

**HOMEWORK**

**Date: 28 January, 2021**

**The Muslim Family Laws Ordinance (MFLO) 1961:**

The Muslim Family Laws Ordinance (MFLO) 1961 has provisions for the constitution of Arbitration Council to resolve three specific family disputes: divorce, polygamy, and maintenance. If the couple comes to a consensus that they will continue the marital relationship, the divorce application will not be effective.

The Muslim Family Laws Ordinance (MFLO) 1961 has provisions for the constitution of Arbitration Council to resolve three specific family disputes: divorce, polygamy, and maintenance. The arbitration may be defined as the reference of a dispute for adjudication to a third party chosen by the parties in dispute and whose decision is binding on the disputants. Islam recognizes Tah'kim (arbitration), alongside the Al-qada' (judiciary) as a means of dispute settlement, as it is evidenced in the Quran, and the Sunnah (tradition) of the Prophet (SM).

After the enactment of MFLO 1961, all incidents of verbal divorce had been announced unlawful. Now, the party who wants to file an application for divorce should go to the Marriage Registrar, and file the application, mentioning the reason. The Registrar will receive the application and send the notice to the Chairman/Mayor of respective local government institution (LGI) for the next course of action and a copy to the other party.

The Chairman/Mayor within 30 days, to form the Arbitration Council, will inform both parties to send particulars of their representatives within 7 days. With the nominated representatives the Chairman/Mayor will form the Council. This Council will call both parties for dialogue, attempting to resolve the dispute. If the couple comes to a consensus that they will continue the marital relationship, the divorce application will not be effective. In case of no-consensus, the divorce will be effective within 90 days after receiving the notice.

In *Jesmin Sultana v Mohammad Elias* (1997 (17) BLD 4), the Court ruled that Section 6 of the MFLO prohibiting the contracting of a polygamous marriage without the prior permission of the Arbitration Council is against the principles of Islamic law. The Court stated that Muslim jurists and scholars are nearly unanimous in the view that it is practically impossible to deal with co-wives justly, and so the Quranic injunction that a second wife may be taken under specific conditions is virtually a prohibition.

According to Section 9, if without any valid reason, a husband neglects his wife and do not pay adequate maintenance or if there is more than one wife and he is not able to give them maintenance equally or if

the husband without any valid reason declines to give any maintenance to his wife then the wife can file a petition to the Chairman/Mayor claiming her right to maintenance.

During a recent study facilitated by the Madaripur Legal Aid Association (MLAA) and Bangladesh Legal Aid & Services Trust (BLAST) some common findings came out. They are:-

**Lack of awareness:** During the interviews with the service recipients at Union Parishad, Pourashobha, and City Corporation, it was commonly observed that neither the husband nor the wife is aware and/or (more than 90%) clear about the process that they need to follow to complete the relevant processes.

**One law but many practices:** Citizens are not aware of where to go, to whom to consult at the local government. There is no uniformity in practice. The practice that has been observed in Chittagong City Corporation is not similar to that of Khulna City Corporation or Dhaka City Corporation.

**Avoidance of law:** The matter of maintenance and polygamy was found to be solved outside the Arbitration Council. As the citizens are not aware of the law they did not take the matter to the Council for settlement. In these cases, the local government representatives preferred to informal arbitration (Salish) to solve the matters.

Based on the present situation the following actions were proposed:-

**Raising the level of awareness regarding the MFLO:** Both duty bearers and citizens should be aware of the regulations. Raising awareness could ensure prevention of illegal practices.

**Reviewing and revising the mandate under MFLO:** The mandate of the local government institutions should be reviewed and revised. At present, a divorce application comes effective automatically after 90 days of serving the notice. If they have the authority to withhold the application without their approval, the Council may become more effective.

**Ensuring capacity building:** To activate the Council, the Chairmen of the Council should be given training on counseling and conciliation and members of the Council should be provided with reasonable remuneration for their services.

**Monitoring and coordination of services:** The performance of the Marriage Registrar should be monitored and coordinated with other relevant agencies regularly. And for any failure, he should be penalized. This will stop unlawful and corrupt practices by the Registrars.

**Digitizing services:** Interviewees proposed to effectively digitize the services. The one-stop point option may be the center point of this process. This may also eliminate the challenge of serving relevant notices as an integral part of the process.

**Thank you**