



Research Paper

'Ibrā' Mahr al-Mithl (Acquittal of Stipulated Dower); Comparative Study of Jurisprudence of Islamic Denominations

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Abstract

According to *ibrā'* (acquittal), a person relinquishes the right to claim what is owed to the other party. The wife's right over the stipulated dower as a financial right can be subject to *ibrā'*. Knowing and being ignorant to the amount of dowry and the time of its obligation on the spouse are factors influencing the decree of such acquittal. The present study, based on a descriptive-analytical method with library tools, tries to answer this basic question: "What is the ruling on *ibrā' mahr al-mithl* (acquittal of stipulated dower) from the perspective of Imami and Sunni jurists?" There are two views among the Imami jurists regarding the time of legal obligation of *mahr al-mithl*: Some believe that *mahr al-mithl* is obligatory through marriage, resulting in the validity of acquittal, while others believe that it is obligatory after intercourse, resulting in the invalidity of acquittal before intercourse. The Imami jurists mostly do not consider ignorance of the amount of *mahr al-mithl* to be effective in the validity of acquittal. Shafi'i, Maliki, and Hanafi jurists also consider the intercourse to cause the obligation of *mahr al-mithl*; However, the Shafi'i jurists do not consider ignorance of the amount of *mahr al-mithl* to be effective in the invalidity of discharge, and the Maliki and Hanafi jurists do not consider the lack of knowledge of the amount of *mahr al-mithl* as an obstacle to the validity of acquittal. According to Hanbalis, *mahr al-mithl* becomes obligatory with the marriage contract, and intercourse and ignorance of the amount of the dowry do not play a role in it. It seems that since the dowry is in exchange for *bad'*, it is the penetration (intercourse) that causes the obligation of *mahr al-mithl*, and so after the penetration, in order for the marriage not to be a mere exchange, ignorance of the amount of *mahr al-mithl* does not affect its validity, unless the ignorance is such that the wife is imagined to lack intention.

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Extended Abstract

1- Introduction

Since the issue of '*ibrā'*' is a financial right, it also includes the wife's right to *mahr al-mithl*. The correctness of '*ibrā'*' *mahr al-mithl* can be examined from two perspectives; from one point of view, the discussion of the role of knowledge and ignorance about the amount of *mahr* that the wife tries to acquit and its effect on the validity and invalidity of '*ibrā'*'. From another point of view, the discussion of the time of obligation of *mahr* as the responsibility of the husband, based on whether the dowry becomes the responsibility of the husband by the time of the marriage contract, or it is obliged by sexual intercourse and marriage contract only provides the situation of eligibility of *mahr*. In this case, it affects the correctness of '*ibrā'*' before and after penetration. This article aims to answer the basic questions, "What is the ruling of '*ibrā'*' *mahr al-mithl* from the perspective of Imami and Sunni jurists?" and "What is the difference between them in this regard?" In the following, after explaining the used concepts, the ruling on '*ibrā'*' *mahr al-mithl* will be discussed from the perspective of Imami, Shafi'i, Hanbali, Hanafi, and Maliki, considering their reasons.

2- Method

Using the descriptive-analytical method with library tools, this article tries to answer this basic question, "What is the ruling on '*ibrā'*' *mahr al-mithl* (acquittal of stipulated dower) from the perspective of Imami and Sunni jurists?"

3- Result

1. In Imami jurisprudence, the renowned majority of jurists believe that '*ibrā'*' of unknown is permissible; for '*ibrā'*' is not an exchange so the rules of exchange do not

apply to it. There are two ideas regarding the time of obligation of *mahr al-mithl*, according to Imami jurists; the first idea is that *mahr al-mithl* is obliged before penetration. In this case, there will be no problem in '*ibrā'*', for it is '*ibrā'*' of what was obliged before. Another idea is that the *mahr* is obliged after penetration and its ownership is realized through penetration. Therefore, if the wife acquits ('*ibrā'*') the husband before intercourse, the '*ibrā'*' is not valid, because the statement was made before the entitlement and '*ibrā'*' before the obligation is not valid and correct. Through the marriage, the wife only achieves the entitlement to *mahr al-mithl* and can revoke this right. However, this is not considered an '*ibrā'*' *mahr al-mithl*. On the other hand, some Imami jurists believe that *mahr al-mithl* becomes obligatory with the marriage contract and penetration is not a condition of its obligation. The source of a woman's entitlement to *mahr* is established through marriage, but its amount will be determined later. According to these jurists, there is no problem with revoking before the obligation.

2. According to Shafi'i jurists, if the woman knows the amount of *mahr al-mithl* and then executes '*ibrā'*' on the man, this act is correct and valid, while if she does not know its value, the '*ibrā'*' is not correct, for '*ibrā'*' is revoking what is owned by a person, and since the unknown has not yet been owned, '*ibrā'*' is not correct as well. Also, from their point of view, *mahr al-mithl* does not become obligatory through marriage, but penetration plays a role in its obligation.

