

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”

(ii) All Courts of "Assistant Judge" shall be Family Courts for the purposes of this Ordinance.

(iii) All "Assistant Judge" shall be the judges of Family Courts.

5. Jurisdiction of Family Courts.—Subject to the provisions of the Muslim Family Laws Ordinance, 1961 (VIII of 1961), a Family Courts shall have exclusive jurisdiction to entertain, try and dispose of any suit relating to, or arising out of, all or any of the following matters, namely—

- a) dissolution of marriage;
- b) restitution of conjugal rights;
- c) dower;
- d) maintenance;
- e) guardianship and custody of children.

6. Institution of Suit.—(i) Every suit under this Ordinance shall be instituted by the presentation of a plaint to the Family Court within the local limits of whose jurisdiction—

- (a) the cause of action has wholly or partly arisen; or
- (b) the parties reside or last resided together:

Provided that in suits for dissolution of marriage, dower or maintenance, the Court within the local limits of whose jurisdiction the wife ordinarily resides shall also have jurisdiction.

(ii) Where a plaint is presented to a Court not having jurisdiction—

- (a) the plaint shall be returned to be presented to the Court to which it should have been presented;
- (b) the Court returning the plaint shall endorse thereon the date of its presentation to it and its return, the name of the party presenting it and a brief statement of the reasons therefor.

(iii) The plaint shall contain all material facts relating to the dispute and shall contain a schedule giving the names and addresses of the witnesses intended to be produced in support of the plaint:

Provided that the plaintiff may, with the permission of the Court, call any witness at any later stage, if the Court considers such evidence expedient in the interest of justice.

(iv) The plaint shall also contain the following particulars, namely—

- (a) the name of the Court in which the suit is brought;
- (b) the name, description and place of residence of the plaintiff;
- (c) the name, description and place of residence of the defendant;
- (d) where the plaintiff or the defendant is a minor or a person of unsound mind, a statement to that effect;
- (e) the facts constituting the cause of action and the place where, and the date when, it arose;
- (f) the facts showing that the Court has jurisdiction;
- (g) the relief which the plaintiff claims.

(v) Where a plaintiff relies upon a document in his possession or power as evidence in support of his claim, he shall produce it in the Court when the plaint is presented and shall at the same time deliver the document or a true or photostat copy thereof to be filed with the plaint and shall also enter such documents in a list to be added or annexed to the plaint.

(vi) Where the plaintiff relies upon a document not in his possession or power as evidence in support of his claim, he shall enter such document in a list to be added or annexed to the plaint and state in whose possession or power it is.

(vii) The plaint shall be accompanied by twice as many true copies thereof, including the Schedule and the lists of documents referred to in sub-sections 5 and 6 as there are defendants in the suit for service upon such defendants.

(viii) The plaint shall be rejected on the following grounds—

- (a) Where it is not accompanied by true copies of plaint including the schedule and the lists of documents required under sub-section (7);

(b) Where the cost of service of summons and postal charges for notice required to be paid under section 7(5) are not paid;

(c) Where the fees required to be paid at the time of presentation of the plaint under section 22 are not paid.

(ix) A document which ought to be produced in Court by the plaintiff where the plaint is presented, or to be entered in the list to be added or annexed to the plaint, and which is not produced or entered accordingly, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit: provided that the Court shall not grant such leave save in exceptional circumstances.

7. Issue of Summons and Notice. —

(i) When a plaint is presented to a Family Court, it shall—

(a) fix a date ordinarily of not more than thirty days for the appearance of the defendant;

(b) issue summons to the defendant to appear and answer the claim on the date specified therein;

(c) send to the defendant, by registered post the acknowledgement due, a notice of the suit.

(ii) Every summon issued and notice sent under sub-section (1) shall be accompanied by a copy of the plaint, and copies of the list of documents referred to in sections 6(5) and 6(6)

(iii) A summons issued under sub-section (1) (b) shall be served in the manner provided in rules 9, 10, 11, 16, 17, 18, 19, 19A, 20, 21, 23, 24, 26, 27, 28 and 29 of Order V of the Code; and a summons so served shall be deemed to be due service thereof on the defendant.

