



RAJSHAHI UNIVERSITY LAW JOURNAL

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Articles

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Reforming the Prosecution Service in the Subordinate Courts of Bangladesh

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ইসলামী আইনে রোমান আইনের প্রভাব : একটি তুলনামূলক পর্যালোচনা



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Rajshahi University Law Journal (RULJ), 2022
Volume X

Contents

Author's Name	Article	Page
Dr. Md. Abdul Alim	Examine the Gap within Legal Protection of Animals Welfare in Bangladesh through the Lens of International Law	1-16
Dr. Md. Abdur Rahim Mia	Reforming the Prosecution Service in the Subordinate Courts of Bangladesh	17-39
Md. Abul Kalam Azad	Shaping the Modern Police in Indian Sub-Continent with Special Reference to Police Commission 1902-1903	40-55
Dr. Armin Khatun Khaledur Rahman	Dispensing Justice through Court Annexed ADR in Bangladesh : Family Court Experience	56-74
Dr. Begum Asma Siddiqua Dr. Sayeeda Anju	Daughter's Preferential Right of Inheritance: <i>Kalala</i> Revisited	75-88
Dr. Halima Khatun	Sexual Harassment Prevention Policy of Islamic University with Special Reference to Awareness Programs	89-106
Humayun Kabir	The Responsibility to Protect in Westphalian Sovereignty: A Post Colonial Approach	107-120
Dr. Maksuda Akter Dr. Md. Golam Rosul	Maintenance of Wife under Islamic <i>Shariah</i> and Statutory Laws of Bangladesh: An Analytical Overview	121-141
Mobarak Hossain	The Definition of Investment under Article 25 of the ICSID Convention: A Critical Legal Study on the Post Salini Development	142-161
Md. Mosharaf Hossain	Admissibility of Electronic Evidence in India, Pakistan and Bangladesh: A Comparative Study	162-183
Dr. Shahin Zohora	Cyber Violence Against Women in Bangladesh: Laws and Realities	184-205
ড. মোহাম্মদ নাছির উদ্দীন	ইসলামী আইনে রোমান আইনের প্রভাব : একটি তুলনামূলক পর্যালোচনা	206-219

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Maintenance of Wife under Islamic *Shariah* and Statutory Laws of Bangladesh: An Analytical Overview

Maksuda Akter*
Md. Golam Rosul**

Abstract: *The introduction of maintenance under Muslim law refers to a wife's entitlement to maintenance and provides a mechanism for recovering maintenance is discussed and examined in this article, with particular emphasis on the rules governing maintenance and their applicability in Bangladesh. The fundamental needs of a person in order to survive are covered by the maintenance principle. The amount that a husband is legally required to pay his wife, either in the course of the marriage or in some cases, after a detachment or separation, is known as maintenance. According to Islamic law, the husband must provide his wife with adequate support. The wife has an absolute right to get support from her spouse. No supplementary maintenance agreement is necessary for the exercise of this right. Regardless of whether the woman is Muslim or not, wealthy or not, in good health or not or of sound mind, she has rights. She has a right to be supported by her spouse even though she lives apart from him due to his abusive actions. It is the husband's responsibility to support his wife even though she may have the resources to do so in cases when the marriage is legal and the wife is capable of engaging in marital relations. But she forfeits her entitlement to maintenance if she unreasonably refuses to live with her husband. A divorced woman has the right to ask her ex-husband for maintenance. But, a divorced wife can only request maintenance from her ex-husband for the 90 days that she is adhering to her iddat.*

Keywords: Maintenance, Iddat, Standard, Arbitration Council, Family Court.

1. Introduction

A Muslim husband is required to support his wife as long as she remains obedient to him and follows his instructions given. If the wife refuses to carry out her responsibilities because the husband failed to pay the prompt dower, the husband will still be obligated to support his wife. If the wife refuses to perform her marital obligations because the husband failed to pay this same prompt dower, the wife has no claim on maintenance from the husband. Even if her spouse is impoverished and she is affluent, a

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woman has the right to maintenance from her husband. Thus, a husband has a duty to support his wife who includes giving her food, clothing, a *Shariah*-compliant home and a servant who is paid at her prior level of living. If the wife is not prepared, capable or willing to live with her husband, the husband is not required to support her. Unless she disobeys her husband, the woman is entitled to maintenance for the rest of her life. If a wife refuses to obey her husband for a legitimate reason, she won't be denied maintenance. The entitlement of women to receive maintenance also expires upon the passing of the husband because there is no express provision for the wife's maintenance from the husband's inheritance. The Muslim Law of Maintenance and the current legislation in Bangladesh have been thoroughly examined in this article. The legal consequences of the statutes have received more attention than its social ramifications. Case studies from both the highest and lowest levels of the judiciary have been used to highlight how the law of maintenance is enforced in order to illustrate how Bangladeshi judges feel about women.

2. Concept of Maintenance

Maintenance (*Nafaqah*) means food, clothing, lodging, medical support and also includes other necessary expenses for mental and physical well-being according to the status in society.¹ In Arabic the root of the word maintenance is *Nafaqatun*, a noun. Its verb is *nafaqa*. The imperative verb is *anfiq* (singular), *anfiqa* (double) and *anfequ* (plural).² The terminological meaning of '*Nafaqah*' is that one spends on his children and a husband spends on his wife etc. This word itself is a noun in etymology. It is not a derivative of *Al-Nufuq* or *Nafaqah*.³ In legal terminology *Nafaqah* refers to provision for necessities of life to wife in consideration of her reserving herself for the husband and for family affairs. In general, the meaning of *Nafaqah* is made provision for one's necessities of life by another in consideration of his labor.⁴

1 *Md. HafzurRahman v. Shamsunnahar and Another*, 28 CLC (Chancery Law Chronicles) (AD) 1999.

