

## FIXING DOWER AND ITS RECOVERY UNDER SHARIAH LAW: A CONTRAST BETWEEN SOCIO-LEGAL PRACTICES IN BANGLADESH

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### Abstract

*This research paper is an endeavour to concentrate on one of the property rights of women provided under Muslim personal laws of Bangladesh, which is the dower. It is generally accepted that women's dower rights are already granted in the Sharia. The present research finds that cases of dower in Bangladesh highlight the contrast between theory and practice. In dower cases, the payment is a legal obligation, whereas in social practice the question of payment arises only in the case of divorce. It was discovered that women faced problems in recovering the dower money in practice because of a lack of awareness along with other reasons. This research endeavours to test couples' awareness of dowers in a village in a northern district of Bangladesh. Side by side it focuses on other reasons of the deprivation of women from their rights of dower. Finally, necessary solutions are recommended for ensuring women's right to dower from the male-dominated society.*

**Keywords:** *Women, Dower, Usool, Awareness, Recovery, Sharia law, statutory law, Bangladesh*

### Introduction

Spouse selection in Bangladesh is viewed as a matter of great concern to the members of both the families of the bride and the bridegroom. Social norms call for a sound marriage between the two mates chosen by the members of the two families, principally the fathers, avoiding any love marriage, which is usually viewed as an unexpected arrangement. Sometimes matchmakers are employed and the search for a good mate may be a time-consuming and costly affair. A virgin in Bangladesh has seldom the right and liberties to choose a mate, fix dower, and its content.

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Generally speaking, there is a clear ruling allowing women to claim their dower money, since sharia law, which is applicable in Bangladesh concerning dower, affirms that the dower has to be paid. Conversely, divergent opinions exist on the question of the amount of dower. Dissimilarities about the quantities of dower will cease if the purposes of mahr are scrutinized. Mahr is paid to the wife only as an honor and respect and to show that the bridegroom has a serious desire to marry her and is not simply entering into the marriage contract without any sense of responsibility and obligation or effort on his part. It is also a provision for her rainy days and socially it becomes a check on the capricious exercise by the husband of his unlimited power of divorce. The real picture is quite contrasting in rural society due to the plenty of reasons where both the males and females contribute. The mentionable are women's lack of awareness and male counterparts' lack of sense of their obligation for payment according to Shariah Law. This article has made an effort to focus on this real picture through an empirical study.

Ornaments or fancy materials given by the groom's family cannot be treated as the payment of dower without taking consent of the wife as mirrored from sharia. A contradictory, better to say, discriminatory law and practice are prevalent in Bangladeshi society. Besides, fixing exorbitant dower on the face of an unreasonable demand by the bride's family leads to the negative mentality of the husband of avoiding dower and this is contradictory to the Quranic injunction. The research takes note of these and puts emphasis on these two paradoxes in line with the challenges of woman's right for dower practice under the shariah and statutory laws and the impact of the traditional practice of dower in Bangladesh. Settling dower volume at a reasonable standard and ensuring financial security of the female spouse go hand in hand and are surely answers to one set of questions concerning rights of a wife over mahr.

### **Research Methodology**

Since the article is a socio-legal research, it involves the methods of social and legal research appropriate for it. This study is mainly both quantitative and qualitative social research. Taking into consideration the Muslim Family Laws Ordinance (MFLO), 1961, the Child Marriage Restraint Act, 2017, and the Muslim Marriages and Divorces (Registration) Act, 1974, the study tries to present whether present arrangements are sufficient to address the current social practices of dower. It is heard that

girls of Bogura district are the most desperate ones among all the districts of the northern part of Bangladesh. It is known to all that they are more concerned about their rights than the others belonging to other Northern parts of Bangladesh. Therefore, Thanthania and Malgram, two villages in Bogura district have been chosen for collecting primary data. The research area is small, since if it is wider, it would be unmanageable in terms of the length of the research and would lose its status to be focused. Both structured and open-ended questionnaire has been used for an intensive interview to find the answer to research questions and relevant issues and to find critical and differentiated information.

Usually, people living in Sadar Upazila are better informed of any rights. This urges the researcher to pick up a sample from two villages of Sadar Upazila. For this study, a systematic random sampling has been conducted putting emphasis on the economic status of the respondent. Respondents who either live in medium-sized houses or flats have moderate income level, and having at least SSC degree have been chosen. Further, the study is based on a fifty-fifty sample of bridegroom and the bride. The study is restricted to first marriages since the number of second and subsequent marriages was extremely small. For collecting primary data, the period, which is from January 1, 2021 to June 30, 2021, has been taken into account, keeping in mind that the latest data will be found. Besides primary data, secondary data has been collected from books, journals, reports, and newspapers. From time-to-time secondary data has also been collected by searching the web.

### **Research Questions**

As far as the title is concerned, there are two research questions: a) Does dower paid to a wife work as social security in Bangladesh? The research relies both on theory and practice to find out the answer to this question. b) Is excess dower contradictory to Islam? The answer to this question is dependent on another linking question. That is-If not contradictory, what is required to be done to reject any unreasonable amount claimed by wives? c) Why do women not receive their dower rights under the law? One must look into the reasons why dower was not given to evaluate this question.

### **Determining Dower and Sharia Standpoint**

Marriage is a social institution as old as the human race itself. Islam does not regard it as a union only for the gratification of sexual lust but

as a social contract with wide and varied responsibilities and duties. The concept of Mahr was introduced by the Prophet (SM) and he made it obligatory for the husband to pay his wife in marriage. Dower is similar to *donation propter nuptias* in Roman Law. But in Roman Law it was voluntary and in Muslim Law it is obligatory. The peculiar feature of Muslim law of Mahr is that no maximum amount of Mahr is prescribed, and, therefore, a husband is free to fix any amount of Mahr, even though it is beyond his means or ability to pay or earn.

