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Right to divorce by a Bangladeshi wife under different personal laws: A critical analysis.

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Subject: Submission of Research Monograph on" Right to divorce by a Bangladeshi wife under different personal laws: A critical analysis.

I do hear by please to submit the research Monograph on the topic Right to divorce by a Bangladeshi wife under different personal laws: A critical analysis. An Appraisal from the perspective of Bangladesh . It is a great pleasure to work on such important topic. This Research work has been done according to the requirements of the Sonargaon University for the fulfilment of my LL.M (Master's) course under the Department of Law.

I respectfully acknowledge your guidance, leadership and help for the preparation of this paper. It is worthwhile to mention that there might be some errors and mistakes in my report due to limited time and knowledge. I am still at learning stage. So I respect that you will pardon my unintentional mistakes in preparing this paper.

Supervisor’s Certificate

This is to certified that the Research Monograph on **Right to divorce by a Bangladeshi wife under different personal laws: A critical analysis. Appraisal from the perspective of Bangladesh.** is prepared by **Mariom Akter** ID No.: LL.M2203027005 for partial fulfillment of the requirement of the Program: LL.B (Hon’s) from Sonargaon University, Dhaka. It also certified that the research work has been carried out under my supervision and intensive guidance.

It is to be certified that this research work is original and suitable in its style and contents for submission and fulfillment of his LL.M (Master’s).

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ABSTRACT

In Bangladesh, sharia law goes hand in hand with the statutory laws of the land. These laws are both conjointly used to regulate and monitor the issues of divorce among Muslims of the country. Orthodox Islamic laws provide husbands with the authority of issuing divorce or talaq to their wives known as Talaq-e-Tawfiz (popularly known as tawfiz) in the kabinnama (the written document of the contract of marriage). Women's power to exercise the tawfiz, however, depends solely on the will of their husbands. Although Muslim women are capable of repudiating their marriages by the process of khula or mubarat, these are only executable under the free consent of their husbands. Also, the statutory laws of Bangladesh address Muslim women's right to the dissolution of marriage by the intervention of the court, only under several grounds. The traditional interpretation of sharia law and the statutory laws of the country are both unwilling to establish Muslim women's absolute right to renounce marriage as with their male counterparts. Current research reveals that this violation of gender equality and women's rights generates female subordination in society and gives birth to numerous socio-legal complications.

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CHAPTER1: INTRODUCTION

Unlike the matrimonies in the Hindu or Christian community, Muslim marriage is considered as a civil contract.The religious, spiritual and social significance associated with these contracts, conversely, are higher compared to any other civil contracts. Similar to other civil contracts, Muslim marriages can be relinquished by adhering to specific rules and regulations. The entire procedure of the dissolution of marriage is provided by both sharia law and the statutory laws of Bangladesh. The jurisprudence of civil contract sets both the parties with equal authority for the termination of the contract. However, neither sharia law nor the statutory laws of Bangladesh administer this equality to women in the case of judicial separation. Critical inspection of sharia law regarding the divorce within its various forms such as talaq , khula , mubarat , tawfiz, khyar-ul- bulughalong with the statutory laws of Bangladesh on this subject, such as the Dissolution of Muslim Marriages Act, 1939 (Act of 1939), the Family Court Ordinance, 1985 (Act of 1985), the Muslim Family Laws Ordinance, 1961 (Act of 1961) indicate that Muslim husbands are presented with unfettered power in this regard over their female counterparts. Bhuiyan notes that divorce at the instance of the husband is relatively easy, arbitrary, without fault and extrajudicial. In sharp contrast, divorce at the instance of a wife is complicated, fault-based or brought for consideration or under delegated right from the husband, involving either judicial or extrajudicial procedure.

A woman’s honour and dignity, from a marital standpoint, is recognised and valued under Islamic ordinances. The Quran treats both the husband and wife as partners and neither of the couple enjoys superiority over the other in marital life. Nonetheless, when it comes to the renouncement of marriage, certain embargos are imposed on wife in the light of traditional interpretations of sharia law.

Although the Act of 1939 was enacted to empower women with a right to divorce by the intervention of the court, it still does not equip Muslim women with absolute authority in the delegation of the power of divorce. Under both sharia law and statutory laws, women are only allowed to repudiate their marriage under certain circumstances. This is inconsistent with the norms of gender equality avowed indifferent international instruments. For instance, Bangladesh is a signatory to various international instruments that are designed to secure gender equality, which include Universal Declaration of Human Rights, 1948 (UDHR) and Convention on the Elimination of All Forms of Discrimination against

Women, 1979 (CEDAW) but still has reservations to the provisions of article 2 and 16 (1) (c) as they conflict with sharia law based on the Holy Quran and Sunnah11 .This inequity, which is widely observed in the country, is also not in accord with the constitutional and statutory laws of Bangladesh. The Constitution is the supreme law of Bangladesh, and any law inharmonious with the Constitution shall be void to the extent of the inconsistency. However, in terms of gender inequality, specifically considering women's rights in private life, the supremacy of the Constitution does not perpetuate and is compromised to a certain degree with the traditional interpretation of sharia law. Sharia law itself can be negotiated and is hardly seen in areas such as commercial law, contract law and penal law. Bhuiyan argues that sharia law now is only prevalent in family matters, and the modern version of sharia law is known to be more of a political question, rather than a legal issue today.

