

Al-Albaani discusses in *Irwaa al-Ghaleel*¹ the authenticity of the story of Umar prohibiting exorbitant dowers. He stated,

Note: What is commonly spread on the tongues of the people is that a woman objected to Umar's statement and said, "You have just prohibited the people from having exorbitant dowers while Allah says in His book, 'If you have given one of them a great amount [*qintaar*], do not take any of it back.'" Umar then said two or three times, "Everyone has a better understanding than Umar." Then he went back to the minbar and said, "I prohibited you from exorbitant dower. Listen, a man should do with his wealth what he sees he should do." This report, though, is weak and rejected. It is narrated by Mujaalid on the authority of al-Shabi from Umar. Al-Baihaqi recorded it and said, "This has a broken chain." I say: In addition to it having a broken chain, it is weak due to Mujaalid, who is ibn Saeed, and he is not strong. Furthermore, its text is objectionable for the verse does not negate the advice that Umar gave concerning exorbitant dowers.

Conclusion

We must take a fresh look at this phenomenon that has spread throughout the Muslim lands, but is particularly common in the Arabian peninsula. Insisting on exorbitant dowers is actually to no one's benefit. It has made life very difficult for the people. They, as well as both the guardians of the man and the woman, are fed up with it and becoming very unhappy with this evil custom. No intelligent person could witness the many young men who cannot get married and how they are trying to amass wealth as well as what is happening among the generation concerning women displaying their persons in public and the evil that is spreading except that he will be convinced that the dowers must be made as accessible as possible.

¹ Vol. 6, p. 347-348, #1928.

Since people differ with respect to how rich or poor they are, the financial situation of the prospective husband must be taken into consideration. A man must not be asked for something which is beyond what he can bear. That may force him to then seek a loan or ask others for help. In fact, it might even drive him to extend his hand to forbidden sources of wealth or to knock on the doors of questionable avenues in order to gather together the money he needs for his fiancée's dower.

Ibn Qudaamah stated in *al-Mughni*,

It is not preferred to have a dower in excess of what the Prophet (peace be upon him) gave his wives. This is because if the amount of the dower is increased, the person may not be able to meet it and he may face some harm in this life and the Hereafter.¹

The correct position is that it is questionable to say that exorbitant dowers are permissible unconditionally or to say that exorbitant dowers are forbidden unconditionally. The correct view is to take the different cases into consideration and conclude that if the *shareeah* causes are present, it is permissible to have a very large dower. However, if such a large dower leads to harm or evil, it is not permissible.

This is the choice of Shaikh al-Islam ibn Taimiya. In *al-Ikhtiyaaraat* he wrote,

If the dower that is given at the time of the marriage is a lot but the person has the means to pay it, it is not reprehensible, unless it is accompanied by an act that makes it reprehensible, such as boasting about it or something of that nature. However, if the person is not able to pay such an amount, it is disliked. In fact, it is forbidden if the person cannot amass it save by begging or other forbidden means.²

¹ Vol. 10, p. 101, Hajr publishing in Egypt, first edition, 1410 A.H., edited by Dr. al-Turki and Dr. Hilu.

² *Al-Ikhtiyaaraat al-Fiqhiyah min Fataawa Sbaikh al-Islam ibn Taimiyah*, p. 227, al-Sunnah al-Muhammadiyah, Cairo.

In *Ahkaam al-Quran*, Abu Bakr ibn al-Arabi stated, "The people vie in boasting about the dowers to the point that the dower reaches one million and very few can amass that amount through means which are permissible."¹ Furthermore, when the husband is overburdened by the dower and other necessary spending for the marriage, he develops a hatred in his heart for his new wife and the results are the opposite of what they are supposed to be in a marriage, as was discussed earlier.

We do not reject the reality nor are we ignorant of the fact that society has different classes with respect to wealth, poverty, ability to spend and inability to spend. However, at the very least, the dower should take into consideration the social class of the husband and wife. If there is no hardship upon the man and the act is not done for boasting, competing against others or extravagance and the dower is from permissible sources, then there is no problem concerning its amount [even if it is great].

As for the poor person, he should not be asked for a dower that he cannot attain except through hardship. The guardians of the woman should not seek such from him. Remember, the dower is a gift and a present to the woman. It does not make any sense that the giver is required to provide such a present that would cause him difficulty.

At the same time, we must not get to the point that we neglect the importance of the dower and simply stress its harm and, therefore, say that it should be done away with. Certainly this cannot be done. We reject this approach from its very roots because we will never accept any going to extremes with the law of Allah concerning honoring the woman and demonstrating how precious she is. We reject this in the same way that we reject the concept that has captured the minds of many people with respect to the amount of the dower that is equally burdening our young men and women.

