

## Reconciliation of Marriage: A Comparative Overview of the Law and Practice in Bangladesh and Maldives

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### Abstract

*Reconciliation process helps both the married couples to save their existing marital relationship. The Muslim dominant societies like Bangladesh and Maldives, usually practice reconciliation process during divorce proceedings. However, this process is very rarely practised in the current legal system due to some unknown reasons. Therefore, this paper highlights on the possibility of the reconciliation process in current judicial setting. The main objective of this paper is to compare relevant laws and existing practice of reconciliation in the Family Courts of both jurisdictions. Thus, this paper adopts library research, where the study uses a legal analytical approach to examine data available from relevant books, journals, laws, reported and unreported cases, personal interviews, newspapers, conference papers, and government reports. This paper concludes that the government should take an initiative to resolve divorce issues through an effective reconciliation process. It also suggests that an affordable and accessible reconciliation process can provide the best solution to the estranged couples facing marital conflict.*

**Keywords:** statutory laws, divorce, reconciliation, legal system, Bangladesh and Maldives.

### A. Introduction

Marriage is a social foundation in the society, (Sultana, 2013) where it creates some social, religious and legal rights and obligations between spouses. In the similar manner, a matrimonial relationship may also cease for many reasons, such as extra-marital relationship, lack of mutual love, satisfaction and trust, abusive marital relationship, non-compromising attitudes among others. (Hawkins, Willoughby, & Doherty, 2012) Ultimately, divorce is a formal breakdown of the matrimonial relationship, where the reconciliation is an effort to reunite estranged couples and prevent separation. Divorce and reconciliation are interconnected, where divorce is termination of marital relation, and the reconciliation is putting the estranged couple back as husband and wife. In both Bangladesh and the Maldives, divorce and reconciliation processes are

common practice in the current legal system. Both the countries are facing various difficulties in their effort to provide amicable solution through reconciliation process. Thus, the main objective of this paper is to examine existing laws and current practice of reconciliation in both Bangladesh and Maldives. It compares the recent development of marital reconciliation in the current legal practice.

## **B. Concept of Reconciliation of Marriage**

The word reconciliation means “a situation in which two people become friendly again after they have argued.”(Dictionary, 2018) According to the Black Law Dictionary reconciliation means “the renewal of friendly relations between two people who had been at hostility, hate and difference, which is implying for forgiveness of enmity or rivalry on one or both sides. This type of process is used to imply in the law of divorce as a term and a condition.(Campbell, 1910) The unity of any society is very much dependent on the equality, peace and harmony among the members. Therefore, savable marriages play a great role in the development of society, thus people give special thoughts to save problematic marriages. Reconciliation is a technique to deal with the marital conflicts. Zin et al. stated that “reconciliation of marriage is a set of process in order to reunite towards amicable relations between the couple who are in the marital discord.”(Najibah Md Zain, Hak, & Sowell, 2017) In the same vein, reconciliation of marriage describes as an alternative family dispute settlement, where it has been defined as “the provision of support which has the aim of bringing estranged spouses back together again.”(Wacks, 1999) It is also be defined as the achievement of reuniting persons who are estranged.

On the other hand, the process of mediation and conciliation are parts of Alternative Dispute Resolution (ADR), where, mediation is a process in which a mediator attempts to meet with the parties who are in dispute. In this respect, the mediator may encourage the parties to be open-minded in viewing their issues in order to see the areas of agreement, common interest and goals. (Fuller, 1971) The main target of mediation is to promote self-assurance and cooperative decision-making process. A successful mediation always helps the parties from their future disputes without the intervention of third party, such as mediator or the court. (McCrory, 1988) On the other side, the conciliation means the process of engendering common sense, reasonableness and agreement in dealing with the consequence of estrangement. (Abdul Hak, 2005) The process of conciliation ought to be in the spirit of restraint as opposed to antagonism. The parties of the marital dispute should assure to the procedure regarding the decision-making process and decisions, rather than surrendering this to the outsider, as this will contribute to the success conciliation process. (Menkel-Meadow, 2018) The concept of conciliation has some objectives. First, divorce issues should be dealt with in a very comfortable and restrained way with less bitterness and fighting, as the parties need to take a responsibility for settling their own dispute. It should also be engendering, and with reasonableness, in order to assist the parties towards fruition. In essence, reconciliation process is most frequent type of alternative process, where it deals with the disputing couple in order to save their marriage without leading to

divorce or separation. The consequences of the reconciliation of marriage are important for the couple, because all kinds of misunderstanding, confusion and fault-based divorce issues may be solved. (DiPietro Law Group, 2015) Thus, a marital discord like marital problem, marital conflicts, marital instability and fault-based divorce issues may only be resolved by a proper reconciliation process.

