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# Dower: Legal Obligation or Rightful Demand

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## ABSTRACT

*Islam makes payment of Mahr as obligatory and rightful demand of Muslim women from her husband. It is wholly immaterial whether the amount of Mahr is mentioned in the marriage certificate or not. It is to be compulsorily honored by the husband as the mark of respect and reverence for his wife. The main objective of Mahr is to provide protection to the wife against the hasty and arbitrary practice of pronouncing divorce by the husband. Mahr is revolutionary right adopted by the Islamic law and provided to the Muslim women which vests her with the property rights. However, social practices vary and differ to the large extent from the provisions of law which further coupled hardships on Muslim women social position. The research paper discusses the concept of Mahr and elucidates whether payment of Mahr is legal obligation on the part of husband or rightful demand of women. It seeks to explore different aspects of Mahr in reference to balancing the argument between rightful demand of Muslim women and obligation on part of her husband and what are various rights under which women can claim the amount of Mahr and other entitlements.*

**Keywords:** Dower, Obligation, Maintenance, Consummation, Privacy.

## I. INTRODUCTION

Muslim Women empowerment is a worldwide movement that brought substantial changes in the socio-legal aspects pertaining to it. In accordance to this movement, the role of the primitive institution is being redefined and new institutions are being setup to support the modification in order to upheave empowerment of women.<sup>3</sup>The concept of Mahr is among one of the important aspect in the Islamic law which is directly related with empowerment of Muslim women and till now regulated by traditional and classical principles under Islamic law. However, the institution of Mahr is now subject to modern legislation, in order to grant

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<sup>3</sup>Vangalar Vinder, Dr. G. Shailaja, *Women literacy in India after independence: A study on debatable affinities and divergences*, 3(2) HRIRJ,125, 125-129, (2015).

certainty to law on it and to bring it under common perspective.<sup>4</sup>

Mahr or dower can be defined as amount of sum or any other thing of value, without any higher limit, which becomes due to Muslim women by her husband as a token of respect symbolizing his love and sincerity for her. The payment of money or other thing of value manifests comprehensive measure of Islamic religion to transfer property rights on the women so they can hold ownership and also ensured equal marital status among them.<sup>5</sup> In the same parlance, it ensured equal legal position to the Muslim women to that of men in concluding the marital relationship. Under such principles, is the institution of marriage termed as “nikah” (solemn marriage) and “Mahr” (gift) which tends to seek cooperative role among Muslim couples from each other as well as in the larger social and community sphere.<sup>6</sup>

Undoubtedly, Mahr is similar to amount of auction, however from the advent of Islamic religion, it is mostly incorrect to consider it like amount for sensual dealings.<sup>7</sup> Islamic marriage exists similar to an agreement wherein female spouse is like a material and Mahr exists as amount or deliberation. But this is also authentic that not paying amount of Mahr at time of marriage won't lead the matrimony to stand null. Therefore, Mahr cannot be said as a pure contractual deliberation.<sup>8</sup> This is because mutual relation is established as soon as the contract to marriage is complete. On the same parlance, contract of marriage provides new recognition and status to both the parties to marriage. This status is not only social and legal but more importantly a sexual status, since it legalizes sexual intercourse between the married couples, which constitutes one of the basic aspects of marriage. Therefore, It can be interpreted that the amount of Mahr is both legal obligation as well as the rightful demand, depending upon the perspective from which it is looked upon.<sup>9</sup>

### **(A) Background of the study**

The research paper mainly discusses the concept of “Mahr” under Islamic law and whether it is rightful demand or obligation which needs to be obliged. It has been elucidated how the right to Mahr of women remains intact irrespective of whether the amount of Mahr is mentioned or not during the contract of marriage. Different aspects of Mahr in reference to balancing the argument between rightful demand of Muslim women and obligation on part of her husband

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<sup>4</sup> Lucy Carroll, *Mahr and Muslim divorcee's right to maintenance*, 2(1) JILI, 489, (1985).

