

REFORMS IN ISLAMIC LAW IN THE CONTEMPORARY WORLD AND CONFORMITY WITH ISLAMIIC PRINCIPLES

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ABSTRACT

Keywords:
*Reforms; Islamic; Law;
Conformity;*

Reformation of any law is necessary for adaptation of it with the passage of time. So is the personal law of the muslims. The Muslim Personal Law (Shariat) Application Act, 1937 states certain personal issues of the muslims will be dealt with pure sharia law of those. Legal provisions on several important issues like inheritance, custody and guardianship of a child, dissolution of marriage, polygamy etc. have been changed, supplemented or reformed by statutory laws of the state as well as by judicial precedents. These reforms have made significant changes to the interpretation, application and clarification to the classical muslim laws. In many cases the reforms made so far are derogatory from classical laws on the issues. This paper tries to find out those reforms and analyse them based on their conformity with the Islamic sources of law.

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INTRODUCTION

The word 'reform' literally means to remodel, rectify, correct and amend. Technically reform means doing over to bring about a better result, correction or rectification. With the passage of time, due to circumstantial, economic and social changes; reform is a must to keep pace with the changing World. So change is made both in the state laws and in the personal law. 'Islamic law' means the law based on Islamic principles. The Muslim personal law is based on four sources. The primary sources are the Quran and the Hadith. The Quran contains the words and commandments of Allah and is therefore of divine origin, and the Hadith is the sayings and practices of the prophet. The other two Ijma and Quias are the secondary sources. Ijma is the consensus of opinion of the prominent Islamic jurists and the latter is analogical deduction. All the four sources together make up the Sharia Law or Islamic Law.

In Islamic law, reform is taken through *iztihad* (analogical deduction). In the legal system of any state, reform is made through passing statutory Acts both in case of its state laws and in the personal law of any religion. In these circumstances, reform is made first through *Ijtihad* by the prominent Islamic jurists and later on, that *Ijtihad* is turned into a statutory law by enacting a new legislation which can be enforced in the court of law of that legal system. Besides legislation law may also be reformed by the way of judicial activism i.e. precedents where the judges apply their judicial intrusion to interpret the law based on context and particular circumstances. Contemporary World means the present World but here in this paper it means the present Muslim World not others. Conformity with Islamic principles indicates- the reforms which are made in the Islamic countries whether they comply with fundamental Islamic commandments of almighty Allah and his holy prophet Hazrat Mohammad (sm) or not.

This paper is about the most important issues of Muslim personal law i.e. marriage, polygamy, registration of marriage, dower, dissolution of marriage, maintenance, custody and guardianship of minors, inheritance and the reforms made in these fields. Here Islamic law and Muslim personal law are used interchangeably. The paper tries to discuss both Islamic theologies, reforms made to it in the present World and side by side the compliance of those reforms with the Islamic principles.

BACKGROUND

The legal system of Bangladesh is pluralistic as there exists a uniform and non-religious system of law, applicable to all Bangladeshis as for instance criminal laws, civil laws, constitutional laws etc as well as personal laws based on religions. But the personal and private family matters such as marriage, divorce, dower, maintenance, custody of children etc are regulated by the personal law of the each religious community. Most of the populations in Bangladesh are Muslims and most of the Muslims here belong to *Sunni Hanafi* School. Besides the four religious sources of Islamic law, we have statutory laws enacted by the legislative organ of the state which have supplemented, changed or reformed the application of

personal laws as well as judicial precedents which have made significant contribution to the interpretation, clarification and occasionally to the reform of religious law.

Some of the key reforming Acts are enacted by the British Legislation and some are enacted by India, Pakistan and Bangladesh legislations. The major reforming Acts are-

The Guardian and Wards Act, 1890. Act No. VIII of 1890.

The Child Marriage Restraint Act, 1929; Act No. VI of 1929.

The Dissolution of Muslim Marriages Act, 1939, Act No. VIII of 1939

The Muslim Family Laws Ordinance, 1961; Ordinance No. VIII of 1961

The Muslim Marriages and Divorces Registration Act, 1974, Act No. LII of 1974.

The Dowry Prohibition Act, 1986; Act No. XXXIX of 1986.

The Family Courts Ordinance, 1985; Ordinance no. XVIII of 1985.

SCOPE AND OBJECTIVES OF THE STUDY

The objective of the study titled 'Reforms in Islamic law in the contemporary World and conformity with Islamic Principles' is to find out reforms made to the Islamic law in contemporary World besides Bangladesh, India and Pakistan, to show the conformity of those reforms with Islamic principles, to analyze those critically and to give findings and recommendations.

The paper is divided into several chapters. The first chapter deals with the introductory points to the research. The second chapter describes the issues relating to marriage, reforms made and their conformity with Islamic principles. The third chapter discusses about women's right to dower and right to live apart from the husband in case of non-getting of dower. The fourth chapter shows the forms of dissolution of marriage and changes made by statutory laws. The fifth chapter deals with maintenance. The sixth chapter finds out the reforms made so far in custody and guardianship law. And the seventh chapter shows the reforms taken to the Islamic law of inheritance. Then the eighth chapter enunciates the concluding observations, findings and recommendations.

METHODOLOGY

The topic of the research is a broad subject. This paper applied qualitative approach in its way of the study as it is best suited to the topic. It consulted with both the primary i.e. the holy *Quran* and the *hadith* of the prophet, and secondary sources i.e. *Ijma* and *Quyas*. Besides these it consulted with both the books of the famous writers on Islamic laws, articles on related issues, statutory Acts, case laws and websites.

To find out the reforms in Islamic law, qualitative approach may give the best opportunity for the purpose because reforms are available mostly in the *Ijma*, *Quyas*, statutory Acts and in the judicial precedents.

MARRIAGE

Islamic Law Relating to Marriage

Marriage (*Nikah*) in Islam is a contract and not a sacrament. Marriage (*Nikah*) is defined to be a contract which has for its object the procreation and the legalizing of children. Ameer Ali an ancient text defining its objects as follows:

“Marriage an institution ordained for the protection of the society, and in order that human beings may guard themselves from foulness and unchastely.”

Marriage is first and foremost a contract under Islamic law. The main purpose of marriage is the legalization of physical relationship between husband and wife and the legitimating of offspring. Legally the only requirement for a valid marriage is the offer and acceptance (*Ijab and Qabul*) required in the presence of two witnesses who must be either both males or one male and two females.

