

# THE REQUISITES OF A VALID WILL

## (A comparative study of Shariah & Law)

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### Introduction:

The concept of will is not new. This concept was very much present in the pre-Islamic civilizations and religions. We do find it in the customs and usages of pre-Islamic Arabs and Rabbinical Law; but the purpose behind making the will was not a good one. It is mentioned in the Rabbinical Law that the Jewish tribes used to make a will in favour of strangers; the purpose of which was to deprive the legal heirs from inheritance. In the Arab tribes also there was a custom to make a will in favour of strangers out of pride, leaving the legal heirs in a state of poverty and need<sup>(1)</sup>.

When Islam came it gave it a new spirit and shape; the purpose of which was not the cruelty and pride but it was based on justice and sacrifice. So it is made obligatory on the owner of property to make a will. The Quran expressly sanctions the power of making a will and it prescribes the formalities, conditions and limitations to which it is subjected. When the Ayah concerning the inheritance was revealed in Surah Al-Nisa<sup>(2)</sup> the conditions regarding the will were prescribed by Sunnah.

A will according to Islamic point of view is a divine institution as it is sanctioned and regulated by the Quran and Sunnah of the Messenger of Allah; the purpose of which is to correct to a certain extent the law of inheritance on the one hand and to accommodate some of the relatives who are excluded from inheritance, to obtain a share in property. In this way Islam not only rectifies the laws of will prevailing in the pre-Islamic civilizations and religions, but it recognizes it as a right of strangers alongwith protecting the rights of legal heirs.

As the present treatise is on "The Requisites of a Valid Will" therefore, we would like to confine our discussion on the said topic, under the headings given below:

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If it is asked that are man and woman equal in Islamic way of life? There would not be simple positive or negative way of answer rather, one must scrutinize, examine and inspect closely and thoroughly their respective rights, duties and functions. And then placing a complete picture in front, it may be possible to answer the above question. In other societies of the world, the state of affairs is not in concurrence to Islamic way of life. Those other societies always try to claim that man and woman are equal in every respect which is not a natural phenomenon.

all the conditions of grant of *Khula'* the judge cannot give any other decision except that of separation (*Khula'*).

Here a question may arise that if the judge is bound to give a particular kind of decision in a suit for *Khula'* then what is the use of judicial proceedings?

The answer is that with regard to *Khula'* we have before us a clear question of law. There is no scope for any deviation from the injunctions (*ahkam*) of Allah and the Messenger of Allah. The only thing which a judge is responsible to see is the question of fact. May be the grievances of the woman be such as may be redressed after the hearing given to by the judge. In such a situation the judge may direct the other side to redress those grievances. The reason is that in the Islamic system of justice it is not the success or failure of either party at the trial. Rather, it is to keep all elements of the society at their proper place for the discharge of their respective functions. Where the judge can remove the grievances of the woman and she is also satisfied with such order there is no reason to cause separation between spouses (*zaujain*).

Where after all efforts, sermons, advices, and using all possible means to maintain the family life between the spouses (*zaujain*) the woman insists for separation (*Khula'*) the judge has the power to order the woman to pay back the dower which she had received at the time of *Nikah* to the husband and then order dissolution of marriage (*nikah*) on the basis of *Khula'*. Except this, the judge has no more power in such a case.

### **After *Khula'***

*Khula'* is equal to a single irrevocable divorce (*talaq ba'in*). A man has no right to revoke it. As the *Khula'* is according to the will of the woman. Hence the question of its revocation does not arise. Hence it is considered equal to an irrevocable divorce. However, if the woman agrees to remarry the same man she can with the consent of the man remarry with him.

### **Conclusion**

It appears that Islamic law of marriage and divorce is not identical to the man made laws which are changed by man himself moment after moment. It is evident that the position of man and woman in the social set up of the community, is equal in every respect, but keeping in view the mindset of both the genders, Islam segregates the rights, duties and functions of both the gender and then declares their status with regard to family matters.

Those under his care and command must proceed subject to his will and desire. Among other grounds this is also one ground on the basis of which the man has been vested with the right to give divorce (*talaq*).

### ***Khula'* By Mutual Consent**

This is the reason that the process of *Khula'* does not become complete by the mere intention, desire or will of the woman. Rather, it has certain circumstances which are mentioned below.