<sup>5</sup>*Id.*, at 489.

<sup>6</sup> M. Afzal Wani, *Muslim women's right to Mahr: An appraisal of the statutory laws in Muslim countries*, 1(3) JILR, 390-391, (2001).

<sup>7</sup>*Id.*, at 391.

<sup>8</sup> Samridhu Shikha Das, Akhil Dixit, *Mahr in Islam: A legalized demand*, 5(2) HRIRJ, 4-5, (2015).

<sup>9</sup> Lucy Carroll, *supra* note 4, at 490.

are being discussed. The research paper also elucidates the appraisal of Mahr in relation to contract and consummation of Muslim marriage. The research study will help to understand the concept of Mahr under Islamic law, and how It relates to rightful demand or legal obligation between the parties to marriage.

The research paper has been completed using the “qualitative doctrinal research methodology”. The research paper seeks to analyze the concept of Mahr-Al-Mithl, concept, object and subject matter of Mahr. The paper will elucidate the concept whether Mahr is rightful demand by Muslim women and obligation on part of her husband. Also, Critical appraisal of Mahr in relation to contract and consummation of Muslim marriage and rightful demand or legal obligation in relation to prompt and deferred Mahr will be discussed in the research paper. Lastly, Status of deferred dower in relation to Indian scenario will be elucidated along with prominent case laws.

The research paper seeks to analyze the following objectives- To achieve an understanding of legal intricacy of Dower involved in institution of marriage under Islamic law. To elucidate the concept whether Mahr is rightful demand by Muslim women and obligation on part of her husband. To Critically appraise the concept of Mahr in relation to contract and consummation of Muslim marriage. To assist readers, researchers, professionals involved in legal provisions like lawyers, judges etc and law students and aspirants to understand this aspect of personal law.

## **II. MAHR-AL-MITHL: A PROTECTIVE RIGHT OF MUSLIM WOMAN**

“The Arabic word Mahr which basically means price and usually termed as dower is the concept originated from the Hebrew word mohar.”<sup>10</sup> However, the difference between two could be acknowledged in the validation of marriage. Under Hebrews, total “mohar” is insisted before the contract of marriage and without specified Mahr marriage is considered as invalid. Whereas, Muslim jurist insisted that where no amount of Mahr is specified, it is still implied as right of Muslim women and therefore contract to marriage is valid. Muslim jurists have regarded the amount of Mahr as the stringent financial obligation of husband towards his wife by Islamic law, and not a mere voluntary gift.<sup>11</sup> Furthermore, it is obligation which continues even if it is not decided prior to contract of marriage. In the same parlance, Muslim wife while exercising the right of Mahr and demanding the payment of her amount is the right granted to her by Islamic law. Thus, if the Muslim women does not receive decided or implied amount of

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<sup>10</sup> Rakesh Kumar Singh, *Law of Dower (Mahr) in India*, 12(5) JILC, 59, (2010).

<sup>11</sup> Mona Siddhiqui, *Mahr: Legal Obligation or Rightful Demand*, 6(1) JILI, 14-24, (1995).

Mahr, then she may refuse herself to contract of marriage with her husband.<sup>12</sup>

1.1 Concept of Mahr in Islam law.- The concept of Mahr is integral and intrinsic part of Muslim marriage law. The main objective of Mahr is to protect the Muslim wife from the absolute power of husband in pronouncing of divorce. It is a deterrent to husband haste and unqualified decision-making power with regard to pronouncement of talaq to her wife.<sup>13</sup> On the same parlance, the contractual nature of Muslim marriage law is emphasized by the presence of Mahr as an intrinsic part of it. The amount of dower can be settled prior to marriage, at the time of marriage or even after the marriage. The reason behind this is subsistence and maintenance of Muslim wife upon the divorce by her husband.

