

Chapter One

The Dower and Related Fiqh Issues

The Types of Rights of the Wife Upon Her Husband

The wife has specific rights upon her husband that are the result of a sound marriage contract. Some of the rights are material rights while others are non-material.¹

From the material rights of the woman is the dower (*al-sadaaq* (الصداق). It is also called “*al-mahr* (المهر the dower), *al-nihlah* (النحلة the gift), *al-fareedhah* (الفريضة, the obligation), *al-hibaa* (الhibاء the gift), *al-ajr* (الأجر the compensation), *al-iqr* (العقر the payment), *al-alaaiq* (العلائق the bond), *al-sadaqah* (الصدقة the charity), *al-taul* (الطول bounty or gift), *al-kharas* (الخرس feast), and *al-nikaah* (النكاح marriage).”²

The reason it is called *al-sadaaq* “is because one feels the husband’s sincerity in wanting to marry that woman.³ In the laws before us, the guardians would receive the dower.”⁴

The Lexical Meaning of *al-Sadaaq* (the dower)

The *sadaaq*— it is better known as *sadaaq* than *sidaaq*— is an exchange. It is said that it is an honoring for the wife. The plural is

¹ These shall be discussed, by the help of Allah, in the discussion of spousal rights.

² *Haashbiyataa Qalyoobi wa Umairah ala Sharh Minbaaj al-Taalibeen*, vol. 10, p. 275.

³ [The words *al-sadaaq* (dower) and *sidq* (sincerity) came from the same three letter stem. That is why the author stated the above.—JZ]

⁴ *Subul al-Salaam*, vol. 3, p. 311.

“*asdiqah* for small plurals (from three in number to ten) and *suduq* for larger numbers.”¹

What Requires the Giving of the Dower

The term *sadaaq* or *mahr* applies to everything that is required to be paid due to a [marriage] contract, sexual intercourse, or in the case of forced separation, such as due to having the same breastfeeding mother or the witnesses taking back their statements.

Technical Definition of Dower

As a technical, legal term, the dower is defined as, “something given in exchange for marriage or something similar, be it required by the judge or by agreement among the two parties.”

The Wisdom behind Instituting the Dower

Islam has legislated the giving of the dower by the husband to the wife in order to make the woman’s heart pleased and to honor her. It is also meant to bring an end to what was done in the Days of Ignorance wherein she was wronged, exploited, despised and robbed of her wealth. The dower is a right exclusively for the wife. It is her possession and none of her guardians or relatives share any part of it. No one has any power over her concerning how she wishes to dispose of it, as long as she does so in a legally acceptable manner. She may give it away as a gift, she may lend it to others or she may give it in charity or do any other permissible acts she wishes with it.

The dower was instituted because the goal of marriage is not the actual act [of the marriage contract in] itself. In fact, the actual purpose of marriage cannot be achieved unless the spouses stay in a state of marriage. However, that may not be achieved unless the dower is an

¹ *Al-Raudh al-Muraba Sharh Zaad al-Mustaqni bi-Haashiyah ibn Qaasim*, vol. 6, p. 363.

obligation at the time of the marriage contract itself. In this case, when there come times that may lead the man to divorce his wife, such as estrangement or coarse behavior, the husband would not be willing to divorce his wife due to just the slightest act of rudeness that occurs. If it were not for the dower that was required due to the contract itself, it would be very easy for him to leave her. Therefore, the goals of marriage would not be met as the goals and benefits of marriage are only met when the two are in accord and agreement with one another but that accord will not come about unless the woman is something honored and special to the husband. But such honor will not come about unless he had to give up something important to him. This is because what is most difficult to achieve is most special to the person while what is easy to achieve becomes something insignificant to the person. Therefore, if the wife is not something special in the eyes of the husband, then he will dispose of her at the first sign of unhappiness, the accord will not occur and the purposes of marriage will not be achieved.

