

## **The Concept of Mahr (Dower) According to Islamic Law**

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### **Abstract**

The aim of this article is to study the concept of Mahr (Dower) among various other fundamental rights, which the wife enjoys in accordance with the teachings of Islam. The groom is presenting it to his bride or stipulated on the occasion of marriage ceremony. It shows the significance of dower in the contract of marriage. The research focuses on the way Islam promoted the issue of the dower and made it a right for the woman, so a marriage contract will not be valid without a dower. Here it particularly focuses on this right which affects the wife, the right to get a dower. This right is wife's own exclusive right. Neither the father nor the guardian should interfere or take anything of it without her permission to do so.

**Key words:** Mahr, Dower, Marriage, Divorce, Life Partner

### **Introduction**

Dower, for which the Arabic word Al-Mahr is one of the rights conferred on woman by the Allah (S.W.T) and is binding on the husband towards their wife. In essence, Mahr is a gift owed to his wife by a Muslim husband on the occasion of marriage as a sign of gratitude that symbolizes his sincerity and affection for her. Depending on the wife's approval, the subject-matter of gift may be money or some other item that has value, without a greater limit. The dower's idea belongs to the pre-Islamic era and is not the one introduced by Islamic law. But despite of this fact, it was Islam which regulated this fundamental right and brought it into an appropriate form to the World. In the pre-Islamic era the status of woman was just like a property, which can be sold and bought without her will. It was the job of her legal heirs/guardian and not of the woman to negotiate for a better deal of dower as it was going into their pockets and not the woman, if there was a marriage proposal from a man. However, with the advent of Islam in the Arab World, various notions and practices in place at that time gave way to novel Islamic

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values and concepts which greatly benefited both the individual and community in general. One of such concept is of dower, which Islam redefined in its present form. Under the then new law, that is Sharīa, it solely became a woman's right and no one else to decide their fate.

### **Dower's Definition**

The dower's legal definition as per Hanafīyyah is:

“The property which is incumbent on a husband either by reason of its being named in the contract of marriage, or by virtue of the contract itself. As opposed to the usufruct of the wife's person<sup>1</sup>.”

So it means that whether dower is specified or not, the husband is even then bound to give the dower money/property to their wife. Nevertheless, this definition and others<sup>2</sup> show the significance of dower in the contract of marriage. This is not the price of enjoyment of woman's body only but is also an honour for the wife, which shows the real aspiration of the husband to become his life-partner.

As evidenced from the above definition, dower is something which is divine or heavenly and is prescribed by the Allah (S.W.T). Such interpretation's evidence comes from the holy Quran:

“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<sup>3</sup>.”

The above verse from the holy Quran clearly states that women should be given their dower, which completely abandons the practices related to dower prevalent in the pre-Islamic era, and this what the essence of the word “give” in the above verse implies, as it is used in the imperative form. However, it is a routine matter in the Islamic world that men are obliged to pay dower to their wives out of their free will, while the women are not required to pay a penny to their husbands for the marriage to proceed, although marriage contract is of mutual interest to both of them.

Apart from the Quranic evidence, further support for a woman's right to dower can be found in the Sunnah of the Prophet (P.B.U.H). Ibn Abbas narrated a hadith from the Prophet (P.B.U.H) that when Fatima came into marriage contract of Ali, the Prophet (P.B.U.H) said to him:

“Give her something as sadaqa.” Ali replied: “I have nothing with me.” The Prophet (P.B.U.H) asked: “Where is your Hutaimiyyah Shield?”<sup>4</sup>

This indicates that he (that is Ali) should give her something that might be of little benefit, however. He can give her anything, such as a shield, that is

symbolic. To make her happy is the intention of doing this. In addition, Muslim scholars agree on the right of women to the dower and they agree that the marriage contract should include a dower. In order to make it sure that this condition is fulfilled they have warned that those not fulfilling this requirement would be punished severely on the Resurrection Day.<sup>5</sup>

