

## **CHAPTER-III**

# **BASIC RIGHTS OF MUSLIM WOMEN IN CONTEXT TO MARRIAGE AND MAHR FROM ISLAMIC PERSPECTIVE**

### **3.1 Introduction:**

Today, the issue of Muslim women rights especially, Muslim women right to Marriage and Mahr from Islamic perspective has become the topic of discussion. Generally, it is agreed that the rights of Muslim women enunciated in the Holy Quran and in the Ahadis and Sunnat given by Prophet Muhammad (PBUH) were vast and seek to improve the status and the social position of Muslim women in comparison to the complexities faced by Muslim women in Arabia prior to the advent of Islam. In India, the constitution of India although guaranteed many rights to Muslim women but as it is known that most of the Muslim Personal laws are uncodified and legal decisions are given on the basis of faulty interpretation of Quran and Hadith contradicting the Spirit of the Constitution.

Time has come where Legal Experts, Qazis, Maulvis, Research Scholars and other Experts should come forward to stop the discrimination based on Gender or Religion and must abolish the conservative heartless culture. The urgent requirement to protect the rights of Muslim women is to understand, interpret and analyse the true spirit of Holy Quran. Both the positive and negative aspects of the Holy Quran should be interpreted in such a way that it benefits the Muslim women's right. Importance should be given to the changing needs of the Muslim women rather to the interpretation given by some Muslim organization or to the customs which are age old practices. The legal rights of Muslim women have long been a source of misunderstanding, which has contributed to the belief that Muslim women have a God

given inferiority to men, so to understand the rights of Muslim women, a basic understanding of Islamic Law is necessary.

In India people of different religion are governed by the various personal law prevalent in India. In India, Muslim personal law is applicable to the people belonging to Islamic religion. For many decades the Muslim personal law has some social and political controversy and it has been debated from many years. Women belonging to Muslim community has been fighting for their rights and the preservation of their basic human rights. Though much has been done for the women empowerment in general but very less has been known about the socio-economic condition of Muslim women. It was only after the 1986 Shah Bano Case, and the enactment of Muslim Women (Protection of Rights of Divorce) Act, the debate has assumed a central position, and politics has gained mileage which was evident in the weakening of Centrist Secular Parties<sup>1</sup>.

It is paramount to understand the true spirit of Quranic Verses. The divine sources of Sharia are the Quran and the authentic teachings of Prophet Muhammad (PBUH). But due to lack of proper codified law in muslim personal law, women are at most disadvantage position. Moreover, the foremost reason for the suffering of women in the baseless fatwas made by some Muslim organisation.

To many Muslims the Holy Quran is the Magna Carta of human rights and large part of its concern is to free human beings from the bondage of traditionalism, authoritarianism (religious, political, economic or any other). In the section entitled General Rights which follows an account is given of the Quran's affirmation of fundamental rights which all human beings ought to possess because they are so deeply rooted in our humanness that their denial or violation is tantamount to a negation or degradation of that which makes us human<sup>2</sup>. So, it becomes clear that Quran is the unanimous divine and sacred source for Muslims and it remains most

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<sup>1</sup> Razia Patel, Indian Muslim Women, *Politics of Muslim Personal Law and Struggle for Life with Dignity* 44, Economic and Political Weekly, Vol. 44, No. 44, (Oct, 2009).

<sup>2</sup> Indrani Sen, *Human Rights of Minority and Women's, Volume 4, Women and Human Rights Development Volume 3*, 93, (Isha Book Publication, Delhi 2005).

progressive in respect of women's rights. The interpretation made in the past was based upon some socio-economic and political condition which is not suitable to be binding on the present and future generations. Islam as a religion has long before recognised the idea of human rights Quran ordained rights to Justice as the main concern not only for men but also for women as human right.

Therefore, there is a need to take various steps for the reformation of personal law and to create awareness against the misuse of various Muslim women rights relating to marriage, Mahr, Divorce etc.

### **3.1.1. Origin and Development of Muslim Marriage under Personal Law:**

The Almighty Allah has ordained marriage as the most correct and legal way to reproduce offspring's and brings them on earth. The basic unit of an Islamic society is the family. Marriage is regarded as an institution that legalizes the sexual relations between man and women so that the human species can be preserved. Whether the nature of marriage is considered as a sacrament or as a contract, it confers certain matrimonial rights and obligations upon the parties and gave the status of husband and wife and also legitimised their children of marriage<sup>3</sup>. There is neither any ritual nor any facade in Islam. Muslim marriage is defined as a commitment for the object of legalizing sexual relation and the upbringing of offspring's.

Women have been given all rights in relation to marriage by the Muslim personal law. Procreation and legitimisation of children is the main object of Muslim marriage. Hence, it is another fallacy of the western thought about Muslim marriage is a mere contract and not sufficiently solemn or sacred. To safeguard the moral and social need, marriage is a religious duty of every Muslim. Thus, Islam always encouraged Marriage as an institution not only for the survival of human race but it also guarantees social stability and a standard existence for both woman and man. Nevertheless, to understand the evolution in the concept of marriage under Islamic

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<sup>3</sup> Paras Diwan, *Muslim Law in Modern India* 74, (Allahabad Law Agency, 1930).

society, it is necessary to know the position both in Pre-Islamic as well as in the Islamic period.

### **3.1.2 Marriage in the Pre-Islamic Period:**

In Pre-Islamic Arabia, a variety of different marriage practices existed. The most common and recognized types of marriage at this time consisted of: marriage by agreement, marriage by capture, marriage by mahr, marriage by inheritance and mutah or temporary marriage<sup>4</sup>.

There was no definite relationship exist between the sexes in the Pre-Islamic Arabia. The form of regular marriage which exists today was very rare. Instances of prostitution, adultery or polyandry were very much visible during those days. Abdur Rahim lists the following types of Marriage Prevalent in those days<sup>5</sup>;

- (i) A custom according to which a man would say to his wife: “Send for so and so (Naming a famous man) and have intercourse with him”. The husband would then keep away from her society until she had conceived by the man indicated, but after her pregnancy became apparent, he would return to her<sup>6</sup>. This originated from a desire to secure noble offspring.
- (ii) A number of men, less than ten, used to go to a woman and have sexual connection with her. If she conceived and was delivered a child, she would send for them, and they would be all bound to come. When they came and assembled, the woman would address them saying “You know what has happened. I have now brought forth a child. Oso and So! (Naming whomsoever of them she chose), this is your son”. The Child would then be ascribed to him and he was not allowed to disclaim its paternity<sup>7</sup>.

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<sup>4</sup> N. Shah, *The Koran and International Human Rights Law* 32, (Martinus Nijhoff Publishers, (2006).

<sup>5</sup> Syed Khalid Rashid, *Muslim Law* 50-51, (Eastern Book Publication, Lucknow, 5<sup>th</sup> Edn., 2009).

<sup>6</sup> Ibid.

<sup>7</sup> Ibid.

(iii) A number of men used to visit a woman who would not refuse any visitor.

These women were prostitutes and used to fix at the doors of their tents a flag as a sign of their calling. If a woman of this class conceived or brought forth a child, the man that frequented her house would be assemblé and physionomists used to decide to whom the child belonged. In addition to these, some other corrupt forms of marriages were:

- (i) A man would purchase a girl from her parents or guardian for a fixed sum
- (ii) Muta (temporary) Marriages were widely prevalent, so much so that in the beginning of Islam, even the Prophet (PBUH) tolerated them as a matter of policy but later on He prohibited them.
- (iii) A Pre-Islamic Arab was allowed to marry two real sisters at one and the same time<sup>8</sup>.

### **3.1.3 Marriage in the Islamic Period:**

After the advent of Islam the old marriage laws become obsolete and in the state of sweeping and far-reaching way. Muhammad (PBUH) had reformed the laws and Procedures of the Common marriage practices that existed during the Pre-Islamic days. The rules of “Marriage by agreement (Marriage through Consent)” was reformed and a strict set of rules and regulations were put in place. The practice of Marriage by inheritance was forbidden. Several chapters and verses from the Quran were revealed which banned such practices<sup>9</sup>.

Islamic law limited men to four wives at one time, not including concubine<sup>10</sup>. The concept of marriage was under gone a radical change for example, the mahr, previously regarded as a bride-price paid to the father, became a nuptial gift retained

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<sup>8</sup> Id.

<sup>9</sup> Marriage in Islam available at: [https://en.m.wikipedia.org/wiki/Marriage\\_in\\_Islam](https://en.m.wikipedia.org/wiki/Marriage_in_Islam) (visited on 10th Sept. 2020).

<sup>10</sup> Holy Quran 4:3.

by the wife as part of her personal property. The consent of the women is now regarded as foremost be it in active or in silence mode. And it is pertinent that the proposal and acceptance had to be made in the presence of at least two witnesses.

In Sura IV of the Quran, some of the regulations regarding marriages are laid down. The relevant passages are:

“Marry not the woman whom your father has or had married, for this is shameful and abominable and evil way”.

“Forbidden to you are your mothers, your daughters, your sisters, your aunts, paternal and maternal, the daughters of your brother and sister, your foster-mother and foster-sisters, the mother of your wives and the step-daughters who are in your care, born (of) your wives, with whom ye have had intercourse but if ye have not had intercourse with them, it is not a sin for you and the wives of the sons, who are your offspring, also ye marry two sisters at the same time, except what is already past, Allah is gracious and merciful<sup>11</sup>.

Prophet Muhammad (PBUH) brought remarkable changes in the status of Muslim women with regard to marriage. The Prophet (PBUH) declared that mahr was due to the woman, and is a symbolic of respect of husband towards his wife. The consent of woman in marriage was made essential. The wife was made a sharer in the inheritance. In short, she was not to be treated henceforth as a chattel.

