

Promise of Marriage From The Perspective Of Islamic law And Jurisprudence

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Abstract

In the present study, the subject of Promise of marriage from the perspective of Islamic law and jurisprudence have been studied. Researcher at the beginning defines the word contract, the promise of contract in science of law, the conception of promise of contract coagulation, and types of contract in the science of Law. The legal nature of a unilateral promise to contract terms Shiite jurists and lawyers discussed. In the end, the nature of the promise of marriage from a legal perspective and Iranian law has been analyzed. The research results are generally as follows: Since the promise of marriage or in other words "candidate" in the Iranian Civil Code is discussed, And Articles 1034 to 1040 of the Civil Code Iran has been allocated to it, This indicates that these promises lie among legal actions and because in this promise, parties have pledged their commitment to the marriage contract , the marriage promise is subject to the contract.

Keywords: Promise, Marriage Promise, Shia jurisprudence, Islamic law.

Introduction

Selection of spouse in Islam is studied in the form of marriage; Marriage, creating Mining under parity between men and women who want to start a family unity and common life. Marriage is a contract that is satisfied and men and women will express their frank will with each other, and make it with their agreement. Of course, the legislator in order to maintain public order and ease of proof of marriage that is important in the community, is considered regulations in order to register the marriage and gave a ceremonial aspect to the marriage. Marriage registration offices have been created for this purpose. Iranian law on civil marriage has been discussed in detail the conditions and obstacles of it; Also pay attention to different parts of marriage, which is very important in the issue of family. . In Volume II of the Civil Code, in the seventh book, Marriage and Dissolution of Marriage discussions come in the eighth and ninth issue of children and the family in the ninth book. On the other hand, the Family Protection Act also referred to issues more closely in this field. Religious books as well, either, devoted a part to the topic of marriage. As we said marriage is a very important concept in personal and social life we're human, for this reason, we must examine the various aspects of a comprehensive blend. Marriage to achieved and the process of his work should be executed, Must go through the process steps that are identical in most cultures, including choosing a spouse, marriage, engagement and marriage.

In pre-marriage agreement the parties may do that later they signed the marriage contract between themselves (as is the case in the nomination period), but then for some reason it is not practical agreements including one of the parties of the obligation to refrainor the death of one of the parties. This breach of promise and do different things and different works will be on time we're going to address in this study. The steps to be married and be eligible to work as mentioned haveseveral steps. Choose a partner who has been investigated more psychological and social aspects. . Do marriage and its effects are carefully specified rules in this study we sought to evaluate the stage of our marriage where the spouse has been done by the person still has not been formed this sacred contract and his work can not be implemented. This includes matchmaking and during the engagement.

The Promise of Contract in words Vade in Payam Persian culture, means "promise", "scheduled" and "promise" to come. (Akhtaran, 1372, 635) The word Vade is a promise in Persian literature. (Moein, 1363,5039) Many verses in the Quran about the promise and commitment that is necessary of fulfilling the promise is of the divine attributes. For example, in verse 3 of Surah Al 'Imran said, "Your Lord on the day Collectors people who doubt about it, because God does not promise". And the promise of Allah is the devil attributes that no other purpose than to deceive people. In Surah Nisa, Verse 4 states "Satan promises them and wish them prey to Satan Vdh→Ay My→Andazd and deception, not-give them and also to those who are God's covenant and Vdh→Y Wafa's salvation ", " be blessed and those who are against Amant→Hayshan and Pyman→Hayshan Raytgr "(Momenoon, 23). But in general English cultures also to express promise from the so-called "Promise" is used when the latter usually is the expression of commitment. (Haghshenas and colleagues, 1384,23).

promise of contract in the law Promises in legal language means "dedication", because the law does not address the moral promise, the law "promise" in the word «Promesse» is the French for "commitment" to-be. (Katoozian, 1383 , 201) Article 22 of Switzerland said: "The commitment to conclude a contract on the contract will be in the future may be." (Vahedi, 1387, 17) doctor Mohammed Jafar Jafari Langroodi, the promise of marriage in law different from the so-called promise of marriage know the law, explaining that "the parties in this promise, which means a certain commitment on the obligation to contract is intended to may, while so-called promise of marriage in Islamic law, the parties intend not willing." (Langroodi, 1381, 24). The concept of the promised contract preliminary figures for the conclusion of the contract or contracts usually include a series of preliminary talks do and then agreed to have signed it so explicitly stated in Article 339 of the Civil Code. "After the salesperson and the customer agreed sales price, the contract of sale to offer and accepted it." But in some cases, for a contract to perform a series of operations such as physical or legal need and the contract to a series of obstacles we encounter a nd in this case requires the parties or one of them after the operations required to lift barriers and existential proclamation and to conclude the contract and, nearly as interpreted this preliminary agreement on the promise of contract .But in terms of rights explained "agreement between two or more will be done to create the legal effect would-be" (Katoozian, 1388, 80).

