

# PROTECTION OF MUSLIM WOMEN'S RIGHTS THROUGH MARRIAGE REGISTRATION IN BANGLADESH: CHALLENGES AND PROSPECTS

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## ABSTRACT

This research explores the protection of women's rights through marriage registration in Bangladesh, focusing on the underutilized provisions of the Nikah Nama, specifically Clause 17 and Clause 18, which provide critical protections such as maintenance, polygamy restrictions, and delegated divorce (Talaq Tawfeez). Despite being legally mandatory, marriage registration faces significant challenges due to cultural resistance, lack of awareness, and weak enforcement, particularly in rural areas. The study, through interviews with affected women, legal experts, and marriage registrars, highlights the gap between legal provisions and their practical implementation. The research suggests that with legal reforms, improved enforcement, public awareness campaigns, and better institutional support, marriage registration can be a powerful tool for empowering women and safeguarding their rights, thus contributing to gender justice in Bangladesh.

**KEYWORDS:** Nikahnama, Clause 17, Clause 18, Marriage Registration, Muslim Women's Rights, Bangladesh

## 1. INTRODUCTION

### 1.1 BACKGROUND OF THE STUDY

Muslim marriages in Bangladesh are regulated by both Islamic principles and civil law. Marriage registration, though a critical legal step, is often overlooked, leading to several legal and social challenges for women. Among the most crucial legal tools is the *Nikah Nama* (marriage contract), which outlines the rights and responsibilities of both the husband and wife. It guarantees not only the recognition of marriage, but also provides women a tool to gain necessary protections within marriage<sup>1</sup>.

The focus of this research is on the Nikah Nama, particularly Clause 17 and Clause 18, that play immense role in the protection of rights of women in marriage. Clause 17 permits inclusion of protective conditions as such delegated divorce (Talaq Tawfeez), Mahr, Maintenance, and Impediment to Remarry. Such provisions provide important legal safeguards for women, who are protected when marital relations are strained or when abuse or neglect occur<sup>2</sup>.

However, these provisions remain unused (or poorly utilized) due to lack of knowledge, cultural resistance, and legal ineffectiveness. This study seeks to investigate the legal and socio-cultural hindrances that render women incapable of benefiting from these provisions effectively, and in turn, how they can be more effectively integrated into marriage contracts so that gender parity and women's rights are upheld<sup>3</sup>.

### 1.2 IDENTIFICATION OF PROBLEMS

The legal recognition and proper registration of marriage are at the core of preserving the rights to a wife under Muslim Family Law in Bangladesh. The Nikahnama, a crucial legal document that formalizes marriage among Muslims, comprises numerous conditions to protect the women rights i.e Clause No.17 relates to inclusion of different protective provisions and Clause No.18 which is related to the right of divorce (Talaq-e-Tafweez) authorization to be provided to the wife. However, there are still many women who are not aware of these rights. Far too often, the Nikahnama is completed without the bride even knowing, and vital protective clauses are left empty or crossed out<sup>4</sup>.

This issue is compounded by social and religious backlash. Most communities find the idea of empowering the Nikahnama in the hands of women indecent or un-Islamic. Religious leaders and elders generally disapprove of women who use Clause 18 (the power to seek a divorce), and consider any exercise of such rights to be a sign of ill manners. These perceptions also restrict Nikahnama from becoming an instrument of law protecting the rights of women<sup>5</sup>.

This is compounded by lack of enforcement of marriage laws. While the marriage registrar's functions and the requirements therefor are regulated by law under The Muslim Marriages and Divorces (Registration) Act, 1974, registrars have little actual supervision. Lots of registrars don't tell women what their rights are, and get away with not doing the Nikahnama properly. This administrative default allows institutions to continue discriminatory practices unchecked<sup>6</sup>.

Moreover, limited access to the law means that it is not easy for women to enforce their rights. Legal aid opportunities are often scarce, particularly in rural areas. Women might also feel pressured not to seek legal assistance or may fear the stigma of asserting their marital rights. This has left countless with no real remedy.

Finally, gender discrimination is a structural obstacle, as well. All the legal and social systems are dominated by the patriarchal norms where the voices of women are marginalized and the legal protections meant for them are reduced to zero. Until it can address these roots of bias in the system by way of reform and awareness, the promise of marriage registration as a means to protect Muslim women in Bangladesh will be largely a mirage.

### 1.3 RESEARCH QUESTIONS

This study seeks to address the following key research questions:

1. How does the marriage registration contribute to the protection of Muslim women's rights through Nikahnama in Bangladesh?
2. What are the challenges in the practicing of the protective clauses in the Nikahnama?
3. What legal and policy reforms are necessary to strengthen the Muslim women's rights in Muslim family law in Bangladesh?

### 1.4 RESEARCH OBJECTIVES

The main objectives of this research are to:

1. To discuss the role and legal significance of Nikahnama and its legal implications in protection of Muslim women rights.
2. To identify the barriers that hinder the effective implementation of protective provisions in the Nikahnama.
3. To suggest legal and policy reforms for better protection of women's rights through marriage registration.

### 1.5 SCOPE OF THE RESEARCH

This research focuses on the protection of Muslim women's rights through marriage registration in Bangladesh. It challenges the legal system, social norms and institutional obligations around the Nikahnama. The research aims to look at how these clauses operate in reality and identify obstacles to making them work as protective instruments of women.

### 1.6 INCLUSION

The research includes a doctrinal and socio-legal examination of The Muslim Marriages and Divorces (Registration) Act, 1974 and the Muslim Family Laws Ordinance, 1961, and the rules and judicial directives pertaining to the registration of Muslim marriage in Bangladesh. Particular attention is paid to the Nikahnama as a necessary tool for promoting women's rights; with specific focus on Clause 17, which provides for the insertion of all possible mutually arranged conditions; and Clause 18, which allows for delegated divorce rights. The research also features interviews and case-related inputs from marriage registrars, lawyers, academics, and affected Muslim women. Further, secondary sources including reports, legal commentaries and policy documents are analysed to underpin the qualitative analysis.

