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# Analyzing the Patterns of Muslim Divorce and the Consequences: A Case Study of Bangladesh

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## ABSTRACT

*The Constitution of Bangladesh ensures women's fundamental right to equality with men in all aspects of life. Nonetheless, this constitutional protection does not extend to legal recourse for women who fall victim to polygamy, unilateral divorce, and discriminating fatwas. Marriage is regarded as one of the most ancient and significant social structures in human history. While the advantages of marriage are indisputable, it often imposes limitations and constraints on Muslim married women, especially in Bangladesh. While marriage ostensibly offers happiness and fulfillment, it functions as a mechanism of female subordination by confining women to domestic labor and restricting their identities to those of wife and mother. This paper will discuss about the reality of muslim women's legal rights in Islam regarding divorce, and to what extent Muslim divorced women can establish their position as individuals and become the overseer of their lives. Nor does the constitutional provision prevent women from being deprived of rights to marital property or financial support after divorce, even when the divorced wife has contributed significantly either directly or indirectly to the family income and maintenance. It fails to safeguard women from systemic and institutionalized discrimination, exploitation, and even torture perpetrated by men. Nevertheless, these have not achieved parity between women and men. This study examines the treatment of Muslim women concerning their personal law, specifically in relation to marriage and other legal frameworks in Bangladesh.*

## KEYWORDS

*Muslim Divorce, Case Study, Social obstacle, Bangladesh*

## INTRODUCTION

Islam is a religion that recognizes the legal status of women and grants them all the rights afforded to males. Islam advocated for the liberation of women from subjugation, granting them equal rights and recognizing their individuality as Muslim individuals. Islam enhanced the status of women by instituting rights related to marriage, dower, divorce, ownership, inheritance, and education. The Qur'an presents a comprehensive declaration of the rights of both women and men.

The status of women's rights within Muslim Personal Law is contentious, particularly concerning Muslim women's rights related to marriage, dower, divorce, and maintenance, which have garnered significant attention recently. The discourse indicates that the primary contention on the interpretation of Muslim personal rules and the rights of Muslim women encompasses both advantageous and disadvantageous viewpoints. Nevertheless, the Constitution of the People's Republic of Bangladesh guarantees equality and freedom from discrimination based on sex or religion; however, some customs rooted in conservative culture persist.

In Bangladesh, women are half of the whole population. Though they are not able to make progress in establishing their legal rights because of so many social, familial and religious restrictions. In Bangladesh conservative society, women are deprived of property rights. Sometimes women are deprived of proper education as well. From birth, a Muslim woman's status in Bangladeshi society is not favorably depicted. A male infant is greeted with the exclamation "Allah-hu-Akbar," whereas a female child is met with merely the subdued recitation of the Qur'an Tilawat. Following the birth of a daughter, her relatives initiate discussions regarding her marriage. Parents often perceive their daughters as a burden, viewing their marriage as the paramount obligation of parenthood. The status of Muslim women in society is neither a novel concern nor a completely resolved matter. The circumstances of Muslim women vary across global societies.

## RESEARCH QUESTION

- a. What are the several ways that Muslims can get a divorce?
- b. What are the legal consequences of divorce in Islam?
- c. What reforms are necessary for women's legal rights in Islam concerning marriage and divorce?

## METHODOLOGY

The research mostly relies on various scholarly sources such as

books, journals, essays, newspapers, pamphlets, and magazines. The utilization of the internet as a tool for facilitating weapons-related activities has significantly enhanced the realm of study. Data were collected from the primary and secondary sources. However the secondary source was the pivot the research. The study is grounded in qualitative approach. Qualitative research methods are characterized by a higher level of intrusiveness and a lower degree of structure compared to quantitative research procedures.

## **DIVORCES IN ISLAM**

Divorce in Islam is known as Talaq which signifies "I separate from you"; on the off chance that a spouse asks Talaq to her better half, at that point the term could be deciphered as "Please separate from me". The Prophet declared that "among the things which have been permitted by law, divorce is the worst. Divorce being an evil, it must be avoided as far as possible. But in some occasions this evil becomes a necessity, because when it is impossible for the parties to the marriage to carry on their union with mutual affection and love then it is better to allow them to get separated than to compel them to live together in an atmosphere of hatred and disaffection. The basis of divorce in Islamic law is the inability of the spouses to live together rather than any specific cause on account of which the parties cannot live together. A divorce may be either by the act of the husband or by the act of the wife."<sup>1</sup>

## **FORMS OF TALAQ**

The declaration of talaq might be either reversible or irrevocable. The Prophet of Islam did not endorse the institution of talaq; the revocable versions are regarded as "approved," while the irrevocable ones are deemed "disapproved". The classifications of talaq are as follows:

- i.** Talaq al-Sunna: Ahsan and Hasan.
- ii.** Talaq al-Bidet

## **TALK AL-SUNNA**

### ***Talaq-i-Ahsan***

When the husband pronounces one divorce during a period of purity in which cohabitation has not occurred between the couples, and subsequently refrains from cohabitation throughout

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<sup>1</sup> S Gupta, 'The concept of divorce under Muslim Law', Dr. Ram Manohar Lohia National Law University, India 2018.

