

# Research Monograph

On

*"Evaluation of the Right to Maintenance of a Wife in the Legal System of Bangladesh: A Critical Analysis"*

A Thesis Submitted in Partial Fulfillment of the Requirements for the Degree of LL.B  
(Hon's), Department of Law, Sonargaon University (SU)

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**Date of Submission: 8<sup>th</sup> July 2025**

## Letter of Transmittal

**Date: 8<sup>th</sup> July 2025**

To

**Mrs. Sharmin Jahan Runa**

**Assistant Professor**

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**Subject: Submission of Research Monograph.**

**Dear Madam,**

It is with great pleasure that I submit my research monograph entitled "**Evaluation of the Right to Maintenance of a Wife in the Legal System of Bangladesh: A Critical Analysis**". I have made my best efforts to complete this research monograph with relevant information that I have collected from various primary and secondary sources. I have concentrated my efforts to achieve the objectives of the work and hope that my endeavor will serve its intended purpose.

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

Sincerely,

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## **Declaration**

I hereby do solemnly declare that the work presented in this research monograph entitled "**Evaluation of the Right to Maintenance of a Wife in the Legal System of Bangladesh: A Critical Analysis**" has been carried out by me under the supervision of **Mrs. Sharmin Jahan Runa, Assistant Professor, Head (Acting)**, Department of Law, Faculty of Arts and Humanities, Sonargaon University, 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 the Thesis Supervisor**

This is to certify that the research monograph on "**Evaluation of the Right to Maintenance of a Wife in the Legal System of Bangladesh: A Critical Analysis**" was done by **Israt Jahan Mim** in partial fulfillment of the requirements for the degree of Bachelor of Laws (Hon's) from Sonargaon University. The research monograph has been carried out under my guidance and is a record of the bona fide work carried out successfully.

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**Mrs. Sharmin Jahan Runa**  
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# Acknowledgement

At the very beginning, I would love to thank Almighty Allah for guiding me on the right path. I convey my profound gratitude to my honorable supervisor, **Mrs. Sharmin Jahan Runa**, Assistant Professor, Department of Law, Faculty of Arts and Humanities, Sonargaon University, for her invaluable guidance, encouragement, and cooperation that helped me to complete this research monograph.

I would also like to express my gratitude to those people who gave me relevant information to proceed with my research report, and to my friends whose cooperation helped me greatly. I extend my sincere thanks to all the authors and writers whose precious works and publications aided me in completing this work.

Thank You.

---

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## Abstract

The right to maintenance is a cornerstone of economic security and social justice for women within the marital framework in Bangladesh. This right, originating from both religious doctrines and secular statutes, is intended to protect a wife from destitution and vagrancy during the subsistence of marriage and upon its dissolution. This thesis critically evaluates the efficacy of the legal framework governing a wife's right to maintenance in Bangladesh, analysing the chasm between jurisprudential ideals and practical realities. While the legal system provides distinct avenues for Muslim, Hindu, and Christian women to claim maintenance, this research contends that the framework is fraught with significant lacunae, procedural impediments, and enforcement deficits that undermine the substantive realisation of this right. For Muslim women, the most contentious issue remains the absence of a clear entitlement to post-divorce maintenance beyond the *iddat* period, a legal vacuum solidified by judicial conservatism. For Hindu and Christian women, the reliance on archaic, colonial-era legislation perpetuates systemic discrimination, starkly conflicting with constitutional guarantees of equality. Through a doctrinal and comparative analysis, drawing lessons from the legal trajectories of India and Pakistan, this paper identifies critical areas for reform. It argues that the current system is characterized by ambiguity in the determination of maintenance quantum, inordinate delays in adjudication, and formidable socio-economic barriers that deter women from seeking justice. The research concludes that while broad reforms are needed, the primary impediment to justice is pervasive judicial conservatism that has cemented a discriminatory status quo. Without a fundamental shift in judicial philosophy towards a purposive, rights-based interpretation of personal law, the right to maintenance will remain an illusory promise for the women of Bangladesh.

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# CHAPTER: ONE

## INTRODUCTION

### 1.1 Background of the Study: The Socio-Legal Significance of Spousal Maintenance

The right of a wife to be maintained by her husband is a principle of profound socio-legal importance, deeply embedded in the legal and cultural fabric of the Indian subcontinent. In a region where patriarchal structures have historically shaped familial and societal norms, the economic dependence of women has been a persistent reality.<sup>1</sup> Consequently, the law of maintenance serves as a critical instrument of social justice, designed to mitigate the financial vulnerability of women, particularly in the event of marital discord, separation, or divorce. It is not merely a financial stipend but a fundamental right that emanates from the status of marriage itself, representing the husband's legal and moral responsibility to provide for his wife's sustenance. This right encompasses the provision of essentials such as food, clothing, and shelter, ensuring that a wife can live with the dignity and standard of living to which she was accustomed during the marriage.<sup>2</sup>

The significance of maintenance transcends mere economic support; it is a vital safeguard against destitution and vagrancy, which are often the harsh realities faced by women upon the breakdown of a marriage. In societies where women's participation in the formal economy is limited and their contributions to the household are often non-monetised and unrecognised, the dissolution of marriage can precipitate a severe financial crisis. The legal framework for maintenance, therefore, acts as a protective shield, acknowledging the economic interdependence inherent in the marital relationship and seeking to ensure that a wife is not left without support. This study proceeds from the premise that an effective and equitable maintenance regime is indispensable for upholding the dignity of women and achieving a measure of gender justice within the family law system.<sup>3</sup>

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<sup>1</sup> T Monsoor, *From Patriarchy to Gender Equity* (UPL 1999).

<sup>2</sup> J J Ferdaus, 'Rights of Maintenance of a Muslim Wife' (2017) 13(20) BJI Thought.

<sup>3</sup> A M Serajuddin, *Sharia Law and Society* (Asiatic Society of Bangladesh, 2011).

## 1.2 Statement of the Problem: The Chasm Between Legal Rights and Practical Realities

Despite the unequivocal recognition of the right to maintenance in the legal system of Bangladesh, a significant chasm exists between the rights enshrined in law and their practical realisation. Women across all religious communities face formidable systemic challenges in securing this fundamental right.<sup>4</sup> The core of the problem is a systemic failure wherein legal pluralism—embodied by separate laws such as **The Hindu Married Women's Right to Separate Residence and Maintenance Act, 1946**, and **The Divorce Act, 1869**, for minority communities—actively perpetuates discrimination.

For Muslim women, who constitute the majority of the population, the legal framework is particularly contentious regarding post-divorce maintenance, leaving them in a state of profound economic precarity.<sup>5</sup> Furthermore, the institutional mechanisms designed to dispense justice, primarily the Family Courts established under **The Family Courts Ordinance, 1985**, suffer from inordinate delays and notorious difficulties in enforcing maintenance decrees. Compounding these legal and institutional failures are powerful socio-cultural barriers, including social stigma, lack of legal awareness, and economic dependency, which deter women from asserting their rights.<sup>6</sup> This thesis, therefore, investigates this systemic failure, where the promise of legal protection is frequently nullified by the harsh realities of its implementation.

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<sup>4</sup> Human Rights Watch, *'Will I Get My Dues Before I Die?'* (HRW Report 2012).

<sup>5</sup> M Rahman, 'Post-Divorce Maintenance (Maa'ta) for Muslim Women' (2018) 23(2) IOSR-JHSS.

<sup>6</sup> BLAST, 'Women's Economic Rights After Separation or Divorce' (Policy Brief 2014).

