

## Muslim women's right to lien the property of deceased husband in lieu of dower in light of Privy Council's decision

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### Abstract

The preliminary objective is to understand the concept of Dower (Mahr) because in Islam, the concept of Dower has been majorly misunderstood and is sometimes misinterpreted either as a consideration given by the man to the woman in lieu of the contact for marriage. The crucial debate on the interpretation of Muslim personal laws together has positive as well as negative facets. On one hand certain authors have backed the positive impact of Muslim personal laws wherein, Muslim women have been given various rights such as choice in marriage, inheritance etc on the other hand, some are of the opinion that, there are various practices in Muslim Personal Laws like polygamy, triple talaq, dissolution of marriage which are against the spirit of the Indian Constitution. In this line, this research paper attempts to scrutinise the on-going debate on the insinuations of Muslim Personal Law in India and addresses the anomalies which need to be eradicated by giving a true essence of Holy Quran for the benefit of the Muslim women's rights. The major purpose of this paper would be to analyse the rights which the Muslim Personal Law confers upon a wife or a widow in the light of the rights of the wife or widow compel the husband for payment of her dower.

**Keywords:** dower, mahr, muslim law, muslim women right, dissolution of marriage, muslim personal law

### 1. Introduction

India is a nation of diversity and its citizens are provided a prospect for broad advancement irrespective of their sex, caste, religion or race by virtue of the fundamental rights guaranteed to the citizens in part III of the Constitution. Rights of Muslim women have been a subject matter of debate ever since the Constitution came into force in 1950. Despite several Constitutional safeguards, the status of Muslim women has not improved because of the religious proclamations along with its conservative approach. The centuries old ideologies of Islam are still applicable, as a result of this Muslim women have minimalist rights on subjects concerning marriage, polygamy, divorce and inheritance. The highly patriarchal Muslim personal law has jeopardized the rights of Muslim women which led to the prolonged struggle of the Muslim women for gender equality in respect of rights pertaining to marriage, divorce and property. Furthermore, the absence of proper codified Muslim personal laws has created major difficulties for women, because of the uncertainty in the several rights interpretations of Quran. Moreover, so many unsubstantiated 'fatwas' are taken out against the rights of the Muslim women consequently Muslim women constantly remain the most economically and socially oppressed segment in the Muslim community itself. This paper is intended to provide an understanding of the rights of women in Muslim personal law thereby, elaborating the right of Muslim women to receive Dower and lien the property of a deceased husband in lieu of the said Dower.

### 2. Historical Background

Islam is the first religion in the world which acknowledges women as legal entity and gave them equal rights as men. Islam emphasises on attaining freedom of women from suppression and aims to give women identical rights and

recognize their identity as human beings. The Quran came out with a comprehensive assertion that men and women are equal and women's rights are equal to their duties. However, the directives of the Quran in respect of women were not acceptable in various cultures, given that it directly challenged the apparent authority of men and made women equal to men in every respect. The major challenge for Muslim women was the absence of the proper codified law in Muslim personal law which puts them at a much difficult position, because of the uncertainty pertaining to different rights and diverse interpretations of the Quran.

There is an immediate need for Muslim intellectuals to initiate the process for drafting a comprehensive and duly codified law which will embody the Quranic spirit. Certain practices like polygamy were permitted in the Quran, in earlier times, to help women in distress like widows and orphans. But such practices have resulted in huge injustice to women in today's times. Despite reforms in the rights of women all over the world Muslim women are still struggling for basic rights because of the uncoded Muslim Personal Law.

Personal laws in India and especially, Muslim personal laws have been a chief diplomatic and controversial issue, and have been extensively debated. However, in an attempt to accomplish the fundamental right to equality enshrined under Article-14 of the Constitution of India various statutory provisions have been drafted to ensure protection of rights of Muslim women. The provisions of The Muslim Personal Law (Shariat) Application Act, 1937, The Dissolution of Muslim Marriages Act, 1939 and The Dissolution of Muslim Marriages Act, 1939 ensure the security of rights of married women under Muslim law with reference to Dower on the dissolution of her marriage and the rights of Muslim women who are divorced by, or have obtained divorce from their husbands wherein, the divorced

women is entitled an inexpensive and fair maintenance for her and her children, any dower and property gifted to her before or during the marriage.