(iv) A notice sent under sub-section (1) (c) shall be deemed to be duly served on the defendant when the acknowledgement purporting to be signed by the defendant is received by the Court or the postal endorsement purporting to have been made by a postal employee to the effect that the defendant had refused to take delivery of the postal article containing the notice when tendered to him:

Provided that where the notice was properly addressed, prepaid and duly sent by registered post with acknowledgement due, it may be deemed to be duly served on the defendant after the expiry of thirty days from the date of posting of the notice notwithstanding the fact that the acknowledgement having been lost or misled or for any other reason has not been received by the Court within that period.

(v) The cost of service of summons issued under sub-sections (1) (b), which shall be equal to the cost of service of similar summons under the Code and the postal charges for notice sent under sub-section (1) (c) shall be paid by the plaintiff at the time presentation of the plaint.

8. Written Statement.— (i) On the date fixed for the appearance of the defendant, the plaintiff and the defendant shall appear before the Family Court and the defendant shall present a written statement of his defence:

Provided that the Court may, on the prayer of the defendant and for good cause shown, fix another date not beyond twenty-one days for the presentation of the written statement of his defence.

(ii) The written statement shall contain a schedule giving the names and addresses of the witnesses intended to be produced in support of the defence:

Provided that the defendant may, with the permission of the Court, call any witness at any later stage, if the Court considers such evidence expedient in the interest of justice.

(iii) Where the defendant relies upon a document in his possession or power as evidence in support of his defence, he shall produce it in the Court when the written statement is presented and shall at the same time deliver the document or a true or photostat copy thereof to be filed with the written statement and shall also enter such documents in a list to be added or annexed to the written statement.

(iv) Where the defendant relies upon a document not in his possession or power as evidence in support of his written statement, he shall enter such document in a list to be added or annexed to the written statement and state in whose possession or power it is.

(v) The written statement shall be accompanied by twice as many true copies thereof, including the schedule, and the lists of documents referred to in sub-sections (3) and (4), as there are plaintiffs in the suit.

(vi) Copies of the written statement, including the schedule, the documents and the list of documents referred to in sub-section (5) shall be given to the plaintiff, his agent or advocate present in the Court.

(vii) A document which ought to be produced in the Court by the defendant when the written statement is presented, or to be entered in the list to be added or annexed to the written statement and which is not produced or entered accordingly shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit:

Provided that the Court shall not grant such leave save exceptional circumstances.

9. Consequence of Non-appearance of the Parties.—

(i) Where on the day fixed for the appearance of the defendant, neither party appears when the suit is called on for hearing the Court may dismiss the suit.

(ii) Where the plaintiff appears and the defendant does not appear when the suit is called on for hearing then—

(a) if it is proved that the summons or notice was duly served on the defendant, the Court may proceed *ex parte*;

(b) if it is not proved that the summons or notice was duly served on the defendant, the Court shall direct a fresh summons and notice to be issued and served on the defendant;

(c) if it is proved that the summons or notice was served on the defendant, but not in sufficient time to enable him to appear and answer on the day fixed for his appearance, the Court shall postpone the hearing of the suit to a future day not exceeding twenty-one days to be fixed by the Court, and shall give notice of such day to the defendant.

(iii) Where a Court has adjourned hearing of the suit *ex parte*, and the defendant, at or before such hearing, appears and assigns good

cause for his previous non-appearance, he may, on such terms as the Court thinks fit, be heard in answer to the suit as if he had appeared on the day fixed for his appearance.

(iv) Where the defendant appears and the plaintiff does not appear when the suit is called on for hearing the Court shall dismiss the suit, unless the defendant admits the claim or part thereof, in which case the Court shall pass a decree against the defendant upon such admission and, where part only of the claim has been admitted, shall dismiss the suit so far as it relates to the remainder.

(v) Where suit is dismissed under sub-section (1) or wholly or partly dismissed under sub-section (4) the plaintiff may, within thirty days of the making of the order of dismissal, apply to the Court by which the order was made for an order to set the dismissal aside, and if he satisfies the Court that there was sufficient cause for his non-appearance when the suit was called on for hearing, the Court shall make an order setting aside the dismissal, and shall appoint a day for proceeding with the suit:

Provided that the Court may set the dismissal of a suit under sub-section (4) aside on such terms as to costs or otherwise as it thinks fit:

Provided further that no order setting the dismissal of a suit under sub-section (4) aside shall be made unless notice of the application has been served on the defendant.