### 1.7 EXCLUSION

The study does not deal with any part of non-Muslim personal laws including marriage among the members of other religious groups in Bangladesh. It also does not employ quantitative methods of research, for instance: surveys and statistical data, since the research is completely qualitative. References to international human rights instruments are only marginal for contextual reasons. In addition, unregistered (and informal) marriages, which do not fall under the legal regime of Nikahnama and formal registration, are not considered for further examination.

### 1.8 SIGNIFICANCE AND JUSTIFICATION OF RESEARCH

Marriage, as an institution in Bangladesh, is not only a social and religious arrangement, but also a legal transaction, especially with respect to Muslim personal law. In this context, the Nikahnama is a vital document, enlisting the rights and responsibilities of both the partners. However, in practice, although it has the potential to safeguard women's rights, particularly in relation to Clause 17 and Clause 18, it is rarely used or purposely left out. Consequently, there are a large number of Muslim women in Bangladesh who continue to be vulnerable from the point of view of law and social practice in the matter of marriage<sup>7</sup>.

This research is important since it fills a gap in academic and policy discourse on the actual use of marriage registration as a means to empower women. Although registration of marriage is compulsory by law, there has been limited analysis of the ways in which this could be more effectively utilised to secure rights for Muslim women. We use the terms of Clause 17 and Clause 18 of the Nikahnama to show how tools already existing in the personal law can be deployed for substantive change and protection, without necessarily having to 'throw away the personal law'<sup>8</sup>.

Moreover, the study can be defended in view of the present social problems women encounter in seeking to implement their marital rights. Cultural opposition, a lack of administrative enforcement and pervasive gender-bias serve to frustrate the enforcement of protective laws. A qualitative exploration of these issues gives us an understanding of not just the legality but also the lived experiences of women who suffer due to the abuse, and non- use, of the *Nikahnama*. Comprehending these dynamics is also critical in making specific recommendations that can be contextually sensitive and culturally appropriate<sup>9</sup>.

## 1.9 LIMITATION OF THE RESEARCH

Several limitations to this study are acknowledged. First, it is completely qualitative, being based on legal analysis, interviews, and secondary sources, and using no quantitative data or major surveys. Second, the sample is restricted only to Muslim personal law and registration of marriage practices in Bangladesh ignoring other religious communities and jurisdictions. Three, because of time and resource limitations interviews were only conducted in selected areas, and may therefore not be truly representative nationally. Moreover, the study cannot explain unregistered or informal marriages which are still widespread in upcountry rural area. Finally, the study does not analyze international law frameworks in depth, except to the extent that they offer some context<sup>10</sup>.

## 1.10 RESEARCH METHODOLOGY

This research draws on a qualitative approach, conflating doctrinal research (law on paper) with empirical socio-legal research (law in action) to assess the protection of Muslim women's rights through marriage registration in the perspective of Bangladesh. The study involves a critical review of relevant statutory provisions, particularly The Muslim Marriages and Divorces (Registration) Act, 1974, and its application through the *Nikahnama*, with a focus on Clauses 17 and 18. Domestic primary legal sources in the form of statutes, case law, and official rules are studied to gain perspective on the current legal regime and secondary sources—contributions from journals, law commission papers, NGO papers, and academic writing—are used to evaluate academic opinion and policy debate.

To enhance the study of the doctrinal law, interviews were conducted with a range of stakeholders, including marriage registration officials, lawyers, Islamic scholars and Muslim women who have undergone the marriage registration process. These interviews yielded useful information about the problems of implementation, the social assumptions behind its use and ineffective general limitations on the access to *Nikahnama* as a protection instrument. The selection of interviewees was purposive and based on relevance and experience.

## 1.11 BRIEF STRUCTURE OF RESEARCH

- **Chapter 1: Introduction** – Introduction to the research topic, objectives, research questions, and methodology.
- **Chapter 2: Review of Relevant Literature** – A review of existing literature on marriage registration, women's rights, and legal frameworks in Bangladesh and other countries.
- **Chapter 3: Conceptual and Theoretical Framework** – Discusses the theoretical perspectives guiding the research, including feminist legal theory, human rights-based approach, and legal pluralism.
- **Chapter 4: Legal and Policy Framework** – Analyzes the legal framework governing marriage registration in Bangladesh and the inclusion of stipulations in the *Nikah Nama*.
- **Chapter 5: Discussion and Analysis** – Presents and discusses the findings from case studies, interviews, and surveys.
- **Chapter 6: Concluding Remarks** – Summarizes the findings and provides recommendations for legal and policy reforms.

## 2. REVIEW OF RELEVANT LITERATURE

### 2.1 INTRODUCTION

The relationship between marriage registration and the protection of women's rights has emerged as a pivotal concern in Muslim-majority legal systems. In Bangladesh, the *Nikahnama*—a legally binding marriage contract—offers scope for including specific stipulations under Clauses 17 and 18, such as restrictions on polygamy, ensure proper maintenance and delegated divorce (*Talaq-e-Tafweez*). However, these protections are hardly ever successfully used. This chapter critically assesses the relevant literature on Muslim family law, marriage registration and gender equality in Bangladesh. It describes current academic fashions and highlights the lacunae that serve as the rationale for this study<sup>11</sup>.

## 2.2 REVIEW OF LITERATURE

The legal literature on the rights of women in the context of Muslim family law in Bangladesh demonstrates an emerging focus on the operationalization of marriage contracts as a mechanism of empowerment. Some influential research studies have laid the groundwork for understanding the doctrinal, socio-legal, and pragmatic aspects of the predicament<sup>12</sup>.

