

The Impact of the Rule “Custom is a Court” on Determining Dowries in Islamic jurisprudence and its Controls

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Abstracts

The study addressed the topic of "The Impact of the Rule of 'Custom is the Court' on Determining Dowries in Islamic Jurisprudence and Its Controls" because it is considered one of the essential matters that demonstrate the authenticity of Islamic law and its suitability to keep pace with social development.

The first section is the meaning of the rule "Custom is a Court" and its importance, as well as the meaning of Custom and habit, and there is no difference between them.

In the second section, the validity of the rule “Custom is a Court” and the controls for working with it, as well as that Custom or usage is a principle of deduction and an independent legal proof if the conditions for working with it are met.

The study presented in the last section the effect of the rule of “Custom is a Court” in determining the amount of the wife's dowry and in estimating the equivalent dowry. In dividing the woman's dowry into immediate and deferred in marriage, and the amount of each if it is not stated in the marriage contract, it is referred to Custom and its collection or non-collection, then explaining the effect of the rule in deferring the deferred dowry until separation between the spouses or death.

1. Introduction

Islamic jurisprudence has worked in all different areas of life with flexibility and comprehensiveness and has not known stagnation or stagnation, starting from the era of the Prophethood and the Message, the Rightly-Guided Caliphs, the jurists of the Companions and the Followers, and those who came after them... and up until now. Thanks to the diligent, innovative jurists through whom God preserves this religion, solutions, and rulings are put in place for every issue at any time and place, no matter how diverse the doctrines and paths are and how different the conditions and people are because Islam, by its nature and origins, can confront the development of life, and what appears in it of issues and developments, and customs and traditions.

The use of "custom" as evidence, its consideration, and its use as evidence are important matters that demonstrate the authenticity of Islamic law and its suitability to keep pace with social

development. Although it governed people in previous eras, it is a source of Islamic legislation in modern civilization and in all eras, even if some who lack knowledge and understanding claim otherwise.

Therefore, the study came under the title "The Impact of the Rule of "Custom is a Court" on Determining Dowries in Islamic Jurisprudence and Its Controls", to explain the meaning of the rule and its authority and the controls for working with it, and that it is resorted to in every era in matters that Sharia accepts, so "Custom is a Court" () as stated by the jurists; instead, it is one of the significant jurisprudential rules agreed upon by scholars, even if they differed in its subsidiary applications. This research also shows the impact of this rule on determining dowries and the extent to which Custom and tradition are considered in determining their amount and method and dividing the dowry or deferring it.

The importance of the study

The importance of the study lies in the following:

1. The rule of "Custom is a Court" has great importance in people's lives because it deals with many of their life affairs, and it is used to derive many of the legal rulings that the Lawgiver, in His wisdom, referred to Custom and habit to suit their situation and time.
2. It shows the rule's reality, authority and position, the controls for working with it, and the extent of its impact on determining dowries in Islamic jurisprudence.

The study problem

The study answers the following questions:

1. What is the concept of the rule "Custom is a Court" and its importance?
2. What is the validity of the rule "Custom is a Court" and the controls for building rulings on it.
3. What is the effect of determining the dowry and its amount based on the rule "Custom is a Court".

The Study Objectives

The study aims to:

1. Define the concept of the rule "Custom is a Court" and its importance.
2. Explain the validity of the "Custom is a Court" rule and the controls for building rulings on it.
3. Explain the effect of determining the dowry and its amount based on the rule "Custom is a Court."

Previous studies

The search for the rule "habit is decisive" is not new. As there are many and varied studies on it, perhaps the most important of them are the following:

1- Custom and its impact on dowries and the reluctance of young people to marry - Dr. Amina Ali Al-Bashir - Assistant Professor - King Khalid University - College of Sharia and Fundamentals of Religion - Department of Jurisprudence, 2019.

2- Applications of the jurisprudential rule "Custom is a Court" in the chapter on marriage, Madani, Muhammad Salim-Shariati, Naseer Ahmed, Rayhan Journal for Scientific Publishing, 9 27, 2022.

3- The jurisprudential rule: "Custom is a Court" and its applications in marriage jurisprudence - Dr. Abdullah Jassim Kurdi, 2010.

Most of these studies were interested in discussing Custom or the rule "Custom is a Court" in general or explaining its impact on one aspect, such as the chapter on marriage or financial transactions. This study contributed to the previous studies by highlighting the importance of the rule "Custom is a Court" and its controls. It is distinguished from those that preceded it in that it sheds light on explaining the rule's impact on dowries in Islamic jurisprudence.