#### **a. Amount of Dower: Islamic Jurisprudence**

In the study, the first question is as to how much Mahr should a groom ask for. There are many different pieces of advice on this:

1. Mahr can be as much as both parties decide on, but according to Hanafi *fiqh*, it has got to be more than the silver price of 10 *dirhams*.
2. A minimum amount of dower is laid down for the Malikis which is three dirhams.
3. Mahr of Fatima Radeyallāhu Anha (RA), daughter of Rasulluulah (sal Allahu alaihi wa sallam), was 1469.60 grams of silver, or its value.
4. A high mahr may be specified at the time of marriage, beyond the husband's easy means, and this may not be asked for except at divorce. This mahr will make him cautious about divorce, as he will have to pay that full amount and make a comfortable financial cushion for the bride in case of divorce. It is allowed after the marriage, but doesn't have to be paid immediately, but when the wife asks for it. Until she asks for it, it remains a debt that he owes his wife. Many wives choose not to ask for it, especially if the amount is very high, as the Mahr is her money alone, and generally not spent on household expenses. If he dies, the Mahr he owed his wife and never paid is considered a debt, and paid from his estate first, before the remaining money is divided among inheritors. The wife's share is then Mahr + 1/4 of the remainder after debts if there is no child; or Mahr + 1/8th of the remainder after debts, if there is any child.
5. Mahr may be high, as this Mahr is in proportion to his status and value.
6. A low Mahr may be fixed, as Prophet Muhammad (sal Allahu alaihi wa sallam) said: "The most blessed nikah is the one with the least expenses."
7. Sometimes there's a traditional Mahr in the family, and that's what all the girls ask for.

Though there is no fixed amount of Mahr in the Shariah, it has to be given according to the financial status of the husband and according to the time and place. Moreover, it must be reasonable and not too much. The Holy Quran does not make any specific mention regarding the actual amount of dower. The holy Quran says: “The wealthy according to his means and the strained according to his means.” The Prophet (SM) never demanded huge amounts of dower when giving his daughters in marriage. He is also reported to have said, “The best woman is the one whose Mahr is the easiest to pay.” In another Hadith, a high amount of *Mahr* is considered evil and little *Mahr* and “*Mahr al-Sunnah*” has been advised which was about 1250 to 1500 grams of silver.

Islamic jurisprudence clearly reveals that Shariah does not stipulate a certain limit for the mahr that should not be overstepped, but it does encourage reducing the mahr and keeping it simple. In the above Hadith, “Do not go to extremes” means do not exaggerate in increasing dower. What people do nowadays, increasing the mahr and exaggerating concerning it, is something that goes against the shariah.

### **b. Content of Mahr and Islamic Practices**

Dower doesn't have to be money. It can be jewelry. It can even be a Quran or a recitation of the Quran. It can be a *Hajj* trip. Freedom can also be a good dower. But if someone prefers taka, he can give the bride in cash. The mahr is not supposed to create hardship for the groom. It is a gift after all. There are sahih references in support of the subject matter of dower. Sahl b. Sa'd al-Sa'idi (Allah be pleased with him) reported:

-----*There stood up a person from amongst his companions and said: Messenger of Allah, marry her to me if you have no need of her. He (the Holy Prophet) said: is there anything with you (which you can give as a dower)? He said: No, Messenger of Allah, by Allah I have nothing. Thereupon Allah's Messenger (may peace be upon him) said: Go to your people (family) and see if you can find something. He returned and said: I have found nothing. The Apostle of Allah (may peace be upon him) said: See even if it is an Iron ring. He went and returned and said: No, by God, not even an iron ring, but only this lower garment of mine (Sahl said that he had no upper garment), half of which (I am prepared to part with) for her. Thereupon Allah's Messenger (may peace be upon him) said: How can your lower garment serve your purpose, for it you wear it, she would not be able to make any use of it and if she wears it there would not be*

*anything on you? The man sat down and as the sitting prolonged, he stood up (in disappointment) and as he was going back Allah's Messenger (may peace be upon him) commanded (him) to be called back, and as he came, he said to him: Do you know any part of the Qur'an? He said: I know such and such surahs (and he counted them). whereupon he said: Can you recite them from heart (from your memory)? He said: Yes, whereupon he (Allah's Messenger) said: Go, I have given her to you in marriage for the part of the Qur'an which you know.*

This hadith has been narrated on the authority of Sahl b. Sa'd with a minor alteration of words, but the hadith transmitted through Za'idah (the words are that the Holy Prophet) said: Go, I have married her to you, and you teach her something of the Qur'an. Abu Salama b. 'Abd al-Rahman reported: I asked 'A'isha, the wife of Allah's Messenger (may peace be upon him): What is the amount of dower of Allah's Messenger (may peace be upon him)? She said: It was twelve 'uqiyas and one nash. She said: Do you know what is *al-nash*? I said: No. She said: It is half of *uqiya*, and it amounts to five hundred *dirhams*, and that was the dower given by Allah's Messenger (may peace be upon him) to his wives.

