

Chapter 1

INTRODUCTION

Women's rights are human rights and must not be jeopardized or destroyed for the sake of any so called religious orthodoxy or in the name of secularism. We are observing with deep concern that in the name of emancipation of women Western world is practically degrading the dignity and status of women and taking away their inherent rights. At the same time we see a conspiracy and propaganda against Islam that women's rights are derogated by a particular Quranic verse. The simplest definition of right is an interest recognized and protected by a rule of right.¹ How women's interests have been protected by Islam would be discussed briefly and how the verse of Holy Quran² is being misinterpreted by a vested interested quarter will also be dealt with. Establishment of a society where men and women can play their respective roles and perform the obligations which ought to be performed by them in order to maintain peace and harmony in the society is very important. A respectful position should be ensured for women in the society where their rights should be equally respectful to the rights of men. Women and men should not be seen as two opposite groups whose interests and rights are conflicting with each other. Rather their rights and interests should be corollary to each other and both of men and women should be seen as substitute and associates to each other for the development of humankind.³

¹ Hamiduddin Khan, *Jurisprudence and Comparative Legal Theory*, 1st ed., (Published by the Book Fair, Bangladesh, 1998) p. 145.

² Sura An nisa: 34.

³ Md. Mahboob Murshed, *Women's Rights at the Cross Road: Between Ultra-Secularism and Religious Orthodoxy*, *Women Rights in Islam*, Edited by: Dr. Maimul Ahsan Khan, (The Nahar Light Foundation Publisher, 2002) p.53-54.

1.1 Literal Explanation of an Isolated Verse of Holy Quran

Literal explanation of any isolated Quranic verse cannot fully comprehend all the heights and lengths of women's dignity given by the Almighty Allah. Allah says: "And among His Signs is this, that He created for you mates from among yourselves, that you may dwell in tranquility with them, and He has put love verily in that are Signs for those who reflects."⁴

This shows the necessity of women for peaceful dwelling of human kind and recognizes women as equal partner of men. The Quran urges husband to treat their wives with kindness.

Almighty Allah says:

"Live with them on a footing of kindness and equity. If you take a dislike to them it may be that you dislike a thing, and Allah brings about through it a great deal of good." (An-Nisa': 21)⁵

1.2 Prophet's Example

Prophet Muhammad. (P) Said:

"The best of you is the best to his family and I am the best among you to my family. The most perfect believers are the best in conduct and best of you are those who are best to their wives." (Ibn-Hanbal, No.7396)

Before the advent of Islam women were often treated worse than animals. The Prophet wanted to put a stop to all cruelties to women. He preached kindness towards them. He told the Muslims: "Fear God in displeased with one bad quality in her, let him be pleased with one that respect of women." And: "The best of you are they who behave best to their wives." And: "A Muslim must not hate his wife,

⁴ Sura Ar-rum: 21.

⁵ www.muslimsdirectory.com, last visited on 10-01-2010.

and if he be is good.” And: “The more civil and kind a Muslim is to his wife, the more perfect in faith he is.”⁶

1.3 Women’s Rights in National Context

Bangladesh is a country where more than ninety percent of its population is Muslim And constitutionally the State Religion is Islam. Though the municipal law is largely based on common law but the personal law of Muslims is guided by Sharia Law i.e. Islamic Law. The Muslim Family Laws Ordinance, 1961 brought remarkable changes in the application of Muslim Family Law particularly in succession, polygamy, talaq (divorce), maintenance and dower.⁷ On question of divorce it followed the principle propogated in the verse 35 of sura An Nisa in the holy Quran. It introduced the Arbitration Council for enforcement of divorce. This ordinance played a vital role in upholding the legal rights of women in Bangladesh and thus directly contributed in women emancipation. Another remarkable piece of legislation is the Dissolution of Muslim Marriages Act, 1939 (Act 8 of 1939). This Ordinance determined the cruelty of husband to a wife in the following manner:

“That the husband treats her with cruelty, that is to say:

- (a) habitually assaults her or makes her life miserable by cruelty of conduct even if such conduct does not amount to physical ill treatment, or
- (b) associates with women of evil repute or leads an infamous life, or
- (c) attempts to force her to lead an immoral life, or
- (d) disposes of her property or prevents her exercising her legal rights over it, or
- (e) obstructs her in the observance of her religious profession or practice, or
- (f) if he has more wives than one, does not treat her equitably in accordance with the injunctions of the Quran.”

⁶ *Women in the Qur’an and the Sunnah* by Dr. Abdur Rahman I.Doi, Professor and Director, Center for Islamic Legal Studies, Ahmadu Bello University, Zaria, Nigeria.

⁷ Came into force on 15th July 1961, by notification dated 12th July 1961.

Thus this legislation covers almost all the aspects of mental, physical and financial atrocities that a man can commit on a woman.

Another remarkable national legislation is the Prevention of Repression on Women and Children Act, 2000 (Act 8 of 2000) which is applicable to irrespective of any religion to all women and children. It provided for capital punishment for committing certain oppressions on women e.g. murder, rape, kidnapping and trafficking etc. It also provided for different period of imprisonments for provoking women in committing suicide, sexual abuse etc.

Recently the Government of Bangladesh declared the Women Policy, 2008 which triggered a violent protest of the orthodox religious scholars and fundamentalist Islamic Political Parties. The policy was formulated from the ultra secularist's view and it suggested some conflicting provisions with Quran and Sunnah. For example it provided for making legal provision to make the equal share of woman and man in case of inheritance.

The western world is now trying to rehabilitate and reconcile the institution of family at any cost. But if we accept the view of ultra secularists in Bangladesh in that case we would take the risk to destroy our family institution and on the other hand by following the religious orthodox views if we can maintain and preserve the family institution in Bangladesh would be much better for the society and humankind.