The subject matter of Mahr is not only the value in terms of money, but any property will come within its ambit if the value of such property could be measured in monetary terms. Any nature of property tangible or intangible, moveable or immovable may be settled as dower, provided such property is not specifically prohibited by Islam. Profits, rents or other beneficial interest of movable or immovable property can also be granted as dower. However, the property must exist physically at the time of making contract of dower. Hence, amount of Mahr is rightful demand of Muslim wife which can be granted in either of its form ranging from money to property that exist in its physical form and have its own monetary value.

#### **(A) Subject matter of Mahr**

Any object which has physical existence in the form of property and having the monetary value is suitable subject matter for Mahr. However, the subject matter of Mahr should exist at the time of contract for marriage. Any future advances of Mahr which do not amount to valid specifications does not amount to valid Mahr and Muslim women would be entitled to “Mahr-al-mithl”.<sup>14</sup> Future advances are not the things which exist independently and are not suitable for legal transactions and therefore their values cannot be estimated. The future advances which are in the form of promise or any sort of condition are also not valid. Thus, if the husband promises his wife that he will not remarry until his marriage subsists or any sort of similar promises, such future advances are not valid as there is no amount of property which can be legally transacted.<sup>15</sup> Those subject matter which have no legal value and incapable of legal transaction are considered as invalid specifications for the Mahr.<sup>16</sup> Thus it can be inferred that it is only the future advances which can be invalid and not the contract for marriage itself.

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<sup>12</sup>*Id.*, at 19.

<sup>13</sup> Abdul Kadir v. Salima, (1886)8 All 149.

<sup>14</sup> Saifuddin V. Soneka, (1954)59 CWN 139.

<sup>15</sup> Kwaja Md. Vs. Hussaini Begum, (1910)37 IA 152.

<sup>16</sup> *Supra* note 14.

Where “Mahr-al-Musamma” (specified Mahr) is found to be invalid, Muslim women automatically becomes entitled to her Mahr-al-mithl. Mahr-al-mithl is implied in every Muslim contract of marriage and act as the protective force in safeguarding the rightful demand of Mahr by Muslim woman.<sup>17</sup> Hence, she does not lose her right to Mahr-al-mithl where the amount specified for Mahr in contract of marriage carries no legal value.<sup>18</sup>

### **III. DIFFERENT ASPECTS OF MAHR IN REFERENCE TO BALACING THE ARGUEMENT BETWEEN RIGHTFUL DEMAND OF MUSLIM WOMEN AND OBLIGATION ON PART OF HER HUSBAND**

#### **(A) Different aspects of Mahr are-**

- As a symbol for respect and reverence to Muslim woman.
- As a part for the maintenance under section 125 of CrPC.

#### **1. Mahr: As a symbol for respect and regard to Muslim woman**

Mahr is regarded as symbol of respect by the husband towards his wife which commences with the completion of contract for Muslim marriage.<sup>19</sup> Hedaya argued and acknowledges that, “The payment of dower is enjoined by the law, merely as a token of respect for the Muslim woman, wherefore the mention of it is not essential to the validity of a marriage.”<sup>20</sup> On the same parlance, Abdur Rahim conceptualize term Mahr as the sum of money or any property which the Husband is legally obliged to pay to his wife as a token of respect and admiration towards her.<sup>21</sup> In Islam, Mahr is not the amount which is granted to the Muslim wife for his own sake. Umar Ibn-al-Khattab said “Do not go to extreme”, meaning thereby that one should not insist or exaggerate in increasing the amount of Mahr.<sup>22</sup> Further it was propounded that a man can increase the amount of dower until he feels resentment. Thereby, It is the mark of respect and honor towards Muslim woman and piety before Allah.<sup>23</sup> Also, Supreme court in Shah Bano case held that Mahr is not a sum payable on divorce and also not a consideration for contract of marriage, but it is the legal obligation imposed upon the husband towards her wife as a mark of regard and respect.<sup>24</sup> The above mentioned excerpts is acceptable to certain extent and hence it is evident that amount of Mahr is a legal obligation imposed upon the husband towards her

<sup>17</sup> Mona Siddhiqui, *supra* note 11, at 15.

