

Muslim Marriage Dissolution: A Study of Bangladesh's Legal Framework

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ABSTRACT

Dissolution of Muslim Marriage is regulated by divine injunctions, and statutory provisions. Although there are traditional and statutory provisions as regards dissolution of marriage but their practice, in essence, is not unquestioned. The termination of marriage cannot finally be treated in the case other than by death of either spouse. The purpose of the paper is to investigate traditional and statutory provisions regarding dissolution, and analyze them critically. Finally, the study will draw some speculations as to what extent and under what circumstances the provisions can be applicable.

The legal framework governing the dissolution of Muslim marriages in Bangladesh is based on both Islamic principles and statutory laws. It examines the primary modes of divorce recognized under Muslim law—such as *talaq*, *khula*, and *mubarat*—and how these are interpreted and regulated within the Bangladeshi legal system. The study focuses on the procedural requirements, the role of the Family Courts, and the impact of the Muslim Family Laws Ordinance, 1961. Additionally, it highlights the gender dynamics involved in accessing divorce and assesses whether the current legal framework adequately protects the rights of women. The article also discusses recent judicial interpretations and potential reforms to address inconsistencies and ensure equitable dissolution of marriage. By bridging religious doctrine and modern legal standards, this study provides a comprehensive understanding of how Muslim marriage dissolution functions within Bangladesh's socio-legal context.

Keyword: Muslim marriage, Divorce, Dissolution of marriage, Islamic law, Sharia law, Family courts.

INTRODUCTION

Marriage is a social institution. It creates relationship between man and woman. Muslim law considers it as a civil contract and not a sacrament. It creates various rights, liabilities and obligations between the contracting parties. Marriage registration is compulsory in Bangladesh, though non-registration does not make a marriage invalid. Marriage contract is dissoluble and through some ways it is being dissolved by the death of either party. It is natural one. But it may also be dissolved during the life time of the parties, either by the act of the husband or wife, or by mutual agreement, or by operation of law, or by a judicial order of separation, or it may be annulled.

The husband is empowered to dissolve marriage, but wife is not so empowered although, this being the position, a desirable dissolution having been taken place since its inception. The husband is given the right to divorce his wife, though, of course, arbitrary divorces are discountenanced. There is a saying of the Prophet (SM) to the effect that "the most detestable of lawful things in Allah's view is divorce." Similarly, the wife is given the right to ask for *Khula* in cases of extreme incompatibility though the warning is conveyed by hadith against too free exercise of this privilege, one of which says that women asking for *khula* will be deprived of the fragrance of paradise.

So the person in authority, including the Qazi, can order separation by *khula* even if the husband is not agreeable to that course. Of course the Qur'anic conditions must be satisfied that it is no longer possible for the husband and wife to live together in harmony and in conformity with their obligations.⁴ Now the Court is

empowered to dissolve marriage through khula under section 2(1x) of the Dissolution of Muslim Marriages Act of 1939. The following three legislation's have been playing a significant role to dissolve marriage.

- a) The Muslim Family Laws Ordinance, 1961
- b) The Muslim Marriages and Divorces (Registration) Act. 1974
- c) The Family Courts Ordinance, 1985

Forms of Dissolution of Marriage:

Preliminary:

Before going to discuss the forms of dissolution of marriage. Relevant portions of the three legislations dealing with the subject matter need to be cited, hence Ordinance VIII of 1961 (the Muslim Family Laws Ordinance, 1961) not affected: Where a family Court passes a decree for the dissolution of a marriage solemnized under the Muslim Law. the Court shall within seven days of passing of the decree, send by registered post a certified copy of the same to the appropriate Chairman referred to in section 7 of the Muslim Family laws ordinance 1961 (Vill of 1961), and upon receipt of such copy the Chairman shall proceed as if he had received an intimation of talaq required to be given under the said Ordinance

A decree passed by a Family Court for the dissolution of a marmaye solemnized under the Muslim law shall...

- a) not be effective until the expiration of ninety days from the day on which a copy thereof has been received under sub-section (2) by the Chairman, and
- b) be of no effect if within the period specified in clause (a) a reconciliation has been effected between the parties in accordance with the provisions of the Muslim Family Laws Ordinance, 1961 (VIII of 1961)

Talaq-(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.

Save as provided in sub-section (5), a talaq, unless revoked earlier, expressly or otherwise, shall not be effective until the expiration of ninety days from the day on which notice under sub-section (1).