Firstly, there may be a circumstance that a woman demands *Khula'* from her husband and the husband immediately gives his *Khula'* and makes no demand from her.<sup>33</sup>

Secondly, there may be a circumstance that a woman demands *Khula'* from her husband and the husband also demands some compensation for the upsetting of his marital life and the woman agrees to pay it to her. This compensation cannot exceed the total value of the dower (*mahr*) of the woman. (see Al-Quran 2/229 and Bukhari and Muslim).

Thirdly, there may be a circumstance that the woman demand *Khula'* and the man accepts it willingly. If he demands the dower (*mahr*) paid by him to her to be returned to him and the woman is willing to do so, the *Khula'* may take place.

### ***Khula'* By the Decree of Court**

The aforesaid three forms of *Khula'* are dependent upon the mutual consent of the parties. Where the *Khula'* is not by any one of these three ways and the woman insists that she is to get separation and the man does not agree to it then the woman has a right to lodge a claim for dissolution of marriage (*nikah*) on the basis of *Khula'* before the Court.

At the trial the judge is responsible for two things. Firstly, to examine and consider as to whether there is apprehension of breaking of limits of Ailah by any party. Secondly, the judge should hear the stand point of the woman and know the will of the woman. A judge is not expected of anything more. He cannot give a verdict against the stand of the woman.

Where any one of the above two situations are proved, the judge must order separation (*Khula'*). Where the woman is fulfilling

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33. Al-Quran 2:229.

From this verse, two kinds of *Khula'* are known. Firstly, any of the spouses (*zaujayn*) may apprehend that it is difficult to keep the limit of Allah during the wedlock and consequently they part from each other. Secondly, the person vested with authority among the Muslims like a judge (*qadi*) who considers that the limits of Allah will be broken if separation is not ordered. In such an apprehension the judge may order dissolution of marriage (*nikah*) on payment of some compensation by the woman to the husband.

In this verse to obtain *Khula'* the mention of payment of compensation by the woman is absolute. For detailed injunctions (*ahkam*) the *Sunnah* provides guidance. The incident of Thabit *bin* Qays is mentioned in the *Sahih* of *Imam* Bukhari and *Sunan* of *Imam* Nisa'i.

The words of the *hadith* show that two of his wives did not like his countenance as his colour was black and his stature was short. One of his wives, namely, Jamilah *bint* Abi Salul brought her suit for dissolution of marriage (*nikah*) in the Court of the Messenger of Allah. After hearing the pleas put forth by her, the Messenger of Allah asked her: Was she prepared to return the garden that had been given to her by Thabit *bin* Qays. She replied in the affirmative. On that the Messenger of Allah directed her to return the said garden to her husband and directed her husband to accept it and give him a single divorce.<sup>32</sup> Similar is the incident of the other wife of *Hadrat* Thabit *bin* Qays (Allah's Pleasure be on him).

Why the woman has not the right of *khula'* of the same nature as the man has the right of divorce?

To understand this thing it is essential that the basis of *nikah* is kept in mind which has been termed as *Ihsan* (a fort) and the man has been termed as *Muhsin* (One who builds the fort) and the woman has been termed as *Muhsinah* (the protected one in the fort). It is the man who lays the foundation of the family. It is he who is responsible to pay dower (*mahr*) to the woman. It is he who is responsible for the food, clothes and shelter and other social needs of the woman. It is he who is to bear the expenses of the maintenance and upbringing of his children. Thus for a family unit he alone is answerable in all manners. So, logically it becomes necessary that he should possess rights in relation to those duties. When he is the Master of the house, he has arranged and put in order everything according to his will and liking.

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32. Al-Bukhari, *Kit b al-Talaq, Bab al-Khula'*, *ibid*

### ***Khula'* and issues relating to it.**

There are many ways of separation between the spouses (*zaujain*). One of these ways is *Khula'*. Where the husband considers that it is impossible for him to continue the wedlock, he has the right to give divorce. Likewise where the wife considers that it is extremely difficult for her to pull on with the marital tie with her husband, she has the right to get *Khula'*. However, this is not the only distinction between divorce (*talaq*) and *Khula'* that one is the right of the man and the other is the right of the woman. Rather, there is a basic difference between the two. The divorce (*talaq*) takes place the moment a man utters some specific words. However the *Khula'* does not take place by mere statement of the woman or her demand for *Khula'*. Rather there is a method for its taking place.