### C. Reconciliation of Marriage in Islam

The whole idea of reconciliation is that it should lead to peace and stability. The Arabic word *Sulh* gives a reflection to the process of reconciliation. The word itself is given importance in both *Qur'an* and *Sunnah*. The main concept of reconciliation is based on the elimination of conflict and unfriendliness among mankind thus to promote friendship and harmony. *Allah SWT* says in *Qur'an* to the effect that;

“if ye fear a breach between them twain, appoint [two] arbiters, one from his family, and the other from hers; if they wish for peace, Allah will cause their reconciliation: For Allah hath full knowledge, and is acquainted with all things.”(Abdullah Yusuf Ali, 1987, v. Sura al Nisa’: 35)

A divorce may take place at any time of the conjugal life. It can be revocable or irrevocable due to many reasons. A revocable divorce permits for the remain of the couple to be together again. In Islam the reconciliation is also proposed in the case of *iddah*, where in the *Qur'an Allah SWT* says that:

“Divorced women shall wait concerning themselves for three monthly periods. Nor is it lawful for them to hide what Allah Hath created in their wombs, if they have faith in Allah and the Last Day. And their husbands have the better right to take them back in that period, if they wish for reconciliation. And women shall have rights similar to the rights against them, according to what is equitable; but men have a degree [of advantage] over them. And Allah is Exalted in Power, Wise.”(Abdullah Yusuf Ali, 1987, v. al Baqarah: 228)

On the other hand, it can be said that during divorce proceeding both couples are separated for short period of time. At that time mere negotiation or mutual compromise may encourage the couples to live together again. Even after a long period of separation, reconciliation may be effected to the disputing couples to re-establish their conjugal relationship. *Allah SWT* says to the effect in the *Qur'an* that:

“the recompense for an injury is an injury equal thereto [in degree]: but if a person forgives and makes reconciliation, his reward is due from Allah: for [Allah] loveth not those who do wrong.”(Abdullah Yusuf Ali, 1987, v. al Shura: 40)

*Allah SWT* also states in the *Qur'an* that settlement is the best among the couples, because *Allah SWT* is well known and well acquainted with everything that we do. *Surah al Nisa'* verse 128, it states that "if a wife fears cruelty or desertion on her husband's part, there is no blame on them if they arrange an amicable settlement between themselves; and such settlement is best; even though men's souls are swayed by greed. But if ye do good and practice self-restraint, *Allah SWT* is well-acquainted with all that ye do." (Abdullah Yusuf Ali, 1987, v. al Nisa': 128)

#### **D. Application of the Reconciliation of Marriage in Bangladesh**

Bangladesh is a multireligious country, but the majority of total population is Muslims. People of other religions namely Hindu, Christian, Buddhist, and tribal minorities used to live in peace and harmony. (Hassan, 2018) Also, the Bangladeshi legal system is rooted from the British legal system. According to the Bangladeshi Constitution, it is stated that the Supreme Court is the guardian of the Constitution, where it has exclusive jurisdiction to interpret the Constitution and other laws of the land. In Bangladesh, Muslim marriage and divorce issues are dealt with by the Muslim personal law. Similarly, non-Muslim marriages and divorces are dealt with by their own personal law and tradition. It is important to know that religiously, Hindu and Christian couples are not allowed to pronounce divorce, but they are legally allowed to apply for judicial separation through the legal proceeding. Scholars state that the Constitutional law has given some rights to the citizen that the state shall ensure the rule of justice based on the principle of equality before the law. Also, the state shall guarantee the equal opportunity to get rule of justice without any discrimination on the basis of economic status and disability. (Mahmud, 2016) The existing legal system is not based on Shariah, where most of the cases are dealt either by the Family Court or the Civil Court. The process of reconciliation is also called an alternative of divorce, which means a joint decision-making process among the disputants. (Huq, 2001) The process of reconciliation is also not a new practice, but it has many hurdles. In the current practice, the Alternative Dispute Resolution (ADR) process is also dealt with by the existing laws, e.g., the Family Court Ordinance 1985 (sections - 10, 11, 13) and the Code of Civil Procedure 1908 (section - 89A). The Family Court and the Civil Court do administration of the ADR (Alternative Dispute Resolution) process for resolving cases before trial.

It is noted that ADR process is the best resolution in the current legal system. In this regard, the court directs to the mediator and the parties to reach for the final settlement. (M. K. Islam, 2015) The Alternative Dispute Resolution is a special process of dispute resolution rather than trial proceeding. It is a mixture of mediation, conciliation and negotiation between the parties who are in dispute. Even, this alternative process may save time and expenses from the long proceeding of the trial. (M. K. Islam, 2015, p. 46) Justice KM Hasan (Hasan, 2001) states that;

"...mediation is an extra-judicial proceeding, in the Family Courts are recommended as a careful assessment of the existing problems, causes and potential solution. At the same time a

compromise attitude continues to persist long after mediation settlement. It is true that there is no legal compulsion for compelling the parties to resolve disputes through conciliation of mediation. However, parties are also free to resolve their matters consensually through mediation.”

In the same vein, reconciliation is the last step for the couples to save their marriage before divorce is taken place. Furthermore, in Islam, *Hilla* marriage or interim marriage alike reconciliation, where, it is considered in the Muslim community but not mandatory. Similarly, *Hilla* marriage is a difficult condition for the both couples in order to reunite their married life. Correspondingly, handling reconciliation process is more problematic when children are involved. In Bangladesh, there are two ways that the couples can try to reconcile their marital issues in order to reunite before divorce.

