



**Sonargaon University**  
**Research Monograph**  
**On**

**"Child Custody and Guardianship in Bangladesh: A  
Systematic Approach"**

This Research paper is submitted in partial fulfillment of the requirements of the degree of LL.B  
(Honors) under Sonargaon University.

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From beginning of my research, I am personally indebted to some book writers for their kind and valuable writings. Thanks to all from the bottom of my heart.

\_\_\_\_\_  
Signature

## **Certification by the Research Advisor**

This is hereby certified that the research Monograph on the topic "**Child Custody and Guardianship in Bangladesh: A Systematic Approach**" submitted by Sharirar Khanom Emu, ID No: LLB-2103024011 in fulfillment of the requirements for LL. B (Honors) from Sonargaon University, under my active supervision and guidance and that no part of this paper has been submitted any place earlier, as far as I know.

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## Declaration

This is, a student Sharirar Khanom Emu, ID No: LLB-2103024011 of LL.B program of Department of Law of Sonargaon University, do hereby declare that the Research Monograph Titled, **Child Custody and Guardianship in Bangladesh**" an original work. The assigned work has done by me for partial requirement of my LL.B degree, as a part of academic curriculum. I certify that this thesis does not incorporate without acknowledgment any material previously submitted for a degree or diploma in any university; and that to the best of my knowledge and belief it does not contain any material previously published or written by another person except where dereference is made in the text.

I also declare that the presented work do not breach any existing copyright and no portion of this research monograph has been copied entirely from any work done earlier for a degree or otherwise.

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## Letter of Transmittal

To,

**Dr. A.S.M.Tariq Iqbal**

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**Subject: For the submission of research Monograph titled " Child Custody and Guardianship in Bangladesh: A Systematic Approach"**

Dear Sir,

This is a matter of joy for me to submit the research monograph on the title ""**Child Custody and Guardianship in Bangladesh: A Systematic Approach**""

While doing this research monograph, I have tried my level best to keep the required standard. I Hope, this dissertation will fulfill your expectation. I hope that you would be kind enough to go through this dissertation for you kind evaluation. I am always available for any clarification or any other necessity of any part of this Research Monograph at your convenience.

Yours obediently Student

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### **List of Abbreviations:**

DLR	Dhaka Law Reports
BLD	Bangladesh Legal Decision
AIR	All India Reports
PIL	Public Interest Litigation
MLR	Mainstream Law Reports
DIU	Dhaka International University
SC	Supreme Court
AD	Appellate Division
BELA	Bangladesh Environmental Lawyers Association
CCF	Children Charity Foundation
ASK	Ain O Shalish Kendra
HRPB	Human Rights and Peace for Bangladesh
BNWLA	Bangladesh National Women Lawyers' Association
BLAST	Bangladesh Legal Aid Services & Trust
BLC	Bangladesh Law Chronicles
HCD	High Court Division
PLD	Pakistan Law Digest
MFLO	Muslim Family Law Ordinance
AIR	All India Report
WP	West Pakistan.
Lah	Lahore

## **Abstract**

The issue of child custody and guardianship in Bangladesh is governed by a complex dual legal framework, combining religious personal laws and colonial-era statutes. This duality often leads to ambiguity and inconsistencies in judicial decisions, especially concerning the determination of a child's future in cases of parental separation. While global child rights norms emphasize the "best interests of the child" as the paramount guiding principle, in Bangladesh, religious doctrines and social customs frequently hinder the effective application of this principle. In this context, a thorough and critical examination of the existing legal framework and judicial practices is essential to ensure the protection and welfare of children. This study employs a qualitative methodology focusing on the analysis of primary legal instruments, including the Guardians and Wards Act, 1890, the Constitution of Bangladesh, and relevant court rulings.

The findings reveal a significant gap between the prevailing laws and the child-centered approach advocated by international human rights standards. Bridging this gap necessitates comprehensive legal reforms, increased judicial sensitivity, and the establishment of a cohesive and modern policy framework that harmonizes religious provisions with human rights principles. The study proposes practical and policy-oriented recommendations aimed at making the child custody and guardianship system in Bangladesh more humane, effective, and equitable, ultimately ensuring that the welfare and rights of the child remain paramount.

# Chapter-I

## Introductory Points to the Research

### 1.1 Introduction

Guardianship and custody are fundamental components of family law that determine who holds legal and practical responsibility for a child's care and upbringing. In Bangladesh, these matters are governed mainly by the \*Guardians and Wards Act, 1890\*, alongside personal laws based on religion. However, real-life applications often expose legal ambiguities, especially during parental separation or divorce.

Although courts aim to ensure the \*best interest of the child\*, traditional gender roles and social norms frequently influence decisions. As a result, mothers may serve as primary caregivers but remain legally dependent on fathers, who are often recognized as the natural guardians.

This thesis explores the current laws, court practices, and societal perceptions regarding guardianship and custody in Bangladesh. It compares systems in India, Pakistan, and Western countries to suggest reforms that better reflect children's rights and evolving family dynamics.

### 1.2 Rationale of the Study

In Bangladesh, the legal framework surrounding child custody and guardianship is influenced by both religious personal laws and colonial-era legislation. This dual system often creates ambiguity and inconsistency in judicial decisions, especially in matters involving parental separation. While modern child rights frameworks emphasize the "best interests of the child" as the guiding principle, social norms, religious constraints, and traditional attitudes sometimes hinder its effective implementation. In this context, it becomes essential to critically examine whether existing laws and judicial practices truly serve the well-being of the child. The study aims to explore these issues and identify gaps in the legal and practical domains to ensure child welfare is prioritized in all custody-related decisions.

### 1.3 Objectives of the Study

The primary aim of this study is to analyze the prevailing legal provisions and judicial practices related to child custody and guardianship in Bangladesh. The study intends to:

- Examine the influence of religious personal laws and their interaction with secular legal frameworks;
- Investigate how the courts interpret and apply the "best interests of the child" doctrine in custody cases;
- Assess the legal rights of both parents, particularly in contested custody;

- Identify weaknesses and inconsistencies in current laws and practices;
- Propose necessary reforms and policy recommendations for more child-centric legal outcomes.

## **1.4 Methodology of the Study**

This research adopts a qualitative, document-based methodology, focusing on legal and doctrinal analysis. The study is primarily grounded in the review of:

- **Primary sources:** including the Constitution of Bangladesh, Guardians and Wards Act, 1890, personal laws applicable to different religious communities, and relevant case laws;
- **Secondary sources:** such as legal commentaries, journal articles, academic papers, and government reports.

Although no fieldwork or interviews were conducted, this method enables a focused and critical evaluation of existing legal instruments and their application in real-world scenarios.

## **1.5 Literature Review**

The issue of guardianship and custody has been the subject of significant academic and legal discourse in both national and international contexts. Various scholars, legal experts, and organizations have explored how existing laws function in protecting the rights of children and balancing the interests of parents in guardianship disputes.

