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➤ **Dower or Mahr under Muslim Law**

Dower is defined under section 285 of Muhammadan law

➤ **Introduction and Meaning**

Mahr or Dower is a sum of money or other property to be paid or delivered to the wife. It is either specified or unspecified but in either case, the law confers a mandatory right of Mahr or Dower on wife.

The Mahr (Dower) belongs to wife and she can deal with it in the manner she likes it and neither her husband nor husband's relations nor even her relations can dictate her in matter of using the Mahr money or property. No doubt, Mahr was originally analogous to sale price, but since the inception of Islam, it is hardly correct to regard it as the price of sexual intercourse.

➤ (Section 10, Muslim family laws order., 1961

According to section 10 , where no details as to the payment of dower are given entire amount of dower shall be presumed to be payable on demand.

➤ dower may be fixed after marriage (s:287 Muhammadan law).

The amount of dower made by a father before or at the time of marriage or after marriage and can be increased after marriage

➤ Contract of dower of minor by father(s 288 of Muhammadan law)

A contract of dower made by father on behalf of his Minor son is binding on the son, such a contract may be made even after marriage, provided the son was then a minor.

Among sunnis the father does not, by entering into such contract, become personally liable for the dower debt, nor is he liable for it merely because he consents to the marriage. But by a recent decision of judicial committee the rule is otherwise among shias when the Minor son has no means of his own.

Muslim marriage is like a contract where wife is the property and Mahr is the price or consideration. However, it is also true that non-payment of Mahr does not void the marriage, so Mahr is not purely a consideration. In pre-Islamic Arabia, Sadqua was a gift to wife but Mahr was paid to the wife's father and could therefore, be regarded as sale-price. But after Islam, Mahr payment is required to be paid to wife and not to her father, it could no longer be regarded as Sale Price.

No sin upon you if you divorce woman before you have touched them (but) appoint a portion fixed for them by you (rather pay Mahr) and make provision (of gift) for them, Rich, according to his means, Poor, according to his means.

And if you divorce them before you have touched them, and you have fixed for them the dower, (pay) half of what you have fixed (i.e., dower) unless they (women) relinquish or give it up.

➤ **Divorce is twice:**

Then retain them reasonably or release them with kindness. And it is not lawful for you that (you) take back anything of what you had given to them except that both fear that they will not be able to keep limits of Allah and she returns what she was given.

Mahr or Dower has to be given to wife however she is vested with discretion to remit it.

Mahr is non-refundable even after divorce (unless she remits it at her sole discretion) and it becomes the property of wife in perpetuity.

Payment of Mahr is mandatory even if marriage is not consummated. But in that case, Mahr is half of the amount fixed.

In a way, Mahr provides a check on the capricious exercise by the husband of his almost unlimited power of divorce. Even a middle class man can fix the Mahr of eleven lakhs of Ashrafis (an ashrafi would be 15-20 rupees). This sum of money would give serious cause for anxiety for a middle class man for giving divorce.

➤ **Concept of dower**

A Dower is a common law that entitled a widow to a portion of her husband's estate in absence of a will. The provision of dower allowed the wife to provide for herself and any children born during the marriage. In most circumstances, the widow was granted up to one-third interest in her husband's assets.

Dower is also called “Mehr”. Dower is in the form of consideration which is the right of a Muslim woman. She receives consideration for contracting to get married to the man. However, Islamic scholars, believe this to a mark of respect given to a woman.

A Muslim matrimony is different from a Hindu one. A Hindu marriage is a sacred ceremony, however, a Muslim marriage has another aspect to it. A Muslim marriage has a contractual aspect to it. It is a civil contract between parties. Hence, a man and woman come into a contractual agreement to marry each other. Now, according to the principles of contract law we know that a contract cannot be valid unless there is a consideration.

Similarly, in a Muslim marriage, the concept of consideration finds its place in the form of ‘dower’. The principles of ‘offer’ and ‘acceptance’ also apply. The man offers the woman to get married and she either accepts directly or someone on her behalf who has been authorised to do so. The other mode of such a proposal can be by way of offering dower. And once the woman accepts this dower, it is deemed that she has assented to the marriage.

➤ ***What is dower?***

Dower is also called “Mehr”. Dower is in the form of consideration which is the right of a Muslim woman. She receives consideration for contracting to get married to the man. However, Islamic scholars, believe this to a mark of respect given to a woman.

