

Towards Reforms of Family Laws Governing Christians in Bangladesh

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Introduction

Christians in Bangladesh can be broadly divided into two groups: Catholics and Protestants. Catholics are majority¹ in Bangladesh and they are governed by the Code of Canon Law promulgated in 1917- the fundamental legislative document of the Catholic Church. The source of Canon Law comes from the Old and New Testaments of the Bible. Protestants are Baptists, Lutherans, Methodists, Episcopalians, Presbyterians and others.²

On the other hand, civil laws relating to Christians were enacted during the British Period. After the independence of Bangladesh in 1971 these laws continued to remain in force as provided by Article 149 of the Constitution of the People's Republic of Bangladesh which states that, "Subject to the provisions of this Constitution all existing laws shall continue to have effect but may be amended or repealed by law made under this Constitution." These laws are applicable to all Christians irrespective of Church differences. Some of the civil laws directly governing family matters of Christians in Bangladesh are as follows:

- i. The Christian Marriage Act, 1872.
- ii. The Divorce Act, 1869.
- iii. The Guardian and Wards Act, 1890.
- iv. The Succession Act, 1925.

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The purpose of this article is to shed light on the existing civil laws governing personal matters of Christians in Bangladesh and to compare them with the Code of Canon Law. The article also aims to point out the weaknesses in these laws and to make suggestions for their amendments.

Legal Provisions and Customs on Christian Marriage

Christian marriage is considered a union for life. Both under the Old Testament and New Testament of the Bible this nature of marriage has been emphasized. **Genesis Chapter 2 verse 24 states:** “Therefore a man leaves his father and his mother and cleaves to his wife, and they become one flesh”. These words have again been mentioned in **Matthew Chapter 19 verse 4-6 which say:** “He answered, ‘Have you not read that he who made them from the beginning made them male and female, and said, “For this reason a man shall leave his father and mother and be joined to his wife, and the two shall become one. So they are no longer two but one. What therefore God has joined together let no man put asunder.” **Ecclesiastes 4:9-12 states:** “two are better than one, because they have a good return for their toil. For if they fall, one will lift up his fellow; but woe to him who is alone when he falls and has not another to lift him up. Again, if two lie together, they are warm; but how can one be warm alone? And though a man might prevail against one who is alone, two will withstand him”.

i) The Christian Marriage Act, 1872

Marriage has been dealt with both by the Canon Law and the Christian Marriage Act, 1872. However the Act does not provide any definition of marriage. Canon regards marriage as a sacrament and terms it as a partnership for life.³ It also provides that the essential properties of marriage are unity and indissolubility. Canon further states that the marriage of Catholics, even if only one party is baptized, is governed not only by divine law but also

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by Canon law, without prejudice to the competence of the civil authority in respect of the merely civil effects of the marriage. Therefore canon law gives its recognition to the civil law in certain matters.

Conditions and formalities of marriage

Canonical rules and formalities are mostly codified in the Code of Canon law. To avoid overlapping discussions, both are discussed jointly. Conditions of Christian marriage may be considered under two headings (i) Code of Canon law and (ii) Statutory laws. Among the Christians of Bangladesh, certain formalities are to be observed before the celebration of marriage. The formalities are laid down in the Christian Marriage Act, 1872 and under the Code of Canon Law. Section 60 of the Christian Marriage Act, 1872 lays down the conditions and formalities for marriage of native Christians. These formalities include the following:

1. *Notice:* According to the provisions of section 12 and 38 of the Christian Marriage Act, 1872, whenever a marriage is intended to be solemnized by a Minister of Religion or by a Marriage Registrar, one of the parties intending marriage shall give notice in writing to whom he or she desires to solemnize the marriage. The notice contains the name, surname, profession and address (both present and permanent) of both parties.
2. *Publication of notice:* As per provisions in Section 13 and 39 of the Christian Marriage Act, 1872, on receipt of such notice, the Minister of Religion or the Marriage Registrar shall cause the notice to be affixed in some conspicuous part of the church or the office. Where the parties give notice in a particular church, the notice is read out before the faithful three Sundays preceding the marriage

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ceremony. Canon⁴ states that before the celebration of a marriage, all the faithful are bound to reveal to the parish priest or the local ordinary such impediments as they may know about.

