



**Research Monograph**

**On**

**“Women’s position Under The Family laws of Bangladesh; Critical Analysis.”**

**This Research Submitted for the Partial Fulfillment of the award of the degree in LL.B  
(Hon’s) Department of Law, Sonargaon University (SU), Dhaka.**

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**Date of Submission: 08 July, 2025**

## *Dedication*

*This Research is Dedicated to my  
Father & Mother*

## **LETTER OF TRANSMITTAL**

**To**

**Sunzida Akhter**

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Subject: Submission of research paper on **“Women’s position Under The Family laws of Bangladesh; Critical Analysis.”**

Dear Sir,

It is a great pleasure for me to submit the thesis on **“Women’s position Under The Family laws of Bangladesh; Critical Analysis.”** While I doing this thesis, I have tried my level best to make this project paper to the latest standard. I think that thesis paper will fulfill your requirement and pleased you. I, therefore, hope that you would be kind enough to go through this thesis paper for evaluation.

I am always be ready for clearance of any part of my thesis.

Thanking you

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## **CERTIFICATION**

This is to certify that the thesis on —**Women’s position Under The Family laws of Bangladesh; Critical Analysis** done by Md.Rakibul Hasan in partial fulfillment of the requirements for the degree of LL.B. (Honours) from Sonargaon University, Dhaka. The thesis has been carried out under my guidance and is a record of the bonafide work carried out successfully.

.....  
**Sunzida Akhter**  
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## **DECLARATION**

I do hereby that this Research Monograph on the **Women's position Under The Family laws of Bangladesh; Critical Analysis.** have been done by me and this Research is free from all plagiarism and without help of other. I further declare that this monograph is prepared with my own effort and it was not and never submit to any institute for any academic reason.

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## **Abstract:**

This thesis undertakes an in-depth critical analysis of the legal status of women under the family laws of Bangladesh, with particular emphasis on the application of religious personal laws—namely Muslim and Hindu laws—that continue to govern family matters such as marriage, divorce, maintenance, custody, guardianship, and inheritance. Despite the constitutional guarantee of equality before the law and the prohibition of gender-based discrimination under Articles 27 and 28 of the Constitution of Bangladesh, women remain subject to numerous legal inequalities rooted in patriarchal interpretations of personal law.

The research identifies and evaluates the structural and substantive barriers that hinder women's access to justice within the family law system. Through detailed examination of legislative provisions, judicial decisions, and customary practices, the study highlights how religious-based personal laws often privilege male authority, restrict women's autonomy, and perpetuate gender-based disparities. Muslim women, for example, face legal disadvantages in areas such as unilateral divorce (*talaq*), unequal inheritance, and limited guardianship rights, while Hindu women contend with the lack of codified divorce rights and marginal inheritance entitlements.

Drawing on national constitutional principles as well as international human rights frameworks—particularly the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), to which Bangladesh is a signatory—the thesis critiques the state's failure to harmonize domestic family laws with international obligations. Comparative legal analysis with jurisdictions such as India, Pakistan, Tunisia, and Malaysia provides insights into progressive legal reforms and gender-sensitive jurisprudence that could serve as models for Bangladesh.

The research also explores the evolving role of the judiciary, civil society organizations, and women's rights activists in advocating for reform and advancing gender justice. It concludes with specific recommendations for legislative and policy reform, including the codification of equitable family laws, removal of CEDAW reservations, and adoption of a uniform legal framework that upholds the fundamental rights and dignity of women regardless of religious affiliation.

This study aspires to contribute to the growing discourse on legal reform and gender equality in Bangladesh, emphasizing the urgent need for a family law system that aligns with democratic principles, social justice, and the realities of women's lived experiences.