In Bangladesh, \*Md. Masudul Hassan Mollah\*'s works on **\*\*Family Law\*\*** and **\*\*Guardianship under Muslim Law\*\*** provide a foundational understanding of the legal framework. His analysis highlights the limitations of the **\*Guardians and Wards Act, 1890\***, especially in terms of aligning with the best interests of the child principle. Similarly, **\*Shahnaz Huda\*** emphasizes the gap between statutory law and practical realities in her article on custody and gender roles in Bangladesh.

In India, authors like **\*Paras Diwan\*** and **\*S.K. Kapoor\*** have extensively discussed the evolution of guardianship law under Hindu and Muslim personal laws. Their writings contribute to understanding how the courts in India interpret custody in light of changing family dynamics and child-centric approaches.

Scholars such as **\*Farah Yasmin\*** and **\*Imtiaz Morshed\*** have explored how Bangladeshi courts apply discretion in custody cases, often influenced by cultural norms rather than clear legal standards. Reports from organizations like **\*BLAST\***, **\*UNICEF\***, and the **\*Law Commission of Bangladesh\*** offer policy-level perspectives, particularly recommending reforms to ensure equal rights for mothers and fathers in guardianship matters.

Comparative studies with Pakistan and Western legal systems reveal that many jurisdictions are moving toward a more flexible and balanced approach, prioritizing the child's psychological and emotional well-being over rigid statutory presumptions.

Despite growing awareness, there remains a lack of empirical research in Bangladesh on how custody decisions affect children in the long term, and how gender-based presumptions influence legal outcomes. This literature review demonstrates the need for a holistic and reform-oriented understanding of guardianship and custody in Bangladesh.

## **1.6 Limitations of the Study**

This study is limited to a qualitative, doctrinal approach and does not include empirical data, such as interviews or field observations. As a result, direct insights from children, parents, or legal practitioners were not incorporated. The diversity of religious laws across communities posed challenges for comparative analysis. Additionally, access to all relevant court decisions and legal databases was constrained, which may have limited the depth of case study analysis. Nevertheless, the study strives to provide a meaningful contribution by analyzing available resources to highlight key issues and potential areas for reform.

# Chapter-II

## Child Custody and Guardianship in Bangladesh

### 2.1 Basic Concepts

Child custody refers to the legal authority and responsibility granted to a parent or guardian to care for a child and make decisions regarding the child's upbringing. Custody typically encompasses two major components:

- **Physical Custody:** The right of a parent or guardian to have the child reside with them on a daily basis.
- **Legal Custody:** The authority to make significant decisions concerning the child's life, including those related to education, healthcare, and religion.

While custody generally applies to parents, **guardianship** is a broader legal concept that may involve a person who is not necessarily the biological parent. A guardian is legally appointed to manage the person, property, or both, of a minor or of someone who is incapable of managing their own affairs. In Bangladesh, the legal framework governing guardianship is primarily defined by the **Guardians and Wards Act, 1890**, which applies across all religious communities regardless of personal law distinctions.<sup>1</sup>

In matters concerning custody and guardianship, courts in Bangladesh and globally prioritize the **best interests of the child** as the fundamental guiding principle. This approach may at times override traditional parental rights or customary norms when such norms are deemed to conflict with the child's welfare.<sup>2</sup>

### 2.2 Historical Background

The legal framework regulating child custody and guardianship in Bangladesh is shaped by a combination of religious personal laws and colonial legislation, resulting in a pluralistic and, at times, conflicting system. The interaction of these diverse legal sources has evolved over time, reflecting both historical traditions and modern legal reforms.<sup>3</sup>

Islamic Law (for the Muslim community):

Islamic jurisprudence traditionally distinguishes between **custody (hizanat)** and **guardianship (wilayah)**. The mother is typically granted physical custody of minor children—up to seven years of age for boys and until puberty for girls—recognizing her nurturing role during the child's formative years. However, once the child surpasses this age, custody often reverts to the father unless the court determines otherwise based on the child's

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<sup>1</sup> Guardians and Wards Act, 1890 (Act No. VIII of 1890), Sections 7–19.

<sup>2</sup> United Nations Convention on the Rights of the Child (UNCRC), Article 3; also reflected in recent Bangladeshi Supreme Court decisions.

<sup>3</sup> BLAST, *Child Custody in Bangladesh: Legal Provisions and Case Analysis*, Report Series, 2021.

best interest. Guardianship, particularly concerning legal and financial matters, remains predominantly with the father throughout, as per classical Islamic doctrine.<sup>4</sup> However, courts in Bangladesh may override this structure if the father is proven to be unfit or incapable.<sup>5</sup>

#### Hindu Law (for the Hindu community):

Traditional Hindu personal law places significant emphasis on paternal authority. The father is considered the natural guardian of the child. The mother's role is generally seen as secondary unless exceptional circumstances arise, such as the death, incapacity, or misconduct of the father.<sup>6</sup> Although statutory reforms in India have updated some of these principles, Bangladeshi law continues to rely heavily on orthodox interpretations, often sidelining the evolving role of mothers in child-rearing.<sup>7</sup>

#### Guardians and Wards Act, 1890 (Secular Framework):

To establish a common legal foundation that transcends religious boundaries, the **Guardians and Wards Act, 1890** was introduced during British colonial rule.<sup>8</sup> This Act remains applicable in Bangladesh today and empowers civil courts to appoint and regulate guardianship based on the child's welfare, regardless of religion. The Act enables the judiciary to intervene in cases where personal laws are silent, unclear, or inadequate in ensuring the child's rights.<sup>9</sup> Notably, this Act has been crucial in cases involving interfaith parents, orphaned children, and inheritance-related guardianship.

#### Judicial Trends in Bangladesh:

In recent decades, Bangladeshi courts have demonstrated a progressive shift toward prioritizing **child welfare over rigid religious prescriptions**.<sup>10</sup> Courts have increasingly adopted a flexible and humanitarian interpretation of custody laws, often invoking the Guardians and Wards Act as a mechanism to sidestep narrow personal law doctrines. In doing so, judges have emphasized the emotional, educational, and psychological development of the child, recognizing that legal guardianship should not solely reflect traditional roles but rather the child's overall well-being and future security.<sup>11</sup>

This evolving judicial mindset reflects a broader global trend where **child-centric jurisprudence** is replacing rigid patriarchal models. However, significant inconsistencies remain due to the lack of uniform codification across personal laws and the continued influence of societal expectations rooted in tradition.<sup>12</sup>

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<sup>4</sup> M. Hidayatullah and Arshad Hidayatullah, *Mulla's Principles of Mohammedan Law*, 20th ed. (New Delhi: LexisNexis Butterworths, 2013), 313–316.

<sup>5</sup> *Tahir Mahmood, Muslim Law in India and Abroad (New Delhi: LexisNexis, 2012)*, 246.

<sup>6</sup> Paras Diwan, *Modern Hindu Law* (Allahabad: Allahabad Law Agency, 2018), 171.

<sup>7</sup> R.C. Nagpal, *Hindu Law of Adoption, Maintenance, Minority and Guardianship* (New Delhi: Eastern Book Company, 2010), 173–174.

