

# RULES OF DOWER IN ISLAM AND AN ANALYSIS OF PAYMENT SYSTEM IN SOCIETY: BANGLADESH PERSPECTIVE

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<https://doi.org/10.55327/jaash.v11i2.403>

(Received: 1 June 2025; Accepted: 25 July 2025; Published: 20 August 2025)

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## **Keywords:**

*Dower; the Qur'an; the  
Sunnah; Islam;  
Bangladesh;*

## **ABSTRACT**

Dower is undoubtedly a significant subject matter for the Muslim society. It is a sum of money or property on which the wife is entitled to receive from her husband in consideration of their marriage. Islam has maintained a balance in the society between men and women by giving its unequivocal endorsement to a practical division of responsibilities, whereby women are placed in charge of the domestic management of the household, while men are responsible for the maintenance of its victuals and livelihood in a matrimonial family. In this article, an investigation of the real problems for the recovery of dower and recommendations have been highlighted to make awareness between men and women in the practice of discharging their respective religious, legal and social responsibilities in regards of dower.

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## INTRODUCTION

The Dower is meant to offer the bride a financial security within and after the marriage. It is a divine order by the Almighty Allah. The giving of Dower to the bride is an important and mandatory part of marriage. In Islam, the amount of Dower is not legally specified, however, a moderation in tandem with the existing social model is strongly recommended. According to the Islamic rules, the Dower may be paid earlier to the bride as soon as possible at the time of marriage or deferred to a later date or a compromise of both. At the time of marriage, Allah says:

“And give to the women (whom you marry) their Dower (obligatory bridal money given by the husband to his wife at the time of marriage) with a good heart, but if they, of their own good pleasure, remit any part of it to you, take it, and enjoy it without fear of any harm (as Allah has made it lawful)”

And a marriage ceremony means that one nuptial party proposes the ‘Ijab’(offer) willing consent to enter into marriage and the other party expresses ‘Qabul’ (acceptance) of the responsibility at the time of marriage ceremony. Mahr (Arabic word) is translated in English as dower or marriage portion. It is one of the incidents of Nikah or marriage. In pre-Islamic period the term mahr was used to signify gifts (Sadaka) given to the parents of the wife but sadaqa was a gift to the wife. Islam approved sadaqa or Mahr to be paid to the wife in case of regular marriage. Mahr is a real settlement in favour of the wife, a provision for a rainy day and socially, a check on the capricious exercise by the husband of his almost unlimited power to divorce. The term Mahr has neither been defined in the Al- Quran nor in the Hadith. But the jurists, scholars and judges have defined it in their own language. Tyabji defined Mahr or dower as a sum that becomes payable by the husband to the wife on marriage, either by agreement between the parties, or by operation of law. D.F Mullah defined it, Mahr or dower is a sum of money or other property which the wife entitled to receive from the husband in consideration of the marriage.

## LITERATURE REVIEW

The article "**Rules of Dower in Islam and Obstacles for Its Recovery: Bangladesh Perspective**" provides a comprehensive analysis of the concept, significance, and legal framework of dower (Mahr) under Islamic law, particularly in Bangladesh. It draws upon both primary and secondary sources to build its arguments. The primary sources include **the Qur'an, Hadith, and case laws**, which form the foundation of Islamic jurisprudence on dower. The article extensively cites Qur'anic verses, such as **Qur'an 4:4**, which emphasizes that dower is a divine obligation, and **Qur'an 60:10**, which highlights the importance of ensuring women's

financial security in marriage. Additionally, various Hadiths reinforce the Prophet Muhammad's (SAW) guidance on setting reasonable dower amounts and ensuring fairness in its payment. The article also references case laws from Islamic jurisprudence, demonstrating how courts interpret and enforce dower-related disputes. Alongside these, secondary sources, including scholarly works by **Asaf A.A. Fyzee, Faiz Badruddin Tyabji, and D.F. Mullah**, provide historical, comparative, and analytical perspectives on the evolution of dower in Muslim societies. These sources contribute to a deeper understanding of the legal and social implications of dower, particularly in Bangladesh, where challenges in enforcing dower rights persist due to socio-cultural and legal barriers.

