Case study

Empowerment of Muslim Women through Inheritance and Maintenance in Bangladesh: A Case Based Analysis

Farhan Hoque¹, Zulkar Nine²

¹LL.B. LL.M. (University of Dhaka) , Advocate , Dhaka Judge Court
²LL.B., LL.M. (University of Dhaka)

Corresponding Author: Farhan Hoque

Abstract: From the time immemorial, men and women are living in the society as associates. The role of women in a given society needs no new description. Islam, being the religion of humanity, understands this phenomenon very well. Hence, Islam has provided various safeguards for women to strengthen their social & economic conditions. This paper will trend to sort out the different provisions of Islam regarding women’s empowerment with a special focus on inheritance and maintenance. Lights will be also shed to elucidate the prevailing conditions of Bangladeshi society to connect the dots between religious rules and social practices.

Keywords: Islam, women, inheritance, maintenance, Bangladesh.

1. Introduction

In Islam both man and woman are the best creation of Allah as human beings. They are the bearer of the same duty of Allah like worship, prayer, faith, almsgiving, fasting, and pilgrimage to Mecca. But in South Asian countries specially in Bangladesh, women are treated inferior to men. Unfortunately, our socio-economic culture is always prone to deprive women from economic empowerment. In Bangladesh, women are often deprived of property and other economic rights. They are restricted to receive their property rights by inheritance. These restrictions are imposed on them systematically though the religious laws and state laws give them the eligibility to possess won property or property gained by the rights of inheritance, maintenance and dower.

In Bangladesh, Muslim family laws are enacted in accordance to Islamic Shariah Law to provide the actual right which Allah has provided for them. But women are the real victim in a patriarchal society. Our socio-economic culture does not provide them the actual right they deserve. Even in family courts women become the victim by judicial decisions. In this article, it is tried to discuss about the economic rights given to the women by Muslim Family laws and find out the actual scenario of women economic empowerment and present socio-economic status of them.

2. Empowerment of women in Islam

2.1 Islam and Women Rights

Before the emergence of Islam, in ancient Arab at the time of ignorance, women were considered as slave of their husband and the king’s-men. Women were considered shameful and female children were buried alive. They had no choice of leaving and maintaining their lives. They were not qualified to take part in social and political activities. Islam gave women the rightful status and saves them from the anarchical situation. More than fourteen hundred years ago, Islam gave women rights that women in the West have only recently began to enjoy. Islam acknowledges that woman is completely equal to man in the sight of Allah in terms of her rights and duties. Quran says, "Every soul will be (held) in pledge for its deeds". [1]

Even Islamic laws do not recognize of superiority or advantage of men over women. But superior degree of men is mentioned as Quiwama (maintenance and protection) in the holy Qur’an as the man has complete obligation to maintain and protect his wife and children. Again the nature of women being more emotional, men are given the status of ‘a degree above’ for taking the authority over households. But men’s dictatorship is not acceptable in Islam. Islam emphasizes and appreciates discussion and mutual agreement in important family decisions between couple.

2.2. Economic Empowerment of Muslim Women
Empowerment of women is a much wider issue and includes a lot of factors. In the simplest sense, it means the act of giving power or authority to women to use and enjoy their social, cultural and civil rights. There are various remedies available under the different laws for violation of these rights and enable them to take equal parts to contribute equally along with men in nation building activities. And for the proper development of a country like Bangladesh, women empowerment is a must and it will also ensure the smooth going of country’s economy, development of socio-cultural issues and overall human development. Empowerment is a complex and dynamic process. Empowerment of women includes the ability of women to take decisions and making control over material and non-material things. But economic empowerment is the most important part of women empowerment. Economic empowerment of women means to provide them their rights especially their rights of property, control over money and freedom of making economic decisions. UN guidelines for empowerment of women describe five components in defining women empowerment:

- Women’s sense of self-worth
- Their right to have access to opportunities and resources
- Their right to have and to determine choices
- Their ability to influence the decoration of social change to create a more just social and economic orders, nationally and internationally
- The right to have the power to control their own lives

