

Statutory and Islamic Provision on Determination and Payment of Dower in Bangladesh: A Comparative Study

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Abstract

Under the Muslim Law and Statutory Law, Dower or mahr indicates a mandatory payment, in the form of money or possessions paid by the husband, or by husband's father, to the bride during marriage which is considered as the lawful property of the wife. As marriage is a civil contract the mahr is considered as consideration. The mahr Includes money, jewelry, home goods, furniture, a dwelling or some land. Mahr is typically specified in the marriage contract signed during marriage. Importance of dower is found in the holy Quran which states: "Give women their dower with no strings attached. If they themselves give some of it back to you, then consume it with good cheer" In this paper, I have discussed the concept of 'dower' both under Islamic Law and under the different statutory laws of Bangladesh. I have tried to express some situations which may manipulate the Muslim women's right of dower. In this context, I have examined some cases relating to dower which clearly show how the right of dower in case of Muslim women has been reduced in practice and prove the arbitrariness of Bangladeshi society. In practice, often a woman in Bangladesh is deprived from receiving her legal right of dower from husband due to various grounds, such as: dower is controlled by husband and social custom, unregistered marriage, non specification of the mode of payment of dower in the Kabinnama, lack of awareness of laws on dower, fixation of a smaller amount of dower by the groom's party, the traditional concept of usool (paid) by jewellery and so on. Finally, I have tried to give a number of essential recommendations to recover the existing circumstances.

Keywords: Prompt, Deferred, Obligation, Custom, Al- Quran, Sunnah, Unsecured debt, Talaq-e- Tafweed.

1. Introduction

The dower means some money or any property, in which there have right of wife from her husband depend on their marriage contract. In the case of *Abdul Kadir Vs Salima* gives the best description of the nature of dower by Mahmood J. Actually, women's rights of dower made by husband depend on two reasons, 1st is for Islamic right and 2nd is for husband's responsibility to his wife.¹ And for those reasons, it is said as Haque- e-Mahar in natural language. The Quran always order in paying off dower to his wife. The husband is bound to pay off dower; even wife will be slave-woman. The dower is considered a right exclusively for the wife and obligation to the husband. Islam has directed to give the dower by the husband to the wife in order to satisfy the woman's heart and to respect her. It is the possession for the wife and none of her guardians or relatives may distribute any part of it. She may transfer it as a gift, or lend it to others or she

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¹ *Abdul Kadir v. Salima*, I.L.R (1886) 8All 149, as cited by Aqil Ahmed, *Mohammedan Law*, 21st ed. (Allahabad: Central Law Agency, 2004), p.148.

may provide it in charity or do any other permitted acts she wishes with it and no one can interfere it, transfer it as a gift, or lend it to others or she may provide it in charity or do any other permitted acts she wishes with it and no one can interfere it.

The right of dower becomes due on divorce or death of husband if not paid instantly after wedding ceremony. No Muslim husband is allowed to take return the dower amount whether specified or proper in any situation. The Quran protects the rights of women as: ‘And give the women (on marriage) their dower as a free gift’².

2. Methodology

In preparing this paper the method of documentary analysis has been mostly used. Moreover, historical and analytical have been used. Primary Data has been collected basically from the *Quran, Sunnah*, the Muslim Family Laws Ordinance, 1961; the Family Court Ordinance, 1985; Muslim Marriages and Divorces (Registration) Act, 1974; Muslim Marriages and Divorces (Registration) Rules, 1975; and the Limitation Act, 1908 of Bangladesh. Secondary data sources such as books, articles, journals, case materials, Internet sources have been used so that the analysis is taken with a multidisciplinary approach.

3. Definition of Dower or Mahr or Sadka

Mahr or dower indicates any type of money or property which a Muslim wife is entitled to acquire from her husband on marriage as a token of respect. It can be said in another way that *mahr* or dower is an amount 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 or deferred. Dower also means sum of money which is given to a wife by her husband in respect of her marital status.³

Mr Justice Mahmood defines dower as follows: ‘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 or mentioned at the marriage ceremony, the law confers the right of dower upon the wife’⁴

Mahr or dower is a sum of money or offer property which the wife is entitled to receive from the husband in consideration of the marriage.⁵

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.⁶

² Al Quran, Surah an-Nisa,(4:4).

³ Rashid’s, Khalid, (2009), Muslim Law, 5th edn, Eastern Book Company Lucknow: 34, Lalbag, Lucknow-226001, p.83

⁴ Hamilton’s Hedava, 2nd ed. by Grady, 44, cited by Mahmood J. at 8 All. 157-8; Cases, loc.cit.(italics mine)

⁵ M. Hidayatullah and Arshad Hidayatullah, Mulla’s principles of Mahommedan Law, 1st ed.

⁶ Kor. Iv, 4; Ameer Ali, II,461-2; Fat. Law 70.

According to Dr. Jung, “Dower” is the property or its equivalent, incumbent on the husband either by reason of being agreed in the contract of marriage or by virtue of a separated contract, as special consideration for the right of enjoyment itself.⁷

According to Baillie, “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. Dower is not the endanger or consideration given by the man to the women for entering into the contract; but an effect to the contract imposed by the law on the husband as a token of respect for its subject, the women.”⁸

In order to constitute a valid marriage, the Islamic law requires that there should always be a consideration either prompt or deferred given by the husband in favour of the wife, for her sole and exclusive use and benefit. This consideration is called *mahr* or *sadaka* in legal treatise and in common parlance *dain mahr*. The principle of ante nuptial settlements is not peculiar to the Mohammedan law. Sautayra thinks that the custom originated in ancient times with the payments which the husbands often made to their wives as a means of support and as a protection against the arbitrary exercise of the power of divorce.⁹

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 report, but the law requires that some dower should be paid to the wife.

