

**MATERIAL RIGHTS OF A WOMAN IN A MUSLIM
MARRIAGE**

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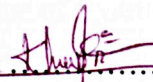
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AUTHOR DECLARATION

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

I hereby declare that the work in this academic project is my own except for quotations and summaries which have been duly acknowledged.

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In the name of Allah, the Almighty, the Most Merciful and Beneficent. Praised be upon Ilahi for the blessings peace be upon the prophet Muhammad s.a.w, his fellows and family.

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ABSTRAK

Kajian ini bertujuan untuk mengetahui secara mendalam mengenai “ hak-hak harta bagi wanita dalam perkahwinan dan hak-hak wanita ketika berlakunya penceraian ”. Ternyata wanita mempunyai hak-hak yang perlu disediakan oleh pihak suami mengikut kemampuannya. Sekiranya pihak suami tidak menyediakan keperluan-keperluan bagi pihak isteri maka isteri juga boleh mengambil tindakan untuk menuntut daripada pihak suami. Kajian ini bertujuan untuk memartabatkan kedudukan perempuan yang sudah bergelar seorang isteri ,dan lelaki sepatutnya memuliakan seorang isteri dan begitulah isteri sebaliknya . Kajian yang digunakan adalah berbentuk kajian perpustakaan disamping meneliti kes-kes yang berlaku kepada masyarakat dalam kehidupan ini. Hasil kajian telah menunjukkan perempuan yang dikahwinkan dan diceraikan patut mendapat hak-hak mereka untuk menunjukkan mereka sebenarnya adalah kaum yang lemah tetapi dihargai.

ABSTRACT

The purpose of this research to know in details on the material rights of the women in a Muslim marriage. In this research, the writer also discuss about the material rights of women after dissolution of marriage. It is clear that women have their own right, which must be provide by the husband to due his ability. In this situation, if a husband is not able to give all the needs to his wife, so that the wife can take legal action to claim upon the husband. This research is also to upgrade the prestigious of a woman, who has become a wife, and a husband should respect his wife. Besides, the writer used a library research and the same time to observe the case among society. The finding of this research shows that a married woman and divorced woman should get their own rights to ensure that they are valuable and honorable person.

ملخص البحث

هذا البحث يهدف لمعرفة بالتفصيل عن الأمور المتعلقة بالحقوق المستحقة للزوجة في التزويج من حيث المالية عند حياة الزوجية وكذلك بعد وقوع الطلاق . وقد افترضت الباحثة أن للزوجة الحقوق الخاصة من حيث المالية سواء في الزواج أو بعد وقوع الطلاق . والمنهج المتبع في هذا البحث هو دراسة مكتبة. التي تقوم على جمع المعلومات من مصادرها الأصلية وهي الكتب العلمية والقضية المسجل. والنتيجة من البحث هي أن للمرأة حقوق من حيث المالية في حياة الزواج وكذلك بعد الطلاق . وواجب على الزوج أن إعداد تلك حقوق بإتباع الشرع.

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ABBREVIATION

a.s	°alayh al-salam
bil.	Bilangan
ed.	Editor / edition / edited
H	hijrah
Jil.	Jilid
M	masihi
n.a.	no author
t.t	no date / no year
n.pl.	no place
n.pb.	no publisher
p.	Page
r.a	radiya Allah °anhu / °anha / °anhum
s.a.w.	salla Allah °alayh sallam
s.w.t.	subhanahu wa ta°ala
vol.	Volume
no.	Number
Thn.	Tahun
Hj.	Haji
Prof.	Professor
Dr.	Doctor
Ibid	Ibidem

CHAPTER 1

INTRODUCTION

1.1 Definition Of Marriage

Marriage according to the classical juristic definition is a contract prescribed by the legislator, and it donates the lawful entitlement of each of the parties thereto to enjoy the other in the lawful manner. Some modern Arab laws more lyrical, for example defining marriage as;

“a legal pact of association and solidarity between a men and woman, meant to last, with the objective being to maintain chastity and lawful wedlock, multiplying the nation through founding a family under the patronage of the husband on solid grounds, to ensure for the contracting parties the discharge of the responsibilities related thereto in security, peace, love and respect”.¹

According to the Kuwaiti Law marriage is; “A contract between a man and the woman who can lawfully be wed to him, to the end of tranquility, chastity and the strength of the nation, in a similar vein, Algerian Laws reads; Marriage is a contract lawfully concluded between a man and a woman, the ends of which are *inter alia*, the formation of a family based on love, compassion, co-operation, chastity of the two spouses and the preservation of legitimate lineage.”²

¹ Abu Zahra.1950. *On Marriage*.Cairo. p.17

² Jamal J.Nasir.*The Status Of Women Under Islamic Law*. London, Graham & Trotman.p. 1

Marital rights are an important indicator of women's general status in a society. In most of the society and religious systems women have been given no independent right to enter a marital relationships of their own free will. A woman is generally considered incapable of choosing a life partners, as her mental capacity is inferior to that of a man. However, the holy Quran takes as no such view and considers a woman mentally as well as morally equal to a man. Both be equally rewarded or punished for their good and bad deeds.

