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বাংলাদেশের বিচার ব্যবস্থায় পদ্ধতিগত জটিলতা: শিশু-কিশোর প্রসঙ্গ

নারীদের উপর এসিড-নিষ্ক্ষেপ: গণমাধ্যমের ভূমিকা ও আইন

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A Legal Study on *Fatwa* regarding *Hilla* Marriage in Bangladesh

Dr. Begum Asma Siddiqua*

Introduction

Statutory laws are applicable in Bangladesh for its citizens for general matters and religion based personal laws for family matters. Eighty percent of the population in Bangladesh are Muslims and most dispute pertaining to family related matters are judicially resolved in the Family Courts of Bangladesh whilst a few issues may be settled extrajudicially by designated forums in accordance with the Muslim Personal Law. In spite of the fact that there are Muslim Personal statutory laws with clear indication as to how the controversies are to be disposed of, it is often seen that *moulvies* (clergies) with the support of a few locals who hold some influential power, intervene in marital discords by stating *fatwa* which may not be in accordance to Islam thus resulting in a disruption of formal order of a family. Case study shows that rural people are affected by it and eighty percent of the total population reside in the rural areas. This article aims to show that the *fatwa* with regard to *hilla* awarded by local *moulvies* contradict with the basic principles of Islamic Law. To reach this aim the article defines different aspects of *fatwa*, *fatwa* regarding *hilla* marriage and the judicial intervention on this issue.

Meaning of *Fatwa*

A *fatwa* (Arabic: فتوى; plural *fatawa* Arabic: فتاوى) literally means to deliver an opinion, expound, consult etc.¹ *Fatwa* is an institution closely related to the Muslim judicial system and represents the practical expression of the principles of legal advice.² It is a judicial opinion or juristic opinion

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¹ Hans Wehr edited by JM Cowan, *Arabic-English Dictionary*, Spoken Language Services, New York 1976, p. 696

² Anwar Ahmad Qadri, *Islamic Jurisprudence in the Modern World*, Taj Company, New Delhi, 1986, p. 261

concerning Islamic law issued by an Islamic scholar.³ In the early days of Islam, a *fatwa* was given by distinguished and learned scholars to help clear certain matters of doubt or human questionability as a road of guidance to other scholars, judges and citizens on personal and public matters to explain, interpret and apply subtle points of Islamic law. There were strict rules on who were eligible to issue a valid *fatwa* and who were not, as well as on the conditions that the *fatwa* must satisfy to be valid. The act of asking for an answer is called *Istifa* and the answer so given is called *fatwa*. The person giving the *fatwa* is called *Mufti* and the person asking for it is called *Mustafi*.⁴ *Fatwa* gained importance and soon *fatwas* were collected and gathered in great volumes.⁵

According to the *usul al-fiqh* (principles of jurisprudence), the *fatwa* must meet the following conditions in order to be valid:

1. The *fatwa* is in line with relevant legal proofs, deduced from Qur'anic verses and *Sunna*;
2. It is issued by a person (or a board) having due knowledge and integrity;
3. It is free from individual opportunism, and not depending on political servitude;
4. It is adequate with the needs of the contemporary world.

Today, with the existence of modern independent States, each with its own legislative system, and its own body of *Ulemas* (learned persons), each country develops and applies its own rules, based on its own interpretation of religious prescriptions. Many Muslim countries such as Egypt and Tunisia have an official *Mufti* position; a distinguished expert in the *Sharia* is appointed to this position by the civil authorities of the country.⁶

³ *Ibid*, p. 227

⁴ *Ibid*, p. 261

⁵ *Ibid*, p. 76

⁶ <http://en.wikipedia.org/wiki/Fatwa> accessed on 20.6.09

Who can issue *Fatwa* in Bangladesh

Among the various modes of education in Bangladesh madrasah education is one.⁷ Within madrasah education, Aliyah madrasah and Qaumi madrasah holds an important position.⁸ The former has a formal approach with academic layouts resembling the general education system of the country whereas the later has an informal style to its education system.⁹ Both are effective in their own way. Effective whilst maintaining its own personal uniqueness. In Aliyah madrasah *Fiqh* or Islamic Jurisprudence is taught from the primary stage¹⁰ and a student doing major in *Fiqh* at the masters level from the Department of *Fiqh* at Islamic University is awarded with degree of *Mumtazul Fuqaha* (MF) and as a *Faqih* acquires the right to issue *fatwa*. In Qawmi madrasah a student passing out from the *Fatwa* department and *Ifta* board¹¹ is termed as a *Mufti* who is qualified to issue *fatwa*.¹²

