

The restitution of  
conjugal rights. not  
merely



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The only difference that the Muslim law-givers recognize between the dower-debt and other debts is this that if the wife is in possession of her husband's property, she can retain possession till her dower-debt is paid.

Thus, the matter may be examined from two angles: (i) dower as a debt, and (ii) right of retention of possession of the husband's property.

#### **Dower as a Debt:**

Dower is an unsecured debt which the wife or widow, or divorcee, can recover from her husband, when alive, or from his estate when dead. Not merely the widow has the right to recover the dower-debt, but, on her death, her heirs, too, can recover it.

Similarly, the dower-debt can be recovered not only from the husband, but also, after his death, from his heirs. It has already been stated that when the prompt dower is not paid, the wife can refuse conjugal rights to the husband, and non-payment of the prompt dower is a firm defence against the husband's suit for restitution of conjugal rights. Not merely this, if on account of non-payment of the dower, the wife is living separately from her husband; he is bound to maintain her.

Further, if the wife is a minor, then the guardian may refuse to allow the husband to take her to the matrimonial home, till the dower is paid. The wife can also file a suit against the husband for the recovery of her dower-debt. It is obvious that the question of payment of the deferred dower can arise only after the dissolution of marriage, or on the happening of the specified contingency to which the payment of the deferred dower was deferred. Once her claim of deferred dower arises, she can recover it against the husband,

or his estate, like any other creditor of the husband. In *Kapoor Chand v. Kadar-unnissa*,<sup>1</sup> the Supreme Court laid down the following three propositions: (a) The widow is like any other creditor of the husband and cannot, therefore, claim any priority for the dower-debt over other creditors, (b) The widow's claim for dower-debt has priority over the claim of heirs (but it seems, if she omits to put up her claim for dower and allows a person to take the amount of his legacy from the estate of the deceased husband, she cannot afterwards retract her assent), and (c) The heirs of the deceased husband are not personally liable for the dower-debt of the widow; the amount can be realized ratably from their share in the estate.

**Dower as a Charge:**

Ordinarily, the dower is not a charge on the property of the husband, though one may be created by agreement, or by a decree of a court.

Whether court should create a charge by its decree is still not a settled question. It appears to be clear that if a court creates a charge on the husband's property by a decree, the charge is enforceable. Mulla opines that, although, it is within the competence of the court to create a charge, it should not ordinarily do so, as thereby the dower-debt gets priority over the debt of other creditors, and he, therefore, suggests that what the court should do, is to pass a simple money decree.

It is submitted that the purpose of creating a charge is to give priority to the dower-debt over the unsecured debt of their creditors. In those cases, where the dower is not a charge on the husband's estate, it may be the only way to protect the interest of the widow, and, therefore, it is submitted, that the

court's discretion should not be inhibited by any such consideration, but rather, the widow's interest should be the paramount consideration before it.