

WOMEN RIGHTS SPECIAL

Scrutinising the right to dower of women

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FOR a Muslim marriage there are three basic requirements under Sharia law: Ejab, Qobul and Mahr (commonly known as Denmahr or dower). Dower is one of the excellent protections, in other words privileges given by Islam to women. In the notion of Islam, it is a bridal gift, a token of respect to the woman. It is the right of the woman which accrues at the time of her marriage and similarly a duty or obligation upon the man as husband.

Concept of dower under Muslim law

The dower is a sum of money or other property which becomes payable by the husband to the wife as an effect of marriage. With regard the mode of determining the amount, it may be specified i.e. fixed at the time of marriage between the parties or unspecified i.e. not fixed before or at the time of marriage. The unspecified dower shall be fixed after marriage. It is observed that in determining the amount of unspecified dower, the dower fixed upon her female paternal relations is considered.

Again as regard the time of payment, the specified dower would be deferred and prompt. The prompt dower is payable on demand. It is like debt of the husband upon the wife. On the other hand deferred dower becomes payable at the termination of dissolution of marriage either on death or on divorce.

Dower: Right and remedies under our statutory law

The Muslim Personal Law (Shariat) Application Act 1937 in section 2 declares as regards dower (including other personal law issues like marriage, dissolution of marriage, guardianship, gifts, trusts, wakfs etc) where the parties are Muslim, the Muslim personal laws (Shariat) shall be applicable. Therefore we don't have any statutory law on dower.

In spite of this, recognition of the dower right is also found in the form for registration of Marriage (clause 13-17, 20) commonly known as Nikahnama or Kabinnama (Form E) under Muslim Marriage and Divorce (Registration) Rules 1975 rule no. 24 (1). When the kabinnama is silent about the division of prompt and deferred part of the dower fixed therein, the whole amount will be presumed as prompt i.e. payable on demand (sec 10 of the Muslim Family Law Ordinance 1961).

Dower in Muslim marriage forms an inseparable part of the terms of the kabinnama and thus as the kabinnama is intended to be registered under Muslim Marriage and Divorce (Registration) Act 1974, so is the



dower. Therefore non-payment of dower fixed in kabinnama will amount to the breach of a registered contract.

The suit for dower is more or less a suit to enforce a simple money claim founded solely on a contract entered into by the husband and wife (in the registered Kabinnama). Claim for dower is within the exclusive jurisdiction of family court under section 5 of Family Court Ordinance 1985. For a suit for the recovery of dower, limitation fixed in article 103 and 104 of the Limitation Act 1908 will be applicable i.e. 3 years from the date when claim for dower was first refused to be paid in case of prompt dower and for deferred on death or divorce. There is fixed court fees for the suit to recover

dower i.e. 25 taka (sec 22 of the Family Court Ordinance 1985).

Some misconceptions regarding dower

It is sometimes heard that the husband begs to the wife at their nuptial night for the relinquishment of her claim of dower and she used to do the same out of emotion or in the belief that it is the possible way to win or retain the affection of her husband. Therefore she remits the dower. There is a misconception among our women that if she relinquished once, she cannot claim dower anymore and the husband also thinks the same. It was held in *Shah Banu Begum v Iftakhar Md. Khan 8 DLR (WP) (1956) p.133* that as she (the wife) did not act as a free agent, it would be iniquitous to hold that a woman who remits

dower in such circumstances is bound by it.

In a study it was found that 88% women in Bangladesh never claim their dower right. It is a common belief among our women that a wife can claim dower only when her husband divorces her. A widow whose dower (deferred or may be both) remained unpaid is still entitled to dower. She can lawfully stay in the possession of her deceased husband's estate until her dower debt is satisfied as the dower being debt of the deceased becomes an encumbrance upon his estate. In reverse the right of the widow as creditor is limited to retain not to obtain. The same is held in *Maina Bibi v Chowdhury Wakil Ahmed 52 LA (1924) p.521*.