In Bangladesh a few areas of Islamic law has been codified and is interpreted by the judicial system according to the national jurisprudence. *Fatawa* have no direct place in the system, except to clarify very unusual or subtle points of law

⁷ For details on madrasah education see, Dr. Sekandar Ali Ibrahimy, *Reports on Islamic Education and Madrasah Education in Bengal (1861-1977)* Islamic Foundation Bangladesh, Dhaka, 1985

⁸ *Islami Bishwakosh*, (The Encyclopaedia of Islam in Bengal), 17th Volume, Islamic Foundation Bangladesh, Dhaka, 1995 p. 292

⁹ For details see, People's Republic of Bangladesh: Capacity Development for Madrasah Education, Asian Development Bank (ADB) Project Number: 39297 Capacity Development Technical Assistance (CDTA) December 2008; <http://www.adb.org/Documents/TARs/BAN/39297-BAN-TAR.pdf>. accessed on 20.6.09

¹⁰ AKM Azharul Islam and Shah Habibur Rahman, *Bangladesh School O Madrasah Shikhaniti Karjokrom Mokka Ghoshonar Aaloke Mullayan*, (The Education Policy and Curricula of Schools and Madrasahs in Bangladesh: An Evaluation in the Light of the Makkah Declaration) The Islamic Academy, Cambridge, United Kingdom, 2003, pp. 162-187

¹¹ *Ibid*, pp. 200-201, Other departments of Qaumi madrasah are Takhassus fil-Fiqhhil Islami, Takhassus fi Ulumul Hadis, Takhassus fi Ulumul Quran, Dawra e Hadis and Hifz department,

¹² *Ibid*, p. 201

for experts or judges or to give moral authority to a given interpretation of a rule.

Different *mujtahids* can issue contradictory *fatwa* because there is no official position of *Mufti* nor a national institution in Bangladesh to clarify such ambiguities. In absence of its binding force on others there is a possibility of different *fatwa* in different areas by different *Mufti* on same nature of situations. In such cases, Muslims would usually honour the *fatwa* deriving from the leadership of their religious tradition.

Legal implications of a *Fatwa*

A *Mufti* defines a Muslim action in a society. When a *Mufti* pronounces a morally binding Islamic law, the judgment is called a *fatwa*. The Quran alone cannot possibly cover modern ethical dilemmas. *Mufti* is a person who has studied Quran and *sunna* alongside a good deal of past and present Muslim tradition in order to apply the spirit of older laws to the morality of new social issues to decide upon a question. The issuance of a *fatwa* helps establish a precedent for future cases, enabling Islam to adapt and comply itself with new challenges of times while remaining true to its roots and tradition. A *mujtahid* (jurist), satisfying a number of qualifications and trained in the techniques of *ijtihad* (personal reasoning) the fourth source of Islamic law after the Quran, the Prophet Muhammad's (sm) *sunna*, and *ijma* (consensus of opinion), is allowed to issue a legal opinion or interpretation of an established law. He does this by examining exhaustively all the relevant standards related to the issue to the extent of possibility and his power, and compares the standard which appeared to him preferable to the rest of the standards.¹³ *Fatwas* are nonbinding, contrary to the laws deriving from the first three sources, and the Muslim may seek another legal opinion. The *fatwas* of famous jurists are

¹³ Ahmad Hasan, *Analogical Reasoning in Islamic Jurisprudence*, Adam Publishers and Distributors, Delhi, 1994, p. 314

usually collected in books and can be used as precedents in courts of law.¹⁴ Since the 18th century British Indian rulers stopped following the *sharia* and have paid less importance to *fatwa* in the courts of the Indian sub continent and have instead adopted secular legal systems,¹⁵ *fatwas* are issued mostly on a personal basis or for political reasons.