3.1. Root or Custom of Dower

The Prophet Mohammad (PBUH) introduced Dower in the present form and made it obligatory in the case of every marriage. The demotion proper nuptial used in Roman law is parallel to Dower in Muslim law. The important difference between them is that the demotion proper nuptial under the Roman was voluntary, and Dower under the Muslim law is absolutely obligatory. The following points may be noted with respect to the nature of Dower.

In *Abdul Kadir v. Salima*,¹⁰ 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.

⁷ Aqil Ahmed, Mohammedan Law, 21st ed. (Allahabad: Central Law Agency, 2004), p.148.

⁸ Baillie, at p. 91.

⁹ Syed Amer Ali, Mohammedan Law, 6th ed. vol.II, (Dhaka: Shams Publication, 2002), p.432.

¹⁰ I.L.R (1886) 8All 149, as cited by Aqil Ahmed, Mohammedan Law, 21st ed. (Allahabad: Central Law Agency, 2004), p.148.

It is regarded by some eminent authorities as a consideration for conjugal intercourse. In the case of *Smt. Nasra Begum v. Rigwan Ali*, Allahabad High court expressed the view that the right to claim prompt dower proceeds cohabitation.¹¹

Regarded as a consideration for the marriage, it is in theory payable before consummation but the law allows its division into two parts, one of which is called “Prompt” payable before the wife can be called upon to enter the conjugal domicile or demanded by the wife, the other “deferred” payable on the dissolution of the contract by the death of either of the parties or by divorce. But the dower ranks as a debt and the widow is entitled along with other creditors of her deceased husband, to have it satisfied on his death out of his estate”. If the property of her deceased husband is in her possession, she is entitled to retain the possession, until her dower is satisfied. Heirs may recover that property after they have paid up her debt. Dower-debt is not a charge and widow cannot prevent another creditor or of her husband from recovering his debt from his estate. Dower-debt is an unsecured debt ranking equally with other debts.¹²

A husband should think seriously before divorcing a wife when he knows that upon divorce the whole of the dower would be payable immediately.

If dower be regarded as sale price, it must be paid to the father or the guardian of the wife, since it is paid to the wife herself, it cannot be the price. It is a token of respect.¹³

4. Classification of Dower

The basis of the classification of dower under Muslim Law is:

- a) Whether it has been fixed by parties or is fixed by operation of law, and
- b) Whether the dower may be claimed by wife any time or only upon the dissolution of marriage.

If the parties do not specify the dower during marriage, it is called Un- specified or Proper Dower.

Broadly, there are two types of dower:

- (i) Specified Dower and
- (ii) Unspecified Dower.

4.1. Specified Dower (*al-mahr al-masamma*)

Specified dower is that dower which is fixed at the time of marriage or later on. There are provisions relating to dower under sections 13, 14, 15, 16 and 20 of the Kabinnama [Form-E]

¹¹ AIR 1980 All:119, as cited by Aqil Ahmed, Mohammedan Law, 21st ed. (Allahabad: Central Law Agency, 2004), p.148.

¹² Aqil Ahmed, Mohammedan Law, 21st ed. (Allahabad: Central Law Agency, 2004), pp.148-49.

¹³ Syed Khalid Rashid, Muslim Law, 3rd ed. (Lucknow: Eastern Book Company, 2002), p.84.

according to the Muslim Marriages and Divorces Rule 1975. When a husband agrees to pay to his wife a residential building or one lakh taka as *mahr*, it is an example of specified *mahr*.¹⁴

The specified dower has been further divided into-

- (a) Prompt Dower (*Mu'ajjal*) and
- (b) Deferred Dower (*Mu'ajjal*).

4.1.1. Prompt Dower (*Mu'ajjal*)

Prompt dower is payable instantly after marriage on demand. The wife can refuse conjugal rights if the prompt dower is not paid on demand. In such case, the wife can effectively resist the suit for restitution of conjugal rights of the husband provided that no consummation took place. But if consummation has taken place, the wife can refuse this right on condition of payment of prompt dower. If there is no mention in the Kabinnama about prompt dower, then court may consider half of the total dower as prompt dower.¹⁵ Of course the court may fix it depending on the circumstances of the case, the status of the wife, the economic condition of the husband and the total amount of dower.

According to Ameer Ali, a wife can refuse to enter into conjugal domicile of husband until the payment of the prompt dower. The following point must be noted regarding prompt dower: Prompt dower is payable immediately on the marriage taking place and it must be paid on demand unless delay is stipulated for or agreed. It can be realized any time after the marriage. It was held in *Rehana Khatun v. Iqtider Uddin*, the prompt portion of the dower may be realized by the wife at any time before or after consummation.¹⁶

4.1.2. Deferred dower (*Mu'ajjal*)

Deferred dower indicates that dower which is payable in case of dissolution of marriage by death or divorce. In case of an agreement regarding the payment of deferred dower earlier, then such an agreement would be valid and binding. If there is no specification of dower either prompt or deferred and then according to sunni law, it should be split into prompt and deferred.