Honour is given to the woman for leaving her home and get married to the man and in a new family

Mehr', needs to be paid if a man divorces the woman before consummating the marriage and this is not a sin according to the Koran. But this 'Mehr' should be pre-fixed or decided between the parties so that if there be a situation the 'Mehr' is paid to the woman as a matter of respect and honour.

➤ ***Concept of 'Mehr' in details***

When a 'Mehr' is decided between the parties, it becomes payable by the man. Especially when the offer of marriage is made by way of offering 'Mehr'. A 'Mehr' shall be paid by the man and then there can be no refund. The man cannot demand the 'Mehr' back from the woman under any circumstances. However, it is believed that in case of a divorce, the 'Mehr' can be paid in half. But the payment is necessary and cannot

It is further believed that 'Mehr' keeps a check on the man. Since, divorce for a Muslim man can be quite easy as a process, and leave the woman high and dry. The dower can be quite a burden since for a middle-class

man to pay separate 'Mehr' could help in the prevention of men leaving their marriages.

➤ ***When can a man not pay dower***

It is believed that when a marriage is not in the nature of a civil contract and there was no offer and acceptance along with consideration to the marriage then the concept of dower does not apply. This is because a dower is paid as a matter of consideration by the man and dower can also be a way of offering his hand in marriage to the woman. But, this only applies to the couples who ratify to a contractual relationship.

On the other hand, marriage can also be only religious and spiritual in nature. And under such circumstances, a dower shall not apply. And the man is not under an obligation to pay dower to a woman.

➤ **Purpose of a 'Mehr'**

There are several interpretations that the 'Mehr' is paid by the husband to the wife in the form of consideration since the marriage between the two in the nature of the civil contract. On the other hand, it is believed that where the marriage is not conducted in a contractual manner it is conducted in a religious manner. Where the need for a dower does not really exist.

There is another set of belief that the 'Mehr' is paid to the woman with the purpose of sustaining herself in a case where the husband loses his life. Since the woman becomes

Since the woman becomes the property and the responsibility of the husband, therefore, it becomes his responsibility to support his wife. Hence, in case of the unforeseen event of his death, the dower shall support the woman and her child.

➤ **Structure of Dower**

A mahr is part of many Muslim marriage contracts. The mahr may be separated into two parts. First, there is the *muqaddam*, or the prompt mahr, which the wife must receive at or immediately after the marriage ceremony. The second part of the mahr, called the *mu'akhar*, is a deferred and promised amount, payable at any agreed upon date following the consummation of the marriage. Often the deferred amount is larger than the amount paid at marriage. In theory, the deferred amount is supposed to provide the wife with a means of support, and is associated with the death or divorce of the husband, however this is a more traditional rather than Islamic stance on the matter.

The *mu'akhar* should be viewed as importantly as the initial dower payment as it is an obligation to be fulfilled by the husband and is considered debt if it is not given to the wife within the timeframe agreed upon between the couple.

The mahr in any Islamic marriage contract is a fundamental religious right of the wife, and the husband may not reduce the mahr. Even upon the husband's death, the deferred mahr is paid from his estate before all other debts, because it is a religious requirement.

According to a hadith, the Muslim Prophet Muhammad stated the mahr should be "one gold piece. but the mahr amount is often negotiated

between the parents or guardians of the bride and groom (also called *wali*), and the parties often draft mahr agreements by filling in the blanks of form contracts that employ standard boilerplate terms. The typical mahr containing marriage contract consists of the names of the parties, the amount of the mahr, a cleric's signature, the signature of two male witnesses, and a disclaimer that Islamic law will govern the marriage contract. In Islamic marriages, assets brought into the union by the wife may only be accepted by the husband after the mahr has been paid by him to her.

In Arabian world, there are varying interpretations of *mahr* containing marriage contracts, highlighting the differences between Maliki, Hanbali, Hanafi, Shafi, and Jafari schools of Islamic jurisprudence. For example, the Hanafi School holds that if the woman initiates the divorce (*khul'*) she cannot receive her mahr regardless of whether the husband is or is not at fault, while the Maliki School holds that when the husband is at fault for the divorce, the wife does not forfeit her right to the mahr even if she initiates the divorce. The schools also differ over the requisite number of witnesses to the contract. The Hanafi School requires two witnesses on the document for a mahr containing contract to be valid, while the Maliki School holds that witnesses are only needed at marriage's publication but not the document.