There is a difference between a judge and a *Mufti*. The judge issues a verdict and binds people to it. The *Mufti* explains the legal judgment but he does not bind the people to his *fatwa*.¹⁶ Despite this, it is usual in Bangladesh to find from newspaper reports that, some self proclaimed theologians misleadingly present their *fatwa* as obligatory.

Many of the self trained *moulvies* without the requisite legal training proclaim the right to issue *fatwas* in Bangladesh. Such edicts may be considered by their followers as binding but they are not recognized by the jurists or the rest of the Muslim community as legitimate juristic opinions.

Attributes of *Fatwa* in Rural Bangladesh

Fatwa are expected to deal with religious issues, subtle points of interpretation of the *fiqh* exemplified by particular cases. In exceptional cases, religious issues and political ones seem to be inextricably intertwined.

Rural Bangladesh has seen an increase in the issuing of *fatwa* since the late 1980s enduring various social, economic and political implications. These *fatwas* converge patriarchal interests with material interests with the assistance of local powerful lobbies and pressure groups in the form of local *shalish*

¹⁴ Idea is developed from Masud, Muhammad Khalid; Messick, Brinkley; and Powers, David S., eds. *Islamic Legal Interpretation: Muftis and Their Fatwas*, Cambridge, MA: Harvard University Press, 1996, <http://www.answers.com/topic/fatwa> accessed on 20.6. 09; The position of Bangladesh is similar to many Muslim countries.

¹⁵ MP Jain, *Outlines of Indian Legal History*, Fifth ed., 1990 Wadha and Company, New Delhi, re 1993, pp. 381-383

¹⁶ Yusuf Al-Qardawi (Dr), *Islamic Law in the Modern World*, translated in English by Al-Hadi A. Khalifa, King Faisal Center for Research and Islamic Studies, Riyadh, Saudi Arabia, 2000, p. 23

(mediation). It causes tremendous adverse implications on women's social and economic lifestyle¹⁷ and their families.

A *Fatwa* can deal with a woman's social life in the right to select partners, marriage, divorce, veiling, family planning, rape, love affair, sensual desire and right to movement. Economic target of *fatwa* are those women who are engaged in income-generating activities outside of the home specially in NGOs (non governmental organisations). Women are targeted politically by these incorrect *fatwas* which restrict their right of speech and human rights.¹⁸

The *fatwa* given in a rural society results in the penalty of whipping by lashes, striking with broom, shaving off the head, wearing of shoe garland, beating of one's spouse by the other, stoning by embedding in earth, declaration of divorce, death penalty, announcement of reward for killing, declaring apostate, ostracizing, disallowing *janaza* (funeral), to force out of village etc.¹⁹

Some *Fatwa* on *Hilla*

The purpose of establishing law and order is to protect society from the dangers of tyranny and oppression. Despite changes of time, place, situation and custom the global objective of *Sharia* to serve interests of justice and people should be adhered to.²⁰ *Fatwas* with respect to *hilla* marriage in Bangladesh causes unexplainable hardship to families.

The word *hilla* means permission, legal manipulation, evasion, juristic stratagem.²¹ *Hilla* is a juristic trick that aims at circumventing the intent behind a certain rule. The concept of intervening marriage as a stratagem or *hilla* to return to the former husband is not recognised in Islamic law. A person divorcing his wife for three times cannot remarry his divorced wife without

¹⁷ Dalia Ahmed, *The Dispensation of Fatwa and Women's Progress in Bangladesh* (FOWSIA), Bangladesh Freedom Foundation-BFF, 2004, Dhaka, p. 10

