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Matrimonial Property Disputes: Rules and Effects

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Abstract---Matrimonial property plays an important role in achieving family stability and in building the society. Therefore, due attention must be given to the reality of the matrimonial property, how it is managed and the rules governing it when disputes about it arise to protect the financial rights of both spouses from any damage that can threaten the stability and development of the society. This study has a number of objectives that can bring about balance regarding the issue of matrimonial property, including: Reaching an accurate definition of matrimonial property, laying down the rules and guidelines of matrimonial property, clarifying the legal characterization of matrimonial property.

Keywords---dispute, effects, family, guidelines, matrimonial property.

Introduction

Marriage contract and rights related to it

Marriage is one of the contracts strongly protected by Islam to safeguard the rights of each of the contract's parties. Allah the Almighty said: "If you desire to replace a wife with another and you have given the former 'even' a stack of gold 'as a dowry', do not take any of it back. Would you 'still' take it unjustly and very sinfully? And how could you take it back after having enjoyed each other intimately and she has taken from you a firm commitment?" (Al-Nisā' 4:20-21).

The Qur'an calls the marriage contract a "*mithaq*", which means covenant and commitment and describes it as firm and solemn. The solemn covenant "*al-mithaq al-ghalīz*" is "the marriage contract; a man's saying: 'I got married' and 'I have contracted marriage'" (Al-Qurṭubī 5/98). This description emphasizes the significance of marriage contract as well as the various rights and obligations affected by it (Vafai & Tien, 1981; Carli et al., 1983). In this context, the Prophet (peace and blessings be upon him) commands kind treatment of women in the hadith: "Fear Allah with regard to women, for you have taken them as a trust from Allah, and intimacy with them has become permissible to you through Allah's Word" (Muslim 1218).

Financial rights associated with marriage contract

1- The dowry (*al-ṣadāq/al-mahr*): Dowry is the first exclusive financial right a wife is entitled to by virtue of marriage. Its obligation is established by Allah's statement in the Qur'an: "Give women 'you wed' their due dowries graciously. But if they waive some of it willingly, then you may enjoy it freely with a clear conscience." (Al-Nisā' 4:4) (Qalyoubī 5/12). The part waived willingly that the verse refers to is the obligatory dowry. It is also said that it refers to any gift, which includes the dowry (Ibn Qudamah 7/160).

The Sunnah of the Prophet (peace and blessings be upon him) includes many hadiths that elaborate on this right that a husband is obliged to pay to his wife. In one hadith the Prophet asked his newly-wed companion, 'Abdur-Rahman ibn 'Awf, "How much did you give her as dowry?" 'Abdur-Rahman said, "Gold equal to the weight of a date stone." The Prophet said: "Hold a wedding feast, even if only with a sheep." (Ibn Hanbal 14216)

The jurists have discussed the details related to the dowry extensively and answered all questions and doubts about it (Al-Kasanī 2/274). If a dispute arises between spouses because the amount of the dowry is not specified (Cheung, 1999; Lam et al., 2009), jurists agree that the wife gets *mahr al-mithl*, that is, an amount equal to her peers' dowry. "The factors considered in assessing *mahr al-mithl* are her wealth, beauty, lineage and what her peers of the same age get. The Maliki school reportedly considers four factors, namely, religion, wealth, status and beauty. In *al-Mudawwanah*, it is reported that Malik said that the wife's youth, place and wealth are to be considered" (Ibn 'Arafah 1/361) "The opinions of the Shafi'i and Hanbali jurists are close to that" (Al-Nawawī 1/326).