### **1.3 Objectives of the Research**

The primary objectives of this research are as follows:

1. To critically examine the doctrinal and statutory foundations of the right to maintenance in Bangladesh, with a specific focus on the distinct legal regimes applicable to Muslim, Hindu, and Christian wives.
2. To analyse the role, procedures, and effectiveness of the judicial and quasi-judicial bodies tasked with adjudicating maintenance claims, namely the Family Courts and the Arbitration Councils.
3. To identify, analyse, and evaluate the systemic, procedural, and socio-cultural challenges that impede women's access to justice and the effective enforcement of maintenance orders in Bangladesh.
4. To conduct a comparative analysis of the law of maintenance in India and Pakistan, examining their legislative frameworks and judicial trends to identify potential lessons and reform pathways for Bangladesh.
5. To formulate a set of concrete and actionable recommendations for legal, institutional, and policy reforms aimed at creating a more just, equitable, and effective maintenance regime in Bangladesh.

### **1.4 Core Research Questions**

This thesis seeks to answer the following central research questions:

1. To what extent does the current legal framework in Bangladesh, encompassing both personal and statutory laws, adequately protect a wife's right to maintenance during the subsistence of marriage and upon its dissolution?
2. What are the primary obstacles—be they legal, institutional, social, or cultural—that hinder the effective realisation of maintenance rights for women in Bangladesh?
3. How have the superior judiciaries in Bangladesh, India, and Pakistan interpreted and shaped the law of maintenance, and what accounts for the divergent legal trajectories observed, particularly concerning the issue of post-divorce maintenance for Muslim women?
4. What specific legislative, policy, and institutional reforms are necessary to bridge the gap between the legal promise and the practical reality of maintenance, thereby ensuring a more just and effective system for all women in Bangladesh?

## 1.5 Rationale and Scope of the Study

**Rationale:** The financial vulnerability of women following marital breakdown is a pressing human rights issue in Bangladesh. The failure of the legal system to provide timely and adequate maintenance not only perpetuates gender inequality but also contributes directly to the feminisation of poverty. By undertaking a comprehensive and critical analysis, this study aims to contribute to the academic discourse on family law reform in Bangladesh and provide a robust, evidence-based foundation for policymakers, legal practitioners, and civil society organisations advocating for change.

**Scope:** The primary focus of this study is the legal system of Bangladesh. The analysis encompasses the personal laws applicable to the three major religious communities—Muslims, Hindus, and Christians—as well as the secular statutes that govern maintenance claims. Recognising the shared legal heritage of the Indian subcontinent, the study incorporates a significant comparative dimension, examining the corresponding legal frameworks and judicial developments in India and Pakistan. This comparative lens is crucial for understanding the different evolutionary paths these legal systems have taken and for identifying innovative solutions that could be adapted to the Bangladeshi context.

## 1.6 Methodology

This research adopts a qualitative, descriptive, and analytical methodology. The core of the study is a doctrinal analysis of primary and secondary legal sources. Primary sources include the Constitution of the People's Republic of Bangladesh, relevant statutes such as **The Muslim Family Laws Ordinance, 1961**, **The Family Courts Ordinance, 1985**, **The Hindu Married Women's Right to Separate Residence and Maintenance Act, 1946**, and **The Divorce Act, 1869**. Crucial judicial precedents from the superior courts of Bangladesh, India, and Pakistan form a significant part of the primary data. Secondary sources consist of a wide range of academic literature, including books, peer-reviewed journal articles, and reports from governmental and non-governmental organisations. The research methodology is designed to systematically analyse these sources to construct a comprehensive and critical evaluation of the law.

# CHAPTER: TWO

## DOCTRINAL AND SHARI'AH

### FOUNDATIONS OF MAINTENANCE

#### 2.1 Conceptualizing Maintenance (*Nafaqa*): A Juristic Inquiry into Its Scope and Elements

In Islamic jurisprudence, the concept of maintenance, or *Nafaqa*, is a foundational pillar of the marital contract. The term *Nafaqa* is derived from the Arabic root word, which signifies 'that which a person spends on his family'. It is not merely a provision for bare survival but encompasses all necessities commensurate with the social standing of the spouses. Classical jurists have defined *Nafaqa* to include food, clothing (raiment), and lodging (*sukna*).<sup>7</sup> The obligation on the husband to provide maintenance is a direct and immediate legal consequence of a valid marriage (*sahih nikah*). It is a debt upon the husband, arising from the moment the marriage is contracted and the wife places herself in his marital authority.

Crucially, this right is absolute and is not contingent upon the wife's financial status. A wife is entitled to maintenance from her husband even if she is wealthy and he is poor.<sup>8</sup> This principle underscores that maintenance is not a form of charity or assistance based on need, but a legal right accruing to the wife by her marital status. The husband's duty is so central that his failure to provide maintenance without lawful cause constitutes a marital offence, which can serve as a ground for the wife to seek judicial separation or dissolution of the marriage. The quantum of maintenance is generally determined by the social position of both the husband and the wife, to ensure that the wife can maintain a lifestyle that is in keeping with her status. This holistic understanding of *Nafaqa* establishes it as a comprehensive system of support designed to ensure the wife's economic security and dignity within the marriage.<sup>9</sup>

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<sup>7</sup> J A Nasir, *The Islamic Law of Personal Status* (1990).

<sup>8</sup> F Rahman, 'Post-divorce maintenance for Muslim women' (1998) 2(1) *Bangladesh Journal of Law*.

<sup>9</sup> S S Ali, *Gender and Human Rights in Islamic and International Law* (2000).

## 2.2 The Qur'anic and Sunnatic Injunctions on a Wife's Maintenance

The obligation of a husband to maintain his wife is firmly rooted in the primary sources of Islamic law: the Holy Qur'an and the Sunnah (practices and sayings of the Prophet Muhammad). The most frequently cited Qur'anic verse in this regard is from Surah An-Nisa (Chapter 4, Verse 34), which states: "Men are the protectors and maintainers (*qawwamun*) of women, because Allah has given the one more (strength) than the other, and because they spend (to support them) from their means." The term *qawwamun* is interpreted to mean that men have the responsibility of guardianship and financial maintenance of women. Other verses also reinforce this duty. For instance, Surah Al-Talaq (Chapter 65, Verse 7) instructs: "Let the man of means spend according to his means, and the man whose resources are restricted, let him spend according to what Allah has given him." This verse not only confirms the obligation but also introduces a principle of proportionality, suggesting that the level of maintenance should be per the husband's financial capacity. Furthermore, Surah Al-Baqarah (Chapter 2, Verse 233) discusses the maintenance of mothers who are nursing their children, stating that "the father of the child shall bear the cost of the mother's food and clothing on a reasonable basis."

The Sunnah of the Prophet Muhammad further solidifies this right. In his farewell sermon, the Prophet famously declared: "Fear Allah concerning women! Verily, you have taken them on the security of Allah... and it is incumbent upon you [men] to provide them clothing and sustenance in a fair manner."<sup>10</sup> These textual sources, taken together, form an unambiguous doctrinal basis for the wife's right to *Nafaqa*, establishing it not as a matter of juristic interpretation alone, but as a direct divine command.

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<sup>10</sup> See generally, *Pakistan Research Journal of Social Sciences* (Vol 3, Issue 2, June 2024).

### 2.3 The Contested Right to Post-Divorce Provision (*Mata'a*)

While the right to maintenance during marriage is clear, the provision for a divorced wife beyond the *iddat* period is one of the most contentious areas in contemporary Islamic family law. The debate revolves around the interpretation of the Qur'anic term *Mata'a*. Verse 2:241 of Surah Al-Baqarah states: "For divorced women, *Mata'a* (should be provided) on a reasonable scale. This is a duty on the righteous."<sup>11</sup> The central question that has vexed jurists and courts across the Muslim world is whether *Mata'a* constitutes an enforceable right to maintenance that continues until the woman remarries, or if it is merely a one-time, "consolatory gift" that is recommended but not legally obligatory.