4.2. Unspecified or Proper Dower: (*Mahr al Mithl*).

In case of non fixing the amount of dower during marriage or later on, the wife is entitled to proper dower, though the marriage was contracted on the condition that the wife cannot claim any dower. Proper dower varies according to the social position of the woman's family, the wealth of her husband, her own personal qualifications and circumstances of time and social conditions surrounding her. According to Hedaya, a renowned book on Islamic law, proper dower is to be determined depending on the personal qualifications of the wife like her age,

¹⁴ Muhammed Faiz-ud-din, *Islamic Law*, 1st ed., (Dhaka: Shams Publication, 1998), p.102.

¹⁵ *Nasiruddin Shah VS Amatul Mughni Begum* II.R (1947) Lah. 565.

¹⁶ 1943, All LJ 98, as cited by Obaidul Huq Chowdhury, *Muslim Law*, 6th ed. (Dhaka: Al-Yakub Press), p.16.

beauty fortune understanding and virtue. The amount of dower fixed of other female members of the wife's family like her sister and paternal aunts is also to be considered. Above all social position and economic capability should be taken into consideration at the time of determining proper dower. Factors to be considered for the determination of proper dower are summarized:

- The personal qualifications of the wife- beauty, virginity, personality, age, education and wealth.
- The status of the family.
- The amount of mahr settled upon the female members of her father's family like her sister and paternal aunts.
- The financial capacity of the husband.¹⁷

5. The Object and The subject matter of dower

Dower indicates monetary gain which is received by a wife from her husband by the virtue of the marriage contract. Dower in fact, is the name of that monetary gain, that saved (collect/gather/deposit/credit/income) in marriage to woman, in exchange of the pleasure to be enjoyed of her, though the marriage be either valid or irregular. The object of dower is three fold:

- To impose an obligation on the husband as a mark of respect to the wife.
- To place a check on the whimsical/moody use of divorce on the part of husband and
- To provide for her existence after dissolution of her marriage, so that she may not become feeble after the death of the husband or termination of marriage by divorce.

The subject matter of dower includes not only a sum of money or property but also personal services and other things. According to a tradition, Amir- bin- Rabia said, "that a woman of the tribe of Bani Fazarah married on a settlement of a pair of shoes, and the prophet said to her 'Are you pleased to give yourself and your property for these two shoes: she said, 'Yes'. Then the prophet approved of the marriage.'"

The followings were recognized as the subject of dower:

- A handful of dates (Abu Daud).
- A pair of shoes (Tirmizi).
- If the husband is a slave, his services to his wife (Mohit Sarkhsee).
- The services of the husband's slaves to the wife (Fatawa-i Alamgir)
- Husband's services rendered to the guardian of a minor wife (Durrul Muktar).
- Teaching the Quran to the wife (Tradition).

In fact, the main contention of the Muslim Jurists is that anything which comes within the definition of *mal* can be the subject matter of dower. Thus, apart from the personal services of the husband, any profits arising from land or business, debts due to the husband, insurance policies, chooses-in-action, the sale proceeds of something, may constitute valid dower.

¹⁷ Muhammed Faiz-ud-din, Islamic Law, 1st ed., (Dhaka: Shams Publication, 1998), p.103.

If the subject matter of dower be “an animal” or “cloth”, then the wife is entitled to *mahr-ul-misl*, proper dower because such dowers are invalid for uncertainty. Similarly, “a land” without specifying the exact location and description are not fit subjects of dower, and the court will have to fix proper dowers in such cases.

6. Contract of Dower made by Father

The amount of dower may be fixed either before or after marriage¹⁸ and can be increased after marriage. It was held in *Basir Ali v. Hafiz* that the amount of dower may be entered into by the father of the bride.¹⁹

The father of a minor son may make a contract on dower on his behalf and it would be binding on the son even if it was made after his marriage during the minority of the son. The father, if he acts as guardian for the marriage of his infant son, is not personally liable unless he expressly becomes a surety for the dower stipulated. Otherwise the father only acts on behalf of the minor son and binds the latter and not him personally. When a father enters into a contract of dower on behalf of his son, he makes himself a surety for due payment of dower in case his minor son who has no means of paying it.²⁰

7. Standard of Dower and Conditions or Terms of Payment

This may be divided into two-

7.1. If the marriage is consummated, and is dissolved by death

- Whole of the specified dower in case of regular marriage.
- Proper dower if unspecified in case of regular marriage.
- Specified or proper dower, whichever is less, in the case of irregular marriage.

7.2. If the marriage is not consummated, and is dissolved by the act of party

When divorced by the husband-

Half of the specified dower, in case of regular marriage.

A present of three articles if unspecified: in case of regular marriage.

When divorced by the wife: No dower.

If the marriage is irregular: No dower.

¹⁸ *Kumar-un-nissa v. Husaini Bibi*, (1880), 3 All 266 FB, as cited by Obaidul Huq Chowdhury, Muslim Law, 6th ed. (Dhaka: Al-Yakub Press), p.16.

¹⁹ *Jahuran Bibi v. Soleman Khan*, (1933) 58 Cal LJ 251, as cited by *ibid*, p.16.

²⁰ Shaukt Mahmood, Principles and Digest of Muslim Law, 6th ed., (Lahore: Legal press Centre, 2002), pp.52-3.

