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Muslim Women's Right to Divorce and Gender Equality Issues in Bangladesh: A Proposal for Review of Current Laws

By Shahnewaj Patwari¹ and Abu Noman Mohammad Atahar Ali²

Abstract

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

Keywords: Right to divorce of Muslim women, Gender equality, Methods of divorce, Domestic violence, Extra-marital affairs, *Sharia* law, Statutory laws of Bangladesh.

Introduction

Unlike the matrimonies in the Hindu or Christian community, Muslim marriage is considered as a civil contract.³ The religious, spiritual and social significance associated with these contracts, conversely, are higher compared to any other civil contracts. Similar to other civil contracts, Muslim marriages can be relinquished by adhering to specific rules and regulations. The entire procedure of the dissolution of marriage is provided by both *sharia* law and the statutory

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³ Syed Ameer Ali, "*Mahomedan Law*", (New Delhi: Himalayan Books: 1985), Vo. II, 5th edition, 272. Law Lectures (1873) in the case *Abdul Kadir vs Salima and Anr.* (1886) ILR 8 All 149. According to him; marriage among Muhammadans is not a sacrament, but purely a civil contract; and although it is solemnized generally with recitation of certain verses from the Quran, yet the Muhammadan law does not positively prescribe any service peculiar to the occasion. A marriage between a Muslim male and a Muslim female is not a sacramental marriage but a civil contract. *Anwar Hossain vs. Mamata Begum* 19 (1999) BLD 435.

laws of Bangladesh. The jurisprudence of civil contract sets both the parties with equal authority for the termination of the contract. However, neither sharia law nor the statutory laws of Bangladesh administer this equality to women in the case of judicial separation. Critical inspection of *sharia law* regarding the divorce within its various forms such as *talaq*⁴, *khula*⁵, *mubarat*⁶, *tawfiz*, *khyar-ul-bulugh* along with the statutory laws of Bangladesh on this subject, such as the *Dissolution of Muslim Marriages Act, 1939* (Act of 1939), the *Family Court Ordinance, 1985* (Act of 1985), the *Muslim Family Laws Ordinance, 1961* (Act of 1961) indicate that Muslim husbands are presented with unfettered power in this regard over their female counterparts. Bhuiyan notes that divorce at the instance of the husband is relatively easy, arbitrary, without fault and extra-judicial.⁷ In sharp contrast, divorce at the instance of a wife is complicated, fault-based or brought for consideration or under delegated right from the husband, involving either judicial or extrajudicial procedure.⁸

A woman's honour and dignity, from a marital standpoint, is recognised and valued under Islamic ordinances. The Quran treats both the husband and wife as partners and neither of the couple enjoys superiority over the other in marital life.⁹ Nonetheless, when it comes to the renouncement of marriage, certain embargos are imposed on wife in the light of traditional interpretations of *sharia law*.

Although the Act of 1939 was enacted to empower women with a right to divorce by the intervention of the court,¹⁰ it still does not equip Muslim women with absolute authority in the delegation of the power of divorce. Under both *sharia law* and statutory laws, women are only allowed to repudiate their marriage under certain circumstances. This is inconsistent with the norms of gender equality avowed indifferent international instruments. For instance, Bangladesh is a signatory to various international instruments that are designed to secure gender equality, which include Universal Declaration of Human Rights, 1948 (UDHR) and Convention on the Elimination of All Forms of Discrimination against Women, 1979 (CEDAW) but still has reservations to the provisions of article 2 and 16 (1) (c) as they conflict with *sharia law* based on the Holy Quran and Sunnah¹¹. This inequity, which is widely observed in the country, is also not

⁴*Talaq* is an Arabic word meaning "to release" or "to divorce", used to represent the action of the husband setting the wife free from the bondage of marriage.

⁵*Khulatalaq* is a form of dissolution of Muslim marriage performed by the mutual understanding of the spouses. In *Khula*, wife takes initiatives to buy her divorce from her husband by relinquishing any right or claim such as dower or offering property or alike to her man.

⁶*Mubarattalaq* is a way of renouncement of marriage accomplished by the reciprocal sanction of the consort. In *Mubarat*, who takes the initiative of divorce is not given importance rather eagerness on behalf of both the husband and wife is required for the successful completion of the split-up of marriage.

⁷Rabia Bhuiyan, Senior Advocate, Supreme Court of Bangladesh is a Muslim Scholar and has great contribution in developing Laws to stop violence against women. She is the author of the book titled "Gender & Tradition in Marriage & Divorce: An Analysis of Personal Laws of Muslim and Hindu Women in Bangladesh", United Nations Educational, Scientific and Cultural Organization (UNESCO), 2010.

⁸Rabia Bhuiyan, *Gender & Tradition in Marriage & Divorce: An Analysis of Personal Laws of Muslim and Hindu Women in Bangladesh*, (United Nations Educational, Scientific and Cultural Organization (UNESCO), 2010), 177.

⁹Al Quran 4:1, 7:189 and 42:11. Women's Rights in Islam, accessed on December 14, 2014, http://www.islamswomen.com/articles/do_muslim_women_have_rights.php.

¹⁰Act of 1939 allows women to divorce under certain grounds specified in section 2 of the Act through the Family Court established under section 4 of the Family Courts Ordinance, 1985.

¹¹Bangladesh is a party to a number of international instruments on gender equality such as Convention on the Elimination of All Forms of Discrimination against Women, 1979 (CEDAW); Universal Declaration of Human Rights, 1948; Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, 1964; Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women,

in accord with the constitutional¹² and statutory laws of Bangladesh.¹³ The Constitution is the supreme law of Bangladesh, and any law inharmonious with the Constitution shall be void to the extent of the inconsistency.¹⁴ However, in terms of gender inequality, specifically considering women's rights in private life, the supremacy of the Constitution does not perpetuate and is compromised to a certain degree with the traditional interpretation of *sharia* law. *Sharia* law itself can be negotiated and is hardly seen in areas such as commercial law, contract law and penal law.¹⁵ Bhuiyan argues that *sharia* law now is only prevalent in family matters, and the modern version of *sharia* law is known to be more of a political question, rather than a legal issue today.¹⁶

1999; Convention on the Political Rights of Women, 1953; International Covenant on Civil and Political Rights, 1966; International Covenant on Economic, Social and Cultural Rights, 1966.

Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, 1979 (CEDAW), says that States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake all necessary steps but Bangladesh does not consider these provisions as binding upon itself.

¹² In its Preamble, the Constitution of Bangladesh proclaimed: "...Further pledging that it shall be a fundamental aim of the State to realize through the democratic process a socialist society, free from exploitation of a society in which the rule of law, fundamental human rights and freedom, equality and justice, political, economic and social, will be secured for all citizens...". In article 27, it guarantees that "all citizens are equal before law and are entitled to equal protection of law". In article 28 of same constitution, it ensures that "(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex or place of birth. (2) Women shall have equal rights with men in all spheres of the State and of public life. (3) No citizen shall, on grounds only of religion, race, caste, sex or place of birth be subjected to any disability, liability, restriction or condition with regard to access to any place of public entertainment or resort, or admission to any educational institution. (4) Nothing in this article shall prevent the State from making special provision in favor of women or children or for the advancement of any backward section of citizens."

¹³ Legislatures of Bangladesh enacted a good number of laws to uphold gender equality i.e. Muslim Marriages and Divorces (Registration) Act, 1974; The Family Court Ordinance, 1985; Overseas Employment and Migration Act, 2013; EPZ Labour Welfare Association and Industrial Relations Act, 2010; Citizenship (Amendment) Act, 2009; Hindu Marriage Registration Act, 2012; Mobile Court Act, 2009; National Acid Crime Prevention Act (Amended), 2010; National Children Act, 2013; Prevention and Suppression of Human Trafficking Act; 2012; The Domestic Violence (Prevention and Protection) Act, 2010; The Local Government (Municipality Corporation) Act, 2009; The Pornography Control Act 2012; The Right to Information Act, 2009; Domestic Violence Prevention and Protection Rules, 2013; The Local Government (Union Parishad) Act, 2009; The Local Government (Upazilla Parishad) Act, 2009 and so forth.

¹⁴Article 7 consist as follows: "(1) All powers in the Republic belong to the people, and their exercise on behalf of the people shall be effected only under, and by the authority of, this Constitution.

(2) This Constitution is, as the solemn expression of the will of the people, the supreme law of the Republic, and if any other law is inconsistent with this Constitution that other law shall, to the extent of the inconsistency, be void."

¹⁵*Supra* Note 9 at 6

¹⁶*Ibid.* At the outset of the beginning of Bangladesh, the original 1972 constitution of Bangladesh incorporated the principle of secularism. General Zia removed secularism principle from the constitution through Fifth Amendment in 1979 by incorporating Bismillah-*ar-Rahman-ar-Rahim* (In the name of Allah, the Beneficent, the Merciful) in the constitution and general Ershad incorporated Islam as the state religion through 8th amendment in 1988. The Supreme Court of Bangladesh declared the removal of secularism from the Constitution illegal in 2005. The Constitution was amended in 2011 by the Parliament so that the provision for secularism was restored. However, the Constitution still lists the state religion as Islam and retains the declaration Bismillah-*ar-Rahman-ar-Rahim.*, Jahid Hossain Bhuyian, "Secularism in the Constitution of Bangladesh", *The Journal of Legal Pluralism and Unofficial Law* 2, no. 49 (2017): 204, <https://doi.org/10.1080/07329113.2017.1341479>. Islam is predominant in the sociopolitical realm of Bangladesh which is why secularism collapsed within a short time of its introduction and religious influence strongly emerged instead. In fact, all over the world, Islam and politics are inextricably interrelated and intertwined. In Bangladesh, Islamic predominance was actually initiated by the first political regime in order to mobilize public supports and the subsequent regimes followed suit, albeit differently. Md Nazrul Islam and Md Saidul Islam, "Politics and Islamic revivalism in Bangladesh: the role of the state and non-state/non-political

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

Both qualitative and quantitative research techniques have been utilized to appraise the research objectives of the paper. Firstly, the pieces of literature and scholarly works on the dissolution of marriage under the traditional clarification of *sharia* law and statutory laws of Bangladesh have been closely examined. The statutory laws such as the Act of 1939, Act of 1961 and Act of 1985 relating to the termination of Muslim marital contract has been extensively analyzed to find out whether these laws are accordant with the constitutional mandate regarding non-discrimination and equal opportunity, and also with the international instruments on gender equality of which Bangladesh is a party.¹⁷ In the next step, the data published by Bangladesh police, Bangladesh Bureau of Statistics (BBS), UNICEF and UNESCO on domestic violence, offences on extramarital affairs and the filling of cases under *Nari O Shishu Nirjaton Domon Ain* (Women and Children Repression Prevention Act) has been investigated to examine whether these issues are impacted by MW's limited scope to disavow marriage or not. Also, several cases¹⁸ were selected from news published in leading English and Bangla dailies of Bangladesh to assess how the influences of social stigma, economic constraints and legal barriers suppress MW from attaining their right to divorce. The authenticity of the media reports was investigated by utilizing ethnographic content analysis method, where the authors emphasized in the construction of the meaning of and in text.¹⁹ Besides, 50 *nikahnamas*²⁰ were randomly collected from several distinct 'Kazi'²¹ offices and law firms to evaluate whether husbands delegate the right of *tawfiz* to their

actors", *Politics, Religion & Ideology* 3 (2018), at <https://doi.org/10.1080/21567689.2018.1493382>. See also Md Nazrul Islam and Md Saidul Islam, "Islam, Politics and Secularism in Bangladesh: Contesting the Dominant Narratives", *Social Sciences* (2018), doi:10.3390/socsci7030037.

¹⁷ Bangladesh is party to a number of binding international human rights instruments. Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted December 18, 1979, G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, entered into force September 3, 1981, acceded to by Bangladesh on November 6, 1984. Bangladesh currently has a reservation to articles 2 and 16(1)(c). Optional Protocol to the Convention on the Elimination of Discrimination against Women, adopted October 6, 1999, G.A. res. 54/4, annex, 54 U.N. GAOR Supp. (No. 49) at 5, U.N. Doc. A/54/49 (Vol. I) (2000), entered into force December 22, 2000. Bangladesh ratified the Optional Protocol on September 6, 2000. International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S.171, entered into force March 23, 1976. Bangladesh assented to the ICCPR on September 28, 2000. International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force January 3, 1976. Bangladesh agreed to the ICESCR on October 12, 1999. Convention on Consent to Marriage, Minimum Age of Marriage, and Registration of Marriages, 1763 A (XVII) of 7 November 1962.

¹⁸Case studies are selected from the incidences which were widely discussed in print and electronic media of Bangladesh.