One school of thought, often described as progressive, interprets *Mata'a* as a provision for the future, a form of financial security to help the divorced woman maintain her dignity and social standing after the trauma of divorce. This view sees the verse as a clear injunction creating a legal duty. The opposing, more traditionalist view, however, interprets *Mata'a* as a parting gift, a gesture of kindness, but not a legally enforceable, recurring payment akin to maintenance. This interpretation often confines the husband's mandatory financial obligation strictly to the *iddat* period.<sup>12</sup> The ambiguity is not a modern invention but is rooted in classical jurisprudence. This textual ambiguity has allowed for divergent legal paths in different countries. As will be discussed later, the judiciary in India has leaned towards a progressive interpretation, while the judiciary in Bangladesh has adopted a more conservative one.<sup>13</sup> This ongoing debate demonstrates that the legal battles over post-divorce maintenance are not simply about applying a clear law, but about choosing between competing, centuries-old interpretations of the same foundational religious text. The lack of consensus on the meaning of *Mata'a* is the primary source of legal uncertainty and a significant cause of hardship for divorced Muslim women.

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<sup>11</sup> S Verma, 'Post-Divorce Maintenance for Muslim Women' (2023) *Int'l Journal of Law & Legal Research*.

<sup>12</sup> M J Alam & T Islam, 'Rethinking Post-Divorce Maintenance' (2015) 15(2) *Bangladesh Journal of Law*.

<sup>13</sup> *Hefzur Rahman v Shamsun Nahar Begum* (1999) 51 DLR (AD) 172.

## 2.4 Grounds for Entitlement and Forfeiture of Maintenance: The Concept of *Nashizah*

The wife's right to maintenance, while described as absolute, is conditional upon her fulfilling her marital obligations. Islamic law provides for circumstances under which a wife may forfeit this right. The key concept in this regard is *nashuz*, and a wife who is deemed to be in a state of *nashuz* is termed a *nashizah* (a rebellious or disobedient wife). A wife becomes a *nashizah* if she, without a lawful or just cause, refuses to cohabit with her husband or disobeys his reasonable and lawful commands. For instance, if a wife leaves the matrimonial home against her husband's wishes and without a valid reason, she may lose her entitlement to maintenance for the period of her absence.

However, the concept is not absolute and is subject to important qualifications. A wife's refusal to cohabit is considered justified under several circumstances, and in such cases, she retains her right to maintenance. The most significant of these is the non-payment of prompt dower (*mahr*). If the prompt portion of the dower has not been paid, the wife is entitled to refuse to live with her husband, and he remains obligated to maintain her. Similarly, if the wife leaves the matrimonial home due to the husband's cruelty, she is not considered a *nashizah* and is entitled to maintenance.<sup>14</sup> This legal framework creates a complex dynamic. The concept of *nashizah* acts as a powerful instrument of patriarchal control, as it places the burden on the wife to demonstrate her obedience or to prove that her disobedience is justified by the husband's fault (e.g., cruelty). Instead of the husband's obligation being truly unconditional, it becomes conditional upon the wife's conduct. In a socio-legal context where women already face significant barriers in accessing justice and proving claims of abuse, the requirement to prove "sufficient cause" for leaving the marital home can become an additional and often insurmountable hurdle, reinforcing the inherent power imbalance within the marital relationship and making the "absolute" right to maintenance precarious.<sup>15</sup>

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<sup>14</sup> T Monsoor, 'Maintenance to Muslim Wives: The Legal Connotations' (1998) IX(1) *Dhaka Uni. Studies*.

<sup>15</sup> 'Women's Access to Justice in Bangladesh: Constraints and Way Forward' (2017) *Jurnal Undang-Undang*.

# **CHAPTER: THREE**

## **THE PLURALISTIC LEGAL FRAMEWORK FOR MAINTENANCE IN BANGLADESH**

### **3.1 Maintenance for Muslim Wives: An Analysis of Key Statutes**

The legal framework governing the maintenance rights of Muslim wives in Bangladesh is a composite of statutory law and principles of Muslim personal law. Two key statutes are central to this framework.

**3.1.1 The Muslim Family Laws Ordinance, 1961 (MFLO)** The Muslim Family Laws Ordinance, 1961, was a landmark piece of legislation enacted to reform certain aspects of Muslim personal law. Section 9 of the Ordinance provides a specific, quasi-judicial remedy for a wife who is not being maintained by her husband. It states that if a husband "fails to maintain his wife adequately, or where there are more wives than one, fails to maintain them equitably," the wife (or wives) may apply to the Chairman of the local Union Parishad. Upon receiving such an application, the Chairman is mandated to constitute an Arbitration Council, consisting of himself and a representative from each of the parties.

The purpose of this Council is to determine the matter and, if maintenance is found to be due, to issue a certificate specifying the amount the husband must pay. This mechanism was intended to provide a swift, inexpensive, and localized forum for resolving maintenance disputes, bypassing the formal court system. However, its effectiveness is often questioned. The decision of the Arbitration Council is not final; either party can apply for a revision to the Assistant Judge, whose decision is then final. Furthermore, any amount awarded, if not paid, is recoverable as arrears of land revenue, a process that can be slow and bureaucratic. While Section 9 provides an additional remedy, it does not oust the jurisdiction of the Family Courts, and many women opt to file suits directly in court, viewing the Arbitration Council as an often ineffective preliminary step.<sup>16</sup>

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<sup>16</sup> The Muslim Family Laws Ordinance 1961.

**3.1.2 The Dissolution of Muslim Marriages Act, 1939.** This Act provides several grounds upon which a Muslim woman can seek a judicial divorce. Significantly, Section 2(ii) of the Act establishes the husband's failure to provide maintenance as a substantive ground for the dissolution of the marriage.<sup>17</sup> It stipulates that a wife is entitled to a decree for divorce if her husband has "neglected or has failed to provide for her maintenance for two years." This provision is of critical importance because it transforms the failure to maintain from a mere civil wrong, giving rise to a claim for money, into a matrimonial offence that can justify the termination of the marriage itself. It empowers a woman who has been abandoned financially to legally end the marital relationship. The courts have held that the husband's obligation is absolute, and his poverty or inability to find work is not considered a valid defence against a claim under this section. The very fact of non-maintenance for the statutory period of two years is sufficient for the wife to obtain a divorce. This provision, therefore, provides a powerful legal tool for women trapped in marriages where they are denied basic financial support.

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<sup>17</sup> The Dissolution of Muslim Marriages Act 1939.

### **3.2 Maintenance for Hindu Wives: The Hindu Married Women's Right to Separate Residence and Maintenance Act, 1946**

The rights of Hindu women in Bangladesh are governed by a legal framework that is largely uncodified, archaic, and deeply discriminatory. The primary legislation concerning maintenance is **The Hindu Married Women's Right to Separate Residence and Maintenance Act, 1946**, a pre-partition statute that remains in force.<sup>18</sup> This Act does not provide for divorce, which is generally not recognized under traditional Hindu law as applied in Bangladesh, but only allows a wife to claim separate residence and maintenance from her husband under a limited set of circumstances.<sup>19</sup>

According to Section 2 of the Act, a Hindu wife is entitled to this right on grounds such as: if the husband is suffering from a "loathsome disease"; if he is guilty of cruelty that makes it unsafe for her to live with him; if he is guilty of desertion; if he marries again; if he converts to another religion; or for "any other justifiable cause". The grounds are restrictive and place a heavy burden of proof on the wife. The fact that Hindu women in neighbouring India have been granted the right to divorce and more equitable property rights under reformed legislation highlights the stagnant and discriminatory nature of the law in Bangladesh.<sup>20</sup> This disparity leaves Bangladeshi Hindu women in a uniquely vulnerable and disadvantaged legal position.