2. Research Methodology

The study relied on the analytical, inductive method, inducting speech by following jurists' statements on "custom is a court" issues regarding its meaning, authority, and controls for working with it. Then, the opinions of jurists and their evidence were analyzed, discussed, and balanced, and the most correct statements were stated.

In order to achieve the research objectives, we followed the following procedures:

1. Attributing the Quranic verses to their places in the Holy Quran.
2. Graduating the prophetic hadiths by attributing them to their sources in the Sunnah collections and judging them.
3. Referring to the original books of jurisprudence, principles, interpretation, and hadith to document the research as much as I could.
4. When quoting a scholar's words verbatim, I put them between quotation marks and mention the source directly in the margin.
5. Translating the names of the notables mentioned in the research, except the famous ones.
6. Creating the scientific indexes necessary for the research.

The Study plan

The study plan includes an introduction, three chapters, and a conclusion. The introduction contains the reasons for choosing the research, its importance, the research problem, its objectives, previous studies, the research methodology and plan, and the chapters are as follows:

The first topic: is defining the rule "Custom is a Court" and its importance, and it contains two requirements:

The first requirement defining the rule "Custom is a Court" and its importance and it contains two branches:

The first branch is defining the jurisprudential rules.

The second branch: the meaning of the rule "Custom is a Court".

The second requirement is the importance of the rule "Custom is a Court".

The second topic is the authority of the rule "Custom is a Court" and the controls for building rulings on it, and it contains two requirements:

The first requirement is the authority of the rule "Custom is a Court".

The second requirement is the control of building rulings on customs among jurists.

The third topic: is determining the dowry and its amount based on the rule "Custom is a Court", and it contains five requirements:

The first requirement is defining the dowry and its legitimacy.

The second requirement is the effect of the rule of "Custom is a Court" on determining the amount of the wife's dowry.

The third requirement is the effect of the rule of "Custom is a Court" on estimating the dowry of the like.

The fourth requirement: The effect of the rule of "Custom is a Court" in dividing the woman's dowry into immediate and deferred in marriage, and the amount of each, if it is not specified in the marriage contract, is referred to as Custom and its collection or non-collection.

The fifth requirement: The effect of the rule of "Custom is a Court" in deferring the deferred dowry until the separation between the spouses or death.

The conclusion includes: Results and recommendations

The first section

Definition of the rule "Custom is a Court" and its importance

It contains two requirements:

The first requirement is to define the rule "Custom is a Court."

The first section: Definition of the jurisprudential rules:

Rules in the language are the plural of rule, and rules are the pillars of Everything, such as the rules of Islam, the rules of the house, and others. The construction rules are its foundation because the wall is built on it. Likewise, the rules of jurisprudence are its foundation because the rulings are built on it.

The rule has been defined technically with multiple definitions, including what came in Durar al-Hukkam, a commentary on Majallat al-Ahkam: "The rule: linguistically, the basis of

something, and in the terminology of jurists, it is the general or majority rule by which is meant knowing the rule of particulars” , and it was said: "It is a general issue under which many particulars fall, and it is not considered a basis for knowledge, meaning that its negation does not negate it" It came in the definitions: "The rule is a general issue that applies to all of its particulars." .

Some contemporary scholars have defined it as: "Comprehensive jurisprudential principles in concise constitutional texts that include general legislative provisions in incidents that fall under its subject matter." The jurisprudential rule is a general (majoritarian) ruling from which some branches may deviate. Their rulings may contradict the rule, but they do not harm or have any effect; rather, they are considered an exception to this rule.

The second section: The meaning of the rule “Custom is a Court”:

First: The meaning of Custom in the language: The word habit is derived from the word “return,” it is said: “He returned” and it is called habit because its owner returns to it time after time, and it comes with the meaning of habit, and habit is perseverance, and persistence in something.

One of the terms synonymous with the term habit is the term custom, which in the language means the known. It was called that because souls are reassured and at peace with it. The letters ‘ayn, ra,’ and fa’ are two correct roots, one indicating the succession of something connected and the other indicating peace and tranquility.

Custom: the opposite of denial, and it is Everything that the soul knows of goodness and is reassured by.

This definition in the language is appropriate for the definition in the Sharia because it limits Custom to what is correct only.

Custom: is what people agree upon among themselves , or that Custom: is what people agree upon in their customs and dealings.

This definition is appropriate in the language, as it includes correct and corrupt Customs, and the origin of the linguistic meaning is that it is general.