the waiting period. The talaq becomes irrevocable upon the conclusion of the iddat. However, during that time, the husband may reclaim his wife. The talaq can be pronounced even after cohabitation when the lady is not bound by courses. The completion of iddat, which consists of three menstrual cycles following divorce, renders the divorce irrevocable; this duration equates to three months when the woman does not experience menstruation. The iddat for a pregnant woman concludes upon the delivery of the child or after three months, whichever occurs later.<sup>2</sup>

### ***Talaq-i-Hasan***

It comprises three successive pronouncements of talaq during the three consecutive tuhrs. If the wife is not subject to menstrual courses because of her minority or pregnancy or old age, then each pronouncement is to be made during the period of three lunar months with an interval of 30 days. Shia law does not approve any other forms of talaq except the talaq-i-Hasan.<sup>3</sup>

### ***Talaq-al-Biddat***

Talaq-i-Biddat is executed by uttering talaq three times during a single period or by articulating the talaq formula once with the stipulation that it be regarded as three pronouncements. When the husband states, "I divorce thrice." It is instantly effective and irreversible. It is sometimes referred to as Bain talaq. This type of talaq is not acknowledged by Shia jurisprudence.<sup>4</sup>

The early European creators grouped the various types of Talaq as follows:

- i. By the spouse without the intercession of the court,
- ii. By regular assent without the mediation of the court,
- iii. By declaration of the court on the use of either party.<sup>5</sup>

Muslim law delineates two forms of divorce:

- i.** Extra judicial divorce, and

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<sup>2</sup> Dr. M Faiz-ud-din, *A Text Book on Islamic Law* (5<sup>th</sup> edn, Shams Publication 2016) P.110.

<sup>3</sup> Ibid

<sup>4</sup> M Baderin and M Lau, 'Introduction to Islamic Law' (2017) 6 UOF P.83.

<sup>5</sup> Ibid

**ii.** Judicial divorce<sup>6</sup>

**The category of extra judicial divorce can be further subdivided into three types, namely,**

**i.** By husband: Talaq-i-ila, and Zihar.

**ii.** By wife: Talaq-i-tafweez.

**iii.** By mutual agreement: Khula and Mubarat.

The second category pertains to the wife's entitlement to initiate divorce under the Dissolution of Muslim Marriages Act of 1939.<sup>7</sup>

### **DIVORCE BY THE HUSBAND**

#### ***Ila***

The situation impacts Ila when her spouse vows to abstain from sexual relations with her for a minimum duration of four months. If he abstains from intercourse during that period, the marriage is dissolved without formal proceedings. If the husband reconciles with the wife during the designated period of the Ila, the Ila will conclude, but he will be obligated to perform expiation.

Under the Ithna Ashari and Shafei Schools, a wife may petition the Court for a decree of divorce. Sunni law does not necessitate legal processes. Under Hanafi law, if an individual fulfills their oath after the stipulated term or after a maximum of four months, the marriage is automatically dissolved.<sup>8</sup>

#### ***Zihar***

If a husband compares his wife to his mother, sister, daughter, or any other female within a banned degree, the wife is entitled to reject him until he has completed atonement. In the absence of atonement, the wife is entitled to seek a judicial divorce. The consequence of Zihar is that the marital relationship between husband and wife becomes prohibited until the husband fulfills compensation by, in accordance with customary rule, fasting for 60 consecutive days, giving sustenance for 60 individuals at both lunch and supper, or emancipating a slave.<sup>9</sup>

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<sup>6</sup> S Gupta, 'The concept of divorce under Muslim Law' (Dr. Ram Manohar Lohia National Law University, India 2018)

<sup>7</sup> Ibid

<sup>8</sup> M Baderin and M Lau, 'Introduction to Islamic Law' (2017) 6 UOF 90.

<sup>9</sup> ibid.

## **DIVORCE BY THE WIFE**

### ***Talaaq-i-Tafweez or Delegated divorce***

Talaaq-i-tafweez, or delegated divorce, is acknowledged by both Shia and Sunni sects. The husband possesses the authority to delegate his wife's right to initiate divorce to a third party or to the wife herself. The husband may confer authority to the wife either unconditionally or conditionally, for a limited duration or indefinitely. A permanent delegation of divorce authority is revocable, but a temporary delegation of divorce authority is irrevocable. The delegation must be unequivocally assigned to the individual receiving the power, and the rationale for the delegation must be clearly articulated.<sup>10</sup>

## **DIVORCE BY MUTUAL CONSENT**

The dissolution of marriage by the normal assent of the life partners, it is impossible to highlight under the Islamic law. Preceding Islam the spouse had basically no privilege to request separating; it was the Qur'anic enactment which accommodated this type of help.<sup>11</sup>

In Islamic divorce methodology through common assent, there are two different ways to get divorced or break up the marriage. One is the "Khula" divorce and the other is "Mubarat".<sup>12</sup>

### ***Khula***

Khula signifies 'draw off' or 'digup' or 'put off'. Under this technique for getting a divorce in a Muslim Law, spouse consents to give the thought to the husband about her detachment from the marriage association. Leaving the spouse from making the installment of Mahr to the wife is likewise one sort of a thought.<sup>13</sup>

### ***Mubarat***

'Mubar'at' literally denotes discharge. Under this Islamic law tactic for divorce, both spouses are unwilling to continue cohabitation and seek to dissolve the marriage expeditiously; i. Either spouse may initiate the divorce proposal, ii. The other partner must acknowledge the divorce offer, iii. Once acknowledged by the other party, the divorce becomes irrevocable,

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<sup>10</sup> M Baderin and M Lau, 'Introduction to Islamic Law' (2017) 6 UOF 90.