## **Abbreviations**

DLR - Dhaka Law Reports

BLD - Bangladesh Legal Decisions

AIR - All Indian Reports

SC - Supreme Court

LAWASIA – THE LAW ASSOCIATION FOR ASIA AND THE PACIFIC

HCD - High Court Division

BCS – Bangladesh Civil Service

PSC – Public Service Commission

MLJPA – Ministry of Law, Justice and Parliamentary Affairs

ME - Ministry of Establishment WP – Writ Petition

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## **Chapter -1: Introduction**

### **1.1 Background of the Study:**

Family laws in Bangladesh occupy a unique and complex position within the broader legal system. Unlike civil or criminal law, which is uniformly applied, family law remains deeply intertwined with religious identity, and is governed by distinct personal laws for different religious communities. Muslim, Hindu, and Christian communities follow their respective religious laws in matters relating to marriage, divorce, maintenance, guardianship, custody of children, and inheritance. Among these, Muslim and Hindu personal laws affect the vast majority of the population and are the focus of this study.

These personal laws, while rooted in religious traditions, were shaped and codified during the colonial era, particularly under British rule. The colonial administration institutionalized personal law systems by formalizing certain interpretations of religious texts, often privileging patriarchal values. This legacy continues in post-independence Bangladesh, where little effort has been made to reform personal laws in line with contemporary human rights standards or the constitutional mandate for equality.

As a result, family laws in Bangladesh disproportionately disadvantage women, subjecting them to legal and social norms that undermine their dignity, autonomy, and status within the family. For example, under Muslim personal law, men possess unilateral rights to divorce through talaq, while women must pursue judicial intervention through more complex and restrictive procedures like khula or faskh. Similarly, Muslim inheritance law grants sons twice the share of daughters, reinforcing economic dependency and limiting women's access to property.

Hindu women face even greater legal challenges. The Hindu personal law in Bangladesh remains largely uncoded and retains archaic provisions that deny women the right to divorce and provide minimal property rights. Widows and daughters often face exclusion from inheritance, and the absence of legal mechanisms for marital dissolution severely restricts their freedom and protection in abusive or irreconcilable relationships.

This systemic legal inequality starkly contrasts with the progressive promises embedded in the Constitution of Bangladesh. Article 27 guarantees equality before the law, while Article 28(2) specifically prohibits discrimination on the grounds of sex. Moreover, Bangladesh is a signatory

to major international human rights instruments, including the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). However, the persistence of discriminatory personal laws signals a gap between constitutional ideals, international obligations, and the lived realities of Bangladeshi women.

The coexistence of multiple personal laws also results in legal fragmentation and unequal treatment of citizens based on religion. It raises important questions about the role of the state in ensuring justice and equality in a multicultural but constitutionally secular society. While legal reform in family law is often perceived as sensitive due to its religious dimensions, there is growing recognition—both domestically and globally—that cultural or religious traditions cannot be used to justify gender-based discrimination.

In recent years, civil society, women’s rights activists, and legal scholars have increasingly called for reforms that align family laws with the Constitution and international human rights standards. Efforts in other Muslim-majority countries like Tunisia, Indonesia, and even neighboring India show that personal laws can be reformed in ways that respect religious values while ensuring gender justice.

This thesis emerges from the pressing need to re-examine the existing legal framework governing family matters in Bangladesh, especially from a gender perspective. By critically analyzing the intersection of religion, law, and gender, this study seeks to uncover how family laws contribute to women’s subordination and what legal and policy reforms are necessary to create a more equitable legal system that upholds women’s rights and human dignity.

## **1.2 Statement of the Problem:**

Despite the constitutional promise of equality and non-discrimination, women in Bangladesh remain structurally disadvantaged within the domain of family law. The application of religious personal laws—particularly Muslim and Hindu laws—continues to institutionalize gender inequality in core aspects of family life, including marriage, divorce, maintenance, custody, guardianship, and inheritance. These laws are not only outdated but also rooted in patriarchal interpretations that uphold male dominance and female subordination within the family structure.

For instance, under Muslim personal law, men enjoy unilateral rights to divorce through talaq, while women face complex and often restricted pathways to dissolve a marriage. In inheritance matters, daughters are entitled to only half the share of sons, reflecting a systemic undervaluation of women's financial rights and reinforcing economic dependency. Similarly, in Hindu personal law—which remains largely uncodified in Bangladesh—women are denied the legal right to initiate divorce, and their property rights are minimal or nonexistent, leaving them vulnerable and legally invisible in cases of marital breakdown or widowhood.