(vi) Where a decree is passed *ex parte* against a defendant, he may, within thirty days of the passing of the decree, apply to the Court by which the decree was passed for an order to set it aside, and if he satisfies the Court that there was sufficient cause for his non-appearance when the suit was called on for hearing, the Court shall make an order setting aside the decree as against him on such terms as to costs or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit:

Provided that where the decree is of such a nature that it cannot be set aside as against such defendant only, it may be set aside against all or any of the other defendants also:

Provided further that no order shall be made under this sub-section unless notice of the application has been served on the plaintiff.

(vii) The provisions of section 5 of the Limitation Act, 1908 (IX of 1908) shall apply to an application under sub-section (6).

10. Pre-trial Processing.—(i) When the written statement is filed, the Family Court shall fix a date ordinarily of not more than thirty days for a pre-trial hearing of the suit.

(ii) On the date fixed for pre-trial hearing, the Court shall examine the plaint, the written statement and documents filed by the parties and shall also, if it so deems fit, hear the parties.

(iii) At the pre-trial hearing, the Court shall ascertain the points at issue between the parties and attempt to effect a compromise or reconciliation between the parties, if this be possible.

(iv) If no compromise or reconciliation is possible, the Court shall frame the issues in the suit and fix a date ordinarily of not more than thirty days for recording evidence.

11. Trial in Camera.—(i) A Family Court may, if it so deems fit, hold the whole or any part of the proceedings under this Ordinance in camera.

(ii) Where both the parties to the suit request the Court to hold the proceedings in camera, the Court shall do so.

12. Recording of Evidence.—(i) On the date fixed for recording of the evidence, the Family Court shall examine the witnesses produced by the parties in such order as it deems fit.

(ii) The Court shall not issue any summons for the appearance of a witness for any party, unless, within three days of the framing of issues, the party intimates the Court that it desires the witness to be summoned through the Court and the Court is satisfied that it is not possible or practicable for the party to produce the witness.

(iii) The witnesses shall give evidence in their own words and may be cross-examined and re-examined.

(iv) The Court may forbid any question which it regards as indecent, scandalous or frivolous or which appears to it to be intended to insult or annoy or be needlessly offensive in form.

(v) The Court may, if it so deems fit, put any question to any witness for the purpose of elucidation of any point which it considers material in the case.

(vi) The Court may permit the evidence of any witness to be given by means of affidavit.

Provided that the Court may, if it so deems fit, call such witness for the purpose of examination.

(vii) The evidence of each witness shall be taken down in writing, in the language of the Court by the presiding Judge of the Court and shall be signed by such judge.

(viii) Where the evidence of a witness is given in any language other than the language of the Court, the presiding judge may take it down in that language if possible, and an authenticated translation of such evidence in the language of the Court shall form a part of record.

(ix) When the evidence of a witness is taken down, it shall be read over to him and shall, if necessary, be corrected.

(x) If the witness does not accept the correctness of any party of the evidence, the presiding judge may, instead of correcting the evidence, make a memorandum of the objection made by the witness, and shall add such remarks as he thinks necessary.

(xi) If the evidence is taken down in a language different from that in which it has been given and the witness does not understand that language, the evidence shall be interpreted to him in the language in which it was given or in a language which he understands.

13. Conclusion of Trial.—(i) After the close of evidence of all parties, the Family Court shall make another effort to effect a compromise or reconciliation between the parties.

(ii) If such compromise or reconciliation is not possible the Court shall pronounce judgment either at once or on some future day not beyond seven days of which due notice shall be given to the parties or their agents or advocates and, on such judgment, a decree shall follow.

14. Compromise Decree.—Where a dispute is settled by compromise or conciliation, the Court shall pass a decree or give dictation in the suit in terms of the compromise or conciliation agreed to between the parties.

15. Writing of Judgment.—(i) Every judgment or order of a Family Court shall be written by the presiding judge or from the dictation of such judge in the language of the Court and shall be dated and signed by the judge in open Court at the time of pronouncing it.

(ii) All judgments and orders which are appealable shall contain the point of determination, the decision thereon and the reasons therefor.

16. Enforcement of Decrees.—(i) A Family Court shall pass a decree in such form and manner, and shall enter its particulars in such register of decrees as may be prescribed.

