

## EXPLORING THE LEGAL AND CULTURAL SIGNIFICANCE OF DOWER RIGHTS: A STUDY

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### ABSTRACT

*Dower is a socio-religious and legal concept that has been in practice since antiquity, and it has a notable impact on various aspects of societal relations, including property rights, inheritance, protective security for women and other gender dynamics. The authors in this paper aim to find out the multifaceted dimensions of the dower in greater detail, exploring its socio-religious context and current legal status of the dower. The analysis attracts case studies and legislative frameworks to explore how dower promotes economic security for spouses, particularly for women. The legal debates on property distribution and its significance in contemporary times on gender equality and marital rights need to be understood through the prism of personal laws and their liberal interpretations. The paper examines how dower is a legal and religious obligation for a husband under Mohammadanian Law to ensure that a wife gets surety and security, also surviving wife is not left destitute after the death of her husband, by providing them with a portion of their husband's property.*

*Furthermore, this paper examines potential challenges and reforms that are associated with dower laws in the context of modern legal systems and societal norms. The research paper provides a comprehensive overview of the religious sanctity of the dower and its socio-cultural dimensions that stress the reliability of dower laws in promoting economic security for women.*

**KEYWORDS:** *dower, security, marital rights, marital rights, gender etc.*

### 1. INTRODUCTION

In Arabia, before Islam, buying a girl from her guardian was the usual way to get into a marriage. When a man desired to marry a girl, he would go to her guardian, make an offer of money or property, and then take the girl with him to become his wife. A marriage like that was practically the same as the guardian selling the daughter. *Mahr* was the amount of money or property that the spouse gave to the guardian.

During the beginnings of Islam, the Prophet prescribed a certain type of marriage (*Nikah*), and the custom of the husband giving the wife “something” was upheld. However, he fundamentally altered the *Mahr* idea.

In a Muslim marriage, *mahr* must be provided and should only be given to the wife. It is a property or monetary worth that the husband must provide to the wife in recognition of her dignity; it is neither a price for the bride nor a wedding gift.

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### 1.1. OBJECTIVE OF STUDY

1. We aim to determine the historical context of Dower.
2. To study the roots of Dower.
3. To find out the loopholes and lacunas in the legislation of Dower.
4. To find out the judicial approach towards Dower.
5. To monitor the existing, general, and specific laws.

### 2. RESEARCH METHODOLOGY

The researchers have used doctrinal methods of data collection and analysis. The primary mode of data collection is from various research papers, judicial decisions, literature reviews, journals, books, reports, online data, and other sources to draw inferences on the subject.

This study has first reviewed various types of dowers and their importance. Based on this understanding, a classification of the dower and reason behind marriage was made and the factors categorised for the purpose of identifying the difficulties in deciding the cases and the execution of the decisions.

In the second stage of the study, existing law and remedy modelling methods has been identified based on a comprehensive review of current judicial practices and academic research in journals. Finally, once the problem and modelling techniques have been identified, a conceptual framework for the total research work has been outlined.

### 3. DEFINITION OF DOWER

**Abdur Rahim.**—According to Abdur Rahim, “*Mahr* or dower is that sum of money or property which a Muslim wife is entitled to get from her husband on marriage as a token of respect towards herself.”<sup>1</sup>

**Justice Mahmood** in *Abdul Kadir v. Salima*,<sup>2</sup> defines dower in the following words:

*“Dower under the Muhammadan 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 dower is expressly fixed, the law confers the right of dower upon the wife as necessary effect of marriage.”*

#### **Mahr**

Dower includes property or money; the wife has right to take the dower as a token of respect. It's neither a gift to the wife to allow intercourse with her nor a

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<sup>1</sup> R. K. Sinha, *Muslim Law* 66 (Central Law Agency, Allahabad, 6th edn., 2006).

