

Dissolution of Marriage under Muslim Law and the Reality in Bangladesh



A Research Monograph Submitted as Partial Fulfill of Master
of Laws (LLM) Degree
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Letter of Transmittal

To

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Subject: Prayer for Submission of Dissertation

Dear Sir,

It is an excellent pressure on behalf of me that I even have been ready to make research on “Dissolution of Marriage under Muslim Law and the Reality in Bangladesh”. In concluding this research, I even have given all of my best afford to make useful research and by collecting all the relevant information from different sources which will fulfill your expectation.

Therefore, I shall remain grateful to you if you undergo this thesis paper for your evaluation and I would be like that if any valuable recommendation made on your part in this matter.

I am always available for any longer clarification of any part of this paper at your convenience.

Jenat Islam Jeba

Thanking you,

Jenat Islam Jeba

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Letter of Approval

This is to certify that the work is done “**Dissolution of Marriage under Muslim Law and the Reality in Bangladesh**” is a real work done by Jenat Islam Jeba , ID: 222-38-077, Department of Law, Daffodil International University, done under my supervision in the partial fulfillment for the research work.



Mr. Mohammad Badruzzaman

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Declaration

I hereby solemnly declare that thesis on “**Dissolution of Marriage under Muslim Law and the Reality in Bangladesh**” partial fulfillment of the requirement for the award of the degree of master of laws, Department of Law, Daffodil International University.

I further declare that the research work presented in this thesis is original and it has not been submitted earlier either partly or wholly to any other university for any academic qualification/certificate/diploma degree. The work I have presented does not breach any copyright.

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Certification

This is to certify that thesis on “**Dissolution of Marriage under Muslim Law and the Reality in Bangladesh**” partial fulfillment for the award of the degree of Master of Laws, Department of Law, Daffodil International University. The research has been carried out with my guidance and as research of the bonafide work carried out successfully.



Mr. Mohammad Badruzzaman

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Dedication

Firstly, I am showing very much respect and gratitude to Allah. I would like to express my gratitude and love to my parents for their encouragement and to provide me with opportunities for higher education. They are still guiding me to be a good human being and motivated me to dedicate myself to the benefit of the country.

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Abstract

This thesis monograph delves into the intricate legal framework surrounding the dissolution of marriage under Muslim law, while critically analyzing its practical implications in contemporary society. The dissolution of marriage is a significant aspect of family law, and within the context of Islamic jurisprudence, it carries distinctive legal principles and practices that often intersect with social realities.

The primary objective of this monograph is to dissect the multifaceted nature of the dissolution of marriage as outlined in Islamic law, and subsequently, juxtapose these legal doctrines with the lived experiences and societal dynamics that surround marital dissolution within Muslim communities. Through an interdisciplinary approach, encompassing legal analysis, sociological investigation, and anthropological inquiry, this study seeks to bridge the gap between legal doctrine and the pragmatic realities that shape the dissolution of Muslim marriages.

The monograph commences with an exploration of the foundational sources of Islamic law, including the Quran, Hadith, and scholarly interpretations (fiqh). It scrutinizes the diverse modes of marital dissolution recognized by Islamic jurisprudence, such as talaq (repudiation), khula (mutual divorce), and judicial dissolution. The analysis extends to the roles and responsibilities of the parties involved, as well as the procedural safeguards embedded in the Islamic legal framework to protect the rights of spouses.

In the subsequent sections, this monograph shifts its focus towards the contemporary realities of marital dissolution within Muslim societies. By drawing upon case studies, empirical data, and personal narratives, the research evaluates how cultural norms, socioeconomic factors, gender dynamics, and access to justice influence the practical outcomes of dissolution proceedings. This critical examination endeavors to unearth potential discrepancies between legal ideals and the actual experiences of those navigating the dissolution process.

Furthermore, the monograph engages with the evolving discourse surrounding gender equality and women's rights within the context of Islamic marriage dissolution. It assesses whether traditional legal principles are compatible with modern notions of fairness and gender equity, and explores efforts to reform or reinterpret these principles in response to changing societal values.

The findings of this research contribute to a deeper understanding of the complexities inherent in the dissolution of marriage under Muslim law, shedding light on the gaps between doctrinal norms and lived realities. By providing insights into the interplay between legal constructs and the socio-cultural milieu, this monograph offers valuable perspectives for legal scholars,

policymakers, practitioners, and activists seeking to address the challenges posed by marital dissolution within Muslim communities.

Chapter 1

Introduction

1.1 Statement of the Problem:

The Dissolution of Marriage under Muslim Law in Bangladesh has long been a subject of legal, social, and cultural significance. This thesis monograph aims to investigate and analyze the dissonance between the legal provisions and the practical realities surrounding the process of marriage dissolution among Muslims in Bangladesh. Despite the codification of laws governing marriage dissolution, there exists a substantial gap between the legal framework and the actual experiences of individuals seeking to dissolve their marriages. This disjunction gives rise to a myriad of legal, social, and emotional challenges that warrant a comprehensive examination.

The primary problem that this thesis addresses is the incongruity between the theoretical constructs of marriage dissolution as delineated in the Muslim personal laws and the challenges faced by individuals when attempting to navigate the legal system for obtaining a divorce. Despite the existence of clear legal procedures for dissolving a marriage, many factors contribute to the complexities and inefficiencies in realizing these procedures in practice. This study seeks to uncover the underlying causes of this dissonance, ranging from sociocultural norms and economic disparities to legal hurdles and bureaucratic inefficiencies.

Marriage is a fundamental social institution that plays a pivotal role in shaping the structure of society. In Bangladesh, a predominantly Muslim country, the dissolution of marriage holds significant legal, social, and cultural implications. The dissolution of marriage under Muslim law, known as "Talaq," is governed by religious principles enshrined in the Quran and Hadiths, as well as codified laws such as the Muslim Family Laws Ordinance, 1961. However, the actual application and implications of these laws often deviate from the intended principles, resulting in a complex web of legal, social, and gender-related issues.

The problem at hand is the stark contrast between the theoretical framework of dissolution of marriage as stipulated in Muslim law and its practical manifestation in Bangladesh. While the religious and legal frameworks provide guidance on the procedure and grounds for divorce, the real-world scenario is characterized by a range of challenges that raise significant concerns.

The dissolution of marriage in Muslim law, as practiced in Bangladesh, often raises concerns regarding gender equality and justice. The traditional power dynamics between husbands and wives can lead to unequal outcomes during divorce proceedings, particularly regarding issues such as custody of children, financial support, and property division.

The practice of "triple talaq," allowing a husband to divorce his wife by uttering "talaq" three times in quick succession, has been a subject of controversy. While it has been banned or restricted in several Muslim-majority countries, its application still persists in some contexts in Bangladesh, leading to abrupt and often unjust divorces.

Divorced women in Bangladesh often face social stigma and economic vulnerability. The limited access to resources and legal support can leave them in precarious situations, struggling to secure their rights and maintain their dignity within society.

The coexistence of Islamic law alongside civil law systems in Bangladesh leads to a complex legal landscape. The lack of clear mechanisms for harmonizing or navigating between these two legal systems can result in confusion and unequal outcomes, particularly for women seeking divorce.

The dissolution of marriage not only affects the spouses but also has implications for the children involved. Issues of custody, guardianship, and child support often become contentious, with children caught in the crossfire of legal and emotional battles.

The evolving societal norms, education, and exposure to global perspectives are influencing the expectations and desires of individuals within marriages. This can lead to conflicts between traditional practices and modern aspirations, contributing to the rise in divorce rates and complex legal scenarios.

Addressing these issues requires a comprehensive understanding of the interplay between religious principles, legal frameworks, cultural norms, and social realities. This thesis aims to delve into the challenges posed by the dissolution of marriage under Muslim law in Bangladesh, analyzing the gaps between theoretical concepts and their practical implications, and proposing recommendations to bridge these gaps in a way that promotes gender justice, social equity, and harmonious family dynamics.

