

RETHINKING POST-DIVORCE MAINTENANCE: AN ALTERNATIVE FOR THE EMPOWERMENT OF MUSLIM WOMEN IN BANGLADESH

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ABSTRACT

The current scholastic understanding and dominant judicial articulations- based on the classical interpretation of Islamic law demonstrate that women are only entitled to three months of spousal support during their religiously prescribed waiting period. The apex court of Bangladesh long back in 1999 in the famous Hejzur Rahman case not only provided its verdict in the same tune but also made a distinction between maintenance and Maa'ta, where the latter was settled as a consolatory gift. However, apart from the religious aspects, the issues of post-divorce maintenance and Maa'ta have a broader socio-political and economic connotation. Thus, the objective of this study is to examine whether the post-divorce maintenance and the support may work as an alternative for the empowerment of Muslim Women in Bangladesh. A pluralistic methodology combining both primary and secondary data has been used in this study. In order to assess the objective, the study at first revisited the existing literature after the conceptualisation of the term maintenance in the related fields that includes but not confined to the post-divorce maintenance in the light of the Quran and the Sunnah and also its journey from traditional concept to the legislations of modern Muslim world. The study then made a connection of these to the situation of post-divorce maintenance in Bangladesh. And then before presenting a case study, which is necessary to test the objective; the study construed the ways following which; post-divorce maintenance may be used as an alternative for the empowerment of the Muslim women in Bangladesh.. The study concludes that the proper actualisation of the post-divorce maintenance and support may be used as a valuable and alternative for empowering Muslim women in Bangladesh.

I. INTRODUCTION

The current understanding and judicial pronouncements based on the classical interpretation of the Islamic law in the Muslim world indicate that women are not entitled to any post-divorce financial support¹ rather they are only entitled

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¹ The Post-divorce Financial Support is also known as *Mut-al-talaq*. Under the classical interpretation of Islamic law women are not entitled to any *Mut-al-talaq* and property settlement, or any wealth of their household that accumulated during the marital course,

to three months of spousal support during their religiously prescribed waiting period, known as '*Iddat al talaq*'.² They go far by saying that '*Maa'ta*' is not the same thing like '*Nafaqa*'.³ '*Nafaqa*' is used as a synonym of maintenance. Indication of both of these, namely '*Maa'ta*' & '*Nafaqa*'; can be found in the primary sources of Islam- the Quran and Hadith.⁴

In the subsequent elongation of the concept of maintenance⁵, there is no controversy about maintenance of a wife prior to divorce but debate exists on post-divorce maintenance, particularly in relation to its duration and connection to *Maa'ta*. In the backdrop of this debate, the divorcee's condition may undergo a critical situation as three things may happen, *firstly*, she may be denied the right to maintenance; *secondly*, she may be granted the post-divorce maintenance but for a shorter time; and *thirdly*, she may be granted only maintenance and not *Maa'ta*. In order to resolve this debate and to secure the rights of the women, many countries, which include but not confined to Egypt, Turkey, Brunei-Darussalam, Tunisia, Yemeni, Iraq, Malaysia; have already enacted legislations and clarified the ways, methods and scope of maintenance. In Bangladesh, there is no legislation in this regard. However, the Appellate Division (AD) of

under the pretext that these women have already exhausted their shares by being sheltered, clothed, and fed by their husbands during the period of their marital life. For more details see, Sheikh, M., "Post-Divorce Financial Support from the Islamic Perspective", at <<http://iiit.org/Research/ScholarsSummerInstitute/TableofContents2008/PostDivorceFinancialSupport/tabid/254/Default.aspx>>. Last visited on December 30, 2015.

² See for details, Tusi, M., *Concise Description of Islamic Law and Legal Opinions*, ICAS Press, 2008, at Chapter. XIII; also, Abiad, N., *Sharia, Muslim States and International Human Rights Treaty Obligations: A Comparative Study*, London, 2008, at pp. 15-17.

