

## **Divorce in Muslim Families: A common phenomenon, Bangladesh perspective**

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### ***Abstract***

*Divorce is the termination of marital bond. The divorce rate among the Muslims in Bangladesh increased dramatically since 2000. The common reasons for divorce include wedding out of family traditions, marrying as a teen, unemployment, low education levels, non consenting marriage, cohabitation and premarital birth, bringing children from a prior relationship to the marriage etc. Moreover, interpersonal reasons of divorce include domestic violence, no confidence to each other, frequent conflict, lack of morality, infidelity, perceived illicit relationship problems, weak commitment to marriage and low levels of love as well as trust between spouses. An increasing of risk factors can lead to divorce through two paths i.e. (i) a high level of conflict and unhappiness and (ii) a low level of commitment to each other. This research continued to show that increasing number of divorce children with divorced parents score lower on a variety of emotional, behavioral, health, social and academic outcomes. Adults with divorced parents obtain less education, have lower levels of psychological well-being, report more problems with their own marriages and they are less close to their parents and are at greater risk of their own divorce. Moreover, divorced individuals show signs of depression and anxiety, more health problems, more substance abuse and a greater risk of overall mortality. After a few years, most individuals had adapted well to their new lives, although a significant minority remained seriously troubled. However, some remedial process can play vital role in reducing the divorce by education classes for the couple/parents and to introducing Mediation before divorce by the family member or court and make effective law to administer pre-divorce and post divorce mechanisms respectively for the well-being of the couples, divorcee, children and to the society at large. So, there is an urgent need to reform the present procedure and structure of divorce mechanisms in Bangladesh. This paper endeavors to recognize these reasons for divorce, effects in life and society as well as suggests the way out by taking remedial measures.*

**Keywords:** *Marriage, Divorce, Islamic Shariah Law, Mediation and Reforms.*

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## **Introduction**

An indispensable means of marriage is to lead a conjugal life having better understanding between the couples through love and emotion to each other. Divorce is the ultimate goal of terminating the marital bond. The Arabic term for divorce is Talak which is the most hatred legally permitted work in the domain of Islamic Shariah Law. As per Mahomedan Law, there are 3(three) types of Talak i.e. Talak-e-ashan which consists of single pronouncement of divorce during Tuhr (period between menstruations); or Talak-e-hasan, which consists of three pronouncements made during the successive Tuhr and no intercourse could be taken place between the Tuhr, and Talak-ul-biddat or Talak-i-badai popularly known in Bangladesh as Talak-e-Bain which consists of three pronouncements made during a single Tuhr either in one sentence or in three sentences meaning a clear intension to divorce saying, “I divorce thee irrevocably” or “I divorce thee, I divorce thee, I divorce thee.” The spirit of Islamic Shariah Law discourages the practice of Talaq. Thus it has been increased among the Muslims in Bangladesh day by day. It becomes common phenomena for the Muslims and its present trends are gradually higher up than the past decade. The common reasons for divorce include wedding out of family traditions, marrying as a teen, unemployment, low education levels, being poor, non consenting marriage, cohabitation and premarital birth, bringing children from a prior relationship to the marriage, second to fourth marriages and wives’ employment have negative consequences that counterbalance one another resulting in no net consequence on marriage. Moreover, interpersonal reasons of divorce include domestic violence, no confidence to each other, frequent conflict, lack of morality, infidelity, perceived illicit relationship problems, weak commitment to marriage and low levels of love as well as trust between spouses. An increasing of risk factors can lead to divorce through two paths i.e. (i) a high level of conflict and unhappiness and (ii) a low level of commitment to each other. In the result cases are increasing phenomenally and huge burden mount up in the families and most upon the children at large. Moreover, divorced individuals show signs of depression and anxiety, more health problems, more substance abuse and a greater risk of overall mortality. After a few years, most individuals had adapted well to their new lives, although a significant minority remained seriously troubled. Sometimes divorce becomes inevitable due to non adjustment and gaps in understanding in the conjugal life of spouses. Problems of divorce among the Muslims now have been emerged as a national crisis in Bangladesh. This crisis has multiplier impact in negative manner on public and social life. There should be thorough research study on divorce in specific with a view to establishing good personal life.