Within thirty days of the receipt of notice under sub-section(1). the Chairman shall constitute an Arbitration Council for the purpose of bringing about a reconciliation between the parties, and the Arbitration shall take all steps necessary to bring about a reconciliation between the parties, and the Arbitration shall take all steps necessary to bring about such reconciliation.

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.

Dissolution of Marriage otherwise than by Talaq -- Where the right to divorce has been duly delegated to the wife and she wishes to exercise that 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, and so far as applicable, applicable, apply.

Registration of Divorce

- 1) A Nikah Registrar may register divorce affected under Muslim law within his jurisdiction or application being made to him for such registration
- 2) An application for registration of a divorce shall be made orally by the persons who has or have effective the divorce: provided that if the woman be pardanashin, such application made be by her duly authorized Wakil

3) The Nikah Registrar shall not register a divorce or 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.

4) Where the Nikah Registrar refuses to register a divorce, the person or persons who apply it for such registration may, within thirty days such refusal, prefer an appeal to the Registrar and the order passed by the Registrar on such appeal shall be final.

The above provisions have given a new shape to the laws relating to the dissolution of marriage. The death of the husband or the wife dissolves the marriage. The husband has got the right to dissolve it unilaterally but the wife does not have the right to dissolve the same by herself. Yet she has got only the right to dissolve it by khula and also by exercising the power of talaq delegated to her by khula and also by exercising the power of talaq delegated to her by the husband. The wife has also the right to file a suit in court for dissolution of marriage on various grounds under the Dissolution of the Muslim Marriages Act, 1939. And a suit to dissolve a marriage shall have to be filed in the Family Court which exercises the power to dissolve a marriage. Finally the Chairman as head of the Arbitration Council is the last. Thus ends the tussle. Of course, the Nikah Registrar may play such role.

To make a better understanding the following provisions of different forms of dissolution of marriage including the executors under specific heads are discussed below:

The Husband

The Wife

The Spouses

The Court

The Arbitration Council and

The Nikah Registrar.

The Husband:

The husband has an absolute power to dissolve the marriage tie at his will without assigning any reason. The forms of dissolution of marriage by the husband are, 1) Talaq, 2) Ila and 3) Zihar.

Talaq:

Preliminary:

The term talaq signifies the absolute power which the husband possesses of divorcing his wife at all times. It is the taking off of the marriage tie by appropriate words. Any Muslim of sound mind, who has attained puberty, may divorce his wife whenever he desires without assigning any cause. It may be oral or written. It may be classified as:

1. Talaq al-Sunna---

a) Ahsan (the most approved)

b) Hasan (approved)

2. Talaq al-Bida---

a) Three declarations, triple talaq

b) One irrevocable declaration.

Talaq al-Sunna:

This form of talaq is approved form, recognised by the Sunni and the Shia schools.

Ahsan (the most approved from):

This consists of a single pronouncement of divorce made during tuhr, period between menstruations followed by abstinence from sexual intercourse for the period of iddat. In a non-consummated marriage it may be made even if the wife is in her menstruations. This talaq may be revoked at any time during iddat. It dissolves marriage or becomes complete and irrevocable on the expiration of the iddat period.

Hasan(approved form):

It is consisted of three successive pronouncements during three consecutive periods of tuhr, purity during which there has been no sexual intercourse. It may be revoked at any time until third pronouncement is made. It dissolves the marriage tie when the third is pronounced

Talaq al-Bida:

Talaq al-Bida or al talaq al-bain or irrevocable talaq is of disapproved form, recognised only by the Sunni and not by the Shiadulent

Three declarations or triple talaq:

Three pronouncements are made by the husband in a single tuhr of the wife saying, "I divorce thee triply or thrice" or "I divorce thee, I divorce thee, I divorce thee" This is irrevocable divorce. it takes effect as soon as it is pronounced.

One Irrevocable Declaration:

A single and irrevocable pronouncement is made by the husband either during the period of tuhr or even otherwise to the wife saying, I divorce thee irrevocably.

Ila:

In Ila the husband swears not to have intercourse with wife for not less than four months and in pursuance of that oath he refrains from intercourse for that period; on expiry of four months

in Hanafi law.....marriage terminates

in Shia and Shafei the matter is to be referred to court for termination of marriage.