1.2 Importance of the Study

The dissolution of marriage under Muslim law, often referred to as "talaq" or divorce, is an important and complex issue with significant social, legal, and cultural implications. The way this process is understood and practiced can vary across different countries and regions, including Bangladesh. Studying the dissolution of marriage under Muslim law and its reality in Bangladesh is crucial for several reasons.

Muslim Law, also known as Islamic law or Sharia, plays a crucial role in the lives of Muslims in Bangladesh. Understanding the principles, processes, and grounds for the dissolution of marriage under Muslim Law is essential for legal practitioners, scholars, and policymakers to ensure fair and just legal proceedings.

Marriage and family are fundamental social institutions in Bangladesh. Exploring the dissolution of marriage sheds light on the social dynamics, gender roles, and familial relationships within the Muslim community. Understanding these dynamics helps in addressing social issues related to divorce, such as the impact on children, women's rights, and societal attitudes.

The study of divorce under Muslim Law in Bangladesh is particularly important to assess its implications for women's rights and empowerment. Analyzing the legal framework and its implementation can help identify gaps in protecting women's rights during divorce proceedings, leading to potential reforms that ensure justice and equality.

Bangladesh has a rich cultural and religious heritage. Exploring divorce in the context of Muslim Law helps in understanding how cultural norms and religious beliefs intersect with legal processes. This understanding is vital for promoting tolerance, respect, and coexistence within a diverse society. A comprehensive study of divorce under Muslim Law in Bangladesh can identify areas in need of legal reform. It can highlight inconsistencies between traditional Islamic principles and modern legal principles, contributing to discussions on adapting Islamic family law to contemporary societal needs. Bangladesh is a signatory to various international human rights agreements. Studying divorce under Muslim Law allows for an assessment of whether these laws align with international human rights standards, such as those related to gender equality and non-discrimination. Policymakers can benefit from a thorough understanding of the dynamics surrounding divorce in Muslim Law. This knowledge can aid in formulating policies that address issues related to family disputes, child custody, financial support, and more.

Scholars and researchers can contribute to the academic discourse by delving into the legal, sociological, and psychological aspects of divorce under Muslim Law in Bangladesh. This can lead to a deeper understanding of the subject and generate valuable insights for future research. Knowledge of the divorce process and its implications is essential for professionals involved in mediation and counseling services. This knowledge equips them to provide informed guidance and support to individuals navigating the challenges of divorce.

Disseminating accurate information about divorce under Muslim Law can lead to increased awareness within the Muslim community in Bangladesh. This can promote informed decision-making, reduce misconceptions, and encourage open dialogue about marriage, divorce, and related issues.

1.3 Objectives of the Research

The primary objective of this research monograph is to examine the social, cultural, and religious factors that influence the process of divorce within the Bangladeshi Muslim community.

And the ancillary objectives are-

- (a) To analyze the legal provisions and procedures for the dissolution of marriage under Muslim law in Bangladesh.
- (b) To evaluate the challenges and barriers faced by individuals seeking divorce under Muslim law and their experiences within the legal system.

1.4 Questions of the Research

To achieve the research objectives, the following research question will be explored:

How do social, cultural, and religious factors impact the process of divorce within the Bangladeshi Muslim community?

And the ancillary questions are-

- (a) What are the legal provisions and procedures for the dissolution of marriage under Muslim law in Bangladesh?
- (b) What are the challenges faced by individuals seeking divorce under Muslim law, and what is their experience within the legal system?

1.5 Methodology

The research will adopt a mixed-methods approach, combining qualitative and quantitative data collection and analysis. The following methods will be employed:

- (a) **Legal Analysis:** A comprehensive review of the relevant legislation, case law, and legal scholarship will be conducted to understand the legal framework governing separation of marriage under Muslim law in Bangladesh.
- (b) **Empirical Research:** Surveys, interviews, and focus group discussions will be conducted with divorced individuals, legal professionals, religious scholars, and relevant stakeholders to gather insights into the social, cultural, and practical aspects of Muslim divorce in Bangladesh.
- (c) **Comparative Analysis:** A comparative study of divorce laws and practices in other Muslim-majority countries will be conducted to gain a broader perspective on the subject matter.

- (d) **Data Analysis:** The collected data will be analyzed using appropriate qualitative and quantitative methods, allowing for a comprehensive understanding of the research questions.

Scope of Data for this research monograph, as the court practices, the Dhaka Board will gather some of those who come to the court to seek legal remedies for divorce through questioning, and in my residence Savar, their opinions or information will be collected through questioning the neighbors.

The dissolution of marriage under Muslim Law and its reality in Bangladesh involves legal, cultural, and social dimensions. Here's an overview of the scope of data related to this topic- legal framework, grounds for Divorce, Divorce rates, Khula Cases (Khula is initiated by the wife seeking a divorce by returning her husband's dower (mahr) or other assets received during marriage.), social and cultural factors, legal reforms, gender dynamics, religious interpretations, cultural norms and stigma etc.

Chapter 2

Laws, Regulations, Legal Process of Divorce & the Role of Advocates in Bangladesh

2.1 Muslim Law Provision

As of my last knowledge update in September 2021, the legal provisions related to divorce in Bangladesh are primarily governed by the Muslim Family Laws Ordinance, 1961. However, please note that laws can change over time, so it's important to consult the most recent legal resources or a legal professional for the latest information. Here's an overview of the provisions regarding divorce under Muslim law in Bangladesh based on the information available up to September 2021.

Muslim Family Laws Ordinance, 1961: This ordinance regulates matters related to marriage, divorce, and maintenance among Muslims in Bangladesh. It aims to provide a uniform legal framework for personal matters concerning Muslims.

In Islamic law, including the laws followed in Bangladesh, divorce is recognized as a legal procedure, and there are provisions for both husband-initiated (talaq) and wife-initiated (khula) divorces. The Muslim Family Laws Ordinance 1961 in Bangladesh aimed to reform and regulate certain aspects of Muslim family law, including divorce. The specific sections you mentioned might provide details about these matters.

Here is a general outline of what is commonly found in divorce provisions in Islamic family laws:

Section 7: Talaq (Husband-Initiated Divorce)

In many Islamic jurisdictions, including Bangladesh, a husband can initiate divorce by pronouncing talaq. The number of times "talaq" is pronounced can have different consequences, such as revocable or irrevocable divorces, depending on the context. Some ordinances might require the husband to provide a written notice of divorce to the appropriate authorities or to the wife.¹

Section 8: Khula (Wife-Initiated Divorce)

Khula is a process through which a wife can seek a divorce from her husband by offering a financial compensation or returning the dowry she received at the time of marriage. This provision allows women to initiate divorce proceedings if their marital situation becomes difficult or unbearable.

It's important to note that laws and regulations can vary by country and jurisdiction, and the Muslim Family Laws Ordinance 1961 might have specific provisions that differ from the general outline I've provided. To get accurate and detailed information about the specific sections you mentioned, I recommend consulting the official legal documents or seeking advice from legal professionals who are well-versed in Bangladeshi family law.²

Grounds for Divorce: Under this ordinance, both the husband and the wife have the right to seek divorce. The grounds for divorce include:

- Adultery on the part of the wife.
- Cruelty by either spouse.
- Desertion for at least two years.
- Failure to fulfill marital obligations.
- Conversion of religion.

¹ D.Zulfikar Ahmed 'ALTERNATIVE DISPUTE RESOLUTION LAW THEORY AND ANALYSIS' (3rd publication 2014) 202

² D.Zulfikar Ahmed 'ALTERNATIVE DISPUTE RESOLUTION LAW THEORY AND ANALYSIS' (3rd publication 2014) 205

- Incurable forms of leprosy or insanity.
- Any other ground recognized as valid under Islamic law.

