Dower (Mahr)

**Origin**  
In old pre- Islamic Arabia, institution of marriage was not developed and many sexual relationships between men and women had no name. Men after ruining their wives used to throw them out leaving no means to her for the continuation of her dignified life. In ancient customs, the concept of providing any sum to wife after she was turned out by the husband was treated as disregarded and there was no proper law to provide financial or moral help to those wives.  
  
In that period, there was a concept of SHIGHAR marriage in which a man gives his sister or daughter to latter as consideration of marriage and in return the latter gives his sister or daughter to former in marriage. Therefore, none of the wives gets any dower. False accusation of unchastity were used at times to disinherit the right of wife of her dower.  
  
There was a form of marriage called Beena marriage in which husband used to visit his wife but he did not bring her to her matrimonial home, in which the wife was called Sadiqa (female friend) and the gift which was given to the wife was called Sadaq. In Islam Sadaq simply means dower and it is synonymous with Mahr.  
  
The distinction between Sadaq and Mahr was Sadaq was a gift given to the wife in Beena form of marriage and Mahr was a gift or compensation given to the parents of wife in the Baal form of marriage. A new form of marriage Nikah which was mentioned in Quran dissolved the ancient customs and objected the unjust acts towards fair sex.  
  
**Definition**  
Mahr or dower is a sum of money which becomes payable by the husband to his wife on marriage, either by agreement between the parties or by operation of law. Mahr can either be prompt (Mu� ajjal), or deferred (Mu�wajjal).  
  
According to Wilson, �Dower� is a consideration for the surrender of person by the wife.  
  
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� which is used under this definition is not used with the same meaning as used under the Indian Contract Act. Payment of Mahr is an obligation on the part of husband as a mark of respect to his wife.  
There was an argument that marriage is a civil contract and dower is the consideration for the contract of marriage.  
  
Therefore, in the case **Abdul Kadir v. Salima**[1], Justice Mahmood stated that under Muslim Law �**Dower**� is a sum of money or other property promised by the husband to be paid to the wife in the consideration of marriage and if the amount of money or other property is not fixed in the marriage ceremony then also the wife has right to demand dower. But the above opinion was considered inaccurate, because even if the payment of dower is not specified during or before the marriage ceremony that does not make the marriage void.  
  
After many arguments Abdul Rahim correctly observed that Dower is an obligation made on the part of husband as a mark of respect toward his wife and is not a consideration for marriage and it does not affect the validity of marriage.

Nature Of Dower

The concept of Mahr was introduced by the Prophet Mohammad and he made it obligatory to husband to pay Dower to his wife in every marriage. Dower is similar to the donatio propter nuptias in Roman Law. But in Roman Law it was voluntary and in Muslim Law it is obligatory in nature.  
  
**The nature of dower can be defined as follows:**

1. Contract of dower and contract of sales is frequently compared and wife is considered as property and mahr as her price.  
   In the case **Abdul Kadir v. Salima**[2], Justice Mahmood compared marriage with contract for sales and dower as the consideration for such contract and said, �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 analogy 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. According to some well-known authorities Dower is regarded as a consideration for conjugal intercourse. In the case,**Smt. Nasra Begum v. Rizwan Ali**[3], Allahabad High Court held that right to claim prompt dower proceeds cohabitation.
3. Dower is an essential incident and fundamental feature of marriage and even though payment of dower is not fixed during or before marriage wife is still entitled to some dower from her husband.

In the case **Hamira Bibi v. Zubaida Bibi**[4], 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.  
  
**As Dower is regarded as consideration for marriage, therefore in theory it becomes payable before the consummation of marriage but the law divides it into two parts:**

1. Prompt dower, which becomes payable before the wife starts living in her matrimonial house.
2. Deferred dower, which becomes payable when demanded by the wife dissolution of marriage either by death of any of the parties or on divorce. But after the death of the husband dower is considered as a debt and the widow is entitled for that debt along with other creditors of her deceased husband, which is to be satisfied on his death from his estate.

If the property of the deceased husband is under the possession of the widow, she is entitled to retain the possession until the amount of dower is satisfied from that property and heirs can recover the property after the amount of dower is satisfied by the widow.