2 Dr. Fazlur, Rahman, *Al Mu-Zamul Waafi*, Dhaka: Read Prakashoni, 2005, p. 1079.

3 Zayn-ud -Din Ibn Ibrahim Hanafi Ibn Nujaym, *Al-Bahr al Raiq*, Vol. 3, Cairo, (970 H), p. 321.

4 Masud Ibn Ubaydullah. *Sharh al-Wiqayah*, Vol. 2, Delhi: Mujtafai Press, 1970, p. 171.

The word '*anfequ*' has been used in Sura *At-Talaq*, verse 6, where women have been given the right to live in the same style in '*Iddat*'⁵ as their husbands live according to their means. The word "*Yonfequ*" (Present indefinite tense and in plural form) has been used in *Ayat* 7 of Sura *At-Talaq* following the verse, on the maintenance of non-pregnant and pregnant divorced women, such as:

*"Let the man of means spend according to his means and the men whose resources are restricted, let him spend according to what Allah has given him."*⁶

According to *Hedaya*:

"Maintenance means all those things which are necessary to the support of life, such as food, clothes and lodging; many scholars confine it solely to food."⁷

3. Objectives of the Study

The main objectives of the study are:

- a. To analyze women rights under Muslim Law in Bangladesh,
- b. To analyze wives' rights of maintenance under Muslim Law,
- c. To examine husband's obligation regarding maintenance,
- d. To analyze the Laws in Bangladesh regarding maintenance,
- e. To highlight the problems that has been come through different cases in Bangladesh,
- f. To identify the mechanism to recover maintenance,
- g. To suggest some probable recommendations regarding the provisions of maintenance.

5 In Islam, iddah or iddat (Arabic: *العدة*; *period of waiting*) is the period for a woman to be observed after the death of her husband or after a divorce, during which she may not marry another man. Its purpose is to ensure that any offsprings produced after the cessation of a *nikah* (marriage) would be known. The length of *iddah* varies according to a number of circumstances. See for details in <https://en.wikipedia.org/wiki/Iddah>. accessed on 17.10.2023

6 The Noble *Quran*, (1424 H), The King Fahad Complex, Ministry of Islamic Affairs, KSA, Sura *At-Talaq*, Verse no. 7.

7 Burhanuddin Ali Ibn Abu Bakar, (Trans.), *Al Hedaya*, 2nd part, 3rd Edition, Dhaka: Islamic Foundation Bangladesh, 2006, p.140.

4. Maintenance of Wife under Islamic Law

It is the duty of the husband to provide for his wife, regardless of whether she is *Kitabiyyah* or Muslim, wealthy or impoverished, loved or unloved, young or old. The wife, however, is too young for marriage relations and has no claim to support from her husband, regardless of whether she resides in his home or with her family.⁸ As soon as his wife remains devoted to him and follows his instructions given, the husband is required to provide for her.⁹ It is the husband's responsibility to support his wife when the marriage is legal and she is able to engage in marital relations, especially if she is able to support herself.¹⁰

4.1 Islamic Provisions regarding Maintenance of Wife

The preservation of the wife is stressed in both the Holy Quran and the Hadith. According to Allah the almighty, maintenance for divorced women should be paid on a reasonable scale. The virtuous have an obligation to do this.¹¹ Due to the fact that men have been endowed by Allah with greater strength than women because they provide for them with their resources, men are responsible for protecting and sustaining women.¹² Unless they have engaged in open naughtiness, you force women out of their houses or allowed them to leave when you neither divorce them nor do so at the appointed periods.¹³ Hazrat Jaber ibn Abdullah ® has narrated from the Messenger of Allah that the Prophet Muhammad (sm) has said, "*They (women) have rights over you in regard to their food and clothing according to means*".¹⁴ They have rights over you; the Prophet (sm.) declared in another hadith and you must treat them fairly by providing them with clothing and food."¹⁵ According to his father, Hakim ibn Muawiyah, I questioned: "*O Messenger of Allah!*" What

8 Charles Hamilton, *The Hedaya, or Guide: A Commentary on the Muslim Law*, 2nd Edition, London, 1870, p. 182

9 Sayed Khalid Rasid, *Muslim Law*, 5th Edition, Luknow: Eastern Book Company, 2009, p. 181

10 *Sayed Ahmed v. Sultan Bibi* AIR 1943 Pesh. 73

11 *Surah Al-Baqarah*, verse no. 241, *The Holy Quran*

12 *Surah An-Nesa*: verse no. 34, *Ibid*

13 *Surah At-Talaq*, verse no. 1, *Ibid*.