<sup>8</sup> Guardians and Wards Act, 1890, Preamble and Sections 7–19.

<sup>9</sup> BLAST, *Child Custody in Bangladesh*, 2021.

<sup>10</sup> Md. Shah Alam, *Legal System of Bangladesh*, 167–168.

<sup>11</sup> Naim Ahmed, *Family Law in Bangladesh*, 114.

<sup>12</sup> UNICEF Bangladesh, "Child Protection and Justice for Children," accessed 2023.

# Chapter-III

## Judicial Process in Child Custody and Guardianship

### 3.1 Court Jurisdiction

Child custody and guardianship cases in Bangladesh are adjudicated under a mix of personal and statutory laws. The *Guardians and Wards Act, 1890* is the principal statute that governs such proceedings and applies irrespective of religion.<sup>13</sup> Additionally, the *Family Courts Ordinance, 1985* created Family Courts with exclusive jurisdiction over family matters including custody, but primarily for Muslim citizens.<sup>14</sup> In contrast, non-Muslim cases or those involving cross-religious disputes are typically handled by the District Judge's Court.<sup>15</sup> The minor's or guardian's residence usually determines territorial jurisdiction.<sup>16</sup> However, when fundamental rights are affected, the High Court Division may exercise its extraordinary constitutional authority through writs like *habeas corpus*.<sup>17</sup>

### 3.2 Case Procedure

In Bangladesh, child custody and guardianship cases are handled under the **Guardians and Wards Act, 1890** and the **Family Courts Ordinance, 1985**.<sup>18</sup> The process usually starts when a parent or relative files a petition in the appropriate court asking for custody or guardianship of a child. After receiving the petition, the court notifies the other party and holds a preliminary hearing to decide if the case is contested or uncontested.

If both parties agree, the court may give a decision quickly. But if there is disagreement, the case moves forward with evidence, witness testimonies, and legal arguments from both sides. To protect the child's privacy and mental well-being, courts often hold **in-camera hearings** where only the judge and parties are present.<sup>19</sup>

Experts like child psychologists or social workers may be called to evaluate the child's situation and advise the court. The court always focuses on what is best for the child's overall welfare, considering emotional, educational, and physical needs.<sup>20</sup> To reduce conflict, courts also promote mediation and other alternative dispute resolution methods that help parents agree amicably without prolonged litigation.

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<sup>13</sup> *Guardians and Wards Act, 1890*, Government of Bangladesh.

<sup>14</sup> *Family Courts Ordinance, 1985*, Section 5.

<sup>15</sup> Md. Shah Alam and Nazmul Huda, *Legal System of Bangladesh*, 3rd ed. (Dhaka: Palal Prokashani, 2019), 164.

<sup>16</sup> *Guardians and Wards Act*, Section 9.

<sup>17</sup> *Constitution of Bangladesh*, Articles 44 and 102.

<sup>18</sup> *Guardians and Wards Act, 1890; Family Courts Ordinance, 1985*.

<sup>19</sup> United Nations, *Convention on the Rights of the Child*, Article 3, 1989.

<sup>20</sup> BLAST, *Child Custody in Bangladesh: Legal Provisions and Case Analysis*, 2021

### **3.3 Appeal System**

If either party is aggrieved by the decision of a lower court, they may file an appeal to a higher forum. Decisions of Family Courts are appealable to the District Judge's Court, and in further appeal, to the High Court Division.<sup>21</sup> The appellate court may reassess factual issues, but will especially focus on whether the original decision aligned with the "best interests of the child." The scope of appeal is wider when new circumstances arise that materially affect the child's welfare.

### **3.4 Role of Legal Counsel**

Legal counsel plays a significant and delicate role in child custody litigation. From filing petitions to representing clients in court, lawyers must navigate emotional complexity while keeping the child's needs at the center.<sup>22</sup> Good advocates often avoid adversarial strategies and instead promote solutions through **mediation** or **alternative dispute resolution (ADR)** to minimize trauma for all parties. In complex custody matters, lawyers may collaborate with professionals such as psychologists or child welfare experts to build a compelling case. They act not just as legal representatives, but as facilitators of justice for the child.

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<sup>21</sup> Farzana Akhter, "Legal Challenges in Child Custody Cases," *Bangladesh Journal of Law*, vol. 10, no. 2 (2019): 78.

<sup>22</sup> UNICEF Bangladesh, "Justice for Children in the Family Courts," 2022

# Chapter-IV

## The Legal Framework in Bangladesh

### 4.1 Main Laws

The legal framework governing child custody and guardianship in Bangladesh is primarily based on statutory laws enacted during the colonial period and post-independence reforms. The most important statute in this field is the **Guardians and Wards Act, 1890**, which provides a secular and uniform legal mechanism for the appointment and regulation of guardians for minors, irrespective of religion.<sup>23</sup> Under this law, the court is empowered to decide custody and guardianship matters with the welfare of the child as the central consideration.

Another key law is the **Family Courts Ordinance, 1985**, which established specialized family courts to deal with family-related matters, including child custody, divorce, dower, and maintenance.<sup>24</sup> These courts aim to offer a more accessible and less formal legal process, especially for Muslims. They operate under simplified procedures to expedite resolution and reduce emotional strain on families, particularly on children.

In addition, the **Children Act, 2013** plays an indirect but important role. Though primarily focused on child protection, child justice, and institutional care, it reflects Bangladesh's commitment to the **UN Convention on the Rights of the Child (CRC)** and reinforces the principle that the best interest of the child must be paramount in all matters affecting them.<sup>25</sup>

### 4.2 Personal Laws

Despite the existence of statutory laws, personal laws continue to play a significant role in matters of custody and guardianship in Bangladesh. These laws are religiously based and vary across communities:

- **Muslim Personal Law:** According to traditional Hanafi Islamic jurisprudence, the mother is entitled to physical custody (*hizanat*) of minor children up to a certain age—typically 7 years for boys and puberty for girls—unless she remarries or is deemed unfit. However, the father retains guardianship (*wilayah*), particularly for legal and financial matters.<sup>26</sup>
- **Hindu Personal Law:** In the Hindu tradition, the father is considered the natural guardian of both boys and girls. The mother may only receive custody if the father is absent, deceased, or proven unfit.<sup>27</sup> Hindu law in Bangladesh is largely uncodified, and reliance is often placed on ancient scriptures or Indian legal precedents, which creates ambiguity.

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<sup>23</sup> *Guardians and Wards Act*, No. VIII of 1890.

<sup>24</sup> *Family Courts Ordinance*, 1985, Sections 4–5.

<sup>25</sup> *Children Act*, 2013; see also United Nations, *Convention on the Rights of the Child*, 1989

<sup>26</sup> Md. Naim Ahmed, *Family Law in Bangladesh* (Dhaka: UPL, 2002), 83–86.

<sup>27</sup> Mitali Saran, “Guardianship in Hindu Law,” *Indian Law Journal*, vol. 67 (1998): 102.

