

2. **Definition.**— *Mahr* or dower is a sum that becomes payable by the husband to the wife on marriage, either by agreement between the parties or by operation of law. It may either be prompt (*Mu' ajjal*), or deferred (*Mu' wajjal*).¹

According to Wilson, "Dower" is a consideration for the surrender of person by the wife. It is the technical Anglo-Mohammedan term for its equivalent '*Mahr*' in Arabic.

✓ According to Ameer Ali, "Dower" is a consideration which belongs absolutely to the wife.

✓ According to Mulla, "Dower" is a sum of money or other property which the wife is entitled to receive from the husband in consideration of the marriage. The word 'consideration' is not used in the sense in which the word is used in the Indian Contract Act. It is an obligation imposed upon the husband as a mark of respect to the wife.

✓ Hon'ble Justice Mahmood has said in *Abdul Kadir v. Salima*,² that 'Dower 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 marriage, and even where no dower is expressly fixed or mentioned at the marriage ceremony, the law confers the right of dower upon the wife'.

The above opinions are based on the argument that marriage is a civil contract and dower is a consideration for the contract. But it is submitted that the above opinions are erroneous, because even in those cases where no dower is specified at the time of marriage, marriage is not void on that account, but the law requires that some dower (proper dower) should be paid to the wife. Abdur Rahim correctly observed, "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 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 marriage".

3. **Nature of Dower.**—Dower in the present form was introduced by the Prophet *Mohammad* and made obligatory by him in the case of every marriage. Dower in Muslim Law is some what similar to the *donatio propter nuptias* in Roman Law. The important difference, however, is that while under the Roman Law it was voluntary, and under the Muslim Law it is absolutely obligatory.

The following points may be noted with respect to the nature of Dower :

- (1) Analogy is often drawn between a contract for dower and one for sale. The wife is considered, to be the property and the dower her price.

In *Abdul Kadir v. Salima*,³ Mahmood, J., comparing the marriage and dower with contract for sale and consideration, says "Dower may be regarded as consideration for connubial intercourse by way of analogy to

the contract for sale. The right to resist her husband so long as the Dower remains unpaid is analogous to the lien of a vendor upon the sold goods while they remain in his possession and so long as the price or any part of it is unpaid and her surrender to husband resembles the delivery of the goods to the vendee..."

- (2) It is regarded by some eminent authorities as a consideration for conjugal intercourse. In a case, *Smt. Nasra Begum v. Rizwan Ali*,⁴ Allahabad High Court expressed the view that the right to claim prompt dower proceeds cohabitation.
- (3) Dower is an essential incident and fundamental feature of marriage with the result that even if no dower is fixed the wife is entitled to some dower from the husband. The marriage is valid even though no mention of dower made by the contracting party. In *Hassina Bibi v. Zubaida Bibi*,⁵ the Judicial Committee held that—

"Dower is an essential incident under the Muslim Law 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.

"No doubt, under the Mohammedan Law *Mahr* or dower means money or property which the wife is entitled to receive from the husband in consideration of the marriage. However, the expression 'consideration' is not to be understood in the sense in which it is used in the Contract Act. In effect dower is an obligation imposed upon the husband as a mark of respect for the wife".

✓ **4. Importance of dower.**—*Fatwai-i-Quazi Khan* says, "*Mahr* is so necessary to marriage that if it were not mentioned at the time of the marriage, or in the contract, the law will presume it by virtue of the contract itself".

It is essentially an incident of the Muslim Law of Marriage that even if there is stipulation on the part of the woman before marriage to forego all her right 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. In Muslim Law, the husband can divorce his wife at his whim and so the object of dower is to check upon the capricious exercise of the husband of his power to terminate the marriage at will. 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 luxury of having two, three or four wives. In *Abdul Kadir v. Salima*,⁸ 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 the marriage contract; it has a pivotal place in the scheme of the domestic relation affecting the mutual rights of the spouses at more than one point."

The question with regard to dower does not arise in case of marriages solemnized under the 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 the Special Marriage Act, 1954.

dower stipulated in the contract of marriage but only such sum as shall be reasonable with reference to the means of the husband and the *Iddat* of the wife.⁹

✓ **6. The object of Dower.**—The object of dower is three-fold:

- (i) to impose an obligation on the husband as a mark of respect of the wife;
- ii) to place a check on the capricious use of divorce on the part of husband; and
- (iii) to provide for her subsistence after the dissolution of her marriage, so that she may not become helpless after the death of the husband or termination of marriage by divorce.

Fixation of Mahr

The Indian Ulema recommended in a seminar that Mahr (dower) should be fixed in terms of gold or silver so that the rights of women are fully protected in the event of fall in the values of currencies.¹⁰

7. Increase or decrease of Dower.—The husband may at any time after marriage increase the dower. Likewise, the wife may remit the dower wholly or partially. A Muslim girl who has attained puberty is competent to relinquish her *Mahr* although she may not have attained majority (18 years within the Indian Majority Act). The remission made by the wife, should be with free consent. The remission of the *Mahr* by a wife is called *Hibe-e-Mahr*.

In a case where the wife was subject to mental distress, on account of her husband's death the remission of dower, was considered as against her consent and not binding on her.¹¹

It has been held in a *Karachi* case,¹² that in certain cases remission of dower cannot be upheld. For instance, if a wife feels that the husband is increasingly showing indifference to her and the only possible way to retain the affection of her husband is to give up her claim of *Mahr* and forgoes her claim by executing a document, she is not a free agent and it may be against justice and equity to hold that she is bound by the terms of the deed.

