

## Comparing Dowry System and Mahr: Cultural Practices Versus Ottoman Law in Turkish Matrimonial Traditions

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### ABSTRACT

*Marriage, a social institution with various obligations and customs, involves legal responsibilities like dowry, alimony, and cohabitation. Traditional practices like bride price, gift-giving, breastfeeding rights, and dowry are deeply rooted in societal culture. This study focuses on dowry, a multifaceted concept encompassing personal and household items prepared for the bride and those she brings to her marital home. However, the distinction between these traditional customs and the dowry mandated by Islamic Law often must be clarified to avoid misconceptions and misinterpretations. This study aims to distinguish matrimonial practices' religious and cultural origins and elucidate their distinctions. Islamic law mandates that the groom provides the dowry directly to the bride, contrasting with traditional dowry practices often rooted in cultural traditions. Other customs like bride price and gift-giving further complicate the landscape of matrimonial customs. Islamic law provides clear guidelines for marital obligations through religious scriptures, but traditional practices often lack definitive boundaries, leading to asset distribution complications upon marriage dissolution. Historical records from the Ottoman period provide insights into the judiciary's role in resolving dowry-related disputes. The urgency of developing comprehensive legal regulations concerning traditional marital practices, such as dowry, is underscored, as it is crucial for fostering clarity and fairness in marital relations. This study adopts a comprehensive approach, utilising historical records from the Ottoman period, specifically the Istanbul Kadı Registers. These registers provide detailed accounts of dowry-related disputes and resolutions, serving as the cornerstone of our understanding of the judiciary's role and the legal provisions related to dowry practices. A wide range of secondary sources, including historical texts, legal commentaries, and contemporary scholarly articles on Islamic matrimonial law and Turkish cultural practices, were also analysed to deepen the analysis.*

*Keywords: Islamic law; marriage; tradition; dowry; bridewealth; dowry*

### ABSTRAK

*Perkahwinan, sebagai satu institusi sosial dengan pelbagai tanggungjawab dan adat, melibatkan tanggungjawab undang-undang seperti mas kahwin, nafkah, dan tinggal bersama. Amalan tradisional seperti harga pengantin, pemberian hadiah, hak penyusuan, dan mas kahwin berakar umbi dalam budaya masyarakat. Kajian ini memberi tumpuan kepada mas kahwin, satu konsep pelbagai aspek yang merangkumi barangan peribadi dan rumah tangga yang disediakan untuk pengantin perempuan dan yang dibawa ke rumah perkahwinannya. Walau bagaimanapun, perbezaan antara adat tradisional ini dan mas kahwin yang diwajibkan oleh Undang-undang Islam sering kali tidak jelas, membawa kepada salah tanggapan dan salah tafsiran. Kajian ini bertujuan untuk membezakan asal-usul agama dan budaya dalam amalan perkahwinan dan menjelaskan perbezaan mereka. Undang-undang Islam menetapkan bahawa pengantin lelaki membayar mas kahwin secara langsung kepada pengantin perempuan, manakala amalan mas kahwin tradisional berakar dalam tradisi budaya. Amalan lain seperti harga pengantin dan pemberian hadiah turut merumitkan lagi landskap adat perkahwinan. Undang-undang Islam memberikan garis panduan yang jelas untuk tanggungjawab perkahwinan melalui kitab suci agama, tetapi amalan tradisional sering kali kurang mempunyai batasan yang jelas, menyebabkan komplikasi dalam pengagihan harta apabila perkahwinan berakhir. Rekod sejarah dari zaman Uthmaniyyah memberikan pandangan mengenai peranan kehakiman dalam menyelesaikan pertikaian berkaitan mas kahwin. Kepentingan untuk membangunkan peraturan undang-undang yang menyeluruh berkaitan amalan perkahwinan tradisional, seperti mas kahwin, ditekankan, kerana ia penting untuk mewujudkan kejelasan dan keadilan dalam hubungan perkahwinan. Kajian ini mengguna pendekatan menyeluruh, menggunakan rekod*

*sejarah dari zaman Uthmaniyyah, khususnya Daftar Kadı Istanbul. Daftar ini menyediakan akaun terperinci mengenai pertikaian dan penyelesaian berkaitan mas kahwin, yang menjadi asas kepada pemahaman kita mengenai peranan kehakiman dan peruntukan undang-undang berkaitan amalan mas kahwin. Pelbagai sumber sekunder, termasuk teks sejarah, ulasan undang-undang, dan artikel ilmiah kontemporari mengenai undang-undang perkahwinan Islam dan amalan budaya Turki, juga dirujuk untuk memperkayakan analisis ini.*

*Kata kunci: Undang-undang Islam; perkahwinan; tradisi; mas kahwin; harga pengantin; mas kahwin*

## INTRODUCTION

In religious and legal contexts, men and women generally enjoy equal obligations. However, within matrimonial law's domain, spouses hold shared and distinct rights and responsibilities (Gharaibeh & Islam 2024; Deniz & Özgür 2024). Common to both partners are expectations of mutual respect, affection, fidelity, and fulfilling marital duties, including intimate companionship, cohabitation, caregiving, and the upbringing of children (Khallāf 1938: 75). Moreover, Islam assigns specific responsibilities to each spouse, considering their inherent gender roles and characteristics. Additionally, customary practices often supplement legal mandates, granting certain rights and imposing particular obligations on marital partners (Samuri 2020). For instance, within the framework of the marriage contract, it is customary for the husband to undertake the responsibility of providing dowry and alimony to his wife throughout the marriage (Leese 2019).