<sup>18</sup> Rakesh Kumar Singh, *Law of Dower (Mahr) in India*, 12(5) JILC, 54, (2010).

<sup>19</sup> G.C.V Subba Rao, *Family law in India* 364 (6<sup>th</sup> edition Allahabad law agency 1992).

<sup>20</sup> Aabhi Hari, “Effective Adherence of Legal Reforms in relation to Mahr, 3(2) HRIRJ, 16-19(2015).”

<sup>21</sup> Rahim, *Muhammadan Jurisprudence*, 334.

<sup>22</sup> Syed Shaid Ahammad, *A Critical Analysis of Dower (Mahr) in Islam*, 21(7) IOSR-JHSS, 86-91, (2016).

<sup>23</sup> *Id.*, at 87.

<sup>24</sup> Mohd. Ahmed Khan v. Shah Bano Begum, AIR 1985 SC 945.

wife.

## **2. Mahr: As a part for maintenance under section 125 of CrPC, 1973.**

Until the Judgement of Shah Bano begum case<sup>25</sup>, it is generally thought that sum payable under personal laws to the Muslim woman according to section 125 clause (b) CrPC<sup>26</sup>, indicates payment of dower. It is generally regarded among Fundamentalists that once the dower amount is paid by the husband to his wife on divorce, no right of maintenance could be sought by the divorced woman under section 125 of criminal procedure code.<sup>27</sup> In the Shah Bano case, the supreme court held that Mahr is a sum paid in the consideration of marriage and as a mark of respect for Muslim wife. It is the legal right of divorce women and an obligation imposed upon husband to pay sum of dower apart from the claim of maintenance under section 125 CrPC. However, magistrate have to take into consideration this amount of dower and if it is adequate enough to enable her to maintain herself, no order of maintenance under section 125 CrPC has to be passed.<sup>28</sup> By the above argument, it can be deduced that amount of Mahr is legal obligation imposed upon husband and legal right of Muslim woman to claim it apart from the maintenance amount under section 125 CrPC such that wife will not be entitled for the double benefit, that is one of personal law payment and other legal obligation under section 125 of criminal procedure code.<sup>29</sup>

## **IV. CRITICAL APPRAISAL OF MAHR IN RELATION TO CONTRACT AND CONSUMMATION OF MUSLIM MARRIAGE”**

The principal contention throughout the section on Mahr is the fundamentalists approach to strike the balance between obligation and demand for Mahr. Although the marriage is valid even though there is no mention of Mahr at the time of marriage, but still, it is compulsorily obligation on the part of the husband to provide amount of Mahr to his wife. It is to be honored by the husband as the mark of respect and reverence towards his wife.<sup>30</sup> Such of compulsorily obligation is elucidated by the concept of Mahr al-mithl, which guides out that even if the husband marries his wife without specifying the amount of Mahr or marries her without any promise to Mahr, then also his wife has legal right to receive the amount of Mahr-al mithl. “Thus, irrespective of the fact that the amount of Mahr is mentioned at the time of contract of

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<sup>25</sup>*Id.*

<sup>26</sup>CODE CRIM. PROC. 1973,§ 125.

<sup>27</sup>Aabhi Hari, *supra* note 20, at 18.

<sup>28</sup> Afzal Rahim v. Sabiha Hussain, AIR 1979 SC 362.

<sup>29</sup> Bat Tahira v. Ali Hussain Fissall (1979)2 SCC 316, AIR 1979 SC 362.

