

**Migration Review Tribunal
AUSTRALIA**

MRT RESEARCH RESPONSE

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Country: Bangladesh
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Questions

- 1. What is the usual process for Muslims marrying in Bangladesh?**
- 2. Does a Nikah Nama have the same legal status as a marriage certificate? Is it issued by the government?**
- 3. Under Bangladeshi law is a Nikah Nama valid if the bride has not signed it? Can she appoint someone (eg a "wakil"/proxy) to sign on her behalf?**
- 4. Does the bride have to sign the Nikah Nama in front of the Qazi?**
- 5. Is there an order to the process eg does the bride have to sign the Nikah Nama before the groom?**

RESPONSE

- 1. What is the usual process for Muslims marrying in Bangladesh?**

Bangladesh has a predominantly Sunni Muslim population and marriage law is governed by Islamic jurisprudence:

Section 1. Religious Demography

The country has an area of 55,126 square miles, and its population is 154 million. According to the 2001 census, Sunni Muslims constitute 89.7 percent of the population and Hindus account for 9.2 percent. The rest of the population is mainly Christian (mostly Roman Catholic) and Theravada-Hinayana Buddhist.

...

Section II. Status of Religious Freedom. Legal/Policy Framework)

...

Family laws concerning marriage, divorce, and adoption differed slightly depending on the religious belief of the persons involved. Each religious group had its own family laws. Muslim men may marry up to four wives; however, a Muslim man must get his first wife's signed permission before taking an additional wife. Society strongly discouraged polygamy, and it was rarely practiced (US Department of State 2008, *International Religious Freedom Report for 2008– Bangladesh*, 19 September – Attachment 1)

In a study of marriage arrangement in Bangladesh, Sarah White made the following observations:

In Islam marriage is an obligation and a contract, Hindus conceive of marriage as a sacrament. The practical politics of marriage arrangement, however, are reminiscent of any other form of transaction. The different parties manoeuvre and fight their own corners, aiming to achieve the best bargain they can.

...

Marriage payments

The practice of dowry significantly shifts the terms of exchange at marriage in favour of the groom's party... Dowry (payment by the bride's family)

...

is now common amongst virtually all groups, and the amounts payable have risen dramatically.

...

There are still some special cases in which dowries need not be paid. The most common of these are: 1) when there is a kin relationship between the two parties; 2) where there are religious objections to dowries (Muslims)...(White, Sarah, 1992, 'Marriage Arrangements', in *Arguing with the Crocodile - Gender and Clan in Bangladesh*, University Press, Dhaka, pp99-115 - - Attachment 2)

In his book, *Islamic Family Law in a Changing World*, Abdullahi An-Na'im writes about Muslim marriages in Bangladesh and contradicts Sarah White's view on the matter of dowries:

Legal Practices and Institutions

...

Bangladesh's Constitution is avowedly secular and its civil code is based on laws inherited from the British. The government of Bangladesh has implemented specific legal protections for women, including the 1980 Anti-dowry Prohibition Act and the 1983 Cruelty to Women Law (US Government 1996). Bangladesh has also passed laws protecting women from arbitrary divorce and from husbands taking additional wives without the consent of the first wife. But these protections apply only to registered marriages and, in rural areas where most Bangladeshi live, few marriages are registered. (p206)

...

Marriage

The subcontinental custom of the bride's family paying dowry to the groom's family cuts across religious lines, despite Shari'a's stipulation that it is the groom who should pay *mahr* to the bride. (p209)

Legal Profiles

The Child Marriage Restraint Act 1929 was amended by ordinance in 1984 so that the minimum ages of marriage are 21 for men and 18 for women.

...

The Muslim Marriages and Divorces (Registration) Act 1974 enacted to strengthen the inducement for civil registration states that 'every marriage solemnised under Muslim law shall be registered in accordance with the provisions of this Act' and establishes the licensing of *nikah* registrars. The punishment for not registering a marriage is a prison sentence and/or a fine. Failure to register does not invalidate the marriage. (p216) An-Na'im, Abdullahi A. 2002, *Islamic Family Law in a Changing World*, Zed Books Ltd, UK – Attachment 3).