14 *Shahih Muslim Sharif* Hadith No. 1991, retrieved from available at <https://www.youtube.com/watch?v=ZeqxI36UNTk>, Accessed on 16.10.2023

15 *Ibid*

claim does the spouse of one of us have on him? He explained: You must feed her after you have eaten and you must dress her after you have dressed yourself.¹⁶

4.2 Scale or Standard for Maintenance of Wife

According to the status and position of both husband and wife shall be determined for the scale of the wife's maintenance. If, there is difference of status between them an average rate of maintenance shall be fixed for the wife.¹⁷ According to the Hanafi School, the position, status, and condition of both the wife's husband and herself must be taken into consideration while determining the wife's upkeep.¹⁸ Therefore, if the husband and wife are both affluent, the husband must maintain them in a lavish fashion; however, if they are both poor, the husband will maintain his wife to the best of his abilities; yet, if he is wealthy and she is poor, he is to offer her a moderate subsistence. The view is supported by the *Quran* which states as "*Let him support her according to his ability.*"¹⁹

In another place, Allah the Almighty states, "Let the man of means spend according to his means; and let the man with limited resources spend according to what Allah has given him. No one is burdened by Allah beyond what He has been granted."²⁰ In the light of this verse, *Imam* Shafi-e is of opinion that the status and condition of the husband alone is to be considered. On one occasion Hinda, daughter of Otba, came and complained to the Prophet Muhammad (sm.) that her husband Abu Shufian was a miser, and did not support her and her child properly. By hearing her complain the Prophet Muhammad (sm.) said, "*Take from the property of your husband whatever may suffice for the subsistence of yourself and your child in the customary or moderate way.*"²¹

16 Book of *Sunnah* from "*Sunan Ibn Majah Sharif*" Cited by Zainab Chawdhury, 1991, P. 269

17 *Ibid.*

18 Burhanuddin Ali Ibn Abu Bakar, Trans, *Al Hedaya*, 2nd part, 3rd Edition, Dhaka: Islamic Foundation Bangladesh, 2006, p.140.

19 *Sura Bakara*, verse no. 236, *Al Quran*.

20 The Noble *Quran*, 1424 H, The King Fahad Complex, Ministry of Islamic Affairs, KSA, *Sura At-Talaq*, Verse no. 7.

21 Professor Faiz-ud-Din, *A Text Book on Islamic Law (Including Statutory Family Laws)*, 16th Edition, Dhaka: Shams Publication, 2014, p. 150; Justice Sayed Ameer Ali, *Mohammadan Law*, Lahore, 1965, P. 406.

Actually, the amount of maintenance may be fixed considering the overall situation, that is, the rank, status, economic condition of both the husband and wife. Cost of living and standard of living must also be taken into consideration in respect of scale of maintenance of wife. The *Qadi (Judge)*, on application made by the wife, may fix up the monthly maintenance and the rate may vary depending upon circumstances. Hence, it is not proper to fix up the amount in a rigid manner. The Criminal Procedure Code, 1898, under section 488, has fixed up the maximum monthly amount of maintenance to take four hundred which, it is submitted, is too meager in the present economic context. The above section has already omitted from the Code of Criminal Procedure, 1898. Regarding this, it has been submitted under the jurisdiction of the Family Court.

4.3 Disentitlement of Wife's Right to Maintenance

The husband's obligation to support his wife is dependent on her compliance; if she refuses to live with him or otherwise disobeys him, he is not required to do so.²² Without good reason, a wife who refuses to go back to her husband is not eligible to get support.²³ She forfeits her claim to get support if she unjustly refuses to live with her spouse.²⁴ If the woman fails to comply with the instructions of the husband, the claim to support would also be forfeited.²⁵ But not if circumstances that make noncompliance acceptable or if she is compelled to leave her husband's home due to maltreatment²⁶ the husband refuses to support his wife for any reason that is not legal, in that case she may bring a maintenance lawsuit against him. It is inconceivable to sustain that a Muslim wife who disobeys her spouse, refuses to live with him and makes scandalous accusations against him, can nevertheless claim to be supported independently at her partner's cost.²⁷

4.4 Past Maintenance of Wife

22 Charles Hamilton, *Op.cit*, 1870, p.182.

23 *Majida Khatoon v. Paghalo Mohammad*, PLD 1963 Dhaka 583; *Sardar Muhammad v. Nasima Bibi*, PLD 1966 Lahore 7.

24 *Ali Akbar v. Fatima Begum* (AIR 1929 Lah. 660); *Mst. Ismabai v. Umar Mahomed Sidik* (AIR 1930 Sind. 11); *Mahomed Ali v. Mst. Ghulam Fatima* AIR 1935 Lah. 902

25 *Mst. Khatijan v. Abdullah* AIR 1943 Sind. 65

26 *Amir Mohd. v. Mst. Bushra* AIR 1956 Raj. 102

27 Tahir Mahmood, *Islamic Law in modern India*, 1972, p.142.

The wife shall be entitled to claim payment to her of the proper maintenance expenses for the past period if the husband has neglected or failed to pay. According to Hanafi School, the wife cannot claim past maintenance from her husband unless there is an agreement between them or there is a decree of the court entitling her to receive maintenance from her husband. According to Shafi School, she is entitled to claim past maintenance.²⁸ Same is the opinion of *Imam* Malik and *Imam* Ahmad Ibn Hambal (Mercy be upon them).²⁹ Opinion of researcher is that if there is an agreement between them regarding the past maintenance, the wife is entitled to past maintenance from husband.

