# 98965 - Rulings and issues for a husband who discovered a romantic relationship between his wife and another man

## the question

I discovered that my wife is having a romantic relationship with a young man. In the beginning, there were phone calls between them, but it has reached such a stage of audacity that she brought him to the house in my absence. Up till now she does not know that I know about the matter, and that I intend to divorce her. My question is, do I have the right, according to sharee‘ah, to take back what I gave her of the mahr, and to force her to give up the delayed portion thereof, that was recorded in the papers filed with the sharee‘ah court? My second question is: my wife stole some money from me, and I did not find out that she was the one who was doing it until after the final theft. Do I have the right to demand that her family return what she stole from me, in addition to taking back the mahr that I mentioned in my first question? My third question is: we have two daughters; the older one is two and a half years old, and the little one is ten months old and she has stopped breastfeeding from her mother. Do I have the right, after divorcing her, to forbid my wife to bring them up, because of what she has done of betraying me? I want to bring up my daughters myself, for fear of her bad attitude. My fourth question is: my wife is now pregnant; can I divorce her whilst she is pregnant? My fifth question is: according to the doctor’s statement, the pregnancy is not yet established, and she may miscarry. If that happens, do I have to wait until her period comes so that I can divorce her? What is the shar‘i timeframe for divorce? My sixth question is: is one divorce (talaaq) sufficient, or must I divorce her on three separate occasions? Please advise me, may Allah reward you with all good. I am waiting for your fatwas so that I may begin divorce proceedings.

## Detailed answer

Praise be to Allah.

Firstly:

If it has become clear to you that she is having a haraam relationship with another man, or it becomes clear to you that she is committing zina, or she admits that to you, it is permissible for you to put pressure on her to give up the delayed portion of her mahr.

Allah, may He be exalted, says (interpretation of the meaning):

“O you who believe! You are forbidden to inherit women against their will, and you should not treat them with harshness, that you may take away part of the Mahr you have given them, unless they are guilty of brazenly immoral conduct. And live with them honourably. If you dislike them, it may be that you dislike a thing and Allah brings through it a great deal of good”

[an-Nisa’ 4:19].

“brazenly immoral conduct” does not refer only to zina; rather it also includes open defiance and disobedience towards a husband, and reviling him and his family. So it is more apt that having a haraam relationship with another man should also be included in that and come under the same ruling.

Ibn Katheer (may Allah have mercy on him) said:

With regard to the words “unless they are guilty of brazenly immoral conduct”, Ibn Mas‘ood, Ibn ‘Abbaas, Sa‘eed ibn al-Musayyab, ash-Sha‘bi, al-Hasan al-Basri, Muhammad ibn Sireen, Sa‘eed ibn Jubayr, Mujaahid, ‘Ikrimah, ‘Ata’, al-Khurasaani, ad-Dahhaak, Abu Qilaabah, Abu Saalih, as-Suddi, Zayd ibn Aslam, and Sa‘eed ibn Abi Hilaal said: What is meant by that is zina, i.e., if she commits zina, then you have the right to ask her to return the mahr that you gave her, and to put pressure on her so that she will give it up to you and you will divorce her by khula‘, as Allah, may He be exalted, says in Soorat al-Baqarah (interpretation of the meaning):

“And it is not lawful for you (men) to take back (from your wives) any of your Mahr (bridal money given by the husband to his wife at the time of marriage) which you have given them, except when both parties fear that they would be unable to keep the limits ordained by Allah (e.g. to deal with each other on a fair basis). Then if you fear that they would not be able to keep the limits

ordained by Allah, then there is no sin on either of them if she gives back (the Mahr or a part of it) for her Al-Khul‘ (divorce)”

[al-Baarah 2:229].

Ibn ‘Abbaas, ‘Ikrimah and ad-Dahhaak said: “brazenly immoral conduct” is defiance and disobedience.

Ibn Jareer – i.e., at-Tabari - favoured the view that it includes all of that: zina, disobedience, defiance, being sharp-tongued, and so on.

In other words, all of that makes it permissible to put pressure on her so that she will give up her rights, or part of them, so that he may leave her, and this is good. And Allah knows best.

Tafseer Ibn Katheer (2/241).

It is essential to understand that the mere fact that the wife has committed zina does not mean that her right to the mahr is waived.

Shaykh al-Islam Ibn Taymiyah (may Allah have mercy on him) said:

The right to the mahr is not waived just because she commits zina, as is indicated by the words of the Prophet (blessings and peace of Allah be upon him) to the couple who engaged in li‘aan, when the husband asked about his money; he said: “No, you are not entitled to any money from her. If you were telling the truth against her, then it is in return for what was made permissible to you of intimacy with her, and if you were telling lies against her, then you have even less right to it.” That is because if a woman commits zina, she may repent, but the fact that she has committed zina makes it permissible for him to put pressure on her, so that she will ransom herself from him if she chooses to leave him, or she should repent.

Majmoo‘ al-Fataawa (15/320)

Secondly:

Whatever a woman takes from her husband’s wealth without his knowledge may be one of two things:

1.She has taken it to spend on herself and on her children and house, and the reason for her doing that is stinginess and miserliness on her husband’s part.

2.She has taken it in order to buy luxuries, or to give the money to her family, and other kinds of spending.

