

THE MUSLIM FAMILY LAWS ORDINANCE, 1961**CONTENTS**

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THE MUSLIM FAMILY LAWS ORDINANCE, 1961

ORDINANCE NO. VIII OF 1961

[2nd March, 1961]

An Ordinance to give effect to certain recommendations of the Commission on Marriage and Family Laws.

WHEREAS it is expedient to give effect to certain recommendations of the Commission on Marriage and Family Laws;

NOW, THEREFORE, in pursuance of the Proclamation of the seventh day of October, 1958, and in exercise of all powers enabling him in that behalf, the President is pleased to make and promulgate the following Ordinance:-

Short title,
extent,
application and
commencement

1. (1) This Ordinance may be called the Muslim Family Laws Ordinance, 1961.

(2) It extends to the whole of ¹[Bangladesh], and applies to all Muslim citizens of ²[Bangladesh], wherever they may be.

(3) It shall come into force on such date as the ³[Government] may, by notification in the *official Gazette*, appoint in this behalf.

Definitions

⁴**2.** In this ordinance, unless there is anything repugnant in the subject or context,-

(a) "Arbitration Council" means a body consisting of the Chairman and a representative of each of the parties to a matter dealt with in this Ordinance:

¹ The word "Bangladesh" was substituted for the word "Pakistan" by section 2 of the Muslim Family Laws (Amendment) Ordinance, 1982 (Ordinance No. XXI of 1982).

² The word "Bangladesh" was substituted for the word "Pakistan" by section 2 of the Muslim Family Laws (Amendment) Ordinance, 1982 (Ordinance No. XXI of 1982).

³ The word "Government" was substituted for the words "Central Government" by section 2 of the Muslim Family Laws (Amendment) Ordinance, 1982 (Ordinance No. XXI of 1982).

⁴ Section 2 was substituted by section 2 of the Muslim Family Law (Amendment) Ordinance, 1985 (Ordinance No. XIV of 1985).

Provided that where any party fails to nominate a representative within the prescribed time, the body formed without such representative shall be the Arbitration Council;

(b) "Chairman" means-

- (i) the Chairman of the Union Parishad;
- (ii) the Chairman of the Paurashava;
- (iii) the Mayor or Administrator of the Municipal Corporation;
- (iv) the person appointed by the Government in the Cantonment areas to discharge the functions of Chairman under this Ordinance;
- (v) where the union Parishad, Paurashava or Municipal Corporation is superseded, the person discharging the functions of such Parishad, Paurashava or Corporation or as the case may be, appointed by the Government to discharge the functions of Chairman under this Ordinance:

Provided that where the Chairman of the Union Parishad or Paurashava or the Mayor of the Municipal Corporation is a non-Muslim, or he himself wishes to make an application to the Arbitration Council, or is, owing to illness or any other reason, unable to discharge the functions of Chairman the Union Parishad, Paurashava or Municipal Corporation shall elect one of its Muslim members or Commissioner as Chairman for the purposes of this ordinance;

(c) "Municipal Corporation" means the Municipal Corporation constituted under the Chittagong Municipal Corporation Ordinance, 1982 (XXXV of 1982), or the Dhaka Municipal Corporation Ordinance, 1983 (XL of 1983), or the Khulna Municipal Ordinance, 1984 (LXXII of 1984), and having in the matter jurisdiction as prescribed;

(d) "Paurashava" means the Paurashava constituted under the Paurashava Ordinance, 1977 (XXVI of 1977), and having the matter jurisdiction as prescribed;

- (e) "Prescribed" means prescribed by rules made under section 11;
- (f) "Union Parishad" means the Union Parishad constituted under the Local Government (Union Parishads) Ordinance, 1983 (LI of 1983), and having in the matter jurisdiction as prescribed.]

Ordinance to override other Laws, etc.

3. (1) The provisions of this Ordinance shall have effect notwithstanding any law, custom or usage ¹[* * *].

(2) For the removal of doubt, it is hereby declared that the provisions of the Arbitration Act, 1940, the Code of Civil Procedure, 1908 and any other law regulating the procedure of Courts shall not apply to any Arbitration Council.

Succession

4. In the event of the death of any son or daughter of the *propositus* before the opening of succession, the children of such son or daughter, if any, living at the time the succession opens, shall *per stirpes* receive a share equivalent to the share which such son or daughter, as the case may be, would have received if alive.

5. [Registration of marriages.- Omitted by section 15 of the Muslim Marriages and Divorces (Registration) Act, 1974 (Act No. LII of 1974).]

Polygamy

6. (1) 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 ²[under the Muslim Marriages and Divorces (Registration) Act, 1974 (LII of 1974)].