Marriage in Islam, as is well known, is a contract between two equal partners. A woman as an equal party stipulates the preferred conditions in the same way that of a man. Partners can. Men enjoy no superiority in this respect. The Qadi or anyone else, who solemnize a marriage, cannot do so without ensuring approval of the woman concerned and the conditions are laid down in the presence of two witnesses who testify before the Qadi, who then puts them before the bridegroom gives his acceptance. When the bridegroom gives his acceptances and approval to marry her, the Qadi solemnizes the marriage.³

Here it would be quite appropriate to quote a Hadith from the Prophet SAW as regard to female. The Prophet SAW was not in favour of retaining slavery, let alone permitting sex with slave girls without marriage, as thought by later theologians.

Thus the Prophet SAW, far from permitting sex with female slave, wanted them to be educated, disciplined and freed before being married to their former masters. However, the orthodox ulama went by the legal, technicalities instead and advocated the right of masters to have sex with those whom their manumission of female slaves was her dower

³ Asghar Ali Engineer.1997. *The Rights Of Women In Islam*. Sterling Publishers Private Limited. p. 105

(*mahr*). Malik ibn. Anas said that the Prophet SAW emancipated Safiyah and that became her dower.⁴

The conclusions about this topic, other rights the material right of women in a marriage about the dower, maintenance, matrimonial property, and child custody. According the right of woman I can explain with details under the other chapter.

1.2 Definition of a Woman According The Quran

The Quran elevates the position of women as a daughter, sister, wife, and mother, and in all these positions she enjoys all rights and status as the man. The Prophet SAW, by his teaching and practice, as explained before, fully established women, in all the above roles, as a full-fledged member of society, enjoying equal rights and status with man and contributing equally with him, if not more culture. This, however, in no way implies a similarity or uniformity in their functions as well. Both enjoy equal status and equal rights as humans and co-partners in life.

If it happens that there are not enough men to fight, then the right to defend the country which belongs to both sexes allows for the woman to come forward to fight, but when the number of men suffices for defense, and there is no need for women for this purpose, it would not be right to ask the latter to fight on the ground that she also has and equal claim to the right of helping with defence.

⁴ Asghar Ali Engineer.1997. *The Rights Of A Woman In Islam*. p 106.

In such case, it would be wrong to place the heavy and arduous burden of war and fighting upon the woman's shoulders, because the laws and regulations based on common human characteristics can be applied only in cases pertaining to those very basic and common human rights and not in cases where the human characteristics differ. This is so because individual characteristics call for particular regulations as per individual nature.

Therefore, regarding the woman, it is necessary to consider the demands of her natural constitution in connection with social regulations. Nature has given her the gift of unique emotion of motherly affection, which certainly is one of her inborn qualities.

1.3 Women In Islam

For a realistic understanding of the fundamentals of Islam, careful examinations of quranic verses, and the narrations and life of the Holy Prophet of Islam becomes imperative.

One must not deduce the dictates of Islam from the actions of some Muslims at certain time in certain places. For instance, if some Muslims abuse woman's rights, it would be wrong to affirm that Islam is ignoring the legitimate rights of a woman on hearing or observing that somewhere, or at a certain period, the Muslims were denying the woman of her legitimate rights. When one observes Islamic tenets being negated in some Muslim lands and they prefer to follow Western cultures, one should not conclude that the legal system of the land is in line.

Civil and penal laws are framed for the average normal citizen of a society and exceptions have no room here. There are, in fact, very few constitutional articles, which are based on exceptions. Thus, if there are exceptional cases, which contravene existing

laws, these laws cannot be called invalid. One cannot blame the legislator when such cases do crop up.⁵

Thus, man's instincts do not help him to differentiate between good and evil. This explains his need for Divine Legislation, as discussion on prophecy would reveal.

1.4 Aim Of Research

Thesis is one of the ways to enable human's mind to grow, to be critical and creative. It also helps one to make decisions based on knowledge, which has been gotten through various types of writings such as books, magazines, dictionary and a lot more.

This research, which I have been indulged in on, is under the title of "Material Right Of A Woman In a Muslim Marriage". The main purpose of the study is to know the women's right in a marriage so as to discover the appropriate rights which are supposed to be given to a woman in marriage. Here I have identified the rights of a wife in marriage such as dower, maintenance and also the reasons, which are deserve a wife to get a full maintenance from her husband. The writer, have also explained the details about matrimonial property, and the position of a wife in this matter.