<sup>11</sup> A A.A Fyzee, *Outlines of Muhammadan Law* (Oxford University Press, 2015) P. 163.

<sup>12</sup> R Karmokar, 'Procedure of divorce under Muslim law by the mutual concert'; Law office and associations, India 2015)

<sup>13</sup> Ibid

iv. The Iddat period is mandated prior to the finalization of the divorce.<sup>14</sup>

#### Divorce by Judicial process

Dissolution of marriage may occur through legal proceedings under the following circumstances: i. Lian ii. Faskh iii. Option of puberty iv. Apostasy prior to the affirmation of divorce<sup>15</sup>

#### **Lian**

Where a husband charges his wife for adultery and the charge is false, it entitles the wife to sue for and get the divorce. The wife must file a usual suit for the dissolution of her marriage as a mere application to the Court is not the appropriate procedure. This procedure occurs when the husband accused his wife of committing adultery without the required evidence of four male witnesses.<sup>16</sup>

### **DIVORCE BY THE COURT**

A woman married under Islamic law is entitled to seek a declaration for the dissolution of her marriage on one or more of the following grounds:<sup>17</sup>

i. That the whereabouts of the spouse have not been known for a time of four years;

The spouse has neglected or has documented to support her maintenance for a duration of two years.

ii. That the spouse has acquired an additional wife in contravention of the stipulations of the Muslim Family Laws Ordinance, 1961

iii. That the husband has been sentenced to imprisonment for a duration of seven years or more; iv. That the spouse has failed to fulfill, without justifiable cause, his marital obligations for a period of three years.

That the spouse was infertile at the time of marriage and remains so;

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<sup>14</sup> *ibid.*

<sup>15</sup> Dr. M Faiz-ud-din, *A Text Book on Islamic Law* (5<sup>th</sup> edn, Shams Publication 2016) P. 116.

<sup>16</sup> M Baderin and M Lau, 'Introduction to Islamic Law' (2017) 6 UOF 90.

<sup>17</sup> N Malik, 'Muslim womens right for dissolution of marriage' (Writer Gurugobind Singh Indraprastha university, India 2015)

vi. That the spouse has been mentally unstable for a duration of two years or is suffering from a contagious or debilitating venereal disease.

vii. That she was married by her father or another guardian prior to reaching the age of sixteen.

### **LEGAL EFFECTS OF MUSLIM DIVORCE**

**These are called legal consequences that are as follows:**

#### ***Cohabitation becomes illegal***

At the point when the divorce is permanent and final, marital obligations together between the divorced from couple ends up unlawful.<sup>18</sup>

In the case of observance of Iddat

The spouse is required to waiting an Iddat of three lunar months after the divorce or, if pregnant, till the conveyance of the youngster. Be that as it may be, if the separation happens before fulfillment, the spouse need not waiting Iddat.<sup>19</sup>

#### ***Maintenance during Iddat***

During the Iddat period, the divorced woman is entitled to be supported by her former husband. The maintenance of divorced individuals is now governed by the Muslim Women (Protection of Rights on Divorce) Act, 1986. This demonstration indicates that the former spouse is at danger of maintaining the divorce from the wife only until the conclusion of Iddat.<sup>20</sup>

#### ***Mutual Rights of Inheritance Ceases***

The spouse and the wife are qualified to acquire one another if both of them kick the bucket during Iddat following revocable Talaq.<sup>21</sup> Upon the consummation of divorce for example at the point when it winds up permanent, the common privileges of legacy between the life partners stop. In other words, if the spouse kicks the bucket after the separation, the wife is not qualified to acquire his properties. In a similar way, if the spouse bites the

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<sup>18</sup> Dr. M Faiz-ud-din, *A Text Book on Islamic Law* (5<sup>th</sup> edn, Shams Publication 2016) P.122.

<sup>19</sup> I Sayed, 'What are Legal Effects of Divorce under Muslim Law in India?'; Indian Writer 2018

<sup>20</sup> *ibid*

<sup>21</sup> Dr. M Faiz-ud-din, *A Text Book on Islamic Law* (5<sup>th</sup> edn, Shams Publication 2016) P. 123.

dust, the husband can not acquire her properties. In any case, if the divorce was articulated during the spouse's contagious disease, this general standard is not appropriate.<sup>22</sup>

#### *Entitlement to Enter into a Subsequent Marriage*

The husband and wife are permitted to enter into another marriage with different individuals. The husband may remarry shortly following the divorce. The wife cannot remarry another man before the conclusion of the Iddat period. When a marriage is annulled before to consummation, the wife is permitted to enter into another marriage immediately following the divorce.<sup>23</sup>

