International Journal of Multicultural and Multireligious Understanding

http://ijmmu.com
editor@ijmmu.com
ISSN 2364-5369
Volume 7, Issue 1
February, 2020
Pages: 247-269

Explanation of the Will in the Causes of Inheritance

Shirin Shahi[1]; Sayyid Hamed Hossein Hosseini[2]; Amir Reza Dehghani Nia[3]

[1] MA in Private Jurisprudence and Law, Iran

[2] Ph.D. in Criminal Jurisprudence and Law, Iran

[3] Ph.D. in Private Jurisprudence and Law, Iran

Email: shirinshahi.7173@gmail.com; seyedhamed@chmail.ir; loghatemoran76@gmail.com;

http://dx.doi.org/10.18415/ijmmu.v7i1.1278

Abstract

The attitude that inheritance has always been an involuntary decree and that people's will has no effect on it has made us unable to see the role of will in the hereditary factors. In spite of this kind of view, the will plays a role in the causes of inheritance, both directly and indirectly. In this research, we try to change this attitude by explaining the will in the hereditary factors, especially the affinity. The will has no role in the lineage because of the decrees expressed through the holy legislator, but the most prominent role of the will is found in the affinity that involves marriage and mastership. So regarding these points, first this kind of look is changed. Second, if one can see the will in the hereditary factors, many of the problems of today's society such as the issue of inheritance in adoption may be resolved.

Keywords: *Will; Inheritance; Hereditary Factors; Development; Islamic Decrees*

Introduction

The will is a mental quality, and after imagination and affirmation it is obtained compulsively in the soul. There are two separate inner states for the will, one is intention and the other is satisfaction. Which sometimes the will just means the intention.

Some conditions are required for the formation of a contract and obligation, as set forth in Article 183 of the Civil Code onwards. Article 190 of the Civil Code states that some essential conditions are required for the authenticity of each contract especially the intention of the parties and the consent of the parties. Article 191 states the same law of intention as: "The contract shall be fulfilled with the intention to create legal relation on the condition that the thing implies the intention."

So firstly, with no intention to create legal relation, the contract is invalid. Secondly, the intention of the parties means the intention to create legal relation and one of the properties of intention to create the legal relation is the attribute of creating of that intention.

The contract is based on the agreement of the parties and cannot be obtained except through these agreements. The agreement is a meeting point between two wills. In other words, if there is no will or the will is defective, then no contract will be formed.

In the civil law of Iran, the sources of the obligations are not explicitly mentioned. But according to Articles 183 of the Civil Code onwards and Articles 301 to 337 of the Civil Code it can be said that from the point of view of law, the sources of the obligation are: 1. Contracts 2. Non-contractual obligations.

Others have divided the sources of obligation into two groups: "legal acts" and "legal facts" (Katooziyan (1374): 73) which, of course, seems more complete, since this division also includes the unilateral legal acts. But in the division, the civil law has applied the term to contracts and does not include the unilateral legal acts. In any case, one of the sources of the obligations in the law is the legal acts that include contracts and unilateral legal acts, and the essential element of both of these is the intention and will that one will be achieved by the agreement of two wills and the other by the agreement of one will. In other words, if we consider the contract, which is the same agreement of the two wills, or even the condition, whose essential element is the agreement of the two wills to create it, as a will then one might say that will is one of the sources of obligations. And essentially human beings, by their will, commit themselves to another and are bound by its obligations. If we have such a look at the will and its role in jurisprudence and law, we will understand its importance in law. With such a viewpoint, there is a will in other parts of jurisprudence and law. Among these debates is the issue of inheritance, which has always been the notion that inheritance is by the rules of the law and will plays no role in it. In this research, we intend to replace some of the same concepts with one another in order to realize that the will plays a role in the inheritance factors and we will express them.

1. Explaining The Will in Hereditary Factors

Will plays no role in the lineage, which is one of the causes of inheritance, and it can only be said that because of affinity it is possible to express the role of the will in the factors of inheritance.

There are three ways to express that there is will in inheritance:

1.Condition 2. Contract 3. Unilateral legal act

1-1. Through condition

They have defined the concept of condition as:

"The legal term of condition expresses one of two concepts:

1. An issue on which the occurrence or effect of a legal act or legal fact depends. Like Article 190 of the Civil Code, which states the basic conditions of the transactions authenticity.

2. An agreement which, by the specific nature of the subject or the mutual agreement of the parties, is included in the number of accessories to the other contracts." (Katooziyan, 3: 112)

In this part, the concept of condition is the latter concept. The condition is somehow like a contract, because it requires the agreement of two wills to create it. The intent and the will, which has the originating attribute, exist in inheritance through the condition. Ultimately, in hereditary factors, stipulation of inheritance in merchandise is the only thing that individuals can inherit from one another. In fact the parties of the contemporary marriage contract, by their own will, mention a condition regarding a mutual agreement, on the basis of that condition that one or both parties will inherit from each other.

1-2. Through contract

Inheritance factors are divided into lineage and affinity. Affinity is the relation of persons to one another through marriage or patronage. On this basis, it can be stated that we can precisely replace the word affinity with the word contract because both have the same meaning. Affinity in inheritance factors include either the marriage contract or the patronage, both of which are among the contracts. Therefore, either the inheritance is obtained by the marriage which is a contract and we need the agreement of two wills to create it, or the inheritance is obtained through a variety of patronage, including the loyalty by virtue of emancipation, by virtue of Ḍimān Jarirah, and by virtue of mastership, which is also a prerequisite, and we need a combination of two healthy wills to create it.

1-3. Through unilateral legal act

Unilateral legal act is a term that implies a particular origin on the one hand. In other words, the contract requires acceptance, but the unilateral legal act does not require acceptance (Taheri, 3: 248). The unilateral legal act is achieved by the will of one person and does not even require the other's consent. But what is mentioned is this unilateral will. The loyalty by virtue of emancipation is, in fact, a kind of unilateral legal act. That master, with his free will, frees the servant, and by achieving the above conditions, the inheritance relationship is established. In fact, master creates a hereditary relationship with his unilateral will, which should be gratuitous. Unilateral legal act is a legal act created by the will of a human being and is the manifestation of a person's will. The loyalty by virtue of emancipation, however, is also a kind of unilateral legal act that creates the inheritance relationship by the fulfillment of one's unilateral will. Of course, as it was said, it may not be induced a characteristic and extended to other unilateral legal acts.

So in all sorts of affinities, we have some kind of will in the hereditary factors.

However, if we say that the will plays no role in inheritance and hereditary factors, it is not true and with minimal accuracy it can be understood that the will exists in inheritance through condition in contemporary marriage and through contract in matrimony contract and inheriting guarantors and through the unilateral legal act in the loyalty by virtue of emancipation.

The key point in this study is that if we put the concept or term in a completely concordant and content-related way instead of some idioms or concepts, the view and attitude towards the problem will change. And by the way, inheritance is such an issue. And if we change the concept and the term to another term without changing the content, that attitude change can be achieved.

It is important that inheritance is a divine law and that its revelation and divinity have created the attitude that it is a decree and duty and that human will has little to do with it. Therefore, ignoring this fact has led to very clear and obvious things such as the contracts that there is no doubt about its voluntariness, also that the rules of inheritance have not been taken into consideration as an intentional issue, and the one thinks that the inheritance is one of the legal and obligatory rules and human will has no role in it. Transforming the sciences and even the divine sciences is necessary to discover all the meanings of the holy legislator and better explain things so that we can improve our attitude by emphasizing the lack of change in content.

2. Reviewing The Concepts

To better explain the will of the hereditary factors, we must first clarify the concept and meaning of will in jurisprudence and law. To this end, we will consider the meaning:

2-1. Will

The will[1] means to ask and demand (Waseti, 4: 466). The literal meaning of will is intention, desire and purpose (Dehkhodā, 1: 1363). In our jurisprudential texts, the will is expressed as the intention, and no separate definition of the will is given. Some jurists have stated intention and authority (satisfaction) in terms of contracting conditions and in terms of the validity of the transactions. In other words, this group separated the intention and the satisfaction, and they have stated both the intention and the satisfaction in the contracting conditions (Karaki (1414), 4:. 61), (Makarem (1425): 226), (Khoei, 3: 275), (Ansari (1415), 3: 295), (Hosseini (1419), 12: 544), and others have expressed intention and satisfaction under the general title of "free will" in the contracting conditions. This group first mentioned free will when expressing the contracting conditions (Najafī (1404), 22: 260), (Bahrani (1405), 18: 367).

In the term of Iranian law, the will can also be defined as to want, two separate internal states are recognized for will or want, one is satisfaction and the other is intent which means the intention to initiate (paragraph 1 of Article 190 of the Civil Code). Will sometimes means intention and satisfaction together and sometimes it is applied only for the intention to initiate. (Shahidi (1380): 55-56) Accordingly, in examining the will and its decrees, we, as jurists and lawyers, inevitably divide the will into two separate inner states of intention and satisfaction. But in the sense of the will, what is intended and more correct is merely the concept of the intent, so we will explain the will under the subject of intent.