3. *Issue of certificate of notice:* Sections 17 and 41 of the Christian Marriage Act, 1872 states that, if any party by whom the notice was given requests the Minister of Religion or the Registrar to issue a certificate, he shall do so provided that he is satisfied as to the absence of any lawful impediment and four days has passed after the receipt of notice. If one of the parties is a minor a certificate cannot be issued until fourteen days after the entry of such notice has expired.
4. *Solemnization of marriage:* According to the provisions of section 26 and 52 of the Christian Marriage Act, 1872, whenever a marriage is not solemnized within two months after the date of certificate issued by the Minister of Religion or the Registrar, the notice and certificate become void and no marriage is to be solemnized until new notice and certificate are issued.

Besides the aforementioned formalities, where the parties intend to marry in a Church, they are required to attend pre-marital counseling sessions. Pastors are required to provide assistance to their church community for preservation of the Christian character of marriage. They are required to prepare the spouses before entering marriage so that the spouses are disposed to the holiness and obligations of their new state⁵.

In addition to the observance of the above formalities, the following conditions on Christian marriage are to be fulfilled:

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Age

Under the Christian Marriage Act, 1872, the age of the man intending to be married shall exceed sixteen years, and the age of the woman intending to be married shall exceed thirteen years⁶. Canon⁷ states that a man cannot validly enter marriage before the completion of his sixteenth year of age, nor a woman before the completion of her fourteenth year. At the same time, Canon⁸ states that Pastors of souls should dissuade young people from entering marriage before the age customarily accepted in the region.

The age of marriage in Bangladesh for anyone irrespective of his/her personal laws is now governed by the Child Marriages Restraint Act, 1929. The Act defines child in section 2 stating that, “child is a person who, if male, is under twenty-one years of age and if female, under eighteen years of age.” These persons are also referred to as minors in relation to contracting marriage. The Act further provides that if anyone contracts a child marriage he/she shall be punishable with simple imprisonment which may extend to one month or with fine which may extend to one thousand taka or both. Parents or guardians who promote or permit or fail to prevent a child marriage are also liable to punishment⁹.

Therefore, there is a conflict regarding age between the Christian Marriage Act, 1872 and the Child Marriage Restraint Act, 1929. Besides, the Act does not declare a child marriage void, so parents/guardians are not easily restrained from giving a child in marriage.

Absence of existing marriage

According to section 60 of the Christian Marriage Act, 1872, neither of the persons intending to be married shall have a wife or husband still living¹⁰. Canon¹¹ states that a person bound by the

bond of a previous marriage, even if not consummated, invalidly attempts marriage.

Witness

According to Canon, two credible witnesses other than the person celebrating the marriage is required for this purpose. This requirement has also been codified in section 66 of the Christian Marriage Act, 1872.

Prohibited degrees

The Christian Marriage Act, 1872 is silent on prohibited degrees in marriage. Under Canon Law¹² the following marriages are prohibited:

- a. marriage between those related by consanguinity in all degrees of the direct line, whether ascending or descending, legitimate or natural.
- b. In the collateral line up to the fourth degree inclusive.
- c. Affinity in any degree of the direct line.
- d. A marriage where there is doubt as to whether the parties are related by consanguinity in any degree of the direct line or in the second degree of the collateral line.

The Bible¹³ says that a man might choose any woman he wants for his wife. Provided that,

- a. she is not already another man's wife
- b. she is not his half-sister
- c. she is not the mother or the sister of a woman who is already his wife.
- d. she is not a son's daughter or a daughter's daughter
- e. she is not his father's sister or mother's sister
- f. she is not his father's brother's wife
- g. she is not his son's wife or brother's wife.

