

MODERNIZING MARRIAGE REGISTRATION LAW IN BANGLADESH

Md. Nannu Mian*

Shaikh Rajib Hossain**

Abstract:

A marriage is a voluntary institution between a man and a woman who matrimonially establish the rights and obligations between them. Usually, all marriages in every religion are solemnized according to the personal law of the spouses. A marriage registration has not been made compulsory in most of the personal laws in Bangladesh, however, nowadays, a marriage registration is very essential for obtaining an established status of legality from the state. Besides, as is the situation now prevailing, it is very important to prove the official and legal status of the marriage and to ensure the rights of the man and the woman at the time of divorce or other official or untenable situations. However, there is no uniform law for the marriage registration for all religions in Bangladesh. Therefore, this research will analyze the existing laws relevant to the marriage registration for the people of all the religions in Bangladesh. Finally, the research will attempt to recommend a modern uniform marriage registration law in Bangladesh. Qualitative and analytical research methods will be applied primarily; besides, non-doctrinal method will also be applied in this research.

Keywords: Marriage, Registration, Modernizing, Law, Bangladesh.

* LL.B. (Hons.), LL.M. (SEU), PhD-Candidate (IUM); Assistant Professor, Department of Law, Uttara University, Dhaka, Bangladesh

** LL.B. (Hons.), LL.M. (RU); Lecturer, Department of Law, Uttara University, Dhaka, Bangladesh

Introduction

Nowadays, a marriage registration is a much talked socio-legal phenomenon in Bangladesh and there is very little publication on the issue which provides a comprehensive knowledge or legitimate amicable solution regarding the problems arising from a non-registered marriage. In this respect, this research has been conducted by centralizing the problem with a critical analysis from a legal and social point of view. As it is a very socio-legal phenomenon, particularly, when a marriage registration is very important to prove the legal status of the marriage and to ensure the rights of the woman at the time of divorce or other miscellaneous distractive situations in the conjugal life of a couple. On the other hand, the study is also crucial and very important as there is no uniform effective means and measures regarding the marriage registration and the needed protection of women from various matrimonial complexities arising out of the non-registered marriages. Moreover, there is no comprehensive and critical study on this issue though many people have opined and analyzed this subject from the scattered complexities of this phenomenon which may be conducive in outsourcing some effective means and measures in mitigating the problem fruitfully.

Although a marriage registration certificate is the most important document to prove the legal existence of a marriage, but this important factor is not followed by both the parties of marriage for various reasons and problems. In Bangladesh many communities like Muslims, Hindus, Buddhists and Christians live in together and they follow different systems of religious practices according to their own religious norm during their marriage. First and foremost in this unmitigating circumstance, there is no uniform and mandatory provision for all the communities for the registration of marriages. This is the most important problem because the parties of marriage can easily complete their marriage ceremony without any registration. On the other hand, a Muslim marriage is considered as a civil contract whereas a Hindu marriage is a religious sacrament. In both cases, a registration is not mandatory although a contract should be registered. Traditional religious practice is one of the major problems of marriage registration because the involved people want to strictly adhere only to their religious rituals during their marriage solemnization process rather than a careful scrutiny specifically emphasized on the future marital problems in proving the marriage official solemnization. Illiteracy is one of the most important problems in ignoring the marriage registration. Poor and illiterate people are not aware of the

importance of having a marriage registration. Negligence from the bridegroom's side is also a problem in respect of the marriage registration because in an unregistered marriage, a husband can easily deny the existence of a legitimate marriage due to the absence of any documentary evidence.

The vast majority of women live in situations where their marital rights are not as well protected as the men's are. As the more vulnerable party in a marriage, a woman benefits from documentation of the marriage because it increases her chances of being able to access the inherent rights of a wife in a Muslim marriage as well as any rights the bride may have negotiated with the groom in the marriage contract in which the terms and conditions of matrimonial stipulations are explicitly prescribed without any ambiguity.

In most of the Muslim countries, a marriage has to be registered and there are penalties such as light prison sentences and/or fines for failure to register the marriage. For example, in 1974 Bangladesh strengthened the marriage registration laws by passing the Muslim Marriages and Divorces (Registration) Act. In 2000 in Pakistan, the Federal Sharia Court upheld the registration of marriages as Islamic.¹ Muslim family laws, for example, in Bangladesh and Pakistan also regard the person who has solemnized the marriage is held fully responsible for the registration.²

After analyzing the historical aspect of the marriage registration law in Bangladesh, it is clear that the development of marriage registration laws in our country is not well standardized as it is required in our social reality rather there are many weaknesses in the existing marriage registration law, particularly, in Hindu, Buddha and tribal communities. It is intrinsically noteworthy that the Muslim, the Hindus and the Christian communities have their marriage registration laws which are not enough to fulfil the purpose, while on the other hand, the Buddhists and the tribes remain out of the legal frame work. In fact, even today no development of laws relating to marriage is initiated for these mentionable groups in the practical field.

