

THE LEGAL STUDY ON INTERFAITH MARRIAGE IN
BANGLADESH: ISSUES AND PROSPECTS FOR REFORM

BY

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ABSTRACT

Interfaith marriage is socially, religiously and legally contested and one of the most complicated issues in Bangladesh. This study focuses on the Special Marriage Act, 1872 and its practice in the current legal setting of Bangladesh. It examines the existing law on the current interfaith marriage practices and legal issues emanating from the existing law in Bangladesh. This study adopted a qualitative method which is a combination of the doctrinal and non-doctrinal research. For the doctrinal research method, it drew data from various legal writings, national laws, international laws, case law, etc. For the non-doctrinal research method, the study conducted in-depth semi-structured interviews to obtain data from various respondents in Bangladesh, namely, interfaith couples, social activists, religious experts, local police officers, special marriage registrars, judges, lawyers and academics. This study examined the benchmark with the Indian, Malaysian and Indonesian interfaith marriage laws and practices. The findings of this study demonstrate that the number of interfaith marriage-related problems is increasing in the current socio-religious and legal landscape. Similarly, it discovered that the existing provisions of the Special Marriage Act, 1872 are extremely inadequate to handle existing interfaith marriage disputes. It also shows that the court faces various difficulties in determining the disputants' rights and obligations. Lastly, it reveals that legal and judicial conflicts are created by the inadequacy of the existing law. The study, therefore, recommends by suggesting that there is a need to amend the Special Marriage Act, 1872 which is inadequate in the current legal setting. However, for a long term solution, the existing law needs to be abolished and replaced by the law governing Muslim and non-Muslims as regards the possibility of resolving conflicts between laws.

خلاصة البحث

الزواج بين معتنقي الأديان المختلفة من أكثر القضايا تعقيداً في بنغلاديش اجتماعياً ودينيًا وقانونيًا. تركز هذه الدراسة على قانون الزواج الخاص لعام 1872 وممارسته في الإطار القانوني الحالي لبنغلاديش. وتفحص هذه الدراسة على القانون الحالي بشأن ممارسات بين معتنقي الأديان المختلفة الحالية والقضايا القانونية المنبثقة عن القانون الحالي في بنغلاديش. واعتمدت هذه الدراسة على المنهج النوعي وهو مزيج من البحث الفقهي وغير الفقهي. بالنسبة لطريقة البحث الفقهي، فإنه يستمد البيانات من مختلف الكتابات القانونية، والقوانين الوطنية، والقوانين الدولية، والسوابق القضائية، إلخ. بالنسبة لطريقة البحث غير الفقهي، فهذه الدراسة تستخدم المقابلات والاستبانات المنظمة والمتعمقة بشكل أساسي للحصول على البيانات من مختلف المجيبين في بنغلاديش، أي الأزواج بين معتنقي الأديان والناشطين الاجتماعيين والخبراء الدينيين وضباط الشرطة المحلية ومسجلي الزواج الخاصين والقضاة والمحامين والأكاديميين. تدرس هذه الدراسة المعيار المرجعي مع قوانين وممارسات الزواج بين الأديان الهندية والماليزية والإندونيسية. توصلت الدراسة إلى مجموعة من النتائج، من أهمها: أن عدد المشاكل المتعلقة بالزواج بين معتنقي الأديان المختلفة آخذ في الازدياد في المشهد الاجتماعي والديني والقانوني الحالي. وبالمثل، تكتشف أن الأحكام القائمة في قانون الزواج الخاص لعام 1872 غير كافية إلى حد كبير لمعالجة المنازعات القائمة بين الأديان. كما يبين أن المحكمة تواجه صعوبات مختلفة في تحديد حقوق المتنازعين والتزاماتهم. وأخيراً، يكشف القانون أن المنازعات القانونية والقضائية تنشأ عن عدم كفاية القانون القائم. ولذلك توصي الدراسة باقتراحها أن هناك حاجة إلى تعديل قانون الزواج الخاص لعام 1872، وهو قانون غير كاف في الإطار القانوني الحالي. ومع ذلك، من أجل حل طويل الأجل، يجب إلغاء القانون القائم واستبداله بقانون يحكم المسلمين وغير المسلمين، وذلك في إطار معالجة إمكانية حل النزاع بين القوانين.