¹⁹Alan Bryman, *Social Research Methods*, International Edition (New York: Oxford University Press, 2016), 232; see also Jim Macnamara, "Media content analysis: Its uses; benefits and best practice methodology", *Asia Pacific Public Relations Journal* 1 no.6: 1-34, accessed June 05, 2017, <https://amecorg.com/wp-content/uploads/2011/10/Media-Content-Analysis-Paper.pdf>

²⁰In Bangladesh the local name of marriage is Nikah. A marriage contract in Muslim law is known as *nikahnama*. The Bangladesh government has a standard format for such contracts.

²¹ A licensed official who registers Muslim marriages and divorces.

wives as per legal regimes and check if it is conditional or unconditional. In addition, the authors conducted 50 unstructured interviews with their married friends, colleagues and acquaintances to find out whether the *Kazis* informed them regarding the right of *tawfiz* before they signed their marriage contracts. Lastly, to conduct a comparative study to substantiate the arguments that inflexibilities and difficulties in getting a divorce do stimulate various socio-legal problems²², the procedures of dissolving marriage among Hindus in India were also briefly analysed. Since there is limited published official data on filing false cases in Bangladesh, the bordering country India, with the socio-legal and economic standards similar to Bangladesh, was chosen as the country for this relative study.

The first section of this paper discusses the standing of MW in getting a divorce under *sharia* law and statutory laws of Bangladesh. The second section explains the socio-legal problems associated in not empowering MW with the absolute right to end their marriages. The final part argues whether MW can be empowered with unfettered right of divorce without frustrating *sharia* law by interpreting *sharia* law in the light of ‘modernist’²³ perspective.

Rationality and background of the study

The Act of 1939 was enacted to empower MW to obtain a decree for dissolution of marriage under specific grounds. To facilitate women to file cases and get permission from the court for the divorce, *family courts*²⁴ were established in every district of Bangladesh. Although this might appear to be a woman-friendly approach from the government, a close look at the cases²⁵ filed by women for the renouncement of marriage reveals nothing but a long hurdle of legal, social and economic struggles women must undertake in acquiring the decree for the termination of the matrimonial contract. The divorce case filed by the famous singer Runa Laila is worth mentioning in this context. Runa Laila did not get along with her first husband. When she wanted separation, her husband refused to give her a divorce consensually, which compelled her to file a divorce case against her husband under section 2 of the Act of 1939. However, when the plaintiff’s lawyer began to reveal incriminatory shreds of evidence against him, he opted to give her the divorce out of the court to avoid slander at the time of the trial.²⁶ Unfortunately, most women, unlike Runa

²² Divorce procedures among Hindus are chosen because Hindu religion is the predominant religion in India.

²³Islamic modernist ideas promoted a re-interpretation of Islam which would fit in with the modern world (Islamic Modernism and Islamic Revival." In *Atlas of the World's Religions, Second Edition*, edited by Ninian Smart, Frederick Denny. *Oxford Islamic Studies Online*, accessed March 15, 2018 <http://www.oxfordislamicstudies.com/article/opr/t253/e9>.

²⁴ Section 4 of the Family Court Ordinance, 1985.

²⁵*Hasina Ahmed vs. Abul Fazal*, 32 DLR (1980) 294; *Mst. Resham Bibi vs. Muhammad Shafi*, 19 DLR (1967) 104; *Mst. Saeeda Khanam vs. Muhammad Samir*, 4 DLR (1952) 134; *Md. Kutubuddin Jaigirdar vs. Noorjahan Begum*, 25 DLR 1973 (HCD) 21; *Abdus Sobhan Sarker vs. Md. Abdul Ghani*, 25 DLR 1973 (HCD) 227; *Hosne Ara Begum vs. Alhaj Md. Rezuul Karim*, 43 DLR 1991 (HCD) 543; *Sirajul Islam vs. Helana Begum*, 48 DLR 1996 (HCD) 48; *Captain Shamsul Alam vs. Sheerin Alam*, 48 DLR 1996 (HCD),79; *Sherin Akhter vs. Md. Ismail*, 51 DLR 1999 (HCD) 512.

²⁶*Runa Laila vs. Javed Kaiser*, Title Suit No. 121 of 1985, 2nd Judge Court, Dhaka discussed in Bhuiyan, Rabia, “Gender & Tradition in Marriage & Divorce: An Analysis of Personal Laws of Muslim and Hindu Women in Bangladesh. This is the case for all cases filed by the women for getting divorce. For more case of similar nature, please see: *Md. Kutubuddin Jaigirdar vs. Noorjahan Begum*, 25 DLR 1973 (HCD) 21; *Abdus Sobhan Sarker vs. Md. Abdul Ghani*, 25 DLR 1973 (HCD) 227; *Hosne Ara Begum vs. Alhaj Md. Rezuul Karim*, 43 DLR 1991 (HCD) 543; *Sirajul Islam vs. Helana Begum*, 48 DLR 1996 (HCD) 48; *Captain Shamsul Alam vs. Sheerin Alam*, 48 DLR 1996 (HCD),79; *Sherin Akhter vs. Md. Ismail*, 51 DLR 1999 (HCD) 512.

Laila, do not have the luxury to afford lawyers or access to the court to get a divorce from their husband.

Proper understanding and mutual adjustment between couples²⁷ are the essentials of a successful marriage. However, it may not always be possible for every married couple to adjust with their partners mentally. While men are privileged to easily escape unhappy marital ties with the exclusive power of repudiating marriage provided by *sharia* law, women have to prove specific grounds²⁸ to get the decree for dissolution of marriage by the intervention of the family court. There are instances where women have brought false allegations against their spouses²⁹ solely for ease in the procedure of separation. Besides, there is also an overwhelming prevalent social taboo that respectable women never initiate divorce in Bangladesh.³⁰ Their family, relatives abandon divorced women, and society at large³¹ and are subjected to blame and humiliation from the community. The legal and social barriers render MW helpless and stuck in the wedlock of unfortunate matrimonies. Current research argues that this stigma stimulates a feeling of superiority among men, and this, in turn, induces domestic violence and other aggravated forms of offences. Abuses such as domiciliary and sexual violence are intertwined with the rate of divorce, and interchangeably this rate is generally high where occurrences of domestic and sexual violence are extreme. For example, the lifetime and current rates of physical violence by husbands are found to be the highest in the ‘Rajshahi Division’³² of Bangladesh, at the rate of around 60.1% and 26.3% respectively.³³ Also, that same region has the most substantial lifetime rate of 34.2% partner sexual violence.³⁴ One demography in 2016 reported the overall marriage-divorce ratio as .08 in Bangladesh, which signifies that 8 per cent of the marriages in the country ended in divorce. However, the Rajshahi Division ranked the top with a rate of 12 percent.³⁵ In an in-depth study on divorced women, it was found that abusive marriage³⁶ compelled a majority of women to demand separation. In particular, Muslims have a higher likelihood of ending up in divorce with a rate of 1.2 per 1000 population while Hindus have a lower rate in this regard (0.32).³⁷ It is believed that this trend exists as Hindu marriage is a pre-ordained union, and there is little scope for dissolution by divorce in Bangladesh.

Moreover, religious differences in the breakage of marital bonds show lower rates of dissolution for Hindus followed by Muslims and the highest for other religious groups such as

²⁷ S T Janetius, Marriage and Marital Adjustment, accessed on April 16, 2015, <http://janetius.page.tl/Marriage.htm>.

²⁸ Section 2 of the Dissolution of Muslim Marriages Act, 1939.

²⁹ *Naveen Kohli vs Neelu Kohli* on 21 March 2006, Appeal (Civil) 812 of 2004, last accessed on July 26, 2015, <http://indiankanoon.org/doc/1643829/>.

³⁰ Nadirakazi Parvez, “Social Changes and Women-Initiated Divorce in Dhaka, Bangladesh: Gaining or Losing Power?”, Thesis submitted to the Universitas Bergensis (University of Bergen) for the degree of Master of Philosophy in Gender and Development, May 2011, at pp. 65 and 89-92, accessed on July 26, 2015, <http://bora.uib.no/bitstream/handle/1956/5312/84856665.pdf>.

³¹ *Ibid.*

³² Rajshahi is located in the northern region of Bangladesh. In comparison with other divisions, Rajshahi is economically lagging behind with increasing incidences of divorce, domestic violence and violence against women.

³³ Bangladesh Bureau of Statistics, Report on Violence against Women (VAW) Survey, 2015 (August 2016), pp. 15-27, accessed on July 27, 2017,

<http://203.112.218.65:8008/WebTestApplication/userfiles/Image/LatestReports/VAWSurvey2015.pdf>.

³⁴ *Ibid.*, 19-21.

³⁵ *Ibid.*, 76-77.

³⁶ *Supra* note 31.

³⁷ *Supra* note 34, 75.

Christians, Buddhist and Sikhs.³⁸Notably, India has separate statutory laws³⁹ to regulate divorce among people of different religious affiliations and the regulations followed for the split-up of the marriage are linked to religion. This denotes that the deviation heavily influences the rate of divorce in the rigidity of issuing divorce in different denominations and their concurrent statutory laws.

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

There is a supposition that even individuals of high morals would justify using fabricated accusation as a means of revenge or a convenient excuse for engaging in consensual sex.⁴⁰Such charges may surface for various motives that may include vengeance, attempts to damage the reputation or any other ill-intention.⁴¹Social and legal hindrances against women-initiated divorce may tempt women to conjure up false allegations against their spouses. Thus, troublesome divorce procedure has a negative consequence on the number of vexatious cases.⁴²

The adverse effects of extramarital affairs on the society which are demonstrated by the vicious crimes arising out of incidences of adultery regularly appearing in the headlines of newspapers seem to strike the conscience of the whole nation.⁴³ Due to the negative perception of the people

³⁸Premchand Dommaraju, "Divorce and Separation in India", 2016 *Population and Development Review* (Forthcoming-in press), 17.

³⁹ Divorce among Hindus, Buddhists and Sikhs is regulated by the Hindu Marriage Act, 1955, Muslims by the Dissolution of Muslim Marriages Act, 1939 and Christians by the India Divorce Act, 1869.

⁴⁰Benjamin Radford, "A Skeptic Reads the Newspaper" *Center for Inquiry*, February 26, 2014, accessed on January 17, 2017, http://www.centerforinquiry.net/blogs/entry/the_anatomy_of_false_accusations_a_skeptical_case_study/.

⁴¹Aiman R. Khan, "The Offence of False Rape Allegations", *Law Journal Bangladesh*, Vol. 6 (2017), accessed on February 21, 2017, <http://www.lawjournalbd.com/2017/06/the-offence-of-false-rape-allegations/>.

⁴²This is discussed in detail in section VI of the paper.

⁴³ Staff Correspondent, "Missing boy found dead in a sack", *the Daily Star*, May 13, 2015,

<http://archive.thedailystar.net/newDesign/news-details.php?nid=144047>. Abdullah Al Noman, "Ex-army personnel killed in Tangail over wife's extra marital affairs", *The Dhaka Tribune*, April 29, 2016, <https://www.dhakatribune.com/bangladesh/nation/2018/04/29/ex-army-personnel-killed-tangail-wifes-extra-marital-affair>. Staff Correspondent, "Rathish killed over wife's extramarital affair: RAB", *Prothom Alo*, April 04, 2018, <https://en.prothomalo.com/bangladesh/news/173634/Rathish-killed-over-extramarital-affair-RAB>. Staff Correspondent, "Mom kills kids over extra-marital affairs", *banglanews24.com*, March 03, 2016, <https://www.banglanews24.com/national/article/50373/Mom-kills-kids-over-extra-marital-affairs>. Tanvir Mahmud, "Crime of passion: Suspicion of extramarital affair lead murder-suicide", *Dhaka Tribune*, March 11, 2018, <https://www.dhakatribune.com/bangladesh/nation/2018/03/11/suspicion-extramarital-affair-murder-suicide-rajbari>. Tarek Mahmud, "Extramarital affairs behind Pushpa and Rozina murders", *Dhaka Tribune*, <https://www.dhakatribune.com/bangladesh/crime/2017/04/20/extramarital-affairs-behind-pushpa-rozina-murders>. Staff Correspondent, "Extramarital affair led to Badda killing", *The Daily Star*, November 04, 2017, <https://www.thedailystar.net/backpage/extramarital-affair-led-badda-killing-1486156>. Man kills over 4 wife's illegal affair, *NTV online*, June 20, 2015, <http://en.ntvbd.com/bangladesh/5789/>. Staff Reporter, "CU student murdered for extramarital affair", *The Independent*, March 25, 2017, <http://www.theindependentbd.com/arcprint/details/86894/2017-03-25>.

of Bangladesh regarding the concept of divorce commenced by women and remarriage, women may become enticed to engage in extramarital affairs to outsource temporary relief from the frustrations of unhappy wedlock. Detailed scrutiny demonstrates that these deadly occurrences arise when women go far beyond their way and end up in most regrettable offences to conceal their extramarital affairs from others.

