

THE DOWRY IN ALGERIA⁽¹⁾

In her introduction, the author of this study raises the following questions: In what measures does the dowry factor influence woman's condition in Algeria? How do we explain the persistence of the dowry as a factor of social development while, all through its practice, it confirms social hierarchy and sex discrimination?

In treating the topic she begins by saying that a distinction must be made between «Mahr Musamma» or Sadaq, whose amount is fixed in the marriage contract and «Mahr el Mithl», an undetermined amount of money which should be given to the bride in case no precise amount has been fixed by contract.

The Mahr, or dowry, is defined by Muslim law as: 1) price of the right to possess the woman's body; 2) a condition of validity of marriage and a result of the marriage contract.

Since the Mahr is the price of defloration, the bride who is not a virgin has no right to a dowry. Consequently a widow upon remarriage is entitled to a lower price than that of a maiden.

As to the time of payment, it is a matter of agreement validated by contract. The amount may be paid at a precise date, or only in case of death or divorce. According to a tradition surviving in Tlemcen until fifty years ago, it was payable only ten years after marriage. In case of divorce motivated by the exclusive fault of the wife, the dowry is never paid.

Is the dowry a condition of the validity of marriage? It is so in theory but in practice it is a result of it, since only the consummation of marriage gives the right to a dowry if marriage has been concluded without stipulation or exclusion of such a condition.

Regarding this question, there is no unified opinion among judges. Some think that marriage occurring without previous agreement on the dowry is considered nil. They require that the nature and amount of the dowry be mentioned in the marriage contract by agreement of both parties.

Historical documents reveal that real estate was sometimes given to a bride in the form of Mahr. Investments in jewelry, gold or silverware have also

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been used. Among nomadic tribes, cattle and other commodities enter into the constitution of a dowry.

According to a recent study (1977), the dowry, while keeping its traditional form, has evolved in content. The bride's trousseau, forming an integral part of the dowry, is partly offered by the bridegroom and partly by the bride's father. The husband's offerings may represent exorbitant sums and reflect the latest progress in European textile industry. The same is true of the father's contribution, with the difference that it follows a more rational course and seems to counteract the commonly accepted idea that the bride is «bought» by the husband.

Are there cases that nullify the payment of a dowry? Some researchers place in this category marriage with the parallel cousin, considered for this reason as preferential. Other authors deny the existence of such a rule in Islam and use Koranic authority to support their view.

A representative case of exemption from dowry is the matrimonial exchange called «Badal», in which one bride is given in return for another. This kind of marriage is strongly condemned by public opinion, but tolerated on the ground that it is economically practical.

A final subject of controversy over the dowry is the differentiation between what is named and what is actually designated as Mahr; in other words, between gifts and dowry. Before the consummation of marriage, what the woman affirms by oath to possess is considered authentic. After consummation, it is the husband's assertions that are valid.

In practice, it seems that easy access to divorce has minimized more and more the function of the dowry as the absolute basis of marriage. As soon as marriage is consummated, the wife loses practically all right to her claims regarding the quality and nature of the dowry.

Having defined the object and nature of the dowry, we may be asked if its amount has been subjected to any limitation.

Neither the Koran nor the Hadeeth give any limits. No Maghribian code exists fixing the maximum amount of the dowry. If the sum has not been fixed by contract, (Mahr Musamma) the husband is obliged to give, after the consummation of marriage, a dowry of parity (Mithl), evaluated by Muslim jurisprudence through the following criteria: age, beauty, wealth, country, period, wisdom, religion, piety and virginity, taken in comparison with those of a woman of an equivalent milieu. The dowry of parity seems to cancel the possibility of misalliance, since the equality of rank of the spouses is required as the basis of marriage.

At present the above considerations are gradually losing ground. Marriage tends to become a political and social investment. The courts seem to consider as essential the original social milieu of the bride and her professional status, because these criteria open the way for informal intervention, of a sociological and humanitarian nature, on the part of the judges.

Another aspect of this study concerns the consolidation and the annihilation of the dowry, resulting from the modality of its application.

How is the dowry delivered? Who guarantees its payment?

As a general rule, the whole dowry is exigible after the consummation of marriage. If the husband dies, the woman has the right to receive it. In case of her death, it is due to her heirs. The payment is guaranteed by the husband or by a member of this family. Presently, the husband's father or guardian remains traditionally the guarantor of payment in urban bourgeois society and in well-to-do rural milieus. In less fortunate societies, the question becomes an object of solidarity and cooperation between members of the extended family.

Recent social upheavals in Algeria, however, have destabilized family solidarity and the problem of long term debts has been a threat to the well-being of many couples. For this reason, a new movement has appeared in urban environments, inducing young people to assume by themselves the charge of the dowry, which makes them independent of any financial or moral obligation imposed on them by the family.

The dowry was instituted, and continues to be in Muslim countries, a symbolic value and a regulator of social reproduction, but it is especially a test of applicability and protection for women.

If this institution had its full significance in pre-capitalist societies and concerned particularly the sectors of traditional activities such as commerce and handicrafts, what significance would it have in modern Algeria, where the economic system leads to a progressive general increase in salaries resulting from a stabilization of employment?

Active living, the promotion of women into public functions and the progressive availability of women's education, are evidences of a new and irreversible experience. How would a dowry, under the present conditions, remain a form of insurance and security for a woman in case of divorce or death of the husband?

Why should a dowry be required for a young girl who has permanent employment, like that of a man? Why should not a man be entitled to a dowry if he has only a temporary job or a low salary? Why should he not be protected against the contingencies of life, such as divorce or the death of his wife?

According to the preliminary project of the new family code (art. 42), a salaried wife will have to contribute to the family budget, while in law and tradition, she has no right to share in any direction and decision-making within the family. In case of controversy between couples, they are still referred to the traditional family counsel emanating from the extended family.

Our inquiry permits us to state that, in Tlemcen, a new movement is emerging among young couples, aiming at joint ownership of property and acquisitions, and the investment of the dowry in the purchase of commodities. According to traditional law, the couple is subject to the system of separation of

property, which is a source of loss to salaried couples, especially to the wife whose dowry has been invested into land, belongings or funds registered in the husband's name. Also in case of divorce, her salary is subject to the law of retaliation: upon her death, it passes by inheritance to the members of the husband's family, since the woman's share in it is insignificant.

In conclusion, the dowry as a means of protection and security for the woman raises a number of questions and problems created by changing social conditions and which will have to be studied and discussed in a subsequent work.