

Obstacles in Recovery of Dower in Bangladesh

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Abstract: Dower, a crucial element of marital agreements in Bangladesh and other Muslim societies, refers to the financial or property rights a wife is entitled to from her husband. Moreover, it plays a crucial role to enhance women's financial security and economic independence, particularly in the event of divorce, widowhood. In Islam, a balanced societal structure is promoted through a clear division of responsibilities: women traditionally manage household affairs, while men are tasked with providing for the family's financial needs. In Bangladesh, the right to dower is safeguarded by law, recognizing it as a binding obligation on the husband. This article examines the practical challenges in recovering dower within the Bangladeshi context and recommends enhancing awareness among wife and husband regarding their respective religious, legal, and social responsibilities in fulfilling dower obligations. The author presumes that addressing the challenges in recovering dower require multilateral approaches involving collaborations between the government, judicial activism, civil societies, religious institutions and community leaders. Moreover, increasing public awareness, reforming statutory frameworks and advocating for changes in the societal attitude to deprive women from this significant right are all inevitable for mitigating the barriers towards recovery of dower rights of Bangladeshi women.

Keywords: dower; Islamic jurisprudence; marital contract; Bangladesh legislation; women's rights

1. Introduction

In Muslim marriage, the dower also known as Mahr is a critical financial safeguard for the bride, both during and after the union. Mandated by Allah as an obligatory component of Islamic marital terms, it reflects both spiritual and practical considerations (Beg et al. 2015). While Islamic law does not specify a fixed amount for the dower, moderation is encouraged, ensuring alignment with societal norms. Flexibility in payment is permitted as it can be paid immediately at the time of marriage, deferred, or divided between both approaches, as agreed upon by the parties (Ahammad 2016).

Holy Quran emphasizes the dower as a mandatory financial gift to be provided with sincerity and goodwill. If wife voluntarily forgives part or all of it, husband may accept it graciously.¹ A marriage ceremony involves a formal proposal (Ijab) from one party requesting consent to marry, followed by the acceptance (Qabul) by the other party, thereby confirming their mutual agreement to the union (Aziz et al. 2018). Mahr is an integral part of the Nikah (marriage) contract and a significant Islamic legal institution. Before Islam, "mahr" was traditionally given to the wife's parents, but Islam reformed this practice, mandating its direct payment to the wife within the context of a formal marriage (Haque 2019). This ensures financial security for the wife and acts as a safeguard against the arbitrary use of the husband's right to divorce², historically a source of significant power disparity (Dwivedi and Bahl 2017). Although "mahr" is not explicitly defined in the Holy Quran or Hadith, jurists, scholars, and judges have interpreted it to provide substantive legal and social safeguards for women.

This study examines the effectiveness of legal frameworks, including Islamic law, in resolving disputes over women's property rights, particularly dower, in Bangladesh. By analyzing primary and secondary Islamic sources of Quran and Hadith, the study deciphers the substantive rights associated with dower. It identifies the challenges Bangladeshi Muslim women face in recovering

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¹ Available online: <https://www.alim.org/quran/read-surah/4/> (accessed on 20 December 2024)

² Md. Sabuz Miah V Most. Rahela Akter 2017. https://www.supremecourt.gov.bd/resources/documents/1253351_C.RNo.3812of17with3811of17final22.pdf

dower and proposes actionable recommendations to address these issues, thereby improving the enforcement and protection of women's property rights.

2. Methods

Conceptual and analytical approach was used by an in-depth examination of primary and secondary legal materials. Dower-related verses from the Holy Quran and Hadith are referenced to provide foundational Islamic perspectives. Dower-related case laws are discussed. The study demonstrates how a married Muslim woman can recover her unpaid dower in accordance with the Holy Quran, Sunnah, and statutory laws.