### D.1. Reconciliation of the Marriage under the Family Court Proceeding

The Family Court used to follow two types of conciliation process in the current legal practice. Firstly, section 7 and 8 of the Muslim Family Law Ordinance 1961 or MFLO, deal with a conciliation process. This process conducted by the local Chairman of the Union Parisad or local council. (MFLO, 1961, sec. 2(b)) Section 7 of the Ordinance, (MFLO, 1961, sec. 7) states that after pronouncement of oral *talaq* any man can file an application who wishes to divorce to his wife accordingly. In order to do that the man needs to serve a Chairman notice in writing to the Chairman of the local council. At the same time, the man shall send a copy of such notice thereof to his wife. (MFLO, 1961, sec. 7(1)) The Chairman tries to negotiate with both the parties who are in conflict upon being served a notice of divorce. (Huq, 2001) Thereafter, the Chairman shall arrange a settlement council within 30 days of the receipt of notice under section 7(1) in order to settle the issue through a reconciliation between the parties. Then, the settlement council shall take initiatives necessary for the reconciliation. (MFLO, 1961, sec. 7(4)) It is also mentioned that if the wife is pregnant when *talaq* is pronounced then such *talaq* shall not be effective for further proceeding or reconciliation unless and until the *iddat* period (MFLO, 1961, sec. 7(3)) elapses, as mentioned in the Ordinance. (MFLO, 1961, sec. 7(5)) Similarly, if either husband or wife wishes to divorce otherwise than *talaq*, the provision of section 7 shall apply as ‘mutatis mutandis’ (Dictionary, 2018) so far as applicable. (MFLO, 1961, sec. 8) In the case of *Parveen Sultana (Mosammat)*, (MLR, 2002) the court held that due service of notice to the Union Chairman under section 7(1) of the Muslim Family Law Ordinance 1961 reasonably established the divorce (*talaq*) in the event. Also, the failure of mediation or reconciliation process becomes effective after expiration of prescribed time frame (90 days) from the date of the service of notice has served. Moreover, the Family Court Practice was re-established in the year 1985, therefore it is administered by the Family Court Ordinance 1985. Since then the Family Court deals with all family affairs such as divorce or dissolution of marriage, dower, restitution of conjugal rights, maintenance, child custody and guardianship of the children. Before that all family issues were

dealt by the civil court under the supervision of Code of Civil Procedure, 1908. It is important to mention that most of the judges were completely unfamiliar with the family mediation or conciliation process. Subsequently, this process was not practised in the family court for long period. In some cases, the mediation or conciliation is practised voluntarily on the agreement or free consent of the parties.

Nowadays, all family court judges are well-versed with the process of mediation or reconciliation. (Z. Islam, 2007) In Bangladesh, Muslim family disputes are dealt by the Family Court, where section 5 of the Family Court Ordinance, 1985 has jurisdiction to deal with Muslim family related disputes. In contrast, there was a contradiction among the non-Muslim family issues before the Family Court, as to whether the Family Court has any jurisdiction to deal with non-Muslim family disputes. This debate was continuing until the year 2000. In the landmark case between *Nirmal Kanti Das v Sremoti Biva Rani*, the honorable High Court Division held that a Hindu woman can file a matrimonial suit before the Family Court. Thereafter, the Court has applied the Alternative Dispute Resolution process in order to resolve family related cases through mediation or conciliation. (M. K. Islam, 2015, pp. 45–55) In addition, at the time of chief Justice Mustafa Kamal, the special training project was organized for the Family Court judges to resolve pending family cases. After the successful training, the Family Court judges achieved immense success to resolve family disputes through mediation or conciliation process. One of the Scholars mentioned that from 2001 to 2004, a total of 2418 family cases have been disposed by the Family Court through alternative settlement, which is 35 % of the total pending family cases. (M. K. Islam, 2015)

In fact, a mutual compromise is one of the prior options for the parties to resolve their conflicts under the Family Court proceedings. The Family Court is the specialist court for the family disputes. This court is set up for adjudicating family disputes to ensure its efficiency and time management. Mediation and reconciliation both are dealt under the supervision of the Family Court. (Huq, 2001) In this regard, the Family Court Ordinance 1985 or FCO deals with two types of ADR, which are pre-trial and post-trial process. According to the section 10 of the Family Court Ordinance 1985, the court deals with pre-trial hearing, where the court attempts to resolve the dispute. After filing written statement, the court shall fix a pre-trial hearing date within 30 days. (FCO, 1985, sec. 10(1)) At the pre-trial hearing, the court shall examine together with all relevant documents as the parties have attached. (FCO, 1985, sec. 10(2)) Also, the court then shall ascertain nature of the disputes between the parties and if possible, the court shall attempt to conclude such disputes through a mutual compromise or reconciliation. (FCO, 1985, sec. 10(3)) If there is no solution, or the parties are not interested in mutual compromise or reconciliation then, the court shall fix a date for the hearing the issue in the court. (FCO, 1985, sec. 10(4)) Even after conclusion of evidence, the Family Court shall make another offer for the parties to consider mutual compromise. (FCO, 1985, sec. 13(1)) If the parties agree to go for mutual compromise then the court fixes a date for the management of the compromise. The court shall pass such compromise decree in terms of what is agreed between the parties through



negotiation concerning the disputes. (FCO, 1985, sec. 14) Otherwise, the court shall pronounce judgment of the suit with due notice. (FCO, 1985, sec. 13(2))