Divorce Procedure: The ordinance mandates certain procedures for divorce, including:

- The husband must give notice of talaq (divorce) to the chairman of the Union Council/Municipality, as well as a copy to the wife.
- The chairman should then constitute an arbitration council consisting of the husband and wife, and attempts should be made at reconciliation.
- If reconciliation fails, and the husband still desires divorce, he can pronounce talaq either orally or in writing, following the provisions of Islamic law.
- After the pronouncement of talaq, a copy must be sent to the chairman and the wife.
- A waiting period (iddat) follows, during which reconciliation can take place. If the reconciliation fails, the divorce becomes final after the iddat period.

Maintenance after Divorce: The ordinance also addresses the issue of maintenance for the wife after divorce. The husband is legally obliged to provide maintenance for his ex-wife during the iddat period and possibly beyond, depending on circumstances.

2.2 Alternative Dispute Resolution (ADR)

Work between divorce in Muslim law and Alternative Dispute Resolution (ADR) involves exploring how ADR methods can be applied to resolve divorce-related disputes within the framework of Islamic law. Islamic law, known as Sharia, governs various aspects of a Muslim's life, including marriage and divorce. ADR, on the other hand, encompasses methods like mediation, arbitration, and negotiation, which aim to settle disputes outside of traditional court proceedings.³

Here's how divorce in Muslim law and ADR can intersect:

- **Mediation:** Mediation is a key ADR method that can be used to facilitate discussions and negotiations between spouses seeking divorce under Muslim law. In many cases, Islamic principles encourage amicable settlement of disputes. A trained mediator can assist the parties in reaching a mutually acceptable divorce agreement while considering Islamic principles.
- **Arbitration:** Islamic law allows for private arbitration to resolve disputes. Arbitration can be used to address divorce-related matters such as division of property, custody of children, and financial support. An arbitrator knowledgeable in both Islamic law and arbitration

³ D.Zulfikar Ahmed 'ALTERNATIVE DISPUTE RESOLUTION LAW THEORY AND ANALYSIS' (3rd publication 2014) 189

procedures can help parties reach a resolution that aligns with their faith and legal requirements.

- **Negotiation:** ADR emphasizes negotiation and compromise. In the context of divorce in Muslim law, negotiation can involve discussions about issues like the dowry (mahr), property distribution, and child custody. A skilled negotiator can help spouses find common ground and avoid lengthy court battles.
- **Cultural Sensitivity:** ADR practitioners dealing with divorce cases under Muslim law must be culturally sensitive and well-versed in the nuances of Islamic jurisprudence. This includes understanding the principles of Sharia that pertain to divorce, such as talaq (divorce initiated by the husband) and khula (divorce initiated by the wife).
- **Customization:** ADR methods allow for greater customization of solutions compared to traditional court processes. This is particularly important when dealing with divorce cases, as each case may have unique circumstances that require tailored solutions while adhering to Islamic legal principles.
- **Confidentiality:** ADR methods often offer a level of confidentiality that court proceedings may not. This can be advantageous in divorce cases, where sensitive matters such as personal finances and family dynamics are involved.
- **Preservation of Relationships:** Islamic teachings emphasize the importance of maintaining family ties even after divorce. ADR approaches can help divorcing couples find common ground, which may contribute to a more amicable post-divorce relationship, especially when co-parenting is involved.
- **Legal Compliance:** When using ADR methods in divorce cases under Muslim law, it's essential to ensure that the solutions reached are in accordance with both Islamic principles and the legal requirements of the jurisdiction.

Intersection between Divorce in Muslim Law and ADR:

In the context of divorce, particularly in situations where both spouses are willing to resolve their differences amicably, ADR methods such as mediation can play a role in achieving a mutually agreeable divorce settlement. This can involve discussions about matters like custody, financial support, property division, and more.

In some cases, Islamic scholars and legal experts have also advocated for the use of ADR methods to help parties navigate the complexities of divorce while adhering to Islamic principles. For instance, if a couple is going through the process of khula or negotiating the terms of divorce, a mediator can facilitate communication and help them find common ground.

It's important to note that the degree to which ADR methods are utilized in the context of Islamic divorce can vary based on cultural norms, legal frameworks in specific countries, and personal preferences of the parties involved. Additionally, the acceptability of ADR methods may be influenced by the interpretation of Islamic jurisprudence by local religious authorities.

2.3 Family Law Provisions

In Bangladesh, family law provisions and divorce regulations for Muslims are primarily governed by Islamic personal law, which is based on principles derived from the Quran, Hadith (sayings and actions of Prophet Muhammad), and customary practices.

Family Law provisions related to divorce are primarily governed by the Muslim Personal Law (Shariat) Application Act, 1937. This law applies to Muslims in Bangladesh and deals with various aspects of personal and family matters, including divorce. The intersection between family law provisions and divorce in Muslim law in Bangladesh involves understanding the legal procedures and grounds for divorce as well as the rights and responsibilities of parties involved.⁴

Here are some key points regarding the intersection between family law provisions and divorce in Muslim law in Bangladesh:

- Grounds for Divorce: Under Muslim law in Bangladesh, a Muslim husband can initiate divorce using either the method of "talaq" (pronouncement of divorce) or through the Family Court system. The grounds for divorce can vary based on the specific circumstances, but generally include issues such as cruelty, desertion, impotency, failure to maintain, and more.
- Talaq: Talaq is the Islamic form of divorce where the husband can pronounce divorce and end the marriage. In Bangladesh, the husband can pronounce talaq either orally or in writing, and it can be done in a single sitting or over a period of time. However, there are specific procedures and requirements that need to be followed for the divorce to be valid, and they are defined by Islamic law and the relevant legal provisions.
- Family Court: In addition to the traditional talaq method, Muslim couples in Bangladesh can also seek divorce through the Family Court system. This system provides a legal framework for resolving family disputes, including divorce, and ensures that both parties have the opportunity to present their case before a judicial authority.
- Maintenance and Custody: The Muslim Personal Law also addresses issues of maintenance (financial support) and custody of children after divorce. It outlines the

⁴ D.Zulfikar Ahmed 'ALTERNATIVE DISPUTE RESOLUTION LAW THEORY AND ANALYSIS' (3rd publication 2014) 225

rights and responsibilities of both parties regarding the maintenance of the wife and children, as well as the custody and guardianship of minor children.

- Women's Rights: The intersection between family law and divorce in Muslim law also includes considerations for women's rights and protection. The law includes provisions aimed at safeguarding the rights of Muslim women during divorce proceedings, including provisions for "khula" (where the wife initiates the divorce) and the provision of maintenance.
- Legal Proceedings: The Family Courts in Bangladesh handle divorce cases and other family matters. These courts follow procedural rules outlined in the Family Courts Ordinance, 1985, which aim to provide a fair and efficient process for resolving family disputes.

Legal Process of Divorce

2.4 Court Trial System

Divorce cases for Muslims are primarily governed by Muslim personal law, which includes the principles of Islamic law and traditions. The process and procedures for a legal trial in court for divorce under Muslim law in Bangladesh generally follow these steps:

(a) Initiation of Divorce

The husband (or in some cases, the wife) can initiate the divorce process by expressing the intention to divorce the spouse. In Islamic law, there are various methods of divorce, such as Talaq, Khula, and Tafwid, each with its own requirements.

(b) Notice of Divorce

Once the intention to divorce is expressed, a notice of divorce needs to be communicated to the other party. In some cases, the divorce is effective immediately, while in others, there may be a waiting period (iddat) during which reconciliation attempts can be made.

(c) Filing a Case in Court

If the parties are unable to reconcile and the divorce is contested or the terms of divorce (such as maintenance, custody, and property distribution) are disputed, either party can file a case in a Family Court in Bangladesh. The Family Court will have jurisdiction over divorce matters for Muslims.