Second: The meaning of habit in technical terms and explaining the relationship between it and Custom:

Scholars have three trends in defining habit in technical terms, and through these trends in the technical definition, the relationship between habit and Custom becomes clear:

The first trend is limiting habits to practical Customs; it was said: "It is the repeated matter without a rational relationship, and what is meant is the practical custom of a people." , which indicates that Custom is more general and habit is more specific.

The second trend is that Custom is a type of habit, so the habit is a more general genus under which there are types of Custom, so every Custom is a habit and not the opposite.

The third trend is that the meaning of Custom in terminology is the same as the meaning of Custom, so the definition of one is the definition of the other, Hafiz al-Din Abdullah bin Ahmad

al-Nasafi. Says: "Custom and custom: what is established in souls from the point of view of the minds, and is accepted by sound natures."

Ibn Abidin Says: "Custom is taken from repetition, so by its repetition and repetition time after time it becomes known, established in souls and minds, and accepted without any relationship or indication, until it becomes a customary reality, so Custom and Custom have one meaning in terms of what is true , even if they differ in terms of concept." .

This is what Sheikh Abdul Wahhab Khilaf followed, as he did not differentiate between Custom and habit, so he said: "In the language of the two jurists: there is no difference between custom and habit" .

This trend is what we prefer; because it is noted that the jurists, ancient and modern, did not really differentiate between Custom and habit. Custom comes in the sense of habit, and habit comes in the sense of Custom in terms of building the legal rulings on them; which is what was indicated by the words of Hafiz al-Din al-Nasafi, Ibn Abidin, and Sheikh Khilaf, and Allah knows best.

Based on that, we choose the definition of Abdul Wahhab Khilaf that "custom is what people have become accustomed to and followed, whether in words, actions, or omissions, and it is called habit"; for the following:

- Because it is a comprehensive definition and includes all types of Custom, whether it is a word, action, or omission or a correct or corrupt custom.
- Because he equated Custom and habit, I see them as preferable.

Third: The meaning of the word "court": As for the meaning of the word "court" in the language, it is a passive participle of arbitration, and it is taken from the word "judgment", which means prevention, separation, and judgment. The meaning of something being arbitrated is that the matter has been made and delegated to it . As for the terminology, it means that Custom is the reference in the event of a dispute .

Fourth: The general meaning of the rule: The meaning of Custom and habit has become clear from what was mentioned above, which is what people have become accustomed to and followed, whether in word, deed, or omission, i.e., what has settled in the souls and natures have accepted. The meaning of it being a court has also become clear that it is the reference in the event of a dispute. Thus, the general meaning of the rule is that Custom refers to which one returns in proving or denying rulings, just as one returns to it in the event of a dispute between the parties to the contract , whether it is a general or specific custom, if it is widespread and there is no explicit statement to the contrary, and if it does not contradict a legal text or a condition of one of the contracting parties .

The second requirement is the importance of the rule "Custom is a Court."

The rule "Custom is a Court" is one of the essential rules in Islamic jurisprudence, and jurists have referred to it in many matters. Al-Suyuti said about it: They are issues that are not considered numerous , and they are evidence of the ease of the Sharia and its care for the interests of the Muslim community and they are evidence of the removal of hardship in Islamic law, and

because of its importance, most books of jurisprudential rules have addressed it, and they have explained a number of its rulings, and they have obligated the mufti to know the customs and ask the questioner about the customs of his people before he issues a fatwa on the issue he is being asked about .

The status of this rule is also evident from two aspects:

First: This rule is one of the rules with a broad impact on the rulings of jurisprudence, as this rule is linked to the arbitration of Custom, which is a basis for many practical rulings in various chapters of jurisprudence, and has its authority in revealing the application of rulings in different circumstances.

Second: This rule is related to the science of the principles of jurisprudence, as it is considered one of the evidence of jurisprudence or that it resembles the evidence of jurisprudence because it is linked to Custom, as the arbitration of customs is considered one of the evidence of Sharia according to some scholars, or it is revealing the ruling of Sharia according to some others. .

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The second section

The authority of the rule “Custom is a Court” and the controls for building rulings on it

It contains two requirements:

The first requirement: The authority of the rule “Custom is a Court”:

The jurists, with their different schools of thought, considered Custom and usage and acted upon it, and considered it an argument upon which a large portion of the rulings of jurisprudence are based.

Even though the books of the jurists are full of texts indicating that Custom is considered an argument, they differed in considering it an independent source and a principle of deduction that stands on its own, with two opinions:

The first opinion: Custom is not a principle of deduction or legal evidence unless the Lawgiver guides to its consideration, which is the Shafi’i school of thought.