We also reject the justification that some young men give for refusing to marry the women of their country because they claim that the dowers are too high and they therefore marry women from other countries. We reject this because we know of many guardians who do not ask for exorbitant dowers nor do they put such as a condition for

¹ *Abkaam al-Quran*, vol. 1, pp. 364-365.

marriage. On the contrary, they ask for a dowry that is more of a token than anything else in order to follow the sunnah. At the same time, these same guardians give a great deal of wealth to their daughters, much more than what the husband gives to them.

When the Woman is Entitled to Her Entire Dowry

The jurists agree that it is certain that the entire dowry must be paid to the woman as the result of a sound marriage that has been consummated or in which the husband has died.¹ This is true regardless of whether the amount of the dowry was explicitly stated or if it were a dowry that was unstated and the same as women who are similar to the wife. None of the obligation of paying the entire dowry is to be dropped unless it was already paid or if the one who has the right to it gives it up of her own accord.

In addition to the two above mentioned cases [of consummation or death], the following causes are added that also require the woman to be paid her entire dowry:

According to the strongest opinion among the scholars, the woman is entitled to her entire dowry as a result of a complete seclusion with her husband after a valid marriage [even if they did not consummate the marriage]. According to the Malikis, the woman is entitled to her complete dowry if she spends one year in the house of her husband, even if they did not have sexual intercourse. According to the Hanbalis, she is also entitled to her complete dowry if the husband is on his deathbed and divorces her only to prevent her from inheriting from him, even if such is done before consummation. Imam Ahmad specifically stated that any kind of physical pleasure, such as kissing, with the wife, even if it is less than sexual intercourse and not in private, requires that the woman receive her entire dowry.

A more detailed discussion of the above aspects follows.

¹ *Bidaayah al-Mujtabid wa Nibaayah al-Muqtasid* by Ibn Rushd al-Maaliki, vol. 1, pp. 22-23 (al-Istqiaamah publishing, Cairo); *Qawaaneen al-Abkaam al-Shariyyah* by Ibn Juzayy, p. 226.

(1) Actual Consummation

This implies any sexual intercourse or sexual contact, even if in a forbidden fashion, whether it be through the vagina or anus, as long as the man's private part has entered the woman, and even if it be when she is menstruating, post-partum hemorrhaging, performing the pilgrimage, fasting or in seclusion in the mosque. The dower must then be paid in return for what the person has done. The man has received his right by such consummation and, therefore, the woman is entitled to her entire dower.¹

This is based on Allah's words,

وَأِنْ أَرَدْتُمْ اسْتِبْدَالَ زَوْجٍ مَكَانَ زَوْجٍ وَآتَيْتُمْ إِحْدَاهُنَّ قِنطَارًا فَلَا تَأْخُذُوا مِنْهُ شَيْئًا

“But if you want to replace one wife with another and you have given one of them a great amount [*qintaar*], do not take any of it back” (*al-Nisaa* 20).² And the Messenger of Allah (peace be upon him) said,

أَيُّمَا امْرَأَةٍ نَكَحْتُ بِغَيْرِ إِذْنٍ وَلَيْتَهَا فَنَكَاحُهَا بَاطِلٌ فَنَكَاحُهَا بَاطِلٌ فَنَكَاحُهَا بَاطِلٌ فَإِنْ دَخَلَ بِهَا فَلَهَا الْمَهْرُ بِمَا اسْتَحَلَّ مِنْ فَرْجِهَا

“If any woman gets married without the permission of her guardian, then her marriage is void; then her marriage is void; then her marriage is void. If he consummated with her, she is entitled to her dower since her private part was taken advantage of.”³ If the woman is entitled to all of

¹ *Al-Fiqh al-Islaami wa Adillatuhu* by Dr. Wahbah al-Zuhaili, vol. 7, p. 289.

² [This is the verse that is mentioned in the text. Most likely, it is a mistake as this verse does not prove the point that was being made. The verse that the author was probably referring to was, “So with those of whom you have enjoyed sexual relations, give them their dower as prescribed” (*al-Nisaa* 24). This verse indicates that sexual relations entitles the woman to her entire dower. Allah knows best.—JZ]

³ Recorded by Abu Dawood (#2083) in the Book of Marriage, Chapter on the guardian; al-Tirmidhi (#1102) in the Book of Marriage, Chapter “There is no marriage except with a guardian”; Ibn Hibbaan (#1248) and al-Haakim (vol. 2, p. 168) declared it authentic. It is a *sahih* hadith.

her dower due to a voided marriage, she must even more so be entitled to all of her dower due to a valid marriage.¹

(2) The Death of Either Spouse after a Sound Marriage and Even before Consummation, According to the Agreement of Scholars²

If either spouse dies after a sound marriage contract yet before consummation, the woman is entitled to her entire dower according to the agreement of the jurists if the dower was explicitly stated in the contract.³ This is because the marriage contract is not annulled by the death. The contract simply comes to an end due to the death of one of the parties. All the rulings are put into force, therefore, including the dower. The Companions were in agreement that in such a case the woman is entitled to her complete dower.