The troubles of women in the domain of marriage are imbedded in the image of a woman as a dependent who is passing from the charge of her father to that of her husband. In Muslim law, marriage is a contract, the object of which is the procreation and legislation of children. Muslim Law confers upon a wife or widow a few rights to oblige payment of her dower by the husband or by the in-laws of the woman. These rights include the right of the woman to refuse cohabitation, right to dower and right to retain the property of her deceased husband.

The Schools of Muslim jurisprudence consider the Dower as a necessary part of the marriage. Under the Muslim Personal Law, Mahr (dower) means money or property which the wife is eligible to obtain from the husband in consideration of the marriage but this consideration is not the same as that of a civil contract. Dower is basically an obligation levied on the husband as a symbol of respect for the wife. The major objective of imposing the condition of dower is to arrange for the subsistence of the wife after the dissolution of her marriage or after the death of the husband. The concept of dower has also obtained statutory recognition since it is considered as the part of maintenance while fixing the amount of maintenance under Section 125 of Criminal Procedure Code, 1973.

### 3. Research Questions

The research work done in this paper focusses on the rights of Muslim women on the property of deceased husband in lieu of dower whilst critically analysing several principles of law established by virtue of judicial pronouncements. The key rationale behind this paper is to trace out the historical background of the issue and comprehend its impact on the present scenario as well as suggesting reformative measures to curb the situation. While doing so, the following question come to mind:

1. What are the rights available to Muslim women regarding marriage, divorce, inheritance and maintenance under Muslim Personal Law?
2. What is the concept of Dower and why is it relevant?
3. What are the rights of Muslim women when Dower is not payable by her husband?
4. Do Muslim women have any right on the property of husband in lieu of Dower? If so, what are these rights?

### 4. Literature Review

Although Islam as a religion is not oppressive to women yet its interpretation in the Muslim Personal law, and everyday living is male dominated. Some jurists believe that the persecution of Muslim women is due to the conservative construal of Shariat which includes gender discriminating customary norms that are presented as God's immutable words. Muslim feminists trace the source of women's oppression to the same Shariah laws which interpret the divine laws wrongly<sup>[1]</sup>. Muslim jurists have attached a great deal of importance to the laws of inheritance, and constantly repeat the saying of the Prophet: —Learn the laws of inheritance, and teach them to the people; for they are one

half of useful knowledge<sup>[2]</sup>. The law of inheritance in Muslim Personal law is constructed on the foundations of pre-Islamic customary law of succession. It is based on patriarchal establishment of the family. It is because of these reasons that property rights of Muslim women much like all other rights, have evolved out of a struggle continuing since centuries.

### 5. Rights of Women in Muslim Personal Law

The Muslim Personal law is the most revolutionary family law in our country. It identifies the person of a woman as distinct and independent of her father, husband and other male members of her family<sup>[3]</sup>. Even though the Quran and Sharia laws have granted several rights to women, but these rights exist only theoretically. In practice, many of these rights are not given to Muslim women because they are considered as communally enslaved to proclaim those rights.

#### 5.1 Marriage under Muslim Personal Law

Under Muslim personal law marriage is considered as a civil contact as well as a religious obligation. The object for this contract is the validation of sexual intercourse and procreation of children. It is to be noted that in the case of marriage under the Muslim law, no religious ceremony is necessary per se. The essential requirement is of a proposal from the side of the man and acceptance by the woman in the presence of a witness<sup>[4]</sup>. The most important and well-established principle is that free consent of the bride is required for marriage under Muslim Personal Law. A woman has right to either accept or reject the proposal of marriage and she also has a right to lay certain terms and conditions in marriage. The issue with respect to this right is how to ensure the free consent of the Muslim women as there are several instances where women who refuse to give the consent are forced by their families to give the consent.

#### 5.2 Divorce under Muslim Personal Law

The concept of divorce existed prior to Islam, but with the advent of Islam the process of divorce was made much more favourable to women. A Muslim women's property is not split during a divorce. Islam does not permit the use of divorce as a mockery and takes additional measures for the welfare of wives. The earnings of a woman before or during the course of the marriage remain her property when the marriage is dissolved. This is to prevent the men from taking benefit of women's wealth through marriage. Conversely, property of the man is divided in case the divorce happens as per the couple's marriage contract. Moreover, a woman is entitled to maintenance from her former husband. Muslim Personal Law also incorporates special instructions if the marriage is dissolved before it is consummated and before or after the dowry is set<sup>[5]</sup>. When the marriage was consummated, wife is permitted to marry another person after the completion of iddat and in such a situation the wife is entitled to immediate payment of the

<sup>1</sup> Melanie P.Mejia: "Gender Jihad: Muslim woman, Islamic jurisprudence and women's rights. Vol-1, No.1 Kritike, 1-24 (June-2007) available at: <http://www.kritike.org> (Accessed on 11-11- 2013).