<sup>2</sup> I.L.R. (1886) 8 All. 149(157).

consideration in the marriage-contract. There cannot be any marriage without dower under Muslim law. The husband must pay ‘something’ to the wife as a mark of respect towards her whether this liability has been expressly referred to at the time of marriage or not. The wife’s right to dower exists despite of any agreement, if there is an agreement between husband and wife that the wife would not claim her dower, and the agreement is void.

According to *Mulla* dower is consideration of the marriage contract.<sup>3</sup> The Calcutta High Court has also observed that “marriage in Islam is like similar as a contract of sale in which the wife is the property and dower is the price paid for this property.”<sup>4</sup> These views are predicated on the claim that a marriage in Islam being a civil contract, there must be some consideration in this contract; dower fulfils the requirement of consideration. But, it is respectfully submitted that it is wrong to regard dower as consideration of the marriage-contract because, even where no dower has been specified, the marriage-contract is not affected the least. In such cases, dower is payable to the wife by operation of law.

As Abdur Rahim accurately notes, “It is not a consideration proceeding from the husband for the contract of marriage, but 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 dower at the time of marriage does not affect the validity of the marriage.”<sup>5</sup>

It is, therefore, clear that essentially, the dower is to be given by husband to his wife as a token of respect and it is the fundamental feature of a Muslim-marriage.

**Dower’s Object**— the object of dower is not to fulfill the requirement of a consideration in the marriage-contract.<sup>6</sup> Dower is neither a ‘price’ of the bride nor serves the purpose of being a ‘*consideration*’ in the contract of marriage. Under Muslim jurisprudence the object of dower is to provide a method by which the husband admits the truth of his wife’s dignity. However, the practical purpose of the dower is two-fold. First, a consideration that is transferred from the husband to the wife for her exclusive, exclusive use and benefit is known as dower. In this sense, dower refers to the distribution of funds or other assets in the wife's favor, ensuring her security even if the marriage dissolves. Secondly, the dower also working as an indirect catalyst to check upon the husband’s unlimited freedom of pronouncing *Talaq* at any time whenever he wants it. Under Muslim law, the Deferred Dower must be paid on the termination of marriage; therefore, the husband will have to think twice before pronouncing

<sup>3</sup> Mulla, *Principles of Mahomedan Law* 308 (Lexis Nexis, New York, ed., XVIII, 2017).

<sup>4</sup> *Saburannessa v. Sabdur Sheikh*, (1934) Cal. 693.

<sup>5</sup> A. Rahim, *Muhammadan Jurisprudence*, 334 (Alpha Edition, Indiana, 1958).

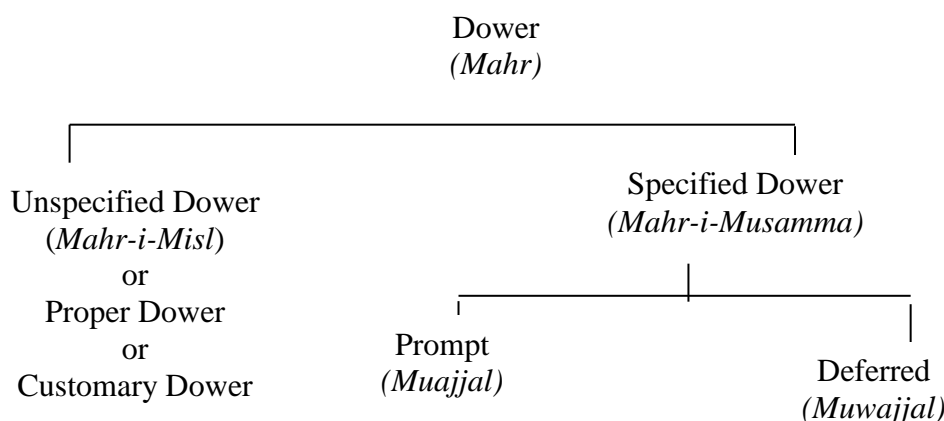
<sup>6</sup> *Mst. Fatima Bibi v. Lal Din*, AIR 1937 Lah. 345.

*Talaq*. It may be noted that there is common practice among the Muslim families to fix the amount of dower exorbitantly high (much higher than his financial capacity) so that he may not pronounce *Talaq* unscrupulously.