Age of Marriage

Every Muslim of sound mind who has attained majority can enter into a valid contract of marriage. Majority is attained at puberty. According to Sunni *Hanafi* law, this age is 15 unless puberty is reached earlier. Every Mahomedan of sound mind, who has attained puberty, may enter into a contract of marriage. Puberty is presumed in the absence of evidence on completion of 15 years. So in accordance with Muslim law the age of marriage is 15 or age of puberty. This age limit is reformed by the British legislation in 1929 by passing an Act; The Child Marriage Restraint Act of 1929 sets 14 for the bride and 18 for the bridegroom. After the amendment ordinance of 1984, now the age is 18 for female and 21 for the male in Bangladesh. In the 18th century the minimum legal age to marry was 14 for men and 12 for women, in most of the regions. In Malaysia, under The Law Reform Act of 1976 the minimum age for marriage is 18 years for both the parties. The consent of both the parties and of their parents is essential under the same Act.

In Afghanistan, The marriage can take place only when they are sixteen. Under-age-marriages. The Child Marriage Restraint Act, 1929 has made under-age marriages a penal offence. Under the Act the minimum age of marriage for a male is 21 years whereas the minimum age of marriage for a female is 18 years. Despite the fact that under-age marriages are liable to punishment, such unions are not rendered invalid. Average Marriage Age in different countries of the World. Worldwide average marriage age for men is 28.7 and 26.8 for women.

The average age for marriage in Pakistan is 22.8 (males) and 19.7 (females), India 23.9 (m) 19.3 (f), USA 27.0 (m) 25.0 (f), U.K 29.8 (m) 27.7 (f), Egypt 27.9 (m) 22.2 (f), Libya 32.0 (m) 29.0 (f), Australia 30.6 (m) 26.1 (f), South Africa 28.9 (m) 27.1 (f) and so on.

Compliance with Islamic law

Here a clear contradiction is evident between Islamic law and state law. Though conflict is seen here between the two laws, the new age limit under state law does not make the marriage void rather it makes child marriage as punishable. In the socio-economic condition of the country increase in the age of marriage is a timely step. This increase is for the public policy and public interest of a country. This age of 18 for female and 21 for male may also differ from country to country as Islam is not an outdated religion. There are some obligations for a husband to perform after marriage. A boy after attaining puberty can not be able to perform all the obligations regarding maintenance of the family suddenly. There is a question of income to survive. So increase in the age is in compliance with the Islamic principles. The system of formal education has developed. So development of education matters in the marriage age of the people a particular country. Because of urbanization and family structure the boys need personal income to maintain the family first.

Option of puberty (khyar-ul-bulug)

Under classical law when any guardian other than father or grandfather contracts a marriage, the minor has the option to repudiate the marriage on attaining puberty. The DMMA Act of 1939 deals with the option of puberty. Section 2(vii) of the Act has increased the age to exercise the right of the option of puberty. Now a Muslim girl can repudiate her marriage if brought about while she was a minor even if she is married off by her father or grandfather. (Provided the marriage has not been consummated). By the Dissolution of Muslim Marriages (Amendment) Ordinance 1986 the age of option of puberty was increased to be consistent with the increase in the minimum age of marriage. Now this option may be exercised before the girl has reached 19 years of age if contracted into marriage before 18. Conformity with Islamic principles: Here two inconformities are evident one is –she can repudiate the marriage even given to marriage by father or grandfather, another is – she can repudiate the marriage before attaining 19. By this provision of the Act the personal choice of the girl is respected. As the minimum of marriage is increased, so increase of age for the purpose of option of puberty is also logical.

WITNESSES TO MARRIAGE

Under the Shia and Maliki doctrines the validity of a marriage does not depend on the presence of witnesses, whilst under the Hanafi law it is a necessary condition. Both the witnesses should hear the words of both the parties simultaneously so that if one witness was to hear the words of one and not of the other, the contract would be invalid. The presence of witnesses is required when the marriage is actually entered into. A marriage contracted without witnesses as required by section 252 (*Mullah*) is irregular, but not void.

Under *hanafi* law at least two male witnesses or one male and two female

witnesses are essential. But only females cannot be the witnesses to a marriage.

In Shiite school of thought the absence of witnesses does not invalidate a marriage. In *Hanfi* law, the presence of witnesses is a must for a valid marriage. The Quran is silent on the issue of witnesses. Majority of Muslim jurists rely upon a hadith quoted by Muslim in his collection. Prophet (pbuh) said, "Announce Your Marriages". The principle of Hanafi law is practiced in Pakistan and accepted by the courts. In *Shazada Begum v. Abdul Hamid* 1950 Lah 773, PLD 1950 Lah. P. 540 and in many other cases, the courts have observed that "a marriage can't be invalidated merely on account of witnesses." Circumstantial evidence is given due weight and even considered conclusive at times. The Muslim Family Laws Ordinance 1961 does not necessitate for presence of witnesses at the time of marriage. Even the rules don't require. However, the form II specified as marriage certificate has a column for witnesses. This form is used to register the marriage and non-registration is a criminal offence in the ordinance (in Pakistan), and in Bangladesh under the Muslim Marriages and Divorces (Registration) Act, 1974.

POLYGAMY

Islam does not out-law polygamy like many communities and religions, however, regulated it and restricted it. It is neither required nor encouraged, but simply permitted and not outlawed completely. No person, during continuance of an existing marriage, shall be empowered to contract another marriage, without the prior written permission of the family court of the area concerned. A mohammadan may have as many as four wives at the same time but not more, if he marries a fifth wife when he has already four, the marriage is not void, but merely irregular. The Quran ordains "and if fear that you shall not be able to deal justly with the orphan-girls, then marry (other) women of your choice, two or three, or four; but if you fear that you shall not be able to deal justly (with them), then only one. So in Islam, polygamy is allowed up to four subject to the condition that he shall deal with the wives equitably and justly.

Statutory provisions regarding polygamy

MFLO has also introduced some reforms in the law relating to polygamy. Now, a husband must submit an application and pay a prescribed fee to the local union council in order to obtain permission for contracting a polygamous marriage. Thereafter, the chairman of the union council forms an arbitration council with representatives of both husband and wife/wives in order to determine the necessity of the proposed marriage. The section 6 of The MFLO 1961 deals with polygamy. Section 6 of the Ordinance provides: "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." In his application to the council for permission

the husband shall mention the reasons of the proposed marriage and whether the consent of the existing wife or wives has been taken or not. If the arbitration council considers that the proposed marriage is necessary and just, it may grant the permission. In deciding whether the proposed marriage is necessary and just, the council may take into consideration such circumstances as- sterility, physical infirmity and unfitness for conjugal relations, willful avoidance of a decree for restitution of conjugal rights or insanity on the part of the existing wife.

