

## **Juristic - Legal Analysis of the Validity of Exorbitant Dowry<sup>1</sup>**

Hussein Shafiee *Ph.D.*

Assistant Professor, Department of Private Law, Kharazmi University, Tehran, Iran

Nasrin Alipour

PhD Student, Department of Private Law, Kharazmi University, Tehran, Iran

**ABSTRACT** — Article 1080 of Civil Code does states the compromise of parties based on the amount of dowry. This decree is supported by famous view of jurisprudents, who consider the amount of dowry absolutely following the parties' compromise based on the Quran, Sunnah, and some via consensus view. However, the issue of exorbitant dowries has resulted in many jurisprudents and jurists' doubting the integrity of exorbitant dowry. Some consider exorbitant dowry invalid due to insanity and some due to lack of ability to submit an exorbitant dowry. In addition, most men who accept an exorbitant dowry, do not have a serious will in returning it. In the present study, regardless of social results of any of the above approaches, abovementioned views were analyzed and it was found that none of the reasons for opposing the validity of an exorbitant dowry are valid.

**KEYWORDS:** *dowry validity, jurisprudence, exorbitant dowry*

### **Introduction**

Article 1080 of the Civil Code speaks on the domination of parties' compromise on the amount of dowry. This decree is supported by the views of most jurisprudents, who consider the amount of dowry absolutely following the parties' compromise based on the Quran and Sunnah and some via consensus (Tousi, 1407 A.H., 364). However, decree of article 1080 A.H. and its historical background have not obstructed discussion. The amount of nominal dowry is one of the very important hot legal, social, economic and even ethic discourses. On the other hand, free will of individuals in determining their extent of commitment weakens application of limit on the amount of dowry, and on the other hand, too much or too little dowry has resulted in many abnormalities and problems in social life of part of people, so that for several years, exorbitant memory has turned into one social and public problem. Some resort to basic approaches to adjust and correct this issue, and in legal and juristic terms, they propose new approaches and some take economic and psychological actions considering it, but the common point of most commentators is their general orientation regarding this issue. Almost all commentators interpret exorbitant dowry as an issue.

#### **1. Reasons for Non-limitedness of the Amount of Dowry**

Contracts, including agreement on dowry, follow compromise of parties, which is per se a strong proof on non-limitedness of the amount of dowry. But, regarding the topic under question, there has been specifically citations to verse of the Quran, Hadith, and jurists' consensus:

##### **1.1. Verses' Implication on Non-Limitedness of the Amount of Dowry**

It is deducted from the views of jurists that they have cited four verses of the holy Quran to infer non-limitedness of the amount of dowry. Next, we will treat referents of each of these verses.

###### **1.1.1: Verse 20 of Chapter Nisa<sup>2</sup>**

No doubt, *Qintar* in this holy verse refers to dowry (Qomi, 1986: 1/135; Tabatabayi, 1417 A.H.: 4/257). Some terminology experts have suggested that *Qintar* has no limit in terms of affluence and many believe that it is equivalent to four thousand dirhams (Fayomi Mogherri, Bitā: 2/508). There are also other citations on the amount of *Qintar*, for example, some have suggested that it refers to seven thousand dinars. Eleven hundred, one hundred twenty rotls of gold, and eighty thousand dirhams have also been cited (Vaseti Zobaydi, 1414 A.H.: 7/422). Also, *Qintar* has been translated as one cowhide filled with gold (A group of authors, 1977: 1/292). However, the common referent of all these citations is that *qintar* is in value more than *Mahr-o-Sunnah* (Dowry of Sunnah). That being said, citations of different jurists to this verse to set *Mahr* more than *Mahr-o-Sunnah* is perfect and integral. Of course, there has been a citation from Omar bin Yazid through Ayashi as follows: "He said, "I asked my father, Abdillah (AS): Inform me about the person who gets married for more than Dowry of Sunnah. Is it permissible for him? He replied: when the dowry exceeded Dowry of Sunnah, then it is not dowry, rather it is actually gift because God says, "If you gave one of them a

<sup>1</sup> This paper is extracted from the student's PhD dissertation.

