UGC & Govt. Approved

Sonargaon University (SU)

সোনারগাঁও ইউনিভার্সিটি (এসইউ)

RESEARCH MONOGRAPH

ON

RIGHT TO DIVORCE BY A BANGLADESHI WIFE UNDER DIFFERENT PERSONAL LAWS: A CRITICAL ANALYSIS

A RESEARCH MONOGRAPH SUBMITTED IN THE PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR THE DEGREE OF MASTER OF LAWS

Submitted By:

Juma Aktar

ID- LLM2203027009

Department of Law, Sonargaon University

Supervised By:

Md. Abdul Alim

Lecturer, Department of Law,

Sonargaon University, Dhaka

Date of Submission: 05-09-2023

Letter of Transmittal

To,

Md. Abdul Alim

Lecturer, Department of Law

Sonargaon University, Dhaka.

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

Dear Sir,

It is a great pleasure for me to submit the research monograph on "Right to divorce by a Bangladeshi wife under different personal laws: A critical analysis."

While doing this Research Monograph, I have tried my level best to keep the required standard. I hope, this dissertation will fulfill your expectation and make you happy. I hope that you would be kind enough to go through this dissertation for evaluation.

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

Sincerely Yours,

Juma Akter

ID- LLM2203027009

Declaration

I am Juma Akter (ID- LLM2203027009), a student of Department of Law Sonargaon University (SU), hereby solemnly declare that this research Monograph entitled "Right to divorce by a Bangladeshi wife under different personal laws: A critical analysis" has been performed by me and the research paper has not been submitted anywhere earlier. I also affirm that this research paper does not breach any copyright provisions and it is not counterfeited.

Signature:

Date: 05-09-2023

Certification by the Research Supervisor

This is to certify that the research Monograph on "Right to divorce by a Bangladeshi wife under different personal laws: A critical analysis" submitted by Juma Akter (ID- LLM2203027009) in fulfillment of the requirements for the award of the Postgraduate Degree in Law from Sonargaon University, under my active supervision and guidance and that no part of this paper has been submitted anywhere earlier, to the best of my knowledge.

Md. Abdul Alim

Lecturer, Department of Law

Sonargaon University, Dhaka.

Acknowledgement

I would like to express my sincere gratitude and appreciation to Md. Abdul Alim, Lecturer in the Department of Law at Sonargaon University, Dhaka, for his invaluable guidance and support throughout the completion of this thesis. Md. Alim's expertise in the field of law, his dedication to teaching, and his commitment to my academic growth have been instrumental in shaping this research work. His insightful comments, constructive criticism, and meticulous attention to detail have greatly enhanced the quality of this thesis. I am deeply thankful for his continuous encouragement, patience, and willingness to devote his time and effort to discuss complex concepts, provide valuable suggestions, and offer invaluable insights. His mentorship has not only refined my research skills but also broadened my intellectual horizons. Furthermore, I would like to acknowledge Md. Alim's unwavering support and flexibility, which allowed me to explore various avenues of research and provided me with the freedom to express my ideas. His open-mindedness and willingness to engage in stimulating discussions have significantly enriched my understanding of the subject matter.

I would also like to extend my appreciation to the faculty members of the Department of Law at Sonargaon University, whose teachings and guidance have contributed to my overall academic development. Finally, I am grateful to my family and friends for their unconditional love, encouragement, and belief in my abilities, which have been constant sources of motivation throughout this journey.

Once again, I express my deepest gratitude to Md. Abdul Alim for his invaluable support and mentorship. His guidance has been instrumental in the successful completion of this thesis, and I am truly honored to have had the opportunity to work under his supervision.

Abstract

This research monograph presents a critical analysis of the right to divorce by Bangladeshi wives under different personal laws. The research aims to examine the legal frameworks governing divorce in Bangladesh and evaluate the extent to which they uphold the rights and interests of women. The study begins by providing an overview of the various personal laws applicable in Bangladesh, including Islamic law, Hindu law, and customary law. It delves into the historical and cultural contexts that have shaped these laws and their impact on the rights of women seeking divorce. Using a combination of doctrinal and socio-legal research methods, this thesis critically analyzes the legal provisions and judicial interpretations pertaining to divorce rights for Bangladeshi wives. It explores the grounds for divorce, the procedures involved, and the legal safeguards in place to protect women's rights during the divorce process. Furthermore, the thesis examines the societal attitudes, cultural norms, and gender dynamics that influence the exercise of the right to divorce by Bangladeshi wives. It investigates the challenges and barriers faced by women in accessing divorce, such as social stigma, economic dependence, and lack of legal awareness. The findings of this thesis contribute to the existing literature on family law in Bangladesh and provide valuable insights for policymakers, legal practitioners, and scholars. It calls for a comprehensive review of personal laws to create an inclusive and equitable legal system that promotes the right to divorce for Bangladeshi wives, aligning with international human rights standards and principles of gender justice.

TABLE OF CONTENT

TOPIC	PAGE
CHAPTER 1- Introductory	1-2
1.1 Introduction	1
1.2 Research questions	1
1.3 Research objective	2
1.4 Methodology	2
1.5 Limitation of the Monograph	2
CHAPTER 2- Divorce Laws and Procedures for Muslims Wife in Bangladesh	3-12
2.1 Concept of Divorce under Muslim Law	3
2.2 Divorce by Muslim Wife	4
2.3 Divorce by Wife under Dissolution of Muslim Marriages Act 1939	6
2.4 Procedure under The Muslim Family Laws Ordinance, 1961	9
2.5 Registration of Divorce and Maintenance after Divorce	12
CHAPTER 3- Divorce under Hindu Law	13-18
3.1 Concept of Hindu divorce	13
3.2 Divorce by Hindu Wife in Bangladesh	14
3.3 Procedure for Dissolution of Marriage by Hindu couple	15
3.4 Importance of making a 'Law of Divorce' for Hindu community	16
CHAPTER 4- Buddhists Personal Law	19-20
4.1 Divorce by Buddhists in Bangladesh	19
4.2 Procedure for dissolution under Buddhists law	19
CHAPTER 5- Divorce under Christians Law	21-24
5.1 Divorce by Christians in Bangladesh	21
5.2 Procedures for Divorce by Christians	22
5.3 Judicial Separation under Christian law	24
CHAPTER 6- Judicial Pronouncements & Critical Analysis	25-29
6.1 Judicial Pronouncements	25
6.2 A Critical Analysis of Women's Right for Divorce	27
Chapter 7- Recommendations and Conclusion	30-32
7.1 Recommendations	30
7.2 Conclusion	32

CHAPTER 1

Introductory

1.1 Introduction

"Marriage is the very foundation of civil society and no part of the laws and institutions of a country can be more vital importance to its subjects than those which regulate the manner and conditions of forming and, if necessary, of dissolving, the marriage contract."[1] The right to divorce holds significant importance in empowering women and allowing them to exercise autonomy within their marital relationships. In Bangladesh, a country comprising diverse religious communities, personal laws play a pivotal role in regulating the process of divorce. This assignment aims to critically analyze the right to divorce by Bangladeshi wives under various personal laws, examining the challenges and disparities encountered by people seeking this fundamental right. Bangladesh, with its rich cultural and religious heritage, recognizes distinct personal laws that govern marriage, divorce, and family matters for different religious communities, including Muslims, Hindus, Christians, and others. Each personal law system entails its own set of provisions, procedures, and criteria for divorce, often resulting in varying levels of protection and rights for individuals seeking to dissolve their marriages.