In the case between *Abdul Aziz vs. Rezia Khatoon*, (DLR, 1969) parties who are in conflict of divorce do not fulfill the service of the notice procedure to the Union Parisad Chairman. It was held that nonfulfillment of the procedure under section 7(1) indicates that divorce (*talaq*) was legally ineffective. In the year 1999, the Appellate Division of the Supreme Court of Bangladesh held that in the case of *Serajul Islam*, (MLR, 1999) where the petitioner husband divorced his wife through affidavit before the Magistrate. Thereafter, the petitioner husband supplied a copy of such affidavit to the Nikah Register office, where their divorce used to register under the Muslim Marriages and Divorces (Registration) Act, 1974, (Ministry of Law, 1974, sec. 6) and their marital relationship is in consequence stands dissolved. At the same time, his divorced wife claimed payment of whole dower money both prompt and deferred. Even though the petitioner husband cannot take any advantages of the noncompliance of the service of notice to the Union Parisad Chairman under section 7(1) of the Ordinance 1961. In *Muhammad Ishaque* (PLD (Lah), 1975) case, it was held that for a situation of total successful reconciliation, the decree of divorce shall be considered to have been abandoned by the wife. Thereafter, in the mediation or reconciliation process there will have some effect on mutual compromise between parties. Similarly, the decree of divorce shall be effective unless the parties have been reconciled within specific period which is provided by the provision of the Family Courts Ordinance 1985. In another case between *Mustaj Mai v Gulam Nabi*, (PLD, 1969) the court held that section 7 and 8 of the Muslim Family Law Ordinance 1961 are not applicable in the case of *Khula or Khulu'*, whatever a successful reconciliation has been established. In this regard, the court also pointed out that the existing case has introduced a credible consequence of reconciliation. From the point of view of *Khula or Khulu'*, (Cassim, 2013)<sup>1</sup> it is very practical to be sought by the court decision. It is also mentioned that if the wife faces any trauma of the court proceeding then she would not be agreed to go for further reconciliation.

## D.2. Reconciliation of Marriage under the Civil Court Proceeding

According to the current legal practice, the civil suits are handled by the Civil Courts which have original jurisdiction. The ADR process has started in the Indian Subcontinent by the enactment of the Bengal Regulation Act, 1772. (Sircar, 1942, p. 6) Thereafter, ADR has been placed under section 89 the Code of Civil Procedure or CPC for resolving pending civil suits. (CPC, 1908, sec. 89) The Code of Civil Procedure (1908), provides an option for the both parties to resolve their conflict through mediation or compromise. The explanation of the section 89A of the Code of Civil Procedure 1908 states that mediation means a flexible, informal, non-binding, confidential, non-adversarial and consensual dispute resolution process. Therefore, the mediator shall provide

<sup>1</sup> a *Khula* is the wife's right to separate or seek divorce from her husband. The right to *Khula* is stipulated in the Holy Quran, surah al-Baqarah: 229.

some facilities to the parties without giving any direction or dictation in order to make a compromise of disputes in the suit. Also, after filing the written statement, the court shall adjourn the hearing for the disputes to be settled through mediation. The District judge shall appoint and prepare a mediator's panel by consultation with the local President of the District Bar Association. Where, a person is eligible to be a mediator, such as pleaders, retired judges, if they are trained in dispute resolution settlement, and such other person or persons who do not holding an office of profit in the service of the Government. (CPC, 1908, sec. 89A (10)) The whole mediation process shall be concluded within Sixty (60) days from the date on which the court is so informed. (CPC, 1908, sec. 89A (4)) If any disputes in the suit are disposed by the reconciliation under this section than the relevant court shall issue a formal certificate in directing refund of the court fees paid within sixty (60) days from the date of issuance of the certificate. (CPC, 1908, sec. 89A (11)) There is no appeal rights against the decree and order passed in pursuance to settlement between the parties. (CPC, 1908, sec. 89A (12)) If the mediator has failed to produce a compromise between the parties then the court shall proceed with the suit as it stood before. (CPC, 1908, sec. 89A (7)) The whole mediation session shall be confidential in terms of evidence adduced and admission made, communication and any statement or comment made shall deemed to be privileged. (CPC, 1908, sec. 89A (8))

Similarly, it can be said that the Divorce Act, 1869 is one of the backdated laws, which deals with non-Muslim divorce issues. Under this Act, 1869 both the District Judge and the High Court Judges have concurrent jurisdiction to deal with Christian family issues. (Special Marriage Act, 1872, preamble) Alike, the Special Marriage Act, 1872, the Christian Marriage Act, 1872, and the Divorce Act, 1869 are used to adjudicate family and related disputes by the District or High Court Division of the Supreme Court of Bangladesh. Currently, the divorce court also offers rights of reconciliation. In the case between Hindu wife and Muslim Husband, (Unreported case of 2016 under sec. 10 of the Divorce Act, 1869) the petitioner filed for dissolution of marriage under the Act of 1869. This case was dismissed by the sole decree, as both the couples have submitted a compromise deed to conclude their dispute. In another unreported case between Muslim wife and Christian Husband, (Unreported case of 2016 under sec. 10 of the Divorce Act, 1869), where the case was also dismissed, as both the parties agreed to continue their marriage life rather than the lengthy proceeding. Therefore, it can be said that reconciliation process used to practice in current trial proceeding, but in recent past years, very few family disputes have been decided by alternative settlement. A District Judge refers a case (Unreported case of 2016 under sec. 10 of the Divorce Act, 1869) that alternative dispute settlement is one of the best means to resolve any complicated family dispute within a fixed time.



