

“Topic: Current issues relating to “Mahr (Dower)” in light of Shariat (Islamic Law) & Indian Judicial decisions.”

*Pushpdan
B.A.L.L.B
Indore Institute of Law.*

Introduction

When the marriage vows are recited in the Muslim religion, the husband promises to give or gives his wife a gift, that is known as mahr, in other words also known as dowry or sadaq. It is an amount settled by the husband with the prior consent of the wife. It can be anything & can be in any form like property, money, gold, silver, ornaments, clothes etc , it is anything which can be owned. It is indirectly can be termed as dowry which the husband pays to his wife in return of marriage, as the women is marrying him, he have to pay or give her a gift in lieu of marriage which is a gift to her. it is not fixed that everyone have to pay that much of amount or property to her wife , it is decided by the wife that what she wants , whatever the wife wants the husband have to give that otherwise the wife can refuse to marry. There is no minimum or maximum amount fixed for mahr. The women should demand that much of mahr which the husband is capable of paying, women should keep in mind the condition, status, financial situation of the husband & his family. The mahr should be paid at the time when the wife wants or decided to be paid. It can be paid at the time of marriage or can be 6paid whenever the wife decided to be paid. It is the mutual decision between the husband & the wife about the mahr, when to be paid. When the mahr was decided to be paid on demand, the wife can demand it before the consummation & if the husband refuse to pay that, then the wife can refuse to consummate. The wife is the only sole owner of mahr, no one can take possession of her property in any form without her consent, even her father or mother cannot.

Definitions

According to Ameer Ali¹, “Dower” is a consideration which belongs absolutely to the wife.

According to Mulla², “Dower” is a sum of money or other property which wife is entitled to receive from the husband in consideration of the marriage. The word consideration is not

¹ Prof.I.A.khan ,Mhammedan Law,150,24th edn,(2012).

² ibit

used in the sense in which the word is used in the Indian Contract Act. It is an obligation imposed upon the husband as a mark of respect to the wife.

According to Wilson³, “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.

Hon’ble Justice Mahmood⁴ has said in *Abdul Kadir V. Salima* , that “Dower” under the muslim law is a sum of money or other property promised by husband to be paid or delivered to the wife in consideration of marriage, and even where no dower is expressly fixed or mentioned at the marriage ceremony, the law confers the right of dower upon the wife.

Origin

In the pre-Islamic Arabia, the institutions of marriage, their rules & regulations were not so developed, the sex relationships between man & women were in vogue, like these are temporary & some are hardly better than prostitution. Normally at that time men, use to despoil their wives or turn them out after having the fulfilment of the sexual desires. The wives left helpless & without any means, because there was no organised system of law.

It is a evident from the Quran that, “If you separate yourself from your wives, send them away with generosity: It is not permitted to you to appropriate the goods you have once given to them.”⁵

So, to protect the respect, self dignity of the muslim women, the concept of Mahr(dower) was evolved.

The Philosophy behind the concept or Mahr

There are arguments against mahr that, what is the reason behind mahr , why it is necessary, Some thinks that it is like buying a slave for the fulfilment of desires. Men & women both need each other physically, this is natural that both desire each other. One quality of a women is their beauty which attracts men the most. Second is that, even the women’s have the similar sexual desires but they are good at hiding off their desires, but men are weak at this

³ ibit

⁴ Asaf.A.A.Fyzee, Outlines of Muhammadan Law, 132, 4th edn.(2002)

⁵ ibit

issue & they show their love & affection & to prove this, he buys gifts & spends money. So the mahr is also a form of showing love, to prove his affection, to show honour for his wife.

Mahr makes the life of the women easier & peaceful, at the time of marriage men promises to wife that he will take care of her & their children, but in some cases the men's are seen running away from their duties & do not perform their part, this leaves the women helpless. After the pregnancy & having a child, the women cannot leave her child anywhere, to nurture the child she needs home, money, food, clothes etc. So the mahr acts as the amount of security which the women needs in that situation, it is like a backup plan of the marriage & an assurance.

Classification of dower (mahr)

Dower can be classified in two types:

- I) Specified dower(Mahr-i-musamma)
- II) Proper dower(Mahr-i-misl)

Specified dower: When the amount of the dower is fixed by a contract at the time of marriage, known as specified dower. This fixation of dower can be done at anytime, before, at the time, after the marriage. It can be decreased or increased after the marriage with the consent of both the parties.

Further specified dower is divided into two parts:

- a) Prompt dower(muajjal mahr)
- b) Deferred dower(muwajjal mahr)

Prompt dower: the dower which is payable to the wife just after marriage or when the wife demands. The wife can demand it at any time.

Deferred dower: this is the amount which is payable to the wife after the expiry of a specified time or happening of a specific contingent event, death of the husband, divorce.

Proper dower(customary): When the amount of dower is not fixed at the time of the marriage or even it is contracted that the wife will not claim any dower, the wife is entitled to some amount which is known as proper dower.

Wife's Rights & remedies: Mahr

“Mahr is not a bride price, It is a women's right.”⁶

In the muslim law, the concept or mahr was evolved for the women's, so this provides them some rights also which are essentials to them & are available to them before & after marriage & after divorce or separation or after the death of the husband. Mahr is not just a gift or a price to be paid by husband, it is a safety provision for her, right given to her by the law.

It is upto the women what she choose as mahr to be given by her husband before the marriage & the husband have to give it at the decided time. She can choose whatever she wants, but she had to keep in mind the financial status or the husband & his family.