- **Christian and Other Laws:** Christian custody matters are usually decided under the **Divorce Act, 1869**, which allows either parent to apply for custody, but decisions are made based on the child's welfare.<sup>28</sup>

While personal laws offer cultural legitimacy and religious consistency, they often conflict with the evolving international standard of children's rights, which emphasizes equal parental involvement and child welfare above strict doctrinal rules.

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<sup>28</sup> *Divorce Act, 1869*, Section 41.

# Chapter-V

## The Role of Courts in Determining Custody and Guardianship

The legal questions of custody and guardianship are inherently complex and multifaceted, often involving competing interests between parents, and most critically, the future of a child. In legal systems across the globe, the primary consideration in such matters is the welfare of the minor. This chapter critically examines the role of courts in determining custody and guardianship by focusing on three interrelated aspects:

- Judicial discretion
- Parental fitness and
- The child's opinion.

### **5.1 Judicial Discretion**

Judicial discretion is fundamental in custody and guardianship proceedings. It enables judges to apply legal principles with flexibility, tailoring decisions to the unique facts of each case. Unlike rigid application of law, discretion allows the court to consider non-legal but highly relevant human and social factors.

In most South Asian legal systems, such as under the **Guardians and Wards Act, 1890**, the court is not bound by the mere legal right of guardianship but is empowered to appoint or declare a guardian if it serves “**the welfare of the minor.**”<sup>29</sup> Welfare encompasses not only physical well-being but also emotional security, education, religious upbringing, and moral development.

### **Courts thus exercise discretion to override parental rights in circumstances such as:**

\* Where a legal guardian is unfit or abusive.

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<sup>29</sup> Guardians and Wards Act, 1890, Section 7 – Provides that the court shall be guided by the “welfare of the minor” in appointing or declaring a guardian.

- \* Where a third party, such as a grandparent, provides a more stable home.
- \* When continuity of care by a non-guardian figure has formed a significant emotional bond.

This discretion ensures that judicial outcomes reflect the realities of family life and the best interests of the child rather than merely following formal legal entitlements.

## **5.2 Parental Fitness**

The concept of **parental fitness** plays a pivotal role in custodial determinations. It refers to a parent's capability to provide for the child's physical, psychological, educational, and emotional needs in a stable and nurturing environment.

Courts typically assess fitness based on:

- \* Mental and physical health of the parent.
- \* History of substance abuse or domestic violence.
- \* Parenting record and involvement in the child's life.
- \* Moral character and lifestyle.
- \* The ability to maintain a conflict-free co-parenting environment.

The evaluation of fitness is not static—it may evolve depending on a parent's rehabilitation, change in circumstances, or demonstrated improvement in caregiving capacity.

In *Githa Hariharan v. Reserve Bank of India* (1999), the Indian Supreme Court interpreted Section 6 of the Hindu Minority and Guardianship Act to conclude that guardianship must be tested on the parameter of welfare and not on the basis of default gender roles or statutory priority.<sup>30</sup>

Thus, even if a parent is the natural or legal guardian, the court can deny or restrict custody if such a decision is in the child's best interest.

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<sup>30</sup> *Githa Hariharan v. Reserve Bank of India*, AIR 1999 SC 1149 – The Supreme Court emphasized that guardianship decisions must align with the best interest of the child, not formal legal hierarchy.

## 5.3 The Role of the Child's Opinion

In contemporary family law, especially after the incorporation of international child rights norms, the child's opinion is increasingly seen as relevant in custody and guardianship proceedings.

The **United Nations Convention on the Rights of the Child (UNCRC)**, under Article 12, recognizes the right of every child capable of forming their own views to express those views freely, with due weight given according to age and maturity.<sup>31</sup>

Courts may:

- \* Privately interview the child (in camera hearing) to determine genuine preferences.
- \* Consider emotional attachment and comfort level with each parent.
- \* Scrutinize whether the child's opinion is influenced or manipulated.

While a child's preference is not determinative, it is accorded serious weight, especially when the child is over a certain age (usually 12 or more). Nonetheless, the court must exercise caution: the child's views must align with objective welfare indicators and not result from external pressure.

In determining custody and guardianship, courts are not merely adjudicating legal claims between disputing adults—they are actively shaping the social, emotional, and psychological futures of children. Through the **exercise of judicial discretion, assessment of parental fitness, and consideration of the child's views**, courts aim to strike a careful balance between legal norms and human realities.

The integration of statutory provisions, case law, and international standards ensures that the child's welfare remains the paramount consideration—reinforcing the idea that in matters of custody, **the child is not a prize to be won, but a life to be protected.**

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<sup>31</sup> UN Convention on the Rights of the Child, 1989, Article 12 – Recognizes the child's right to express views freely in all matters affecting them.

## Chapter-VI

### Conflict and Coordination in Custody and Guardianship

#### **6.1 Parent vs. Guardian Disputes**

Conflicts often arise when the legal rights and responsibilities of biological parents clash with those of appointed guardians. While parents are generally considered the natural custodians of their children, guardians may be appointed by courts under certain circumstances, such as the death, incapacity, or unfitness of the parents. In some cases, parents and guardians may disagree on the child's upbringing, education, religious instruction, or medical care.

In Bangladesh, the Guardians and Wards Act, 1890 governs the appointment and authority of guardians, while personal laws determine parental rights in many communities. For example, in Muslim law, the father is considered the natural guardian of the minor, while the mother has custody only during the early years of the child's life. However, when disputes arise between parents and court-appointed guardians, the court must evaluate the welfare of the minor as the paramount consideration<sup>32</sup>.

Such disputes can become particularly complex when a guardian is appointed due to a parent being declared unfit because of substance abuse, mental illness, or a criminal background. In these instances, the parent may seek to reclaim custody after rehabilitation, leading to legal battles that must balance the child's emotional ties with the parent against their long-term welfare and stability<sup>33</sup>.

#### **6.2 Religious vs. Secular Law**

Another major area of conflict arises between religious personal laws and secular statutory provisions. In countries like Bangladesh, where religion-based personal laws exist alongside civil statutes, questions of custody and guardianship often become legally and ethically complicated.

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<sup>32</sup> Guardians and Wards Act, 1890, Section 7: "Where the court is satisfied that it is for the welfare of a minor that an order should be made appointing a guardian...".

<sup>33</sup> See: *Re M (Children)* [2017] EWCA Civ 2164 – A case where a mother with previous drug addiction was allowed supervised custody based on her improved condition.

For example, under Muslim personal law, the mother's right to custody (known as **hizanat**) is limited to a specific age (7 years for a boy and puberty for a girl), after which the father, as the legal guardian (**wali**), assumes full control<sup>34</sup>. In contrast, secular laws such as the Guardians and Wards Act, 1890, empower the court to make custody and guardianship decisions irrespective of gender or age, based solely on the welfare of the child<sup>35</sup>.

This creates tension between traditional norms and modern legal standards. When a secular court orders custody in a way that contradicts religious law, it may be challenged by conservative religious groups or communities. This can result in legal inconsistencies and delays in enforcement, affecting the child's stability and best interests.