¹⁸ *Ibid*, p.10

¹⁹ *Ibid*, p.87

²⁰ Yusuf Al-Qardawi (Dr.), *op cit*, p.99

²¹ Hans Wehr, *op cit*, pp. 198-199

halala.²² It means a wife will only be *halal* to her former husband after she has entered into a second marriage contract and that marriage tie expired naturally.²³ It is mentioned in the Holy Quran in Sura Baqara *Ayat* 230. Explanation and interpretation of this *Ayat* with citation of many Hadith endorses the view of regular process of law.²⁴ When such second marriage is entered with the intention to circumvent the natural procedure it is termed as *Nikah tahlil*. It has been reprovved by Prophet (sm).²⁵ The Sunni schools do not approve of this kind of marriage²⁶ except a few jurists. There is controversy in the Hanafi school of thought about the status of a sham *hilla* marriage. A few including Imam Hanifa consider it as legally effective²⁷ whereas most of the jurists render it as *haram*.²⁸ It is not clear in what circumstances a great *Alim* like Imam Abu Hanifa and a few others sanctioned sham *hilla* marriage. Even sham intervening marriages was not recognised by Indian case law.²⁹ Not only was this kind of marriage is prohibited by the verse of the Holy Quran, it was castigated by the Prophet (sm)* himself and the majority of the jurists

²² Burhan Uddin Ali Ibn abu Bakr, *Al-Hidaya*, 2nd vol., Islamic Foundation, Dhaka, 2000 p. 158; Firasat Ali & Furqan Ahmad, *Divorce in Mohammedan Law the Law of Triple Divorce*, Deep & Deep Publications, New Delhi, 1983 p. 74

²³ Tahir Mahmood, *The Muslim Law of India*, 3rd ed., LexisNexis Butterworths, New Delhi, 2002 p. 113

²⁴ Allama Abu Jafar Muhammad Ibn Jarir Tabari (R), *Tafsire Tabari Sharif*, 4th vol. Islamic Foundation Bangladesh, Dhaka, 1993, pp. 276-283

²⁵ Salma Ali (ed), *Talaq o Hillah*, Bangladesh National Women Lawyers Association, BNWLA, Dhaka, 1999, p. 60

²⁶ Salim Sarwar (ed), *Hillah Marriage Humiliation of Muslim Women under Fundamentalism*, Association for Community Development - ACD, Rajshahi, 2003 pp. 20-22

²⁷ Badshah Abul Muzaffar Muhammad Muhiuddin Aurungzeb Alamgir (ed), *Fatawa e Alamgiri*, 2nd vol. Islamic Foundation Bangladesh, Dhaka, 2001, p. 517

²⁸ Maulana Ubaidul Huq and 7 others constituting the Editorial Board, *Fatawa wa Masail*, 5th vol. Islamic Foundation, Dhaka, 2001 p. 189; Tanzil-Ur-Rahman (Dr.), *A Code of Muslim Personal Law Vol I* Hamdard Academy, Pakistan, 1978, pp. 166-167; Gazi Shamsur Rahman and 5 others constituting the Editorial Board, *Bidhibodhho Islami Ain (Codified Islamic Laws)*, Vol I Part I, Islamic Foundation, Dhaka, 1995 p. 533

²⁹ *Rashid Ahmed vs. Anisa Khatun* AIR 1932 PC 25, Tahir Mahmood *op cit*, p. 113

reproached it, yet the *moulvies* of Bangladesh took the lead and gave a *fatwa* in favour of *hilla* marriage.

A few *fatwa* cases on *hilla* at different point in time and place in rural areas have been briefly stated to elaborate certain scenarios in Bangladesh.

1. March 2009, Village Kadirpur, Union Rampasha, Upazilla, Bishwanath, District Sylhet. Safia Begum and Abdul Motlib had a family dispute for which Abdul Motalib announced a verbal *talaq* to his wife. The local people asked the couple to go through *hilla* marriage. Since Abdul Motalib defied this condition the local people fined him 20 thousand taka which he also refused to pay. For this reason the local people requested the Principal of the local madrasah to expel his daughters from that institute. The Principal did not abide by their requests but due to constant pressure and threats from the locals the two sisters have stopped attending the institute.³⁰
2. 27 December 2006, Brahmaputra embankment, Chataipara, Gidari Union Parishad, District Gaibandha. Asma and Nurunnabi, a displaced family by river erosion, often quarrelled. On one such altercation Nuru lost his passion for his wife and divorced her verbally. Some influential villagers along with a local *moulvi* pronounced the *fatwa* that Nuru and Asma can no longer live together for he had divorced her. Ignoring the pleas of the couple to forgive, a *hilla* marriage of Asma with Mohir Ali was forcibly done on 11 January 2007. She was assured of a reunion with Nuru only after having lived with Mohir for three or four days. However she ran away and lived with her three minor children enduring her deep rooted misery. Later she filed a petition in the magistrates court against those villagers and that *moulvi* of forcibly separating her from her husband.³¹
3. June 2000 Village Nehab, Narsingdi Sadar upazilla, District Narsingdi. A couple named Mozal Khan and Afia Begum — in the heat of an argument

