



A Critical Analysis of the Legal Difficulties in Pakistan's Dower Rights Enforcement

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Abstract

A crucial component of Islamic marriage is dower, or mahr, which gives the wife both material and symbolic protection. Although dower is acknowledged in Pakistan by both Islamic law and statutory legislation, such as the West Pakistan Family Courts Act of 1964 and the Muslim Family Laws Ordinance of 1961, there are several obstacles to overcome in its actual application. Through an analysis of important case laws and statutory requirements, this study investigates contemporary dower concerns in Pakistan. The mismatch between statutory interpretation and judicial application specifically, with regard to enforceability, women's rights in recovery procedures, and prompt and postponed dower is the main research gap that has been highlighted. While courts typically support women's right to demand dower, there are still discrepancies in deciding whether dower is payable on demand or depending on divorce or death, according to the study's doctrinal legal analysis of Supreme Court and High Court rulings. The report also emphasizes the lack of appropriate enforcement mechanisms and consistent criteria for calculating dower in modern socioeconomic circumstances. In order to bring dower-related regulations into line with both Islamic jurisprudence and contemporary gender justice, the findings point to the urgent need for statutory reform and judicial standardization. According to the article's conclusion, Pakistani women's marriage rights would be safeguarded and legal certainty would be increased by codifying judicial principles and providing clearer statutory guidance.

Keywords: *Islamic Marriage, Pakistani Case Law, Muslim Family Law, Mahr, Dower, and Statutory Interpretation*

An Islamic marriage contract must include dower (*mahr*), which represents the wife's financial security, duty, and respect. Dower is a legal entitlement of the bride that is enforceable under both religious and civil law, and it has its roots in Islamic jurisprudence. Through a number of laws, including the West Pakistan Family Courts Act of 1964 and the Muslim Family Laws Ordinance of 1961, this idea has been integrated into Pakistan's legal system. The use and interpretation of dower rules in Pakistan continue to present serious legal and social issues, despite their obvious acknowledgment in both national legislation and religious belief. The classification and timing of payment (immediate vs. postponed), enforceability in non-payment situations, ambiguity in oral vs. written agreements, and the impact of sociocultural customs that frequently violate women's rights are some of the current concerns concerning dower. Furthermore, there has occasionally been variation in judicial interpretations, which has resulted in inconsistent case outcomes among various courts. The sufficiency of the existing legal provisions and the judiciary's role in defending women's matrimonial rights are called into question by these



disparities.

1. Muslim Family Law Ordinance, 1961

In the section 6 (5) of MFLO, it is mentioned that when a person remarries, without taking the Arbitration Council's permission, he shall pay immediately the whole Dower amount, whether it is Prompt or Deferred due to the existing wife or wives. Such Dower amount, if not paid shall be recoverable as arrears of land revenue'.¹

As, it is clear that Prompt Dower is payable on claim and no specific period of limitation for application of decree can be fixed, that whenever wife moves to the legal opportunity for satisfaction of her right, then the husband is under legal obligation to satisfy such verdict.²

Section 10 of MFLO 1961, provides details about Dower that if the means of payment of Dower are not specified in *nikāh nama* or in any of the contract of marriage then the whole Dower amount shall be payable on the demand of wife at any time in marital life.³

2. West Pakistan Family Courts Act, 1964

In the section 14(2)(b) of WPFA, it is mentioned that no appeal shall lie from a decree passed by the Family Court for Dower (or dowry) not more than rupees (thirty thousand)'.⁴

The Family Court prescribed by the Civil judge that whatever be the amount of Dower, the decree shall be appealable only before the District Judge. Amount declared by such Family Court would have no place in determining forum of appeal, as in one of the previous case,⁵ the exceeding Dower amount suggested by the Court was rupees 50, 000. Deferment of recovery of Dower for any consideration during existence of marriage would not deny the wife from execution of the decree being striped (barred) by time. Suit for recovery of the Dower decreed in 1979, implementation launched that would be treated as renunciation by a husband to fulfill the legal responsibility of Prompt Dower.⁶

a. Dissolution of Muslim Marriages Act, 1939

In the section 5 of DMMA, it is mentioned that nothing restricted in this Act shall distress any right, which a married woman may have under Muslim law regarding her Dower or any part thereof on the dissolution of her marriage.

The payment of the Prompt Dower is one of the obligations of the husband under a marital contract. Therefore, it looks that the failure to pay a Prompt Dower without any rational cause, would entitle the wife to claim dissolution of marriage. It is easily possible that the husband may have resources enough to pay the Prompt Dower of the wife but he may continue it and not pay it for 3 years after a demand is made for it. In such a case, the right would be offered to the wife unless there is

¹ Mahmood. M, *The Code of Muslim Family Laws; Ammendments and Case law Up-To-Date*. ed 3rd (Lahore; Pakistan Law Time Publications, 2004), 49. (2000 YLR 537, 2000 CLC 1384).

² *The Code of Muslim Family Laws*, 53-54, (Syed Muhammad v Mst. Zeenat PLD 2001 SC 128).