## **Objective of the Study**

On this backdrop, the present study with a view to minimizing or eradicating the divorce among the Muslims in Bangladesh aims at (i) analyzing the reasons of divorces, (ii) evaluating the problems identified by conducting survey, (iii) exploring the current status of divorce, (iv) identifying the problems in ensuing divorces and (v) suggesting measures to minimize the existing problems.

## **Methodology**

Multiple methodologies will be used in this study to ensure its validity, reliability and objectivity. These primarily include: (i) Case study; (ii) experts consultation, (iii) content analysis likely Books, Internet, Newspapers, Journals, Statutes, Charters, Law Reports, Judgments, Minutes of Judicial Conference and Researches on Judicial Reforms; (iv) Observation and Participatory method and so on.

## **Discussion**

Divorces also increasing the litigations and vice versa, both are causing the violation of human rights and to minimize the alleged problems among the Muslims in Bangladesh, a new device of law keeping priorities of Islamic personal law needs to be chalked out.

## **Causes of divorce identified by the Survey**

A minuscule field survey conducted upon 200 Muslim males and females in urban and rural area specially in Dhaka City and Manikgonj District of Bangladesh. Most of them were married couples. The basic questions were (i) whether you support divorce, (ii) who is more responsible for divorce and (iii) what is the main reason of divorce? However, the survey pointed out some reasons for the divorce among the Muslims, which cover both rural and urban areas as well. These are as follows

### **In respect of question (i)**

- (a) 98% Women do not support divorce or separation;
- (b) 85% Men do not support divorce;

### **In respect of question (ii)**

- (a) 99% Women said the opposites are mainly responsible for conducting divorce;
- (b) Only 15% Men said the opposites are more responsible in respect of separation;

### **In respect of question (iii)-**

- (a) Illicit relations with 3<sup>rd</sup> party are 70%;
- (b) Committing custody due to litigations are 15%
- (c) Early marriages are 8%;
- (d) Other reasons are 7%.

However, it is noticeable that the ratio of divorce in urban area is more than the rural area and the members of the family of victims are being blind to shift responsibility to the opposite party whether s/he male or female. Most of the participants in the survey are not aware of giving reasons to their own answers and as such accurate pictures may come through an observation of whole area of Bangladesh in respect of education, culture and effective role of the Courts as well as application of Laws in Bangladesh.

### **Case Study: Litigations failed to control divorce!!!**

Most of the researches and books raise finger against the males as to divorce mostly causes in the family life. But I dare to say that some reasons arise from the part of the female or from the corner of the female members of the family whether it may be the bride or bridegroom. Moreover, painful experiences of divorce incriminate the innocent persons of the family. The divorce in our country causes of violation of human rights.

### **Cases in point**

- i. One Most. Shahriar Khanam Mukti and Kazi Sadrul Alam married themselves as per the provisions of the Islamic Shariah Law through the registered Kabinnama on 19/07/1989 and the amount of dower was fixed at Tk.20,001/=(Twenty thousand and one taka) only and the marriage has been consummated between themselves. Dower money to the tune of Tk.10,000/= only paid at the time of wedding in terms of ornaments and the rest of the money was left out as prompt dower. During the conjugal life, 01 daughter Shahrin Sultana Sayma and 2 sons Kazi Abu Sayem and Kazi Farhan Shahriar Tanim were born out of their wedlock. Thereafter, Kazi Sadrul Alam who served in Bakhrabad Gas Field demanded dowry on several occasions and tortured his wife. Finally, on 05/05/2006 he ousted his wife with the children from his house. Hereinafter, Shahria Khanam demanded her due prompt dower and maintenance as well as the maintenance of her children, thus the Kazi Sadrul refused to pay the dower and maintenances as a whole. Then Shahria Khan and children were leading miserable lives in the parental house of her and got decision and filed a family suit being No.26 of 2006 before the Family Court, Sadar, Sirajgonj. On the other hand, Kazi Sadrul Alam appeared in the suit and submitted the written statement stating, *inter alia* that used to lead whimsical life and she did make rough behaves towards him and he tried to mend her ways, thus she attacked him with the blow of Bati and Daa (i.e. the instrument of cutting fish or vegetables) and as such, it was very hardships for him to lead conjugal life with her security of his life and then he took decision to curtail the marital bond and he gave Talaq-e-Bain to his wife on 17.05.2006 and finally he denied to provide the dower money and maintenance as well.

