A Critical Analysis of Dower (Mahr) in Islam

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Abstract: Mahr is undoubtedly a significant subject matter for the Muslim society. It is a sum of money or property on which the wife is entitled to receive from her husband in consideration of their marriage. The religion of Islam has maintained a balance in the society between men and women by giving its unequivocal endorsement to a practical division of responsibilities, whereby women are placed in charge of the domestic management of the household, while men are responsible for the maintenance of its victuals and livelihood in a matrimonial family. In this article, an investigation of the real philosophy of mahr has been highlighted to make physical and mental differences between men and women in the practice of discharging their respective familial responsibilities in the internal and external domestic spheres.

Keywords: Mahr, the Qur'an, the Sunnah, Philosophy, Islam

I. INTRODUCTION

The mahr is meant to offer the bride a financial security within and after the marriage. It is a divine order by the Almighty Allah. The giving of mahr to the bride is an important and mandatory part of the Islamic terms of marriage. The amount of mahr is not legally specified, however, a moderation in tandem with the existing social model is strongly recommended. According to the Islamic rules, the mahr may be paid earlier to the bride as soon as possible at the time of marriage or deferred to a later date or a compromise of both.

At the time of marriage, give the women their dowries willingly as an obligation; but if they, by their own free will, give up to you a portion of it then you may enjoy it with pleasure. And a marriage ceremony means that one nuptial party proposes the ‘Ijab’ (proposaal - يجاب) willing consent to enter into marriage and the other party expresses ‘Qabul’ (acceptance - قبول) of the responsibility at the time of marriage ceremony. The word mahr is derived from the Arabic word (مهر). Hebrew mohar, ‘bridal gift’ originally “purchase-money” which properly means “friendship” then “present” a gift given as a result of which the bridegroom has to give to the bride when the contract of marriage is made and which becomes the property of the wife.

In the Holy Qur’an, it has also been referred to as al-sadaq (الصداق), la - saduqah (الصداق), al-nihlah (النحل), al-ajr (الأجر), al-faridah (الفرد), and al-`aqid (القاعد). It is a pre-requisite for a marriage as mentioned throughout the Qur’an. The woman may choose to willingly forfeit anything as a reciprocity of the believing man who must offer the dowry with sincere intentions.

In the Islamic Law, mahr is a gift from the husband to his bride at the time of marriage. The terms ‘dowry’ and bride gift are sometimes used to translate mahr. In Islamic marriages, such assets brought into the union by the wife may only be accepted by the husband after the mahr has been paid by him to her. In the event that the marriage of the contract does not contain an exact or specified mahr, the husband must still pay the wife an equitable sum of money. The requirement of a mahr is mentioned several times in the Qur’an and as a Sunnah.

Exponents of Islamic scholars have given many definitions of mahr which are as follows: According to the Islamic teaching in Sunnah, mahr is the amount of some monetary value to be paid by the groom to the bride at the time of marriage (عقد الفناء) some of which may be delayed according to what has been agreed upon between the spouses. The mahr is for the bride to spend as she wishes.

The ‘mahr’ is the payment of an agreed sum of money from the intending husband to the intended wife. It is often paid (at least partly) in advance, and should be completed at the wedding. This money belongs exclusively to the bride, and is hers to keep should her husband later divorce her. The mahr does not mean so much as a deterrent for the husband to divorce; but seeking a large ‘mahr’ is not in keeping with the principles of Islam. Neither is the paying of it to the bride's father of family leader, nor not agreeing to pay it at all. The question of ‘mahr’ should never be used as an opportunity as a means to insult a woman, or keep her ‘prisoner’, or force her to remain unmarried. (2:229, 236-7; 4:4, 19-21, 25). The bride's family should certainly not pay dowry to the husband or his family, the practices of which had been abolished by the Prophet (SAW). Mahr in Islamic Law refers to the gift that must be given by the husband to the wife at the time of wedding.
According to Islamic Family Law (Federal Territories), it is stated that the mahru refers to a payment from the husband to the wife that is legally due at the solemnization ceremony, either in the form of money actually paid or recognized as a credit with or without security, or as something that, according to Islamic law, has a monetary value.  

II. MAHR IN THE HOLY QUR’AN

Allah (SWT) has given a full right of a mahru to a woman as mentioned in the Qur’an. The following verses from the Holy Qur’an will, God willing, enable us to understand the word mahru as per Allah’s laws. The relevant words have been highlighted for emphasis.