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Mixed Marriages

The term mixed marriages is used in referring to marriages between Christians of different denominations and marriages with non- Christians. Though the Bible prohibits interfaith marriages¹⁴, Chapter VI of Canon Law specifically deals with this sort of marriages. The Christian Marriage Act, 1872 is applicable to marriages where both or any one of the parties is or are Christians. Under Canon Law the term has two meanings: a) inter church or denomination marriage and b) inter-religious marriage.

a) Inter-Church or Denomination marriage

Inter church or denomination marriage means a marriage between a Catholic and non-Catholic party. Canon Law¹⁵ states that without express permission of the competent authority a marriage between a Catholic and Non- Catholic is prohibited. Permission may be granted on the fulfillment of the following conditions¹⁶:

1. the catholic party is to declare that he or she is prepared to remove dangers of defecting from the faith, and is to make a sincere promise to do all in his or her power in order that all the children be baptized and brought up in the Catholic Church;
2. the other party is to be informed in good time of these promises to be made by the catholic party, so that it is certain that he or she is truly aware of the promise and of the obligation of the catholic party;
3. both parties are to be instructed about the purposes and essential properties of marriage, which are not to be excluded by either contractant.

Canon states that it is for the Episcopal Conference to prescribe the manner in which these declarations and promises, which are always required, are to be made, and to determine how they are to be established in the external forum, and how the non-catholic party is to be informed of them.

b) Inter-religious marriage

Canon¹⁷ states that a marriage is invalid when one of the two persons was baptized in the Catholic Church or received into it and has not by a formal act defected from it, and the other was not baptized. This sort of marriage is termed as marriage of disparity of worship. However, this impediment can be removed if the conditions mentioned in Canon 1125 and 1126 are fulfilled.

Again in case of a marriage where any one of the parties is Christian, is addressed by the Christian Marriage Act, 1872. Section 4 of the Act states that such type of marriage if not solemnized in accordance with the provisions of the Act shall be void. The provisions are laid down in Section 5. According to this section in order to be valid, marriage in Bangladesh should be solemnized:

1. by any person who has received Episcopal ordination, provided that the marriage be solemnized according to the rules, rites, ceremonies and customs of the Church of which he is a Minister;
2. by any clergyman of the Church of Scotland, provided that such marriage be solemnized according to the rules, rites, ceremonies and customs of the Church of Scotland;
3. by any Minister of Religion licensed under this Act to solemnize marriages;
4. by, or in the presence of a Marriage Registrar appointed under this Act;

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5. by any person licensed under this Act to grant certificates of marriage between native Christians.

Here we see that the issue of interfaith marriages varies between Biblical principles, the Code of Canon Law and The Christian Marriage Act, 1872. While the Bible prohibits interfaith marriages, the Code of Canon Law permits such marriages subject to certain conditions.

Pre-conditions of inter-faith marriage

Parties intending to marry in Church must first give notice in writing to the Minister of Religion he/she desires to solemnize the marriage under section 12 and 13 of the Christian Marriage Act, 1872. If the parties intend the marriage to be solemnized in any Private place, after receiving the notice, the Minister of Religion forwards it to the Marriage Registrar of the District. He then causes the notice to be published by affixing it some conspicuous place in his own office and sends a copy to each of the Marriage Registrars in the District. Under section 17 and 18 of the same Act, where the Minister of Religion consents to solemnize a marriage, he shall issue a certificate that notice has been given and the parties are then required to make a solemn declaration that there are no impediments to the said marriage. These conditions are similar to those laid down in Canon Law. Canon²¹ states that, before a marriage takes place, it must be established that nothing stands in the way of its valid and lawful celebration.

