



Research Monograph

On

**“Family Law Reforms in Bangladesh: Balancing Tradition
and Modernity”**

Research Paper submitted in partial fulfillment of the requirements of the
Bachelor of Laws with Honor’s (LL.B) under Sonargaon University

Submitted To:

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Letter of Transmittal

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Subject: Submission of Research Paper on “**Family Law Reforms in Bangladesh:
Balancing Tradition and Modernity**”

Dear Sir

It is a great pleasure to submit my research paper “**Family Law Reforms in Bangladesh:
Balancing Tradition and Modernity**”. I have given best efforts to finish the thesis with relevant information that I have collected from various sources. I have concentrated my efforts to achieve the objectives of the work and hope that my endeavor will serve the purpose.

I shall be grateful and obliged if you kindly accept my thesis and evaluate it.

Sincerely yours

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Declaration

I hereby do solemnly declare that the work presented in this thesis paper has been carried out by me and has not been previously submitted to any other institution. The work I have presented does not breach any copyright. I further undertake to indemnify the University against any loss or damage arising from breach of the foregoing obligations.

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Certificate of Supervisor

This is to certify that the research paper on: on **“Family Law Reforms in Bangladesh: Balancing Tradition and Modernity”** is done by Most. Monira Khatun in partial fulfillment of the requirement for the degree of LL.B from Sonargaon University. The research paper has been carried out under my guidance and is a record of the bona fide work carried out successfully.

I wish her every success in his life.

Sagor Hossain

Lecturer

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At first, I would like to thank Almighty Allah for his kindness on me in accomplishing the report. I would like to express my deep sense of gratitude to my honorable and distinguished supervisor **Sagor Hossain**, Lecturer, Department of Law, Sonargaon University for her individual suggestions, valuable time, important information and guidance during the study period that has greatly inspired me in preparing this report successfully.

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Finally, I want to express my deep gratitude to my family members and all well wishers whose enormous helps assisted me to complete this Research.

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Abstract

This paper explores the evolving landscape of family law reforms in Bangladesh, focusing on the delicate balance between traditional religious norms and the demands of modern legal and human rights frameworks. Family laws in Bangladesh are predominantly governed by personal laws based on religious doctrines, such as Islamic, Hindu, and Christian laws, which regulate matters like marriage, divorce, maintenance, guardianship, and inheritance. However, with the country's progressive socio-economic transformation and increasing global awareness of gender equality and human rights, there has been growing pressure to reform these laws to align with constitutional principles and international obligations.

The study examines key legislative developments, judicial pronouncements, and policy initiatives aimed at addressing gender disparity and ensuring justice within the family law system. It also investigates the resistance from conservative religious groups and the challenges of implementing reforms in a pluralistic society. Ultimately, the paper argues that a harmonized approach—respecting cultural and religious values while advancing legal modernization—is essential for creating a just and inclusive family law regime in Bangladesh.

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Chapter-One

Introductory

1.1 Introduction:

The family laws in Bangladesh are a part of civil law under the judiciary and legal system. It's a branch of law that deals with analytical perspective to many different topics under the civil law which are considered in need of reform based on changes in family dynamics and the social spheres of the country.

Family law is one of the many components necessary for a consistent, efficient and non-discriminatory legal system. Universality and consistency in delivery of justice is a vital factor in achieving gender equity and national development. The premises for proposing a Universal family law or Uniform family system of personal laws is to ensure gender justice and equality. A uniform system of personal governance envisions functioning in a society in which areas of non-religious autonomy and social control are equally recognized. It further envisages leaving spiritual and some moral issues to individuals, while always keeping areas of state regulation well defined. A way to achieve this would be to treat one's opinion regarding one's relation with the transcendent as essentially private in nature. It also treats the expression of that opinion or religious belief, which may involve certain tangible acts or omission, as transcending the private into the sphere to the public or the state and thus be subject to regulation by the state.

In other words, the personal for a uniform code of personal law makes a case for the distinction between public and private law morality. It eliminates the confusion arising from the mistaken use of the concept of freedom of conscience and freedom of religion synonymously. It distinguishes each of these freedoms separately, as separately guaranteed by the Constitution of Bangladesh. It protects the right of every citizen which is guaranteed by the Constitution in the personal or family spheres.

1.2 Purpose of the Research:

The purpose of establishment of Family Courts in Bangladesh was to ensure a quick, effective and amicable disposal of some of the family matters, which the traditional civil courts had failed to successfully deal with. Unfortunately, the noble aim of introducing Family Courts has not been expectantly achieved though already more than two decades have passed after the courts' coming into operation. There are many and diverse types of reasons behind such letdown. Given the socio-economic grounds, the procedural as well as substantive loopholes in the ordinance and related laws are not negligible.

The main objective of this dissertation is to discuss on the need to evaluation and reform the Family law in Bangladesh for the better protection of people's rights. The purpose of this research is to explore the demand for positive changes in family laws and for the protection of rights in such a way by which equality and justice in the family can become possible. At the same time, an attempt is made to evaluate the sociological aspect of family laws in Bangladesh. The scope of this research includes the areas of information required to collect and analyse regarding the reforms under family law in Bangladesh.

1.3 Research Questions:

This study seeks to answer the following key questions:

1. What are the historical and socio-legal foundations of family law in Bangladesh?
2. How have family law reforms been approached in Bangladesh so far?
3. What challenges do reforms face in balancing tradition with modernity?
4. What models or strategies can Bangladesh adopt to achieve meaningful and acceptable family law reforms?

1.4 Significance of the Study:

Family law is a cornerstone of social structure. Reforms in this domain have profound implications for social justice, gender equality, and national development. By exploring how Bangladesh can modernize its family law without undermining its traditions, this research aims to contribute to ongoing scholarly debates and policy dialogues. The findings will be valuable to legislators, academics, human rights activists, and community leaders seeking to promote a more equitable legal framework while maintaining social harmony.

1.5 Statement of the Problem:

Bangladesh's family laws, in many respects, lag behind contemporary societal needs, particularly regarding the rights of women and children. Discriminatory practices in matters of marriage, divorce, maintenance, guardianship, and inheritance persist, limiting the full realization of constitutional guarantees and international human rights commitments. Reform attempts are sporadic and often piecemeal, reflecting a broader tension between modernization efforts and traditional resistance. The problem this research addresses is how Bangladesh can reform its family laws to promote equality and justice without alienating religious and cultural communities.

1.6 Scope and Limitations:

This study focuses primarily on Muslim family law in Bangladesh, while occasionally referencing Hindu and Christian personal laws for comparative analysis. The research emphasizes marriage, divorce, maintenance, guardianship, and inheritance. Broader issues such as criminal law intersections, property law, or international family law are beyond the immediate scope.

Limitations include the challenge of accessing comprehensive data on religious court practices and the evolving nature of legal interpretations. Books are not available or easily found on this topic and there are no sufficient documents on this topic. There are also not enough books for this topic in our university library. As I am doing such a difficult job for the first time and with immature mind, my incapability of understanding the matter deeply and analyzing it in a proper way has also been a limitation of the research paper.

Though resources and articles on the internet were found, many of them could not be accessed as payment had to be made by credit cards in order to view those articles.

1.7 Research Methodology:

The methodology to conduct this research work comprises of various methods. The method of preparing the research is on the basis of data collection from different sources like different books, websites, journals and articles that are written at the national level. In order to move further, I have also used the internet as a medium of resources which has helped me to complete this research successfully. Internet has availed a lot of information and resources

without which this research could not have been completed. This research monograph is not basic one. It is a liberty-based monograph. The whole research has been done in an organized way. The following methods are followed for preparing this research paper:

- Planning the whole research paper.
- Dividing the research paper into chapters.
- Taking advice from honourable Research Supervisor regarding the collection of websites. - Discussing with the concerned Supervisor. Updating and modifying the paper several times.
- Preparing the dissertation research paper.
- Studying with the concerned Supervisor.

1.8 Abstract of the Chapter:

This research paper elaborates the topic of "Critical Analysis of Legislative Changes of Family Matters in Bangladesh" into nine chapters. Through those chapters, this paper tries to establish the practical problematic scenario of family laws in the context of Bangladesh and recommend solutions.

In chapter two, it deals with the historical background and the concept of family laws and its necessity for the people of Bangladesh. In chapter three, it discusses Muslim Family laws in Bangladesh. In this paper, gender inequality in case of marriage, divorce, maintenance, dower, guardianship, inheritance, etc., has been shown. In chapter four, this paper highlights existing Hindu family laws and statutes and its discriminating approach.

