RELEVANCE OF MAHR IN CONTEMPORARY SOCIETY: A SOCIO-LEGAL STUDY

ABSTRACT OF THE THESIS
SUBMITTED FOR THE AWARD OF THE DEGREE OF DOCTOR OF PHILOSOPHY IN LAW

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ABSTRACT
In the present world, everybody is talking about the economic empowerment of the women to ameliorate their social status. Some efforts (like reservation in Govt. jobs) have been made in this direction but this is not enough. Islam has from its very inception provided an inbuilt mechanism in its social system. The provision of Mahr (if regulated in its letter and spirits) in marriage is an important means not only to check the unbridled menace of divorce but also to empower the women in its economic conditions.

After the advent of Islam, the Institution of dower occupied very important place in the Muslim Law. The incident of dower became an integral part of the institution of marriage in Islam. Under the Islamic society dower is highly institutionalized part of Muslim Marriages and is thought of as a form of insurance for the bride in case of separation and divorce. The concept of dower has changed from time to time according to the changing socio-economic status of woman. Firstly, in pre-Islamic society it was considered as a sale price of the woman and paid to the parents. Woman had no right over it. Secondly, after the advent of Islam, dower is considered as personal property of the woman. Thirdly, in modern society it is considered as a social and
economic security of the women and delinks ages with the incident of divorce.

The concept of dower is not the only innovation of Islamic law as it was also found in the Pre-Islamic Arab Society. But it was not in its present form as it is found in the present Islamic law. This was so because of the various ways of adopting wife and the poor position of woman in the days of ignorance. The women were deprived of their various rights for which they were entitled as a human being. Among the rights, which were not enjoyed by them, was right to get dower from their husbands. As among the primitive people, different methods of securing wives were prevalent.

With the advent of Islam, the practices which were prevalent in the days of ignorance to deprive the women’s from their rights of dower were removed by Islam. It was made necessary to pay dower to the woman. Quran declares:

"And give the woman (on marriage) their dower, as a free gift, but if they off, their own goods pleasure, remit any part of it, take it and enjoy it with right good cheer”. (An-Nisā’ 4:4)

There were also traditions on this point by which it becomes clear that Mahr was made necessary for every marriage. According to a
tradition in Bukhari "the Mahr is an essential condition for the legality of marriage".

Thus, in this way Mahr was made essential for every marriage under Islam to safeguard the right of dower of the married women. The amount of dower is not material. Even a small portion of money may be fixed as Mahr and can be given by the husband to his wife. Once Prophet Mohammad (P.B.U.H.) allowed a marriage with only a pair of shoes as Mahr and approved of a poor man who did not possess even an iron ring, giving his wife instruction in Quran as Mahr. According to Fyzee the object of dower is twofold.

1. To impose an obligation on the husband as a mark of respect of the wife and
2. To place a check on the capricious use of divorce on the part of husband.

Another object of dower is to provide a woman her subsistence after her marriage or divorce.

According to Fatawa-i-Qazi Khan, Mahr is so important for the solemnization of marriage that if it was not mentioned at the time of the marriage or in the marriage contract, the law will presume it by virtue of the contract itself. It is so essential incident of marriage under Islamic law that even if there is a stipulation on the part of the women before
ABSTRACT

marriage to forego all her rights to dower or even if she agrees to marry without any dower; the stipulation or agreement will be invalid.

The reason of its importance lies in the protection that it imparts to the wife against the arbitrary exercise of the power of divorce by the husband. Under Islamic law, the husband can divorce his wife at his whim so the subject matter of dower is to check upon absolute power of the husband to terminate the marriage at any time without any cogent reason. It not only protects from his unbridled power to divorce but also from his extravagance in having more than one wife. A stipulation to charge a huge dower on the occasion of his another marriage is enough to deter him from enjoying the option of having more than one wife at a time. In Abdul Kadir Vs. Salima, Mahmood J. has observed the marriage contract is easily dissoluble and the freedom of divorce and the rule of polygamy place the power in the hands of the husband which the law giver intended to restrain by rendering the rules as to payment of dower stringent on the husband. That is why the right of the wife to her dower is a fundamental feature of marriage contract.

1. Objectives of the Study

   The objective to undertake this research work is pertaining to:

   (1) Evaluate the position and concept of dower before Islam and the reforms that were made in this sphere by Prophet (P.B.U.H.) after the advent of Islam.
(2) Study the true nature of *Mahr* and the efforts of the Whether jurists of Muslim law and the judiciary to explore the real meaning, nature and concept it.

(3) The nexus of *Mahr* with the institution of marriage and the impact on the validity of marriage if mahr is not settled at the time of marriage.

(4) Study the present state of affairs as regards to its enforcement and workability in the existing socio-economic conditions of women in India.

(5) The remedies that is available to the wife for non-payment of dower at the time of marriage or after dissolution of marriage?

(6) The codification of laws regarding *Mahr* that has taken place in the sub-continent and elsewhere in the world.

(7) The impact of dower as an effective means to ensure economic safeguard to the women in present society.

(8) The present trend of fixing the dower as prompt or deferred and its realisation by the woman from the husband.

2. **Hypothesis**

The research proceeds on the following hypothesis:

Most of the Muslim women are not aware about the actual effect of their rights to get mahr from their husbands. This right may prove a means for stabilizing the marital relations.

The right of the wife to get mahr can play a very crucial important role in the economic empowerment of the female if dower is fixed according to the socio and economic status of the parties.
ABSTRACT

The amount of dower and a fair provisions relating to maintenance if awarded together by the Court at the time of divorce, she would be able to receive handsome amount of money from her husband that can be utilized by her in more effective manner to lead a dignified life as compare to seeking maintenance from her husband monthly under section 125 of the Cr.P.C.

3. Impact of the Study

Muslim Community will become aware about the importance of Mahr in the contemporary society and will be able to utilize such concept in more effective manner within the spirit of Quran and Hadith for their betterment. This study would add something to the existing pool of literature in the society pertaining to the subject.

4. Methodology

The methodology adopted is doctrinal and analytical. This study is basically based on fundamental sources of Islamic law i.e. The Quran, Hadith and the juristic works in English, Urdu and Arabic languages. Secondary materials consists relevant Journals, books, reports and articles published and used for assessing the present legislative and judicial trends in India and Muslim countries. Leading decisions on the subject by Privy Council, Supreme Court of India, High Court of States
and even decisions of Districts courts of Aligarh and Agra have also been analyzed to examine, identify and spell out the misconceptions and inconsistencies that have crept into the working and usefulness of the institution of Mahr. Use of Internet was also made together important information related to the subject of study.

5. **Chapter wise Introduction:** I have divided my thesis in VI Chapters. The brief chapter-wise contents are as under:

*Chapter I* has been devoted to the study of the origin and development of the law on Mahr with reference to the Quranic directions, practices of the prophet (P.B.U.H.) and the later developments.

*Chapter II* is the study of concept, meaning and nature of Mahr and the real object of Mahr in Islam.

*Chapter III* deals with the relevance of Mahr with the institution of marriage and what will be the effect on the validity of marriage. If not fixed at the time of Marriage and also deals with the subject matter of Mahr and its quantum in the light of Hadith and common usages and practices. Impact of modern litigations on the amount of Mahr has also been considered herein.
Chapter IV In Chapter IV of thesis it is discussed that what are different kinds of Mahr and how they can be realized by the wife from her husband.

Chapter V is an endeavour to determine the extent of entitlement of Muslim women to Mahr in cases of extra judicial as well as judicial divorces. Chapter also incorporates the principles of Islamic law and a detailed account of judicial precedents about the nature and scope of the widowed woman claim to Mahr especially the "widow's right of retention".

Chapter VI gives a review of the statutory laws related to Mahr in different Muslim country with reference to the relevant classical law.

In the concluding chapter, the impressions from the various findings in this study have been stated and some suggestions have accordingly been articulated to make the institution of Mahr useful for Muslim society in general and the Muslim women in particular.

Conclusion and Suggestions:

Please peruse the chapter in the thesis.
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2014
Dedicated

To my

Parents & Wife
CONTENTS

ACKNOWLEDGMENT i - ii
ABBREVIATION iii
TABLE OF CASES iv-viii

INTRODUCTION

AN OVERVIEW
• Objectives of the Study
• Hypothesis
• Impact of the Study
• Methodology
• Chapter wise Introduction

CHAPTER-I

HISTORICAL RETROSPECT
• Dower: Pre-Islamic Society
• Dower: Islamic Society
• The Relevant Ahadith on Mahr
• MAHR: Outside India:
• 5. Position of Mahr in India

CHAPTER-II

DOWER: A CONCEPTUAL ANALYSIS
• Dower: Secular Understanding Meaning and Nature
• Nature of mahr as an Islamic Legal Concept
• Socio-Legal Significance of mahr in the Islamic Society
• Some pre and non-Islamic concepts confused with Mahr

CHAPTER-III

MARRIAGE AND INSTITUTION OF DOWER 81-169
• General Observation
• Instruction in religion
• Legislation in Muslim Countries
• Indian Legislation
• Dissolution of Muslim Marriage Act 1939
• Procedural Laws
• Case Law in the Subcontinent
• Impact of the Muslim Marriages Registration Act, 1980
• MAHR AND Aqid AL-NIKAH: A LEGAL NORMS
• Validity of Marriage without fixing dower
• Dower- a religious ordinance

CHAPTER-IV

DIFFERENT KINDS OF DOWER AND THEIR REALIZATION 170-252
• Specified Dower
• Prompt dower and its Payment
• Deferred Dower and its Payment
• Proper Dower (Mahr-e-misl)
• Determination of proper dower
CHAPTER V  
MUSLIM WOMEN'S RIGHT TO MAHR ON THE DISSOLUTION OF MARRIAGE
- The Approach of Shariah law on Mahr and Dissolution of Muslim Marriage
- Dissolution of Muslim marriage Act, 1939
- Mahr, Nafaqah & Mata': Nature and Inter-Relationship
- Muslim Widow's Right to retain possession of husband's estate in lieu of dower
- Salient Features for right of retention

CHAPTER VI  
STATUTORY POSITION OF MAHR IN DIFFERENT ISLAMIC COUNTRIES
- Statutory Provisions relating to Mahr:
- Definition of Mahr
- Nature of the Right to Mahr:
- Subject matter of mahr
- Quantum of Mahr
- Specified and 'Proper' mahr
- Bride's consent to mahr
- Disputes about mahr amount
- Increase or decrease in the amount of mahr
- Time for payment of mahr
- Enforcement of mahr:
- Mahr and irregular (fasid) marriages
- Mahr and marriage consummation
- Mahr as damages for breach of betrothal
- Return of mahr
- Mahr and equality of spouses (Kufu)
- Mahr and Khula'
- Mahr and Fasid
- Procedure for payment of mahr
- Mahr and anti-dowry legislations

CONCLUSION & SUGGESTIONS

BIBLIOGRAPHY
APPENDIX - I
APPENDIX - II
APPENDIX - III

389 - 406
407 - 412
i - iii
iv - vii
viii - xii
Acknowledgement
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(Hashmat Ali Khan)
ABBREVIATION
<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>A.I.R.</td>
<td>All India Reporter</td>
</tr>
<tr>
<td>A.S.I.L.</td>
<td>Annual Survey of Indian Law</td>
</tr>
<tr>
<td>All. L.J.</td>
<td>Allahabad Law Journal</td>
</tr>
<tr>
<td>Bom.</td>
<td>Bombay</td>
</tr>
<tr>
<td>C.P.C.</td>
<td>Civil Procedure Code</td>
</tr>
<tr>
<td>Cal.</td>
<td>Calcutta</td>
</tr>
<tr>
<td>Cal. W.N.</td>
<td>Calcutta Weekly Notes</td>
</tr>
<tr>
<td>D.B.</td>
<td>Division Bench</td>
</tr>
<tr>
<td>H.C.</td>
<td>High Court</td>
</tr>
<tr>
<td>I.A.</td>
<td>Indian Appeals</td>
</tr>
<tr>
<td>I.C.</td>
<td>Indian Cases</td>
</tr>
<tr>
<td>I.L.R.</td>
<td>Indian Law Reports</td>
</tr>
<tr>
<td>I.C.L.Q.</td>
<td>Islamic and Comparative Law Quarterly</td>
</tr>
<tr>
<td>I.C.L.R.</td>
<td>Islamic and Comparative Law Review</td>
</tr>
<tr>
<td>IR</td>
<td>Indian Rupees</td>
</tr>
<tr>
<td>J&amp;K L.R.</td>
<td>Jammu &amp; Kashmir Law Reporter</td>
</tr>
<tr>
<td>Lah.</td>
<td>Lahore</td>
</tr>
<tr>
<td>M.I.A.</td>
<td>Moore's Indian Appeals</td>
</tr>
<tr>
<td>Mad.</td>
<td>Madras</td>
</tr>
<tr>
<td>P.C.</td>
<td>Privy Council</td>
</tr>
<tr>
<td>P.L.D.</td>
<td>Pakistan Legal Decisions</td>
</tr>
<tr>
<td>Pat.</td>
<td>Patna</td>
</tr>
<tr>
<td>Q.B.</td>
<td>Queen’s Bench</td>
</tr>
<tr>
<td>R.A.</td>
<td>Radiyallahu Anhu, Rahmatullahi Alaih</td>
</tr>
<tr>
<td>S.A.W.</td>
<td>Sallallahu Alihi Wasallam</td>
</tr>
<tr>
<td>S.C.C.</td>
<td>Supreme Court Cases</td>
</tr>
<tr>
<td>S.C.R.</td>
<td>Supreme Court Reporter</td>
</tr>
<tr>
<td>Smv.</td>
<td>Samvat era</td>
</tr>
<tr>
<td>So. Sh.</td>
<td>Somalian Shilling</td>
</tr>
<tr>
<td>T.P. Act</td>
<td>Transfer of Property Act</td>
</tr>
<tr>
<td>P.B.U.H.</td>
<td>Peace and Blessing Upon Him</td>
</tr>
</tbody>
</table>
TABLE OF CASES
<table>
<thead>
<tr>
<th>Name</th>
<th>Vs.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Abdul Kadir</td>
<td>Salima, 6, 61, 158, 172, 209</td>
</tr>
<tr>
<td>Abdul Rahman</td>
<td>Wali Mohammad, 303</td>
</tr>
<tr>
<td>Abdul Rehman Khan</td>
<td>Mst. Inayati Bibi, 129, 216, 215</td>
</tr>
<tr>
<td>Abdul Sattar</td>
<td>Mt. Aqida Bibi, 179</td>
</tr>
<tr>
<td>Abdul Wahab</td>
<td>Mushtaq Ahmad, 318</td>
</tr>
<tr>
<td>Ahmad Hussain</td>
<td>Kallu Mian, 7</td>
</tr>
<tr>
<td>Ahmad Hussain</td>
<td>Mt. Khadeja, 154, 178</td>
</tr>
<tr>
<td>Ahmad Khan</td>
<td>Noorjahan, 180, 181</td>
</tr>
<tr>
<td>Ali Bukhsh</td>
<td>Kaeem Bibi, 277</td>
</tr>
<tr>
<td>Ali Muhammad Khan</td>
<td>Azizullah Khan, 329</td>
</tr>
<tr>
<td>Ameer Ahmad</td>
<td>Sankara Narajana Chatty, 329</td>
</tr>
<tr>
<td>Amin Begum</td>
<td>Soman, 188</td>
</tr>
<tr>
<td>Amina Bibi</td>
<td>Mt. Ibrahim, 149, 157</td>
</tr>
<tr>
<td>Amir Hassan</td>
<td>M. Nazir, 322</td>
</tr>
<tr>
<td>Amurom Nisfa</td>
<td>Mooreed-un-Nisfa, 212</td>
</tr>
<tr>
<td>Anis Begum</td>
<td>Mohammad Istafa, 62, 160, 176</td>
</tr>
<tr>
<td>Arab Ahmad Bin Abdullah</td>
<td>A.B. Mohamuna Saiydbhai, 289</td>
</tr>
<tr>
<td>Asma Bibi</td>
<td>Abdul Samad Khan, 134</td>
</tr>
<tr>
<td>Asma Bibi</td>
<td>Sarnad Khan, 110</td>
</tr>
<tr>
<td>Azizullah Khan</td>
<td>Ahmad Ali Khan, 317</td>
</tr>
<tr>
<td>Bai Tahira</td>
<td>Ali Hussain, 284, 289</td>
</tr>
<tr>
<td>Baij Nath</td>
<td>Hajee Vally Mohammad, 143</td>
</tr>
<tr>
<td>Balkis Fatima</td>
<td>Niaum-ul-Ikram Qreshi, 35</td>
</tr>
<tr>
<td>Bashir Ali</td>
<td>Hafiz Ali, 97</td>
</tr>
<tr>
<td>Bibi Makbulunnissa</td>
<td>Bibi Umaturunnissa, 303</td>
</tr>
<tr>
<td>Bibi</td>
<td>Musi bibi, 314</td>
</tr>
<tr>
<td>Buland Khan</td>
<td>Janee, 219</td>
</tr>
<tr>
<td>Collector of Moradabad</td>
<td>Harbans Singh, 139</td>
</tr>
<tr>
<td>E.M. Ebrahim</td>
<td>Mama &amp; others, 192</td>
</tr>
<tr>
<td>Eidann</td>
<td>Mazhar, 210</td>
</tr>
<tr>
<td>Ekram Hussain</td>
<td>Ali Hussain, 143</td>
</tr>
<tr>
<td>Fatima</td>
<td>Sadruddin, 132</td>
</tr>
<tr>
<td>Fazal Begum</td>
<td>Hakim Ali, 282</td>
</tr>
<tr>
<td>Fuziumbi</td>
<td>Khader Vali, 284</td>
</tr>
</tbody>
</table>
# Table of Cases

<table>
<thead>
<tr>
<th>Name</th>
<th>Vs.</th>
<th>Case Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ghani Ahmad</td>
<td>Vs. Medhi Begum</td>
<td>90</td>
</tr>
<tr>
<td>Ghiasuddin Babu Khan</td>
<td>Vs. C.I.T. A.P.</td>
<td>187, 323</td>
</tr>
<tr>
<td>Ghouseyar Khan &amp; Others</td>
<td>Vs. Fatima Begum</td>
<td>299</td>
</tr>
<tr>
<td>Ghulam Ali</td>
<td>Vs. Saghirunnisa</td>
<td>218</td>
</tr>
<tr>
<td>Goover</td>
<td>Vs. Hayatbhai</td>
<td>300, 312</td>
</tr>
<tr>
<td>Haji Faqir Bux</td>
<td>Vs. Pandit Thakur Prasad</td>
<td>182</td>
</tr>
<tr>
<td>Haji Mokshed Mondal</td>
<td>Vs. Del Rouson Bibi</td>
<td>153, 297</td>
</tr>
<tr>
<td>Haliman</td>
<td>Vs. Md. Mamir</td>
<td>317</td>
</tr>
<tr>
<td>Haliman</td>
<td>Vs. Mohd. Mamir</td>
<td>293</td>
</tr>
<tr>
<td>Hamidunnessa Bibi</td>
<td>Vs. Zohiruddin Sheikh</td>
<td>208</td>
</tr>
<tr>
<td>Humaira Bibi</td>
<td>Vs. Zubaida Bibi</td>
<td>62, 84, 172, 192, 211, 324</td>
</tr>
<tr>
<td>Hasan Bukhari</td>
<td>Vs. Madam Chetty</td>
<td>325</td>
</tr>
<tr>
<td>Hasnumiyan</td>
<td>Vs. Hallimunnissa</td>
<td>320</td>
</tr>
<tr>
<td>Hira Singh</td>
<td>Vs. Mosaheb</td>
<td>315</td>
</tr>
<tr>
<td>Hosseinoodelen Chowdhary</td>
<td>Vs. Tajehwisk Khatoon</td>
<td>217</td>
</tr>
<tr>
<td>Hussain Khan</td>
<td>Vs. Gulab Khatoon</td>
<td>175, 215</td>
</tr>
<tr>
<td>Imambi</td>
<td>Vs. Khaja Hussain</td>
<td>213, 298</td>
</tr>
<tr>
<td>Imperial Bank of India</td>
<td>Vs. Bivi Sayeden</td>
<td>247</td>
</tr>
<tr>
<td>Jahangir Khan</td>
<td>Vs. Abdur Rehman</td>
<td>195</td>
</tr>
<tr>
<td>Janudul Haq</td>
<td>Vs. Zubair Haider</td>
<td>299</td>
</tr>
<tr>
<td>Kamarunnissa</td>
<td>Vs. Hussain Bibi</td>
<td>149</td>
</tr>
<tr>
<td>Kapurchand</td>
<td>Vs. Kadarun Nissa</td>
<td>159</td>
</tr>
<tr>
<td>Karam</td>
<td>Vs. Joharbi</td>
<td>7, 182</td>
</tr>
<tr>
<td>Katimunnissa</td>
<td>Vs. U. Marakar</td>
<td>198</td>
</tr>
<tr>
<td>Khadija Begun</td>
<td>Vs. Nisar Ahmed</td>
<td>315</td>
</tr>
<tr>
<td>Khadija</td>
<td>Vs. M. Zahir</td>
<td>149</td>
</tr>
<tr>
<td>Khairum Nisa</td>
<td>Vs. Mohd. Husain Bara</td>
<td>199</td>
</tr>
<tr>
<td>Khajunnissa</td>
<td>Vs. Saifullah Khan</td>
<td>217</td>
</tr>
<tr>
<td>Khatoon Begum</td>
<td>Vs. Hosseinee Baksh</td>
<td>219</td>
</tr>
<tr>
<td>Khurshid Bibi</td>
<td>Vs. Muhammad Amin</td>
<td>36</td>
</tr>
<tr>
<td>Kulsumbi</td>
<td>Vs. Bilan Khan</td>
<td>143, 215, 299</td>
</tr>
<tr>
<td>Latafat Hussain</td>
<td>Vs. Hidayat Hussain</td>
<td>334</td>
</tr>
<tr>
<td>M. Iman Din</td>
<td>Vs. Hasan Bibi</td>
<td>189</td>
</tr>
<tr>
<td>M. Talib Hussain</td>
<td>Vs. Inayati Jan</td>
<td>149</td>
</tr>
<tr>
<td>Table of Cases</td>
<td></td>
<td></td>
</tr>
<tr>
<td>----------------</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mahadeo</td>
<td>Vs. Mt. Bibi Maniran, 180, 205</td>
<td></td>
</tr>
<tr>
<td>Mahar Ali</td>
<td>Vs. Amani, 195</td>
<td></td>
</tr>
<tr>
<td>Mahmommad Ishaq</td>
<td>Vs. Sheikh Ikram ul Haq, 275</td>
<td></td>
</tr>
<tr>
<td>Maina Bibi</td>
<td>Vs. Chaudri Vakil Ahmad, 314</td>
<td></td>
</tr>
<tr>
<td>Malik Iftikhar Wali</td>
<td>Vs. Sarwari Begum, 338</td>
<td></td>
</tr>
<tr>
<td>Mangal Rai</td>
<td>Vs. Hira Lal, 197</td>
<td></td>
</tr>
<tr>
<td>Mangat Rai</td>
<td>Vs. Sakina Begum, 188, 206</td>
<td></td>
</tr>
<tr>
<td>Manihar Bibi</td>
<td>Vs. Rakha Singh, 183</td>
<td></td>
</tr>
<tr>
<td>Manihar Bibi</td>
<td>Vs. Rakha Singh, 198</td>
<td></td>
</tr>
<tr>
<td>Manihar</td>
<td>Vs. Rakha Singh, 205</td>
<td></td>
</tr>
<tr>
<td>Marina</td>
<td>Vs. Nuruddin, 202</td>
<td></td>
</tr>
<tr>
<td>Mashal Singh</td>
<td>Vs. Ahmad Husain, 313</td>
<td></td>
</tr>
<tr>
<td>Md. Nayeem Khan</td>
<td>Vs. Union of India, 331</td>
<td></td>
</tr>
<tr>
<td>Meer Mahr Ally</td>
<td>Vs. Mst. Amina, 207</td>
<td></td>
</tr>
<tr>
<td>Mirza Ali</td>
<td>Vs. Qadri Khanam, 194</td>
<td></td>
</tr>
<tr>
<td>Mirza Badar Bukht</td>
<td>Vs. Mirza Khuram Bukht, 181, 185</td>
<td></td>
</tr>
<tr>
<td>Mirza Sulleman Kadar</td>
<td>Vs. Nawab Mehti Begum, 100</td>
<td></td>
</tr>
<tr>
<td>Mohd. Sahif</td>
<td>Vs. Zaib Jahan, 302</td>
<td></td>
</tr>
<tr>
<td>Mohd. Shahabuddin</td>
<td>Vs. Mt. Ummatur Rasul, 97, 144, 112</td>
<td></td>
</tr>
<tr>
<td>Mohd. Taqi Ahmad</td>
<td>Vs. Farmoodi Begum, 7, 176, 182, 183, 296</td>
<td></td>
</tr>
<tr>
<td>Mst. Manihar Bibi</td>
<td>Vs. Rakha Singh, 297</td>
<td></td>
</tr>
<tr>
<td>Mst. Amtul Rasool</td>
<td>Vs. Karim Baksh, 133, 182, 183, 207</td>
<td></td>
</tr>
<tr>
<td>Mt. Fatima Bibi</td>
<td>Vs. Lall Din, 63, 86</td>
<td></td>
</tr>
<tr>
<td>Mt. Nasra Begum</td>
<td>Vs. Rizwan Ali, 5, 62, 179</td>
<td></td>
</tr>
<tr>
<td>(Mt.) Intiyaz Begum</td>
<td>Vs. Abdul Karim, 317</td>
<td></td>
</tr>
<tr>
<td>(Mt.) Umar Din</td>
<td>Vs. Muhammad Din, 279</td>
<td></td>
</tr>
<tr>
<td>Mubarak-un-Nisa'</td>
<td>Vs. Mansab Hasan Khan, 150, 279</td>
<td></td>
</tr>
<tr>
<td>Muhammad Ahmad Khan</td>
<td>Vs. Shah Bano Begum, 2, 284</td>
<td></td>
</tr>
<tr>
<td>Muhammad Taqi Khan</td>
<td>Vs. Farmoodi, 133, 157, 216</td>
<td></td>
</tr>
<tr>
<td>Muhammad Yaqub Hussain</td>
<td>Vs. Inayati Jan, 278</td>
<td></td>
</tr>
<tr>
<td>Mulka Do Alam Nawab Tajdar Bahoo</td>
<td>Vs. Mirza Jehan Kadr, 100</td>
<td></td>
</tr>
<tr>
<td>Masthan Saheb</td>
<td>Vs. Assam Bibi, 184</td>
<td></td>
</tr>
<tr>
<td>Najmunnisa Begum</td>
<td>Vs. Sirajuddin Ahmad, 321</td>
<td></td>
</tr>
<tr>
<td>Case Name</td>
<td>Plaintiff</td>
<td>Defendant</td>
</tr>
<tr>
<td>-------------------------------</td>
<td>-----------</td>
<td>----------------------------</td>
</tr>
<tr>
<td>Nasarat Hussain</td>
<td>Vs.</td>
<td>Hanidan, 339</td>
</tr>
<tr>
<td>Nasiruddin Shah</td>
<td>Vs.</td>
<td>Amatul Mughari, 187</td>
</tr>
<tr>
<td>Naurozi</td>
<td>Vs.</td>
<td>M. Nur Khan, 130</td>
</tr>
<tr>
<td>Nawab Begum</td>
<td>Vs.</td>
<td>Allah Rakha, 139, 177, 187, 196, 205</td>
</tr>
<tr>
<td>Nemi Chand</td>
<td>Vs.</td>
<td>Mt. Muluk Begum, 196</td>
</tr>
<tr>
<td>Nuju moodeen Ahmad</td>
<td>Vs.</td>
<td>Beebee Hossein, 140, 202</td>
</tr>
<tr>
<td>Nur-ud-din Ahmad</td>
<td>Vs.</td>
<td>Masuda Khanum, 174</td>
</tr>
<tr>
<td>Nurunissa</td>
<td>Vs.</td>
<td>Khawja Mohammad, 319</td>
</tr>
<tr>
<td>P.S. Narayana Ayyar</td>
<td>Vs.</td>
<td>Biyar Bibi, 303</td>
</tr>
<tr>
<td>Pukhray Begum</td>
<td>Vs.</td>
<td>Hidayat Ali, 178</td>
</tr>
<tr>
<td>Pym</td>
<td>Vs.</td>
<td>Campbell, 142</td>
</tr>
<tr>
<td>Qasim Hussain</td>
<td>Vs.</td>
<td>Bibi Kaniz Fatima, 315, 320</td>
</tr>
<tr>
<td>Rabia Khatoon</td>
<td>Vs.</td>
<td>Mukhtar Ahmad, 209</td>
</tr>
<tr>
<td>Rajeev</td>
<td>Vs.</td>
<td>Ramkishan Jaiswal, 5</td>
</tr>
<tr>
<td>Rameshwor Nath</td>
<td>Vs.</td>
<td>Aftab Begum, 297</td>
</tr>
<tr>
<td>Rani Khajoosunnissa</td>
<td>Vs.</td>
<td>Rani Ryessunisa, 175</td>
</tr>
<tr>
<td>Raza Hussain</td>
<td>Vs.</td>
<td>Ifatoonnissa, 335</td>
</tr>
<tr>
<td>Razia Bano</td>
<td>Vs.</td>
<td>Nawab Ara Begum, 202</td>
</tr>
<tr>
<td>Razina Khatoon</td>
<td>Vs.</td>
<td>Abida Khatoon, 303</td>
</tr>
<tr>
<td>Rehana Khatun</td>
<td>Vs.</td>
<td>Iqtidaruddin, 178, 183, 205</td>
</tr>
<tr>
<td>Rukaiya Begum</td>
<td>Vs.</td>
<td>Radha Kishan, 148</td>
</tr>
<tr>
<td>Rustam Ali</td>
<td>Vs.</td>
<td>Abdul Jabbar, 304</td>
</tr>
<tr>
<td>S.K. Mohammad Zubair</td>
<td>Vs.</td>
<td>Mt. Bibi Sahida, 90</td>
</tr>
<tr>
<td>Sabir Hussain</td>
<td>Vs.</td>
<td>Farzand Hussain, 181</td>
</tr>
<tr>
<td>Saburanessa</td>
<td>Vs.</td>
<td>Sabdu Sheikh, 62</td>
</tr>
<tr>
<td>Saibanbi</td>
<td>Vs.</td>
<td>Mahmood Ali, 322</td>
</tr>
<tr>
<td>Saima Aziz</td>
<td>Vs.</td>
<td>Muslim Khan, 250</td>
</tr>
<tr>
<td>Sajjad Hussain</td>
<td>Vs.</td>
<td>Mohd. S. Hasan, 315</td>
</tr>
<tr>
<td>Salma Begum</td>
<td>Vs.</td>
<td>Azmat Ali, 250</td>
</tr>
<tr>
<td>Sarb Krishna</td>
<td>Vs.</td>
<td>Mst. Fatima, 177, 188, 205, 302</td>
</tr>
<tr>
<td>Sardar Mohd.</td>
<td>Vs.</td>
<td>Maryam Bibi, 192</td>
</tr>
<tr>
<td>Sarwar Ali Khan</td>
<td>Vs.</td>
<td>Jawahar Devi, 190</td>
</tr>
<tr>
<td>Shahnaz</td>
<td>Vs.</td>
<td>Rizwan, 62</td>
</tr>
<tr>
<td>Shaikh Abdul Rashid</td>
<td>Vs.</td>
<td>Qudrabiunnissa, 219</td>
</tr>
<tr>
<td>Name</td>
<td>Vs.</td>
<td>Reference</td>
</tr>
<tr>
<td>---------------------------</td>
<td>-------------------------</td>
<td>---------------</td>
</tr>
<tr>
<td>Shaikh Abdul Shukoor</td>
<td>Vs. Raheemoon-Nissa, 210</td>
<td></td>
</tr>
<tr>
<td>Shaikh Salma</td>
<td>Vs. Abdul Kadar, 303, 327</td>
<td></td>
</tr>
<tr>
<td>Sheikh M. Zubair</td>
<td>Vs. Mst. Bibi Sahida, 88, 301</td>
<td></td>
</tr>
<tr>
<td>Sheikh Muhammad</td>
<td>Vs. Aisha Bibi, 183</td>
<td></td>
</tr>
<tr>
<td>Siddique</td>
<td>Vs. Family Judge Court III, 62</td>
<td></td>
</tr>
<tr>
<td>Sugra Bibi</td>
<td>Vs. Gaya Prasad, 188, 193</td>
<td></td>
</tr>
<tr>
<td>Sugra Bibi</td>
<td>Vs. Masuma Bibi, 99, 135</td>
<td></td>
</tr>
<tr>
<td>Sulaiman Kadr</td>
<td>Vs. Mehdi Begum, 129</td>
<td></td>
</tr>
<tr>
<td>Sultan Begum</td>
<td>Vs. Siraj-ud-Din Ahmad, 140</td>
<td></td>
</tr>
<tr>
<td>Sultan Nachi</td>
<td>Vs. Salawar Bi, 214</td>
<td></td>
</tr>
<tr>
<td>Syaiyad Qasim</td>
<td>Vs. Habibur Rahman, 214</td>
<td></td>
</tr>
<tr>
<td>Syed Humaira</td>
<td>Vs. Syed Imran Agha, 250</td>
<td></td>
</tr>
<tr>
<td>Syed Mohd. Haider</td>
<td>Vs. Safdar Shah, 297</td>
<td></td>
</tr>
<tr>
<td>Syed Sabir Hussain</td>
<td>Vs. S. Farzand Haan, 159, 211</td>
<td></td>
</tr>
<tr>
<td>Umrao Bibi</td>
<td>Vs. Ahmed Baksh, 156</td>
<td></td>
</tr>
<tr>
<td>Wahedunnissa</td>
<td>Vs. Shubratun, 331</td>
<td></td>
</tr>
<tr>
<td>Wajid Ali Khan</td>
<td>Vs. Shaukat Ali Khan, 177</td>
<td></td>
</tr>
<tr>
<td>Wilyat Hussain</td>
<td>Vs. Allah Rakhi, 122</td>
<td></td>
</tr>
<tr>
<td>Zabardast Khan</td>
<td>Vs. His Wife, 189</td>
<td></td>
</tr>
<tr>
<td>Zahoor Ahmad</td>
<td>Vs. J.P. Singh, 215, 314</td>
<td></td>
</tr>
<tr>
<td>ZaiBounnisa</td>
<td>Vs. Nazim Hasan, 318</td>
<td></td>
</tr>
<tr>
<td>Zakeri Begum</td>
<td>Vs. Muhammad, 38</td>
<td></td>
</tr>
<tr>
<td>Zakeri Begum</td>
<td>Vs. Sakina Begum, 130, 141</td>
<td></td>
</tr>
<tr>
<td>Zamin Ali</td>
<td>Vs. Azizunnissa, 219, 324</td>
<td></td>
</tr>
<tr>
<td>Zamir Hussain Khan</td>
<td>Vs. Tassaduq Ali Khan, 297</td>
<td></td>
</tr>
<tr>
<td>Zarina Quisha</td>
<td>Vs. Arab Wali Mohd., 62</td>
<td></td>
</tr>
</tbody>
</table>
Introduction

An Overview

- Objectives of the Study
- Hypothesis
- Impact of the Study
- Methodology
- Chapter wise Introduction
A. AN OVERVIEW

In pre-Islamic Arabia, the institution of marriage as we know it nowadays was not so developed. Many forms of sex relationships between men and women were commonly in vogue. Some were temporary and hardly better than prostitution. Men, after dispelling their wives, often turned them out helpless and without any means. The ancient custom to settle certain sums for the subsistence of the wife in the event, she was turned out was often disregarded as there was no organized system of law.

But after the advent of Islam, the Institution of dower occupied very important place in the Muslim Law. The incident of dower became an integral part of the institution of marriage in Islam. Under the Islamic society dower is highly institutionalized part of Muslim Marriages and is thought of as a form of insurance for the bride in case of separation and divorce. The concept of dower has changed from time to time according to the changing socio-economic status of woman. Firstly, in pre-Islamic society it was considered as a sale price of the woman and paid to the parents. Woman had no right over it. Secondly, after the advent of Islam, dower is considered as personal property of the woman. Thirdly, in modern society it is considered as a social and

economic security of the women and delinks ages with the incident of divorce.²

The concept of dower is not the only innovation of Islamic law as it was also found in the Pre-Islamic Arab Society. But it was not in its present form as it is found in the present Islamic law. This was so because of the various ways of adopting wife and the poor position of woman in the days of ignorance. The women were deprived of their various rights for which they were entitled as a human being. Among the rights which were not enjoyed by them, was right to get dower from their husbands. As among the primitive people, different methods of securing wives were prevalent.³

The most common method was marriage by purchase. The husband was required to pay the price of the bride to her father, brother or other relative, who so ever may be the guardian of the girl. And in the case of marriage by service the husband served the father of the bride with his service. And in consideration of their services the father of the girl used to give his daughter to his would be son in law. Marriage by capture was also found at that time. These were the devices by which women were deprived of their rights of dower.

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Sir Abdur Rahim⁴ "says that in the regular form of marriage the fixing of Mahr or dower for the benefit of the wife was in vague form among the Pre-Islamic Arab Society. It formed part of the marriage but in some cases the guardian of the girls were used to take dower himself. But at the time of Prophet Mohammad (P.B.U.H.) dower was regarded as a principal term of marriage contract. Its payment in the event of divorce or death of the husband was enforced by the voice of the public opinion or by the power of the woman's relative unless it has been paid at the time of marriage."

With the advent of Islam, the practices which were prevalent in the days of ignorance to deprive the women's from their rights of dower were removed by Islam. It was made necessary to pay dower to the woman. Quran declares:

"And give the woman (on marriage) their dower, as a free gift, but if they off, their own goods pleasure, remit any part of it, take it and enjoy it with right good cheer".

There were also traditions on this point by which it becomes clear that Mahr was made necessary for every marriage. According to a tradition in Bukhari "the Mahr is an essential condition for the legality of marriage".⁵

⁴ Abdur Rahim: Mohammadan Jurisprudence, 8 (1958).
Thus, in this way *Mahr* was made essential for every marriage under Islam to safeguard the right of dower of the married women. The amount of dower is not material. Even a small portion of money may be fixed as *Mahr* and can be given by the husband to his wife. Once Prophet Mohammad (P.B.U.H.) allowed a marriage with only a pair of shoes as *Mahr* and approved of a poor man who did not possess even an iron ring, giving his wife instruction in Quran as *Mahr*. According to Fyzee the object of dower is twofold.

1. To impose an obligation on the husband as a mark of respect of the wife and

2. To place a check on the capricious use of divorce on the part of husband.

Another object of dower is to provide a woman her subsistence after her marriage or by divorce.

The concept of dower is also found in other religion such as Jewish and Roman law. The Jewish Law as regards dower is that, a marriage without consideration is invalid. The Roman law also provides for *Mahr* to the wife. Some jurists compare the Islamic concept of dower with Roman concept of dower and say that it is similar to the Roman doctrine. But in reality it is not so. Because in Roman doctrine, the payment of dower is voluntary where as it is absolutely obligatory

6. Ibid
under Islamic law. Ameer Ali\(^7\) also says that 'the difference between the
two is that under the Roman law it is not obligatory but depends upon
the will of the husband to pay it or not where as under the Islamic law
its payment is absolutely necessary. The marriage institution enjoins
some right and obligation on both the spouses. These rights and
obligations are equal in some respect to both the spouses but unequal in
some other respect. One of these obligations is that the husband has to
pay dower to his wife in marriage. This is so much obligatory that if the
dower is not fixed at the time of marriage then it will be presumed by
law.

This *Mahr* is any amount or property under Islamic Law which
has some monetary value, the wife is entitled to get it from her
husband. Mulla defines it as a sum of money or other property which
the wife is entitled to receive from the husband in consideration of
marriage.\(^8\)

Any property given by the parents or the family members of the
girl at or before any time after the marriage in connection with the
marriage of the said parties shall be covered by the term dowry.\(^9\)

\(^8\) Mulla, Principles of Mohommadan law, 17th Ed. P. 27: See also Nasra Begum Vs. Rizwan Ali,
AIR 1980 All 118 at PP. 119.120 (DB)
INTRODUCTION

According to Fatawa-i-Qazi Khan, Mahr is so important for the solemnization of marriage that if it was not mentioned at the time of the marriage or in the marriage contract. The law will presume it by virtue of the contract itself. It is so essential incident of marriage under Islamic law that even if there is a stipulation on the part of the women before marriage to forego all her rights to dower or even if she agrees to marry without any dower; the stipulation or agreement will be invalid.

The reason of its importance lies in the protection that it imparts to the wife against the arbitrary exercise of the power of divorce by the husband. Under Islamic law, the husband can divorce his wife at his whim so the subject matter of dower is to check upon absolute power of the husband to terminate the marriage at any time without any cogent reason. It not only protects from his unbridled power to divorce but also from his extravagance in having more than one wife. A stipulation to charge a huge dower on the occasion of his another marriage is enough to deter him from enjoying the option of having more than one wife at a time. In Abdul Kadir Vs. Salima, Mahmood J. has observed the marriage contract is easily dissoluble and the freedom of divorce and the rule of Polygamy place the power in the hands of the husband which the law giver intended to restrain by rendering the rules as to

10. ILR (1886) 8 All, 149.
payment of dower stringent on the husband. That is why the right of the wife to her dower is a fundamental feature of marriage contract.

The question with regard to dower does not arise in case of marriages solemnized under special Marriage Act, 1954. But the right to Mahr fixed in a marriage first contracted under Muslim law will not be forfeited merely by the fact of registration of the marriage under Special Marriage Act, 1954.

Prompt dower is an absolute right of wife to recover it and while it may be open for husband to enforce his right in a suit for restitution of conjugal rights, prompt dower cannot be made conditional on wife residing with the husband.\textsuperscript{11}

The wife is entitled to recover her prompt dower at any time before or after consummation. Consummation has not the effect of converting the prompt dower into deferred dower.\textsuperscript{12}

1. **Objectives of the Study**

The objective is to undertake this research work pertaining to:

(1) What was the position and concept of dower before Islam and what reforms were made in this sphere by Prophet (P.B.U.H.) after the advent of Islam.

\textsuperscript{11} *Karum Vs. Joharki*, AIR 1930 Nag 270.
\textsuperscript{12} *Mohd. Taqi Ahmad Vs. Farooqui Begum*, AIR 1941 All 181.
2. Hypothesis

The research proceeds on the following hypothesis:

Most of the Muslim women are not aware about actual effect of their rights to get mahr from their husbands. This right may prove a means for stabilizing the marital relations.

The right of the wife to get mahr can play a very important role in the economic empowerment of the female if dower is fixed according to the socio and economic status of the parties.
INTRODUCTION

The amount of dower and a fair provisions relating to maintenance if awarded together by the Court at the time of divorce. Then, she would be able to receive handsome amount of money from her husband that can be utilized by her in more effective manner to lead a dignified life as compare to seeking maintenance from her husband monthly under section 125 of the Cr.P.C.

3. Impact of the Study

Muslim Community will become aware about the importance of Mahr in the contemporary society and must be able to utilize such concept in more effective manner within the spirit of Quran and Hadith for their betterment. The impact of the study would add something to the existing literature and practices prevailing in the society pertaining to the subject and provide best use of Mahr in present and in the future.

4. Methodology

Methodology adopted is doctrinal and analytical. This study is basically based on fundamental sources of Islamic law viz., The Quran, Hadith and the juristic works in English, Urdu and Arabic languages. Journals, books, reports and articles published have been used for assessing the present legislative and judicial trends in India and Muslim countries. Leading decisions on the subject of Privy Council, Supreme
Court of India, High Court of States and even decisions of Districts courts of Aligarh and Agra have been analyzed to examine, identify and spell out the misconceptions and inconsistencies that have crept into the working and usefulness of the institution of *Mahr*.

5. **Chapter wise Introduction:** I have divided my thesis in VI Chapters. The brief chapter-wise contents are as under:

Chapter I has been devoted to the study of the origin and development of the law on *Mahr* with reference to the *Quranic* directions, practices of the prophet (P.B.U.H.) and the later developments.

Chapter II is the study of concept, meaning and nature of *Mahr* and the real object of *Mahr* in Islam.

Chapter III deals with the relevance of *Mahr* with the institution of marriage and what will be the effect on the validity of marriage. If not fixed at the time of Marriage and also deals with the subject matter of *Mahr* and its quantum in the light of Hadith and common usages and practices. Impact of modern litigations on the amount of *Mahr* has also been considered herein.

Chapter IV In Chapter IV of thesis it is discussed that what are different kinds of *Mahr* and how they can be realized by the wife from her husband.
Chapter V is an endeavour to determine the extent of entitlement of Muslim women to *Mahr* in cases of extra judicial as well as judicial divorces. Chapter also incorporates the principles of Islamic law and a detailed account of judicial precedents about the nature and scope of the widowed woman claim to *Mahr* especially the "widow's right of retention".

Chapter VI gives a review of the statutory laws related to *Mahr* in different Muslim country with reference to the relevant classical law.

In the concluding chapter, the impressions from the various findings in this study have been stated and some suggestions have accordingly been articulated to make the institution of *Mahr* useful for Muslim society in general and the Muslim women in particular.
CHAPTER I

HISTORICAL RETROSPECT

1. DOWER: PRE-ISLAMIC SOCIETY
2. DOWER: ISLAMIC SOCIETY
3. THE RELEVANT AHADITH ON MAHR:
   a) Obligatory Character of MAHR
   b) Shighar Prohibited
   c) Quantum and Subject Matter of MAHR
   d) MAHR and Khul
   e) MAHR and Li’an
   f) MAHR and Void Marriages
   g) Widow’s MAHR
   h) MAHR and the New Converts
   i) MAHR and the Orphan Brides
   j) MAHR and Mutd
4. MAHR: OUTSIDE INDIA:
5. Position of MAHR in India
Chapter - I  

HISTORICAL RETROSPECT

1. Dower: Pre-Islamic Society

Before the advent of Islam Arabic Society was socially, economically and politically was highly imbalanced. It was primarily a male dominated society. The concept of equality between the sexes was unknown species. The male domination on powers economic, social and political had established a number of customs and practices through which they enjoyed absolute supremacy over woman. Turning back the long pages of history and wiping out the dust of time from the sketch of a woman, on the pages during just before Islam in Arabia, there appears before eyes a woman’s sketch handcuffed and chained with drooping head, and tearful eyes. Conforming to all pre-requisites of human being, although, she was subjected to a sub-human treatment by the man. Having a heart to the left and a superbly human mind she was reduced to a nonentity by the cruel hands of the then prevailing situation. Her position in the domestic surrounding was not more than a saucepan, or kettle, so much, so that with all the other belonging of the deceased she was an object worth, inheriting and worth distributing. She was treated as a chattel marketable and transferable and a subject of testamentary disposition.¹

In Pre-Islamic Arabia the birth of a daughter was considered to be a sin. In alkashaf and other commentaries stated2 “that when a daughter was born to someone and somebody wanted to congratulate him, he used to say (hani' an taken afijah), that is congratulation may she be a source of wealth (lit a pouch of musk) for you. This was an illusion to be fact that father of the girl would marry her in future and would receive the dower”. This means the father had relieved the dower amount from the boy's family, and the dower will be as a sale price of the girl.

A woman was not a free agent in contracting marriage. It was the right of her father, brother or cousin or any other male relative or guardian to her in marriage, whether she was old or young, widow or virgin to whomsoever she chose.3 He consent was immaterial. The amounts of Mahr in those days were handed over to the girl's father, brother or cousin, in whose guardianship the girl was. What was usually given to the women at the betrothel is the sadaq, the Mahr being the purchase price, of the bride was given to the wali.4

The concept of dower has passed through four different stages.5 In the pre-Islamic times human being led a savage life, lived in tribal

groups and that for unknown reasons marriage among blood relation used to be considered taboo. The Youngman of the tribe who wished to marry were obliged to make selection of their spouses and lovers from other tribes and for that purpose, they had to approach the other tribe to make his choice. In those ages, man was not aware of the part he played in the birth of a child. Man lived as a parasite and as attendant on woman. The man had complete domination over the women's properties.

In the second stage, too marriage between blood relation was not admissible and man was obliged to select his spouse from some other tribe and bring her to his own tribe. Selection of spouse by means of abduction was there. In other words, a young man used to abduct the girls of his choice from other tribe for the purpose of marriage.

The third stage the custom of abduction became unnecessary, and in order to get girl of his choice man used to bind himself to the service of the father of the girl and in lieu of the services rendered by the would be son in law, the father of the girl gives his daughter to him and then he would bring that girl to his tribe.

Eventually the economic situation improved, and man instead of working for years for the father of the bride it was preferred to present
Chapter - I  

**HISTORICAL RETROSPECT**

a worthy gift to him at the time of marriage, and thus obtain his
daughter from him. He began to do this and from this, the dower came
into existence.

There is also a fifth period⁶ about which sociologist and theory
makers are silent. This is the period in which man on the occasion of
marriage present a gift to the woman herself. Neither of the parent has
any share or right in that gift.

Fyzee⁷ was of the opinion that in pre-Islamic society two kinds of
marital gift were present. In a certain type of marriage, the so called
bina marriage where the husband visited the wife but did not bring her
home the wife was called sadiqa or a female friend and a gift given to
the wife on marriage was called as sadaq. In Islam sadaq is
synonymous with *Mahr*. But originally the two words are quite distinct
sadaq, is a gift to the wife and *Mahr* to the parent of the wife the latter
term belong to the matter of dominion which is known as ball marriage
where the wife's people part with her and have to be compensated. In
these marriages the gift's given to the wife's would be her absolute
property.

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⁷ Fyzee A.A.: Outlines of Mohammadan Law, 133 (1978)
Chapter - I  

**HISTORICAL RETROSPECT**

In regular for of marriages, the fixing of *Mahr* or dower was found in the old Arab society, but it was in the vague form. Generally they were deprived of it by their guardians. In pre-Islamic society, it was an essential condition to the validity of marriage that the husband should settle a certain dower, which becomes her exclusive property. Such at least was the established custom, though owing to the absence of organised system of law or justice the custom was often more honoured in the breach than in the observation.

2. **Dower: Islamic Society**

The status of woman in that is after the rise of prophet Mohammad (P.B.U.H.) on the Arab scene in the seventh century A.D. was great enhanced an abhorrent practice by some Arab Jahilliyyah that was the practice of female infanticide was forbidden by prophet Mohammad (P.B.U.H.).

Islam, one of the great religions of the world, whose followers are found in every country and continent, introduced that concept of universal brotherhood and non-discrimination among Muslims on the ground of sex. It is recognized as the rights of women pertaining to marriage, property and inheritance. Woman as human being are

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9. Id at 7.
entitled to similar rights to life and honour. The reward for their good
deed is similar both male and female. Men and women are considered
as member of a family.\textsuperscript{10} Allah ordained:

\begin{quote}
And their Lord hath accepted
Of them, and answered them:
"Never will I suffer to be lost
The work of any of you,
Be he male or female:
Ye are members, one of another.
Those who have left their homes,
And were driven out therefrom,
And suffered harm in My Cause,
And fought and were slain, -
Verily, I will blot out
From them their iniquities,
And admit them into Gardens
With rivers flowing beneath:-
A reward from Allah
And from Allah
Is the best of rewards."\textsuperscript{11}
\end{quote}

The exchange of daughter was also abolished by Islam.\textsuperscript{12} There
was a custom that one man used to say to the other, I will marry my
daughter or sister to you in exchange for your daughter (or sister)
becoming my wife". The other man then would agree to it. In this way
the two girls become the dower for the other girl and were married to
the father or brother of other girl. Such kind of marriage was called as
higher marriage. Islam annulled this custom.

\textsuperscript{10} M. Muslehuddin: Sociology and Islam, 155 (1977).
\textsuperscript{11} Al-Quran: III:195.
\textsuperscript{12} Murtada Mutabbari: The rights of woman in Islam, 205, 105 (1981).
Chapter - I

The Holy Prophet commanded:

"That is the exchange of daughter of sister is forbidden in Islam".

However, this custom was abolished in Islam and the father of the girl has no right to consider the dower as his property even if his aim and motive was to spend it for the daughters.

The inheriting of wife was also abolished by Islam.\textsuperscript{13} In the case of death of a man, his inheritors, like his son or brother inherited his wives exactly in the same way as they inherited the property of the deceased. After the death of a man, the son or brother of the deceased assumed that the marriage right was still valid and considered himself empowered to marry the wife to anybody he like and take the dower for himself or otherwise to take her as his own wife without a new dower on the strength of the dower that the deceased has paid for her in the past.

The Holy Quran annulled the custom and ordained that:

\begin{quote}
O ye who believe!
Ye are forbidden to inherit
Women against their will.
Nor should ye treat them
With harshness, that ye may
Take away part of the dower
Ye have given them,-except
Where they have been guilty
\end{quote}

\textsuperscript{13} Ibid.
Of open lewdness;
On the contrary live with them
On a footing of kindness and equity
If ye take a dislike to them
It may be that ye dislike
A thing, and Allah brings about
Through it a great deal of good.\textsuperscript{14}

In another verse Holy Quran prohibits absolutely marriage with the wife of the father, even if it is not by way of succession, and even if she wishes to marry of her own free will, Holy Quran ordained:

\textit{And marry not women
Whom your father married,-
Except what is past:
It was shameful and odious,-
An abominable custom indeed.}\textsuperscript{15}

In this way Islam abolished all the custom which was derogatory to the status of women. It also closed the doors of devices of the payment of dower and made it absolutely of the woman property. The Holy Quran says:

\textit{Also (prohibited are)
Women already married,
Except those
Whom your right hands posses:
Thus hath Allah ordained
(Prohibition) against you:}

\textsuperscript{14. Al-Quran, IV:19.}
\textsuperscript{15. Al-Quran IV:22.}
Chapter - I

Historical Retrospect

Except for these, all others
Are lawful, provided
Ye seek (them in marriage)
With gifts from your property,-
Desiring chastity, for fornication.
Give them their dowery
For the enjoyment you have
Of them as a duty; but if,
After a dower is prescribed, ye agree
Mutually (to vary it),
There is no blame on you,
And Allah is All-knowing
All-wise.16

Another place Quran further says:

If any of you have not
The means wherewith
To wed free believing women,
They may wed believing
Girls from among those
Whom your right hands possess:
And Allah hath full knowledge
About your faith.
Ye are one from another:
Wed them with the leave
Of their owners, and give them
Their dowers, according to what
Is reasonable: they should be
Chaste, not fornicators, nor taking
Adulterous: when they
Are taken in wedlock,
If they commit indecency

Chapter - I

Historical Retrospect

Their punishment is half
That for free women.
This (permission) is for those
Among you who fear sin;
But it is better for you
That ye practice self-restraint.
And Allah is Oft-forgiving,
Most Merciful.\textsuperscript{17}

In pre-Islamic days it often happen that Arab after despoiling their wives turned them out a drift, absolutely helpless and without means. So Islam made it an essential incident of a valid marriage. Therefore the husband must settle on the wife a certain dower which became her exclusive properly. The Holy Quran says:

"If you separate yourself from your wives, send them away with generosity, it is not permitted to you to appropriate the goods you have once given to them."

Although dower is an essential part of marriage but the marriage is not invalidated if it is not paid or contracted before marriage. The Holy Quran says:

\textit{A divorce is only}
Permissible twice; after that,
The parties should either hold
Together on equitable terms,
Or separate with kindness.
It is not lawful for you,
(Men), to take back

\textsuperscript{17} Al-Quran, IV.25.
And of your gifts (from your wives),
Except when both parties
Fear that they would be
Unable to keep the limits
Ordained by Allah
If ye (judges) do indeed
Fear that they would be
Unable to keep the limits
Ordained by Allah,
There is no blame on either
Of them if she give
Something for her freedom
These are the limits
Ordained by Allah;
So do not transgress them
If any do transgress
The limits ordained by Allah,
Such persons wrong
(Themselves as well as others).18

It explains that- "it is not sin for you if you divorce woman while
yet ye have not touched them nor appointed to them a portion i.e.
dower."

There was a number of traditions about the *Mahr* and these pave
the way for the theories laid down by the jurist in the fiqah book. From
all the tradition it is clear that *Mahr* is a dominant factor in marriage.19

Depending upon the financial capacity of bridegroom the amount
of *Mahr* should be kept light. And should discard the custom of old

18. Al-Quran, II:229
Chapter - I

HISTORICAL RETROSPECT

Arab tribe and clan which make contracting of marriage a heavy financial burden.

Quran says:

There is no blame on you
If ye divorce women
Before consummation
Or the fixation of their dower;
But bestow on them
(A suitable gift),
The wealthy
According to his means,
And the poor
According to his means;
A gift of a reasonable amount
Is due from those
Who wish to do the right thing.20

Hadrat Ayesha reported that the messenger of Allah said-

"The greatest blessing in the marriage is that of one which gives the least trouble."21

The dower under the Islamic law is essential incident for marriage, it does not matter how much is its amount. And the Mahr absolutely belong to the wife.

Dower in the present form was introduced by the Prophet Mohammad (P.B.U.H.) and made obligatory by him in case of every

20. Al-Quran, II:236
Chapter - I

HISTORICAL RETROSPECT

marriage. As it is stated earlier it is similar to the Roman doctrine and like sadaq it is paid to the wife.

As Quran says:

And give the women
(On marriage) their dower
As an obligation; but if they,
Of their own good pleasure,
Remit any part of it to you,
Take it and enjoy it
With right good cheer.22

3. The Relevant Ahadith on Mahr:

a) Obligatory character of Mahr

The obligatory character of Mahr is evident from various ahadith.

A famous Hadith is quoted below in this respect:

A woman came to Allah's Messenger and said "O" Allah's Messenger I have come to give myself in marriage to you". Allah's Messenger lowered his gaze ... She said so thrice ... One from among the companions of Allah's Messenger got up and expressed his desire to marry her. On this the Prophet (SAW) said, 'Have you got anything to offer as Mahr'? The Man said, "No, By Allah, O' Allah's Messenger".

The Prophet (SAW) said, "Go to your home and see if you have something".

The man went to his home and returned, saying, "No, by Allah, I have not found anything".

Allah's Messenger said, "(Go again) and look for something even if it is an iron-ring".

22. Al-Quran, IV:4
Chapter - I

Historical Retrospect

He went again and returned, saying, 'No by Allah 'O' Allah's Messenger, I could not find even an iron ring but this is my Izar (Waist-sheet)' ... He had no rida. He added, 'I give half of it to her'.

Allah's Messenger said, "what will she do with your Izar? If you wear it she will be naked, and if she wears it, you will be naked" ... How much of the Quran do you know?

He said, "I know such and such Sura" Counting them ....

The prophet (SAW) said, 'Do you know them by heart?

He replied, "Yes ...."

The Prophet (SAW) said, "Go I let you marry her for that much of the Quran, which you know, as Mahr"23

This Hadith throws much light on the fact that Mahr is binding in every situation irrespective of its value and quantum. It may be even an iron ring. The main object is to offer it with an open heart as a gift. This is implied that Mahr must be determined with reference to the status of the parties.

b) Shighar prohibited

Narrated Ibn Umar (HA):

Allah's Messenger (SAW) forebode al-Shighar, which means that somebody gets his daughter married to somebody else, and the latter gets his daughter married to the former without paying Mahr.24

c) Quantum and subject matter of Mahr

Narrated Anas (RA):

Abdur Rahman bin 'Auf married a woman and gave her gold equal to the weight of a date-stone as Mahr. When the Prophet (SAW) noticed

23. Sahih Bukhari, Kitab-al-Nikah, Chapters 1.5, 33 and 35.
24. Ibid, Chapter 29
Chapter - I  

HISTORICAL RETROSPECT

the signs of cheerfulness of the marriage (on his face) and asked him about it, he said, “I have married a woman and gave her gold equal to the date-stone in weight as Mahr”. He also reported that the Prophet (SAW) said “Give a feast even, with a sheep”.25

Allah’s Messenger (SAW) manumitted Safiyyah and then married her and her Mahr was manumission and he gave a wedding banquet with hais – a sort of sweet dish made from butter, cheese and dates.26

S’ahl (RA) narrated:

The Prophet (SAW) said to a man, “Bring even an iron-ring (as Mahr)”27

Abu Huraira (RA) reported:

A man came to Allah’s Messenger (SAW) and said: I have contracted marriage with a women of Ansar, where upon Allah’s Apostle (SAW) asked – for what Mahr did you marry her. He replied ‘four’ uqiyas. The Allah’s Apostle (SAW) remarked …. it seems as if you dig out silver from the side of this mountain (so agree to higher Mahr.)28

Abu Salama b. ‘Abd al-Rahman (RA) reported:

I asked Aisha (RA) the wife of Allah’s Messenger (SAW) what is the amount of Mahr of Allah’s Messenger?

She said:

It was twelve uqiyas and one nash

She asked:

Do you know what is al-nash?

I said, “No”

She said,

It is half of an uqiya, and it (the whole Mahr) amounts to five hundred dirhams and that was the Mahr given by Allah’s Messenger to his wives.29

Anas (RA) has reported:

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25. Id. Chapter 50
26. Id. Chapter 69
27. Id. Chapter 15
28. Sahih Muslim, Kitab-al-Nikah
29. Ibid
Chapter - I  

**HISTORICAL RETROSPECT**

Abu Talhah married Omme Solaim and the Mahr between them was Islam. Omme Solaim accepted Islam before Abu Talhah who afterwards sought her in marriage. She said: I have surely accepted Islam; but if you accept Islam, I shall marry you. He accepted Islam and it was their Mahr between them.\(^{30}\)

d) **Mahr** and Khul

Narrated Ibn Abbas (RA)

The wife of Thabit bin Qais came to the Prophet (SAW) and said ‘O’ Allah’s Messenger (SAW) I do not blame Thabit for defects in his character or his religion, but I being a Muslim, dislike to behave in un-Islanic manner if I remain with him i.e. “I cannot endure to live with him or I am afraid that I may become unthankful for Allah’s blessings.”

On that Allah’s Messenger (SAW) said to her, “Will you give back the garden which your husband has given you as Mahr?”

She said, “Yes”.

The Prophet (SAW) said to Thabit, ‘O’ Thabit accept your garden and divorce her once.”\(^ {31}\)

Ata (RA) narrates:

“Prophet (SAW) said, take not anything more than Mahr for khul’ from women.”\(^ {32}\)

e) **Mahr** and Li’an

Narrated Sa’id bin Jubair:

I asked Ibn Umar, “What is the verdict if a man accuses his wife of illegal intercourse”. Ibn Umar said, ‘The Prophet (SAW) separated (by dissolution of marriage) the couple of Bani Al-Ajlan and said to them Allah knows that one of you two is a liar, so will one of you repent?” But both of them refused, so he (SAW) separated them by divorce.

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\(^{30}\) Al-Nasai

\(^{31}\) Sahih Muslim, Kitab-al-Talaq, Chapter 12.

\(^{32}\) Musannad Imam Azam, Kitab-al-Talaq, p. 273 (Deoband), 1967.
Chapter - I  

**HISTORICAL RETROSPECT**

The man said, "What about the Mahr that I have given to my wife?". It was said, "You have no right to restore any money for if you have spoken the truth you have also shared life with her and if you have told a lie, you are less rightful to have your money back."  

f) **Mahr** and void marriages

Al Hasan al-Basari (RA) said:

*If a person mistakenly marries a women from the forbidden degrees of consanguinity (i.e. maharam). They should be separated with divorce, and she would keep what she has taken as Mahr and she would not be entitled to take anything else. Later on Al-Hasan said: She would be entitled to take her full Mahr.*  

g) **Widow’s Mahr**

Narrated Abdullah Ibn Mas’ud (RA):

*For a woman whose husband has died and neither her Mahr has been fixed nor the marriage consummated, there is rnahr-al-mithal (proper Mahr).*  

h) **Mahr** and the new converts

(What) if a pagan or a Christian woman becomes a Muslim while she is the wife of a dhimmi (i.e. a non-Muslim under the protection of a Muslim Government) or a pagan at war with the Muslims?, Ibn Abas (RA) said:

"If a Christian woman embraces Islam before her husband by a short while she will by no means remain as his wife legally."  