3. According to Hanbali jurists, '*ibrā'*' is correct whether it occurs before or after the penetration, for in these cases, dowry is



obliged, and ignorance to its amount does not disturb the *'ibrā'*, for *'ibrā'* is revoking and is correct to the unknown. According to Hanbalis, *mahr al-mithl* becomes obligatory by the marriage contract and is settled on the spouse's responsibility, i.e. penetration has no role in it. Actually, as soon as the reason for the obligation of *mahr al-mithl*, i.e. marriage, is concluded, it is sufficient for the obligation of *mahr al-mithl* and as soon as the marriage takes place, *mahr al-mithl* becomes obligatory and the wife can acquit (*'ibrā'*) the husband. This is *'ibrā'* of an obliged matter and there is no doubt on their authenticity.

4. According to Hanafi jurists, *'ibrā'* is established by the penetration and death of one of the spouses. According to them, *'ibrā'* before the obligation is not correct and valid, for *mahr* is not obliged through marriage; however, after the penetration and obligation, ignorance of the amount of *mahr al-mithl* will not prevent the validity of the statement, but the *'ibrā'* of the unknown, the guarantee of the unknown, and the guarantee of "*mā lam yajib*" (what is not obliged) are valid.

5. According to Maliki jurists, the marriage contract does not affect the obligation of *mahr al-mithl*, but what causes the husband's obligation to pay, is penetration. That is, as long as the penetration does not happen, there is no liability which can be revoked. After the establishment and obligation of *mahr al-mithl* on the spouse, *'ibrā'* will be valid, and ignorance of the amount will not affect its validity.

6. According to the studies, it seems that as *mahr al-mithl* is regarded as *'iwad-i bud'* (compensation for intercourse), without the *bud'* being provided to the husband and his having enjoyed the wife's *bud'*, no compensation can be conceived

for it. What has been mentioned in the words of the jurists, both Shi'a and Sunni jurists, that the marriage contract does not make the *mahr al-mithl* mandatory, goes back to their definition of *mahr al-mithl*; because as long as the man has not enjoyed the wife's *bud'*, its compensation cannot be considered as obligatory on him. Although marriage is the reason for the obligation of *mahr al-mithl*, however, this reason only indicates the wife's entitlement to that in the future, and it is not obligatory yet and even this obligation may never be fulfilled. Therefore, expressing it before its realization won't have any effect. Moreover, if the wife states that if the *mahr al-mithl* becomes obligatory, she will revoke it, such a statement is a suspension to implementation, which is invalid, as it is invalid in *damān* (liability). It is the same in *'ibrā'*; however, after it is obligatory, knowledge and ignorance cannot be considered effective in the validity of *'ibrā'*, for marriage is not an exchange to apply all the rules of exchange. Even some jurists, including the author of al-Jawāhir, consider marriage to be part of worship. Based on this interpretation, if marriage is considered to be only a type of exchange, rather than a mere exchange, the detailed rules of exchange, including the detailed knowledge of the exchange, will not apply to it. Now, if marriage is considered to be part of the acts of worship, definitely knowledge and ignorance won't affect the validity of *'ibrā'*. Only one supposition can be imagined, that is, there is so much ignorance about the amount of *mahr al-mithl* that it undermines the wife's intention to *'ibrā'*. In this case, the correctness of the *'ibrā'* will face problems. Therefore, if ignorance is such that it affects the wife's intention to *'ibrā'*, the validity of such *'ibrā'* faces a problem, for intention is a fundamental element and a condition in legal activities.



4- Conclusion

'Ibrā' means the cancellation of an incorporeal right, by which the person who has the right, relieves the other party from paying the debt. The issue of 'ibrā' is always a financial right to which a person is obliged. In the relationship between spouses, since the husband's obligation to pay the *mahr* (dowry) creates a financial right for the wife, the wife, like any other right holder, can revoke this financial right by her will. In the marriage contract, *mahr* is not always agreed upon by the parties in a correct and precise way, which is known as *mahr al-musammā*. For example, sometimes due to the lack of agreement on *mahr*, the scope of the couple's obligation to pay the *mahr* is the amount of the *mahr al-mithl*. *Mahr al-mithl*, which is determined as '*iwad-i bud*' and the amount of property as *mahr* for the likes and equals of a woman in marriage, may be subject to 'ibrā', like *mahr al-musammā*. In this supposition, what is effective in Thanks to all those who helped us in writing this article

ruling on the validity or invalidity of the 'ibrā' *mahr al-mithl* is the wife's knowledge and ignorance of the amount of the *mahr al-mithl* that she tries to acquit, as well as the time when the *mahr al-mithl* is obligatory on the husband. The view of Imami and Sunni jurists on these two components, as a result of determining the ruling of such expressions based on them, is significant and notable.

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Maryam al-Sadat Mohaghegh Damad, the corresponding author of this article, is an Assistant Professor at Imam Sadiq University. The contribution of both authors in writing the article is equal and common.

7- Conflict of Interest

Authors declared no conflict of interest.

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