APPROVAL PAGE

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DECLARATION

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To my Family with Allah nothing is impossible...

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Advocate Md. Salauddin Dolon v. Government of Bangladesh and Others (2010) 39 CLC
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Andal Vaidyanathan v. Abdul Allam Vaidya (1946) 1 MLJ 402
Aysha Bibi v. Sobodh Ch. Chakravarty (1945) 49 CWN 439
*Bangladesh Legal Aid and Services Trust and Others v. Government of Bangladesh and
Others* (2009) Writ Petition no 5863
BNWLA v. Government of and others (2009) 14 BLC 707
BNWLA v. Government of Bangladesh (2011) 31 BLD 324 (HCD)
BNWLA v. Government of Bangladesh and Others (2001) 40 CLC (HCD)
Budansa Rowther And Anrs v. Fatima Bi And Ors (1914) 26 MLJ 260
C. A. Neelakantan v. Mrs. Anne Neelakantan (1959) RAJ AIR 133
Chaudhury and Kendra v. Bangladesh and Others (2009) 29 BLD (HCD)
Dr. Niranjana Das Mahan v. Mrs. Ena Mahan (1943) Cal AIR 146
Ershad v. Bangladesh and others (2001) 21 BLD
Gul Mohammad v. Emperor (1947) Nag AIR 121
Inder Mohan Tiwari v. Manju Tiwari (1986) Del AIR 155
*Indira Gandhi a/p Mutho v. Patmanathan a/l Krishnan (anyone having and control over
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Islam and Others v. Bangladesh and Others (2000) 52 DLR 413
Jamna Devi v. Mul Raj (1907) 49 PR 198
Karishma Qureshi v. Faisal Qureshi (2015) Bom AIR 46
Ketua Polis Negara v. Indira Gandhi a/p Mutho [2015] 2 MLJ 149 CA
Khambatta v. Khambatta (1935) 59 Bom ILR 278
Krishnapada Talukder v. Geetasree Talukder (1994) 14 BLD 415
Kung Lim Siew Wan v. Choong Chee Kuan (2003) 6 MLJ 260
Lina Joy v. Majlis Agama Islam Wilayah Persekutuan dan lain (2007) 4 MLJ 585
M v. A (2018) CM(M) Delhi High Court 140
Mahbub Shafique and Others v. Government of Bangladesh and Others (2010) Writ
Petition no 4275
Mohammad Shafi v. Raunaq Ali (1928) Oudh AIR 231
Mst. Nandi alias Zainab v. Crown (1920) 1 Lah ILR 440
Mt. Title v. Alfred Robert Jones (1934) All AIR 273
Muhammad Mustafizur Rahaman Khan v. Mrs. Rina Khan (1967) Dac PLD 652
Muncherji Cursetji Khambata v. Jessie Grant Khambata (1934) 36 BOMLR 1021
Musst. Khan Bibi v. Pir Shah (1884) 19 PR 359
Neduncheliam Balasunbramaniam v. Kohila A/P Sharmagam (1997) 3 MLJ 768
Nelly Zaman v. Giasuddin Khan (1982) 34 DLR 221 AD

