

Rights of Muslim Women in Case of Unpaid Dower

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Abstract: *Dower is an essential element of marriages under Muslim Law. The Arabic term Mehr also means dower. Dower is an exclusive right of Muslim women to receive a sum of money from their husband before the marriage, at the time of marriage or at any point of time after the marriage. Dower enhances the security status of a Muslim wife in marriage but the Muslim wife is not entitled to receive dower under all circumstances. There are some situations where the Muslim wife is not entitled to dower. This study revolves around understanding the entire concept of Dower under Muslim Law. The study also briefly explains the objective and importance of dower. The paper also discusses how can a Muslim woman recover the unpaid dower and also discusses some of the relevant case laws with respect to the same.*

Keywords: Muslim, Dower, Wife, Meher, Divorce, Islamic, women

1. Introduction

Mahomedans (Muslims) treat marriage as a civil contract. For the purpose of constituting a marriage the agreement between the parties arising out of proposal and acceptance is necessary. Moreover the contractual character of Muslim marriage is emphasized by the presence of Mehr (dower) which is an essential part of Muslim marriage. Mehr is of great significance under Muslim law. It is one of the fundamental rights which is given to women under Muslim law. It is a distinctive attribute of marriage under Muslim Law. Dower or Mehr under Muslim law means the amount of money or the property which a Muslim wife is entitled to receive from his husband or from the relatives of his husband in consideration to marriage. [1] It is an obligation imposed on the husband as a symbol of respect for his wife. The concept of dower was initiated by Prophet Mohammad. Prophet Mohammad made it obligatory for husbands to pay Mehr to their wives in every marriage. Dower is agreed by both the parties during the time of marriage. Even if the dower is not specified at the time of marriage it would not render the marriage as void but there would be an agreement implied to pay proper dower. The dower can also be fixed even after the marriage. Many people confuse dower with dowry. There is a lot of difference between both the terms. Dower is given in good faith as a financial security to the Muslim wives and the concept of dower exercised only under Muslim (matrimonial) law, no other religion exercises any such concept. On the other hand, dowry was one of the most prominent social evil in the Indian society. It has nothing to do with any specific religion/ law. No law states that the girl or her family is under any kind of obligation to give dowry to husband's family or relatives. Dowry is demanded by husband's family to fulfil their greed and was not given by the free will of the girl's family. The dower which is fixed after both the parties got married is termed as specified dower. The objective behind providing dower to the wife is that she can support her livelihood and the wife does not become helpless if the dissolution of marriage takes place or if her husband dies. The other main reason why a Muslim wife is entitled to dower is to prevent the husband from divorcing his wife and prevent the misuse of power conferred on the husband since under Islamic law husbands can give divorce to their wives according to his will thus the concept of dower was evolved to protect the wife from the

arbitrary exercise of power of divorce by her husband. Also, since it is an obligation on the husband to pay dower every time he gets married this will also help in preventing the practice of polygamy to a certain extent. An unpaid dower is similar to a simple debt where the husband is a debtor and the wife is the creditor. The researcher in the later part of the paper in detail discusses about the various types of dower, circumstances in which a woman is entitled to receive dower / not entitled to receive dower and how much amount of dower is she entitled to receive. The researcher also discusses the various legal remedies which a woman can exercise to recover the unpaid dower in detail. Finally in the end the paper ends with a conclusion and some valuable suggestions (if any) will be put forth by the researcher.

2. Research Methodology

There are mainly two types of research methodologies Doctrinal and Non- Doctrinal used for conducting research work. Doctrinal method of research mainly emphasis on conducting research by analysing the materials available i.e. the primary sources of data; statutes, acts, laws and rules or the secondary sources of data i.e. published articles, journals, research papers and newspapers etc. while non-doctrinal research requires the researchers to undergo field study for the purpose of conducting research. To understand the current research topic of rights of Muslim women in case of unpaid dower and for the purpose of conducting a valuable and meaningful research the researcher is required to follow doctrinal method of research.

