

The Rights of the Muslim Women after Dissolution of Marriage in Dhaka: A Case Study

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Abstract: In our country family ties and happiness are very important. Our culture and tradition focus on strengthening family ties. Unfortunately, at present we are slowly moving away from the culture of continuing married life in our country. Under Muslim law, marriage is a civil contract and through this contract the couple takes an oath to have a beautiful family. Husbands and wives have no blood ties, yet their mutual trust, love and respect inspire them to have a nice family for the rest of their lives. Marriage is a sacred bond that lasts on the mutual trust of husband and wife. Divorce is permitted for very specific reasons, but it is discouraged, even in the Quran. Divorce cases are occurring frequently at present which is really incompatible with our culture. The number of divorces in our country is rising at an alarming rate specially in Dhaka city. At present most of divorce in Dhaka city are filed by women. After divorce women deprive to get their rights. The law has not secured a woman any financial security after divorce. Moreover, the lengthy legal process also makes it very difficult to get their post-divorce rights. The Muslim woman of Bangladesh have given lots of rights under a set of laws but social and traditional practices either causing barrier or discouraging them in enforcing their lawful rights. (Ahamuduzaman, 2014). This paper tries to examine existing laws regarding the rights of Muslim women after dissolution of marriage and comparing the laws and in its practice in Bangladesh.

Introduction

A marriage under Islamic law is a civil contract between a male and a female to create divine relationship not only for sexual intercourse or procreation of child but also to obey spiritual order. A family starts and grew up with a marital relationship between a male and female. A woman after marriage constitutes a new family with her husband. In most cases, it is the women who are suffer physical and mental abuse in the hands of their husbands and in-laws. Now-a-days many women are speaking up against the abuse and choosing to break out of their conjugal life. In previous time most of the women were entirely dependent maintaining a conjugal life, failure in providing subsistence, immoral practices, incurable diseases, physical assault on their husbands, they tolerated all kinds of abuse silently. But as women are becoming financially independent, they have both the confidence and the opportunity to get out of abusive marriage, even though divorce is still heavily frowned up in our society. The most common reasons behind decisions of separation and divorce stem from an inability to, dowry, premature marriage, infertility and polygamy. In consequences of divorce a bride has to return to her parental home which is not considered as respectable in the society of Bangladesh and the situation may be more difficult if parents are not alive or in poverty. Though divorce is a right of a man or a woman and he or she can legally terminate his or her conjugal life by divorce but in Bangladesh currently it has reached in such extreme level that it has become a matter of great concern. To some extent divorce relief, a man or a woman from endless sufferings but most of the cases it broken dreams, hopes and aspiration of a family, causes intolerable sufferings and push their

offspring future uncertainty According to the Bangladesh Bureau of Statistics (BBS), divorce application rate has increased by 34 per cent in the past seven years. A Muslim woman can claim different types of rights even after dissolution of marriage such as dower, maintenance, inheritance or safety and security in a family either as a wife or as a daughter or as a mother of her legitimate child under Shariah as well as statutory laws. Though the provisions have been inserted in our existing laws to get these rights after divorce but in reality, most of the cases divorced women deprived from getting these rights. This paper aims to find out how far the rights are being enjoyed by the divorced women in reality in our country.

Objectives

The general objective of the study is to find out the rights of the Muslim women after divorce under the existing laws of the land and to explore how far the rights are being enjoyed by the divorced women. To achieve the general objectives, the study will be conducted on the basis of some specific objectives.

The specific objectives of this research are as follows:

- To examine the laws relating to rights of the Muslim women after dissolution of marriage in Bangladesh.
- To evaluate the measure for enforcement of rights of divorced women and to find out the reasons of violation of the rights;
- To find out the actual scenario regarding the post-divorce rights of Muslim women.

Conceptual Framework

The term dissolution of marriage is very wide in its meaning and execution. A ‘talaq’ or ‘divorce’ under Muslim Law is pronouncement by husband to her wife that their marital relationship is over such as ‘I divorce you’. A ‘talaq’ must not be a mere declaration or pronouncement rather it must be a written notice preferably in prescribed form issued to the woman through the office of marriage registrar or advocate or notary public on behalf of the husband or by husband himself. A woman may divorce her husband if she is empowered under column -18 of the marriage (nikah) deed (kabinnama) known as ‘talaq-e-tawfid’. Even a ‘khula’ talaq may be held by consensus of the parties. If the woman is not empowered for ‘talaq-e-tawfid’, she may apply to the Family Court for dissolution of marriage under reasonable grounds. A right is a claim of some interests which has either legal or moral basis and is entitled by law and also protected by it. There are different types of rights belongs to a citizen provided by various laws of Bangladesh of which this article included rights of a Muslim woman to her family after divorce. A Muslim woman may claim maintenance, dower, inheritance and other property rights. She is authorized to divorce her husband and also to re-marriage according to her own choice after divorce or dissolution of marriage followed by the iddah period. A Muslim woman would never be excluded from her property rights as a wife or as a daughter or as a mother. She is entitled to receive maintenance from her husband. The other rights of a Muslim woman included guardianship and custody of the child, pension benefits, allowances, compensations etc, in different circumstances under different laws. This paper focuses on those rights of a woman to her family for her safety as well as social and economic security after dissolution of marriage. However, if dissolution of marriage is caused by death of husband, a woman shall be entitled to all the above rights including right to property.