### **3.2: Definition and Meaning of Muslim Marriage:**

The Quran specifically refers to marriage as Mithaqun Ghalithun, which means a “Strong Agreement”. It can further be understood as the legal contract between a bride and bridegroom as a part of an Islamic Marriage, or the contract of Islamic marriage, or Islamic marriage in general. The original meaning of the word Nikah is the physical relationship between man and woman. It is also used secondarily to refer to the contract of marriage which makes the relationship lawful. A contract that results in the

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<sup>11</sup> Syed Khalid Rashid, *Muslim Law 51*, (Eastern Book Publication, Lucknow, 5<sup>th</sup> Edn., 2009).

man and women living with each other and supporting each other within the limits of what have been laid down for them in terms of rights and obligations<sup>12</sup>.

**Various Definitions of a Muslim Marriage are written below:**

Hedaya: Nikah in its primitive sense means carnal conjunction. Some have said that it signifies conjunction generally. In the language of the law it implies a particular contract used for the purpose of legalizing generation<sup>13</sup>.

Ameer Ali: “Marriage is an institution ordained for the protection of society, and in order that human beings may guard themselves from foulness and unchastity”<sup>14</sup>.

Justice Mahmood: “Marriage among Muhammadans not a sacrament, but purely a civil contract”<sup>15</sup>.

**Dr. Jung is of opinion that –**

Marriage though essentially a contract is also a devotional act; its objects are rights of enjoyments and procreation of children and regulation of social life in interest of society<sup>16</sup>.

Again same view was given by Abdur Rahim who says: “The Mohammedan Jurists regard the institution of marriage as par taking both of the nature of ibadat or devotional acts and muamalat or dealings among men”<sup>17</sup>.

**According to Tyabji:**

Marriage brings about a relation based on and arising from a permanent contract for intercourse and procreation of children, between a man and a woman, who are referred to as Parties to one marriage and who after being married, become husband and wife<sup>18</sup>.

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<sup>12</sup> Nuzat Parveen Khan, *Women and the Law* 318, (Universal Law Publishing, 1<sup>st</sup> Edn. , 2016).

<sup>13</sup> Supra Not 5.

<sup>14</sup> Ameer Ali, *Mohammedan Law* 97, (S. K. Lahiri & Co., Calcutta, 6<sup>th</sup> Edn., 1912)

<sup>15</sup> *Abdul Kadir V. Salima*, (1886) 8All 149.

<sup>16</sup> Dr. M.U.S. Jang, “Dissertation on the Development of Muslim Law in British India”, P. 1,2.

<sup>17</sup> Abdur Rahim, *The Principles of Mohammadan Jurisprudence* 327, (Lahore Edn., 1958).

<sup>18</sup> Faiz Badrudin Tyabji, *Muslim Law* 44-45, (N. M. Tripathi, Bombay, 4<sup>th</sup> Edn., 1968).

### 3.2.1 Objects of Muslim Marriage:

The essential objects of Muslim marriage are perpetuation of human race and attainment of chastity, continence, mutual love, affection and peace. The five objects of marriage are:

- The moderation of sexual passion;
- The commandment of domestic life;
- The enlargement of the family;
- The regulation and management of wife and children; and
- The upbringing of virtuous children<sup>19</sup>.

In short, it can be said that the object of the Muslim marriage is to provide legal validity to the sexual relationship of husband and wife to legalise the children, without a valid contract of marriage, the intercourse between a man and woman is unlawful (Zina), thus legalises the children born out of a valid marriage<sup>20</sup>.

### 3.2.2 Nature of Muslim Marriage:

There is no uniformity in the opinion regarding the nature of Muslim marriage. To have better understanding it would be correct to go through the various notions. In Islamic society Muslim marriage has various connotations in social, legal and religious aspect. First of all according to social aspect, Muslim marriage is a social institution and tries to maintain equal social status to women. The Mahr, which a primary requirement for Muslim Marriage is the financial security for the woman in case of distress. By imposing rectifications on the marriage, a well relationship of families can

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<sup>19</sup> Aqil Ahmed, *Textbook of Mohammedan Law* 109, (Central Law Agency, Allahabad, 26<sup>th</sup> Edn., 2016).

<sup>20</sup> Dr. R. K. Sinha, *Muslim Law* 40, (Central Law Agency, Allahabad, 6<sup>th</sup> Edn., 2006).



be maintained and the restricted polygamy would assist the women to uphold their dignity in the society and to avoid the ill-effects of breeding<sup>21</sup>.

According to the religious aspect, marriage is the one of the essential sunnat of the Prophet (PBUH) as well as mentioned in the Holy Quran. So, one who undergoes a marriage ceremony gets religious gain and the avoider rendered himself to a sin. In *Anis Begum V. Mohd. Istafa*<sup>22</sup>, Sir Shah Sulaiman C.J. observed that Marriage in Islam is not regarded as a mere civil contract, but a religious sacrament too. In *Shoharat Singh V. Jafri Bibi*<sup>23</sup>, the Privy Council said that under Muslim law is a religious ceremony and confers on a Muslim woman the full status of wife and children born from it are legitimate. It leads to the upliftment of man and is a means of continuance of the human race.

One of the classic pronouncements describing the nature of Muslim marriage, in *Abdul Kadir V. Salima*<sup>24</sup>, Mr. Justice Mahmood opined the following:

Marriage among Muhammadans is not a sacrament, but purely a civil contract, and though it is solemnised generally with recitation of certain verses from the Quran, yet the Muhammadan law does not positively prescribe any service peculiar to the occasion. That it is Civil Contract is manifest from the various ways and circumstances in and under which marriages are contracted or presumed to have been contracted. And though a civil contract, it is positively prescribed to be reduced upon the declaration or proposal of the one, and the acceptance or consent of the other of the contracting parties, or of their natural and legal guardians before competent and sufficient witnesses; as also upon the restrictions imposed, and certain of the conditions required to be abided by according to the peculiarity of the case.

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<sup>21</sup> Nuzhat Parveen Khan, *Women and the Law* 318, (Universal Law Publishing, 1<sup>st</sup> Edn., 2016).

<sup>22</sup> (1933) 55 All 743: AIR 1933 All 634.

<sup>23</sup> (1914) 17 Bom. LR13.

<sup>24</sup> (1886) 8 All 149.

From the above observation justice Mahmood could not be held to have taken the view. The Muslim marriage is nothing but purely a civil contract. Yet its obiter dicta carries the legal sanctity of ratio decidendi. When he approves of Baillie's view that marriage is also for the solace of life, he is himself highlighting another aspect of marriage, that is, its social aspects<sup>25</sup>.

Taking the religious aspect into account, Muslim marriage is an Ibadat (devotional act). Again, why Muslim marriage is not merely a civil contract, the reasons are cited below<sup>26</sup> –

- (i) Unlike civil contract, it cannot be made contingent on future event, and
- (ii) Unlike civil contracts, it cannot be for a limited time (Muta marriage is an exception).
- (iii) Unlike civil contract, the analogies of lien cannot be applied to a marriage contract.

Thus, the nature of Muslim marriage may be concluded by the observation of M.C.J. Jung<sup>27</sup>: "Marriage is an institution of Ibadat clothed in the legal form of contract regulating sexual intercourse; but its continuance is dependent upon the maintenance of conjugal affection". Therefore, finally it can be summed up as neither civil contract nor as a sacrament but the semblance of the two.

### **3.2.3 Essential Requirement of Muslim Marriage:**

In Muslim marriages no uniform ceremonies, special rites, no officiants, no irksome formalities are required. However, following conditions are necessary:

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<sup>25</sup> Aqil Ahmed, *Textbook of Mohammedan Law 110*, (Central Law Agency, Allahabad, 26<sup>th</sup> Edn., 2016).

<sup>26</sup> Syed Khalid Rashid, *Muslim Law 53-54*, (Eastern Book Publication, Lucknow, 5<sup>th</sup> Edn., 2009).

<sup>27</sup> Aqil Ahmed, *Textbook of Mohammedan Law 113*, (Central Law Agency, Allahabad, 26<sup>th</sup> Edn., 2016).

1. Proposal and Acceptance
2. Competent Parties
3. No Legal Disability

### **Proposal and Acceptance:**

Proposal or offer made by or on behalf of one of the parties to the marriage and an acceptance of the proposal by or on behalf of the other party. In Muslim marriage, ijab from one party and acceptance Qubul from the other in one sitting is mandatory. In *Zainaba V. Abdul Rahman*<sup>28</sup>, the Court held there is no particular form in which the proposal and acceptance should be made. The words of proposal and acceptance should be free from ambiguity and clear enough to show the real intention to establish the conjugal relation from the moment of acceptance.

(ii) The parties to the marriage must be competent. Simply, it can be said that the parties to a marriage must have the capacity to enter into a contract. A Muslim who is sane and adult may enter into a contract of marriage. If any of the party to the Muslim marriage is minor or insane, the consent of the guardian is mandatory which must be free from force or fraud. In *Hassan Kutti V. Jainbha*<sup>29</sup>, the court held that free consent in case of adult persons is not only essential for a valid marriage but is absolutely necessary. In other sense, competency includes puberty for the parties (Bulugh).

No Legal Disability: under Muslim law marriage is prohibited in the following circumstances:

- (a) Absolute incapacity or Prohibition.
- (b) Relative incapacity or Prohibition.
- (c) Prohibitory incapacity or Prohibition.
- (d) Directory incapacity or Prohibition.

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<sup>28</sup> AIR 1945 Pesh 51:222 IC 277.

