

**MARRIAGE AND DIVORCE
REGISTRATION IN BANGLADESH**

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FORWARD

A specific law exists in Bangladesh requiring registration of marriages and divorces in Bangladesh. The premise is that the laws relating to registration are not being followed i.e. that a large portion of the marriages in Bangladesh are unregistered and consequently many women are deprived of rights they are entitled to and are thus legally disempowered. This in turn leads to their lack of empowerment in other aspects of their lives. Ambiguity, faulty procedures and lack of divorce registration also result in deprivation of rights.

The BLAST experience shows that for the women customers who have come for legal aid, many of their legal problems stemmed from marriage and marriage related issues and concerns.

It is in the context of working with family law aspects and issues of women customers that the need to streamline, strengthen the marriage registration procedure awareness campaign has been felt.¹

The purpose of the research was

a fuller understanding of the lacunae in the normative framework of actual registration, actual practices and customs, and the area of abuse in the process. An exhaustive research, therefore, needed to be undertaken to develop a meaningful strategy and modality for legal awareness campaign on this issue.²

The research aimed at trying to find the reasons for the lack of compliance of the laws relating to marriage and divorce registration and to develop measures to combat non-registration.

¹Project proposal for the project on Registration of Marriage Law Practice and Legal Awareness BLAST Dhaka at p 3
²Ibid at p 2

10 INTRODUCTION

The universality of marriage in Bangladesh is undeniable. This is especially true in the case of Bangladeshi women, for most of whom marriage continues to be the most viable option available even though many have breached traditional norms and have engaged in profitable activities.

The agenda for reform addressed by most agencies in Bangladesh both in the government and especially in the non-governmental sector concentrates to a large extent on gender in development. The shift in recent times in development strategy from the concept of women in development (WID) or women and development (WAD) to the gender and development (GAD) strategy is in recognition of the necessity to accept that development can come only by contemplating women within society and not as an isolated entity. The GAD strategy among other things, focuses on oppression of women in the family i.e. within the traditional private spheres. It also focuses on women's legal rights and the ways to enhance these rights.

This study deals with registration of marriages and divorces in Bangladesh. The focus in this connection is on the Muslim women in Bangladesh since 88.3% of the population is Muslim.³

³ 10.5% of the population are Hindus while 0.6% belong to other religions. Source: Bangladesh Statistical Yearbook, BBS 1996, Dhaka at p. 32.

The logic behind focussing upon women when registration is the topic of study may be questioned, since marriage necessarily concerns both men and women. The reasoning behind this is similar to that which affects poverty analysis in Bangladesh. Both men and women are poor but women bear the brunt of poverty. The wife of a relatively well off man can be poor and the wife of a poor man can be poorer than him because of her weaker sex status'⁴ She is discriminated against as regards her access to resources, assets as well as the rights to which she is legally entitled.

Although marriage is a union, in fact the most important union, between a man and a woman and each have corresponding rights and duties, it is undeniable that in the Bangladeshi context, in a marriage it is the woman who is disadvantaged and disempowered. For a variety of reasons she faces discrimination.

1.1 The Bangladeshi woman

Women in Bangladesh are discriminated against and face oppression from within the family and outside of it when they step out of their traditional sequestered roles. In fact, discrimination begins from birth and continues throughout a woman's life in one form or other. The birth of a daughter is cause, especially for poorer households, for dismay. The desire to have a male offspring is widespread and may be also justifiable in the context of Bangladesh society.

Although many women have stepped out of their homes and taken up employment traditionally reserved for males, marriage continues, for most

⁴Hye, Hasnat Abdul (1996) Below the Poverty Line The University Press Limited, Dhaka at p 37

women, to be the only available and desirable option. Since the majority of women spend the predominant part of their lives within the marital union, it is imperative to focus on women's rights in connection with marriage if the focus of one's agenda is the betterment of women's lives. The marital relationship is thus an important arena within which women's rights need to be secured and protected. Registration of marriage is considered to be an important mechanism of such protection.

1.2 Registration - an empowerment strategy

In the law, rights are islands of empowerment. To be un-righted is to be disempowered, and the line between rights and no rights is most often the line between dominators and oppressors.⁵

The importance given to the concept of registration of marriages is that it is construed to be an empowerment mechanism as far as women are concerned. It is widely assumed that a more efficient, effective and equitable process of registration is essential for empowering women in their marital homes and safeguarding their rights in instances of divorce.

In recent times, when the connection between development and women has become the subject of much research and speculation, one of the most common words used in the context of women is 'empowerment'. The word empowerment however needs some explanation. Empowerment is not just about women acquiring something but about those holding power relinquishing it.⁶

⁵Williams Patricia J (1991) 'On Being the Subject of Property [1988]' in Feminist Legal Theory, Bartlett K T and Kennedy R (editors), Westview Press Boulder et al, pp 165-180 at p 177

⁶Young Kate (1997) 'Planning from a Gender Perspective' in The Women, Gender and Development Reader Visvanathan Nalini (Co-ordinator) UPL Dhaka, pp 366-374 at p 372

By tradition (cultural norms, values, mores and customs), most societies bestow legitimate power on their male family members⁷ Empowerment of women is a concept alien to Bangladeshi patriarchal culture and therefore not easy to achieve However, strategies to enhance sustainable gender development must identify methods to empower women Again such strategies must be based on the understanding of, and ability to overcome, the causes of the lack of power which lie behind it⁸ The central question which concern those interested in empowerment is to find an answer to the question

What are the causes of subordination or oppression of a specific powerless group?⁹

It would probably be right in the Bangladeshi context not to oversimplify the root causes of powerlessness of women and try to limit it to any specific arena a multifaceted understanding of disempowerment of women is necessary although all causes may be intrinsically linked to each other

For the purposes of this study, if we confine ourselves to the approach of trying to deal with women's powerlessness related to her marital status, we have on one hand the question what causes women's lack of powerlessness related to marriage On the other hand we have the task of evolving strategies to eliminate her powerlessness This may be attempted in several ways increasing women's participation in economic activities, political empowerment strategies, empowerment through education and the use of law and so on Needless to

⁷Mizan, Amin Nahar (1994) In Quest of Empowerment University Publications Limited Dhaka at p 51

⁸Carr Marilyn Chen Martha and Jhabwala Renana (1997) Speaking out Women's economic empowerment in South Asia The University Press Limited Dhaka at p 3

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mention, all strategies cannot be direct, immediate or simple, neither are they totally disconnected from each other

In this study the concept of empowerment and registration of marriages has been approached from the point of view of legal empowerment of women

Registration of marriage ensures legal capacity It is assumed that registration of marriages can strengthen women's empowerment while non-registration can contribute to women's powerlessness Numerous important institutions or consequences at the personal level (like legitimate sexual relationship, divorce, maintenance, custody, inheritance) all arise from the legal relationship which comes into existence upon marriage Although the demand for a civil law, which gives equal rights to women, may be the best solution, it is also at present neither practical nor politically feasible In reality, women are deprived of many benefits, which are guaranteed to them under their personal laws Thus the existence of equitable laws is not sufficient --women's access and uncomplicated use of such laws must be guaranteed

In Bangladesh, although women make up a substantive part of the population, they are discriminated against in almost every sphere of life As mentioned before, they face the brunt of societal inequities and the factors, which contribute to such disparity, are a conglomeration of factors They include poverty, patriarchy, religion, cultural construction of the proper roles of women, seclusion and so forth The research with its primary focus of registration of marriages cannot but help highlight other relevant issues affecting women The important institutions necessary for the proper appreciation of women's lives are discussed in brief below

⁹Ibid at p 3

14 POVERTY

Bangladesh has the unfortunate distinction of being one of the poorest and least developed countries of the world. A population of close to 120 million people live in an area of 56,977 sq miles.¹⁰ According to a narrow definition, poverty is measured by the percentage of population having incomes below the minimum expenditure required for meeting the basic needs.¹¹ Over one quarter of the rural population i.e. roughly 4.5 million households live in extreme poverty without the necessary income to meet even 85% of their basic minimum food requirements.¹² Growing landlessness, political instability, almost institutionalised corruption and frequent natural disasters all combine to contribute to endemic poverty, which affects the majority of the population. Poverty alleviation is thus necessarily recognised as the primary development need of Bangladesh.

Poverty and lack of resources is an underlying factor in any equation and cannot be ignored, in fact, must always be remembered. Again poverty, endemic and persistent is also mainly rural.

The country being predominantly rural, the majority of the poor live in the rural areas. While urban poverty is not negligible both in terms of number of people and intensity, in the backdrop of almost continuous rural urban migration, it is regarded as a reflection of rural poverty.¹³

It is the rural poor, who are generally deprived of many of their basic rights, including equal treatment and protection of law guaranteed by the Constitution. Again, as mentioned earlier, poverty affects women more than men. The essential link between gender and poverty is inescapable.

¹⁰Statistical Notebook, Bangladesh 1994 at p 3

¹¹See note 4 p 4. According to Hye (1996) a broader definition of poverty refers to forms of economic, social and psychological deprivation occurring among people lacking sufficient ownership, control or access to resources to maintain or provide individual or collective minimum levels of living.

¹²Orr A., Magor N. and Islam A. S. M. (1998) 'Insights into Rural Poverty through Wealth Ranking: A Village Case Study' in *Journal of Social Studies* No 72, April 1996, pp 58-71 at 73.

¹³See note 4 at p 2.

Women's access to, use and ownership of resources is sharply compromised
Women's inheritance rights are unequal and they inherit less than their male counterparts. Cultural norms ensure that they are deprived of access and use of even the portion that they do or should own.

1.5 PATRIARCHY

Patriarchy emphasises the superior role of men which pervades all aspects of life and offers to them many opportunities and concessions over women. Patriarchy is the system of male domination and female subordination in economy, society and culture.¹⁴ In Bangladesh, social values stress cohesiveness within the family with women playing a pivotal role in maintaining the harmony through their subordination and submission to the system of patriarchy.¹⁵ Religion, cultural and social norms and eventually the State contribute to maintain patriarchy's hold over society so that the institution not only has practical ramifications but also affects the way men and women perceive themselves. Marriage in Bangladesh is essentially a patriarchal institution.

1.6 PURDAH

Women's subordinated role is sustained through the process whereby women are secluded from public spaces, whether directly, or by confining them within spheres of what is construed to be acceptable behaviour. Social institutions, important to women's lives, are greatly influenced by the sequestered, isolated and protected world ascribed for women by religion, society and culture. The system of *pardah* accentuates women's subordinate role within the family and her access to employment opportunities.

The institution of *pardah* is closely linked to the institution of marriage in Bangladesh, especially in relation to its arrangement and the desirability of the bride. The culture of seclusion also emphasises the importance of marriage by

¹⁴Lum, Lina Y (1997) "Capitalism, Imperialism and Patriarchy: The Dilemma of Third World Women Workers in Multinational Factories" in The Women, Gender and Development Reader Visvanathan Nalini (Co-ordinator) UPL, Dhaka, pp 216-229 at p 220

¹⁵Hamid Shamim (1996) Why Women Count: essays on women and Development in Bangladesh The University Press Limited, Dhaka at p 140

Article 3 of this Convention states¹⁹

All marriages shall be registered in an appropriate official register by the competent authority

On 6 July this year (1998) the Cabinet decided to ratify several international conventions, among them the above Convention

2.2 Family Law

Unlike other aspects of the legal system which are regulated by codified legislative enactments, personal laws, based on religious and cultural precepts, tend to be discriminatory and opposed to the human rights of women

Legislative enactments made mainly during the British colonists of the Indian sub-continent brought uniformity to most aspects of law, except family law. Thus the law of crimes, evidence, contract, transfer of property and so forth are regulated by laws which are applicable to all irrespective of the religion of the person concerned. In the case of family matters such as marriage, divorce, custody of children, personal religious law is the relevant law. Thus Bangladesh has accepted reform or changes only with regard to certain aspects of human conduct and life as being governed by an uniform law applicable to all, irrespective of religious affiliation, while retaining the application of religious law in family or personal matters²⁰

There are several sources of family or personal law of the Muslims in Bangladesh. The personal religious law derived from the *Quran* and the *Hadith* as well as *Ijma* and *Qias* or which is designated as the *Shariah* law, forms the basis of the personal religious law of the Muslims. Added to that, we have legislative enactments which have substantially affected the application of

¹⁹A/RES/1763 A (XVII), 7 November 1962

²⁰Huda Shahnaz (1994) Untying the Knot - Muslim Women's Right of Divorce and Other Incidental Rights In Bangladesh in The Dhaka University Studies Part-F, Vol V (1) pp 133-157 at p 133

personal laws (for example, The Child Marriage Restraint Act 1929²¹, The Muslim Family Laws Ordinance, 1961²², The Family Courts Ordinance of 1985²³ etc) as well as judge-made laws or judicial precedents which have made important contributions to the interpretation and reform of religious law

2 2 1 Marriage

Marriage is considered to be of utmost importance in the lives of Bangladeshis. It is one amongst the number of powerful institutions, which cut across class distinctions, to shape roles and status of women in general²⁴. Women have fewer options than men do in life and therefore for most Bangladeshi women there are no alternatives to marriage. The research deals primarily with the registration of Muslim marriages and divorces. There is the need to understand what marriage means under Muslim law as well as institutions, which are intrinsically related to marriages both in terms of law and the social context.

Marriage has been defined by sociologists as

a socially recognized union between two or more individuals that typically involves sexual and economic rights and duties²⁵

Under Muslim law, marriage is a contract between a man and a woman. There is, in reality, very little formality necessary for the marriage to be contracted. All that is required is that one capable party makes an offer of marriage which is accepted by the other capable party in the presence of witnesses (of whom either both must be male or one male and two female --females alone cannot be witnesses). All other rituals and ceremonies which are widely connected to marriages in Bangladesh and elsewhere are not required to give validity to the marriage.

²¹The Bangladesh Code, Vol XI

²²

²³No 296 Pub. The Bangladesh Gazette Extraordinary 30 March 1985

²⁴See note 16 at p 3

²⁵Calhoun C. Light D. et al (1994) Sociology 6th edition McGraw-Hill Inc New York et al at p 316

2 2 1 1 Age of marriage

There is no prescribed or minimum age of marriage under Muslim law. The guardian may validly contract a child who has not reached puberty into marriage. However, consent is essential when the bride or bridegroom has reached puberty. In *MUHAMMAD ZAMAN Vs SULRAN* it was held that

it is absolutely necessary that the man or some one on his behalf and the woman or some one on her behalf should agree to the marriage at one meeting and that the agreement should be witnessed by two adult witnesses²⁶

In *ALLAH DIWAYA Vs MST KAMMON MAI* marriage entered into by girl who had not attained puberty was not considered to be a marriage in the eye of the law and was therefore void²⁷. It was held in this case that a minor cannot possess sufficient understanding, before she attains puberty, to comprehend the implications of a contract of marriage²⁸.

As far as capacity is concerned, only a person who has reached majority according to religious law may consent to his or her marriage personally, also the parties must not be related within what is termed the prohibited degrees of marriage. Under Muslim law, attainment of puberty is the relevant factor²⁹. Before puberty however, as mentioned the guardian may validly contract a child into marriage.

In 1929, the British Government in a bid to stop child marriages enacted the Child Marriage Restraint Act, which made child marriages punishable but not void. The minimum age was set down in 1929 at 14 for the bride and 18 for the groom, in 1961 by the Muslim Family Laws Ordinance the minimum age was increased to 16 for the female and finally in 1984 the limit was settled at 18 for the bride and 21 for the groom³⁰.

²⁶PLD 1952 Pesh 47

²⁷Ibid

²⁸Ibid

²⁹Note that The Majority Act of 1875 prescribes 18 as the age of majority, but this law does not apply to marriage, divorce etc.

Child marriage and social factors

Inconsistency between religious law and statutory law is evident in the existence of laws which make an act (i.e. child marriage) valid but punishable. Social factors makes it desirable for girls to be married at an early age, religious law permits such early marriages, however statutory law prohibits the same. Thus marriage at whatever age is valid although law prescribes punishment.

2.2.2 DOWER

Dower becomes due from the husband to the wife on every marriage contract. It arises either by agreement or by operation of law.³¹ The payment or promise of payment of dower is intended to act as security for the wife in case of divorce or widowhood. It also operates as a check on the man's arbitrary exercise of the right of divorce.