This study helps me to understand more deeply about the women's right in Muslim marriage. It is also one of the counter attacks to those writings, which condemn a lot about humans right in Islam. It has been known that western always claim that women are a second class in this sacred religion. Therefore the writing wish and really hope that this writing will help to clarify the truth and return the position of Islam to its place.

⁵ Afzalur Rahman.1996. *Role Of Muslim Human In Society*. London. Seerah Foundation.n.p.

The religious laws and precepts not only preserve the order the order of society and safeguard its materials interests, but also take stock of the spiritual and intellectual aspects. It would be wrong to imagine that the Islamic injections bother themselves only with worldly interests.

Thus, man's instincts do not help him to differentiate between right and wrong in this earthly world, which affects life in both the worlds. His intellect also fails to satisfy this purpose of certain.

1.5 Objective Of Research

The academic project writing is a part and parcel for graduating in the degree of syariah Bachelor and Judiciary for graduation for session 2000/03 sessions. The objective of the writer for selecting this title is to get full understanding about the problems, which relate to dower. Besides, the writers wish to study whether the dower is like buying things? Or is it a dower is just paying money to posses a woman by a man or is it actually an obligation which has written as a role in Islam.

Another purpose, which the writer wants to achieve for the community, is to evoke the women in this ummah to realize how important dower is to them. The writer wish also to attract attention from the public people to see that it is the dower, which is the most important, and indeed the essential requirement for a marriage and not the gifts (hantaran belanja), which is always being the most priority by the community at present.

Therefore, the writer really hopes that this study will be able to change all the misunderstandings, which have been revolved around us all these time. Some people might see this effort as a jest but the writer is a positive hope that this is a piece of work, which will contribute to the completion of all other efforts in upgrading this sacred religion. And I pray to Allah that it will accept this very small effort as one of the good deeds '*jariah*', which helps people to the betterment of their Islamic understanding.

The writer really hope that those confusion can be cleared up for the truth of Islam of Islam is very important in can be clear and understanding of this religion.

1.6 Research Methodology

In this research the writer have been using several methodologies to get all the information related to its writing. One of the methods is searching through library where most of the academic materials are collected and gathered as references.

The writer have also been to the libraries of University Malaya, University Kebangsaan Malaysia and International Islamic University Malaysia libraries to get more information for the research that have been done by the previous student understand the way of writing. Whereas, in the library of University Kebangsaan Malaysia library the writer wonder to gathered a lot of references in Malay and English. In the library of University Islam Antarabangsa The writer went to the law section and studied some journals there and took some time to see some of the cases which are closely related to the my research writings; particularly on matters of dower, *mutaah*, maintenance and matrimonial property.

Besides going to libraries, the writer got the opportunity to go to the Legal Aid Bureau and took notes on related cases. There were also the reference books which the writer had read to information add to the contents.

1.7 Scope Of Methodology

The writer had chosen this topic about “Material Rights Of A Woman In Muslim Marriage” The research is mainly about the material rights of a woman including dowry, maintenance and upon dissolution of marriage without *eddah*, *mutaah*, and matrimonial property.

1.8 Literature Review

From my observation while studying one of the theses writing in the library of University Kebangsaan Malaysia, the writer had written about “The Dower And Hantaran In Family Marriage” written by Rosnah Ismail 1992. Also some of the case study about marriage in Kedah.

As in the library of University Malaya, The writer found one thesis, which has been written by a student on “Marriage In and Women’s Right In Marriage And After Divorce”, written by Jamil Ahmad 2000.

Realizing that those two theses were almost similar with the one that the writer was writing. The writer took some time to study on them and compared them with this writing. It is found that their theses had been detailing on the concept of marriage and dower, while this writing just includes the rights of a woman in marriage and classified it

into several chapters, and the matrimonial properties. In short their theses cover the topic in detail this writing is one in general.

It can be concluded that, there was no other writing yet a general view as this writing. So it is a hope that this writing will help to add up to the collections of Islamic writings in the country.

CHAPTER 2
THE RIGHT OF A WOMAN UPON MARRIAGE
(DOWER AND MAINTENANCE)

2.1 Definition Of Dower (*Mahr*)

Dower has a lot of definitions as it is being perceived differently by the contemporary fiqh' scholars and Muslim writers. Therefore, we can put forward it's definition into two parts:

i) Literal meaning

and it has a lot other words which صدق According to literary, dower is known as

عقر , اقرباء , هبة , فريضة , نحلة , carry the same meanings such as nahlah

علائق and 'ala'iq.

ii) Technical meaning

Technically, dower has been defined by fuqaha' as a compulsory or obligatory gift from a man to a woman as a result of a marriage for consummation. Besides, there is another definition for a man to be given to a woman as an exchange for *istimta'* with her from a legal marriage.