Importance Of Dower

According to **Fatwa-i-Quazi Khan**:  
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.  
  
Dower is so essential under the Muslim Law of marriage that even if there is an agreement made by the wife before marriage that she will revoke her right of dower and will not claim for dower in future or she agrees to marry without any dower, that agreement will be invalid according to law. This is done to protect the wife from the power of husband to give divorce and to prevent its misuse. Under Muslim Law, husband can give divorce to his wife as his will so the object of dower is to prevent the misuse of such power and also to prevent polygamy.

Right To Make A Legislation In Respect Of Reasonable Dower

According to Muslim Law, the wife can claim for dower on the dissolution of her marriage and the amount can be very high or very low. In many cases it was found that the husband was having sufficient income but the amount of dower was very less that it was impossible for the wife to maintain herself from such amount, therefore, Legislature was given full power to make laws and the Courts will not be bound to award the amount of dower which was mentioned in the marriage deed.  
  
Section 5 of the Oudh Laws Act, 1876 provided that Court will award the amount of dower which is reasonable according to the income of husband and iddat of the wife and not according to the amount mentioned in the marriage deed.

Object Of Dower

**The object of Dower are:**

1. to enforce an obligation on husband as a mark of respect towards his wife,
2. to place a check on the misuse of power to give divorce by the husband,
3. to provide for her livelihood on the dissolution of her marriage, so that she can lead her dignified life after the death of her husband or divorce.

Increase Or Decrease Of Dower

Husband can increase the amount of dower at any time and also the wife can remit the dower wholly or partially but it should be done by her free consent. A Muslim girl who has attained puberty can relinquish her dower, it is not mandatory that she has attained majority (which is 18 years according to Indian Majority Act) or not. The remission of Mahr by wife is called Hibe-e-Mahr.  
  
In any case after the death of husband, wife suffers mental distress, then remission of dower at that condition will be considered against her free consent and will not be binding on her.  
In Karachi�s case, it was held that in certain circumstances remission of dower will not be binding on her, for instance husband shows indifference towards his wife and he makes it obvious that the only way to resolve those indifference is when she remit the dower, and makes a document for the same, then it will be against her free consent and also against justice and equity.

Classification Of Dower

**Dower can be classified into two:**

1. Specified Dower (Mahr-i-Musamma)- This type of Dower is further divided into two:  
   1. Prompt Dower
   2. Deferred Dower
2. Customary (Proper) Dower (Mahr-i-Misl).

1. Specified Dower

When the amount of dower is specified in the marriage contract, then that dower is known as Specified Dower. The amount of dower may be settled before or during, even after the marriage ceremony. If the marriage is contracted by the guardian due to minority or lunacy of husband, then guardians can fix the amount of dower and the amount fixed by the guardian is binding in nature on boy, after attaining puberty he cannot take plea that he was not a part of the contract when it was made and even after the marriage of minor or lunatic boy guardians can fix the amount of dower if the boy is still minor or lunatic.  
  
Husband can fix any amount of dower as per his will even if it doesn�t leave anything for the heirs after the payment of dower but according to Hanafi School the amount of dower in no case should be less than 10 dirhams and 3 dirhams according to Maliki School. In Shia Law there is no minimum amount fixed for the amount of dower.  
  
But if there are any Muslim husbands who are unable to give 10 dirhams to their wives due to poverty then in such cases Prophet Mohammad has directed them to teach Quran to their wives in exchange for the payment of dower. At present there is no maximum amount of dower and minimum amount is no longer in practice as it is very low according to the present situation.

Specified Dower if further classified into:

1. **Prompt Dower (Muajjal Mahr)**  
   Prompt dower becomes payable immediately after the marriage ceremony. According to Ameer Ali, if the payment of prompt dower is not made by the husband, then wife can refuse to enter into the conjugal domicile until the amount of prompt dower is paid.  
   Following points of Prompt Dower are:  
   1. Prompt Dower becomes payable immediately during or after the marriage ceremony and it must be paid on demand, unless the other parties have agreed for the delay. If the dower is not paid then wife can refuse to live with her husband until the amount is paid and in case the wife is minor then her parents can refuse to send her to her husband�s house and husband has to give maintenance to her wife even if she is not living with him.
   2. If the marriage has been consummated that does not convert the prompt dower into deferred dower. After consummation, wife cannot refuse to live with her husband on the ground of non-payment of dower, but she can sue her husband for the payment of dower. And if the wife refuses to live with her husband after consummation due to non-payment of dower, then Court can pass the decree of restitution of conjugal Rights on the condition of payment of dower by husband.
   3. Husband can only file petition for the restitution of conjugal Rights if the amount of dower is not paid when the marriage has been consummated.
   4. Prompt Dower should be paid on demand, the limitation period of filing the suit for non-payment of dower is three years. The time would begin from the date when the demand was made and was refused by the husband during the subsistence of marriage. If the wife does not make any demand, then the limitation period will begin from the date of dissolution of marriage either by death or divorce.

1. **Deferred Dower (muwajjal Mahr)**Deferred Dower becomes payable after the dissolution of marriage either by death or divorce.  
   Following points of Deferred Dower:  
   1. Deferred Dower is generally paid after the dissolution of marriage but any agreement in which it is mentioned that deferred dower will be paid before the dissolution marriage, then that kind of agreement will be binding and will not be considered as void.
   2. Wife cannot claim for the payment of deferred dower during the lifetime or during the subsistence of marriage but husband can treat it as prompt dower and can pay or transfer property, and that payment will be valid and will not be considered as fraudulent preference unless there is actual insolvency of husband involved.
   3. In case of death of husband, widow can waive off her right to claim for the payment of deferred dower, but this act must be done on her free consent.
   4. The interest of wife in deferred dower is vested and it is not contingent. Deferred dower does not depend upon the happening of certain contingencies not even on the death of wife, in case of death of wife her legal heirs can claim for the money payable under deferred dower.

Presumption regarding prompt and deferred dower

In case where in the marriage contract (Kabin-nama), it is not specified that which portion of the amount decided for the payment of dower will be prompt and which portion will be deferred, according to Allahabad and Bombay High Courts held that the proportion of amount to be paid will be specified according to the:

1. position of wife,
2. custom of locality,
3. total amount of dower,
4. status of husband.

Shia Law:

If the amount of dower is specified in the marriage contract but it is not mentioned that which portion will be prompt and deferred, then according to Ithna Ashari Shia Law the whole amount of dower will be regarded as prompt. In Madras Presidency, the whole amount to be paid will be regarded as prompt no matter the person is Shia or Sunni.

Sunni Law:

According to Sunni Law, half of the amount will be regarded as prompt and the other proportion will be regarded as deferred.

Proper (Customary) Dower

When the amount of dower is not specified in the marriage contract and even if it is agreed that the wife will not claim for dower, then also wife is entitled to proper dower. Amount of proper dower is decided on the basis of the amount of dower paid on the marriage of female members of father�s family.

Determination of Proper Dower- The amount of proper dower is decided on the basis of following factors:

1. Personal qualification of wife, her age, her beauty, fortune, understanding and virtue.
2. Social Position of her father�s family.
3. Amount of dower given on her female paternal relations marriages.
4. Economic condition of her husband.
5. Circumstances of time.

Wife�s Rights And Remedies On Non-Payment Of Dower

Under Muslim Law, wife or widow have following rights on non-payment of dower:

1. **Refusal to Cohabit:**  
   Under Muslim law, wife has a right to refuse to live with her husband when the amount of prompt dower is not paid, if the marriage has not been consummated. If the wife is minor or a lunatic then her guardians can refuse to send her to her matrimonial home until the payment of prompt dower is done and during that time husband is bound to maintain his wife.  
   In the case Abdul Kadir v. Salima, it was held that wife can refuse to cohabit or to live with her husband and if before the consummation of marriage husband files petition for restitution of conjugal rights, then such appeal will be dismissed.  
     
   Similarly in the case of **Nasra Begum v. Rizwan Ali**, it was held by the Allahabad High Court the wife can refuse to cohabit or to live with her husband until the amount of dower is paid by him. Any suit for restitution of conjugal rights will be void before the consummation of marriage. In case the wife is minor or lunatic then her guardian can refuse to send her to her matrimonial home until the amount of dower is paid by her husband and if the minor wife is already in the custody of husband, then her guardians can take her back on the ground that the amount of dower is not paid.  
     