**Shahnaz Huda's** seminal article "*Protection of Women in the Marriage Contract: An Exploration*" (2000) more explicitly challenges the transformational capacity of the Nikahnama. Huda further considers how specific provisions in contracts, especially under Clauses 17 and 18, can work to safeguard women in their marital contracts. She notes that although these clauses enable women to bargain for important rights (like delegated divorce or banning of polygamy) women rarely exercise the clauses because of societal conservatism, ignorance and poor legal implementation. Hers is one of the rare contributions to focus squarely on what she describes as the Nikahnama's "instrumental" value as a rights credential<sup>13</sup>.

**Kamrul Hossain** (2003), in "*In Search of Equality: Marriage Related Laws for Muslim Women in Bangladesh*," provides a broad doctrinal analysis, but argues single pointedly that even when like here the law offers conditionalities, social structures and patriarchal values outwit their operation. Between legal right and practical ability, he says there is a "mismatch"<sup>14</sup>.

**Anisur Rahman** (2008) in "*Development of Muslim Family Law in Bangladesh: Empowerment or Streamlining of Women?*" asks if changes in Muslim family law really benefit women or just make for an efficient system. He criticizes the state for intervening only minimally to secure the forces of women entering marriage contracts<sup>15</sup>.

**S. Amin** (2008), in her work "*Reforming Marriage Practices in Bangladesh*," highlights persistent harmful customs such as child marriage and dowry, arguing that legal tools alone—like registration—are insufficient to change entrenched patriarchal attitudes. The findings affirm the necessity of addressing sociocultural resistance in addition to legal reform<sup>16</sup>.

**N. Mian and S. Hossain** (2013), in "*Modernizing Marriage Registration Law in Bangladesh*," advocate for administrative reform of the marriage registration system. They focus on the need for fortified institutional frameworks that will help the Nikahnama become more than a ceremonial document but their work lacks empirical specificity and a clause-by- clause focus<sup>17</sup>.

**Shahnewaj Patwari and A. Ali** (2020), in their study "*Muslim Women's Right to Divorce and Gender Equality Issues in Bangladesh*," discuss the practical and legal impediments women face in exercising their right to delegated divorce. Though they are working in the realm of gender-based legal reform, they emphasize that housewives would also benefit from a more widespread use of Clause 18 and, more broadly, that registrars and families are largely in the dark about its provisions.

**Nowrin Tamanna et al.** (2019), in "*Muslim Women's Rights under Bangladesh Law*," present an extensive doctrinal analysis of the rights of Muslim women under domestic law. It resounds the potential in family law legislation, but once again fails to provide a concentrated discussion of the Nikahnama and its conditions.

**R. Parveen** (2020), in "*From Regulating Marriage Ceremonies to Recognizing Marriage Ceremonies*," explores the legal complications arising from informal or unregistered marriages. She focuses on how state recognition/s can be insufficient to guarantee women's rights without formal registration and thus, indirectly argues for the need for rigorous and meaningful Nikahnama implementation.

**Jannatul Ferdous** (2020), in "*Rights of Maintenance of a Muslim Wife under Islamic Law*," and **N. Ferdousi** (2021), in "*Protection of Wife's Right to Maintenance in Bangladesh*," both focus on maintenance as a critical area of women's rights. These scholars identify structural barriers to access to justice, but do not consider how women could use contractual terms within the marriage to address some of these barriers.

Finally, **A.B.M. Asrafuzaman and Mohammad Golam Sarwar** (2024), in "*Recent Trends of Judicial Activism for the Advancement of Muslim Family Laws in Bangladesh*," show a new trend that the judiciary is coming forward to play an interpretive role of the personal laws to ensure the protection of women's interest. But their analysis is operating at the level of high constitutional drama, not with such ground-level instruments as Clauses 17 and 18<sup>18</sup>.

## 2.3 GAP IN THE LITERATURE REVIEW

While a considerable literature exists in the domain of legal studies pertaining to women's rights in the context of Muslim family law in Bangladesh, there exist major lacunae, especially in terms of what these clauses can actually do and the qualitative dimensions of their usage. A lot of the literature focuses more broadly on maintenance, divorce rights and marriage law reform, for example, albeit frequently from a doctrinal or policy viewpoint. However, clause-specific analysis—particularly concerning Clauses 17 and 18 of the *nikahnama*—is notably absent in most scholarly works.

Further, it is doctrinally based literature that is mostly concerned with interpretations of the law and policy with little empirical support. The interpretation and application of these clauses by women, marriage registrars and legal authorities in real-life situations is not well known. In the absence of field-level data, there remains substantial uncertainty about the enforcement and knowledge of these rights.

## 2.4 CHAPTER SUMMARY AND DISCUSSION

The literature is evident on a persistent concern for Muslim family law reform. Academic interest has gradually moved from high level doctrinal analysis towards demands for administrative modernisation, coupled with relatively little empirical investigation. Yet other research is unsuccessful in addressing marriage registration as a legal instrument of change. There is also a striking absence of clause-specific, empirical, or practice-based research on the *Nikahnama*. Furthermore, while recent works explore judicial activism, they remain disconnected from the procedural realities faced by women attempting to assert their rights through marriage contracts.

This study is, therefore, at the crossroads in law and lived experience and seeks to address this vital lacuna by qualitatively and causally investigating the dynamics of marriage registration procedures in Bangladesh.

## 3. CONCEPTUAL AND THEORETICAL FRAMEWORK

### 3.1 INTRODUCTION

The chapter provides a theoretical framework and background literature that inform the investigation of how women's rights are safeguarded through marriage registration in Bangladesh. Given that the research investigates the underutilized potential of *nikahnama* clauses—particularly Clauses 17 and 18—as tools for enhancing women's rights, this chapter focuses on clarifying key terms such as *marriage registration*, *stipulations in marriage contracts*, *delegated divorce (Talaq al-Tafwid)*, and *women's legal empowerment*. It also discusses the connection of these ideas with the recognized legal, social and administrative problems of the Muslim women in Bangladesh<sup>19</sup>.