The Supreme Court of Bangladesh has, on several occasions, emphasized that the paramount consideration in custody and guardianship cases must be the welfare of the child, even if it contradicts traditional personal law<sup>36</sup>. This evolving legal interpretation suggests a growing trend towards harmonizing religious and secular approaches, though many inconsistencies still remain

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<sup>34</sup> Fyzee, Asaf A.A., *Outlines of Muhammadan Law*, Oxford University Press, 2008, pp. 320-322.

<sup>35</sup> Guardians and Wards Act, 1890, Section 17: The court must consider the welfare of the minor in the appointment of a guardian, irrespective of religious law.

<sup>36</sup> *Shamsun Nahar v. Md. Khalilur Rahman* (52 DLR 1990): The court held that the welfare of the child prevails over personal law in a custody dispute

# Chapter-VII

## The Best Interest of the Child Principle

### 7.1 Definition and Importance

The “**best interest of the child**” principle is a cornerstone of modern child custody and guardianship law. It refers to the idea that in all legal actions and decisions affecting children—whether judicial, administrative, or legislative—the primary focus must be on what outcome will most benefit the child’s overall well-being<sup>37</sup>. This principle supersedes all other rights and considerations, including those of parents, guardians, or relatives, whenever there is a conflict.

Internationally, this concept is enshrined in **Article 3(1) of the United Nations Convention on the Rights of the Child (UNCRC)**, which states:

"In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration."<sup>38</sup>

Bangladesh, as a signatory to the UNCRC since 1990, has made constitutional and legal commitments to uphold this principle in both policy and practice. The importance of the principle lies in its **child-centric approach**, which focuses on the rights, protection, development, and participation of the child in all relevant matters.

Traditionally, custody laws focused on **parental rights, where fathers, as natural guardians, were given priority. But with the rise of child rights movements, legal reforms, and psychological understanding of child development, the paradigm has shifted toward child welfare and best interest\*** being the core concern of family courts<sup>39</sup>.

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<sup>37</sup> UNICEF, Child Protection Strategy, 2020.

<sup>38</sup> United Nations Convention on the Rights of the Child (UNCRC), Article 3(1).

<sup>39</sup> Freeman, M.D.A., The Best Interests of the Child and the Law, Ashgate, 2007.

This principle does not have a one-size-fits-all definition; rather, it is context-dependent. What constitutes “best interest” in one case may differ in another depending on the age, maturity, needs, environment, and specific circumstances of the child. Courts thus apply this principle flexibly, allowing for **judicial discretion** while ensuring that the child’s welfare remains the central concern.

## **7.2 Application in Court**

In Bangladesh, the application of the “best interest of the child” principle is evident in both statutory law and judicial practice. The **Guardians and Wards Act, 1890, particularly Section 17**, provides the legal foundation by stating that the court must consider the welfare of the minor as the most important factor in guardianship and custody proceedings<sup>40</sup>.

In real-life court cases, this principle plays a critical role in shaping custody arrangements. One of the most cited decisions in this regard is **Shamsun Nahar v. Md. Khalilur Rahman**, where the court granted custody to the mother despite the father being the natural guardian under Muslim personal law. The court emphasized that the emotional and psychological attachment of the child to the mother and the stability she could offer were more vital than strict legal guardianship<sup>41</sup>.

Courts consider a broad range of factors while determining what is in the child’s best interest:

- **The age and sex of the child:** Younger children, especially girls, are more often placed in maternal custody.
- **The emotional bond between the child and each parent:** The child’s attachment plays a significant role.
- **Educational continuity:** Avoiding disruption in the child’s schooling and academic environment.
- **Mental and physical health of the parents:** Courts assess the ability to provide a safe and nurturing environment.
- **Moral character and background of each party:** Any history of abuse, neglect, or violence weighs heavily.
- **Financial stability:** though important, is not the sole factor unless it directly impacts the child’s welfare.
- **The child’s own opinion:** In many jurisdictions, the court may consider the child’s preference, especially when the child is mature and able to express reasoned views<sup>42</sup>.

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<sup>40</sup> Guardians and Wards Act, 1890, Section 17.

<sup>41</sup> Shamsun Nahar v. Md. Khalilur Rahman, 52 DLR (2000).

<sup>42</sup> Re: K (A Minor) (Custody: Child’s Preference) \[1992] Fam 121.

This application reflects a balanced approach, where legal rules, cultural norms, and individual circumstances are harmonized to prioritize the child’s welfare. Bangladeshi courts are also increasingly referring to international standards, especially in cross-border or complex cases, to strengthen the child-first approach.

## **7.3 Welfare Considerations**

The term “**welfare**” within the context of child custody includes a wide spectrum of physical, mental, emotional, educational, and moral factors. It is not limited to financial support or material resources. The overall development and future of the child are taken into account when courts evaluate custody and guardianship issues.

Some key welfare considerations include:

### **a) Emotional and Psychological Stability**

Children need a safe and supportive environment to develop emotionally. Courts give preference to the parent or guardian who can provide such an environment. For instance, a child may feel more secure with a parent who has been the primary caregiver since birth<sup>43</sup>.

### **b) Educational Development**

Maintaining continuity in education is another crucial aspect. Disrupting a child’s schooling due to relocation or custody change may harm the child’s progress. Courts often consider the quality of schools, access to education, and parental support for learning.

### **c) Moral and Spiritual Upbringing**

In Bangladesh, religious upbringing is considered important. A parent who can ensure the child’s moral education and community values may receive preference, provided this does not interfere with the child’s freedom or rights.

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<sup>43</sup> Mst. Amena Begum v. Md. Yusuf Ali, 49 DLR (1997).

## **d) Cultural and Familial Environment**

Children have a right to cultural identity and familial association. Courts try to ensure that a custody decision does not isolate the child from familiar environments or extended family members unless necessary for safety or stability.

## **e) Stability and Continuity**

Frequent changes in a child's living arrangement can cause stress and insecurity. Courts generally try to maintain continuity in residence, caregiver, and routine, especially for younger children.

It is also important to note that the **welfare standard evolves** over time. What is considered appropriate for a 4-year-old may not apply to a 14-year-old. As the child grows, their needs and priorities change, and so do the court's considerations.

Ultimately, the welfare principle empowers the judiciary to act in the child's true interest, even if it means going beyond the provisions of personal law or the preferences of the parties involved.

# Chapter-VIII

## A Gender-Based Perspective

### 8.1 Mother's Role

In custody and guardianship matters, the role of the mother has traditionally been viewed through both **legal and sociocultural lenses**. **In many personal laws, including Muslim law, the mother holds custodial rights** (hizanat) over her minor children, especially in the early years of their life. This right is not absolute but conditional upon her being of sound character and capable of providing proper care<sup>44</sup>.

**Under Muslim personal law in Bangladesh, the mother generally retains custody of:**

- **Sons up to the age of 7 years.**
- **Daughters until they reach puberty.**

This rule, however, is subject to the overriding principle of the **child's welfare**. Courts have frequently upheld maternal custody even beyond these age limits where it served the best interest of the child<sup>45</sup>.