They argued that Custom is not considered unless the Lawgiver accepts it, and that Custom is apparent evidence that goes back to the correct evidence .

Ibn Hajar explains the Shafi'i position on acting according to Custom: "The Shafi'is only denied acting according to custom if it contradicts the legal text or the legal text does not guide to custom".

The second statement: Custom is an argument and a principle of deduction and an independent legal proof, and this is the doctrine of the Hanafis, Malikis, and Ibn al-Qayyim from the Hanbalis .

What strengthens our preference for this statement is that Custom is a principle of deduction and an independent legal proof according to the conditions set by scholars in adopting acting according to Custom, and we tend to prefer it; Because of the strength of the evidence they used, which is abundant, including:

First: From the Book:

The Holy Qur'an contains many verses that indicate the consideration of sound customs and traditions, and refer to them in dealing with matters that do not contradict the Sharia, including:

The Almighty's saying: {Adopt forgiveness, enjoin what is right, and turn away from the ignorant} .

The evidence:

Allah the Almighty commanded His Prophet ﷺ to follow Custom, which is what people have become accustomed to of good in dealings and customs that do not contradict the Shari'ah. Ibn 'Atiyyah says in his interpretation: "His saying: {And enjoin what is customary} means: everything that people have come to know that the Shari'ah does not reject." .

And Allah the Almighty says: {And mothers shall breastfeed their children for two years for whoever wishes to complete the nursing. And upon the child's father is their provision and clothing on what is acceptable. No soul is charged except [with that within] its capacity}.

The evidence: The Almighty's saying: "according to what is acceptable," indicates that God has made maintenance and clothing obligatory according to Custom, that is, according to the man's situation in terms of his insolvency or wealth, since it is not customary to oblige the insolvent to give more than he can and capable of, nor to oblige the wealthy to give a small amount .

Second: From the Sunnah:

Many hadiths in the Sunnah indicate the consideration of sound customs and traditions, and refer to them in dealing with matters that do not contradict the Shari'ah, including:

1. What was reported on the authority of Ibn Mas'ud, may God be pleased with him, that he said: "Whatever the Muslims see as good, it is good with God, and whatever they see as bad, it is bad with God." .

The evidence:

This trace is evidence of Custom and its authority since what people consider good in terms of transactions and customs for which no text is acceptable to God Almighty. Al-Kamal bin Al-Hammam Used this trace as evidence for the authority of Custom, as he said: "Custom only

became an authority by the text, which is the saying of the Prophet (peace and blessings of God be upon him): 'Whatever the Muslims see as good is good with God.' . Many scholars have said that this hadith is the basis for the jurisprudential principle: 'Custom is a Court.' .

2. The hadith of Aisha (may Allah be pleased with her) that Hind bint Utbah, the wife of Abu Sufyan (may Allah be pleased with them both), asked the Prophet (peace and blessings of Allah be upon him) if she had the right to take from her husband's money, so he said to her: "Take, you and your children, what is sufficient for you in a reasonable manner." .

The evidence: The Prophet (peace and blessings of Allah be upon him) permitted Hind (may Allah be pleased with her) to take from her husband Abu Sufyan's money, which was sufficient for her and her children according to Custom, so it clearly indicates that Custom is taken into account in determining maintenance, as there is no legal text regarding its determination. Abu al-Abbas al-Qurtubi says: "It is evidence that custom is taken into account in legal rulings, contrary to the Shafi'is and others who deny it verbally but accept it in practice." .

Ibn Hajar said: "His statement: Take from his money what is sufficient for you in a reasonable manner, refers her to custom in matters for which there is no legal specification." .

3. The hadith of Ibn Umar, may God be pleased with them, regarding the option of the meeting: The Prophet, may God bless him and grant him peace, said: "If two men make a sale, each of them has the option as long as they do not separate, and they are together, or one of them gives the other the option, and they make a sale on that basis, then the sale is binding." .

The evidence: The Lawgiver did not specify a specific description for separation, indicating that one should refer to Custom and resort to it in what people consider separation. Ibn Qudamah says: "The reference in separation is to the custom and habit of people, in what they consider separation; because the Lawgiver attached a ruling to it, and did not clarify it, so this indicates that he intended what people know, such as taking possession and securing." . The second requirement: The controls for basing rulings on Custom according to jurists

After mentioning the meaning of the rule and its authority in legislation, and that the imams consider the correct Custom in the Shariah rulings, if the conditions for working with it are met, we will explain the controls that the fundamentalists have set for considering Custom as an authority, and that it is not correct for rulings to be based on it unless the following conditions or controls are met.