(d) Legal Proceedings

The court proceedings will involve presenting evidence, witnesses, and arguments. Both parties will have the opportunity to present their side of the story and provide evidence to support their claims. The court will also consider the relevant provisions of Islamic law and legal precedents.

(e) Judgment

After considering the evidence and arguments presented, the court will issue a judgment regarding the divorce and related matters. The judgment will specify the terms of the divorce, such as custody of children, maintenance, and division of marital property.

(f) Appeals

If either party is dissatisfied with the judgment, they can appeal to a higher court within a specified timeframe. The appeal process will involve a review of the lower court's decision and a reconsideration of the case.

(g) Execution of Judgment

Once the judgment becomes final, both parties are required to comply with its terms. Failure to do so can lead to enforcement actions by the court.

2.5 Needed Documents for Trial

If any women or men want to filled divorce, they must needs some documents which explain in blow:

○ Talaq Notice or Demand for Divorce Letter:

The process usually begins with the husband sending a written notice to the wife expressing his intent to divorce her. This notice can be written by the husband or his legal representative.

○ Marriage Certificate:

A copy of the marriage certificate is typically required to prove the existence of the marriage.

○ Proof of Marriage:

Other evidence of the marriage, such as photographs, invitations, or testimonies of witnesses who were present at the marriage ceremony.

○

Witness Statements:

In Islamic law, witnesses are often required to testify to the occurrence of divorce. The witnesses can provide statements regarding the divorce process and the intent of both parties.

- Identity Documents:

Copies of the husband's and wife's national identity cards or passports to establish their identities.

- Nikahnama:

This is the marriage contract and is usually kept by the wife. It may be required to confirm details about the marriage.

- Mahr Agreement:

If there was a mahr (dower) agreement between the husband and wife, a copy of that agreement might be relevant.

- Proof of Dowry Payment:

If dowry was given at the time of marriage, evidence of its payment could be important.

- Financial Information:

Details about the financial situation of both parties, including their sources of income, assets, and liabilities.

- Children's Information:

If there are children from the marriage, their birth certificates and custody arrangements might be relevant.

- Communication Records:

Any communication between the husband and wife, especially if it pertains to the divorce or attempts at reconciliation.

- Any Previous Legal Proceedings:

If there have been previous legal actions or disputes between the parties, relevant documents from those cases might be needed.

Remember that legal procedures can change, so it's important to consult with a lawyer or legal expert who is up-to-date with the current laws and requirements in Bangladesh. Family law cases can be complex, so having proper legal representation is crucial to ensure that your rights are protected throughout the process.

The Role of the Advocates

2.6 Behaviours & Responsibility

An advocate, also known as an attorney or lawyer, plays a critical role in a divorce case with parties. Their primary responsibility is to represent and advocate for their client's best interests within the bounds of the law.

Advocates must zealously represent their client's interests throughout the divorce proceedings. Provide legal advice to the client regarding their rights, obligations, and options during divorce. Evaluate the client's situation, including assets, liabilities, and child custody matters, to develop a comprehensive legal strategy. Attempt to negotiate a fair and amicable settlement between the divorcing parties whenever possible. This may involve discussions on property division, alimony, child custody, and visitation. Prepare and file all necessary legal documents, such as divorce petitions, financial disclosures, and child custody agreements, in accordance with local laws and court rules. Appear on behalf of the client in court hearings and proceedings, presenting arguments and evidence effectively. Mediate disputes between the parties and facilitate negotiations to resolve issues without the need for lengthy court battles, if possible. If children are involved, advocate for the best interests of the children, including custody, visitation, and child support arrangements. Assist the client in securing a fair division of assets and liabilities, which may include real estate, bank accounts, retirement funds, and other property. Advocate for fair alimony arrangements if applicable based on the client's needs and the financial situation of both parties. Conduct thorough legal research to support the client's case and stay updated on relevant laws and precedents. Maintain strict client confidentiality and protect sensitive information shared by the client. Adhere to the legal profession's code of ethics, including honesty, integrity, and professional conduct. Inform the client about alternative methods of dispute resolution, such as mediation or collaborative divorce, and help them decide if these methods are appropriate. Keep the client informed about the progress of the case, court dates, and any developments that may affect their legal rights. Assist the client in finalizing the divorce, ensuring that all legal requirements are met and that the divorce decree is properly executed.

2.7 Court Fee and Advocate fee

Court fees for divorce cases in Bangladesh are determined by the government and can change over time. These fees typically cover the cost of filing the divorce petition and other court-related expenses. The specific fees can vary depending on the type of divorce (e.g., mutual consent divorce or contested divorce) and the assets involved. Court fees for filing a divorce petition in Bangladesh were relatively affordable, but they could still vary depending on the circumstances. The exact amount of court fees should be confirmed with the relevant court or legal authorities. Keep in mind that there may be additional costs associated with court

proceedings, such as fees for serving legal notices, hiring process servers, and other administrative expenses.

Advocate fees for divorce cases in Bangladesh can vary significantly based on several factors, including the complexity of the case, the location of the court, the reputation and experience of the lawyer, and the negotiation between the client and the attorney. Some lawyers may charge a flat fee for handling an entire divorce case, while others may charge hourly rates or a combination of both.

The reality of divorce cases in Bangladesh can vary widely based on individual circumstances, the willingness of the parties to cooperate, and the complexity of the issues involved. Some divorce cases may proceed relatively smoothly, especially in cases of mutual consent divorce, while others may become contentious and lengthy if there are disputes over property, custody, or other issues.

Chapter 3

Divorce, Maintenance & Mentally Situation of Parties

3.1 Divorce by Husband

There are four ways or options a husband can give divorce⁵. They are:

Talaq-ul-sunnat

Talaq-ul-Sunnat, also known as "Talaq al-Sunnah," is a term used in Islamic jurisprudence to refer to the ideal or recommended form of divorce as per the traditions and teachings of the Prophet Muhammad (peace be upon him). It is considered the most preferred and proper way to end a marriage within the Sunni branch of Islam.

This form of divorce is based on Muslim Personal Laws. It is further sub-divided into the following categories:

Ahsan

Husband has to make an announcement of divorce in a single sentence when the wife is free from the menstrual cycle. After divorce women have to observe Iddat for a certain period of time, during which the husband cannot indulge in any form of sexual intercourse, if he indulges

⁵ Shreya Roushan, 'Handbook on marriage and divorce under Muslim Law' (Ipleaders, 3 August 2021)

then revocation of talaq becomes impliedly revocable, otherwise, it becomes irrevocable. This type of talaq can be pronounced even when the wife is undergoing menstruation, but for that marriage must not be consummated between the parties. It is the most approved form of talaq.

Hasan

It is a less approved form of Talaq Ahasan. There is a provision for revocation of divorce. The word talaq is to be pronounced three times simultaneously. Three announcements should be made in the three states of purity if the wife has not crossed the age of menstruation. If the wife has crossed the age of menstruation, pronouncement must be made at the 30 days interval between the successive pronouncements. During the period of three pronouncements, no sexual intercourse should take place, if it happens divorce is revoked. After completion of the iddat period, this type of divorce becomes irrevocable.

Talaq-ul-Biddat

It is this disapproved/sinful form of divorce. It is also known as triple talaq, after pronouncing talaq three times it becomes irrevocable immediately. This form of divorce is only recognised under Sunni Law and not by Shias and Malikis. Parties can remarry only after performing nikah halala by the female partner, under which she has to marry another man and then get divorced from him.

Ila

It is a form of divorce under which the husband has the power to pronounce that he would not indulge in sexual intercourse with his wife. Subsequent to this pronouncement, the wife is required to observe iddat. If the husband cohabits with the wife during this period, then the Ila is revoked. Once the period of iddat is over, divorce becomes irrevocable.

