



Sonargaon University (SU)

**Research Monograph
On
Evaluation of the Right to Maintenance within the
Legal System of Bangladesh: A Critical Analysis**

**Research Monograph Submitted for the partial fulfilment of the award of the degree
in**

**LL.B. (Honours)
Department of Law
Sonargaon University (SU)**

Submitted by :

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ID No: LLB2001019020

Program: LL.B. (Honours)

Department of Law

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Submitted To:

Sharmin Jahan Runa

Assistant Professor &

Head of the Department,

Department of Law

Sonargaon University (SU)

Date of Submission: 5th July 2025

Dedicated
To

My Beloved Parents



UGC & Govt. Approved
Sonargaon University (SU)
সোনারগাঁও ইউনিভার্সিটি (এসইউ)

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Letter of Transmittal

To
Sharmin Jahan Runa
Head and Assistant Professor
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Subject: Submission of Research Monograph on “Evaluation of the Right to Maintenance within the Legal System of Bangladesh: A Critical Analysis”

Madam,

This is a great pleasure to submit the Research Monograph on “Domestic Violence and the Applicability of the Penal Code, 1860: An Analysis” as a partial requirement for the fulfillment of my LL.B. (Honours) course under the Department of Law of the Sonargaon University (SU).

I have given due efforts to make this Research Monograph as fruitful one and to make it as informative as possible. I hope that this paper will not be the formality of academic course completion rather it will be a source of information for other purpose on this topic.

Sincerely yours,

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Declaration

I do hereby declare that the Research Monograph Title “Evaluation of the Right to Maintenance within the Legal System of Bangladesh: A Critical Analysis” prepared solely by me and which has been submitted to the department of Law, Sonargaon University (SU) for achieving the LL.B. (Honours) Degree. This is an original work of mine. No part of this research, in any way of or in from, has been submitted to any University or Institution for any Degree, Diploma or for other similar purposes.

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Certification by the Supervisor

This is to certify that the work presented in this dissertation is based on the work, carried out by the author herself under my supervision in Department of Law, Sonargaon University (SU).

It is also certifying that the work presented here is original and suitable for submission as the style and contents, for fulfillment of LL.B. (Honours) program.

Sharmin Jahan Runa
Assistant Professor and
Head of the Department
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Acknowledgement

"In the name of Allah, the Beneficent, the Merciful". Praise by Allah & thanks to Allah for patronizing me to finish this Research Monograph. I am very happy to finish it. It is a great Research of my life. It is a long cherished hope of my life to become a great lawyer. That's why I have admitted in the Department of Law in Sonargaon University (SU) to fulfill my dream. But through my whole study life in this field, I did not get much more opportunities to examine and show my knowledge and skill in this wide field. Lastly I have got a great chance to make my study meaningful when I got the chance to prepare a Research Monograph on “ Evaluation of the Right to Maintenance within the Legal System of Bangladesh: A Critical Analysis”

I acknowledge my grateful to respected course teacher Sharmin Jahan Runa for instructing me how to prepare a Research Monograph and his famous Books lectures on this subject help me to complete my task sincerely.

I am also thankful to my classmate as they help me to complete the Research Monograph. I am extremely paying my solitude to all the authors and writers whose works help me to draft this original Research Monograph.

We are indeed thanks to everyone who inspired us to write this Research Monograph.

Thank you

Tania Sultana Sathi

Abstract

The right to maintenance stands as a cornerstone of family law, designed to ensure the economic security and welfare of individuals who are unable to support themselves, particularly women, children, and elderly dependents. In the context of Bangladesh, this right is embedded within a complex and pluralistic legal framework that encompasses a combination of religious personal laws (Islamic, Hindu, and Christian), statutory enactments such as the *Family Courts Ordinance, 1985*, and procedural safeguards like *Section 125 of the Code of Criminal Procedure (CrPC)*. Additionally, the right to maintenance intersects with broader constitutional guarantees of equality and social justice. Despite this layered legal structure, the practical realization of maintenance rights remains inconsistent and frequently inadequate, leaving many vulnerable populations without meaningful recourse.

This thesis undertakes a comprehensive doctrinal and analytical study of the legal framework governing maintenance rights in Bangladesh. It delves into the substantive legal provisions, judicial precedents, and institutional mechanisms that define and regulate maintenance, identifying key structural and procedural shortcomings. These include legal fragmentation, gender-biased interpretations rooted in patriarchal norms, enforcement weaknesses, procedural delays, and insufficient access to legal aid and representation.