### **THE CRITICAL ISSUES OF MUSLIM WOMEN IN DIVORCE**

#### ***Divorce by the Husband***

The contract of marriage as a part of the religious aspect, Sharia imposes some obligations, fixes the nature and limits of definite powers and mentions some powers specifically to belong either the husband or the wife to a contract irrespective of the agreement between both of the parties. The Sharia given the husband's power of divorce is strictly simple matter, putting him in a higher position compared to his wife, another party to the contract. Husband's power to dissolve the marriage, according to Sharia law, this is inherent, as it is not dependent on the conditions of the agreement, absolute because no one can question this power and unrestricted in the sense that the husband can exercise this power unilaterally showing no reason. When the discussion of Talaq is raised in the Qur'an, then this act is recognized to men, which makes in abundance clear that the right to alarm Talaq is vested in the husband only. Thus, the husband enjoys a primary power to dissolve the contract of marriage compared to the wife whose power is secondary.<sup>24</sup>

According to the Sharia law, the power of Talaq naturally belongs to the husband. The jurists have given men the power of divorce for reason or no reason or without any ground and denied it to the women. In exercise of the natural power of divorce, a husband can divorce his wife even against her will with no judicial interference.<sup>25</sup>

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<sup>22</sup> I Sayed, 'What are Legal Effects of Divorce under Muslim Law in India?'; Indian Writer 2018

<sup>23</sup> Ibid

<sup>24</sup> M Abdul Jaleel, *The Complete System of Divorce* (New Delhi 2003) P.42.

<sup>25</sup> E Fadl Khaled Abou, 'Islamic Law, Authority and Women' (2006) SGN 288.

## MODERN REFORMATION REGARDING THE HUSBAND'S POWER OF DIVORCE

It is accurate that the Islamic law of divorce has generated much scholastic writing and is almost certainly the largest aspect of Muslim matrimonial law, with an opening approach among the scholars, resulting from tension between religious principles and social authenticity. It appears from beyond the discussion on Talaq, that a husband enjoyed an excessive power to dissolve a marriage, which is absolute and unrestricted. Others modern countries introduced many statutory reforms to restrain the unilateral power of the husband and to restrict the illogical exercise of the power of Talaq. From the original statutory interventions in Muslim family law in this area, legislatures have addressed themselves to divorce law in a common pattern of constraining a husband's unitary facility of Talaq and widening the reason on which a wife can seek judicial divorce and her legal rights on divorce.<sup>26</sup> The present section will be restricted only within the examination of the power of divorce of the husband according to classical Sharia law and its altered versions in different states.<sup>27</sup>

### ***Divorces by the Wife***

A wife's capacity to dissolve a marriage is secondary and conditional. It depends on either the husband mind or the court decision. The wife gets the power of Talaq from the husband all the way through proper delegation or has to seek it from the husband through cooperation. Conversely, the wife may approach the court to initiate a divorce, contingent upon the satisfaction of specific reasons.<sup>28</sup>

Conversely, the wife may approach the court to initiate a divorce, contingent upon the satisfaction of specific reasons. This is known as 'talaq-i-tawfeez' or delegated Talaq. Thus, the subsistence of such power to be in the hands of a wife totally depends on the contract between husband and wife. If there were any conditions about the delegation of such power by the husband to his wife inserted in the marriage contract, only then a wife could dissolve a marriage by exercising that power without resorting to either the husband or the court. Therefore, if the husband does not delegate any such power to his wife in Kabinnama, then the wife's power

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<sup>26</sup> Dr M Ekramul Haque, *Muslim Family Law* (1<sup>st</sup> edn, London College of Legal Studies 2015) P. 273, P.274.

<sup>27</sup> H Gani, *Reformation of Muslim Personal Law* (Deep and Deep Publication, New Delhi 1988) P. 165.

<sup>28</sup> Dr M Ekramul Haque, *Muslim Family Law* (1<sup>st</sup> edn, London College of Legal Studies 2015) P.315.

to dissolve a marriage will be 'nothing'. In the lack of having such power, the wife will then have to ask for the husband to dissolve a marriage or the wife will have to file a suit for the dissolution of a marriage in cases, but the wife can not dissolve the marriage by herself.<sup>29</sup>

It is motivating to mark that although the wife does not have any power to dissolve a marriage according to the sharia, there is a condition under the sharia according to which the wife get the power. The wife can even enlarge her power to dissolve a marriage from nothing to a hundred percent.<sup>30</sup>

### **MODERN REFORMATION REGARDING THE WIFE'S POWER OF DIVORCE**

It is understandable that unless otherwise kept back a wife's right to divorce obviously in the Kabinnama or marriage contract, the position of women is substandard compared to that of men as regards the power to dissolve a marriage. Therefore, others modern countries tried to improve the status of women by growing her power and by restrictive the husband's power day by day, as far as practicable. Divorce is permitted for the man as a matter of right, and for the woman to apply for in certain situation.<sup>31</sup>

### **TALAQ BY DELEGATED RIGHT (TALAQ-I-TAWFEEZ)**

In Bangladesh, according to the Muslim Family Laws Ordinance 1961 'talaq-i-tawfeez' is the most frequent method of divorce today. In urban areas, almost all marriage activities surround the provision of this delegated right to divorce. Section 8 of the Muslim Family Laws Ordinance 1961 deals with the dissolution of marriage by a wife which as follows:<sup>32</sup>

'Talaq-i-tawfeez' has been proved to be the most significant weapon in the hands of a Muslim wife to get her discharge from her husband without any harassment to the court. In reality, the wife cannot always work out her right as freely as her husband, although the wife finds it hard to live with him.<sup>33</sup>

An Indian author asserts that the legal delegation of divorce constitutes a husband-initiated divorce, as the authority to divorce is conferred upon the wife by the husband. The wife's

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<sup>29</sup> Ibid

<sup>30</sup> ibid.