(ii) If any money is paid, or any property is delivered, in the presence of the Court in satisfaction of the decree, it shall enter the fact of such payment or delivery in the aforesaid register.

(iii) Where the decree relates to the payment of money and the decretal amount is not paid within the time specified by the Court, the decree shall, on the prayer of the decree-holder to be made within a period of one year from the expiry of the time so specified, be executed—

- (a) as a decree for money of a Civil Court under the Code, or
- (b) as an order for payment of fine made by a Magistrate under the Code of Criminal Procedure 1898 (Act V of 1898),

and on such execution the decretal amount recovered shall be paid to the decree-holder.

(iiia) For the purpose of execution of a decree under sub-section (3)(a), the Court shall be deemed to be a Civil Court and shall have all the powers of such Court under the Code.

(iiib) For the purpose of execution of a decree under sub-section (3)(b), the judge of the Family Court shall be deemed to be a Magistrate of the first class and shall have all the powers of such Magistrate under the Code of Criminal Procedure, 1898 (Act V of 1898), and he may issue a warrant for levying the decretal amount due

in the manner provided in that Code for levying fines, and may sentence the judgment-debtor, for the whole or any part of the decretal amount remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to three months or until payment if sooner made.

(iiic) When a decree does not relate to payment of money, it shall be executed as a decree, other than a decree for money of a Civil Court and for that purpose the Court shall be deemed to be a Civil Court and shall have all the powers of such Court under the Code.

(iv) The decree shall be executed by the Family Court passing it or by such other Family Court to which the decree may be transferred for execution by the Court passing it and in executing such a decree the Court to which it is transferred shall have all powers of the Family Court passing the decree as if the decree were passed by it.

(v) The Court may, if it so deems fit, direct that any money to be paid under a decree passed by it be paid in such instalments as it deems fit.

16A. Interim order by Family Courts— Where at any stage of a suit, the Family Court is satisfied by affidavit or otherwise, that immediate action should be taken for preventing any party from frustrating the purpose of the suit, it may make such interim order as it deems fit.

17. Appeal—(i) Subject to the provisions of sub-section (ii), an appeal shall lie from a judgment, decree or order of a Family Court to the Court of District judge.

(ii) No appeal shall lie from a decree passed by a Family Court—

(a) for dissolution of marriage, except in the case of dissolution for reasons specified in section 2(viii) (d) of the Dissolution of Muslim Marriages Act, 1939(VIII of 1939)

(b) for dower not exceeding five thousand taka.

(iii) An appeal under this section shall be preferred within thirty days of the passing of the judgment, decree or order excluding the time required for obtaining copies thereof.

Provided that the Court of District judge may, for sufficient cause, extend the said period.

(iv) An appeal shall—

- (a) be in writing;
- (b) Set out the grounds on which the appellant seeks to challenge the judgment, decree or order;
- (c) contain the names description and addresses of the parties; and
- (d) bear the signature of the appellant.

(v) A certified copy of the judgment, decree or order of the Court from which the appeal is preferred shall be attached with the appeal.

(vi) Any order passed by the Court of District Judge shall, as soon as may be, be communicated to the Family Court which shall modify or amend the judgment, decree or order accordingly and shall also make necessary entries to that effect in the appropriate column in the register of decrees.

(vii) The District judge may transfer an appeal to the Court of an Additional District judge or a Subordinate Judge for hearing and disposal and may withdraw any such appeal from such Court.

18. Power of Family Court to summon witnesses.—(i) A Family Court may issue summons to any person to appear and give evidence, or to produce or cause the production of any document:

Provided that—

- (a) no person who is exempt from personal appearance in a Court under section 133 (1) of the Code shall be required to appear in person;
- (b) a Family Court may refuse to summon a witness or to enforce a summons already issued against a witness when, in the opinion of the Court, the attendance of the witness cannot be procured without such delay, expense or inconvenience as in the circumstances would be unreasonable.

(ii) If any person to whom a Family Court has issued summons to appear and give evidence or to cause the production of any document before it wilfully disobeys such summons, the Court may take cognizance of such disobedience, and after giving such person an opportunity to explain, sentence him to a fine not exceeding one hundred taka.