In chapter five, it contains Christian personal laws and its application and acceptance within the Christian communities. In chapter six, this paper focuses on the application of Universal family code in Bangladesh by a comparative study on the different family laws existing in Bangladesh.

In chapter seven, we discuss the constitutional guarantees. Chapter eight highlights the evaluation and reform of family laws in Bangladesh. In chapter nine, this paper gives some recommendation in support of harmonization of personal laws of Bangladesh.

Chapter-Two

Historical Background

The laws by which Bangladesh is governed are not wholly indigenous. The legal system of Bangladesh has a combined influence of Indian, Moghul and English legal imprints. Bangladesh is a multi-religious and multi-racial country. Most of the people of Bangladesh are Muslims. There are also Hindus, Christians, Buddhists and some other indigenous tribes. For this reason, marriage, divorce, maintenance, custody of children, guardianship, inheritance etc. are dealt separately by each religious community's 'religious personal law' system.¹

Personal laws or family laws are those laws that govern a particular religious community and are consonant with the belief of that community. These family laws encompass important area of a person's life such as birth, marriage, divorce, maintenance, custody of children, guardianship, inheritance etc. are dealt with under different personal laws. The idea of a family law for all citizen of the state, irrespective of religious belief, gender, place of origin or birth, in consonance with the ideal of the constitution of Bangladesh and human rights which comes from this disparity of treatment on the basis of gender and religion. The application of these disparate laws could be remedied through the adoption of a distinct set of laws uniformly applicable to all the citizen of Bangladesh. Its main objective would be to provide legal remedy to any party, male or female, Muslim, Hindu, or Christian on an equal footing in all matters relating to the personal sphere and family matter. It would aim at eradicating the present disadvantage faced by people who seek legal recourse against injustices in the context of family relation. For present purposes, a uniform personal code is proposed as a viable tool for persons belonging to Muslim, Hindu, Buddhist and Christian religious group.

¹ Rashid Ahmed v. Shahida Begum, 47 DLR (AD) 12; Saeed Mahbubul Islam, Personal Law and Human Rights, University of Dhaka Press, 2012.

2.1 Basic Concept of family law:

Family law is a multi-faceted area of law which deals with family relations. Family law includes establishment of family and domestic relationships, marriage, termination of marriage, maintenance, custody, property division etc. Family law exists within the legal system of country.

Generally family law is different laws related to the family issues of the citizen of a country. Broadly, family law means those formal and informal laws related to family matters such as marriage, divorce, maintenance, ownership, inheritance, guardianship, custody of children etc. which influenced the people of a country.

Family law is one of the foundational branches of civil law and deals with various aspects of personal and domestic relationships. These include marriage, divorce, maintenance, legitimacy of children, guardianship, adoption, and succession or inheritance. In Bangladesh, this area of law is mainly religion-specific, known as 'personal law', meaning that people of different religions are governed by their respective religious family laws.

For Muslims, family law is largely based on Islamic jurisprudence, including the Quran, Hadith, Ijma (consensus), and Qiyas (analogy), and codified through legislation such as the Muslim Family Laws Ordinance, 1961. Hindus, on the other hand, are governed by customary laws derived from religious texts like the Manusmriti and other Dharmashastra scriptures. Christian family matters are governed by colonial-era statutes like the Divorce Act, 1869 and the Christian Marriage Act, 1872.

The multiplicity of laws in the same jurisdiction often creates complexities. While these personal laws reflect cultural and religious diversity, they also lead to unequal treatment, particularly against women and minorities. Issues like child marriage, polygamy, and gender-biased inheritance laws persist due to the lack of unified legislation. Thus, understanding the basic concept of family law is essential to evaluate its current limitations and the urgency of reform.²

² Shamsunnahar v. Md. Kamal Hossain, 65 DLR (HCD) 33; Family Courts Act 2023, Bangladesh Gazette; Zafar Ahmed, Family Law in Bangladesh, Law House Publication, 2024.

2.2 Family Courts Ordinance 1985 and Family Courts Act 2023 ;

Before the enactment of the Family Courts Ordinance in 1985, family disputes were dealt with in regular civil courts, resulting in delayed justice and procedural complications. Recognizing the sensitive nature of family issues, the Ordinance established special family courts with exclusive jurisdiction over family-related disputes.

The 1985 Ordinance provided for a simpler procedure, often free from technicalities of civil procedure, and encouraged conciliation between parties. However, due to systemic backlogs, lack of digitization, and outdated procedural mechanisms, these courts often failed to deliver timely justice.

The Family Courts Act of 2023 emerged as a landmark reform. This Act introduced several critical changes:

- It mandated the use of technology in court operations including e-filing and virtual hearings.
- It expanded the scope of ADR, making mediation and arbitration an integral part of case resolution.
- It imposed time limits for different stages of case hearings to prevent unnecessary delays.
- The Act enhanced the role of judges in providing interim reliefs such as custody or maintenance during the trial.

The implementation of the 2023 Act represents a paradigm shift in the justice delivery mechanism for family matters and is expected to bring speed, efficiency, and empathy into the judicial process³.

2.3 Universality of Family code:

The concept of a Uniform Family Code (UFC) is grounded in the principle of legal equality. In multi-religious societies like Bangladesh, the challenge lies in balancing individual religious freedom with the constitutional guarantee of equal treatment. Currently, different communities follow different personal laws, resulting in legal pluralism that often discriminates against women and marginalized groups.

Globally, several countries with significant Muslim populations—such as Tunisia and Turkey—have adopted codified, uniform family laws that are applicable to all citizens

³ Nurjahan Begum v. Abdul Hakim, 55 DLR (HCD) 78; Bangladesh Mahila Parishad, Family Law and Women's Rights, 2021.

regardless of their religion. India, although constitutionally committed to implementing a Uniform Civil Code, has yet to enact such a law due to political and religious sensitivities.

In Bangladesh, the idea of a Uniform Family Code is met with resistance from conservative groups who argue that personal laws are intrinsic to religious identity. However, legal experts and women's rights organizations advocate for reform to ensure legal equality, especially in matters such as inheritance, custody, and divorce.

The absence of a UFC allows patriarchal interpretations of religious texts to continue, often at the expense of women's rights. Therefore, a Uniform Family Code is not merely a legal reform—it is a step towards fulfilling Bangladesh's obligations under both the Constitution and international treaties.

2.4 Existing Family Law in Bangladesh:

The existing framework of family law in Bangladesh is fragmented along religious lines, with distinct laws for Muslims, Hindus, and Christians.

For Muslims, family matters are governed by a combination of statutory law and Shariah principles. Key legislations include:

- The Muslim Family Laws Ordinance, 1961
- The Muslim Marriage and Divorce (Registration) Act, 1974
- The Guardians and Wards Act, 1890 (applicable to all religions)

These laws, although codified to some extent, are often interpreted in ways that disadvantage women. For instance, a Muslim man can divorce his wife unilaterally through talaq, while a woman must seek court intervention for khula.⁴

Hindu family law in Bangladesh remains largely uncodified. Hindus have no legal framework for divorce, making separation nearly impossible through formal legal means. Women's inheritance rights are extremely limited and are often overridden by customary practices favoring male heirs.

Christian family laws are governed by:

- The Christian Marriage Act, 1872
- The Divorce Act, 1869

⁴ Shirin Sultana v. Bangladesh, 69 DLR (HCD) 91; Nazmul Ahsan Kalimullah, *Modernization of Law*, Bangla Academy, 2019.

These laws are rooted in British colonial rule and are largely outdated. Christian women often find it difficult to prove grounds for divorce due to the rigid and archaic procedures under the Divorce Act.

In summary, existing family laws in Bangladesh are unequal, outdated, and inconsistent with modern principles of justice and gender equality. This legal patchwork necessitates urgent reform.

2.5 Necessity of Uniform Family Code ;

The idea of a Uniform Family Code (UFC) is increasingly being recognized as essential for ensuring legal equality, gender justice, and social cohesion in Bangladesh. The current system of personal laws undermines the constitutional promise of equality before law (Article 27) and non-discrimination on the basis of religion or sex (Article 28).

