

Right to Maintenance under different Family Laws in Bangladesh: A Study of Socio Legal Impediments

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Abstract: Bangladesh is a country where people belonging to different religion are lived and different family laws are applicable for each religious people regarding their family matters. In each and every family law maintenance means that type of expenses which is required for ensuring some fundamental needs as well as the mental and physical well-being of a person. Providing maintenance is an obligation which arises out of some relationships and in some other cases for having means. Out of marriage and other relationship law creates some rights in getting maintenance and also some obligations in providing maintenance. But the trends of providing maintenance are not optimal. Lots of impediments are working behind this. This paper is an attempt to analyze the right to maintenance under different family laws as applied in Bangladesh and to find out the socio- legal hindrance of getting this right to maintenance adequately and equitably.

1. Introduction

Maintenance is an immensely significant issue in Bangladesh. The concept of Maintenance in Muslim law was introduced to provide support to those people who are not capable to maintain themselves. Maintenance includes food, clothing, lodging and the expenses required for ensuring the mental and physical well-being of a dependant that suit his/ her social status (Chowdhury, 2014). The maintenance basically deals with some rights in favour of some persons which correspond with some duties attributed to others (Akter and others, 2015). The obligation of such maintenance is created out of the marital status, relationship and wealth. Since the beginning of the modern era, most of the traditional norms, customs and practices have been modified and supplemented into statutory laws. Hence, the law of maintenance in Bangladesh is combination of codified law, local traditions and traditional Muslim Law (Akter and others, 2015). The factors of determining the amount of maintenance depends on the different circumstances under different schools of Muslim law. Maintenance is one of the basic rights which the Islamic laws have provided for the Muslim women (Ferdous, 2017). Here, maintenance of wife and children are the liability of a father. And the liability of a son to maintain his parents and grandparents were religious the liability. Though from 2013 it is not only the religious obligation rather; it is now the statutory obligation of a child to maintain their parents under the Parents Maintenance Act, 2013. The main purpose of the Act is to make the child liable to maintain their parents at their old age and at the time when they need most. The concept of this paper is to assess the existing laws and practices regarding maintenance and whether the dependants are getting remedy by exercising their rights.

2. Conceptual Framework

A woman, in all religions possesses a discriminatory status in case of getting rights comparing to her male counterpart. It is the opinion of the Islamic scholars that Islam has provided lots of rights like dower, maintenance, right to property etc. to the women but in most of the cases those rights are being enjoyed by the women subject to the practices and customs of the male dominating society. Maintenance is one of the important rights of the women. Getting right to maintenance by the women in different family laws are not satisfactory. Though Law has provided the provision that women under

any situation will get their maintenance even if they are capable enough to maintain themselves, the practical approach of providing maintenance is needs to be changed. As, the women in Bangladesh are still unprivileged in getting their right to maintenance. Lack of legal awareness, unwillingness in filling suits are putting them in such a vulnerable situation. Moreover, local customs, patriarchal societal pattern, family traditions are the impediments getting maintenance by the women in Bangladesh. most of them are not getting maintenance properly in existing their conjugal life and also after the dissolution of their marriage by talaq.

3. Maintenance under Muslim law

3.1 Maintenance of the wife under Muslim Law

It is the obligation of the husband to maintain his wife out of the marital relationship. A wife is entitled to maintenance from her husband during the subsistence of marriage moreover after the dissolution of marriage. A wife's right to be maintained by her husband gets priority over the rights of maintenance of all other persons.(Zahid Ahmed,2017).

During the subsistence of marriage: Under the Sharia law, the right to maintenance impose obligation to the husband by following the different verses from the holy Quran. The rights and the obligations of a husband in Bangladesh has become a statutory shape. Maintenance of a wife is legal obligation of a husband during the subsistence of marriage. The husband is bound to maintain his wife so long as she is faithful to him and obey his reliable orders. Law impose an obligation to the husband to maintain his wife though she is capable of maintain herself.

Section 9 of the Muslim Family Laws Ordinance, 1961, has imposed the liability of a husband to maintain his wife or wives adequately. The law also provided the right to the wife to apply to the chairman for her maintenance if unpaid or inadequate by the husband.

Islamic law grants a Muslim wife's right to maintenance from her husband not only during the subsistence of marriage but also reasonably after the dissolution of marriage during the iddat period. In the case of *Hefzur Rahman vs Shamsun Nahar Begum*, 51 DLR, (AD), 1999, it has been pointed out that Muslim woman is entitled to get maintenance during the iddat period, or in case of pregnancy, during the pregnancy.

The economic solvency of the wife is not a barrier in getting maintenance. The wife will be entitled to maintenance until and unless she loses her right to maintenance as provided by law.

However, if we talk about the scale of maintenance, it will depend on individual fact. The amount will be fixed on the basis of economic condition of husband and social status of wife (Masum, 2022)

3.2 Maintenance of the Children under Muslim Law

A child during the subsistence of marriage is legitimate child and so he/she is the responsibility of a father. Thus a father is bound to maintain his son until they have attained the age of puberty and liability to maintain his daughter until they are married. He is also responsible for the upkeep of his widowed or divorced daughter, or a child in the custody of the mother (Akter and others, 2015). Law does not remit the obligation of a father from maintenance if the child remains in the custody of a mother except on the ground where the child stays away from his or her father without reasonable cause, and the father has failed to have their custody after trying heart fully. In that case the child will not be entitled to maintenance from his or her father. Law sometimes has imposed the moral obligation towards a mother where the father is insolvent and poor and incapable of maintaining his child. The father is however, not absolved from his obligation.

