

**DISSERTATION ON**  
**Dissolution of Muslim Marriage: A Critical Analysis of Laws and**  
**Procedure Related to Dissolution of Muslim Marriage in**  
**Bangladesh**

**Course Title: Supervised Dissertation**

**Course Code: LAW 406**

**Submitted To:**

**Dr. Nabaat Tasnima Mahbub**

**Assistant Professor**

**Department of Law,**

**East West University**

**Submitted By:**

**Md. Abid Chowdhury**

**ID: 2018-1-66-007**

**Date of Submission:**

**15<sup>th</sup>September 2022**

## **Acknowledgement**

I want to express gratitude to my supervisor, Dr. Nabaat Tasnima Mahbub, Assistant Professor, Department of Law, East West University for giving me the opportunity to complete the dissertation under her supervision. She provided me with all the necessary materials and guidance relating to my paper from time to time. She was there by guiding me through the whole research process and by providing her valuable thoughts and advice. I have learned so many things from her. I owe her a huge debt of gratitude. I'd like to thank my family and friends for their encouragement and support in helping me finish my dissertation. The research has aided me in gathering knowledge on my topic, and I am confident that this will be advantageous to me in the future. None of the above person, I am alone responsible for the work's shortcomings.

## **Declaration**

The dissertation on “Dissolution of Muslim Marriage: A Critical Analysis of Laws and Procedure Related to Dissolution of Muslim Marriage in Bangladesh” has been conducted under the supervision of Dr. Nabaat Tasnima Mahbub, Assistant Professor, Department of Law, East West University. The research tried to depict the present state of divorce process, obstacles, limitations of laws and procedure, necessary changes. Except where reference has been provided, I declare that this study is valid work and done by me. This dissertation has never been submitted for examination or for any other degree before.

Md. Abid Chowdhury

## Table of Content

1.1Background of the Study	7
1.5 Literature Review	8
1.7Chapter Outline	9
2.2Mode of Divorce	10
2.3 Divorce by Husband	11
2.4 Divorce by Wife(Talaq-e-tafwid)	12
2.5Divorces by Judicial Pronouncement (Lian)	12
2.7Conclusion	12
3.1Introduction	14
3.2 Divorce Laws, Acts and Provisions for Muslims in Bangladesh	14
3.3Notice of Talaq	16
3.4Effect of non-service of notice	16
3.5Registration of Talaq	17
3.6Conclusion	18
4.1Introduction	19
4.2Limitations and Challenges	19
4.3Conclusion	23
5.1Findings	24
5.2Recommendations	25
5.3Concluding Remarks	26

## **Abstract**

Dissolution of Marriage (Divorce) is the final termination of a marriage that refers cancellation of all legal duties and responsibilities between husband and wife. In Islam, marriage combines legal, social and religious matters together. Marriage is a type of contract that allows wedlock and living together. In Islam divorce is an exclusion of marriage. According to Justice Mahmud, “Muslim marriage is not a sacrament; it is absolutely a civil contract.” In all countries around the world, divorce requires compliance with a number of laws and procedures. Bangladesh also has some laws in that regard. But laws and procedure must change over time, or they continue to increase the complexity.

## List of Abbreviations

MFLO	Muslim Family Laws and Ordinance
------	----------------------------------

## **Chapter: 1**

### **Introduction**

#### **1.1 Background of the Study**

Marriage in Islam comprise legal, social and religious consideration. Marriage is a contract that allows for wedlock, allows for procreation, and recognizes the legal parenthood of children. Muslim marriage is unquestionably a civil contract and not a sacrament- according to Justice Mahmud's ruling. Divorce is seen differently in Islam. Repudiation comes with divorce. It can be summed up as liberating a woman or reliving her from the marriage's bond. The Prophet(sm) declared the Talaq to be the most abhorrent of all things permitted in the sight of Almighty.

#### **1.2 Research Question**

What are the limitations and obstacles of dissolution of Muslim marriage laws and procedure in Bangladesh?

#### **1.3 Research Justification**

Marriage is a very fundamental part of civil society and divorce can be one of the consequences of it. When problem between husband and wife reach towards a demolishing situation, the divorce happens. My research paper will aim to find out the obstacles especially by women under existing Muslim Personal Law in Bangladesh. After dissolution of marriage some problems faced by the parties e.g family, wife, husband, children. Especially the wife becomes the worst sufferer if the divorce is unexpected to her. My research paper will try to bring up various issues related to divorce and will also try to show the way to minimize the complexity of the consequence of divorce under Muslim Personal Law in Bangladesh.

#### **1.4 Research Methodology**

My research paper will be driven by qualitative method. This research paper will go through different Muslim Personal Laws, Statutory Laws, Writing of Scholars and Books Relating to Divorce, Journals, Articles, Case Studies, Recommendation made by different law sector.