<sup>2</sup> "But if you want to replace one wife with another and you have given one of them a great amount [in gifts], do not take [back] from it anything. Would you take it in injustice and manifest sin?" (<http://quran.com/4/20>)

qintar, don't take anything from it". In fact, it is gift and does not mean dowry. Don't you know that once she received the dowry then was divorced, he can get the dowry in whole, then surplus to that is gift as I informed you, but then it is incumbent to pay the woman her female dowry? I asked, "How should he pay it and how much is it?" He said, "In fact, dowry of faithful women is five hundred and that is Dowry of Sunnah, and therefore it has to be less than that and not beyond that. And anyone whose wife's dowry is less than five hundred, he should pay it, and anyone who boasted and spent graciously and added to five hundred, then she deserves her female dowry because of the reasons mentioned, but it does not exceed Dowry of Sunnah, which is five hundred." (Majlesi, 1410 A.H.: 100/350-351). This narration is trying to suggest that the purpose of the abovementioned holy verse is not that it be cited as a permit for dowry in addition to Dowry of Sunnah, rather its purpose is gifting. In fact, the verse tries to state that you're not allowed to take back the gift you have given –how much it be. Also, if a man wants to divorce his wife in the Khula manner and take back dowry from her, it will be ok (Shobeyri Zanjani, 1419 A.H.: 6817/21). It is noteworthy that the above narration does not seek to negate ownership of wife on surplus of Dowry of Sunnah, rather it confines the title of Mahr to the amount of Dowry of Sunnah. Of course, this change of title has many practical implications. For example, if there occurs divorce between the spouses before intercourse, the wife must refund half of the dowry, but if she has received more than that as gift, she is not obligated to refund (Araki, 1419 A.H.: 541). Nonetheless, the above narration has been criticized both in terms of authentication and implication, thus is not practiced by jurists. In terms of authentication, relation and link of Ayashi to Omar bin Abdol Aziz is not clear, so some of its narrators are unknown and therefore, the above narration is weak (Hashemi Shahroudi, 1426 A.H.: 265/3). Implication of this narrative is also flawed. First, referent of this hadith is inconsistent with the appearance of the above holy verse as the verse ostensibly wants to say, "Don't try to take back forcefully the dowry you have given to your wife." Second, the reasoning suggested in it is answerable as in the rest of the verse, it says, "And we received from you a strong promise", which is not proportionate with gift, and, in contrast, it is consistent with dowry, which is the result of term and agreement (Shobeyri Zanjani, Idem: 6818).

#### 1.1.2. Verse 24 of Chapter Nisa<sup>3</sup>

Some jurists have resorted to this verse on the non-limitedness of the amount of dowry. They have interpreted the obligation in sense of incumbency, saying the referent of this holy verse is that it is incumbent on you to pay the wage you have set, and the verse covers any amount of dowry including Dowry of Sunnah and more than that (Bahrani, 1405 A.H.: 430/24).

Nonetheless, it should be noted that this verse has been interpreted in connection with discontinuous marriage (Shahabi, 1995: 364) and thus it cannot be used to address validity and permit of non-limitedness of dowry in permanent marriage. Additionally, if we assume the obligation as meaning the incumbency of paying the set dowry, the verse's reference regarding the amount of dowry cannot be resorted to. To put it otherwise, the legislator's emphasis is on fulfilling the promise not the amount of promise.

#### 1.1.3. Baghara Verse 237<sup>4</sup> and Nisa Verse 4<sup>5</sup>

In this verses, the Supreme God has absolutely commanded fulfilling the dowry. Since the statement is general, obligation to pay dowry covers both Dowry of Sunnah and the dowry exceeding it. However, such a resort doesn't have reasoning power. Nonetheless, in both cases legislator's denotes the obligation to pay dowry, ignoring its value. It is clear that paying proper dowry is obligatory. Therefore, if someone set narcotics or dead human's flesh as dowry, it's basically beyond the decree in these holy verses. That being said, if we are skeptical on integrity of exorbitant or heavy dowry or dowry exceeding Dowry of Sunnah, it is not correct to cite these verses to prove the integrity of such dowries.

It follows from the above consideration that exclusively, the verse of qintar is a proof on permitting dowry to any amount.

### 1.2. Validity of Non-Limitedness of the Amount of Dowry

Many narratives have been cited regarding the amount dowry. Some of these narratives apply to the amount dowry, as some of them were mentioned. But, some narratives have considered correct the setting of a dowry more than Dowry of Sunnah. Also, some narratives have considered setting dowry value correct in general, which deserves consideration. Hence, next we will treat authenticated narratives cited in this regard:

#### 1.2.1. Apparent Narratives in Non-Limitedness of the Amount of Dowry

Many narratives have, generally, endorsed setting any amount of dowry. Clearly, if the Innocent ([=any member of Ahlulbayt] peace be upon them), had in mind a limit for dowry, both in Dowry of Sunnah and beyond that, they would avoid repeatedly using the term *general* regarding the amount of dowry. Also, a dowry that doesn't topically come under possession e.g. intoxicants must be excluded. Some authentic hadiths in this connection are as follows:

