

The Statutory Laws of Bangladesh Relating to Muslim Marriage

Syeda Shajia Sharmin, Md. Moazzom Hossain, Mir Mohammad Azad

Abstract— Attention needs to be given on Statutory Laws relating to Muslim Marriage in Bangladesh. The Statutory Laws which passed by Indo-Pak Bangladesh sub-continent. It is to be noted that all the laws in the form of statutes, ordinance etc. enforced in Pakistan have been adopted in Bangladesh by Laws Continuance and Enforcement Order, 1971. It is to be further noted that the insertion of the word “Bangladesh” in place of Pakistan, East Pakistan etc. was made by P.O. No 48 of 1972.

Index Terms— Statutory laws, Muslim Marriage laws.

I. INTRODUCTION

Bangladesh is part of the common law jurisdiction. It is a member of the Commonwealth of Nations. The legal system of Bangladesh has its roots in the laws of British India. Since independence in 1971, statutory law enacted by the Parliament of Bangladesh has been the primary form of legislation. Judge made law continues to be significant in areas such as constitutional law. Unlike in other common law countries, the Supreme Court of Bangladesh has the power to not only interpret laws made by the parliament, but to also declare them null and void and to enforce fundamental rights of the citizens. The Bangladesh Code includes a compilation of all laws since 1836. The vast majority of Bangladeshi laws are in English. But most laws adopted after 1987 are in Bengali. Family law is intertwined with religious law. Bangladesh has significant international law obligations. During periods of martial law in the 1970s and 1980s, proclamations and ordinances were issued as laws. In 2010, the Supreme Court declared that martial law was illegal, which led to a re-enactment of some laws by parliament. A Right to Information Act has been enacted. Several of Bangladesh's laws are controversial, archaic or in violation of the country's own constitution. They include the country's special powers act, blasphemy law, sedition law, internet regulation law, NGO law, media regulation law, military justice and aspects of its property law. Many colonial laws require modernization.

According to the World Justice Project, Bangladesh ranked 103rd out of 113 countries in an index of the rule of law in 2016.

II. THE MENTIONABLE LAWS RELATING TO MUSLIM MARRIAGE

The mentionable laws relating to Muslim marriage which are treated requisites for Muslim marriage.

- The Shariya (Application) Act, 1937)

Syeda Shajia Sharmin, Department of Law, Shanto Mariam university of Creative Technology, Uttara, Dhaka, Bangladesh

Md. Moazzom Hossain, Registrar, Hamdard University Bangladesh, Gazaria, Munshigonj, Bangladesh

Mir Mohammad Azad, Department of CSE, Hamdard University Bangladesh, Gazaria, Munshigonj, Bangladesh

- The Child Marriage Restraint Act, 1929(Act XI of 1929)
- The Muslim Marriage and Divorces (Registration) Rules, 1975
- The Muslim Marriage and Divorces Registration Act, 1974(Act No LIT of 1974)
- The Muslim Family Laws Ordinance, 1961(Ordinance VIII of, 1961)
- The Muslim Family Laws Rules, 1961
- The Civil Courts Acts, 1887
- The Muslim Family Court Rules, 1985
- The Family Courts Ordinance, 1985(Ordinance No. XVIII of 1985)

III. MUSLIM PERSONAL LAW REGARDING MARRIAGE

The Shariya (Application) Act, 1937(Act XXVI of 1937) deals with Muslim personal law and section -2 of this Act provided the arena of applicability of Muslim Law.

Subject to section 2 of the Shariya (Application) Act, 1937 where the parties are Muslim then the Muslim Personal Law shall be followed regarding agricultural land, regarding intestate, succession, special property of females, including personal property inherited or obtained under contract or gift or any other provision of personal law, marriage, dissolution of marriage, including talaq, Zihar, lian, Khula and mubarrat, maintenance, dower, guardianship, gifts, trusts properties, and waqf (other than charities and charitable institutions and charitable and religious endowments).

It was decided that in certain specific cases Muslim Personal Law will be applicable to Muslims and Hindu Law will be applicable to Hindus according to section-37 of The Civil Courts Acts, 1887.

So, certainly Muslim Marriage is governed by the rule of Muslim Law, according to section 2 of the Shariya (Application) Act, 1937(Act XXVI of 1937) which makes provision for the application of the Muslim Personal Law (Shariya) to Muslims in Bangladesh.

In respect of Marriage, if both the parties are Muslim then Muslim Law will be applicable to decide the validity of marriage as well as if the both parties are Hindu then Hindu Law will be applicable.

IV. AGE OF CONTRACTING PARTIES OF MARRIAGE

Though the Child marriage is treated as legal and valid marriage but punishable. Punishment is imposed upon contracting and concerned parties according to the Child Marriage Act, 1929. Punishment is simple imprisonment which may extend to one month, or which may extend to one thousand taka or with both.