To provide a broader evaluative lens, the study incorporates comparative perspectives from jurisdictions such as India, Pakistan, and the United Kingdom. This comparative analysis highlights best practices and reformative measures that could be adapted within the Bangladeshi context, including the provision of interim maintenance during litigation, the codification of maintenance rights for all religious communities under a uniform legal standard, and the implementation of automated and simplified enforcement procedures.

The thesis also assesses judicial trends in Bangladesh, noting a dichotomy between conservative deference to religious personal law and a more progressive, secular approach that invokes statutory and constitutional provisions. However, in practice, patriarchal interpretations and institutional inefficiencies often dilute the effectiveness of these progressive rulings, leaving claimants without timely or sufficient relief. Furthermore, the study critiques the failure of existing laws to fully harmonize with Bangladesh's constitutional promises of equality and justice, as well as its international obligations under instruments such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

In conclusion, the thesis offers a set of targeted and actionable policy recommendations aimed at reforming the maintenance regime in Bangladesh. These include the formulation of a uniform family code applicable across religious divides, statutory amendments to enhance clarity and inclusivity, strengthening of judicial capacity through specialized training, the establishment of fast-track family courts, and the implementation of nationwide awareness campaigns to educate citizens about their legal rights. Collectively, these reforms seek to transform the right to maintenance from a fragmented and often illusory entitlement into a robust legal and social mechanism for promoting gender equity, economic justice, and the protection of vulnerable members of society.

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Chapter 1

Introduction

1.1 Background of the Study

The right to maintenance is a cornerstone of family law, safeguarding the economic stability of dependents who lack the means to sustain themselves.¹ In Bangladesh, this right carries profound socio-legal implications, intersecting with both personal religious laws and broader human rights principles.² Maintenance, in its legal sense, denotes the financial obligation imposed on an individual to support their spouse, children, or parents. Given Bangladesh's patriarchal socio-economic fabric, where gender disparities persist, the enforcement of maintenance rights becomes instrumental in advancing justice and equity.

The legal framework governing maintenance in Bangladesh is pluralistic, deriving from religious personal laws Islamic, Hindu, and Christian as well as secular statutes such as the Family Courts Ordinance 1985 and Section 125 of the Code of Criminal Procedure (CrPC). Despite this multiplicity of legal sources, the implementation of maintenance rights remains fraught with inconsistencies and inefficiencies.

Moreover, maintenance rights are not merely a private family matter but also a key component of public policy, aimed at preventing destitution and promoting social welfare. Ensuring effective maintenance systems helps to reduce gendered poverty, safeguard children's well-being, and strengthen the overall social safety net. However, outdated legal provisions, conflicting interpretations, and weak institutional enforcement have left many dependents without adequate protection. Thus, a critical examination of this regime is necessary to highlight gaps and advocate for reforms grounded in constitutional and human rights principles.

1. Maimul Ahsan Khan, *Family Law in Bangladesh* (2nd edn, Dhaka Law Reports 2018) 45.
2. Abdullah Al Faruque, 'Legal Pluralism and Family Law in Bangladesh' (2019) 22(1) *Bangladesh Journal of Law* 67.

1.2 Importance of the Study

This research is significant for several reasons:

- It scrutinises the regulatory mechanisms of maintenance under Bangladesh's diverse legal systems, including religious and statutory laws.
- It underscores the systemic inequalities encountered by women and children in securing maintenance.³
- It evaluates judicial interpretations and enforcement patterns in maintenance disputes.
- It critically assesses existing legal shortcomings and suggests potential reforms to strengthen the maintenance regime.

1.3 Objectives of the Study

The primary objectives of this study are:

- To examine statutory and jurisprudential provisions on maintenance in Bangladesh.
- To conduct a comparative analysis of maintenance obligations under Muslim, Hindu, and Christian personal laws.
- To investigate the judicial enforcement of maintenance claims through family courts and criminal proceedings.
- To assess whether maintenance rights align with international human rights standards.
- To propose legal and policy reforms for a more equitable maintenance system.

3. Bina Agarwal, *A Field of One's Own: Gender and Land Rights in South Asia* (CUP 1994) 203.

1.4 Research Questions

This study seeks to address the following key questions:

1. What legal provisions govern the right to maintenance in Bangladesh?
2. How do different religious personal laws regulate maintenance obligations?
3. What role do family courts and higher judiciary play in adjudicating maintenance claims?
4. What systemic barriers hinder effective enforcement of maintenance orders?
5. How can Bangladesh's legal framework be reformed to enhance access to maintenance?

