

Al- Mahr

Mahr is one of the (pecuniary) rights of a wife established in the Qur'an and the Sunnah, and on which there is consensus (*ijma'*) among Muslims.

There are two kinds of *mahr*: *al-musamma* and *mahr al-mithl*.

1. Al-Mahr al-Musamma:

Al-mahr al-musamma is the *mahr* agreed by the couple and specified by them in the contract. This *mahr* does not have any upper limit, by consensus of all the schools, in accordance with the following verse of the Qur'an:

وَأِنْ أَرَدْتُمْ اسْتِبْدَالَ زَوْجٍ مَكَانَ زَوْجٍ وَآتَيْتُمْ إِحْدَاهُنَّ قِنْطَارًا فَلَا تَأْخُذُوا مِنْهُ شَيْئًا

And if you wish to take a wife in place of another and have given one of them a heap of gold, then take not from it a thing. (4:20)

But the schools differ regarding the lower limit. The Shafi'i, the Hanafi and the Imamiyyah schools observe: Everything which is valid as price in a contract of sale is valid as *mahr* in a marriage contract, though it be a single morsel.

The minimum *mahr* according to the Hanafi is ten dirhams, and a contract concluded for a lesser amount is valid and the minimum—i.e. ten dirhams—shall be payable.

The Malikis have said: The minimum is three dirhams. Therefore, if something less is specified and later the marriage is consummated, the husband will pay her three dirhams; if it has not been consummated, he has a choice between giving her three dirhams or dissolving the contract by paying her half the specified *mahr*.

Conditions of Mahr

It is valid that *mahr* be specified in terms of currency, jewelry, farmland, cattle, profit, trade commodities and other things of value. It is necessary that the value of the *mahr* be known, either exactly (e.g. a thousand Lira) or approximately (e.g. a particular piece of gold or a particular stock of wheat). If the *mahr* is totally vague, so that its value is unascertainable in any manner, according to all the schools except the Maliki, the contract is valid and the *mahr* void. The Malikis observe: The contract is invalid and will be considered void before consummation but if consummation has occurred it will be valid on the basis of *mahr al-mithl*.

Among the conditions is the being *halal* of the *mahr* and its being valued in terms of a commodity whose transaction is considered legal by the Islamic Shari'ah. Therefore, if it is mentioned in terms of liquor, swine or *m'aytah* or anything else whose ownership is invalid, according to the Malikis the contract shall be invalid if it has not been consummated, and if consummated, shall be valid and the *mahr al-mithl* shall be payable.

The Shafi'i, the Hanafi, the Hanbali and most of the Imamiyyah legists have said: The contract is valid and she shall be entitled to the *mahr al-mithl*. Some Imamiyyah legists have entitled her to the *mahr al-mithl* only if the marriage has been consummated, while others amongst them lay no such condition and are in consonance with the other four schools.

If the *mahr* is usurped property, such as when she is married for a farm as her *mahr* and later it is known to belong to the groom's father or someone else, the Malikis have said: If the farm is known to the two and both happen to be sane, the contract shall be invalid if not consummated and if consummated shall be considered valid on the basis of *mahr al-mithl*. The Shafi'i and the Hanbali schools regard the contract as valid and entitle her to the *mahr al-mithl*. The Imamiyyah and the Hanafi schools are of the opinion that the contract is unconditionally valid; but regarding the *mahr* they observe: If the owner agrees, she shall receive the farm itself; if the owner refuses, she shall be entitled to receive a similar farm or its price because the stipulated *mahr* in this case is capable of being validly owned though ownership does not materialize, in contrast with liquor or swine which cannot be owned at all.

Mahr al-Mithl

The concept of *mahr al-mithl* is relevant in the following cases:

1. There is consensus among the schools that *mahr* is not an essential ingredient (*rukun*) of a marriage contract, as price is in a contract of sale. On the contrary, *mahr* is only one of the effects of a marriage contract, and even without its stipulation the contract is valid. Thus, *mahr al-mithl* shall be payable on consummation (when *mahr* was not specified) and if he divorces her before the consummation of marriage, she shall not be entitled to any *mahr*, but will receive *al-muat'ah*, which is a gift given by the husband to his wife (at the time of divorce) in accordance with his status, such as a ring or a dress, etc.

If they both agree on this gift it will suffice: otherwise it will be fixed by the judge. The issue whether the couple's retiring to seclusion (*khalwah*) is tantamount to consummation or not, will be discussed later.