Chapter 2

SUCCESSION AND RIGHT TO PROPERTY

2.1 Right to Property According to Muslim Law

Muslim law of inheritance has two distinct elements, namely, the customs of ancient Arabia and the rules laid down by the Quran and prophet Mohammad. Under the customary law of pre-Islamic Arabia the women in whatever capacity were excluded from inheritance. The Quran made quite a considerable change of the position. According to the Muslim Law there are three kinds of heirs (i) "sharers" who are entitled to a prescribed share of the inheritance, (ii) "residuaries" who take on prescribed share, but succeed to the residue left after satisfying the claims of the sharers, and (iii) "distant kindreds" who are blood relations other than the sharers and residuaries, and succeed generally in the absence of sharers and residuaries. In the classification of the heirs, it is important to note that though the son's son and son's daughter have been made residuary and sharer respectively, daughter's children have been made distant kindreds.⁸ The principles of succession among the sharers and reliquaries are two-fold, i.e. the nearest in blood relationship excluded the remote one and ii. Whoever is related to the deceased through any person shall not inherit while the person is living.⁹ Under the Muslim Law, the wife (or wives taken together) gets one-eighth if there is child, and one fourth if there be no child from the estate of her husband, though the husband gets exactly double.

⁸ *Women's Legal Status in Bangladesh* by Sufia Ahmed and Jahanara Choudhry, published in Situation of Women in Bangladesh, Women for Women 1979. P.295

⁹ D.F. Mulla, *Principles of Mohammedan Law*, 17th ed. (M.M. Tripathi (Private Ltd) Bombay 1972) P70.

Mother gets from the estate of her sons one-sixth when there is child of her son or when there are two or more brothers or sisters or one brother and one sister of her son, and one third when there is no child and not more than one brother or sister of her son. On the other hand, the father gets from the estate of his son one-sixth if there be child of his son and in the absence of any child of his son; he gets the entire residue after satisfying other sharers claim, and so on and so forth.¹⁰ It is significant that the Quran has provided that daughter, mother and wife would under all circumstances be entitled to some share in the inheritance and are not liable to exclusion from inheritance, but they are not treated at par with their male counterparts, i.e. son, father and husband and to this extent rule of inheritance are discriminatory. Women in fact were not given parity in the matter of their shares and as a general rule; the female is given one-half the share of the male. Salma Sobhan writes, since "the Koran is to be likened to an "amending act" rather an exhaustive code... in the changed society there is little reason to perpetuate this distinction."¹¹ The case of sister's inheritance is equally discriminatory.

According to the rule of nearer in relationship excluding the remoter in relationship, children of a pre-deceased son or daughter would not inherit if a person died leaving another son. This often rendered the child or child of pre-deceased child destitute. This inequity, however, has been removed by Muslim Family Laws ordinance, 1961¹² which provides that the children of the pre-deceased child would inherit the share which the pre-deceased children would have inherited had he or she been alive. But the widow of a predeceased son remains as helpless as before as she does not inherit anything of this ordinance.

¹⁰ *Ibid.* P.72.

¹¹ Salma Sobhan - *Legal Status of Woman in Bangladesh*. p. 31.

¹² An ordinance to give effect to certain recommendations of the Commission on Marriage and Family Laws dealing with succession, registration of marriage, polygamy, divorce, maintenance, dower, etc.

2.2 Economic Rights of Women in Islam

In Islam women enjoy several economic rights:

1. Before marriage any gift given to women is her own and her husband has no legal right to claim on it even after marriage.
2. On marriage she is entitled to receive a marriage gift (Mahr) and this is her own property.
3. Even if the wife is rich, she is not required to spend a single penny for household; the full responsibility for her food, clothing, housing, medication and recreation etc. are her husband's.
4. Any income the wife earns through investment or working is entirely her own.
5. In case of divorce, if any deferred part of the Mahr is left unpaid, it becomes due immediately.
6. The divorcee woman is entitled to get maintenance from husband during her waiting period (iddat).¹³

2.3 Reasons for Half Share for Females

Women in Islam receive assets mainly from three sources: inheritance, Mahr and maintenance. On the other hand male receives double on first source inheritance but they need to give Mahr to wives and maintenance to wives and other dependants. A bridegroom must provide his bride with a marriage gift. This gift is considered her property and neither the groom nor the bride's family have any share in or control over it and remains so even if she is later divorced. The bride is under no obligation to present any gifts to her groom. This symbolizes an assurance of economic security from the husband towards wife.¹⁴ "And give the women (on marriage) their dower as a free gift; but if they, Of their own good pleasure, remit any part of it to you, take and enjoy it with right good cheer".¹⁵

¹³ Dr. Jamal Badawi, *Islami Shikkha Series*, Dhaka: (Bangladesh Institute of Islamic Thought, 2006), p. 317, 318.

¹⁴ Abdel-Haleem Shuqqa, *Abu. Tahreer al Mar'aa fi Asr al Risala*, (Kuwait: Dra al Qalam, 1990), pp. 109-112.

¹⁵ Al Qur'an, Sura 4: Verse 4.

Moreover, the wife's property and earnings are under her full control and for her use alone since her,¹⁶ and no matter how rich the wife might be, she is not obliged to act as a co-provider for the family unless she herself voluntarily chooses to do so.¹⁷ Women are financially secure and provided for. If she is a wife, her husband is the provider; if she is a mother, it is the son; if she is a daughter; it is the father; if she is a sister, it is the brother, and so on. In this circumstances if we deprive the female completely from inheritance, it would be unjust to her because she is related to the deceased. Likewise, if we always give her a share equal to the man's, it would be unjust to him. So, instead of doing injustice to either side, Islam gives the man a larger portion of the inherited property to help him to meet his family needs and social responsibilities. At the same time, Islam has not forgotten her altogether, but has given her a portion to satisfy her very personal needs.¹⁸

2.4 Half in Inheritance does not Mean Half in Status

Sometimes it has been claimed that half in inheritance indicates inferior status of women in Islam. We should keep in mind that is Islam asset or money is not the standard of status.¹⁹ Her share in most cases is one-half the man's share, with no implication that she is worth half a man. This variation in inheritance rights is only consistent with the variation in financial responsibilities of man and woman according to the Islamic Law.²⁰ The attitude of the Qur'an and the early Muslims bear witness to the fact that woman is, at least, as vital to life as man himself, and that she is not inferior to him nor is she one of the lower species. The status of

¹⁶ Shah Abdul Hannan, *Social Laws of Islam*, (Dhaka: Bangladesh Institute of Islamic Thought, 1995) p. 318.