Case laws on polygamy

Jesmin Sultana v. Md. Elias The court opined: the expression of the holy Quran by the words “be able to deal justly” is the condition precedent to marry more than one woman which implies equality in love and affection and such equality being impossible in the weakness of human nature, the permission to take another wife amounts virtually to a prohibition for which section 6 of the Ordinance is against the principle of Islamic law. In *Ayesha Sultana v. Shahjahan Ali* it was clearly laid down that marrying without the permission of the arbitration council violates law and is punishable.

Law of Polygamy in Malaysia

The law relating to polygamy has been reformed, based on sources of Islamic law and Muslim law existing in the Muslim countries, by the legislation such as the Islamic Family Law (Federal Territories) Act, 1984. This Act requires an application for a polygamous marriage to fulfill five conditions: such as it is just and necessary, he has means to support the present and future dependants, consent of the existing wife and ability to accord equal treatment to his wives as required by the Quran.

Conformity with Islamic principle

Section 6 of the MFLO 1961 does not make the polygamy void directly rather it has put some procedures to be followed i.e. permission the arbitration council and consent of the present wife.

Similarly we see the Quranic verse (4:3) allows taking upto four wives at the same time and warns the equality and fairness in treatment is a must. It also added that (perhaps) you will not be able to be fair and just between women so only one (is better). So the Ordinance of 1961 does not contradict with classical Islamic law. On the contrary it lays down some procedural obligation on the husband wishing polygamy. This Ordinance gives statutory force to the Islamic law to some extent. This verse (4:129) was revealed after battle of *Ohud* in which dozens of Muslims were martyred leaving behind widows and orphans.¹ So the context of unusual

¹Cited in “Equality between Men and Women in Islam especially in respect of and its compatibility with international human rights”. The D.U studies, part F Vol. xv(2): Decm. 2004 pp.163-206 at p.169

circumstances can not be applicable in normal situation.

REGISTRATION OF MARRIAGE

As per Islamic law there is no requirement of registration for the validity of marriage. It requires (1) *Ijab* (declaration or offer), on the part of the one; (2) *Qabul* (acceptance) by the other; (3) before sufficient witnesses; two in Hanafi law; in Shite law witnesses are not necessary. Cited in Fayzee at p.91 Under classical law the marriage contract is not required to be reduced to writing; an oral marriage is perfectly valid. Every *Nikah* duly performed under the *sharia* law will be registered and the registration of *Nikah* shall be prima facie evidence of *Nikah*. So in accordance with Islamic law, there is no clear commandment to register a marriage under Islam between two Muslims (male and female) of sound mind attaining puberty.

REFORMS MADE IN BANGLADESH

The Muslim Marriages and Divorces (Registration) Act, 1974 made the registration of all the Muslim marriages and divorces compulsory. Section 3 of the Act states “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. Under this Act registration of marriage is mandatory. Contravention of this Act is made punishable.

Reforms made in Pakistan

In Pakistan the registration of marriage is compulsory under section 5 of The Muslim Family Laws Ordinance of 1961. The compulsory registration system was incorporated into law under the report of The Commission on Marriages and Family laws. The commission recommended that – the registration of marriages must be made compulsory. So that it becomes easier to determine legitimacy, proof of marriage, claiming dower, maintenance etc.

Condition of India Regarding Registration of Marriage

Unlike Bangladesh and Pakistan, the Indian Govt. has not passed any law for compulsory registration of the Muslim marriages. The registration of marriage is done under the Registration Act of 1908. However registration is not mandatory. Statutory provisions are, however, available in West Bengal, Bihar, Assam and Orissa for optional registration of Muslim marriages. Also in the state of Tamil Nadu, the customary practice of registration of Muslim marriages has been given the force of law by the court. The madras high court said that – though personal law does not require the registration of marriages, it does not prohibit the registration. As the Muslims of a particular area adopted a custom of registering the marriage in *jamath* That custom is given the status of law. The Muslim Family Laws Ordinance (MFLO) 1961 introduced reforms regarding registration of marriages, and in default of such registration; penalties of

fine and imprisonment have been prescribed. Nevertheless, Muslim marriages are still legal and valid if they are performed according to the requisites of Islam.

MFLO has also introduced some reforms in the law relating to polygamy. Now, a husband must submit an application and pay a prescribed fee to the local union council in order to obtain permission for contracting a polygamous marriage. Thereafter, the chairman of the union council forms an arbitration council with representatives of both husband and wife/wives in order to determine the necessity of the proposed marriage.

Conformity with Islamic principles

Under Islamic law, marriage is contract. Though it does not require registration of muslim marriages imperatively, it emphasizes on the written form of any economic transaction involving future obligations. The holy *Quran* ordains “O you who believe! When you deal with each other in transactions involving future obligations in a fixed period of time reduce them to writing. Let a scribe write down faithfully as between the parties: let not the scribe refuse to write as Allah has taught him; so let him write. So it is evident that, marriage being a contract should also be registered or written down as it will be easy to prove the marriage. The best proof of marriage is the *Kabinnama*. It is the prima-facie evidence of marriage. If the marriage is not registered, a lot of problems arise relating to that. Proof of marriage is essential for getting their rights by the women. As we see in several cases- when the women fails to prove the “factum of marriage she is not entitled to get any dower.

Questions often arise as to the validity of marriage either due to non registration of marriage or other causes. As in the case of Dr. A.L.M Abdullah v. RokeyaKhatoon, the court held that – it must be established by clear, direct and specific evidence that Rokeya gave her consent to the marriage. As Dr. Abdullah failed to establish it, there was no valid marriage. As we see that registration works for the betterment of the parties and there is also a direction to register the economic transaction in the *Quran*. And as there is no prohibition in the *Quran* and *Hadith*; so marriage should be registered. This does not in any way contravenes the provisions of Islamic law. Rather the registration system in marriage strengthens the *Quranic* provisions of reducing the transaction into writing. Because, later on when the solemnizer and the witnesses have disappeared either by death or migration to distant places no evidence of *nikah* is left. They may also deny having taken any part in the particular marriage.