1.2 Research questions

1. What are the key provisions and procedures governing the right to divorce for Bangladeshi wives under different personal laws?

2. How do the personal laws in Bangladesh define and recognize the grounds for divorce for Bangladeshi wives?

3. What are the legal safeguards in place to protect the rights and interests of Bangladeshi wives during the divorce process under different personal laws?

[1] Asaf A. A. Fyzee, Outlines of Muhammadan Law, 4th ed. (Oxford: Oxford University Press, 1993), p.147.

4. What are the major challenges and barriers faced by Bangladeshi wives in accessing divorce, and how do these differ across different personal laws?

5. What are the gaps and inconsistencies within the existing legal frameworks for divorce, and how can they be addressed through legal reforms?

1.3 Research objective

The objectives of this paper was to examine the legal provisions and procedures governing the right to divorce for Bangladeshi wives under different personal laws, to critically analyze the extent to which the existing personal laws in Bangladesh uphold the rights and interests of Bangladeshi wives seeking divorce, to identify the grounds for divorce recognized under different personal laws and evaluate their adequacy in addressing the diverse circumstances and needs of Bangladeshi wives, to assess the legal safeguards in place to protect the rights of Bangladeshi wives during the divorce process and evaluate their effectiveness, etc.

1.4 Methodology

The methodology of this research paper are qualitative and comparative and also all around dependent on secondary materials however to some degree I have utilized essential information moreover. The secondary source of data are different Books, papers available online books, DLR, AIR, online case reports, sites and newspapers. In order to complete my research from various sources, I have collected materials from books, journals, internet, and law reports and responds data relating to family laws of Bangladesh.

1.5 Limitation of the Monograph

The limitations of the study are described in many ways, but the time limitation was the main factor. I had only a few months for preparing this research paper. For this reason I cannot prepare it at my heart’s content. I have collected the information about personal laws on divorce from different site of internet. But I cannot go through all the books and journals due to the shortage of time limitation. I had only a few months for finishing the research Monograph, so I couldn't been able to present all related information in this monograph.

CHAPTER 2

Divorce Laws and Procedures for Muslims Wife in Bangladesh

2.1 Concept of Divorce under Muslim Law

Talaq and Divorce though have always been used interchangeably yet the former is distinct in nature as it is the termination of marriage by the sole prerogative of the husband unlike English Divorce, which can be initiated by any partner. The Islamic concept of dissolution of marriage stands on power of announcement by Husband bestowed to the latter by Almighty Allah. It is this unique authority, which makes Talaq different from Divorce. This unilateral power of one partner though sanctioned under Islamic scriptures, nonetheless has often been exploited. A comparative case study of legislations adopted by different countries has been undertaken to evaluate this issue. Talaq-ul-Bain or Triple Talaq has been critically analyzed in the background of Islamic law and many scholars have suggested reforms to bring this law into conformity with the true spirit of Islam by treating both partners on equal footing in a society. Reconciliation or re-unification, which is an essence of Islamic form of divorce, is only possible in case of declaring Talaq-ul-Bain or Triple Divorce as null and void.

Divorce or Talaq under Islamic Law means the termination or dissolution of the contract of marriage between the husband and wife. Islam if on one hand strongly advocates a congenial relationship between a married couple, it on the other hand, also doesn't shut the doors for an amicable separation between the two when it becomes inevitable to depart rather than "being miserably bound together".[2] Talaq, though often considered as the sole synonym for divorce in Islamic law, does not have such a generic meaning as divorce. For the purpose of clarity in understanding, a divorce by talaq in Islamic law may be understood as that dissolution of marriage which is effected by the sole prerogative of the husband to end the marriage as opposed to any other type of divorce which may be brought about at the instance of either the husband or wife, and which is more varied in its form and character. A talaq, therefore, is a divorce forced

[2] AbdurRahman I. Doi, 1989. WOMEN IN SHARIAH (ISLAMIC LAW), (Ta-Ha Publishers Ltd United Kingdom, p: 83

on the wife by the husband without requiring her consent. However, both divorce and talaq have sometimes been used interchangeably, the meaning in such cases becoming clear from the context in which either word is used.

2.2 Divorce by Muslim Wife

"Under Muslim law 'talak' means 'freedom'. The right of giving freedom by her husband from marriage to wife is called 'talak, According to Heyadaya."[3]

Under islamic laws of divorces procedures for muslim's in Bangladesh can be very confusing if not a proper step by step guide has not been mentioned. Marriage under Islamic law is not an indissoluble and permanent bond and the parties may dissolve the marriage by the approved methodologies provided by the shariah. The policy of Islamic law is that a marriage may be terminated for a genuine reason. Followings are the relevent act, provision and laws in matter to divorces for muslims in Bangladesh.

- Muslim Family Law Ordinance, 1961.[4]
- Dissolution of Muslim Marriage Act, 1939[5]
- The Family Courts Ordinance, 1985[6]
- The Muslim Marriages and Divorces (Registration) Act, 1974[7]

Wife's Power: (talaaq-i-tawfid) A wife does not have any power of her own to dissolve a marriage. She can dissolve a marriage by herself only if the husband had delegated the power to her before the head. This is known as talaq-i-tawfid or delegated talaq. Thus, the existence of such power to be in the hands of the wife completely depends on the contract between husband and wife. If there were any stipulations regarding delegation of such power by husband and wife inserted in the marriage contract, only then the wife would be able to dissolve the marriage by exercising that power without resorting to either the husband or the court. In Bangladesh Column 18 of the kabinnama is about delegation of power of talaq by a husband to his wife and column 19 is about whether husbands' power of talaq has been curtailed in any way.

[3] Md. Altaf Hossain. Islamic Jurisprudence and Muslim Ain sohaika. (Dhaka: City Law Book, 2003), pp.164-65.
[4] Ordinance NO. VIII OF 1961
[5] ACT NO. VIII OF 1939)
[6] Ordinance NO. XVIII OF 1985
[7] ACT NO. LII OF 1974

Talaaq-i-tafweez or delegated divorce is recognized among both, the Shias and the Sunnis. The Muslim husband is free to delegate his power of pronouncing divorce to his wife or any other person. He may delegate the power absolutely or conditionally, temporarily or permanently . A permanent delegation of power is revocable but a temporary delegation of power is not. This delegation must be made distinctly in favour of the person to whom the power is delegated, and the purpose of delegation must be clearly stated. The power of talaaq may be delegated to his wife and as Faizee observes, "this form of delegated divorce is perhaps the most potent weapon in the hands of a Muslim wife to obtain freedom without the intervention of any court and is now beginning to be fairly common in India". This form of delegated divorce is usually stipulated in prenuptial agreements. In Md. Khan v. Shahmali[8], under a prenuptial agreement, a husband, who was a Khana Damad, undertook to pay certain amount of marriage expenses incurred by the father-in-law in the event of his leaving the house and conferred a power to pronounce divorce on his wife. The husband left his father-in-law's house without paying the amount. The wife exercised the right and divorced herself. It was held that it was a valid divorce in the exercise of the power delegated to her. Delegation of power may be made even in the post marriage agreements. Thus where under an agreement it is stipulated that in the event of the husband failing to pay her maintenance or taking a second wife, the will have a right of pronouncing divorce on herself, such an agreement is valid, and such conditions are reasonable and not against public policy . It should be noted that even in the event of contingency, whether or not the power is to be exercised, depend upon the wife she may choose to exercise it or she may not. The happening of the event of contingency does not result in automatic divorce.