8. Amount of Dower

There is no minimum or lower limit of dower fixed by law, though some jurists opine that it should not be less than ten dirhams. It may be in the form of cash or in kind. The Prophet (PBUH) did not fix any minimum. According to the well reported Traditions of the Prophet of Islam, even a handful of barley or dates or even an iron ring may be sufficient provided the bride agrees to accept it. The Messenger of Allah himself married Hazrat Safiyyah and her emancipation was her dower. Omme Solaim agreed to marry Abu Talha on the condition that he should accept Islam. Abu Talha fulfilled the condition and his acceptance of Islam was declared to be *mahr* or dower of Omme Solaim. In another case, the teaching of one or two verses of the Holy Qur'an by the husband to the wife was declared to be an adequate *Mahr* for the bride.²¹

These minimums have become obsolete and it is now customary in different countries to fix the amount of dower entirely by a consideration of the circumstances of the husband and wife.²²

Among Sunnis there is no maximum; any amount may be fixed. According to Some sects of Shias, “not to stipulate for a sum higher than the minimum fixed by the Prophet for his favorite daughter Fatima, the wife of Ali, namely 500 dirham.”²³

8.1. Increase or Decrease of Dower

The husband may increase the dower at any time after marriage. Similarly, the wife may remit the dower wholly or partly in favor of her husband. The Quran says “Dower, once fixed can be increased by the husband and decreased by the wife.”²⁴ A Muslim girl who has attained puberty is competent to relinquish her *Mahr* although she may not have attained majority (18 years) under the Bangladesh Majority Act. The remission of the *Mahr* by a wife is called *Hibe-e-Mahr*. But the remission made by the wife should be with free consent. It was held in the case of *Nurunnessa v. Khaje Mahomed*²⁵ that where the wife was subject to the mental distress, on account of her husband's death, the remission of dower was considered as against her consent and not binding on her.

9. Difference between Sunni & Shia Law Regarding Dower

9.1. Sunni Law

A minimum limit of 10 dirhams is prescribed for specified dower. There is no limit to proper dower. There is no maximum limit for specific dower. If marriage is dissolved by death and dower has not been specified, or it is agreed that no dower shall be payable, proper dower would be due whether the marriage was consummated or not. An agreement that no dower shall be due

²¹ http://www.muslimtents.com/shaufi/b2/b2_06.htm. Last visited 29 October, 2018.

²² Syed Amer Ali, *Mohammadan Law*, 6th ed. vol.II, (Dhaka: Shams Publication, 2002), p.434.

²³ Syed Khalid Rashid, *Muslim Law*, 3rd ed. (Lucknow: Eastern Book Company, 2002), p.87.

²⁴ Al Quran, Surahan-Nisa, (4:4)

²⁵ (1920) 47 Cal 537, as cited by Obaidul Huq Chowdhury, *Muslim Law*, 6th ed. (Dhaka: Al-Yakub Press), p.17

is void. In the absence of an agreement only a reasonable part of the dower is presumed to be prompt.

9.2. Shia Law

No minimum limit is prescribed. Proper dower cannot exceed 500 dirham's. Fixing of dower exceeding 500 dirhams is considered abominable though not illegal. In such case, no dower would be due if the marriage was not consummated. Such agreement by sane and adult wife is valid. The whole dower is presumed to be prompt.²⁶

10. Obstacles in Claiming the Right of Dower by Wife

10.1. Remission of Dower by Wife:

The wife who has attained puberty can remit the full portion of dower or any part of it in favor of the husband or his heirs. The reduction would be valid although made without consideration. But only a written instrument is considered as valid. A Muslim girl who has attained puberty is competent to relinquish her *Mahr* although she may not have attained majority (18 years) within the Bangladesh Majority Act.

10.2. Dower Payable after Consummation of Marriage:

If he divorces her before touching her and after fixing the amount of dower for her, he is bound to give half of the fixed of dower. However, if the wife agrees to forgo her rights of accepting this half dower or the man shows generosity in giving her full dower, such an accord is permitted.²⁷

Consummation confirms or perfects the dower. So after consummation or valid retirement a woman has a right to her dower if a separation takes place and it does not matter whether the cause of separation originates from the husband or the wife.²⁸

10.3. Death before Consummation:

In case of death before consummation, the wife is entitled to her full dower. It necessarily follows that if no dower has been fixed she would get her full proper dower.

10.4. Right of widows about dower

Dower is like a debt and it is an unsecured debt. If any Muslim husband died leaving his wife (widow) then she will have the right to get the property of her husband in two ways. She will inherit as sharer as well as she will receive the dower from the property of the deceased husband

²⁶ Aqil Ahmed, Mohammedan Law, 21st ed. (Allahabad: Central law Agency, 2004), pp.160-61.

²⁷ Al-Qur'an, Surah Al -Baqarah (2:237) http://www.muslimtents.com/shaufi/b2/b2_06.htm. Last visited 29 October, 2018.

²⁸ David Pearl & Werner Menski, Muslim Family Law, 3rd ed. (London: Sweet& Maxwell,1998), p.180.

which is considered as debt. An illustration is given for proper understanding of the position of the widow.

A Muslim, for example, died leaving a widow, a mother, and father. The widow's dower debt is 60000/- from her husband. The valuation of left property by the deceased is 200000/-. In this case inheritance opens after repaying dower of widow. Here part of Widow's $\frac{1}{4}$, as sharer

Mother $\frac{1}{4}$, as sharer

Father $\frac{1}{2}$, as residuary

So, there the widow will contribute $\frac{1}{4}$ of 60,000 = 15000

Mother's contribution is $\frac{1}{4}$ of 60000 = 15000

And Father's contribution is $\frac{1}{2}$ of 60000 = 30000

After deduction of *mahr* (15000+15000+30000) Tk 60000,

There remains tk. 140000 (200000-60000)

Now wife gets $\frac{1}{4}$ of 140000 = 35000+60000(*mahr*)=95000 tk.

