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PERSPECTIVE | CULTURALLY SPEAKING

Why California should stop invalidating Mahr under 'promotion of divorce' doctrine

California treats divorce neutrally, regulating its consequences rather than judging the decision, so courts should stop invalidating religious or cultural marital agreements like Mahr under the outdated "promotion of divorce" doctrine.

By Abbas Hadjian

California does not have a public policy favoring marriage over divorce. Nor does it maintain a public policy that disfavors one type of religious divorce over another. Yet for nearly four decades, courts have invoked a judicially constructed notion that certain agreements "promote divorce" and are therefore void as against public policy. That doctrine—frequently used to invalidate Islamic *Mahr* provisions—deserves reconsideration.

Beginning Jan. 1, 2026, SB 1427 expands consensual dissolution procedures, allowing spouses who do not qualify for traditional summary dissolution to file a joint petition for dissolution or legal separation in a streamlined format. The process reduces procedural friction, lowers costs and applies even where parties have children or assets beyond former summary limits. The legislative direction is unmistakable: facilitate orderly dissolution, not obstruct it. Yet courts continue to invoke the refrain that agreements "promoting divorce" violate public policy.

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From dicta to doctrine

Public policy in California is ordinarily derived from enacted law—constitutional provisions, statutes or firmly established precedent—not from generalized moral inference. The modern articulation of the "promotion of divorce" doctrine traces to *In re Marriage of Noghrey*, 169 Cal.App.3d 326 (1985). There, the appellate court invalidated a Ketubah-style promise that required a substantial payment if the husband-initiated divorce. The court reasoned that such a provision might encourage dissolution and therefore conflict with public policy.

In doing so, the court relied in part upon reasoning similar to *Gross v. Gross*, 11 Ohio St.3d 99 (1984), an Ohio decision discussing agreements that might "promote divorce." But California's statutory schemes, since the enactment of no-fault dissolution in 1969, contain no categorical prohibition on divorce-triggered financial obligations. Indeed, California was the first state to permit unilateral dissolution upon proof of irreconcilable differences, without fault, without moral inquiry, and without judicial scrutiny of motive. The state does not evaluate *why* a marriage failed. It regulates only the economic consequences of that failure. If the legislature believed divorce-triggered obligations were inherently suspect, it has had four decades to say so. It has not. Neither the California Constitution, penal code, or the family code declare such provisions void per se.

Yet Noghrey's reasoning quickly shifted. Three years later, in *In re Marriage of Dajani*, 204 Cal.App.3d 1387 (1988), the court invalidated enforcement of a $1,700 Islamic Mahr as "promotive of divorce" when sought by the wife. The reasoning drew criticism. In *In re Marriage of Bellio*, 105 Cal.App.4th 630 (2003), the Court of Appeal stated plainly that Dajani "was wrongly decided." The court observed that a modest payment upon dissolution is insufficient to jeopardize a viable marriage, and that enforceable premarital agreements may in fact encourage rather than discourage marriage. Notably, *Bellio* upheld a $100,000 payment provision, concluding it did not offend public policy.

The judicial landscape, therefore, is not uniform. It is fractured. And yet, despite legislative neutrality toward dissolution and judicial refinement, the misconception that *Mahr* is inherently "divorce-promotive" persists in some quarters.

California's legislative trajectory

If California's public policy truly favored preserving marriage over dissolving it, the law would impose fault-based restrictions, financial deterrents and mandatory reconciliation barriers. Instead, dissolution is unilateral and no-fault. The state penalizes neither filing nor conditions exit upon moral justification. The Uniform Premarital Agreement Act permits parties to contract regarding the disposition of property upon dissolution. Spouses may waive spousal support (subject to statutory

safeguards). SB 1427 further streamlines consensual dissolution procedures.

The trajectory is consistent: regulate consequences, not motives. In that framework, it becomes difficult to argue that financial provisions triggered by dissolution are inherently contrary to public policy.

The cultural context of *Mahr*

Mahr is frequently misunderstood. It is not a "divorce bonus," litigation weapon or incentive structure. It is a marital undertaking negotiated prior to marriage, embedded in religious and cultural tradition.

For many Muslim couples, *Mahr* functions as a deferred marital gift, recognition of commitment and culturally meaningful obligation. Couples marry with full awareness that California is a community property state. The *Mahr* supplements the statutory property framework; it does not displace it.

Describing *Mahr* as promoting divorce overlooks its cultural meaning, mistakes timing for encouragement, and could lead to unequal treatment of religious marriage agreements. If California's Legislature has chosen to remain neutral on divorce —and has even made the process easier—courts should be cautious about relying on a policy favoring marriage that the legislature has not clearly stated. The issue is not whether *Mahr* mirrors American prenuptial practice. The issue is whether California law prohibits it. Absent statutory conflict, striking it down risks turning judicial preference into lawmaking.

SB 1427 and the changing landscape

The expansion of consensual divorce under SB 1427 underscores a broader reality: California has moved toward efficiency, accessibility and procedural neutrality. The state now allows joint petitions for divorce or legal separation with fewer restrictions than before. Filing costs are effectively reduced, service is accomplished through the joint petition and procedural friction is minimized.

Against that backdrop, continuing to invalidate marital undertakings on the theory that they "promote divorce" appears increasingly disconnected from legislative direction.

California regulates the results of divorce, not the decision itself. Four decades after *Noghrey*, it's worth asking whether the "promotion of divorce" idea reflects current law or outdated judicial thinking. In a no-fault state, contracts—religious or secular—should follow normal contract rules, i.e., capacity, voluntariness, disclosure and unconscionability, not a preference for keeping marriages intact. If California law remains neutral on divorce, judicial doctrine should reflect that neutrality.

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