(2) An application for permission under sub-section (1) shall be submitted to the Chairman in the prescribed manner,

¹ The comma and words " , and the registration of Muslim marriages shall take place only in accordance with those provisions" were omitted by section 15 of the Muslim Marriages and Divorces (Registration) Act, 1974 (Act No. LII of 1974).

² The words, comma, figures and brackets "under the Muslim Marriages and Divorces (Registration) Act, 1974 (LII of 1974)" were substituted for the words "under this Ordinance" by section 15 of the Muslim Marriages and Divorces (Registration) Act, 1974 (Act No. LII of 1974).

together with the prescribed fee, and shall state the reasons for the proposed marriage, and whether the consent of the existing wife or wives has been obtained thereto.

(3) On receipt of the application under sub-section (2), the Chairman shall ask the applicant and his existing wife or wives each to nominate a representative, and the Arbitration Council so constituted may, if satisfied that the proposed marriage is necessary and just, grant, subject to such conditions, if any, as may be deemed fit, the permission applied for.

(4) In deciding the application the Arbitration Council shall record its reasons for the decision, and any party may, in the prescribed manner, within the prescribed period, and on payment of the prescribed fee, prefer an application for revision¹[* * *] to the²[Assistant Judge] concerned and his decision shall be final and shall not be called in question in any Court.

(5) Any man who contracts another marriage without the permission of the Arbitration Council shall-

- (a) pay immediately 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
- (b) on conviction upon complaint be punishable with simple imprisonment which may extend to one year, or with fine which may extend to³[ten thousand taka], or with both.

7. (1) Any man who wishes to divorce his wife shall, as Talaq soon as may be after the pronouncement of *talaq* in any form whatsoever, give the Chairman notice in writing of his having done so, and shall supply a copy thereof to the wife.

¹ The commas and words “, in the case of West Pakistan, to the Collector and, in the case of East Pakistan,” were omitted by section 4 of the Muslim Family Laws (Amendment) Ordinance, 1982 (Ordinance No. XXI of 1982).

² The words “Assistant Judge” were substituted for the word “Munsif” by section 3 of the Civil Courts (Amendment) Act, 1987 (Act No. XIV of 1987).

³ The words “ten thousand taka” were substituted for the words “five thousand rupees” by section 4 of the Muslim Family Laws (Amendment) Ordinance, 1982 (Ordinance No. XXI of 1982).

(2) Whoever contravenes the provisions of sub-section (1) shall be punishable with simple imprisonment for term which may extend to one year or with fine which may extend to ¹[ten thousand taka] or with both.

(3) Save as provided in sub-section (5), a *talaq* unless revoked earlier, expressly or otherwise, shall not be effective until the expiration of ninety days from the day on which notice under sub-section (1) is delivered to the Chairman.

(4) Within thirty days of the receipt of notice under sub-section (1), the Chairman shall constitute an Arbitration Council for the purpose of bringing about a reconciliation between the parties, and the Arbitration Council shall take all steps necessary to bring about such reconciliation.

(5) If the wife be pregnant at the time *talaq* is pronounced, *talaq* shall not be effective until the period mentioned in sub-section (3) or the pregnancy, whichever be later, ends.

(6) Nothing shall debar a wife whose marriage has been terminated by *talaq* effective under this section from re-marrying the same husband, without an intervening marriage with a third-person, unless such termination is for the third time so effective.

Dissolution of marriage otherwise than by *talaq*

8. Where the right to divorce has been duly delegated to the wife and she wishes to exercise that right, or where any of the parties to a marriage wishes to dissolve the marriage otherwise than by *talaq*, the provisions of section 7 shall, *mutatis mutandis* and so far as applicable, apply.

Maintenance

9. (1) If any husband fails to maintain his wife adequately, or where there are more wives than one, fails to maintain them equitably, the wife, or all or any of the wives, may in addition to seeking, any other legal remedy available apply to the Chairman who shall constitute an Arbitration Council to determine the matter, and the Arbitration Council may issue a certificate specifying the amount which shall be paid as maintenance by the husband.

¹ The words "ten thousand taka" were substituted for the words "five thousand rupees" by section 5 of the Muslim Family Laws (Amendment) Ordinance, 1982 (Ordinance No. XXI of 1982).

(2) A husband or wife may, in the prescribed manner, within the prescribed period, and on payment of the prescribed fee, prefer an application for revision of the certificate ¹[* * *] to the ²[Assistant Judge] concerned and his decision shall be final and shall not be called in question in any Court.

(3) Any amount payable under sub-section (1) or (2), if not paid in due time, shall be recoverable as arrears of land revenue.

10. Where no details about the mode of payment of dower are specified in the *nikah nama*, or the marriage contract, the entire amount of the dower shall be prescribed to be payable on demand. Dower

11.³(1) The Government may make rules to carry into effect the purposes of this Ordinance.] Power to make rules

(2) In making rules under this section, ⁴[the Government] may provide that a breach of any of the rules shall be punishable with simple imprisonment which may extend to one month, or with fine which may extend to ⁵[five hundred taka], or with both.

