

Payments to and from the Bride in Islamic Law and Tradition of Dowry and Mahr

In the first era of Islam marriage was a simple affair, without pomp or ceremony. Any expenditure incurred in its performance was quite minimal, and not a burden on either family. Indeed, the Prophet stated: 'the most blessed marriage is one in which the marriage partners place the least burden on each other.' (al-Haythami, Kitab ab-Nikah, 4:255).

Nowadays, much difficulty and hardship can be caused by the setting and giving of **dowries, bride-prices and mahr** – not to mention enormous wedding feasts and celebrations in some cultures which bring a most unreasonable financial burden on the families concerned. Financially crippling celebrations are totally in opposition to the spirit of Islam, and are not necessary. They are purely a matter of the culture of certain regions.

No Muslim should feel obliged to continue these unIslamic traditions, or be embarrassed about breaking with their old cultural traditions.

It is very important that Muslims themselves realise that there is an enormous difference between dowry, brideprice and *mahr*. **Many books and articles on the subject confusingly use the word dowry to mean *mahr*, but in fact the correct word for dowry is *jahez*, and its function is totally different.**

What is a dowry?

The custom of giving dowry (*jahez*) is not part of Islam, although it actually seems to be on the increase among several Muslim cultures, notably those of Indian, Pakistani and Bangladeshi origin, even when they have settled in the UK. In fact, it is a practice which has never been sanctioned by Islam and is not prevalent amongst

Muslims of other cultures. It seems to be in imitation of ancient Hindu culture in which daughters were not given any share in the family property, but were given payments, part of which might be in the form of household goods, as a measure of compensation. Islam granted daughters a rightful share in their family property and inheritance.

A 'bride-price' is either :

- an amount of money, goods or possessions given to the bride by the bride's family at the time of her marriage, in order to attract a good husband for her. It would in effect become the property of the husband or his family upon his marrying her. This is a totally unIslamic practice. In Islam, women are not 'owned' by their families and should not be 'traded with' in this manner. It is an insulting practice. Or
- an amount of money demanded from the bridegroom or his family by the bride or her family, usually the bride's father, without which the daughter will not be given in marriage. In the jahiliyyah society before Islam, this money was regarded as the property of the girl's guardian.

The matters of fathers giving the bride gifts of money or property, or paying for an enormous wedding feast, or providing a home, or setting her up in her home with furniture and household effects are left to the discretion of the people involved in Islam. The Prophet himself saw to the marriages of his four daughters.

He gave his daughter Fatimah various gifts when she married Ali b. Abu Talib, but there is no record of his having given anything to his other daughters on the occasion of their marriages. Had such gifts been a recommended *sunnah*, he would surely have given the others gifts as well. Moreover, the gifts given to Fatimah were extremely modest household articles – a sheet, a leather water-bag, and a pillow stuffed with grass and fibre.

Nothing could be more unIslamic than ostentation. It is ridiculous to attempt to justify flamboyant displays of wealth in lavish gifts or feastings by citing the Prophet's extremely modest gifts to Fatimah.

What is the Mahr?

The *mahr* is a compulsory part of an Islamic marriage contract. The other words for *mahr* generally used in the Qur'an are *sadaqah* and *ajr*, meaning reward or gift to the bride in which there is profit but no loss, and *faridah*, literally that which has been made obligatory, or an appointed portion. Allah commanded: '*Give women their faridah as a free gift.*' (4:4) (Unfortunately the word is frequently incorrectly translated as 'dowry').

It is a gift of money, possessions or property made by the husband to the wife, which becomes her exclusive property. It is an admission of her independence, for she becomes the owner of the money or property immediately, even though she may have owned nothing before. It has nothing to do with either of their parents, except that a husband might need to take a loan. This should only be done with the intention of repayment. It is also intended as a token of the husband's willing acceptance of the responsibility of bearing all the necessary expenses of his wife.

Even if the wife owned no property or money of her own before her marriage, she is given this money or property when she marries so that she commences her married life in her new status with money or property of her own. The wife gives herself and her services to her husband, and in return he gives her property to own herself, even if she had nothing before, and pledges that he will maintain her. Muslim women are placed in charge of the internal arrangement of the household, while Muslim men are responsible for its financing (even if the wife earns her own money subsequent to her marriage).