<sup>31</sup> L Welchman, *Women and Muslim Family Laws in Arab States* (Amsterdam University Press 2007) P.109.

<sup>32</sup> Dr R Bhuiyan, *Gender and Tradition in Marriage and Divorce* (United Nations Educational, Scientific and Cultural Organization 2010) Pp. 205,206.

<sup>33</sup> Ibid

authority under 'talaq-i-tawfeez' differs from that of her husband. Under personal law, the husband's authority is limitless. Even if the husband transfers his authority to divorce to each of his four wives, he retains the unilateral ability to divorce. His right to divorce is uncontrolled, but a delegated right to divorce may be either unrestricted or conditional, contingent upon the stipulations outlined in the kabinnama. The stipulations of the 'talaq-i-tawfeez' may include, for instance, non-payment of dower, conflicting marital disputes, maintenance issues, harshness, polygamy, and the husband's adultery. When such provisions are included in the marriage contract, her divorce is frequently contested by her spouse.<sup>34</sup>

### **JUDICIAL DIVORCE**

In the absence of delegated authority for divorce (talaq-i-tawfeez), a wife may obtain a divorce through the court without the husband's consent, pursuant to the Dissolution of Muslim Marriage Act 1939. The judicial divorce stipulated by this Act has demonstrated itself as a more advantageous option for a woman and her maintenance. Section 2 of the statute delineates the reasons for divorce.<sup>35</sup>

The 1939 Act, even with its amendments, is not a suitable answer to the problem of Muslim women attentive in a repressive and insulting matrimonial situation. Divorce on the grounds of physical and mental cruelty, although most common has proved to be most complicated for a Muslim wife. The courts issued a warning about the hazard of liberalizing women's right to divorce because there was detestation between husband and wife, or on the ground of inappropriateness. Divorce is often hard for women not only for the financial considerations or require of evidence but also for the reputation and self-importance of the family.<sup>36</sup>

Divorce is complicated for women for another reason. Taking benefit of the weakness and financial susceptibility of the wife, almost all divorces filed by poor distressed wives are habitually followed by criminal charges, filed by the husbands against their wives and their family members. The poor wife finds it complex to fight the criminal case, and to fight for her independence from the marriage shackle.<sup>37</sup>

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<sup>34</sup> *ibid*

<sup>35</sup> *Ibid*

<sup>36</sup> *Ibid*

<sup>37</sup> *Ibid*

## CONSEQUENCES OF DIVORCE PROBLEMS FOR DIVORCED WOMEN

Under Islamic law, specific obligations and privileges arise upon the finalization of a divorce, regardless of the method employed for the dissolution.

First, if they consummate the marriage, the wife can marry another man to marry only after completion of her iddat. If they do not consummate the marriage, women are free to marry immediately according to Sharia law. This provision of Sharia is not consonant with section 7 of the MFLO 1961, which requires a 90-day waiting period for any form of divorce.<sup>38</sup>

Second, if the marriage is consummated, the wife is entitled to immediate payment of the entire unpaid dower, both prompt and deferred, as well as full maintenance for the iddat term. In reality, the husband never readily acknowledges the wife's contributions. The divorced wife has to file a case before the family court claiming her dower money and maintenance, which is hard mainly for rural women.<sup>39</sup>

Third, it entitles a wife to maintenance for iddat and past maintenance. The period of iddat is not compulsory if they dissolved the marriage before consummation and in such a case, according to Muslim personal law, the husband has no obligation to pay maintenance except half or full of the dower money. This Sharia provision also comes in conflict with section 7 of the MFLO 1961 requiring a wife to go through 90 days' waiting period in talaq.<sup>40</sup>

Fourth, the reciprocal rights of inheritance persist till the conclusion of her iddat. There is no definitive regulation on the applicability of this privilege to an unconsummated marriage if the woman must wait 90 days for the divorce to take effect.<sup>41</sup>

Fifth, after divorce cohabitation between the couples, becomes illegal and the offspring of such intercourse is illegitimate and cannot be legitimized by acknowledgments.<sup>42</sup>

Sixth, the couple may reconcile prior to the finalization of the divorce. Once the divorce is finalized, the couple may remarry

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<sup>38</sup> Md. M Faysal, 'Causes of increasing divorce rate' (2011) CWB 14.

<sup>39</sup> Dr R Bhuiyan, *Gender and Tradition in Marriage and Divorce* (United Nations Educational, Scientific and Cultural Organization 2010) P222.