Registration

According to section 27 of the Christian Marriage Act, 1872 all marriages are to be registered in the manner prescribed therein. Section 30 relates to registration of marriages of Catholics. It states that every marriage solemnized by a Clergyman of the Church of Rome shall be registered by the person and according to the form

directed in that behalf by the Roman Catholic Bishop of the Diocese or Vicariate in which such marriage is solemnized, and such person shall forward quarterly to the Registrar General of Births, Deaths and Marriages returns of the entries of all marriages registered by him during the three months next preceding.

ii) The Divorce Act, 1869

Christian marriage is considered a religious sacrament, a partnership for life. Therefore under Canon Law there is no provision for divorce. The Holy Bible also forbids severance of the marriage bond. 1 Corinthians Chapter 7 versus 10-11 states: “And unto the married I command, yet not I, but the Lord, Let not the wife depart from her husband: But and if she depart, let her remain unmarried, or be reconciled to her husband: and let not the husband put away his wife.” This Bible verse is reflected in Canon¹⁸ which provides that a marriage which is ratified and consummated cannot be dissolved by any human power or by any cause other than death.

There is however provision for Separation under Canon Law¹⁹. But this does not mean severance of the bond of marriage. This is because Canon²⁰ states that in all cases, when the reason for separation ceases, the common conjugal life is to be restored, unless otherwise provided by ecclesiastical authority. Another form of dissolution under Canon is ‘Annulment’²¹. Annulment is a declaration by the Catholic Church that a specific union, presumably begun in good faith, and thought by all to be a marriage, was in fact an invalid union according to the Catholic Church’s teachings. A marriage can be annulled on the grounds of deceit, force, fear imposed, lack of consent etc. Annulment renders a marriage *void ab initio*.

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Unlike Canon Law, which is applicable only to Catholics, the Divorce Act, 1869 is applicable to all persons professing the Christian religion. This Act provides three methods for divorce:

1. Dissolution of Marriage [Sec.10]
2. Nullity of Marriage. [Sec. 18]
3. Judicial Separation. [Sec. 22]

Dissolution of marriage:

Section 10 of the Divorce Act, 1869 empowers the husband to present a petition for dissolution to the District Court or the High Court Division on the ground that his wife has been guilty of adultery. The husband is also entitled to make the alleged co-adulterer a respondent to the petition. In case of the wife she cannot present a petition simply on the ground of adultery nor can she include the name of the alleged adulteress. In order to present a petition for divorce she has to put forward any one of the following grounds:

- a. that her husband has exchanged his profession of Christianity for the profession of some other religion, and gone through a form of marriage with another woman, or
- b. has been guilty of incestuous adultery, or
- c. of bigamy with adultery, or
- d. of marriage with another woman with adultery, or
- e. of rape, sodomy or bestiality, or
- f. of adultery coupled with such cruelty as without adultery would have entitled her to a divorce *a mensa et toro*, or
- g. of adultery coupled with desertion, without reasonable excuse, for two years or upwards.

The above grounds are a clear picture of gender inequality. Under the existing section it is very difficult for a Christian wife to obtain a divorce. Even if she can overcome the hurdles

and obtain a divorce from the District Court, the decree is subject to confirmation by the High Court Division according to the provision in section 17..Her hardship is still not over as the confirmation will not be given until the expiration of six months from the pronouncement of the decree. The situation was alike in India until the amendment of the Divorce Act in 2001. The amendment came after a decision by the Kerala High Court in the case of *Mary Sonia Zachariah v. Union of India*²² where the Court decided to allow divorce for a Christian wife simply on the ground of cruelty. The Court in its revolutionary judgment said, *“The legal effects of the provisions of section 10 is to compel the wife who is deserted or cruelly treated to continue a life as the wife of a man she hates. Such a life will be a sub-human life without dignity and personal liberty. It will be humiliating and oppressive without the freedom to remarry and enjoy life in the normal course. Such a life can legitimately be treated only as a life imposed by a tyrannical or authoritarian law on a helpless deserted or cruelly treated Christian wife quite against her will and will be a life without dignity and liberty ensured by the Constitution. Hence the provisions which require the Christian wives to prove adultery along with desertion and cruelty are violative of article 21 of the Constitution of India”*.