### **Literal Meaning of *Khula'***

Literally, the word "*Khula'*" means to bring out a thing from another thing. The definition of *nikah* is to intermingle a thing into the other, to pierce a thing into another, to absorb a thing into another. The *Khula'* is opposite to it. Its meaning is otherwise. This word has been made to convey the sense of separation and parting.<sup>30</sup>

*Khil`at* is that dress or garment which is put of by an emperor from his own person and bestowed upon any one among his subjects or taxpayer. Thus *khil`at* is that clothing which is put of by a person from his body. As a separation takes place on account of *Khula'* the same has been so termed.

### **Legality of *Khula'***

The validity of *Khula'* is proved on the authority of both the Holy *Qur'an* and *Sunnah*. The Holy *Qur'an* says:

It is not lawful for you (men), to take back any of your gifts (from your wives), except when both parties fear that they would be unable to keep the limits ordained by Allah if ye (judges) do indeed fear that they would be unable to keep the limits ordained by Allah, There is no blame on either of them if she gives something for her freedom.<sup>31</sup>

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30. Sa`di, Abu Habib, *Al-Qamus al-Fiqhi lughatan wa istilahan*, Karachi, Idarah al-Qur'an wa al-'Ulum al-Islamiyyah, p.120.

31. Al Quran 2:229.

## 2. Allegorical Wording

The words other than the explicit words of divorce are the allegorical words. Such words are not used to clearly state the divorce but they are taken to mean divorce. As where a person says to his wife: "You are released." In such circumstance the intention of the speaker is relied upon. If the speaker says that his intention was to give divorce, the divorce will take place and if he explains otherwise then that explanation will be accepted.

Until a divorce (*talaq*) becomes irrevocable the husband has the option to revoke it within the period of *`iddat*. However, if the *`iddat* period expires this option is no more available to the man.

Right to revoke a divorce is vested in the man. He may declare such revocation by words of mouth. It is commendable to revoke a divorce in the presence of two witnesses. It is not necessary to give any compensation or to pay the dower (*mahr*) afresh nor is the consent of the woman necessary in the matter of revocation.

According to the *Hanafi* jurists (*fuqaha*) where a man who has given the divorce to his wife cohabits with her during the currency of the *`iddat* period, the revocation takes place automatically. There is no need of any oral declaration by the husband that he has revoked the divorce (*talaq*). Their argument is that there did not occur the disconnection of *nikah* between the spouses (*zaujayn*) and the right to revoke vesting in the man is proved on the authority of the *Sunnah* of the Messenger of Allah as he had divorced *Hadrat* Hafsa (Allah's Pleasure be on her) and the same mode was adopted for revocation of divorce (*talaq*).<sup>29</sup>

As against this, *Imam* Shafi'i is of the view that for the revocation of divorce oral declaration in the presence of two witnesses is necessary. He does not consider revocation of divorce (*talaq*) permissible by means of cohabitation.

After three pronouncements of divorce (*talaq*) have taken place the right to revoke comes to an end. The spouses (*zaujayn*) become of prohibited degrees for each other and they cannot remarry. Rather, their reunion is possible only after the divorced woman marries some other person and that other person thereafter dies or he of his own free will divorces her. There is no other way for (the divorcer and the divorcee) for their marrying each other again.

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29. *Sunan* Ibn Majah , *Kitab al-Talaq*, *ibid*.

### (1), *Talaq raj`i*,

A *talaq raj`i* refers to a *talaq* where after giving the *talaq* the husband has the right to return to the marital life as before. he has the right to revoke the divorce pronounced by him. The process is accomplished by cohabiting with the woman during the period of *`iddat* after the first or the second pronouncement without any remarrying ceremony (*tajdid nikah*). However if he used the word *ba'in* (irrevocable) then the right to revoke (*haqq ruju`*) ends. In the process of *ruju`* in the case of a *talaq raj`i* there is no need of consent of the woman. It is the act of the man who brings the revocation to an effect.

### 2. *Talaq Ba'in Sughra*

When the period of *talaq raj`i* comes to an end, the man has no right to recall the marital life and the *talaq* turns into *talaq raj`i ba'in*. In such circumstance the spouses (*zaujain*) can remarry by mutual consent.