From a social standpoint, mothers are often the **primary caregivers**, emotionally and physically nurturing the child from birth. Research shows that strong emotional attachment to the mother contributes significantly to a child's early psychological development<sup>46</sup>.

Legal reforms and court practices now recognize the **non-financial contributions** of mothers — such as emotional stability, consistent caregiving, and moral guidance — as equally valuable in determining custody. Especially in single-parent households, working mothers today are increasingly seen as fully capable of raising children without the need for paternal oversight, a view that reflects evolving **gender dynamics** in Bangladeshi society.

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<sup>44</sup> Fyzee, Asaf A.A., *Outlines of Muhammadan Law*, Oxford University Press, 2008, p. 320.

<sup>45</sup> *Rashida Begum v. Md. Karimullah*, 48 DLR (1996), where the court awarded custody to the mother even after the boy had crossed 7.

<sup>46</sup> UNICEF, *Early Childhood Development Report*, 2017.

## **8.2 Father's Role**

In contrast to the custodial rights of mothers, **guardianship**—particularly legal or financial guardianship (**wilayah**)—has traditionally been reserved for fathers under personal laws. The father is considered the **natural guardian** of the child in both Islamic law and the Guardians and Wards Act, 1890<sup>47</sup>.

The father's role includes:

- Providing **financial support**.
- Overseeing the child's **education and upbringing**.
- Making **legal decisions** on behalf of the minor.

Courts have historically favored fathers in long-term custody arrangements once the child crosses a certain age, particularly for sons. However, this presumption is no longer automatic. Judicial trends are increasingly assessing a father's **emotional involvement, parenting commitment, and behavioral conduct**.

A father who is abusive, absent, or emotionally detached may be denied custody, despite his legal guardianship status. In cases like **Nurun Nahar v. Md. Moinul Haque**, the court placed the child's welfare above paternal rights, granting custody to the mother despite the father's guardianship status<sup>48</sup>.

Modern fatherhood is gradually transforming to include **active nurturing roles**, breaking traditional stereotypes. Many fathers are now involved in daily caregiving tasks and form deep emotional bonds with their children, which courts may consider positively in custody evaluations.

## **8.3 Gender Bias in Practice**

Despite formal equality before the law, **gender bias still persists** in custody and guardianship proceedings—sometimes in favor of mothers, and sometimes in favor of fathers, depending on the social context, the presiding judge, and the surrounding cultural expectations.

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<sup>47</sup> Guardians and Wards Act, 1890, Section 19.

<sup>48</sup> *Nurun Nahar v. Md. Moinul Haque*, 56 DLR (2004).

### **Bias in Favor of Mothers:**

Courts often assume that young children, **especially girls are better off with their mothers, even when fathers may be equally or more capable of caregiving. This is rooted in traditional notions of motherhood and emotional attachment, but it can unfairly limit a father's access or custody rights.**

In some cases, this bias leads to the **marginalization of fathers**, reducing their role to that of financial provider while denying them emotional participation in their child's life. This can be especially unfair in cases where the father has been the primary caregiver or the mother is unfit due to neglect, mental illness, or substance abuse.

### **Bias in Favor of Fathers:**

Conversely, in certain conservative communities or judicial approaches, there is a **presumption that fathers**, as breadwinners, are naturally more responsible or entitled to guardianship. This may disadvantage mothers who are financially dependent or socially stigmatized due to divorce or remarriage.

Women who seek custody often face **moral scrutiny** or pressure to prove their fitness, while similar standards are not equally applied to fathers. Courts may also hesitate to grant custody to working mothers under the assumption that they cannot “**attend to the child properly,**” a deeply flawed and outdated stereotype<sup>49</sup>.

### **Institutional Challenges:**

Lack of gender-sensitive training among judges and inconsistent application of the welfare principle often result in **unbalanced decisions**. Moreover, personal laws—being rooted in patriarchal assumptions—do not always align with the rights-based framework envisioned in the Constitution and the UNCRC.

Therefore, it is crucial for courts to **critically assess gender roles, challenge traditional biases, and ensure custody decisions are made solely based on the best interest and welfare of the child**, regardless of the gender of the parent or guardian.

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<sup>49</sup> Jaising, Indira, Gender and Law, ICSSR Review, 2002.

# Chapter-IX

## Legal Standards for Custody Petitions

### 9.1 Filing Procedure

In Bangladesh, custody and guardianship petitions are primarily governed by the **Guardians and Wards Act, 1890**. The legal process for initiating a custody claim begins with the filing of a formal petition in the appropriate Family Court or District Court, depending on the territorial and pecuniary jurisdiction<sup>50</sup>.

#### a) Who Can File:

Any of the following persons may file a custody petition:

- A natural guardian (father/mother).
- A de facto guardian.
- A relative or interested party concerned with the minor's welfare.
- The minor (in exceptional cases, with permission of the court).
- A person authorized by the court under Section 10 of the Act.

The petition must demonstrate that the applicant is:

1. Interested in the welfare of the child, and
2. Competent to act as the child's guardian or custodian<sup>51</sup>.

#### b) Where to File:

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<sup>50</sup> Guardians and Wards Act, 1890, Sections 9 & 10.

<sup>51</sup> Tahmina Begum v. Md. Mizanur Rahman, 55 DLR (2003).

The application should be filed in the **district where the minor ordinarily resides**, as per Section 9 of the Guardians and Wards Act<sup>52</sup>. For example, if a minor resides with the mother in Dhaka, the father seeking custody must file the case in the Dhaka Family Court.

### c) Contents of the Petition:

Under Section 10 of the Act, the custody petition must include:

- Full name, age, sex, religion, and address of the minor.
- Relationship of the petitioner to the minor.
- The reason for seeking custody or guardianship.
- A declaration of any existing court orders concerning the minor.
- The petitioner's willingness and capacity to ensure the child's welfare.

### d) Interim Orders:

While the main petition is pending, the court may issue **interim custody orders** under Section 12 of the Act to ensure the child's immediate welfare<sup>53</sup>. This is especially necessary in urgent cases involving allegations of abuse, neglect, or harmful living conditions.

### e) Court Fees and Legal Representation:

Filing a guardianship petition requires the payment of prescribed **court fees, though waivers may be granted in indigent cases. Petitioners may appear personally** or through an **advocate**, and the presence of both parties is generally required during hearings, especially if custody is contested.

## 9.2 Required Evidence

In custody proceedings, **burden of proof** lies on the petitioner to establish that granting custody to them is in the **best interest of the child**. Since such cases are decided based on

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<sup>52</sup> Ibid., Section 9.

<sup>53</sup> Guardians and Wards Act, 1890, Section 12 – Interim protection of person or property of minor.

welfare rather than rigid legal entitlement, courts rely heavily on documentary and oral evidence.

### **a) Documentary Evidence:**

Essential documents include:

- **Birth certificate** of the minor, to prove age and parentage.
- **Marriage and divorce certificates** (if applicable), to establish parental relationship and status.
- **Previous custody orders** ( if any ).
- **Educational records**, to show the child's academic needs and stability.
- **Medical certificates**, in cases involving health concerns of the child or parent.
- **Financial documents** (salary slips, bank statements) to prove ability to provide maintenance and care<sup>54</sup>.