According to the amended provision of Section 10 (1) any marriage solemnized, whether before or after the commencement of the Indian Divorce (Amendment) Act, 2001, may, on a petition presented to the District Court either by the husband or the wife, be dissolved on the ground that since the solemnization of the marriage, the respondent

- (i) has committed adultery; or
- (ii) has ceased to be Christian by conversion to another religion; or

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- (iii) has been incurably of unsound mind for a continuous period of not less than two years immediately preceding the presentation of the petition; or
- (iv) has, for a period of not less than two years immediately preceding the presentation of the petition, been suffering from a virulent and incurable form of leprosy; or
- (v) has, for a period of not less than two years immediately preceding the Presentation of the petition, been suffering from venereal disease in a communicable form; or
- (vi) has not been heard of as being alive for a period of seven years or more by Those persons who would naturally have heard of the respondent if the respondent had been alive; or
- (vii) has wilfully refused to consummate the marriage and the marriage has not therefore been consummated; or
- (viii) has failed to comply with a decree for restitution of conjugal rights for a period of two years or upwards after the passing of the decree against the respondent; or
- (ix) has deserted the petitioner for at least two years immediately preceding the presentation of the petition; or
- (x) has treated the petitioner with such cruelty as to cause a reasonable apprehension in the mind of the petitioner that it would be harmful or injurious for the petitioner to live with the respondent.

(2) A wife may also present a petition for the dissolution of her marriage on the ground that the husband has, since the solemnization of the marriage, been guilty of rape, sodomy or bestiality.”

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The amendment also introduced a new section namely, section 10A to provide for mutual divorce. The section states as follows:

“Subject to the provisions of this Act and the rules made there under, a petition for dissolution of marriage may be presented to the District Court by both the parties to a marriage together, whether such marriage was solemnized before or after the commencement of the Indian Divorce (Amendment) Act, 2001, on the ground that they have been living separately for a period of two years or more, that they have not been able to live together and they have mutually agreed that the marriage should be dissolved.”

The Bangladesh Law Commission has also proposed amendment of the Divorce Act, 1869 and had prepared a draft bill in February 2006. The Commission recommended amendment of section 10 in light of the Indian Divorce (Amendment) Act, 2001 so as to give a wife equal rights in respect of divorce. The Commission had also recommended omission of Section 17 requiring confirmation of the High Court Division in a decree of divorce passed by the District Court and Section 34 and 35 where the husband is entitled to make the alleged adulterer a co-respondent and claim compensation. However, the Government has not taken any effective step to pass the bill till date.

Nullity of marriage

Section 18 of the Divorce Act, 1869 empowers both the husband and wife to present a petition to the District Court or to the High Court Division for declaring his or her marriage null and void. Under section 19 the grounds for obtaining such declaration are:-

1. that the respondent was impotent at the time of the marriage and at the time of the institution of the suit;

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2. that the parties are within the prohibited degrees of consanguinity (whether natural or legal) or affinity;
3. that either party was a lunatic or idiot at the time of marriage;
4. that the former husband or wife of either party was living at the time of the marriage, and the marriage with such former husband or wife was then in force.

The section also empowers the High Court Division to make decrees of nullity of marriage on the ground that the consent of either party was obtained by force or fraud.

Remarriage

The Catechism of the Catholic Church teaches that where the first marriage subsists a new one will not be valid. If persons obtaining divorce under state law contract a second marriage, they live in a position that is contrary to the divine rule. The Church also has the authority to impose sanction on such persons.