Current laws relating to marriage registration in Bangladesh

Bangladesh is a multireligious country with a unitary and parliamentary system of government based on periodic elections. The state religion is Islam, however; there are several types of other religions in Bangladesh, such as, Hinduism, Christianity, Buddhism, Sikh or Jain, Bahai Faith and Atheism.³ In Bangladesh, traditionally the marriage among the people of different religions is solemnised according to their respective unwritten rituals and customs. Besides, there are a few legislations relevant to the marriage and its registration procedures of a particular religion in Bangladesh. Most of these legislations were developed during the nineteenth and twentieth century for both the Muslim and the Christian communities though Buddhist and the tribal communities remain out of the legal framework⁴. However; the Hindu Marriage Registration Act 2012 has recently been enacted from the National Parliament of Bangladesh.⁵ Marriage Registration laws regarding all religions in Bangladesh are as described below:

Marriage registration in the Muslim community

A marriage is a civil contract between a man and a woman under the Sharia (Muslim) law⁶ and a marriage contract is a written and registered contract like any other contracts so made under the Contract Act, 1872. In para 8 of the case Abdul Kadir vs Salima and Anr,⁷ Mahmood, J observed:

A marriage among Muhammadans is not a sacrament, but purely a civil contract; and though it is solemnised generally with recitation of certain verses from the Kuran, yet the Muhammadan law does not positively prescribe any service peculiar to the occasion. That it is a civil contract is manifest from the various ways and circumstances in and under which marriages are contracted or presumed to have been contracted. And though a civil contract, it is not positively prescribed to be reduced to writing, but the validity and operation of the whole are made to depend upon the declaration or proposal of the one, and the acceptance or consent of the other, of the contracting parties, or of their natural and legal guardians before competent and sufficient witnesses; as also upon the restrictions imposed, and certain of the conditions required to be abided by according to the peculiarity of the case.

Therefore, Muslim marriages have always been treated as a civil contract and not as a sacrament. Since Muslim marriage is a civil contract; it should be registered with an appropriate authority like other general contracts for the safety of both parties.

Marriage and divorce registrations are mandatory according to the Muslim Marriages and Divorces (Registration) Act, 1974 in Bangladesh. Section 3 of the said Act states on the registration of marriages and section 6 states on the registration of divorces. Section 3 of the Act states:

Notwithstanding anything contained in any law, custom or usage, every marriage solemnized under the Muslim law shall be registered in accordance with the provisions of this Act.

Customary laws are very important for the people of all religions and everybody follows the customary laws as a member of a society. According to the Muslim customary laws, a Muslim marriage registration is not compulsory, however; the Muslim Marriages and Divorces (Registration) Act, 1974 states that all Muslim marriages shall be registered with the Nikah (Marriage) Registrars who will maintain separate registers of marriages and divorces.⁸

In Bangladesh, the laws relating to a Muslim marriage are the combination of a civil law and religious obligations. According to the civil law, a man must be not less than 21 years old and a woman must be not less than 18 years old to be eligible for marriage. Since a marriage is a civil contract, a free consent of the parties is essential. If any marriage is solemnized forcibly without the free consent of the parties⁹ or before attaining the age of majority, that marriage may be challenged and declared voidable or invalid. However, the marriage of a minor is a criminal offence;¹⁰ thus, the congruency of this type of marriage should also be invalid.¹¹ Although the Muslim Marriages and Divorces (Registration) Act, 1974 has stated on almost every aspect of Muslim marriages, this Act has failed to give an appropriately proper guideline regarding the above mentioned issues.

Marriage registration in the Hindu community

A marriage is essential in Hinduism because after a marriage, a Hindu person becomes a full man. Besides, after the marriage, a Hindu person gets a son who is very important for the Hindu parents because, according to their religious faith, only the son can help his parents after death to enter into the Heaven.¹² Bangladeshi Hindus follow the Dayabhaga School of Hindu Law and according to this School, a Hindu Marriage is a sacrament and not a contract. There was no provision for the registration of a Hindu Marriage before 2012 in Bangladesh. The National Parliament of Bangladesh has enacted the Hindu Marriage Registration Act, 2012 making the marriage registration optional for protecting the rights of the Hindu women in 2012.

Since the Hindu marriage registration has been made optional, it will not protect the rights of the Hindu women who are deprived of many social and economic privileges.¹³ Advocate Rana Das Gupta¹⁴ said that Hindu women get no legal support from the present Hindu Laws. He strongly recommended for the better modernization of all Hindu laws including the Hindu Marriage Registration law so that the Hindu women can legally claim for their rights and privileges in all sectors.¹⁵ Barrister Shafiq Ahmed¹⁶ said that some law makers tried to make a Hindu marriage registration compulsory, however; they could not succeed because they faced a very strong resistance from a certain quarter of the same religion as they strictly believe in the customary law and conclude that if a Hindu marriage is registered, it will lose its religious authenticity. Suranjit Sen Gupta¹⁷ said that the Hindu laws need to be reformed in our country, however; the proper situation or environments of reforming have not been ascertained yet.

