

**Migration Review Tribunal
AUSTRALIA**

MRT RESEARCH RESPONSE

Research Request Number: BGD35303
Country: Bangladesh
Date: 24 September 2009

Keywords: Bangladesh – Muslim divorce (talaq) procedure

Questions

1. Please advise the procedure for Muslim divorce under Bangladesh Family Law in regard to notification of intent to divorce and the granting of the divorce certificate?

RESPONSE

1. Please advise the procedure for Muslim divorce under Bangladesh Family Law in regard to notification of intent to divorce and the granting of the divorce certificate?

A 2004 report by the Center for Reproductive Rights discusses the marriage and divorce laws in Bangladesh. This states that “there are several variants of divorce that are technically recognized in the *Sharia*. These include *talaq* (unilateral action by the husband), *mubarat* (mutual consent) and *khula* (at the initiation of the wife, provided that she agrees to forgo her financial rights, such as her dower).” The report states that in Bangladesh “the Muslim Family Laws Ordinance regulates the procedure for seeking a divorce. Under the ordinance, men may seek divorce by pronouncing *talaq* and giving written notice to the chairman of the union *parishad* or other appointed official and a copy to his wife. The chairman is then bound to constitute an arbitration council charged with the task of attempting reconciliation between the parties. If such efforts fail, divorce is generally effective after *iddat* – a three month period that must pass before the divorce becomes effective – or, if the wife is pregnant at the time of *talaq*, at the end of her pregnancy, whichever occurs later” (Center for Reproductive Rights 2004, ‘Bangladesh’ in *Women of the World: Laws and Policies Affecting Their Reproductive Lives – South Asia*, Center for Reproductive Rights website, 1 June, pp. 51-52 – http://www.crlp.org/pdf/pdf_wowsa_bangladesh.pdf – Accessed 12 October 2005 – Attachment 1).

According to a November 1999 report by the Immigration and Refugee Board of Canada (IRB), the parties may contract at the time of marriage to delegate the right of *talaq* to the wife. This form of divorce is called *talaq-i-tafweez*. The IRB response reports that the formal requirements of notifying the relevant authority and a subsequent 90 day period before a divorce will take effect remains unchanged whether it is the husband or wife seeking divorce. The divorce procedure is set out in Section 7 (Talaq) of the Muslim Family Laws Ordinance 1961 (MFLO). A copy of the MFLO, found on the website of the Ministry of Law, Justice and Parliamentary Affairs, is included in this response as Attachment 3. Section 8 (Dissolution of marriage otherwise than by talaq) of the MFLO states that: “Where the right to divorce has been duly delegated to the wife and she wishes to exercise that right, or where any of the parties to a marriage wishes to dissolve the marriage otherwise than by talaq, the provisions of section 7 shall, *mutatis mutandis* and so far as applicable, apply” (Immigration

and Refugee Board of Canada 1999, BGD33257.E – *Bangladesh: Procedure and time involved in obtaining a divorce via the Muslim Marriage Registrar, a registrar and a qadi [qazi, kadi, kazi, Islamic judge] in Dhaka; the meaning of a divorce certificate compared to a divorce notice*, 25 November – Attachment 2; Government of Bangladesh 1961, ‘Muslim Family Laws Ordinance’ (Ordinance No. VIII of 1961). Accessed on Ministry of Law, Justice and Parliamentary Affairs (Laws of Bangladesh) website http://www.bdlaws.gov.bd/print_sections_all.php?id=305 – Accessed 17 September 2009 – Attachment 3).

No information was found to indicate whether a divorce would be automatically invalidated if a divorce certificate had been issued despite the fact that the 90 day period between notification and registration was not observed.

Information on talaq divorce was found on the UK Home Office website, updated on 25 June 2009, setting out the formal requirements for the recognition of full talaq divorces in Bangladesh:

Under traditional Islamic law a bare talaq divorce is deemed to have taken place when the husband pronounces three times “I divorce thee”. This pronouncement dissolves the marriage instantly.

However, the Muslim Family Law Ordinance 1961 (MFLO) sets out formal requirements for the recognition of full talaq divorces in all parts of Bangladesh and Pakistan except Azad Kashmir:

- the husband must give notice in writing of the pronouncement of a talaq divorce to the Chairman of the Union Council of the Ward,
- the husband must also give a copy of this notice to his wife.

At the end of 90 days (or at the end of the wife’s pregnancy if she is pregnant at this time) the divorce will take effect. There is provision for attempts at conciliation between the two parties during this 90 day period.

Only a talaq under the MFLO is considered to have been obtained by means of proceedings as defined under UK Acts.

If a full talaq divorce takes place in Bangladesh or Pakistan it will be recognised in the UK if the procedures laid down under the Muslim Family Laws Ordinance 1961 were complied with, and:

- the husband or the wife is a Bangladeshi or Pakistani citizen;
- or
- he or she is habitually resident in Bangladesh or Pakistan;
- or
- he or she is domiciled in Bangladesh or Pakistan (‘Overseas divorces’ 2009, UK Home Office website, updated 25 June

<http://www.ukvisas.gov.uk/en/ecg/settlement/overseasdivorces> – Accessed 16 September 2009 – Attachment 4).

In November 1999 the Research Directorate of the Canadian Immigration and Refugee Board (IRB) provided information obtained from a range of sources on Bangladesh divorce procedures, including the meaning of a divorce certificate compared to a divorce notice. (Immigration and Refugee Board of Canada 1999, *BGD33257.E – Bangladesh: Procedure and time involved in obtaining a divorce via the Muslim Marriage Registrar, a registrar and a qadi [qazi, kadi, kazi, Islamic judge] in Dhaka; the meaning of a divorce certificate compared to a divorce notice*, 25 November – Attachment 2).

List of Sources Consulted

Internet Sources:

Google search engine <http://www.google.com/>

Databases:

FACTIVA (news database)

BACIS (DIAC Country Information database)

REFINFO (IRBDC (Canada) Country Information database)

ISYS (RRT Research & Information database, including Amnesty International, Human Rights Watch, US Department of State Reports)

RRT Library Catalogue

List of Attachments

1. Center for Reproductive Rights 2004, 'Bangladesh' in *Women of the World: Laws and Policies Affecting Their Reproductive Lives – South Asia*, Center for Reproductive Rights website, 1 June, pp. 51-52 – http://www.crlp.org/pdf/pdf_wowsa_bangladesh.pdf – Accessed 12 October 2005.
2. Immigration and Refugee Board of Canada 1999, *BGD33257.E – Bangladesh: Procedure and time involved in obtaining a divorce via the Muslim Marriage Registrar, a registrar and a qadi [qazi, kadi, kazi, Islamic judge] in Dhaka; the meaning of a divorce certificate compared to a divorce notice*, 25 November. (REFINFO)
3. Government of Bangladesh 1961, 'Muslim Family Laws Ordinance' (Ordinance No. VIII of 1961). Accessed on Ministry of Law, Justice and Parliamentary Affairs (Laws of Bangladesh) website http://www.bdlaws.gov.bd/print_sections_all.php?id=305 – Accessed 17 September 2009.
4. 'Overseas divorces' 2009, UK Home Office website, updated 25 June <http://www.ukvisas.gov.uk/en/ecg/settlement/overseasdivorces> – Accessed 16 September 2009.