

Exception III: Uterine brother and sister.—Where uterine brothers and sisters survive with full sisters, the uterine brothers and sisters do not participate in Return. (This rule does not apply to consanguine sisters).

Illustrations

- (a) Uterine brother. . . . $\frac{1}{6}$
 Full sister $\frac{1}{2}$ (as sharer) + $\frac{1}{3}$ (by Return) = $\frac{5}{6}$.
- (b) Wife $\frac{1}{4}$ = $\frac{3}{12}$.
 Uterine sister $\frac{1}{6}$ = $\frac{2}{12}$.
 Full sister (by Return) = $\frac{7}{12}$.

Doctrine of Increase in Shia law.—Shia law does not recognize Hanafi doctrine of Increase (*Aul*). Shia law says that if the sum total of the shares exceeds unity, the fraction in excess of the unity is deducted invariably from the share of—

- (i) the daughter or daughters;
 (ii) the full or consanguine sister or sisters.

Illustrations

- (a) Daughter $\frac{1}{2}$ = $\frac{6}{12}$ reduced to $(\frac{6}{12} - \frac{1}{12}) = \frac{5}{12}$.
 Father $\frac{1}{6}$ = $\frac{2}{12}$.
 Husband $\frac{1}{4}$ = $\frac{3}{12}$.
 Mother $\frac{1}{6}$ = $\frac{2}{12}$.
 Total $\frac{13}{12}$ $\frac{12}{12}$
- (b) Full sister $\frac{1}{2}$ reduced to $(\frac{1}{2} - \frac{1}{6}) = \frac{1}{3}$.
 Husband $\frac{1}{2}$
 Uterine brother $\frac{1}{6}$

PART TWO**STATUTORY FAMILY LAWS****Chapter Twenty One****Statutory Laws Relating to Muslim Law**

In Indo-Pak-Bangladesh sub-continent several statutes were passed regarding Muslim marriage and Related matters. The important statutes concerning it are (1) The Child Marriage Restraint Act, 1929 (Act No. XIX of 1929), (2) The Dissolution of Muslim Marriages Act, 1939 (Act No. VIII of 1939), (3) The Muslim Family Laws Ordinance, 1961 (Ordinance No. VIII of 1961) and (4) The Muslim Marriages and Divorces (Registration) Act, 1974 (Act No. III of 1974). In these statutes mutual rights and duties of the husband and the wife have been clearly stated, and the jurisdictions of the courts, in case of disputes, have been specified in order to facilitate quick and speedy disposal of the suits relating to marriage, dower, divorce, maintenance etc.

It is to be noted that all the laws in the form of statutes, ordinance etc. enforced in Pakistan have been adopted in Bangladesh by 'Laws Continuance and Enforcement Order, 1971'. It is to be further noted that the insertion of the word 'Bangladesh' in place of Pakistan, East Pakistan etc. was made by P.O. No. 48 of 1972.

The Child Marriage Restraint Act. 1929

(Act No. XIX of 1929)

(1st Oct. 1929)

An act to restrain the solemnization of child marriage. Whereas it is expedient to restrain in the solemnization of child marriages; It is hereby enacted as follows:

1. Short Title, Extent And Commencement

(1) This Act may be called the Child Marriage Restraint Act, 1929.

(2) It extends to the whole of Bangladesh and applies to all citizens of Bangladesh wherever they may be

(3) It shall come into force on the 1st day of April, 1930.

2. Definitions

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

(a) "Child" means a person who, if male, is under twentyone years of age and if a female, is under eighteen years of age;¹

(b) "Child marriage" means a marriage to which either of the contracting parties is a child;

(c) "Contracting party" to a marriage means either of the parties whose marriage is, or is about to be, thereby solemnised;

(d) "Minor" means a person who, if a male, is under twenty-one years of age, and, if a female, is under eighteen years of age;²

(e) "Municipal Corporation" means the Municipal Corporation constituted under the Chittagong Municipal Corporation Ordinance, 1982 (XXXV of 1982), or the Dhaka Municipal

¹ Substituted by section 2(a) of Ordinance 38 of 1984.