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<sup>18</sup> The Hindu Married Women's Right to Separate Residence and Maintenance Act 1946.

<sup>19</sup> M Kamal, 'Marital Rights of Hindu Women in Bangladesh' (OSUN Global Commons 2023).

<sup>20</sup> See generally, Hindu Marriage Act 1955 (India).

### 3.3 Maintenance for Christian Wives: Provisions under The Divorce Act, 1869

The maintenance rights of Christian women in Bangladesh are intrinsically linked to the provisions of **The Divorce Act, 1869**, another colonial-era statute.<sup>21</sup> This Act governs divorce and other matrimonial reliefs for the Christian community. It provides for two types of financial support: alimony *pendente lite* (temporary maintenance during the legal proceedings) and permanent alimony. A court can grant alimony *pendente lite* to a wife to cover her living expenses and the costs of the litigation. Upon passing a decree for divorce or judicial separation, the court can order the husband to pay permanent alimony, either as a gross sum or as a periodic payment, for the wife's lifetime. The court determines the amount based on factors such as the wife's fortune, the husband's ability to pay, and the conduct of the parties.

However, the ability to claim permanent alimony is contingent upon securing a divorce, and the grounds for divorce under the 1869 Act are notoriously discriminatory against women.<sup>22</sup> A husband can seek a divorce solely on the ground of his wife's adultery. In contrast, a wife must prove not only her husband's adultery but also an additional aggravating factor, such as incest, bigamy, cruelty, or desertion for two years. This unequal standard makes it significantly more difficult for a Christian woman to obtain a divorce, and consequently, to secure a right to permanent alimony. This reliance on a 150-year-old law with overtly discriminatory provisions places Christian women at a severe disadvantage and is a clear violation of the principle of gender equality.

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<sup>21</sup> The Divorce Act 1869.

<sup>22</sup> S Aktar, 'Protecting Divorced Muslim Women's Right through Maintenance' (2012) III *N.U. Journal of Law*.

### 3.4 The Constitutional Mandate for Equality and Its Interplay with Personal Laws

The persistence of these disparate and often discriminatory personal laws creates a direct and irreconcilable conflict with the fundamental rights guaranteed by the **Constitution of the People's Republic of Bangladesh**. The Constitution, in its Part III, lays down a clear mandate for equality and non-discrimination. Article 27 unequivocally states that "all citizens are equal before law and are entitled to equal protection of law," and Article 28 explicitly provides that "women shall have equal rights with men in all spheres of the State and of public life."<sup>23</sup>

The current family law system, however, institutionalizes inequality. It establishes a fragmented and hierarchical structure where a woman's fundamental rights concerning marriage, divorce, and maintenance are determined not by a uniform standard of justice, but by the religion she happens to follow. A Muslim woman has access to a set of remedies, a Hindu woman to a far more restrictive set, and a Christian woman to yet another. This legal pluralism results in different classes of female citizenship, a reality that is fundamentally at odds with the Constitution's promise of equality for all. The state's failure to reform these personal laws and harmonize them with constitutional principles means that it is actively maintaining a system of legal discrimination against a significant portion of its female population.

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<sup>23</sup> The Constitution of the People's Republic of Bangladesh 1972, arts 27-28.

### 3.5 International Obligations: The Impact of CEDAW and Bangladesh's Reservations

Bangladesh's international commitments further highlight the problematic nature of its domestic family law regime. In 1984, Bangladesh ratified the **Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)**, often described as the international bill of rights for women.<sup>24</sup> By ratifying CEDAW, the state undertook a legally binding obligation to eliminate discrimination against women in all its forms. However, this commitment was significantly undermined by the reservations Bangladesh placed on two of the Convention's most critical provisions: Article 2 and Article 16(1)(c).<sup>25</sup>

Article 2 is the cornerstone of the Convention, obligating state parties to "pursue by all appropriate means and without delay a policy of eliminating discrimination against women," including by repealing all discriminatory laws. Article 16(1)(c) calls for ensuring the "same rights and responsibilities during marriage and at its dissolution." The government's justification for these reservations is that these articles conflict with the Shari'ah-based personal laws of the country. These reservations are not merely a legal technicality; they function as a political shield that legitimizes the state's inaction on family law reform. They provide a convenient excuse to deflect international scrutiny and resist domestic calls for a Uniform Family Code (UFC), a measure that has been recommended by numerous reform commissions and women's rights organizations.<sup>26</sup> By maintaining these reservations, the state creates a fundamental contradiction: it professes a commitment to gender equality on the international stage while simultaneously preserving a legal framework of inequality at home. The reservations are the lynchpin that holds the discriminatory and fragmented system of personal laws in place, effectively freezing family law in time and preventing the realization of substantive equality for the women of Bangladesh.

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<sup>24</sup> Convention on the Elimination of All Forms of Discrimination Against Women (1979).

<sup>25</sup> 'Withdrawal of CEDAW reservations is necessary to ensure gender equality' (UNDP Bangladesh 2019).

<sup>26</sup> 'Time for Bangladesh to withdraw CEDAW reservations' *The Daily Star* (Dhaka, 3 March 2025).

# CHAPTER: FOUR

## INSTITUTIONAL MECHANISMS AND JUDICIAL ENFORCEMENT

### 4.1 The Role and Jurisdiction of the Family Courts

The establishment of Family Courts in Bangladesh through **the Family Courts Ordinance, 1985**, was a significant step towards creating a specialized forum for the adjudication of familial disputes.<sup>27</sup> The primary objective was to provide a mechanism for resolving sensitive family matters in a timely, effective, and less adversarial manner than the conventional civil courts.<sup>28</sup> Under Section 5 of the Ordinance, Family Courts are vested with exclusive jurisdiction to "entertain, try and dispose of any suit" relating to five specific matters: (a) dissolution of marriage, (b) restitution of conjugal rights, (c) dower, (d) maintenance, and (e) guardianship and custody of children. This exclusive jurisdiction means that all formal legal claims for maintenance must be initiated in a Family Court, which is essentially the Courts of Assistant Judges acting in a specialized capacity.

The procedure for instituting a suit for maintenance is laid out in the Ordinance. A suit is commenced by the presentation of a plaint, which must contain all material facts, the relief claimed, and a list of witnesses. The court then issues a summons to the defendant, who is required to file a written statement. A key feature of the Ordinance is its emphasis on reconciliation. Section 10 mandates a pre-trial hearing where the court must attempt to bring about a compromise or reconciliation between the parties. If this fails, the court proceeds to frame issues and record evidence. Another attempt at reconciliation is required under Section 13 after the evidence is closed but before the judgment is pronounced. Decrees for maintenance, if not complied with, can be executed either as a money decree of a civil court or, significantly, as an order for a fine imposed by a Magistrate, which includes the power to imprison the defaulter for up to three months.<sup>29</sup> While the creation of these specialized courts was a progressive move, their effectiveness is often hampered by systemic issues such as case backlogs, procedural delays, and challenges in enforcement.

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<sup>27</sup> The Family Courts Ordinance 1985.

<sup>28</sup> 'Function of Family Court in Bangladesh' (Tahmidur Rahman Remura Wahid, 2023).

<sup>29</sup> The Family Courts Ordinance 1985, ss 6, 10, 13, 16.

## 4.2 The Arbitration Council: An Alternative Forum

As an alternative to the formal court system, Section 9 of **The Muslim Family Laws Ordinance, 1961**, provides for a quasi-judicial mechanism known as the Arbitration Council.<sup>30</sup> This forum is available to a Muslim wife when her husband fails to provide adequate maintenance. The process is initiated by the wife making an application to the Chairman of her local Union Parishad (or municipal body). The Chairman then constitutes the Council, comprising himself and one representative nominated by each of the spouses.