Woman has the absolute authority over her earnings, acquires by inheritance and gifts in Islam. They have given the power to transfer and gift her property according to her own will. In Muslim law the main sources of economic women empowerment are dower, maintenance and Inheritance. In Bangladesh, our family matters and property rights are regulated by Muslim Shariah Law. Though Islam has given them all rights regarding their own property, our social framework doesn’t support them to follow Islamic laws regarding economic rights in Bangladesh. Male members of their families are mainly making their economic decisions and thus hindering the process of empowerment. Empowerment in Bangladesh is still an unstructured and underdeveloped field. There are scopes to work on in these area and Islamic acts in Bangladesh regarding these areas must be updated under the rules of Islamic laws provided by Quran.

### 2.3 Muslim Family Laws for Economic Empowerment of Women

Muslim family laws are primarily based on Quran and Sunnah, and secondary basis is created by Ijma and Quias. In Bangladesh, islamic family laws are mostly enacted during British period and most of them have not been amended ever since. So those laws are quite obsolete now-a-days with the social changes occurred during last few decades. Sometimes they fail to recognize the rights of the women properly and customary rules take over to deal with women rights related issues. Again, the british administrators were only concerned to lessen the abuse of women. So, the proper executions of Islamic law were not ever witnessed on this land. There are some important laws under which economic issues with women are administered currently in Bangladesh:

- **The Muslim Marriages and Divorces (Registration) Act, 1974:**

  This act mainly deals with issues relating to marriage, divorce and rights arising from these. Section 3 states, “notwithstanding anything contained in any law, custom or usage, every marriage solemnized under Muslim law shall be registered in accordance with the provisions of this act.” Registration of marriage is given much importance to provide related rights to concerned women and that’s how bounds husbands to provide those rights.

- **The Muslim Family Laws Ordinance (MFLO) 1961:**

  Proper security for women in the subject of property is provided through the ‘Doctrine of Representation’ and this special feature of this act is a wonderful privilege for women which is mentioned in section 4. Again this law provides rules for prompt dower in section 10. Apart from these, Section 7 provides for the protection of woman from getting talaq by her husband with single pronouncement. Alternative Dispute Resolution (ADR) in family disputes is also a special feature under this law.

- **Family Courts Ordinance, 1985:**

  Settlement of family issues through courts are the main issue of this ordinance and this plays an important role in adjudicating family matters in family courts. The Family Courts Ordinance (FCO), 1985 also provides the Family Courts to exercise formal ADR. Section 10 of the FCO, 1985 provides...
the pre-trial proceeding. In this stage Family Courts try to make settlement between the parties by compromise and reconciliation. It will be very helpful to Women most importantly the poor women to get their rights.

- The Dissolution of Muslim Marriage Act (DMMA), 1939:

This act provides power to women to dissolution of marriage on some specific grounds. According to the section 2(ii) of this act a Muslim woman is entitled to obtain a decree for dissolving her marriage for husband’s failure to provide the maintenance and prompt dower she is entitled. If the husband fails to continue the conjugal life for his sickness or some other reason the wife can ask for divorce for the further security of her life under this act.

3. Inheritance and Economic Empowerment of Women

3.1 Inheritance in Islam

Inheritance plays an important role in empowerment of Muslim women. It gives them control and access to land and other property inherited by them from deceased parents and close relatives. Women inherit in many categories such as a wife, daughter and mother. In pre-Islamic period women were not allowed to get any share of property. And Muslim laws have made it general rule of inheritance that, a female will get one half share of a male. In Quran inheritance is made an absolute right and we can find in Quranic sayings: “For men is a share of what the parents and close relatives leave and, and for women is a share of what the parents and close relatives leave, be it little or much- an obligatory share.” [2]

Women in Bangladesh most of the cases are deprived from their rights. And women in Bangladesh clearly aim for gender equity rather than absolute gender equality.