3. Dower in the Holy Quran and Sunnah

Islamic scripture establishes that women possess an inherent right to receive a dower upon marriage, as emphasized in the Quran. Within the framework of divine law, several Quranic verses provide significant insights (Khan 2023). According to the Quran, when Muslim women seek refuge within the Muslim community, their faith should be thoroughly examined. Once their faith is confirmed, they must not be returned to their non-Muslim husbands, as marriage between these women and their non-Muslim spouses is no longer permissible. Any dowries previously paid by their non-Muslim husbands must be returned to these women. Muslim men may marry these women without religious transgression, provided they fulfil all necessary marital obligations, including the payment of dowries.³

The scripture mandates that dowry payments be equitable and reserved exclusively for the bride. Allah (SWT) emphasizes the fulfilment of this bridal due as obligatory and any additional gifts mutually agreed upon beyond this obligation are permissible. Through the mahr, Allah (SWT) has sanctioned sexual relations within marriage (Zai and Sadat 2023). Muslim women married to non-Muslims are under no obligation to remain in the marriage if they choose to convert to Islam. In such situations, both parties may seek the return of their dowries, in accordance with divine decrees established by Allah, who governs all affairs with perfect wisdom and knowledge.⁴

The Quran addresses the dowry in cases of divorce before consummation. If a marriage is dissolved before consummation but after a dowry has been agreed upon, the wife is entitled to half the stipulated dowry. This entitlement may be waived if the wife voluntarily relinquishes her claim or if the party initiating the divorce decides to forgo the dowry payment. Such waivers are considered aligned with virtuous conduct, emphasizing the maintenance of amicable relations between the parties. The Quran specifies that divorce is permitted twice. After the second divorce, the husband must either reconcile with his wife on equitable terms or release her with kindness. The husband cannot reclaim anything he has given her unless both parties agree to a mutual arrangement. If adherence to the limits set by Allah becomes challenging, either party may consent to modifications. These divine limits must not be transgressed, as doing so constitutes unjust behavior.⁵ The Quran underscores the significance of mahr through the story of Prophet Shu'ayb (peace be upon him), where Allah (SWT) facilitated the marriage of one of his daughters to Prophet Musa (peace be upon him) in exchange for eight years of service, extendable voluntarily to ten years. This narrative highlights the value placed on mahr as a gesture of respect and recognition of the wife's contribution to the marital bond.⁶ The Quran prohibits the reclamation of a substantial mahr given to the first wife when a man marries another wife. Such actions are deemed deceitful, unjust, and contrary to Islamic values, as they violate the sanctity of marriage contracts and the trust inherent in them.

In pre-Islamic Arabia, mahr was primarily transactional, where the bridal gift was given to the bride's father or guardian, often treating marriage as a commercial exchange. Islam, however, transformed this norm by mandating that mahr be paid directly to the bride, thereby removing any notion of marriage as a financial transaction and affirming women's rights in the marital relationship (Ayatullah 2019). This underscores Islam's emphasis on justice and dignity for women, reshaping societal attitudes and placing the bride as the primary recipient of the dower (Ahmad 2024).

The Prophet Muhammad (PBUH) emphasized simplicity and affordability in Mahr through both his teachings and actions. He stated, "The best dowry for a woman is that which is easy," thereby discouraging unnecessary financial burden (Elias 2019). This principle was evident in his personal practices, such as encouraging a simple dowry when a woman proposed marriage to him, even suggesting the modest gift of an iron ring (Sahih Muslim, Book 8: The Book of Marriage).⁷ Likewise, the marriage of Hazrat Ali (RA) to Fatima (RA) was marked by modesty, where the Mahr consisted of a Hutami shield (Abrar 2024). Through these actions, the Prophet (SAW) set an enduring precedent for simplicity, reflecting that the Mahr's purpose lies beyond monetary considerations.

Exorbitant dowries, as cautioned by Umar Ibn al-Khattab (RA), can lead to resentment and undue financial strain, which contradicts the principles of Islamic marriage. The Prophet Muhammad (SAW) refrained from offering or accepting extravagant dowries for his wives or daughters, encouraging moderation as a norm. These teachings echo warning against dowries that surpass what the Prophet's daughters received, serving as a guide for the faithful. Excessive demands, as highlighted by Chowdhury (2023), can harm marital harmony, emphasizing the importance of moderation and fairness in upholding the sanctity of Islamic marriage (Ajazz 2022).