Anas b. Malik reported that Allah's Apostle (may peace be upon him) saw the trace of yellowness on 'Abd al-Rahman b. 'Auf and said: What is this? Thereupon he said: Allah's Messenger, I have married a woman for a date-stone's weight of gold. He said: God bless you! Hold a wedding feast, even if only with a sheep. Anas (Allah be pleased with him) reported:

*-----There came Dihya and he said: Messenger of Allah, bestow upon me a girl out of the prisoners. He said: Go and get any girl. He made a choice for Safiyya daughter of Huyayy (b. Akhtab). There came a person to Allah's Apostle (may peace be upon him) and said: Apostle of Allah, you have bestowed Safiyya bint Huyayy, the chief of Quraiza and al-Nadir, upon Dihya and she is worthy of you only. He said: Call him along with her. So, he came along with her. When Allah's Apostle (may peace be upon him) saw her, he said: Take any other woman from among the prisoners. He (the narrator) said: He (the Holy Prophet) then granted her emancipation and married her. Thabit said to him: Abu Hamza, how much dower did he (the Holy Prophet) give to her? He said: He granted her freedom and then married her-----.*

This hadith has been narrated through another chain of transmitters on the authority of Anas that Allah's Apostle (may peace be upon him)

emancipated Safiyya, and her emancipation was treated as her wedding gift, and in the hadith transmitted by Mu'adh on the authority of his father (the words are): "He (the Holy Prophet) married Safiyya and bestowed her emancipation as her wedding gift."

Therefore, religious prescriptions, as mentioned above, affirm that the subject matter of mahr can be money or any other thing having monetary value, depending upon the acceptance of the wife.

### **Legislations and Social Practices**

Muslim Family Law, which encompasses dower also, in Bangladesh, is regulated by principles deduced from the holy Quran, Sunnah, Ijma, and Qiyas. The Muslim Personal Law (Shariat) Application Act, 1937 (XXVI of 1937) applies to all Bangladeshi Muslims in all matters relating to family affairs including dower. Accordingly, the liability of a Bangladeshi groom to pay dower is imposed by Sharia Law. Side by side, the MFLO and case law enrich this legal institution.

However, Allah says in the Qur'an: "And give the women their dower with a good heart... This verse is addressed to the husband because it is their responsibility to pay dower. This verse shows that dower must be given to the wife and should not be given to the guardians. Prompt Dower becomes payable immediately after the marriage and must be paid on demand. The wife claiming the prompt dower stands as an unsecured creditor. If the prompt dower is not paid, she could refuse to stay with her husband and also can take legal action. It was held that prompt dower may be considered a debt always due and able to be demanded and payable upon demand. Dower can also be deferred. Moreover, the MFLO, 1961 provides that where no details about the mode of payment of dower are specified in the *nikahnama* or the marriage contract, the entire amount of dower shall be prescribed to be payable on demand.

Where the wife felt that possible way to win or retain the affection of her husband was to act on his suggestion and to remit the dower, it was held that she did not act as a free agent and it would be inequities to hold that a woman who remits dower in such circumstances is bound by it. It was held in the case of *Rahim Jan v. Md.* that the wife can refuse to live with her husband if dower is not paid on her demand and consummation does not affect this right of the wife. But after cohabitation, the proper course for the court is to pass a decree for restitution of conjugal rights on condition



of payment of prompt dower. In *Rabia Khatoon v. Muktar Ahmad*, it was held that the right of refusing herself is lost on consummation. Thus if the husband files a suit for restitution of conjugal rights before consummation, nonpayment of prompt dower is a complete defence.

Deferred Dower becomes payable at the termination or dissolution of marriage either by death or divorce. If the marriage is dissolved by divorce, then the dower can be recovered by compromise or suing in the family court. If the marriage is dissolved by death, the dower can be recovered from her husband's estate. However, if the husband contracts another marriage without the previous permission of the Arbitration Council, he shall pay immediately the entire amount of the dower, whether prompt or deferred, due to the existing wife or wives, which amount, if not so paid, shall be recoverable as arrears of land revenue.

Usually in the country dower is fixed at the time of marriage according to the status of the husband and it is mentioned in the *Kabin Nama*. In *Mst. Meherunnahar v. Rahman Khondakar*, the plaintiff asked for the realisation of her dower which was fixed at taka 90,111 by a registered *kabinnama*. The Family Court ascertained that no portion of the dower money had been paid as *usool* and that the plaintiff was entitled to the full amount. The Family Court, while deciding whether the plaintiff was entitled to the full amount of dower, attempted a theological discussion that in the holy Quran it is expressly written that the amount of dower should be that amount which the husband is able to give whenever the wife demands it. The court deduced that according to religion and the theologians, the amount should not be more than the ability of the husband warranted. It was held that it should not be more than the annual income of the husband.

The court, thus, reduced the specified amount of dower granted by the registered *kabinnama* to taka 50,000 on the ground that the defendant, being a lawyer who is completely dependent on his senior, would not be able to pay a higher amount. It is significant to note that the reduction of the dower money to taka 50,000 was first suggested by a few lawyers in a conciliation or *shalish* and the parties agreed to it. But as the defendant failed to pay anything, the suit arose. The Family Court thus accepted the compromise amount arrived at by the *shalish* and attempts to give it religious legitimacy.

Marriages in Bangladesh are seen as a contract whose terms are to be negotiated between two people and their families. Bangladeshis assume that the amount of dower will be fixed by the guardians and the bride



would remain a mere spectator. While interrogating respondents, the researcher did not find anyone who contributed to fixing her dower money. Neither did they try to negotiate. When women negotiate a dower amount, this is considered a non-traditional marriage and is rarely found. I argue that knowledge about mahr and capacities to negotiate depend on several factors, namely, age of the bride, educational background, economic independence, etc. It is felt that Bangladeshis are increasingly insistent that women have the right to negotiate their dower money, higher or lower independently and marriage contracts are used to secure such conditions, although there is no evidence to support this contention.

A family of high status or one of the middle classes frequently consider that dower of their daughters would be same. For example, if dower of their first two daughters is 10 lakhs, they expect and negotiate to determine the dower for the third one at taka 10 lakhs. It is nowhere stated in the holy Quran. Nor is it found from the practices of the prophet (SM). Since *Rizq* is different for each and every people in Islam, how could dower be same in all cases? And how could the dower of one or two daughters could determine the dower of the rest, since dower is determined on the basis of the financial position of the groom?