This study evaluated whether or not married Muslim women (MW) are entitled to the complete right to terminate their marital unions like their male equivalents from the grounds of the traditional interpretation of sharia law and present legal regime of Bangladesh. In determining that MW are not similarly entitled, this study attempts to identify whether it is still possible to grant MW with the right to issue separation under the existing legal sovereignty without frustrating the norms of sharia law. Moreover, this research also seeks to identify possible socio-legal impacts on the society that the restriction of divorce on MW can bring on.

Both qualitative and quantitative research techniques have been utilized to appraise the research objectives of the paper. Firstly, the pieces of literature and scholarly works on the dissolution of marriage under the traditional clarification of sharia law and statutory laws of Bangladesh have been closely examined. The statutory laws such as the Act of 1939, Act of 1961 and Act of 1985 relating to the termination of Muslim marital contract has been extensively analyzed to find out whether these laws are accordant with the constitutional mandate regarding non-discrimination and equal opportunity, and also with the international instruments on gender equality of which Bangladesh is a party. In the next step, the data published by Bangladesh police, Bangladesh Bureau of Statistics (BBS), UNICEF and UNESCO on domestic violence, offences on extramarital affairs and the filling of cases under Nari O Shishu Nirjaton Domon Ain (Women and Children Repression Prevention Act) has been investigated to examine whether these issues are impacted by MW's limited scope to disavow marriage or not. Also, several

cases were selected from news published in leading English and Bangla dailies of Bangladesh to assess how the influences of social stigma, economic constraints and legal barriers suppress MW from attaining their right to divorce. The authenticity of the media reports was investigated by utilizing ethnographic content analysis method, where the authors emphasized in the construction of the meaning of and in text. Besides, nikahnamas were randomly collected from several distinct 'Kazi' offices and law firms to evaluate whether husbands delegate the right of tawfiz to their wives as per legal regimes and check if it is conditional or unconditional. In addition, the authors conducted unstructured interviews with their married friends, colleagues and acquaintances to find out whether the Kazis informed them regarding the right of tawfiz before they signed their marriage contracts. Lastly, to conduct a comparative study to substantiate the arguments that inflexibilities and difficulties in getting a divorce do stimulate various socio-legal problems , the procedures of dissolving marriage among Hindus in India were also briefly analysed. Since there is limited published official data on filing false cases in Bangladesh, the bordering country India, with the socio-legal and economic standards similar to Bangladesh, was chosen as the country for this relative study.

The first section of this paper discusses the standing of MW in getting a divorce under sharia law and statutory laws of Bangladesh. The second section explains the socio-legal problems associated in not empowering MW with the absolute right to end their marriages. The final part argues whether MW can be empowered with unfettered right of divorce without frustrating sharia law by interpreting sharia law in the light of 'modernist' perspective.

1.1Rationality and background of the study:

The Act of 1939 was enacted to empower MW to obtain a decree for dissolution of marriage under specific grounds. To facilitate women to file cases and get permission from the court for the divorce, family courts were established in every district of Bangladesh. Although this might appear to be a woman-friendly approach from the government, a close look at the cases filed by women for the renouncement of marriage reveals nothing but a long hurdle of legal, social and economic struggles women must undertake in acquiring the decree for the termination of the matrimonial contract. The divorce case filed by the famous singer Runa Laila is worth mentioning in this context. Runa Laila did not get along with her first husband. When she wanted separation, her husband refused to give her a divorce consensually, which compelled her to file a divorce case against her

husband under section 2 of the Act of 1939. However, when the plaintiff's lawyer began to reveal incriminatory shreds of evidence against him, he opted to give her the divorce out of the court to avoid slander at the time of the trial. Unfortunately, most women, unlike Runa Laila, do not have the luxury to afford lawyers or access to the court to get a divorce from their husband.

Proper understanding and mutual adjustment between couples are the essentials of a successful marriage. However, it may not always be possible for every married couple to adjust with their partners mentally. While men are privileged to easily escape unhappy marital ties with the exclusive power of repudiating marriage provided by sharia law, women have to prove specific grounds to get the decree for dissolution of marriage by the intervention of the family court. There are instances where women have brought false allegations against their spouses solely for ease in the procedure of separation. Besides, there is also an overwhelming prevalent social taboo that respectable women never initiate divorce in Bangladesh. Their family, relatives abandon divorced women, and society at large and are subjected to blame and humiliation from the community. The legal and social barriers render MW helpless and stuck in the wedlock of unfortunate matrimonies. Current research argues that this stigma stimulates a feeling of superiority among men, and this, in turn, induces domestic violence and other aggravated forms of offences. Abuses such as domiciliary and sexual violence are intertwined with the rate of divorce, and interchangeably this rate is generally high where occurrences of domestic and sexual violence are extreme. For example, the lifetime and current rates of physical violence by husbands are found to be the highest in the 'Rajshahi Division' of Bangladesh, at the rate of around 60.1% and 26.3% respectively. Also, that same region has the most substantial lifetime rate of 34.2% partner sexual violence. One demography in 2016 reported the overall marriage-divorce ratio as .08 in Bangladesh, which signifies hat 8 percent of the marriages in the country ended in divorce. However, the Rajshahi Division ranked the top with a rate of 12 percent. In an in-depth study on divorced women, it was found that abusive marriage compelled a majority of women to demand separation. In particular, Muslims have a higher likelihood of ending up in divorce with a rate of 1.2 per 1000 population while Hindus have a lower rate in this regard (0.32).37 It is believed that this trend exists as Hindu marriage is a pre-ordained union, and there is little scope for dissolution by divorce in Bangladesh.