If while giving *talaq* the man adds the word "*ba'in*", then for the first pronouncement and the second pronouncement it is called "*talaq ba'in sughra*". In such *talaq (talaq ba'in sughra)* the man and the woman can remarry by mutual consent during the *`iddat* or at the end of the *i`ddat* period. However when the *talaq* is given for the third time the right to remarry also comes to an end in the ordinary circumstances.

### (3) *Talaq ba'in kubra*

This *talaq* is also called "*talaq mughallaz*". The manner of such *talaq* is that the husband gives three *talaqs* to his wife at one and the same time. After such *talaq* the man has no right to revoke it nor can he remarry the same woman till she marries another person and then that new husband dies or he divorces that woman.

## The wording of divorce (*talaq*).

### 1. Explicit Wording

In Islamic law the wording used for pronouncement of divorce are also significant. Some words are such which explicitly give the meaning of *talaq* as the words: "I have given *talaq*." or " Now you have become a divorcee (*mutallaqah*).<sup>4</sup> After utterance of such words there remains no doubt at all that there has occurred divorce. Likewise in the words of other languages that are used for conveying the sense of divorce, if uttered the divorce will take place. The divorcer cannot later on take the plea that he intended by such words something else than divorce.



In this way of giving *talaq* the right to remarry by the same man to the same woman comes to an end as he has given the *talaq* thrice.

## (2) *Talaq al-Bid`ah*

*Talaq* is the actual separation between the spouses (*zaujain*). As the Messenger of Allah has prescribed the manner of performance of a contract of marriage (*nikah*) so he has prescribed the manner of giving *talaq*. However there is a difference between the *nikah* and the *talaq*. The *nikah* can be entered into by the consent of both the parties while the right to divorce lies with the husband alone and this right he has in every circumstance irrespective of his exercising it in accordance with the *Sunnah* or otherwise.

A *talaq* given in a manner not prescribed by the *Sunnah* is called *bid`iyy*. One who adopts such manner is sinful. However, the *talaq* becomes effective.

*Talaq bid`iyy* is also of two kinds.

First kind of *Talaq Bid`iyy* is that which is given at an improper time. An improper time is the time when a women is undergoing her menses. There is a *hadith* concerning such a *talaq*. *Hadrat` Abdullah bin `Umar* (Allah's Pleasure be on them) gave *talaq* to his wife while she was under going her menses. The Messenger of Allah on the asking of *Hadrat` Umar* (Allah's Pleasure be on him) directed to revoke it and said: "Keep her till she is clean. Then when she again undergoes her menses and becomes clean, then if you want you may give her *talaq* or to keep her."<sup>28</sup>

The second kind of *talaq bid`iyy* is that where the husband gives or pronounces the *talaq* in a single sitting or a single sentence thrice and ends the marital relation. For example he says: To you are three divorces or you are divorced, you are divorced or you are divorced."

## 2. With regard to effectiveness

With regard to effectiveness the divorce is of three kinds and each such kind has different rules. These kinds are: *talaq raj`i*, *talaq ba'in sughra*, and *talaq ba'in kubra*

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28 . *Al-Bukhari, Kitab al-Talaq, ibid.*

An adult, of sound mind, married person has the right to pronounce "divorce" (*talaq*) to his wife during the marital life three times. For two times the husband has the right to revoke the pronouncement and can continue the usual marital relationship. But when he gives the *talaq* exercising his third time right, then the spouses (*zaujayn*) do not remain husband and wife. The Holy *Qur'an* says:

A divorce is permissible twice, after that the parties should either hold together on equitable terms, or separate with kindness<sup>27</sup>.

### **Kinds of Divorce (*talaq*)**

There are two significant divisions of divorce which have been further sub-divided.

#### **1. With regard to its construction**

Kinds of Divorce (*talaq*) with regard to its construction refers to it that we can judge them by the standard of *Shari'ah*. And after such examining we can declare it as to whether it is in accordance with the method prescribed by the Messenger of Allah or is deviating from such method. Such a divorce is further sub-divided into *Talaq al-Sunnah* and *Talaq al-Bid'ah*.

##### **(1) *Talaq al-Sunnah***

The *talaq* methodology of which has been taught by the Messenger of Allah himself. There are two modes of pronouncing this kind of *talaq*, namely, *talaq ahsan* and *talaq hasan*.