<sup>2</sup> A.A.A. Fyzee, OutLines of Mohammadan Law, Oxford University Press, 1964, p380

<sup>3</sup> Mufti Samia Tabasum. 2013. Status of Muslim Women in India. New Delhi: Regal Publications

<sup>4</sup> Dr. Nanda Chiranjeevi Rao, presumption of marriage under Muslim Law, Indian bar review, page 133, Vol. 39, issue 4, 2012.

<sup>5</sup> Article 3 Volume 4 2011 Mitchell Hamline School of law: Journal of Law and Practice

entire unpaid dower. But if the marriage was not consummated the wife is at liberty to marry immediately and she is entitled to part amount of the Dower when the amount of dower was precisely stated in the contract of marriage. The divorced wife is also entitled to maintenance and accommodation till the expiry of the period of iddat. Another anomaly in Muslim Personal Law is that there are no terms for the maintenance of a divorced wife in Muslim law after the expiry of period of iddat or after the delivery and suckling of the child.

### 5.3 Property Rights of Muslim Women

Property rights of Muslim women, like all other rights, have evolved out of prolonged struggle between the status quoist and the liberal forces. In terms of right to property Indian Muslim women have always had fewer rights as compared to their male counter parts. The reason for men being entitled to a better share and title in the property and estate is because men are always obligated to provide women with their needs.

However, Dower is an essential notion in Islamic law which is precisely associated with the right to property of the Muslim women. Dower is basically a gift from a Muslim husband to his wife on marriage which is taken as a gesture of respect symbolising his sincerity and love towards the marriage and the wife. The substance of Dower can be money or any other thing having value, subject the acceptance of the wife. When the object or property given as Dower, the ownership rights to that property lie exclusively with the women. Furthermore, the bestowing of absolute ownership of the Dower property to the Muslim wife is indicative of the radical measure taken by Muslim personal law to confer property rights on women to ensure equal marital status for them.

### 6. Dower

Dower is the sum of money or property, which a Muslim wife is entitled to receive from her husband as a mark of respect towards her and the marriage. In Islam, marriage is considered as a contract of civil law and it hint at being developed from the purchase of the bride wherein, the bridegroom concludes the contract with the legal guardian of the bride and as a consideration he undertakes to pay the nuptial gift known as dower, not to the legal guardian as was accustomed in the pre- Islamic period, but to the wife herself<sup>[6]</sup>. Islam insists that dower should be paid to the wife herself. Dower symbolises something of value that a Muslim husband is obligated to offer to his wife on marriage. As an eccentric Islamic concept Dower has been divinely ordained and juristically recognised.

In Islam, Dower is an absolute property of the Muslim woman. A famous jurist has iterated that one of the best honours that has been conferred upon women and the best veneration that has been given to them by Islam is that she is vested with the property rights. Prior to the revelation of the Quran, a Muslim woman could not own even her person. Interdiction was to the extent that even the guardian would snatch her property rendering no possibility or chance to own something or to possess something. Islam has liberated women of those heavy weights. This is symbolised by making payment of Dower to the wife obligatory for the

husband<sup>[7]</sup>.

It was observed in the case of Abdul Kadir v. Salima<sup>[8]</sup> that dower was not the consideration given by the man to the women in exchange of marriage, but an effect of the contract imposed by the law on the husband as a token of respect for the wife. In the case Sayed Sabir Hussain v. Farsand Hussain<sup>[9]</sup> the court concluded that the dower paid by the husband to wife is the legal responsibility of the husband. Further, it was observed in the case of Anis Begam v. Mohd. Istafa<sup>[10]</sup> that under Muslim law Dower could not be treated purely as the sale of the person by the wife in consideration for the payment of dower. The dower is taken as a tangible form of settlement in favour of the wife, and to assure that no any disparate power rests with the husband in the instance of divorce<sup>[11]</sup>.