According to the Malikis,⁴ if the dower was not explicitly stated in the contract, the woman is not entitled to anything. They make an analogy between this case and the cases of death while divorced, divorce from consummation or private seclusion and before stating a dower.⁵

According to the majority of jurists,⁶ in such a case, she is entitled to receive the same dower of women who are similar to her. Abdullah ibn Masood judged concerning a woman whose husband died and had not consummated the marriage or stated the dower, "She is to receive the dower of the women similar to her, without any shortcoming or increase; she must observe the mourning period and she receives her inheritance [from her deceased husband]." Then Miqil ibn Sanaan said,

¹ *Nail al-Autaar* by al-Shaukaani, vol. 6, p. 118.

² *Bidaayah al-Mujtabid wa Nihaayah al-Muqtasid* by ibn Rushd, vol. 2, p. 22; *Rahmat al-Ummah fi Ikhtilaaf al-Aimmah*, p. 213.

³ [If the wife dies, her heirs are entitled to receive her dower.—JZ]

⁴ *Mausooh al-Ijmaa fi al-Fiqh al-Islami* by Saadi Abu Jaib, vol. 2, p. 980.

⁵ *Qawaaneed al-Abkaam al-Shariyyah wa Masaail al-Furoo al-Fiqhiyyah* by ibn Juzayy al-Maaliki, p. 227.

⁶ *Tuhfab al-Fuqahaa* by al-Samarqandi, vol. 1, p. 141.

“The Messenger of Allah (peace be upon him) made the same judgment you just made concerning Barwa bint Waashiq.”¹

Furthermore, the term of the contract is life. It ends with the death of either. However, what must be given in exchange has already been established, in the same way as when the time of the end of a lease comes up and the person must pay for what preceded it.

The following question has been brought up: Is being killed to be considered the same as death? If one of the spouses is killed by a third party or if one of the spouses kills the other or if one of the spouses commits suicide, then, according to the strongest of the two opinions among scholars, being killed is treated in the same way as death with respect to the dower. However, if the wife intentionally kills her husband, that will cause her to lose her dower. This is because, in this case, her treacherous act brings the marriage contract to an end through a sin. Any time the marriage contract is brought to an end due to a sin on the part of the wife and before consummation, she loses all of her dower, as is true in the case of her apostatizing. And no one has a right to that dower. This is the strongest opinion.²

(3) A True Seclusion

Ibn Abideen has defined this concept of a real or true seclusion as, “This is where, after a sound marriage contract, the spouses are alone together with the ability to completely experience one another, being

¹ This is a *sahih* hadith. Recorded by Abu Dawood (#2114, 2115, 2116) in the Book of Marriage, Chapter on one who gets married and the dower is not stated; al-Tirmidhi (#1145) in the Book of Marriage, chapter on what has been reported concerning a man who gets married and dies before determining the dower; al-Nasaai (vol. 6, pp. 121-123) in the Book of Marriage, chapter on the permissibility of marrying without stating the dower; ibn Maaajah (#1891); Imam Ahmad in *al-Musnad* (#4099, 4100, 4272); ibn Hibbaan (#1263) who declared it *sahih*; and al-Haakim (vol. 2, p. 108). Ibn Hajr has a lengthy discussion of this hadith in *Talkhees* (vol. 3, pp. 191-192) and he states who considered it authentic and responds to those who considered it weak.

² *Al-Fiqh al-Isaami wa Adillatuhu* by Wahbah al-Zuhaili, vol. 7, pp. 290-291; *al-Sharh al-Sagheer* by al-Dardeer, vol. 2, p. 438.

safe from anyone entering upon them, and with neither of them having any natural, physical or *shareeah* obstacle to such enjoyment.”

A “natural impediment” means the presence of another mature person. A “physical impediment” means one of them having an illness that would prevent intercourse, such as a vaginal or scrotal hernia or when the woman’s vagina has been sewn together or cannot be penetrated. A “*shareeah* impediment” would include one of them fasting during Ramadhan or being in the state of voluntary or obligatory pilgrimage or *umrah*.

A true seclusion has the same status as consummation with respect to entitling the woman to her entire dower, if the two get divorced or the marriage is annulled before the actual consummation but after said seclusion. This is according to the stronger of the two opinions among the scholars. We shall discuss this issue in greater detail when we discuss the question of paying only half of the dower, Allah willing.

