

## MOHR IN BANGLADESH

### (FIXATION, EFFECTS AND RECOMMENDATIONS)

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### Abstract

Mohr is one of the main features of Islamic marriages. And, without which a Muslim marriage can't be solemnized. It is ordained that it should be given with a willing mood as a gift to that very female whom a person is going to marry. But most of the time, it is seen that this right of a woman is curtailed before or after the marriage. It is very obvious that sometimes the amount of Mohr is fixed whimsically by both the parties. Even, it is gauged beyond the means of the groom. It becomes a great problem when a marriage is ended with dissolution of marriage. The divorced wife never gets her proper right of Mohr without hurdle. It happens for several visible reasons. Most importantly, two factors that are very responsible for these are dower isn't prompt with the reasonable amount not beyond the affordability of the groom and the natural instinct to escape the liability and obligations to pay the actual amount. This is how the number of cases relating non-payment of dower is a burning question for our judicial system of Family Courts. I have tried to figure out the easier solution to this phenomenon. It will surely lessen the problems faced by the parties for the payment of dower mostly in case of dissolution of marriage. There are some recommendations to pave the way to the right of dower of a woman to be ensured.

**KEYWORDS:** Dower, Amount of dower, Fixation, Problems faced, Recommendation.

### **MOHR/MAHR/DOWER:**

There is no actual definition of Mohr or Dower in both Quran and Hadith. Mohr/Mahr/Dower is a token of love and honor to a woman from the husband. It is normally seen in regular marriages. It's an absolute portion of a wife having the exact ownership over it. It can be a sum of money or a property given by the husband as consideration of marriage. In pre-Islamic period, a sum of money was given to the parents of the wife called "Sadaqa" and "Sadaq" was the gift to the wife. "Sadaq" is approved in the approved in Islam. This is how it is both a obligatory consideration and a sign of respect in Muslim marriages.

### **WHY MOHR/DOWER:**

A marriage without Mohr is null and void.<sup>1</sup>Allah Almighty says, "And give the women (on marriage) their dower as an obligation".<sup>2</sup>Even the Prophet (PBUH) has been told, "O Prophet, We have made permissible for you the wives whose dower you have paid....".<sup>3</sup>It's a provision of Islam. On the other hand, it has to be given voluntarily. There is no certain of minimum or maximum amount of dower. Some of the secularist writers have tried to dishonor the provision of Mohr in Islam. They pointed their finger to Islam telling that Mohr is the price for the body of a woman; and this is the access of a male for his sexual pleasure. "How can you take it (Mahr) back after one of you has gone in unto the other. . . .?"<sup>4</sup> So Mohr cannot be a return from husband for the pleasures he enjoys. Their target is always the complete code of life, Islam. Being a sign of love towards the wife, Mohr is also a barrier for dissolution of marriage and the second marriage. Islam doesn't allow any man or woman to be alone when they are matured to get married. Even, after the dissolution of marriage, there is no difference of the amount of the Mohr in second marriage or third one.

There are three circumstances which make the payment of dower obligatory:

- (1) If the marriage is consummated, the full amount becomes obligatory to pay.
- (2) A widow gets her dower from the property when her husband dies. Here cohabitation is not a fact.

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<sup>1</sup>M. ThHoutsma (31 December 1987). *E.J. Brill's First Encyclopaedia of Islam, 1913-1936*. BRILL.137. ISBN 978-90-04-08265-6. Retrieved 21 February 2012.

<sup>2</sup>Al-Quran 4:4.

<sup>3</sup>Al-Quran 33:50

<sup>4</sup>Al-Quran 4:21.