Mother takes $\frac{1}{4}$ of 140000 = 35000 tk.

Father takes $\frac{1}{2}$ of 140000 = 70000 tk.

10.5. Divorce before Consummation of Marriage

If a person divorces his wife before touching her and before appointing any amount of dower for her, he has been directed to make provision for her according to his means.²⁹ In case of divorce, the right to dower is confirmed only when the cause of the separation lies with the husband, as when he divorces his wife or a separation takes place on account of his impotency, but the husband would not be liable to pay dower when the cause of separation lies with the wife when she exercises the option of puberty.³⁰

10.6. Dissolution of Marriage by Talaq

If the husband dissolved the marriage by giving talaq then the wife will get full dower and maintenance from the husband. But in practice, we will see later, this is rarely observed.

10.7. Dissolution of Marriage by Talaq-e- Tafweed

Talaq-e-tafweed is one of the most effective legal weapons in Muslim women's possession in case of delegated divorce. The Muslim Family Laws Ordinance, 1961 has provided the option of Talaq-e-tafweed as the right of divorce in the prescribed form of the kabinnama. If a marriage is dissolved by exercising it, then the wife will not be deprived from getting the dower money as she has exercised the delegated power which was given by her husband.

²⁹ Al-Qur'an, Surah Al -Baqarah, (2:236), http://www.muslimtents.com/shaufi/b2/b2_06.htm. Last visited 29 October, 2018.

³⁰ Shaukt Mahmood, Principles and Digest of Muslim Law, 6th ed., (Lahore: Legal press Centre, 2002), pp.52-3.

10.8. Dissolution of Marriage by *khula*

Dissolution by *khula* indicates the agreement between the parties to dissolve the marriage. In *khula* cases wife sacrifices her right of dower. But the husband tries to take the advantages of it. Sometimes the husband forced the wife to divorce through *khula* so that he can be benefited.

10.9. Dissolution of Marriage by Mubara'at

In Mubara'at, the marriage is dissolved by an agreement between the parties and here the desire for being separated is mutual for a consideration to be paid by the wife to the husband.³¹

11. Wife's Right of Dower under Islamic Law and Statutory Laws

11.1. The Quran

The form of the dower described above in connection with the fifth stage is not an invention of the Quran. All that the Qur'an did was to restore it to its natural and pristine form. The Quran in its incomparably elegant style says: "Give to the women a free gift of their marriage portions".³² This means that the dower belongs to women exclusively and it is a gift to be paid directly to them. It has nothing to do with their fathers or brothers.

The Holy Quran did away with this custom also. It says:

'O you who believe! It is not lawful for you to inherit women forcibly"³³

In another verse, the holy Quran has totally banned a marriage with one's father's wife (stepmother) even if she be willing. It says: "Marry not those women whom your father married"³⁴

The Holy Quran did away with every custom which deprived woman of her dower. One of such customs was that when a man lost interest in his wife, he harassed her with a view to making her agree to a divorce on the condition that she would return, wholly or partly, the dower which she had received. The Holy Quran says: "Nor should you put constraint on them (women) so that you take away part of what you have given."³⁵

Surah Nisa Chapter 4, Verse 34 (4:34) states:

"Give the women (on marriage) the dower as a free gift".³⁶

³¹ Taslima Monsoor, From Patriarchy to Gender Equity, 1st ed. (Dhaka: The University Press Limited, 1999), pp.180, 186 & 190.

³² Al Quran, Surah an-Nisa, (4 : 4), http://www.muslimtents.com/shaufi/b2/b2_06.htm, Last visited 31 October, 2018.

³³ Al Quran, Surah an-Nisa,(4 : 19).

³⁴ Al Quran, Surah an-Nisa,(4 : 22).

³⁵ Al Quran, Surah an-Nisa, 4: 19

³⁶ Al Quran, Surahan-Nisa,(4 : 34), https://www.islamawareness.net/Women/naik_women.html, Last visited 31 October, 2018.

11.2. Sunnah/Hadith

A hadith of the Prophet Muhammad (PBUH) on the rights of woman regarding dower are as under: -

Omme-Habibah reported that she was the wife of Abdullah Jahash who died in the land of Abyssinia, and then the Negus gave her in marriage to the Prophet and took from him a dower of 4000. Then he sent her to the Prophet with Shurahbilb-Hasanah.³⁷

Anas retorted that the Messenger of Allah emancipated Safiyyah and married her and made her emancipation a dower... (Bukhari and Muslim)

Anas reported that Abu Talhah married Omme Solaim and the dower between them was Islam. Omme Solaim had accepted Islam before Abu Talhah who sought her in marriage. She said: I have surely accepted Islam; but if you accept Islam, I shall marry you. So Abu Talhah accepted Islam and it was their dower between them. (Nisai)

Hazrat Umar once addressed the people in the Mosque of the Prophet: O People! Why have you started fixing the dowers of women at fantastically higher amounts, while the Messenger of Allah had never fixed the dower of any of his wives at an amount exceeding four hundred Dirhams. Beware! I should not hear in future that any of you has fixed dower exceeding 400 dirhams. He then descended from the pulpit. Then came a woman of Quraish and said: O Umar! Have not you heard the word of God (in Al Qur'an 4:20)³⁸. Allah says, even if you have given a big treasure to a woman, don't take back anything out of that. Hazrat Umar at once returned, withdrew his order and announced: Any one of you can fix as much dower as he pleases: I can't stop him. (Tafsir Ibn Kathir).³⁹