This definition is an extract from the words of Allah SWT in Surah al-Nisa' verse 29. More than that, dower is also an obligatory property, which has to be given by a man for a broken marriage **فائد** or because of his consummation.

2.2 Concept Of Dower In Islam

According to Muslim Family Law in Islam in our country, there are some written laws pertaining to the dower and gifts when there is a refusal of marriage after engagement. And these written laws are different for every state in Malaysia. In Selangor, Negeri Sembilan, Malacca, Penang, and Perak it has been established that it is a blameworthy

“ It is for someone who had made up a contract in accordance with Syariah whither orally or any other ways”.

Mahr or dower money is an essential part of Islamic marriage. Without *mahr* a marriage cannot be said to have been materially solemnized. Dower must be paid or fixed before the solemnization of a marriage and it is the exclusive preserve of the woman or the bride to determine the amount. In addition, *mahr* belongs to the wife alone. Neither her father nor husband can claim it. She can spend it the way she likes. However, the Quran does not use the word *mahr*, but either *sadaqatun* is derived from *sadaqa* or *ujurun*. *Sadaqatun* is derived from *sadaqa*, which means truthfulness, sincerity and gift given as an act of virtue. It is not something to show off on one's social or financial status.

Truth would be seen that according to the Islamic concept the bridegroom must pay to the bride some amount as a token of his love, truthfulness and sincerity. No doubt, as its origin is pre-Islamic and tribal and it is essentially a bride price but Islam elevated it from being merely a bride –price to being a token of love, truthfulness and sincerity. Another

word used for dower in the Quran is *nahlah*. *Nahlah* according to Raghīb, is something given without any expectation in return, purely out of love and regard.⁷

In Islam, when a marriage is declared in accordance with *Syariah* some laws will automatically come with it to preserve the rights of both parties in marriage. Those laws can be classified into two sections;

- i) Man Rights On his wife
- ii) Women Right On Her Husband

Talking about the rights of a wife on her husband, the most crucial thing is from the scope of dower, known as *mahr* in Arabic. It is known by everyone that dower is a right of a wife on her husband a result of a legal marriage in *syariah*.

Basically, dower is an obligatory gift that has been established by *syariah* to be given by a husband to a wife as a sign of a feeling of a husband of his willingness to share his life with his newly wed wife. It is very wrong to think that dower is an exchange of a woman or as a barter system in a business as understood by some people. Indeed, a lot more people still are in a wrong perception about the dower and a big number of them also confuse about the concept of dower. To clarify this, we should go and see the situation of dower in Islam through *syariah* and comprehend the details of it by a full understanding.

⁷ Asghar Ali Engineer, *The Rights Of Women In Islam*. p. 111.

2.3 The dower in the Al-Qur'an

The form of the dower described above in connection with the fifth stage is not an invention of the Qur'an. All that the Qur'an did was to restore it to its natural and pristine form. The Qur'an in its incomparably elegant style says: “ *Give to the women a free gift of their marriage portions*”. (Surah Al-Nisa, 4:4)

وَأَتُوا النِّسَاءَ صَدَقَتِهِنَّ نِحْلَةً. فَإِنْ طَبِنَ لَكُمْ عَنْ شَيْءٍ مِنْهُ نَفْسًا فَكُلُوهُ هَنِينًا مَرْنًا

Meaning:

And give the women (in marriage). Their dower as a free gift, But if they, with their own good pleasure, give back any part of it with right good cheer.

This that the dower belongs to women exclusively and its is a gift to be paid directly to them. It has nothing to do with their fathers or brothers.⁸

In this short sentence the holy Qur'an has referred to three basic points:

Firstly it has used for marriage portion or the dower the word, “ *saduqah*” meaning truthfulness and sincerity and not the word is a symbolizing the cordiality of the man paying it. This point has been expressly mentioned mentioned by a number of the commentators of the Holy Qur'an. Similarly, the famous philologist, Raghīb Isfahani says in his lexicon of the Qur'an that the dower has been called '*saduqah*' because it is a symbol of the sincerity of faith. Secondly, it is to be paid directly to the women, and her parents have no claim to it. It is not a compensation for the efforts made by them to bring up their daughter. Thirdly, it is clear that the dower is nothing else than a present and a gift.

⁸ Murthza Mutahery. 1982. *Women And Her Rihght*. Y.K. Nats.p.54.