Dower is anything, which the wife is entitled to get from her husband notwithstanding any contract to the contrary, by virtue of entering into the marriage contract.³²

In the case of *Atiqul Huque Chowdhury Vs Shahana Rahim*, it was held

Dower in a Muslim marriage forms an inseparable part of the terms of the *Kabinnama* and thus as the *Kabinnama* is intended to be registered under the 1974 Act, so is the dower. The Act of 1974 is, in our opinion, in force relating to the registration of Muslim marriages including dower.³³

Further a registered *Kabinnama* strengthens the woman's claim to dower

if there is any breach by way of non-payment of dower fixed in a *Kabinnama* registered by a Nikah register, it will amount to a breach of a registered contract.³⁴

³⁰No. 512-Pub. The Bangladesh Gazette Extraordinary, June 4, 1984

³¹Dhaka Law Reports (1984) *Principles of Muhammeden Law*, Chowdhury, O H, Dhaka at p 149

³²Verma, B R (1994) *Islamic Law* 6th edition, Law Publishers (India) Private Limited, Allahabad at p 141

³³47 DLR 1995 HC 301

³⁴ibid

2 2 3 MAINTENANCE

Maintenance or *nifka* signifies in the language of the law, food, clothes and lodging ³⁵ The highest obligation in a marriage under Muslim Law is the maintenance of the wife. The father also has the duty to maintain his children. It is generally agreed that the wife is entitled to maintenance during the continuance of the marriage and during the *iddat* period after divorce. The *Quran* puts the entire burden of maintenance on the husband and the wife is not obliged to give anything from her own income. The question dealt with in two fairly recent cases was whether or not she is entitled to past arrears of maintenance and post divorce maintenance beyond the period of *iddat* ³⁶

A woman under Sec 488 of the Cr P C ³⁷ could institute a criminal case for maintenance but it has been held that after the coming into force of the Family Courts Ordinance of 1985 the Criminal Courts jurisdiction has been ousted in respect of awarding maintenance, except in case of pending proceeding ³⁸ A wife may file a civil suit under the Family Courts Ordinance or under Section 9 of the MFLO make an application for maintenance. Under the Dissolution of Muslim Marriages Act of 1939³⁹ failure to maintain may be grounds for divorce

2 2 4 DIVORCE

The husband under Muslim law has the unilateral right of divorce i.e. the right of *talaq*. Muslim jurisprudence confers on the husband almost absolute power to divorce but denies like freedom to the wife. Consequently the wife can obtain divorce only when the couple mutually agree to the dissolution (*mubaraat*), or the husband agrees to the wife's proposal for divorce and she

³⁵Hedaya The (1982) Commentaries on the Islamic Laws, Translated by Charles Hamilton, Islamic Book Trust, Delhi at p 140

³⁶See Hefzur Rahman Vs Shamsun Nahar Begum 47 DLR 1995 on post divorce maintenance and Rustom Ali Vs Jamila Khatun 16 BLD AD 1996 on past maintenance

³⁷The Code of Criminal Procedure 1898 The Bangladesh Code Vol IV

³⁸ Pochon Rissi Das Vs Khuku Ran Das and Others 1998 50 DLR 47

³⁹The Bangladesh Code Vol XI

either forgoes her dower or gives him something in return for his consent to release her from her marital bond (*khula*) The husband may also, if only he wishes to, delegate his right of divorce to her (*talaq e tafwid or tafveez al talak*) Failing the above, after 1939, the wife may under the Dissolution of Muslim Marriages Act of 1939 go to Court under certain specific reasons and pray for a dissolution of marriage (*faskh*) In 1961 by the MFLO some restrictions were introduced to the husband's right to divorce

3 0

REGISTRATION

3 1 Types of contracts in Bangladesh

Registration of marriage means registration of the contract of marriage i.e. the *nikahnama* (also called the *kabinnama*) The *nikahnama* is according to the format prescribed by law A marriage certificate may be issued by the Registrar's office on request, e.g. when someone is going abroad (See Appendix)

The *nikahnama* is a document which contains the conditions of the marriage contract ⁴⁰ The MFLO of 1961 prescribed a form of *nikahnama* and the same is prescribed by the 1974 Act A *nikahnama* is available from the Marriage Registrar of the area

There may be oral marriages with nothing written down which is perfectly valid Again the contract may be in the standardised form prescribed by law and Registered again in accordance with law

⁴⁰Laws regarding Marriage AGHS Legal Aid Cell, Lahore, NY at p 10

There may also be marriages where the conditions or some of the conditions of the contract are written down on plain paper. For example respondent Nayan's marriage contract was written but not registered. Her parents arranged her marriage and the local *Imam* solemnised it. This form of marriage is quite common in the rural areas. The main portion of these types of informally written *nikahnamas* is the specification of the sum of dower.

Some people may draw up their contracts of marriage on 13" cartridge paper and this marriage may or may not be registered on the proper form. No extra legal strength is gained but the parties executing the deed feel more assured⁴¹

According to Ali

many people obtained the seal of registration from the marriage registrar on the reverse of their '13-inch document'. This document is accepted as one to which s 20 of the Marriage Register form relates (whether at the time of the marriage any deed was executed with regard to dower, maintenance etc.)⁴²

Another type of written marriage contract may be those written on stamp paper and notarised by the notary public although not registered by the relevant authority. These types of marriages may sometimes be erroneously termed as 'court marriage' since in many cases the couple marry before witnesses and sign an affidavit on stamp paper and have it notarised. Afterwards the marriage may or may not be registered. It must be stressed that although such document may be used as evidence of the marriage it does not do away with the legal requirement of registration. Similar situation exists in

⁴¹ Ali, M. Imman (1988) 'The value of 13" cartridge paper (marriage ceremonies, contracts and certificate in Bangladesh)' in Immigration and Nationality Law and Practice 21-3) 1988 94-97 at p 96

Pakistan where, for example, there are like Bangladesh, apparently three types of marriage contracts. These are written on the standard *nikahnama* form and registered with the Nikah Registrar, written either on the standard *nikahnama* form and/or stamp paper, but not registered, and oral, unregistered⁴³

3.2 Registration of marriages the history

Under Muslim law, as mentioned earlier, oral marriages are perfectly valid. Oral contracts were, in fact considered acceptable in ancient Muslim society. Gradually however, with the growing complexities of modern life, it became impossible to depend upon oral testimony alone⁴⁴. Even when the traditionalist scholars continued to emphasise the superiority of oral testimony over documentary evidence, various transactions were reduced into writing for the sake of convenience⁴⁵.

Certain conditions have been laid down by modern reformers and jurists, which must be met, in order that a contract of marriage may be registered. Since traditionally no registration was required, this is a modernisation introduced by reformers who wished to undertake reforms while keeping within traditional law

⁴ Ibid

⁴³ Women, Law and Society: An action Manual for NGOs (March 1996), Balchin, Cassandra (editor) Shirkat Gah/WLUML, Lahore, at p 52

⁴⁴ Huda Shahnaz (1996) 'Born to be Wed' Bangladeshi Women and the Formation of the Muslim Marriage Contract Unpublished Ph D thesis, University of East London, U.K. at p 367

⁴⁵ Ibid at p 368

as far as possible Their aim was to lay down certain legal requirements, which must be fulfilled before the marriage, could be termed legal under state law There are certain conditions, which must be fulfilled before a contract of marriage may be registered ⁴⁶

State law requires all Muslim marriages in Bangladesh to be registered According to Anderson registration of a contract of marriage represents an innovation which has no parallel in classical texts but which has assumed a major importance for it enshrines the principal method of reform ⁴⁷ Even though registration of the contract of marriage itself is a recent innovation the Quran exhorts believers to reduce transactions into writing Sura al-Baqarah (2) verse 282 states

O ye who believe! When ye deal with each other, in transactions involving future obligations In a fixed period of time Reduce them to writing ⁴⁸

The requirement of registration has been used by the state as a method of accomplishing reforms relating to a minimum age of marriage, polygamy, payment of dower, woman's right to divorce and so on Thus, via the procedure of registration, reforms have been attempted in order to avoid disturbing or coming into conflict with the Shariah ⁴⁹

⁴⁶See note 44 at p 370

⁴⁷Anderson J N D (1959) Islamic Law in the Modern World, Stevens and Sons, London at p 48

⁴⁸*The Holy Qu'ran* (1983) Text Translation and Commentary by A Yusuf Ali Amanat Corp Maryland

⁴⁹See note 44

3.3 Legal position of registered and non-registered marriages and divorces and

Importance of registration

Registration of marriage is not an imperative under religious law and the validity of the marriage does not depend on the marriage being registered. Conversely, an otherwise invalid marriage cannot be validated by registration. Therefore, as far as the Muslim law regarding marriage is concerned, registration is irrelevant.⁵⁰ Unwritten marriages have been accepted as legally valid by the courts and

there is no hard and fast rule about the legal validity of unregistered and/or oral marriages and there have been different judgments on the validity of such marriages. Rather than regarding non-registration as conclusive proof of the non-existence of the marriage, other circumstances are taken into account by the Courts.⁵¹

However, according to Prof. Faizuddin, Dean Faculty of Law, Rajshahi University

Although Registration is not required by Shariah law to validate the marriage the requirement of registration has had the effect of reducing the number of litigations since the fact of marriage is proved by registration.⁵²

⁵⁰Ibid at p 366

⁵¹See note 43 at p 34

⁵²Personal interview

Importance of registration is construed to be essential for the purpose of record keeping. Again a host of legal consequences of marriage are predicated upon proper registration.⁵³

Although marriage can be proved by legal presumption where there is no legal presumption of the existence of marriage, if it were challenged it would have to be proved by satisfactory evidence, and documentation could entirely prove valuable.⁵⁴

Registration solves many complicated questions regarding the marriage itself. Despite the fact that oral marriages are perfectly valid and non-registration does not make the marriage invalid, registration is required by law. Registration provides the best evidence of the marriage and non-registration of the marriage causes a doubt on the solemnization of the marriage itself (Dr A L M Abdullah v Rokeya Khaton and another XXI PLD 1969 Dac 47)

Thus registration of a Muslim marriage operates as conclusive proof of marriage (though not of its validity). The registration of *nikah* shall merely be prima facie evidence of *nikah* which may be rebutted by other evidence.⁵⁵

So much stress is put upon the value of registration of marriage that in a recent case it was held

⁵³See note 1 at p 1

⁵⁴Ali, Zeenat Shaukat (1987) Marriage and Divorce in Islam: an appraisal, Jaico Publishing House, Bombay at p 104

⁵⁵Rahman Tanzil ur (1978) A Code of Muslim Personal Law Hamdard Academy, Karachi at p 87

The Muslim marriage is a socio-religious contract and the signatures of both the parties are very essential to prove the contract of marriage written in the form of *Kabinnama*. In such circumstances no amount of oral evidence will cure the deficiency and no amount of oral evidence will be sufficient to prove the marriage when the plaintiff failed to prove the *Kabinnama* according to law.⁵⁶

Registration relieves women from constantly being uncertain of their marital status.⁵⁷ If one of the spouse dies and the *nikahnama* was not registered interested parties can, for the sake of depriving the alive spouse and children of inheritance, allege that the marriage was not legal.⁵⁸ In reality therefore, although it does not effect the validity of the marriage itself, non-registration may deprive the wife of many of her rights for example her right to dower, maintenance both of herself and her children and the right to use her delegated right of divorce. The registered deed of marriage provides support to the woman's rights arising out of marriage. In its absence, the wife may also be divorced without getting her promised dower, or her husband may marry again without permission, as is required by law. She may be deprived of her maintenance which her husband is supposed to provide during the continuance of the marriage or afterwards during the period of *iddat* by refusing to admit the marriage itself. In rural Bangladesh, disputes regarding the existence of marriage often arise when the husband attempts to avoid payment of dower upon divorce, or when he marries again without the permission of the first wife.

Muslim law grants unequal rights of marriage and divorce to men and women. A man may marry a several women at the same time -- he may marry a Muslim

⁵⁶Khodeja Begum and Others Vs Md Sadeq Sarkar 50 DLR 1998 181

⁵⁷See note 40 at p 6

⁵⁸Ibid at p 11

woman or even women belonging to other religions. A Muslim woman however must be monogamous and can validly only marry a Muslim. As regards divorce, as discussed earlier a woman's rights are restricted. A woman with a registered document has various advantages which may to a certain extent equalize and protect her position within and outside marriage. Her right of delegated divorce may be secured and she may also may impose conditions in the *Nikahnama* on her husband's right to *talaq*, secure her rights of dower and have evidence of her marriage since there is a great deal of emphasis on documentation.

Non-registration of marriage is often pinpointed as one of the main causes of torture and repression against women including divorce, demand for dowry and polygamy (Daily Star 24-8-94)

Thus, in the absence of registration of the marriage contract, the wife is deprived of many of her rights, which she is by law entitled to⁵⁹

This very important function of the state however is not often performed accurately, diligently and fairly of a number of reasons

Inadequacies and sometimes, outright illegalities in the process of registration frequently lead to denial of rights, particularly of wives and divorced women as legal remedies for breach of spousal rights such as maintenance, dower custody -etc can be claimed only on the basis of properly registered marriages and divorces⁶⁰

40 METHODOLOGY

⁵⁹See note 44

⁶⁰See note 1 c p 1

The primary causes of non-registration of marriages and divorces are a combination of social and religious factors. These factors have to be investigated before any reforms whether in the law or in the practical procedures can be suggested. With the purpose therefore of extensive investigation a field research was undertaken.

The most efficient way of investigating the affect and success/or lack of success of a particular law in the Bangladeshi context is to investigate its affect on its expected benefactors which consists to a large extent of the general rural population of the country. This entails the collection of first hand data relating to the reality of the situation regarding registration through field work conducted in the rural areas. This empirical investigation may best be done through a combination of research methods. Quantitative investigation was undertaken on several hundred respondents. **The target group or population** was the married or once married population of Bangladesh.

Surveys

The present research aimed at investigating a variety of issues related to registration of marriages and divorces. In order to be truly representative, the best way to find the effect of a particular law is by way of census. Since a census can be only undertaken by organs of the state, which has sufficient manpower and can bear the enormous costs, the next best alternative is by a survey of a small portion of the population, in order that they may be said, to a certain extent, to represent the whole⁶¹

⁶¹ See note 44 at p 33

Surveys are the systematic gathering of answers to standardized questions from a designated sample of respondents. Respondents may be asked to answer questionnaires by mail, over the phone, or in face-to-face interviews.⁶²

The aim of most surveys is to provide knowledge about a substantial portion of the population. The population of any survey is simply the total number of people who share a characteristic that the sociologist is interested in studying.⁶³

Surveys are important to gather information about events, which cannot be gathered directly.⁶⁴ For this purpose a quantitative survey was undertaken of several hundred respondents.

SURVEY SAMPLE Because of the time and costs involved, a sample is canvassed which is a limited subset of the population.⁶⁵

A sample is a smaller portion of the target population. The purpose of sampling is to be able to access the information obtained from a smaller group of respondents or subjects to a much larger group. A sample needs to be as representative as possible so that the information gleaned is as representative as possible. One word of caution is that it is impossible to claim total representation. The method of choosing the sample was random. Random does not mean haphazard, casual, or careless.⁶⁶ A random sampling method of selection is based on chance and all units in the target population have a known chance of being selected.⁶⁷

⁶²See note 25 at p 38

⁶³Ibid at p 38

⁶⁴Ibid

⁶⁵See note 25 at p 38 39

⁶⁶Nichols Paul (1991) Social Survey Methods: A Fieldguide for Development Workers Oxford: Oxford at p 26

Sample Subjects

The field work respondents consisted of both men and women - married or divorced, widowed or separated, i.e. those who are, or had been, in the married state. Empirical investigation was carried out in 581 villages in 28 districts in the six divisions of Bangladesh. A total of 1403 respondents were interviewed ⁶⁸

The respondents who are the target of the above questionnaire included

The respondents included

- 233 Farmers
- 212 Rickshaw pullers
- 207 Day labourers
- 146 Small businessmen
- 12 Medicine men
- 7 NGO workers
- 12 Teachers
- 106 Other rural occupation holders
- 34 Garment workers
- 107 Domestic workers
- 168 Professionals
- 93 Government service holders
- 23 Other urban occupations
- 10 Multiple

⁶⁷Ibid at p 128

⁶⁸The country is divided into six administrative divisions each placed under a District Commissioner. Each division is further divided into zilas or districts. The country now has 64 zilas. Each zila in its turn consists of several thanas. There are 490 thanas. Thanas are divided into unions (4451 unions in all) which again consists of several villages. Union Parishads (Union Councils) are entrusted with local government in rural areas and the

RURAL sample The number of respondents interviewed was 1203 who they were selected randomly There were at least 200 respondents from each of the six divisions, Dhaka, Sylhet, Chittagong, Rajshahi, Jessore and Barisal For methodological clarity only those districts within each division were chosen which are on the border of the division--i e either bordering on another division or the international boundary of Bangladesh

URBAN sample 200 or more respondents from the city-- urban lower or poorer classes were also be taken as sample The respondents were from amongst

- a) Garments workers
- b) Slum dwellers
- c) Domestic servants

b) The second subject of the research were 18 Marriage Registrars or *Kazi's* as they are popularly known The purpose was to investigate the defects in the process and ways to improve the process of registration and to determine the knowledge and awareness of the Registrars A questionnaire used for the Registrars was open ended with Bengali translation for the Registrar's to complete personally

Questionnaires

It was decided that the use of questionnaires would be the most productive and informative Two sets of questionnaires were formulated for the purpose of the field investigation The first was meant for the customers/ general respondents

¹municipality or Pourashava in urban areas

and the second for the Marriage Registrars. The first questionnaire after the pre-testing had 42 questions.

PILOT STUDY or PRE-TESTING of the questionnaire for the customers was conducted on 15 women who had come to the Nari Nirjaton Cell under the Social Welfare Ministry at Eskaton. Pretesting in this instance meant the trying out of the questionnaires on a small group of persons. The questionnaire for the Registrars was pre-tested on the Marriage Registrars' of Demra and Sutrapur Kotwali.

Structured questionnaire. One option was to use open ended or unstructured questionnaires in which the respondents could give any reply they chose. In the case of a closed response question or close ended/structured question respondents must choose from the several answers provided by the researchers. The range of possible answers to each question is known in advance and often possible answers are listed on the form so that the interviewer simply marks the appropriate reply in each case.⁶⁹ In an open response question, respondents answer in their own words.

From earlier experience and the pre-testing, it was obvious that most Bangladeshi respondents found it inhibiting and confusing when such opinion eliciting questions were asked. It was only by giving them several options or

⁶⁹See note 66 at p 130

probable answers from which to choose from, that it was easiest to obtain responses and therefore the type of questionnaire used was a structures one in which as many probable responses/options possible were included Interviewer administered questionnaire Since the majority of the respondents are illiterate it is necessary that the questionnaire be conducted (i e the questions asked and answers recorded by the interviewer) For the Marriage Registrars who were assumed to be educated and knowledgeable open-ended questions were used

Case study/ qualitative study Apart from questionnaires, the other method used was in-depth study or non-scheduled interviews Qualitative research stresses on the quality and depth of the investigation rather than numerical importance Case studies of 13 women were recorded

The essential methodological feature of case-studies/in-depth studies is that it provides in-depth, detailed analysis' ⁷⁰ No specified questions are used -- the respondent is encouraged to reveal a lot more of her own thoughts and perceptions

Personal interviews

Personal interviews with persons connected with the legal profession, social workers, marriage Registrars', researchers and others interested or connected with the topic under research was also conducted

⁷⁰Casley D J and Lury, D A (1987) Data Collecting in developing Countries, Clarendon Press at p 64

The project also sought to investigate the process of registration from existing data and has accumulated data including press clippings, relevant articles, reported decisions of the courts etc [SEE CHARTS I – IV]

5 0 MARRIAGE AND DIVORCE REGISTRATION LAWS

5 1 Bengal Mohammadan Marriage and Divorces Registration Act of 1876 (Bengal Act I of 1876) ⁷¹

The earliest statute providing for registration of Muslim marriages was the Bengal Mohammadan Marriage and Divorces Registration Act of 1876. This Statute provided for the voluntary registration of marriages *and* divorces in undivided Bengal and later for East Pakistan ⁷²

Under the above Act, the person empowered to register marriages and divorces was known as the Muhammadan Registrar (S 2)

5 2 Muslim Family Laws Ordinance, 1961:

From 1961 the Muslim marriage contracts are required to be compulsorily registered. The MFLO however made no mention of divorce registration but presumably divorces continued to be voluntarily registered under the Act of 1876. The Family Laws Commission ⁷³, on whose recommendation the Muslim

⁷¹The East Pakistan Code, First Edition, Vol II, Bengal Acts 1862-1889, East Pakistan Press, Dacca

⁷²vide E P Ord XII of 1962

⁷³The Gazette of Pakistan Extra June 20 1956 at p 1208

Family Laws Ordinance of 1961 was enacted, agreed that registration of marriage must be made compulsory as questions relating to the validity

and existence of marriage between parties arise frequently in civil and criminal courts. Registration, the Commission opined, would solve complex questions relating to such validity and existence as well as those relating to legitimacy or illegitimacy of heirs (in cases relating to inheritance), claims of right to maintenance by the wife, and for the purpose of disproving criminal charges for example when two men claim to be the husband of the same woman in order to avoid conviction for abduction. In all these cases documentary evidence may be necessary.⁷⁴

5.3 The Muslim Marriages and Divorces (Registration) Act, 1974

In 1974 the Muslim Marriages and Divorces Registration Act was enacted by the 5th Session of the 1st Jatiyo Sangsad. The Bill was proposed by Sri Monoranjan Dhar. The main intentions were to remove the power to appoint Registrars from the hands of the Union Councils and give this power to the Government and also to include divorce Registration in the Act.⁷⁵ By virtue of the powers conferred by Section 14 of the Act of 1974, the Government made the Muslim Marriages and Divorces (Registration) Rules, 1975.