19. Contempt of Family Courts.— A person shall be guilty of contempt of the Family Court if he, without lawful excuse—

- (a) offers any insult to the Family Court;
- (b) causes an interruption in the work of the Family Court;
- (c) refuses to answer any question put by the Family Court, which he is bound to answer; or
- (d) refuses to take oath to state the truth or to sign any statement made by him in the Family Court;

and the Family Court may forthwith try such person for such contempt and sentence him to a fine not exceeding two hundred taka.

20. Application and non-application of certain laws—(i) Save as otherwise expressly provided by or under this Ordinance, the provisions of the Evidence Act, 1872 (1 of 1872), and of the Code except sections 10 and 11 shall not apply to proceedings before the Family Courts.

(ii) The Oaths Act, 1873 (X of 1873) shall apply to all proceeding before the Family Courts.

21. Appearance through agents.—If a person required under this Ordinance to appear before a Family Court, otherwise than as a witness, is a *pardanashin* lady, the Family Court may permit her to be represented by a duly authorised agent.

22. Court-fee.—The Court-fees to be paid on any plaint presented to a Family Court shall be twenty-five take for any kind of suit.

23. Ordinance VIII of 1961 affected.—(i) Nothing in this Ordinance shall be deemed to affect any of the provisions of the Muslim Family Laws Ordinance, 1961 (VIII of 1961), or the rules made thereunder.

(ii) Where a Family Court passes a decree for the dissolution of a marriage solemnized under the Muslim Law, the Court shall, within seven days of the passing of the decree, send by registered post a certified copy of the same to the appropriate Chairman referred to in section 7 of the Muslim Family Law Ordinance, 1961 (VIII of 1961), and upon receipt of such copy, the Chairman shall proceed as if he had received an intimation of talaq required to be given under the said Ordinance.

(iii) A decree passed by a Family Court for the dissolution of a marriage solemnized under the Muslim Law shall—

(a) not be effective until the expiration of ninety days from the day on which a copy thereof has been received under sub-section (2) by the Chairman; and

(b) be of no effect if within the period specified in clause (a) a reconciliation has been effected between the parties in accordance with the provisions of the Muslim Family Law Ordinance, 1961 (VIII of 1961).

24. Family Court deemed to be a District Court for Purposes of Act VIII of 1890.—(i) A Family Court shall be deemed to be a District Court for the purposes of the Guardians and Wards Act, 1890 (VIII of 1890), and notwithstanding anything contained in this Ordinance, shall, in dealing with matters specified in that Act, follow the procedure specified in that Act.

(ii) Notwithstanding anything contained in the Guardians and Wards Act, 1890 (VIII of 1890), an appeal from an order made by a Family Court as District Court under that Act shall lie to the Court of District Judge, and the provisions of section 17 shall apply to such appeal.

25. Transfer and stay of suits and stay of suits and appeals.—(i) The High Court Division may, either on the application of any party or of its own accord, by an order in writing—

(a) transfer any suit under this Ordinance from one Family Court to another Family Court in the same district or from a Family Court of one district to a Family Court of another district.

(b) transfer any appeal under this Ordinance from the Court of District Judge of one district to the Court of District Judge of another district.

(ii) A District Judge may, either on the application of any party or of his own accord, by an order in writing, transfer any suit under this Ordinance from one Family Court to another Family Court within the local limits of his jurisdiction.

(iii) Notwithstanding anything contained in the Ordinance, a District Judge may transfer an appeal pending before him under this Ordinance to any Court of Additional District Judge or Subordinate Judge under his administrative control and may also re-transfer such appeal from such Court to his own court.

(iv) Any Court to which a suit or appeal is transferred under this section, shall notwithstanding anything contained in this Ordinance, have the jurisdiction to dispose of it in the manner as if it were instituted or filed before it:

Provided that on the transfer of a suit, it shall not be necessary to commence the proceedings before the succeeding judge *de novo* unless the judge, for reasons to be recorded in writing, directs otherwise.

(v) A District Judge may, by an order in writing, stay any suit pending before a Family Court within the local limits of his jurisdiction.

(vi) The High Court Division may, by an order in writing, stay any suit or appeal pending before any Family Court or Court of District Judge.

26. Power to make rules.—The Government may, by notification in the *official Gazette*, make rules for carrying out the purposes of this Ordinance.