<sup>40</sup> Ibid

<sup>41</sup> Ibid

<sup>42</sup> Dr R Bhuiyan, *Gender and Tradition in Marriage and Divorce* (United Nations Educational, Scientific and Cultural Organization 2010) P. 222.

each other, provided the wife has not entered into a subsequent marriage with a third party, unless this is the third divorce.<sup>43</sup>

Seventh, the most significant consequence of divorce is that, in most cases, a divorced woman becomes destitute and loses everything her matrimonial home, food, maintenance and also custody of children everything.<sup>44</sup>

#### *Post-Divorce Maintenance*

Throughout the duration of the marriage, a wife may simultaneously fulfill dual responsibilities of external employment and caregiving for children and family members. Consequently, based on the aforementioned fact, it can be asserted that women urgently want financial assistance post-divorce. Women without employable skills or who relinquish their careers to remain housewives for extended periods sometimes experience significant despair and financial hardship following divorce, primarily attributable to the divorce itself. Currently, neither personal laws nor statutory laws in Bangladesh have provisions for post-divorce support or marital recompense for divorced women.<sup>45</sup>

Consequently, in light of the contributions made by spouses to the marital estate and the sacrifices undertaken by wives for their in-laws, husbands ought to compensate their wives accordingly. The compensation amount may fluctuate based on the wife's education, remarriage status, health, financial and non-financial contributions to the family, children, their ages, and the ex-husband's income and assets, among other factors. The objectives of presentation compensation are to address the needs of wives post-divorce, to facilitate their self-sufficiency, and to enable them to acquire the ability to generate income sufficient for a standard of living comparable to that experienced during the marriage.<sup>46</sup>

Compensation may be a total sum granted either as a lump sum or in a series of periodic installments. Wives may receive permanent compensation if they are employed solely at a low salary and have diminished prospects for attaining financial independence due to their inability to maintain the quality of life established during the marriage.<sup>47</sup>

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<sup>43</sup> Ibid

<sup>44</sup> Ibid

<sup>45</sup> N Wahab, 'Women's right to post divorce matrimonial compensation' *The Daily Star* (Bangladesh 23 May 2018).

<sup>46</sup> Ibid

<sup>47</sup> *ibid.*

## CASE STUDY

### Non-registration of marriage

**Case Reference:** *Abdullah vs. Rokeya Khatoon, 21 DLR 213.*

#### Principle of the Case:

The absence of marriage registration indicates that a lawful marriage solemnization did not occur. The marriage occurred after the enactment of the Muslim Family Laws Ordinance; however, it was not registered as mandated by the ordinance. This lack of registration indicates that there was no valid solemnization, despite the affidavit purportedly made by defendant No. 1 before a Magistrate, which attests to the solemnization of marriage between the plaintiff and defendant No. 1. This affidavit is a unilateral document and does not indicate that a proposition was made by one party and accepted by the other in the presence of two witnesses, as mandated by Muslim Law.

Section 5 of the Muslim Family Laws Ordinance mandates the registration of marriages conducted under Muslim Law. The solemnization of marriage may remain unaffected if it is lawfully executed despite non-registration. The absence of marriage registration raises questions regarding the legitimacy of the marriage ceremony.

### Cohabitation for a period

**Case Reference:** *Abdullah vs. Rokeya Khatoon, 21 DLR 213.*

#### Principle of the Case:

Co-habitation for approximately one year does not constitute a legitimate marriage. Intimacy, regardless of its closeness between a man and a woman, cannot substantiate marriage.

In the current instance, while there is evidence of significant familiarity between the plaintiff and defendant No. 1, this alone cannot substantiate the existence of a marriage. Marriage may be inferred from extended and sustained cohabitation. However, based on the plaintiff's argument, the cohabitation lasted less than a year, and one cannot infer the existence of a lawful marriage, even if all of the plaintiff's evidence on this matter is acknowledged.<sup>48</sup>

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<sup>48</sup> O Huq Chowdhury, *Hand Book of Muslim Family Laws* (6<sup>th</sup> edn, Dhaka Law Report 2005) P.128.

**Exercise of Talaq-i-tawfeez:**

**Case Reference:** *Atiqul Hoque Chuwdhmy vs Shuhuna Rahim and another 47 DLR 301.*

**Principle of the Case:**

In the context of a marriage where the right of divorce was delegated and recorded prior to 1974, Section 6 of the aforementioned Act stipulates that a Talaq-i-tawfeez shall not be registered by the Nikah Registrar unless the marriage is registered under the Registration Act of 1908. For marriages occurring since 1974, the Muslim Marriages and Divorces (Registration) Act, 1974 is applicable, necessitating an attested copy of the marriage registration entry for the registration of Talaq-i-tawfeez.<sup>49</sup>

**Second marriage as illegal or invalid**

**Case Reference:** *Jesmin Sultana vs. Md Elias 2 BLC 233.*

**Principle of the Case:**

Section 6 of the Ordinance does not render a second marriage illegal or invalid; it merely establishes a penal provision for its violation. However, the phrase "be able to deal justly" from the Holy Quran serves as a prerequisite for marrying multiple women, implying the necessity of equality in love and affection. Given the inherent limitations of human nature, the allowance for a second wife effectively constitutes a prohibition, thereby rendering section 6 of the Ordinance inconsistent with the principles of Islamic Law.<sup>50</sup>

**Contracting the second marriage without permission of prescribed**

**Case Reference:** *Tahera Begum. vs Farukh Meah 4 BSCD 152.*

**Principle of the Case:**

Contracting the second marriage without permission of prescribed authority an offense when such authority did not exist.