Literature Review

Pervez Nadira Kazi (2011) in her thesis paper “Social Changes and Women-Initiated Divorce in Dhaka, Bangladesh: Gaining or Losing Power?” has explored the nature of women-initiated divorce in Dhaka, considering the social changes of Bangladesh. The study focuses particularly on the urban

middle-class women from the point of view of their own experience, their understanding of marital disruptions and the consequences of divorce on them. In her study she finds that women are faced by social exclusion and stigma, harassment in working place, difficulties in a second marriage, downswing changes in lifestyle in the face of social expectations, and psychological and physiological disturbance in post-divorce situations.

Shahid Ayesha (2013) in her paper “Post-Divorce Maintenance for Muslim Women in Pakistan and Bangladesh: A Comparative Perspective” discussed the potential of employing these to make the case for awarding post-divorce maintenance to Muslim women. She also mentioned the judicial response to post divorce maintenance in Bangladesh. However, in her paper she focused on the constitutional as well as legislative provision of Pakistan and Bangladesh in this regard.

Ahamuduzzaman (2014) in his article “Rights of a Muslim woman to her family after dissolution of marriage in Bangladesh” focused on all the relevant laws of Bangladesh on the subject in addition to a number of case references to identify rights of a Muslim woman after dissolution of her marriage. He also mentions in his paper that a Muslim woman can claim different types of rights through a valid marriage and even after dissolution of marriage such as dowry, maintenance, inheritance or safety and security in a family either as a wife or as a daughter or as a mother of her legitimate child under Shariah as well as statutory laws.

Pervin Dalia (2014) in her article “Post-Divorce Maintenance for Muslim Women: Which path to follow in Bangladesh?” has examined the present legal position and the questions raised with regard to post-divorce maintenance of Muslim women under the Shariah and practice in Bangladesh. In doing so, it tries to examine what existing legal and practical shields are available in the Muslim world considering the societal ramifications.

Ghose, (2018) in his paper that most of the applicants of divorce are women and the main causes of divorce by the wife are torture for dowry, extra marital relation of husband with other women or second marriage of husband, family conflict, drug addiction of husband and conflict with mother-in-law and the causes of divorce by the husband are illicit relation of wife with other men, avoid the commandment of husband and family conflict.

Present scenario and causes of Divorce

The incidence of divorce is increasing significantly in the Dhaka city as 50,000 divorce-seeking petitions were recorded at the Dhaka City Corporation's (DCC) marriage and divorce section. The rate of divorce has increased largely last year. During this time there were 39 divorces every day, i.e., one divorce every 37 minutes in the year of 2020. Divorce rates are highest among working husbands and wives. In the five months of this year 5970 divorces have been taken place in Dhaka. There is an average of 1194 divorces per month. Last year there was an average of 920 divorces per month. Divorce has increased by 29.78 percent in the first 5 months of this year. The incidence of divorce in 2019 has increased by 17 percent compared to 2018 (Hossain, 2018). There are many reasons behind high rate of increasing divorce in Dhaka City. Now-a-days women are too conscious about their position which causes the conflict of personality between husband and wife accelerates divorce. Day by day Mutual respect, trust, and love between husband and wife are disappearing which is the main causes for divorce. Moreover Lack of tolerance in conjugal life is taking an acute shape, bad temper, suspicion, self-ego, indifference, impatience are the reasons for breaking up the family. Besides the negative effects of TV serials, Facebook, and social media are considered to be the cause of breaking-up of family. On the other hand women are not willing to remain in an unhappy marriage where the husband is constantly suspicious of the wife for extramarital relations or is physically torturing or mentally abusing the wife for dowry and not giving proper maintenance .