➤ ***Imposition of Dower***

The husband is liable to pay the dower. And this liability can be imposed in case the husband fails to pay the same to the woman. Now, since it has already been iterated that the dower is the way a man offers for the

matrimony and its acceptance can be by way of accepting the dower by the woman or a person on her behalf. However, in cases where the dower is unpaid and is yet to be paid by the husband the woman cannot refuse conjugal rights to him.

Since it is a matter of right after the marriage. The law provides for a remedy to the woman that she can file a suit for recovery of the dower.

➤ **Mahr amount**

Hanafi Law, 10 Dirhams

Malaki Law, 3 Dirhams

Shafi Law, No fixed amount

Shariya Law, No fixed amount.

The Mahr fixed by Prophet of Islam for his favourite daughter Fatima, wife of Ali was 500 Dirhams. A dirham (derived from the Greek) is the name of Silver coin of 2.97 grams in weight. However, it would be a sad mistake to lay too great stress upon the monetary value of the Mahr amount. It is said that in the case of an extremely poor man, the Prophet requested him to teach the Quran to his wife. It is said in one Hedaya that the payment of Mahr is enjoined by the law merely as a token of respect for the woman.

Confirmation of dower(Muhammadan law s: 289 A)

By consummation of the marriage

By a valid retirement (khilwat-e-sahiha)

By the death of either husband or the wife.

➤ **Types/kinds/sorts of Dower**

➤ **Specified dower (mahrul-musamma) Muhammdan law s: 286**

The husband may settle any amount he likes by way of dower upon his wife, though it may be beyond his means, and though nothing may be left to his heirs after payment of the amount. But he cannot in any case settle less than (ten dirhams).

The Mahr is usually fixed at the time of marriage but it is also fixed after the marriage. Mahr fixed by the father on behalf of his minor son is binding on the minor son on his majority. However, under Hanafi Law, the father is not personally liable for the Mahr but in Ithna Ashari Law, father is also held liable. Where the amount has been specified, the husband will be compelled to pay the whole of it, howsoever excessive it may be.

But in Oudth, only a reasonable amount will be granted, if court deemed the amount excessive or fictitious. Sometimes, for the purpose of glorification, a large Mahr for the purposes of show is announced but the real Mahr is smaller. Such a Mahr for the purposes of show is fictitious. But this will be a fraud on Law and defeats the very purpose and hence must not be allowed to be given recognition in law.

➤ **Unspecified dower (mahrul misal)**

The obligation to pay dower is a legal responsibility on the part of the husband and is not dependent upon any contract between the parties. Hence, the husband's liable to pay Mahr even if it is not specified. The only question would be the quantum. If no Mahr is fixed, wife will be entitled to receive the amount which is customary in the community or in respective society or what is proper in each individual case. What is proper in each individual case will be determined as under?

With reference to the social position of her father's family.

Her own personal qualifications.

Social position of the husband. But the means of husband are of little account.

Her age, beauty, fortune, understanding and virtues.

Mahr fixed earlier in the family (i.e., Mahr fixed for father, brother, uncle, sister etc. of the wife's family).

Proper dower (Muhammadan law s: 289)

If the amount of dower is not fixed (s.287) , the wife is entitled to proper dower (mahr-i-misl) even if the marriage was contracted on the express condition that she should not claim any dower .

In determining what is proper dower regard is to be had to the amount of dower settled upon other female members of her father' family such as her fathers sisters.

➤ ***Proper dower***

If the amount of dower has not been fixed between the parties, before or at the time of marriage, the wife is entitled to get a reasonable amount from the husband as dower. This dower is called proper dower or Mahr-

i-Misl. It is payable on demand by the wife. Even if the marriage has been solemnized on the condition that the wife shall not claim dower, she is still entitled to claim proper dowe from the husband. The amount of proper dower is generally fixed by the Court taking the following factors into consideration:

personal qualifications of the wife.

wife's age, beauty, fortune, understanding, and virtue.

the social position of the wife's father's family.

economic status of the husband.

dower generally settled for women in wife's father's family such as her sister, paternal aunt or paternal parallel cousin, etc.