Shariah law regulates the inheritance laws in Bangladesh. The main principles of Islamic inheritance is

a. the husband or wife is made an heir
b. Females and cognates are made competent to inherit
c. Parents and ascendants are given the right to inherit even when male descendants are present.
d. as a general rule, a female is given one half the share of a male

3.2 Legal Mechanisms and Provisions:

Out of 12 kinds of Quranic shares 8 kinds are for women. These 8 kinds of shares are mentioned as:

- Mother of the deceased: the share of mother is 1/6, if the deceased person has more than one brother and one sister. If the person has no siblings or has one brother and one sister, mother will get 1/3
- Being wife of the deceased: wife gets 1/8 of the deceased husband’s estate. But if there is no children of the husband, then the wife will get ¼ of the total property of the deceased husband. If there is more than one wife, each wife will get equal share of the mentioned property.
- Daughter of the deceased: the daughter of the deceased gets half of her father’s estate. If she is the only child. If there is more than one daughter, they will get collectively 2/3 of the property. In the presence of son daughter becomes agnatic.
- Full sister: full sister gets half of the inheritance of her deceased brother if there is no brother or sister. If there are more than two sisters they will get 2/3 collectively. Existence of brother, full sister becomes agnatic.
- Son’s daughter: like daughter, son’s daughter gets half of the property if she is the only child. Collectively they get 2/3 of the property. Son’s daughter gets excluded in the presence of son and more than one daughter. Existence of son’s daughter becomes agnatic.
- Grandmother: In the absence of mother, grandmother gets 1/6 of the total property of the deceased. Mother excludes grandmother.
- Uterine sister: If there are only one uterine sister she will get 1/6 share of the deceased property. Collectively they will get 1/3.
- Consanguine sister: consanguine sister is the deceased maternal half –sister. If the diseased person has no full sister she takes the same ruling as the full sister.

Among the 8 kinds of sharers’, full sister, consanguine sister and uterine sister excluded by son, son’s son how long so ever, father and true grandfather. In Muslim Family Law the general rule is, a female will get one half of the share of a male. The critics and feminists mostly focus on this point. But Islam has taken into account the fact that a man is obliged to provide for his family. Man is required to take care and provide financial support to his family and close relatives. And as a matter of fact we will find women are the beneficiaries than men as Women are free from such kind of responsibilities.

In Islam women are given the right of inheritance on their father, husband, brother and son’s property.
But in reality problem lies in social norms as the process of inheritance is regulated by some customary rules. In Bangladesh Shariah law of inheritance is followed by the Muslims for proper distribution of a deceased property among the heirs though inheritance is the subject of civil court jurisdiction not family court. In civil court, the cases revolve on three issues relating to legitimacy and acknowledgment, the doctrine of representation and partition of joint property.

### 3.3 Judicial Activism regarding Inheritance

In Imamuddin vs. Shukkur Molla [3] case, the question of parentage of the daughter had arisen. A very old kabinnama (marriage registry) registered under the Bengal Mohammadan marriage and divorce registration act 1876 was produced to establish the legitimacy of the daughter. It was held that by the court such document could be relied for these kinds of purposes.

On the other hand, in Md. Khorshed Alam vs. M.A. Ali Haider [4] a reversed situation was found. The question arises about the legitimacy of the defendant as a son of Amir Ali. According to Mohammadan law there are some conditions for the acknowledgement of the legitimacy of the child. The most important part of Inheritance is the doctrine of representation. Section 4 of MFLO, 1961 is about doctrine of representation. In Sheikh Ibrahim vs. Nazma begum [5] the court decided that the death of the daughter of the porosities, whether it was before or after the coming into force of the MFLO, 1961 is immaterial. The material importance is the date of succession.

### 4. Maintenance in Economic Empowerment of Women

#### 4.1 Maintenance in Islam

Both the maintenance and dower are two rights of muslim woman provided by her husband. Muslim Woman gets maintenance from husband and also from her father and sons. Father is bound to maintain his daughter until she got married and earn her won livings. Son is liable to maintain her mother if he has the economic capability. But a husband is liable to give maintenance to his wife during the whole married life even after the dissolution of marriage during the iddat period. The Holy Quran states that:

“Men are protectors and maintainers of women. Because God has given them more strength than the other and because they support them from their menace.” [6]

But a Muslim woman will loss her right to maintenance if she willfully refuses to live with her husband without any lawful reason, or fails to perform her marital obligations at her own wish. But the husband will not get relief from his liability to maintain his wife if the wife refuses to perform her marital obligation if he fails to pay prompt dower.