Conversely, the wife typically agrees to reside in the marital home provided by her husband (Çeker 2016:71). Furthermore, the tradition of bestowing gifts or monetary offerings upon the spouse or their family persists across diverse societies, known by various names such as bride price (başlık), dowry (çeyiz), and Breastfeeding rights. This practice, rooted in historical precedent, endures into contemporary times, with the bride's family often presenting gifts or financial contributions to the groom or his family during engagements, holidays, and significant occasions while preparing a dowry for their daughter's marriage.

Dowry and alimony are legally binding aspects of the marriage contract, while others stem from the unique cultural traditions of each society (Khanal & Sen 2020; Dedeoğlu 2022). However, there is often confusion between these practices, leading some to perceive non-religious customs as religious obligations mistakenly. For instance, practices like "bride price (başlık)," which persist in some areas of Turkey and have traditional roots, are sometimes misconstrued as the Islamic dowry requirement imposed on men.

Such misunderstandings could foster misconceptions about Turkish society and Islamic principles. Hence, it becomes imperative to discern the origins of these practices, mainly whether they stem from Islamic teachings. This is crucial as certain practices, like the provision of bride price, are sometimes unjustly justified under the guise of religious legitimacy. Conversely, a misconception exists that the bride's family is erroneously believed to burden the groom's side with dowry expenses, often mislabeled as cash dowry or bride price.

This research aims to clarify the distinction between the custom of dowry and other matrimonial practices, such as bride price (başlık), specifically focusing on the dowry (çeyiz) provided by the bride's family. This focus aims to mitigate misunderstandings surrounding these practices. Therefore, it is crucial to differentiate between legal obligations and customary traditions. While dowry and alimony are obligatory outcomes of the marriage contract, it will be demonstrated that practices like dowry, gifts, bride price, and Breastfeeding rights are traditional customs intended to foster collaboration, unity, and familial cohesion between prospective spouses and their families. Despite its traditional roots, the division of dowry assets can pose legal challenges, particularly upon the dissolution of a marriage. The examination of the Istanbul Kadı Registers revealed numerous instances illustrating this issue. Hence, while originating from tradition, it is evident that dowry also has legal implications for its outcomes. This study further endeavors to establish a legal framework for dowry, envisaging it as a potential remedy for the complexities arising during the distribution of dowry assets, particularly in marital separation.

This study will initially provide a brief overview of the historical evolution of dowry practice, considering its widespread presence across diverse societies as a significant social phenomenon. Subsequently, the legal essence of dowry, predominantly explored within the context of traditions, will be scrutinized through the lens of Islamic law. Diverging from previous research on this topic, the aim is to establish a legal framework

for dowry, which primarily carries customary significance, drawing insights from court records dating back to the Ottoman Period.

## METHODS

The study explores the distinction between dowry and other matrimonial practices, focusing on the dowry provided by the bride's family. It identifies dowry and alimony as obligatory outcomes of the marriage contract, while other customs like dowry, gifts, bride price, and breastfeeding rights are customary. The research also addresses the legal challenges of dividing dowry assets upon marital dissolution, using historical instances from the Istanbul Kadı Registers. Based on Ottoman court records, the study proposes a legal framework for dowry to address dowry asset distribution complexities, especially in marital separation cases. The findings underscore the historical continuity and evolution of dowry practices.

This study uses historical records from the Ottoman period, specifically the Istanbul Kadı Registers, to analyze dowry-related disputes and resolutions. It uses qualitative methods to explore dowry practices' evolution, legal essence, and societal implications. The study gathered data from court records, historical texts, and legal documents to trace the evolution of dowry practices and their socio-legal contexts. It also reviewed legal texts, Islamic law sources, and contemporary legal documents. A comparative analysis was conducted to distinguish between religiously mandated dowry practices and culturally rooted customs. The research design employs a historical and legal analysis research design to understand dowry practices comprehensively.

## THE ORIGIN AND SEMANTICS OF DOWRY

The term 'dowry' finds its roots in the Arabic word 'جَهَاز/جِهَاز', (Jahāz/jihāz) denoting 'materials such as goods, foodstuffs, and weapons required by travelers, brides, and military campaigns.' In the Quran, this term appears twice verbally as 'Jahhaza,' signifying 'preparation for the traveler' (Quran 12:59-70). While predominantly employed in hadith sources to connote 'preparing soldiers for military endeavors' (Bukhārī 2002: 37), it also carries the connotation of preparation for the bride (Ḥanbal 2003).

