



PRIMARY RESEARCH

# Mahr in Turkish and Iranian law

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## Abstract

Marriage, in all religions, is sacred and respected. By marriage, spouses acquire financial and non-financial rights and obligations toward each other. Although financial matters in marriage are incidental and the main purpose of marriage is that the spouses live together with love and affection, Mahr is one of the financial rights of the wife who deserves it, and the husband should provide. This article focuses on the concept of Mahr in Iranian and Turkish laws in basic terms. The research method was descriptive-analytical and taken from library sources, national documents, and internal laws and bills of the studied countries. Firstly, the status of Mahr and how it is perceived in both legal systems are explained separately. Afterward, approaches to Mahr in both legal systems are compared basically. This study elucidated how the Mahr practice in these two countries, where most of the people are Muslims, can differ. It is concluded that both in Iran and Turkey, Mahr is implemented among the people; nevertheless, its scope and legal basis are different. All institutions and organizations that somehow deal with rights and legal principles and are responsible for legal issues in the field of marriage and Mahr in Turkey and Iran can use the results of this research.

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## INTRODUCTION

### Mahr in Iranian Law

According to Article 1087 <sup>1</sup> of the Civil Code of the Islamic Republic of Iran: "Mahr is a property that the husband is obligated to pay to the wife by the marriage contract. The demand to pay the Mahr follows the rules of the Holy Quran and is not a stipulated contract. Therefore, the silence of the parties to the contract, even the agreement that the wife is not entitled to the Mahr, does not invalidate the husband's obligation to pay and the entitlement of the husband to the Mahr." Payment of Mahr is not a contractual issue; Mahr's obligation can be found in the verses of the Holy Qur'an. By the way, Islam has stated issues regarding the amount and conditions of the Mahr for women.

Determining the amount of Mahr is left to the parties according to the husband's capability and dignity of the wife and the customs of different people. The amount of Mahr depends on the satisfaction of both parties (Malekzadeh,

2009). The legislator of the Islamic Republic of Iran has stipulated in Article 1080 <sup>2</sup> of the Civil Code that the determination of the Mahr is subject to the consent of the parties. For this reason, the amount of the Mahr can be determined by consensus with a third party. Therefore, as stated by this article, there is no limit in determining the amount of Mahr, and the consent of both parties to the Mahr is important. Accordingly, couples in practice agree on huge amounts of Mahr at the beginning of acquaintance and uncautious agreement that the man often cannot pay. Despite the Islamic advice to reduce the amount of Mahr for convenient marriage, unfortunately, the amount of Mahr is increasing daily, while it has been approved that in some cases, the husbands are unable to pay ten percent of the promised Mahr (Jalali, 2010).

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<sup>1</sup> Article 1087 of the Civil Code of the Islamic Republic of Iran: "If the Mahr is not mentioned in the permanent marriage or no Mahr is stipulated, the marriage is valid and the parties can determine the Mahr by mutual consent after the contract, and if intercourse takes place between them before the mutual consent on a certain Mahr, the wife will deserve Mahr al-Mathil."

<sup>2</sup> Article 1080 of the Civil Code of the Islamic Republic of Iran: Mahr must be determined based on the consent of the parties of the marriage contract.