The Act provides by Section 3 that

⁷⁴Ibid

⁷⁵Bangladesh Jatiyo Sangsad Debates Government version, 2nd vol 3rd part (9th July to 22nd July 1974) Bangladesh First Jatiyo Sangsad Fifth Session at p 2879-2884

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

The Act therefore reiterates that all Muslim marriages must be registered. By Section 15 of the above Act, Section 5 of the Muslim Family Law Ordinance dealing with registration was omitted and by Section 16 the Act of 1876 was repealed.⁷⁶ In *Atiqul Huque Chowdhury Vs Shahana Rahim*, the object of the enactment of a separate law relating to registration was explained

the whole purpose of the 1974 Act, as derived from the preamble is to consolidate the registration of Muslim marriages and divorces under one Act and not to diversify the registration of different parts of a marriage contract under different Acts.⁷⁷

5.3.1 SELECTION AND APPOINTMENT OF REGISTRARS

The government is to appoint Registrars. It is to be counselled by an Advisory Committee in the selection of Registrars (Rule 4). Only persons not less than 21 years old and not more than 40 years of age, who possess Alim Certificate from a Madrasa Board established under any law for the time being in force and a resident of that area (Rule 6).⁷⁸ Before amendment in 1993 the age bracket was 25 to 45 years. Registrars were also required to possess sufficient acquaintance of the Arabic language, the MFLO and Muslim laws relevant to marriage. Since the Registrar is not now required to have knowledge about relevant Muslim as well as the MFLO it may be said to be a cause of their not ensuring that statutory provisions are followed.

⁷⁶The Bengal Mohammedan Marriages and Divorces Registration Act 1876 (Act I of 1876) was amended as the Muslim Divorces Registration Act 1876 (Act I of 1876 vide Act of 1973)

⁷⁷47 DLR 1995 HC 301

⁷⁸The qualifications required were changed vide No S R O 12 L/93, The Bangladesh

Under Rule 16 of the Rules it is specifically stated that Nikah Registrars shall not be deemed to be Government servants and are therefore not entitled to claim for pension or gratuity or the leave allowances of any kind. This may be a reason for many Registrars demanding higher fees to supplement their income.

Under Rule 17 the Nikah Registrar cannot hold any salaried appointment

other than an appointment in a mosque or in a non-Government school or madrasa situated within the areas for which he has been licensed ⁷⁹

This change was made in 1993. Before this, the Registrar was not barred from holding any salaried appointment with any private concern or semi-autonomous body or carrying on business provided it did not interfere with the proper discharge of his duty as a Registrar and it is held with permission of the Government. Many people refuse, says a respondent, to pay the sum of fees required and when some influential person is involved he may tell the people not to register at all. As a result the Registrar takes more when he has the opportunity.

5.3.2 PLACE OF REGISTRATION JURISDICTION OF REGISTRAR

As regards the place of registration, rule 22 provides that marriages shall be registered by the *nikah* Registrar within whose jurisdiction the marriage is solemnised or divorce affected.

Under Section 4 the Government

shall grant licences to such number of persons, to be called Nikah Registrars, as it may deem necessary for such areas as it may specify.

Gazette Extraordinary January 19, 1993

⁷⁹Substituted by S R O No 12-L/93

has unrestricted and unlimited power to determine the area for which the Nikah registrar is to be permanently appointed. The Government in the exercise of this power may extend, curtail or otherwise alter the limits of any area for which a/the Nikah Registrar has been licensed.⁸⁰ In *Nur Mohammad Fakir Vs Bangladesh*, the learned judges held that sub-rule 1 of rule 10 which specified the area for which a Nikah Register may be licensed' cannot be said to be mandatory and was merely directory.⁸¹ Rule 10 relating to jurisdiction was however amended so that as of January 1, 1998 (before the above case was reported in the DLR) the jurisdiction of the Nikah Register was changed. Rule 10 now reads

The area for which a Nikah Registrar may be licensed shall be --
(a) in the case of an area under a city corporation or paurashava not more than three wards,

b) in the case of other areas, not more than three unions.⁸²

The jurisdiction was revised in consideration of the increased population.⁸³

The Government has the authority to exclude certain areas from the jurisdiction of one Nikah Registrar and amalgamate with others but in so doing notice to show cause should be served upon the existing Nikah Registrar and must show reasons therefor.⁸⁴

⁸⁰ Section 4 of the MDRA, 1974
See also *Moulvi Khurshid Alam Vs Bangladesh Secretary Ministry of Law Justice and Parliamentary Affairs* 50 DLR (AD) 1998 82

⁸¹ *Nur Mohammad Fakir Vs Bangladesh* 50 DLR 1998 71

⁸² Vide S R O No 289 L/97 The Bangladesh Gazette Extraordinary, 1 January, 1998

⁸³ The Daily Star 28-2-98

⁸⁴ *Latifur Rahman (Md) Vs Ministry of Law and Parliamentary Affairs, Government of Bangladesh* 49 DLR 1997 434

Amongst reasons for non-registration many experts have said that distance of the Registrar's office may be a cause. According to Abdus Sabur Khan, Advocate Tangail, of one of the reasons for not registering marriages is that there is no Registrar nearby.⁸⁵ Advocates Mirza Atahar Hossain, Shahidullah Khan Yusufzai, Niranjana Nath Talukdar, all from Tangail all agree that distance of the Nikah Registry office, bad communication may be causes for non registration.⁸⁶ Says Advocate Kalipada De Sarkar

Because the office is far away the marriage takes place with the parties intending to register afterwards which they later neglect to do.⁸⁷

Some marriage Registrars agree. For example according to one Registrar

People don't come to us because of the distance. The Registrar office is in most of the thanas and unions far from the residence of the village people and that is one of the main reasons of non-registration of marriages. Mostly the educated people come to us.⁸⁸

5.3.3 MARRIAGE NOT SOLEMNISED BY REGISTRAR

The Act of 1974 lays down that every marriage not solemnised by the Nikah Registrar shall, for the purpose of registration under this Act, be reported by the person who has solemnised such marriage' (Sec 5). The Act also provides that contravention of the provisions of sub-section (1) shall be punishable with simple imprisonment for a term which may extend to three months or with fine which may extend to five hundred taka, or both.

⁸⁵Personal communication. I am grateful to Gholam Rabbani, Assistant Judge for all his help.

⁸⁶Ibid

⁸⁷Ibid

⁸⁸Marriage Registrar, Sadar Thana, Jessore

In addition to the above, Rule 19(3) of the Muslim Marriages and Divorces (Registration) Rules, 1975 states that such person shall report the matter within fifteen days to the Nikah Registrar within whose jurisdiction the marriage was solemnised. In such a case the person who solemnised the marriage shall appear before the Nikah Registrar concerned with the persons whose signatures are required in the Register, for the purpose of registration of marriage.

The majority of the marriages in the villages are solemnised by the *Munshi*, *Imam* or other religious persons.

According to the Marriage Registrar of Sadar Thana, Jessore

In the villages it is usually the village *Munshi*, Maulana or the *Imam* of the Mosque who solemnises marriages. He is the person who leads the village prayers and conducts funeral etc. The Registrar does not usually attend the solemnisation.

Many of such persons are unaware of their responsibilities under the law to report marriages solemnised by them. Since registration is not a requirement for the validity of the marriage, solemnisation of the marriage through the religious offices of these persons who are usually respected elders of the village is construed to be sufficient to give validity to the marriage which it actually is. For example, respondent from Pirojpur is not aware of the *Imam* or *Munshi's* duty to report marriages solemnised by him for registration. She says

In the village either the Maulvi or the *Munshi* or any other older person solemnises the marriage and that is all. No further steps are taken.

"People who are not aware of the laws regarding registration", says Champa, from Jhalakhathi, "call the *Imam* or *Munshi* and solemnises the marriage and takes an amount which is within the capacity of the people to pay "

18 Marriage Registrars were asked questions as to whether they were aware of the responsibility under law of the person solemnising the marriage to report the marriages for registration, whether they were aware of the punishment in cases of non-compliance and whether they had any liaison with such a person 89% of the Registrars were aware that *Imams*, *Munshis* were under law required to report marriages solemnised by them However some of them were vague as to whether there was any punishment fixed by law, seven said there should be some punishment One registrar from Sherpur said "the punishment is mentioned in the law books but I am not sure what it is " As to whether they had any liaison with the village people who solemnised the marriage, seven answered in the affirmative One said that it was not necessary while another was of the opinion that it was not possible to maintain any such contact

According to the Marriage Registrar of Sadar Thana, Jessore

Generally if a marriage is arranged and the parties agree to register the marriage, they come to the Registry office before the actual ceremony takes place Sometimes there are certain *Munshis* or other persons who work as agents of the Marriage Registrar They are given the form or the *Kabinnama* and they take down the name, address and other necessary details as well as the signature of the bride and bridegroom, and of the authorised persons They then bring the form to the marriage Registrar and the registration is completed in his office In such cases the Registrar has liaison with such *Imam* or *Munshi*

He goes on to say

the *Munshi Imam* and the others are not appointed by the government, nor do they have any license and so forth. We unofficially appoint them agents. They only work as our representatives and they inform us whenever any marriage is taking place.

Fake registrars. In a news item published in the Daily Star on the 24th of April 1997 it was reported that in Kushtia, marriage registration was being conducted throughout the district for the last few months by fraudulent Registrars. The item reports that about 50 such fake registrars. These registrars have no license to conduct such marriage and to register. They are therefore said to be depriving the govt treasury of revenue.

5.3.4 FEES FOR REGISTRATION

Many allegations regarding Marriage Registrars, including the fact that they take more fees than required have come to light and have been highlighted in various newspapers. On 14th September 1997 the Daily Star reported the plight of a young couple who instead of being above the legal age of marriage were harassed at a Registrar's Office in Dhaka city when they went to get married. In the end they had to pay a ridiculous and illegal sum.

Many people asked offhand why they thought marriages are not registered are under the impression that the fees is too high. Rule 18 of the Muslim marriage and Divorce Registration Rules lays down the fees required for registration. There have been several amendments of the amount. The most recent amendment was made in 1998. Now the maximum limit of fees has been increased from two thousand to three thousand.

Rule 18 states

(1) A Nikah Registrar may, subject to a minimum of taka thirty and maximum of taka three thousand, charge for registration of a marriage a fee of taka five for the dower of every one thousand taka or part thereof⁸⁹

This means that for a dower of, for example 1,00,000 (one lakh) the fees required is 500, for a dower of 5,00,000 it is 2,500/- However since the maximum limit is 3000 the fees cannot, whatever the amount of dower, exceed this amount.

The charge for the registration of divorce is taka one hundred In addition for registration of a marriage or divorce on commission the Nikah Registrar may charge fees and allowances a) commission fees of taka 25 and travelling allowance for the execution of the commission taka 1 per mile

In reality there exists a wide disparity between the actual amount charged for registration The parties are generally unaware of the fees they are in law required to pay Even amongst the educated populace there exists a lack of knowledge about the amount Since the occasion of marriage is considered to be auspicious, people rarely refuse or challenge the Registrar when he demands a higher sum In the end, the money paid for registration adds up to quite a high amount Many Registrars are alleged in the aforesaid manner to extort large sums of money Registration becomes an expensive business especially for the rural poor

Receipt

The Registrar is also required to give a receipt of the amount of money taken but respondents have reported that no such receipt is given An investigation by

⁸⁹Vide S R O No 289-L/97 Bangladesh Gazette Extraordinary 1 January, 1997

Bhorer Kagoj in Tangail found that no such receipt is given (Bhorer Kagoj 9-3-94)

Many Registrars' are alleged to demand a sum of money as the fees required to be paid by the Government of which, they claim, they get no portion of and which is deposited to the Government and then claiming an additional amount as their fees. So in many cases, people pay a sum additional to that, which is specified as the fees for registration.

The Daily Star on April 23rd, 1993 reported that most of rural marriages take place without registration because the parties cannot afford the necessary registration fees. Bhorer Kagoj (9-3-94) in a similar report stated that Registrars regularly take an inflated amount. The report went on to suggest that the fees should be reduced to make it possible for even poor people to register their marriages.

There is an extreme lack of knowledge regarding the amount of fees. Even some Registrars are unaware of the laws under which fees are required to be taken. Registrars interviewed when asked the question under which law or rule is the fees for registration determined, gave varied answers. In answer to this query although the majority gave correct replies, others were vague and answers ranged from MFLO 1961 to 'whatever is in the law books'. One Registrar said honestly that he did not know while three replied that fees was determined according to the *Kazi Act*⁹⁰, 'Muslim law' and so forth.

⁹⁰The *Kazi Act* of 1880 (The Bangladesh Code Vol I). Although not apparently repealed the *Kazi Act* of 1880 has no applicability now (personal interview with Pirzada Hazi).

Morjina from Bogra says

the amount is determined by the *Kazi*. He tells people the amount they are to pay and they pay that

Shabuj for Teknaf is also unclear about the registration fees. She knows that it must be paid to the *Kazi* who fixes the amount. Says Shampa from Sherpur the registration fees is fixed by the *Kazi* and the people always give what the *Kazi's* demand. Sometimes the guardians decide what is to be given to the *Kazi*. Registrars are required to display a table of fees and allowances payable in some conspicuous part of the office of every Nikah Registrar. However many Registrars do not comply with this provision and this in effect means that the majority of the people are unaware of the amount they are to in law pay. When asked about registration fees, Champa, from Jhalakhathi, says that the village people pay whatever the *Kazi* demands since a marriage is an auspicious occasion and people wish to satisfy the *Kazi*. The people are not aware that there is a fee fixed by the Government. "Ignorance of the people", she says

makes them pay a big amount to the *Kazi* or his agent. People who are not aware of the registration laws call the *Imam* or *Munshi* and he solemnises the marriage and takes an amount of money, which is within the capacity of the poor of the village to pay

It is much less expensive for the people to go to the village priest instead of the Nikah Registrar

Before the amendment of 1998, the Registrar was required to deposit a percentage of the fees collected by him in the Government treasury or sub-

treasury According to the amended sub rule 8 of Rule 18 the Registrar must deposit to the Government Treasury or Sub-Treasury out of the fees realised by him

- a) three thousand, against each ward of a city corporation
- b) one thousand against, each ward of any other municipality and
- c) five hundred against each union

Who is to pay the fees

Under Rule 18(5) the fees for marriage registration must be paid by the bridegrooms side and the fees for registration of a divorce shall be payable by the party at whose instance registration is made In reality, in many cases the bride's family or both the families share the fees When asked who was more eager to register marriages, 16, out of the 18, Marriage Registrars interviewed replied that the bride's side showed much more interest to register Probably because of this, in many cases the bride's family pays the fees despite the fact that law requires the grooms side to pay for registration 33% of the Registrars agreed Respondent Lutfa's (from Barishal) father paid the fees Lutf a is not aware of who is required to pay the fees "In the villages the fees", says Shahana from Jessore, "is usually paid by the bride's side because the villages are unaware of the law"

The quantitative survey shows that in fees for registration was paid in 28.9% of the cases by the husband' family and in 34% of the cases by the brides family See Chart V and table below

PAYMENT OF FEES

	Frequency	Valid percent
Husband's side	222	28.9
Bride's side	267	34.8
Do not know	195	25.4
Both	84	10.9
	768	100

5.3.5 COPY OF DOCUMENT

Under Section 9 of the Act, the parties are entitled, free of charge, to receive an attested copy of the entry in the register for which no charge is to be made. When asked whether the Registrars knew they were supposed to deliver attested copies without charge the majority of the Registrars claimed they knew and did so. However some Registrars honestly admitted that they took a small amount. For example one Registrar from Khulna said that he took 5 takas. Another two claimed that there was provision for taking fees. Bhorer Kagoj reported on 9th March 1994 that on investigation it was found that in Tangail so far no free copies have been ever given.

Lutfa's marriage was registered but she does not know where her *Kabinnama* is. She thinks it may be found in the *Kazi* Office although she does not know

where the *Kazi* Office is. At the time of her marriage she saw a paper or form which must be the *Kabinnama* since she knows the colour of the paper.

Usually the parties neglect to collect the *Kabinnama* afterwards and only do so when they are in some kind of trouble. The danger in this is that in many cases the documents may be destroyed due to floods, tornados and so forth. For example in the tornado of Shaturia in 1988 documents kept in Registrars offices were destroyed. The *Nikah* Registrar is under a duty (Sec 12) to make over the filled register of marriages and divorces to the Register⁹¹ for safe custody. This however is not done always due to shortage of storage space and the *Nikah* Registrars retain the registers⁹². Many volumes were destroyed or lost during the war of liberation in 1971⁹³. The table below shows the percentage of possession of the *Kabinnama* (See also Chart VI).

POSSESSION OF *KABINNAMA* OR COPY

Bride	170	20.6%
Parent of bride	101	12.4%
Husband	33	4.1%
Marriage Registrar	212	26.1%
Do not know	297	36.5%

⁹¹Registrar means the officer so designated and appointed under the Registration Act of 1908.

⁹²See note 41 at p 96.

⁹³Ibid.

