LAW IN-DEPTH

DIVORCE UNDER MUSLIM LAW

Prompt action of judiciary can ensure justice

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THE other day, while listening to my friend discussing the predicament of a man seeking legal advice, I was introduced to a scintillating loophole in our Muslim family law which hitherto had gone unnoticed by many.

The man's problem was not uncommon on the face of it. He had been divorced by his wife, and was seeking to get the guardianship of his fifteen year old son. While this might create illusion of yet another instance of exercising women rights and women empowerment to the effect that women are nowadays increasingly becoming brave enough to come out of incompatible bonds, nonetheless, this particular case is not one that the women rights activists could be happy about. As a matter of fact, this incident is an example of misusing the law, and of how the justice delivery system in our country is plagued by negligence, often at the cost of other's happiness and stability.

The main legislation guiding the procedure of dissolution of Muslim marriage in Bangladesh is the Muslim family laws ordinance 1961. The law in Section 7 clearly stipulates that, any man who wishes to divorce his wife shall send a notice to the Chairman as soon as possible after the pronouncement of talaq that he has done so. Moreover, he must supply a copy of that notice to his wife.

The talaq shall be effective only after ninety days have passed after delivering this notice to the chairman. The chairman, on the other hand, within thirty days of receiving the notice shall arrange for reconciliation between the parties.

In case of wife divorcing her husband, Section 8 provides that the provisions of Section 7 will apply mutadis mutandis.

On a simple reading, the law seems quite clear and the procedure quite easy to follow. It is not cumbersome to send a written notice to the local UP chairman or the Ward commissioner that a person has pronounced talaq to one's spouse, and when such notice is once given, supplying a copy to the spouse is neither an elephant task. That is, this is what I used to think until now. For you see, that man had shown me an example of twisting the law to serve one's purpose in a crooked manner. Although his wife did send a notice to the chairman, she did not bother to send a proper copy to her husband. Also, the notice was served through beneath the door in a plain paper in a manner that it failed to catch the attention of the husband until a substantial period from the ninety days had already elapsed. Thus even though the wife could claim that she did comply with the legal provisions, a crucial question arises: what is to be the proper form of notifying and what is the legal consequence of non delivery of notice.

It is important to consider that The MFLO 1961 has two aspects of notification: one to the chairman and one to the spouse, albeit the same piece of notice. A reasonable apprehension against this provision is what is to happen if one fails by any reason whatsoever to deliver such notice. The case laws and court precedents are quite abundant when it involves notice to the chairman, although not identical.

The courts in this regard hold two views. The majority court decisions show that, the talaq shall be effective only when the prerequisite of notifying the chairman is obliged with. Thus, if the person is dormant

and feels like sending the notice after 2 months of having pronounced the talaq, then one has to wait for 5 months in total for the talaq to be effective if reconciliation is not possible.

However, the courts show two types of inclination in this regard. While in the earlier days, courts held the view that non delivery of notice prevented the talaq from operating, the recent court decisions show that non delivery of notice is not a vital omission of from the behavior and treatment of the person with the spouse makes the talaq established.(1996 BLD 477)

This recent notion carries with it the understanding, that if a person has clear knowledge of the fact of divorce from the spouse's behavior or treatment, then one might lose the standing to challenge such talaq if steps for reconciliation are not taken within 90 days. Dear readers, let us stop here, and ask a question. In Bangladesh, where wives are often not treated at par with the husbands, where the wives are silenced by the in laws and the husband even in mundane matters such as which discipline should the child choose to study, and where the mobility of women is so limited, how plausible it is for a wife facing the prospects of talaq to find an arbitrator for reconciliation? Let's get out of the legal context and look at the societal picture. The in laws in most of the cases shall support the husband, as for the males it is Shaat Khun Maaf (utmost guilt shall be condoned), and her own family will advise her to make peace with the husband at terms put forward by him. Often there is none in her own family to defend her interest, to place her terms, for even these days in a city like Dhaka talaq is a taboo. Thus, our judiciary should consider the vulnerability of women while judging the validity of talaq in absence of notice.

