

Feasibility of Validity of Mahr Beyond the Payer's Ability

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Abstract:

One of the recent legal issues in society is the matter of heavy dowries. In fact, the determination of high dowries by couples, which are sometimes beyond the financial capacity of the husband, has become a common legal issue. These dowries are often placed as a general obligation on the husband, while the circumstances show that the obligor not only lacks the actual ability to pay but also has little to no probability of being able to pay in the future. The invalidity of such dowries due to their inability to be delivered has been discussed. However, this objection, based on invalidity, is not referenced in jurisprudence. It seems that the invalidity of dowries on the grounds of being impossible to deliver is only possible based on certain jurisprudential foundations. After discussing and analyzing various possibilities on the matter, the belief in the invalidity of heavy dowries due to being impossible to deliver is preferred. Another argument that can be made is the lack of will from the obligor to pay the dowry, where the inability to pay is seen as an indication of a lack of intent to fulfill the obligation. This study uses a descriptive method and library sources to explore the relevant issues and analyze the problems related to heavy dowries.

Keywords:

Ability to Deliver, Obligation to Pay, Obligor's Ability, Invalidity of Dowry

Extended Abstract

Heavy monetary dowries (mahr) that far exceed the husband's present and reasonably foreseeable financial capacity have become a pervasive social and legal problem in contemporary Iranian society. Originally designed as a supportive financial right for women and a symbol of the husband's commitment, mahr has, in many cases, turned into a defensive instrument used by women against potential male arbitrariness, in a context of weak social security and fragile ethical norms. This development has led to the widespread stipulation of dowries that are "beyond the obligor's ability," where the husband neither has the actual means to pay nor a realistic prospect of payment in the future. The present study seeks to examine, from the perspective of Imāmī jurisprudence and Iranian civil law, whether such heavy and practically non-payable mahrs can be regarded as valid, or whether they should be considered void due to impossibility of performance and lack of serious intent. Using a descriptive-analytical method based on library research, the article analyzes classical fiqh texts, modern fatwas, and statutory rules to determine the doctrinal and legal status of these dowries and to clarify the consequences of their potential invalidity.

The conceptual framework of the research begins with a precise definition of mahr as any property capable of being owned that is transferred to the wife at the time of the marriage contract. Heavy mahr is understood as a dowry whose amount is so high that payment is practically impossible or extremely burdensome for the husband in normal circumstances. Within this framework, the study distinguishes two main forms of “mahr beyond capacity”: (1) extraordinarily high monetary or in-kind obligations (such as hundreds or thousands of gold coins) that are clearly disproportionate to the husband’s financial situation; and (2) non-traditional objects, including body organs, designated as mahr. While the latter often raises questions of “malīyyat” (having the legal character of property) and permissibility, the core problem in both categories is whether the subject of the obligation can, in practice and under normal expectations, be delivered without severe harm or impossibility.

In terms of general contract law, the article emphasizes the centrality of the condition of “ability to deliver” (qudrat bar taslīm). Drawing on Article 348 of the Iranian Civil Code— which invalidates a sale when the subject cannot be delivered— the study argues that, by analogy, mahr is also subject to this requirement. If the husband’s financial situation at the time of contract makes it clear that he cannot currently pay the agreed mahr and there is no reasonable prospect of payment in the future, the subject of the dowry is, in effect, non-deliverable. From a rational, economic perspective, such an obligation lacks real “property value” because it cannot be realized in practice. Thus, the article contends that many instances of heavy mahr are structurally similar to contracts over a non-deliverable object and should be analyzed within the same doctrinal framework.

The fiqh analysis deepens this argument by examining the nature of mahr in Imāmī jurisprudence. Although many jurists reject the classification of nikāḥ as a fully commutative contract (‘aqd mu‘āwaḍī), they nonetheless acknowledge that several rules governing commutative contracts— such as the prohibition of excessive uncertainty (gharar) and the requirement of malīyyat— extend to mahr as well. The article revisits key textual bases, including the prophetic traditions “lā tabī‘ mā laysa ‘indak” (do not sell what you do not possess) and the hadith of gharar, to show that the common denominator is full control and realistic power of delivery over the subject of obligation. When a dowry is set at a level manifestly beyond the obligor’s capacity, the condition of such control is not fulfilled. Moreover, the jurisprudential maxim “buṭlān kull ‘aqd bi-ta‘adhthur al-wafā’ bi-mazmūneh” (every contract whose performance becomes impossible is void) is interpreted not only for supervening impossibility after the contract, but also for initial impossibility where the obligation is non-performable from the outset.