³⁰ 'Mother not accepting *hilla* marriage, two students going to Madrasah stopped', *Noa Digonto*, 26 May 2009 p. 13

³¹ 'A woman's battle against injustice', *The Daily New Age*, 08 March, 2007 p. 1

the day labourer husband pronounced oral *talaq*. Local influential people stated to them that they were divorced and were to separate and remain separated. The local Marriage Register Moulana asked them to repent and do *touba* (forgiveness from Allah) and return to their marital life. Nonetheless, the local people took *fatwa* from another Moulana for a *hilla* marriage. The husband having denying this *fatwa* was ostracized.³²

4. 1997, Village Haridoho, Thana Gangni, District Meherpur. A couple named Aman Ali and Fazila Khatun were married for fifteen years. Due to poverty they use to argue on and off. At one of these verbal confrontations, farmer Aman orally pronounced three *talaqs* to his wife. Influential locals and *moulvi* decided for them that they should go through *hilla* marriage. The couple disagreed and took their case to the court. The court found the *talaq* to be ineffective. The locals did not accept the decision of the court and ostracized them.³³
5. 10 January, 1993, Village Chatokchora, Thana Komolgonj, District Moulvibazar. Nurjahan was married to Rabban of District Sherpur but after sometime he verbally announced *talaq* to his wife and left. Four years after Rabban left, Nurjahan's father obtained a divorce letter from him. Nurjahan married for the second time. The influential people of the village rejected the second marriage on the ground that the first marriage existed. They refused to take cognisance of the divorce letter of Rabban. In accordance with the *fatwa* 101 stones were openly thrown at Nurjahan and her second husband Abdul Motaleb therefore embedding them into the earth. If that wasn't enough immoral and uneducated behaviour they also whipped parents of Nurjahan with 50 lashes. The guests present in the second marriage were made to give 10 sit-ups. After the punishment Nurjahan committed suicide. It is assumed that she must have taken such a decision after taking on a vast amount of insults and living in such disappointment.

³² Dalia Ahmed, *op cit*, p. 96

³³ Dalia Ahmed, *ibid*, p. 97

The same Maulana then gave *fatwa* that a *janaza* for this person was not to be held.³⁴

These cases are illustrative and by no means exhaustive. Aforementioned five cases which have been a few of many which occurred within a fifteen year period show that there are many factors which are not looked into seriously nor taken into thoughtful consideration by the *moulvies*. Husbands who hastily pronounce a threefold repudiation of their wives would recant and wish to remarry them, without having to wait unduly long for, or suffer the indignity of a painstaking long wait for the 'former' wife to remarry then wait upon a divorce. Hence the device of *tahlil* or the process of making the wife lawful to her former husband by a sham intervening marriage has become a tool for the *moulvies*. Those who offer their services for this purpose are known as *muhallils* or those who make the divorced wife lawful to her former husband.³⁵

The rural elites and power brokers with the aid of local *moulvies* abused the process of law which may have a hidden design to promote vested interests. A detailed study of such cases reveals that there have been times when the locals have asked for a ransom in exchange of a *fatwa* or an admirer had desired the inadvertent courtship in choosing *hilla*. Surprisingly, marriages which were not unnecessarily broken were also declared to have ended. A few works have been done on the area of *fatwa* and *hilla* marriage in Bangladesh but none of the works seem to find out the necessary qualifications needed to hold such rank of those *moulvies* who pronounce *fatwa*. Whether they have the least knowledge required by the madrasahs let alone the requirements of the old days. The author of this article has talked to a few people and *moulvies* and found that the village *moulvies* do not have the minimum required standard of madrasahs to issue *fatwa*.