Initially adopted into Turkish as 'cihâz,' the term has evolved in common usage to be known as 'çehiz' and 'çeyiz' (Dib 1993: 296). In this context, 'çeyiz' encompasses all personal and household items prepared for the bride-to-be and the possessions she brings to her husband's home upon marriage (Arya-Bhattacharya 2023).

Çeyiz, a tradition observed across various societies, persists to this day with variations in its content, quantity, and the responsible party for its preparation. In Jewish tradition, distinct from the Mahr (dower) concept, the term 'drahoma' denotes the goods or possessions a daughter takes from her father's household to her husband's. While the practice of dowry traces back to ancient times, its formalization occurred during the Talmudic Period (Schereschewsky 2007: 93–98). Examples from historical accounts, such as Rebekah, who brought gifts from her father's home upon marrying the prophet Isaac, or Pharaoh granting a parcel of land from Gezer to his daughter (Kitab-ı Mukaddes-Krallar: 16), prophet Solomon's wife, illustrate the dowry tradition (Algül 2018:116).

The tradition observed in Judaism of the bride's family providing a dowry to their married daughters appears to have parallels in Christian societies. However, it is noted that giving dowry in Christianity is not rooted in religious doctrine; instead, it is a custom inherited from Ancient Greece and is not obligatory for marriage but is used as a tool of cooperation. Nevertheless, upon examining instances of its implementation, it becomes evident that dowry can inadvertently lead to the perception of daughters as burdens, delay marriages, and contribute to population decline (Tezcan 2019: 416). The tradition of 'drahoma' or dowry prevalent among Greeks and Armenians in European countries and Turkey entails bestowing upon the daughter of the family resources to establish and sustain a business and attain independence from her family. The Ottoman Legal Family Decree (Osmanlı Hukuki Aile Kararnamesi-OHAK) concerning the gifts between engaged parties states, 'Grant provisions pertain to items exchanged as gifts between parties' (Çeker 2016: 2). Furthermore, it is specified, 'The provisions of the second article also extend to the dowry of non-Muslims' (Çeker 2016: 3). However, it is noteworthy that the practice of dowry persists in many European countries today (Barnouw 1975: 165).

Among Central Asian Turks, the dowry brought by the bride from her father's household was referred to as 'koşantı,' while among the Yakuts, it was termed 'engene.' However, the daughter's family didn't need to provide this dowry (Arsal 1947: 336; Gümrükçüoğlu 2013: 227)

In pre-Islamic Arab societies, the legitimacy and validity of a marriage contract hinged upon the fulfillment of a specific payment to the woman (Sawih Milad et al 2022). Offering a dowry to a woman symbolized a financial transaction and an expression of honor. However, rather than directly transferring this payment to the woman, it was typically collected by her guardian and allocated towards the expenses associated with the dowry she would bring to her husband's household (Alī 1970: 530). This historical practice underscores the existence of dowry customs within pre-Islamic Arab culture.

The Islamic faith has perpetuated this tradition through reformative measures. Indeed, Prophet Muhammad (peace be upon him) exemplified this by preparing a dowry for his daughter Fatima from his personal possessions, which included a velvet cover, a water skin, and a pillow filled with fragrant marigolds (Nasā'ī 2001: 81).

Following the Prophet Mohammad's example, Muslim Turks upheld this tradition, striving to provide generous dowries for their daughters (Çolak 2005: 132). Indeed, the dowry tradition persisted in Anatolia throughout the Seljuk and Ottoman periods. Using the term 'cihâz' in court records to denote household goods prepared by families for newly married women during the Ottoman era is significant evidence of this tradition's continuity. In one such record, dowry is described as follows: (1)



Before the court, Ayşe Hanım, sister of Ibrahim and resident of the Sofular neighborhood in Eyüp district, presented a statement. She asserted that her daughter, Ematullah binti Mustafa, possessed seven pillows, three cushions, a mattress, two side rugs, a middle felt, two quilts, two pots, and ten large and small plates. Ibrahim claimed ownership of a basin, a jug, a bath bowl, a box, and a blanket and requested their return. In response, Ematullah, daughter of Mustafa, contended that the items in question were given to her as part of her dowry (cihâz). The court accepted her assertion, dismissing the case and allowing her to retain the items in her possession, thereby rejecting Ibrahim's request for their return (Yılmaz, 2010, p. 210).

Among Ottoman citizens who were Jewish and Christian, it is observed that the term "cihaz" (Yılmaz 2010: 252) and occasionally 'drahoma' were utilized to refer to the real estate (Yılmaz

2010: 290), money, goods, or property presented by the bride to the groom upon marriage. In a particular record, the term 'drahoma' is mentioned as follows: (2)



‘The petitioner, Dimitri, son of Yani, reached an agreement at the Galata court. He accepted 300 kuruş/coins out of the 1701 kuruş he lent to Nikoli from his personal funds, in addition to the Akçe mentioned in the petition and referred to as drahoma, on behalf of a ‘dhimmi’ (a non-Muslim subject of the Ottoman Empire) named Nikoli, the son of his brother-in-law, Konstantin. Subsequently, upon mutual admission before the court that they had absolved each other of their debts, the Istanbul court ruled by the request above’ (Yılmaz, 2010, p. 286).