<sup>30</sup> Mona Siddhiqui, *supra* note 11, at 15.

marriage or not, the contract of marriage still remains valid.”<sup>31</sup>This is because of a mutual tie which grants a new status of husband and wife gets secured at the moment where the contract for marriage is completed. This mutual tie pertains not only to legal or social relation among the married couples but more importantly a sexual status since it legalizes the sexual intercourse among the married couple which establishes the inherent principle of marriage.<sup>32</sup>According to the Hanafi text *Bhar al Raiq*, institution of marriage is based on the principle of contract and marriage. This dual concept propounds the change of status of Muslim women and exchange of prosperity and wealth. Thus, Mahr is an example of reciprocal agreement that is concluded with the exchange of financial or material payment.<sup>33</sup>

Death and divorce are the two important aspects by which married couples are separated from each other.<sup>34</sup>Divorce which is generally pronounced by the husband to end mutual tie with his wife is the sort of detriment to the marital status of both husband and wife.<sup>35</sup>Before, divorce gets confirmed there are various stages involved in it. But, generally it is held that even if divorce is given prior to consummation of marriage, then also Muslim wife is entitled to half of the Mahr.<sup>36</sup>Quranic verses 2:236of Surah Al-Baqarah commands “*And if you divorce them before you have touched them and have already settled a dower on them, then it is incumbent on you to pay them one half of what you have settled.*” The Jurists approach on this issue revolves around two main contentions. Firstly, whether the wife should be entitled to any amount of dower even prior to consummation of marriage. Secondly whether the wife has legal right to recover the full amount of Mahr from her husband who leaves his wife before any consummation with her. It is, however, concluded that since both the arguments contradicts each other, command of Quranic verses have to be followed.<sup>37</sup>On the same parlance, the Muslim wife should be entitled to a gift called “Mut’a”, in the case where no amount of Mahr is decided and is based on Mahr-al Mithl.“Mut’a is the type of surety paid by the husband to her wife which shall not exceed half the amount of, Mahr al mithl.”<sup>38</sup>It is meant to assure the legal right of wife and obligation on the part of her husband so that social status of wife is financially recognized.<sup>39</sup>

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<sup>31</sup> G.C.V Subba Rao, *supra* note 19 at 364.

<sup>32</sup> Rakesh Kumar Singh, *supra* note 10 at 59.

<sup>33</sup> Sabiha Hussain, *Unfolding the reality of Islamic Right of Women: Mahr and Maintenance Rights in India*, 20(3) JLSR, 29-50, (2013).

<sup>34</sup> *Id* at 30.

<sup>35</sup> Sabah Adnan Sami Khan v. Adnan Sami Khan, AIR 2010 Bom. 109.

<sup>36</sup> Fuzhudi v. K.Khader Vali & Ors., AIR 1980 SC 1730.

<sup>37</sup> Rakesh Kumar Singh, *supra* note 10 at 60.

<sup>38</sup> Mona Siddhiqui, *supra* note 11, at 15.

<sup>39</sup> RA Pathan & Kursheed Ahmad Khan v. State of UP, AIR 2015 SC 429.

However, the notion of valid privacy (Al-Khalwa al-Sahiba) is a concept which provides that the husband is legally obliged to provide the full amount of Mahr to his wife, in almost every marriage where the valid contract is compiled between both the parties, without taking into account consideration that whether consummation took place or not.<sup>40</sup> The notion of valid privacy is reasonably expected to have when both husband and wife meet in a place where they have the opportunity of sexual intercourse and there lies no natural or legal impediment to prevent it. "The significant aspect of valid privacy notion is that the marriage is presumed to have been consummated, thus making husband legally liable to pay full amount of Mahr to his wife."<sup>41</sup> On the same parlance, there are arguments that recognizes privacy as valid or invalid. The distinction between both is necessary in order to effectuate the amount of Mahr, because if the privacy is invalid then husband is not liable to pay full Mahr upon the divorce with his wife. Invalid privacy states that privacy is not valid when either one or both the couples are performing rituals, obligatory prayers or fasting. The reasoning behind this argument is that during such period consummation is forbidden and therefore there is no presumption as to consummation between husband and wife during this period. Consequently, the husband is not bound legally to provide the full amount of Mahr.<sup>42</sup>