Moreover, religious differences in the breakage of marital bonds show lower rates of dissolution for Hindus followed by Muslims and the highest for other religious groups such as Christians, Buddhist and Sikhs. Notably, India has separate statutory laws to regulate divorce among people of different religious affiliations and the regulations followed for the split-up of the marriage are linked to religion. This denotes that the deviation heavily influences the rate of divorce in the rigidity of issuing divorce in different denominations and their concurrent statutory laws.

In light of the above, the authors substantiate that the divorce rate is considerably high in the areas of Bangladesh with outrageous domestic violence rate as compared to other regions. The demographic data also proposes that Muslims encounter four times higher rate of divorce in comparison with Hindus because Hindus are harnessed with both personal and statutory laws. It demonstrates that the scope of intercepting marriage has a profound impact on the rate of divorce. Limited and conditional opportunity of divorce subject women to an unpleasant married life where they fall prey to domestic violence and other aggravated forms of violence, such as grievous injuries and even murder. The authors of this paper argue that in a patriarchal oriented society which exhibits male dominance, equipping MW with the absolute right of divorce as of their male equivalent would break free women from marriages filled with oppression and brutality.

There is a supposition that even individuals of high morals would justify using fabricated accusation as a means of revenge or a convenient excuse for engaging in consensual sex. Such charges may surface for various motives that may include vengeance, attempts to damage the reputation or any other ill-intention. Social and legal hindrances against women-initiated divorce may tempt women to conjure up false allegations against their spouses. Thus, troublesome divorce procedure has a negative consequence on the number of vexatious cases.

The adverse effects of extramarital affairs on the society which are demonstrated by the vicious crimes arising out of incidences of adultery regularly appearing in the headlines of newspapers seem to strike the conscience of the whole nation. Due to the negative perception of the people of Bangladesh regarding the concept of divorce commenced by women and remarriage, women may become enticed to engage in extramarital affairs to outsource temporary relief from the frustrations of unhappy wedlock. Detailed scrutiny demonstrates that these deadly occurrences arise when women go far beyond their way and end up in most regrettable offences to conceal their extramarital affairs from others.

The arguments of the authors are further supported by the case studies included in section VIII of the paper. The authors argue that inequality in terms of the right to divorce against MW is contrary to the concept of gender equality, and this discrimination exacerbate the offences corresponding to domestic violence and other intensified forms of violence.

Existing methods provided for the dissolution of marriage of Muslim women

The means of renouncing marriage of Muslim women can be discussed under two headings:

1. Methods available under sharia law.

2. Methods available under statutory laws of Bangladesh.

1.2. Dissolution of marriage for Muslim women under sharia law

Traditionally, under sharia law, there are limited options for Muslim women when it comes to the repudiation of marriage. Notably, it does not grant Muslim women with the absolute power for the termination of the marital contract. The few options are available for women to endtheir marriage in sharia law are discussed below.

A. Talaq- e –Tawfiz

Talaq -e –Tawfizis commonly known as the delegated power of divorce exercised by a husband to his wife. This form of delegated separation is perhaps the most likely weapon of Muslim wife to attain her freedom without the intervention of the court. When an MW issues divorce to her husband by executing the power of tawfiz, this is done on behalf of her husband. The option is not available without the free consent of the husband. However, in the context of dominating male society, it is quite easy to comprehend that a proud husband may not willingly pass on the right of tawfiz to his wife. Even when a woman is empowered with tawfiz and wishes to divorce her husband, she is further required to prove that her husband delegated the power of tawfiz to her. As per section 6(3) of the Muslim Marriages and Divorces (Registration) Act, 1974, the Nikah (Marriage) Registrar shall not register a divorce of the kind known as tawfiz without the document registered under the Registration Act, 1908 (XVI of 1908) by which the husband hands over the power of divorce to his wife or of an attested copy of an entry in the register of marriages verifying that such delegation has been made.

On the contrary, sharia law opens the door only for the husband to exercise such power at any stage of the marriage. Tawfiz, being a delegated right delivered by only a husband to his wife, in its present form, fails to universally empower Muslim wives with the absolute right to renounce marital bondage unilaterally like their male counterpart. It is noteworthy that at present, almost all the divorces initiated by MW take place by exercising the right of tawfiz. Through random inspection of some kabinnama and informal interviews with their acquaintances,the authors found that the Nikah Registrar haphazardly fill up the column18 of Form D of the Muslim Marriages and Divorces (Registration) Rules, 2009 without taking any prior permission of the husbands.Such a way in which tawfiz is delegated(in the cases where Nikah Registrar fills up column 18 to empower wives with right of tawfiz without taking the prior consent of their husbands) raises jurisprudential questions on the correctness and validity of the power exercised by MW in the strict legal sense. As per the Act of 1961, wife's right to tawfizis only applicable with the due delegation of the husband and also it is permissible for a man to add conditions and demarcate the grounds under which his spouse can inaugurate the procedures of divorce. Utilising the grounds that the right of tawfiz was not devolved and that the specified condition under which their wives can exercise tawfiz was not accrued, the husband has the option of challenging the divorce initiated by MW through tawfiz if they wish to do so. In the case of Nelly Zaman vs. Giasuddin, the defendant Nelly Zaman issued separation from her husband through tawfizbuton the ground that the delegated power was not implemented rightfully by her, the divorce was challenged by her husband. Both the trial court and lower appellate court held that the divorce is illegal and declared the restitution of conjugal rights. Ultimately this case was brought before the High Court Division (HCD) of the Supreme Court of Bangladesh, and the HCD dismissed the synchronous verdicts of lower courts. This indicates that the talaq e tawfizis also subjected to court decisions.