1.1.2.1 Narrative One: Abi al-Sabah al-Kanani said, citing Abi Abdillah (AS), "I asked him about dowry querying what it is. He said, "Whatever people agree upon!" (Koleyni, 1429 A.H.: 378/5)

1.2.1.2 Narrative Two: Authentic Hadith of Fazil bin Yasar from abi Jafar (AS), quoted, "Dowry is what they both agree upon either little or much, that is the dowry." (Idem)

1.2.1.3 Narrative Three: Trusted Hadith of Zorara from abi Jafar (AS), quoted, "Dowry is what they both agree upon, be it either little or much." (Tousi, 1407 A.H., 353/7).

#### 1.2.2 Authentic Narratives on Integrity of Dowry beyond Dowry of Sunnah

Among this group of narratives, the Innocent have endorsed dowry more than Dowry of Sunnah. For instance in Sahiha of Bazanti, Imam Reza (AS) considered the man who had set one thousand dinars for his wife's dowry responsible to pay it.

<sup>3</sup> "And [also prohibited to you are all] married women except those your right hands possess. [This is] the decree of Allah upon you..." (<http://quran.com/4/24>)

<sup>4</sup> "And if you divorce them before you have touched them..." (<http://quran.com/2/237>)

<sup>5</sup> "And give the women [upon marriage] their [bridal] gifts graciously." (<http://quran.com/4/4>)

1.2.2.1. Narrative One: authentic hadith of Bazanti: “He said, “I asked Reza (AS) about marrying a woman for one thousand dirhams, then he divorced her after intercourse. His answer was that she owns one thousand of the money she received from him and she does not have to observe an Eddah [waiting].” (Idem, 375).

1.2.2.2. Narrative Two: authentic or trusted hadith of Muhammad bin Muslim: “He said that he asked aba Abdillah (AS) about a man marrying a woman who set her dowry one thousand dirhams and paid it to her, then, she forgave for him five hundred dirhams and returned it to him, then, he divorced her before intercourse. He replied that five hundred is returned to him, the rest is for her, because she deserves five hundred dirhams, if she granted it to him, then that’s for the man, but not so if otherwise.” (Koleyni, Idem: 108/6)<sup>6</sup>.

1.2.2.3 Narrative Three: Muhammad bin Yaghob from Hussein bin Muhammad from Moalli bin Muhammad and Muhammad bin Yahya from Ahmad bin Muhammad, all from al-Vasha’ from al-Reza (AS), said, “I heard him saying that if a man married a woman and set her dowry twenty thousand and set for her father ten thousand, the dowry is allowed, but the one he set for her father is wrong.” (Horr Ameli, Idem: 371/10).

1.2.2.4 Narrative Four: Muhammad bin Yaghob from Muhammad bin Yahya from Ahmad from Ali bin al-Hakam from Ali bin abi Hamza, said, “I asked aba Ibrahim (AS) about a man whose son’s wife was his brother’s daughter, and he had set a dowry of a house and servant and then the man died. He said that he takes the dowry from within the possessions. I asked, “What about the house and servant?” He said, “half of houses and a servant from among servants.” I said, “This way it becomes thirty or forty dinars and the house.” Then he said, “This is one hundred and seventy or eighty dinars.”” (Koleyni, Idem, 381/5).

Implication of this narrative on permitting the surplus to Dowry of Sunnah is clear. But, it should be noted that every dinar had been equivalent to ten dirhams.<sup>7</sup>

1.2.2.5 Narrative five: Muhammad bin Yaghob from Hamid bin Ziad from bin Sama’ah from Ghayr Vahed<sup>8</sup> from Aban bin Uthman from Ibn Abi Yaghfor, said, “I asked aba Abdillah (AS) about a man who married a woman and her father set the dowry that he be given one thousand dirhams, then he divorced her before intercourse, what does she have to pay back to him? And in fact, half of the dowry is for her and her father is an old man whose share is five hundred dirhams and he says, “If it was not because of you, I would not have accepted him with three thousand dirhams? Then he said, “He should not look at what he says and nothing returns to him.”” (Horr Ameli, Idem, 318/21)

It’s inferred from this narrative that Hadrat Sadegh (AS) saw no problem with setting a dowry of thousand dirhams. A similar narrative has also been cited via other direction (Horr Ameli, Idem).