<sup>29</sup> AIR 1928 Mad 1285:ILR52 Mad 29.

(a) Absolute Incapacity: Absolute incapacity to marry arises from:

- (i) Consanguinity
- (ii) Affinity, or
- (iii) Fosterage

(b) Relative incapacity: the following are the cases of relative incapacity:

(c) (i) Unlawful Conjunction,

- (ii) Polygamy, or Marriage a Fifth Wife,
- (iii) Absence of proper witnesses,
- (iv) Difference of religion,
- (v) Woman undergoing iddat.

(c) Prohibitive Incapacity: It arises in the following cases:

- (i) Polyandry and
- (ii) A Muslim woman marrying a non-Muslim.

(d) Directory Incapacity: This may arise from:

- (i) Marrying a woman anciente
- (iii) Prohibition of divorce;
- (iv) Marriage during Pilgrimage;
- (v) Marriage with a sick man<sup>30</sup>

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<sup>30</sup> Aqil Ahmed, *Text of Mohammedan Law 127-128*, (Central Law Agency, Allahabad, 25<sup>th</sup> Edn., 2015).

### 3.2.4 Aspects of Muslim Marriage:

(a) Valid Marriage (Sahih): Sahih marriage is one which is performed in accordance with the requirement prescribed by the Muslim Law. It rests upon the wife, the right of Mahr or Dower, maintenance and shelter, imposes also duties to be faithful, obedient to her husband, allows consummation with and undergo Iddat.

Fyzee<sup>31</sup> has given nine legal effect of Sahih Marriage:

- Sexual Intercourse becomes lawful and the children born of the union are legitimate.
- The wife becomes entitled to dower.
- The wife becomes entitled to maintenance.
- The husband becomes entitled to restrain the wife's movement in a reasonable manner;
- Mutual rights of inheritance are established;
- The prohibitions regarding marriage due to the rules of affinity come into operation,
- The wife is not entitled to remarry after the death of her husband or after the dissolution of her marriage, without observing Iddat;
- Where there is an agreement between the parties, entered into either at time of the marriage or subsequent to it, its stipulations will be enforced, in so far as they are consistent with the provisions or policy of the law, and

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<sup>31</sup> A. A. A. Fyzee, *Outlines of Muhammadan Law 116-117*, (Oxford University, Press, 5<sup>th</sup> Edn., 2009).

- Neither the wife nor the husband acquires any interest in the property of the other by reason of marriage.

(b) Irregular Marriage (Fasid)<sup>32</sup>:- Non fulfilment of the essentials of Muslim Marriage results into an irregular marriage. It is to be terminated by one of the party to the marriage. Irregular marriage amounts due to the following reasons:

- A marriage without witness (Not under Shia Law).
- Marriage with fifth wife
- Marriage with a woman undergoing iddat
- Marriage with a fire-Worshipperr
- Marriage outcome of bar of unlawful conjunction

### **Legal Effects of an Irregular Marriage<sup>33</sup>:**

- Where marriage is not consummated no legal consequences follows:
- When consummated, cohabitation is lawful, children's are legitimate and can inherit properties of their parents.
- After consummation, Mahr can be claimed by the wife
- No observance of iddat, if marriage not consummated.

(c) Void Marriage (Batil)<sup>34</sup>:-

Void Marriage has no existence in the eyes of law. Thus if marriage performed in disregarding the absolute prohibitions or polyandry is a void marriage. Reasons for void marriages are:

- Marriage through forced consent

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<sup>32</sup> Nuzhat Parveen Khan, *Women and the Law* 329, (Universal Law Publishing, 1<sup>st</sup> Edn., 2016).

<sup>33</sup> Ibid.

<sup>34</sup> Ibid.

- Plurality of Husband
- Marriage prohibited on the ground of consanguinity, affinity and fosterage.

### **Legal Effects of a Void Marriage<sup>35</sup>:**

- No mutual rights or obligations are created between the parties.
- Children born are deemed illegitimate.
- No right to Mahr or maintenance of the wife.

### **3.3 Marital Rights of Muslim Woman:**

Islam being the primary religion in the world that regards woman as a legal personality endow her all right which is equally enjoyed by man. The reforms of Prophet (PBUH) brought liberation from bondage and recognised her individuality as human being. The status of women was raised by giving her rights of property, ownership, inheritance, education, marriage and divorce. To understand the changes in the improvement of marital rights of Muslim women, it is necessary to know both the position before and after the advent of Islam.

#### **3.3.1 Before the advent of Islam:**

During the Pre-Islamic society, the status of Muslim woman was very bad. The customary laws of Arabia in those days were most of them in support of the males. The enjoyment of sexual passion and the procreation of children was the only object of a Muslim marriage. There was no uniformity or certainty in the matrimonial status of a Muslim wife. Precisely, it can be said that in those days there was no recognised martial rights of Muslim women.

#### **3.3.2 After the Advent of Islam:**

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<sup>35</sup> Id.

Position of women was completely changed by Prophet Mohammad (PBUH). Striking improvements were done and that had led to the recognition of status of Muslim women. The Prophet (PBUH) has said “there is no celibacy in Islam. Marriage is a religious duty and is consequently a moral safeguard as well as social necessity<sup>36</sup>”.

### **Rights of the Muslim wife from Islamic Perspective:**

1. The Muslim wife has the right to get her dower as per the law.
2. The wife becomes entitled to get maintenance from her husband.
3. She has the right to use the apartment for her own and her husband’s exclusive use.
4. She has the right to receive an equal treatment and an equal share of the husband's society.
5. She is entitled to obtain dissolution of the marriage if the law or the specific stipulation authorises her to this effect.

### **Wife’s Independent Status Conjugal Rights and Restitution:**

A Muslim wife after being legally wedded maintains her independent legal status in all spheres and can independently take her legal actions in her own right and name under Muslim law, she is not bound to adopt the name of her husband, thus she remains also a member of her father’s family with all her rights remaining intact. The husband cannot claim any right to deal with the property of the wife, and the wife too does not claim any ownership right on the husband’s property during his lifetime<sup>37</sup>.

### **Wife’s Right to Work:**

The Holy Quran mention the rule of “What the man obtain is his property and what the woman obtains is her property” clearly suggest the women’s right to work and earn.

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<sup>36</sup> Rakesh Kumar Singh, *Muslim Law* 57, (Universal Law Publishing, New Delhi, 1<sup>st</sup> Edn., 2016).

<sup>37</sup> Tahir Mahmood & Saif Mahmood, *Introduction to Muslim Law* 110, (Universal Law Publishing, Delhi, 2<sup>nd</sup> Edn., 2018).



Evidences are also visible in the Sunnat of Prophet where His wife Syeda Khadija had her own business and was exporting and importing commercial goods. But any agreement by the wife to the husband that she will actively involved in Household activities and not do any job, then it could be against the policy of Islam if she breaches the agreement. Nevertheless household jobs or cooking in the husband house and feeding his children are not necessarily her duties, if she so desires, the husband has to compensate her for these jobs<sup>38</sup>.

### **Maintenance:**

One of the most important rights of the wife is maintenance (nafaqa) and therefore a co-relative duty lies on the husband in all lawful marriages. It is the foremost responsibility of the husband to maintain his wife which includes food, clothing, a separate space to live with the husband, and medical and maternity expenses. A Muslim wife who illegally refuses herself to the husband will abstains from her to claim maintenance. The extent of maintenance is to be determined as per the circumstances of both the spouses under Sunni Law and with regard to the wife's requirement under Shia law.

A neglected Muslim wife can avail an order of maintenance through civil proceedings or by instituting a suit of maintenance under the code of criminal procedure 1973<sup>39</sup>.

### **Rights to Sexual Relations & Contraceptives:**

Under Muslim law a Muslim wife shall have the right to refuse sex with the husband on the ground of non-payment of dower, non-maintenance, cruelty, option of puberty etc. And the husband cannot force with his wife at when to have sex with him.

Indian Penal Code 1860<sup>40</sup>, criminalizes sex with a minor wife (Sec. 375) fully applies to the Muslims. The Muslim is also under the purview of the amendment of IPC in

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<sup>38</sup> Id.

<sup>39</sup> The Code of Criminal Procedure, 1973 (Act No. 2 of 1974).

<sup>40</sup> Indian Penal Code, 1860, (Act No. 45 of 1860).

2013 which criminalizes sex forced by the husband during separation between the spouses by a court order otherwise.

### **Restitution of Conjugal Rights:**

This Right is a fundamental feature of Muslim marriages which grants the wife right to live with the husband and the husband must not desert her. The wife has the right to conjugal society judicially enforced by means of a decree for restitution of conjugal rights.

### **3.3.3 Rights of Muslim Women under the Constitution of India:**

Article 21<sup>41</sup> of the constitution of India provides, “No person shall be deprived of his life or personal liberty except according to the procedure established by law”. The right to marry is an essential part of this article. The universal declaration of Human Rights, 1948 has also recognized this right under Article 16<sup>42</sup> of the same.

The verses of Holy Quran revealed that men and women are created by Allah to accompany each other. The Prophet (PBUH) declared “There is no monasticism in Islam”. He further ordained “Marriage is my Sunna” and whoseever keeps away from it is not my followers<sup>43</sup>.

### **An analysis on the marital rights of Muslim woman suggest the following points:**

- The consent of the wife is mandatory otherwise there would be no marriage between the parties. In other words, the marriage should not be induced by coercion or undue influence or fraud<sup>44</sup>.
- One of the effects of marriage is dower which is said to be an exchange for the effect that is the Usufruct of the Wife.

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<sup>41</sup> J. N. Pandey, *Constitutional Law of India* 238, (Central Law Agency, Allahabad, 47<sup>th</sup> Edn., 2010).