Zihar

It is also constructive divorce like Ila. In this form of divorce, the husband compares his wife with a woman who comes under a degree of prohibited relationship, such as his mother, sister etc, and pronounces that she is like his mother or sister. For doing this the husband must be of sound mind and above the age of eighteen years. The wife has the right to seek judicial remedies such as restitution of conjugal rights, cohabitation etc., but cannot seek judicial divorce. Husband can revoke such divorce by observing two months fast, feeding sixty people and freeing a slave. This type of divorce is no longer in practice.

3.2 Divorce by Wife

Talaq-e-Tafweez

It is also known as delegated divorce. The husband has the power to delegate such power to the wife, he must be of sound mind and above 18 years of age. This type of talaq is also called an agreement, which may be entered between the parties before or after marriage. If the terms of an agreement are not fulfilled, the wife can ask for a divorce. It is the only way through which a woman can ask for a divorce. The right of the husband to divorce his wife remains intact, it does not deprive the husband of his right to pronounce the divorce.⁶

3.3 Divorce by Mutual Consent

Khula

It means 'laying down', where the husband lays down the authority over his wife. This is done through mutual consent between husband and wife, where the wife pays the consideration from her property to the husband, for her release. Wife releases Mehr and other rights for the benefit of her husband. Thus, divorce is purchased from husband by wife. There is an offer from the wife, which is accepted by the husband. Women are required to observe iddat after Khula.

Mubarat

It means 'release', it releases/discharges parties from marital rights. Divorce is with mutual consent among parties to become free from one another. Its formalities are the same as Khula, where there is an offer from one party and acceptance from another. Women are required to observe Iddat.

Maintenance

3.4 Mahr or Dower

After divorce every woman need her maintenance for her or if she have children. And Mahar is a right of a woman after marriage, if marriage stay or not, but husband must give this right to her wife. Tybji defined Mahr or dower as a sum that becomes payable by the husband to the wife on marriage, either by agreement between the parties, or operation of law.⁷

⁶ Shreya Roushan, 'Handbook on marriage and divorce under Muslim Law'(Ipleaders, 3 August 2021)

⁷ Faiz Badrudin Tyabi, Muhammad law (1866),P.,170,Lahor

D.F. Mulla defined it, 'Mahr or dower is a sum of money or other property which the wife is entitled to receive from the husband in consideration of the marriage'.⁸

The obligation and importance of the payment of mahr is found in Holy Quran and the Hadith. The Quran states, 'Give women(wives) their dower with no stings attached. If they themselves (wives) give some of it back to you(wives it), then consume it with good cheers.'⁹

Muslim marriage is a civil contract like other ordinary contract and as such it creates some grounds and obligations on both the parties after dissolution. These are called legal consequences.

If the marriage was consummated or valid retirement took place before divorce, the entire amount of unpaid dower, whether prompt or deferred, becomes like any debt.

The Muslim Family Laws Ordinance, 1961, section-10 said that about dower- where no details about the mode of payment of dower are specified in the nikah nama, or the marriage contract, the entire amount of the dower shall be prescribed to be payable on demand.

But in real life in court trial for dower, woman face so much hard time for achieve her dower. Cause our patriarchal society could not give there deserved rights. In trial husband party try to prove that the wife is not good by the character.

3.5 Maintenance for Children's Provisions

According to Section 3(1)(b) of the Muslim Women (Protection of Rights on Divorce) Act, 1986, a Muslim woman can claim a reasonable maintenance amount from her husband, if she maintains children born to her, before or after divorce, for two years from the date of birth of such children. It should be noted that this right of a woman has no relation with the independent right of the children. It does not matter whether the children were born before or after the divorce, the wife can compel her former husband to provide maintenance to the children. This right of a divorced wife (mother) is separate from the right of children to claim maintenance from their father.

According to the Muslim Family Laws Ordinance, 1961 section-9 sub-section(1) In the event that any spouse neglects to keep up with his better half enough, or where there are a larger number of wives than one, neglects to keep up with them impartially, the wife, or all or any of the wives, may as well as looking for, some other lawful cure accessible apply to the Director who will comprise a Discretion Board to decide the matter, and the Mediation Gathering might give a testament determining the sum which will be paid as support by the husband.

⁸ D.F.Mulla Mahomedan law, P.245 (1993) Bomby

⁹ Al Quran-4:4

Sub-section(2) A spouse or wife may, in the endorsed way, inside the recommended period, and on installment of the endorsed expense, favor an application for correction of the declaration 1 to the 2[Assistant Judge] concerned and his choice will be conclusive and will not be brought being referred to in any Court. Sub-section(3) Any sum payable under sub-section (1) or (2), on the off chance that not paid eventually, will be recoverable as unpaid debts of land income.

3.6 Implementation in Reality

After a birth, every child need its mother. Mother is not guardian of a child she is a custody of a child law said that. As per the information given by the two city enterprises of Dhaka, 39 separations occurred consistently in Dhaka from June to October 2020. As per that computation, separate has expanded in 2020 contrasted with a similar period in 2019. However, kids are the most impacted after partition. Since then the guardians begin battling once again who the youngster ought to remain with. This punishment once transformed into a horrible circumstance. Regardless of whether there is a separation between the guardians of a family, many individuals don't have the foggiest idea who will be liable for the offspring of that family, who will bear the support. The law has made this understood.¹⁰

As per High Court attorney Miti Sanjana, under Muslim family regulation, the father is the genuine lawful gatekeeper of the youngster in practically all cases. Guardianship and care of youngsters are viewed as independently under this Demonstration. Legal counselor Miti Sanjana said that assuming several separations and they have youngsters, the kid will be in the care of the mother till the age of seven. The law says that. For this situation, the mother's right is perceived first.

Be that as it may, in Muslim regulation, the mother isn't the lawful watchman of the youngster, the legitimate gatekeeper is the father. A mother is just a gatekeeper or watchman.

She said, "In Muslim regulation, the mother isn't the gatekeeper, the mother isn't considered as the watchman, the mother is the caretaker of the youngster."

She said, on account of a kid, he will actually want to meet his father when he remains with his mom for quite some time. On account of a young lady kid, she will be in the care of her mom till she achieves pubescence. Father can meet him during this time. After this time the youngsters can be taken by their father assuming they need.

Be that as it may, to keep the care of the youngster even after a specific age, then, at that point, she needs to apply to the court.

¹⁰ IMAM HOSSAIN, 'Rising trend of divorce in Bangladesh' (The Financial Express, 10 September 2023)

Miti Sanjana said, it is many times seen that regardless of whether there is a separation, in the event that everything is good to go or questions between the guardians, all things considered, the kids are given joint care. That is, both father and mother can keep the youngsters assuming they need.¹¹

Nowadays, the real thing is that, after getting the custody of child the wife, husband not give his child money for maintenance properly. Many of times, this money achieve becomes so hard for woman. In my real life I saw that, name is Salma, after divorce she got his girl custody, but when she go to the court for collect the money for maintenance, she face lots of problem like, husband did not give monthly money properly, advocate not to do good behave when go to collect money. As per say, she could not found 4 months money also, she work as a garments worker.

And also see in advocate chamber, women used the term of divorce as a business. They married again and again and gave their husband in trap of divorce and collect Mahr and Maintenance also.