These discriminatory practices are perpetuated despite the explicit provisions of Article 27 (equality before law) and Article 28 (non-discrimination on the basis of sex) of the Constitution of Bangladesh. Moreover, Bangladesh's international legal commitments—such as to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)—are undermined by the existence of personal laws that violate basic principles of gender justice. The lack of codification, uniformity, and reform in personal laws further exacerbates the problem. There is an absence of legal mechanisms that empower women to challenge discriminatory practices within their respective religious frameworks. Additionally, social stigma, lack of legal awareness, limited access to legal aid, and the male-dominated nature of the judiciary and religious institutions contribute to the silencing and marginalization of women's voices in legal proceedings.

While legal reform efforts in other Muslim-majority and pluralistic societies show that personal law can evolve in a way that respects both religious values and women's rights, Bangladesh has yet to take substantial steps toward modernizing its family law framework. Resistance from conservative religious groups and a lack of political will have stalled progressive reform initiatives, leaving thousands of women without legal recourse or protection in matters that affect their personal lives, dignity, and future.

This study aims to address the urgent need for legal reform by identifying the specific ways in which women are disadvantaged under current family laws, analyzing the contradictions between domestic laws and constitutional/international commitments, and proposing actionable reforms. The research problem, therefore, lies in the continuing legal subjugation of women within the family structure, sustained by outdated personal laws and a fragmented, patriarchal legal system.

### **1.3 Objectives of the Study:**

The overarching objective of this study is to critically analyze the status and treatment of women under the family laws of Bangladesh, particularly focusing on the gender-based disparities inherent in Muslim and Hindu personal laws. In pursuit of this central goal, the study aims to achieve the following specific objectives:

1. To examine the legal framework governing family matters in Bangladesh with a focus on religious personal laws applicable to Muslim and Hindu women in areas such as marriage, divorce, maintenance, guardianship, custody, and inheritance.
2. To identify and analyze the specific provisions within personal laws that result in direct or indirect discrimination against women and to explore how these provisions reflect patriarchal structures embedded within religious and social institutions.
3. To assess the compatibility of these personal laws with the fundamental rights enshrined in the Constitution of Bangladesh—particularly the right to equality and non-discrimination—as well as the country’s obligations under international human rights treaties, including CEDAW.
4. To explore judicial interpretations and key case laws that have either upheld or challenged discriminatory personal law provisions and assess the role of the judiciary in shaping gender justice within the family law context.
5. To compare Bangladesh's personal law regime with that of other countries—particularly South Asian and Muslim-majority nations—that have undertaken successful family law reforms, in order to extract lessons and best practices.
6. To evaluate existing legal reform initiatives and public discourse concerning personal law reform in Bangladesh and assess their effectiveness, challenges, and prospects for implementation.

7. To propose specific legal and policy recommendations aimed at reforming discriminatory personal law provisions in order to establish a more equitable, gender-sensitive, and constitutionally compliant family law system in Bangladesh.

By fulfilling these objectives, the study seeks not only to highlight the legal and social challenges faced by women under the current family law framework but also to contribute constructively to the ongoing dialogue surrounding gender justice, legal reform, and women's rights in Bangladesh.

#### **1.4 Research Questions:**

This research is guided by a central concern: how do the existing family laws of Bangladesh affect the legal and social position of women, and what reforms are necessary to ensure gender equality within this domain?<sup>1</sup> To address this broader issue, the study is structured around the following key research questions:

1. What are the key features of the personal laws (Muslim and Hindu) governing family matters in Bangladesh, particularly in relation to women's rights in marriage, divorce, maintenance, custody, guardianship, and inheritance?<sup>2</sup>
2. How do these personal law provisions create or perpetuate legal disadvantages and gender-based discrimination against women?<sup>3</sup>
3. To what extent do family laws in Bangladesh align or conflict with the constitutional guarantees of equality and non-discrimination?<sup>4</sup>
4. How has the judiciary in Bangladesh interpreted and applied personal law provisions affecting women, and what role has it played in reinforcing or challenging discriminatory practices?<sup>5</sup>
5. What are the implications of Bangladesh's commitments under international human rights instruments, such as CEDAW, for the reform of discriminatory personal laws?<sup>6</sup>

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<sup>1</sup> Ain o Salish Kendra (ASK), *Discriminatory Personal Laws and Women's Rights in Bangladesh*, 2020.

