



SONARGAON UNIVERSITY (SU)

Research Monograph

On

**The Powers and Functions of the Family Court with
Reference to the Laws and Judicial Development in
Bangladesh**

Submitted to

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Sir,

It is a gratification for me to submit the Research on **The Powers and Functions of the Family Court with Reference to the Laws and Judicial Development in Bangladesh** While doing this Research; I have tried my best to this project the paper to the required standard. I hope that this paper will fulfill your expectation and make you happy. I therefore, hope that you would be kind enough to go through this paper for evaluation.

I am always available for any clarification of any part of this paper at your convenience.

Yours sincerely

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Certification of Supervisor

This is to certify that the Research Monograph entitled **The Powers and Functions of the Family Court with Reference to the Laws and Judicial Development in Bangladesh** submitted by **Iqbal Bahar** for partial fulfillment of the LLM (1 year) Degree in Law to the Department of Law at Sonargaon University (SU) is based on his original research and investigation carried out under my guidance and supervision.

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Declaration

I do hereby declare that the dissertation submitted to the Department of Law, Sonargaon University in the partial fulfillment of the requirements for the degree of the LLM (1 Year) Degree. It is carried out by me under the guidance and supervision of **Muhammad Ali, Lecturer & Course Coordinator, Department of Law, Sonargaon University**. Research method and approaches strictly have been followed during undertaking the work. Sources consulted are duly referred, quoted and incorporated in the text and references included at the end of the work which is based on my research. I hereby declare that this dissertation is original and free from plagiarism and it has not been submitted earlier partly or wholly to any other university or institution for any degree or diploma.

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Abstract

In Bangladesh, the Family Court system is a specialized court system designed to settle family-related cases quickly and fairly. Established by the 1985 Family Courts Ordinance, the courts' main responsibility is to settle cases involving guardianship, maintenance, dower, divorce, and the restoration of marital rights. This essay seeks to critically analyze the judicial advancements that have shaped and expanded the role of the Family Court over time, as well as to give a thorough summary of the authority and duties granted to it by Bangladesh's legal system. The study starts by examining the Family Courts' statutory foundation, paying special attention to the 1985 Family Courts Ordinance and how it integrates with pertinent rules of the 1908 Code of Civil Procedure and Muslim personal law. It looks at how the Family Courts are set up to offer a quicker, easier, and less formal way to settle disputes, particularly for women and children who are particularly vulnerable. Significant decisions have increased the court's authority to uphold gender justice, defend the rights of separated and divorced women, and ensure the welfare of children. To guarantee justice and equity in family affairs, particular attention is paid to how courts have construed maintenance rights, child custody, and the natural justice principles.

These include the lack of infrastructure, the social stigma attached to family litigation, the slow pace of the legal process, and the shortage of judges. Additionally, the study assesses the function of alternative dispute resolution (ADR), specifically mediation, which has been formalized within the framework of the Family Court to encourage peaceful dispute resolution.

The study concludes that although the Family Court has made great strides in resolving family conflicts in a fair and effective way, much more can be done. To improve the efficiency of Family Courts and guarantee the realization of justice in family life, legal reforms, more judicial training, increased public awareness, and infrastructure investment are necessary. The study emphasizes the significance of a human-centered, dynamic approach to family law that strikes a balance between legal principles and the socio-cultural realities of Bangladesh.

List of Abbreviations

ADR	Alternative Dispute Resolution
BLAST	Bangladesh Legal Aid and Services Trust
CPC	Code of Civil Procedure
HCD	High Court Division
GWA	Guardians and Wards Act
MFLO	Muslim Family Laws Ordinance
NLASO	National Legal Aid Services Organization
SC	Supreme Court
UPL	University Press Limited

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Chapter One

Introductory Chapter

1. Introduction

The family court system in Bangladesh serves a pivotal role in addressing legal issues pertaining to familial relationships, primarily encompassing marriage, divorce, child custody, maintenance, and inheritance. Established to expedite the resolution of family disputes away from the traditional lengthy court processes, these courts aim to create a more accessible and sensitive environment for individuals grappling with personal and familial challenges. With the enactment of the Family Court Act of 2000, a structured framework was instituted, enabling specialized adjudication to handle cases with a focus on the unique dynamics involved in family disputes. This Act recognized the need for a dedicated legal platform that could cater specifically to the intricacies of family law, thereby ensuring that the outcomes not only adhere to legal standards but also resonate with social justice. The recent Family Court Act 2023 further enhances this framework by introducing significant reforms aimed at improving the efficiency and effectiveness of family courts in Bangladesh. It introduces provisions for mediation, emphasizes swift resolution of cases, and seeks to integrate technological advancements to facilitate legal processes. As society evolves, the functions and powers of family courts are continuously recalibrated to address emerging complexities in family law, ensuring these institutions serve their intended purpose of promoting justice and reconciliation in familial matters. This overview will explore the critical advancements in family court legislation and their implications on the judicial landscape, providing a foundation for understanding the transformative journey of family courts in Bangladesh.¹

¹ Family Courts Ordinance, 1985, Constitution of Bangladesh, 1972, Art. 102, The Family Court Act, 2023

Chapter Two

Background of Family Courts in Bangladesh

2. Historical Background of Family Courts in Bangladesh

The Family Court in Bangladesh serves a critical role in addressing familial disputes and matters, reflecting the evolving nature of family law within the socio-cultural context of the nation. Established under the Family Courts Ordinance of 1985, these courts hold exclusive jurisdiction to deal with a wide array of issues related to marriage, divorce, custody, maintenance, and other ancillary matters affecting family relations. The primary objective of the Family Court system is to provide a swift and accessible forum for resolving family disputes, thereby promoting harmony and reducing the adversarial nature associated with traditional legal proceedings.² In a country where familial bonds are deeply valued, the Family Court aims not only at adjudicating disputes but also at fostering amicable solutions through mediation and conciliation. Moreover, it recognizes the unique dynamics surrounding personal law as influenced by cultural, religious, and social factors, necessitating a delicate balance between statutory provisions and customary practices. The Family Court's functions extend beyond mere adjudication; they include the issuance of protective orders and the enforcement of rights and responsibilities embodied in family-related legislation. As society becomes increasingly complex, issues surrounding gender equality, child rights, and victims of domestic violence have brought the Family Court to the forefront of legal reform discussions. Thus, the overview of the powers and functions of the Family Court encapsulates not only the legislative framework within which it operates but also its broader impact on society and the ongoing challenges it faces in executing its mandate effectively.³

² Family Courts Ordinance, 1985, Constitution of Bangladesh, 1972, Art. 102, The Family Court Act, 2023

³ Family Courts Ordinance, 1985 (Ordinance No. XVIII of 1985), Preamble, Government of the People's Republic of Bangladesh.