The Muslim law mainly confers these rights to women to compel her husband for mahr:

- 1) The right to refuse for cohabitation: if at the time of marriage it was decided that the husband will pay the mahr after the marriage, the wife could restrain her husband to not cohabit until the payment of mahr in the case of a minor or an insane, the guardians have this right.
- 2) Right to dower as debt: The mahr is like a debt on the husband, which he have to pay on the demand of the wife. If the husband is not performing his promises, the wife can file a suit if the husband is alive & if the husband is dead, then she is entitled to the share in the property of the husband.

The rights which are provided to the women are also the remedies which can help her to gain her mahr.

Difference between the Shia & Sunni law relating to dower (mahr)

In Shia sect, law relating to dower (mahr) are as follows:

There is no minimum limit to mahr is prescribed by the law in Shia sect, the proper dower cannot exceed 500 dirhams. In the case where the husband died without consummation there is no due left on the husband in regard to mahr. The agreements for no mahr or no mahr left

⁶ An Introduction to the rights and duties of women in Islam, al-Islam.org (july 6,2018, 20:28) <https://www.al-islam.org/introduction-rights-and-duties-women-islam-ayatullah-ibrahim-amini/mahr-women-and-its-philosophy>

by the sane & adult wife are valid in this sect. If the marriage is settle without deciding any dower (mahr) then the whole of the dower is considered to be prompt.

In sunni sect, law relating to dower (mahr)

There is a minimum limit which is prescribed for the specific dower that is 10 dirhams. For the proper dower there is no maximum limit. There is also no maximum limit for the specific dower. If the husband dies, whether consummation takes place or not, there is always a debt left in part of the husband & it is always proper in nature. The agreement for no dower at the time of the marriage is held to be void. If the proper agreement was not made then only a reasonable amount of dower will be considered to be prompt.

Indian legislations in the issues of “MAHR”

In context to the Indian legislation, the Muslim law is having a different place in the Indian judiciary. Muslim personal law is not codified in India, while other personal laws are codified in India. The peoples of Muslim religion in India are governed by ‘**The Muslim Personal Law (Shariat) Application Act, 1937**’. The law deals with the matters of Marriage, Inheritance, Charities, Succession etc. ‘**The Dissolution Of Muslim Marriage Act, 1939.**’ This act deals with the situations in which a Muslim women can obtain divorce. ‘**The Muslim Women (Protection of Rights on Divorce) Act, 1986.**’, this act deals with the rights of the women who had been divorced by their husband.

The section 125 of ‘‘The Code of Criminal Procedure, 1973’’, provides a minimal amount of protection to all the divorced women’s. But this originally does not solve the problem of mahr, it only deals with the matters of divorce which is also a kind of protection to them.

MAHR is defined in The Muslim women (protection of rights on divorce) Act, 1986, it contains all the provisions relating to mahr, all the conditions are settled down in the act under the sections, maintenance is also covered in this act.

The concept of Mahr in India is so much confused, people’s think of it as dowry, though dowry is a far away other concept from mahr, even some people regard it as shameful. Mahr is a other concept which provides security to the women in the case of divorce or death of the husband.

The first case which reached the supreme court was *Bai Tahira v. Ali Hussain*, it was held that after paying all the mahr the husband is not free for divorce. In the famous shah bano case, it was held that the amount of mahr could not conclude as the amount of divorce. Mahr is a gift which the wife was already getting & the amount for maintenance in divorce is a different thing.

Case Studies

1) Hamira bibi v. Zubaida bibi, ILR(1916) 38 AII581

In this case it was observed that the wife has a debt in part of the husband's property if the husband had not paid the mahr or dower to her before his death. If the husband dies without paying dower(mahr) to his wife, then the wife could demand her part from the heirs of the husband or the guardians of the husband who were present at the time of marriage. The wife has a full right to recover her part from the husband's property whether it is movable or immovable.

It was also observed in this case that a heir could take his or her part of her share from the property only after paying that share of dower to which he or she is responsible. If the wife also dies then the representatives of the wife have the full right to recover that amount of dower from the family of the husband.

2) *Maina Bibi V. Chaudhri Vakil Ahmed. (1952) 52 IA.145.*

In this case it was observed that after the death of the husband, all the debts of other persons which are left to be paid by the husband will not be paid till the dower (mahr) of the wife is recovered of the property of the husband. All the debts of other persons will be paid later, firstly the wife has the first right in the property of the husband. She is in a full power to retain her debt dower, which was left unpaid after the death of the husband.

The priority was given to the wife that her dower debt should be fully recovered then only the other debts on the husband will be paid. If the husband had some debts outside with other persons then after the death of the husband they will be the second priority for the court, first priority being the wife will be entitled to firstly get the debt of dower (Mahr) & when the wife's debt will be satisfied then the other persons will be entitled to get their debts out of the property of the husband.

Conclusion

In earlier times there were no laws to deal with the issues of divorce or about the maltreatment to women that's why law of these types were needed & the concept of Mahr was evolved to protect the women from the society & to make her life secured. But now in this modern era every women is aware about her rights & every laws which are made in favour of her, to protect her. These customs are not needed in this modern era to protect the women. The new laws had passed for the women safety & protection.

Yet this is a good safeguard to the women's, in the Muslim religion still the women's are not given that much of freedom which the other religion's women are getting. Every religion has it's own merits & demerits, the Muslim religion has also the same points it has some merits & demerits, like mahr is provided for the future safeguards but it also shows the lagging behind of the Muslim women's in the modern era.