Section 57 of the Divorce Act, 1869 provides for remarriage, but section 58 states that a clergyman of the Church of England (Anglican Church) is not compelled to solemnize the marriage of any person whose former marriage has been dissolved on the ground of his or her adultery. The Act is silent on the position of persons belonging to the Roman Catholic Church.

Maintenance/Alimony

Canon Law²³ states that when a separation of spouses has taken place, provision is always, and in good time, to be made for the

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due maintenance and upbringing of the children. The amount of due maintenance is fixed by the Church.

Under section 36 of the Divorce Act, 1869 the wife is entitled to petition for alimony pending the divorce suit. But such alimony is in no way to exceed one-fifth of the husband's average net income.

Custody

Sections 41-44 of the Divorce Act, 1869 deal with provisions as to the custody of children. The matter has been left to the discretion of the Court.

iii) The Guardian and Wards Act, 1890

Guardianship

Christians in Bangladesh are governed generally by the provisions of the Guardians and Wards Act of 1890 in matters relating to guardianship of minors in respect of their person and property.

iv) The Succession Act, 1925

Succession

Matters relating to Christian Inheritance are governed by the Succession Act, 1925.

Section 27 of the Act lays down certain rules governing succession. According to these rules:

- a. There is no distinction regarding the share of a son and that of the daughter.
- b. There is no distinction between full-blood and half-blood.
- c. A child in the womb at the time of father's death inherits equally with other children.

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According to section 35 of the Succession Act, the husband and the wife inherit each other's property. The father of the deceased inherits where there are no children. The mother inherits in absence of father and children. However, when there are brothers and sisters of the deceased, they do not inherit with the father. But with the mother they all inherit equally. According to the provision of section 30, a person is deemed to die intestate in respect of all property of which he has not made a testamentary disposition.

Conclusion

Century old civil laws governing Christians in Bangladesh are not able to provide women equal rights. The situation is even worse in the case of Catholic women who are morally bound by Canon Law or the Law of the Catholic Church. But it is high time that the laws are brought in conformity with the changing world.

Article 28(1) of the Constitution of the People's Republic of Bangladesh pledges not to discriminate on the grounds of gender. As a ratifying country of CEDAW and by not having any reservation towards Article 15, Bangladesh is bound to grant women equality in all spheres of public as well as personal life. But existing laws and customs on Christian marriage are not in conformity with the constitutional norms and international human rights obligations on equality and non-discrimination. It should be mentioned that personal laws of Christians in many countries underwent massive changes in line with universal norms of human rights. Similar arrangement should be made in Bangladesh with the consultation of Christian communities to make the personal laws of Christians in consistent with international human rights obligations.

Notes and References

1. The 2007 Catholic directory puts the number of Catholics in the country, pp 309,745.
2. See <http://www.newadvent.org/cathen/09707a.htm>.
3. The Code of Canon Law, Article 1055 § 1.
4. The Code of Canon Law, Article 1069.
5. The Code of Canon Law, Article 1063.
6. The Christian Marriage Act, 1872. Section 60(1)
7. The Code of Canon Law, Article 1083 § 1.
8. The Code of Canon Law, Article 1072.
9. The Child Marriage Restraint Act, 1929. Sections 4 and 6.
10. The Christian Marriage Act, 1872. Section 60(2).
11. The Code of Canon Law, Article 1085 § 1.
12. The Code of Canon Law, Article 1091 and 1092.
13. The Holy Bible. Leviticus 18: 6-20.
14. The Holy Bible. Ezra 9:12, 2 Corinthians 6:14
15. The Code of Canon Law, Article 1124
16. The Code of Canon Law, Article 1125
17. The Code of Canon Law, Article 1086 § 1.
18. The Code of Canon Law, Article 1141.
19. The Code of Canon Law, Book IV, Chapter IX.
20. The Code of Canon Law, Article 1153 § 2.
21. The Code of Canon Law, Article 1103
22. AIR (All India Report) 1995 Ker 252 FB
23. The Code of Canon Law, Article 1154