¹⁷ Dr. Jamal Badawi, *Islami Shikkha Series*, (Dhaka: Bangladesh Institute of Islamic Thought, 2006), p. 317, 318.

¹⁸ <http://www.jannah.org/sister/statuswomen.html>, Abdul-Ati, Hammuda. The Status of Women in Islam, Last visited: 05-01-2010.

¹⁹ Moulana Fazlur Rahman Ashrafi, *Rights of Women in Islamic Inheritance and Farayez*, (Dhaka, RIS Publication, 1995), p.28.

²⁰ Dr. M. Ershadul Bari, *Human Rights in Islam with Special References to Women's Rights*, (The Dhaka University Studies, Part-F, Vol. V, no.1, 1994), P.19.

woman was taken for granted to be equal to that of man.²¹ The fact that Islam gives her equal rights but not identical shows that it takes her into due consideration, acknowledges her, and recognizes her independent personality.

Bangladesh National Woman Lawyers' Association (BNWLA) has been fighting to ensure equal opportunities and equal rights for every woman and child in the country for last 29 years. BNWLA promotes the rights and status of women lawyers alongside fighting for access to justice for all women & children particularly for the most disadvantaged women and children in Bangladesh. The programs and service provisions of BNWLA are particularly targeted at the poorest and most disadvantaged areas of the country where comprehensive legal service delivery program along with others preventive and protective supports in establishing human rights and resisting violence against woman and child is most needed.

2.4.1 The Objectives of BNWLA²²

With a slogan of “Helping to balance scales” and a mission to “Enable women to become self-reliant, conscious of their rights and productive members of society founded on justice,” BNWLA is committed to achieve the following objectives:

- Organize women to develop their status in the community.
- Improve women's and children's domestic, social, legal and economic status.
- Provide justice for all and combat violence against women and children.
- Create equal opportunities and equal rights for every woman and child in Bangladesh
- Establish linkage and network with law enforcing authorities, local people, local elected bodies and civil society as well as other organizations working for the rights of women and children.
- Promote women lawyers of Bangladesh to enhance their scope of profession in the society.

²¹ Shah Abdul Hannan, *Nari O bastobata*, (Dhaka: Adorn Publication, 2002), p.16.

²² Bangladesh National Woman Lawyers' Association.

- Adopt measures to remove all forms of discrimination and harassment against women.

2.4.2 Vision of BNWLA

To improve the legal, social and economic rights of women and children thereby establish rule of law and gender equality.

2.4.3 Missions of BNWLA

- To ensure access to justice
- To ensure rights of women and children
- To ensure access to justice and establish rights of women and children by reducing violence and inequality.²³

Islam grants woman equal rights to contract, to enterprise, to earn and possess independently.²⁴ Her life, her property, her honor are as sacred as those of man. If she commits any offense, her penalty is no less or more than of man's in a similar case. If she is wronged or harmed, she gets due compensations equal to what a man in her position would get (2:178; 4:92-93).²⁵

²³ <http://www.bnwla.org.bd/> last visited: 13-01-2010.

²⁴ Muhammad Abdur Raheem, *Naree*, (Dhaka: Shindabad Prokashoni, 1997), p.35.

²⁵ "O you who have attained to faith! Just retribution is ordained for you in cases of killing: the free for the free and the slave for the slave, and the women for the women." (Al Baqara 178)

Chapter 3

WOMEN'S RIGHT TO DISSOLUTION OF MARRIAGE

Dissolution of marriage is a very serious affair. It is an encroachment on the sacred matrimonial rights. Matrimony is so sacred a right that it can bring two unknown persons closest to each other. Our Prophet (Sm.) said: "When a person divorces, the Arsh of Allah (SWT) shakes and trembles".²⁶ Like polygamy it is also not prohibited. In fact, scope of complete prohibition of anything in the Holy Qur'an is very little. The societies prohibiting polygamy and divorce take the risk of allowing them informally. Islam being a practical religion desires to regulate them under all circumstances.²⁷

3.1 Pre-Islamic Concept

In pre-Islamic Arabian society, divorced was considered as the absolute, unlimited and unilateral right of the husband. A husband could divorce his wife at any time, for any reason or without any reason. He could also revoke his divorce and divorce again as many times as he preferred. He could, moreover, if he is so inclined swear that he would have non intercourse with his wife, though still living with her. The husband could arbitrarily accuse his wife of adultery, dismiss her, and leave her with such notoriety, as would other suitors.²⁸

The Prophet Muhammad (Sm.) looked upon these customs of divorce with extreme disapproval and regarded their practice as calculated to undermine the foundation of society. It was impossible, however, under the existing conditions of society to abolish the custom entirely.

²⁶ A.Z.M. Shamsul Alam, *Family Values*, (Dhaka, 1995), p.180.

²⁷ Dr. Md. Maimul Ahsan Khan, 'Women's Rights in Islam', *Gender in Law*, (Dhaka, 1998), p.121.

²⁸ Ibrahim Bbdel Hamid, *Dissolution of Marriage in Islam Quarterly*, (Lucknow, 1996), p.97.