### 6.1 Importance of Dower in Marriage

In Islam, Dower is essential to constitute a lawful marriage so much so that if it was not mentioned at the time of the marriage the law will presume that the marriage did not take place. It is a fundamental element under Muslim Personal Law to such an extent that even when it is unstipulated when the marriage takes place it must be adjudged on definite principles. Even if there is an agreement between husband and wife that the wife will not claim Dower such an agreement is void and the right to dower remains in spite of such an agreement. If the wife dies before the payment of the dower, her legal representatives are entitled to the dower amount.

### 6.2 Types of Dower

There are two types of Dower: Specified Dower and Unspecified Dower. Specified dower is fixed with the assistance of settlement among the parties, either before or at the time or even after the marriage. Specified Dower is further divided into two categories namely, prompt and deferred dower. Prompt dower is payable on demand and deferred dower is one which is payable on dissolution of marriage either by death or divorce. Prompt dower is dower that's payable immediately when the wedding takes place, and it ought to be paid on demand, unless put off is stipulated for and agreed. Prompt dower can be realized at any time before or after consummation of marriage. Deferred dower is payable at the dissolution of the marriage either by the demise of either of the parties or by means of divorce. In a case in which no exclusive share of set off and deferred dower has been fixed by agreement at the time of the wedding, or by custom-

1. The whole is appeared as prompt in keeping with Shia law;
2. Part is appeared as activate, and part as deferred in keeping with Sunni law; the percentage is regulated by using the popularity of the parties and the quantity of the dower settled<sup>[12]</sup>.

### 6.3 When is Dower payable?

In the case of prompt dower, the husband has to pay the

<sup>6</sup> Joseph Schacht, An Introduction to Islamic Law, Oxford University Press, 1964, p161.

<sup>7</sup> Fiqh al- Sunnah, Vol. ii, Beirut 1968, p155

<sup>8</sup> Abdul Kadir v. Salima, [1886] 8 All 149

<sup>9</sup> Sayed Sabir Hussain v. Farsand Hussain, AIR 1938 PC 80

<sup>10</sup> Anis Begam v. Mohd. Istafa, ILR 1933 ALL 743

<sup>11</sup> Moslay Uddin & Md.Ayatullah, Muslim Law: Judicial and Legislative Changes around the World (4th ed. Universal Law Publishing 2014).

<sup>12</sup> Husein khan v. Gulab Khatun, (1911) I.L.R. 35 Bom. 386

dower amount as the wife makes a demand for it whether the marriage has consummated or not. If any delay is caused in the payment of the dower, the wife is entitled to get interest for the period during which the dower has been unpaid. The wife may also refuse consummation till the husband pays the prompt dower. In deferred dower, the husband pays the dower after the occurrence of a particular event i.e. either on dissolution of marriage or upon the death of the husband. The husband in either case has to pay the amount soon.

### 7. Rights of Women in lieu of Unpaid Dower

Under the Muslim personal law, the husband has an obligation for payment of dower to the wife. In circumstances when the dower remains unpaid, a Muslim woman has the following rights:

#### 7.1 Right to Dower as Debt

The legal obligation of the husband under the Muslim Personal Law is to pay dower to the wife. An unpaid dower resembles like a simple debt in which the husband is like a debtor, and the wife is like a creditor. Unpaid dower is often interpreted as unpaid debt. It is enforceable by the wife by filing a suit in the Court of Law. If the husband is not alive, the wife is even allowed to recover this amount from the legal heirs of the husband. In the case of *Hamira Bibi v Zubaida Bibi* <sup>[13]</sup>, it was held that the widow has a special right to demand the unpaid dower to his husband. Further it in this regard it was quoted that “dower is an essential incident under the Muslim Law to the status of marriage. The dower ranks as a debt to which the wife is entitled, along with other creditors, to have it satisfied on the death of the husband out of his estate”.

#### 7.2 Right to Refuse Co-habitation

The effect of non-payment of prompt dower is that the wife can refuse to cohabit or refuse to live with husband <sup>[14]</sup>. When the marriage is not consummated, the wife has a right to refuse to cohabit with her husband so long as the prompt dower is not paid. In the case of a wife who is a minor or an insane, her guardian has right to refuse to send her to her husband's house till payment of prompt dower. During her such stay in her guardian's house the husband is bound to maintain her. If the minor wife is already in the custody of her husband, such guardian can take her back on the ground of non-payment of prompt dower <sup>[15]</sup>. The absolute right of the wife to insist on payment of the prompt dower, before giving him the access to her, is lost after the consummation of the marriage. After consummation the husband in his suit for restitution of conjugal rights upon her refusal can secure only a decree conditional on payment of dower.