**4. DIFFERENT KINDS OF DOWER UNDER MUSLIM LAW**

- (a) the dower is used to fix by the parties at the time of marriage or by the operation of law, and;
- (b) the wife may claim the dower at any time or only at the time of dissolution of marriage.

It is known as un-specified or Proper Dower when the parties did not specify it at the time of marriage. Law operates to establish proper dower. The parties themselves specify the amount in a specified dower at the time of the marriage contract. Should the dower be indicated, it may be somewhat deferred and partially expedited, or it could be both. Following the marriage, the wife is always entitled to request the Prompt Dower. However, she is entitled to claim Deferred Dower in the event of a divorce. The several types of dower are clearly depicted in the chart below.



**4.1 MAHR-I-MISL (UNSPECIFIED OR PROPER DOWER)**

If the dower in a Muslim marriage is not mentioned, the wife still has the right to receive the Proper Dower, which will be determined by the operation of law. Dower is an integral component of every Muslim marriage and must be defined by the parties themselves, either at the time of marriage or subsequently. Either negligently or intentionally if the parties have not specified it a proper sum of money or property it may be settled by Court of law. In “*Hamira Bibi v. Zubaida Bibi*,”<sup>7</sup> the Privy Council observed:

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<sup>7</sup> (1916) 43 IA 294.

“Dower is an essential incident under Mohammedan 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 declares that it must be adjudged on definite principles.”

In “*Marina Jatoi v. Nuruddin Jatoi*,<sup>8</sup> a Sunni Muslim from Pakistan married a Christian lady in England, and their marriage was registered by the Registrar. No dower was settled in the marriage. The husband divorced the wife by pronouncing Talaq whereupon the wife claimed dower.”

It was decided by Pakistan’s Supreme Court, “the marriage was a Muslim-marriage in which the husband was competent to pronounce Talaq. But at the same time the wife too was entitled to get the Proper Dower as it was not specified at the time of marriage. It is evident therefore, that dower is an obligation upon the husband and the extent of this obligation is determined by contract between husband and wife. But if there is no such mention of dower or the marriage is performed on express condition that wife would not claim any dower in future, the wife is even then entitled to Proper Dower.”<sup>9</sup>

There is no definite amount which may be regarded as a Proper Dower in all the cases. Legal system is not a static one, its dynamic and changing the characteristics on daily basis, according to the needs of the society. The amount of Proper Dower is also changeable according to the need of the hour. However, there aren’t many guidelines that provide a clear scale of measurement for determining when the appropriate dower should be fixed. While fixing the Proper Dower, following principles of law should be followed:

- (i) The wife’s qualifications,
- (ii) The wife’s father’s position in society,
- (iii) In the case of dowry in the family of the wife’s father. That is the amount of dowry that was fixed in the previous marriage between her sister or his father’s sisters.

*Shia Law.* —Under *Shia* law, the maximum limit of a Proper Dower is 500 Dirhams.

According to the *Hadith*, the dowry for the marriage of Fatima, the daughter of the Prophet, was 500 dirhams. Since then, there has been a tradition among *Shias* to consider 500 dirhams as the maximum amount of *mahr*, supported by the tradition of the Prophet (*mahr-i-sunnat*). According to *Shia* law, there are three types of dower: (i) *Mahar-i-Misal*, (ii) *Mahar-i-Musamma* and (iii) *Mahar-i-Sunnat* (500 dirhams).

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<sup>8</sup> PLD (1967) Sc 580.

<sup>9</sup> *Nasra Begum v. Rizwan Alzi*, AIR (1980) All. 118.

#### 4.2 MAHR-I-MUSAMMA (SPECIFIED DOWER)

Settling the amount of dower at the time of marriage is a common practice. The sum of money or any property which is fixed as dower, is called Specified Dower (*Mahr-i-Musamma*). The *mahr* can be fixed at any time before marriage or at the time of marriage or after marriage, it may be oral or written (*mahar-nama*) and the amount is stated at the time of agreement with the consent of both party.