### **Dower's importance under Islamic law**

The dower's importance under Islamic law is evidenced from the fact that it satisfies various functions which leads to the success and prosperity of the marital relationship in between the spouses. The Qurān commands marriage as an obligation upon all Muslim men by these words, 'Marry women of your choice'<sup>6</sup> and again on the concept of marriage the Qurān states, 'And among His Signs is this, that He Created for you mates from among yourselves, that you may dwell in tranquility with them.'<sup>7</sup> Both Muslim and Bukhari quote on the authority of Anas b. Malik and 'Abdullah b. Masud that the Prophet (P.B.U.H) established the institution of marriage and said,

"O young man, those among you who can support a wife should marry, for it restrains eyes (from casting evil glances) and preserves one from immorality; but he who cannot afford it should observe fast, for it is a means of controlling the sexual desire."<sup>8</sup>

Nikah or marriage in Islam according to the Hedaya, 'in its literal sense, signifies a contract of union, which is fully accomplished by the junction of a man and woman;<sup>9</sup> Nikah is thus a covenant entered into between man and woman. In an early Madinan verse believers were enjoined for the protection of the early Muslim community,

"Do not marry unbelieving woman until they believe: A slave woman who believes is better than an unbelieving woman. Even though she allures you. Nor marry (your girls) to unbelievers until they believe: A man slave who believes is better than an unbeliever even though he allure you."<sup>10</sup>

Though prescribed by the Qurān, it is not a sacrament, in the sense that it is indissoluble such as a Christian marriage entered into before God, but a civil contract.<sup>11</sup> Like all civil contracts marriage can be brought to an end by operation of law or by the act of the parties. In this latter case, divorce or talaq, is effected under provisions laid down by the Qurān.<sup>12</sup> One prominent Muslim author and judge has described marriage as,

Regarded as a social institution, marriage, under the Muhammadan Law, is essentially a civil contract... In fact, a marriage contract, as a civil institution, rests on the same footing as other contracts. The parties retain their

personal rights against each other as well as against strangers; and according to the majority of the schools, have power to dissolve the marriage-tie.<sup>13</sup>

The basics of marriage, an essential contract are simple and can be created by an oral declaration made by the parties before witnesses without a formal agreement being enforced. In a time when an oral stipulation of a contract was the law, marriage was contracted by declaration and agreement.<sup>14</sup> Marriage legalizes conjugal relations and imposes the formal obligation on the husband to comply with all ante-nuptial contracts, retains the affinity restriction on both sides, and grants the rights of inheritance on both sides. The marriage contract contains four basic clauses, which are;

- (i) Offer,
- (ii) Acceptance,
- (iii) The agreement to pay the bridal gift or dower,<sup>15</sup> and
- (iv) Witnesses (at least two) to the contract.

It must be certain of the words of offer and acceptance. The uncertainty must not be there. There must be a definite intention, in other words, to create conjugal relationships. It is an arrangement to legalize sexual intercourse and to procreate. Marriage, as a contract, has certain features that are legal. It can be formed without a ceremony and consent and capability are necessary prerequisites for its creation, as in all contracts. Either or both of the parties must be able to write the terms of the contract. The partner (wife) is referred to until the necessary formalities of the marriage are completed as *zawj* in the holy Qurān, 'And We said:

“O Ādam! Dwell thou and thy wife (*zawjukal-jannata*) in the garden: And eat of the bountiful things therein as (where and when) ye will; but approach not this tree, or ye run into harm and transgression.”<sup>16</sup>

The payment of Dower (Mahr) is an important and basic condition for a legitimate marriage in Islam. While the Hedaya states that moreover the payment of the dower is enjoined by law, merely as a token of gratitude, hence the mention of a marriage's validity is not absolutely necessary.<sup>17</sup> It has become an important part of the marriage contract as approved by the holy Quran,

“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.”<sup>18</sup>

Not just marriage and the obligations of the Dower Qurānic, but also the practices of the Prophet (P.B.U.H.). Under the prophetic tradition, Dower may

also be paid in kind. The Prophet (P.B.U.H.), who used to urge young people to marry, thus considered an absolute responsibility to Dower. In one specific case, he approved the marriage of a poor person who could not pay a dower, on the promise of the latter that he could teach certain suras of the Qurān, and in another instance, on the groom offering a banquet in addition to the mahr.<sup>19</sup>