### 3.2 CONCEPTUAL FRAMEWORK

This research is based on a theory which has shown how marriage registration, especially Clause 17 and 18 of *Nikahnama*, can be used as a legal tool ensure the rights of Muslim women of Bangladesh. The model is predicated, after all, on the fact that, although it is a religious and social institution in Islam, marriage has a contractual segment which can be regulated through the use of formal legal means<sup>20</sup>.

In Clause 17 allows for the introduction of agreed to conditions to include control over polygamy and maintenance and Clause 18 allows the husband to transfer his right to Divorce (Talaq al-Tafwid) onerous or otherwise in instance the wife waives her right to divorce at earlier stages of marriage such as on demand. Such articles constitute the official means by which women may claim a sense of autonomy and safety once they are in marriage. Yet the enforcement and the practicality of such clauses are heavily influenced by the social cultural setting and institutional practices in Bangladesh<sup>21</sup>.

Therefore, the conceptual framework rests on three interrelated pillars:

1. **Legal Mechanisms** – These form the substance, enforceability and interpretive techniques employed in relation to *Nikahnama* and the statutes e.g. Bangladesh Muslim Marriage & Divorce (Registration) act-1974. It explores how the law contractually secures the rights of women in marriage.
2. **Socio-Cultural Realities** – Socio-cultural realities such as customs, conservative interpretations of certain religious texts, and the patriarchal mindset are an impediment to a woman enjoying her rights in a marriage agreement. The use of protective and women-friendly sections, even if available in theory, are usually thwarted by cultural resistance.
3. **Institutional Capacity** – this pertains to the capacity of marriage registrars, law practitioners and courts to implement the law. Institutional hindrances, that is a lack of regulation, inadequate training, or lack of legal assistance, determine to a large extent how the rights in the *Nikahnama* are implemented.

### 3.3 EXPLANATION OF THE KEY CONCEPTS

This section explicates the key concepts shaping the scope and analysis of the study. It is important to understand these terms in order to understand how they are related to women rights and marriage registration in Bangladesh.

#### A. MARRIAGE REGISTRATION

The registration of marriage is the official recording of a marriage performed by a state institution and resulting in a marriage certificate. Under the provisions of the Muslim Marriages and Divorces (Registration) Act, 1974, marriage registration is mandatory for Muslim in Bangladesh. Though the religious aspect is primordial, the legal registration of marriages, securing the recording, traceability and enforceability of the marriage contract has vital importance, notably in guarding the rights of women in terms of dower, maintenance, divorce, and inheritance<sup>22</sup>.

#### B. NIKAHNAMA

*Nikahnama* is a pre-designed formulaic marriage contract used in Muslim marriages in Bangladesh. It is made up of several clauses to account for personal, financial, and legal agreements. Clauses 17 and 18 are particularly important: Clause 17 allows the parties to include additional stipulations agreed upon during marriage (such as restrictions on polygamy or rights to maintenance), while Clause 18 refers to the delegation of divorce (Talaq al- Tafwid) to the wife.

These provisions represent a contractual space within Islamic family law for the protection and advancement of women's rights.

### C. STIPULATIONS IN MARRIAGE CONTRACT

These refer to additional conditions included in the *nikahnama* with mutual consent. Such stipulations might involve promises not to divorce or to live separately or with specific financial obligations, or consent by the husband to monogamy. They are not inconsistent with Islam if they fail to contradict its fundamentals and can increase women's marital bargaining power.

### D. TALAQ AL-TAFWID (DELEGATED DIVORCE)

It stipulates for the delegation by the husband of the power to divorce his wife in consideration of a part of the dower which the wife agrees to forego. This condition is recognised by Islamic law and meanwhile the same is legally enabled under Clause 18 of *nikahnama*. As a major legal weapon to escape from oppressive and abusive marital relationships, this condition provides the women the means for exit, other than judicial *khula* process or other harrowing legal manoeuvres<sup>23</sup>.

### E. WOMEN'S LEGAL EMPOWERMENT

The legal empowerment of women is the process through which women gain capacity and access to resources to acquire confidence to assert their rights to control their own lives, within and outside the household, and participate in the life of their community and country. It includes more than the mere formal recognition of rights: the understanding of those rights, their accessibility and their enforceability in practice. On how legal empowerment is seen under this study, Legal empowerment that is women who know and use *nikahnama* clauses and marriage registration processes to assert their claims<sup>24</sup>.

## 3.4 HOW THESE CONCEPTS RELATE TO THE RESEARCH PROBLEM

The core problematic in this study is the lack of safeguard of Muslim women's rights in marriage in spite of the existence of formal legal tools, that is to say the *nikahnama* and obligatory marriage registration in Bangladesh. The themes of the earlier discussion—the registration of marriage, *nikahnama*, contractual conditions, *talaq al-tafwid*, and the empowerment of women in law—have an essential relationship with an understanding of the problem in both theory and reality<sup>25</sup>.

Firstly, marriage registration is intended to act as a legal safeguard by formally documenting the terms of the marital relationship. However, the effectiveness of this guarantee is doubtful where the process is perceived as an administrative form instead of a mechanism for protecting rights. This brings us to the question of conceptual disuse — if parties (women particularly) are unaware of the legal bite of the *nikahnama*, including the ability to put express terms in, or to advocate for delegated rights to divorce, then those tools will be unused.

Secondly, the *nikahnama*, especially Clauses 17 and 18 gives an important contractual site for the expansion of women's marital autonomy. Clause 17 permits spouses to insert such legally valid stipulations — but is mostly seen blank or with vague comments, not due to ignorance, but because social protocols, indifference of the registrars makes it happen so. Clause 18 also allows a husband to confer on his wife the right to divorce, but this is seldom invoked and widely misunderstood. These gaps militate against the legal position of the wife, and betray legal and cultural resistance to gender equality in the intimate domain of marriage.