Ata’ was asked about a woman from the pagans who had a treaty with the Muslims. She embraced Islam and during her iddat, her husband embraced Islam too? Could he retain her as his wife?, Ata (RA) said:

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33. Supra Note 31, Chapters 32 & 52  
34. Id. Chapter 51  
35. Supra Note 32  
36. Supra note 31, chapter 20
Chapter - I

HISTORICAL RETROSPECT

‘No’, unless she is willing to marry him with a new marriage and new Mahr.\textsuperscript{37}

Ibn Juraij said ‘I asked ‘Ata,

“If a pagan woman comes to the Muslims (i.e. embraces Islam), will the husband be compensated for losing her as is indicated by the settlement of Allah’.

“They are not lawful for the disbelievers, nor are the disbelievers lawful for them. But pay the disbelievers what they have spent (on their Mahr).\textsuperscript{38}

Ata replied,

“No, for this (return of the amount to disbelievers) was for only between the Prophet (SAW) and those persons who made a treaty with him”.

And Mujahid said:

“All this was for only a treaty between the Prophet (SAW) and the Quraisy”\textsuperscript{39}

i) Mahr and the orphan brides

Narrated Urwa that he asked Aisha (HA) about the Quranic verse:

If ye fear that ye shall not be able to deal justly with the Orphan girls, then marry (other) women of your choice, or (the captives) that your right hands possess. That will be nearer to prevent you from doing injustice.\textsuperscript{40}

Aisha (RA) said:

‘O’ my nephew; This verse refers to the orphan girls. If such a girl is under the protection of a guardian who likes her beauty and wealth and wishes to marry her with lesser Mahr. Such guardians have been forbidden to marry them unless they do justice by giving them their full Mahr, and they have been ordered to marry women other than them.\textsuperscript{41}

\textsuperscript{37.} Ibid
\textsuperscript{38.} Quran LX:10
\textsuperscript{39.} Supra note 36
\textsuperscript{40.} Al Quran IV:3
\textsuperscript{41.} Supra Note 31, Chapter 1, 17 and 44
Chapter - I

**HISTORICAL RETROSPECT**

j) *Mahr* and Mutfd

Rabi B. Sabra reported that his father went on an expedition with Allah’s messenger (SAW) during the victory of Mecca and “we stayed there for fifteen days, and Allah’s Messenger permitted us to contract temporary marriage. I and another person of my tribe went out. I was more handsome than he, whereas he was almost ugly. Each one of us had a cloak. My cloak was worn out, whereas the cloak of my cousin was quite new. We reached the lower or upper side of Mecca where we came across a young woman ... We said: Is it possible that one of us may contract temporary marriage with you? She said, what will you give me as *Mahr*? Each one of us spread his cloak. She began to cast a glance on both the persons. My companion also looked at her when she was casting a glance at her side and said: This cloak of his is worn out, whereas my cloak is quite new. She, however, said twice or thrice: There is no harm in accepting this cloak (the older one). So I contracted temporary marriage with her, and I did not come out of this until Allah’s Messenger (SAW) declared it forbidden.43

Sabra al-Juhanni reported that while he was with Allah’s Messenger (SAW), he (SAW), said “O’ people, I had permitted you to

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42. Muta is considered as permissible by Ahna Asharis only
43. Supra Note 28
Chapter - I

Historical Retrospect

contract temporary marriage with women, but Allah has forbidden it (flow) until the Day of Resurrection. So he who has any (woman with this type of marriage) he should leave her off, and do not take back anything you have given to them as Mahr." 44

4. MAHR: Outside India:

Institute of Mahr has been Islamically recognized worldwide in one form or another. In countries like Iraq and Syria, in the absence of any agreement to the contrary regarding the nature of dower, a portion of Mahr becomes payable is the safe at the time of marriage on demand and the remainder at the later date. In Pakistan and Bangladesh in such a case the entire Mahr has been made payable on demand. 45 Another, practice regarding payment of Mahr being payable in an irregular marriage has received statutory recognition in Syria. 46 Country like Algeria has different kind of practice, regarding Mahr, where marriage still approximates is a form of purchase in which the Mahr is paid is the bride’s father by the husband, and is largely reserved by line of should the marriage be terminated either form her father on person or from the husband to whom she is given in marriage. 47

44. Ibid
In some countries, fathers make such excessive demands of *Mahrou* in regard to their daughters as to make it very difficult for a young man to marry. Sometimes higher *Mahrou* is fixed as a status symbol for the family irrespective of being a symbol of mutual love and affection. This has involved legislative response to the extent that under the family law of South Yemen 1974, it has been provided that *Mahrou* (Prompt and deferred together) must not exceed 100 dinars. The Somalian Family Code, 1975 permits as maximum *Mahrou* an amount not exceeding 1000 local levelling.\(^{48}\)

The Moroccan Code of Personal status, 1958 restricts a guardian from opposing the marriage of a girl for an inadequate *Mahrou* which she herself is willing to accept.\(^{49}\) Also the father or guardian of the bride is statutorily restricted from demanding any money from the husband for handling her over to him or for acting as a guardian.\(^{50}\) Moreover, for the determination of the amount of *Mahrou* in cases of dispute legislation has been made in Egypt, Lebanon, Jordan, Sudan and Morocco.\(^{51}\)

About right to *Mahrou* on marriage dissolution, the Syrian Code provides that if the consideration for *khul* is fixed as something other than the *Mahrou* this consideration is binding and both parties are also


\(^{49}\) Article 23 of Moroccan Code of Personal Status, 1958.

\(^{50}\) Ibid, Article 19.

Chapter - I

HISTORICAL RETROSPECT

released from any obligation regarding *Mahr*. Where the parties do not name any consideration, the *khul* shall take effect and both parties shall be released from the rights of the other regarding *Mahr* and maintenance.53

The Ottoman law of Family Rights, 1917 deprives a divorced wife of her *Mahr* or makes her return not more than half of her *Mahr* where the whole *Mahr* has already been paid, if it appears that she alone was "responsible for the breakdown of marriage."54 Under the Moroccan Code of Personal Status, 1958, the payment of *mata-e- talaq* does not remain obligatory where the *Mahr* was specified.55 But among the Ismaili Khojas of East Africa under Article 273 of their Constitution of 1962 compensation remains payable to the wife on the dissolution of marriage in addition to *Mahr* where the husband is responsible for breakdown.

One more dimension of the legislations about *Mahr* is represented by Pakistan Muslim Family Law Ordinance, 1961, which has utilized *Mahr* as a means, though mild, of discouraging polygamy. The relevant provision is as follows:

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52. Article 98 of Syrian Code of Personal Status, 1953-75.
53. Id, Article 98.
Any man who contracts another marriage without the permission of the Arbitration Council shall –

pay immediately the entire amount of the Mahr whether prompt or deferred, due to existing wife or wives, which amount, if not paid, shall be recovered as arrears of land revenue;\textsuperscript{56}

It further appears that an effort is going on in various countries to make the relevant statutes more certain and just. By way of an example, we may mention below some provisions of the Syrian Code of Personal Status, 1953 as amended in 1975:

Article 54:

(iii) \textit{Mahr} shall be treated as a preferential debt...

(iv) where it is claimed that the stipulated \textit{Mahr} is fictitious or fraudulent, either partly can prove it. If the said \textit{Mahr} is not proved to be real, the judge shall enforce ‘prompt Mahr’.

v) Every ‘\textit{Mahr} – debt’ stipulated in the deed of marriage or divorce shall be regarded as a secured debt ... Deferred ‘\textit{Mahr}’ shall be payable before the expiry of \textit{iddat}.

Article 57:

Increase or decrease in the amount of \textit{Mahr} whether during the subsistence of a marriage or during \textit{iddat}, shall be void if not made in the Court, where this is done by mutual consent the action must be registered.

\textsuperscript{56} Section 5(a) Family Law Ordinance, 1961.
Chapter - I  

**HISTORICAL RETROSPECT**

Article 60:

(i) The Mahr is the due right of a married woman and a husband will not be absolved of his liability except by its payment to her provided that she is legally competent to receive it, unless a particular person is appointed to receive it.

(ii) The law of set-off (taqaddam) shall not apply to prompt Mahr during marriage though the same might have been stipulated in the deed of marriage.

These provisions of the Syrian Code have strengthened the women's claim to Mahr and have garbed the relevant law with certainty.

In the cases regarding Mahr and divorce, some instances of judicial activism are also reported. In Pakistan through Lahore High Court, the Muslim wives have been given the right to a judicial divorce, on repayment of their Mahr) on grounds which amount to incompatibility of temperament or breakdown of marriage.57

The Court has based its decision on the following Quranic verse:

\[
\text{A divorce is only } \\
\text{Permissible twice; after that,} \\
\text{The parties should either hold} \\
\text{Together on equitable terms,} \\
\text{Or separate with kindness.} \\
\text{It is not lawful for you,} \\
\text{(Men), to take back} \\
\text{And of your gifts (from your wives),}
\]


Chapter - I

**HISTORICAL RETROSPECT**

- Except when both parties
- Fear that they would be
- Unable to keep the limits
- Ordained by Allah
- *If ye (judges) do indeed*
- Fear that they would be
- Unable to keep the limits
- Ordained by Allah,
- *There is no blame on either*
- Of them if she give
- *Something for her freedom*
- These are the limits
- Ordained by Allah;
- *So do not transgress them*
- If any do transgress
- *The limits ordained by Allah,*
- Such persons wrong
- *(Themselves as well as others).*

The decision is supported by a *hadith* in which the Prophet (SAW) is said to have asked a husband whose wife had taken a dislike to him, although he had not in fact ill-used her, to accept the return of her *Mahr* and then repudiate her. The Supreme Court of Pakistan has upheld this Lahore decision.

5. **Position of Mahr in India**

In India the institution of *Mahr* enjoys full recognition as a part of Muslim Personal Law. It has been saved from any effect by the

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anti-dowry legislations. The right of a wife to *Mahr* is also not affected by any decree of divorce granted under the provisions of the Dissolution of Muslim Marriages Act, 1939. However, as regards the working of the institution of *Mahr* in India one fails to record uniformity about the actual practices prevalent at different places or within different families. No uniform rate of *Mahr* exists even in the same area. In some cases it is much lower than the reasonable while as in others it is much higher than desirable. It ranges from rupees fifty upto some crores.

The fixation of *Mahr* takes place usually at the time of marriage. Customarily at some places the half of the stipulated *Mahr* is deemed as 'prompt' and the remaining part as deferred. The deferred *Mahr* is being paid either after divorce or is being realized after the death of the husband. Where no specific terms and conditions are given about *Mahr* in nikahnama, the Courts decide the cases according to the 'customs prevalent in respective regions'. In case no *Mahr* has been fixed at the time of marriage *Mahr* al-mithal is payable which is determined with.

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61. Dowry Prohibition Act, 1961, Section 2.
62. Dissolution of Muslim Marriage Act, 1939.
Chapter - I  

**Historical Retrospect**

reference to *Mahr* fixed or payable in cases of the wife's paternal relations like paternal aunts and sisters.\(^63\)

The husband is legally bound to pay the whole of *Mahr* to the wife even if the stipulated amount is beyond his means. The relatives of the wives have not been passive in the realization of *Mahr* from husbands especially in cases of marriage breakdown or where there is apprehension of such breakdown. Only in the earlier state of Oudh provisions were made for the relief of the husbands under the debt of higher *Mahr* in Section 5 of the Oudh Laws Act, 1876.

The Courts in that area were empowered to fix a fresh reasonable amount of *Mahr* with reference to the husband’s means and the status of the wife. Similar law is found in Jammu & Kashmir enacted in Section 2 of the Jammu & Kashmir Muslim Dower Act, 1920. In both places the provision is applicable only to the persons having a local domicile. The Privy Council has held in a case that if a man residing outside Oudh goes to that area and marries within its territory the provisions of the Section 5 of the Oudh laws Act, 1876, cannot be invoked.\(^64\)

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\(^63\) T. Mahmood, Muslim Law of India, p. 71-79.
\(^64\) *Zakeri Begum Vs. Muhammad* (1910) 32 AL 477.
CHAPTER II

DOWER: A CONCEPTUAL ANALYSIS

- Dower: Secular Understanding Meaning and Nature
- Nature of mahr as an Islamic Legal Concept of Mahr
- Socio-Legal Significance of mahr in the Islamic Society
- Some pre and non-Islamic concepts confused with Mahr
Chapter - II  Dower: A Conceptual Analysis

The concept of dower is not only the innovation of Islamic Law but it was also found in the Pre-Islamic Arab Society. However, it was not as found in the present Islamic law. This was so because of the various ways of adopting wife and the poor position of a woman in the days of ignorance. They were deprived of their various rights for which they were entitled as a human being. Among the rights which were not enjoyed by them, was the right to get dower from their husbands. As among the primitive people, various methods of securing wives were prevalent in the past. The most common method was "marriage by purchase." The husband was required to pay the price of the bride to her father, brother or other relative, whosoever may be guardian of the girl and in the case of "marriage by service"; the husband would serve the father of the bride with his service. In consideration of the service the father of the girl gave, his daughter to his would be son-in-law. Marriage by capture was also found at that time. These were the devices by which women were deprived of their rights of dower.

Sir Abdur Rahim says that-

"in the regular form of marriage the fixing of Mahr or dower for the benefit of the wife was in vague form among the Pre-Islamic Arab society. It forms part of the marriage but in some cases the guardian of the girls used to take dower himself. But at the time of Prophet

1. Willystin Goodsell: A history of Marriage and Family, p. 23 (1947)
Chapter - II  Dower: A Conceptual Analysis

Mohammad (P.B.U.H) dower was regarded as a principal term of marriage contract. Its payment in the event of divorce or death of the husband was enforced by the voice of the public opinion or by the power of the woman’s relative unless it has been paid at the time of marriage”.

With the advent of Islam, it removed the devices, which were prevalent in the days of ignorance to deprive the women from their rights of dower. It was made necessary to pay dower to a woman.

Quran declares:

“And give the woman (on marriage) their dower, as a free gift, but if they off, their own goods pleasure, remit any part of it, take it and enjoy it with right good cheer”.

There is also a tradition on this point by which it becomes clear that Mahr was made necessary for every marriage. According to the tradition in Bukhari “the Mahr is an essential condition for the legality of marriage”.

Thus, in this way Mahr was made essential for every marriage under Islam to safeguard the right of a wife. Even a small portion of a money may be fixed as Mahr and can be given by the husband to his wife. Once Prophet Mohammad (P.B.U.H.) allowed a marriage with

3. Al-Quran, IV:4
only a poor man who did not possess even an iron ring, giving his wife instruction in Quran as *Mahr*.\textsuperscript{5}

The concept of dower is also found in other religions such as that of Jews as well as in the Roman law. The Jewish Law with regard to dower is that, 'a marriage without consideration is invalid.' The Roman law also provides for *Mahr* to the wife. Some jurists compare the Islamic concept of dower with Roman concept of dower and say that it is similar to the Roman doctrine. But in reality it is not so, because in Roman doctrine the payment of dower is voluntary whereas it is absolutely obligatory under Islamic law. Ameer Ali\textsuperscript{6} also says that the difference between the two is that under the Roman law it is not obligatory but depends upon the will of the husband to pay it or not where as under the Islamic law its payment is absolutely necessary.

Thus under Islamic law proprietary financial interest is the basic characteristics of dower, because the real object of dower is financial gain. Allah has said:\textsuperscript{7}

\begin{quote}
"Also (prohibited are) Women already married. Except those whom your right hands possess: Thus, hath Allah ordained (Prohibition) against you: Except for these, all others Are lawful, provided Ye seek (them in marriage) with gifts from your property. Desiring chastity,
\end{quote}

\textsuperscript{5} Ibid.
\textsuperscript{6} Ameer Ali: Mohammadan Law, 450 (1982).
\textsuperscript{7} Al Quran IV: 24.
not fornication. Give them their dowry for the enjoyment you have of them as a duty, but if after a dower is prescribed ye agree mutually (to vary it), there is no blame on you, And Allah is all knowing All-wise”.

Dower, in fact, is the name of that financial gain that accrues in marriage to woman in lieu of the pleasure to be enjoyed of her, though the marriage be either valid or irregular, on even cohabitation be in doubt.8

It was held by the Peshawar High Court in the case of Zarina Qaiser Vs. Arbab Wali Mohammad that “Mahr is a sum of money on other property which the wife is entitled to receive from the husband in consideration of marriage.”

Dower: Secular Understanding Meaning and Nature

Islam ordains that it is mandatory for the husband to pay his wife as a gift spontaneous popularly known as Mahr, merely because marriage has taken place between the two. It has a solid Quranic base confirmed by the Sunnah of the Prophet (S.A.W). But there exists a great deal of conflict and confusion in various writings about Mahr which seem to fail in giving a clear understanding of its concept, social significance and the rationale behind its legal enforceability. In order to understand the real spirit behind the concept of Mahr a macro level

etymological survey of *Mahr* is most requisite. Without such a survey it
would be impossible to find a basis for marking the magnitude and
measuring the parameters of this Islamic Institution.

The expression *Mahr* is of multiple usage and connotation. *Mahr*
as a noun with Arabic origins stands for what becomes due as a gift by
the husband to the wife on marriage. Mahrur (pl. of *Mahr*) is also used
for ‘marriage-portion’ or a gift to the wife because of the fact of
marriage.\(^9\)

Francis Johnson describes *Mahr* as follows:

*Mahr indicates contracting, fixing of Mahr, paying of Mahr or making
settlement on wife, and excelling in art or profession. It also means
‘going on the right way’, e.g., ‘Lam taatul hazel amral maharatul’ – you
have not gone the right way in this matter.\(^{10}\)*

In its broader perspective *Mahr* includes -

i) something lovable, or thing having reference to love as a bone
in the upper part of the breast, joints of the breast, or gristles
of the ribs; or something presentable as gift like a pearl; and

ii) doing of something in the right way and with skill.\(^{11}\)

*Mahr* (origin: Persian) means kindness, favour, love, affection
(noun feminine) and Sun (noun masculine).\(^{12}\)

a) *Quranic Phraseology:*

The Quran makes the ordainment of *Mahr* in its own peculiar
terms. It nowhere uses the word *Mahr*. Term *Mahr* has been used by

\(^9\) Lisan al Arabi, Meaning of *Mahr*.
\(^10\) Francis Johnson, Dictionary of Persian, Arabic and English (London), 1852
\(^11\) Ibid.
\(^12\) Molvi Feroz al-Din, Feroz al-Lugat, Meaning of the term ‘Mahr’.
Chapter - II  Dower: A Conceptual Analysis

Muffassirin (exegetical commentators), Fuqaha (Jurists) and by the majority of Muslims all over the world. The use of the term Mahr in hadith is found to be very rare. The question is- Why the term Mahr is widely used in fiqh when it has not been used in the Quran. This is probably due to the common use of this term in pre-Islamic Arabia. However, it is to be noted, that the term Mahr in Islamic fiqh does not have the same meaning and connotation as it had in the pre-Islamic period. The term Mahr has undergone complete metamorphosis after taking on the colour from Quranic terms as will be evident from the following exposition of the relevant expressions. This is a strong instance of social transformation by Islam. Islam does not blindly disapprove or abolish an institution or system by way of reaction but does it sanely, bringing about modifications in social institutions. In this process the evil becomes clearly visible, discernible and, of course, extinct. This protects the good and abolishes the evil, not which is otherwise, possible in a mere reactionary process. For Mahr the Quran uses the following terms:

i) Saduqah (Saduqati hinna)\textsuperscript{13}

ii) Ajr (Ajura-hunna)\textsuperscript{14}

\textsuperscript{13} The Quran, 4:4, Maulana Abdul Rashid Nu'mani, Lugat al-Quran Vol. IV, p. 14, 1958 AD/1378 A.H.

\textsuperscript{14} The Quran, IV:24, 25; V:5; XXXII:50; LX:10.
iii) Fariezah (Lahunna‘fariezah)\textsuperscript{15}

All the Muffassirin in their versions, have described these terms as Mahr. Short texts and relevant excerpts from Tafasir are given below:

i) Sadaqah:

\textit{And give the women (on marriage) their ‘dower’\textsuperscript{16} as a free gift}

(Abdullah Yusuf Ali)\textsuperscript{17}

\textit{Give Mahr to your wives with a willing heart.}

(Ibh Kathir)\textsuperscript{18}

Ibh Kathir also reports Abu Saleh (RA) saying:

“Earlier people took the Mahr of their daughters themselves but this verse was revealed to stop them enjoining its actual delivery to the wife herself”.\textsuperscript{19}

This shows that the term Sadaqat stands for Mahr.

\textit{“And you give Mahr to the women with a willing heart.”}

(Maulana Ashraf Ali Thanvi)\textsuperscript{20}

\textit{“And give Mahr to the women with a willing heart (considering it a obligatory)”.}

(Syed Abul A’la)\textsuperscript{21}

\textit{“And give to the women on marriage ‘Sadaqathinna’ (Plural of Sadaqat) with Fatah (S) and Dhamma (d), the sadaqah meaning Mahr”.}

(Tafsir Rooh al M’ani)\textsuperscript{22}

\textsuperscript{15} The Quran, II:236, 237; IV:24; XXXV:50.
\textsuperscript{16} A Yusuf Ali, The Holy Quran, (English Translation) IV: 4; see the actual connotation of the term ‘dower’ below in this chapter.
\textsuperscript{17} Ibid.
\textsuperscript{18} Tafsir Ibn Kathir, 4:4.
\textsuperscript{19} Ibid.
\textsuperscript{20} Bayan al Quran, Surah al-Nisa:4.
\textsuperscript{22} Tafsir Rooh-al-Ma‘ani, Vol. III, Part 4, P. 198 (Maktabah Imadadiya Multan, n.d.).
Chapter - II **Dower: A Conceptual Analysis**

Thus the Muffassirin gave, for saduqah used the common expression, *Mahr* and for term Saduqatihinna the mahurahunna (their *Mahr*).\(^{23}\)

ii) **Ajr** (pl. Ajur)

*Give them their ‘dowers’ (at least) as prescribed.*

*(Abdullah Yusuf Ali)\(^{24}\)*

*Give them their settled Mahr.*

*(Ibn-Kathir)\(^{25}\)*

*So give them their Mahr which has been settled.*

*(Maulana Thanvi)\(^{26}\)*

*Discharge their Mahr as prescribed to be obligatory.*

*(Syed Abul A’la)\(^{27}\)*

*Give them their dowers according to what is reasonable.*

*(Abdullah Yusuf Ali)\(^{28}\)*

*And give their Mahr according to established order.*

*(Ibn Kathir)\(^{29}\)*

*And keep them giving Mahr in conformity with the established order.*

*(Maulana Thanvi)\(^{30}\)*

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23. All these excerpts are given here only to know the Quranic terms used for *Mahr* with established meaning from Mufassirin. Full details about legal principles will be given at relevant places in the subsequent chapters of this work.


Chapter - II  DOWER: A CONCEPTUAL ANALYSIS

And discharge their Mahr in the reasonable way.

(Syed Abul A’la)\textsuperscript{31}

When ye give them their dowers.

(Abdullah Yusuf Ali)\textsuperscript{32}

Ye discharge their Mahr….\textsuperscript{33}
Ye give them their recompense, i.e. Mahr be given not merely as a condition but as an obligation.

(Maulana Thanvi)\textsuperscript{34}

After ye discharge their Mahr.

(Syed Abul A’la)\textsuperscript{35}

To whom thou hast paid their ‘dowers’\textsuperscript{,36}

(Abdullah Yusuf Ali)

To whom ye have given their Mahr.

(Ibn Kathir)\textsuperscript{37}

To whom you have given their Mahr.

(Maulana Thanvi)\textsuperscript{38}

Whose Mahr ye have discharged.

(Syed Abul A’la)\textsuperscript{39}

On payment of their ‘dowers’\textsuperscript{,40}

(Abdullah Yusuf Ali)

\textsuperscript{33} Tafsir Ibn Kathir, Surah Maidah:5.
\textsuperscript{34} Bayan al-Quran, Surah Maidah:5.
\textsuperscript{35} Tafhim al-Quran, Surah Maidah:5.
\textsuperscript{37} Tafsir Ibn Kathir, Surah al-Ahzab:50.
\textsuperscript{38} Bayan al-Quran, Vol. IV, Surah al-Ahzab:50.
\textsuperscript{39} Tafhim al-Quran, Vol. IV, Surah al-Ahzab:50.
Chapter - II  DOWER: A CONCEPTUAL ANALYSIS

After giving them their Mahr.

(Ibn Kathir)\textsuperscript{41}

*While ye defray their Mahr to them.*

(Maulana Thanvi)\textsuperscript{42}

*Provided ye pay their Mahr to them.*

(Syed Abul A’la)\textsuperscript{43}

iii)  Fariezah

*Or before the fixation of their ‘dower’.*

(Abdullah Yusuf Ali)\textsuperscript{44}

*And without fixation of Mahr.*

(Ibn Kathir)\textsuperscript{45}

*And no Mahr has been fixed for them.*

(Maulana Thanvi)\textsuperscript{46}

*Or (before) Mahr has been fixed.*

(Syed Abul A’la)\textsuperscript{47}

*And ye have fixed their Mahr also.*

(Ibn Kathir)\textsuperscript{48}

*And some Mahr had been fixed for them.* \textsuperscript{49}

(Maulana Thanvi)

*But Mahr has been fixed.*

(Syed Abul A’la)\textsuperscript{50}

\begin{itemize}
  \item \textsuperscript{41} Tafsir Ibn Kathir, Surah Mumtahanah:10.
  \item \textsuperscript{42} Bayan al-Quran, Vol. III, Surah Mumtahanah:10.
  \item \textsuperscript{43} Tafhim al-Quran, Vol. V, Surah Mumtahanah:10.
  \item \textsuperscript{44} A. Yusuf Ali, \emph{Op. Cit.}, II:236.
  \item \textsuperscript{45} \textsuperscript{45} Tafsir Ibn Kathir, Surah Baqarah:236
  \item \textsuperscript{46} Bayan al-Quran, Surah Baqarah:236.
  \item \textsuperscript{47} Tafhim al-Quran, Vol. II, Surah Baqarah:236.
  \item \textsuperscript{48} Tafsir Ibn Kathir, Surah Baqarah:237
  \item \textsuperscript{49} Bayan al-Quran, Surah Baqarah:237.
  \item \textsuperscript{50} Tafhim al-Quran, Surah Baqarah:237.
\end{itemize}
Chapter - II  DOWER: A CONCEPTUAL ANALYSIS

b) Terms used in ahadith and other works (Excerpts)

Allah’s Messenger manumitted Safiyyah and regarded her manumission as her Mahr.51

Allah’s Messenger forbade al-shighar which means that somebody gets his daughter married to somebody else, and the latter gets his daughter married to the former without paying Mahr.52

Have you got anything to pay her Mahr.53

To marry (a lady to) a man for what he knows of the Quran (by heart) and without paying (and other thing as) Mahr.54

To give Mahr in the form of material things.55

When Abdur-Rehman bin Auf married an Ansari woman, the Prophet (S.A.W.), asked him; How much Mahr did you give her?56

Thus in ahadith also, originally, the expression sadaquah is found to have been used abundantly but the commentators and the translators have used the common expression Mahr.

To have an appraisal of some other substitute terms the following excerpts from various works are reported:

Sadaq, Sadaqah, Nihlah, Ati iah and Uqr are all the names of Mahr. And Ajr, ala’iq, Habba and Fariezah are also called as Mahr.57
Chapter - II  Dower: A Conceptual Analysis

Sadaqatun means only such a gift that invokes only the pleasure of Allah and not personal glorification. Al-Sadaqatu, al Sadqatu, al-Saduqatu, al-Sud qatu all have the same meaning. This also means Mahr given to the women on marriage.  

The Quran has used the expression Saduqatun and Ujurun for Mahr. Mahr, is termed as: Persian kabin-e-zann, Ahmad Nagri, dasturul ulema, Arabic (i) al-nihlah (ii) al-sadaq (iii) al-uqr (iv) al-ajr (v) al-saduqah; al-alaiq al-habba and al-fariezah but only word Mahr is in common use.

c) Meaning of the terms relating to Mahr used in the Quran and ahadith

The meaning of the Quranic terms saduqah, nihlah, ajr and farieza is made clear by the following excerpts from the lugat and other works:

(i) Saduqah:

Saduqah is a derivative of ‘Sadq’, written by some as Sadk. Following excerpts from the lugat helps to know its literal meaning.

59. Id., p. 504.
Chapter - II  DOWER: A CONCEPTUAL ANALYSIS

Sak; speaking the truth, being true, just, honest, upright, Sidk, truth, veracity, sincerity, praise.61

Sudaka, (p. Sadiq) True, just sincere friend). Sudkat, Sudakat and Sudukat, Sudkat, marriage portion, Sadaq or sidk (pl. Sudk) and Suduk. A marriage settlement, a portion which the husband engages to give to his future wife. Sidak cultivating friendship, sincere and mutual friendship.62

Saduqat (pl. of saduqah) means Mahr. Sidq: Truth, veracity, rectitude, honesty; uprightness, truthfulness, good name Sadaqa is the origin of Yasaduqa which means speaking the truth and manifestation of truth by deeds.63

Sidq (1) Truth; (2) Correctness, rectitude; good fortune, felicity, auspiciousness e.g.

"And give the good news to the Believers that they have before their Lord the Lofty rank of truth".64

According to Imam Raghib Isfahani65 Sidq and Kizb both are, in reality, utterances-pat or future-promise or no promise. These give

61. Supra Note 2 at p. 42
62. Ibid; Some other uses of this word are outside the scope of this work.
64. Mirza Abul Fazl, Gharib al-Quran Fe Lugat al-Furqan (Allahabad, 1925).
65. Imam Raghib Isfahani, Mufradatul Quran (The obscure words of the Quran); Supra Note 65.
Chapter - II  DOWER: A CONCEPTUAL ANALYSIS

some information. Directly these are not used in any other genre of literature. Their use is made like this:

Whose word is more ‘truthful’ than that of Allah

He was ‘true’ to his word.

Also Sīdq means conscience (or, inner moral guide). It is sometimes used to express one’s degree of commitment towards an object, such as Sadqa fi-al Qatal (He has done all that he was supposed to do in the battlefield).\textsuperscript{66} That is Sadaqah includes unity of thought and action and it is the expression of situation as per the reality.\textsuperscript{67} The word Sādqa, therefore, applies to every such object as is in appearance as well as in reality; graceful, honored, exalted. It is said:\textsuperscript{68}

Honourable body;
And
Honourable rank, position

iii)  Nihlah:

Nahlat, a bee, nihlat or nuhat, an appointment of a marriage portion, a gift, of one’s own accord, voluntarily.\textsuperscript{69} Granting to a woman her marriage gift voluntarily.\textsuperscript{70}

\textsuperscript{66}  Ibid.
\textsuperscript{67}  Urdu Encyclopedia of Islam, Vol. XII, p. 93.
\textsuperscript{68}  Qazi Zain-ul-Abidin-Sajjad Meeruti, Qamus-al-Quran, (Meerut, 1381 AH).
\textsuperscript{69}  Supra Note 2 at p. 42
\textsuperscript{70}  Ibid.
Chapter - II  DOWER: A CONCEPTUAL ANALYSIS

Al-nihlatan and al-nuhlata means that gift which is given without any compensation or consideration....Al-ata'-bilaiwz, (gift without any consideration).  

Tajul'Urus and Ibn Faras have written the same meaning of al-nahlu. This indicates a 'gift'- spontaneous, with no idea of compensation or consideration. Imam Raghib has written that (al-nihlatu is a derivative of (nahlum)). That is, as a honey bee gives without any consideration, the useful and sweet honey, it is in the same manner that nihlatun is that pleasant and sweet gift given to women willingly and gladly without any idea of compensation.

iii) Ajr

Ajr is actually a word of Akkadian language which has been assimilated by Arabic language. This is used in two senses. Both the uses of the term are found in the Quran:

i) It is used for expressing the reward that will be given for virtuous deeds in the hereafter; but truly the ajr', i.e. reward of the hereafter will be greater, if they only realize (this);  

ii) During the time of the Prophet, (P.B.U.H.) it was used to mean 'recompense'. In the Quran it is used for recompense as well as Mahr, e.g.

If they suckle your (offspring) give them their recompense.

And give them their Mahr.

71. Supra Note 67 at p. 54
72. Ibid.
74. The Quran, XVI:41.
75. The Quran, LXXV:5
76. The Quran IV:25.
Chapter - II  DOWER: A Conceptual Analysis

The correct use of the term 'ajr' is explained by the following lines:

Ujurun (pl. of ajrun), according to Ibn Faras basically means 'joining of a broken bone.' It is for this reason that the remuneration given to a labourer is called ajrun. It heals up the wounds of labour and joins the broken bones. The gift or Mahr given to the women on marriage is called ajr because it is given to the wife to bear with some pleasantry the agony of separation from parental home which every woman suffers and to face the disquietude of usual apprehensions about the new matrimonial life. She is tied up to the new home with a gift spontaneous so that she becomes gladly familiar with the new life.77

Francis Johnson also makes a mention of the meaning of the word ajr' as:

Restoring, healing (a broken or dislocated joint). Being this restored. Honourable mention.78

iv)  Fariezah means:

Mahr, al-Sadaq (as said by Ibn Abbas);79 ordainment; an ordinance of Allah; an indispensable religious or legal duty; a fixed portion; Mahr of women.80

77.  Supra Note 58 at p. 52
78.  Supra Note 2 at p. 42
79.  Supra Note 66 at p. 54
80.  Maulan Syed Abdul Rahim Jalali, Lugat al-Quran (1376/1957); Supra Note 2.
Chapter II  Dower: A Conceptual Analysis

It is for this reason that the rule has been established that *Mahr* is obligatory for every marriage even if no mention of it is made at the time of marriage.  

2. **Nature of Mahr as an Islamic Legal Concept**

a) **Some juristic explanations:** Before making an attempt to define the term *Mahr* it is necessary to examine the important expositions from various writers of Muslim law concerning the meaning and significance of *Mahr*. It will be most advisable to prepare an actual record of the excerpts from these writers and authorities. It, however, cannot be gainsaid that these explanations fail to communicate in full, the spirit behind the divine expression ‘gift spontaneous’ used for *Mahr* in the Quran.

**Hedaya:** The payment of *Mahr* is enjoined by the law, merely as a token of respect for its object (the woman) wherefore the mention of it is not absolutely essential to the validity of a marriage and for the same reason a marriage is also valid, although the man were to engage in the contract on the special condition that there should be no *Mahr*.  

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81. Supra Note 60 at p. 52
82. Hedaya, vol. I, Book II, Chapter III, p. 44.
Chapter II  Dower: A Conceptual Analysis

Inayah: (Mahr is) the property which is incumbent on a husband whether by reason of being mentioned in the contract of marriage, or by virtue of the contract itself, opposed to the usufruct of the wife's person. 83

Kifayah: Mahr is not the exchange or consideration given by the man to woman for entering into the contract. 84

Baillie: (Maahr) is defined to be the property which is incumbent on a husband, either by reason of its being named in the contract of marriage or by virtue of contract itself, as opposed to the usufruct of the wife's person; and it is known by several names, as Mahr, Sudak, Nuhlah and Akr...[Mahr] is not the exchange or consideration given by the man to the woman for entering into the contract; but an effect of the contract, imposed by the law on the husband, as a token of respect for its object, the woman. 85

It appears that Neil B.E. Baillie has given his definition of Mahr on the basis of the texts of Hadaya, Inayah and Kifaya.

Abdur Rahim: Mahr....is either a sum of money or some other form of property to which the wife becomes entitled by marriage. It is not a

consideration proceeding from the husband for the contract of marriage, but it is an obligation imposed by the law on the husband as a mark of respect for the wife as is evident from the fact that the non-specification of ‘Mahr’ at the time of marriage does not affect the validity of marriage.\footnote{Abdul Rahim, Mohammadan Jurisprudence, p. 334 (Madras, 1911).}

Al-Fiqh Al-Mazahib Al-Arba‘ah: Since Mahr is obligatory which is to be given by the husband to the wife on marriage; on this basis, Shafi defines it as that mal which validates the conjugal rights to man. But other jurists have defined Mahr as that mal which is given to the woman in consideration of the benefits taken from her. It means only that mal which is given in case of a proper and genuine marriage.\footnote{Al-Fiqh al-Mazahib al-Arba‘ah, Vol. IV, pp. 94-96: Urdu Encyclopedia of Islam, Vol. XXI, p. 886 (P.U. Lahore, 1406/1987).}

Urdu Encyclopedia of Islam: The proper amount of money or equivalent property that is binding on man as ‘Qawwam’ to be given to woman on marriage, besides usual maintenance, is called Mahr. Though some jurists have described it as a consideration for obtaining bodily benefits by the husband but its meaning and connotation is wider than that. For example, half of the fixed Mahr, desirably whole of it, is
Chapter - II  DOWER: A CONCEPTUAL ANALYSIS

payable to the wife even if the marriage is dissolved before consummation.88

Encyclopedia of Islam: Mahr is in Muslim law the gift which the bridegroom has to give to the bride when the contract of marriage is made....the 'Kuran' no longer contains the conception of the purchase of the wife and Mahr as the price, but the Mahr is in a way a reward, a legitimate compensation which the woman has to claim in all cases. The 'Kuran' thus demands a bridal gift for a legal marriage.89

Joseph Schacht: [In Islamic law] there is no matrimonial; community of goods and no dot or marriage portion (dowry in the western sense). The wife has the right to the nuptial gift (Mahr) and to maintenance (nafaka). This gives her a strong position as against the husband.90

Almaric Rumsey: 'Mahr' in its general sense, is a sum of money, or other property, payable by a man to a woman on or after her marriage with him, as a consideration to allow him to have sexual intercourse with her. The husband on his side is entitled to the enjoyment of that for which he has bargained.91

91. Almaric Rumsey, Mohammedan law, p. 345 (Lahore).
Chapter - II  DOWER: A CONCEPTUAL ANALYSIS

Alhaji A.D. Ajijola: *Mahr* is an obligation imposed by the law on the husband, as a mark of respect for the wife...it is a safeguard against the husband's arbitrary power of divorce and is not an exchange or consideration given by the man for marriage contract because the contract only requires union of the parties.\(^92\)

Ameer Ali: In order to constitute a valid marriage, the Muslim law requires that there should always be a consideration moving from the husband in favor of the wife, for her sole and exclusive use and benefit. This consideration is called *Mahr* or sadak in legal treatises, and in common parlance dain-*Mahr* (*Mahr* debt).\(^93\)

Robertson Smith: In Islamic law, *Mahr* belongs absolutely to the wife...historically speaking, the idea of sale is latent in the law of *Mahr*.\(^94\)

David Pearl: *Mahr* is not a consideration for the contracting of marriage. The *Mahr* must be clearly seen as the effect of the contract of marriage rather than the price paid by the husband for acquiring various rights which accrue to him on marriage. *Mahr* is often discussed also in terms of a sum paid to the wife as a mark of respect to her. If, therefore, no

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Chapter - II  DOWER: A CONCEPTUAL ANALYSIS

Mahr is agreed upon by the parties, the contract of marriage and what is referred to by the expression “proper Mahr” created by the operation of law will become payable. The obligation to pay Mahr is an effect of the marriage, rather than an incident to it.⁹⁵

Maulana Abul A’la Maududi: Men are the protectors and maintainers of women....man by nature deserve to be the ‘Qawwam’ but apparently he gets this position in a return for the mal which he spends by way of Mahr.⁹⁶

Maulana Umar Ahmad Usmani: [Mahr] is that present or gift which is given to invoke the pleasure of Allah through fulfilling his orders. It is neither compensation for anything nor its object to show one’s greatness or grace. Mahr is that present or gift which is given by man to woman without any idea of any kind of compensation.⁹⁷

Al-Syed Sabiq: Making Mahr obligatory for women is symbolic of the conferment of property rights upon women by Islam after Jahiliyah period. That purifies the soul of the woman and she becomes satisfied with the proctorship of the man.⁹⁸

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⁹⁵ David Pearl, A textbook on Muslim Personnel Law, 2nd ed., p. 60 (New Hampshire, USA, 1987)
Chapter II   Dower: A Conceptual Analysis

Hazrat Ali: [Mahr] is an absolute gift (nihla) to the wife without any condition.99

b) Excerpts from Judgments

i) Mahr under the Muslim law, is a sum of money or other property promised by the husband to be paid or delivered to the wife in consideration of the marriage, and even where no 'Mahr' is expressly fixed or mentioned at the marriage ceremony, the law confers the right of Mahr upon the wife as a necessary effect of marriage. The Mahr of Muslim law bears a strong resemblance to the donation propter nuptials of the Romans which has subsisted in the English law under the name of marriage settlement. In this sense and in no other Mahr under Muslim law be regarded as the consideration for the connubial intercourse, and if the authors of the Arabic text books of Muslim law have compared it to price in the contract of sale, it is simply because marriage is a civil contract under that law and sale is the typical contract which Muslim jurists are accustomed to refer to in illustrating the incidents of other contracts by analogy.100

ii) Mahr is an essential incident under the Muslim law to the status of marriage, to such an extent this is so that when it is unspecified at the time the marriage is contracted, the law

100. Mahmood, J's dictum in Abdul Kadir Vs. Salima (1889) ILR 8 ALL 149.
Chapter - II  DOWER: A CONCEPTUAL ANALYSIS

declares that it must be adjudged on definite principles. Regarded as a consideration for marriage...\textsuperscript{101}

iii) What is being sought to be enforced here is a contract entered into in contemplation of, by reason of, and ... as has been said in at least one decided case, though some doubt is to be very accurate, in consideration of marriage...\textsuperscript{102}

iv) \([\textit{Mahr}]\) is "a mark of respect" to the wife.\textsuperscript{103}

v) A right which comes into existence with the marriage contract itself except that in case the \textit{Mahr} is deferred its enforcement is held in abeyance till a certain event, i.e. dissolution of marriage by death or divorce occurs. \textsuperscript{104}

vi) The marriage under the Muslim law is a civil contract and is like a contract of sale. Sale is a transfer of property for a price. In the contract of marriage the wife is the property and the \textit{Mahr} is the price.\textsuperscript{105}

vii) The marriage cannot be regarded as purely a sale of the person of the wife in consideration for the payment of \textit{Mahr}.\textsuperscript{106}

viii) It is not correct to say that the right to claim prompt \textit{Mahr} does not precede cohabitation and comes into existence along with it.\textsuperscript{107}

\textsuperscript{101} Hamira Bibi Vs. Zubaida Bibi 1915/1643 ILR IA 294, per Lord Parker. The expression ‘Mohammedan Law’ is not islamically correct. It must be read as Islamic law.
\textsuperscript{102} Shahnaz Vs. Rizwan, 1965, I Q.B. 390 per Winn, J.
\textsuperscript{103} Zarina Quisha Vs. Arab Wali Mohd., 1976, PLD Pesh 128.
\textsuperscript{104} Siddique Vs. family Judge Court III, Karachi, 1980, PLD Karachi 477.
\textsuperscript{105} Saburamnensa Vs. Sabdu Sheikh, AIR 1934 Cal 693.
\textsuperscript{106} Anis Begum Vs. Muhammad Istafa (193) 55 All 743.
\textsuperscript{107} Mt. Nasra Begum v. Rizwan Ali, AIR 1980 All 113.
ix) Under Muslim law *Mahr* is not the exchange or consideration, as understood in the technical sense in the contract Act, given by the man to the woman for entering into the contract, but an effect of the contract imposed by the law on the husband as a token of respect for its subject, the woman.\(^{108}\)

x) The fact is that *Mahr* is neither ‘consideration’ nor ‘dowry’. It has a unique position of its own.\(^{109}\)

c) **Legislative definition**

Of all the modern legislations on Muslim family laws, the Moroccan Code of Personal Status, 1958 enjoys the distinction of giving a concise and comprehensive definition of *Mahr* which bears the quality of touching the Divine wisdom. It reads:

> "*Mahr*" means any property given by husband to the wife representing his intention to have a family life based on mutual affection and company.\(^{110}\)

d) **An analysis of these concepts of *Mahr***

The above conceptualization of *Mahr* boils down to the following assertions:

i) *Mahr* is a token of respect for woman.

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109. Tahir Mahmood, *The Muslim Law of India*, p. 71 (Allahabad, 1980); This has reference to the conflicting views from judiciary.
Chapter - II  Dower: A Conceptual Analysis

ii) *Mahr* is incumbent on the husband by virtue of the contract itself. It is an effect of the marriage.

iii) *Mahr* is a symbol of conferment of property rights on woman by Islam.

iv) *Mahr* is an essential incident to the status of marriage.

v) *Mahr*, which is mal spent on wife by the husband, apparently puts him in the position of Qawwan (protector, friend).

vi) *Mahr* is a 'consideration' for the marriage given by the husband to the wife.

vii) *Mahr* is a safe-guard against the husband's power to unilateral divorce.

viii) *Mahr* is a measure to strengthen the position of wife against the husband.

On the basis of above juristic expressions, when each taken separately, we find lack of comprehensiveness coupled with diversity in approach and contradiction in terms. It is probably because of this situation that Tahir Mahmood writes:

Unfortunately, the Islamic concept of *Mahr* has been widely misunderstood. Those who are obsessed with contractual element in the Muslim concept of marriage regard it as 'consideration' and those who are more familiar with 'dowry' confuse it with the same. The fact is that
Chapter - II DOWER: A CONCEPTUAL ANALYSIS

Mahr is neither consideration nor 'dowry' it has a unique position of its own. 111

An appropriate definition of Mahr can be evolved only after a cumulative consideration of the following facts which may be called testing facts:

i) Islam recognizes the property rights of woman and each woman retains her individual legal existence even during marriage, which can be symbolized by putting some property under her possession by way of Mahr at the time of marriage.

ii) Islam demands that the husband must be careful about the matrimonial rights of the wife and his feelings about her honour and dignity must be conspicuous by actions (like payment of Mahr).

iii) Islam desires that the husband must win the love and cooperation of the wife with the hope of reciprocity and make a symbolic representation of it.

iv) Islam requires that something must be done at the time of marriage which can bring the spouses out of the perplexity of having joined a new phase of life and apprehensions about married life. 112

111. Supra Note 109 at p.
112. Dr. M. Afzal Wani, the Islamic Institution of Mahr, p. 17.
Chapter II  Dower: A Conceptual Analysis

In view of these facts the most appropriate definition of Mahr is found in the Quran itself, it is a 'gift-spontaneous', that is a gift given with a willing heart.

And give to the woman their Mahr as a 'gift spontaneous'.

The representation of a 'gift spontaneous' to the wife implies not only the recognition of her economic rights and equal legal status but raises her position socially to be treated as a source of blessing. Therefore, the term 'gift' qualified by the expression 'spontaneous' represents the true nature of Mahr as is manifested by the above mentioned 'testing facts'.

3. Socio-Legal Significance of Mahr in the Islamic Society

In order to understand any Islamic concept in its true sense and to comprehend the nature of any Islamic Institution in its real perspective, resort must, primarily, be had to the basic source of guidance, that is, the Quran and it's over all dispositions. Anything prohibited, permitted or enjoined by Islam must be read with its Quranic propensity and inclination. Without such a reference, Error is likely to occur and the confusion is certain to precipitate.

Chapter - II  DOWER: A CONCEPTUAL ANALYSIS

Thus, the Quranic terms saduqah, nihlah and ajr show that Mahr is a gift or present from the husband to the wife with the purpose of producing maximum spousal cohesion and its presentation aims at stimulating co-operative living between the spouses. It inculcates responsibility and invokes reciprocity and fair dealing. Mahr as a gift spontaneous shows the nearness of hearts between the spouses. It is a symbol of high matrimonial morality, truthfulness, earnestness, affection and mutual; trust and confidence between the spouses. Mahr, if not paid by the husband when he is able to pay it and if demanded by the wife when she know that the husband is not at that time able to pay it indicates a breach in the spousal relationship.

The most natural way of developing good relationship is offering a gift with a willing heart. Its value is not important, but the way it is offered is significant. It is not primarily a monetary benefit to be conferred upon the donee. Therefore, the Quran directs the man to solicit the hand of the woman with Mahr, with all humility and solicitous approach, as she is the virtue, the potential and the garment of the man.114

Chapter II DOWER: A CONCEPTUAL ANALYSIS

Mahr is not a part of the contract of marriage. As an effect of the marriage it is a post ceremonial measure. It has a definite role to play in accordance with Divine Wisdom, that is, the establishment of the sweet home with cooperative spouses. Mutual love and affection is the basic arch of every family (the basic unit of Muslim Society) and Mahr is the key stone of that arch. In domestic relationship the Quran has laid down great emphasis on mutual love, affection, trust and confidence. It says:

And of his signs is that He created for you of yourselves, spouses that you might repose in them and He has set between you mawaddah (love) and rahmah (mercy); Surely in that there are the signs for the people who think.  

They are your garments and you are in their garments.

O' children of Adam we have bestowed upon you the garments to cover your shame, and to be an adornment to you and the garment of righteous, that is the best....

And live with them (women) with kindness and equity....

The Prophet (S.A.W) has said:

I command you to take care of the woman in good manner....

118. The Quran, IV:19.
Chapter - II  Dower: A Conceptual Analysis

Every one of you is a guardian and every one of you is responsible; a wife as the guardian of her husband's home and she is responsible.  
Beware, all of you are guardians and responsible.\textsuperscript{120}

From amongst the believers the person of perfect faith is one who is best in morals; and amongst you the best is one who is best to his wife.\textsuperscript{121}

Of all humans actions, the one which pleases Allah most is the manifestation of love when made only for winning the pleasure of Allah.\textsuperscript{122}

It is basically with this percep that the Quran has enjoined \textit{Mahr} in the following words:

\textit{And give to the woman Mahr as a gift spontaneous (a gift with willing heart).}\textsuperscript{123}

This view is further substantiated by the fact that Prophet (SAW) has even accepted 'teaching of the Quran to the wife' as \textit{Mahr}. It creates love (mawaddah) and forgiveness (rahmah) among the spouses and cements the family-ties. The Moroccan legislature, while defining \textit{Mahr}, has really clinched the point by saying:

\textit{Mahr} is any property given by the husband to the wife representing his intention to have a family based on mutual affection and company.\textsuperscript{124}

\textsuperscript{120} Ibid.  
\textsuperscript{121} Tirmidhi.  
\textsuperscript{122} Abu Dawud  
\textsuperscript{123} The Quran, IV:4.  
\textsuperscript{124} Supra Note 110 at p.
Chapter - II  DOWER: A CONCEPTUAL ANALYSIS

So *Mahr* is not merely an economic benefit to be conferred upon a woman but it has a greater social purpose.

In its broader perspective the obligation of *Mahr* does not only provide the bed-rock for a tranquillos home but also plays a role in creating just and chaste social order. Recognizing a just place for women in the society, Islam removed all possible interdictions from their conferring upon them the ownership rights and a right to legally independent existence. In Islam, the personality of the wife cannot be deemed to have merged into that of her husband on marriage. She can own property, can sue anybody including her husband and can be sued whenever necessary. *Mahr* as an absolute property of the wife is symbolic of her full fledged legal personality. Al-Syed al-Sabiq, the author of Fiqh-al-Sunnah has aptly brought to the fore the socio-legal significance of *Mahr* in the following terms:

One of the best honours that have been conferred upon women and the best veneration that has been given to them by Islam is that she was vested with the property rights. During the period of Jahiliah she could not own even her person. Interdiction was to the extent that even the guardian would snatch her property rendering no possibility or chance for her to own something or to possess anything. Islam liberated
her from those heavy weights. This is symbolized by making *Mahr* obligatory for her and binding upon men...This purifies the soul of the women and cultivates trust in the proctorship of man.\textsuperscript{125}

Jurisprudentially, something, which is socially and morally important and on breach invites moral and social sanctions, is in cases of higher desirability made legally enforceable. Islamically *Mahr* has been enjoined as a measure for maintaining socio-marital equilibrium when anyone tries to mock at this Quranic directive he cannot escape, besides moral and social sanctions, the legal sanctions. It is in this context that *Mahr* has been made legally enforceable before qadi (an Islamic judge). The legal sanctions are invited for breaking the Quranic social norms and for causing disobedience to Allah. And the magnitude of the sanction is determined by the quantum of *Mahr* due to the wife. So the qadi can ask the husband to deposit the amount of *Mahr* with him and handover the same to the aggrieved party.

From the above stated facts it becomes clear that *Mahr* has an apparent social, moral and legal significance. However, as a Divinely ordained Institution of Islamic law, *Mahr* may, at times, attain many

\textsuperscript{125} Supra Note 98 at p.
more significant dimensions, especially economic and strategic to protect women from exploitation.

4. Some pre and non-Islamic concepts confused with Mahr Dower:

At common law, dower was the life interest of a widow in one-third of the legal estates in real property owned by her husband at any time during the marriage. Originally there were varieties such as dower of as Ostium Ecclesiae (at the church door) and dower ex assensu patris (by the heir with his father’s consent) where immediately before the marriage the wife was endowed of specified lands; and sometimes land held in knight service was exonerated from dower; by the widow’s taking dower de la pelvis beale (of the most fair) of her husband socage land. But by the sixteenth century these forms were of little importance compared with dower at common law, or subject to local customs under which dower might extend to a quarter, a half or even a whole of the land. Except where the wife had been endowed of specific lands, she was entitled to have her land assigned ‘by metes and bounds’ by the heir with her quarantine: that is, the 40 days during which Magna Carta (1215) permitted her to remain in he husband’s house after his death.126

Chapter - II  DOWER: A CONCEPTUAL ANALYSIS

The right to dower might be barred by the wife before marriage accepting a jointure (a life estate in specified lands) in lieu of dower or by the complicated uses to bar dower invented in the 18th century. By the Dower Act, 1933, dower in Great Britain was restricted to reality still owed by the husband at his death and not devised by his will, and it could also be barred by a declaration in his will or by dead. Dower thus ceased to be a nuisance to conveyancers. As a small measure of compensation to widows, the Act extended dower to equitable interests.127

The administration of Estates Act, 1925, abolished dower. The modern tendency, wherever in common-law jurisdictions the dower continues, is either to abolish or to replace it by other less arbitrary means for providing for widows.128

In the United States, no states had enacted statutes to the contrary, dower continues as at common-law. Some statutes, in most of the states have greatly modified the practices of dower; or substituted a different right or practice for it in the forms like a certain portion of the husband's property, or of the community property of both or of the life

127. Ibid.
128. Ibid.
Chapter - II  **Dower: A Conceptual Analysis**

estate in portion of his reality. The subject, therefore, in common law has greater reference to alimony rather than *Mahr*.

The probable cause for the use of the term dower for *Mahr* can be found in the fact that mostly the Muslims since long have not been giving *Mahr* to the wives at the time of marriage leaving their claims un-met during the course of the marriage. The unsatisfied claims may be, therefore, been usually launched by women or their representatives after the dissolution of the marriage by divorce or death. It is for this reason that the case on *Mahr*, which for the last two centuries have come before the courts involve, with rare exceptions, the question regarding widow's rights on *Mahr*. Thus, the western writers and judges, being not well versed with the real concept of *Mahr*, have adopted the term dower for *Mahr* taking it merely a widow's claim on deceased husband's estate.

**Dowry:**

The custom of giving dowry is not part of Islam, although seems to be on the increase among several Muslims cultures, notify those of Indian, Pakistani and Bangladeshi origin. In fact, dowry is another expression which is being confused with *Mahr*. Even the Encyclopaedia

129. Ibid.
Chapter - II DOWER: A CONCEPTUAL ANALYSIS

of Seerat\textsuperscript{130} has used term ‘dowry’ for \textit{Mahr}. The term dowry denotes the property. Whether real or personal, that a wife brings to her husband on marriage. In English law, until the enactment of the Married Women’s Property Act, 1870 the wife’s property passed in law absolutely to the husband. The rigour of this rule was modified by the application of the rules of equity to the provisions of settlements by the husband, or by the wife or by both, or by persons (such as the parents of either) interested in their welfare and while the legal estate was vested in the trustee of the settlement, the beneficial interest in the property included in the settlement vested as provided by the terms of the deed. Thus while in law a married woman would own no property, the position in equity was quite different. With the passage of Married Women’s property Act, 1870, marriage settlements were no longer necessary for preserving the wife’s title to her own property.\textsuperscript{131}

Again the term, dowry is not a word that has all the technical connotations and implications of the French \textit{dot} which has its roots in Roman Law. Among the Athenians and the Romans the woman, of course, brought the dowry and Code Napoleon (Article 1540) attached

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\textsuperscript{130} Encyclopedia of Seerat, Vol. V, p. 475 (London)
\textsuperscript{131} Id., at p. 619.
\end{flushleft}

75
Chapter II  Dower: A Conceptual Analysis

the same character to French dot. But in countries like France, where, even if Roman law remained the basis of the law of the country and was revived as such; the husband’s rights in relation to the dot were not unlimited and the wife could take legal steps to protect the property which she had brought in the community of goods. The French dot is analogous to Indian Jahez that has now taken shape of a social evil. Mahr is different from these altogether.

Under Hindu Law also the woman, before she was given the statutory protection, was having no legal personality of her own and on marriage her personality was being said to have merged into that of her husband. So the wife was virtually owned by the husband along with her property, if any. Presently even if the woman enjoys, under the statutory law, some independent existence but the husband in his ‘earlier mood’ continues to demand property fro the wife in the shape of dowry. The present hiker in dowry –deaths is an evidence of that fact.

In India legislations have been made prohibiting the practices of dowry. These anti-dowry legislations, however, exempt Mahr from their application recognizing it as a separate institution under Islamic law.

132. Supra Note 93 at p.
133. Supra Note 131 at p.
Chapter - II DOWER: A CONCEPTUAL ANALYSIS

This becomes clear from the definition of dowry given in section 2 of the India Dowry Prohibition Act, 1961 which read as follows:

"dowry" means any property or valuable security given or agreed to be given either directly or indirectly

a) by one party to a marriage to the other party to the marriage; or

b) by the parents of either party to a marriage or by any other person to either party to marriage or to any other person; at or before or any time after the marriage in connection with the marriage of the said parties, but does not include dowry or Mahr in the case of persons to whom the Muslim personnel Law (Shariat) Act applies.

Thus Mahr has been identified and recognized as distinct concept, not to be confused with dowry just for the reason that Mahr has been rendered into English, of course, wrongly as ‘dower’. Indian legislature has played quite safe in this respect and to avoid any confusion both words Mahr and dower have been used in the above mentioned provisions as ‘dower’ or Mahr. So Mahr is not the same as dowry.

Stridhan

Stridhan under Hindu Law is not the same as Mahr in Islam. Stridhan literally means woman’s property. No exact definition of the
Chapter - II Dower: A Conceptual Analysis

term is available in authorities on Hindu law. Gooroodas Banerjee has
given vent to this feeling in the following words:

"majority of sages and commentators give neither an exact
definition of Stridhan nor an exhaustive enumeration."\(^{134}\)

In Yajnavalkya a definition of Stridhan has been attempted
though this definition cannot be deemed to be final. It reads:

What was given to a woman by the father, mother, her husband
or her brother or received by her at nuptial-fire or presented on her
suppression and the like is denominated as women's property.\(^{135}\)

By using the words "and the like" in the definition
Vijnaneshwara has enlarged the meaning of Stridhan. So this definition
does not make the whole concept of stridhan clear and we do no have
any other better definition available. But Mahr as an Islamic legal
institution is a different one having its specific purpose and a definite
place in its socio-legal set-up.

The difference between stridhan and Mahr will be more clear by
making a perusal of the us of the term stridhan under Hindu law for
denoting the following:\(^{136}\)

\(^{134}\) See Paras Diwan, Modern Hindu Law, p. 332 (1985).
\(^{135}\) Yajnavalkya, II, 143.
\(^{136}\) See Supra Note 134.
Chapter - II DOWER: A Conceptual Analysis

i) The gifts made to a woman during her maidenhood, coveture or widowhood by her parents and their relatives or by the husband and her relatives. These may be gifts inter vivos or by will.

ii) The gifts inter vivos or by will made by strangers to a woman during her maidenhood, widowhood; before nuptial-fire or at bridal procession; during coveture by strangers under all schools of Hindu law but Mithila and Dayabhaga.

iii) Property earned by self-exertion during maidenhood and widowhood; during covertures under all the schools of Hindu law other than Mithila and Bombay School; and

iv) Property obtained by adverse possession according to all schools.

It may be pointed out that the position 1956 was that the gifts received from strangers during coveture were stridhan but these would during her life time remain under the husband’s control. On his death these would become her full-fledged stridhan.

In a Kerala decision stridhan has been held to be covered by the expression ‘dowry’.137

Bride-Price

Some writers have used the expression ‘bride-price’ for Mahr.

This concept is quite unislamic. This is callous use of the expression and an offensive way of taking undue liberties about sensitive matters. Unfortunately, misuse of terms is reported from some known writers

137. (1975) Kerala LT 386.
also. The climax is found in the following line of a well circulated book which can be read only with exclamation.

The term 'bride-price' has been used because of its being closer to the original connotation of Mahr and, to avoid confusion, the term "dowry" has not been used.\textsuperscript{138}

To avoid one confusion, as is claimed by the author, a bigger confusion has been created by him. The author has not preferred to use the term Mahr as such to avoid every possible confusion. Such writings indicate misinformation and lack of intellectual courage.

The expression 'bride-price' indicates the payment by a husband to his father-in-law and the wife is, in effect, bought from her father. Among Hindus a form of marriage namely Asura, still prevalent among Sudra serves as an instance. In such a marriage the bridegroom receives a maiden after having given as much wealth as he can afford, to her kinsmen. Such a practice has no semblance with Mahr.

\textsuperscript{138} Majid Khadduri, Law in the Middle East, p. 141 (Washington, 1955).
CHAPTER III
MARRIAGE AND INSTITUTION OF DOWER

- General Observation
- Instruction in religion
- Legislation in Muslim Countries
- Indian Legislation
- Dissolution of Muslim Marriage Act 1939
- Procedural Laws
- Case Law in the Subcontinent
- Impact of the Muslim Marriages Registration Act, 1980
- *Mahr* and *aqd al-nikah*: A legal norms
- Validity of Marriage without fixing dower
- Dower- a religious ordinance
Chapter - III  
MARRIAGE AND INSTITUTION OF DOWER

General Observation:

In pre-Islamic Arabia marriage by capture, which was mainly due to the rule of exogamy; was the ancient form of securing a wife and it subsequently took the form of marriage by purchase. The specific conditions and terms were secured by the kins of the women to safeguard her interest and welfare. In ancient days the ‘Saura’ form of marriage (by purchase) was prevalent in India and it is still alleged to be practiced by the Indian Muslims in Punjab.¹

In the Muslim system, the concept of dower may historically be traced to be the bride’s price in certain respects but it is not wholly so; prior to Islam, two kinds of marital gifts were prevalent. In a certain type of marriage, the so-called ‘beena’ marriage, where the husband visited the wife but did not bring her home, the wife was called ‘Sadiqa’ or female friend. In Islam ‘Sadaq’ simply means ‘a dower’ and is synonymous with Mahr.² But originally the two words were quite distinct; Sadaq is a gift to the wife and Mahr to the parents of the wife. The latter term belongs to the marriage of dominion, which is known as

Chapter - III  MARRIAGE AND INSTITUTION OF DOWER

the baal marriage, where the wife's people part with her and have to be compensated.

