

Article

The Problem of Kalyn mal in Kazakh Customary Law and Mahr in Islamic Law: Prospects for Modernization

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Abstract

This work is devoted to a comprehensive analysis of the institutes of kalyn mal (Kazakh traditional bridewealth or kalym) and mahr within the context of Kazakh customary law and Islamic legal norms. The authors examine the historical roots, terminology, and evolution of these institutes, conducting a comparative analysis of traditional Kazakh customs and Sharia requirements. The article details the functions of kalyn mal as a social and symbolic tool for strengthening kinship ties, as well as its inseparable link with the preparation of the dowry (jasau). Special attention is paid to the issue of the modernization of these practices in contemporary society, particularly considering high divorce rates. The research substantiates the need for institutional transformation: it is proposed to consider kalyn mal as a form of mahr, ensuring the financial protection of women, and to record such agreements officially. The work analyzes legal aspects, including judicial practice in Kazakhstan, where wedding offerings are often recognized as voluntary gifts, which complicates their return in the event of a dispute. In conclusion, specific recommendations for reforming traditions are proposed, such as opening joint bank accounts and moving away from burdensome formalities that do not benefit the family unit. This approach aims to transform archaic rites into an effective mechanism of social protection that meets modern legal and spiritual challenges.

Keywords: kalyn mal; mahr; Islamic law; Kazakh traditions; family modernization.

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Қазақ дәстүрлі құқығында қалың мал және исламдағы мәһір мәселесі: модернизация мүмкіндіктері

Аңдатпа

Бұл жұмыс қазақтың әдет-ғұрып құқығы мен исламдық құқықтық нормалар аясындағы қалың мал және мәһір институттарын кешенді талдауға арналған. Авторлар бұл институттардың тарихи тамырын, терминологиясын және эволюциясын зерттей отырып, дәстүрлі қазақ салт-дәстүрлері мен шарият талаптарына салыстырмалы талдау жүргізеді. Мақалада қалың малдың туыстық байланыстарды нығайтудағы әлеуметтік және символдық рөлі, сондай-ақ оның қыз жасауымен ажырамас байланысы егжей-тегжейлі қарастырылған. Ерекше назар ажырасу деңгейі жоғары қазіргі қоғамдағы, бұл тәжірибелерді модернизациялау мәселесіне аударылады. Зерттеуде институционалдық трансформацияның қажеттілігі негізделген: қалың малды әйелдің қаржылық қауіпсіздігін қамтамасыз ететін мәһірдің бір түрі ретінде қарастыру және мұндай келісімдерді ресми түрде келісім-шартпен бекіту ұсынылады. Жұмыста Қазақстандағы сот практикасы талданады, онда үйлену тойындағы сый-сияпаттар көбінесе ерікті сыйлық ретінде танылып, оларды даулы жағдайда кері қайтару құқықтық тұрғыдан қиындық тудыратыны айтылады. Мақаланың соңында, дәстүрлерді реформалау бойынша нақты ұсыныстар берілген, мысалы: бірлескен банктік шоттар ашу және жас отбасына пайдасы жоқ ауыр формальдылықтардан бас тарту. Бұл архаикалық салттарды қазіргі заманғы құқықтық және рухани талаптарға сай келетін әлеуметтік қорғау механизміне айналдыруға мүмкіндік береді.

Түйін сөздер: қалың мал; мәһір; ислам құқығы; қазақ дәстүрлері; отбасын модернизациялау.

Проблема калын мал в казахском обычном праве и махра в исламском праве: перспективы модернизации

Аннотация

В данной работе проводится комплексный анализ институтов калын мал и махра в контексте казахского обычного права и исламских правовых норм. Авторы исследуют терминологию, исторические корни и эволюцию этих понятий, проводя сравнительный анализ традиционных казахских обычаев и требований шариата. В статье подробно рассматриваются функции калын мал как социального и символического инструмента укрепления родственных связей, а также его неразрывная связь с подготовкой приданого (жасау). Особое внимание уделяется вопросу модернизации данных практик в условиях современного общества и высокого уровня разводов. Авторы обосновывают необходимость институциональной трансформации: предлагается рассматривать калын мал как форму махра, обеспечивающую финансовую защиту женщины, и фиксировать такие соглашения официально через брачные контракты. В работе анализируется судебная практика Казахстана, где свадебные подношения часто признаются добровольными дарами, что затрудняет их возврат в правовом поле. В заключении предложены конкретные рекомендации: приравнивание калын мал к махру на уровне религиозных и правовых консультаций; использование совместных банковских счетов или фондов для обеспечения прозрачности выплат; отказ от обременительных формальностей, не приносящих реальной пользы молодой семье. Это позволит превратить архаичные обряды в эффективный механизм социальной защиты, соответствующий современным правовым и духовным вызовам.