When the death is caused before consummation, then in such event the women is entitled to full amount of Mahr because death implies that contract of marriage is concluded.<sup>43</sup> This affirms the sexual status of women towards her husband.<sup>44</sup> Therefore, everything after completion of contract of marriage becomes final and confirmed with respect to all its effects. "Thus, divorce, death and consummation all incur full amount of Mahr and husband is bound and under obligation to provide such amount of Mahr to his wife because woman's legal position as her husband partner gets affirmed soon after divorce, death or consummation of marriage is established."<sup>45</sup> However, in the event of consummation the amount of Mahr has to be determined as per the notion of valid and invalid privacy.

## **V. RIGHTFUL DEMAND OR LEGAL OBLIGATION IN RELATION TO PROMPT AND DEFERRED MAHR**

At the outset, it has been cleared that the amount of Mahr remains intact whether or not decided at the point of contract for marriage. The contract continues to remain enforced because amount

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<sup>40</sup> Lucy Carroll, *Mahr and Muslim Divorcee's Right to Maintenance*, 2(1) JILI, 489, (1985).

<sup>41</sup> Mona Siddiqui, *supra* note 11, at 14.

<sup>42</sup> *Id* at 15.

<sup>43</sup> Abdul Kadir v. Salima, (1886)8 All 149.

<sup>44</sup> Sabiha Hussain, *supra* note 33, at 29.

<sup>45</sup> Mona Siddiqui, *supra* note 11, at 17.

of Mahr-al mithl is confirmed. The wife has legal right to claim the amount of Mahr from the husband who remains in debt to his wife.<sup>46</sup> However, If no time period is mentioned then she has to resist until the dissolution of marriage. “Thus, it is generally accepted that specified portion of Mahr should be provided to wife at the time of contract for marriage and the rest upon dissolution of marriage or on the death of the husband.”<sup>47</sup> The amount of Mahr payable immediately is prompt dower and left over portion payable after some period of time is deferred dower. There is, however, contention on the relevance of “deferred” dower, since no fixed time period for payment of Mahr is specified under it. Some jurist resist on the notion that deferred Mahr is not permitted and it is right of Muslim women to take the whole amount immediately.<sup>48</sup> “On the same parlance, some jurist belief that deferred payment must be permitted and that it takes place either at the time of death or divorce. Such juxtapose situation confirms the notion of delaying the payment until dissolution of marriage.”<sup>49</sup> This situation can be solved through generally accepted notion that such deferred amount of Mahr becomes payable automatically upon the dissolution of marriage and hence time is actually known in practical terms

This juxtaposes situation between demand and obligation brings into light the “transactional nature” of marriage contract. However, it can be inferred that wife can claim at least half the amount of Mahr at the time of contract for marriage, but on the other hand by deferring the full amount of Mahr she restricts husband unqualified liberty of pronouncing divorce at his free will.<sup>50</sup> This bar on liberty precipitates from the fact that husband becomes legally obliged towards the payment of Mahr amount to his wife at the time of dissolution of marriage. Therefore, Mahr is secured to Muslim women as debt as soon as she enters into the contract of marriage, irrespective of whether amount of Mahr to be paid in part or in full. “In fact the amount of Mahr is to be considered as debt rather than gift, since the obligation on the husband to pay Mahr amount is legally and socially enforceable irrespective of when and how demand for such amount of Mahr is made.”<sup>51</sup>

## VI. STATUS OF DEFFERED DOWER

Under the Islamic law right to claim amount of Mahr is the legal right of the wife and the

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<sup>46</sup> Sabir Husain v. Farzand, AIR 1938 PC 80; Asma Bibi v. Abdul Samad, AIR 1964 SC 64.

<sup>47</sup> Syed Shaid Ahammad, *supra* note 22, at 86.