³ Mahmood. M, *The Code of Muslim Family Laws; Ammendments and Case law Up-To-Date*. ed 3rd (Lahore; Pakistan Law Time Publications, 2004), 15. (2000 YLR 537, 2000 CLC 1384).

⁴ *Ibid*, 206.

⁵ PLD 1985 Lahore, 2609.

⁶ Mahmood. M, *The Code of Muslim Family Laws; Ammendments and Case law Up-To-Date*. ed 3rd (Lahore; Pakistan Law Time Publications, 2004), 218. (2000 YLR 537, 2000 CLC 1384).



sensible cause.⁷

i. Case Laws related to Some Issues

There are several cases registered in the Courts regarding different issues of Dower that what was the matter and the jurisdiction of Court to decide such issues. So here, just some of the previous and latest cases related to the Dower, containing some specific current issues, have been discussed by the researcher.

a. Consideration of Property In Lieu of Dower

In some cases, it has been seen that at the time of marriage contract, valuable property was fixed as the Dower of a bride and that it will be handed over to the wife whenever it is demanded or in case of happening of any specific event.

In the suit of *Mst. Shazia Begum v Additional District Judge, Islamabad and Others*,⁸ it was claimed for dissolution of marriage based on cruelty along with the recovery of dowry articles as mentioned in the list provided by her, recovery of the gold ornaments weighing 9 tolas which were given to her as Dower at the time of marriage and a house which was given in lieu of Dower.

The case was decided in favor of the wife by Mian Saqib Nisar judge of the Family Court of Islamabad. The Court ordered that the husband is liable to return the dowry articles which are in his possession and if he failed to return the items provided in the list, then he shall pay the particular amount for those items. About the question of gold ornaments and house, the Court held that in the *nikāḥ nama* it is not mentioned that the gold ornaments were given as Dower, nor the house which she claimed was written as her Dower. It was written that she can live in that house. The marriage was dissolved with the order that it is the husband who forcibly kicked his wife out of the house, so the amount of Dower Rs. 75,000 shall be paid to her by the husband within the period of one month, along with the dowry articles.

In the case of *Mst. Saira Zulfiqar v The Additional District judge, Multan*,⁹ the petitioner Mst. Saira, challenged the judgment passed by the Learned Judge Family Court, Multan whereby she was held entitled to recover the Dower amount of Rs. 20, 00,000/- and it was held that the 50 tolas gold ornaments, agricultural land and 1½ share in residential house were under taken to be given in lieu of the Dower of Rs. 20, 00,000/- and not in addition to it.

The two courts below had not considered the *iqrarnama*, which document stands unrebutted in the evidence and that's why their contents cannot be denied. As such the *iqrarnama* and its contents have become integral part of *nikāḥ nama*. The parties to the marriage are at liberty to enter the terms of their choice. Courts cannot interpret the said terms at their own. These two documents in the present case clearly revealed that amount of Dower of Rs. 20, 00,000/- was independent and the property and the gold ornaments were in addition to the said amount. The judgment of both the learned courts below, that gold ornaments and the property were in lieu of amount of Dower, stood falsified. Thus this petition was accepted and the petitioner was held entitled to the properties and the gold ornaments as predicted in the *nikāḥ nama* and the *iqrar nama*.

⁷ B. R. Verma, *Muslim Marriage, Dissolution and Maintenance* (India: The Law Book Company, 1988), 294.

⁸ PLD 2014 Supreme Court 335.

⁹ PLJ 2009 Lahore, 324.



According to both of these cases, an element of denying payment of Dower by the side of husband is clear that property was mentioned in lieu of Dower to be given but later on rejected this thing. It is also clear that *iqrar nama* has also a great significance like *nikāh nama* that one cannot deny the statements mentioned in the document of *iqrar nama*.

b. Half of the Dower can be returned in Dissolution of Marriage

In Qur'an and *hadith*, it is mentioned that a wife can seek dissolution of marriage by returning her Dower and can have dissolution of marriage through Court, based on cruelty.

In the case of *Mst. Saima Gul vs Haider Zaman*,¹⁰ wife demanded dissolution of marriage on basis of cruelty along with recovery of Dower equal to 15 tolas of gold and a vacant landed property measuring 15 marla situated at Peshawar. In front of the Court, wife failed to prove the element of cruelty by her husband, which meant that she was not entitled for dissolution based on cruelty, but her right of dissolution could not be rejected, so the court decided the case based on *Khul'*. Reliance was upon the interpretation of "*Tafheem Ul Quran*" compiled by Abu Ala Mududi that "the wife has to return some consideration to the husband on seeking dissolution on basis of *Khul'*." It does not command in express words and clear terms that the entire consideration (Dower) received by the wife has to be repaid, therefore, the judge has the authority to determine that the consideration as a whole is not to be repaid by the wife but a part of it. Similarly, the Court can also determine as to what extent the husband can be relieved from the payment of Dower, to the wife, if not already paid.