27. Provisions relating to pending cases.—Notwithstanding anything contained in this Ordinance, all suits, appeals and other legal proceedings relating to, or arising out of, any of the matters specified in

section 5 pending in any Court immediately before the commencement of this Ordinance shall continue in the same Court and shall be heard and disposed of by that Court as if this Ordinance had not been made.

Commentaries

1. Background of the establishment of the Family Courts.

The establishment of the Family Courts in Bangladesh under this ordinance is a landmark decision of the government, which was the long-felt demand of the people. Before the establishment of the Family Courts, all litigations relating to family matters and other issues were adjudicated by the same courts. As a result, it would be impossible to dispose of cases expeditiously and it would take much time to set aside the cases and even sometimes plaintiff or defendant or both would die before the delivery of judgment. Naturally, delay in disposal of suits frustrates the very purpose of establishment of courts. Many would have been deprived from justice due to delay, illiteracy, poverty and ignorance of law.

In order to alleviate this hardship, the demand for the establishment of courts absolutely for family matters was felt by the sufferers specially by the women folk in the then Pakistani regime. Consequently, West Pakistan Family Courts Act, 1964 (Act No. XXXV of 1964) was passed in West Pakistan and under this Act, Family Courts were established there. In the then East Pakistan, the necessity for the establishment of similar courts became popular demand and as a result, the Government in 1967 set up a Law Reform Commission to find out causes of delays in the disposal of cases and to suggest remedies. The Law Reform Commission submitted its report with some recommendations including separation of judiciary from the executive.¹

After the emergence of Bangladesh as a independent state, the Government set up a Law Committee to review the recommendations

¹ Azizul Haque, *The Legal System of Bangladesh*, Dhaka. 1980, P. 98.

made by the Law Reforms Commission of 1967. The Law Committee practically worked as a Law Reforms Commission and submitted its report to the Government on October, 31, 1976 with the following recommendations:²

- (a) Amendment of both civil and criminal procedure code for speedy disposal of suits;
- (b) Separation of judiciary from the executive;
- (c) Training of subordinate judicial officers.
- (d) Eradication of corruption from judiciary; and
- (e) Establishment of Family Courts in Bangladesh for adjudication of family disputes relating to dissolution of marriage, maintenance of wife, restitution of conjugal rights, dower and guardianship of wards.

The Family Courts Ordinance, 1985 was promulgated in order to give effect to the recommendations made by the Law Reforms Commission. It came into force on June 15, 1985. Under this Ordinance Law Courts have been established and under section 26, Government made necessary rules for its proper implementation.

2. Main features of the Family Courts

(i) Conversion of "Munsif" and Assistant Judge Court

The designation of "Munsifs" (judge) has been converted into "Assistant Judge" and all Assistant Judges shall act as Judges of the Family Courts.³

(ii) Jurisdiction of Family Courts

The Family Courts shall dispose of only the following matters under sections 5 of the Ordinance.

- (a) dissolution of marriage;

² *The Legal System of Bangladesh*, *Ibid*, P. 99.

³ The words "Assistant Judge" were substituted for "Munsif" by section 2 of Act. no. 30 of 1989.

(b) restitution of conjugal rights;

(c) dower;

(d) maintenance; and

(e) guardianship and custody of children.

The Family Courts shall deal with all forms of dissolution either in the form of *talaque* by husband or by mutual consent (*Mubara't*) or by *takaque-e-tafwez* (*Khula'*) or any suit either by husband or wife for judicial decree.

The Family Courts have the exclusive jurisdiction to deal with the suits instituted by husband for restitution of conjugal rights, which the court can dispose of at its discretion. The court, in dealing with the matter, shall take it into consideration whether the plaintiff (husband) makes equal treatment with his wives, if more than one, or he is free from misconduct.

The wife is entitled to file a suit to the Family Courts in case of non-payment of dower, prompt or deferred. If the dower is not paid, the wife, and after her death, her heirs may sue for it in the Family Courts. The suit is to be filed within three years in case of a suit to recover "prompt" dower from the date of demand or refusal of dower from the date of dissolution of marriage due to death or divorce, if the demand for dower was not made during the continuance of marriage.⁴ The period of limitation is also three years for a suit to recover "deferred" dower from the date when the marriage is dissolved by death or divorce.⁵

The wife can file a suit to the Family Courts for maintenance from the husband and Courts allow it for three months from the date of decree for dissolution of the marriage.⁶ She can also claim maintenance for the minor children.