2-2. Intention

The word "intention" is an initiating will in legal acts. That is, the intention that creates a new work and doesn't consider the news and doesn't announce what has happened. To distinguish this intention from the will to declare past events, it is called an initiation or an intention to initiate (Katooziyan (1397), 1: 220.) As stated in Article 191 of the Civil Code: "Contract shall take place with the intention to initiate, on the condition that it is connected to something that implies."

There are many expressions in the difference between intention and satisfaction, but what is the most important difference between the two is their creativity. This means that the intention alone can create a legal act, whereas if one is only satisfied with doing a transaction, this is not sufficient to create the legal act.

Iranian Civil Code in Article 190 and paragraph 1 of this Article has declared the satisfaction of the parties in addition to their intention as one of the basic conditions of the transactions authenticity. But by looking at the verdicts and the effects of intention and satisfaction, it turns out that the intention of the parties to initiate is not a condition in the true sense, but it is a constituent element of the contract and has a central and essential role in the formation of the contract, and the satisfaction of the parties is not a condition of the validity of the contract but it is the condition of the validity and influence of the contract. Therefore, satisfaction should be considered merely a condition of the influence of the contract, not the constituent element of the contract. The intention to initiate makes the contract, but in order for the legal effects of the contract to flow, the parties must be satisfied with the constitution of the contract (Shahidi (1380): 174).

[1] "Ir*ā*dah" is rooted from "ra wa da: رود"

2-3. Inheritance

The literal meaning of inheritance is to inherit and what comes from the dead to the heir. (Dehkhodā, 1: 1390). Article 867 of the Civil Code states: "Inheritance shall be come pass to the real dead, or to the presumed dead of the heir." in the literal sense, the cause means obligatory, cause and reason (Mo'in: 1023). Causes of inheritance means the gadgets and factors that makes the person inherits from the other people, such as kinship (lineage kinship) and cause (affinity kinship) (Ja'fari Langroodi (1397): 728).

3. An Exemplar Explanation of the Will in the Inheritance Factors

3-1. Lineage and an explanation of the will therein

Lineage in the word means originality, race, kinship (Mo'in: 1072), and in term it is the connection through birth, such as the son leading to the father (as he goes higher) or the father to the child and as he goes lower.

Lineage has three classes, and if a person from the first class is alive (unless there are barriers to inheritance), individuals of lower classes do not inherit.

What should be mentioned in the topic of lineage is that if a person from the first class or a close relative exist, one person cannot inherit from another class or degree, and this is the example of the Ulu l-arḥām verse (verse 75, surah Anfāl).

Regarding the explanation of the will in the hereditary factors in the lineage part, it can be said that the will in the lineage plays no role on the concept of kinship and the rules governing it. In a better sense, in lineage, the will cannot create or remove the inheritance relationship. Inheritance is based on kinship and according to public order and consistent kinship relation and depriving the inheriting relatives disturbs public order and causes many problems. On this basis, the will plays no role in lineage.

Another factor in inheritance is that by explaining this factor we will finally explain the role of will in it.

3-2. Affinity and explaining the will therein

In the discussion of hereditary factors, Affinity is one of the causes in which the role of the will can be explained and adapted. In other words, in the part of affinity, all causes are somehow returned to the will. In some, the inheritance is realized by the will of one in the form of unilateral legal act (loyalty by virtue of emancipation) and in others by the will of two people through condition or contract (marriage, conditional guarantee).

Affinity is the second factor of inheritance and is sole in marriage and mastership, and it is recognized by these two factors (marriage and mastership) or the connection of two persons other than birth (Sobhani (1415): 18).

First, let's talk about marriage and its types and decrees:

3-2-1. Marriage

Marriage can have done in two ways: permanent and temporary

In permanent marriage through the marriage contract, which is the result of two wills, as soon as it is concluded, the hereditary relationship is established. But in a temporary marriage, such a possibility

is not inherently possible, unless the inheritance is provided. Of course, there is a disagreement among the jurisprudents that we will examine these views in this research and finally express our opinion.

3-2-1-1. Permanent marriage and explaining the will therein:

Permanent marriage is the legal relationship created by contract between man and woman and gives them the right to have sexual intercourse.

In permanent marriage, it is possible for the couple to inherit as soon as the marriage is concluded, though the intercourse has not yet taken place. Also in a revocable divorce, if one of the spouses dies, they inherit from each other because the divorcee by revocable divorce is as a wife (ʿĀmilī (1413), 13: 177), (Sobhani (1415): 291).

Among the verses and narratives that the jurists have cited in this regard is verse 12 of surah Nisā' and the following narration:

> Some asked Imam Bāqir (AS) about a man who marries a woman and dies before the intercourse, Imam (AS) said, "That woman inherits from the man and must keep four months and ten days as the time of widowhood[2]."

The Civil Code also provides in Article 913: "... if the dead has no no children or grandchildren, half of the estate is for the husband and its one forth is for the wife. If the dead person has children or grandchildren, one fourth of the estate is for the husband and one eighth is for the wife and the remainder of the estate shall be divided among the other heirs according to the previous provisions."

As for the explanation of the will in the marriage contract, it should be said that marriage is basically a contract, and in order to form any contract we need the agreement and consent of the parties, and we know that agreement is the same agreement of the will of the individuals. Therefore, as the marriage contract is concluded, the inheritance relationship is created and the will of individuals has created this contract so the marriage contract is concluded. Of course, the will has an indirect role in this case.

3-2-1-2. Temporary marriage

In the word temporary marriage means to have sex with a woman so that you do not want to continue it (Ibn Manẓūr, 8: 329). And in the term, it means the marriage, in which the time and reward should be mentioned and this is the condition of its validity. It is also used with the names of temporary contract and interrupted contract. Temporary marriage has a limited specific time. If the reward (bridal gift) is specified in the marriage but the term is not mentioned, the marriage becomes permanent but if both the reward and time is not specified the marriage will be void and invalid (Ibn Barrāj, 2: 179).

On the issue of inheritance of the temporary wife there is a disagreement among the jurists and a group believe that in the temporary marriage the condition of inheritance can be mentioned and the influence of the condition does not conflict with the requirement of contract. (Āmulī (Martyr I), 2, 290 / Bahrani, 24: 180 / Juba'i ʿĀmilī (1410), 8:24) But another group argues that the condition of inheritance in temporary marriage is to place an alien partner in contrary to the imperative laws. (Bojnourdi (1419) 3, 278 / Hillī (1410) 2: 624 / Najafī (1404), 30: 193). This is not explicitly stated in Civil Code, and it can

[2] صحيحه محمد بن مسلم از أبي جعفر (عليه السلام) می‌گويد: سألته عن الرجل
يتزوّج المرأة ثمّ يموت قبل أن يدخل بها؟ فقال: «لها الميراث و عليها العدّة أربعة أشهر و عشر».(عاملی،21: 330)

only be deduced from the opposite concept of Article 940 of the Civil Code[3] that temporary marriage doesn't cause an inheritance. However, some jurists like many jurists and as well as the provisions of Article 10 of the Civil Code, believe that it is possible to mention the inheritance as a condition in temporary marriage.

According to the opinions of jurists, there are four groups that we consider each of these views and their documentation:

Group One: This group believe that there is absolutely no inheritance in the temporary marriage. That is to say, neither the contract itself requires inheritance nor it has the possibility of inheritance. This view is popular according to the claims of some jurists (Isfahani (1416), 7: 287) and some consider this quote to be the appearance of the religion of the later scholars (Bahrani (1405), 24: 176). Those who believe in this viewpoint are: Ibn Idris (Sara'ir, 2: 624), Mohaqiq fi al-Sharay'ah (2: 307), Ibn Zohra (Al-Jawami al-Fiqhiyah: 549), Abu Salah (al-Kafi fi al-Fiqh: 298), Mirza Qumī (Jam'i al-Shatat, 4: 391), Sheikh Saduq (Al-Muqni': 340), Sheikh Mufid (Al-Muqni': 498), Mohaqiq Thani (Jami al-Maqasid, 13:37).

The aforementioned jurists believe that:

The word "couples" is absolute in the verses that propose the inheritance of couples, and accordingly everyone inherits, and in temporary marriage, the term "wife" applies to the woman, as well as the wife's commandments, and marriage prohibitions include them. So, in principle, inheritance is fixed, but there are some solid and absolute narratives against some, and others stipulate that "mentioning or not mentioning the condition[4]" and, ultimately, by imperative reasoning, some imply non-inheritance. That is to say, be careful to determine the time-period of marriage otherwise the temporary contract will become a permanent contract and the inheritance will be fixed. What is required is that there is no inheritance in the temporary marriage.