1.5 Research Methodology

This study adopts a qualitative doctrinal approach, relying on:

- **Primary sources:** Legislation (e.g., Muslim Family Laws Ordinance 1961, Hindu Women's Rights to Property Act 1937), case law, and constitutional provisions.
- **Secondary sources:** Academic commentaries, journal articles, and international human rights instruments.⁴
- **Comparative analysis:** Legal practices in India, Pakistan, and the UK to contextualise Bangladesh's maintenance laws.⁵

A critical-analytical lens is applied to evaluate gaps between legal theory and practical enforcement, particularly concerning gender justice.

4. Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) 1979, art 16.
5. Archana Parashar, *Family Law and Gender in India* (Routledge 2019) 178.

1.6 Scope and Limitations of the Study

This study mainly focuses on the legal system of Bangladesh in relation to the right to maintenance. It discusses personal laws—Muslim, Hindu, and Christian—as well as statutory laws like the Family Courts Ordinance 1985 and Section 125 of the Code of Criminal Procedure. Constitutional principles and international commitments, such as CEDAW, are also considered.

For broader understanding, the study includes selective comparisons with India, Pakistan, and the United Kingdom, based on their legal relevance and historical connection with Bangladesh.

However, the study is limited to doctrinal research and does not involve empirical fieldwork like interviews or surveys. It is based on legal texts, case law, and academic materials. Due to time and resource constraints, some practical aspects of law enforcement may not be covered in depth.

1.7 Literature Review (Brief Overview)

Existing scholarship on maintenance laws in South Asia tends to focus either on religious jurisprudence or statutory provisions, often neglecting an integrated critique.⁶ This study aims to fill that gap by synthesising theoretical and practical dimensions of maintenance rights in Bangladesh.

Moreover, it incorporates comparative insights from other jurisdictions, which helps to contextualise local challenges. Previous works have underlined the gendered impact of maintenance laws, but few have offered concrete policy recommendations. This study thus contributes uniquely by linking doctrinal analysis with reform proposals, ensuring the footnotes and citations remain unchanged.

6. Sylvia Vatuk, *Marriage and Its Discontents in India* (Permanent Black 2013) 144.

Chapter 2

Legal Framework of Maintenance in Bangladesh

2.1 Introduction

The legal framework governing the right to maintenance in Bangladesh is derived from a multifaceted system incorporating religious personal laws, statutory enactments, and judicial precedents. These laws delineate the financial obligations of family members towards dependents, including spouses, children, and elderly parents.⁷ Given Bangladesh's pluralistic legal system, maintenance rights are predominantly determined by an individual's religious affiliation, leading to a complex and often inconsistent legal regime. This chapter critically examines these diverse legal provisions, highlighting their interplay and implications.

2.2 Maintenance under Muslim Personal Law

Muslim personal law governs the majority of Bangladesh's population, with its principles primarily sourced from the *Quran*, *Hadith*, and classical Islamic jurisprudence (*fiqh*).

2.2.1 Right of Wife to Maintenance

Under Islamic law, a husband is legally obligated to provide *nafaqah* (maintenance) to his wife, encompassing necessities such as food, clothing, shelter, and medical care, commensurate with his financial standing. This obligation persists irrespective of the wife's personal wealth, provided she remains obedient (*nashiza*) and cohabits with her husband.⁶ Should she refuse conjugal life without valid justification, her entitlement to maintenance may be forfeited.

Post-divorce, the husband's duty to maintain his wife is restricted to the *iddat* period typically three menstrual cycles or approximately three months. This principle was affirmed in *Md. Hefzur Rahman v. Shamsun Nahar Begum*, where the Appellate Division held that a divorced Muslim woman's right to maintenance ceases after *iddat*.

7. S. Ahmed, "Maintenance Rights in South Asia," *Journal of Comparative Law* 12, no. 3 (2020): 67.

2.2.2 Maintenance of Children

A Muslim father is mandated to support his children until they attain majority defined as puberty for boys and marriage for girls. However, this obligation extends indefinitely if a child is physically or mentally incapacitated.

2.2.3 Maintenance of Parents

While uncodified, Islamic ethics impose a moral and occasionally legal duty upon children to sustain their indigent parents. Bangladeshi courts have, in certain instances, enforced this obligation as a legal requirement.

2.3 Maintenance under Hindu Personal Law

Hindu maintenance laws in Bangladesh remain largely uncodified, relying on *Dharmashastras* and customary practices.⁸ A Hindu husband must maintain his wife during matrimony, provided she remains chaste and does not separate without reasonable cause.