³⁴ Sultana Kamal, 'The Fate of Nurjahans and the Constitution of Bangladesh' in *Fatwas Against Women in Bangladesh*, Women Living Under Muslim Laws, ASK, Dhaka, 1996, p. 80

³⁵ Noel J Coulson, *Conflicts and Tensions in Islamic Jurisprudence*, The University of Chicago Press, Chicago and London, 1969, pp. 89-90

Intervening Marriage

Intervening marriage in Islamic law corresponds to *hilla* marriage practiced in Bangladesh. Provisions of intervening marriage is recognised in Bangladesh under section 7 of the Muslim Family Laws Ordinance (MFLO). The MFLO in Bangladesh has streamlined the provisions of *talaq* in accordance with the Quranic provisions of *talaq ahsan* form formulating that any number of *talaq* will be counted as a single *talaq*. It has further announced that notice of *talaq* must be given in a written form to the Chairman of the Arbitration Council and a copy of it must be forwarded to the wife in order to bring it to her knowledge. Contravention of this provision is a punishable offence. It shows that *talaq* cannot be given on the spur of a moment. If it has to be proclaimed, it should be done after paying much attention towards it. The Chairman is made responsible to take measures to mitigate between the couple to continue with their marital life. If he fails after such endeavour the marriage tie will break after the expiry of ninety days from the date of notice to the Chairman unless *talaq* is expressly revoked. If the couple wants to remarry they can do so without any intervening marriage. The question of intervening marriage arises only after the couple have experienced this kind of situation for the third time. Section 7 (6) of MFLO on *talaq* states

Nothing shall debar a wife whose marriage has been terminated by *talaq* effective under this section from remarrying the same husband, without an intervening marriage with a third person, unless such termination is for the third time so effective.

The juristic explanation is that such intervening marriage cannot be done with the intention of remarrying the first husband. The reason is, such intention or condition itself is invalid.

The majority of Muslims in Bangladesh are amenable to Islam and follows the Hanafi school of thought. Some local authority figures having vested interest with the assistance of the self styled *moulvies* take advantage of the submissiveness, illiteracy and humility of rural people in order to wreck their family. The reality is, statutory laws cannot purge the society of evils instead it is the *moulvies* to whom people turn for direction in extreme situations. Had

these religious figures valued the worth of their role, their surroundings and those who inhabit their surroundings and society would have been a much better place to live with.

Talaq bidaat is taken into effect by pronouncing three *talaqs* verbally in one sitting. It is the most common and prevalent mode of divorce in rural Bangladesh. To uproot this evil custom the lawmakers of MFLO judiciously introduced the *talaq ahsan* form only. The local *moulvies* ignored the statutory provisions or the intentions of the law makers and kept on misinterpreting many aspects of marriage and divorce. They continued to endorse verbal *talaq* in *bidaat* form. They also ignored the provisions of the statutory law, that is, MFLO with regard to giving a notice of *talaq* in writing by the husband to the Chairman and informing the wife of his intentions; an effort of compromise; and release from marriage tie only after expiry of ninety days from the date of notice.

Ibn Taimiya mentions Umar's (R) decision to accept the validity of a triple divorce pronounced at a single time was to punish those husbands who were abusing it. He saw that making this kind of divorce legally valid was the best way to protect public interest.³⁶ At present *talaq bidaat* has reached a level that is in direct antagonism to the admitted policy of the law on the subject.³⁷ Now, because people have crossed certain limits, statutory law has been enacted to introduce reversible form of *talaq* as stated earlier.