But, horrifyingly, the more disturbing picture is unveiled when one ponders about the notice given to spouse. Given that it is not at all uncommon for our busy chairmen to fail to find some time for arranging reconciliation, cases like the one stated above are not seldom where the divorced spouse has no idea that the marriage has come to end , more likely when they are in separate residence. Often, the person pronouncing talaq takes the advantage of this moot point of legislation. They argue that since the chairman failed to reconciliate despite receiving notice, they are not liable. Their mala fide omission is suppressed under the strict interpretation of the provisions. This is a major loophole in our law, for there is no clear guideline in this regard, and our common people, not well aware of the maxims of law and equity, silently admit that they have no choice but to accept the divorce, for their 'dear' spouse did respect the law. It is the naughty chairman who is guilt, but dear me! Who could possibly challenge the mighty chairman, who is rare to find in the vicinity?

The judiciary should set out proper rules on what is to be the proper form of delivering notice, what would be the legal consequence of negligence in serving notice to spouse inhibiting the exercise of rights under the law, and what would be the implication under Islamic Law of defrauding the spouse by misrepresenting the law.

Marriage forms the first basis of society. If we want to establish rule of law, we must ensure marriage receives proper protection of abuse of justice.

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LAW ANALYSIS

Loopholes in law makes justice difficult

JAHANGIR ALAM SARKER

THE women litigants of Bangladesh are deprived of variously from justice for weakness in legal framework. The personal laws promulgated during the British colonial regime are in force till now in our country. In many of those laws inequality has been shown towards women. The women are victims in the hand of inequality in all aspects of there lives from age to age. In the last century the women made advances in socio-economic field amidst innumerable hindrances but it is reputed that cruelty to women has not decreased. The extent of cruelty has increased gradually day by day. Although there are laws in the state level yet they failed to establish the right of women and to assure justice to the litigant women.

Needless to say the most important feature in order to secure justice is that the state laws shall have to be friendly to women. If the state law becomes friendly to women it will be easy to ensure justice to women to a greater extent. It is astonishing to think that the women are the victims of greedy man in the state which claims that there is the highest possibility of the full development of the freedom of women. Our past experience reminds us that the social prestige of women has been trembled down from age to the age. In spite of the abolition of the usage of self immolation of Hindu wife in her dead husband's pyre, child-marriage, and oppression, right of the women in state level could not have been established in full in our social system. That the women are afraid of various kinds of malpractices and usage such as dowry, killing, abduction, realization of dowry, throwing up of acid etc become the head lines in the newspaper.

Simultaneously with the degradation of law and order in the state level, oppression of women is advancing on contests. For different causes, the woman remains behind in getting justice. On the face of the violent demand of the women headed organizations to remove this type of national difference in providing in justice the government promulgated the Family Court ordinance on the 17th June, 1985. It was presumed that the Family court law ordinance of 1985 would play an epoch-making role in maintaining the rights of the women. But it is with grief to say after the laps of 25 years it is observed that the side of success of this law is so scanty that it could not yielded a laughing face to the women. Some other consequential expenses are in existences which have not been fixed up although court fee payable (to the plaint) has been fixed up. As a result there is nothing worth mentioning for which the deprived village women are getting in this respect.

In to-days discussion on proper cause I shall remain confined in applied problem of the family Courts. The reason for which the women communities of Bangladesh are confronted to the alarming situation inspite of the existence of the family courts ordinance of 1985. Let me venture to discuss them categorically bellow viz;

1.According to section: 4 of the Family Courts Ordinance of 1985, all assistance judges court shall be treated as Family Courts that means family courts are not getting special consideration. So we can say speedy trail is far off, i.e. the lengthy process of getting legal aid for the women does not come to an end;

2.As per provisions of law only disputes in five matters like dissolution of marriage, restitution of conjugal rights, dower, maintenance, guardianship & caretaking of children may be solved in the family court but is the life of the women and it's reality confined within the five subjects? The answer is very easy never, rather a vast part of her life has been excluded which is beyond the scope of this law. Consistently this law and the court are not sufficient to change the problem and the position of women's life.