The Child Marriage Restraint Act, 1929(Act XI of 1929) described the age of the parties who are barred to marriage. This Act aims at restrain of the solemnization of child marriages belonging to any set, caste, or religion and main

object to prevent child marriage. According to section- 2 of this Act, unless there is anything repugnant in the subject or context-

- “Child” means a person who, if male, is under twenty one years of age and if a female, is under eighteen years of age.
- “Child marriage” means a marriage to which either of contracting parties is a child;
- “Contracting Party” to a marriage means either of the parties whose marriage is, or is about to be, thereby solemnized;

Punishment is imposed by the provisions of this Act for the contracting parties and involving parties to the child marriage.

According to Section: 4- though this Act: Punishment for male adult above twenty one years of age or female adult above eighteen years of ages marrying a child-whomever, being a male above twenty-one years of age, or being a female above eighteen years of age, contracts a child marriage, shall be punishable with simple imprisonment which may extend to one month, or which may extend to one thousand taka, or with both.

According to Section: 5- though this Act: Punishment for solemnizing a child marriage,-whoever performs, conducts or directs any child marriage shall be punishable with simple imprisonment which may extend to one month, or which may extend to one thousand taka, or with both, unless he proves that he had reason to believe that the marriage was not a child marriage.

According to Section: 6- Punishment for parents or guardian concerned in a child marriage,

- Where a minor contracts a child marriage, any person having charge of the minor, whether as parent or guardian or in any other capacity, lawful or unlawful, who does any act to promote the marriage or permits it to be solemnized, or
 - Negligently fails to prevent it from being solemnized, shall be punishable with simple imprisonment which may extend to one month, or which may extend to one thousand taka, or with both.
- Provided that no woman shall be punishable with imprisonment.

In Bangladesh Child marriage is discouraged by imposing law.

V. REGISTRATION OF MUSLIM MARRIAGE

Registration of Muslim marriage is mandatory in Bangladesh and non registration of marriage is punishable. Section 3 of The Muslim Marriage and Divorces (Registration) Act, 1974 describes that notwithstanding anything contained in any law, custom or usage, every marriage solemnized under Muslim Law shall be registered in accordance with the provision of this Act

A. Effect of Non-registration

It is clear that registration of Marriage under section 3 of The Muslim Marriage and Divorces (Registration) Act, 1974 (Act No. LII of 1974.) is mandatory. Otherwise punishment shall be imposed under section 5(4) with a simple imprisonment for a term which may extend to two years

without or with a fine which may extend to three thousand taka or with both.

It is crystal clear that validity of Muslim Marriage without registration would be tested a fresh but punishable.

Therefore registration of marriage is legally unavoidable. The Nikhanama [Registration Form of marriage under rule 24(1) of the Muslim marriage and Divorce (Registration) Rules, 1975] has been clearly contained mutual rights and duties of the husband and wife. Contracting parties of marriage should be careful to fill up all the Column of Nikhnama especially Column No.13-16, 18 and 19. In future if any dispute arises between them, Nikhnama as a written document works like evidence to give remedy for arrived one.

B. Muslim marry under Special Marriage Act, 1872(Act No.III of 1872)

By faith a Muslim cannot marry under Special Marriage Act, 1872. According to section-2 of this Act-

Marriage may be celebrated under Special Marriage Act, between -

A. neither of whom professes the Christian or the Jewish, or the Hindu or the Muslim or the Parsi or the Buddhist, or the Sikh or the Jaina religion,

B. between persons each of whom professes one or other of the following religions, that is to say, the Hindu, Buddhist, Sikh or Jaina religion.

In this respect Almighty Allah has declared:

“And do not marry *Al-Mushrikat* (idolatresses, etc.) till they believe (worship Allah Alone). And indeed a slave woman who believes is better than a *Mushrikah* (idolatress), even though she pleases you. And give not (your daughters) in marriage to *Al-Mushrikun* till they believe (in Allah alone) and verily, a believing slave is better than a free *Mushrikun* (idolater) even though he pleases you. Those (*Al-Mushrikun*) invite you to the Fire. But Allah invites (you) to Paradise and forgiveness by His Leave, and makes His *Ayat* (proofs, evidences, verses, lessons, signs, revelations, etc.) clear to mankind that they may remember.”

VI. RESTRICTION IMPOSED UPON POLYGAMY

(1) No man, during the subsistence of an existing marriage, shall, except with the previous permission in writing of the Arbitration Council, contract another marriage, nor shall any such marriage contracted without such permission be registered 1[under the Muslim Marriages and Divorces (Registration) Act, 1974 (LII of 1974)].