2. The maintenance (*al-Nafaqah*): The second right of the wife is the right to maintenance and residence. This right is established by the Qur'an, Sunnah and the consensus of scholars. Allah said: "Let the man of wealth provide according to his means. As for the one with limited resources, let him provide according to whatever Allah has given him. Allah does not require of any soul beyond what He has given it." (Al-Ṭalaq 65:7)

The jurists stated that if a husband refuses to pay his wife's maintenance, the court forces him to do so. That was declared by Imam Al-Nawawī in his *Al-Minhaj*: "If he denies her one of her rights like the night stay (*qasm*) or her maintenance, the judge forces him to fulfill it. If he treats her badly or hurt her unjustifiably,

the judge commands him to desist from that; yet if he repeats it, the judge penalizes him" (Al-Nawawai 1/232).

The jurists have discussed the right to maintenance and residence thoroughly and adequately. They dedicated whole chapters for the maintenance right and its related rulings; see for example *Al-Bada'i'*(2/322) of the Hanfī jurist, Al-Kasani and also Ibn Qudamah (8/156).

3. The inheritance: The marriage contract establishes the right of inheritance according to the Shari'ah as Allah said: "You will inherit half of what your wives leave if they are childless. But if they have children, then 'your share is' one-fourth of the estate—after the fulfilment of bequests and debts. And your wives will inherit one-fourth of what you leave if you are childless. But if you have children, then your wives will receive one-eighth of your estate—after the fulfilment of bequests and debts." (al-Nisā' 4:12)

4. The furniture: if the wife furnishes the house, which is the custom regardless of the scholars' differences, then the furniture belongs to her according to the scholars' consensus. It doesn't matter if she purchases the furniture personally or if a representative, like a guardian or a person she appoints as her proxy, purchases it on her behalf. If her father acts as her proxy and he purchases her furniture using her dowry or her money, she owns the furniture once the sale is completed because the provisions of a contract concluded by proxy apply to the person concerned once the contract is concluded without delay (Abū Zahrah 228).

Rules of property disputes

First: Definition of the matrimonial property

The term, "matrimonial property", is one of the contemporary terms that were not discussed or studied by scholars (Frémeaux & Leturcq, 2018). Perhaps such lack of study is because the wife does have private estate independent from the husband; she also enjoys all the financial rights affected by the marriage contract such as the dowry and maintenance etc (Nini et al., 2009; Acharya et al., 2011). This issue has emerged as a result of the development of contemporary life and women going out for study and work. The term is defined by some contemporary researchers as follows:

"Matrimonial property is the wealth acquired and developed jointly by spouses after marriage, whether their contributions are direct or indirect. This property is divided among spouses in proportion to their contributions to it. Entitlement to this property results from the spouses' joint work or the work of one of them like in case the husband works while his wife stays at home to attend to her duties such as looking after the kids, keeping the house and so on" (Shahid 5).

Second: Rules of Judgements in Matrimonial Property Disputes

1. Household goods dispute

How to resolve a dispute about the household goods if they are purchased by the wife? This question has been discussed at length by jurists which shows the

Shari'ah's care for the wife and its protection of her financial right. The fiqh books dedicated whole chapters for this issue. The scholars of the Hanafī, Malikī, Shafīī and Hanbalī schools paid attention to this question as it concerns one type of the spouses' matrimonial property (Yeates, 1999). Jurists identified two categories of household goods disputes:

First category: a dispute among two spouses during their life about the household goods, which are considered a form of the matrimonial property. This category has two types:

First: the dispute occurs while the marriage still exists.

Second: the dispute arises after separation and divorce.

The books of fiqh show that the jurists unanimously agree that if a dispute arises about the household goods, these goods will be classified according to whether they are relevant to the husband or to the wife; the custom will be referred to in that process. So, what is relevant to the husband according to the *'urf* or custom, he will be entitled to it. By the same token, the wife will be entitled to the items that are customarily relevant to her. This opinion was stated by the Hanafī and Malikī jurists in their books. For example, Imam Muhammad ibn al-Hasan al-Shaibani states: "As for his saying, 'Chapter on the Dispute About the Household Goods', if the spouses dispute about the household goods, whether they are still married or not, and every one of them claims that all the household goods belong to him/her, in such a case, the man's claim will be accepted regarding things relevant to men like turbans, men shoes and bows because the apparent circumstances support his claim. As for things relevant to women, the wife's claim of them will be accepted.