**E. Reconciliation of Marriage in Maldives**

Maldives is a small island nation which consists of 1192 scattered islands and located in Indian Ocean. There are 400,000 people, who are 100% Sunni Muslims. Laws are mainly based on Islamic law, though some degree of the legal system is created on English common law mostly influential in certain areas such as commercial law. Over the years, Maldives has experienced tremendous democratic reforms. Mainly, it fuses democracy and defends the essential human rights of Maldivian citizens.(MALDIVES, 2012, sec. 2) In the year 2008, a new Constitution was ratified, and it guarantees the separation of powers. The Constitution of Maldives states that “all the legislative powers are vested in the Peoples majlis,(Constitution of Maldives, 2008, Art. 5) while the executive power is vested to the president (Constitution of Maldives, 2008, Art. 6) and the judicial power is vested to the courts of the Maldives. (Constitution of Maldives, 2008, Art. 7)

Marriage plays a vital role for couple's happiness and security. Equally, major frictions create in the relationship effects the mental health and give a negative impact to the relationship. For example, couple conflict predicts a higher occurrence of mental disorders in adults, thus, it relates undesirable social results. The lack of stability in couple's relationship is a serious factor to their children's happiness. The constant solidarity and understanding, play a major role in development, supporting, and socializing children. However, major societal changes over past years have experienced a bitter life for the families in the Maldives, as a consequences of tremendous high divorce rate. Children from the separated families are the victims, following family separation and complex parental disagreement which has been related with increased psychological, academic problems, behavioral and mental stress, in children. Therefore, children's future and stabilities are very much depending on their parents' decisions. Equally, the welfares of children in separated families are highly imperative. It could be settled through best assisted, cooperative, child focused, and formal agreement between their separations with amicable solution for the best interest of the children. (Cleak, Schofield, & Bickerdike, 2014) In an unreported decided case, where the petitioner husband requests for consent from the judge in order to divorce his wife. On request of the court, the respondent wife replied that she is ready for it as it is husband's wish to divorce her. Based on the statements of the both parties and the reports of two judges proved that they are married for the third time to each other and they have a child from their marriage. Therefore, the judge did not approve their divorce. From this case, it is identified that the judge did not give much consideration to the original problems of the couple. The court decided the case, based on the best interest of the child. (Maldives, 2004, p. 52)

As, the Maldivian Constitution states that a marriage is a voluntary union between a man and a woman. According to that every marriageable age is determined by law, where people have rights to get married in order to establish their family life. (Constitution of Maldives, 2008, art. 34) Similarly, they are allowed to terminate their marital relationship through a formal divorce proceeding. The study found that the high rate of divorce in Maldives is common

problem among the civilians. The statistic shows that Maldives has its highest divorce rate in the World, where average 30 years old male or female has already been married and divorce three times. (Winjnads, 2018) The Family law permits men and women to seek termination if they do not live together for any reason. Though Islam permits divorce, it is the most hatred thing in the eyes of Islam, thus, it inspires the couples to go for reconciliation and seek possible solution of their problem. Basically, divorce proceeding is administered by the court. Maldivians courts are divided into three, where Supreme Court is highest court of the land. The High Court is an appeal court and lower courts are known as Magistrate Courts. Family Court is one of the superior courts and mostly, magistrate Courts used to deal with all family matters.

### **E.1. Application of Reconciliation of Marriage under the Family Law Act, 2000**

The Family Court has the jurisdiction to hear all family issues, which mainly looks into the matters associated to family inheritance, parentage, marital issues, divorce, assignment of child support and child custody. (Family Law Act, 2000, sec. 2) Prior to the adoption of the Family Law Act, all family issues are dealt under the Islamic law, which stipulated in the Qur'an, sunnah and fatwas by various jurists. The Family Law Act, 2000 replaced the old practice and focused on the modern notions with the ambit of the Shariah principles. (Suood, 2014) It is reported that Compare to other countries, divorce rate is very high in Maldives. Even though, the Family Law Act encourages family mediation and reconciliation for the disputing couples, it does not give much positive effect. From the year 2013 to year 2017, where 16832 divorce cases were registered. According to 2017 statistic, out of 3211 divorces only 90 cases were filed for reconciliation. As a general rule, upon the application of divorce petition, the matter is referred to Conciliation Committee for Family Matters, for reconciliation or for mediation. The Conciliation Committee for Family Matters, provides mediation and reconciliation as the main family dispute resolution process prescribed under the Family Law Act, 2000, thus rather than contest in the courts. Under section 25 of the Family Law Act, 2000, deals with the conciliation or reconciliation procedure, thus it gives a silver hope of strengthening of the family unity. It is also important to know that first time in Maldivians history, extra-judicial divorce specified as a penalized offence under section 67 of the Family Law Act, 2000, where it states that "extra-judicial divorce shall be an offence to divorce in contravention of this Act. As consequence, the offender shall be subjected to a fine not more than Mrf. 5,000 or exile or house detention for a period not exceeding six (6) months." (Family Law Act, 2000, sec. 67)