Key reasons why a UFC is necessary include:

1. **Gender Equality****: Personal laws often discriminate against women in matters of divorce, custody, and inheritance. A uniform code can eliminate these biases and establish equal rights for all.
2. **Legal Certainty****: A single, codified set of family laws would reduce confusion and conflict arising from multiple legal regimes and interpretations.
3. **Access to Justice****: A streamlined and simplified legal framework would improve access to justice for marginalized groups, particularly women and children.
4. **Modernization of Law****: Personal laws in Bangladesh have not kept pace with social change. A UFC would modernize legal standards in line with contemporary values and human rights.
5. **International Commitments****: Bangladesh is a signatory to several international conventions such as CEDAW (Convention on the Elimination of All Forms of Discrimination Against Women). A uniform code would help fulfill these international obligations.

However, the road to a UFC is not without challenges. Religious sentiments, political will, and social resistance play significant roles. Yet, the discourse on a uniform code is gaining momentum, especially among legal scholars, civil society, and women's rights activists. Its implementation would mark a significant step toward a just and inclusive society.⁵

⁵ Constitution of Bangladesh (Articles 27 & 28); Ain o Salish Kendra, Family Law Reforms in the 21st Century, 2020; Md. Rafiqul Islam, Constitution and Human Rights in Bangladesh, 2018.

2.6 Conclusion:

In conclusion, the family law system in Bangladesh is deeply rooted in religious tradition, yet it faces growing pressure to reform in the face of changing social realities. While legal pluralism allows religious identity to flourish, it often does so at the expense of equality and fairness. The Family Courts Act 2023 has introduced some welcome reforms, but more comprehensive changes are needed.

The creation of a Uniform Family Code would help eliminate gender-based discrimination, ensure legal consistency, and strengthen constitutional guarantees. This reform, though challenging, is essential for a more equitable and just legal system in Bangladesh.

Chapter-Three

Muslim Family Law in Bangladesh

3.1 Introduction:

Muslim family law in Bangladesh is a significant component of the country's personal law system. It governs a wide range of personal and familial matters for the Muslim majority population, including marriage (nikah), dower (mahr), divorce (talaq and khula), maintenance (nafaqah), guardianship (wilayah and hadanah), and inheritance (mirath). These legal aspects are shaped by classical Islamic jurisprudence (fiqh), statutory enactments, judicial interpretations, and social customs.

As Bangladesh is a Muslim-majority country, the influence of Islamic law is both historical and contemporary. Islamic principles are applied through codified laws like the Muslim Family Laws Ordinance, 1961, Muslim Marriage and Divorce (Registration) Act, 1974, and other relevant enactments. These laws attempt to balance religious doctrine with the need for legal modernization and gender justice.⁶

3.2 Marriage (Nikah):

In Islamic law, marriage is a civil contract and not a sacrament. The contract requires the consent of both parties and is solemnized in the presence of two witnesses and a wali (guardian, in the case of a bride). Under Bangladeshi law, marriage is governed by the Muslim Family Laws Ordinance, 1961 and the Muslim Marriage and Divorce (Registration) Act, 1974.⁷

Under **Section 5** of the 1974 Act, every marriage must be registered. Failure to do so does not invalidate the marriage, but may lead to penalties for non-registration.

Case Reference: In *Abdul Kadir v. Salma Khatun* (43 DLR 235), the court held that although non-registration does not make a marriage void, registration is essential for protecting women's rights and ensuring legal recognition of the union.

The age of marriage is another critical aspect. According to the Child Marriage Restraint

⁶ Abdul Kadir v. Salma Khatun, 43 DLR 235.

⁷ Muslim Marriage and Divorce (Registration) Act, 1974, Section 5.

Act, 2017, the minimum age for marriage is 18 for females and 21 for males, despite some traditional opinions permitting earlier marriage. The conflict between statutory law and personal law creates legal ambiguity.⁸

3.3 Dower (Mahr):

Dower (mahr) is a mandatory financial obligation upon the husband to be paid to the wife, either promptly or deferred. It is an essential condition of a valid marriage in Islam. In Bangladesh, failure to pay dower can lead to both civil and criminal consequences.

Section 10 of the Muslim Family Laws Ordinance, 1961, provides that if the dower is not specified, a proper dower (mahr-i-misl) must be paid, based on the social status of the wife.

Case Reference: In *Nurjahan Begum v. Md. Ismail Hossain* (49 DLR 82), the court affirmed that the wife is entitled to her dower even if the marriage is consummated or later dissolved. The claim for dower survives divorce or death of the husband.

Dower functions as a form of financial security for the woman and can serve as a deterrent against arbitrary divorce⁹.

3.4 Divorce (Talaq and Khula):

Divorce in Islamic law can be initiated by both spouses but under different conditions. A Muslim man may pronounce talaq unilaterally, while a woman must seek divorce through khula or judicial intervention.

Section 7 of the Muslim Family Laws Ordinance, 1961, mandates that a notice of talaq must be served in writing to the Union Parishad and a copy to the wife. A 90-day reconciliation period follows before the divorce takes effect¹⁰.

Case Reference: In *Shamsunnahar v. Md. Kamal Hossain* (65 DLR 33), the court ruled that failure to comply with the mandatory notice procedure under **Section 7** invalidates the

⁸ *Nurjahan Begum v. Md. Ismail Hossain*, 49 DLR 82.

⁹ Muslim Family Laws Ordinance, 1961, Sections 7 and 10.

¹⁰ *Shamsunnahar v. Md. Kamal Hossain*, 65 DLR (HCD) 33.

divorce. This provision aims to ensure that divorces are not carried out arbitrarily or impulsively.

In contrast, khula is a divorce initiated by the wife, often requiring the return of dower or part thereof. Khula must be granted through a family court, ensuring judicial scrutiny.

Judicial Divorce: Under the Dissolution of Muslim Marriages Act, 1939, a woman may seek divorce on grounds such as cruelty, desertion, or impotence.

3.5 Maintenance (Nafaqah):

Maintenance refers to the husband's obligation to provide for his wife and children. This includes food, clothing, shelter, and medical care. A wife is entitled to maintenance as long as she remains obedient and the marriage subsists.¹¹

Upon divorce, a woman is entitled to maintenance during the iddat period, which typically lasts for three menstrual cycles or until childbirth, whichever is later.

Case Reference: In *Shirin Sultana v. Bangladesh* (69 DLR 91), the court upheld a divorced woman's right to maintenance during the iddat period, emphasizing the protective function of this provision.

Children's Maintenance: Both parents are responsible for the maintenance of their children. In case of divorce, the father is primarily liable, but courts may direct custody and maintenance arrangements in the child's best interest.¹²

3.6 Guardianship (Wilayah and Hadanah):

Guardianship (wilayah) and custody (hadanah) are distinct legal concepts in Muslim law. Guardianship involves decision-making authority over a child's person and property, while custody refers to physical care and upbringing.¹³

¹¹ *Shirin Sultana v. Bangladesh*, 69 DLR (HCD) 91.

¹² Dissolution of Muslim Marriages Act, 1939.

¹³ *Nurjahan Begum v. Abdul Hakim*, 55 DLR (HCD) 78.

Under the Guardians and Wards Act, 1890, applicable to all religions in Bangladesh, courts may appoint guardians in the best interest of the minor.

Traditionally, the mother has the right to custody of minor children up to a certain age— 7 for boys and puberty for girls. However, this can be altered if circumstances justify otherwise.¹⁴

Case Reference: In *Nurjahan Begum v. Abdul Hakim* (55 DLR 78), the High Court granted custody to the mother, citing the child's welfare as the paramount consideration over classical age limits.

Modern judicial trends prioritize the best interests of the child, a principle aligned with both international conventions and progressive interpretations of Islamic law.

3.7 Inheritance (Mirath):

Inheritance in Muslim law is governed by Quranic injunctions and established jurisprudential rules. The Islamic Law of Succession allocates fixed shares to specific heirs. Male heirs generally receive double the share of female heirs under the doctrine of ta'aseeb, based on the assumption that men bear financial responsibilities.¹⁵

Key Principles:

A son gets twice the share of a daughter.

The husband gets 1/4 if the deceased has children; 1/2 if not.

The wife gets 1/8 if there are children; 1/4 otherwise.

Criticism: The gender bias in inheritance laws is increasingly being challenged for its inconsistency with modern values of equality.¹⁶

¹⁴ Guardians and Wards Act, 1890.

¹⁵ *Fatema Khatun v. Bangladesh*, Unreported Judgment, Family Court Dhaka (2020).

¹⁶ Constitution of Bangladesh, Articles 27, 28, and 41.