What we see happening in some European countries—in fact, in some Muslim countries—is very strange indeed. This is where the woman is required to furnish a dowry or provide the furniture for their future house. This is definitely turning the natural order of things upside down and goes against the nature of mankind. It leads to a great deal of social ills and behavioral harm. It is a means by which the woman is despised and belittled. Indeed, she is ruined because of it. If the woman is not able to gather enough wealth together for marriage, she will not be able to get married and, instead, will have boyfriends and affairs and other evil results.

Such a practice contains a great deal of evil and harm for the society; this practice may even bring about society's end soon. There is a great difference between the case where the woman feels that she and what she possesses belong to her husband and where she feels that she is something desired and honored, as the fiancé spends money on her and gives her presents and so on to get her as his wife.

All praises are due to Allah who raised the position of the woman while other laws and systems belittle her and degrade her honor.

The Ruling Concerning Stating the Dower at the Time of the Marriage Contract

It is a sunnah (recommended act) to state the dower at the time of the marriage contract in order to prevent any future dispute or argumentation. This is based on Allah's statement,

وَأَحِلَّ لَكُمْ مَا وَرَاءَ ذَلِكَ أَنْ تَبْتَغُوا بِأَمْوَالِكُمْ

“All others [women other than those stated in the verse] are lawful for you provided you seek them [with a dower] from your wealth” (*al-Nisaa* 24). And the Messenger of Allah (peace be upon him) said to the one who was to marry the woman who had offered herself to the Messenger of Allah (peace be upon him),

الْتِمِسْ وَلَوْ خَاتَمًا مِنْ حَدِيدٍ

“Seek something [to give her as a dower] even if it be a ring made of iron.”¹

The scholars are agreed that it is sanctioned to state the dower at that time but it is not a prerequisite for the validity of the contract.²

The Status of the Dower

The dower is not a prerequisite or an essential component of the marriage contract. Instead, it is one of its rulings and a requirement of a sound marriage. Therefore, a small amount of uncertainty concerning it is overlooked as well as a small amount of potential harm that is expected to be removed. This is because the goal of marriage is bringing

¹ Recorded by al-Bukhari in his *Sahih*, number 5078, The Book on Marriage, Chapter on marrying those in dire straits, and numbers 5029, 5030 and 5141. Recorded by Muslim (#1425), The Book on Marriage, Chapter on the dower.

² *Haashiyah al-Raudh al-Murabi bi-Sbarh Zaad al-Mustaqni*, vol. 6, p. 364; *al-Iftsaah an Maani al-Sibaah* by ibn Hubairah, vol. 2, p. 135.

the two together and having the two enjoy each other. If the marriage contract is concluded without the mentioning of a specific dower, the marriage contract is still valid. In that case, the husband is required to give his wife a dower which is comparable to the dower that women who are similar to his wife receive, according to the agreement of the scholars.¹

The evidence for this position is in Allah's statement,

لَا جُنَاحَ عَلَيْكُمْ إِنِ طَلَقْتُمُ النِّسَاءَ مَا لَمْ تَمْسُوهُنَّ أَوْ تَفْرِضُوا لَهُنَّ
فَرِيضَةً

“There is no sin upon you if you divorce women while you had not yet had sexual relations with them, nor appointed for them a dower” (*al-Baqara* 236). This verse permits divorce before consummation and before determining the dower. This indicates that the dower is neither a necessary component nor a prerequisite for the marriage contract.

In *Zaad al-Maseer*, ibn al-Jauzi stated, “The verse indicates that it is allowed to have a marriage contract without stating the dower.”²

It is confirmed in the sunnah from Uqbah ibn Aamir who narrated that the Messenger of Allah (peace be upon him) said to a man, “Would you be pleased if I were to marry you to so and so?” He said, “Yes.” Then he said to the woman, “Would you be pleased if I were to marry you to so and so?” She said, “Yes.” So he married the two of them together. Uqbah consummated the marriage and did not establish any dower for her. When he was about to die, he said, “The Messenger of Allah (peace be upon him) married me to so and so and he did not state a dower for her and I did not give her anything. Therefore, I give her as the dower my share [of the war booty] in Khaibar.” She took it and sold it for two hundred thousand [dinars].³

¹ *Kasbaaf al-Qinaa*, vol. 5, p. 144; *al-Badaai*, vol. 2, p. 274; *al-Muhadhib*, vol. 2, pp. 55 and 60; *al-Sharh al-Sagheer*, vol. 2, p. 449; and *al-Fiqh al-Islami wa Adillatuhu* by Wahba al-Zuhaili, vol. 7, pp. 23 and 254.