## **1.5 Literature Review**

There has already been a substantial amount of study conducted on divorce related concerns. This research aims to find out the obstacles faces by the divorcing parties in Bangladesh. A few books, papers and other materials were analyzed in this study. Bangladeshi Muslim Personal laws have been developed by combining by the perspective of sharia law and state law. Divorce is divided into different categories according to sharia law and statutory law. Divorce is approved by both sharia and statutory law. “And if you have reason to fear that a breach might occur between a married couple, appoint an arbiter from among his people and one from hers; if they both want to set things right, Allah may bring their reconciliation.” (The Holy Qura’n, 4:35) Marriage is considered as a civil contract and according to Justice Mahmood ruling “Muslim marriage is unquestionably a civil contract and not a sacrament. And it can be terminated accordingly.” The power of divorce vested upon the husband in some particular manner and also to the wife in some limited manner. Mufti Abdul Jalil told in his book “The Complete System of Divorce” that when the discussion of Talaq is raised in the Qur’an Majeed, then this act is attribute to men, which makes abundantly clear that the right to issue Talaq is vested in the husband only. Though husband enjoys a primary power to terminate the contract of marriage in comparison to the wife whose power is secondary. Sharia law and statutory law provide strict guidelines to follow the procedure of divorce. Though Tanzilur Rahman mentioned in his book “A Code of Muslim Personal Law” that Hanafi School takes an extreme stand declaring that talaq will be effective even if it is pronounced under intoxication where no intention in that regard is proved. Though others school is not agreed with this statement and sharia and statutory law provides process of divorce which must be followed. Many scholars and writers write about the laws and procedure regarding divorce and also criticize about those. Beyond all, codified and specified laws and procedure is necessary to rid out from limitations and obstacles of divorce relating laws in Bangladesh.

## **1.6 Limitations of study**

I could not study many things properly due to shortage of time. I could not also bring some point from some divorce related cases because of there is no online resource of those case in Bangladesh. Many books, journals, and articles are either not available in online or are accessible

through a paid website. Only two and a half months were allotted to finish the dissertation. Qualitative study took up much more time than that.

### **1.7 Chapter Outline**

My research paper is divided into five chapters. In the second chapter I have discussed about elementary discussion about divorce law. In the third chapter I have discussed about legal development and consequence of divorce law in Bangladesh. In the fourth chapter I have critically discussed about divorce law, process in Bangladesh. Finally, I have concluded the fifth chapter by finding of my whole study, reform proposal and different report.

## Chapter 2

### Dissolution of Muslim Marriage under Muslim Personal Law

#### 2.1 Introduction

Dissolution of Marriage (Divorce) is the final termination of a marriage that refers cancellation of all legal duties and responsibilities between husband and wife. In Islam, marriage combines legal, social and religious matters together. Marriage is a type of contract that allows wedlock and living together. In Islam divorce is an exclusion of marriage. According to Justice Mahmud, “Muslim marriage is not a sacrament; it is absolutely a civil contract.” In all countries around the world, divorce requires compliance with a number of laws and procedures. Bangladesh also has some laws in that regard. According to the sharia law, the power of talaq inherently belongs to the husband. When the discussion of Talaq is raised in the Qur’an Majeed, then this act is attribute to men, which makes abundantly clear that the right to issue Talaq is vested in the husband only. Though husband enjoys a primary power to terminate the contract of marriage in comparison to the wife whose power is secondary.<sup>1</sup> The jurist said, generally have given men the power of divorce for cause or no cause and denied it to women.<sup>2</sup> In exercise of the inherent power of divorce, a husband can divorce his wife even against her will without any judicial intervention.<sup>3</sup>

#### 2.2 Mode of Divorce

Divorce can be effected in any of the following ways:

- (i) at the will of the husband
- (ii) by mutual consent of the wife and husband
- (iii) by operation of the court

The Muslim Family Laws Ordinance 1961 empowers the wife to divorce her husband.

---

<sup>1</sup>Qasmi, Mufti Abdul Jaleel, *The Complete System of Divorce*, New Delhi (2003) 42

<sup>2</sup> El Fadl Khaled Abou, *Speaking in God’s Name: Islamic Law, Authority and Women*, Oxford (2006) 288.

<sup>3</sup> Wilson, R.K, *Anglo-Muhammadan Law, Mohammadan Law*, London (1921) 135

### 2.3 Divorce by Husband

Husband may divorce in the following manner:

Talaq: A sound and adult husband can divorce his wife without showing any cause. In exercise of inherent of divorce, a husband can divorce his wife even against her will without any judicial intervention.<sup>4</sup>This type of divorce is characterized as hated and heinous act. But this kind of divorce is recognized by law.

By husband Talaq can be

- (i) Talaq-e-Sunna
- (ii) Talaq-e-Biddat

**(i) Talaq-e-Sunna:** Prophet approved this kind of talaq. It is divided by two types.

**Talaq-e-Ahsan:** This kind of talaq is the most approval format of talaq by Prophet. In this way husband can wave his wife by a single pronouncement in a period of purity. During this purity period husband has not had intercourse with his wife and after that husband leaves his wife for the observation of iddat period. The divorce stays as irrevocable position.

**Talaq-e-Hasan:** In this kind of talaq husband pronounces divorce three times in a row during the period of purity. It is known as "Talaq Upon A Talaq".