Thereafter the Family Court gave verdict after analyzing all the contesting evidences and materials in favor of Shahria Khanam Mukti by declaring Talak as valid in accordance with law. The painful scenario of case were the plaintiff got married while she was a student of class IX and her study broke down, her father died, her mother got shelter in her son's house. The defendant was neither willing to take the responsibility nor the children willing to go to their father with step-mother. The 1<sup>st</sup> daughter was a student of class X, the 2<sup>nd</sup> and 3<sup>rd</sup> sons were the students of class VII and III respectively as well as the plaintiff was simply house-wife having unwanted shelter to her brother's house. Then the Court directed the defendant to provide nursing costs to the plaintiff due to his children's look after, sheltering and education. Thus the preferred Appeal against the verdict of trial Court and the Appellate Court upheld the verdict of trial Court except nursing costs towards the plaintiff. Hereinafter, the defendant stopped the maintenance to his children claiming them adult and accordingly the children of them preferred Civil Revision before the Hon'ble High Court Division of the Supreme Court of Bangladesh which is pending yet to see the light of justice.

- ii. Parvin Akter and Mintu Miah got married themselves as per the provisions of the Islamic Sharia Law through the registered Kabinnama on 15/04/2000 fixing the dower of at Tk.40,000/= (Forty thousand taka) only and marriage has been consummated between themselves. During their conjugal life one daughter and one son namely Nishu Akter (now age about-6 years) and Siyam (age about 3½ years) were born. Thereafter, Mintu Miah demanded dowry to Parvin Akter and tortured her and he drove away her with children to the parental house of Parvin Akter. Then she filed two cases one for dowry in the Criminal Court and another for Maintenance and Dower before the Family Court of Bhola. On the other hand, Mintu Miah filed one case before Family Court for restitution of their conjugal life and also appeared in the suit of Maintenance and Dower submitting written statement stating, *inter alia* that there is no reason to institute this suit, the suit is not maintainable in its present form and manner, the suit is a test suit only. The real facts are that the plaintiff was disobedient towards him and after their marriage she led immoral life and after taking all possible steps to rectify her, the he curtailed their marital bond by giving her Talaq-e-Bain on 26/05/2009 and he has sent the notice of Talaq to her and to the local Chairman. He did not demand any dowry to her and she resided with her mother willingly and accordingly she was not entitled to have the dower money and maintenance as well.

Thereafter the Family Court gave verdict sifting all the relevant evidences and documents in favor of Parvin Akter declaring the

Talaq illegal and not binding upon her as the notice of Talaq has not been served upon her and to the local Chairman for reconciliation of marriage between them. A notice of Talaq must be given to opposite party as per section 7 of the Muslim Family Laws Ordinance of 1961. The intention of the Legislature while enacting the said Ordinance was to prevent hasty dissolution of marriage and a duty is cast upon the husband to give notice under section 7 of the said Ordinance. If the husband failed to do so intentionally or purposely the divorce will not be effective till to eternity. Finally they started conjugal life again.

- iii. Another instance out of several cases that Jesmine Sultana, student of Class VII, got married with Akter Hossain under the pressure of parents. Akter Hossain used to live in Saudi Arabia as a Labor and the age difference between them was almost 20 (twenty) years and moreover he was handsome for money then his appearance. After 7 (seven) days of marriage she returned to her parental house claiming that Akter Hossain tortured her mentally and physically. Then Akter Hossain tried to solve the issue through guardians but failed and then he filed a suit for restitution of conjugal life before the Family Court of Manikgonj. After getting notice of the same she firstly divorced him and secondly she filed a suit for dower and maintenance for *heriddat* period. Then Akter Hossain made appearance before the Court and submitted written statement stating *inter alia* that the plaintiff has love affair with another smart guy and their marriage has not been consummated at all. After contesting hearing the learned Family Court dismissed the suit of the plaintiff declaring the Talak as valid in the eye of law.

