



CONCEPT OF DOWER IN MUSLIM LAW

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ABSTRACT

Every marriage under the personal law is a sacred institution. It can be observed that purpose of nikah is not only to enter in contract rather it is to create basic unit of society that is, family and the main purpose is procreation of children. At the same time Nikah has a religious sanctity, attached as well as extract from Holy Quran are recited at time of Nikah that is, Khutba-e-Nikah which are relating to importance of marriage and providing guidelines for happy married life, therefore Nikah cannot be devoid of essential socio religious practice.

INTRODUCTION

It is very essential part of marriage contract, we can also call it Mahr, Mehr, Sadak but Indian Judiciary uses the word Mahr. It is compared to “consideration” in Indian Contract Act. In Indian Contract Act (ICA) a contract without consideration is void in the same sense Nikah in Muslim Jurisprudence without consideration is void, but it also depends upon type of marriage and type of dower. According to Justice Mahmood in the case of Abdul Qadir v. Salima (1886), Dower is a consideration which is paid in marriage contract

EVOLUTION OF CONCEPT OF DOWER

For this we must understand why and how Dower came

- Shighar Marriages- In this type of marriages Barter system of wives that is exchange system. In this one person give his sister to another man and that another man gives his sister to that person exactly like exchange. For example, H gives his sister to H₁ and H₁ gives his sister₁ to H.
- Beena Marriages- In this type of marriage, Wife stay at her maternal home only and not obliged to go to Huband’s place. Here Husband frequently visits at Wife place and can stay there for some time. But whenever Husband come to meet his Wife, he brings gifts for her which were known as Sadak
- Baal Marriages- In this first time, concept like Dower is introduced. Husband used to give amount, property to parents of Wife because they are giving their daughter to him, and she give birth to child of Husband and continue his family. So, it is given as a mark of respect.
- Nikah- In the case of Nikah, the holy Quran was interpreted. In holy Quran one word-” If you separate yourself from your Wife, do it with Generosity”. Which acts for her as financial security, and after this a proper system of dower is introduced in Nikah.

THREE PURPOSE OF DOWER

- Financial Security
- Mark of Respect for Wife
- Deterrence (Deterrent for Husband because if he marries multiple times then inn every case, he must give Dower)



DEFINITION OF DOWER

WILSON- Dower is a consideration for the surrender of the person by the Wife.

AMEER ALI- Dower is a consideration which belongs absolutely to Wife.

MULLA- Dower is the sum of money or other property which a wife is entitled to receive from Husband in consideration of marriage.

JUSTICE MAHMOOD IN CASE OF ABDUL KADIR v. SALIMA¹

“Dower Under Muslim Law is a sum of money or other property promised by Husband to be paid or delivered to the Wife in consideration of marriage and even where no Dower is expressly mentioned or fixed at the time of marriage ceremony, law confers the right of Dower upon the Wife”.

ABDUL RAHIM- Dower is not a consideration proceeding from the Husband for the contract of marriage. But it is an obligation imposed by law on Husband as a mark of respect for the wife, as it is evident from the fact that non-specification of Dower does not affect the validity of marriage.

1. **NATURE OF DOWER-** Introduced by Prophet Mohammad. Obligatory in every marriage, like *donatio propter nuptias* (gift/settlement before the marriage). In context of Wife, it is her right. In context of Husband, it is unsecured debt.

In case of a Dower the wife can claim Dower amount but usually the Husband doesn't declare any property in lieu of her debt therefore the Dower claim of Wife is in the

form of debt upon which Husband has not given any security or guarantee of any property therefore she would be deemed to be an unsecured creditor as if she has given a loan to her Husband worth the Dower amount and therefore the Dower will also be in the nature unsecured debt².

WHAT IF DOWER NOT DECIDED?

Dower is a natural legal incident of a Muslim Nikah that is even if the spouse has not agreed for amount of Dower, it will automatically payable or incidental upon marriage. In every Nikah Dower is deemed to be a part of marriage agreement even if parties have not agreed expressly for Dower. Then such agreement can be entered into after the marriage, or it can even be decided by the Court or the Qazi. In such cases the Dower also relate back to date of marriage therefore Dower is considered to be running parallel to marriage and originate every act of marriage, that is it can be said that Dower is not a condition precedent rather it is a consequence of a Nikah³. It can be said by Fateawai Kazi khan” Maher/Dower is necessary to the marriage that if it was not mentioned at the time of marriage or in contract then the law will presume by itself”.

TYPES OF DOWERS

Mainly Dower is divided on basis of Time and Amount

- On basis of time
1. Prompt Dower (Mahr-I-Muajjal)
 2. Deferred Dower (Mahr -I-Muwajjal)

¹(1886) ILR 8 All 149

² Cheema, Shahbaz. (2018). Revisiting Abdul Kadir v Salima: Locus Classicus on Civil Nature of Marriage?. SSRN Electronic Journal. 10.2139/ssrn.3239960.