As a glaring actual matrimonial example, Kanon Bala Das, a Hindu woman from Gazipur, was married to a Hindu man according to the Hindu traditional law almost twenty years back. Subsequently, the couple got two children. However, suddenly the man repudiated that Kanon Bala Das as his wife. In this case Konon Bala Das failed to prove the marriage because it was solemnized according to the Hindu traditional law and there was no legal document to support her in the hour of dire need. Since there was no Hindu marriage registration law in existence, she had pitifully failed to produce the legal document and also failed to file a suit before the court for

divorce.¹⁸ In other words, Kanon Bala Das did not get any legal help for proving her marriage which is a very untenably destructive situation for a Hindu woman.

Afterwards, the parents of Kanon Bala Das disclaimed her because normally, the Hindu society does not accept this type of woman who has failed to prove her marriage but has two children. Advocate Rabindranath Bishas¹⁹ commented on Kanon's case as:

Given that there are no laws regarding registration, divorce and property rights of the Hindus, we cannot provide any legal advice and assistance. There has been a case of a woman who had married again, however, she had no legal papers, subsequently she could not divorce her first husband and neither could she legalize her second marriage, a double jeopardy indeed.

Albeit, a Hindu marriage registration is very significant for purposes of travelling to foreign countries, domicile and birth registration of Hindu children, however, a large portion of Hindu Brahmins (Highest caste of Hindu People) are not agreed upon this issue. The registration of Hindu marriages is not compulsory according to the existing law of our country;²⁰ however, registration of one's marriage provides a proof for legal purposes and therefore, it is highly recommended for the Hindu women as a safety measure against unfavourable marital jeopardy. A Hindu marriage may be registered under the Special Marriage Act, 1872 in Bangladesh if both parties so desire.²¹ If that is done, the marriage is treated as a civil marriage which is a civil contract²² and not a sacrament; therefore, the marriage may not be accepted by the traditional Hindu society because this type of marriage culturally affects a religious sentiment.

Marriage registration in the Christian community

As a rule, Christian Marriages are solemnized by any Minister of Religion licensed under the Christian Marriage Act, 1872 in a Church according to the rules, rites, ceremonies and customs of the Church in Bangladesh.²³ Christian Marriage registration procedures have also been stated in the above mentioned Act. Section 7 provides:

The Government may appoint one or more Christians, either by name or as holding any office for the time being, to be the Marriage Registrar or Marriage Registrars for any district subject to its administration. Where there is more marriage Registrars than one in any district, the Government shall appoint one of them to be the senior marriage Registrar. When there is only one Marriage Registrar in a district, and such Registrar is absent from such district, or ill, or when his office is temporarily vacant, the Magistrate of the district shall act as, and be, the Marriage Registrar thereof during such absence, illness or temporary vacancy.

Every Christian marriage must be registered according to the Christian Marriage Act, 1872 of Bangladesh.²⁴ The said Act has stated a lot about Christian Marriage including Registration process in England,²⁵ Scotland,²⁶ Rome²⁷ and Bangladesh. Although a Christian marriage registration is obligatory with the respective Registrar through the church, a non-registration of the marriage is not punishable by the existing laws.

Marriage registration in the Buddhist community

A marriage is a secular affair and not a sacrament in the Buddhist community.²⁸ It is a matter of wonder or surprise that there is no marriage law relating to the Buddhist and the tribes, such as, the Chakma, Marma, Mog, Murong, Garo, Rajbongsi and Santal²⁹ marriage registration in Bangladesh, therefore; there is no registration authority for their marriages. These marriages are solemnized through their social customs and religious rituals under the Family Court Ordinance 1985, the Dowry Prohibition Act, 1980 and the Women and Children Repression Prevention Act, 2003. Buddhist and Tribal women can file a case to regain their conjugal life but the existing laws are not sufficient to ensure their rights and privileges. Professor Niranjana Odhikari,³⁰ said a marriage registration is as necessary as the baby's birth registration.

It is a matter of regret that the people of Buddhist and Tribal community think that a marriage registration is not necessary. The leaders of Hindu, Buddhist, Christian and Tribal Oikya Parishad (HBCOP) also think that a registration of marriage is an unnecessary issue. Hindu, Buddhist and Tribal people believe in a single marriage and very few people go for polygamy. The leaders of these communities mention that women of these communities will be repressed

more if the marriage registration laws are enacted, without further elaboration on the causes of repression.