Through mutual consent (khula, Mubarat) - When both husband and wife seek separation through their mutual consent it referred to as Mubarat. Khula or redemption means a form of divorce that takes place at the request of the wife. Khula or redemption literally means to lay down. In law it means laying down by a husband of his right and authority over his wife. A divorce by khula is a divorce with the consent and at the instance of the wife, in which she gives or agrees to give a consideration to the husband for her release from the marriage tie. It signifies an arrangement entered into for the purpose of dissolving a connubial connection in lieu of compensation paid by the wife to her husband out of her property.

[8] AIR (1977), Cal, 90.

2.3 Divorce by Wife under Dissolution of Muslim Marriages Act 1939

It should be mentioned here that "in Islamic classical law, the judicial dissolution of marriage is referred to as faskh. Etymologically, faskh means "annulment" or "separation" and by definition it is the annulment of a contract; thus the faskh al-nikha is the annulment of the marriage contract. It should be emphasized that through the faskh, the marriage contract becomes void as if it never happened.[9]"

According to Section 2 of The Dissolution of Muslim Marriages Act 1939 Act: A woman married under Muslim law shall be entitled to obtain a decree for divorce for the dissolution of her marriage on any one or more of the following grounds, namely:-

(i) that the whereabouts of the husband have not been known for a period of four years: if the husband is missing for a period of four years the wife may file a petition for the dissolution of her marriage. The husband is deemed to be missing if the wife or any such person, who is expected to have knowledge of the husband, is unable to locate the husband. Where a wife files petition for divorce under this ground, she is required to give the names and addresses of all such persons who would have been the legal heirs of the husband upon his death. The court issues notices to all such persons appear before it and to state if they have any knowledge about the missing husband. If nobody knows then the court passes a decree to this effect which becomes effective only after the expiry of six months. If before the expiry, the husband reappears, the Court shall set aside the decree and the marriage is not dissolved.

(ii) that the husband has neglected or has failed to provide for her maintenance for a period of two years: it is a legal obligation of every husband to maintain his wife, and if he fails to do so, the wife may seek divorce on this ground.

In Mst. Amena Khatun Vs. Sheraj-uddin Sardar, the Court held that where the husband has failed to maintain his wife for more than two years in violation of the marriage contract, the wife

[9] Ayang Utriza Yakin, Erin E. Stiles, Islamic Divorce in the Twenty-First Century A Global Perspective, Rutgers University Press, 2022, P. 6

succeeds in establishing her right to claim a dissolution of marriage. This is so even where the wife is a woman of means and is able to maintain herself.

(iii) that the husband has been sentenced to imprisonment for a period of seven years or upwards: the wife's right of judicial divorce on this ground begins from the date on which the sentence becomes final. Therefore, the decree can be passed in her favour only after the expiry of the date for appeal by the husband or after the appeal by the husband has been dismissed by the final court.

(iv) that the husband has failed to perform, without reasonable cause, his marital obligations for a period of three years: the Act does define 'marital obligations of the husband'. There are several marital obligations of the husband under Muslim law.

(v) that the husband was impotent at the time of the marriage and continues to be so: for getting a decree of divorce on this ground, the wife has to prove that the husband was impotent at the time of the marriage and continues to be impotent till the filing of the suit. Before passing a decree of divorce of divorce on this ground, the court is bound to give to the husband one year to improve his potency provided he makes an application for it. If the husband does not give such application, the court shall pass the decree without delay. In Md. Ibrahim vs. Altafan Impotency of the husband is a good ground for dissolution of marriage. The court upon application of the husband if any should allow one year time to the husband to show that he has ceased to be impotent. If no application is filed by the husband the court shall decide the suit forthwith.

(vi) if the husband has been insane for a period of two years or is suffering from leprosy or a virulent venereal disease: the husband's insanity must be for two or more years immediately preceding the presentation of the suit. But this act does not specify that the unsoundness of mind must be curable or incurable. Leprosy may be white or black or cause the skin to wither away. It may be curable or incurable. Venereal disease is a disease of the sex organs. The Act provides that this disease must be of incurable nature. It may be of any duration. Moreover even if this disease has been infected to the husband by the wife herself, she is entitled to get divorce on this ground.

(vii) that she, having been given in marriage by her father or other guardian before she attained the age of fifteen years, repudiated the marriage before attaining the age of eighteen years, provided that the marriage has not been consummated;

(viii) that the husband treats her with cruelty, that is to say,-

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

(b) associates with women of ill-repute or leads an infamous life, or

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

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

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

(f) if he has more than one wives, does not treat her equitably in accordance with the injunctions of the Holy Quran.

(ix) on any other ground which is recognized as valid for the dissolution of marriage under Muslim Law.

2.4 Procedure under The Muslim Family Laws Ordinance, 1961

According to Section 7, of The Muslim Family Laws Ordinance, 1961

(1) Any man who wishes to divorce his wife shall as soon as may be after the pronouncement of talaq, in any form whatsoever give the chairman notice in writing of his having done so and shall supply a copy thereof to the wife.

In the case of Abdul Aziz vs Rezia Khatoon[10], it was held that the non-compliance with the provisions of section 7(1) makes talaq legally ineffective. However, very recently the Appellate Division of the Supreme Court of Bangladesh in apparent contradiction to Section 7 of the Ordinance held: the petitioner husband divorced his wife by swearing an affidavit before Magistrate and accordingly sent the copy thereof to the Nikah Register in whose office the divorce was registered as required under Section 6 of the Act, 1974 and the marriage tie is in consequence stands dissolved and as such he wife is entitled to the payment of entire, dower, both prompt and deferred. He cannot take the advantage of his own wrong in respect of no service of notice to the Chairman as required under section 7 (1) of the Ordinance l961.

(2) Whoever contravenes the provision of sub-section (i) shall be punishable with simple imprisonment for a term which may extend to one year or with fine which may extend to five thousand taka or with both.

(3) Save as in sub-section (5), a talaq unless revoked earlier, expressly or otherwise shall not be effective until the expiration of ninety days form the day on which notice under sub-section (i) is delivered to the chairman.

(4) Within thirty days of the receipt of notice under sub-section (i) the chairman shall constitute an arbitration council for the purpose of bringing about a reconciliation between the parties and the arbitration council shall take all steps necessary to bring about such reconciliation.

(5) If the wife be pregnant at the time of talaq is pronounced, talaq shall not be effective until the period mentioned in sub-section (3) or the pregnancy whichever be later ends.

[10] (1969) 21 DLR 733

(6) Nothing shall debar a wife who marriage has been terminated by talaq effective under this section from remarry the same husband without an intervening marriage with a third person, unless such termination is for the third time so effective.