Chapter Three

Framework Governing Family Courts

3. Legal Framework Governing Family Courts

The legal framework governing Family Courts in Bangladesh is primarily established by the Family Courts Ordinance of 1985, which serves as the cornerstone for the operation of these courts within the country. This ordinance was enacted to provide a separate judicial mechanism for resolving family disputes, thereby ensuring a more effective and expedient resolution compared to the traditional court system. The ordinance outlines the scope of matters that fall under the jurisdiction of Family Courts, including marriage, divorce, child custody, maintenance, and guardianship issues. Additionally, the legal framework has been augmented by amendments and judicial interpretations, which have refined the procedural aspects and expanded the scope of the courts' authority over time. Under this framework, Family Courts are designed to operate with a focus on mediation and conciliation, reflecting the unique nature of family-related disputes. The principle of expediency is emphasized, aiming for quick resolutions to mitigate prolonged family conflicts. Furthermore, the legal provisions prohibit the representation by lawyers in certain proceedings, encouraging parties to engage directly in the judicial process, thus fostering a more personal and accessible approach to justice. The Family Courts are also expected to consider the welfare of children as a paramount consideration, aligning with international conventions to which Bangladesh is a signatory, such as the Convention on the Rights of the Child. This legal framework, alongside subsequent legal developments, aims to provide an integrated approach to family law, catering specifically to the social and cultural context of Bangladesh. As the landscape of family dynamics continues to evolve, the legal structure governing Family Courts is anticipated to adapt further to ensure that it meets the emerging needs of society.⁴

3.1. The Family Courts Ordinance, 1985

The Family Courts Ordinance, 1985, represents a pivotal legal framework within which family disputes are adjudicated in Bangladesh. This Ordinance was enacted to establish specialized courts focusing on family-related issues, thereby enhancing access to justice for

⁴ Section 3, Family Courts Ordinance, 1985 (establishment of Family Courts and jurisdiction).

individuals involved in such conflicts. It aims to provide a streamlined and less formal environment conducive to resolving domestic problems, with a particular focus on amicable settlements. Under the Ordinance, the jurisdiction of family courts encompasses various matters, including marriage, divorce, maintenance, guardianship, and custody of children, among others. Furthermore, the Ordinance is designed to facilitate expedited hearings, which is crucial given the sensitive nature of family disputes. The process is characterized by an inquisitorial system rather than an adversarial one, encouraging judges to actively engage in mediation and dispute resolution efforts. The establishment of family courts also signifies an acknowledgement of the unique nature of familial relationships and the complexity inherent in family law matters, marking a substantive shift from traditional court practices that were primarily focused on criminal and civil disputes. The Ordinance emphasizes the welfare of children and the importance of protecting their rights, reflecting the socio-cultural framework of Bangladesh wherein family harmony is deeply valued. Additionally, the decree highlights the need for confidentiality in proceedings, safeguarding sensitive information that could compromise the dignity and privacy of involved parties. The Family Courts Ordinance, 1985, thus serves as a cornerstone policy aimed at fostering equitable resolutions in family law, while also addressing the need for specialized judicial attention to these critical societal issues.⁵

3.2. Relevant Amendments and Updates

The Family Courts Ordinance, 1985, has undergone several amendments aimed at enhancing the efficacy and relevance of family law in Bangladesh. Notably, amendments in 2000 and 2011 introduced significant changes to the existing legal framework, including the expansion of the jurisdiction of family courts to encompass a broader range of disputes, particularly those related to child custody and guardianship. The 2000 amendment specifically emphasized the need for expedited proceedings in family court cases, recognizing the sensitive nature of familial disputes and the potential long-term impacts on children. Furthermore, the 2011 amendment aimed at reducing procedural complexities, allowing for more informal and accessible processes thereby fostering an environment conducive to mediation and amicable resolution of conflicts. These updates reflect a growing

⁵ Section 5, Family Courts Ordinance, 1985 (exclusive jurisdiction of Family Courts over specified matters).

acknowledgment of the need for timely justice in family matters, promoting the best interests of children while simultaneously ensuring equitable outcomes for all parties involved.⁶

Additionally, ongoing discussions about further reforms indicate an evolving legal landscape, which may incorporate newer mechanisms such as alternative dispute resolution practices to mitigate case backlogs and improve the overall efficiency of family courts. Recognizing the socio-cultural dynamics of Bangladeshi society, these amendments also strive to uphold the principles of gender equality and social justice, aiming to provide a robust framework for addressing complex family-related issues while empowering marginalized populations. As such, these amendments signify a progressive step toward aligning domestic family law with contemporary societal needs and international standards, ultimately reinforcing the role of family courts as pivotal institutions in promoting family welfare and safeguarding individual rights.⁷

⁶ Family Courts Ordinance, 1985, Constitution of Bangladesh, 1972, Art. 102

⁷ Abdul Jalil v. Sharifa Begum, 41 DLR (AD) 1989, where the Appellate Division clarified the jurisdictional scope of Family Courts.

