

## ***Mahr* in the Context of The Islamic Marriage Contract**

**By Raja El Habti**

*Mahr* is the obligatory gift given by the husband to the wife at the time of marriage. It is an expression of the man's love, respect, and serious commitment to his wife to be and to married life. It is the right of the woman, and hers alone. She may do with it as she chooses. The Qur'an enjoins men to give their prospective wives a *mahr* upon contracting the marriage: "And give the women [upon marriage] their gifts graciously (*ṣaduqātihinna niḥlah*). But if they give up willingly to you anything of it, then take it in satisfaction and ease."<sup>1</sup>

The Qur'an and books of *fiqh* refer to *mahr* in different terms, including:

- *An niḥlah*: unconditional donation (not expecting anything in return)
- *Al farīdah*: obligation or prescribed amount
- *Al Hibah*: gift or present
- *Al Ajr*: payment or compensation
- *As ṣaduqah*: sincere gift or charity

### **Amount of *mahr*:**

*Mahr* can vary from a symbolic piece of jewelry to a substantial amount of money. It may also be as simple as teaching the wife a *sūrah* of Qur'an. Muslim scholars unanimously agree that no one can impose an upper limit to *mahr* not even the state, as is the case in many Muslim countries, but they agreed on a minimum. The Hanafi School states that *mahr* should not be less than ten Dirhams (around ten US Dollars). The Malikis on the other hand consider that the minimum *mahr* should not be less than three Dirhams (or three US Dollars.) These minimum amounts stress the symbolic, as opposed to monetary, value of the marital gift.

### **The purpose of *mahr*:**

Muslim Sunni schools of legal thought differ on the definition of *mahr* and its purpose. It is however clear that cultural and patriarchal influences have shaped their understanding of the Qur'anic pronouncements on *mahr*. This appears in their definitions of the purpose of *mahr* in ways that are degrading to women. The Hanafi School for instance, defines *mahr* as the amount of money given by the husband to his future wife in return for her staying home (*iḥtibās*).<sup>2</sup> Worst yet, a Hanafi scholar defines *mahr* as the obligatory amount of money that the husband pays to his prospective wife in return for benefiting

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<sup>1</sup> Qur'an, 4:4.

<sup>2</sup> Abū Bakr Al Sarḥasī, Kitāb al Mabsūt. Dār al-Kutub al-ʿilmiyyah, Beirut, Lebanon. 5:62-63.



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from her reproductive parts, *manāfi 'al-bud'*.<sup>3</sup> Other schools of thought, like the Malikis and Shafi'is, view *mahr* as part of an exchange due to the prospective wife in return for sexual enjoyment.<sup>4</sup>

The Hanbalis, on the other hand, define *mahr* as “the money paid by the husband for the purpose of *nikāh* (marriage)<sup>5</sup>. In this regard, they were more faithful to the Qur'anic spirit in considering *mahr* as an obligatory unconditional marital gift. Some other jurists such as as-San'aani, a great *mujtahid* from the 12th century, explains that *ṣadāq*, another term for *mahr* comes from the word *ṣidq* or truthfulness because “it indicates the sincerity of the husband's desire for his wife.”<sup>6</sup> Modern scholars also reject the idea of *mahr* in return of sexual enjoyment, because sexual enjoyment is mutual between the spouses. They adopt a view similar to that of as-San'aani.<sup>7</sup>

***Mahr must be stipulated in the Islamic marriage contract.*** Although *mahr* is not considered a condition for the validity of the marriage contract in most Islamic schools of thought, the amount and nature of *mahr* has to be stipulated in the marriage contract. *Mahr* becomes binding upon the husband once the marriage is contracted unless the wife herself waives it. It can either be paid in total at the time of contracting the marriage or deferred in total or in part to a later time or times depending on the agreement between the prospective spouses. Under current custom in most Muslim countries, *Mahr* is divided into two parts. The first is called “prompt *Mahr*” or *muqaddam* and is due immediately at the signing of the marriage contract. The second part is deferred, *mu'ahhar*, and is due at either divorce or death of the husband.

**If the marriage contract does not include a provision for *mahr*,** it is still considered to be valid. Hanafis, Shafi'is and Hanbalis agree that *mahr* is a provision not a condition for the validity of the marriage contract. They believe that *mahr* is an obligation upon the husband regardless of whether it is stipulated in the marriage contract or not. Accordingly, if the signed marriage contract has no provision for *mahr*, or if the prospective spouses agree on a *mahr* that is considered to be unlawful under Islamic law (such as a bottle of wine), or if the parties agree not to include a *mahr* provision, in all these cases the conditions are null and void, the contract is valid and the husband must give his wife a *mahr* proportionate to her social status and qualities, which is called *mahr al miṭl*, meaning a *mahr* similar to that of her peers. If the man stipulates not paying a *mahr* as a condition for the marriage, the condition is null and void and the contract valid. The man has to pay *mahr al miṭl* to his wife.

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<sup>3</sup> Ibn al-Humām Muḥammad Ibn 'Abdelwāhid, *Šarḥ Faḥ al-Qadīr*, 3:304.

<sup>4</sup> For Maliki jurisprudence see: Al-Ḥattāb Muḥammad ibn Muḥammad Ibn 'Abderrahmān al Maḡribī, *Mawāhib al-jalīl li-Šarḥ Mukhtaṣar Khalīl*, 5:172 and for Shafi'i *fiqh* see: Al-Nawawī, *Kitāb al Majmū'*. 18:605.

<sup>5</sup> Ibn Qudāmah, *al Muḡnī*, 6:679

<sup>6</sup> As-San'ānī, *Subul as-Salām: Sharḥ Bulūḡ al Marām*, 3:147. 4<sup>th</sup> ed. 1960.

<sup>7</sup> See for instance al-Qaradawi: <http://www.qaradawi.net/supportus/6363.html>



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The Maliki School view differs from these views discussed above and considers the *mahr* provision in the contract necessary. However, if the marriage was consummated, Malikis consider it valid and the husband has to give his wife *mahr al mitl*. If the marriage was not consummated yet, they consider the marriage to be null and void.

One thing that all schools of legal thought agree on is that if the man does not pay a *mahr* to his wife at the time of contracting the marriage, whether the *mahr* was stipulated in the contract or not, it shall be considered an outstanding debt of the man to his wife, unless she unequivocally waives it. If the husband dies before he pays his wife her *mahr*, the unpaid *mahr* becomes a senior debt against the husband's estate.

It is very important to note that the man may not demand the *mahr* back if he decides to divorce his wife. The Qur'an states: "And it is not lawful for you (men) to take back anything of what you have given them (your wives) unless both fear that they will not be able to keep [within] the limits of Allah."<sup>8</sup>

And God knows best.

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<sup>8</sup> Qur'an, 2: 229.