It is used asked by the women that if she divorces her husband, she will be automatically relinquished her right to dower. But the case is not always so. There are few forms of divorce for a wife to divorce her husband. Among them only for Khula, she forgoes her right to dower. But when she gives talaq-e- tafwid (delegated right to divorce) she remains entitled to dower. Therefore there are separate form for registration of divorce of Khula and Talaq-e Tafwid. Again if the divorce is prayed on any grounds under section 2 of Dissolution of Muslim Marriages Act 1939, the divorce never affect her right to dower (section 5 of the said Act 1939). But reverse decision is found in *Nur Akhter v Md. Abdul Mabud Chowdhury, (1996) BLC 404* where the wife refused to continue her conjugal life with the husband, the court decreed that she is not entitled to her deferred dower.

Moreover due to such misconceptions among men and women, many husbands are found not giving divorces to their wives rather force their wives by way of cruelty to give him divorce. Therefore it becomes a ground of cruelty to women. It is thought by husbands that when she cannot bear his cruelty anymore, she would divorce him and he would be freed from his duty to pay dower. It ultimately frustrates the philosophy of Islam behind dower i.e. to act as a check and balance on the unlimited power of the husband to divorce his wife. It was thought that The husband would think twice before divorcing his wife when he knows that upon divorce the whole of the dower would be payable immediately. But the reality is found different.

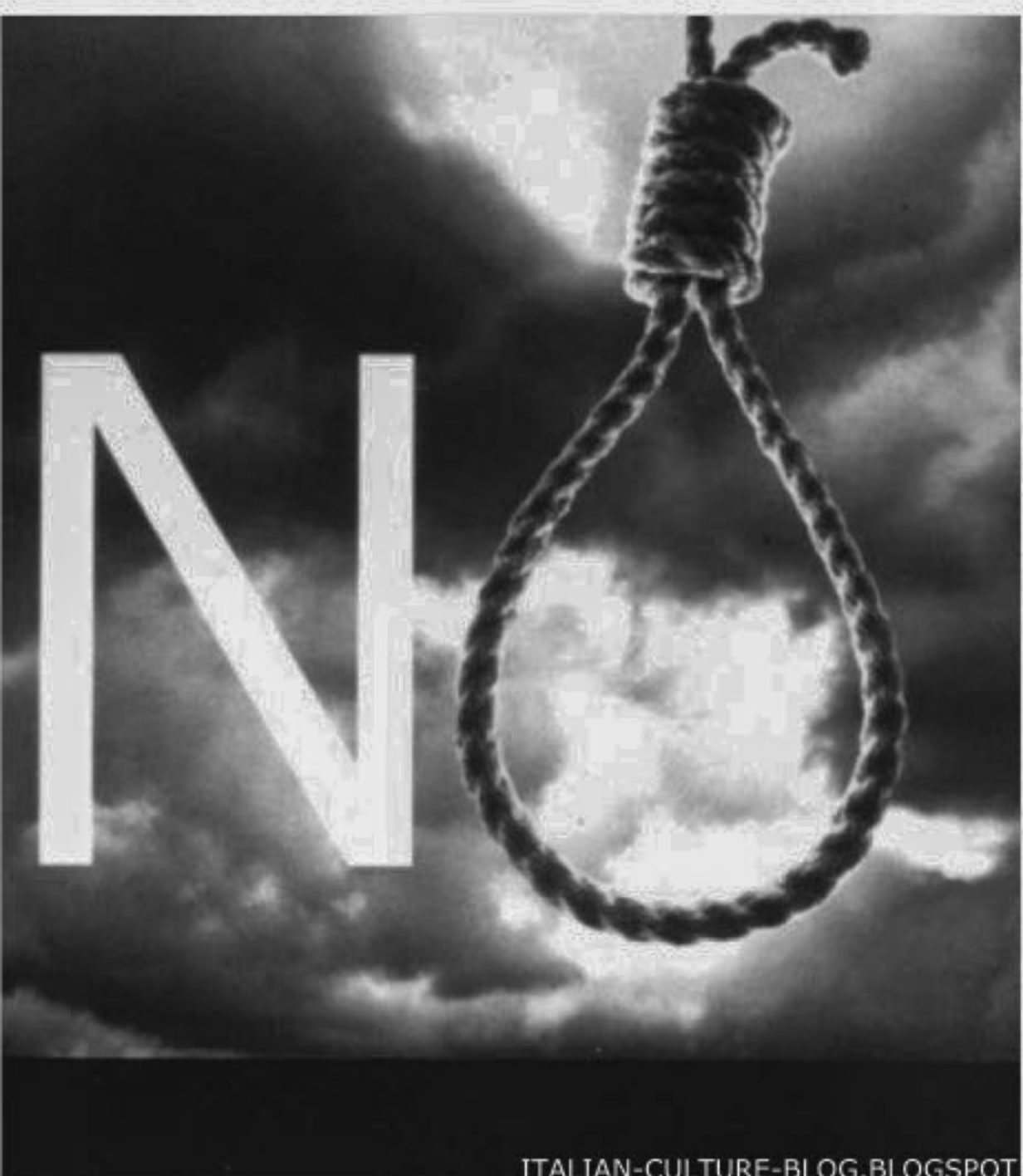
This is unfair. Why should women always make concessions and compromises? We should make aware about these rights of women not the wives only but the husbands also.