### The Meaning of Mahr

Mahr, Dowry, and Mehriye are the property given to the wife through the marriage Contract by the husband, or the man is committed to paying. Mahr is a means to help and benefit the wife and is substituted by words such as nahl, Mahr, and reward of religious duty in the Holy Qur'an. It is an Arabic word called Cabin in Persian (Damad, 2003, 2021). The Mahr, whether in the form of commodity or currency, is payable by the groom upon marriage (Dehkhoda, 1998). In the definition of the term Mahr in Kashaf, it is stated that the Mahr is the price of a woman at the time of marriage. Mahr could also mean dowry (Babakhani, 1998; Taghizadeh & A., 2009). In terms of jurisprudence and civil law, Mahr is a certain property (or something related to property) that a man gives to his wife at the time of marriage in a conventional way or undertakes in favor of the wife (Langroudi, 2021). According to the content definition of the Iranian civil law, Mahr is the amount of money that is given to the wife by her husband at the time of marriage and based on the Civil Code, anything that is of financial worth and possessive can be settled as the Mahr (Article 1078<sup>3</sup> of the Civil Code of the Islamic Republic of Iran) and determining the amount of the Mahr is subject to the consent of the parties<sup>4</sup>. The Article about taking possession of the Mahr by the woman provides that: once the marriage is concluded, the wife becomes the owner and could make any possession that she wishes (Article 1082<sup>5</sup> of the Civil Code of the Islamic Republic of Iran). According to Iranian law, the assets that are considered as Mahr for a woman, if it is certain, with all its benefits, become the property of the woman from the moment of the marriage, and if it is destroyed before delivery, or there is a defect in it, the husband must compensate. If no installments or deadlines are set for this property, it must be paid to the woman whenever she requests, otherwise, at the defined time. To terminate the marriage if the Mahr has not been given to the woman, according to the third note of the "Law on Amending the Divorce regulations acted by the Islamic Republic of Iran in 1371", execution of the divorce decree and its registration in the notary office, is subject to the payment of Mahr and woman's other rights, unless there is a definitive decree on the husband's insolvency, or the woman abandons her Mahr or agrees to be paid later on (Malekzadeh, 2009).

As soon as a woman marries, she becomes the owner of the

<sup>3</sup> Article 1078 of the Civil Code of the Islamic Republic of Iran: anything that is valuable and is possessable, can be settled as the mahr.

<sup>4</sup> Article 1080 of the Civil Code of the Islamic Republic of Iran

<sup>5</sup> Article 1082 of the Civil Code of the Islamic Republic of Iran: once marriage concluded, the wife owns the Mahr and can make any kind on possession on it.

<sup>6</sup> Article 1079 of the Civil Code of the Islamic Republic of Iran: Mahr must be known between the wife and husband to the extent that ignorance is eliminated.

Mahr (Article 1082 of the Civil Code of the Islamic Republic of Iran), but according to the jurists, this property is precarious and is replaced by sexual intercourse (McGlenn, 2002).

### METHODOLOGY

Our method in compiling and summary of this research is mainly in the form of descriptive analysis and review of national and legal documents in the field of Mahr in Turkey and Iran, which was done by scanning books, documents, articles, and judicial opinions and then analyzed and discussed.

The secondary purpose of conducting this research is to develop the literature on the subject from a scientific and legal point of view in the field of marriage and Mahr. All institutions and organizations that somehow deal with rights and legal principles and are responsible for legal issues in the field of marriage and Mahr in Turkey and Iran can use the results of this research. This study can be useful for jurists, including professors, students, judges, lawyers and legal advisors, experts, researchers and academics at the domestic and international level, and other law students. In the next degree, family law activists and users of topics related to Mahr and women's rights at the national and international level can benefit from the study results and how to respond to the needs.

### Types of Mahr

Types of Mahr from the perspective of the nature of Mahr Because civil law has followed the famous speech of the jurists, we will mention the law as much as possible in the topics discussed. In this section, it should be noted that the Mahr is determined in 4 different ways based on the type of Mahr:

- 1) Mahr al-Sunnah (Traditional Mahr): (the Holy Prophet) gave 500 dirhams, equivalent to 50 dinars, to all of his wives (Akbari, 2019). This amount is Mahr al-Sunnah (some Imami jurists believe that the Mahr of women should not exceed this amount).
- 2) Mahr al-Masmi: It is a Mahr that a couple determines by compromise and consensus before or after the marriage and before intimacy. (article 1080 of the Civil Code of the Islamic Republic of Iran) and it must be known to the extent that ignorance is eliminated (Article 1079<sup>6</sup> of the Civil Code of the Islamic Republic of Iran).

3) Mahr al-Mathil: Mahr al-Mathil is a financial thing that is determined for the wife (where the wife's condition in terms of family honor and other attributes and her relation to her equals, relatives, and friends, as well as the usual place, etc.) (Article 1091 of the Civil Code of the Islamic Republic of Iran). If there is the intimacy between them, after a permanent marriage and before compromise on Mahr (Article 1087 of the Civil Code of the Islamic Republic of Iran) or Mahr al-Masmi is unknown or has no financial value, It will be one of the entitlements of Mahr al-Methal. (Article 1087 of the Civil Code of the Islamic Republic of Iran).