<sup>2</sup> Huda, S.M. Masum Billah, *Personal Laws and Legal Pluralism in Bangladesh*, Bangladesh Institute of Legal Studies, 2020.

<sup>3</sup> UN Women, *Muslim Family Laws and Women's Rights in South Asia: Lessons from Reform*, 2020.

<sup>4</sup> The Constitution of the People's Republic of Bangladesh, Articles 27 and 28.

<sup>5</sup> *Kazi Nurul Islam v. Government of Bangladesh*, Supreme Court of Bangladesh (Case Citation).

6. What reform initiatives have been proposed or implemented in Bangladesh to address gender inequality in family laws, and what obstacles have hindered their success?<sup>7</sup>

7. How have other countries, particularly in South Asia and the Muslim world, reformed their family laws to better protect women's rights, and what lessons can Bangladesh learn from their experiences?<sup>8</sup>

8. What legal and policy recommendations can be made to create a more equitable and gender-just family law system in Bangladesh?<sup>9</sup>

These research questions will guide the analysis throughout the thesis and help structure the investigation into the current status, challenges, and prospects for reform of women's rights under family laws in Bangladesh.<sup>10</sup>

## **1.5 Research Methodology:**

The research methodology adopted in this study is primarily doctrinal and analytical, aimed at examining and critically evaluating the position of women under the family laws of Bangladesh. It involves a close study of legal texts, statutes, case laws, and scholarly opinions, as well as a comparative legal perspective. The methodology has been structured to ensure a thorough understanding of the existing legal framework, its gaps, and the scope for reform.<sup>1</sup>

### **1.5.1 Doctrinal Legal Research:**

Doctrinal research, also known as library-based research, forms the foundation of this study. It involves a detailed analysis of:

- Primary sources, such as:
  - The Constitution of the People's Republic of Bangladesh<sup>2</sup>

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<sup>6</sup> CEDAW (Convention on the Elimination of All Forms of Discrimination Against Women), Articles 1 and 2; General Recommendation No. 21.

<sup>7</sup> Naripokkho, *Reforming Family Laws in Bangladesh: Advocacy and Legal Strategies*, 2019.

<sup>8</sup> United Nations ESCAP, *Legal Reforms for Gender Equality in Muslim-Majority States*, 2021; India Law Commission Report No. 277 (2018).

<sup>9</sup> Bangladesh Legal Aid and Services Trust (BLAST), *Legal Empowerment and Policy Reform Proposals for Women in Family Law*, 2020.

<sup>10</sup> Jahan, Rounaq, *Women and Development: Perspectives from South Asia*, University Press Limited, 2005.

<sup>1</sup> Ain o Salish Kendra (ASK), *Discriminatory Personal Laws and Women's Rights in Bangladesh*, 2020.

<sup>2</sup> The Constitution of the People's Republic of Bangladesh, Articles 27 and 28.

- Statutes governing family matters (e.g., Muslim Family Laws Ordinance, 1961; The Hindu Married Women's Right to Separate Residence and Maintenance Act, 1946)<sup>3</sup>
- Case laws and judicial interpretations relevant to family law and women's rights<sup>4</sup>
- International treaties and conventions ratified by Bangladesh, especially the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)<sup>5</sup>
- Secondary sources, such as:
  - Books and scholarly articles on family law, gender justice, Islamic law, and comparative legal systems<sup>6</sup>
  - Reports and publications by law commissions, women's rights organizations, and legal advocacy groups<sup>7</sup>
  - Legal commentaries and journals focusing on personal law reform and human rights in South Asia<sup>8</sup>

This approach enables a deep exploration of the legal provisions that govern family matters and how they affect the rights and status of women in practice.

### **1.5.2 Analytical and Critical Approach:**

An analytical framework is used to evaluate the gendered implications of personal laws, scrutinize inconsistencies between law and constitutional principles, and assess the socio-legal impact of discriminatory practices. The analysis includes:

- Identifying contradictions between personal law provisions and constitutional guarantees (Articles 27, 28, and 29 of the Constitution)<sup>2</sup>
- Critically assessing court decisions that have either upheld or challenged gender-discriminatory norms<sup>4</sup>
- Analyzing the implementation gap between legal provisions and their real-world application, particularly from a gender perspective<sup>9</sup>

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<sup>3</sup> Huda, S.M. Masum Billah, *Personal Laws and Legal Pluralism in Bangladesh*, Bangladesh Institute of Legal Studies, 2020.