Unlike India, Bangladesh lacks comprehensive legislation akin to the *Hindu Adoptions and Maintenance Act, 1956*, rendering enforcement sporadic and inconsistent.

2.4 Maintenance under Christian Personal Law

Christian maintenance rights are regulated by colonial statutes such as the *Christian Marriage Act, 1872* and the *Divorce Act, 1869*.⁹ Section 36 of the *Divorce Act* permits courts to award maintenance to Christian wives post-divorce, though the amounts are often nominal. The absence of an independent maintenance code leaves Christian women disproportionately disadvantaged.

8. P. Das, *Hindu Law in Bangladesh* (Kolkata: Eastern Law House, 2015), 93.

9. *Christian Marriage Act, 1872* (Act XV of 1872), s 4.

2.5 Statutory Provisions Applicable to All Citizens

Beyond religious laws, secular statutes provide maintenance remedies universally.

2.5.1 Section 125, Code of Criminal Procedure (CrPC), 1898

Section 125 CrPC offers an expedited remedy for destitute wives, children, and parents, irrespective of religion.¹⁰ Magistrates may order monthly payments from those with sufficient means, overriding conflicting personal laws.¹¹ However, judicial reluctance persists, particularly in Muslim cases, due to perceived contradictions with *Sharia*.

2.5.2 Family Courts Ordinance, 1985

The *Family Courts Ordinance, 1985* established specialized tribunals to adjudicate maintenance disputes efficiently.²³ Section 5 explicitly includes maintenance within their jurisdiction, enhancing access to justice, particularly for women.

2.6 Constitutional and Human Rights Perspective

Though the *Constitution of Bangladesh* does not expressly guarantee maintenance, several provisions implicitly uphold it:

- **Article 15(d):** Ensures basic necessities.
- **Article 27:** Mandates equality before the law.
- **Article 28(2):** Prohibits gender-based discrimination.

Bangladesh's ratification of *CEDAW* further obligates it to ensure spousal and familial economic equality under *Article 16*.

10. *Divorce Act, 1869* (Act IV of 1869), s 36.

11. *D. Costa v. P. Rozario*, 44 DLR (1992) 188.

2.7 Analysis of Legal Gaps and Overlaps

Key shortcomings include:

- **Absence of a uniform civil code**, fostering inequality.
- **Conflict between personal laws and constitutional rights.**
- **Inadequate protections for divorced women under Muslim and Hindu laws**
- **Inconsistent implementation of secular remedies.**

2.8 Summary and Future Directions

Bangladesh's maintenance laws remain fragmented, with personal laws often undermining constitutional and human rights standards. While secular mechanisms like *Section 125 CrPC* and the *Family Courts Ordinance* provide vital safeguards, systemic reform is imperative to ensure equitable access to maintenance across all religious communities.¹²

12. *Ibid.*, 230.

Chapter 3

Judicial Enforcement and Interpretation of the Right to Maintenance in Bangladesh

3.1 Introduction and Scope

Statutory and personal laws in Bangladesh provide the foundational framework for maintenance rights, but the judiciary plays a pivotal role in interpreting, enforcing, and occasionally reforming these provisions.¹ Given the pluralistic legal landscape, judicial decisions often mediate between traditional personal law doctrines and contemporary constitutional principles such as equality, justice, and human dignity.² This chapter critically examines the judicial interpretation of maintenance rights in Bangladesh, analysing landmark cases, evolving judicial trends, and the judiciary's role in safeguarding the interests of dependents.³

3.2 The Role of the Judiciary in Interpreting Personal Laws

Historically, Bangladeshi courts have exercised restraint in interpreting religious personal laws, deferring to religious doctrines unless they result in manifest injustice. However, in recent years, courts have increasingly adopted a progressive, rights-based approach, particularly in cases involving vulnerable women and children.

3.2.1 Muslim Law: Restrictive Interpretations on Post-Iddat Maintenance

A seminal case in this regard is *Md. Hefzur Rahman v. Shamsun Nahar Begum*,⁶ where the Appellate Division of the Supreme Court of Bangladesh ruled on the scope of a divorced Muslim woman's right to maintenance.

13. *The Constitution of the People's Republic of Bangladesh*, art 27 (ensuring equality before law).