² Substituted by section 2(b) of Ordinance 38 of 1984.

Corporation Ordinance, 1983 (XL of 1983), or the Khulna Municipal Corporation ordinance, 1984 (LXXII of 1984), within whose jurisdiction a child marriage is or is about to be solemnized;

- (f) "Paurashava" means the Paurashava constituted under the Paurashava Ordinance, 1977 (XXVI of 1977), within whose jurisdiction a child marriage is or is about to be solemnized; and
- (g) "Union Parishad" means the Union Parishad constituted under the local Government (Union Parishads) Ordinance, 1983 (LI of 1983) within whose jurisdiction a child marriage is or is about to be solemnized.

3. Omitted.³

4. Punishment for male adult above twenty-⁴ one years of age or female adult above eighteen years of age marrying a child – Whoever, being a male above twenty-one years of age, or being a female above eighteen years of age, contracts a child marriage, shall be punishable with simple imprisonment which may extend to one month, or with fine which may extend to one thousand taka, or with both.

5. Punishment for solemnising a child marriage, - Whoever performs, conducts or directs any child marriage shall be punishable with simple imprisonment which may extend to one month, or with fine which may extend to one thousand taka, or with both, unless he proves that he had reason to believe that the marriage was not a child marriage.

6. Punishment for parent or guardian concerned in a child marriage

(1) Where a minor contracts a child marriage, any person having charge of the minor, whether as parent or guardian or in any other capacity, lawful or unlawful, who does any act to promote the marriage or permits it to be solemnised, or negligently fails to prevent it from being solemnised, shall be punishable with simple imprisonment which may extend to one month, or with fine which may extend to one thousand taka, or with both:

³ Omitted by section 3 Ordinance no. 38 of 1984.

⁴ Replaced by section 4 of Ordinance No. 38 of 1984.

Provided that no woman shall be punishable with imprisonment.

(2) For the purposes of this section, it shall be presumed, unless and until the contrary is proved, that where a minor has contracted a child marriage, the person having charge of such minor has negligently failed to prevent the marriage from being solemnised.

7. Imprisonment not to be awarded for offences under section 3

Notwithstanding anything contained in section 25 of the General Clauses Act, 1897, or section 64 of the Bangladesh Penal Code, a Court sentencing an offender under section 3 shall not be competent to direct that, in default of payment of the fine imposed, he shall undergo any term of imprisonment.⁵

8. Jurisdiction under this Act. – Notwithstanding anything contained in section 190 of the Code of Criminal Procedure, 1898, no Court other than that of Magistrate of the first class shall take cognizance of, or try, any offence under this Act.

9. Mode of taking cognizance of offences. No Court shall take cognizance of any offence under this Act except on a complaint made by the Union Parishad or if there is no Union Parishad in the area, by such authority as the Government may in this behalf prescribe, and such cognizance shall in no case be taken after the expiry of one year from the date on which the offence is alleged to have been committed.

10. Preliminary inquiries into offences under this Act. The Court taking cognizance of an offence under this Act shall, unless it dismisses the complaint under section 203 of the Code of Criminal Procedure, 1898, either itself make an inquiry under section 202 of that Code, or direct a Magistrate of the first class subordinate to it to make such inquiry.

11. Power to take security from complainant.—(Omitted by section 12 (5) of the Muslim Family Laws Ordinance, 1961.

12. Power to issue injunction prohibiting marriage in contravention of this Act.

(1) Notwithstanding anything to the contrary contained in this Act, the Court may, if satisfied from information laid before it

⁵ This section has become redundant due to omission of section 3

through a complaint or otherwise that a child marriage in contravention of this Act has been arranged or is about to be solemnised, issue an injunction against any of the persons mentioned in sections 4, 5, and 6 of this Act prohibiting such marriage.