Having a look on the circumstances of the case, the wife's father was a school teacher and having his own family to look after and salary was the only income and the daughter was a simple house woman, that's why in the case of dissolution of marriage, it had to be great burden for her with a hard life to lead, along with 4 kids. The Court decreed that the marriage between the parties shall stand dissolved on the basis of *Khul'*. The wife was not entitled to demand further of the 8 tolas unpaid Dower, and likewise the husband were not entitled to receive back the 7 tolas paid as Dower. Further, the one plot of land in the Dower deed being already given to the wife, the husband was not allowed to get back that plot.

In this case, an element of cruelty from the husband's side is not present that's why court has decided the case in the light of *Quranic* interpretation of Molana Modudi that a wife can take *Khul'* by returning half of the Dower. However, after analyzing the wife's financial circumstances, court decided that the wife was not liable to ask for the remaining half Dower and also husband was not allowed to take such plot of land which was already given to the wife.

c. The Owner of the Property will be liable to pay the Dower of the Wife

It is an established rule that the husband could not give any property in Dower to his wife that did not belong to him. In the case of *Mst. Shumaila Bibi vs Zahir Khan*,¹¹ 8 tolas of gold ornaments as well as the share of the husband in his father's house was fixed as Dower and in this regard a valid deed (*nikah nama*) was

¹⁰ PLD 2015 Peshawar, 14.

¹¹ PLD 2015 Peshawar, 182.



executed between the parties. After some time of the marriage the wife was expelled from the house without payment of a single penny, therefore, she filed the instant suit.

The Court was of the view that it is a settled rule that a husband could not give any property as Dower to his wife which did not belong to him, but when the marriage contract contained the proper stipulation regarding the Dower and is signed by the father, then father will be responsible to pay son's debt.

It is our custom that the terms and conditions of marriage are settled by the elders of bride and bridegroom. According to the circumstances of the case, the marriage deed had been signed by the father of bridegroom and it was also admitted that he was present at the time of marriage and he was in full knowledge of the terms and conditions of the marital contract being written in his presence.

The case was decided with reference to section 5 of West Pakistan Family Court Act, 1964 that if a person had stood surety or had guaranteed the payment of Dower, he/she could lawfully be impleaded in the suit. Surety and guarantor to the Dower were as much as party and liable to pay Dower as the bridegroom himself. It was held that wife would be entitled to the ownership of the house in question to the extent of share of her husband as mentioned in the marital contract, or in the alternative to its present market value from the husband. Same question was decided in the case of *Muhammad Anwar Khan*,¹² *Mst. Shehnaz Akhtar vs Fida Hussain*¹³ and *Maj. Rifat Nawaz v Mst Tahira*.¹⁴

d. Delay in Payment of Prompt Dower entitles the Wife to seek Maintenance

The husband's obligation to maintain his wife in Islam is based on the social contract of marriage. Dower is the consideration for the wife to enter this social contract, which the husband must pay her, either Promptly or Deferred, as mutually agreed between them during their marriage. The provision of maintenance to the wife is an obligation, which is a very crucial and essential ingredient of marriage and should be paid by the husband to his wife.

In case *Mst. Nasreen vs Hafiz Amjed Ali*,¹⁵ question of Prompt Dower and maintenance has been settled down. The essential facts of the case are that after marriage 2 children were born out of the wedlock. The marriage between the spouses witnessed difficulties, which forced the wife to leave the house along with children. Having refused her Dower by the husband she instituted a suit claiming recovery of Dower Rs. 50,000, 5 tolas gold ornaments and a 5 marla plot near Maltoon Town Mardan, and recovery of maintenance for herself and the children.

The Court argued, it is a well settled fact that when a wife demands her Dower from her husband, the refusal or delay in payment thereof entitles the wife to seek maintenance from the husband till the payment thereof. Reference for this is given to, section 284 of Muhammadan Law: "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 rights, non-payment of

¹² PLD 2010 Lahore, 119.

¹³ CLC 2007, 1517.

¹⁴ CLC 2008, 803.

¹⁵ CLC 2011, 944.



Dower is a complete defense to the suit.”

Court passed a decree in favor of wife for the recovery of Dower, maintenance allowance at the rate of Rs.1000 per month from the date of the institution of suit till the date of payment of Prompt Dower. Besides, the counter claim of the husband for restitution of conjugal rights was dismissed. The Superior courts have recognized this right and reliance may be sought from the cases titled *Rahilah v Sanaullah*,¹⁶ *Nooruddin Ahmad v Masooda Khanam*,¹⁷ *Muhammadi v Jamaluddin case*¹⁸ and *Ishtiaq Mehmood vs Zarin Gul case*.¹⁹

e. Entries in a Contract of Marriage

Different issues arise when the stipulations mentioned in *nikah nama* are considered falsified or misinterpreted by any of the party. Most of such cases cannot be resolved at the first stage and are sorted out in the Courts at the second stage. As in the case of *Mst. Musarrat Bibi v Shah Muhammad*,²⁰ the issue arose that the Dower mentioned in *Nikah nama* was of Rs. 500 and two acres' land was as gift in lieu of dower. Later the petitioner (wife) claimed that the land should also be in her possession but the defendant (husband) denied it. It was stated that the entries in *Nikah nama* were fabricated regarding the above noted lands.