After attaining puberty and fulfilling the criteria of marriage the parties are competent to settle the amount of dower. However, the guardian may also determine the dower amount at the time of the marriage if the boy is not of sound mind or is a juvenile. The dower fixed by father or guardian is binding on the boy and he cannot change anything on attaining puberty that he was not party to it, as he was minor during the contract. When a father or guardian specifies dower on behalf of a minor boy, the guardian is not required to provide the wife the amount they had agreed upon.<sup>10</sup> However, in the event that someone—including a guardian—guarantees payment and acts as a surety, that person bears personal liability to the wife for her husband's failure to pay.<sup>11</sup>

*Shia Law.* — Where a minor's marriage was contracted by father or other guardian, the guardian is personally liable to pay the dower if the minor husband has no means or livelihood of his own under *Shia Law*.<sup>12</sup>

#### 5. WHAT MAY BE SETTLED AS DOWER?

Anything can be settled as *mahr*. It could be a precise amount of money or itemized property. Dower can be used to any type of property, whether it is tangible or intangible, mobile or immovable. Money or a property specified as dower must be reasonably certain and must be in existence. A property, which is un-Islamic, such as wine, cannot be fixed as dower. An un-Islamic property should not be considered as dower, it should be presumed that there is no dower at all, and the wife is entitled to get Proper Dower when she demands it. Where dower consists of certain properties, some of which are lawful and the rest unlawful then, only the lawful property may be regarded as dower. The unlawful part of it would not be taken into account.

According to *Fatwai Alamgiri* “rendering of Quran by husband for wife” may be the subject-matter of dower.<sup>13</sup> “Personal service” rendered or promised to be rendered to the wife by husband is no dower under Sunni Law. But under

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<sup>10</sup> *Muhammad Siddiq v. Shahabuddin*, AIR (1927) All. 364.

<sup>11</sup> *Mst. Fatima Bibi v. Lal Din*, AIR (1937) Lah. 345 : 171 IC 421.

<sup>12</sup> *Sabir Husain v. Farzand Khan*, AIR (1938) PC 80.

<sup>13</sup> A. Ali, *Mohammedan Law* 472 (Kitab Bhavan, New Delhi, ed., III, 1986).

the *Shia* law, if the husband promises to do some “personal service” to the wife for a specified period, this “personal service” may be regarded as dower.<sup>14</sup>

### 5.1 AMOUNT OF DOWER

Any amount of money or property of any valuation which has monetary value can be settled as Specified Dower. There is no maximum limit for it. Minimum amount of Specified Dower under Sunni law is 10 Dirhams, and there is no such minimum amount in *Shia* law.

Quran protects the rights of dower as:

“And give the women (on marriage) their dower as a free gift.”<sup>15</sup>

“O Prophet! We have made lawful to thee thy wives to whom thou has paid their dowers.”<sup>16</sup>

“And there is no blame on you to marry them when you give them their dowries.”<sup>17</sup>

“The amount of dower which the bridegroom has to give to his bride has not been fixed by the Qur’an or the Sunnah. It depends entirely on the agreement of the contracting parties. The Qur’an says:” 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 things”<sup>18</sup>

### 5.2 CHANGE IN THE AMOUNT OF DOWER

The husband and wife may lawfully enter into a contract and enhance of the amount of dower at any time, which was specified at the time of marriage. Although Specified Dower was fixed at the time of marriage, but husband cannot reduce the amount on his will. As remission of dower, the wife may lessen, remit, or give up her claim to all or a portion of the Specified Dower.

### 5.3 PROMPT DOWER

Specified Dower may of two types Prompt or Deferred. In Prompt Dower the wife can demand the dower any time. In Prompt Dower the full amount is not fixed, partially it is fixed. Features of Prompt Dower are as follows:

1. Whether the consummation has taken place or not, it may be demanded by the wife whenever she likes.

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<sup>14</sup> F. B. Tyabji, *Muslim Law* 109 (Bombay: N. M. Tripathi, Ed. IV, 1968).