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

Existing methods provided for the dissolution of marriage of Muslim women

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

- Methods available under *sharia* law.
- Methods available under statutory laws of Bangladesh.

1. Dissolution of marriage for Muslim women under *sharia* law

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

A. *Talaq-e-Tawfiz*

Talaq-e-Tawfiz is commonly known as the delegated power of divorce exercised by a husband to his wife.⁴⁴ This form of delegated separation is perhaps the most likely weapon of Muslim wife to attain her freedom without the intervention of the court.⁴⁵ When an MW issues divorce to her husband by executing the power of *tawfiz*, this is done on behalf of her husband. The option is not available without the free consent of the husband. However, in the context of dominating male society, it is quite easy to comprehend that a proud husband may not willingly pass on the right of *tawfiz* to his wife. Even when a woman is empowered with *tawfiz* and wishes to divorce her husband, she is further required to prove that her husband delegated the power of *tawfiz* to her. As per section 6(3) of the Muslim Marriages and Divorces (Registration) Act, 1974, the *Nikah* (Marriage) Registrar shall not register a divorce of the kind known as *tawfiz* without the document registered under the Registration Act, 1908 (XVI of 1908) by which the husband hands over the power of divorce to his wife or of an attested copy of an entry in the register of marriages verifying that such delegation has been made.

On the contrary, *sharia* law opens the door only for the husband to exercise such power at any stage of the marriage.⁴⁶ *Tawfiz*, being a delegated right delivered by only a husband to his wife, in its present form, fails to universally empower Muslim wives with the absolute right to renounce marital bondage unilaterally like their male counterpart. It is noteworthy that at present, almost all

⁴⁴ *Sahih Muslim, Book: 9, Number 3498-3504 (Translated by Abdul Hamid Siddiqui). See also Sahih Bukhari Volume 007, Book 063, Hadith Number 188.*

⁴⁵ A. A.A. Fyzee, *Outlines of Muhammadan Law*, 4th ed. (Delhi: Oxford University Press, 2007), 159.

⁴⁶ Syed Khalid Rashid, *Muslim Law*, edited by V.P. Bharatiya, 5th ed. (Lucknow: Eastern Book Company, 2006), 106.

the divorces initiated by MW take place by exercising the right of *tawfiz*.⁴⁷ Through random inspection of some *kabinnamas* and informal interviews with their acquaintances, the authors found that the *Nikah* Registrar haphazardly fill up the column 18 of Form D of the Muslim Marriages and Divorces (Registration) Rules, 2009 without taking any prior permission of the husbands.⁴⁸ Such a way in which *tawfiz* is delegated (in the cases where *Nikah* Registrar fills up column 18 to empower wives with right of *tawfiz* without taking the prior consent of their husbands) raises jurisprudential questions on the correctness and validity of the power exercised by MW in the strict legal sense. As per the Act of 1961, wife's right to *tawfiz* is only applicable with the due delegation of the husband⁴⁹ and also it is permissible for a man to add conditions and demarcate the grounds under which his spouse can inaugurate the procedures of divorce. Utilising the grounds that the right of *tawfiz* was not devolved and that the specified condition under which their wives can exercise *tawfiz* was not accrued, the husband has the option of challenging the divorce initiated by MW through *tawfiz* if they wish to do so. In the case of *Nelly Zaman vs. Giasuddin*⁵⁰, the defendant Nelly Zaman issued separation from her husband through *tawfiz* but on the ground that the delegated power was not implemented rightfully by her, the divorce was challenged by her husband. Both the trial court and lower appellate court held that the divorce is illegal and declared the restitution of conjugal rights. Ultimately this case was brought before the High Court Division (HCD) of the Supreme Court of Bangladesh, and the HCD dismissed the synchronous verdicts of lower courts. This indicates that the *talaq e tawfiz* is also subjected to court decisions.

B. By mutual consent

Both husband and wife can surrender their marriage if that is what they jointly agree. It is a peculiar feature of Islamic law,⁵¹ and it happens in two ways, namely *talaq-e-khula* and *talaq-e-mubarat*.

▪ *Khula*

A woman can pursue *khula* divorce from her husband by renouncing any legal rights she is entitled to get from her husband, such as- dower, money, property and so forth. Nevertheless, the breakage of marital union in *khula* is only possible with the mutual consent of both husband and wife. Lack of conjoint assent renders a *khula* divorce null and void, failing the dissolution of marriage.⁵² Rashid, a notable Islamic jurist in the Indian subcontinent, said that "it entirely depends upon the husband to accept the consideration of dower and to grant the divorce".⁵³ It suggests that

⁴⁷Supra note 34.

⁴⁸Form D is a standard marriage contract form prescribed by the government which deals with the terms and conditions and other relevant particulars of the newly married couple. Column 18 of the Form D specifically deals with the issue whether the husband wish to delegate the power of *tawfiz* to his wife or not.

⁴⁹ Section 8 of the Muslim Family Laws Ordinance, 1961.

⁵⁰34 DLR (1982) 221. See also *Aklima Khatun vs. Mahibur Rahman and Others*, 14 DLR (1962) 476; *Mrs. Sherin Akhter and another vs. Al-Haj Md. Ismail*, 20 BLD (2000) HIGH COURT DIVISION 159; *Syed Ali Newaz Gardezi Vs. Lt. Col Muhammad Yusuf*, 15DLR(SC)9; *Serajul Islam Vs. Helena Begum and others* 16 BLD(HCD) (1996) 477; *Gauhur Vs. Mrs. Ghulam Fatima and another* PLD 1984 Lahore 124; *Gul Newaz Khan vs. Mst. Maherunnessa Begum*, 17 DLR (1965) 199; *Muhammad Siddiq vs. Mst. Ghafuran Bibi*, 1971 PLD 192; *Ahmed Ali vs. Sabhan Khatun Bibi and Ors.*, 4 DLR (1952) 613; *Tahazzud Hossain Sikdar vs. Hossneara Begum*, 17 DLR (1965) 732; *Mrs. Sherin Akhter and another vs. Al-Haj Md. Ismail*, 2000 20 BLD HIGH COURT DIVISION 159; *Tahazzad Hossain Sikdar vs. Hossneara Begum and Others*, PLD 1967 421

⁵¹Supra note 47.

⁵² Ibn Hazm, *Al-muhala* (Beirut: Dar al-Afaq al-Jadida), Vol.10, 235.

⁵³Supra note, 107.

this option does not ensure the unilateral power of cessation of marriage by the initiatives of the wife rather the success of the entire proceedings exclusively depend upon mutual consent of husband and wife. In contrast, in the case of *Khurshid Bibi vs Baboo Muhammad Amin*⁵⁴, despite the unwillingness of the husband to release her from the matrimonial tie, the wife's claim to the right of *khula*, based on the proper justification that under no circumstances they can carry on their union by complying with the marital obligations, was decreed by the court in favor of wife. Nonetheless, such judicial precedence for women's benefit does not necessarily empower MW with the absolute right to divorce their husband like their counterpart.

- *Mubarat*

Another form of dissolution of marriage by mutual agreement is known as *mubarat*. Unlike *khula* where the request proceeds from the wife to be released and the husband agrees for specified consideration the proposal of the split-up in *mubarat* can emanate from either side. The essential feature of such divorce is the willingness of both parties at the prospect of getting rid of each other; therefore, it is not relevant as to who takes the initiative.⁵⁵ Similar to *khula*, this permanent separation by *mubaratis* only brought about upon the mutual consent of husband and wife. Hence this option is linked with same drawbacks as pointed out in *tawfiz* and *khula*.

C. *Khyar-ul-bulugh* or option of puberty

If the marriage of a minor is entered into his or her behalf by any guardian other than father or paternal grandfather, once puberty⁵⁶ is reached, the minor acquires a legal option to disapprove the union. This is known as *Khyar-ul-bulugh* or 'option of puberty'. In the eyes of the law, it is a right vested in an infant to ratify or rescind, upon attaining majority (puberty), a marriage contracted during minority.⁵⁷ If the minor rebukes, the matrimony will dissolve with immediate effect. If the minor doesn't object, the wedding will be presumed to be approved. *Shia* law is a bit stringent from *Sunni* law in this aspect. According to *Shia* law, a minor marriage would be ineffective until and unless it is ratified by the minor on attaining puberty.⁵⁸ However, at present, in Bangladesh, the rules and regulations available for the option of puberty are regulated by statutory law, and the provisions relating to the option of puberty apply to all Muslims of the country equally, irrespective of their schools (*Shia* or *Sunni*). Muslim women who are befitting for the option of puberty⁵⁹ can repudiate their wedlock before they reach the age of 19 years. Nevertheless, this option of puberty does not automatically disclaim a marriage; instead it works as a ground to seek divorce by the intervention of the court. This is because a girl under 18 years of age is considered to be incapable of reaching the level of intellectuality required to decide her marriage.⁶⁰ Therefore, a girl who gets married before 18 is required to marry based on the decision of her legal guardian. After attaining majority, when an MW decides not to continue her marital life, the burden lies on the girl alone to go through the hurdles of certain legal proceedings to exercise her right of the option of puberty⁶¹. She needs to file the case in Family Court⁶² seeking divorce on the ground that she had undergone

⁵⁴19 DLR (1967) 59.

⁵⁵ R. K. Singha, *The Muslim Law*, 3rd ed. (Allahabad: Central Law Agency, 1995), 91.

⁵⁶ Rakesh Kumar Singh, *Textbook on Muslim Law* (Delhi: Universal Law Publishing Co. Pvt. Ltd, 2011), 140.

⁵⁷ Syed Ameer Ali, *Commentaries on Mahomedan Law* (Lahore: Imran Law Book House, 2007), 1280.

⁵⁸ K. D. Gangrade, *Social Legislation in India* (Delhi: Concept Publishing Company Pvt. Ltd., 2011), 47.

⁵⁹ *Supra* note 29, s 2 (VII).

⁶⁰ Report, "Child marriage and its fatal consequences", *the Daily Prothom Alo*, October 12, 2014, <http://epaper.prothom-alo.com/view/dhaka/2014-10-12/1>.

⁶¹ Section 101 of the Evidence Act, 1872. See more at *Allah Diwaya vs Mst. Kammon Mai*, 9 DLR (1957) 49.

⁶² *Supra* note 25, s 5(a).

minor marriage.⁶³ For a fruitful split-up, she has to prove that she was bestowed before 18⁶⁴(the legal age of marriage⁶⁵); that the case was filed before 19⁶⁶ and the marriage is not consummated.⁶⁷If the marriage is consummated, it is compulsory to prove further that the attainment took place against her will⁶⁸ or before she hit her age of puberty.⁶⁹ Not only are these court proceedings time consuming and costly, but they are also cumbersome for a young woman who is not yet 19. It is highly probable that the family of the young women, who got their daughter into child marriage in the first place, may not be supportive of her decision to pronounce divorce by exercising the option of puberty. Any delay concerning the women in the renouncement of marriage is presumed as the rectification of the union on her behalf.⁷⁰Due to the abovementioned context, such assumption generally goes against the interest of MW. Hence, it can be held that the right of option of puberty also misses the mark to empower Muslim women with unilateral power to disclaim matrimony.

To be precise, it can be said that the options open for women under *sharia* law cannot equip them with the absolute right of divorce considering the following:

- The option of puberty is only applicable if a woman is bestowed before 18 years of age. Moreover, there is a time constraint designed for implementing this right.
- *Tawfiẓ* can only be exercised if the husband willingly delegates his power of divorce to his wife.
- Both *khula* and *mubarat* necessitate mutual consent of both husband and wife. Besides, in the case of *khula*, the wife often needs to pay the dowry or any other amount of money they agreed upon and relinquish any right entitled from her husband.

Therefore, the above discussions suggest that *sharia* law does not permit Muslim women with the liberty of ending their marriage at their desire like their male counterpart.

Personal laws governing the lives of Muslims suffer from various misinterpretations, distortions and discriminations against women and are generally incompetent to satisfy the realities of modern life.⁷¹In terms of divorce, modern idealists believe that not only is the traditional interpretation of *sharia* law incompatible with human rights and gender equality⁷² but is also inconsistent with the core norms and fundamental ethos of the Islamic law. Bhuiyan remarks that traditional interpretation of *sharia* law concerning divorce is causing great injustice to women and is also contributing to instability and insecurity in their lives during the marriage as well as after divorce.⁷³

⁶³ Supra note 29, s 2(vii).

⁶⁴ Section 2(a) of the Child Marriage Restraint Act, 1929 and section 2(vii) of the Dissolution of Muslim Marriages Act, 1939.

⁶⁵Section 2(3) of the Child Marriage Restraint Act, 2017

⁶⁶ Supra note 29, s 2(vii).

⁶⁷ Ibid s2(vii).