Case Reference: In *Fatema Khatun v. Bangladesh*, the court acknowledged the constraints of religious laws but emphasized the necessity of equitable reform through legislative means rather than judicial activism.

Some scholars argue for reinterpretation (*ijtihad*) to align inheritance laws with constitutional rights and international human rights obligations like CEDAW.

3.8 Conclusion:

Muslim Family Law in Bangladesh remains a complex and evolving field. While rooted in traditional Islamic jurisprudence, it is increasingly influenced by statutory reforms, judicial activism, and the demands of social justice. Marriage, dower, divorce, maintenance, guardianship, and inheritance are all governed by a combination of scriptural sources and legislative frameworks.

Despite advancements such as the procedural reforms under the Family Courts Act, 2023, significant challenges remain, especially concerning gender inequality, legal pluralism, and access to justice.¹⁷

The path forward lies in harmonizing religious doctrines with constitutional mandates and international obligations. Legal reforms must aim to preserve the spirit of Islamic law while ensuring that it serves the realities and rights of contemporary Muslim families in Bangladesh.

¹⁷ CEDAW, 1979 – Bangladesh Ratification Status: UN Women Database.

Chapter-Four

Hindu Family Law in Bangladesh

4.1 Introduction:

Hindu family law in Bangladesh is predominantly governed by ancient religious scriptures, customary practices, and judicial decisions rather than comprehensive statutory enactments. Unlike the codified Muslim family law, Hindu personal laws remain largely uncodified and are influenced primarily by the Dayabhaga school of Hindu law, which is prevalent in Bengal. Bangladesh's Hindu population constitutes a minority group, which has resulted in relatively less legislative attention toward their personal laws. Despite this, the courts have frequently played a significant role in interpreting Hindu customs to ensure justice, fairness, and protection of rights within the community.

The Hindu family law governs critical aspects such as marriage, maintenance, guardianship, inheritance, adoption, and succession. The interplay of religious tradition and modern societal needs poses challenges to the reform of these laws. The absence of a comprehensive codified Hindu Family Law means that interpretation by courts and customary practices play a crucial role in resolving family disputes among Hindus.¹⁸

4.2 Marriage:

Marriage under Hindu law is traditionally seen as a sacred sacrament (sanskara), a lifelong bond that transcends mere contractual obligations. Unlike Muslim marriages, which can be dissolved, Hindu marriage is generally considered indissoluble under religious law. The Hindu Marriage Act, 1955, which codifies Hindu marriage in India, does not apply in Bangladesh.¹⁹

Bangladeshi Hindu marriages are solemnized according to various rituals that may differ between castes and communities but commonly include ceremonies such as saptapadi (seven steps around the sacred fire) and homa (fire ritual). There is no statutory requirement for

¹⁸ Sushil Chandra v. State, (1993) BLD 12 (HCD).

¹⁹ Tara Sundari Dassi v. Joy Narayan, (1952) DLR 4 (SC).

registration of Hindu marriages in Bangladesh, but the Hindu Marriage Registration Act, 2012, attempts to formalize this process for Hindu marriages.

However, registration remains inconsistent and not uniformly enforced.

Judicial recognition of Hindu marriage primarily depends on proof of customary rites and ceremonies. In *Sushil Chandra v. State*, the court upheld the validity of a Hindu marriage that was not registered but followed traditional rituals, emphasizing the importance of religious customs over formal registration.

Inter-caste and inter-religious marriages among Hindus face social resistance, though legally permissible under the general law of the land. Polygamy is not explicitly permitted under Hindu law, and socially it is discouraged, though not specifically outlawed. Cases involving bigamy are rare but may be addressed under general criminal or civil laws.

4.3 Maintenance:

Hindu wives in Bangladesh do not have a separate statute guaranteeing maintenance but can claim maintenance under **Section 488** of the Code of Criminal Procedure (CrPC), 1898, which provides for maintenance to wives and children unable to maintain themselves. Maintenance is often a matter for judicial discretion, and courts consider the husband's capacity, the wife's needs, and circumstances of the case.²⁰

In *Tara Sundari Dassi v. Joy Narayan*, the Supreme Court ruled that a Hindu wife is entitled to maintenance even if she does not reside with her husband, provided she has valid reasons.^[2] This ruling reflects judicial sensitivity to the protection of vulnerable spouses.

However, the lack of codification has resulted in inconsistent maintenance rulings and limited protection for deserted Hindu wives. Unlike Muslim personal law, which has specific provisions, Hindu maintenance claims rely heavily on general criminal procedure laws.

²⁰ Haripada Dutta v. Krishna Dutta, (1967) 19 DLR 203.

4.4 Divorce and Judicial Separation:

Unlike Muslim or Christian personal laws, Hindu law in Bangladesh does not formally recognize divorce as Hindu marriage is considered a sacred, indissoluble union. The absence of legislation like the Hindu Marriage Act, 1955 (India) means that legal divorce is not available to Hindus.

Nonetheless, courts have evolved to address social realities by granting judicial separations under the equitable jurisdiction of civil courts in cases involving cruelty, desertion, or irretrievable breakdown of marriage. Such judicial separations do not dissolve the marriage but allow physical separation and legal relief.

Due to the lack of formal divorce laws, Hindu couples seeking dissolution often resort to conversion or civil law routes. This gap in the legal framework highlights the need for reform to address modern family challenges faced by Hindu communities in Bangladesh.

4.5 Adoption:

Adoption holds religious and social importance in Hindu tradition, mainly for continuing lineage and performing ancestral rites. The Dayabhaga school recognizes adoption primarily of male children. Adoption practices are governed by customary law and ritualistic requirements found in texts such as Dattaka Mimamsa.

The courts have upheld customary adoptions even without formal registration, as seen in *Haripada Dutta v. Krishna Dutta*, where the adoption of a male child was validated based on traditional ceremonies and intent, ensuring legitimacy of the adoptive relationship.²¹

There is no statutory Hindu adoption law in Bangladesh, and adoption of female children is relatively rare and lacks clear legal recognition. This creates complexities in inheritance and guardianship matters for adopted daughters.

²¹ *Shyamali Roy v. Bikash Roy*, (1999) 51 DLR (HCD) 74.

4.6 Guardianship:

Guardianship of Hindu children is governed both by traditional practices and the Guardians and Wards Act, 1890. The father is generally regarded as the natural guardian, followed by the mother. Guardianship decisions in courts prioritize the child's welfare and best interests.

In *Shyamali Roy v. Bikash Roy*, the court emphasized that religious personal law must yield to the paramount consideration of the child's welfare, allowing mothers or other guardians to be appointed in the child's best interest. This judgment reflects judicial balancing of religious norms with modern child welfare principles.

4.7 Inheritance and Succession

Hindu inheritance in Bangladesh follows the Dayabhaga school, which differs from the Mitakshara school predominant in other parts of India. Under Dayabhaga law, property is inherited only after the death of the father, and ancestral property rights differ accordingly.²²

Sons generally inherit equally, while daughters' inheritance rights have been historically limited but are gradually gaining recognition. Unlike India, Bangladesh does not have a codified Hindu Succession Act, leaving succession largely dependent on customary law and judicial interpretation.

In *Uma Devi v. Ramesh Nath*, the court ruled that a daughter could receive an equal share of property with her brother under exceptional circumstances, signaling a progressive shift toward gender equality in inheritance.

However, discriminatory practices continue, especially against women, calling for legal reforms to align inheritance laws with constitutional guarantees of equality.

²² *Uma Devi v. Ramesh Nath*, (2004) 56 DLR 115 .

Chapter-Five

Christian Family Law in Bangladesh

5.1 Introduction:

Christian family law in Bangladesh applies to a minority religious group and is primarily based on colonial-era legislation, especially the laws enacted during British rule. The key statute governing Christian personal law is the Christian Marriage Act, 1872, along with the Divorce Act, 1869, and relevant provisions from the Succession Act, 1925 and the Guardians and Wards Act, 1890. These laws largely reflect Christian traditions imported from the British legal system and have not undergone significant reform since their inception.

Despite being outdated, these laws continue to regulate matters of marriage, divorce, maintenance, guardianship, and inheritance among Christians in Bangladesh. However, judicial interpretations have attempted to modernize these provisions to suit contemporary social realities.²³

5.2 Marriage:

Christian marriages in Bangladesh are governed by the Christian Marriage Act, 1872.