The writer is student of law, University of Dhaka.

International death penalty abolition day

1 March 2011 -- This day marks the occasion in 1847 when the U.S. state of Michigan became the first English-speaking territory in the world to abolish capital punishment. The death penalty is a violation of human rights, as stated in Article 3 of the Universal Declaration of Human Rights.

In 2009, the last year for which worldwide data is available, there were at least 714 known executions in 18 countries. This figure does not include executions in China, which were estimated to be in the thousands. China, Iran, Iraq, Saudi Arabia, and the United States were the five countries who carried out the most executions.



ITALIAN-CULTURE-BLOG.BLOGSPOT

International law related to capital punishment is evolving. There is currently only one universal treaty banning executions and aiming for the total abolition of the death penalty: The Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR). The Protocol, adopted by the United Nations General Assembly in 1989, requires states that have ratified it to renounce definitely the use of the death penalty. As of February 2011, it has been ratified by 73 states and signed by 35 others. In December 2010, the General Assembly passed its third resolution calling upon all countries to establish a moratorium on the death penalty.

Sources: Amnesty International.



YOUR ADVOCATE

This week Your Advocate is Barrister Tanjib-ul Alam Advocate, Supreme Court of Bangladesh. He is the head of the chamber of a renowned law firm, namely, 'Tanjib-ul Alam and Associates', which has expertise mainly in commercial law, corporate law, admiralty, employment and labor law, land law, banking law, constitutional law, telecom law, energy law, Alternative Dispute Resolution, Intellectual Property Rights and in conducting litigations before courts of different hierarchies.

Query

I am a director of a public limited company which has a debt of 20 crores with a reputed bank. There are 10 directors who are also the majority shareholders of the said company. I have 35% shares in the company and I have suffered loss due to several illegal and arbitrary decision and activities of the other directors. I mortgaged my property along with some other properties of the Company itself against a loan taken by the Company. I mortgaged my property as a 2nd party mortgagor. The Company became a loan defaulter and it failed to repay the entire loan. Concerned bank and the CIB of Bangladesh send the name of the directors of the company including my name in the CIB report. As my name is in the CIB my other business and financial reputation is going to be hampered acutely. Concerned bank is about to initiate proceedings under the Artha Rin Adalat Ain, 2003 and also sell the afore-said properties of the company along with my personal property which is mortgaged at the bank. I want to come out of this problem. Please advice me accordingly.

Response

Thank you for your query. It seems you have got a number of serious legal issues at hand and you should take immediate steps. The best and the most effective advice that I can give you at this moment is that you should consult a lawyer immediately. You should consult a lawyer who is acquainted with the banking laws. There are number of reasons why you should consult a lawyer, firstly, for every next step relating to settlement of your current situation you will have to engage a lawyer as mere advice will not solve your problem.