4) Mahr al-Mut'a: If the Mahr is not mentioned in the marriage and the husband divorces his wife before intimacy and determining the Mahr, the wife is entitled to the Mahr al-Mut'a, and if he divorces after that, he will be entitled to the Mahr al-Mut'a (Article 1093 of the Civil Code of the Islamic Republic of Iran), and the amount of Mahr depends on the financial situation of the husband (Article 1094<sup>7</sup> of the Civil Code of the Islamic Republic of Iran).

Iranian Jurists examine the effects of the marriage contract in two sections: financial and non-financial effects; Mahr is one of the most important financial effects of the marriage contract and is an obligation imposed on the husband as provided by law (Saffar, 2011). Mahr must have the following conditions:

- Mahr should involve financial aspects; that is, it can be traded and exchanged in the economic market, such as land, cars, wheat, etc.
- Mahr can be acquired and transferred: therefore, a property such as public property and endowments, which are not transferable, cannot be considered a Mahr for a woman because the woman can neither own nor transfer it.
- Mahr must be defined and available during the marriage contract.
- Mahr must be known (not uncertain and unknown).
- Mahr has legitimate rational benefits (Ansari-pour, 2017).
- The man must be able to deliver because the ultimate purpose of the wife in putting the Mahr in the marriage contract is to obtain that property, so if the husband gives the wife the property that he is not able to deliver as a Mahr, and if the woman is not able to surrender and seize it, take into possession will be ineffective. Things such as a ring that has sunk in the sea or a garden that is in the usurper iodine of others are examples for the mentioned case (Ar-

ticles 1078-1079 and 1080 of the Civil Code of the Islamic Republic of Iran (Malekzadeh, 2009).

If one of the specified conditions is absent, the Mahr will have a disability, but It will not affect the status of the marriage contract (Fumshi, 2012). There is no stipulation in the civil law for a specified Mahr al-Masmi, and spouses are free to determine the Mahr in marriage as much as they want. Also, if it is unspecified, or does not have financial value, or if the Mahr is property of any other person, according to Article 1100<sup>8</sup> of the Civil Code of the Islamic Republic of Iran, in the first and second cases, the wife is entitled to the Mahr al-Masmi, and in the third case, she is entitled to the identical or its price; Unless the owner of the property allows (Emami, 2020).

Jurist conservative state that: Although there is no definite amount for the Mahr in Islam, its amount is left to the agreement of the marriage parties, and anything Halal or valuable, more or less, goods, money or profit or work and service, can be defined as Mahr; But it is certain that a woman cannot marry without Mahr and marriage of a woman without Mahr is considered only for the Holy Prophet (Hor Ameli, 1988). As God says to them in the Holy Qur'an: where a faithful woman endows herself to the Holly Prophet (and does not demand any Mahr for herself), the Holly Prophet can marry her if he wants, but such a marriage is permissible only for him and not for other believers (Al-Ahzab, verse 33). Some narrations are used that it is objectionable for the amount of Mahr to be very small and less than ten dirhams, which is approximately equivalent to one shekel of sharia gold; In a way that resembles the wages that adulterous women receive for adultery (Hor Ameli, 1988). The issue of Mahr is so important that if a husband does not have the power to pay something as Mahr, he can take a job as a Mahr and do it for the woman (Najafabadi, 2006). Regarding the amount of Mahr in Imami jurisprudence; some believe that the Mahr should not exceed five hundred dirhams, equivalent to fifty dinars (Khomeini, 2000), and if it is more than that, it will return the same amount. This amount has been called "traditional Mahr" because the Holy Prophet married all his wives to the same amount of Mahr (Najafi, 1984).

The contract that a man and a woman enter regarding the Mahr is ancillary separate from the marriage itself but subject to the contract, as mentioned earlier. Therefore, the ba-

<sup>7</sup> Article 1094 of the Civil Code of the Islamic Republic of Iran: The present Mahr al-Mut'a of the husband is determined according to his wealth and poverty.