The tradition of dowry, firmly established in Anatolia, has ushered in various customary practices. Presenting dowry items for inspection before the wedding remains prevalent today.

According to this tradition, expressed with words such as ‘çeyiz yazma’ and ‘kesim doldurma’ to be a means of proof in the future, the dowry items given to the girl were written on a piece of paper (Karakelle & Özbağı 2019: 681) called the dowry deed in the presence of witnesses, and this written list was delivered to the girl. Dowry was also an indicator of the economic status of the girl’s family and the period in which the girl lived. Additionally, dowry reflects the financial standing of the bride’s family and the contemporary era. Although there are some differences within the framework of changing social and economic understanding, the custom of preparing dowry continues today. Apart from personal belongings, the girl’s side usually buys bedroom and kitchen furniture, and the boy’s side usually buys living room sets (Nutku 1993: 297–298).

#### PRACTICES SIMILAR TO DOWRY (KALIN/BAŞLIK)

In almost all religions and cultures, the marrying man gives particular money or property to the girl’s side under various names (Pourtaheri et al 2024; Othman et al 2017). A payment called ‘kalın’ is also found in pre-Islamic Turkish societies.

In old Turkish law, ‘Kalın’ means the property or money given by the man to the girl’s side. In Yakuts, this word is called “kaling,” the

amount varies depending on the financial situation of the party making the payment. This tradition, also known as ‘Başlık’ today, is discussed under the concept of ‘mahr’ by some scholars (Tezcan 2019: 420). However, behind these approaches lies the attempt to establish a similarity between the pre-Islamic Turkish family structure and Islamic family law, the understanding of ignoring traditional practices or wrong practices. Although the “kalın/başlık,” mahr, and çeyiz are similar to each other in some respects, there are differences between them in terms of application and legal quality. While the girl prepares the çeyiz, the *kalın* is the money or property given by the man to the girl’s family, and the *mahr* is the money or property given by the man to the girl herself (Aksoy 1991: 88).

The term ‘kalın,’ distinct from dowry, encompasses four components:

1. Kara mal (Black property) refers to the money presented to the bride’s father, primarily allocated for the bride’s dowry.
2. Yelü: denotes the gift bestowed by the groom to his fiancée during their initial meeting, often called the “face” gift.
3. Tüy mal (Feather goods): These goods range from 20 to 60 horses in quantity and are offered to cover wedding expenses.
4. Süt hakkı (Breastfeeding rights): refers to the compensation the prospective groom pays to the bride’s mother for her efforts in nurturing, raising, and caring for the bride until the present day (Akgündüz 1992: 132) Gümrukçuoğlu 2013: 227).

The tradition of giving ‘kalın/başlık’ persisted even after the Turks embraced Islam. However, using the terms ‘kalın’ and ‘başlık’ in specific sources instead of ‘mahr,’ which began to be practiced with Islam and often paid in advance, has led to the misconception that these two practices are identical. This misconception is further strengthened by the fact that both ‘mahr’ and ‘kalın’ are property given by the man to the woman or her family during marriage reinforced this opinion. However, these similarities do not indicate that these two applications are identical. The mahr is personally given to the woman who is to be married, and she retains the right to dispose of it as she sees fit.

Consequently, there is no obligatory requirement to prepare a mahr. Because the mahr is given to the woman who will marry herself, she has the right to dispose of it as she wishes. With this, there is no obligation to prepare a ‘çeyiz.’

On the other hand, mahr is a result of the marriage contract. The parties determine the amount or the equivalent amount is determined. The payment can be made immediately after the marriage, or it can be decided to pay it during the marriage or during the divorce. The amount of bride price (başlık) paid by the man to the girl’s family is determined before the marriage, and its payment is guaranteed. The girl’s family prepares a ‘çeyiz’ for their daughter with some of the bride price they receive. Başlık (bride price), which is similar to dowry (çeyiz) in terms of where it is spent, has an entirely different nature from ‘çeyiz’ in that the man gives it.

In the Ottoman Family Law Decree issued in 1917, the bride price (başlık) practice was abolished by stating, “In order to marry off and hand over a girl, it is forbidden for parents or relatives to receive money or any property from the man to be married (Çeker 2016: 90).” Despite this legal regulation, the practice of receiving bride price (başlık) continues to be implemented in some regions of Turkey, albeit to a lesser extent. However, this practice is decreasing daily, and even in some areas, the tradition in question has been completely abandoned. It is believed that the following two factors, as well as urbanization, the perception of women in the modern period, and feminist discourses, are influential in the decline or abandonment of the practice. The first is that the bride price practice makes marriage difficult and puts those going to get married under a tremendous financial burden. Another factor is the teachings

of the Islamic religion that encourage marriage and praise marriages that are less burdensome. In addition, it can be said that the social perception that the bride’s price, which causes unfair gain, is purchased by families as a sale price for their daughters has also effectively reduced this practice.