(3) According to Imam Abu Hanifa and Imam Ahmad bin Hanbal, payment of dower is certain where the couple had full privacy (Valid Retirement). But Valid Retirement is not considered if the room is open to come and go for others.<sup>5</sup>

According to Imam Malik, if the parties agreed that there would be no Haqmahr then the nikah would not be valid. But according to Imams Abu Hanifa, Shafi'i and Ahmed the nikah would be valid, but the Haqmahr (Dower) would still remain an obligation. Muhammad (Sm.) made it obligatory saying, "pay Mohr to your wife even it is a ring made of iron."<sup>6</sup>

### III) HOW IS MOHR FIXED AT PRESENT?

It depends on the social position of the parties and the conditions of society in which they live. These days it is becoming a norm for a woman to demand very high dower and some of them stipulate that this amount should be paid only if they end up divorced. Other stipulate for the amount to be paid in installments during the marriage. Dower is fixed on various aspects of both bride and groom's conditions. Mostly the family status of the parties is considered as the main criteria for the fixation of the dower. There are other factors too, like age, beauty, virginity, modesty, education, the Mohr of the relatives or her elder sisters fixed on their wedding. But it is a matter of sorrow that the affordability of the groom is hardly considered in fixation. Even, the family and relatives of the girl want to establish an example regarding the amount of Mohr. Sometimes, the amount is set to debar a man to divorce. This is a mean practice. On the other hand, the provision of Islam is not thus met. In this regard, bride and groom are supposed to settle the amount. But the social norms and usages have compelled us not to do so. That is another problem. Dower is a sole right of the daughter not their parents or other relatives. Lack of dower in a marriage is termed as "Vacant marriage" and dower is a right of the daughter not the father.<sup>7</sup> Though The Prophet (peace and blessings of Allah be upon him) said: "The best of marriage is that which is made easiest."<sup>8</sup> And he (peace and blessings of Allah be upon him) said: "The best of Mohr is the simplest (or most affordable)."<sup>9</sup>

### IV) WHAT ARE THE MODES OF PAYMENT OF MOHR?

<sup>5</sup><http://www.cssforum.com.pk/166227-post18.html>. (Friday, January 29, 2010)

<sup>6</sup>Imdadia Library, trans., *MiskatulMasabih* (Dhaka: 1987), 257.

<sup>7</sup>Sheikh Mohammed Gemeaah, trans.; *The Status of Women in Islam* (Cairo, Egypt, Islamic Home of Publishing and Distribution, 1997).

<sup>8</sup>Narrated by Ibn Hibbaan, classed as saheeh by al-Albaani in *Saheeh al-Jaami'*, 3300.

<sup>9</sup>Narrated by al-Haakim and al-Bayhaqi, classed as saheeh by al-Albaani in *Saheeh al-Jaami'*, 3279.

In the registration form of marriage, there are 4 provisions for the amount and payment of Mohr. There are two types of methods for the payment of Mohr. Prompt and deferred are the ways.<sup>10</sup> Mu'ajjal(prompt) is paid immediately at the time of marriage and Mu'wajjal(deferred) is payable to the wife in the course of time or at the time of dissolution of marriage, death, happening of the specific events. It is very predominant that the total amount is scarcely paid to the wife. Our sisters are very flexible to the payment of Mohr. They always decrease the amount of Mohr fixed during their conjugal life. The remission of the Mahr by a wife called Hibe-e-Mahr. After the fixation of Mohr or after marriage a husband can only increase the amount. But remission can only be done by the wife. When the amount is fixed but not specifically prompt or deferred, the whole amount would be regarded as prompt. There is a provision, "where no details about the mode of payment of dower are specified in the Nikahnama, or the marriage contract, the entire amount of the dower shall be prescribed to be payable on demand."<sup>11</sup>

#### **V) HOW IS THE PAYMENT OF MOHR AFTER MARRIAGE?**

It is well established that Dower/Mohr is just a condition to write on the "Kabinnama". It is never been met by the husband. A wife also has the same view that they will never get the dower money. In existing socio-economic condition, at the time of marriage the jewelries given by the bridal party are counted in the amount of Dower/Mohr. This practice is very obvious not only in the rural areas but also among the big cities. A wife reduces the amount of Mohr or releases her husband from this duty. Men are very tricky in this regard. They stick to their wives for the decline of amount or relief. Though oral remission is not enough for the husband to prove that he is relieved from this duty, there must be two or more witnesses at the time of utterance. Dower, in most of the cases, is met at the dissolution of marriage through so much hardship and legal procedures. A woman can avail the right of dower within 3 years from the date of her divorce.<sup>12</sup>

#### **VI) WHAT ARE THE PROBLEMS FACED BY BOTH THE PARTIES?**

It is matter of sorrow that a study found 88% of the women doesn't get dower money in the metropolitan city of Dhaka. Rural areas are worse. Women don't get their dower money firstly for the non-registration of their marriages. Men fix lower amount of dower for an

<sup>10</sup> evsjv`k dig I cÖKvkbvAwd`migy`aYv`k bs-43/2012-2013 Zvwil t 20-03-2013|

<sup>11</sup> Section-10, The Muslim Family Laws Ordinance, 1961.