5 3 6 REGISTRATION AND DOWRY

The system of dowry whereby the groom's side demands money or other property is rampant in Bangladesh

Respondent Champa says

Without dowry in the villages you cannot get married so you must give dowry although you are poor and cannot afford to pay. People sell their land and other property to arrange dowry.

Champa's father was forced at the time of her marriage to give the 10,000

Takas that her husband's family demanded.

The system of dowry has a connection with the registration of marriages. In many cases it has been reported that the payment of dowry has been made a condition to registration of marriages by the groom's side. If a portion of dowry remains unpaid the groom's side may refuse to register the marriage. 58% of the respondents knew about the law regarding dowry and 39.8% were unaware that dowry is prohibited. 2.2% were under the impression that law applauded the practice of dowry. See Chart VII.

5 3 7 REGISTRATION and POLYGAMY

According to a news report in the Daily Star, the number of polygamous marriages has increased from 1,74,000 to 730,000 in 1981 and by the year 1991 the number allegedly increased to 1,400,000. Under Muslim law, a man is allowed to have four wives concurrently, provided he treats them equally. By Section 6 of the MFLO 1961, polygamy was made an offence unless permission has been obtained from the Arbitration Council. Section 6 of the MFLO provides that

No man, during the subsistence of an existing marriage, shall except with the previous permission in writing of the Arbitration Council, contract another marriage, nor shall any such marriage contracted without such permission be registered [under the Muslim Marriages and Divorces Registration Act 1974 (LII of 1974)]

Therefore marrying 2nd wife without permission of an Arbitration Council, violates law and punishable⁹⁴ In the case of polygamy, a man has to declare in clause 21 of the *Nikahnama* whether at the time, if already married, he has obtained permission of the Arbitration Council as is required under the MFLO 1961

In many cases the husband refuses to register a marriage if he has an existing wife and he has not taken the necessary permission. Again he may refuse to register a marriage in case he wishes, in the future, to contract a polygamous marriage without permission in which case he may be liable under Sec 6(5) of the MFLO. Respondent Hanufa from Sylhet has a sister who works in an NGO and who tells her about laws. Hanufa's marriage was not registered. Hanufa's husband married without permission and she was unable to do anything about it as she had three children and was afraid that her husband would leave them all. For the sake of her children she did not protest.

6.0 DIVORCE REGISTRATION

Divorce Registration is voluntary. Section 6(1) of the Muslim Marriages and Divorces (Registration) Act of 1974 states

⁹⁴Ayesha Sultana Vs. Shahrihan Ali 38 DLR 1986 140

A Nikah Registrar may register divorce effected under Muslim law within his jurisdiction on application being made to him for such registration

A certain procedure is required to be followed under Section 7 of the MFLO for divorces. Dissolution of the marriage in any manner, whether by the husband by way of *talaq* or the wife by the exercise of the right of delegated divorce, or dissolution by any other means shall take place only after notice is given to the Chairman of the Union Council of having done so, and on supplying a copy of the notice to the wife or husband, as the case may be (Sections 7 and 8 of the MFLO)

The *talaq* can, according to law, only be effective until the expiration of ninety days from the day on which notice under the above section is delivered to the Chairman [Section 7(3)]. The same necessity for notice and expiration of 90 applies to divorce by *talaq-i tawfeez* (Sec 8). However in reality, divorce by way of *talaq* is taking place without the legal procedures required by law. Very few cases of divorce by *talaq* are brought before the Arbitration Council for disposal⁹⁵

Since marriage is considered to be of such importance, a woman who is divorced or widowed is in an unenviable situation. She is rarely welcomed back into her paternal family and her place in her husband's home becomes uncertain. The most common problem faced by women whose marriage has come to an end is economic insecurity. Since many of the women do not have any regular income

⁹⁵Chaudhury, Rafiqul Huda and Ahmed, Nilufer Raihan (1980) Female Status in Bangladesh, BIDS Dhaka at p 29

they are financially unable to support themselves and their children⁹⁶ Claims to dower in case of divorce or to maintenance may be her only means of survival Her access to the legal system in order to obtain dower and maintenance is severely limited if her marriage is difficult to prove One of the major obstacles to legal redress is financial inability and without a registered document of marriage proving the existence of the marriage is for many women extremely difficult especially if the husband is influential and affluent

Women face many obstacles when they seek divorce and this is true for even those who have registered marriages As mentioned before the Bengal Act of 1876 contained a provision for the voluntary registration of divorce In 1956 the Commission on Marriage and Family Laws debated as to whether there should be compulsory registration of divorce⁹⁷ According to the Commission's report

in cases of abduction the abductor often alleges that the first husband had pronounced a final divorce, and that he had thereafter married the woman and therefore was not guilty The same woman is claimed as wife by the first husband as well as by the second husband The same question also arises frequently in civil litigation in suits relating to inheritance and legitimacy, and a great deal of time and money is wasted in trying to establish as to whether a woman had or had not been divorced by her first husband The anomalies and absurdities would not arise if registration of divorce is made compulsory⁹⁸

It was even suggested that no one should be able to divorce his wife without recourse to a Matrimonial and Family Laws Court which, when approached would only allow the husband to pronounce divorce until he had paid the entire

⁹⁶See Momen Mehnaaz Bhuiya, Abbas and Chowdhury, Mushtaque (1995) Vulnerable of the Vulnerables: The Situation of Divorced, Abandoned and Widowed Women in a Rural Area of Bangladesh - Working Paper Number II, BRAC-ICDDR,B Joint Research Project Dhaka

⁹⁷See note 73 at p 1213-1214

⁹⁸Ibid

dower and made suitable provision for the first wife and children⁹⁹ In the end however no provision was made for registration of divorce in the Muslim Family Laws Ordinance In 1974 voluntary divorce registration was reintroduced

Delegated divorce

Muslim law grants the husband unilateral rights of divorce, but he may delegate, if he so wishes, the right of divorce to his wife This is known as the delegated right of divorce or *talak-e-tafveez* A divorce by a woman in the exercise of her right of delegated divorce will not be registered by the Nikah Registrar unless the delegation has been made by way of a registered instrument--either "a document registered under the Registration Act 1908 (XVI of 1908) by which the husband delegated the power of divorce to the wife or of an attested copy of an entry in the register of marriage showing that such delegation has been made"¹⁰⁰ For marriages which took place before 1974 the marriage should have been registered under the Registration Act of 1908 and for marriages taking place after 1974 the Muslim Marriages and Divorces Registration Act of 1974 in order for the Nikah Registrar to register the *talaq-i-tawfeez*¹⁰¹

Women whose marriages are not registered are deprived of their delegated right of divorce and may not have any feasible way to dissolve the marital tie since going to Court is not an option open for the majority of women

⁹⁹Ibid

¹⁰⁰Section 6(3) of the Muslim Marriages and Divorces (Registration) Act 1974

¹⁰¹Atiqul Huque Chowdhury Vs Shahana Rahim 47 DLR 1995 HC 301

Newspapers often report increased incidences of divorce because of the non-enforcement of registration laws. To quote one editorial

in the absence of proper documents the man can break the marriage at will because he has to pay nothing for his act. He is obliged in no way to make amends for his action or compensate the woman --either religiously or legally.¹⁰²

The Daily telegraph on 31-8-92 noted that in Nariial non-registration is the main cause behind the number of divorces in the district. According to a survey, the newspaper reports that abandonment by their husbands through divorce force women often to 'commit immoral activities for mere survival'

Non-compulsory nature of divorce registration, lack of awareness of the need to register and so forth means that in many cases the divorce is not registered. The triple *talaq* continues to be used inspite of changes made by the MFLO of 1961. Respondent *Tahmina* from Pirojpur says

In our village men say *talaq* three times and that is the end of a marriage. I have never seen anything else. I don't know anything about the registration of divorce.

Even if the divorce is not registered this does not do away with the requirements of law. One of the inconsistencies of the law is that if any party comes before the Registrar to register a divorce the Registrar is not under a duty to ensure that the procedures required for divorce has been followed. There is no clause in the prescribed form for divorce registration, which necessitates the party registering the divorce to mention whether the necessary notices have been given or whether the required waiting period has elapsed.

Only three out of the 18 Registrars were aware that divorce Registration is not compulsory. There was no response from one. 14 of the Registrars confidently replied that divorce registration was compulsory.

According to Advocate Sigma Huda (personal interview)

The process of divorce registration is ambiguous and confusing. Many Registrars, Municipal Corporations and so forth have made up their own rules the legality of which, in many cases, is questionable. Many Registrar offices now have a printed divorce form, which contains a list of grounds for divorce. People who wish to dissolve their marriages are often ignorant as to whom they should go to and end up, in many cases, going to the Registrar or *Kazi*. The Registrar sends the notice required, in the form mentioned, to the Union Council/Municipal Corporation and the party concerned. At the same time the divorce is recorded in his register which contravenes the law. Again the Dhaka City Corporation for example has started issuing a no objection certificate (NOC) certifying that reconciliation has not been possible and the Registrar, in many cases, demands that this be shown before he registers the divorce.

The requirement of giving notice is, under the MFLO, imposed upon the person who wishes to divorce or dissolve the marital tie and this notice may be given via a lawyer or even by the person concerned. The Registrar's office has at this stage, no legal function since by law, the Registrar is only concerned with the registration of divorces on application being made to him (Section 6). It is apparently the decision of the Bangladesh National Marriage Registrars Authority to provide for a form to be sent to the Council and parties. Whether they have this authority is questionable.

The plight of one Ranu was highlighted recently ¹⁰³ Ranu had exercised her right to delegated divorce and had given the due notices to her husband and the Chairman and later upon receipt of notice from the Arbitration Council went to the Chairman office to express her inability to continue with the marriage. After waiting for 90 days Ranu went to collect the certificate from the Arbitration Council which she was refused since according to the Chairman, the husband had not received the proper notices and the couple had not appeared before him simultaneously. After about five months, Ranu was informed that the divorce notice was not made in the "proper" manner, which is to complete the notice according to the format provided by the *Kazi* Office. Thus Chanda states

even when women receive their divorce certificates after ninety days of the notice, the *Kazis* refuse to register the divorce on the ground that the divorce notice had not been sent through them (the *Kazi*) ¹⁰⁴

The pertinent considerations which arise from the above is that in law there is does not seem to be any provision for the Arbitration Council to issue any certificate that divorce has taken effect. In fact the lack of any such requirement had often created problems since the party being divorced may not be aware that she/he has been divorced. In several cases it has been held that divorce is legally effective even in the absence of proof of the constitution of the Arbitration Council ¹⁰⁵. It appears that the only thing required under law is that notice should be given under Section 7 of the MFLO. Failure of the Chairman to constitute an arbitration council or that of a duly constituted arbitration council to take necessary steps to bring about reconciliation is thus inconsequential ¹⁰⁶.

¹⁰³Chanda, Ila (1998) 'When women seek divorce' in the Daily Star, August 30, 1998

¹⁰⁴Ibid

¹⁰⁵Abdul Aziz Vs Rezia Khatoon 21 DLR 733

¹⁰⁶Abdus Sobhan Sarkar Vs Md Abdul Ghani 25 DLR 227

87% of the male respondents who had divorced said that they had divorced their wives by way of oral talaq only 50% of the respondents who were divorced had registered their divorces See Chart VIII

7 0 REGISTRATION AND AGE OF MARRIAGE

Under age marriages may be one cause of non-registration The desire to marry offsprings early means that the Child Marriage Restraint Act of 1929 is widely disregarded One of the purposes of marriage registration is to ensure that such laws regarding age is followed However, this aim has been a failure Either the parties do not register, or they lie about their ages Again in the absence of proper birth registration it is close to impossible to find out the correct age and in many cases the people do not know themselves Says the Marriage Registrar from Jessore

We sometimes face problems about the age of the bride In such cases we either check the birth certificate or we confirm the age by oral declaration of the parents or guardians We do not have any other way to confirm the age and we have to believe the guardians Most of the times the bride is not before us, and that is when the problem arises

He denied the allegation that Marriage Registrars' wrote the age of the parties without confirming the correct age He said

We never register such marriages where the age of the bride is in question because we do not want to face any problems in the future and we don't want a young girl to suffer and be miserable

The reality is that many under age marriages are not registered Maleka of Sherpur was married before puberty Nevertheless her marriage was registered Similarly Laili Begum (Sylhet) was married when she was about 14 years old in

1992 In spite of the fact that she was married in the *Kazi* Office her marriage was registered

Says Dr Taslima Mansoor, Assistant Professor of the Law department, Dhaka University

Along with all the other impediments which obstructs the registration of marriages taking place, is the lack of proof that the parties have reached marriageable age. The legal age cannot be ascertained unless there is proper birth registration is certain. In Bangladesh there should be proper mechanisms to register births. Otherwise the problems of child marriages, non-registration of marriages and so forth will persist

See Chart IX

8.0 AWARENESS OF LAWS RELATING TO REGISTRATION OF MARRIAGES AND DIVORCES

Tahmina is barely literate. Asked about her knowledge regarding registration laws she said

Now I know a little about registration of marriages. It is necessary to register the marriage of a man but I am not sure about a woman. It depends on the husband's family. If they register the marriage only then can it be registered. The bride's family has nothing to do with it.

There seems to be an increased awareness regarding the requirement to register of marriages. Many of the respondents report that although their own marriages were not registered they now are aware of the need to register. Many respondents have said that they will register their children's marriages. However their knowledge is very often vague and incorrect.

The lack of knowledge regarding divorce registration is much more obvious

Tahmina says

In our village men say *talaq* three times and that is the end of the marriage I never saw anything else I am not aware of the law regarding registration of divorce

Champa also does not have much idea about divorce and the procedures involved

AWARENESS OF LAWS REGARDING REGISTRATION

	Frequency
Yes	905 (67.8%)
No	202 (15.1%)
Do not know	296 (21.09%)
Total	1403

9.0 Registration of marriages in Bangladesh: fiction and fact

The data of the Government can only be obtained from the marriages that have been registered as is required by law. The reality is that despite laws requiring compulsory registration a large number of marriages are not registered since, lack of registration, like underage marriage, does not effect the validity of the marriage. As for those that are registered, the parties often overstate their ages and Marriage Registrars are under no obligation to check whether the contracting parties to the marriage conform to the age required by law, since the parties may be represented by their agents.

There is a lack of coordination between the state authority and social institutions. In the rural areas, marriages are solemnised by the village *Munshi* or priest, who is generally unaware that they are under State law, obliged to give notice of any marriage to the Nikah Registrar.

In the absence of a registered marriage document, the Bangladeshi courts generally rely on other methods of proof, for example witnesses testifying as to the existence of the marriage and cohabitation. However such methods may be time consuming, expensive and in many cases impossible. Many legal aid organisations for such reason avoid giving assistance in cases where the marriage is not registered.

There are no enforcement mechanisms to back up the requirement of registration so that non-registration is rarely, if ever, punished. Since the legality of the marriage is not compromised by non-registration, and registration is construed by many villagers as giving power to the woman, my field work showed that there still exists a high percentage of unregistered marriages (about 43.2%) while 45.4% of the marriages were registered (others either did not know whether their marriages had been registered, or had not responded). See following table and Chart

XIII

PERCENTAGE OF REGISTRATION OF MARRIAGES

	Frequency	Valid Percent
REGISTERED	634	45.4
UNREGISTERED	604	43.2
DO NOT KNOW	159	11.4
MISSING	6	0.43
Total	1403	100.53

See Chart XIII

The frequency of registration differs from place to place and district to district. In the 28 districts Narshindi had the highest percentage of registered marriages while in Bagerhat the percentage was the lowest.

DISTRICTWISE REGISTRATION

	REGISTERED	NOT REGISTERED	DO NOT KNOW
BAGERHAT	4 (10.0%)	32 (80.0%)	4 (10.0%)
BARISAL	32 (57.1%)	23 (41.1%)	1 (1.8%)
BOGRA	24 (50.0%)	22 (45.8%)	2 (4.2%)
BRAHMAN	20 (74.1%)	7 (25.9%)	
BARIA			
CHITTAGONG	38 (65.5%)	17 (29.3%)	3 (5.25%)

COMILLA	29 (70 7%)	9 (22 0%)	3 (7 3%)
COX'S BAZAAR	24 (53 3%)	14 (31 1%)	7 (15 6%)
DHAKA	42 (30 9%)	68 (50 0%)	26 (19 1%)
DINAJPUR	17 (34 0%)	33 (66 0%)	
FARIDPUR	25 (65 8%)	9 (23 7%)	4 (10 5%)
HOBIGANJ	11 (25 6%)	25 (58 1%)	7 (16 3%)
JESSORE	24 (48 0%)	17 (34 0%)	9 (18 0%)
JHALAKHATI	18 (41 9%)	21 (48 8%)	4 (9 3%)
JHENIDHA	15 (37 5%)	17 (42 5%)	8 (20 0%)
KHULNA	18 (41 9%)	21 (48 8%)	4 (9 3%)
MOULVI BAZAR	12 (33 3%)	23 (63 9%)	1 (2 8%)
MUNSHIGANJ	14 (46 7%)	15 (50 0%)	1 (3 3%)
NARAYANGANJ	17 (63 0%)	6 (22 2%)	4 (14 8%)
NARSHINDI	28 (93 3%)	1 (3 3%)	1 (3 3%)
PATUAKHALI	29 (61 7%)	16 (34 0%)	2 (4 3%)
PIRAJPUR	22 (35 5%)	36 (58 1%)	4 (6 5%)
RAJSHAHI	26 (37 7%)	40 (58 0%)	3 (4 3%)
RANGAMATI	22 (56 4%)	12 (30 8%)	5 (12 8%)
RANGPUR	13 (26 0%)	32 (64 0%)	5 (10 0%)

SATKHIRA	12 (30.8%)	20 (51.3%)	7 (17.9%)
SHERPUR	52 (64.2%)	6 (7.4%)	23 (28.4%)
SHUNAMGANJ	20 (33.3%)	35 (58.3%)	5 (8.3%)
SYLHET	26 (37.7%)	27 (39.1%)	16 (23.2%)

Although 93.33% of the urban marriages were registered only 41.94% of rural marriages were registered

10.0 EDUCATION AND REGISTRATION

Education of the parties affects registration. The positive correlation between education and registration was apparent. The lowest percentage of registration was amongst the group of illiterate respondents. See table below and also

Chart XIV

REGISTRATION AND EDUCATION

	Registered	Not Registered	Do not know	Row Total
Illiterate	234 (31.2%)	391 (52.2%)	124 (16.6%)	749
Barely Literate	157 (47.7%)	143 (43.5%)	29 (8.8%)	329
Primary level	120 (70.6%)	46 (27.1%)	4 (2.4%)	170
Secondary level	79 (80.6%)	17 (17.3%)	2 (2.0%)	98
Under graduate level	29 (93.5%)	2 (6.5%)		31
Graduate level	13 (100%)			13
TOTAL	632	599	159	1390
No response 13				

752 of the respondents were illiterate, 330 barely literate, 170 were at the primary level, 98 at the secondary level, 31 at the undergraduate level and 13 at the graduate level

The main focus of this project as mentioned before is on marriage and divorce registration in Muslim marriages. However a brief summary is given below of Hindu and Christian marriages and the situation regarding registration.