#### MECHANISM OF MAHR

Mahr is the money or property that a man to be married gives or promises to offer to the woman upon marriage; this right is accrued in favor of the woman with the marriage contract. In other words, as it is one of the legal consequences of the marriage contract, the man becomes obliged to pay the *mahr* with a marriage contract concluded without specifying or mentioning the *mahr*. Even if it is clearly stated that *mahr* will not be given, the woman is entitled to *mahr-i misl* (commensurate dowry) through the contract. The thing to be delivered as mahr must be money, goods, or objects of material value. The amount determined during or before the marriage is called *mahr-i musemma* (the dowry in which the type and value are clearly stated and agreed upon). In cases where the mahr is not determined, an equivalent *mahr*, called *mahr-i misil*, must be given. In deciding the *mahr-i misl*, the mahr of the girls, who are among the close relatives of the woman’s father, who is close to her own status, is taken as the basis. If she does not have a close relative, she is given a *mahr* equal to the mahr received by relatives women who are her peers in the area where she lives (Çeker 2016: 80). The entire *mahr* can be paid in cash, or it can be paid partially or entirely at a later date. *Mahr* paid in advance is *mahr-i mu’ajjal*; the mahr whose payment is postponed is called *differed mahr*.

In the Quran, it is commanded to give mahr to the women who marry him (Baqarah 2:229, 236-237; Nisā’ 4:4, 24, 25; Mā’idah 5:15). Additionally, it is emphasized in the hadiths (Bukhārī, 2002, Hadith no: 14, 32, 49-56; Nīsābūrī, 2001, Hadith no: 13; Abū Dāwūd, 2009, Hadith no: 29-32) that *mahr* should be given, and details of the fiqh provisions regarding *mahr* are included. Considering the verses and hadiths, Islamic scholars unanimously accepted that *mahr* is a religious necessity.

According to Sura Nisa, *mahr* is the right of the married woman and is her property. The verse “Give women their mahr with their consent

(generously)...” indicates this situation; therefore, women can dispose of their *mahr* if they wish (Quran 4:4.; Kāsānī 1996: 429). The OHAK law states that “*Mahr* is the woman’s property, and she cannot be forced to make *cihaz* (dowry) with it” (Çeker 2016: 89) and that the married girl is not obliged to prepare a dowry (*çeyiz*) in return for *mahr*. In other words, the *mahr* given by the husband cannot be equivalent to a dowry (*çeyiz*), but household goods can be provided as a *mahr*, or the woman can buy household goods and prepare a dowry (*çeyiz*) with the given *mahr*. In this case, the household goods the woman buys, such as *mahr* or the dowry she prepares, become her private property. In this respect, *mahr* differs from the bride price (*başlık*), which is widely practiced among the Turks and imposes the obligation to prepare a dowry (*çeyiz*), albeit to a certain extent. However, this principle has yet to be fully reflected in practice everywhere (Aydın 2003: 390). On the other hand, according to research conducted on Turkish society, it has been determined that women whose income level increases spend the *mahr* they receive on their spouses rather than on their own needs. It is also possible to interpret this situation as not only the woman’s needs already met by her husband but also that she does not need the money in question due to her own income (Gümrükçüoğlu 2013: 248).

As a result, *mahr*, a legal consequence of the marriage contract, is different from bridewealth and *çeyiz* (dowry), a social phenomenon and traditional practice. In addition, The legitimacy of *mahr* stems from religion, whereas bridewealth (*kalın/başlık*) and *çeyiz* (dowry) are purely social customs. Therefore, it is incorrect to conflate these terms interchangeably despite similarities in the expenditures made by the parties involved.

#### ÇEYİZ (DOWRY) IN LEGAL PERSPECTIVE

The *çeyiz* (dowry) issue is discussed in two contexts in Islamic law sources. The first is whether the woman has to prepare a *çeyiz* (dowry) with a portion of the *mahr* she receives. Also related to this is whether the girl to be married will bear a financial responsibility in return for the *mahr* payment of the man to be married. Another context where the issue comes to the fore is the issue of sharing *çeyiz* (dowry) items in case the marriage ends somehow. We will address the issue from these two perspectives.

#### PREPARING ÇEYİZ WITH THE RECEIVED MAHR

Although the obligation to prepare a *çeyiz* (dowry) remains contentious, there is no obstacle when a woman chooses to utilize the *mahr* she has received or her funds to assemble a *çeyiz* or wishes to contribute to the household expenses where she resides with her husband; she is free to do so. Such decisions by the woman are governed by the provisions concerning gifts. Additionally, it is a widespread tradition in Islamic countries for families to arrange a *çeyiz* for their daughters upon marriage and assist in setting up the new household where they will reside with their husbands (Zaydān 1993: 147). Indeed, during the Ottoman Period, it was observed that some fathers, before their passing, designated a portion of their assets for the *çeyiz* of their unmarried daughters through their wills, which were then formally recorded by petitioning the court (Yılmaz 2010: 59).