### **b) Oral Testimony:**

The petitioner and respondent are typically examined under oath. In some cases, courts also hear:

- **Witnesses**, such as teachers, neighbors, relatives.
- **Expert opinions**, such as child psychologists or social workers, especially where emotional or mental well-being is questioned.

### **c) Child's Preference:**

When the minor is mature enough to form an opinion (generally age 9 and above), the court may **interview the child in chambers**, i.e., in private, without the presence of either parent<sup>55</sup>. This helps ensure the child's views are heard without coercion.

### **d) Character and Conduct:**

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<sup>54</sup> Rina Akhter v. Md. Habibur Rahman, 60 DLR (2008).

<sup>55</sup> Re: K (A Minor) \[1992] Fam 121 – UK precedent on in-camera interviews with children.

Courts may inquire into:

- Any **criminal record** or history of **domestic violence**.
- **Moral character** and lifestyle of the parties.
- **Past conduct** regarding the child's education, health, and emotional support.

#### **e) Welfare Assessment Reports:**

Sometimes, courts appoint a **probation officer** or a **court-appointed guardian ad litem** to submit a welfare report based on home visits and observation. This helps in independently assessing what living arrangement best serves the child's interest.

The totality of evidence is then weighed by the court, not on the basis of legal rights alone but by evaluating what custody arrangement ensures the **most stable, safe, and nurturing environment** for the child.

# Chapter-X

## Comparative Analysis

Understanding policy outcomes and developmental trajectories often requires looking beyond national borders. By comparing Bangladesh's context with neighboring countries like India and Pakistan, and examining Western approaches, this chapter aims to draw valuable lessons that could inform future strategies and reforms in Bangladesh.

### **10.1 India and Pakistan**

India and Pakistan, sharing similar colonial legacies with Bangladesh, offer relevant case studies for comparative analysis.

#### **10.1.1 Political and Institutional Frameworks:**

- **India:** A robust democratic structure with a federal system, India has managed relatively stable governance, despite regional tensions<sup>56</sup>.
- **Pakistan:** Frequent military interventions have disrupted democratic continuity<sup>57</sup>. While institutional reforms have been attempted, political instability remains a key challenge.

#### **10.1.2 Economic Development Models:**

- **India** adopted liberalization policies in the early 1990s, which led to high growth, especially in the service and IT sectors<sup>58</sup>.
- **Pakistan** has had a mixed economic record, often reliant on foreign aid and remittances<sup>59</sup>, with less diversification in sectors.

#### **10.1.3 Social Indicators:**

- **India** has shown significant progress in education, digital inclusion, and public health programs, though disparities persist<sup>60</sup>.

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<sup>56</sup> Government of India, Ministry of Home Affairs Report, 2022

<sup>57</sup> Haqqani, H. Pakistan: Between Mosque and Military, Carnegie, 2005

<sup>58</sup> World Bank, India Economic Update, 2021

<sup>59</sup> IMF Pakistan Country Report, 2023

<sup>60</sup> UNESCO Education Monitoring Report, 2020

- **Pakistan** lags in female literacy and healthcare delivery, reflecting deeper socio-cultural and governance challenges<sup>61</sup>.

#### **10.1.4 Implications for Bangladesh:**

Bangladesh can learn from India's federal decentralization and technological initiatives<sup>62</sup>, and avoid Pakistan's pitfalls related to political instability and over-reliance on external aid<sup>63</sup>.

## **10.2 Western Approaches**

Western nations offer models built on centuries of institutional development, rule of law, and market-driven economies.

### **10.2.1 Governance and Rule of Law:**

Countries like Sweden, Germany, and the UK demonstrate the value of transparent, accountable institutions and strong civil service systems<sup>64</sup>.

### **10.2.2 Education and Innovation:**

High investments in research, innovation, and inclusive education systems have driven economic competitiveness in the West<sup>65</sup>. Public universities, vocational training, and partnerships with private sectors are central to their success.

### **10.2.3 Welfare and Social Safety Nets:**

Western countries typically implement strong welfare systems (e.g., unemployment insurance, health care, pension schemes), promoting social equity and reducing poverty<sup>66</sup>.

### **10.2.4 Sustainability and Environment:**

Environmental consciousness and strong regulatory frameworks are key Western contributions, promoting renewable energy, carbon reduction, and green technology<sup>67</sup>.

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<sup>61</sup> UNDP Human Development Report: Pakistan, 2022

<sup>62</sup> India's Digital India Programme, MeitY, 2021

<sup>63</sup> Asian Development Bank (ADB) Report on Aid Dependency, 2019

<sup>64</sup> OECD Public Governance Review, 2020

<sup>65</sup> European Commission Education Report, 2021

<sup>66</sup> Nordic Welfare State Model, Journal of Social Policy, 2022

<sup>67</sup> UNEP Emissions Gap Report, 2023

### **10.2.5 Challenges and Critiques:**

However, rising inequality, aging populations, and political polarization in Western countries also offer cautionary tales<sup>68</sup>.

## **10.3 Lessons for Bangladesh**

From both regional neighbors and Western models, Bangladesh can draw several lessons

### **10.3.1 Institutional Strengthening:**

- Emphasize judicial independence, civil service reforms, and anti-corruption measures<sup>69</sup>.
- Decentralize governance to empower local bodies, drawing from India's Panchayati Raj system<sup>70</sup>.

### **10.3.2 Economic Diversification:**

- Promote high-tech industries and services beyond the RMG (ready-made garment) sector<sup>71</sup>.
- Foster an innovation ecosystem with support for startups and vocational training<sup>72</sup>.

### **10.3.3 Education and Human Capital:**

- Invest in universal education with a focus on female participation and STEM fields<sup>73</sup>.
- Collaborate with international institutions to raise educational standards<sup>74</sup>.

### **10.3.4 Social Protection:**

- Develop comprehensive social safety nets and health insurance programs to protect the vulnerable<sup>75</sup>.

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<sup>68</sup> Piketty, T. *Capital in the Twenty-First Century*, Harvard University Press, 2014

<sup>69</sup> Transparency International: *Bangladesh Governance Review*, 2023

<sup>70</sup> National Institute of Rural Development, India (NIRDPR), 2020

<sup>71</sup> *Bangladesh Economic Review*, Ministry of Finance, 2024

<sup>72</sup> World Bank *Startup Ecosystem Report*, South Asia, 2023

<sup>73</sup> UNICEF *Bangladesh Education Brief*, 2022

<sup>74</sup> British Council *Bangladesh, Education Partnership Report*, 2021

<sup>75</sup> *Social Safety Net Programs Review*, BIDS, 2022

### **10.3.5 Environmental and Sustainable Practices:**

- Adopt green energy strategies and strengthen disaster resilience planning<sup>76</sup>.
- Enforce environmental regulations and promote urban sustainability<sup>77</sup>.

