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ARTICLES

Women's rights in the Nikahnama in Bangladesh : A critical study

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Muslim wives' right to maintenance in Bangladesh: the role of N.G.O's in Rajshahi District

Prevention of Crime in Islamic Criminal Law: Perspective Bangladesh

যৌতুক : একটি সামাজিক ব্যাধি

সড়ক দুর্ঘটনা ও ট্রাফিক আইন : প্রেক্ষিত বাংলাদেশ

আদালত অবমাননা, সাংবাদিকতা-প্রকাশনা ও তথ্যের অধিকার : পরিপ্রেক্ষিত বাংলাদেশ

বাংলাদেশের রাজনীতিতে পঞ্চম জাতীয় সংসদের কার্যকারিতা : একটি পর্যালোচনা

Abstract on the Project Changing Pattern of Trade Union in Bangladesh

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Muslim wives' right to maintenance in Bangladesh: the role of N.G.O's in Rajshahi District.

Sayeeda Anju^{*}

Introduction:

One of the basic rule of Islamic law is the maintenance of wives, dependent children and other relatives by the male member of the family. Right to maintenance is termed as '*nafaqah*' in Arabic.¹ *Nafaqah* has been defined by different scholars in various ways, which includes mainly human basic needs.

This article is concerned with Muslim wives' right to maintenance. To get *nafaqah* from the husband is the Quranic right of the wife. If the wife enjoys it properly there is no question of claiming it; claims can be raised only when she is deprived from enjoying her right as a wife.

In Bangladesh, women can claim maintenance in the Family Court under the Family Court's Ordinance 1985. Besides that, many NGOs are also working in favour of women. A huge number of cases are solved by the NGOs. There are three main NGOs in Rajshahi district namely, Bangladesh National Women Lawyer's Association (BNWLA), Association for Community Development (ACD), and Bangladesh Legal Aid and Services Trust (BLAST), which provide legal aid to women. The aim of this article is to focus on how these NGOs help Muslim wives of Rajshahi district to realize maintenance. This paper also highlights one year's study of the above three NGO's in Rajshahi district regarding the maintenance of wives in this region.

Wife's Right to Maintenance:

The most important consequence of a valid marriage is maintenance of wife by the husband. Maintenance can be claimed only when the marriage is legal.² A wife is entitled to maintenance even if she has got means of her own.³ If the wife is residing in her father's house then also the husband is bound to maintain her.⁴ But she cannot refuse her husband if he asks her to come and live with him. Only on valid reason, such as, non-payment of

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¹ Mr. Justice Aftab Hussain, *Status of Women in Islam* (Law Publishing Company, Lahore, Pakistan, 1987) p. 508

² Syed Ameer Ali, *Muhammedan Law* vol-2, p-407 np

³ B. R. Verma, *Islamic Law-Personal* (Law publishers. Allahabad, 1986) p. 283

prompt dower or illness, she can claim maintenance while staying at her father's house.⁵ Without any valid ground if the wife stays at a different place, the husband is not bound to maintain her.⁶

The wife can claim maintenance from her husband only during the continuance of marriage. In case of death of the husband, a widow is not entitled to maintenance. Even she cannot claim maintenance during her *iddat* period unless she is expecting a child.⁷ But Imam Abu Hanifa says that she will be entitled to her maintenance as well. A widow must not leave her house on account of the death of her husband, until she has completed the *iddat* period for the death of her husband.⁸

In case of divorce, a wife is entitled to maintenance only during the period of *iddat*.⁹ A divorcee cannot claim maintenance after *iddat* period. In the case of *-Hefzur Rahman v Shamsun Nahar Begum* (1995)¹⁰ the High Court Division of the Supreme Court of Bangladesh observed that the plaintiff is entitled to maintenance until her remarriage. On appeal the Appellate Division set aside the decision and decided to continue the traditional system.¹¹

However it is a positive side for women that at least the Higher Court examines the relevant laws of Quran, Hadith and other statutes regarding the provisions of maintenance for wives.