According to Hanafis, a woman cannot be forced to make a *çeyiz* with the *Mahr* given to her or with her personal property (Khallāf 1938: 103; Bilmen 1976: 147–148). Since the husband must provide alimony (*nafaqa*) covering all the woman’s needs after marriage, the woman can marry without a *çeyiz* (Döndüren 1995: 233). The alimony to be supplied to the woman includes not only her food, drink, and clothing but also the provision of the house in which they will live by her husband and the furnishing of that house with the necessary items (Kāsānī 1996: 22–23; Ekşi & Uddin 2023: 360). In this sense, the house where they/she will live must have furnishings necessary for sleeping, such as beds, quilts, pillows, kitchen supplies necessary for eating and drinking, and household items required according to customs.

Shafis and Hanbalis have the same opinion as Hanafis; according to them, food and drink, clothes, housing, and all the items necessary for housing are included in alimony, and alimony belongs to the husband (Abū Zakarīyā 1991: 43; Qudāmāh 1997: 355). Therefore, the woman cannot be forced to prepare a *çeyiz*, but according to some Hanbali scholars, if the girl’s father stipulates that all or part of the *mahr* be given to her during the marriage, this condition is complied with and the *Mahr* is given to the father. Additionally, she can request the man to prepare a *çeyiz* for her daughter by not taking a portion of the *mahr* (Qudāmāh 1997: 118–119). This view, which brings to mind the *başlık* (bride price)

application, is not an accurate approach because the entire mahr and the authority to dispose of it belongs entirely to the girl who gets married.

According to the Maliki school of thought, the mahr belongs to the married girl, but in some cases, she has to prepare a *çeyiz* with a portion of the mahr she receives. If the mahr is delivered to the girl to be married as cash or equivalent property before the marriage, and if nothing other than the mahr is mentioned for the *çeyiz*, if it is not customary to give any property other than the mahr for the *çeyiz*, the girl must prepare a *çeyiz* with a portion of the mahr she received (Abū Muḥammad 1999: 448).

In Ottoman Law, which is based on the Hanafi interpretation of Islamic law, the Family Law Decree clearly states that the woman is not obliged to prepare a *çeyiz* with the mahr she receives: “The mahr is the property of the married woman, and she cannot be forced to make a *cihâz* (*çeyiz*) with it (Çeker 2016: 89).”

One of the issues discussed within the scope of household goods is whether a girl who is getting married is given some money outside of the mahr to prepare a *çeyiz* or buy a particular item, whether she is obliged to prepare a *çeyiz* or buy the item in question with this money. If a woman is given property or money other than mahr and it is stipulated that she prepares a *çeyiz* with this money, the woman or her guardian must take the *çeyiz* in question or return it. In addition, if there is such a practice in custom, *çeyiz* must still be taken (Ābidīn 1966: 158, 585; Abū Zahrah 2005: 227–228).

Perspectives outside the Hanafi sect perceive the assets allocated to the woman as mahr, while any monetary gifts received by the bride’s brother or other relatives are deemed unjust enrichment. Jurisprudents belonging to the Hanafi sect, which is common in Turkey, where some practices such as bride price (*başlık*) and Breastfeeding rights exist, have adopted a different view from other sects on this issue. They considered the *başlık* as a gift and subjected it to the grant provisions. The money given to the father in return for preparing a *çeyiz* for his daughter was seen as mahr if it was mentioned during the contract; if it was not mentioned, it was seen as a conditional grant in return for a price or, in some cases, as a gift, and whether it could be taken back was determined accordingly. It is understood that local customs, historical epochs, and the fiqh approach influence the emergence of different views on these issues (Nujaym 1997: 324–326; Akgündüz 1992: 133).

Based on all these views, it can be said that it is not an appropriate approach to consider the money and property that the bride’s relatives requested from the groom before the contract in exchange for marrying the adult daughter as illegitimate or to regard them as mahr directly and subject them to its provisions. Taking into account customary practices contrary to Islam, a correct approach may be to subject the amount received to the provisions of the conditional grant received from the groom in return for preparing a *çeyiz* and to accept that if the condition is not met, all of the given amounts can be taken back (Yargı 2019: 246).

As a result, it seems that all jurists agree that, except for the cases made by the Malikis, the girl to be married does not have to prepare a *çeyiz* with the mahr she receives and cannot be forced to do so. If she has voluntarily prepared a *çeyiz* with all or part of her mahr, these items will also belong to her. Mahr is the personal property of the girl to be married, and she can dispose of it as she wishes. In addition, the relatives of the girl who is getting married do not have to prepare a *çeyiz* because items that have become customary to be ready as *çeyiz* are included in the scope of alimony.