² *Zaad al-Maseer*, vol. 1, p. 279.

³ Recorded by Abu Dawood (#2117), The Book on Marriage, Chapter on one who marries and did not determine a dower until he dies. Its chain is *hasan*. Al-Haakim

Based on that, “if two spouses agree to get married without a dower, the marriage is valid according to the majority of the scholars, save the Malikis. When the marriage is consummated or when the man dies, she has the right to a dower that is comparable to the dower given to those women who are similar to her. According to the Malikis, if two agree to get married with a dower, the marriage is not valid.”¹

Conclusion

To state the dower at the time of the marriage contract is neither an essential component nor a condition for the validity of the marriage contract. This is because the dower is a resultant ruling that follows from the contract and it is not necessary to mention the rulings that are the result of the contract when the contract is actually being stated. This is also based on the previous evidence given. In *al-Mughni* it states, “Marriage is sound without the stating of the dower according to the vast majority of the scholars.”²

However, ibn Taimiya has concluded that one should state the dower at the time of the marriage contract in order to avoid any dispute or confrontation. He also concluded that the dower is an essential component of the marriage and that the dower must be mentioned or she is to be given what is given to women similar to her. He wrote,

Those who state that the dower is not a goal in itself are making a statement that has no truth to it. It is, in fact, an essential component of the marriage and it being a condition of it makes it a more important condition than the price [in a sale] for the Messenger of Allah (peace be upon him) said, “The conditions that have the most right to be fulfilled are those conditions that make the private

recorded it in *al-Mustadrak* (vol. 2, p. 182), and he declared it *sahih*. Al-Dhahabi agreed with his assessment.

¹ *Bidayyah al-Mujtabid*, vol. 2, p. 52.

² *Al-Mughni*, vol. 6, pp. 680-681.

parts lawful.”¹ Wealth is permissible in exchange for other wealth. However, the private parts are not permissible for another except with the dower. A marriage can be enacted without stating or fixing the amount of dower but it cannot be enacted while negating the dower. For the marriage in which the dower is not stated, the dower then becomes the dower of a similar woman... What is confirmed in the Quran, sunnah and consensus is that a marriage can be enacted without fixing the dower. But it cannot be enacted while negating the dower. In fact, Allah has said, “Indeed, We know what We have enjoined upon them concerning their wives and whom their right hands possess” (*al-Ahzaab* 50). [Since the preceding portion of the verse] states that the Prophet (peace be upon him) may marry without a dower, it was made obligatory upon them to marry with a dower. This is what the Quran indicates in more than one place. There must be either a stated dower or a non-stated dower [but there cannot be a marriage if there is a refusal to accept the payment of a dower].²

Therefore, there are three possible scenarios:

One case is where the two agree upon not having a dower. This is not allowed and such a marriage contract is not valid.

A second case is where the dower is clearly stated at the time of the marriage contract. This is the normal, most complete [and best] case.

A third case is where the dower is not mentioned at the time of the contract. This is permissible and the women will then receive what women similar to her receive or whatever they may later agree upon.

¹ Recorded by al-Bukhari (#5151), The Book on Conditions, Chapter on conditions for the dower at the time of the marriage contract, and by Muslim (#1418), The Book on Marriage, Chapter on fulfilling conditions and marriage.