8. Classification of dower.—The dower may be classified into:

- ✓ (i) **Specified dower (Mahr-i-Musamma).**—Specified dower is again divided into:
 - (a) prompt dower, and
 - (b) deferred dower.
- ✓ (ii) **Customary (Proper) dower (Mahr-i-Misl).**
 - (i) **Specified dower.**—If the amount of dower is stated in the marriage contract, it is called the specified dower. Dower may be settled by the parties to the marriage either before the marriage or at the time of the marriage or even after the marriage. If a marriage of a minor or lunatic boy is contracted by a guardian, such guardian can fix the amount of

Although prompt dower, according to Muslim Law, is payable immediately on demand, yet, in a large majority of cases it is rarely demanded and is rarely paid; in practice a Muslim husband generally gives little thought to the question of paying dower to his wife save when there is domestic disagreement, or when the wife presses for payment upon the husband's embarking upon a course of extravagance and indebtedness without making any provision for her. Lapse of time since marriage raises no presumption in favour of the payment of dower.¹³

(b) Deferred dower.— It is payable on dissolution of marriage either by death or divorce.

According to Ameer Ali generally in India 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:

- (i) Deferred dower is payable on dissolution of marriage by death or divorce. But if there is any agreement as to the payment of deferred dower earlier than the dissolution of marriage such an agreement would be valid and binding.
- (ii) 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.
- (iii) The widow may relinquish her dower at the time of her husband's funeral by the recital of a formula. Such a relinquishment must be a voluntary act of the widow.

dower. Dower fixed by the guardian is binding on the minor boy and he cannot on attaining the age of puberty take the plea that he was not party to it. Even after the marriage of such minor or lunatic boy, the guardian can settle the amount of dower, provided that at the time of settlement of dower, the boy is still minor or lunatic.

The husband may settle any amount he likes by way of dower upon his wife, though it may leave nothing to his heirs after payment of the amount. But he cannot in any case settle less than ten *dirhams* (the money value of 10 *dirhams* is between 3 and 4 rupees) according to Hanafi Law and 3 *dirhams* according to Maliki Law. Shia Law does not fix any minimum amount for dower.

For those Muslim husbands who are very poor and not in a position to pay even 10 *dirhams* to the wife as dower, the Prophet has directed them to teach *Quran* to the wife in lieu of dower. At present there is no limit to the maximum amount of dower. The minimum has now become obsolete.

As already stated, specified dower is again subdivided into:—

- (i) Prompt Dower (**muajjal mahr**).
- (ii) Deferred Dower (**muwajjal mahr**).

Prompt Dower.—It is payable immediately after marriage on demand. According to Ameer Ali a wife can refuse to enter into conjugal domicile of husband until the payment of the prompt dower.

(ii) **Proper (Customary) Dower.**— When the amount of dower 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 the father's family such as her father's sisters.

Determination of Proper Dower.—The proper dower (*mahr-i-misl*) is regulated with reference to the following factors :—

- (a) Personal qualifications of wife; her age, beauty, fortune, understanding and virtue.
- (b) Social position of her father's family.
- (c) Dower given to her female paternal relations.
- (d) Economic condition of her husband.
- (e) Circumstances of time.

There is no limit to the maximum amount of proper dower under the Sunni Law, but under the Shia law the proper dower should not exceed the 500 *Dirhams*. 500 Dirhams was the amount of dower which was fixed in the marriage of Fatima, the Prophet's daughter. In the Shia Muslims it is, therefore, considered a point of honour not to stipulate for a sum higher than the sum of dower fixed by the Prophet for his daughter, Fatima.

9. **Wife's rights and remedies on non-payment of Dower.**— Muslim Law confers upon a wife (or widow) the following three rights to compel payment of her dower :

1. Refusal to cohabit;
2. Right to dower as a debt; and
3. Right to retain her deceased husband's property.

9. Difference between Sunni and Shia Laws relating to dower :

| Sunni Law | Shia Law |
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| 1. A minimum limit of 10 <i>dirhams</i> is prescribed for specified dower. | 1. No minimum limit is prescribed. |
| 2. There is no limit to proper dower. | 2. Proper dower cannot exceed 500 <i>dirhams</i> .. |
| 3. There is no maximum limit for specific dower. | 3. Fixing of dower exceeding 500 <i>dirhams</i> is considered abominable though not illegal. |

Rights of a Muslim Widow— (i) Right of Retention— 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 greater than that of any other unsecured creditors, 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 and before 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 as against other creditors of her husband, until her dower debt is satisfied. A widow who has not obtained possession of her husband's estate in lieu of her dower cannot exclude other heirs of her husband from possession, they are entitled to join possession with her.

This right is sometimes called a 'lien' but it is not a lien in the strict sense of the term. However, this is the only kind of lien under Muslim Law, recognised in India [*Hamira Vs. Zubaida Bibi*, 8 All. 581 (PC.)].

2. 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 life-time, the wife has no right of retention against a purchaser in execution of the decree and she must deliver possession to him.

3. Actual Possession—The widow or a divorced woman can retain possession of her husband's property in order to secure payment of her unpaid dower only where such possession was in her hands in lieu of her unpaid dower. If she is in possession of her husband's property for some other reason, she cannot retain it for the exercise of this right.

4. Right to Retain, not to Obtain Possession—This right is right to retain the possession in lieu of dower, and not to obtain the possession. Therefore, if the property was not in possession of the widow during the life-time of her husband she cannot obtain its possession after his death under this right. The widow's right of retention is simply the right to continue the possession of her husband's property obtained during his life-time so long as her dower is not paid.

5. Without Force or Fraud—The widow must have obtained possession of property without force or fraud and consent of the husband or his heirs for obtaining the possession is immaterial.

6. The Right of Retention not Analogous to a Mortgage—The woman has no interest in her deceased husband's property as a mortgagee 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.