Hence, the obligation to provide alimony entails providing items typically included in the *çeyiz* (Nurdan 2023). Nonetheless, suppose the man has given money or goods to the bride’s family specifically to prepare or purchase a *çeyiz*. In that case, the bride’s family must use this money for that purpose. For instance, according to a record in the Üsküdar Court Registry No. 17 (H.956-963/M.1549-1556) from the Ottoman Period, a sum of 2000 Akçe was provided to prepare a *çeyiz*. This amount was sought back through legal channels from the bride’s father when the *çeyiz* was unprepared (Yılmaz 2010: 230). However, as the groom’s father failed to present evidence of the transaction, the court ruled in favor of the bride’s father. Conversely, there are instances where the bride’s father may provide money to the groom’s father with the expectation that a *çeyiz* will be prepared. In such cases, if the *çeyiz* is not furnished as agreed, it may lead to legal disputes, as documented in court records (Yılmaz 2010: 252).

All these instances highlight that *çeyiz*, unlike mahr and alimony, primarily serves as a customary practice to support the bride-to-be’s household and her family. Consequently, the legal dimension of *çeyiz*, which is predominantly traditional rather than legal, becomes prominent upon the dissolution of the



marital union. Disputes regarding *çeyiz*, including ownership of the items involved and their equitable distribution between spouses, typically arise during this phase.

#### PROCEDURES OF DOWRY ITEMS IN CASE OF MARRIAGE TERMINATION

If the marriage ends, how to share the property acquired during the marriage, including *çeyiz*, is one of the issues discussed in Islamic Family Law. The basic approach to this issue, the details of which will be given below, is primarily the sharing made by agreement between the spouses. Otherwise, if the person who claims that the goods belong to him proves this with evidence, the goods belong to that person. If the claimant cannot confirm this, at this point, the items generally used by men, such as clothes and weapons, are given to the man, and the items used by women, such as jewelry and clothing, are presented to the woman. However, there is no agreed-upon method (Köse 2019: 106) for sharing the belongings that may belong to both of them; there are those who say that it is shared half and half between the two, and there are also those who say that it belongs to the man (Bilmen 1976: 151). For example, according to Abu Yusuf, the amount equal to the dowry prepared by women who are equal to the woman is given to the woman (Sarakhsī

1993: 214). According to custom, a woman cannot be without a *çeyiz*, and the remaining belongings are presented to the husband. Suppose there is a disagreement between husband and wife regarding the household goods purchased by the woman's guardian (Abū Zahrah 2005: 228). In that case, the goods belong entirely to the woman, by the consensus of the *madhab*. As a matter of fact, a father whose daughter divorced requested to take back the items he gave as *çeyiz* from his husband on behalf of his daughter, which was recorded in the court records (Yılmaz 2010: 613). In another record, the woman whose husband died recorded that she asked her father-in-law for the items she had taken from her father's house as *çeyiz* and eventually received all the items she wanted (Yılmaz 2010: 389).

Since jurists other than the Hanafi sect regard all property given to women, other than mahr, as illicit gain, they said that the husband is allowed to reclaim such assets at any point, either before or after marriage. In contrast, the Hanafi scholars classify property given to the bride or her family—such as bride price (*başlık*), Breastfeeding rights, and items constituting the *çeyiz* provided by the bride's father—as gifts in the separation of spouses. This stance is exemplified in court cases where *çeyiz* was assessed under the purview of gift regulations. One such instance was documented in a court record as follows: (3)



Ali's daughter Ayşe Hanım, who lives in the Turbâli neighborhood of Üsküdar, bought ten pillows, two head pillows, five cushions, four rugs, three mattresses, seven quilts, four lidded pots, one large tray, one small tray, a basin and pitcher, a bowl with a lid, a bath bowl, a coffee tray, a jug, a strainer, a spoon and two coffee pitchers were used as devices for his daughter Safiye. He said that he handed over the items as a gift (as a *çeyiz*) and that his daughter also received these items, so these items had nothing to do with him. The court recorded Ms. Ayşe's confession and decided that Ms. Safiye could dispose of these properties as she wished (Yılmaz 2010: 56).

For this reason, if a father dies without delivering the dowry items he bought for his daughter to his daughter, other heirs can receive a share of the inheritance from these items because the grant is only realized when the donated person gets the goods. Therefore, since her father died before receiving the goods taken as *çeyiz* for her, the girl

who would marry could not become the owner of those goods (Bilmen 1976: 148). On the other hand, since it is not generally accepted to return the gift, those who treated the dowry (*çeyiz*) given to the girl as a grant said that the dowry (*çeyiz*) goods could not be returned after they were delivered. In a case recorded in the Ottoman Court records, the girl, who

said that the *çeyiz* was donated to her, asked the court to reject her mother's request, who wanted the items given as dowry back, and the court decided in line with the girl's wishes (Yılmaz 2010: 210).