It is gathered from the field that 35% of the respondents believed that dower must be reasonable considering the economic status of the bridegroom. 40% of the respondents thought that it has to be small so that the husband could easily pay for it. Others were in favor of raising dower money so that it can give economic security to women after divorce.

### **Case Study 1**

Md. Abdul Mabud, aged 70, was a Professor in Govt. Azizul Haque College of Bogura district in Bangladesh. He served as a witness in several marriages both in urban and rural areas. He opined that though Islam considers dower as economic security, it appears worthless when a marriage is dissolved irrespective of the high or low amount of dower. He added that the dower has to be small considering the economic ability of the husband. But whatever the amount is, it has to be paid fully at the marriage ceremony and the Kazi will ensure it. The government needs to enact laws compelling the husband to pay it at the marriage ceremony. If it is not possible, he must pay at least 80% of the dower at that time. He also said that guardians are concerned more with dowry than dower in poor sections of society. Though dowry is prohibited, they give or receive it secretly.

### **Demanding Excessive Amount of Dower**

Islamic law does not fix any minimum and maximum amount of dower, but makes it obligatory for the husband to pay, whatever amount has been specified and whatever amount is assessed, if not specified. Determining the dower, which happens on a compromise between the bridegroom and the bride, is undoubtedly a crucial factor in every marriage. If it's too much, the groom can negotiate and reduce it but she must consent. The mahr has no limits. The second khalif of Islam Umar (RA) tried to place a limit until he was accounted for by a woman. She said as the Prophet (SAW) had not placed a limit, how could he? He realized his mistake and reversed his decision.

Fixing excessive amounts of dower is being used in the country as a means to control and check the husband's unilateral and unlimited power of divorce, as he has to pay the full amount of dower at the time of divorce. It further acts as a status matter, in which case there is no intention to pay the stipulated amount in full. Besides, very often the groom is forced to increase the amount of dower under social pressure. But the husband has to pay the whole dower money, whatever unreasonable or unrealistic amount it might be, without any consideration of his income and along with the maintenance for three more months for his wife and if he has children then maintenance for the children as well in case of divorce.

**Table: 1**  
**Scenario of Paying Dower**

Paid, unpaid, waived or not waived or others	Percentage
Paid	65%
Unpaid	5%
Partially paid	30%
Waived	20%
Did not waive	35%
Don't know about dower	0%

Media has highlighted some unusual incidents of 'dower businesses' by some women, who seemingly marry for dower. There are some incidents on record where women married several times, each time fixing high amount of dower, and then divorced the husband. There is a potential of misuse of this practice of excessive dower for quick gains. Excessive dower has been mentioned by the authors as a factor leading to wife-initiated divorce. In this study, 25% of the respondents opined that there was a pressure from

the party of the bride to raise dower money. 75% of the respondents said that dower was fixed through a negotiation between them, the parties of the bridegroom and the bride.

It appears that before every marriage ceremony, fixing the dower money causes many problems including a heated argument between two sides of the marriage leading to a breakdown of proposed marriage as well. Besides, even though the groom side concedes to pay dower on the face of an unreasonable demand, it leaves a permanent scar in the mind of the husband and his family which eventually create a mental bar to accept the bride in the new family. Many women also treat dower money as a scale which represents their value. Lower dower money represents less value as a bride and higher means the opposite. In this way, they are objectifying themselves unconsciously. There is a custom among some of the Bangladeshi Muslims of taking dower as a status enhancing device, which is to stipulate huge amounts of dower without any intention to pay this. This hypothesis of fixing excessive dower is not proved in the study, since the following table shows that only 10% of the respondents thought that the dower money in their marriage was too much.

**Table: 2**  
**Amount of Dower**

Question Asked on Amount of Dower	Percentage
Is it high?	10%
Is it low?	10%
Is it ok?	80%

The necessity for producing a guideline for determining reasonable amount of dower within a legal framework is an issue which deserves the attention of the researcher more than ever. It will give the judiciary a strong ground to reject any unreasonable amount claimed by the disgruntled wives. Simultaneously, it will also eradicate the bad culture of imposing a high amount of dower on the groom in the name of religious practice which is discouraged in Islam.

### **Treating Wedding Presents as Dower**

Very often a wife in this country receives a dower from her husband in the guise of gifts, such as, ornaments, cosmetics, or other wearing materials, made at the marriage ceremony. In this regard, Sharia law is that ornaments

or other such materials given by the groom's family cannot be treated as the payment of that dower without taking consent of the wife. Whereas clause 15 of the *Kabinnama* (marriage deed) says that the husband can pay a certain amount of dower in the form of jewelry and cloth during the marriage. Usually, the husband or his men create pressure to fill up this clause mentioning those items. The wife's consent is not taken in practice in Bangladesh to count jewelry and other wedding presents as *usool*. Clause 15 of the *Kabinnama* and the social practice existing in the country are contradictory to Sharia principles. As far as the paradox is concerned, clause 15 of the *Kabinnama* needs to be changed and the bride's consent requires to be mandatorily taken before counting wedding presents as dower.