Nirmal Kanti Das v. Sremoti Biva Rani (1994) 14 BLD 413 (HCD)
Noor Jehan Begum v. Eugene Tiscenko (1942) Cal AIR 325
Paintal v. Avtar Sing (1988) Del AIR 1212
Pedley v. Majlis Ugama Islam Pulau Pinang & Anor (1990) 2 MLJ 307
Pravir Chandra v. Kaveri Guha (1987) Cal AIR 191
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Robasa Khanum v. Khodadad Bomanji Irani (1946) 48 BOMLR 864
*Samala a/p Sathiyaseelan v. Dr. Jeyaganesh a/l C Mogarajah & Anor (also known
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Sarla Mudgal v. Union of India (1995) 3 SSC 635
Shafin Jahan v. Asokan KM & Others (2017) CrI. 57 SLA
Shakti Vahini v. Union of India (2018) AIR 1601 (SC)
*Shamala a/p Sathiyaseelan v. Dr Jeyaganesh a/l C Mogarajah (also known as Muhammad
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Sharmin Hossain alias Rupa v. Mizanur Rahaman (1997) 2 BLC HCD
Sherin Akther and another v. Md. Ismail (1999) 51 DLR 512
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Siti Aysha Jhantip Aisam (2006) 21 JH 262
Skinner v. Orde And Ors (1875) 1 Allahbad ILR 230
Subashini a/p Rajasingam v. Saravanan a/l Thangathoray and other (2008) 2 CLJ 2 (FC)
Tapan Ranjan Das v. Smt. Jolly Das (1990) Cal AIR 353
Tey Siew Choo v. Teo Eng Hua (1999) 3 AMR 2279
Uma Charan Roy v Sm. Kajal Roy (1971) AIR Cal 307
*Viran a/l Nagapan v. Deepa a/p Subramaniam (Penang Negara Malaysia & Anor,
 intervener)* (2015) 3 MLJ 209
Yip Fook Tai v. Manjit Singh @ Mohd Iskandar Manjit Abdullah (1990) 2 CLJ 605
Yong Fuat Meng v. Chin Yoon Kew (2008) 5 MLJ 226

LIST OF STATUTES / CONVENTIONS

Bangladeshi Statutes

Araya Marriage Validation Act (1937) (Act XIX)
Bangladesh Laws (Revision and Declaration) Act (1973) (Act VIII)
Christian Marriage Act (1872) (Act XV)
Code of Civil Procedure (1908) (Act V)
Code of Criminal Procedure (1898) (Act V)
Constitution of the People's Republic of Bangladesh (1972) (President Order No 76)
Divorce Act (1869) (Act IV)
Family Courts Ordinance (1985) (Act XVIII)
Muslim Marriage and Divorce (Registration) Act, (1974) (Act LII)
Muslim Personal Law (*Shariat*) Application Act (1937) (Act XXVI)
Nari-o-Shishu Nirjatan Daman Ain (2000) (Act VIII)
Penal Code (1860) (Act XLV)
Special Marriage Act (1872) (Act III)
Succession Act (1925) (Act XXXIX)

Indian Statutes

Constitution of India (1949)
Hindu Marriage Act (1955) (Act 25)
Indian Divorce (Amendment) Act (2001)
Indian Divorce Act (1869) (Act 4)
Special Marriage Act (1954) (Act 43)

Malaysian Statutes

Evidence Act (1950) (Act 56)
Federal Constitution of Malaysia (1957) (Act 373)
Islamic Family Law (Federal Territories) Act, (1984) (Act 303)
Law Reform (Marriage and Divorce) Act, (1976) (Act 164) (Amendment 2017) (Act A1546)

Indonesian Statutes

Compilation of Islamic Laws in Indonesia (1997) (Presidential Decesion No 1)
Constitution of the Republic of Indonesia (1945)
Marriage Law (1974) (Act 1)

International Conventions & Instruments

Convention on the Elimination of All Forms of Discrimination Against Women (1989)
Universal Declaration of Human Rights (1948)

LIST OF ABBREVIATIONS

AD	Appellate Division
ADR	Alternative Dispute Resolution
AIR	All India Reporter
All	Allahabad
AMR	All Malaysia Reports
BLAST	Bangladesh Legal Aid and Service Trust
BLC	Bangladesh Law Chronicles
BLD	Bangladesh Legal Decision
BNWLA	Bangladesh National Women Lawyers' Association
BOMLR	Bombay Law Report
Cal	Calcutta
CHN	Calcutta High Court Notes
CLC	Civil Law Cases
CLJ	Current Law Journal
Crl. A	Criminal Appeal
WN	Weekly Notes
DLR	Dhaka Law Report
FC	Federal Court
HCD	High Court Division
IA	Indian Appeal
ILR	Indian Law Reports
JH	Jurnal Hukum
Lah	Lahore
MLJ	Malayan Law Journal
MLJ	Madras Law Journal
MLR	Malayan Law Reports
Oudh	Oudh State of India
PLD	Pakistan Legal Decision
PR	Punjab Record
SC	Supreme Court
SLA	Special Leave to Appeal
SLP	Special Leave Petition