The Hanafi and the Hanbali schools observe: If the husband or the wife dies before consummation, full *mahr al-mithl* shall be payable as if the marriage had been consummated (*Majma' al-'anhur* and *al-Mughni*, chapters on marriage).

According to the Malikis and the Imamiyyah, no *mahr* is payable if any of the two dies before consummation (*al-Mughni* and *al-Wasilah*).

The Shafi'is have two views: (a) That the *mahr* shall be payable; (b) no *mahr* shall be paid (*Maqsad al-nabih*).

2. If the marriage contract is concluded with specification of *mahr* in terms of a commodity which cannot be owned, e.g. liquor or swine, as mentioned earlier.

3. All the schools agree that *mahr al-mithl* becomes *wajib* as a result of intercourse-by-mistake. Intercourse-by-mistake is intercourse with someone with whom it is not legally permissible, though without the knowledge of it being so; such as a person marrying a woman without the knowledge of her being his foster sister and coming to know of it later, or his having intercourse with her after both have appointed their deputies for reciting the contract, thinking it to be sufficient for establishing sexual contact. In other words, intercourse-by-mistake is intercourse without proper marriage, though the presence of a legal excuse precludes penal action. On this account the Imamiyyah include under this head intercourse by a person who is either insane or intoxicated or in sleep.

4. The Imamiyyah, the Shafi'i and the Hanbali schools have said: One who coerces a woman to fornicate shall have to pay *mahr al-mithl*; but if she had yielded voluntarily she shall not be entitled to anything.

5. A marriage concluded on the condition that no *mahr* shall be paid is valid according to all except the Malikis who say: The contract shall be invalid if not consummated and valid if consummated due to the obligation to pay *mahr al-mithl*. A large number of Imamiyyah legists have said: He shall give her something, be it much or little. Traditions from the Ahl al-Bayt ('a) support this view.

According to the Imamiyyah and the Hanafi schools, if an invalid marriage contract is recited with a certain *mahr* and the marriage is consummated, she shall be entitled to receive the *mahr* stipulated even though it was less than the *mahr al-mithl* because of her prior consent. But if the stipulated *mahr* is more, she shall receive only the *mahr al-mithl*, because she is not entitled to receive more than *mahr al-mithl*.

Mahr al-mithl is computed by the Hanafis by taking into account the *mahr* of her equals from the paternal, not the maternal side. According to the Malikis, her *mahr* shall be commensurate with her physical and mental qualities. The Shafi'is, take the *mahr al-mithl* of the wives of her paternal relatives

as reference, i.e. the wife of her brother, that of her paternal uncle, then her sister etc. For the Hanbalis, the judges shall compute the *mahr al-mithl* by taking into account the *mahr* of her female relations, such as the mother or maternal aunt.

The Imamiyyah have said: There is no fixed way of determining *mahr al-mithl* in the Shari'ah. It is estimated by those who know her status, descent, and all those aspects which influence the increase or decrease of *mahr*. But this *mahr* shall not exceed the *mahr al-sunnah*, which is equal to five hundred dirhams.

Immediate and Deferred Payment of Mahr

All the schools concur regarding the validity of deferred payment of *mahr*, fully or partly, provided that the period be known, either exactly (such as when it is said, "I marry you for a hundred, of which fifty shall be paid immediately and the rest after one year") or in an indeterminate manner (such as when it is said, "The *mahr* is deferred till death or divorce"). The Shafi'i school disapproves the latter form of deferment.

But if the period is so mentioned that it is totally vague, such as when it is stated that the payment of *mahr* shall be made on the return of a certain traveler, the time clause shall be void. [1](#)

The Imamiyyah and the Hanbali schools have said: If the *mahr* has been mentioned without specifying whether its payment is immediate or deferred, the entire *mahr* shall be immediately payable.

According to the Hanafis, the local practice shall be observed; i.e. the portions to be immediately paid and deferred will follow the local custom.

The Hanafis have also said: If the *mahr* is deferred without mentioning the period of deferment (such as when it is said, "Half of it is immediately payable and the rest deferred"), the full *mahr* shall be immediately payable.

The Hanbalis observe: The *mahr* can be deferred until death or divorce.

The Malikis are of the opinion that such a marriage is invalid; it is voidable before consummation, though valid after it on the basis of *mahr al-mithl*.