➤ **Prompt (muajjal) and deferred (muvajjal) Mahr.(Muhammadan law s.290).**

A technical term for Prompt is Muajjal and for Deferred is Muvajjal. The term Muajjal is derived from a root meaning 'hasten', 'to proceed' whereas the term Muvajjal is derived from the root meaning 'delayed' or 'deferred.'

The prompt dower is payable immediately after the marriage but the deferred Dower becomes payable either on the dissolution of the

marriage or on the happening of a specified event. When dower is fixed, it is usual to split it into two equal parts, one part is paid at once or on demand and the other on the death of the husband or on divorce or on the happening of some specified event. In Ithna Ashari Law, the presumption is that the whole of the dower is prompt but in Hanafi Law, the position is different.

Ideally and usually, the whole Mahr is required to be promptly awarded but in earlier case, the Full Bench held that the usage (custom) of the wife's family is the main consideration and in absence of proof of custom, the presumption is that one half is prompt. However, the proportion may be changed to suit particular cases.

➤ **Prompt dower**

It is payable on demand.

The prompt portion of the dower may be realized by the wife at any time before or after consummation.

The quantity of dower is commonly cut up into two parts prompt and deferred. Prompt dower is that which is payable on demand and deferred dower is one payable on dissolution of marriage by way of death or divorce. Prompt dower is dower that's payable right away on the wedding taking place, and it ought to be paid on demand, unless put off is stipulated for and agreed. Prompt dower can be realized at any time before or after consummation. Proof of sex among the events isn't always vital for its charge.

It is handiest on charge of the spark off dower that the husband will become entitled to enforce his conjugal rights, unless the wedding is already consummated. The proper of restitution, to this point from being a circumstance precedent to the price of activate dower, arises simplest after the dower has been paid.

In *Rabia Khatoon v. Mukhtar Ahmed* (1966 A.A. 548), it changed into discovered that the spouse may refuse to live with her husband and to confess him to sexual intercourse, as long as the activate dower isn't always paid. If the husband sues her for restitution of conjugal rights earlier than sexual sex takes place, non-price of dower is an entire defence to the match, and the match might be dismissed.

If the suit is delivered after sexual intercourse has taken area along with her loose consent, the right decree to skip is not a decree of dismissal, however a decree for restitution, conditional on fee of activate dower. [This principle was first laid down in *Abdul Kadir v. Salima*, (1886) 8 All. 148.]

➤ **Deferred dower**

It is payable dissolution of marriage by death or divorce.

Dower which is not paid at once may for that reason be described as deferred dower but if it is postponed until demanded by the wife it is in law prompt dower.

But deferred dower does not become prompt merely because the wife demands.

Deferred dower can be changed into prompt dower.

Deferred dower is payable at the dissolution of the marriage either

- (i) by the demise of either of the parties, or
- (ii) (ii) by means of divorce.

In a case in which no unique share of set off and deferred dower has been fixed by means of agreement at the time of the wedding, or by means of custom —

The whole is appeared as prompt in keeping with Shia law;

Part is appeared as activate, and part as deferred in keeping with Sunni law; the percentage is regulated by using the popularity of the parties and the quantity of the dower settled. The Court has, however, the energy to award the entire as set off. (Huseinkhan v. Gulab Khatun, (1911) I.L.R. 35 Bom. 386).

➤ **Difference between Prompt and Deferred Dower:**

The amount of dower usually spilt into two parts, one called prompt , which is payable on demand, and the other is called deferred, which is payable on the dissolution of marriage either by death or divorce. Prompt portion of the dower may be realized by the wife at any time before or after consummation, dower which is not payable at once may for the reason be described as deferred dower but if it is postponed until demanded by the wife it is prompt dower, but

deferred dower does not become prompt merely because it is due on demand of wife according to Pakistani Family Laws prompt dower as soon as demanded, becomes a debt which is the husband is liable to pay, the wife may refuse to live with husband unless and until prompt dower is paid, the wife's right to prompt dower cannot be defeated by the husband on the ground of his being denied the society of his wife.

Where it is not settled on the time of marriage whether the dower is to be prompt or deferred then according to shia law, the rule is to regard the whole as prompt, but according to Sunni law, the rule is to regard, part as prompt and part as deferred, the proportion referable to each class being regulated by customs, and in the absence of custom, by the status of parties and the amount of the dower settled.