(4) The Wife Staying One Year in the House of the Husband

According to the Malikis, if the wife stays in the house of the husband for one year and he does not have intercourse with her, she is still entitled to her entire dower. In other words, if a man marries a woman and he takes her home in a marriage procession and she stays with him for one year, given that she is adult and able to have sexual intercourse, and they agree not to have sexual intercourse for that year, she is entitled to her entire dower. This is because her stay implies the action or takes the place of the intercourse. However, the Hanafis, Shafi’ees and Hanbalis disagree with this opinion.¹

¹ *Al-Fiqh al-Islami wa Adillatuhu* by Wahbah al-Zuhaili, vol. 7, pp. 292-293.

(5) A Divorce Said on One's Deathbed, before Consummation of the Marriage, in Order to Keep the Wife from Inheriting

According to the Hanbalis,¹ a woman is entitled to her complete dower if she is divorced while her husband is on his deathbed and dies after pronouncing the divorce, even before consummation, if he is trying to keep her from inheriting. She is entitled to her entire dower at the time of his death in the same manner that she must now enter into the mourning period of a widow, as long as she does not [illegally] wed during that time or apostate. The principle is that a new event is ascribed to the most recent time.²

(6) Physically Enjoying One's Wife in a Manner Less than Sexual Intercourse, such as Kissing and so forth, While Not in Complete Privacy

Ahmad explicitly stated that in such a case, the woman is entitled to her complete dower. In *al-Mughni* it states, "If he is with her and touches her or hugs her, without being in private with her, she is

¹ *Al-Mughni* by ibn Qudaamah, vol. 10, p. 157.

² *Durur al-Hikaam Sharh Majallah al-Abkaam al-Adahyah* by Ali Haidar (p. 25), article 11 (published by Dar al-Ilm al-Malaayeen, Lebanon). [Here the author has quoted an established fiqh principle. However, it may not be applicable to the question at hand. Using the same reference the author has noted, the application of this principle would be as follows: If a woman claims that she has been divorced by her husband while he was on his deathbed simply to keep her from inheriting from him and the family claims that he divorced her while he was healthy, given no other evidence, the wife's claim will be upheld because the divorce was a new event that did not previously take place and it must therefore be ascribed to the most recent time, which is while the man was near his death. However, the question that the author is dealing with in the text is not quite the same. The issue above is concerned with the woman definitely being divorced while the husband is on his deathbed. Is she still entitled to her dower as her husband may have divorced her simply to keep her from getting her dower or inheritance? In other words, in this case it is well-known that she was divorced while he was on his deathbed and there is no dispute over whether or not she was divorced. Hence, it seems that this fiqh principle quoted by the author is irrelevant here. Allah knows best.—JZ]

entitled to her complete dower as he has done with her what is not permissible for others to do.”¹

The evidence for this opinion is the following:

First, al-Daaraqutni recorded in his *Sunan*² from Muhammad ibn Abdul Rahmaan ibn Thaubaan that the Messenger of Allah (peace be upon him) said,

من كشف خمار امرأة ونظر إليها وجب عليه الصداق دخل بها أو لم
يدخل

“Whoever uncovers the headcovering of a woman and looks at her must pay the dower, whether he consummated with her or not.”

Second, by such actions, he is physically enjoying the woman and so he must pay the entire dower as he would if he had sexual intercourse with her. This is because touching falls under the implication of the verse in the Quran,

وَإِنْ طَلَّقْتُمُوهُنَّ مِنْ قَبْلِ أَنْ تَمْسُوهُنَّ وَقَدْ فَرَضْتُمْ لَهُنَّ فَرِيضَةً
فَنَصْفُ مَا فَرَضْتُمْ

“If you divorce them before ‘touching them’ and you have determined their dowers, then they shall receive half of the dowers...” (*al-Baqara* 237).

However, these two proofs are objected to. First, the hadith contains ibn Laheeah³ who is weak and whose narrations cannot be used as evidence. Even if one were to assume that it is authentic, it would be understood to mean that such took place when the two were in private as there is a consensus that if something of that nature takes place in front of others, the dower does not become obligatory.

¹ *Al-Mughni* by ibn Qudaamah al-Hanbali, vol. 10, p. 157; *al-Insaaf fi Marifah al-Raajib min al-Khilaaf* by al-Mardaawi, vol. 8, p. 287.

² *Sunan al-Daaraqutni*, vol. 3, p. 207, hadith #232, from the chapters on the dower.

³ *Talkbees al-Habeer*, vol. 3, p. 193, hadith #1555.