To get maintenance from the husband is both a Quranic right of a wife and enforceable by statute in the court of law. Deprived wives can claim maintenance in the Family Court under the Family Court's Ordinance. In most of the cases, however, wives prefer to file complaints at the NGO

⁴ Aftab, above n-1p.510

⁵ Ibid

⁶ Ameer Ali above n-2

⁷ বিধিবদ্ধ ইসলামী আইন - ইসলামিক ফাউন্ডেশন বাংলাদেশ, পৃষ্ঠা নং - ১৬৪

⁸ Abdur Rahman I. Doi *Shari'ah The Islamic Law* Ta-ha Publishers London United Kindom p-208

⁹ M. Hidayatullah and Arshad Hidayatullah, *Principles of Mahomedan Law* (Bombay 1990) p-237

¹⁰ Hefzur Rahman v Shamsun Nahar Begum 47 DLR(1995) 54,

¹¹ Similar judgement was delivered by the Indian Supreme Court in the case of *Mohd. Ahmed Khan v Shah Bano Begum* (1985). But that judgement was not implemented because of parliament amendment. An Act was passed by the Indian parliament regarding maintenance.

office. NGOs help them to enforce this right by *shalish*¹² and failing it; they also file the case in a court. Now a day's NGOs play a significant role in solving family problems.

Role of the NGOs:

BNWLA and BLAST, two law based NGOs, started their branch offices in Rajshahi District. BNWLA started its activities from 1998; BLAST, from 1994. ACD is a local NGO, which has no other office besides Rajshahi. It has started its service from 1997. Husband and wife both come to the NGO with their family problems, but most of the complainants are wives. The NGO office helps the wives to enforce their rights through different programmes. It is learnt from these three law based NGOs in Rajshahi district that they help wives to obtain their right to maintenance. Wives can file complaints in any of the three NGOs but comparatively BLAST gets more complaints than others.

It was found from the NGO offices that husbands deny their wives' basic needs for various causes. The main cause is not having his demanded dowry paid. His second marriage is another cause. When the wife fails to get maintenance after repeated demands, she comes to the NGO office to secure her right. At first the NGO workers file the complaint. The cause of action is marked from that date on which the deprivation began. The NGO sends a notice to the husband to come to the office. Not only the husband but also other relatives are called to the NGO. The office fixes a date for the *shalish*. *Shalish* is held in the presence of both the parties, their relatives and the NGO workers. The NGO's *shalish* is more effective and easier than a court case; this is because in this programme both the parties are informed about the relevant laws and their financial expenditure. The environment of the NGO's *shalish* is more informal than at court. So in many cases NGO workers try to solve the dispute by *shalish*. In the *shalish* programme solution of the case not only depends on the *shalishdar* but also on the statements of both the parties. The participation and opinions of both parties are more important in *shalish*.

¹⁴ 'Shalish is called the traditional mechanism of conflict resolution' Nasir Uddin
The Chittagong University Journal of law vol. 6. 2001.p-147

The first objective of the NGO is to solve the problem in an informal environment in a short time but they are not always successful. There are many reasons behind this; for instance, sometimes the husband does not come to the NGO office, he seeks help of the advocate and so on. On the advice of that advocate, he remains absent. Sometimes he simply neglects the summons of the NGO and so the *shalish* does not take place. Sometimes *shalish* is not possible because the wife wants to file a suit directly. In addition to this, the wife's behaviour is another factor in case of trial by *shalish*. NGOs always discourage court cases and encourage the *shalish* but if finally they cannot solve the problem through the *shalish*, a case is filed in the Family Court by the NGO itself. All three NGOs bear the cost of the case and fight the cases by their panel lawyers. The NGOs also bear the *muhuri*¹³ cost.

We can get an idea about the maintenance-related complaint of the three NGOs by the following tables:

Table No. 1

BNWLA--2004

Date	Number of complaint	Absent	Withdrawn	Solution by Salish	Case filing
Jan	7	3		2	2
Feb	6		1	2	3
Mar	5	2	1	1	1
April	4	2		1	1
May	3		2	1	
June	4	2		2	
July	6	1	1	4	
Aug	6	1	1	1	3
Sep	3		1	1	1
Oct	4		1	1	2
Nov	7	1		1	5
Dec	4	1		3	
Total	59	13	8	20	18

Source: Annual report of BNWLA

¹³ 'muhuri' a person who works as a secretary to the advocate.