<sup>8</sup> Article 1100 of the Civil Code of the Islamic Republic of Iran: If Mahr al-Masmi is unknown or has no financial aspect, and or is in the other person's ownership, the wife is entitle to Mahr al-Mathil in cases 1 and 2, but she is entitled to its equivalent or price in the third case, unless the property's owner allows.

sic conditions of the transaction on the contract of sale must also be observed regarding the Mahr.

As soon as a woman marries, she becomes the owner of the Mahr (Article 1082 of the Civil Code of the Islamic Republic of Iran), but according to the jurists, this property is precarious and is replaced by sexual intercourse. Divorce before a sexual relationship or the death of each spouse is one of the cases in which the Mahr is halved (Article 1092<sup>9</sup> of the Civil Code of the Islamic Republic of Iran).

### Types of Mahr in Terms of Time

In terms of payment time, Mahr is divided into three types: 1- Mature: means the Mahr received completely and immediately, which can be called on demand. On-demand Mahr means that as soon as the contract is signed, if the wife wishes, she can claim all or part of it by referring to the husband or family courts or entry of judgment, and thus she has the right to demand the entire Mahr from her husband. In this case, the wife is canonically and legally entitled to claim after the marriage contract, and the husband is obliged to pay the Mahr. Moreover, the wife can refuse to obey or surrender to the husband and the marital relationship before receiving the mature Mahr. She is entitled to refuse sexual submission (Tamkin) (Article 1085 of Civil Code) (Khomeini, 2000).

2- Non-mature: (deferred): the man must pay the Mahr within a certain period. If the Mahr is non-mature, the wife abandons her right to receive the Mahr by the deferring Mahr and cannot refuse sexual submission (Najafi, 1984). Sahebe Javaher has said: The obligation of sexual submission has been related to the time when the Mahr would be payable at once; therefore, sexual submission precedes Mahr.

3- Part of the Mahr is mature (on-demand), and the other part is non-mature (on-solvency). On-solvency refers to the situation where the wife can demand her own Mahr and oblige the husband to pay it if the husband can afford to pay the Mahr, but if the husband is unable to pay the Mahr, it is said to be "insolvent" (Ibn Idris & Ibn Ahmad, 1410) quoted by (Bahmanpouri & Jafarpour, 2018).

## RESULTS AND DISCUSSION

### On-Demand or on Solvency cause of the Mahr in Iranian law

Nowadays, one of the most important matters in judicial courts is the payment of the Mahr by a man to a woman with an on-demand Mahr.

The explicit text of the Quran is based on the fact that whenever a man marries a woman, he must pay her Mahr. The man is required to pay on demand. In other words, the marriage contract is fulfilled immediately; the woman becomes the owner of the Mahr. Mahr is the debt for the man that must pay on-demand (Hosseini Shirazi, 2019). to his wife. But if it's on-solvency, the woman has to establish her husband's solvency. Men, usually due to the legal protection of common illegal ways, can easily deny or hide their solvency, and often women fail to establish their claim. It can be said that the same surplus of 110 coins or its equivalent has been ratified in Article 22<sup>10</sup> of the new protection law that if the woman claims the Mahr more than what is stated in the Article, she should collect her Mahr. Because the women struggle with many problems in their way, including going to court, having lawyer, costs, etc., it ends in favor of men and makes the women regret establishing the men's solvency.

Men have experienced that they can be successful with a little pressure and insistence, and our women cannot get their rights due to a lack of strong legal support from valid sources and will always submit to men. Those claim that Mahr should be on-solvency, thereby restricting the wife's powers and preventing her from achieving her rights. That is contrary to jurisprudence and isn't legally permissible. It is said that doing this is not forced but with mutual agreement and the wife's consent. While this decision causes men to use this voluntary Act as a pretext, or due to wives' ignorance, to pressure the wife to accept the on-solvency Mahr while they are unaware of the consequences. Such a decision means not paying the Mahr on 99% of cases. In on-demand Mahr, the meaning of on-solvency is placed and does not need to be legalized; because the man can refuse to pay the Mahr by establishing his insolvency, the law accepts it and provides conditions and facilities (Ismaili, 2011). As stated in this article, if the Mahr is more than 110 coins or its equivalent, the man's solvency is a criterion. According

<sup>9</sup> Article 1092 of the Civil Code of the Islamic Republic of Iran: Whenever a husband divorces his wife before sexual relationship, the wife shall be entitled to half of the mahr, and if the husband has already paid more than half of the mahr, he has the right to demand the return of the surplus, in original, in the equivalent, or in value.