**(iii) Talaq-e-Biddat:** This kind of talaq is known as the triple declaration. When husband does not follow the proper way of talaq and does not pay attention to the time of purity without abstaining from intercourse. This kind of talaq irrecoverable at the time of pronouncement. It is heretical for a man to pronounce a triple repudiation in a single utterance, but, if it is done, it will bind the husband.<sup>5</sup>

**(iii) Ila:** When husband expresses his desire that he will abstain himself from all kind of relationship with his wife.

**(iv) Zihar:** When husband in his sound mind compares his wife with his mother or other female whose are within the prohibited degrees.

---

<sup>4</sup> Saksena K Prasad, *Muslim Law as Administered in India and Pakistan*, Lukhnow (1963),260.

<sup>5</sup> Al-Sad, Bakurat, translated by David Russell and Al-Mamun Suhrawaedy, *First Step in Muslim Jurisprudence*, London (1963) 23

## **2.4 Divorce by Wife (Talaq-e-Tafwid)**

This kind of divorce protests the women's right. Wife can divorce her husband if any of the terms of marriage is violated, when husband signed such kind of terms the wife has the right to give divorce. However, this kind of divorce does not deprive husband of his own right to divorce. If a woman has the right to divorce by delegated the power of divorce either before or after marriage, she can separate herself from husband by divorcing him.

## **2.5 Divorces by Judicial Pronouncement (Lian)**

If the husband brings an accusation of adultery against his wife after taking oath in the name of almighty Allah and his wife denies the accusation also taking oath in the name of Almighty Allah, then it will be the responsibility of the court to set aside the marriage because of those conflicting oaths.

## **2.6 Divorce by Mutual consent (Khula and Mubarat)**

(i) **Khula:** This is another kind of divorce by mutual consent. In this kind of divorce the wife has to pay compensation to her husband. The wife requests her husband to accept divorce in exchange of a compensation paid by the wife to her husband. The husband gives his consent to khula divorce in exchange of taking a monetary benefit from his wife. The root of khula is found in the Holy Quranic verse. If ye (judges) do indeed fear that they would be unable to keep the limits ordained by Allah, there is no blame on either of them if she gives something for her freedom.<sup>6</sup> This kind of divorce prescribed by Allah in this verse mean the directions regarding a happy social life.<sup>7</sup>

(ii) **Mubarat:** Mubarat is the best form of divorce by mutual consent of the husband and wife. If both of them consider the continuance of marriage as undesirable, they can terminate it by their mutual consent. No party has to pay compensation.

## **2.7 Conclusion**

Marriage under Muslim law is not an indissoluble matter. Husband and wife can dissolve marriage accordance with approved methodology. But it must be terminated for a genuine reason. Sharia law and statutory law refer many forms of divorce which must be followed. When the situation goes beyond the tolerable stage, there is no other option than divorce. There are

---

<sup>6</sup> Verse 11:229 of the Holy Quran

<sup>7</sup> Tanzilur Rahman; *A Code of Muslim Personal Law*, 1984, Islamic Publishers, Karachi: 525

many methods that try to reduce the complexity of divorce. Divorce can be done either on the basis of Sharia law or on the basis of statutory law. Whichever method is followed, judicial process gives legal recognition of dissolution of marriage.

## Chapter 3

### Dissolution of Muslim Marriage in the Context of Bangladesh

#### 3.1 Introduction

Marriage under Muslim law is neither an indissoluble matter nor a permanent bond. Parties may dissolve marriage by following approved methodologies under sharia and statutory law. But it is said that marriage can be dissolve for a genuine reason. Under Islamic laws of divorce for Bangladeshi Muslims can be very confusing if they do not follow step by step guidance.

#### 3.2 Divorce Laws, Acts and Provisions for Muslims in Bangladesh

There are some law, acts and provision in the matter of divorce in Bangladesh.

- Muslim Family Laws Ordinance, 1961
- Dissolution of Muslim Marriage Act, 1939
- The Family Court Ordinance, 1985
- The Muslim Marriage and Divorces (Registration) Act, 1974
- Muslim Personal Law (Shariat) Application Act, 1937

The Muslim Family Laws Ordinance, 1961 directs the talaq by husband. According to this husband needs to pronounce talaq verbally to her wife. After this pronouncement a written notice shall give to the union parishad chairman or authorized officer. Also, a copy of divorce notice shall send to the wife. In *State Vs. Mst. Tauqir Fatima and another*<sup>8</sup> held that nonservice of notice makes a divorce ineffective. Section 7 of this act directs the manner of divorce by husband. This section specifies the manner also protect the wife from oppression in the name of divorce. Also, in *Abdul Aziz Vs. Rezia Khatoon*<sup>9</sup> it was held that non-service of notice under section 7 renders a talaq ineffective and even if a talaq is pronounced by the husband with proper manner.

After sending notice the chairman or authorized person shall arrange arbitration council within 30 days and take necessary steps. If the reconciliation become fail, then the divorce

---

<sup>8</sup> PLD 1964 (W.P.) Karachi 306.