Zihar:

If a husband compares his wife to his mother saying, you are to me like the back of my mother, or you are to me like the belly, or thigh or pudendum of my mother or your head or your waist is like the back of mother, ¹⁸ zihar is established. Zihar does not operate termination of marriage, it only prohibits or forbids the matrimonial intercourse and also conjugal familiarity, such as, kissing or touching with desire etc. It is one of the grounds of dissolution of marriage, and to dissolve a marriage a suit is required. Of course, after husband's expiation they can lead the life of a husband and wife. There are various forms of expiation of zihar. Emancipation of a slave is one of the forms of it. Fasting for two months, or feeding sixty poor persons (when the husband is unable to undertake fast) are considered valid forms of expiation of zihar.

Iddat Period:

Iddat is observed to testify legitimacy of the child in womb of the mother the wife has to observe iddat if the marriage has been consummated. The duration of it is as follows

When the wife is (i) subject to menstruation--- three courses

(ii) Not so subject --- three lunar months

(iii) Pregnant--- until delivery.

In the case of pregnancy of the wife the duration of iddat will be until delivery or four months and ten days whichever is longer if the dissolution is on death of the husband.

The Wife:

The wife enjoys the right to dissolve marriage by paying compensation to the husband by khula. She can also sever a marriage tie exercising the power of talaq delegated to her, delegated divorce, i.e., talaq-i- tafweez by her husband. She has also the right to obtain a decree for the dissolution of marriage under the Dissolution of Muslim Marriages Act, 1939.

Khula

Islam, recognizing the weakness of human nature, has permitted the dissolution of marriage, and does not make it un- severable, condemning the spouses to a life of helpless despair. The Qur'anic legislation makes it clear that it has raised the status of women. Verse 2:229 of the Holy Qur'an confers a right and privilege on the wife to seek dissolution of marriage. Khula is thus a right conferred on the wife. The Holy Qur'an declared in Verse 2:228 that women have rights against men similar to those that men have against them according to the well-known rules of equity. In such a way it conferred the right of Khula on women as against the right of talaq in men. Verse 2:229 of the Holy Qur'an runs thus:

Divorce must be pronounced twice; then either retain them in honour or release them with kindness. And it is not lawful for you that you take back from women anything out of what you have given them unless they both fear that they cannot observe the limits imposed by Allah.

The word "khula" literally means to put off, as a man is said to khula his garment, when he puts it off. Verse 187, Chapter II of the Holy Qur'an recites "you are garment or apparel for them and they are garment for you", meaning that the husband is a garment for the wife and vice versa. "Khula", therefore, should mean the putting off or doffing of the cloak of marriage.

Khula takes place (i) on the mutual agreement or common consent of the parties or (ii) by the order of the Kazi or court. Where the husband disputes the right of the wife to obtain separation by khula, it can be ordered or by the Kazi against the will and consent of the husband. When a wife seeks khula from the Kazi, he is named as a judge and he is empowered to decide the matter, independent of and even without the consent of the husband. His authority to dissolve a marriage by khula, where the wife seeks khula, and where he is satisfied that the continuance of marriage tie is improper, harmful or likely to condemn the spouses to a life of adultery, sin and misery, and that the parties cannot keep within the limits of Allah, has no limitation of consent of the husband of his pronouncing a talaq. It has been highlighted in an earlier case that the wife is entitled to khula as of right, if she satisfies the conscience of the court that it will otherwise mean forcing her into a hateful union. In another case the High Court Division of the Supreme Court of Bangladesh has held that if it so appears that the husband and wife cannot live together in peace and amity and the wife offers consideration for the dissolution of the marriage she is entitled to get it dissolved by way of "khula".

Consideration:

The Holy Qur'an implies that the wife has to pay compensation to the husband in order to obtain dissolution of marriage by khula. According to Hedaya, it is abominable on the part of the husband to take from his wife

more than what he had given or settled upon her, namely, her dower. If the husband takes more than the dower it is strictly legal, because the wife agrees to give more than what she received in lieu of the marriage. Of course, this is a check on the wife's exercise of the right of khula that, as a general rule, she cannot retain the benefits, i.e., the benefits which have been conferred on her, by the husband as a consideration of marriage.

