

RAJSHAHI UNIVERSITY LAW JOURNAL



FACULTY OF LAW
RAJSHAHI UNIVERSITY

2006

ARTICLES

Dower in history and its significance in Islamic law

The Emergence of Plantation Labour in Bengal: A historical and legal study

The Convention on the Rights of the Child, 1989: Its Success or Failure after 17 years

The concept of Islamic Law and its application in Bangladesh

Hiring and Firing of Securities Regulators in Bangladesh and Australia: A Comparative Review

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Inheritance of Orphan Grandchildren under Islamic law of Succession: A study of the impact of section 4 of the Muslim Family Laws Ordinance, 1961

পঞ্চম জাতীয় সংসদে গঠিত কতিপয় গুরুত্বপূর্ণ কমিটি: একটি পর্যালোচনা

বাংলাদেশের শিকস্তি ও পয়স্তি আইন : একটি পর্যালোচনা

ইসলামে মোহরানার অধিকার ও বাংলাদেশের আর্থসামাজিক প্রেক্ষাপট : একটি পর্যালোচনা

সাইবার ক্রাইম : আইন প্রয়োগ, সমস্যা ও উত্তরণের উপায় অনুসন্ধান

শিশু নির্যাতন এবং শিশু অধিকার : প্রেক্ষিত বাংলাদেশ

বাংলাদেশে টিপাইমুখ বাঁধ এর প্রভাব : একটি আইনী পর্যালোচনা

Abstract on the Project Legal Rights of the Child: Policy and Enforcement in Bangladesh, 1995

ISSN 1991-8976

Rajshahi University Law Journal

Volume 03 2006

Published by:

Dean

Faculty of Law

Rajshahi University

Rajshahi- 6205

Bangladesh



FACULTY OF LAW
UNIVERSITY OF RAJSHAHI

Rajshahi University Law Journal 2006

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Cover Design & Printed by

B T S Commercial Institute

Benodpur Bazar, Rajshahi

Printed at:

Barendra Printing Press & Packaging

Sapora, Rajshahi

Subscription Rates

For Individuals: Tk. 100.00 US\$ 20 (without postage)

For Organisation: Tk. 150.00 US\$ 30 (without postage)

[Published in December 2006]

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Dower in history and its significance in Islamic Law

Dr. Begum Asma Siddiqua*

1. Introduction

It is one of the most ancient traditions of the human family relations that at the time of marriage the man pays a dower (*mehr*) to the woman or to her father. In addition to that, he undertakes to bear the expenses of his wife and children during the entire period of his life. This practice in different forms is known to the people of the scriptures and also to many communities of the world. Dower used to be paid to the wife or widow in most of the European countries and even today some of the countries have retained this provision. In Islam payment of dower is obligatory on the husband to the wife. Dower, in Islam is a present given by husband to the wife as a sign of friendship, cordiality and goodwill. Dower in Islam is a free gift to the wife on which she can exercise her absolute right. This article does not address the Quranic provisions of dower in detail, kinds of dower as exist in traditional law and can be found in many text books, amount of dower coupled with the debate on dower and dowry as prevalent in Bangladeshi society. Those areas can be discussed independently on their own merit and an article in this issue appears on a different area of dower. Dower was prevalent among the Arabs in different forms which is also available in some text books and as such it has not been discussed in this article except for reference. This article aims to look at dower as it exists in history of the European and north American countries, history of dower as appears from the Quran, philosophy of dower and its significance in the Islamic system of marriage. The methodology adopted for this study is both descriptive and analytical.

2. Existence of Dower in the European countries

Dower was known among the people of Europe and other communities. Often it was termed as morning gift. Even today it is in practice in some communities of Europe and north America. The intention behind payment of dower was to make provision for the wife if she became a widow. In those countries and communities dower is a gift given by the groom to the bride, customarily on the morning after the wedding hence it is also termed as morning gift. Though all dower from the man to the woman, either in betrothment period, or wedding, or afterwards, even as late as in the testament, are understood as dowers if specifically intended for the

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maintenance of the widow. Dower is a very ancient practice the reference of which is found in the Code of Hammurabi.¹ It prescribes that a widow is entitled from her husband's estate both the value of her dower and any deed that may have been made by her husband in her favour. In Roman law, a gift called *donatio propter nuptias*, from the family of the husband was given to the wife provided she brought the *dos*. An ordinance of the Christian Emperor Justinian, however, secured a widow an absolute right to a part of her rich husband's property, if she was poor and undotated at the time of his death.