<sup>9</sup> 21 DLR 733

become effective. The divorce become effective after the iddat period that is 3 months. As per as Muslim Family Laws Ordinance 1961, s(8) wife may exercise the power of divorce if she gets the power of divorce by delegation. Besides according to Dissolution of Muslim Marriage Act 1939, s(2) wife shall be empowered to get a decree for dissolution her marriage. As per as this section some grounds as follows:

1. If the husband has been missing or not in trace for 4 years.
2. If the husband has failed to provide maintenance to her wife for 2 years.
3. If the husband has been sentenced to imprisonment for 7 years.
4. If the has failed to maintain the marital obligation for 3 years or more.
5. If the husband was impotent and it will continue to be so.
6. If the husband has been in a position of insane for 2 years.
7. If the wife is being treated with cruelty (habitual assault, physical torture, husband leading immoral life, husband forces wife to lead immoral life, husband obstructing wife to perform religious activity, husband does not treat wife equally like other wife/s) by husband.

Moreover, The Muslim Marriages and Divorces (Registration) Act 1974, s(6) directs registration of marriage and divorce.

The Family Court Ordinance, 1985 is working to resolve legal dispute relating to dissolution of marriage, restitution of conjugal life, dower, maintenance, guardianship and custody of the children. This act is relating to dissolution of Muslim marriage and directs about summons and notice to the party, trial proceedings, consequence of non-appearance of the parties, pre-trial proceedings, recording evidence and so on. This act tried to minimize the complexity of dissolution of marriage. Before this act parties to the divorce were facing legal obstacles like notice and summons, legal validity of the trial etc. Moreover, Muslim Family and Divorce (Registration) Act, 1974 directs some ideas relating to registration of of Muslim marriage and divorce from the date of 24<sup>th</sup> July, 1974. This act directs about registration of marriage, solemnization of marriage and its registration, manner of registration and so on. This act gives the legality of divorce under a specific statutory provision. Before this there was a confusion about the dissolution of marriage under The Muslim Personal Law (Shariat)

Application Act 1937, Section 5. Which was dealt with dissolution of marriage by court. Though this section is repealed by Dissolution of Muslim Marriage Act 1939, Section 6 (6).

### **3.3 Notice of Talaq**

Section 7 of the Muslim Family Laws Ordinance, 1961 lays down the statutory formalities to observe for a talaq pronounced by husband. The husband who has pronounced talaq has to serve the notice of such talaq to his wife and the chairman defined accordingly section 2 of the MFLO. The law does not require a talaq to be pronounced in any specific manner or specific time, but the only requirement is to serve the notice of such talaq.

The Chairman after receiving the notice of talaq will constitute an arbitration council taking representative from each side. According to section 7 of the MFLO within thirty days of the receipt of notice under sub section 1, the chairman shall constitute an arbitration council for the purpose of bringing about reconciliation between the parties. According to MFLO a talaq will be effective after the expiry of 90 days counting from the day on which the notice was delivered to the chairman. If the reconciliation fails talaq has not been revoked during the period of 90 days. Though husband can revoke divorce at any time before the expiry. It is also said in section 7(5) of the MFLO if the wife is pregnant at the time of pronouncement of the talaq, talaq will be effective either at the expiry of 90 days or the discharge of the pregnancy whichever ends later.

### **3.4 Effect of non-service of notice**

MFLO has made the act of non-service of notice as punishable under section 7(2). It directs that whoever contravenes the provisions of sub section (1) shall be punishable with simple imprisonment for term which may extend to one year or with fine which may extend to ten years. Muslim Family Laws Ordinance, 1961 lays down certain procedural formalities to be observed to pronounce a talaq in whatever mode. Section (7) of this ordinance prescribes a talaq to be notified to the chairman, a local authority who in turn will take certain steps to conciliate the dispute and after the expiry of 90 days from the day of receipt of notification<sup>10</sup> by the chairman talaq will be effective. It is also held in *The State Vs Tauqir Fatima and another*<sup>11</sup> that non

---

<sup>10</sup>*Safiqul Islam and others V. State*, 46 DLR(HCD) 1994

<sup>11</sup> PLD 1964(W.P) Karachi 306

service of notice under section makes a talaq ineffective. Then the further subsequence is both parties signed the agreement to dissolve the marriage in presence of two witness and they also sent it to the chairman and requested the authority concerned that the marriage between them be dissolved and to complete the formalities. (Ayesha Yasmin abbasi Vs. Maqbool Husaun Qureshi<sup>12</sup>) The latest position of the High Court Division about non service of notification is in favor of thr opinion that a talaq does not become ineffective merely on the ground of non service of notice under section 7 of the MFLO. The High Court Division in Mr. Nurul Islam Vs. Nur Ayesha Begum<sup>13</sup> endorsing the earlier view and held that from the alone provision of law it is clear that the mere absence of communication of divorce notice to the Chairman under section 7(1) of the MFLO does not invalidate the divorce.