Marriage registration in the Sikh or Jain, Bahai Faith and Atheism community

There are only a few people in these communities in Bangladesh. As in other tribal communities, they marry by following their customs and rites and there are no particular statutory laws for the registration of marriage in these communities. In fact, the people of these societies are not conscious or aware of their legitimate rights and duties. However, if any problem occurs in these societies concerning the registration of marriage, they can go to the court according to the Family Court Ordinance 1985, the Dowry Prohibition Act, 1980 and the Women and Children Repression Prevention Act, 2003 for justice.

Provision for the intra-religious marriages

If the couple wishes to have a religious marriage governed by a Hindu law, then the non-Hindu partner must convert to Hinduism. If the non-Hindu partner is a Christian then it is also possible for the couple to marry according to Christian rites under the Christian Marriage Act, 1872 in which case the Christian Personal law then governs the legal status of the marriage. The third option, in some ways the simplest, is to have a civil marriage under the Special Marriage Act 1954 which facilitates marriages between any two people, including members of any two religious communities wherein it does not involve any religious conversion and also permits the people to avoid various complications that arise from marriages under various religion-based laws.

Such a child is considered legitimate regardless of the status of the parent's marriage, if the marriage was performed according to the Hindu rites or was a civil marriage under the Special Marriage Act, 1954. Such a child may inherit the property of his parents. However, the child does not acquire the rights in relation to a joint Hindu family or a Hindu ancestral property.

Legal and ceremonial aspects of marriage registration in Bangladesh

Bangladesh is a multi-religious and multi-social country because people from different religions live here peacefully. In Bangladesh, most of the people are Muslims (89.5%) followed by Hindus (9.6%), Buddhists (0.7%), Christians (0.3%) and other minor communities (0.2%). Several types of tribes such as the Chakma, Marma, Mog, Murong, Garo, Rajbongsi, and Santal also live here.³¹

The Muslim community of Bangladesh follows the Muslim Marriages and Divorces (Registration) Act, 1974, the Hindus follow the Hindu Marriage Registration Act, 2012, and the Christians follow the Christian Marriage Act, 1872 during their marriage registration. However, the Buddhists, Tribes and other minor religions have no specific law to be followed during their marriages. They follow only some religious rituals during their marriages. In accordance with the civil law of Bangladesh, every marriage must be registered according to the existing laws in Bangladesh.

Most of the people of Bangladesh are Muslims, thus, the status of Muslim marriage is important for a lengthy discussion. The word 'Nikah' has been used in two senses in the Muslim law, i.e., a marriage and sexual contact and after marriage a man and a woman may live together to produce children and are entitled to enjoy their life. Under the Muslim law, a marriage contract is perpetual in nature based on a mutual consent of a man and a woman between whom there is no bar to a lawful union. In the Sharia law, a Muslim marriage is considered a pact between a man and a woman which takes the form of a legal contract. The proposal, acceptance and the compulsory presence of witnesses are essential elements of a valid marriage under the Muslim law, which are also a prerequisite performance to a valid contract made under the Contract Act, 1872.

In the Chan Mia case,³² after recognizing the Muslim marriage as a contract, the High Court Division of the Supreme Court of Bangladesh has observed that 'it could be contracted by a declaration made by one contracting party being followed by a corresponding acceptance from the other'. Taking these elements (i.e., offer, acceptance, etc.) into consideration a long debate

has been going on the question of whether a Muslim marriage is a contract so made under the Contract Act, 1872.

Marriage under the Muslim Sharia law has been considered as a civil contract as it involves the rights and obligations soon after the solemnization process. In the Salima's case, Justice Mahmood observed:

Marriage, according to the Mohammadan law, is not a sacrament, but a civil contract. All rights and obligations it creates arise immediately and simultaneously and are not dependent upon any condition precedent as to payment of a dower by the husband to the wife.

Therefore, a Muslim marriage has always been considered as a civil contract which does not require any particular form of legal prescription. A Muslim marriage is also considered as a socio-religious contract. It is evident that Muslim jurists do not rule out the religious significance and social solemnity of a Muslim marriage though they consider it a civil contract. In addition, they make a distinction between a marriage under the Muslim law and that under the Hindu law on the ground that social ceremonies are not necessary to prove the existence of a marriage in the former but are obligatory in the latter.

Despite a strong advocacy of many Muslim jurists that a marriage under the Muslim Sharia law is not a contract³³ it has always been treated like a contract as made under the Contract Act, 1872 by the judiciary. Even the court has treated a claim of maintenance and dower after divorce as a registered 'money claim' and has applied article 116 of the Limitation Act, 1908 to provide an effective remedy to a delayed petitioner, A classic example in this case is Atiqul Huque Chowdhury's case³⁴ where a bench of the High Court Division observed that a breach of any provision of the contract of marriage is a breach of contract as if it were a contract made under the Contract Act, 1872 in a different way.