According to the Immigration and Refugee Board of Canada there is a high incidence of forced marriages:

Arranged marriage is entered into with the consent of both parties, although family may play an important role in selecting a marriage partner (UK 7 June 2006, 5; see also *USA Today* 19 Apr. 2006). Forced marriage, on the other hand, is entered into under emotional and/or physical pressure, and the consent of one or both parties is missing (UK 7 June 2006, 5; see also BBC 5 Sept. 2005 and *USA Today* 19 Apr. 2006).

According to media and human rights sources, many women in Bangladesh are forced into marriage (IPS 16 June 2003; OMCT 2003, 20; HRW n.d.). In addition, it is estimated that up to 50 per cent of women marry early, before the age of 18 (OMCT 2003, 20; see also UNB 14 Dec. 2005 and *Country Reports 2005* 8 Mar. 2006, Sec. 5). In Bangladesh, the official age of consent for marriage is 18 for women and 21 for men (India 1 Oct. 1929; see also Ali Oct. 2004, 26 and OMCT 2003, 20) (Immigration and Refugee Board of Canada 2006, *BGD101507.E - 'Bangladesh: Arranged, forced, and early marriage, the matching process and the role of the matchmaker; consequences for refusing to participate (2003 – 2006)*, 8 August – Attachment 4)

Parents and a matchmaker play a major role:

The role of the matchmaker

Most marriages in Bangladesh are arranged by parents (Banglapedia n.d.a; see also Field and Ambrus Nov. 2005) or relatives (Banglapedia n.d.a; *ibid.* n.d.b.). However, matchmakers called ghataks [or "ghotoks"] may also assist (*ibid.*; *ibid.* n.d.a). Ghataks were traditionally used in Bengali society to establish a link between the bride and groom (*ibid.* n.d.b). The matchmakers may also maintain lists of potential brides and grooms, which include background information on their families (*ibid.* n.d.a). Parents may use this information to select spouses for their children based on caste (*ibid.* n.d.b). Successful matches of bride and groom may result in a reward for the ghatak from both parties (*ibid.*).

Matchmakers are reportedly becoming less common in Bangladesh (*ibid.*), while professional matchmaking agencies are gaining in popularity (*ibid.*; *The Daily Star* 9 Mar. 2004; *ibid.* 14 Dec. 2003). According to an article in *The Daily Star*, a Dhaka-based newspaper (*ibid.* n.d.), individuals working as matchmakers for such agencies are generally well educated (9 Mar. 2004).

Matchmaking agencies collect personal information and photographs from prospective brides and grooms (*The Daily Star* 9 Mar. 2004; *MarriageBangladesh* n.d.a; *Banglapedia* n.d.b). Certain matchmaking agencies ask for an initial registration fee of about 1,500 taka [approximately CAN\$24.65 (XE.com 18 July 2006a)] from their clients (*The Daily Star* 14 Dec. 2003; *MarriageBangladesh.com* n.d.b; see also *Banglapedia* n.d.b), then charge a full fee once the marriage has been successfully arranged (*ibid.*; *The Daily Star* 9 Mar. 2004). According to a 9 March 2004 news article in *The Daily Star*, 10,000 taka [approximately CAN\$164.34 (XE.com 18 July 2006b)] is paid to the matchmaking agency for a successful match. Rates are reportedly higher for Bangladesh expatriates (*The Daily Star* 14 Dec. 2003). (*Ibid.*)

2. Does a Nikah Nama have the same legal status as a marriage certificate? Is it issued by the government?

3. Under Bangladeshi law is a Nikah Nama valid if the bride has not signed it? Can she appoint someone (eg a "wakil"/proxy) to sign on her behalf?

4. Does the bride have to sign the Nikah Nama in front of the Qazi?

5. Is there an order to the process eg does the bride have to sign the Nikah Nama before the groom?

The following questions were referred to DFAT for their advice. (MRT Research & Information 2008, Email to DFAT, 'MRT Information Request: BGD34036', 12 December Attachment 5)

The following advice was provided:

DFAT provides the following response to MRT request BGD34039 regarding the legal status of a Nikahnama. DFAT consulted a government licensed Nikah Registrar and DIAC in Dhaka in preparing the following responses.