Now Mahr in the baal form of Marriage was used by the Prophet (SAW) to ameliorate the position of the wife in Islam, and it was combined with sadaq, so that it became a settlement or a provision for the wife. Thus historically speaking, the idea of sale is latent in the law of Mahr (dower).³

In pre-Islamic days, it often happened that the Arabs, after despoiling their wives, turned them out adrift, helpless and without any means. So, it was made an essential condition to the validity of a marriage that the husband should settle on the wife a certain dower, which became her exclusive property. This ancient custom was often disregarded, as there was no organised system of law.⁴ Promulgation of Islam established this ancient custom and forbade unjust acts towards the fair sex, as is evident from the Quran:

"If you separate yourself from your wives, send them away with generosity, it is not permitted to you to appropriate the goods you have once given to them".⁵

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3. Ibid.
4. Supra note 1, p. 215.
5. Quran V:4
Chapter III  Marriage And Institution Of Dower

In order to safeguard the economic position of woman after the marriage, Islam has made it legally obligatory on the husband to pay her a reasonable amount as dower. The amount is to be fixed on an agreement between the parties. The object is to strengthen the financial position of the wife so that she is not prevented, for the lack of money, from defending her rights. However, she is competent enough to decrease the dower in favour of the husband partially. Quranic provision also, in this regard says:

"And give women their dower as a free gift, but if they themselves be pleased to give up to you a portion of it, then eat it with enjoyment and with wholesome result".

The following a hadith of the Prophet (SAW) stresses the importance attached to dower in Islam:

"Ibn Umar reported that the Prophet (SAW) of Allah forbade shishar and shishar is a means giving his daughter in marriage on condition that another would give his daughter in marriage to him and that there should be no dower between them."  

Jabar reported that the Messenger of Allah said:

"Whose gives two hundred of barley or dates as dower of his wife has rendered (her) lawful."  

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6. Quran IV:4
7. Quoted by M.M. Siddique in Women in Islam, Supra note 2, p. 46.
Chapter - III  MARriage AND InStItUTiON OF Dower

The following hadith of the Prophet (SAW) also stresses upon the importance attached to dower in Islam; the hadith was collected by Abu Dawood and Hasan:9

Alamah b. Masud reported that he was asked about a man who married a woman but did not fix any dower for her, nor had he any intercourse with her till he died. Ibn Mas'ud told her: Fix the equivalent dower of his woman, neither less nor more. And there is a period of waiting for her and there is her share of inheritance for her (from her husband’s property), then Ma’qal b. Sinan got up and said: ‘The Messenger of Allah decreed in case of Bar wa’ah bint washiq (a woman belonging to us) just as you have decreed’.

Dower is an essential incident of the Muslim law of marriage, so much so that even if there is a stipulation on the part of the woman before marriage to forgo all her right to dower, or even if she agrees to marry without any dower, the stipulation or agreement will be invalid and ineffective and she would be entitled to customary dower. If there is no specification of dower in the marriage contract, the marriage will be held valid, and the law would adjudge it on a definite principle.10

9. Ibid.
Chapter - III  MARRIAGE AND INSTITUTION OF DOWER

The amount of dower can be fixed at any time before or after marriage. It should never be supposed that the validity of the marriage is dependent upon the conferment of dower and when there is no consideration for the matrimonial contract, the marriage is valid. Hedaya\textsuperscript{11} says:

"A marriage is valid although no dower had been mentioned, because literally nikah signifies a contract of union which is fully accomplished by the performance of the marital rites."

Dower is obligatory as a mark of respect for the subject (Al-Mahal); therefore its mention is not essential to the validity of marriage. For the same reason, a marriage is valid, although the husband were to engage in the contract on the special condition that there should be no dower. Fatwa-i-Qadi Khan\textsuperscript{12} says:

"Mahr is so necessary to the marriage that if it were not mentioned out the time of marriage, or in the contract, the law will presume it by virtue of the contract itself."

So, the settlement of dower is essential for a marriage but not for its validity.

Muslim jurists generally treat dower as a consideration for buza i.e. engagement of the private parts of a woman, and it cannot be

\textsuperscript{11} Hedaya, quoted by Saksena, Supra note 1, p. 216.
\textsuperscript{12} Fatwa-i-Qadi Khan, quoted by Saksena, Supra note 1, p. 216.
Chapter – III  MARRIAGE AND INSTITUTION OF DOWER

treated as a consideration for marriage. Sir Abdur Rahim has remarked:

"Dower is not a consideration proceeding from the husband for the contract of marriage, but is an obligation imposed by the Muslim law as a mark of respect for the wife".

Baillie, in his Digest defines dower to be:

"The property which is incumbent on a husband, either by reason of its being named in the contract itself, as opposed to the usufruct of the wife’s person...."

Dower is not the exchange or consideration given by the men to the women for entering into contract; but an effect of the contract imposed by the law on the husband as a token of respect for its subject, the woman.

The Hedaya says:

"The payment of dower is enjoined by law as a token of respect for its object; the women".

Maulvi M. Somee Ullah gives an equivalent of the Arabian expression in English to be a token of respect for the "mahal" which from term refers to buza and not the woman herself.

Chapter – III  MARRIAGE AND INSTITUTION OF DOWER

Regarding the amount of dower to be fixed, Islam has given a wide latitude to men and women. It can be as low as possible or on high as the parties may desire. Ibn Majah and Iirmidhi report from ‘Amir ibn Rabi’ah:

“A woman belonging to the tribe of Banu Fazarah married a man for a pair of shoes. The Prophet (SAW) asked her whether she was really happy over that much dower. She replied in the affirmative, whereupon the Prophet (SAW) made no objection.”17

According to Abu al Jafar (R), it was the opinion of ‘Umar (R) the second Caliph that:

Dowry should not be fixed at a very high rate, for if this had been a point of honour and pleasing in the sight of God, the Prophet (SAW) too would have acted accordingly, but he did not fix more than a hundred and twenty-five dirham for his wives and daughters.”18

Umar’s(R) opinion was, however, challenged by a woman who said:

“Umar, you have no right to impose which restrictions, because the Holy Quran says that men should not take anything from their wives if they intend to divorce them, even if they have given them heaps of gold. This shows that God allows even a very high rate of dower, Umar(R) replied her saying that she was right and that he had made a mistake himself.”19

The amount of dower may be fixed either before or at the time of marriage or after marriage, and can even be increased after marriage.

A contract of dower can be made by a father on behalf of his son, if the

17.   Tirmidhi, Ibn Majah, Quoted by M.M. Siddiqi, Supra note 1, p. 47.
18.   Tirmidhi, p. 132, Ibid.
Chapter - III  Marriage And Institution Of Dower

latter is a minor. The wife may remit the whole or part of dower. Such remission is valid though made without consideration. If the dower is not paid, the wife and, after her death, her heirs may sue for it.20

The real object of dower is to raise the wife from the position of a saleable object to that of a contracting party21 and to protect the wife against the arbitrary exercise of the power of divorce by the husband. Dower also compensates the women. It may be said that by giving the daughter half the share of a son, Islam has let down the position of women, but it should not be forgotten that a woman may also receive dower and property from her husband. Moreover, there is no obligation on a wife to sustain her husband economically, while the husband is under a legal obligation to provide for his wife. Thus her ostensible inequality is more than compensated and both sexes become equal on economic grounds.22

When the right to the dower has once been vested in the women, she cannot be divested of it by any of her subsequent acts, such as her

20. Id. at p. 48.
22. Supra note 1, pp. 48-49.
Chapter III  Marriage and Institution of Dower

apostasy or adultery or even if she commits suicide or is killed by her husband, in the last two cases, her heirs would be entitled to it.²³

Section 130, Transfer or Property Act applies as much to Muslim as to any other communities.²⁴

The Jewish law as regards to the dower is that a marriage without consideration is invalid, and the women have no right over it until the marriage is validated. If no dower has been settled or specified, then in such a case it shall be presumed on some recognized basis. A Muslim wife also requires immediate right over it.²⁵

Roman law regarding 'Dopatio propter ruptias' is similar to Mahr in all its incidents. The only difference is that the former is voluntary on the part of the husband, while Mahr is, as explained above, absolutely obligatory. It may be noted that the sentiment pre-supposed and encouraged by the system in the Roman Law, is that matrimony is on the husband's side a burdensome duty, which the wife must bribe him to undertake by placing at his disposal, so long as the conjugal union subsists, the income of land or other property, which in itself is

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²³ Fatawai-Alamgiri, Vol. I. p. 44 (Id. At p. 229)
²⁴ S.K. Mohammad Zubair Vs. Mt. Bibi Sahida, 1942, Pat. 210
²⁵ Supra Note 1, p. 220
jealously withheld from his control, and which reverts on the termination of the marriage to the wife or to her family.  

From the reports of the Prophet (SAW) the utility of Mahr seems to be ceremonial, as he suggested the amount to be a nominal one. Even teaching of the Quran, gift of a pair of shoes and a handful of dates were considered to be dower, Umar(R) the second Caliph, through his penetrating insight and deep understanding of life and administration could aptly realize the prospect of its social utility too. That was why he recommended higher amount of dower though he restrained himself from its immediate implementation. In fact, in course of time, with ceremonial aspect, its social character has also come to light. The changed social condition has enhanced the role of Mahr from a simple token of respect to one of the most important matrimonial remedy; a potent weapon in the hands of women. In the subsequent pages we will see how dower, apart from bringing women from the saleable status to that of contract, provides remedy to solve her concrete matrimonial, social and economic problems. In this context the role of prompt and deferred dower has been highlighted which is followed by a discussion regarding the enforceability of dower as such in certain cases in the


90
Chapter III  
MARRIAGE AND INSTITUTION OF DOWER

court of law. Been held in a case,\textsuperscript{27} that no hard and fast principle can be laid down on which the amount of dower can be accessed to be claimed by a Muslim widow. It has to be done on the broad lines laid down in the Oudh Laws Act, and the question as to what amount is reasonable must be determined with reference to the means of the husband and status of the wife.

On the basis of above discussion it may be concluded that the conception of proprietary financial interest is the basic characteristic of dower, because the object of dower is financial assistance. All has said:

\textit{“Except for those all others are lawful, provided ye seek (than in marriage) with gifts from your property – desiring chastity, not lust.”}\textsuperscript{28}

In fact Dower is financial gain that accrues in marriage to a women in lieu of the pleasure to be enjoyed of her through the marriage be either valid, or irregular or even cohabitation be in doubt to Dower in which its true sense is not the exchange on consideration given or agreed to be given by the husband to his wife at time of solemnizing marriage but it ensues from the marriage contract as it effect, imposed by the law on him as a mark of respect and honour to the women.

\textsuperscript{27} Ghani Ahmad Vs. Medhi Begum, Oudh, 63 (1931).
\textsuperscript{28} Quran IV: 24
Chapter - III  MARRIAGE AND INSTITUTION OF DOWER

However, the marriage is valid though no dower were mentioned and even though it were expressly stipulated that there would be no dower".29

What can be subject matter of Mahr

Every lawful object that has some pecuniary value may be subject matter of dower. Accordingly cash, merchandise, goods, immovable property, shares of companies or dividends etc may be settled as dower, provided the property be such that it is certain, lawful and capable of being taken into possession. Mahr can be either money or anything having some value and must be reasonably certain.

It cannot be a mere promise to do or to abstain from doing something which cannot be enforced by the court.31 In other words anything over which the right to property may be exercised, or anything which may be reduced into possession, either in the present or in the future or anything which comes within the meaning of the word mâl may form the subject of Mahr.30 Profits (munafa) accruing from land, investment, business, industry, etc. are proper subjects of Mahr.

Chapter - III  Marriage And Institution Of Dower

Debts due to the husband from other people are also fit to be offered as Mahr.31

Personal services as Mahr:

Difference of opinion exists as to whether the personal services rendered by the husband can constitute Mahr. In Hanafi law personal services rendered by the husband cannot be the Mahr; but in Ithna Ashari and Ismaili laws husband’s personal services may form the Mahr.32 The Hanafi view is that if a free man were to marry on the stipulation that he would render his own services to his wife in lieu of Mahr, the marriage would be valid but the woman would be entitled to Mahr al-mithal. But if a slave, by his owner’s consent, marries a woman on the same terms, It is lawful and the woman is entitled to the stipulated service only.33 In this respect reference may be made to the following Hanafi authorities:

The text of the Tanwir al-Absar is as follows:

"And it the husband be free and should marry either a free woman or slave girl on condition of serving her for a year (in other words a determinate period), the woman would be entitled to her Mahr al-mithal."34

32. Supra note 31.
34. Supra note 3
Chapter III  MARRIAGE AND INSTITUTION OF DOWER

Radd al-Mukhtar comments on this passage in the following:

"If the husband should condition that he would serve the wife for a year, this, according to the two Sheikhs (Abu Hanifa and Abu Yusuf), would make the husband liable for the Mahr al-mithal. According to Imam Muhammad the woman would receive the value of services."\(^{35}\)

The author of the Radd al-Mukhtar further points out:

"[H]ere restriction is placed on the word 'service', for, should a man marry a woman on the condition that he would carry her load or tend her animals, or cultivate her land and such matters, which result in profit, for a determinate period by way of Mahr, such a condition is valid. For, all this is the profit of Mahr."\(^{36}\)

According to the Hanafi doctrines, an assignment of insurance policies would form a valid Mahr.\(^{37}\) Among the Shias and Shafis, however, a free man may assign to his wife his own services in lieu of Mahr.\(^{38}\)

**Instruction in religion**

Among the Hanafis, if a man were to marry a woman, engaged to instruct her in religion, or to take her on a pilgrimage (in lieu of Mahr); the stipulation would be in-operative, and the woman would be entitled to Mahr al-mithal. Ameer Ali points out that according to the primitive Hanafi notions, when a man marries a woman on the condition of

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36. Ibid
37. Ibid
instructing her by the Quran, he becomes liable for the Mahr al-mithal; but according to the modern legists, the condition is valid.\textsuperscript{39}

The author of the Bahr al-Raik states that it is lawful to receive remuneration for instructing in law or the Quran, and that on this is the fatawa; and that consequently, it is lawful to make instructions in the Quran the subject of Mahr.\textsuperscript{40} Instruction in religion or arts, an engagement to take the wife on a Pilgrimage may according to this doctrine, form the valid subject of Mahr.\textsuperscript{41}

Future property

When something is assigned by way of Mahr which is not in existence at the time of fixation either substantively or as a creation of the law, such assignment is not valid. For example, if man were to settle on his wife by way of Mahr the future produce of certain bees or lands in his possession, it would be invalid, and the woman would have a right to the usual Mahr. But the assignment of a chose in action; or the sale proceeds of something of which he is a proprietor, would constitute a lawful Mahr.\textsuperscript{42}

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\textsuperscript{39} Supra note 5
\textsuperscript{40} Supra note 3
\textsuperscript{41} Jamaush-Shittal; Supra note 3
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Chapter – III  MARRIAGE AND INSTITUTION OF DOWER

The relevant text of the Tanvir-al-Absar is as follows:

“It is lawful for a man to assign for Mahr the ten dirhams which may be due to him from somebody else.”\textsuperscript{43}

It is, therefore, lawful for a man marrying a woman to fix for her Mahr anything which may be due to him from her, or which may be due to him from somebody else. For example, if ten dirhams are due to him from Zaid, he may fix that for Mahr, and the woman would be entitled to get that amount either from the husband’s debtor or from the husband; if the debt is owing from the woman herself, it is on the footing of am (a thing in specie)\textsuperscript{44} Radd al-Muhtar also provides:

“Similarly, if a man were to fix for Mahr a manfa’at (profit), that also will be lawful; for example, residence in a house, or the might of riding on an animal, the right of cultivation, etc. but that the period thereof should be ascertained.”\textsuperscript{45}

The usufruct or property not the existence, contingent benefits, etc., may according to the Shia doctrine, form the valid subject of Mahr.\textsuperscript{46}

Quantum of Mahr

The question that what will be the Mahr for a particular woman on marriage is primarily left by the law to be determined by the parties to the marriage who can settle it before, at the time of or after the

\textsuperscript{43} Supra note 3
\textsuperscript{44} Ibid
\textsuperscript{45} Supra note 44
\textsuperscript{46} Supra note 43
marriage, of course, subject to legal conditions. It is, however, not necessary for the parties to settle this matter themselves. The law also provides definite rules for the determination of the amount of *Mahr*. However, these rules operate only if the parties have not settled any *Mahr* mutually.

Thus, where the parties are competent to contract their own marriage they may fix the *Mahr* by mutual agreement. This agreement may be oral or be reduced to writing. In the latter case, it is called *Mahr*-nama or kabin-nama. The *Mahr*-nama or kabin-nama may be incorporated in the nikah-nama itself.

Where a party to the marriage is incompetent to contract his or her own marriage, the *Mahr* may be fixed on his or her behalf by the marriage guardian (wali). In such a case if the marriage is binding on the person married, *Mahr* too will be binding.\(^\text{47}\) The *Mahr* which the parties to a marriage may fix by stipulation is called *Mahr* al-musamma (‘specified *Mahr*’) and the *Mahr* to which wife becomes entitled by the operation of law, when parties have not fixed, it is called *Mahr*-al-mithal (proper *Mahr*).

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Chapter - III  MARRIAGE AND INSTITUTION OF DOWER

Extent of *Mahr* al-musamma

The classical works option ten dirhams as the legal minimum of *Mahr* (*Mahr* al-aqqal).\(^{48}\) Hanafis follow the same precedent. In Hanafi law, therefore, neither the parties to a marriage nor any marriage guardian can stipulate for a *Mahr*, the value of which is less than the 'legal minimum.'\(^{49}\) However, under Ithna Ashari and Ismaili laws there is no 'legal minimum' of *Mahr*. In Shafi'i law the 'legal minimum' of *Mahr* is recommended, but not insisted upon.

There is no fixed rule as to the maximum amount of *Mahr*, though the husband can at any time, during the subsistence of marriage increase the *Mahr* al-musamma as originally specified.

The Prophet (SAW) did not enunciate any fixed rule as to the amount of *Mahr*. He appears to have settled 500 dirhams upon Maimuna and the Shias consider that amount to be the *Mahr*-al-sunnat. The *Mahr* of Fatima (IRA), the daughter of Prophet (SAW), was 400 dirhams.\(^{50}\) The Radd al-Muhtur, however, lays down with considerable distinctness that whatever amount exceeding the minimum, the man

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48. Dirham was a silver coin weighing 2.97 grams.
50. Supra note 33
agrees to pay as Mahr, he will be liable for that.\textsuperscript{51} About this rule only one exception has been reported, that is, where a minor is given in marriage by his guardian and the Mahr fixed is exorbitant, either beyond the means of the husband or covers his entire property, the husband’s liability will be limited to the Mahr-al-mithal.\textsuperscript{52} The Shahih Shara’ya also says that there is no limit either to the maximum or minimum of Mahr; it being a matter of contract between the husband and the wife; so long as the article given or assigned by way of Mahr possesses any definite value, the assignment is considered valid.\textsuperscript{53}

There is no distinction so far as this principle is concerned between the Shias and the Sunnis.\textsuperscript{54} Both schools however regard excessive Mahr as improper though not absolutely illegal,\textsuperscript{55} but this recommendation has usually been disregarded by the Muslims.\textsuperscript{56}

Precedent reveals that the amount of Mahr depends on the social position of the parties and the conditions of society in which they live. As for instance the early Hanafi lawyers fixed ten dirhams (equal to about five shillings) as the minimum for Mahr, but the Malikis,
inhabiting a poorer and less populous country than that in which the early Hanafi lawyers flourished, considered even a smaller sum as permissible.\textsuperscript{57}

Of them large sums are stipulated as \textit{Mahr} merely as a device to prevent, on the part of the husband, the capricious exercise of the power of divorce vested in him.\textsuperscript{58} It is a wholesome method of maintaining the balance between the rights of husband and wife. But as the law is generally administered, it often works great injustice on children. For instance, when a man leaves children by a pre-deceased wife and a second wife on whom he has settled, either from vanity or pressure from her relatives as a device against divorce, a preposterous \textit{Mahr}, which he never had an intention of paying but the courts enforce the contract in its entirety. In such a case, the widow gets the whole estate of the deceased to the absolute exclusion of the children.\textsuperscript{59}

At certain places and in some families large amounts of \textit{Mahr} are being fixed without any intention of paying or exacting payment of such amounts. Another type of situation is presented by the cases

\textsuperscript{57} Supra note 33
\textsuperscript{58} Comp. Cases XXXV and XXXVIII in MacNaghten's Precedents on Mohammedan Law.
Chapter - III  Marriage And Institution Of Dower

where a moderate *Mahr*, in accordance with the means and status of the parties, is settled in private, but to give éclat to the marriage and for purposes of ‘glorification’ a large amount is mentioned in public and entered in the deed which is read out to the guests. This subject is treated in the Fatawai-Alamgiri under the title of al-sum’at (with a zamma on the first syllable, and a fatah on the last).

Al-suma’t according to the Lughat means a public announcement of something with the object of self-glorification. In the language of law it means a *Mahr* announced to the public with the same object. The Shara’ya-al-Islam, states the Shiah doctrine that in such cases the private arrangement will constitute the lawful *Mahr*.60

The Fatawai-Alamgiri gives the Hanafi rules in some detail.61 According to it if a man were to marry a woman for a certain sadaq (*Mahr*) settled privately and announced a large amount in public (fi al-Ielandia) the subject assumes the following aspects:

i) If the parties agreed to its settlement (viz; the private arrangement), or the man has called evidence to prove against her (the woman) or her guardian (if she be a minor) that the *Mahr* was that specified privately and the larger amount was sum ‘at

60. Supra note 33  
61. Supra note 35
Chapter - III  MARRIAGE AND INSTITUTION OF DOWER

(for glorification), in that case the *Mahr* will be that which was settled in private.

ii) If the parties differ as to the amount settled privately and the man alleges that it was 1000 (dirhams) and the woman denies that amount, her allegation will be accepted and the *Mahr* will be that specified in the contract, unless the husband can adduce proof (of his allegation).

iii) If, in the case of a dispute between the parties as to nature of fixation, no evidence can be called as to the excess being sum’at then the *Mahr* will be that stated in the public.62

iv) If the husband says that what he acknowledged in public was a joke (hazi) and the woman asserts that it was the fact, in such a case her statement will be accepted and the *Mahr* will be that mentioned publicly, unless the husband adduces proof in support of his claim.63

v) When a man and woman settle in private certain dinars as the *Mahr*, and then contract the marriage in public or condition that there shall be no *Mahr* to her, the dinars settled in private will he her *Mahr*.

vi) If the man were to marry her on condition that the diners shall not constitute her *Mahr*, or if he were to marry her publicly observing silence as to the *Mahr* (without specification of *Mahr*). In both these cases the marriage would be contracted at the *Mahr* al-mithal of the woman.

The Muslim law recognizes the validity of arrangements of this nature, regarding the private settlement as the real contract and treating the public declaration as nominal and fictitious. The British Indian

62. The View of Tarfaen in Sharh-i-Mukhtasar al Tahtawi, see Supra note 33
63. As per Shaikh al-Islam al-Sarakhsi; See Supra note 5.
Chapter - III  

Marriage And Institution Of Dower

Courts in dealing with cases of exorbitant Mahr have lost sight of this principle, with the result that in many instances great injustice has been occasioned to the heirs of the husband.64

Section 92 of the Indian Evidence Act, 1972, does not touch on this question. For an allegation that the real Mahr was different from that stated in public and recorded in the Mahr-deed would not mean a variation of the written contract; it would only amount to an assertion that the real contract was different. The onus, of course, will be on the person making the allegation.

Where a wakil or a mandatory who accepts a commission to arrange a contract of marriage and to stipulate for a certain Mahr, exceeds his authority and fraudulently increases the Mahr, the husband would only be liable for it if he knew that before he consummated the marriage. It is so because the wakil, had exceeded his authority. If, before consummation, the woman knew of the fraud of the husband’s agent, she would be entitled only to the sum for which the authority was actually given. If both parties were aware of the fraud then the husband would be liable for the whole amount.65

64. See below in this chapter, cases in the subcontinent- Proof of Mahr.
65. Supra note 33.
Chapter – III  MARRIAGE AND INSTITUTION OF DOWER

When it is alleged that the first contract has been modified by a subsequent one, the onus rests on the party making the allegation.66

Extent of Mahr al-mithal

When no Mahr is fixed at the time of marriage or has not been distinctly specified either before or after marriage, or has been intentionally or unintentionally left indeterminate, the woman by the operation of law becomes entitled to what is called the Mahr-al-mithal, the Mahr of her equals’ or the ‘proper Mahr’ or ‘khandani Mahr’. Some call it customary Mahr. The proper Mahr of a woman is regulated with reference to the social position of her father’s family and her own personal qualifications, and the Mahr that has been given to her female paternal relations, such as, her consanguine sisters or paternal aunts, or the daughters of her paternal uncles. The Mahr of wife’s mother or of the girls in the wife’s mother’s family will not be considered unless the mother is an agnatic relation (paternal cousin etc.) of the wife’s father. It, however, does not necessarily follow from the rule that the proper Mahr should be regulated with reference to ‘the position of her father’s family only and no attention should be paid to the mother’s position.

66. Ibid.
Chapter - III  MARRIAGE AND INSTITUTION OF DOWER

In fixing the amount of Mahr, some other points, besides the customs, which prevail in the woman’s paternal family, must be taken into consideration. For example, if one sister marries a rich man the other a comparatively poor man, the Mahr of the one cannot be taken as a standard for the Mahr of the other. It is, therefore, laid down that, in order to find a proper test for the proper Mahr of a woman, the condition of her husband in respect of wealth and lineage should be like that of the husband of the woman to whom she is compared.67

In the same way, a woman may be superior to all the female members of her father’s family in intellectual attainments or personal attractions and accordingly her Mahr can hardly be regulated by the Mahr of her less fortunately endowed female relations. The Hedaya says:

"In regulating the Mahr-al-mithal of a woman, attention must be paid to her equality with the women from whose Mahr the rule is to be taken, in point of age, beauty, fortune, understanding and virtue, because the Mahr varies according to any difference in all these circumstances, and, in like manner, it differs according to place of residence or time."68

The Mahr-al-mithal, therefore, varies in amount according to the social position of the woman’s family, the wealth of her husband, her

67. Supra note 35; Supra note 44.
own personal qualifications, the circumstances of the time and the conditions of society surrounding her. No fixed rule can be laid down as to the amount of *Mahr* in any particular case. It is, therefore, said that the *Mahr* of the woman, where no *Mahr* is stipulated or specified at the time of marriage, should be the *Mahr* of her equals. It is only intended to imply, that an approximation may be made by observing the custom which has prevailed in her father's family, provided she does not differ in intellectual capacity or personal attraction from the female relations with whom she is being compared.\(^{69}\)

The same rule respecting proper *Mahr* is in force among the Shias. Irshad puts it as follows:

The *Mahr*-al-mithal of a woman is regulated by a regard to the nobility of her birth, the beauty of her person and the custom of her family relations.\(^{70}\)

This is supplemented by Tahir al-Ahkam and the Jama-ush-Shittat providing:

As there exist different customs in different places in respect of *Mahr*, in fixing the amount of the *Mahr*-al-mithal, regard must be paid

\(^{69}\) Supra note 14 at pp. 581-582.
\(^{70}\) Supra note 33.
Chapter - III MARRIAGE AND INSTITUTION OF DOWER

to the Mahr of the women who are the equals of the female in question, in knowledge, lineage, wealth, understanding and such like.\textsuperscript{71}

Among the Shias, Mahr can he said to be of three types, viz. -

a) the Mahr-al-Sunnat or Traditional Mahr; it refers to the amount of the Mahr adopted by the Prophet (SAW) and is said to be 500 dirhams;

b) the Mahr-al-mithal, and

c) the Mahr al-musamma, the specified Mahr.

Some of the Shias are of the opinion that where no Mahr is settled at the time of marriage, and an approximation is made from the custom prevailing in the woman's family, the amount should not exceed the traditional 500 dirhams.\textsuperscript{72} In the Ithna Ashari marriage, where the wife is given discretion to fix the Mahr subsequent to the marriage, she can name any amount not exceeding Mahr al-sunnat.\textsuperscript{73} The same is the general rule in Islamic law.\textsuperscript{74}

Ameer Ali, however, points out that this view has long been abandoned, and, nowadays, regulate the approximation of the customary Mahr among the Sunnis are in force also among the Shias.\textsuperscript{75}

\textsuperscript{71} Supra note 43.
\textsuperscript{72} Neill B.E. Baillie, Digest of Mohammedan Law, II; 21.
\textsuperscript{73} Id at p. 73.
\textsuperscript{74} Fyzee, AAA, Compendium of Fatimid Law, (1969) p. 17.
\textsuperscript{75} Supra note 33.
Chapter - III  MARRIAGE AND INSTITUTION OF DOWER

In a situation when no example is available from the woman's family, the following principle can be followed:

"When there is no example forthcoming for determining, the Mahr-al-mithal, the position of the father's family ought to be taken into consideration. And it is allowable, may incumbent, on the judge, in the absence of examples in the woman’s family to enquire into the custom among strangers occupying the same rank in life, and living under the same circumstances in different cities. And when all the conditions are not similar, so much as are identical or analogous should be considered." 76

Mahr in the family of the Prophet (SAW): relevant excerpts

"The Prophet (SAW) did neither give his daughter in marriage nor did he marry any of his wives on a Mahr higher than 12 (twelve) auqiyahs and a nush. ‘Nush’ means one half of an auqiyah. One auqiyah is 40 dirhams and one nush is twenty dirhams and thus it (the Mahr) amcunis to 500 (five hundred) dirhams." 77

According to the Shafi’is and the Hanbalis it is desirable that a Mahr should not be less than (ten) dirhams. The view is adopted to avoid a conflict with Abu hanif’s view. It is

76. Ibid; Radd-ul-Muhtār; Vol. II, PP. 583-584.
also desirable that it should not exceed 500 (five hundred) dirhams, which was the amount of the 'Mahr' of the daughter of the Prophet (SAW) and his wives. The Mahr of Ommi Habiba, one of the wives of the Prophet(SAW), was, no doubt, 400 (four hundred) dinars (a gold coin) but that was fixed by Najashi as a mark of distinction to the Prophet(SAW).  

It is stated that in the account given of the marriage of Abu Jaifar, the second, that he said that All, son of Musa, proposed to marry Ommul Fazl, daughter of Abdullah Al Mamum and gave her as Mahr 500 (five hundred) genuine dirhams, which was the amount of Mahr of his great-grandmother, Fatima.  

The Prophet (SAW) gave Fatima in marriage to Ali. Her Mahr according to one report was 480 dirhams; according to another it was 400 (four hundred) mithqal of silver. According to a third report it was 500 (five hundred) dirhams and this is the most authentic report.  

Ali (RA) has said that 'This is the Messenger of Allah. He has given his daughter Fatima to me in marriage on (a Mahr

80. Id. at p. 36.
of 500 (five hundred) dirhams. I have accepted it, you should know it from him and be witness”.\textsuperscript{81}

It is reported from Abu Salmah, “I asked Aisha ‘what was the Prophet’s Mahr? “The Mahr fixed by him” she said, it was 12 (twelve) auqiyahs and a nush”, she said, “Do you know what a nush is? I said ‘No’, she said, ‘It is one half of an auqiyah and thus it (the Mahr) amounts to 500 (five hundred) dirhams.”\textsuperscript{82}

Umar said, “I do not know that the Prophet (SAW) married any of his wives or gave any of his daughter in marriage on a Mahr exceeding 12 (twelve) auqiyahs.”\textsuperscript{83}

It is reported from Ommi Habibah (that) she was the wife of Abdullah (obedullah) son of Jahsh. He died in Euthopia and Najashi gave her in marriage to the Prophet (S.A.W.), fixing Mahr on his behalf at four thousand.” According to another report at 4,000 (four thousand) dirhams, and sent her to the Prophet (SAW) with Shurhabil son of Hasanah.\textsuperscript{84}

\textbf{Addition to Mahr}

Husband has the power of making an addition to the Mahr during the subsistence of the marriage, just as the wife may make

\textsuperscript{81} Id at p. 35: This is a portion of the speech reported to have been made by All (R.A.) on the occasion of his marriage with Fatima (R.A.).

\textsuperscript{82} Mishkat, Bab al-Sadaq, P. 277 (Mujtabai Ed)

\textsuperscript{83} Ibid.

\textsuperscript{84} Ibid; See Asma Bibi Vs. Sarnad Khan (1910) 32 All 167.
abatement. Among the Shafi’is such an addition is regarded as gift. Since under Islamic law no gift is valid without seisin, any addition made by the husband to the Mah\textit{r} requires that delivery thereof should be made at that time to the wife.\textsuperscript{85}

Among the Hanafis and Shias, the addition is not regarded gift or hiba. To render it valid, they, therefore, do not require delivery of seisin, at the time the addition is made. “It is,” says the Hedaya, “an alteration of the terms of the contract in a non-essential matter within the power of the parties, and, like an addition to the price in sale, becomes incorporated with the original Mah\textit{r}.”\textsuperscript{86}

When a separation takes place before consummation, the wife is not entitled to the benefit of any post-nuptial settlement or additions made to Mah\textit{r} after marriage.\textsuperscript{87}

\textbf{Legislation in Muslim Countries}\textsuperscript{88}

\textbf{ALGERIA}

The Algerian Family Code of 1984 is silent about the quantum of Mah\textit{r}. The Muslims of that country will continue to be governed by

\textsuperscript{85} Supra note 3 at P. 469.
\textsuperscript{87} Supra note 33.
\textsuperscript{88} For a detailed study of the legislation on laws relating to personal status in various countries see (i) Tahir Mahmood, Family Law Reform in the Muslim World (Bombay) (1972) and (ii) Tahir Mahmood, Personal Law in Islamic Countries (New Delhi, 1987).
their respective schools of law to which they belong, that is, Maliki and Ibadi.

**EGYPT**

In early Islamic history the home land of Shafi’i school adopted Hanafi legal system when it became an autonomous province of the Ottoman Empire. In the current century the Egyptian legislature made some important enactments relating to the family relations beginning from 1920 to 1929 till the recent amendment of 1985. About the quantum of *Mahr* statutory provisions were incorporated for the first time in Egypt in 1929 (Law No. 25 of 1929) under Articles 18 and 19 of the said law which read as follows:

"If there is a dispute between the spouses as to the amount of *Mahr*, the wife shall be asked to prove her claim. If she fails to do so, the statement on oath made by her husband shall be accepted, except when he states an amount which cannot be normally supposed to be the *Mahr* of a woman of her status. In such a case, the proper *Mahr* (*Mahr*-al-mithal) of the wife shall be binding on him." (Art. 18)

"Where the parties to such a dispute are one of the spouses and the heirs of the other spouse, or the heirs of both the spouses, the provision of article 18 shall apply." (Art. 19)
Chapter III  Marriage And Institution Of Dower

In 1977, Egypt abandoned its old constitution of 1923 and adopted a new constitution. After the new constitution in 1979, he cites other significant amendments, another clause about payment of mata' for two years to a divorced wife was added to above mentioned Art. 18 as part (2) by law No. 44 of 1979 called Jihan Law, 1979. In May 1985 the Jihan Law of 1979 was struck down by the Supreme Court of Egypt as ultra vires, the Constitution of 1977. Then in December 1985 a new law no. 100 of 1985 once again amended the two old laws on personal status 1920-1929. The provisions of earlier Article 18 and 9 have been assembled in Article 19 only with no substantial change in the pre 1985 provisions. The new added part 2 of Article 18 which related to mata' has been numbered as Article 18A. The only provision (Art. 19 of the amended law) that now relates to the determination of the amount of Mahr reads as follows:

"If there is a dispute between the spouses regarding the amount of 'Mahr', the wife shall be asked to prove her claim. If she fails to do so, the statement on oath made by the husband shall be accepted unless he states an amount which cannot be normally supposed to be the 'Mahr' of the woman of her status, in which case the proper Mahr of the wife shall be binding on him. Same rule shall apply where the parties to the dispute relating to Mahr are one of the spouses and the heirs of the other spouse, or the heirs of both the spouses".

113
Chapter - III  MARRIAGE AND INSTITUTION OF DOWER

IRAQ:

Till 1959, the Hanafi and Jafri Muslims in Iraq followed in matters of personal status, the unqualified laws of their respective schools. The only common provisions of the family law enforced by the state were found in the two Imperial Decrees, containing no provision about Mahr, issued by the Sultan of Turkey in 1915. The Ottoman Law of Family Rights, 1917 was not extended to Iraq. In December, 1959 the Iraqi legislature enacted the Qanun -al-Ahwal al-Shakhsiya (the law of personal status). In the Chapter III of the said Iraqi legislation some provisions were incorporated about Mahr. About the amount of Mahr, in Article 19(1) it was laid down:

"A woman is entitled to the Mahr specified in the contract; if it has not been specified she shall get the proper Mahr (Mahr al-mithal)"

The provision has been retained without any change in the Iraqi Code of Personal Status, 1959, even after many amendments made upto the latest one in 1983.

JORDAN:

In Jordan, the Ottoman Law of Family Rights, 1917, with the exception of few articles remained in force till the enactment of the
Chapter - III  **Marriage And Institution Of Dower**

Jordanian law of Family Rights (al-Qanun al-haquq al-Aila) in 1951. The law of 1951 contains no substantive provision about the quantum of Mahr. It, however, requires a strict adherence to the entries made in the certificate of marriage. Article 51 of the law of 1951 provides:

> A dispute concerning Mahr shall not be entertained if the claim made in this respect is different from the entry in the certificate of marriage, or is not proved by written evidence.

The law of Family Rights 1951 remained in force in Jordan until 1976, when replaced by Qanun al-Ahwal al Shakhsiyah, the jordanian Code of Personal Status, 1976. This code was amended in 1977 giving it retrospective effect in matters of divorce. The Code contains 187 articles arranged in 19 Chapters on marriage, property and inheritance. Chapter on Mahr is comprised of Articles 44-65. Article 51 has been retained in the new legislation without any modifications. No other provision deals with the quantum of Mahr.

**Kuwait:**

Since the last part of the seventeenth century Kuwait was a part of Ottoman Empire and the Ottoman legal and judicial system was made applicable there. The local rulers belonging to the Maliki School
of Islamic law had, however, preserved their special religious 'law and usage. During the period of 'British Protection of Kuwait', the westernized system of judicial administration set up by British claimed jurisdiction over Non-Arab inhabitants of Kuwait, however, the Arabs continued to be governed by the Islamic law — especially in the matter of personal status, family relations and succession.

After the end of British 'protection', Kuwait adopted its own constitution declaring Islam as state religion and Shariah as the primary source of legislation in the country. 89

In Article 9, it declares:

"Family is the corner stone of society founded on religion, morality and patriotism."

The laws on family relations and family property were thus to be regulated by the Shariah. Now preparation of comprehensive Encyclopaedia of Islamic Law - Mausu‘ah al Fiqhiyah is expected in Kuwait. 90
Chapter - III  MARRIAGE AND INSTITUTION OF DOWER

LEBANON:

In accordance with the Shariah Court Reorganization law, 1942, all Sunni Muslims in Lebanon are governed, in matters of family law, by the Ottoman Law of Family Rights, 1917 and, in matters not covered by the said laws by the select opinion in the Hanafi School. To Shias only those provisions of Ottoman Law apply which do not conflict with the precepts of their own schools of law.

The provisions about amount of Mahr in the Ottoman law of Family Rights, 1917, are found in Art. 80 of the said law which reads as under:

Mahr can either be specified (Mahr al-musamma) or it may be the proper Mahr (Mahr al-mithal). Proper Mahr in respect of a woman- shall be that of her equals on her paternal side, and if there is no such person it shall be equal to that of the women of her status in her town. Any amount may be specified as Mahr.

ISRAEL:

In the territory now forming the State of Israel, the Ottoman law of Family Rights, 1917, had been adopted and made applicable to the

91. Decree Law No. 241 of 1942 Art. 111.
local Muslims by an ordinance issued in Palestine in 1919. It continues to govern the family affairs of Muslims in the new state.

**LIBYA:**

After revolution of 1969 besides other enactments the law on Women’s Rights in Marriage and Divorce 1972-73 was passed. Its provisions are silent about Mahr. Islamic law will apply in this area because the Revolutionary Command Council of Libya has declared that in future the Shariah would be the principle source of all legislations in Libya. 92

**MOROCCO:**

In Morocco the Maliki School of Islamic Law had, from its very beginning a deep influence and has always been exclusively followed by Moroccan Muslims in respect of Family law. The legislation in this field was also based on the doctrine of public interest (Masaleh al-Mursala) of the Maliki jurists. Art. 17 of the Code of Personal Status, 1958 (Mudawanah al-Ahwal al-Shakhsiyih) incorporates the general rule of Shariah about the subject matter and the amount of Mahr. In following terms:

Anything that may be the subject of a legal obligation may form the Mahr; there is no maximum or minimum thereof.

Article 23 provides:

Where a legally major girl agrees to Mahr which is less than her proper Mahr (Mahr-al-mithal) her guardian cannot object to it.

**SUDAN:**

Before Sudan formed a part of the Ottoman Empire the Maliki and Shafi‘i Schools of Islamic law were prevalent there. Later the Hanafi legal system became dominant and remained in that position till the enactment of the Shariah Courts (Organization and Procedure) Regulations, 1915. This regulation recognized the power of the Grandqadi of the country to direct the application of non-Hanafi doctrines to any particular matter superseding the principles of rigid taqlid.93 Till now the Manshurat, which have been issued by the Qadi-al-Qadat, contains following provisions about the amount of Mahr:

Where there is a dispute regarding the amount of Mahr, unless the wife can prove otherwise the husband’s statements on oath shall he accepted; but if he states an amount which cannot normally form Mahr of a woman of wife’s status, the proper Mahr shall be binding on him.94

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94. Art. 10 of Law on Talaq, Marital Disputes and Gifts, 1935 (Manshur 41 of 1935).
Chapter - III  MARRIAGE AND INSTITUTION OF DOWER

The consent and approval of a girl who has attained puberty, is essential for the choice of her husband as well as for the amount of Mahr."\(^{95}\)

Silence of a virgin on the choice of the bridegroom and the amount of Mahr shall amount to her consent and her assertion that she did not know that silence would mean consent shall not be accepted unless she is mentally weak.\(^{96}\)

**SYRIA:**

In Syria, the Ottoman law of Family Rights, 1917 survived upto 1953 when it was replaced by the Syrian Code of Personal Status (Al-Qanun al-Ahwal al Shakhsiyah), 1953. The Syrian Code of Personal Status, 1953 after its amendment in 1975, contains provisions about the quantum of Mahr and the increase or decrease of Mahr. According to this the amount of Mahr in an irregular marriage will be:

"The proper or specified Mahr whichever is less"\(^{97}\)

About the increase or decrease of Mahr the Syrian Code of 1953 provides as given below:

Increase or decrease in the amount of Mahr, whether during the subsistence of marriage or during iddat shall be void if not made in the Court where this is done by mutual

\(^{95}\) Art. 6(a) of the Law on Marriage Guardianship 1960 (Manshur 54 of 1960)

\(^{96}\) Ibid. Art 6(b).

\(^{97}\) Art. 51(2)(a) Syrin Code of Personal Status, 1953.
consent. The action must be duly registered with the qadi.”

TUNISIA:

Emerged as an independent nation in 1956 and became republic in 1957. The Maliki School of Islam has enjoyed a predominant following, though Hanafi School has also made some place later. The Tunisian Uniform Code of Personal Status, 1956 called the ‘Majallat al-Ahwal al-Shakhsiyah’, was enforced on 1st January, 1957. The code as amended upto 1981 provides about the amount of Mahr as follows:

Anything which is lawful and has a monetary value may form the Mahr. It cannot be a valueless thing, nor is its maximum limited. Mahr is wife’s property which she may dispose of as she wishes.

YEMEN (NORTH):

The Arab Republic of Yemen is the accredited centre of the Zaidi School of Islamic Law. The non-Zaidi Muslims are followers of the Shafi’i School. The provisions of the Family law of 1978 are in conformity with the established Zaidi-Shafi’i law. It declares in Art. 159 that the ‘dominant principles of the Shariah’ be regarded as its parts for

98. Art. 57, Ibid.
Chapter - III  **Marriage And Institution Of Dower**

matters which it did not provide for. The Code is silent about the amount of *Mahr*.

**Yemen (South):**

There the Shafi’i School of Islamic law has been dominant. During British period the local customary law was often enforced in preference to Shariah denying the women the rights under Shariah. After winning independence in 1967, the Constitution was promulgated in November, 1970. By an amendment of this Constitution in 1978, it was declared:

The State shall promote marriage and establishment of Family. The law of Family Relations shall be organized on the basis of equality between men and women in rights and obligations.\(^{100}\)

In 1974 the National Legislature enacted the family law Al-Qanun al-Usrah. It put an end to customary law and enforced certain striking provisions relating to polygamy, *Mahr* and divorce with regard to the amount of *Mahr* it provides under Article 17 and 18 as follows:

The *Mahr*, inclusive of both prompt and deferred parts shall not exceed one hundred dinars.\(^{101}\)

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100. Art. 27. of the Constitution of Yemen (South) 1970.
Chapter - III  MARRIAGE AND INSTITUTION OF DOWER

Both the parties to the marriage shall contribute to the expenses of marriage and the requirements of the matrimonial home in conformity with their respective resources.\(^{102}\)

It is not lawful to pay arty money in respect of marriage against the provisions of Article 17 and 18.\(^{103}\)

AFGHANISTAN:

Hanafi law has been dominant in Afghanistan as the vast majority of Muslims there is Hanafi. In 1930 a group of Afghan Jurists had published an unofficial code titled Tamassuk-al-Qada (Judicial Compendium) based on a selection of the Hanafi legal principles. The Fatawa-i-Alamgiri and the Turkish Civil Code 1876 (Majaliah) were used by them as their source materials.

A marriage law – Qanun-i-Izdiwaj – adopting even non-Hanafi principles came into force in Afghanistan in 1350 A.H. (1971 AD). It was based on Egyptian law of Personal Status, 1929 and also had some provisions similar to the Dissolution of Muslim marriage Act enacted in 1939 in undivided India. After 1977 the notable provisions of Personal law enactments in Afghanistan relate to the following:

\(^{102}\) Ibid., Art 17
\(^{103}\) Ibid., Art 19.
Chapter - III  

Marriage and Institution of Dower

i) Compulsory registration of marriages;

ii) Family Court’s prior permission for bigamy;

iii) Judicial intervention for effecting a talaq or khula;

iv) Availability of judicial divorce to the wife on a number of specified grounds;

v) Divorced mother’s right to custody of children;

vi) Recognition of women’s civil status on a footing of equality with men.104

The amount of Mahr seems to have been left to be determined as per the prevalent practices among the people of Afghanistan mostly Hanafis.

Bangladesh:

The Muslims of Bangladesh are mostly Hanafis. It was part of undivided India upto 1947 and that of Pakistan up to 1971. It has retained all the pre-liberation laws. The only notable legislations in the field of Family law are regarding dowry prohibition and restraining of child marriages. About Mahr the statutory position is same as in Pakistan.

Iran:

After Islamic revolution of 1979 the uncodified Islamic Personal Law has now been restored for the Ithna Ashari Shahah majority and the Sunni minorities.

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104. See Supra note 90(ii)
Chapter - III  MARRIAGE AND INSTITUTION OF DOWER

PAKISTAN:

The predominant Sunni majority in Pakistan follows the Hanafi School of Islamic law. The Ithna Ashari, Shafii, Ismaili and non-Muslims are in minority. Pakistan shares its legal history with India upto 1947. The first significant legislation in the area of family law has been the Muslim Family Law Ordinances, 1961. This ordinance sought to secure compulsory registration of marriages, control over polygamy and divorce, reformation of the principles relating to Mahr and maintenance of wives and recognition of inheritance rights of orphaned grand-children of deceased persons in their estates. It also amended the pre 1947 Child Marriages Restraint Act, 1929 and the Dissolution of Muslim Marriages Act, 1939, in respect of age of marriages for females. The Family Law Ordinance 1961 is silent about the amount of Mahr itself though section 10 of the Ordinance provides that:

Where no details about the mode of payment of Mahr are specified in the nikahnama or the marriage contract, the entire amount of Mahr shall be presumed to be payable on demand.

Tahir Mahmood comments on this saying:

"This rule of presumption relating to the time for the payment of Mahr is supported by the Ithna Ashari School of Islamic Law."105

105. Supra note 90(i)
Chapter - III  Marriage And Institution Of Dower

Somalia:

Somali Muslims have generally been following the Shafii School of Islamic Law in the matter of personal status and family relations. In Somalia, after it emerged as an independent state in July 1960, the Somali Socialistic Government declared enacted a new family Code in 1975. The Code of 1975 declared the dominant opinion in Shafii school and general principles of Islamic law and social justice to be the residual law. 106 About Mahr is provides:

The bride shall be entitled to Mahr as determined at the time of marriage. The upper limit for Mahr is SO Sh. 1000 or its value in kind. 107

Commenting on this Tahir Mahmood opines that:

In principle the wife’s right to Mahr in Shariah is protected by Somalian enactment. It however, includes two such innovations which make this right a “mere token”. It is provided that Mahr must be fixed at the time of marriage leaving no room for Mahr al-mithal and the upper ceiling of one thousand Somali shillings (or its equivalent in kind) on Mahr. 108

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107.  Ibid., Art. 24.
Chapter - III  MARRIAGE AND INSTITUTION OF DOWER

He further comments that:

This ridiculous ceiling (1000 Somali Sh = £ 80, i.e: less than 1500 IR) defeats the very purpose of Mahr under the socio-legal strategy of Islam. It also makes quite meaningless the Somali statutory protection of the traditional rules relating to choice between ‘prompt’ and deferred’ Mahr, wife’s right of remitting the Mahr and the amount of Mahr payable in the cases of marriages dissolved before consummation.¹⁰⁹

BRUNEI DARUSSALAM:

The Muslims of Brunei have been following the Shafii Law in all matters relating to marriage, divorce, family relations, succession and religious usages. In 1912 and 1913 enactments regarding administration of Islamic legislations were made. These were repealed and replaced by a new law — The Religious Council, State Customs and Kathis Courts Enactments, 1955. Under the law of 1955 in Brunei besides Mahr (locally called mas-kahwin) there is a practice to give a wife optionally at the time of marriage also some items of gift called “pemberian”. Mahr has been connected with the payment of damages for breach of promise to marry.

¹⁰⁹. Ibid Art. 25-27.
Chapter III  MARRIAGE AND INSTITUTION OF DOWER

Section 136 of the law of 1955 reads as under:

If any person shall, either orally or in writing, and either personally or through an intermediary, has entered into contract of betrothal in accordance with Muslim law and subsequently refuses without lawful reason to marry the other party to such contract such other party being willing to perform the same, the party in default shall be liable, if a male, to pay as damages the amount of the mas-kahwin which would have been payable together with other monies expended in good faith in preparation for the marriage or if a female, to return the betrothal gifts, if any, or the value thereof and to pay as damages the amount of such other monies as aforesaid; and the same may be recovered by action in the Court.\textsuperscript{110}

MALAYSIA:

Muslims of Malaysia are the followers of Shafii School of Islamic Law. Some ancient customs known as the adat have survived and are being adhered to by the Muslims of Malaysia along with the law, of Islam. Under the Islamic Family Law (Federal Territory) Act, 1984 besides \textit{Mahr} (locally called mas-kahwin) some items of gift are also payable. Section 21 of the Act contains some relevant provisions as follows:

Chapter - III  **Marriage And Institution Of Dower**

21(1) The mas-kahwin shall ordinarily be paid by the man or his representative to the woman or her representative in the presence of the person solemnizing the marriage and at least two other witnesses;

21(2) The registrar shall, in respect of every marriage to be registered by him, ascertain and record:

a) the value and other particulars of the mas-kahwin;

b) the value and other particulars of any pemberian;

c) the value and other particulars of any part of the mas-kahwin or pemberian or both that was promised but not paid at the time of the solemnization of the marriage, and the promised date of payment; and

d) particulars of any security given for the payment of any mas-kahwin or pemberian.

**Indian Legislation**

a) **Oudh Laws Act, 1876**

With regard to the excessive stipulation of *Mahr*, provisions were incorporated in the Oudh Laws Act for application in the territory under the former Oudh State. The Allahabad High Court in *Mirza Munawar Ali Beg Vs. Smt. Itrai. Masood* (1982 All. L.J. NOC. 5) has now declared this legislation as violative of articles 14 and 15 of the
Chapter - III  

MARRIAGE AND INSTITUTION OF DOWER

Constitution of India. We, however, prefer to discuss it for academic interest. By virtue of these provisions, the Courts could, in the cases where excessive Mahr was stipulated, allow by decree only a reasonable amount of Mahr with reference to the means of the husband and the status of the wife. Section 5 of the Act provides:

Where the amount of 'Mahr' stipulated for in any contract of marriage by a Muslim is excessive with reference to the means of the husband, the entire sum provided in the contract shall not be awarded in any suit by a decree in favour of the plaintiff, or by allowing it by way of set-off, lien or otherwise, to the dependant, but the amount of the 'Mahr' to be allowed by the Court shall be reasonable with reference to the means of the husband and the status of the wife. This rule shall be applicable whether the suit to enforce the contract is brought in the husband's life or after his death.

The provision was applicable to all the local Muslims, to whichever school of law they might belong. 111 It, however, applied only if the husband was a resident of Oudh. Where a man coming from outside Oudh married a woman of Oudh, it would have no

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111. Sulaiman Kadr Vs. Mehdi Begum (1893) ILR 21 Cal. 135; Abdul Rehman Khan Vs. Inayati Bibi, AIR 1931 Oudh 63.
application.\textsuperscript{112} The husband’s ability to pay \textit{Mahr} was considered by the courts at the time \textit{Mahr} was claimed and not at the time of marriage.\textsuperscript{113} The provisions, however, affected only \textit{Mahr} al-musamma (specified-\textit{Mahr}) and not \textit{Mahr} al-mithal (proper \textit{Mahr}).\textsuperscript{114}

b) Dissolution of Muslim Marriage Act 1939

The Act is a piece of declaratory legislation which crystallizes a portion of Muslim law relating to the dissolution of marriage. Its official name is Dissolution of Muslim Marriages Act, 1939. Under this Act a woman married under Muslim law is entitled to obtain a decree for the dissolution of her marriage on any one or more of the given grounds like missing-husband, non-maintenance, husband’s imprisonment, impotency, insanity, disease, cruelty, etc. Section 5 of the Act points out expressly that no provision of it shall in any way affect the rights of women to \textit{Mahr} under Muslim Law. A reading of the Section which exists in the following terms will make it clear:

\begin{quote}
Nothing contained in this Act shall affect any right which a married woman may have under Muslim Law to her
\end{quote}

\textsuperscript{112} Zakeri Begum Vs. Sokina Begum (1892) 19 I.A. 157 (P.C) Rukai Begum Vs. Mohammad Kazim (1910) 32 All 471.

\textsuperscript{113} Nourozi Vs. M. Nur Khan 50 C.W.N. 1931.

\textsuperscript{114} Supra note 31; For further cases see below in this Chapter.
Chapter - III  MARRIAGE AND INSTITUTION OF DOWER

'Mahr' or any part thereof on the dissolution of her marriage.

c) Procedural Laws

Civil Procedure Code, 1908

Order XXXII-A of the Civil Procedure Code, 1908 makes provisions providing the procedure for suits relating to matters concerning the family.\textsuperscript{115} Mainly it provides that the proceedings may be held in camera and an endeavour shall be made by the court in the first instance to assist the parties in arriving at a settlement in respect of the subject-matter of the suit. The Court may also seek the assistance of a welfare expert whenever thought fit. Since these provisions apply to any suit or proceeding relating to the matters concerning the family in respect of which the parties are subject to their personal law, the Court may adopt the same measures for the settlement of disputes concerning Mahr.\textsuperscript{116}

Order XXXII of the Civil Procedure Code, 1908 provides that every suit by a minor shall be instituted in his name by a 'next friend'\textsuperscript{117} where the defendant is a minor, the Court is required to appoint for him

\textsuperscript{115} Provisions added through amendment in 1976.
\textsuperscript{116} Order 32-A, r 1(g).
\textsuperscript{117} Order 32, r-1.
Chapter - III  Marriage And Institution Of Dower

or her 'guardian for the suit' called the "guardian ad litem".\textsuperscript{118} Till 1976 these provisions were silent about the definition of 'minor' as used here. The question before the Courts, therefore, was that when a Muslim boy or girl who was major at Muslim Law (having attained puberty) but not having attained the prescribed majority age under the Indian Majority Act, 1875, instituted a suit in respect of which the Muslim law formed the rule of decision whether the aforesaid provisions of the civil procedure code be applied or not? The judicial opinion on the point was divided.\textsuperscript{119} But by the Code of Civil Procedure (Amendment) Act, 1976, a definition of 'minor' was added to Order XXXII of the Code as follows:

'Minor' means a person who has not attained his majority within the meaning of Section 3 of the Indian Majority Act, 1875, where the suit relates to any of the matters mentioned in clauses (a) and (b) of Section 2 of that Act or to any other matter."

The matters mentioned in clauses (a) and (b) of Section 2 of the Indian Majority Act are:

\begin{itemize}
  \item[(a)] marriage, 'dower' (\textit{Mahr}), divorce and adoption;
\end{itemize}

\textsuperscript{118} Order 32, r-3
\textsuperscript{119} See Tahir Mahmood, Muslim Personal Law: Role of State in the Indian Subcontinent, pp. 101-102 (Nagpur, 1983).
Chapter III  Marriage and Institution of Dower

b) religion or religious rights and usages of any classes of citizens of India.

Thus in all cases including marriage, Mahr, divorce, adoption, religion or religious rights and usages the parties to a suit would be deemed to be minor if they have not reached the statutory age of majority, as laid down in Section 3 of the Indian Majority Act and will, therefore, need a ‘next friend’ or ‘guardian for the suit’, as the case may be.

Limitation Act

The former Limitation Act, 1908 (now replaced) laid down that the period of limitation for filing a suit to claim unpaid Mahr would be as detailed below:

a) Mahr al mu’ajal—three years from the date when the Mahr demanded but refused.\textsuperscript{120}

The court has held that both demand and refusal must be unambiguous;\textsuperscript{121} demand and refusal were no conditions for filing a suit in case of ‘prompt’ portion of Mahr al-mithal.\textsuperscript{122}

b) Mahr al Maw’ajal—three years from the date of dissolution of marriage.\textsuperscript{123}

The new Limitation Act, 1963 (now in force) contains no specific provision relating to the enforcement of Mahr. The Courts may,

\textsuperscript{120} Schedule 1, Art. 103.
\textsuperscript{121} Mt. Amutul Rasul Vs. Karim Baksh, AIR 1933 Pesh 31.
\textsuperscript{122} Muhammad Taqi Khan Vs. Farmoodi, AIR 1941, 181.
\textsuperscript{123} Schedule 1, Art. 104.
Chapter - III  MARRIAGE AND INSTITUTION OF DOWER

however, apply the old rules under the residuary provision contained in article 113 of the new Act.

Case Law in the Subcontinent

The judiciary, in the sub-continent, has not only adopted the basic dicta given by earlier authorities on Muslim law for decision making in the area of Mahr but has also made an effort to evolve some befitting principles on the said subject to meet the local situations. A review of these judicial deliveries helps to know as regards to Mahr not only the principles adopted by the courts but also the common usages and practices prevalent among the Muslims of the subcontinent. These cases are classified below under different heads:-

a) Minimum Mahr: Regarding minimum Mahr the judgment of Knox and Karamat Hussain JJ in Asma Bibi\textsuperscript{124} is a valuable exploration. The court has provided a measure to determine the value of a dirham in the following lines:

"A dirham is a silver coin usually weighing from 45 to 50 grains, rather heavier than an English six-pence."

"Ten dirhams according to one account make about eight shillings and eight pence sterling”.

\textsuperscript{124.} Asma Bibi Vs. Abdul Samad Khan (1909) ILR 32 All 167.
Chapter - III  MARRIAGE AND INSTITUTION OF DOWER

The measure has helped the Courts to calculate the amount of Mahr in local currency. So when the present case was decided, the value of a dirham was settled to be between three and four annas and on this basis the Mahr of Fatima (RA), the daughter of the Prophet (S.A.W.) which was 500 dirhams was calculated as amount approximately to Rupees 107 of the British coin.

b) Maximum Mahr: The matter regarding maximum Mahr in the Indian context was discussed, one after another, by the Division Bench as well by as by the Full Bench of the Allahabad High Court in Sughra Bibi.125 The Court was confronted with a situation where the husband on his marriage, being in poor circumstances, fixed a ‘deferred’ Mahr of Rs. 51,000.00 upon his wife, and died without leaving sufficient assets to pay such Mahr and his wife sued to recover the amount of such Mahr from his estate. The wife sued in forma paupris. The defendant’s contention was that the wife is not entitled to recover the whole of Mahr from her husband’s estate, without reference to his circumstances at the time of marriage or the value of his estate at his death; the plaintiff, under the circumstances, was only entitled to a reasonable amount of

125.  Sughra Bibi Vs. Masuma Bibi (1877) ILR 2 All 573-582.
Chapter III  Marriage And Institution Of Dower

Mahr. The Stuart, C. J. (Pearson, J. dissenting) raised the following important question as to:

"Could a woman herself a pauper, seek to recover a Mahr to the extent of Rs. 51,000 although when the settlement of this 'Mahr' was supposed to be made, the husband had not a rupee in the world to call it his own."

He expressed a desire to reduce Mahr to husband's possibilities which could he appealing to one's 'sense of justice' and falling within intelligible acceptance 'among rational beings. He described the present case as beyond the reach of 'intellectual apprehension' with the facts of intangible nature. The suggested law to him was 'visionary'. To support the contention that Mahr cannot be decreed in favour of a wife without reference to the husband's financial strength, he argues:

'Mahr' is said to be 'incumbent' on a husband; but how can it be incumbent on him, that is, imposed on him as a duty and obligation if the thing to be done is an impossibility, and that it relates to money and property which have no existence.