The first rule: The Custom should not be contrary to the Shariah:

There is no consideration for the Custom when there is a text, whether it is the Qur'an, Sunnah, or consensus. However, the Custom in contradicting the text has two cases:

The first: It contradicts the Shariah text in all aspects, such that acting according to the Custom would result in abandoning it. In this case, the Custom is rejected and is invalid and without evidence, as in the Custom of some Muslim societies to eat and drink with the left hand, and the Custom of some people to drink alcohol and gamble, and light candles on graves, and expose some of the private parts, and other corrupt customs that contradict the Shariah .

Ibn Abidin says: "If the custom contradicts the Shariah evidence in that it contradicts it in every aspect, such that it necessitates abandoning the text, then there is no doubt in rejecting it, such as the custom of people to do many forbidden things, such as usury, drinking alcohol, wearing silk and gold, and other things that are forbidden by the text." .

Second: If the Custom conflicts with the text in one way or another, such that the text is general and the Custom is specific, or the Custom is contrary to it in some of its individuals only, then the Custom here is considered correct and not invalid because it does not conflict with the text in every way, but the text and Custom are reconciled by applying both as much as possible, so the Custom specifies the generality of the texts and restricts its generality.

Example: The saying of the Prophet, peace and blessings be upon him, to Hakim bin Hizam, may God be pleased with him: "Do not sell what you do not have." This text is general and prohibits the sale of everything that a person does not have because (what) is a relative pronoun that indicates generality.

Despite this, the jurists said that the contract of Istisna' is permissible, even though it is true that it is the sale of what a person does not have, but the Custom has been practiced among people since the time of the Companions and the Followers and those after them, so the Custom was applied in the contract of Istisna', and it was a specification of the general prohibition against a person selling what he does not have .

The second rule is that the Custom be consistent or prevalent:

It is widespread among its people who have become familiar with it, whether verbally or practically. If the Custom is stated, people immediately go to it, and the failure of a small number to act upon it does not invalidate it because the criterion is the prevalent, not the rare and rare.

Al-Suyuti, may God have mercy on him, said: "Custom is only considered if it is consistent, but if it is disturbed, then it is not." .

The third rule is that the contracting parties do not explicitly state something contrary to the Custom:

For example, if two specific parties agree to something contrary to the Custom, then it is not valid to apply the Custom in this case because the indication is not significant in contrast to the explicit statement, and the Custom is only considered when there is no explicit statement to the contrary.

Al-Izz bin Abd al-Salam says: "Everything that is established in Custom, if the two contracting parties explicitly state otherwise in a manner that is consistent with the intent of the contract, is valid. So, if the tenant stipulates that the worker should work all day without eating or drinking and cut off the benefit, that is binding on him. Suppose he stipulates that he should not pray the voluntary prayers and limit the obligatory prayers to the pillars. In that case, it is valid and obligatory to fulfill that. "

The fourth rule is that customs must exist when the transaction is established. If the transaction precedes the establishment of the Custom, it is not valid to consider it and apply it, and the Custom must continue in order for it to be valid to apply it and act upon it. Ibn Nujaym says:

"The custom upon which the words are based in the previous, concurrent custom, not the later one; therefore, they said: There is no consideration for the emerging custom, so it is considered in transactions, but not in suspension, so it remains general, and the custom does not specify it." . In order to observe this condition, the evidence of endowments, wills, sales, gifts, and marriage documents, and the conditions and terminology contained therein, must be interpreted according to the Custom of the disposers that existed at their time, not according to a new custom .

The Third Section

Determining the dowry and its amount based on the rule "Custom is a Court"

Introduction

It was previously shown that jurists and legal theorists, despite their different opinions, agree on considering Custom and relying on it in general, and they base many rulings on it. Rulings are greatly affected by Custom and habit to the point that the ruling may change completely with the change in Custom and habit according to time, place, people, and circumstances. The legal theorists have established rules for this, including: "It is not denied that rulings (based on interest or custom) change with the change in time." . Abu Hanifa and his companions differed in their rulings based on their customs. Imam Malik based many of his rulings on the practices of the people of Medina, and Al-Shafi'i changed some rulings in Egypt from what he ruled in Baghdad due to the change in customs. For this reason, he has two schools of thought, old and new. .