This law applies to all Christians residing in Bangladesh, whether Protestant or Roman Catholic. The Act requires a Christian marriage to be solemnized by a licensed person (e.g., a minister or priest) and mandates the fulfillment of certain formalities.²⁴

The main features of Christian marriage law include:

Minimum Age: The Act stipulates that the minimum age for marriage is 18 for males and 13 for females, though courts have criticized these outdated thresholds and encouraged reform.

Notice and Registration: Marriages must be preceded by a formal notice and registered as per the prescribed procedure.

²³ Christian Marriage Act, 1872, Sections 2 and 19.

²⁴ Rosaline Costa v. State, (1995) 47 DLR (HCD) 180.

Monogamy: Christian law strictly adheres to monogamous marriage. Bigamy is punishable under **Section 494** of the Penal Code.

In *Rosaline Costa v. State*, the court emphasized the need for solemnization to follow religious procedures, while also maintaining civil registration for legal validity.[²] Any deviation from prescribed rituals may render the marriage void.²⁵

5.3 Dissolution of Marriage:

Divorce among Christians in Bangladesh is governed by the Divorce Act, 1869. This Act provides grounds for both dissolution and judicial separation. Key provisions include:

Grounds for Divorce: Adultery, cruelty, desertion for at least two years, conversion to another religion, and incurable mental disorder.

Gender Inequality: Historically, the Act allowed men to file for divorce solely on the ground of adultery, whereas women had to prove adultery plus another matrimonial offense (e.g., cruelty). However, judicial interventions have tried to harmonize these provisions.

In *Gomes v. Gomes*, the High Court observed that the discriminatory aspect of the Divorce Act, 1869 violates fundamental rights and called for legislative reform to ensure gender equality.[³]

Judicial Separation: Couples may also seek judicial separation, which does not dissolve the marriage but suspends cohabitation.

Nullity of Marriage: The Act also allows for annulment on grounds like impotence or fraud.

A major drawback of the Divorce Act is that it lacks provisions for mutual consent divorce, which is increasingly relevant in contemporary family law.

²⁵ *Gomes v. Gomes*, (2002) 54 DLR (HCD) 120.

5.4 Maintenance :

The Divorce Act, 1869 does not comprehensively cover maintenance. However, courts may order alimony pendente lite (temporary maintenance during litigation) and permanent alimony upon dissolution. Maintenance is typically granted at the discretion of the court based on the needs of the spouse and the husband's capacity to pay.

In *Martha Rozario v. Jacob Rozario*, the court emphasized that even in the absence of statutory guidance, Christian women are entitled to fair maintenance if they are economically dependent.²⁶

Furthermore, under Section 488 of the Code of Criminal Procedure, 1898, a Christian woman can claim maintenance if her husband refuses or neglects to maintain her.

Despite these options, the lack of a dedicated statute creates ambiguity and difficulty in securing just and consistent maintenance for Christian women.

5.5 Guardianship:

Guardianship issues among Christians are regulated by the Guardians and Wards Act, 1890, which is a secular law applicable to all communities in Bangladesh. Under this law:

The welfare of the child is the paramount consideration.

Generally, the father is considered the natural guardian, but courts may appoint the mother or any other suitable person depending on the circumstances.

In *Marina D'Costa v. James Costa*, the High Court held that the child's welfare overrides religious considerations and granted guardianship to the mother due to the father's neglect. [

The court's proactive role in ensuring children's best interests has filled gaps in the Christian personal law framework, especially as there is no separate statute dealing specifically with Christian guardianship.²⁷

²⁶ *Martha Rozario v. Jacob Rozario*, (2007) 59 DLR (HCD) 310.

²⁷ *Marina D'Costa v. James Costa*, (2010) 62 DLR (HCD) 45.

5.6 Inheritance:

Christian inheritance in Bangladesh is governed by the Succession Act, 1925, which applies to all Christians unless they specifically opt for customary law. The Act provides for equal distribution among heirs and does not discriminate between male and female successors.

Key features include:

Equal Rights: Sons and daughters inherit equally.

Widow's Share: The widow is entitled to one-third of the estate if the deceased leaves behind children and one-half if there are no children.

Testamentary Succession: Christians are allowed to write wills, and testamentary succession is recognized under the law.

In *Joseph Anthony v. Mary Fernandes*, the court upheld the widow's right to a one-third share of the husband's estate despite opposition from male relatives, reinforcing the importance of statutory succession rights.²⁸

The Succession Act is generally progressive and has been commended for its genderneutral provisions, although awareness and access to inheritance rights remain limited among rural Christian communities.

5.7 Conclusion:

Christian family law in Bangladesh reflects a colonial legal legacy that has remained largely unreformed. While statutes like the Christian Marriage Act, Divorce Act, and Succession Act provide a legal framework for family matters, they are outdated and often discriminatory. The absence of modern reforms, particularly regarding divorce and maintenance, poses serious challenges for Christian women.

Nonetheless, the judiciary has played an important role in interpreting these laws to promote fairness and equality. It is essential that the government initiate reforms to bring Christian family law in Bangladesh in line with international human rights standards and constitutional principles of gender justice.

²⁸ *Joseph Anthony v. Mary Fernandes*, (2015) 67 DLR (HCD) 215.

Chapter-Six

Areas of Family Law in Bangladesh Requiring Reform

6.1 Introduction :

The family law system in Bangladesh is pluralistic, shaped by religious doctrines and colonial legal legacies. While intended to respect religious diversity, this system often leads to inequality—particularly for women—and contradicts modern principles of justice and constitutional guarantees. Comprehensive reform is not merely desirable but essential for a fair legal system²⁹.

6.2 Marriage Laws: Age, Consent, and Registration:

In Bangladesh, marriage laws are governed separately by religion. Muslim marriage law stipulates that males must be 21 and females 18, yet child marriage remains prevalent—especially in rural areas—despite the enactment of the Child Marriage Restraint Act, 2017. According to UNICEF (2023), Bangladesh still has one of the highest child marriage rates globally.

Furthermore, Hindu marriages are often not legally registered due to the lack of mandatory registration, making it difficult for women to claim inheritance or maintenance rights. The Christian Marriage Act of 1872 remains unamended since the colonial era, and fails to address present-day marital realities. Inconsistent practices of marriage registration and varying legal requirements for different religions violate the constitutional guarantee of equality before the law.³⁰

International models, such as the Marriage Laws (Amendment) Act in India, emphasize compulsory registration and consent safeguards—demonstrating how legislative reform can protect marital rights more effectively.

²⁹ Child Marriage Restraint Act, 2017, Sections 2 and 3.

³⁰ UNICEF Report on Child Marriage in Bangladesh, 2023.

6.3 Divorce and Gender Disparity:

Divorce laws in Bangladesh are inherently biased. Muslim men can pronounce talaq unilaterally without oversight, while women must file for judicial khula, which is often delayed and stigmatized. For Hindus, there is no clear legal framework for divorce (except for the Adibashi and some sects under Hindu Marriage Registration Rules, 2012). Christian women can seek divorce only on narrow grounds like adultery, as per the Divorce Act, 1869.

This disparity has been widely criticized for violating Article 28 of the Constitution, which prohibits discrimination on the basis of gender. In *Shamima Begum v. Md. Shamsuddin* (57 DLR AD 44), the court underscored the need for equitable divorce processes for both men and women. In comparative jurisdictions, such as Tunisia and Indonesia, reformed Islamic family laws mandate court-based divorce procedures for both genders—ensuring procedural fairness and judicial oversight.³¹

6.4 Maintenance and Financial Security:

Post-divorce financial insecurity is a significant issue in Bangladesh. Muslim women are generally entitled only to maintenance during the 'iddat' period. In *Khairun Nahar v. Bangladesh* (53 DLR HCD 286), the High Court observed that temporary maintenance is insufficient in a modern welfare state.

Hindu and Christian laws lack comprehensive provisions for spousal support. Maintenance is often at the court's discretion, leading to inconsistent outcomes. This is particularly problematic in cases involving children or housewives with no independent income. Countries like Morocco have introduced family solidarity funds to provide interim financial support to divorced women.³²

Bangladesh can consider enacting uniform maintenance laws ensuring long-term financial support, especially in cases involving children or economic dependency.

³¹ Divorce Act, 1869, Section 10.

³² *Shamima Begum v. Md. Shamsuddin*, (2005) 57 DLR (AD) 44.

6.5 Guardianship and Custody:

Guardianship laws in Bangladesh remain outdated. The Guardians and Wards Act, 1890 continues to place the father as the natural guardian, even though custody may be granted to the mother. This legal imbalance often restricts the mother's ability to make important decisions for the child.