He made an analogical reference to the following rule:

When something is mentioned as 'Mahr' which is not in existence at the time, as far instance, the future produce of

126. Id at p. 567.
127. Ibid.
certain trees or of certain land, or the gains of a slave, the assignment is bad and the woman is entitled to her 'proper' Mahr (Mahr appropriate to the wife's family and social position). 128

Stuart C.J., commenting upon the general rule that the Mahr is unlimited in amount points out:

But it is not said that it is unlimited irrespective of the actual extent and value of the husband's property. 129

Referring to the expression usually used to denote the minimum Mahr, that is, 'the Mahr must be capable of appreciation — not totally destitute of value like a single grain of wheat', the Chief Justice raises the query that:

Why the 'appreciation' should not be equally applied to visionary or impossible 'Mahr', to the case for example, of the husband not having himself a single grain of wheat but yet settling a Mahr of Rs. 51,000 on his wife. 130

As to the argument that higher Mahr is intended to (a) compensate a Shia childless widow who is precluded from taking any share from the estate of her deceased husband; and (b) protect wives from capricious declaration of talaq, he said:

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129. Supra note 96 at p. 577.
130. Id. at p. 578.
[The] difficulty could be met by an express settlement which would give the wife, at the time of marriage a reasonable share of, or if you please the whole of, her husband’s property. This doctrine, in short, contended for, of unlimited ‘Mahir’ infinitely transcends the necessity of the case as stated.\textsuperscript{131}

Besides:

I am unable to altogether to appreciate that the consequences of a divorce might be fully guarded against by allowing the wife her proper Mahir, or even such Mahir as may comprise the whole of the husband’s then available estate.\textsuperscript{132}

However, when the matter came for consideration before the Full Bench (Pearson, Turner and Spankie, JJ), they concluded differently:

['Mahir' is fixed] without regard to the extent of the [husband’s] income, and when satisfactory proof is adduced that a settlement of Mahir has been made bonafide, a lady is entitled to enforce her claim for the whole amount, although it may be in excess of the fortune which on her marriage the husband possessed or could have been expected to acquire.\textsuperscript{133}

\textsuperscript{131} Ibid.
\textsuperscript{132} Ibid.
\textsuperscript{133} Id. at pp. 80-81.
Chapter - III  MARRIAGE AND INSTITUTION OF DOWER

Pearson, J. explains:

The plaintiff is doubtless entitled to the whole of the Mahr which her late husband agreed to give her, and which was fixed not in reference to his means at the time of marriage, but to the value which she possessed in the 'matrimonial market', that value being mainly determined by the local position and traditions, the surroundings and antecedents of her family. The contract cannot be set aside or treated as a nullity because he was comparatively poor when he married, or has not left assets sufficient to pay the debt but on the contrary may be enforced so far as is possible.\textsuperscript{134}

In the instant case as per Pearson, J. if Mahr of 51,000 had not been agreed to by the husband even then the wife would have been entitled to a Mahr equivalent to that amount because such an amount was customarily being fixed as Mahr for ladies belonging to the family of which she was a member. The claim of the plaintiff was ultimately held by the Court to be maintainable.

In Collector of Moradabad\textsuperscript{135} the High Court granted a decree for a sum of one crore of rupees and 25,000 gold 'mohurs' as the plaintiff's Mahr-debt, though the effect was to deprive the son of the late husband of the plaintiff of all his property. It was said by the Court that:

\footnotesize\textsuperscript{134}  Id. at pp. 580-81.
\footnotesize\textsuperscript{135}  Collector of Moradabad Vs. Harbans Singh (1988) ILR 21 All 187.
“they had no alternative but to pass a decree for the amount of the Mahr contracted for, however, extravagant that amount might be.”\textsuperscript{136}

It may be pointed out that the practice of extravagant settlement of Mahr was common in the families belonging to old aristocracy and still they tried to maintain the tradition of their departed grandeur. The courts have followed the trend that the settled Mahr must he decreed. The fact that the bridegroom has neither the present means nor expectations to pay the amount of Mahr or that the amount is inordinately large, is no reason for the courts to decree the suit for a smaller sum.\textsuperscript{137}

c) \textbf{Proof of Mahr}: In Nujmoodeen Ahmad\textsuperscript{138} it had been held that a customary Mahr must be proved by showing a custom of the women of the wife’s family to receive, rather than of men of the husband’s family to pay a certain Mahr, being the ‘consideration’ paid by the bridegroom for the marriage and, therefore, regulated by the position and conduct of the bride. As regards the cases where Mahr is already settled but kabirnama is not available or it is not in vogue at a particular place, the claim can be established by oral testimony, the character of which must

\textsuperscript{136} Ibid.
\textsuperscript{137} See also Sultan Begun Vs. Siraj ud Din Ahmad, AIR 1936, Lah 183.
\textsuperscript{138} Nujmoodeen Ahmad Vs. Beebee Hosseins (1865) W.R. 110.
depend on the circumstances of each particular case and the nature of the evidence available. In Zakeri Begum a register of marriage having been made by a ‘mujtahid’ in discharge of his professional duty and kept by qadi, was held to be admissible.

A practice discussed above has existed in some localities that the real Mahr, usually a modest sum is being settled in private while an extravagantly large and fictitious amount is being announced in the public aiming self-glorification (ul-suma‘t). In such cases the onus of proving, that the amount of Mahr publicly announced was never intended to be paid and that only the smaller amount settled in private was exigible, would be on the party making the allegation of fictitious nature of Mahr. In Mt. Mohammad Sultan Begum it was held that:

“[Where] there is no evidence as to what was the smaller figure privately fixed, on the other hand a regular kabirnama is on the record .....there cannot be any doubt as regards its genuineness, the settled Mahr must be paid”.

In the same case, a question was raised that whether total evidence is admissible to prove that the kabirnama was mere sham and that the amount mentioned therein was nominal and that no effect

139. 7 W.R. 495 and 11 W.R., 65.
141. Supra note 108.
Chapter - III  MARRIAGE AND INSTITUTION OF DOWER

should be given to it. In this connection Agha Haider, J. ruled that oral evidence to prove such plea was not admissible under Section 92 of the Indian Evidence Act, 1872. It was said:

"I do not think that the evidence of any mental reservation contrary to the explicit terms of the written agreement could be given, as it would practically reduce section 92 of the Evidence Act to nullity."\(^{142}\)

Further, it was observed that:

"To hold that it was open to the defendant to lead evidence to prove that the Mahr which had been fixed was not really payable would virtually have the effect of cancelling one of the essential terms of the marriage."\(^{143}\)

However, Tek Chand, J. gives his opinion as follows:

"S. 92 operates as a bar only when oral evidence is sought to be led to vary or modify the terms of an agreement but that the oral evidence is admissible to prove that the agreement in writing was not an agreement at all, but was only a sham and was not intended to be operative."\(^{144}\)

He relied on the English case Pym\(^{145}\) where Erie J. has drawn a distinction between the two situations as follows:

\(^{142}\) Id at p. 188: the Court relied upon Feroz Shah Vs. Sohbat Khan (1933) P.C. 178 and Bakishan Das Vs. Legge (1900) 22 All 149.
\(^{143}\) Ibid.
\(^{144}\) Ibid.
\(^{145}\) Pym Vs. Campbell (1856) 106 ER 632
Chapter – III  Marriage and Institution of Dower

"The distinction in point of law is that evidence to vary the terms of an agreement in writing is not admissible, but evidence to show that there was not an agreement at all is admissible."

Privy Council has taken the view that:

S. 92 does not fetter the courts power to arrive at the true meaning and effect of the transaction in the light of all the surrounding circumstances.146

In the absence of a kabirnama, the courts have awarded the claims of the wives on oral evidence but after weighing their claims in the light of the common settlements and proper Mahr. In Kulsambi147 Mahr of Rs. 50,000,100 ashrafis and 50 diners was awarded on the oral evidence of three witnesses and no documentary evidence saying:

"It was not uncommon for the Mahr for a Muslim wife to be fixed at a figure which is out of all proportion to the husband’s means"

Similarly in Ekram Husain148 Mahr of Rs.40,000 was awarded as it was the customary Mahr among high class Muslims in Bihar when the other party contended that the Mahr was only Rs.500.00.

146. Ibid, Baijnath Singh Vs. Hajee Vally Mohammed, AIR 1925 PC 75.
Chapter - III  
Marriage And Institution Of Dower

Same trend seems to have continued later as is clear from the decision of the Patna High Court in Mohammad Shahabuddin\textsuperscript{149} where the court had decreed Rs. 40,000 and one gold mohar as Mahr instead of Rs.500.00 as claimed by the defendant saying.

The plaintiff belonged to the highest (Siddique) class of Sheikhs in Bihar and from the financial point of view also of a good class and the plaintiff possessed all the qualifications of a good wife.\textsuperscript{150} The Court has, therefore, maintained the trend adopted earlier in Nujmooden Ahmad\textsuperscript{151} that:

\textit{Mahr} should be taken to be regulated by the position and conduct of the bride especially because the Muslims often most unequal contract marriage. It is also recognized that when there is no written contract and a dispute arises at any time regarding the amount of the \textquote{Mahr} the \textit{Mahr} al-mithal (\textit{Mahr} of the equals) ought to be taken as the standard by which the respective allegations of the parties are to be rested.\textsuperscript{152}

An overall view of court deliveries shows an inclination of courts for grant of higher \textit{Mahr}. This seemingly has been so because of the fact

\textsuperscript{149} Mohammed Shahabuddin Vs. Mt. Umatur Rasool, AIR 1960 PAT 511.
\textsuperscript{150} Id. at p. 513.
\textsuperscript{151} Supra note 140
\textsuperscript{152} Ibid
Chapter - III  MARRIAGE AND INSTITUTION OF DOWER

that courts feel that Mahr is a check for unilateral exercise of divorce. In Zakeri Begum\textsuperscript{153} we find that trend as follows:

‘Mahr’ was high among Muslims, to prevent the husband divorcing his wife in which case he would have to pay the amount stipulated.

Cases under the Oudh Laws Act, 1876

In Mohammed Shahabuddins\textsuperscript{154}, the Court has summed up the practices and trends influencing Mahr fixation in the subcontinent in the following lines:

The amount of ‘Mahr’ is ordinarily fixed by oral contract, and this is valid. There is also no limit either to maximum or minimum of the amount of ‘Mahr’, although the early Hanafi law givers had fixed ten dirhams as the minimum for it and Malikis consider even a smaller sum as permissible. These minima have now become obsolete and the amount of ‘Mahr’ depends entirely upon other considerations such as the circumstances of the husband and the wife. The necessity of a device to prevent on the part of the husband the arbitrary exercise of the power of divorce vested in him. The position of paternal family of the woman, her intellectual attainment or personal attractions and qualifications, wealth of her husband,

\textsuperscript{153} Supra note 114
\textsuperscript{154} Supra note 151
conditions of society surrounding her and the desire of self-glorification and vanity on the part of the parties. All these considerations enter into the determination and settlement of the amount of 'Mahrr'.

This excessive Mahrr fixation had become so oppressive and unjust to the children of a Muslim by a predeceased wife that in 1876 an Act, called Oudh Laws Act, was enacted, whereby under Section 5 thereof the Civil Courts were given power to fix a reasonable amount of Mahrr where the amount of Mahrr stipulated in any contract of marriage by a Muslim was excessive with reference to the means of the husband. In such a contingency the entire sum, provided in the contract was not to be awarded in any suit by decree in favour of the plaintiff, or by allowing it by way of set off, lien or otherwise to the defendant. The amount of Mahrr to be allowed by the court had to be reasonable with reference to the means of the husband and the status of the wife.

The extent of the application of the Act first came into question in Rukia Begum,\textsuperscript{155} this case the marriage had taken place at Lucknow and the Mahrr was fixed at Rs. 1, 25,000. The parties being afterwards domiciled in the province of Agra was not sufficient to authorize the courts in the province of Agra to apply to a suit brought by the wife

\textsuperscript{155. Supra note 114}
Chapter - III  MARRIAGE AND INSTITUTION OF DOWER

against the heirs of her deceased husband for recovery of her Mahr the provision of Oudh laws Act, 1876. The preamble of the Act states:

"An Act to declare and amend the laws to be administered in Oudh."

This indicates that it is only the Courts administering the law in Oudh which could put in force the provisions of the Act.

So far as the extent of discretion exercised by the Courts in reducing the quantum of Mahr, the courts have manifested unlimited powers. In Sulaiman Kadr\textsuperscript{156} the Court reduced a claim of ten lakhs to Rs. 25,000 saying that it was "plainly fixed for show". The court also stopped the monthly payments that were being made to the wife. In place of both Mahr and timely allowance a lump sum amount was fixed so that all the matters between the parties were settled and any future trouble is prevented.

The question as to what should be the standard for re-fixation of Mahr has been discussed in Abdul Rahman K\textsuperscript{gan}\textsuperscript{157} The court observed:

"No hard and fast rule can be laid down on which to assess the amount of 'Mahr' which may be claimed ... it has to be

\textsuperscript{156} Supra note 113
\textsuperscript{157} Ibid
done on the broad lines laid down in the S.5 of the Oudh Laws Act, and the question as to what is reasonable must be determined with reference to the means of the husband and status of wife."¹⁵⁸

In the present case the *Mahr* which was admittedly prompt *Mahr* was Rs. 50,000 but in the circumstances of the case Rs. 10,000 was said to be reasonable amount. As to the contention that the ‘*Mahr*’ should he fixed with reference to the means of the husband at the time of marriage, the court said:

"This appears to us to be contrary to the obvious intention of the section (Section 5 Oudh Laws Act)."

As regards the nature of the *Mahr* claim the court said:

"The claim for *Mahr* is a simple money claim and though the decree may be executed against the husband’s property it cannot be charged against any specific portion thereof."¹⁵⁹

e) **Addition of Mahr:** Addition to the amount of *Mahr* of the wife was challenged by the heirs of a husband in Rukaiya Begum.¹⁶⁰ The Court held that:

¹⁵⁸. Id at p. 65
¹⁵⁹. Ibid
¹⁶⁰. Rukaiya Begum Vs. Radha Kishan AIR 1944, All 214
Chapter - III  Marriage And Institution Of Dower

At any time during the continuance of the marriage an addition may be made to the Mahr. The husband’s promise to add to the Mahr, if accepted by the wife, becomes incorporated into the marriage contract and binds him.\textsuperscript{161}

In Kamarunnisa Bibi,\textsuperscript{162} the question was regarding an oral gift of an estate, consisting of certain taluquas and Mauzaz made by the Muslim proprietor in favour of his wife. The gift was stated as had been made in consideration of Mahr of a certain amount which had remained unpaid and which had been agreed upon prior to the marriage. The court held the gift effective on the grounds that:

i) It is not necessary to constitute Mahr under Muslim law, that the Mahr should be agreed upon before marriage it may be fixed (or enhanced) afterwards; and

ii) Possession of the estate which may be the subject of the gift, if delivered in conformity with the (requirements of the) gift, that handing over of possession would be sufficient to support it, even without consideration.

f) Anomalous Settlements: In Muhammad Talib Hussain,\textsuperscript{163} a Muslim husband and wife of the Shia persuasion referred a dispute

\textsuperscript{161} Same has been the precedent as laid down in Kamarunnissa (infra note 133) and Ibrahim Vs. Isa Rasul AIR 1916 Born. 159 and Jahurdan Vs. Sakina Bibi AIR 1934 Cal. 210. Amina Bibi Vs. Mt. Ibrahim AIR 1929 Oudh 529; Bashir Vs. Zubeeda AIR 1926 Oudh 186.

\textsuperscript{162} Kamarunnisa Bibi Vs Hussaini Bibi (1881) ILR 3 All 266; Mt. Amina Bibi Vs. M.D. Ibrahim AIR 1929, Oudh 520.

\textsuperscript{163} M. Talib Hussain Vs. Inayati Jan (1911) ILR 33 All 683.
Chapter - III  MARRIAGE AND INSTITUTION OF DOWER

In another case Mubarak Un-Nissa\textsuperscript{165} a husband made over to his wife, to whom a \textit{Mahr} of Rs. 1,25,000 was due, certain property. In the deed of transfer it was stipulated:

i) that the wife was to take possession of the property in lieu of her \textit{Mahr} and enjoy the usufruct;

ii) that the property was to revert to the husband if the wife predeceased him, the \textquoteleft Mahr \textquoteright debt being deemed to have been discharged; and

iii) that if the husband predeceased the wife the property was to become hers absolutely.

The Court agreed with the contention of the wife that the transaction was not a mortgage and the mere fact that the possession was delivered to the wife did not create any hypothecation of the property for the amount of \textit{Mahr}. It was a conveyance of the property in lieu of \textit{Mahr} subject to the contingency which the court was not called upon to determine. The court said:

The interest created was a right to enjoy the usufruct of the property during the lifetime of the husband, which was to develop into full ownership on the happening of a contingency namely, the death of the husband in the lifetime of the wife. That contingency has happened ... she has become the absolute owner of the property.\textsuperscript{166}

\textsuperscript{165} Mubarak-un-Nisa Vs. Mansab Hasan Khan (1911) ILR 33 All 421.
\textsuperscript{166} Id. at p.429
Chapter III  MARRIAGE AND INSTITUTION OF DOWER

In an another settlement the wife was given possession of some property in lieu of her ‘Mahr’ and the husband retained possession of some other property for life, which life interest in case of urgent necessity he was authorized to sell or hypothecate, and it was agreed that on the death of the wife the persons who should be the heirs of both would be the owners of the properties. The wife predeceased her husband, who then transferred certain properties in his own right and as heir of his wife. This was challenged by the plaintiff as the properties in the possession of the wife were to devolve on their heirs after her death.

It was argued by the dependents that the agreement was unlawful as the husband could not have relinquished his chance to succeed his wife under section 6 of the T.P. Act. The court held that this was in the nature of a family settlement. There was no transfer or renunciation of an expectant interest or of a mere possibility.\(^{167}\)

Section 6 of the T.P. Act provides that:

"The chance of an heir apparent succeeding to an estate ... or any other mere possibility of a like nature cannot be transferred."

This clause seems to strike at transfers of a mere possibility or expectancy not coupled with any interest or growing out of an existing

\(^{167}\) Id at p. 426
property. It does not strike at agreements by expectant heirs, such as agreement to divide a particular property in a certain way on the happening of a certain contingency.\textsuperscript{168}

In Haji Mokshed Mondal\textsuperscript{169} in a somewhat similar situation it was held that:

"the transfer of land in lieu of ‘\textit{Mahr}’ is in the nature of hiba-bil-iwaz. In such a case even if the kabinnama is not registered, if the bride is put in possession, Section 53-A of T.P. Act will apply and her father- in-law’s suit for declaration of title and confirmation of possession must jail.”\textsuperscript{170}

g) Usage and practice: In India as per the common practice, \textit{Mahr} has to be specified at the time of performing nikah. So in most of the cases \textit{Mahr} is specified (musamma) and the occasions for the application of the rules relating to \textit{Mahr}-al-mithal are very rare. As to the minimum amount of \textit{Mahr} neither the Hanafi nor the Ithna Ashari standards are being followed. The specification of \textit{Mahr} depends upon the following:\textsuperscript{171}

i) Circumstances of the husband and the wife;

\begin{itemize}
  \item \textsuperscript{168} Ibid
  \item \textsuperscript{169} \textit{Haji Mokshed Mondal Vs. Del Rouson Bibi} AIR 1971, Cal. 162
  \item \textsuperscript{170} Id at p. 163
  \item \textsuperscript{171} Supra note 151
\end{itemize}
Chapter - III  MARRIAGE AND INSTITUTION OF DOWER

ii) Status of wife's parents;

iii) Intellectual attainments, qualifications and education of the wife;

iv) Husband's financial status;

v) Social conditions; and

vi) Customs and usage

Sometimes some more factors influence specification of the amount of Mahr, such as:

i) desire of self-glorification;

ii) personal attraction, charm and beauty of the wife; and

iii) need to control husband's power to divorce the wife.

Impact of the Muslim Marriages Registration Act, 1980

The Act was passed by the state legislature for compulsory registration of marriages. The main object of the legislation was explained by the then Law Minister Mr. M. A. Beg, while introducing the Bill in the State Legislature, in the following words:

"The bill seeks to provide for the registration of Muslim marriages, as in the absence of a law on the subject requiring the preservation of the records regarding the solemnization of marriages people are generally dragged to litigation and innumerable difficulties. With a view to remedying the situation, it is proposed to enact a law
Chapter - III MARRIAGE AND INSTITUTION OF DOWER

providing for the registration of all marriages solemnized by the Nikah in the state, hence the bill."^{172}

The Act, however, did not provide for the registration of divorces which is equally important.

Besides other provisions the Act required that there shall be recorded on every copy of nikahnama or memorandum, as the case may be, the amount of Mahr 'prompt' and 'deferred' separately and also the manner of payment thereof.\footnote{173}

The Act was repealed in 1981 because of pressures from different quarters. This proved legislation on paper only. However, there is already a practice of maintaining written record of the nikah and the related matters personally by the parties through nikahnama. This continues to be the only evidence available to prove the nikah and the other terms agreed to by the parties.

Taxation and Mahr

Mahr in its real nature is a gift to be given to the wife on the occasion of marriage. The question before us is that whether it comes within the purview of the tax laws or not. The relevant statute, the

\footnotesize{172. 1 Islamic ClQ 1981, p. 302
173. Section 3 (4) and item No. 5 in the Schedule.}
Chapter - III  MARRIAGE AND INSTITUTION OF DOWER

Indian Gift Tax Act, 1958 (as amended upto 1990), in its section 2(xii) defines a gift in the following terms:

"gift means the transfer by one person to another of any existing movable or immovable property made voluntarily and without consideration in money or money’s worth…"

The language of the definition is sufficient to cover Mahr as a subject of gift-tax under the Act. However, section 5(1)(x) as modified in 1990, can ordinarily save it from tax upto the specified limit of rupees one lakh. The relevant provision reads as follows:

S.5(1): Gift-tax shall not be charged under this Act in respect of the gifts received by any person

(x): On the occasion of the marriage of such person subject to a maximum of rupees one lakh in value.

So Mahr, if delivered actually on the occasion of the marriage upto rupees one lakh will be exempted from tax. Its obligatory character at Islamic law will not affect its nature as a gift under gift-tax laws. It, however, may be noted that after the Bill of 1990 the amount of tax, wherever it is due, is collected from the donees and not from donors.
Chapter – III  MARRIAGE AND INSTITUTION OF DOWER

In case the nature is not specified:

Dower is always presumed to be fixed in case of a Muslim marriage.\textsuperscript{174} There is no provision in Muslim Law as to when it should be fixed. It may be fixed at any time before or after the marriage is contracted.\textsuperscript{175} In theory, it should be paid before a marriage is consummated, but as there is nothing in the Quran or the Hadith to support this view, the jurist have held that a portion of it is payable at once on demand, while the remainder on the dissolution of marriage, whenever it may come to pass. Prompt dower does not become deferred by consummation of marriage and a wife has absolute right to sue for the recovery of the prompt dower even after consummation.\textsuperscript{176} About the fixation of the quantum of each portion, the law is silent. It seems that the prompt and the deferred portions are set led on the discretion of the parties. In many parts of India, it is customary, among Hanafies, to relinquish the claim of the prompt portion. In such areas, the husband secures the access of the wife without disbursement of the prompt portion.

\textsuperscript{174} Umrao Bibi Vs. Ahmed Baksh, 55 IC 236 (Lah.)
\textsuperscript{175} Amina Bibi Vs. Mohammed Ibrahim, 4 Luc. 343.
\textsuperscript{176} Mohammad Taqi Ahmad Khan Vs. Farmoodi Begum, 1941, All. 181.
MAHR AND AQD AL-NIKAH: A LEGAL NORMS

In some of the above given juristic and judicial observations Mahr has been treated, inter alia, as 'consideration' for marriage. The view, however, does not seem to be absolutely correct. Of course, there exists a dominant contractual element in Muslim marriage. But its purpose is to ensure that the marriage must be a voluntary union with free consent from each party. It cannot be asserted without difficulty that Mahr is a 'consideration' for marriage in the same way there is consideration in any ordinary contract. The propounders of this view have themselves faced enormous difficulties in supporting their opinion which is obvious from their muddled conclusions. Mahmood J. who is believed by some to be the main propounder of this view has, in fact in his famous judgement in the case of Abdul Kadir, presented only a mixed view of things. He observes:

'Mahr under the Mohammedan Law is a sum of money or other property promised by the husband to be paid or delivered to the wife in consideration of the marriage, and even where no Mahr is expressly fixed or mentioned at the marriage ceremony, the law confers the right of 'Mahr' upon the wife as a necessary effect of marriage. To use the language of the Hedaya, 'the payment of Mahr
is enjoined by the law merely as a token of respect for its object (the woman).177

The Privy Council, having referred to the said view, has found it unsuitable to treat the analogy of ‘sale’ and ‘Muslim marriage’ as absolute. They have denied governing of *Mahr* by the same rules as consideration in a contract. It has observed.

"The right of her *Mahr* is a fundamental feature of the marriage contract, it has a pivotal place in the scheme of the domestic relations affecting the mutual rights of the spouses of more than one point. While by the Muslim law, marriage itself is viewed as a civil contract and the agreement to pay a certain amount of *Mahr* is a part of the contract of marriage, the mere principles of the law of contract as embodied in the Indian Contract Act are insufficient to themselves to account for the main features of the law of *Mahr*."178

But the following lines from another judgment again sound a different note:

"That *Mahr* is purely in the nature of a marriage settlement and is for consideration. It is a claim arising out of contract by the husband."179

It is about these and like statements that David Pearl has cautioned the students of Islamic law in the following terms:

"Thus, early Indian cases must be read with caution".180

177. Malimood, J’s dictum in *Abdul Kadir Vs. Salima*, (1886) ILR, 8 All 149.
Chapter - III  MARRIAGE AND INSTITUTION OF DOWER

Mahmood, J., ignoring the serious differences between a Muslim marriage and an ordinary civil contract, through analogy regards Mahr as consideration for connubial intercourse. But, his own words show that he had taken up this analogy with no firm belief. He said.

"In this sense and in no other can ‘Mahr under Muslim Law be regarded as a consideration for the connubial intercourse and if the authors of the Arabic text books of Muslim law have compared it with price in the contract of sale, it is simply because marriage is a civil contract..., sale is the typical contract which Muslim jurists are accustomed to refer to in illustrating the incidents of the other contracts by analogy."181

Marriage is the most important socio-religious institution of Islam with specific objectives and purposes. Resort to analogy in such a situation is not only a juristic mistake but also a deviation from the basic Islamic norms. Islam places both the parties to the marriage on an equal footing, making each subject to social, religious and legal norms. Since each spouse is offering company, support, comfort and cooperation to the other, to think of Mahr as an ordinary ‘consideration’ to the woman amounts to the denigration of her position. It may be possible to think so for any commercialized, materialistic and dehumanized brain but it is not possible to think so in Islam.

181. Supra note 115.
Chapter - III  Marriage And Institution Of Dower

Sulaiman, J. has cautioned about the liberal use of this analogy in the following words:

"The similarity cannot be pushed too far, nor can the principles governing the same of goods be applied to in all their details. Indeed, if one were to pursue the analogy for enough there would be a reduction of absurdum."\(^{182}\)

The weaknesses, unsuitability and the obvious absurdity of the analogy-scenario have become further clear from Mahmood J’s Judgment in Abdul Kadir itself when he refused to the Muslim wife a right to withdraw from the conjugal society of the husband for non payment of Mahr following the doctrine of stoppage in transit as follows:

"This lien essentially presumes the right of ownership in the vendee, and terminates as soon as delivery has taken place."\(^{183}\)

The falsity of this argument has been well explained by Sulaiman, J. in Anis Begum in the following terms:

"The marriage cannot be regarded as purely a sale of the person by the wife in consideration for the payment of Mahr and even if such a grotesque analogy were to be carried to its fullest extent, it would not necessarily result in support of the observations made in Abdul Kadir’s case…. The lien on goods sold may be lost when possession is

\(^{182}\) Anis Begum Vs. Muhammad Istafa (1933) 55 All 743.
\(^{183}\) Supra note 115.
lost, but that lien is revived when possession is again recovered. Again if part of the goods have been delivered and part of it is still retained, the lien on the part retained continues... if the wife after the consummation returns to her own house she can still resist restitution of conjugal rights to so long as her Mahr is not paid, because her right has been revived after the co-habitation ceased.  

Thus Mahmod, J., applying the doctrine of stoppage in transit through a wrongful analogy, has failed to provide sufficient justification for refusing a wife the right to withdraw from the husband’s society for non-payment of Mahr. He has begun with a wrong analogy and ended with unsound logic.

Besides, when the analogy of sale and marriage is carried too far one obviously violates the Islamic spirit. This trend has obscured reality and led to absurdity. It reduces the woman to the degree of a chattel. Sulaiman, J. points out that:

"The analogy cannot be carried too far, it does not necessary clinch the matter."  

The real nexus between Mahr and marriage is manifested by the following observation of David Pearl which he has made with due intellectual concern:

184. Supra note 119.
185. Supra note 119.
Chapter - III  MARRIAGE AND INSTITUTION OF DOWER

"The Mahr is paid by the husband to the wife. It needs to be emphasized at the outset that the Mahr is not consideration for the contracting of marriage. The Mahr must be clearly seen as the effect of the contract of marriage rather than the price paid by the husband for acquiring the various rights which accrue to him on marriage." 186

Tajul’Urus describes Mahr as a ata-o-bila-lwiz (a gift without return). This is comparable to the honey produced by a honey-bee without any return for that. This is a legal duty of the husband with a social purpose behind it. The Prophet (S.A.W.) has approved even an iron ring as Mahr. How can this be said to be a consideration for connubial relationship.

Moreover, it may be clarified that Mahr is not something connected with divorce and to be given to the wife on the dissolution of marriage. However, if the Mahr in part of whole has remained unpaid during the marriage, the husband is bound to discharge this liability towards the wife immediately. 187

Validity of Marriage without fixing dower:

All most all the jurists of Islamic law are having the consensus on the question that a marriage contract without mentioning dower is

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186. Supra note 118.
valid. Similarly a marriage contract, even with denial to pay dower is also valid. For Allah has said, "There is no blame on you if ye divorce women before consummation or the fixation of their dower."\(^{188}\) It is proved from this verse that divorcing the wife contracted into marriage in which no dower is fixed, is no sin. As a divorce follows only after a valid marriage contract, the verse is in support of the effectiveness of the marriage contract without the dower being fixed.

**Imam Shafii’s argument:** Imam Shafii in support of his argument puts forward the Quranic verse.\(^{189}\) "And give the women (on marriage) their dower as a free gift." He argues that the God has expounded *Mahr* as "nahlah" and nahlah indicates gift. Dower in fact is a consideration in excess, which accrues in addition to and not the basis of the marriage contract itself. According to him for the fulfilment of the purposes of marriage contract, creation of valuable consideration is not necessary. Dower is an additional liability which envisages for women a remuneration in excess and so without a settlement it cannot be made incumbent upon man (except where consummation has taken place). According to Imam Shafii, therefore, dower shall not become incumbent

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\(^{188}\) Al-Quran, surah Al-Baqarah, II.236.

\(^{189}\) Al-Quran, surah Al-Nisa, IV.4.
merely on the basis of the marriage contract itself without being specifically settled.

Hanafis argument: Hanafis in support of their argument put forward Quranic verse, "Except for these, all others are lawful provided you seek (them in marriage) with gifts from your property."\textsuperscript{190} They argue that Allah has made women lawful on condition of property being given to them. Marriage contract, therefore, without the fulfilment of the stipulation that property be given, shall not be valid. The women have been made lawful on condition of property being given to them. Hence without that stipulation they cannot become lawful. Uterus and life, according to Hanafis are objects of reverence. Permission to deal with them depends on the condition prescribed. In spite of the absence of that condition of dower in the marriage contract, therefore, their original reverence shall stand on its own. Thus, if there be a condition that there shall be void and proper dower shall become incumbent upon the man.

The Hanafis, in support of their point of view also cite the following tradition.\textsuperscript{191} "Alqamah narrated a tradition from Abdullah b. Masud that a person asked him about the dower of a woman whose

\textsuperscript{190} Al-Quran, surah Al-Nisa, IV:24.
\textsuperscript{191} This tradition has been narrated by Imam Abu Hanifah from Hammad and Hammad has narrated it from Ibrahim Nakhi, See Muwatta by Al-Shaybani, Op. Cit., p. 245.
Chapter - III  Marriage And Institution Of Dower

husband died before fixing her dower. He felt perplexed. He said, "I find nothing about it either in the book of Allah nor have I heard anything from the Prophet about it. I, therefore, give opinion on my own ijtihad. If I am right it is from Allah, if I am wrong it is from me and Satan. Allah and His Prophet are exonerated." Abdullah b. Masud, thereupon, said such women shall have treatment like that of other women." The man having heard the fatwa (legal opinion), stood up and said, "I bear witness that the Prophet in the case of Buru’bt, Washuq al-Ashja’iyah had given the same decision." Then arose a man of Ashja tribe and said, "I bear witness to this fact", Abdullah b. Masud finding his decision in accord with the decision of the Prophet was highly pleased. So pleased never was he after his embracing Islam." This means she will be entitled to proper dower.

The Hanafis, in support of their point of view further argue that the objects of marriage cannot be gained without its being permanent. And permanency in marriage cannot be gained without the dower being incumbent. If the dower is not incumbent in marriage it will be easy for men, in their wrath and anger, to pronounce divorce. The incumbency of dower, therefore, is a means of gaining the object and rationale of marriage contract, which is realized by mutual conformity
Chapter - III  MARRIAGE AND INSTITUTION OF DOWER

and this mutual conformity, is not gained till the dower of woman is not venerated and respected by man.

Rejoinder to Imam Shafii: The Hanafi jurists discussing Imam Shafii's view about dower being a gift, say that the word, "nahla" in fact has been used in the meaning of faith and religion. Hence, the said Quranic verse, being directory in nature, is in reality a proof of the commandment to say dower with piety and dutifully. Dower is not a mere gift, which depends on the will of the donor.  

Analysis:

The real cause of difference of opinion between Hanafi and Shafii jurists is that Hanafi jurists recognize the marriage contract itself as the basis of the dower becoming due whereas the Shaffis consider to consummation to be the basis of dower becoming due.

The Hanafis content that man's right over woman's uterus is created simultaneous with the marriage contract and as the consideration implies the proof of proprietorship, rights should be created against each other at the same time. For instance, in the matter of "sale" the consideration money becomes due on account of the execution of the sale deed and becomes at once to the seller on his demand. In the same manner when the marriage

contract is entered into the woman's dower becomes incumbent upon the man.\textsuperscript{193}

**Dower - a religious ordinance:**

On the basis of above arguments, it may be concluded that dower, like consideration money in a contract for sale, is not merely monetary consideration. Its mandatory nature in the religious law is meant to maintain the respect, honour and dignity of the wife. Thus, even if it is not mentioned in the marriage contract, proper dower shall become incumbent. Even if it is settled that there shall be no dower in the marriage contract, dower shall become incumbent and the condition shall be void.\textsuperscript{194}

\textsuperscript{193} Al-Kasani, Ala al-Din: Bado I' al-Sana'I, Cairo, Vol. ii, Kitab al-k, p. 245.
CHAPTER-IV

DIFFERENT KINDS OF DOWER AND THEIR REALIZATION

- Specified Dower
- Prompt dower and its Payment
- Deferred Dower and its Payment
- Proper Dower (Mahr-e-misl)
- Determination of proper dower
- Difference between Prompt and Deferred Dower
- Remedies on non-payment of Dower
- Decree in a suit for Dower
- Discretion of remission of Mahr by wife
- Payment of Mahr on death of either party
Chapter-IV  Different Kinds Of Dower And Their Realization

In order to constitute a valid marriage, under Islamic law, there should always be a consideration moving from the husband in favour of the wife, for her sole and exclusive use and benefits. This consideration is called Dower or Sadak in legal treatises, and in common parlance *Mahr*. The liability of the payment of *Mahr* is divinely of the husband except when he, during his minority, has been got contracted into marriage by guardian. The liability in that case will be that of guardian. The logic behind this according to Shariah is that a minor is incapable of contracting his marriage. In case the minor dies, his guardian shall be liable to pay the dower to his widow. This rule of law is based on the principle that a minor cannot be burdened with financial liability by the act of guardian but such a concept has not been recognized under Shia law. Under Shia law if the son has no means to pay the specified dower only then father is liable to pay it. Basically *Mahr* is of two kinds:

(1) Specified dower
(2) Unspecified dower or Proper Dower Customary Dower (*Mahr*-al-Misl)
1. Specified Dower:

Specified dower is that which is specified at the time of marriage contract between the parties. It is further classified in two kinds:

(a) Prompt dower (Mahr-e-Muajjal)
(b) Deferred dower (Mahr-e-Mawajjal)

(a) Prompt dower and its Payment

Dower amount is normally fixed by the parties before the solemnisation of marriage on the basis of mutual consent. No particular process or formal documentation is ordinarily required, various sects of Muslims having their own customs and usages relating to determination of amount of dower which is required under the law governing them. In India the Hanafi sect constitutes an overwhelming majority and next important is that of Shia. Followers of other sects are very small in number.

There is nothing in the Quran or in the tradition tending to show that the payment of dower settled at the solemnisation of marriage is obligatory in law, before the consummation of marriages. The latter jurist's consults have held that a portion of the Mahr should be
Chapter-IV  Different Kinds Of Dower And Their Realization

considered payable at once or on demand and remainder on the dissolution of the contract whether by the divorce or death of either of the parties. The portion which is payable immediately is called as prompt dower or Mahr-e-Muajjal and the wife can refuse to enter into the conjugal domicile until the payment of prompt portion of dower.

The following points must be noted regarding prompt dower:

(i) Prompt dower is payable immediately on the marriage taking place and it must be paid on demand, unless delay is stipulated for or agreed. It can be realised any time before or after the marriage.

(ii) Prompt dower does not become deferred after consummation of marriage, and a wife has absolute right to sue for recovery of prompt dower even after consummation. After consummation, she cannot resist the conjugal rights of the husband if the prompt dower has not been paid by him. If marriage is consummated, the Court may pass a decree conditional on payment of dower.

(iii) It is only on the payment of the prompt dower that the husband is entitled to enforce the conjugal rights unless the marriage is already consummated. The right of restitution arises only after the dower has been paid.
Chapter-IV Different Kinds Of Dower And Their Realization

(iv) As the prompt dower is payable on demand, limitation begins to run on demand and refusal. The period of limitation for this purpose is three years, during the continuance of marriage and if the wife does not make any demand, the limitations begins to run only from the date of the dissolution of marriage by death or divorce.¹

The Privy Council in Humaira Bibi Vs. Zubaida Bibi² regarding the dower as consideration for the marriage held that it is in theory payable before consummation, but the law allows its division into two, one of which is prompt dower payable before the wife can be called to enter the conjugal domicile, the latter deferred dower payable on the dissolution of the contract by death of the either party or by divorce. In Abdul Qadir Vs. Salima² also it was held that in order to constitute a valid marriage the Muhammedan Law requires that there should always be a consideration moving from the husband in favour of the wife for her solace, exclusive use and benefit. This consideration is called as prompt dower.

¹ AIR 1916 p.c. 46
² ILR (1886) 8 All. 149
Chapter-IV  Different Kinds Of Dower And Their Realization

In Kefayatul Mufti\(^3\) defining the payment of dower it is said that it is payable after marriage on demand of the wife. It has further explained that if in the case of deferred dower, the period is not fixed for its payment then in such a situation this deferred dower will be treated as prompt dower and the wife is entitled to claim it any time after the marriage.

Thus, it becomes clear that prompt dower is payable by the husband to the wife immediately after the marriage. As Islam recognises women’s right of holding property. The dower amount exclusively belongs to her. She has every right of claiming and recovering it from her husband. In the case of major woman she herself has authority to realise her dower. If she is a minor, her father and in his absence her near guardian may realise the same.\(^4\)

If a husband refuses to pay prompt dower, the guardian of the minor wife has the right to refuse to allow her to be sent to the husband’s house, and similarly the wife may refuse the husband his conjugal rights provided no consummation has taken place. The wife is

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3. Vol. V, Ed. 1st, 125
4. Dr. Tanzilur Rahman: A code of Muslim Personal Law, 235, (1976)
under Mohammedan Law entitled to refuse herself to her husband until the prompt dower is paid and if in such circumstances, she is not residing with him, the husband is bound to maintain her. The passage in the "Durrul Mukhtiar" on the same subject runs as follows. It is the wife’s right to prevent the husband from connubial intercourse, and that is which is implied therein, and from journeying with her even though after connubial intercourse. So, for the purpose of obtaining what has been stated as prompt dower, whether wholly or partly. But she cannot do so, if the payment of dower is deferred to a future time.

And again it is lawful for the wife says the, "Tanwirul Absar" to refuse cohabitation in order to exact payment of dower, that portion of it which is payable immediately.

In the Vikayaur Rawaeq of which Surat Al-Waqi’ah is the commentary, the law is stated thus “It is the right of the wife (it belongs to her) to refuse cohabitation to company the husband on a journey, and notwithstanding such refusal to obtain maintenance from him although such refusal may take place after cohabitation or valid retirement with

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7. Ibid.
Chapter-IV  Different Kinds Of Dower And Their Realization

her consent, so long as she does not receive her Mahr either the whole or such part as it is specified as Muajjal (prompt) or which is customary & prompt for such woman, without consideration of whether it is a fourth or fifth unless it is specified”.

In Hedaya also it is said “that a woman may refuse to admit her husband to a carnal connection until she receives her dower from him, so as that her right may be maintained? In the same manner as that of her husband to the object for which the return is given as in sale.”

In Husain Khan Vs. Gulab Khatoon following the case of Rani Khajoorunnissa Vs. Rani Ryessunnisa, it was held that prompt dower is payable immediately on the marriage taking place, and it must be paid on demand; it is only by the payment of prompt dower that the husband is entitled to consummate the marriage. In Nawab Bibi Vs. Mohd. Din a suit was brought by the Nawab Bibi. Her husband also brought suit for restitution of conjugal right. The lower court decrees

the suit of the wife on the condition that she will live with her husband.

8. Ibid 319.
10. I.L.R., 35 Bomb., 386.
12. (1917) 45 I.C. 893
Then the wife appealed to the higher court. It was held by the High Court that a fact that a court passed a decree for restitution of conjugal right conditional on payment of prompt dower does not show that a wife's decree for prompt dower can be made conditional upon living with her husband and set aside the order of lower court. The Court further held that prompt dower can be demanded by the wife at any time either before or after consummation and she can refuse all conjugal rights on the part of the husband until it is paid.

The Allahabad High Court in *Anis Begum Vs. Mohd. Istafa,*13 has followed the same view and held that the right of dower is not lost after consummation of marriage. Then again the same High Court in *Mohd. Taqi Ahmad Khan Vs. Farmoodi Begum*14 followed its earlier decision and held that prompt dower can be demanded by the wife even after consummation of marriage. Prompt dower does not become deferred dower by consummation of marriage; wife has absolute right to sue for recovery of prompt dower even after consummation whenever she chooses to do so.

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13. AIR 1933 All 634
14. AIR 1941 All 181
Chapter-IV  **Different Kinds Of Dower And Their Realization**

The Lahore High Court has also adopted the same principle as back in 1922 in *Nawab Begum Vs. Allah Rakha*\(^{15}\) that prompt dower can be claimed by the wife at any time before or after the consummation of marriage. It set aside the condition of lower court for wife to live with her husband and held that no such condition can be attached for the payment of prompt dower. Then the same High Court again in *Sarb Krishna Vs. Mt. Fatima*\(^{16}\) had made a clear distinction between prompt and deferred dower and held that the portion of dower specified in the contract is realisable at once and wife can refuse all conjugal rights until it is paid.

In *Wajid Ali Khan Vs. Shaukat Ali Khan*\(^{17}\), the Oudh High Court has held that under the Sunni law a wife has right to refuse to surrender her person to husband in spite of consummation of marriage so long as prompt dower remains unpaid.

The Peshawar High Court in *M. Pukhraj Begum Vs. Hidayat Ali*\(^{18}\) where Mrs. Pukhraj Begum was married to Hidayat Ali Shah.

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15. AIR 1922 Lahore p. 172  
16. AIR 1937 Lahore p. 859  
17. AIR 1912 Oudh  
18. AIR 1938 Peshawar
Chapter-IV  Different Kinds Of Dower And Their Realization

The marriage yet had not been consummated but dissensions had already begun between them. Hidayat Ali brought a suit for restitution of conjugal right. Pukhraj Begum instituted a suit for possession by partition of a share in a house which had been given to her in dower. Hidayat Ali contended that she is not entitled to dower as she has not agreed to consummate the marriage. The suit of husband (Hidayat Ali) was dismissed and it was held that the wife is entitled to realise the prompt dower before consummation of marriage.

Baillie\textsuperscript{19} has also endorsed the same opinion that wife can refuse to live with her husband or admit him to connubial intimacy so long as the prompt dower is not paid. In \textit{Rehana Khatoon Vs. Iqtidaruddin}\textsuperscript{20}, Allahabad High Court followed its earlier decision and observed that prompt dower might be realised by the wife before or after consummation and proof of connubial intercourse between the parties is not necessary for its payment.

\footnote{20. AIR (1943) All 184}
Chapter-IV  Different Kinds Of Dower And Their Realization

Then in *Nasara Begum Vs. Rizwan Ali*,\(^{21}\) the court laid down that the wife has right to refuse to live with her husband and admit him to sexual intercourse so long as the prompt dower is not paid to her. Therefore it is not correct to say that the right to claim prompt dower does not precede cohabitation and comes into existence along with it.

If prompt dower is not paid by the husband then the wife is having right to refuse her husband go with him anywhere or on journey. As it is stated by *Hedaya*\(^{22}\) that a woman is also at liberty to resist her husband carrying her upon journey until she has received her dower. On the other hand, the husband has no power to restrain his wife from going on a journey or from going abroad or visiting her friends, until such time he has paid the whole of *Mahr* Moajjal or prompt dower. Because a husband's right to confine his wife is solely for the sake of securing to himself the enjoyment of her person, and his right to such enjoyment does not exist until after the payment for it.

But, when the husband has duly paid to his wife the whole of her dower, he is at liberty to carry her where he pleases, because the word

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21. AIR (1980) All 118

180
Chapter-IV Different Kinds Of Dower And Their Realization

of God says, "Ye shall cause them to reside in your own habitation". Some has alleged that the husband is not at liberty to carry his wife to another city different from her own. Although he should pay her the whole dower because journey and travelling may be injurious to her, but he is at liberty to carry her to the villages in the vicinity of the city as this does not amount to travelling.\footnote{23}

Thus, Prompt Dower known as \textit{Mahr-e-Muajjal} is payable immediately after marriage on the demand of the wife.\footnote{24}

The executing court refused to execute a decree for restitution of conjugal rights where a claim of prompt dower was not made. It was held that on the principle of justice, equity and good conscience there cannot be any interference on the ground that wife's claim prior to the decree for the restitution of conjugal rights cannot have been granted.\footnote{25}

In case of Prompt dower, time would begin to run from the date of demand and refusal during subsistence of marriage, and if no

\footnotesize{23. Id. at 55.  
24. \textit{Mahadeo Lal Vs. Mantram}, AIR, 1933, Pat. 281  
25. \textit{Ahmad Khan Vs. Noorjahan}, I (1985) DMC 184.}
demand and refusal is made, then from the dissolution of marriage by
death or divorce.  

Under Shia Law if the two separate kinds of dowers are not
specified then the whole amount would be taken as prompt.

What the executing court has done in the present case was in
consonance with the principles of Mohammedan Law bearing on the
question of wife’s claim for prompt dower and the husband’s right to
ask for restitution of conjugal rights. There was no reason why on
principles, a relief which could be granted to the wife prior to the
passing of the decree for restitution of conjugal rights cannot have been
granted at the stage of execution. Even at that stage the claims which
the parties were making not different from which they might have
made, if the same issues were raised at one and the same trial.
It appears that the view taken by the executing court is in consonance
with the principles of justice, equity and good conscience and call for no
interference.

26. Sabir Hussain Vs. Farzand Hussain, AIR 1934 All 52.
27. Mirza Badar Bukht Vs. Mirza Khurram Bukht (1873) 19 WR 315 (PC).
Chapter-IV  

**DIFFERENT KINDS OF DOWER AND THEIR REALIZATION**

Wife is entitled to recover her prompt dower at any time before or after consummation. Consummation has no effect of converting the prompt dower into deferred dower.²⁹

Where the wife has been demanding the entire dower debt, her demand could not have been made until the whole dower was prompt.³⁰

It is absolute right of wife to recover her prompt dower and while it may be open for husband to enforce his right in a suit for restitution of conjugal rights prompt dower cannot be made conditional on wife's residing with the husband.³¹

The payment of even prompt dower is often postponed till the dissolution of the marriage but wife is under no obligation to demand it at any time during converture.³²

It is absolute right of wife to recover her prompt dower and while it may be open to husband to enforce his right in a suit for restitution of conjugal rights, prompt dower cannot be made conditional on wife's residing with the husband.³³

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²⁹ Mohd. Taqui Ahmad Vs. Farmoodi Begum, AIR 1941 All 181.
³⁰ Haji Faquir Bux Vs. Pandit Thakur Prasad, AIR 1941 Oudh 457.
³¹ Kasam Vs. Joharbi, AIR 1930 Nag 270.
³³ Kasam Vs. Joharbi, AIR 1930 Nag 270.
Chapter-IV  **Different Kinds Of Dower And Their Realization**

On the other hand deferred dower does not become prompt merely because wife demands it.\(^\text{34}\)

Payment of prompt dower is often postponed till the dissolution of marriage but wife is not restricted to demand it at any time during continuance of marriage.\(^\text{35}\)

Demand of wife may be made before or after consummation. Consummation cannot be said to have any effect of converting the prompt dower into deferred dower.\(^\text{36}\)

In cases where it was not specified whether the dower was prompt or deferred the while of the dower shall be presumed to be prompt.\(^\text{37}\)

Only reasonable proportion should be presumed to be prompt, regard being had to the custom and status of the parties and the actual amount of dower settled.\(^\text{38}\)

Where it is not specified what portion is prompt and what portion deferred, the whole dower is to be considered prompt is

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applicable probably to cases arising among Shias. But it has been followed by the Madras High Court without consideration of the attendant circumstances.\textsuperscript{39}

The Shias regard the whole of the specified dower as prompt and the Sunnis regard one-half of the amounts as prompt and the other half as deferred. But the Courts differ on this point. It was held by a full Bench of the Lahore High Court, that the matter may be determined on the basis of usage or custom of wife's family and in the absence of usage or custom, one half, is presumed as prompt and the other as deferred.\textsuperscript{40}

(b) Deferred Dower (Mahr-e-Muwajjal) and its Payment:

The word Muwajjal is derived from the word Ajal, which means time or period, and is being used for deferred. So, when the dower is agreed to be paid not at the time of marriage but after that at any other time or occasion then it is called as deferred dower. In English deferred means the postponement and dower means an amount given in marriage by the husband to the wife. It means deferred dower is that dower the payment of which is not made at the time of marriage but it

\textsuperscript{39} Masthan Saheb Vs. Assam Bibi, (1899) IL 23 Mad 371.
\textsuperscript{40} Nasiruddin Vs. Amatul, 1948 Lah 135; Mirza Bedar Bukht Vs. Mirza Khuram Bakht, (1873) 19 WR 315 (PC).
Chapter-IV  Different Kinds Of Dower And Their Realization

is postponed for some period or certain other occasion or happening
e.g. death or divorce.

Deferred dower\(^{41}\) shall become payable as follows:

(a) where a time is fixed at such time.\(^ {42}\)

(b) when it is agreed to be payable on the happening of a specified
event when such event happens e.g. (talaque or dissolution of
marriage),

(c) when no time is fixed on the dissolution of marriage.

It is payable on dissolution of marriage by death or divorce.

According to Ameer Ali generally in India deferred dower is a
penal sum with the object to compel husband to fulfil marriage contract
in its entirety.

The following points must be noted regarding deferred dower:

(1) Deferred dower is payable on dissolution of marriage by death
or divorce. But If there is any agreement as to the payment of
defered dower earlier than the dissolution of marriage, such an
agreement would be valid and binding.

\(^{41}\) B.R. Verma: Mohammedan Law 151 (1978)
\(^{42}\) *Mirza Bedar Bakht Vs. Mirza Khurram Bakht*, 19 W.R. 315 at 318 (P.C.)
Chapter-IV  Different Kinds Of Dower And Their Realization

(2) The wife is not entitled to demand payment of deferred dower (unless otherwise stipulated), but the husband can treat it as prompt and pay or transfer the property in lieu of it. Such a transfer will not be void as a fraudulent preference unless actual insolvency is involved.

(3) The widow may relinquish her dower at the time of her husband’s funeral by the recital of a formula. Such a remission must be a voluntary act of the widow.

(4) The interest of the wife in the deferred dower is a vested one and not a contingent one. It is not liable to be displaced by the happening of any event, not even on her own death and as such her heir can claim the money if she dies.

If there is an agreement for payment of dower earlier than the dissolution of marriage such an agreement may be given effect to.\textsuperscript{43}

Deferred dower cannot be demanded till it is due. But the husband may pay it off by transferring property in lieu thereof.\textsuperscript{44}

It is an unsecured debt and the remedies which the other unsecured creditors have in such a situation would equally be available in case of transfer in favour of a wife in lieu of deferred dower, no less, no more.\textsuperscript{45}

\textsuperscript{43}  Mst. Nawab Begum Vs. Allah Rakha, AIR 1922 Lah 172
\textsuperscript{44}  Mangnat Rai Vs. Mst. Sakina, AIR 1934 All 441.
\textsuperscript{45}  Ghiasuddin Babu Khan Vs. C.I.T., A.P., 1985 Tax LR 1058
Chapter-IV Different Kinds of Dower and Their Realization

The husband may pay the deferred dower by transferring property in lieu thereof or may agree that even deferred dower may be recoverable on demand.\(^4\)

According to Sunni Law one part of the whole amount would be considered as prompt dower and the rest would be deferred dower. In such a case for deciding the proportion in each class; would be determined either on the basis of custom or, in absence of custom, on the basis of status of parties and actual amount involved.\(^5\)

Deferred dower is an unsecured debt and the remedies, which the other unsecured creditors have in such a situation would equally be available in case of transfer in favour of a wife in lieu of deferred dower, no less no more.\(^6\) Husband may pay the deferred dower by transferring property or may agree that even deferred dower may be recoverable on demand.\(^7\) If there is an agreement for payment of dower earlier than the dissolution of marriage, such an agreement may be given effect to.\(^8\)

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50. Ibid
Chapter-IV Different Kinds Of Dower And Their Realization

Deferred dower cannot be demanded till it is due. But husband may pay it off by transferring property in lieu thereof.51

A dower which is payable at the death of parties, divorce or dissolution of marriage in any way, on happening of an event specified by agreement, or expiry of any particular period, is called deferred dower. In short it becomes payable on termination of marriage by death or divorce.52

The deferred dower is incapable of being fairly estimated and if husband becomes an insolvent, it should not be entered in schedule of creditors.53

As deferred dower is payable in the dissolution of marriage or at any fixed time or happening of any specified event, so when husband and wife or either of them renounces Islam and embraces on other religion, then in that case also the wife can claim deferred dower because the marriage is dissolved by apostasy. In Amin Begum Vs. Soman54 it was held by the Allahabad High court that under the Mohammedan Law a wife’s conversion from Islam to Christianity

51. Mangat Rai Vs. Mst. Sakina, AIR 1934 All 441.
52. Sarb Krishna Vs. Mst. Fatima, AIR 1937 Lah 859
53. Sughra Bibi Vs. Gaya Prasad, AIR 1930 All 580
54. ILR 33 All 90

189
Chapter-IV  DIFFERENT KINDS OF DOWER AND THEIR REALIZATION

effects a complete dissolution of marriage. The honourable Justice had relied on two earlier decisions of Zabardasi Khan Vs. his wife in which Turner (officiating C.J.) and Tribunal J., expressed the opinion that the effect of apostasy of a Mohammedan wife was to dissolve the marriage contract and that according to Mohammedan law if either party to a marriage becomes a convert to Christianity a claim of restitution of conjugal right cannot be supported.

In addition to above case which was followed by Allahabad High Court they also followed the ruling of the case of M. Imam Din Vs. Hasan Bibi it was held in this case that according to Mohammedan law of wife's conversion from Islam to Christianity affects a complete dissolution of marriage with her Mohammedan husband.

The honourable justice has also cited the view of the jurist of Bukhara in his decision. Because there is two group of jurists on the conversion of wife from Islam. According to the jurist of Bukhara the effect of wife's abjuration from Islam effects the status of marriage and dissolve the marriage tie. Whereas the jurist of Bulk and Samarkand

55. (1870) 2 N.W.P. H.C. Rep. 370
56. (1906) Punjab Rec. 309
laid down that when a woman abjures Islam from a scriptural or
revealed religion like Judaism or Christianity their renunciation of faith
does not dissolve the marriage.

Besides the above decisions and opinion of jurist of Bukhara he
has also cited the authority of Baillie’s view that Apostasy from Islam
by one of the married pair is a cancellation of their marriage. Sir Ronald
Wilson is also of the view that effect of either or both of the parties to a
Mohammedan marriage renouncing the Mohammedan religion is to
dissolve the marriage is if so facto. The Andhra Pradesh High Court is
also of the same view and held in Sarwar Ali Khan Vs. Jawahar Dev
“that a wife by her apostasy can not only dissolve the marriage but also
claim dower from her erstwhile husband.

There is no consensus of opinion among the old and modern
jurists on the point that whether either of the apostasy of husband and
wife can dissolve the marriage. Among the Hanafi according to old
lawyers whose view’s are enunciated in Hedaya, Fatawa-i-Alamgiri and
other works, apostasy from Islam of either husband or wife whether it

57. Baillie: Digest of Mohammedan Law, 182
58. Wilson, R. Anglo Mohammedan Law, 155 (1917)
59. (1964) 1 Andh. W.R. 60
Chapter-IV Different Kinds Of Dower And Their Realization

takes place before or after consummation of marriage dissolve if so facto
the marriage tie. The Indian courts have given effect to this doctrine
without considering the development that has taken place within three
centuries in Hanafi legal conception regarding the effect of apostasy of
one or other of the married parties on marriage relationship.\(^{60}\)

The modern lawyer on the contrary held\(^ {61}\) that "when the
husband renounces Islam and the wife continues in faith the connection
become unlawful, but if the man returns to Islam before the expiration
of wife's "Iddat" (The probation she has to observe in case he is dead)
there would be no need for remarriage between the parties. This seems
from the doctrine enunciated in Raddul Mukhtar\(^ {62}\) "that if a Muslim was
to abandon the faith and to take refuge in a non-Muslim country and
then divorced his wife, the divorce would not be effective. But if he
returns to Islam while she was still in her iddat and then give divorce it
would be operative".

\(^{60}\) Ameer Ali: Mohammedan Law 350 (1978)
\(^{61}\) Id at 351
\(^{62}\) Raddul Mukhtar Vol. II, 643
Chapter IV  Different Kinds Of Dower And Their Realization

Hence there are divergent opinion among the old and modern jurists on the issue of the apostasy of husband. However, the Indian courts have followed the view of old jurists. It is seen in Humaira Bibi Vs. Zubaida Bibi.63 The Privy Council observed that the deferred dower is payable on the dissolution of marriage contract by death of either party or by divorce. If any of the spouse changes or accepts another religion, then in such situation the wife is entitled to ask for the payment of deferred dower from her husband. Because due to the change of religion the marriage is dissolved. Later in Sardar Mohd. Vs. Maryam Bibi,64 it was held, "where the wife accepted Christianity and asked for the payment of deferred dower. The husband contended that the marriage with a Kitabiya is valid so she cannot ask for the payment the marriage is not dissolved. But the court negating the contention of husband held that the marriage is dissolved, and his wife is entitled for the payment of her deferred dower.

In E.M. Ebrahim Vs. Mama & others65 Rangoon High Court observe the same principle and held that, where the wife apostized by worshipping the spirit, images and Budhist shrines, she can claim the

63. ILR 38 All 581
64. AIR 1936 Cal. 666
65. AIR 1939 Rang. 28
Chapter-IV  **Different Kinds Of Dower And Their Realization**

amount agreed to be paid by the husband on the dissolution of marriage by her apostasy.

Death or divorce is the only contingency on which deferred dower becomes payable. So it is not payable on the contingency that the husband has become insolvent. In *Sughra Bibi Vs. Gaya Prakash*,\(^{66}\) it was held by Allahabad High Court that deferred dower cannot be claimed by wife on the insolvency of her husband. In this case a suit was brought by Ms. Sughra Bibi wife of Abdul Mughni insolvent. Abdul Mughni adjudge insolvent on 3rd December 1927 and a previous transfer has been made by him to his wife on 21st February 1927 of all his property in lieu of his dower debt. The transfer was set-aside as fraudulent, and the matter came before the High Court. Subsequently Sughra Bibi applied for to have her name entered in the schedule of creditors for the total amount of her deferred dower debt which was Rs.5000/-.  

The Allahabad High Court relied on Wilson's *Mohammedan*\(^{67}\) law that is the deferred dower is payable only on termination of marriage.

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66. (1930) All LJ, 1038
by death or divorce. He further observed that neither of these contingencies has yet taken place and it is not possible to say whether the husband will or will not predecease his wife nor it is possible to say that at what date the husband would predecease or divorce his wife if either of the two contingency takes place. Accordingly, it is not possible for the insolvency court to estimate what would be the present value of the deferred dower of Rs.5000/- which was to be paid if either of those contingency take place. The Allahabad High Court has relied on the decision of Mirza Ali Vs. Qadri Khanam 68 in which the Punjab Chief Court has held that a similar deferred dower debt is incapable of being fairly estimated and therefore should not be entitled in the schedule of creditors to claim her deferred dower debt.

The whole deferred dower becomes payable on the pronouncement of talaq even though revocable and it does not become deferred by retention. Even a revocable talaq would hasten the payment of deferred dower, that it make it prompt and thought the wife could be actually recalled by her husband it would not again become

68. (1919) 50 I.C. 774 (Punjab)
Chapter-IV  Different Kinds Of Dower And Their Realization

deferred. Although there is also another opinion that it does not become payable till the expiry of iddat.

As deferred dower is payable on dissolution of marriage or on divorce by the husband. Death also dissolve the marriage tie so a wife can very well claim her amount of deferred dower on the death of her husband. In Jahangir Khan Vs. Syed Abdul Rahman, the Allahabad High Court relied on Fatawa Alamgiri which states that “the death dissolve the marriage tie which naturally means death of the either party”. In Mahar Ali Vs. Amani case also the Bengal High Court has held that death dissolve the marriage tie which naturally means death of the either party”.

Thus, it become clear that the wife can ask for the payment of deferred dower only on the dissolution of marriage death, or any date of it is fixed on such data. But if the wife ask from her husband for the payment of deferred dower before the dissolution of marriage, and the husband transfers certain property in lieu of that deferred dower then

70. Durrul Mukhtar, Vol. I, 217
71. (1921) 20 All L.J. 36
73. (1869) 2 Beng. L.R. 17
such transaction with be valid. As Ameer Ali says,\textsuperscript{74} "that there is no rule by which it necessary follows' that the postponed or deferred dower becomes realisable on the death of the husband or if she happens to be a divorce the wife on such divorce."

In \textit{Mt. Nawab Begum Vs. Allah Rakha}\textsuperscript{75} the dower amount was fixed Rs.5000/- half of which was prompt. All agreement was executed by which the husband authorised to his wife to demand payment of whole sum at any time. The Lahore High Court held it valid.

In another case \textit{Nemichand Vs. Mt. Muluk Begum}\textsuperscript{76} the full bench of Allahabad High Court held that a deferred dower can form a valid consideration for the transfer of property during the life time of her husband who has not divorced the wife. It is laid down that wife is not entitle as a right to demand payment of her deferred dower, but the husband is entitled if he please to pay his wife her dower before it is due to discharge or satisfy his obligation in any other legal way.

\textsuperscript{75} AIR 1922 Lahore 172
\textsuperscript{76} (1910) S.J.C. 316 (Allah.)
Chapter-IV  DIFFERENT KINDS OF DOWER AND THEIR REALIZATION

In Khadeja Vs. Mohd. Zahir\textsuperscript{77} case also the ruling of full bench of Allahabad High Court was followed. In this case a Mohammedan against whom a decree for money has been passed, about a week after the passing of the decree and in order to save the property from being taken by his creditors, in execution thereof, transferred certain immovable property belong to him to his wife in part satisfaction of the deferred dower debt. It was held that such a transfer was not voidable, as transfer made with intention to defeat the creditors.

In another case of Mangal Rai Vs. Hira Lal\textsuperscript{78} the Allahabad High Court has held that when the wife makes a demand for deferred dower the husband is entitle either to pay it or make a transfer of property in her favour in lieu thereof which will be valid.