³ Singh, Rakesh. (2010). Law of dower (Mahr) in India. Journal of Islamic Law and Culture. 12. 58-73. 10.1080/1528817X.2010.528594.



- On basis of Amount
- 1. Specified (Mahr-I-Muassama)
- 2. Unspecified (Mahr-I-Misl)

1. **Specified Dower-** In this type of Dower, amount is fixed or we can say specified between parties at the time of Nikah and it is different according to different sects of Muslim.

By mutual agreement parties can increase the amount of dower. But if they want to reduce it they can't do it by themselves, In this case Qazi has power of reducing the excessive Dower where the amount of Dower stipulated in any contract of marriage is excessive with reference of the means of Husband or for any other reason than the entire sum provided in the contract shall not be avoided in any suit or Decree in favor of Wife. However, such amount of Dower to be allowed by Qazi or court shall be reasonable with respect to means of the Husband and the status of wife⁴.

2. **Unspecified-** Also called proper or customry Dower in this amount is not fixed by the parties at the time of Nikah when such amount of Dower is decided even after the Marriage by mutual agreement between the parties. However if parties are unable to decide then either Wife may file civil suit to claim Dower amount or she can approach the court to decide Dower amount. The court may look into the following circumstances.

- (i) The court will examine the tradition of payment of Dower in the Wife's father's family that is regard has to be given to amount of Dower settled upon other female

members of her father's family such as her father's sister or her sister's.

- (ii) The court will also examine the personal qualification of the Wife for example her age, education, Intellect, beauty etc.
- (iii) According to Aquil Ahmed the financial and economic condition of Husband is also relevant.
- (iv) The circumstances and terms and condition of society shall also be considered by the court.

According to Ameer Ali, customary Dower varies in amount according to social position of women's family. The wealth of her Husband, her personal qualification the conditions of society surrounding her. Where no Mahr is mentioned or specified at time of marriage Dower should be "Dower among her equals".

3. **Prompt Dower-** Where in the nature of Dower is prompt then it becomes payable at the moment when demanded by Wife. This Dower may be demanded at any time after marriage. Prompt Dower may be realized by the Wife at any time before or after consummation of marriage. In thus the right to claim Dower will arise simultaneously with right to Dower that is such Dower is claimable at any point of time after marriage and the promptness of Dower lies upon the fact it must be paid immediately when demanded.

4. **Deferred Dower-** In this Dower it is automatically payable in three situations

- a. Deaths
- b. Divorce
- c. Condition

⁴ Dadashev, Musa. (2021). Dower (Mahr) in the Muslim Family Law of the Early Middle Ages: A Theoretical and Historical Legal Aspect. History of

state and law. 3. 65-69. 10.18572/1812-3805-2021-3-65-69.



It is not demanded rather payable automatically. At the time of marriage or there after by mutual consent the spouse can agree that the Dower can be claimed upon fulfillment of condition or on dissolution of marriage, that is either on death or divorce. In this case also the right to Dower gets vested in Wife at the time of marriage itself.

The prompt can be converted into a Deferred Dower on the other hand Deferred can not be converted into Prompt Dower. Suppose Dower is specified and it is not decided whether Prompt or Deferred then in Shias it will be wholly Prompt and in Sunnis it will be half Prompt and half Deferred.

- Siddique, Hafiz & Rao, Muhammad. (2019). The Protection of Woman's Right to Dower in Islamic Law. *Pakistan Journal of Gender Studies*. 18. 43-62. 10.46568/pjgs.v18i1.24.
- Abdul Qadir v. Salima 1886 SC
- Singh, Rakesh. (2010). Law of dower (Mahr) in India. *Journal of Islamic Law and Culture*. 12. 58-73. 10.1080/1528817X.2010.528594.
- Dadashev, Musa. (2021). Dower (Mahr) in the Muslim Family Law of the Early Middle Ages: A Theoretical and Historical Legal Aspect. *History of state and law*. 3. 65-69. 10.18572/1812-3805-2021-3-65-69.
- Law of Dower in India- Law of dower (Mahr) in India: *Journal of Islamic Law and Culture: Vol 12, No 1* (tandfonline.com)

CONSEQUENCES

Dower is a natural legal incident of Muslim Nikah right of Wife to her Dower is her fundamental feature of marriage contract. However, Dower cannot be looked at from limited perspective of being a mere consideration for Nikah, if it had been a mere consideration then the marriage without Dower would have been void. Dower is also considered as a token of respect for Wife that Wife is leaving her house and coming to Husband's house for procreation.

References

- Dower In Muslim Law - All You Need to Know - Law Corner
- Dower legal obligation or rightful demand - Dower: Legal Obligation or Rightful Demand - *International Journal of Law Management & Humanities* (ijlmh.com)
- Right of Muslim women in case of unpaid dower -Rights of Muslim Women in Case of Unpaid Dower (ijsr.net)