The suit was decreed to the Learned Judge Family Court on 27-1-2004 while appeal filed before learned Addl. District Judge, was accepted on 24-6-2004 and the suit related to the claim of Dower was dismissed by holding that the suit was maintainable in the Family Court.

Petitioner's Learned Counsel submitted that the land in dispute was granted in consideration of marriage as a Dower, and it was well within jurisdiction of the Family Court to determine the Dower. He referred to the case of *Liaqat Ali V. Addl. District Judge*.²¹ Learned Counsel appearing on behalf of respondent submitted that only Rs.500 were fixed as Dower and two acres of lands entered in the *nikah nama* as Dower was never given to the petitioner. Then contained in the *Nikah nama* have been interpolated and inserted thereafter and the Learned Judge Family Court had no jurisdiction to decide it. The judgment of decree passed by Learned Addl. District Judge, is, therefore declared to illegal and unlawful and the case was remanded to Learned Judge Family Court concerned, who would grant the opportunity of hearing to both the parties, if need be felt, may frame fresh issues if the case requires, allow parties to produce their evidence if they desire and then to decide the same strictly on merits and in accordance with law.

In the case of *Mudassar Butt v. Judge Family Court*,²² the issue arose that the petitioner was married to the respondent in the consideration of Dower of Rs. 20,000 which was paid by the respondent in the shape of 30 tolas gold ornaments at the time of marriage. There was a controversy between the parties in respect of

¹⁶ PLD 1959 Lahore, 470.

¹⁷ PLD 1957 Dhaka, 242.

¹⁸ PLD 60 Karachi, 663.

¹⁹ CLC 2002, 1838.

²⁰ PLJ 2006 Lahore, 39.

²¹ SCMR 1997, 1122.

²² CLC 2010, 1729.



payment of Dower amount in the shape of gold ornaments weighing 30 tolas at the time of marriage, as per the contents of the *Nikah nama*. The wife denied the receipt of Dower.

In this case, the Learned Judge had already framed an issue in respect of the controversy of the receipt of the Dower amount by the wife in shape of gold ornaments weighing 30 tolas at the time of marriage, as per contents of the *Nikāh nama* and the same would be decided after recording evidence of the parties. That's why the impugned order, passed in Civil Court was not illegal so the petition was dismissed.

In the case of *Muhammad Aslam v Mst. Surraya*,²³ the respondent filed a suit against the petitioner for recovery of Rs. 1,00,000/-, which was the Dower amount fixed at the time of marriage, in the learned Family Court, Sargodha. The defendant stated that Dower was *Shar'i* which was Rs. 32/- and was paid at the time of marriage and Dower was not fixed as Rs. 1,00,000 and he rejected.

The special witness from the plaintiff's side, Muhammad Anwar took an oath that Rs. 1,00,000 was entered in *nikāh nama* and was not paid yet. Muhammad Aslam (defendant) stated that no Dower was fixed and he had thumb marked the *nikāh nama* at the house of Advocate. Entries of the *nikāh nama* were not filled in his presence. The document of *nikāh nama* along with the evidence of the person who solemnized such marriage and the evidence of recital in the ordinary are sufficient to prove the property or the consideration of Dower. The person who contends that the *nikāh nama* entries are not correct, is bound to rebut these entries through a strong evidence. Otherwise the Courts are bound to give a solemn affirmation to the entries in *nikāh nama*. Thus, the writ petition was dismissed.

In the case of *Sabir Hussain vs Nusrat Bibi*,²⁴ the respondent Nusrat Bibi filed a suit for recovery of gold ornaments, Dower amount fixed in *Nikāh nama* and agricultural land measuring 50 Kanals as Dower. The Learned Judge Family Court consolidated all the suits and framed the issues.

Firstly, the Civil judge decided that the suit of respondent for decree for the possession of land measuring 50 Kanals, according to the condition mentioned in the *Nikāh nama* was declined and the decision was against the respondent Nusrat Bibi and the suit for recovery of land as Dower was dismissed. Later, the Learned Additional District Judge decided that as the petitioner had submitted his signatures on *nikāh nama* and his marriage with respondent, then it makes clear that entry in *Nikāh nama* regarding the transfer of land as Dower was genuine. It was proved that she, at the time of marriage, was given 100 Kanals of land, out of which 50 Kanals had already been transferred in her name. There was no legal justification to deny the Dower settled. The writ petition was dismissed.

There are many cases related to entries in *Nikāh nama* which are misunderstood by the parties and then such matters are solved in the Courts according to the law. For instance, in the case of *Imran Moazzam vs Additional District Judge with powers Judge Family Court Pakpattan Sharif*,²⁵ the respondent had filed a suit for the

²³ PLJ 2000 Lahore, 872.

²⁴ PLJ 2009 Lahore, 520.