4.5 Maintenance of Wife Living Separately

No wife shall be entitled to seek separation on account of her husband's poverty except when the court arrives at the conclusion that there is no possibility of the husband having sufficient means in the near future and there is the likelihood of the wife getting led astray from the virtuous path.³⁰ Although according to the Hanafi School, financial inability of a husband is no ground for divorce; the majority of jurists grant the wife a choice. She may both bear with him (highly recommended) and await relief or she may seek separation from him and the court shall agree with her request. If the husband's financial situation does not allow him to discharge his obligations to her, the wife shall be supported by her relative. Also, she has the option of borrowing on his behalf in proportion to her needs. In either case, whatever she spends becomes a claim or debt against her husband, which he is to pay when his financial situation improves. Although the *Hanafiyah* have opinioned that financial inability of a husband is no ground for divorce, the majority of jurists grant the wife a choice. She may both bear with him and await relief or she may seek separation from him and the court shall agree with her request.³¹ According to Hanafi School, if the husband avoids providing maintenance

28 Dr. Tanzilur Rahman, *A Code of Muslim Personal Law*, Vol. No. 1, Lahore: Hamdard Academy, 1978, p. 271; Al-Quduri, Abul Hasan, *Al-Mukhtasar*, Trans. by Tahir Mahmood Kiani, Karachi: Quran Mahal, 2007, p.174.

29 Dr. Tanzilur Rahman, *A Code of Muslim Personal Law*, *Op.cit.* 1978, p. 271.

30 *Ibid.* p.272.

31 *Ibid.*

to his wife, even due to his poverty, separation shall not be effected between them. The Hanafis have, in support of their contentions, quoted the *Quranic* verse:

*"Let the man of means spend according to his means and the men whose recourses are restricted, let him spend according to what Allah has given him. Thus one should spend from what Allah has bestowed upon him because Allah puts no burden on any person, beyond what He has given him. After a difficulty Allah will soon grant relief."*³²

The other contention of the Hanafi is that among the companions of the Prophet Muhammad (sm.) there were some who were well to do and some who were very poor but not a single instance is to be found during the Prophet Muhammad's (sm.) period that separation between the spouses was effected on account of the poverty, stinginess or non-providing of maintenance by the husband. It may be said here that state was the guardian at that time. According to Hanafi School, if the husband in spite of his being well off avoids providing maintenance to his wife, the court, instead of passing order for separation, shall order for his imprisonment or order for his property being sold and the maintenance expenses being paid out of it to the wife. If the non-providing of maintenance is due to the husband's poverty, he shall be given proper time for its payment. Allah the Almighty says, *"After a difficulty, He will soon create relief."*³³ According to Hanafi School, if such a suit is brought before a court, the first order that should be passed is that the maintenance expenses of the wife should be met by borrowing in the name of the husband. *Shi'a 'Ulama'* also appear to be in agreement with the Hanafi's point of view.³⁴ The point of view of *Imam* Malik, Shafi' and Ahmad Ibn Hambal (Mercy be upon them) is that the husband, if he avoids providing maintenance to his wife, separation shall be effected between them. In such cases, keeping the woman in wedlock will be treated as perpetrating cruelty on her in perpetuity. Allah has prohibited retaining them (the wives) for persecuting them.³⁵ It is cruelty to compel a wife to remain in the wedlock of such a

³² The Noble *Quran*, (1424 H), The King Fahad Complex, Ministry of Islamic Affairs, KSA, *Sura At-Talaq*, Verse no. 7.

³³ *Ibid.*

³⁴ *Ibid.*

³⁵ *Al Quran*, 2: 23.

husband and in this respect; every court should do away with their marriage bondage. Hence, when the husband is not agreeable to dissolve the marriage, the court in having jurisdiction shall be empowered; it will be a right decision according to the view of the present researcher, the court should order for separation between them.

4.6 Maintenance of a Widow

A woman who has lost her husband is referred to as a widow in Islamic law. The fundamental prerequisite for receiving maintenance for a female is to create a union between her spouse and herself. A current obligation whose function is served by marriage. Its goal is to have children since *Iddat* is actually required (*wazib*) for the protection of preserving the generation of children and upkeep is also required (*wazib*). Because of this, she also receives upkeep. The majority of scholars, among them Abu Hanifa, Shafi, Malik, and Ahmed Ibn Hambal (may Allah have mercy on them), have agreed that a widow should not receive support from her deceased husband. They have cited the following argument to bolster their claims. Because this waiting period is regarded as worship on her part, the wife practices *Iddat* instead of protecting her husband's rights but rather the rights of *Shari'ah*. We are aware that a woman must observe *Iddat* for four months and ten days after the death of her spouse. They have cited the following arguments to support them. As Allah says,

*"And those of you who die and leave wives behind them, they (the wives) shall wait (as regards their marriage) for four months and ten days, then when they have fulfilled their term, there is no sin on you if they (wives) dispose of themselves in a just and honorable manner (i.e. they can marry). And Allah is Well-Acquainted with what you do."*³⁶

Menstruation is not a condition in the verse above, as can be inferred. Hence, her spouse will not be required to pay for her upkeep (*wazib*). Another reason is that although maintenance is gradually required (*wazib*), the husband does not inherit any of the property after his death. So, it is not possible to fix this obligation in the ownership of heirs. Who will now pay for the widow's maintenance is the topic at hand. For the sake of her

³⁶ The Noble *Quran*, (1424 H), The King Fahad Complex, Ministry of Islamic Affairs, KSA, Sura *Al-Baqara*, Verse no. 234.

children's future, a widow who has children shouldn't marry because the Prophet (s.a.w.) has said that she should not. as:

*"If the widow who abstains from making marriage with other for the future of her children and protects her chastely, they will stay in the heaven with me and its distant will not be more than me."*³⁷

In this way, the widow will receive maintenance from her husband's estate. If the husband has no property left, the father-in-law will support her out of the assets to which the husband is entitled. She will be supported by her parents because she is an heir to their estates if her father-in-law does not have any assets to do so.