Rule for the husband is that he will maintain his wife during the continuation of marriage and as well as afterwards. It is mandatory to provide maintenance to the wife during the three months of iddat period. She is also entitled for the maintenance from her husband even if she earns money of her own. Verse in the Quran states that:

“For divorced women maintenance (should be provided) on a reasonable scale. This is a duty on the righteous.” [7]

#### 4.2 Legal Mechanisms and Provisions Regarding Maintenance:

The Muslim Family Laws Ordinance (MFLO), 1961 has provisions regarding the disputes of maintenance. The section 9(1) says that a wife can go to the arbitration council if her husband fails to provide maintenance. Section (2) of MFLO states that if any husband fails to maintain his wife adequately, or fails to maintain more than one wives equitably, the wife or all or any of the wives, may in addition to seeking any other legal remedy available, apply to the chairman. The chairman shall constitute an arbitration council which may issue a certificate specifying the amount which shall be paid as maintenance by the husband.

There is also a provision for appeal. Appeal can be made to the Sub-divisonal Officer under section 9(2) of MFLO within 30 days according to section 16 of the Muslim Family Laws rules, 1961. The Arbitration council will issue a certificate with a specific amount of maintenance which the husband has to pay. If the amount is not paid to the arbitration council in due time, it could be recovered under section 9(3) if MFLO as arrears of land revenue.

#### 4.3 Judicial activism regarding Maintenance:

Maintenance plays an important to ensure economic right for women. Most of the time women become the victim. Women have the right to get maintenance during the whole period of the married life but in Bangladesh the topic of maintenance and dower arise only at the time of divorce. But at the time of divorce every husband tries to prove that his wife is disobedient.

In Jamila khatun vs. Rustam Ali [8] the High Court
Division of The Supreme Court did not grant the past maintenance which was allowed by the lower court as the wife was staying her father’s house not with her husband. Wife while staying with her father’s house will only be entitled for maintenance if the husband did not request her to come to his house. Or it would be a matter of danger or risk for her health to remove her from father’s house. In this case the court allowed maintenance for her Iddat period only. The court also gave the opinion that a wife is entitled for past maintenance even in the absence of any specific agreement.

In Bangladesh, in the leading case Md. Hefzur Rahman vs. Shamsun Nahar Begum [9] the Appellate Division gave decision that Mataa is not included in maintenance and it cannot be claimed as maintenance under The Family Court Ordinance 1985. The court held that Mataa in the quranic verse (II:241) means a consolatory gift and it is not enforceable by law. Justice Mustafa Kamal in his decision stated that if Mataa means maintenance, it will run counter to verses 233, 236 and 237of Surah Al- Baqarah and verses 6 and 7 of Surah Al-Talaq. According to the Holy Quran, Mataa is not maintenance it is a consolatory gift and it should be provided to the women at the time of her divorce.

6. Conclusion

Truth be told ,Islam thoroughly recognizes rights of women and empowers them economically. Laws provide the economic rights to the women in accordance to the Islamic Shariah. But there are some administrative problems A significant portion of women in Bangladesh are ignorant about Shariah Law and their economic rights provided by Dower, maintenance and inheritance. Very often , they willfully waive their rights of dower and inheritance for the affection of the husband. Besides, judicial system is not friendly enough to provide access to justice in moments of need .Due to financial constraints ,many women don’t get adequate access to court and legal procedures . With proper education and actions taken by government, modern women of Bangladesh are becoming conscious of their economic rights. The alternative dispute resolution mechanism provided by The Muslim Family Laws Ordinance 1961 can be a much effective tool to ensure legal remedy to disadvantaged women .To implement these laws and ensure empowerment of women, government bodies, judiciary, Islamic scholars, NGOs and all other stake holders must come forward.

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