DOWER

Concept of Dower

According to Islamic law where there is a marriage there is a Dower. It is a bridal gift and a token of respect to the wife. In pre-Islamic Arabia, *Mahr* was known as *Sadaqand* paid to the wife’s father, and could therefore be regarded as tantamount to sale-price. But when Islam insisted on its payment to the wife, it could no longer be regarded strictly as sale

price. Dower (*Mahr*) is that financial gain which the wife is entitled to receive from her husband by virtue of the marriage contract itself whether or not in the contract of marriage. Dower or Mahr is a sum of money or other property which the wife is entitled to receive from the husband in consideration of the marriage (here consideration is not as in the contract Act 1872). Mr. Justice Mahmood defines Dower in the case of -Abdul Kadir vs. Salima (1886), All. As “Dower under the Mohammedan law is a sum of money or other or Property promised by thy husband to be paid or delivered to the wife in Consideration of the marriage and even where no dower is expressly fixed or mentioned at the marriage ceremony the law confers the right of dower is upon the wife.”

The dower is a sum of money or other property which becomes payable by the husband to the wife as an effect of marriage. “And give to the women (whom you marry) their Mahr (obligatory bridal-money given by the husband to his wife at the time of marriage) with a good heart ...” Under the marriage law of Iran, which is based on Islamic law, it is incumbent on a man at the time of marriage to offer some property or something of value as a gift to his future wife.

Kinds of dower

There are two kinds of dower in Muslim marriage i.e. prompt and deferred. The husband is bound to pay prompt dower on demand of the wife. So the dower which is payable on demand is called prompt dower. The dower which becomes payable on the dissolution of marriage either by death of any party or by operation of law is called deferred dower. In the case -SalehaKhatun v. Saleh Ahmed, 25 BLD,(HCD),2005 324 AT 328 the court held that Dower is the essential condition of muslim marriage. to provide for the maintenace of the wife by the husband it is enjoined by the Muslim law, but to pay prompt dower on demand it is all the more enjoined by that law, the same being an essential condition of a contract of marriage. The husband’s failure to pay prompt dower does not appear to be against public policy or the principles of muslim law. In another case - Chanani Begum v. Muhammad Shafiq, 1985, MLD p. 310 the court held that “it is true that a wife cannot claim maintenance if she lives separate from her husband without any justification but it is equally well-recognized that a wife can refuse herself from her husband and also live separate from him until prompt dower is paid by the husband and during the marriage husband is duly bound to maintain her.

The Quran ordains

“And give the women (on marriage) their dower as a free gift. The wife shall be entitled to half of the specified dower if the marriage is dissolved before consummation. Under the *Quranic*verse: “If ye divorce them before ye touched them and ye have appointed unto them a portion then pays the half of that which ye have appointed.”

Muslim Family laws Ordinance, 1961 under Section 10 Dower:

If no details mode of dower is specified in *the Nikkahnama*, entire amount of Dower becomes prompt. In *Mst. Meherunnahar v. Rahman Khondekhar*, the Family Court said that the amount of dower should be that which the husband is able to give. Where the wife felt that possible way to win or retain the affection of her husband was to act on his suggestion and to remit the dower. It was held that she did not act as free agent and it would be inequities to hold that a woman who remits Dower in such circumstances is bound by it. *Shah Banu Begum v. Iftekhar Md. Khan*. Prompt Dower may be considered a debt, always due and demandable and payable upon demand and the wife is Under the Mohammedan law entitled to refuse herself to her husband until and unless the prompt dower is paid. Case: *Nuruddin Ahmed v. Masuda Khanasm*. Wife can refuse to live with her husband if dower is not paid on her demand and Consummation does not affect this right of the wife. Case: *Rahim Jan v. Muhammad*, But contrary case is: *Rabia Khatoon v. MukhtarAhamad*; it was held that the right of Refusing herself is lost on consummation. Thus the right of refusing herself is lost on consummation. Thus, if the husband files a suit for restitution of conjugal Right before cohabitation, non-payment of prompt dower is complete defense. But after cohabitation, the proper course for the court is to pass a decree for restitution conditional on payment of prompt dower, this was held in the leading Case of: *Anis Begum v. Md. IstataWali khan*.

Reforms regarding dower by statutory law

Section 10 of the MFLO 1961 says where no details about the mode of payment of dower are specified in the *Nikahnama* of the marriage contract, the entire amount of the dower shall be prescribed to be payable on demand. Section 6(5) of the MFLO 1961 provides a man contracts another marriage without the permission of the arbitration council shall pay the entire amount of the dower, whether prompt or deferred, due to the existing wife or wives, which amount, if not so paid, shall be recoverable as arrears of land revenue, and On conviction upon complaint be punishable with simple imprisonment upto one year or with fine upto ten thousand taka.

Islamic dower and social dowry

Mahr or dower is an essential component of the marriage contract. Mulla defines dower as “Dower or Mahr is a sum of money or other property which the wife is entitled to receive from the husband in consideration of the marriage”. On the other hand, dowry is the property or money taken from the bride’s parents by the bridegroom or by his parents or relatives. It is clearly the sheer violation of Islamic rules. As instead of giving dower to the bride as ordered by the Quran, some people take dowry or *joutuk*. How violation it is! However the statutory law has prohibited the practice of dowry.

DISSOLUTION OF MARRIAGE

There is a divergence of opinion among the various schools of jurists and scholars relating to Talaq. Marriage as prescribed by Allah is the lawful union of a man and woman based on mutual consent. Ideally, the purpose of marriage is to foster a state of tranquility, love and compassion in Islam, but this is not always the case. Islam discourages divorce but, unlike some religions, does make provisions for divorce by either party. TALAQ is the word used in Islamic law for Divorce. It is only in unavoidable circumstances that TALAQ is permitted in Islam as a lawful method to bring the marriage contract to an end. The *shariah* takes a very reasonable and realistic view of such a sad situation where marriage becomes impossible to continue and all means fail to bring the couple together, by permitting divorce as last resort.

Islamic law relating to *talaq*

The Quran ordains: “and you fear that the two (husband and wife) may not be able to keep the limits ordered by Allah, there is no blame on either of them if she redeems herself (from the marriage tie)” (2: 229). Another verse of the Quran: “a divorce is only permissible twice, after that the parties should either hold together on equitable terms, or separate with kindness.” Any Mohammedan of sound mind may divorce his wife whenever he desires without assigning any cause. The case is – Ahmad Karim v. Khatun Bibi (1932) 59 Cal, 833, 141 I.C 689

So under Islamic law the husband has absolute right to divorce his wife. The controversy with divorce lies in the idea that men seem to have absolute power in divorce. The way the scholars in the past have interpreted this is that if the man initiates the divorce, then the reconciliation step for appointing an arbitrator from both sides is omitted. This diverges from the *Qur'anic* injunction. The differences in powers of the husband and wife with regard to divorce can be extracted from the following verse: ...but, in accordance with justice, the rights of the wives (with regard to their husbands) are equal to the (husbands :) rights with regard to them, although men have precedence over them (in this respect). And God is almighty wise. (2:228)

It is in the next verse, according to existing interpretations, the reason for the small difference: Men shall take full care of women with the bounties which God has bestowed more abundantly on the former than on the latter, and with what they may spend out of their possessions. And the righteous women are the truly devout ones, who guard the intimacy which God has (ordained to be) guarded. (4:34). After marriage both male and female life partners have almost equal opportunities to get divorce if they don't want to live together. However it should be noted that as per our beloved prophet (peace be upon him): Allah did not make anything lawful more abominable to Him than Divorce. Of all the lawful acts the most detestable to Allah is Divorce. (*Sunan Abu dawud*: Book: 12, *Hadith*

No.2172-2173)

The Qur'an says: And for women have rights over men similar to those for men over women' (2:228).