Judicial Decision on *Fatwa*

A sensational *fatwa* was decreed by Haji Azizul Huq from the village Atitha in Naogaon in the year 2000. The *fatwa* forced Shahida to marry her husband's cousin Shamsul in a *hilla* marriage. A year before the *fatwa*, Shahida's husband had, in a fit of anger, used the word *talaq* against his wife. However, they continued living together as husband and wife. This *fatwa* issue went right up to the High Court. Following this *fatwa*, on January 1, 2001, two judges of the High Court Division Bench, Justice Mohammed Golam Rabbani and Justice

³⁶ Yusuf Al-Qardawi (Dr.), *op cit*, pp. 111-112

³⁷ Syed Khalid Rashid, *Muslim Law*, Fourth ed., Eastern Book Company, Lucknow, 2004, p. 119

Najmun Ara Sultana, ruled that any form of *fatwa* was illegal and was a punishable crime. The moulanas of the country protested against this ruling. The two judges ruled that Islamic law can only be interpreted by the country's courts. The court recommended that giving of *fatwa* by unauthorised person(s) must be made a punishable offence. The court further recommended introducing MFLO in all schools and madrasahs, to direct *khatibs* in all mosques to discuss MFLO in their Friday sermons and to introduce a unified education system.³⁸

It is evident that even after this ruling on the issuing of giving a *fatwa* on *hilla* and other areas, the act of doing so has not stopped. The five cases cited above range from and after the High Court decision. Even a recent case study of this year shows that the daughters of a couple have become subject to harassment for defying a *fatwa* on *hilla* marriage.

The real values and standards by which a society lives are not always and not merely those that the courts will enforce. There are often more powerful forces to compel the observance of standards of behaviour than legal coercion. In traditional Islamic society a consciousness and an acceptance of the standard of religious morality was instilled into the population at large, through the great influence wielded by men of religion in public and private office through the religious teachers in educational establishments, through the imams of the mosques of the Friday sermon, through *Muftis*, whose advice given in a public or private sector often indicated how the ethical principles of Islam were to be implemented in the practical circumstances of life.³⁹ The scholars of Islam must take initiative to stop the malpractice of *fatwa* by people who do not have knowledge of Islamic jurisprudence. The court or for that matter the law enforcing agencies will not be able to help the people *enmasse* from the abuse of religious edicts. The simple minded rural folk have always taken refuge with such religious figures and only those who learned with good morals can relieve the society from the damage done it.

³⁸ *Editor, The Daily Banglabazar Patrika vs. District Magistrate and Deputy Commissioner, Naogaon*, Writ Petition No. 5897 of 2000, 6MLR (HC) 2001

³⁹ Noel J Coulson, *op cit*, p. 84

Conclusion

Fatwa is a source of Islamic law which is supposed to be given or issued by a very well educated person in Islamic jurisprudence. Bangladeshi rural society is familiar with day to day *fatwas* which adversely regulate families and women in particular. A high court ruling could not change the scenario. No difference can be found in pre and post high court *fatwas* on *hilla* marriage. *Hilla* or legal strategem is not required for the purpose of marriage in Islam. It continues in rural Bangladesh because the self styled *moulvies* and local brokers subjugate the religious minded, little educated and modest Muslims. Poor rural couples and families are compelled to abide by the arbitrary rules of coercion applied in the name of *fatwa*. The *moulvies* in rural Bangladesh make two mistakes. They accept *talaq bidaat* and give *fatwa* on *hilla* marriage which is void in Islam. If they accepted any number of *talaq* as a single *talaq* then no question of *hilla* marriage would arise.

It seems that there is no prospect of eliminating these unnecessary *fatwa's* as they seem to be deeply rooted in the patriarchal set up of Bangladesh. Nevertheless, building awareness against vicious *fatwas* has to be made by the government and NGOs through media, local authority, Imam Academy, Islamic Foundation, curriculum of educational institute. In particular Madrasah curriculum and education has to be upgraded and unified. Instead of allowing all the students doing major in *Fiqh* or registering in *Ifta* department to issue *fatwa* the government may set up a committee of *Muftis* under the Islamic Foundation to synchronize *fatwas* that may arise from different parts of the country. The local *moulvies* instead of easily issuing a *fatwa* to the people may send the problem along with his individual opinion to the board for approval. This will improve the situation, build confidence within communities and allow proper application of Islam in day to day life. The courts can also decide with the help of the recognised *Muftis* as *amicus curiae* on such matters which calls for special attention in Islamic law. Faith is as strong as one strengthens it, without good foundation building cannot be built, without good moral faith, leadership is a construction of one's imagination and unity is merely a mirage.