<sup>15</sup> (Quran 4:4)

<sup>16</sup> (33:50).

<sup>17</sup> (60:10).

<sup>18</sup> (2:236).

2. When the wife demands payment, the husband is required to make the payment as quickly as possible. If there is a delay in payment, the woman is also entitled to interest for the time that the payment was outstanding.<sup>19</sup>
3. The wife has the option to deny consummation until the husband pays the Prompt Dower upon demand.

The wife may demand it at any time. Wives do not always need to request the Prompt Dower right away following their marriage.

#### 5.4 DEFERRED DOWER

A Deferred Dower is payable-

On some specified event:

- (i) the dissolution of marriage, or
- (ii) the happening of a specified event, if so agreed.

When the Specified Dower is set as Deferred, the woman is not entitled to receive it prior to the husband's death (an act of God) or divorce (an act of the parties). The wife's lawful heirs are entitled to the Deferred Dower in the event that her death dissolves the marriage. Where it has been decided that the dower may only be claimed upon the occurrence of a certain event, the dower is likewise deferred. Unlike a contingent contract<sup>20</sup> in such cases unless that event takes place the wife is not eligible to claim deferred dower. But, the dower becomes instantly due in the event that the marriage dissolves due to a party's action or an act of God. The Deferred Dower cannot be claimed by the wife before any above-mentioned event, but the husband can pay it earlier.<sup>21</sup>

#### 6. WHAT AMOUNT OF DOWER IS PAYABLE?

As soon as a marriage is lawfully contracted, the right to dower is created in favour of the wife. However, depending on the circumstances, the wife may be entitled to a different amount of dower. The amount of dower to which a wife (or widow) is entitled in different situations, is given below.

(A) *Valid marriage:*

- (i) The wife is designated to get half amount of the Specified Dower, when the marriage has not been consummated. Where the dower is unspecified, she is entitled to get a nominal presentation. But, if an unconsummated marriage dissolves by the option of puberty by either party, then nothing is given to the wife as dower.

<sup>19</sup> *Mst. Maimuna Begum v. Sharafat Ullah Khan*, (1931) All. 403.

<sup>20</sup> The Indian Contract Act, 1872 s.32 "A contingent contract is a contract to do or not to do something, if some event collateral to such contract does or does not happen".

<sup>21</sup> *Firm Mangat Rai Hira lal v, Mst. Sakina Begum*, (1934) All. 441.



- (ii) The wife is designated to get full amount of the Specified Dower, when the marriage has been consummated. Where the dower is unspecified, the wife is able to get the Proper Dower.

*(B) Irregular marriage:*

- (i) In an irregular marriage, in the circumstances of non-consummated marriage, the wife is entitled to get nothing as dower.
- (ii) Where an irregular marriage has been consummated and the dower is specified, the wife is entitled to get either Specified Dower or the Proper Dower whichever is less.

However, in an irregular marriage when the dower is not stipulated, the woman is entitled to receive the Proper Dower.<sup>22</sup>

## 7. REMISSION OF DOWER

Following the dissolution of a marriage, the wife becomes entitled to dower. The wife may give up, lessen, or surrender her claim to all or a portion of the dower in favor of her spouse. This is known as the wife's own remission of dower. In Muslim marriage dower is an inseparable element, if before the marriage a woman denies the dower, or denies exercising the right, then the agreement is void. After the marriage, the 'right to dower' becomes her property. Then the wife is free use the property as she likes. However, remission of dower by the wife must have some reasonableness.