The narratives that this group cites include:

- Imam Sadiq (AS) said in a hadith about temporary marriage: there is no hereditary for a wife[5] (Āmulī (1409), 21:67) It is said that first of all, Mursalah ibn Abī ʿUmayr is accepted and this narrative expresses the lack of inheritance of wife, but since it is a mutual inheritance, we understand that the husband does not inherit either (Makarem Shirazi (1424), 5: 66).

- Imam Sadiq (AS) has mentioned in a hadith about the temporary marriage that there is no inheritance between the two (the husband and the wife in temporary marriage)[6]. (Āmulī (1409), 21:67)

The document of this narrative is valid and this is the reason for the lack of inheritance in the temporary marriage.

Some asked Imam Sadiq (AS) about a man who would marry a woman temporarily and did not mention a condition of inheritance, and he said that there is no inheritance between them, whether or not it was mentioned as a condition[7]. (Āmulī (1409), 21:67)

[3] Article 940 of the Civil Code: Couples whose marriage is permanent and not prohibited from inheritance shall inherit from each other.

[4] «شرطا او لم يشترط»

[5] عَنْ أَبِي عَبْدِ اللَّهِ ع فِي حَدِيثٍ فِي الْمُتْعَةِ قَالَ:- إِنْ حَدَثَ بِهِ حَدَثٌ لَمْ يَكُنْ لَهَا مِيرَاث.(وسايل الشيعه ، ج 21، ص 67)

[6] عَنْ أَبِي عَبْدِ اللَّهِ ع فِي حَدِيثٍ فِي الْمُتْعَةِ قَالَ وَ لَيْسَ بَيْنَهُمَا مِيرَاثٌ. (وسايل الشيعه، ج 21، ص 67)

[7] عَنْ أَبِي عَبْدِ اللَّهِ ع قَالَ: سَأَلْتُهُ عَنِ الرَّجُلِ يَتَزَوَّجُ الْمَرْأَةَ مُتْعَةً وَ لَمْ يَشْتَرِطِ الْمِيرَاثَ- قَالَ لَيْسَ بَيْنَهُمَا مِيرَاثٌ اشْتَرَطَ أَوْ لَمْ يَشْتَرِطْ. (وسايل الشيعه ، ج 21، ص 67)

According to Makarem Shirazi, the only narrative stating that there is no difference between the mentioning and not mentioning the condition is the same narrative.

- Imam Sadiq (AS) was asked about temporary marriage, he said that temporary marriage is lawful for you on behalf of God and the Prophet (PBUH). They asked him about the limits of the temporary marriage: he said that its limit is that the wife will not inherit from you and you will not inherit from your wife[8]. (ibid: 68)

- Imam Bāqir (AS) says: A man and a woman who have been married to one another temporarily will inherit one another when they have not made a condition and although the condition is made after marriage[9]. (ibid: 66)

The narrative says that the concept of the term 'if they have not mentioned it as a condition' is not inheritance, it means not mentioning the time-period in this contract that it becomes a permanent marriage and they inherit from each other (Sheikh Tūsī, quoted by Āmulī, 21: 66) And the way to argue this narrative is that it is mentioned in the narrative "they inherit from each other", it means permanent marriage, not temporary marriage.

Believers in this group all believe that these narratives imply a lack of inheritance in the temporary marriage, some of which are weak and some powerful.

Group Two: This group believes that absolutely there is inheritance in temporary marriage, and their documentary is verse 12 of Surah Nisā'. They believe that this verse is intended for the audience of general marriage and includes permanent and temporary marriage.

Of course, it seems incorrect to argue this without regard to valid narratives. Ibn Barrāj is one of those who believe in this principle (Ibn Barrāj (1406), 2: 243).

Group Three: This group believes that the parties to the temporary marriage contract will not inherit from each other unless the condition of inheritance is agreed upon in the course of the marriage. The author of Jawahir considers this saying more famous (Najafī (1404), 30: 193). One of the reasons for this group is the hadith "the believers are at their conditions". The narratives that this group cites are two narratives whose both document is valid. Which include:

- Imam Reza (AS) narrates that: Temporary marriage is one that can both be with inheritance and can be without inheritance; if it is conditioned, there is inheritance and if it is not conditioned there is no inheritance. (Āmulī (1409), 21: 66)

- Imam Sadiq (AS) was asked about the amount of bridal gift in temporary marriage, he said that to whatever extent the parties were satisfied, he said that if the condition of inheritance is mentioned, they should act upon it[10]. (Āmulī (1409), 21:67)

These explicit narratives mean that couples inherit each other if they have mentioned the inheritance as a condition for marriage. And they are clearly used that if they do not mention it as a condition, they will not inherit.

These two narratives seem to be in conflict with Sa'id ibn Yasar's narrative, which was told in the first group, which is to say they will not inherit whether they mention it or not, because these two narratives emphasize inheritance if there is a condition. And these two narratives also seem to contradict

[8] سَأَلْتُ أَبَا عَبْدِ اللَّهِ ع عَنِ الْمُتْعَةِ- فَقَالَ حَلَالٌ لَكَ مِنَ اللَّهِ وَ مِنْ رَسُولِهِ قُلْتُ فَمَا حَدُّهَا- قَالَ مِنْ حُدُودِهَا أَنْ لَا تَرِثَهَا وَ لَا تَرِثَكَ. (وسایل الشیعه ، ج 21، ص 68)

[9] عَنْ مُحَمَّدِ بْنِ مُسْلِمٍ قَالَ سَمِعْتُ أَبَا جَعْفَرٍ ع يَقُولُ فِي الرَّجُلِ يَتَزَوَّجُ الْمَرْأَةَ مُتْعَةً إِنَّهُمَا يَتَوَارَثَانِ- إِذَا لَمْ يَشْتَرِطَا وَ إِنَّمَا الشَّرْطُ بَعْدَ النِّكَاحِ. (وسایل الشیعه ، ج 21، ص66)

[10] عَنْ مُحَمَّدِ بْنِ مُسْلِمٍ قَالَ: سَأَلْتُ أَبَا عَبْدِ اللَّهِ ع كَمِ الْمَهْرُ يَعْنِي فِي الْمُتْعَةِ- فَقَالَ مَا تَرَاضَيَا عَلَيْهِ إِلَى أَنْ قَالَ- وَ إِنِ اشْتَرَطَا الْمِيرَاثَ فَهُمَا عَلَى شَرْطِهِمَا. (وسایل الشیعه ، ج 21، ص 67)

the narrative of Muhammad ibn Muslim, the last narrative of the first group, but as it was stated in that narrative, it was stated the condition meant time-period of marriage, not an inheritance. Ayatollah Shubayri says:

> "According to Sheikh, here condition is other than the meaning that has been stated in the two previous narratives. Because the conditions mentioned about marriage are different and are not summarized in terms of the condition of inheritance and non-inheritance but time-period is one of them. Thus, in the narration of Muhammad ibn Muslim, the condition means the time-period, and by not mentioning it as a condition of marriage, the temporary contract becomes permanent contract and the couples will inherit from each other.

In this sense, on the one hand, the conflict between the narrative of Muhammad ibn Muslim and the previous two narratives is resolved, on the other hand, the problem derived from the bounding of the sense of inheritance to the condition is resolved. For if the meaning of the condition in this narrative is the condition of the inheritance, the meaning of the phrase "they shall inherit if they have not mention it as a condition" shall be: "If the condition is not inheritance they will inherit" and if we consider a concept for it, the meaning is: "If they mention the condition of inheritance, they will not inherit!"

And these two meanings for content and concept are something that cannot be bound unless we say: The narrative of Muhammad ibn Muslim had no meaning, and the mentioning of "they will inherit if they don't mention it as a condition" was the mention of the hidden individual and the clear examples of temporary marriage are the cases in which the condition of inheritance is mentioned, according to which the meaning of the narrative is as follows: Couples inherit each other, although they do not mention it as a condition.

But if we take the condition as it means the time-period in the case of Sheikh, we will not consider the opposite meaning and ignore the concept of narrative, and this would itself be an affirmation for the word of Sheikh, and the narrative is among three other narratives and this is the reason of those who consider not mentioning the time-period as the cause of changing the contemporary contract to the permanent contract." (Shubayri (1419), 19: 6163).

He summarized the views of the Sheikh as follows:

> "One of the things that was common in the past and that is not emphasized in our time is that in a temporary contract they stated that the inheritance would fall or not be fixed. According to this method, Sheikh does not consider the meaning of the condition in these two narratives as one issue and states: The condition in the narrative of Sa'id bin Yasār is the same as the conventional condition in the past, i.e. the condition of non-inheritance, and this narrative is not at all a matter of inheritance condition. Therefore, its provisions are that the existence and non-existence of the conventional condition of non-inheritance has no role in the decree of inheritance, whether this condition is mentioned or the contract is originated without it, in any case the couples will not inherit from each other.

But the condition in Bazanṭī's Sahīhah is the condition of the inheritance and it is directly related to inheritance and non-inheritance. Therefore, there is no contradiction between the contents of these two narratives, each looking at something different from each other, and by inheritance condition, couples will inherit from each other." (Shubayri (1419), 19: 6162)

Finally, they have considered the correct quote to be the content of the Bazanṭī's narrative and believe it to be famous (Ibid: 6158).