The intended purpose of the Arbitration Council is to offer a swift, accessible, and informal means of dispute resolution at the local level. The Council determines the amount of maintenance payable and issues a certificate to that effect. If the husband fails to pay, the amount can be recovered as arrears of land revenue. However, the efficacy of this body is often limited. Its decisions are not final and are subject to an application for revision before the local Assistant Judge. This adds another layer to the process and can lead to delays. Furthermore, there is a perception that these councils are often influenced by local power dynamics and patriarchal attitudes, which may not be conducive to a fair outcome for the wife, and the MFLO does not mandate a course of action should a Chairman fail to constitute a council.<sup>31</sup> Consequently, while the Arbitration Council exists as a legal option, many women and their legal advisors choose to bypass it and proceed directly to the Family Court.

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<sup>30</sup> The Muslim Family Laws Ordinance 1961, s 9; The West Pakistan Rules under the Muslim Family Laws Ordinance 1961, r 3.

<sup>31</sup> Taslima Monsoor, 'ADR in Family Court: A Critical Review' (Daffodil Int'l University).

### 4.3 Landmark Judicial Pronouncements in Bangladesh: A Critical Analysis

The jurisprudence on maintenance in Bangladesh has been shaped by a few pivotal judgments from the Supreme Court. These cases reveal a judiciary that is at times progressive, willing to rectify historical injustices, yet at other times deeply conservative, hesitant to engage in substantive reinterpretation of religious law.

**4.3.1 *Hefzur Rahman v Shamsun Nahar Begum* (1999) 51 DLR (AD) 172.** This case stands as the definitive, and deeply controversial, ruling on post-divorce maintenance for Muslim women in Bangladesh. The case centered on the interpretation of *mata'a* in Qur'anic verse 2:241. The High Court Division, in a progressive and widely lauded decision, had interpreted *mata'a* as an enforceable right to maintenance, holding that a divorced Muslim woman was entitled to reasonable maintenance from her ex-husband until she remarried.<sup>32</sup> This ruling was seen as a significant step towards providing economic security for vulnerable divorced women, aligning with the activist judicial trend seen in India.

However, this progressive interpretation was short-lived. The Appellate Division of the Supreme Court, upon appeal, reversed the High Court's decision.<sup>33</sup> The apex court adopted a narrow, textualist, and traditionalist interpretation, holding that *mata'a* was not maintenance in the legal sense. Instead, it was defined as a "consolatory offering" or a one-time parting gift, which was morally commendable for a righteous man to give but was not legally enforceable in a court of law.<sup>34</sup> This decision effectively closed the door on post-divorce maintenance beyond the *iddat* period for Muslim women in Bangladesh, marking a moment of profound judicial conservatism and creating a stark divergence from the legal path taken in India. It has left a significant legal vacuum, contributing to the financial precarity of countless divorced women.

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<sup>32</sup> *Muhammad Hefzur Rahman v Shamsun Nahar Begum* (1995) 15 BLD 34.

<sup>33</sup> *Hefzur Rahman v Shamsun Nahar Begum* (1999) 51 DLR (AD) 172.

<sup>34</sup> A M Serajuddin, 'Redress for Women Divorced Unjustly' *The Daily Star* (Dhaka, 15 Nov 2009).

**4.3.2 *Jamila Khatun v Rustom Ali* (1996) 48 DLR (AD) 110.** In contrast to the conservatism of *Hefzur Rahman*, the case of *Jamila Khatun v Rustom Ali* represents a moment of significant judicial progressivism. Before this judgment, the prevailing view was that a wife could not claim maintenance for a past period (*past maintenance*) unless there was a specific agreement to that effect in the marriage contract (*kabinnama*). This rule caused immense hardship, as it meant that a woman who had been neglected for years could only claim maintenance from the date she filed her suit.

In *Jamila Khatun*, the Appellate Division overturned this long-standing precedent. The Court held that a wife's right to maintenance arises from the moment her husband neglects or refuses to maintain her, and she is entitled to claim arrears of maintenance. The Court reasoned that since the Family Courts Ordinance, 1985, did not specify a limitation period for maintenance suits, the residuary provision of **The Limitation Act, 1908** (Article 120), would apply, allowing a claim for up to six years of past maintenance.<sup>35</sup> This landmark decision was a crucial victory for women's rights, as it recognized the injustice of the previous rule and provided a legal basis for women to recover years of unpaid maintenance. The contradictory nature of these two key judgments reveals a judiciary grappling with its role, comfortable with procedural reforms but unwilling to engage in the kind of substantive reinterpretation of religious personal law that could lead to more profound social change.

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<sup>35</sup> *Jamila Khatun v Rustom Ali* (1996) 48 DLR (AD) 110.

#### 4.4 The Role of Alternative Dispute Resolution (ADR) and Legal Aid Services

The legal framework in Bangladesh formally incorporates mechanisms for Alternative Dispute Resolution (ADR) in family matters. **The Family Courts Ordinance, 1985**, explicitly requires the court to attempt reconciliation at two stages: a pre-trial hearing (Section 10) and after the conclusion of evidence (Section 13).<sup>36</sup> This emphasis on mediation is designed to provide a less adversarial and quicker path to resolving sensitive family disputes.<sup>37</sup>

Recognising that many women lack the financial means to access the justice system, Bangladesh enacted **the Legal Aid Services Act, 2000**.<sup>38</sup> This led to the establishment of the National Legal Aid Services Organisation (NLASO), which operates through District Legal Aid Offices to provide free legal assistance to indigent persons. Several non-governmental organisations (NGOs), most notably the Bangladesh Legal Aid and Services Trust (BLAST), also play a crucial role in providing legal representation, mediation services, and rights awareness training to poor and marginalized women.<sup>39</sup>

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<sup>36</sup> The Family Courts Ordinance 1985, ss 10, 13.

<sup>37</sup> 'The Role of Alternative Dispute Resolution (ADR) in Pakistan's Legal System' (ResearchGate 2023).

<sup>38</sup> The Legal Aid Services Act 2000. <sup>39</sup> BLAST, 'Legal Aid' <https://blast.org.bd/programmes/legal-aid/> accessed 9 July 2025.

# **CHAPTER: FIVE**

## **A CRITICAL EVALUATION OF SYSTEMIC CHALLENGES AND DEFICIENCIES**

### **5.1 Procedural Labyrinths and Enforcement Deficits**

While the law provides avenues for claiming maintenance, the procedural journey for a woman seeking this right is often a labyrinth fraught with delays and obstacles. One of the most common tactics used by husbands to frustrate maintenance claims is the abuse of the legal process. It is a frequent practice for a husband, upon being sued for maintenance, to file a frivolous counter-suit for restitution of conjugal rights. This strategy serves to delay the proceedings, increase the legal costs for the wife, and shift the narrative from his failure to maintain to her alleged refusal to cohabit.<sup>40</sup>

Even when a woman successfully navigates the trial process and obtains a maintenance decree, the battle is often only half-won. The enforcement of these decrees presents another formidable challenge. Family Courts are notoriously overburdened, leading to "huge delays" in both the initial adjudication and subsequent execution proceedings, with one former judge reporting a backlog of 700 cases in a single district.<sup>41</sup> When a husband defaults on payment, the law stipulates that the amount is recoverable "as arrears of land revenue," a notoriously slow and cumbersome administrative process ill-suited for providing urgent financial relief.<sup>42</sup> The system's chronic delays and inefficient enforcement mechanisms function as a form of "justice denial by attrition," forcing many women to abandon their claims or settle for a pittance.