Thirdly, legal empowerment of women is not only a matter of having rights on paper but of having knowledge, access to and capacity to exercise rights. In rural and deprived areas however, these legal provisions lack actual practice as patriarchal norms still persist and legal literacy is minimal. This is the hitch for empirical investigation of how those rights are observed—ignored—at the community.

Thus, all of these central concepts not only suggest some possible directions in protecting women's rights but also indicate the limitations and problems at the heart of the research problem. By using the theoretical instruments to engage with lives, the study seeks to explore how marriage registration in Bangladesh might be reformed so that it becomes an effective instrument for protecting Muslim women.

## 3.5 THEORETICAL FRAMEWORK

This study's theoretical framework draws from four compatible perspectives-Feminist Legal Theory, Human Rights-Based Approach, Legal Pluralism, and Intersectionality-to press on the most sensitive, effective and comprehensive protection of Muslim Women's Right around marriage registration in Bangladesh. These theoretical frames provide a broad framework for examining the possibilities and challenges of a legal instrument like the *nikahnama*, especially Clauses 17 and 18 thereof, within a complex social-legal environment<sup>26</sup>.

### FEMINIST LEGAL THEORY

Feminist legal theory challenges the patriarchal bias in law and all its institutions which promote practices and laws which disadvantage women. This framework examines how the legal system, even in family law, frequently reinforces gender hierarchies in the name of neutrality or in the name of a cultural preservation. For the purposes of this study, feminist legal

theory allows us to consider why resources such as delegated divorce (Clause 18) and contractual conditions (Clause 17) are underused (despite their availability under Islamic law) because of persistent male bargaining power and social custom and administrative inertia. It also informs an assessment of the extent to which marriage registering laws and policy really promote women, as opposed to consolidating old roles<sup>27</sup>.

## HUMAN RIGHTS-BASED APPROACH

The analysis is rooted in a human rights-based approach to the international legal requirement to protect, respect, and fulfil women's rights to equality, dignity, and non-discrimination. If marriage registration is done meaningfully, it can be a human rights protection which can help access justice and counter exploitative marital arrangements. This method makes possible a normative criticism of what might be (and are) perceived to be gaps between statutory rights and the actual practice in Bangladesh, emphasizing the state's obligation to ensure Muslim women are actually able to claim and enforce rights integral in marriage contracts.

## LEGAL PLURALISM

Legal pluralism acknowledges that different legal systems (the state law, the religious law, and the customary law) can coexist in a single jurisdiction. In Bangladesh, Muslim family law operates in a pluralist context in which religious norms and statutory law co-exist and sometimes compete with one another. Legal pluralism allows one to understand the competing claims of progressive statutory reforms and conservative religious interpretations that circumscribe the potential of the nikahnama as a rights document. The framework provides an insight into the role of local actors – marriage registrars, religious leaders and families – as mediators between these various local sites of authority, who often work against women's rights<sup>28</sup>.

## INTERSECTIONALITY

Intersectionality is the idea that compounded elements of race, gender, rural and urbanity, class, education etc. result in more layers of society that suffer (or benefit, depending on the context of discussion) from more serious forms of discrimination. This framework is important when considering why so many women - not least those in rural or socio-economically deprived contexts - have no knowledge of their rights or capacity to exercise them in the context of marriage registration. Intersectionality highlights how women's experiences vary according to social economic and cultural environments thus showing that women in different contexts require particular reforms and awareness raising<sup>29</sup>.

## 3.6 SUMMARY OF THE CHAPTER

This chapter was devoted to the theoretical and conceptual framework and became a starting point for the analysis of the research problem about limited protection of Muslim women's rights by the system of register in marriage in Bangladesh. It opened with a summary of the chapter's objectives and conceptual grounding, and clarification of such terms as marriage registration, Nikahnama (marriage contract), contractual condition, Talaq al Tafwid, and women's substantive legal empowerment. These are relevant to understand the extent to which legal tools protect or fail to protect women in marriage.

The chapter concretized theoretical ideas into social practice revealing that despite the presence of protective measures like clauses 17 and 18 they remained limited in their range on account of cultural expectations, administrative lackadaisicalness, and vacuum within the organization. These deterrents weaken the empowering potential of the Nikahnama.

Further inquiry was conducted based on four interlocking theoretical frameworks, namely Feminist Legal Theory, Human Rights-Based Approach, Legal Pluralism and intersectionality. Combined, they provide an analytic framework for the question of how and when law replicates and disrupts gender disparity in marital relations.

## 4. LEGAL AND POLICY FRAMEWORK

### 4.1 INTRODUCTION

This chapter considers legal and policy dimensions of marriage registration in Bangladesh: in particular, I analyze Clause 17 and Clause 18 of the Nikah Nama. It examines to what extent these provisions safeguard the rights of women; the legal ramifications for the inclusion of such provisions and obstacles faced for enforcement within the formal justice system. The purpose is to assess the existing framework and suggest enhancements in order to reinforce the potential of such clauses for gender justice<sup>30</sup>.

### 4.2 THE ROLE OF CLAUSE 17 AND CLAUSE 18 IN PROTECTING WOMEN'S RIGHTS

Clause 17 and Clause 18 of the Nikah Nama covers provisions including delegated divorce (Talaq Tawfeez), maintenance (Nafaqa), mahr (dower), thus providing a good deal of protection for women in marriage. Such provisions provide women with freedom, financial security and legal protection on the disintegration of marriage. The provisions in it are all legally binding making the women more secure<sup>31</sup>.