(3) Rules made under this section shall be published in the *official Gazette*, and shall thereupon have effect as if enacted in this Ordinance.

¹ The commas and words “, in the case of West Pakistan, to the Collector and, in the case of East Pakistan,” were omitted by section 6 of the Muslim Family Laws (Amendment) Ordinance, 1982 (Ordinance No. XXI of 1982).

² The words “Assistant Judge” were substituted for the word “Munsif” by section 2 of the Civil Courts (Amendment) Act, 1987 (Act No. XIV of 1987).

³ Sub-section (1) was substituted by section 7 of the Muslim Family Laws (Amendment) Ordinance, 1982 (Ordinance No. XXI of 1982).

⁴ The words “the Government” were substituted for the words “the such Government” by section 7 of the Muslim Family Laws (Amendment) Ordinance, 1982 (Ordinance No. XXI of 1982).

⁵ The words “five hundred taka” were substituted for the words “two hundred rupees” by section 7 of the Muslim Family Laws (Amendment) Ordinance, 1982 (Ordinance No. XXI of 1982).

Place of trial

¹[11A. Notwithstanding anything contained in any other law for the time being in force, an offence under this Ordinance shall be tried by a Court within the local limits of whose jurisdiction-

- (a) the offence was committed; or
- (b) the complainant or the accused resides or last resided.]

Amendment of Child Marriage Restraint Act, 1929 (XIX of 1929)

12. In the Child Marriage Restraint Act, 1929,-

(1) in section 2,-

- (a) in clause (a), for the word “fourteen” the word “sixteen” shall be *substituted*;
- (b) in clause (c), the word “and” shall be *omitted*; and
- (c) in clause (d), for the full stop at the end a comma shall be substituted, and thereafter the following ²[new clauses] shall be *added*, namely:-

³[(e) “Municipal Corporation” means the Municipal Corporation constituted under the Chittagong Municipal Corporation Ordinance, 1982 (XXXV of 1982), or the Dhaka Municipal 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 solemnised;

(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 solemnised;

¹ Section 11A was inserted by section 2 of the Muslim Family Laws (Amendment) Ordinance, 1986 (Ordinance No. XXIV of 1986).

² The words “new clauses” were substituted for the words, brackets and letter “new clauses (e)” by section 8 of the Muslim Family Laws (Amendment) Ordinance, 1982 (Ordinance No. XXI of 1982).

³ Clauses (e), (f) and (g) were substituted for former clauses (e) and (f) by section 5 of the Muslim Family Law (Amendment) Ordinance, 1985 (Ordinance No. XIV of 1985).

(g) “Union Parishad” means 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 solemnised”.]

(2) section 3 shall be *omitted*;

(3) in section 4, for the words “twenty-one” the word “eighteen” shall be *substituted* ;

(4) in section 9, after the words “under this Act”, the words “except on a complaint made by the ¹[Union Parishad or Paurashava ²[or Municipal Corporation]], or if there is no ³[Union Parishad or Paurashava ⁴[or Municipal Corporation]] in the area, by such authority as the ⁵[Government] may in this behalf prescribe, and such cognizance shall in no case be taken” shall be *inserted*; and

(5) section 11 shall be *omitted*.

13. In the Dissolution of Muslim Marriages Act, 1939, in section 2,-

Amendment of the Dissolution of Muslim Marriages Act, 1939 (VIII of 1939)

(a) after clause (ii), the following new clause (iia) shall be *inserted*, namely:-

“(iia) that the husband has taken an additional wife in contravention of the provisions of the Muslim Family Laws Ordinance, 1961;” and

(b) in clause (vii), for the word “fifteen” the word “sixteen” shall be *substituted*.

¹ The words “Union Parishad or Paurashava” were substituted for the words “Union Council” by section 8 of the Muslim Family Laws (Amendment) Ordinance, 1982 (Ordinance No. XXI of 1982).

² The words “or Municipal Corporation” were inserted by section 5 of the Muslim Family Law (Amendment) Ordinance, 1985 (Ordinance No. XIV of 1985).

³ The words “Union Parishad or Paurashava” were substituted for the words “Union Council” by section 8 of the Muslim Family Laws (Amendment) Ordinance, 1982 (Ordinance No. XXI of 1982).

⁴ The words “or Municipal Corporation” were inserted by section 5 of the Muslim Family Law (Amendment) Ordinance, 1985 (Ordinance No. XIV of 1985).

⁵ The word “Government” was substituted for the words “Provincial Government” by section 8 of the Muslim Family Laws (Amendment) Ordinance, 1982 (Ordinance No. XXI of 1982).