O you who believe! When believing women ask for asylum with you, you shall test them. Allah is fully aware of their belief. Once established that they are believers, you shall not return them to the disbelievers. They are not lawful to remain married to the disbelievers, nor shall the disbelievers be allowed to marry them. Give back the mahru (dowries) that the disbelievers have paid to them. You commit no error by marrying them, so long as you pay them their due dowries. 11 Allah (SWT) says,

فالفحصون يبان أهلين وأثركم أجورهم بالمعرّف

So, you give them their bridal due (as) on obligation. And (there is) no sin on you concerning what you mutually agree of it (dowry) from beyond the obligation. Indeed, Allah is All-knowing, All-Wise. 12

Allah (SWT) has given permission to sexual intercourses with each other by giving the mahru.  

أكأن الله أثريهم أثريهن وأثركم أجورهم بالمحرك.

If you divorce the wife before testing her, what is the situation of the mahru. 13 Allah (SWT) says,

إذا طلقتمهن من قبل أن تسومة وفدا فرسمتم لهن فرضية ففصلت ما فرضتمه إلا أن بقي فنُغفو أو يعفو الذي بينه عفّة الإكناج" وأن أخوهم أقرب.

If you divorce them before touching them, but after you had set the dowry for them, the compensation shall be half the mahru, unless they voluntarily forfeit their rights, or the party responsible for causing the divorce chooses to forfeit the dowry. To forfeit is closer to righteousness. You shall maintain the amicable relations among you. Allah is Seer of everything you do. 15

The question of mahru after the divorce, Allah (SWT) says,

الطلاق مرتان بمحروما أو تزويج بحبسان. "ولا يحل لكم أن تأخذوا من أحداً أثبر عن طلاقكم إلا أن يعفو أو يعفو الذي بينه عفّة الإكناج. إنا ما حرتعنكم من حجوت الله فلا تتعدوا "ومن يعفو عن حجوت الله وثأركم أقرب.

Divorce may be retracted twice. The divorced woman shall be allowed to live in the same home amicably, or leave it amicably. It is not lawful for the husband to take back anything he had given her. However, the couple may fear that they may transgress Allah’s law. If there is fear that they may transgress Allah’s law, they commit no error if the wife willingly gives back whatever she chooses. These are Allah’s laws; do not transgress them. Those who transgress Allah’s laws are the unjust. 16

To show the significance of mahru, Allah (SWT) says,
I wish to offer one of my two daughters for you to marry, in return for working for me for eight pilgrimages; if you make them ten, it will be voluntary on your part. I do not wish to make this matter too difficult for you. You will find me, Allah willing, righteous. In the event of marrying another wife in addition to the present wife, how should the mahra be given, Allah (SWT) says,

If you wish to marry another wife, in place of your present wife, and you had given any of them a great deal, you shall not take back anything you had given her. Would you take it fraudulently, maliciously, and sinfully?

III. MAHR IN SUNNAH

The Dower (Mahr), according to the pre-Islamic customs, was to be paid to the father or guardian of the bride (wife), the action of which amounted to a sale, but in Islam, the dower becomes payable only to the bride and the idea of sale disappeared. The Prophet (SAW) set the highest examples of all good principles for his ummah in that regard, so that a clear understanding of the basic principles would be implanted in the society, and the spirit of simplicity in applying them would spread among the people. Our beloved Prophet (SAW) has explained the full right to the woman in Sunnah. The following speech from the Hadiths will, Allah willing, enable us to understand the word mahra as per Shari‘ah's laws. The relevant words have been highlighted for emphasis:

In the hadith (حديث) of ‘Uqbah ibn ‘Aamir (RA.), the Prophet (SAW) said:

The best dowry for woman is that which is easy, and he (SAW) said; the best of mahrs is the simplest (or most affordable). Once a woman offered herself to the Prophet (SAW) for marriage. However, one of his Companions wished to marry her, thus, the Prophet (SAW) said regarding the mahra: Bring something, even if it be an iron ring. When he could not find even this, the Prophet (SAW) then married her for the dowry so that the man, from this example, would teach other believers whatever concept of the dowry in the Qur’an that he knew. Narrated from Abdullah Ibn Abbas (RA.) what Hazrat Ali (RA) said; I married Fatima (RA) and said ‘O messenger of Allah, let me go ahead with the marriage. He said; ‘Give her something.’ I said; ‘I do not have anything.’ He said; ‘Where is your Hutami shield?’ , I have it with me. ‘He said, give it to her.'