The Prophet gave each of his wives a payment of *mahr*, ranging from token sums, the granting of freedom from slavery when being made a wife, to the payment of 400-500 *dirhams*. His wife Umm Habibah's *mahr* consisted of 4000 *dirhams*, this sum having been fixed by Najashi, the Negus (a Christian ruler) of Abyssinia. (Abu Dawud, Kitab an-Nikah, 2:235).

There was in fact no fixed upper limit for *mahr*. Allah required the provision to depend upon the circumstances of the husband:

‘...the wealthy according to his means, and the straitened in circumstances according to his means. The gift of a reasonable amount is necessary from those who wish to act in the right way.’ (2:236).

In a famous case, the second Caliph, Umar b. al-Khattab, once gave a public sermon in which he asked the congregation to refrain from fixing heavy mahrs, and stated that the Prophet had declared no-one should give more than 400 *dirhams*. A woman immediately stood up and challenged him, quoting the verse 4:20 from the Qur’an:

‘But if you decide to take a wife in place of another, even if you had given the first a heap of gold (quintar) for a dowry, you shall not take the least bit back.’

Umar went back to the minbar and withdrew his words stating ‘the woman is right, and Umar is wrong. Whoever wishes may give as much property as he wishes to give.’ (Ibn Hajar al-Athqalani, Fath al-Bari, 9:167).

Who owns the mahr? Can it be refused?

It is owned solely by the wife. The husband is not allowed to refuse to pay his wife a proper *mahr* or *faridah*.

The settling of the payment is obligatory.

‘Women are lawful to you....provided that you take them in marriage and not fornication. As to those through whom you profit (through marriage), give them their faridah as appointed.’ (2:24).

The same applied when marrying Jewish or Christian women (5:5). If a Muslim man married someone ‘whom his right hand possessed’ (ie a slave or prisoner of war), the *mahr* was to grant her freedom and other payment was not required. Caliph Umar ruled that if a woman had excused her husband his mahr, but later demanded it, the husband should be compelled to pay it on the grounds that the fact that she demanded it was a clear proof that she had not remit it of her own free will.

The case of a woman whose husband died before fixing the amount of the dowry or consummating the marriage was brought to Abdullah b. Mas’ud. He ruled that she should be paid according to the mahr of women of like status to herself. The Shafi ‘I school rules that a wife may refuse to consummate the marriage if the husband agreed to pay the mahr immediately, but did not do so. She may have the marriage annulled.

How much should the Mahr amount be?

It is unIslamic for a Muslim woman to set a huge demand for herself, with the intention of deterring suitors of humble means. Islam does not require husbands and wives to come from the same social strata or income brackets – although this may

often seem to be advisable. Islamic compatibility is based on religious faith and mutual respect, not on money, class, background etc.

It is just as unIslamic to demand a huge *mahr*, generally beyond the husband's means, based on the intention of checking the husband from ill-treating his wife, or wrongfully or causelessly divorcing the wife, or preventing him from remarrying another later – the reasoning being that in cases of divorce the woman can demand the full payment of the *mahr*. The fixing of a substantial *mahr* for the above purposes rests on the supposition that the *mahr* has to be fixed at the time of marriage, but not handed over until divorce – which gives it a supposed 'deterrent' value. This is unlawful in Islam, for in this case the wife has no use or ownership of the *mahr* during the time of the marriage.

If the prospective husband is not a wealthy man, a generous wife may choose to accept very small *mahr*, but this has to be her own free choice. She should not be coerced or have pressure put on her in any way. Some of the Prophet's female companions accepted their husbands' conversions to Islam, or memorising of ayat of the Qur'an, or giving education to others as their *mahr*.

The *mahr* has to be fixed taking into account the bridegroom's position in life. That is, it should not normally be more than he is easily able to afford, whether it be a lump sum or some article of value. Jurists have different views on what the minimum amount should be, but all agree that it should be substantial enough for something to be bought against it. In other words, any amount which is sufficient for a purchase is acceptable as *mahr*.