### 4.3 LEGAL FRAMEWORK GOVERNING MARRIAGE REGISTRATION

The following are some of the most relevant provisions governing the registration of marriage and related protective clauses:

1. **The Muslim Family Laws Ordinance, 1961:** Effects in the matters of marriage, divorce, maintenance, polygamy, with the protection of rights of women in section 17.
2. **The Muslim Marriages and Divorces (Registration) Act, 1974:** Mandates marriage registration but has limited implementation, especially in rural areas.
3. **The Dissolution of Muslim Marriages Act, 1939:** Allows for divorce but insufficient protection for women; Clause 18 provides for a more balanced and fair right of divorce.

These are the laws underlying marriage registration in Bangladesh, yet enforcement is weak and social barriers persist.

### 4.4 POLICY CONSIDERATIONS AND RECOMMENDATIONS

Recommendations The following are a set of recommendations to enhance the implementation of Clause 17 and Clause 18:

1. **Awareness and Education Campaigns:** Education to the public to emphasize the legal advantages of registration of marriage and the need for inclusion of protective clauses.
2. **Simplifying the Marriage Registration Process:** Eliminating red tape and its availability for registration, especially in the interior, would result in a greater number of registrations.
3. **Strengthening Enforcement Mechanisms:** It is essential that marriage registrars follow the legal criteria and comply with legal requirements and the stipulations are upheld in court.
4. **Legal Aid and Support for Women:** Provision for legal aid to women, in particular in rural areas, to secure their rights under Clause 17 and Clause 18.
5. **Collaboration with Religious Leaders:** Campaigning for legal benefits of marriage registry by involving religious leaders could mitigate inertia-attitude gained by cultural belief.
6. **Incentivizing Marriage Registration:** Through the provision of financial inducements, more marriage registration and protective clauses will be added.

### 4.5 MARRIAGE REGISTRATION AND WOMEN'S SOCIAL INCLUSION

Ensuring marriage registration is not just a legal safeguard, but also a mechanism for women's inclusion in society. It provides inheritance, maintenance and property rights that enhance the social and economic status of women. Married registrations also serve to breach social gap and allow women to equally stake their claim, and participate fully in society.

### 4.6 SUMMARY

This section considers the significance of Clause 17 and Clause 18 in safeguarding women's rights in marriage. Although the legal provision provides strong protection, it is not effectively enforced, not widely known, and it is negatively perceived in society, preventing it from being put in practice fully. The suggested policy advice has a focus on creating awareness, making processes easier, enforcing more, and providing legal aid to make sure women gain the full benefit of registration of marriage and the protective mechanisms. In the following chapters we will examine empirical evidence and develop policy recommendations for improving the soundness of these provisions.

## 5. DISCUSSION AND ANALYSIS

### 5.1 INTRODUCTION

The chapter provides findings from the empirical study using interview, field observation as well as document analysis. The results are not actually 'results' in a strict sense, but are ordered thematically to tackle the key research questions. The study consisted of several women, individuals in the field of law, and marriage registrars in both urban and rural areas of Bangladesh, from which the experiences of women in respect of marriage registration and inclusion of Clause 17 and Clause 18 were gathered.

### 5.2 UNDERSTANDING AND EXPERIENCES OF MARRIAGE REGISTRATION

This section explores how respondents—particularly Muslim women—perceive, understand, and engage with the process of marriage registration in Bangladesh. Registration, however, is often viewed as a formality rather than a potential source of empowerment even though it is often mandated by law. If many had no idea what the Nikahnama said then that was especially true for many of the woman interviewed, where all the woman had signed on the dotted line but never read and had no idea they had a legal right to insert conditions (Clause 17) or receive the delegated right of divorce (Clause 18).

Female participants still felt unable to negotiate these provisions, even in urban areas.

Even marriage registrars confessed that they seldom explain these clauses unless requested to do so because of cultural sensitivities. Legal experts noted that even states, who are meant to benefit from those clauses, have no idea what they are. A lawyer said: “The Nikahnama is a historical document but on the ground, it is more of a formality.”

Only a handful of men and women, mostly from middle-class, educated and possibly more urban backgrounds had managed to exploit Clause 18 and make an effective escape from abusive wedlock—showing that notwithstanding positive law, access to legal knowledge is very much mediated and shaped by entrenched existing socio-economic privilege.

### 5.3 BARRIERS TO UTILIZING PROTECTIVE CLAUSES

While Clauses 17 and 18 in Nikahnama permit Muslim women to negotiate conditions at marriage and to receive delegated divorce rights, the research identifies a multitude of socio-cultural, administrative and institutional barriers that prevent their use. This leaves these protective provisions largely ineffective in nature for the majority of Bangladeshi women.

One of the largest obstacles is that many women are unaware of their legal rights. The women and, in particular, those from rural areas were unaware of the existence of these Clauses 17 and 18. The emotional high of marriage ceremonies left little space to think carefully. Another rural woman said: ‘I didn’t even know what I was signing. The Kazi just signaled, and my father said, sign this.’ Even urban women with secondary education were confused on these clauses, which is alarming.

Cultural expectations dissuade women from demanding rights while negotiating marriages. The addition of conditions is sometimes seen by families as a lack of trust, While religious conservatism wrongly equates delegated divorce with un-Islamism. Marriage registrars have said they refrain from bringing up these clauses to avoid causing controversy or being accused of interfering with customs. And even educated women are terrified of being seen as defiant or unconventional. The fear of demanding such rights is based in the idea that doing so would hurt their prospects for marriage, and therefore many remain silent even when the law is in their favor.

There is no supervision nor training available for kazis. They do not have to explain the clauses or even fill them properly — there is no regulatory machinery to hold them accountable. Efforts from both government and legal aid on this issue are few and far between.