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<sup>40</sup> BLAST, 'Women's Economic Rights After Separation or Divorce' (Policy Brief 2014).

<sup>41</sup> BLAST (n 40).

<sup>42</sup> The Muslim Family Laws Ordinance 1961, s 9(3).

## 5.2 Inadequacy of Quantum and Lack of Clear Guidelines

A fundamental flaw in the maintenance regime in Bangladesh is the absence of any fixed rules or clear statutory guidelines for determining the quantum of maintenance.<sup>43</sup> The law merely states that a husband must maintain his wife "adequately," leaving the determination of what constitutes an "adequate" amount entirely to the discretion of the court.<sup>44</sup>

In practice, courts tend to focus narrowly on the husband's "capacity to pay" and the wife's "basic needs," often resulting in minimal, subsistence-level awards. This approach is problematic as it is difficult to prove a husband's true income, and the calculation rarely considers inflation or the wife's significant non-monetary contributions to the marriage.<sup>45</sup> Her years of unpaid domestic labour, childcare, and sacrificed career opportunities are typically ignored. The inadequacy of the quantum is therefore a reflection of the legal system's deeper failure to view marriage as an economic partnership. This contrasts with jurisdictions like India, where courts have started to lay down more structured guidelines to ensure more equitable outcomes.<sup>46</sup>

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<sup>43</sup> 'Protection of Wife's Right to Maintenance in Bangladesh' (2021) 9(2) *Malaysian Journal of Syariah and Law*.

<sup>44</sup> The Muslim Family Laws Ordinance 1961, s 9(1).

<sup>45</sup> Human Rights Watch, 'Will I Get My Dues Before I Die?' (HRW Report 2012).

<sup>46</sup> *Rajnesh v Neha* (2021) 2 SCC 324.

### 5.3 Socio-Economic and Cultural Barriers to Accessing Justice

Beyond the legal and institutional hurdles, women in Bangladesh face a host of powerful socio-economic and cultural barriers. The social stigma associated with divorce and with women who publicly challenge their husbands remains a potent deterrent, creating a "chilling effect" that compels many to suffer in silence.<sup>47</sup> Economic dependency is another critical barrier, as a woman who is financially reliant on her husband's family is in a weak position to initiate legal action.<sup>48</sup> This is compounded by a widespread lack of legal literacy, particularly in rural areas, where many women are unaware of their rights or that legal aid services even exist, rendering the formal justice system inaccessible to those who need it most.<sup>49</sup>

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<sup>47</sup> 'Divorce Laws and Procedures in Bangladesh: Comprehensive Guide' (Legal Seba 2024).

<sup>48</sup> 'Women's Access to Justice in Bangladesh: Constraints and Way Forward' (2017) *Jurnal Undang-Undang*.

<sup>49</sup> 'The challenges in implementing the Parents' Maintenance Act 2013' *The Business Standard* (Dhaka, 30 March 2023).

#### 5.4 The Unresolved Conundrum of Post-Divorce Maintenance for Muslim Women

The legal position of divorced Muslim women in Bangladesh regarding post-divorce maintenance is one of acute vulnerability, a direct consequence of the Supreme Court's conservative stance in the *Hefzur Rahman* case. By interpreting *mata'a* as a non-enforceable "consolatory gift" rather than a right to ongoing maintenance, the judiciary created a significant legal vacuum.<sup>50</sup> This decision leaves a divorced Muslim woman with no legal right to financial support from her former husband beyond the three-month *iddat* period.<sup>51</sup> This situation is a primary driver of female poverty and destitution following divorce. Once the *iddat* period expires, a woman unable to support herself is left with no legal recourse against her ex-husband. This legal position stands in stark contrast to developments in neighbouring India, where judicial activism has carved out a right to a fair and reasonable provision for the future.<sup>52</sup> The unresolved conundrum of post-divorce maintenance remains one of the most critical and pressing issues of gender justice in Bangladesh's family law system.

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<sup>50</sup> *Hefzur Rahman v Shamsun Nahar Begum* (1999) 51 DLR (AD) 172.

<sup>51</sup> Mizanur Rahman, 'Post-Divorce Maintenance (Maa'ta) For Muslim Women' (2018) 23(2) IOSR-JHSS.

<sup>52</sup> *Danial Latifi v Union of India* (2001) 7 SCC 740.

## 5.5 Gaps and Inadequacies in the Laws for Non-Muslim Wives

The legal frameworks governing the maintenance rights of non-Muslim women in Bangladesh are relics of the colonial era. For Hindu women, their rights are governed by the uncodified Hindu law and the outdated **Hindu Married Women's Right to Separate Residence and Maintenance Act, 1946**.<sup>53</sup> This Act does not recognize divorce, trapping women in broken marriages with only a limited right to claim separate maintenance on restrictive grounds.<sup>54</sup> Similarly, Christian women's rights are governed by **The Divorce Act, 1869**, which contains overtly discriminatory grounds for divorce, making it much harder for women than for men to dissolve a marriage.<sup>55</sup> Since the right to permanent alimony is contingent on obtaining a divorce, this inequality directly translates into an inequality in accessing long-term financial support. The persistence of these archaic laws means the state is failing in its constitutional duty to provide equal protection, perpetuating a tiered system of justice based on religious identity.

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<sup>53</sup> The Hindu Married Women's Right to Separate Residence and Maintenance Act 1946.

<sup>54</sup> M Kamal, 'Marital Rights of Hindu Women in Bangladesh' (OSUN Global Commons 2023).

<sup>55</sup> The Divorce Act 1869.

## CHAPTER: SIX

# A COMPARATIVE PERSPECTIVE FROM THE INDIAN SUBCONTINENT AND BEYOND

### 6.1 The Indian Trajectory: Judicial Activism and Legislative Response

The journey of maintenance rights for Muslim women in India offers a compelling and instructive contrast to the situation in Bangladesh. The Indian judiciary, particularly the Supreme Court, has played a profoundly activist role in expanding these rights, often in the face of significant political and social resistance.

**6.1.1 *Mohd. Ahmed Khan v Shah Bano Begum* (AIR 1985 SC 945).** The case of *Shah Bano Begum* is a watershed moment in the history of Indian family law. Shah Bano, a 62-year-old divorced Muslim woman, sought maintenance from her ex-husband under Section 125 of **the Code of Criminal Procedure, 1973 (CrPC)**, a secular provision applicable to all citizens.<sup>56</sup> Her husband argued that under Muslim Personal Law, his liability was limited to the *iddat* period and the payment of dower. The Supreme Court of India delivered a landmark judgment, ruling decisively in favour of Shah Bano. The Court held that Section 125 CrPC was a secular law designed to prevent vagrancy and destitution, and it overrode the conflicting provisions of personal law.<sup>57</sup> It famously declared that there was no conflict between Section 125 and the Qur'an, interpreting the holy text to support the idea of providing for a divorced wife. The judgment also made a strong call for the enactment of a Uniform Civil Code as envisioned in Article 44 of the Indian Constitution. The decision sparked a massive political firestorm, with conservative Muslim groups denouncing it as an interference in their law.

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<sup>56</sup> Code of Criminal Procedure 1973 (India), s 125.

<sup>57</sup> *Mohd. Ahmed Khan v Shah Bano Begum* AIR 1985 SC 945.