Even when a man and a woman want to enjoy sex unlawfully and indulge in free love, it is man who presents gift to woman. When they have coffee, tea a food together it is man who regards it his duty to pay the bill. Woman considers it to be insulting to her to spend money for the sake of man. A boy requires financial potentialities to indulge in debauchery, whereas for a girl it is to means of receiving gifts. Such customs, which are common to both lawful and un lawful relations, emanate from the dissimilarity of the feelings of man and woman in relation to each other.⁹

2.4 When Dower is to be paid?

The payment of *dower* is necessary even though it might be a very small sum. In exceptional cases, marriage is legal even though the amount of dower has not been specified but it is obligatory and must be paid afterwards. Thus the holy Qur'an says, speaking of divorce:

لا جناح عليكم إن طلقتم النساء ما لم تمسوهن أو تفرضوا لهن فريضة

Meanings:

There is no blame on you if you divorce women when you have not touched them, or appointed for them a dower.¹⁰

This shows that the marriage is valid without specifying a dower. A hadith also speaks of the validity of a marriage, even though dower has not been named. But dower must be paid, either at the time of the consummation of the marriage or afterwards. The amount of dower in this case depends upon the circumstances of the husband and social position of the wife. The Holy Qur'an makes this clear by requiring the provision for the wife to depend upon the circumstances of the husband:

⁹ M. M 1982. *Women And Her Right*. Y.K Natsi.p.125

¹⁰ Al-Quran. al-Baqarah 2: 236

على الموسع قدره و وعلى المقتر قدره

Meanings:

The wealthy according to his means and the straightened in circumstances according to his means.¹¹

In a hadith it is related that the case of a woman whose husband has died after fixing a dower and consummating the marriage was referred to ‘ Abdullah Ibn Mas’ud, who decided that she should be paid a dower consummated marriage was paid a dower of women of similar likes status to her self. This decision, which was accepted as a model by the jurist, meant that the reasonable amount for a dower is depending on the position in life and social status of the parties and her female relatives to the marriage and will differ from place to place, period to period, and country to country.

This shows definitely that the dower belongs to the woman and not to her former husband. So if he tries to get it back through fault such as laying a calumny against her or slandering her, he earns the disapproval of the Holy Qur’an.

The Qura’n makes payment of the dower as obligatory and it is not only for no Muslims but also in marriage of a Muslim to a woman who is a kitabiyah (belonging to the people of the Book, Jews or Christians).

2.5 Conditions Concerning The Dower

The syariah of Islam does not fix any definite amount or thing of definite values as a *dower*. The injunctions of the Qur’an are silent on this issue. However there are Hadith on

¹¹ ibid 2:236

the subject: It is narrated by ‘ Amir ibn Rabi’ah that a woman belonging to the Banu Fazarah was married with a pair of shoes as her Mahr. The Messenger of Allah SAW asked her, “ Are you happy with a pair of shoes?” She replied that she was. The Prophet SAW said: may Allah bless him and grant him peace; a then permitted her to marry.

As for giving a large *dower*, there is absolutely no harm in that. Once Khalifah ‘Umar said that the Prophet SAW had declared that no one should give a *dower* large than 400 dirhams. When he got down from the *mimbar*, a lady of Quraysh asked him, “ Have you not heard the injunction of Allah? And you give one of them *qintars*.

Umar went back to the *mimbar* and declared: “ I was advising you not to give more than 400 dirhams as dower. Whosoever wishes may give as much property as he wishes to give. ¹³

The payment of the dower should be in the form of something that has a value even though it may be small. According to the Hanafi School, the smallest amount possible for a dower is 10 dirhams but according to Maliki Schools the least mahr is equivalent to 3 dirhams. There is no fixed minimum in the Shafi’i and Hanbali schools nor among the Shi’ities. If someone gets married on the strength of a dower consisting of a quantity of wine or pigs or anything that is unlawful in Islam and which cannot be owned or bought or sold by a Muslim, the marriage is null and void. All the jurists of the four schools agreed upon this point. The Maliki School insisted that half of the dower should be given on the spot for the consummation of a valid marriage or can be postponed until after the marriage. The Hanafi point of view is that the payment of the dower can be delayed, either in part or in whole, but it must not be just forgotten completely.

¹³ Abd Rahman I.Do. *Women In Syariah*..p.160

The proposal for giving dower should not be made in an ambiguous way such as saying, “I marry you for RM 100 to be paid when the clouds come or when the sky produces rain or traveler arrives”. The Malikis say that the mahr may be a definite thing like an animal known by sight or description or a particular kind of horse like an Arabian horse or it may be a definite amount of money as mentioned earlier.