(2) An application for permission under sub-section (1) shall be submitted to the Chairman in the prescribed manner, together with the prescribed fee, and shall state the reasons for the proposed marriage, and whether the consent of the existing wife or wives has been obtained thereto.

(3) On receipt of the application under sub-section (2), the Chairman shall ask the applicant and his existing wife or wives each to nominate a representative, and the Arbitration Council so constituted may, if satisfied that the proposed marriage is necessary and just, grant, subject to such conditions, if any, as may be deemed fit, the permission applied for.

(4) In deciding the application the Arbitration Council shall record its reasons for the decision, and any party may, in the prescribed manner, within the prescribed period, and on payment of the prescribed fee, prefer an application for

revision 2 to the 3 Assistant Judge] concerned and his decision shall be final and shall not be called in question in any Court.

(5) Any man who contracts another marriage without the permission of the Arbitration Council shall-

- pay immediately the entire amount of the dower, whether prompt or deferred, due to the existing wife or wives, which amount, if not so paid, shall be recoverable as arrears of land revenue; and
- On conviction upon complaint be punishable with simple imprisonment which may extend to one year, or with fine which may extend to ten thousand taka], or with both.

VII. THE COURT WHICH HAS THE JURISDICTION TO RESOLVE THE DISPUTE ARISES OUT OF MUSLIM MARRIAGE

Family Court means a Family Court established under the Family Court Ordinance, 1985 (Ordinance No. XVIII of 1985). There shall be as many as Family Courts as there are Courts of "Assistant Judge." And all Courts of "Assistant Judge" shall be Family Courts for the purpose of this ordinance and all "Assistant Judge" shall be judges of Family Courts.

A Family Court shall have exclusive jurisdiction to entertain, try and dispose of any suit relating to, or arising out of, all or any of the following matters, namely:-(a) dissolution of marriage; (b) restitution of conjugal rights; (c) dower; (d) maintenance; (e) guardianship and custody of children according to Sec-5 of The Family Courts Ordinance, 1985 (Ordinance No. XVIII of 1985).

After long and through study of the affair of the disputes regarding marriage and others, the above jurisdiction incorporated distinct and separately in the year 1985, The Family Courts Ordinance enacted in order to facilitate quick and speedy disposal of the suits relating to marriage, dower, and divorce, maintenance, guardianship and custody of children.

VIII. ABSOLUTE AUTHORITY TO DISSOLVE MUSLIM MARRIAGE

Absolute Authority to dissolve Muslim Marriage goes to the husband. If a Muslim wife be delegated the power of husband to dissolve the marriage tie (*talaque-e- tafyees* or Delegated *talaque*) by husband then she could dissolve the tie of marriage. If husband did not delegated his power of divorce then in a judicial process, a woman married under Muslim law is entitled to dissolve the tie of marriage under any one or more of the grounds which are enumerated in Sec: 2 of The Dissolution of Muslim Marriage Act, 1939.

IX. GROUNDS FOR DECREE FOR DISSOLUTION OF MARRIAGE

A woman married under Muslim law shall be entitled to obtain a decree for the dissolution of her marriage on any one or more of the following grounds, namely:

- That the whereabouts of the husband have not been known for a period of four years.
- That the husband has neglected or has failed to provide for her maintenance for a period of two years. that the husband has taken an additional wife in contravention of the provisions of the Muslim Family Law Ordinance, 1961.

- That the husband has been sentenced to imprisonment for a period of seven years or upwards;
- That the husband has failed to perform, without reasonable cause, his marital obligations for a period of three years
- That the husband was impotent at the time of the marriage and continues to be so;
- That the husband has been insane for a period of two years or is suffering from leprosy or a virulent venereal disease;
- That she, having been given in marriage by her father or other guardian before she attained the age of fifteen years, repudiated the marriage before attaining the age of eighteen years. Provided that the marriage has not been consummated
- That the husband treats her with cruelty, that is to say, subs. By the Muslim Family Laws Ord., 1961 (8 of 1961), s.13, for "fifteen" w.e.f 15th July, 1961.

(a) Habitually assaults her or makes her life miserable by cruelty of conduct even if such conduct does not amount to physical ill-treatment, or

(b) Associates with women of evil repute or leads an infamous life, or

(c) Attempts to force her to lead an immoral life, or

(d) Disposes of her property or prevents her exercising her legal rights over it, or

(e) Obstructs her in the observance of her religious profession or practice, or

(f) If he has more wives than one, does not treat her equitably in accordance with the injunctions of the Qur'an;

(ix) On any other ground which is recognized as valid for the dissolution of marriages under Muslim law:

Provided that-

(a) No decree shall be passed on ground (iii) until the sentence has become final;

(b) A decree passed on ground (i) shall not take effect for a period of six months from the date of such decree, and if the husband appears either in person or through an authorized agent within that period and satisfied the Court that he is prepared to perform his conjugal duties, the Court shall set aside the said decree; and

(c) before passing a decree on ground (v) the Court shall, on application by the husband, made an order requiring the husband to satisfy the Court within a period of one year from the date of such order that he has ceased to be impotent, and if the husband so satisfies the Court within such period, no decree shall be passed on the said ground. Now-a- days, Divorce power is commonly delegated by husband to his wife in Bangladesh.