In contrast, some who regard the first idea as popular and believe in it to summarize these two narratives say:

"First, we examine these two narratives (Sahīh Bazanṭī and Muhammad ibn Muslim) without contradiction, summation, and preference, and it becomes clear that these two narratives are difficult in themselves:

1- These two narratives are exposed by the companions and the celebrities have not acted on them and the famous abandonment disables the both documents despite their validity.

2. It includes something that is contrary to the rules of jurisprudence and that is the fixity of the inheritance by virtue of the condition as an integral part of contract that it is not in jurisprudence because the inheritance is a divine judgment that is the function of the affinity or lineage that exists between the devisor and devisee in heritage; for example if one sells a house and then makes the condition of inheritance, the condition is not true and no scholar has permitted its document, then inheritance is not something to be made by condition but it is a divine judgment so that no one can be deprived of the inheritance through condition and it is not possible to make someone an heir through contract.

3. If we believe that the condition makes the inheritance, we must be subject to the condition, that is, if they mention the condition that the woman doesn't inherit, it should be correct, or that the woman inherit one third or more or less or inherits land, we must be subject to the condition, and inherit upon the condition, are the followers of this detailed word obliged to do so?

It is said that the nature of the temporary marriage is the imperfect cause for the inheritance (in the permanent contract, the cause is perfect) and the condition is the latter and perfect part of the cause, and it completes the imperfect cause that cannot be violated through sale and rent because they are not an imperfect cause of inheritance, nor can it be said that it inherits more than the prescribed amount in the Shari'ah. "

Before gathering among the groups of narratives, they believe that the two narratives, which have a detailed opinion about inheritance, have a problem. Here's a review of their comments:

The first reason: They state in the first reason that the celebrity have not acted on these two narratives and they also claimed that the popular view was absolutely non-inheritance, while other sources have stated that the celebrity opinion is acting upon the condition. (Najafi (1404)), 193: 30, Shubayri (1419), 19: 6158)

Therefore, there is no consistent opinion in this respect, and it cannot be claimed that the celebrity ignored it so it is not valid.

The second reason: In the second reason they say that these narratives contain something that is contrary to the rules of jurisprudence, they say that inheritance is a divine decree which is subject to lineage and affinity and is not possible on condition of marriage. In response to this reason it can be said that we also agree that inheritance is a function of lineage and affinity and it is one of the causes of marriage, both in verse 33 of Surah Nisā', which includes those who have made a covenant that includes marriage, and in verse 12 of the same surah, the term is common marriage and includes all kinds of wives.

Therefore, marriage include permanent and temporary marriage. And we have no word in jurisprudence when it comes to mentioning marriage, which is one of the types of affinity, that only permanent marriage is involved. Permanent and temporary contracts, as they are different in other decrees, they also differ in inheritance. Including that there is inherently no inheritance in the temporary contract, and the narratives that state: There is no inheritance among them... all express the obligation of temporary marriage. And it may be said that in those narratives, the infallible Imams (AS) were expressing the general commandments of the essence of the obligation of the temporary marriage. But in other narratives, such as Sahih Bazanṭī and the narrative of Muhammad ibn Muslim, which is the document of both valid narratives, they say that it must be fulfilled if the condition of inheritance is

mentioned in this contract. In other words, this contract does not require inheritance, but if the inheritance is mentioned as a condition, it is correct and must be acted upon.

The third reason: According to what was said in the second reason, we say that due to the narratives we have in this regard, we consider the possibility of inheriting for the temporary wife in the temporary marriage as in the same law of the permanent wife. They finally raised the question that if we accept that the condition creates the inheritance we should be subject to the condition and if the condition was that the woman would not inherit or inherit more or less ... would you be obliged to do so?

In answering this question, it should be said that, first of all, the decrees of lineage and inheritance expressed by the holy legislator are a kind of public order and it was stated that the will has no role in lineage because of the established laws that exist, that is, no one can enter or exit the genealogy. But about affinity and with regard to the explanation of the will in them, somehow we can enter the non-relative in the affinity by acquiring some conditions. Ultimately, we are not bound by these matters through public order.

They say that there are three deductive ways that only one of them is superior. This deductive ways indicate that the condition in the narratives of (Bazanṭī and Muhammad ibn Muslim) is will. That is, if you make a will to this woman to give her an inheritance it is accepted, and since the inheritance of the woman is either one-eighth or one-fourth and the will of the dead is also effective in one-third, then the narratives are in harmony and the condition is also referred to as the will. Therefor alongside the former narratives we carry these two narratives on will.

Here it can be said that in these narratives, the condition is often used either to state its non-inheritance or to expire it or to confirm the inheritance (Āmulī (1409), 21:68, Shubayri (1419), 19: 6162). And these meanings are closer than we carry the condition as a will.

Some jurists have said in this regard:

It seems that if we consider this condition as a will, this is far from a judicial procedure, since in the case of inheritance the parties did not intend to do so, and the contract does not take place without intention, except in the case of some evidences that expresses the intention of the will (Imami, 3: 298).

Those who consider this include Tūsī (al-Wasilah: 309), Yaḥyā ibn Sa'id (Jami' al-Shari'ah: 451), Al-Kiddari (Isbah al-Shi'ah be Misbah al-Shari'ah: 420), Bahraini (Hada'iq al-Nazirah, 24: 182), Shubayri (al-Masai'l al-Shari'ayah: p. 553) Khoi (Minhaj al-Salihin, 2: 267).

Group Four: This group believes that there is inheritance in the temporary marriage unless the condition of inheritance is not mentioned. And if the condition is the fixity of inheritance, it is for emphasis otherwise marriage has the obligation of inheritance. This group cites only one narrative:

- Imam Sadiq (AS) have said: A man and a woman who have been married temporarily will inherit one another when the condition is not fulfilled, though the condition is mentioned after marriage[11]. (Āmulī (1409), 21: 66)

As stated earlier, the concept of "if they have not mentioned ant condition" in this narrative is lack of mentioning the time-period, in which the temporary contract becomes a permanent contract and the couples inherit from each other.

Those who agree with this opinion are Sayyid Morteza (Intisar: 114), Ibn Abi Aqil (Quoted by Fazel Abi (Kashf al-Rumuz), 2: 157; Allameh (al-Mokhtalif): 561)

[11] مُحَمَّدِ بْنِ مُسْلِمٍ قَالَ سَمِعْتُ أَبَا جَعْفَرٍ ع يَقُولُ فِي الرَّجُلِ يَتَزَوَّجُ الْمَرْأَةَ مُتْعَةً إِنَّهُمَا يَتَوَارَثَانِ- إِذَا لَمْ يَشْتَرِطَا وَ إِنَّمَا الشَّرْطُ بَعْدَ النِّكَاحِ. (وسایل الشیعه،21: 66)

3-2-1-2-1. The inheritance of temporary wife from the perspective of Civil Code

The Civil Code does not explicitly state the temporary wife's inheritance. And it merely states in Article 1077 concerning temporary marriage, "In temporary marriage, the law concerning the inheritance of a woman and her bridal gift shall be the same as those laid down for inheritance in the coming season." There is no Article about the inheritance with this subject. And only the opposite sense of Article 940 of the Civil Code provides: "Couples whose marriage is permanent and not prohibited by inheritance shall inherit from each other ..."

It can be understood that the condition of inheritance for the couples is permanent marriage, and if the marriage is temporary, the couples shall not inherit from each other. Some have argued that under this Article the legislator absolutely refuses to accept the inheritance in the temporary marriage (Civil Rights, Imami, vol. 3, p. 297).

It seems that Article 940 of the Civil Code can be interpreted as it is true that the legislator has put the inheritance requirement into permanent marriage, but this is not a reason for refusing to accept inheritance in the temporary marriage. Some jurists also argue that: Article 940 of the Civil Code discusses a marriage which, by virtue of a contract, without inheritance condition and inheritance obligation, as a matter of law, and that, therefore, the temporary marriage does not necessarily inherit. However, Article 940 of the Civil Code does not negate the condition of inheritance in the temporary marriage, and Article 10 of the Civil Code guarantees this condition. For this condition is not explicitly contrary to any law (Langroodi (1392), 1: 220).

Some other jurists have commented on the views of the jurists in this regard and stated that the famous opinion is a requirement of acting upon the inheritance condition, and this requirement needs research, and is the example of "the believers are at their terms"; contrary to this view, the opinions of other jurists, who have voided such a condition, are expressed and they argue that such a condition is valid if it is within the scope of the obligor's rights, while the condition of inheritance is the obligation against the heirs and no one can make a condition against the other (Taheri (1418), 3: 211)

This seems to be incorrect because if so, for example, a man who has a permanent wife and two children will no longer have to remarry permanently because such a marriage is a loss to other heirs. Or she should not give birth to another child, because if another child is born, he or she will be a loss for another heirs and they will be deprived of their inheritance share. But such an argument is incorrect and it cannot be said this reason makes the condition invalid.