<sup>42</sup> Ibid. 142.

<sup>43</sup> Hadith Bukhair 64.

<sup>44</sup> *Fatima V. Fazal Karim*, AIR 1928 Cal 303.

- The social aspect of Muslim marriage gives to the woman definitely high social status after marriage.
- One of the important marital rights of Muslim woman is the option of puberty immediately on attaining puberty and the right is lost if she permits the marriage to be consummated thereafter.

### **3.3.4 Practice of Polygamy and its Impact on Women's Right:**

The subject of Polygamy has been treated as if it was one of the rites of Islam or one of the duty or at least a sensible tradition in Islam. It is normally believed that Muslim is readily permitted by their religion to undertake four wives at a time and they easily do so to fulfil their sexual desire. It is submitted that nothing could be more erroneous than this. Neither Islam favours Polygamy nor the Muslims prefer polygamous union. The overwhelming norm of marriages, for a Muslim, is to marry one woman to be his solaces, the joy of his heart, the keeper of his house and the one to trust with his secrets. Thus, quietude, love and mercy, the foundation of married life according to the Quran, would support them. Therefore, the learned say, "It is disliked for a man who has a wife who is chaste and modest and who is enough for him to marry another. This will subject him to what is forbidden". The Almighty says: "You will never be able to do perfect justice between wives even if it is your ardent desire, so do not incline too much to one of them (by giving her more of your time and provision) so, as to leave the other hanging (i.e. neither divorced nor married)"

[Surah 4:129]<sup>45</sup>.

In Islam, monogamy is a general rule while polygamy is only an exception. The Quran commands:

"Marry such a women as seem good to you, two three or four; but if you fear that you cannot do justice (between them) then marry only one, this is better so that you may not deviate from the right path" (Quran IV:4).

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<sup>45</sup> Danish Yusuf, *Islamic Law and Divorce 51*, (Random Publications, New Delhi, 1<sup>st</sup> Edn., 2013).

“And it is not in your power to do justice between wives, even though you may covet it, but keep yourself not aloof from one with total aversion, nor leave her like one in suspense (Quran V:4)<sup>46</sup>.

Under the Pre-Islamic Arabian society, there was no limitation as to number of wife's, thus the above principles of Quran should be seen in that context. For such a society, Islam limited the number to four though focussed more on monogamy as an objective one.

Islam, being a universal religion takes into consideration Polygamy as remedial ordinances to meet the contingency of place, time, circumstances and other aspects. There may be conditions or state of affairs in which Polygamy become unavoidable. There are certain factors which are written below:

**Individual Factors<sup>47</sup>:**

In the case of wife's barrenness, perpetual illness, unsuitability for cohabitation, etc. The alternatives available to a man of monogamous society are:

- (i) Either to take the action of divorcing the wife, or
- (ii) To wait for that far off eventuality of the death of the wife, or
- (iii) To abandon the hope of an issue and desire of cohabitation. Could not it be preferred to take a second wife, instead of four torturing ourselves, or leaving a helpless wife?

A situation to the contrary could only lead to such tragedies as that of Josephine, whom Napoleon was forced to divorce, against his wishes, because she was not able to procreate and heir to the throne, or that of Soraiya, the queen of Shah of Iran, whose only fault was her alleged barrenness, and the Shah had to divorce her in compliance

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<sup>46</sup> Syed Khalid Rashid, *Muslim Law 74*, (Easter Book Company, Lucknow, 5<sup>th</sup> Edn., 2009).

<sup>47</sup> Ibid.

with a custom of the Iran's Royal Family, that a queen who fails to provide an heir to the throne should be divorced and replaced by another<sup>48</sup>.

Polygamy in Islam is only a remedy which comes into play when an emergency warrants or an opportunity arises<sup>49</sup>.

### **Biological and Psychological Factors:**

There are certain individuals who have a more active sexual impulse than others. For them polygamy is necessary<sup>50</sup>.

It is the only way to check adultery concubinage and Prostitution, and many sexual offences which have become so common today. In many countries, tribes and religion, polygamy has been a recognised institution. Before 1955, there was no restriction on the number of wives under Hindu Law. Polygamy was observed among the Athenians, the most civilised and most cultured of all nations of antiquity<sup>51</sup>.

Thus, it is absolutely untenable to claim that Islam has originated and legalised polygamy. On the contrary Islam has put restriction to the number of wives<sup>52</sup>.

### **Impacts on women's Rights:**

The relevancy of Polygamy in the context of 21<sup>st</sup> Century is not felt any more. It is sad to note that the concern for which polygamy was permitted is now misused by the Muslim society and that has infringes the privacy right of the women, especially the lowest strata of individuals in society have morphed to such an extent that, it is not uncommon to see the practice of Polygamy.

Broadly speaking, the issue of Polygamy needs to be tackled. The increasing application of Polygamy by the male members of the society is economically affecting

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<sup>48</sup> Id.

<sup>49</sup> Ibid.

<sup>50</sup> Ibid.

<sup>51</sup> Aqil Ahmed, *Text Book of Mohammadan Law 145*, (Central Law Agency, Allahabad, 25<sup>th</sup> Edn., 2015).

<sup>52</sup> Ibid.

the right to Privacy of Muslim women, where she is tolerating all her rights being violated in silence. In India, though much has been talked about the empowerment of women but very less has been done to protect the violation of rights of Muslim resulting from evil practice of Polygamy.

### **3.4 Origin and Concept of Mahr or Dower under Personal Law:**

#### **Introduction:**

The germ of the law on dower or Mahr is to be found in the Quran: “give women their dowries freely; and if they are good enough to remit any of it themselves, then devour it with good digestion and appetite”<sup>53</sup>.

One of the significant subject matter of the Islamic Society is doubtlessly Mahr or Dower. It is an amount of money or property on which the wife is entitled to receive from her husband in consideration of their marriage. Islam as a religion has tried to draw a balance in the community between men and women by giving its unequivocal endorsement to a practical division of responsibilities whereby women are placed in charge of the household management, while men are responsible for the maintenance and livelihood of the matrimonial family.

The Holy Quran and the Sunnat of Prophet (PBUH) proclaims Mahr or Dower is one of the pecuniary rights of a Muslim wife and upon this there is consensus of opinion among the Muslims. Mahr or Dower may be in the form of currency, Jewellery, farmland, cattle, profit, trade commodities and any other things of value. The only necessary requirement is that the value of the Mahr or Dower must be known either exactly or approximately. If the value is not ascertainable then it is of no importance in any manner according to all the schools except the Maliki School. According to the Maliki School, the marriage contract is invalid and void in the eyes of law before consummation but if consummation has been occurred it will be a valid marriage.

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<sup>53</sup> The Holy Quran, Surah An-Nissa 4:4.

According to the Shafi, Hanafi and the Hanabali School, a Muslim wife shall be entitled to the Mahr in Islam at the time of marriage. A Mahr is a mandatory payment in the form of money or possession paid by the groom, or by the groom's father to the bride at the time of marriage that legally becomes her property. While the Mahr is not often money it can also be anything agreed upon the bride such as jewellery, home made goods.

The word mahr is related to the Hebrew Word "Mohar" and the Syria's Word "Mahra", meaning "Bridal Gift" which originally meant purchase money". The word implies a gift given voluntarily and not as a result of a contract, but in Muslim religious law it was declared a gift which the bridegroom has to give the bride when the contract of marriage is made and which becomes the property of the wife<sup>54</sup>.

The essential condition for the settlement of marriage is dower, but the validity of the marriage does not depend upon its express mention, so that where no dower is settle at the time of the contact, that fact does not affect its validity and the wife becomes entitled to the dower customary in her family. But in case where it is made a condition that there shall be no dower, the law imposes liability on the husband by awarding the woman the customary dower.

Dower has been defined to be an effect of the marriage contract, which is imposed upon the husband as a mark of respect for the wife, and as a consideration for the carnal use of her.

### **3.4.1 Mahr in Pre-Islamic Society:**

The Arabian society before the advent of Islam was highly imbalanced be it socially, economically and politically. The domination of male and patriarchy was visible in the every sphere of life. Customs prevalent in those were such that a man would enjoy all his rights and absolute control over the woman going reverse the long pages of history and erasing out the dust of time from the sketch of a woman, there become visible

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<sup>54</sup> Mahr available at: [https://en.m.wikipedia.org/wiki/Mahr#Etymology\\_and\\_history](https://en.m.wikipedia.org/wiki/Mahr#Etymology_and_history) (visited on 12<sup>th</sup> Sept. 2020).

before eyes a woman's with wailing eyes. She was also subjected to miserable conditions and her position in the domestic surrounding is not more than a thing.

A woman was a never a free agent in contracting marriage. This right was usually given to the father, brother or cousin or any other male relative or guardian to her in marriage. The consent of the women at her marriage is immaterial. The sum of Mahr in those days were handed over to the father, brother or cousin of the bride.

In old Pre-Islamic Arabia<sup>55</sup>, when the institution of marriage as it is known today was not developed, many forms of sex relationships between man and women were in vogue. Some were temporary and hardly better than prostitution. Men, after despoiling their wives, often turned them out, absolutely helpless and without any means. The ancient custom to settle certain sums for subsistence of the wife in the event she was turned out was often disregarded, as there was no organised system of law. A device was in vogue under the name of SHIGHAR Marriage in which a man would give his daughter or sister in marriage to another in consideration of the latter giving his daughters or sister in marriage to the former. Thus neither of the wives could get a dower. False accusation of unchastity were frequently used to deprive the wife of her dower.