Regarding things that are relevant to both of them, the woman's claim will be accepted concerning the goods that women customarily bring to home upon marriage (*jihaz mithliha*) according to Abū Yūsuf, may Allah shower his soul with His mercy. For other items, man's claim will be accepted with his oath (*yamīn*). However, Abu Hanifah and Muhammad hold that the man's claim is what should be accepted in all the above. (Al-Shaibani: 240) The Malikī jurists hold a similar opinion (Al-Abdari 3/539); they also stated that the woman is entitled to specific types of *mut'ah* in the event of divorce (Al-Abdari 3/539).

Second category: dispute about the household goods in the event of one spouse's death

If one of the spouses dies, and the other disputes with the deceased's heirs about the household goods, Abu Yūsuf and Muhammad maintained that the same rulings related to the spouses' disputes occurring in their life also apply to this case because the heirs substitute the deceased. According to Muhammad (may Allah shower his soul with mercy), what is relevant for both husband and wife goes to the man in both cases of life and death. Abū Yūsuf (may Allah shower his soul with mercy) held that the woman is entitled to items that her peers customarily bring home upon marriage while the rest goes to the husband (Sobko et al., 2021). If one of the spouses is a slave, all the household goods go to the free spouse in both cases of life and death. Abū Yūsuf and Muhammad stated that "the slave who is permitted to do business and the slave who is in the process of buying his/her freedom (*al-mukatab*) are both treated as the free person. And Allah knows best" (Al-Shaibani 240). We find similar views in the works of the Malikī jurists and in Ibn Al-Hajj's *Nawazil* (Al-Abdari 3/540).

2. Disputes about matrimonial property acquired through the work of one spouse

The Malikī jurists had a good and detailed discussion of this issue. Following is a beautiful example they mentioned in their discussion of spouses' working together to produce a specific commodity: "The yarn goes to the wife unless it is proven that the flax threads used in it is owned by the husband; in such a case, they will be partners in it. Asbagh narrated that if the spouses dispute about the yarn, the wife is entitled to it after she makes an oath that it belongs to her (Sudama, 2020). Ibn 'Arafah held that if the husband is a tailor, yet the yarn resembled the work of both husband and wife, then they partner in it; otherwise, it belongs to the one whose yarn is similar to it. Al-Matiṭī said that if it is established by evidence or by the woman's confession that the flax thread belongs to the man, then they are partners in the yarn since the husband has contributed the flax thread and the wife has contributed her labor (Suryasa, 2019). Similarly, 'Isa reported in the chapter of Claim and Reconciliation that Malik was asked about a fabric woven by a woman but her husband claimed that he owned it, he responded that the woman must produce evidence that she owns both the thread and yarn (Grilli et al., 2000; Agha et al., 2016). Ibn Al-Qasim said that the fabric belongs to the woman; as for the man, he needs to prove that he owns the thread and yarn, if he does then the woman will be his partner in proportion of the value of her weaving work; similarly he will be partner in proportion to his thread and yarn (and if the husband establishes with proof the he had bought her portion, he should make an oath and the fabric will be judged to be his)" (Al-Abdari 3/540).

Conclusion

Thus, it is clear that the Shari'ah jurists did discuss the matrimonial property and how disputes related to it can be resolved. Exploring the above views of the scholars, we learn that disputes related to the matrimonial property can be classified under two categories; each of them has various forms. The first category is when disputes arise while the marriage still exists. On the other hand, disputes of the second category occur after the termination of the marriage whether the termination is caused by death or divorce. In both cases, when a dispute arises, it should be brought before the judge for resolution. If the disputed property seems to belong to women, it is judged to be the wife. On the other hand, properties that appear to be relevant for men go to the husband. As for things that are relevant to men and women, the judgment will be for the party who can produce evidence or bring witnesses supporting his/her claim.

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