Rights of dower after divorce

Dower is a sum or property that a Muslim woman is entitled to get from her husband on marriage. The dower is connected with marriage, not with divorce, and under Muslim law a marriage is not valid without dower. Unfortunately, most of the cases the dower is not paid out during the marriage. The Muslim Personal Law (Shariat) Application Act 1937 in section 2 states that dower including other personal law issues like marriage, dissolution of marriage, guardianship, gifts, trusts, wakfs etc) shall be applicable for muslim. Therefore we don't have any statutory law on dower. On the other hand 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 under section 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. Claim for dower is within the exclusive jurisdiction of family court under section 5 of Family Court Ordinance 1985. After divorce, if the husband does not pay the dower, the wife has to file a suit before the court to claim the dower within three years after the divorce which is a very lengthy process and also very complex. So most of the women and their families don't want to file any suit for the recovery of dower because of various reasons. Thus the dower remains unpaid in almost every cases of divorce by the wife. It was found in a study of the metropolitan city of Dhaka that 88% of Muslim wives did not receive any dower at all. Moreover, the lengthy legal process also makes it very difficult to recover this nominal dower money and maintenance.

Maintenance right after dissolution of marriage

A divorced Muslim woman is entitled to maintenance till the period of iddat and no further maintenance afterward. Iddat is the period of time that a woman must wait to remarry as a consequence of nullification of her marriage with her husband because of divorce. As such, Muslim law recognizes wives' rights to get maintenance during the continuation of marriage, but upon dissolution of marriage, maintenance is provided for only 90 days (Iddat) from the date of official notice! On the other hand, if the wife is pregnant at the time of divorce, she is entitled to maintenance until the birth of the child. Most of divorced women didn't get maintenance because of long term legal process and they are not financially solvent to run the case in the court. When a poor woman seeks to secure her maintenance through the courts, usually through legal aid, she may struggle to maintain herself. The Court does not grant interim maintenance orders as a result they have to face months and years pursuing minor claims. The right to post-divorce maintenance (maa'ta) beyond the iddat period is an important and helpful provision, which provides security to a divorced woman. But Hedaya and Fatawa-i-Alamgiri, the two authoritative texts based on the Hanafi School of law, allow the payment of maintenance only up to iddat period. The Hanafi School is applicable in our country. As a result, the judiciary does not allow reasonable maintenance after the completion of iddat period. In the absence of such legal provision, a divorced woman suffers from lack of financial support as during the post-divorce period, woman faces a critical situation after the separation from wedlock on the happening of denial of the right to maintenance and granting post-divorce maintenance only for a shorter period and not beyond the iddat period. Post-divorce maintenance or support may also work

as a valuable, alternative and effective tool for the empowerment of Muslim women in Bangladesh (Alam & Islam, 2015).

Custody and guardianship Right after divorce

According to Family Courts Ordinance, 1985 and Guardians and Wards Act, (GWA) 1890 while dealing with cases related to custody and guardianship of children. As per the legal provisions of law, a father is the legal and natural guardian of the children until they attain the age of majority under the general law of the land, namely the Majority Act 1875. But the mother has the right of custody up to the age of seven years in case of a male child, and up to the age of puberty in case of a female child. Various precedents have also been developed in this connection by the decisions of the higher courts; and the gist of such decisions is that the family court's power to determine the entitlement of a party to the custody of a child is not limited to mere observance of the 'age rule', the paramount consideration is to be the concept of the welfare and best interest of the minor child. Thus, deviation from the literal application of the age rule is permissible where a child's welfare is in question. Under Islamic law, even if the mother has the physical custody of her children, father continues to be the guardian of the child as he is supposed to support the child financially. The courts in our jurisdiction have been taken decision considering the need and welfare of the children or applying the best interest principle which changes in stance is very much possible and expected as well.

Conclusion and Recommendations

In our country Divorce rate was more among illiterate and poor but recently it is increasing among all section of the people of the country. The incidence of divorce is increasing significantly in our country especially Dhaka District. After divorce women faced difficulties mentally and physically and they feel unsecured financially. Though the provisions are existed in our laws to protect and claim their post-divorce rights most of the cases they are deprived to get their post-divorce rights. There are some recommendations as below:

- a) Laws on restitution of conjugal rights should be amended.
- b) Create greater awareness among women about rights during and after dissolution marriage by disseminating information through press, electronic and social media.
- c) Ensure women and girls married under Muslim law learn about the different clauses of the kabin-nama, and how women can negotiate these at the time of marriage.
- d) Create public awareness in simple language and accessible formats on social safety nets and benefits for women facing separation or divorce.
- e) Speedy trial or summary trial are needed for ensuring women right.
- f) Providing legal Aid for poor and vulnerable divorced women to conduct the cases.
- g) Financial support may be given to woman throughout course of divorce proceeding or for certain period for their rehabilitation by NGO, s as well as Government.

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