Modes of Talaq

There are two categories of divorce under the Muslim law:

- 1.) Extra judicial divorce, and
- 2.) Judicial divorce

The category of extra judicial divorce can be further subdivided into three types, namely,

- i. By husband- talaq, ila, and zihar.
- ii. wife- talaq-i-tafweez, lian.
- iii. By mutual agreement- khula and mubarat.

The second category is the right of the wife to give divorce under the Dissolution of Muslim Marriages Act 1939.

Talaq by husband: falls into two categories:

- Talaq-i-sunnat,
- Talaq-i-biddat.

Talaq-i-sunnat has two forms:

- Talaq-i-ahsan (Most approved)
- Talaq-i-hasan (Less approved).

Talaq-i-sunnat is considered to be in accordance with the dictates of Prophet Mohammad.

The ahasan talaq

consists of a single pronouncement of divorce made in the period of tuhr (purity, between two menstruations), or at any time, when the wife is free from menstruation, followed by abstinence from sexual intercourse during the period of iddat. The requirement that the pronouncement be made during a period of tuhr applies only to oral divorce and does not apply to talaq in writing.

The hasantalaq: In this the husband is required to pronounce the formula of talaq three times during three successive tuhrs. If the wife has crossed the age of menstruation, the pronouncement of it may be made after the interval of a month or thirty days between the successive pronouncements. When the last pronouncement is made, the talaq becomes final and irrevocable. It is necessary that each of the three pronouncements should be made at times when no intercourse has taken place during the period of tuhr.

Talaq-i-Biddat

It came into vogue during the second century of Islam. It has two forms: (i) the triple declaration of talaq made in a period of purity, either in one

sentence or in three, (ii) the other form constitutes a single irrevocable pronouncement of divorce made in a period of tuhr or even otherwise. This type of talaq is not recognized by the Shias. This form of divorce is condemned. It is considered heretical, because of its irrevocability. The prophet condemned the simultaneous pronouncement of three divorces and declared it a sin.

Divorce by wife

The divorce by wife can be categorized under three categories:

(i) Talaq-i-tafweez

(ii) Lian

(iii) By filing suit under the Dissolution of Muslim Marriages Act 1939.

Talaq-i-tafweez or delegated divorce: it is recognized among both the Shias and the Sunnis. The Muslim husband is free to delegate his power of pronouncing divorce to his wife or any other person. He may delegate the power absolutely or conditionally, temporarily or permanently. A permanent delegation of power is revocable but a temporary delegation of power is not. This delegation must be made distinctly in favour of the person to whom the power is delegated, and the purpose of delegation must be clearly stated. The power of talaq may be delegated to his wife and as Faizee observes, "this form of delegated divorce is perhaps the most potent weapon in the hands of a Muslim wife to obtain freedom without the intervention of any court and is now beginning to be fairly common in India". Dissolution by the wife on certain grounds under section 2 of the DMMA of 1939:

Reforms taken by statutory and case laws into the classical law

Reforms by the DMMA OF 1939

Besides Talaq-e-tafwid or delegated divorce, khula or mubara, the women are given the rights to divorce by the Dissolution of Muslim Marriages Act, 1939. Section 2 of the said Act specifies certain grounds under which they can apply to the family court to obtain a decree for dissolution of marriage. These grounds include- if whereabouts of the husband is not known for 4 years, his failure to provide maintenance for two years, his imprisonment for 7 years or upwards, taking additional wife without her consent, impotency, and insanity, his suffering from leprosy or venereal disease and cruelty to her both physical and mental.

This is said to be the most important piece of legislation in the subcontinent. If the court is satisfied and grants a decree, the wife does not lose the right to dower (sec. 5). This is great reform in favour of the women to establish their rights.

Reforms by the MFLO 1961

The reforms are taken mainly by The Muslim Family Laws Ordinance, 1961. Section 7 lays down the procedure to be followed when the husband and the wife wish to divorce each other without the intervention of the court. The ordinance makes it obligatory upon the husband to send notice

of talaq to the chairman of the UP irrespective of the methods adopted by him i.e. talaqahsan, talaqhasan or talaqbidat. Failure to give notice is made punishable under the ordinance. The union parishad must take all necessary steps to bring about reconciliation between the husband and wife. The divorce will, if not revoked earlier, be effective only after the expiry of ninety days from the date of the notice or if the wife is pregnant after the delivery. If and when a divorce becomes effective, the parties may marry each other without intervening marriage. But after the third effective divorce, intervening (hilla) marriage is required sec.7 (6). Section 7 of the said ordinance has made all forms of talaq into single revocable talaq. The method of reconciliation has been made mandatory. The object of this section is to prevent the hasty dissolution of marriage by way of talaq pronounced by the husband unilaterally, without any attempt being made to prevent the ending of the matrimonial tie.

However in the case *Sirajulislam v. Helena Begum* 48 DLR (1996) p.51 the court held that “non-service of notice to the chairman can not render the divorce ineffective. Section 8 of the same ordinance of 1961 provides that the method of section shall so far applicable shall apply even in any other forms of talaq.

Case law on *Talaq-e-bidat*:

“A divorce pronounced thrice in one breath by a muslim husband would have no effect in law, if was given without deliberation and without any intention of effecting an irrevocable divorce; such divorce is a form of talaq-e-ahsaan”. *Jiuddin Ahmed v. Anwara Begum*, (1981) 1GLR 359 the court held that talaq must be “for reasonable cause; must be preceded by attempt of reconciliation; it may be effected if the said attempts fail

Provisions of intervening marriage in Islam

“So if a husband divorces his wife (irrevocably), he cannot, after that, remarry her until after she has married another husband and he has divorced her.” So here it is clear from the verse – a man once divorcing his wife can not marry the same wife without intervening marriage. But under the ordinance he can marry the same divorced wife. But if he wants to marry her after three complete divorces then she is required hilla marriage if she wants to be getting married for the fourth time with the same husband.