Even if the dower is not given on the spot, it should not be delayed through a flimsy promise like “ to be postponed until death or our separation”. According to the Shafi’i and Hanbali schools it is lawful if the entire dower is paid later but it should not be forgotten completely. Once the amount of the dower is fixed and it is ready at hand, the payment should be delayed. According to the Malikis, it may be given to the wife on the day of the marriage except when the woman herself want to take it later on with specific words that “ I marry you on RM 50 to be paid now and the remaining RM 50 later on. It is necessary in this situation to pay her the full amount before consummation. ¹⁴

According to the Shafi’i schools, the wife can refuse to allow consummation of the marriage by the husband if the mahr or maintenance to the wife is not paid, the wife can take an action to annul the marriage. The Shafi’I jurists said that if husband is unable to pay the dower, as agreed, then it is up to the Qadi to annul the marriage.

No limits have been placed on the amount of mahr. The words used in the Holy Qur’an show that any amount of dower might be settled on the wife:

وَأَتَيْتُمْ إِحْدَىٰ هُنَّ قِنْطَارًا

And you have given one of them a heap of gold.¹⁵

¹⁴ Ibid. p.161, 162

¹⁵ Al-Quran. Al-Imran 4:20

Thus no maximum or minimum amount has been laid down. The Holy Prophet SAW paid varying amounts to his wives. In one case when the Negus paid the amount to Umm Habiba (Abu Sufyan's daughter), who was then in Abbisyina where the marriage took place, it was generally five hundred dirhams. The mahr of his daughter Fatima was four hundred dirhams. The lowest amount the man who could not procure even that was told to teach the Holy Qur'an to his wife.¹⁶

In the Hanafi school however, if the dower has been specified, then the question arises whether it is to be given promptly or it is to be deferred or delayed. *Mu'ajjal* or prompt dower is to be paid immediately after marriage if demanded by the wife. It is agreed that if it is *mu'ajjal* or delayed or disturbs the harmony of the family. When a mahr is fixed (*musamma*), it may be split into two equal parts and it may be stipulated that one part is to be paid on the death of the husband or divorce or the happening of some special event.¹⁶

2.6 Prompt Dower

The dower, being a consequence of marriage contract rather than an essential or a condition of it, shall be the right of the wife once the valid contract is made. However, it may not be paid in full at once, but may be split into portions: prompt and deferred. This provision is retained from syariah in the Modern Arab laws of Syria, Jordan, Morocco, and Kuwait, where it is allowed that the whole or part of agreement shall be recorded in writing, otherwise the whole dower shall be deemed prompt.¹⁷

The prompt dower is usually paid in terms of money, and sometimes by instalments, and by means of provisory notes. It might take the form of a plot of land, an olive grove,

¹⁶ Abdur Rahman. 1992. *Women In Syariah*. A.S Noordeen. p. 162

¹⁶ Ibid. P.162

¹⁷ Jamal J.Nasir. *The Status Of Women Under Islamic Law*. p. 45 & 46.

or a vegetable garden (*hakura*), a house, or livestock. The wife frequently inserts in the marriage contract stipulations (*shurut*) to the effect that the husband must give her various household articles (*afsh al-baity*), such as furniture and bedding, or jewelry and ornaments, a room of a house, live stock and the like: the things themselves were likewise referred to as stipulations were part of or additional to her property. The monetary value of stipulations was occasionally indicated alongside the prompt dower. The wife was sometimes careful property the monetary value of the stipulations was occasionally indicated alongside the prompt and deferred dowers and included in the total amount of the dower.

It was a customary practice for the groom to pay the prompt dower at or before the drawing up of the marriage contract. There were differences in this respect between different types of settlement. In 1968, prompt dower was paid in the entire full four-fifth towns (including Tayyiba and Umm al-fahm).¹⁸

According to Islamic law, as stated, the dower belongs to the wife. To what extent does she enjoy this property right in practice? An exhaustive reply to this question cannot be obtained from the sources because a woman was generally given, in marriage by a age guardian or *wali*, who might be her father or brother or another relatives, and who received the dower and on her behalf. Hence, it cannot be ascertained whether the dower goes to the bride or what became of it. At the same time, scattered evidence permits one at least to say that the wife did not always enjoy the right. Sometimes a woman declared in court during the hearing of some matrimonial matter, that the dower had been given to her father or brother.