### **OBJECTIVES AND METHODOLOGY**

#### **Objectives of the Study:**

The objectives of the research are as follows:

- (i) To highlight and analyze the actual meaning of dower and rules among the Muslim Society.
- (ii) To identify and enumerate the dower rights guaranteed to Muslim women according to textual sources (Quran and Sunnah).
- (iii) To identify and analyze the impediments for the recovery of dower in the context of Bangladesh.
- (iv) Have tried to give necessary solutions for ensuring women's right of dower.

#### **Methodology of the Research:**

The method approaches used are conceptual and analytical approach. The researchers focused on reading, understanding, and studying the primary and secondary legal materials such as articles, classical and modern books, newspapers, and websites. Along with this, dower related verses of Holy Quran and Sunnah are referred to in this research. The researchers observe dower related case laws of Muslim society of different countries. The researchers show in this paper how a married Muslim woman can recover her unpaid dower according to the Quran, Hadith and Statutory Law.

### **DOWNER IN THE HOLY QURAN**

Allah (SWT) has given a full right of a Dower to a woman as mentioned in the Qur'an. The following verses from the Holy Qur'an will, God willing, enable us to understand the word Dower as per Allah's laws. The relevant words have been highlighted for emphasis.

“O you who believers! When believing women ask for asylum with you, you shall test them. Allah is fully aware of their belief. Once established that they are believers, you shall not return them to the disbelievers. They are not lawful to remain married to them, nor shall the disbelievers be allowed to marry them. Give back the Dower (dowries) that the disbelievers have paid to them. You commit no error by marrying them, so long as you pay them their due dowries.”

Allah (SWT) says, so, you shall obtain permission from their guardians before you marry them, and pay them their due Dower (dowries) equitably. Dower only for the bride, Allah (SWT) says,

“So, you give them their bridal due (as) on obligation. And (there is) no sin on you concerning what you mutually agree of it (dowry) from beyond the obligation. Indeed, Allah is All-knowing, All-Wise.”

Allah (SWT) has given permission to sexual intercourses with each other by giving the mahr.

“O you who believers, when believing women (abandon the enemy and) ask for asylum with you, you shall test them. Allah is fully aware of their belief. Once you establish that they are believers, you shall not return them to the disbelievers. They are not lawful to remain married to the disbelievers, nor shall the disbelievers be allowed to marry them. Give back the dowries that the disbelievers have paid. You commit no error by marrying them, so long as you pay them their due dowries. Do not keep disbelieving wives (if they wish to join the enemy). You may ask them for the dowry you had paid, and they may ask for what they paid. This is Allah's rule; He rules among you. Allah is Omniscient, Most Wise.”

If you divorce the wife before touching her, what is the situation of the mahr, Allah (SWT) says,

“If you divorce them before touching them, but after you had set the dowry for them, the compensation shall be half the mahr, unless they voluntarily forfeit their rights, or the party responsible for causing the divorce chooses to forfeit the dowry. To forfeit is closer to righteousness. You shall maintain the amicable relations among you. Allah is Seer of everything you do.” The question of mahr after the divorce, Allah (SWT) says,

Divorce may be retracted twice. The divorced woman shall be allowed to live in the same home amicably, or leave it amicably. It is not lawful for the husband to take back anything he had given her. However, the couple may fear that they may transgress Allah's law. If there is fear that they may transgress Allah's law, they commit no error if the wife willingly gives back whatever she chooses. These are Allah's laws; do not transgress them. Those who transgress Allah's laws are the unjust.”

To show the significance of mahr, Allah (SWT) says,

“I wish to offer one of my two daughters for you to marry, in return for working for me for eight pilgrimages; if you make them ten, it will be voluntary on your part. I do not wish to make this matter too difficult for you. You will find me, Allah willing, righteous.” In the event of marrying another wife in addition to the present wife, how the mahr should be given, Allah (SWT) says

“If you wish to marry another wife, in place of your present wife, and you had given any of them a great deal, you shall not take back anything you had given her. Would you take it fraudulently, maliciously, and sinfully?”