The Qurān does not use the term mahr, but the preferred word is sadaqa or gift. It is understood that Sadaqa was a gift to the bride before Islam, and Mahr was paid to the father of the bride. In the Islamic period, this significant pre-Islamic tradition did not survive. Thus, Dower or mahr is of Qurānic origin and is central to a Muslim marriage. When it contains a provision granting the bride her dower, accepted by both sides, a marriage contract is complete. If it is not clearly specified, then it will be inferred by the law according to prescribed principles.

In countries like Pakistan and India, where the predominant school of Islam is Hanafī, if the dower is not specifically defined, the rule would mean dower under customary law and in accordance with definite principles. The Judicial Committee of the Privy Council, in a leading case on the subject is (this was then the highest body of appeal from decisions of the Indian courts), said,

“Dower is an essential incident under the Musulman Law to the status of marriage, to such an extent is this so that when it is unspecified at the time the marriage is contracted the law declares that it must be adjudged on definite principles.”<sup>20</sup>

The validity of the marriage is not conditional, according to the Hedaya, on the dower being stated. The marriage is still valid if at the time of the marriage, it is not specified either in the contract or not mentioned at all or if the husband stipulated that there should be no dower.<sup>21</sup> According to specified laws, the wife would be entitled to mahr al-mithl or a customary or proper dower. Her privileges differ according to her social status and personal characteristics as well. Her age, appearance, fortune, wisdom and virtue are certain qualities. When determining her proper dower, her equality with the women from whose dowers the starting point is to be made must be taken into account such as, her paternal relations, sisters, aunts or daughters of her paternal uncles, but not to be estimated by the dower of her mother or her maternal aunt.<sup>22</sup>

There is difference in between the Ḥanafī and the Mālikī Schools on the question where dower is not so fixed and, either, (a) The husband divorces the wife before consummation, or, (b) Dies before the fixing of the amount of

dower. The Hanafi School claims that in any such case the wife is entitled to her gift based on the Qurān;

There is no blame on you if you divorce women before consummation or the fixation of the 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.<sup>23</sup>

However, if the parties agree on the amount of the dower after the marriage, but the husband dies before consummation, then the wife is entitled only to a gift applying the above verse of the Qurān.<sup>24</sup>

Malik is of the opinion that where the husband dies before consummation, then the wife is not entitled to dower but would get her share of the inheritance. He gives as an example of the arbitration award of Zaid b. Thabit, who adjudicated upon the claim by the daughter of ‘Ubaid Allah b. ‘Umar who was married to the son of ‘Abdullah b. ‘Umar, who died before co-habitation or fixation of mater.

Mālik has been reported as saying that ‘Umar bin ‘Abdul ‘Azīz, the Ummayyad Caliph wrote to an administrator suggesting that any person who gives away a woman in marriage must lay down a condition that she receives a gift or a present, she can as a wife, demand as of right.<sup>25</sup>

By citing the Qurān and from a tradition of the Prophet (P.B.U.H.), the Hanafi School supports their stance. In the former case, the verse in question continues after declaring those women who are banned from marriage, 'except for these, all others are lawful, provided that you seek gifts from your property (them in marriage), - desiring chastity, not lust.'<sup>26</sup> The second point of argument put forward by the Subcontinent's Hanafi School in favor of their point of view is based on the Prophet's decision (P.B.U.H).

Hence in a hypothetical situation, a person asked Abdullah b. Mas'ud about the position of a woman whose husband has passed away before the fixing of her dower. Although he was at first perplexed, by the hypothetical question posed, he replied that in answering the question his reasoning was based on his own ijtiḥād. He felt that she should be treated like any other woman in other words she would be entitled to a proper dower. Several witnesses came forward to say that in a similar situation the Prophet (P.B.U.H) had given the same decision.