#### 7.3 Right to Retain Possession of Husband's Property

Under the Muslim personal law, a widow has a right of retention of estate of her husband against the unpaid dower. However, the widow's right of retention does not create any right of the widow on the property. She can simply retain the possession and appropriate the usufruct until her dower debt is satisfied. The key element to notice in this right is that a Muslim woman is not entitled to exercise this right

during the continuance of the marriage. The widow cannot be made to account for the projects of the estate without being allowed reasonable compensation; this compensation may be allowed in the form of interest upon dower.

### 8. Rights of Muslim Women to Lien the Property of Deceased Husband in Lieu of Dower

After the death of the husband the most efficient mode of enforcement of dower is to exercise of ‘right of retention’. In Islam a widow, whose dower is unpaid, has a right to retain the properties of the husband till the complete payment of her dower. This right is characterised as the right of retention in lieu of unpaid dower and it is available to a widow. It is not relevant whether there is any agreement between the parties pertaining to this right or not. As per this right if a wife has taken possession of her husband's properties lawfully i.e., with free consent of her husband, in lieu of the unpaid dower, then she is authorized to retain the possession of such property after the death of her husband, until her dower is paid out of the properties retained by her. The right of retention can be exercised by a woman against the creditors, if any, of her deceased husband, and his legal heirs. The legal heirs of the deceased husband are barred from possession and availing benefits of such properties until they make absolute payment towards the unpaid dower in proportion of their respective shares. The salient features of the right of Muslim women to retain the property of her deceased husband in lieu of unpaid dower are listed below:

1. **No right of retain the property during continuance of marriage:** This right comes into existence only after the death of the husband, or if the marriage is dissolved by divorce, immediately on such divorce, but not during the continuation of the marriage. Thus, if a creditor of the husband obtains a decree against him and the husband's property is sold in execution in his lifetime, the wife has no right of retention against a purchaser in execution of the decree and she must deliver possession to him.
2. **Actual Possession:** The right of retention means the right to continue in the possession of the husband's property after the death of the husband until the payment of the dower debt. It is, therefore, necessary for the exercise of this right that the widow must be in actual possession of the property at the time of the death of the husband. If she was not in actual possession of the property at that time, then she cannot afterwards acquire possession of the husband's property in lieu of this right. The right of retention is the right of the widow to retain possession of the property of the deceased husband which was acquired by her during the subsistence of marriage. It is, therefore, not a right to obtain possession. It is also essential that the wife should have obtained possession of the property lawfully and without force or fraud.
3. **The right of retention not analogous to a mortgage:** The widow has no interest in the property, as a mortgagee has under an ordinary mortgage. There is no true correspondence between her right of retention and mortgage. In the case of a mortgage, the mortgagee retains possession under an agreement between him and the mortgagor, while her right of retention does not arise from any such agreement but is conferred on her by law.

<sup>13</sup> *Hamira Bibi v. Zubaida Bibi*, [1916] 43 IA 294

<sup>14</sup> *Abdul Kadir v. Salima*, [1886] 8 All 149

<sup>15</sup> *Rabia Khatoun v. Mukhtar Ahmed* AIR 1966 ALL 548.



4. **The right is not a charge on the property:** The right does not constitute a charge on the property and as such the woman is not a secured creditor. If the property, which is being held by the widow in lieu of dower under her right of retention, has been mortgaged by her deceased husband, the mortgagee can sell it free of her right and can oust her from possession.
5. **A possessory lien does not accrue the title of the property on the woman:** The right of retention does not give the woman any title to the property. The title to the property vests with legal the heirs, including, of course, the widow. The woman is only entitled to satisfy her claim for dower with the rents and profits accruing from the property. She cannot alienate the property by sale or mortgage to satisfy her dower. If she alienates the property, it is valid to the extent of her own share and not of the shares of other heirs of her husband. If she delivers possession thereof to the alienee, the other heirs become entitled to recover immediate possession of their shares unconditionally, that is, without payment of their proportionate share of the dower-debt. The widow is not entitled on the alienation being set aside, to be restored back possessions. By giving up possession thereof and whether she loses her right to the dower. However, if the widow is disposed by the heirs of the husband or their transferees, she can recover possession only by instituting a suit under Section 9 of the Specific Relief Act, that too within 6 months of dispossession, failing which she would lose her right to recover possession. In case she is dispossessed by a trespasser, she can sue with 12 years under Article 12 of the Indian Limitation Act. In the leading case of *Maina Bibi v. Chaudhary Vakil Ahmad* <sup>[16]</sup>, the Privy Council observed that the possession of the property being once peacefully and lawfully acquired, the right of the widow to retain it till her dower debt is satisfied, is conferred upon her by the Muslim Law.
6. **The woman in possession of the property is liable to account for the said property:** A widow in possession of her husband's estate is bound to account the other heirs of her husband for the rents and profits received by her out of the estate while she is herself entitled to charge interest on the dower due to her and to set it off against the net profits. It was held in *Shaikh Salma vs. Mohammad Abdul Kadar* <sup>[17]</sup> that, "a widow in possession of her husband's property in lieu of dower debt is liable to account to other sharers of income from such property, in her possession."