   In the case **Rabia Khatoon v. Mukhtar Ahmed**[5], it was held that if the suit for restitution of conjugal rights is brought up after the consummation of marriage with the free consent of wife, then the decree will be passed on the condition of payment of prompt dower.
2. **Right to dower as a debt:**  
   The Privy Council has held that dower is ranked as a debt which must be paid to the widow along with the other creditors out of the estate of the husband on account of his death. If the husband is alive, then wife can claim for dower debt by filing a suit against him. After the death of husband, widow can claim for dower by filing suit against the other heirs of the property from which the amount of dower has to be recovered.  
     
   Heirs of deceased husband are not personally liable for the payment of dower debt; they are liable to the extent in which they inherit the property of the deceased. If the property of the deceased husband is already in the possession of the widow, then the other heirs of the deceased are entitled to recover their shares according to the payment of the debt proportionate to their shares.  
     
   In the case of **Syed Sabir Hussain v. Farzand Hussain**[6], a Shia Muslim took legal responsibility for the payment of dower of his minor son that if he fails to do pay then he will pay instead of the son, after the death of the father payment of dower was done from his estate as he was liable to pay his son�s dower and every heir was responsible to pay for the dower proportionate to their share.
3. **Right to retain possession in lieu of unpaid dower:**  
   Widow has right to retain the possession of the property of her deceased husband which she has already obtained lawfully and without any force or fraud against other heirs and creditors of the property until the amount of dower is paid. The right to retain the property does not her the owner of the property, therefore she cannot alienate the property. The right to retain the property also arises in case of divorce.  
     
   Right to retain the possession of the property by the widow is for special purpose, so she has to satisfy the amount of dower as soon as possible from that property. If the widow is not in possession of the property or has lost it then she cannot claim for the possession of the property.  
     
   **Features of right to retain the possession are:**  
   1. **No right to retain the possession during the continuance of marriage:**  
      Wife cannot retain the possession of her husband�s property during the continuance of marriage. This right only arises after the dissolution of marriage either by death or divorce.
   2. **Actual possession:**  
      The right of retention means to continue the possession of the property until the dower debt is paid. Therefore, the wife or widow must be in actual possession of the property after the dissolution of the marriage and if the wife or widow is not in actual possession of the property then she cannot retain the possession.
   3. **Right of retention not analogous to a mortgage:**  
      The wife or widow do not have interest in the property, she has retained the property as a mortgage. But in case of mortgage, the mortgagee retains the property under an agreement made between him and the owner of the property and in case of retention by wife or widow, that right has conferred upon him by law.
   4. **Not a charge:**  
      The right to retention does not create a charge on the property as the wife or widow is not a secured creditor. And if the property has been mortgaged to someone by the husband when the wife/widow was having the possession of that property, then the mortgagee can sell the property and dispose the possession of wife/widow.
   5. **A possessory lien on property is no title:**  
      Wife or widow can only satisfy the amount of dower through rents and profits from the property, she does not get the title of the property. The title goes to the heirs of the husband including widow. She has no right to sell or mortgage the property to satisfy the amount of dower, she can only alienate her share in the property not the share of other heirs. And if she alienates the whole property then the other heirs become entitled to recover the possession of their shares, and that share will be given to them without the payment of dower proportionate to their shares. Widow can acquire the possession of the property if she has been dispossessed by the heirs under Section 9 of the Specific Relief Act, within the period of 6 months, and if she fails to do so, then she loses her possession over the property and if the dispossession is caused by the trespasser, then she can file case under Article 12 of Indian Limitation Act within 12 years.  
        
      In the case of **Maina Bibi v. Chaudhary Vakil Ahmad**[7], Muinuddin died in 1890 leaving immovable property. In 1902, respondent who were the heirs of the property filed case against the widow (Maina Bibi) claiming immediate possession of the property. Widow pleaded that the property was gifted to her by her husband and therefore she is entitled to retain the possession of the property until the amount of dower is satisfied from the property.  
        