**6.1.2 The Muslim Women (Protection of Rights on Divorce) Act, 1986.** In response to the intense political pressure following the *Shah Bano* judgment, the Indian Parliament enacted **the Muslim Women (Protection of Rights on Divorce) Act, 1986**. The Act was widely seen as a legislative reversal of the Supreme Court's decision. It stipulated that a divorced Muslim woman was entitled to maintenance only for the duration of the *iddat* period. Beyond this period, the responsibility for maintaining her, if she was unable to support herself, was shifted to her relatives who would inherit her property, and failing that, to the State Waqf Board. The Act also stated that Section 125 CrPC would only apply to Muslims if both spouses consented. On its face, the Act appeared to strip Muslim women of the rights they had gained under the *Shah Bano* ruling.<sup>58</sup>

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<sup>58</sup> The Muslim Women (Protection of Rights on Divorce) Act 1986 (India), ss 3-5.

**6.1.3 *Danial Latifi v Union of India* (AIR 2001 SC 3958)** The constitutional validity of the 1986 Act was challenged in the case of *Danial Latifi v Union of India*. In a masterful display of judicial creativity, the Indian Supreme Court upheld the Act's constitutionality but interpreted its provisions in a manner that effectively restored the spirit of the *Shah Bano* judgment.<sup>59</sup> The Court focused on Section 3(1)(a) of the Act, which entitles a divorced woman to "a reasonable and fair provision and maintenance to be made and paid to her within the *iddat* period."<sup>60</sup> The Court held that the words "provision and maintenance" were distinct. "Maintenance" covered the needs during the *iddat* period, but "provision" meant that the husband must make a reasonable and fair provision for her entire future. This future provision, the Court ruled, must be a lump-sum payment calculated to meet her needs for the rest of her life (or until she remarries) and must be paid within the *iddat* period. This brilliant interpretation reconciled the Act with the constitutional principles of equality and social justice, ensuring that a divorced Muslim woman would not be left destitute.<sup>61</sup> The *Danial Latifi* judgment provides a powerful model of how a judiciary can use purposive interpretation to advance gender justice, a model that the Bangladeshi judiciary conspicuously failed to follow in *Hefzur Rahman*.

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<sup>59</sup> *Danial Latifi v Union of India* (2001) 7 SCC 740.

<sup>60</sup> The Muslim Women (Protection of Rights on Divorce) Act 1986 (India), s 3(1)(a).

<sup>61</sup> 'Danial Latifi v. Union of India: Upholding Maintenance Rights' (CaseMine 2023).

## 6.2 Developments in Pakistan: Interpreting a Shared Legacy

Pakistan shares the same foundational statute as Bangladesh in this area—**The Muslim Family Laws Ordinance, 1961**. However, its judicial and legislative trajectory has shown some distinct developments. The Pakistani judiciary has generally affirmed that the husband's obligation to maintain his wife is absolute. In the landmark case of *Haseen Ullah v Naheed Begum*, the Supreme Court of Pakistan reiterated that a husband is obligated to provide maintenance under Islamic law as long as the wife is faithful and willing to fulfill her matrimonial obligations.<sup>62</sup> However, the effectiveness of the legal system in Pakistan faces challenges similar to those in Bangladesh. The Lahore High Court has criticized Family Courts for passing "stereotype orders" in maintenance cases and for failing to properly assess the husband's financial capacity and the wife's actual needs.<sup>63</sup> While there have been progressive judgments, such as the Islamabad High Court's decision in *Shahab Saqib v Sadaf Rasheed*, the overall system still struggles with enforcement issues and a lack of comprehensive statutory protection for divorced women.<sup>64</sup>

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<sup>62</sup> *Haseen Ullah v Naheed Begum* (Civil Appeal No 473 of 2020).

<sup>63</sup> 'Maintenance allowance cases in family courts' *Dawn* (Lahore, 6 October 2022).

<sup>64</sup> *Shahab Saqib v Sadaf Rasheed* (W.P. No 1366 of 2019).

### 6.3 Lessons from a Common Law Jurisdiction: The 'Clean Break' Principle in the United Kingdom

To provide a contrasting perspective, it is useful to briefly examine the approach in a developed common law jurisdiction like the United Kingdom. The UK's **Matrimonial Causes Act 1973** grants courts wide discretionary powers to make financial orders upon divorce, including orders for periodic payments (spousal maintenance).<sup>65</sup> However, a central guiding principle in English family law is the concept of a "clean break."<sup>66</sup> The principle posits that, wherever possible, the financial obligations between the spouses should be terminated as soon as is just and reasonable to encourage financial independence. This can be achieved by dismissing future maintenance claims, often in exchange for a larger share of the capital assets.<sup>67</sup> While a direct transplant of the clean break principle may not be appropriate for the socio-economic context of Bangladesh, it offers a valuable alternative perspective that prioritizes self-sufficiency and the finality of litigation.

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<sup>65</sup> Matrimonial Causes Act 1973 (UK).

<sup>66</sup> 'Clean break or spousal maintenance after divorce or dissolution' (MoneyHelper 2024).

<sup>67</sup> 'What is Spousal Maintenance' (Blanchards Law 2025).

#### **6.4 Synthesis of Comparative Findings and Comparative Table**

The comparative analysis reveals a fascinating divergence in the legal evolution of three nations with a shared legal heritage. India, through bold judicial activism in *Shah Bano* and creative interpretation in *Danial Latifi*, has carved out the most robust protections for divorced Muslim women, despite legislative backlash. Pakistan's judiciary has shown a commitment to upholding the wife's absolute right to maintenance during marriage, but has been more conservative regarding post-divorce provisions and struggles with similar enforcement challenges as Bangladesh. Bangladesh stands out as the most judicially conservative of the three, with the *Hefzur Rahman* decision cementing a legal framework that offers the least protection to divorced Muslim women. The laws for minority women remain archaic and unreformed in both Bangladesh and Pakistan, whereas India has made significant strides in codifying and modernizing Hindu law. This comparative picture underscores that legal outcomes are not predetermined by shared origins but are shaped by the political will to legislate and the judiciary's willingness to interpret laws in a manner that advances substantive justice.

**Table 6.4.1: Comparative Matrix of Spousal Maintenance Laws**

<b>Feature</b>	<b>Bangladesh</b>	<b>India</b>	<b>Pakistan</b>
<b>Primary Statute(s)</b>	MFLO 1961; Family Courts Ord. 1985; Act of 1946 (Hindu); Act of 1869 (Christian)	CrPC 1973; Hindu Marriage Act 1955; Muslim Women Act 1986	MFLO 1961; Family Courts Act 1964; Dissolution of Muslim Marriages Act 1939
<b>Secular Remedy</b>	Limited, primarily Family Court.	Yes, CrPC s 125 is a powerful remedy for all women.	Limited, primarily personal law.
<b>Post-Divorce Maintenance</b>	Denied beyond iddat. Mata'a is a non-enforceable gift.	Enforceable as a "reasonable and fair provision" for the future.	Generally limited to the iddat period.
<b>Key Judicial Precedent</b>	Hefzur Rahman (conservative); Jamila Khatun (progressive on past maintenance).	Shah Bano Begum (activist); Danial Latifi (activist interpretation).	Haseen Ullah (affirmed duty during marriage).
<b>Enforcement Mechanism</b>	Cumbersome; often as "arrears of land revenue".	Enforced via warrants, attachment of property, and imprisonment.	Enforcement through Family Courts faces significant delays.
<b>Minority Law Status</b>	Largely uncodified and archaic.	Substantially codified and reformed.	Unreformed; relies on traditional law.

# CHAPTER: SEVEN

## RECOMMENDATIONS AND CONCLUSION

### 7.1 Proposals for Legislative Reform

The critical analysis conducted in this thesis reveals that the legal framework for maintenance in Bangladesh is fragmented, outdated, and inadequate. Substantive legislative reform is therefore the most urgent and fundamental requirement for ensuring justice for women.