### **DOWER IN THE SUNNAH**

The Dower (Mahr), according to the pre-Islamic customs, was to be paid to the father or guardian of the bride (wife), the action of which amounted to a sale, but in Islam, the dower becomes payable only to the bride and the idea of sale disappeared.” The Prophet (PUH) set the highest examples of all good principles for his ummah in that regard, so that a clear understanding of the basic principles would be implanted in the society, and the spirit of simplicity in applying them would spread among the people. Our beloved Prophet (PUH) has explained the full right to the woman in Sunnah. The following speech from the Hadiths will, Allah willing, enable us to understand the word mahr as per Shari’ah’s laws. The relevant words have been highlighted for emphasis: In the hadith of ‘Uqbaibn ‘Aamir (RA.), the Prophet (PUH) said:

“The best dowry for woman is that which is easy and he (PUH) said; the best of mahrs is the simplest (or most affordable).” Once a woman offered herself to the Prophet (PUH) for marriage. However, one of his Companions desired to marry her, thus, the Prophet (PUH) said regarding the mahr: Bring something, even if it be an iron ring. When he could not find even this, the Prophet (PUH) then married her for the dowry so that the man, from this example, would teach other believers’ whatever concept of the dowry in the Qur’an that he knew. Narrated from Abdullah Ibn Abbas (RA.) what Hazrat Ali (RA) said; I married Fatima (RA) and said ‘O messenger of Allah, let me go ahead with the marriage. He said; ‘Give her something,’ I said; ‘I do not have anything.’” He said; ‘Where is your Hutami shield? I have it with me. ‘He said, give it to her.

This reinforces the fact that in Islam, the mahr is not something that is sought for its own sake. Ibn Mazah narrated that ‘Umar Ibn al-khattab said; “Do not go to extremes with regard to the dowries of a woman, for if that were a sign of honour and dignity in this world or a sign of piety before Allah, then Mohammad (PUH) would have done that before you. But he did not give any of his wives, and none of his daughters were given, more than twelve uqiyah. A man may increase the dowry until he feels resentment against her and says, "You cost me everything I own, and caused me a great deal of hardship.”

Whoever thinks of increasing his daughter’s mahr and asking for more than the daughters of the messenger of Allah were given when they were the best women in this world in all aspects – then he is an ignorant fool. This applies even if one is well off and can afford it. With regard to one who is poor, he should not give a mahr greater than he can afford to pay without any hardship.

### **TYPES OF MAHR /DOWER**

Jurists divide Mahr into two kinds:

#### **Specified dower**

Usually, Mahr is fixed at the time of marriage and the Kazi performing the ceremony enters the amount in the register; or else there may be a regular contract called Kabin- nama, with numerous conditions. If the amount of

dower is stated in the marriage contract, is called the specified dower. The amount of dower may be fixed by the parties to the marriage either before the marriage or at the time of marriage or even after the marriage. If a marriage of a minor or lunatic boy is contracted by a guardian, such guardian can fix the amount of dower. Dower fixed by the guardian is binding on the minor boy and he cannot on attaining the age of puberty take the plea that he was not party to it. Even after the marriage of such minor or lunatic boy, the guardian can settle the amount of dower, provided that at the time of settlement of dower, the boy is still minor or lunatic.

The specified dower has been further divided into-

**(A) Prompt dower/ Muwajjal:**

Prompt dower is one which is payable on demand. Prompt dower may be considered a debt always due and demandable and payable upon demand. Under Muslim law wife is entitled to refuse herself to her husband until and unless the prompt is paid and also can take legal action. As the Holy Qur'an and Hadith of Allah Apostle (Sm) prescribe for giving dower, the court has no right to reduce the prompt dower unless the wife remits it voluntarily. (Jesmin Sultana v. Md. Elias 2 BLC 233)

**(B) Deferred dower/Muajjal:**

Deferred dower is one which is payable on dissolution of marriage by death or divorce. If by divorce it may be realized by compromise or suing in the Family Court. If by death deferred dower can be acquired from her husband's estate by compromise or by suing in the Family Court.

