

Family Courts Ordinance, 1985

Family Courts Ordinance, 1985 aims at resolving legal disputes related to dissolution of marriage, restitution of conjugal relation, dower, maintenance, and guardianship and custody of children. This Ordinance was promulgated in 1985. The contents selected for consideration in the Ordinance are compiled from Muslim law, Hindu Law, Civil Procedure Code, Evidence Act, Dissolution of Muslim Marriages Act, and the Muslim Family Laws Ordinance. This Ordinance extends to whole of Bangladesh except the hill districts of Rangamati, Khagrachhari and Bandarban. This law provides that all courts of munsifs shall be Family courts and the munsifs shall be the judges of Family courts. Basically Family courts shall have exclusive jurisdiction to entertain, try and dispose of matters relating to marriage, conjugal relations, dower, maintenance, guardianship and custody of children.

Dissolution of marriage (talak) Under Muslim law, the contract of marriage may be dissolved in any one of the following ways: (i) by the husband at his will, without the intervention of the court; (ii) by mutual consent of the husband and wife, without the intervention of the court; (iii) by a judicial decree at the suit of the husband or wife. The wife cannot divorce herself from her husband without his consent unless such right is given to wife in the Nikahnama. This type of talak is known as talak-e-toufiz. When the divorce is effected by mutual consent, it is called khula or mubara'at according to the terms of the contract between the parties.

The dissolution of contract of marriage by the husband at his will without the intervention of the court is called talak. Talak may be oral or in writing. To talak orally husband with sound mind pronounces a few words wilfully, which are expressed (saheeh) or well understood as implying divorce, and since pronouncement behaves accordingly. Talak in writing or talaknama is the written document of oral talak. The deed may be executed in the presence of the kazi, or the wife's father or of other witnesses. However, the deed should be in customary form and properly superscribed and addressed so as to show the name of the writer and person addressed. In Muslim law, the wife too has limited right to divorce her husband judicially. A wife can dissolve the contract of marriage with the intervention of the court on the grounds: (i) the whereabouts of the husband are unknown for a period of four years; (ii) failure of the husband to provide for the maintenance of the wife for a period of two years; (iii) sentence of imprisonment on husband for a period of seven years or more; (iv) failure without reasonable cause to perform marital obligations; (v) impotence of husband; (vi) insanity of husband or his suffering from virulent venereal disease; (vii) repudiation of marriage by wife; (viii) cruelty of husband; and (ix) marriage without her consent. This divorce is called talak-e-taufiz.

Restitution of conjugal relation The husband may sue against the wife for restitution of conjugal life if the wife, without lawful cause, ceases to cohabit with her husband. This suit is maintainable only against legally married wife. However, a husband cannot file such a suit if the contract of marriage is dissolved.

Dower (mahr) It is the sum of money or other property which the wife is entitled to receive from the husband in consideration of the marriage. Muslim law made it binding (farz) for all Muslim husbands to settle the amount of dower in marriage and record the same in the marriage contract popularly known as Kabinnama or Nikahnama. The amount of dower is settled basing the bride's social status, personal traits, and beauty. The husband may settle any amount he likes by way of dower upon his wife, which in any case must not be less than ten dirham or equivalent thereof. Husband is bound to pay the entire amount of dower settled even though it is beyond his means. It is the debt of husband to his wife, and he has to pay the wife the total amount on demand unless otherwise is stated in the marriage contract. Realisation of dower is a right of wife and even a widow can keep her husband's properties in possession under a claim for her dower till the whole amount is paid.

Maintenance Maintenance (nafafa) is the monetary support that a wife, children, parents, and grand children can claim as a matter of legal right on the husband, parents, son, and grandfather respectively to maintain their livelihood. It includes food, clothing, lodging, medical support for the adults (in applicable cases), and also includes other necessary expenses for mental and physical well being according to their respective status in society. Grounds by which the obligation is imposed on a person in order of gravity are: (a) marriage, (b) kinship, and (c) inheritance. A father is bound to maintain his sons until they have attained puberty, and his daughters until they are married.

Maintenance of widowed or divorced daughters is also a responsibility of father. If the father is poor and incapable to maintain, mother will shoulder the responsibility. If the father is poor and infirm, and the mother is also poor, obligation to maintain the children lies on grandfather, provided he is in easy circumstances. Wife is the first and prime claimant of maintenance, and she has every right to realise the claim even though she is financially well off than her husband or the husband does not have enough means to meet up the claim. After divorce, wife is entitled to maintenance up to iddat period which may extends to three months. There are provisions for maintenance in other religions too. An able man should, in addition to his wife children and parents, subject to capability, maintain grandparents and other relations.

Guardianship or custody of children In all cases father, if alive, is the natural guardian of the person and property of his minor child. In absence of father, the responsibility shifts to mother, and in case of absence or inability of mother, grandfather or the nearest relation of the parents becomes guardian of the person and property of the minor. Even the government can be the guardian of the person and property of the minor in demanding situation. Prior to promulgation of Family Court Ordinance 1985, district judges were appointed the guardian of person and property of a minor, which is now vested on the concerned assistant judge of the Family court. All application for appointment of a guardian of the person or property or both of minor are to be under the Guardians and Wards Act, 1890. However, a prospective guardian may start working as a guardian of the minor as per Muslim law even before getting judgment of the court.

Family courts resolve problems arising out of the above mentioned problems. A person may, on payment of twenty five taka, prefer a plaint to be presented to a Family court. The judge can pass the judgment and decree against which appeal petition may be filed with the district judge's court provided the judgment does not relate to (a) the article 2(8) of the Dissolution of Muslim Marriage Act, 1939 (Act VIII of 1939) or (b) for dower not exceeding five thousand taka.

An appeal against the judgment, decree or order of a Family court shall be preferred within thirty days of the passing of the judgment, decree or order excluding the time required for obtaining true copies thereof. The High Court Division may, either on the application of any party or of his own accord transfer any suit under this Ordinance from the Family court to another court within the local limits of its jurisdiction. A Family court shall be deemed to be district court for the purposes of guardianship and custody of children.

The provisions of this Ordinance shall have priority over other concerned rules, provided that does not affect the personal law or the religious law prevailing in the country. These rules are applicable for the adherents of those religions in which dissolution of marriage is accepted. This court shall conduct the trial and shall pass the judgment as per religious provisions. However, this Ordinance shall not affect any of the provisions of Muslim Family Law Ordinance of 1961.