➤ **DIFFERENCE BETWEEN PROMPT AND DEFERRED DOWER**

As to payment:

Prompt dower is payable immediately after the marriage.

Deferred dower is payable only after the dissolution of the marriage.

As to demand:

Prompt dower is only payable on the demand of the wife.

In deferred dower the wife is not entitled to demand it unless agreed.

As to wife's right to realize:

The wife is entitled to realize the prompt dower at any time.

Deferred dower is payable only when it becomes due.

As to conjugal rights:

The right of restitution of conjugal right arises only after its payment.

In deferred dower there is no question restitution of conjugal rights.

The prompt is payable straight away after marriage at any time on call for by using the wife, whilst the deferred quantity is payable at such time, or on the happening of such contingency, to which it's miles deferred; but in each case, it's far payable without delay at the dissolution of marriage, by way of divorce or demise of both party. Ordinarily, which part of the dower is activate and which is deferred, is fixed in the contract or in mahr-nama or in kabilnama. It is common to fix 1/2 of the amount as activate and the alternative half of, as deferred. But there is no difficult and fast rule. It is commonplace to pay the spark off dower immediately on marriage, or, in any case, at any time thereafter, on the demand of the spouse. Parties are also unfastened to outline the instantaneous fee or postponement of the whole of the dower. When on the time of marriage, it isn't always certain as to which a part of the dower is prompt and which element is deferred, the Shias take the view that the entire of the amount is activate. Among the Sunnis, the guideline is that one element have to be treated as spark off and the other part as deferred. The Madras High Court takes the view that irrespective of the reality whether or not the parties are Shias or Sunnis, inside the absence of any particular settlement, the entire amount need

to be presumed to be spark off. A complete Bench of the Lahore High Court held the view that the matter may be determined on the premise of utilization or custom in wife's family: within the absence of usage or custom, the presumption is that one-half is activate and the opposite half of deferred.

It is also viable that the percentage can be unique in distinctive cases. According to the High Court of Bombay, even if the parties are Hanafis, the court docket has electricity to award the whole of the dower as prompt dower. The basic difference between the spark off and deferred dower is this: the activate dower is realizable and payable at once after the solemnization of marriage; and the wife can refuse all conjugal rights to the husband till her activate dower is paid. On the other hand, the deferred dower turns into payable on the expiry of the specified period, or on the happening of the specified contingency, to which it is deferred, and in every other case, it becomes payable at the dissolution of marriage by means of divorce or death of the party.

CONCLUSION

To conclude I can say that dower is the legal right of the wife. If dower is unpaid the wife is entitled to sue for the amount of dower. The widow must sue for the whole of her dower and not a part of it. Under the Muslim Law, Mehr (dower) means money or belongings which the spouse is entitled to receive from the husband in attention of the marriage however this attention isn't always similar to that of the civil contract. Dower is a duty imposed upon the husband as a mark of appreciates for the spouse. The important object of the dower is to offer

wife for her subsistence after the dissolution of her marriage so that she might also not grow to be helpless after the loss of life of the husband or termination of marriage by means of divorce. Mehr has also been considered as the part of maintenance even as fixing the quantity of maintenance under Section a hundred twenty five of Criminal Procedure Code, 1973. Since there's no clear reduce definition as in line with Muslim Personal Laws concerning the dower (Mehr) amount, specific High Courts and Supreme Court of India in exclusive instances rendered extraordinary conceptions relating to Mahr.

➤ **Suit for dower and limitation**

If the dower is not paid, the wife, and, after her death, her heirs ,may sue for it

➤ **Limitation for prompt dower**

The period of limitation for a suit to recover prompt dower is 3 years from the date when the dower is demanded and refused, or where during the continuance of marriage no such demand has been made, when the marriage is dissolved by death or divorce.(Limitation act, 1908 sch 1, **article 103**).

Where However, prompt dower has not been fixed , a demand and refusal is not condition for filling a suit for its recovry.

Limitation for prompt dower runs from the time when the dower is demanded and refused, but both demand and refusal must be unambiguous.

➤ **Limitation for deferred dower**

The period of limitation for a suit to recover deferred dower is 3 years . from the date when the marriage is dissolved by death or divorce.

(Limitation act,1908(SCH.1 **article 104**))

Limitation for deferred dower does not run against the widow during the period she is lawful possession of her husband's property under a claim for her dower.