Dr. Naima Haque commented in her Ph.D. thesis that according to the orthodox law the divorce is effective after the expiry of the iddat period that is 90 days, but the ordinance make it clear that its provisions override other laws, custom and usages.<sup>14</sup> Dr. Naima Haque with her comment that talaq thus made or registered without complying with section 7 of the MFLO does not have any effect in the eye of law, in the following words:

*“Neither the Muslim Family Laws Ordinance of 1961, no the Muslim Marriage and Divorce Registration Act 1974 provides for maintaining a liaison between the two statutes and they do not state the effectiveness or consequences of divorce if no notice is sent to the Union Parishad but nevertheless the divorce is registered at the marriage and divorce registration office have no effect in the eye of the law but in practice such divorce are considered effective by Kazis”.*<sup>15</sup>

### **3.5 Registration of Talaq**

The Muslim Marriage and divorce (registration) Act,1974 incorporated provision regarding registration of a talaq. Though the registration in not compulsory and non-registration of a talaq does not give rise to any other legal effect. Section 7 of The Muslim Marriage and divorce (registration) Act,1974 said that a nikah registrar may register a divorce effected under Muslim law within his jurisdiction on applicable being made to him for such registration.

---

<sup>12</sup>PLD 1979 Lahore 241,243

<sup>13</sup> 16 BLC (HCD) (2011) 10

<sup>14</sup> Naima Haque; Unpublished thesis submitted in partial fulfillment of the requirement of the East London, school of Law for the degree of Doctor of Philosophy, London (1995) 89

<sup>15</sup> Ibid

### **3.6 Conclusion**

The family law in Bangladesh does not have any clear statutory provision regarding the validity of a talaq pronouncement in violation of section 7 of the Muslim Family Law Ordinance, 1961. In the absence of such provision in the statute the courts interpreted the relevant laws differently. The judgment is found on both sides. So far, the latest position of the High Court Division of found in Dilruba Case<sup>16</sup> that decides the requirement of notification under section 7 of the MFLO as mandatory to constitute a valid talaq in the eye of law. But to confirm the legal position in this regard we need a new legislation change. Bangladesh has enough laws regarding marriage and divorces but on discussion it can be seen that constantly new decisions are coming in this regard. Which is bringing the existing laws to the brink of question. Sometimes court itself gets confused as to which procedure to proceed. Where the higher court sometimes gets confused the lower court are getting out of hands. As a result, there are many types of ambiguous decision seen in the lower court. For that there should be clear interpretation of all the laws and through which complexity of laws will be reduced the number of cases as well will be reduced.

---

<sup>16</sup> 55 DLR 568

## Chapter: 4

### Limitations and Challenges of the Muslim Family Laws in Bangladesh

#### 4.1 Introduction

With the change of time in Bangladesh, various family laws have been made. Family law deals with marriage, divorce, guardianship, inheritance etc. Law is essentially a reflection of a state's vision. Various inequalities and problems are observed in the family law in Bangladesh. While there is nothing discriminatory in other civil and criminal laws, some discriminations can be observed in family laws in Bangladesh. In the country we live in, there is discrimination and limitations can be seen in many ways like- men-women, poor-rich, religious etc. Although Muslim family law originates from Sharia law, but in Bangladesh Muslim family laws has been amended and modified at various times by making new laws in accordance with the natural rules of historical evolution. Besides, High court decisions and interpretations of laws at various times have played an important role in the development of Muslim family law in Bangladesh.

#### 4.2 Limitations and Challenges

There is an arbitrary and unreasonable exercise of the right to dissolve the marriage is strongly blamed in the Quran and the reported saying of the prophet and is treated as a spiritual offence.<sup>17</sup> However legally speaking, the husband in exercise of his inherent and absolute power of divorce may pronounce a talaq on whatever ground, which is set behind any challenge by any authority. Thus, the reason for talaq cannot be investigated so as to determine the ground of a particular talaq as unjustified or not, as his power in this regard has generally been considered as unrestricted.

Part 18 of the marriage registration form, it is said that whether the husband has delegated the power of divorce to the wife and if it does, it will depend on what condition. This column is against the concept of equality of men and women and against the fundamental rights recognized by the Constitution of Bangladesh. Because marriage is a contract of two independent adult person. According to this agreement, the right to divorce should be equal for both parties.

---

<sup>17</sup> Verma, B.R; *Muslim Marriage and Dissolution*, 1975, Law Book co., Allahabad: 140

But while the issue of conditional divorce was mentioned in the case of women, the requirement of wife.