5. Maintenance of Wife under the Statutory Laws of Bangladesh:

Maintenance of wife has been provided under the various statutory laws in Bangladesh that are as follows categorically:

5.1 Provision under the Dissolution of Muslim Marriages Act, 1939

The section 2 of the Dissolution of Muslim Marriage Act, 1939 has stated that a woman married under Muslim law shall be entitled to obtain a decree for the dissolution of her marriage on the certain grounds, such as, that the husband has neglected or has failed to provide for maintenance for a period of two years.

5.2 The Muslim Family Laws Ordinance, 1961

Under section 9 of the Muslim Family Laws Ordinance, 1961, the wife may file an application to the Chairman for recovery of maintenance and the chairman by constituting an Arbitration Council determines the amount of maintenance and section 9 of this ordinance runs in details, as: "If any husband fails to maintain his wife adequately or where there are more wives than one, fails to maintain them equitably, the wife or all or any of the wives may, in addition to seeking any other legal remedy available, apply to the chairman who shall constitute an Arbitration Council to determine the matter and the Arbitration may issue a certificate specifying the amount which shall be paid as maintenance by the husband." This

³⁷ Hadith no. 179, Chapter-on Nikah, Meskat Sharif

section of the Ordinance deals with the maintenance of the Muslim married woman only and not for the children. The amount fixed by the Arbitration Council is recoverable as arrears of land revenue. Of course, an aggrieved party may prefer an appeal to the Court of Assistant Judge whose decision is final and no appeal shall lie in any court of law. In this regard, a leading case '*Sarder Muhammad v. Mist Nasima Bibi* (1967)³⁸' is mention praiseworthy here. In this case, Justice Afzal Cheema following the Muslim Family Laws Ordinance, 1961 contended:

"The maintenance of a wife is the bounded duty of a husband, irrespective of his minority; illness or imprisonment or richness of the wife, so much so that the obligation devolves on the father of a minor husband with a right of recovery against him when he is in a position to repay the amount."

The court has thus the jurisdiction to grant adequate maintenance subject, of course, to consideration of limitation and the relevant circumstances of each case. Thus section 9 of the Muslim Family Laws Ordinance is not alternative in nature, but has been made available in addition to a similar remedy provided in section 488 of Criminal Procedure Code,³⁹ although this section has already been omitted.

Besides, section 9 of the Act has stated that:

- i. if any husband fails to maintain his wife adequately, or where there are more wives than one, fails to maintain them equitably, the wife or all or any of the wives, may in addition to seeking any other legal remedy available apply to the chairman who shall constitute an Arbitration Council to determine the matter, and the Arbitration Council may issue a certificate specifying the amount which shall be paid as maintenance by the husband.
- ii. a husband or wife may, in the prescribed manner, within the prescribed period, and on payment of the prescribed fee, prefer an application for revision of the certificate, to the collector

³⁸ 19 DLR (1967) W.P., p. 50

³⁹ 19 DLR (1967) W.P., p. 50

concerned and his decision shall be final and shall not be called in question in any court.

- iii. any amount payable under sub-section (1) or (2) if, not paid in the due time, shall be recoverable as arrears of land revenue.

The Honorable Appellate Division of the Supreme Court of Bangladesh held in the case of *Jamila Khatun v. Rustom Ali* 48 DLR (AD) 110, as:

"Children in easy circumstances under Muslim law are bound to maintain their poor parents, although the latter may be to earn something for themselves. These poor parents may also file a suit in Family Court for maintenance from their opulent children. Similarly, poor or disabled relatives, even servants of the wife can maintain a suit for maintenance under the Ordinance of 1985 under circumstances enjoined by Muslim law."

5.3 The Family Court Ordinance, 1985

Under Section 5 of the 1985 Ordinance, a support suit must be filed in the Family Court. The enforcement of a support order issued by a Family Court is covered in Section 16 of the Ordinance from 1985. According to the clause, the Family Court will take the place of the Civil Court if the decree calls for the payment of money and the decial amount is not delivered within the time frame set by the court. But if it is a fine order, the Family Court will serve as the Criminal Court and may issue a warrant or grant an order for jail if the changing with time sum is not paid. The implementation of repair orders resembles the implementation of a money-payment order.

6. Case Laws regarding the Development of the Concept of Wife's Right to Maintenance

According to the various case laws involving the right of Muslim women to maintenance, the Family Courts seem to be rigidly upholding conventional Muslim law. But as per *Sharia*, if the wife has a good reason to live apart from her husband, she is entitled to get support. If the wife doesn't want to live in her husband's house, she must charge rent even

when she lives with her father.⁴⁰ A very ancient court had determined that the woman in this situation was not entitled to maintenance since arguments and differences with her mother-in-law did not qualify as a legitimate reason for her to depart her husband's home. If the right to separate residence and maintenance for such mistreatment or disputes had been outlined in the *kabinnama*, as in a much older case, this matter may have been resolved.⁴¹ The wife was only eligible to get support during the period of *iddat* since she had legally separated from her husband using the *talaq-e-tafweed* delegated authority. The Family Courts of Bangladesh strictly upheld the traditional Muslim rule that the wife has no right to support if the marriage is not legally performed.⁴² But in a court of law, these views of women are never taken into account. It is crucial to note that it is impossible to tell from the judgments⁴³ if the courts are adhering to the conventional custom of taking the spouses' social standing into account when determining the amount of maintenance. The method they use to determine the specific amount of maintenance could not also be evaluated. Maintenance is typically seen as being provided in a respectable manner inside the *kabinnama*. Yet, it is not stated how much upkeep is considered to be decent. The Family Courts have been known to award larger maintenance amounts in some situations where the spouse is living overseas. The High Court Division of the Supreme Court declined to grant the previous support ordered by the lower court because the wife was not living with her spouse (in *Rustom Ali v. Jamila Khatun case*). As a result, the husband has sexual dominance over the woman and is in charge of who lives where in the marital household. When a mother refused to live with her husband, she is referred to as a disobedient wife or *nashuza*, which in this circumstance was viewed as a primary reason to deny support.⁴⁴

⁴⁰ Mahomed Ullah Ibn S. Jung, *Dissertation on the Muslim Law of Marriage Compiled from the original Arabic Authorities*, Allahabad, 1926, p. 41.