⁶⁸*Mst Ghulam Sakina vs Falak Sher*, PLD 1949 Lah.79.

⁶⁹*Allah DiwayavsMst. KammonMai*, 9 DLR (1957) 49.

⁷⁰*Muhammad Baksh vs Crown PLD*, 1950 Lah.203.

⁷¹Supra note 9, 1.

⁷²Report of the Commission on Marriages and Family Laws, The Gazette of Pakistan, Extraordinary, Karachi, 20th June 1956, p. 1203 (Chapter 2).

⁷³Supra note, 179.

2. Dissolution of marriage for Muslim women under statutory laws of Bangladesh

On the Indian sub-continent, Muslim women's right to dissolve a marriage under specific grounds⁷⁴ was first recognised in 1939 by enacting the Act of 1939. Moreover, the Act of 1961, the *Muslim Marriages and Divorces (Registration) Act*, 1974, the Act of 1985, the *Muslim Marriages and Divorces (Registration) Rules*, 2009 are some necessary steps taken for upholding women's right to divorce. However, statutory laws of Bangladesh do not offer any provision in addition to the conducts for the renouncement of marriage as per *sharia* law, except divorce by the intervention of the court. Moreover, Muslim women are tied with the option of divorce via the interference of court only under limited grounds.⁷⁵ An analysis of statutory laws concerning the Muslim dissolution of marriages suggests that instead of empowering women by ensuring absolute right to dissolve marriage (by removing the implications of grounds for divorce or the formalities of the process) Muslim family laws of Bangladesh work on to explore the husband's absolute power of *talaq* by formulating different "rules and regulations".⁷⁶ The Government's tendency to steer clear of personal matters to avoid the risk of losing votes is also common in Bangladesh.⁷⁷ A similar perspective is seen in Justice Baron's observation that 'in the long run, and sometimes in the short run, government policy depends on political actions and omissions of citizens'.⁷⁸ Due to these reasons, MW's status in the society is yet to be in equal footing with their male counterpart, predominantly in the case of separation. This ultimately leads to several socio-legal problems such as violence against women⁷⁹ as well as murder for extramarital relationships.⁸⁰

Notably, a gradual increase in the number of cases filed under the laws specially sanctioned for the protection of women is now a growing concern for the government of Bangladesh. For example, the reports of 4 consecutive years 2011-2014 marked the number of cases filed under the Act of 2000 as 37602, 38331, 50702 and 54 810 respectively. Notably, every year, the figure is increasing alarmingly (discussed later in section V). The Act of 1939 provides the grounds (clarification and consolidation of the circumstances stated in Islam under which MW can relinquish a nuptial union) on which the court's intervention is permissible in the procedures of divorce. The rules for the separation of spouses by the interference of the court are described in part VII of this paper.

⁷⁴ *Supra* note 29, s2.

⁷⁵ *Ibid.*

⁷⁶ *Supra* note 25, s 7.

⁷⁷ *Supra* note 9 and Jahid Hossain Bhuiyan, "Secularism in the Constitution of Bangladesh", *The Journal of Legal Pluralism and Unofficial Law* 2, No. 49 (2017) pp. 204-227, p. 204, <https://doi.org/10.1080/07329113.2017.1341479>; Md Nazrul Islam and Md Saidul Islam, "Politics and Islamic revivalism in Bangladesh: the role of the state and non-state/non-political actors", *Politics, Religion & Ideology* 3, (2018), <https://doi.org/10.1080/21567689.2018.1493382>. Md Nazrul Islam and Md Saidul Islam, "Islam, Politics and Secularism in Bangladesh: Contesting the Dominant Narratives", *Social Sciences* (2018), doi:10.3390/socsci7030037.

⁷⁸ J. Baron, "Value analysis of political behavior - self-interested: moralistic: altruistic: moral", *University of Pennsylvania Law Review*, 151(2003):1135.

⁷⁹ Police statistics and assessments of women's rights organization show that there is an increasing trend in violence against women in spite of the existence of stringent laws to protect their rights in Bangladesh. See more at Shanzana Yasmin Khan, "Violence against women in Bangladesh: A human rights problem" *the daily sun*, November 29, 2012, http://www.daily-sun.com/old_version/details_yes_29-11-2012_Violence-against-women-in-Bangladesh:-A-human-rights-problem_333_1_17_1_0.html.

⁸⁰ See *supra* note 45.

Analysis of the dissolution of marriage by the intervention of the court

The Act of 1939 provides a reasonably large number of grounds for women who desire a divorce. Menski argues that the case laws under the Act of 1939 from Pakistan and Bangladesh clearly show that Muslim Wives in those countries have the right to divorce the husband at any time they want, provided they dare to stand up in court declaring that they cannot cohabit any longer with their husband.⁸¹ A wife can dissolve her wedlock by filing a case in the Family Court by presenting reasonable ground(s) (stated in section 2 of Act of 1939). In the trial, the court passes the decree of dissolution of marriage upon the accomplishment of the women in proving her case. A copy of the decree shall have to be sent to the “Chairman”⁸² of the “Arbitration Council”⁸³ so that arbitration council can take “initiatives to conciliate”⁸⁴ between them. If the conciliation process of the arbitration council fails, it sends a letter to the *Nikah* Registrar⁸⁵ to take necessary steps to register the divorce in Registrar book. However, a woman who is unable to prove her case in the court will not be given the decree of divorce. This is the scenario for women who can afford to go to court. But most women do not have the means to stand up in court to seek separation.⁸⁶ In spite of depriving women of the absolute fundamental right to renounce marriage, it may be argued that the procedure of the Family Court regarding divorce is favourable towards women. For instance, the government of Bangladesh charges BDT⁸⁷ 25 for filing any suit, including the one for dissolution of marriage in the Family Court.⁸⁸ It is the minimum amount in comparison to the fee required for filing a lawsuit in any other courts of Bangladesh.⁸⁹ Moreover, there is also a facility provided by the judge of the Family Court of having whole or part of the proceeding in private (camera trial)⁹⁰ for women who are uncomfortable in public hearings. Hence, it can be said that the Family Court is friendly towards women in comparison with other courts of Bangladesh. However, it should be acknowledged that ensuring procedural rights do not supplement the necessity of guaranteeing fundamental rights. Moreover, the decision of the family court concerning divorce is not final. Instead, the outcome of the arbitration procedure is what determines this particular assertion. Bhuiyan (2010) raises the question on the use of court proceedings if the decree of dissolution of marriage is required to go through an arbitration procedure. She termed it as unethical, lengthy and a violation of the rule of law.⁹¹

Sinha rightly remarks that the legal system of Bangladesh along with relevant regulatory authorities, cannot ensure access to justice for judicial remedy, especially for women in

⁸¹ Werner Menski, “Developments in Muslim Law: The South Asian Context (The Birth Centenary Commemorative Lecture Delivered in Honour of Professor Asaf A A Fyzee at the Royal Asiatic Society Hall in Bombay, December 22, 1999) (2003) 3SCC (Journal Section), 11.

⁸² *Supra* note 51, s 2(a).

⁸³ *Ibid* s2(b).

⁸⁴ *Ibid* s7&8.

⁸⁵ Section 4 of the Muslim Marriages and Divorces (Registration) Act, 1974(Act No. LII of 1974).

⁸⁶ Human Rights Watch (2012), “Will I Get My Dues ... Before I Die?” Harm to Women from Bangladesh’s Discriminatory Laws on Marriage, Separation, and Divorce”, at p. 60, accessed on March 23, 2017, <https://www.hrw.org/sites/default/files/reports/bangladesh0912ForUpload.pdf>.

⁸⁷ BDT stands for Bangladeshi taka (local currency of Bangladesh).

⁸⁸ *Supra* note 25, s 22.

⁸⁹ Where the subject matter is money -2.5% of the amount but the total fees shall not exceed Taka 50,000 and where the subject-matter is other than money- 2% of the amount but the total fees shall not exceed Taka 40,000. Schedule of the Court-Fees Act, 1870.

⁹⁰ *Ibid* s11.

⁹¹ *Supra* note 9, 219-220.

Bangladesh.⁹²In respect to the socio-legal and economic contexts of Bangladesh, even if women are given more rights to divorce, most of them are scared to go for it; they are anxious about being stigmatised and petrified at the prospect of losing their marital home, maintenance, food, clothing, and even children.⁹³ The current research findings reveal the following as the reasons women face difficulties going to court to file a case for separation.

- i. The judicial system of Bangladesh, including the judges, bench officers and advocates is male dominated. For example, there are merely 344 females⁹⁴ among 1655 judges in the lower court of Bangladesh and only seven females⁹⁵ out of 107 judges in the Supreme Court of Bangladesh. Generally, women are shy to discuss their problems with males. Hence this appears as an obstacle for women to go to the court to file a case for divorce.⁹⁶
- ii. Personal laws are discriminatory towards women concerning marriage, divorce, separation, and maintenance.⁹⁷ Therefore, it is troublesome for women to establish their rights through court interventions.
- iii. It is tough for most Bangladeshi women who have spent years as housewives, being dependent on their partners, to take the initiative towards divorce against their husbands.⁹⁸ Culture and social norms of Bangladesh are not in harmony with women along with their fight in the court, since women who protest to establish their legal rights are eyed with negative perceptions by the entire society.⁹⁹
- iv. Women endeavouring to establish their limited powers under personal laws in Bangladesh face procedural and practical barriers that often delay or defeat any remedies.¹⁰⁰
- v. Women who are *Pardanshin*¹⁰¹ are generally reluctant to go to court and choose an unhappy life over having to express themselves before the court.
- vi. A large number of women in Bangladesh are uneducated.¹⁰² They are not even aware of their legal rights, which makes it burdensome for them to win a legal battle in the court to enforce their marital rights.
- vii. Generally, Family Courts are situated in the district *Sadars* (headquarters). This creates conveyance problems for women in forwarding with the court proceedings.
- viii. Economically dependent women are mostly unable to hire lawyers and bear the expenses of legal proceeding due to financial struggles.¹⁰³

⁹² Staff report, “Judicial reformation and recommendation for the increase of legal aid” *the Daily Prothom Alo*, April 26, 2015, <http://epaper.prothom-alo.com/view/dhaka/2015-04-26/20>.

⁹³*Supra* note 9, 177-178.

⁹⁴Abida Sultana, Former Treasurer, Women Judges Association, Bangladesh, personal interview with the authors on June 20, 2015.

⁹⁵ Annual Report 2013, Supreme Court of Bangladesh, 7, accessed June 23, 2016, http://www.supremecourt.gov.bd/web/contents/Annual_Report_2013.pdf.

⁹⁶ For details see: S.M. Atia Naznin And Tanjina Sharmin, “Reasons for the Low Rate of Conviction in the VAW Cases and Inconsistencies in the Legislative Framework”, BRAC University Press, 2015.

⁹⁷*Supra* note 89, 5.

⁹⁸*Supra* note 9, 178.

⁹⁹*Supra* note 99. See more at: Seikh Sabiha Alam, “Half of women and children suffer from hanging in the case”, *The Daily Prothom Alo*, March 03, 2019.

¹⁰⁰*Ibid*, 60.

¹⁰¹ Muslim married woman who does not go outside or never expose herself to the stranger for religious purposes.

¹⁰² Only 54.84% of women aged 7 years and over are literate in Bangladesh, Bangladesh Bureau of Statistics, Report on Bangladesh Literacy Survey, 2010, 9.

¹⁰³*Supra* note 99.

- ix. Family members of most women do not support them in filing a divorce case because they are clouded with the perception that it brings disgrace for their family.¹⁰⁴ This renders women helpless and lonely in their battle for their rights.
- x. Taking into account the amount of time and effort required, alongside the uncertainty involved in seeking a fault-based divorce,¹⁰⁵ many women prefer separation by mutual consent such as *khula* instead of fault-based divorce by the intervention of the court.

An Indian study found that the cessation of the marital union by approaching a court are fewer compared to customary and informal separations. The reasons are straightforward—with the general lack of faith in the judicial system, courts are perceived to be inefficient, complicated, inaccessible and expensive (due to bribes, lawyer and court fees). Also, approaching courts, without resolving marital disputes within the household or community, is seen as bringing shame to the family and locality.¹⁰⁶

In Bangladeshi culture, girls are brought up with the lesson that after marriage, they are bound to survive all the adversities and live in their in-law's house by satisfying all the members in that family. Some parents often overlook the potential life threat of their daughter, inflicted by the members of the in-law's family. In the case of *Shamarukh*, the victim Shamarukh called her father pleading "Father, take me away. Otherwise, they will kill me" one day before she was found allegedly murdered.¹⁰⁷ She might not have lost her life if her father had listened to her. Incidences of this type are not rare in Bangladesh. Women, in general, are still accused of their unhappy life at the homes of their in-laws.

