

Muslim Law

Mehr

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Introduction to Mehr

A Muslim matrimony is different from a Hindu one. A Hindu marriage is a sacred ceremony, however, a Muslim marriage has another aspect to it. A Muslim marriage has a contractual aspect to it. It is a civil contract between parties. Hence, a man and woman come into a contractual agreement to marry each other. Now, according to the principles of contract law we know that a contract cannot be valid unless there is a consideration.

Similarly, in a Muslim marriage, the concept of consideration finds its place in the form of 'mehr'. The principles of 'offer' and 'acceptance' also apply. The man offers the woman to get married and she either accepts directly or someone on her behalf who has been authorised to do so. The other mode of such a proposal can be by way of offering mehr. And once the woman accepts this mehr, it is deemed that she has assented to the marriage.

What is mehr?

Mehr is also called "dower". Mehr is in the form of consideration which is the right of a Muslim woman. She receives consideration for contracting to get married to the man. However, Islamic scholars, believe this to a mark of respect given to a woman.

Honour is given to the woman for leaving her home and get married to the man and in a new family. Therefore, it is considered as a vital part of the marriage since the husband gives this mehr to the wife as a way to respect them.

Moreover, it was held that it is a right of the wife to get 'Mehr' and even if there wasn't a specified mehr the wife is entitled to her right.^[1] Since mehr is a mere mark of respect, it shall be given by the man according to the means he has. A rich man shall pay, a higher mehr than a man who is not as able as him. Therefore, mehr is to be paid according to the financial status.

'Mehr', needs to be paid if a man divorces the woman before consummating the marriage and this is not a sin according to the Kuran. But this 'Mehr' should be pre-fixed or decided between the parties so that if there be a situation the 'Mehr' is paid to the woman as a matter of respect and honour.

Concept of 'Mehr' in details

When a 'Mehr' is decided between the parties, it becomes payable by the man. Especially when the offer of marriage is made by way of offering 'Mehr'. A 'Mehr' shall be paid by the man and then there can be no refund. The man cannot demand the 'Mehr' back from the woman under

any circumstances. However, it is believed that in case of a divorce, the 'Mehr' can be paid in half. But the payment is necessary and cannot be bypassed.

It is further believed that 'Mehr' keeps a check on the man. Since, divorce for a Muslim man can be quite easy as a process, and leave the woman high and dry. The mehr can be quite a burden since for a middle-class man to pay separate 'Mehr' could help in the prevention of men leaving their marriages.

When can a man not pay mehr

It is believed that when a marriage is not in the nature of a civil contract and there was no offer and acceptance along with consideration to the marriage then the concept of mehr does not apply. This is because a mehr is paid as a matter of consideration by the man and mehr can also be a way of offering his hand in marriage to the woman. But, this only applies to the couples who ratify to a contractual relationship.

On the other hand, marriage can also be only religious and spiritual in nature. And under such circumstances, a mehr shall not apply. And the man is not under an obligation to pay mehr to a woman.

Purpose of a 'Mehr'

There are several interpretations that the 'Mehr' is paid by the husband to the wife in the form of consideration since the marriage between the two in the nature of the civil contract. On the other hand, it is believed that where the marriage is not conducted in a contractual manner it is conducted in a religious manner. Where the need for a mehr does not really exist.

There is another set of belief that the 'Mehr' is paid to the woman with the purpose of sustaining herself in a case where the husband loses his life. Since the woman becomes the property and the responsibility of the husband, therefore, it becomes his responsibility to support his wife. Hence, in case of the unforeseen event of his death, the mehr shall support the woman and her child.

Imposition of Mehr

The husband is liable to pay the mehr. And this liability can be imposed in case the husband fails to pay the same to the woman. Now, since it has already been iterated that the mehr is the way a man offers for the matrimony and its acceptance can be by way of accepting the mehr by the woman or a person on her behalf. However, in cases where the mehr is unpaid and is yet to be paid by the husband the woman cannot refuse conjugal rights to him.

Since it is a matter of right after the marriage. The law provides for a remedy to the woman that she can file a suit for recovery of the mehr. The recovery can be made in the same manner as any debt is recovered in a court of law.

Illustration: Section 138 of Negotiable instruments act, 1881 the creditor can file against the debtor a suit for recovery of a sum of money which has been dishonoured. Now, in this case, it becomes essential to prove that the amount which was being paid was in the nature of a debt.

Similarly, the mehr is treated as a debt legally. Thereby, providing a Muslim woman the right to recover the mehr which is like any other legal debt. Therefore, the woman cannot deny conjugal rights to her husband but can file a suit for recovery of debt.

Right to lien

In a situation where the mehr is unpaid, and the husband passes away then the wife has not been paid the mehr she also has the right to recover the mehr from his heirs. This is to ensure that the woman is maintained even under circumstances where her husband dies. But the heirs are not required to pay the mehr from their own pocket.

The legal heirs are required to pay by way of the property inherited by the heir of the husband. Therefore, the woman is given the honour, support and respect by way of mehr to ensure she does not suffer especially in financial terms if her husband passes away. The woman further has the right to reserve the property of the husband before enforcing the will. This is similar to the right to lien under contract law.

Illustration: Under Section 171 of the Indian Contract Act, 1872 there exists right to lien, this can be enforced by the banker where the loan or debt is unpaid upon the security given. The banker shall hold a lien on the securities. Similarly, the wife has the right of lien upon the property of the husband.

And she can enforce this right till the non-payment of mehr. Therefore, this right shall be enforced by the wife after the death of her husband till the legal heirs who have the right over the property pay her mehr. The mehr is to be paid by the legal heirs through their share in the property and not by way of his personal property. The possession hence shall be retained by the woman till the mehr or 'Mehr' is paid.