By the way, what did the wife do with the dower she received? The writer could discover only one instance information as to this matter. A woman who had married at the

¹⁸ Ibid. p.46

beginning of the 20th century had received 5,000 Turkish Kurush as dower, partly in cash and partly in the form of seven olive trees, with the cash she had bought gold coins, for which her husband had sold her six olive trees in the village.¹⁹

2.7 Deferred Dower

Deferred dower (*mahr mu'ajjal*) and its proportion to the whole dower are not matters of law but it is a custom recognized by the Hanafi School. If the deferred dower was of a considerable amount, it might deter the husband from hasty or arbitrary divorce and also give a certain measure of economic security to the wife after divorce, for according to the shari'ah she is only entitled to maintenance during the *idda* (the waiting –period of a woman after termination of the marriage) which is normally three months and 10 days. According to the testimony of Syaikh Muhammad Habayshi, it was then usual to regard the deferred dower as the wife's insurance policy. In several cases, the wife, on contracting of the marriage or subsequently, demanded that the deferred dower should be increased. In functional respect, there is thus a distinct material difference between prompt and deferred dowers.²⁰

Other laws rule that if no such arrangement is written down, then the prevailing custom shall be followed. This is also, in general, the Shia's provision, applying the maxim that, “ a matter recognized by custom regarded as though it was a contractual obligation”. In Egypt, for example, the custom is to divide the dower into two equal shares.

The deferred dower shall become payable on the date agreed upon, otherwise it shall become payable immediately, earlier than of to the payment of the deferred dower becomes in the event of divorce or death. The Jordan Law is more elaborate, stating that

¹⁹ Aharon Layish. *Women And Islamic Law In A Non –Muslim State*. p. 41,45,51

²⁰ A.Layish. *Women And Islamic Law In A Non-Muslim State*.p.51

if a date is set for the deferred dower the wife shall not be entitled to claim it before the said date, even in the event of divorce. However, in the event of the death of the husband, that the date will be void. Furthermore if the term is grossly indetermined, like “ till the time of affluence” or “ on demand” or “at the time of the wedding”, the term shall be invalid, and all of the dower shall be deemed prompt. If no term was stipulated, the deferred dower shall be deemed payable on divorce, or on death of either spouse.²¹

The distinction of ‘prompt’ and ‘deferred’ specified dower is very important in the theory and practice. The prompt dower is payable immediately or marriage, which confirms that the dower is an inalienable right of the wife. Commonly, some of the dower, if not the entire amount, will be deferred. It is then payable on the dissolution of the marriage by divorce or death, or on the happening of a specified event. Many marriage contracts do not specify whether the dower is to be prompt or deferred. In these circumstances, the presumption, in the absence of the particular community, is that is the dower is prompt.²²

2.8 The Problem Of Excessive Dower

The problem soaring dower never ceased to happen in the Muslim society and some considered it as “ the most serious problem facing a Muslim youth in Israel on reaching maturity”. The young men complained that they had to incur heavy debts, at usurious interest, or work for years to save up for the dower, the gifts for the bride and her family. The wedding festives and the dwelling with all the necessary equipment. Special criticism was leveled at the increase of the dower in the Little Triangle villages; it was contended that the fathers sold their daughter like cattle to the highest bidder, that young men had to forego their betrothed because the fathers had withdrawn their consent to the marriages

²¹ J.J.Nasir. *The Status Of Women Under Islamic Law*.p.46

²² David Pearl, Werner Menski. 1998. *Muslim Family Law*. London Sweet & Maxwell. Third Edition. P. 180

and demanded exorbitant dowers. As a result of all this, the young men were utterly bewildered.²³

Militating against renunciation of the dower was not only consideration of finance, but also of status and prestige. A small dower, let alone the total lack of dower, was apt to impair a woman's standing, which was identified with the family honour. This notion underlaid the fair dower. The dower to be given to a woman is according to her value by criteria of a traditional society. There is evidence of dozens of girls imploring families to forego the dower and let them marry the penniless boys they loved and not some wealthy old man, and quite often the family would have been ready to comply but for the fear that this would mean loss of face. To overcome this obstacle, the bride and her family sometimes contributed to the groom after he had paid it in the presence of many people. Method of circumventing the dower is usually done in the presence of many people.

The conclusion is that the renunciation of the dower was frequent in all ecological groups and must be understood in the light of changes in the status of women, of changes in the status of women, of which the extremely widespread dissolution of marriage on the wife's initiative was one of the most notable manifestations. The wife was ready to forego the monetary and other rights in order to obtain her freedom.²⁴

2.9 The Laws on Dower or *Mahr*?

Dower or *Mahr* is considered to be essential in every marriage contract, although it does not determine the validity of the marriage. Although it does determine the validity of the marriage. It is the payment, which a wife is entitled to receive from the husband in consideration of the marriage. This is based on the Qur'an, which states:

²³ Aharon Layish. *Women and Islamic Law In A Non-Muslim State*.p.56

²⁴ Ibid.p.59

واتوا النساء صدقاتهن نحلة. فإن طبن لكم عن شيء منه نفسا فكلوه هنيئا مريئا.