The appellant, the first wife of the respondent, started a criminal case against respondent alleging that during the subsistence of their marriage, the respondent without prior permission of the prescribed authority and her consent contracted a second

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<sup>49</sup> Ibid

<sup>50</sup> O Huq Chowdhury, *Hand Book of Muslim Family Laws* (6<sup>th</sup> edn, Dhaka Law Report 2005) P.75.

marriage and committed an offense under the law. The Magistrate found the respondent guilty and convicted and sentenced him accordingly. On appeal, the Sessions Court upheld the conviction of the respondent who then moved the High Court Division in revision. The High Court Division set aside the order of conviction and sentence.<sup>51</sup>

### **Divorce and marriage within 90 days void**

**Case Reference:** *Sayed Ali Newaz Gardezi vs Lt. Col. Md Yusuf I5 DLR (SC) 9.*

#### **Principle of the Case:**

The conclusion drawn is that the respondent was culpable of luring or abducting Christa Renate while she was still the lawful wife of the complainant, so committing an offense under section 498 of the Pakistan Penal Code. The evidence suggests that he was aware she was the appellant's wife at the pertinent period. The aim to "marry" her lacked any authentic foundation, since he must have been aware that no formal separation existed between her and her first husband; hence, no marriage ceremony, regardless of its execution, could erase that reality from his awareness. The ensuing marriage, under the circumstances, should be perceived solely as a duplicitous stratagem to create an illusion of respectability over an unlawful partnership.<sup>52</sup>

### **RECOMMENDATIONS**

There is a need to reform women's legal rights in Islam regarding marriage and divorce in Bangladesh and there also needs some changes in the organization of the judicial methods. It will take the women's legal rights to marriage and divorce and a better lifestyle. Following are the recommendations from the researcher:

#### **Registration of all Marriages**

- a.** Registration of all marriages, whether civil or religious should be made mandatory and it should introduce a uniform registration form for all marriages.<sup>53</sup>
- b.** Registration of Muslim Marriages and Divorces Act 1974 must be amended to declare unregistered marriages void

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<sup>51</sup> Ibid.

<sup>52</sup> O Huq Chowdhury, *Hand Book of Muslim Family Laws* (6<sup>th</sup> edn, Dhaka Law Report 2005) P.93.

<sup>53</sup> S Shefali, 'Harm to Women from Bangladesh's Discriminatory Laws on Marriage, Separation, and Divorce' (The members of Bangladesh Mahila Parishad, 2008).

and illegal (giving a certain date and reasonable time for its enforceability). Since unregistered marriage is still valid, most child marriages, as well as polygamous marriages, are not registered purposely to escape-proof and prosecution.<sup>54</sup>

### **Ensure the rights**

- a. Eliminate any connection between a wife's entitlement to maintenance and her obedience, chastity, marital responsibilities, or moral character.
- b. Ensure equitable access to divorce for both men and women.
- c. Implement comprehensive legislation on social security, delineating the criteria for eligibility regarding assistance with marriage and divorce.

### **Dower Money**

The minimal dower amount must be established, and its timely disbursement should be guaranteed in the event of the wife's non-maintenance following divorce, should it remain unpaid previously. In the event of a failed settlement, the Chairman shall be authorized to defer the implementation of the divorce until the husband fulfills the payment of the dower and the maintenance for the iddat period of the wife. This might significantly benefit women and decrease the incidence of unilateral divorce initiated by husbands.<sup>55</sup>

### **Consequences of Polygamy**

- a. Promote national awareness of the repercussions of polygamy, its association with domestic violence, and strive for its abolition. Guarantee that this content is accessible through diverse media and in formats suitable for those with impairments.
- b. Until polygamy is abolished, any legislation terminating polygamy must safeguard the rights of subsequent wives and their offspring, encompassing property, dower, and maintenance rights. Until legislation outlawing polygamy is enacted, rigorously enforce rules that limit men's capacity to marry many wives and augment the notice period and

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<sup>54</sup> Dr R Bhuiyan, *Gender and Tradition in Marriage and Divorce* (United Nations Educational, Scientific and Cultural Organization 2010) P.240.

<sup>55</sup> Report on 'Legislative Initiatives and Reforms in the family Laws, (Bangladesh Legal Aid and Services Trust, BLAST 2017).

permission prerequisites with explicit evidence of financial stability.<sup>56</sup>

- c. Drafters must implement measures to unequivocally outlaw and eradicate polygamous behaviors, without exceptions for religious or customary systems that permit polygamy.

### **Restoration of Marital Rights**

Eliminate the legal entitlement for restitution of conjugal rights, as determined by the High Court Division of the Bangladesh Supreme Court, which has deemed it unconstitutional.

### **Equal Rights on Divorce**

- a. Men and women should possess equal rights to pursue divorce or dissolution of marriage. Legislation should be established to facilitate the remarriage of both parties following the dissolution of marriage.
- b. The divorce laws require reform. Regrettably, none of the changes implemented in Muslim nations, with the exception of Tunisia, have addressed the needs of women in post-divorce situations. A divorced woman requires financial assistance until her situation ameliorates. There exists a significant disparity between a divorced guy and a divorced woman. Post-divorce, typically uneducated women often become reliant on their children. The contributions of a wife to the marriage, her husband, and children are completely overlooked. Divorce results in calamity and detriment for a woman lacking financial security.<sup>57</sup>

### **Reform Maintenance Laws**

Establish explicit guidelines to assist family court judges in exercising prudence while assessing support payments. The criteria must encompass the duration of the relationship; the influence of childcare and domestic obligations on the education and earning potential of the dependent spouse; the present and anticipated future income of each spouse; the dependent spouse's ability to achieve self-sufficiency; the health and age of both spouses; the dependent spouse's requirements and standard of living; alternative sources of support; and contributions made by

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<sup>56</sup> S Shefali, 'Harm to Women from Bangladesh's Discriminatory Laws on Marriage, Separation, and Divorce' (The members of Bangladesh Mahila Parishad, 2008).