11 0 CHRISTIAN AND HINDU MARRIAGES AND MARRIAGES

UNDER THE SPECIAL MARRIAGE ACT

11 1 CHRISTIAN MARRIAGES

All Christian marriages in Bangladesh including those of native Christians must be solemnised under the Christian Marriage Act of 1872¹⁰⁷. Under this Act every Christian marriage must be registered whether solemnised by Ministers of religion or by the Marriage Registrar. Under Section 7 of the Act, Marriage Registrars are to be appointed from amongst Christians for any district subject to the Government's administration.

Christian marriages under the Christian Marriage Act of 1872 and marriages under the Special Marriage Act¹⁰⁸ shall be registered under those acts and also under the Births Deaths and Marriages Registration Act of 1886¹⁰⁹. The law that governs divorce for Christians is the Divorce Act of 1869¹¹⁰.

¹⁰⁷The Bangladesh Code Vol II

¹⁰⁸The Bangladesh Code Vol II

¹⁰⁹Bangladesh Code Vol III

¹¹⁰The Bangladesh Code Vol I

11 2 HINDU MARRIAGES

Under Hindu law, marriage is a sacrament and not a contract. In Bangladesh the Dayabagha school of Hindu law is followed and unlike in India almost all aspects of Hindu law remains uncodified. There has been no legislative enactments codifying the law of marriage. Whatever statutory innovations exist are the gift of the British colonisers.

There is no requirement for registration of Hindu marriages in Bangladesh. Since registration is not a requirement, the Court's technical approach, in particular the failure to recognise customary forms of marriage, may cause considerable difficulty to women who seek to validate their rights¹¹¹

11 3 THE SPECIAL MARRIAGE ACT, 1872¹¹²

The vast majority of marriages are contracted under personal laws, which restrict the right to freely choose a spouse¹¹³

Persons belonging to different religions may marry under the Special Marriage Act 1872. However there seems to be some confusion regarding the persons who may marry under this act. Sec 2 of the Act states that marriages may be celebrated under the above Act between parties neither of whom professes the Christian, Muslim, Hindu Jewish, Parsi, Buddhist, Sikh or the Jaina Religion

or between persons each of whom professes one or other of the following religions that is to say, the Hindu, Buddhist, Sikh or Jaina religion

¹¹¹ Hossain, Sara (1994) "Equality in the Home: Women's Rights and Personal Laws in South Asia" in Human Rights of Women, Cook, Rebecca (Editor), The University Of Pennsylvania Press Philadelphia, pp 465-494 at p 477

¹¹² See note 108

¹¹³ See note 111 at p 476

Marriages under this Act must be registered by the Registrar called "Registrar of Marriages under Act III of 1872" to be appointed by the Government (Sec 3)

The Special marriage act is rarely used since it requires the parties to renounce their religion and personal laws and also limits rights to divorce, succession and adoption ¹¹⁴

The Births, Deaths and Marriages Registration Act 1886

The above Act provides for the establishment of a general registry office for the keeping of among other documents certified copies of marriages registered under the Christian Marriage Act or the Special Marriage Act 1872

12.0. CONCLUSION:

In Bangladesh women are at a disadvantaged position and the contributing factors are, as discussed earlier, a mixture of social, legal, religious and customary factors. Even though all these factors are not always detrimental to women's interests in many contexts it affects women adversely, especially when supported by patrilineal customs of marriage, divorce, and inheritance which by definition, always favours men. The challenge is to create strategies which promote those aspects of custom not detrimental to women while replacing those which are ¹¹⁵

¹¹⁴Ibid at p 476

¹¹⁵Schuler, Margaret (1986) "Conceptualizing and Exploring Issues and Strategies" in Empowerment and the Law strategies of third world women, Schuler, Margaret (editor) OEF

Strategies may be evolved with a variety of aims. Some may aim to ensure women's access to law, which in its turn will involve the creation of strategies to guarantee that this access is in reality practicable for the people for whom it is aimed. In simple terms, this means that women must not only have the capacity to go to the Court they must in practice be able to do so. On the other hand strategies may also use law to equality women's position within a wider social context by empowering them. Although it may be too simplistic to say that due to non-registration of marriages oppressed women can not take legal action against their husbands (Daily Star 1-6-92), it may be one of the causes and therefore must be construed as a strategy. As mentioned before, registration of marriages means that women are empowered and achieve legal capacity to pursue their rights gained through the institution of marriage.

Strategies to empower women through law may take a variety of routes. They may include legislative enactments, changes or reform of existing laws. Institutional changes to ensure proper enforcement and effectiveness of laws may be another strategy, it may be the problem of educating and changing the cultural attitudes fashioned by religion, culture and society. The general apathy and disrespect to law and legal institutions for a variety of causes may also be targeted.

One of the aims of law is to empower persons to redress wrongs committed against them. Law thus empowers. Lack of registration has a causal relationship with powerlessness of women. One of the strategies is to make law functional for

those who have least access to resources within the legal system and are thus vulnerable to injustices ¹¹⁶ No change in policy or legislation will lead to social transformation without the input and mobilization of the grassroots ¹¹⁷ Whatever strategy is evolved therefore, has to keep in mind the realities of the lives of the majority of the population of Bangladesh

It is not enough that laws exist which aim to benefit women and serve the interests of an equitable society, these laws must be enforced and used Respondent Amina's marriage and divorce are both registered Although her dower money has not been paid and her husband does not pay maintenance for her child, Amina is reluctant to go to Court She is frightened of losing her daughter if she goes to court For the majority of the people, especially women, access to the judicial system is impeded due to economic and societal causes To remove these obstacles it is necessary to make access easier by educating the mainly illiterate population of how to avail themselves of the law, to provide legal aid mechanisms and to remove corruption from the system Rampant corruption is one of the major reasons for the loss of faith of the people in the judiciary

Schuler says that there must be some means to assure access to the system at the structural level for those that law is meant to serve ¹¹⁸ If enactment of laws could by itself guarantee their enforcement then there would be no injustice Some

¹¹⁶Ibid at p 25

¹¹⁷See note 115 at p 34

¹¹⁸See note 115 at p 24

65

strategies view the use of law as a means for increasing awareness at an individual level, leading to the exercise of rights¹¹⁹

Several recommendations have been discussed in depth below

Education and Legal Awareness

At the very beginning it is necessary that women be made aware of the rights they have. Legal awareness as a strategy for empowerment cannot therefore be overemphasised. What is necessary therefore is that women be sensitised about what their rights are. In spite of various campaigns having been undertaken to raise awareness, the quality of these campaigns must be evaluated. Educational strategies can take several forms such as structures community level legal education programs, media campaigns, public fora, reform of law school curricula

the main purpose is to change attitudes and behaviours by raising awareness about the legal status of women and how the law functions to the women's detriment¹²⁰

From our investigation so far we have been able to identify several areas where legal awareness needs to be promoted (See tables X-XII). The general public need to be made aware not only about the legal requirement to get their marriages registered but also about the process of registration, the amount of fees that is required to be paid, what customers can expect legally e.g. free copies of the document and so forth.

¹¹⁹See note 115 at p 36

¹²⁰See note 115 at p 25

So far a variety of problems have been identified. Poor guardians are not aware of the benefits of marriage Registration (Daily Star 1-6-92). The mainly rural, illiterate and disadvantaged population has to be made aware. Again as discussed earlier, it is not enough that women know about their rights, they have to also know where and how to go if their rights are infringed. A very basic idea about 'what to do' with law and 'how to do it' is therefore necessary. There are several organisations, which impart legal literacy. It is however not enough to inform people that they have rights. They must also know how to use those rights.

Although initially the awareness campaign was seen to be more required for raising consciousness amongst the community regarding registration, the lack of awareness seems to a large extent to be centered on the officials entrusted with registration i.e. the Registrars. Thus awareness must be increased not only of the customers but also the Marriage Registrars.

Following from the above there needs necessarily to be an educational component which progressively moves women from learning about their rights and injustice toward an understanding of the causes of their inferior status.

¹²¹ Therefore there needs to be an increase in literacy rates. The positive correlation between registration and general education has been discussed above. When asked why there are still so many unregistered marriages a Registrar for Jessore said 'There must be an increase in the percentage of educated persons'. Says Champa,

You must make announcement and supply papers to these village people so that they can think about their future. The Government

¹²¹See note 115 at p 34

must make new laws so that everybody goes to school and learns how to read and write. When they become literate they will be interested to know about law.

CAUSES AND SUGGESTED CURES

Before dealing with the subject of this specific research i.e. registration of marriages and divorces, and the recommendations, we may shortly sum up the causes for non-registration. A cross section of people was asked their opinion as to why there were so many unregistered marriages and their opinion has been included.

- i) Lack of awareness, education and publicity. Many people are unaware that registration of marriages is compulsory and have very little knowledge about divorce registration. The benefits of registration and disadvantages of non-registration is unknown to a great many people.
- ii) In case of polygamous marriages, because proper permission is not secured according to law, the 2nd marriage may not be registered. This may be true also in the event of divorced persons marrying again. When a divorced or widowed woman marries she has to answer the question in the *Kabinnama* as to whether she is a 'maiden, a widow or a divorcee' (cl 5), a question which a man does not have to answer. As it is, a woman who has been married before is at a disadvantage and her family will usually not press for registration.
- iii) Child marriages may not be registered. When the parties to the marriage are below the age prescribed by law there is lack of eagerness to register.
- iv) Distance and improper communication may also be cause of non-registration.

v) Lack of ability to pay fees This may be fees which is prescribed by the Government but in most cases it is the fees which is illegally demanded by Registrars' Thus many guardians fail to register because they are unable to pay the inflated amount demanded by the Registrar (Bhorer Kagoj 9-3-94)

vi) Fraudulent marriages Many women are fraudulently induced into marriages and these marriages are not registered

v) Love Marriages According to Advocate Abdus Sabur Khan of Tangail, in the case of 'love marriages' registration is avoided

vi) Marriages between family members When the marriage is between family members --e g cousins registration may not, to the parties seem necessary (Advocate Mirza Atahar Hossain, Tangail) Again if the groom's family is well known and respected registration may seem unnecessary

vii) Negligence Since non-registration does not effect the validity of the marriage there is lack of enthusiasm A Registrar with 40 years experience was of the opinion that negligence was the main cause of non-registration

viii) Lack of measures by the Government Many have opined that the Government is not strong enough and fails to take tough measures to punish persons who ignore the law Disrespect for law is cause for non-observance of law

x1) As discussed earlier the pervasive system of dowry often results in many rights of the woman being violated. When the bride's side fails to pay the dowry or part of the dowry registration may be postponed (sometimes for ever)

x) The last and most important cause is the patriarchal attitude of society, which devaluates women on the whole. Registration is inferred as being mainly for the benefit of woman and therefore many families, specifically the groom's family, refuses to empower women by giving them a document with which they may lay down their rights against them. As far as the woman's family is concerned she is a burden and at the time marriage negotiation the table is definitely stacked in favour of the man and against the woman. As a result if the groom's family refuses to register the bride's family is not in a position to insist lest the marriage falls through.

Following are recommendations, which aim specifically towards increasing proper registration of marriages.

Marriage registration at the time of land registration At the time of land registration, a duty may be imposed on the officials concerned to inquire whether the party, if married, has a registered marriage document, since in future the property in question will devolve on the person's heirs, and questions of legitimacy and so forth may arise. The Registrar may refuse registration of the documents of land until the parties concerned register their marriages. However

this should be done in such a way that the already convoluted and corrupted procedure of land registration is not further complicated

Marriage registration made possible at any time:

Following from the above, it may be necessary to bring legislative changes to make it possible for parties to register their marriages at any time, even after several months or years of marriage, with retrospective effect. If both parties are agreeable, this should present no insurmountable problem. Now as the law stands, the person solemnising marriages must report within fifteen days for registration. The law is vague as to whether the marriage can be registered after fifteen days. In reality, the Registrar usually accepts a back dated application from the *Kazi* or *Imam* (dated within 15 days of the actual solemnisation) and then registers the marriage and thus stays within the limits of law (personal interview with *Kazi* Shariatullah)

NGO interventions

NGO's working with women should also make it part of their agenda to encourage marriage registration of its members and may also take on the responsibility to inform the *Imam* and so forth about their responsibility to register marriages. Thus awareness campaigns need to target customers, b Registrars and c persons who solemnise the marriage

Use of the media

Success seems to have been achieved by the use of the media to impart awareness. For example several respondents have said that they have learnt

about various laws from the T V and radio Champa's marriage was not registered and at the time of marriage she was not aware of the laws requiring registration. Now however she knows about the law regarding registration and her knowledge comes from the television and radio. Therefore visual methods are useful and if used properly can raise awareness. One newspaper item suggests that the big network of Family Planning workers be used to spread the 'gospel of marriage registration' (The Daily Star 23rd April 1993)

Punishment for non-registration of the groom/his family Punishment for non-registration is prescribed only for those who solemnise marriages like the *Imam*, *Munshi* and so forth. No evidence has been found of anyone being punished under this clause. It may be suggested that punishments should be prescribed for the bridegroom and/or his family. Since registration in reality aids the woman more than the man, and a woman is in a disadvantageous position at the time of the wedding, it is usually in the hands of the husband and his family to decide whether the marriage should be registered or not. Therefore the law should be changed to impose punishment on the groom and/or his family along with the person solemnising the marriage. Of course this will not ensure registration as many such laws exist and are not complied with. There has to be an enormous amount of publicity if such new punishment is introduced and a few convictions to convince the people of the seriousness of the Government to enforce such law.

Ensuring compliance with the law under MFLO 1961 Another amendment of law would be insertion of a clause in the forms prescribed for divorce as to

whether the procedure for notice and so forth has been followed. Piecemeal measures, which create confusion, have to be avoided because they result only in harassment of candidates.

Qualification, training of nikah registrars

Following from the above, the qualifications of the Nikah Registrar must include the need to have knowledge of the necessary laws e.g. the MFLO 1961, the Family Courts Ordinance 1985 and so forth. Rule 34 of the Muslim Marriages and Divorces (Registration) Rules, 1975 prescribes training for Registrars from time to time arranged and funded by the Nikah Registrar Association. This wholly discretionary duty to impart training must be overseen by the Law Ministry with consultation of relevant interest groups.

Proper birth registration

The need for proper birth registration has been emphasised by several experts. In the absence of an efficient marriage and birth registration system it is difficult to establish the correct age of individuals and the age of marriage.¹²² According to Prof. Faizuddin, Dean of the Faculty of Law, Rajshahi University,

Proper marriage registration should be preceded by proper birth registration. The law prohibiting child marriage has been a complete failure and therefore one purpose of the Act has been unsuccessful.¹²³

¹²²See note 7 at p 31

¹²³Personal interview

Duties of registrars

Imputations against registrars abound. Various NGOs and persons who have suffered allege that Registrars work according to their own whims, behave erratically and outside the scope of law¹²⁴

The following must be ensured

a Marriage Registrars must not refuse to register the marriages of couples who appear personally before them

b Registrar must ensure compliance as far as possible with the legal age of marriage

c The proper fees, and only the proper fees must be demanded

d Copies must be given as per requirement of law. Free attested copies at first and then upon payment

e Proper receipt must be given of any sum received

f Registrars must be made accountable

Section 10 of the Act states that every Nikah Registrar shall perform his duties under the superintendence and control of the Registrar [10(9)] and the Inspector General of Registration shall exercise a general supervision over offices of all Nikah Registrars. Rule 8 and Section 11 relates to the revocation, suspension

¹²⁴Jalal uddin, Muhammad (1996) Muslim Bibaho O Registration kichu truti Unpublished article, BLAST, Dhaka pp 1 4 at 2

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and annulment of licence on the ground of misconduct in the discharge of the Marriage Registrar's duties or if he has become unfit or physically incapable. The licence may be revoked or suspended for a period of not exceeding two years.

Local level administrative authorities should be required to monitor the proper registration of all births, deaths, marriages and dissolution of marriages in the administration units.¹²⁵ Questions arise regarding the accountability of Marriage Registrars.¹²⁶ There seems to be no specific authority to monitor their functions of Registrars since their licences are given and revoked/suspended by the Government but they work under the control of the District Registrars. Again there exists no provision for punishment for Registrars in law -- only their licences may be cancelled.¹²⁷

According to Ivy Rahman¹²⁸ there is no local authority to monitor marriage registration. The consequence is that many Registrars become involved in illegal activities like appointing illegal agents, registering in loose sheets instead of the proper volume for evading government taxes. Side by side with birth registration Union Parishads, Municipal Corporations and Paurashavas under the local government should be given the responsibility for marriage registration. In this way, elected members of the Union Parishad may directly undertake responsibility regarding registration of marriages. Over and above this there are

¹²⁵Workshop on the draft report by Sectoral Need Assessment (S\NAT) 20 11 96 CIRDAP, Dhaka, NP

¹²⁶See note 124 at p 3

¹²⁷Ibid

¹²⁸Rahman, Ivy (1998) "Bibaho registration" in Antorjatic Nari Dibosh Women's Directorate, Dhaka NP

three elected women representatives of the UP. They may, alongside the Marriage Registrars take on the responsibility of marriage registration¹²⁹

Coordination between those who solemnise marriages and Registrars: The *Imam* or *Munshi* i.e. those who usually solemnise the marriage do not know that they are under responsibility to report the marriage. Such coordination has to be maintained. The possibility to legally register even after 15 days, as mentioned before must also be considered.

Unregistered marriages to be declared invalid?

It is one of the inconsistencies of law that while non-registration may be punished the marriage itself is legal. Although declaring unregistered marriages invalid may not be easy, several experts have given their opinion that this must be done. 5 of the 18 Marriage Registrars were of the opinion that unregistered marriages should be made invalid. 12 of the Registrars disagreed because the Sharah permits such unregistered marriages. Professor Khaleda Salahuddin of Women for Women and Professor Ishrat Shamim of the Sociology department of Dhaka University and President, Centre for Women and Children Studies are both of the opinion that unregistered marriages should be declared void.