3.3 Maintenance of the Parents under the Parents Maintenance Act

Before the enactment of the Act, the maintenance of the parents was the religious obligation of a child. Where most of the cases the parents were deprived and were possessed a distressed life. To consider the situation the maintenance of the parents have been made statutory obligation.

4. Maintenance under Hindu Law

4.1 Maintenance of wife under Hindu Law

A Hindu woman enjoys more rights than Muslim women. As per Section 18(1) of Hindu Adoption and Maintenance Act, 1956 the Hindu wife is entitled to get the maintenance amount from her husband until she dies or he dies. A married woman who refuses to live with her husband because her husband

is liable for desertion or liable for cruelty or is suffering from leprosy or liable for bigamy or convert his religion without the consent of the wife can claim a special allowance under this Act.

4.2 Maintenance of the Child

A Hindu is bound to maintain his minor son during his lifetime whether legitimate or illegitimate. But he is under no obligation to maintain his adult son. Every Hindu father is bound to maintain his daughter until she is married. On the death of the father, the daughters are entitled to maintain from the estate of the deceased.

4.3 Maintenance of the Aged Parents

The liability to maintain the parents is clear both in *shastric* Hindu law and also the decided cases. So a person is personally bound to maintain his aged father and mother.

4.4 Maintenance of Daughter-in-law

A Hindu wife, whether married before or after the commencement of this Act, shall be entitled to be maintained after the death of her husband by her father-in-law. Provided and to the extent that she is unable to maintain herself out of her own earnings or other property or, where she has no property of her own, is unable to obtain maintenance.

4.5 Hindu Women's Right to Separate Residence and Maintenance Act, 1946

In Bangladesh, Hindu women are not permitted to get divorce from husband though the other Hindu women of Dayabagha schools are enjoying such rights other than Bangladesh. Hindu women of Bangladesh can seek separate residence and maintenance from her husband under Hindu Married Women's Right to Separate Residence and Maintenance Act, 1946 with some grounds and prohibitions specified by the said Act. on the basis of any justifiable grounds filed by the Hindu women, the court may ascertain the amount of maintenance for a wife considering the status of the parties and also the capacity of the husband.

5. Maintenance under Christian Law

In Bangladesh, a small number of populations i.e. 0.4% of the total population are Christian (Census, 2011). Among them most of them are Catholic and the laws which is applicable to them is the —Code of Cannon Law. A Christian wife in Bangladesh may apply to the court for her alimony and the District court, in this regard, has to satisfy that the wife has no sufficient for the support and necessary expenses of the proceedings (Rayhan, 2021). According to section 37 of the Cannon Law, the wife is entitled to get alimony from husband after dissolution of marriage. The court may direct the amount and modes of payment of such alimony or maintenance.

6. Enforcement of the Right to Maintenance

Maintenance is one of the subject matter of the Family Court as per the provisions of the Family Court Ordinance, 1985. It is one of the important subject matters which are tried by the family court as of their jurisdiction. Maintenance was the subject matter of the First Class Magistrate Court before introducing the Family Court Ordinance, 1985. A wife, children can claim maintenance in the Family Court to establish their right to maintenance. And after the enactment of the Parents Maintenance Act, 2013, the Parents can file suit for their maintenance to the Judicial Magistrate of the 1st Class or the Metropolitan Magistrate Court. In the case of maintenance filed by the parents, the court can send the case or the matter to the Chairman or the member of the Union Parishad, or Mayor or the councilor of the City Corporation or any other competent person to solve the matter.

7. Impediments in getting Maintenance

Though the provisions of maintenance have been inserted in the different family laws but the reality of getting the maintenance is not satisfactory because of social impediments, cultural pattern and legal barriers. In that case patriarchal social system can be pointed out as a social hinder in getting maintenance by a woman. Usually our traditional cultural pattern is very reluctant to provide maintenance for a woman. It is usually seen that when the husband keeps more than one wife and not provided them proper maintenance equally or when the suit related to maintenance is filed after the dissolution of marriage between the wedlock then the complaint of adequate maintenance is evolved.

In Bangladesh the impediments of getting maintenance is not always social rather legal impediments is also a major factor in case of getting maintenance. As stated earlier that though the law provides a specific right to a wife to file a complaint to the Chairman/Mayor for her adequate and equal maintenance but the reality is that most of the women specially the village women and also the illiterate women have lack of legal knowledge and awareness regarding this sort of rights. When the husband is reluctant to comply with the decision of the Chairman as well as the Arbitration Council, the wife is seldom seen to take the legal steps because of unawareness of legal process and some of complainants try to avoid the court procedure for taking legal steps for the time consuming existing judicial system.

8. Concluding Remarks

In all the family laws maintenance of a wife is a legal obligation of the husband that that a husband would maintain his wife throughout her life even if the wife lives separately with some reasonable grounds, she is entitled to be maintained by her husband. Wife's right to get maintenance is a legal effect of every marriage. The wife can claim maintenance from her husband as of right. In case of violation of such right, a wife is entitled to file a complaint to the Chairman of Union Parishad or Mayor of a City Corporation or can file a suit for her maintenance in a family court under the Family Courts Ordinance, 1985. Though the law has provided the rights for women but the reality of getting maintenance is not satisfactory which is discussed in this paper. Some recommendations may be adopted. In this regard, social awareness may be built to remove the negative attitude towards women. Legal training may be initiated for increasing the awareness regarding right to maintenance and legal steps/ procedures at community level. Non-Government Organizations can play a vital role. They can provide training, create awareness, and provide legal support for those who are disenfranchised people. Besides Non- Government Organizations, Government may take initiative to reduce the back log of cases, make awareness about Legal Aid services so that the women of all strata can take the privileges and can be aware about their legal rights.

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