BNWLA:

Table 1. Shows that in 2004 -59 complaints were received at BNWLA. Later on 13 complainants were absent and 8 complaints were withdrawn. When I wanted to know about the large number of absent and withdrawn complaints, it was explained by the NGO that in some cases complainants come to file a case in the court directly without any *shalish* process. In BNWLA after filing a complaint *shalish* is held at the NGO office. When it fails to solve the problem by *shalish* then a case is filed in the court by the NGO. So a court case is possible only after failing to solve the problem through *shalish*. Besides, BNWLA has a quota system for filing court cases in Rajshahi district. Only 4 or 5 cases can be filed in the court per month. They select those cases, which has witnesses, evidences or proper materials. Hence those who come to file a case directly may face delays. In such a situation they do not further stay interested in coming to BNWLA. It is to be mentioned that the complainants can file a case in the court directly by themselves but they come to the NGO office because NGO's case filing is cost free.

There are some other reasons for absent or withdrawn complaints. In some cases the husband tries to reach an understanding with his wife after receiving the NGO notice. The wife is often pressurized to withdraw the complaint through such understandings. For these reasons some of the cases are withdrawn soon after the registration. 20 cases have been settled through *shalish* in BNWLA. The remaining 18 were not solved by *shalish*, for which those complaints were taken to the court. BNWLA encourages solutions through *shalish* rather than court cases. Even then if a dispute cannot be settled through the *salish*, BNWLA files cases on behalf of the deprived women and help them in recovering their rights of maintenance.

Table No - 2

BLAST**2004 April 2005**

Date	Number of complaint	Absent	Withdrawn	Solution by Salish	Case filing
April	20	7		9	4
May	34	7		13	14
June	35	6		13	16
July	29	8		9	12
Aug	45	14		10	21
Sep	41	11		5	25
Oct	35	9		9	17
Nov	19	7		4	8
Dec	32	5		10	17
Jan	32	5		10	17
Feb	26	6		8	12
Mar	45	11		21	17
Total	393	96		121	176

Source: Annual Report of BLAST March 2004 to April 2005

BLAST:

Table 2. Shows that BLAST gets a large number of complaints. In 2004 this NGO received 393 complaints. Among them 96 were absent just after filing the complaints. When the BLAST workers were asked about the absence of so many complainants they replied that some women do not come later being influenced by their husbands. BLAST records do not show the absent and withdrawn complaints separately. 121 of the total cases were solved by BLAST through the *shalish* programme, and the remaining 176 cases were filed at the court by BLAST itself. BLST comes forward to fight the cases with their own panel lawyer without any cost. Contrary to BNWLA, BLAST does not maintain any limitations in filing cases, so the number of complaints is comparatively large here.

Table No.3

A.C.D2004

Date	Number of complaint	Absent	Withdrawn	Solved by <i>Shalish</i>	Case filing
Jan-Dec	33			21, 9 are in continuing process	2

Source: ACD office Rajshahi

ACD:

Table 3. Shows that in case of ACD a total of 33 complaints were filed in 2004. Among these 21 were settled through *shalish*, 2 cases were filed in the court and the remaining 9 are in *shalish* process at the NGO. Due to irregular presence of both the parties, settlements through *shalish* have not been possible yet.

In comparison with the previous two NGOs, the number of complaints found at ACD is small. In ACD complaints are filed after inspection. ACD workers go to the area concerned to investigate into the matter. Before the entry of a case, ACD tries its level best to convince women to solve their problem personally, if possible. They even remind them that a complaint cannot be withdrawn after being filed. ACD registers a case only when the woman's plight is proved acute.

