

Book of Marriage

Rulings Regarding *Mahr* (Marriage Payment)

**Prepared by
Saleh As-Saleh**

**Based upon Points of Benefit
From the *duroos* of our
Sh. Sami As-Sghair (*hafidhahullaah*)**

6th of *Jamaadah al-Aakhirah*, 1427
2nd July, 2006.

Rulings Regarding *Mahr* (Marriage Payment)

First: The Ruling of *Mahr*: Marriage payment is legalized in Islam. And its cases are the following:

- (1) The amount is named and stipulated in the contract, then the expressly stated amount is the bride's *mahr*.
- (2) The amount is not named. In this case she is entitled to what is typically received as *mahr* by similar brides. This is known as *mahrul mithl* (the marriage payment received by similar brides).
- (3) If the agreement stipulates that no *mahr* is to be specified, then is the contract valid? There are two opinions regarding this case:
 - (i) The contract is valid, but the stipulation is invalid, and she is entitled to *mahrul mithl*.
 - (ii) The stipulation is invalid and it invalidates the contract. This is the choice of shyekhul Islam Ibn Taymeeyah (*rahimahullah*), and it is the correct opinion.
 - (iii)

Second: The Kinds of Separation in a Valid Marriage:

- (1) Separation due to death.
- (2) Separation due to annulment (*faskh*)¹ of marriage.
- (3) Separation due to divorce (*talaaq*).

Third: Cases of Full, Half, and non-Entitlement of the *Mahr*

- (1) **The wife is not entitled to any of the *mahr* if the separation takes place before intercourse due to a cause on the bride's part.**
- (2) **She is entitled to half of the *mahr* if the separation takes place before intercourse due to a cause on the husband's part.**
- (3) **She is entitled for full *mahr* in either of the following cases:**
 - (i) **Death of either spouse.**
 - (ii) **After intercourse or private seclusion between them.**

¹ Point of Benefit: Annulment cannot occur except due to one of three causes: (i) *khul'a* (separation in return for compensation given to the husband), (ii) un-fulfillment of a condition, and (iii) existence of a defect.

Fourth: *Mahr* Specifications In Accordance with the Kinds of Separation:

(A) Under Valid Marriage

- 1- If the separation is due to **death**, then she is entitled to full *mahr* (either stipulated or *mahrul mithl*) whether death takes place before or after intercourse, and irrespective of the one who dies.
- 2- If the separation is due to **annulment (*faskh*)** then:
 - (i) If it took place before intercourse then according to one opinion she is not entitled to *mahr* whether the *faskh* was due to a cause by him or by her. The other opinion is that she is entitled to half the *mahr* if the *faskh* was due to a cause by him, and this is the more valid opinion.
 - (ii) If it took place after intercourse then she is entitled to full *mahr* irrespective of the causer. However, if the cause was on her part then he seeks compensation from the one who may have misled or deceived him in marrying her, if this actually took place.
- 3- If the separation is due to **divorce (*talaaq*)** then:
 - (i) If it took place before intercourse and he had named an amount as a *mahr* then she is entitled to half of it. And in case she allowed her guardian to choose a spouse for her (known as *al-mufawidah*) and she was divorced before intercourse before any *mahr* was stipulated, then she receives *mut'a-ah* (amenity payment) [See verse: 2: 236]. The other opinion, and it is a strong one, is that *al-mufawwidah* is entitled to half of *mahrul mithl*.
 - (ii) If *talaaq* took place after intercourse then she is entitled to full *mahr* in case it was stipulated or *mahrul mithl* in case it was not.

(B) Under Invalid Marriage

If the marriage is invalid, then the *mahr* is either established or not-established.

- (i) It is not established (i.e. she is not entitled to a *mahr*) under any kind of separation (see kinds above) if it takes place before intercourse and whether the cause is on her or his part.
- (ii) It is affirmed upon intercourse or private seclusion. Other scholars are with the opinion that private seclusion does not affirm a *mahr*, and it is the more valid one in light of what is apparent from the hadeeth reported from 'Aaishah (*radialllaahu 'anha*) that the Messenger (ﷺ) said: "The marriage of a woman who marries without the consent of her guardians is void. (He said these words)

three times. **If there is cohabitation, she gets her dower for the intercourse her husband has had.** If there is a dispute, the sultan (man in authority) is the guardian of one who has none. [Reported by the four except an-Nasaa'ee, and was authenticated by Abu 'Uwaanah, Ibn Hibbaan, and al-Haakim; See Sunaan Abu Dawood, *Number 2078*].

Fourth: The *mut'a-ah* (amenity payment) according to one opinion is an obligation upon the husband for his wife if she was divorced before intercourse and no *mahr* was stipulated for her, or in case a void *mahr* was named for her. Shayekhul Islam Ibn Taymeeyah (*rahimahullah*) chose that the amenity payment is an obligation for **every** divorced woman whether there was a stipulation of *mahr* or not, and whether the divorce took place before or after intercourse. And this is a strong opinion.

And Allaah Knows Best.

All Praise is due to Allaah, and may Allaah's Salaah and Salaam be upon our Prophet, his household, and his companions, and on those who follow their path in righteousness until the Day of Resurrection.

Saleh As-Saleh