Accordingly, he allowed the exercise of the power of divorce to husband under certain conditions. He permitted to the divorced parties three distinct and separate periods within which they might endeavor to become reconciled; but should all attempts at reconciliation prove unsuccessful, and then in the third period, the final separation become effective.²⁹

3.2 Dissolution of Marriage

In the Islamic Shariah, Muslim marriages may be dissolved either by the death of parties or by the acts of the parties. Under the heading by the acts of parties, the husband as well as wife has the right to dissolve the marriage. Modern jurists contented that the concept of divorce as a ‘unilateral act of the husbands’ is due to the influence of Hebraic laws,³⁰ the laws of Manu and, to a great extent, the matrimonial laws of pre-Islamic Arabia.³¹

Moreover, modern jurists contented that the husband cannot exercise the power of *Talaq* arbitrarily, irrationally or unreasonably. While the Holy Qur’an recognizes the right to divorce, it recognizes *Talaq* with numerous injunctions to observe justice and fair play, generosity and kindness.

Thus The Holy Qur’an says:

The divorce is twice, after that, either you retain her on reasonable terms or release her with kindness.....³²

In a Hadith, Rasulullah (Sm.) said:

“With Allah, the most detestable of all things permitted is divorce.”

In the case of *Yusuf vs. Sowramma*³³, it was observed that it is popular fallacy that a Muslim male enjoys under the Qur’anic law, unbridled authority to liquidate the marriage

²⁹ Syed Ammer Ali, *The Spirit of Islam*, (London, 1965), pp.243-244. *Ibid*, p. 432.

³⁰ M.R. Zafar, *Unilateral Divorce in Muslim Personal Law*, in Tahir Mahmood (ed.) *Islamic Law*.

³¹ *Modern India*, Bombay, 1972, p. 168.

³² Al Qur’an: 4:19.

....The view that Muslim husband enjoys an arbitrary, unilateral power to inflict divorce does not accord with Islamic injunctions. However, Muslim Law, as applied in India has taken a course contrary to the spirit of what the Prophet (Sm.) or the Holy Qur'an laid down and the misconception vitiates the law dealing with wife's right to divorce.

A Muslim wife has also the right to dissolve the marriage (though it is considered as the exclusive of a Muslim husband) under the provision of *Talaq-E-Tawfid*. Besides this, the wife can exercise the power to dissolve the marriage under the provisions of *Khula, Mubarah, Lian and Faskh*.

3.2.1 Talak-E-Tawfid

The husband may delegate the power of divorce to his wife. He may do so at the time of marriage contract or at anytime when he so like. This is called Talaq-E-Tawfid.

“As man may in person repudiate his wife, so he may commit the power of repudiating her to herself or to a third party.”³⁴ This doctrine is peculiar to the Muslim Law and has no parallel in other legal system.

In the case of *Akhlima Khatun vs. Mohibur Rahman and Others*³⁵, the kabinnama gave the wife the right to dissolve the marriage if prompt dower was not paid. The wife pronounced divorce after her demand was not met. It was held that such pronouncement was not against public policy and the principles of Muhammadan Law. Therefore the wife can use her delegated power to divorce on the failure of her husband to pay prompt dower if it is so stipulated.

The right of *Talaw-E-Tawfid* may be an important safeguard for woman although it can in no way be called equal to the right of the husband as regard *Talaq*.

³³ AIR, 1997, Kerala, p. 264.

³⁴ Neil Baillie, *Digest of Muhammadan Law*, (London, 1875), p. 236.

³⁵ PLD, 1963, Dacca, p. 602.

3.2.2 *Divorce by Khula*

Literal meaning of *Khula* is ‘redemption’. If the mutual relationship between the husband and wife is not good, the wife, if she so desires, may seek a *Khula* divorce, e.g. by relinquishing her claim to the dower.³⁶

The Maliki jurists refer to the *Khula* form of divorce as *Talaq bil Iwad* or ‘divorce by giving something in return’ while to the Hanafi jurists the *Khula* form of divorce means:

The end of a marital relationship with consent either with the utterance of the word *Khul* or something that means the same.

In the case of *Mst. Bilquis Fatima vs. Najmul Ikram Qureshi*³⁷ it was held that under the Muslim Law, the wife is entitled to *Khula*, as of right, if she satisfies the conscience of the court that it will otherwise mean forcing her into a hateful union. The Court categorically laid down that there is clear distinction between *Khula* and *Talaq*. *Talaq* is pronounced by the husband on his own, but *Khula* signifies reference to some authority or third party (e.g. the court). When there is dissolution by mutual agreement it is technically called *Mubara’at* and no reference to the court is required.

3.2.3 *Divorce by Mubara’a*

The word *Mubara’a* indicates the freeing of each other (from the marital tie) by mutual agreement. When the divorce is affected by mutual consent of the husband and wife, it is known as *Mubara’at* (i.e. freeing one another mutually).

In the Pakistani case *Sayeeda Khanum vs. Muhammad Sami*³⁸ it was held: A husband under the Muhammedan Law alone wishing to dissolve the marriage may, after fulfilling all the conditions of the marriage contract, by his unilateral act dissolve it by means of *Talaq*. If both the husband and wife wish to dissolve it, the dissolution may take the form of *Khula* or *Mubara’at*.

³⁶ Syed Khalid Rashid, *Muslim Law*, Eastern Book Company, (Lucknow, 1996), p. 192.

³⁷ PLD, 1959, Lahore, p. 566.

³⁸ PLD, 1952 (WP) Lahore, p.113 (FB).

3.2.4 Dissolution by Lian

Literally *Lian* means mutual imprecation. The wife is entitled to sue for divorce on the ground that her husband has falsely charged her with adultery. At the hearing of the suit, the husband has two alternatives: (i) he may withdraw the charge before the end of the trial, in which the wife could not get a divorce, or (ii) to persist in his attitude, whereby he will be required to accuse his wife on oath. This is followed by oaths of innocence made by the wife. After these 'mutual imprecations' the court dissolves the marriage.³⁹

3.2.5 Dissolution by Faskh

Faskh means judicial annulment. It refers to the power of Judge to annul a marriage on the application of the wife. The law of *Faskh* is founded upon the Holy Qur'an and Traditions. In the Sub-continent, such judicial annulments are governed by Section 2 of the Dissolution of Muslim Marriage Act, 1939.