All kinds of promises in law In cases where the decision to close and want to make the vow promises and end up in the primary and preparatory talks to agree But external obstacles prevent the conclusion of contracts and Nmy→Tvannd is the final treaty is certainly true formation in this case is the promise of contract or pre-contract signing of the final contract to closing occurs, based on that, both sides (bilateral promise), or in cases where the decision is still in doubt, one of the two (serving one-way) committed to the pact to-be.

The first clause - two-way promise: when the primary purpose of the contract is only the commitment to conclude the main contract, this means that the two parties do not want to provisions of the original contract and final out come true, but only on the terms of the transaction are agreed their relationship the person has no right to exist can not be the objective of the treaty, so common, the amount of the transaction as a "deposit" paid and "penalty clause" transaction will be doing so if the buyer breach of its obligation, and if the seller refuses the right to not deposit with additional deposit equivalent to the buyer returns . The document, which contains the promise of contract in business practices, "Pending", called simply, works letter of promise and meaning indicating "penalty clause" in the contract that the intention of the parties, but that has arisen about its provisions binding contract. And simple means able to meet the moral promise. Of the Treaty on Nmy→Yd also that they be free in disrupting contract, unless it is clear or conclusive evidence and arbitration practice. (Katoozian, 1383, 377).

The second clause- unilateral promise: If the commitment is for one side where one of the parties of the provisions of the final contract terms of the contract is subject to the will of the composition and the other side opens, That is, if he consents to the terms of the contract, without the need for the contract will be willing, in fact satisfy a contract But this commitment which gives him the right to deliver (do not be) like other debts from pledged wishes. In this case, the lease is associated with the promise of sale and the buyer will only depend on the fulfillment of the contract of sale and you do not have to compromise again. This opinion of the Article 12 bill interest-free banking "lease-purchase" This group of mutual promises if they are willing and Conditions contract will have the same effect as the original contract. And analytically as an offer and acceptance the difference is that both sides committed in its preliminary consent to their promises have been kept (Ibid). Article 1589 of the Civil Code, which opens in France on the subject: "If the buyer and seller agree on the price and sales information, promise of sale is the sale value sales and the transfer is made." To explain, the nature of the Treaty on the promise that the purpose of the Treaty establishing the obligation to contract is, as is customary in the letter of promise is clear it is clear in analyzing the mutual consent of the parties and it

can be assumed that: in fact, two separate contracts signed And each of these conventions and conclusion of contracts subject to the general rules first as an introduction to final contract is closed. But the promise of a way very similar to the required binding, and the nature and consequences of Tfavt-Hayy with two-way promise that, in nature, the promise of contract, Although the area is one of the parties, a form of contract and its effects and adherence to promises, after the other party comes to creating and binding because the force of the agreement and the Convention on behalf of both sides However, due to the required conditional commitment to maintain its additional commitment and revoking offer simple, just can not create liability, In addition to the simple affirmative or stone to death by the parties and also with the expiry of the deadline set by custom emphasis will be lost, While the promise of a contract based on the contract is completely real and the harm is and the heirs of the deceased partner died and stone, his deputy and adhere to the obligations arising from the Agreement. (Katoozian, 1383, 381).

The legal nature of a unilateral promise to contract is the promise of a unilateral contract or Abqa a legal practice is the one-way or two-way, in fact, a legal act or contract or the nature of the other.