Nevertheless, wife-initiated divorce is seen as a "reflection of her character, morals, or child-bearing ability".¹⁰⁸ Even the family members of the women often are unsupportive of them and instead make them liable in this behalf. In-depth research on divorced women in India reveals that they are subjected to "social boycott, persuasion, shame, reprimand, and ridicule by caste and sect authorities".¹⁰⁹ Since the Socio-legal context of Bangladesh and India is mostly similar, this observation is relevant to MW of Bangladesh as well. This is the reason Muslim women lack the courage to consider separation in spite of enduring oppression and torture. The following case study leads to similar findings.

Case study 1:

Jhorna, age 40, was married off to a businessman when she was only 13.5 years old. Her husband used for ask her assistance in his ventures by developing intimate relationships with his

¹⁰⁴ Ain O Salish Kendro (ASK), Annual Report, 2013, 29. See more at: Report, "Trying to suicide to avoid the deterioration of rape attempt: *The Daily Prothom Alo*, March 04, 2019.

¹⁰⁵ Mohamed KhirBustami, "The right of women to no-fault divorce in Islam and its application by British Muslims", *Islam and Christian-Muslim Relations* 17, No. 3 (2006): 301.

¹⁰⁶ *Supra* note 40, 195-223.

¹⁰⁷ Staff Correspondent, "Phone call details may hold clues" *the Daily Star*, November 16, 2014, <http://www.thedailystar.net/phone-call-details-may-hold-clues-50550>.

¹⁰⁸ Amy Hornbeck; Bethany Johnson; Michelle La Grotta, and Kellie Sellman, "The protection of women from domestic violence act: Solution or mere paper tiger?" 2007 *Loyola University Chicago International Law Review* 4, no. 2 (2007): 273-307, at p. 277. See also Nahela Nowshin, "Understanding the rise in divorce in Bangladesh", *The Daily Star*, September 03, 2018, <https://www.thedailystar.net/news/opinion/perspective/understanding-the-rise-divorce-bangladesh-1628311>.

¹⁰⁹ Gopika Solanki, "Adjudication in Religious Family Laws: Cultural Accommodation, Legal Pluralism, and Gender Equality in India, (Cambridge: Cambridge University Press, 2011), 57 quoted in Dommaraju, Premchand., "Divorce and Separation in India," 2016 *Population and Development Review* 42(2):195-223, at p. 216.

clients and professional associates for ease in the negotiation of business deals. But, eventually accusing her of being promiscuous, she was beaten, bruised, slashed with knives, bound with rope and locked up in a separate room by her husband. With time, Jhorna gained enough perspective to conclude that she needed a divorce. Her mother was infuriated at the idea, because she thought a divorced woman would bring nothing but shame and disgrace to her family as there had never been any incidence of divorce in their family.¹¹⁰

This is a common scenario for most of the female divorce seekers in Bangladesh. Therefore, it can be argued that relaxation of the grounds of divorce and establishment of favourable family courts still does not make the process easier for women to surrender their marriage by the intervention of the court.

The Act of 1939 is the first statutory law which was sanctioned to facilitate Muslim women to dissolve marriages under certain limited grounds. This is stated in detail in section 2 of this Act. The grounds stated in this section cover the maximum of the reasons under which a wife may retract her marriage. But under the categorical analysis of all the circumstances included for termination of the marital contract in section 2 of this Act, several downsides that frustrate the purpose of enacting the law come into the light. The current research argues that the grounds stated in section 2 of the Act of 1939 for Muslim women in quest of divorce have the following loopholes:

1. A wife is entitled to file suit to get a decree for the dissolution of marriage¹¹¹ if the whereabouts of the husband have not been known for four years. With the location of the husband unknown, the implication of such a long-time frame is impractical and cruel for a woman solely to be eligible to divorce her husband under this ground. Also, the decree of divorce shall not take its effect for six months from the date of such a verdict. This restraint adds up to the hardship of the wife because her husband's family, in general, would be reluctant to accommodate her in that period.
2. A wife is allowed to file suit for divorce if the husband has neglected or failed to provide maintenance to his wife for two years¹¹². In Bangladesh, women are mostly dependent on their husbands for their means of sustenance.¹¹³ From this point of view, it is absurd for a woman, who is reliant on her husband, to wait for two years to get the right to divorce. This clause fails to redress the sufferings of an economically dependent woman during the period she is bound to delay being permitted to file suit to divorce under the particular ground stated in this clause. Women must be granted with the decree to dissolve their marriage earlier if their husbands neglect or fail to look after them properly. Moreover, the term maintenance itself is vague and ambiguous. This clause lacks the inclusion of the consequences of inadequate support of husbands to their wives. Gathering proper evidence on whether the wife is adequately maintained or not is quite difficult, making the process of getting a divorce under this ground strenuous.

¹¹⁰*Supra* note 106, 28-29.

¹¹¹*Supra* note 29, s 2(I).

¹¹²*Ibid* s2(II).

¹¹³ Only 17.2% women (who are above the age of 15 years or more) are economically active and among them 16.2% are employed. Bangladesh Bureau of Statistics, Labor Force Survey, 2010, at p. 1. Women of Bangladesh stand 130 among 179 countries (counted from first to last) on the basis of education, economic and social status index. Save the Children, Worlds Mothers Report, 2015, 10, accessed August 24, 2017, http://www.savethechildren.org/atf/cf/%7B9def2ebe-10ae-432c-9bd0-df91d2eba74a%7D/SOWM_EXECUTIVE%20SUMMARY.PDF.

3. A wife is eligible to get a decree for the termination of marriage if her husband has been sentenced to imprisonment for seven years or upwards.¹¹⁴ This is under the constraint that no decree of divorce shall be passed on this ground until the sentence has become final.¹¹⁵ There may be arguments in favour of this restriction that everyone must presume an accused innocent until proven guilty at the end.¹¹⁶ But it must be taken into account that the penalty of captivity for seven years or upwards is commanded for offences of a grievous nature. Thus, wives of the convicted are subjected to immense social pressure to live as the partner of the accused. Moreover, in our criminal justice system, a sentence is finalised after appeal and revision in the ‘appellate court’¹¹⁷, and this is usually a lengthy process. Hence, wives live under fear and mental trauma for an elongated period time worrying over their husbands, whether they are guilty or not.
4. A wife is authorised to get a decree of divorce¹¹⁸ if the husband has failed to perform, without reasonable cause, his marital obligations for three years. Furthermore, this is also valid if a husband has been insane for two years or is suffering from leprosy or virulent venereal disease.¹¹⁹ Both the predicaments are linked with similar detriments stated above.
5. If her father or another guardian bestow a wife before she reaches eighteen years of age, she can repudiate the marriage before nineteen years provided that the marriage has not been consummated.¹²⁰ But the Act of 1939 remains silent concerning the remedy for cases where the consummation takes place against her will. Though it is established by the judicial precedent of different courts that ‘consummation of marriage before attaining puberty’¹²¹, ‘consummation without free consent of wife’¹²² or ‘consummation by force’¹²³ does not disentitle the wife from implementing her right to option of puberty, gathering proof of the relatable incidences becomes challenging for the women.

Section 2 (VIII) of the Act of 1939 provides MW with a wide range of options to claim a divorce. Several¹²⁴ decisions of apex court of Bangladesh and India relaxed the grounds of the decree of dissolution of marriage¹²⁵ for Muslim women. However, attaining the decree of divorce

¹¹⁴ *Supra* note 29, s2 (III).

¹¹⁵ *Ibid*, s2 (a).

¹¹⁶ Article 11(1) of the Universal Declaration of Human Rights, 1948. See more at Kenneth Pennington, “Innocent Until Proven Guilty: The Origins of a Legal Maxim”, *The Jurist* No. 63 (2003): 106-124; William F. Fox Junior, “The “Presumption of Innocence” as Constitutional Doctrine”, *Catholic University Law Review* 2, no. 28 (1979): 253-269.

¹¹⁷ Sessions Court and Supreme Court of Bangladesh.

¹¹⁸ *Supra* note 29, s 2(IV).

¹¹⁹ *Ibid* s 2(VI).

¹²⁰ *Ibid* s (VII).

¹²¹ Co-habitation between husband and wife before the attainment of puberty by the wife cannot stand in the way of valid repudiation of marriage after attainment of puberty. *Madhu Molla vs Fuljan Bibi* 53 CWN 1 (DR) 37.

¹²² Forcible sexual intercourse with the wife does not defeat claim for dissolution of marriage. *Abdul Karim vs Amina Bai* 59 Bom. 426

¹²³ *Ibid*.

¹²⁴ *Supra* note 52.

¹²⁵ A marriage can be dissolved on the ground of mental cruelty, PLJ 1980 Kar. 230 (DB). The husband is liable for cruelty to his wife if he compels her to live at her parent’s house for a long time and denied her his company, AIR 1941 Sind. 23. The cruelty may include the habitual use of abusive and insulting language to the wife, PLD 1955 Sind. 378. The disposal of wife’s property without her consent for the selfish gain and the deprivation of a women from her property treated as the proper ground for seeking dissolution, *Mst. Umatul Hafeez vs. Talib Hussain* AIR 1945 Lah. 56.

in court is, to some extent, uncertain. Everything ultimately results in a situation where it is not the wife but the judges who decide on the continuity of the marriage. This creates withdrawal from the essence of Muslim marriage itself.¹²⁶ Therefore, the reasons mentioned above strengthen the argument on the fact that Act of 1939 fails to authorise Muslim women with the complete right to divorce even when it equips them to acquire judgment to abolish their marriage under certain circumstances.

Negative impacts of the absence of the absolute right of women to dissolve the marriage

In Islam, divorce is among the worst things permissible by law, but even then it is only legal to avoid loathsome consequences in families as well as society.¹²⁷ Bhuiyan remarks that Muslim personal laws on marriage and divorce have a significant influence on the day-to-day lives of the community and therefore, traditional ideas, misinterpretation of religion and negligence in the concerned matter are directly responsible for aggravating the already vulnerable condition of women in our country.¹²⁸ The absenteeism of the absolute right of women to dissolve the marriage, is intertwined with multiple socio-legal problems. These are discussed below.

1. Increase in domestic violence

A study in 2011 found that half of the divorcee women are victims of mental or physical abuse by their husbands,¹²⁹ and in most of the cases, domestic violence appeared to be the root cause of divorces filed by the ladies.¹³⁰ Jesmin and Salway contended that reduced social stigmatisation against divorce and improved women labour participation rate had given females more freedom that yields them the bravery to break the unpleasant marital knots to escape domestic violence.¹³¹ However, when women are independent, they are courageous enough to stand against abuse, which results in more torture from husbands in response to their wife's resistance. It can be argued that rigidity in getting divorce perhaps compel women to endure a family where they fall prey to domestic violence. Likewise, inflexibility in getting a separation and social stigmatisation against women initiated divorce force women to consider divorce as their last alternative before either killing themselves or being killed by their husbands.¹³² A 2014 study conducted by the UNICEF reveals that 47% of women aged between 15-19 experiences physical, sexual or emotional forms of violence.¹³³ It is worth mentioning that the prevalence of physical violence

¹²⁶ Islam speaks of marriage as muaddat (love), rehmat (sympathy) and sukun (peace of mind). Mohammed A. Qureshi, *Marriage and Matrimonial Remedies: A Uniform Civil Code for India* (Concept Publishing Company: Delhi, 1978), 42.

¹²⁷ Sunan Abi Dawud 2177, Book 13, Hadith 3 and Sunan Abi Dawud 2178, Book 13, Hadith 4, accessed on June 23, 2017, <https://sunnah.com/abudawud/13>.

¹²⁸ *Supra* note 9, 2.

¹²⁹ *Supra* note 31, 62-63 and 65.

¹³⁰ *Ibid*, 64. See also Nahela Nowshin, "Understanding the rise in divorce in Bangladesh", *The Daily Star*, September 03, 2018, <https://www.thedailystar.net/news/opinion/perspective/understanding-the-rise-divorce-bangladesh-1628311>

¹³¹ S. Jesmin, & S. Salway, "Marriage among the Urban Poor in Dhaka: Instability and Uncertainty", *Journal of International Development* 12, (2010): 689-705.

¹³² Siru Aura, "Women and Marital Breakdown in South Asia: Reconstructing Homes, Bonds and Persons, PhD dissertation (2008), Anthropology, University of Helsinki. See also Tahmina Anam, "The Curse of Early Marriage", *The New York Times*, December 29, 2014, <https://www.nytimes.com/2014/12/30/opinion/anam-the-curse-of-early-marriage.html>.