Formalities necessary for remarriage: Where the husband has divorced his wife by three pronouncements, remarriage with her is possible only if the following formalities are observed:

- After the divorce, the wife should observe iddat;
- When the period of iddat expires, she should marry another person;
- The marriage should be actually consummated.
- The second husband should voluntarily divorce the wife.
- Then the wife should observed iddat, after which remarriage with the first husband.

In the case of Editor, Daily Bangla Bazar Patrika and two others vs. District Magistrate, Naogaon, it was held that Section 7 of the Muslim Family Laws Ordinance, 1961 prescribes the procedure of divorce. “Hila’, intervening marriage with third person is not necessary in case of retaking of a divorced wife by former husband. Fatwa is declared illegal and unauthorized.

Dissolution of marriage otherwise than by talaq: According to Section 8, Where the right to divorce has been duly delegated to the wife and she wishes to exercise the right, or where any of the parties to a marriage wishes to dissolve the marriage otherwise than by talaq, the provisions of section 7 shall, mutatis mutandis (as near as possible), and so far as applicable, apply.

The Muslim Family Laws Ordinance 1961 provides the rules of divorce, that any person who wishes to divorce his wife should, after pronouncing 'talaq', is to inform the chairman (of Union Council) in writing as soon as possible and deliver a copy thereof to the wife. A talaq shall not be effective before the expiry of ninety days from the day of serving the notice to the Chairman. In fact, the Act makes a combination between 'talaq-e-hasan' and 'talaq-e-ahsan'. A wife on whom the right to divorce has been duly delegated and who wishes to exercise the right as per provisions of the Section 8 of the said Ordinance. These sections incorporate the provisions of two forms of Talaq-e-Sunna.

In Sayed Ali Newaz Grdezi vs. Lt. Col.Md Yusuf[11], the court held that the objection of section 7 is to prevent hasty dissolution of marriage by talaq, pronounced by the husband, unilaterally, without an attempt being made to prevent disruption of the matrimonial status. Sub-section 7(1) required the husband gives notice in writing of his having pronounced talaq but if the husband himself thinks better of the pronouncement of talaq and abstains from given a notice to the chairman, he should perhaps be deemed, in view of section 7, to have revoked the pronouncement that would be to the advantage to the wife. Sub-section (3) of the section precludes the talaq from being effective as such for a certain period and with the period, consequently, I could not be said that the marital status of the parties had in any way been changed

Moreover, The Muslim Marriages and Divorces (Registration) Act, 1974 mentions about registrations of Muslim marriage and divorce. As per section 6 of the Act, A registrar may register a divorce under Muslim Law on the application being made to him for registration.

In addition to this, when a wife has delegated the power to divorce her husband (Talaq-i-Tawfid), proof of such delegation shall be produced to the Registrar to register this type of divorce.

[11] 15 DLR (SC) 9

2.5 Registration of Divorce and Maintenance after Divorce

A Marriage Registrar may register a divorce effected under Muslim Law within his jurisdiction on the application being made to him for such registration. An application for registration of divorce shall be made orally by the person or persons who have or have effected the divorce.

Moreover, The Marriage Registrar shall not register a divorce of the kind known as Talaq-i-tafweez except on the production of a document registered under the Registration Act, 1908 (XVI of 1908), by which the husband delegated the power of divorce to the wife or of an attested copy of an entry in the register of marriages showing that such delegation has been made. Registration is being mandatory rules nowadays in Bangladesh.

Usually, assuming her husband demands a divorce, the divorced wife keeps her dower (mahr), both the original gift and any supplementary property specified in the marriage contract. She is also given child support until the age of weaning, at which point the child's custody will be settled by the couple or by the courts.

Muslim personal law recognizes wives' right to maintenance during marriage, but upon divorce, maintenance is provided for only 90 days from the date of official notice, or if the wife was pregnant at the time of divorce, until the birth of the child. Spousal maintenance can be paid for a fixed term (which might need to be extended) e.g. until the youngest child reaches 18 or for life e.g. until one or the other dies. It can even extend beyond the death of the payer if that maintenance has been secured.

CHAPTER 3

Divorce under Hindu Law

3.1 Concept of Hindu divorce

Marriage is one of the 10th sacraments mentioned in Hindu Dharma Shastra. It says husband and wife through marriage dedicate themselves for the performance of religious duties and also for the spiritual benefit. According to the conventional belief of Hinduism, if one can be blessed with a son, he/she can go to heaven. Further, son can be obtained only through marriage. Following the Hindu Scriptures, marriage is a bond that lasts for ages. Even death cannot untie the bond. This belief made the absence of provision for divorce under the Hindu Shastra. Hinduism places a very high value on marriage and thus does not approve of divorce. However, according to the Mitakshara School, the practice of dissolution of marriage is followed as custom in very special cases. But there is no such practice or provision of dissolution under Dayabhaga School. To be noted, Hindus in Bangladesh, West Bengal and Assam follow the Dayabhaga School. Everywhere else in India and in other countries of the world, Mitakshara School is followed by the Hindus.

Due to the absence of any custom of dissolution of marriage or any scriptural provision in the Dayabhaga School and also absence of any such act regarding divorce in Bangladesh, the Hindu community living in this country cannot get a divorce even if they want it. There is Dissolution of Muslim Marriage Act, 1939 for the Muslim community who seek divorce and The Divorce Act, 1869[12] for the Christian society living in Bangladesh. But it is a matter of regret that, little attention has been paid to reform the Hindu personal law in Bangladesh. Since so many years have been passed after independence, so far there is no law of divorce for Hindu spouses.

[12] ACT NO. IV OF 1869

3.2 Divorce by Hindu Wife in Bangladesh

In Hindu personal law there is no mention of divorce or dissolution of marriage as Hindu marriage is considered a divine bond and a sacrament. In Hinduism marriage is, therefore, a sacred bond that cannot be broken by divorce by husband and wife. Thus, Hinduism puts high importance on marriage and does not approve of dissolution or divorce. Relevant Laws and Provisions related to Hindu Divorces in Bangladesh

- The Hindu Married Women's Right to Separate Residence and Maintenance Act, 1946[13]
- Hindu Marriage Registration 2012
- Hindu Marriage Registration Rules, 2013
- The Family Courts Ordinance- 1985

"In 2012, the Hindu Marriage Registration Act came into force providing forthe registration of Hindu marriages in Bangladesh. Although this may be construed as a first step towards taking concrete steps to improve the position of married Hindu women in Bangladesh, its scope is limited since the require-ment for registration is only optional. The debate on making marriage registration mandatory is still ongoing.[14]"

In Bangladesh, there exists no separate law on Hindu Marriage and Divorce. However, there is an Act named The Hindu Married Women's Right to Separate Residence and Maintenance Act, 1946. Under this Act, A Hindu married woman can ask for separation and maintenance from her husband upon satisfying the grounds that are mentioned in section 2 of the Act.