Talaq-i-tafweez or Delegated Divorce:

The husband's power to dissolve marriage may be delegated to some third person or even to the wife herself. In such a case under certain specific stipulated conditions or grounds the third person or the wife may dissolve the marriage. This is called Talaq-i-tafweez or delegated divorce. When such an agreement is made the wife after happening of any of the contingencies, repudiated herself to the same extent as if a talaq had been pronounced by the husband. Actually this is not the wife's power to dissolve marriage by the wife herself, but so long the delegated power of the husband remains to her, she has every right to exclude it by herself.

The Dissolution of Muslim Marriages Act, 1939:

The Dissolution of Muslim Marriages Act, 1939 provides the rights to the Muslim married women to have her marriage dissolved on the certain and specific grounds. Prior to the Act the right of the wife to terminate a marriage was very much restricted and was confined to certain specified conditions and contingencies. The grounds only they enjoyed were i) talaq-i-tafweez or khula or mubaraat, without intervention of the court; ii) a) option of puberty b) impotency c) li'an d) cruelty or habitual ill-treatment, although this was somewhat uncertain, with the intervention of the court. To consolidate and clarify the provisions of Muslim law relating to suits for dissolution of marriage by women married under Muslim law this Act was passed. It provides that a woman married under Muslim law shall be entitled to obtain a decree for the dissolution of her marriage on one or more of the certain ground those are:

1. Missing husband: If the husband's whereabouts have not been known for a period of four years;
2. Failure to maintain: If the husband has neglected or has failed to provide for her maintenance for a period of two years;
3. Imprisonment: If the husband sentenced to imprisonment for a period of seven years or upwards;
4. Failure to perform marital obligations: If the husband has failed to perform, without reasonable cause, his obligations for a period of three years,
5. Impotency: If the husband was impotent at the time of marriage and continued to be so;
6. Insanity, leprosy, venereal disease: If the husband has been insane for a period of two years or is suffering from leprosy or a virulent disease;
7. Option of puberty: If the marriage has been given by the father or other guardian before her attaining the age of fifteen years and she repudiated it before attaining the age of the eighteen years provided that the marriage has not been consummated;
8. Cruelty: If the husband treats her with cruelty, that is to say --
 - i. habitually assaults her or makes her life miserable by cruelty of conduct even if such conduct does not amount to physical ill-treatment, or
 - ii. Associates with women of evil repute or leads an infamous life, or
 - iii. Attempts to force her to lead an immoral life, or
 - iv. Disposes of her property or prevents her from exercising her legal rights over it, or

v. Obstructs her in the observance of her religious profession or practice or

vi. If he has more wives than one, does not treat her equitably in accordance with the injunctions of the Qur'an.

9. Any valid grounds under Muslim law: Any other ground which is recognized as valid for the dissolution of marriages under Muslim law.

The Spouses:

Mutual agreement or common consent of both the parties to the contract of marriage that is the husband and wife may dissolve the marriage tie without intervention of a court in the following forms: (1) Khula and (2) Mubaraat.

Khula:

Khula takes place on the mutual agreement or common consent of both the husband and the wife. As a matter of fact Khula is applicable by wife on fulfillment of conditions imposed by the husband. In the sense it is observable that Khula cannot be effective unless the husband consents to that. From this practicable on the basis of mutual consent of the spouse. Finally, whatever it is, Khula takes place without intervention of the court.

Mubaraat:

Mubaraat denotes the act of freeing one another mutually. When the divorce is effected by mutual consent and with the desire of both parties, it is called Mubaraat. The husband or the wife may make an offer for Mubaraat and thus dissolves marriage. Under Sunni law Mubaraat is one kind of Khula. Where Khula takes place as a result of mutual consent of the spouses, then it is technically called Mubaraat. In this case no reference to Kazi is necessary. Under Shia law it is distinct proceeding.

The Court

The Court may pass a decree dissolving marriage and also declare a marriage to have been annulled or abrogated or rescinded. There are so many grounds on which the decree of a court is available. As per provisions of the Dissolution of Muslim Marriages Act, 1939 a Muslim wife is entitled to obtain a decree for the dissolution of her marriage. This Act contains some very specific grounds including other valid grounds for dissolution of marriage under Muslim law on which the court can pass a decree for dissolution of marriage.