### **The Roots of the Problem**

Marriage of the Muslims has been termed as a civil contract. It is patently guided by the Muslims personal laws which by and large are and were immune from the provisions of the Constitution. The breach of such contract has been culminated into divorce. The divorce is increasing due to deviation from the spirit of Muslims personal laws. Legal scholars should identify the roots of the principal causes of divorces among the Muslims in Bangladesh. The main causes of divorce are as follows:

#### **A. The common reason for divorce includes**

(i) Marrying as a teen, (ii) Non consenting marriage, (iii) Wedding out of family traditions, (iv) Unemployment of husband, (v) Low education levels, (vi) Being poor, (vii) Cohabitation and premarital birth, (viii) Second to fourth marriages, (ix) Wife's employment and (x) Litigations, etc.

#### **B. Interpersonal reason of divorce includes**

(i) Perceived illicit relationships or extra marital affairs, (ii) Domestic violence, (iii) No confidence to each other, (iv) Frequent conflict, (v)

Lack of morality, (vi) Infidelity, (vii) Weak commitment to marriage and (viii) Lack of accountability of the spouses leading to low levels of love and trust between them.

### **Analyzing the Reasons of Divorce**

The reasons of the problem are so inter related. One problem creates others. If we consider the facts and consequence of the aforesaid 1<sup>st</sup> case it is manifested that a teen age girl student of class IX had been compelled to marriage and she took birth within her teen age and after having 3 (three) children became full-fledged housewife without any employment and on the other hand, her husband a highly paid up service holder who lost interest to his wife day by day to have another wife. Dilemma and climax of low love started between them and consequently they imposed the sword of illicit relations to each other and the members of their parental families took their own side. In the result, litigations started to an unending point. The children lost their father's love and affection from their early life and their last hope turned into an end while the Judge of the Family Court asked them, "To whom do you want to reside? the elder son of class VII replied, we want both." The Judge was crying but ultimately declared the Talak pronounced by husband was valid in the eye of law. An almost illiterate divorcee started a new life having only at BDT 10,000/= as dower money with 3 children and there was no shelter of her own.

There are many instances that due to personal reasons husband and wife started litigation. Sometimes under the instigation of the parents or ex-lover the wife filed case under section 4 of the Dowry Prohibition Act, 1980 or under section 11(Ga) of the Nari-O-Shishu Nirjatan Daman Ain, 2000 (as amended in 2003) alleging that the husband drove away her by demanding dowry and torturing upon her person. The Court due to prohibit or daman of dowry applied mind to send the accused persons including parents and relatives of the husband to jail custody for a certain period likely 7 days to 3 months which most of the occasion resulting into divorces.

Most of the survey shows that after promulgation of the Nari-O-Shishu Nirjatan Daman Ain, 2000 the litigations among the husband and wife increased tremendously vice versa the divorces. In 2014 there were 127 petition cases and 960 trial cases pending before the Nari-O-Shishu Nirjatan Daman Tribunal, Manikgonj; whereas in November 2017 there are 610 petition cases and 1419 trial cases pending before the said Tribunal. The result of short survey also disclosed that divorces are increasing more due to extra marital affairs of the husband or wife and the husbands are more responsible for divorces and the wives are more responsible for bringing litigations. Now-a-days, it becomes a fashion out of passion resulting common phenomena for the Muslims perspective Bangladesh.