B. By mutual consent

Both husband and wife can surrender their marriage if that is what they jointly agree. It is a peculiar feature of Islamic law, and it happens in two ways, namely talaq-e-khulaand talaq-e-mubarat.

- khula

A woman can pursue khula divorce from her husband by renouncing any legal rights she is entitled to get from her husband, such as- dower, money, property and so forth. Nevertheless, the breakage of marital union in khula is only possible with the mutual consent of both husband and wife. Lack of conjoint assent renders a khula divorce null and void, failing the dissolution of marriage. Rashid, a notable Islamic jurist in the Indian subcontinent, said that "it entirely depends upon the husband to accept the consideration of dower and to grant the divorce".It suggests that this option does not ensure the unilateral power of cessation of marriage by the initiatives of the wife rather the success of the entire proceedings exclusively depend upon mutual consent of husband and wife. In contrast, in the case of Khurshid Bibi vs Baboo Muhammad Amin , despite the unwillingness of the husband to release her from the matrimonial tie, the wife's claim to the right of khula, based on the proper justification that under no circumstances they can carry on their union by complying with the marital obligations, was decreed by the court in favor of wife. Nonetheless, such judicial precedence for women's benefit does not necessarily empower MW with the absolute right to divorce their husband like their counterpart.

- Mubarat

Another form of dissolution of marriage by mutual agreement is known as mubarat. Unlike khula where the request proceeds from the wife to be released and the husband agrees for specified consideration the proposal of the split-up in mubarat can emanate from either side. The essential feature of such divorce is the willingness of both parties at the prospect of getting rid of each other; therefore, it is not relevant as to who takes the initiative. Similar to khula, this permanent separation by mubaratis only brought about upon the mutual consent of husband and wife. Hence this option is linked with same drawbacks as pointed out in tawfiz and khula.

C. Khyar-ul-bulugh or option of puberty

If the marriage of a minor is entered into his or her behalf by any guardian other than father or paternal grandfather, once puberty is reached, the minor acquires a legal option to disapprove the union. This is known as Khyar-ul-bulugh or 'option of puberty'. In the eyes of the law, it is a right vested in an infant to ratify or rescind, upon attaining majority (puberty), a marriage contracted during minority.If the minor rebukes, the matrimony will dissolve with immediate effect. If the minor doesn't object, the wedding will be presumed to be approved. Shia law is a bit stringent from Sunni law in this aspect.

CHAPTER 2: Law relating to women's right

The Bangladesh Constitution declares equal rights for men and women in all spheres of public life.The word 'public' seems to be a major clue to solving this riddle. It is only in the spheres of state and public life that equality is guaranteed through the Constitution. This means that in the private or personal sphere women are pretty much on their own. So even if her husband for whatever reason continuously tortures a woman, until she is killed, the state is unlikely to intervene, as it is we say, too gentlemanly to invade the privacy of the individual. The result is that women continue to be treated as inferior human beings by their husbands and by a society that tends to victimize victims instead of helping them.

Trying to understand the dichotomy of public and private spheres of our legal system is like squirming around in quicksand-- the more you want to get out the deeper you get stuck in the muck. According to Faustina Pereira, a Supreme Court Advocate and author of the book 'Fractured Scales' that deals with this very issue, the legal system of Bangladesh is categorized into two distinct branches. One is Constitutional Law and the other is General Law or those that are not directly governed by the Constitution. The Constitution being the supreme law of the land demands that any law inconsistent with its provisions is void. Thus laws considered under the General Law must technically confirm to the constitution. But if we try to get a firm grip on what 'General Law' consists of, it becomes clear why so many women prefer to silence rather then seek legal help. [i]

2.1. Women's Rights under the Family Laws

The General Law consists of civil and criminal laws, which are governed respectively by the Code of Civil Procedure of 1908, the Penal Code of 1860 and the Criminal Procedure Code of 1898. The Personal or Family Laws are under the General Law but mostly are governed by the civil law: the matters which directly affect women such as marriage, divorce, dower, maintenance, guardianship, custody, inheritance and restitution of conjugal rights are separately governed by each religious community's "religious personal law" system. For example, take marriage. Muslim parties, says Pereira, are regulated by, among others, the Muslim Family Ordinance 1961 or the Muslim Marriages and Divorce (Registration) Act 1974. Hindu parties are regulated by (among others) the Hindu Marriages Disabilities Removal Act 1946 or the Hindu Widow's Remarriage Act 1856.

Christian parties to marriage meanwhile, come under the Christian Marriage Act 1872.

The existence of separate laws for each community means that the kind of justice meted out to a woman is determined by the religious community she belongs to. Most of these laws are antiquated and originated from patriarchal mindsets and therefore do little to change the status of women from helpless, inferior citizens.

2.2. Women's Rights under the Constitution

Even some of the articles in the Constitution are patronizing towards women. Article 28 (1) states: The State shall not discriminate against any citizens on the grounds of religion, race, cast, sex or place of birth. But then Article 28 (4) states: Nothing in this article shall prevent the State from making special provisions in favour of women and children or for the advancement of any backward section of citizens. In "The Fractured Scales" by 'Faustina Pereira, She said, Lumping women with 'any backward section of the citizens', prejudicially protective, paternalistic attitude. The language of the law, all law, till now, has been the language of patriarchs.