### 5.4 THEORETICAL REFLECTION AND LEGAL SYNTHESIS

Feminist Legal Theory argues that legal rights in their official form are insufficient for the deconstruction of patriarchal domination. However, both Clauses 17 and 18 may be useful legal instruments in theory, but in practice, they receive little exercise, as families and other institutions remain patriarchal in nature. This disconnect between law and day-to-day life serves to validate feminist critiques on gender bias embedded in both state and non-state legal regimes.

Marriage Registration and Legal Pluralism shows that both formal law and informal custom shape marriage registration. Marriage registrars frequently apply cultural, not legal requirements. So, having such opposing norms present can deplete the protective value of codified law.

This HRBA reveals the positive state duty to protect the rights of women. Bangladesh, as a party to CEDAW, is under an obligation to ensure that access to rights goes beyond mere incorporation of rights in laws and is made effective and enforceable. But this obligation is stymied by institutional gaps—particularly in training and awareness.

It is intersectionality that accounts for the fact that the majority of rural, less-educated women are kept outside the ambit of these legal protections while those few with privilege reap the benefits. Legal access is thus mediated through gender, class and place. Therefore, an intersectional approach demands context-sensitive legal reforms to address these hierarchically inequitable realities in practice.

### 5.5 CONCLUSION

It has been discussed in this chapter, the results from both legal review and qualitative interviews about the awareness, implementation, and issues experienced with Clauses 17 and 18 of the Nikahnama. It should be noted that while these clauses are of transformative legal potential, their effectiveness is severely hampered by cultural barriers, institutional indifference and persisting gender-based power imbalances. By employing Feminist Legal Theory, Legal Pluralism, the Human Rights-Based Approach, and Intersectionality, the chapter critically analysed how structural inequalities hinder women from leveraging these laws on marriage registration.

## 6. CONCLUDING REMARKS

### 6.1 FINDINGS

This paper presents the following major findings on how the marital registration of the Nikahnama protects the rights of Muslim women in Bangladesh, through Clauses 17 and 18. Results are presented in line with the three main research questions.

#### A. MARRIAGE REGISTRATION AS A TOOL FOR WOMEN'S RIGHTS PROTECTION

Marriage registration, when done right, is a boon for Muslim women. Similarly Clause 17 provides that the contract of marriage could be conditioned — e.g., against polygamy, providing maintenance, etc. or any terms mutually agreed and Clause 18 permits delegation of right of divorce (Talaq al-Tafwid) to wife. Such conditions could help enhance women's independence and protection in legal marriage. But the research showed that use of these provisions is very rare. The existence and importance of such mechanisms are still under the general knowledge of women, especially in rural areas. Even if they know their rights, most of times social pressure stops them from exercising those rights. Lawyers who spoke to The Tribune confirmed that while the clauses were legally valid, they were seldom invoked at the time of marriage registration. But hardly a marriage registration office bothered to implement them due to ignorance and apathy.

#### B. BARRIERS TO THE USE OF PROTECTIVE CLAUSES

A mix of cultural, social and structural factors make it difficult to use Clauses 17 and 18 effectively. This like the above mentioned are mostly not known to women especially in rural areas who definitely has little or no knowledge about the existence of such clauses and even if they know, they are not enforceable. Most brides have no idea of what is written in Nikahnama and what it stands for. These are grounded, second, in the retreat of cultural and religious conservatism that deters women from including conditions of protection in their marriage contracts. Many of these attempts are seen as impudent, indecorous, and interfered with by parents or community leaders. Finally, the researchers report that marriage registrars commonly do not explain these clauses at the time of registration, partly owing to their fear of family disputes or negligence. Moreover, gendered power structures restrict women from negotiating marriage contracts, which are often drawn by males and religious figures. Third, these clauses deter women from seeking their rights as they are often ostracised, harassed, abused or threatened by not just their husbands but also their families, which entices most into silence.

#### C. REFORM NEEDS AND POLICY GAPS

To deal with these challenges, many legal and policy reforms are required. First, marriage registrars must undergo compulsory training and be held accountable for explaining and completing all legal clauses during registration. Second, it is paramount to conduct awareness campaigns—especially in rural areas—to help women and their families understand the legal implications of Clauses 17 and 18. Third, using the Nikahnama in a digital format with help texts attached to each clause can help standardize what should not be skipped and make the process more transparent. Fourth, make free legal aid accessible for women so that they can seek justice when their rights are violated. Furthermore, involving progressive religious leaders in advocacy efforts can mitigate backlash and show that protecting women rights in marriage is in accordance with Islamic teachings.

### 6.2 RECOMMENDATIONS

Following the findings of this research, some legal, institutional and social reforms are suggested to safeguard rights of the Muslim women and provide them with the protection that they have been entitled to receive through marriage registration in Bangladesh, specifically with respect to the implementation of Clauses 17 & 18 of the Nikahnama.

#### A. MANDATORY TRAINING AND REGULATION OF MARRIAGE REGISTRARS

There should be a mandatory training of all marriage registrars addressing women's legal rights and gender sensitivity with full explanation of the Nikahnama, particularly Clauses 17 and 18. Third, a regulatory body should audit registrar compliance based upon community complaints and periodic reviews. Disciplinary action should hold registrars accountable for not providing this clause or failing to explain it.

#### B. SIMPLIFICATION AND DIGITIZATION OF THE MARRIAGE REGISTRATION PROCESS

For convenience, the registration of marriages should be simplified and computerized. A standardized digital Nikahnama form, explaining each clause will help prevent any arbitrary omission or manipulation. Two things: set up mobile registration units or local legal service centers to support these women with a legal framework so they do not become opportunistic intermediaries themselves.