² *Majmoo Fatawa Shaikh al-Islam ibn Taimiya*, vol. 29, p. 344. [The above is not a translation of what is found in Sadlaan’s work because the text has typographical errors that completely distort the meaning of ibn Taimiya’s words. Hence, the passage was translated directly from the new edition of *Majmoo Fatawa*, vol. 15, part 29, p. 189. — JZ]

The Maximum Amount of Dower Allowed¹

The jurists agree that there is no maximum limit to the dower, since there is nothing stated in the *shareeah* mentioning an upper limit. Allah says in the Quran,

وَأِنْ أَرَدْتُمْ اسْتِبْدَالَ زَوْجٍ مَكَانَ زَوْجٍ وَآتَيْتُمْ إِحْدَاهُنَّ قِنطَارًا فَلَا تَأْخُذُوا مِنْهُ شَيْئًا أَتَأْخُذُونَهُ بُهْتَانًا وَإِثْمًا مُبِينًا

“But if you intend to replace a wife by another and you have given one a *qintaar* (large amount of gold), take not the least bit back of it. Would you take it wrongfully without a right and in manifest sin?” (*al-Nisaa* 20).

The mention of a *qintaar* is not meant to place an upper limit to the dower but it is simply “a figurative expression implying a great amount.”² If that were meant to state the greater limit to the dower, Allah would have prohibited us from going beyond that.

The Minimum Amount Allowable for a Dower

Concerning the minimum amount permissible for a dower, there are five well-known opinions.

¹ The jurists have stated the maximum and minimum allowed dower in terms of dirhams and dinars because they were the monetary units common among the people in the past. Therefore, it would be good to discuss their origins and their weights in modern terms. Dirham is originally a Greek word, drachma, and it is a word for a silver coin that is equivalent to seven-tenths of a dinar. Therefore, in order to know the weight of a dirham, one must know the weight of a dinar. Dinar comes from a Latin-Greek term, dinariyus, and it was one of the most important coins used in the Islamic lands. Its weight in grams is 4.25 grams. Since a dirham is seven-tenths of that, its weight is 2.975 grams. See *Fiqh al-Zakaat* by Dr. Yusuf al-Qaradhawi, vol. 1, p. 259 (Muassasat al-Risalah, Lebanon, eighth edition, 1405 A.H.). [Sadlaan's text actual states 9.975, but that is obviously simply a typographical error.—JZ]

² *Nail al-Maraam min Tafseer Ayaat al-Abkaam* by Muhammad Sideeq Khan, p. 137 (Daar al-Raaid, Lebanon).

The first opinion is that a proper dower cannot be less than ten dirhams. This is the opinion of the Hanafis.¹

The second opinion is that the minimum acceptable for a dower is three dirhams, a quarter of a dinar or what is equivalent in value to that of goods or of something pure and not impure, something that is considered wealth, assets or property from a *shareeah* perspective, something that may be permissibly benefited from, and not like a lute [which has no value according to the *shareeah*]. It must be something that one can hand over to the wife, whose amount, type and term is known and fixed. This is the opinion of the Malikis.²

A third opinion is that the dower is valid as long as anything which can be called wealth or its equivalent is given, as long as the parties mutually consent to it. This is the opinion of the Shafi'ees, Hanbalis, ibn Wahb of the Malikis, Ishaq ibn Rahawaih, Abu Thaur, the jurists of the Madinah at the time of the Followers, al-Hasan al-Basri, al-Thauri, al-Auzaa'ee and Saeed ibn al-Musayyab.³

A fourth opinion is that anything which may be called "a thing", even if it is just a grain of barley, is acceptable as the dower. This was the opinion of ibn Hazm.⁴

A fifth opinion is that the dower is valid by anything which has value, either material or non-material.

The Evidence

Those of the first opinion, that the minimum dower is ten dirhams, support their view with the following evidence:

First is what is recorded by al-Daaraqutni and al-Baihaqi from Jaabir ibn Abdullah that the Messenger of Allah (peace be upon him) said,

¹ *Fath al-Qadeer*, vol. 2, pp. 435-436; *Nail al-Autaar*, vol. 6, p. 167.

² *Al-Sharh al-Sagheer*, vol. 2, p. 28; *al-Mudawanah al-Kubra*, vol. 2, pp. 173-174.

³ *Al-Majmoo Sharh al-Mubadhib*, vol. 5, p. 482.

⁴ *Al-Muballa Sharh al-Majallah* by ibn Hazm, the Dhaahiri, vol. 11, pp. 96-97, issue #1850.