<sup>10</sup> Article 22 of the Family Protection Law of the Islamic Republic of Iran: If the Mahr is up to 110 coins or its equivalent at the time of the contract, its payment is subject to the provisions of Article (2) of the Law on Execution of Financial Sentences. If the mahr is more than this amount, only the husband's solvency is the criterion for payment the surplus. However, it is still required to follow the rules for calculating the Mahr at the daily rate.

to this article, it can be understood that part of the Mahr is on-demand and the other part is on-solvency. In any case, the man must pay the Mahr to the woman, and as long as he does not fulfill this duty, he shall be liable for its waste and loss (Babakhani, 1998).

Since it may be a question for the readers of this paper, what does the Iranian legislator mean by mentioning the word equivalent in front of the word coin? We discuss this category in this section. Before the Islamic Revolution in Iran (1978), most of the Mahr of the Iranian women was the common currency (Rial). However, after the Islamic Republic of Iran's governance and inflation caused by socio-economic issues in the country, the common currency (Rial) lost its value against gold day by day. Thus, to maintain their financial power, most Iranian women replaced the Rials with coins to determine the amount of Mahr. Hence, the Legislature of Iran has added a single article under the addendum of a note to Article 1082 of the Civil Code to compensate for the losses imposed by women who have married the conventional Mahr before the governance of the Islamic Republic of Iran or have agreed on the conventional Mahr after the marriage, according to which the legislator mentions the word equivalent meaning a coin, the common currency of the country, and the wife can claim Mahr at the current rate <sup>11</sup>.

The Family Protection Law was enacted in 1967 but desuetuded due to shortcomings. Then, a law under the same title was enacted in 1974, which changed due to some reactions. The Parliament proposed new law with the same title in 2007, which was finally enacted in 2012. In the previous laws, no article addressed the Mahr and its payment independently. Article 1 of the Act of Execution of Financial Sentences, as well as Article 22 of the new law, states that "If the Mahr at the time of concluding marriage contract is up to 110 Bahar Azadi coins or its equivalent, only solvency is the criterion for the payment of its surplus. However, Article 22 cannot be executed; thus, most women cannot receive their Mahr up to 110 Bahar Azadi coins or its equivalent. Because due to the recent amendments of Article 2 of the Pecuniary Judgments Act, the husband's insolvency is presumed (Damad, 2021).

It should be noted that the approval of the mentioned cases does not mean a reduction in the amount of Mahr but only a reduction in the legal sanctions of the surplus of the Mahr. Therefore, 110 Bahar Azadi coins or its equivalent, which has been set in this Article, refers to the dominant case and

is not general. Hence, its equivalent in Rials or other currency is also subject to the Article mentioned earlier.

In the new by-law, there is an imposing imprisoned for receiving only 110 coins or its equivalent; but the man cannot be imprisoned for more; it means if the woman claims 110 coins or its equivalent or less than it, the man will be condemned to the same amount of Mahr.

### Mahr in Turkish Law

As is known, the Republic of Turkey is a state founded in Anatolia after the Ottoman Empire. In addition to many aspects, such as its political regime, there are fundamental differences between its legal system and the Ottoman Empire (Alderman, 1975). These differences become highly apparent in the field of family law. Thus, Ottoman family law is based on Islamic law, but Turkish family law is based on the Continental European Legal System. This difference also manifests itself in the legal characterization of Mahr.

In the Ottoman period, Mahr was subject to rules similar to those of Iranian law according to the rules of Islamic law. Doubtlessly, the practices of the Sunni belief were dominant in the Ottoman Empire, and the practices of the Shia (Imamate) understanding were dominant in Iran. However, there is no difference of opinion in both large Islamic groups concerning the existence and legitimacy of Mahr, which is based on the Qur'an.