So it makes it clear that husband is not bound to pay the deferred dower demanded by the wife before the dissolution of marriage. But it depends upon the sweat will of the husband to pay it before the dissolution of marriage. And if any payment is made or any property is transferred by the husband in pursuance of the demand made by the

\textsuperscript{77} 1919 A.W.N. 64
\textsuperscript{78} AIR (1994) All 439
Chapter-IV  Different Kinds Of Dower And Their Realization

wife, then the transfer will be valid although the dower cannot also become prompt if demand by the wife during the continuance of marriage.

It was held in *Mt. Manihar Bibi Vs. Rakha Singh* by Manipur High Court that there is no authority for view that deferred dower agreed to be paid on the death or divorce becomes prompt if demand by the wife during continuance of the marriage.

There is also a settled law that the deferred dower can only be claimed within three years of the dissolution of marriage. Because after passing of the three years it will be barred under the Indian Limitation Act. But as the marriage is dissolve by divorce only when it comes to the knowledge of the wife. Hence, wife claim for deferred dower occurs only on the date on which she becomes aware of the divorce. And therefore a suit filed within three years from the date of her knowledge about the divorce, is not barred in spite of the fact that talaq was pronounced in the absence of the wife and time of three years is lapsed.80

79. AIR (1954) Manipur 1
Chapter-IV  **Different Kinds Of Dower And Their Realization**

The payment of deferred dower can also be made in instalments. As it was held in *Mt. Khairun Nisa Vs. Mohd. Husain Bara*\(^{81}\) in this case the wife brought an action for maintenance under sec. 488 of Cr. P.C. on this the husband produce a Talaq Nama. On the basis of this Talaq Nama the court dismissed the suit of maintenance. The lower court also dismissed the suit on the ground of limitation. But in Talaq Nama husband has agreed to pay the deferred dower in instalment. The court held the payment of deferred dower in instalment as valid, and the court further on stated that when all things are considered, it is to be noted that this poor lady lived with him as his wife for a period of 15 years, that is to say the period of bloom of her youth and now when her early youth is gone she has been divorced. Apparently the defendant himself felt it right to state in the deed of divorce that he would pay deferred dower of Rs.1000/- in instalment of Rs. 20/- per month.

2. **Proper Dower (Mahr-e-misl)**

'Proper' (Customary) dower — It is also called *Mahr*-e-Misl. Misl means similar. Unlike unspecified dower, there may be rare Instances
where the dower, either prompt or deferred, was not settled and actual
amount not mentioned.

Wife is legally entitled to get 'proper' dower in such cases.

A 'proper' dower is determined similar (Misl) to those dowers
which were fixed of females in the father's family of wife, such as
father's sisters etc.82 Besides the position of her father, her qualifications
and dowers settled to other females, sisters, cousins etc., would also be
considered.

There could be following different circumstances where the
actual amount of dower could not be fixed at the time of marriage or
where Courts have to resort for fixing 'proper' dower.

(i) There might be a condition, though expressly agreed to, that for
the marriage contract no dower would be paid. Such conditions
could not stand because in any case wife is entitled to dower. If
such is the case no amount would be fixed, and if matter comes to
Court it would fix 'proper' dower amount, to be paid by the
husband.

(ii) In some cases where marriage was declared Irregular, though the
dower might have been specified, the wife would get a 'proper'
dower.

82. Mulla, Commentary on Mohammedan Law, Section 289
Chapter-IV  DIFFERENT KINDS OF DOWER AND THEIR REALIZATION

(iii) If for some eventuality, the entire specified dower has been declared unlawful proper dower is fixed.

(iv) Proper dower is recoverable in cases where reciprocal marriages have been arranged and dower not fixed.

(v) Proper dower is also recoverable where a breach of legally recognized condition has been violated, even though the proper dower exceeds specified dower. In a case where it was agreed that husband would not bring a second wife to the house, the first wife would be entitled to proper dower if this condition is breached.

In fixing 'proper' dower no hard and fast rules could be formulated. It would depend in each individual case to study the circumstances and then only to fix the 'proper' dower.

When the amount is not fixed in the marriage contract or even if the marriage has been contracted on the condition that she should not claim any dower, the wife is entitled to proper dower. Proper dower is to be determined by taking into consideration the amount of dower settled upon other female members of her father's family such as her father's sisters.
Chapter-IV  DIFFERENT KINDS OF DOWER AND THEIR REALIZATION

A customary dower must be proved by showing a custom of the women of the wife's family to receive rather than of the men of the husband's family to pay, a certain dower; the Mohammedan dower being the consideration paid by the bridegroom for the marriage, and, therefore, regulated by the position and conduct of the bride, especially as Mohammedan men often contract most unequal marriages, though the means and position of the bridegroom must not altogether be excluded from consideration.83

In a case where a Muslim married a Christian in England, a Pakistan Court had held that husband is competent to Talaq his wife, and in which case wife would be entitled to 'proper' dower.84

Considerations for fixing 'proper' dower are, nobility of her birth, beauty and qualifications, besides custom in the family, but should not exceed 500 Dirhams.85

Determination of proper dower — The proper dower or Mahr-e-misl is regulated with reference to the following factors:

83. Nujmoodeen Ahmed Vs. Beebee Hosceinee (1865) 4 WR 110
84. Marina Vs. Nuruddin, PLD. 1967 SC 580
85. Razia Banu Vs. Nawab Ara Begum 1955 NUC 3602 All (1)
Chapter-IV  Different Kinds Of Dower And Their Realization

(a)  Personal qualifications of wife, age, beauty, fortune, understanding and virtue.

(b)  Social position of her father’s family.

(c)  Dower given to her female paternal relations.\textsuperscript{86}

(d)  Economic condition of her husband.

(e)  Circumstances of time.

There is no limit to the maximum amount of proper dower under Sunni Law but the proper dower under Shia Law should not exceed 500 dirhams.\textsuperscript{87}

The following facts are also to be observed while determining the amount of proper dower: —

(i)  **Local Customs** — Local customs should be observed while fixing the proper dower. “In fixing the amount of the \textit{Mahr}-i-misl regard must be paid to local customs, with special reference to the dower of the women who are equal of the dower of the women who are equal of the female in question, in knowledge, lineage, wealth understanding and such like.”\textsuperscript{88}

(ii)  **Position of the Husband** — In determining the amount of proper Dower, the, position of the husband and his status may also be

\textsuperscript{86}  52 PLR 1912
\textsuperscript{87}  Baillie, II, 71
\textsuperscript{88}  Jama-ush-shittat, quoted by Ameer Ali, II, 437
observed. But few law givers consider that in fixing the amount of proper dower, the social position of the husband should not be the criterion. In the words of Fitzgerald: "what have the circumstances of a purchaser to do with the intrinsic value of thing he buys." 89

(iii) **Position of Wife’s Father** — In the determination of amount of proper dower, the social position and the status of wife’s father is also to be observed.

(iv) **Reference to Dower of Female Paternal Relations** — The proper dower is to be fixed with reference to the amount of dower given to wife’s paternal relations such as sister, consanguine sisters, paternal aunts, etc. If there is no full or consanguine sister or paternal aunt, the dowers given to the uterine sister’s daughter or uncle’s daughters may be considered. 90

(v) **Personal qualifications** — In determining the amount of proper dower, wife’s personal qualification e.g., her beauty, her education, her age, her understanding etc. is also to be observed.

The Laws of Shias and Sunnis are the same on the point. The *Mahr*-miisl of a woman is regulated by a regard to the nobility of her birth, the beauty of her person, and the custom, of her female relations. 91

89. Fitzgerald Mohammedan Law, 66
90. Durr-ul-Mukhtar, 78
91. Irshad quoted by Ameer Ali, II, 437
Chapter-IV  Different Kinds Of Dower And Their Realization

(vi) Shia Law *Mahr-i-Sunnat* (Rule 88-ii) — Under the Shia Law, the proper dower does not exceed Rs. 500/- dirhams. It has become the tradition or sunnat under the Shia Law, hence giving rise to third type of dower known as *Mahr-i-Sunnat*, the other being the *Mahr-i-Musamma* (Specified Dower), and *Mahr-i-Misl* (proper dower).

**Difference between Prompt and Deferred Dower —**

(1) The prompt dower becomes due at once after the solemnization of marriage.

But the deferred dower becomes due only, on the happening of such event to which it is deferred or on the expiry of time which is specified or in every either case on the dissolution of marriage by divorce or death of either party.92

(2) The prompt dower becomes payable on the demand of the wife.93

But the deferred dower does not become prompt by the demand of the wife during the continuance of marriage.94

(3) The wife is entitled to realize the prompt dower at any time.95

92. *Sarb Krishna Vs. Mt. Fatima*, AIR 1937 Lah 859
93. *Mahadeo Lal Vs. Maniram*, AIR 1933 Pat 281
94. *Mt. Manihar Vs. Rekha Singh*, AIR 1954 Manipur 1
95. *Rehana Khatoon Vs. Iqidaruddin*, AIR 1943 All 184
Chapter-IV Different Kinds Of Dower And Their Realization

But the deferred dower is payable only when it becomes due. But the husband may pay it off by transferring property in lieu thereof\textsuperscript{96} or may agree that even deferred dower may be recoverable on demand.\textsuperscript{97}

(4) The wife is entitled to recover her prompt dower at any time before or after consummation. Consummation has not the effect of converting the prompt dower into deferred dower.\textsuperscript{98}

(5) Prompt dower is absolute right of wife to recover it and while it may be open for husband to enforce his right in a suit for restitution of conjugal rights, prompt dower cannot be made conditional on wife’s residing with the husband.\textsuperscript{99} The wife can refuse all conjugal rights to the husband until her prompt dower is paid. The wife has the right to deny her person (to her husband) or to go on a journey with him until she receives the dower. Her right in the consideration is the same as that of her husband in the object of the consideration (his conjugal right over her person) as in sale. The husband has no power to prevent her from travelling or going out of his house and visiting her friends until he has paid the whole exigible dower because the right of restraint is given to a person who has right, and he has not the right to secure fulfilment before rendering fulfilment (himself).

\textsuperscript{96} Mangat Rai Vs. Mst. Sakina, AIR 1934 All 441
\textsuperscript{97} Mst. Nawab Begum Vs. Allah Rakha, AIR 1922 Lah 172
\textsuperscript{98} Mohd. Taquit Ahmad Vs. Farnoodi Begum, AIR 1941 All 181
\textsuperscript{99} Kasam Vs. Joharbi, AIR 1930 Nag 270
Chapter-IV  Different Kinds Of Dower And Their Realization

So, now it has become a settled law that a wife has the right to refuse to live with her husband or admit him to sexual intercourse and if the husband sues for restitution of conjugal rights, his suit will fail. But after consummation of marriage, the suit for restitution of conjugal rights cannot be dismissed on the ground of non-payment of prompt dower.

But in case of deferred dower, nothing happens like this and denial of consummation has no effect on the payment of dower, it becomes due only on the expiry of certain period for which it is deferred.

(6) The payment of prompt dower is often postponed till the dissolution of the marriage but wife is under no obligation to demand it at any time during converture.\textsuperscript{100}

The liability to pay deferred dower binds the husband during his lifetime and his property after his death. And if the wife predeceases the husband, the dower would become due immediately and will not be postponed till the death of the husband.\textsuperscript{101}

(7) The only similarity between the prompt and deferred dower is that the parties are free to stipulate the immediate payment of whole specified

\textsuperscript{100} Mst. Antal Rasul Vs. Karim Baksh, AIR 1933 Pesh 31
\textsuperscript{101} Meer Mehr Ally Vs. Mst. Amanee, 11 WR 212
Chapter IV  DIFFERENT KINDS OF DOWER AND THEIR REALIZATION

Remedies on non-payment of Dower — Law confers upon a Muslim wife (or widow) the following three rights to compel payment of her dower:

1. Refusal to cohabit
2. Right to dower as a debt
3. Right to retain possession

(1) Refusal to cohabit — If the marriage has not been consummated, she has a right to refuse to cohabit with him so long as the prompt dower is not paid. In the case of a wife who is a minor or an insane, her guardian has right to refuse to send her to her husband’s house till payment of dower. During her such a stay in her guardian’s house the husband is bound to maintain her.

The absolute right of the wife to insist on payment of the prompt dower before giving him the access to her is lost after the consummation of the marriage.102 After consummation, the husband in his suit for restitution of conjugal rights upon her refusal can secure only a decree conditional on payment of dower.

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102. Hamidunnissa Bibi Vs. Zaheer Sheik, 17 Cal 670


**Chapter-IV Different Kinds Of Dower And Their Realization**

It was held in *Abdul Kadir Vs. Salima*\(^{103}\) that the effect of non-payment of prompt dower is that the wife can refuse to cohabit or refuse to live with the husband. If the husband sues her for restitution of conjugal rights before sexual intercourse takes place, non-payment of power is a complete defence to the suit, and the suit will be dismissed. It was held in *Rabia Khatoon Vs. Mukhtar Ahmad*,\(^{104}\) that if the suit is brought after sexual intercourse has taken place with her free consent the proper decree to pass is not a decree of dismissal, but a decree for restitution, conditional on payment of prompt dower.

When dower is deferred and is payable at a future date or on the contingency of an event, and there is no other contract to the contrary, the question is, whether she can refuse to the husband his conjugal rights or whether her guardian can detain her till it is paid. Abu Yusuf is of opinion that she can but according to Imam Muhammad and the Shia Law, she cannot have such option of denial in cases of deferred dower, and it appears from the learned decision of Mahmood, J. in

\(^{103}\) ILR (1886) 8 All 140

\(^{104}\) AIR 1966 All 548
Chapter IV  Different Kinds Of Dower And Their Realization

Abdul Kadir Vs. Salima105, that the latter opinion has been followed in India.

In Wilayat Hussain Vs. Allah Rakhi,106 the court state that a Mohammedan husband could not, according to Mohammedan Law, maintain a suit against his wife for restitution of conjugal rights, even after such consummation with consent as is proved by cohabitation for five years, where the wife’s dower is prompt and has not been paid.

In a suit by the husband to enforce his conjugal rights, the wife was entitled to refuse to cohabit with him until he had paid her dower, and that she was not precluded from doing so by the mere fact of having consented to cohabit with him since the marriage.107

(2) Right to dower as a debt — Dower is an unsecured debt which is recoverable by the wife or widow, or divorcée or her heirs if she is deed, from the husband when alive or from his assets when dead she is like any other unsecured creditor and her position is equal to the other creditors except on one point it is an actionable claim.

105. ILR (1886) 8 All 149
106. (1880) IL 2 All 831; See also Sheikh Abdul Shukkoor Vs. Raheem-oon-nissa, (1874) 6 NWP HC Rep. 94; Jaun Beebee Vs. Sheikh Munshee Beparee, (1865) 3 WR 93
107. Eidan Vs. Mazhar Hossain, (1877) IL 1 All 483
Chapter IV Different Kinds Of Dower And Their Realization

Their Lordships of the Privy Council held that "the dower ranks as a debt and widow is entitled along with other creditors to have it satisfied on the death of the husband, out of his estate". She is not, however, entitled to any charge on her husband's property, though such a charge may be created by agreement.\(^\text{108}\) Even a father's contract on behalf of his minor son is binding upon the minor and upon the father if the minor fails to pay.

In *Syed Sabir Hussain Vs. Farzand Hussain*\(^\text{109}\), a Shia Muslim stood surety for payment of the dower by his minor son. After his death his estate was held liable for the payment of his son's *Mahr* and each heir was made responsible for a portion of the wife's claim in proportion to his share in the estate of the deceased.

There is no doubt that it is within the competence of a Court to create a charge by its decree for a dower debt so that if such a charge is created and the decree has been appealed against and has become final, effect will be given to the charge, in other words, a decree creating a charge is not a nullity for want of Jurisdiction. But though it is not

\(^{108}\) *Hamira Bibi Vs. Zubaida Bibi*, ILR (1916) 38 All 581

\(^{109}\) 65 IA 119
Chapter-IV  DIFFERENT KINDS OF DOWER AND THEIR REALIZATION

beyond the power of a Court to pass a decree creating a charge, it will not ordinarily do so. To pass such a decree is to give the dower debt a priority over other debt due from the deceased. The proper decree to make is a simple money decree, and no charge is created merely because the decree directs execution by sale of properties maintained. If a decree is passed creating a charge the proper course for the Appellate Court would be to set it aside to that extent.\textsuperscript{110}

The claim for unpaid dower constitutes a debt.\textsuperscript{111}

(3) Right to retain possession – If the widow is in actual possession of the property of the deceased husband, she is entitled to retain it until her dower is paid. This right of retention does not give her any title to the property; therefore she cannot alienate the property. The right to retain possession of husband’s estate till payment of dower also arises after divorce. In no case it arises during the continuance of marriage.

A widow’s right to retain possession of her husband’s estate in lieu of her dower, is for a special purpose. It is by way of compulsion to

\textsuperscript{110}  \textit{Ameeroon nissa Vs. Moorad un nissa}, (1855) 6 MIA 211
obtain speedy payment of the dower which is an unsecured debt. Where she is not in possession or has lost possession, she cannot claim to obtain it. Because her right to retain is not in the nature of a charge on the property like mortgage but a personal right against the heirs and creditors of her deceased husband.

Decree in a suit for Dower —
(i) A decree by the Court as a simple money claim may be executed against the husband’s property but it cannot be charged against any specific portion thereof.
(ii) A decree in a suit filed by a widow for recovery of her dower-debt must be passed against the assets of the husband and not personally against those into whose possession those assets fall.

Where dower was fixed in kind i.e., immovable property.

Its transfer in law to be considered to be a gift pure and simple ‘Hiba’.

An absolute title would not pass and as such a relief of declaration that she is the owner of the lands cannot be granted to her.112

A Muslim lady, and thereafter her heirs, can retain husband’s father’s property till, the dower debt is discharged. Even though partition of some items has taken place in the family, which is permissible under the Muslim Law.113

112. Inambhi Vs. Khaja Hussain, AIR 1988 Kant 51
Chapter IV  Different Kinds Of Dower And Their Realization

A decree in suit filed by widow for her dower debt ought to be passed against the assets left by husband and not personally against those into whose hands those assets fall.\textsuperscript{114}

The decree for dower should not be passed creating a charge if a decree is actually passed and is allowed to become final between the parties a charge would be created.\textsuperscript{115}

The claim for dower is a simple money claim and though the decree maybe executed against the husband property it cannot be charged against any specific portion thereof.\textsuperscript{116}

But if a decree is actually passed and is allowed to become final between the parties, a charge would be created.\textsuperscript{117}

A decree in a suit filed by widow for her dower debt ought to be passed against the assets left by husband and not personally against these into whose hands those assets fall.\textsuperscript{118}

Though a decree for dower obtained by a widow against the heirs of the husband does not create a charge against those assets from which

\textsuperscript{114} Sultan Nachi Vs. Salamar Bibi, AIR 1938 Mad 25
\textsuperscript{115} Syed Qaisim Hussain Vs. Habibur Rahman, AIR 1929 PC 174
\textsuperscript{116} Abdul Rahman Vs. Mst. Inayati Bibi, AIR 1931 Oudh 63
\textsuperscript{117} Syed Qaisim Hussain Vs. Habibur Rahman, AIR 1929 PC 174
\textsuperscript{118} Sultan Nachi Vs. Salamar Bibi, AIR 1938 Mad 25
the dower may be realizable. Yet if a Court actually passes a decree for a charge and the decree becomes final between the parties, then a charge would be created and the decree would be a nullity for want of Jurisdiction.\textsuperscript{119}

A Mohammedan widow’s claim for dower is a simple money claim though that decree may be executed against the husband’s property.\textsuperscript{120}

Wife has only interest for personal enjoyment of the property in her possession but she has no right of alienation.\textsuperscript{121}

The Court has power to award the whole of the dower as prompt, irrespective of the fact that the parties belong to Hanafi Sect.\textsuperscript{122}

A decree for dower debt would not create a charge in the property of husband because it would give a priority to wife over other creditors. This charge could not be created by Court for any portion of the property not in possession of wife legally.\textsuperscript{123}

\begin{itemize}
  \item [119.] Qasim Hussain Vs. Habibur Rahman, AIR 1929 PC 174
  \item [120.] Abdul Rahman Khan Vs. Inayati Bibi, AIR 1937 Oudh 63
  \item [121.] Zahoor Ahmad Vs. Jainandan Pd. Singh, AIR 1960 Pat 147
  \item [122.] Hussein Khan Vs. Ghulab Khatoon, ILR 35 Bom 386
  \item [123.] Kulsum Bi Vs. Bilan Khan, AIR 1929 Nag 121; Durga Das Vs. Hanifa Begum, AIR 1940 Oudh 104
\end{itemize}
Chapter-IV Different Kinds Of Dower And Their Realization

Suits Dower and limitation — If the dower is not paid, the wife and after her death, her heirs, may sue for it. The period of limitation, according to Article 113 of the Limitation Act, for a suit to recover prompt dower is three years from the date when the dower is demanded, refused or where during the continuance of the marriage no such demand has been made, when the marriage is dissolved by death or divorce. In case of deferred dower, the period of limitation is three years, from the date when marriage is dissolved by death or divorce. Where, however, prompt dower has not been fixed, a demand and refusal is not a condition precedent for filing a suit for its recovery.\textsuperscript{124}

(i) In the case of prompt dower, limitation period starts from the date of demand and refusal and if not made on one date, then from the date of refusal during subsistence of marriage. If no demand and refusal is made then from the dissolution of marriage either by death or divorce.

(ii) In the case of deferred dower, limitation period starts from the date of dissolution of the marriage by death of either party or divorce. Or on the happening of the contingency or on the expiry of the time for which it is deferred.

\textsuperscript{124} Mohammed Taqi Khan Vs. Tarmodi Begum (1941) All 326
(iii) The Limitation period prescribed by the Limitation Act is in case of a registered deed, 3 years if property is movable otherwise 12 years according to Articles 55 and 62 of this Act.

Shares of dower when received by the legal inheritors thereof cease to be dower, and become part of the recipient’s estate.\textsuperscript{125}

If the widow was in possession of her husband’s property as security for her dower, and was subsequently thrown out of possession, the cause of action in respect of the dower must be deemed to have arisen at the time when she was ejected.\textsuperscript{126}

On a clear and unambiguous demand for payment of dower by the wife, and its refusal by the husband, it has been held by the Judicial Committee of the Privy Council that a cause of action accrues, against which limitation would begin to run. When there has been no explicit demand on the wife’s part, limitation will not affect her claim with reference to the exigible dower. The wife has an absolute option to demand the Mahr during the lifetime of her husband, and to eject her own time for demanding it.\textsuperscript{127}

\textsuperscript{125} Hosseinooddeen Chowdhry Vs. Tajennissa Khatoon, WR 1864 (199)
\textsuperscript{126} Sooma Khatoon Vs. Altafooonnissa Khatoon, (1863) 2 Hay 210
\textsuperscript{127} Khajurunnissa Vs. Saifullah Khan (1875) 15 BLR AC 305; See also Khijarannissa Vs. Risunnissa, (1870) 5 BLR 84; Mulleka Vs. Jameela, (1876) 11 BLR 375
Chapter-IV Different Kinds Of Dower And Their Realization

The mere fact that a widow is in possession of the property of her husband in lieu of dower does not preclude her from bringing a suit for the dower-debt against the heirs, although in such an action she would be bound to account for the rents and issues whilst the property was in her hands.128

When the widow, the defendant in a suit for ejectment, was found to be in possession of the property in suit in lieu of dower, and that the plaintiff was not entitled to sue for possession thereof until such claim for dower has been satisfied, it was unnecessary to determine the question of the amount of such dower; that a Mohammedan widow was entitled to a lien for whatever dower remained due to her, although there might be a dispute as to what was the amount actually due, and that the heir not being entitled to recover possession from the widow so long as any portion of the dower remained unsatisfied, nor to mesne profits, his proper course was to bring a suit for an account of what was

128. Ghulam Ali Vs. Saghir-un-nissa (1901) IL 23 All 433
Chapter-IV  Different Kinds Of Dower And Their Realization

due as dower, and to pray that in satisfaction of that amount he might be put into possession of his share of the estate.\textsuperscript{129}

If the husband files an application under the U.P. Encumbered Estate Act and there has been no demand by the wife and refusal by the husband, in respect of prompt dower, the failure of the wife to make a claim for it would not extinguish the debt under Section 13 of the Act.\textsuperscript{130}

Where the first suit is filed against the minor and her father for ejectment, it does bar a suit for dower debt against the minor and the father where in a joint decree is claimed along with the minor though some facts to be proved in both the cases are the same.\textsuperscript{131}

A Muslim wife like any other creditor may institute a suit for her dower and can obtain a decree against the assets of her husband.\textsuperscript{132}

According to the Limitation Act, the limitation period in case of a registered deed, 12 years if property is immovable (Section 62) and 3

\textsuperscript{129}  Buland Khan Vs. Janee, (1870) 2 NW 319; Ufzool Begum Vs. Ladilee Begum, 2 NW 325 and Imdad Hossein Vs. Hossein Bee Kesh (1869) 2 NW 327
\textsuperscript{130}  Mst. Khatoon Begum Vs. Saghbir Hussain, AIR 1945 All 321
\textsuperscript{131}  Shaikh Abdul Rashid Vs. Mst. Qudratunnissa, AIR 1924 All 713
\textsuperscript{132}  Zamin Ali Vs. Azizunnissa, AIR 1933 All 329

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years if property is movable (Section 55). So the suit should be filed within the limitation period.133

When the plaintiff did not know of her right to claim dower by reason of fraudulent conduct of the defendant, time would only begin to run against the plaintiff where she knew of the fraud.134

If talaq once becomes effective, the mere fact that the parties lived together and the talaq again given, would not prevent the running of time from the date of first talaq.135

A suit may be filed if the heirs of the husband wrongfully dispossess the widow; she is entitled to recover possession under Section 9 of the Specific Relief Act. In a suit for dower, she should file a claim for the entire dower, debt and not a part of it she cannot afterwards sue for the rest. Order II, Rule 2 of the Code of Civil Procedure, is applicable is dower, suits.136

133. Mazhrul Vs. Azimuddin, AIR 1923 Cal 507 at 513; Mst. Kubra Begum Vs. Fazal Hussain, AIR 1927 All 268
134. Mst. Khadim Bibi Vs. Bure Khan, AIR 1943 Kant 215
135. Mst. Hayat Khatun Vs. Abdullah Khan, AIR 1937 Lah 270
136. Kaneez Fatima Begum Vs. Ram Nanda Dhar Dube, AIR 1923 All
Chapter-IV  Different Kinds Of Dower And Their Realization

There is nothing to prevent a wife or widow for instituting a suit for dower for the purpose of obtaining a simple money degree against all the assets of her husband, including the property in her possession at least by surrendering possession of such property in her hands.\textsuperscript{137}

The wife or widow, or divorce or her heirs have a right to sue for the recovery of dower. But if she is already in possession of the husbands property enjoying right of retention of lien, she can file a suit for administration of property.\textsuperscript{138}

In the case of a valid marriage if it has been dissolved by divorce or apostasy of husband or wife, if consummation of marriage has taken place, the wife is entitled to recover full specified dower whether settled before or the time of or after marriage.\textsuperscript{139}

The dower will not be lost in any case even by apostasy or other misconduct of wife such as committed adultery or concealing illicit pregnancy or even by the murder of husband by her.\textsuperscript{140}

\textsuperscript{137} Amir Hasan Khan Vs. Mohd. Nazir Hasan, AIR 1932 All 345 at p. 347
\textsuperscript{138} Mohd. Sharifaat Vs. Wahida, 28 IC 199
\textsuperscript{139} Mst. Hakimibi Vs. Mir Ahmad, AIR 1931 Sind 17
\textsuperscript{140} Fulsambi Vs. Abdul Kadir, AIR 1921 Bom 205
Chapter-IV  Different Kinds Of Dower And Their Realization

If the marriage has been dissolved by the death of either party, whether consummation of marriage has taken place or not the dower becomes confirmed.141

The payment of prompt dower is often postponed till the dissolution of the marriage but wife is under no obligation to demand it at any time during coverture.142

Time will not run against the wife for suit for recovery of dower debt until in case of prompt dower there is positive and unambiguous demand, also a refusal.143

Time will not run against the wife for suit for recovery of dower debt where the marriage is dissolved by divorce only when it comes to wife’s notice.144

When a woman dies leaving her husband and three sons one of whom being minor as heirs. A suit of recovery of their shares of dower debt is brought by all. The suit is within time.145

141. Malik Iftikhar Wali Vs. Sarvari Begum, AIR 1929 All 369; See also Hedaya, 44 & 60
143. Mst. Zohrabibi Vs. Ganesh Prasad, AIR 1925 Oudh 267
144. Kathiyamma Vs. Urathel Marrarker, AIR 1931 Mad 637
Chapter-IV  Different Kinds Of Dower And Their Realization

It was held that "after consummation of marriage", non-payment of dower even though exigible, cannot be pleaded in defence of an action for restitution of conjugal rights; the rule so laid down having, or course, no effect upon the right of the wife to claim her dower in a separate suit."\(^{146}\)

If the husband sues for restitution of conjugal rights before consummation of marriage takes place, non-payment of the dower is a complete defence to the suit.\(^{147}\)

If the widow is inducted into possession either by consent or otherwise except by force or fraud she is entitled to retain the possession in lieu of dower payable to her and the limitation of three years from the date of the death of the husband does not operate in the event of possession of the property of the widow.\(^{148}\)

Where talaq deed by husband was not written in presence of Qazi and other witnesses. Date, month or year of talaq not mentioned in the deed. It was held that talaq deed was invalid.\(^{149}\)

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146.  *Abdul Kadir Vs. Salima* (1886) 8 All 149  
147.  *Hussein Khan Vs. Sardar Khan*, 35 Bom 386  
148.  *Syed Yosuf Akbar Hussaini Vs. Syed Murtuza Akbar Hussaini*, 1983 (1) Civil LJ 464 at p. 469 (AP); ILR 43 Mad 214; AIR 125 PC 63; AIR 1937 Lah 589; AIR 1930 All 881; AIR 1953 SC 413 – Relied on  
149.  *Shaikh Mobin Vs. State of Maharashtra*, 1996 (2) Civil LJ 754 (Bom)
Chapter-IV Different Kinds Of Dower And Their Realization

Talaq can be pronounced anywhere. Even selection particular Qazi too is not necessary for giving validity to talaq.\textsuperscript{150}

Law recognizes talaq by single pronouncement and also by three pronouncements. Only difference between these two is that talaq by single pronouncement is revocable if husband starts cohabiting with wife.\textsuperscript{151}

In this case, no evidence has been adduced by the husband either to prove that there was reconciliation attempt or to prove that the talaq pronouncement was attested by the persons from both the family or from both the Jamaths or to show three talaqs were pronounced through the said letter. Both the Courts would correctly hold that the letter does not indicate the pronouncement of triple talaq. Therefore, the decree passed by the Court below is correct.\textsuperscript{152}

According to the Shariat Law, the correct law for talaq as ordained by the holy Quran is that, talaq must be for a reasonable cause and proceeded by attempts for reconciliation between the husband and

\textsuperscript{150} Banu Vs. Kutubuddin Sulamanji Vimanwala, 1996 (1) Civil LJ 125 (Bom)
\textsuperscript{151} Banu Vs. Kutubuddin Sulemanji Vimanwala, 1996 (1) Civil LJ 125 (Bom)
\textsuperscript{152} M. Shahul Hameed Vs. A. Salimo, AIR 2003 Mad 162:2003 1 Mad LW 183 (Mad)
Chapter-IV  **DIFFERENT KINDS OF DOWER AND THEIR REALIZATION**

wife by two elders, one by wife's family and the other from the husband's family. If the attempts fall talaq may be affected the husband alleging that he divorced his wife must lead satisfactory evidence to prove the pronouncement of talaq. When the husband failed to prove pronouncement of talaq, order of family Court negative plea of divorce would be proper.\textsuperscript{153}

In the instant case, it was established that wife was minor at time of marriage. It was held that even if she had stayed with husband and marriage was consummated when she was minor, it would not end her right to repudiate marriage after attaining puberty.\textsuperscript{154}

Discretion of remission of *Mahr* by wife:

"And give the women on marriage their dower as a free gift, but if they of their own good pleasure, remit any part of it to you, take it and enjoy it with right good cheer."

(Quran - Sura 4: Aayat 4)

According to this provision the wife is free to either realize the whole amount of dower or remit the dower or any part of it of her own free will. This remission should be made without any consideration.

\textsuperscript{153} *Mohd. Ibrahim Vs. Mehrunisa Begum*, AIR 2004 Kant 261
\textsuperscript{154} *Shabnam Vs. Mohd. Shafiq*, AIR 2004 Raj 303
Chapter IV  DIFFERENT KINDS OF DOWER AND THEIR REALIZATION

Acceptance of remission of the dower by the husband or his heirs is not compulsory. But if the husband refuses to accept the remission, then it returns to the wife.\textsuperscript{155}

When the wife is under mental tension, such as her husband is on death-bed or has died, at that time if she makes a remission, her consent cannot said to be free.\textsuperscript{156}

The age of majority for the purpose of making remission should be 18 years as under the Indian Majority Act, 1875. But the Allahabad and Calcutta High Courts hold the opinion that the age of majority is to be determined under the Mohammedan Law i.e., on attaining puberty.\textsuperscript{157}

Remission can be made at any time after marriage whether it has been consummated or not. The remission of dower can be made before or at the time of marriage.\textsuperscript{158}

Indian Majority Act does not affect the discretion of a person to act in the matter of marriage and dower', and as such a wife who has

\textsuperscript{155} Nurannessa Vs. Khaje Moid., ILR 47 Cal 537
\textsuperscript{156} Hasnuniya Vs. Halimunnissa, AIR 1942 Bom 128
\textsuperscript{157} Qasim Hussain Vs. Bibi Kaniz, AIR 1923 All 649; Mazharul Vs. Abdul, AIR 1925 Cal 322
\textsuperscript{158} Ali Vs. Md., (1918) 41 Mad 1026; Najmunnessa Vs. Serajuddin, 1939 Pat 133
Chapter-IV  Different Kinds Of Dower And Their Realization

not attained majority according to the Act but has completed age of puberty may remit her dower.\textsuperscript{159}

If wife has not attained an age under the Indian Majority Act, even though she has attained puberty according to Islamic Law, she is not competent to relinquish her dower.\textsuperscript{160}

In a case it was held that wife was under great mental distress due to husband’s death and remission made during such conditions cannot be said to be of her free consent.\textsuperscript{161}

Actionable claim: As an actionable claim, it can be taken in execution of a decree like any other debt. It does not fall within the exception assignable properly created by section 6(e) of the Transfer of Property Act.\textsuperscript{162} The prohibition being absolute, any transfer in defiance of provisions is calculated to defeat its provisions and as such is void.\textsuperscript{163}

A wife has got every right to file a suit for recovery of dower and in such cases she would obtain a money decree against all property,

\textsuperscript{159} Qasim Hussain Vs. Bibi Kaniz, AIR 1932 All 649; Mst. Khadija Begum Vs. Nisar Ahmad, AIR 1936 All 887; Mulas, Section 291
\textsuperscript{160} Najimunnissa Vs. Sirajuddin, AIR 1939 Pat 133
\textsuperscript{161} Hasnumiya Dadamiya Vs. Halimunnissa, (1942) 44 Bom LR 126
\textsuperscript{162} Nibanthi Vs. Mohammuduli, AIR 1941 Nag 8
\textsuperscript{163} Ameer Hassan Khan Vs. H. Mohd. Nasir, AIR 1932 All 345
Chapter-IV  Different Kinds Of Dower And Their Realization

including the property of husband in her own possession, if any. Dower can be realized like any other debt.

Dower is an actionable claim and can be taken an execution of a decree like any other debt, and it will not fall within the exception assignable property created by Section 6(e) of the Transfer of Property Act, 1882.\textsuperscript{164}

It can be taken in execution of a decree like any other debt. It does not fall within the exception assignable property created by Section 6(e) of the Transfer of Property Act.\textsuperscript{165}

As an actionable claim it can be taken in execution of a decree like any other debt. It does not fall within the exception assignable property created Section 6(e) of the Transfer of Property Act.\textsuperscript{166}

Dower is not a secured Debt: A dower debt could not be co-owner is entitled to an equal share in the shared property. This position is different from a money debt, because owelty has a priority over a mortgage debt.

\textsuperscript{164} Saibanbi Vs. Mahamud Ali, AIR 1941 Nag 8
\textsuperscript{165} Ibid
\textsuperscript{166} Ibid
Chapter-IV Different Kinds Of Dower And Their Realization

The dower is an unsecured debt, which is recoverable by the wife on her heirs from the husband on the event of his death, from his assets. Since it is a debt, she is free to relinquish the same. Such a relinquishment can be made conditionally.\textsuperscript{167}

While any heir of husband may claim a share in the property and a simultaneous claim of wife for dower debt, the wife would get a priority for satisfaction of her dower debt before any claim of legal heirs are satisfied.

Remedies which other unsecured creditors have in such a situation would equally be available to wife in case of transfer to wife in lieu of dower, no less no more.\textsuperscript{168}

The dower debt of Mohammedan widow is not, properly speaking a charge upon the property of her husband, and the interest which she has in the property in her possession in lieu of dower debt is therefore an interest restricted in its enjoyment to her personally within the meaning of Section 6 (d) of the Transfer of Property Act, and as such is not capable of alienation.\textsuperscript{169}

\textsuperscript{167} Hasina Bano Vs. Alam Noor, 2007 Raj 49
\textsuperscript{168} Ghiasuddin Babu Khan Vs. C.I.T., AP., 1985 Tax LR 1058
\textsuperscript{169} Zobair Ahmad and another Vs. Jainandam Prasad Singh, AIR 1960 Pat 147 at p. 148
Chapter-IV  DIFFERENT KINDS OF DOWER AND THEIR REALIZATION

A widow or divorcee is entitled to compensation for bearing to enforce her right of the dower-debt and such compensation is in the form of interest on the principle amount of the dower.\textsuperscript{170}

A widow must sue for recovery of the entire dower debt due to her at one time she cannot afterwards sue for the balance.\textsuperscript{171}

The dower cannot be called a loan, as there has been no advance according to the provisions of U.P. Agricultural Relief Act.\textsuperscript{172}

A wife is not liable to be displaced by happening of any event not even her own death, because her heirs can claim the money if she dies and it is a debt within the meaning of Section 9(1)(b) of the Provincial Insolvency Act.\textsuperscript{173}

If there are no other creditors for outstanding debts against the husband then dower debt would be recoverable before any other legacies are paid.\textsuperscript{174}

On the death of husband, dower debt can be recovered from his heirs, and widow like any other creditor, institute a suit for her dower and can obtain decree against the assets of her husband.\textsuperscript{175}

\textsuperscript{170} Hamira Bibi Vs. Zubaida Bibi, (1916) 43 IA 294
\textsuperscript{171} Kameez Fatima Begum Vs. Ran Nanda Dhar Dube, AIR 1923 All 331
\textsuperscript{172} Rehuma Khatun Vs. Iqitaruddin, AIR 1943 All 134
\textsuperscript{173} Bibi Junbi Vs. Abbar Ali, AIR 1941 Nag 167
\textsuperscript{174} Nauwah Begum Vs. Hessain Ali, AIR 1937 Lah 589
\textsuperscript{175} Zamin Ali Vs. Azizunnissa, AIR 1933 All 329
Chapter-IV  DIFFERENT KINDS OF DOWER AND THEIR REALIZATION

A dower debt could not be presumed to be similar to owelty, where a co-owner is entitled to an equal share in the shared property. This position is different from a money debt, because owelty has a priority over a mortgage debt.\textsuperscript{176}

Discharge of claim of dower: A Muslim may discharge his duty to satisfy claim of dower before or after it becomes due, if the dower has not already been remitted by wife, in following manner:

(i) Cash payments: A husband may discharge his duty to pay dower if he pays in cash either the whole amount or in parts. If simple payments were made in varying amount from time to time by the husband but it was not allocated towards dower, neither the wife had accepted those amounts as dower, then these payments could not be said to have satisfied the dower debt. As such the amount or amounts paid should be expressly told to be towards satisfaction of dower debt.

A payment for satisfying dower debt of a minor or insane wife may be made to her, to her father, grandfather or other guardian.

A wife is not liable to be displaced by the happening of any event, not even her own death, because her heirs can claim the money if she dies.

\textsuperscript{176.} Hasan Bukhari Vs. Madan Chetty, AIR 1956 AP 87
Chapter-IV  **DIFFERENT KINDS OF DOWER AND THEIR REALIZATION**

and it is a debt within the meaning of Section 9 (1) (b) of the Provincial Insolvency Act.177

A Muslim widow's claim for dower is a simple money claim though that decree may be executed against the husband's property.178

(ii) **In lieu of cash payment:** Such types of transfers are called Hiba-bil-Ewaz, where husband transfers a property to satisfy a claim of dower. A Muslim marriage is a contract of which dower is a consideration and a transfer in lieu of dower is legal.179 Such transfer in lieu does not affect Section 53 of the Transfer of Property Act, which is a separate provision from that of Islamic Law.180

(iii) **Lieu of dower after death of husband:** After death of the husband widow’s right to dower accrues and she is entitled to retain the possession of husband’s property. If obtained lawfully and without force, may continue to retain the possession and it is called ‘widow’s right of retention’. If dower remains unpaid.181

Her right for retention of property for unpaid dower does not create a charge, mortgage or lien in the property. In the same case it

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179. *Subarunnessa Vs. Sabdu Shaitkh*, AIR 1964 Cal 693
181. *Miroshadalli Vs. Rashid Beg*, AIR 1951 Bom 22
was held that if she loses possession, the special right of retention is lost and she is at par with other unsecured creditors.

In case a widow is in exclusive possession of her husband’s estate, other heirs are entitled to demand an account for rents and profits received by her out of that property. In such a case widow would be entitled to compensation in the shape of interest on the dower debt.

When the widow is retaining the possession, if she is dispossessed unlawfully, she may bring a suit for possession of the property within the limitation period provided by Limitation Act. Widow is also entitled to bring a suit for recovery of dower against other heirs, even though she is in possession of property, but in that case the widow has to surrender the possession she is holding in lieu of her dower debt.

In case a widow is in exclusive possession of her husband’s estate, other heirs are entitled to demand an account for rents and profits received by her out of that property.\textsuperscript{182}

\textsuperscript{182.} \textit{Shaikh Salma Vs. Mohd. Abdul Kadar}, AIR 1961 AP 428
Chapter-IV  **Different Kinds Of Dower And Their Realization**

The right of retention accrues only on the death of husband or on divorce.\(^{183}\)

If a widow gets possession of the property and dies, her heirs are entitled to retain possession as widow's lien is heritable and transferable.\(^{184}\)

However, the Privy Council has expressed some doubt whether the widow can assign either her dower or her right to hold possession.\(^{185}\)

In *Kapoor Chand Vs. Kadar Unissa*\(^{186}\) the Supreme Court has laid down the three propositions:

(a) The widow is like any other creditor of the husband and cannot therefore; claim any priority for the dower debt over other creditors.

(b) The widow's claim for dower debt has priority over the claims of heir, and

(c) The heirs of the deceased husband are not personally liable for the dower-debt of the widow; the amount can be realized rateably from their share in the estate.

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183. Mulla Section 299
184. *Coooverbai Vs. Hayabi*, AIR 1943 Bom 372
185. *Maina Bibi Vs. Vakil Ahmad*, AIR 1925 PC 63
186. (1959) SCR 747
Chapter-IV  Different Kinds Of Dower And Their Realization

Where the husband had not specifically hypothecated his property for the dower debt, the widow’s possession gave her no right as against a purchaser in execution of a decree for sale passed on a mortgage executed by her husband.\(^{187}\)

The lien which a Mohammedan widow has over the estate of her deceased husband for her unpaid dower is a purely personal one and does not descend to her heirs, although the right to the dower itself passes to them by succession. It follows, therefore, that they cannot take possession of the husband’s estate under the claim for dower.\(^{188}\)

A purchaser of a deceased husband’s estate from a Mohammedan widow, in possession thereof pending payment of her dower, was not entitled to plead non-satisfaction of her dower debt to a claim by her husband’s heirs for their share of his inheritance, as the widow’s right to dower was personal to herself, and did not pass to a purchaser of the estate.\(^{189}\)

\(^{187}\). Ameer Annal Vs. Lankara Narayan Chatty, (1901) IL 28 Mad 658
\(^{188}\). Hadi Ali Vs. Akbar Ali, (1898) IL 20 All 262; Muzaffar Ali Khan Vs. Parbuti, (1907) IL 29 All 640
\(^{189}\). Ali Muhammad Khan Vs. Azizullah Khan, IL 6 All 50; See also Ghufoorun Bibi Vs. Mustakdeh, 2 Agra 300 and Azeemun Vs. Asgar Ali, 2 Agra Part II, 167

236
Chapter-IV  DIFFERENT KINDS OF DOWER AND THEIR REALIZATION

But a widow in possession of her husband’s estate pending was unascertained, but the widows were in possession of their deceased husband’s estate in satisfaction of their Mahr, they had a lien over it as long as any portion of the dower remained unsatisfied.\footnote{Ahmed Hussain Vs. Mussamut Khadija (1868) 3 BLR AC 28 note; 10 WR 369}

Where, however, she has obtained actual and lawful possession of the estate of her husband, under a claim to hold it for her dower, she will be entitled to retain possession until the debt is satisfied, with the usual liability for account to the heirs.\footnote{Mussamat Beebee Bachun Vs. Sheikh Hamid Hussain (1871) 10 BLR PC 45; SC 14 MIA 398; See also Amanatunnissa Vs. Bashirunnissa (1894) IL 17 All 77; Muhammad Karimullah Khan Vs. Amani Begum (1895) IL 17 All 93}

If she omits to put forward her claim for dower and assents to a person taking a legal she cannot afterwards retract her assent.\footnote{Reza Hossein Vs. Ifaatunnissa (1873) 24 WR 564}

Under the Mohammedan Law, there is no hypothecation without seisin, and therefore a widow has no absolute lien over any specific property of her deceased husband so as to enable her to follow it, as in the case of a mortgage, into the hands of a bonafide purchaser for value. As stated already, the widow’s claim for dower is only a debt against
Chapter-IV  Different Kinds Of Dower And Their Realization

the husband's estate and has priority over legacies and the rights of heirs.193

Remission of dower on condition — A wife has discretion of remission of her dower (besides provided under Article 9) in lieu of annuity of marriage.194

It is open to a lady to relinquish her entire dower debt in whatever claim she had on account of the dower debts against the heirs of her husband.195

The wife has the power to relinquish her whole dower or any portion of it in favour of her husband or his heirs only if the following conditions are fulfilled:—

(i) Time of Remission (Rule 95(i)) — Remission can be made at any time after marriage whether it has been consummated or not. No remission of dower can be made before or at the time of marriage.196

193. Wazedunnissa Vs. Shubratun (1870) 6 BLR 54
196. Ali Vs. Md., (1918) 41 Mad 1026; Najmunnissa Vs. Serajuddin, 1939 Pat 133
(ii) Capacity for Remission (Rule 95(ii)) — Only an major (adult) wife with sound mind can make a remission. Regarding the age of majority, the Courts have different opinions. According to Madras and Patna High Courts the age of majority for the purpose of making remission should be 18 years as under the Indian Majority Act, 1875. But the Allahabad and Calcutta High Courts hold the opinion that the age of majority is to be determined under the Mohammedan Law i.e., on attaining puberty.  

(iii) Consideration (Rule (iii)) - Remission can be made even without consideration.

(iv) Free Consent (Rule 95(iv)) — Remission should be made by the wife with her free consent. Consent is free when there is no coercion or undue influence. When the wife is under mental tension, such as her husband is on death-bed or has died, at that time if she makes a remission, her consent cannot said to be free.  

197. Qasin Hussain Vs. Bibi Kaniz, AIR 1923 All 649; Mazharul Vs. Abdul, AIR 1925 Cal 322
198. Hasumiya Vs. Halimunnissa, AIR 1942 Bom 128
Chapter-IV Different Kinds Of Dower And Their Realization

A remission of dower debt may be made conditionally, for example on execution of a Waqfnama.\textsuperscript{199}

It is open to a lady to relinquish her entire dower debt in whatever claim she had on account of the dower debts against the heirs of her husband.\textsuperscript{200}

A wife has discretion of remission of her dower in lieu of annuity of marriage.\textsuperscript{201}

Standing surety for dower — Under the Muslim Law it is valid for person, who is guardian of, whether husband or wife or both, to stand surety for payment of dower, although the wife may be minor. Even a stranger may make a contract for surety ship for payment of dower.\textsuperscript{202}

The consent to become a surety must be specific and express as where a father is his consent for marriage only that does not automatically make him a surety for payment of dower debt.\textsuperscript{203}

\textsuperscript{199} Latafat Husain Vs. Hidayat Husain, AIR 1936 All 573
\textsuperscript{200} Ram Prasad Singh Vs. Mst. Khudayatul Kubra, AIR 1948 Pat 163
\textsuperscript{201} Khadija Begum Vs. Nisar Ahmad, AIR 1936 Lah 887; Gulam Mohd. VS. Gulam Hosain, AIR 1932 PC 81
\textsuperscript{202} Smt. Fatima Vs. Ahmad Ali, AIR 1937 PC 121
\textsuperscript{203} Mohd. Siddiq Vs. Sahabuddin, AIR 1927 All 364
Chapter-IV  Different Kinds Of Dower And Their Realization

In Shia Law when his father contracts the marriage of an infant son and the child is poor, the obligation rests entirely on the father, and in the event of his death must be discharged out of the whole of his property whether child should arrive at maturity and become wealthy or die before it.\(^{204}\)

It is valid for a person who is guardian (whether-for husband or wife or both) to stand a surety for payment of dower although the wife may be minor.\(^{205}\)

Under Shia Law when marriage of an infant son is contracted by his father and child is poor, the obligation rests entirely on the father, and in the event of death of father the obligation would be discharged out of whole of his property whether child should attain maturity or even die before it.\(^{206}\)

Where a father is giving his consent for marriage only that does not automatically make him a surety for payment of dower debt.\(^{207}\)

Under the Muslim Law it is valid for a person, who is guardian of, whether husband or wife or both, to stand surety for payment of

\(^{204}\) Syed Sabir Hussein Vs. S. Farzand Hasan Khan, AIR 1938 PC 80
\(^{205}\) Mst. Fatima Bibi Vs. Lal Din, AIR 1937 Lah 45
\(^{206}\) Sayed Sabir Husain Vs. Farzand Hasan Khan, AIR 1938 PC 80
\(^{207}\) Mohd. Siddiq Vs. Sahabuddin, AIR 1927 All 364

241
Chapter-IV  **Different Kinds Of Dower And Their Realization**

dower, although the wife may be minor. Even a stranger may make a contract for surety ship for payment of dower.\(^\text{208}\)

Effect of apostasy- The effect of dissolution of marriage under a decree of the Court is regulated by Statute. According to Section 5 of the Dissolution of Muslim Marriages Act, 1939; a married Muslim woman shall have same rights in respect of dower after dissolution of marriage under the Act as she may have (after dissolution of marriage, by way of talaq, faskh, etc. under the Muslim Law. Hence, a Muslim woman whose marriage is dissolved under the aforesaid Act on the ground of apostasy of the husband is entitled to dower. The dissolution of marriage under the Act, even though made after apostasy of the wife, does not take away her right to dower and she is entitled to deferred (or half) dower even if the marriage is not consummated.

If a valid marriage has been dissolved (on account of the husband such as Divorce or Apostasy or any other act) before consummation of marriage:

\(^{208}\) *Smt. Fatima Vs. Ahmad Ali, AIR 1937 PC 121*
Chapter-IV  **DIFFERENT KINDS OF DOWER AND THEIR REALIZATION**

(a) The wife is entitled to receive one half of the specified dower settled at the time of marriage (settled before or at the time or after marriage under the Shia Law) excluding additions.

(b) Where the dower is settled after the solemnization of a valid marriage and the marriage is dissolved (on account of husband) before consummation of marriage, such a apostasy then the wife is entitled to a present only (under the Sunni Law), and to no portion of the dower.

(c) If a valid marriage has been dissolved (on account of the husband such as divorce or apostasy or any other act) before consummation of marriage and the dower is not specified the wife is entitled to a present only and to no portion of the dower.

(d) Where a valid marriage has been dissolved by the husband or the wife in exercise of an option of repudiation, before consummation of marriage the wife would get nothing.

(e) If a valid marriage has been dissolved, on account of wife’s apostasy or adultery before consummation of marriage, the wife would get nothing.

(f) The amount of present is determined on the basis of the social position, status and means of the husband.

**Payment of Mahr on death of either party —**

(i) Under Sunni Law, on the death of either party to a valid marriage, irrespective of the fact whether the marriage is consummated or not the wife is entitled to receive either
specified dower (including additions) settled before or at the
time of or after marriage or proper dower if the dower is not
specified.

(ii) Under the Shia Law, if either party to marriage dies before
consummation and no dower has been specified, the wife
would get nothing.

In the case of valid marriage full specified dower or if it has not
been specified then proper dower whether the marriage has been
consummated or not because of the death of the husband or the wife
marriage is rendered complete and everything becomes established and
confirmed by its completeness.\textsuperscript{209}

Under the Sunni Law—

(i) In the case of a valid marriage, whether the consummation of
marriage has taken place or not, if the husband or the wife dies,
the wife (If dies then her heirs) is entitled to full specified dower
including prompt and deferred, which also includes any
additions made after marriage. The Specified Dower may be
settled either before marriage or at the time of marriage or even
after marriage. (Rule 91 (i)).

\textsuperscript{209} Malik Iftikhar Wali Vs. Sarwari Begum, AIR 1929 All 369
(ii) In the case of a valid marriage whether consummated or not if one of the party to marriage dies, and no dower is specified, then the wife is entitled to proper dower under the Sunni Law. (Rule 91(1))

Under the Shia Law, if either party to marriage dies before consummation and if the dower is not settled, the wife is not entitled to anything neither dower nor present and if it has been agreed to be specified later, then she is entitled to one half of dower [Rule 91(ii)].

Jurisdiction of Court - The jurisdiction of the Court for filing the suit for dower is settled according to the cause of action, i.e., if an agreement for dower at the time of marriage or a Dower-Deed is made or executed. The place where the agreement is made, or the Dower-Deed is created at the time of marriage will be the within jurisdiction of the Court where the suit will lie. The agreement between the husband and wife for payment of dower undoubtedly be a part of the cause of action for maintaining a suit for its recovery and the place where such agreements entered into would be a place where a part of cause of action for such suit arises. 210

210. *Smt. Nasra Begum Vs. Rijwan Ali, AIR 1980 All 118 at p. 120*
Chapter-IV  Different Kinds Of Dower And Their Realization

The Family Court has no jurisdiction to entertain a petition for sum of Mahr or dower filed by divorced Muslim women. Only Magistrate concerned can entertain such petition.\textsuperscript{211}

The absence of any power to Court for decreasing amount of dower has been judicially deplored.\textsuperscript{212}

The plea that suit for restitution of conjugal rights filed by wife, is not maintainable under the Mohammedan Court can be raised before Trial Court and not before Revisional Court.\textsuperscript{213}

If the marriage was celebrated abroad, and the parties were resident in England, even then the English Courts will refuse to recognise a divorce not obtained through a validly constituted Court of Justice.\textsuperscript{214}

Miscellaneous Cases: In case of registered deed under Article 62 of the Limitation Act period of Limitation is 12 years if immovable property is hypothecated.\textsuperscript{215}

\textsuperscript{211} Amjoun Hasan Siddiqui Vs. Smt. Salma B., AIR 1992 All 322
\textsuperscript{212} Mohd. Sultan Begum Vs. Sarajuddin, AIR 1936 Lah 183
\textsuperscript{213} W. Sarajuddin Vs. Shaziya, AIR 2003 Kant 224:2003 (2) DMC 618
\textsuperscript{214} Shaw Vs. Gould (1868) LR 3 HL 55
\textsuperscript{215} Mazarul Vs. Azimuddin, AIR 1923 Cal 507
Chapter-IV  Different Kinds Of Dower And Their Realization

If Talaq once becomes effective the mere fact that the parties lived together and the talaq again given would not prevent the running of time from the date of first talaq.\textsuperscript{216}

In case of consummated marriage, the dower will not be lost in any case even by apostasy or other misconduct of wife such as committing adultery or concealing illicit pregnancy or even by the murder of husband by her.\textsuperscript{217}

The widow's right of retention is to some degree analogous to mortgage yet there is no real analogy between the two.\textsuperscript{218}

If it is admitted that dower was specified, but there is no satisfactory evidence of it, the burden of proof being wife only, the amount admitted by the husband to have been settled may be allowed.\textsuperscript{219}

The widow is entitled to equitable compensation by way of interest on dower, as she is creditor of the husband.\textsuperscript{220}

\textsuperscript{216}  Mst. Hayat Khatun Vs. Abdullah Khan, AIR 1937 Lah 270
\textsuperscript{217}  Kulsambi Vs. Abdul Kadir, AIR 1921 Bom 205
\textsuperscript{218}  Mst. Maina Bibi Vs. Vakil Ahmad, AIR 1925 PC 63
\textsuperscript{219}  Mst. Bhuri Vs. Asgari, AIR 1926 Lah 458
\textsuperscript{220}  Mst. Maimunia Vs. Sarafatullah, AIR 1931 All 403
Chapter-IV Different Kinds Of Dower And Their Realization

The Courts have, however, some discretion in determining whether interest should be allowed in case of dower.\textsuperscript{221}

The Privy Council has expressed some doubt whether the widow can assign either her dower or her right to hold possession although the question was not decided.\textsuperscript{222}

A widow must sue for recoveries of the entire dower debt due to her at one time she cannot after-wards sue for the balance.\textsuperscript{223}

A post-nuptial agreement of dower requires the concurrence of both the parties i.e., an offer by husband and acceptance by the wife or her guardian.\textsuperscript{224}

Where a suit for claim of dower debt has to be filed against heirs of husband, heirs are not personally liable for dower debt, but each heir is liable for such debt to the extent of his share in the estate. Thus, if a suit is to be filed for dower claim it must be filed against all heirs.\textsuperscript{225}

As the claim of dower debt and its relief granted would be a simple money claim, such decrees may be executed against the property

\textsuperscript{221} 
\textit{Niwasi Begum Vs. Dilafroz}, AIR 1927 All 39

\textsuperscript{222} 
\textit{Maina Bibi Vs. Vakil Ahmad}, AIR 1925 PC 63

\textsuperscript{223} 
\textit{Kaneez Fatima Begham Vs. Ram Nanda Dhar Dube}, AIR 1923 All 331

\textsuperscript{224} 
\textit{Mst. Hakimibi Vs. Mir Ahmad}, AIR 1931 Sind 17

\textsuperscript{225} 
\textit{Imperial Bank of India Vs. Bibi Sayedan}, AIR 1960 Pat 132
Chapter-IV Different Kinds Of Dower And Their Realization

of the husband and the property cannot be charged against any specific portions.226

In a suit filed by widow for her dower debt, a decree should be passed against the assets left by the husband and not against those personally into whose hands those assets fall.227

A decree for dower debt should not be passed to create a charge on the property, but if the decree is allowed to become final between the parties. It would create a charge.228

The liability to pay deferred dower binds the husband during his lifetime and his property after his death and if the wife predeceases the husband, the dower would become due immediately and will not be postponed till the death of the husband.229

The Court would not ordinarily create a charge on any property while passing a decree for dower; it can pass a simple money decree.230

A Muslim marriage is a contract of which dower is a consideration and a transfer in lieu of dower is legal.231

226. Abdul Rahman Vs. Inayat Bibi, AIR 1931 Oudh 63
227. Sultan Nachi Vs. Salamar Bibi, AIR 1938 Mad 25
228. Syed Qasim Hussain Vs. Habeebur Rahman, AIR 1929 PC 174
229. Maer Mehr Ally Vs. Mst. Amnee, 11 WR 212
230. Mst. Ahmadi Vs. Abdullah, AIR 1934 Oudh 437
231. Suburanessa Vs. Sabdu Shaikh, AIR 1934 Cal 693
Chapter-IV  Different Kinds Of Dower And Their Realization

However, such transfer in lieu does not affect Section 53 of the Transfer of Property Act, which is a separate provision from that of Islamic Law.²³²

If simple payments were made in varying amounts from time to time by the husband but it was not allocated towards dower, neither the wife had accepted those amounts as dower, then these payments could not be said to have satisfied the dower debt.²³³

The talaq has not been pronounced thrice through the letter and as it is not a triple talaq. The said talaq is not valid.²³⁴

Attempt for mediation although encouraged but its absence would not invalidate talaq.²³⁵

Presence of two witnesses of the time of pronouncing talaq makes it a valid talaq. Even consent of wife for talaq is not necessary.²³⁶

In addition to above it has also been noticed and observed from the practices prevailing in the Muslim society in India that husbands generally use to take the plea in cases of payment of prompt or deferred

²³²  Har Pd. Vs. Mohd. Usman Khan, AIR 1943 All 2; Bibi Kubra Vs. Jainandam Prasad, AIR 1955 Pat 270; Ameer Ali, 1-211
²³⁴  M. Shahul Hameed Vs. A. Salim, AIR 2003 Mad 162:2003 (1) Mad LW 183 (Mad)
²³⁵  Banu Vs. Kutubuddin Sulemanji Vimonwala, 1996 (1) Civil LJ 125 (Bom)
²³⁶  Ibid

250
dower that he has already presented some valuables like gold ornaments or has transferred some immovable property to his wife in lieu of her claim of dower. Keeping in view the observation of different courts on the issue, it may be deduced that if such gifts and property are not accepted by the wife in lieu of her claim of dower then such gifts and transfer of properties cannot be said to have satisfied her claim for dower.

The researcher has an opportunity to conduct an intensive survey of the related cases of dower in various High Courts and the Supreme Court of India, whereby it has been found that the cases on the said subject were quite small in number, which have already been discussed in the preceding chapter. Hence, the researcher ventured to conduct the random survey of the official records available in the District Courts of Aligarh and Agra. Having tried to exhaust all the possible efforts, the researcher managed to find out three important cases decided in 2013 namely (i) Salma Begum Vs. Azmat Ali (2013) (ii) Saima Aziz Vs. Muslim Khan (2013) (iii) Syed Humaira Vs. Syed Imran Agha (2013) (the copies of which have been annexed herewith). In all the above cited cases, the wife had filed an application seeking the recovery of dower from her
Chapter-IV  Different Kinds Of Dower And Their Realization

husband under Section 3 and 4 of the Muslim Women (Protection of the Right and Divorce) Act, 1986 wherein the Court unanimously passed an order to pay the amount of dower which is specified in the Nikahnama along with other claims. It is also pertinent to mention here that in all the above cited cases, the Muslim women had filed the instant suits only after the dissolution of their marriages.
Chapter V

Muslim Women’s Right To Mahr On The Dissolution Of Marriage

- The Approach of Shariah law on Mahr and Dissolution of Muslim Marriage
- Dissolution of Muslim marriage Act, 1939
- Mahr, Nafaqah & Mata’: Nature and Inter-Relationship
- Muslim Widow’s Right to retain possession of husband’s estate in lieu of dower
- Salient Features for right of retention
Chapter-V  MUSLIM WOMEN’S RIGHT TO MAHR
ON THE DISSOLUTION OF MARRIAGE

Nature demands that men and women lead their lives together. The ideal way of leading such a life is, according to the Shariah within the bonds of marriage. Once a man and a woman are tied together in the bonds of matrimony, they are expected to do their utmost, till the day they die to honor and uphold what the Quran calls their firm contract, or pledge. However, it sometimes happens, with or without reason that unpleasantness crops up and goes on increasing between husband and wife, with no apparent indication of their being able to carry the relation smoothly and their marriage has because devoid of love and affection, in such circumstances Shariah law desires that disgruntled spouse should separate from each other by dissolving the marriage. In such a case, the best strategy according to the Quran is to introduce a third party who will act as an arbitrator. But if the arbitration fails then there are various commandments in Quran and in the Hadiths regarding divorce. The Prophet (P.B.U.H.) considered it as being the most hateful of all the lawful things (abghad-ul-mubahat) in the eyes of God, and said that when it does take place, it should be done in an atmosphere of goodwill. In no way should one harbour ill will against the other.
Chapter V  Muslim Women's Rights to Mahr On The Dissolution Of Marriage

Since Islam has recognized the extra-judicial mode of marriage dissolution as a general policy and judicial one only as an exceptional measure. This is demanded by circumstances like fault or guilt of either or both the parties. The dissolution of marriage in practice has acquired different forms. The Muslim women's rights to Mahr can be determined with reference to respective form of marriage dissolution followed in a particular case.