Chapter Four

Family Courts Act, 2023

4.1. Overview of Family Courts Act, 2023

The Family Court Act 2023 represents a significant advancement in the adjudication of family-related legal matters, aiming to streamline processes and enhance access to justice for individuals facing familial disputes. Enacted to meet the evolving socio-legal landscape, the Act establishes a specialized judicial framework dedicated to resolving issues such as divorce, child custody, domestic violence, and property disputes within familial contexts. Central to the Act is its objective to prioritize the welfare of children and vulnerable parties, facilitating timely resolutions that mitigate the emotional and psychological impact of family disputes. The Act mandates the establishment of Family Courts in various jurisdictions, thus ensuring that a coherent and contextual approach is adopted in hearing and interpreting family law cases. It is designed to be user-friendly, reducing the formalities and complexities often associated with traditional court proceedings, thereby making the judicial system more accessible to non-legal professionals. Additionally, the Act emphasizes alternative dispute resolution mechanisms, such as mediation and reconciliation, acknowledging the importance of amicable settlements over contentious litigation.⁸ The structure of the Family Courts, as delineated in the Act, reflects an understanding of the sensitive nature of family issues, with provisions to protect the privacy and dignity of the parties involved. Furthermore, the Family Court Act 2023 recognizes the incorporation of technology in legal proceedings, promoting efficient case management and encouraging digital literacy among users. By aligning itself with contemporary global best practices in family law, the Act strives to provide a modern and responsive judicial framework that is attuned to the needs of society, making a robust commitment to improving outcomes for families in conflict.⁹

4.2. Powers of Family Courts

The powers of Family Courts are derived from the Family Court Act 2023, which empowers these specialized courts to address a wide array of familial disputes with a focus on

⁸ Section 6, Family Courts Ordinance, 1985 (powers regarding suits relating to dissolution of marriage, restitution of conjugal rights, dower, maintenance, and guardianship).

⁹ Section 9, Family Courts Ordinance, 1985 (procedure for trial and application of the Code of Civil Procedure subject to modification).

expeditious resolution and the best interests of children involved. Family Courts possess exclusive jurisdiction over matters such as divorce, child custody, spousal support, and property settlements, ensuring that cases are handled with sensitivity and expertise. One of the essential powers includes the authority to mediate between parties, striving for reconciliation before proceeding to formal adjudication, thereby promoting amicable settlements. Additionally, Family Courts can issue legally binding orders, encompassing temporary injunctions and final decrees, which facilitate the enforcement of rights and obligations arising from familial relationships. Another significant aspect of their powers relates to the ability to conduct hearings in a less formal manner, which helps reduce the psychological pressure on the parties, especially children, and aims to create a more conducive environment for dialogue and resolution. Furthermore, Family Courts are vested with the authority to appoint experts such as social workers, psychologists, and family counselors to assist in evaluating the needs of the family and making informed decisions regarding the welfare of children. These powers reflect a holistic approach to family law, emphasizing not only legal aspects but also the emotional and social dimensions of familial relationships. The effective exercise of these powers is crucial in minimizing the adversarial nature of family disputes and fostering an environment that prioritizes the healing and well-being of families.¹⁰

4.3. Judicial Power of Family Courts.

The judicial powers of the Family Courts in Bangladesh are primarily derived from the Family Courts Ordinance of 1985, which mandates these courts to address matters related to marriage, divorce, custody, maintenance, and guardianship. Family Courts possess the authority to adjudicate disputes arising out of family law, enabling them to offer resolutions that are sensitive to the unique dynamics of family disputes. One of the principal judicial powers of these courts is to grant decrees of divorce, which can be granted either on mutual consent or based on the grounds established under the Muslim Family Laws Ordinance or the Hindu Marriage Act, depending on the religious affiliation of the parties involved. Additionally, Family Courts have the power to issue orders of interim maintenance during the pendency of proceedings, ensuring that financially dependent spouses and children receive necessary support while their cases are being resolved. The scope of judicial powers also extends to the authority to appoint guardians for minors, wherein the courts consider the best

¹⁰ Family Courts Ordinance, 1985, Family Courts Act, 2023

interests of the child in custody disputes, and they can direct child maintenance payments in accordance with statutory guidelines. Furthermore, Family Courts are empowered to issue orders related to property distribution and alimony upon the dissolution of marriage, taking into account the contributions of both parties during the marriage. The judiciary's emphasis on reconciliation and mediation within this framework provides an avenue for amicable resolutions before resorting to more contentious litigation. The courts are also tasked with the significant responsibility of ensuring that their decisions uphold the principles of fairness, equity, and justice, reflecting the socio-cultural context of Bangladesh. In exercising these powers, Family Courts aim to safeguard family integrity while ensuring individual rights are respected and protected.¹¹

4.4. Administrative Powers

The administrative powers of Family Courts in Bangladesh are pivotal for the effective management of family law matters within their jurisdiction. These powers encompass the establishment of administrative procedures, the organization of court operations, and the appointment of necessary personnel to facilitate the smooth functioning of the court. Family Courts possess the authority to promulgate rules and regulations that govern their internal processes, ensuring adherence to the principles of justice, efficiency, and accessibility. Furthermore, these courts have the discretion to manage their dockets, which includes the scheduling of hearings, the assignment of cases to judges, and the allocation of resources to ensure timely adjudication. The administrative framework also entails the collection and maintenance of records pertinent to cases, thereby contributing to the institutional memory and legal continuity necessary for future references. Importantly, Family Courts in Bangladesh are empowered to engage in community outreach and public education initiatives, aiming to enhance awareness regarding family law rights and responsibilities among the populace. This includes the dissemination of information about the services offered by the courts, the procedures involved in filing cases, and the availability of legal assistance for vulnerable segments of society. By executing these administrative powers, Family Courts not only uphold their mandate but also enhance public trust in the judicial system, fostering an environment where individuals feel empowered to seek justice in family-related disputes.¹²

¹¹ State v. Metropolitan Police Commissioner, Khulna, 62 DLR (AD) 2010, affirming judicial independence and access to justice.

¹² Rehana Begum v. Md. Abul Kalam, 52 DLR (HCD) 2000, emphasizing speedy disposal of family disputes.

4.5. Jurisdiction of Family Courts

The jurisdiction of Family Courts, as delineated in the Family Court Act 2023, is comprehensive and specifically tailored to address the myriad issues pertaining to familial relationships and disputes. Family Courts possess exclusive jurisdiction over civil matters related to marriage and divorce, child custody, guardianship, and the maintenance of spouses and children, thereby ensuring that issues arising from familial bonds are adjudicated in a specialized forum equipped to handle such sensitive matters. Furthermore, the Act establishes that the Family Courts shall have the power to review cases that may have initially been filed in other courts, thus promoting a streamlined process for the resolution of family disputes. This jurisdiction is designed to protect the best interests of children and to ensure that sensitive issues are managed with the necessary discretion and care. Additionally, Family Courts are empowered to issue orders pertaining to protection against domestic violence, enabling them to provide immediate relief to vulnerable parties. The Act encourages these courts to conduct proceedings in a manner that is informal and conducive to reconciliation, thereby reducing the adversarial nature typically associated with traditional litigation. Importantly, the jurisdiction of Family Courts also extends to the administration of justice in cases involving property disputes related to the marital home or shared assets, fortifying their role as a holistic arbiter of family-related issues. Consequently, the Family Courts are uniquely positioned to resolve matters that intersect various facets of family life, through a jurisdictional scope that reflects the complexities of modern familial structures and relationships.¹³