### **C. STRENGTHENING LEGAL AID AND INSTITUTIONAL SUPPORT**

Widening the access to legal wherewithal so that women can enforce their rights cannot also mean driving other men away. Special marriage dispute services should be part of government-sponsored legal aid, as well as other support mechanisms created by non- governmental organisations. Help desks in family courts to assist women to claim rights pertaining to maintenance, delegated divorce and enforcement of contracts;

### **D. ENGAGEMENT WITH RELIGIOUS AND COMMUNITY LEADERS**

Often, opposing views of women's rights in marriage can be rooted in cultural and religious misreading. Thus, religious/faith leaders and hence community influencers must be involved to promote the idea of protective clauses to be included in Nikahnama. By highlighting how these rights align with Islam, it becomes possible to counter practices that are harmful and promote greater social acceptance of such rights.

### **E. POLICY REFORM AND COMPLIANCE WITH INTERNATIONAL OBLIGATIONS**

Other than that, the government can also revise relevant marriage registration laws and policies to require compulsory implementation and explanation of protective clauses. Bangladesh has ratified the women rights treaty called Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and has a binding legal obligation to take appropriate legislative and other measures, including the introduction of sanctions, where appropriate, to eliminate discrimination against women in all areas of life, including in family relations. Marriage registration practices should therefore be consistent with state obligations under CEDAW to make law and family life gender-equal (Art. 15 and 16).

### **6.3 CONCLUSION**

The research highlights the importance of marriage registration and Nikah Nama in the protection of women's rights in marriage. Although the regime enshrined in Article 17 and Article 18 are quite protective, the current situation is plagued by gaps and deficiencies connected to lack of knowledge, cultural opposition, administrative barriers, absence of effective enforcement, and gendered power relations. But there are legal and policy reforms that can make the system work better; they include public education campaigns, simplification of registration procedures, stronger enforcement, cultural change and empowerment of women to claim their rights to equitable registration. Through more research and advocacy, the protections that women possess in marriage can be strengthened, bringing about more gender parity and women's empowerment in Bangladesh.

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**Mehedi Hasan**

## LIST OF ABBREVIATIONS

1. **BUP** - Bangladesh University of Professionals
2. **LLM** - Master of Laws
3. **FSSS** - Faculty of Security and Strategic Studies
4. **Nikah** - Marriage (in Islamic law)
5. **CEDAW** - Convention on the Elimination of All Forms of Discrimination Against Women
6. **UN Women** - United Nations Women
7. **NGO** - Non-Governmental Organization
8. **Sharia** - Islamic Law
9. **Maher** - Dower (Islamic Marriage Contract)
10. **Talaq** - Divorce (in Islamic law)
11. **HRBA** - Human Rights-Based Approach
12. **MOU** - Memorandum of Understanding
13. **UNICEF** - United Nations Children's Fund
14. **WHO** - World Health Organization
15. **BMC** - Bangladesh Marriage Certificate
16. **CPC** - Civil Procedure Code

## LIST OF LAWS

### 1. **THE MUSLIM FAMILY LAWS ORDINANCE, 1961**

Governs various aspects of Muslim family law, including marriage, divorce, and the registration of marriages and divorces.

### 2. **THE MUSLIM MARRIAGES AND DIVORCES(REGISTRATION) ACT, 1974**

Provides the legal framework for the registration of Muslim marriages and divorces in Bangladesh.

### 3. **THE DISSOLUTION OF MUSLIM MARRIAGES ACT, 1939**

Outlines the grounds on which a Muslim woman can file for divorce and the legal process for dissolution of marriage.

### 4. **THE CONSTITUTION OF BANGLADESH (1972)**

Provides the fundamental legal framework and guarantees basic rights, including equality and non-discrimination for all citizens.

### 5. **THE PENAL CODE, 1860**

Defines criminal offenses, including those related to marriage, family, and personal harm, and sets forth penalties for their violation.

### 6. **THE EVIDENCE ACT, 1872**

Governs the admissibility of evidence in legal proceedings, including the evidence related to marriage registration.

### 7. **THE DOWRY PROHIBITION ACT, 1980**

Prohibits dowry demands and stipulates penalties for the unlawful demand or giving of dowry.

### 8. **THE CHILD MARRIAGE RESTRAINT ACT, 1929**

Prohibits the marriage of minors and sets the legal age of marriage for women at 18 and men at 21.

### 9. **THE DOMESTIC VIOLENCE (PREVENTION AND PROTECTION) ACT, 2010**

Provides a legal framework for the prevention of domestic violence, including violence within marriage, and offers protection and support to victims.

## 10. THE PREVENTION OF WOMEN AND CHILDREN REPRESSION ACT, 2000

Protects women and children from oppression and exploitation, including those within marriage.

## 11. THE NATIONAL WOMEN DEVELOPMENT POLICY, 2011

A policy document that addresses the legal and social empowerment of women, including the protection of their rights within marriage.

## 12. THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW)

A UN treaty focusing on the elimination of discrimination against women, including in marriage and family relations.

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## QUESTIONS

### **QUESTIONS FOR WOMEN**

1. Have you ever come up against any issues with unregistered marriage?
2. What would you like to see that might make it easier to register for women like yourself?
3. Do you know what is written in Clause-17 in *Nikahnama*?
4. What do you know about delegated divorce?
5. Did you read your *nikahnama* before putting your sign?

### **QUESTIONS FOR LEGAL EXPERT**

1. What legal challenges do women face when their marriages are unregistered?
2. How can registration for marriage be strengthened in Bangladesh?
3. What type stipulations can be inserted in clause-17 in the *nikahnama*?
4. Does delegated divorce in *nikahnama* go against the norms of the Shariah Law?
5. What reforms do you recommend to make marriage registration more accessible?

### **QUESTIONS FOR RELIGIOUS AND COMMUNITY LEADER**

1. How do you view the role of marriage registration in Islam?
2. Do you think registration of marriage is a violation of Islamic customs?
3. How does the marriage registration process in Bangladesh impact the legal rights of women?
4. Do women have the right to make divorce against their husband?
5. How can religious communities be convinced to accept marriage registration?