

### Introduction

Muslim Family Laws Ordinance of 1961 provides some restricted facilities for women. The husband must give notice of talaq to the wife through proper channel for breakdown of a marriage. He must take permission of the wife before a second marriage. Polygamy is curtailed by this Ordinance. This law is available to Muslims only, though polygamy is a concern for other communities also. Any dispute under the Muslim Family Law ordinance, 1961 will be solved by the arbitration council. 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. The details are being discussed in the below.

### Arbitration Council

“Arbitration Council” means a body consisting of the Chairman and a representative of each of the parties to a matter dealt with 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.<sup>90</sup>

### Chairman

“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;<sup>91</sup>

Where the union Parishad, Paurashava or Municipal Corporation is superseded, the person discharging the functions of such Parishad, Paurashava or Corporation may be appointed by the Government to discharge the functions of Chairman under this

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90 Section 2(a) of the Muslim Family Law ordinance 1961

91 Section 2(b) of the Muslim Family Law ordinance 1961

Ordinance but 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 owing to illness or another 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.<sup>92</sup>

### Municipal Corporation

Municipal Corporation “means the Municipal Corporation constituted under the Chittagong Municipal Corporation Ordinance, 1982 or the Dhaka Municipal Corporation Ordinance, 1983 or the Khulna Municipal Ordinance, 1984 and having in the matter jurisdiction as prescribed.<sup>93</sup>

### Paurashava

Paurashava” Means the Paurashava constituted under the Paurashava Ordinance, 1977 and having the matter jurisdiction as prescribed.<sup>94</sup>

### Union Parishad

“Union Parishad” means the Union Parishad constituted under the Local Government (Union Parishads) Ordinance, 1983 and having in the matter jurisdiction as prescribed.<sup>95</sup>

### Formation of Arbitration Council and their functional procedure

The chairman shall make an Arbitration Council for pacifying the all disputes originated under the Muslim family law ordinance 1961. When the chairman will get the notice of allegation either by the husband or the wife, the chairman shall call for an Arbitration council to constitute. For this the chairman shall call

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92 Section 2(b) of the Muslim Family Law ordinance 1961

93 Section 2(c) of the Muslim Family Law ordinance 1961

94 Section 2(d) of the Muslim Family Law ordinance 1961

95 Section 2(f) of the Muslim Family Law ordinance 1961



the parties to appoint their representative within seven days. The council shall take lawful arrangement without representative if any party fails to appoint the representative.

If any member of the Council is unable to run the function for ill or any other reason, the chairman may call for choosing another one. In this case the procedure shall be started where the procedure was stopped previously. But in exceptional case the chairman may start denovo trial.

If the chairman is non Muslim, the council shall appoint a Muslim as chairman and his office will be terminated like a member.<sup>96</sup>

### Procedure of making decision

The decision of the Council shall be given on the basis of the majority opinion of the member but if it is not possible the decision of the chairman shall be final. The procedure of arbitration shall be in camera but if the parties have no objection, it may be open place.<sup>97</sup>

### ADR in case of Polygamy

The arbitration procedure in case of polygamy is described in different stages:

#### Application / seeking permission from the Arbitration Council

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 is registered under the Muslim Marriages and Divorces (Registration) Act, 1974. If there is more than one wife, the application is to be made in the chairman of the latest wife where she lives in.<sup>98</sup>

#### Contents of the Application

An application for permission shall be submitted to the Chairman in the prescribed manner together with the prescribed

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96 MdAkhtaruzzaman, concept and law of on alternative dispute resolution and legal aid 2<sup>nd</sup>ed, shabdaokoli printers p.126

97 Ibid

98 Section 6(1) of the Muslim Family Law ordinance 1961

fee and shall state the reasons for the proposed marriage and whether the consent of the existing wife or wives has been obtained thereto.<sup>99</sup>

### Duties of the council

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<sup>100</sup>. Generally the Council in giving the permission considered the following matters:

1. Physical capacity of the woman
2. The sterility of the woman
3. Mental capacity of the wife
4. Not peaceful in the conjugal life.