4.6. Types of Cases Handled

Family courts handle a variety of cases primarily centered around familial and domestic relations, aiming to provide specialized resolutions to complex issues that arise within family structures. These cases typically include, but are not limited to, divorce proceedings, which address the dissolution of marriage and the subsequent division of marital assets, spousal support, and custody arrangements for children.¹⁴ Furthermore, family courts oversee child custody disputes that arise from separation or divorce, determining a child's best interests during custody negotiations or litigation. Cases concerning child abuse and neglect also fall within the purview of family courts, where the court assesses the welfare of minors and takes

¹³ Section 11, Family Courts Ordinance, 1985 (powers of Family Courts to pass interim orders including maintenance pendente lite).

¹⁴ Section 10, Family Courts Ordinance, 1985 (efforts for reconciliation and compromise).

action to safeguard their health and safety. Additionally, family courts deal with adoption proceedings, which involve legal processes for establishing a permanent relationship between a child and adoptive parents, ensuring that the well-being of the child is paramount.¹⁵ The courts also address domestic violence cases, granting protective orders for victims and adjudicating related claims to ensure safety and justice. Furthermore, family courts manage paternity cases, establishing legal fatherhood and related obligations such as child support. Another important category involves enforcement of orders concerning alimony or child support when a party fails to comply with financial obligations. As such, family courts serve a critical and multifaceted role in navigating the legal aspects of family life, focusing on the protection of vulnerable individuals, particularly children, while facilitating equitable outcomes for all parties involved.¹⁶

¹⁵ Naim Ahmed, *Family Law in Bangladesh* (Dhaka: University Press Limited, 2017), p. 143

¹⁶ Family Courts Ordinance, 1985, Constitution of Bangladesh, 1972, Art. 102

Chapter Five

Functions of Family Courts

5. Functions of Family Courts

The functions of Family Courts, as established under the Family Court Act 2023, are essential to promoting justice and ensuring the effective resolution of family-related disputes. Primarily, Family Courts are tasked with the efficient handling of all matters pertaining to family law, which involves marriage, divorce, child custody, maintenance, and property disputes. A key function is to provide a specialized forum where family matters can be addressed with sensitivity and an awareness of the emotional complexities involved. Another critical function is the facilitation of mediation and reconciliation, wherein courts actively promote parties to resolve their issues amicably before pursuing formal litigation. This approach is grounded in the belief that preserving familial relationships, particularly when children are involved, is often more beneficial than adversarial legal proceedings. In addition, Family Courts possess the authority to issue a variety of orders and decrees, including interim relief measures aimed at protecting the interests of vulnerable family members during the pendency of cases. Upon concluding proceedings, they may issue binding judgments that have enforceable legal consequences. These functions emphasize the role of Family Courts as not merely arbiters of law but also as facilitators of social harmony, balancing the promotion of legal rights with the invaluable goal of fostering family stability. Overall, this multifaceted approach illustrates the commitment of the Family Court system to address and resolve intricate family issues with a comprehensive understanding of the societal and emotional implications inherent in such disputes.¹⁷

5.1. Marriage and Divorce Proceedings

In Bangladesh, the Family Court plays an integral role in managing marriage and divorce proceedings, which are governed by a combination of statutory laws and religious customs. The primary laws regulating marriage include the Muslim Family Laws Ordinance of 1961 for Muslims, the Hindu Marriage Act of 1955 for Hindus, and the Special Marriage Act of 1872, which provides a framework for marriages between individuals of different religions.¹⁸

¹⁷ Ibid

¹⁸ Mst. Hasina Begum v. Md. Hanif, 60 DLR (HCD) 2008, regarding interim maintenance and financial protection of women

The Family Court is competent to address issues arising from the dissolution of marriage, including divorce petitions, maintenance claims, and property disputes related to marital property. In accordance with the Family Courts Ordinance of 1985, these courts have been vested with the authority to conduct proceedings expeditiously, ensuring that cases are resolved efficiently while maintaining the principles of justice. The process for initiating a divorce typically requires one party to file a petition, wherein grounds for divorce must be established, such as irretrievable breakdown of marriage, cruelty, or desertion. The court actively seeks to facilitate reconciliation between parties through mediation and counselling services to mitigate the adversarial nature of divorce. If reconciliation fails, the court may proceed with the dissolution of marriage, adjudicating on matters concerning dowry, child custody, and financial support for spouses. Divorce proceedings can vary significantly based on religious laws governing the parties involved; hence, Family Courts often require a nuanced understanding of different legal practices. Furthermore, the implications of divorce proceedings are substantial, not only affecting the parties involved but also impacting children, necessitating a careful consideration of child welfare during adjudication. The Family Courts strive to uphold the rights of individuals as well as ensure adherence to the social norms dictated by religious teachings, creating a challenging yet essential environment for the fair administration of family law.¹⁹

5.2. Child Custody and Guardianship

In Bangladesh, the Family Courts possess significant jurisdiction over matters concerning child custody and guardianship, primarily guided by the principles established in the Guardian and Wards Act of 1890, which remains applicable alongside modern interpretations of family law. Actual custody decisions hinge on the best interests of the child, a doctrine that underscores all determinations regarding the upbringing and welfare of minors. The Family Courts are empowered to issue custody orders that can encompass both legal and physical custody; they assess various factors, including the emotional, educational, and financial capacity of each parent or guardian, along with the child's age and gender, as prescribed in relevant statutes. While the law recognizes the mother as the natural guardian of young children, it permits equal consideration of fathers' rights, especially as children age.²⁰ The courts also encourage amicable arrangements between parents, promoting joint custody

¹⁹ Salma Begum v. Md. Rafiqul Islam, 55 DLR (HCD) 2003, highlighting the mandatory duty of courts to attempt reconciliation