In considering all above, it can be easily said, there is no doubt that Islam does not merely recognize all sorts of women's personal rights including divorce, but emphasizes on the enforcement thereof in the society. Unfortunately this is not implemented for various reasons, such as: lack of proper knowledge, awareness and proper attitude. In order to enforce this right, some measures have to taken.

At first, it is the duty of a particular state to provide the proper knowledge towards its national about the women's personal rights.

Second, these local governments have the obligation to raise the awareness among the women about their particular right as well as duty concerning marriage and divorce.

Third, the state can take some training programme to take the men more concerned to the women's right to divorce. Fourth, the role of Imams (religious leader) would be more effective in exercising Qur'an and Sunnah. And at last, the Islamic scholars have the most important duty to interpret the schedule text of Islamic law and give their valuable suggestion to the society as well as state concerning this particular issue.

³⁹ Asaf A.A. Fyzee, *Outlines of Muhammadan Law* 4th Ed. (Oxford University Press, Delhi) p.167.

Chapter 4

RIGHT TO MAINTENANCE

Despite its attention to the women's rights of inheritance and dower, the Sharia makes the men responsible for their women especially for all kinds of protection when their physical and economic interests are at stake. Generally, women are not under any strict financial obligation either for themselves or for their family. As a result, apparently women remain under the men's supervision and men have to bear all financial burdens for women, even if the latter do not need any economic support thereon. However, women have their own responsibility in maintaining peace and harmony both inside and outside of their family life when situation demands. Very often some family relation requires fulfilling economic demands in a very special or peculiar way. Wives right to maintenance is one of such a vital area.

4.1 Rules Regarding Maintenance

The word 'maintenance' literally stands for 'Nafaqa' which means 'Ikhraj' or taking out. In legal terminology it refers to provision for necessities of life to wife in consideration of reserving himself for her husband. The general rule is that, a wife is entitled to maintenance e.g. food, clothing and lodging during the substance of marriage and during the period of idda on certain conditions. These conditions relate to the contract of marriage itself and wife's obedience and they involve spouses above the age of puberty.

Maintenance is wife's right irrespective of her means or religious but the wife may lose her otherwise absolute right to maintenance in certain situation. The rule is that a wife loses her right, if she is disobedient or "nashuza".

An instructive Pakistani case on this respect in the case of *Ahmed Ali v. Sabha Khatun*⁴⁰, Where the wife was held nashuza, as without a valid excuse she disobeyed her husband's reasonable order and refuses to cohabit in the house. But it is to be noted that, in turn, non-payment of prompt dower or any other husband's inability may be reasonable ground for a wife to refuse the cohabitation.

Concerning the quantum of maintenance, socio-economic condition, tradition and the individual circumstances of the spouses has obviously been a key bearing on that issue. But according to the Hanafi School, the husband's condition alone should be the guiding factor and this seems to operate, though irregularly in the cases of our law.

4.2 Claim for Past Maintenance: "A Statutory and judicial cooling off"

According to classical Hanafi law, the wife can not claim past maintenance from the husband unless there is an agreement between them. But due to the merit of some statutory and judicial cooling off approach, now the past maintenance is allowed in favor of the wife on some reasonable ground like cruelty or neglect to them.

The relevant enactment in this respect is sec-488 of the Code of Criminal Procedure, 1898. (Sec-488 has been ousted by the Family Courts Ordinance, 1985: *Pochon Rikssi Dasi v. Khukhu Rani Dasi and others*). This enable a wife of any religion to apply for maintenance if she can prove that her husband having sufficient means neglect or refuses to maintain her. But this sec did not operate well as it remedied the husband by simply divorcing his wife whose maintenance is in question. So it ultimately leads enactment to strengthen the position of the wife in terms of maintenance. Sec 2(ii) of the Dissolution of Muslim Marriages Act, 1939 gives a Muslim woman a right to claim divorce, if her husband fails to maintain her for a period of two years. But, Sec 9 of the Muslim Family Laws Ordinance, 1961 the main statutory provision placing an obligation on the Muslim husband to maintain his wife, which has been decided to include payment for past maintenance (*Rashid Ahmed Case*).

⁴⁰ PLD, 1952 Dacca 385.

And finally all the ambiguity about the Muslim women's right to past maintenance has been removed by judicial pronouncement in both Bangladesh and Pakistan. The later position of Sunni law in the subcontinent regarding past maintenance was settled by the Appellate Division of the Supreme Court in the case of *Jamila Khatun v. Rustom Ali*⁴¹, Which held that the wife is entitled to past maintenance, even in the absence of any specific agreement. This case has been relied on, the Pakistan leading case of *Sardar Muhammad v. Nasima Bibi*⁴², Where it has been authoritatively held that the word adequately of sec-9 of the MELO includes cases of total neglect or refusal.....

So from the forgoing discussion it seems to be clear that a Muslim wife now can sue her husband for past maintenance on the ground of neglect.

4.3 Post-Divorce Maintenance: 'A Bone of Contention'

Because, the right of maintenance arises out of the status of marriage, it is incumbent on a husband to maintain his legally wedded wife only during the subsistence of the marriage and reasonably for three months after dissolution of marriage (iddat period), as it is the waiting period to remarry. This was, perhaps, since in Islam after dissolution of marriage the parties are entitled to remarriage, and the woman returns to her natal family. So it is just not fair to burden a man with obligation of maintenance when he is no more her husband, as soon as the marriage being a religious and social contract is terminated. Moreover, according to Islamic law, deferred dower is seen as the safeguard for divorced women. But the more strong justification of that ruling has been relied on particularly the verse of the Quran.⁴³

So from the deeper look into the inner meaning and the hidden rational behind that Quranic injunction, it was sufficient for the traditional Muslim juristic opinion to make its effect that except in the case of pregnancy, the rights of women to maintenance do not go beyond the iddat period.