3. Research Objectives

The objectives of the study are as follows-

- To study and evaluate the concept of dower under Muslim law
- To study and analyse different types of dower and the conditions under which the same is paid.
- To study and understand sum of dower with respect to different schools of Islam.
- To evaluate the rights and remedies available to Muslim women to recover dower

4. Research Question

The research questions are as follows-

- What are the various types of dower?
- What are the various circumstances under which a Muslim wife is entitled to dower?
- What is the amount of dower which a Muslim wife is entitled to receive?
- What are the various remedies available to Muslim wives for recovering their unpaid dower?
- What are the features of retention of husband's property in lieu of dower?

5. Literature Review

Literature review is one of the main aspects involved in the research paper. The researcher in this paper has reviewed the following works. For the purpose of an effective research the researcher has reviewed a paper which discusses the importance of dower in Islam. The paper also studies the legitimacy of Dower in Islamic Law, minimum and maximum amount of Dower and prompt and deferred dower. [2] The researcher reviewed another paper which talks about the dower under the Shariah and The Muslim Family Laws. The paper also discusses the challenges of the application of dower's right. [3] The researcher referred another paper which discusses the marriage under Muslim law and dower. The paper reflects importance of dower, its types and the rights of women in lieu of unpaid dower. The paper also discusses the rights of Muslim women to lien the property of deceased husband in lieu of dower. The paper also highlights the judicial response. [4] There is another paper which studies about Mehr and the kinds of dower. The also paper discusses about Qur'anic concept of Mehr, hadith view about Mehr, interest on dower and the application of law of limitation on dower. The study also reflects the debate on inflated deferred dower and the social dynamism about dower. [5] The researcher reviewed another paper which talks about Mehr (dower) rights to wife, the different types of dower and the object or purpose behind Mehr. The current paper also highlights the remedies for non payment of dower and the inheritance rights of a wife in husband's property after his death [6]. There is another paper reviewed by the researcher and it highlights the origin and philosophies behind the concept of Mehar. The paper also discusses different types of dower, rights and remedies of wife with regard to Mehr and the difference between Shia and Sunni Law regarding dower. The paper also reflects various Indian legislation and case studies regarding the issue of Mehr. [7]

6. Detailed Study

6.1 Types of Dower which the Muslim Wife is entitled to Receive

There are two types of dower which the Muslim wives are entitled to –

6.1.1 Specified Dower

Under Muslim law the amount specified dower is fixed either before the marriage / at the time of forming the marriage contract or even after the marriage. It is fixed by mutual consent of both the parties. The settlement of dower can take place at any point before or after marriage or at the time of marriage. Specified dower is further classified into following two types-

- **Prompt Dower-** The amount of dower which is payable before the wife starts cohabiting with her husband in his house.
- **Deferred Dower-** The amount of dower which is payable on demand after the dissolution of marriage either by divorce or death of husband. The amount of deferred dower is usually high.

6.2 Proper Dower

Proper dower is also known as unspecified or customary dower. Proper dower is the one which the Muslim wife is entitled to receive even if the marriage contract itself states that the wife is not entitled to claim any dower or is payable on demand even if the amount of which is not fixed while forming the contract of marriage or before the marriage. The amount of proper dower is influenced by the following factors-

- a) Economic condition of her husband
- b) Financial and social status of wife's father
- c) Local customs prevailing
- d) Personal qualifications (i.e. virtue, understanding, age, fortune beauty etc.)
- e) Family paternal relations

6.2.1 Brief Analyses of Amount (Minimum And Maximum) of Dower Fixed Under Different Islamic Schools

Different jurists have different opinions with regard to the minimum amount dower which a women is entitled to receive.

- a) **Hanafi School-** As per the jurists of Hanafi school of thought the dower that a Muslim wife is entitled to receive should not be less than ten dirhams.
- b) **Maliki School-** As per the Maliki jurists the dower that a Muslim wife is entitled to receive should not be less than three dirhams.
- c) **Shafi and Shariya Schools-** For both these schools of thought there is no fixed amount of dower which a Muslim women is entitled to receive.

Exception- Muslims who are very poor and cannot afford to pay even ten dirhams in place of paying the dower amount they can teach Quran to their wives.