1.2.2.6 Narrative Six: Muhammad bin Yaghob from Muhammad bin Yahya from Ahmad bin Muhammad from Ibn Mahbob from Saleh bin Razin from Shahab, said, “I asked Aba Abdillah (AS) about a man who married a woman for one thousand dirhams which he paid to her and she said, “I love you”, then he divorced her before intercourse. He said, “She must return five hundred dirhams.” (Koleyni, Id., 107/6).<sup>9</sup>

1.2.2.7 Narrative Seven: Muhammad bin Yaghob from a group of our friends from Sahl bin Ziad and from Ali bin Ebrahim from his father, all from Ibn Mahbob from Ali bin Re’ab from Abi al-Hassan (AS), he said, “A question was asked and I was present about a man who married a woman on the condition that he she move with him to his land, if she didn’t move, then her dowry would be fifty dinars if she refused to move with him to his land. Then he said, “If he wanted to move her to the land of infidelity, then no condition applies on her in that and she deserves the five hundred dinars that the man agreed to give as dowry to her, and if he wanted to move her to the land of Muslims, then he will have what he has conditioned and Muslims must fulfill their promises, and he does not have to move her with him to his land, he pays her dowry or they compromise and then that will be permissible for him” ”.

1.2.2.8 Narrative Eight: Authentic hadith from Fuzail, said, “I asked Aba Abdillah (AS) about a man who married a woman for one thousand dirhams, then he gave her a servant and a cotton dress for the one thousand dirham he had set as her dowry. He said, “Once she agreed on the servant while she had known him, then there is no problem if she kept the dress and agreed on the servant.” I asked, “What if he divorced her before copulation?” He said, “She deserves no dowry and five hundred dirhams returns to the man and she will only have the servant””.

This narrative also states directly the permissibility of setting a dowry exceeding five hundred dirhams and the Imam (AS) states in the end that in divorce before intercourse, half of the dowry i.e. five hundred dirhams is returned by the woman to the man. These narratives clearly predicate the permissibility of setting surplus to Dowry of Sunnah.

### 1.2.3 Narratives of Impermissibility of Surplus to Dowry of Sunnah

<sup>6</sup> In the document for this narrative, Mansur bin Yonis is seen. Though he has been trusted, but Sheikh Tousi has called him Waghefi (=a group of Shia sect), in opposite to Najashi about whom he does not have such a description. Most probably, he is one of Waghefis who has been enlightened and so, Najashi does not address them as Waghefi (Shobeyri, Idem, 6814).

<sup>7</sup> In the chain of the narrators of this narration, only Ali bin abi Hamza Bataeni is weak in it, but narrations that non-Waghefis have narrated from Ali bin abi Hamaza have to be correct, because the criterion in integrity is directness of the individual upon stating the hadith, though it might be diverted later on, and non-Waghefi narrators have certainly narrated from Ali bin abi Hamza during his assiduity, as they would avoid him after his diversion.

<sup>8</sup> *Ghayr Vahed* in document series denotes a group of people one of which is most likely authentic and therefore, the cited narrative is reliable.

<sup>9</sup> Although Saleh bin Razin does not have explicit entrusting on the citation of this narrative, his book has been trusted by traditionists, as Hassan bin Mahboob who is from companions of Ijma’, cites his book as well as Bin abi Umayr via Hassan bin Mahboob (Shobayri Zanjani, Idem, 6814-6815).

Against the abovementioned narratives, there are two narratives that explicitly negate dowry value beyond Dowry of Sunnah. One of these narratives was investigated in connection with the verse of qintar and its weak citation and implication determined. Another narrative is one cited by Muhammad bin Sanan in Istibsar:

From Muhammad bin Sanan from Mofazzal bin Omar, he said, "I entered at Abi Abdillah (AS), and said, "Please inform me about a woman's dowry which is not allowed for faithful men to give". He said, "Dowry of Sunnah is five hundred dirhams, so, what exceeded that returns to Sunnah and he has no obligation more than five hundred dirhams, thus, if he has intercourse before paying her dowry, the dowry will be annulled and there will be nothing for her but what she received before sex, so, if she demanded anything after that in his lifetime or after his death, she will deserve nothing" (Tousi, 1390 A.H., 224/3).

Sheikh Tousi states following this hadith that Muhammad bin Sanan has been taunted and his report is seriously weak and no one will practice it (Ibid). Additionally, the referent of this narrative is inconsistent in terms of meaning with the appearance of the Book and other authentic reports. Therefore, in general, there is no doubt that narratively, the amount of dowry has not been limited.