      Trial Judge held that the heirs can acquire the possession of the property on the condition that they pay the widow Rs. 25,357 within the period of 6 months and the decree also included that if the respondents fail to pay the amount, then the suit will be dismissed. The respondents did not pay and the widow continued her possession over the property. Later in year 1907, the widow executed two deeds of transferring the possession of her husband�s property to the donees and from the terms of the deeds it was obvious that the widow was giving the title of the property to the donees. In 1915, the respondents again filed suit against the widow claiming the possession of the property unconditionally because under Muslim Law, she cannot transfer the title of the property for which she has only right of retention for the payment of dower.  
        
      The appellant pleaded that the suit filed was res judicata and the claim should not be entered entertained by the court as it has limitations. Their Lordship of the Privy Council has held that the possession retained by the widow is lawful and the right to retain the property extends till the payment of dower is satisfied and this right is conferred upon her by Muslim Law. They further observed that the right to retain is only to satisfy the amount of dower, she has no estate or interest on the property as an ordinary mortgagee, she has no right to alienate the property through sell, gift, mortgage, etc.
   6. **Widow in possession liable to account:**  
      Widow is bound to account the profits and rents received out the property to the other heirs of her deceased husband while she is entitled to charge interest on the dower which is due to her and to set it off against the net profit.
   7. **Can sue heirs:**  
      widow can sue the heirs of her deceased husband for the recovery of the amount of dower out of their shares.
   8. **Right of retention whether heritable or transferable:**  
      There is a difference in the judicial opinion on the widow�s right of retention is whether heritable or transferable.  
        
      1. One view is that the right to retention is a personal right and is not a lien, therefore it cannot be transferred through sale, gift or otherwise and it cannot be transferred to the widow�s heirs on her death.
      2. The second view is by Mysore High Court that the right to retention is both heritable and transferable as the right to retention can be exercised by the heirs of the widow on her death. In the case Azizullah v. Ahmad, it was held that the right to retention is heritable without expressing any opinion whether it is also transferable.
      3. Allahabad High Court held in a case that the right to retention is both transferable and heritable.

Difference Between Sunni And Shia Law Relating To Dower

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| --- | --- |
| Sunni Law | Shia Law |
| The minimum amount of specified dower is 10 dirhams. | There is minimum amount of specified dower. |
| There is no maximum amount of proper dower. | The maximum amount of proper dower is 500 dirhams. |
| There is maximum amount of specified dower. | The maximum amount of specified dower is also 500 dirhams. |
| In case the marriage is dissolved by death of husband, and the payment of dower is not specified or it has been agreed that no payment of dower will be done by the husband, in such case the amount will be due whether the marriage has been consummated or not. | Payment of dower will not be due if the marriage has not been consummated. |
| Any agreement which states that no dower shall be due is void. | Such agreement will be valid if the agreeing party are sane and adult. |
| In the absence of agreement, a reasonable part of dower will be considered as prompt. | The whole amount of dower will be considered as prompt dower. |

Effect Of Apostacy On Dower

The effect of dissolution of marriage through the decree of court is under a statute. According to Section 5 of the Dissolution of Muslim Marriage Act, 1939, a married Muslim woman whose marriage has been dissolved through Act shall have equal right in respect of dower as her marriage has been dissolved through talaq, fasqh, etc.

Amount Of Dower And Condition Of Payment

* When the amount of dower is specified in the marriage deed and the marriage has been consummated or any of the party dies, then the whole amount of Mahr will be paid to the wife.
* When the amount of dower is not specified and the marriage has been consummated or any of the party dies, then the wife will receive proper dower.
* When the marriage is irregular and has been consummated, then any of the party dies, then the wife will receive specified or proper dower, whichever is less.
* When the marriage has been dissolved through divorce and the marriage has not been consummated, then the wife is entitled to receive:  
  1. Half the amount of specified dower.
  2. A present of three articles of dresses or of their value

If the wife has taken divorce, then she is not entitled to receive any dower.  
  
**End-Notes:**

1. (1886) ILR 8 All. 149
2. (1886) ILR 8 All. 149
3. AIR 1980 All. 118
4. AIR 1916 P.C. 46
5. AIR 1996 All. 548
6. AIR 1934 All. 52
7. AIR 1925 P.C. 63