The Shafi'is state: If the period is known not exactly but in an indeterminate manner (such as until death or divorce) the *mahr* stipulated shall become invalid and the *mahr al-mithl* will be payable (*al-Fiqh 'ala al-madhahib al-'arba'ah*).

The Hanafi and the Hanbali schools have said: If the bride's father apportions for himself, as a condition. A part of her *mahr*, the *mahr* is valid and the condition shall have to be complied with.

The Shafi'is say: The *mahr* stipulated shall become invalid and *mahr al-mithl* shall be payable.

According to the Malikis, if this condition is included at the time of marriage, the bride shall receive the entire *mahr*, including her father's share; and if the condition is laid after the marriage, the bride's father shall receive his share (*al-Mughni and Bidayat al-mujtahid*).

The Imamiyyah observe: If her *mahr* has been specified with a fixed portion of it mentioned for her father, she shall get her full stipulated *mahr* and her father will not get his share.

The Wife's Right to Refuse Her Conjugal Society

There is consensus among the schools that the wife, simply after the recital of the contract, has the right to demand her full specified *mahr* immediately and to refuse her conjugal society until the *mahr* is paid. But, if she surrenders once willingly without demanding the *mahr*, she loses her right of refusal; all concur on this issue except Abu Hanifah. He observes: She has the right to refuse even after surrender. Abu Hanifah's disciples, Muhammad and Abu Yusuf oppose his view.

The wife is entitled to receive maintenance if she refuses her conjugal society until the payment of *mahr*; because her refusal in such a case is legally valid. But if she refuses to fulfill her conjugal duties after receiving *mahr* or after voluntary surrender, she shall not be entitled to maintenance except according to Abu Hanifah.

If the wife be a minor unfit for marital relations and the husband a major, it is up to her *wali* to demand the *mahr*; it is not necessary that he wait until her maturity. Similarly, if the wife be a major and the husband a minor, the wife has the right to demand the *mahr*, from his *wali*, and it is not necessary for her to wait until his maturity.

The Imamiyyah and the Shafi schools state: If a dispute arises between the couple, with the wife refusing to surrender until payment of *mahr* and the husband refusing payment until her surrender, the husband shall be compelled to deposit the *mahr* with a trustee and the wife will be asked to surrender. Then if she surrenders, she shall receive her *mahr* and be entitled to maintenance. But if she refuses, she shall not receive the *mahr* and will not be entitled to any maintenance. If the husband refuses to deposit the *mahr*, he will be ordered to pay her maintenance on her demanding it.

The Hanafi and the Maliki schools state: The payment of *mahr* has precedence over the woman's surrender, and the man may not say, "I will not pay the *mahr* until she surrenders". If he insists on this, he shall be ordered to pay her maintenance, and if she after receiving the *mahr*, refuses her conjugal society, the husband is not entitled to claim the return of *mahr*.

According to the Hanbali School, the husband shall be first compelled to pay the *mahr*.

This opinion concurs with the Hanafi view except that according to the Hanbalis, if she refuses her conjugal society after receiving the *mahr*, he has the right to demand the return of the *mahr*. (*Maqсад al-nabih, M ajma ' al-'anhur and al-Fiqh 'ala al-madhahib al-'arba'ah*)

Inability of the Husband to Pay the Mahr

The Imamiyyah and the Hanafi schools observe: If the husband is unable to pay the *mahr*, the wife is not entitled to dissolve the marriage, and the judge, too, cannot pronounce her divorce. But she has the right to deny her conjugal society.

The Malikis state: If his inability is proved before the consummation of marriage, the judge will grant him time according to his own discretion.

If, after the expiry of such period his inability continues, the judge will pronounce divorce, or the wife will divorce herself and the judge shall endorse its validity. But if he has consummated the marriage, she can in no way dissolve it.

The Shafi'i school is of the opinion that if his inability is proved while the marriage has not been consummated, she can dissolve it. But if it has been, she cannot dissolve it.

The Hanbalis state: She may dissolve the marriage even after its consummation, provided she had no knowledge of his inability before the marriage. Therefore, if she had the knowledge the question of dissolving the marriage does not arise. Even when the marriage is dissolvable, only the judge has the authority to do so.

The Father and His Daughter-in-Law's Mahr

The Shafi'i the Maliki and the Hanbali schools hold that if a father concludes the marriage of his pauper son, he shall be liable for payment of *mahr* even if the son be a major and the father acts as his *wali* for the marriage as his son's deputy. If the father dies before *mahr* is paid, which was *wajib* upon him, it shall be paid out of his legacy.