The Family is established under the Family Courts Ordinance, 1985 which is empowered to entertain, try and dispose of suits relating to dissolution of marriage (also restitution of conjugal rights, dower, maintenance, guardianship and custody of children). In disposing of a suit for dissolution of marriage the Court will have to follow the provisions of the Family Courts Ordinance, 1985. The Family Court may pass a decree for dissolution of marriage on ground of lian or on any one or more grounds contained in the Dissolution of Muslim Marriages Act, 1939 which covers so many grounds containing "any other ground which is recognized as valid for the dissolution of marriages under Muslim law" along with some specific grounds in it.

The Arbitration Council and the Nikah Registrar

The dissolution of marriage by the husband or exercising delegated power by the wife or by the spouses or by a decree of a Family Court is no effective unless the compliance of the mandatory provisions of section 7(1) of the Muslim Family Laws Ordinance, 1961 regarding the 36 and delivery of notice or copy of decree of such divorce to the Chairman," expiration of 90 days from such delivery under section 7(3) of the Muslim Family Laws Ordinance, 1961 or from the day on which a copy of decree of divorce has been received under section 23(2) of the Family Courts Ordinance, 1985. Within thirty days of the receipt of written notice or copy of decree of divorce the Chairman has to constitute an Arbitration Council to bring about reconciliation between the parties and also he has to take all other necessary steps for bringing about a reconciliation of the matter.

Although the non-compliance with the provisions of section 7(1) of the Ordinance regarding delivery of notice of copy of divorce to the Chairman makes talaq legally ineffective but the failure of the Chairman to constitute an Arbitration Council does not make the divorce ineffective.³⁷ Failure of the Chairman to constitute an Arbitration Council or that of a duly constituted Arbitration Council to take necessary steps to bring about reconciliation is thus inconsequential.

Validity of divorce without notice to the Chairman has recently been decided by a Division Bench of the High Court of the Supreme Court of Bangladesh. The Court has decided that the registration of divorce under section 6 of the Act finally dissolves the matrimonial tie, and non-service of notice under section 7 of the Muslim Family Laws Ordinance, 1961 upon the Chairman cannot render the divorce ineffective if the conduct of the husband appears to be so, that is the husband with an intention not to revoke it again purposely avoided to give notice to the Chairman of the Union Council under section 7 of the Ordinance.

In *Gauhar v. Mst. Ghulam Fatima* the Court held that the main object of section 7 of the Ordinance to prevent hasty dissolution of marriage by talaq pronounced by the husband unilaterally, has not been defeated by non-giving of the notice. Section 7 of the Ordinance is obviously for the benefit of the female.

In the context of the Muslim Family Laws Ordinance, 1961 if the husband does not served notice, the Chairman, Arbitration Council has no authority to take action in connection of the divorce. As regards the Muslim Marriages and Divorces (Registration) Act, 1974 registration of divorce depends entirely on the attitude of the husband or the wife as the case may be, that is the husband or the wife does not register the divorce with Registrar there is nothing to take action by the concerned authority like the Registrar in connection with the divorce.

Practically speaking the dominance of husband prevails in respect of divorce by giving no notice of divorce to the Chairman, Arbitrary Council or Nikah Registrar. As a result wife becomes helpless by such unscrupulous attempts of the husband who can keep her in hanging Section 23(2) of the Family Courts Ordinance, 1985 appears to be applicable towards a decree for the dissolution of marriage solemnized under the Muslim law. In essence the copy of decree of divorce served to him. It is under law and practice by the party obtained. The party needs to file a fresh suit for its execution and has to observe several formalities therefore. But in the case of decree for dissolution of marriage the party does not require to file and observe likely. The court seems to take liability of executing that decree by serving it to the Chairman, Arbitration Council within 7 days. It is an effective development for the party obtained the decree.

CONCLUSION

Dissolution of Muslim marriage is frequent in Bangladesh. Traditional and statutory provisions are seen to be applicable to this end If the provisions are properly followed, neither the wife nor the husband may suffer. But it depends entirely on the role of the machinery concerned and the attitudes of the spouse as well. In the society like ours, there is a problem to execute law even in the form of court's decree which is made ineffective by unscrupulous activities of the parties. Finally, the decree of dissolution of marriage passed by the Family Court seems to be in fractious by influence, pressure, inducement, threats, and interferences of the persons convicted, the decision of the Family Court will be effective theoretically other than practically. Unless and until the stature provisions are properly enforced, neither of the couple, the wife particularly in the case of Bangladesh, can get remedy against woes and sufferings inflicted by the husband.

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