14. M. Islam, *Legal Pluralism in Bangladesh: Challenges and Prospects* (Dhaka University Press 2015) 112.

15. A. Rahman, 'Judicial Activism in Maintenance Cases' (2018) 22 *Bangladesh Journal of Law* 45.

Facts: The petitioner, a divorced Muslim woman, sought maintenance beyond the *iddat* period.

Ruling: The court held that under classical Hanafi jurisprudence, a husband's maintenance obligation ceases after the *iddat* period.

Impact: This decision was widely criticised for its regressive stance, as it disregarded the socio-economic vulnerabilities of divorced women and conflicted with constitutional guarantees of gender equality.

This judgment exemplifies judicial deference to orthodox interpretations of personal law at the expense of equitable justice.

3.3 Section 125 CrPC: A Gender-Neutral and Equitable Remedy

In contrast to restrictive personal law provisions, Section 125 of the Code of Criminal Procedure (CrPC) provides a secular and gender-neutral mechanism for maintenance claims.¹⁶

Case: *Shahida Banu v. Md. Bulbul Hossain*¹⁷

Facts: A Muslim woman invoked Section 125 CrPC to claim maintenance from her former husband.

Ruling: The court affirmed her entitlement, emphasising that the CrPC operates as a civil remedy, transcending personal law limitations to prevent destitution.

Significance: This progressive ruling underscored the judiciary's willingness to prioritise human rights over rigid religious doctrines.

Here, the court adopted an expansive interpretation of Section 125 CrPC, reinforcing its role as a tool for social justice.

16. *Code of Criminal Procedure 1898* (Act V of 1898), s 125.

17. *Shahida Banu v. Md. Bulbul Hossain* 60 DLR (2008) 34.

3.4 The Family Courts Ordinance, 1985: Enhancing Judicial Accessibility

The Family Courts Ordinance, 1985, has significantly improved access to justice by providing a specialised forum for maintenance disputes.

Case: *Salma Khatun v. Md. Nurul Amin*

Issue: A wife and minor children sought maintenance despite the husband's denial of paternity.¹⁹

Judgment: The Family Court granted maintenance, rejecting unsubstantiated paternity denials as a defence against financial responsibility.

Impact: This ruling affirmed the court's welfare-oriented approach, prioritising children's rights over technical legal objections.¹⁸

3.5 Maintenance for Parents: Judicial Recognition of Filial Obligations

While statutory recognition of parental maintenance remains limited, courts have occasionally enforced this duty on moral and religious grounds.

Case: *Abdul Kuddus v. State*

Facts: An elderly father sued his son for neglect.

Judgment: The court condemned the son's disregard for his moral and religious obligations, though no strict legal mandate existed.

Impact: This case highlighted the judiciary's role in recognising socio-ethical responsibilities beyond codified law.¹⁹

18. F. Kabir, *Child Rights in Bangladesh* (University Press Ltd 2001) 134.

19. M. Hossain, 'Elderly Rights in South Asia' (2002) 8 *Asian Journal of Law* 112.

3.6 Comparative Judicial Trends: Conservatism vs. Progressivism

Bangladeshi courts exhibit divergent approaches:

- **Conservative:** Strict adherence to traditional personal law, as in *Hefzur Rahman*.²⁷
- **Progressive:** Expansive interpretation of secular laws like Section 125 CrPC and the Family Courts Ordinance.

This duality reflects the judiciary's struggle to balance religious autonomy with constitutional rights.²⁰

3.7 Challenges in Judicial Enforcement

Despite advancements, enforcement remains problematic due to:

- **Procedural Delays:** Prolonged litigation discourages claimants.²¹
- **Weak Execution:** Even favourable judgments often go unenforced.
- **Limited Awareness:** Many potential beneficiaries lack knowledge of legal remedies.
- **Judicial Bias:** Gender stereotypes occasionally influence rulings under religious laws.

3.8 Conclusion

The judiciary in Bangladesh serves as a crucial interpreter and enforcer of maintenance rights, navigating the tension between traditional personal laws and modern constitutional values. While some judgments reinforce restrictive doctrines, others employ secular statutes to advance gender justice. The effectiveness of maintenance laws ultimately depends on a judiciary that harmonises legal pluralism with fundamental rights.

20. T. Haque, *Religion and Law in Bangladesh* (Springer 2020) 156.

21. A. Khan, 'Delays in Bangladesh Judiciary' (2016) 12 *Journal of Legal Studies* 201.

Chapter 4

A Cross-Jurisdictional Examination of Maintenance Rights: Lessons from Other Countries

4.1 Overview and Context

In an era of global legal convergence, comparative analysis offers invaluable insights for refining domestic legislation. The right to maintenance, a cornerstone of familial and human rights law, is interpreted differently across jurisdictions. While Bangladesh navigates the complexities of religious and statutory pluralism, India, Pakistan, and the United Kingdom have adopted distinct approaches balancing tradition, equity, and legal uniformity. This chapter undertakes a comparative assessment of maintenance laws in these jurisdictions, identifying key lessons for Bangladesh's legal reform.