<sup>48</sup> Amrita Ghosh and Pratyush Kar, *Understanding the Islamic Law of Divorce*; 24(3) JLPF, 23-25, (2010).

<sup>49</sup> *Id.*, at 24.

<sup>50</sup> Maimuna Begum v. Sharafat Ullah khan, AIR 1961 SC 403; Hussain khan v. Gulab Khatun, (1911) 36 Bom.386; SarbKrishna v. Mst. Ftaima, AIR 1987 SC. 859.

<sup>51</sup> Amrita Ghosh & Pratyush Kar, *supra* note 48, at 24.

husband is under obligation to provide such amount of dower to his wife.<sup>52</sup>“An unpaid amount of dower resembles like a debt in which husband is similar to debtor and her wife who is entitled to claim such amount of Mahr is like creditor.”<sup>53</sup> In the case of Hussain v. Rahim Khan<sup>54</sup> it has been held that Mahr is intrinsic part of the Muslim law to the status of marriage and Muslim wife who is similar to the position of creditor is entitled to claim such amount on the death of the husband out of his estate. However, the primary contention on this is whether the wife is entitled to retain back the possession of the husband property in lieu of the unpaid amount of dower is still at unqualified status and no conclusive determination in such regard has been made.

In the case of Babe Bachum v. Hamid Hussain<sup>55</sup>, the court held that wife is legally entitled, on the pretext of right provided in the Muslim law, to retain back the possession of her husband property until the amount of unpaid dower is satisfied by her husband. However, it is to be noted that such retention of property can only be initiated without any act of force or fraud. The same principle was laid down in the case of Mania Bibi v. Chaudhri Vakil Ahmad<sup>56</sup>, in which it was held that property must be acquired lawfully in case of non-payment of dower by the husband.

Another contention which come up in consideration along with these cases is whether the property of husband retain by the wife in lieu of the unpaid amount of dower is transferable and hence subject to heritance. In the case of Kaporechand v. Kedar Unnissa<sup>57</sup>, the court held that dower is intrinsic part of the Muslim law which protects the right of the Muslim wife against ill-effects of hasty pronouncements of divorce by her husband. If such compulsorily payment is not honored by the husband then it endures un-necessary hardship on future of Muslim wife. So in order to protect future interest of Muslim wife she should be entitle to retain the property until such payment is honored and this right over property is both transferable and heritable.<sup>58</sup> On the contrary, the Patna high court in the case of Zubair Ahmad v. Jainandon<sup>59</sup>prasad held that right of retention of property is nontransferable right of Muslim wife.<sup>60</sup> However, In the case of Ghouse Yar khan v. Fatima Begham<sup>61</sup> the Andhra Pradesh high

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<sup>52</sup>Hamirabibi v. Zubaidabibi, (1916)43 IA 294.

<sup>53</sup>*Id.*

<sup>54</sup>Hussain v. Rahim Khan, AIR 1954 SC 24.

<sup>55</sup>BabeeBachum v. Hamid Hussain, (1871) 14 MIA 377.

<sup>56</sup>Mania Bibi v. ChaudhriVakil Ahmad, AIR 1976 SC 145.

<sup>57</sup>Kaporechand v. KedarUnnissa, (1950) SCR 747.

<sup>58</sup>Mona Siddhiqui, *supra* note11, at 14.

<sup>59</sup>Zobair Ahmad v. Jainandon AIR 1960 Pat 147.

<sup>60</sup>Sabiha Hussain, *supra* note31, at 29.

<sup>61</sup>Ghouse Yar khan v. Fatima Begham, AIR 1988 AP 354.

court held that right to retain the property on non-fulfillment of dower or Mahr amount is cursed upon the husband who is under obligation to provide such amount. If wife retain property she is legally entitled to transfer and inherit property of her husband.