Maximum Amount- Many jurists are of this view that there should not be a fixed maximum amount of dower which a husband is obliged to pay under Muslim law. A man must be given the liberty to pay as much as he can depending on his financial status and affordability. As per the Quranic

versealso, no specified amount of dower is there which a Muslim wife is entitled to receive. Several jurists are also of this view that the dower amount which a Muslim women is entitled to receive should be in accordance with the economic and social status of the man.

6.3 Conditions of Payment of Dower Under Different Circumstances

- 1) When the marriage is consummated but dissolved due to husband's death. In such situation where the marriage is a valid marriage the Muslim and the wife is entitled to the specified dower as per the contract of marriage In that case whole amount of dower will be given to her or she will be entitled to proper dower, if the amount is unspecified and if the marriage is an irregular marriage (unlawful marriage having a limited legal effect) in that case scenario the Muslim wife is entitled to the specified dower or the proper dower whichever will be less.
- 2) When the marriage is consummated but dissolved by divorce-
 - a) Divorce given by husband- Where the husband gives divorce to his wife in case of valid marriage the wife will be entitled to half of the specified dower or a present of three articles if unspecified and if the marriage is an irregular marriage (unlawful marriage having a limited legal effect) in that case scenario the Muslim wife is not entitled to any dower.
 - b) Divorce given by wife- Where the wife gives divorce to her husband under those circumstances the wife is not entitled to receive any dower.

7. Remedies available to Muslim Women to Recover the Unpaid Dower

7.1 Right to Refuse of Conjugal Rights

Under Muslim law wife can refuse to cohabit with her husband if the sum of prompt dower is unpaid and the marriage has not been consummated. Since unpaid dower is a lawful justification thus the wife can deny living with her husband and also denying from having sexual intercourse with him until the dower is paid. In case where the wife is a minor or lunatic her parents can refuse to send her to his husband's house till the time the amount of dower is paid and even during such times the husband is legally bound to maintain his wife. In cases of Nasra Begum v. Rizwan Ali [8] and Abdul Kadir v. Salima [9] the court held that wife can refuse to live with her husband till the time he pays the amount of dower. Even if the husband files the petition for restitution of conjugal rights before consummation of marriage the same will be rejected.

7.2 Right of Enforcement of Dower as a Debt

1) During Husband's Lifetime

In cases where the husband is alive and the marriage is consummated the wife cannot deny to live together with her husband. Under such circumstances the wife can maintain an action in the court in order to recover the unpaid amount of dower. The wife can realise it from her husband in the similar way as a creditor recovers the loan.

2) After Husband's Death, Wife's Lien for Dower

After the death of husband the widow can recover the unpaid amount of dower by filing a case in the court against the legal representatives of the deceased. The representatives of the deceased are not personally responsible for paying the unpaid dower amount. The dower is the debt against the estate of the deceased husband inherited by legal heirs.

7.3 Right of Retaining Possession In Lieu Of Unpaid Dower

The widow has a right of lien on the property of her husband after his death till the time the dower amount is paid to her. Right of retention is made available to the widow irrespective of any agreement between the parties. If the wife has lawfully obtained the possession of her husband's property she can retain the same till the time dower amount is paid to her. The same right is also exercisable against the creditors (If any) and the legal heirs of the property as well. No other party can get any benefit out of that property till the time they make the payment of the unpaid amount of dower to the widow. The widow's right to retain the property does not mean that the widow has any right on the property. She can only retain the possession of such property till the time the dower amount is paid to her. Right of lien can also be exercised in case of dissolution of marriage by divorce.