Observation:

Right to maintenance includes wife's basic needs. All wives, who cannot get their basic needs from their husbands, do not go to the court or NGOs. Though the NGO provides a lot of beneficial services to these women, all deprived women cannot enjoy them. There are many reasons behind this, some deprived wives do not know the law, some know about the law but they are not aware about the procedures of law, i. e, how and where they can seek legal help is not clear to them. However some deprived wives have an idea about the Family Court and relevant laws but they cannot go to the court due to a fear of social stigma. Last but not least some wives cannot seek justice for their insecurities regarding financial expenditure. Some legal

aid organisations give legal assistance without any cost but all does not know this.

Generally people assume that NGO means an organisation, which gives micro credit to the people or some organisations, which is somehow related with financial matters. There is another idea, that is, NGO- means an organisation that provides health related facilities. There are some NGOs, which give legal aid to the people, but those that give free legal assistance are not so popular. An organisation becomes popular by its campaign programmes. Health related organisations campaign and publicize their programmes widely. Micro credit related organisations do not conduct their campaign programs so widely yet people come to know about them because of their own interests. The general idea about the law related NGOs is not very clear and perhaps, a certain lack of interest or awareness is responsible in this case.

When these three NGO workers were asked about their campaign they said that all of them act upon campaign to different fields. They incorporate different types of peoples in campaign as well as awareness programme.

When the wives, who come to the NGO for help were asked about their source of motivation to come to the NGO, they replied that, the woman who had already enjoyed the assistance of the NGOs has brought them here. Very often, there is a common figure that brings the deprived wives to the NGO office. Thus how far can the messages of campaigns of legal aid giving NGOs reach to the people and how far can they motivate them is an important question.

Conclusion:

Maintenance is a right. Muslim married women are dependent on their husbands for maintenance. Now a days even though some women are self-dependent, majority of women depend on their husbands completely. It is remarkable that a wife is entitled to maintenance even if she can maintain herself. However if the wife is deprived from her basic needs she can claim it. A deprived wife can file a case in the Family Court but it is not easy for all wives to fight for their maintenance in the court. Difficult procedures of the court case and the financial inability are the decisive factors here. For these reasons women are not interested to claim their rights and often try to get

shelter in their parents house. In the present society it is very hard for a deserted women to go back to her parental household because the family does not accept it happily. In some cases parents are no more alive to give shelter. Under such circumstances, the contribution of the NGOs in helping women through legal aid is really praiseworthy.

The inclusion of the right to maintenance in the NGOs *shalish* programme has great advantage of making the remedy speedy and cheap. If *shalish* is not successful then also the women do not have to worry about the expenses, nor do they have to think about how the lawyer would fight the case for them. So it can be said that, by filing their complaints at the NGO office, women can easily reach a solution today.

It is true that the NGO's solution is easy, cheap and speedy but the question is whether all deprived women can enjoy this advantage or not. A number of deprived women do not want to open their mouths for the fear of social stigma. Others who are not well-off not aware about the NGO's cost free services.

Since the procedures are comparatively easy and homely at the NGO and if it grows to be more popular, a large number of women will seek the assistance from these organisations.

Though the NGO's are functioning for a decade, till now they are not so popular as they were supposed to be. So how far they are sincere about their campaign programmes is a matter of question.

The NGOs have started their activities but the deprived wives can enjoy these properly only if they are given the opportunity to utilize the services through awareness programmes. If deprived wives are made sufficiently aware about their rights through legal awareness, and if they are also made aware about the NGO's free services, they will indeed want to establish their rights.

If more deprived wives come to the NGO offices, it will reduce the pressure on the court. BNWLA, BLAST, ACD are the three NGOs which conduct their activities in Rajshahi districts, if they grow to be more efficient, they can establish a place in the heart of the people of Rajshahi district. These private organisations have to be more sincere in developing the overall efficiency of their internal projects. They should be more encouraging and cordial in their treatment of deprived women starting from filing complaints and leading

through *shalish* or courts case dealings. They should also encourage women to be bold enough to stand for their rights; they should make to understand that maintenance from husbands is their legal right and not a favour to be bestowed in mercy. If such awareness is created women will feel inspired to establish their rights and men will grow more conscious of their duties and responsibilities. Above all, the NGOs should aim at mass awareness about their activities.