As can be seen, family law issues in the Ottoman Empire were resolved by referring to fiqh books within the framework of the rules of fiqh with a classical perspective for centuries. An obvious exception to this attitude is the Decree of Family Law (Hukuk-ı Aile Kararnamesi). In the period during which codification works were carried out intensely all over Europe, the Mecelle related to various fields of private law was also prepared in the Ottoman Empire (Aydın, 1997; Ayoub, 2015; Kaşıkçı, 1997). However, family law was not regulated in the Mecelle. The Decree of Family Law later filled this gap. This Decree is a codification work worth examining from many aspects (Baygin, 2016; Küçüktiryaki, 2017; Yurtseven, 2003).

The Decree primarily regulated family law based on three religions (Islam, Christianity, and Judaism). The rules specific to each religion were separately subjected to codification. On the other hand, not only did the Hanafi School (one of the four major Sunni Schools), which was dominant in Turkey (Anatolia), was followed the rules established for Muslims, but also the views of other schools that provided

<sup>11</sup> Amount of mahr defined in the contract of marriage = price index in the year of mahr demand on the divorce day divided by the price index in the year of the marriage contract multiplied by the amount of mahr (common currency).

<sup>12</sup> For the provisions that differ from the Hanafi School, see Orhan Çeker, Osmanlı Hukuk-ı Aile Kararnamesi, (Konya: Mehîr Vakfı, 2017), 11-13.

ease of application and were more suitable for the needs of the day were used (Çeker, 2017)<sup>12</sup>. Unfortunately, it could remain in force only for approximately two years due to the negative approaches arising from its period and its structure mentioned above (1917-1919). Twelve articles of the Decree of Family Law were allocated for Mahr (art. 80-91) and were adopted to apply to all Muslims of different sects living in the Ottoman Empire. In the final analysis, in terms of our subject, we would like to indicate that this Decree considered the existence of Mahr legitimate according to the rules of Islamic law and regulated it separately as a family law concept.

Following the foundation of the Republic of Turkey, the Turkish Civil Code No. 743 was adopted in 1926. It was one of the concrete reflections of the tendency toward westernization. It was taken from the Swiss Civil Code, one of the newest laws of that period, through translation (reception) (Magnarella, 1973). Along with this Code and the Code of Obligations originating from Swiss law, Turkish Private Law was included in Continental European Law, and thus, it was separated from Islamic law in civil law. It was stated in the doctrine that no single provision based on Islamic law was included in the Turkish Civil Code (Akipek et al., 2014). In the Act on the Implementation of the Turkish Civil Code of 1926, it was regulated that the rules of the old law, which were contrary to public order and general moral rules according to the Turkish Civil Code, would not be implemented in any way after the Code entered into force (art. 2). From 2002, Turkish Civil Code No. 743 was replaced by Turkish Civil Code No. 4721. like the previous Code, it is also based on Swiss and Continental European Law.

As can be easily understood from the statements mentioned above, it could not be expected that the Republic would include the concept of Mahr belonging to Islamic law in its civil codes. Indeed, no Mahr or any other legal institution can evoke it in the family law book that constitutes the 2nd book of the Turkish Civil Code.

In Turkey, the application of the Civil Code in the western sense has a history of approximately a century. Its provisions on many issues, such as monogamy, divorce, and the official marriage ceremony, were implemented and largely established in the country. Unofficial polygamy practices can still be observed in some regions, even though they are reduced. With an amendment made in 2017, Muftis were

also granted the authority to perform the solemnization of marriage (perform the ceremony of marriage)<sup>13</sup>. However, in this regulation, Muftis perform this ceremony by following the rules of the Turkish Civil Code. This regulation led to another interesting debate concerning equality and freedom of religion in Turkey: Should the authority granted to Muftis also be granted to the clergymen of other religions? (Tüzüner, 2019).

