

Muslim Law

Mehar

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This article deals with the enforcement of the right of a woman towards her mehar. It basically highlights the other remedies the woman in the marriage or after the marriage can revert to, to ensure enforcement of the right to mehar.

Introduction

The right of [mehar](#) is an intrinsic right of Muslim marriage and it cannot be taken away from her by the virtue of any pre-contract or any terms and conditions.

There are several rights that come into play when the question of mehar arises for the woman. The husband has failed to deliver the sum of money or the property whichever, the woman has certain other rights to ensure that the right towards the mehar is enforceable.

1. Conjugal rights

The man and wife, if have come upon this agreement that the mode of payment of the mehar shall be immediate. This infers that the husband shall be liable to pay the mehar before the woman leaves her maternal house and goes to her husband's house. Moreover, it becomes not only the responsibility but also lies as a liability of the man to pay the mehar immediately.

In Muslim law, it is believed that by the virtue of marriage the man in the marriage has an intrinsic right to conjugal rights and these rights under no circumstances can be taken away from him. However, when there is an understanding between the parties to pay the mehar immediately and diligently as soon as the marriage is taken place or even before that. Then such an understanding between the parties cannot be bypassed.

This becomes a well put lawful defense against the right of the man towards conjugal rights. it is further understood that a suit against the woman for the restitution of conjugal rights shall fail if the agreement is to pay the mehar first, even before the marriage.

Nevertheless, even in this situation, the court has the power to impose a restitution order according to immediate Mehar's terms of payment. The details were in the judgment **Anis Begum v. Muhammad Istafa Wali Khan**[\[1\]](#). Istafa, Rs. 15,000 was the immediate Mehar. For some time, the wife and husband were living together, and they bore a daughter. Later, Anisa left her husband's house and refused to return until she was pleased with the immediate Mehar. The husband Istafa filed a lawsuit for conjugal rights compensation.

In this case, Sulaiman, C.J. held that a husband had no absolute right to unconditionally assert conjugal rights. The courts can make the restitution decree dependent on payment of the Prompt Mehar unpaid to their wife even though they already have a marriage. Therefore, 15,000/-was passed for the husband, subject to his payment of Rs. The order for restitution of the conjugal right.

Further, in **Nasra Begum v. Rizwan Ali**[\[2\]](#), it was observed that the women's right to mehar exists before cohabitation of the spouses and she can make prompt demand for the same. After the payment of the prompt mehar, the court exercises its discretion whether to pass an order of restitution of conjugal rights or not.

2. Debt enforcement

With respect to the enforcement of the right to mehar, the Madras High Court in **Ameer Ammal v. Sankaranarayana Chetty**[\[3\]](#), observed that right of the wife to mehar is like a right of any other creditor and can be enforced like any other debt.

Where a marriage has been consummated, by refusing marital rights to a husband, the wife cannot enforce her claims. In this case, the wife will recover her unpaid mehar via court proceedings. We have already seen that an unpaid mehar is a wife's reimbursement of action and she can see the reimbursement of the loan from the husband in the same way as a creditor. If the husband is alive and the mehar is left unpaid, the wife may exercise its claim by suing the husband to retrieve the unpaid Mehar.

If the husband dies, the widow shall be entitled to recover the sum by suing the deceased husband's legal heirs. However, the husband's legal heirs can not pay the Mehar personally. The Mehar is a debt against the estate of the dead man that the heirs inherit.

The legitimate heirs are responsible for paying the Mehar only to the degree that they are entitled to the property of the deceased, as the property is inherited by the family per their own shares.

For example, if the unpaid Mehar is 4,000 and the share of the legal heir is 1/2, the widow will be liable only to be paid 2,000. It can be observed that the Mehar is generally not a charge for the property of the husband. Therefore, if a woman sues her husband or her heirs for an unpaid Mehar, the decision for her is a simple decree for a property.

Nevertheless, a fee may be levied on the husband's property by mutual agreement for the mehar debt. If such an allegation was created by a contract between the husband and the wife, the agreement is legitimate.

In the absence of such agreement, the Court shall also be qualified to charge the husband's land. Nevertheless, such a fee should not be imposed by courts, for the Mehar debt would have precedence over other debts if the court were to enforce a charge. This would be contrary to the interests of other creditors of the partner.

In **Qasim Hussain Reg v. Begum Kaniz Sakina**[\[4\]](#), it was held by the Allahabad High Court that when the wife had relinquished her right to mehar before the divorce and was going through the iddat period; she cannot claim her right after the completion of iddat and the mehar cannot be enforced.

3. The right of restraint of the Widow

The practice of 'right of protection' after the husband's death is the most efficient way of enforcing a mehar. A widow whose Mehr remains unpaid is entitled to keep the husband's property until his Mehr debt is met. That right is known as the protection right rather than the unpaid Mehr and a widow can be given whether the parties agree or not on that right.

Under this clause, if a wife took over the property of her husband lawfully (with the husband's free consent) instead of the husband's unpaid Mehr, she has the right to hold the property after her husband has died and to maintain it until his Mehr is reimbursed from her house.

Furthermore, the woman can enforce her right to lien over the property of her husband until the members or the legal heirs who are entitled to get the property pay the woman out of the property which they have inherited from her husband. Hence, this is similar to the security which the bank gets against the loan taken by the customer.

And under circumstances where the loaned amount is unpaid, that is when the bank exercises their right to lien over the security against the loan until the payment is made by the customer. This right to lien is also called right to retain the property.

The creditors of their deceased husband and his legitimate heirs exercise this privilege if any. The husband's legal heirs can not take possession (and profit) of the property of the deceased until they make unpaid payments for their respective actions. This can, therefore, be considered an unpaid Mehr recovery method from the legal heirs of the husband.

Conclusion

The circumstance does become difficult when the husband dies, and then there is no one to pay the unpaid mehar. Then comes into play the property of the husband which is inherited by the legal heir and then they become responsible to pay the woman out of the property equally