In the so called Beena marriage, where the husband visited the wife but did not bring her home, the wife was called Sadiqa or female friend, and a gift given to wife on marriage called Sadaq. In Islam Sadaq simply means a dowry and is synonymous with Mahr. But originally the two words are quiet distinct Sadaq, is a gift to the wife and Mahr to the parent of the wife the latter term belong to the matter of dominion which is known as baal marriage where the wife is compensated<sup>56</sup>. In these marriages, the gifts given to the wife's would be her absolute property. In regular form of marriages,

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<sup>55</sup> Aqil Ahmed, *Text Book of Mohammedan Law* 149, (Central Law Agency, Allahabad, 25<sup>th</sup> Edn., (2015).

<sup>56</sup> Ibid.



it was essential condition to the validity of marriage that the husband should settle ascertain dower, which becomes her exclusive property<sup>57</sup>.

### **3.4.2 Mahr in Islamic Society:**

After the rise of Prophet Mohammad (PBUH) in the Seventh Century AD, the status of woman was highly enhanced and the abhorrent practice by some people was the practice of female infanticide was forbidden by Prophet (PBUH). Promulgation of Islam gave a new form of Nikah to marriage, abolished this ancient custom and forbade unjust acts towards the fair sex, as is away with generosity; “it is not permitted to you to appropriate the goods you have once given to them”. Thus the custom originated in ancient times with the Payment which husbands often made to their wives as means of support in their old age or when turned out by them. Mahr in the baal form of marriage was also recognised by the Prophet to ameliorate the position of wife in Islam, and it was combined with Sadaq, so that it becomes a settlement or a provision for the wife. In Islamic law Mahr belongs to the wife although historically speaking it is more akin to bride’s price than gift or anything else<sup>58</sup>.

The Hadith throws much light on the fact that Mahr is binding in every situation irrespective of its value and quantum. It may be even an iron ring. The main object is to offer it with an open heart as a fit. This is implied that Mahr must be determined with reference to the status of the parties.

In India the institution of Mahr enjoys full recognition as a part of Muslim Personal Law. It has been saved from any effect by the anti-dowry legislation<sup>59</sup>. The right of a wife to Mahr is also not affected by any decree of divorce granted under the provisions of the dissolution of Muslim Marriages Act, 1939<sup>60</sup>.

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<sup>57</sup> A. A. A. Fyzee, *Outlines of Mohammedan Law* 212, (Oxford University Press, India, 4<sup>th</sup> Edn., 2008).

<sup>58</sup> Supra Note 55.

<sup>59</sup> Sec. 2, Dowry Prohibition Act, 1961, Sec 2.

<sup>60</sup> Dissolution of Muslim Marriage Act, 1939.

However, as regards the working of the institution of Mahr in India once fails to record uniformity about the actual practices prevalent at different places or within different families. No uniform rate of Mahr exists even in the same area. In some cases it is much lower than reasonable while as in others it is much higher than desirable. It starts from rupees fifty up to some crores. Generally Mahr is fixed at the marriage, i.e. prompt and the one is paid after some time known as deferred dower where no specified amount is fixed in the Nikahnama, the courts decide the cases according to the customs prevalent in respective regions.

### 3.4.3 Meaning of Mahr:

Baillie: "...The property which is incumbent on a husband, either by reason of its being named in the contract of marriage, or by virtue of the contract itself...". Dower is not the exchange or consideration given by the man to the woman for entering into the contract; but an effect to the contract imposed by the law on the husband as a token of respect for its subject, the woman<sup>61</sup>.

Abdur Rahim (on the basis of Hedaya) – "It is either a sum of money or other form of property to which the wife becomes entitled by marriage... it is an obligation imposed by law on the husband as a mark of respect for the wife..."<sup>62</sup> (This definition has been adopted by Mulla also).

Tyabji: "Mahr or dower is a sum that becomes payable by the husband to the wife on marriage, either by agreement between the parties or by operation of law"<sup>63</sup>.

According to Ameer Ali, "Dower" is a consideration which belongs absolutely to the wife<sup>64</sup>.

Hon'ble Justice Mahmood has said in *Abdul Kadir V. Salima*, that Dower under the Muslim law is a sum of money or other property promised by the husband to be paid

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<sup>61</sup> Baillie (N&E), *Digest of Mohammedan Law* 91, (Kazi Publications, 1989).

<sup>62</sup> Abdur Rahim, *The Principle Mohammedan Jurisprudence* 334, (Lahore Edn., 1958).

<sup>63</sup> Faiz Badrudin Tyabji, *Muslim Law* 170, (N. M. Tripathi, Bombay, 4<sup>th</sup> Edn., 1968).

<sup>64</sup> Aqil Ahmed, *Mohammedan Law* 150, (Central Law Agency, Allahabad, 26<sup>th</sup> Edn., 2016).

or delivered to the wife in consideration of marriage, and even where no dower is expressly fixed or mentioned at the marriage ceremony, the law confers the right of dower upon the wife<sup>65</sup>.

#### **3.4.4 Nature of Mahr or Dower:**

The present form of Mahr was introduced by the Holy Prophet (PBUH) and it becomes mandatory in case of every Muslim marriage. Under Roman law 'Donatio Propter Nuptias' is similar to Dower in Muslim Law. However, it is voluntary in case of former and obligatory in the case of later.

**To understand the true nature of Mahr or Dower following points may be analysed:**

- (1) Analogy is often drawn between a contract for dower and one for sale. The wife is considered, to be the property and the dower her price. In *Abdul Kadir V. Salima*<sup>66</sup>; Mahmood, J. Comparing the marriage and dower with contract for sale and consideration says "Dower may be regarded as consideration for connubial intercourse by way of analogy to the contract for sale. The right to resist her husband so long as the Dower remains unpaid is analogous to the lien of a vendor upon the sold goods while they remain in his possession and so long as the price or any part of it is unpaid and her surrender to husband resembles the delivery of the goods to the vendee".
- (2) It is sometimes considered as a consideration for conjugal intercourse. In *Smt. Nasra Begum V. Rizwan Ali*<sup>67</sup>. Allahabad High Court expressed the view that the right to claim prompt dower proceeds cohabitation.
- (3) It is one of the important features of Muslim marriage, if no fixed amount of dower is mentioned than also some dower from the husband is obligatory. In *Hassina Bibi V. Zubaida Bibi*<sup>68</sup>, the Judicial Committee held that –

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<sup>65</sup> ILR 1886 at All 149.

<sup>66</sup> ILR 1886 at All 149.

<sup>67</sup> AIR 1980 All 119.

<sup>68</sup> (1916) 43 I. A. 294.

“Dower is an essential incident under Muslim Law the status of marriage, to such an extent this is so that when it is unspecified at the time the marriage is contracted, the law declares that it must be adjudged on definite principles”.

The line of reasoning based on the analogy of sale was criticised by Ameer Ali<sup>69</sup>, and by Sir Shah Sulaiman in *Anees Begum V. Mohd. Istefa*<sup>70</sup> and in *Wajid Ali Khan case*<sup>71</sup>. Sir Sulaiman observed:

“It is quite obvious that the analogy of sale cannot be carried too far. The marriage cannot be regarded as purely a sale of the person by the wife in consideration for the payment of dower”<sup>72</sup>.

According to Islamic perception, the Dower should be paid to wife herself, it must be in favour of the wife, it is provision made for the security of the wife and a check on the malicious exercise by the husband of his almost unlimited power of divorce. A husband must think thrice before divorcing wife because he knows that upon divorce the whole of the dower would be payable immediately.<sup>73</sup>

### **3.4.5 Object of Dower or Mahr:**

The object of dower is three – fold<sup>74</sup>:

- (i) To impose an obligation on the husband as a mark of respect of the wife;
- (ii) To place a check on the capricious use of divorce on the part of husband; and
- (iii) To provide for her subsistence after the dissolution of her marriage, so that she may not become helpless after the death of the husband or termination of marriage by divorce.

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<sup>69</sup> Ameer Ali, *Mohammadan Law*, 459-60, (S. K. Lahiri & Co., Calcutta, 16<sup>th</sup> Edn., 1912).

<sup>70</sup> ILR 1933 All 743.

<sup>71</sup> *Wajid Ali Khan V. Shaukat Ali Khan* (1912) 15 Oudh Cases 127.

<sup>72</sup> ILR 1933 All 743.

<sup>73</sup> A. A. A. Fyze, *Outlines of Mohammedan Law* 133, (Oxford University Press, India, 4<sup>th</sup> Edn., 2008).

<sup>74</sup> Aqil Ahmed, *Text Book of Mohammedan Law* 153, (Central Law Agency, Allahabad, 25<sup>th</sup> Edn., (2015).

### **3.4.6 Kinds of Mahr or Dower:**

Mainly there are two kinds of Dower:

(i) Specified dower (Mahr-i-Musamma):- Specified dowries again divided into:

(a) Prompt dower, and

(b) Deferred Dower

(ii) Customary (Proper) dower/Mahr-i-Misl)

(i) Specified Dower:

When the amount of dower is already mentioned in the marriage contract, it is known as specified dower. The parties to the marriage may settle the dower either before the marriage or at the time of marriage. In case, the bride groom is a lunatic or a minor, his father may fix the dower which will be binding on him. The specified dower is also known as Maher-e-Musamma.

According to some of the exponents, in Sunni Law proper dower should not be less than ten, and in Shia law not more than five hundred, dirham's (currency of the Arabia during 7<sup>th</sup> century). There is also a custom, to fix the dower as per Prophet's (PBUH) Tradition known as Maher Masnoona or Maher-e-Fatimi dower for Prophet's (PBUH) Daughter Fatima. Dower payable must take into consideration the reasonableness and the present day value<sup>75</sup>.