In Muslim family law, marriage is a civil and social contract, so right of marriage as well as right of divorce is guaranteed here. Marriage creates certain rights and responsibilities. Among them maintenance is important one. Maintenance is husband's duty and wife's right. Wife is entitled to get food, shelter, medical and other means of living from her husband due to marriage. This right exists during the marriage period as well as during a divorce. However, this right is limited and exists for a limited period during divorce. The wife will get maintenance from the husband till 90 days have elapsed from the date the divorce takes effect. Under MFLO 1961 this matter is discussed. According to section 9 of the MFLO, 1961 if the husband fails to provide maintenance to the wife, the wife shall apply to the Local Chairman. The Chairman shall constitute the arbitration council and fix the amount of maintenance according to the social status of the husband and issue a certificate to this effect. If the amount fixed for maintenance is not paid within the specific time as per the decision, it will be recovered as arrears. Marriage is a civil contract but when the contract is concluded it does not confer equal rights on both parties. As a result, it can be seen that the wife gets only 90 days of maintenance from the husband as per the law due to the sole power of the husband on divorce. But there is no recognition of the role of women in the formation of that family. Women will get maintenance only for 90 days or if she is pregnant, she will get maintenance during iddat period. Again, there is no discussion about law and society regarding the way out of the irony that a woman falls into in a helpless situation after divorce. Here what kind of responsibilities the family, society or state is ignored. Though there are different opinions of Imams on the basis of revocability of divorce. In case of revocable divorce, the unanimous opinion is that the wife will get maintenance during her iddat period. However, in case of irrevocable divorce Hanafi opinion is in favor of maintenance. But it is a matter of concern that maintenance is also limited. It is also a matter of great sorrow that, in case where post-divorce maintenance is payable, it was decided by the HCD of the Supreme court of Bangladesh in Hefzur Rahman case that maintenance is to be paid till remarriage of the divorced wife or her death, which has been overruled by the Appellate Division.<sup>18</sup> There are, various

---

<sup>18</sup>*Hefzur Rahman v. Shamsun Nahar Begum and Another*, 51 DLR(AD) 172

legislations in different countries extending the post-divorce maintenance up to one year.<sup>19</sup> But that is not enough in the perspective of Bangladeshi women.

There is a legal effect of non-service of notice of talaq. The law has made the act of non-service of notice as a punishable offence. Section 7(2) says: “Whoever contravenes the provisions of sub-section (1) shall be punishable with simple imprisonment for term which may extend to one year or with fine which may extend to ten thousand taka or both.” However, the law is silent about the validity of the talaq without through the statutory procedure under section 7 of the MFLO. It is submitted that in the absence any statutory provision on any particular aspect of Muslim family law, the governing law will be the sharia. According to section 2 of the Shariat Application Act, 1937. Thus, a bare talaq without observing the statutory formalities will still be treated as a valid talaq in the eye of law. This matter calls into the question the entire judicial system of divorce. If the laws are that kind of conflicting, it is questionable how reasonable the remedy is!

The wording of column 5 & 18 of the marriage registration form is grossly discriminatory against women. Here it says that whether the woman is “kanna, kumari, or divorced woman or not. Such questions were asked in case of women, but such questions were not applied to men. Article 27 of the Constitution of Bangladesh states that all citizens are equal before the law and entitled to equal protection of law and article 28(1) states that discrimination shall not be made by the state against any citizen on account of religion, creed, caste or place of birth. So it can be said that such statement in the registration form is a direct violation of the Constitution of Bangladesh. Such statements on the marriage registration form should be struck down as violation of the fundamental rights of the Constitution which the state is governed. If such question has to be asked, it should be asked of both men and women.

Registration of Talaq is another confusing part of divorce. The Muslim Marriage and Divorce (registration) Act, 1974 incorporated provision regarding registration of a talaq. However, the registration is not compulsory and non-registration of talaq does not give rise to any other legal effect. The act of non-registration of a talaq is not punishable unlike non-registration of a marriage. Section 6(1) of The Muslim Marriage and Divorce (registration) Act,

---

<sup>19</sup> Nasir Jamal, *The Status of Women under Islamic Law and Modern Islamic Legislation*, Boston (2009) 116

1974 says that “A Nikah Register may register a divorce effected under Muslim Law within his jurisdiction on application being made to him for such registration.” The law is anomalous and created some confusion in the existing Muslim family laws in Bangladesh. The main anomaly is that the law has not said that a talaq is to be registered after completion of the notice procedure under section 7 of the MFLO. So, a bare procedure can be registered under this act. Sub section 2 of section 6 of the act makes it further clear that any talaq may be registered as it is says that an application of registration of a divorce shall be made orally by the person who has effected the divorce. Thus, it is clear that law does not require the production of any certificate under section 7 of the MFLO before it is registered under the 1974 act. The eventual impact of this provision is that a husband who has pronounced a bare talaq and has not followed the MFLO procedure of notification, still he can obtain a registered divorce certificate under 1974 act. Another anomaly is in the Form F of the divorce registration. Where the date of pronouncement of talaq is to be mentioned. However, no column in the form requires putting the date on which has become effective. It can give rise to grossly anomalous situations.

There is a misconception in our society about triple divorce pronouncement by husband. And law does not clarify the process about this. For that purpose, women face social obstacles regarding this. But the reality is different. There is no enough educative guidance regarding talaq in Bangladesh. That was another issue to create anomaly. But the legal status and irrevocability of triple talaq pronounced without procedure in controversial among different Imams. The majority Sunni scholars think that triple talaq become effective and irrevocable instantly, although each of them considers it a sinful act. Unfortunately, the people who adhere to this opinion they focus on the effectiveness of this talaq and ignore the sinful nature of this act. Dr Rahman has summed up three different opinions about the effect of triple talaq:<sup>20</sup> Divorce does not take effect at all, only one divorce takes effect, three irrevocable divorces take effect. But that kind of process are highly criticized now a days. From present era that kind of process can be said ancient process! Those make divorce laws more complex.