## 8. THE ESSENCE OF THE DOWER'S RIGHT

### (1) ONCE THE RIGHT TO DOWER IS VESTED, IT'S FOR LIFETIME

An essential component of a Muslim marriage is dower. The wife gets the right to dower after the marriage is consummated; once this right is granted to her, it cannot be taken away from her. Even in cases of the greatest kind of matrimonial offenses—such as renunciation of Islam, suicide, adultery, husband's murder, *etc.*—a wife's entitlement to dower remains intact in Muslim law. However, there is no loss of the wife's dower rights in any way. According to the Dissolution of Muslim Marriage Act, 1939, when a Muslim wife seeks the dissolution of her marriage under any of the grounds of the Act, her right to dower remains intact.<sup>23</sup>

<sup>22</sup> F. B. Tyabji, *Muslim Law* 118 (Bombay: N. M. Tripathi, Ed. IV, 1968).

<sup>23</sup> The Dissolution of Muslim Marriage Act, 1939 s.5. "**Rights to dower not to be affected.** — Nothing contained in this Act shall affect any right which a married woman may have under Muslim law to her dower or any part thereof on the dissolution of her marriage."

## **(2) UNPAID DOWER IS AN UNSECURED DEBT ON A MUSLIM MALE**

Payment of dower is the legal obligation of a husband to the wife. It is due, and then it will be considered as debt. Before the payment of dower (any), the legal position of the husband is; as if the husband has taken some loan from the wife which he has not repaid yet. It is relevant to note that if the husband has been giving some money to wife from time to time (as normally happens in married life) without mentioning that these payments are towards unpaid dower then, such money cannot be regarded as payment of dower-debt.

An unpaid dower is an actionable claim of the wife against her husband. In *Kapore Chand v. Kadar Unnissa*,<sup>24</sup> “the Supreme Court has observed that an unpaid dower is like an ordinary debt and stands on the same footing as any other unsecured debt. The wife is not able to claim that her claim is superior to that of other creditors of the husband. The husband is personally liable to the wife for an unpaid dower. If the husband dies, without paying the dower, the widow together with other creditors, may recover it from his properties.”

### **9. ENFORCEMENT OF THE RIGHT TO DOWER**

Every Muslim wife has the right to dower inherently. Only after marriage, the wife can avail this right. A wife or a widow may use the following methods to enforce her entitlement to dower :-

#### **9.1 REFUSAL OF CONJUGAL RIGHTS**

When the marriage has not yet been consummated and the dower is prompt, the wife may refuse to spend time with her husband until he pays her. The wife is entitled to deny cohabitation to the husband till he is not giving the Prompt Dower on her demand. Non-payment of Prompt Dower before consummation is a reasonable justification for the wife to refuse cohabitation to the husband. “In *Nasra Begum v. Rizwan Ali*,<sup>25</sup> the Allahabad High Court held that the right to dower comes into existence before cohabitation and Prompt Dower may be demanded even before the cohabitation. The wife can refuse to live with her husband and admit him to sexual intercourse so long as Prompt If the wife has not been given a dowry, then in a suit for recovery of restitution of conjugal rights by the husband, the failure to pay the prompt dower before the end of that case is a complete defense and the case must be dismissed.”

If the wife is a minor or is not sane, and the wife is already in the custody of the husband; the guardian can take him back because he did not pay the dower. The husband may refuse to allow his wife to accompany him until he pays the

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<sup>24</sup> (1950) SCR 747.

<sup>25</sup> AIR (1980) All, 118.

dower if his guardian wishes. The enforcement of right to dower takes an opposite direction where the consummation has taken place even once; the wife's right to refuse consummation is lost. If the marriage has already been consummated, the husband's lawsuit seeking the return of conjugal rights shall not be dismissed for failure to pay the prompt dower. Even in this kind of situation, the court retains the authority to grant a ruling restoring marital rights, provided that Prompt Dower is paid. "In *Anis Begum v. Muhammad Istafa Wali Khan*,<sup>26</sup> the Prompt Dower was ₹15,000. The husband and wife lived together for some time and a daughter was born to them. Later, *Anis Begum* left the house of her husband and refused to come back till her Prompt Dower was paid. *Md. Istafa*, the husband, filed a suit for the restitution of conjugal rights. It was held by Sulaiman, C.J., that there was no absolute right in a husband to claim conjugal rights unconditionally. The courts have discretion to make the decree of restitution of conjugal rights conditional on payment of wife's unpaid Prompt Dower even where the marriage has already been consummated. Accordingly, the decree for restitution of conjugal right was passed in favour of the husband subject to his payment of ₹15,000."