The Family Courts can appoint a guardian of the persons (*Hizanat*) or property or both of the minor as provided by the Guardians and Wards Act, 1890. In appointing guardian of the minor the shall

⁴ See Art. 103, *The Limitation Act, 1908*.

⁵ See Art. 104, *Ibid.*

⁶ *Hefzur Rahman V. Shamsunnahar*, 51 DLR 172 (1999)

consider the welfare of the minor.⁷ A legal guardian of property cannot alienate the immovable property of the minor except under certain circumstances prescribed by Islamic law.⁸ A guardian of property of a minor appointed by the Family Courts cannot mortgage or transfer by sale, gift, exchange or otherwise alienate any immovable property without the previous permission of the Court. According to Islamic law, the mother is entitled to the custody of her male child until he has completed the age of seven years and in case of female child, until she attains puberty. The right of guardianship, of course, continues even if she is divorced by the father of the child.⁹

(iii) Attempt for reconciliation between the parties

Family Court tries to compromise between the parties in (i) pre-trial period under section 10 and (ii) before delivery of judgment after hearing under section 13 of the Ordinance with a view to bring amicable and permanent settlement. A Family Court may hold the whole or any part of the proceedings in camera on its own accord if deems fit or at the request of both the parties in order to keep private matters confidential. The main aim of this court is to bring reconciliation between the parties.

(iv) Appeal against a judgment, decree or order passed by Family Courts

An aggrieved party may prefer an appeal against the judgment, decree or order of the Family Courts to the Court of District Judge. But no appeal shall lie against the decree of a suit for dissolution of marriage under section 2(viii) (d) of the Dissolution of Muslim Marriages Act, 1939 and a decree of dower not exceeding taka five thousand under section 17 of this Ordinance.

(v) Less Court-fee

A litigant can file a suit in this Court paying less court-fee than in any other courts, which facilitates him/her to file suit comfortably.

⁷ *Dr. Rashiduddin V. Dr. Quamruddin*, 30 DLR 208; 22 DLR 548 (1963).

⁸ For details, see chapter XI on Maintenance.

⁹ 22 DLR 548; 30 DLR 208.

Under section 22 of the Ordinance, a plaintiff is to pay only taka twenty five for presenting plaint in the courts.

(vi) Status of the Family Courts

Family Courts shall be deemed to be District Court at the time of the application of the provisions of the Guardians and Wards Act, 1890 (Act No. VIII of 1890).

(vii) Pecuniary jurisdiction of the Court

The pecuniary jurisdiction of a Family Court is unlimited, though, however, in other matter, the jurisdiction of an assistant judge and Senior Assistant Judges is fifty thousand and one lakh taka respectively.

In dealing with the suits, the Family Courts follow the procedure laid down in the Code of Civil Procedure (Act No. of 1908). Litigation arising of family disputes are settled in the Family Courts easily and with less cost. The establishment of the Family Courts, therefore, has served the purpose for which the Ordinance was promulgated.

Chapter Twenty Seven

The Guardians and Wards Act, 1890

(Act VIII of 1890)

An Act to consolidate and amend the law relating to guardians and wards whereas it is expedient to consolidate and amend the law relating to guardian and ward; it is hereby enacted as follows: -

CHAPTER-1

PRELIMINARY

1. Title, extent and commencement.-

- (1) This Act may be called the Guardians and Wards Act, 1890.
- (2) It extends to whole of Bangladesh¹
- (3) It shall come into force on the first day of July, 1890.

2. Repealed by the Repealing Act, 1938, s. 2 and Sch.-

3. Saving of jurisdiction of Courts of Wards and Chartered High Courts.-

This Act shall be read subject to every enactment heretofore or hereafter passed relating to any Court of Wards by any competent legislature, authority or person in Bangladesh and nothing in this Act shall be construed to effect or in any way derogate from the jurisdiction or authority of any Court of Wards, or to take any power possessed by Supreme Court.

4. Definitions.-

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

- (i) "minor" means a person who, under the provisions of the Indian Majority Act, 1875 (9 of 1875), is to be deemed not to have attained his majority;
- (ii) "guardian" means a person having the care of the person of a minor or of his property or of both his person and property;

¹ The word "Bangladesh" was substituted for the word "Pakistan".