Ключевые слова: калын мал; махра; исламское право; казахские традиции; модернизация семьи.

Introduction

The tradition of giving the bride a large gift during the wedding is an ancient practice common in many countries and religions. Although it is commonly called “mahir” in Arabic, it has many other names and alternatives such as sadaq, nihlah, farizah, tawla, hiba, ajr, akr, alaik, nikah, and hars (‘Abd al-Ḥamīd, 2017, p. 126). In Hebrew, it’s called mohar, and in Syriac, mahra. In Judaism, a mohar is a sum of money or property paid to the girl’s father. The Holy Quran also narrates that Prophet Musa served for years in the house of his probationer, Prophet Shu’aiba, to marry one of his two daughters. The Mishnah and Talmud also specify the amount of the dowry. Even in the Age of Ignorance, the dowry was paid to the girl’s father and guardians (Ateş, 2014, pp. 251–253). In Islamic law, dowry is considered a private matter, the exclusive property of the woman. However, the custom of giving a dowry or transferring it to the father remains widespread, and laws and articles are sometimes passed to prohibit this practice (Çeker, 2016, pp. 89–90). There are no texts in classical works that directly prohibit the gifting of anything other than a dowry.

This is called a “Bride price / Bride wealth”, and the act of paying it is called a “dowry”. According to historical and anthropological data, in many traditional African societies, the groom’s family pays the bride’s family in the form of livestock. A dowry has not only economic but also social and symbolic significance: it serves as a guarantee of good behavior, a sign of respect, and strengthens family ties. For example, dowries can include livestock (horned animals), clothing, food, or other valuables. Furthermore, dowries may have conditions for their return – in the event of a divorce, a certain portion of the property paid may be returned (Britannica Editors, 2014). It’s quite possible that this practice was introduced to other peoples under the influence of Islam, or that it was common in ancient religions and cultures. Anthropologists have shown that dowries were most common in agricultural societies, where land ownership was highly valued (University of Hawaii at Mānoa, n.d.). In many Eurasian cultures, especially in agrarian societies, the bride’s family gives the groom a house, land, money, etc. This practice is closely linked to social stratification and the inheritance system. For example, in Roman law, a woman’s family gave a gift to her husband or future spouse; later, a system called “dowry” arose. Anthropological research has shown that dowries and similar practices existed in ancient civilizations: Egypt, Mesopotamia, ancient Hebrew cultures, and Inca and Aztec societies. Among Germanic tribes, for a marriage to be considered legal, the groom had to pay a “dos” (dowry) to the other party. Furthermore, Roman and Byzantine law had a system called “donatio propter nuptias” – gifts and obligations associated with marriage (Scott, 1911). The social role of a dowry is not only an economic gift but also ensures the security and financial independence of a woman.

Materials and Methods

This study, based on historical and ethnographic data collected from the population, presents a comparative analysis of the form of dowry and its application in traditional Kazakh society, as well as its religious and legal nature. By collecting the experiences of each region, it is hoped to identify common problems, as well as shared principles and rules. The study made extensive use of comparative legal analysis. This method allowed for a comparison of the enforcement function of dowry in traditional Kazakh society, its size, and composition (for example, the “forty-seven horses” system) with dowry requirements under Sharia law. The connection between kalym and such social institutions as “dowry” and “obligatory gift to a grandson / granddaughter from sisters or daughters” was analyzed from a historical and anthropological point of view. An important part of the methodology is aimed at identifying common legal principles and norms, as well as collecting local experience in each region. To analyze the current situation, a sociological and legislative review was conducted. The research methodology is based on proposing mechanisms for institutional transformation by comparing traditional archaic norms with international experience (for example, the Dowry Prohibition Act in India) and modern academic research in Kazakhstan and Turkey.

Results and Discussion

Kalyn mal is a form of gift-giving that has long been practiced among the Kazakhs. The bride price was a set of animals, the size of which was determined by the state or society and divided into species so that they could be purchased without bargaining (Tauūly, 2017, pp. 275–276). They used animals to exchange gifts. They primarily used sterile animals for payments. Thus, the purpose of genetically protecting livestock by passing them from hand to hand was their breeding.