### **Impacts of Divorce upon the Family and Society**

Sometimes divorce becomes inevitable due to non adjustment and gaps in understanding in the conjugal life of spouses. Problems of divorce among the Muslims now have been emerged as a national crisis in Bangladesh. This crisis has multiplier impact in negative manner on personal and social life. An increasing of risk factors can lead to divorce through two paths i.e. (i) a high level of conflict and unhappiness and (ii) a low level of commitment to each other. In the result cases are increasing phenomenally and huge burden mount up in the families and most upon the children at large. Moreover, divorced individuals show signs of depression and anxiety, more health problems, more substance abuse and a greater risk of overall mortality. After a few years, most individuals had adapted well to their new lives, although a significant minority remained seriously troubled. Moreover, the children with divorced parents score lower on a variety of emotional, behavioral, adaptation, health, social, and academic outcomes. Adults with divorced parents obtain less education, have lower levels of psychological well-being, report more problems with their own marriages are less close to their parents and are at greater risk of their own divorce. Most of the children of divorced family have pinched on stress, coping, risk and resiliency. The short-term stresses and the long-term strains increase risk for children. They also suffered by lower well-being include declines in household income, poor psychological functioning of resident parent, ineffective parenting, loss of contact with nonresident parent, continuing conflict and lack of cooperation among parents. Even earlier divorce any one of the parents curtail the child's well-being. There should have religious values in life and aid of law on divorce in specific with a view to establishing good personal and social life.

### **Recommendations**

Some remedial courses of action can play vital role in reducing the divorce by education classes for the couple/parents and to introducing Mediation before divorce by the family member or court and make effective law to administer pre-divorce and post divorce mechanisms respectively for the well-being of the couples, divorcee, children and to the society at large. So, there is an urgent need to reform the present procedure and structure of divorce mechanisms in Bangladesh. Some suggestive measures are given below to be taken into account for reducing the rate of divorce of Muslims in Bangladesh perspective:

### **Digitalized Marriage Registration**

The Muslim Law of Marriage permitting plurality of wives but prohibiting plurality of husbands providing strict conditions which



negated the polygamy for the male. Thus year's together situations prevailing as to suppression of facts in respect of more than one wife and consequently some marriages got dissolved due to breach of trust from the part of husband. There should have matrimonial web-site to view the previous record of bride and bridegroom in respect of date of birth and marriage. So, digitalized marriage registration can make the covenant of marriage more effective, accountable and transparent.

### **Family Court should be separated**

A separate administration of the family court may be a way out in coping with the present family litigations. This may happen in any or more of the following ways:

- a. In every District there should have more than one exclusive family court.
- b. A judge of family court cannot sit for other jurisdiction.
- c. A family court will have to spend more time for mediation and reconciliation between the husband and wife.

### **Effective Legislative measures should be taken**

The termination of marriage may be solemnized by the act of the party or by judicial process. In case of 1<sup>st</sup> category the husband has got free license to shoot out the marital bond and due to arbitrary exercise of power to dissolution of marriage the wife becomes helpless in the eye of the society. So, there should have proper law to have sanction before executing talaq except mutual or consented talaq. Effective Legislation should be adopted for the following steps into consideration:

- i. The Village Court /Office of Councilors can play a vital role for reconciliation having prospective notice of talaq from either party.
- ii. If the Village Court/Councilors will fail to take measures of reconciliation then the Family Court after due mediation between the parties will give permission to terminate their marriage after realization of dower money and maintenance.
- iii. Finally the Nikah Registrar will make registration of Talaq within the stipulated time given by the Family Court.

### **Motivational Seminars and Advertisements**

The motivational seminars and symposium should be arranged by the Government in every Union/Upazila and District levels in Bangladesh. The Government and the social organizations should display motivational advertisements against divorces and its effects.

### **Role of the Civil Society**

The members of Civil Society includes Judges, Teachers, Advocates, Journalists et cetera can make a vital role in reducing the divorce by arranging education classes for the couple/parents and to introducing

A common phenomena for the Muslims perspective Bangladesh

Mediation before divorce by the family member or court and make effective law to administer pre-divorce and post divorce mechanisms respectively for the well-being of the couples, divorcee, children and to the society at large.