Shia scholars view In Jurisprudence, according to the resemblance between the primary conditions and promised a thorough discussion with a review of the legal nature of the contract, there can be primary conditions, according to the jurists about the legal nature of a unilateral promise to contract is also concluded. . The majority of Shia scholars apparently considered primary conditions of release and thus Grfth-And examples of contracts that any requirement and obligation under the definition of marriage has been so public, "Ogo Beloghoo" extended to them decreases As a smear on "Alqvd" the legislator is not limited to contracts known and unknown covenant included (Najafi khansari, 1418, 103, Mohaghegh Damad, 1388, 52) of these statements is that the primary conditions in a format similar to the contract. Commitment may be a party to the agreement and consent of the other party. That is the primary condition in the form of marriage and consensual. In contrast, some scholars believe any bilateral arrangements, even if it entails a commitment on the part of one or both spouses and with the intention to be bound by and be pleasing to the opposite side, the contract it is not considered the principle is subject to the need to fulfill that promise, because the transaction at issue. Apparently, from this perspective, the assumption that although for contract, contract-based theme certainty that composed it, has not been (Ghanavati et al., 1379, 101) . It may be thought because of these conditions, according to the contract has not been seen earlier comment that the principle of commitment in the form of a specific contracts not included. It is not considered among jurists of the contract even though it looks as if the marriage But it should be noted that even jurists who meet the conditions and commitment, integrity, non-specific contracts that are eligible to accept liability commitment. (Khoei, 401). Another argument can be made about the legal nature of the primary conditions is bBecause in such conditions is a requirement unilaterally shape it can be in the form of Rhythmic contract. But it should be noted that in Islamic jurisprudence, Rhythmic Rhythmic limited to certain concrete cases and can not be considered as a source of general obligations.

Lawyer's views

In Iranian law on the legal nature of a unilateral promise to contract is controversial. Some lawyers believe that a unilateral promise in that it only relies on the will of one side, is Rhythmic. (Shahidi, 1380, 201). Some lawyers also implicitly accepted that opinion (Safai, 1388, 21). In contrast, some lawyers believe that the promise of contract, although the area is one of the parties to the contract itself is a kind of contract and it works and commitment to serving the audience accepted there. (Katoozian, 1388, 380). The latter view seems to have a theory that French law known as "implied contract theory" is proposed, is used. According to the theory of unilateral undertaking will retain their demands is discussed, The second view seems to be valid. For the purpose of the phrase "one-sided" in combination promises a unilateral contract is the self-will of a person, causing him to be considered commitment and satisfaction and intention of the other party does not play a role. While lawyers argued that it holds the promise of unilateral contracts are contracts the consent of the other party, provided that the intention was to make a commitment.

The concept of Marriage promise

Before concluding that the marriage habit before marriage, son and Khanvadh-Ash familiar to the parties and the recognition of the union's desire to marry the girl of his formal matchmaking track. And after the men and

women religious and legal norms with each other on issues of their marriage have reached a final agreement, and women after review and consultation with relatives and their Aqrbay measure profit and loss accept this request,

You want to marry a man with If the response is positive that the parties to each candidate is said to have been engaged. Engagement stage for further understanding of the candidates and their families. The interaction between the candidates plays an important role in their future life, the more real character and appearance of the parties and express their inner feelings Khvasth-Ha and strength as much help the family in the future. In other words, engagement or promise of marriage in the marriage contract is concluded an agreement that men and women are our future and are committed under Dumped into their marriage together. Iranian legislator in this case, in Article 1035 of the Civil Code of promise of marriage is mentioned, but with a glimpse of the material is the 1036 to 1038 can be realized. In other words, the subject of this promise, the man himself and his fate is the subject of other types of property generally is the promise of contract.

Nature of promise of marriage in law Marriage promises a moral obligation Some lawyers in the Article 1035 of the Civil Code, denied signing the marriage promise and the promise Dansth-And as moral obligations. One of the lawyers said that "candidates promise of marriage that creates moral obligation is stopped." (Imami, 1347, 270). They are therefore infer from this statement that lawyers are able to meet the nomination in the category of contracts but perhaps the reason it is not mandatory for the parties promise it's just moral and ethical commitment-are considered. . Another lawyers with different interpretations of scholars believes that:"The promise of marriage, commitment Nmy-Knd after promising marriage and the rights of Nmy-Vrd In other words, the obligation is unilateral and binding commitment not to marry." (Haeri, 1376, 884).

Promise to accept the idea that marriage is a moral obligation, Article 1037 of the Civil Law degree in conflict with Article 803 of the Civil Code, because if a candidate gifts subject to gift we can not accept it My-Grdand, if it is not refundable and gifts that while they remain an important loss. The principle of autonomy of the marriage, to protect the health of the family and provide complete freedom of candidates, and Article 10 of the Civil Code is not run-Document can not be committed because the marriage apart from other deals and license in terms of the effects of promise except for public order and supporting the family formed the basis of marriage is not healthy. In particular, whether the promise of marriage was a moral promise, or legal obligation is the only jurist Imam who only relative to this topic Mirza Qomi also said that he has the moral and customary promise is a promise of marriage. But most renowned scholars in the Shiite jurisprudence Given the absence of such periodic knows and believes. Article 1034 of the Civil Code which provides for keeps: "Any woman who is free from obstacles marriage can be a suitor." Jurisprudential root and Jurisprudence in books and on the recommendation of Sunni jurisprudence there Ktab-Hay comment and use it as a "sermon" remember, nearly as (Mohaghegh Helli, bita, 569). The promise of a marriage contract about marriage and the final conclusion of the preliminary contract or letter of promise of marriage, as well as other contracts that set it between dealers is common today, it is common. First man to woo women and parties sit to talk about the future of marriage and in the event of disagreement, the parties pledged to each other that marriage is dumped conclude. . This promise is written marriage contract is not necessary, because, as mentioned in previous discussions, the conditions and circumstances and is statistically proven. Engagement or marriage promised in marriage and married Introduction It is not considered.