As per this section, a Hindu married woman shall be entitled to a separate residence and maintenance from her husband on either of the following grounds:

1. If the husband is suffering from a disease which is not contracted from his wife
2. If the husband behaves cruelly with his wife
3. If the husband abandoned his wife without her consent or desire

[13] ACT NO. XIX OF 1946

[14] Faustina Pereira, Sara Hossain, Shahnaz Huda, Revisiting Personal Laws in Bangladesh Proposals for Reform, Brill, 2019, P. 2-3

4. If he Re-Marries

5. If the husband converts to another religion other from Hinduism

6. If he keeps a mistress or lives with her

7. For other justiciable reason

However, a Hindu wife shall not be entitled to a separate residence or maintenance if she converts to any other religion or fails to comply with the order of the competent court for the restitution of conjugal rights.

3.3 Procedure for Dissolution of Marriage by Hindu couple

Instead of Divorce, a Hindu couple can file a petition at the Family Court to obtain Dissolution of Marriage under section 6 The Family Courts Ordinance- 1985. The steps for obtaining a dissolution of marriage is described below:

STEP 1 | FILE A CASE

A husband or wife can institute a suit under the ordinance by presenting a plaint at the family court for dissolving the marriage. The plaint shall disclose material facts related to the dispute between the husband and wife.

STEP 2 | CONTESTING THE WRITTEN STATEMENT

At a fixed date the parties shall be present at the Family Court. The defendant shall present his written statement along with supporting documents.

STEP 3 | EXAMINATION OF THE PETITIONS

Within 30 days of submission of a written statement, the court shall fix a date for pre-trial proceeding. In the pre-trial hearing examine the petition along with other documents and attempt for reconciliation if possible.

STEP 4 | FRAMING OF THE ISSUES

After that, if the court fails to reconcile between the parties then issues shall be framed and a date shall be fixed within 30 days.

STEP 5 | WITNESS EXAMINATION

On the fixed date the court shall examine the witness and record the evidence.

STEP 6 | DISCUSSION OF NEGOTIATIONS BETWEEN THE PARTIES

After the recording of evidence of the parties and the witnesses, the court shall once again make an effort to reconcile between the parties to the suit.

STEP 7 | DECREE FOR DISSOLUTION OF MARRIAGE

After that, if the court is satisfied that the parties shall be granted dissolution the court shall do so by enforcing a decree for dissolution of the marriage between the parties.

An aggrieved party may appeal against the decree passed by the Family Court.

3.4 Importance of making a 'Law of Divorce' for Hindu community:

Dissolution of a marriage can never be a better solution to any problem in the progress of a sound mind society. Disagreements between husband and wife, is also the part of conjugal life. But in a situation where it is almost impossible for the couple to be together then what will be the solution?

In our society, violence against women is happening all the time. In spite of hundreds of persecutions by the husband, wife tolerates everything as it is very normal for her life. Taking every word of the husband as a gospel has become the virtue of the wife. It can be said that if anything like this happens, Hindu women may go to the competent court, seeking separate residence and alimony under the act of 1946. In this case, it is only possible to get the decree of separate residence but in vain there is no permanent solution.

As there is no divorce law, a Hindu woman cannot remarry with the other person even if she is entitled to separate residence. If the wife remarries after going for separate residence, it will be

illegal. Although the Shastric law allows Hindu male to exercise polygamy as much as he wants but the Hindu female is strictly prohibited to have more than one husband at the same time.

As a result, the burden of the first marriage has to be carried out till the death of her husband. The Hindu Widows' Remarriage Act, 1856 was passed in the British period which is still in force in Bangladesh. So there is no obstacle for a widow to remarry.

In a newly married couple, if husband is too torturous to sustain a marital relationship, what will happen to the wife? Is there any solution other than carrying this burden for the rest of her life?

On the other hand, if the wife gets a decree of separate residence and maintenance under the act of 1946, the husband has to pay the alimony of his wife for a long period of time. This also becomes an excessive pressure for the husband.

The family court was established by the act namely The Family Court Ordinance, 1985. There are five kinds of jurisdiction of the family court. These are: divorce, restitution of conjugal life, dower, maintenance and guardianship. It was not mentioned in that act that which religious community can seek remedy regarding family matters under this Act. As a matter of fact an important question arises as to whether the Hindus can file a suit in Family Court or not for seeking divorce. In Pachan Rissi das vs Khuku Rani Dasi and others[15] case, Court decided the issue that "Every citizen of our country irrespective of all religious beliefs could sue in the family court according to their respective religious provisions. But the religion in which divorce and dower is not recognized, these issues will not apply to them."

Despite the recommendations from the Law Commission and under-pressure of various Human Rights Organizations, the government has not taken any steps to reform the Hindu personal law. The explicit objection from the leader of Hindu community is the prime reason in this regard. Government is not willing to enact or reform because the community itself did not welcome it. Hindu personal law was originated from various customs, rituals and also from Shastric provisions. They strongly believe the idea of such reformation to be an attack upon their tradition and religious belief. Marriage is an inseparable bond according to the Hindu Dharma Shastra. Thus, they believe divorce, to be contradictory with the philosophy of Hinduism.

[15] 50 DLR 47

At present, laws have been enacted on the basis of needs and demands of the society. Since the practice of divorce is followed in special cases of Mitakshara School, the divorce law can be enacted based on it. Indian reforms of Hindu personal law can also be an example in this regard. It is mandatory for the government to uphold the right of every citizen irrespective of gender race or religion. So the government must take necessary steps as soon as possible to amend and reform the Hindu personal law for ensuring lawful protection for Hindu women and for the betterment of the society.

CHAPTER 4

Buddhists Personal Law

4.1 Divorce by Buddhists in Bangladesh

The Buddhist view of marriage considers marriage to be a secular affair and does not consider it to be a sacrament. In Buddhism, there are no restrictions on divorce, unlike Hinduism. Buddhists believe that, if a marriage causes suffering, it is better to get a divorce or dissolution. Buddhists are required to obey the personal laws laid down by their respective governments. In Bangladesh, there is no existence of Buddhist personal law and therefore no particular divorce law is followed by the Buddhists living in the country.

However, The Family law Ordinance, 1985 applies to everyone irrespective of their religion. This ordinance mentions about dissolving the marriage by instituting a suit at the family court.

Moreover, there exists a law on marriage and divorce known as the Special Marriage Act, 1872. This Act is applicable for persons who profess the Hindu, Buddhist, Sikh or Jaina religion. Relevant Statutes are:

- The Family Courts Ordinance, 1985
- Special Marriage Act, 1872[16]

4.2 Procedure for dissolution under Buddhists law:

Instead of Divorce, a Buddhist couple can file a petition at the Family Court to obtain the Dissolution of Marriage under section 6 The Family Courts Ordinance- 1985. The steps for obtaining a dissolution of marriage is described below:

[16] ACT NO. III OF 1872

Step 1

A husband or wife can institute a suit under the ordinance by presenting a plaint at the family court for dissolving the marriage. The plaint shall disclose material facts related to the dispute between the husband and wife.

Step 2

At a fixed date the parties shall be present at the Family Court. The defendant shall present his written statement along with supporting documents.

Step 3

Within 30 days of submission of a written statement, the court shall fix a date for pre-trial proceeding. In the pre-trial hearing examine the petition along with other documents and attempt for reconciliation if possible.