11.3. Muslim Family Laws Ordinance, 1961

Section 10 of the Muslim Family Laws Ordinance makes it absolutely necessary that the marriage solemnized under the Muslim Law shall be registered. Where no details about the mode of payment of dower are specified in the nikah nama, or the marriage contract, the entire amount of the dower shall be presumed to be payable on demand.⁴⁰

11.4. The Family Courts Ordinance, 1985

Subject to the provisions of the Muslim Family Laws Ordinance, 1961, a family court shall have exclusive jurisdiction to entertain, try and dispose of any suit relating to dower.⁴¹ It was held in *Shafiqul Huq (Md) v. Mina Begum*,⁴² that Family Court has got every jurisdiction to decide as to whether the kabinnama in question is a genuine and valid document or not and whether any

³⁷ Abu Daud; Nisai, http://www.muslimtents.com/shaufi/b2/b2_06.htm, Last visited 31 October, 2018.

³⁸ Al Quran, Surahan-Nisa,(4 : 20)

³⁹ http://www.muslimtents.com/shaufi/b2/b2_06.htm, Last visited 31 October, 2018.

⁴⁰ Muslim Family Laws Ordinance, 1961, s.10.

⁴¹ The Family Courts Ordinance, 1985, s.5.

⁴² 54 DLR 481.

marriage between the petitioner and opposite party was ever solemnized or not before it decides to grant any decree for dower. It was further stated in the case of *Jesmin Sultana v. Md. Elias*⁴³ that the court has no right to reduce the prompt dower unless the wife remits it voluntary.⁴⁴

11.5. Muslim Marriages and Divorces (Registration) Act, 1974

Dower in a Muslim marriage forms an inseparable part of the terms of the kabinamah and thus as the kabinnamah is intended to be registered under the 1974 Act, so is the dower. The Act of 1974 is in force relating to the registration of Muslim marriages including dower. (*Atiqul Huque Chowdhury vs Shahana Rahim and another* 47 DLR 301)⁴⁵

12. Suit for Dower and Limitation

If the dower is not paid, the wife, and after her death, her heirs, may sue for it. The period of limitation for a suit to recover "prompt" dower is three years from the date when the dower is demanded and refused, or, where during the continuance of the marriage no such demand has been made, when the marriage is dissolved by death or divorce.⁴⁶ The period of limitation for a suit to recover "deferred" dower is three years from the date when the marriage is dissolved by death or divorce.⁴⁷ Where, however, prompt dower has not been fixed, a demand and refusal is not a condition precedent for filing a suit for its recovery, it was decided in *Muhammad Taqi Khan v. Farmoodi Begum*.⁴⁸

12.1. Non-payment of Prompt Dower and Restitution of Conjugal Right

The wife may refuse to live with her husband and admit him to sexual intercourse so long as the prompt dower is not paid. If the husband sues her for restitution of conjugal right before sexual intercourse takes place, non-payment of the dower is a complete defence to the suit, and the suit will be dismissed. If the suit is brought after sexual intercourse has taken place with her free consent, the proper decree to pass is not a decree of dismissal, but a decree for restitution conditional on payment of prompt dower, *Abdul Kadir v. Salima*.⁴⁹

12.2. Liability of Heirs for Dower Debt

The heirs of a deceased Muslim are not personally liable for the dower debt. As in the case of other debts due from the deceased, so in the case of a dower debt, each heir is liable for the debt to the extent only of a share of the debt proportionate to his share of the estate. Where the

⁴³ 2 BLC 233.

⁴⁴ The Family Courts Ordinance, 1985, s.5.

⁴⁵ Obaidul Huq Chowdhury, Muslim Law, 6th ed. (Dhaka: Al-Yakub Press, 2005). p.128.

⁴⁶ The Limitation Act, 1908, Sch. I, Art. 103.

⁴⁷ Ibid Art. 104.

⁴⁸ (1941) All, 326, as cited by Obaidul Huq Chowdhury, Muslim Law, 6th ed. (Dhaka: Al-Yakub Press, 2005), p.17.

⁴⁹ (1886) 8 All 149, as cited by Obaidul Huq Chowdhury, ibid, p.18.

widow, is in possession of her husband's property under a claim for her dower, the other heirs of her husband are severally entitled to recover their respective shares upon payment of quota of the dower debt proportionate to those shares, *Hamira Bibi v. Zubaiada Bibi*.⁵⁰

12.3. Liability of Widow in possession to account

A widow in possession of her husband's estate, in lieu of dower is bound to account to the other heirs of her husband for the rents and profits received by her out of the estate. But she is entitled in that case to compensation for forbearing to enforce her right to the dower debt, *Hamira Bibi v. Zabaida Bibi*.⁵¹

12.4. No Right of Widow to alienate Property to satisfy Dower Debt

The right of a widow to retain possession of her husband's property under a claim for her dower does not carry with it the right to alienate the property by sale, mortgage, gift or otherwise, *Chuhi Bibi v. Shams-un-nisa*.⁵²

12.5. Suit for Possession by Widow who is Dispossessed

If a widow, who is in possession of her husband's property under a claim for her dower, is wrongfully deprived of her possession, she may bring a suit for recovery of possession. *Majidmian v. Bibisahad*.⁵³

12.6. Widow's Possession no Bar to a Suit for Dower

The fact that a widow is in possession of her husband's property under a claim for her dower, is no bar to a suit by her against the heirs of her husband to recover the dower debt. But she must in such a suit offer to give up possession of the property. She cannot both retain possession and have a decree for her dower debt, decided in *Ghulam Ali v. Saqir-ul-nissa*.⁵⁴

If the widow is in possession of her husband's property under a claim for her dower the proper course for her to follow is to bring an administration suit in which the property can be placed in the hands of the Court for the satisfaction of her claim by sale of the asset or otherwise, *Mirza Mohammad v. Shazadi Wahida*.⁵⁵

As the Holy Quran and Hadith of Allah's Apostle (SM) prescribe for giving dower the Court has no right to reduce the prompt dower unless the wife remits it voluntarily, *Jesmin Sultana vs Md. Elias*.⁵⁶

⁵⁰ (1916) 43 IA 294, as cited by Obaidul Huq Chowdhury, *ibid*, p.18.