²⁵ PLJ 2009 Lahore, 326.



recovery of Dower, which at the time of marriage was fixed as 25 Acre land. She filed separate suits for recovery of maintenance and for the restitution of the conjugal rights as well, the Learned Judge Family Court had however dismissed the suit for recovery of Dower.

The Learned Counsel for the petitioner submitted that the *Nikah* Registrar had made categorical statement in the Court that at the time of performing of *Nikah*, there was no mentioning of Dower, even then the learned Appellate Court accepted the appeal of the respondent. After hearing the Learned Counsel for the parties and after checking the records and evidences, the judge Appellate Court found that the *Nikah* registrar Abu Lal Hussain appeared and categorically stated in his cross examination that all the entries in *Nikāh nama* were made by him. He also admitted that the entry in column no 13 and 14 were made by him which shows that 25 acres property valuing Rs. 50,00,000/- was given to the wife as Dower. No illegality or irregularity had been found in the judgment passed by the Learned Appellate Court and the writ petition was dismissed.

The following cases are related to stipulations of *Nikāh nama* in different dimensions of Dower that have been resolved in the Family Courts, that if either party challenged the entries in *Nikāh nama*, then such party is supposed to provide the proofs or witnesses and if such party fails to do so, then the decision will be in favor of the other party.

f. Principal of *As-Şumāt*

This is the principal when the Dower mentioned in *nikah nama* is something else and decided privately between the parties and the amount of Dower which is fixed publicly, is just to show off in front of others and is not supposed to pay.

In the case of *Nazir Ahmad v Additional District Judge, D.G. Khan*,²⁶ the respondent filed a suit for recovery of Rs. 30, 000/- against petitioner, which was fixed as the Prompt Dower at the time of their marriage contract and was not been paid. In the written statement, the petitioner stated that the said amount was fixed but the parties had an understanding that the same shall not be payable.

The Learned Judge said that the petitioner sought to take the advantage of the principle of *As-Şumāt*. The matter came up before the Supreme Court of Pakistan in similar circumstances in the case of *Nasir Ahmad Khan vs. Asmat Jehan Begum*²⁷ and it was explained there that *As-Şumāt* is recognized when a real Dower has been fixed privately but publicly a second Dower is fixed in inflated amount for enhancement of the prestige of the family of bridegroom or for the glorification. The Dower payable was that which was fixed privately.

Where there is no averment of any privately fixed Dower, which is essential for application of the principle of *As-Şumāt*, the Dower publicly announced and evidenced by a registered deed would be accepted. It is a settled proposition that a *Nikāh nama* duly filled up and registered in accordance with law is a public document and the parties are bound by the recitals contained therein. In the present case, there was no evidence that any amount was privately fixed as Dower other than the Dower mentioned in the public document. The writ petition was without

²⁶ PLJ 2001 Lahore, 282.

²⁷ PLD 1969 SC 194.



any force and accordingly dismissed with costs.

g. Deferred Dower becomes Prompt

There are different misconceptions prevailing in our society regarding the payment of Deferred Dower just because of unawareness that when it should be given, whether at the time of happening of some specific event or on demand. In the case of *Muhammad Azam vs. A.D.J etc.*,²⁸ the question before the Lahore High Court was that when does a Deferred Dower become Prompt? The issue was whether the wife was entitled to receive her Deferred Dower upon demand when her husband gets married again or whether she was only entitled to it when she died or on dissolution of her marriage? The trial Court held that she was not entitled to the Deferred Dower till her death or dissolution of her marriage. The Additional District Judge disagreed with this decision of the Trial Court and ruled that she should be given the same whenever she demands, especially when the husband has remarried.²⁹ It is now an established principle of law that Dower, whether Prompt or Deferred, is an absolute right of the wife, and after consummation the same becomes a conferred right for a wife to claim at any time. This writ petition being without substance was thereby dismissed.

h. Husband is liable to pay Deferred Dower

In a suit of *Zafar Iqbal vs Mst. Nagina Begum*,³⁰ the dispute between the parties arose after the effect of divorce between them. Wife sued for recovery of her Deferred Dower Rs. 50,000 along with the dowry articles for price Rs.2,21,000. The Court declared that the defendant (husband) is liable to pay Deferred Dower of Rs. 50,000 and return and deliver dowry articles which he has admitted to be present in his home, at the place of wife's present residence, i.e., at her father's home within one month. Further, if he failed to deliver articles within this time then he had to pay the amount demanded by the wife for dowry articles. Case was decided in favor of the wife.

There is another case of *Saadia Usman v. Muhammad Usman Iqbal Jadoon*.³¹ In this case Mst. Saadia Usman filed a suit for recovery of Dower amount of Rs. 500,000/-. According to the remarks of the learned single judge of the High Court, the Prompt Dower is payable on demand during the marital life but the Deferred Dower is payable on the time fixed by both the parties, but where no time is fixed, it will be payable on dissolution of marriage either by death or divorce. In this case, the total amount of Dower was fixed as Rs. 10,00,000/- and the amount of Rs. 500,000/- was paid at the time of marriage in the shape of gold ornaments but no time was fixed for payment of Deferred Dower of remaining Rs. 500,000, so it would be payable at the time of dissolution of marriage either by death or divorce.