Dower was usual among the Germans as suggested by Tacitus.² He terms this gift as *dos*, but contrasts it with the *dos* in the Roman law, which was a gift from the wife to the husband, while in Germany the gift was made by the husband to the wife.³ The general establishment of the principle of dower in the customary law of Western Europe is to be traced to the influence of church, and may be included among its most arduous triumphs.⁴ Dower has been a property arrangement for marriage used apparently first in early medieval German cultures (such as Langobards and Goths), and the church drove its adoption into other countries, in order to improve the wife's security by this additional benefit. The practice of dower was prevalent in the Germanic-descending and Scandinavian-descending parts of Europe, such as Sweden, Germany, Normandy and successor states of the Langobardian kingdom. The husband was legally prevented from using the wife's dower - as contrary to her dowry.

In the above mentioned countries and cultures women were regarded as minors. For the separateness of the dower, this often meant that the woman's legal representative, usually her male relative, guarded the dower at some degree, and particularly was obliged to check that the husband does not touch, nor waste that property, and generally that the dower was to be preserved for the woman's widowhood, to her old age.

¹It was developed during the reign of Hammurabi (1792–1750 BC) of the 1st dynasty of Babylon (ancient Mesopotamia)

² Publius (or Gaius) Cornelius Tacitus (c. 56 – c. 117) is one of the important historians of Roman Antiquity.

³ Larousse, *Grand Dictionnaire Universel*, Paris, 1870, see Douaire

⁴ Henry Maine, *Ancient Law*, 3rd Amer. ed., New York, 1887, p.218

Usually, the wife was free from kin limitations to use and bequeath her dower to whatever and whomever she pleased. It may have become the property of her next marriage, be given to an ecclesiastical institution, or be inherited by her children from other relationships than from whom she received it. Dower was basically not under the clannish restrictions on alienation. Dower, as already mentioned is an outcome of the ecclesiastical practice of exacting from the husband at marriage a promise to endow his wife, a promise retained in form even now in the marriage ritual of the Established Church in England.⁵

In an ordinance of King Philip Augustus of France (1214), and in the almost contemporaneous Magna Charta (1215), dower is referred to. But it seems to have already become customary law in Normandy, Sicily, and Naples, as well as in England. The object of both ordinance and charter was to regulate the amount of the dower where this was not the subject of voluntary arrangement, dower by English law consisting of a wife's life estate in one-third of the lands of the husband of which any issue which she might have had might by possibility have been heir.⁶ Of dower (*douaire*) as it existed in the old French law no trace is to be found in the existing law of France. But brought to Canada from the mother country in pre-revolutionary times, customary dower accruing by operation of law is yet recognized in the law of the former French province of Quebec. And now by the law of Quebec a widow joining certain religious orders of the province is deemed civilly dead and undoubtedly would suffer loss of dower.⁷

There is judicial authority in English law of the year 1310 for the proposition that dower was favoured by law,⁸ and at a less remote period it was said to be with life and liberty one of three things which the law favoereth. However, in the early modern period, it was common for a wife to bar her right to dower in advance under a marriage settlement, under which she agreed to take instead a jointure, that is a particular interest in her

⁵ Blackstone, *Commentaries on the Laws of England*, II, p. 134

⁶ Blackstone, p.131

⁷ Larousse, *Grand Dictionnaire Universel*, Paris, 1870, s. v. *Douaire*; *The Civil Code of the Province of Quebec* (Montreal, 1905), §§ 1431, 1434, 1462, note to §34.

husband's property, either a particular share, or a life interest in a particular part of the land, or an annuity. This was often part of an arrangement by which she gave up her property to her husband in exchange for her jointure, which would accordingly be greater than a third. Strictly dower was only available from land that her husband owned, but a life tenant under a settlement was often given power to appoint a jointure for his wife. In England in the late 18th century, it became common for men to land with a trust that prevented their wives acquiring dower. Accordingly the English statute, the Fines and Recoveries Act of 1833 was passed to impair the inviolability of dower by empowering husbands to cut off by deed or will their wives from dower. Wives married before the Act still had in certain cases to acknowledge the deed before a commissioner to bar their right to dower in property which their husband sold. This was simpler than the previous procedure, which had required a fine to be levied in the Court of Common Pleas, a fictitious proceeding, by which she and her husband formally remitted their right to the property to the purchaser.