⁴¹ *Sabed Khan v. Bilatunnissa Bibi*, AIR 1919 Calcutta 825

⁴² Syed Ameer Ali, *Mohammedan Law*. Vol. II, Calcutta, 1917, p. 463.

⁴³ *Sabed Khan v. Bilatunnissa Bibi*, AIR 1919 Calcutta 825

⁴⁴ Mahmood Tahir, *Muslim Law in modern India*, New Delhi, 1986, pp.76-79

According to Muslim law, the woman is only entitled to get maintenance if she lives with her father, the spouse did not ask her to visit him or removing her from her father's home would put her in harm or put her danger to her health.⁴⁵ The circumstances that forced the wife to remain apart were not taken into account by the court (in *Rustom Ali v. Jamila Khatun*). This gives off the appearance that women are not taken into consideration and also shows a strong intent to restrict women's movement. The court only permitted support from the moment the lawsuit was filed until three months following the decree for divorce or during her original term. The High Court Division mandated that the husband pay support even after the wife left the husband's home (in *Hosne Ara Begum v. Md. Rezaul Karim*). Due of cruelty, the wife was residing outside of the marital residence. Perhaps the proof of the husband's brutality caused the court to be mindful of the wife. Yet, it was determined that the Court has the authority to issue an order for previous support in the right circumstances (in *Sirajul Islam v. Helana Begum and Others case*). The Appellate Division of the Supreme Court concluded that the wife is entitled to prior maintenance even in the absence of any express arrangement, which is the most recent position of *Sunni* Law in the Subcontinent related to past maintenance of Muslim wives (in *Jamila Khatun v. Rustom Ali case*).

The husband should provide support during the *iddat* period and while the marriage is still in existence.⁴⁶ This was possibly due to the fact that under Islam, if a wedding is dissolved, both parties are eligible for marriage and the lady rejoins her biological family.⁴⁷ According to Islamic law, the Muslim Community as a whole shall be responsible for paying the divorcee's cost of maintenance if her biological family is unable to do so. If a *Baitul Mal* or community fund exists, the divorcee may receive support from it or funds saved from the sale of property may also be utilized for this reason.⁴⁸ The Supreme Court's High Court Division had initiated action to establish divorced wife maintenance. The HCD

⁴⁵ *Ahmed Ali v. Sabha Khatun* 1917, p. 461; 43 DLR 1991, HCD 301; 43 DLR 1991, 543

⁴⁶ Paras Diwan, *Muslim Law in modern India*. Allahabad, 1985, p.130

⁴⁷ Tahir Mahmood, *Personal Laws in Crisis*, New Delhi, 1986, p.87.

⁴⁸ Mohd. Shabbir, *Muslim Personal Law and Judiciary*, Allahabad, 1988, p. 288.

determined that a husband who divorces his wife is obligated to provide for her on a legitimate basis beyond the period of *iddat* for an indeterminate amount of time until she no longer qualifies as a divorcee by getting remarried.⁴⁹ Abdullah Yusuf Ali's translation of this verse from the Holy Quran states: "For separated ladies maintenance should be provided on a suitable scale." The righteous have an obligation to do this.⁵⁰

The High Court Division only considered the literal interpretation of the first part of the passage. The pronunciation is *Wa lilmootalla kate mataaoon bil-maarooof* means for divorced women it is a suitable gift. This is a duty on the righteous.⁵¹ Yet the ruling of the HCD was overturned by the Appellate Division. The AD concluded that the High Court Division's learned judges incorrectly determined that a separated woman is entitled to maintenance up until the time she decides to be married and disregarded the correct translations of the Arabic phrases "*Mataa*" and "*Nafaqa*".⁵² Translated as "consolatory gift," "compensation," or "indemnity," *mataa* means all three. It differs fundamentally from the divorcee's usual maintenance. According to conventional Muslim legal theory, the Quran's prohibitions do not apply beyond the *iddat* period. If a man gets divorced his wife, whether the separation is revocable or permanent, he is responsible for providing for her during the duration of her edit, according to Hedaya translated by Charles Hamilton.⁵³

A woman who is divorced due to repudiation for any reason other than her own is entitled to get maintenance and accommodation during her *Iddat*.⁵⁴ In the recent case of *Hefzur Rahman v. Shamsun Nahar Begum*, the Appellate Division of the Supreme Court of Bangladesh upheld this.⁵⁵ The Appellate Division ruled that the High Court Division's verdict is illogical and goes against the standards established by Muslim jurists regarding the maintenance of divorced wife based on Hadith, *Ijma* and *Qiyas* (a written

⁴⁹ *Md. Hafzur Rahman v. Shamsunnahar and Another*, 28 CLC (Chancery Law Chronicles) (AD) 1999.