This indicates that the correct Custom and usage that meets the conditions for working with it has a significant position in deriving rulings and applications. Relating derivation, the text may depend on Custom in taking the ruling from it, so it is an indication of evidence or a helpful clue in deriving the ruling from it. As for application, Custom is a fertile source for revealing the rulings of Allah to the judge and the mufti. The jurists have said: "Custom is a Court," meaning it is made a judge in the dispute over what is not mentioned in the text, just as the Lawgiver may stipulate general rulings, and the application of the partial ruling from these texts depends on Custom . Perhaps what was mentioned of examples in the previous section proves this position and the great impact of Custom and usage in deriving rulings, and to clarify this matter, I will explain below the rule "Custom is a Court" and its effect on dowries in Islamic jurisprudence.

The first requirement: Definition of the dowry and its legitimacy

Linguistically, the dowry is the bride price, and the plural is dowries . The woman was given a dowry, and it is said that the woman was given a dowry, meaning that she was given a dowry. The dowry has many names, the most famous of which are the dowry, with the opening of the sad and its breaking, the dowry, the gift, and the charity.

The dowry technically: The jurists defined it with many definitions, including that it is the name for the money that is required in the marriage contract from the husband in exchange for sexual intercourse, either by naming it or by the contract . Some contemporary scholars defined it as the money the wife deserves from the husband by contracting with her or entering into her.

The ruling on the dowry: It is obligatory for the woman from the man . The Qur'an, the Sunnah, and consensus have indicated this.

As for the Book, God Almighty says: {So give them their dowries as an obligation. There is no blame for what you mutually agree upon after the obligation. Indeed, God is ever Knowing and Wise}, and God Almighty says: {And give the women their dowries as a gift}.

As for the Sunnah, What Sahl ibn Sa'd narrated from the Prophet, may God bless him and grant him peace: For whoever wants to get married, "seek a ring, even if it is made of iron." . The Messenger of God, may God bless him and grant him peace, freed Safiyyah, and made her freedom her dowry. The hadiths clearly indicate that the dowry was approved by the Messenger of God for the wife by her husband and that it is necessary for every Muslim, whether it is a small or large dowry. Consensus: The Muslims agreed on the legitimacy of the dowry in marriage. Ibn Qudamah, may God have mercy on him, said: "The Muslims agreed on the legitimacy of the dowry in marriage." , and Al-Qurtubi said in his interpretation of the verse: {And give the women their dowries as a gift}: "This verse indicates the obligation of the dowry for the woman, and there is consensus on it" .

The second requirement: The effect of the rule of "Custom is a Court" in determining the amount of the wife's dowry:

It has become apparent from the above that the dowry is obligatory for the husband and the wife. However, the Shari'ah did not specify a specific amount for it, as indicated by the Almighty's saying: {And if you have given one of them a significant amount, do not take back from it anything} [An-Nisa': 20]. The verse does not specify the highest amount of dowry; it is a metaphor for much money. As for the minimum dowry is a matter of disagreement among the jurists, and the most correct opinion is that it is not specified. Everything permissible to be a price, sale, wage, or rent is permissible to be a dowry, whether minor or much. Al-Shafi'i, may God have mercy on him, said: Everything that is permissible to be a price for something or is permissible to be a wage is permissible to be a dowry, and this is the opinion of the majority of scholars. And the people of hadith, all of whom permitted dowries with little or much money. Hence, we see that the Sharia left a flexible space to determine the amount of the dowry according to people's customs and traditions. This space accommodates all types of people: the rich and the poor, those with limited income, the educated and the ignorant. It left the specification to give each person according to his ability, his situation, and the customs of his tribe .

Today, customs have changed, and education has given women a status and value they did not have before. Accordingly, the dowry of an educated woman is different from that of an ignorant woman. Customs have also changed regarding women's work and society's view of them, and women's work has become one of the qualities that husbands desire, so their dowry has increased accordingly. Therefore, it is clear from the above that not specifying the dowry and leaving it to people's customs is one of the manifestations of facilitation in Islamic law because if the dowry were specified at a certain amount, people would be in great difficulty. In addition, what is appropriate for one time may not be appropriate for another, which is consistent with Islamic law's spirit and objectives.

The third requirement: The effect of the rule of "Custom is a Court" in estimating the dowry of an equal value:

The dowry of an equal value is the amount that is desired in a woman like her, according to Custom . Her lineage, beauty, religion, social status, and other things are taken into consideration according to the customs of the people in what they are accustomed to giving as dowries to this woman and her likes from the wife's relatives, while also taking into consideration the condition of equality in times and countries. Whoever is equal to her in these qualities is returned to her in the dowry of an equal value .