## 9.2 ENFORCEMENT OF DOWER AS DEBT

The wife cannot enforce her claim by refusing conjugal rights to the husband when the marriage has been consummated.<sup>27</sup> Through the maintenance of an action in a court of law, the wife can obtain her unpaid dower. Unpaid dower is comparable to a wife's actionable claim, and she can pursue it against her husband in the same way that a creditor pursues repayment of a debt. The woman may pursue legal action to reclaim unpaid dower throughout her husband's lifetime in order to enforce her claim.

The husband's legal heirs have inherited the property but are not held personally responsible for it in the event of his death. As much as they get from the deceased, they must use the property to pay the dowry in accordance with their portion of the estate. For instance, if a genuine successor has a 1/6 stake in the property and the outstanding dower is ₹12,000, he will only be required to pay the widow ₹2,000.

## 9.3 WIDOW'S RIGHT TO RETAIN PROPERTY

"The most effective way to enforce the right to receive dowry after the death of the husband is the 'right to retain the property'. A widow has a right to retain the properties of the husband till her dower debt is satisfied. This right is termed as the right of retention in lieu of unpaid dower and it is available to a widow"<sup>28</sup>, whether there is any agreement between the parties for this right or

<sup>26</sup> (1933) 55 MI. 743.

<sup>27</sup> *Abdul Kadir v. Salima*, (1886) 8 All. 149 (FB).

<sup>28</sup> *Asia Khatun v. Amarendra*, (1940) Cal. 578.

not. In this right if a wife has taken possession of her husband's properties lawfully (with free consent of the husband) she is entitled to retain that possession after the death of her husband *in lieu* of unpaid dower. Until her dower is paid out of the properties retained by her. This right is exercised against the creditors, if any, of her deceased husband, and his legal heirs. The legal heirs of the husband cannot get possession or any benefit of the properties until they make payments towards unpaid dower in proportion of their respective shares. Thus, this may be said to be a coercive method of recovery of unpaid dower from husband's legal heirs.

However, regarding the consent of husband's legal heirs for obtaining possession, the opinions of the courts are different. According to Calcutta, Patna and Allahabad High Courts, an express or implied consent of the husband and his legal heirs is necessary for a lawful possession.<sup>29</sup> However, the Bombay and Madras High Courts hold that the legitimate heirs' agreement is not required.<sup>30</sup>

As discussed in the preceding lines, the widow's right to retain the property is simply a possessory right; she does not become the owner of that property. Since she is not the owner, she cannot transfer the property.

In other words, if the widow has parted with the possession (the only right with which she can realize dower from legal heirs) she cannot resume the same. Once the possession is lost, it is lost forever. In *Maina Bibi's* case, the Privy Council observed that by giving up the possession of the land the widow had lost her right to hold the possession. The result is, therefore, that the heirs are automatically entitled to get the possession in their respective shares without paying the amount of dower. In this manner, this method of enforcing the claim of unpaid dower is forfeited forever.

"In *Tahirunnissa v. Nawab Hasan*,<sup>31</sup> a widow had lawfully retained certain properties of her deceased husband *in lieu* of unpaid dower. The widow died during retention, leaving a daughter as her heir. It was held by the court that daughter was entitled, to inherit the possession of those properties until her mother's (deceased widow's) dower debt was paid by other legal heirs. It may be concluded in the words of Mulla that all that can now be said with certainty is that the right to hold possession is heritable."<sup>32</sup>

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<sup>29</sup> *Sabur Bibi v. Ismail*, (1924) 51 Cal. 124, *Mohammad Zobair v. Mst. Bibi Sahidan*, (1941) Pat. 798, *Mst. Izhar Fatima Bibi v. Ansar Bibi*, (1939) ALJ 642.