4. Types of Dower

4.1 Specified Dower

³ <https://quran.com/en/al-mumtahanah/10>

⁴ Supra

⁵ Available online: <https://almerja.com/en/more.php?pid=5121> (accessed on 20 December 2024)

⁶ Available online: https://submission.org/QI#28_27 (accessed on 20 December 2024)

⁷ (Kitab Al-Nikah). (2024). International Islamic University Malaysia. https://www.iium.edu.my/deed/hadith/muslim/008_smt.html

Specified dower refers to the Mahr explicitly agreed upon and recorded in the marriage contract, typically established before the wedding and documented by the officiating Kazi. Alternatively, the terms may be outlined in a formal agreement known as *Kabin-nama*. When the marriage contract explicitly specifies the dower amount, it is referred to as a "specified dower" (ibid). This amount can be mutually agreed upon by the couple at any stage—before, during, or after the marriage. In cases of minor or mentally incapacitated male, the guardian can determine the dower amount, and this settlement is binding. A minor cannot dispute the dower fixed by their guardian upon reaching adulthood, nor can a mentally incapacitated individual.⁸

Specified dower encompasses the payment structure for Mahr, which can be immediate or deferred. Prompt dower, also known as *Muwajjal*, is an immediate obligation payable on demand. Islamic law upholds a wife's right to withhold conjugal relations until the prompt dower is paid. Legal enforcement for its recovery can also be pursued if necessary. As both the Quran and the Sunnah mandate the payment of dower, courts generally cannot alter the prompt dower unless the wife voluntarily relinquishes her right to it. Deferred dower, or *Muajjal*, becomes payable upon the dissolution of the marriage through divorce or the husband's death. In cases of divorce, the wife may seek legal or negotiated recovery of the deferred dower. If the husband dies, the wife can claim the amount from his estate either through settlement or court intervention (Monsoor 2013).

When a marriage contract does not explicitly specify the type of dower—whether immediate or deferred—legal interpretations differ between Sunni and Shia schools of thought. In Shia marriage, the entire dower is considered immediately payable, whereas Sunnis usually divide the dower into prompt and deferred portions. This division is guided by local customs. In the absence of established customs, the couple's social standing and the agreed dower amount influence the allocation (Mulk et al. 2013). Before the enactment of the Muslim Family Laws Ordinance, 1961, unspecified dower was divided equally, i.e., 50% prompt and 50% deferred. However, Section 10 of the 1961 Ordinance stipulates that if no mode of dower payment is specified in the Nikahnama, the entire dower amount is deemed prompt (The Muslim Family Laws Ordinance, 1961).⁹

4.2 Unspecified Dower

When a marriage contract does not specify a dower amount, the wife is entitled to a "proper dower," which remains enforceable even if the agreement claims she has no right to demand dower. This proper dower is a flexible determination influenced by factors such as the woman's family's social standing, the financial capacity of the husband, her personal attributes—such as education and beauty—and prevailing societal and economic conditions (Chowdhury 2023).

Determining a proper dower necessitates an in-depth evaluation of the wife's distinct qualities, including her age, intelligence, beauty, virtue, and economic status (Al-Marghinani 1197). Further, the dower amounts agreed upon for other female relatives, such as sisters and paternal aunts, should also be considered. The collective assessment of the social status of the wife's family and the financial standing of the husband is critical in deciding a reasonable and just dower amount. Singh (2010) outlined the primary factors for determining proper dower as: (1) the personal qualities of the wife, including her beauty, virginity, age, educational qualifications, personality, and health; (2) the social standing of her family; (3) the dower amounts historically received by other female members of her father's family; and (4) the husband's financial capacity. These elements collectively ensure that the dower is appropriate, equitable, and reflective of the socio-economic and familial context.

5. Amount of Dower

According to Hanafis, the minimum dower amount is set at ten dirhams, while there is no upper limit, allowing the husband to a dower amount based on his financial ability. In Shias, no minimum or maximum dower amount is prescribed (ibid) and dower can be fixed through mutual consent between the couple. Under Malikis, the minimum amount is three dirhams, while Shafis do not establish a fixed sum. In Bangladesh, the dower is sometimes set at a higher rate to ensure that the husband is dissuaded from divorce, knowing the financial burden it would impose him. In many cases, the husband receives dowry from the wife or her family, although it is strictly prohibited and punishable under Section 7 of the Dowry Prohibition Act 2018.¹⁰ Setting of an excessively high dower amount beyond the husband's means violates the provisions outlined in the Holy Quran. The husband is accountable for the non-payment of dower. Therefore, the dower amount should be set at a level that is within the husband's capacity to pay comfortably (Tirkey 2020). Once a dower amount has been agreed upon, the husband has the option to increase it, while the wife may decrease the amount. However, only a wife who has attained the age of majority and possesses full understanding can reduce the dower. Any such reduction must be formalized in writing to ensure its validity. The husband cannot apply any coercion or pressure on the wife to reduce the agreed dower amount (Islam 2014).