### 1.3. Consensus of Jurists

Many of pioneers and some recent scholars have claimed to have consensus on lack of limitation (Helli Seyvari, 1404 A.H.: 208/3), while some take a non-opposing stand on this topic (Helli, 1410 A.H.:576/2)<sup>10</sup>. However, Sayyid Morteza in Al-Entesar issues explicit fatwa that it is not permitted to set dowry beyond Dowry of Sunnah. It is interesting to note that Sayyid Morteza's reason is also consensus (Tabatabaei, 1421 A.H.: 12/8).

Statements of Sheikh Sadough in this regard are also skeptical; the sheikh writes in Hedaya, "Dowry of Sunnah is five hundred dirhams, and what exceeds it, returns back to Sunnah" (Sadough, 1418: 259). In the book Moghna, he considers permissible setting a dowry of one thousand dirhams (Sadough, 1415 A.H., 328). Apparently, bin Junayd has also stated dowry to be limited to the amount of Dowry of Sunnah, and some jurists have concluded such a view from his statements (Helli) (Fakhr-al-Mohagheghin), 1387 A.H.: 193/3). But, Shahid Thani says that bin Junayd has firstly not confined dowry and secondly has cited a weak narrative from Mofazzal as to confinement of dowry to the amount of Dowry of Sunnah. Thus, in general, bin Junayd does not believe in confinement of dowry (Ameli, 1413: 166/8). Nonetheless, claim of the consensus is worth pondering and therefore, many jurists have forgone claim of consensus (Ameli, 1411 A.H.: 362/1).

## 2. Reasons for Confinement of Dowry

Respecting individuals' freedom of will and its reasons did not prevent researchers from confining the amount of dowry. Phenomena that are raised by social issues will be corrected by the power they get from the authority of legislator or sacrosanctity of the legislator, and in this regard, starting an attempt to repair social issues will be performed by scientists. That being said, to overcome such a strong principle as individual's freedom of will, strong proofs have to be available. Some jurists and lawyers know too much dowry as a foolish and wrong action and some, based on the condition of ability to submit object of deal, as one of the essential conditions of integrity of deals, consider heavy unpayable dowry as void and ineffective. There are other reasons that can be brought in confirmation of dowry confinement. Here, with neutrality and without prejudice, we will treat reasons and viewpoints given by supporters of dowry confinement.

### 1.2. Insanity of Commitment to Heavy Unconventional Dowry

Seeing insane agreement on heavy dowry, some contemporary jurists contend, "Some heavy dowries have an insane nature and as a result, dowry becomes void and turns into Mahr al-Mithl." Following this topic, they respond to possible objection, talking about the contrast of the appearance of the qintar verse to this view, "We shouldn't ignore Muhkamat (the clear) for Mutashabihat (the unclear), rather, Mutashabihat should be interpreted via Muhkamat. Among Muhkamat is that insane deals are void, be it sale or marriage, and the rule of insanity is not limited to this case, but it also applies to gifting and other topics as well" (Makarem Shirazi, 1424 A.H.:20/1)<sup>11</sup>. In contrast, some jurists have argued that even assuming insanity of some dowries, still no reason exists on nullity of insane deal, as all Muhaabat deals (deals at less than conventional price) are insane (Shobeyri Zanjani, Idem, 2807/21). Nonetheless, it is required that we first consider the concept of insane deal and answer the question if heavy dowry is an example of insane deal, and then, try to seek the decree ruling this subject.

#### 1.1.2. Concept of Insane Deal

The term *insane deal* does not have a legitimate reality and no such term has been used in juristic cases and Civil Code or other laws, but such usage is observed in juristic texts. Author of Anavin states in definition of insane deal, "No doubt, insane deal or any insane deal is not any deal in which parties are or one of the parties is insane, but it is a deal the holding of which is in accord with the status of the insane" (Husseini Maragheh, 1417 A.H., 366/2). Some authors, with a similar definition, do consider insane a deal which is not based on cunctation of the wise but uncommitted cunctation has been applied in it and therefore, it has become similar to the deal of the insane (Jafari Langroudi, 251: 1378). Therefore, it is concluded that insane deal is an unwise deal conducted by the wise (Hekmat Nia, 2013: 11). Therefore, saying that insane non-Muhaabat deals are not wise is not correct. The wise generally hold Muhaabat deals themselves, for example, they gift their children or wives. In their view, such an action is not unwise and insane but if type of cunctation is not rational, both in cunctation and Muhaabat deals and fraudulent and exchange deals, that deal will be considered irrational deal. For instance, gifting a ring to a friend is not an insane action, but is Muhaabat and based on cunctation. In contrast, bestowing all personal possessions to a friend is considered merely insane.