According to Prof. Shamim

Villages are not isolated anymore so the *Imam*, *Munshi* cannot escape responsibility. There are officials from the Department of Women's Affairs and Directorate of Social Welfare at the Thana level and they can be given the responsibility to ensure registration.¹³⁰

From the above, it is apparent that the arguments against making registration compulsory and the unregistered marriage invalid are weak in the context of the

¹²⁹Ibid

present situation. However as Dr Taslima Mansoor, Assistant Professor of the Department of law says

The process of registration of marriage should be made convenient so that people will be encouraged to register. Moreover the mainstream population should feel the urge to register marriages by publicising the punishments imposed for non-registration.¹³¹

In essence, making unregistered marriages or divorces invalid in light of the present anomalies and difficulties that exist would be reckless. It will only be possible after ensuring that the obstacles that prevent people from registering are removed. Otherwise the very people whom the law is meant to serve will suffer.

Thus legal education, legislative changes etc. may be used to as strategies to increase registration of marriages and divorces. The Government's active participation is necessary, as is the participation of civil society organisations. The Government has so far appointed 1335 Nikah Registrars across the country. Daily Star (28-2-98). The activities of Registrars must be scrutinised and allegations investigated. Women in Bangladesh are deprived of equality or equity due to many reasons -- their rights are however protected, at least in theory, by a variety of instruments. However

International, regional and domestic protection of women's rights can make a difference if women are empowered to use their rights including knowing what they can do if their rights are violated.¹³²

Although stress is put on the legal awareness campaigns awareness alone is

¹³⁰Personal Interview

¹³¹Personal communication

¹³²Cook, Rebeca J (1995) "Enforcing women's rights through law" in Women and Rights, Sweetman, Caroline (editor), Oxfam, Oxford, pp 8-15 at p 8

Insufficient and creates frustration unless accompanied by access to the courts and influence over legislative and policy-making levels¹³³

If success is achieved in increasing the number of marriages registered it may in its turn not only empower women legally but also change their overall status in society. In a study, conducted by BRAC and ICDDR,B, to assess changes brought about to women's status by BRAC and ICDDR,B's socio-economic interventions, authors include increased registration of marriages as an indicator of social change along with decrease in number of child marriages, polygamy, dowry, increase in demand for dower and so forth¹³⁴. The purpose is to empower Bangladeshi women in any way possible. Empowerment

maximises one's options in life, strengthens one autonomy and endows oneself with powers to shape one's destiny¹³⁵

The majority of Bangladeshi women are impeded from availing themselves of the shelter of law. Lack of access may be attributed to many factors e.g. poverty, ignorance, distance of the courts, the lack of speedy trials, the failure to enforce judgment and above all gender, with its correlated connotations of seclusion and powerlessness. Strategies to empower must take into account all the inhibiting factors, which contribute, to women's lack of empowerment in Bangladesh.

¹³³ See note 117 at p 26

¹³⁴ See note 16 at pp 24 and 29

¹³⁵ Editorial of Empowerment Vol 1 1994 A Journal of Women For Women NP

Case Studies

Case studies of 13 women respondents, from different districts, are given below. Their names have been changed and only the districts they come from have been mentioned. As regards their ages, it is probably pertinent to point out that inconsistencies may exist, since most villagers are vague about their age and consider it of little consequence. I must also mention that no value judgements have been made. The renditions portray reality and have been made without embellishments and therefore may seem stark.

Several factors are obvious: the women's lack of awareness or their vagueness regarding one or more laws. Again, instances of child marriages, of illegal divorces (e.g. in the case of Arefa, who was divorced, according to her, while she was pregnant) have come to light. Incidences of physical abuse seem to be commonplace and are therefore even more poignant.

Case Study One

Name Maleka

Age Above 35

Status Separated

District Sherpur

Maleka was born in Nabinagar village She was below puberty (9 10 years old) when she got married in 1969 She has three sons and one daughter At the time of marriage her family gave no dowry

Her marriage was registered and she says that the copy of her kabinnama is in the Registrar's Office She remembers very little about her wedding because she was so young

Maleka is aware that marriages should be registered nowadays She is also aware that dowry is prohibited under present law

Maleka's three sons are married and they took no dowry Maleka is not aware about the legal minimum age of marriage

Her son's live apart She has been separated from her husband for about 10 years Her husband married another woman and lives with her He did not take permission at the time of his second marriage After he married again, he beat Maleka severely and forced her out of his house

Her brothers gave her some land on which she built a little hut where she lives with her daughter Her husband often comes to visit her and demands money from her He even beats her Maleka is afraid to take any steps against her husband "He is a very bad man and can do anything", she says

Maleka works as a domestic servant in several houses and earns taka 400/500 per month She has no cultivable land of her own She is illiterate and knows no way to improve her standard of living

Case Study Two

Name Arefa Begum

Age 23

Status Divorced

District Sylhet

Arefa was 18 when, in 1992, she married Hamid Bepari, a driver. She is her parents' youngest child and only daughter. Harun was her cousin and they are from the same village under Jaintapur Thana in Sylhet district. Although at the time of her marriage, her husband or her in-laws did not demand any dowry, after a year of marriage her husband began to badger her to go to her father's house. He wanted her to bring money for him to start a business with. Arefa refused and after a few months her husband and his family started abusing her both mentally and physically. She was beaten severely and was at last compelled to go to her father. Her father could not pay the money demanded since he was only a poor farmer. He went to see his son-in-law and promised to pay the money within six months. Harun and his family refused to accept Arefa back without the money and so Arefa had to return with her father. After 4 months, she received a notice of divorce. Her father and brother tried to mediate but failed, and the marriage came to an end. In spite of being educated up to class XI, Arefa says

I knew nothing about registration of marriage or divorce. Now I understand.

She collected her Nikahnama from the Registrar's Office and has also registered the divorce. Arefa is now working in a village school run by a NGO. She has one three-year-old daughter. When she was divorced in 1994 she was two months pregnant. Her husband never came to see the child. Arefa has no desire to marry again. She wants to educate her daughter.

Although the dower money has not been paid, and her husband does not pay maintenance for her child, Arefa is reluctant to go to court. She is frightened of losing her daughter if she goes to court. Arefa lives now with her brother. She says that although she is a strong woman, she is scared of her husband and does not want to antagonise him. Arefa says

Money is everything to my husband He never loved me and would have never loved my child so what Allah has done has been for the good I am happy my daughter was not born there, otherwise they would have kept her I am happy with my daughter and do not want any trouble

Case Study Three

Laili Begum

Age 20

Status Separated

District Sylhet

Their families did not arrange Laili's marriage to Hannan She was 14 at the time of her marriage in 1992 The marriage was solemnised by the Kazi in the Kazi Office because their families refused to accept their marriage Some of her relatives helped them

Laili is from Durgapur and her husband from Madaripur Her husband was 20 she says, when she married him After a long time, Laili's family accepted her marriage and after that she went and stayed with her parents for a few months Her husband left for Dhaka after marriage He works in the capital as a Supervisor in a garment factory Laili has a 4 year old daughter After her daughter's birth her mother in law came and after 15 months of marriage she went to her in laws for the first time She lived there for only one month after which her husband and his family demanded 20,000 takas from her They said, says Laili

Without money there will no peace and happiness in your life

Laili tried to convince her husband but she failed, and after he started torturing her physically she went back to her father's house where she has been living for the past 4 years During this time her husband had no contact with her and never paid any money for her or their daughter's maintenance Laili was unable to get any information regarding her husband since he father and brother, still

angry, refused to help. In 1997 her husband suddenly came back and took Laili and their daughter to Madaripur. There, she says, she was severely beaten and both her hands broken. Finally, with the help of a village woman, Laili escaped with her daughter. Laili stays with her father now. After Laili's arrival, her brother informed her that her husband had lodged a general diary in the thana alleging that she has stolen ornaments and escaped.

Laili realises now that she was foolish to get married so early. She says

My husband wanted only money, but I know that he would not have changed even after getting money and would have tortured me again. He is not a good man and I cannot blame anyone. If he did not want to demand money, no one could have made him. Another cannot make one bad. I want to now file a case against my husband. I want to sue him for maintenance for my daughter and myself. He cannot escape then.

Laili has some knowledge about registration laws. She knows that the kabinnama is the most important document of a marriage. She is aware of the necessity to register marriages. She also knows that the Kazi is the person who performs the job of registering marriages. She however is not aware of the minimum legal age for marriage. Neither is she aware of the law regarding registration of divorce.

Laili has learnt from the radio and television that dowry is prohibited and punishable. Laili wants to do everything properly at the time of her daughter's marriage. She does not want her daughter to suffer like her.

Case study Four

Name Lutfa

Status Married

Age 28 years

District Barishal

Lutfa got married in 1988 when she was less than 16 Her husband is a farmer and they have two sons and one daughter Lutfa is illiterate Her husband is a farmer and they have some land, which they cultivate

Lutfa's marriage was registered but she does not know where her kabinnama is She thinks it may be found in the Kazi Office although she does not know where the Kazi Office is At the time of her marriage she saw a paper or form which must be the kabinnama since she knows the colour of the paper Her father, she says, paid the fees for registration She is not aware of who is required to pay the fees

She has a co wife whom her husband married after her Her husband did not ask permission before marrying and she is not aware of any law which must be followed regarding polygamy

According to her, the village people do not know so many laws and they follow whatever society regards as correct Her family paid dowry at the time of marriage She wishes to register her children's marriage She know that the marriage comes to an end when talaq is uttered three times by her husband She is unaware about laws regarding the correct procedure for divorce and registration of divorce Neither is she aware of any minimum age of marriage

Case study Five

Name Morjina

Age Early Forties

Status Married

District Bogra

Morjina is in her early forties. Married in 1972 at the age of 15, she now has five children. Her husband is too old to work and so they depend on their sons to earn for the family. Her two daughters are married and their marriages were registered since both Morjina and her husband were aware of the laws regarding registration. She says

Without registration the marriage is valueless

She is also aware of the fact that dowry is prohibited and they neither took dowry for their two sons nor did they pay dowry for their daughters marriages. She however does not know anything about registration of divorce. When asked about registration fees she said

the amount is determined by the Kazi. He tells people the amount they are to pay and they pay that

She says

Previously there was no law regarding registration and people did not register. Now however, there is a law and people must follow it for their own happiness

Case Study Six

Name Champa

Age below 20

Status Married

District Barishal

Champa and Badal, a rickshawpuller, were married in 1989. Champa is illiterate and her marriage is not a registered one. She says

Without dowry in the villages you cannot get married so you must give dowry although you are poor and cannot afford to pay. People sell their land and other property to arrange dowry. Her father was forced at the time of her marriage to give the 10,000 takas that her husband's family demanded.

Champa is unaware of any law as to the minimum age of marriage. Although at the time of her own marriage she was not aware, she is now aware of the law regarding registration of marriage. Her awareness comes from the radio and the television. She also knows that dowry is illegal, but says that it has become a custom of the society and people do not know and are not interested to know about the existing law.

The young generation however, says Champa, is interested to find out all the important things regarding marriage, divorce, dower, dowry and so forth. Champa says that now that she and her husband know all about registration they will register their children's marriages.

When asked about registration fees Champa says that the village people pay whatever the Kazi demands since a marriage is an auspicious occasion and people wish to satisfy the Kazi. They people are not aware that there is a fee fixed by the Government. Ignorance makes the people pay a large sum to the Kazi or his agent. People who are not aware of the laws regarding registration call the Imam or Munshi and he solemnises the marriage and takes an amount that is within the capacity of the people to pay.

At the time of Champa's marriage her kabinnama was written on a plain paper which she saw on that day without having any idea about what it contained. She does not know where that paper is now. Champa does not have much idea about divorce and the procedures involved.

Says Champa,

You must make announcement and supply papers to these village people so that they can think about their future. The Government must make new laws so that everybody goes to school and learns how to read and write. When they become literate they will be interested to know about law.

Case study Seven

Name Shampa

Age less than 25

Status Married

District Sherpur

Shampa has been educated up to the primary level i.e. Class V. She got married in 1987 to Md Azad and is a housewife. Shampa, her husband and their two daughters form a separate household in Noahata, Khararpar. They own no cultivable land. Her husband who has a small business maintains the family and his income is sufficient.

Shampa says that she was married below puberty and her husband was also below the legal minimum age of 21. She has no idea whether her marriage was registered. Although she is aware of the minimum ages required for marriage, she is not aware of the laws regarding registration of marriages or divorces. She seems however aware of the problems women face within marriage. She says

If a marriage is not registered a woman has to face a lot of problems. Her husband may in such cases say that the woman is not his wife or he may marry again. In such cases if the husband divorces his wife she cannot take any legal steps and cannot go to Court as she has no written proof of her marriage. The woman cannot challenge the husband's second marriage and also cannot claim maintenance for herself and her children as well as being deprived of her dower.

As for the institution of dowry, Shampa says

This is a new system which did not exist earlier. Now it has become a part of the marriage and has a bad effect on family life.

Her family paid a dowry of 20,00 takas at the time of her marriage. Although she knows that dowry is prohibited she says

Our parents have to give dowry for our welfare and safety. Although Hadith prohibits dowry, we cannot get rid of this system. It seems to be an advance made to secure the future happiness of the woman.

About registration fees, Shampa says,

The registration fees is fixed by the Kazi and the people always give what the Kazi's demand. Sometimes the guardians decide what is to be given to the Kazi.

Case study Eight

Name Tahmina Begum

Age Less than 25 years

Status Married

District Pirojpur

Tahmina got married to Khasru (about 40) in 1991. Khasru is a rickshawpuller and they have two sons. Khasru's first wife died childless in 1989 after which he married Tahmina. Tahmina's father was a poor farmer and had to provide for 9 members of his family. As a result, says Tahmina, her father did not think about her happiness and married her off to Khasru. Her husband did not demand any dowry at the time of her marriage.

Tahmina is barely literate. Asked of her knowledge about registration laws she says

Now I know a little about registration of marriage. It is necessary to register the marriage of a man, but I am not sure about a woman. It depends on the husband's family. If they register the marriage, only then can it be registered. The bride's family has nothing to do with it.

Tahmina is not aware of the age required for marriage. She does not know anything about dowry or laws regarding dowry. She is under the impression

that it is the system of society to give money or other things to the bridegroom
She does not know that demanding dowry is punishable

Tahmina is not aware of the Imam or Munshi's duty to report marriages
solemnised by him for registration She says

*In the village either the Maulvi or the Munshi or any other older
person solemnises the marriage and that is all No further steps
are taken*

Her own marriage is not a registered one and she does not know anything
about registration fees While answering questions regarding registration of
divorces, she said

*In our village, men say talaq three times and that is the end of a
marriage I have never seen anything else I don't know
anything about the registration of divorce*

Tahmina is not facing any problems and is happy with her husband and two
sons and therefore she feels she does not need to know so many laws She does
not want to think of the future problems of family life

Case study Nine

Name Hanufa

Status Married

Age 35

District Sylhet

Hanufa was born in Chatak She got married to Sattar before puberty in 1972
She started living with her husband in his village in Jaintapur after five years
Hanufa remembers very little about her wedding She says that at the time of
her marriage she was too young to understand the significance of married life
When she had to go to her husband's home she was miserable and cried for her
friends and family She was sent back to her father's house where her husband

visited her every month. Finally after five years she went back permanently to her husband's home.

Hanufa's marriage to Sattar was not registered and he was about 20 at the time of the marriage. She is aware of the laws restraining child marriages. Hanufa and her husband have two sons and one daughter. Her husband married another woman after her. He is a day labourer and also has a small shop in the village.

Hanufa has learnt about various laws regarding dowry, registration of marriages as well as the necessity to take permission for polygamy. She says

I have learnt all these from the TV and from local NGOs. I have seen different dramas on TV regarding dowry, second marriage and registration of marriage.

Hanufa has a sister who works in an NGO and she also tells her about laws. Her husband married again and she was unable to do anything about it as she had three children and was afraid that her husband would leave them all. For the sake of her children she did not protest.

Hanufa has a sewing machine and earns money working as a tailor from her home. She is now happy that she can take care of her children by herself. Her husband is now a bit frightened of her and won't dare to do anything wrong. This is because, she thinks, her sister works in a NGO, the fact that Hanufa is more aware of relevant laws and also the fact that she Hanufa, is earning money. Hanufa says she will ensure that her children's, especially her daughters' marriages are registered. She has suffered a lot in her early life, she says, and does not want her children to suffer in the same manner.

Case study Ten

Sharmin

Age below 40

District Sylhet

Sharmin was married below the age of puberty She is her husband third wife he had two other wives before her Sharmin says

I was my husband's third wife and was not aware that he had been married before I am an orphan and used to live with my uncle and had to obey him when he arranged my marriage My husband lied to him After my marriage I used to cry and want to go back to my uncle but my husband never wanted me to

"I was very small", she says She had no one to talk to or play with She only spent two years with her husband and then

left him to come back and live with my uncle After I left he married again for the fourth time

Sharmin says she think her marriage was registered but she has no idea where the document is In fact, she has never seen it Her uncle paid no dowry When Sharmin went back to her husband she found his other wife living there She finally believed that he had married again She was furious and demanded maintenance and wanted to leave Her husband convinced her not to and so she lived two more years with her co wife

Her husband used to beat both his wives severely Finally she says, she could tolerate no more and left for good She worked as a domestic servant for 3 4 years in Chittagong and then came back again to ner village, Hemidpur

Sharmin thinks that she was too young to have gotten married Also the fact that she was an orphan with no parents and only an uncle attributed to her helplessness

According to Sharmin the kabinnama is usually written on a white sheet of paper. She now knows the law regarding registration. According to her, the people of Biswanath Thana are aware of the importance of registration and there are few marriages without registration.

Sharmin's husband is still in contact with her. He comes to visit and stays with her. She has only one son. Her husband, who is a rickshawpuller, pays her nothing. He feels no responsibility towards her or their son. In fact, he often demands money from her. Sharmin is afraid of her husband and is forced to keep in touch with him. She says:

I cannot escape and cannot tolerate all this. It was my bad luck that I got married to a bad man. It was my fate. I am helpless and cannot solve my problems. I am the most unfortunate and unhappy woman.

Case study Ten

Name Nayan

Age 16/17 years

Status Married

District Khulna

Nayan was married to Ershad Mia in 1994, a year before she reached the age of puberty. She is illiterate. Her parents arranged her marriage and the local Imam solemnised it. She was scared and upset. She has no idea how old her husband was then or is now and cannot even guess.