In talq-e-tafwid rule 18 of nikahnama deals if the wife is given delegated power and if given under what conditions. It seems, condition/conditions are must. But reforming case is – *Aklima Khatun v. Muhibur Rahman*, PLD, and 1963 Dac. 602 here in this case the court held that – delegation of the right to divorce may be conditional or unconditional.

Reform in case of *Khula*

Under classical law the consent of the husband is essential *Khula* by the wife from the husband. But the SC of Pakistan held – the court can effect *khula* even if the husband does not consent, if the wife can show

irretrievable breakdown of the marital relationship.

Conformity with Islamic principles

Under classical law, *talaq-al-bidat* is irrevocable but under the ordinance that is also revocable as per section 7 as all forms of talaq is made not to be effective unless 90 days are passed from the date of notice. So husband can take his wife back even after giving her talaq-ul-bain or irrevocable divorce within 90 days of pronouncement. Here conflict is seen between the statutory law and that of classical Islamic law. And the provision of reconciliation by the U.P chairman is quite consistent with classical Islamic law. Rather it has strengthened the classical law. The almighty encourages the husband and wife to appoint arbitrators as the first step to aid in reconciliation in the process of divorce. If the reconciliation step fails, both men and women are guaranteed their right to divorce as established in the Qur'an.

MAINTENANC

Maintenance allowance is the consideration for the control which the husband exercises over movement of the wife. It includes proper food, clothing and accommodation. Maintenance is obligatory in lawful (*shahi*) marriages. With regard to the issue of maintenance, the Qur'an addresses the ex-husband's financial obligation to his ex-wife but it does not provide a specific formula for the amount of support (2:241, 65:4-7). This is open for negotiation between parties and should be in proportion with the husband's financial income. Under classical law, maintenance of the wife is an obligatory duty of the husband. If he neglects or refuses to maintain her without any lawful cause, she can sue him in the family court under section 5 of the Family Courts Ordinance, 1985. But the decree for maintenance is enforceable only from the date of decree; she can not claim it from the day when cause of action arose, unless there was a specific agreement between them. The commission on Marriages and family Law, 1956 recommended to allow past maintenance to the divorced wife but it was not incorporated into law.

In the case of *Rustom Ali v. Jamila Khatun*, 43 DLR(1991)p.301 the HCD held that she is not entitled to past maintenance unless the claim is based on specific agreement. But in the case of *Sirajul Islam v. Helena Begum*, 48 DLR, (1996) p. 48 the court – granted a half prior to the institution of the suit. In the case of *Hefzur Rahman v. Shamsun Nahar Begum*, 47 DLR (1995) p. 74. Here in this case the court gave the liberal interpretation of the Quranic word *mataa* that *mataa* is something to which a divorced is entitled, and which a former husband is under an obligation to pay.

In the case of *Mohd. Ahmed Khan v. Shah Bano Begum*, AIR, 1995 SC, p.945 the full bench of the Indian SC held that “The position is that, if the divorced wife is able to maintain herself, the husband's liability to provide maintenance for her ceases with the expiration of the period of *iddat*. If she is unable to maintain herself, she is entitled to take recourse to section

125 of the code. India has solved the problem by The Muslim Women (Protection of Rights on Divorce) Act, 1986.

Reforms in maintenance in classical law

Section 9 of the MFLO 1961 provides if any husband fails to maintain his wife adequately, or where there are more wives than one, fails to maintain equitably, the wife or all or any of the wives may, besides other legal remedy, apply to the chairman who shall form an arbitration council to determine the matter; this council may specify the amount of maintenance to be paid by the husband. Section 2(ii) of the DMMA of 1939 provides failure or neglect to provide maintenance for two years may be a ground for obtaining a decree for dissolution of marriage.

Custody and guardianship

Like India and Pakistan, the *Hizanat* or custody law of minor children is governed by a combination of statute laws, i.e., The Guardian and Wards Act, 1890, Muslim personal law, case law, and the court's concern for the children's well-being. Custody is the actual care, rearing and control of the child. The question of custody arises when the parents are separated. The law regarding custody and guardianship under *Sunni Hanafi* law is straightforward. When the couple is separated due to divorce or otherwise, a mother under this law is entitled to the custody (*Hizanat*) of the child until, if she is a girl, she reaches puberty and if a boy, he reaches the age of 7 years. She retains this right even if she is divorced.

Under *Hanafi* law the guardian of the father and after him the father's executor (*wasi*), the grandfather and his executor in that order of priority. Where the daughter is above the age of puberty and the son is above the age of seven, the custody belongs to the father and paternal relations in order of priority. All schools of Islam agree that the mother is entitled to the custody of her children until the first few years of her life. The custody of an infant child belongs to the mother, this right is known as *hidana*. Under *hanafi* law the mother is entitled to the custody of her male child till the age of 7 years, and of her female child till the puberty. Issues like custody have become controversial. For example, the Qur'an advises the husband and wife to consult each other in a fair manner regarding their children's future after divorce (Quran 2:232-3).

Reforms made by the Guardians and Wards Act, 1890 and Case Laws

The Act of 1890 does not make any distinction between custody and guardianship. But in Muslim law these two are quite different things. Some reforms are taken by section 7 and 17 of the Act. Under section 7 in the absence of the mother, father, maternal and paternal relations; the court may appoint a guardian for the welfare or benefit of the minor. Under section 17 (1) in appointing or declaring the guardian of a minor, the court shall be guided by the by what, consistently with the law to which the minor is subject, appears in the circumstances to be for the welfare of the minor. Under section 17(2) in considering what will be the welfare of the

minor, the court shall regard to the age, sex and religion of the minor, character and capacity of the proposed guardian and his nearness of kin to the minor, the wishes if any, of a deceased parent, and existing or previous relations of the proposed guardian with the minor and his property.

Child's participation in the proceeding

Under section 17(3) if the minor is old enough to form an intelligent preference, the court may also consider that preference. Here it is evident that some matters to be taken into considerations but in pure Islamic law no such provision is available. The most mentionable reforms are seen in the case laws made by the courts of the both the three countries. *Ayesha Khanum v. Major Sabbir Ahmed* in delivering the judgment of the court, Hassan J, later C.J, held that the provisions of the personal law of the parties, even those of statute law, are subject to the "paramount need of the welfare of the child." In support of his view he cited the case of *Smt. SurinderKaurSandhu v. Harbux Singh sandhu*, AIR 1984 SC 1224, where the welfare of the minor was of paramount consideration and the mother was entitled to custody of the minor boy.