Despite this legal status, Mahr is commonly applied in the Muslim community even today in Turkey. Indeed, as was noted by Okur Gümrükçüoğlu, in a study conducted on 1700 women, it was found that Mahr was determined during the marriage process by 90% (Gümrükçüoğlu, 2013). Akyüz (2005) studied the amount of Mahr and types of Mahr in the Ottoman period. In this prevalence, it should immediately be noted that the demand for Mahr has become a tradition in Turkey and is as effective as religious beliefs. Another reason may be that Mahr coming from the former law, was not subject to a penal sanction while the new law was adopted. Indeed, while Turkish law prohibited polygamy, it was subject to a penal sanction (see Turkish Penal Code art. 230). Likewise, it also punished those who had the religious ceremony of marriage performed before they had the official ceremony of marriage performed<sup>14</sup>. The extent to which punishment is a deterrent in reducing these practices certainly requires a detailed investigation.

Whatever the reason might be, the practice of Mahr has continued its existence among the people during the first Civil Code (No.743) and today. It has become inevitable that disputes related to Mahr, a common practice, have emerged over time and occupied the courts<sup>15</sup>.

Initially, there was a debate on the validity of Mahr in local courts and Chambers of the Court of Cassation. One of the main views was that Mahr was against the public order of the new state (The Republic of Turkey). According to the other view, Mahr consisted of a valid agreement between spouses. This difference in jurisprudence led to the Decision of Unification of Conflicting Judgements of the Court of Cassation dated 1959 (Reisoğlu, 1960)<sup>16</sup>. In Turkish law, while the jurisprudence established by a court or the Chamber of the Court of Cassation is binding only in the case to which it relates, the Decision of Unification of Conflicting Judgements has the power to bind both local courts and the Chamber of the Court of Cassation (The Court of Cassation

<sup>13</sup> Civil Registry Services Act No. 5490 art. 22/2

<sup>14</sup> The penal provisions on religious ceremony were later annulled by the Constitutional Court (Decision 2015/51 of 27.05.2015).

<sup>15</sup> In the study conducted by Okur Gümrükçüoğlu, the ratio of those who paid the property or money that was subject to mahr to the woman during union of marriage or divorce was determined as 29%. Okur Gümrükçüoğlu, 253.

<sup>16</sup> Decision 1959/30 of 02.12.1959. on the Decision see Safa Reisoğlu, "Mihri Müeccele Müteallik 2.12.1959 Tarihli Tevhidi İçtihat Kararı Hakkında (1)", Ankara Barosu Dergisi, 17:3 (1960), 78-82.

Law art. 45). Thus, the 1959 Decision brought a common perspective to Mahr in judicial practice in Turkey. This jurisprudence has been adopted and implemented by judicial bodies even today, as well as during the period of the Turkish Civil Code No. 4721.

After the statements mentioned earlier, it is time to explain the approach of the Decision of Unification of Conflicting Judgements to Mahr. With this decision, Mahr was considered as an agreement between spouses/those to be married: Since both the former (art. 169) and the new Civil Code (art. 193) do not prohibit legal transactions between spouses, then there is also no obstacle to considering Mahr valid as a contract. With this jurisprudence, it was accepted that Mahr agreements would be legally valid in the new Turkey.

After accepting that Mahr was a legally binding agreement, in other words, a contract, the second question that needs to be answered is the nature of this contract. In this regard, Turkish judicial practice still preserves the understanding adopted in the 1959 Decision<sup>17</sup>. Accordingly, since Mahr is a gratuitous acquisition provided by one of the spouses, this contract is a gift. Therefore, if the agreed Mahr is to be given immediately, in other words, if prompt Mahr (*mahr mu'ajjal*) comes into question, it should be considered a "gift from hand to hand." However, if Mahr is to be given in the future after marriage, in other words, if deferred Mahr (*mahr gayr mu'ajjal* (*mu'wajjel*)) comes into question, then the provisions regarding the "promise of a gift" should be applied, let us immediately indicate that the gift is one of the nominated contracts regulated in the Turkish Code of Obligations (art. 285-298).

There have been authors who have adopted/have not adopted/criticized the above view in Turkish legal doctrine. In the face of the establishment of the Decision of Unification of Conflicting Judgements in practice, other views in the doctrine will not be included in this study (Türkmen, 2020). However, we would like to emphasize that based on the principle of "freedom of contract" prevailing in the Turkish Code of Obligations, the Supreme Court could have accepted Mahr as an "innominate" "a sui generis contract" that is not regulated in the law but instead preferred to describe it as a nominate contract.