As per the computation of 2018, the quantity of half year partitions in the two city companies of Dhaka is around 5 thousand and this year the quantity of half year detachments has expanded to around 7 thousand. The Dhaka City Enterprise, yet guardians and gatekeepers are stressed and terrified by the commonness of it step by step. Fundamentally, taught and working ladies from affluent and world class families are nearly ahead in such separations. Which nobody needs. It ought to be noticed that the justification for partition or separation are absence of connection among a couple. Doubt inclination among a couple, distance, Facebook fixation, Measurements show that the frequency of separation is a lot higher in Muslim families than in Hindu, Buddhist and Christian families. The pattern of separation in this general public is to a great extent liable for the elevated degrees of outrage, rage, brutality, pride, self-importance and covetousness in Muslim families. Beginning from youngster marriage, getting hitched in Bangladesh is extremely simple and separation is additionally normal. Much of the time, regardless of whether there is a case, because of the long course of settlement, the casualties are compelled to pull out from this way. These day young ladies are getting divorce from young men by words. Since following the separation, they wedded another child once more. Because of his personality and beneficial routines, he additionally finds it challenging to track down bliss on the planet. Computerized data innovation has made correspondence so natural that, Couple furtively foster kinships with others in one another's nonappearance. This companionship at last became dull in the family. Separate from rate isn't extremely low from here. There is an incredible absence of wariness or mindfulness here. Kids as well as hitched people nowadays talk with outsiders through Facebook and make fellowships. Through this social correspondence, kids, however wedded individuals are frequently getting hitched by their own

¹¹ Samsur Rahman, 'One divorce in every 40 minutes in Dhaka' *Prothom Alo* (Dhaka, 14 June 2023)

choice. This is causing squabbles and debates in the family day by day according to sociologists, marriage is a common agreement went into between two people based on split the difference. Assuming that agreement has caused distress or torment, breaking it whenever is regular. In the present society, separate is more normal in privileged and lower class families. Albeit such a propensity is moderately less in working class families, it has become troublesome in the general public to diminish its level because of web and Facebook. These issues are little today. It has turned into a reason for worry for huge and working class families. A path of least resistance of this is the requirement for social holding. As a rule, working ladies are frequently in danger of managing youthful or moderately aged laborers or young men. With spouses or adolescents or little fellows at home. It is much of the time heard that female homegrown laborers are mishandled by them without even a trace of their spouses. There are instances of separation or partition of spouses from husbands. Furthermore, through this Facebook today, squabbles among a couple at home, Questions and at last battles result. The mindset of giving concessions to one another is diminishing. Generally speaking, on account of being drawn to others who have created fellowships through virtual entertainment, separate is much of the time happening since one's better half or spouse could do without that person. As a rule, unlawful connections are being created by keeping away from one another. Which is neither wonderful nor alluring for any family. Because of loss of confidence in family trust, occurrences like endlessly separate can't be forestalled in any capacity. In the public eye young men are not less insane than insane young ladies. Because of which occurrences like endlessly separate are going on in the country. As per social researchers, the quantity of separations is higher for young ladies than young men. As well as checking social debasement and abuse of mechanical greatness, this issue can be addressed through mindfulness. Since in the present society grown-ups are not guardians to minor youngsters Hesitant to tune in. They don't regard society or religion.

Mentally Situation of Parties

3.7 Husband & Wife Families

During the separation time frame in Bangladesh, the circumstance of a couple families can be very difficult and sincerely burdening. Separate from procedures in Bangladesh commonly observe Islamic family regulation, which gives specific freedoms as well as certain limitations to the two players. By and large, spouses are supposed to offer monetary help to their wives during the iddat period, which is the three-month holding up period following the declaration of separation. This help helps ladies monetarily as they change out of the marriage. Nonetheless, disagreements regarding property, care of kids, and different resources can frequently prompt

delayed fights in court and profound pain for the two players. The social shame related with separation can likewise add to the pressure and challenges looked by separating from couples. Generally, the separation time frame in Bangladesh can be a difficult time for a couple families, needing lawful and profound help to explore the intricacies of the cycle.

3.8 Situation of Kids

The circumstance of kids during the separation time frame in Bangladesh can be genuinely and mentally testing. Separate is a touchy and complex issue, and its effect on kids can fluctuate contingent upon a few elements, including the age of the youngster, the idea of the separation, and the degree of parental struggle.

More youthful kids frequently battle to comprehend the reason why their folks are isolating and may feel confounded, restless, or shaky. They might stress over losing the affection and consideration of one or the two guardians. Teenagers, then again, may have a superior comprehension of the circumstance however can in any case encounter a scope of feelings, including outrage, bitterness, and disdain.

In Bangladesh, where accepted practices and values frequently focus on the solidness of the nuclear family, kids might confront extra cultural strain and shame during their folks' separation. This can additionally muddle their close to home prosperity.

Additionally, the lawful and monetary parts of separation can affect youngsters' living courses of action and by and large personal satisfaction. Guardianship fights and monetary questions between guardians can make unsteadiness, influencing youngsters' admittance to training, medical services, and fundamental necessities.

To alleviate the adverse consequences of separation on youngsters in Bangladesh, it is essential for guardians and important specialists to focus on their prosperity. This might include offering profound help, keeping up with open correspondence, and guaranteeing that youngsters' fundamental requirements are met. Furthermore, family directing and legitimate changes that focus on the wellbeing of the youngster can assume a crucial part in advancing the circumstance for kids during the separation time frame.

3.9 Society

Analysts and sociologists accept that ladies face more injury than men in the post-separate from period in Bangladesh because of different reasons. As a rule, the whole obligation of separating

the family is attempted to be put on the lady. From one perspective, the agony of separating the house, on the other, the prospect of remaking monetarily makes outrageous instability among ladies, they say. Separate is thought of as despicable not exclusively to oneself yet in addition to the family. Thus, they would rather not discuss separate from generally speaking. The situation is covered up if conceivable. Because of which separation has turned into a sort of no in the general public.

Miz Nasima is a piece of clothing laborer from Sherpur. Nasima isn't her genuine name, the name Nasima is involved here for obscurity. It is sunset and night when I address Miz Nasima, a mother of two. He got back in the wake of completing office only a couple of moments prior. Miz Nasima began talking in an exceptionally earnest way despite the fact that she was worn out. She said her significant other separated from her in 2003. In any case, that also is very emotional. Since before that she was unable to believe that her better half could separate from her. Miss Nasima said she generally approved of her better half. He came to his dad's home with his significant other. Everything was working out positively. Then one morning, his recognizable life out of nowhere different. In a mournful voice, Nasima kept on saying: "He went through the entire night with me. In the wake of going through the evening, I will leave toward the beginning of the day. At the point when I left, during the azan, he asked me, "Might you at any point pay me 16,000 tk the present moment?" I'm saying that my folks are old. Allow me to sell the land without?" Nasima enjoyed some time off for a couple of moments expressing up to this point. He was holding his throat. This break is to conceal it. Of course he started to say: "The number of, then, at that point, the timeless Laiga Master Hara Holila." "Afterward, coming, went to the Qazi's office and got a separation, not a solitary one of us know, to no end." Nasima was portraying the occasions of that day a long time back as though it happened yesterday before her eyes. His voice was breaking into tears over and over like an injury from way back. Stop once more. He continued discussing his battle and bringing up his two children.

"However long my folks were there, I have been getting along nicely, days experience gone by in difficulty, yet my folks were there - I have not endured so a lot," said Nasima, "both my folks kicked the bucket in 2006. Then, at that point, I think ... (crying)) ..enduring a great deal."

"I'm coming to Dhaka in the year 10, I'm going to Raikha to my sibling. I have taken some work in garments..." Nasima's story doesn't end. The commencement proceeds to 2010 followed by 2011.

Nasima said, presently her two children are enormous. They have begun to independently lay down a good foundation for themselves. And, surprisingly, however their dad didn't search for

them for quite a while, he calls from time to time. As per Dhaka City Partnership's computations, one separation happened like clockwork in 2020 in Dhaka city.¹²

Therapists express that after separate, ladies face injury or compelling profound injury because of different reasons including social, financial. From one perspective, as a feeling of disappointment works in the separation of his family, self-assurance diminishes, then again, a sort of frailty likewise works in him. Therapist Dr. Mekhla Sarkar said, many individuals consume most of the day to recuperate from the psychological injury that is made after separate.

Chapter 4

Misuses of Laws & Divorce by Operation of Laws with Cases

4.1 Side of Wife

In Bangladesh, as in numerous different nations, separate from arrangements are planned to give a legitimate system to couples to end their relationships when all endeavors at compromise have fizzled. In any case, there have been occurrences where a few spouses have confronted the abuse of separation arrangements, frequently to their weakness.