Below is given an account of the various existing forms of marriage dissolution and the entitlement to Mahr in each case by the divorced woman.

The Approach of Shariah law on Mahr and Dissolution of Muslim Marriage

Cases/Circumstances:

The Act of bringing marriage tie to an end by a unilateral action of the husband is called the talaq and that under the unilateral action of the wife, who may have reserved in the marriage contract an authority delegated by the husband to pronounce a divorce is called talaq-tafwidh. As regards the position of Mahr in these cases, unless there is an agreement to the contrary, the wife will be entitled to-
Chapter-V MUSLIM WOMEN'S RIGHT TO MAHR ON THE DISSOLUTION OF MARRIAGE

a) In lawful marriages:

(i) If consummated\(^1\) - the whole 'specified' Mahr; when Mahr is unspecified, the 'proper' Mahr;

(ii) If unconsummated - half of the specified Mahr if unspecified,\(^2\) only mata\(^3\)

b) In irregular marriages (recognized by Hanafi Law):

i) If consummated - 'specified' or 'proper' Mahr whichever is less;

ii) If unconsummated - no Mahr;

iii) If consummated 'presumptively' only - no Mahr.

In case of irregular marriages, 'valid retirement' is not equated with actual consummation for the purposes of Mahr.\(^4\)

Cases of khula'

Termination of marriage by the husband at the request of the wife is called khula'. It literally means 'to put off'. Here the husband lays down his right over his wife at her request when she gives or agrees to give iwaz (some consideration) to the husband for her release from the marriage tie.

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2. This rule was applied by Madras High Court in Tajbi Vs. Nattar Shariff, AIR 1944 Mad. 888.
3. Mata' is a benefit to be given to the wife, which under Hanafi law cannot be more than half of Mahr.
Chapter-V  

**MUSLIM WOMEN’S RIGHT TO MAHR**

**ON THE DISSOLUTION OF MARRIAGE**

The Quran provides:

*Then if you fear that they (the husband and the wife) cannot keep within the limits of Allah, there is no blame on them for what she gives up to become free thereby.*

To the same effect is the famous hadith when Prophet (S.A.W.) asked Thabit Ibn Qays to release his wife Jamila, daughter of Abdullah B. Ubbay b. Salut, who had requested for that, in return of the orchard which he had given to her as *Mahr*.

It is, therefore, open to the spouses to agree to khula’ on the condition that the wife surrenders or returns her *Mahr* to the husband. Hence, whatever may in law constitute *Mahr* in marriage can also form the iwaz in khula’ and the wife may agree not to claim from the husband her hitherto unpaid *Mahr* or any part thereof which she will lose accordingly. It can, however, be made an express condition of khula’ that the wife’s *Mahr* or a portion of it shall remain payable by the husband. If the whole *Mahr* has already been paid to her, she may agree to make a specified payment to the husband as iwaz (which may or may not be regarded as the return of *Mahr*). Where an agreement of khula’ is silent on the question of iwaz there is difference of opinion.

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among Hanafis about the husband’s liability for payment of Mahr to the wife. According to Imam Abu Hanifa the husband’s liability for Mahr is discharged, but according to both of his disciples, it is not.6

Different opinions exist about husband’s liability for payment of wife’s Mahr and wife’s liability for its return if it has already been paid to her. Where the spouses settle iwhaz other than Mahr and no mention has been made about the Mahr, the following results will follow:

a) If the marriage has been consummated and the whole Mahr has been paid to the wife, she shall be entitled to retain it according to the unanimous view of Abu Hanifa, Imam Muhammad and Abu Yusuf. The husband will get only the consideration agreed upon.7 But if the Mahr has not been paid to her, then according to Abu Hanifa, she is not entitled to claim the Mahr because, according to him, khula’ puts an end to the rights which the spouses have against each other except the wife’s maintenance and residence during her iddah. But according to Abu Yusuf and Imam Muhammad the wife shall be entitled to claim it from her husband because it becomes due if the marriage has been consummated.8

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6. Hedayat, Fatawa-i’-Alamgiri and Bhshty Zewar refer to the former opinion as the law but the Courts usually apply the concurrent opinion of the disciples where both of these differ from the great Imam: (i) Ayub Ali Khan Vs. Aliaf (1982) 11 All 429 (ii) Abdul Kadir Vs. Salama (1886) 8 All, 149.

7. Fatawai Qadi Khan, Vol. III, p. 256 (Kanpur, 1310 AH)

8. Ibid
b) If the marriage has not been consummated and the whole *Mahr* has been paid to her, according to Abu Hanifa the husband will not be entitled to the return of any portion of *Mahr*. He shall, of course, take the consideration that may have been agreed upon. But according to his disciples, the wife shall have to return half of *Mahr*, to the husband and will be entitled to keep half of it.\(^9\)

c) If the marriage has not been consummated and *Mahr* has not been paid to her, then according to Abu Hanifa no amount of *Mahr* shall be due to her. She shall not be entitled to get her *Mahr* or any portion of it from her husband and shall pay to him the consideration agreed upon.\(^10\) According to Abu Yusuf and Imam Muhammad, the wife shall be entitled to get half of her *Mahr* from the husband.\(^11\) The consideration agreed upon has, of course, to be paid by the wife to the husband in each case.

If the husband divorces his wife by *khula' in consideration of her *Mahr* and in case the marriage has not been consummated and the whole *Mahr* has been paid to the wife, then the husband shall be entitled to its return by the wife. If it has not yet been paid to her, the husband's liability for the same shall cease.\(^12\) There are two opinions expressed by Hanafi jurists. According to one, the same rule shall apply as held by Abu Hanifa regarding *Mahr* in *khula'*. But according to

\(^9\) Ibid
\(^10\) Ibid
\(^11\) Ibid
\(^12\) Ibid
Chapter-V  Muslim Women’s Right to Mahr
On the Dissolution of Marriage

Second opinion which is generally believed to be correct, the same rule shall apply as laid down by Imam Muhammad and Abu Yusuf.\(^\text{13}\)

According to the Maliki view if the marriage has not been consummated and the parties settle khula’ for a specified consideration, the wife shall have to pay the specified consideration and her right to get Mahr shall get extinguished. She shall not be entitled to get the whole or any portion of it.\(^\text{14}\)

According to Shafi’i view, if the spouses agree to a khula’ for a particular consideration and the marriage has not been consummated, the wife shall be entitled to half of the Mahr. If the whole Mahr has been paid to her, she shall have to return half of it; while if it has not been paid to her, the husband has to pay half of Mahr to her.\(^\text{15}\)

According to Imam Ahmad Ibn Hanbal the right to Mahr is not lost in consequence to the khula’ and the husband remains liable for its payment if the same has not already been paid to the wife.\(^\text{16}\)

Cases of Mutual Consent (mubara’a)

Where the agreement to dissolve marriage emanates from a concurrent desire of both the spouses, the divorce is called mubara’a

\(^{13}\) Ibid
\(^{14}\) Sunan, al Mudawwans al Kubra, Vol. V, P. 21 (Cairo, 1323 AH)
\(^{15}\) Ibn Qudamah, Al-Mughni, Vol. VII, P. 56 (Cairo 1367 AH)
\(^{16}\) Ibid
Chapter-V  Muslim Women's Right To Mahr
On The Dissolution Of Marriage

(that is by mutual consent). In such a case iwaz may or may not be specified. Where the agreement of mubara’a is silent on the question of iwaz the wife’s entitlement to Mahr is to be determined as follows:

i) according to Imam Abu Hanifa and Imam Abu Yusuf the presumption is that the husband’s liability relating to Mahr is discharged;

ii) in the opinion of Imam Muhammad al-shayabani the Mahr is not discharged.17

Cases of faskh

The termination of marriage by the qadi, either on his own initiative or at the instance of the wife or a third person is called faskh. In cases of marriage dissolution by faskh for determining the position of Mahr broadly the rules determining the position of Mahr in the cases of talaq, khula’ etc. apply with modification having reference to the defects of the spouses, consummation etc.

Under Sunni law a wife shall get the whole of her Mahr if the marriage has been consummated or under the Hanafi, Maliki or Hanbali laws if there has been a ‘valid retirement’ irrespective of the

17. The majority opinion has been supported by Maulana Ashraf Ali Thanwi, Bihishti Zewar, Vol. IV, p. 40.
Chapter-V  Muslim Women’s Right to Mahr On the Dissolution of Marriage

fact whether it is dissolved by the husband or the qadi.\textsuperscript{18} But in the absence of consummation or valid retirement she shall be entitled to half of the Mahr when marriage is dissolved by the husband.\textsuperscript{19} If dissolved by the qadi on account of a defect in the wife, she shall not be entitled to get any Mahr whatsoever.\textsuperscript{20}

Under the Shia law if a marriage is cancelled before consummation either by the husband or the wife on account of the specified defects in the other, no Mahr shall be payable to her.\textsuperscript{21} This is subject to one exception, namely when the marriage is cancelled by the wife on account of husband’s impotency, she shall be entitled to get half of her Mahr.\textsuperscript{22}

If the marriage is cancelled either by the husband or by the wife after its consummation, the wife shall get her full Mahr.\textsuperscript{23}

In a consummated marriage the unpaid Mahr ordinarily becomes payable when the marriage is dissolved. If an unconsummated marriage is dissolved by the act of the wife no Mahr is payable, where

\textsuperscript{18} Sharaf al Din al Maqdisi, Al-Iqna Vol. III, p. 200 (Cairo, n.d.)
\textsuperscript{19} Ibid
\textsuperscript{20} Ibid
\textsuperscript{22} Ibid
\textsuperscript{23} Ibid

261
Chapter-V  MUSLIM WOMEN’S RIGHT TO MAHR
ON THE DISSOLUTION OF MARRIAGE

the wife exercises her ‘option of puberty’ before consummating the
marriage no Mahr is due.

Where a marriage is dissolved on the ground of husband’s
impotency, if the marriage has not been consummated (under Hanafi
law including ‘valid retirement’) half the Mahr is due if ‘specified’, if
Mahr is not specified only mata’ is due valuing under Hanafi law half of
proper Mahr. In an irregular (fasid) Hanafi marriage, if it has been
consummated (actually not presumptively) the specified or proper
Mahr whichever is less, is due; in the absence of actual consumption
no Mahr is due. Under the Shafi’i and Ithna Shari laws, when a wife
annuls her marriage (unilaterally and extra-judicially), before its actual
consummation, on the ground of husband’s insanity or inability to
provide maintenance, she cannot claim any Mahr, but if it has been
consummated the whole Mahr becomes due.

To sum up when a marriage is dissolved by the Qadi on account
of some defect in the wife her entitlement to Mahr will be:

i) If unconsummated (actually or “presumptively”) - no Mahr;

ii) If consummated (actually or “presumptively”) – whole Mahr
    payable
Chapter-V  Muslim Women’s Right To Mahr On The Dissolution Of Marriage

When the marriage is dissolved by either party due to other’s defect (under Shia law) the position of Mahr will be:

i) if an unconsummated marriage is cancelled either by the husband or the wife on account of specific defects (excepting husband’s impotency) in the other – no Mahr is due to the wife;

ii) in case of husband’s impotency she shall be entitled to half of the Mahr;

iii) if the marriage was consummated full Mahr shall be due.

When the dissolution of marriage takes place by the act of the wife, she will be entitled to, if the marriage was –

i) unconsummated – no Mahr;

ii) unconsummated and dissolved by exercising option of puberty by her – no Mahr;

iii) unconsummated (actually or “presumptively”) and dissolved on the ground of husband’s impotency – if specified, half of the Mahr – if unspecified only mata’ payable;

iv) unconsummated and annulled by her under classical Shafi’i, or Ithna Ashari law on the ground of husband’s insanity or inability to maintain her – no Mahr;

v) consummated and annulled as in (iv) – whole of the Mahr payable;
vi) an unconsummated irregular marriage is repudiated by the wife - no Mahr payable;

vii) a consummated (actually, not by "presumption") irregular marriage if repudiated by the wife - whole Mahr payable.

Cases of li‘an

In case of li‘an the entitlement of the wife to Mahr can be determined with reference to the following hadith:

Narrated Sa‘ad bin Jubair:

I asked Ibn Umar, “what is the verdict if a man accuses his wife of illegal intercourse”. Ibn Umar said, “The Prophet (S.A.W.) separated (by dissolution of marriage) a couple of Bani al-Ajlan and said to them Allah knows that one of you two is a liar; so will one of you repent? But both of them refused, so he (S.A.W.) separated them by divorce. He again said, “what about the Mahr that I have given to my wife?” It was said, “You have no right to restore any money, for if you have spoken the truth you have also shared life with her and if you have told a lie, you are less rightful to have your money back.”

It can be inferred from this hadith that the position of women’s right to Mahr where marriage is dissolved by li‘an will be:

i) if the marriage was consummated, the whole specified Mahr or proper Mahr, if it was unspecified;

ii) if the marriage was unconsummated, under general Quranic law the half of the ‘specified’ Mahr; if Mahr was unspecified, only mata’. 25

iii) If the whole or part of Mahr has already been paid, guidance may be taken from the Quranic principle given below:

Nor should ye treat them with harshness, that ye may take away part of the Mahr ye had given them; except where they have been guilty of open lewdness.26

It may be pointed out that mere suspicion may not amount to open lewdness. It warrants strict interpretation. This principle will apply to both consummated and unconsummated and unconsummated marriages as the Quran is silent about any distinction in the respect.

Cases of ila’

Ila’ is a kind of desertion in which the husband decided to keep away from the wife without divorcing her. If the husband actually keeps away from the wife and does not resume cohabitation till the expiry of four months, the law enables the wife to become free from the

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25. II:236, 237
26. IV:19
Chapter-V  Muslim Women’s Right to Mahr
On the Dissolution of Marriage

marriage. In Hanafi law, the marriage is automatically dissolved by talaq; in Shafi’i and Ithna Ashari laws, the wife can sue for faskh. Now where the marriage of a wife has dissolved through ila’ her entitlement to Mahr will be the same as in case of talaq if the Hanafi law is applicable to the parties or it will be the same as in the case of faskh if the Shafi’i or Ithna Ashari laws are applicable to parties.

Cases of zihar

The word zihar is derived from ‘zahr’ (back). Zihar means “to oppose back to back”. It is explained that when there is discord between the husband and the wife, they instead of remaining face to face towards each other turn their backs against each other. In the language of law it signifies a man comparing his wife to any of his female relation within such prohibited degree of relationship, whether by blood, fosterage or affinity, as renders marriage with her invariably unlawful. In such cases, the husband is expected to expiate and resume cohabitation. The wife also become entitled to call her muzahir husband to return to his matrimonial duties and on his failure to do so approach the qadi who shall force the husband either to perform the necessary expiation or divorce the wife. Some authorities have laid down the rule

27. Supra note 1, p. 107.
that the qadi should give the husband three months time either to make expiation and to return to his wife or to divorce her. If the husband fails to do either, the qadi can use coercive measures to compel him to adopt one of the alternatives.28 The general opinion is that the qadi cannot himself pronounce a divorce on behalf of the husband. However, in the subcontinent, if the husband continues to keep away from the wife, faskh may be sought by the wife under statutory law.29

From the nature of zihar it is clear that if the husband chooses to divorce the wife, his liability for Mahr of the divorcée will be the same as that in talaq. But, if the marriage is dissolved by grant of faskh similar rules will apply, as discussed above.

Cases of khyar al-bulugh (option of puberty)

When the dissolution of marriage takes place by the exercise of ‘option of puberty’ and the marriage has not been consummated, the woman is not entitled to Mahr; but if the marriage has been consummated, she is entitled to her full Mahr irrespective of the fact whether the separation has taken place by her own option or by the option of her husband.30

29. Section 2(ix) of the Dissolution of Muslim Marriages Act, 1939.
Chapter-V  Muslim Women's Right To Mahr On The Dissolution Of Marriage

Cases of Irtidad or Apostasy

If the marriage has been consummated or if under the Hanafi, Maliki and Hanbali laws there has been a 'valid retirement', the wife shall be entitled to her whole Mahr irrespective of the fact whether it is the husband or the wife who has left the fold of Islam.\(^{31}\)

If a marriage has not been consummated or under the Hanafi, Maliki and Hanbali laws there has not been a 'valid retirement', the wife shall get half of the Mahr if it is the husband who has renounced Islam but she shall not be entitled to get any Mahr if it is she herself who has renounced the faith.\(^{32}\)

Cases of Automatic Dissolution of Marriage

The automatic termination of marriage is called furqah (separation). In Islam marriage gets automatically dissolved on:

i) the death of one of the spouses;

ii) apostasy of one of the spouses;

iii) under the Sunni law, on the fulfillment of a condition in the case of a conditional divorce; or

iv) change of domicile in case of non-Muslims.

\(^{31}\) Ibn Abidin, Radd al-Muhtarr, Vol. III, p. 402 (Cairo, 1318 AH)
\(^{32}\) Ibid
If a marriage is dissolved by the death or for a cause imputable to the husband then it has, generally speaking, the effect of talaq or divorce on the ground that the dissolution of marriage has been brought about by the husband and he should be deemed to have divorced his wife. Thus, if the marriage is dissolved on the ground that the husband is impotent or insane or the like then the dissolution of the marriage will have the effect of talaq even though the marriage is dissolved by the qadi at the instance of the wife. The dissolution of marriage by or at the instance of a wife is called faskh (termination). If the marriage is dissolved due to a cause attributable to the wife then also it should have the effect of faskh or termination of the marriage by the wife. Thus if it is dissolved by the wife in the exercise of the option of puberty or by the qadi on the ground of some serious blemish in her, then it shall be deemed to be faskh by the wife.33

It may be added here that the above is not an invariable rule of law and there are certain exceptions to it. Thus, if a marriage is dissolved on account of the apostasy of the husband or adoption of a domicile in dar al-harb when the wife resides in dar al-Islam, then the

33. Id. Vol. III, p. 315, Faskh is the termination of marriage by the qadi either on his own initiative or at the instance of the wife or any third person.
dissolution shall be considered to be faskh, although the marriage is dissolved for a cause attributable to the husband.

The effect of both these methods, namely, talaq and faskh is the same as far as dissolution of marriage is concerned. The difference is in the extent of the husband’s ability for payment of Mahr and the number of divorces affected.

Assorted Marriages

A marriage can be dissolved at the instance of certain near relations of the wife if she contracts a marriage for a Mahr which is less than the proper Mahr in her family or if the husband is otherwise unequal to the girls family. Mahr is being treated as a criteria of inequality and such marriages between the unequals have been termed as ill-assorted marriages. By Mahr in this respect is meant the proper Mahr of the wife because there is no present liability for the payment of her deferred Mahr. There, however, exists a difference of opinion as to whether the ability to pay the wife’s Mahr or maintenance is a condition of equality in marriage. Abu Yusuf does not hold it to be an essential condition on the ground that payment of Mahr can admit delay, but the
payment of maintenance cannot be delayed. But the generally accepted view is that the husband’s ability to pay wife’s *Mahr* is an essential condition of equality in marriage.

As already stated, the *Mahr* of a girl should not be less than the proper *Mahr* prevalent in her family. If the *Mahr* fixed is less than the proper *Mahr* then the man cannot be considered to be the equal girl. This matter may be considered from several aspects as given below:

**Inadequate *Mahr* agreed upon by the wife**

When a girl contracts a marriage for an inadequate *Mahr*, according to the Hanafi view her guardian for marriage or a near collateral can get the marriage dissolved on that ground. This is based on the reason that the interests the other girls in the family shall be adversely affected by this act of the wife. The fixation of lower *Mahr* also affects the prestige of the girl’s family.

*Abu Yusuf* and Imam Muhammad hold the view that the father or guardian or near relations are not possessed of any such authority. They base their opinion on the ground that the *Mahr* belongs to the wife and, therefore, she can lawfully relinquish a portion of it by accepting

35. Supra note 30, at p. 268
36. Supra note 34, at p. 272
37. Ibid
lower amount of *Mahr*. They further contended that it is open to a woman after the amount of her *Mahr* has been specified to relinquish a portion of it and that there is no difference in the cases when *Mahr* is relinquished before or after the marriage. Abu Hanifa argues that some importance and respectability are attached to a large amount of *Mahr* while its smallness may be disgraceful to the wife's family, hence the guardian has a right to object to a small amount of *Mahr*.\(^{38}\) He further says that the relinquishment of *Mahr* after marriage does not bring any disgrace to the family as is occasioned by the fixation of a small amount of *Mahr*.\(^{39}\)

**Disproportionate *Mahr* fixed by the father/guardian**

If father or paternal grandfather should contract his minor child in marriage for an inadequate or too high *Mahr* the marriage is binding on minor, but if contracted by any other person, it is liable to be set aside on the suit of the minor.\(^{40}\) But if the *Mahr* is very low or high, then according to Abu Yusuf and Imam Muhammad, the marriage is not legal and can be set aside. They contend that the binding nature of a marriage by the father or grandfather is based on the presumption that

\(^{38}\) Ibid
\(^{39}\) Ibid
\(^{40}\) Ibid
Chapter-V  Muslim Women’s Right To MAHR
ON THE DISSOLUTION OF MARRIAGE

they are acting in the best interest of the child but where their disregard
for the interests of the minor is apparent, this presumption cannot arise,
and so the contract of marriage loses its binding force.41 Abu Hanifa
does not agree with this view. He says that the nearness of the
relationship establishes the father’s tenderness (affection) for minor and
the amount of MAHR is not the only consideration but there are many
other considerations of still greater importance than the MAHR, hence the
marriage contracted by them shall be binding on the minor.42 But this
rule applies when the father’s or grandfather’s act is bonafide; if it is
malafide or if he fixed the MAHR while he was drunk, the marriage
would not be binding on the girl.43

Inadequate MAHR accepted by the guardian

If the marriage has been contracted by a guardian for a minor,
whether a boy or a girl and the amount of the MAHR is lower in the case
of girl and higher in the case of a boy than the proper MAHR prevalent in
the girl’s family, the marriage shall be considered unequal. The minor
can apply in such a case, on attaining puberty, for the dissolution of the
marriage on this ground. This rule seems to be based on the fact that it

41. Id. at pp. 301-302.
42. Id. at p. 302.
43. Supra note 30, p. 268
is against the interests of the boy or girl to agree to a higher or lower Mahr than the proper Mahr.

If the marriage for unequal Mahr is contracted by some one other than the father or the grandfather of the girl then it is an agreed view that the girl possesses a right to get it dissolved.

Marriage by agent for inadequate Mahr

If a person appoints an agent to contract a marriage for him or her and the agent contracts the marriage for an unreasonably low or high Mahr then the marriage shall not be binding because the fixation of a reasonable, that is, proper Mahr was an implied condition of the marriage. This rule, of course, is subject to the condition that the party concerned had not authorized the agent to fix the Mahr at that amount.

Increment by the husband

The right to the dissolution of the marriage shall be lost if the husband should increase the amount of the Mahr so as to bring it in conformity with the proper Mahr.

Subsequent Relinquishment of Mahr by wife

There is a difference of opinion about the relinquishment of the whole or a portion of her Mahr by the wife subsequent to the time of the

44. Id. at p. 16; Supra note 31, Vol. II, p. 313.
marriage, so that the inequality in the husband may be removed. The father or other guardians have ordinarily no right to object in such a case.\textsuperscript{45} The Hanafis justify this opinion on the ground that the \textit{Mahr} belongs to the wife and she can deal with it in any way she likes. But it is stated in Fatawa-i-Alamgiri that if a woman marries a destitute person (beggar) and then she gives up her claim for her \textit{Mahr} even then the man shall not be considered to be the equal of the wife because the ability to pay the \textit{Mahr} is determined at the time of marriage.\textsuperscript{46}

\textbf{Impact of defects in spouses}

Under Sunni law a wife shall get the whole of her \textit{Mahr} if the marriage has been consummated or under the Hanafi, Maliki or Hanbali laws if there has been 'valid retirement' irrespective of the fact that whether it is dissolved by the husband or the qadi.\textsuperscript{47} But in the absence of consummation or valid retirement she should be entitled to half the \textit{Mahr} when marriage is dissolved by the husband.\textsuperscript{48} If dissolved by the qadi on account of a defect in the wife, she shall not be entitled to get any \textit{Mahr} whatsoever.\textsuperscript{49}

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\textsuperscript{45} Supra note 34 at p. 300.
\textsuperscript{46} Ameer Ali Urdu Trans. of Fatawai Alamgiri, Vol. II, p. 13 (Lucknow, 1899 AD)
\textsuperscript{47} Supra note 18 at p. 262
\textsuperscript{48} Ibid.
\textsuperscript{49} Ibid
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Chapter-V  MUSLIM WOMEN’S RIGHT TO MAHR ON THE DISSOLUTION OF MARRIAGE

Under the Shia law if a marriage is cancelled before consummation either by the husband or the wife on account of the specified defects in the other, no Mahr shall be payable to her.\(^{50}\) This is subject to one exception, namely when the marriage is cancelled by the wife on account of her husband's impotency then she shall be entitled to get half of her Mahr.\(^{51}\)

If the marriage is cancelled by either the husband or the wife after its consummation, the wife shall get her full Mahr.\(^{52}\)

A wife shall be entitled to maintenance even when she suffers from some physical disability such as rataq, qaran, insanity, or has been so old as to become unfit for intimacy.\(^{53}\)

Mahr and Iddat

The only effect of iddat on Mahr arises in the case of a deferred Mahr on the pronouncement of a revocable divorce. There is a difference of opinion about the time when the deferred Mahr becomes payable. According to one version the deferred Mahr becomes payable on the pronouncement of the divorce while according to another version it does not become payable till the expiry of the period of iddat.\(^{54}\)

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50. Supra note 21 at p. 262
51. Ibid
52. Ibid
53. Supra note 46, p. 407
Chapter-V  MUSLIM WOMEN'S RIGHT TO MAHR
ON THE DISSOLUTION OF MARRIAGE

An important result of this difference is that in former case the payment to *Mahr* having become due on pronouncement of divorce, revocation of the divorce will not restore the nature of the *Mahr*, that is, the *Mahr* will not become deferred but shall remain immediately payable. In the other case the *Mahr* being not due till after the expiry of iddat, a revocation of the divorce will not affect its payment and it will still remain deferred.

The second view is generally considered to be the correct view. It is stated in Radd-al-Muhtar that the *Mahr* shall remain deferred till the expiry of the period of iddat and shall become prompt only on the expiry of that period. It is also stated therein that this is the usually accepted view.\(^55\) In case of irrevocable divorce, the *Mahr* becomes immediately payable on such pronouncement as an irrevocable divorce puts an immediate end to the marriage.\(^56\)

**Deceased Wife's Mahr: Obligation of Widower**

If any portion of the deceased wife's *Mahr* was, under the contract of marriage or by operation of law payable by the husband on her death, the same can be claimed by the legal heirs (warison) of the deceased wife (including the husband himself).

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55. Id. at p. 368.
56. Ibid.
Chapter-V  Muslim Women's Right To Mahr On The Dissolution Of Marriage

In the case of such a claim by any of her heirs other than the husband himself, he must discharge the liability unless he proves that before her death that the wife had lawfully agreed to forgo the Mahr.

If the wife predeceases the husband, the heirs of the wife, including the husband, become entitled to her Mahr; and he is liable for the amount less by his share. They can sue him severally each for his or her share, but for a proper adjudication, all the heirs should be joined as parties to the action. In Mohammad Ishaq one of the heirs was not made a party until more than three years from the death of the wife. The husband contended that the suit which was brought by another heir was barred. The High Court overruled the objection and decreed the claim.

In Mubarak-un-Nissa Vs. Mansab Hassan Khan it was provided in the deed of Mahr that the wife was to take possession of certain property in lieu of her Mahr, and enjoy the usufruct thereof, but in case she predeceased the husband it would revert to him and if he predeceased her, the property would become her absolutely.

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58. Mohammad Ishaq Vs. Sheikh Akramul Haq (1907) 12 CWN, 84.
The husband having died before the wife, a question arose between the widow and his other heirs as to the effect of the deed of Mahr. The High Court of Allahabad held that the agreement was neither a mortgage by conditional sale nor the special form of transaction known by the term muba'hat but that it was a contract between the parties, which was binding on their representatives.

In another case Mohammad Yakub Hussain the Allahabad High Court carried further the effect on an agreement between husband and wife. In this case a dispute between the parties was referred to arbitration with the result that an agreement was arrived at, confirmed subsequently by an award of the arbitrators that a certain property should be transferred in present to the wife in lieu of her Mahr with a control to the husband over the application of the income. It was provided, however, that if she predeceased him, he should continue in possession during his life, but that if he died before her, she should become the owner and his heirs should have no right to interfere with her possession. On the question as to the effect of this agreement, the High Court held that the award was sufficient to transfer the property and that no further conveyance was necessary.

60. *Muhammad Yakub Hussain Vs. Inayati Jan* (1911) I.L.R. 33 All 683.
Chapter-V  Muslim Women’s Right To Mahr
On The Dissolution Of Marriage

Dissolution of Muslim marriage Act, 1939

The dissolution of Muslim Marriage Act, 1939, enables a Muslim wife in India to seek the dissolution of her marriage by judicial decree on some specific grounds. The Act, in reality, incorporates one of the modes of dissolution of marriage under Islamic Law called faskh. It means the annulment of marriage by a qadi. In India under the Act, the position of the courts has been held to be akin to that of a qadi.61

Before the enactment of the dissolution of Muslim Marriage Act, 1939 the Courts in India, following the Hanafi law as the main rule of decision, had denied to Muslim women the right of the dissolution of marriage through faskh. This had become a cause of misery for many women. The Shafi’i and Ithna Ashari laws (unlike the Hanafi law) allow a wife to annul her marriage by her unilateral action and without the intervention of the Courts on the grounds of insanity, impotency and non-maintenance. Hanbali law is equally suitable to women. However, on comparison in the respect the Maliki law had been found to be most favourable to them.62 It was on the basis of this comparative suitability that Maulana Ashraf Ali Thanwi rightly gave a valid solution to the

61. Mt. Umer Din Vs. Muhammad Din, AIR 1945 Lah 51 (D.B.)
problem of 'non-availability of the remedy of faskh’. His was the for resorting to the doctrine of takhayyur which permits an adoption of the most suitable rules for decision making in Islamic law transcending the school divergences. He made an exposition of this principle in his book Al-Hilat al-Najizah-lil-Halilatil’Ajizah giving a detailed account of Maliki law on the subject. Pursuant to the approval of this by various Ulema a bill was introduced by Muhammad Ahmad Kazimi in the central legislature on April 17, 1936 which led to the passing of the Dissolution of Muslim Marriages Act on March 17, 1939.

Section 2 of Dissolution of Muslim Marriage Act contains various grounds on the basis of which a Muslim woman can claim dissolution of her marriage by a court decree. These include the grounds of ‘missing-husband’ non-maintenance, imprisonment of husband, impotency, insanity, leprosy, venereal diseases, option of puberty, cruelty and any other ground that may be available under Shariah like li’an etc.

**Provision related to Mahr**

Section 5 of the Act is related to *Mahr* which reads as follows:

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63. For Takhayyar, see generally supra note 1 at p. 256

281
"Nothing contained in this Act shall affect any right which a married woman may have under Muslim law to her Mahr or any part thereof on the dissolution of her marriage".

This is a vague provision though it can be understood to mean that the position of Mahr of a woman obtaining dissolution of marriage under the Act will remain the same as it is under the classical Muslim law and it will not be affected by the provisions of the Act.

Since in this legislation mostly, the rules of Maliki law relating to wife’s right to claim dissolution of marriage were adopted, there was obviously an apprehension that the Courts may apply Maliki rules relating to Mahr to the cases where a marriage is dissolved under the provisions of this Act. This could have excluded the application of Hanafi, Shafi’I and Ithna Ashari rules about Mahr which most probably the legislature wanted to save. The difficulty in the ascertainment of the rules of Maliki law on Mahr might also have been apprehended by the legislature. Awaiting a judicial verdict, the question that remains open is that whether the position of Mahr in the marriage dissolved under the Act will be determined by the same rules of Hanafi, Shafi’I or Ithna Ashari laws which are applied to the cases of talaq or khula’. This is a
delicate issue and needs a careful consideration taking guidance, of course, from the nature of the legislation itself.

The nature of the dissolution of Muslim marriage Act has been described by the Courts in India in the following terms:

"The Act is a piece of declaratory legislation...." 64

"The Act crystallizes only a portion of Muslim law and should, therefore, be applied in conjunction with the provisions of the whole of Muslim law." 65

Thus to find out the position of Mahr vis-à-vis the grounds of marriage dissolution enshrined in the Act cannot be ignored.

Impact of Shah Banors case and the Muslim women Act 1986 on Mahr

In order to make a speedy remedy available to the wives for the enforcement of their maintenance claims, provisions were incorporated in the Code of Criminal Procedure (Cr.P.C.) 1898. This Code was replaced by a new one in 1973. In the code of 1973 the provisions relating to the maintenance claims were retained in Sections 125-128 with a significant change, whereby the divorced wives have been made able to claim maintenance from their erstwhile husbands even after

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65. *AIR 1951 Nag. 375.*
Chapter V  Muslim Women's Right To Mahr
On the Dissolution of Marriage

divorce up to remarriage or death, whichever is earlier. These provisions with an obvious contradiction with the Shariah were sought to be modified by the Indian Muslims so far as their application to them was concerned. Pursuant to this demand an exception clause, in general terms, was added to these provisions in section 127(3)(b) of the Code in favour of any person who may have discharged his liability towards the divorce under the personal law. Under Section 127(3)(b) the magistrate is required to cancel any maintenance order passed under section 125 if;

"She (the divorcee) has received, whether before or after the date of the said order the whole of the sum which under any customary or personal law applicable of the parties, was payable on such divorce".

Whether irony or irradiation it is, that in 1979, the Supreme Court brought to the focus another dimension of these supervisions in the following words:

The purpose of the payment under any customary or personal laws must to be obviate destitution of the divorcee and to provide her with wherewithal to maintain herself. The whole theme of S. 127(3)(b) is manifestly to recognize the substitute maintenance arrangement by lump sum payment organized

Chapter-V  

**Muslim Women’s Right to Mahr On the Dissolution of Marriage**

by the custom of the community or the personal law of the parties.  

Thus, even a Muslim husband who has discharged every liability under his personal law, would be held to be bound to maintain his wife even after divorce and after the expiry of iddat. The same trend was maintained by the Supreme Court in subsequent cases like Faz-lunbi Vs. K. Khader Vali and the most famous case of Muhammad Ahmad Khan Vs. Shah Bano Begum. Consequently the protection which was intended to be given to Muslim law against suppression by section 125 of the Cr. P.C., through section 127(3)(b) proved to be quite insufficient. For this reason and the Supreme Court’s taking into its own hands the interpretation of the Quran started a countrywide agitation against the Shah Bano decision. Consequent upon the Govt. of India got a new enactment passed by the Parliament titled as Muslim Women (protection of Rights on Divorce) Act, 1986 to undo the effect of Shah Bano ruling.

In all these decisions which led to the enactment of the Muslim Women Act, 1986 *Mahr* has received both just and unjust treatment at

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68. AIR 1980 SC 1730.
69. AIR 1985 SC 945; For details see Infra note 85.
Chapter-V  Muslim Women’s Right To Mahr On The Dissolution Of Marriage

the hands of the judges. In the Bai Tahira case the Court treated Mahr as one of the ‘substitute payments for maintenance’ under Muslim Personal Law:

"Payment of Mahr money as a customary discharge is within the cognizance of that provision" [i.e., Section 127(3)(b)].

These words from the Supreme Court judgment in bai Tahira create a wrong impression about Mahr, as if it is an incident of divorce rather than effect on marriage. Islam has ordained Mahr as a separate right of the Muslim women. It is neither a provision for maintenance nor something to be given in lieu of maintenance. It has its own social and legal purposes.

Later the Supreme Court appreciated the difference between Mahr and maintenance in the following words:

"The quintessence of Mahr whether it is prompt or deferred is clearly not a contemplated qualification of a sum of money in lieu of maintenance upon divorce".

The difference between the Mahr and maintenance was further made clear by the Supreme Court itself in 1985 in the case of

70. Supra note 67 at p. 286
71. Supra note 68 at 1736.
Chapter-V  Muslim Women's Right To MahR
On The Dissolution Of Marriage

Muhammad Ahmad Khan Vs., Shah Bano Begum in the following good or bad terms:

If MahR is an amount which the wife is entitled to receive from the husband 'in consideration' of the marriage, that is the very opposite of the amount being payable in consideration of divorce. No amount which is payable in consideration of marriage can possibly be described as an amount payable in consideration of divorce. The alternative premise that the MahR is an obligation imposed upon the husband as a mark of respect for the wife is wholly detrimental to the stance that it is an amount payable to the wife on divorce. He does not divorce her as a mark of respect. Therefore, a sum payable to the wife out of respect, cannot be a sum payable on divorce.\textsuperscript{72}

Further it was observed:

Deferred MahR (even if) payable at the time of dissolution of marriage, cannot justify the conclusion that it is payable 'on divorce.\textsuperscript{73}

It was concluded that MahR is not a sum payable on divorce and is not a substitute payment for maintenance. But the divergence in the Court deliveries about MahR and maintenance vis-à-vis Section 127(3)(b) Cr. P.C., cannot be carried too far. In Bai Tahira the Court treated MahR

\textsuperscript{72} Id at pp. 952-953.
\textsuperscript{73} Ibid; See Lucy Carrol, "Divorces' MahR and Muslim women's Right to Maintenance", 27 JILI, pp. 487-495.
as a ‘customary discharge’ within the cognizance of Section 127(3)(b) as per that judgment an adequate amount of Mahr could have exonerated the husband from liability under Section 125. In Shah Banu, the Court held that it had been in error in its earlier judgment, and that Mahr does not fall within the meaning of Section 127(3)(b). The reality is that if the amount of Mahr with or without any other property of the wife, was sufficient to make a woman able to maintain herself she could not claim relief under Section 125. In other words, while determining the ability of the wife to maintain herself under Section 125 of The Court would take into consideration the whole property of the wife including Mahr. So the differentiation made between Mahr and maintenance in Shah Bano loses its merit. It may, however, be pointed out that the differentiation between Mahr and maintenance is quite understandable and fully maintainable under Islamic law which, unfortunately, the scheme of maintenance law under Cr. P.C., as applied by the Courts in India has missed its clear appreciation.

Provision of the Act related to Mahr

Section 3 of the Act contains a list of the benefits and properties, which can be claimed by a wife on divorce, failing which she can seek
Chapter-V  Muslim Women’s Right To Mahr
On The Dissolution Of Marriage

magisterial action. Mention of Mahr has been made in Section 3(1)(c) of
the Act in the following words:

“A divorced woman shall be entitled to an amount equal to the
sum of Mahr agreed to be paid to her at the time of her
marriage and at any time thereafter according to Muslim law”.

In this clause the words “an amount equal to the sum of Mahr
agreed to be paid”, are full of perplexity and confusion. It leads one to a
clumsy situation of choosing the best from all the worst that it can be
supposed to mean. Shrouded with controversy the provision seems to
have laid down that:

(i) even if full or part payment of the specified Mahr has already
taken place before divorce the wife will be entitled to a further
amount equal to such Mahr, specified and discharged already;
and

(ii) if the sum of Mahr was never fixed by the parties to the marriage
then she will not be entitled to anything – when she is entitled to
proper Mahr under Shariah.\textsuperscript{74}

The result is that in the cases falling under situation (i) double
payment of Mahr will be due to the wife from the husband. Contrarily
in the cases falling under situation (ii) no Mahr will be payable.

\textsuperscript{74} See, Tahir Mahmood, Islamic CLQ (1986) pp. 172-173.
Chapter-V  MUSLIM WOMEN’S RIGHT TO MAHR
ON THE DISSOLUTION OF MARRIAGE

Also, from the cause under discussion it is not clear that what will be the entitlement of the divorced women when:

(i) no Mahr was fixed by the parties but the husband has paid in full or part the ‘proper’ Mahr to her during marriage;

(ii) she is under Muslim law entitled to either no Mahr or only a portion of it;

(iii) the Mahr was reduced or enhanced before divorce;

(iv) the Mahr was fully remitted by her

Moreover, from the scheme of the Act one feels that Mahr stands shifted from its basic position of being an independent institution of Islamic law and has been made a part of the maintenance law as was done by the Supreme Court in Bai Tahira.

The fact is, as observed by Professor Tahir Mahmood that:

"The provisions of the Act relating to Mahr are badly drafted and do not represent the true principles of Islamic law".75

Some cases decided under the Act of 1986- e.g. Arab Ahmad bin Abdullah Vs. A.B. Mohmuna Saiyadbhai76, however, show that the Courts, have consciously or unconsciously counted Mahr as an additional

75. Ibid.
76. AIR 1988 Guj 141; Any discussion on the main issue in this case is beyond the scope of this work, See Infra note 85.
Chapter-V  MUSLIM WOMEN'S RIGHT TO MAHR ON THE DISSOLUTION OF MARRIAGE

payment different from ordinary maintenance. The distinction must be properly understood and maintained.

Mahr, Nafaqah & Mata': Nature and Inter-Relationship

Mahr is a gift spontaneous to be presented to the wife by the husband on nikah with a willing heart. This is an honor to the bride from the husband. He by his mistakes makes a manifestation of his sincerity to respect her rights to his fullest possible capability. So Mahr is a symbolic representation of the earnestness in sharing love and a vow to stand by each other with the object of transcendent tranquility under the chaste alliance known as nikah (the basis of the fundamental unit of Islamic society - the family). This is the basic purpose of Mahr.

The amount of Mahr must be in accordance with the position of husband and the wife. The amount must not be in excess of their capabilities. Hazrat Umar (R.A.) has opined that unreasonable amounts of Mahr should neither be stipulated nor paid or received as this is, in the final analysis, at variance with the object and purpose of Mahr. He once remarked:
Chapter-V  Muslim Women’s Right To Mahr
On The Dissolution Of Marriage

You should not fix unreasonably high amounts of Mahr
because if it would have an element of worldly nobility or
divine felicity, then the Apostle was the most worthy of it all. 77

The unreasonably high amount of Mahr can be a source of
unnecessary anxiety creating strain on the union followed by doubt and
suspicion resulting into divorce. In such circumstances Mahr usually
remains unpaid and also there remains no possibility of lawful
remission of Mahr. The Mahr remaining unpaid is being claimed after
dissolution of marriage because of which, unfortunately, some confuse
it either with earlier concept of dower at common law or with substitute
maintenance of divorced woman.

Nafaqah is the means of sustenance (including every reasonable
facility of life) to be kept availability by the husband to the wife during
the subsistence of nikah. This is to facilitate ordinarily a joint living of
the wife with the husband and performance of matrimonial obligations.
This brings a family into existence and provides a ground for its
endurance. Without nafaqah matrimonial home is neither desirable nor
possible.

77. Professor M. Taqi Amini, Time Changes and Islamic Law, p. 184-85, 210 (English
translation by Prof. Ghulam Ahmad Khan).
Chapter-V MUSLIM WOMEN’S RIGHT TO MAHR ON THE DISSOLUTION OF MARRIAGE

Basically the obligation of the husband is that of qawwam (Procter and maintainer) towards the wife and when the children are born the liability extends to maintain them also. So, the purpose behind the nafaqah is the strengthening of family ties creating a chaste social order. The moment the basic fibre of the family is hit the maintenance stops. Therefore, if the wife becomes refractory (nashizah), she loses her right to maintenance or if the nikah is broken the right to maintenance ceases. It only continues upto the expiry of iddat during which the nikah is notionally supposes to continue so that the possibility of reconciliation is worked out by the parties or any pregnancy of the wife is determined for the clarity of parentage. A refractory or adulterous wife is not entitled to iddat maintenance.78

Mata’ is the parting gift to be offered to a wife on separation due to the dissolution of marriage by the husband. It must be given with humanity and kindness to remove any cause for accusation or shame which may arise from divorce which is in Islam the most detestable act. The obligation by the relatives and friends which can cause more thinking about separation and may stimulate a reconciliation.

78. Hedaya p. 72, 145-46 (Hamilton’s Translation, 1870 ed. by Grady).
Chapter-V  Muslim Women’s Right To Mahr On The Dissolution Of Marriage

Ultimately, if the result is separation, mata’ will be due to the wife as a parting gift. It falls in line with the Quranic directive:

"either retain them (the wives) with kindness or part from them with mercy".79

In the scheme of the law relating to nikah all the three obligations of Mahr, nafaqah and mata’ have, therefore, a successive role to perform on nikah, during nikah and on termination of nikah respectively. All these, however, aim at one common objective, that is, strengthening of the family. Now where a breach occurs with respect to the payment of Mahr, nafaqah or mata’, legal action follows for their enforcement.

Mata’ must not be confused with nafaqah (maintenance). In no sense mata’ means maintenance from an erstwhile husband. The right to maintenance gets suspended even during the marriage for some just cause (for example, when the wife becomes a nashizah (refractory). There can be no reason to grant maintenance to such a wife after divorce. But such a wife is also entitled to mata’ on the dissolution of her marriage. Had mata’ been same as maintenance then mata’ would never had been payable to a refractory wife or nashizah.

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79. II:229; Some people, though consider mata’ different from nafaqah, present a muddled view of it, see ASIL (1985).
Moreover, mata' in its actual nature, is a gift and relates to some
definite occasion while as maintenance right relates to time periods. It
becomes due with respect to a time period and gest suspended or
withdrawn accordingly. In law, also maintenance is always determined
with respect to time. In the Quran where word mata' is used in the
meaning of maintenance, the time period is specified with it. Where it is
used to denote a gift, enjoyment, Profit, comfort, a little enjoyment,
possession, for use and convenience. In such cases, the time period is
not specified with it.

*Mahr*, nafaqah and mata' have existed as independent institutions
of Islamic Law throughout its history. Modern instances can also be
found in some cases available in which mata' has been treated as a
separate claim in addition to other claims.⁸⁰

Thus the divorced women’s entitlement of *Mahr* varies from case
to case depending upon the circumstances & forms of dissolution. The
detail account we find in classical shariah law. Keeping them aside is
neither affordable nor advisable in contemporary society.

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⁸⁰ II:236, 241; IV:193, IV:77; XVI:177; IX:38; X:70; III:34; LXXIX:37, LXXX:32
Muslim Widow's Right to retain possession of husband's estate in lieu of dower

The most important right which is available to a Muslim woman on the death of her husband is her right to retain possession over the property of her deceased husband till her unpaid dower debt is paid to her. This is known as 'Widow's right of retention'.

If the wife, during the life time of her husband, is in exclusive possession of a property or a part of property of her husband, she on the death of her husband, has the right without the assent of the heirs to remain in undisturbed possession of the same till the payment of her dower debt is made to her, provided her possession must have been acquired validly and peacefully without coercion or deceit. Provided further that the possession must not be that of a mortgage nor should it be such that it may create proprietary right in her favour. The widow during her possession over property, shall simultaneously have the right of suing the heirs for the realization of her dower debt.

In the event of filing a suit for the realization of her dower debt she shall have to express her willingness to give up her possession at the realization of her dower debt. However, she is entitled to receive her
Chapter-V  Muslim Women’s Right To Mahr On The Dissolution Of Marriage

inherited share in her husband’s property independent of her dower debt.

On the basis of above discussion it may be deduced that the dower ranks as a debt, and the wife is entitled, along with other creditors, to have it satisfied on the death of the husband out of his estate. Her right is no higher than that of any other unsecured creditor, and as such it does not entitle her to charge on any specific property of her deceased husband. She must, however, be paid, like other creditors, before legacies’ distribution of the estate.

But if she has lawfully and without force or fraud obtained in lieu of her dower actual possession of the whole or part of her deceased husband’s property, she is entitled to retain that possession as against the other heirs and against other creditors of her husband, until her dower is satisfied.81

If a contract was entered for marriage and the defendant had performed her part and the disputed property was written in the contract, then it was held that suit would be barred by Section 53-A of

81. Mohammad Taqi Khan Vs. Tar moo di Begum, (1941) All 326.
Chapter-V  

**MUSLIM WOMEN’S RIGHT TO MAHR ON THE DISSOLUTION OF MARRIAGE**

the Transfer of Property Act. But if the transfer to wife is made, where dower is not actually due, for defeating claim of other creditors then such transaction should be avoided. If a wife wishes to forestall other creditors to obtain what is due for her first, there is nothing fraudulent in her action in carrying out such a wish. After death of the husband widow’s right to dower accrue and she is entitled to retain the possession of husband’s property, if obtained lawfully and without force, may continue to retain the possession and it is called widows right of retention, if dower remains unpaid. The question whether the transaction is really a transfer or a sham or stimulated transfer must be declared on the particular facts of a case. There is no rule of Mohammedan Law, which is inconsistent with the provisions of Section 53 of the Transfer of Property Act. A transfer in lieu of dower cannot be impeached under Section 53 of the Transfer Property Act.

It is clear that amount of dower in coins is not mentioned. It is also clear that the suit lands were given to the plaintiff to meet the

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dower debt. Whether the words 'in lieu of dower' would in these circumstances be of special significance and import is to be considered in the light of various decisions rendered by various High Courts while dealing with this aspect of the matter of registration and the question whether such transfer is simple gift (hiba, or 'hiba-bil-iwaz' or sale. The principle that under Mohammedan Law, dower is an obligation imposed upon the husband as a mark of respect to the wife has been accepted by all the High Courts. It is well-settled that dower or Mahr can be in law recovered by the wife concerned by instituting an action in law as if it was a debt due to her. Hence it follows that the obligation to pay dower to his wife that Mohammedan Law imposes on a husband gives rise to a debt in favour of his wife. 89

The Muslim widow is entitled to retain possession of the property in lieu of dower debt payable to her and such right is heritable and alienable. In the event of sale of such property the purchasers step into the shoes of the widow and acquire right to possession coupled with right to payment of dower notwithstanding the recital in the sale deed purporting to convey absolute rights. The rights of the widow to

transfer her rights in the property for consideration is not fettered.
Though the sale deed executed by the widow purports to convey
absolute rights, such sale, to be sustained to the extent to right to
possession accompanied by the right to payment dower debt.\textsuperscript{90}

It is well-settled that the claim for unpaid dower constitutes a
debt. The decision in \textit{Jubair Ahmad Vs. Jainandan Prasad Singh},\textsuperscript{91} is clearly
distinguishable. What was held not to be property was not the dower
debt but the interest, which the widow had in the property in her
possession in lieu of dower debt.\textsuperscript{92}

A transfer in lieu of dower will be valid if the dower is really due
even if other creditors are defeated.\textsuperscript{93}

A transfer in lieu of dower cannot be impeached under Section 53
of the transfer of Property Act.\textsuperscript{94}

The question whether the dower was to be prompt or deferred is
of minor importance as satisfaction of deferred dower debt can be valid
consideration for a transfer between husband and the wife.\textsuperscript{95}

\textsuperscript{91} AIR 1960 Pat 147.
\textsuperscript{93} \textit{Mahadeo Lal Vs. Bibi Maniram}, AIR 1933 Pat 281.
\textsuperscript{94} \textit{Rameshwar Nath Vs. Aftab Begum}, AIR 1936 All 803.
\textsuperscript{95} \textit{Kulsambhi Vs. Bilan Khan}, AIR 1929 Nag 121.
Chapter-V  Muslim Women’s Right To Mahr On The Dissolution Of Marriage

If the widow gets into possession of the property and dies after that her heirs are entitled to retain possession as widows’ lien is heritable.96

A widow in possession of her husband’s property in lieu of her dower is entitled to continue till her dower debt is satisfied and after its satisfaction from the income and profits of the property the right of retention is lost, the widow is under an obligation to hand over the possession of the property to other heirs, while keeping her share as an heir to the husband, with herself.97

The right of possession which the widow secures as creditor for her dower debt, is property and is prima facie transferable.98

The right of possession which widow secures as creditor for her dower debt is transferable.99

The dower debt of a widow is not property speaking, a charge upon the property of her husband, and the interest which she has in the property in her possession in lieu of dower debt is therefore an interest restricted in its enjoyment to her personally within the meaning of

97. Nabibai Vs. Sheikh Medu, 2 ALJ 775.
98. Abdullah Vs. Shamshel Haq, AIR 1921 All 262.
Chapter-V  Muslim Women's Right To Mahr On The Dissolution Of Marriage

Section 6(d) of the Transfer of Property Act, and so it is not capable of alienation.\(^{100}\)

The widow was in possession of 1/3 share in a house. She is an heir was entitled to 1/12 of the house. But she transferred the entire 1/3 share in the house which had been and was in her possession and occupation as absolute proprietor in lieu of dower debt the Court held that the widow could transfer by sale deed her right, title and interest in the property i.e., 1/12 share only but could not transfer her right to possession of the property in lieu of her dower debt.\(^{101}\)

A husband can transfer his property in the favour of his wife, in lieu of her dower-debt even though it has not fallen due (as in case of deferred dower). But such transfer is subject to the provisions of Section 53 of the Transfer of Property Act, 1882 which deals with Fraudulent Transfer. Accordingly, every transfer of immovable property made with intent to (a) defeat or delay the creditors of the transferee, or (b) defraud a subsequent transferee, the transfer being without consideration, shall be voidable at the option of (a) any creditor so defeated or delayed or (b) such subsequent transferee. Nothing contained in above mentioned

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\(^{101}\) Abdul Samad Vs. Alimuddin, AIR 1944 Pat 174.
Chapter-V  Muslim Women's Right To Mahr On The Dissolution Of Marriage

Clause (a) (i) shall impair the rights of a transferee in good faith and for consideration, or (ii) affect any law relating to insolvency.

It is not necessary that widow’s possession should have been taken with the express intention of holding it in lieu of dower.\textsuperscript{102}

If the transfer in so far as it was for deferred dower is trained with fraud, the whole transaction must be set aside.\textsuperscript{103}

When alienation was made more than two years before the adjudgment of the insolvent, it could be set aside under Section 4 not under Section 53, of the Provincial Insolvency Act and the Insolvency Court could only deal with question according to same principle which would have governed a suit for avoidance of the transfer under the ordinary law.\textsuperscript{104}

Where the husband gives fraudulent preference to his wife by transferring property in favor of his wife in lieu of dower, then the only remedy to other aggrieved creditors is to approach the insolvency Court

\textsuperscript{102} Mohd. Sahib Vs. Zaib Jahan, AIR 1927 All 850.
\textsuperscript{103} Sarb Krishna Vs. Mst. Fatima, AIR 1937 Lah 859.
\textsuperscript{104} Basharat Ali Shah Vs. Ram Pattah, AIR 1938 Lah 73.
within two years of transfer when they would be placed on same footing as the preferred creditors.\textsuperscript{105}

The widow has the right to possession of the properties of her husband in lieu of the dower-debt and so long as her dower-debt remains unsatisfied and she does not transfer the dower. Itself she can transfer for her life time possession of the property.\textsuperscript{106}

The right of the Mohammedan widow to hold the property as a security for the dower debt and to continue profession thereof until the dower debt was satisfied, was property, which was both heritable and transferable.\textsuperscript{107}

The presumption as to widow's possession comes into existence for first time on the dissolution of marriage.\textsuperscript{108}

The widow or divorcer is liable to render full account of the income and profits of the property received by her to the heirs of the husband or husband respectively.\textsuperscript{109}

When the husband was not the owner of the property when he made the transfer, acquiring title to it afterwards, the Court of equity

\textsuperscript{105} Mst. Razina Khatun Vs. Mst. Abida Khatun, AIR 1937 All 39.
\textsuperscript{106} Abdul Rahman Vs. Wati Mohammad, AIR 1923 Pat 72.
\textsuperscript{107} Mst. Bibi Makhulmunissa Vs. Mst. Bibi Umatunissa, AIR 1923 Pat 33.
\textsuperscript{108} P.S. Narayana Ayyar Vs. Biyar Bii, AIR 1922 Mad 221.
will compel the husband to perform the contract. The entire property would pass to the wife under the principle of feeding the estoppels.\textsuperscript{110}

If the widow wishes to forestall other creditors and to obtain what is due to her first, there is nothing fraudulent in her action in carrying out such a wish.\textsuperscript{111}

When a transfer is made with a view to defeat or delay creditors, the creditors can avoid it under Section 53 of the Transfer of Property Act, 1882.\textsuperscript{112}

Where possession is obtained after the death of the husband, there is a presumption that it was legally and peacefully obtained. It is for heirs to prove that possession is not in lieu for dower.

If in mutation proceedings the name of the widow is entered into the Board of Rights with the knowledge of the heirs, the consent of the heirs will be implied. If after the death of husband, the heirs made no opposition whatsoever that is enough to show in Mohammedan Law that the widow entered, into possession lawfully in lieu of her dower, without force or fraud.

\textsuperscript{110} Rustam Ali Vs. Abdul Jabbar, AIR 1923 Cal 535.
\textsuperscript{111} Zamin Hussain Khan Vs. Tussaduq Ali Khan, AIR 1925 Oudh 111.
\textsuperscript{112} Syed Moul. Haider Vs. Safdar Sah, AIR 1930 Oudh 230.
Chapter-V  Muslim Women’s Right to MAHR On the Dissolution of Marriage

The requirement continuing or getting possession of the husband’s estate on divorce is entitled to retain possession of husband’s property, after the death of her husband if she gets into it with the consent of heirs, express or implied.

A widow who was in possession of her husband’s property in lieu of her dower-debt could not mortgage her right of possession. But if a widow gets into possession of her husband’s property already mortgaged she cannot set up the right to retain possession which must be delivered to the purchaser on sale.

Where transfer of property was made orally by the husband in lieu of dower it was held that this transfer does not convey title. This right exists till the dower debt claim is discharged.

Salient Features for right of retention –

(i) If a wife, whose marriage has been dissolved by death or divorce, lawfully obtains or already in possession of her husband’s property, she or her heirs have a right to continue to hold the possession of such property against his heirs, or other unsecured creditors, till her dower debt is satisfied provided.

(a) The wife is liable to render full account of income and profits to the heirs of her husband.
(b) She has no right of alienation and mortgage of such property.

(ii) Such possession in the exercise of her right of retention is not a bar to file a suit for the recovery of the dower debts by a widow or a divorcee.

(iii) The right of retention not being a adverse possession, is heritable and transferable to some extent.

(iv) The right of retention does not create a charge on the property.

(v) The heirs of the husband may sue for recovery of possession of their respective shares in the property only when dower dent of the widow is satisfied. No Res Judicata applies to any subsequent suits.

The following features of right to retain possession must be noted:

(i) No right of retention during continuance of marriage – The right comes into existence only after the death of her husband, or if the marriage is dissolved by divorce, immediately on such divorce, but not before.

Thus, if a creditor of the husband obtains a decree against him and the husband’s property is sold in execution in his lifetime, the wife has no right of retention against a purchaser in execution of the decree and she must deliver possession to him.
(ii) The right of retention not analogous to a mortgage - the woman has no interest in the property, as a mortgage has under an ordinary mortgage. There is no true analogy between her right of retention and mortgage. In the case of a mortgage, the mortgagee retains possession under an agreement between him and the mortgagor, while her right of retention does not arise from any such agreement but is conferred on her by law.

(iii) Not a charge - The right does not constitute a charge on the property and as such, she is not a secured creditor. If the property, which is being held by her lieu of dower under her right of retention has been mortgaged by her deceased husband, the mortgage can sell it free of her right and can oust her from possession.

(iv) A possessory lien on property; no title -

(a) She is to satisfy he claim for dower with the rents and profits accruing from the property.

(b) The right of retention does not give her any title to the property. The title to the property is in the heirs, including, of course, the widow.

(c) She cannot alternate the property by sale or mortgage to satisfy her dower. If she alienates the property, it is valid to the extent of her own share.

(v) Widow in possession liable to account - A widow in possession of her husband's estate is bound to account the other heirs of her husband for the rents and profits received by her out of the estate.
while she is herself entitled to charge interest on the dower due to her and to set it off against the net profits.

(vi) Can sue heirs – The widow is not disentitled to sue her husband’s heirs for the recovery of her dower out of his assets on the ground that she is retaining the property.

(vii) Heritable and transferable – The right to hold possession is heritable. Though it cannot be said with certainty. The opinion mostly is in favor of view that it is also transferable. She can assign her right to Mahr.

(viii) Extinction of her right – The right of retention is extinguished –

(i) If she voluntarily gives up the possession, or

(ii) If she is dispossessed, though she can sue for re-possession, if dispossessed by force or fraud.

This right is essentially a right to retain possession, which she has obtained and not to obtain possession is exercise of that right. Although the right of retention is transferable yet it can be transferred only along with dower debt itself and not separately.

It is open to a lady to relinquish her entire dower debt in whatever claim she had on account of the dower debts against the heirs of her husband. A remission may be made conditionally i.e., on execution of a waqfnama.
Chapter-V  MUSLIM WOMEN’S RIGHT TO MAHR
ON THE DISSOLUTION OF MARRIAGE

Where the heirs of the husband files a suit for recovery of possession of the property, which is under the possession of the widow in lieu of her dower-debt, the Court passes a decree on the condition that the heirs should pay her dower-debt within a certain period failing which the suit would fail. And if the heirs do not pay the amount within the time mentioned they can file another suit and this second suit or other subsequent suits are not barred by Res Judicata.

The heirs have also the right of alienating their shares in the property but the alienee will take the property subject to the widow’s right of dower-debt and he cannot disturb her possession.

The heirs have also a right to recovery of possession of their respective hares of property. In case where an heir files a suit for recovery of the possession of his respective share in the property, the Court may pass a decree allowing him to recover separate share of property on payment of proportionate amount of dower-debt within a specified period.

If widow does not give possession, the heirs may sue for possession but first, they should sue for taking of accounts so that it should be ascertained whether dower is due or has been satisfied.
Chapter V  Muslim Women’s Right To Mahr
On The Dissolution Of Marriage

If a widow transfers the property but does not deliver possession, the heirs can sue for a declaration that the transfer is not binding on them but in such a case, they are not entitled to recover possession because the lien has not been lost. If wrongfully, dispossessed by the heirs of the husband the widow can bring a suit under Section 9 of the Specific Relief Act, for recovery of immovable property only within six months from the date of her dispossession.

The right of the widow to retain the possession of her husband’s property until satisfaction of the dower-debt does not carry with the right of selling, mortgaging or gifting or otherwise transferring the property.

In case of dispossession of immovable property, she can sue within three years from the date on which she first learns about the possession under Article 68 of the Limitation Act, 1963. But if the widow is dispossessed by a rank trespasser, she can file suit within twelve years Article 64 of the Limitation Act, 1963.

