

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

a divorce on application being made to him for such registration and the purpose of such registration is to avoid confusion and consequences of non-registration.

The Nikah Registrar shall register a marriage or divorce in the prescribed manner and he must maintain separate registers of marriages and divorces in prescribed forms as provided under section 8 of the Act. It further provides that the Registrar shall deliver to the parties concerned an attested copy of such registration made in the register of registration of marriage and divorce. Thus the Muslim Marriages and Divorces (Registration) Act, 1974 has provided for a documentary evidence by making provision for registration of all such marriages and divorces solemnized under Muslim law. In the absence of such provision, the question relating to the validity and the existence of marriage and marriage tie would arise frequently in civil and criminal courts.

No historical fact is available regarding the registration of marriage or divorce either during the period of the prophet Muhammad (Peace be on him) or during the time of the four Caliphs; and thus this Act has brought a great change in the Muslim law. During the early period of Islam, the problem relating to marriage and divorce was not so acute as is now-a-days. With the growth of population and change of social pattern, the problem has become too complex which necessitated this change in Muslim law. But nothing is to be found in this change which is in contravention with the Holy Quran or the *Sunna*. The Muslim Marriages and Divorces (Registration) Act, 1974 is, therefore, a clear departure from the earlier enactments. Disputes relating to marriages and divorces have been decreased after the enforcement of this Act. It is to be mentioned here that this Act does not say anything regarding the effects of non-registration of marriages or divorces.

Chapter Twenty Five The Dowry Prohibition Act, 1980

(Act No. xxxv Of 1980)

The following Act of parliament received the assent of the President on 26th December, 1980 and is hereby published for general information:

(Act No. xxxv Of 1980)¹

An Act to prohibit the taking or giving of dowry in marriages.

Whereas it is expedient to make provision to prohibit the taking or giving of dowry in marriages:

It is hereby enacted as follows-

1. SHORT TITLE AND COMMENCEMENT—

- (1) This Act may be called the Dowry Prohibition Act, 1980.
- (2) It shall come into force on such date as the Government may, by notification in the official Gazette, appoint.

2. DEFINITION—

In this Act, unless there is anything repugnant in the subject or context, "dowry" means any property or valuable security given or agreed to be given either directly or indirectly-

- (a) by one party to a marriage to the other party to the marriage, or
- (b) by the parents of either party to a marriage or by any other person to either party to the marriage or to any other person:

at the time of marriage or at any time before or after the marriage as consideration for the marriage of the said parties but does not include dower or muhr in the case of persons to whom the Muslim Personal Law (Shariat) applies.

¹ Published on 26th December, 1980 in the Bangladesh Gazette (Extra Ordinary)

Explanation 1— For the removal of doubts, it is hereby declared that any presents made at the time of a marriage by any person other than a party to the marriage to either party to the marriage in the form of any articles the value of which does not exceed five hundred taka, shall not be deemed to be dowry within the meaning of this section, unless they are made as consideration for the marriage of the said party.

Explanation II— The expression “valuable security” has the same meaning as section 30 of the Penal Code (Act XLV of 1860).

3. PENALTY FOR GIVING OR TAKING DOWRY—

If any person, after the commencement of this Act, gives or takes or abets the giving or taking of dowry, he shall be punishable with imprisonment which may extend to five years and shall not be less than one year, or with fine, or with both.

4. PENALTY FOR DEMANDING DOWRY—

If any person, after the commencement of this Act, demands, directly or indirectly, from the parents or guardian or a bride or bridegroom, as the case may be, any dowry he shall be punishable with imprisonment which may extend to five years and shall not be less than one year, or with fine, or with both.

5. AGREEMENT FOR GIVING OR TAKING DOWRY TO BE VOID—

Any agreement for the giving or taking of dowry shall be void.

