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LEGAL CONCEPTS OF MAHR AND MAINTENANCE IN MUSLIMS

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Abstract

Under the Muslim Law, Mehr (dower) means money or property which the wife is entitled to receive from the husband in consideration of the marriage but this consideration is not the same as that of the civil contract. Dower is an obligation imposed upon the husband as a mark of respect for the wife. The major object of the dower is to provide wife for her subsistence after the dissolution of her marriage so that she may not become helpless after the death of the husband or termination of marriage by divorce. Mehr has also been considered as the part of maintenance while fixing the amount of maintenance under Section 125 of Criminal Procedure Code, 1973.

Since there is no clear cut definition as per Muslim Personal Laws regarding the dower (Mehr) amount, different High Courts and Supreme Court of India in different cases rendered different conceptions relating to Mahr.

Keywords: Dower (Mahr), Nikah , consideration, maintenance

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.¹ The amount of mahr is not legally specified, however, a

moderation in tandem with the existing social model is strongly recommended. According the Islamic rules, the mahr may be paid earlier to the bride as soon as possible at the time of marriage or deferred² 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' (proposal - دبةُ (willing consent to enter into marriage and the other party expresses 'Qabul' (acceptance - يُلب (of the responsibility at the time of marriage ceremony.

The word mahr is derived from the Arabic word (شيم) (Hebrew mohar, 'bridal gift' originally "purchase-money" which properly means "friendship" then "present" a gift given as a result of a marriage contract, as according to the Muslim law, the gift 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 (صداقا), (la - saduqah (صداقتا), (al-faridah (فريدها), (al-ajr (عدها), (al-nihlah (نيلها) (and al-'aqd (عقد). (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 (ىىبدا عمد) (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 or 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.

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 mahr 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.

MAHR IN THE HOLY QUR'AN

Allah (SWT) has given a full right of a mahr 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 mahr 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 them, nor shall the disbelievers be allowed to marry them. Give back the mahr (dowries) that the disbelievers have paid to them. You commit no error by marrying them, so long as you pay them their due dowries. Allah (SWT) says,

So, you shall obtain permission from their guardians before you marry them, and pay them their due mahr (dowries) equitably. Mahr only for the bride, Allah (SWT) says,

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

O you who believers, when believing women (abandon the enemy and) ask for asylum with you, you shall test them. Allah is fully aware of their belief. Once you establish 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 dowries that the disbelievers have paid. You commit no error by marrying them, so long as you pay them their due dowries. Do not keep disbelieving wives (if they wish to join the enemy). You may ask them for the dowry you had paid, and they may ask for what they paid. This is Allah's rule; He rules among you. Allah is Omniscient, Most Wise.

If you divorce them before touching them, but after you had set the dowry for them, the compensation shall be half the mahr, 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.

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.

To show the significance of mahr, 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.

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.¹⁹ 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 best dowry for woman is that which is easy²⁰ and he (SAW) said; the best of mahrs is the simplest (or most affordable).²¹ Once a woman offered herself to the Prophet (SAW) for marriage. However, one of his Companions desired to marry her, thus, the Prophet (SAW) said regarding the mahr: 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 mahr is not something that is sought for its own sake. Ibn Mazah narrated that 'Umar Ibn al-khattab said; "Do not go to extremes²³ 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 mahr 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 mahr greater than he can afford to pay without any hardship.

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 (صداق) 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: Sadaq is something that the betrothed agree upon, whether slight or considerable.

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.

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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