However, there is a difference of opinion in regard to the possession and retention of property for unpaid dower, which should be with or without the consent of deceased husband or legal heirs. The
consent is immaterial in this regard because dower is a debt under the Islamic Law, and if unpaid, widow has every right to retain the possession until her dower is paid irrespective of any consent from any quarter. In a way a widow is a custodian of the property using only usufruct. Widow is not entitled to sell, mortgage or gift the property as a custodian. This position of widow is different from that of being a legal heir to her deceased husband’s property. If widow tries to dispose the property in any manner, she loses her right of retention. She cannot become owner of properly by lapse of time.

The right of retention whether heritable or transferable -

There is conflict of judicial opinions whether the widow’s right to hold possession is transferable and heritable.

1. One view is that the right is a personal right and not a lein and it cannot therefore be transferred by sale, gift or otherwise nor can it pass to her heirs on her death.

2. The other view is of the Mysore High Court that the right to hold possession is the right both heritable and transferable. Such right to retain possession can also be exercised by her heirs after her death. It has been held in a case that it is heritable without expressing any opinion whether it is also transferable.
Chapter-V  MUSLIM WOMEN’S RIGHT TO MAHR
ON THE DISSOLUTION OF MARRIAGE

3. In another case of the Allahabad High Court it has been held that it is both transferable and heritable.

The right of a widow to retain possession of her husband’s property under a claim for her dower does not carry with it the right to alienate the property by sale, mortgage, gift or otherwise. If she alienates the property, the alienation is valid to the extent of her own share and not of the shares of other heirs of her husband.\(^\text{113}\)

If she delivers possession thereof to the alienee, the other heirs become entitled to recover immediate possession of their shares unconditionally, that is, without payment of their proportionate share of the dower-debt. The widow is not entitled on the alienation being set aside, to be restored back to possession. By giving up possession of the property, she loses her right to hold possession thereof and whether she loses her right to the dower-debt is an open question.

If the widow does not deliver possession to the alienee, as whether she executes a mortgage without possession, the other heirs are entitled to a declaration that the mortgage does not bind their shares but they are not entitled to immediate and unconditional possession thereof.

\(^{113}\) Coove bhai Vs. Havatib, (1943) 45 Bom LR 730.
The wife may legally transfer her right to recover her dower debt to any one she likes.

Under Article 3 of the Limitation Act, 1908, failing which her right to recover possession will be lost and even her lien also.\textsuperscript{114}

If any alienation is made by a widow, it cannot affect the share of other heirs and to that extent, will be void and it will be valid to the extent of her share as a heir to her deceased husband. If she hands over the possession to the alienee the heirs get an immediate right of possession and the possession cannot be restored to the widow, as she has voluntarily transferred it to the alienee.\textsuperscript{115}

The dower debt is not a charge upon the property of the husband and the interest which she has in the property in her possession in lieu of dower debt is therefore an interest restricted in its enjoyment to her personally within the meaning of Section 6(d) of the Transfer of Property Act, 1882, and as such is not capable of alienation.\textsuperscript{116}

\textsuperscript{114} Mashal Singh Vs. Ahmad Hussain, AIR 1927 All 534.
\textsuperscript{115} Maina Bibi Vs. Vakil Ahmad, AIR 1925 PC 63.
\textsuperscript{116} Zobair Ahmad Vs. Jainandar Prasad Singh, AIR 1960 Pat 147.
Chapter V  Muslim Women's Right to Mahr on the Dissolution of Marriage

Whether transferable the widow can transfer merely her right to retention without parting with her dower debt.117

In Maina Bibi Vs. Vakil Ahmad,118 the Privy Council held:

"There is no ground for the contention, if it has been really put forward, that because these deeds fail to effect a transfer of the absolute interest with which they purport to deal, they operate to transfer the widow’s dower debt and her right to held possession of the lands, till that debt is paid. By giving the possession of the lands as in her deeds she alleges that she has done, she has undoubtedly lost her right to hold possession of them."

A widow in possession in lieu of dower does not for that reason become the exclusive owner of the property bring of hold the property adversely to heirs. She cannot become an owner by lapse of time.119

Under the law it was for defendant who can set up a case of relinquishment to show that it was made by the lady voluntarily and her own free will and without any pressure.120

118. AIR 1925 PC 63.
Chapter-V  MUSLIM WOMEN’S RIGHT TO MAHR ON THE DISSOLUTION OF MARRIAGE

The majority for purposes of relinquishment of dower is to be determined according to Mohammedan Law i.e., majority is attained on puberty as per Allahabad and Calcutta High Courts.121

Where an agreement is made at the time of the marriage that the wife shall not be competent to relinquish her dower without the consent of her relations, the agreement would be valid and relinquishment without such consent would be void.122

The widow is entitled to remain in possession of husband’s property if she got into possession “lawfully and without force or fraud”, till she has been paid her dower, but she has not interest or estate in the property as a mortgagee. The facts of this case are on the death of her husband in 1850, Maina Bibi entered into possession of his property. Some heirs of the husband filed a suit to obtain possession of their share in 1902. The widow Maina Bibi pleaded that her possession was in lieu of her dower and she had a right to retain the same. In 1903, a decree, in favour of the heirs on the condition that they paid certain sum of money together with interest to the widow towards her dower within six months was passed by the Trial Court. But no amount was

Chapter-V  
**Muslim Women’s Right To Mahr On The Dissolution Of Marriage**

paid to the widow, and she continued in possession of the property. In 1907, the widow made a gift of the property, which was challenged by the heirs of the husband. The Court held that the widow merely had a right of retention of possession until she was paid but she could not make an alienation of the property. In this case, though no consent of the heirs to retain the possession was taken, yet the Court held her possession as lawfully acquired, so there is some controversy on this point, whether the possession of the widow or divorce should be with the consent, of the husband or the heirs.123

A suit for partition of even on item of property is maintainable in case of tenants in common. The ordinary rule that a suit for partial partition of the properties owned by the parties to the suit is not maintainable does not apply however, to the case of co-owners, who hold land as tenants in common as distinguished from the co-sharers holding land as joint tenants. In the case of tenancy-in-common, each co-owner has not interest in each item of the property held as tenancy in common, and he is entitled to claim partition in respect of even one of these items without seeking for partition of the other items. In the case of Mohammedans, the co-heirs are only tenants-in-common, and there

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Chapter-V  MUSLIM WOMEN'S RIGHT TO MAHR  
ON THE DISSOLUTION OF MARRIAGE

is no joint family in the Hindu Law sense of the term. In the instant case, all the parties to the suit were interested in the items of the properties given in Schedule A of the plaint. Therefore, the suit cannot fail if all the properties left by Habibul Hassan and Mohd. Eilyas Hussain have not been included in this suit. 124

The right of retention is not available to a wife during the continuance of marriage. Such right of retention is her lien which she is entitled to retains if dispossessed, she can sue for the recovery of possession. 125

The right of retention means that a Mohammedan wife is entitled to remain in possession of her husband's property, on the dissolution of marriage either by death or divorce, till her dower-debt is satisfied. 126

The right of dower is heritable and the heirs are entitled to claim it even if the wife in her life time never demanded. 127

The right widow for retention of property for unpaid dower does not create a charge, mortgage or lien in the property if she loses

125.  Azizullah Vs. Ahmed, (1885) 7 All 353.
127.  Abdul Wahab Vs. Mushtaq Ahmad, AIR 1944 All 36; Bashir Ali Vs. Hanif Nasir, 4 IC 462.
possession, the special right of retention is lost and she is at par with other unsecured creditors.\textsuperscript{128}

Right of wife to realize dower is heritable.\textsuperscript{129}

The right of dower is heritable and transferable while in possession of the husband’s property in lieu of her dower-debt, the widow or divorce can neither make alienation of that property nor marriage it. The right of retention or lien is not a charge on property. The husband in his life time may make a transfer of his property in favour of his wife in lieu of her dower debt, even though it has not become due but such transfer should not be fraudulent. Lastly, the widow or divorcee can use for recovery of her dower debt, even though in possession of husband’s property.

Right of wife to realize dower is heritable.\textsuperscript{130} Legal heirs of wife are entitled to claim dower, though wife had not demanded the dower while she was alive.

In case both husband and wife died, the legal heirs of wife are still entitled to claim, according to Islamic Law. Right is inheritable even if wife dies before consummation of marriage.

\textsuperscript{128} Zaibunnissa Vs. Nazim Hasan, AIR 1962 All 197.
\textsuperscript{129} Abdul Wahab Vs. Mushtaq Ahmad, AIR 1944 All 36.
\textsuperscript{130} Ibid.
Chapter-V  MUSLIM WOMEN'S RIGHT TO MAHR
ON THE DISSOLUTION OF MARRIAGE

Discretion of remission by wife-

"And give the women on marriage their dower as a free gift, but if they, of their own good pleasure, remit any part of it to you, take it and enjoy it with right good cheer."

Quran- Sura 4: Aayat 4

According to this provision the wife is free to either realize the whole amount of dower or remit the dower or any part of it of her own free will. The remission should be made without any consideration.

Acceptance of remission of the dower by the husband or his heirs is not compulsory. But if the husband refuses to accept the remission, then it returns to the wife.131

When the wife is under mental tension, such as her husband is on death-bed or has died, at that time if she makes a remission, her consent cannot said to be free.132

The age of majority for the purpose of making remission should be 18 years as under the Indian Majority Act, 1875. But the Allahabad and Calcutta High Courts hold the opinion that the age of majority is to

Chapter-V  MUSLIM WOMEN’S RIGHT TO MAHR
ON THE DISSOLUTION OF MARRIAGE

be determined under the Mohammedan Law i.e., on attaining puberty.\textsuperscript{133}

Remission can be made at any time after marriage whether it has been consummated or not. We remission of dower can be made before or at the time of marriage.\textsuperscript{134}

Indian Majority Act does not affect the discretion of a person “to act in the matter of marriage and dower”, and as such a wife who has not attained majority according to the Act but has completed age of puberty may remit her dower.\textsuperscript{135}

If wife has not attained an age under the Indian Majority Act, even though she has attained puberty according to Islamic Law, she is not competent to relinquish her dower.\textsuperscript{136}

In a case it was held that wife was under great mental distress due to husband’s death and remission made during such conditions cannot be said to be of her free consent.\textsuperscript{137}

\textsuperscript{133} Qasim Hussain Vs. Bibi Kaniz, AIR 1923 All 649; Mazharul Vs. Abdul, AIR 1925 Cal 322.
\textsuperscript{134} Ali Vs. Md., (1918) 41 Mad 1026; Najmunnissa Vs. Serajuddin, 1939 Pat 133.
\textsuperscript{135} Qasim Husain Vs. Bibi Kaniz, AIR 1932 All 649; Mst. Khadija Begum Vs. Nisar Ahmed, AIR 1936 All 887; Mulas, Section 291.
\textsuperscript{136} Najmunissa Vs. Sirajuddin, AIR 1939 Pat 133.
\textsuperscript{137} Hasmuniya Dadamiya Vs. Halmunnissa (1942) 44 Bom LR 126.
Chapter-V  Muslim Women’s Right To Mahr On The Dissolution Of Marriage

But in Hasina Bano Vs. Alam Noor\textsuperscript{138} court hold that if agreement to relinquish the claim of dower bears the petitioners thumb impression then it cannot be held that the agreement was induced by coercion, fraud, undue influence, misrepresentation on mistake. Since in this case, petitioner was major, she had the capacity to enter into the agreement with her free consent. Thus, she is bound by the agreement. Once she has relinquished her right to receive the Mahr under valid agreement she is prevented from claiming the same.

Actionable claim- As an actionable claim it can be taken in execution of a decree like any other debt. It does not fall within the exception assignable property created by Section 6(e) of the Transfer of Property Act\textsuperscript{139}. The prohibition being absolute, any transfer in defiance of provisions is calculated to defeat its provisions and as such is void\textsuperscript{140}.

A wife has got every right to file a suit for recovery of dower and in such cases she would obtain a money decree against all property, including the property of husband in her own possession, if any. Dower can be realized like any other debt.

\textsuperscript{138.} AIR 2007, Raj. 49, RLW 2007 (1) Raj 566.
\textsuperscript{139.} Suibambi Vs. Mohamudulli, AIR 1941 Nag 8.
\textsuperscript{140.} Ameer Hassan Khan Vs. H. Mohd. Nasir, AIR 1932 All 345.
Dower is an actionable claim and can be taken an execution of a decree like any other debt, and it will not fall within the exception assignable property created by Section 6(e) of the Transfer of Property Act, 1882.\textsuperscript{141}

It can be taken in execution of a decree like any other debt. It does not fall within the exception assignable property created by Section 6(e) of the Transfer of Property Act.\textsuperscript{142}

As an actionable claim it can be taken in execution of a decree like any other debt. It does not fall within the exception assignable property created by Section 6(e) of the Transfer of Property Act.\textsuperscript{143}

**Dower is not a secured Debt**- A dower debt could not be presumed to be similar to owelty, where a co-owner is entitled to an equal share in the shared property. This position is different from a money debt, because owelty has a priority over a mortgage debt.

While any heir of husband may claim a share in the property and a simultaneous claim of wife for dower debt, the wife would get a priority for satisfaction of her dower debt before any claim of legal heirs are satisfied.

\textsuperscript{141} Saihanbi Vs. Mahamud Ali, AIR 1941 Nag 8.
\textsuperscript{142} Ibid.
\textsuperscript{143} Ibid.
Chapter V  Muslim Women's Right To Mahr On The Dissolution Of Marriage

Remedies which other unsecured creditors have in such a situation would equally be available to wife in case of transfer to wife in lieu of dower, no less no more.\textsuperscript{144}

The dower debt of Mohammedan widow is not, properly speaking a charge upon the property of her husband, and the interest which she has in the property in her possession in lieu of dower debt is therefore an interest restricted in its enjoyment to her personally within the meaning of Section 6(d) of the Transfer of Property Act, and as such is not capable of alienation.\textsuperscript{145}

A widow or divorcee is entitled to compensation for bearing to enforce her right of the dower-debt and such compensation is in the form of interest on the principal amount of the dower.\textsuperscript{146}

A widow must sue for recovery of the entire dower debt due to her at one time she cannot afterwards sue for the balance.\textsuperscript{147}

The dower cannot be called a loan as there has been no advance according to the provisions of U.P. Agricultural Relief Act.\textsuperscript{148}

\textsuperscript{144} Ghiasuddin Babu Khan Vs. C.I.T., AP, 1985 Tax LR 1058.
\textsuperscript{145} Zobair Ahmad and another Vs. Jainandam Prasad Singh, AIR 1960 Pat 147 at p. 148.
\textsuperscript{146} Hamira Bibi Vs. Zubaida Bibi, (1916) 43 IA 294.
\textsuperscript{147} Kaneez Fatima Begum Vs. Ran Nanda Dhar Dube, AIR 1923 All 331.
\textsuperscript{148} Rehana Khatun Vs. Iqtidaruddin, AIR 1943 All 134.
Chapter-V  Muslim Women's Right To Mahr On The Dissolution Of Marriage

A wife is not liable to be displaced by happening of any event not even her own death, because her heirs can claim the money if she dies and it is a debt within the meaning of Section 9(1) of the Provincial Insolvency Act.149

If there are no other creditors for outstanding debts against the husband then dower debt would be recoverable before any other legacies are paid.150

On the death of husband, dower debt can be recovered from his heirs, she like any other creditor institute a suit for her dower and can obtain a decree against the assets of her husband.151

A dower debt could not be presumed to be similar to owelty, where a co-owner is entitled to an equal share in the shared property. This position is different from a money debt, because owelty has a priority over a mortgage debt.152

Discharge of claim of dower- A Muslim may discharge his duty to satisfy claim of dower before or after it becomes due, if the dower has not already been remitted by wife, in following manner:

Chapter-V  Muslim Women's Right To Mahr On The Dissolution Of Marriage

(i) Cash payments - A husband may discharge his duty to pay dower if he pays in cash either the whole amount or in parts, if simple payments were made in varying amounts from time to time by the husband but it was not allocated towards dower, neither the wife had accepted those amounts as dower, then these payments could not be said to have satisfied the dower debt. As such the amount or amounts paid should be expressly told to be towards satisfaction of dower debt.

A payment for satisfying dower debt of a minor or insane wife may be made to her, to her father, grandfather or other guardian.

A wife is not liable to be displaced by the happening of any event, not even her own death, because her heirs can claim the money if she dies and it is a debt within the meaning of Section 9(1)(b) of the Provincial Insolvency Act.153

A Muslim widow's claim for dower is a simple money claim though that decree may be executed against the husband's property.154

(ii) In lieu of cash payment - Such types of transfers are called Hiba-bil-Ewaz, where husband transfers a property to satisfy a claim of dower.

A Muslim marriage is a contract of which dower is a consideration and

a transfer in lieu of dower is legal.\textsuperscript{155} Such transfer in lieu does not affect Section 53 of the Transfer of Property Act, which is a separate provision from that of Islamic Law.\textsuperscript{156}

(iii) Lieu of dower after death of husband—After death of the husband widow’s right to dower accrues and she is entitled to retain the possession of husband’s property, if obtained lawfully and without force, may continue to retain the possession and it is called ‘widow’s right of retention’, if dower remains unpaid.\textsuperscript{157}

Her right for retention of property for unpaid dower does not create a charge, mortgage or lien in the property. In the same case it was held that if she loses possession, the special right of retention is lost and she is at par with other unsecured creditors.

In case a widow is in exclusive possession of her husband’s estate, other heirs are entitled to demand an account for rents and profits received by her out of that property. In such a case widow would be entitled to a compensation in the shape of interest of the dower debt.

\textsuperscript{155} Suburannessa Vs. Sabdu Shaikh, AIR 1934 Cal 693.
\textsuperscript{156} Har Pd. Vs. Mohd. Usman Khan, AIR 1943 All 2; Bibi Kobra Vs. Jainandan Prasad, AIR 1955 Pat 270; Ameer Ali, 1-211.
\textsuperscript{157} Mirushidalli Vs. Rashid Beg, AIR 1951 Bom 22.
Chapter-V  
MUSLIM WOMEN'S RIGHT TO Mahr  
ON THE DISSOLUTION OF MARRIAGE

When the widow is retaining the possession, if she is dispossessed unlawfully, she may bring a suit for possession of the property within the limitation period provided by Limitation Act. Widow is also entitled to bring a suit for recovery of dower against other heirs, even though she is in possession of property, but in that case the widow has to surrender the possession she is holding in lieu of her dower debt.

In case a widow is in exclusive possession of her husband's estate, other heirs are entitled to demand an account for rents and profits received by her out of that property.¹⁵⁸

The right of retention accrues only on the death of husband or on divorce.¹⁵⁹

If a widow gets possession of the property and dies, her heirs are entitled to retain possession, as widow's lien is heritable and transferable.¹⁶⁰

However, the Privy Council has expressed some doubt whether the widow can assign either her dower or her right to hold possession.¹⁶¹

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Mulla Section 299.

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Cooperbai Vs. Hayabi, AIR 1943 Bom 372.

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Maina Bibi Vs. Vakil Ahmad, AIR 1925 PC 63.
Chapter-V  Muslim Women’s Right To Mahr On The Dissolution Of Marriage

In Kapoor Chand Vs. Kadar Unissa,\textsuperscript{162} the Supreme Court has laid down the three propositions-

(a) The widow is like any other creditor of the husband and cannot therefore, claim any priority for the dower debt over other creditors.

(b) The widow’s claim for dower-debt has priority over the claims of heir, and

(c) The heirs of the deceased husband are not personally liable for the dower-debt of the widow; the amount can be realized rateably from their share in the estate.

Where the husband had not specifically hypothecated his property for the dower-debt, the widow’s possession gave her no right as against a purchaser in execution of a decree for sale passed on a mortgage executed by her husband.\textsuperscript{163}

The lien which a Mohammedan widow has over the estate of her deceased husband for her unpaid dower is a purely personal one and does not descend to her heirs, although the right to the dower itself.

\textsuperscript{162} (1959) SCR 747.
\textsuperscript{163} Ameer Ammal Vs. Lankara Narayan Chatty, (1901) IL 28 Mad 658.
Chapter-V  MUSLIM WOMEN’S RIGHT TO MAHRR
ON THE DISSOLUTION OF MARRIAGE

passes to them by succession. It follows, therefore, that they cannot take possession of the husband’s estate under the claim for dower. 164

A purchaser of a deceased husband’s estate from a Mohammedan widow, in possession thereof pending payment of her dower, was not entitled to plead non-satisfaction of her dower-debt to a claim by her husband’s heirs for their share of his inheritance, as the widow’s right to dower was personal to herself, and did not pass to a purchaser of the estate. 165

But a widow in possession of her husband’s estate pending payment of her dower is not entitled to alienate it whether by sale or mortgage.166

A Mohammedan widow, lawfully in possession of her husband’s estate, occupied a position analogous to that of a mortgagee and her possession could not be disturbed until her dower-debt has been satisfied, and that after her death her heirs were entitled to succeed her

165.  Ali Muhammad Khan Vs. Azizullah Khan, IL 6 All 50; See also Ghufoorun Bibi Vs. Mustuceedeh, 2 Agra 300 and Azeemun Vs. Asgar Ali, 2 Agra Part II, 167.
166.  Chuki Bibi Vs. Shamsunnissa Begum (1894) IL 17 All 19.
in such possession, and if wrongfully deprived thereof, to maintain a suit for its recovery.\textsuperscript{167}

If a widow, who has obtained possession of a property in lieu of dower, is dispossessed by the heir of her husband, such heir would take the property subject to her lien for dower.\textsuperscript{168}

Even where the dower was unascertained, but the widows were in possession of their deceased husband’s estate in satisfaction of their \textit{Mahr}, they had a lien over it as long as any portion of the dower remained unsatisfied.\textsuperscript{169}

Where, however, she has obtained actual and lawful possession of the estate of her husband, under a claim to hold it for her dower, she will be entitled to retain possession until the debt is satisfied, with the usual liability for account to the heirs.\textsuperscript{170}

If she omits to put forward her claim for dower and assents to a person taking a legal, she cannot afterwards retract her assent.\textsuperscript{171}

\textsuperscript{167} Azizullah Khan Vs. Ahamudullah Khan, (1889) IL 7 All 353.
\textsuperscript{168} Umed Ally Vs. Safiah (1869) 3 BLR AC 175; Janee Khanum Vs. Amatool Fatima (1867) 8 WR 51; See also Woomatul Fatima Begum Vs. Mariamunnissa Khanum (1868) 9 WR 318; See also Musst. Umatul Mehdi Vs. Musst. Kusoom (1907) 12 CWN 16.
\textsuperscript{169} Ahmed Hussain Vs. Mussamut Khadija (1868) 3 BLR AC 28 note; 10 WR 369.
\textsuperscript{170} Mussammat Beebee Bachun Vs. Shekh Hamid Hussain, (1871) 10 BLR PC 45; SC 14 MIA 398; See also Ammaturunnissa Vs. Bashirunnissa, (1894) IL 17 All 77; Muhammad Karimullah Khan Vs. Amari Begum, (1865) IL 17 All 93.
\textsuperscript{171} Reza Hossein Vs. Ifatoomnissa, (1873) 24 WR 564.
Chapter-V  Muslim Women’s Right To Mahr On The Dissolution Of Marriage

Under the Mohammedan Law, there is no hypothecation without seisin, and therefore a widow has no absolute lien over any specific property of her deceased husband so as to enable her to follow it, as in the case of a mortgage, into the hands of a bona fide purchaser for value. As stated already, the widow’s claim for dower is only a debt against the husband’s estate, and has priority over legacies and the rights of heirs.172

In *Md. Nayeem Khan Vs. Union Law Secretary*, Government of India, New Delhi, the relevant issue to be discussed does not require much elaboration of facts. Hence, the Author is not mentioning the facts and directly focusing the issue involved that whether the Muslim women entitled to retain possession of husband’s immovable property even after divorce, until her dower debt is satisfied. The Court while settling the issue held that a Muslim widow is conferred with the right to retain property in lieu of payment of Mahr till it is paid off, whether she is divorced or her husband is deceased. Because Muslim law confers a right on the widow to retain the immovable Property of her late husband in her possession in lieu of payment of Mahr till the same is paid off. Possibly the same principle may be retended having regard to

Chapter-V  Muslim Women's Right To MAHR
On The Dissolution Of Marriage

the rationale behind the same principle to cases where the divorced wife is in possession of a house of the husband or in regard to the matrimonial home where she is residing. She may be entitled to retain possession of the house of the husband who divorced her till the Mahr amount is paid off.173

Remission of dower on condition- A wife has discretion of remission of her dower (besides provided under Article 9) in lieu of annuity of marriage.174

It is open to a lady to relinquish her entire dower debt in whatever claim she had on account of the dower debts against the heirs of her husband.175

The wife has the power to relinquish her whole dower or any portion of it in favour of her husband or his heirs only if the following conditions are fulfilled:-

(i) Time of Remission [Rule 95(i)] – Remission can be made at any time after marriage whether it has been consummated or not. No

173. MANU/AP/05 516/2001
remission of dower can be made before or at the time of marriage.\footnote{176}

(ii) Capacity for Remission [Rule 95(ii)] – Only any major (adult) wife with sound mind can make a remission. Regarding the age of majority, the Courts have different opinions. According to Madras and Patna High Courts, the age of majority for the purpose of making remission should be 18 years as under the Indian Majority Act, 1875. But the Allahabad and Calcutta High Courts hold the opinion that the age of majority is to be determined under the Mohammedan Law i.e., on attaining puberty.\footnote{177}

(iii) Consideration [Rule (iii)] – Remission can be made even without consideration.

(iv) Free Consent [Rule 95(iv)] – Remission should be made by the wife with her free consent. Consent is free when there is no coercion or undue influence. When the wife is under mental tension, such as her husband is on death-bed or has died, at that time is she makes a remission, her consent cannot said to be free.\footnote{178}

A remission of dower debt may be made conditionally, for example on execution of a Waqfnama.\footnote{179}
Chapter-V  Muslim Women’s Right to Mahr On the Dissolution of Marriage

It is open to a lady to relinquish her entire dower debt in whatever claim she had on account of the dower debts against the heirs of her husband.\(^{180}\)

A wife has discretion of remission of her dower in lieu of annuity of marriage.\(^{181}\)

Standing surety for dower – Under the Muslim Law it is valid for a person, who is guardian of, whether husband or wife or both, to stand surety for payment of dower, although the wife may be minor. Even a stranger may make a contract for surety ship for payment of dower.\(^{182}\)

The consent to become a surety must be specific and express, as where a father is giving his consent for marriage only that does not automatically make him a surety for payment of dower debt.\(^{183}\)

In Shia Law when the marriage of an infant son is contracted by his father and the child is poor, the obligation rests entirely on the father, and in the event of his death must be discharged out of the

\(^{180}\) Ram Prasad Singh Vs. Mst. Khudayatul Kubra, AIR 1948 Pat 163.
\(^{181}\) Khadija Begum Vs. Nisar Ahmad, AIR 1936 Lah 887; Gulam Mohd. Vs. Gulam Hosain, AIR 1 1932 PC 81.
\(^{182}\) Smt. Fatima Vs. Ahmad Ali, AIR 1937 PC 121.
\(^{183}\) Mohd. Siddiq Vs. Sahabuddin, AIR 1927 All 364.
whole of his property whether child should arrive at maturity and become wealthy or die before it.\textsuperscript{184}

It is valid for a person who is guardian (whether for husband or wife or both) to stand a surety for payment of dower although the wife may be minor.\textsuperscript{185}

Under Shia Law when marriage of an infant son is contracted by his father and child is poor, the obligation rests entirely on the father, and in the event of death of father the obligation would be discharged out of whole of his property whether child should attain maturity or even die before it.\textsuperscript{186}

Where a father is giving his consent for marriage only that does not automatically make him a surety for payment of dower debt.\textsuperscript{187}

Under the Muslim Law it is valid for a person, who is guardian of, whether husband or wife or both, to stand surety for payment of dower, although the wife may be minor. Even a stranger may make a contract for suretyship for payment of dower.\textsuperscript{188}

\begin{itemize}
\item[184] Syed Sabir Hussain Vs. S. Farzand Hasan Khan, AIR 1938 PC 80.
\item[185] Mst. Fatima Bibi Vs. Lal Din, AIR 1937 Lah 45.
\item[186] Syed Sabir Hussain Vs. Farzand Hasan Khan, AIR 1938 PC 80.
\item[187] Mohd. Siddiq Vs. Sahabuddin, AIR 1927 All 564.
\item[188] Smt. Fatima Vs. Ahmad Ali, AIR 1937 PC 121.
\end{itemize}
Chapter V  Muslim Women's Right To Mahr On The Dissolution Of Marriage

Effect of apostasy - The effect of dissolution of marriage under a decree of the Court is regulated by statute. According to Section 5 of the Dissolution of Muslim Marriages Act, 1939, a married Muslim woman shall have same rights in respect of dower after dissolution of marriage under the Act as she may have (after dissolution of marriage, by way of talaq, faskh, etc.) under the Muslim Law. Hence, a Muslim woman whose marriage is dissolved under the aforesaid Act on the ground of apostasy of the husband is entitled to dower. The dissolution of marriage under the Act, even though made after apostasy of the wife, does not take away her right to dower and she is entitled to deferred (or half) dower even if the marriage is not consummated.

If a valid marriage has been dissolved (on account of the husband such as Divorce or Apostasy or any other act) before consummation of marriage:

(a) The wife is entitled to receive one half of the specified dower settled at the time of marriage (settled before or at the time or after marriage under the Shia Law) excluding additions.

(b) Where the dower is settled after the solemnization of a valid marriage and the marriage is dissolved (on account of husband) before consummation of marriage, such as apostasy then the wife
is entitled to a present only (under the Sunni Law), and to no portion of the dower.

(c) If a valid marriage has been dissolved (on account of the husband such as divorce or apostasy or any other act) before consummation of marriage and the dower is not specified the wife is entitled to a present only and to no portion of the dower.

(d) Where a valid marriage has been dissolved by the husband or the wife in exercise of an option of repudiation, before consummation of marriage the wife would get nothing.

(e) If a valid marriage has been dissolved, on account of wife's Apostasy or adultery before consummation of marriage, the wife would get nothing.

(f) The amount of present is determined on the basis of the social position, status and means of the husband.

On death of either party –

(i) Under Sunni Law, on the death of either party to a valid marriage, irrespective of the fact whether the marriage is consummated or not the wife is entitled to receive either specified dower (including additions) settled before, or at the time of or after marriage or proper dower if the dower is not specified.

(ii) Under the Shia Law, if either party to marriage dies before consummation and no dower has been specified, the wife would get nothing.
In the case of valid marriage full specified dower or if it has not been specified then proper dower whether the marriage has been consummated or not because of the death of the husband or the wife marriage is rendered complete and everything becomes established and confirmed by its completeness.  

Under the Sunni Law-

(i) In the case of a valid marriage, whether the consummation of marriage has taken place or not, if the husband or the wife dies, the wife (if dies then her heirs) is entitled to full specified dower including prompt and deferred, which also includes any additions made after marriage. The Specified Dower may be settled either before marriage or at the time of marriage or even after marriage. [Rule 91(i)]

(ii) In the case of a valid marriage whether consummated or not, if one of the party to marriage dies, and no dower is specified, then the wife is entitled to proper dower under the Sunni Law. [Rule 91(i)]

(iii) Under the Shia Law, if either party to marriage dies before consummation, and if the dower is not settled, the wife is not entitled to anything neither dower nor present. And if it has been

189. Malik Itikhar Wali Vs. Sarwari Begum, AIR 1929 All 369.
agreed to be specified later, then she is entitled to one half of dower [Rule 91(ii)].

A woman belonging to the Sunni Sect married to a Shia was entitled to the privileges secured to her married position by the law of her sect, and that she did no, by the mere fact of the marriage, become governed by the Shia Law, and that, consequently, where a husband sued to recover his wife, the one being a Shia and the other a Sunni, the wife's dower being exigible and not having been paid, the suit was not maintainable under the Sunni Law.¹⁹⁰

Jurisdiction of Court – The jurisdiction of the Court for filing the suit for dower is settled according to the cause of action i.e., if an agreement for dower at the time of marriage or a Dower-Deed is made or executed. The place where the agreement is made, or the Dower-Deed is created at the time of marriage will be the within jurisdiction of the Court where the suit will lie. The agreement between the husband and wife for payment of dower undoubtedly a part of the cause of action for maintaining a suit for its recovery and the place where such agreements entered into would be a place where a part of cause of action for such suit arises.¹⁹¹

¹⁹⁰ Nasrat Husain Vs. Hamidan, (1880) IL 8 All 149.
¹⁹¹ Smt. Nasra Begum Vs. Rijwan Ali, AIR 1980 All 118 at p. 120.
Chapter-V  Muslim Women’s Right To Mahr On The Dissolution Of Marriage

The Family Court has no jurisdiction to entertain a petition for sum of Mahr or dower filed by divorced Muslim women. Only Magistrate concerned can entertain such petition.\textsuperscript{192}

The absence of any power to Court for decreasing amount of dower has been judicially deplored.\textsuperscript{193}

The plea that suit for restitution of confugal rights filed by wife, is not maintainable under the Mohammedan Law can be raised before Trial Court and not before Revisional Court.\textsuperscript{194}

If the marriage was celebrated abroad, and the parties were resident in England, even then the English Courts will refuse to recognize a divorce not obtained through a validity constituted Court of Justice.\textsuperscript{195}

Miscellaneous - In case of registered deed under Article 62 of the Limitation Act period of Limitation is 12 years if immovable property is hypothecated.\textsuperscript{196}

\begin{footnotes}
\item[192.] Amjoun Hasan Siddiqui Vs. Smt. Salma B., AIR 1992 All 322.
\item[193.] Mohd. Sultan Begum Vs. Sarajuddin, AIR 1936 Lah 183.
\item[194.] W. Sirajuddin Vs. Shaziya, AIR 2003 Kant 224 : 2003 (2) DMC 618.
\item[195.] Shaw Vs. Gould, (1868) LR 3 HL 55.
\item[196.] Muzharul Vs. Azimuddin, AIR 1923 Cal 507.
\end{footnotes}
Chapter-V  **Muslim Women’s Right to Mahr On The Dissolution Of Marriage**

If Talaq once becomes effective, the mere fact that the parties lived together and the talaq again given would not prevent the running of time from the date of first talaq.\(^\text{197}\)

In case of consummated marriage, the dower will not be lost in any case even by apostasy or other misconduct of wife such as committing adultery or concealing illicit pregnancy or even by the murder of husband by her.\(^\text{198}\)

The widow’s right of retention is to some degree analogous to mortgage yet there is no real analogy between the two.\(^\text{199}\)

If it is admitted that dower was specified, but there is no satisfactory evidence of it, the burden of proof being on wife only, the amount admitted by the husband to have been settled may be allowed.\(^\text{200}\)

The widow is entitled to equitable compensation by way of interest on dower, as she is creditor of the husband.\(^\text{201}\)

\(^{197}\) *Mst. Hayat Khatun Vs. Abdullah Khan*, AIR 1937 Lah 270.

\(^{198}\) *Kulsambi Vs. Abdul Kadir*, AIR 1921 Bom 205.

\(^{199}\) *Mst. Maina Bibi Vs. Vakil Ahmad*, AIR 1925 PC 63.


\(^{201}\) *Mst. Maimunia Vs. Sarafatullah*, AIR 1931 All 403.
Chapter-V  Muslim Women’s Right To Mahr
On The Dissolution Of Marriage

The Court have however, some discretion in determining whether interest should be allowed in case of dower.\textsuperscript{202}

In view of the above discussion, it may be concluded that Mahr is the absolute property of the wife and descends like any other property that she may possess. She has right to alienate it to any other person. Ordinarily, it seems that Mahr as property rests in the wife of the time of nikah, irrespective of the fact whether it is specified or not. Therefore, after nikah, the wife should have the right to assign it at any time.

Mahr has been held to be transferable by all the courts in India. Though there exists difference of opinion about the transferability of the widow’s right of retention. So Mahr itself can be good subject of transfer and Muslim law by way of both testamentary disposition and disposition intervivos. Hiba of Mahr is not an uncommon practice in Muslim society. However, the testamentary disposition of Mahr has been rare. Mahr can constitute a valid subject of will and it will be governed by the general rules of Muslim law related to will.

\textsuperscript{202.} Nizam Begum Vs. Dilafroz, AIR 1927 All 39.
Chapter VI

Statutory Position of Mahr in Different Islamic Countries

- Statutory Provisions relating to Mahr:
- Definition of Mahr
- Nature of the Right to Mahr:
- Subject matter of mahr
- Quantum of Mahr
- Specified and 'Proper' mahr
- Bride's consent to mahr
- Disputes about mahr amount
- Increase or decrease in the amount of mahr
- Time for payment of mahr
- Enforcement of mahr:
- Mahr and irregular (fusid) marriages
- Mahr and marriage consummation
- Mahr as damages for breach of betrothal
- Return of mahr
- Mahr and equality of spouses (Kufu)
- Mahr and Khula'
- Mahr and Faskh
- Procedure for payment of mahr
- Mahr and anti-dowry legislations
Chapter VI  STATUTORY POSITION OF MAHR IN DIFFERENT ISLAMIC COUNTRIES

The basic foundations of law of mahr are found in the Quran and hadith. The task of working out further details was performed by jurists of Islamic law. Some local practices have also found place in the law on mahr. Now in various Muslim countries some codification of personal laws has taken place, which covers the subject of Mahr too. Thus, the law on mahr is present by constituent upon the Quranic directives, hadith, juristic exposition, some local practices and the modern legislation to improve the social and economic condition of Muslim Women,¹ but here the stress is given on the economic security of Muslim Women in different Islamic Countries. The concept of Mahr which has been an integral component of marriage under the Islamic Law has also changed from price of women to token of respect. Mahr under the present Islamic system 'is a 'gift' which a Muslim husband is bound to present his wife on marriage as a symbol of honour, respect and affection. It manifests the Islamic policy of equitable marital status and property rights of women and invokes friendship, sincerity, tolerance and respect in reciprocity. Its significance can be better appreciated in the context of the nature of women and the historical unfolding of their miseries and deprivation. Islam describes men and

¹. Dr. M. Azal Wani, The Islamic Institution of Mahr at p. 215.
Chaper-VI  Statutory Position Of Mahr In Different Islamic Countries

women as each other’s “garment” and “potential” with just position for both, in the matrimonial home as well as in the society. It negates the concept of merger of the personality of the wife into that of her husband on marriage. Under Islamic Law mahr is legally enforceable and any breach of it warrants legal action.

Law relating to Mahr derives its basic foundation from the Quran and hadith. The task of working out further details has been performed by the jurists of Islamic Law. Some local practices have also found place in the law on mahr. Now in various Muslim countries, during the present century, some sort of codification of personal laws has taken place which covers the subject of mahr as well. Thus, the law on mahr is presently constituent upon the Quranic directives, Hadith, juristic expositions, local practices and the modern legislations. This chapter shall underline the relevant areas of the subject, which have been brought under legislation and assess the merit and utility of this legislative effort.


It is pertinent to note that still no Muslim country has a complete set of statutes on Mahr. But, the provisions from relevant enactments of
different countries plus the Ottoman Law of Family Rights, 1971, taken
together constitute a considerable body of regulations which covers
most of the notable aspects of mahr. These aspects may be taken for
examination, under the following heads:

1. **Definition of Mahr**

*Morocco*

Of all the relevant legislations in various Muslim countries the
Moroccan code of Personal Status, 1958 enjoys the distinction of giving
a definition of mahr, which reads as follows:

"*Mahr means any property given by the husband to the wife*
*representing his intention to have a family based on mutual affection*
*and company.**" ²

The definition is appropriate and conforms to the main purpose
of mahr in Islamic law, i.e., to have a peaceful and happy home. When
the husband presents mahr to the wife, it creates in her a feeling of
familiarity and affection about the matrimonial home, making a
comfortable abode for both. Quran has also described mahr as a "gift
spontaneous" (a gift with a willing heart).

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2. The Moroccan Code of Personal Status, 1958, Section 16.
2. Nature of the Right to Mahr:

*Mahr* as a symbol of conferment of property rights on women by Islam exclusively belongs to the wife. She, therefore, enjoys absolute ownership over the subject matter of *mahr*. This principle has now attained statutory form in many Muslim countries.

*Lebanon*

About the nature of *mahr*, the Ottoman Law on Family Rights, as applicable in Lebanon, says:

"*Mahr is the property of the wife; she cannot be compelled to make provision of the house hold goods from it*."

*Morocco*

Regarding nature of Mahr, the Moroccan code provides:

"*Mahr is the property of the wife which she can dispose of as she wants. The husband cannot set-off any part thereof against any house hold goods given by him to the wife.*"

It further declares:

"*The father or guardian of a bride cannot demand from the husband any money for handing her over to him or for acting as guardian.*"
Chapter-VI  Statutory Position Of Mahr In Different Islamic Countries

Tunisia

Tunisian Uniform Code of Personal Status, 1956-81, also embodies the same principle in following terms7-

"... Mahr is wife's property which she may dispose of as she wishes."

3. Subject matter of mahr

According to the classical authorities mahr can be any property (mäl), monetary or non- monetary, having value. Where it is non- monetary the thing to be given must be certain. Mahr, however, cannot be a mere promise to do or to abstain from doing something not enforceable by the court.8 Legislations in this respect are found in Morocco and Tunisia.

Morocco

The Moroccan code clearly says:9

"Anything that may be the subject of legal obligation may form the mahr..."

Tunisia

The Tunisian code is more illustrative on the point, which says:10

"Anything which is lawful and has a monetary value may form the mahr, it cannot be a valueless thing..."

6. Ibid
7. Tunisian Uniform Code of Personal Status, 1956, Article 12
9. Article 17
10. Article 12
These statutes conform to the established norms of the Shariah; but, with regard to the traditional controversy, like whether the personal services of a husband can constitute mahr or not, the modern statutes are not expressly clear. It, however, appears that the husband’s personal services for a determinate period can form a valid subject of mahr. Teaching of the Quran or providing any other educational facility to the wife can also, under these statutes, is treated as a valid subject of mahr.

4. Quantum of Mahr

The parties to a marriage are, under Shariah free to determine the quantum of mahr themselves by mutual consent. There is no hard and fast rule about it. However, the Hanafis insist on a legal minimum of ten dirham’s (equivalent to 2.97 grams of silver). The Shafi’is does not insist upon the legal minimum but, there are recommending it. With regard to maximum mahr, none of the school of Islamic law prescribes any limit. Whatever is agreed upon (howsoever high), is payable.11 The position under the statutory laws in Muslim countries is diverse. Some

11. Supra note 9 at p. 73.
countries have in this respect followed the traditional principles while & others have shown a clear deviation from those norms.

**Morocco**

Regarding quantum of *mahr*, the Moroccan code has adopted the principle of complete freedom of stipulation. It envisages as follows:

"......there is no maximum or minimum thereof". 12

**Lebanon**

The Ottoman Law as applied in Lebanon, provides:

".........any amount may be specified as *mahr*". 13

**Tunisia**

With respect to the minimum *mahr* the language of the Tunisian code is more guarded than the Moroccan and Lebanese statute. It reads as follows:

"......it cannot be a valueless thing, nor is its maximum limited..." 14

**Yemen**

In the former state of South Yemen deviating from the classical law, an upper limit of *mahr* has been fixed. The family law of Yemen(S), 1974 provides:

12. Article 17
13. Article 80
14. Article 12
Chapter VI Statutory Position of Mahr in Different Islamic Countries

"The mahr inclusive of both prompt and deferred parts shall not exceed one hundred dinars".\(^{15}\)

Somalia

This provision is condemnable because ceiling of the upper and the lower limit cannot be accepted. It should be fixed amicably with the concept of both the parties to marriage. In Somalia, the Family Code, 1975 has also provided, for the ceiling of mahr. It says:

"The bride shall be entitled to mahr as determined at the time of marriage. The upper limit for mahr is SO SH 1000 or its value in kind".\(^{16}\)

In principle the wife’s right to mahr in Shariah is protected by Somali enactment. It, however, includes two such innovations, which make this right a mere token. It is provided that it must be fixed at the time of marriage, leaving no room for mahr-al-mithl and there will be an upper ceiling of one thousand Somali shillings (or its equivalent in kind) on mahr.\(^{17}\) This ridiculous ceiling (SO SH 1000 £80, i.e., 1500 IR) defeats the very purpose of mahr under the socio-legal strategy of Islam.\(^{18}\)

\(^{15}\) Article 18
\(^{16}\) Article 24
\(^{17}\) II Islamic CLQ, 250, 255 (1982)
\(^{18}\) Ibid
5. Specified and ‘Proper’ mahr

Mahr, with respect to a marriage, may be fixed by the parties before, at the time of, or after the marriage. Such mahr is called as mahr-al-musamma (specified mahr). When the mahr is not specified by the parties to a marriage, a proper amount becomes payable to the wife as mahr. This is called as mahr-al-mithl (mahr of the like or ‘proper mahr’), which is determined with reference to the mahr of the other women in the wife’s father’s family and her personal qualities like age, beauty, virginity, education, character, social status, etc. The choice between the specified mahr and the proper mahr has generally been retained by the modern legislations in Muslim countries.

Iraq

The Iraqi Code of personal status 1959-84 provides:

“A woman is entitled to the mahr specified in the contract, if it has not been specified she shall get the proper mahr (mahr-ul-mithl)”.

Lebanon

The relevant provisions of the Ottoman law read as follows:

“Mahr can either be specified (mahr al musamma) or it may be proper mahr (mahr al mithl). Proper mahr in respect of the women

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19. Article 19(1)
20. Article 80
Chapter VI  STATUTORY POSITION OF MAHR IN DIFFERENT ISLAMIC COUNTRIES

shall be that of her equals on her paternal side, and if there is no such person it shall be equal to that of the women of her status in her town......"

Somalia

Contrary to above, the Somalian Code does not approves of the choice between proper and specified mahr.

It says:21

"The bride shall be entitled to mahr as determined at the time of marriage".

Sudan and Egypt

In case of certain disputes about quantum of mahr the enactments of Sudan and Egypt make proper mahr payable to the wife.22

6. Bride’s consent to mahr

The woman, under Islamic law, has a right to accept or reject an offer of marriage. She similarly, has a right to agree or refuse certain terms and conditions to the marriage put forward by the other side. Thus, she may not agree to a certain amount of mahr. Some modern statutes have taken note of bride’s consent as an essential for mahr fixation. Of course, this is most sensible provision.

21. Article 24
22. See infra in this Chapter ‘Disputes about mahr’
Chapter-VI Statutory Position Of Mahr In Different Islamic Countries

Sudan

The Sudanese Law on Marriage and Guardianship, 1960, provides as follows:23

The consent and approval of a girl who has attained puberty is essential for the choice of her husband as well as for the amount of mahr.

It further declares:24

Silence of a virgin on the choice of the bridegroom and the amount of mahr shall amount to her consent and her assertion that she did not know that silence would mean consent shall not be accepted unless she is mentally weak.

Morocco

The Moroccan Code, though with a different purpose, accepts the bride’s consent as an essential for mahr fixation. It says:25

"Where a legally major girl agrees to mahr which is less than her proper mahr (mahr al mithl) her guardian can not object to it."

23. Article 6(a)
24. Article 6(c)
25. Article 23
Chapter-VI  Statutory Position Of Mahr In Different Islamic Countries

So it is generally accepted that the bride's consent is essential for the mahr fixation. It may, however, be pointed out that the rule, that a bride can accept mahr which is less than her proper mahr against the wishes of the guardian, is subject to serious doubt. Such acceptance of lower mahr, can affect the rights of the other women in the family of the bride which the guardian may ordinarily not allow.

7. Disputes about mahr amount

Regarding the proof of mahr, the nikahnamas, kabinnamas, and the oral statements have been the main sources of evidence. Where no proof is available about the amount of mahr, whether the wife will be entitled to proper mahr or any other amount is not expressly clear from the classical authorities. Now the modern legislations appear to have tried to evolve some principle in this respect. It is submitted that in such cases proper mahr should be fixed by the Court.

Egypt

The relevant provision in the Egyptian Law on Personal Status, 1929-85 reads as follow:

If there is a dispute between the spouses regarding the amount of mahr, the wife shall be asked to prove her claim. If
she fails to do so, the statement on oath made by the husband shall be accepted unless he states an amount, which cannot be normally supposed to be the mahr of the women of her status, in which case the proper mahr of the wife shall be binding on him. Same rule shall apply where parties to the dispute relating to mahr are one of the spouses and the heirs of the other or the heirs of both the spouses. 26

Sudan

The Sudanese Law on Talaq, Marital Disputes and Gifts 1935 provides as follows: 27

Where there is a dispute regarding the amount of mahr, unless the wife can prove, otherwise, the husband’s statement on oath shall be accepted, but if he states an amount which cannot normally form the mahr of a woman of the wife’s status the proper mahr shall be binding on him.

Lebanon

The relevant Ottoman Law provides: 28

Where there is a dispute as to the specification of mahr and its amount cannot be established, the proper mahr shall be payable. If the spouse who claims that it was specified is the wife, the proper mahr so

26. Article 19
27. Article 10
28. Article 86
Chapter-VI  

Statutory Position Of Mahr In Different Islamic Countries

Payable shall not exceed the amount claimed by her, but if that spouse is the husband, the proper mahr shall not be less than the amount claimed by him to have been specified.

It further says:29

"where the amount of specified mahr is disputed and the husband claims it to be an amount which is customary, his word shall be accepted."

About these provisions it has been pointed out by some writers that "on this point, Qadi Abu Yusuf's simple view has been enforced in supersession of other Hanafi opinions."30 A-side of it, a clear reading of these provisions shows that where actual amount of specified mahr cannot, after the statements of husband and wife, be proved, proper mahr will be due to the wife. This is fair.

Jordan

As a matter of fact the proper maintenance of nikahnama, kabinnamas and marriage registers can help in avoiding disputes about the quantum of mahr and other related matters. The Jordanian code of

29. Article 87
30. i) Tahir Mahmood, Family Law Reform in Muslim World, ILL, 1972, p. 39
    ii) Tahir Mahmood, Personal Law in Islamic Countries, ALR, 1987, New Delhi
Chapter-VI  
Statutory Position Of Mahr In Different Islamic Countries

Personal Status, 1976 has made such maintenance of records compulsory in following words:31

“A dispute concerning mahr shall not be entertained if the claim made in this respect is different from the entry in the certificate of marriage or is not provided by written evidence”.

Syria

The Syrian Law has taken a fair note of another important situation: where the stipulated mahr may be claimed to be fictitious or fraudulent. In article 54(iv) it is provided:

“Where it is claimed that the stipulated mahr is fictitious or fraudulent, either party can prove it. If the said mahr is not proved to be real, the judge shall enforce proper mahr.”

8. Increase or decrease in the amount of mahr

The traditional law allows increase and decrease in mahr by the husband and wife respectively, at any time during the marriage. The Shafi’is treat addition in mahr as hiba and, therefore needs for its validity the delivery of possession. The Hanafis and Shias on the other hand, treat it as a condition that becomes incorporated in the original

31. Article 51
agreement. Though in a single country, this aspect of mahr has also come under modern legislation.

Syria

The Syrian code of Personal Status, 1953 incorporates the following provisions in this respect:

"Increase or decrease in the amount of mahr, whether during the subsistence of marriage or during iddah, shall be void if not made in the court where this is done by mutual consent, the action must be duly registered with the qazi."

The provisions prescribe the following requirements for the validity of any increase or decrease in the amount of mahr:

a) Increase or decrease in the amount of mahr must take place with mutual consent of the parties to the marriage.

b) Such an increase or decrease must take place in the court.

c) Such an action must be duly registered with the qazi.

It is evident that in Syria any increase or decrease in mahr can validly be made only when these statutory requirements are followed. It also implies that the relinquishment of mahr by the wife cannot be effective unless it takes place in conformity with the said provisions.

32. Article 57
9. Time for payment of mahr

The basic spirit of mahr demands that the husband must be very prompt in presenting it to the wife. However, for sufficient reasons the payment of mahr may be deferred with the free consent of the wife. In this respect the jurists have developed following optional propositions for adoption by the parties:

a) The whole mahr may be made payable at the time of marriage, soon, thereafter or on demand (indat-talb). Such mahr is called mahr-al-muwajjal (prompt mahr).

b) The whole mahr may be made payable on the happening of a specified event (e.g., death, divorce or a specified period of time). Such mahr is called mahr ghayr mu’ajjal (deferred mahr).

c) A specified portion of mahr may be made payable as in (a) and the rest as in (b).

In this respect the Ottoman Law provides:

"The specified mahr may be made either prompt (mu’ajjal) or deferred (muw’ajjal) wholly or partly." 33

Where no time is specified for the payment of mahr or where its nature described only in general terms and it is not clear as to how much of mahr is mu’ajjal and how much ghayr mu’ajjal, such mahr is

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33. Article 81
Chapter-VI  Statutory Position Of Mahr In Different Islamic Countries

known as mahr ghayr muqattia. In such cases under Shia law the whole mahr is treated as mu’ajjal, while as under Hanafi law the portion of mahr to be mu’ajjal is determined with regard to the personal qualities of the wife, the quantum of mahr fixed and ‘urf (custom). The position under modern statues in Muslim countries is given below.

Pakistan and Bangladesh

"Where no details about the mode of payment of mahr are specified in the nikahnama or the marriage contract, the entire amount of mahr shall be presumed to be payable on demand, that is prompt."\(^{34}\)

This rule of presumption, as pointed out by Professor Mahmood, is supported by the Ithna Ashari School of Islamic Law.\(^ {35}\)

Iraq

(1) "Mahr may be made either prompt or deferred, wholly or in part; where no specific provision is made, custom shall prevail."

(2) "The period fixed in the marital contract for the entitlement of the deferred mahr shall lapse on death or divorce."\(^ {36}\)

Jordan

"It is lawful to make the mahr prompt or deferred, the whole or part of it as specified in the certificate of marriage, when it is not so specified to be deferred, it shall be regarded as prompt.\(^ {37}\)

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34. Section 10, Muslim Family Laws Ordinance, 1961, applicable both in Pakistan and Bangladesh which have common legal history upto 1971
35. Supra note 31 (i)
36. Article 20, Iraqi Code of Personal Status 1959-83
Chapter VI  
STATUTORY POSITION OF MAHR IN DIFFERENT ISLAMIC COUNTRIES

Somalia

The Somalian Statute, referred to a boy prescribing an upper ceiling for mahr at one thousand Somali shillings, has also an impact on the time for payment of mahr. Professor Tahir Mahmood comments on this as follows:38

"It also makes quite meaningless the Somali statutory protection of the traditional rules relating to choice between prompt' and 'deferred' mahr, the wife's right of remitting mahr and the amount of mahr payable in the cases of marriage dissolved before consummation."

10. Enforcement of mahr:

(a) Prompt mahr: The classical works on fiqh contain rules about the enforcement of mahr prescribing measures for making the husband to discharge this duty towards the wife. According to these authorities, the wife has a right to deny her person to the husband until she receives her prompt mahr. But the question that whether the wife can exercise this specific right for non-payment of prompt mahr even after the consummation of the marriage is not finally settled by the traditional authorities. Imam Abu Hanifa has replied this query in affirmative but

37. Article 45, Jordanian Code of Personal Status, 1976
38. Supra note 18
Chapter-VI  STATUTORY POSITION OF MAHR IN DIFFERENT ISLAMIC COUNTRIES

according to the disciples (Imam Abu Yusuf and Imam Mahammad Shaybani) the wife continues to hold such right after consummation only if the cohabitation with her has taken place under compulsion or she is an infant or insane. The controversy can now be settled by statutes at different places. The present statutory position in some Muslim countries is as given below.

Jordan

"Where the wife has received her mahr, or where the parties have agreed to defer the payment of mahr for a stipulated period, the wife cannot refuse consummation of a marriage." 39

This shows that in Jordan before the payment of prompt mahr the wife can refuse consummation of the marriage but she cannot do so after having received her mahr or where payment of mahr has been deferred for a stipulated period. It, however, appears that where the mahr has been deferred for an in definite period of time the wife shall have a right to refuse consummation of her marriage so long it remains unsatisfied or some specific agreement is reached between the parties.

Now where the marriage has been consummated before the payment of mahr or before any stipulation about the time having been

39. Article 43, Jordanian Law of Family Rights, 1951
set between the parties, the wife is entitled to refuse society to the husband for non-payment of *mahr* after such consummation of marriage. About the refusal of her society to the husband the Jordanian code provides in unqualified terms.

"... she will have the right to refuse to join him if he has not paid her prompt *mahr*". 40

About the wife who has received her prompt *mahr* the Code clearly lays down. 41

A wife having been paid her prompt *mahr* shall obey her husband and live in his house and go with him wherever he goes even if out of the country, provided that her safety is assured and no condition to the contrary has been registered in the certificate of marriage. Where she refuses to obey him, her right to maintenance will lapse.

The Jordanian law gives an additional right to the wife to claim dissolution of marriage on account of non-payment of prompt *mahr*, provided her marriage is still unconsummated.

40. Article 67
41. Article 37
Chapter-VI  Statutory Position of Mahr in Different Islamic Countries

It provides:42

Where a marriage has not been consummated and the husband is unable to pay the prompt mahr, the wife can bring an action for the dissolution of the marriage. The qadi shall thereupon give one month’s time to the husband and if he fails to pay it within that period, the marriage may be dissolved. If in such a case the husband is absent, or if his whereabouts are not known, or if he has no property in the place, the marriage may be dissolved forthwith.

Syria

The Syrian Code makes it incumbent upon the wife to live with her husband after receiving her prompt mahr. It envisages:

"The wife must, after receiving her prompt mahr reside with her husband." 43

".... the wife shall have a right of refusal to join him if the husband has failed to pay the prompt mahr...."

This leads to the inference that the wife can refuse to live with the husband for non-payment of prompt mahr. There is nothing, in this

42. Article 55, supra note 39
43. Article 66, 72
provision, to show that the wife cannot do so after the consummation of marriage. The Syrian Code has made clear, a very important point that:

"The law of set-off shall not apply to prompt mahr even if permitted by the wife." 44

Lebanon

The Ottoman Law provides:

"The wife is bound, after receiving her prompt mahr to reside in the house of her husband and to travel with him if he wants to shift to another town, unless there is any legal obstacle." 45

In effect the provision is similar to that in Syrian Code.

Tunisia

The relevant Tunisian statute provides: 46

"The husband cannot unless he pays the mahr force the wife to consummate the marriage. After a marriage is consummated, mahr shall constitute an unsecured debt of which only the wife can claim payment."

It is clear from this provision that in Tunisia the woman cannot be compelled by the husband to consummate the marriage before the

44. Article 60 (ii)
45. Article 71
46. Article 13
Chapter VI  Statutory Position Of Mahr In Different Islamic Countries

payment of mahr. In other words, the wife, under this statute can refuse her person to the husband for non-payment of mahr.

Morocco

The Moroccan code contains a complex provision about the enforcement of mahr which reads as follows:

"Where there is a dispute between the spouses as to the payment of mahr the wife’s claim shall be accepted if the dispute arises before consummation of marriage. But if it arises after that, the husband’s statement shall be accepted."

The provision, among other things, implies that the wife can refuse consummation of marriage on account of her demand for mahr from the husband only before submitting herself to him.

Iraq

Iraqi Code not only justifies that wife’s refusal of the society to the husband for no-payment of prompt mahr but also protects her right to maintenance during this period.

It says:

"(1) Maintenance of wife is obligatory on the husband .... even if she is living with her parents, except when the husband wants her

47. Article 24
48. Article 23
to come to his house and she refuses to do so without any excuse.

(2) The wife’s refusal shall be valid if the husband has withheld her prompt mahr ..."

b) Deferred mahr

Deferred mahr can be enforced just after the expiry of the stipulated period of time (if any) or on the happening of a certain event specified for the purpose. Where the payment of mahr has been deferred without any mention of a specified period or event, it can be claimed on the dissolution of marriage, either by the act of the parties or by death. However, Imam Abu Yusuf has opined that where mahr has been deferred for an indeterminate period, the wife can claim its payment immediately in definite demand, provided the marriage has not already been consummated. A situation may arise where the payment of mahr has been deferred for a specified period of time or upto the happening of a specified event (other than marriage dissolution) but the dissolution of marriage takes place before the expiry of such time period, it appears, that the mahr will become, enforceable just after such marriage dissolution. Iraq Provisions are found in this respect in Iraqi Code and Ottoman Law.
Chapter-VI  Statutory Position Of Mahr In Different Islamic Countries

The Iraqi Code declares:49

"The period fixed in the marital contract for entitlement to the deferred mahr shall lapse on death or divorce."

Lebanon

The position under the Ottoman Law has been that the condition of time for the payment of deferred mahr lapses only on the death of the husband and not on divorce. But where no determinate period has been fixed for deferred mahr, it can be enforced on the death of either party or divorce. The Ottoman Law provides:50

"Where the period for the payment of deferred mahr has been fixed, the wife cannot claim its payment before that time even if a divorce takes place; but if the husband dies the period so stipulated lapses. If no period is specified for the payment of the deferred mahr, it shall be deemed to be deferred till the occurrence of the death of either party or divorce"

Pakistan and Bangladesh

The family Laws Ordinance, 1961 applicable in these countries makes in its Section 6(5) (a) mahr immediately payable if the husband takes another wife without prior permission.

49. Article 20 (2)
50. Article 82
The section reads as:

"Any man who contracts another marriage without the permission of the Arbitration Council shall -

Pay immediately the entire amount of mahr whether prompt or deferred, due to existing wife or wives, which amount if not paid shall be recovered as arrears of land revenue."

11. Mahr and irregular (fasid) marriages

For an unconsummated irregular marriage, no mahr is due to the wife. However, on its consummation the specified or proper mahr, whichever is less, becomes payable to her. "Presumptive consummation" (Khalwat-e-Sahih), recognized by Hanafi, Maliki and Hanbali laws is for the purpose of mahr, not equated with actual consummation. Thus, in cases of irregular marriages the wife becomes entitled to mahr only after actual consummation. Provisions are found in this respect in some enactments also.

Syria

The Syrian Code recognizes the above principle in following terms:51

(1) An irregular marriage if not consummated shall be like a void marriage,

51. Article 51
Chapter-VI  

STATUTORY POSITION OF MAHR IN DIFFERENT ISLAMIC COUNTRIES

(2) If it is consummated it shall give rise to:

- the proper or the specified mahr whichever is less.

Iraq

The Iraqi Code provides as follow:\textsuperscript{52}

Where separation takes place after consummation of an invalid marriage, the specified mahr or the proper mahr, whichever is less, shall be binding; where no mahr has been specified in such a case, the proper mahr shall be payable.

Lebanon

The Ottoman Law contains detailed provisions about the matter.

The full text of these provisions is as given below:\textsuperscript{53}

"A void marriage whether consummated or not, and an irregular marriage if not consummated, shall have no legal effects of a valid marriage on the basis of any such marriage the parties shall have no rights and obligations of a valid marriage, e.g., mahr, paternity, iddat, bar of affinity and mutual inheritance."

"If an irregular marriage is consummated, it shall give rise to the rights of mahr, iddat, paternity and bar of affinity, but it shall not establish the rights of maintenance and mutual inheritance."

\textsuperscript{52} Article 22 \textsuperscript{53} Article 75-76
Chapter-VI Statutory Position Of Mahr In Different Islamic Countries

The Ottoman Law, therefore, makes the position of *mahr* clear both in irregular as well as in void marriages. It further provides in specific terms that:

where separation takes place after consummation of a marriage which is irregular and the *mahr* had been specified, such *mahr* or the proper *mahr* whichever is less shall be payable, where, in such a case, *mahr* had not been specified or had been incorrectly specified, the proper *mahr* shall be binding, if separation takes place before such a marriage is consummated, nothing shall be payable as *mahr*.