In another unreported family court case No:1656/AC/2009, where the petitioner wife applied for a divorce before the court. Due to the extra judicial divorce, the husband was fined for an amount of Mrf. 2500, under section 67 of the Family Law Act, 2000. (Unreported case no:1656/AC/2009) Maldivian family law facilitates certain procedures to be followed for the application of divorce to annul the marriages and to make a reconciliation between the disputing couples. The family law discourages divorce out of the court. The main reason is that this law is to provide a reconciliation process, where the disputants couples can come in a common stage

for seeking divorce with the help of experts. Even, the Act, 2000 states that a husband can file a petition before the appropriate court to divorce his wife. It is also necessary to contain some other particulars, which required by the rules pursuant to this Family Law Act. (Family Law Act, 2000, sec. 23(1)) After filing a divorce petition, the court will ask the wife whether she has given consent on the divorce proceeding or not. If she agrees, with her acquiescence, then, with the approval of the judge the husband can terminate the marriage by the court decision. (Family Law Act, 2000, sec. 23(2))

On the other hand, if the wife expresses her desire to remain in the marriage, then the judge shall send the petition to the Conciliatory Committee regarding family matters to the suitable court jurisdiction. According to the section 25 of the Family Law Act, 2000 in Island Courts the presiding Judges used to conduct the reconciliation process for resolution of family disputes. (Family Law Act, 2000, sec. 23(3)) Although, the existing Act prescribed the manner of reconciliation, there is a vast difference, how it has been conducting in the islands, thus, it is more likely fulfil a formality. Even, if the Conciliatory Division for family matters informs the judge that reconciliation between the parties had been unsuccessful, then the judge grant leave to the husband to divorce his wife. (Family Law Act, 2000, sec. 23(4)) In one of the unreported cases, where the petitioner wife requests for a divorce but the reason was not specified on court records. Therefore, the court was held that the husband shall pay for wife and their two children maintenance and other cost. Finally, the court verdict against the wife and refused to null the marriage. In this case husband pointed that he accomplishes his responsibilities by providing materially for the wife and children is a strong evidence as enough cause to remain in the marriage. Albeit, it was decided based on the best interest of children, it is not clear the role of reconciliation process or any amicable solution. In contrast to that, it portrays the harsh verdict from the judge. Also, the Conciliatory Division, if it thinks fit that the effect of reconciliation between the parties had been successfully completed then the pending divorce petition will be cancelled. (Family Law Act, 2000, sec. 23(5)) Subsequently, the wife is given equal rights to request for a divorce from her husband based on the regulations made under section 24 of the Act (2000), (Family Law Act, 2000, sec. 24(1)) on the following grounds:

- (i) The husband acts in a way which humiliates to the sanctity of the wife.
- (ii) The husband treats his wife with cruelty.
- (iii)The husband forces to his wife to perform some acts which is prohibited in Islam.
- (iv)The husband has restrained from performing sexual intercourse with his wife for a period exceeding 4 months.

However, after inspection if any reason founded by the court that the petition for the divorce falls outside of the section 28 of this Act, 2000, the judge shall refer such matters to the Conciliatory Committee of the relevant court jurisdiction. On the other hand, the presiding judge of the Island Court shall seek to the effect of reconciliation under section 25 of the Family Law Act, 2000.

(Family Law Act, 2000, 2000, sec. 24(2)) In practice, section 25 is heavily depend on family mediation rather than reconciliation.

Astonishingly, the whole process of reconciliation be subjected to the discretion of the judges. The regulation is completely silent about the importance of conducting the process with the help of well-trained expertise in the field, thus it is set up in a manner to appoint an expert if the judge desires to do so. However, the purpose of a law should be to deliver justice and to get benefit from it, rather than a mere piece of paper. As the result of the gray areas in the family law gives negative impact to the society. The previous year statistic shows that, out of 1876 established divorce cases, only 90 cases of reconciliation were filed and concluded. This outcome infers as a supportive evidence of a disastrous technique of conducting reconciliation procedure, thus it shows the situation deteriorate rather than improving the conditions of high divorce rate in Maldives. There is no specific definition of conciliation and reconciliation under the Family Law Act, 2000, however Maldivian family court required by law to give a relief on principles based on Alternative Dispute Resolution in matrimonial proceedings. It is encouraged reconciliation between the disputing parties, thus section 25 of the Family Law Act, 2000 imposes a reconciliation procedure in order to settle family disputes. Under section 25 of this Act states that;

“(1) Upon transmittal of a matter for conciliation as referred in section 23 and section 24 of this Act to the Conciliation Division for Family Matters, or upon submission of a similar matter to the Court in islands where such a Division is not available, the Conciliation Division or Court shall as soon as possible begin the process of reconciliation between the couple. Reconciliation process shall be completed in all such matters within 3 months of their transmittal or submission.