### Decision of the council

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 revision to the Assistant Judge concerned and his decision shall be final and shall not be called in question in any Court.<sup>101</sup>

### Punishment

Any man who contracts another marriage without the permission of the Arbitration Council shall

1. pay immediately the entire amount of the dower whether prompt or deferred due to the existing wife or wives but if not so paid it shall be recoverable as arrears of land revenue; and

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99 Section 6(2) of the Muslim Family Law Ordinance 1961

100 Section 6(3) of the Muslim Family Law ordinance 1961

101 Section 6(4) of the Muslim Family Law ordinance 1961



2. 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.<sup>102</sup>

### Revision

The aggrieved party may apply or revision to the Assistant judge for revision of the decision given by the council within 30 days of the date of decision.

### Interference of the High Court Division

Generally no court has any power to intervene with the decision of the Assistant Judge Court but an application may be done to the High Court Division for the abuse of the given power under section 561A of the Code of Criminal Procedure 1898.<sup>103</sup>

### ADR in case of Talaq

When a person wishes to give talaq his wife he has to maintain some formalities under this Ordinance. No one is allowed to give divorce at liberty. He has to enter in ADR for making the divorce peaceful. Talaq may be given either by the husband and wife. The procedure in both cases is same. The procedure is below:

### Serving the notice of talaq to the chairman and the wife

Any man who wishes to divorce his wife shall as soon as may be after the pronouncement of talaq in any form whatsoever give notice to the Chairman and his wife in writing of his having done so and shall supply a copy thereof to the wife and to the chairman.<sup>104</sup>

### Duties of the chairman

Within thirty days of the receipt of notice under sub-section (1), the Chairman shall constitute an Arbitration Council for the

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<sup>102</sup> Section 6(5) of the Muslim Family Law ordinance 1961

<sup>103</sup> Section 561A of the Code of Criminal Procedure 1898

<sup>104</sup> Section 7(1) of the Muslim Family Law Ordinance 1961

purpose of bringing about reconciliation between the parties and the Arbitration Council shall take all steps necessary to bring about such reconciliation.<sup>105</sup>

### Effectiveness of Talaq

If a talaq is not revoked earlier expressly or otherwise, it 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.<sup>106</sup> If the wife be pregnant at the time when talaq is pronounced, the talaq shall not be effective until 90 days is expired or the delivery of pregnancy whichever be later ended.<sup>107</sup>

### Remarriage after talaq

Nothing shall debar a wife whose marriage has been terminated by talaq and it has been effective from re-marrying the same husband without an intervening marriage with a third-person unless such termination is for the third time so effective.<sup>108</sup> If it is fir third time the third party intervention is necessary.

### Punishment

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.<sup>109</sup>

### ADR in case of maintenance under Muslim Law Ordinance, 1961

Maintenance is sum of money or any other daily necessities which are necessary for leading the life. The wife is entitled it from the husband or from the husband's property whether he is poor or rich. He is bound under law to provide the maintenance

105 Section 7(3) of the Muslim Family Law Ordinance 1961

106 Section 7(4) of the Muslim Family Law Ordinance 1961

107 Section 7(5) of the Muslim Family Law Ordinance 1961

108 Section 7(6) of the Muslim Family Law Ordinance 1961

109 Section 7(2) of the Muslim Family Law Ordinance 1961



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according to his ability. But if the dispute arises about the maintenance, the wife can inform the chairman of the matter. The procedure for solving amicably is as follows:

#### Application to the Arbitration Council

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.<sup>110</sup>

#### Revision

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 to the Assistant Judge concerned and his decision shall be final and shall not be called in question in any Court.<sup>111</sup>

#### Collection of the maintenance

Any amount payable under sub-sections (1) or (2) if not paid in due time shall be recoverable as arrears of land revenue.<sup>112</sup>

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110 Section 9(1) of the Muslim Family Law Ordinance 1961

111 Section 9(2) of the Muslim Family Law Ordinance 1961

112 Section 9(3) of the Muslim Family Law Ordinance 1961