<sup>30</sup> *Hasnumiya Dadamiya v. Halimunnissa Hafizulla*, (1942) 44 Bom. LR 126, *Beeja Bee v. Syed Moorthija*, (1920) 43 Mad. 214.

<sup>31</sup> (1914) 36 All 558 24 IC 938.

<sup>32</sup> Mulla, *Principles of Mahomedan Law* 321 (Lexis Nexis, New York, Ed. XVIII, 2017).

#### 9.4 KHARCHE-E-PANDAN

A common practice among Muslim families of distinction, particularly in upper India, is the *Kharche-e-pandan*. *Kharche-e-pandan*, which translates literally as “betel box expenses,” is a personal allowance given to the woman either before or after marriage. Another name for it is a *mewakhori* permit for fruit consumption. The contract is made between the couples’ parents or guardians when the parties are minors; in these situations, the wife is the beneficiary and is allowed to use or enforce the agreement after marriage. This is decided upon before or after marriage, depending on the parties’ social standing and financial situation. Muslim jurists have seen parallels between the *Kharche-e-pandan* notion and English law’s “pin money”. However, the two differ in a few ways. As long as she resides with her husband, the woman is entitled to the *Kharche-e-pandan*, which she is free to spend or use as she pleases without interference from others. The ‘pin money’ however, is spent during covertures with the advice and at the opinion of the husband.

This term could be explained easily by an example, if a husband A have a lawful agreement with his first wife B that on marrying his second wife C the first wife may reside with her parents and obtain a regular allowance; or similarly an agreement with his second wife C to allow her to reside with her parents and pay maintenance to her. An agreement for future separation, however, and for the payment of maintenance in such an event is void as against public policy. From the above instance it is not be misconceived that making the wife to live with her parents on the marriage of a second wife is an injustice, because in the holy Quran a man can marry to his choice up to four women but if he can’t do justice to them then only one he has to marry.<sup>33</sup> Additionally, a husband who is near death has an obligation to leave his wife a year’s worth of maintenance and housing; but, if the wife leaves of her own volition, the husband is not responsible and cannot be held accountable (chapter 2:240).

#### 10. CONCLUSION

The Shariat Application Act must be amended as necessary for the courts to feel comfortable following the clear and unequivocal instructions of the holy Quran. A woman's dower is intended to provide her financial security, and it is the husband's moral, legal, and religious duty to provide it whenever possible. Regardless of the method chosen for the dissolution of the marriage, the dower must be paid right away if it hasn't fixed already. The husband is responsible for paying half of the dower in the event that the marriage does ends before consummation. Regardless of where the marriage has been consummated, the husband must pay the full amount of dower to the wife if a valid retirement has

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<sup>33</sup> (Surat An Nisa 4:3).

occurred and can be supported by circumstantial evidence. It must become illegal to fail to pay a divorced wife's dower obligation. In a khula, a wife is not required to pay consideration or surrender her right to dower, in whole or in part, in order to be freed from her husband's bond unless she has produced four witnesses to attest to her indecent behaviour. The marriage consideration is dower. Its payment is payable even prior to the marriage being consummated. Although there are conflicting opinions regarding the payment of dower in khula and mubarat cases, divorced women should not be forced to give up their dower amount unless they are shown to have committed lewd acts, according to clear instructions in Surah Nisa (4:19–21) and Surah Al Baqrah (2:237).

Additionally, the definition of "dower" and the guidelines for calculating it must be made clear in the legislation. In the case of khula, women should be free to choose whether or not to pay for the consideration. Furthermore, a wife should not be forced to give up her dower or pay any other consideration if she requests a dissolution of marriage under the Dissolution of Muslim Marriage Act, 1939. Under such circumstances, even if she offers or agrees to forgive her dower in order to be freed from marital obligations, her offer or undertaking will be deemed void. The nikahnama must also include the amount of dower. Even if the woman hasn't asked for it, the court must make sure that the dower sum is paid to her at the time of the marriage dissolution if it isn't stated in the nikahnama or if the marriage wasn't registered.

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