The facts of this case in brief are that, one Shahana Rahim was married to Atiqul Huque on 1 October 1982 and divorced by Mr. Huque on 15 April 1984. Shahana Rahim instituted a suit for dower and maintenance on 7 February 1989, more than four years later from the date of divorce.

The trial court decreed the suit in favour of the wife. The husband (petitioner) then challenged the maintainability of the suit on the ground that the case was barred by limitation. The petitioner's lawyer argued before the court that the Family Courts Ordinance, 1985 is a special law which prescribes no timeframe within which a suit for dower would be filed. In the absence of such a provision, he argued, Articles 103 and 104 of the Limitation Act, 1908 will apply. It is mentionable that according to these two articles, one has to file a suit for dower, whether prompt or deferred, within three years. Therefore, according to the petitioner's lawyer the suit was barred by limitation since it was filed more than four years after the date of divorce.

It is noteworthy that in the Muslim law, a claim for dower can never be denied. Even after the death of the husband a wife is entitled to claim her dower money from her in-laws. In addition, Islam suggests that if the dower money is not paid to the wife during her life time, then after the wife's death it should be treated as her property. Therefore there is no scope to bar a wife from claiming her dower money by time limit.

In this stage of the suit the court has taken recourse to Article 116 of the Limitation Act, 1908, which stipulates a period of limitation of a suit for the breach of a registered contract. Under this article, one may file a suit within six years. The court observed:

after the Muslim Marriages and Divorces (Registration) Act, 1974 all Kabinmahs are required to be registered by the Nikah Registrar under section 3 of the said Act. Thus, in our opinion, if there is any breach by way of non-payment of a dower fixed in a Kabinmah registered by a Nikah Registrar, it will amount to a breach of a registered contract invoking article 116 of the Limitation Act.

The HCD further observed that "the suit for a dower is more or less a suit to enforce a simple money claim formed solely on a contract entered into by the husband with the wife." The court has also revealed that non payment of dower money is a breach of the contract of marriage. It has further proclaimed that after the enactment of the Muslim Marriages and Divorces (Registration) Act, 1974 the marriage contract is a written and registered contract like the contract so made and registered under the Contract Act 1872.

It is worth mentioning that earlier in the Nuruddin Ahmed's case³⁵ the High Court observed that there was a clear distinction between the registration of marriage and the registration of documents. It has further observed that a registration of a marriage under the Bengal Muhammedan (Marriages and Divorces) Registration Act, 1876 is not a registration within the meaning of article 116 of the Limitation Act and therefore declared Article 116 of the Limitation Act inapplicable in the case of a marriage.

In the present case, the High Court Division bench deviated from the earlier decision aforementioned by observing that "a close scrutiny of sections 6 and 9 of the Muslim Marriages and Divorces (Registration) Act, 1974 leaves no room for making any distinction between registration of marriages and divorces and registration of documents." The court further observed that "the whole purpose of the Act of 1974 is to consolidate the registration of Muslim marriages and divorces and not to diversify the registration of different parts of a marriage contract under different Acts".

It is noteworthy that the capacity to contract of a valid marriage under the Muslim Sharia law is the same as the capacity to enter into a contract under the Contract Act, 1872. For example, the capacity to understand the nature of marriage, age of majority and free consent are mentionable, which are prerequisites to enter into a valid contract. It is also worth mentioning that most of the jurists have used the term 'contract of marriage' to define a marriage and compared it to other legal transactions. For example, 'free consent' and 'majority' are necessary elements to enter into other legal transactions.

Therefore, it would not be an exaggeration to say that a marriage under the Muslim law has been getting treatment like a registered contract rather a civil or religious contract after the promulgation of the Muslim Marriage and Divorces (Registration) Act, 1974. A Muslim marriage, one might say, is considered as a civil contract for a considerable period of time in the absence of written documents of the marriage when there is a ceremony of marriage. It is a contract before the Almighty. Therefore, in order to prove a valid marriage, the religious ceremony is the main evidence in the hand of the parties to the marriage. Moreover, publicity of

the marriage contract serves as an important safeguard. In addition, the public celebration of the marriage leads to a public recognition of the marital status of the individuals concerned.

Today, the necessity of the ceremony of a marriage gets little attention before the court after the promulgation of the Muslim Family Laws Ordinance 1961 that emphasized on the compulsory registration of the marriage, which was followed by the passing of the Muslim Marriage and Divorces (Registration) Act, 1974. It makes the Muslim marriage a legal bond where both of the parties are free to dissolve the marital tie. Asghar Ali has observed that “marriage is like a contract which can be dissolved anytime by the parties.³⁶ If it is not treated as a contract there will be no possibility of dissolution”. In addition, according to Malik, the legal remedy in the way of restitution of conjugal life arises out of a consideration that a marriage under the Muslim law is a contract.³⁷