(2) Reconciliation process as per subsection (1) of this section shall be conducted in accordance with this Act and Regulations made under it.

(3) In conducting the reconciliation process as per subsection (1) and subsection (2) of this section, priority shall be given to conducting the process by securing the attendance of the couple and those relatives of theirs who possess knowledge in respect of the dispute.” (Family Law Act, 2000, sec. 25)

From the above point of view, it can be said that the Family Law Act, 2000 clearly gives an implication that there is a great difference in application of the reconciliation process in the islands and the capital city. Moreover, section 25(2) states that reconciliation process under section 25(1) must be directed in accordance with this Act and rules made pursuant thereto. (Family Law Act, 2000, sec. 25(2)) Consequently, it is presumed that, the whole reconciliation process depends on the judge’s discretion. As a result, the outcome is not fruitful, and the seriousness of the sessions are undermined thus the whole purpose is defeated frequently. Furthermore, under section 25(3) the priority should be given to the reconciliation process by safeguarding the attendance of the couple and their relatives who have more information in the

disagreement between the couple. (Family Law Act, 2000, sec. 25(3)) The above subsections that efforts made by relatives to reconcile the parties should also be accepted other than officials of Conciliation Committee for family matters, thus it shows that relatives and other close people to the disputing couple too can play a vital role in order to afford a settlement.

In another unreported case No. 30/Q8C/2012, where the petitioner wife requested for an annulment of the marriage before the Magistrate Court on the ground that the husband is treating her maliciously. The petitioner wife further mentioned that they had not have any marital relationship for 10 months and they have separated from each other more than 12 months, moreover it is stated that it was the second petition for the divorce, the petitioner previously filed a case before the Family Court and tried for reconciliation, hence it was not successful. The court recorded the statements from the couple and show that they had no marital relationship in 10 months. Based on the facts, the court has dissolved (*fasakh*) the marriage under section 28 of the Act, 2000. (Family Law Act, 2000, sec28(1)) The above case reveals that, based on certain circumstances, even though the wife had a strong ground for *fasakh*, still the judge refers the case for reconciliation. However, the situation was a bit different before the formulation of regulation under section 25 of the Family Law Act, 2000. It is noted that the regulation was enacted in 2010 after 10 years of its arrival.

## **F. Comparative Overview of the Law and Practice in Bangladesh and Maldives**

### **F.1. Similarities**

Nowadays, people are too busy and have no time to spend in the lengthy litigation process. Therefore, in both Bangladesh and Maldives, reconciliation of marriage is ultimately time and cost saving process, where it is conducted privately outside of the court proceeding. Even, media and public attendance is not allowed in such dispute settlement. In addition, this process is more comfortable for the vulnerable parties who are in marital conflicts. Therefore, disputing parties are welcoming into reconciliation process rather than traditional trial proceedings. Similarly, a well-trained mediator or conciliator is more capable to deal with the parties in order to settle their dispute through formal resolution process. Bangladesh and Maldives are Muslim majority countries, but due to multi-religious social system, in Bangladesh, family issues are dealt either by the Family Court or the Civil Court jurisdiction. On the other side, Maldivians are Muslims, where family matters are dealt by the *Shariah* law principles. In both jurisdictions, the trial proceeding is a lengthy process to get the final decision from the court, but reconciliation process is time and money saving process.

### **F.2. Differences**

In Bangladesh, reconciliation of marriage proposes that both parties should consider themselves before the dissolution of the marriage. It is not only time and cost saving process but is also more flexible and faster process, where parties are free to settle any marital issue without extra pressure. However, in Bangladesh, if the parties prefer to go for a reconciliation process through court then the cost is less than ordinary lawyers and court fees. In Maldives, in contrast, litigation



and arbitration are considered expensive processes comparing to the process of mediation or conciliation. (Abdul Hak, Oseni, & Mohamed, 2016, p. 77) In some of the other jurisdictions, the cost of mediation is paid by the parties. In opposite, in the Maldives, the services are delivered by the government for free of charge and it is a compulsory session, if the judge recommends doing so. Delays in courts are measured as an obstacle for justice. (Abdul Hak et al., 2016) Section 25(1) of the Maldivians Family Law Act, 2000 specifies that whole reconciliation or conciliation process should not be prolonged and must be finalized within three months. Subsequently, it is observed that the reconciliation process is controlled by the parties. However, in litigation, the powers are shifting from parties to lawyers. The role of mediators and conciliatory bodies are to facilitate the process of reconciliation of the parties. The mediators or conciliatory bodies cannot be forced any decisions on parties. (Abdul Hak et al., 2016)

### **F.3. Challenges**

Bangladesh is a multi-religious country, where reconciliation process is dealt under the Muslim personal law. Similarly, others are dealt by their own personal laws or civil laws. In addition, personal laws-based family proceedings are administered by the Family Court and the civil law related family issues are administered by the District Court or High Court. In reality, the Bangladeshi lawyers are not interested to deal with reconciliation process, they assumed that only because reconciliation the pending suits will be disposed within is a short time, as a result, the lawyers used to play a dilatory practice during trial as well as alternative process. Therefore, it can be said that dilatory practice by lawyers are also another challenge for the reconciliation of marriage process. In addition, many of the lawyers are not familiar with the reconciliation process, due to that reason, the parties in dispute are not well informed of the significant of such dispute resolution. At the same time, parties are not well known about reconciliation through mutual agreement. As a result, parties are always relied upon their legal experts. Also, the disputant parties may also misunderstand that result of reconciliation will not meet their expectation. Moreover, due to inadequate legal provisions of the existing laws, reconciliation process fails to make an attention of the pending disputes.