She says:

He was much older than me. Her family paid no dowry. In fact, her husband's family paid 5000 takas with which her parents entertained 20-25 people on the day of the wedding.

The only earning members of their family are her husband and his father. The former is a rickshawpuller and the latter a day labourer. They are landless.

Nayan's marriage contract was written but not registered. She is not aware of the formalities or law regarding marriage and its registration. She does not know what she will do at the time of her children's marriages. She has three children, two sons and one daughter. Her knowledge about law extends to only being aware that dowry is prohibited. She does not know anything about the legal age for marriage.

Case study Eleven

Name Shahana Afrin

Age 28

Status Married

District Jessore

Shahana is now 28 years old and has been educated upto undergraduate level (H S C). She works in the NGO, Ahsania Mission as field worker.

Shahana married Sanaul in 1990. She, her husband and their two children form a separate household. They have a homestead but no cultivable land. Her husband is a Government Officer and works in a bank. They earn enough to save a little money each month. They have two children. One is two years old and the other is four years old. They are still too young to go to school.

At the time of marriage, Shahana was 21 years old and her husband above the legal minimum of 21. She is aware about the legal ages of marriage. Her in-laws are both deceased and so she did not have to live with them after marriage. Their marriage was solemnised by the Kazi in her father's house. They have the copy of the Kabinnama. After marriage she started her job at the

Ahsania Mission, and learnt more about marriage divorce dower, dowry and so forth She is now aware of the importance of the registration of marriage In fact she has to teach the village women She has to impart literal education and knowledge about other important aspects of family and social life She has to also collect information from these people about their health and education She visits the thana "Ganashikkha Kendra" established by the Mission In these schools people of all ages come to learn

Shahana is aware of various laws regarding marriage and divorce and understands the necessity for such laws She knows for example that by uttering talaq three times a marriage does not immediately come to an end For divorce, she knows that further steps must be completed although she does not know these steps

At the time of her own marriage the registration fees was paid by the husband's side She is aware that the fees depends upon the dower and also that the Government fixes this amount In the villages, the fees, says Shahana, is usually paid by the bride's side because the villages are unaware of the law They also avoid the registration process because on one hand they do not know about the legal requirement to register, and on the other they are under the impression that it is very expensive The result is that they do not go to the Kazi office to register the marriage The villagers do not for the above reasons bother about the law The villagers feel that since they are not facing any problem registration is not necessary

Shahana thinks that the rural people must be educated and then only will be able to understand the necessity of registration She herself thinks that the legal age is same for both males and females

Through the NGO she works in, Shahana is trying to teach the villagers about laws regarding marriage, divorce, dower, dowry and so forth. They want to know because their lack of knowledge prevents them from taking proper steps against their husbands' illegal acts.

According to Shahana, this is the best time to impart knowledge to the villagers. Not only education and knowledge, but also proper steps by the Government can improve the situation. For this "the educated people must come forward" Shahana says

The registration of marriage is very important for women. So they must step forward to get their right. The registration fees are not that high and that's why people of all classes of the society must register their marriages.

Registration of divorce, Shahana said, is required for the welfare of both husband and wife.

Case study Twelve

Karima Khatun

Age Above 60

Status Married

District Shunamganj

Karima was married before puberty. After marriage, she spent most of the early years at her parents' house and sometimes visited her husband. Her uncle had arranged the marriage. She was informed the day before by her mother that she was to be married. She had no reaction, she says, since she could not comprehend anything. I was only a little girl, she says.

There was no payment made by her family at the time of her marriage and she knows nothing about the registration of marriage, neither is she aware of the legal minimum age for marriage.

Karima says her consent was not taken her parents did everything She now has seven children Her husband is a day labourer Only three of the children are now with Karima, the others are married and live separately She knows no details about the marriages of her sons and daughters "Their father did everything, she says, and I did not interfere I do remember however that my husband paid money at the time of my daughters marriages' She is not aware of any law regarding marriage registration and dowry Her sons take care of them and run the family as she and her husband are old At their sons' marriages they took money and other things' and her husband said they were taking those to ensure their sons' happiness Karima believed this and she refuses to accept that it was wrong and that it was against the law Karima is illiterate she is also not interested to know so many laws In fact it irritated her being asked so many unnecessary questions

Case Study Thirteen

Name Sabuj

Age 23 24

Status Separated

District Cox's Bazar

Sabuj, who is illiterate, got married to Rafiq a driver, before the age of 18 There are six members in their family She has two sons Sabuj has been separated from her husband, who is about 40 years old, since 1990

After her marriage, Sabuj and her husband were very happy and had a wonderful time After about four years however, her husband got involved with another woman Sabuj tried her best to dissuade him but failed and eventually her husband married that woman From that day Sabuj left her husband's

home She now has with her only her youngest son and that is because she was pregnant with him when she left and he was born later

Sabuj is now working in her uncle's shop as a sales girl She and her son live with her uncle

Since 1990, her husband has not made any attempts to take her back and she never did go back Sabuj cried when she talked about her eldest son, whom she had to leave behind, but she says

I can't go back there, because if I do, they will take away my other son I don't want to lose him too

Sabuj knows very little about registration of marriages let alone divorces She seems to know however, that if her marriage had been registered her son would be entitled to maintenance Her marriage was not registered She now knows that marriages must be registered but knows nothing about the procedures for registration She is also unaware of the legal age of marriage and is vague about the registration fees She knows only that the fees has to be paid to the Kazi and the amount is fixed by him

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MARRIAGE AND DIVORCE REGISTRATION PROJECT
BANGLADESH LEGAL AID AND SERVICES TRUST

FIELD WORK AREAS

DIVISION DHAKA

District A) Sherpur

Sadar Thana
Jhiny Gati Thana
Nokhla Thana

District B) Faridpur

Modhukhali Thana
Nagarkanda Thana
Faridpur Sadar Thana
Boalmari Thana
Alfadanga Thana
Sadarpur Thana
Bhanga Thana

District C) Narayanganj

Sadar Thana

District D) Narshindi

Raipura
Sadar

District E) Munshiganj

Tongi Bari Thana
Luhajang Thana

District F) Dhaka

DIVISION CHITTAGONG

District A) Brahman Baria

Sadar Thana
Sarail Thana
Kasba Thana
Akhaura Thana
Bancharampur Thana

District B) Chittagong

Kotwali
Pachlayesh
Shitakundo
Pahartali
Rowzan Thana
Rangunia
Satkania
Fatikchari
Chandanayesh
Jowal Khali
Patia Thana

District C) Comilla

Comilla Sadar Thana
Muradnagar Thana
Debidar Thana
Burichang Thana
Laksham Thana

District D) Cox s Bazar

Saagar Thana
Chakoria
Ramu

District E) Rangamati

Sadar Thana

DIVISION SYLHET

District A) Sylhet

Sadar Thana
Biswanath Thana
Goainghat Thana

District B) Sunamganj

Sadar
Dirai
Jaggonathpur
Chatak Thana

District C) Moulv. Bazar

Sadar Thana
Srimongal Thana
Kotolganj Thana

District D) Habiganj

Sadar Thana
Bahuban Thana
Chunarughat Thana
Raniyachong Thana

DIVISION KHULNA

District A) Khulna

Khulna Sadar Thana
Dumuria Thana
Paik Gacha Thana

District B) Jessore

Sadar Thana
Kaliganj Thana

District C) Jhenaidah

Kotchadpur Thana
Shailakupa Thana
Horina Kurdo Thana

District D) Bagerhat

Chitol Mari Thana

District E) Shatkhira

Sadar Thana
Tala Thana

DIVISION BARISHAL

District A) Barishal

Barishal Sadar Thana
Uzirpur Thana
Gournadi Thana
Baoganj Thana
Agayeljhara Thana
Uzirpur Thana
Gourradi Thana

District B) Patuakhali

Barisal Thana
Patuakhali Thana

District C) Pirojpur

Nazirpur Thana
Sadar Thana
Bhandaria Thana
Mothbaria Thana

District D) Jhalokathi

Nalchiti Thana
Sadar Thana
Rajapur

DIVISION RAJSHAHI

District A) Rajshahi

Mohanpur Thana
Tanor Thana
Godagari Thana
Durgapur Thana
Bagmara Thana
Puthia Thana
Sadar Thana
Paba Thana
Bagha Thana
Charghat Thana

District B) Bogra

Nandigram
Sherpur
Shonatala
Shibganj
Adamighi
Shariakandi
Dhubchachia
Sadar
Gasbtali
Kahalu