A Bashkir researcher who studied Kazakh life says the following about the dowry: “When determining the size of a Kazakh dowry, it’s important to know the ransom. According to custom, the ransom for a young man was one hundred horses and six good camels, one slave or maid, white armor, a good gun, a black horse, and a woven carpet. The ransom for a woman was considered half the ransom”. That is, fifty horses, three good camels, a black horse, and a thick carpet are given as a dowry. This is how the fifty horses are calculated, which are now considered the woman’s price. Three horses are replaced by valuable clothing, which the groom gives her as a gift upon his first arrival. The remaining forty-seven horses are given as a dowry. According to this tradition, kalyn mal is designated as forty-seven, thirty-seven, twenty-seven, and seventeen, depending on the situation. Kalyn mal can be divided into the following sections: 1) Ten good horses, 2) Foaled mare – 16 heads, 3) Colt / filly (3 years) – 7 heads, 4) Yearling (2 years) – 7 heads, 5) Barren mare – 1 head, 6) preferably a one horse or a camel, 7) four heads of good (full-fledged) cattle – then all together it will be 47. When counting livestock, Kazakhs strictly adhere to specific numbers and species. The final stage is a blessing ritual: each participant holds their palms open and then rubs them across their faces, symbolizing mutual agreement and confirming the agreement reached (Ibragimov, 2006, p. 22). The fact that the number and size of kalyn mal are strictly regulated throughout Kazakhstan indicates that this was not done by the people themselves, but by state authorities. The amount of kalyn mal has historically been determined by khans and biys.

L.K. Poltoratskaya, in an article written in 1860 and published in 1878, writes: “The optimal number of livestock should be one hundred baytals (unbred filly). The quantity is calculated solely based on the number of livestock”. For example, a camel is worth five barren mares and two foals, a riding mare is worth two horses, a jockey is worth one or two camels, and a racehorse is worth one camel, sometimes three. In addition to the kalyn mal, a shield, a gun, or an eagle is given as a reward. The number of kalyn mal below this is seventy-seven, sixty-seven, forty-seven, thirty-seven, and twenty-seven baytals. However, this can vary depending on the agreement. Poor people pay a quarter of this kalyn mal. The size of the kalyn mal is equal to the amount of the dowry. Sometimes the dowry is greater than the kalyn mal. If the dowry is insufficient, a higher amount may be requested (Polotaratskaya, 2006, p. 43).

On the one hand, in addition to the livestock provided to the herd, four things are required: a gun, armor, a camel, and a mount. Each of these is considered equivalent to five black cows or five baytals and is called a “good head”. Later, when the use of these four things declined, they were replaced by livestock (Argynbaev, 1973, p. 241). Before the wedding, several rituals and payments are performed, such as: ata kushi (symbolic support from the older generation), ilu (a gift given by the groom at his first visit to the bride), sūt akysy (“milk fee”, compensation for feeding the bride with her mother’s milk), and öltiri (a monetary or material payment according to customary rules). All this must be done. At least according to the Kazakh proverb: “A headscarf won’t become a fur coat, but it will become a sign of respect”. Even if the amount paid isn’t the same, traditionally, she receives something in return.

According to Y. Altynsarin’s notes, the agreed-upon number of livestock is forty-seven head. In some regions, this number reaches fifty head. The average family owns thirty-seven head of livestock (Altynsarin, 1955, pp. 247–248). According to information provided by Kurbangali Khalidi: “When a

lump sum payment is made, children may still be young, even in the crib. In such cases, payment can be made in installments for each year". When a wedding takes place, gifts of clothing and accessories are given, and the ceremony is held. From this point on, the bride's side also begins preparing for the wedding and continues until the wedding itself. There is a popular proverb about preparing a girl for her wedding: "If you start at six, it will be too early; at seven, it will be enough; and after ten, it will be too late" (Khalidi, 1992, pp. 170–182). Since the bride is obligated to prepare a dowry, the fact that the dowry is paid in installments makes it clear that the promise must be fulfilled and that this agreement entails a debt. Elsewhere, Kurbangali states that the dowry can reach fifty baytals, and depending on the situation, it can be seventeen, twenty-seven, thirty-seven, or forty-seven baytals. After fifty, there is no specific limit, but it can reach five hundred (Khalidi, 1992, pp. 39–40; Berem, 2006, p. 80). Ethnographers and Russian researchers Ibragimov, Tronov, Meyer, Grodekov, Divaev, Kozlov also noted the preservation of the numbers seventeen, twenty-seven, thirty-seven and forty-seven (Kustanaev, 1894, pp. 68–69).

