

Australian Court decides on Mahr

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**Refer to the boxed text below on what is mahr.*

Under Islamic law mahr is due by a groom to his bride once a marriage is contracted. The mahr becomes payable after the consummation of the marriage. The Almighty states: “**And give unto the women, (whom ye marry) free gift of their marriage portions...**” (An-Nisa’: 4).

In most cases the mahr is paid at the time of the marriage ceremony (nikah). Some Muslims defer either the entire or a portion of the mahr. This is permissible if agreed upon by the husband and wife. Deferrals can be paid at any time in the future and one trigger can be divorce.

As part of the marital agreement a husband and wife can agree that a certain sum will be paid if the husband divorces his wife. Such a case was presented before the NSW Supreme Court. A Sydney man, who agreed under an Islamic marriage contract to pay his wife a 'deferred dowry' of \$50,000 if he left her, has been forced by the Court to honour the agreement.

Mostafa Mohamed (the husband) argued the dispute could only be resolved by an Islamic court as it was an Islamic law issue. But Associate Judge Joanne Harrison ruled that the deferred mahr, known as "moakhar sadaq" was enforceable under Australian law.

Justice Harrison said courts in the US, Canada and Britain had been prepared to enforce such agreements by applying the common law or relevant legislation, rather than Shariah.

The Facts:

(Source of Court Facts: Isabel Heyes - AAP; and Nicola Berkovic - The Australian - 2 August 2012).

The court heard the couple were married under Islamic law in 2004 and intended to marry under Australian law at a future date.

They signed a financial agreement in February 2005, stating Mostafa should pay Neima \$50,000 if he initiated any separation or divorce proceedings. If she initiated it or it was mutual, no money was payable.

The relationship encountered problems three years later. The couple attempted to reconcile, but divorced under Islamic law in September 2008. Neima claimed Mostafa divorced her according to Islamic practice in September 2008 by telling her "you are divorced", but Mostafa denied they had ever been married under Islamic law.

Mostafa said only an Islamic court could decide what constituted an initiation of Islamic divorce or separation. But his wife's lawyer argued that the contract had been signed without undue influence and was enforceable under common law like any other valid contract.

Neima Mohamed told *The Australian*: "It's very important for Muslim women to fight for their rights."

Whilst it is debateable whether the amount was a deferred mahr or a later condition of marriage, included below is some information on what constitutes a mahr.

What is Mahr?

Dr. Muzammil H. Siddiqi, former President of the Islamic Society of North America, states:

"*Mahr* is a wife's right, which becomes binding upon the husband once the marriage is contracted. It is fully payable after the consummation of marriage but if divorce occurs before the consummation of marriage then half of the *Mahr* is required to be paid unless the wife or her guardians waive it. Allah says: **“And give unto the women, (whom ye marry) free gift of their marriage portions...”** (An-Nisa': 4).

The Almighty also says: **“And those of whom ye seek content (by marrying them), give unto them their portions as a duty...”** (An-Nisa': 24).

Mahr is very important in Islamic marriage. Allah has used the word "*faridah*" for it. It means something fixed, decided and obligatory. It is obligatory on the husband to pay *mahr* to his wife unless she expressly by her own will without any pressure forgives him or returns the amount of *mahr* to him. *Mahr* belongs to the wife and it is to be given to her only. It is not the property of her parents or her guardian.

Mahr is not a bride price. It is a woman's right and it signifies a husband's love and appreciation for his wife. In the Qur'an it is called "*sadaqah*" which means a token of friendship. It is also called "*nihlah*" which means "a nice gift or present." *Mahr* also signifies a husband's commitment to take care of his wife's financial needs (*nafaqah*).

People often make part of *mahr* advanced (*mu`ajjal*) and part of it deferred (*mu'akkhar* or *mu'ajjal*). The advanced *mahr* should be paid at the time of *Nikah* while the postponed should be paid later. The wife has a right to demand it from her husband; it's her right."

The mahr can be varied at any time, provided the husband and wife agree on the terms and quantum of the variation. So it is permissible to change the mahr after marriage.