Thus, such inadequacy is main blockage for the reconciliation process. Within a short period of time the whole reconciliation process is faced various difficulties, such as quality of service. Correspondingly, it can be assured that most of the courts usually handle numerous problems to deal with alternative process such as reconciliation. Also, the uncertainty of Government funding makes problem to deal with the dispute resolution process. At the same time, such alternative dispute process become more challenging to settle the pending issues. Besides, it is an important that the parties are under threat due to privacy and confidentiality. Even, the parties be frightened that mediation and conciliation panel's decision are neutral according to the rule of ethic and morality. On the other side, it is important to know that since long period of time Maldivian legal system used to practice Shariah based legal system. In the year, 2000 Maldivian Family Court is administered by the Family Law Act, 2000 in order to deal with divorce and marital reconciliation issues.

Particularly, Maldivians common perception is that every broken marriage is not reconcilable. However, it is believed that a proper reconciling method could help the success rate of reconciliation in family matters. (Md Hashim et al., 2017) The unity of the family is very much depended on the success of conciliation. Similarly, the numerous obstacles that are tackled in order to conduct a proper conciliation process in Maldives. Although, the Maldivian Constitution guarantees that the equality among the people, including persons with national origins, birth other status, or native island are entitled to the rights and freedom stipulated in the constitution, however it is noted that the people who are living in the islands are not equally available to get the benefit of Constitutional rights as specified for individuals or groups. (Constitution of Maldives, 2008, art. 17a) As stated in section 23 (3) of the Family Law Act, 2000, people who are living in the islands are refrained from that right of getting to access to the “Conciliatory Committee for Family Matters” hence, the service is available in the capital city of Maldives, but in a minimal level. At the same time, the geographical challenges might be one of other reasons to deliver the services in a meaning full manner.

#### **F.4. Inadequacies**

In Bangladesh, reconciliation related laws are insufficient and backdated, therefore majority of alternative dispute resolution process remain undercover. Also, legal provisions related to the reconciliation process are completely inadequate. There is no specific provision for fine in relation to the conciliation process, but in Maldives the Family Court and Magistrate Court (Island Court) can also impose fine due to extra judicial divorce. The amount of such fine under section 67 of the Maldivian Family Law Act, 2000 is not proportionate to the current circumstances thus it needs an amendment. Nevertheless, it is very much prominent that the Family Law Act, 2000 is completely silent about the action that they will take against the parties who are not attending the sessions. This is identified as a lacuna in the Family Law Act, 2000 as well as in the reconciliation process, which is needed to be amended. Nevertheless, it could be argued that unjustified excuses are not acceptable because it had been almost two decades that the Family Law Act, 2000 has been enacted in Maldives, and it imposes to establish a reconciliation system. Also, it does not work as a full fledged system due to lack of expertise in current legal setting. For the success of the process, it is imperative to have skillful people in this field. Reconciliation of marriage is one of the areas very much neglected, thus past years the concerned authorities did not give much attention or consideration to train people in this area. Currently, there is a need to have expertise in this area in order to resolve family disputes through a formal reconciliation process.

#### **G. Conclusion**

From the overall discussion, it is clear that marital disputes are amicably reconcilable outside the court. In Islam, reconciliation of marital disputes is recognised, and it has been practised since long time. In both Bangladesh and Maldives, the statutory laws administer reconciliation and conciliation process of marriage. It is an obligatory for the court and disputing parties to consider

reconciliation process outside of the court for resolving any divorce matters rather than go to trial. Many of disputants do not know the actual process of reconciliation. Even though, the parties also do not know benefit of such alternative settlement. In this regard, the courts and the lawyers need to clarify the whole proceeding of reconciliation, so that the parties would be encouraged to come for reconciliation of marriage and other matters rather than go to the ordinary trial proceeding. It is supposed to appoint some expert professionals to deal with reconciliation process. In addition, a well-organized training session may change the misconception of the mediation or reconciliation process. A proper training shall inform how a dispute resolution process reduces suit cost, transportation cost, time, etc. Similarly, it also demonstrates how a quality dispute resolution process can satisfy both the parties in a dispute. Also, both the Governments would take an initiative through a new legal framework in relation to the alternative dispute proceeding. Especially, reconciliation process should be an accessible, affordable, amicable, and available opportunity for the disputant couples to reconcile their divorce matters. Also, the Government can make new guideline for the courts, lawyers, conciliatory bodies, and disputant parties for best practice.

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