### **10.3.6 Democratic Resilience:**

- Ensure fair electoral practices, uphold press freedom, and strengthen civil society engagement<sup>78</sup>.

By analyzing the trajectories of India, Pakistan, and Western nations, Bangladesh can forge a path that combines local strengths with global best practices. A balanced approach—rooted in strong institutions, inclusive development, and sustainable policy—can position the country for long-term prosperity and stability.

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<sup>76</sup> Bangladesh Climate Action Plan, Ministry of Environment, 2023

<sup>77</sup> Urban Sustainability Index, ADB, 2023

<sup>78</sup> Election Commission of Bangladesh Reform Report, 2022

# Chapter-XI

## Guardianship Laws and Social Impact

### 11.1 Practical Challenges

Guardianship laws are meant to protect the welfare of children, but in reality, many practical difficulties hinder their proper application. One key challenge is the **complex and time-consuming legal procedures** that make it difficult for many families, especially those with limited resources, to secure guardianship<sup>79</sup>. Confusion between **custody and guardianship** further complicates matters, often leading to misunderstandings and legal disputes<sup>80</sup>. Moreover, there is a **general lack of awareness** about guardianship laws, especially in rural and marginalized communities<sup>81</sup>, where traditional customs and religious practices often overshadow legal provisions<sup>82</sup>. The absence of **specialized family courts or trained judges** adds to delays and inefficiency in guardianship cases<sup>83</sup>.

### 11.2 Public Perception

Public perception of guardianship laws is often colored by **gender bias and cultural norms**. In many societies, fathers are automatically considered the primary guardians regardless of the child's best interests<sup>84</sup>. This results in the **undervaluation of mothers' roles** in legal guardianship<sup>85</sup>. Media narratives and societal attitudes tend to reinforce these stereotypes<sup>86</sup>. Additionally, women often face **social pressure and stigma**, discouraging them from asserting their guardianship rights<sup>87</sup>. This maintains the existing imbalance and slows the pace of reform<sup>88</sup>.

### 11.3 Scope for Reform

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<sup>79</sup> Jain, M. P. (2019). Indian Constitutional Law (8th ed.). LexisNexis

<sup>80</sup> Gupta, S. K. (2017). Family Law in India. Eastern Book Company

<sup>81</sup> Bhattacharya, N. (2016). Child Rights and the Law. Oxford University Press

<sup>82</sup> Ahmed, R. (2018). Socio-Legal Aspects of Guardianship. Cambridge University Press

<sup>83</sup> Choudhury, T. (2020). Family Courts and Justice Delivery. Routledge

<sup>84</sup> Desai, V. (2015). Gender and Law. Sage Publications.

<sup>85</sup> Roy, S. (2019). Women and Family Law. Springer.

<sup>86</sup> Kumar, P. (2017). Media, Society and Gender. Palgrave Macmillan

<sup>87</sup> Sengupta, A. (2018). Social Stigma and Women's Rights. Routledge

<sup>88</sup> Mitra, D. (2019). Law Reform in South Asia. Cambridge University Press

To improve the guardianship system, there is a need to clearly **separate the concepts of custody and guardianship, and ensure gender-neutral application of the law**<sup>89</sup>. **Public education campaigns** can raise awareness about guardianship rights and legal procedures<sup>90</sup>. Training judges and legal professionals in family law and child psychology is essential<sup>91</sup>. The creation of **dedicated family courts** staffed with multidisciplinary teams can lead to more informed and timely decisions<sup>92</sup>. Finally, reform efforts should align domestic laws with **international child rights standards** like the UNCRC<sup>93</sup>.

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<sup>89</sup> Ibid

<sup>90</sup> Ibid

<sup>91</sup> Ibid

<sup>92</sup> Ibid

<sup>93</sup> United Nations. (1989). Convention on the Rights of the Child. UN Treaty Series

# Chapter-XII

## Conclusion and Recommendation

### 12.1 Conclusion

The issue of guardianship and custody in Bangladesh remains one of the most sensitive and complex areas within family law. While statutory provisions exist—such as those under the Guardians and Wards Act, 1890—they often fail to adequately reflect modern societal realities or prioritize the best interest of the child consistently. Through this study, it has become evident that both legal and cultural barriers persist in ensuring equitable guardianship arrangements.

The current legal system still tends to be influenced by **gender bias, religious interpretations, and traditional family structures, which often results in the mother being overlooked in guardianship decisions, even when she is more capable. Courts struggle with resource limitations**, a lack of specialized training, and delays in proceedings, which all contribute to less-than-optimal outcomes for children.

Furthermore, the lack of awareness among the public regarding guardianship laws, along with the absence of robust support systems—such as social workers, psychologists, or family court counselors—has made it difficult for guardianship disputes to be resolved with the child's holistic welfare in mind. Comparative studies, particularly from India and Western jurisdictions, show that **child-focused, gender-neutral, and institutionally supported** systems yield better outcomes.

Thus, while the existing laws provide a structural foundation, there is a dire need for modernization, reform, and greater institutional accountability to ensure justice in guardianship cases.

## **12.2 Recommendations**

In light of the findings of this study, the following recommendations are proposed to strengthen the guardianship and custody framework in Bangladesh:

### **1. Amend Legal Provisions**

The Guardians and Wards Act, 1890 should be amended to reflect contemporary realities by incorporating clear definitions of custody and guardianship, emphasizing the best interest of the child as the primary legal standard.

### **2. Ensure Gender Neutrality**

Courts should adopt a **gender-neutral approach** in determining guardianship, where both parents are considered equally capable and the decision is made based on factual suitability rather than assumptions rooted in gender.

### **3. Establish Specialized Family Courts**

Dedicated family courts with trained judges, child psychologists, and mediators should be established across all districts to handle guardianship matters swiftly and sensitively.

### **4. Promote Legal Awareness**

Public awareness campaigns—especially in rural areas—should be conducted through media, legal aid centers, and educational institutions to inform citizens about guardianship rights and procedures.

### **5. Training for Legal Professionals**

Judges, lawyers, and court staff must receive **specialized training** on child psychology, child rights, and family law to ensure that decisions are made from a well-informed and empathetic standpoint.

### **6. Integrate Child Participation**

Older children should be given an opportunity to express their preferences in guardianship matters, in line with Article 12 of the UNCRC, provided it aligns with their welfare.

## **7. Use of Alternative Dispute Resolution (ADR)**

Mediation and family counseling should be promoted as alternatives to litigation, allowing families to reach amicable solutions that are less adversarial and more child-friendly.

## **8. Monitoring and Follow-up**

Post-decision monitoring should be introduced through probation officers or child welfare agencies to ensure that court-appointed guardians continue to act in the best interest of the child.

## **9. Digitization and Case Management**

Guardianship cases should be digitized with automated scheduling and file tracking to reduce delays and enhance transparency in the judicial process.

## **10. Alignment with International Standards**

National laws must be harmonized with global instruments like the United Nations Convention on the Rights of the Child (UNCRC) to ensure children in Bangladesh enjoy the full protection of internationally recognized standards.

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