The Hanafi school observes: The payment of *mahr* is not *wajib* upon the father, regardless of whether the son is a well-to-do person or a pauper, a major or a minor (*al-'Ahwal al-shakhiyyah* by Abu Zuhrah).

The Imamiyyah state: If the minor son possesses property and his father gets him married the *mahr* shall be paid from the son's assets and the father shall not be liable at all. But if the minor has no property at the time of marriage, the father shall be liable to pay the *mahr*; the husband (son) shall not be liable even if he becomes a man of means later. Also, the father is not required to pay the *mahr* of his major son's wife unless he guarantees it on the conclusion of the contract.

Consummation and Mahr

Sex relations with a woman fall within these three categories:

1. Fornication (*zina*) to which she surrenders with the knowledge of its being *haram*. In this instance, she will not get any *mahr*; rather shall be liable to penal action.
2. As a result of a misunderstanding on her behalf of its being legal, followed by later knowledge that it was *haram*. Here, her act has no penal consequences and she is entitled to receive *mahr al-mithl*, irrespective of the man's knowledge of the act being *haram*.
3. As a result of a valid marriage. In this case she is entitled to receive the specified *mahr* if it has been validly stipulated, and the *mahr al-mithl* if no *mahr* was specified in the contract or was specified in an invalid form (e.g. in terms of liquor or swine).

If one of the spouses dies before consummation, then, according to the four schools, she is entitled to receive the entire specified *mahr*. The Imamiyyah jurists differ. Some of them, in consonance with the four Sunni schools entitle her to the entire specified *mahr*, while others (including al-Sayyid Abu al-Hasan al-Isfahani in his *al-Wasilah* and Shaykh Ahmad Kashif al-Ghita' in *Safinat al-najat*) to half the specified *mahr* on a par with a divorcee.

Wife's Crime Against Husband

The Shafi, the Maliki and the Hanhali schools have observed: If a wife kills her husband before the consummation of marriage she shall not be entitled to any *mahr* According to the Hanafi and the Imamiyyah schools. she shall not be deprived of her right to *mahr*, though she loses her right to inherit him.

Al-Khalwah

According to the Shafi'i school and the majority of Imamiyyah jurists, the mere enjoyment of privacy or retirement by the couple has no effect on *mahr* nor any other consequence. Only the consummation of marriage is consequential in this regard.

The Hanafi and the Hanbali schools have observed: 'Valid seclusion' confirms *mahr*, establishes descent, and requires observance of *'iddah* in case of divorce, even though such seclusion does not result in consummation. The Hanbalis also consider gazing and touching with a sexual intent and kissing on a par with consummation and therefore sufficient for confirming *mahr*. By 'valid seclusion' is meant the seclusion of the couple in a place where they are secure from observation by others and where there is no impediment to intercourse.

The Malikis state: If the period of seclusion is prolonged, *mahr* is established even without consummation. Some of them have fixed the period of 'prolonged seclusion' at one complete year (*al-Ahwal al-shakhsiyyah* of Abu Zuhrah: *Rahmat al-'ummah* of al-Dimashqi).

Half the Mahr

There is consensus among the school that if *mahr* is specified at the time of the contract and then the husband pronounces divorce without consummation, or seclusion—for those who consider the latter to be consequential—half the *mahr* shall be payable. But if the contract is recited without specifying *mahr*, she shall get nothing except *al-mut'ah*, as mentioned earlier in accordance with the following verse:

لَا جُنَاحَ عَلَيْكُمْ إِن طَلَقْتُمُ النِّسَاءَ مَا لَمْ تَمْسُوهُنَّ أَوْ تَفْرِضُوا لَهُنَّ فَرِيضَةً ۖ وَمَتَّعُوهُنَّ عَلَى الْمَوْسِعِ قَدْرَهُ وَعَلَى الْمُقْتِرِ قَدْرُهُ مَتَاعًا بِالْمَعْرُوفِ ۖ حَقًّا عَلَى الْمُحْسِنِينَ

وَإِن طَلَقْتُمُوهُنَّ مِن قَبْلِ أَنْ تَمْسُوهُنَّ وَقَدْ فَرَضْتُمْ لَهُنَّ فَرِيضَةً فَنِصْفُ مَا فَرَضْتُمْ

There is no blame on you if you divorce women when you have not touched them or appointed for them a portion: yet make provision for them, the wealthy man according to his means and the needy man according to his means, a provision according to honorable usage: (this is) a duty on the good -doers. And if you divorce them before you have touched them and you have appointed for them a portion, then (pay them) half of what you have appointed... (2:236--37)

Therefore, if the husband, not having paid anything to the wife whose *mahr* has been specified, divorces her before consummating the marriage, he shall pay her half the *mahr*. But if he has paid the entire *mahr*, half of it shall be returned if it still exists and the equivalent of it in cash or kind if it has perished.

