

Mahr as a Financial Right of the Woman (A Critique of Jurisprudential and Legal Approaches)

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Abstract:

Mahr, as one of the fundamental legal and jurisprudential institutions in the Iranian family system, is considered an obligatory part of the marriage contract, and its payment by the husband is seen as a binding commitment. In Iranian law, mahr has both a religious and legal dimension, and the country's civil laws, following Shia jurisprudence, regulate the provisions related to mahr. Mahr is not merely a financial obligation but a symbol of the husband's responsibility towards the wife and the family, serving as a guarantee for protecting the woman's rights within the family framework. Upon the occurrence of the marriage contract, the ownership of the mahr is transferred to the wife, and according to the majority of jurists, she has the right to dispose of the entire mahr; however, according to the minority opinion, this right to dispose is limited prior to intimacy or the establishment of the mahr. In Iran's legal system, mahr plays a significant role in strengthening the family structure and guaranteeing the financial rights of women. This article, with an analytical approach, examines the nature of mahr, its various forms, and its position as a financial right for women from both a jurisprudential and legal perspective. It also explores the various dimensions of this important institution, referencing reliable jurisprudential sources and civil laws. Moreover, mahr serves as a tool for balancing marital relationships and reducing the harms caused by family disputes. From a sociological perspective, mahr can be considered a factor for enhancing the psychological and economic security of women in society. A comparative analysis of mahr in other legal systems reveals that this institution holds a special position in Iranian law and is regarded as one of the pillars of family consolidation.

Keywords: Mahr, Marriage, Ownership, Women's Rights, Psychological Security.

Extended Abstract

This article critically examines *mahr* (dower) as a fundamental financial right of women in Islamic law and the Iranian legal system, challenging reductive jurisprudential and legal approaches that have either commodified it as the “price” of the bride or, conversely, tried to marginalise it in the name of modernisation. It argues that mahr is both a binding patrimonial entitlement and a value-laden institution that symbolises male responsibility, female dignity, and the protective function of family law, and that any serious reform must preserve all three dimensions .

The study adopts a descriptive–analytical and critical method. Using library research, it analyses classical and contemporary Imāmī fiqh, Qur’anic and hadith sources, major civil-law treatises, and the provisions of the Iranian Civil Code, while also drawing on historical and sociological materials. The article first reconstructs the historical evolution of mahr from ancient Babylonian and Assyrian practices and pre-Islamic Iran, where groom’s payments to the bride’s family resembled bride-price and women often lacked direct proprietary control, to pre-Islamic Arabia,

where mahr gradually began to be recognised, at least in part, as the woman's own right. Islam is then presented as completing this trajectory by definitively vesting mahr in the woman herself and invalidating customs that diverted it to guardians or conditioned its return under coercion .

On the conceptual plane, the article surveys the rich vocabulary used for mahr in Islamic sources (ṣadāq, ujra, niḥla, farīda, 'aqr, ḥibā', ṭawl, etc.) and argues that these terms collectively show that mahr is not a "price" for the woman's person but a divinely mandated gift, a sign of truthful commitment, and a financial counterpart to the husband's marital obligations. Qur'an 4:4 ("And give the women their ṣaduqāt as a free gift") is analysed as affirming the woman's direct ownership, her financial independence inside marriage, and the gratuitous, non-barter spirit of the payment. Numerous hadith are marshalled to show that refusal to pay mahr, or stipulating it without intent to fulfil, is morally equated with theft or fornication, underscoring its serious, rights-creating nature .

In the jurisprudential section, the article details the debate on when and how mahr becomes the woman's property. The majority view holds that full ownership transfers at the moment of the marriage contract, allowing the wife to sell, gift, or otherwise dispose of it even before physical delivery; minority opinions restrict this power until consummation or other causes of "stabilisation" of mahr. The paper explains the practical consequences of these doctrines in cases of divorce before consummation, destruction or transfer of the mahr object, apostasy of the husband, or the wife's death. It argues that the dominant view—immediate ownership subject to subsequent stabilisation or halving in defined situations—best reflects the textual evidence and the protective rationale of the institution .