## 9. Response of the Judiciary

The issue pertaining to the rights of a widow to lien the property of her deceased husband in lieu of unpaid dower has always been debated and is still into consideration.

In the case of *Hamira Bibi v Zubaida Bibi* <sup>[18]</sup>, the Privy Council explained the special right of the widow to enforce her demand for the payment of unpaid dower. It was held by Lord Parker: "Dower is an essential incident under the Muslim law to the status of marriage . . . the dower ranks as a debt, and the wife is entitled, along with other creditors, to

have it satisfied on the death of the husband out of his estate. Her right, however, is no greater than that of any other unsecured creditor, except that if she lawfully, with the express or implied consent of the husband or his heirs, obtains possession of the whole or part of his estate, to satisfy her claim with the rents and issues accruing therefrom, she is entitled to retain such possession until it is satisfied. This is called widow's lien for dower, and this is the only creditor's lien of the Mussalman law which has received recognition in the British Indian Courts and this Board."

In the case of *Maina Bibi v Chaudhri Vakil Ahmed* <sup>[19]</sup>, it was made clear that the possession of the property being once and lawfully acquired, the right of the widow to retain it till her dower debt is paid is conferred upon her by the Muslim law. The widow's right of retention does not create any right of the widow on the property. She can simply retain the possession and appropriate the usufruct until her dower debt is satisfied. She has thus no right to alienate the property by sale, mortgage, gift or otherwise and if she attempts to do so, she loses her right of retention. The Supreme Court held that the widow is not entitled to priority as against her husband's other unsecured creditors.

In the case of *Sikandar Ara vs. Hussan Ara* <sup>[20]</sup>, the provision of law established was that the possession of the husband's property by the wife can continue after husband's death until the Dower is recovered. The Privy Council observed that the possession of the property being once peacefully and lawfully acquired, the right of the widow to retain it till her dower debt is satisfied, is conferred upon her by the Muslim Law. They further said that it is not exactly a lien (the right to take another's property if an obligation is not discharged), nor a mortgage, usufructuary i.e., a legal right to use and derive profit from property belonging to someone else provided that the property itself is not injured in any way or other.

The subject matter of the rights of a widow to lien the property of her deceased husband in lieu of unpaid dower again came into consideration on the question whether the widow right of retention in lieu of unpaid dower is transferable and heritable. There is a plethora of conflicting judicial opinion on this point.

In the case of *Mir Vaheed Ali v Rashid Beg* <sup>[21]</sup>, the Bombay High Court held that the right of retention of the property is heritable. Further, the Mysore High court in the case of *Hussain v Rahim Khan* <sup>[22]</sup> held that the right to retain the property in lieu of unpaid dower is both heritable and transferable. The Andhra Pradesh High Court, in the case of *Ghouse Yar Khan v Fatim Begham* <sup>[23]</sup>, held that that under the Muslim personal law, the property retained by the widow in lieu of unpaid dower under can be alienated and inherited as well. On the contrary, the Patna High court has while deciding the same issue in the case of *Zobair Ahmad v Jainandan Parasad* <sup>[24]</sup>, held that the right is not transferable. According to the Supreme Court in the case of *Kapore Chand v Kedar Unnissa* <sup>[25]</sup> the right to possession of the property is not a transferable right.

<sup>19</sup> *Maina Bibi v. Chaudhary Vakil Ahmad*, [1924] 52 IA 145

<sup>20</sup> *Sikandar Ara vs. Hussan Ara*. AIR 1916 Oudh 136

<sup>21</sup> *Mir Vaheed Ali v. Rashid Beg*, AIR 1951 BOM 22

<sup>22</sup> *Hussain v. Rahima Khan*, AIR 1954 MYS 24.