Where it is not settled at the time of marriage whether the dower is to be prompt or deferred, then according to the Shia Law the rule is to regard the whole as prompt but according to the Sunni Law the rule is to regard part as prompt and part as deferred, the proportion referable to each class being regulated by custom, and in the absence of custom by the status of the parties and the amount of the dower settled. So, before 1961(MFLO) if dower was unspecified 50% was regarded as prompt and the other 50% was regarded as deferred. But according to section 10 under Muslim Family Laws Ordinance, 1961 if no detail mode of dower is specified in the Nikahnama, entire amount of dower becomes prompt.

**UNSPECIFIED DOWER/MAHR-AL-MISL**

If the amount of dower was not fixed at the time of marriage or later on, the wife is entitled to proper dower, though the marriage was contracted on the condition that the wife cannot claim any dower. Proper dower varies according to the social position of the woman's family, the wealth of the husband, her own personal qualifications and circumstances of time and social conditions surrounding her. According to Hedaya, a renowned book on Islamic law, proper dower is to be determined depending on the personal qualifications of the wife like her age, beauty, fortune, understanding and virtue. The amount of dower fixed of other female

members of the wife's family, like her sister and paternal aunts is also to be considered. Above all, social position and economic capacity should be taken into consideration at the time of determining proper dower. Factors to be considered for the determination of proper dower are summarized:

- (i) The personal qualifications of the wife –beauty, virginity, personality, age, education and health.
- (ii) The status of her family.
- (iii) The amount of Mahr settled upon the female members of her father's family like her sister and paternal aunts.
- (iv) The financial capacity of the husband.

### **AMOUNT OF DOWER**

According to Hanafi Law, the lowest minimum amount of dower is ten dirhams. But there is no upper limit and the husband may settle an amount in accordance with his means. Under Shia law, there is no lowest or highest limit of dower. It can be fixed by mutual consent. According to Malaki Law, the lowest minimum amount of dower is three dirhams. Shia, Shariya and Shafi law determine no fixed amount. In Bangladesh, the amount of dower is sometimes fixed at a higher rate in consideration of the fact that the husband will not divorce his wife for fear of payment of dower. Besides, the husband takes, in most of the cases, dowry from the wife or wife's side, though taking and giving of dowry is prohibited by the Dowry Prohibition Act 1980. Fixation of higher amount of dower beyond the capacity of the husband is in violation to the provision of Holy Quran. The dower is a debt which is to be paid irrespective of its amount, big or small. The husband remains accountable for non-payment of mahr. So, it is to be fixed in such an amount which can be paid by the husband easily and comfortably.

Dower, once fixed, can be increased by the husband and decreased by the wife. A wife who has attained the age of majority and full understanding can only make the reduction. There shall be written instrument for the validity of such remission. No coercive force can be applied by the husband for decreasing the amount of dower.

### **MODES OF PAYMENT OF DOWER**

This may be divided into two-

- (1) In case of consummated marriage, they belong three conditions. These are:

- (i) Where the amount of the dower had been fixed by agreement, and the marriage has been consummated or either party has died –the whole of the dower is payable to the wife.
- (ii) Where the dower is unspecified, and if the marriage has been consummated or either party has died, the wife is entitled to proper dower.
- (iii) Where the marriage is irregular and it had been unconsummated but dissolved by death of the party, then the wife is entitled to specified or proper dower whichever is less.

(2) Where the wife is divorced by the husband without consummation or valid retirement, the wife is entitled to receive:

- (i) Half of the specified dower, or
- (ii) A present of three articles of dress or of their value.

If the divorce is given by the wife then she is not entitled to any dower.

The wife may file a suit for recovery of unpaid dower. as per the articles 103 and 104 of schedule 1 to the limitation act, 1908, the period of limitation for filing a suit for recovery of dower is three years from the date of cause of action.