### **Accountability of Husband**

The established tradition of joint family has been decayed day by day. In a joint family the senior members of the family could play effective role upon the junior members irrespective of marital bond and life styles. Thus in the unitary form of family a husband is the key player to run his family except in certain cases. It is a common phenomenon that a husband enjoys rampant authority to liquidate the marriage under the Quoranic law. Moreover the husband has duty towards his wife as the Gracious and Almighty ALLAH has declared in Surah An-Nisa (4:4) that, “And give to the women (whom you marry) their Mahr (Obligatory bridal-money given by the husband to his wife at the time of marriage ) with a good heart; but if they, of their own good pleasure, remit any part of it to you, take it, and enjoy it without fear of any harm (as ALLAH has made it law )”. However, the person who has unparallel power to dissolution of marriage, the responsibilities shifted more upon him. The husband has to bear more duty than the wife unless equal situation live to tell the tale between them. Any misconduct committed by a husband makes him liable to be accountable to his own conscience and society at large.

### **Accountability of Wife**

Unlike husband there is the modest accountability of the wife who bears more tolerance to maintain family bond. A wife or mother can bear the pangs of a child more than the father. The wife also maintains the chain to socialize the members of family and friends. She has to bear the internal administration of family unless required external necessity. Even today, most of the family life is running smoothly due to the utmost sacrifice of the wife.

### **Ends demanded happy life of couple**

Couples' craving for happy life ends into crying by unwanted divorce. Anyway, seeing happy life, the mother's care is very essential for a child to make the flesh and blood in building a shining life. The contributions of a mother to build up the children is more invaluable then the father. The mother always uses the inner side of her love and affection towards her children whether the father has active role in financial matters to come them into the light. For maintaining happy life the wife has to spend the most priceless time of her life during the bonding of marriage. In the perspective of Bangladesh, the husband has enough opportunities even to marry a teen age girl whereas, the divorcee have no such opportunities to marry a young boy. Moreover, she is tied with bondage

of love to her children and she never thinks to marry another person leaving her affectionate children. Easy access to happy life is nothing but a chronicle of Gold-deer. However, in order to establish happy conjugal life both parties have to invest sacrifice to increase love and affection to each other. So, substantial reforms required to Muslim Family Laws in respect of divorce, dower, maintenance and prohibition of dowry as well as procedural laws to establish peaceful family life.

### **Conclusion**

The archives of life i.e. a parents' son/daughter becomes husband/wife of someone who becomes parents again of son/daughter respectively to become the husband/wife of someone again. Talaq breeds intolerance in personal and social life. The Muslim husband enjoys an arbitrary and unilateral power which most of the time becomes violation to the Islamic Injunctions in respect of Talak. Divorce in Muslim community has reached a point where it has become a factor of injustice, a violator of human rights. The faces of the children of a divorced couple remind us the story of 'A Mother in Manville' by William Somerset Maugham and the silent crying and craving of Jerry trembles the heart of the world again and again.

### **References**

- Bhattacharjee, A.M. (2017). Matrimonial Laws and the Constitution, Second Edition by Ruma Pal, Former Judge, Supreme Court of India; Published by Eastern Law House.
- Mulla, D. F. Principles of Mahommedan Law, 20<sup>th</sup> Edition.
- Momen, N. Muslim Ain, 1<sup>st</sup> Edition, Published by Mollick Brothers, 38/Bangla Bazar, Dhaka, Bangladesh.
- Amato, P. R. (2010). Title Research on Divorce: Continuing Trends and New Developments. Journal of Marriage and Family: 650-666
- <https://www.quora.com>, last viewed on 26.11.2017.
- <https://www.google.com>, last viewed on 28.11.2017.

### **Case References**

- Judgment and Decree dated 21.07.2008 in Family Suit No.26 of 2006 of the Family Court, Sadar, Sirajgonj.
- Mohd. Ahmed Khan Vs. Shah Banu Begum, AIR1985 SC 945; (1985)2 SCC 556, 1985 CrLJ 875.
- Danial Latifi Vs. Union of India (2001)7 SCC 740; AIR 2001 SC 3958; JT 2001(8) SC 218.
- Kazi Rashed Akhter Shahid ( Prince ) Vs. Rokshana Chowdhury ( Sanda ), 58 DLR(2006), Page-274.
- Hefzur Rahman Vs Shamsun Nahar Begum, 51 DLR (AD)(1999) Pg-172.