There are various theories regarding the meaning of the number seven. For example, when a girl was born, Kazakhs would ask her father for forty-seven or thirty-seven head of cattle. This is $40 \times 7 = 280$, meaning each week lasts seven days, equivalent to nine months and nine days, or the equivalent of giving alms daily (Yelubaev, 1996, p. 78). According to the works of P. Makovetskiy, I. Ibragimov, Yu. Altynsarin, A. I. Levshin and Grodekov, this arrangement of numbers is explained by the fact that the Kazakhs considered the number seven sacred (Argynbaev, 1973, pp. 268–270; Töleubaeva, 2010, pp. 105–110).

According to the research of K. Mukhanov, in accordance with the principles of Yesim Khan's "Eski Joly" (Primordial Path) and Kasym Khan's "Qasqa Joly" (Bright Path), the value of men was determined by the amount of livestock paid to them, while according to the "Zhety Zhargy" (Seven Charters), the value of men was determined by the number of camels and sheep, and the value of women was half of this amount (Kenjealiev, 2005, p. 123).

In the Hanafi and other madhhabs, one of the most important duties in marriage is fulfilling mutual obligations and providing a dowry. As the head of the family, the man cares for the woman and oversees her activities, such as leaving the house (Al-Kāsānī, 2010, Vol. 2, p. 331). The concept of possession and retention under one's control is present in this context. However, no viewpoint equating this with the appropriation of property in trade has been expressed. However, the nature of kalym in Kazakh law is similar. There's even a connection between diyya and kalyn, as both involve the concepts of ownership, care, and responsibility. For example, the reason a man cannot marry his slave is that, since ownership takes precedence over the marriage contract, marriage is unnecessary.

Russian researchers and those who examined Kazakh culture from an external perspective interpreted kalym as the "sale" of a daughter by her parents. However, in practice, the kalym couldn't be paid without a dowry ceremony for the girl. Such payments and gifts within family relationships are a form of mutual assistance and should be considered ways to strengthen family ties. Article 86 of the Kazakh Civil Procedure Code, compiled in Omsk in 1824 by order of the Russian Empire, stipulates that if a husband kills his wife, he is obligated to pay half a qun (for causing death or injury, either intentionally or through negligence, the guilty party was subject to payment of "qun"), or fifty horses, to her relatives (Dulatbekov, 2006, p. 102). Thus, although the value of the dowry is equal to the value of the person, it is not considered a purchase and is not like a contract of sale, since even if the dowry is paid, this does not mean a complete severance of relations with relatives. Only after explaining the rationale for the contract within Muslim legal methodology can a comparison with a commercial contract be made, clarifying the terms "dhimmat" (confirmation) and "badal" (payment).

The purpose of requiring parental consent for marriage is to protect a woman's property and religious rights, as well as to safeguard her from potential disadvantage. This also allows for her to be

placed under her father's guardianship if she is unable to independently protect her property interests (Al-Kāsānī, 2010, Vol. 2, p. 248). According to the Hanafi madhhab, if a girl's father forbids her from receiving mahr, she is not permitted to receive it. Her husband cannot force her to refuse to take her as his property and give her to her father. However, if he does not forbid her, this is considered the girl's consent, and her father is permitted to receive the mahr. Generally, an adult girl is embarrassed to forbid her father from accepting the mahr. The father, having received the mahr, prepares a dowry for his daughter along with his own property. This custom is not observed among widows, and the responsibility for preparing the dowry falls on the father only once (Al-Sarakhsī, 1993, Vol. 5, p. 3). On the one hand, the husband is not granted the right to protect the mahr. If the girl is young and unable to protect herself, it is first given to her father, and if there is no father, then to the person appointed by the father; if there is no father, then to the grandfather; and if there is no grandfather, then to the person appointed by the grandfather. If the girl has reached the age of majority, meaning she has the right to own her own property, she does not give it to her parents but keeps it for herself, appoints a guardian, or gives it to someone else of her own choosing ('Abd al-Ḥamīd, 2017, pp. 155–156; Al-Kāsānī, 2010, Vol. 2, p. 240). Among Kazakhs, the reason for transferring the kalym to the father stems precisely from these customs. From a functional perspective, mahr can also be comparable to the payment made for the transfer of the bride to the husband. Considering that among Uzbeks, Tajiks, and Turkmens, kalyn mal developed as mahr, and considering that the Kazakh marriage rite makes no mention of mahr, one can conclude that kalyn mal was considered its equivalent. On the other hand, according to written sources, in the event of a divorce due to the woman's failure to fulfill her duties, her indecent or uncooperative behavior, she returned to her parents' home with a full dowry (Töleubaeva, 2010, p. 69). This situation is like the situation in Islamic law, where the entire marriage gift is returned upon divorce.