This could be classified as follows:

- (i) In the case of prompt dower, the cause of action accrues when the dower was demanded and refused, or if no such demand is made during the continuance of marriage, when the marriage was dissolved by death or divorce. So, from the date of refusal or divorce or death, the suit should be lodged within three years.
- (ii) In the case of deferred dower, the cause of action arises, when the marriage was dissolved by death or divorce. So, from the date of divorce or death the suit should be lodged within three years.

### **PROBLEMS FACED BY WOMEN IN RECOVERING DOWER IN PRACTICE**

Though we have legal instruments concerning dower and recovery of it, still it is noticeable that women are being deprived of their right of dower. It was found in a study of the metropolitan city of Dhaka that 88% of Muslim wives did not receive any dower at all. If this is the situation in the capital city, one can imagine an alarming situation in the rural remote areas. Why are women not receiving their legal right of dower? To inquire into this one has to probe into the causes for not giving dower.

Firstly, though Registration of Marriage is mandatory according to *the Muslim Marriages and Divorces (Registraton) Act, 1974* in our country but still this is not strictly followed in many villages. The reasons behind this are sometimes lack of awareness and sometimes a hidden intention to deprive the bride from legal or religious right. Consequently, there exist no Kabinnama of the marriage and it is natural that it will not be possible to trace the amount of dower of the marriage unless it is testified by the witnesses. Absence of Kabinnama is a major cause for the deprivation of the women's right of dower in Bangladesh.

Secondly, where the Kabinnama is prepared in accordance with law, it is noticeable that there exists a tendency with the groom's part to fix a lower amount as dower money. This is done to make their way easy to divorce the wife or to remarry.

Thirdly, sometimes, a higher amount of dower is fixed by the parties to show off their status but without having any real intention to pay it. But this should not be encouraged by the courts by reducing the amount of dower in the pretext that the husband does not have the present ability to pay it.

Fourthly, sometimes it is not mentioned in the Kabinnama specifically that what portion is prompt and what portion is deferred. The Commission on Marriage and Family Laws which was established in 1955 and its recommendations were accepted in a diluted form and the Muslim Family Laws Ordinance (MFLO) was promulgated in 1961.

As to the section 10 of the Muslim Family Laws Ordinance 1961, where no details about the mode of payment of dower are specified in the nikah nama, or the marriage contract, the entire amount of the dower shall be prescribed to be payable on demand. However, lack of awareness and ignorance of law deprive women from their legal right.

Fifthly, it is significant that this imposed tradition to waive dower in the wedding night is another customary practice forced on women to deprive them of their right of dower. Under Islamic law, a wife can forego or gift her dower which is known as *hiba al-mahr*. Under Islamic law the wife making the remission must act freely and must not be influenced. In a case in Pakistan, it was held that if the wife remits her dower just to retain the affection of the husband, she is not allowed to forego her dower. We could not find any reported or unreported case of this kind in Bangladesh.

Sixthly, the wife may remit the dower wholly or partially in favour of her husband or his heirs. A Muslim girl who has attained puberty is competent to relinquish her Mahr although she may not have attained majority (18 years) within *the Bangladesh Majority Act*. The remission of the Mahr by a wife called Hibe-e-Mahr. But the remission made by the wife, should be with free consent. It was held in the case of *Nurunnessa v. Khaje Mahomed* that where the wife was subject to the mental distress, on account of her husband's death the remission of dower, was considered as against her consent and not binding on her.

Seventh, it is believed in our society that if the marriage is dissolved by exercising the right of talaq by the husband only then the wife is entitled to the full amount of dower and Iddat money. In practice, this is rarely observed. But there is a misconception that if a marriage is dissolved by the wife by exercise of talaq-e-tafweed then the wife will be deprived from the dower money. But actually, the wife is entitled to the dower money as she has exercised the delegated power which was conferred on her by her husband.

Eighth, the women's right of dower is curtailed by turning a talaq case into khula. Dissolution of marriage by khula is defined as an agreement between the parties to dissolve the marriage by the wife's foregoing of dower. In khula cases women are sacrificing their right of dower in exchange for a divorce. Moreover, from the practical point of view, a woman may be pressurized by her cruelty of husband to give khula to avoid the payment of dower which he has to give when using talaq. Thus, the dissolution of marriage by khula potentially operates against women as it deprives them of their right of dower for their freedom from an undesirable marriage.