According to the decisions of these cases, the Deferred Dower can be paid at the time of divorce, death, or remarriage of the husband. It is also a set principal that a wife can get her Deferred Dower at the time of dissolution of marriage either by death or divorce, if the time is not fixed for it, but if the time is fixed or there is a condition to get it on demand then it can be got on demand in a happy married life

²⁸ PLJ 2006 Lahore, 927.

²⁹ Muslim Family Law Ordinance, 1961.

³⁰ 2011 CLC, 406.

³¹ 2010 SD 438.



and there is no need to wait for such a specific event.

i. Enhancement of Dower Amount

In the case of *Abdullah vs. Naila Aslam*,³² the petitioner married to the respondent and the marriage led to birth of a male child and after sometime the divorce happened between them. The Respondent filed a suit for recovery of her Dower amount of Rs. 1,00,000/- and pleaded that divorce was revoked with the condition of enhancement of Dower amount from Rs. 500/- to Rs. 1,00,000/-. She further said that petitioner has left for Saudi Arabia and did not pay the Dower and maintenance. The Learned Judge Family Court awarded decree for her outstanding Dower amount of Rs. 1,00,000/-.

The petitioner again filed instant petition contending that respondent could not prove the enhancement of Dower and the agreement relied by her was forged. Petitioner's attorney denied the signatures of the petitioner present on such document. Initially the Dower was fixed as Rs. 500/- but under Islamic law, same could be enhanced by the husband during the existence of marriage. Keeping in view the sacrifices of the wife and her contributions towards the brought up of the child, the judge refrained to exercise the constitutional jurisdiction in aid of the petitioner. A lawful decision within the field of consulted jurisdiction cannot be replaced on this petition, which being lacking any merit, was dismissed in limine.

j. Dower as Consideration of Khul'

In the case of *Abdul Rehman v Mst. Hakim*,³³ it was stated that the marriage of the petitioner with the respondent Mst. Hakim was solemnized in 1999 and the Dower amount was fixed at Rs. 1,000. A demand of return of Dower by the respondent denied to have received Rs. 1,000/-.

The only contention provided for dissolution of marriage based on *Khul'*, is the return of Dower amount, which was the bone of contention in the present case. In this case the object was to provide the specific relief without any undue delay, so as not to keep the wife in a state when she may be deprived of her right to remarry. The application moved by the counsel for the applicant to deposit the disputed amount of Dower to *Khul'* was not barred by any law. In such cases, even if the respondent denied receipt of Dower, the applicant seeking relief by way of *Khul'* again deposits the amount of alleged Dower in the Court and the Court allows the dissolution of marriage on the basis of dissolution of marriage. The judgment announced and challenged by the petitioner at the period of 14 months which was even otherwise not maintainable. This petition was dismissed.

In the case of *Amel Khan kasi vs Noreen Kausar*,³⁴ the petitioner challenged the order passed by the Court Civil and Family Judge Karachi through this petition, whereby dissolution of marriage was granted to the respondent and issues were framed to be decided after taking evidence. It was stated by the Trial Court that there was no possibility of the parties to lead a happy marital life and the respondent was ready to remit her Dower amount in consideration of dissolution of marriage. The Learned Counsel stated that no preliminary decree can be passed, as

³² PLJ 2006 Lahore, 1260.

³³ PLJ 2007 Karachi, 198.

³⁴ CLC 2015, 153.



dissolution of marriage is always granted in lieu of Dower. However, in this case the respondent has denied having received Dower whereas the petitioner claims to have paid it. The counsel further stated that the Dower amount of 25,000 was Deferred and therefore it was to be payable on demand.

The Learned Counsel also stated that the petitioner said that he has paid the Dower but the mode of payment of Dower on demand and date of payment was not mentioned. It is evident from the Courts that Dower was Deferred and nothing was mentioned in *Nikāḥ nama*, which had been paid at the time of conclusion of marriage. According to the WPFA, 1964, if reconciliation fails then the decree of dissolution of marriage forthwith and also restore the husband's Dower paid in consideration of marriage at the time of marriage. In this case, nothing was paid at the time of marriage.

The learned Trial Court observed that the plaintiff was ready to remit her Dower amount in consideration of dissolution of marriage, although she claimed not to have received any. Therefore, in such circumstances the respondent was directed to deposit Rs. 25,000/- with the Nazir of District Court Karachi within two weeks and the Nazir was required to invest such amount in some government profitable scheme and such amount was subject to any final order of the Family Court concerned, when the issues framed by the trial Court are finally decided. The petition was dismissed.