In his note on the issue of divorce in Kazakh customs, F. Lazarevsky writes: "When such situations arise, the biys are informed about it". Judges make decisions only if the charges are proven. In divorce cases, it is determined whether sexual relations took place. If sexual intercourse is known to have occurred, one-third of the kalyn mal is returned to the man. If there was no sexual intercourse, the kalyn mal is returned. If one of the two dies, half of the kalyn mal is returned in the same manner. This may vary depending on the agreement between the two parties. If both parties deem it fair, the entire kalyn mal paid is returned in full. This most often occurs in the event of a refusal by the bride's family. If the refusal comes from the groom's side, the gifts and kalyn mal paid are not refundable. Furthermore, if the bride's family files a complaint, the biy court imposes both financial and corporal punishment on the guilty party for infringing their honor and dignity" (Lazarevskii, 2006, Vol. 2, p. 169). It follows from this that the Kazakhs viewed the kalyn mal as a replacement for the mahr.

Islamic law views many contracts, starting with marriage contracts, as contracts for the purchase and sale of property. The mahr is called the *istimta'* (right of use) fee. In classical *fiqh* literature, the marriage contract is compared to property deeds, and the basis of such an act is called *milk al-mut'ah* (the right to marital cohabitation arising after the conclusion of *nikah*) (Al-Kāsānī, 2010, Vol. 2, p. 339; Ibn Nujaym, 1997, Vol. 3, p. 85; Ibn 'Abidīn, 2014, Vol. 2, p. 4). We understand that a contract must be based on something that has real value.

We also learned that the Kazakhs calculated the kalyn mal in cattle, and if there were no cattle to pay, the man became "kūsh küyèu" (worked for the bride's family). Mahr also includes property or items given as compensation. Paying mahr through hard work is also permissible. It is considered acceptable to give mahr for anything that can be valued in monetary terms (Al-Kāsānī, 2010, Vol. 2, p. 412).

The previous sections indicated that if the girl was not a virgin, the groom had the option of demanding the return of the kalyn mal and refusing the marriage. In Islamic law, various views

have been advanced regarding the return of the mahr if the girl was not a virgin. However, even if the girl assumed to be a virgin at the time of marriage turns out to be otherwise, the marriage is still considered valid, and the groom has no right of choice in this matter (Al-Bazzāzī, 2009, Vol. 1, p. 120).

According to Islamic law, the following is very important: if a married man has property, he pays the mahr from his own property. If he has no property of his own, the father pays it in his stead by way of guarantee. Otherwise, the girl has no right to demand the mahr from the groom's father. If the groom was betrothed as a child and was allocated property, the father pays it not from his own property, but from his son's, since he is the manager of that property ('Abd al-Ḥamīd, 2017, p. 161). In this case, the mahr is at the disposal of the father, who is the guardian of the girl, who is considered a minor, and other relatives with representation in the girl's relatives. Furthermore, close relatives, such as the mother or brother, as well as the groom himself, have no right to leave the mahr to the girl. A mahr paid to a father, grandfather or their heirs is considered paid. When a girl reaches puberty, she cannot demand a dowry from her groom. This is because it is considered to have already been transferred to its rightful owner. The responsibility for preserving and protecting the young girl's dowry lies with her. However, she can transfer her property into guardianship with anyone she wishes. If the girl is a virgin, she does not have to openly utter the word "guardianship". Her consent to the transfer of property into guardianship is considered her consent ('Abd al-Ḥamīd, 2017, pp. 155–156). As we mentioned above, this rule can be observed in the payment and maintenance of mahr among Kazakhs. For example, a father pays the mahr on behalf of his son through his representative or guardian. A daughter's mahr is guarded by a person explicitly and tacitly authorized by the father and daughter. After all, generally and traditionally, minors do not have their own property. Girls also do not have the right or ability to protect their property.