District C) Rangpur

Taraganj Thana
Badarganj
Mithapukur
Sadar
Pirgacha
Gangachara
Kawnia

District D) Dinajpur

Sadar
Biral
Fulbari
Bocnganj
Chiriabandar
Parbotipur
Gnoraghat
Hakimpur
Kaharol

Chart I
MARITAL STATUS OF RESPONDENTS

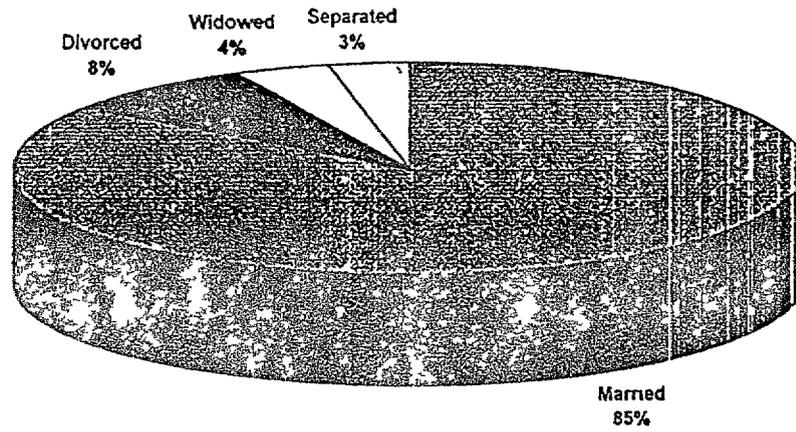


Chart II
PRESENT AGE OF RESPONDENTS

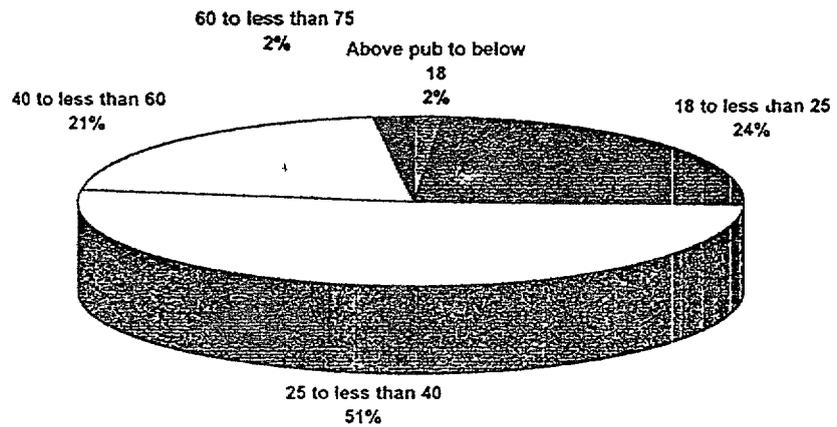


CHART III
BRIDE S AGE AT MARRIAGE

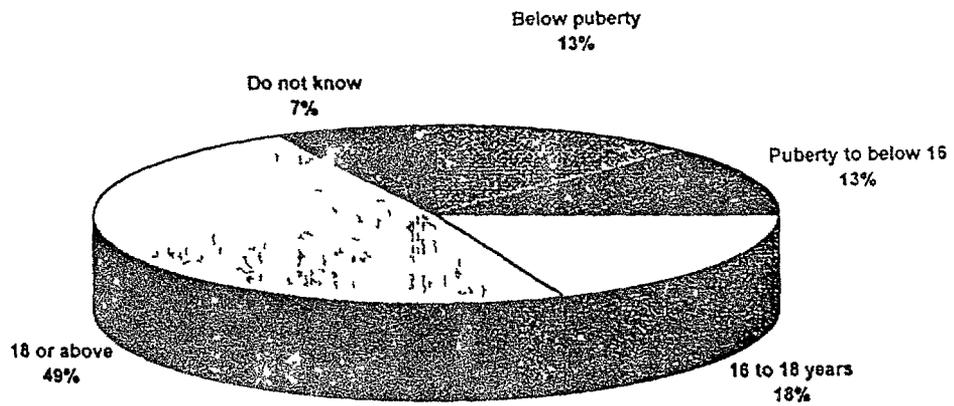


CHART IV
GROOM S AGE AT MARRIAGE

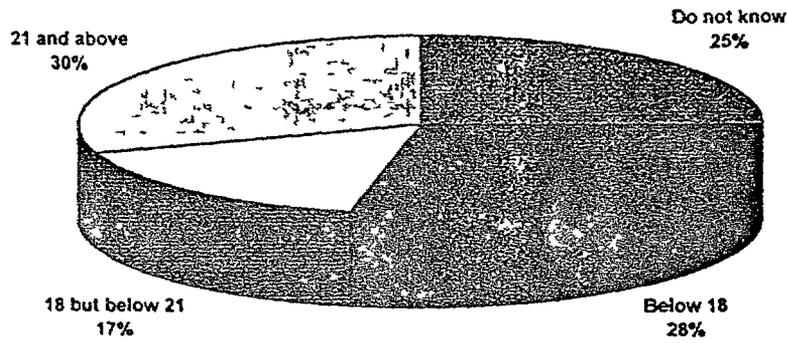


Chart V
PAYMENT FOR REGISTRATION

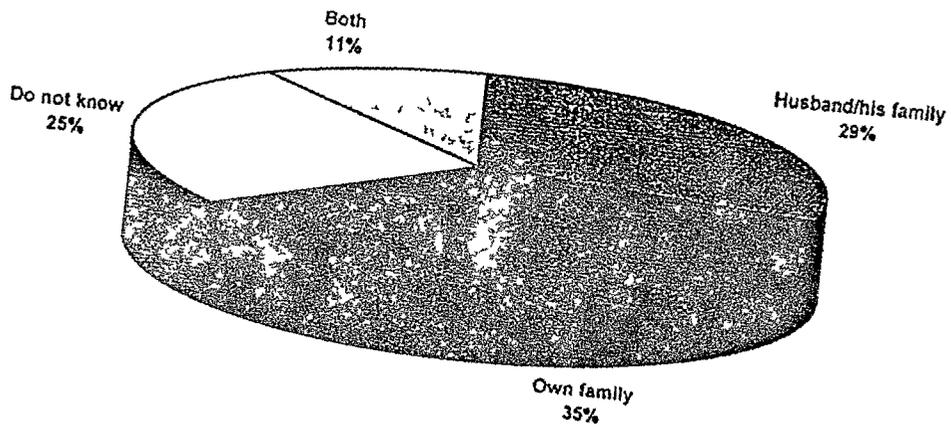


Chart VI
WHO HAS NIKAHNAMA OR COPY OF NIKAHNAMA

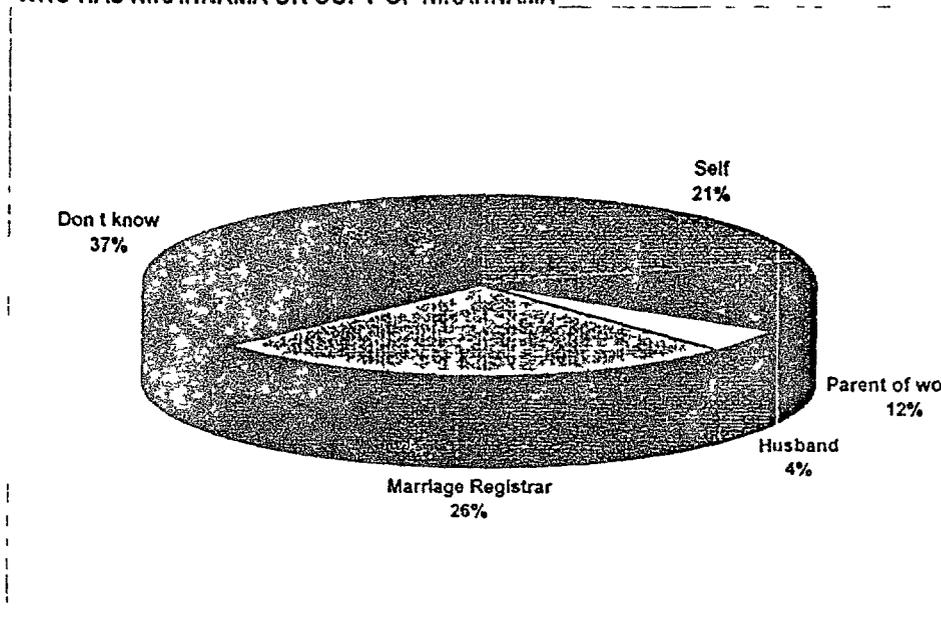


Chart VII
AWARENESS OF LAW REGARDING DOWRY

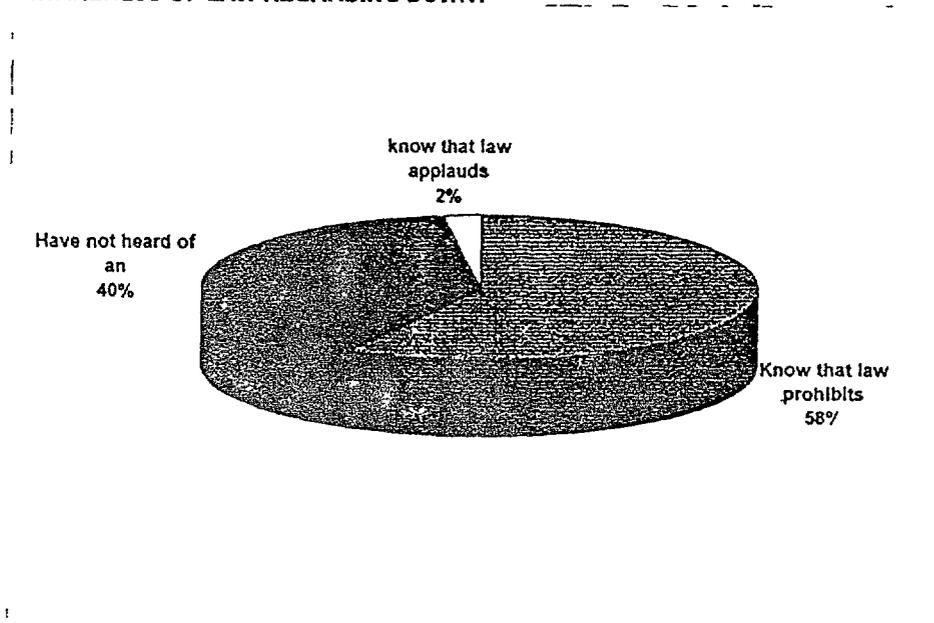


Chart VIII
REGISTRATION OF DIVORCES

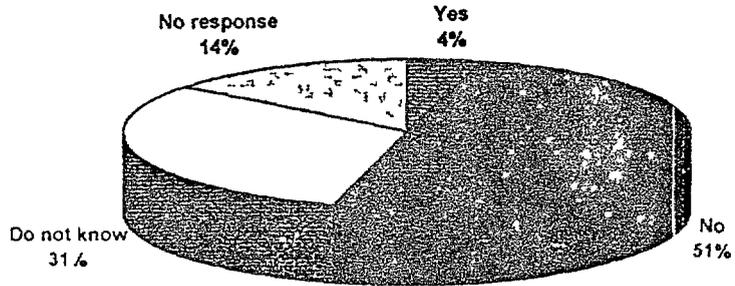


Chart IX
KNOWLEDGE OF LAWS REGARDING MINIMUM AGE OF MARRIAGE

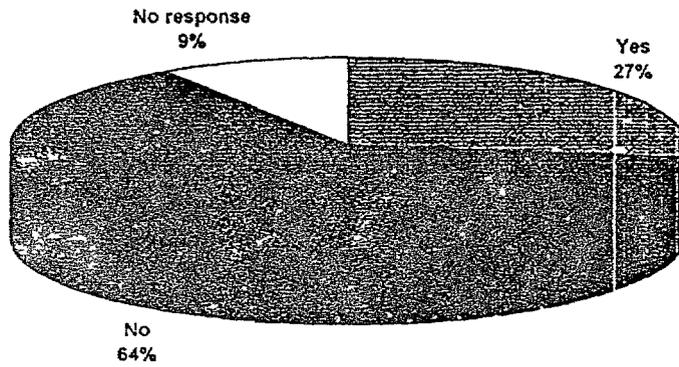


Chart X
KNOWLEDGE OF WHERE TO COLLECT NIKAHNAMA FROM

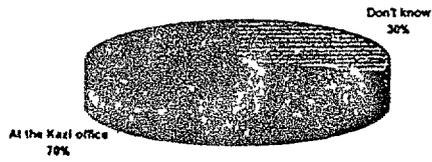


Chart XI
AWARENESS OF LAW REGARDING REGISTRATION OF MARRIAGE

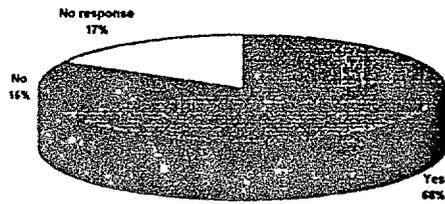


Chart XII
KNOWLEDGE OF WHERE KAZI OFFICE IS

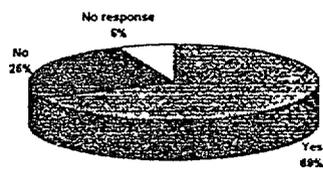


Chart XIII
REGISTRATION OF NIKAHNAMA

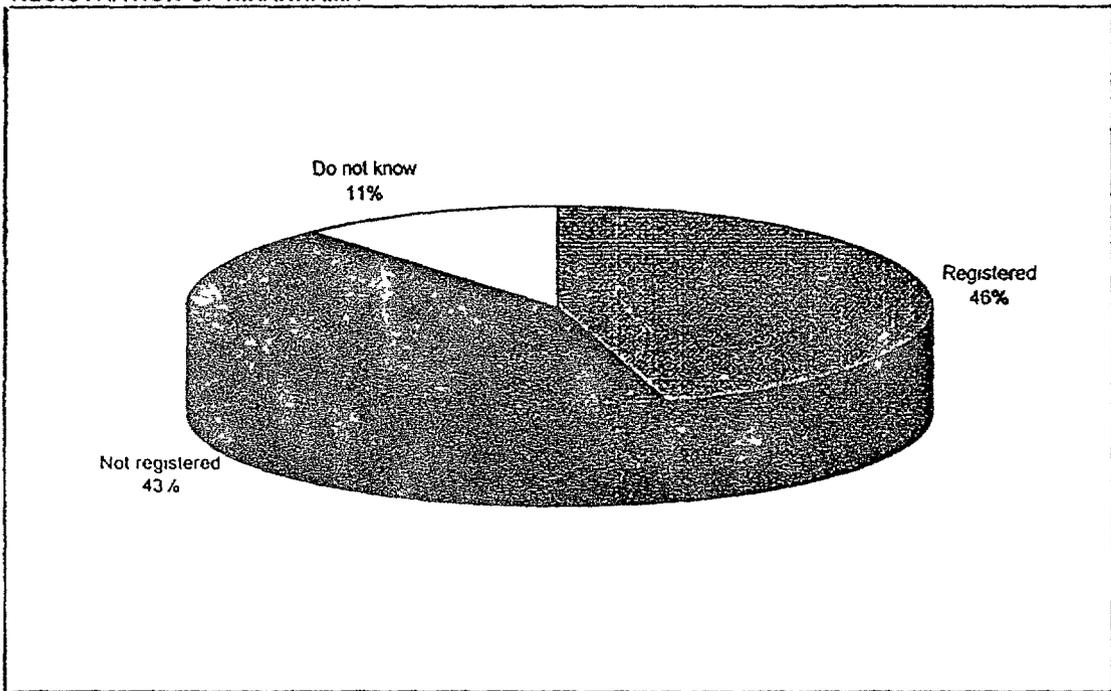
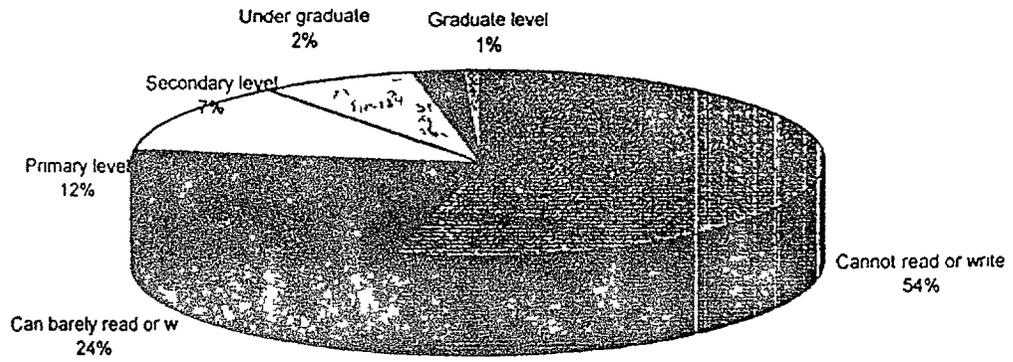


CHART XIV
RESPONDENTS ACCORDING TO EDUCATION



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APPENDICES

Appendix I

The Muslim Marriages and Divorces (Registration) Act,
1974

Act NO LII of 1974

(An Act to consolidate and amend the law relating to Registration
of Muslim marriages and divorces)

Whereas it is expedient to consolidate and amend the laws relating
to registration of Muslim marriages and divorces

It is hereby enacted as follows--

1 SHORT TITLE AND APPLICATION--(1) This Act may be called the
Muslim Marriages and Divorces (Registration) Act, 1974

(2) It applies to all Muslim citizens of Bangladesh wherever
they may be

2 DEFINITIONS--In this Act, unless there is anything repugnant in
the subject or context--

(a) "Inspector General of Registration" and "Registrar"
respectively mean the officers so designated and appointed under
the Registration Act, 1908(XVI) of 1908,

(b) "prescribed" means prescribed by rules made under this Act

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

4 NIKAH REGISTRAR-- For the purpose of registration of marriages
under this Act, the Government shall grant licences to such number
of persons, to be called Nikah Registrars, as it may deem necessary
for such areas as it may specify,

Provided that not more than one Nikah Registrar shall be licensed
for one area

Provided further that the Government may, whenever it deems fit to
do so, extend, curtail or otherwise alter the limits of any area
for which a Nikah registrar has been licensed¹.

5 MARRIAGE NOT SOLEMNISED BY NIKAH REGISTRAR TO BE REPORTED TO
THEM-- (1) Every marriage not solemnised by the Nikah Registrar
shall, for the purpose of registration under this Act, be reported

¹ vide Ordinance XLIX of 1982

to him by the person who has solemnised such marriage

(2) Whoever contravenes the provisions of sub-section (1) shall be punishable with simple imprisonment for a term which may extend to three months, or with fine which may extend to five hundred taka, or with both.

6 REGISTRATION OF DIVORCES--(1) A Nikah Registrar may register divorce effected under Muslim law within his jurisdiction on application being made to him for such registration

(2) An application for registration of a divorce shall be made orally by the persons who has or have effected the divorce

Provided that if the woman be a pardanashin, such application may be made by her duly authorised Wakil

(3) The Nikah Registrar shall not register a divorce of the kind known as talaq-i-tafweez except on the production of a document registered under the Registration Act, 1908 (XVI of 1908) by which the husband delegated the power to divorce to the wife or of an attested copy of an entry in the register of marriage showing that such delegation has been made

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

7 MANNER OF REGISTRATION--The Nikah Registrar shall register a marriage or divorce in such manner as may be prescribed

8. REGISTERS--Every Nikah Registrar shall maintain separate registers of marriages and divorces in such form as may be prescribed and all entries in each register shall be numbered in a consecutive series, a fresh series being commenced at the beginning of each year.

9 COPIES OF ENTRY TO BE GIVEN TO PARTIES--On completion of the registration of any marriage or divorce the Nikah Registrar shall deliver to the parties concerned an attested copy of the entry in the register, and for such copy no charge shall be made

10 SUPERINTENDENCE AND CONTROL--(1) Every Nikah Registrar shall perform the duties of his office under the superintendence and control of the Registrar.

(2) The Inspector-General of Registration shall exercise a general superintendence over offices of all Nikah Registrars

11 REVOCATION OR SUSPENSION OF A LICENCE--If the Government is of the opinion that a Nikah Registrar is guilty of any misconduct in the discharge of his duties or has become unfit or physically incapable to discharge his duties, it may, by order in writing, revoke his licence, or suspend his licence for such period, not exceeding two years as may be specified in the order

Provided that no such order shall be made unless the Nikah Registrar has been given a reasonable opportunity of showing cause why that order should not be made

12 CUSTODY OF REGISTERS--Every Nikah Registrar shall keep safely each register maintained by him under section 8 until the same is filled, and shall then or earlier if he leaves the district or ceases to hold a licence, make over the same to the Registrar for safe custody

13 INSPECTION OF REGISTERS-- Any person, may on payment of the prescribed fee, if any, inspect at the office of the Nikah Registrar or of the Registrar any register kept in such office or obtain a copy of any entry therein

14. POWER TO MAKE RULES--(1) The Government may, by notification in the official Gazette, make any rules to carry into effect the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for the--

(a) qualifications to be required from persons to whom licences under section 4 may be granted..

(b) fees payable to a Nikah Registrar for registration of a marriage or divorce:

(c) any other matter for which rules are required to be made

15 AMENDMENT OF MUSLIM FAMILY LAWS ORDINANCE, 1961 (VIII OF 1961)--In the Muslim Family Laws Ordinance, 1961 (VIII of 1961)--

(a) in section 3, sub-section (1), the comma and words, "and the registration of Muslim marriages shall take place only in accordance with those provisions" shall be omitted,

(b) section 5 shall be omitted,

(c) in section 6, in sub-section(1), for the words "under this Ordinance" the words, comma, figures and brackets "under the Muslim Marriages and Divorces (Registration) Act, 1974 (LII of 1974)" shall be substituted.

16 REPEAL--The Muslim Divorces Registration Act, 1876 (Beng Act I of 1876), is hereby repealed

17. PROVISION RELATING TO EXISTING NIKAH REGISTRARS--All Nikah Registrars licensed under the Muslim Family Laws ordinance, 1961 (VII of 1961), before the commencement of this Act, shall be deemed to have been licensed as Nikah Registrars under this Act

Appendix II.

FORM OF NIKAH NAMA

FORM-E

Register of Marriages in accordance with rule 24(1) of the Muslim Marriages and Divorces (Registration) Rules, 1975

(1) Name of Ward _____ Town/Union _____ and District _____ in which the marriage took place

(2) Name of the bridegroom and his father, with their respective residences _____

(3) Age of the bridegroom _____

(4) The names of the bride and her father, with their respective residences _____

(5) Whether the bride is a maiden, a widow or a divorcee _____

(6) Age of the bride _____

(7) Name of Vakil, if any appointed by the bride, father's name and his residence _____

(8) The names of the witnesses to the appointment of the bride's Vakil with their Father's names, their residences and their relationship with the bride-

(1) _____

(2) _____

(9) Name of the Vakil, if any appointed by the bridegroom, his father's name and his residence-

(10) The names of the witnesses to the appointment of the bridegroom's Vakil with their father's names and their residences.

(1) _____

(2) _____

(11) Name of the witnesses to the marriage, their father's names and their residences-

(1) _____

(2) _____

(12) Date on which the marriage was contracted _____

(13) Amount of dower _____

(14) How much of the dower is mu'wajjal (Prompt) and how much ghair mu'wajjal (deferred).

(15) Whether any portion of the dower was paid at the time of the marriage If so, how much-

FORM-E

Register of Marriages in accordance with rule 24(1) of the Muslim Marriages and Divorces (Registration) Rules, 1975

- (1) Name of Ward _____ Town/Union _____ and District _____ in which the marriage took place
- (2) Name of the bridegroom and his father, with their respective residences _____
- (3) Age of the bridegroom _____
- (4) The names of the bride and her father, with their respective residences _____
- (5) Whether the bride is a maiden, a widow or a divorcee _____
- (6) Age of the bride _____
- (7) Name of Vakil, if any appointed by the bride, father's name and his residence _____
- (8) The names of the witnesses to the appointment of the bride's Vakil with their Father's names, their residences and their relationship with the bride.

(1) _____

(2) _____

- (9) Name of the Vakil, if any appointed by the bridegroom, his father's name and his residence _____
- (10) The names of the witnesses to the appointment of the bridegroom's Vakil with their father's names and their residences _____

(1) _____

(2) _____

- (11) Name of the witnesses to the marriage, their father's names and their residences _____

(1) _____

(2) _____

- (12) Date on which the marriage was contracted _____
- (13) Amount of dower _____
- (14) How much of the dower is mu'wajjal (Prompt) and how much ghair ma'wajjal (deferred)
- (15) Whether any portion of the dower was paid at the time of the marriage. If so, how much _____

(16) Whether any property was given in lieu of the whole or any portion of the dower with specification of the same and its valuation agreed to between the parties

(17) Special conditions, if any

(18) Whether the husband has delegated the power of divorce to the wife, if so under what conditions

(19) Whether the husband's right of divorce is in any way curtailed

(20) Whether any document was drawn up at the time of marriage relating to dower, maintenance, etc. If so, contents thereof in brief

(21) Whether the bridegroom has any existing wife, and if so, whether he has secured the permission of the Arbitration Council under the Muslim Family Laws Ordinance, 1961, to contract another marriage

(22) Name and date of the communication conveying to the bridegroom the permission of the Arbitration Council to contract another marriage

(23) Name and address of the person by whom the marriage was solemnised and his father

(24) Date of registration of marriage

(25) Registration fees paid

Signature of the bridegroom
or his Vakil.

Signature of the witness to be appointed of bridegrooms Vakil

Signature of the bride

Signature of the Vakil of the bride

Signature of the witness to be appointed of the brides Vakil

Signature of the witnesses to the marriage

(1) _____
(2) _____

Signature of the person who solemnised the marriage

Signature and seal

APPENDIX III

Government of the People's Republic of Bangladesh
Office of the Muslim Marriage Registrar & Kazi

MARRIAGE CERTIFICATE

This is to certify that
Son of _____ of _____
_____ of _____
Date of birth _____
married to _____
_____ of _____
Daughter of _____
_____ of _____
Date of birth _____
The marriage was registered in my office on the _____ day of _____
One Thousand Nine Hundred and _____
of the christian era.

Muslim Marriage Registrar & Kazi

APPENDIX V

CERTIFICATE OF MARRIAGE

This is to certify that according to the Records of this Church

Name of Husband ¹

(block letters)

son of (Father)

and (Mother)

resident of (at time of marriage)

Name of Wife

(block letters)

daughter of (Father)

and (Mother)

resident of (at time of marriage)

were duly married on

(Reg No)

Place of Marriage

Minister Officiating

Two known witnesses '

Given at Name of Parish

Address

Dated

No

(Signature of Pastor)

(Seal)

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APPENDIX IV

বাংলাদেশ চার্চ The Church of Bangladesh

বিবাহ সম্পাদনের স্থান
Marriage Solemnized at _____

বিবাহের তারিখ When Married			বর ও কন্যার নাম Names of Parties		বয়স Age	অবস্থা Condition	পেশা Occupation	বিবাহের সময়ে বাসস্থান Residence at the time of Marriage	পিতার নাম ও স্মরণী Father's Name and Surname	বান্ধব অথবা পাইলসেপ দ্বারা By Banns or License	বর ও কন্যার স্বাক্ষর Signatures of the Parties	দায়ে (দুই বা ততোধিক) Witnesses (two or more)	বিবাহ সম্পাদনকারী Person by whom the ceremony was performed
সন Year	মাস Month	তারিখ Day	খ্রিস্টীয় নাম Christian	স্মরণী Surname								পূর্ণ নাম Full name	স্বাক্ষর ও পদ Signature & Designation

আমি _____

এতদ্বারা অত্যন্ত সন্মত হইয়া নিম্নলিখিত বিষয়টি

সত্যকরণে

do certify the foregoing to be a true copy of an Entry in the Register of Marriages kept at _____

দীর্ঘায় স্মরণে বিবাহের সাক্ষরকারীর অধিকার নথি রাখা উচিত/বিদ্যমান

আমি _____

নামের _____

তারিখে আদি স্বাক্ষর করিয়া

as witnessed by my hand this _____

day of _____

in the year of our Lord one thousand nine hundred and _____

স্বাক্ষর

Signature _____

পদ

Designation _____

BEST AVAILABLE COPY