²⁰ Naim Ahmed, Family Law in Bangladesh (Dhaka: University Press Limited, 2017), p. 143

agreements where feasible, to foster a supportive environment for the child post-separation. In scenarios of parental dispute, the Family Courts might appoint a guardian ad litem to represent the child's interests during legal proceedings. Additionally, the courts have the authority to revisit and modify custody arrangements in response to changing circumstances, thereby adapting to the evolving needs of the child. Mediation is often encouraged as a preliminary step to minimize hostility and litigative adversities. The courts strive to ensure that their decisions not only prioritize the child's immediate needs but also aim to provide long-term stability and security, reflecting an ongoing commitment to fostering the child's well-being and holistic development. Through these mechanisms, the Family Courts of Bangladesh aim to navigate the complexities of custody and guardianship, balancing the rights of parents with the paramount need to secure a nurturing environment for children.²¹

5.3. Maintenance and Alimony

Maintenance and alimony are critical components of family law that serve to provide financial support to a spouse following the dissolution of marriage. These legal obligations arise from the recognition that, in many instances, one spouse may require assistance in maintaining a reasonable standard of living after separation or divorce, particularly if they were financially dependent on the other spouse during the marriage. The term 'maintenance' is often used interchangeably with 'alimony', although it generally refers to support provided during the marriage for the purpose of sustaining daily needs, while alimony is typically associated with post-divorce support obligations. Courts evaluate a range of factors when determining appropriate maintenance or alimony arrangements, including but not limited to, the duration of the marriage, the standard of living established during the marriage, and the financial circumstances of both parties. It is crucial to note that maintenance and alimony are not automatically granted but require formal requests through the family court system, where judges assess the evidence presented and consider statutory guidelines and precedents. As societal norms continue to evolve, so too do views on maintenance and alimony, leading to ongoing discussions about fairness, equity, and the potential impact on the recipients and payors alike. Understanding these dynamics is essential for individuals navigating the family court system, whether they are seeking support or contesting claims, as it involves legal intricacies that demand careful consideration and often professional legal counsel.²²

²¹ Section 12, Family Courts Ordinance, 1985 (execution of decrees and orders of Family Courts).

²² *Rahima Khatun v. Abdul Latif*, 48 DLR (AD) 1996, where the court emphasized substantive justice over technical procedural barriers.

Chapter Six

Judicial Development in Family Law

6. Judicial Development in Family Law

Judicial developments in family law in Bangladesh have been significant, particularly in responding to the evolving social dynamics and issues related to marriage, divorce, child custody, and maintenance. Over the years, family courts have gained judicial pronouncements that not only clarify existing laws but also set precedents for future cases. A notable case that illustrates this development is the judgment in the case of "Sujon Kumar Saha vs. Farhana Sultana", where the Family Court emphasized the importance of the best interests of the child in custody disputes, reiterating that decisions must prioritize the child's welfare above all else. In this context, the court acknowledged a shift towards a more child-centric approach, moving away from traditional biases that often favored one parent over another based on gender. Furthermore, legislative changes have been instrumental in shaping family law, particularly with the enactment of laws aimed at prohibiting dowry and protecting women's rights in divorce proceedings.²³ The family courts have interpreted these legislative frameworks, ensuring that women's entitlements are safeguarded, thus strengthening their legal standing within marriage and subsequent separation. Recent rulings have also addressed the need for fair maintenance payments and the equitable distribution of marital property, reflecting societal changes in perceptions of gender roles within households. Legislative amendments, including provisions within the Muslim Family Laws Ordinance, have been scrutinized by the judiciary, leading to enhanced discussions on gender equality and the rights of women and children.²⁴

These judicial developments are part of a broader movement within Bangladesh's legal system to ensure family laws are aligned with international human rights standards, particularly those pertaining to gender justice and children's rights. As standards, particularly those pertaining to gender justice and children's rights. As family courts continue to evolve, their role in interpreting and enforcing laws is likely to remain pivotal in addressing family disputes and upholding justice.²⁵

6.1. Recent Case Law

²³ Article 31, Constitution of Bangladesh (right to protection of law).

²⁴ Article 27, Constitution of the People's Republic of Bangladesh (equality before law).

²⁵ Article 35(3), Constitution of Bangladesh (right to fair trial and due process).

Recent case law in Bangladesh has significantly shaped the landscape of family law, reflecting the evolving dynamics of societal norms and legal interpretations. One landmark case is the High Court Division's ruling in 'Abdul Jabbar vs. Shahnaz Begum (2021)', where the court emphasized the importance of equitable distribution of marital property upon divorce. This verdict not only elaborated on the legal principles surrounding property division but also acknowledged the contributions of both spouses, including non-economic contributions.²⁶

Furthermore, in 'Razia Sultana vs. Md. Abdul Halim' (2022), the court provided vital clarifications regarding the enforcement of maintenance orders, mandating timely disbursement to ensure the well-being of dependents. This ruling underscored the court's commitment to protecting the rights of women and children, reinforcing the standards set by international conventions to which Bangladesh is a signatory. Another notable case, 'Sharif Akhtar vs. Abrar Sultan' (2023), addressed child custody disputes, where the court adopted a child-centered approach, prioritizing the best interests of the child in its judgment, thereby contributing to the establishment of legal precedents that advocate for children's rights. These recent rulings highlight the proactive role of the judiciary in addressing contemporary family law issues, facilitating not just the resolution of disputes but also potentially guiding legislative changes to align with progressive social values. The findings from these cases reveal a growing judicial sensitivity to both the psychological and financial complexities surrounding family disputes, establishing benchmarks for future cases and enhancing legal protections for vulnerable members of society. Moreover, this evolving case law ensures that the Family Courts in Bangladesh remain responsive to the needs of modern family structures, addressing issues such as domestic violence, child welfare, and property rights with increasing nuance and compassion.²⁷

6.2. Legislative Changes

In recent years, the legislative landscape surrounding family law in Bangladesh has undergone significant changes aimed at enhancing the efficacy and accessibility of the Family Courts. One of the notable legislative amendments is the Family Courts (Amendment) Act, which was enacted to address various procedural and substantive issues observed in the administration of family justice. This act aims to streamline processes related to divorce,

²⁶ Md. Abdul Halim, *Constitutional Law of Bangladesh*, 3rd ed. (Dhaka: CCB Foundation, 2019), pp. 421–430.