- (2) No injunction under sub-section (1) shall be issued against any person unless the Court has previously given notice to such person, and has afforded him an opportunity to show cause against the issue of the injunction.
- (3) The Court may either on its own motion or on the application or on the application of any person aggrieved rescind or alter any order made under subsection (1).
- (4) Where such an application is received, the Court shall afford the applicant an early opportunity of appearing before it either in person or by pleader; and if the Court rejects the application wholly or in part, it shall record in writing its reasons for so doing.
- (5) Whoever, knowing that an injunction has been issued against him under sub-section (1) of this section, disobeys such injunction shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to one thousand taka or with both:

Provided that no woman shall be punishable with imprisonment.

Commentaries

The purpose of the enactment of the Child Marriage Restraint Act is clear from its pre-amble. It aims at the restraint of the solemnization of child marriages belonging to any set, caste, or religion. This Act, therefore, is applicable for Muslim child marriage also. It is in force in Bangladesh, Pakistan and India. Section 12 of this Act is a self-contained provision. Its main object is to prevent child marriages from being performed.

This Act has brought changes in Muslim law on different points. First, according to Muslim law, a girl becomes major for the purpose of marriage on the happening of either of the two events, (1) on the completion of her fifteen year, and (2) on her attaining the state of puberty at an earlier period. The burden of proof regarding a girl's achieving either of these two conditions for attaining majority for the purpose of marriage lies on those who claim to be her guardian or give her in marriage whose testimony is to be relied.⁶ Secondly, when a girl is a minor, it is permissible in Muslim law that her father or grandfather or other paternal relations, as guardian, can give her in marriage. But according to this Act, a Muslim girl who has not attained the age of eighteen years can not marry on her own accord, though she may have attained puberty. Again, a Muslim male who is below the age of twenty-one years can not marry, even though he has attained puberty. Thus this Act has imposed some restrictions on Muslim law in respect of the age of marriage. According to Islam, there is no minimum age of marriage. At any age marriage may take place provided that the parties themselves cannot contract marriage before their attaining puberty. Hazrat Muhammad (Peace be on him) married Hazrat Aisha (R) before her attaining puberty.

“Aisha reported that the Messenger of Allah married her while she was a girl of seven years. She was sent to him while she was a girl of nine years and he played with her. He died while she was a girl of 18 years.”⁷

This Act, therefore, has brought a remarkable change in the Muslim Shariya law by imposing limit on the age of marriage. That is, in case of a male the minimum age shall be 21 years and in case of a female the minimum age shall be 18 years for solemnizing marriage. Any violation of such minimum age-limit is punishable under Section 4, 5 and 6 of this Act.

⁶ R.B. Sethi, *Muslim Marriage and its Dissolution*, P. 5.

⁷ Fazlul Karim, *Al-Hadis*, Vol. II, P. 650v *Shah: Bokhari*, Vol. V, P.61.

Chapter-Twenty Two

The Dissolution of Muslim Marriages Act, 1939

(Act No. VIII of 1939)

An Act to consolidate and clarify the provisions of Muslim law relating to suits for dissolution of marriage by woman married under Muslim law and to remove doubts as to the effect of the renunciation of Islam by a married Muslim woman on her marriage tie. Whereas it is expedient to consolidate and clarify the provisions of Muslim law relation to suits for dissolution of marriage by women married under Muslim law and to remove doubts as to the effect of the renunciation of Islam by a married Muslim woman on her marriage tie; It is hereby enacted as follows:-

1. Short Title and Extent.-

- (1) This Act may be called the Dissolution of Muslim Marriages Act, 1939.
- (2) It extends to the whole of Bangladesh.

2. Grounds for Decree for Dissolution of Marriage

A woman married under Muslim law shall be entitled to obtain a decree for the dissolution of her marriage on any one or more of the following grounds, namely:-

- (i) that the whereabouts of the husband have not been known for a period of four years;
- (ii) that the husband has neglected or has failed to provide for her maintenance for a period of two years;
- (iia) that the husband has taken an additional wife in contravention of the provisions of the Muslim Family Laws Ordinance, 1961;¹
- (iii) that the husband has been sentenced to imprisonment for a period of seven years or upwards;
- (iv) that the husband has failed to perform, without reasonable cause, his marital obligations for a period of three Years,

¹ Inserted by section 13(a) of the Muslim Family Laws Ordinance.