⁵¹ (1916) 43 AI 294, as cited by Obaidul Huq Chowdhury, *Muslim Law*, 6th ed. (Dhaka: Al-Yakub Press, 2005), p.19.

⁵² (1894) 17 All 19, as cited by Obaidul Huq Chowdhury, *ibid*, p.19.

⁵³ (1916) 40 Bom, 34, as cited by Obaidul Huq Chowdhury *ibid*, p.19.

⁵⁴ (1901) 23 All 432, as cited by Obaidul Huq Chowdhury *ibid*, p.19.

⁵⁵ (1914) 19 CMN 502: 28 IC 191, as cited by Obaidul Huq Chowdhury *ibid*, p.20.

⁵⁶ 2 BLC 233.

13. Problems Faced by Muslim Wives in case of Recovering Dower in Practice

Although there are sufficient laws and enforcing agencies in Bangladesh but the Muslim women are not getting dower properly. Sometimes they do not receive any dower at all. It is an alarming situation in cities and the rural remote areas. There are some reasons for happening this situation. Those are given below:

Firstly, in Bangladesh though Registration of marriage is mandatory according to Marriages and Divorces (Registration) Act, 1974 but most of the people do not follow it strictly. The people are not aware regarding this matter. Sometimes the people deprive the bride from legal or religious right intentionally. As a result, no kabinnama of marriage is existed. In the absence of kabinnama, it is impossible to trace the amount of dower properly without testifying by the witnesses. So, nonappearance of Kabinnama is the most important reason for the deprivation of the women's right of dower in Bangladesh.

Secondly, generally the parties should mention the dower specifically whether it is prompt or deferred, but they do not mention it. Although the law of Bangladesh specifically states that if any dower is not fixed then that is considered as prompt dower. Due to lack of awareness, the women are being deprived from getting the dower in time.

Thirdly, the wife may remit the dower wholly or partially in favour of her husband or his heirs. A Muslim girl who has attained puberty is competent to relinquish her *Mahr* although she may not have attained majority (18 years) within the Bangladesh Majority Act. The remission of the *Mahr* by a wife called *Hibe-e-Mahr*. But the remission made by the wife should be with free consent. It was held in the case of *Nurunnessa v. Khaje Mahomed*⁵⁷ that where the wife was subject to the mental distress, on account of her husband's death, the remission of dower was considered as against her consent and not binding on her.

It has been held in (Karachi case) *Shah Bano v. Iftakar Mohammed*,⁵⁸ 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.⁵⁹ But for lack of knowledge women are unable in exercising their right of dower as they believe that they have already relinquished their right.

Fourthly, the people of the society think that if husband give divorce only then the wife will get the full amount of dower. There is a misconception that if a wife dissolves the marriage by exercising *talaq-e-tafweed* then the wife will not get any amount from the dower money. But

⁵⁷ (1920) 47 Cal 537, as cited by Obaidul Huq Chowdhury, *Muslim Law*, 6th ed. (Dhaka: Al-Yakub Press, 2005), p.17.

⁵⁸ P.L.D 1956 (P.W). Kar. 363, as cited by, Asaf. A. Fyzee, *Outliness Of Muhammadan Law*, 4th ed. (Oxford: Oxford University Press, 1974), p.140.

⁵⁹ *Ibid*, p.140.

actually the wife is entitled to the dower money as she has exercised the delegated power of talaq-e-tafweed which was conferred on her by her husband.

Fifthly, sometimes the *kabinnama* is prepared in accordance with law where the groom's part tries to fix a lower amount of dower. They do it so that they can be able to divorce or remarry easily. The amount of dower is fixed with the free consent of the parties

Sixthly, sometimes the parties fix a high amount of dower to show off their status but they have no intention to pay it. Sometimes it suffers the parties. When a party wants to dissolve the marriage, they could not do it due to inability to pay the dower.

Seventhly, generally the women of Bangladesh use their right to divorce by *khula*, where they sacrifice their right of dower in replace for a divorce. Sometimes the husband pressurizes the wife to give *khula* divorce to avoid the pressure of dower money in case of giving talaq. Thus the women are being deprived from getting dower.

Eighthly, the cases reveal that whether any portion of dower is actually paid or not, if it is mentioned in the registered *kabinnama*, the courts tend to reduce the amount of dower by the alleged *usool*. Thus, in *Mst. Razia Akhter v. Abul Kalam Azad*,⁶⁰ the Family Court gave preference to documentary evidence. In the registered *kabinnama* it was mentioned that a part of the dower had been paid as *usool* at the time of marriage. The court did not further inquire whether it had actually been paid. The same situation arose also in *Mst. Ilafi'za lihi v. Md. Shafiqid Alam case*,⁶¹ where the Family Court only allowed the claim for dower after reducing the total amount by the *usool* as specified in the registered *kabinnama*.