When estimating the dowry of equal value, the closest should be considered first, and it should be considered that she is in the same situation about religion, mind, beauty, and all her qualities. If there are no women agnates in the same situation as her, then the women of her wombs are considered, such as the mother, grandmother, aunt, and their daughters. If none of them are found, then the people of her country. If none of them are found, then the women of the country closest to her . If only the lesser qualities are found, the woman's dowry is increased according to the qualities she possesses. If only the better of the two is found, her dowry will decrease according to the missing qualities.

The dowry of a similar woman is also estimated based on the situation of a husband similar to her because the jurists believe that it is possible that the woman's family may have been somewhat lenient in the dowry of a similar woman due to circumstances in her husband that they desired, just as they may have increased it somewhat due to circumstances on his part that required them to do so, such as old age, wealth, etc . The most likely opinion in estimating the dowry of a similar woman is to consider the women of the agnates in particular, based on two matters: The first: It was mentioned in the story of Baru' bint Washaq al-Ashja'iyyah that the Messenger of Allah, may Allah bless him and grant him peace, ruled in Baru' that it was equal to the dowry of the women of her people, and her husband had died and had not consummated the marriage with her and had not imposed a dowry on her The second is because a woman's honor is considered in her dowry, and her honor is in her lineage. Her mother and aunt are not equal to her in lineage or honor, and the woman may be Qurayshi, and her mother is not like that, and so on.

Hence, it becomes clear that the whole matter is discretionary, considering Custom and tradition to achieve justice for both parties, mainly if a dispute occurs between the two parties over the dowry and its amount, whether or not it is named in the contract. The dowry of the like is proven in a number of cases, including:

1. Failure to name the dowry in the contract: The dowry of the like is established in this case, where the contract is concluded without naming the dowry, meaning that the contracting parties have not mentioned the dowry. In this case, the woman is called "delegated" because she delegated the matter of her dowry to the husband. Here, the dowry of the like must be given in the same contract according to the Hanafis, as the woman has the right to demand the dowry if he consummates the marriage with her, and everyone agrees. However, if the husband dies before consummation, the woman is entitled to the dowry of the like from his estate, which is the opinion of Abu Hanifa and the Shafi'is. . The Hanbalis believe that she is entitled to only half of the dowry of the like , and the Malikis believe that she is not entitled to a dowry because it is a separation that occurred based on a valid delegation before imposition and touching, so she is not entitled to a dowry .

2. Incorrect naming of the dowry: If the dowry is misnamed, such as if it is not specified, i.e., unknown, or the named item is not money, or it is based on an invalid condition, or something else that invalidates the naming of the dowry, or it is a higher marriage, then it is also an invalid name for the dowry. In this case, scholars do not differ on the necessity of a dowry similar to that of the woman.

3. - Intercourse in a corrupt marriage: This corrupt marriage lacks a pillar or condition of the contract's validity, such as the condition of two witnesses. If he marries her without witnesses and intercourse takes place with her, then the judge separates them, and he must give her a dower similar to that of this intercourse. The same applies if he marries two sisters together, marries a sister during her sister's waiting period, marries a woman in her waiting period who is not his, or marries a fifth woman during the waiting period of the fourth woman whom he separated from. All of these are matters that invalidate the marriage, but they require a dower similar to that of the woman due to the occurrence of intercourse.

4. Suspicion of intercourse: If a man has intercourse with a woman on suspicion, such as if he had intercourse with her thinking that she was his wife, then he is obligated to give her a dowry similar to that of her peers. Suspicion of intercourse requires a dowry similar to that of her peers, according to the Hanafi, Maliki, Shafi'i, Hanbali, and others.

5. Among the cases in which the dowry of an equivalent is required if the dowry in a valid marriage is an object that is lost before the wife takes possession of it, such as if her dowry is a car or a refrigerator that is lost before the wife takes possession of it.

The fourth requirement: The effect of the rule "Custom is a Court" in dividing a woman's dowry into immediate and deferred dowry in marriage, and the amount of each, if it is not specified in the marriage contract, is referred to Custom and whether it is received or not:

The basic principle in the chapter on dowry in the chapter on marriage is that if it is specified and defined, whether it is immediate or deferred, it is paid according to the agreement between the spouses, directly through them or through their guardian in the case of agency and representation. However, if it is not specified and defined, then it is referred to as Custom in terms of quantity and quality and in terms of prompting and deferring; this was stated by a group of jurists.