X. COURT MARRIAGE IS MISNOMER

In the light of Law there is no marriage by name of Court Marriage. It is just a misconception of common people. Actually Government empowered Nikha Registrar for registration of marriage and divorce. Here I take the privilege to set an example to clear the concept of Court Marriage, Mr. K and Miss T want to marry with each other without the consent of their own family. So as a supplementary document of contracting parties of marriage give declaration of their competence to enter into marriage contract through Notary Public with a hope that no question arises regarding free

consent of them. Later with a misconception of this declaration gets name of Court Marriage.

XI. RECOMMENDATIONS

Proper knowledge should be gathered regarding Muslim marriage. As lack of Proper knowledge can divert us to the wrong way of life.

Following recommendations of this research are:

- 1) It is a top priority of individuals who involved as a contracting party of a marriage to know the requisites of a valid marriage.
- 2) Do not ignore the importance of the Dower (*Mahar*).
- 3) Marriage has a vast impact so do not forget to know the Legal effect of various kinds of Marriage.

The contracting parties of marriage that obviously justified by Muslim law as well as statutory laws of Bangladesh.

XII. CONCLUSION

It is a sacred duty of every man to know the laws which applicable for him. Here in this paper discussed those laws which related to Muslim marriage through which we are benefited specially young and new generations in the light of proper information. The object of this article is given proper information regarding Muslim marriage which helps in many manners to up hold the dignity of a Muslim.

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AUTHOR'S PROFILE



Syeda Shajia Sharmin was born in Village: Khashipur, Post office: Daulatpur, Police Station: Khalishpur, District: Khulna, Bangladesh on 09 December, 1983. She passed her childhood in the city of Khulna as well as she achieved her Secondary School Certificate (S.S.C) and Higher Secondary School Certificate (H.S.C) respectively from Rotary School and Khulna Govt.

Girls College, Khulna, Educational Board Jessore, Bangladesh. She has obtained Bachelor of Laws LL.B (Hon's) in the year of 2004 and Master of Laws (LL.M) in the year of 2005 from University of Rajshahi, Bangladesh. She practiced as an Advocate at Dhaka Judges Court from 01-06-2006 to 31-03-2008 and also worked as a Lecturer of Department of Law, DarulIhsan University, 9/A Dhanmondi, Dhaka, Bangladesh from 21-04-2008 to 31-10-2013. She is also enlisted as an Advocate of Bangladesh Supreme Court in the year of 2014. She had 3 publications in international journal in various countries like FRANCE, INDIA, GERMANY, and JAPAN. At present she is working as a Lecturer of Law Department, Shanto-Mariam University of Creative Technology, Bangladesh. Her arenas of interests include as a subject and object in Law and Law related premises.



Md. Moazzom Hossain was born in Village-Matiagodha, PO-Chandgazi, PS-Chhagalnaiya, District-Feni. Bangladesh on March 23 1969. He received PhD in Public Administration, 2014 from Jahangirnagar University, Masters in Social Science, 1990 Bachelor of Social Science, 1989 from University of Chittagong and also received Bachelor of Law (LL.B) from Chittagong University, 1993. He contained 27 years Administrative experience in Govt. and Non-Govt. organization. At present he is working as a Registrar at Hamdard University Bangladesh. His areas of interest include Social work, LAW and Public Administration etc.



Mir Mohammad Azad was born in Village – Koror Betka; Post Office: Miror Betka; Police Station - Tangail; District - Tangail, Bangladesh on 10th October, 1982. He received PhD in Computer Science, 2008 from Golden State University, Master of Computer Application, 2006 from Bharath University and Bachelor of Computer Application, 2004, Bangalore University, India.

He also received Bachelor of Law (LL.B) from National University of Bangladesh. He had 14+ years of experience in teaching and research work at university level in India, USA, China and Bangladesh. At present he is working as a Professor, Department of Computer Science and Engineering and Dean, Faculty of Science, Engineering and Technology at Hamdard University Bangladesh. His areas of interest include Computer Architecture, Architecture, E-commerce, Digital Image processing, Computer Network, Wireless communication, MIS and Law.