<sup>12</sup> Section: 103-104, Limitation Act, 1908.

access to divorce and remarry. Higher amount is never met by the husband side. Inability to pay a huge amount deters the man to divorce her and she remains suspended for years.<sup>13</sup> The Commission on Marriage and Family Laws which was established in 1955, states that if the amount is not mentioned whether it is prompt or differed, the total amount is prompt. "Usul" plays a vital role. The jewelry and ornaments given in a wedding ceremony are considered as prompt dower. In *Nasima Bilkis v. Md. Abdus Sarnad Khan*, the Family Court regarded ware and apparels as the Usul and further reduced the amount of dower after deducting the jewelry.<sup>14</sup> Women are forced to reduce the amount of dower at the night of the wedding. But, it has to be willingly by the wife. Even, the fixed amount is declined on the basis of non-consummation.<sup>15</sup> It is a rule that the Mohrana must not be set exceeding the affordability of the husband. It can also be met whenever the wife demands it. A wife is deprived of her dower money if she divorce. This is a big misconception. A woman may be pressurized by her husband to give "Khula" to avoid the payment of dower which he has to give when using Talaq. It frees the husband and entitles him to get back some consideration from the wife. Another way for avoiding dower is "Mubarat" which is done by mutual consent. Most importantly, the women of our country don't have proper knowledge of their rights and how to sue for dower.

## VII) WHAT CAN BE THE BEST WAY OF FIXATION AND PAYMENT OF MOHR AT PRESENT?

To make marriage easier for the average family, it should be kept at a reasonable level, not making it a matter of prestige and show-off, nor treating it as a deterrent to divorce. It should not be so excessive that the husband can never pay it and not too low considering their social status, standard of living and future earning power of the husband. The ruling of the Holy Prophet in this matter is: "A man, who marries a woman in return for an amount of money, but has the intention of never paying it, is in reality an adulterer."<sup>16</sup> There is no highest limit of dower from a hadith of Omar (R.).<sup>17</sup> Reduction of Dower should not be done in any case.<sup>18</sup> There must be consent of the girl for the fixation the amount of dower. For the best use of the doctrine of Dower, the total amount must be paid immediately after the marriage. Our women are still not well equipped. As a result, the suit for recovery of dower money must not lengthen. When a husband dies, a widow will get his portion of dower out of the property of her deceased husband. This provision is to be incorporated in Family Courts Ordinance, 1985. Deferred dower must be stated in regular stamp paper. Imams and Chairmen must come forward to making people out about dower. These can also be added in the primary and secondary level of education.

<sup>13</sup>Maulana Sayyid Abul A'la Maudoodi, *The Rights and Duties of Spouses* (English Version of Urdu "Huqooquzzaujein"), 152.

<sup>14</sup>Family Suit No. 12 of 1992 (Unreported), as cited by Taslima Monsoor, *ibid*, 205.

<sup>15</sup>*Margubater Rouf v. A.T.M. Zahurul Haq Khan*, Family Suit No. 1 of 1992 and Family Suit No. 3 of 1992.

<sup>16</sup>Maudoodi, 152.

<sup>17</sup><http://ayubhamid.com/q-a-a/568-dower-vs-mahr>, accessed March 30, 2017.

<sup>18</sup>Mst. Meherunnahar vs Rahman Khondakar (Family Suit No. 24 of 1987 unreported).

**VII) CONCLUSION:**

Dower is a duty. It has to be made according to the means of the payer. Whim does not give any fruit to this system. Both the parties are given the chance to talk over it. Whole amount must be paid immediately after the completion of wedding procedure. Dower money will be available to the widow after the death of her husband. Suits and length must not be stretched. This is how the right to dower will be established firmly and predominantly.