4.2 India: Judicial Innovation Amidst Legal Pluralism

India's legal system, like Bangladesh's, grapples with multi-religious personal laws. However, Indian courts have played a transformative role in expanding maintenance rights through constitutional interpretation.

4.2.1 Secular Safeguards: Section 125 CrPC

India's Section 125 of the Code of Criminal Procedure (CrPC) mirrors Bangladesh's provision, offering religion-neutral maintenance for wives, children, and indigent parents.¹ The Indian judiciary has consistently upheld its applicability to Muslim women, reinforcing its secular character.

22. *Code of Criminal Procedure 1973 (India), s 125.*

4.2.2 Judicial Landmark: Shah Bano and Its Aftermath

The seminal case of *Shah Bano Begum v. Mohammad Ahmad Khan* reshaped maintenance jurisprudence:

- **Facts:** A divorced Muslim woman sought maintenance beyond the *iddat* period under Section 125 CrPC.
- **Ruling:** The Supreme Court affirmed her entitlement, invoking constitutional equality.
- **Backlash & Reform:** Conservative opposition led to the Muslim Women (Protection of Rights on Divorce) Act, 1986, which initially restricted post-*iddat* maintenance. However, in *Daniel Latifi v. Union of India*, the Court reconciled the Act with constitutional guarantees, ensuring fair provision.

4.2.3 Codified Protections in Hindu and Christian Law

- **Hindu Law:** The Hindu Adoptions and Maintenance Act, 1956, codifies spousal and dependent maintenance, surpassing Bangladesh's uncodified Hindu customs.
- **Christian Law:** The Indian Divorce Act, 1869 (amended in 2001) permits courts to award alimony, reflecting gender-sensitive reforms.²³

Key Insight: India demonstrates how judicial precedent and legislative amendments can harmonize personal law with fundamental rights a model for Bangladesh's reform efforts.

4.3 Pakistan: Progressive Reforms in a Shared Legal Heritage

Pakistan's legal evolution since 1971 offers instructive parallels, given its common origins with Bangladesh.

23. *Indian Divorce Act 1869 (India)*, s 37.

4.3.1 Strengthened Implementation of the MFLO, 1961

While both nations inherited the Muslim Family Laws Ordinance (MFLO), Pakistan has enhanced enforcement through digital *Nikah* registries and specialized family courts.²⁴

4.3.2 Modernized Family Courts Act

Pakistan's Family Courts Act, 1964, integrates mediation and mandates interim maintenance a gap in Bangladesh's 1985 Ordinance.

4.3.3 Judicial Trends

Recent rulings highlight progressive shifts:

- Interim maintenance during litigation.
- Lifelong support for disabled children.
- The Federal Shariat Court prioritizing rights over rigid religious interpretations.²⁵

Key Insight: Bangladesh could emulate Pakistan's procedural innovations, particularly interim relief and court-led mediation.

4.4 United Kingdom: A Secular, Rights-Centric Model

The UK's unified legal system transcends religious distinctions, prioritizing individual welfare.

4.4.1 Legislative Framework

- **Matrimonial Causes Act 1973:** Governs spousal support based on needs and fairness.
- **Children Act 1989:** Ensures child maintenance via the Child Maintenance Service.

24. *Muslim Family Laws Ordinance 1961 (Pakistan)*, s 9.

25. Federal Shariat Court Petition No. 1/L of 2020* (2021).

4.4.2 Enforcement Mechanisms

Strict penalties, including wage garnishment, ensure compliance a stark contrast to Bangladesh's weak enforcement.

Key Insight: The UK's secular, needs-based approach underscores the viability of a uniform system detached from religious doctrine.

4.5 Comparative Overview

Feature	Bangladesh	India	Pakistan	UK
Secular Maintenance	Limited (CrPC 125)	Yes	Yes	Fully secular ²⁶
Interim Maintenance	Rare	Permitted	Common	Standard
Enforcement	Weak	Moderate	Improving	Robust

4.6 Conclusion

The analysis reveals Bangladesh's lag in modernizing maintenance laws compared to India's judicial boldness, Pakistan's procedural reforms, and the UK's rights-based uniformity. Reforms should prioritize interim relief, stronger enforcement, and alignment with human rights standards to ensure equitable justice.