Local authority is one of the important parts involved in the execution of divorce. Local authority means- chairman, councilor, mayor. One of their functions is to oversee the issue of notice and seat the two party in arbitration council. Local authority has been doing this sensitive

---

<sup>20</sup> Tanzilur Rahman, 412-414

work for ages. But it a matter of question how much educational qualification actually plays a role in dealing with matter of divorce. Are they properly fit to deal this matter? Are the parties to the divorce being hostage to the power of local authorities? There is no one to supervise this matter at the field level; laws are also silent in this regard.

According to section 5 of the Family Courts Ordinance, 1985 family court shall have exclusive jurisdiction on dissolution of marriage, restitution of conjugal life, dower, maintenance and guardianship and custody of children. It is seen some complexity regarding divorce in the family court. For example- False suit, complexity regarding excess of women(especially rural women) in the family court. Process is not enough friendly to the rural citizen. There is some criticism regarding this which trying to fix by the family court.

#### **4.3 Conclusion**

As I mentioned before marriage under Islamic law is not an indissoluble permanent bond. The parties may dissolve the marriage in accordance with the approved methodology provided by the law. The main policy of Islamic law regarding divorce is that a marriage may be terminated for a genuine reason. The jurist have generally appreciated the Islamic legal standpoint that allows a divorce to take place, if necessary “had it been that did not legislate divorce to serve as a way-out of unhappy situations, life would certainly be unbearable and an intolerable prison that is full of pain and torment.<sup>21</sup>” But in Bangladesh’s perspective it is seen in some cases where there is a wide reversal of such statement. In many cases it is seen that the husband is divorcing the wife without any specific reason. Again, the important part of the Constitution of Bangladesh that is the fundamental rights are violated by some word in the marriage and divorce registration form. The issue of maintenance is another debatable topic. The wife’s right after divorce can be the utmost important topic, it is a matter of great sorrow that this matter remain general as others. Also divorce registration was not treated as seriously as marriage registration. Besides, it is said that regarding triple declaration that triple talaq become effective and irrevocable instantly. It is a matter of question that how reasonable this statement is!

---

<sup>21</sup>Ayoub Hassan, *Fiqh of Muslim Family*, 1999, Islamic Inc., Egypt, 182

## Chapter 5

### Findings, Recommendation & Conclusion

#### 5.1 Findings

The main purpose of this study is to find out the obstacles and limitations of the Muslim Personals Laws in Bangladesh. It has been discovered that:

- There is an arbitrary and unreasonable exercise of right to dissolve of marriage by husband. Though from legal perspective, it is said that husband has to exercise his power accordingly. But in reality, husband exercise his inherent power of divorce in whatever ground. And there is no proper and specific investigation process to determine the ground of divorce.
- It is said in Part 18 of the registration form of marriage whether the husband has delegated the power of divorce to the wife. And about the conditions. These kinds of words are a serious violation of the fundamental rights recognized by the Constitution of Bangladesh. This is the gross violation of equality before law and no discrimination regarding sex ensured by the Constitution of Bangladesh.
- Maintenance during the period of divorce which is known as post-divorce maintenance is limited. Only 90 days is not fair enough for every divorce case. Divorced women who are not financially strong faced serious obstacles to lead a financially sound life. Even they are deprived socially for that kind of unstable financial situation.
- Local authority will fix the amount of maintenance according to the social status of the husband. But in reality, sometimes it is not in favor of the wife. Local authority prioritizes the financial situation of husband. Maximum time they think that divorced wife goes to the parents' house, and they will maintain them. But in reality, divorced women also face obstacles in her own family.
- If the wife is pregnant, she will get maintenance during the iddat period only. But it is not discussed what will be the consequence after that as the position of the divorce women in Bangladesh is like helpless. Even though it is a matter of sorrow, law says that gife get the maintenance during the pregnancy period. It refers that, the child is important, what

will be the situation of wife after pregnancy? This situation is not considered in the eye of law.

- Column 5 and 18 of the marriage registration form is a gross discrimination against women. The division of women in those columns is disrespectful. The category made regarding women is a matter of high criticism. That kind of discriminatory words (kanna, kumari, or divorced women or not) hurts the women dignity.
- Registration of talaq is another anomalous part of divorce. Law has not said that a talaq is to be registered after completion of the notice procedure under section 7 of the MFLO.
- Triple declaration of Talaq is another anomaly. Law directs about the regular process of law, but majority Sunni scholars think that triple declaration become effective and irrevocable instantly.
- The education quality of local authority is ignored. But they deal with the main consequence of a divorce case. Education quality of local authority is highly necessary. They are the considered as the decision maker in the rural area in some cases. And rural people are abiding by them also by political and social influences. So, their education quality is necessary when they are dealing with the divorce matter.
- Family courts environment is not enough friendly in some cases to the women. They face some obstacles regarding process even in some cases they won't get proper information what should be done or what should not be done.