One normal type of abuse is the erratic and one-sided declaration of separation by spouses, especially through the technique for "Talaq" (separate) in Islamic regulation, which can be articulated verbally or recorded as a hard copy without legitimate thought for the wife's prosperity or without genuine grounds. This can leave spouses defenseless and without sufficient legitimate response, prompting monetary and personal difficulties.

One more type of abuse includes documenting misleading or negligible separation bodies of evidence against spouses. These cases can be documented for of provocation, terrorizing, or pressure, frequently fully intent on removing monetary concessions or acquiring influence in

¹² Munni Akter, 'Divorce: What is the social, emotional and economic impact on women in Bangladesh?' BBC Bangla(Dhaka, 26 November, 2021)

different questions. Such activities can bring about delayed fights in court, causing profound trouble and monetary strain for the impacted spouses.

Moreover, a few spouses might abuse the overall set of laws to defer or deny provision or kid support installments, leaving wives and youngsters in unsafe monetary circumstances.

To resolve these issues, lawful changes and mindfulness crusades have been started in Bangladesh to safeguard the privileges of spouses during divorce procedures. It is fundamental for the overall set of laws to guarantee fair and evenhanded treatment for all gatherings associated with separate from cases, with a specific spotlight on protecting the privileges and prosperity of spouses and kids. Furthermore, bringing issues to light about legitimate freedoms and roads for help among ladies can engage them to affirm their privileges and safeguard themselves from expected abuse of separation arrangements.

4.2 Side of Husband

Abuse of separation arrangements by spouses in Bangladesh is an unsettling issue that can have hindering ramifications for ladies and families. In Bangladesh, the legitimate structure for separate is administered by different individual regulations, including Islamic regulation (Sharia), Hindu regulation, and standard regulations, which give arrangements to spouses to start separate from procedures. Sadly, a few spouses might abuse these arrangements for their own benefit.

One normal type of abuse is the act of "Triple Talaq" in Islamic regulation, where a spouse can singularly separate from his better half by articulating "talaq" multiple times at a time, without giving legitimate reasons or legitimate thought for the prosperity of the wife and youngsters. This can prompt sudden and frequently vile separations, leaving spouses powerless and without lawful insurance.¹³

Besides, spouses may here and there take advantage of lawful provisos or participate in extended fights in court, making it challenging for wives to get a fair settlement or care of their kids. Monetary and profound control during divorce procedures is likewise a worry, as certain spouses might endeavor to deny monetary help or admittance to assets to their wives and kids.

To resolve the issue of abuse of separation arrangements, it is vital for advocate for lawful changes that safeguard the freedoms of ladies and advance orientation equity. Reinforcing

¹³ Advocate Mohammad Habibur Rahman, '*ISLAMIC JURISPRUDENCE*' (9th edition,2019) 289

ladies' admittance to legitimate guide, schooling, and monetary freedom can engage them to all the more likely explore separate from procedures and safeguard their inclinations. Furthermore, bringing issues to light about the results of such abuse and empowering dependable and moral separation rehearses inside networks is pivotal to making a more evenhanded and only framework for all gatherings included.

Divorce by Operation of Law with Cases

Separate from by legal announcement under Muslim Disintegration of Marriage Act, 1939:

Lian:

This sort of separation happens when a spouse is dishonestly accused of infidelity by her significant other. She can move to court to record an ordinary suit for disintegration of marriage, under the Muslim Disintegration of Marriage Act, 1939.

The ground of separation should be a misleading allegation of infidelity on the spouse, his significant other. The spouse forcing charge should be rational or more 18 years old. Marriage isn't disintegrated until disintegration degrees are passed by the court, whenever it is passed separate becomes unalterable. The spouse can forestall separate from by the withdrawal of misleading declaration of infidelity on the wife, prior to passing of the announcement by the court.

Faskh:

In the event that couple feel that they are not viable together, they can petition for legal separation. Segment 2 of The Disintegration of Marriage Act, 1939, states grounds based on which the spouse might sue for separate. Whereabouts of spouse not known for a considerable length of time. Spouse has neglected to keep up with wife for a very long time. Spouse is condemned for detainment of 7 years or more. Spouse has neglected to perform conjugal commitments for a long time, with next to no sensible reason. The spouse is feeble. Spouse is experiencing madness (for a long time), uncleanliness or harmful venereal sickness. Spouse being hitched before 15 years, dismisses the legitimacy of marriage subsequent to achieving the age of 18 years, gave marriage should not be fulfilled. Spouse treats her with mercilessness, like impressive actual attack. offering slanderous expressions that influence her standing and so on.¹⁴

¹⁴ Shreya Roushan, 'Handbook on marriage and divorce under Muslim Law'(Ipleaders, 3 August 2021)

For example, the two most well-known and significant decisions of the Supreme Court in this regard—in the cases of *Mohd. Ahmed Khan v. Shah Bano*¹⁵, Shah Bano, who was 62 years old at the time of her divorce from Mohammed Ahmed Shah, was also ejected from her matrimonial house together with her five children. Her husband had stopped paying her maintenance of \$200, so she went to the Madhya Pradesh High Court to get it reinstated and increased to \$500. Her spouse had then filed for divorce.

Similar to *Shayara Bano v. Union of India*¹⁶, Rizwan Ahmed handed Shayara Bano, who was married to him, a divorce letter of Talaq-ul-Biddat announcing immediate divorce when she was visiting her parents. Shayara Bano was a victim of domestic abuse. She petitioned the Supreme Court to deem polygamy, nikah halala, and triple talaq as unlawful. Although the court only considered the triple talaq argument, it found it to be illegal and stated that there would be an injunction on husbands pronouncing triple talaq on their wives until the government creates a law governing instant triple talaq.

Triple talaq, also known as talaq-ul-biddat, is unconstitutional because it violates Article 14 of the Constitution in two ways: first, it discriminates against Muslim women and Muslim men based on gender because only Muslim men have the authority to declare triple talaq; and second, it discriminates against women of other religions because no other women are subject to the cruel and unjust treatment of triple talaq except Muslim women. The Talaq-ul-Biddat also breaches Article 21 of the Constitution because it violates the right of Muslims to live in dignity. Muslim women are subjected to the brutal and degrading Talaq-ul-Biddat practices, which make them appear to their husbands and the rest of society as nothing more than undesired objects. An unjustified, arbitrary, and unsupported divorce.

Divorce is never a decision that is made lightly. On the other hand, a Bangla daily recently reported that one divorce occurs in Dhaka every forty minutes. There are no longer any Bangladeshi marriages that endure a lifetime. According to a fresh survey study released this week, the divorce rate in Bangladesh has doubled in just a single year. The Bangladesh Bureau of Statistics reports that the divorce rate increased from 0.7 per 1,000 individuals in 2021 to 1.4 per 1,000 individuals in 2022. The national statistics agency stated in its report on the Bangladesh Sample Vital Statistics 2022 that the divorce rate was greater in rural areas, where it increased by 0.6 per 1,000 people.

These days more ladies are searching an exit from their marriage for various reasons. Also, to numerous it is a mark of their strengthening. Today, most ladies are less able to stay in a troubled marriage. Prior they used to proceed with a relationship regardless of whether it was a harmful one. In any case, presently ladies are utilized and can deal with themselves. They are done ready to acknowledge orientation based savagery at home, which is one of the significant causes adding to the ascent of separation rates. Countless ladies nowadays work close by men.

¹⁵ *Mohd. Ahmed Khan v. Shah Bano Begum and Ors* on 23 April, [1985]

¹⁶ *Shayara Bano v. Union of India and Ors. Ministry of ...* on 22 August, [2017]

However, a few men actually will more often than not expect that their spouses will serve them like the conventional wife. This makes a break between the couple and it can prompt a division. Different causes that affect the ascent of marriage separations incorporate neediness, joblessness, absence of resistance, change issue, extramarital undertakings and fruitlessness, among others.