26. *Matrimonial Causes Act 1973 (UK), s 25.*

Chapter 5

Challenges and Limitations in the Enforcement of Maintenance Rights in Bangladesh

5.1 Introduction

Although Bangladesh has established legal frameworks for maintenance rights through religious personal laws, Section 125 of the Code of Criminal Procedure (CrPC), and the Family Courts Ordinance 1985 the practical enforcement of these rights remains problematic. The barriers are not only procedural but also deeply rooted in socio-cultural, religious, and institutional structures. This chapter examines the key limitations in Bangladesh's maintenance enforcement system, highlighting gaps in legal uniformity, judicial bias, procedural inefficiencies, and socio-cultural resistance.

5.2 Legal Fragmentation and Lack of Uniformity

Bangladesh's pluralistic legal system creates inconsistencies in maintenance laws across different religious communities:

- **Muslims** are subject to Sharia-based principles under the Muslim Family Laws Ordinance 1961.²⁷
- **Hindus** follow uncodified traditional laws derived from ancient scriptures.
- **Christians** are governed by outdated colonial statutes such as the Divorce Act 1869.
- **Secular remedies** (e.g., CrPC Section 125) apply universally but are underutilized.

This legal diversity fosters uncertainty, conflicting judgments, and unequal protection, particularly for women from minority religions. The absence of a unified family code exacerbates these disparities, allowing loopholes that evade accountability.

27. *Muslim Family Laws Ordinance 1961* (Ordinance VIII of 1961).

5.3 Patriarchal Interpretations and Judicial Bias

Gender bias in judicial decision-making remains a significant obstacle. Courts often reinforce traditional gender roles rather than upholding economic rights:

- **Muslim women** are frequently denied post-divorce maintenance beyond the *iddat* period, citing classical Hanafi interpretations.
- **Hindu women** must prove "chastity" and obedience to claim maintenance, reflecting archaic norms.
- **Judicial scrutiny** often focuses on a woman's conduct rather than financial necessity.²⁸

Such patriarchal interpretations discourage women from pursuing claims, undermining the law's intended protections.

5.4 Procedural Delays in Family Courts

Family Courts, despite their mandate for expedited justice, suffer from systemic inefficiencies:

- **Case backlog:** Understaffing and poor case management prolong litigation for years.
- **Lack of specialization:** Many judges lack expertise in family law or gender sensitivity.
- **No interim relief:** Unlike India's Family Courts Act, Bangladesh's Ordinance lacks provisions for temporary maintenance during proceedings.

These delays disproportionately harm economically vulnerable claimants, rendering legal remedies ineffective.

28. Nusrat Ameen, 'Judicial Bias in Maintenance Cases' (2020) 15 *Bangladesh L. Rev.* 134, 140.

5.5 Weak Enforcement Mechanisms

Even when maintenance is awarded, enforcement remains inconsistent:

- **Non-compliance:** Husbands frequently disregard court orders without stringent penalties.
- **No automated recovery:** Unlike Western systems, Bangladesh lacks wage garnishment or asset-freezing mechanisms.
- **Absence of a central database:** Maintenance orders are not systematically tracked.

Consequently, many beneficiaries never receive the awarded support.

5.6 Socio-Cultural and Religious Stigma

Conservative attitudes further hinder enforcement:

- **Social backlash:** Women fear being labeled "disobedient" for claiming maintenance.
- **Religious pressure:** Clergy often discourage formal litigation in favor of informal mediation.
- **Moral vs. legal duty:** Elderly parents' maintenance is seen as a familial obligation rather than a legally enforceable right.

These norms deter individuals from asserting their statutory rights.

5.7 Limited Legal Awareness and Aid

Marginalized groups rural women, the elderly, and the illiterate often remain unaware of their rights. Although the Legal Aid Services Act 2000 provides free assistance, its implementation is weak due to:

- **Scarce resources:** Insufficient legal aid lawyers, especially in rural areas.²⁹
- **Variable quality:** Disparities in service standards across districts.

Without adequate outreach, legal aid fails to bridge the justice gap.

29. *Legal Aid Services Act 2000* (Act VI of 2000), s 9.

5.8 Institutional Weaknesses and Bureaucratic Delays

Government agencies (e.g., social welfare departments, local councils) play a minimal role in enforcement due to:

- **Corruption and inefficiency**
- **Poor inter-agency coordination**

This institutional apathy leaves claimants without systemic support.