6. Modes of Payment of Dower

Husbands are obligated to pay dower to their wives, although the mode of payment varies depending on the circumstances of the marriage. In consummated marriages, three main conditions govern the payment of dower.¹¹

- Fixed Dower: If the dower amount is agreed upon and the marriage is consummated or either spouse dies, the full dower is payable to the wife.
- Unspecified Dower: If no dower amount is specified, the wife is entitled to a "proper dower" upon consummation or death of either spouse.

⁸ Available online: <https://blog.ipleaders.in/essentials-of-valid-marriage-under-muslim-law/> (accessed on 20 December 2024)

⁹ Available online: <http://bdlaws.minlaw.gov.bd/act-305/section-13542.html> (accessed on 20 December 2024)

¹⁰ Available online: <http://bdlaws.minlaw.gov.bd/act-1256.html> (accessed on 20 December 2024)

¹¹ Md. Vs. Jesmin Sultana. 2012.. <https://www.lawyersjurists.com/article/elias-md-vs-jesmin-sultana/>

- Irregular Unconsummated Marriages: If the marriage is irregular, unconsummated, and dissolved by death, the wife is entitled to the lesser of the specified or proper dower.

For divorces without consummation or valid retirement¹², wife receives half the specified dower or receives three articles of clothing or their equivalent value. If the wife initiates the divorce, she is not entitled to any dower. Wives also have the right to file lawsuits for the recovery of any unpaid dower. According to Articles 103 and 104 of Schedule 1 of the Limitation Act, 1908 (Ministry of Law, Justice and Parliamentary Affairs, Bangladesh, 1908),¹³ the limitation period for dower recovery suits is set at three years from the date of the cause of action.

7. Legal and Practical Barriers to Dower Recovery

Despite the existence of legal frameworks governing dower and its recovery, women in Bangladesh frequently encounter significant barriers for their rightful dower. Nearly 88% Muslim wives do not receive any dower (Islam 2014), and this troubling trend is likely to extend to rural areas as well. Investigating the root causes behind the denial of dower requires a comprehensive exploration of both legal and social factors.¹⁴

One key challenge is the poor enforcement of marriage registration under the Muslim Marriages and Divorces (Registration) Act, 1974 (The Muslim Marriages and Divorces (Registration) Act, 1974).¹⁵ Despite the mandatory provisions of the Muslim Marriages and Divorces (Registration) Act of 1974, particularly in rural regions (Mian and Hossain 2013). Failure to register marriages may be due to lack of awareness, or as a deliberate attempt to deny brides their legal and religious rights. In the absence of a *Kabinnama* (marriage contract), dower determination becomes difficult, often relying on uncertain witness testimony (Hossain 2011).

Another issue is inflated dower amounts, set for social display rather than legal necessity. However, courts should not condone this practice by reducing the dower amount on the grounds of the husband's inability to pay (Ferdousi 2015). *Kabinnama* contracts usually lack clarity on whether the dower is prompt or deferred. The 1955 Commission on Marriage and Family Laws recommended that, in the absence of specified terms, the full dower amount should be considered payable on demand, a right of which many women remain unaware (Monsoor 1994).

A troubling custom exists where women are pressured to waive their dower on the wedding night. While Islamic law permits "*hiba al-mahr*" (dower relinquishment), it must be voluntary and not coerced. In countries like Pakistan, relinquishment made under duress is not recognized as valid. Though similar practices may occur in Bangladesh, many of these instances remain undocumented (Rehman 2003). While wives can legally remit part or all of their dower in favor of their husband or his heirs (Parvathy 2020), a pubescent girl in Bangladesh may be encouraged to waive her dower before attaining legal majority, even though such relinquishment must be freely consented to. The case of *Nurunnessa v. Khaje Mahomed* affirmed that any dower relinquishment made under duress is not legally binding.¹⁶

A common misconception is that dower is only payable when the husband initiates divorce (*talaq*). However, women are entitled to dower even when exercising *talaq-e-tafweed* (delegated divorce powers) (Alam 1991). Additionally, the practice of *khula* (wife's divorce in exchange for relinquishing dower) continues to undermine women's dower rights. Women are often coerced into *khula* to avoid paying dower in cases of *talaq*, effectively depriving them of their rightful financial compensation for an unwanted marriage.