**Table: 3**  
**Scenario of *Usool***

<i>Usool</i> Given or Not	Percentage
Considering pieces of jewellery and wedding presents as dower	75%
Did not provide anything at the marriage ceremony	25%

Case laws reveal that if any portion of the dower is paid and mentioned in the registered *kabinnama*, the courts tend to reduce the amount of dower by the alleged *usool*. While interrogating the uses of *usool*, the Family Court gave preference to documentary evidence. In the registered *kabinnama* it was mentioned that a part of the dower had been paid as *usool* at the time of marriage. The court did not further inquire whether it had actually been paid. The same situation arose in another case where the Family Court only allowed the claim for dower after reducing the total amount by the *usool* as specified in the registered *kabinnama*. The concept of *usool* can also be found in cases where the registered *kabinnama* did not specify that a part of the dower has been paid by the husband at the marriage ceremony. It was decided that the wife was no longer entitled to dower as the jewelry given by the husband constituted her dower. This concept of *usool* as substituting dower with jewelry and other valuables is actually reducing the right of dower of women.

When *usool* is registered in the *kabinnama*, it is easier for the courts to reduce the dower, as found in many cases. It was held by the Family Court that when in the registered deed it is expressed that a part of the dower money has been paid in the form of jewelry at the marriage ceremony,

there is no ground to reduce the amount of dower. The court allowed only the prompt dower. Sometimes the courts are not only regarding jewelry but also household wares and apparel as substitutes for dowers.

**Table: 4**  
**Consent Given by the Bride in case of Usool**

Consent given or not given	Percentage
Consent given	15%
Did not give consent	60%
Consent is irrelevant as no wedding present is given	25%

The above table shows that 60% of the respondents did not give their consent in treating their wedding presents as dower. Guardians especially fathers of either bridegroom or bride, who play a dominant role in fixing and negotiating dower money, do seldom feel the necessity of asking the bride about her consent for *usool*. Ziba Mir-Hosseini told in her analysis of Islamic marriage and divorce laws in post-revolutionary Iran, “It is misleading to take Islamic family law at face value and evaluate women’s positions according to what the law entitles them to. The law and what it entails can only be understood through its application; in other words, the law cannot be isolated from the wider context within which it is meaningful.”

The holy Quran does not stipulate that dower should be in cash. Practices of prophet (SM) also appear to simplify dower. Dower in Bangladesh is generally paid through jewelry. Exercises of *usool* through jewelry leads to the wife’s deprivation from dower right. Difficulties sprang from *usool* are: 1) Dower works as a financial security for women. Items like wedding presents except jewelry and cash money do not meet up the purpose of securing women financially. Hence, these presents except cash money and jewelry must not be considered as dower. 2) The bride’s party usually does not ascertain at the time of marriage whether the claim is genuine because they want the ceremony to go on uninterrupted. But the claim might later prove to be false, taking away a potential right of dower of the woman. 3) When presents are made in public at the time of marriage, there is clearly an element of show of status, rather than concern for the financial protection of the women.

### **Facets of Infringement of Women's Rights in Case of Dower**

Despite legal instruments concerning dower and recovery of dower, deprivation of right of dower is still a persistent trouble. 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 anticipate 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.

Bangladesh ranks the 4<sup>th</sup> in the world and the 1<sup>st</sup> in Asia in terms of child marriage. Recently the Child Marriage Restraint Act, 1929 has been abolished and it has been replaced by the Child Marriage Restraint Act of 2017. The Act of 2017 preserves article 2 of the previous statute which lays down the legal age for marriage for a boy 21 and for a girl 18. This Act adds article 19 which legalizes minors below 18 years of age to be married off with the consent of the parents or guardians in the presence of a magistrate under "special circumstances" deemed with securing the best interest for them. The law artfully coincides with the Muslim Marriage Law which allows participants of 15 years and above to get legally married. At present 68% girls below 18 years are being married in rural areas of Bangladesh.

65% of the aforesaid numbers of child marriages are occurred forcibly. Parents tend to impose their decisions regarding marriage on the child bride and under coercion, the bride gives consent to marry the man chosen by her guardians. Under this compelling situation, it is difficult for Muslim girls to negotiate for dower at the time of marriage. In this study, 20% of the respondents opined that they were given in marriage during their tender age. They knew nothing about dower fixation, only heard the term 'dower'. Further, against the backdrop of a male-dominated society which treats women as subordinates, women are seldom encouraged to make an informed decision including bargaining about dower and to consent freely at the time of marriage.

**Table: 5**  
**Educational Qualification of the Respondents**

Degrees	Percentage
Below SSC	15%
SSC	10%
HSC	25%
Bachelor	10%
Masters	40%

The above table displays the educational qualification of the respondents. As noted earlier, child marriage plays a great hindrance to awareness of a bride, similarly, lack of educational qualification does not let her to be conscious of her rights. Given lack of accelerated consciousness due to child marriage and backward people in terms of education, the real problems are socio-cultural reasons and patriarchal subversions of a later period. This is the irony of mixing deprivation of dower with socio-economic reasons, the address of which are of the starkest urgency.

**Table: 6**  
**Knowledge of Respondents about Laws Concerning Dower**

Nature of Knowledge	Percentage
Know about relevant laws	70%
Did not know about relevant laws	30%

One aspect cannot be analyzed without taking into consideration of other relevant issues. Women's rights over dower are now being infringed in the country not only because of child marriage but also lack of educational qualification, which places a hindrance on women to be socially aware of laws so far as dower is concerned. The hypothesis is not proved totally and the praiseworthy data is found from the above table showing that 70% knew about dower. Another positive thing is that all the respondents know about dower. Nevertheless, data showing knowledge of the respondents reveals that their opinion is partial, since consciousness about dower was tested long after their marriage. Accurate result would have been obtained, if inquiry were made among the virgins getting into married.

65% of the respondents opined that dower was partially given at the marriage ceremony. 25% of the respondents said that dower was paid fully at the marriage ceremony. 15% of the respondents said that nothing was



given at the marriage ceremony. 10% of them did not yet receive it. 5% of them received full dower after divorce through instituting a suit. 25% of the respondents did not claim unpaid dower later on. Only 10% of the respondents said that unpaid dower had been given later on by providing land property. Rest of the respondents either fully got or waived or partially got and partially waived dower. The original data showed no distinctive pattern of mahr for widows.