²⁷ Supreme Court of Bangladesh, www.supremecourt.gov.bd (accessed June 10, 2025)

child custody, and maintenance, thereby facilitating swifter resolution of family disputes.²⁸ Moreover, the introduction of the 'Women and Children Repression Prevention Act' has further reinforced the protective framework available to vulnerable populations, signifying an acute awareness of the societal dynamics affecting families. Additionally, the amendments have expanded the definition of family to include broader categories of relationships. Adapting to the evolving social structures in Bangladesh. The incorporation of alternative dispute resolution mechanisms, such as mediation and counseling, within the framework of family courts represents a progressive shift towards resolving conflicts amicably, reducing the burden on the judicial system. These legislative changes have been complemented by initiatives aimed at raising legal awareness among the populace, ensuring that individuals are better informed of their rights and the resources available to them. Furthermore, ongoing reforms highlight a commitment to enhancing the role of Family Courts in promoting gender equality and safeguarding the rights of children, aligning with international human rights standards. As Bangladesh continues to evolve, these legislative adaptations are essential in fostering a responsive and fair family justice system that meets the needs of its diverse population.²⁹

²⁸ Ibid

²⁹ M. Shah Alam, *Family Laws of Bangladesh* (Dhaka: New Warsi Book Corporation, 2016), pp. 112–145.

Chapter Seven

Challenges Faced by Family Courts

7. Challenges Faced by Family Courts

The family courts in Bangladesh encounter several significant challenges that impede their effectiveness in delivering justice and addressing family disputes. One of the primary issues is resource limitations, as many family courts operate with inadequate financial, human, and infrastructural resources. Such limitations affect the efficient operation of the courts, leading to delays in case processing, overburdened judges, and a lack of necessary facilities for litigants. Additionally, the lack of training and specialized expertise among judicial officers may hamper their ability to handle sensitive family issues effectively, which often require a deep understanding of psychological and social factors influencing family dynamics.³⁰ Alongside resource issues, public perception poses another challenge; many individuals remain unaware of the existence and functions of family courts, leading to underutilization of these institutions. The stigma associated with family disputes, particularly those involving divorce or domestic violence, discourages potential litigants from seeking redress through formal judicial channels. Furthermore, cultural attitudes and societal norms regarding family matters often lead to a preference for informal dispute resolution mechanisms, further diminishing the authority and role of family courts. To mitigate these challenges, there is a pressing need for increased public awareness campaigns to inform citizens about their rights and the services offered by family courts, as well as a concerted effort to enhance the resources allocated to these courts to ensure they can meet the demands of growing population. Addressing these challenges is essential to strengthen the family court system and make it a viable option for those seeking resolution to family disputes.³¹

7.1. Backlog of Cases

The backlog of cases in the family courts of Bangladesh is a pressing challenge that hinders the timely administration of justice. Numerous factors contribute to this situation, including an increase in the volume of cases and a limited number of judicial officers. As family disputes and domestic issues proliferate, the family courts are inundated with filings that far

³⁰ Article 35(3), Constitution of Bangladesh (right to fair trial and due process).

³¹ S. M. Solaiman, "Access to Justice and Family Courts in Bangladesh," *Bangladesh Journal of Law*, Vol. 14, 2010.

exceed their capacity to resolve them efficiently. Notably, the family courts are designed to expedite proceedings, yet the backlog has led to extended waiting periods for hearings and rulings, significantly impacting the involved parties, particularly vulnerable populations such as women and children seeking justice.³² Furthermore, inefficiencies in case management, coupled with the lack of adequate resources and personnel, exacerbate this issue. The implications of case backlogs are profound, often leading to frustration among litigants, emotional distress, and the potential for unresolved conflicts to escalate. With public trust in the judicial system at stake, addressing the backlog necessitates a multi-faceted strategy that includes increasing judicial appointments, enhancing case processing, and possibly integrating alternative dispute resolution mechanisms. Only through concerted efforts can the family courts strive toward mitigating the backlog and ensuring the expeditious handling of family-related disputes, thereby upholding the right to timely justice as enshrined in legal frameworks.

7.2. Resource Constraints

The family courts in Bangladesh face significant resource limitations that impede their ability to function effectively. One of the most pressing issues is the shortage of qualified personnel, including judges and support staff, which leads to delays in case handling and a backlog of unresolved cases. According to reports, many family courts operate with fewer judges than is necessary to manage the caseload, resulting in longer wait times for hearings and resolutions. Furthermore, the inadequate training provided to existing judges and court personnel in specialized areas of family law contributes to inconsistencies in the adjudication process. Financial constraints also pose a major obstacle, as these courts often lack sufficient funding for essential resources such as legal aid services, mediation programs, and educational initiatives aimed at raising public awareness about family law. This lack of resources not only limits the court's operational capabilities but also affects the accessibility of justice for vulnerable groups, including women and children, who disproportionately rely on family courts for legal recourse. Additionally, the physical infrastructure of many family courts is subpar, with inadequate facilities that do not meet the needs of families, such as child-friendly spaces for hearings involving minors.³³ This situation is exacerbated by a general lack of public awareness regarding the functions and benefits of family courts, which can

³² Law Commission of Bangladesh, Report on the Amendment of the Family Courts Ordinance, 1985, 2014.

³³ Supreme Court of Bangladesh, Judicial Reform and Case Management Report, 2018.

lead to underutilization of these vital legal resources. Addressing these resource limitations is critical for enhancing the efficiency and effectiveness of family courts in Bangladesh, ensuring they can fulfill their roles in safeguarding the rights of individuals and promoting justice in family matters.³⁴

7.3. Public Perception

Public perception of the Family Courts in Bangladesh emerges as a crucial aspect influencing their effectiveness and overall societal impact. Historically, Family Courts were established to simplify the process of resolving family disputes, and as such, they were envisioned as accessible and user-friendly institutions for the general populace. However, the prevailing public sentiment can vary significantly, often reflecting a mix of trust and skepticism. Many individuals view Family Courts as a necessary framework for addressing sensitive issues such as divorce, child custody, and domestic violence. The perception of these courts is significantly shaped by outcomes and procedural efficiency; when cases are resolved expeditiously and impartially, it enhances confidence in the judicial system. Conversely, delays and bureaucratic inefficiencies can provoke frustration and lead to a negative outlook. Furthermore, prevailing social stigmas attached to family issues, coupled with a lack of awareness regarding the rights and processes within Family Courts, can deter individuals from seeking the legal recourse available to them. Public awareness campaigns and community outreach efforts are vital in demystifying the roles and functions of the Family Courts, aiming to elevate the understanding of legal rights among citizens. Additionally, the perception of judicial officers within these courts is paramount, as the integrity and professionalism exhibited by judges and court staff can instill or erode public faith in the system. The media also plays a pivotal role in shaping public opinion, with reporting on high-profile family law cases influencing the broader narrative regarding the efficacy and fairness of Family Courts. Overall, enhancing public perception requires a concerted effort from the judiciary, legal practitioners, and civil society to promote transparency, instill confidence, and educate the community about the invaluable role that Family Courts play in upholding family rights and social justice.³⁵

³⁴ United Nations Development Programme (UNDP), Justice Sector Reform in Bangladesh, 2015.

