

EXCESSIVE DOWER AND ITS IMPACT ON WIFE-INITIATED DIVORCES: AN EMPIRICAL STUDY ON CHATTOGRAM DISTRICT OF BANGLADESH

Mohammed Moniruzzaman Bhuiyan*

Dr. Mohammad Moin Uddin**

ABSTRACT

In a Muslim marriage, dower is an essential component, and it is an obligation of the husband to pay and a right of the wife to realize dower. Notably, dower is like a debt, and it cannot be avoided once a Muslim marriage takes place. There is no maximum limit of dower, and even when dower is excessive, wife can realize the dower as it is.

In recent times, fixing high amounts of dower has become a trend in Chattogram district of Bangladesh. Concurrent with this trend is the phenomenon of increasing rates of wife-initiated divorce. Literature seldom refers to “excessive dower” as a reason of increasing divorce rates, but recently excessive dower has been mentioned as a factor leading to wife-initiated divorce in some newspaper reports. The claim makes sense when we keep in mind that delegating power of divorce to wife has become a normal practice now-a-days. With the power of divorce in hand, high amount of dower can be a potential provocation to a wife to divorce the husband for quick gains.

In this paper, we investigate whether high amount of dower has anything to do with increasing rates of divorce in Chattogram district or not. In light of a questionnaire survey and analysis of data gathered from hundreds of court files and Kabinnamas, we found that there is a greater tendency amongst wives to initiate divorce when dower rates are higher.

I. INTRODUCTION

In recent times, divorce rates in Chattogram¹ metropolitan area took a quantum leap, so much so that the Mayor of Chattogram City Corporation

* **Mohammed Moniruzzaman Bhuiyan**, M.Sc. (Thesis) and B.Sc. (Hons.) in Statistics (University of Chittagong) is an Associate Professor, Department of Statistics, University of Chittagong, Bangladesh.

** **Dr. Mohammad Moin Uddin**, SJD (University of Arizona), MA (Northern Arizona University), LL.M. and LL.B. (Hons.) (University of Chittagong) is a Professor, Department of Law, University of Chittagong, Bangladesh.

¹ Chattogram is a major district of Bangladesh situated on the south-eastern part of the country. Being home of a major port of the country, Chattogram, formerly known as Chittagong, is considered to be strategically very important for supply of commodities throughout the country. For its sea-shores alongside beautiful hills, rivers and fertile lands, business and industrial activities and facilities of its port,

expressed his concern on the ‘divorce phenomenon.’² In addition to the overall rise of divorce in Chattogram, wife-initiated divorce has increased dramatically.³ Media has highlighted some unusual incidents of ‘dower business’ by some women, who seemingly marry for dower.⁴ There are some incidents on record where women married several times, each time fixing high amount of dower, and then divorced the husband.⁵ Moreover, fixation of excessively high dower has become a regular practice in Chattogram area in recent times. There is a potential of misuse of this practice of excessive dower for quick gains. It is a hypothesis—and some people have already spoken out about it—that excessive dower and ulterior practice of dower business could have a link to the high rate of women-led divorces. The hypothesis is provoked by another correlated phenomenon, namely, high rate of delegation of power of divorce to wives in the Kabinnama (the option being available at Column no. 18 of the Kabinnama). The reasoning is that fixation of a high amount of dower on the one hand and delegation of power of divorce on the other hand is a combination that could potentially increase the rates of wife-led divorces. Authors of this paper considered that the claim—that excessive dower is motivating women to divorce their husbands for recovering a big dower amount—needed to be investigated by serious research. Marriage being a foundational institution of social structure in Bangladeshi society, and divorce being a disruption of that foundational institution, it is necessary to examine if excessive dower is playing a role in the disruption.