Beyond impossibility, the study identifies two additional grounds of invalidity: absence of serious intent (‘adam al-qasd (and “safah” (wasteful or foolish conduct). In practice, when a poor or low-income husband accepts an astronomically high mahr— knowing he will never be able to pay— his consent is often merely formal and not underpinned by a genuine resolve to perform. The popular phrase “who has ever paid and who has ever received such a mahr?” reflects a social presumption that neither party seriously expects performance. From a fiqhī viewpoint, lack of real

intention to undertake an obligation undermines the contract ;and where the obligation is radically disproportionate to the party's means, it may also be categorized as an act of *safah*, whose legal effects are restricted or nullified in Islamic law to protect the individual and society from irresponsible disposition of property.

The article further considers the problem of uncertainty and ambiguity regarding the subject of *mahr*. Under Article 1079 of the Civil Code, the dowry must be sufficiently determined to remove ignorance; this is supported by classical juristic discussions that prohibit *mahr* which is entirely unknown or undefined. Examples such as “a room full of gold,” an unspecified future car, or “three *dāng* (one half) of a house that the husband will later acquire” illustrate cases where the subject either does not yet exist in the husband's ownership or is too vague to be properly evaluated. The paper argues that where the defect in *mahr* lies in such ambiguity or lack of *malīyyat*, the dowry is void, although the marriage itself remains valid and is treated as a case of “*mahr* not specified” (*tafwīḍ al-ṣadaq/buḍʿ*). In contrast, in many heavy-*mahr* cases the amount is perfectly clear (e.g., 1000 gold coins), so the problem is not uncertainty but actual impossibility of performance relative to the obligor's means.

A distinctive section is devoted to *mahr* consisting of body organs, such as a kidney or, in extreme examples, vital organs like the heart. The article argues that, despite debates, many organs possess *malīyyat* and can in principle be transferred, including by designating them as *mahr*. However, this is subject to strict conditions: no serious, non-tolerable harm to the donor; genuine medical need on the part of the recipient; and compliance with public order and good morals. Where removal of the organ leads to death or grave bodily defect, or where the motivation is merely symbolic, competitive, or sentimental (e.g., writing “my heart” or “half my body” in the contract), the stipulation is invalid. In such instances, Islamic principles prohibiting self-harm and suicide, as well as statutory rules on public policy, override any contractual freedom and render the *mahr* void. The study also notes that in temporary marriage (*mutʿa*), where *mahr* is a constitutive pillar of the contract, invalidity of the stipulated dowry entails invalidity of the entire marriage.

On the statutory side, the article reads Article 348 of the Civil Code as an indirect basis for invalidating heavy *mahr*: if the law declares contracts over non-deliverable objects void, then, by analogy (*waḥdat-e malāk*), dowries that cannot realistically be delivered should be treated the same. The paper also invokes Article 975 Civil Code on public order and good morals in relation to grotesque and irrational dowries. Complementing this, the study analyzes a significant contemporary fatwa of Ayatollah Makarem Shirazi, who holds that extremely heavy mahrs, accepted by husbands whose lifetime income cannot cover them, are “not serious” obligations and therefore should not be judicially enforced in cases of inability. This alignment between juristic opinion and statutory interpretation strengthens the claim that such mahrs lack both subjective seriousness and objective feasibility, and are therefore void as *mahr al-musammā*, even though the underlying marriage contract remains intact.

Having argued for the invalidity of *mahr* beyond the obligor's ability, the article addresses the crucial remedial question: what replaces the void dowry? Three main positions are examined. The

first, supported by some classical jurists, holds that the wife is entitled to mahr al-mithl (a customary, reasonable dowry) only if marital consummation has occurred; before consummation, she has no financial claim. The second view awards mahr al-mithl from the moment of contract, even before consummation, because the spouses intended a dowry in exchange for marriage itself. The third position distinguishes between cases where the null mahr has an assessable value (in which case its monetary equivalent could be paid) and those where it is valueless or non-assessable (in which mahr al-mithl is substituted). The article ultimately favors a nuanced approach: where the stipulated mahr is objectively non-deliverable due to the obligor's persistent lack of capacity, rather than any defect in the object itself, the appropriate remedy is mahr al-mithl upon consummation; before consummation, the wife has no right except, in case of divorce, to an equitable compensation (mahr al-mut'a) determined with regard to the husband's economic situation.

The study concludes that, in light of both fiqhī principles and the structure of Iranian civil law, heavy mahrs that are clearly beyond the husband's present and reasonably foreseeable capacity should not be regarded as valid, enforceable mahr al-musammā. They are tainted by initial impossibility of performance, lack of real intent, and, in some cases, by elements of safah, gharar, or conflict with public order and good morals. Recognizing their invalidity does not undermine women's financial security; rather, the legal system compensates through mahr al-mithl after consummation and through mahr al-mut'a in certain divorce scenarios, which align the dowry more closely with the woman's social status and the husband's genuine financial means. From a policy perspective, the proposed approach discourages the inflationary and symbolic escalation of mahr, reduces litigation and incarceration arising from unpaid dowries, and restores mahr to its original role as a rational, protective, and ethically grounded institution in Islamic family law.

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