#### **Specified Dower is again Sub Divided into:**

(i) Prompt Dower

(ii) Deferred Dower

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<sup>75</sup> Dr. Nuzhat Parveen Khan, *Women and the Law 106*, (Universal Law Publishing, Lexis Nexis, New Delhi, 1<sup>st</sup> Edn., 2016).

**Prompt Dower:**

Dower which is payable instantly or after on demand is known as prompt dower. Ameer Ali opined that it is the right of the wife to refuse for the conjugal domicile until the dower is paid.

**Essential points with regard to Prompt Dower are written below:**

- (i) Most importantly prompt dower is paid immediately at the time of marriage.
- (ii) The wife has the absolute right to sue for the recovery of prompt dower even if the marriage is consummated.
- (iii) The right of restitution arises only after the dower has been paid.
- (iv) The limitation Period for the payment of Prompt dower is 3 Years, and if the wife does not make any claim, the limitation starts to run only from the date of the dissolution of marriage by death or divorce.

According to Muslim Law, prompt dower is paid at the time of marriage instantly but in real practice, majority of cases revealed that rarely dower is paid. Nevertheless, the lapse of time since marriage raises no presumption in favour of the payment of dower<sup>76</sup>.

**Deferred Dower:**

Dower which is paid on the dissolution of marriage either by death or divorce.

Ameer Ali viewed that Dower is a penal sum with the object to compel husband to fulfil marriage contract in its entirety.

**Essential Points with regard to deferred dower:**

- (i) unless any agreement to the contrary is made between the parties, deferred dower shall be paid on dissolution of marriage either by death or by divorce.

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<sup>76</sup> AIR 1941 Oudh. 457.

- (ii) In respect to deferred dower the wife is not allowed to demand the payment. However, if the husband desires to make the payment he can do so.
- (iii) In case the husband dies, the widow may canal her dower at the time of husband's funeral by pronouncing of a formula. Such a waiver of dower should be free from force, fraud, or undue influence.
- (iv) As the deferred dower involves vested interest, even after her death, her legal heirs can claim it.

### **(ii) Customary Dower:**

If no dower is fixed at the time of marriage or even after the marriage contracted on the stipulation that she should not demand any dower, the wife is entitled to a proper dower which also known as customary dower. It is determined by taking into consideration of the amount payable to other female members of the family as dower.

However, certain criteria are mentioned that should be taken into consideration while fixing the dower they are:

- (a) Distinctive qualification of the wife, her age, beauty, fortune, understanding and virtue.
- (b) social standard of her father's family
- (c) dower given to her female paternal relationship.
- (d) Economic stability of her husband.
- (e) Circumstances of the time.

There is no limit to the maximum amount of dower in case of Sunni Law. However, in case of Shia Law, it should be not beyond 500 Dirham's.

### **Subject-Matter of Dower:**

Money and property are not only the subject matter of Mahr or Dower, it may includes the Personal services and other things. Under Sunni Law, any specified thing which is

property and which has some value falling within the concept of mal, can be the subject of dower and be stipulated as such. It is not necessary that it should necessarily be in coin or metal. It may be munafa or profits accruing from land, business etc. Bulcarrion, blood, wife and a hag are no property assigned as dower must be something in existence at the time, and in the husband's possession at the time of assignment.

**Illustration:**

- A Mohammedan consent to construct a house for the wife and to give it to her as Mahr. This is not a valid subject of Mahr, because the proportions, circumstances and value of the house are not fixed.
- Where a particular object specified as dower cannot be delivered then the price of such object should be given to the wife.
- Under Shia and Shafi laws, services property mentioned may deemed as valid Mahr.

**To sum up following are recognized as the subject of dower:**

- (i) A handful of dates (Abu Daud).
- (ii) A pair of Shoes.
- (iii) If the husband is a slave, his services to his wife.
- (iv) The services of the husband's slaves to the wife.
- (v) the Husband's services rendered to the guardian of a minor wife.
- (vi) Teaching Quran to the wife.

**3.4.7 Statutory Measures on Mahr or Dower:**

The basic foundations of law of the Mahr are ordained in the Holy Quran and Ahadis and Sunnat of Prophet (PBUH). Further the Jurists of Islamic Law enunciated the vast principles of Mahr. Even codification in some countries took place of Islamic law



which includes the subject of Mahr. So, the law on Mahr is present in the Holy Quran, Hadith, Juristic Opinion, some local customs and the modern legislation to upgrade the social and economic condition of Muslim women, but here more emphasis is given on the economic security of Muslim women in different Islamic Countries – No doubt the institution of Mahr is an important part of marriage under the Islamic Law the concept has undergone a radical change from the bride price to token of respect. Mahr or Dower under Muslim Law is given to the wife on marriage as a mark of dignity, respect and love. It seeks to maintain the equitable marital status of women. Islam narrates that both men and women are each other's 'garment' and 'Potential' with just position for both, in the matrimonial home as well as in the society. The concept of Mahr is legally enforceable and any violation of it's brings legal action.

It is relevant to note that till now there is no complete set of statutes on Mahr in any country. However, provisions from relevant enactments constitute a notable aspect of Mahr.

#### **Dissolution of Muslim Marriage Act, 1939:**

The dissolution of Muslim marriage act, 1939, enables a Muslim wife in India to seek to the dissolution of her marriage by judicial decree on some specific grounds. The Act, in reality, incorporates one of the modes of dissolution of marriage under Islamic Law called Faskh. It means the annulment of marriage by a Qadi. In India under the Act, the position of the Courts has been held to be akin to that of a Qadi<sup>77</sup>.

#### **Section 5 of the Dissolution of Muslim Marriage Act, 1939 relates to Mahr which read as follows:**

“Nothing contained in this Act shall affect any right which a married woman may have under Muslim Law to her Mahr or any Part thereof on the dissolution of her marriage”.

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<sup>77</sup> *Mt. Umar Din V. Muhammad Din*, AIR Lah 51 (D.B).

The position of Mahr of a woman about obtaining dissolution of marriage under the Act will remain the same as it is under the classical Muslim and it will not be affected by the provisions of the Act.

The nature of dissolution of Muslim marriage Act has been described by the Courts in India in the following terms:

“The Act is a piece of declaratory legislation...”<sup>78</sup>

“The Act crystallizes only a portion of Muslim Law and should therefore, be applied in conjunction with provision of the whole of Muslim law”<sup>79</sup>

### **The landmark Judgement of Shah Bano Case and its impact on Mahr:**

The Criminal Procedure Code 1973 also contains provisions for the enforcement of the maintenance right of a Muslim wife. The code of Criminal Procedure 1973 replaced the old code of 1898. Relevant Changes were made by the new code of 1973. Section 125-128 provides procedures whereby the divorced wives have been made able to claim maintenance from their erstwhile husbands even after divorce up to remarriage or death, whichever is earlier<sup>80</sup>. However, an exception clause was added in Section 127 (3) (b) of the code in favour of any person who may have discharged his liability towards the divorce under the personal law. Under Section 127 (3) (b) the Magistrate is required to cancel any maintenance order passed under section 125 if,

“She (the divorcee) has received, whether before or after the date of the said order the whole of the sum which under any customary or personal law applicable of the parties, was payable on such divorce”.

The Supreme Court in 1979, brought another aspect of these supervisions and held that even a Muslim husband who has discharged every liability under his personal law, will again be held liable to maintain his wife even after divorce and after the expiry of

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<sup>78</sup> *Fazal Begum V. Hakem Ali*, AIR 1941, Lah 22.

<sup>79</sup> *Abdul Ghani V. The State of Madhya Pradesh*, AIR 1951 Nag, 375.

<sup>80</sup> Sec 125 of Code Criminal Procedure, 1973.

iddat. The same principle was followed by the Supreme Court in *Faz-lun-Bi V. K. Khader Vali*<sup>81</sup> and in the most landmark Judgement of *Muhammad Ahmad Khan V. Shah Bano Begum*<sup>82</sup>. Section 127 (3) (b) which seek to protect against the suppression by Section 125 of Cr PC proved to be inadequate. Therefore, the Supreme Court started interpreting the provision of Holy Quran which again led to large agitation against the Shah Bano decision. Subsequently the Govt. of India enacted, the (Protection of Rights on Divorce) Act, 1986 to undo the effect of Shah Bano ruling. In all the above mentioned Judgements, Mahr has received both fair and unfair treatment at the hands of the Judges.

The Supreme Court in *Bai Tahira Case* held Mahr is a kind of replacement payment for maintenance under Muslim personal law.

‘Payments of Mahr money as a customary discharge is within the cognizance of that provision [Section 127 (3) (b)].

The decision of *Bai Tahira* creates wrong aspects of Mahr, because it is not an event of divorce rather than one of the important effects on marriage. But Mahr is something which is never a provision for maintenance; it has its own social aim and objectives. The Supreme Court later on acknowledged the difference between Mahr and maintenance by giving the following expression<sup>83</sup>.

‘The quintessence of Mahr whether it is prompt or deferred is clearly not a contemplated qualification of a sum of money in lieu of maintenance upon divorce.

A clear and precise distinction between Mahr and maintenance was given.

By the Supreme Court itself in the year in 1985 in the leading case of *Muhammad Ahmad Khan V. Shah Bano Begum* in following words:

If Mahr is an amount which a wife is entitled to get in lieu of the marriage by the husband, which is very much opposite of the amount being payable in consideration of

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<sup>81</sup> AIR 1980 SC 1730.

<sup>82</sup> AIR 1985 SC 945.