The law of dower unimpaired by statute has been with some modifications everywhere adopted as part of the municipal jurisprudence of the United States. But while the marriage portion, *dot*, is, yet dower is not, known to the law of Louisiana, and it has now been expressly abolished in some other States and in some territories. The instances of legislative modifications are numerous and important.

The concept of dower does not exist in Hindu law. All property acquired by a Hindu women on which she has absolute right is known as *stridhana*. Dower is a right of a wife against her husband whereas *stridhana* is a gift acquired by a Hindu women from different people and sources at anytime of her life. There is a long list of events made by Hindu jurists which may constitute a property as *stridhana*. Different school have different rules regarding the devolution of this property after the death of the woman. All schools, however, agree that a female child has more right on *stridhana* of a

⁸ Year Books of Edward II, London, 1905, Vol. III, p. 189

mother than her male child.⁹ There is one similarity between dower and *stridhana* that there is an absolute right of the woman with regard to its devolution during her lifetime.

While at present dower has almost lost its importance among the European and north American countries and different communities, it has retained its special position in the Islamic world. Payment of dower is specifically ordained in the Quran as essential part of a Muslim marriage.¹⁰

3. Dower in Islam

During the earliest days of Adam (A) and Bibi Hawa it is said that each time one pair of twins consisting of a boy and a girl used to be born to them and after adulthood the previous pair and the subsequent pair used to get married to the opposite gender. The same pair never got married to each other.¹¹ Following this tradition later marriage was prohibited between a male and a female of the same blood. Dower or endowing the wife with any kind of gift in the days of Adam (A) and Bibi Hawa has not been transmitted to us by any authority. Musa (A) for shelter and marriage, became a hired worker of his wife's father and worked for him for ten years. When Musa (A) escaped from Egypt and reached the well of Madyan the daughters of Shuayb (A) were standing with the sheep waiting to draw water from the well to quench the thirst of the animals. Musa (A) felt sympathy for them and drew water for their animals. The daughters narrated the event to their father who invited to his house. Later he gave one of his daughters into marriage with Musa (A) on the condition of paying service to him for eight or ten years.¹² Dower in various different forms was known to the Arabs and practised before the advent of Islam. There the wife was considered as a property of the father or clan.¹³

⁹ For details pl. see DF Mulla, *Principles of Hindu Law*, 14th ed. reprint by Sunderlal T. Desai, Bombay, 1978

¹⁰ Judith E. Tucker, *In the House of the Law: Gender and Islamic Law in Ottoman Syria and Palestine*, California, 1998, p.52

¹¹ *Islami Bishokosh*, (The Encyclopaedia of Islam- Bengali Version), 1st Vol., Dhaka, 2000, p. 243

¹² Quran 28:22-28

¹³ VR Verma, *Mohammedan Law*, 5th ed. Allahabad, 1978, p.133; NJ Coulson, *A History of Islamic Law*, Paperback ed., Edinburgh, 1978, p. 14

Even before the advent of Islam Prophet Muhammad (SM) paid five hundred dirhams as dower to Khadija (R). Dower of Ayesha (R) was equivalent to five hundred dirhams and dower of Umme Habiba (R) was four thousand dirhams or four hundred dinars. Ali (R) presented a suitable gift of four hundred and eighty or five hundred dirhams to Fatima (R).¹⁴

Islam came as a reform of the society and it directed that a man gives a present to woman herself. At present, in Islam neither of her parents has any claim to it. Woman receives the present, but she preserves her social and economic independence. She chooses her husband of her own free will, not with the sanction of her father or brother. Furthermore, neither has her father nor her husband any right to enslave or exploit her. The proceeds of her work and labour belong exclusively to her. In financial matters she does not require anybody's supervision or patronage. The husband has only one right. He can enjoy conjugal life with his wife. As long as the conjugal relations are intact, he is under an obligation to meet all the legitimate requirements of his wife within his own financial limits. Islam did not introduce dower for the first time, all that the Qur'an did was to restore it to its natural and pristine form. While payments to the wife herself were sometimes made in pre-Islamic times, the basic concept of marriage under some forms of the customary law was that of a sale of the woman by the father, or other near male relative, who received, *qua* vendor, the purchase price by the husband.¹⁵ The Qur'an in its incomparably elegant style says: "*Give to the women a free gift of their marriage portions*". (Surah an-Nisa, 4 : 4) The effect of this rule is to transfer the wife from the position of a sale object to that of a contracting party. This means that the dower belongs to women exclusively and it is a gift to be paid directly to them. It has nothing to do with their fathers or brothers. In this short sentence the Holy Qur'an has referred to three basic points: It has used for marriage portion or the dower the word, *saduqatehinna* meaning truthfulness and sincerity and not the word *mehr*. It is clear from the above verse of the Qur'an that the dower is to be paid directly to the woman, and her parents have no claim to it. It is not a compensation for the efforts made by them to bring up their daughter.