7.3.1 Features of Right to Retention Exercised in Lieu of Dower

- 1) WIFE DOES NOT HAS ANY RIGHT TO RETAIN THE PROPERTY DURING CONTINUANCE OF MARRIAGE- During the continuance of marriage the wife cannot exercise the right to retain the possession of goods. The same can only be exercised after the dissolution of marriage takes place either by divorce or death.
- 2) ACTUAL POSSESSION-Right to retain the property means the possession of property till the time the dower is paid to the Muslim wife. The widow must have the actual possession of husband's property after the marriage has been dissolved. The dissolution can be either by divorce or death of husband.
- 3) RIGHT OF RETENTION IS NOT SIMILAR TO A MORTGAGE-The widow does not has any interest in the property. She has merely kept the possession of the property as a mortgage. But in there is a difference, in case of mortgage there is an agreement which both the parties have entered into but the right of retaining goods can be exercised without entering into any agreement because the law itself entitles the widow with such a right.
- 4) RIGHT OF RETENTION IS NOT A CHARGE ON PROPERTY-Since the widow or the Muslim women has a to retain the property of her husband after their marriage is being dissolved but since the wife is not a secured creditor such a right does not create any charge on the property. During the time when the property is under the possession of the wife and the same is mortgaged by the husband to some other person, that person (mortgagee) can sell that property and dispose off the wife's right of possession over that property.

- 5) A POSSESSORY LIEN ON PROPERTY DOES NOT GIVES A VALID TITLE TO THE WOMAN ON THE PROPERTY OF HER HUSBAND- The right to retain the property does not give any valid title to the woman over that property. It is the legal representatives of the property including the women in whom the actual title of the property vests. Woman can satisfy her unpaid amount of dower from accrued profits and rents from her husband's property. Muslim women can also alienate her husband's property by sale or mortgage only to the extent of her own share in the husband's property and in case where the women delivers the possession of the property the legal representatives can immediately recover the possession of their part of property. If the alienation is overturned, the widow loses her right to possessions. If she relinquishes possession of the dower, does she forfeit her claim to it? If the husband's heirs or transferees dispose of the widow, she can only restore possession by submitting a complaint under Section 9 of the Specific Relief Act, and she must do so within 6 months of being disposed, or she would lose her right to reclaim possession. She has 12 years to sue if she is ejected by a trespasser under Article 12 of the Indian Limitation Act. In the case of Maina Bibi v. Chaudhary Vakil Ahmad [10] the trail court judge held that the legal representatives can get the possession of the property only after they pay an amount of 25,357 within a span of 6 months to the women and if in case they were not able to pay the same the suit filed by them would be dismissed by court. In the same case the Privy Council stated that the widow has a right to retain the possession of the property until the dower amount was paid to her and this right is given to her under Muslim law.
- 6) WIDOW IN POSSESSION OF PROPERTY IS LIABLE TO ACCOUNT FOR THE PROPERTY- A widow possessing her husband's property is bounded by law the rents and profits received out of that property to the legal representatives of her husband. The widow is entitled to charge interest on amount of unpaid dower and sets it off against the net profits. In case of Shaikh Salma vs. Mohammad Abdul Kada [11] r the court stated that, "a widow in possession of her husband's property in lieu of dower debt is liable to account to other sharers of income from such property, in her possession."
- 7) RIGHT OF RETENTION WHETHER HERITABLE AND TRANSFERABLE-Difference judicial opinions are there on whether the right of retaining husband's property is heritable and transferable. As per one of the viewpoint right of retaining the property is personal right given to Muslim women and not a lien, hence the same cannot be transferred by gift, sale or otherwise and the same can also not be transferred in name of widow's legal representatives after her death. Mysore High Court gave a different viewpoint which says the right of retaining husband's property is a transferable as well as a inheritable right as the same can be acquired by the legal representatives of the widow after she dies. There is a case law Ahmadv. Azizullah [12] in this case the court stated the right of retention is an inheritable right but the court did not give any opinion about the transferability of the same. Allahabad High court in one

its judgement also gave the same opinion as Mysore High court stating that the right of retaining husband's property is transferable as well as inheritable right.

8. Conclusion

The researcher concludes from the current study that concept of dower holds vital importance in Muslim marriages. The practice of paying dower by the husband is still prevalent under Muslim marriages. Dower is basically given in good faith for the benefit of the women. It places a check on the misuse of power to divorce her wife without any valid justification. The researcher also reaches to a conclusion that there are some special rights which the woman is entitled to and which she can exercise to recover the unpaid amount of dower. The law has not been able to take a single stand with respect to the same and there are varying opinions expressed by different courts across the country.

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