In *Noor Jahan Bibi v. Kazim Ali*¹⁷, one Noor Jahan a suit against her husband Kamiz Ali who charged her that she was of bad character and she was enamoured of one Asghar Ali and committed adultery with him. It was held by the court that the doctrine of Lian has not been absolute under the Muslim Law and therefore a Muslim wife can bring a suit for divorce against her husband on the ground that her husband has charged her with adultery falsely.

In case of Dhaka Lower Court, *Lipi Akter v. Shanto Khan*¹⁸, Lipi was a divorced when Shanto Khan marry her. Lipi many time of 4 years married life, she was left Shanto's house with money, without any inform and they had a child also, she also kept her son far away from her husband. And one time, her husband knew that, Lipi married another man and also suit against him for divorce and dower.

The same thing also happened in *Rubi Begum v. Nadim Ali*¹⁹, Rubi work in brick kiln, she did love marriage to Nadim Ali. In one stage of almost two years marriage life Nadim asked her for some big amount money and she gave him 2 lakhs taka by sell some jewelry and from some savings. After got money he leave her without any informed, and then Rubi took step, suit against her husband.

Chapter 5

Data Analysis

Data analysis for a research monograph involves the systematic examination and interpretation of collected data to derive meaningful insights and conclusions. It encompasses various techniques, including statistical analysis, qualitative coding, and visualization, to uncover patterns, trends, and relationships within the data. The goal is to provide evidence-based support for the research objectives and hypotheses outlined in the monograph, ensuring the validity and

¹⁷ *Noor Jahan Bibi v. Kazim Ali* AIR [1977] Cal.90

¹⁸ *Lipi Akter v. Shanto Khan* 436/20

¹⁹ *Rubi Begum v. Nadim Ali* 7(2)21

rigor of the study's findings. Effective data analysis is crucial for producing credible and impactful research within the context of a monograph. Here made some questions for data analysis and those question asked some people almost 118%, for their opinions. The questions and results of data analyzing drop in below in tables.

The statistical survey of the questionnaire highlighted the detailed information about our main object of research.

Question 1- At present, who or which party is more responsible for divorce?

- A. Wife**
- B. Husband**

The analyzing result of question no. 1 below in the table 1:

Answer of the question	Respondents number for answer	Total respondents	Percentage (100%)
A. Wife	65	118	55%
B. Husband	53		45%

In the time of explication of results of data, if see this first question table, 55% respondents answer that wife is did divorce more than husband and 45% respondents answer that husband is responsible for divorce. The difference is 10% which said that wife are more responsible than husband for divorce.

Question 2- Why do women divorce their husband?

- A. For Dowry**
- B. To get rid of marital relationship**

The analyzing result of question no. 2 below in the table 2:

Answer of the question	Respondents number for answer	Total respondents	Percentage (100%)
A. For Dowry	68	118	57.5%
B. To get rid of marital relationship	50		42.5%

In the second table, 57.5% women are doing divorce for dowry and 42.5% are want to get rid of marital relationship. But the difference is 15% which support that women did divorce for dowry, it mean money. Some respondents also said that, woman are doing divorce business at present and it's harmful for families, children, also for society.

Question 3- Do women get their due dowry and child maintenance (if any) after divorce?

A. Get it

B. Do not get it

The analyzing result of question no. 3 below in the table 3:

Answer of the question	Respondents number for answer	Total respondents	Percentage (100%)
A. Get it	69	118	58.47%
B. Do not get it	49		41.53%

By the data, in the third table, it's about woman get their due dowry or maintenance properly after marriage or not. 58.47% respondents answered that woman get their dowry and maintenance. 41.53% said, did not get their rightful due. There is a positive result, 16.94% difference mean that rightful due is big sum than did not get it.

All over can said that after this analyzing, woman is more responsible for their divorce in this time. But our Islam is not support divorce positively, it got permission also. Woman or wife or female,

whatever call it, a family is made by them and their responsibility is more important for domestic life.

Chapter 6

Findings & Recommendations

Going through a divorce is a tough and mentally draining event to experience. But it is actually better than staying in a bad marriage. Staying in a bad marriage in our country might provide security but, getting a divorce gives one's a hope. Some findings are catching from this research monograph, likely,

Firstly, a hope to be who you want to be, the hope of another start the hope of shaping the life in one's desired way. Unfortunately divorce is not as easy as it should be in Bangladesh. Divorce rate in Bangladesh is left unaddressed, it will result in eroding family fabric further, leaving children to suffer most.

Secondly, in separation steps there have many anomalies in reality. It happened in court areas very much, as a woman. Disciplines for the abuse of separation arrangements can incorporate legitimate punishments, for example, fines, local area administration, or detainment, contingent upon the seriousness of the abuse. Also, those found liable may confront the deficiency of specific legitimate privileges, common remuneration claims from casualties, and court-requested guiding or recovery programs. These disciplines intend to prevent people from mishandling divorce arrangements while guaranteeing that the overall set of laws maintains decency and safeguards the freedoms of all gatherings included, especially weak people like companions and youngsters.

Thirdly, in reality, women did not get their dowry properly. They faced many of anomalies in reality but legally, it was not supposed to be.

Fourthly, sometimes, a woman used this divorce as a business nowadays. But it is not provisional and its impact is so dangerous for our society, family and also for children.

In Bangladesh, as in many other countries, divorce rates and the reasons for divorce can vary widely among different communities and individuals. Factors contributing to divorce can include issues such as compatibility problems, economic difficulties, family pressure, or other personal circumstances. Additionally, divorce rates can change over time due to shifts in societal attitudes, legal changes, and economic conditions. But this paper indicates that, women are more liable for divorce than men. More specific recommendations for findings are:

- Our findings can be solved by awareness of man-woman both.
- If they keep their children in their first priority then this divorce rate will be low and it possible.
- Need to awareness in adultery, it is a big problem for a married couple in a days.
- Poverty or money-greed, take women in wrong way like divorce.

It's essential to rely on well-researched and up-to-date studies or statistics from reputable sources to understand divorce trends accurately within a specific region or community. These studies can provide a more nuanced perspective on the factors influencing divorce and the roles of both men and women in divorce processes. Making sweeping generalizations about divorce based solely on gender can oversimplify a complex and multifaceted issue.

Chapter 7

CONCLUDING REMARKS

All in all, the disintegration of marriage under Muslim regulation in Bangladesh is a subject of significant importance that rises above legitimate principle alone. It is an impression of the perplexing interaction between strict customs, social standards, and developing cultural elements. This postulation has analyzed the legitimate structure overseeing divorce, including talaq, khula, and faskh, and has revealed insight into the difficulties looked by Muslim ladies in practicing their privileges inside this system. Also, we have investigated the more extensive setting of social real factors that impact marriage and separation in Bangladesh.

While lawful changes have tried to give more prominent security and organization to Muslim women, the proposition has uncovered that the interpretation of these changes into unmistakable advantages for women stays a perplexing and progressing try. Social and cultural variables, monetary aberrations, and settled in male centric standards keep on molding the encounters of Muslim ladies in Bangladesh with regards to marriage and separation.

As Bangladesh keeps on advancing, it is fundamental to perceive the diverse idea of the disintegration of Muslim relationships in this specific circumstance. Accomplishing orientation value and equity for ladies in issues of marriage and separation requests proceeded with legitimate changes as well as a comprehensive methodology that envelops schooling, mindfulness raising, and social change. The proposition highlights the significance of recognizing the resided real factors of Muslim ladies in Bangladesh and pursuing a future where

their privileges are revered in regulation as well as completely acknowledged practically speaking, cultivating a more impartial and comprehensive society for all.

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