12. *Mahr* and marriage consummation

The right to the entirety of mahr vests in the wife only when the marriage has been consummated or when either of the parties to a subsisting marriage dies before consummation. Now where dissolution of marriage takes place before the consummation of marriage the extent of the wife’s entitlement to *mahr*, according to the Quran, will depend upon the fact whether the *mahr* was fixed or not. It provides that where a woman has been divorced before the consummation of marriage and without fixation of *mahr*, no *mahr* is payable to her, but a ‘gift’ or ‘present’ called mata’, which under Hanafi law cannot be more than

54. Article 85
55. Article Actually or presumptively (under Hanafi, Maliki or Hanbali laws)
half of mahr is due to her. On the other hand, where the woman has been divorced before consummation of marriage but after the fixation of mahr, she will be entitled to half of it. However, the wife may freely remit her half of the mahr also, or the husband may pay full mahr to the wife. The modern legislations have embodied certain rules about the matter.

Lebanon

The Ottoman Law provides:

Where the mahr has, in a valid marriage been specified, its payment in full becomes binding on the death of either spouse or on divorce after valid retirement (Khalwat al Sahih). If a divorce occurs before such retirement, half of the specified mahr shall be payable, where separation takes place on the initiative of the wife, e.g., where her guardian claims dissolution of the marriage on the grounds of inequality of the husband, the mahr shall lapse in full where no mahr is specified in a valid marriage contract or is specified but the specification is incorrect, the proper mahr shall be payable on the death of either spouse or on the occurrence of divorce after valid retirement; when a

56. The Quran II: 236-237
57. Article 83-84
divorce occurs, in such a case, before valid retirement a mata’ (consolatory gift) shall be payable. The amount of mata’ shall be determined in accordance with custom and usage but it shall not exceed half of mahr.

The rule about mata’ in this provision conforms to the Hanafi view of the Law.

Jordan

The Jordanian Code embodies the rule in following terms:58

Where divorce takes place before mahr is stipulated or before consummation of marriage or presumptive consummation, mata’ will be obligatory; and mata’ will be fixed up in accordance with the custom and usage and in conformity with the husband’s position but shall not exceed half of proper mahr.

Iraq

The relevant provision in Iraqi Code reads as follows:59

"The wife is entitled to the whole of the specified mahr after the marriage is consummated or after either spouse has died. In case of divorce before consummation, half of the mahr is payable."

58. Article 55
59. Article 21
Chapter VI  
Statutory Position Of Mahr In Different Islamic Countries

Morocco

The position under Morrocan Code will be as follows:60

A husband who, on his initiative, divorces his wife shall give her a mata' in accordance with his financial condition and the status of the wife. No such gift is necessary when mahr is specified but the wife is divorced before consummation of marriage.

13. Mahr as damages for breach of betrothal

In Brunei Darussalam mahr (locally called mas-kahwin) has been connected with the payment of damages for breach of promise to marry. The relevant provision of the Brunei enactment reads as follows:61

"If any person shall, either orally or in writing and either personally or through an intermediary, have entered into contract of betrothal in accordance with Muslim Law and subsequently refuses without lawful reason to marry the other party being willing to perform the same, the party in default shall be liable, if a male, to pay as damages the amount of the mas-kahwin which would have been payable together with other monies extended in good faith in preparation for the marriage or if a female to return the betrothal gifts, if any, or the value thereof and to pay as much damages as the amount of such

60. Article 60
other monies as aforesaid; and the same may be recovered by action in the Court."

14. Return of mahr

Iraq

The Iraqi code incorporates provisions about the return of mahr on the failure of betrothal. It provides:

“If the man had given to the fiancée, before the marriage, any property on account of mahr, and either party failed to contract the marriage or died, what was so given shall be returned if intact; where such property has been lost possession of, its value shall be recoverable.” ⁶²

Family Law of 1978, in the former state of North Yemen contains following provisions in this respect: ⁶³

Engagement or promise to marry or acceptance of mahr or gift etc., shall not constitute marriage and either party can go out of it. Where the man cancels the engagement he can withdraw the mahr or its value, while if the woman has broken the engagement she must return the gifts presented to her.

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⁶². Article 19 (2)
⁶³. Article 2
15. *Mahr* and equality of spouses (Kufu)

Doctrine of Kufu, which intends that the parties to a marriage must be equal for ensuring harmonious life to the spouses after marriage, was developed by some Muslim jurists. Now also, the modern legislation in some Muslim countries has connected *mahr* with this doctrine.

Lebanon

"... *Equality in wealth means that the husband shall be capable of paying the prompt *mahr* (*mahr al mithl*) and meeting the maintenance expenses of the wife*"\(^64\)

"Where a major girl denies that she has a guardian and marries a person, if it appears that she married an 'equal' the marriage shall be binding even if the *mahr* is less than her proper *mahr*. But if she has married a person who is not her 'equal', her guardian may approach the court and the marriage may be dissolved"\(^65\)

Morocco

"Where the guardian *neglects to contract the ward into marriage, the qazi shall ask him to do so and if he refuses to do so the qazi*
himself can give her in marriage to a person who is her 'equal', with proper mahr.  

16. Mahr and Khula’

Khula’ is the termination of the marriage bond on the request of the wife for some iwwaz. It is not necessary that the iwwaz must be the mahr itself. It can be any property (monetary or non-monetary) equivalent to or more or less than mahr. But usually the wives give up their mahr as iwwaz for khul’. Relevant provisions are found in the enactments of Iraq and Algeria.

Iraq

Iraqi code in this respect provides:

“A husband can agree to khul’ in consideration of an amount less or more than mahr”.

Algeria

The Algerian Family Code, 1984 provides differently as follows:

“The wife can get separation from the husband by khul’ under an agreement on the same. In case of disagreement, the qazi may
pass a decree of *khulʿ* for a consideration to be given by the wife 
not exceeding the value of her *mahr*.”

**Lebanon**

Section 130 of the Ottoman Law, in effect, deprives a divorced 
wife of her *mahr* or makes her return not more than half of her *mahr* (if 
already paid), if the wife is responsible for the breakdown. It provides:

“...where no reconciliation is possible and fault is of the husband, 
divorce shall be granted. Where the fault is of the wife, a *khulʿ* may 
be granted in consideration of the whole or part of *mahr*...”

**Syria**

According to Article 98 of the Syrian Code, where consideration 
has been fixed for *khulʿ*, which is something other than *mahr*, this 
consideration is binding and both parties are also released from any 
obligation regarding *mahr* or maintenance. And as per article 99 where 
the parties do not name any consideration, the *khulʿ* shall take effect and 
both parties shall be released from the rights of the other regarding 
*mahr* and maintenance.69 In both these situations the wife shall have to 
forgo her *mahr*.

17. *Mahr* and *Faskh*

In cases of *faskh* (judicial divorce) the divorced women’s entitlement to *mahr* in various Muslim countries will, among other things, depend upon the provisions in their respective enactments given below.

**Pakistan and Bangladesh**

The Dissolution of Muslim Marriages Act, 1939 applicable both in Pakistan and Bangladesh protects the divorced woman’s right to *mahr*, in following terms:70

"*Nothing contained in this Act shall affect any right which a married woman may have under Muslim law to her mahr or any part thereof on the dissolution of her marriage.*"

**Other Countries**

The position of women’s *mahr* on *faskh* in other Muslim countries, is as follows:71

70. Section 5. Same provision is applicable in India also as these three countries share their legal history upto 1947. A detailed analysis of the impact of this provision on *mahr* can be found in XIII ICLR 43-45 (1993).

Chapter VI  Statutory Position Of Mahr In Different Islamic Countries

i) in all cases where mahr is not specified but is, otherwise, payable proper mahr shall be payable in all countries.

ii) where the divorced wife claims a higher amount to have been specified as her mahr but cannot prove it, while the husband quotes an amount as specified mahr which seems unusually low, proper mahr shall be payable. (Egypt, Jordan, Lebanon and Syria)

iii) where an unconsummated marriage is dissolved on the grounds of impotency or sexual deformity of either party, no mahr is payable. (Jordan and Syria)

iv) where an unconsummated marriage is dissolved while mahr is specified, half of it will be payable. (Iraq, Jordan and Syria)

v) where a marriage is dissolved on account of the wife's apostasy, no mahr will be payable. (Jordan)

One more situation envisaged by the Ottoman. Law is the marriage during death-illness. About the right to mahr in such cases, it provides:\textsuperscript{72}

If a person marries during his death illness and it appears that the specified mahr in such a marriage is equal to the proper mahr of the wife, she will get it from the property left by the husband; but if the mahr so specified exceeds the amount of the proper mahr, the excess shall be governed by the law of bequests.

\textsuperscript{72} Article
Chapter VI  Statutory Position of Mahr in Different Islamic Countries

The law about faskh and mahr, in Libya is as given below:

"If the husband has claimed separation and his allegation is proved, the court shall ask him to pronounce a divorce, and if he refuses to do so the court shall decree a divorce. In either case the court shall order the lapse of deferred mahr, maintenance of iddat and accumulated past maintenance. If the allegation has not been proved, the court shall dismiss the suit.

The Syrian enactment, in its article 54 grants better protection to the women about mahr. The relevant clauses (iii) and (iv) read as follows:

"mahr shall be treated as a preferential debt...."

"Every mahr debt stipulated in the deed of marriage or divorce shall regarded as a secured debt... Deferred mahr shall be payable before the expiry of iddat."

18. Procedure for payment of mahr

In Malaysia procedure has been laid down about the payment of mahr (locally called mas-kahwin) and also about making customary payments in addition to mahr, called pemberian. The said procedure is as follows:

73. Article 11 (iv) Law on Women's Rights in Marriage and Divorce, 1972
74. Section 21, Islamic Family Law (Federal Territory) Act, 1984 (Malaysia)
Chapter VI  Statutory Position of Mahr in Different Islamic Countries

(1) The mas-kahwin shall ordinarily be paid by the man or his representative to the woman or her representative in the presence of the person solemnizing the marriage and at least two other witnesses.

(2) The registrar shall, in respect of every marriage to be registered by him, ascertain and record:

(a) the value and other particulars of the mas-kahwin.

(b) the value and other particulars of any pemberian;

(c) the value and other particulars of any part of mas-kahwin or pemberian or both that was promised but not paid at the time of the solemnization of the marriage and the promised date of payment; and

(d) the particulars of any security given for the payment of any mas-kahwin or pemberian.

Syria

The Syrian Code also contains a procedural provision as follows: 75

Mahr is wife's right and the husband shall not be absolved of his liability except by its payment to her personally if she has full legal capacity—unless the contract of marriage names a particular representative to take possession.

75. Article 6

383
Chapter VI  Statutory Position Of Mahr In Different Islamic Countries

The law of set-off shall not apply to prompt mahr even if permitted by the wife."

19. Mahr and anti-dowry legislations

Dowry is confused by some with mahr because of its being rendered into English as dower. The anti-dowry legislations in Bangladesh and Pakistan make this distinction clear and protect mahr from any impact thereof.

Pakistan

In Pakistan, the Dowry and Bridal Gifts (Restriction) Act, 1976 while defining bridal gift, excludes mahr from its purview as follows:76

"Bridal gift means any property given as a gift before, at or after the marriage, either directly or indirectly, by the bridegroom or his parents to the bride in connection with the marriage but does not include mahr".

Bangladesh

In Bangladesh also, the Dowry Prohibition Act, 1980 excludes mahr from its application. While defining dowry it provides:77

"Dowry means any property or valuable security given or agreed to be given either directly or indirectly;

76. Section 2 (a)
77. Section 2
Chapter VI  Statutory Position of Mahr in Different Islamic Countries

a) by one party to a marriage to the other party to the marriage; or

b) by the parents of either party to a marriage or by any other person to either party to the marriage or to any other person, at the time of marriage or at any time or before or after the marriage as a consideration for the marriage of the said parties, but does not include dower or mahr in case of persons to whom the Muslim Personal Law (Shariat) applies.

The law on mahr is thus protected by these legislations in these countries.

On the basis of minute scrutiny of different legislative measures enacted by various Islamic countries it may be concluded that the legislation about mahr that has taken place in many Muslim countries is an embodiment of the established principles of Shariah. There are many good points in it which deserve for appreciation. The definition of mahr given by the Moroccan enactment is clear and true to its spirit. This effort is more admirable than that of many traditional authors, textbook writers and judges. The statutory recognition of the bride’s consent as an essential requirement for fixation of mahr coupled with the express declaration of mahr as exclusive property of the wife is a
welcome step taken by some Muslim countries towards ensuring ‘Islamic gender-justice.' Encouraging is the effort of certain countries to evolve principles about the settlement of disputes related to the quantum of mahr and its enforcement, though to attain certainty in this respect, some further attempt is needed. The laying down of procedures for payment of mahr, its increase or decrease and maintenance of records, is an appropriate legislative action which can after further improvements, streamline the working of the institution of mahr in Muslim society. Moreover, the statutes which connect mahr with damages for breach of betrothal are a good addition to family penal laws. These merits aside, the legislative prescription of a ridiculous upper ceiling of mahr in Somalia and the former state of South Yemen is a deviation from the established norms of Shariah. Such deviations, substantially affecting the rights of woman, need to be avoided. The ‘widow’s right of retention’, an important aspect of the law of mahr has not yet been brought under legislation irrespective of the fact that there has been a lot of controversy on the issue whether such right is heritable or transferable and can be claimed by a Muslim divorcee or not.
Chapter VI  Statutory Position Of Mahr In Different Islamic Countries

The Holy Quran and Hadith describe Islam as the only eternal and universal order, envisaging the fundamental Principles of law and justice mixed with obligatory formulations. These principles of Quran and Hadith are universal, multi-dimensional and eternal which are claimed to be suited to all future times. In view of the continuity of creation by Almighty Allah a continuous process of law identification and deduction with an absolute nexus with the revealed principles is needed in view of the continuity of creation of the lands of Almighty Allah. The process of law identification and deduction under Islam must be differentiated from the modern law making because such a noble job can only be discharged by the Mujtahibs who are generally not available in non-Islamic countries. Basically the purpose is to bridge the gaps of time and space in the Islamic judicial system.

Adopting the practical approach it may be deduced that these plethora of juristic formulations and precedents available in Fiqh (Islamic Juris Corpus) which offer enough choice to adopt suitable norms after a proper apprehension of changing situations. Therefore jurists are supposed to take a serious note of the existing circumstances and provide a better choice of suitable regulations about various
Chapter-VI  Statutory Position Of Mahr In Different Islamic Countries

matters from the same body of Fiqh. Needless to emphasize that onerous task of law identification and deduction may not be given in the hands of modern state legislatures but this task can be discharged by the qualified Muslim scholars under a common umbrella. The said process is not an ordinary process of reformation but purely is an Islamic process characterized by Obedience to Allah, Investigation and elective choice of suitability from the prescribed and approved rules of Shariah.
Conclusion & Suggestions
CONCLUSION AND SUGGESTIONS

To conclude any study and more so a research work is difficult and a cumbersome task. I am reminded of the immortal words of the famous Greek Philosopher Socrates who said, "I know nothing except the fact of my ignorance." My ignorance may be noticed everywhere in this study but it may be more prominently visible in this part of the work.

_Mahr_ is not a mere Pre-Islamic or non-Islamic concept adopted by Islam but is a divinely ordained Islamic institution with express direction in the Quran and manifest instructions from the practices of the Prophet (P.B.U.H.). This institution has survived throughout the Muslim history as a living institution having attracted the attention of jurists in all times, who have always referred only to the rules and regulations related to the institution of _Mahr_ with no reference to its philosophy and purpose, which is a tragic part of the matter. No serious study has been made about the exploration of the real meaning of _Mahr_ and its utility.

The dower amount, which was generally paid or taken by the father of the bride, was prohibited by Islam and it was commanded by Almighty Allah that the right of dower is not the right of the father of the bride but it
should be paid to the wife and not her father or other relatives. It is ordained in the Holy Book that:

"Ye are one from mother wed them with the leaves of their owners and give them their dowers according to what is reasonable."

Prophet Mohammad (P.B.U.H.) also declared that the best "among you are those who are kindest of their wives."

"There can be no marriage without dower."

Hazrat Ali

In this way, we see that dower plays an important role in the marital relationship of the husband and wife. It is a coordinal right of Muslim wife guaranteed by Quran and Prophet Mohammad (P.B.U.H.).

This dower amounts have invited some controversy about its nature. Some jurists and judges are of the view that it is a consideration of the marriage. Justice Mahmood is of the view that "dower under Islamic law is a consideration for the sexual intercourse by way of the analogy of contract of sale. And her surrender of her person to her husband resembles the delivery of goods to the vendors." 2

1. Al-Quran IV:-XXV S.
2. Abdul Qadir Vs. Saleema, ILR (1886) 8 All 149 s
CONCLUSION AND SUGGESTIONS

The Calcutta High Court also supported the views of Justice Mahmood. But many others who do not subscribe to the view that dower is a consideration of marriage held it as a token of respect. Sir Abdur Rahim has remarked:

"that dower is not a consideration proceeding from the husband for the contract of marriage, but it is on obligation imposed by the Muslim law as a mark of respect for the wife."

Sir Sulaiman in Anis Begum Vs. Mohd. Istifa said that "it is quite obvious that the analogy or sale cannot be carried too far. The Muslim marriage cannot be regarded as purely a sale of the person of the wife in consideration of the payment of dower."

The Lahore High Court in Mt. Fatima Bibi Vs. Lal Din and further Allahabad High Court in Smt. Nasara Begum Vs. Rizwan Ali had observed that dower under Mohammedan Law is not a consideration as it is understood under the Indian contract Act. But dower is an obligation imposed on the husband as a mark of respect of the wife.

5. ILR (1934) All 743.
7. AIR (1980) All 119
CONCLUSION AND SUGGESTIONS

On the other hand some jurists regards dower as a necessary incident of marriage. That is to say that if at the time of marriage the dower is not fixed the husband is bound to pay proper dower to his wife. Tahir Mahmood says “that Mahr is an amount settled on the wife by the husband as an essential component of Muslim Marriage. Even if no sum is mentioned in marriage the wife is nevertheless entitled to the proper dower.” 8

Fatawa Qazi Khan9 also declares that “if no dower is fixed at the time of marriage the law will presume it by contract itself.”

But the actual position is that dower is a token of respect of the wife as well as necessary incident of marriage.

On the basis of nature of dower, it was defined in different ways by different jurist. Mulla while defining the dower says that dower is an amount or property which the wife is entitled from her husband in consideration of marriage.” 10

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9. Fatwa Kazi Khan, p. 428
CONCLUSION AND SUGGESTIONS

But the most appropriate definition of dower has been given by Sir Abdur Rahim that "it is either a sum of money or other form of property to which the wife becomes entitled by marriage. It is an obligation imposed by the law on the husband as a mark of respect of the wife." 11

Like the nature of dower various observations have been made about the object of dower in Islam, some say that the real object of dower in Islam is that it is a provision for the wife for her rainy days. Others who do not follow the first view say that it will serve a check on the husband to divorce his wife. And the husband will think twice before pronouncing talaq. Some say that the real object of dower is financial gain to the wife. But it is not correct. Because if financial gain was the main object of dower then why Prophet Mohammad (P.B.U.H.) approved the marriage as only an iron ring as dower amount. The real object of dower was only to recognize the status of the wife, who was treated as a saleable item in the pre-Islamic Arabia.

11. Abdur Rahim: Mohammedan Jurisprudence, 8 (1958)
CONCLUSION AND SUGGESTIONS

As it is clear that in marriage dower is being given by the husband to the wife, the nature of which is defined by various jurists in different ways. It is not necessary that the payment of whole dower is compulsory on the husband at the time of solemnization of marriage. The jurists concerned have divided the dower in two categories. The dower the payment of which is necessary at the time of marriage or before the sexual intercourse is called as prompt dower. And the wife is entitled to claim the amount of her prompt dower before the cohabitation. The wife may also refuse to go on journey with her husband until she receives the full amount of her prompt dower.

The other dower, the payment of which is not necessary at the time of marriage and it is generally paid after death or divorce is called as deferred dower the wife is not entitle to ask the payment of deferred dower. But if the husband wishes to pay it, before the divorce then he can do it very well. As the payment of deferred dower becomes due, only on the happening of two contingency that is death or divorce. The deferred dower cannot be claimed by the wife on the happening of the insolvent of
CONCLUSION AND SUGGESTIONS

her husband. In Sughra Bibi Vs. Gaya Prasad\(^{12}\), the Allahabad High Court has categorically held that the death or divorce is the only contingency on the happening of which the wife can claim the amount of her deferred dower.

If the wife embraces another religion say Christianity then also she can claim the amount of her deferred dower. Because after the renouncing of her faith the marriage is dissolved. And the husband cannot claim that she is not entitled for her deferred dower because a marriage of a Muslim with a Kitabia is a valid one.

There is a conflict of opinion among the jurists that whether the wife can refuse to live with her husband after surrender of her person on the ground of non-payment of her prompt dower. Imam Abu Hanifa is of the view that the wife can refuse to live with her husband for non-payment of prompt dower and it does not matter whether sexual relation has taken place between them or not. On the contrary, his two disciples Imam Yusuf and Imam Mohammad held the opinion that she cannot do so if once she has surrendered her person to her husband.

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\(^{12}\) (1930) All L.H. 1038.
CONCLUSION AND SUGGESTIONS

The present study in its critical analysis in respect of the issue as to what is the exact nature of the liability of the husband to pay the amount of prompt dower reveals that the wife may refuse her husband in his suit for restitution of conjugal right to come with him on the ground of non payment of prompt dower. This view is attributed to the great Imam Hanifa, which has been recognized by the consensus of the classical as well as modern jurist of Muslim law. And the same has been followed by the Allahabad High Court in Anis Begum Vs. Mohd. Istafa\(^13\) where it was impliedly adopted by imposing a condition on passing a decree for restitution to pay of prompt dower first.

Justice Sulaiman also rejected the contract of sale of goods to the contract of marriage applied by Justice Mahmood in Abdul Qadir Vs. Saleema.\(^14\) Right of seller to stoppage of goods in transit can by no stretch be imagination be compared with the wife’s right to refuse to cohabit with her husband if the dower is not paid. Consummation of marriage cannot be compared with the delivery or transfer of possession of goods to the purchaser, like goods, wife cannot be a subject of sale.

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13. AL (1934) All 743
14. ILR (1886) 8 All 149.
CONCLUSION AND SUGGESTIONS

In interpreting the Hanafi law, sometimes in view of Abu Hanifa has been preferred in favour of the wife in every respect by the court. And some time on certain occasions the courts followed the more progressive disciples of the same school, on preference to his founder by allowing the right of restitution in favour of the husband if marriage has been consummated, even if prompt dower is not paid.

The courts in India have sometimes interpreted the principle of Muslim law in progressive spirit. No doubt a realistic approach to the legal history of Islam has never remained outside the purview of judicial interpretation deviating from the traditional principle of Muslim Law. The jurists can interpret the Muslim law in a liberal way but without claiming the right of Mujtahid.

Basically Mahr serves as a keystone of the arch on which a Muslim home rests. Mahr is not a coercive measure but a civilized way of winning and reposing trust reciprocally with a friendly gesture like presenting a gift to the other with open heart and smile. The basis of the institution of Mahr lies in the Quran and Hadith, but while legislating and decision making on the subject reference has not always been made to these basic
CONCLUSION AND SUGGESTIONS

sources of Islamic law. Even the Quranic Terminology has been ignored which has let the doors open for many misconceptions. The Quran uses the term Sadaqah, ajr and fariezah for Mahr. It has been wrongly rendered into English as ‘dower’ which in reality was only an endowment due to widows at equity in common law countries. Mahr is different from Roman donatio propter muptias, French dot, Hindu Stridhan and practices like bride-price and dowry. In Islam Mahr is not an essential of the contract of marriage but an effect of the nikah. It is legally enforceable because its non-payment will mean the breach of a positive direction of the Quran and it affects the honour and interest of its object (The woman).\footnote{Dr. M. Afzalwani, The Islamic Institution of Mahr, at p. 246.}

Generally the quantum of Mahr is being fixed according to socio-economic conditions of the parties and the people of place. Hanafis prescribe a minimum of Ten dirham and Malikis accepted even a smaller amount probably because they inhabited in poorer area. Where no Mahr is fixed by the parties the wife is entitled to proper Mahr to be assessed with reference to the qualities of the wife and economic status of her paternal family. Some Shias hold the view that in such cases the amount of Mahr should not exceed Mahr-al-sunnat (500 dirhams). This rule does not seem
to be sound in justice. Upper ceiling of Mahr has also been fixed by statutes in Somalia and Yemen at $1000 and 100 dinars respectively. This is also not in conformity with Shariah.

The wife has a power to remit whole or a part of Mahr whenever she may like to do so. But under Shariah no incidence is available where Mahr can be reduced by any authority without the free consent of the wife. The Quran and Hadith in general imply a quick discharge of Mahr. It may remain unpaid only in exceptional situations. The practice in Muslim society, however has been different. Usually a portion of Mahr termed as prompt Mahr is being made payable immediately on marriage or on demand. Another portion called deferred Mahr is said to become payable on the happening of some specified event (death on divorce). The breaking of Mahr into two parts has become an established practice and rules are formed in the books of fiqh about the realization of these types of Mahr with ancillary details.

Consummation confirms the Mahr in full. Hanafis, Malikis and Hambalis consider “valid retirement” as equal to actual consummation where the marriage is valid and not irregular. Shafis and Ithna Asharis
differ from other schools in this respect. They do not equate “valid retirement” with actual consummation in any case. In case of a batil marriage no Mahr is due to the wife because it is no marriage. However, if marriage has been consummated the wife will get the Mahr amount. In case of consummated irregular marriage Mahr is payable to the wife provided it was contracted in ignorance of the bar to such marriage. She will get specified Mahr or proper Mahr, whichever is less.

The claim of Mahr survives the death of both or either of the spouses. This is immaterial whether the Mahr was ascertained or unascertained. For widows a special right is found in Muslim law called the right of retention. To retain the possession of her deceased husband’s property of which she has obtained peaceful possession till her Mahr is satisfied, however she is bound to render accounts of property under her possession.

Divorced women’s claim to Mahr depends upon the Mahr of marriage dissolution. On the dissolution of a consummated marriage, the whole Mahr becomes payable to the wife. The position in cases of unconsummated marriage is not uniform. Generally no Mahr is payable to
the wife if an unconsummated marriage is dissolved by the act of the wife. When an unconsummated marriage is dissolved after the fixation of *Mahr*, only half of the *Mahr* is due to the wife. If *Mahr* has not been fixed before dissolution no *Mahr* but mata is to be paid to the wife. At some places like Brunei *Mahr* is being taken by woman as damages for breaking betrothal.

*Mahr* is not an amount payable on divorce and is not substitute measure for maintenance of divorcees. The impression created by the Supreme Court of India in Bai Tahira is we submit not correct. *Mahr* is payable on marriage as a token of respect and symbol of the rights of women in Islam, especially property rights. Islam has its own separate comprehensive system for maintenance of all the individuals in a family and society at large. No court or legislature is supposed to belittle the significance of *Mahr* and treat it merely a substitute for maintenance. Some people confuse *Mahr* with mata which is a gift due to the wife on divorce. This is a Quranic concept in true tune with its directive “either be with them with kindness or separate from them with mercy.” The differentiation between the two cannot be ignored.
CONCLUSION AND SUGGESTIONS

Suggestions:

The practice of *Mahr* among Muslims, as is revealed by the present study, is not conscious, enthusiastic and honest to the level of expectation. Its significance is not well understood by them. Such a negligent approach towards *Mahr* and other aspects of Islamic law leads to the unpleasant happenings and injustice by way of deprivation. This is basically due to ignorance of Muslims in general and women in particular about the Divine character, moral significance, social purpose and legal necessity of *Mahr* and its sister institutions, *nafaqah* and *mata‘*. Therefore, there is a need for mass education about the principles of Islamic law. Women in particular, are to be educated about the actual concept and working of the institution of *Mahr* and the related laws.

Besides proper education policy, following measures may be adopted to make the working of the institution of *Mahr* more effective and just.

1. Muslim community be sensitized about the concept of *Mahr* and its utility and relevance in present era by Qazi and jurist of Islamic law.
CONCLUSION AND SUGGESTIONS

2. The decision-making in personal law matters must take place squarely under the principles of Islamic law and only fair use of analogies must be allowed.

3. Deviations in the present practices and precedent from the spirit of the institution of Mahr must be sufficiently taken note of.

4. The printed nikahnamas available in the market and in common use nowadays need to be thoroughly revised and standardized with careful scientific modulation.

5. Mahr as a necessary effect of Muslim marriage must be well distinguished from customary payments like ornaments, and valuables given to the wife at the time of solemnization of marriage.

6. Mahr must be actually handed over to the wife as and when demanded so that it can be used by her for economic development.

7. Reasonable amount of Mahr be fixed with the free consent of both the parties. Bride's consent as is usually not being sought, must be obtained after due deliberations with her.

8. Mahr must be considered as a symbol of honour and not as a mere economic benefit to the wife or a coercive measure for preventing talaq which become a cause for excessive fixation of Mahr. The experience has shown that the exorbitant Mahr has never served the purpose for which it was fixed, instead, has dragged the parties to the litigation with no or little gains.

9. Usually higher Mahr is being fixed in the cases where parties to the marriage lack mutual trust and confidence and are in a state of doubt and suspicion. To avoid such a situation, the doctrine of kufu,
with special emphasis on moral attitude, ethical consciousness, social behaviour and intellectual attainments of the parties to the marriage, must be followed.

10. Generally the payment of Mahr must be prompt as is demanded by its nature. Its payment may be deferred only when demanded by exceptional circumstances and expressible reasons.

11. Where no separate mention of prompt and deferred Mahr has been made, whole of the Mahr must be deemed to be payable on demand.

12. Regarding refusal of conjugal rights for non-payment of prompt Mahr the Imam Abu Hanifa's view must be followed and the decision of Allahabad High Court in Abdul Kadir (1886) be overruled. The wife must be given a right to refuse society to the husband for non-payment of prompt Mahr even if consummation of marriage has taken place.

13. So far as the disputes about relinquishment of Mahr are concerned the fatwa of Hazrat Umar(R.A.) must be adopted. If the lady, after the relinquishment of her Mahr claims it again she must be paid that because to demand it again means that she had not rendered it willingly. However, it may be pointed out that if the wife does not claim it again during her lifetime her heirs be not given such right.

14. Where a girl contracts her marriage for inadequate Mahr, proper Mahr be made payable to her on consummation of marriage. If she really intends to agree to a lower Mahr, she can remit a part of it later after marriage. Same principle may be followed where a Shia grandfather has exercised his power of abatement of Mahr.

404
CONCLUSION AND SUGGESTIONS

15. For the purposes of "widow’s right of retention", the term possession must be given a liberal interpretation and a widow, if living with her husband till his death, be deemed to be in possession of a reasonable portion of his-house property even after his death.

16. The "widow’s right of retention" must be treated as heritable. There is no harm in holding it also as transferable though the doctrine of Shufa needs to be adhered to in this case strictly.

17. Where dissolution of marriage takes place before its consummation half of the Mahr (where Mahr was fixed) or only mata (where Mahr was unspecified) is due to the divorcée. In some cases, it has been observed that the marriage breakdown takes place immediately after some days of marriage. In such cases, the woman to save her image of virginity, does not claim that the marriage has got consummated when it has actually so happened. She, therefore, loses her right to Mahr, just to save her particular image for obvious reasons. In view of this fact, it is suggested that whenever the wife resides in the matrimonial home (where husband also resides) for a reasonable period of time, full Mahr must be made payable to the wife. In other words, the concept of khilwat-i-sahihah must be given an extended meaning. However, the dissolution of marriage should not have taken place on account of the impotency of the wife. In such cases the women should not claim Mahr. But if the husband has sufficient means he must offer full Mahr.

18. In fact, the practice prevailing amongst the illiterate and semi-literate Muslim society is that men generally use to take the plea that
their wives have relinquished their claim of dower before consummation of marriage. This is against the spirit of Islam as well as against the law of the land.

19. In case of dissolution of marriage, the wife must file a suit, if dower claim remains unsatisfied for one time economic transaction, which will include the amount of Mahr and the provision relating to maintenance upto iddat period.

20. In the present era of globalization and liberalization of the world’s economy, the Muslim women should also realize the importance of Mahr. Therefore, the quantum of Mahr should be fixed with their due consent at the time of solemnization of marriage.

21. In the course of the instant study from the authentic sources, it has been noticed/observed that in majority of the Muslim marriages, dower is either prompt or deferred and partly prompt and partly deferred. Therefore it is suggested that while fixing the amount of dower, the criteria taken into consideration for specifying unspecified dower (Mahr-ul-misl) should be given due weightage. So that it may go a long way to afford economic security to the Mahr consequent upon her marriage effectively.
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विपक्षी अजमत अली ने प्रार्थित का सेवन पवार्य का रिमार्क 27.8.08 को लिखित संके आगे आकर तत्वत्त्व देखा धनी।

विपक्षी अपनी प्रार्थित का 27.8.08 से आज तक किसी प्रकार का कोई अत्याचार सामने नहीं रखा है और न ही पक्षाधिकार के तथा कोई मुख्य साधन नहीं।

पक्षाधिकार का निर्देश 12.1.2007 का अग्रणी ने समान हुआ था जो कि इस पक्षाधिकार के विषय सिद्धांत के अन्तर्गत आता है जिसका सुनने व निर्णय करने का पूर्ण अधिकार है।

प्रार्थित व विपक्षी के भाव उत्तर वाद के आलावा अन्य कोई वादभार वर्ष के विनिमय व न्यायाधीश नहीं है।

प्रार्थित प्रतापबंद के गिता लेखक के मार्ग के वितरण के पूर्व तत्त्व और उस वितरण निश्चित हो गया है और उकस और ती पत्र इस कारण से वह समान वेम और मुलाकात वर्ष के पूर्ण अधिकार है।

विपक्षी अजमत अली ने प्रार्थित का मेहरा का रिमार्क 10,000 व इंदिरा का रिमार्क 25,000 व नकदी 5000 व भुगतान आज तक नहीं किया है और न ही पापिल्स किया है जिसकी स्वीकार करने के साथ संलग्न 1 लगायत 50 के रूप में संलग्न है।

अंतः पृष्ठ के रूप में न्यायाधीश में कोई प्रता अज़ा कर दिया गया है।

विपक्षी को नोटिस भेजा गया परन्तु वह न्यायाधीश में उपरोक्त नहीं आया उसके कारण रिमार्क 31.1.12 के विपक्षी के विरुद्ध नोटिस की सामिल पत्रिका भाषा हुई विपक्षी का विफल कार्यवार का आदेश पारित किया गया।

वादिता की ओर से एक नष्ट ताला के रूप में रद्द की गयी 10,000 रुपये का रिमार्क। प्रार्थित का प्रचालन नहीं है हाल तक विनिमय का कर रहा है। वादिता की ओर से ताली के दिन व प्रार्थित का राज्य धन, इन्दिरा का राज्य धन और न अदालत का राज्य धन तथा न समान निर्णय का संग्रह भाग है। वादिता की ओर से विनिमय निर्णय। दरअस्स यह तर्क प्रस्तुत किया गया है कि विपक्षी ज्ञानपूर्वक उपरिवर्तित नहीं करते हैं और न ही वादिता का राज्य धन इन्दिरा का राज्य धन, नेवर की राज्य धन और न ही अदालत का राज्य धन। हालांकि यह है कि विपक्षी द्वारा रिमार्क 12.1.07 का अर्थ में निकाला भूलिम्म शीतिनिर्भर विकल्प के अनुसार अजमल आली के साथ होना चाहिए है। शासी के विनिमय के ऑर के के साथ एक नहीं आदेश किया जाने का भी कारण नहीं।
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--- प्रारंभ ---
वनन
1. श्री संयुक्त राष्ट्र आयुक्त अय्यर निर्मला जेती कार्य के भार संभालने का संस्करण जीवित रहेगा, १९८६।

भिन्नता
सत्र प्रत्येक वार्षिक अनुमोदन अवधि ३० वर्ष पूर्व आयुक्त जेती की शायरी के भाषा का संस्करण।

प्रतिपाद
प्रस्तुत यह वार्षिक प्रतिपादण दर्शाते कम रूप से संशोधन के साधन थे। यह आयुक्त अय्यर निर्मला जेती के निर्माण का झूठा अपूर्णाधिक धारणा के अनुसार भाषात्मक देखने में दान देने जारी लागत प्रदर्शनी के हित के साध संस्करण था। किंतु यह अय्यर निर्मला जेती की शायरी हुई थी।

प्रतिपाद
प्रत्येक यह वार्षिक प्रतिपादण २५-१२-२००७ को राष्ट्र की दशक बाद देने जारी लागत प्रदर्शनी के हित के साध संस्करण था।

कृपया देखें कि यह वार्षिक प्रतिपादण २००८ को राष्ट्र की दशक बाद देने जारी लागत प्रदर्शनी के हित के साध संस्करण था।
प्रस्तुत क्रमशः अभाव, एकीकृत से बदन्दी आगर और आगाज हो गई है और उपर भाग के मध्य पत्र फलन का विरस खान हो गया है एवं अव बदन्दी वित्त वृक्ष का विनिमय कर रही है। अभी आदर्श के विवाह मिलें उपरिवेश्वर और वादन एक अनुशासन भी सत्ता अत्यंत प्रमाणित नहीं होता जिसके सत्संग में बनवें हेतु विवाह ने माननीय उच्च न्यायालय कसाबाव में रिट प्रस्तुत हो की थी। इसमें भी हिंदी ने तत्व नाम विधियों की कमान कर दिया है। इन्हीं विवाह उनकी आहवान व देशवास एक विनिमय माह न्यायालय श्रीमान् सीताराम श्रीपाल ने उपवास किसी ग्रामस्थानीय से बनाए हेतु विवाह ने माननीय उच्च न्यायालय कसाबाव में रिट प्रस्तुत हो की थी। इसमें भी हिंदी ने तत्व नाम विधियों की कमान कर दिया है। इन्हीं विवाह उनकी आहवान व देशवास एक विनिमय माह न्यायालय श्रीमान् सीताराम श्रीपाल ने उपवास किसी ग्रामस्थानीय से बनाए हेतु विवाह ने माननीय उच्च न्यायालय कसाबाव में रिट प्रस्तुत हो की थी। इसमें भी हिंदी ने तत्व नाम विधियों की कमान कर दिया है।

प्रस्तुत या में हिंदी पर तामिल प्रकाश थी। हिंदी ने अपना प्रतिबाद प्रयास न्यायालय में प्रस्तुत किया। इसमें उनसे प्राथिष्ठा को अपनी विनिमयों करने होना सीखा करता है तथा श्रेण करने के पहले पत्र करने हुए बचत किया है। इसी ने प्राथिष्ठा को श्रीमान् निरंग 25-12-2007 का उच्चतंत्र फाइलिस प्राप्त कर आंशिक सामाजिक तत्त्व द्वारा ठहराया शादी की थी। इसमें भी हिंदी ने तत्व नाम विधियों की कमान कर दिया है।

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वादिया की ओर से यह कहा गया है कि तालक की जानकारी करने उन्हें निवायब कानून इलाजीदाई में उल्लिखित सिट धारक की सुनवाई के दौरान इसके अतिरिक्त बदले में एक कारण तालकक्ष का भी था। तालकक्ष धारक में इदस की अधिकारी अपने पता के पर फिराइए। इदस की उपरी बढ़कर जो किसी पर देख था। उसके हदार नहीं दिखाया। तिसंयो के द्वारा इस विन्दु पर अपने प्रतिबंध पर मद कर गया है कि इसका वादिया फिराइए इदस की अधिकारी के घर अधिकारी समुदाय में नहीं दिखाया है। फिराइए फिराइए इदस की भाषा प्रदान करने की अधिकारी नहीं है।

प्रेमर उपर यह कथा घायल है कि तालक के परत में विवह का आवश्यक किया। जिससे यह स्पष्ट है कि वादिया की ओर से इस सित्रिक को निंदा करने के विवह का संस्कार विवह भी भाषा में देखा जा सकता है। उसी प्रेमर ओर के विवह के द्वारा इदस के पता के प्रति तिसंयो की कोई संबंधित क्षेत्र हमारे पूर्व रोज के शब्द के आधार पर उपरी बढ़कर जो किसी पर देख था।
और फलस्वरूप की भी बलात लेता था। इसके अतिरिक्त वादिया रघुराम शेशांक का शरीर देखकर भूमिष्ठ, वेदना पर स्त्रीली थी। इसके अतिरिक्त विवाह में उसके भीतर ने विपक्षों को एक सन्तोषकारक घटनामय समाधान दिया था और विपक्षों के हाथ खंभ की गई। जब भी विपक्षों के समय तीतर थे। जो समय, नियंत्रण हो गया था। इस सभी समयों से यह स्पष्ट है कि उन्होंने अपने जीवन स्तर नमूने वार्ता पर विवाह का जीवन स्तर है। वादिया उनपर ब्रह्मचारी रूप से पूरी अप्रवाह विवाह के पुरातन उच्चतरता जड़ीजड़ी नहीं कर रही थी। इसके अतिरिक्त विवाह समय में उसके हाथ शरीर, विवाही निर्देश-विवाही निर्देशी यथाप्प्राप्ति तो कर लिखा गया है, और वह विवाह में निवासता है। वादिया के द्वितीय विवाह में एक पुत्र है। वादिया विवाह समय में खुशहाल जीवन व्यस्तत कर रही है। वादिया का द्वितीय विवाह हो गया है। विपक्ष विवाह समय में लेकरता है। ऐसी दशा में वादिया करोर उपजित व्यवसाय (चैत्र प्राचीनकाल) मुदिली मां लाने वाले प्राप्त करने की अधिकारिणी नहीं हैं। जोकि तक वादिया के हाथ यह कहा गया है कि उसके भीतर ने विपक्षों को बीता द्वारा स्थिर हो गई थी। सभी के परिजनों में अपनी पत्नी या जो विवाह है। जिनसे समाप्त नहीं था। ऐसी दशा में वादिया बीस द्वारा स्थिर हो गई थी। वादिया करोर उपजित व्यवसाय करने की अधिकारिणी नहीं हैं।

उपजित की उपजित राजस्थान अन्तरिक्ष के अंतरहर व्यवसाय ध्वनि निर्माण कर भूमिष्ठ है कि वादिया में शरीर की राजस्थान वार्ता हजार लाख, हजार का खाना 16,866/-लघु तथा परम्परागत पर उल्लब्ध और परंपर प्राप्त करने की अधिकारिणी नहीं है। उदासुख द्वारा वादिया अपनी रूप से स्वीकार किये जाने योग्य हैं। ये अनुरोध के परिजनों में द्वारा वादिया निर्देश किये जाने योग्य हैं।

आदेश:
उदासुख द्वारा आदेश वादिया अपने अपने कर से आदेश किया जाता है।
विपक्षों को निरीक्षित किया जाता है कि यह निरीक्ष ने निरीक्ष में तीतर वन्दन के अंतर में शरीर की राजस्थान पक्ष के हजार लाख एवं उदासुख का खाना 16,866/-लघु तथा परम्परागत की अधिकारिणी करने को अद्यान करें। ये अनुरोध के अनुसार द्वारा वादिया निर्देश किया जाता है।
प्रत्यक्ष प्राप्ति पर प्रविष्ट श्रीकृष्ण शरण आचार्य ने अनावरण धारा 3/4 पुरातन महात्मा (विवेक विविधता पर योगीचार्यों का रस्सी)[अधिनियम, 1986] शासन — वन्यजीव, अनावरण

प्रवर्तक/प्रवर्तिका का रक्षित कथन है कि प्रविष्टा की सहाय दिनांक 05-10-2002 को मुस्लिम रिहा-विवाह के अनुसार बिलपी गौरवा गुरदा के साथ हुई है एवं प्रविष्टी के निष्कास में मैर पूर्वकर 20,000 —/—. रूपये कोई बोट शो जो कि प्रविष्टी ने अनुसार एक नहीं की है। प्रविष्टी के बादकर्ता ने प्रविष्टी की शारीरिक शारीरिक भारत में अब तक रुपये देने-देखने में खाना करने वाले हिस्टर नहीं देनेवाले के प्रर्थियों के कोटा पहली तत्काल विवाह था। शारीर के केवल मौलिक पात्र एवं अंतरराष्ट्रीय सामाजिक रहे हुए देश में मोदिसार्वविश्व या आधुनिक सरकार रूपों की गंगा करने लगे तथा प्रविष्टी को तहसील राजा से जाता। यह परिवार करता देखा कि कांग्रेस में मोदिसार्वविश्व व भारत बाजार रूपे व लाख देने नहीं चाहते और युद्ध जन-सब आप तेज देखा बेदमी लाली कर लें। दिनांक 5/7/04-2003 की शाम सब बाहर बाहर बाहर उपर विद्वानों की भारी सरक्षा के विभिन्न दशा तथा विश्वसनीय मूलदल के चौराहे चाँदी पत्थर 354/11/04 श्रीकृष्ण सामाजिक अभिमान पुरस्कार जुताव 125, दीपावली का चारा विदा विपरीत स्थितियों में विवाह कि दुनिया वहाँ लाता दिया। मजबूत आर्थिक का बाजार मूलधार अपलव संख्या 142/03 अनावरण धारा 498/22, 354, 500, 307, भविष्यवाणी एवं 3/4 प्रदेश प्रतिष्ठित अधिनियम एवं न्यायाधीश में विवाहीयाधिकारी है। प्रविष्टी के विश्वसनीय मूलदल के विभिन्न बाहर रूपक 125/29/04 नागरिक मूलधार की सामाजिक अभिमान पुरस्कार जुताव 125, दीपावली का चारा विदा विपरीत स्थितियों में विवाह कि दुनिया वहाँ लाता दिया। मजबूत आर्थिक का बाजार मूलधार अपलव संख्या 142/03 अनावरण धारा 498/22, 354, 500, 307, भविष्यवाणी एवं 3/4 प्रदेश प्रतिष्ठित अधिनियम एवं न्यायाधीश में विवाहीयाधिकारी है। प्रविष्टी के विश्वसनीय मूलदल के विभिन्न बाहर रूपक 125/29/04 नागरिक मूलधार की सामाजिक अभिमान पुरस्कार जुताव 125, दीपावली का चारा विदा विपरीत स्थितियों में विवाह कि दुनिया वहाँ लाता दिया। मजबूत आर्थिक का बाजार मूलधार अपलव संख्या 142/03 अनावरण धारा 498/22, 354, 500, 307, भविष्यवाणी एवं 3/4 प्रदेश प्रतिष्ठित अधिनियम एवं न्यायाधीश में विवाहीयाधिकारी है। प्रविष्टी के विश्वसनीय मूलदल के विभिन्न बाहर रूपक 125/29/04 नागरिक मूलधार की सामाजिक अभिमान पुरस्कार जुताव 125, दीपावली का चारा विदा विपरीत स्थितियों में विवाह कि दुनिया वहाँ लाता दिया। मजबूत आर्थिक का बाजार मूलधार अपलव संख्या 142/03 अनावरण धारा 498/22, 354, 500, 307, भविष्यवाणी एवं 3/4 प्रदेश प्रतिष्ठित अधिनियम एवं न्यायाधीश में विवाहीयाधिकारी है। प्रविष्टी के विश्वसनीय मूलदल के विभिन्न बाहर रूपक 125/29/04 नागरिक मूलधार की सामाजिक अभिमान पुरस्कार जुताव 125, दीपावली का चारा विदा विपरीत स्थितियों में विवाह कि दुनिया वहाँ लाता दिया। मजबूत आर्थिक का बाजार मूलधार अपलव संख्या 142/03 अनावरण धारा 498/22, 354, 500, 307, भविष्यवाणी एवं 3/4 प्रदेश प्रतिष्ठित अधिनियम एवं न्यायाधीश में विवाहीयाधिकारी है।
पिल्ली की ओर से प्रतिबद्धता प्रस्तुत करते हुए बालकने लिया गया है कि निषिद्ध लेखा से जिन 
किसी उचित कार्य के उत्तरदाता का दल पकड़ने का निर्देश नि्गया। निफोक के वर्तमान कार्यों के लिए 
नए अधिकारियों का ढांचा निर्माण हेतु उल्लेखित एवं उसकी कर्त्ताओं के साथ दुर्गमः करने वाली 
उपग्रह से निर्धारण के तरह से ही अपने मामले में रहने की इंतजार रहती है। अंतर्गत, 125, भागादों के वर्ष में निवासी 
अनेकों के कारण उत्साहित होते हैं कि पिल्ली के ग्राम अनेक तफावत तब है जब सरकारों के खाते पर 
पानी के उत्साहित होते हैं जब तक सभी केंद्रों का उत्साहित नहीं किया गया है। पिल्ली द्वारा मुसलमान रूपी एवं अन्य उत्साहित 
वर्तमान नए तकनीक भी हो सकता है तथा केंद्र उत्साहित रहने का मुख्य प्रभाव द्वारा प्रस्तुत उत्साहित वर्तमान धातु 
अधिकारियों के लिए अनुसूची करने की अवसरधाराओं के नहीं है।

बाहरी की ओर से अपने वादों के कारणों के समान्य रूप में इतिहासकार ने अनेक संदेह 
के रूप में संबंध की परिभाषा कराया है तथा ओपीडेक्स-01 के रूप में संबंध की परिभाषा कराया है तथा 
अनेक संदेह के रूप में संबंध की परिभाषा कराया है। इस तरह से अपने वादों के कारणों के समान्य 
रूप में संबंध की परिभाषा कराया है। इस संदेह के रूप में संबंध की परिभाषा कराया है। इस तरह से 
अपने वादों के कारणों के समान्य रूप में संबंध की परिभाषा कराया है। इस संदेह के रूप में संबंध 
की परिभाषा कराया है। इस संदेह के रूप में संबंध की परिभाषा कराया है। इस संदेह के रूप 
में संबंध की परिभाषा कराया है। इस संदेह के रूप में संबंध की परिभाषा कराया है।

स्वर्ण एवं अनेक उत्साहित रहने का मुख्य प्रभाव द्वारा प्रस्तुत उत्साहित वर्तमान धातु 
अधिकारियों के लिए अनुसूची करने की अवसरधाराओं के नहीं है।

बाहरी से अपने वादों के कारणों के समान्य रूप में इतिहासकार ने अनेक संदेह 
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में संबंध की परिभाषा कराया है। इस संदेह के रूप में संबंध की परिभाषा कराया है। इस संदेह के रूप
बूढ़े कार ड्राइवर। पूछते गया, मुझे अदालत ने इस दोनों के बीच तलाक होने को चिह्नित कर दिया था। उसने मुझने ने कहा खरी खाना नहीं करा दिया था। मैंने कहा, इसलिए मुझे हां, इसके प्रकाशक मुझने अदालत ने इस दोनों के बीच तलाक होने को चिह्नित कर दिया था।

तालिका के प्रमुख बयान 28-05-07 से स्पष्ट है कि उन राहतों ने एक मुकदमा अन्तर्गत 31-12-03 से 28-05-07 के बीच 31-12-03 से 28-05-07 के बीच 31-12-03 से 28-05-07 के बीच 31-12-03 से 28-05-07 के बीच के समय के दौरान विवश के न्यायाधीश से वारियर को दिनांक 14-04-07 को तलाक दे दिया था। इस वस्तुत अयोग्य में पूरे से हुए प्रमाणीय निगम से है, जिसे न्यायाधीश द्वारा इस वस्तुत अयोग्य में पूरे से हुए प्रमाणीय निगम से है, जिसे न्यायाधीश द्वारा इस वस्तुत अयोग्य में पूरे से हुए प्रमाणीय निगम से है, जिसे न्यायाधीश द्वारा इस वस्तुत अयोग्य में पूरे से हुए प्रमाणीय निगम से है, जिसे न्यायाधीश द्वारा इस वस्तुत अयोग्य में पूरे से हुए प्रमाणीय निगम से है, जिसे न्यायाधीश द्वारा इस वस्तुत अयोग्य में पूरे से हुए प्रमाणीय निगम से है, जिसे न्यायाधीश द्वारा इस वस्तुत अयोग्य में पूरे से हुए प्रमाणीय निगम से है, जिसे न्यायाधीश द्वारा इस वस्तुत अयोग्य में पूरे से हुए प्रमाणीय निगम से है, जिसे न्यायाधीश द्वारा इस वस्तुत अयोग्य में पूरे से हुए प्रमाणीय निगम से है, जिसे न्यायाधीश द्वारा इस वस्तुत अयोग्य में पूरे से हुए प्रमाणीय निगम से है, जिसे न्यायाधीश द्वारा इस वस्तुत अयोग्य में पूरे से हुए प्रमाणीय निगम से है, जिसे न्यायाधीश द्वारा इस वस्तुत अयोग्य में पूरे से हुए प्रमाणीय निगम से है, जिसे न्यायाधीश द्वारा इस वस्तुत अयोग्य में पूरे से हुए प्रमाणीय निगम से है, जिसे न्यायाधीश द्वारा इस वस्तुत अयोग्य में पूरे से हुए प्रमाणीय निगम से है, जिसे न्यायाधीश द्वारा इस वस्तुत अयोग्य में पूरे से हुए प्रमाणीय निगम से है, जिसे न्यायाधीश द्वारा इस वस्तुत अयोग्य में पूरे से हुए प्रमाणीय निगम से है, जिसे न्यायाधीश द्वारा इस वस्तुत अयोग्य में पूरे से हुए प्रमाणीय निगम से है, जिसे न्यायाधीश द्वारा इस वस्तुत अयोग्य में पूरे से हुए प्रमाणीय निगम से है, जिसे न्यायाधीश द्वारा इस वस्तुत अयोग्य में पूरे से हुए प्रमाणीय निगम से है, जिसे न्यायाधीश द्वारा इस वस्तुत अयोग्य में पूरे से हुए प्रमाणीय निगम से है, जिसे न्यायाधीश द्वारा इस वस्तुत अयोग्य में पूरे से हुए प्रमाणीय निगम से है, जिसे न्यायाधीश द्वारा इस वस्तुत अयोग्य में पूरे से हुए प्रमाणीय निगम से है, जिसे न्यायाधीश द्वारा इस वस्तुत अयोग्य में पूरे से हुए प्रमाणीय निगम से है, जिसे न्यायाधीश द्वारा इस वस्तुत अयोग्य में पूरे से हुए प्रमाणीय निगम से है, जिसे न्यायाधीश द्वारा इस वस्तुत अयोग्य में पूरे से हुए प्रमाणीय निगम से है, जिसे न्यायाधीश द्वारा इस वस्तुत अयोग्य में पूरे से हुए प्रमाणीय निगम से है, जिसे न्यायाधीश द्वारा इस वस्तुत अयोग्य में पूरे से हुए प्रमाणीय निगम से है, जिसे न्यायाधीश द्वारा इस वस्तुत अयोग्य में पूरे से हुए प्रमाणीय निगम से है, जिसे न्यायाधीश द्वारा इस वस्तुत अयोग्य में पूरे से हुए प्रमाणीय निगम से है, जिसे न्यायाधीश द्वारा इस वस्तुत अयोग्य में पूरे से हुए प्रमाणीय निगम से है,
विषय किससे उसकी दो समान हैं। विषय सूची ने न्यायालय के नाम के बजार अन्तर्गत धारा 125, राहत-राजमंडिर के वाद में है और दर्जा उसके प्रयास उसने अपनी समस्या को जताया कर दिया है। इस तरह से नी किसी का आरोप तलाक के समय में रक्षा है और उदाहरण-न्यायालय के माध्यम में दर्जे पर उदार-राजमंडिर का माध्यम में सुनावला एवं उदार-राजमंडिर पारिवार के प्रति पूर्ण हो जाता है और रक्षा न्यायालय धारा 14-04-07 से पूर्ण है। इसके अतिरिक्त नौकरी सम्बन्ध के समय तलाक का वाद बिल के साथ कार वह है जिसे करने वाली यह परामित्र को अन्तर्गत राजमंडिर के माध्यम से होता है और उसकी सुनावला ने उदार-राजमंडिर की जानकारी पत्तियों को किसी भी स्थान से नहीं हो जाता है जो रक्षा तलाक पूर्ण हो जाता है।

इस समय के विषय में विवेचन ने धारा 1995 जे.आर.ई. 35 उदार-राजमंडिर है जिसमें नामी सूची जब न्यायालय राजमंडिर ने इस अनिवार्य व्यक्ति कहा है कि यदि प्रधान-न्यायालय में उदार-राजमंडिर का दो नहीं है तदर्शित है तो प्रधान-न्यायालय द्वारा रक्षा को अवस्था का काम एवं रक्षा से धारा 125 राहत-राजमंडिर के बावजूद में किया है और उत्तर के यह समय के प्रयास बिनें के द्वारा यह बता है कि जब प्रति की गर्व तलाक को नहीं है नाम न्यायिक की विविधता में रक्षा का दृष्टि है कि यदि प्रधान-न्यायालय में दीदे वाले अनुमोदन के बिनाव यह है कि उसके समय में रक्षा की न्यायालय के संगम अनोखे की कारोबार्यों में प्राप्त रूप से दिनें 14-04-07 को तलाक करवाने उसे देखा तब कर दिया है और तलाक के स्पष्टत: बिनें की तलाककुरुक्षेत्र पत्ती है। प्रतिदिन यह बता है कि विनें के दिनें 14-04-07 से पूर्व तक दीदे वाले का काम करना है और उसकी सुनावला उदार-राजमंडिर धारा 14-04-07 को वाली के समय तलाक के देवता पूर्ण की आगाज के अनुसार रक्षा का दृष्टि होता है। तदनुसार अवस्था विनें संस्कृति 01 वाली के नें बिनें के द्वारा सकारात्मक रूप से निर्देशित किया जाता है।

निर्देशार्थ आवश्यक बिनें संस्कृति 02 :-

यह आवश्यक विनें इस आवाज को बनाया गया है कि "विनें के तलाक के उपरांत बिनें को मेहर व इतिहास की विनें की अवधारित कर दी है और उनमें देखा कर दिया है?"

प्रवासी पर आवश्यक बिनें संस्कृति ने अनुशासन तथा अनुशासन सहित से दिनें हैं कि बिनें की विनें के साथ धारा 16-10-02 को कुछ तथा और उदार के विश्वास में एक निर्देश किया गया था जिससे विनें की विनें के साथ 25,000/- अनुशासन है। इस नाम विपक्ष में दीदे नें दीदे के दृष्टि के साथ में प्रवासी पर विनें का विनें के साथ से स्थान ना देखा है तो विनें के दृष्टि को और उदार-राजमंडिर के निर्देश अनुशासन है, इसलिए यह स्पष्ट है कि विनें के दृष्टि को नहीं करना यह अनुशासन विनें का अनुशासन करना है जिनका उदार के साथ अनुशासन को नहीं है नी के दृष्टि के पारिवारिक या उदार-राजमंडिर के अनुशासन को अपनी विनें का अनुशासन करना है। दिनें के क्षेत्र में यह अनुशासन के दृष्टि के पारिवारिक या उदार-राजमंडिर के अनुशासन को अपनी विनें का अनुशासन करना है। दिनें के क्षेत्र में यह अनुशासन के दृष्टि के पारिवारिक या उदार-राजमंडिर के अनुशासन को अपनी विनें का अनुशासन करना है।
पत्रालोक के अनुसार से रुपरेखा है कि उम्मीद चयन के कारण एक वाद धार्मा 125. दरकार तथा सार्वजनिक विषय गृही अक्षम चुरा था जिसमें न्यायवाद द्वारा गुप्त-प्रवेश के आधार पर दिनांक 28-05-07 निधान मार्ग किया था। उपर वाद धार्मा 125. दरकार के कारण जिसमें आई फायदादारी (Quasi Criminal) के अनुसार आया है और वह सुनिश्चित निर्देश निभाया अदालत ने उपर जानकारी नहीं मिली। ऐसे ही नवाब निकाय प्रवेश (उदाहरण) 2009, उद्वहन न्यायालय, मुंबई 2463 संप विवाद जांच निकाय तथा प्रशासन, ने माननीय उद्वहन न्यायालय द्वारा यथार्थ निर्माण किया यह है। माननीय उद्वहन न्यायालय द्वारा यह आरोपी किया गया है कि फायदादारी निर्देश निर्देशन न्यायालय एवं बात में गृही नहीं होता है परंतु यदि कोई विवादपूर्वित (Admission) कारखाने वाले में की गयी है। इसलिए साध्यता के अनुसार दर्शन 125. दरकार के बाद अन्य विवाद में एक अधिकारिक विवाद में तालक दिया जाना स्वीकार किया गया है। ऐसी दशा में उत्तर स्थिति प्रतिक्रिया प्रकरण में सामने दिया गया है। उपर के आरोपित अन्य कोई निफ़ाप प्रस्तुत प्रकरण में सामने नहीं आया। इसी स्तर पर यह यथा दस्तावेज है कि बात अर्पित है धारा 125. दरकार में दिवारी ने लेख के द्वारा बाहरिया को तालक दिया जाना, उसे दिवारी के नाम से सुनाम किया जाना और जासूस किये जाने का काम किया गया था। इसके आलावा भी प्रस्तुत प्रकरण के अनुसार दिवारी ने उस काम में सहयोग दिया जाना विवादपूर्वक दाखिल किया कि उसने बाहरिया को तालक नहीं दिया है इसलिए दिवारी की दिशा पूर्वक वाद रचना की है। इसी के साथ यह यथा दस्तावेज है और अन्य विवाद में के तालक प्रस्तुत प्रकरण धारा 125. दरकार के बाद में निकाय-निकाय विवादाधीन बाहरिया है। इस दशा में धारा 125. दरकार के अनुसार दिया गया निफ़ाप को कोई सुनाम एवं बाहरिया इस न्यायाधीश पर स्थापित नहीं है। तदनुसार अवधारित लिखी संख्या 03 बाहरिया के प्रयोग में निकाय के विषय न्यायाधीश रूप से निपटी किया जाता है।

तिलसारण अवधारित हिंदी प्रमाण 04।

यह अरमान ग्रुप अनुष्ठान से समाप्तित है।

जैसे कि दायित्व धारा 01, 02 और 03 का निराशान करने के लिए, निफ़ाप द्वारा यह उपलब्ध किया जा चुका है कि दिवारी ने दिनांक 14-04-07 के बाहरिया को तालक दिया जा चुका है और बाहरिया निफ़ाप को लक्ष्य किया था। दिवारी ने तालक के उपर स्थापित दाहिने की विनियमन के रूप में 25,000/- रूपये, इत्यादि की भारतीय के रूप में 18,800/- रूपये की अदालती नहीं की गई है और न ही फैसला प्राप्तिक द्वारा निकाय भी प्राप्ति की अदालती नहीं की गई है और न ही उसके अनुसार दाहिने की विनियमन की गई है तथा धारा 125. दरकार के अनुसार दिवारी के रूप में दिये गये निफ़ाप संस्थापक दाहिने के सुसंबंध में गृही नहीं है। ऐसी दशा में बाहरिया बाहरिया अनुसार प्राप्त करने को अधिक नहीं है। तदनुसार बाहरिया का दायित्व अपरिवर्तित हिंदी प्रमाण यह है।

आदेश

बाहरिया का दायित्व धारा 3/4 न्यायालय महाल (उदाहरण पर अधिकार के संबंध) विवादित, 1988 संयुक्त आयुक्त किया जाता है। विवाद का आयुक्त निर्देश किया जाता है कि वह बाहरिया को जिले की भारतीय 25,000/-, इत्यादि की विनियमन 18,800/- रूपये की अदालती नहीं करेंगे। दाहिने के रूप में एक जान के लिए अर्थ के अनुसार 125. दरकार के संबंध में दिये गये निफ़ाप संस्थापक दाहिने के सुसंबंध में गृही नहीं है। ऐसी दशा में बाहरिया बाहरिया अनुसार प्राप्त करने की अधिकार है।