Philosophical basis of the development of laws relating to marriage registration

In Bangladesh the source of Registration of Marriage is an intervention to support women’s economic and social status and protect them against a social hostility. The Bangladesh government and some NGOs are highly concerned on improving the women’s rights and gender equity and they are using a variety of channels to raise the awareness of longstanding national laws and policies relating to the marriage and the family, and to encourage compliance with them. In spite of these efforts, families often disregard such laws, particularly, those establishing a lower minimum age at marriage and prohibiting the taking of dowry. A current data from a study of gender inequality and marriage in Bangladesh which started at least ten years back suggests that a uniform law should be enacted requiring legal registration of marriages.³⁸

The need for reforms in laws relating to marriage registration

Constitutional obligation of marriage registration in Bangladesh

A non-registered marriage is not invalid. Article 27 of our Bangladeshi constitution has stated regarding the equality before the law. Thus, it can be easily observed that a uniform law

relating to marriage registration is succinctly and crucially needed to be made for all communities. Thenceforth, it should be enforced for all. The UNESCO and some women's organizations have jointly prepared a study report in respect of marriage, inheritance and family laws. This report has been submitted to the Ministry of Law, Justice and Parliamentary Affairs for its opinion on that very report. This report was referred to the Law Commission by the Government for its opinion in matters raised in the report. However, it is not possible to enact a common family code for all the communities in Bangladesh as proposed by a few persons only as it does not reflect the wish or opinion of the majority of people of the country.

The Special Marriage Act, 1872 is enforceable in the whole of Bangladesh. A marriage can be celebrated under this act between a person neither of whom professes the Christian nor the Jewish nor the Hindu nor the Muslim nor the Buddhist nor the Sikh nor the Jaina religion nor between persons each of those religions. The government may appoint a registrar under this Act to register those marriages.

Importance of Reforming the Muslim Marriage Registration Act

In case of a marriage between a man and a woman, age, marital status of the parties, financial condition of the bride groom, and strictly related stipulations are very important issues. These issues are discussed briefly in the Muslim Marriages and Divorces (Registration) Act, 1974. In accordance with the birth, death and marriage registration Act, 1886, the registration is not compulsory. Hence, the people have the liberty to give their option for it. The Government of Bangladesh has emphasised on the importance to birth registration and the last Caretaker Government has done an admirable work which is the introduction of the national identification card. These two issues ensure the majority of a person (coming of age of a person). Thus, it can be suggested that the national identification number and age according to the birth certificate should be included in the Nikahnama.

Clause 5 of Nikahnama is suggested to be re-written wherein the status of a boy also is described. Payment of dower should be immediately made after the marriage; hence, this should be specifically mentioned in the Nikahnama. The registrar must see and read the court

permission of a second marriage during registering the second marriage. It is an important issue regarding registering the second marriage and a provision should be exclusively included in the Nikahnama with this issue. Provision should also be made regarding the punishment of misregistration if he registers the second marriage without strictly adhering to the aforementioned conditions. This punishment may be imprisonment or fine or with both.

Findings for Reforming Laws Relating to Marriage Registration for all Communities

It is the demand of the time that our government should take the necessary measures to make a uniform law of marriage registration and it should be mandatory for all religious communities in Bangladesh where different communities follow their own religious rituals in case of marriage. The Family Court Ordinance, 1985 has some effective provisions for all communities to seek a legal redress in settling the disputes relating to the dissolution of marriage, dower, and maintenance, restitution of conjugal rights and guardianship of children, but in practice, most of the family disputes in Bangladesh are settled through an alternative dispute resolution process such as traditional Shalish. In Bangladesh, the religious laws have been made on the basis of different origins, faiths, bases and beliefs of different religious communities and subsequently these laws are different from each other. For this particular reason, a uniform law relating to marriage registration should be made through some substantial or procedural changes of those religious laws because a uniform law is needed at this moment to protect or to ensure the citizens' rights and to establish an equal opportunity for all communities. It is known to all that our marriage registration laws need to be appropriately reformed but the free democratic environment which is needed for the reforms has not been developed yet. Essentially in this regard, the government should work with the NGOs to preach awareness among different communities like Hindu, Buddhist, Christian and Tribal groups on the weaknesses and limitations of their personal religious laws. Through various seminars and symposia, they should be made aware that the reform of their personal religious laws is needed for their own matrimonial benefits. The women of these communities should be fully aware regarding their rights. In this case, the conscientiously concerned people of these communities should enthusiastically come forward to demand the special needs of the community. The government

can take proper steps to instil and invoke awareness across the country with the concerted cooperation of the various NGOs.