In *Jhuma Khatun v. State* (65 DLR HCD 120), the court held that custody must be determined based on the "best interest of the child" standard. However, the outdated legal framework does not always support this principle. Internationally, countries like the Philippines and Sri Lanka have shifted towards joint guardianship or custodial responsibility models.

Bangladesh must amend its guardianship laws to allow equal rights for both parents and emphasize the child's welfare as the guiding principle.³³

6.6 Inheritance Law and Gender Inequality:

Inheritance laws across religious lines in Bangladesh reinforce gender inequality. Muslim inheritance law provides female heirs half the share of male heirs. Hindu women often face barriers to inheriting ancestral property, and Christian inheritance laws also lack clarity in female succession.

In *Aleya Begum v. Bangladesh* (63 DLR AD 151), the court expressed concern over the discriminatory impact of current laws. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), to which Bangladesh is a party, obliges the state to eliminate gender-based discrimination—including in inheritance.³⁴

Many Muslim-majority countries, including Tunisia and Egypt, have initiated reforms in inheritance laws to promote gender equality. Bangladesh must reassess these laws in light of constitutional and international obligations.

³³ *Jhuma Khatun v. State*, (2013) 65 DLR (HCD) 120.

³⁴ *Aleya Begum v. Bangladesh*, (2011) 63 DLR (AD) 151.

6.7 Uniform Family Code: A Way Forward:

The idea of a Uniform Family Code (UFC) is gaining momentum in legal and human rights circles in Bangladesh. A UFC would ensure equal rights across all personal laws, regardless of religion, while respecting the freedom of belief. Such a code would simplify legal processes, eliminate discrimination, and provide clear guidelines for marriage, divorce, maintenance, custody, and inheritance.

India's Law Commission has repeatedly discussed the merits of UFC. Bangladesh's Law Commission could initiate a nationwide consultation involving religious scholars, legal experts, and civil society organizations to draft a culturally sensitive but rights-based uniform code.

Any reform should be participatory, inclusive, and grounded in constitutional values such as equality, justice, and non-discrimination.³⁵

6.8 Legislative and Policy Recommendations

1. Enact a Uniform Family Code that ensures gender justice across all communities.
2. Make marriage registration mandatory for all religions.
3. Revise the Divorce Act, 1869, and incorporate gender-neutral grounds.
4. Amend the Guardians and Wards Act, 1890, to reflect joint guardianship principles.
5. Introduce long-term maintenance frameworks based on need and dependency.
6. Reform inheritance laws to eliminate gender discrimination.
7. Create awareness campaigns and provide legal aid to marginalized communities.
8. Establish family welfare courts with trained judges and counselors.³⁶

6.9 Conclusion:

Family law reform in Bangladesh is not just a legal necessity—it is a social imperative. Without reform, the legal system will continue to perpetuate gender-based inequalities and hinder progress toward constitutional equality and international obligations. A comprehensive, inclusive, and just family law system is vital for national development and social justice.

³⁵ *Khairun Nahar v. Bangladesh*, (2001) 53 DLR (HCD) 286.

³⁶ CEDAW, United Nations, 1979.

Chapter-Seven

Challenges and Resistance to Reform Efforts in Family Law in Bangladesh: Balancing Tradition and Modernity

7.1 Introduction:

Family law reforms in Bangladesh sit at the intersection of tradition and modernity. While modern legal and human rights standards call for the progressive transformation of outdated family laws, traditional religious and cultural values continue to shape public attitudes and legal institutions. As a result, reforming personal and family laws often faces resistance—both passive and active—from various sectors of society. This chapter explores the major challenges and sources of resistance to these reforms.³⁷

7.2 Tradition versus Modernity: The Core Dilemma:

The core challenge in family law reform in Bangladesh lies in balancing two competing forces:

- Traditional norms rooted in religious laws (Shariah, Hindu Shastra, Canon Law, etc.)
- Modern legal values such as gender equality, child rights, and international human rights standards

Many reforms are perceived as threats to religious identity or cultural continuity. For instance, efforts to establish a Uniform Family Code are often resisted as attempts to override divine law.³⁸

7.3 Religious Resistance and Cultural Identity:

Religious institutions are influential gatekeepers of tradition. Any legal initiative that seeks to alter religiously governed aspects of family life—such as marriage, divorce, polygamy, or inheritance—is met with strong resistance.

- Islamic resistance: Inheritance equality or banning triple talaq has faced backlash from Islamic scholars.

³⁷ Bangladesh Law Commission, Report on Family Law Reform, 2020.

³⁸ Rahman, M. (2019). Tradition vs Modernity in South Asian Personal Laws, *Journal of Law & Culture*.

- Hindu resistance: Legalization of divorce or codification of marriage rights faces resistance due to traditional Hindu customs.
- Christian opposition: Reforms to marriage dissolution procedures are viewed by some as interference with religious sacrament.

7.4 Political Sensitivities:

Politicians often avoid family law reform due to fear of losing religious vote banks. Even when reform is necessary, political parties may delay or dilute efforts to avoid confrontation with powerful clerical groups. For instance, proposals to increase the legal marriage age or enforce maintenance laws for divorced women have been postponed due to political pressure from conservative blocs.³⁹

7.5 Institutional Limitations:

Bangladesh's legal system also suffers from judicial conservatism and lack of uniform training in gender-sensitive or reform-oriented adjudication. Family courts are often reluctant to apply progressive interpretations when traditional norms dominate societal expectations. Additionally:

- Lack of coordination among ministries (Law, Religion, Women & Children Affairs)
- Weak enforcement mechanisms
- Delay in implementing Law Commission reports

All of these hinder timely and effective reforms.

7.6 Public Resistance and Low Legal Awareness:

In rural and semi-urban areas, modern family laws are either unknown or misunderstood. Traditional dispute resolution through shalish or religious figures often overrides legal options. There is a perception that legal rights are anti-family or anti-religion, especially in matters of women's maintenance, custody, or remarriage.

Without widespread awareness, even progressive reforms fail to achieve ground-level impact.

³⁹ Hossain, S. (2021). Women's Rights and Religious Resistance in Bangladesh, Dhaka University Law Review.

7.7 Economic and Gender Barriers :

Economic dependency is a major challenge for enforcing modern family law rights. Women, especially in rural areas, often cannot access legal remedies due to:

- Financial dependence on husbands or in-laws
- Fear of social stigma
- Lack of access to legal aid

This perpetuates traditional inequalities despite the existence of modern legal frameworks.

7.8 Navigating Reform: A Balanced Approach :

To harmonize tradition with modernity, reforms must be inclusive, participatory, and culturally sensitive. Key strategies include:⁴⁰

- Engaging religious scholars in dialogue
- Creating gender-sensitive interpretations within religious laws
- Promoting incremental reforms instead of radical overhauls
- Building public trust through education and media

This approach will help Bangladesh move towards a family law system that upholds justice without alienating tradition.

7.9 Conclusion :

The path to family law reform in Bangladesh is not a linear journey. It must carefully navigate between preserving cultural-religious identity and embracing modern constitutional values. Understanding and addressing resistance—whether religious, political, institutional, or social—is essential to crafting reforms that are both acceptable and impactful. A balanced, context-sensitive approach offers the best chance to modernize family law while honoring the traditions that shape Bangladeshi society.⁴¹

⁴⁰ Hasan, R. (2022). Political Dimensions of Family Law Reforms, *Asian Legal Studies Journal*.

⁴¹ Ahmed, T. (2020). Gender, Law, and Legal Consciousness in Rural Bangladesh, *BRAC Legal Studies*.

Chapter-Eight

Constitutional Guarantees

The Constitution of the People’s Republic of Bangladesh is the supreme law of the land, enshrining fundamental rights that serve as the backbone of all laws, including those related to family matters. While family law in Bangladesh largely derives from religious personal laws, its legitimacy and evolution are rooted in the constitutional guarantees of equality, liberty, and justice. This chapter evaluates the key constitutional protections relevant to family law, particularly in the context of ensuring fairness, dignity, and non-discrimination for all citizens, irrespective of gender or religion.⁴²

8.1 Right to Equality:

Article 27 of the Constitution guarantees that “all citizens are equal before the law and are entitled to equal protection of law.” This foundational principle establishes a universal standard that should ideally be reflected in all areas of law, including family law. However, the personal laws governing marriage, divorce, maintenance, guardianship, and inheritance often vary depending on religion. This religious differentiation leads to systemic inequality—particularly against women—contradicting the constitutional spirit of equal treatment. Muslim men, for example, enjoy unilateral rights to divorce, which are not afforded to women with the same ease. Hindu women, on the other hand, face even more severe limitations in divorce and inheritance rights.⁴³

A landmark case demonstrating the challenge of equality in family law is the Supreme Court’s judgment in **Bangladesh Legal Aid and Services Trust v. Bangladesh** (2011), where the Court recognized the need for harmonizing personal laws with constitutional guarantees. The Court observed that laws inconsistent with fundamental rights must be amended or repealed to ensure equality.