In the issue of *Khul'* it is also a settled principal that the consent of husband would not be necessary for such dissolution, and if the reconciliation process fails between the spouses then the judge would have no option but to restore the Dower to husband which he has been given to his wife at the time of marriage.³⁵ Same was decided in the case of *Asif Jahangir v Mst. Zaheen Kausar*,³⁶ where the respondent Mst. Zaheen Kausar had filed a suit for the dissolution of marriage on the ground of cruelty, nonpayment of maintenance, nonfulfillment of the marital obligations and alternatively on the ground of *Khul'* as she expressed severe hatred against her husband and the spouses could not live together. On the other hand, her husband, Asif Jahangir also filed a cross suit for restitution of conjugal rights, which was dismissed by the Learned Judge Family Court after recording and analyzing all the facts and figures. Later it was also proved that ornaments which were given to her as Dower were snatched away from her. So according to the Learned Counsel Judge,³⁷ the dissolution of marriage on the ground of *Khul'* was granted to the woman without any consideration.

Same issue happened in *Waseem Ahmad Rathore v. Mst Fozia Raheem*,³⁸ when Mst. Fozia filed a suit for dissolution of marriage based on dissolution of marriage and the husband also filed a suit for restitution of conjugal rights, which was dismissed by the learned Court. In case of demanding *Khul'*, she must return the entire Dower amount. Furthermore, the ornaments weighing 17 tolas worth Rs. 3, 71,600/- were given to her in lieu of Dower. The Court decided that the wife

³⁵ PLD 2013 Peshawar, 12.

³⁶ 2015 SD, 290.

³⁷ Malik Muhammad Zaraat Khan.

³⁸ 2014 SD, 651.



would be granted dissolution of marriage on the condition of repayment of the entire Dower amount Rs. 3,71,600/- as consideration of dissolution of marriage.

k. Dower in case of Second Marriage and Recovery of Prompt Dower

In case of *Abdul Sattar vs Mst. Shagufta Bano*,³⁹ the respondent Mst. Shagufta Bano filed a suit for recovery of Prompt Dower amount Rs. 50,000/- cash and 50 tolas gold in shape of ornaments or according to its market value of Rs. 4, 50,000. The Learned Trial Court had decided the case in favor of respondent. The Learned Counsel contended that the petitioner had paid the whole Dower to the respondent and nothing remained. Counsel referred to the entries made at Columns no. 13 and 15 of *Nikāh nama* executed between the parties. Wherein Dower Rs. 50,000/- was mentioned in the entry against the Column no. 13 while Column no. 15 showed that the same was paid to respondent in the shape of gold ornaments.

It was also stated that the respondent was treated with cruelty for not being able to have children and the petitioner contracted the second marriage without prior permission of the respondent. Learned Counsel added that her total Dower as fixed was Rs. 50,000/- cash, 50 tola gold and a piece of land measuring 20 marla. Counsel referred to *Tamleek Nama* executed by petitioner in favour of Mst. Shagufta Bano. The petitioner again stated that he went to Saudi Arabia in 1995 along with the respondent to perform 'Umrah, where Mst. Shagufta Bano relinquished her Dower as gesture of gratitude. There was another stance by the petitioner that in 2003, the respondent torn *Holy Quran* and threw the pages on ground and against all this, the petitioner took *Fatawas* from scholars declaring the respondent infidel, due to which the marriage automatically dissolved with no liability of payment of Dower. His third stance was that he had paid the whole Dower in shape of gold ornaments weighing 50 tola.

When the Deferred Dower is paid at the time of any kind of worst circumstances between the parties then the Prompt Dower can be payable at the time of marriage. It was proved that the petitioner contracted the second marriage without the prior permission of his first wife and according to the section 6 (5) (a) MFLO 1961, he was bound to pay the entire Dower. The writ petition was dismissed.

l. Quantum of Dower in case of Non-Consummation of Marriage

There is sometimes confusion amongst people regarding the amount of Dower in case of non-consummation of marriage. There is a case of *Muhammad Akbar v Shazia Bibi*⁴⁰ where Mst. Shazia Bibi claimed her Dower but due to non-consummation of marriage, as *Rukhsati* had not taken place, she was not entitled to the full Dower. The two previous appeals arising out of these petitions may be fixed for hearing within three months. Till then the operation of impugned judgment remained suspended.

In the view of learned Advocate Supreme Court, it was proved that the marriage between these couples was not consummated, so according to Muhammadan law, she was only entitled to half of the settled Dower. The facts of this case were, that the marriage between Appellant and respondent was solemnized on 13-2-2004 but the *Rukhsati* never took place. Later, the Appellant filed a suit for declaration that

³⁹ 2014 CLC Peshawar, 15.

⁴⁰ PLD 2014 SC, 693.



he is owner in possession of the land measuring 99 Kanals in District Lodhran, regarding which the respondent Shazia Bibi illegally got sanction in her favor as Dower, which needed to be cancelled. On the other side, the respondent Mst. Shazia Bibi also filed a suit for recovery of her Dower in front of senior judge Court, Lodhran but the appeal was dismissed in both the learned Courts of Civil Judge and Additional District Judge. However, the respondent was entitled for the suit land conveyed in her favor in lieu of her Dower.