## **5.2 Recommendations**

The dissertation main point is to find out the limitations and obstacles of the Muslim divorce laws in Bangladesh. Where there is a concern that there are some limitations and obstacles. As a result of the research, certain recommendations have been made to ensure proper implementation of the Muslim divorce laws. They are listed below:

- Equal rights of husband and wife should ensure in case of divorce. Proper and specific investigation should be done as to whether the husband is divorcing the wife for a valid reason.
- Part 18 of the registration form of marriage delegated the power of divorce to the wife. This delegation of power depends on husband's concern. That kind of delegation should be annulled. In this regard, wife must pave the way to fully exercise her rights.

- The matter of post-divorce maintenance should not be limited as 90 days. Considering the financial status of women in Bangladesh perspective, it is quite fragile. So, there should be discussion about this limited 90 days.
- The local authority determines the amount of maintenance after looking at the social and financial status of husband. But in this regard, the amount of maintenance should be determined based on social and financial status of the wife.
- The law says that the husband will pay maintenance as long as the wife remain pregnant. But in this regard the social and financial status of the wife should be taken into consideration after the pregnancy.
- Words from column 5 & 18 should be omitted or similar kind of words should be used for men as well.
- Registration of divorce should be made compulsory and specific instruction should be given in this regard.
- The Sunni scholar thinks that triple declaration become effective and irrevocable instantly. This matter is so rigid and will be exaggerated for both parties. So, in this regard be more flexible.
- There should be a proper guidance about local authorities' education and training. There should be instructions as to what kind of education qualification of local authorities is necessary and what kind of training they should be receive.
- It is important to elaborate to the excess of rural women to the family court. To make friendly environment to them family court can make different department to deal with rural people who are not enough aware about his/her rights.

### **5.3 Concluding Remarks**

Undoubtedly, four acts relating to divorce have proper guidance. But with the changes of time the social and legal status of marriage is changing. For that, some changes definitely required. There was a time when the whole society was completely patriarchal. Their monopoly could be observed in all matters including marriage and divorce. But in today's age there is more emphasis on equal rights of men and women. Various domestic laws in Bangladesh also different international bodies are said to emphasize equal rights. It is very important to bring changes in the Muslim divorce laws in Bangladesh. Also it has to be ascertained whether any false case or

accusation to the husband is made by wife by the chance of divorce law. Because many false cases are being noticed in the current time. So, all in all, it is possible to avoid the complexity of the Muslim divorce laws of Bangladesh through some basic changes.

## Bibliography

### Statutes

- Muslim Family Laws Ordinance, 1961
- Dissolution of Muslim Marriage Act, 1939
- The Family Court Ordinance, 1985
- The Muslim Marriage and Divorce (Registration) Act, 1974
- Muslim Personal Law (Shariat) Application Act, 1937

### Cases

- *State Vs. Mst. Tauqir Fatima and another*. PLD 1964 (W.P.) Karachi 306.
- *Aziz Vs. Rezia Khatoon*. 21 DLR 733
- *Safiqul Islam and others V. State*, 46 DLR(HCD) 1994
- *Ayesha Yasmin abbasi Vs. Maqbool Hussaun Qureshi*, PLD 1979 Lahore 241,243
- *Mr. Nurul Islam Vs. Nur Ayesha Begum*, 13 BLC (HCD) (2011) 10
- *Dilruba Akhter Vs. AHM Mohsin*, 55DLR (2003) 568
- *Hefzur Rahman v. Shamsun Nahar Begum and Another*,51 DLR(AD) 172

### Books

- Tanzilur Rahman, *A Code of Muslim Personal Law*, 1978, Islamic Publishers, Karachi
- Ayouf Hassan, *Fiqh of Muslim Family*, 1999, Islamic Inc., Egypt
- Nasir Jamal, *The Status of Women under Islamic Law and Modern Islamic Legislation*,2009, IDC Publishers, Boston
- B.R. Verma; *Muslim Marriage and Dissolution*, 1975, Law Book co.,Allahabad
- The Qur'an
- Al-Sad, Bakurat, translated by david Russell and Al-Mamun Suhrawaedy, *First Step In Muslim Jurisprudence*,1963, Forgotten Books, London
- Saksena K Prasad, *Muslim Law as Administered in India and Pakistan*, 1963, Eastern Book Co., Lukhnow
- Mufti Abdul JaleelQasmi, *The Complete System of Divorce*,2003, ZamZam Publisher, New Delhi
- El Fadl Khaled Abou, *Speaking in God's Name: Islamic Law, Authority and Women*, 2001, OneworldPress, Oxford

- Wilson, R.K, *Anglo-Muhammadan Law, Mohammadan Law*,1921,Andesite Press,UK

#### **Journals Article**

- Naima Haque; Unpublished thesis submitted in partial fulfillment of the requirement of the East London, school of Law for the degree of doctor of philosophy, London (1995)