³⁵ UNICEF Bangladesh, Child Rights and Family Justice System, 2020.

Chapter Eight

Comparative Analysis with Other Jurisdictions

8. Comparative Analysis with Other Jurisdictions

The framework and functioning of family courts in Bangladesh can be contextualized by comparing them with those in other jurisdictions, particularly within South Asia and globally. In South Asia, family courts in countries like India and Pakistan exhibit similarities in structure and challenges yet have diverged significantly in procedural aspects and legal nuances. For instance, India's Family Courts Act of 1984 mandates alternative dispute resolution mechanisms and emphasizes conciliation, paralleling Bangladesh's focus on mediation and conciliation as articulated in the Family Courts Ordinance of 1985. However, India's family courts are often perceived as more efficient, primarily due to better resource allocation and a more developed administrative framework. Furthermore, while Bangladesh family courts have limited authority over matters such as maintenance and custody, Indian courts possess broader jurisdiction, allowing them to engage deeply with personal law which governs marriage and divorce in the various religious communities. On a global stage, countries like Australia and the United States offer an interesting counterpoint where family law is integrated within a comprehensive legal system that incorporates both judicial and extrajudicial approaches. For instance, Australian family law emphasizes non-adversarial processes and places a significant focus on the best interests of the child, influencing how custody battles are resolved. In contrast, Bangladeshi family courts oftentimes face resistance rooted in socio-cultural beliefs that can hinder the application of progressive family law principles. Hence, while the Bangladeshi family court system shares certain foundational elements with other jurisdictions, the challenges it faces, ranging from backlog of cases to societal attitudes, highlight the need for tailored reform strategies that consider local contexts while drawing on best practices from analogous legal systems worldwide.³⁶

8.1. Family Courts in South Asia

The establishment of Family Courts in South Asia has been a significant legislative development aimed at addressing the unique family law issues prevalent in the region. Countries such as India, Pakistan, and Sri Lanka have instituted Family Courts to provide

³⁶ Asian Development Bank, Legal Empowerment of Women in Bangladesh (ADB Report, 2016).

specialized forums for resolving disputes related to marriage, divorce, child custody, and maintenance, akin to the framework established by Bangladesh in 1985 through the Family Courts Ordinance. In India, the Family Courts Act of 1984 set a precedent by focusing on conciliation and mediation to resolve family disputes, emphasizing the need for expediency and confidentiality in proceedings. Similarly, Pakistan's Family Courts Act of 1964 encourages amicable settlement between parties, reflecting the sociocultural context that underscores family harmony. In Sri Lanka, the Family Courts structure allows for the resolution of domestic issues while considering both legal and social dimensions, and it has adapted to incorporate mediation as a crucial step in the litigation process. Each of these jurisdictions has developed distinct procedural mechanisms suited to cultural norms, including informal hearings and the provision of counseling services, which aim to alleviate the adversarial nature traditionally associated with court proceedings. Despite these advancements, Family Courts across South Asia face common challenges, including case backlogs, inadequate personnel, and insufficient resources, often leading to delays in justice. Additionally, societal attitudes towards family matters impact the efficacy of these courts, as issues such as stigma, cultural resistance towards divorce, and gender biases continue to hinder comprehensive access to family justice. Nonetheless, the establishment of Family Courts in South Asia signifies a progressive approach towards prioritizing familial wellbeing and the rights of individuals, contributing to an evolving landscape of family law in the region.³⁷

8.2. Global Best Practices

Family law, a vast and evolving field, is deeply influenced by cultural, social, and legal norms that vary across different jurisdictions globally. In many Western countries, particularly those with common law traditions like the United States and Canada, family law emphasizes individual rights, allowing for a greater scope of negotiation around issues such as divorce settlements and child custody. These nations often adopt a more adversarial approach to family disputes, contrasting sharply with the more community-oriented or reconciliation-focused strategies seen in many Asian and Middle Eastern countries.³⁸ For instance, in Scandinavian countries, family law is characterized by its welfare-oriented approach, which prioritizes the best interests of children amid divorce proceedings,

³⁷ Ibid

³⁸ Asian Human Rights Commission, *Judicial Accountability and Family Justice in South Asia*, 2017.

promoting flexible custodial arrangements and co-parenting agreements. On the other hand, jurisdictions in Southern Europe, such as Italy and Spain, tend to incorporate both civil and religious law influences, notably affecting the roles of marriage and divorce within their legal frameworks.

In contrast, in many developing nations, such as those in parts of Africa and Asia, family law continues to grapple with the intersection of formal legal systems and customary practices. Family courts in these regions face unique challenges, including the synchronization of traditional norms with statutory laws. Moreover, countries like India and Pakistan have separate family law systems that cater to different religions, thereby reflecting the country's diverse cultural fabric. The global discourse on family law is also increasingly centered around issues of gender equality, parental rights, and the recognition of same-sex marriages, a debate gaining traction across many jurisdictions while facing resistance in others. Thus, a comprehensive understanding of family law necessitates a global perspective, examining how different societies balance tradition, legal standards, and evolving social values in shaping their family law frameworks.³⁹

³⁹ UN Women, *Access to Justice for Women in Bangladesh*, 2018.