<sup>83</sup> Supra Note 81.

divorce. Any amount which is payable in consideration of marriage cannot be regarded as something payable in consideration of divorce. The alternative premise that the Mahr is an obligation imposed upon the husband as a mark of respect for the wife is wholly detrimental to the point that it is an amount payable to the wife on divorce. He does not divorce her as a mark of respect. Therefore, a sum payable to the wife out of respect cannot be a sum payable on divorce<sup>84</sup>.

**Further it was observed:**

Deferred Mahr (even it) Payable at the time of dissolution of marriage, cannot justify the conclusion that it is payable on divorce<sup>85</sup>.

Thus, it may be concluded that Mahr is not a sum payable on divorce and is not a substitute payment for maintenance.

The latest law on the point is the Muslim Women (Protection of Rights on Divorce) Act, 1986, a law commonly known as a sequel to the Shah Bano<sup>86</sup> decision. Sec 3 of the Act strikes a consonant note with Shah Bano ruling that dower is not an amount payable on divorce i.e. for divorce Section 3(i) (c) reads as follows:

“Mahr or other properties of Muslim woman to be given to her at the time of divorce:

- (i) Notwithstanding anything contained in any other law for the time being enforce, a divorced woman shall be entitled to –
- (ii) an amount equal to the sum of Mahr or dower agreed to be paid to her at the time of her marriage or at any time there after according to Muslim Law.

According to sub-clause (a) a divorced Muslim woman shall be entitled to –

A reasonable and fair provision and maintenance to be made and paid to her within the Iddat period by her former husband, and if he fails, she can make an application to a

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<sup>84</sup> Supra Note 82.

<sup>85</sup> Lucy Carol, ‘Divorce’, *Mahr and Muslim Women’s Right to Maintenance* 487-495, (JL I Publication, New Delhi, 2013).

<sup>86</sup> *Mohammad Ahmad Khan V. Shah Bano Begum*, (1985) SC 945.

magistrate for an order for payment of such provision and maintenance, Mahr or dower or the delivery of properties, as the case may be, under clause (2). It may further, be carefully noted that section 3 enumerates four kinds of rights besides Mahr to which she is entitled (including maintenance), and the Act nowhere absolves the husband of making and paying her properties and rights on the ground of having paid her dower<sup>87</sup>.

### **3.5 Wife's right and remedies on non-Payment of Dower<sup>88</sup>:**

Three basic rights were granted to the wife (or widow) under Muslim Law, to impel the husband for the Payment of dower or Mahr:

- (1) Refusal to Cohabit
- (2) Right to Dower as a debt.
- (3) Right to retain possession.

#### **(i) Refusal to Cohabit:**

Where the marriage is not consummated the wife shall have the right to refuse to cohabit with her husband until the prompt dower is paid. In case the wife is minor or a lunatic the same right can be exercised by the guardian by refusing to send her to husband's house till the payment of prompt dower. During her such a stay in her guardian's house the husband is bound to maintain her<sup>89</sup>.

It was held in *Hamidunissa Bibi V. Zaheer-Sheik*<sup>90</sup>, the absolute right of the wife to insist on payment of the prompt dower, before giving him the access to her, is lost after consummation of the marriage.

It was held in *Abdul Kadir V. Salima*<sup>91</sup>, the effect of non-payment of prompt dower is that the wife can refuse to cohabit or refuse to live with the husband. If the husband

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<sup>87</sup> Syed Khalid Rashid, *Muslim Law* 96, (Eastern Book Publication, Lucknow, 5<sup>th</sup> Edn., 2009).

<sup>88</sup> Aqil Ahmed, *Mohammedan Law* 156, (Central Law Agency, Allahabad, 26<sup>th</sup> Edn., 2016).

<sup>89</sup> Ibid.

<sup>90</sup> *Hamidunissa Bibi V. Zaheer-Sheikh*, 17, Cal 670.

<sup>91</sup> ILR (1886) 8All 149.

sues her for restitution of conjugal rights before sexual intercourse takes place, non-payment of dower is a complete defence to the suit, and the suit will be dismissed.

It was held in *Rabia Khatoon V. Mukhtar Ahmed*<sup>92</sup>, that if the suits is brought after sexual intercourse has taken place with her free consent the proper decree to pass is not a decree of dismissal, but a decree for restitution, conditional on payment of prompt dower.

Again, in *Nasra Begum V. Rizwan Ali*<sup>93</sup>, it was held by the Allahabad High Court that the wife can refuse to live with her husband and refuse to him the sexual intercourse so long as the prompt dower is not given to her when dower is deferred and is payable at a future date or on the contingency of an event, and there is no other contract to the contrary, the question is what her she can refuse to the husband his conjugal rights or whether her guardian can detain her till it is paid, Abu Yusuf is of opinion that she can but according to Imam Muhammad and the Shia law, she cannot have such option of denial in cases of deferred dower, and it appears from the learned decision of Mohmood J. In *Abdul Kadir V. Salima*, the latter opinion has been followed in India<sup>94</sup>.

### **3.5.1 Right to Dower as a Debt:**

The wife has the right to recover dower as an unsecured debt from the husband. Even the widow, divorcee or her legal heirs if she is dead, can retrieve the dower from the husband directly when he is alive or from her property when he is dead. The wife or widow or divorcee occupies the position of unsecured creditor and the dower becomes an actionable claim.

Their lordships of the Privy Council held that “the dower ranks as a debt and widow is entitled along with other creditors to have it satisfied on the death of the husband, out of his estate”. If the husband is alive, the wife can recover the dower debt by instituting a suit against him. After the death of the husband, dower debt remaining

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<sup>92</sup> AIR 1966 All 548.

<sup>93</sup> AIR (1980) All 118.

<sup>94</sup> ILR (1886) 8 All 149.

unpaid, the widow can enforce her claim for the dower debt by filing a suit against his heirs. The heirs of the deceased husband are however, not personally liable for the dower debt. They are liable to the extent to which and in the proportion in which they inherit the property of the deceased husband. If the widow is in possession of her husband's property under a claim for her dower, the other heirs of her husband are severally entitled to recover their respective share upon payment of a quota of the dower debt proportionate to those shares<sup>95</sup>.

In *Syed Sabir Hussain V. Farzand Husain*,<sup>96</sup> a Shia Muslim stood surety for payment of the dower by his minor son. After his death his estate was held liable for the payment of his son's Mahr and each heir was made responsible for a portion of the wife's claim in proportion to his share in the estate of the deceased.

In *Mohammad Tusabuddin V. Yasin Begum*<sup>97</sup>, it was held that claim of a widow for dower was in the nature of a secured debt.

In *Anjum Hassan Siddiqui V. Salma Bi*<sup>98</sup>, the Allahabad High Court held that an application by the divorced woman for sum of Mahr or dower under section 3 of Muslim Women (Protection of Rights of Divorce) Act, (1986) can lie only before the Magistrate concerned. The family Court established under the 1984 Act cannot exercise jurisdiction unless the same had been specifically conferred upon the family Court under the provision of Sec 2 (b) of 1984 Act. The family Court in this case was therefore, not competent to deal with the application moved by the respondent for want of Jurisdiction.

### **3.5.2 Right to Retain Possession in lieu of unpaid dower:**

The widow is entitled to retain the actual possession of the husband property until her dower is paid. Although she has the possession of the property but she cannot alienate

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<sup>95</sup> *Hamira Bibi V. Zubaida Bibi*, ILR (1916) 38 All 581.

<sup>96</sup> 65 IA 119.

<sup>97</sup> 17 DLR 224.

<sup>98</sup> AIR 1992 All. 322.

the same. The right to retain possession of husband's estate till payment of dower also arises after divorce. But the right to retain husband property cannot arise during the continuance of marriage.

The right to retain possession of husband property for the unsecured debt is a way to compel for the speedy payment of the dower which is an unsecured debt. It is to be noted that her right to retain the possession is not like the property in mortgage but a personal right against the heirs and creditors of her deceased husband.

The following features of right to retain possession must be noted:

- (i) No Right of retention during continuance of marriage – The right comes into existence only after the death of her husband, or if the marriage is dissolved by divorce, immediately on such divorce, but not before<sup>99</sup>.
- (ii) Actual possession – The right of retention means the right to continue in the possession of the husband's property after termination of marriage (either by divorce or by death) until the satisfaction of the dower debt. It is therefore, necessary for the exercise of this right that the wife or widow must be in actual possession of the property at the termination of the marriage<sup>100</sup>.
- (iii) The right of retention not analogous to a mortgage: The wife or the widow has no interest in the property, as mortgages. There is no true analogy between her right of retention and mortgage<sup>101</sup>.
- (iv) Not a Charge: As the wife is not a secured creditor, the right of retained does not create a charge on the property<sup>102</sup>.

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<sup>99</sup> Aqil Ahmed, *Mohammedan Law* 159, (Central Law Agency, Allahabad, 26<sup>th</sup> Edn., 2016).

<sup>100</sup> Ibid.

<sup>101</sup> Ibid.

<sup>102</sup> Ibid.



**(v) A Possessory Lieu on Property is not Title<sup>103</sup>:**

- (a) She is to satisfy her claim for dower with the rents and profits accruing from the property.
- (b) She does not have any right to claim any title to the property.
- (c) She cannot alienate the property by sale or mortgage to satisfy her dower.

**(vi) Widow in Possession Liable to Account<sup>104</sup>:**

It was held in Shaikh Salima's Case, that "Widow in possession of her husband's Property in lieu of dower debt is liable to account to other sharers of income from such property, in her possession"<sup>105</sup>.

**(vii) Can sue heirs –**

The wife is entitled to sue her husband's heirs for the recovery of her dower<sup>106</sup>.