The Muslim Marriage and Divorce (Registration) Act, 1974 provides that every marriage solemnized under the Muslim Law shall be registered and for this purpose the Government shall appoint Marriage Registrars. Every Marriage Registrar shall maintain separate Register of marriages and divorces in the prescribed manner. The Muslim Marriage and Divorce (Registration) Rules, 2009 are framed to determine the qualifications for appointment of a Marriage Registrar, fees payable to a Marriage Registrar and any other matter ancillary thereto. Candidates seeking a licence of a Marriage Registrar must possess an Alim Certificate from a Madrasha Board or University and must be between 21 to 40 years of age. An application for the appointment of a Marriage Registrar shall be made in the prescribed form to the Secretary of Advisory Committee which shall advise the Government with regard to the selection of a Marriage Registrar. The service of a Marriage Registrar is not a governmental service. A Marriage Registrar shall hold office till the expiry of 65 years of age.

Regarding reformation of the Marriage Registration Act, it is suggested that a Nikah (Marriage) Registrar shall charge for registration of a marriage a fee at the rate of taka ten for the dower of every one thousand taka or part thereof, subject to a minimum of taka one hundred and a maximum of taka four thousand, but this charge is burdensome to the poor people, hence, it should be reduced. In Bangladesh, the government is serious to protect the women's rights and the Ministry of Law, Justice and Parliamentary Affairs is working for the assurance of the women's rights as well as the specifically tailored marriage registration among the different communities.

From this chapter, it is clear that in the meantime, though the structural aspect of the marriage registration has been developed, the functional aspect of a marriage registration, legally speaking, is still very poor and it is far from being conveniently enjoyed by the majority poor illiterate communities of Bangladesh. Nonetheless, the well-to-do people of the country practise a marriage registration of their own communities. It is a matter of concern that marriage related hazards of matrimonial upheaval is very common among the grass root level people in

Bangladesh, hence, it is finally suggested that the functional activities of a marriage registration should be widely announced, understood and strengthened as all sectors of the society get the benefit of the existing infrastructural facilities of the marriage registration and the legal institution of Bangladesh.

Conclusion

The marriage registration is the most important factor of matrimony as well as its close association in our social life. It ensures the rights and liabilities of the spouses between each other. It is the only documentary evidence of the actual existence of a legitimate marriage and in the absence of this important element, a marriage is affected every so often and conductively creating many social matrimonial conflicts resulting in numerous one-sided family and domestic disruptions. To achieve an amicable marital settlement, it is essential for every marriage to establish the rights and responsibilities of the husband and the wife through a systematic strong marriage registration institution as well as the presentation of counselling sessions. Many countries of this world have already enacted uniform laws relating to a marriage registration because Muslim, Christian, Hindu and Buddhists everywhere follow their personal religious customs and rituals which are different from one another.

However, in Bangladesh there is no uniform law relating to the marriage registration, and in view of this untenable matrimonial situational circumstance, it is considered very timely indeed for our legislature to enact a justifiable uniform law specifically concerned with this issue and the government should initiate the necessary steps to mitigate the long standing challenges regarding the marriage and divorce affairs to protect the right of the couple, particularly, the bride side in the present context in Bangladesh. In our socio-economic reality, it is very difficult to get the justice from the higher court since most of the women involved are not educated and financially solvent; rather, many of them are illiterate and unable to manage their bread and butter resources for keeping their body and soul together. As a matter of fact, there is no denying the necessity to enact a uniform law to eradicate the complexities originated from unregistered marriages. Therefore, it is the social demand of this era that the government should immediately mobilize the necessary initiatives to enact a uniform law relating to the marriage registration and

to establish a central marriage and divorce commission for all the communities without any unrelenting delay. Needless to mention, the economic and social pressure of the present societies have increased by leaps and bounds and the disastrous effects on the domestic sectors are manifestly demonstrated in the form of domestic squabbles of small matter which escalates into a domestic violence, physically, economically, emotionally as well as the family breakdown, the result of which becomes the liability of the state as a whole.

Bibliography

- Abbott, F. (1968). Islam and Pakistan . New York: Cornell University Press.
- Ahamduzzaman. (2009). Marriage and Dissolution of Marriage in Bangladesh. Dhaka: Books-4U.
- Chowdhury, O. H. (2005). Muslim Family Laws. Dhaka: Dhaka Law Reports.
- David Pearl, W. M. (1998). Muslim Family Law . London: Sweet & Maxwell.
- Engineer, A. A. (1992). The Rights of Women in Islam . New Delhi: Sterling Publishers Pvt. Limited.
- Gangadevi, M. (2003). Restitution of Conjugal Rights: Constitutional perspective. Journal of Indian Law Institute , XXXV.
- Monsoor, T. (2008). Gender Equity and Economic Empowerment: Family Law and Women in Bangladesh . Dhaka: The British Council.
- Monsoor, T. (2004). Dissolution of Marriage on Test. Dhaka: Dhaka University Press.
- Nazmi, M. (2005). Mohammadan Law . Allahbad: Central Law Publications.
- Sharma, S. S. (2004, June 27). Suffering for absence of marriage registration. The Daily Star .
- Sharmin Akter, A. S. (2007). A comparative study on Hindus law between Bangladesh and India. Asian Affairs , 29, 61-95.