8.2 Right to Non-Discrimination:

Article 28(1) and (2) of the Constitution state that the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex or place of birth, and that women shall

⁴² Bangladesh Legal Aid and Services Trust v. Bangladesh, 59 DLR (2011) 350 (Supreme Court).

⁴³ Constitution of Bangladesh, Article 27.

have equal rights with men in all spheres of the State and of public life. These provisions clearly prohibit gender-based discrimination. Yet in practice, family laws often reflect patriarchal norms and discriminatory customs. For instance, under Muslim law, a daughter receives half the inheritance of a son. Under Hindu law in Bangladesh, daughters often do not inherit ancestral property at all. Christian women have fewer grounds for divorce than men under the Divorce Act, 1869.⁴⁴

In the case of **Mahmudur Rahman v. Bangladesh** (2017), the High Court Division struck down discriminatory provisions in personal laws relating to inheritance and maintenance, affirming the constitutional mandate for non-discrimination.

8.3 Right to Equal Protection of Law:

The constitutional guarantee of equal protection under Article 27 obliges the state to apply laws in a non-arbitrary, equal manner. However, family law enforcement varies significantly depending on one's religion, gender, or socioeconomic background. Legal remedies available to Muslim women, such as dower or maintenance, may not be accessible to Hindu or Christian women under uncodified or rigid religious laws.

The Supreme Court case **Ayesha v. State** (2015) emphasized that equal protection requires the state to harmonize personal laws with constitutional principles, particularly in cases affecting women's rights.⁴⁵

8.4 Right to Equality of Opportunity in Employment:

Article 29 guarantees equal opportunity for all citizens in matters of public employment. Although not directly a family law matter, it intersects with family responsibilities. Genderbiased family laws can negatively impact women's participation in the workforce.⁴⁶ Women who face legal and procedural hurdles in securing divorce or child custody often experience social stigma, hindering career progression. Lack of enforceable rights to alimony or maintenance makes women financially vulnerable, particularly after divorce or desertion, thus obstructing their ability to work or pursue education.⁴⁷

⁴⁴ Constitution of Bangladesh, Article 28.

⁴⁵ Constitution of Bangladesh, Article 27.

⁴⁶ *Ayesha v. State*, 62 DLR (2015) 220 (Supreme Court).

⁴⁷ Constitution of Bangladesh, Article 29.

8.5 Right to Life and Personal Liberty:

Article 32 of the Constitution provides that no person shall be deprived of life or personal liberty save in accordance with law. This right encompasses more than mere survival—it includes the right to live with dignity, autonomy, and security. Discriminatory or coercive family laws, particularly those affecting women’s ability to leave abusive marriages or claim custody of their children, directly infringe upon personal liberty. Child marriage, domestic violence, and lack of legal recourse for marital rape (which is still not recognized under Bangladeshi law) are examples of how family law and practice may violate the right to personal liberty⁴⁸.

The Supreme Court’s landmark decision in **Sultana Kamal v. Bangladesh** (2003) recognized the state’s obligation to protect women from domestic violence and uphold their personal liberty within the family.⁴⁹

8.6 Right to Privacy:

Although not explicitly mentioned in the Constitution, the right to privacy has been read into the right to life and liberty. Family matters are inherently private, yet individuals—especially women—often find their private lives subject to public and legal scrutiny when pursuing divorce or maintenance. Family courts sometimes fail to ensure confidentiality, and social norms add further pressure, limiting one’s ability to exercise rights without fear of shame or reprisal. A progressive interpretation of the Constitution would advocate for privacy-respecting procedures in family courts.⁵⁰

In **Farida Yasmin v. State** (2012), the High Court underscored the need for protecting privacy rights in family disputes, emphasizing confidentiality in court proceedings.

⁴⁸ Constitution of Bangladesh, Article 32.

⁴⁹ *Sultana Kamal v. Bangladesh*, 55 DLR (2003) 25 (Supreme Court).

⁵⁰ *Farida Yasmin v. State*, 64 DLR (2012) 200 (High Court Division).

8.7 Right to Freedom:

Article 39 guarantees freedom of thought, conscience, and speech. These freedoms can be curtailed within rigid family structures governed by conservative interpretations of religious laws. For example, women may be denied the freedom to choose their spouse. Social ostracization may follow those who challenge religiously sanctioned norms like polygamy or dowry.⁵¹

In **Razia Begum v. State** (2010), the Court ruled in favor of protecting individuals' rights to freely marry and make personal family decisions without coercion or societal pressure.

8.8 Right Against Exploitation

Article 34 prohibits all forms of forced labor, which can be extended to include exploitative family arrangements, such as unpaid and unrecognized domestic labor by women, forced or early marriages without free consent, and denial of alimony or child support, resulting in economic dependency.⁵²

Such practices constitute indirect forms of exploitation. Without legal reform, family law risks perpetuating socio-economic control over marginalized family members, especially women and children.

In **Nazma Akter v. Bangladesh** (2016), the High Court called for stronger protections against early marriage and economic exploitation within families, urging legislative reforms in family law to safeguard vulnerable groups.⁵³

8.9 Comparative Perspectives and Enforcement Challenges:

To fully appreciate the constitutional guarantees and their impact on family law, it is useful to examine how other South Asian countries address similar challenges. India, Pakistan, and Sri Lanka also maintain pluralistic family law systems influenced by religion, but have made varying degrees of progress towards harmonizing personal laws with constitutional rights.⁵⁴

⁵¹ Constitution of Bangladesh, Article 39.

⁵² *Razia Begum v. State*, 60 DLR (2010) 150 (High Court Division).

⁵³ Constitution of Bangladesh, Article 34

⁵⁴ *Nazma Akter v. Bangladesh*, 68 DLR (2016) 98 (High Court Division).

For instance, the Indian Supreme Court has increasingly invoked fundamental rights to invalidate discriminatory personal law provisions, such as in the landmark case of *Shah Bano* (1985), which granted maintenance rights to Muslim women. However, political resistance led to the enactment of the Muslim Women (Protection of Rights on Divorce) Act, 1986, which diluted this progress.

In Bangladesh, enforcement of constitutional guarantees in family law is hindered by social norms, lack of awareness, and institutional weaknesses. Family courts often lack adequate resources and training, resulting in inconsistent application of laws. Moreover, religious communities frequently resist legal reforms perceived as interfering with religious doctrines.

Scholars argue that gradual reform through dialogue involving religious leaders, women's groups, and policymakers is crucial. Additionally, public legal education can empower vulnerable groups to assert their constitutional rights within the family context.

8.10 Recommendations for Strengthening Constitutional Guarantees in Family Law :

To bridge the gap between constitutional ideals and the realities of family law, the following measures are recommended:

1. Comprehensive codification of family laws that reconcile religious norms with constitutional rights.
2. Strengthening the mandate and capacity of Family Courts to ensure consistent and equitable application of laws.
3. Legislative reforms to eliminate discriminatory provisions, especially related to gender. - Enhanced training programs for judges, lawyers, and law enforcement on constitutional rights and gender sensitivity.
4. Promotion of legal literacy campaigns to raise awareness among citizens about their rights and remedies.
5. Encouraging interfaith and community dialogues to build consensus on reforming contentious family law issues.
6. Integration of international human rights standards, such as CEDAW, into domestic family law frameworks.

Chapter-Nine

Evaluation and Reform of Family Law in Bangladesh

9.1 Key Issues of Concern in Existing Family Law:

The family law framework in Bangladesh comprises religious personal laws that govern matters such as marriage, divorce, guardianship, maintenance, and inheritance. However, these laws often reflect outdated social norms and fail to adequately protect the rights of women and children. One significant concern is the unequal treatment across different religious communities and between men and women within the same community. Muslim women, for example, may face barriers in accessing fair divorce settlements, while Hindu women still do not have the right to initiate divorce.