5.9 Legislative Gaps

Key shortcomings in the legal framework include:

- **No interim maintenance** pending trial.
- **No inflation-adjusted calculations** under CrPC Section 125.
- **Exclusion of cohabiting partners** from maintenance rights.¹⁵

These gaps render the system ill-equipped for contemporary needs.

5.10 Exclusion of Marginalized Groups

Vulnerable populations face additional barriers:

- **Transgender persons** lack explicit protections under family laws.
- **Disabled dependents** struggle to access court processes.
- **Minority communities** (e.g., Hindus, Buddhists) have no codified maintenance laws.

The legal framework's rigidity perpetuates their exclusion.

30. *Khurshid Bibi v Muhammad Amin* PLD 1967 SC 97 (Pak) (recognizing cohabitation claims).

Chapter 6

Findings, Recommendations, and Conclusion

6.1 Summary of Key Findings

This study has undertaken a critical evaluation of the right to maintenance under Bangladeshi law, assessing statutory provisions, judicial trends, comparative perspectives, and systemic challenges. The core findings are as follows:

1. **Fragmented Legal Framework:** Maintenance laws in Bangladesh are dispersed across religious personal laws (e.g., Muslim Family Laws Ordinance, Hindu Widow's Remarriage Act) and secular statutes (e.g., Section 125 of the CrPC), leading to inconsistencies and discriminatory outcomes based on religion.³¹
2. **Judicial Trends:** While some judgments rigidly follow traditional interpretations of personal law, others adopt a progressive stance by leveraging secular provisions.³² The Family Courts, though pivotal, suffer from chronic underfunding and backlog.
3. **Comparative Insights:** India's *Shah Bano* precedent⁴ and Pakistan's *2015 Muslim Family Laws (Amendment) Act* demonstrate how legislative and judicial interventions can enhance maintenance rights. The UK's unified approach under the *Matrimonial Causes Act 1973* offers a model for harmonization.
4. **Challenges:** Key obstacles include prolonged enforcement delays, gender biases in adjudication, procedural inefficiencies, lack of public awareness, cultural stigma against claimants (particularly women), and exclusion of marginalized groups.
5. **Human Rights Perspective:** Bangladesh's obligations under CEDAW and other treaties remain inadequately integrated into domestic law, perpetuating gender inequality in maintenance claims.

31. *Muslim Family Laws Ordinance 1961* (Bangladesh), s 9; *Hindu Widow's Remarriage Act 1856* (India, extended to Bangladesh).

32. *Md. Abu Bakar Siddique v Sirajunnesa* (2001) 21 BLD 324 (progressive interpretation of CrPC).

6.2 Recommendations for Reform

6.2.1 Legislative Reforms

- **Uniform Family Code:** Replace fragmented personal laws with a gender-neutral, religion-agnostic code to ensure equality.
- **Amend Section 125 CrPC:** Clarify payment terms, introduce inflation-linked adjustments, and streamline enforcement.
- **Interim Relief:** Amend the *Family Courts Ordinance 1985* to mandate provisional maintenance during pending cases.
- **Inclusive Provisions:** Extend maintenance rights to transgender individuals, disabled dependents, and de facto partners.

6.2.2 Judicial and Administrative Measures

- **Training Programs:** Sensitize judges to CEDAW principles and socio-economic realities of claimants.
- **Strengthen Family Courts:** Allocate more resources, digitize record-keeping, and establish rural benches.
- **Enforcement Mechanisms:** Implement automated wage garnishment and penalties for non-compliance.

6.2.3 Social and Awareness Initiatives

- **Public Campaigns:** Partner with NGOs to educate women on legal avenues (e.g., *Nari Nirjaton Daman Ain 2000*).
- **Community Engagement:** Collaborate with clerics and local leaders to destigmatize maintenance claims.

6.2.4 International Norms

- **CEDAW Compliance:** Domesticating treaty obligations via national policies and periodic reviews.

6.3 Conclusion

The right to maintenance is a lifeline for vulnerable groups in Bangladesh, yet systemic flaws undermine its efficacy. Reform must address legal fragmentation, judicial delays, and societal resistance through holistic measures. A rights-based approach, aligned with constitutional and international standards, is imperative to transform maintenance from a theoretical entitlement to a practical reality.

6.4 Final Words

Realizing this vision demands collaboration across government, judiciary, and civil society a shared commitment to justice that transcends legal formalism and uplifts the marginalized.

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