In the case of *Shahana Bibi v. Nadeem Shah*<sup>62</sup>, the court held that mental cruelty, expulsion of the wife from the house by husband, demand of dowry, non-payment of maintenance allowance, are grounds for dissolution of marriage and wife shall be entitle to recover the unpaid amount of Mahr and other maintenance. This entitlement of unpaid Mahr in the form of property will also provide transferable right to Muslim women.

Thus, it can be inferred that there are conflicting opinions with regard to right of women in relation to recovery of unpaid amount of Mahr from her husband. On the same parlance, the obiter dicta of various judgement of supreme court and high court has contrasting opinions on whether the right to retain the property of husband is transferable and inheritable right of Muslim women.

## VII. CONCLUSION AND RECOMMENDATION

1-After the foregoing discussion, it can be concluded that dower (Mahr) plays an essential role in the Muslim contract of marriage. It is a kind of debt owed and obligation imposed upon the husband to pay the amount of Mahr in consideration of the marriage. The amount of Mahr paid by the husband to his wife is considered as a mark of respect for the wife and it provide subsistence to survive after the dissolution of her marriage.<sup>63</sup>

2- The amount of Mahr is the right of the wife to claim such amount and obligation of husband on the pretext of mutual relationship that exist between the couples soon after the contract of marriage.<sup>64</sup> The subject matter of Mahr can be any object which have physical existence in the form of property and having the value in monetary terms.<sup>65</sup>

3- Muslim women automatically becomes entitled to dower if no amount of it is mentioned during the contract of marriage. “This amount of Mahr is known as Mahr-al-mithl and is implied in every contract of marriage and act as the protective force in safeguarding the rightful demand of Mahr by Muslim woman.”<sup>66</sup> Hence, she does not lose her right to Mahr-al-mithl where the amount specified for Mahr in contract of marriage even though carries no legal value.

4- It can be deduced that if the amount of deferred Mahr is kept sufficiently high, it may cause

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<sup>62</sup>*Shahana Bibi v. Nadeem Shah*, AIR 2015 SC 1623.

<sup>63</sup>*Mohd. Ahmed Khan v. Shah Bano Begum*, air 1985 SC 945.

<sup>64</sup> *Sabir Hussain v. Farzand* AIR 1938 PC 180.

<sup>65</sup> *Id.*

<sup>66</sup> *Mrs. Sabah Adnan Sami Khan v. Adnan Sami Khan*, AIR 2010 (112) BOMLR1409.

the husband to think twice before pronouncing divorce on his wife and in this situation, wife can be at real benefit.<sup>67</sup>

5- Divorce, death and consummation all incur full amount of Mahr and husband is under obligation to provide necessary amount of Mahr to his wife because her legal position as her husband sexual partner gets affirmed soon after divorce, death or consummation of marriage is established.<sup>68</sup> However, in the event of consummation the amount of Mahr has to be determined as per the notion of valid and invalid privacy.<sup>69</sup>

6- There exist ambiguity regarding the prompt and deferred Mahr(dower) in India and how these cannot be implemented taking due to the multiplicity of judicial pronouncements in relation to marriage and divorce in the India. The validity of the prompt and deferred dower is un-revealed and remains a question which requires a definite answer.

7- It is pertinent and necessary to codify the Muslim customary right in order to ensure that customary laws does not prevail over the Muslim personal law and there could be harmony among the Muslim community.<sup>70</sup>With the codified its Muslim personal laws concept of Mahr, its quantum, subject matter, modes of presentation, Settlement of disputes related to Mahr and other issue of great practical importance can be guided out and further improvements in working of the institution of Mahr in Muslim society can be sought. This will assure the effective enforcement mechanism with respect to Mahr(dower) rights of Muslim women

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<sup>67</sup> Amrita Gosh, PratyushaKar, *supra* note 48, at 23.

<sup>68</sup>Sabiha Hussain, *supra* note33, at 29

<sup>69</sup> Asma bibi v. Abdul Samad AIR, 1964 SC 64.

<sup>70</sup> Bai Tahira v. Ali Hussain Chotia, AIR 1979 SC 362.