The welfare doctrine would have precedence

However the judges made it clear that if the personal law and the welfare doctrine conflicts, the welfare doctrine would have precedence. The most important case on the subject is –*Md. Abu Bakar Siddique v. S.M.A Bakar*, DLR (AD) 1986, P. 106 in this case the court granted the custody of an eight -year-old boy to his mother for welfare of the boy. As the boy was suffering from serious disease and it was established the mother, a doctor, would be able to look after him better. Though under *hanafi* law the father was supposed to be entitled to the custody of the boy above seven, here mother was given the custody of the boy above seven. Another case on same consideration is *Mst. Zohra Begum v. Sh. Latif Ahmed Munawwar*, where the court said – it is true that, according to hanafi law, father is entitled to the Hizanat or custody of the son above seven years of age.... But this rule is found neither in Quran nor in Sunnah. It would not seem to have any claim to immutably so that it can not be departed from, even if circumstances justified such departure.... Indeed, the principle of Islamic law has to be regarded, but deviation wherefrom would seem permissible, as the paramount consideration should be the child's welfare.

In a case (though between a hindu couple), where the custody of a one and a half year old child was given to the father. in appeal the SC of India held – it is settled that that in matters concerning the custody of minor children, the paramount consideration is the welfare of the minor and not the legal right of this or that particular party. And ... that the custody with the (respondent) father cannot be said to be illegal. Similar decisions were given in several other cases: *Mst. Sultana Begum v. Muhammad Shafi* it was held the welfare of the minor was deemed to be

paramount consideration.

Fahmida Begum v. Habib Ahmedheld doctrine of *Qiyas* can be applied to the welfare of the minor as there is no *Quranic* or traditional text. Zohra Begum v. Maimuna Khatun held – the mother would be better to look after the minor even though she takes a second husband after the death of the minor’s father who is not within the prohibited degrees with the minor. Abdul jalil v. Sharon Laiily Begum Jalil, here three below seven was given to mother and the eldest one was given to the father. Section 12 and 13 of the Guardians and Wards Act 1890 are applicable to the proceedings before the family court in deciding guardianship of minor where evidence are to be taken and the welfare and best interest of the minor shall be the paramount consideration. Md. Rahmatullah&ors. Vs. Most.Sabana Islam &ors. 54 DLR (HCD), 2002. No other disqualification of the mother expecting her marriage to a stranger was raised. It was the view of the Courts that the uncles were acting against the interest of the minor by recourse to litigation to deprive her of the property bequeathed to litigation to deprive her of the property bequeathed to her father. The court of Appeal had correctly affirmed the conclusion of the assistant Judge that welfare of the minor would be best secured in the custody of the mother. Saleha Begum Vs. Dilruba Begum 7 MLR (HCD) 2001. Page-346

The welfare and best interest of the minor shall be the paramount consideration. Md. Rahmatullah and others Vs. Most. Sabana Islam and others, 8 MLR, (HCD) 2003 p. 242. But when no better claimant is found the mother, despite her marriage, may be appointed guardian of the minor child having regard to the welfare of the child as paramount consideration. The case is – KaratulAinakias Rita and others Vs. Md.Slimullah Khan, 9 MLR(AD) 2004, p.71 The court has to take into consideration the welfare and best interest of the minor while deciding custody of the child. Nargis Sultana v. Amirul Borchowdhury, the court held that in custody cases the welfare of the minor was the dominant consideration, not what the parents have agreed upon.

Access and visitation rights

With regard to parents’ rights to access the minor, there is no Islamic or statutory provision dealing with the issue of ensuring access of one parent to the child while in the custody of another. It was held in AktarMasood v. BilkisJahanFerdoust that a father can not be denied access to his minor son while the latter is in the custody of the mother.

Adoption in Muslim personal law

The practice of adoption, though prevalent among the Muslims in Bangladesh, the classical Muslim law does not give the legal basis by granting the rights of inheritance to the adopted child. The taking of adoption is called *kafala* or fosterage in Islam.

Adopted children and adoptive parents

Relationships based on adoption are generally excluded from traditional

Islamic inheritance rules. In Indonesia's *Kompilasi Hukum Islam* (Compilation of Islamic Laws), however, an adopted child must receive an obligatory bequest of up to one-third of the estate when the child has not been named in an express bequest by the adoptive parents. The adoptive parents also receive an obligatory bequest out of their child's estate. In Islamic Southeast Asia, it is common to raise children outside of the birth home, so the obligatory bequest provides for fair inheritance distribution to the adopted children. This rule derived from the Egyptian law providing for obligatory bequests for orphaned grandchildren (Cammack).

Conformity of the best interest doctrine with Islamic principles

Islam always says about the special care and protection of the children. As Hazrat Mohammad (sm) says – who among us does not love youngers and respect the elders he is not in our Jamaat. There are some national and international instruments where the special rights attention of the children is emphasized. i.e Declaration on the Rights of the child 1959, the Universal Declaration of Human rights 1948, Hague convention on the protection of Children and co-operation in respect of Intercountry Adoption, 1993 etc. Mother is the best care taker and nurturer for the child. In the lap of the mother a child feels best protected and comfortable so in such a situation if the child is not with his/her mother he/she can be hampered mentally and physically. In case of girls they can know the norms and household chores from her mother. So it can be said that “the best interest principle” adopted by the court, though in some cases violates the Islamic rules of 7 years for boy and puberty for the girl does not neglect or transgress it.

INHERITANCE

Inheritance is the transfer of legal possession of deceased persons onto their descendants. According to *Bukhari*, inheritance is the entry of living persons into possession of dead persons' property and exists in some form wherever the institution of private property is recognized as the basis of the social and economic system.

Surah an-Nisa 4:7

Men shall have a share in what parents and kinsfolk leave behind, and women shall have a share in what Parents and kinsfolk leave behind, whether be it little or much – a share ordained by Allah. Allah directs you as regards your Children's (Inheritance): to the male, a portion equal to that of two females: if only daughters, two or more, their share is two-thirds of the inheritance; if only one, her share is a half. For parents, a sixth share of the inheritance to each, if the deceased left children; if no children, and the parents are the (only) heirs, the mother has a third; if the deceased left brothers (or sisters) the mother has a sixth. (The distribution in all cases ('s) after the payment of legacies and debts. You know not whether your parents or your children are nearest to you in benefit. These are settled portions ordained by Allah; and Allah is All-knowing, All-wise

(Quran Suranisa verse No.11).