CHAPTER ONE

GENERAL INTRODUCTION

1.1 BACKGROUND OF THE RESEARCH

Bangladesh is a Muslim majority country in South Asia, but there are other minority groups, namely, Hindus, Christians, Buddhists and others. Bangladesh used to be part of the British Empire, and since coming under the British rule, it has adopted different cultures, ideologies and philosophies.¹ As a result, people have become more familiar with intercultural affairs irrespective of their religious identity. Therefore, such mixed cultural relationships impact adversely on interfaith marriages and family life. Interfaith marriage has been legalised in Bangladesh since the era of British colonialism. The Special Marriage Act, 1872 permits a special form of marriage between the parties who do not profess Christianity, Judaism, Hinduism, Islam, Zoroastrianism, Buddhism, Sikhism or Jainism faiths at the time of marriage.² In this regard, the parties must declare that they do not profess any religion at all. Subsequently, such marriages have to be solemnized before a registrar, in which such marriages become permitted under the Special Marriage Act of 1872.³

The Bangladesh Constitution of 1972 affirms that the religion of the republic is Islam,⁴ but it also ensures equal status and equal rights for its citizen to observe the religion

¹ Abdul Majid, "Genesis of the Two Nations Theory and the Quaid-e-Azam," *Pakistan Vision Academic Journal*, vol. 15, no. 1 (2014): 180.

² The Special Marriage Act, 1872, Preamble., the preamble provides that a marriage between persons who do not profess the Christian, Jewish, Hindu, Muslim, Parsi, Buddhist, Sikh or Jaina religion. And persons who profess the Hindu, Buddhist, Sikh or Jaina in order to legalize certain marriage which are doubtful.

³ *Ibid.*, s. 11.

⁴ The Constitution of the People's Republic of Bangladesh 1972, Art. 2A.

of their own choice. In addition, the Bangladesh Constitution protects secularism,⁵ where it states that freedom of religion, elimination of communalism, abuse of religion for political aggression, discrimination and harassment against persons for practicing a particular religion.⁶ At present, interfaith marriages have gradually increased in the society, because of the mixed cultural affiliations. It is a common scenario that after the marriage of the interfaith couples, they are vulnerable to abuse, discrimination and social violence, such as being forced to leave their parents' houses and compelled to hide themselves. This is due to the existing social and religious pressures.⁷

The Special Marriage Act of 1872 was enacted by the British Parliament to resolve inter-religious marriage related disputes. However, this law does not cover all marital obligations and other codified law that governs the interfaith marriage procedure. The number of problems faced by interfaith couples has been on the increase, due to inadequacy of the existing laws to govern and protect their rights and obligations. The inadequacy is created by the fact that marriage under the Special Marriage Act, 1872, is multidimensional and not judicially enforceable. There are insufficient provisions in relation to divorce, child custody, maintenance, guardianship, property share, succession, adoption and religious issues. The current social setting is that if the couples decided to marry under the Special Marriage Act, 1872, the situation becomes difficult, since the law does not provide adequate provisions on the rights of the married parties where the legal disputes arise and appear before the court for settlement. The inadequate provisions have imposed limitations on the rights of married parties under this Act.

⁵ Ibid., Art.12.

⁶ Ibid., Art. 28.

⁷ Refugee Review and Tribunal, *RRT Research Response (BGD17577- Bangladesh)*, (Australia, 2005), 8.

Although the government has neither objected nor encouraged and has no preventive action against interfaith marriage practices, the existing law makes it difficult for the court to implement and deliver relevant legal decisions. In this regard, the judges have faced various difficulties in resolving interfaith marriage cases. Mostly, judges rely on their own inherent and intellectual expertise for resolving such legal complications. As a result, the court has failed to resolve the real causes, and thus the whole proceedings have become ambiguous. Due to procedural complexity, most of the interfaith marriage disputes have come to a standstill at the early stages of the legal proceedings. Therefore, the consequences of such marriage disputes vary from one to another. The problems encountered by interfaith couples can be explained by referring to the cases which had been decided before and after the independence of Bangladesh as mentioned bellow.