Regarding the amount of dowry in Islamic law, according to the Hanafi madhhab, it cannot be less than ten dirhams. Imam Malik holds that it is three dirhams. According to the Shafi'i and Hanbali schools, there is no minimum limit. There is also no uniform maximum limit. Ten dirhams is equivalent to approximately four grams of gold ('Abd al-Ḥamīd, 2017, p. 129). In Islamic law, mahr, which is considered obligatory (wajib), is divided into two types: mahr musamma (established, agreed upon) and mahr misl (established based on the mahr in the region or among peers). Within these two types, four categories are distinguished: the minimum established amount and the minimum mahr. Furthermore, depending on whether the mahr is paid or returned, it can be considered in three forms: full mahr, half mahr, and mut'ah, which is less than half the mahr.

1. Mahr musamma is the mahr stipulated in the current marriage contract.

2. Mahr misl is required in the following circumstances: 1) at the time of the agreement, neither the authorized representatives nor the spouses themselves had come to an agreement; 2) during the nikah ceremony, since the exact size of the mahr was not determined; 3) Mufawwida – the determination of the amount of mahr is left to the husband, but the husband did not specify it (tafwid al-mahr / unspecified mahr); 4) If during the agreements says that will not take mahr; 5) The mahr is a ghayr mutaḡawwim – a thing that has no value, is inaccessible, or is of benefit that cannot be assessed; 6) If the bride price is set at a level less than the dowry accepted in a given region, without the permission of the girl's parents (guardians), then if the parents object, the mahr will be increased to a misl.

3. The payment of the lesser of the two amounts – Mahr Misl and Mahr Musamma – is possible in the following cases: If the contract is terminated but the terms of the contract are valid (tasmiya sahih), then after the actual marriage, the smaller of the two dowries is paid. However, if the minimum dowry is less than ten dirhams, it is increased by ten dirhams, even if the parents do not object ('Abd al-Ḥamīd, 2017, pp. 135–136).

In this case, any mahr is required, be it musamma or other forms: 1. After marriage and cohabitation, or even in the absence of cohabitation and seclusion, if one of the spouses dies; 2. If both parties enter into marital relations after the marriage contract has been declared invalid, and if the condition is true, a minimum amount of mahr misl and mahr musamma is required; 3. After a dubious marital cohabitation, it is necessary to pay mahr misl.

If the marriage is concluded and the amount of the dowry is determined, but a divorce or separation occurs before sexual intercourse, half of the dowry is returned. In cases where the amount of the dowry is not clearly defined, or if the divorce occurred due to the ex-husband's fault or because of separation, a certain amount of the dowry must be donated.

In these two cases, mahr is not issued: 1. Divorce before sexual intercourse after a fasid (illegal, unfounded) marriage; 2. A divorce that occurs due to the woman's fault, even if the conditions of the marriage were properly fulfilled. This means a divorce that occurs due to her choice, refusal, rejection of one of the sacred religions, or an act that demeans her honor. As a result, she cannot receive the mahr ('Abd al-Ḥamīd, 2017, pp. 141–152).

Dowry – household furniture and items prepared in the bride's house

The following explanations are given in the work of G. Bonch-Osmolovsky, who studied the formation and traditions of the Turkic peoples and nations in the late 1920s of the 20th centuries: "A dowry is a quantity of livestock and property prepared for the bride, equal to the kalyn mal paid by the groom, and sometimes more. The root of the word "dowry" (zhasau in Kazakh) comes from the Arabic word "jahaza" (جهز). The word "aw" (meaning "house") is added to it" (Bonch-Osmolovskii, 1926, p. 109). This assumption by G. Osmolovskiy appears to be incorrect, since "zhas" means "young", "new", and "fresh". And the word "au" should have denoted "au", "eu", "üb", and "üy" in Old Turkic. It's possible that the Ottoman Turk word "cheyz" derived from the word "zhakhaza" (zhakhaza meaning household utensils).

L.F. Balluzek's writings on dressmaking describe the following: "A very beautiful carriage, a beautiful headscarf, bed linens, and dishes are prepared for the girl. Among them are many items. All the girl's relatives, and sometimes even villagers, help with the dressmaking process" (Ballyuzek, 2006, p. 39). For example, the following items may be included in the "zhasau": horses, camels, a yurt, harness and other riding equipment, blankets, spoons and plates, a cauldron, a chest, a large chest, bed linen, girls' clothing, products made from animal skins, carpets, bale felt coverings, woven rugs (alasha), patterned felt carpets-syrmaks (Makovetskii, 2001, p. 114).