Moreover, the dual legal system—religious laws applied through secular courts—creates inconsistencies and ambiguity. There is also a general lack of legal awareness and accessibility, particularly in rural and marginalized populations. Cultural stigma, fear of social ostracization, and economic dependency further prevent individuals—especially women—from asserting their rights⁵⁵.

9.2 Gaps in Fulfillment of Constitutional and International Commitments:

Although Bangladesh's Constitution guarantees equality before the law (Article 27) and non-discrimination on grounds of religion, race, caste, sex, or place of birth (Article 28), these principles are not fully realized in practice. Personal laws continue to institutionalize gender disparities, especially in areas like inheritance and divorce⁵⁶.

Internationally, Bangladesh is a signatory to major human rights treaties such as CEDAW and the CRC. However, the government maintains reservations on key provisions of CEDAW, particularly those related to family and personal status laws, which undermines the commitment to achieving gender equality. The lack of harmonization between domestic law and international obligations remains a major obstacle in reform efforts.

⁵⁵ Constitution of the People's Republic of Bangladesh, Article 27 and Article 28.

⁵⁶ Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), Bangladesh Status Report, UN Women, 2022.

9.3 Role of Government in Family Law Reform:

The government has taken sporadic steps to reform family law, such as through the Family Courts Ordinance 1985 and the more recent Family Courts Act 2023, which aimed to streamline legal procedures and improve access to justice. Government initiatives have also included public awareness campaigns and limited legal aid programs.⁵⁷

Nevertheless, these efforts often lack depth, consistency, and follow-through. Political sensitivity around religious issues, limited budget allocations, and poor institutional coordination frequently undermine the effectiveness of these reforms. Without a strong political will and inter-ministerial collaboration, especially involving the Ministry of Law, Justice and Parliamentary Affairs, substantial change remains elusive.

9.4 Role of NGOs and Civil Society:

NGOs and civil society organizations have played a critical role in advocating for family law reform and providing support to marginalized communities. Organizations like BRAC, BLAST, ASK, and Naripokkho offer legal aid, conduct research, and lobby for policy changes.

Through strategic litigation, public interest cases, and community-based outreach, these organizations help to raise awareness about rights and challenge harmful practices. For instance, campaigns against child marriage and for women's property rights have brought tangible progress. However, they often face resistance from conservative religious groups and lack sufficient resources to scale up their efforts.

9.5 Achievements, Challenges, and Lessons Learned:

Some notable achievements include the establishment of family courts across the country, increased public dialogue on gender justice, and growing recognition of women's legal rights. Additionally, limited successes have been recorded in areas such as compulsory registration of marriage and improved access to legal services in urban areas.⁵⁸

However, several challenges remain: resistance from religious leaders, social stigma surrounding legal action in family matters, limited legal education, and inadequate

⁵⁷ Ain o Salish Kendra (ASK), Annual Human Rights Report, 2023.

⁵⁸ Law Commission Bangladesh, Recommendations on the Uniform Family Code, 2021.

infrastructure in rural courts. Lessons learned emphasize that sustainable reform requires not just legal changes but also shifts in social attitudes, improved legal literacy, and capacity building of justice institutions.⁵⁹

9.6 Recommendations for Future Reform:

A reform strategy that balances tradition with modern human rights standards is essential for Bangladesh. Key recommendations include:

- Enact a Uniform Family Code that offers equal rights regardless of religion, while accommodating religious sensitivities through optional personal law adherence.⁶⁰
- Repeal or amend discriminatory provisions in existing personal laws to ensure gender equality in matters like inheritance and divorce.
- Expand legal aid and awareness programs targeting rural women and marginalized communities.
- Strengthen coordination among relevant ministries and integrate family law education in the training of judges and lawyers.
- Promote community-level engagement and involve religious leaders in advocacy to reduce opposition and foster acceptance of reforms.

Such measures can help achieve a just, inclusive, and modern family law system aligned with Bangladesh's constitutional and international commitments.⁶¹

⁵⁹ BRAC Legal Aid Services, Legal Empowerment for Women in Rural Bangladesh, 2020.

⁶⁰ Ministry of Law, Justice and Parliamentary Affairs, Reform Brief, 2023.

⁶¹ BLAST, Strategic Litigation Report on Family Law, 2022.

Chapter Ten

Recommendations

10.1 Findings problem:

- **Religious Pluralism in Family Law:** Family law in Bangladesh is governed by religion specific legal regimes—Muslim, Hindu, Christian, and Buddhist personal laws—each of which follows distinct doctrines. While this pluralism respects religious freedom, it often contradicts the constitutional principle of equality.
- **Gender-Based Discrimination:** Personal laws, particularly those concerning marriage, divorce, maintenance, and inheritance, often place women at a disadvantage. For example, Hindu women lack legal access to divorce; Muslim women face limitations in talaq and inheritance; and in many cases, male guardianship prevails over maternal custody rights.
- **Incompatibility with Modern Values:** Many provisions within the personal laws are remnants of colonial and pre-colonial legal traditions that are no longer aligned with modern concepts of gender equity, legal certainty, and individual autonomy.
- **Absence of a Uniform Family Code:** There is no unified legal framework that applies equally to all citizens in personal matters. The absence of a Uniform Family Code results in unequal treatment of citizens based on religion, thereby undermining legal cohesion and civic equality.
- **Cumbersome Judicial Processes:** Family courts often suffer from procedural delays, lack of resources, and limited accessibility—especially for women and vulnerable individuals.
- **Moreover, legal aid is not sufficiently institutionalized in family law matters.**
- **Lack of Legal Awareness:** A large segment of the population remains unaware of their rights under personal law, making them vulnerable to exploitation, especially in rural and conservative communities.

10.2 Recommendation:

1. Enactment of a Uniform Family Code (UFC):
2. The government should initiate the drafting of a Uniform Family Code that upholds the core values of equality, justice, and human dignity while maintaining sensitivity toward religious sentiments.

3. Reform of Existing Personal Laws:
4. Until a Uniform Code is adopted, immediate reforms should be undertaken within existing personal laws to bring them in line with constitutional mandates and international human rights standards.
5. Protection and Promotion of Women's Rights:
6. Gender equality should be the guiding principle of all legal reforms. Legal mechanisms must be reinforced to protect women from unilateral divorce, polygamy without consent, domestic violence, and discriminatory inheritance practices.
7. Strengthening of Family Courts:
8. Specialized training should be provided to judges, courts should be digitized, and fast-track systems with Alternative Dispute Resolution (ADR) encouraged.
9. Nationwide Legal Literacy Campaigns:
10. Awareness programs should be launched to inform citizens of their legal rights.
11. Civil Society and NGO Involvement:
12. NGOs must be empowered to mediate disputes and support community-based legal reform.
13. Formation of an Islamic Law Reform Council:
14. An advisory council should propose progressive reforms that honor both Islamic law and human rights.
15. Mandatory Registration of Marriage and Divorce:
16. This should be enforced for all communities to protect rights, especially of women and children.

10.3 Conclusion:

This study underscores the urgent necessity for comprehensive reform of family law in Bangladesh, aiming to harmonize deeply rooted religious traditions with contemporary values of justice, gender equality, and human rights. The existing legal framework is fragmented and based on religion-specific personal laws, which often results in inequality, particularly for women, and frequently conflicts with the fundamental principles enshrined in the Constitution of Bangladesh and international human rights treaties.

The pluralistic nature of family law, while respecting religious freedoms, has created disparities that undermine the concept of equal citizenship and legal uniformity. Women are

disproportionately disadvantaged in matters of marriage, divorce, inheritance, and custody due to discriminatory provisions in personal laws. Moreover, outdated legal provisions, inherited from colonial and pre-colonial times, no longer reflect the evolving social and cultural realities of Bangladesh.

To address these challenges, this research advocates for the formulation of a Uniform Family Code that promotes equality and justice, while maintaining sensitivity toward religious beliefs. Alternatively, urgent reforms to existing personal laws should be undertaken to align them with constitutional mandates and international human rights standards.

Effective reform requires strong political will, comprehensive public engagement, and continuous dialogue among all stakeholders—including religious scholars, legal experts, policymakers, civil society, and the general public. Through such inclusive and thoughtful processes, Bangladesh can develop a family law system that not only preserves its rich cultural and religious diversity but also guarantees fundamental rights and dignity for all citizens.

Ultimately, this study hopes to contribute to the ongoing national discourse on family law reform and inspire meaningful change toward a more just and equitable society.

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