In the case of *Muhammad Mustafizur Rahaman Khan v Mrs. Rina Khan*,⁸ the petitioner husband filed a petition for a declaration that the marriage be declared null and void, while the respondent wife also filed an alternative suit for an order for the restitution of conjugal rights under section 19 of the Divorce Act, 1869. Subsequently, the court found that the petitioner husband was a Muslim by birth and the respondent wife was a Christian (Catholic). Therefore, the court held that the marriage between the parties was void due to deceptive information in the marriage declaration form.

In *Dr. Niranjana Das Mahan v Mrs. Ena Mahan*,⁹ the petitioner husband (Hindu Arya sect) filed a petition for the dissolution of the marriage and for damages. The petitioner stated that the respondent wife was a Christian. Thereafter, the respondent wife

⁸ *Muhammad Mustafizur Rahaman Khan v Mrs. Rina Khan* (1967) PLD DAC 652.

⁹ *Dr. Niranjana Das Mahan v Mrs. Ena Mahan* (1943) AIR Cal 146.

converted to a Hindu Arya sect and married the petitioner accordingly. Later, they registered their marriage under the Special Marriage Act, 1872. The petitioner husband alleged that his wife committed adultery after their marriage. Subsequently, the respondent wife filed a petition for judicial separation based on her husband's allegation. After the hearing, the court dismissed both the petitions. The petitioner husband subsequently appealed against the dismissed order. The appeal court pointed out that the petitioner husband had acknowledged his religion at the trial proceedings. The court also found that the declaration of marriage form was defective due to missing information. Therefore, the court held that the marriage was not valid under the Act of 1872. As a consequence, the appeal too was rejected.

Similarly, in the case of *Mt. Title v. Alfred Robert Jones*,¹⁰ which arose from a matrimonial suit, the petitioner (husband) was a Christian and the respondent (wife) was a Muslim widow, and during the marriage, the respondent's wife had converted to Christianity. Thereafter, the petitioner husband pleaded for a declaration that the marriage to the respondent be declared null and void under section 19 (3)¹¹ of the Divorce Act, 1869 and his consent to the marriage had been obtained by force and fraud. The respondent denied all allegations and claimed that the marriage was valid and lawful. The trial court found that neither force nor fraud was performed upon the petitioner husband to induce him in order to obtain consent for their marriage. After that the petitioner husband appealed, and at the appeal stage, the High Court judge pointed out that the appellant husband was not mindless or an idiot, and he was moderately capable of understanding the actual nature

¹⁰ *Mt. Title v Alfred Robert Jones* (1934) AIR All 273.

¹¹ The Divorce Act, 1869, s. 19(3)., a decree may be made on the grounds that either party was a lunatic or idiot at the time of marriage.

of the marital ceremony. In addition, the alleged grounds under section 19 of the Indian Divorce Act, 1869 had not been established. However, in this situation all those alleged grounds had to be established, otherwise it could be said that there was no real consent. Therefore, the court held that the marriage was not invalid, and there could not be a declaration of nullity on the grounds under section 19 of the Divorce Act, 1869. Finally, the court dismissed the suit with cost order.

The above-mentioned cases illustrate the existing problems encountered by the court in adjudicating cases involving interfaith marriage disputes. Against this background, the present study therefore wishes to examine the strengths and weaknesses of the existing substantive and procedural laws relating to the practice of interfaith marriages in Bangladesh. It is hoped that the outcome of this study will enable the court to deliver judicially acceptable judgments and resolve interfaith marriage disputes rather than postponing them. Hence, the underlying objective of this study is to propose for a legal reform in the Bangladeshi legal system.

1.2 STATEMENT OF THE PROBLEM

Interfaith couples are bound to leave their family affiliations immediately after the marriage, because they tend to be neglected by the society.¹² Socio-cultural violence and radical bitterness are serious problems faced by interfaith couples in the society. It has been observed that there is an increase in the rate of problems encountered by couples of interfaith marriages. Insufficient legal provisions in the existing laws is the principal barrier for the couples to protect their rights and obligations. Similarly, such inadequacy is created

¹² Md. Kamruzzaman, "Interreligious Marriage in Bangladesh: From Human Rights Perspective", *International Journal of Education, Culture and Society*, vol. 1, no. 2 (2016): 48–50.