<sup>10</sup> Bin Idris in Sara'er mentions the opposing fatwa of Sayyid Morteza, but due to its inconsistency with the appearance of the Book and frequent reports and consensus of ages, he eventually chooses not to oppose in this issue.

<sup>11</sup> His view on nullity of insane contract does not specialize to dowry and he has the same view on other deals as well. For instance, on insane sale, see Anvar al-Fighaha, p. 411, Qom, Amirmomenin School, 1<sup>st</sup> print, 1426 A.H.

Jurists and lawyers have presented some criteria to detect insanity of legal action such as not being able to submit (Ardebili, 1403 A.H., 58/10), knowledge on not being able to submit (Shahidi, 2007 A.H.: 93), lack of rational benefit for the deal (Bojnourdi, 1419: 158/2), non-clearness of the object of the deal (Katouzian, Idem, 171/3).

That said, is committing the husband to pay too heavy or compromise of the couple on very little dowry considered insane action? To answer this question, heavy dowry has to be defined. In juristic and legal contexts searched, no definition or criterion was observed regarding heavy dowry. Maybe such a negligence is caused by conventionality of heavy dowry. However, if we assume heavy dowry as one that upon marriage contract the groom cannot pay, such a definition is not in accord with conventional practice. In a statistical study conducted by the author it was determined that average dowry in recent years has been 324 Bahar Azadi gold coins per marriage.

It appears that it is a heavy exorbitant dowry that de facto and potential possession of the groom will not normally afford it. For example, commitment to paying 1000 Bahar Azadi coins by a simple worker who gets a wage as little as one Bahar Azadi coin and this wage does not suffice his normal life, the dowry is considered too exorbitant; but, this commitment on the side of a reputable businessman whose possessions are multiple times as high as this value, assuming his current and fixed possessions, or a specialized doctor who does not have much possessions but is expected to earn much, is not too exorbitant. This criterion depends on the payment ability of the obligor.

In some cases, significant inconsistency of dowry and wife's status makes the dowry look irrational and insane. If a young man promises to pay the dowry of a young chaste girl in front of a disreputable harridan, then his agreement can be known foolish. Also, in the author's opinion, little dowry can be considered insane. A young competent with a high social status who does not have economic support and feels content with a few flowers, has in fact done an insane act.

#### 2.1.2. Legal Status of Insane Deal

According to the abovementioned, the issue was clarified to some extent, but the main problem is if insane deal is juristically and legally acceptable like agreement on exorbitant dowry. Legal status of insane deal is debated by jurists. Based on the principle of corruption in deals, some consider it void. According to this view, the first principle in deals is corruption and excluding this principle requires proof. The most important reason for excluding the principle of corruption is prevalence of the deal in legislator's era and lack of his affirmation on its nullity. There is no proof for integrity of insane deals due to rarity (Arani Kashani, 1426 A.H.: 658). Criticizing this statement, it has been said that assuming superior integrity of the above reason, insane deal is one to which the title of deal applies and title of deal is a reason for its prevalence (Khomeini, 1415 A.H.: 244). In other words, insanity is an adventitious description for a prevalent deal, not a rare deal not confirmed by the legislator. Other reason of advocates of nullity of insane deal is that nullity of certain insane deals such as useless sale e.g. sale of wasps is under consensus of jurists (Arani Kashani, Idem, 659). Criticizing consensus citing it is said that firstly, no consensus is observed regarding nullity of insane deal. Second, consensus in devotional matters is applicant, not in those based on inference and deduction from general rules (Montazeri, 1415 A.H.: 426/2). Another reason for nullity of insane deal is disparity of proper deal conditions from insane deal. Meanwhile, an exchange that is absolutely insane is not endorsed by wisdom and religion and deals are conventional rational things that humans have devised to supply conventional needs. The holy religion has also endorsed such a thing that the wise invented and affirmed. One of contemporary jurists says confirming this view, "Apparently, nullity decree of deals conducted by an insane person is because of the fact that his/her deals are subject to being insane, leading to wastage of possessions. So, deals considered by jurists as insane cannot be considered correct" (Montazeri, Ibid). Nonetheless, it should be noted that assuming application of the title of deal on insane deal and existence of components of proper deal, there is no reason for distinguishing deals from insane deal in specific sense of the word. Also, nullity of lunatic's deals cannot be brought as reason for nullity of their action. There are probably some deals done by a lunatic which are quite reasonable but don't merit an integrity decree. Therefore, in logic of Imamia jurisprudence, insanity leading to nullity is a personal matter rather than a topical one. In addition to this, there is narrative from Imam Reza (AS) regarding usury endorsing nullity of insane deal. According to the narrative, he said on reasons for prohibiting usury, "One of the reasons for prohibition of usury is corruption in possessions as when one buys one dirham for two dirhams, nothing is placed against one of the two dirhams... So, God has prohibited usury to His slaves as insane person is prohibited from delivering their possessions unless they grow mature, as they waste their possessions" (Sadugh, 2007: 483/2). It appears that one of the reasons for prohibition and annulment of usury is its insanity. Some contemporary jurists consider this narrative as endorsing insane deal (Makarem Shirazi, 1425 A.H.:92). Criticizing this reason it should be said that in a hadith from Imam Reza (AS) two reasons have been mentioned for usury, one being negation by religion and the other as corruption in possessions. Comparing usury to insane deal is due to corrupting possessions, so, nullity cannot be attributed to its insanity (Hekamatnia, Idem, 23).