**Table: 7**  
**List of Registered or Unregistered Marriage**

Nature of Marriage	Percentage
Registered	70%
Unregistered	30%

Marriage registration can prevent child marriage, ensure inheritance rights, and enable paternity recognition, fair divorce, and benefits linked to marriage. Therefore, registering the marriage is a strong device to protect the rights of a Muslim wife. Though the Registration of Marriage has been made mandatory in Bangladesh by the Muslim Marriages and Divorces (Registration) Act, 1974, still in many villages this is not strictly followed. The reasons behind this are sometimes a lack of awareness and sometimes a hidden intention to deprive the bride of legal or religious rights. Consequently, where there exists no *Kabinnama* of the marriage, 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. The above table evidences the fact displaying that 30% of marriages are to date unregistered. Nevertheless, Plan International Bangladesh conducted a survey on the scenario of registration of marriages and prepared the following table expressing that marriage registration rates are generally high - 79.5% of marriages have been registered. Hindu marriages have the lowest registration rate with only 28.8% of respondents who did not register their marriages.

**Table: 8**  
**Marriage Registration Status by Religion**

Type of marriage	Number of respondents	Number of marriages registered	The proportion of registered marriages (%)
Muslim	323	290	89.8%
Hindu	66	19	28.8%
Christian (registered in Church)	25	19	76%
Buddhist (registered in practice, not legally)	10	8	80%
Special	6%	6	100%
Total	430	342	79.5%

It is significant to state here that cases of dower are influenced by social practice in the country and the question of paying due dower arises only at the time of divorce. In case of divorce, the wife has to recover it through court case. During contest the husband often raises different pleas, such as, the dower money is paid (*usool*) in the form of jewelries or shows a paper (which he obtains from his wife forcibly or forges her signature) showing that his wife has either received or waived her dower. This was not proved in the study, though 5% of the respondents strongly opined that their husbands showed different pretexts with a view of avoiding dower payment.

### Case Study 2

Shahida Bewa, aged 60, got married with Saju Mia in 1989. Her marriage was registered. Nothing was given as dower at the marriage ceremony. She claimed dower from her husband during the continuance of marriage but he denied giving it. After passing 23 years of family life, Saju Mia gave talaq in 2012 without showing any reason and married another woman. After divorce, Shahida Bewa instituted a suit for recovery of

dower. After spending almost TK. 20, 000 as expenses of advocates' fee, Mohuris' fee and travel for about one and a half year, she recovered TK. 50,000. She suffered a lot in order to continue the suit. During that time, she everyday went to the court at 9 am and returned home at 4 pm without taking any lunch. She filed another case after divorce under the Nari O Shishu Nirjatan Daman Ain. But it was dismissed due to the influence of Saju Mia. Afterwards, she filed a suit for getting maintenance. The court decreed TK. 9000 as maintenance. He gave only TK. 5000 through the advocate. Later on, Shahida Bewa did not claim the rest realizing all the difficulties she faced in the suit for the recovery of dower.

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. Further, there is a misconception that if a marriage is dissolved by the wife by the exercise of *talaq-e-tafweed*, the wife will be deprived of her 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. In khula cases women are sacrificing their right of dower in exchange for a divorce. From the practical point of view, a woman may be pressurized by her husband to give khula to avoid the payment of dower which he has to give when using talaq. In *Mubara'at* form of dissolution of marriage, the marriage is dissolved by an agreement between the parties and here the desire for being separated is mutual, as consideration here is to be paid by the wife to the husband. Lack of clear idea about these forms of dissolution of marriages creates confusion and accelerates the deprivation cases. Moreover, dower also contributes to desertion, as husbands, who cannot divorce their wives and pay for it, just desert them. It must be emphasized in this context that desertion has become an acute problem in Bangladeshi society.

There are cases where the courts were investigating and went into detail whether the husband actually paid dower. The question of investigation arises only after divorce and when a wife files a suit for recovery of dower. Constant supervision is required ensuring the payment of mahr by the husband and it will be assured by local *kazi* as to how much it has been paid and by how.

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. Sometimes, a high amount of dower is fixed

by the parties to show off their status but without having any real intention to pay it. Sometimes it is not mentioned in the *Kabinnama* specifically that what portion is prompt and what portion is deferred. Again, the tradition to waive dower at 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*, but must act freely and must not be influenced. It was held in the case of *Nurunnessa v. Khaja Mahomed*, that where the wife was subject to mental distress on account of her husband's death, the remission of dower was considered as against her consent and not binding on her. It has been held in *Shah Bano v. Iftekar Mohammed*, that in certain cases remission of dower cannot be upheld. For instance, if a wife feels that the husband is increasingly showing indifference to her and the only possible way to retain the affection of her husband is to give up her claim of Mahr and forgoes her claim by executing a document, she is not a free agent and it may be against justice and equity to hold that she is bound by the terms of the deed. In these situations, women are being deprived of their right of dower for lack of awareness as they believe that they have already relinquished their right.

### Case Study 3

Fatema Zohra, aged 40, is running her Ph.D. in Umm-ul-Qura University in Saudi Arabia. Her marriage is registered and she got a full dower at the marriage ceremony. Wedding presents like ornaments were considered as dowers. Afterwards, her husband, Rafiqul Islam, while buying a plot of land, took ornaments as loan and paid dower back after few years through giving share in land property. All these happened through a negotiation between them. She thought that her dower is perfect and delivered lots of recommendations which are: 1) Dower must be small; 2) It has to be paid at the marriage ceremony because it is Sunnah; 3) Economic status of the husband has to be seen in calculating dower; 4) The wife can do anything with her dower; 5) The husband must not seek waiver of dower from the wife at the wedding night; 6) The bridegroom must not demand any dowry from the bride; 7) The husband will receive wife with honour through paying full dower at the marriage ceremony.