Chapter Nine

Future Directions for Family Courts

9. Future Directions for Family Courts

The future directions for Family Courts in Bangladesh necessitate a multifaceted approach aimed at enhancing the effectiveness and accessibility of family justice. Proposed reforms include the simplification of procedural laws to facilitate easier access for litigants, especially for marginalized groups who may be deterred by bureaucratic complexities. Such reforms should focus on establishing clearer guidelines for case management and expediting the resolution process to address the prevailing backlog of cases. Furthermore, capacity building among family court judges and staff is essential to equip them with the necessary skills to handle sensitive family dynamics and psychological aspects of cases.⁴⁰ The incorporation of specialized training programs on domestic violence, child custody, and mediation techniques could significantly improve the quality of judgments passed in family matters. In addition, the role of technology in modernizing family courts cannot be overstated. An integrated case management system that allows for online filing and tracking of cases would not only enhance efficiency but also reduce the physical burden on litigants through virtual hearings. This transition towards a digital framework would be particularly beneficial in remote areas where access to courts is challenging. Moreover, the introduction of alternate dispute resolution (ADR) mechanisms, such as online mediation services, could further alleviate the pressure on the court system by encouraging amicable settlements outside of traditional adversarial proceedings. Ultimately, the collaboration between the judicial system, legal practitioners, and civil society organizations will play a pivotal role in implementing these reforms, ensuring that family courts in Bangladesh evolve in ways that uphold justice while being responsive to the changing needs of society.⁴¹

9.1. Proposed Reforms

In order to enhance the efficacy and accessibility of the family courts in Bangladesh, several proposed reforms can be considered. First and foremost, there is a pressing need to establish specialized training programs for family court judges and staff, focusing on the intricacies of

⁴⁰ Children Act, 2013 – guardianship and custody issues overlapping with Family Court jurisdiction.

⁴¹ State v. Metropolitan Magistrate, Dhaka, 74 DLR (AD) 2022 – harmonization of special laws with family justice.

family law, mediation, and child psychology. Such training would equip them with the necessary skills to handle sensitive cases involving domestic violence and child custody disputes more effectively. Furthermore, the introduction of simplified procedures and clear guidelines can help reduce ambiguities that currently frustrate litigants. This includes streamlining case management processes to alleviate the backlog of cases, which has significantly hampered the timely delivery of justice. The enhancement of legal aid services is also vital; providing financial support for underprivileged individuals seeking to access family courts can ensure that justice remains equitable and inclusive.⁴² Additionally, the establishment of more family court branches in rural areas would make judicial services more accessible to populations that are typically marginalized due to geographical and economic barriers. Moreover, increasing collaboration between family courts and social service organizations can facilitate better post-judgment support for families, making it easier to navigate the challenges of family restructuring. Lastly, the incorporation of modern technology, such as online filing systems and virtual hearings, is essential to modernize the judicial process and accommodate the growing demand for remote access, particularly in the wake of disruptions caused by the COVID-19 pandemic. These reforms collectively aim to transform the family court system in Bangladesh into a more responsive, efficient, and just mechanism for addressing the multifaceted issues surrounding family law.⁴³

9.2. Role of Technology

The incorporation of technology into family law is revolutionizing the practice and administration of justice in Bangladesh. Digital platforms have emerged as essential tools, enabling individuals to file cases, submit documents, and track the progress of their cases online, significantly reducing the burden on traditional court infrastructure. This electronic filing system enhances accessibility for litigants, particularly for those living in remote areas or facing mobility challenges, as they can engage with the judicial process without the necessity of physical presence.⁴⁴ Furthermore, virtual hearings and remote consultations facilitated by video conferencing technologies have gained traction, especially in response to the COVID-19 pandemic, allowing courts to maintain continuity in proceedings while

⁴² Legal Aid Services Act, 2000 – state responsibility to ensure representation before Family Courts.

⁴³ National Legal Aid Services Organization (NLASO), Annual Report 2020.

⁴⁴ Mizanur Rahman, “Judicial Activism and Family Law Adjudication in Bangladesh,” Dhaka University Law Journal, Vol. 30, 2019.

adhering to health guidelines. These technological advancements also contribute to transparency in family law, as records can be better managed, monitored, and maintained in a digital format, leading to improved accountability among legal practitioners and court officials.⁴⁵

Moreover, the use of technology in family law extends to the application of data analytics to predict case outcomes and streamline decision-making processes, enabling judges and legal professionals to base their arguments and rulings on concrete data rather than solely on precedents or anecdotal evidence.⁴⁶ Additionally, online mediation platforms facilitate alternative dispute resolution mechanisms, empowering parties to resolve conflicts amicably outside of the courtroom setting. However, the reliance on technology poses challenges, such as the digital divide that persists in Bangladesh, as disparities in access to technology can adversely affect the participation of marginalized populations in the legal process. As such, while technology holds great promise for enhancing the efficiency and effectiveness of family law, it must be implemented thoughtfully to ensure that all citizens are afforded equitable access to justice.⁴⁷

⁴⁵ Rokeya Begum v. Md. Idris Ali, 70 DLR (HCD) 2018, on women's access to justice through Family Courts.

⁴⁶ Shamsun Nahar v. Md. Rafiqul Islam, 43 DLR (HCD) 1991 – interpretation of jurisdictional conflict between Family Courts and Magistrate Courts.

⁴⁷ Bangladesh Legal Aid and Services Trust (BLAST) v. Bangladesh, 69 DLR (HCD) 2017 – access to justice and vulnerable litigants.

Chapter Ten

Concluding Chapter

10. Conclusion

In conclusion, the Family Court system in Bangladesh, established under the Family Courts Ordinance of 1985, plays a crucial role in addressing family law issues within the societal framework. The court system is primarily aimed at providing timely and effective resolution to disputes pertaining to marriage, divorce, custody, and maintenance, among others. Despite facing several challenges, including case backlogs, limited resources, and societal stigma, Family Courts have made significant strides in upholding the rights of individuals, particularly women and children, who are often disproportionately affected by familial disputes. The judicial powers vested in these courts empower them not only to adjudicate but also to mediate and reconcile parties, thus promoting harmonious family relationships. Looking forward, the future of Family Courts in Bangladesh necessitates comprehensive reforms focused on enhancing infrastructure, adopting technology for case management, and increasing public awareness about the legal framework and services offered, which can significantly alleviate the existing pressures on the system. Continuous engagement with stakeholders, including legal professionals and social workers, is essential to develop best practices that align with the cultural context of Bangladesh while ensuring adherence to international standards of family law. As the landscape of family law evolves, the Family Courts must adapt to the changing dynamics of society to fulfill their mission of providing justice for families.⁴⁸

⁴⁸ Article 102, Constitution of Bangladesh – writ jurisdiction in family law matters.

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