Step 4

After that, if the court fails to reconcile between the parties then issues shall be framed and a date shall be fixed within 30 days.

Step 5

On the fixed date the court shall examine the witness and record the evidence.

Step 6

After the recording of evidence of the parties and the witnesses, the court shall once again make an effort to reconcile between the parties to the suit.

Step 7

After that, if the court is satisfied that the parties shall be granted dissolution the court shall do so by enforcing a decree for dissolution of the marriage between the parties.

An aggrieved party may appeal against the decree passed by the Family Court.

CHAPTER 5

Divorce under Christians Law

5.1 Divorce by Christians in Bangladesh

"Many teachers on this subject teach that there is no divorce permitted, and they often use bible verses although taken out of context. (Whether this is intentional or unintentional is neither really here nor there, for it is an untruth which leads many believers into sad situations.[17]"

In Christianity marriage is considered to be eternal and lifelong union and therefore there is no mention of divorce or dissolution of marriage. Christian personal law also does not permit divorce. However, Christian divorce is possible on limited grounds. In Bangladesh, the Divorce Act of 1869 has mentioned provisions for the dissolution of Christian marriage by order of the court. Relevant Statutes are-

- Divorce Act, 1869
- Special Marriage Act, 1872
- The Family Courts Ordinance- 1985

The Divorce Act 1869 includes the provision for the dissolution of Christian marriage by order of the court only and not declaration of divorce by either side or by mutual consent. As stated, divorce is allowed on limited grounds for both men and women, but the grounds are far more restrictive for women. Christian men can divorce their wife if they allege that his wife is committing adultery, on the other hand women shall have to prove adultery with other commission of act/elements. Under the provision, a women can file a petition to the District Judge Court or to the High Court Division for the dissolution of her marriage on the grounds that her husband converted into another religion, guilty of bigamy or guilty of rape, sodomy or bestiality or married to another women or desertion for 02 (two) years without a reason excuse, or cruelty so on and so forth. A District Judge can issue a decree for the dissolution of the marriage based on the evidence subject to the approval of the High Court Division under Section

[17] William Deavin, Christian Divorce and Remarriage the Gospel Myth and Truth, Trafford Publishing, 2004, P. 4

-17 of the Divorce Act 1869 and such confirmation shall not be given until the expiration of 06 (six) months from the pronouncement of the decree. Needless to say, it is a complex procedure to be followed in order to obtain a Christian divorce in Bangladesh. Please be informed that the District Judge may dismiss the petition for dissolution of marriage in that case, one may file a similar petition before the High Court Division. The High Court Division comprising with 03 (three) member can issue an order of dissolution. Alternatively, both man and women can seek for judicial separation in any of the courts i.e. District Court and High Court Division by filing a petition. Please note in this regard the husband and wife are still legally married but the couple is forbidden to live and co-habit together. One may file a petition for judicial separation on the ground of cruelty or adultery etc. under Section 22 & 23 of the Act.

5.2 Procedures for Divorce by Christians

In Christianity marriage is considered to be eternal and lifelong union and therefore there is no mention of divorce or dissolution of marriage. Christian personal law also does not permit divorce. However, Christian divorce is possible on limited grounds. In Bangladesh, the Divorce Act of 1869 has mentioned provisions for the dissolution of Christian marriage by order of the court. Relevant Statutes are-

- Divorce Act, 1869
- Special Marriage Act, 1872
- The Family Courts Ordinance- 1985

The procedure and steps for filing a Christian divorce are discussed below:

STEP 1

Under the provisions of the Divorce Act 1869, Section 3, any Christian husband may file a petition to the District Judge's Court or the High Court Division to dissolve the marriage on the reasons of adultery.

In the same way, as per section 10, a wife can make such a petition to any court for dissolution of marriage on the grounds as follows:

- If the husband has converted to any other religion from Christianity and has married any other woman.
- Adultery committed by Husband.
- If the husband has been guilty of marriage with another woman.
- Rape or bestiality
- If the husband has been deserted for 2 years along with adultery.
- If the husband been guilty of cruelty along with adultery

STEP 2:

As mentioned in section 12 of the Act, After filing the petition, If the court is satisfied based on the facts of the alleged ground and is confident that the allegation is not collusive or that there is no condonation of the alleged ground of filing a divorce, an order for dissolution of the marriage shall be given.

However, If the court is not satisfied based on the facts of the alleged ground and is confident that the allegation is collusive, the District Court shall dismiss the petition, and, in that case, a similar petition could be filed at the High Court Division.

STEP 3:

Divorces are genuine then the District Court shall pronounce a decree for dissolution of marriage. However, the decree is subject to review by the High Court Division as mentioned in section 17 of the Act, and will not be confirmed until the expiration of six months from the pronouncement of the decree.

Nullity of Marriage- On the filing of a petition by husband or wife, order for the nullity of marriage may be issued by The District Judges court or the High Court as mentioned in section 19 of the Act. As per this section, either of the two courts may issue an order for nullity of marriage on any of the following grounds:

1. When the respondent is impotent.

2. Prohibited relationship by the parties.

3. When one of the parties was lunatic during the time of marriage

4. Former husband or wife of either party was alive during the married and the marriage between them was in force at that time.

However, to nullify the marriage, the court shall be satisfied that the consent of either party was not obtained by force or fraud.

5.3 Judicial Separation under Christian law

Judicial Separation is another process for obtaining a divorce. Section 22 and 23 of the Divorce Act, 1869 deals with a petition for judicial separation to the High Court Division or the District Court on the grounds of Adultery, Cruelty, and desertion for two years or more without any reasonable ground. Judicial separation may be reversed by the court on the basis that it was inflicted in the absence of the parties and that there was a reasonable excuse for the alleged desertion as mentioned in section 26 of the Act.

A husband or a wife may apply for judicial separation by petition to the District Court or the High Court. Judicial separation has the effect of a divorce. It is governed under section 22 of the Divorce Act 1869. The petition must contain the following grounds:

(i) adultery; or

(ii) cruelty; or

(iii) desertion without reasonable excuse for two years or upwards.

Upon the satisfaction of the court of the truth of the grounds claimed in the petition, the court may gran judicial separation.

Damages - Under section 34 of the Divorce Act 1869, a husband may file petition to claim damages from a person on the ground of his having committed adultery with the petitioner’s wife.

CHAPTER 6

Judicial Pronouncements & Critical Analysis

6.1 Judicial Pronouncements:

As per Md. Serajul Islam Vs. Most. Helena Begurn & Ors[18] "Section 7 (1) of the Ordinance provides for giving of notice of talaq to the Chairman and a copy thereof to the wife and provides for punishment for contravention and this law overrides any other provision of any other law. But there being clear intention to divorce by the Affidavit on the part of the petitioner and the same having been disclosed and produced before the lower appellate court by the petitioner himself. The petitioner cannot take advantage of his own wrong and cannot claim the benefit of non-service of notice by him to the Chairman. He is bound by his admission. Payment of dower being obligatory as per Nikahnama the wife is entitied to the same on talaq. [Para-8]"

It is observed in Dilruba Aktar vs AHM Mohsin[19] "Talaq in any form shall not stand effective and Talaq shall be not Talaq in the eye of law unless provision contained in section 7(1) is sternly complied with and in the event of subsistence of existing marriage no man can enter into second marriage and if he enters he shall contribute himself to be punished under section 6(5) of The Ordinance."