⁵⁰ *The Holy Quran, (Trans.) by Ali, Abdulla Yusuf* (1979), Delhi, p.452

⁵¹ Sura Bakara, verse no.241, the Holy Quran

⁵² 51 DLR (AD) 1999, 172

⁵³ *Ibid.*

⁵⁴ Neil. Baillie, *The Digest of Mohammedan law*, London, (1885), p.450

⁵⁵ 54, 51 DLR (AD) (1999) 172

report by Allama Obaidul Haque, former Khatib of Baitul Mukram mosque that referred before the Appellate Division) over the last 1400 years. According to Chief Justice ATM Afzal, the *Quranic* passages cannot be fully understood in isolation or solely based on their grammatical interpretation; they must also be considered in light of the Prophet's (sm.) teachings and deeds, as well as the opinions of Islamic scholars and jurists. In his ruling, Mr. Judge Mustafa Kamal observed that the Ayats 233, 236 and 237 of *Sura Al-Baqarah* and the Ayats 6 and 1 of *Sura Al-Talaq* would be violated if *mataa* were to entail upkeep.

If *mataa* does not refer to maintenance, it refers to a consoling gift, recompense or compensation that, according to the Holy Quran, should be given to divorced women. There are issues that recur in every maintenance situation. Secondly, there is the issue of calculating the amount of maintenance, or more specifically, how does the Family Court and the legislation determine a just and sufficient amount? The review of the instances has demonstrated that there is no set policy, however occasionally the husband's salary is taken into account. Second, the issue is worsened by the fact that most husbands refuse to pay alimony. The only punishment left for the woman is to carry out the ruling, which also makes it easy for the husband to get away with breaking the law because it is rarely put into practice. In Bangladesh's patriarchal system, men also have the benefit of using threats of physical violence, familial defamation and other forms of social intimidation to avoid the law.

7. Evaluation of the Laws of Bangladesh in accordance with Islamic Point of View

Muslim marriage is an agreement that involves childbearing and the legalization of children as its goals. In a Muslim wedding, the parties to the union come to an agreement outlining the responsibilities of the couple. The wedding would be deemed illegal if the criteria outlined in the agreement were not true. When the husband got remarried, he made a deal with his first wife that stated she may live separately from him and receive maintenance if they couldn't get along. This deal was upheld as being lawful and effective.⁵⁶ According to a contract signed by the spouses or

⁵⁶ *Mansur v. Azizul*, AIR 1928 Oudh 303

their guardians, a wife has the right to receive maintenance payments from her husband. Hence, a husband's promise to provide his wife with separate support in the event of discord, animosity or separating between the couples is not against policy making and is legally binding.⁵⁷ The divorce terminated the marital rights but the agreement continues until the plaintiff dies or breaks it. As long as the right to maintenance continues, it cannot be viewed as being without value or going against public policy. This demonstrates that a support agreement has a stronger legal foundation than the wife's simple personal law claim for maintenance. The cause is clear. According to Islamic law, a marriage is a simple contract and any agreement made between the spouses or their guardians is enforceable as long as it does not violate the law or policy making. Every spouse is required by law to support his spouse and their kids. The wife also has a responsibility to obey her spouse and grant him unlimited access at all appropriate times. In addition to this need, the couples may agree that the husband will give his wife a specific stipend. This type of allowance is also known as i. *guzara*, ii. *mewa khor* and iii. *kharach-i-pandan*.⁵⁸ Indicate that conditions in the marriage contract can make the husband responsible for providing the wife with a particular stipend in additional to upkeep.

D.F Mulla has said regarding "*Kharach-i-Pandan*," which literally translates to "betel-box costs," is a benefit cap given to the wife that is typical in Muslim families of status. If the wife stays by her husband's side and obeys him, it is a form of maintenance provided by the husband.⁵⁹ It is a betel-box cost, thus the change in your pocket. In Muslim families, it is traditional to determine the wife's personal allowance either before or after the wedding. The amount varies depending on the parties' financial situation and position. *Kharach-i-Pandan* is the wife's own possession and she is free to utilize it however she pleases without the husband having any

⁵⁷ BR Verma, *Mohmeddan Law*, 5th Edition, 1978, p.218

⁵⁸ Faiz Hassan Badruddin Tyabji, *Muslim Law: The Personal Law of Muslims*, 3rd Edition, N.M. Tripathi, 1940, p.264

⁵⁹ Dr.Tanzil-ur-Rahman, *A Code of Muslim Personal Law*, Vol. 1, Lahore: Hamdard Academy, 1978, p. 280.

say in the matter. The marriage took place while the children were still very young (in *Nawab Khwaja Muhammad Khan v. Nawab Hussaini Begum*). The parents of the spouses agreed that the parent of the son would give his son's wife Rs. 500 every month for all time. The payment was referred to as *Kharach-i-Pandan* and there were no restrictions on how it had to be made. The woman moved into and spent some time in her partner's home. Afterwards, the couple started to disagree. As a result, the wife departed the marital house. She brought a lawsuit in order to get her *Kharach-i-Pandan* realized. Irrespective fact that she's not a party to the arrangement it was decided that she was nevertheless entitled to recover the whole sum. It was obvious that she had the right to pursue her claim in equity. She did not have to reside with her husband, the Privy Council's judicial committee further ruled. Privy Council decided:

*"By the arrangement upon which the present action is based, the plaintiff binds himself unconditionally to pay the claimant the fixed allotment; there is no provision requiring it to be paid only while the wife is residing in the husband's home or that his obligation to do so should end at whatever the circumstances under which she may choose to leave it."*⁶⁰