### SUGGESTIONS

In the previous chapter, we have elaborately discussed the problems in recovering dower money by the women in Bangladesh. From there it is clear that 90% of Muslim wives do not receive any dower at all in the metropolitan city of Dhaka so we can understand the real situation of rural area. In rural area women are not well educated. So, they are not concern about their rights. Social awareness regarding women's right of dower should be ensured by inserting basis concepts of dower in the syllabus of primary or secondary education. Duties should be given to the Imams of mosques or to the Chairman of Union Parishad to aware the local people about women's right of dower.

Sometimes the women are bound to relinquish or do not claim their rights because of their social prestige, lack of power and lack of social support in a male dominated society. Women will have to be brave and free from shyness because it is their right conferred by *the Quran* itself.

In rural areas many marriages are taking place without Kabinnama, or in the kabinnama it is not mentioned about what portion is prompt or what portion is deferred, or where the amount of dower is mentioned there is a tendency to keep less amount as dower money or women's right of exercising the right of Talaq-e-Tafweed are curtailed or conferred on condition that in such a case she will have to waive her right of dower. In these way women are being deprived and subordinated by the patriarchal family and in the wider socio-religious arena. So, it will have to be observed very minutely by the bride's part at the time of marriage that whether the right of Talaq-e-Tafweed has been delegated by the husband unconditionally or will have to be aware about the conditions, if any. Because by having such a right the wife could be provided separate maintenance and residence if the contingencies of polygamy or cruelty arise. This would resolve many of the problems for deserted women when the husband marries again or she is to suffer the agony of difficulties of living with a co-wife.

It is not enough to make marriage registration mandatory rather monitoring cell should be constructed for ensuring registration of marriage. Moreover, enquiry should be effective as to what portion of dower money has been really paid by the groom's part and what has been stated in the kabinnama, both at the time of marriage and at the time of dissolution of marriage. Again, there exists a recent custom of taking dower as a status-enhancing device, which is to stipulate huge amounts of dower without any real intention to pay this. Under Islamic law there is a concept of *assummat*, where a large amount of dower may be announced in public, whereas privately the parties agree to a smaller amount. This should not be encouraged. Whatever amount has been stated in the kabinnama as dower money will have to be paid by the husband and in no circumstances the court should reduce the amount.

We know that if the dower is not paid, the wife and after her death, her heirs may sue for it. The period of limitation, according to *Article 113 of the Limitation Act*, for a suit to recover prompt dower is three years from

the date when the dower is demanded and refused; or where the marriage is dissolved by death or divorce. In case of deferred dower, the period of limitation is three years, from the date when the marriage is dissolved by death or divorce. Where, however, prompt dower has not been fixed, a demand and refusal is not a condition precedent for filling a suit for its recovery.

Here sometimes in practice it is noticeable that neither the wife has any knowledge about her right of dower nor she knows any information about the legal mechanism of getting it. Sometimes she is bringing an action after expiry of the time limitation for dower money and for that she never gets dower money. So, women should be more aware about her right of dower and it is the responsibility of the government, NGOs and civil society to disseminate the knowledge of dower.

Legal aid services should be more accessible to the women so that they can bring their action within the proper time.

### CONCLUDING REMARKS

Under the Muslim Law, dower is an important part of marriage. The custom of giving dower was come from pre-Islamic time. *The Quran* and Sunna say that, dower must be given at the time of marriage and the statutes of Bangladesh also confirm it. Cautions of the Prophet (SAW) has stated: “Surely Allah will forgive any sin on the Day of Judgment save the sin of one who misappropriates the mahr of a woman or the wages of hired person, or who sells a free person (as a slave)”. We have tried to give necessary solutions for ensuring women’s right of dower in the male dominated society. If we want to overcome these problems and want to establish women’s right in the society with dignity then women and men all have to be more conscious and aware about the women’s right of dower under shariah and statutory laws of Bangladesh and we all have to extend our hands for the women to ensure their right of whole amount of dower money.

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