Finally, after examining the verses and narratives about the inheritance of the temporary marriage and also considering the opinions of the jurisprudents in this regard, it seems that the temporary marriage doesn't oblige the inheritance, but if it is conditioned to be inherited in this marriage according to the authentic narratives in this matter the parties must be bound by their condition and this condition is not contrary to jurisprudence and its rules. Finally, in light of what has been said so far, it seems possible to include such a condition in the temporary contract and one can be bound by it.

3-2-2. loyalty

The second type of affinity is loyalty, which includes the loyalty by virtue of emancipation, by virtue of leadership, and by virtue of mastership.

3-2-2-1. loyalty by virtue of emancipation and explaining the will therein

According to what has been said about the loyalty by virtue of emancipation, the meaning of the loyalty is closeness and friendship, and the establishment of a relationship of closeness and friendship by

one person or another. This is done according to the will of the individual and it is a charity, which can under certain circumstances, establish the inheritance relationship.

The general condition of all relationships that can be interpreted as friendship of one party or the other is that it is not a kinship relationship. As stated above, this is normal.

There are three conditions regarding the loyalty by virtue of emancipation for the realization of the hereditary relationship:

1. There is no kinship relationship, upon which all jurists agree.

2. The freedom of the slave should be strictly gratuitous and shouldn't be regarding atonement or vow.

3. They have not conditioned the collapse of the inheriting guarantee (loyalty by virtue of leadership) otherwise there will be no inheritance (Sobhani (1415): 344).

Many narratives have been cited on the subject that the basic and general condition of these relationships have been expressed, including the narrative by Ab al-Hasan (AS) who was asked about the inheritance of a person who had a sister and a freed slave. He has explicitly stated that it is the property of his sister (Āmulī (1409), 26: 233), according to which the main condition of these relations was the absence of a kinship relationship.

It is clear that inheritance based on the freedom of the servant is considered a unilateral legal act, which is based on the will of the people and it can be interpreted that the Islamic system of inheritance is both based on the unilateral legal act and on the contract and covenant, and the spirit of the contract and covenant both return to the spirit of the will.

The unilateral legal act is the will of the individual by which the right is created or abolished. This does not require any further intervention, and therefore the dissatisfaction of others will not affect its realization, such as abandoning the ownership or discharging the religion or revival of res nullius. From the legal point of view, unilateral legal act is created through a unified will and no other will has any effect on it, so no external discoverer can be effective on its realization, but for the realization of a contract there must be two wills that agree with each other and this will not be possible without the declaration of the companions to one another (Imami 1: 184).

The release of the slave or his emancipation was a one-way act of will, and the most important condition is that the slave emancipation should be completely gratuitous and not be for his atonement or vow. All of these and the positive constraints and conditions are the complete freedom of the individual to exercise a will that can establish a hereditary relationship between the parties (between the servant and the master).

Although it may be seen as encouragement to abolish slavery in relation to the former system, what this study is concerned with is that the inheritance relationship is realized with the unilateral act, which is a voluntary and completely free act. There are some conditions in this regard that may be mentioned in the third condition which states: Freedom must be fully gratuitous and not conditional on the collapse of the inheriting guarantee. That is, if he makes a condition, he will not inherit. In other words, God declares that apart from kinship discussion, in addition to the marriage covenant, unilateral legal act can also establish an inheritance relationship.

Thus, it should be said that the Islamic inheritance system can be used for inheritance in addition to treaty-based relations based on the will of both parties. The unilateral legal act can be used for inheritance. Incidentally, the most important thing in unilateral act is the complete crystallization of one's free will and authority. That is, a very important point that can be used to discuss the loyalty by virtue of emancipation, whether we have emancipation or slave today, and the question is whether inheritance can

also be established through unilateral legal act or not. However, given that the relation of emancipation based on what is seen by human beings demands a particular system that is the system of slave freedom and servant-master relations, it may not be characterized by induction of properties, and it may be attributed to other unilateral acts, as well and we say that in other cases where one does not have a kinship relation, if he does absolutely a charity, upon which he will be able to establish an inheritance relation.

In view of what has been said about the subject of emancipation and unilateral act, it is important to note that in Islam the inheritance relationship with emancipation is also accepted and that unilateral act is a manifestation of one's will. Essentially it can be considered as a legal act created by the will of a human being. In unilateral act, according to what some scholars have stated, the unilateral act is originating the independent legal work that the originator wants and his will is not even subject to any other consent (Imami, 1: 184).

Of course, since no coherent and integrated theory has been designed and articulated about unilateral legal act as a general theory, neither among among lawyers' legal opinions nor among jurisprudential opinions, and a very detailed picture of the jurisprudence has not been accurately stated, and generally there are instances of unilateral legal acts, such as whether a divorce is a unilateral act or not? And ... what can everyone agree is that unilateral legal act is achieved through one person's will and that is a voluntary act. Thus, in the Islamic inheritance system, by changing the attitude toward division and expressing the true reality of this division, it can be pointed out that the Islamic inheritance system is based on the will, or the will of one, or the will of two. That one person's will is the same as unilateral legal act and its example is the loyalty by virtue of emancipation. The will of the two is covenant based on what was said. It is either a marriage contract or a inheriting contract or imamate treaty.

3-2-2-2. Loyalty by virtue of Ḍimān Jarirah and explaining the will in it

Ḍimān (i.e. Guarantee) in the word means accepting, admitting, being obliged to compensate damages when one fails to fulfill his promise (Mo'in (1384): 55), and Jarirah in the word means crime and sin (Ibn Manẓūr (1414)). 4: 129) (Dehkhodā (1372), 5: 6760).

Sheikh Ansari, in his definition of *Ḍimān* Jarirah, stated: " *Ḍimān* Jarirah is a contract of necessity, which requires necessity and acceptance, and one of the followers is to say: "I get married you to support me, to support you, to pay me, to pay for you, to be wise for me, to be wise for you and to inherit me and inherit you[12]" and the other says: "I accepted this" and since this contract is necessary, then everything that is required in other necessary contracts is valid here. (Ansari (1415): 179).

Ḍimān Jarirah is a contract in nature, which means that one can guarantee another crime and inherit him in return. However, it is clear that this warranty may be possible in pure error crime because the warranty must pay the Diya i.e. the blood money, and otherwise, this guarantee is possible only in the case of pure error. This contract can be concluded unilaterally as well as reciprocally. Opinions on the necessity or permission of *Ḍimān* Jarirah vary. Some believe that this contract is necessary (Ansari (1415): 179), and they also believe so according to the verse of "اوفوا بالعقود و خبر المومنون عند شروطهم"and consensus (Hosseini (1419), 8: 204, Ibn Idris (1410), 3: 265) and others accept the permission of contract, they claim that the legitimacy of the contract has a problem because it is neither in the hadith nor in the words of the predecessors (Qazvini (1414): 394). What seems to be more precise is the necessity of such a contract because, firstly, in response to the illegality of such a contract, it can be said that in addition to the narratives that implicitly affirm the legitimacy of the *Ḍimān* Jarirah, verse 33 of Surat Nisā' describes its interpretations in Chapter 2 of the present study. That is, it confirms the legitimacy of this contract.

[12] «عاقدتك على أن تنصرني و أنصرك و تدفع عنّي و أدفع عنك و تعقل عنّي و أعقل عنك و ترثني و أرثك»

Eventually, after acceptance of legitimacy, this contract will, like other contracts, be subject to the presumption of irrevocability of contracts.

There is a debate on how the inheritance is fulfilled in the *Ḍimān* Jarirah contract, that if the inheritance is not mentioned in the terms of the contract, is there still an inheritance, or should inheritance be mentioned in the contract to oblige the inheritance?

Answering these questions can have important effects on jurisprudence and law. In this way, if the inheritance in the *Ḍimān* Jarirah is bound to mentioning it in the inheritance vow otherwise there is no inheritance, then it can be inferred that the inheritance is a condition in the *Ḍimān* Jarirah which has its own effects. On the contrary, even if it is not mentioned in the vow, it is still possible to inherit. In this case, too, we realize that inheritance is one of the commands and characteristics of this contract, and here it has its own special effects.

In this section, we express the views of the jurists in this regard:

> Muhaqiq Isfahani argues that it is impossible to mention inheritance in the temporary marriage contract because the inheritance is a Shar'ī law, as opposed to the terms of the Book of Allah and the Sunnah. *Ḍimān* Jarirah also obliges the inheritance, as stated in the marriage vow that one of the followers would say: "Your blood is my blood, your revenge is my revenge, your war is my war, your peace is my peace, and you are my heir as I am your heir[13]" and another says: "Accept it." This is the acceptance of inheritance through marriage. And it is not appropriate for us to mention inheritance as the condition of marriage. And the appearance of the *Ḍimān* Jarirah' s narratives states that the inheritance is from the *Ḍimān* Jarirah' s warrant not from the provisions of this contract. (Company (1418), 5: 135-136)

This jurisprudent has considered inheritance as a warrant of *Ḍimān* Jarirah and according to this view, even if inheritance is not mentioned in the marriage contract, it is still possible to inherit the *Ḍimān* Jarirah.