In the book *Al-Durr Al-Mukhtar* and the commentary of Ibn Abidin, in the issue of preventing the woman from herself until she receives the dowry, he said: "Then if he stipulated for her a known amount of the dowry in advance and he paid it to her, she does not have the right to prevent herself. The same applies to what is stipulated in Custom, such as the shoe, the cube, the silk brocade, and the sugar dirhams according to the Custom of the people of Samarkand. It is not obligatory if they stipulate that none of that should be paid. If they were silent, it is not obligatory except for the one who believes in Custom without hesitation in giving her something similar, and according to weak Custom, what is silent about is not included in what is stipulated."

It has been shown that Custom comes according to the requirements of society, and new customs arise to meet these requirements with regard to the dowry; the original is to pay it promptly, and when people's needs require postponing the dowry or dividing it into immediate and deferred,

this Custom has become common in many Islamic societies and the Custom has become a custom.

The fifth requirement: The effect of the rule “Custom is a Court” in postponing the deferred dowry until separation between the spouses or death

In many countries, people have become accustomed to paying a small advance payment of the dowry and delaying the rest until one of two dates: death or divorce. It is well known that “Custom is a Court” and that what is known by Custom is like what is stipulated as a condition. Based on that, the scholars said that if no specific date has been set for paying the deferred dowry, it may be demanded upon separation by divorce or the like or the death of one of the spouses. Ibn al-Qayyim (may Allah have mercy on him) said: “Chapter: Deferring part of the dowry and the ruling on the deferred portion... which the spouses agreed to delay demanding, even if they did not specify a date, rather the husband said one hundred advance payments and one hundred deferred payments; then the deferred portion is not entitled to be demanded except upon death or separation. This is the correct view, and it is stated explicitly by Ahmad, who said in a narration by a group of his companions: If he marries her for both immediate and deferred payments, the deferred portion is not permissible except upon death or separation.” ,

It is clear from the above that the Custom in Islamic societies is that if the term in which the deferred dowry is paid is not specified, then the absolute expression refers to leaving the demand for the deferred dowry until death or divorce, so the Custom has become a condition. We will suffice with this amount of issues indicating the consideration of customs and habits in determining dowries in Islamic jurisprudence. Whoever follows the issues of Custom and its effect on deriving rulings will find them very numerous, and it is not easy to enumerate them. Ibn al-Qayyim, may God have mercy on him, says: “Custom has become a literal expression in more than a hundred places”.

3. Conclusion

The study reached several results and recommendations, the most important of which are the following:

Results

1. Citing the rule of “Custom is a Court” and citing it as evidence is essential, and controls are available. This is the authenticity of Islamic law and its suitability to keep pace with social development.
2. Custom is what people have become accustomed to and followed, whether in words, actions, or omissions, and is called habit.
3. The meaning of habit in terminology is the same as that of Custom, so the definition of one is the definition of the other according to the correct opinion.
4. The rule of “Custom is a Court” is one of the essential rules in Islamic jurisprudence, and jurists have referred to it in many matters. Despite their different schools of thought, Jurists have

considered Custom, acted upon it, and considered it an argument upon which a great portion of the rulings of jurisprudence are built. However, they differed in considering it an independent source and a foundation of deduction that stands on its own, according to two opinions, the most correct of which is that Custom is a foundation of deduction and an independent legal proof if the conditions for acting upon it are met.

5. Adhering to the correct Custom removes much hardship from people and is consistent with the flexibility of Islamic law and its suitability for all times and places. 6. The rule of "Custom is a Court" affects determining the amount of the wife's dowry according to people's customs and traditions, and in estimating the equivalent dowry considering the agnates' women in particular, according to the correct opinion, in cases where the equivalent dowry is proven, such as not naming the dowry in the contract, invalid naming of the dowry, intercourse in an invalid marriage, suspicious intercourse, etc. The "Custom is a Court" rule also affects dividing the woman's dowry into immediate and deferred marriages. If not specified in the marriage contract, the amount of each of them is referred to Custom. Whether it is collected or not, the rule also affects deferring the dowry if the term is not specified until the separation between the spouses or death, according to what is customary in Islamic societies.

4. Recommendations

The subject of the "Custom is a Court" rule, and its impact on deriving Islamic rulings in our contemporary reality still requires further studies. Therefore, it is recommended to prepare new studies concerned with the practical aspect and linked to the reality of contemporary life, especially in the aspect of transactions; to link the theoretical aspect with the practical and to focus on that, as it is the most critical aspect of Custom; indeed, it is its goal and fruit.

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