Binding nature of the promise of marriage

Rezai marriage contracts is not certain formalities (Article 1062 of the Civil Code), Article 1035 of the Civil Code, in imitation of European law and in particular the German Civil Code (Articles 1297 to 1302) and the Swiss Civil Code (Articles 90 to 94), marital relationship or marriage promise of commitment to fulfill the obligation is considered ineffective. According to the article "promise of marriage interest parity, although all seal or part of the dowry for marriage was set between the two sides, is paid." Public scholars also agreed to propose binding legal contract but it Namydh-And contract or promise of marriage. (Al-Sabooni, without date, 31) so each of the men and women, as long as the marriage is not now, can the marriage and the other party can not refuse in no way forced him to marry or refuse marriage to spend claim damages. One of the jurists in this regard, and in the interpretation of Article 1035 says: "It follows from the article that is intended to discredit the commitment to marriage. After the nomination of a contract the parties that each party has the right to disturb it. "(Ameli, 1367, 52) in Iranian law contrary to European legal obligation of the parties to the contract, the

original contract is thus able to meet the commitment of marriage. Branjam our legal practice distinguished from his contract. However, the commitment of marriage in the future on the assumption that men and women are mutually area, it is not the couple, In this period when the child is illegitimate sexual relations occur, legally the child is illegitimate and illegal.

The nature of the permissibility of marriage promise

Given the lack of promise of marriage was expressed that in the context of a binding nomination form can be said that the contract is revocable it is not that none of the effects of marriage on current and candidates must regulate relations with religious constraints, as a lawyer in this regard says: "Under Article 1035 of the Civil Code, first, each of the parties to the contract have the right to refuse marriage, secondly, nothing can not force them to marry. Therefore, pursuant to Article 1035 signified any commitment before the marriage is null and void and not binding and enforcement will not." (Mohaghegh Damad, 1385, 33). In Iranian law, some lawyers nature of the promise of marriage is a contract and it is permissible to consider contracts and believe that the promise of marriage is a contract and legal obligation is generated not moral and ethical duty. of his decision to return and promised to disrupt the marriage, because the withdrawal of a rash decision and breach of promise of marriage, although morally reprehensible, it is better that men and women, Khanvadh-Ay shaky and uncoordinated and poor form and a lifetime of suffering to live. "(Safaei , Emami, 1372, 19).

Conclusion

By examining the question whether the nature of moral obligation is a promise or contract and the contract of marriage is permissible. It could be argued that since the promise of marriage or in other words ((candidate)) is discussed in the Iranian Civil Code and the Civil Code of 1034 to 1040 has been allocated to it, Reflects the fact that these promises are among the legal acts since this promise and commitment of the parties to the marriage contract is concluded, nearly as promised marriage should be considered subject to contract. Because the contract or agreement between two or more will deal only with the aim of creating legal effect is not as if there is no binding agreement contract shall not be considered engagement. Thus, the binding nature of the engagement contract, but the contract is not necessary And this character is allowed in all contracts that the parties could contract at any time they want to disrupt , so it must be admit that promise novel established the European legal marriage (Germany and Switzerland) has been adapted and the law does not adopted form Islamic Fiqh. Since the removal of two articles of the candidates (for 1039 and 1036) conducted by our own lawyers Indicates that the provisions of the Civil Code are applicable to candidates of the material that is against the law. So we can say that commitment and ethics in all transactions and contracts there somehow, But what is important in the context of marriage promise is that despite all the regulations in order to preserve the family and the foundation was set up this institution. What survival and prosperity of its numerous ethical commitment and therefore puts ethics in place of other transactions is very clear. So we have to admit its kind of special deal was promised by the effects of other transactions is removed, And that is why some lawyers According to the prevailing moral obligation of the contractual obligation on the promise of marriage its nature purely ethical obligation to consider and unenforceable.

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