If the husband and wife do not specify *mahr* in the contract but later agree upon it and then the husband divorces her before consummation, in this case, shall she be entitled to receive half of the *mahr* agreed upon if the *mahr* had been specified in the contract, or shall she get nothing except the *mut'ah*, as if they had not agreed upon *mahr* later?

The Shafi'i, the Imamiyyah [2](#) and the Maliki schools are of the opinion that she is entitled to half the *mahr* agreed upon, and according to the Hanbali book *al-Mughni* (vol. 6, chapter on marriage), she is entitled to half the *mahr* agreed upon after the contract. but not *mut'ah*.

This discussion was related to the right to full *mahr* and the right to half *mahr*. Instances of annulment of the right to full *mahr* can be found in our above discussion on 'defects'.

An Exceptional Case

If the husband (by his finger or something else) causes the wife's loss of virginity, will it be considered consummation for the sake of confirming *mahr*?

There is no doubt that such an act followed by intercourse has all the legal consequences such as *mahr*, 'iddah, establishment of parenthood and so on.

But the question is, if he, without intercourse, divorces her after causing her loss of virginity in this manner, does it confirm only half the specified *mahr* because the marriage has not been consummated, or will the full *mahr* be payable on account of her loss of virginity?

I put this question to Ayatullah al-Sayyid Abu al-Qasim al-Khu'i. This was his reply: "The husband is liable to pay the full *mahr* because of the loss of virginity, on the basis of the tradition narrated by 'Ali ibn Ri'ab in which the Imam ('a) has stated: If they (wives) are as they were when they joined the husband, then she will get half the specified *mahr*. That which is understood from this conditional clause is that after divorce only half the *mahr* is to be paid if the wife's condition at the time of divorce is the same as it was when she joined him. Therefore, due to the general meaning connoted, it indicates that the wife, if she is not what she was, the husband is liable to pay the entire *mahr*, and it shall not be reduced to half irrespective of whether the change and loss of virginity occurs as a result of intercourse or some other factor."³

¹. I had stated in my book al-Fusal al-Shariyyah that the deferring of mahr till death or divorce is not correct due to the need to avoid vagueness; is not the period of deferment. Later on, it occurred to me that it is correct. because mahr can stand vaguely to a greater extent than price in a transaction of sale, and also because it is not a compensation ('nwad) in the real sense of the term. Thus, it is sufficient for mahr that it be determinable by sight (i.e. without being weighed or measured) or receivable or that it be teaching the wife of that which the husband knows of the Qur'an. Apart from this, one of the two terms (death or divorce) is in fact known, though not to the parties to the contract. Thus one of these two events, death or divorce, will inevitably occur. Moreover, it is also valid that a marriage be concluded without mentioning the mahr, as well as when a third person is delegated to determine the mahr.

². The author of al-Jawahir has observed about the third problem relating to the issue of al-tafwid : whenever there is an agreement on a thing, that thing shall be the mahr and shall in fact become the property of the wife, either by itself or in the form of a debt, immediately or in a deferred form, and all those rules which apply to mahr specified in the contract, shall apply to it.

³. It has been observed in a tradition on the authority of Yunus ibn Ya'qub that:

لا يوجب الصداق إلا الوقاع في الفرج

(Nothing makes mahr wajib except vaginal intercourse).

- This tradition is an explanation of the one narrated by Ibn Ri'ab, and on this basis the Imam's words:

فإن كن كما دخلن عليه

(If they are as they were when they joined him'), would appear to include only the natural form of copulation, not those instances where virginity is lost as a result of unnatural means, and the tradition narrated by Ibn Ri'ab fails to provide a valid basis for argument. Whatever be the case, the fatwa of al-Sayyid al-Khu'i concurs with those of al-Sayyid al-Hakim in Minhaj al-salihin (where he states: "If he causes her to lose her virginity by using his finger without her consent, the mahr shall be payable") and al-Shaykh Ahmad Kashif al-Ghita' in Safinat al-najat (chapter on hud'ud).

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