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MAHR IN INDIA

AUTHORED BY - MOHD. YASIN¹

Introduction

Under Muslim Law, Mehr/Mahr means money or property which the wife is entitled to receive from the husband in consideration of the marriage but this consideration is not the same as the civil contract. Mehr gives from the husband to the wife as a sign of respect and provide wife for her subsistence after the dissolution of the marriage. Mahr is often money, it can also be anything agreed upon by the bride such as jewellery, home goods, a camel, furniture, a dwelling or some land. Under Section 125 of The Code of Criminal Procedure²,1973, It is also considered while fixing the amount of maintenance.

Mahr is typically specified in the marriage contract signed during a marriage. It has to be given to the wife however she is vested with the discretion to remit it. It need not be given back even after divorce and it becomes the property of wife in perpetuity. Payment of Mahr is mandatory even if marriage is not consummated. But, if the marriage is not consummated, then the Mahr is half of the amount fixed. The husband may at any time increase the dower and the wife may remit the dower wholly or partly. The remission of the Mahr by the wife is called as Hibatul Mahr or Hiba-I-Mahr.³

Types Of Mahr

- **Specified dower (mahrul-musamma):** It is fixed at the time of marriage but is also fixed after the marriage.
- **Unspecified dower (mahrul missal):** if no Mahr is fixed the wife will be entitled to receive the amount which is customary in the community or the respective society or what

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² §125 Order for maintenance of wives, children and parents.—(1) If any person having sufficient means neglects or refuses to maintain— (a) his wife, unable to maintain herself, or (b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or (c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or (d) his father or mother, unable to maintain himself or herself.

³ Carroll, L. (1985). MAHR AND MUSLIM DIVORCEE'S RIGHT TO MAINTENANCE. *Journal of the Indian Law Institute*, 27(3), 487–495. <http://www.jstor.org/stable/43952254> (Accessed: 02 January 2024).

is proper in each individual case i.e., concerning the social position of her father's family, her personal qualifications, social position of the husband, Mahr fixed earlier in the family, etc.

- **Prompt (muajjal) and deferred (muvajjal) Mahr:** the prompt dower is payable immediately after the marriage but the deferred dower becomes payable either on the dissolution of the marriage or the happening of a specified event. Usually, one half of the amount is prompt and paid after the marriage, while the other half is paid on the dissolution of the marriage.

Right of Dower to the Wife

- **Widows right of retention**

A widow whose dower remains unpaid has a right to retain certain properties of the husband till her dower debt is satisfied. This is known as the right of retention in place of unpaid dower and is available to a widow, whether there is an agreement between the parties for this right or not. If a wife has taken possession of her husband's properties lawfully (with free consent of the husband) instead of unpaid dower, then she is entitled to retain that possession after the death of her husband, until her dower is paid out of the properties retained by her.

This right can be exercised against the creditor of her deceased husband, if any, and his legal heirs. The legal heirs cannot get possession (and benefit) of the properties of the deceased until they make payments towards unpaid dower in proportion of their respective shares. Thus this may be said to be a corrective method of recovery of unpaid dower from the husband's legal heirs.

- **Enforcement of dower as debt**

Where the marriage has been consummated, the wife can recover her unpaid dower by maintaining an action in a court of law. She may realize it from her husband, in the same manner, as a creditor recovers his loan. If the husband dies, the widow is entitled to recover the amount by filing a suit against the legal heirs of the deceased husband. The legal heir's of the husband are not personally liable to pay the dower. The dower is a debt against the estate of the deceased husband which is inherited by the heirs.

- **Refusal of conjugal rights**

Before the consummation of marriage, the wife is entitled to deny cohabitation to the husband till he gives her prompt dower on demand. Under Muslim law, a husband has the right to cohabit with his wife and she cannot refuse the same without any reasonable excuse. Non-payment of prompt dower before consummation is a lawful justification by the wife to refuse cohabitation. In *Rizwan Ali Khan v. Nazma Siddiqui*⁴ Hon'ble Allahabad High Court held that the right to dower comes into existence before cohabitation and prompt dower may be demanded even before the cohabitation. If the wife is minor or insane, the guardian can refuse the husband to take the wife till the prompt dower has been paid. If the minor or insane wife is already with the husband then the guardian can take the wife away on the grounds of non-payment of dower. Where the consummation has taken place even once, the wife's right to refuse consummation is lost and the husband's suit for restitution of conjugal right will not fail on the ground of non-payment of prompt dower.

In the case of *Anis Begus v. Muhammad Istafa Wali Khan*⁵, the wife and husband lived together for some time and a daughter was born to them. Later on, the wife left the husband's house and refused to come back till the payment of prompt dower. When the husband claimed for restitution of conjugal rights, the court held that the husband's right to claim conjugal rights was not absolute. The courts have the discretion to make the decree of restitution of conjugal rights conditional on payment of wife's unpaid prompt dower, even when the marriage has already been consummated.

Conclusion

At one factor dower is taken into consideration useful for girls because it gives safety at the time of marriage. The Haq mahr is exclusive of the wife no relatives and not even the mother and father of the wife has any right over the Haq mahr. The Quran mentions an extraordinary purpose for giving Haq Mahr to a wife – It states that it is paid as a present to a woman who leaves the security of her home and family and is risking adjusting and staying in a strange set-up. It is an obligation on all Muslim husbands and nobody is exempted from paying mahr to their wife. Indeed, the reality is that in reality this legal cum nonsecular requirement has been made a mockery of, where the amount constant is too petty. In India, there are numerous such Muslim

⁴ S.A. (2009) ALL 1122

⁵ AIR (1933) ALL 634

marriages solemnized in which the dower fixed at the time of marriage while signing the nikah nama is simply barely “1 Rupee” so that in the end there might be no need for the husband to pay the dower. Also, at times the amount of dower is astonishingly constant so high that they're not able to pay.