Another jurist states:

> Because inheritance is a warrant of *Ḍimān* Jarirah, if inheritance is not mentioned in the formula of contract, inheritance is still possible (Kashif al-Qita (1422): 85).

Some say:

> There is no need to mention the inheritance in the contract and then the contract will be valid and the inheritance will be respected. He goes on to state that if the parties only mention inheritance in the contract and there is no mention of warranty, reason, and blood money, the guaranteed is to say to the guarantor: "I made this contract that you inherit from me after my death" There is a problem in warranting the validity of such a contract. (Basari Bahrani (1413), 7: 335-336)

In this regard, if only the inheritance is mentioned and there is no mention of the guarantee of blood money, some say:

> "If one mentions the inheritance without Diya, then it has no effect on the contract. For two reasons, first based on principle, second based on restriction to an extent that is not opposed to proof. "(Sabzevārī (1413), 30: 237)

Against these, there is another opinion:

[13] « دمك دمي و ثارك ثاري و حربك حربي و سلمك سلمي و ترثني وارثك»

"It is said that if the inheritance is not mentioned, the inheritance is still fixed, but it is not true. Because inheritance is consideration here and this is one of the things that should be mentioned, for example, if it is necessary to mention compromise or non-compromise in in sale, rent, and etc. so it should be mentioned, here in the contract as exchange or something else, namely with the word of particular quality and not mentioning the inheritance here like not mentioning one of the things in contracts and exchanges." (Qazwini (1414): 397)

According to this view, inheritance is a kind of exchange against blood money. It seems correct to state that the *Ḍimān* Jarirah contract is a transferable contract, since it is inherited as a guarantee against the payment of the blood money, and there is an exchange in the contract.

In the *Ḍimān* Jarirah contract, if the guarantor dies, the contract becomes void, and there are two comments whether the right of inheritance transfers to the heirs of guarantor or not. First, we will express the views of the group that believe this right is not transferred:

Ibn Idris states in Sarai'r: "So if the guarantor dies, this mastership is void, and the inheritance is not transferred to the heirs of guarantor, such as the loyalty by virtue of unilateral legal act...[14]"

He believes that if the guarantor dies, the marriage will be void and it is not possible to transfer the heir. And he goes on to say that this is the more apparent view, since the transfer of the guarantor after death and inheritance requires a religious reason. And this decree only obliges the guarantor of *Ḍimān* Jarirah, and there is no reason to oblige the heir after the death of the guarantor (Ibn Idris (1410), 3: 265).

It is also stated in the Jāmi al-Sharāyiʿ that the death of the guarantor, the loyalty of *Ḍimān* Jarirah is not transmitted to the heir of the guarantor (Hillī (1405): 406).

While others, such as Sheikh Mufid in *al-Muqni'ah* say his opinion[15], from which the jurists have implied that Sheikh Mufid believes in the transfer of the mastership to the heir after his death. (Husseini (1419), 8: 205)

Ultimately, what seems to be the case is that we have to believe in separation. If during this contract the guarantor has no payment as a guarantor of blood money and dies then it can be said that with the death of the guarantor the contract will be canceled and is not transferred to the heirs of the guarantor. But if we consider inheritance, according to some jurisprudents, to be an exchange for Diya, and during the lifetime of the guarantor, the guaranteed commits a crime and guarantor pays its Diya and then the guarantor dies, here it can be said that the mastership is immediately transferred to the heir of the guarantor. This is because the guarantee and the payment of the Diya by the guarantor have been realized, which is one exchange and one party to the mutual contract, but no counterparty has been created, and if we first consider not to transfer the inheritance to heirs, we will have trouble. It is as if the customer has received a service in the contract but had not paid for it and died, in which case the cost of transaction would have to be paid by the heir as the client's debt. In the above assumption, it seems that after the death of the guarantor, the inheritance right of guarantor will be transferred to his heir. Another point that confirms this is the need for this contract. It was said earlier that this contract is one of the necessary contracts. One of the essentials of necessary contracts is that they do not become extinct with death.

Another argument regarding the inheritance of the guarantor in *Ḍimān* Jarirah is the condition that that there should be no kinship heir and no unilateral act. Which seems to be a controversial argument, as we have in the words of some jurists that if the guaranteed dies, the mastership will extend to the minor offspring. This in itself violates the requirement that there should be no kinship heir.

[14] فإذا مات بطل هذا الولاء، و رجع الي ما كان، و لا ينتقل منه الى ورثته، كانتقال ولاء المعتق...

[15] إذا أسلم الذمي و تولى رجلا مسلما على أن يضمن جريرته
و يكون ناصره كان ميراثه له و حكمه حكم السيد مع عبده إذا أعتقه و كذلك الحكم فيمن تولى غيره و إن كان مسلما إذا قبل ولاءه وجب عليه ضمان جريرته و كان له ميراثه(شيخ مفيد(1413): 694)

Now let us speak the words of jurists in this regard:

> Sheikh Tūsī says: "if guaranteed dies, the mastership of *Ḍimān* Jarirah is transferred to the offspring[16]" (Tūsī (1408): 398).

The same word[17] has been also mentioned in Jami al-Sharāyiʿ and Allameh Hillī also expresses the same thing which the mastership is immediately transmitted to the minor offspring. (Hillī (1405): 400)

Another group of jurists also state:

> - In *Ḍimān* Jarirah it is a condition to have neither a proper heir nor a unilateral act. That is a consensus. This is a condition of the validity of the contract at the time of marriage. If the guaranteed is married after marriage and has a child or has a loyalty by virtue of emancipation, both of these are preceded on the guarantor and there are two opinions in this regard: one is the annulment of the marriage and the other is that the marriage remains so, until the death of the guaranteed. (Husseini (1419), 8: 204)
>
> - One of the conditions of validity of the *Ḍimān* Jarirah is the absence of a kinship heir and the unilateral legal act for two reasons, one is consensus and the other is the fundamental texts in this regard. (Sabzevārī (1413), 30: 237)
>
> - In *Ḍimān* Jarirah, the inheritance is proved for the guarantor when the guaranteed has neither a kinship heir nor a loyalty by virtue of emancipation [18].

All jurists who regard this condition as a condition of the validity of the contract cite the consensus. Finally, due to the general principles governing the inheritance rules, it seems that the guarantor of *Ḍimān* Jarirah inherits when there is no kinship heir, and a loyalty by virtue of emancipation.

As to the explanation of the will in loyalty by virtue of *Ḍimān* Jarirah, it may be said that based on *Ḍimān* Jarirah, the inheritance relationship is the main topic of the contract.

But the marriage contract indirectly creates inheritance causes on the basis of kinship or affinity relationship. So if we change the criterion of division and divide it by will, then essentially the Islamic system of inheritance explained by divine revelation can be fully explained by the free will of human. But with regard to the *Ḍimān* Jarirah, it should be noted that the loyalty of *Ḍimān* Jarirah is quite similar to a contract of acceptance of the responsibility of the parties' crimes, which today is usually expressed in the form of an insurance contract. (Makarem (1427), 3: 448) According to the narratives and phrases of the jurisprudents, the expressions about the quality of this contract are different, but each of those terms may refer to a comprehensive meaning that is: There is a will-based contract between two people that if you help me and support me against my enemies and advise me, you will inherit me and the other accepts. It can also be established between two people and the inheritance relationship can be two-way so that after one of the parties needs to be accepted and the other party accepts the other side. In this case, after the conditions are realized, the two parties will inherit from each other.

Although there are some terms for what we have said, it does not mean that there is no free will but that it provides a public order for the maintenance of human relations. So the nature of the Ḍimān Jarirah is based on the free will in regulating the relations of inheritance, and incidentally here based on some of the contemporary fatwas of jurists and references to what has been said, it can induce its characterization and development into the kind of insurance and civil liability discussed today. However, in this type of insurance we can define inheritance or inherit from one another in the contract. And one of the most important points to note is the narratives about the freed servant who is tied up with a people of

[16] و هذا الولاء يسري إلى ولده الصغار دون الكبار...
[17] «... و يصير مولى له و لصغار ولده دون كبارهم...»
[18] « و يثبت الميراث إذا لم يكن للمضمون عنه مناسب و معتق...»(غروی(1421):332)

the covenant, i.e. such a covenant between the people of the covenant and the Muslim can also create an inheritance relationship, though there is a difference.

But we have some narratives that have accepted this kind of inheritance and inherit relationship, and this can reinforce the notion that in the spirit of the *Ḍimān* Jarirah covenant is the acceptance of civil liability, and the payment of damages in exchange for an inheritance or hereditary relationship.