### **Conclusions**

This research has revealed that the dower is wife's own wealth and it has nothing to do with the husband or the guardian. In other words, anything

from the dower is not allowed to be taken by the guardian, and the same applies to the husband, unless something from the dower is given willingly. This is because Islam sees the Dower as a gesture or a way to respect and dignify the wife. Dower, on the other hand, is regarded as a symbolic, yet sincere, manifestation of a man's desire to marry a woman. These two considerations make it obvious as to why husbands or guardians are not permitted to take anything from the dower.

It may be concluded that under Islamic law, the dower means cash or property that the wife is entitled to receive from the husband in relation to the consideration of marriage. As a sign of affection for the wife, Dower is a duty placed on the husband. After the breakup of her marriage, the essential aim of the dower is to give the wife means so that she will not become hopeless after the husband's death or the end of a marriage by divorce. Dower is meant for the economic welfare of a woman and it is the legal, moral and religious responsibility of the husband to fulfill this in all circumstances. In the case of the breakup of the union, irrespective of the manner in which it was chosen, it should be compensated without delay if the dower was not paid. In the event of non-consummation of marriage, the husband must pay half of the dower's worth. Nevertheless, in case of valid retirement whether the marriage is consummated or not but it is proved with circumstantial evidence then in such a situation it is mandatory for the husband to pay full amount of the Mahr to his wife.

### References

- 1 Baillie, Neil B. E, Digest of Mohammadan law, Second part, p.91, 2 edition, Premier book house, Lahore.
- 2 Siddiqī, Muhammad Iqbal, The family laws of Islam, Delhi, p.79, International Islamic Publishers, 1988.
- 3 Sūrah Al-Nisā, 4: 4
- 4 Abu Al-Nur, Al-Ahmadi, Manhaj al-sunnah ft al-zawāj, 4th edn. p.407, Cairo: Dar Al-Salāxn, 1992.
- 5 Sulaimān, Al-Fābārāni, Al-Mujam al-kabir, vol. 8, (Cairo: Maktabat Ibn Taimiyah, 1983), p. 40. Hadith no. 7301.
- 6 Sūrah Al-Nisā, 4:3
- 7 Sūrah Al-Rūm, 30:21
- 8 Muslim, Vol. 1, p. 703, Hadith Nos. 3233, 3236. Also al-Bukhari, Sahih, Vol. VII.

- 9 'Alī, Burhan-ad-Dīn, *The Hedaya fī'lfuru*, Vol. 1, tr. Charles Hamilton, p. 122, Karachi, 1991.
- 10 Sūrah Al-Baqara 2:221
- 11 Marriage, properly sexual intercourse, but in the Qur'an used exclusively of the contract of marriage. EI, s. v. 'Nikah, ' Vol. VIII, (Leiden, 1995), p. 26.
- 12 Sūrah Al- Ṭalaq65:1
- 13 Amīr 'Alī, Syed, *Muahmmedan Law*, Vol. 2, 7th ed., p. 43, New Delhi, 1976.
- 14 *The Hedaya*, p. 72.
- 15 In pre-Islamic Arabia mahr was given to the father thus importing into the transaction the concept of bridal purchase, a description that led to a libel action in the London High Court, which is discussed later. EI, s. v. 'Mahr,' Vol. VI, (Leiden, 1991), p. 78.
- 16 For a detailed meaning of the term see EI, s. v. 'Zawdj, ' Vo1. XI, (Leiden, 2002), F 464.
- 17 *The Hedaya*, p. 122.
- 18 Sūrah Al-Nisā, 4:4
- 19 Bukhārī, Vol. VII, pp. 7 and 16 hadith Nos. 10 and 24.
- 20 *Hamira Bibi v Zubaida Bibi*, I.L.R 38, reported in *Mohammedan Law*, p. 395.
- 21 *The Hedaya*, p. 122.
- 22 *libid*, p. 148.
- 23 Sūrah Al-Baqara 2: 236
- 24 *Hedaya*, p. 125.
- 25 *Muwatta'*, p. 233, paragraphs, 1071 and 1072.
- 26 Sūrah Al-Shūra42:4