Kurbangali Khalidi says: "Wealthy people complete the traditional Kazakh house (otau), which consists of six kerege, nine camels, a carpet, and nine pieces of fabric. Some prepare twenty camels, forty felts, forty carpets, household furniture, and a yurt" (Khalidi, 1992, pp. 39–43). F. Lazarevsky also wrote that the house prepared for the wedding was as beautiful and elegant as the yurts of the khans and sultans, and the size of the wedding celebration was determined at the discretion of the girl's father and depended on his wealth, and, as a rule, was equal to the dowry given (Lazarevskii, 2006, Vol. 2, p. 149).

As for the general opinion of researchers regarding the size of the dowry, they did not name a specific, precise size (Makovetskii, 2001, p. 9). Therefore, there was no requirement for a kalyn mal; everyone considered it obligatory. The recipient of the kalyn mal accepted it as a mahr and transferred it in the form of household items and various furniture.

According to Islamic law, a dowry is considered the girl's private property, given only to her and not to be spent without the permission of the groom and her father. However, there is nothing wrong with the girl giving permission to spend it with her groom or giving it to her representative. We have already discussed the father's role in the dowry issue in the section on dowry. In Fatwa al-Bazzaziyya,

Imam Jamaluddin, author of the book *Muhit*, issued a fatwa stating that if a wealthy man gives a girl's father a significant sum of money for wedding expenses and a dowry, but the father sends his daughter away without preparing the dowry, the groom has the right to demand the dowry from the father. This fatwa was also adopted by the imams (Al-Bazzāzī, 2009, Vol. 1, p. 113).

In fatwa books, the term “dest-peyman” (pledged mahr / customary marital promise) is the name given to the mahr muajjal, who was provided by the groom (Devellioğlu, 1970). Some say this is unfair or illegal. If we consider the kalyn mal as a mahr, then since there is no explicit prohibition on a father preparing a dowry for his daughter as a gift, as described in the section on dowry, this shows that Kazakh custom does not carry any risks associated with Sharia law. At the same time, there is no command or requirement in Islamic law obliging a father to prepare a dowry. We see that Kazakh custom does not stipulate any special penalties or taxes for failure to prepare a dowry.

Just as in Islamic law, the mahr belongs to the girl, in Kazakh tradition, the girl is the owner of the property. In the event of a divorce, she has the right to reclaim the property. There is reason to believe that the main purpose and secret of giving a mahr is to improve the girl's financial situation and to encourage her to address social issues. This demonstrates that she is the owner of the property and is in a liquid state. As we have seen from sacred texts, the kalyn mal is equal to or greater than the dowry. This means that the kalyn mal is not the price or norm for purchasing a girl. Article 86 of the regulations prepared for the Kazakhs in 1824 states that if a man kills a girl (woman, bride), he must pay half the price, or fifty horses, to her relatives (Dulatbekov, 2006, p. 102). Thus, it can be concluded that even if the bride price was paid, it did not completely sever ties with relatives and did not reflect the full value of the person.

Another custom that strengthens and regulates the relationship between the parties is the *zhien akysy*, or “*kyryk shubar*”. Sometimes it is also called the “*zhienkuyryk*”. It consists of forty head of cattle, which the *naghashy* (maternal kin) is obligated to hand over to the *zhien* (maternal niece, nephew) and which the *zhien* has the right to receive at any time convenient for him or her (Nüsipoqasūly & Japarūly, 2011, Vol. IV, p. 63). Kazakhs pay special attention to their nephews and nieces. They try not to alienate or offend them when fulfilling their requests. If their wishes are not fulfilled, they are considered guilty and blamed. In fact, this custom is so interesting that it attracted the attention of a Russian researcher. For example, L. F. Balluzek wrote that a nephew or niece can get what they want by asking their uncle three times. No one can stop them (Ballyuzek, 2006, p. 235). It is most often given to the first (eldest) maternal niece or nephew. It may also be regarded as a share allocated by the wife's relatives (Tauūly, 2017, p. 316).

Conclusion

Currently, due to traditionalism on the one hand and religious tendencies on the other, dowry and related phenomena are once again entering the public sphere, although not the legal sphere. This trend persists not only in Muslim and Kazakh societies, but also in many other countries and societies. Some modern studies analyze the legal and social impact of dowry on women. For example, the article “Does bride price harm women?” shows that in some societies, kalyn mal can limit women's freedom, but in other cases it is an economic resource that strengthens women's social position. There are studies that discuss how modernization and urbanization are changing these traditions in some places: the form, method of giving, and size of gifts are changing (Brandl & Colleran, 2024). In some countries, laws also influence this area: for example, regulations have emerged governing traditional dowry or kalyn mal schemes.