1. Article 7 of the Constitution declares that any existing law of the state which is inconsistent with any provision of the Constitution shall be void.

2. Articles 27, 28 and 29 of the Constitution declare the principles of non discrimination.

3. As per Articles 36, 39 and 65 of the Constitution, a woman has the right to seek nomination and contest for any political opposition.

4. Article 28(2) of the Constitution states that women shall have equal rights with men in all spheres of STATE and PUBLIC life.

2.3. Gender Violence: Laws under the Penal Code 1860:

Miscarriage, of injuries to unborn Children, of the Exposure of infants, and of the Concealment of Births:

1. Sec.312: Causing miscarriage

2. Sec.313: Death caused by act done with intent to cause miscarriage if act done without women's consent

3. Sec. 354: Assault or criminal force to woman with intent to outrage her modesty (Of Kidnapping, Abduction, Slavery and Forced Labour)

4. Sec.359 kidnapping Sec. kidnapping
5. Sec.362 Abduction Sec. Abduction
6. Sec. 366: Kidnapping, abducting or inducing women to compel her marriage etc.
7. Sec. 366A: Procreation of minor girl
8. Sec.366B: Importation of girl from foreign country
9. Sec. 372: Selling minor for purposes of prostitution
10. Sec. 373: Buying minor for purposes of prostitution (Of Rape)
11. Sec. 375: Rape
12. Sec.376: Punishment of Rape (Of Offences Relating to Marriage)
13. Sec.493 Cohabitation caused by a man deceitfully inducing a belief of lawful marriage
14. Sec 494: Marrying again during lifetime of husband or wife.
15. Sec.495: Same offence with concealment of former marriage from person with whom subsequent marriage is contracted.
16. Sec.496: Marriage ceremony fraudulently gone through without lawful marriage.
17. Sec. 497: Adultery.
18. Sec.498: Enticing or taking away or detaining with criminal intent a married woman. (Of Criminal Intimidation, Insult and Annoyance)
19. Sec 509: Word gesture or act intended to insult the modesty of a woman.

2.4. Other laws; relating to violence against women

1. Dowry Prohibition Act, 1980
2. Nari O Shishu Nirjaton Daman Ain , 2000
3. Acid Crime Prevention Act, 2000.
4. Acid Control Act, 2000.

CHAPTER3: Women's Right under Hindu and Muslim Personal Law

3.1. Women's Right under Muslim Law

The purpose of women, according to the Quran, is to compliment men. Women's rights to employment and participation in public life, freedom of movement and freedom of organization, are severely restricted through a combination of the Shari'a principles of qawam (men's guardianship over women), hijab (the veil) and segregation between men and women. Examples of women's inequality can be found in the administration of justice and in certain aspects of family law. A woman's judicial testimony is deemed to be of half the value of that of a man, in civil cases, and is not accepted at all in serious criminal cases. In certain types of wrongful homicide, monetary compensation paid to the heirs of a female victim is less than that paid to the heirs of a male victim and a woman's share in inheritance is half that of a man's. Additionally, no woman may hold any public office which involves exercising authority over men.

The status of women in Islam is complicated by the fact that scholarly interpretation of the Qur'an may have been subject to the biases of those who stood to benefit by a society that favored their gender. Women played no part in interpretation of the Qur'an, and their absence "has been mistakenly equated with voiceless ness in the text itself." Furthermore, social norms in many male-dominated countries may have obscured many of the original purposes of the Qur'anic legislation. Former Prime Minister of Pakistan, Benazir Bhutto, claims that the subjugation of women in Islam "has got nothing to do with the religion, but it has got very much to do with material or man-made considerations." She concludes, "It is not Islam which is averse to women rulers, I think—it is men.

3.2. Status of Women under Marriage

The word '*Nikah'* has been used in two senses in Muslim law, i.e. marriage and sexual contact.Muslim marriage has been considered a ceremony for a man to be united with a woman to enjoy their life together and to produce children.

Though it can be said that Muslim law in all its egalitarian principles confers upon women equal status is also interpreted in various other ways. Though it was always felt that the man must marry himself to a woman of equal status, there was no such provision for the women that a woman must marry herself to a man of equal status. Rather it was always considered that a man, on marriage with a woman of lower status, would simply elevate her position to his own position. This concept of

equality between the two parties to a Muslim marriage was traditionally known as kafa'a. The idea of faskh demonstrates the uncommon platform on which men and women stand in Muslim law. This concept was that a woman who contracts herself to marriage with a man of unequal status without the consent of any of her male relations would render such a marriage violable and rescindable by the Court.

So here we can see that the women did not get a large scope to choose husband for them. Moreover the right to give consent for marriage is really a controversy one. Most of the cases the women's consent not considered in settling the marriage, in other cases the silence are treated as of her consent.

So ultimately the law regarding marriage discriminate the women's status.

3.3. Right of Women in Divorce

In Islam, divorce is permitted when serious differences arise which cannot be resolved through reconciliation. However, it has to be the last resort, for the Prophet p.b.u.h. has described divorce as the most detestable of all lawful things in the sight of God. Now divorce is probably the last thing in the world that a couple would want to consider when negotiating their Prenuptial Agreement, but since Islamic divorce law is far more reasonable and equitable than Western divorce law, it would be wise to commit to the Shar'iah in your Prenuptial Agreement and in the early stages of marriage. Furthermore, this is the time when a woman may claim many of her Islamic rights.