<sup>23</sup> *Ghouse Yar Khan v. Fatim Begham*, AIR 1988 AP 354.

<sup>24</sup> *Zobair Ahmad v. Jainandon Prasad*, AIR 1960 Pat 147

<sup>25</sup> *Kapore Chand v. Kedar Unnissa*, [1950] SCR 747

<sup>16</sup> *Maina Bibi v. Chaudhary Vakil Ahmad*, [1924] 52 IA 145

<sup>17</sup> *Shaikh Salma vs. Mohammad Abdul Kadar*, AIR 1961 A.P 428

<sup>18</sup> *Hamira Bibi v. Zubaida Bibi*, [1916] 43 IA 294

## 10. Conclusion

In conclusion, Islam has raised the status of women in the society by issuing many laws for their protection and to ensure an honourable and dignified life for women. Under the Muslim personal laws many rights have been granted to Muslim women such as preference in marriage, inheritance etc. Muslim personal law also aims to provide the women a certainly high social status after marriage. The Muslim woman has the freedom of choice in marriage, her assent is essential for the legitimacy of the contract of marriage. As per property rights, it can be safely stated that Muslim women have had lesser rights in property in comparison with the males as well as the women of other religion.

The lack of codified Muslim laws is one reason for this prejudice. However, there is an inherent concept of Dower in Islam by virtue of which certain property rights are conferred on the Muslim women. The concept of dower rights is said to be refined by God and his prophet Muhammad. Under Islam, dower is mandatory, irrelevant of the issue that it written in the marriage certificate or not. A dower may be specified or proper. However, dower rights become payable on termination of marriage whether by divorce or death of the husband in case it is not paid immediately after marriage. In any Muslim marriage, dower rights are reflected as mandatory. In Arabic language it is called Mahr, or Meher. It is a gift which becomes due for payment by the husband to the wife instantly after marriage but before the consummation of marriage. It does not necessarily have to be money but any worthy thing like property, jewellery or anything else as agreed between the parties to the Muslim marriage. It is considered as a token of respect and a part of financial rights of the women in Islam. It is actually a financial benefit which the wife obtains as a mark of respect towards the marriage contract itself. It is usually understood that the primary object of dower in a Muslim marriage is to protect the wife against the arbitrary powers of the husband in exercising the right of divorce. However, this was neither object of the concept of dower nor the intention of the Quran behind the introduction of dower. On the contrary, when absolute procedure for divorce as stated in the Quran is followed, the arbitrary powers exercised by the husband in the event of divorce become minimal.

The practice of payment of dower still continues in Muslim personal law. Payment of dower is still an essential in Muslim marriages. This conclusion has been drawn from several judicial principles wherein it has been held that women have special rights to claim unpaid dower and the husband has a legal obligation to pay such amount. In lieu of unpaid dower, the right of women to retain the possession of the estate of the husband is still conflicting. In this respect, the High Courts and Supreme Court across the country have expressed different opinions. There is no single position of law that they have arrived at. So far as unpaid dower is concerned, the majority opinion is that unpaid dower basically remains as a debt that is mandatory to be discharged by the husband to the wife in case of Muslim marriages. Additionally, the general opinion on whether a widow has the right to retain possession of the property after the husband has deceased is that the women do have the right, but the same is not transferable. As mentioned earlier, different opinions on this issue have been given by different Courts across the country. What remains to be seen is how the jurisprudence on this will further

develop and affect the rights with respect to the dower of women married under Muslim law.

Presently, there is a crying need for a comprehensive legislation to draft Muslim personal laws. Islamic law is so progressive that it can become basis for a Uniform Civil Code. However, conservative Muslim societies have dragged the Quran pronouncements to their own level and introduced, through human reasoning many measures, which have curbed women's rights. Hence, after the discussion of all above aspects it can be concluded that, public opinion needs to be guided into favouring certain liberal judgments and uniform codified laws which help in an important way to nullify to some extent the inequities in the existing personal Muslim laws. Therefore, there is need to launch an awareness campaign against the misuse of various Muslim women rights relating to marriage, divorce, property rights etc. Also, there is a need to make sure that the amount of dower paid is substantially high so it can discourage the practices of divorce as well as ensure the rights of Muslim women.

## 11. References

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