6. (Repealed)

7. COGNIZANCE OF OFFENCES—

Notwithstanding any thing contained in Cr.PC 1898, (Act V of 1898)-

(a) no court inferior to that of a magistrate of the first class shall try any offence under this Act;

(b) no court shall take cognizance of any such offence except on a complaint made within one year from the date of the offence;

(c) it shall be lawful for a magistrate of the first class to pass any sentence authorized by this Act on any person convicted of an offence under this Act.

8. OFFENCE TO BE NON-COGNIZABLE, BAILABLE AND NON-

COMPOUNDABLE— Every offence under this Act shall be non-cognizable, non-bailable and compoundable.²

9. POWER TO MAKE RULES—

(i) The government may, by notification in the official Gazette, make rules for carrying out the purpose of this Act.

(ii) Every rule made under this section shall, as soon as may be after it is made, be laid before Parliament and if Parliament, before the expiry of the session in which it is laid, agree in making any modification in the rule or agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of effect as the case may be, subject that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Commentaries

This Act prohibits the taking or giving dowry and now it is punishable offence. Dowry means, under this Act, any property or valuable security which one party of the marriage gives or agrees to give to other party of the marriage; or which is taken or given by the parent of either of the party of the marriage or may be received by any other person as a consideration of marriage.³ Dowry may be given and taken at the time of marriage or before or after the marriage. But it does not include dower or mahr which is payable, under Islamic law, by the

² The Words “bailable and non-poundable” have been substituted by the words “non bailable and compoundable” under section 4 of Ordinance XXVI of 1986.

³ Abul Basher Howlader VS. State (1994) 14BLD (A.D)185.

husband to the wife. Section 2 of the Prevention of Repression of Women and Children Act, 2003 also defines dowry like this Act.

The Claiming of dowry is not only a social crime but also a punishable offence. So parliament enacted this Act to prevent this crime. Section 3 and 4 of the Act prescribe simple imprisonment extending to five years but not less than one year or fine for taking or giving dowry, and for abetment thereof.⁴ It is an offence even though it is claimed after the marriage.⁵

It is also punishable if the husband or his relatives claim dowry long after the solemnization of the marriage though there was agreement at the time of marriage.⁶ If anybody is found guilty under this Act, he will not be granted bail, since section 8 of the act treats this offence as non bailable and also compoundable.

⁴ Section 2 of Ordinance No. 26 of 1986 enhanced punishment from one year to maximum five years.

⁵ Md. Salam Mollick VS. State 48 DLR 329.

⁶ 14 BLD (AD) 185 (1994)

Chapter-Twenty Six

The Family Courts Ordinance, 1985

(Ordinance No. XVIII of 1985)

An Ordinance to provide for the establishment of Family Courts Whereas it is expedient to provide for the establishment of Family Courts and for matters connected therewith;

Now, therefore, in prsuance of the Proclamation of the 24th March, 1982 and in in exercise of all powers enabling him in that behalf, the President is pleased to make and promulgate the following Ordinance—

1. Short title, extent and Commencement. —

(i) This Ordinance may be called the Family Courts Ordinance, 1985.

(ii) It extends to the whole of Bangladesh except the districts of Rangamati Hill Tract, Bandarban Hill Tract and Khagrachari Hil Tract.

(iii) It shall come into force on such date as the Government may, by notification in the official Gazette, appoint.

2. Definitions.—(1) In this Ordinance, unless there is anything repugnant in the subject or context,—

(a) “Code” means the Code of Civil Procedure, 1908 (V of 1908);

(b) “Family Court” means a Family Court established under this Ordinance;

(c) “Prescribed” means prescribed by rules made under this Ordinance.

(2) Words and expressions used in this Ordinance, but not defined, shall have the meanings respectively assigned to them in the Code.

3. Ordinance to override other laws.—The provisions of this Ordinance shall have effect notwithstanding anything contained in any other law for the time being in force.

4. Establishment of Family Courts.—

(i) There shall as many Family Courts as there are Courts of “Assistant Judge”