In Syed Ziauddin v. Parvez Sultana[20], Parvez Sultana was a science graduate and she wanted to take admission in a college for medical studies. She needed money for her studies. Syed Ziaudddin promised to give her money provided she married him. She did. Later she filed for divorce for non-fulfillment of promise on the part of the husband. The court granted her divorce on the ground of cruelty. Thus we see the court's attitude of attributing a wider meaning to the expression cruelty. In Zubaida Begum v. Sardar Shah[21] a case from Lahore High Court, the husband sold the ornaments of the wife with her consent. It was submitted that the husband's conduct does not amount to cruelty.

[18] 7 BLT (AD)-137
[19] 55 DLR 568
[20] (1943) 210 IC 587
[21] (1971) KLT 663.

In Muhammad Ali Akbar v. Fatima Begum[22] quoted Lord Davey's remarks in Janson v. Driefontein Consolidated Mines, Ltd[23] as "Public policy is always an unsafe and treacherous ground for legal decision." Four years later the same Court considered an agreement between a husband and his wife whereby the husband agreed that should he take a second wife, the first wife would be entitled either to exercise the delegated power of talaq or to reside separately and receive a monthly allowance of Rs.75. The Lahore High Court upheld the contract and observed: "An agreement such as… that signed by the husband is permitted by Mohammedan law and it certainly cannot be said to be opposed to public policy. I am unable to see anything "monstrous" or mad in the deed which, in my opinion, was a reasonable one for a husband to execute in favour of a wife who looks for treatment such as emancipated Indian women naturally consider they have a right to insist upon." (Mst. Sadiqa Begum v. Ata Ullah).[24]

In Mohd. Khan v. Mst. Shahmali[25] there was pre nuptial agreement according to which the defendant agreed to live in the plaintiff's parental house and if he would leave that house, he would pay certain specified sum to the plaintiff in default of which the condition would operate as divorce. It was held that the condition was not unconscionable and opposed to public policy, violation of such term would operate as divorce between the husband and wife.

[22] AIR(1929), 660
[23] (1902) Appeal Cases 484.
[24] AIR (1933), 885.
[25] AIR(1972), J.&K., 8

6.2 A Critical Analysis of Women's Right for Divorce

Divorce takes place every hour in Dhaka. This was one of the startling findings in an exclusive report published by Prothom Alo recently. The report states that in the last seven years, the divorce rate application has increased by a massive 34 percent throughout the country according to data compiled by the Bangladesh Bureau of Statistics (BBS). "At least 50,000 divorce applications were filed in Dhaka North and South City Corporations in the past six years, which means on average one divorce application was filed every hour," the report reads. In Chittagong City Corporation, already 2,532 applications have been filed during January-July of this year.[26]

For the inquisitive mind, these findings could provide for a very interesting case study. Does this trend signal that a major societal change is under way? Is it a manifestation of attitudinal or behavioural changes towards marriage? If so, does this shift in attitude have a relationship with something much bigger? Could the changing socioeconomic structure of Bangladeshi society have a role in all this?

Going back to BBS' findings, in Chittagong City Corporation and the two city corporations of Dhaka, the majority of applications being filed were by women. While the most common reason for divorce has been found to be marital conflict, what's more intriguing are the differences in reasons cited by men and women for seeking a divorce. For women, the most common reasons were their husband's suspicious nature, extramarital relations, dowry, husband never returning home after going overseas, drug addiction, Facebook addiction, impotence, and personality clash, among others. On the other hand, the most common reasons cited by men were wives not leading lives according to Islamic rules, bad temper, indifference towards the family, disobeying their husband and infertility.

A cursory glance at the most common reasons cited by women lends some legitimacy to the claim that the rising trend of divorce, as more and more women are initiating divorce and seeking a way out of their marriage, is an indicator of empowerment. Today, women are less willing to remain in an unhappy marriage where the husband is constantly suspicious of the wife, is having an affair, or is physically torturing or mentally abusing the wife for dowry.

[26] Nahela Nowshin, Understanding the rise in divorce in Bangladesh, The Daily Star, Sep 3, 2018 (https://www.thedailystar.net/news/opinion/perspective/understanding-the-rise-divorce-bangladesh-1628311)

The taboos against divorce are still intact in many parts of the country, particularly in rural areas, where a divorced woman is associated with disgrace and shame. But it could be argued that the prejudices attached to divorcees are withering away, albeit gradually, in places like Dhaka where modernisation is giving way to people shedding their conservative attitudes. This shift in attitudes is likely part of a broader societal change brought about by an increased number of women attaining higher education and their absorption into the labour force. As a woman's decision-making role in the private sphere has begun to be recognised, so too has her right to end a marriage. The combination of a growing societal acceptance of divorce and women's realisation of their own rights has a big role to play.

Women's economic independence stands as one of the most crucial factors—not just in Bangladesh but around the world where there is seen similar trends in divorce. Women's participation rate in the labour force in Bangladesh has increased by eight times in the last four decades—from four percent in 1974 to 35.6 percent in 2016. It is true that much of Bangladeshi women's increased freedom in their personal lives today has to do with their financial independence: less dependence on the spouse for money means there's less of a need to remain tied to an abusive marriage.

In a paper titled "The Connection between the Family Cycle and Divorce Rates: An Analysis Based on European Data" published in 1974, the author looks at how industrialisation, urbanisation and rise in educational levels affect phases of the family cycle. The findings of the study, gleaned from data of European countries, hold a lot of relevance for industrialising countries even today where family cycles and roles of men and women are undergoing transformation. One of the findings is related to women's increased participation in the labour force which, as the author interestingly and astutely puts it, is due to the "professionalisation" of many tasks leading to a "separation of the private and the occupational spheres…Through more and more tasks being taken away from the family and professionalised, the area of women's tasks within the family has become considerably restricted. It thus becomes possible that the woman, deprived of her formerly abundant tasks, leaves the intrafamily sphere and goes out to work." Women's absorption into the labour force combined with a rise in life expectancy and decrease in the number of children was found to have a positive relationship with divorce rates.

However, a word of caution is necessary—and let's not jump to generalised conclusions. The above BBS data—which gives us a glimpse into marriage and divorce scenarios in urban and rural areas—does not give nearly enough information needed to analyse, for example, region-wise trends: what proportion of divorces taking place in urban and rural areas are due to marital conflict, torture, etc. Could it be that more urban women are filing for divorce on grounds of marital conflict while in far-flung rural areas more women are divorcing their husband alleging torture or physical violence or due to abandonment by their husband? An analysis that looks at the socioeconomic status and the reasons for divorce of individual couples could shed much light on the contrasting views men and women from different strata of society have on divorce. Given the frequency with which people are bombarded by headlines of women being tortured or killed for dowry—violence against women being so deeply embedded in society—especially in rural pockets of the country, people would perhaps be surprised to find the number of women filing for divorce on grounds of physical violence despite being financially dependent on their spouse.