Given that you are a Director of a public company and holding 35% of the issued capital, your situation squarely falls within the definition of "defaulting borrower" and you and your other companies will be treated as a related company. Since you have furnished personal guarantee, you cannot avoid liability

for the repayment of your company's loan. The fact that you have suffered loss due to the fault of your fellow directors would not relieve you from the liability of repayment of loan that your company has taken. In my opinion, the lending bank has rightly reported your name to the Bangladesh Bank as a classified borrower and in accordance with the provisions of the Bank Companies Act, 1991 your other companies will also be treated as defaulting borrower because you are a Director of the defaulting company and you are holding more than 25% of the issued capital.

Although you have stated about the steps that the lending bank is going to take, you have not mentioned what step you have taken to repay your loan. If you continue to be a defaulter, it is only fair that bank will take action against you. If you wish to stop the bank from taking any action against you and your

company, it would be prudent for you to seek re-scheduling your loan by paying at least 10% of the outstanding amount.

If you fail to re-schedule your loan, the bank will be compelled to put your mortgaged property in to auction, regardless of the fact whether you have mortgaged your personal property or the company's property, in accordance with section 12 of the Artha Rin Adalat. This is due to the fact that as per the provisions of section 12, a bank is not

allowed to file an Artha Rin Adalat suit without first attempting to sell the mortgaged property (assuming that you have executed a Power of Attorney authorising the bank to sell). If you remain defaulter and the lending bank does not take any legal action against you and your company, the bank run the risk of its claim being barred by limitation. Hence, the bank is under a legal compulsion to take legal action against you and your company and the other shareholders who have furnished personal guarantee. Best of luck with your business.

For detailed query contact: info@tanjibalalam.com.



HCasks DCC

The High Court on February 29 directed Dhaka City Corporation to remove all structures from the car parks in the city's Karwan Bazar within two months. The verdict came on a writ petition filed on April 12, 2010 by Human Rights and Peace for Bangladesh following a report in The Daily Star under the headline "Car park lost to market". Responding to the public interest litigation, the HC on April 12 of that year ordered the DCC authorities to maintain status quo on any construction at the car parks in Karwan Bazar. It also issued a rule upon the DCC to explain why construction at the sites should not be declared illegal. -*The Daily Star March 01 2012.*

HCasks Oli to appear March 7

The High Court on February 28 deferred till March 7 the hearing on a rule it issued earlier against Liberal Democratic Party chief Col (Retd) Oli Ahmed on charge of starting construction of a resort on the Cox's Bazar beach in violation of environmental laws. The suo moto rule came following a report published in The Daily Star. The report stated that lawmaker Oli Ahmed, without any permission from the authorities concerned, is having a four-storey structure built in the jhau woods on the Cox's Bazar beach that is a violation of environmental laws. -*The Daily Star February 29, 2012.*

HC to clean roads, footpaths

The High Court on February 26 directed the government to free roads and footpaths from Zero Point to Sadarghat in the city in the succeeding 48 hours to facilitate easy movement of people and vehicles. The court said the authorities have to ensure that nobody will keep sand, rods and other materials, parked rickshaw-vans and carts and establish makeshift shops by occupying the road and footpaths. The court issued the order following a writ petition moved by Advocate Manzill Murshid on behalf of Human Rights and Peace for Bangladesh. -*The Daily Star February 27, 2012.*

HC to stop speculative reports in media

The High Court on February 28 asked the government to explain within two weeks why it should not be directed to find out the motive for the murder of journalist couple Sagar Sarowar and Meherun Runi and to bring the killers to justice. The court issued the rule in response to a public interest litigation filed by Human Rights and Peace for Bangladesh (HRPB). It also directed the authorities concerned not to make any statement to the media without any specific development in the ongoing investigation into the double murder. -*The Daily Star February 29, 2012.*

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