In Bangladesh, Muslim marriage contract itself is drawn by the woman's male relatives, not by the woman herself, so the conditions that she writes into the contract again depend on what her family is willing to negotiate for her. The abstract right of a woman over dower thus cannot

be understood outside of a whole social context of kinship, class, her age, educational qualification, economic independence and the relationship between the woman and her male relatives.

### **Conclusion with Recommendations**

Although there are divergent opinions in favour of and against both fixing exorbitant or lower amount of dower and considering jewelries, garments and other cosmetics as *usool* without the consent of the bride, it is unanimously agreed that dower has to be paid, whatever the amount is, and fancy gifts presented to the bride cannot work as her security. The above discussion relies on the contrast between theory and practice and in doing this, takes note of various socio-realities, such as, child marriage, educational background, non-registration of marriage, remission of dower at the marriage night, misconception about the classes of divorce etc. It is of utmost importance to note here that the Quran was revealed at a time and place in history when patriarchal values reigned supreme and its laws in large part tempered and relieved some of the most egregious excesses which then subsisted by creating new regulations for society and modifying customary practices. Patriarchal values and attitudes still subsist and hence guardians specially fathers do not take consent of their daughters in considering *usool*.

Fixing excessive dower is not desirable and the bridegroom better to avoid enter into the prospective marriage tie, if the bride's family demands dower beyond capacity. The debate about the question of dower fixation between the two families can raise to a great extent and *kazi* could surely come up with a helping hand. His assistance could significantly lead them to settling reasonable amount, since it is a matter of utmost apprehensiveness at the time of marriage and of duty afterwards. Assistance of the Kazi and consciousness of the groom must not undermine and devalue the concerns of the bride. A state of equilibrium appears to be maintained between the economic security of a bride and the financial ability of the groom. The discussion further calls for another question and that is-whether a Muslim husband could be forced to pay his dower, irrespective of the volume of dower. It is hitherto argued that the moral fuel behind the obligation towards the wife is actually stronger than the duty in a legal instrument. Actually, except few devices, such as, denying to co-habit with the husband, leaving husband's house and filing court case, it is hard for wives to claim the due dower under present social practices.

It is discovered that women are not concerned of their rights in rural areas. Social awareness regarding women's right of dower has to be ensured by inserting basic concepts of dower in the syllabus of primary or secondary education. Duties must be given to the Imams of mosques or to the Chairman of Union Parishad to make local people aware about women's right of dower. Sometimes women are forced to relinquish or are reluctant to claim their rights because of their social prestige, lack of power and lack of social support in a male dominated society. Boldness could certainly let women raising their voices for their dower what otherwise would not be available, having realized that it is their right conferred by the Quran itself. This would help to avoid the inevitable stresses of financial gaining and strengthen the family unit.

In addition, it is not enough to make marriage registration mandatory rather monitoring cell has to be constructed for ensuring the registration of marriage. Moreover, the enquiry must 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. As there is a tendency to deprive the bride of her dower by deducting the fake price of jewelry on the part of the groom. Dower has to be reasonable based on the economic capacity of the bridegroom. It requires to be fully paid at the marriage ceremony. Kazi will assure this matter. If it is not possible for the bridegroom to pay the full dower at the marriage ceremony, at least 80% of the dower must be paid at the marriage ceremony. The rest could be paid later on and the Kazi will oversee this matter. Of course, people at the grassroots level have to be socially and religiously aware of this obligation towards dower. Massive social campaigns through Imams in the mosque and media can help raising morality and religious and social obligation of the husbands about dower towards their wives.

It is known that if 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, of recovering 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. 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 it.

So, women have to 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 must be more accessible for the women so that they can bring their actions within the proper time.

Islam is no doubt a source of progress. It is thought that the decadence of Muslims is the consequence of traditions and customs, negative attitudes and mentalities. The author strongly advocates social change and context-specific education for women, since over many years Islam had been misinterpreted to such an extent that women were unaware of their rights including mahr, and the legitimate advantages they could expect in life. It is as well required to break the monopoly of the patriarchal attitudes concerning *usool* and to free groom from traditional bonds of declaring high dower. Refuting assertions that exorbitant dower is permissible for Muslims, the author stands up for establishing justice so that the groom could be able to meet up the debt of dower and the bride to receive it.

Practices of fixing excess dower and uses of *usool* will have to be evaluated over time, drawing on a much larger pool of evidence and research than has been presented here. Meanwhile, this paper has reached the conclusion that Bangladeshi women are increasingly getting better access to information and dower right. Crucially, *kabinnama* will work as an efficient venue for the recognition of dower rights of women.

<sup>1</sup> T. Monsoor (2003) 'Dower and Dowry: Its effect on the empowerment of muslim women', *The Daily Star* 4, 1-8.

<sup>2</sup> Ibid.

<sup>3</sup> Bogra District is an area 2898.25 sq km, located in between 24°32' and 25°07' north latitudes and in between 88°58' and 89°45' east longitudes within Rajshahi Division in Bangladesh.

<sup>4</sup> Sahih Muslim, Book 8, 1, Hadith Nos. 3231-3472.

<sup>5</sup> Ibid.

<sup>6</sup> 3.125g \*10 of silver, around \$30

<sup>7</sup> Jamal. J.A. Nasir (2017) 'Dower', *The Islamic Law of Personal Status*, BRILL, 83-96.

<sup>8</sup> Sahih Al-Albani, Hadith No. 4163.