In the first case, it is not permissible for the husband to ask her to give this money back, because she took something that she is entitled to, because spending on the wife and children is obligatory upon the head of the household. If he falls short in that or refuses to do it, it is permissible to take from his wealth, even if that is without his knowledge.

It was narrated that ‘Aa’ishah (may Allah be pleased with her) said: Hind – the wife of Abu Sufyaan – said to the Prophet (blessings and peace of Allah be upon him): Abu Sufyaan is a stingy man and he does not give me enough for me and my child, except what I take from him without him knowing. He said: “Take that which will suffice you and your child on a reasonable basis.”

Narrated by al-Bukhaari (5049) and Muslim (1714).

An-Nawawi (may Allah have mercy on him) said, discussing what we learn from this hadith:

… If a person has some right over another but he is not fulfilling it, it is permissible to take from his wealth as much as he is entitled to, without his permission.

Sharh Muslim (4/373)

In the second case, it is not permissible for your wife to take anything from you without your permission, and if she does that then she is sinning, and you have the right to ask her to return what she took; if she refuses, you have the right to take back your wealth from the deferred portion of her mahr or from anything else of her wealth that you owe her.

Thirdly:

The basic principle is that the mother is more entitled to custody of her children – before the age of seven years – so long as she has not remarried. What is meant by custody is not merely providing food, drink and shelter; it also includes teaching them, educating them, teaching them morals and manners, and taking care of their psychological wellbeing. If the mother is a disbeliever or an evildoer, it is not permissible to give her custody of her children. What matters with regard to custody is not that the one who has custody should be a father or a mother; what matters is what he or she can offer the child of care and Islamic upbringing and education. Based on that, the parent who is more entitled to custody is one who is better in terms of religious commitment. If the mother, after her divorce, is continuing to follow misguidance and commit sin, it is not permissible to give her custody of her children, and in that case custody should be given to the father, but if she repents and mends her ways, then she is more entitled to custody of them so long as she has not remarried, for "the one who repents from sin is like the one who never sinned."

Ibn al-Qayyim (may Allah have mercy on him) said:

Our shaykh – i.e., Ibn Taymiyah – said: If one of the parents fails to teach the child and enjoin upon him that which Allah has enjoined, then he is a sinner and is not entitled to guardianship over the child; rather anyone who fails to undertake the duties of guardianship is not entitled to guardianship. In fact he should either give up guardianship and hand it over to one who will do what is required, or someone should be made a co-guardian with him who will do what is required, because the aim is to achieve obedience to Allah and His Messenger.

Our shaykh said:

This right is not the right of inheritance which is attained by ties of kinship, marriage or wala', and is the same regardless of whether the heir is an evildoer or righteous; rather it is more akin to rights of guardianship, with regard to which it is essential that the individual be able to carry out the duties, have knowledge thereof and do them to the best of his ability.

He said: if we assume that the father marries a woman who does not pay any attention to the

interests of his daughter, and does not take care of her, and her mother is more able to take care of the daughter's interests than that co-wife, then in this case custody should definitely be given to the mother.

It should be understood that there is no general shar'i text to suggest that priority be given to one of the parents in all cases, or that the child should be given the choice between his parents in all cases. The scholars are unanimously agreed that neither of them is given priority all cases; rather one who is a transgressor and negligent should not be given precedence over one who is righteous, fair and will treat him well. And Allah knows best.

Zaad al-Ma'aad (5/475, 476)

Please see also the answer to question no. 20705.

Fourthly:

Divorce of a pregnant woman is acceptable according to sharee'ah and is in harmony with the Sunnah. Many ordinary people think that it does not count as such, but their view has no basis in Islamic teaching; rather it is a divorce that is in harmony with the Sunnah.

Muslim (1471) narrated the story of how Ibn 'Umar divorced his wife; according to this report the Prophet (blessings and peace of Allah be upon him) said: "Tell him to take her back, then divorce her when she is pure or pregnant."

Ibn 'Abd al-Barr (may Allah have mercy on him) said:

With regard to one who is pregnant, there is no difference of opinion among the scholars that divorce in this case is in accordance with the Sunnah, from the beginning to the end of pregnancy, because her 'iddah ends when she gives birth. Similarly, it is proven from the Prophet (blessings and peace of Allah be upon him), in the hadith of Ibn 'Umar, that he instructed him to divorce his wife when she was pure or pregnant, and he did not specify either the beginning or end of pregnancy.

At-Tamheed (15/80)

We have quoted a fatwa from Shaykh Ibn Baaz (may Allah have mercy on him) on the ruling on divorce of a wife who is pregnant, in the answer to question no. 12287.

As this is the case, you can divorce your wife with one, revocable talaaq, after which you have the choice: either you can take her back during the ‘iddah – which lasts up until the time she gives birth – if you see that she has mended her ways and you are convinced that she has repented – or you can wait until the ‘iddah ends, after which she will become revocably divorced. At that time she will become free to choose her own destiny, but you can take her back if she wants that and her guardian agrees to it, with a new marriage contract and mahr, because she will have become a stranger (non-mahram) to you.

You should not issue three divorces in one sitting, or in one sentence, because that is a way of divorce that is contrary to the Sunnah.

Please see the answer to question no. 36580

And Allah knows best.