In legal terms also insane deal can be treated. In Civil Code, the term insane deal has not been used and no clear decree stated regarding insane deals. Still, article 215 states, "object of the deal must be appropriable and involve reasonable legal benefit". Also, article 507 states regarding conditions for integrity of reward, "reward on illegitimate or unreasonable action is void". No doubt, non-reasonable action in Civil Code refers to insane action as article 1208 of Civil Code states concerning the rule on insanity, "Immature is someone whose appropriation of their possessions and legal rights is not reasonable". Therefore, subject of decree mentioned in article 507 is "insane reward". However, insane reward is not specific and considering generalities and decree of article 215, specificity must be nullified and purpose of this decree transferred to other deals. Also, paragraph 2 of article 232 of Civil Code considers one of the useless conditions as useless. Some jurists believe that article 2's paragraph 2 in Civil Code is one of the general elements of deals, thus, not specific to by-deal terms (Jafari Langroudi, 2008: 251). Thus, insane deals can be considered null according to the Civil Code.

However, these reasons are quite strongly suspicious, as relationship between a deal without reasonable benefit and insane deal is generally and specifically close. Some insane deals are benefitting, but submitting is not possible in them and in some of them there

is not a balance between two parties. Additionally, despite mentioning principles of integrity of deals in article 190 of Civil Code onwards, decree of article 507 cannot be generalized to all deals. To put it otherwise, the reasons is more specific than the claim. Assuming that base of decree of article 507 can be generalized, it would not involve all insane deals, but will involve those insane deals that lack basic conditions of integrity of deals such as reasonable benefit (article 215 of Civil Code) (Hekmatnia, Idem, 25). Therefore, reasons given for invalidity of insane deal cannot be resorted to. In contrast, there are strong reasons that insane deal with basic conditions of deals' integrity is correct. The most important reason is the principle of integrity. Following the view of most jurists, Civil Code has ignored the principle of corruption of deals, accepting the principle of deals' integrity. The rule of domination also endorses insane deal. Also, the principle of contractual necessity and firm reason of "Fulfill your promises!" and "God permitted deals" are the reasons cited to prove integrity of deals, thus endorsing the validity and integrity of insane deal. Additionally, rational order requires that when in doubt towards reasonability of an action, a reasonable purpose should be assumed on people's action (Khouyi, 1400: 310/7). Hence, from the set of the above reasons it could be concluded that agreement on exorbitant dowry or in case, on very little dowry, is considered conventionally insane, but there is no reason for nullity of these agreements due to insanity.

## 2.2. Lack of Authority to Afford

Some authors resorting to the ability of submitting object of commitment as one of the integrity terms of deal, don't confirm a dowry beyond the husband's authority (Motavalli Almoti, 2006: 150). What is certain in this regard is the fact that currently, upon marriage contract, most young men don't have the ability to pay the dowry they have promised. Therefore, it is necessary that we consider what authority of submission is and which rule can be used to know authority from lack of authority upon holding the contract.

### 2.2.1. Authority to Submit Object of Commitment as One of the Terms of Commitment

Iranian Civil Law does not mention authority of submission regarding contracts and deals in general but considering specific cases regarding some contracts such as sale, rent, and general legal principles, authority can be considered as one of the conditions for deals' integrity (Shahidi, Idem, 91). As article 348 of Civil Law states, Sale of something that the seller does not have authority to submit is null unless the client is able to get". Also, article 470 of the Civil Code states regarding lease, "In order for a lease to be correct, the condition is authority to submit the object of lease." In Imamiyya jurisprudence also there is no doubt on necessity of authority of submission, and Sheikh Ansari claims consensus in this regard (Ansari, 1415: 175/4). Some jurists have cited lack of opposition in this issue (Halabi, 1417: 212). That being said, what is authority of submission?