⁴¹ 48 DLR 1996.

⁴² PLD 1966 (WP).

⁴³ 65:6.

The story of modern maintenance laws began to unfold in India when sec 488 of the Code of Criminal Procedure, 1898, which enable the wife of any religion to apply for maintenance, if she can prove that her husband having sufficient means, neglects or refuses to maintain her, was repealed by sec 125 of the new Code of Criminal Procedure, 1973. This law extended the definition of ‘wife’ for the purpose of maintenance to include a divorced wife. So sec 125(b) of the Act says- “wife includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not married.”

In the case of *Ahmed Khan vs. Shah Bano Begum*⁴⁴, the learned judge coupled with relative and comprehensive regarding of the Quran, went through the statement of several specialist authors and found that:

“These statements in the text books are inadequate to establish the proposition that the Muslim husband is not under an obligation to provide for the maintenance of his divorced wife who is unable to maintain herself”⁴⁵

⁴⁴ A.I.R 1985.

⁴⁵ Ibid

Chapter 5

WOMEN'S RIGHTS IN LAW AND IN REALITY

Women are favorite subjects of literature, and Bangladeshi women are no exception. The beauty and charm of Bangladeshi women are extolled in poems, legends and short stories. But the suffering of Bangladeshi women hardly comes out in the literature. Bangladeshi women endure oppression and deprivation in their own family, community or in the society at large. They are also subjected to violence and discrimination. In a large country like Bangladesh, with its socio-economic and legal systems biased against the poor and the women, Bangladeshi women are in difficult situation.

5.1 Women's rights in law

Under the 1972 Constitution of Bangladesh, women's rights are protected under the broad and universal principles of equality and participation. These principles are found in the following Articles in the Constitution:

- Article 10 of the Constitution provides that steps shall be taken to ensure participation of women in all spheres of national life.
- Article 19 (1) provides that the State shall endeavor to ensure equality of opportunity to all citizens. Article 27 specifies that all citizens are equal before the law and are entitled to equal protection of the law. Moreover, Article 28 (1) provides that the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, or place of birth. Article 28 (2) more directly and categorically says that women shall have equal rights with men in all spheres of the State and of public life. This latter provision means that all rights mentioned in the Constitution, such as right to life, right to personal liberty, right to property, freedom of

movement, freedom of speech, freedom to exercise a profession or occupation are equally applicable to women in Bangladesh.

Bangladesh has a number of special laws, specifically prohibiting certain form of violence against women including the Penal Code, 1860, the Anti-Dowry Prohibition Act (1980), the Cruelty to Women Ordinance (1983), the Suppression of Immoral Traffic Act (1993;), and the Prevention of Repression against Women and Children Act (2000).

5.2 Women's rights in reality

Despite the legal support for women's rights, Bangladesh women are still practically not given equal treatment. Practices of inequality are manifold, of which the following deserve a special mention:

- In case of wages in the informal sector, women are paid a lower grade than men for the same work;
- In divorce, women need a court order to enforce their right to divorce, which requires proving the validity of their reason for seeking divorce. Men, on the other hand, do not need such court order and thus they can divorce their wives even without any proper reason, and at any time they wish;
- In inheritance, a woman is generally given half the share of her male counterpart. A son would exclude his paternal uncle or aunt from inheriting from his deceased's father's property, while a daughter would not cause such consequence.

Contravening the Constitutional provisions on the right to life and liberty (Article 32), and freedom of movement (Article 36), Bangladeshi women face different forms of violence by men on a daily basis. One research report⁴⁶ published in 2000 by a reputed women's non-governmental organization in Bangladesh shows that 30% of the women in the cities are battered by their husbands, 37% are victims of verbal insults and harassment, and 33% are victims

⁴⁶ *Violence on Women in Bangladesh*, Nari Pakkha Report, (Dhaka: 2000).

of other forms of domestic violence. Another survey reveals that among the victims of physical violence, 23% are rape victims, 22% acid-throwing victims, 10% burn-victims, 5% are victims of poisoning, forced abortion and other kinds of violence.

A number of traditional practices also oppress Bangladeshi women. Many women have been charged with committing "moral" offences before local religious leaders whose views are generally biased against women. The local religious leaders issue a *fatwa* (ruling) that metes out punishment to women, such as the humiliating and degrading public whipping and stoning. There is no legal sanction for *fatwa*; it is simply a part of traditional practice.

Bangladeshi women who fail to pay the dowry to their husbands and their families are subjected to violence. Some have been beaten, set on fire or poisoned. Women who turn down marriage proposals are in danger of suffering violence from spurned men. There is increasing number of cases of men throwing acid to the faces of women with the aim of disfiguring them. One non-governmental organization (ODHIKAR)⁴⁷ reported an increasing number of acid-throwing cases - 101 in 1998, 178 in 1999, 186 in 2000, 206 in 2001 (including 33 of the victims who were children) and 247 in 2002

The mobility of Bangladeshi women is also hampered by traditional practices. The observance of *pardah* (seclusion) is an example of such traditional practices. This practice restricts the movement of women outside the house. And if they enter a public place where men are present, they have to make sure that no part of their body (including their face) is without any cover. In some extreme cases, family reputation is considered blemished if any of the Muslim family's women fail to follow this tradition. There are also cases of trafficking of Bangladeshi women to other countries for purposes of forced prostitution. Because of the hidden nature of trafficking, reliable statistics are hard to find. Nevertheless according to one report,⁴⁸ the rate of trafficking of women and children in Bangladesh is as follows:

⁴⁷ ODHIKAR, *Yearly Report on Human Rights Situation in Bangladesh* (Dhaka: 2002).