Guzara which in Arabic means money for subsistence and *Mewa Khorī*, which implies consumption of fruits, are terms with comparable meanings. *Kharach-i-Pandan* was given an allowance of Rs. 25 per month in addition to the assistance to which she'd be entitled in the case of *Ali Akbar v. Ms. Fatima*.⁶¹ Even if the wife could be refusing to go back to her husband, it was decided that she had a right. *Kharach-i-Pandan* is a benefit cap that cannot be transferred, although being paid with money guaranteed by real estate.⁶² In *Mydeen Beevi Ammal v. T.N. Mydeen Rowther*,⁶³ the husband bestowed certain possessions on his first spouse for her support until the end of her life following his second wife with no prior wife's consent. He then divorced her and brought a claim for possession of the properties that

⁶⁰ *Debnarayan Dutt v. Chunilal Ghosh* (1910) ILR 32 All. 410.

⁶¹ (1929) ILR II Lah. 85.

⁶² *Altaf Bi v. Brij Narain*, (1929) ILR 51 All. 612.

⁶³ AIR 1951 Mad. 992.

had been awarded to her. Whether or not she was divorced, the court ruled that she was entitled to the properties' income for the rest of her life. The court went on to list the following constitutional concepts:

*"Where a Muslim husband performs a deed of maintenance in favor of his wife placing certain assets upon her for her upkeep for her life without any condition connected thereto, the husband cannot recover ownership of the properties from his wife on the grounds that he has since divorced her."*⁶⁴

The arrangement for living apart has been acknowledged as lawful by Indian courts. The court granted the support overdue in accordance with the agreement to cohabit.⁶⁵ The arrangement for separate living has been upheld as lawful by Indian courts. According to the agreement for living apart, the court granted the backlog of support.⁶⁶ In a similar vein, a family settlement arrangement was upheld as legal.⁶⁷ *Kharach-i-Pandan* is the wife's own property and she is free to utilize it whatever she pleases. The terms pertaining to the wife's upkeep, place of residence, and ownership of the property are occasionally reduced to writing in *Nikahanama*. These agreements protect the wife's entitlement to a regular pocket allowance known as *Kharach-i-Pandan*, beetle box expenditures or *Mewa Khori*. She has complete ownership of it and complete discretion over how to use it. Therefore, the husband's duty to support his wife does not result from an express term but rather from their marital status. Specific agreements such as the *Kharach-i-Pandan*, *Mewa- Khori* or *Guzara*, etc., have nothing to do with the wife's claim to support. While the right under the special agreement is a separate right granted to the wife under commercial contracts, the issue of maintenance is tied to the contractual contract between the couple. Maintenance rights and rights under special agreements are two distinct rights that are in no way related to one another. A Muslim woman who is married under Muslim personal laws is entitled to demand support from her husband after the expiration of the *iddat* period even after obtaining the management refers to the

⁶⁴ AIR 1951 Mad. 992.

⁶⁵ *Banney Sahib v. Abida Begum*, AIR 1922 Oudh 251

⁶⁶ *Mansur v. Mst. Azizul*, (1938) 3 Luck. 603.

⁶⁷ *Latif Jehan v. Mohammad Nabi*, (1932) 30 All. L.J. 9

management money, according to the Apex Court's ruling in *Bai Tahira v. Ali Hussain Fissali Chotia*.⁶⁸

8. Findings and Suggestions

Findings of the Study: Throughout this study it is found that:

- i. In a Muslim marriage, maintenance is a crucial topic that guarantees the wife's claim to her husband after marriage.
- ii. It is shown that Bangladesh has a number of rules pertaining to a wife's support but these do not adequately address the issue.
- iii. Bangladesh's current legal laws grant a wife the right to file for divorce on the grounds that her husband has failed to pay child support; nevertheless, this right can only be exercised by the husband if he delegated it to his wife;
- iv. The guidelines for maintenance in Bangladesh merely say that a wife may file for divorce on this basis; they do not specify any penalties for failure to pay maintenance;
- v. Bangladeshi law mandates a three-month prison sentence for failing to pay a monthly allowance as ordered by the court;
- vi. In Bangladesh, it has been established that a wife has a legal right to receive maintenance from her husband even after a divorce, up to the *iddat* term.
- vii. The amount that would be paid to the wife on a monthly basis following a divorce up until the *iddat* term is not specified in Bangladeshi law.

Suggestions

Throughout this study some problems have been found, the probable suggestions to recover them are as follows:

- i. A suitable provision must be established to define maintenance appropriately. The opportunity to specify maintenance in a method that works for them is provided by this.
- ii. To clarify the notion of maintenance of Muslim wives in Bangladesh, direct maintenance provisions should be made. Because maintenance is crucial to keeping a marriage intact.

⁶⁸ AIR 1979 SC 362

- iii. Appropriate rules should be established on the penalty for failure to pay maintenance and the amount of maintenance in Bangladesh.
- iv. The support for Muslim wives is quite negligible in Bangladesh because there are several statutory provisions that are relevant to all religions. The nations must establish appropriate rules for maintaining each type of religion separately.

9. Conclusion

It can be claimed that this study focuses on the wife's maintenance rights under Bangladeshi Muslim law and that various issues were discovered throughout the research process that must be addressed in order to effectively guarantee the wife's right to maintenance. This study emphasizes the advantages of Muslim women in terms of the country-provided upkeep.