The husband may be loaned money by his father or family, but it must be repaid. In the case of Nabi Musa (the Prophet Moses), when he left Egypt for Madyan he married Safura the daughter of the Prophet Shu'ayb. His *mahr mu'ajjal* was settled and paid off by binding himself to grazing his father-in-law's cattle for ten years without wages. Presumably Shu'ayb had paid Safura on Musa's behalf.

A good woman might agree on a low *mahr* if she wishes, or none at all, according to the circumstances of her husband. Once fixed it is fixed, and legally binding – so it is good practice to have it written down and witnessed on a document. The wife should take advice on her decision, and not be blinded by emotion, or coercion, or fear, or family pressure. If any person pressurises a woman into a decision she might not have otherwise made, that person will be held to account in the Life to Come, even if he 'got away with it' on this earth.

One recorded hadith suggests that 'the best woman is the one whose *mahr* is the easiest to pay.' (al-Haythami, Kitab an-Nikah 4:281).

However, it is sensible for a wife to accept a reasonable *mahr*, as this becomes her own property as stated, and is hers to keep should the marriage fail and end in divorce.

Under what conditions is it payable?

There are two main ways of properly presenting *mahr* to the bride.

The first way is to hand it over in full at the time of marriage, in which case it is known as *mahr mu'ajjal*, or 'promptly given *mahr*'. (Notice the ' '. The word is derived from '*ajilah*', meaning 'without delay'. This was the accepted practice during the time of the Prophet, and the amount fixed was generally quite minimal.

In the case of Fatimah and Ali, Ali informed the Prophet that he had nothing to give her. The Prophet reminded him of a coat of chain-mail he had been given. It was still in his possession, although in a delapidated condition and worth less than four *dirhams*. The Prophet suggested he gave that to Fatimah, and this was done.

The second way of presenting *mahr* is to defer it, to hand it over to the bride after a certain period of time, the duration of which must be specified, fixed by the man and agreed by the wife. This has to be settled, with witnesses, at the time of the marriage. This form of *mahr* is known as *mahr muwajjal*. (the word implies 'in a period of time').

The five major schools of Islamic jurisprudence all agree that delay in handing over the *mahr*, whether in full or in part, is lawful provided that the fixed period for payment is not indefinite.

This method should never be used as an excuse to wilfully postpone the payment. A definite date should **always be fixed, witnessed, and adhered to**. It should certainly not be left 'hanging' in case the marriage breaks down and the couple come to consider a divorce - because of the inevitable emotions, bitterness, arguments, hostilities and financial problems involved at that time.

If the husband died, or they got divorced, the *mahr* debt must be paid up immediately to the widow before his inheritance or other financial settlements are considered. It is her property, and not his.

Repayment of Mahr in cases of *khul* divorce.

A *khul* divorce is one in which a wife sues for divorce even though the husband has not driven her to it by his unreasonable behaviour.

If there is no good reason for a wife wishing to divorce her husband, but it is a case in which she simply wishes to finish the marriage **with no particular legal grounds** against the husband, the **husband may agree to grant her the divorce if she returns all or part of the *mahr***. This has to be agreed between them.

If the wife does have genuine grounds for divorce – such as cruelty, mental cruelty, breaking of the marriage contract, adultery, desertion, incurable insanity, long-term imprisonment, abandonment of Islam – then the divorce is not *khul* but a normal *talaq*, in which the wife has as much right to instigate proceedings as the husband. In these cases, she most certainly **does not have to hand over any of the *mahr***.

If the wife has genuine grounds for divorce but the husband refuses the divorce, she may then approach lawyers for *khul*, and appoint an Imam to act for her. It is

sensible to do this as well as having a UK lawyer. She is not required to pay back any of her *mahr*. Indeed, **the lawyers may demand some further compensation** for her if the husband is guilty. (She may have to prove his guilt, and should gather as much evidence beforehand as she can – such as signed and witnessed statements of witnesses, photographs of injuries sustained, etc).