### 2.2.2. Rule of Authority of Submission

Does lack of authority of submission mean that no one has authority and possibility of submitting object of commitment? Or promiser's lack of authority, per se, results in "lack of authority of submission"? In other words, is lack of authority of submission an absolute or relative thing? Some authors consider the husband's lack of authority for submitting dowry as leading to nullity of dowry, and to prove this, they state that if we look at the basis of the law of non-deliverable deal, we will find that regardless of whether we assume lack of authority as relative or absolute, the result is that as a result of lack of authority of promiser to submit, object of deal will not be given to the receiver or promiser, and the reasons for nullity of deal due to lack of authority (i.e. lack of deceiving and insanity) are also present when assuming relative lack of authority (Shahidi, Idem, 101). Nonetheless, this view is problematic in different aspects. In legal terms, jurists have considered authority of submission as a condition of deal and in other words, in order for lack of authority of submission to nullify commitment, it is necessary that object of commitment be not deliverable. So, prevalent example with regard to this condition is nullity of selling birds in sky or the fish swimming in sea (Halabi, Ibid). Therefore, consensus of jurists in this regard concerns lack of absolute authority rather than relative authority. In Iranian law also there is a minority who advocates relativity of authority. Jurists believe that considering the contents and status of article 348, nullity of contract is special to those cases where non-deliverability is due to the situation of the possession itself rather than disability of the promiser (Katouzian, Idem, 189/2). In French law also, tendency is toward absolutism of lack of authority. French jurists believe that to nullify a deal due to lack of authority of submission, it is necessary that submission of object of deal be absolutely beyond authority (Shahidi, Idem, 100).

Hence, it appear that although many current agreements on dowry are beyond authority of the husband, but sheer lack of authority does not nullify the dowry.

## 2.3. Lack of Will

None of the reasons stated above for destabilizing validity of exorbitant dowry is a firm and trustable pretext to correct what we assume as a social issue. But this does not mean that all agreements made regarding dowry at any value are respected. Major criticism on many of exorbitant dowries is lack of serious will of the husband or the couple on paying the dowry. No doubt judge must query his will in order to obligate him for fulfilling the commitment. As per article 190's first paragraph in the Civil Law, their will and satisfaction is the foremost condition of integrity of transactions. Now, the question is if the will of those who hold a contract and set an exorbitant dowry in it and notify each other that "who gave it and who received it?" is serious and if they have serious will to fulfill the commitment. Narratively, there are various narratives suggesting if the husband intends not to pay dowry upon wedlock contract is considered fornicator or thief (Horr Ameli, 1409 A.H.: 266-267/21). Socially, nullity of too exorbitant dowry has minor implications compared with obligating the husband, as with the dowry being nullified, the wife starts to deserve Mahr al-Mithl, which in Iranian community is not little for young competent women. That being said, lack of will for fulfilling the contract does not invalidate it, but the will is required for composing the contract. Explaining "parties' will and their satisfaction" as one of the basic terms of deals' integrity, the Civil Code states that, "the contract is held with the purpose of being accompanied with something that denotes the will" (article 191 of the Civil Code). Therefore, despite the too exorbitant dowry turning into a social issue, its credibility cannot be doubted with the purpose of troubleshooting. Regarding the above narratives it should be noted



that these narratives refer to the moral compensation and sin of a man who does not intend to pay the dowry. Otherwise, there is no doubt that nullity of dowry does not result in nullity of marriage, thus rendering the man fornicator.

### Conclusion

Based on the findings of the above study, value of dowry follows will of the parties. The verse of qintar (verse 20 of Nisa Chapter), Sunnah, and most jurists are reasons endorsing non-limitedness of the amount of dowry. In contrast, some consider exorbitant dowry invalid due to its insanity and some others due to lack of authority to submit exorbitant dowry. Besides, most men who undertake too exorbitant dowries don't have serious will to pay it. It was determined in the present paper that insanity of contract will nullify the contract if it spoils one of the essential terms of deal integrity. Otherwise, sheer insanity of a contract is not a reason for its nullity. Deliverability is also a topical issue and for a contract to be correct it is sufficient for the subject of contract to be deliverable. In other words, it is not necessary that the promiser be able to make the submission. Also, lack of the promiser's will to fulfill subject of commitment does not nullify the contract, but his will on composing the contract is the basic term for contract's integrity. Hence, in juristic and legal terms exorbitant dowry cannot be invalidated. Rather it is appropriate that the society and especially youth be notified regarding implications of their commitments in marriage contract. Therefore, it is befitting that the mandatory pre-marital training include legal training too.

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