3.Family courts being empowered to deal with civil powers only, it is not possible to solve the criminal problems of the families through these courts resulting stern reality of the women remains tact.

4.Though provision for fixed court fee has been made yet there are many consequential expenses which have not been fixed up resulting in that the disadvantaged village women are not getting any facilities worth mentioning in this sphere.

5.According to the section: 20 of the Muslim Family Laws Ordinance, no procedure of the of the civil procedure code except section: 10 & 11 shall apply to any procedures which are brought in the family court. For prevalence of this law or provision of the Family Court Ordinance, 1985 is not a self sufficient law.

Lastly it may be said that the present situation is not desirable to anyone for the well establishment of the honour of women. For ensuring justice towards women it is necessary to treat women as human with full privilege for development. It is to be bear in mind that women & man is not opponent to one another. It is the demand of time to make the Family laws ordinance a women friendly law removing those problems. For the greater interests of the women the concerned authority will consider demand which is the expectation of about 16 crore of general people of Bangladesh.

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HUMAN RIGHTS WATCH

World Bank to uphold rights in its policies

"The World Bank has long ignored the importance of free speech, assembly, and association and other basic human rights," said Jessica Evans, senior advocate on international financial institutions at Human Rights Watch. "In the wake of the popular upheavals in the Arab world, the World Bank needs to recognize that human rights are critically important to its efforts to reduce poverty."

THE World Bank should incorporate human rights in its revised policies as a key component of fulfilling its mission to eradicate poverty, Human Rights Watch and the Center for International Environmental Law (CIEL) said on November15.

A new review of the World Bank's environmental and social policies, known as the "safeguard" policies, begins with a consultation meeting in Washington, DC on November 15, 2012.

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Some World Bank-funded projects have been plagued by human rights problems. The World Bank recently approved a project in Ethiopia that indirectly funds forced evictions of indigenous peoples and other marginalized ethnic groups. These forced evictions, in violation of international law, violate rights to adequate housing and other social and economic rights including the rights to food, water, and education.

The World Bank Group, whose mission is to reduce global poverty and achieve sustainable development, should make a commitment to incorporate and abide by human rights standards in all of its activities, the groups said. As a starting point, it should require human rights due diligence and put measures into place to address any human rights risks before financing projects and programs.

The World Bank's review of the safeguard policies is expected to take two years, during which time it will accept comments on its current standards, including policies on indigenous peoples and involuntary resettlement, and on whether to expand its coverage to other areas such as labour rights and climate change.

The World Bank has an obligation to ensure that it does not fund rights abuses, directly or indirectly, the groups said. The safeguards review is an important opportunity to introduce the necessary checks and balances in order to avoid adverse rights impacts.

Background

The current policies of the World Bank Group and their implementation are not sufficient to prevent or address the adverse impact on human rights that lending may have, the groups said. The diversification of lending instruments and activities supported by the Group are governed by a patchwork of inconsistent and increasingly vague policies that leave too much room for interpretation.

For instance, in the Ethiopia project, approved on September 25, the institution has not applied its safeguard policies on involuntary resettlement and indigenous peoples despite evidence that the project funds, at least indirectly, forced relocation of indigenous peoples and other marginalized ethnic groups. In other cases, even this patchwork of policies has been abandoned in favor of allowing funds to be disbursed without ensuring any protection for communities or the environment.

Commitment to human rights is not just a matter of good policy; it is also a political commitment and an obligation under international law. Member countries should not set aside their obligations to respect, protect, and fulfill human rights when they enter the boardroom or when they sign a loan agreement.

Further, as a UN specialized agency, the World Bank Group must act consistently with the UN Charter, which requires "universal respect for, and observance of, human rights and fundamental freedoms for all… ." The UN Committee on Economic, Social and Cultural Rights has also stated that the World Bank "should act as [an] advocate of projects and approaches which contribute … to enhanced enjoyment of the full range of human rights." Individually and collectively, member countries have the duty to ensure that their decisions do not lead to human rights violations.

**Source: Human Rights Watch.
(http://www.hrw.org/news/2012/11/15/world-bank-uphold-rights.)**