Many passages of the Qur'an emphasise that the dower exclusively belongs to a woman. Besides, the husband has to maintain her and meet her expenses. At the same time, whatever a woman earns belongs to her and

¹⁴ Mawlana Muhammad Ishaq Faridi *et al*, *Fatawa o Masail V*, edited by Editors Committee, Islamic Foundation Bangladesh, 2001 pp. 115-6

¹⁵ NJ Coulson, *A History of Islamic law*, Edinburgh, Paperback ed. 1978, p. 14

not to anybody else, not even to her father or husband. It is here that the question of dower and maintenance becomes a little puzzling. As long as the dower was paid to the father of the girl and she went to the husband's house just like a slave where the husband could economically exploit her, the question was easy to understand. The dower was then paid as a price of the girl and she had to be maintained like any other slave. In Islam woman has complete economic independence, and as far as her rights are concerned, she does not require the supervision, control or patronage of anybody. To be able to grasp the philosophy of the dower and maintenance in Islam one has to feel the wonderful planning of nature to reach its universal goal.

4. Philosophy of Dower

According to the belief of the Muslims, the dower has come into being as the result of skilful arrangements, put into the very design of creation, to balance the relations between man and woman. The dower has come into being, because, by nature, the respective roles of man and woman are different from each other. According to the gnostics the law of love and attraction prevails everywhere in the Universe. As everything is designed to perform a definite function, its role is different from that of all other things.

The law of creation has ordained that woman should have the qualities of beauty, pride and indifference, whereas man should have those of courting and pursuit. That is how the physical weakness of woman, as compared to man, has been counterbalanced, and for this very reason it has mostly been man who has sought woman's hand and proposed to her. Both man and woman have a physical urge for the opposite gender, but woman has a better sense of self-restraint. This feature has enabled woman not to run after man, nor to submit to him easily. Man's instinct compels him to approach woman, and he takes steps to gain her favour. One of these steps is to present her with a gift.

The dower is closely related to woman's modesty and chastity. She knows by instinct that her self-respect demands that she should not submit herself freely. That is how woman, in spite of her physical weakness, has been able to bring men to their knees, to compel them to vie with each other, and to make Romeos run after Juliets. When she agrees to marry a man, she receives a present from him as a sign of friendship, cordiality and goodwill.

It is said that among some barbaric tribes, when a girl had more than one suitor, she used to persuade them to fight a duel. Whoever won the duel or killed his rival was considered fit to secure the hand of the girl. It is

unbelievable that the fair and weaker sex should be able to set on two members of the stronger sex to attack each other. But the wonderful and mysterious power which nature has granted to woman, there is nothing strange in this. Woman has had much influence over man. Her influence over man has been greater than man's influence over her. Man is indebted to woman and to her chastity and charming modesty for his many achievements of art and feats of bravery. The credit for the building of many a personality and the developing of many a genius goes to her. Woman has built man and man has built the society.

That faculty of woman, has enabled her to maintain her personality throughout history; to compel man to come to her door-step as a suitor; to lead man to rivalry and even to fight for her sake; to maintain her modesty and chastity as her hallmark; to keep her body hidden from the gaze of man; to inspire man to love to perform feats of bravery, as a sacred asset; to excel in intellectual and creative deeds; to sing amorous songs and to submit to the weaker sex in humility. Hence this tendency has impelled bridegroom to offer his bride a present at the time of marriage as the dower. The dower is a part of the natural law, which has been promulgated by nature itself.¹⁶ This philosophy of dower has been coordinated in Islam to assist a man and woman to continue their courtship legitimately and with affection.¹⁷

5. Significance of dower in Islam

The significance of dower in Islam lies in the philosophy of natural law that in the creation of gender, with their distinct capability one supplements the other. It is one of the indisputable principles of Islam that a man has no claim to the money or property of his wife, nor is he entitled to force her to do anything for him. The earnings of a working woman can in no way be appropriated by her husband without her consent. In this respect there is no difference between a man and a woman. She has full independence to deal with them herself. Though Islam has given complete economic independence to woman, and has allowed the husband no right in regard to her property, yet it has retained the system of dower. This shows that, from the Islamic