⁴⁸ US Department of State, *Trafficking in Persons Report 2002* (Washington: 2002) and USAID, *Bangladesh Anti - Trafficking* 13 March 2003.

- 200 -- 400 young women and children are smuggled and trafficked every month from Bangladesh to Pakistan and Arab countries;
- An estimated 10,000 - 15,000 are trafficked to India annually;
- On average at least 70-80 women and children are trafficked daily from Bangladesh to other countries;
- An estimated 200, 00 women have already been trafficked to different countries including girls as young as 9 years old.

Rape cases are also increasing in an alarming rate. There were 3,189 rape cases in 2002, up from 3,140 cases the previous year.⁴⁹

This situation restricts the free movement of women. They fear for their safety. They are not safe whether they are inside or outside the house. Parents, relatives and the women themselves are constantly worried about their physical security. This led to the situation where women cannot anymore freely move around without another person acting as bodyguard, and where parents insist that they return home before its gets dark whether their work is finished or not.

The Bangladeshi government created in 1990 a program in the Ministry of Women and Children Affairs to assist women victims of violence. Assistance cells have been created in different parts of the country to implement the program. However, the number of such assistance cells is very limited to be able to cope with the demand for service.

Early marriage is another obstacle in promoting women's rights. The Majority Act, 1875 clearly provides that a woman must at least be 18 years old to be able to get married. This legal requirement unfortunately is disregarded, especially in rural areas. Many marriages are held without the 'free consent' of the women. The parents give the consent as if there is no justification for getting the consent from the women. Poverty, family honor, social insecurity is some of the major reasons for early marriages. As a result, the women's right to education, a pillar for realizing one's own rights, suffers.

In education, more Bangladeshi boys study than girls. The ratio of boy-girl

⁴⁹ "Violence May Be Rising Against Bangladesh Women," *Gulf News*, United Arab Emirates, 23 March 2002.

students in the primary school level has improved with girl enrolment reaching 70% of the boy enrolment level. But the situation in the secondary school level is still bad with girl enrolment constituting only 40% of the boy enrolment level.

In livelihood, Bangladeshi women suffer discrimination in getting bank loans. Since most of them do not have properties of their own that can be used as loan collateral, and husbands or male relatives have to give consent to any bank loan transaction, the opportunity for women to access to financial resource from the bank is limited.

Employment of women is still low. This is true for the both private and government offices.⁵⁰ And women who occupy government jobs have lower status and very little influence in government decision-making processes.

In politics, while Bangladesh has two women Prime Ministers during the last decade until the present, only 6 women legislators have been elected into Parliament during the 8th National Elections held in June 2001. There are 36 women legislators (composed of 30 members occupying reserved seats for women and 6 elected members), in the 330-member parliament.

A close look reveals the practical obstacles for the women in our country to get legal aid. The legal procedure in Bangladesh is very lengthy. At first a crime is to be reported to the local police station. About 95% police officers are thoroughly corrupt. The women usually cannot pay any bribe. And actually they are the victims so question of paying bribe does not arise at all.

But they have to make the local police officers “happy” in order to file the complain and get a well documented “charge sheet” written. Usually the offender is more powerful. They make the police officer “happy” and gets a “charge sheet” which is so inaccurate, vague and under rated that it does not stand when put up in the court.

⁵⁰ The government policy of recruiting more women into the government service has not been successful so far. In 1999, only 14% of the new government employees are women. See 1999 Country reports on human rights released by the Bureau of Democracy, Human Rights and Labor, U.S Department of State, February 25, 2000.

Again after a sentence is passed in the lower court it goes to the session judge court and then to the High court and ultimately to the Supreme Court. The process takes in excess of 2 to 3 years at least, 90% women or their families can not bear the cost of the lengthy legal procedure.

The perpetrators usually remain at large on bail and persecute the victims and their family to withdraw the case. Sometimes they burn their houses or even kill or injure other members of the family. Till now we have more than 1000 acid victims' cases and only in 13 cases sentences have been passed. These too are in the lower courts only.

It is shameful to say that even many judicial members are corrupt and sometimes the judgment can be influenced by the powerful section of the society. So where comes the justice? How can we prevent cruelty to the women? Should we wait for the perpetrators to throw acids on women and we shall treat them only? NO!! The perpetrators must be brought to justice so that the crime in itself is lowered and we have less case to deal with.

Chapter 6

CONCLUSION

6.1 Recommendations

1. The situation of Bangladeshi women illustrates the problem of turning legal principles into social, political and economic practice.
2. The discriminatory attitude against women, rooted in the family and extends to the State level, should be ended. Because of the constraints from the family, society and the State in general, Bangladeshi women are not aware of their rights. And even if some of them become aware of their rights, they still would not assert them due to the "ingrained unexpected continuity" (i.e., the traditional belief of keeping women under the shadow of somebody such as their fathers or husbands).
3. A basic change in the institutional structure may occur if social security for women is ensured. Furthermore, the outlook of the family and society has to change to give more opportunity for women's protection and participation in Bangladesh. This, in turn, will help women become independent and conscious about their rights.
4. There should be two levels of positive approach - at the level of the family and society, and at the level of the State. This approach mitigates the gap between the laws and the existing practices against women's rights.
5. Without the link between the principles and the practice, Bangladeshi women will continue to suffer. This is a sad state three decades after the United Nations pronounced the "Decade of Women (1975- 1985)."
6. There should be increased emphasis on 'humanism' and nurture of 'humanity' in family, society and in the society should be developed so that common people can accept the equal rights of men and women naturally and can

have proper sympathy for the women because of the injustice and deprivation done to them.