(a) ***Talaq Ahan***: The most correct way of giving divorce to the wife is called *talaq ahsan*. The way of giving *talaq ahsan* is that when the state of menstruation of the wife comes to an end and the husband has not cohabited with her, he may pronounce one revocable divorce (*talaq raj'i* i.e. a *talaq* after which the husband has the right to revoke it) and thus the period of *'iddat* of the woman passes and if she was pregnant the delivery takes place.

The advantage of such divorce is that after the expiry of the *'iddat* period the same man can remarry the same woman without any impediment.

(b) ***Talaq Hasan*** : This mode of giving *talaq* is also according to the *Sunnah*. But it is of lesser rank. A *talaq hasan* is that a husband does not cohabit with his wife after she is clear from her menses and gives her *talaq*. When she is again clear from her next menses period he pronounces second *talaq* and when she is clear from her next menses he pronounces the third *talaq*.

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27 . Al-Quran 2:229.

marriage (*nikah*)? In which family dissolution of marriage (*nikah*) took place? Where a child was born? To perform such functions the state may adopt different means.

### **Divorce and its related issues**

In case of disunity and dissent between the spouses (*zaujain*) the *Shari`ah* has prescribed a reasonable way for the separation between them so that the spouses (*zaujain*) may determine for themselves new ways on the changed circumstances. This way is called "divorce" (*talaq*).

### **Definition of "divorce" (*talaq*)**

Literally, the word "divorce" (*talaq*) means to abandon a thing or get rid of a thing. When an animal tied with a string is untied it is called *talaq*. If the tied with a string she camel is untied, the Arabs mention this state as: "*talaqa al-naqata talaqan*"<sup>23</sup> (The she-camel has been released).

*Imam Sarakhsi* has used the words "*Izlatu'l-qayd*" (release from confinement) to convey the meaning of the word "divorce" (*talaq*)<sup>24</sup>.

If by keeping in view the definitions given by different schools an exhaustive definition of the word "divorce" (*talaq*) which may also be harmonious with the modern legal language is given then it would be like this: "Divorce means the dissolution of marital relationship between the spouses (*zaujain*) personally or through an agent or a deputy or a delegatee , with specific words or allegorically, immediately or consequently."<sup>25</sup>

When there remains no love and affection and unity among the spouses (*zaujain*) and there is no alternative except "divorce" (*talaq*) then separation in the manner prescribed by *Shari`ah* is better. However, separation among the spouses (*zaujain*) is not act liked by Allah. It is mentioned in the saying of the Messenger of Allah that: "Among the lawful matters the most disliked in the sight of Allah is the divorce"<sup>26</sup>.

### **Number of pronouncements of "divorce" (*talaq*)**

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23 . Isfahani, see *Talaqa*, *ibid*.

24 . *Al-Sarakhsi, Kitab al-Mabsut*, vol.6, p.2. ?

25 . *Tanzil al Rahman*, Dr, vol.2, p. 357.

26 . *Abu-Daud, Sulayman bin Asha'th, Al-Sunan*, Lahore, Islamic Academy, 1983, vol.2, p.169.

The Muslim Family Laws Ordinance 1961<sup>22</sup>. ---the current law enforced in the country--- has deep impact on the Pakistani social order. This law remains under constant criticism in the religious circles. However, if some partial amendments are made in this law, all circles may be satisfied. In section 2 of the Ordinance, an attempt has been made to infuse the spirit of verse 35 of the *Surah al-Nisa*. The object of the said verse is that where there is apprehension of any disorder between the relations of the spouses (*zaujain*) an arbiter from each side be appointed to consider reconciliation between the spouses (*zaujain*). In this provision of the Ordinance an arbitration council has been constituted to achieve this objective. The council consists of a representative each of the parties and a Chairman who is the Chairman of the union council or such person whom the Federal or the Provincial Government or any officer of such Government may delegate the powers of Chairman.

It has also been stated in this section that if any of the parties does not nominate its representatives within the prescribed period the council shall stand constituted. The important thing to be noted is that the addition of a Chairman in the constitution of the arbitration council is an addition over and above the *Qur'anic* injunction. Hence it is better if the arbitration council consists of only on a representative of each party to be appointed by the parties themselves. The Chairman should not be included in the constitution of the council. Rather, he should perform his function as that of a supervisor and shall not interfere in the function of the council.

Section 5 of the Ordinance relates to the *nikah* solemnized by a person other than the *nikah* Registrar. In this section it has been stated that the person who solemnizes the *nikah* shall be responsible to inform the *nikah* registrar of the particulars of the *nikah* and in case of violation he shall be liable to undergo three months simple imprisonment or pay a fine of one thousand rupees or both.