In what your wives leave, your share is a half, if they leave no child; but if they leave a child, you get a fourth; after payment of legacies and debts. In what you leave, their share is a fourth, if you leave no child; but if you leave a child, they get an eighth; after payment of legacies and debts. If the man or woman whose inheritance is in question, has left neither ascendants nor descendants, but has left a brother or a sister, each one of the two gets a sixth; but if more than two, they share in a third; after payment of legacies and debts; so that no loss is caused (to any one). Thus is it ordained by Allah; and Allah is All-knowing, Most Forbearing (4:12).

Reforms in the Islamic law of inheritance

Doctrine of representation

When one of the sons of a person dies, leaving child/children, before that person, this child or children does not inherit the property of his grandfather. But the doctrine under which this grandchild represents his father in the property his grandfather is called “The doctrine of representation”. Under this doctrine this grandchild gets equal property as his father would have received, if he were alive. This doctrine is introduced by the Muslim Family Law Ordinance, 1961 which was enacted by Pakistan (when Bangladesh was East Pakistan), now followed by Bangladesh and Pakistan. According to all four Sunni schools, the deceased’s orphaned grandson or granddaughter (orphaned by the death of the deceased’s son or daughter) is totally excluded from inheriting if a son exists. The son excludes his nieces and nephews, and, in the traditional tribal society, was expected to support them as he would support his own children. But this is less likely to happen in modern societies where the nuclear family is emphasized and each nuclear family is an independent branch of the extended family.

Reform in Somalia in the law of inheritance

In Somalia, males and females are now completely equal with regard to inheritance rights. When there are no children or grandchildren, the widow or widower inherits one-half of the estate. When children or grandchildren exist, this amount is reduced to one-fourth of the estate. If the deceased leaves only a parent, only a sibling or only a single child, the parent or sibling or child, regardless of gender, inherits the entire estate (Esposito 2001). In the *Shafi’i and Maliki rules*, a predeceased daughter’s children are excluded even if no other son or daughter exists. The portion of the estate that would have gone to the daughter (and then to her children), had she still been alive, goes to male agnates instead. If there are no sharers or *residuaries*, the estate will go to the public treasury (*bayt al-mal*). In 1946, Egypt addressed this problem by providing for an obligatory bequest for the orphaned grandchild. In Syria, Morocco, and Tunisia have similar systems, though Syria’s applies only to the children of the deceased’s son and not his daughter. Tunisia limits the need for obligatory requests to

cases where the grandchild was not already named to receive a bequest. The total amount of the obligatory bequest for all grandchildren cannot equal more than one-third of the estate (Esposito 2001). In the 1961 Muslim Family Laws Ordinance, Pakistan provided for representational succession by lineal descendants (Esposito 2001). Morocco originally adopted a system of obligatory bequests for orphaned grandchildren but limited it to the children of a predeceased son. In Morocco's 2004 reforms to its *Moudawana* (Family Code), the children of either sons or daughters take an obligatory amount, according to the total size of the estate. The Indonesian *Kompilasi Hukum Islam* (Compilation of Islamic Laws) provides for representation of Pre-deceased heirs in article 185: "An heir who dies before the deceased may be represented by his children", but "The share of the representative may not exceed the share of an heir of the same degree [of relationship] as the person represented" (Cammack 2000, pp.12-13). 2000). Bequests Under the traditional Sunni rules of inheritance, bequests of up to one-third of the estate can be made, but not to an heir unless (for some schools) the other heirs agree. As an attempt to expand the rights of Individuals to dispose of their property according to their wishes, Egypt, Sudan, and Iraq adopted the Shi'ite law of inheritance which allows heirs to receive a bequest of up to one-third of the estate.

CONCLUDING OBSERVATIONS AND FINDINGS

No muslim can believe that islam is an outdated religion and incapable to meet the pace with the changing World. The door of *Ijtihad* is open to the islamic jurists based on the fundamental sources i.e. the Quran and Hadith. So without damaging the basic pillars the *mustahids* (islamic jurists) can interpret islamic law for the better solution because all the circumstances of the World before 1400 years are not quite the same as now in the changing World. However, the reforms made till now into the islamic law by legislations and precedents are in most of the cases deserve praise except some. The reform in the minimum age of Muslim marriage is a good one because in the present context traditional age will create problems. Present polygamy law is better under the MFLO OF 1961. But provisions of banning intervening marriage are not acceptable as marriage should not be a plaything. On the contrary the classical law in this regard should be implemented. There are no provisions in the statutory Acts or Ordinance regarding the witness to the marriage so these provisions can be incorporated in the Muslim Marriages and Divorces Act, 1974. Inserting the mandatory registration in the Act is a good step among the reforms so far made. Dower is *Quranic* provisions so it should be encouraged to be paid to the wife besides prohibition of dowry. It should not be only for writing and being effective after the death of the husband. Maintenance should be limited only during marriage and till the period of iddat not post divorce, but past maintenance may be allowed in a reasonable manner as in Shah Banu Case of India. In case of divorce, reform by the Act of 1939 is a good step in the establishment of women's rights. (Divorce) Marriage, according to Mohammadan Law, is a civil contract. The wife at the time of

marriage is at liberty to get the husband's power of divorce delegated to her on stated conditions, and thus secure equality of divorce with her husband. However the women should be made aware of their rights of talaq-e-tafwid(delegated divorce) as this the easiest way for them to dissolve the marriage by them.

Talaq –ul- bidat as made in the MFLO revocable is praiseworthy because bidat is a sin as the prophet said. A wife who spends her whole life for her husband's family should not be subjected to such tyranny system of triple talaq at the same time. Its context was different when it was allowed by the second caliph of islam; as it was a punitive measure to the people who resorted to it. In case of custody and guardianship, "the best interest of minor principle adopted by the court" is a contemporary advancement in the legal system. Though this principle is in some cases violates classical law; the guardianship always remains on the husband. So there is no grave violation. The main reform in inheritance is the introduction of MFLO 1961 by inserting the provisions of the doctrine of representation. This is for the protection and assurance of the orphan's rights. As the Report of commission on marriages and Muslim laws-1956; The gazette of Pakistan, Extra, June, 20, 1956. At p. 1223 states –"the right of representation entitles a grandfather to inherit the property of his grandsons even though the father of the testator has pre-deceased him, why can the same principle be not applied to the lineal descendants, permitting the children of a pre-deceased son or daughter to inherit property from their grandfather."

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