Furthermore, the prevalence of child marriage in Bangladesh presents an unfortunate paradox: on one hand, girls as young as 15 (and even younger) are being forced into marriage while, on the other, more women are seemingly choosing to leave their marriage of their own volition. Just a thought: could there be women filing for divorce (included in BBS' statistics) who were victims of child marriage? In that case, isn't it true that divorce, for a woman who was coerced into marriage at an early age, represents a symbol of liberation as she is the one who took the decision to leave the marriage?

The way people look at and talk about divorce should be nuanced. True, age-old notions about divorce are slowly being shed. And women's higher decision-making power derived from their economic freedom is a major reason. But let's also start talking about the ways in which divorce can be prevented. A rising trend in divorce also means that there are increasing disruptions in familial harmony— a painful experience and a source of severe trauma for children that can have lifelong effects. Existing awareness campaigns such as those against violence against women and dowry—two big reasons behind women seeking a divorce in Bangladesh—could take on these findings to drive home their message. Extensive research that takes into account the social complexities of Bangladesh and resulting disaggregated data could also prove to be very useful in understanding the deeper causes behind the rise in divorce and the ways to prevent it.

Chapter 7

Recommendations and Conclusion

7.1 Recommendations

Ensuring women's rights to divorce is crucial for promoting gender equality and empowering women in Bangladesh. This set of recommendations aims to address the challenges faced by women of all religions when seeking divorce in Bangladesh. By implementing these recommendations, the government and society can work together to create a more inclusive and just legal framework that upholds women's rights.

1. REFORM PERSONAL LAWS:

Review and amend personal laws governing marriage and divorce across all religious communities to ensure gender equality and protect women's rights. This should include provisions for no-fault divorce, equal grounds for divorce, and fair distribution of assets.

2. RAISE LEGAL AWARENESS:

Conduct widespread public awareness campaigns to educate women about their legal rights to divorce, regardless of their religious background. These campaigns should focus on reaching rural areas, where women's access to information is limited.

3. STRENGTHEN LEGAL AID:

Establish and promote legal aid services specifically designed to assist women seeking divorce. These services should be accessible, affordable, and culturally sensitive, ensuring that women from all religious backgrounds can access legal support.

4. ELIMINATE DISCRIMINATORY PRACTICES:

Enforce existing laws that prohibit discriminatory practices against women in divorce proceedings. This includes addressing issues such as polygamy, dowry, and unequal child custody arrangements.

5. ESTABLISH SPECIAL FAMILY COURTS:

Create specialized family courts that are sensitive to the needs of women seeking divorce, regardless of their religious affiliation. These courts should be equipped with female judges, mediators, and support staff to provide a safe and supportive environment for women.

6. STRENGTHEN IMPLEMENTATION OF LEGISLATION:

Ensure proper implementation and enforcement of existing laws related to women's rights to divorce. This includes monitoring and holding accountable those who obstruct or deny women their rightful access to the legal process.

7. ENCOURAGE MEDIATION AND COUNSELING:

Promote mediation and counseling services as an alternative to lengthy court proceedings. These services should be available and accessible to women from all religious backgrounds, providing them with options for amicable resolutions.

8. SUPPORT ECONOMIC EMPOWERMENT:

Implement programs that promote economic empowerment for women, including vocational training, entrepreneurship support, and access to credit facilities. Economic independence can provide women with the means to make independent decisions, including seeking divorce if necessary.

9. FOSTER GENDER-SENSITIVE ATTITUDES:

Conduct awareness campaigns and educational programs aimed at changing societal attitudes towards divorce and women's rights. Foster a culture that respects women's autonomy and recognizes divorce as a legitimate choice for women seeking to end an unhappy or abusive marriage.

10. ENGAGE RELIGIOUS LEADERS AND COMMUNITY:

Collaborate with religious leaders, community influencers, and civil society organizations to promote women's rights to divorce within the framework of religious teachings. Encouraging

dialogue and interpretation that supports gender equality can help dispel misconceptions and resistance.

By implementing these recommendations, Bangladesh can take significant strides towards ensuring women's rights to divorce, regardless of their religious background. These steps will contribute to a more equitable society, empower women, and foster an environment where women can exercise their agency and make decisions about their own lives.

7.2 Conclusion

It is argued that Islam has given unfettered power to the husband to give divorce to his wife without any cause. But experience shows that greater suffering is endangered by the husband's withholding divorce than by his irresponsible exercise of this right. Under such conditions the power to release herself is the surest safeguard for the wife. No system of law can produce material happiness, but humane laws may at least alleviate sufferings. And when marital life is wrecked, the home utterly broken up by misunderstanding, jealousy, cruelty, infidelity, what greater boon can a spouse have to secure his/her liberty.[27] Divorce of course, a social evil in itself, but it is a necessary evil. It is better to wreck the unity of the family than to wreck the future happiness of the parties by binding them to a companionship that has become odious. That's why Quran permits divorce partly because to enable men to get rid of an odious union. It has shown in the dissertation that the judiciary has taken efforts to curb the practice of arbitrary, unilateral pronouncement of divorce by Muslim husbands, and affirmed the right of the woman to challenge such a divorce. There is no doubt that Muslim women have recourse to the courts to challenge arbitrary unilateral talaq, and hence arbitrary talaq becomes a non-issue if recourse to law is taken. However, many women are unable to take recourse to law due to lack of awareness, poverty, illiteracy, financial implications of litigation and community opposition against such a move. How can the judgements impact women's lives, when women themselves, and the communities they live in, believe that they have been legally divorced? The challenge then is to educate women living in communities about the legal position and enable their access to law, as well as to promote community awareness and acceptance of the law as stated through judgments.

[27] Asaf A. A. Fyzee, ibid, p.147.

Bibliography

1.	Abdur Rahman	Women in Shariah (Islamic Law)
2.	Ayang Utriza Yakin, Erin E. Stiles	Islamic Divorce in the Twenty-First Century A Global Perspective
3.	Asaf A. A. Fyzee	Outlines of Muhammadan Law
4.	Faustina Pereira, Sara Hossain, Shahnaz Huda	Revisiting Personal Laws in Bangladesh Proposals for Reform
5.	William Deavin	Christian Divorce and Remarriage the Gospel Myth and Truth

Case Reference

1. Abdul Aziz vs Rezia Khatoon (1969) 21 DLR 733
2. Dilruba Aktar vs AHM Mohsin 55 DLR 568
3. Janson v. Driefontein Consolidated Mines, Ltd (1902) Appeal Cases 484.
4. Md. Khan v. Shahmali AIR (1977), Cal, 90
5. Md. Serajul Islam Vs. Most. Helena Begurn & Ors 7 BLT (AD)-137
6. Mohd. Khan v. Mst. Shahmali AIR(1972), J.&K., 8
7. Mst. Sadiqa Begum v. Ata Ullah AIR (1933), 885.
8. Muhammad Ali Akbar v. Fatima Begum AIR(1929), 660
9. Pachan Rissi das vs Khuku Rani Dasi and others 50 DLR 47
10. Sayed Ali Newaz Grdezi vs. Lt. Col.Md Yusuf 15 DLR (SC) 9
11. Syed Ziauddin v. Parvez Sultana (1943) 210 IC 587
12. Zubaida Begum v. Sardar Shah (1971) KLT 663.