**(viii) The Right of Retention whether Heritable or Transferable<sup>107</sup>:**

There is no uniformity of Judicial Opinion whether the widow's right to hold possession is transferable and heritable<sup>108</sup>.

All that can now be said with certainty is that the right to hold possession is heritable. Though it cannot be said with certainty, whether it is transferable but the balance of authority in India is in favour of the view that it is also transferable<sup>109</sup>.

**Limitation:**

The wife or her legal heirs after her death may file an action for realizing the dower. If the dower is prompt and the marriage is still subsisting, the suit must be filed within 3

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<sup>103</sup> Id.

<sup>104</sup> Aqil Ahmed, *Mohammedan Law* 161, (Central Law Agency, Allahabad, 26<sup>th</sup> Edn., 2016).

<sup>105</sup> *Shaikh Salma V. Mohammad Abdul Kadar*, AIR 1961, A.P. 428.

<sup>106</sup> Ibid 104.

<sup>107</sup> Aqil Ahmed, *Mohammedan Law* 162, (Central Law Agency, Allahabad, 26<sup>th</sup> Edn., 2016).

<sup>108</sup> *Zubair Ahmed V. Jainadan Prasad*, AIR 1960 Pat 147.

<sup>109</sup> *Maina Bibi V. Chaudhary Vakil Ahmad*, (1825), (1925) 52 IA.145.

years of the dower being demanded. If the marriage has dissolved, the limitation period of 3 Years starts from the date of dissolution. Where the dower is deferred, the limitation on period is again 3 Years, but where the widow is in possession of the deceased's property in lieu of her unpaid dower, the period of limitation will extend till her dower is not fully paid.

### **3.6 Discussion:**

The chapter signifies under the Basic Rights of Muslim Women in context to Marriage and Mahr from Islamic perspective. Fore mostly the chapter gives the details of origin and development of Muslim marriage under personal law, the marital rights of Muslim women, practice of polygamy and its impacts on women's right. Secondly the chapter discuss about the ideas and issues related with the concept of Mahr or Dower under Personal Law, legislative Measures on Mahr, Impact of Shah Bano Case on Mahr and Women's Right and Remedies on Non-Payment of Dower or Mahr. The essence of the entire Chapter are written below:

Muslim marriage or Nikah is the most appropriate way to reproduce offspring's as ordained by the Almighty Allah. Islamic social system has been built up on the principle of high standard of human values, piety, purity and dignity. The relationships between men and women are regulated by these principles that have been in corporate in the institution of marriage.

In Pre-Islamic Arabia, a variety of different marriage practices existed. The most practicable are – marriage by agreement, marriage by captures marriage by mahr, marriage by inheritance and the temporary muta marriage.

After the advent of Islam, there was a remarkable change in the concept of marriage. Marriage (Nikah) is defined as a contract which has the main object of Procreation and the legalizing of children.

#### **Capacity for Marriage:**

- (a) Every Muslim who is of sound mind, who has attained the age of majority can enter into a marriage.

- (b) Insanes or persons who has not attained the age of majority may validly entered into a marriage by the consent of the guardian.
- (c) The consent of the Muslim who is of sound mind and has attained majority must be free from force and fraud.

**Essentials of a valid Nikah:**

- (a) Proposal or offer (Ijab)
- (b) Acceptance (Qubul)
- (c) Presence of Sufficient witnesses (i.e.) in Sunni Law, Two; no requirement of witnesses in Shia Law).
- (d) Proposal and acceptance should take place in one meeting.

**A Muslim cannot indulge into marriage on the following grounds –**

- (a) A Muslim man can marry any number of wives but no exceeding four, and marriage to the fifth one is void. However a Muslim woman can marry only one husband, contrary to this, she will be liable to bigamy under section 494 of Indian Penal Code.
- (b) A Muslim man may contract a valid marriage with a Muslim woman as well as with a Kitabia i.e. Jewes or Christian but the Muslim woman can contract valid marriage only with a Muslim man.

The main object of Muslim marriage is to restrain the sexual passion, ordering of social life and Pro-Creation of children.

To understand the nature of Muslim marriage in a true and precise way it may be concluded that “Marriage is an institution of Ibadat clothed with Legal form of contract regulating sexual intercourse, but its continuance is dependent upon the maintenance of conjugal affection”. Thus, it is neither a civil contract nor a sacrament but a semblance of both.

The chapter also discusses about the various kinds of Muslim marriage i.e. Sahih, Fasid and Batil marriage.

The Chapter gives detail idea about the marital rights of Muslim women. There are enormous rights granted by the Holy Quran and the Ahadis of Prophet (PBUH). Some of the rights are right of property, ownership inheritance, education, marriage and divorce.

The status of Muslim women was improved and upgraded by the remarkable Reforms made by the Holy Prophet (PBUH).

In a precise way the marital rights of a Muslim woman are:

- Right to get Mahr or Dower.
- Right to Maintenance.
- Right to receive an equal treatment and equal share of the husband's society.
- Right to dissolve her marriage on the statutory grounds.
- Right to maintain independent legal status in all spheres.
- Right to sexual relations and contraceptives.
- Right to live with the husband and the husband must not desert her. She has the right to conjugal society.

The constitution of India under Part-III, guarantees fundamental rights to all Muslim women. The right to marry is an essential part of Article 21 of the constitution.

The Chapter also discusses about the debatable issue of Polygamy in Islam. Some experts argue Polygamy as a compliance of Al-mighty Allah's command. Some perceived it as violation of Human Rights and gender in equality. Although the exercise of polygamy is allowed in the Holy Quran, but it never put an obligation on people to do it.

One of the Primary requirement that must be followed in the practice of Polygamy is that the husband must behave justly and equally among his wives.

The concept of Polygamy was highly criticised because it infringes women's right and widens the scope of injustice and inequality.

The study on the subject of Polygamy suggests that it is almost impossible to maintain equality among the wives in terms of affection, care and care.

Although Islam provided the opportunities for polygamy but, Islam also commands to follow the fundamental aspect of Polygamy, i.e. just and equal to their wives.

On certain occasion. The institution of Polygamy may be felt justifiable:

- (a) Wife's barrenness
- (b) Perpetual illness
- (c) Unsuitability for Cohabitation
- (d) Biological and Psychological factor

The second Part of the Chapter elaborates about the concept of Mahr or Dower and basic right of Muslim Women in context to Mahr or Dower. Mahr or Dower is a Quranic right; it is a unique feature of Muslim law which is not found in any other matrimonial statute.

It is the economic rights of Muslim women, where the husband is bound to assure an amount of money or anything which is of value as a mark of respect to the wife at the marriage. It provides future security to the wife.

The fixation of Mahr is an essential part of the Muslim marriage. It is an obligation on the Part of the husband towards his wife, which is enforceable in a court of law.

Mahr can either prompt or deferred on demand during the marriage or in the occasion of dissolution of marriage.

The stipulation of higher amount of Mahr in the Nikah nama was mainly done to deter the husband for the act of unilateral and arbitrary divorce.

The Muslim law provide the wife, right of retention over husband's property for the payment of Mahr, even after his death.

There was a phase, after independence period, where the amount of Mahr become just illusory, the Muslim husband's use the arbitrary triple talaq and the wife would have miserable condition as the husbands were not entitled to pay post divorce maintenance.

The Muslim husband's obligation towards the wife ended only upon the payment of the customary Mahr and they had no further obligation to maintain their wives.

To resolve the problem, the Criminal Procedure Code (CrPC) was amended in 1973. Two landmark rulings by the Supreme Court Opined by Justice Krishna Iyer in 1979 and 1980 was held an illusory amount under customary or personal law does absolve a husband from the purview of this beneficial provisions (Bai Tahira V. Ali Hussain AIR 1979 SC 362). In a subsequent Judgment of the Supreme Court pronounced in 1981 by Justice Murtaza Fazal Ali, it was held that the Court is not bound to cancel the order of maintenance on payment of Mahr.

Meanwhile the decision given by Chief Justice Chandrachud in 1985 in the leading Shahbano Begum case, creates controversy all over India and exerted pressure upon the ruling Party headed by the then Prime Minister Rajiv Gandhi enacted the Muslim (Protection of Rights on Divorce) Act, 1986.

This statute seems to defeat the principle of gender Justice for Indian women and contrary to the provision of section of CrPC and these violate the constitutional mandate of equality.

This Act was also viewed as a departure from the directive principle of State Policy enshrined in Article 44 of the Indian Constitution.

However, several High Courts began to interpret the Act in favour of women's section of the society. The Court held that a divorced Muslim woman has the right to a

“fair and reasonable settlement”. The Court also observed that reasonable and fair treatment to women is a Quranic Injunction.

The rights of Muslim women to deserve fair and reasonable provision and fair maintenance will be based upon the requirements of the divorced woman, pattern of life enjoyed by her during her marriage and the means of her former husband.

The landmark Judgment of the Supreme Court on this issue was pronounced in 2001 in *Daniel Latifi V. Union of India* ((2001/7) SCC 740 CR L.J.4660 SCFB). The Court held that a Muslim husband is liable to make a reasonable and fair provision for the future of his divorced wife, which must be made within the iddat period. The Court further clarified that the liability of the Muslim husband to the divorced wife to pay maintenance under the Act is not confined to the iddat period.

Thus, it may be said that Mahr is not an adopted concept in Islam rather it is mentioned with express direction in the Quran and a manifest instruction from the Ahadis of the Prophet (PBUH). In the Holy Quran Chapter IV, verse 25 XXV it is mentioned that the dower amount, which is usually paid or taken by the father of the bride, was strictly prohibited by Islam and it was commanded by Almighty Allah that the right of dower is not the right of the father of the bride but it should be paid to the wife and not to her father or other relatives.