Ninthly, It was found in a study of the metropolitan city of Dhaka that 88% of Muslim wives did not receive any dower at all. If this is the situation in the capital city, one can anticipate an alarming situation in the rural remote areas. Why are women not receiving their legal right of dower? To inquire into this one has to probe into the causes for not giving dower. Here the same causes for which the women in Bangladesh are being subordinated come in, as women are dominated in the patriarchal family and in the wider socio-religious arena. What needs to be ascertained here, in particular, seems to be whether the women's right to dower is being enlarged or reduced by local customary conventions.⁶²

The cases on dower in Bangladesh highlight the contrast between theory and practice. In dower cases, the payment is a legal obligation, whereas in social practice the question of payment arises only at the instance of divorce. For example, in *khula* cases, the right of dower is relinquished to end an undesired marriage. The fact remains that in social reality women rarely get any portion

⁶⁰ Taslima Monsoor, *From Patriarchy to Gender Equity*, 1st ed. (Dhaka: The University Press Limited, 1999), p.204

⁶¹ *Ibid*, p.204

⁶² Dr. Taslima Monsoor, *Dower and Dowry: Its Affect on the Empowerment of Muslim Women* (Available at July 27, 2003) Available at <https://www.thedailystar.net/law/200307/04/index.htm> (Accessed 31 October, 2018)

of their dower unless the husband is adamant to give talaq. Sometimes the social position of female litigants who are economically dependent influences the claim for dower as the last financial support. Thus, the theoretical right of women's potential power of demanding dower does not exist in practice. It was already mentioned earlier that in Dhaka itself 88% of the Muslim wives did not receive any dower.⁶³

14. Recommendations

In the previous chapter I have tried to discuss elaborately regarding the problems in case of recovering dower money by the women in Bangladesh. From there it is clear that most of the Muslim wives do not receive any dower at all in the cities as well as in rural areas.

Generally, the husband forced the wife to give *talak* through *khula talak*. By this system the wives are deprived from getting the dower properly. Then the wives cannot see any point to challenge this situation. It may be noticed by the court that a fewer cases are available regarding talaq cases as the husbands are trying to avoid giving divorce, thus forcing wives to go for judicial dissolution. To solve this problem the court should take proper steps for the protection of the women and should ensure their rights of dower.

In rural area, most of the women are illiterate. So, they are not aware about their rights. They can be aware through social awareness program. The chairman of Union Parishad can take some measures to aware them. The different NGOs and organization can make the people aware through their activities regarding women's right of dower. The syllabus of primary and secondary education can be changed and some social awareness program can be included, such as women's right of dower. And the government should take the necessary steps to solve such problem.

Sometimes the women feel shy to claim their rights because of their social status, lack of power and lack of social support in a male dominated society. Women will have to be bold and free from shyness because the Quran itself has given the right to them.

In the country especially in the rural areas, some marriages are taking place without *kabinnama*. Sometimes in *kabinnama* the portion of prompt or deferred dower is not mentioned. So it is not enough to make marriage registration mandatory. The government should be constructive for ensuring registration of marriage by monitoring cell. Moreover, the government should be effective regarding enquiry as to what portion of dower money has been really paid by the groom's part and what has been stated in the *kabinnama*, so that the husband cannot deprive the bride from her dower by deducing the fake price of jewellery.

Again, sometimes the parties announced a large amount of dower in public but later the parties agree to a smaller amount. This should be discouraged. The amount which has been stated in the

⁶³ Taslima Monsoor, From Patriarchy to Gender Equity, 1st ed. (Dhaka: The University Press Limited, 1999), pp.209

kabinnama as dower money will have to be paid by the husband and in no circumstances the court should reduce the amount. By doing this the divorce can be decreased and the women will get the dower properly. Legal aid services should be more accessible for the women so that they can bring their action within the proper time.

If we want to solve these problems and want to ascertain women's right in the society, then the people have to be more conscious and aware about the women's right of dower under Islamic and statutory laws of Bangladesh and we all have to extend our hands for the women to ensure their right of whole amount of dower money.

15. Conclusion

The dower is a part and parcel of marriage under both the Islamic and Statutory Law. To give dower to the wives is a custom which is derived from the pre-Islamic Period. Dower is unavoidable in case of marriage and it should be given at the time of marriage which is clearly said in the holy *Quran, Sunnah* as well as the Statutes of Bangladesh. There are two ways to give the dower either prompt or deferred. In case of prompt dower, husband is bound to give the dower at the time of dissolution of marriage either by divorce or by death. If any person denies giving the dower to his wife, then he can be bound by law and the wife can deny continuing conjugal life with the husband.

The cases on dower in Bangladesh highlight the disparity between theory and practice. Different sceneries are existing in our society. Most of the cases relating to dower indicate that the payment of dower is a legal obligation but the people of the society think that the question regarding payment of dower should arise only at the time of divorce. In this paper attention has been given on the person who can make contract for the dower at the time of marriage, and when, and how he will be bound to pay the dower to the wife. If someone denies paying dower, then the wife can claim it under the statutory law of Bangladesh and within a limitation period. In this present paper I have discussed the problems facing by women in recovering the dower money in practice and finally I have tried to give necessary solutions for ensuring women's right of dower from the male dominated society. The amount of dower is not only a check for unreasonable exercise of *talaq* but also the only financial security the wife might have after the dissolution of her marriage.