The Muslim Marriages and Divorces (Registration) Act, 1974. (n.d.).

¹ Alah Rakha and another vs. Federation of Pakistan and Others PLD 2000 FSC 1

² <www.marriage-registration-laws.bd.com>, retrieved on 10 March 2013.

³ Religion in Bangladesh, http://en.wikipedia.org/wiki/Religion_in_Bangladesh, retrieved on 23/02/2013.

- ⁴ Taslima Monsoor, *Gender Equity and Economic Empowerment: Family Law and Women in Bangladesh* (Dhaka: The British Council, 2008).
- ⁵ Sagar Biswas, Hindu marriage optional registration not enough, *The New Nation*, <http://thenewnationbd.com/newsdetails.aspx?newsid=47274>, retrieved on 22 Feb. 13.
- ⁶ V. P. Bharatiya, Syed Khalid Rsshid's Muslim Law, Lalbagh, 2009, Lucknow: Eastern Book Company, pp. 51-52.
- ⁷ (1886) ILR 8 All 149.
- ⁸ Section 8, of the Muslim Marriages and Divorces (Registration) Act, 1974.
- ⁹ According to section 14 & 19 of the Contract Act, 1872.
- ¹⁰ According to section 4 of the Child Marriage Restraint Act, 1929.
- ¹¹ Forced Marriage in Bangladesh, Embassy of the United States, Dhaka, Bangladesh. http://dhaka.usembassy.gov/forced_marriage_definitions.html, retrieved on 24/02/2013.
- ¹² Nirmolendu Dhor, Hindu Law, ReMisi Publishers, 2010, p. 49 & Noshirvan H. Jhabvala, Principles of Hindu Law, Mumbai, C Jamandas & Company, 2009-2010, p. 148.
- ¹³ Sagar Biswas, Hindu marriage optional registration not enough, *The New Nation*, <http://thenewnationbd.com/newsdetails.aspx?newsid=47274>, retrieved on 22 February 2013.
- ¹⁴ General Secretary of Bangladesh Hindu, Buddhist, Christian Oikkya Parisad.
- ¹⁵ Sagar Biswas, Hindu marriage optional registration not enough, *The New Nation*, <http://thenewnationbd.com/newsdetails.aspx?newsid=47274>, retrieved on 22 Feb. 13
- ¹⁶ Member of Parliament and the Minister of Law, Justice and Parliamentary Affairs of Bangladesh Government
- ¹⁷ Minister, Government of Bangladesh & Member of Parliament as well as the Chairman of Legal and Parliamentary Affairs Committee.
- ¹⁸ Sharmin Ahmed, *How much of the draft Hindu Marriage Law 2011 will be implemented remains a matter of concern*, *The Star*, Vol. 11, Issue.15, April 13, 2012. <<http://www.thedailystar.net/magazine/2012/04/02/human.htm>>, Retrieved on 22/02/2013.
- ¹⁹ Learned Advocate from Norail of Bangladesh.
- ²⁰ According to the Hindu Marriage Registration Act, 2012.
- ²¹ According to the section 2 under the Special Marriage Act, 1872.
- ²² *Ibid.*
- ²³ Section 5 of the Christian Marriage Act, 1872.
- ²⁴ Section 27 of the Christian Marriage Act, 1872.
- ²⁵ Section 28 of the Christian Marriage Act, 1872.
- ²⁶ Section 31 of the Christian Marriage Act, 1872.
- ²⁷ Section 30 of the Christian Marriage Act, 1872.
- ²⁸ Buddhist view of marriage, http://en.wikipedia.org/wiki/Buddhist_view_of_marriage, retrieved on 23/02/2013.
- ²⁹ Tahir Mahmood (2002) *The Muslim Law of India*, 3rd Ed. (New Delhi: LexisNexis Butte
- ³⁰ Professor of Department of Culture and Pale of University of Dhaka, Bangladesh.
- ³¹ Religion in Bangladesh, Wikipedia, http://en.wikipedia.org/wiki/Religion_in_Bangladesh, retrieved on 25 February, 2013.
- ³² 6 BLT, HCD, p. 92
- ³³ The Contract Act 1872
- ³⁴ 47 DLR, HCD, p. 301.
- ³⁵ 9 DLR 15
- ³⁶ Asghar Ali Engineer, (1992). *The Rights of Women in Islam* (New Delhi: Sterling Publishers Pvt. Limited,).
- ³⁷ Shahdeen Malik, (2005) *Muslim Family Courts Ordinance, 1985 and Relevant Reported Judgments*, an unpublished reader for the students of School of Law, Brac University, Dhaka.
- ³⁸ Sidney Ruth Schuler; Lisa M Bates; Farzana Islam; Md Khairul Islam (2006), *The timing of marriage and childbearing among rural families in Bangladesh: choosing between competing risks*, *Social science & medicine*.