This reinforces the fact that in Islam, the mahra is not something that is sought for its own sake. Ibn Mazah narrated that ‘Umar Ibn al-khattab said; “Do not go to extremes with regard to the dowries of a woman, for if that were a sign of honour and dignity in this world or a sign of piety before Allah, then Mohammad (SAW) would have done that before you. But he did not give any of his wives, and none of his daughters were given, more than twelve uqiyah. A man may increase the dowry until he feels a resentment against her and says, ”You cost me everything I own, and caused me a great deal of hardship.”

Whoever thinks of increasing his daughter’s mahra and asking for more than the daughters of the messenger of Allah were given when they were the best women in this world in all aspects – then he is an ignorant fool. This applies even if one is well off and can afford it. With regard to one who is poor, he should not give a mahra greater than he can afford to pay without any hardship.

IV. THE METHODS OF MAHR PAYMENT

There are two principal methods of mahra payment according to Islamic scholars.

a) By Specified Mahr or Mahr e Mosawamah: This method has been agreed upon by the parties at the time of marriage. Specified Mahr or Mahr e Musawamah can further be divided into two categories-

(i) Prompt or Mahr e Mu’ajal: This mahra is payable immediately upon the marriage under the following circumstances:

- Only after the payment of dower can the husband enforce his conjugal rights and, if the marriage is consummated, then the wife cannot refuse cohabitation (intercourse) after that.
- The wife has a right to refuse cohabitation (intercourse) with the husband until she is paid the mahra.
- The period of limitation on demand and refusal of a dowry and any part of it is three years;
- A Prompt dower (mahra) does not become differed after consummation and the wife has the right to demand and sue (petition) for it any time;
- If the wife is a minor, the guardian can refuse to allow the wife to be sent to the husband until the mahra is paid.

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(ii) Deffered or Mahr e Muakkhar (مهر المؤخر): This type of mahr is payable upon dissolution of a marriage either by divorce or by death of a husband. Its promise to pay does not make the full amount of mahr any less legally required. There are differences between the nature of mahr, definition of proper contract and conditions of enforceability depending on the quality of fiqh and school of Islamic Jurisprudence.

b) Customary or Mahr e Misil (مهر المثل): This type of mahr is not fixed in the marriage contract or even if the marriage has been contracted on the condition that the wife will not claim any Mahr, but the wife is legally entitled to a Proper Dower. The amount of monetary value of the dowry is to be settled based on the bride’s father’s family. It is regulated with reference to the following factors:

(i) Age, beauty, fortune, understanding and virtue of an intended wife;
(ii) Circumstances of the time
(iii) Economic condition of the intending husband
(iv) Social position of the intended wife's father and
(v) Female paternal relations.

V. THE PHILOSOPHY OF MAHR

The payment of mahr has a deep symbolic philosophy. In Arabian world, there are various interpretations of mahr in relation to the marriage contracts, highlighting the differences between Maliki, Hambali and Hanafi religious philosophies respectively. The word mahr does not appear in the Qur’an, however, the word Sadaq has been employed. There is no minimum amount of monetary value set for a mahr although various Sunnah suggest that it should not be excessively low. No specific amount of monetary value has been determined for the Sadaq, it is a matter that is decided by a mutual agreement between the woman and the man. Imam Baqir has stated:

"فَالنَّفْسُ عَلَى أَنْ يَعْقِبَهَا بِمَعْدُونٍ أَلْبَمٍ فَيْدَاءٍ الصَّدَقَاءِ" (صِدَاق)

Sadaq is something that the betrotheds agree upon, whether slight or considerable. Imam Zafar Sadiq has pointed out that Hazrat Ali (RA) had declared:

"علي "إلي أكره أن يكون المهر أقل من عشرة دراهم" قال I do not like mahr to be less than ten (10) dirham.

If the mahr was agreed to be paid on demand, the woman may request it before the consummation of her marriage. If the husband has the means to pay for it, he must do so. If he declines, the wife may abstain from sexual relations with him. This refusal is not considered nushuz and thus her husband cannot withhold the financial support from her. The Hanafi School requires two witnesses on the documents for a mahr contained in the marriage contract to be valid, while the Maliki School holds that witnesses are only needed at the marriage’s publication but not in the document. The philosophy that the future owner of the mahr, regardless of the type of property, is only the wife. No one has the right to use or take possession of her property without her consent; not even her father, mother, or husband. The profits of a woman’s properties, which she got as a mahr also belong to herself.