There is a misguided notion both among western nations and even among Muslims themselves that under Muslim law a woman will get nothing from her husband towards her maintenance and living expenses beyond her probationary period of Iddat. This is a very simplistic notion and is clearly misleading.

In Islam the husband may unilaterally divorce his wife at any time, without specifying any reason, and a woman may do the same as long as she acquires this right when contracting her marriage. She can do this by negotiating and demanding that the prospective husband delegate to herself (or her nominated agent) the right to divorce her at any time without assigning any reason. It should be borne in mind that the procedure relating to the pronouncement of divorce can vary depending upon which school of law is followed by the husband and wife. The prospective wife can also have the husband's right to divorce her curtailed in many other ways - all by demanding and having the required legal conditions included in the marriage

contract - and these conditions would be just as enforceable in a court of law as any conditions of a civil contract.

n fact, the modus operandi, even in a so-called bilateral marital breakdown situation (i.e., where both the husband and the wife mutually agree to divorce) is always for one of the two spouses to take the initiative to call the marriage off. So, in reality, marriage breakdown situations almost always entail unilateral decisions and motivations. Therefore, given that there is often an unavoidable, unilateral dimension in initiating divorce proceedings, one could argue that to let either of the two spouses have the unilateral right to divorce the other will save both of them from endless argumentation and bickering that could ultimately lead them to very expensive and emotionally charged court litigation.

One good ground for divorce, according to the Prophet of Islam, is the absence of mutual understanding/bonding between the parties and therefore they should free themselves from the bondage of marriage.

3.4. Women's Right to Inheritance

In Islamic inheritance law of whether a male always inherits a share that is twice that of a female of equal class presents an interesting case in which male interpreters of the Qur'an may have been willing to stretch even the words of the Qur'an itself to favor their gender. The Qur'anic verse states that "he male shall have the equal of the portion of two females. . . ." Yet a literal reading of the separate verse that specifies heirs' fractional shares is not consistent in some cases with the double share requirement. For example, if a decedent is survived by his wife and parents, the wife should receive one-fourth of his estate, the mother one-third and the father the remaining five-twelfths. Worrying that the father does not receive double of what the mother receives, the legal scholars determined that the mother was not to receive one-third of the estate but rather one-third of what remains in the estate after the wife receives her share. Under this interpretation, then, the wife would take one-fourth, the mother would take one-fourth also (one-third of the remaining three-fourths), and the father would take the remaining one-half of the estate, thus securing his double portion.

The provision for double shares for males is often pointed to as a source for the proposition that Islamic law generally favors men over women. It should be noted, however, that the Qur'anic system may at times result in situations in which female family members (although not of the same rank) may end up with equal or greater

shares of decedent's estate. For example, if a wife dies survived by her husband, her daughter and her (the wife's) brother, the estate will be distributed as follows: one-fourth to the husband, one-half to the daughter, one-fourth to her brother. Thus, the spouse and male relative of the wife each receive half of the amount allocated to the daughter.

3.5. Husband's Right to Wife's Estate

Islamic law provides both the husband and the wife with a definite portion of each other's estates and then divides the rest of the estate among other relatives of the deceased spouse. The husband's share in the wife's estate is expressly delineated in the Qur'an. Under the Sunni system, if the wife is survived by one or more agnatic lineal descendants, the husband is entitled to one-fourth of her estate If the wife is not survived by any children or agnatic lineal descendants, the husband takes one-half of her estate. The remaining estate is then divided, under the Sunni approach, among her agnatic lineal descendants or, if none, the wife's other relatives. (Her husband is not deemed to be her "relative.") It is important to note, however, that the husband's share of the estate is specifically limited by the Qur'an to his prescribed portion after payment of any legacies or debts.

3.6. Wife's Right to Husband's Estate

Under Islamic law, the widow has a right to her deferred *mehr* and also to her Qur'anic share of her husband's estate. The prescribed amount is basically one-half of the amount to which the husband is entitled if the wife were to die first. If the husband left agnatic lineal descendants, the widow's share is one-eighth of his estate.Her share is one-fourth of the estate in the absence of lineal descendants. If there is more than one widow, however, the widows must share that amount equally among themselves. The wife, like the husband, will never take more than the prescribed share. Also, as with husbands, the Qur'an specifically states that the surviving wife's share is a share only of the net estate.

3.7. Women's right to Maintenance

According to Mulla's Principle of Mohammedan Law, the husband is bound to maintain his wife (unless she is too young for matrimonial intercourse) so long as she is faithful to him and obey his reasonable orders. But he is not bound to maintain her who refuses herself to him or is otherwise disobedient. Unless the refusal or disobedient is justified of non payment of prompt dower (sec. 290)

If the Husband is neglect or refuses to maintain his wife without any lawful cause the wife may sue him for maintenance, unless the claim is based on a specific agreement or she may apply for an order of maintenance under the provision of the Code of Criminal Procedure, 1908, section 488, in which case the court may order the husband to make a monthly allowance not exceeding four hundred Taka.

After divorce the wife is entitle to maintenance during the period of Iddat (sec.257). A pregnant woman is entitled to maintenance till she delivers the child.