<sup>57</sup> Dr R Bhuiyan, *Gender and Tradition in Marriage and Divorce* (United Nations Educational, Scientific and Cultural Organization 2010) 240.

the dependent spouse to facilitate the career advancement of the other spouse.<sup>58</sup>

## CONCLUSION

Islam considers marriage a very severe obligation; it has agreed certain measures to make the marital relationship as permanent as humanly possible. The parties must attempt to meet the conditions of proper age, general capability, free consent, honorable intentions, and judicious prudence. When the parties enter a marital bond, the intention must be clear to make the bond permanent, free from casual and temporary designations.<sup>59</sup> They design customary personal laws of Muslim women in such a way that they reproduce only life experiences, interests, and needs of men to the exclusion of those of women based on the natural fact of sexual difference. Although men and women are, in theory, treated as equal before religious laws, there is an outstanding inequality and discrimination through sexual and financial inequality. Women suffer degrading treatment as children and wives from guardians and husbands, respectively. Women are treated as personal properties, possessed and controlled by the guardians and the husbands.<sup>60</sup> Particularly, in rural areas, the wife may not leave the home without her husband's consent except for a valid reason such as visiting her family. It meets failure to obey with violence, divorce, or stopping maintenance. Restricting a wife's free movement in the name of obedience is a violation of the fundamental freedom and liberty of a woman as a human being.<sup>61</sup>

The concept of Muslim personal law provision of dower money as an honor to the wife has lost its consequence. Wives rarely get dower money. Women's organizations demand that the provision of dower money in Muslim marriage may be made as not obligatory and instead, the provision of the equal right to marital property be given. Some courts in Bangladesh have sometimes interpreted the principles of Muslim law with a progressive strength. The need for progressive interpretation is felt more today than ever before because of the changing socio-economic condition and the position of the family. There were decisions by

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<sup>58</sup> S Shefali, 'Harm to Women from Bangladesh's Discriminatory Laws on Marriage, Separation, and Divorce' (The members of Bangladesh Mahila Parishad, 2008).

<sup>59</sup> Dr. M Ahmed Meraj, 'THE IMPORTANCE OF MARRIAGE IN ISLAM' (2018) 6 IJRG 5.

<sup>60</sup> Dr R Bhuiyan, *Gender and Tradition in Marriage and Divorce* (United Nations Educational, Scientific and Cultural Organization 2010) P.172.

<sup>61</sup> Dr R Bhuiyan, *Gender and Tradition in Marriage and Divorce* (United Nations Educational, Scientific and Cultural Organization 2010) P.173.

the High Court Division declaring a provision of polygamy and restitution of conjugal rights in Muslim personal laws as illegal. Although the decisions were consequently challenged, at least, they created some awareness among the people. Decisions vary on the personal approach and conviction of the particular judges. The judiciary can play an important role in liberalizing and modernizing the rules of personal laws relating to marriage, divorce, and maintenance. Judicial reforms are likely to draw lesser challenges and hostility than reforms through legislation.<sup>62</sup>

Islam allows the divorce to both men and women to avoid dreadful consequences to the family. In Islam, men and women do not situate on the same balance in marriage and divorce. According to the Qur'an brought some innovative changes in the marriage and divorce rights of women. The longer a marriage has lasted, the greater a wife's economic and psychosomatic dependence on her husband. The wife has sacrificed her career to marry him and have his children. A wife also has furthered his career during the process. In spite of all this, her husband can easily practice polygamy and her option is to consent or seek out a divorce. If the wife divorces, she has no right to a share of the marital property or post-divorce maintenance, no matter how much she has contributed. The title of the property will continue in her husband's name, unless, before the divorce takes place, the title of the property was in the wife's name.<sup>63</sup>

Numerous Muslim nations have amended their divorce legislation, stipulating that divorce can only be granted through judicial proceedings. Compensation for the innocent woman injured by no-fault divorce is provided by post-divorce maintenance or compensation beyond iddat for periods of instability. Tunisia permits the maintenance of the culpable husband to his ex-wife until her death, remarriage, or alteration of her social circumstances.<sup>64</sup>

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<sup>62</sup> Dr R Bhuiyan, *Gender and Tradition in Marriage and Divorce* (United Nations Educational, Scientific and Cultural Organization 2010) P.174.

<sup>63</sup> Dr R Bhuiyan, *Gender and Tradition in Marriage and Divorce* (United Nations Educational, Scientific and Cultural Organization 2010) P.240.

<sup>64</sup> Dr R Bhuiyan, *Gender and Tradition in Marriage and Divorce* (United Nations Educational, Scientific and Cultural Organization 2010) P.241.