¹³³ United Nations Children's Fund 'Hidden in Plain Sight: A statistical analysis of violence against children, UNICEF, New York, 2014, 133.

among adolescent girls of the same age group in Bangladesh is 40%.¹³⁴ Many of them have suffered from the first day of marriage, yet financial instability, lack of literacy and unconsciousness of the matter hindered them from breaking the unhappy wedlock by the intervention of the court. In Bangladesh, 39% of the women are married off by their guardian before they attain 15 years of age and 74% of the females, sometimes forcefully, get entangled into a marital knot before 18 years of age.¹³⁵ In most of the cases, the bride has little choice either in deciding the terms of the contract or in the selection of the groom.¹³⁶ Ironically, the women are obliged to live in families where they were married off before they even gained the maturity to give consent to their marriages. Also, such marriages cause problems of adjustment for couples. This is one of the leading factors in the increase in domestic violence in Bangladesh. While prevention of child marriage could be an appropriate solution in this regard, divorce is the only alternative for cases where child marriage has already taken place, and couples fail to adjust in spite of their earnest effort to accommodate each other. In such circumstances, due to the formalities involved in the separation, women are not left with any choices to escape from the trouble emerged from the distressing match. In the context above, it can be said that rigidity and procedural formalities to exercise divorce right by women pressures them to continue the troubled and oppressive marriage.

An alarming report by the Bangladesh Police indicates that, from the year 2013 to 2014, the number of acts of violence against women (including domestic violence) climbed from 19,601 to 21,291, respectively.¹³⁷ The incidences of domestic violence could have been tackled in many ways, but one effective remedy is for a woman to leave the family where she is insecure. This is readily possible if MW is granted with the absolute right to repudiate their marriage.

As per the 2011 BBS survey report, among 26,792,993 of the women respondents in Bangladesh, 87% of them, on any occasion, have experienced cruelty from their current husbands.¹³⁸ Mainly, the percentages marking the number of women under physical, sexual, psychological, and economic violence was reported to be 65%, 36%, 82% and 53% respectively.¹³⁹ The persistent nature of spousal ferocity is reflected in the survey data where it was found that almost 90% of those who have been subjected to oppression by their current husband has over the 12-month experience of enduring violence.¹⁴⁰ Only 2.36% of 1, 80, 79, 841 participants took legal action against their partner for physical harm.¹⁴¹ A 2012 study conducted by Human Rights Watch demonstrates that discriminatory personal laws act as a significant barrier in evading domestic violence.¹⁴²

Likely, those who cannot afford to take legal actions for domestic violence will not be able to overcome all the formalities involved in getting the decree of divorce by the intervention of the

¹³⁴*Ibid*, 136.

¹³⁵ National Institute of Population Research and Training (NIPORT), Bangladesh Demography and Health Survey (BDHS), 2011 (NIPORT Report, 2013), 50-51.

¹³⁶ Lindsey E. Blenkhorn, "Islamic Marriage Contracts in American Courts: Interpreting Mahr Agreements as Prenuptials and Their Effect on Muslim Women", *Southern California Law Review* 76, (2002-2003), 197.

¹³⁷ Bangladesh Police, Annual report, 2013 and 2014, accessed June 25, 2017, <http://www.police.gov.bd/Crime-Statistics-comparative.php?id=208>.

¹³⁸ Bangladesh Bureau of Statistics, Report on Violence against Women Survey, 2011 available at http://203.112.218.66/WebTestApplication/userfiles/Image/Latest%20Statistics%20Release/VAW_Survey_2011.pdf last accessed on April 15, 2015, 29-30.

¹³⁹*Ibid*, 29-30.

¹⁴⁰*Ibid*, 16

¹⁴¹*Ibid*, 38

¹⁴²*Supra* note 89, 51.

court. The trauma of being stuck in an unpleasant marital life may tempt women to commit suicide. This assumption is supported by a 2011 survey report by BBS on emotional and psychological effects of physical violence where 70, 82,582 respondents conveyed that 7.09% of them attempted to commit suicide, 0.17% became drug-addicted, and 1.13% faced the tyranny of abortion due to physical violence.¹⁴³The concern of this paper here is to highlight the fact that in many cases, husbands and his family infringe the rights, privileges and in extreme cases, the life of the wives.

2. Increase in offences from extra-marital affairs

Couples in arranged marriages may not be compatible, which may naturally induce dissatisfaction within the duo, causing them to look for options elsewhere.¹⁴⁴ This may lead to involvement in extra-marital relationships. Currently, the offences emerging out of extra-marital affairs have gained momentum. Also, the appalling nature of the offences such as the murder of one's own infant children by the mother, or killing of the husbands or family members of the in-laws by women to hide their illegal¹⁴⁵ extra-marital association from others¹⁴⁶ have shocked the conscience of the Bangladeshi public.¹⁴⁷ In a study by Rutgers University, a biological anthropologist found that among men and women who are actively cheating on their spouses, 34 percent of the women said they were "happily married" whereas 56 percent of the males felt that way.¹⁴⁸ This potentially indirectly implies that a higher proportion of women is more likely to be engaged in extramarital affairs than men when they are unhappy in their marital lives.

It is quite natural that couples may not be able to adjust and live together mutually for the rest of eternity. Sometimes, repudiation of a marriage is instead the only alternative to discontented marital knots. With the disallowance of Muslim women with their absolute right to divorce along with the negative perception of the society regarding women initiated divorce, extramarital relationships are often prioritized by women, which wreaks havoc not only on the family but on the community as well.¹⁴⁹ The most recent remorseful suicide incident of the physician Akash at the beginning of the New Year 2019, did not escape the attention of anyone in Bangladesh after his Facebook post few hours before he poisoned himself, disclosing his marital agony over the multiple illicit sexual relationships of his wife Mitu, went viral on social media¹⁵⁰. Extramarital relationships are not justified as an excuse because of an unhappy marital life, neither is the attempt of taking one's own life, but such scenes could have been avoided if the concept of separation was not regarded as so outrageous in contemporary life.

¹⁴³*Supra* note 140, 38.

¹⁴⁴ Kalpana Sharma, "Is it worth having an extra-marital affair", *Times of India*, November 23, 2017, <https://timesofindia.indiatimes.com/life-style/relationships/love-sex/Is-it-worth-having-an-extra-marital-affair/articleshow/11153863.cms>. See more Kalpana Sharma, "Why extra marital affairs could be right" *Times of India*, July 6, 2017, <https://timesofindia.indiatimes.com/life-style/relationships/love-sex/why-extra-marital-affairs-could-be-right/articleshow/48019416.cms>.

¹⁴⁵ Section 497 of the Penal Code, 1860 prohibited sexual intercourse with the wife of another man without the consent or connivance of that man and defined it as the offence of adultery.

¹⁴⁶ See more: Correspondent Report, "Trader killed over extramarital affair" *the Dhaka Tribune*, August 16, 2014, <http://www.dhakatribune.com/bangladesh/2014/aug/16/trader-killed-over-extramarital-affair#sthash.OroELbNX.dpuf>. See more at *supra* note 45.

¹⁴⁷*Supra* note 45.

¹⁴⁸ Robert Weiss, "Women who cheat on relationships", *Psychology Today*, October 15, 2013, <https://www.psychologytoday.com/blog/love-and-sex-in-the-digital-age/201310/women-who-cheat-relationships>.

¹⁴⁹Women's Right under Hindu and Muslim Personal Law: A Comparative Study, accessed on October 23, 2014, http://bdlaws24.blogspot.com/2013/02/a-comparative-study-on-womens-right-in_8893.html.

¹⁵⁰ Anwar Hossain, Ctg doctor's suicide: wife sent to jail after remand", *Dhaka Tribute*, February 16, 2019, <https://www.dhakatribune.com/bangladesh/nation/2019/02/09/ctg-doctor-s-suicide-wife-sent-to-jail-after-remand>.

The following case studies will further clarify how the narrow scope of divorce for Muslim women results in extra-marital affairs.

Case study 1:

An 18-year-old boy named Tanbir Ahmed killed a 36 years-old businessman named Giasuddin. Giasuddin's wife, Yeasmin Alias Lina aged 29 years, the mother of two children, had an extramarital relationship with Tanbir Ahmed. She was wedded to Tanbir while she was still married to her first husband, just a few days before her husband Giasuddin was found dead. Lovely claimed that she had only planned the murder of her husband Giasuddin to be rescued from his tortures.¹⁵¹

From the above incident, it is evident that Lovely was not content with Giasuddin in their conjugal life. Lovely also married her boyfriend Tanbir without divorcing her existing husband. The second marriage of an MW is not allowed in the existence of a valid marriage under both the *sharia* law and the statutory laws of Bangladesh. She had chosen to kill her husband instead of divorcing him to live with her boyfriend freely. From the socio-legal context of Bangladesh, this signifies that lack of ease in the process of divorce initiated by women is increasing the murder for extra-marital relationship day by day.

Case study 2:

Kamruzzaman, a 30-year-old stone businessman of Demra, Dhaka, was killed by the plan and active support of his mother, Mariam Begum. His mother, a 45-year-old woman, decided to assassinate him, so she could continue an extramarital relationship with her 50-year-old boyfriend, Azizul Haque Aziz. It is allegedly reported that Azizul Haque Aziz's wife is elderly and Muriam Begum's husband suffers from ill-health, which was the reason they maintained the extramarital relationship, to enjoy the benefits of marital life they were deprived off in their respective one.¹⁵² It is clear that Mariam Begum and Azizul Haque Aziz were unhappy in their own matrimonial lives provided their partners are old and in poor health. Mariam Begum chose to murder her son to keep her extramarital affair secret instead of divorcing her existing husband.

3. Increase of cases filed by women under several special penal laws

The number of lawsuits filed by women under *Women and Children Repression Prevention Act, 2000* (Act of 2000)¹⁵³ is surging upwards daily. According to the annual report of the High Court Division of the Supreme Court of Bangladesh, the number of cases filed by the women under the Act of 2000 was 37,602¹⁵⁴ in 2011, which from the year 2012-2014 inflated to 38, 331¹⁵⁵, 50,702¹⁵⁶ and 54,810¹⁵⁷ respectively. As per the report prepared by the Ministry of Home Affairs, Bangladesh, the number of cases filed for violence against women is 1,383 in July 2014, which rose to 1,651 in August 2014. This shows that particularly in a month, the increase in quantity is 268.

¹⁵¹ Report, "Wife's boyfriend involved in killing", The Daily Observer, November 22, 2014, <http://www.observerd.com/2014/10/22/50202.php>.

¹⁵² Tazlina Zamila Khan, "Extra-marital affair leads mother to kill son", *The Dhaka Tribune*, October 03, 2014, <https://www.dhakatribune.com/uncategorized/2014/10/03/extra-marital-affair-leads-mother-to-kill-son>.

¹⁵³ Women and Child Repression Prevention Act, 2000.

¹⁵⁴ High Court Division of Supreme Court of Bangladesh, Report on the statistics of suit in the court of Bangladesh, 2011, 22-28.

¹⁵⁵ *Ibid.*

¹⁵⁶ *Supra* note 156, 27-28.

¹⁵⁷ *Ibid.*, 26-27.

Domestic violence against married women usually starts with a simple injury and mental torture, which in extreme cases, turns into domestic violence of a grievous nature such as habitual maltreatment and serious physical harm. There might be situations, especially over the long term of couples' lives, where quarrels and slaps become a common phenomenon. In those situations, counselling and conciliation can be a more appropriate solution than dissolving the marriage itself. However, if professional help cannot prevent persistent minor damages and mental torments of married women, then how is it justified to restrict them from repudiating the marriage? Generally, married women only file cases against their husband and in-laws in cases of frequent torture or serious physical damage. Most of the marriages under such circumstances hardly continue peacefully.¹⁵⁸

Every victim of domestic violence can file suit to redress the exploitation, but only a few of them can file cases to claim justice. Furthermore, to gain support and sympathy of the society as well as their family in issuing a divorce, women may make false pleas conveying that their husband oppresses them.

Menski appraised *talaq* as the freedom of choice for an individual. He criticised the husband's outright power of divorce as a violation of human rights, exclusively because of its gender bias. He stated that *talaq* offers men unilateral power over women and children, and such power and discretion may be abused, thus creating a definite gender imbalance which a modern state may wish to reduce.¹⁵⁹ This imbalance can be addressed by endowing women with the absolute power of divorce like their male counterparts. As women end marriages full of misery, this in turn may also contribute to the reduction of the number of cases filed by women under various special penal laws for their protection.

Procedural rigidity for divorce leads to the filing of false cases: Lessons from India

In terms of both personal and statutory laws, Muslims are considerably privileged with more liberty in getting a divorce as compared to Hindus. In India, 78.9% of the population practices Hinduism. Therefore, the procedures for attaining separation by Hindu people of India are discussed to have a comparative analysis to substantiate further the argument regarding the fact that restraints in the renunciation of marriage are a violation of gender equality that may tempt women to fabricate cases against their husbands and in-laws.

