

# ADR in Muslim Family Laws Ordinance, 1961

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**Alternative Dispute Resolution**

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# The Issues Covered by ADR under this Legislation

There are three things are under cover of this legislation concerned with Alternative Dispute Resolution (ADR). These are:

1. Polygamy ( U/S. 6)
2. Talaq (U/S. 7)
3. Maintenance (U/S. 9)

# Polygamy [U/S. 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 [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, 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.

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(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 **[30 days]**, and on payment of the prescribed fee, prefer an **application for revision to the [Assistant Judge]** concerned and his decision shall be final and shall not be called in question in any Court. **[U/S.561A of CrPc for Quashment]**

(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 to **[ten thousand taka]**, or with both.

# Talaq [U/S. 7]

**(1) Any man who wishes to divorce his wife shall, as 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.**

**(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 [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.**



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(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. **[Hillah Marriage]**

# Dissolution of Marriage otherwise than by Talaq [U/S. 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. [\[Talaq E Taufiz or Delegated Talaq\]](#)

# Maintenance [U/S. 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.

(2) A husband or wife may, in the prescribed manner, within the prescribed period [30 days], and on payment of the prescribed fee, prefer an application for revision of the certificate [\* \* \*] to the [Assistant Judge] concerned and his decision shall be final and shall not be called in question in any Court. [U/S.561A of CrPc for Quashment]

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



# **Arbitration Council [U/S.2(a)]**

**(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:**

**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;**

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(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 the **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 an 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;**

# The Institutions

**U/S. 2(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;**

**U/S. 2(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.]**

**U/S. 2(e) “Prescribed” means prescribed by rules made under section 11;**

# Ordinance to Override other Laws, etc. [U/S. 3]

(1) The provisions of this Ordinance shall have effect notwithstanding any law, custom or usage;

(2) For the removal of doubt, it is hereby declared that the provisions of **the Arbitration Act, 2001, the Code of Civil Procedure, 1908 and any other law regulating the procedure of Courts shall not apply to any Arbitration Council.**



# Questions Session