³ A clarification is made and distinction drawn between *Nafaqa* and *Maa'ta* at the later portion of this article.

⁴ The reference could be found in the Holy Quran at several places, like, (2:236), (2:241), (33:28), (33:49). Even in the Hadith, the reference is found regarding the same.

⁵ In Muslim law, the wife has been bestowed with an absolute right to be maintained and the husband is bound to maintain her regardless of any consideration. Wife's right to maintenance is a debt against the husband. In Muslim law, wife is preferred over all the other persons (even the young children & other necessitous relations). Even, the wife does not lose the right to maintenance if she refuses access to her husband on legal grounds, such as if the marriage cannot be consummated because of her old age, illness, minority or physical defects. However if the wife being too young for sexual intercourse, lives with her parents; she does not possess any right for maintenance. Nevertheless, the controversy starts from the moment of a separation and arguably a divorcee is entitled to three months of maintenance, which is known as post-divorce maintenance, for details see, Law Teacher, "Maintenance of Wife Under Hindu and Muslim Law Essays", at <<http://www.lawteacher.net/free-law-essays/family-law/maintenance-of-wife-under-hindu-law-essays.php#ixzz3vnooDBMM>>. Last visited on December 30, 2015.

the Supreme Court of Bangladesh⁶ long back in 1999 in the well-known Hefzur Rahman case⁷ not only provided its verdict settling three months of post-divorce maintenance but also made a distinction between maintenance and *Maa'ta*, where the latter is settled as a consolatory gift.

However, apart from the religious aspects and interpretative debates, the issues of post-divorce maintenance and *Maa'ta* have broader socio-political and economic connotations. For example, the post-divorce maintenance may work as a tool for the empowerment⁸ of the Muslim women, particularly for those, who go through the transitional shock immediately after the separation. Thus, the object of this study is to examine- whether the post-divorce maintenance and support may work as an alternative for the empowerment of Muslim Women in Bangladesh.⁹ A pluralistic methodology, combining both primary and secondary data; has been used in this study. In order to assess the objective, the study after the conceptualisation of the term maintenance, at first revisited the existing literature in the related fields, that includes but not confined to the post-divorce maintenance in the light of the Quran and Sunnah; and also its journey from traditional concept to the legislations of modern Muslim world. The study then made a connection of these to the situation of post-divorce maintenance in Bangladesh. And then, before presenting a case study, which is

⁶ Bangladesh being a common law country, precedent is a source of law. Thus, the verdicts made by the supreme judiciary, have the status of law and binding force. The Constitution of the People's Republic of Bangladesh in this regard under Article 111 states that the law declared by the Appellate Division shall be binding on the High Court Division and the law declared by either division of the Supreme Court shall be binding on all courts subordinate to it.

⁷ *Hefzur Rahman vs. Shamsun Nahar Begum* 51 (1999) DLR (AD) 172.

⁸ Women –Empowerment is multidimensional as it occurs within sociological, psychological, economic and other dimensions, and at various levels such as individual, group, and community. It is a social process in the sense that it happens in relationships to others. It empowers women to control over their own lives; seeds capacity in them, for use in their own lives, their community, and in their society by acting on issues that they define as important. The empowerment of women brings certain elements in women like, sense of self-worth; their right to have the power to control their own lives; their rights to have and to fix choices and so forth. For details see, Majumdar, M., *Encyclopaedia of Gender Equality Through Women Empowerment*, New Delhi, 2005; Kumar, H., Varghese, J., *Women's Empowerment, Issues, Challenges, and Strategies: A Source Book*, Delhi, 2005.

⁹ The object of the current study is to test whether the post-divorce maintenance or support may work as an effective tool for the empowerment of Muslim women in Bangladesh or not. Although it is clarified at the very beginning that *Mut-al-talaq* and *Iddat al talaq* are not the same thing, but in this work they are distinctly related as the object is set to see the impact of either or both of them on women empowerment and thus, under the current study they are used interchangeably.