According to the classical laws of Hinduism, marriage is a religious sacrament that bonds couple in an indissoluble union.¹⁶⁰ It is the holy unification of mind, body and soul of the spouses and, it is believed that even death does not put an end to it, for the wife's soul remains linked to that of her husband even after rebirth in the next world.¹⁶¹ There has been a prevailing view among scholars that classical Hindu law does not permit divorce, mainly because it infringes on the ideal of sacramental marriage, seen as the central foundation of Hindu family law.¹⁶² The renowned jurist Kapadia examined why Hinduism is hostile to divorce in the light of the laws of Manu (*Manusmriti*) outlining marriage. According to Kapadia, the essence of *dharma* for the husband and wife is declared by these laws as the mutual fidelity towards each other till death, because

¹⁵⁸Nowshin, *Supra* note 110

¹⁵⁹*Supra* note 84, 11.

¹⁶⁰Werner F. Menski, *Hindu Law: Beyond Tradition and Modernity*, 3rd ed., New Delhi: Oxford University, 2010, 278.

¹⁶¹*Ibid*, 433.

¹⁶²*Ibid*, 427.

when united in a marital bond, they must continually put effort to ensure that they do not disunite or violate their mutual allegiance.¹⁶³ It is vital to bear in mind that these laws of Manu are ancient laws which codified the customs, usages and practices of society in earlier times, many of which became outdated and obsolete in the present context. However, these are the most dominant source of orthodox Hindu laws still guiding the authority of family affairs of Hindus.¹⁶⁴ As per these laws, Hindu women are not allowed to divorce their husband even if they are impotent, cruel, suffering life imprisonment or threat to their lives.¹⁶⁵

However, in India, procedures of divorce are regulated by the Hindu Marriage Act, 1955 (Act of 1955). Under this Act of 1955, Hindu couples are entitled to a 'judicial separation'¹⁶⁶ and divorce under specific grounds.¹⁶⁷ The circumstances under which Hindu couples are permitted to file a divorce petition are related to cruelty, polygamy, extramarital affairs. The legislators of the Act disregarded the fact that married couples may not be happy due to the lack of adjustment within themselves. Since the couples are bound to prove specific stereotypic grounds to issue divorce, it drives many of them to bring false allegations against each other to acquire divorce by the intervention of the court. Besides, there is also a precondition that one year must pass after the registration of marriage before the court allows the presentation of the petition for divorce.¹⁶⁸ However, the court may grant a requisition to be presented before one year in exceptional cases of hardship to the petitioner or of abnormal depravity on the part of the respondent.

Provided that the Hindu personal law prohibits dissolution of marriage, the only option available for a Hindu couple is judicial divorce through the intervention of the court. Customarily, women are the usual victims of unhappy marital knots and hence are more inclined to cast off their marriage than their counterpart in cases of unfortunate matrimonies. Thus, stipulation to wait for a year to file the appeal for divorce may lead women to raise false accusations against their husbands and in-laws under various laws that support women to abdicate their marriage before the completion of one year on the ground of exceptional suffering or depravity.

The trend of filing false rape complaints against husbands and in-laws is on the rise in India.¹⁶⁹ In a briefing in the 'Lok Sabha'¹⁷⁰, Haribhai Parathibhai Chaudhary, Minister of State for Home Affairs of India, said that police investigation revealed as many as 31,292 cases of alleged cruelty by husbands and in-laws, filed by women under Section 498A of the Indian Penal Code (IPC) between 2011 and 2013, were found false or mistake of fact or law.¹⁷¹

Although the purpose behind the enactment of Section 498-A of the IPC and the Dowry Prohibition Act is to regulate and curb the hazard of dowry, instead they observe a tendency among women to involve all of the husband's family members in the cases filed under section 498 A-IPC

¹⁶³ K.M. Kapadia, *Marriage and Family in India*, 3rd ed., Calcutta: Oxford University Press, 1972 pp. 181-2 cited in Menski, Werner F. (2010), *Hindu Law: Beyond Tradition and Modernity*, 3rd ed., New Delhi: Oxford University, p. 435. See also Tahir Mahmood, *Hindu Law*, 2nd ed., Allahabad: The Law Book Company (P) Ltd, 1986; John D. Mayne, *Hindu Law and Usage*, revised by Justice Alladi Kuppaswami, twelfth ed., New Delhi: Bharat Law House, 1986 and Ramesh Chandra Nagpal, *Modern Hindu Law*, Lucknow: Eastern Book Company, 1983.

¹⁶⁴ *Supra* note 162, 430-438.

¹⁶⁵ *Supra* note 9, 2.

¹⁶⁶ Section 13-A of the Hindu Marriage Act, 1955.

¹⁶⁷ *Ibid*, s 13.

¹⁶⁸ *Ibid*, s14(1).

¹⁶⁹ Christin Mathew Philip, "Steady increase in number of women filling false cases against husbands", *The Times of India*, March 22, 2015, <https://timesofindia.indiatimes.com/india/Steady-increase-in-number-of-women-filing-false-cases-against-husbands/articleshow/46452475.cms>.

¹⁷⁰ Lok Sabha, House of the People, is the lower house of the India's bicameral parliament.

¹⁷¹ *Supra* note 172.

and Dowry Prohibition Act, to satisfy the complainant.¹⁷² In the case of *Rajesh Sharma & Ors vs State of U.P. & Another*, Justice Adarsh Kumar Goel, mentioned that misuse of the provision of 498 A-IPC and the Dowry Prohibition Act is judicially acknowledged.¹⁷³ The following reference from statistics of the National Crime Records Bureau (NCRB) shows the prevalence of the filing made-up cases in India:

As per NCRB report of 2005, for a total 58,319 cases reported Under Section 498A IPC, a total of 1,27,560 people were arrested, and 6,141 cases were declared false on account of mistake of fact or law. While in 2009 for a total 89,546 cases reported, a total of 1,74,395 people were arrested, and 8,352 cases were declared false on account of mistake of fact or law. In 2012, a total of 197,762 people all across India were arrested under Section 498A of whom 47,951 were women perhaps mother or sisters of the husband. However, most surprisingly the rate of charge-sheet filing for the year 2012, under section 498A Indian Penal Code was at an exponential height of 93.6% while the conviction rate was at a staggering low at 14.4% only. The report stated that as many as 3,72,706 cases were a pending trial of which 3,17,000 were projected to be acquitted.¹⁷⁴

Even though there are diversified pretexts for the filing of false cases by women, most of the cases studied by the authors which are filed under different penal laws of Bangladesh, are found to be the result of distress in the family or polygamy of the husband, but with the purpose to make a score or punish the counterpart.¹⁷⁵ In the case of *Hasina Ahmed vs. Abul Fazal*, after 9 years of marriage with Abul Fazal (from November 1963 to May 1972), Hasina Ahmad filed a suit for dissolving her marital contract on several accounts including both physical and psychologically ill treatment towards her, selling of her property and ornaments, fraudulent allegations against her moral character, immoral conduct of the husband and his association with prostitutes.¹⁷⁶ The case was dismissed by both the trial court and ‘lower appellate court’,¹⁷⁷ as proper evidence supporting the accusations were not found. However, in an appeal from the appellate decree, High Court Division of the Supreme Court of Bangladesh set aside the concurrent judgments of the lower courts based on an admitted fact that the plaintiff’s husband used to suspect her of partaking in an illicit relationship with one of her cousins. Justice S. M. Husain discoursed that the same allegation being repeated by the husband to the concerned wife falls under the definition of “cruelty” within the meaning of sub-clause (a) of Clause VIII of section 2 of the Act of 1939 and granted the decree for dissolution of marriage in favour of the wife. However, close inspection of the grounds of divorce brought by the wife against the husband in the court at the first place indicates that the

¹⁷² *Tahmena Kaleem and Others vs State of A.P. Rep. by Public Prosecutor*, AIR 2000 SC 2324 (1), accessed December 23, 2015, <https://indiankanoon.org/doc/122766842/?type=print>. The same view is also reflected in the case of *Sushil Kumar Sharma vs. UoI* [(2005) 6 SCC 281]; *Preeti Gupta vs. State of Jharkhand* [(2010) 7 SCC 667]; *Ram Gopal vs. State of M.P.* [(2010) 13 SCC 540] *Savitri Devi vs. Ramesh Chandra*.

¹⁷³ Para 8 of Criminal Appeal No. 1265 of 2017 (AIR2017SC3869), http://supremecourt.gov.in/supremecourt/2017/6593/6593_2017_Judgement_27-Jul-2017.pdf.

¹⁷⁴ *Ibid*, Para 7.

¹⁷⁵ *Khurshid Bibi vs. Baboo Muhammad Amin*, 19 DLR (1967) 59.

¹⁷⁶ 32 DLR (1980) 294.

¹⁷⁷ District Court. Section 17 of the Family Court Ordinance, 1985.

presented allegations are punishable offences under different penal laws of Bangladesh.¹⁷⁸ It is worth mentioning that she was unable to prove the charges of wrongdoings in the trial court and subsequently in the lower appellate court and High Court Division of the Supreme Court. This signifies that it is not surprising to find MW provoked into bringing false charges against their husbands to strengthen their reasons for the renouncement of the marriage.

In Bangladesh, there is no record of any official data on the number of false cases filed under different special penal laws enacted to establish women's rights. However, a comprehensive and thorough study conducted by a research team of the *Daily Prothom Alo*, on the cases tried by 5 'Nari O Shishu Nirjaton Doman Tribunals'¹⁷⁹ in Dhaka District over 15 years (from 2002-2016) found that in 97% of the cases, the accused is either released or acquitted from charges.¹⁸⁰ The reasons for such observations were figured out to be mostly the filing of fake claims. In the Judicial Conference of judges in 2016, more than 40 judges of different Women and Child Repression Prevention Tribunals marked the filing of the spurious claim as the foremost reason for the non-disposal of matters addressed by them in the tribunal.¹⁸¹ Hence, filing of concocted instances to take revenge or humiliating opponents is not an unusual occurrence in Bangladesh.¹⁸²

Given the above circumstances while also taking into account the discussion of the Indian context, the authors argue that the social stigma in Bangladesh discourages women from divorcing their husbands, resulting in a tendency among many of them to bring false allegation against their husband and his family members under the Act of 2000; the Penal Code, 1860 and The Dowry Prohibition Act, 1980 to gain sympathy along with moral and legal support from others in getting the decree for divorce.

Sharia law and Muslim women's absolute right to dissolve their marriage: Is harmonious interpretation possible?

Traditionalists argue that the empowerment of Muslim women with the absolute right to relinquish their marriage will frustrate the rules of *sharia* law. However, it is not the intention of the Almighty Allah to compel MW to remain in unpleasant wedlock that causes personal distress, pain, and suffering. The Holy Quran clearly states that men and women have the same spirit, and there is no superiority in the spiritual sense between men and women.¹⁸³ According to the messages of Allah and the hadiths of Prophet Muhammad regarding the separation of spouses, it is evident that *sharia* law recognises the rights of Muslim women to repudiate their marriage. *Tawfiz* permits women to renounce their marriage in any case where the *tawfiz* is delegated unconditionally in the *kabinnama*. This includes the unhappiness of the women in a marital bond. Therefore, no women shall suffer lifelong merely because their husband did not empower them with the right for this. The authors of this paper aim to empower MW to reject their marriage without the formalities required to exercise their rights its present form, so that they have equal footing with their husbands in this regard. This, in turn, will eradicate the problems that may emerge from this disparity and inequality.

¹⁷⁸ The Penal Code, 1860, The Women and Child Repression Act, 2000, The Dowry Prohibition Act, 1980, The Domestic Violence (Prevention and Protection) Act, 2010.

¹⁷⁹ Women and Child Repression Prevention Tribunal.

¹⁸⁰ Asdujjaman and Golam Murtuja, "Women and children didn't get justice", *The Daily Prothom Alo*, March 08, 2018.

¹⁸¹ Ibid.

¹⁸² Ibid.

¹⁸³ Al Quran 4:1, 7:189 and 42:11.