A basic fact about the *nikah* is that it takes place in presence of the witnesses after an offer and acceptance. After it, the descent (*nasab*) of the children and the inheritance in the estate stand proved. In Islamic family law system there is no concept of any such person who is to act as a professional *Nikah Khawan*. This function can be performed by the relatives and friends of the parties who abides by the law of *Shari`ah*. Thereafter it is the responsibility of the state to keep vigilance over the state of affairs of the citizens. Who contracted

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22 . Muslim Family Laws Ordinance (VIII of 1961) of July 15, 1961.

else. It is called valid retirement (*Khalwat Sahihah*). In such a circumstance other persons do not know about cohabitation. However, if the door is closed in such a manner that coming or going in the private room is possible then such a situation is not called Valid retirement (*Khalwat Sahihah*)<sup>20</sup>.

On valid retirement (*Khalwat Sahihah*), the payment of dower becomes obligatory upon the husband.

### **3. Dropping of Dower (*Suqut Mahr*)**

Dropping of dower means the appearance of such circumstances due to which the dower does not remain the right of the woman. Those are five situations, namely,-

- (1) Renunciation of faith of Islam by the woman.
- (2) Both the spouses (*zaujain*) become apostates.
- (3) Both the spouses (*zaujain*) were non Muslims. The husband embraced Islam. The wife did not do so. She shall lose her right to receive the dower.
- (4) Where a guardian (*wali*) had contracted the marriage (*nikah*) of a minor or mad male person and he on attainment of his age of puberty or becoming of sound mind person denounces the contract of marriage (*nikah*).
- (5) Where a guardian (*wali*) had contracted the marriage (*nikah*) of a minor or mad female person and she on attainment of her age of puberty or becoming of sound mind person denounces the contract of marriage (*nikah*)<sup>21</sup>.

### **5. Dropping of half of the amount of Dower (*Suqut Nisf mahr*)**

Where a wife is immediately after the contract of marriage (*nikah*) and without cohabitation is divorced, she becomes entitled to half of the settled dower.

In case the dower was not settled at the time of contract of marriage (*nikah*) and she was divorced without cohabitation, she becomes entitled to receive some benefit of graceful departure (*mut`ah*) which means a few garments, and a few articles of adornment according to the local custom and usage.

### **An over view of the family law in force**

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20 . Tanzil al Rahman, p.291-92 *ibid*.

21. Al Jaziri, p. 146-52, *ibid*.

## 2. Kinds of Dower (*Mahr*) with regard to the period

With regard to the period when the dower is to be paid by the husband to the wife there are two kinds of dower.

- (1) Prompt dower (*mahr mu`ajjal*): It is that dower regarding the payment of which parties have agreed that it shall be paid promptly.
- (2) Deferred dower (*mahr mu`ajjal*): It is that dower regarding which there had been agreement between the parties that it shall be paid after some period<sup>18</sup>.

## 3. Addition or reduction in the quantity of settled dower

Both the husband and the wife have the right to add or reduce the settled amount or quantity of dower by mutual consent. Where a husband intends to increase the amount agreed to by him to be paid as dower amount, he has the right to do so. Likewise, where a wife intends to reduce the amount payable to him as dower amount she has the right to do so. She has the right even to forego the whole quantity of her dower.

The Holy *Qur'an* says:

But if they, of their own good pleasure, remit any part of it to you take it and enjoy it with right good cheer.<sup>19</sup>

There are three circumstances which make the payment of dower obligatory:

- (1) When after entering into the contract of marriage (*nikah*) the spouses (*zaujain*) had cohabited it becomes obligatory upon the husband to make full payment of the dower amount.
- (2) When after entering into contract of marriage (*nikah*) the husband died. The widow shall get her dower amount before the distribution of the estate left behind by the deceased husband. It is not necessary that the spouses had cohabited before the death of the husband. To distribute the estate of the deceased husband before making payment of the dower debt to the widow is not permissible.
- (3) According to *Imam* Abu Hanifa and *Imam* Ahmad bin Hanbal, payment of dower become certain where the spouses (*zaujain*) had full privacy and isolation without any apprehension of arrival in their apartment of anyone

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18. Ibn Rushd, p.14-22, *ibid*.

19. Al-Quran 4:4.