The learned Advocate Supreme Court for respondent decided that the Dower of Shazia Bibi was partly allowed, to the extent that her Dower is reduced to half of what was settled between the parties at the time of conclusion of their marriage. She would be entitled to retain 49 Kanals and 10 marlas of land from the total land measuring 99 Kanals, given to her by the Appellant in lieu of her Dower. If both the parties faced any difficulty in the division of the said land in two equal pieces in an equitable manner, then they may approach the Executing Court to resolve the issue.

m. Dower in Case when the Wife exercised Right of Delegated Divorce

A suit was brought before the Court by a wife against her husband in *Mst. Nadia Akhtar v Sajid Hussain Tanoli* case.⁴¹ According to the circumstances of the case, the behavior of husband compelled his wife to exercise her right of delegated divorce which was given to her in column 18 of *Nikāh nama* and she issued a notice of so on 16.8.2008. Since her husband had not paid the Dower yet so she claimed for recovery of Dower money equal to Rs.10 Lac. The husband argued that he had not given such right of divorce and she couldn't use that right as divorce because divorce is the only right of husband, so she cannot claim Dower. The copies of *Nikāh nama* were produced before the Court by both the parties which were same and the right of delegated divorce was given to the wife rightly according to Sharia, under column 18.

The Court decided the dispute with reference to the interpretation of the matter by Maulana Modudi in *Tafseer-ul-Quran* that the right of "*Tafweez of Talaq*" is delegated right, therefore it cannot be termed as Khul` by making wife liable to return the Dower. There is much difference between dissolution of marriage through court and delegated right of divorce. In Khul`, wife has to seek dissolution from the Court but in case of delegated divorce wife can repudiate marriage herself. Court made the husband liable to pay 10 Lac Dower money. Decree was granted in favor of wife.

n. Dower, in Case of Immoveable Property

In the suit titled, *Mst. Razia Begum vs Jang Baz*,⁴² 2 tolas gold and 5 marlas house was given as Dower at the time of the contract of marriage in 1987. No child was born out of the wedlock and the wife was divorced after twenty years in 2007. Wife claimed for recovery of Dower as gold and house along with the dowry articles. Husband argued that the possession of the house could not be handed over because it was joint property. The Court held that the possession of an immoveable property cannot be handed over then the present market value of the said land may be determined and the wife may be awarded with the said value. Husband was held

⁴¹ 2013 CLC, 1625.

⁴² CLC 2012, 105.



liable to pay 10 Lac as the market value of the house and 2 tolas gold along with the dowry articles mentioned in the list. Decree was awarded in favor of wife. Same question was settled in *Amjad Hussain vs Mst. Shagufta*,⁴³ *Mst Hussana vs Gulfrana*,⁴⁴ *Muhammad Sana Ullah vs Shamim Naz Kausar*⁴⁵ and *Masal Khan vs Mst. Shah Tarina*.⁴⁶

o. Dower is the Right of a Wife

It is a set principal of Islamic law that Dower is the right of wife and the husband is bound to pay her. In the case of *Tasleem Kausar v. Kh. Muhammad Ashraf*, the Appellant Mst. Tasleem Kausar had filed a suit for recovery of Dower amount Rs. 50,000/-. According to the remained with the respondent for three and a half years and during this time, the behavior of the husband was very harsh towards his wife and he used to beat her on very small matters. He also forced her to leave the house and snatched away the gold ornaments which were her Dower. Later on it was proved by the witnesses of both the sides that the ornaments were snatched away from the wife. So the Learned Court decided that Dower is the right of wife and the husband is bound to pay her. A decree for recovery of Dower amounting Rs. 50,000/- was issued in favor of the Appellant Mst. Tasleem Kausar.

As there are many issues that arise and the case laws are decided by the Courts regarding different issues of Dower. In this chapter, the researcher has discussed some of them like, the entries in *Nikāh nama* regarding Dower, property in lieu of Dower,

Dower in case of dissolution of marriage as dissolution of marriage and *Tafweed*, issues related to Prompt and Deferred Dower and the judgment of Court when Dower is an immoveable property etc. were discussed here by the researcher. So in these cases, sometimes judgment was in favor of males but in most of the cases, the decision was in favor of females (wives).

It appears that Islamic law of marriage and divorce is not identical to the man-made laws which are changed by man himself, moment after moment. It is evident that the position of man and woman in the social set up of the community, is equal in every respect, but keeping in view the mindset of both the genders, Islam segregates the rights, duties and functions of both the genders and then declares their status with regard to family matters. If it is asked that are men and women equal in Islamic way of life? There would not be a simple positive or negative way of answer, rather one must examine and inspect closely and thoroughly their respective rights, duties and functions. In other societies of the world, the state of affairs is not in correspondence to Islamic way of life. Those other societies always try to claim that man and woman are equal in every respect which is not a natural phenomenon. Marriage is itself an obligatory religious duty. Civil contracts do not involve any ideas of religious obligations. Dower is an essential incident and fundamental feature of marriage with the result that even if no Dower is fixed, the wife is entitled to some Dower from the husband. It is presumed by the contract itself even though it has not been fixed in the contract.

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⁴³ PLD 1996 Peshawar, 64.

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