Thus, it can be reinforced by the fact that in *Ḍimān* Jarirah, the spirit of the covenant is merely the acceptance of crimes and the responsibility for the crimes. Now, in order to maintain public order, unintentional and wrong crimes can be cited as a limit. But in the narratives, there is no specific title that confirms the specificity of *Ḍimān* Jarirah in the sense that it cannot be developed today. Therefore, if any agreement is made between each individual, it will establish a hereditary relationship with the will of the parties. Therefore, the contract of *Ḍimān* Jarirah is the most prominent form of will ruling in the Islamic system of inheritance alongside the unilateral act of emancipation, and God has basically designed the Islamic inheritance system on the basis of the will of individuals.

Therefore, as in any covenant, this can be seen as a suggestion based on the assertion with the viewpoint that two particularly Muslim individuals will work together to protect one another, to support one another in wrong crimes, and to accept its civil liability as a guarantee and paying for those crimes can establish a hereditary relationship. Although this article needs further development and explanation, it is sufficient to interpret the *Ḍimān* Jarirah relationship on the basis of two wills.

3-2-2-2-1. Ḍimān Jarirah from the perspective of Civil Code

Article 864 of the Civil Code states: "Among the persons who inherit by virtue of affinity is each spouse who is alive during the death of another." The meaning of this phrase is that some inherit due to affinity, one of whom is the couples.

In fact, the legislator has vaguely addressed the issue. That ambiguity does not necessarily mean that the legislator is weak. The legislator uses a word or phrase as a summary, depending on the time and the differences and various attitudes that may exist in a society, to form a majority theory and to form a relative consensus as society progresses. Such words and phrases are relatively found in law. In these cases, we must refer to authentic Islamic sources or valid fatwas in accordance with Article 167 of the Constitution which states that in cases of silence, defect and law brief. Therefore, in this case, even though it is not stated in the Law of *Ḍimān* Jarirah, by referring to authentic jurisprudential sources it can be understood that *Ḍimān* Jarirah is one of the means of inheritance.

Some jurists comment on this regard:

> In terms of Civil Code, how to express the phrases of Article "864" says that (the individuals who inherit are each spouse) it is as if there are other people besides the couples who inherit through affinity, while the Civil Code does not name any of the others. It seems that the Civil Code for the observance of the rights of the Imamiyyah, who recognizes the three types of mastership as a means of inheritance, has provided the Article briefly in order not to challenge the ideas of the environment when the law was adopted. Through the spirit of the statute laws and the customary laws of the loyalty by virtue of emancipation and loyalty by virtue of *Ḍimān* Jarirah as the means of inheritance, since because of the abolition of ownership of slave and the failure to enforce the Islamic penal provisions, no subject remains for the loyalty by virtue of emancipation and loyalty by virtue of *Ḍimān* Jarirah. For this reason, based on the judicial viewpoint, no other affinity, except the marriage, can be recognized as the means of inheritance, about the loyalty of leadership, the Civil Code in Article 866 states: "If the heir is not alive, the property of the deceased is upon the governor" according to the article. "335" the responsibility is given to the state treasury (Imami, 3: 177).

It seems to say that with the help of the spirit of the statute laws and the customary laws, it is not true to regard the loyalty by virtue of emancipation and loyalty by virtue of *Ḍimān* Jarirah as the means of inheritance, for we need reason to prove the absence of the object while not using the object cannot prove the absence of object. Also, the statement that he stated that "non-compliance with Islamic penal provisions" can be criticized, because if they said that execution and enforcement of Hodods is not possible in the time of absenteeism, it can be answered according to the rule: "اقامه الحدود اِلی من اِلیه الحکم"

And reviewing the phrase "من اِلیه الحکم" in the narration and word of the jurisprudents refer to this person as an imam, not necessarily an infallible Imam, but an imam, meaning a king, governor and head of state who qualifies for this position, who is interpreted as "the supreme leader." (Hosseini Khamenei (1392): 187-188) However the phrase non-execution of Islamic criminal sentences is not correct and the implementation of the Islamic criminal decisions is by Islamic ruler (the supreme leader) and all criminal decisions in the Islamic state is applicable by the governor. Of course, the Islamic ruler's authority can also be delegated.

Other jurists have also stated:

> The Civil Code does not speak of any other inheritance means (other than marriage) referred to in Article 864, and this silence signifies the abandonment of such means as loyalty by virtue of emancipation and *Ḍimān* Jarirah in the present law. (Katooziyan (1379): 84)

The jurist goes on to say that it is better to think about how to govern and inherit the inheritance which has no heir rather than to think about the history of Civil Code in jurisprudence and discussing the fate of 'mastership or loyalty' as the cause of inheritance.

Others say:

> Today's loyalty regulations are abandoned in social relations and the discussing its rules is of no practical use; for loyalty is related to slavery which does not exist in today's relations and yet the loyalty of *Ḍimān* Jarirah is in conflict with the principle of personalization of crime and punishment and in practice it is not realized. And even the loyalty by virtue of Imamate is also dismissed because of the absence of the appointed Imam. Therefore, at present, the causal inheritance should be considered as exclusive to the parties to the permanent marriage, i.e. the husband and the wife (Shahidi (1381): 32).

The point in all jurists' opinions is to abandon the argument and keep it silent. If we look at these issues with this perspective, of course, we come to the conclusion that such issues are of no practical use. But if we look a little more closely, we will find that with contemplating in this debates, the issues of today's society can be organized.

It is incorrect to say that a *Ḍimān* Jarirah contradicts the principle of personalization of the offense and punishment. Because first of all, the *Ḍimān* Jarirah only applies to the crimes of pure error and includes the crimes which include the blood money. If this word is true, the insurances who pay the Diya for merely wrong crimes will also have problems, while it is not true.

The latter case is also criticized, in which they say the affinity is unique to permanent marriage, as it was previously stated that in the temporary marriage, in spite of the lack of inheritance obligation in the temporary marriage, according to the traditions it is possible to make the condition of inheritance in the temporary marriage.

3-2-2-3. Loyalty by virtue of Imamate and the explanation of the will therein

The point, which is mentioned at the end, is a personal inheritance that has no heir, neither on the basis of a unilateral legal act, nor on the basis of a marriage contract, nor on the basis of a *Ḍimān* Jarirah

contract, nor even on the basis of lineage. If no one had any of this, it means that he has not created an inheritance relationship with his will, neither under the Civil Liability Convention for Crimes, nor on the basis of the Marital Agreement, etc., in such an assumption, his inheritance is given to the Imam.

Whenever the dead with affinity and kinship heirs is not at any of the five stages mentioned above, the Imam will inherit his property and he will deal with such property as he wants and Imam Ali (AS) divided the inheritance between the poor and needy neighbors of the dead. And Allameh has said this property reaches the poor in the absence time, although some have said that it is from Anfāl, and it is permissible for all the Shiite in the absence time, whether poor or rich, and saying is much in this respect, and there is currently no time for more consideration. (Mohammadi, 2: 337)

It can be understood that according to the jurisprudential terms his property is considered to be Anfāl and it is given to the Imam as the property of unknown parentage (Mousavi al-Khomeini (1421), 2: 112), that is, the person who has not established the inheritance relationship with his own free will, as if he has accepted his property be given to the Muslims after him and in a sense based on what is considered to be property of Anfāl and the individual himself has not established a specific inheritance relationship with the individual under the *Ḍimān* Jarirah contract and marriage covenant. And in this sense, he has actually wanted and willed that after his death, his property would be given to the Muslims that Imam is the legal representative of Muslims meaning the guardianship on Muslims. One might say that this action needs to intention to be attributed to the will, and if it has no intention, it is a judgment. What can be said in the writing of this discussion is the inheritance that remains for the Imam, with regard to the principle of expressing the commandments and informing the obliged of the judgments, this meaning is fixed to the obliged, if they do not establish the inheritance or hereditary relationship by their will, they themselves have accepted that the Imam's inheritance judgement would be applied on their property after their death.

Yes, the Imam's inheritance is a decree that includes a person who has no heir. But a person who has no heir, no spouse, no relative, or no *Ḍimān* Jarirah (guarantor), can establish an inheritance relationship on the basis of the unilateral act or the will of Jarirah or the marital will or to the temporary marriage with the inheritance condition or the permanent marriage. If he does not participate in a contract for inheritance or in a unilateral act for inheritance, he has essentially given his property to the imam and the Bayt al-Mal of Muslims after his death.

So, it can be argued that the will of the people is the key determinant in the quality of their inheritance and the main criterion in inheritance sharing and it can be said that inheritance is either bilateral or unilateral, on the basis of peoples will. And the thing which is considered as the inheritance of Imam is the heir that one has not used by his own will. Even if the answer is not accepted and consider "the inheritance with no heir" as a judgement, it can be interpreted as one can create any of the voluntary relationships proposed, including marriage and *Ḍimān* Jarirah and loyalty by virtue of emancipation, and if he did not create each of them, and did not benefit from his will to regulate these relations, the sacred nature of Allah for such a person has a general mandate for the general order of society in the sense that he has not wished to have a hereditary relationship with a certain person, so after his death God has decreed that his property be given to the Imam of the Muslims and no one else will share it. And in this sense, this sentence can be considered in accordance with this person's original will.