<sup>9</sup> The Holy Quran, Verse 236, Sura 2.

<sup>10</sup> See Al-Albaani, Saheeh al-Jaami', Saheeh, Hadith No. 3300.

<sup>11</sup> Equal to about 170 to 223 grams of gold.

<sup>12</sup> Sahih Muslim (n 5) Hadith No. 3316.

<sup>13</sup> Ibid, Hadith No. 3317.

<sup>14</sup> Ibid, Hadith No. 3318.



<sup>15</sup> Ibid, Hadith No. 3319.

<sup>16</sup> Ibid, Hadith No. 3325.

<sup>17</sup> Ibid, Hadith No. 3326.

<sup>18</sup> Section 2 of the Act states that notwithstanding any custom or usage to the contrary, in all questions (save questions relating to agricultural land) regarding intestate succession, special property of females, including personal property inherited or obtained under contract or gift or any other provision of Personal Law, marriage, dissolution of marriage, including talaq, ıla, zihar, lian, khula and mubaraat, maintenance, dower, guardianship, gifts, trusts and trust properties, and waqfs (other than charities and charitable institutions and charitable and religious endowments) the rule of decision in cases where the parties are Muslims shall be the Muslim Personal Law (Shariat).

<sup>19</sup> It means “And give the women their dower with a good heart... “ This is noted in Verse 4, Sura Nisa of the Holy Quran.

<sup>20</sup> Nuruddin Ahmed v. Masuda Khanam, (1957) 9 DLR 8.

<sup>21</sup> Monsoor (n. 1).

<sup>22</sup> Ibid.

<sup>23</sup> This was held in the leading case of Anis Begum v. Md. Istafa Wali Khan, AIR 1933 All 634.

<sup>24</sup> AIR 1966 All 548.

<sup>25</sup> Section 6(5) (a), the Muslim Family Laws Ordinance, 1961.

<sup>26</sup> Kabinnama is the marriage deed in the country.

<sup>27</sup> Family Suit No.24 of 1987 (unreported).

<sup>28</sup> N.U. Rocki (2021) *Three Divorces Each Hour in Chattogram*, Dainik Jugantor 5, 1-10.; also retrieved from: <<http://surl.li/bgfx>> (Last accessed 30 September 2021).

<sup>29</sup> M. M. Tomal (2018) *When Marriage is a Business*, Bangladesh Protidin; retrieved from <<http://surl.li/bgfx>> (Last visited on September 30, 2021); See also, Online Desk, “Business in the Name of Kabin: New Law Demanded”, Dainik Ittefaq, December 28, 2020, available at: <<http://surl.li/bgfx>> (Last accessed 30 September 2021).

<sup>30</sup> M.B. Mohammed and M. U. Mohammad (2021) *Excessive Dower and its Impact on Wife-Initiated Divorces: An Empirical Study on Chattogram District of Bangladesh*, Bangladesh Journal of Law: retrieved from :<<https://www.biliabd.org/wp-content/uploads/2022/02/Mohammed-Moniruzzaman-Bhuiyan-and-Dr.-M.-Moin-Uddin.pdf>> (last accessed 29 May 2022).

<sup>31</sup> F. Nahid (2019) *The practice of dower and dowry in muslim marriage in Bangladesh: A legal analysis*, Jurnal Syariah, 547-564.

<sup>32</sup> Mst. Razia Akhter v. Abul Kalam Azad, 3 LNJ (2014) 170.

<sup>33</sup> Mst. Ilafi'za liihi v. Md. Shafiqid Alam, Statutory Provision and Legal Mechanism About Dower in Bangladesh, retrieved from: < <https://www.assignmentpoint.com/arts/law/statutory-provision-and-legal-machanism-about-dower-in-bangladesh.html>>,(Last accessed 10 June 2021).

- <sup>34</sup> Monawara Begum v. Hannan Hawladar. Family Suit No. 15 of 1989 (Unreported).
- <sup>35</sup> Ms. Roksana Begum v. Md. Abul Khair, Civil Revision, 1268/2011, Narayanganj.
- <sup>36</sup> Nasima Bilkis v. Md. Abdus Sarnad Khan, Monsoor (n. 1).
- <sup>37</sup> L.L. wynn, *Marriage Contracts and Women's Rights in Saudi Arabia: Mahr, Shurut, and Knowledge Distribution The Islamic Marriage Contract*, Asifa Quraishi and Frank Vogel, eds. (Cambridge: Harvard University Press, 2008) 3.
- <sup>38</sup> Nahid (n. 31).
- <sup>39</sup> T. Monsoor (2000) *Gender Equity, Economic Transformation of Woman and Family Law: A Socio-Legal Analysis*, Bangladesh journal of Law 85, 83-97.
- <sup>40</sup> T. A. Ahnaf and S. Sanwar (2020) *Child Marriage in Bangladesh: Policy and Ethics*, Bangladesh Journal of Bioethics 23, 23-34.
- <sup>41</sup> Ibid.
- <sup>42</sup> Child Marriage in Bangladesh, retrieved from: <<https://www.hrw.org/report/2015/06/09/marry-your-house-swept-away/child-marriage-bangladesh>> (last accessed 28 June 2021).
- <sup>43</sup> Ibid.
- <sup>44</sup> Monsoor (n. 1), Ambia Khatoon v. Md Yasin Bepar, Mst. Angari Begum v. Md. Iqbal Rashid.
- <sup>45</sup> Monsoor (n. 1).
- <sup>46</sup> 1956 Karachi HC. [3] AIR 1980 All 119.
- <sup>47</sup> M.M. Adrian and P. S. Leila (1995) *Marriage, Divorce, and Foreign Recognition*, Family Law quarterly 702, 701-720.