The Prophet (SAW) has stated:

"قال رسول الله (ص) "إن الله يغفر كل ذنب يوم القيامة إلا مهر إمرأة ومن أعتصمه أجيراً" ومن باع Бог" (ص)

Surely Allah will forgive any sin on the Day of Judgment save the sin of one who misappropriates the mahr of a woman or the wages of a hired person, or who sells a free person (as a slave).

Provisions 21(1) and 21(2) of the 1984 Muslim Family Law Act reads as follows:
(i) The Mahr (dowry) must be paid by the groom or his representative to the bride or her representive before the person solemnizing the marriage and, at least, two other witnesses.
(ii) The registrar shall, with respect to each marriage to be registered, ascertain and record:
(a) the value and particulars of the dowry;
(b) the value and particulars of the gifts;
(c) the value and particulars of any part of the dowry or gifts or both which have been promised but not paid at the solemnization ceremony, and the promised date of payment; and
(d) the particulars of the security given for the payment of dowry and gift.

VI. FINDINGS

(i) Mahr is to be paid by the husband to his wife as early as possible;
(ii) Mahr is a pre-requisite for a marriage;
(iii) It should be equitable;
(iv) A woman’s forfeiting on the dowry for the prophet does not atomically apply to other believers;

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(v) The husband and wife can mutually make any adjustment to the dowry;
(vi) The future owner of a mahr is only the wife;
(vii) Mahr is the pre-requisite for marriage as mentioned throughout the Qur'an and Sunnah.
(viii) It is as a sort of protection for women.
(ix) Although one cannot find in the Qur’an any direct support for payment of mahr in cash only, mahr cannot be something that does not have a monetary value. It cannot be only love, honesty, being faithful, etc., which are anyway traits of righteous people.

VII. CONCLUSION

The mahr is one of the wife’s rights that is sincerely given by the husband to the wife, without exception, as an expression of his love and responsibility. In Islam, the concept of mahr is more effective, comprehensive, vital and sacred than any other religions. It is one of the fundamental rights of every woman. Mahr is not only considered to be a trust, a sacred responsibility, which is to be performed in conformity with the provisions of the Qur’an and Sunnah; but the dispensation of mahr also constitutes one of the most important acts of devotion. It is intended to please the wife, so that she feels appreciated and more willing to bring and share a new life with the husband. Nevertheless, Islam recommends moderation and not setting a rate that is too high or low. The Prophet (SAW) has encouraged us to simplify the giving of mahr.

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[16] Mahr Agreements as Prenuptials and Effects on Muslim Women
The deferred mahr however, falls due in case of death or divorce.


5. The term dowry (Latin, dos dotis) is inaccurate, as it is the money, goods, or estate that a woman brings forth to the marriage, usually provided by her parents or family.


11. Al-Qur'an, 60:10

12. Al-Qur'an, 4:25

13. Al-Qur'an, 4:24

14. Al-Qur'an, 60:10

15. Al-Qur'an,2:237

16. Al-Qur'an, 2:229

17. Al-Qur'an, 28:27

18. Al-Qur'an, 4:20


21. This was narrated by Abu Daawood and al-Haakim who authenticated it. Also narrated by Ibn Hibban, classed as saheeh by al-Albaani in sahih al-Jamee’i. Hadith no. 3279

22. Imam Abu Dawd , 2125 and An-Nasai.3375. Also classed as Sahih by al- Albaani in Sahih an-Nasa’i, 3160.

23. Do not go to extremes means do not exaggerate in increasing the dowry.

24. Twelve uqiah is equivalent to 480 dirhams.

25. Classed as sahih by ‘Allama Albaani (RH) in Sahih Ibn Mazah,1532


28. A husband can settle any amount as dower to his wife,even if that leaves nothing to the heirs but he cannot settle for less than 10 dhirham in Sunni Law. The Shia Law, has no minimum.

29. A formal written request, typically signed by many people, appealing to authority with respect to a particular cause.


32. Lindsey E. Blenkhorn, *Note, Islamic Marriage Contacts in American Courts; Interpreting Mahr Agreements as Prenuptials and Effects on Muslim Women*, 76 S. Cal.L.REV.189,210-11


36. *Ibid*, p.253

37. Nushuz is when a spouse does not perform his or her obligatory marital duties toward the other.