A substantial portion of the study is devoted to the typology of mahr :*mahr al-musammā*) specified mahr agreed in the contract ,(*mahr al-mithl*) equivalent mahr determined by social comparators ,(*mahr al-muta'a* (consolatory dower in certain divorces without prior stipulation), and *mahr al-sunna* (the "Prophetic mahr" of 500 dirhams). For mahr al-musammā, the article sets out the conditions of a valid financial consideration: market value, legality and rational benefit, possibility of transfer, determinacy in amount, type and quality, and the husband's ability to deliver. These conditions mirror general rules of contract law and show that, while mahr is not strictly a price in a sale, it is undeniably a fully fledged patrimonial right subject to contractual safeguards.

Mahr al-mithl is presented as a corrective mechanism when no mahr was agreed, the stipulated mahr is void, or unlawful conduct (such as forced intercourse) occurs; it is calculated by reference to women of similar social and personal profile (age, family status, education, beauty, virtues, etc.) and contemporary economic conditions. Mahr al-muta'a, in contrast, is tied primarily to the husband's financial capacity, functioning as a minimum compensatory gift in divorces before consummation with no agreed mahr, while mahr al-sunna is analysed as a recommended, not mandatory, benchmark that reflects Islamic preference for moderation but does not cap the permissible amount. The article criticises both the rigid limitation of mahr to mahr al-sunna and the social trend of exorbitant mahrs, arguing that the former distorts the flexibility of Islamic law, while the latter undermines the social function of marriage by deterring unions and fuelling post-marital conflict .

The core critical section revisits the classic question: what is mahr “for”? Surveying classical exegetes and jurists (Qurṭubī, Ibn al-‘Arabī, Ṭabarsī, al-Sāyes and others), the article identifies three main models: (1) mahr as a quasi-equivalent (‘iwaḍ) for the husband’s exclusive right to sexual enjoyment; (2) mahr as a pure gift (niḥla) and honouring of the woman, unrelated to specific counter-performance; and (3) mahr as a mixed institution, legally linked to sexual access and marital rights but morally framed as a gift and sign of respect. The author, drawing on Imāmī jurisprudence and modern thinkers such as Morteza Motahhari, endorses the mixed model: mahr embodies a juridical logic of exchange—reflected in rules on reduction and forfeiture in certain cases—yet, in its language and spiritual purpose, it is a dignifying, non-commodifying grant that must not be reduced to a purchase price of the bride .

From a socio-legal perspective, the article argues that mahr continues to play a crucial role in protecting women in a context where structural economic inequalities, gendered division of labour and the risks of divorce threaten their financial stability. By granting the wife a definite, enforceable claim, often indexed to valuable assets or currency, mahr functions as a form of pre-emptive “safety net” and bargaining power within marriage and at its dissolution. At the same time, the paper acknowledges contemporary pathologies: symbolic or purely nominal mahrs that empty the institution of content, on one side, and extremely high mahrs that are used as tools of pressure or retaliatory measures in marital disputes, on the other. The author maintains that both extremes betray the balanced spirit of Islamic teaching, which combines generosity and moderation, and calls for calibrated legal and cultural responses rather than abandonment of the institution .

The article also evaluates recent legal and judicial trends in Iran that, under the banner of preventing imprisonment for mahr-related debts or controlling “excessive mahr”, may weaken the enforceability of women’s rights. It warns against reforms that effectively turn mahr into a moral wish rather than a binding financial obligation, arguing that such moves disproportionately expose women—especially those without independent income—to the economic consequences of marital breakdown. Instead, it suggests complementary policies such as encouraging reasonable mahrs, expanding women’s access to employment and social insurance, and improving public legal literacy about the timing, enforcement and division of mahr claims.

In conclusion, the study asserts that mahr, properly understood, is a multidimensional institution: a core financial right of the wife, a symbol of the husband’s responsibility and goodwill, and a mechanism for promoting marital equilibrium and women’s economic and psychological security. It urges jurists and legislators to resist both commodifying interpretations that treat mahr as the “price of the woman” and modernist narratives that dismiss it as anachronistic. Instead, it advocates an interpretive and policy approach that preserves mahr as a robust, enforceable property right ,re-centres its ethical and spiritual meanings, and situates it within broader efforts to achieve genuine gender justice and protect women’s dignity in the evolving Iranian family law system .

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