### The Comparison of Legal Approach to Mahr in Iranian and Turkish Laws

Following the statements mentioned earlier, the following comparison can be made regarding the concept of Mahr in

Iranian and Turkish laws:

1- In Iranian law, Mahr is based on Islamic law and legal regulations. In this respect, Mahr is considered a concept belonging to family law and is included in the legal system.

The concept of Mahr is not included in the Turkish Civil Law and the Turkish Civil Code, which regulates it in detail. In this sense, Mahr is an alien concept to the civil law system. The family law does not include a concept as Mahr or a concept that substitutes for it (Katouzian, 2021). Nevertheless, it is considered a gift, a concept of the Turkish Obligation Law, based on its "gratuitous acquisition" aspect. Thus, Mahr is not considered an independent concept in legal practice, is not subject to specific rules, and is employed as a gift.

2- In Iranian law, Mahr is a form of legal obligation. Hence, it can be requested from the other party as required by law (*Mehr-i misil*) even though the parties do not decide whether the agreement between them is void. From this point of view, *Mahr-al musemma* consists of the freedom given to the spouses in determining the amount of this legal obligation.

In Turkish law, Mahr is a contractual obligation. It is established by the two parties mutual and appropriate will statements. Unless such a contract is made, the woman cannot demand Mahr from the man and cannot ask him to provide her with gratuitous acquisition based on the Mahr. Therefore, Mahr is not a form of legal obligation in Turkish law.

3- In Iranian law, the validity of Mahr does not depend on a written contract between the parties. As mentioned above, even if the agreement between the parties is void, Mahr can be asked to be paid.

In Turkish law, Mahr is subject to form rules in a gift. According to the Turkish Code of Obligations, a gift from hand to hand is valid only when the donor presents the movable property to the recipient. Therefore, a gift from hand to hand is compatible with prompt Mahr (*Mahr mu'ajjal*), in which Mahr is immediately executed. If there is a movable property that will be given after the agreement, the promise of a gift comes into question, which is valid only if done in writing, which is compatible with deferred Mahr (*Mahr gayr mu'ajjal*, "*mu'wajjel*"). However, it is necessary to immediately indicate that if the promise of a gift, which is not done in writing in Turkish law, is executed actually, then it is valid as a gift from hand to hand (otherwise, if the man does not execute it, he cannot be compelled to execute it since the transaction is void). In any case, contracts for transferring immovable properties must be made formally in front of the

<sup>17</sup> For example, see 3th Chamber of the Court of Cassation, Decision 2019/3079 of 08.04.2019; 2th Chamber of the Court of Cassation, Decision 2018/14111 of 05.12.2018.

land registry officer.

4- In Iranian law, if certain conditions are met, the failure in the payment of Mahr also results in the husband's imprisonment. In Turkish law, the non-execution of the deed of the gift does not result in a criminal legal consequence, and the husband who does not fulfill his debt is not imprisoned for it.

These are the main differences in terms of Mahr between Iranian law and Turkish law. Undoubtedly, it is possible to reveal many more differences that can be gathered from them (Türkmen, 2020). For example, by Mahr's nature, the Mahr's obligator is the husband, and the creditor is the wife in Iranian law. In other words, the obligator of this obligation is the man, and the creditor is the woman. However, there is no such limitation regarding gifts in Turkish law. The obligator of the gift may be a man or woman; in this context, a married woman can also provide a gift to her husband.

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## CONCLUSION

Mahr is a concept of Islamic family law with its entire existence based on the Qur'an and the Sunnah. It comes into question because marriage is an obligation the husband must fulfill to his wife immediately or later. Finally, when the marriage ends, this obligation becomes prompt and can be demanded to be fulfilled.

Both in Iran and Turkey, Mahr is implemented among the people. Nevertheless, its scope and legal basis are different. It has been accepted as a concept of family law and is guaranteed by legal regulations in Iranian law, as in Islamic law. Mahr is a form of legal obligation in Iranian law. Turkish law is based on religious beliefs and traditions among the people. It has no legal basis. More precisely, in Turkish law, Mahr is not accepted as a separate term subject to the provisions of Islamic law, and it is described as a contract/gift in the context of the obligation law established with the mutual consent of the parties.



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