A. Does a Nikahnama have the same legal status as a marriage certificate? Is it issued by the government?

2. A Nikahnama has greater legal status than a marriage certificate, although both are issued from the Qazi office. A Nikahnama is the official government document regarding marriage. All Qazis must register marriages in the registry book of Nikahnama. Qazis then provide two attested true copies of the Nikahnama to the couple - one to the bride and one to the groom. A marriage certificate is only an attestation from the Qazi office confirming the marriage registration at his office. Legally, a marriage certificate cannot be issued without a valid Nikahnama.

B. Under Bangladeshi law, is a Nikahnama valid if the bride has not signed it? Can she appoint someone (eg a "wakil"/proxy) to sign on her behalf?

Under Bangladeshi law a marriage is not valid if the bride has not signed the Nikahnama. A bride cannot appoint a Wakil/authorized person to consent to the marriage and sign the Nikahnama on her behalf. However, even recently, especially in rural areas, this was not strictly enforced, and marriages have been held with only the verbal consent of the bride (or even sometimes without any consent at all).

C. Does the bride have to sign the Nikahnama in front of the Qazi?

The bride has to sign the Nikahnama in front of a Qazi.

D. Is there an order to the process, eg. does the bride have to sign the Nikahnama before the groom?

The general order followed for signing the Nikahnama is that the bride first gives her consent orally to the Qazi and then signs the Nikahnama. The groom or his wakil/authorized person then gives his consent to the marriage and signs the Nikahnama (Department of Foreign Affairs and Trade 2008, *DFAT Report No. 938 – MRT Information Request BGD34036*, 15 December - Attachment 6)

The Muslim Marriage and Divorces (Registration) Act, 1974 is attached for your information. (Government of the People's Republic of Bangladesh, Ministry of Law, Justice and Parliamentary Affairs, undated, 'The Muslim Marriages and Divorces (Registration) Act, 1974, Laws of Bangladesh website – Attachment 7).

List of Sources Consulted

Internet Sources:

Government Information & Reports

UK Home Office website <http://www.ind.homeoffice.gov.uk>

US Department of State website <http://www.state.gov>

Immigration and Refugee Board Canada <http://www.irb-cisr.gc.ca/>

United Nations (UN)

UN High Commissioner for Refugees (UNHCR) website <http://www.unhcr.ch/cgi-bin/texis/vtx/home>

Non-Government Organisations

Amnesty International website <http://www.amnesty.org/>

Human Rights Watch (HRW) website <http://www.hrw.org/>

International News & Politics

BBC News website <http://news.bbc.co.uk/>

Search Engines

AlltheWeb search engine <http://www.alltheweb.com/>

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

Yahoo search engine <http://search.yahoo.com>

Exalead www.exalead.com/search

Copernic search engine

Databases:

FACTIVA (news database)

BACIS (DIAC Country Information database)

REFINFO (IRBDC (Canada) Country Information database)

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

MRT-RRT Library Catalogue

List of Attachments

1. US Department of State 2008, International Religious Freedom Report for 2008–Bangladesh, 19 September.
2. White, Sarah, 1992, 'Marriage Arrangements', in *Arguing with the Crocodile - Gender and Clan in Bangladesh*, University Press, Dhaka, 1992, pp99-115. (MRT-RRT General Papers)
3. An-Na'im, Abdullahi A. 2002, *Islamic Family Law in a Changing World*, Zed Books Ltd, UK. (MRT-RRT Library)
4. Immigration and Refugee Board of Canada 2006, *BGD101507.E - 'Bangladesh: Arranged, forced, and early marriage, the matching process and the role of the matchmaker; consequences for refusing to participate (2003 – 2006)*, 8 August. (REFINFO)
5. MRT Research & Information 2008, Email to DFAT, 'MRT Information Request: BGD34036', 12 December.
6. Department of Foreign Affairs and Trade 2008, *DFAT Report No. 938 – MRT Information Request BGD34036*, 15 December.
7. Government of the People's Republic of Bangladesh, Ministry of Law, Justice and Parliamentary Affairs, undated, 'The Muslim Marriages and Divorces (Registration) Act, 1974, Laws of Bangladesh website - <http://www.bdlaws.gov.bd/pdf/476.pdf> - Accessed 6 January 2009.