A significant gap exists between the legal right to dower and its actual realization for Muslim women in Bangladesh. A study conducted by the Bangladesh Legal Aid and Services Trust (BLAST)¹⁷ in 2002 revealed that 90% of wives in Dhaka City receive no dower, a situation likely to be more severe in rural areas. Contributing factors to this disparity include low female literacy rates, limited awareness of dower rights, and societal norms that discourage women from asserting their claims (Minnee 2021). Addressing this issue requires integrating basic dower education into primary and secondary schooling, alongside awareness campaigns spearheaded by religious leaders (Imams) and local government officials (Union Parishad Chairmen), which could significantly enhance women's understanding of their legal rights.

Social pressure often compels women to forgo their dower claims due to concerns about social standing or lack of support within male-dominated households (Abu Shehab 1992). Common marriage practices also contribute to this disparity, as many marriages occur without a formal marriage contract (*Kabinnama*), or the contract fails to specify the dower amount or payment terms.¹⁸ Sometimes, the contract limits women's rights to divorce (*Talaq-e-Tafweed*) or requires forfeiting dower claims, thereby reinforcing the subordinate position of women within patriarchal family structures (Susan 2023). Therefore, it is essential to pay careful attention to the terms of the marriage contract, particularly the husband's delegation of divorce rights.¹⁹ This right enables women to seek separate maintenance and residence in cases of polygamy or spousal abuse, providing them with a critical safety net (Farooq 2022).

Although the mandatory marriage registration law is a positive step, effective monitoring mechanisms should be established to ensure compliance and verify the accuracy of the dower information recorded in marriage contracts (Murphy et al. 2021).²⁰ Setting inflated dower in marriage contracts, often with no intention of actual payment, further complicates the situation (Siddique and Rao

¹² Available online: <https://www.al-islam.org/marriage-according-five-schools-islamic-law-muhammad-jawad-mughniyya/al-mahr> (accessed on 20 December 2024)

¹³ Available online: <http://bdlaws.minlaw.gov.bd/act-88.html> (accessed on 20 December 2024)

¹⁴ Available online: <https://www.lawyersjurists.com/article/women-rights-bangladesh/> (accessed on 20 December 2024)

¹⁵ Available online: <http://bdlaws.minlaw.gov.bd/act-details-476.html> (accessed on 20 December 2024)

¹⁶ Available online: <https://www.lawyersjurists.com/article/dower/> (accessed on 20 December 2024)

¹⁷ Available online: <https://www.blast.org.bd/content/annualreport/2000-01.pdf> (accessed on 20 December 2024)

¹⁸ Sadrul Huq, Vs. Farhana Firdousi & anr 2022. https://www.supremecourt.gov.bd/resources/documents/e_680560_FA_207_2013.pdf

¹⁹ Md. Raju Mia V Most. Lutfa Begum and another. 2019

https://www.supremecourt.gov.bd/resources/documents/1640188_CivilRevision1435of2019.pdf

²⁰ Momtaz Begum V Anwar Hossain. 2003. https://supremecourt.gov.bd/translation/process.php?file=436565_139_2003.pdf

2019). Courts should uphold the integrity of the agreed-upon dower amount and avoid arbitrarily reducing it (Jalal and Zubair 2023). According to the Limitation Act of 1908, the legal timeframe for claiming prompt dower is three years from the date of demand and refusal, or from the date of marriage dissolution. The limitation period for deferred dower is three years from the dissolution of the marriage. However, claiming prompt dower does not always require prior demand and refusal (Limitation Act 1908).²¹ Despite these legal provisions, many women remain unaware of their dower rights and the procedures for claiming them (Qudder et al. 2014), which often leads to missed deadlines and prevents them from receiving what they are entitled to.

8. Conclusions.

In Islamic jurisprudence, dower (mehr) is an essential component of the marital contract. This practice predates Islam, with both the Quran and Sunnah emphasizing its obligatory nature at the time of marriage and firmly embedded in Bangladeshi legislation. Although there are inconsistencies in the statutory laws in terms of proper recovery of Dower, amendment of statutory laws and making those compliant with the dictations of Quran and sunnah shall likely be a valid recourse. Therefore, this study aims to highlight solutions that can safeguard women's dower rights within a patriarchal societal structure. But, upholding the dignity of women requires increased awareness in men and women about their dower rights, as outlined in Islamic law and Bangladeshi legislation.

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²¹ Supra.

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