CHAPTER 4: Analysis of the dissolution of marriage by the intervention of the court

The Act of 1939 provides a reasonably large number of grounds for women who desire a divorce. Menski argues that the case laws under the Act of 1939 from Pakistan and Bangladesh clearly show that Muslim Wives in those countries have the right to divorce the husband at any time they want, provided they dare to stand up in court declaring that they cannot cohabit any longer with their husband.A wife can dissolve her wedlock by filing a case in the Family Court by presenting reasonable ground(s) (stated in section 2 of Act of1939). In the trial, the court passes the decree of dissolution of marriage upon the accomplishment of the women in proving her case. A copy of the decree shall have to be sent to the "Chairman" of the "Arbitration Council"83so that arbitration council can take "initiatives to conciliate" between them. If the conciliation process of the arbitration council fails, it sends a letter to the Nikah Registrar to take necessary steps to register the divorce in Registrar book. However, a woman who is unable to prove her case in the court will not be given the decree of divorce. This is the scenario for women who can afford to go to court. But most women do not have the means to stand up in court to seek separation. In spite of depriving women of the absolute fundamental right to renounce marriage, it may be argued that the procedure of the Family Court regarding divorce is favourable towards women. For instance, the government of Bangladesh charges BDT 25 for filing any suit, including the one for dissolution of marriage in the Family Court. It is the minimum amount in comparison to the fee required for filing a lawsuit in any other courts of Bangladesh. Moreover, there is also a facility provided by the judge of the Family Court of having whole or part of the proceeding in private (camera trial) for women who are uncomfortable in public hearings. Hence, it can be said that the Family Court is friendly towards women in comparison with other courts of Bangladesh. However, it should be acknowledged that ensuring procedural rights do not supplement the necessity of guaranteeing fundamental rights. Moreover, the decision of the family court concerning divorce is not final. Instead, the outcome of the arbitration procedure is what determines this particular assertion. Bhuiyan (2010) raises the question on the use of court proceedings if the decree of dissolution of marriage is required to go through an arbitration procedure. She termed it as unethical, lengthy and a violation of the rule of law.

Sinha rightly remarks that the legal system of Bangladesh along with relevant regulatory authorities, cannot ensure access to justice for judicial remedy, especially for women in Bangladesh.In respect to the socio-legal and economic contexts of Bangladesh, even if women are given more rights to divorce, most of them are scared to go for it; they are anxious about being stigmatised and petrified at the prospect of losing their marital home, maintenance, food, clothing, and even children.93 The current research findings reveal the following as the reasons women face difficulties going to court to file a case for separation.

i. The judicial system of Bangladesh, including the judges, bench officers and advocates is male dominated. For example, there are merely 344 females94 among 1655 judges in the lower court of Bangladesh and only seven females95 out of 107 judges in the Supreme Court of Bangladesh. Generally, women are shy to discuss their problems with males. Hence this appears as an obstacle for women to go to the court to file a case for divorce.

ii. Personal laws are discriminatory towards women concerning marriage, divorce, separation, and maintenance. Therefore, it is troublesome for women to establish their rights through court interventions.

iii. iii. It is tough for most Bangladeshi women who have spent years as housewives, being dependent on their partners, to take the initiative towards divorce against their husbands. Culture and social norms of Bangladesh are not in harmony with women along with their fight in the court, since women who protest to establish their legal rights are eyed with negative perceptions by the entire society.

iv. iv. Women endeavouring to establish their limited powers under personal laws in Bangladesh face procedural and practical barriers that often delay or defeat any remedies.

v. Women who are Pardanshin are generally reluctant to go to court and choose an unhappy life over having to express themselves before the court.

vi. A large number of women in Bangladesh are uneducated.They are not even aware of their legal rights, which makes it

burdensome for them to win a legal battle in the court to enforce their marital rights.

vii. Generally, Family Courts are situated in the district Sadars (headquarters). This creates conveyance problems for women in forwarding with the court proceedings.

viii. Economically dependent women are mostly unable to hire lawyers and bear the expenses of legal proceeding due to financial struggles

ix. Family members of most women do not support them in filing a divorce case because they are clouded with the perception that it brings disgrace for their family.This renders women helpless and lonely in their battle for their rights.

x. Taking into account the amount of time and effort required, alongside the uncertainty involved in seeking a fault-based divorce, many women prefer separation by mutual consent such as khula instead of fault-based divorce by the intervention of the court.

4.1. Discussion of the Fact:

Under Mohammedan Law maintenance during the period of Iddat is incumbent upon a former husband. A divorced wife can legally and lawfully realized maintenance for the period of iddat. But the right of "Mattaa" loosely used as maintenance beyond the period of Iddat may be statutorily provided for the poorer women who are destitute and suffering in the hand of unjust and cruel husbands. It can be argued that for giving benefit to Muslim women laws may be made as has been made in several counties and the beneficial legislation will not be against Muslim personal law and will be consonance with the ideas of justice tolerance and composition of Holy Qur-an enjoins upon all righteous and true Muslim.

The High Court Division is appears to be too wide, but as in our country many women are divorced by their husbands without any fault on their part some legislation may be made for the good of Muslim women community in Bangladesh. Many divorced women in our county suffer as they have no economic and educational background to support them. She

urges to provide for a fair, just and reasonable legislation to remove the extreme hardship of divorced women in our society. Such statutory recognition of benefits and privileges for a divorced woman will not be in conflict of Muslim Law.