Islam does not pressure couples to continue their marriage against their will. Mainly, it allows Muslim women to end their marriage if their life is at stake. A relatable verse of the Holy Quran states that "if a wife fears cruelty or desertion on her husband's part, there is no blame on them if they arrange an amicable settlement between themselves; and such settlement is best".¹⁸⁴ Furthermore, it is also mentioned in the Holy Quran that if the couple fails to live peacefully, then there will be no blame on either of them if the woman opts to give something for her release.¹⁸⁵ According to a hadith of Prophet, as narrated by Ibn Abbas, the wife of Thabit bin Qais came to the Prophet and said:

"O Allah's Apostle! I do not blame Thabit for defects in his character or his religion, but I, being a Muslim, dislike to behave in an un-Islamic manner (if I remain with him)." On that Allah's Apostle said (to her), "Will you give back the garden which your husband has given you (as Mahr)?" She said, "Yes." Then the Prophet said to Thabit, "O Thabit! Accept your garden and divorce her once."¹⁸⁶

The above messages of Allah and Hadith of Prophet might convey the impression that Islam does not empower women with the absolute right to surrender their marriage; instead, it only recognises the rights of women to divorce their husband by fulfilling certain conditions. Therefore, it may look like MW cannot be equipped with absolute power to divorce their husbands without frustrating *sharia* law. However, it should not be overlooked that Allah treats men and women as equals in terms of spiritually.¹⁸⁷ Therefore, this should not be any different in the case of divorce as well. Hence, the authors' concern is to establish the fact that since *sharia* law recognises Muslim women's will to end their marriage, the state must also facilitate women by removing barriers and procedural obduracy in the process of issuing divorce against their husband if separation is what they desire.¹⁸⁸

The reform of personal law by legislating statutory requirements is not a new phenomenon in Bangladesh. *Sharia* law as it stands today in the country was shaped by several modifications brought by British rulers during the colonial period and further alterations undertaken by the Pakistan and Bangladesh governments in response to social needs, the feminist movement and pressure from progressive reformers.¹⁸⁹ There are illustrations in which lawmakers consolidated personal laws regarding marriage, divorce and inheritance of Muslims, which are under exclusive jurisdiction of *sharia* law, aimed for the welfare of the general public. For instance, traditional *sharia* law does not entitle an orphan with the claim of succession to their grandparents' property. However, to establish an orphan's right of inheritance, legislatures of the former Pakistan government added a new endowment in the Muslim law of succession, which states that "in the event of the death of any son or daughter of the propositus before the opening of succession, the children of such son or daughter, if any, living at the time the succession opens, shall per stirpes receive a share equivalent to the share which such son or daughter, as the case may be, would receive if alive".¹⁹⁰ This provision of the government recognising the right of a child without parents in succession is an outstanding example manifesting that religious laws are not immutable.

¹⁸⁴ Al Quran 4: 128.

¹⁸⁵ Al Quran 2:229.

¹⁸⁶ Sahih Bukhari, Volume 007, Book 063, Hadith Number 197.

¹⁸⁷ Al Quran 3:195.

¹⁸⁸ For example, through the enactment.

¹⁸⁹ *Supra* note, 5.

¹⁹⁰ *Supra* note 51, s4.

Again, under *sharia* law, a Muslim husband has the liberty to divorce his wife instantly without having to go through any formalities. But the statutory rules of Bangladesh have made it mandatory to hand over a notice of divorce to the arbitration council constituted in this behalf.¹⁹¹ Non-compliance with the provision of section 7(1) (regarding the delivery of notice to the Chairman) makes *talaq* legally ineffective.¹⁹² The statutory laws of the land likewise did not recognise '*talaq e bida*'¹⁹³. Although under *sharia* law, *talaq e bida* comes into force at an instant, in Bangladesh however, no *talaq* is valid before the expiry of 90 days from the date the notice of divorce is sent to the arbitration council.¹⁹⁴ Besides, sexual intercourse of a man with his wife is considered as rape if the age of wife is less than thirteen years¹⁹⁵, but no such type of age limitation for wives is designated for the consummation of marriage under *sharia* law.

Furthermore, the registration of marriage is not obligatory under *sharia* law. But the registration of Muslim marriage is compulsory under section 3 of the *Muslim Marriages and Divorces (Registration) Act, 1974*.¹⁹⁶ Moreover, the *Muslim Marriages and Divorces (Registration) Rules, 2009* provides a predefined form for the registration of marriage which comprises of all the necessary particulars essential for the spouses to lead a peaceful marital life along with the regulations designed for the protection of the rights of Muslim women.¹⁹⁷ *Sharia* law also does not prescribe any minimum required age for marriage. However, the government of Bangladesh acknowledged the harmful consequences both on the mental and physical health of children who are married off before attaining a certain minimum age. It enacted an Act¹⁹⁸ to restrain the solemnization of child marriages and fixed a required age of 21 years for males and 18 years for females for entering into a marital contract.¹⁹⁹

As per *sharia* law, a Muslim male is permitted to have four wives at a time without having to deal with any formalities. But the statutory laws of the country incorporated the provision of obtaining permission from the arbitration council if a Muslim man wants to remarry during the sustenance of a valid marriage. The goal is to prevent whimsical polygamy of Muslim males.

From the above discussion, we may conclude that legislators do not always remain silent concerning the personal laws of Muslims. The policymakers crafted many remarkable restructurings in *sharia* law for the greater good. Thus, there is no valid point to oppose gender equality in terms of divorce on the ground that it is under the exclusive dominion of *sharia* law.

It is noteworthy that the article 16 (1) (c) of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) urged its States Parties to take all the appropriate measures to ensure equivalent rights and responsibilities during marriage and at its dissolution based on gender equality.²⁰⁰ In particular, since Bangladesh ratified the CEDAW, enactment of

¹⁹¹ *Ibid* s 7(1).

¹⁹² *Abdul Aziz vs Rezia Khatoon*, 21 DLR 733.

¹⁹³ An irrevocable form of divorce which becomes effective as soon as the intention of *talaq* is scrawled in a written *talaqnama*, or even via phone or text message. Sahih Bukhari Volume 007, Book 063, Hadith Number 187, <http://hadithcollection.com/sahihbukhari/96-Sahih%20Bukhari%20Book%2063.%20Divorce/5907-sahih-bukhari-volume-007-book-063-hadith-number-187.html>.

¹⁹⁴ *Supra* note 51, s7(3).

¹⁹⁵ Section 375 of the Penal Code, 1860 (Act No. XLV of 1960).

¹⁹⁶ Section 3 of the Muslim Marriages and Divorces (Registration) Act, 1974.

¹⁹⁷ Form 'D' of the Muslim Marriages and Divorces (Registration) Rules, 2009.

¹⁹⁸ The Child Marriage Restraint Act, 2017

¹⁹⁹ *Ibid* s 2(1).

²⁰⁰ It is ironic that Bangladesh has signed this instrument putting reservation on Articles 2, 13 (a) and 16 paragraph 1 (c) and (f). The Federal Republic of Germany considers that the reservations made by Bangladesh are incompatible with the object and purpose of the Convention (article 28, paragraph 2) and therefore oppose to them. For more,

the law for positive empowerment of Muslim women with respect to dissolution of their marriage falls under the legal obligation of the state.

Now the real question lies in how the empowerment of Muslim women with the exclusive right to divorce their husbands can be brought about within the ambit of *sharia* law. Among the options available for Muslim women to terminate their marital contract under *sharia* law, the success of all of them is at the mercy of the husband's will except *tawfiẓ*. Women initiated divorce is free of obstacles in *tawfiẓ*, if the husbands delegate the right of *tawfiẓ* 'unconditionally'²⁰¹ to their wives. The only problem in the scenario is that it is entirely a husband's preference, whether he desires to authorise his wife with the right of *tawfiẓ* or not. This is where legislators of Bangladesh can step in to address the problem by ordaining a statutory law that makes it mandatory for husbands to delegate the right of *tawfiẓ* unconditionally to their wives. Carroll remarked *tawfiẓ* as a way of balancing matrimonial power between husband and wife, in terms of the divorce. She termed it as a means of empowering Muslim women with the extra-judicial right to dissolve the marriage via verbal formulation, as with their male counterparts, while expeditiously retaining their claim to the full amount of dower.

On the contrary, from a legal perspective, it may be argued that it is not possible to make the delegation of the right of *tawfiẓ* to Muslim women compulsory for men, because it is the sole right of a husband to decide on his family matter. Generally, the state cannot overwhelmingly require husbands to pass on the right of *tawfiẓ* to their wives. However, the government of a country has the inherent power to make laws for the more significant benefit of its residents. Just as the lawmakers of Bangladesh prohibited *talaq-e-bida* that relinquishes marriage in an instant, policymakers may establish another law making it possible for husbands to devolve the right of *tawfiẓ* unconditionally to their wives. Placing the public interest foremost, the inclusion of such compulsory delegation of *tawfiẓ* in the *kabinnamais* is neither illegal nor contradictory to *sharia* law.

Absolute power does not necessarily involve unwanted divorces

Menski raised a question on the justification of the law that supports that Muslim husbands alone should be able to claim the right of absolute *talaq*, while the Muslim wife is told that she does not possess the same unilateral discretion.²⁰² There may be many who support the argument that empowering Muslim women with the absolute right to renounce her marriage will escalate the number of divorces. However, it should not be forgotten that unless it is an extreme case, no women would be willing to go through the mental trauma of a marital separation. This standpoint is supported by the hadith of Prophet narrated by Musruq: "I asked, 'Aisha about the option: She said, "The Prophet gave us the option. Do you think that option was considered a divorce?" I said, "It matters little to me if I give my wife the option once or a hundred times after she has chosen me".²⁰³

The authorisation of Muslim women with the unilateral right to divorce certainly does not cause an unreasonable increase in the rate of divorce.²⁰⁴ Instead, it will only provide a mechanism

please visit: <http://www.un.org/womenwatch/daw/cedaw/reservations-country.htm>. Last accessed on February 22, 2017.

²⁰¹ Delegating the right of *tawfiẓ* to wives without stipulating any prerequisite to exercise it.

²⁰² *Supra* note 84, 14.

²⁰³ Sahih Bukhari, Volume 007, Book 063, Hadith Number 189.

²⁰⁴ *Ibid*, hadith 188.

for Muslim women to end their unhappy wedlock. Moreover, *sharia* law empowers only the husband with unlimited power for the dissolution of marriage, and therefore the likelihood of the rise in several divorces should not be used as a defence against women from letting them enjoy the absolute power to surrender their marriage.

According to the messages of the Almighty Allah, if a couple reaches a point of desperation from where they cannot come back in good terms with each other, then they are instructed to be separated properly.²⁰⁵ In this given perspective, the implication of fighting in the court solely to obtain the decree of divorce from the husband is entirely inconsistent.

Conclusion

Bhuiyan remarks that divorce is crucial to free couples, particularly women from abusive, violent and oppressive marital ties and to avoid the deadly consequences concomitant with inequality among genders in terms of divorce.²⁰⁶ Menski recognised the engagement of spouses in extra-marital sexual relations, *zina*²⁰⁷ as a potential threat in case *sharia* law protects spouses against being divorced even if the marriage between two people appears no longer tenable.²⁰⁸ But in fact, *sharia* law does not treat marriage as perpetual bondage. It instead provides the spouses with a wide range of options to terminate their marital union if they wish to do so. At present, while Muslim women are chained with limited opportunities to end their marriages both under traditional interpretations of *sharia* law and the statutory laws of Bangladesh, their male counterparts are however, granted absolute rights to invalidate their marriage at any instance devoid of any formalities. This disparity not only violates gender equality but also works as one of the fundamental reasons of domestic violence, an increase of filing of cases and offences emerging out of extra-marital affairs of the spouses, and so on. The formalities in the process of women-initiated divorce act as instigators of socio-legal problems just like child marriage is a significant factor in marital rape, domestic and sexual violence, malnutrition of the mother and child, the birth of underweight and deceased baby, high mortality rates of mothers. However, this is directly contradictory with the core fundamentals of Islam. The Quran bears witness that Islam treats women as vital to life as men, and that she is not in any way inferior. Since Islam is the Code of Life for its believers, then, indeed, it does not have room for anything that hampers the well-being of its believers. Where male domination in some cases results in aggravated forms of mental and physical damage to women, if separation of spouses is the only way to steer clear of the associated consequences of domestic violence and extramarital affairs, then the formalities existent in the process of women-initiated divorce cannot recognize women and men as spiritually equal as Islam does. ‘Islamic modernists’²⁰⁹ believe that *sharia* law as developed by the classical jurist is not immutable and can receive amendments as it did before from the grounds of human rights and gender equality to meet the modern difficulties of life.²¹⁰ To restore peace, *sharia* law may be comprehended in the light of modernist perspectives as per changing social contexts and needs of

²⁰⁵ Al Quran 65:2.

²⁰⁶ *Supra* note 9, 241.

²⁰⁷ Islamic legal term meaning impermissible sexual intercourse.

²⁰⁸ *Supra* note 84, 18.

²⁰⁹ “Muslim modernists,” instead referring to themselves simply as Muslims, Muslims involved in the process of reform and renewal, Muslims committed to democracy, or even Muslims intent on reviving the original spirit of Islam, accessed on March 17, 2017, <https://www.encyclopedia.com/environment/encyclopedias-almanacs-transcripts-and-maps/modernism-islamic-modernism>.

²¹⁰ *Supra* note 9, 246.

the current society, as long as it does not violate the central value of Islam. To sum up, the authors substantiate that government's contribution in the enactment of a provision that makes it compulsory for husbands to delegate unconditional *tawfiz* to their wives is a potential solution to equip Muslim women with the absolute right for dissolution of marriage without frustrating the foundation of *sharia* law in this behalf.

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