Conclusion

Given what has been stated in the lineage and according to the concept and rules governing the lineage, it cannot be accepted that will play a role in it, but because the inheritance factors are unique to the marriage and mastership, the matter is different. That is to say, both in the temporary marriage which we have proved the inheritance is possible by making the condition, and in the case of the loyalty by virtue of emancipation and the *Ḍimān* Jarirah marriage and the loyalty by virtue of Imamate, will plays an essential role. There is a common element in a condition and in a contract called agreement and

satisfaction, and we realize that without will and intention there is no satisfaction and agreement at all, and in the case of a unilateral legal act that is shaped with a unilateral will, the essential element is the same will. So in affinity we will carefully consider the role of will in it.

References

The Holy Quran

Abi, Fazil. 1417 AH. Kashf al-Rumuz fi Sharh Mukhtasar al-Nafi, Qom Theological Society of Islamic Publications Office.

Amili, Mohammad ibn Makkī (Shahid Awwal), Rules and Benefits, Mufid Bookstore, Qom.

Āmulī, Hur. 1409 AH. Wasā'il Al-Shia, Al al-Bayt Institute (AS), Qom.

Ansari, Morteza. 1415 AH. Al-Maqasib, World Congress of Commemoration of Sheikh A'azam Ansari, Qom.

Bahrani, Youssef. 1405 AH. Al-Hadaiq al-Nazirah fi Ahkam al-Itarat al-Taherah, the Islamic Publications Office affiliated with the Qom Seminary.

Basari Bahrani, Zayn al-Din. 1413 AH. Kalamah al-Taqwa, Qom.

48. Sabzevārī, Sayyid Abdul Aala. 1413 AH. Muhazzab al-Ahkām, Al-Manar Institute, Qom.

Bojnourdi, Sayyid Hassan. 1419 AH. Al-Qawad al-Fiqhiyah, Volume 3, Al-Hadi, Qom.

Dehkhodā, Ali Akbar. 1372 H.S. Dehkhodā Dictionary, Tehran University Press, Tehran.

Halabi, Abu Salah. 1403 AH. Al-Kafi fi al-Fiqh, Amir al-Mu'minin Public Library, Isfahan.

Hillī (Ibn Idris), Mohammad ibn Mansour. 1410 AH. Sarair al-Hawi Le Tahrir al-Fatawi, Islamic Publications Office affiliated to Qom Theological Seminary.

Hillī (Muhaqqiq), Najm al-Din. 1408 AH. Sharayi al-Islam fi Masail al-Haram wa al-Halal, Volume 2, The Ismaili Institute, Qom.

Hillī, Yaḥyā ibn Said. 1405 AH. Al-Jami' al-Sharāyiʿ, Sayyid al-Shuhada Institute, Qom.

Hosseini Khamenei, Sayyid Hamid Hossein. 1392 H.S. Doctoral dissertation "Investigating the Figural Rules of Jurisdictional Religions and Islamic Penal Code", Motahhari University.

Hosseini, Sayyid Jawad. 1419 AH. Miftah al-Kiramah fi Sharh Qawaed al-Allameh, Islamic Publications Office affiliated with Qom Theological Seminary.

Ibn Barrāj, Qazi Abdul Aziz. 1406 AH. Al-Muhazzab, Office of Islamic Publications affiliated with Qom Theological Seminary.

Ibn Manẓūr, Jamal al-Din. 1414 AH. Lisān al-Arab, Dar al-Fikr, Beirut.

Imami, Sayyid Hassan. nd. Civil Rights, Volumes 1 and 3, Al-Islamiyah Publications, Tehran.

Isfahani, Mohammad bin Hassan. 1416 AH. Kashf al-Litham wa al-Ibham an Qawaid al-Ahkām, Volume 7, Islamic Publications affiliated to Qom Seminary.

Isfahani, Mohammad Hussein (Company). 1418 AH. Al-Makasib Book Margin, Anwar al-Mahdi, Qom.

Jafari Langroodi, Mohammad Ja'far. 1392 H.S. Inheritance, Volume 1, Knowledge Treasure, Tehran.

Jafari Langroodi, Mohammad Ja'far. 1397 H.S. Law Terminology, Ganj Danesh, Tehran.

Juba'i ʿĀmilī (Shahid Thani), Zayn al-Din. 1410 AH. Al-Rawzah al-Bahiyyah fi al-lama al-Mashqiyah, volume 8, Mufīd Bookstore, Qom.

Juba'i ʿĀmilī (Shahid Thani), Zayn al-Din. 1413 AH. Understanding pathways to revise the laws of Islam, encyclopedia of Islam, Qom.

Karaki, Ali ibn Hussein. 1414 AH. Jami al-Maqasid fi Sharh al-Qawaid, Al Bayt Institute, Qom.

Kashif al-Qita, Hassan. 1422 AH. Anwar al-Fiqahah (Heritage), Kashf al-Ghatta Institute, Najaf.

Katooziyan, Naser. 1387 H.S. General Rules of Contracts, Volume 3, Publishing Corporation, Tehran.

Katooziyan, Naser. 1397 H.S. General Rules of Contracts, Volume 1, Ganj Danesh, Tehran.

Katooziyan, Naser. 1374 H.S. General Theory of Commitments, Yalda Publishing Institute, Tehran.

Katooziyan, Naser. 1379 H.S. "Intercession, Will, Inheritance", Dadgostar, Tehran.

Kiddari, Qutb al-Din. 1416 AH. Isbah al-Shi'a bi Misbah al-Sharia, Imam Sadiq Institute (AS), Qom.

Khoi, Sayyid Abu al-Qasim. 1410 AH. Minhaj al-Salihin, Medina al-Ilm Publishing, Qom.

Khoi, Sayyid Abu al-Qasim. nd. Misbah al-Fiqahah (al-Makasib).

Makārim Shirazi, Naser. 1425 AH. Anwar al-Fiqahah (Kitāb al-Bayi'), School of Imam Ali ibn Abi Ṭālib (AS), Qom.

Makārim Shirazi, Naser. 1424 AH. Kitāb al-Nikah, School of Imam Ali ibn Abi Ṭālib (AS), Qom.

Makārim Shirazi, Naser. 1427 AH. New Istiftaat, School of Imam Ali (AS), Qum.

Mirza Qomi, Abulghasem. 1413 AH. Jami al-Shatat, Kayhan Institute, Vol. 4, Tehran.

Mohammadi, Ali. nd. Commentary on the Teachers Note.

Mo'in, Mohammad. 1384 H.S. Mo'in Persian Dictionary, Single Volume, Goli, Tehran.

Mousavi al-Khomeini, Rouhullah. 1421 AH. Kitab Al-Bai, Institute for the Regulation and Publication of Imam Khomeini's Works, Tehran.

Mufid, Muhammad. 1413 AH. Al-Maqnaah, Sheikh Mufid's Millennium World Congress, Qom.

Najafi, Mohammad Hassan. 1404 AH. Jawahir al-Kalam fi Sharh Sharāyiʿ al-Islam, Dar Īhyā al-Turāth al-Arabī, Beirut.

Qarawi, Ali. 1421 AH. Izah al-Qawamiz fi Taqsim al-Faraiz, Islamic Cultural Foundation, Qom.

Qazwini, Mulla Ali. 1414 AH. Sigh al-Uqud wa al-Iqaaat (Mahashi), Shakouri, Qom.

Sadūq, Muhammad. 1415 AH. Al-Maqqana, Imam Hadi Institute (AS), Qom.

Shahidi, Mahdi. 1380 H.S. Forming Contracts and Obligations, Majd, Tehran.

Shahidi, Mahdi. 1381 H.S. Inheritance, Majd, Tehran.

Sharif Morteza, Ali. 1415 AH. Al-Intisar fi Infiradat al-Imamiyah, Islamic Publications Office affiliated to Qom Theological Seminary.

Shubayri Zanjani, Sayyid Musa. 1419 AH. Marriage Books, Raay Pardaz Research Institute, Qom.

Shubayri Zanjani, Sayyid Musa. 1428 AH. Masa'il al-Shari'ah, Institute of al-Fiqahah Publication, Qom.

Sobhani, Ja'far. 1415 AH. Legacy system in Islamic Shari'ah, Institute of Imam Sadiq (AS), Qom.

Taheri, Habibullah. 1418 AH. Civil Rights, Islamic Publications Office affiliated with Qom Theological Seminary.

Tūsī, Mohammad. 1408 AH. Al-Wasilah ila Neil al-Fazilah, Ayatollah Mar'ashi Najafī Library, Qom.

Waseti, Sayyid Muhammad. 1414 AH. Taj al-Arūs Min Jawahir al-Qāmūs, Dar al-Fikr, Beirut.