**7.1.1 Enact a Uniform Family Code (UFC)** The most comprehensive and equitable solution to the problems identified is the enactment of a Uniform Family Code (UFC). As recommended by various reform commissions and civil society organizations, a UFC would create a single, secular set of laws governing marriage, divorce, maintenance, custody, and inheritance for all citizens of Bangladesh, irrespective of their religion.<sup>68</sup> This would eliminate the current discriminatory hierarchy where the rights of a woman are contingent upon her religious identity. A UFC would harmonize family law with the constitutional guarantees of equality under Articles 27 and 28, ensuring that every woman has access to the same rights and remedies. While politically challenging, the law could initially be made optional, allowing communities to gradually adapt, as has been suggested by the Women's Affairs Reform Commission.<sup>69</sup>

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<sup>68</sup> Citizens' Initiatives on CEDAW, Bangladesh, 'Alternative Report on the Sixth and Seventh Periodic Report' (OHCHR 2011).

<sup>69</sup> 'Reform Commission on Women's Affairs submits report to Dr Yunus' *Prothom Alo* (Dhaka, 19 April 2025).

**7.1.2 Amend the MFLO and Family Courts Ordinance.** In the interim, or the absence of the political will for a UFC, targeted amendments to existing laws are crucial. **The Muslim Family Laws Ordinance, 1961**, and **The Family Courts Ordinance, 1985**, must be amended to address the critical gap in post-divorce maintenance for Muslim women. The law should be amended to explicitly define *mata'a* as a "reasonable and fair provision" for the future of the divorced wife, drawing direct inspiration from the Indian Supreme Court's interpretation in *Danial Latifi*. This would codify a right to a lump-sum payment or periodic payments sufficient to prevent destitution until remarriage, thereby legislatively overturning the conservative precedent set in *Hefzur Rahman*.

**7.1.3 Introduce Clear Guidelines for Quantum** To address the issue of inconsistent and inadequate maintenance awards, the law must be amended to introduce clear, though non-exhaustive, criteria for courts to follow. This would shift the focus from mere subsistence to ensuring a dignified standard of living. The criteria should explicitly require courts to consider:

- The standard of living enjoyed by the parties during the marriage.
- The wife's age, health, and educational qualifications.
- The wife's non-monetary contributions to the family, including childcare and domestic labour.
- The wife's loss of earning capacity as a result of the marriage.
- The income, assets, and financial obligations of both parties.
- The needs of any dependent children.

This would bring greater consistency, fairness, and predictability to the determination of maintenance amounts.

## **7.2 Recommendations for Institutional Strengthening**

Legislative reform alone is insufficient without institutions capable of effectively implementing the law.

**7.2.1 Enhance Family Court Efficacy** The capacity of the Family Courts must be significantly enhanced. This requires a multi-faceted approach:

- **Reduce Delays:** Implement strict, mandatory timelines for the disposal of maintenance applications, particularly for interim maintenance, which should be decided summarily at the first or second hearing.
- **Specialized Training:** Introduce mandatory and continuous gender-sensitization training for Family Court judges, court staff, and lawyers to combat patriarchal biases and ensure a more empathetic and just approach to family disputes.
- **Infrastructure Development:** Increase the number of Family Courts and provide them with adequate resources, including staff and modern infrastructure.

- **7.2.2 Reform Enforcement Mechanisms** The current process for enforcing maintenance decrees is a major bottleneck. The cumbersome procedure of recovering dues "as arrears of land revenue" should be replaced with more direct and effective mechanisms.<sup>70</sup> The law should be amended to empower Family Courts to issue orders for the direct attachment of the husband's salary, bank accounts, or other movable and immovable properties. Willful non-compliance with a maintenance order should be treated as contempt of court, with swift and stringent penalties, including imprisonment, to act as a credible deterrent.<sup>71</sup>

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<sup>70</sup> The Muslim Family Laws Ordinance 1961, s 9(3).

<sup>71</sup> Law Commission of India, 'Report on Criminal Liability for Failure by Husband to Pay Maintenance' (Report No 125, 1987).

**7.2.3 Improve Legal Aid Services** An accessible and effective legal aid system is crucial for ensuring that poor and vulnerable women can vindicate their rights. The following reforms are necessary:

- **Increased Funding:** The government must significantly increase the budget for the National Legal Aid Services Organisation (NLASO) to ensure it has the resources to meet the demand for its services.
- **Simplified Procedures:** The application process for legal aid must be simplified and decentralized, with less bureaucratic red tape to ensure swift approval for those in urgent need.
- **Expanded Eligibility:** The rigid income-based eligibility criteria should be replaced with a more flexible "merits and means" test that considers the applicant's overall economic hardship, including the number of dependents and the high cost of litigation, rather than just a fixed income ceiling.<sup>72</sup>

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<sup>72</sup> 'Legal aid: Systemic barriers and access to justice in Bangladesh' *The Daily Star* (Dhaka, 15 June 2025).

### 7.3 Policy Imperatives

Broader policy changes are required to create an enabling environment for the realization of women's rights.

**7.3.1 Withdrawal of CEDAW Reservations** The government of Bangladesh must demonstrate its unequivocal commitment to gender equality by withdrawing its reservations to Articles 2 and 16(1)(c) of CEDAW.<sup>73</sup> These reservations are the primary legal and political justification for the state's failure to reform discriminatory personal laws. Their withdrawal would signal a genuine political will to harmonize domestic law with international human rights standards and would remove a major obstacle to the enactment of a Uniform Family Code.

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<sup>73</sup> 'Time for Bangladesh to withdraw CEDAW reservations' *The Daily Star* (Dhaka, 3 March 2025).

**7.3.2 Public Awareness Campaigns** The government, in collaboration with NGOs and civil society, should launch sustained public awareness campaigns. These campaigns should aim to educate women, particularly in rural and marginalized communities, about their legal rights to maintenance and the procedures for claiming them. They should also work to challenge and dismantle the deep-rooted social stigma associated with divorce and women who assert their legal rights, fostering a more supportive social environment for women seeking justice.

#### **7.4 Concluding Remarks: Synthesizing the Analysis and Future Outlook**

This thesis has undertaken a comprehensive evaluation of a wife's right to maintenance in the legal system of Bangladesh. The analysis has journeyed from the doctrinal foundations of this right in Islamic jurisprudence to the complex and often contradictory web of statutes and judicial precedents that govern it in practice. It has been demonstrated that the right to maintenance in Bangladesh is a right in peril, promised in law but frequently denied in reality. The legal framework is a fragmented patchwork of colonial-era statutes and post-independence ordinances that creates a hierarchy of rights based on religion, a situation that is constitutionally untenable and morally indefensible.

The institutional mechanisms designed to deliver justice are hobbled by procedural delays, enforcement deficits, and a lack of clear guidelines, while powerful socio-cultural barriers prevent many women from even approaching the courthouse door. The comparative analysis with India and Pakistan has revealed that while these nations face similar challenges, the judicial and legislative choices they have made have led to vastly different outcomes, particularly for divorced Muslim women. The activist and purposive approach of the Indian judiciary stands in stark contrast to the conservatism that has characterized the jurisprudence in Bangladesh.

The path forward requires bold and concerted action on multiple fronts. It demands the political courage to undertake fundamental legislative reform, ideally through a Uniform Family Code, and to withdraw the reservations to CEDAW that shield discriminatory laws from scrutiny. It requires a judiciary that is willing to interpret laws not just textually, but purposively, with a firm commitment to the constitutional vision of gender justice. It necessitates the strengthening of our courts and legal aid services to make them more accessible and effective. Finally, it calls for a societal transformation, driven by education and awareness, to create a culture where women's rights are respected not just in law but in life. The challenge is immense, but it must be met if the right to maintenance is to become a lived reality, rather than a legal fiction, for the women of Bangladesh.

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