4.2. Relevant Case Laws

Aga Muhammed Jaffer v. koolsom Beebee

The plaintiff was married to the defendant on May 17, 1950. A son was born of the marriage and thereafter the husband neglected the wife and refuse to maintain her and her son on the plea (held to be false) that he had divorced her on the night of the wedding. The trial court moved by the wife, granted a decree for maintenance for both mother and son.

In *Asmatullah v. Mst khatunessa*, after divorce the wife is entitled to maintenance during the period of Iddat. She was held not entitle to past maintenance unless there was a specific agreement.

4.3. Judgment

It was held that the learned judge of the High Court Division had no jurisdiction to give her any further relief beyond what was granted by the first two courts below. The decision of the High Court Division was set aside because of that it is beyond of the Islamic Law. And court decide the point *so moto*.

4.4. Some Recent Important steps Towards Ensuring equal rights of women:

The Bangladesh Mahila Parished wisely proposed a Uniform Family Code irrespective of sex, religion, race, cast and place of birth which should be applicable to all citizens. It is based on principle of equality, principle of non-discrimination, and principle of state obligation.

They argued that the Constitution of Bangladesh ensures the right of man and woman in all spear of public life and it is one of the fundamental right. Under third part of the Constitution, Article 27 states “All citizen are equal before law and entitle to equal protection of law.” After that in Article 28(1), it says “The state shall not discriminate against any citizen on the ground of only of religion, race, cast, or place of birth”. And according to Article 26, Law inconsistent with fundamental right will be void.

Part two of the Constitution of the Bangladesh states the fundamental principle of state policy, according to Article 8 there are four fundamental principles one of them is socialism; here means that, economic and social justice. So discrimination against women in social life can not be social
justice.

So for the requirement of time the law should be changed which is discriminate against women. In this perspective this organization proposed that there should be one uniform law irrespective of sex, religion, race, cast etc. it was first published in 1 April 1993 and the new edition was published after several reform in 2006.

This proposal contains five parts,

1. Uniform Marriage and Divorce Registration Act, 2005.
2. Uniform Maintenance Act, 2005.
3. Uniform Guardian and Ward Act, 2005.
4. Uniform Law of Inform of Inheritance Act, 2005.
5. Uniform Adoption Act, 2005.

According to their proposal in Uniform Marriage and Divorce Registration Act, all citizen should be bound to registration their marriage and divorce within one month from marriage and divorce irrespective of religion.

In Uniform Maintenance act they proposed three type of maintenance

1. Maintenance by husband to his wife
2. Maintenance by wife to her husband
3. and maintenance of their child

In Uniform Guardian and Ward Act the mother and father of the child should equally treated as the guardian of the child; there also gender equality get priority.

In Uniform Law of Inheritance, the male and female both heirs should be get equal proportion of the property irrespective of religion.

In Uniform Adoption Act there should be scope to adopt child for all religion.

CHAPTER 5: Conclusion

In the last decades of the 20th century there was a declaration of Principle of Fundamental Human rights. In June 1993 at the Vienna Human right Conference it was recognized that Women's Right is Human Right, Violence against Women is Violence against Humanity. From then there is movements for ensuring women's as to a man and for removing gender discrimination.

In our country the women are mostly discriminated by the Personal Law. After the above analysis it is clear that under the existing personal law the gender equality can not be possible at all, in this circumstance the Law Commission refuses the possibility of a common personal law prepared by the UNESCO and Women for Women.

We have seen that there are some reformation has occurred in personal law for the welfare of the people and we think that the uniform family code is also possible for the benefit of the people. The Law Commission States that the uniform family code is the desire of a few people.....but this is not true because in Bangladesh all women are suffering by the hardship of the personal laws, not only one community but by all personal law.

In Bangladesh the personal laws are not reformed along with the time. The law which has been old of thousand years how can it match with modern society? As of human being the women also entitle equal right, which the personal law did not realize.

It is common knowledge among those reasonably acquainted with law that women are greatly deprived of their rights within the laws that govern crucial aspects of the man woman relationship: marriage and divorce, custody of children and guardianship rights, alimony and maintenance for divorced women as well as property rights.

The question of women has acquired great importance throughout the world today among all communities. This is for obvious reasons. For centuries, women have been in total subjugation in male-dominated patriarchal societies. It has been a “natural law” to regard women as the inferior sex and for them to submit to male authority for the smooth functioning of society in its day to day progress. In the today’s world it is an issue of impartiality of law irrespective of race was clearly crucial. Indeed the law which prevented women from achieving their full development as individuals must be bad law.

So the personal law which is discriminate against women should be reformed the only solution of this gender discrimination by the personal law is enacting a Uniform Personal Law, the women must no be deprived any more. Since we see there are many barriers in implementing necessary reforms in the personal laws, we need to accelerate awareness programs among the common people against the violence oppression and deprivation to women. Educated community should move forward to ensure social justice and equality. They need to speak for the deprived class; they have to take strong possession against injustice. If this social conscious class continues whole heartedly to contribute the social awareness activities then very soon the conscience of the nation would be awaken, and the Law commission should not get chance to termed this demand of a uniform law

as the opinion of few rather it would be the demand of the majority. Only then we will be succeed to establish equality, that will lead us to social order and justice in its real sense.

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and as for his parents, each of them shall have the sixth of what he has left if he has a child, but if he has no child and (only) his two parents inherit him, then his mother shall have the third; but if he has brothers, then his mother shall have the sixth after (the payment of) a bequest you may have bequeathed or a debt . . . .
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