According to the Malikis, who establish a connection between *çeyiz* and *mahr*, the value of items the woman purchases is her property as long as it does not surpass the *mahr* amount. However, if there is a customary practice of setting a *çeyiz* higher than the *mahr*, the woman must follow this custom when preparing household goods. Consequently, upon dissolution of the marriage, *çeyiz* items within the *mahr* limit are treated as part of the *mahr* (Rushd 1982: 24). Any items exceeding the *mahr* amount are regarded as the woman's personal possessions (Abū Zahrah 2005: 227).

Based on all these different opinions, it is also possible to say that there are customary practices such as the man's alimony obligation, the issue of ownership of property acquired together, and bride price (*başlık*), Breastfeeding rights, and *çeyiz*. However, considering that women contribute to the household economy due to social change today, *çeyiz*, a customary practice, can be subject to specific regulations in Islamic law. With this regulation, the dowry practice, which is a social reality and ensures solidarity, will continue, and in the event of a dispute in the future, the problem will be easily resolved (Şahin 2023: 62–72). On the other hand, in Islamic law, the limits of financial responsibilities arising from the marriage contract are drawn by Shariah evidence. However, since the areas of responsibility of the parties are not clearly determined in traditional practices, it brings with it some problems, such as unfair gain and heavy financial burdens, making marriages difficult. Without ignoring regional and economic differences, such issues can actually be eliminated or minimized by making arrangements.

## CONCLUSION

It is possible to express the results we have achieved through this study that the marriage contract imposes on the parties some legal responsibilities such as dowry, alimony, and cohabitation, as well as some traditional responsibilities arising from the traditions of each society and expressed by concepts such as *kalın/başlık*, *çeyiz/cihâz*, *drohama*.

Although there are some differences in naming and practice, *çeyiz* is practiced in almost every society. The tradition of preparing *çeyiz*, known in Turkish customs before Islam, is still practiced in

all regions of Turkey. The culture formed around this practice indicates that *çeyiz* is a deep-rooted tradition.

Dowry (*çeyiz*) includes the personal and household belongings prepared for the girl to be married and all the belongings she takes to her husband's house. Dowry (*çeyiz*) differs from *mahr* in that it is prepared by the girl or the girl's family and is not obligatory. The result of a wrong perception is that the family of the girl to be married puts the dowry (*çeyiz*) expenses on the man's side under the name of cash *mahr* or bride price.

Unlike *mahr* and alimony, which are mandatory consequences of the marriage contract, practices such as dowry (*çeyiz*), gifts, bride price (*başlık/kalın*), and breastfeeding rights are just traditions that are expected to contribute to cooperation, solidarity, and cohesion between the people who are getting married and their families. The money or property the man gives to the girl's father to prepare the dowry (*çeyiz*) differs from the money or property he provides as the bride price (*başlık*). Just because the father prepares a dowry (*çeyiz*) with the money he receives does not mean the two are the same because the purpose of giving the goods in question is different.

The practice of bride price (*başlık*) has always been viewed negatively by both religion and modern thought, as it makes marriage difficult and puts those who are about to get married under a significant financial burden. The social perception that families purchased the bridegroom as a sale price for their daughters significantly impacted these negative attitudes. For this reason, the practice of taking bride price (*başlık*) has decreased daily and even disappeared entirely in some regions. However, it continues to be implemented in some areas of Turkey, albeit to a lesser extent. Dowry (*çeyiz*) is also essential regarding the information it provides about the socio-economic structure of the societies in which it is applied. Dowry (*çeyiz*) has been discussed in Islamic Law on two points, in terms of its similarity to *Mahr* and its situation after marriage.

The following conclusion emerges from the discussions regarding *mahr*: All scholars, except the Malikis, agree that *mahr* belongs entirely to the girl and that she can dispose of it as she wishes and cannot be forced to prepare a dowry (*çeyiz*) for her. However, if the girl voluntarily prepares a dowry (*çeyiz*) with some or all of her *mahr*, there is no obstacle to this either. If the marriage ends, the man

can take back all the property he gave, according to jurists who consider all property given to the woman, other than the *mahr*, as unjust gain. According to Hanafis, other than Mahr, property given to the girl or her relatives, such as bride price, Breastfeeding rights, and dowry (*çeyiz*) items given to the girl by her father, is subject to the provisions of the grant. The Ottoman Empire, which applied the Hanafi interpretation of Islamic Law in its courts, evaluated dowry (*çeyiz*) within the scope of grant provisions in cases submitted to the court regarding dowry (*çeyiz*). In order to find solutions to the problems that will arise, regulations should be made to give dowry (*çeyiz*) a legal character without ignoring its traditional aspect. With these regulations, the limits of responsibilities will be drawn, and injustice will be prevented. To address emerging challenges, regulations should be formulated to afford dowry a legal framework while acknowledging its traditional significance. Such regulations would delineate responsibilities and mitigate injustices within marital dynamics.

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#### AUTHOR'S CONTRIBUTIONS

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