II. SCOPE OF WIFE-INITIATED DIVORCE IN MUSLIM LAW

Though in Islam, marriage is a contract, it is interesting to observe that only one party (i.e. husband) has a unilateral power of divorce and the other party (i.e. wife) has none but has the sole right of receiving dower. Still, in traditional Muslim law, wife could secure divorce in the forms of *Talak-e-Tafwid*, *Khula* and *Mubarat*. Apart from these forms available in traditional Muslim law, the Dissolution of Muslim Marriages Act, 1939 opened another avenue for Muslim wives to secure dissolution of marriage through court verdicts. The traditional forms and the court-based form of wife-initiated divorce are discussed below:

Chattogram is a vibrant district in Bangladesh. Chattogram metropolitan area is the second largest in size and population, only next to Dhaka, the capital city.

² Ghosh, S., “Daily Fourteen Marriages are being held in Chattogram”, *Prothom Alo*, August 27, 2018, available at: <<http://surl.li/bgfdw>> (Last visited on September 30, 2021).

³ *ibid.*

⁴ Rocki, N. U., “Three Divorces Each Hour in Chattogram”, *Dainik Jugantor*, September 16, 2021, available at: <<http://surl.li/bgfdx>> (Last visited on September 30, 2021).

⁵ Tomal, M. M., “When Marriage Is A Business”, *Bangladesh Pratidin*, October 1, 2018, available at <<http://surl.li/bgfhs>> (Last visited on September 30, 2021); See also, Online Desk, “Business in the Name of Kabin: New Law Demanded”, *Dainik Ittefaq*, December 28, 2020, available at: <<http://surl.li/bgffh>> (Last visited on September 30, 2021).

1. Talak-e-Tafwid

The husband may delegate his power of pronouncing divorce to the wife by a stipulation in *kabinnanma* during marriage or unilaterally after marriage. In either case, the extent of the power and conditions, if any, of its use are determined by the husband.⁶ Once delegated, wife can exercise divorce unilaterally, and it will take the effect like a constructive divorce by the husband.⁷ Such delegated divorce is technically called “*talak-e-tafwid*”. Fyzee comments that “[t]his form of delegated divorce is perhaps the most potent weapon in the hands of a Muslim wife to obtain her freedom without the intervention of any court and is now beginning to be fairly common in India.”⁸ It is interesting to mention that Fyzee in his time just saw the “beginning” of the practice of delegated divorce becoming “fairly common”, now it has become common. In our study, among all the *Kabinnamas* we studied, we found more than 99 percent frequency of delegation of power of divorce in *Kabinnama*. Among the 211 *Kabinnamas* we studied, there was only one solitary case in which the husband did not grant power of divorce to the wife in column 18 of the *Kabinnama*. Tahir Mahmood also mentions that in some parts of India, delegation of divorce is “quite common.”⁹ Such extensive incidents of delegation augurs well in terms of equalizing wife’s position as a party to marriage contract, letting Muslim wives relieve themselves from unhappy unions. The flip side is that if delegation of divorce is available in those cases where the amount of dower is excessive, wife’s divorce would instantly put husbands in a tough position financially.

2. Khula

When a Muslim wife wants to relieve herself from a marital bond, she can offer her husband some consideration, like relinquishment of her right of dower wholly or partially, or any other special payment or agreement to benefit husband; and if the husband agrees to her offer, an irrevocable divorce takes place.¹⁰ Though ultimately such a divorce requires consent of both the parties to a marriage, generally *khula* is initiated by a wife. It is mentionable that once the husband agrees, the divorce becomes effective; and the non-payment of consideration does not invalidate the divorce, though the husband may sue the wife for recovery of the consideration.¹¹

Khula can be effectuated by the parties themselves, and the intervention of the court is not necessary. However, there is nothing in Muslim law that prevents

⁶ Mahmood, T., *The Muslim Law of India*, Allahabad, 1992, at p. 123.

⁷ *ibid.*

⁸ Fyzee, A.A.A., *Outline of Muhammadan Law*, Delhi, 1997, at p. 159.

⁹ *supra* note 6, at p. 124.

¹⁰ Mulla, D. F., *Principles of Mahomedan Law*, Bombay, 1990, at p. 265.

¹¹ *ibid.*