The researchers' main conclusion is that social ties are strengthened: kalyn mal, or wedding gifts, not only strengthen family ties but also create economic and social ties between clans or kinship groups. In terms of value and symbolism, objects used in practice (livestock, money, jewelry) have not

only economic value but also symbolic significance – a sign of respect, honor, and consent. They are also viewed as guarantees of security and legal protection. Some concepts view them as compensation for labor and reproductive services. In Islamic law, the right of use is called *milk al-mut'ah*. This is often used to explain the rationale for a classical contract.

Over time and as society develops, these traditions evolve – their form, meaning, the possibility of returning the gift, and legal regulation change. Therefore, institutional transformation is urgently needed. It is known that for several centuries, this was considered a restriction of women's rights, and a struggle was waged against it. Clear manifestations of this phenomenon still exist in Kazakh society and public opinion. Some countries have laws specifically prohibiting it. For example, India has the Dowry Prohibition Act, 1961. This law is aimed at prohibiting the giving and receiving of traditional dowry or *kalyn mal*. It aims to put an end to crimes against women, such as “dowry harassment” and “dowry deaths”, both in practice and through legal measures (Dowry Prohibition Act, 1961).

Transforming *mahr* into a “financial guarantee for women” is a legally and theoretically sound proposal. In recent years, academic research has discussed the idea of reviving *mahr* as a payment that serves as financial protection or insurance for women. Mechanisms have been proposed for formalizing it as a specific, enforceable requirement in the marriage contract, allowing for temporary/monthly payments, or investing it in a secure fund. New research has emerged on the topic of “*mahr* circulation through financial instruments” in the Turkish context (Okumuş & Gümüş, 2023). This necessity stems from the large number of victims in practical life. The fact is that in Kazakh society, the costs of weddings, wedding ceremonies, and gifts are not so high as to be ignored. Since legal authorities view all these as verbally agreed-upon gifts, ordinary people often suffer as a result.

Legislation and case law dictate what must be formalized and executed as a contract. Western courts (USA, UK, Germany, and others) sometimes view *mahr* demands as contractual obligations; this case law examines ways to enforce *mahr* obligations. However, authors and lawyers argue that it is more effective to regulate *mahr* under the family law statute (written legal systems) than to treat it as a simple agreement (Raman, 2024).

In Kazakhstan, disputes over *kalyn mal* (*kalym*) and dowry arise, but they are not systematically published in official statistics (annual data for the entire country). In most cases, such disputes are resolved at the local level – at the family or village level; only in major or exceptional cases do they reach the courts. Dispute resolution is possible through the binding legal acts of the Civil Code.

Judicial practice often reaches a certain conclusion: in many cases, courts recognize *kalyn mal* (items given during a celebration) as a “gift” and do not always accept it back. However, depending on the specific circumstances and evidence of the case, the court's decision may vary. Since gifts are given voluntarily, the court often rejects them (BAQ.KZ, 2021). A lawsuit can only be filed if the case involves fraud. However, it's no secret that the *kalyn mal* tradition is widespread among couples. According to a survey, 70% of respondents confirmed having given or received a *kalyn mal* (Inform.kz, 2025). The problem lies not in expressing positive or negative opinions, but in general practice. Today, the divorce rate among Kazakh youth is alarming. Half of married young people are divorced. For most Turkic peoples, this figure may be close. The issue of family is complex in many ways. Beyond the spiritual aspect of its stability, it is also directly linked to the socio-economic situation. In such a situation, the importance of providing advice on modernization from a religious perspective is a guarantee of its stabilization. For example, the Spiritual Administration of Muslims of Kazakhstan (SAMK) expressed its socio-religious opinion on the comparison of *kalyn mal* and *mahr*, as well as the possibility of considering *kalyn mal* as *mahr*. Some statements by the SAMK stated that “if *kalyn mal* is provided by the husband, the wife may accept it as *mahr* and use it at her own discretion”. In conclusion, the following suggestions can be made.

Firstly, according to the proposal of the spiritual administration, consider kalyn mal and mahr to be the same, and conclude an official agreement to prevent any consequences.

Second, establish a joint fund or bank account for both parties, which will be used for mahr or its equivalent. Strengthen support for two-parent families over single-parent families (in the event of divorce, death of one spouse, or disability).

Third, initiate public discussion about ending formal practices that lead to gender discrimination or create a one-sided burden and do not benefit young families.

Authors' contributions

First author – writing the article text, literature review, editing the text, correspondence, and submission of the article.

Second author – writing the article text, technical formatting.

Conflict of interests

The authors declare that there is no conflict of interest.

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