And give the women (on marriage) their dower as a free gift.²⁵

The dower is payable not to bride's father but only to the bride herself. If the amount of the dower is not agreed between the parties, the amount specified in the State Enactment will apply. The mahr need not always be in the form of fruit plantation, a piece of land, a house, jewellery, and other property. It may be deferred too. If the dower is in cash or other forms, it must be agreed upon by the female party, for otherwise, without her agreement the property would only be a mere gift and not dower.

The Islamic Family Law (Federal Territories) Act 1984 (Act 303) defines dower as the obligatory marriage payment due under *hukum syarak* by the husband to the wife at the time the marriage is solemnized, whether in the form of money actually paid or acknowledge as a debt with or without security, or on the form of something that, according to *hukum syara'* is capable of being valued in terms of money. Section 57 states that nothing in the Act shall effect any right that a married woman may have under *hukum syarak'* to the dower or any part of it on dissolution of her marriage.²⁶

According to Section 21 of the Act, the man or his representative shall ordinarily pay the dower to the woman or her representative in the presence of the person solemnizing the marriage and at least two other witnesses. The Register shall, in respect of every marriage to be registered by him, ascertain and record the value and other particulars of the mas kahwin: the value and other particulars of any part of the mas kahwin that was

²⁵ Al-Quran. Al-Nisa'4:4

²⁶ Legal Research Board. *Islamic Family Law (Federal Territories) Act 1984 (Act 303)*. International Law Books Services p.17

promised date of payment and particulars of any security given for the payment of any dower.²⁷

The Malay customary rules regarding the dower (or *berian* in the East Malaysia) represent a compromise with the Muslim law, recognizes one payment, the dower: Malay customary law, on the other hand, insists on the betrothal and sometimes continuing till the birth of the forth child or even later. A sort of compromises has been arrived at by identifying one of these many presents, beginning with the betrothal and sometimes continuing till the birth of the first child or later. Identifying onr of these many presents, the dower, with the Muslim *dower*, has arrived at a sort of compromise. Dower meant money paid by the bridegroom to the bride's parents but is now like the Muslim mahr paid (or sometimes promised and left as an outstanding debt) to the bride herself.²⁸

Under the Muslim law there is no fixed legal minimum amount for the dower It should however posses some value and it is recommended that it should be less than 1000 or more than 500 *dirhams*. Where no amount is stipulated for the dower in the marriage contract, the law gives the wives a right to the proper in life. Under the Malay custom of the amount as fixed by custom of the dower among the peasantry in Negeri Sembilan is RM24. A bridegroom may be asked to pay varying amounts by the brides parents, depending upon the status, education and the eligibility of the bride. But whether sum is asked for or not, the legal customary dower must be fixed by custom that is RM24. The rest is regarded as being for the personal and ceremonial expenses required for the occasion. Such expenses, called *belanja hangus* or incidental expenditure are quite apart from the dower. In Perak, the amount of the *dower* varies with the status of the father of

²⁷ Mimi Kamariah Majid. 1999. *Family Law In Malaysia* .Malayan Law Sdn.Bhd. p. 51

²⁸ JR Wilkinson. 1908. *Malay Law, Papers On Malay State*. Journal of the Royal Asiatic Society. Vol xxi.p.47

the bride ranging from RM 50 for the daughter of a commoner to RM 1000 for the daughter of the ruler.²⁹

In the districts of Naning and Alor Gajah in Malacca, which follow the *adat perpateh*, the amount of the dower is fixed at RM 60 for an unmarried woman and RM 40 for a previously married woman. There appears to be no maximum amount of the dower fixed for *berian* in Sarawak except in the case of *nikah salah*, a marriage which takes place where the man has committed an act which is considered and accepted as wrong by Malay custom, as for example, where he is found together with a woman in such circumstances as to raise a suspicion of their misbehavior. In such cases a *berian* of RM 50 in the case of a spinster, and RM20 in the case of a divorced woman, and no more is to be paid to the woman.³⁰

The term used for the *maskahwin* in Sarawak and Sabah is dower. In Sabah the maximum amount payable as dower in the various districts was prescribed by rules and varies from RM 50 to RM 200 in the case of an unmarried woman and RM 40 to RM 200 in the case of a woman who has been previously married. Among the Illanun and Banjar tribes in the Kota Belud district of Sabah, the dower was originally paid in the weight of brass cannon but this custom has been substituted by fixed cash payments, the basis of the cannon and is so referred to locally. The amount varies according to the class to which the father of the bride belongs.

It is provided in Islamic Family Law (Federal Territories) Act 1984 as follows:

- 1) The dower shall ordinarily be paid by the man or his representative to the woman or her representative in the presence of the person solemnizing the marriage and at least two other witnesses.

²⁹ Ahmad Ibrahim. 1997. *Family Law In Malaysia*. Malayan Law Journal. Third Edition. p. 209&210

³⁰ Ibid. p.210