¹⁶ www.al-Islam.org/Womanrights/7.htm; muslim-canada.org/dower_dictionaryof

¹⁷ islam.himl-6k.com; www.al-islam.org/rightsofwomeninislam/20.htm-33k; Ayatullah Murtada Mutahhari, *The Rights of Women in Islam*, Iran, 1980 see Part 8

point of view, dower is not paid to woman because the husband subsequently utilises her physical energy or exploits her economically.¹⁸

The Quran has minutely taken into consideration all the characteristics of human nature and, to ensure that neither man nor woman forgets the respective role entrusted to him or her by nature, stresses the necessity of fixing a dower. The law of dower is in conformity with nature, because it is a symbol that shows that love is initiated mostly by man, and woman only responds to it. Man offers a gift as a symbol of his love and respect for woman.

It is sometimes argued that dower is the price to purchase a bride since one must spend money to gain any thing of value. It is often mentioned that dower is a financial security against a man's right of divorce. Contrary to the above argument, in Islam dower could be anything instead of being temporal in nature. In this respect the marriage of Abu Talha, the companion of the Prophet may be mentioned. Before accepting Islam, Abu Talha proposed for the hand of Umme Sulaym, a Muslim lady in marriage. Umme Sulaym counter proposed that she could only marry him if he were a Muslim and his embracing of Islam would be her dower. This was accepted by Prophet (SM). Another example is the case of a companion of the Prophet who had no material thing to endow as dower to his wife. The Prophet (SM) directed the husband would teach his wife the verses of the Quran as dower.¹⁹ However, traditional jurists are in favour of payment of *mehr misl* or proper dower in these kind of circumstances as mentioned above.

In Islam dower is a sign of respect towards the wife by the husband. A settlement from the groom to the bride is an essential part of current traditional Muslim marriages. It is considered a gift which they both have to agree on. The dower can be any value as long as it is agreed upon by both parties. When the groom gives his bride the dower, it becomes her property. In case of a divorce, she won't have to give up her dower unless she is the one who requested the divorce. If it was the later case which is considered as *Khula* form of divorce, her husband may ask her to return the dower to him.²⁰ However, if she has requested the divorce in a court of law on an

¹⁸ A careful reading of the Quran 4:4 along with 4:24, 4:20 substantiates this claim.

¹⁹ Abu Bakr Ahmad ibn Ali ar-Razi al-Jassas al-Hanafi, *Ahkamul Quran*, II, Islamic Foundation Bangladesh, 1988, pp. 588-594

²⁰ *Mst. Khurshid Bibi vs. Muhammad Amin* PLD 1967 97; The wife is entitled to a *Khula* form of divorce by returning her dower to the husband. *Talaq* is the right of the husband whereas *Khula* is the right of the wife; Alamgir Muhammad

acceptable ground in Islamic laws she may obtain it without losing her right of dower.²¹ A dower is neither a price nor wages. It is a mark of respect towards the wife and the marital home.

6. Conclusion

Dower is contrivance of the law of creation to raise the worth of woman and to elevate her to a higher status. Dower in different forms and circumstances had different meanings in different phases of history of European and north American countries. It originated from ecclesiastical rule and mostly demised in secular law of those countries. In European and north American countries dower was meant mostly for the widow which shows that it was a kind of financial security for her after the death of her husband. In the Arab peninsula dower was known in a different context. Islam explicitly recognised that although a man and woman need each other, yet they and their position are not the same. Nature has placed them into similar but with specific characteristics. Islam, which made a drive for social reform, introduced dower in a regenerated form. In Islam, a woman is fully entitled to manage, administer, invest or dispense with any of her property along with dower, the way she likes, without any interference from her father or husband. She is fully qualified to make any transaction she wants. Dower, as introduced after the advent of Islam, gives personality to a woman, for the moral value of dower is greater than its material value. The Quran considers the gift of dower as obligatory. It has scrupulously observed human nature where a husband and a wife are assigned their respective duties and special role of mutual affection which is fortified with the gift of dower.

Serajuddin, *Shari'a Law and Society Tradition and Change in the Indian SubContinent*, Dhaka 1999

²¹ for more information see "<http://en.wikipedia.org/wiki/Dower>" and "Ancestrycom-The Widow's Dower Interest, Ancestry Magazine, 9/1/1994-Archive; www.themodernreligion.com/family/family_marriageablelegal.html-16k;