6.2 Concluding remarks

The term women's right refers to freedoms and entitlements of women and girls of all ages. These rights may or may not be institutionalized, ignored or suppressed by law, local custom, and behavior in a particular society. These liberties are grouped together and differentiated from broader notions of human rights because they often differ from the freedoms inherently possessed by or recognized for men and boys and because activists for this issue claim an inherent historical and traditional bias against the exercise of rights by women and girls.

Issues commonly associated with notions of women's rights include, though are not limited to, the right to bodily integrity and autonomy; to vote (suffrage); to hold public office; to work; to fair wages or equal pay; to own property; to education; to serve in the military or be conscripted; to enter into legal contracts; and to have marital, parental and religious rights. Women and their supporters have campaigned and in some places continue to campaign for the same rights as men.

Bangladesh has a well-developed set of National laws. In addition to its Penal Code, Bangladesh have some other laws to address specific needs of women in the country. So far the willingness of the Government and also of the opinion of the members of the legislature is concerned, the women are cared for and actions are “meant” to be taken to reduce cruelty to women.

So in order to prevent the women from suffering and falling prey to the oppression deprivation, the legal procedure must be effective.

REFERENCES

Books

1. Moulana Fazlur Rahman Ashrafi, *Rights of Women in Islamic Inheritance and Farayez*, (Dhaka, RIS Publication, 1995).
2. Dr. Md. Maimul Ahsan, 'Women's Rights in Islam', *Gender in Law*, Dhaka, 1998.
3. Neil Baillie, *Digest of Muhammadan Law*, London, 1875.
4. Dr. M. Ershadul Bari, *Human Rights in Islam with Special References to Women's Rights*, The Dhaka University Studies, Part-F, Vol. V, no.1, 1994.
5. Dr. Jamal Badawi, *Islami Shikkha Series*, (Dhaka: Bangladesh Institute of Islamic Thought, 2006).
6. Asaf A.A. Fyzee, *Outlines of Muhammadan Law* 4th ed. (Oxford University Press, Delhi).
7. Ibrahim Bbdel Hamid, *Dissolution of Marriage in Islam Quarterly*, Lucknow, 1996.
8. Shah Abdul Hannan, *Nari O bastobata*, (Dhaka: Adorn Publication, 2002).
9. Shah Abdul Hannan, *Social Laws of Islam*, (Dhaka: Bangladesh Institute of Islamic Thought, 1995).
10. Hamiduddin Khan, *Jurisprudence and Comparative Legal Theory*, 1st ed., (Published by the Book Fair, Bangladesh).
11. Md. Mahboob Murshed, *Women's Rights at the Cross Road: Between Ultra-Secularism and Religious Orthodoxy, Women Rights in Islam*, Edited by: Dr. Maimul Ahsan Khan, (The Nahar Light Foundation Publisher).

12. D.F. Mulla, *Principles of Mohammedan Law*, 17th ed. (M.M. Tripathi (Private Ltd) Bombay 1972).
13. Muhammad Abdur Raheem, *Naree*, (Dhaka: Shindabad Prokashoni, 1997).
14. Salma Sobhan - *Legal Status of Woman in Bangladesh*.
15. The Holy Al-Qur'an.

Statutes

1. *The Muslim Marriage and Divorce (Registration) Act, 1974.*
2. *The Muslim Family Laws Ordinance, 1961.*
3. *Dissolution of Muslim Marriages Act, 1939 (Act 8 of 1939).*
4. *Women and Children Act, 2000 (Act 8 of 2000)*
5. *The Anti-Women and Children Oppression Act, 2000 (Act 8 of 2000).*
6. *The Dowry Prohibition Act, 1980 (Act 35 of 1980).*
7. *The Code of Criminal Procedure, 1898.*
8. *The Constitution of Peoples Republic of Bangladesh.*

Web Pages

1. <http://www.muslimsdirectory.com>, last visited on 10-01-2010.
2. <http://www.jannah.org/sister/statuswomen.html>, Abdul-Ati, Hammuda. The Status of Women in Islam Last visited: 05-01-2010.
3. <http://www.bnwla.org.bd/> last visited: 13-01-2010.
4. <http://www.womenandislam.net/bd/articles/20060509211204.pdf>-last visited 13-01-2010.
5. <http://www.onlinewomeninpolitics.org/womensit/bd-w-sit.pdf>-last visited 13-01-2010.

Articles

1. 1999 Country reports on human rights released by the Bureau of Democracy, Human Rights and Labor, U.S Department of State, February 25, 2000.
2. "Violence May Be Rising Against Bangladesh Women," *Gulf News*, United Arab Emirates, 23 March 2002.
3. US Department of State, *Trafficking in Persons Report 2002* (Washington: 2002) and USAID, *Bangladesh Anti - Trafficking* 13 March 2003.
4. ODHIKAR, *Yearly Report on Human Rights Situation in Bangladesh* (Dhaka: 2002).
5. Violence on Women in Bangladesh, Nari Pakkha Report, (Dhaka: 2000).

Case References

1. *Yousuf v. Sowramma*, A.I.R, 1997, Kerala, p.264.
2. *Akhlima Khatun v. Mohibur Rahman and Others*, P.L.D, 1936, Dacca, p.602.
3. *Mst. Bilquis Fatima vs. Najmul Ikram Qureshi*, P.L.D, 1959, Lahore, p.566.
4. *Sayeeda Khanum vs. Muhammad Sami*, P.L.D, 1952(WP), Lahore, p.113 (FB).
5. *Pochon Rikssi Dasi v. Khukhu Rani Dasi and others*, P.L.D, 1952, Dacca, p.385.
6. *Jamila Khatun v. Rustom Ali*, 48 D.L.R, 1996.
7. *Sardar Muhammad v. Nasima Bibi*, P.L.D, 1966(WP).
8. *Ahmed Khan vs. Shah Bano Begum*, A.I.R, 1985.