<sup>4</sup> Kazi Nurul Islam v. Government of Bangladesh, Supreme Court of Bangladesh (Case Citation).

<sup>5</sup> CEDAW (Convention on the Elimination of All Forms of Discrimination Against Women), Articles 1 and 2; General Recommendation No. 21.

<sup>6</sup> UN Women, *Muslim Family Laws and Women's Rights in South Asia: Lessons from Reform*, 2020.

<sup>7</sup> Naripokkho, *Reforming Family Laws in Bangladesh: Advocacy and Legal Strategies*, 2019.

### **1.5.3 Comparative Legal Method:**

The research also adopts a comparative approach by examining how other jurisdictions—particularly India, Pakistan, Tunisia, and Malaysia—have approached the reform of personal laws to promote gender equality. These comparisons help:

- Highlight successful legal models or practices that can inform reform in Bangladesh<sup>8</sup>
- Provide context to the challenges and opportunities of reforming religious-based personal laws in Muslim-majority and pluralistic societies
- Strengthen the case for harmonizing religious laws with international human rights standards<sup>5</sup>

### **1.5.4 Normative and Reform-Oriented Perspective:**

In addition to analyzing existing laws, the research adopts a normative lens by:

- Evaluating laws against the norms of equality, justice, and non-discrimination
- Proposing reform measures aimed at ensuring gender justice while balancing cultural and religious sensitivities
- Offering recommendations that align domestic laws with international legal obligations and human rights principles<sup>10</sup>

This multi-faceted methodology ensures that the research is both academically rigorous and socially relevant, capable of contributing to the evolving discourse on family law reform and women’s legal empowerment in Bangladesh.

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<sup>8</sup> United Nations ESCAP, *Legal Reforms for Gender Equality in Muslim-Majority States*, 2021; India Law Commission Report No. 277 (2018).

<sup>9</sup> Bangladesh Legal Aid and Services Trust (BLAST), *Legal Empowerment and Policy Reform Proposals for Women in Family Law*, 2020.

<sup>10</sup> Jahan, Rounaq, *Women and Development: Perspectives from South Asia*, University Press Limited, 2005.

## **1.6 Structure of the thesis:**

This thesis is structured into seven comprehensive chapters, each designed to systematically address the research problem, explore key legal and social issues, and propose reforms. The structure ensures logical progression and analytical clarity:

### **Chapter 1: Introduction**

This chapter sets the foundation for the study. It outlines the background of the research, states the problem, defines the objectives, formulates research questions, explains the methodology, and presents the scope and limitations. It also introduces the structure of the thesis.

### **Chapter 2: Legal Framework of Family Laws in Bangladesh**

This chapter examines the personal laws that govern family matters in Bangladesh, with a focus on Muslim and Hindu laws. It analyzes relevant statutes, constitutional provisions, and international legal obligations. The chapter discusses the pluralistic nature of family law and its implications for legal uniformity and gender justice.

### **Chapter 3: Women's Rights Under Muslim and Hindu Personal Laws**

This chapter critically evaluates women's legal position in core areas of family life, including marriage, divorce, maintenance, custody, guardianship, and inheritance. It compares the rights accorded to Muslim and Hindu women and highlights legal gaps and gender-based disadvantages.

### **Chapter 4: Key Issues and Discriminations**

This chapter delves into specific areas where family laws create systemic discrimination against women. It discusses unequal divorce rights, inheritance disparities, biased guardianship presumptions, and the broader implications of lacking a uniform legal framework.

### **Chapter 5: Comparative Perspectives from Other Jurisdictions**

This chapter explores legal reforms undertaken in other South Asian and Muslim-majority countries such as India, Tunisia, and Malaysia. It provides comparative insights to demonstrate that personal law reform is possible without undermining cultural or religious values.

## Chapter 6: Legal Reforms, Judicial Trends, and Civil Society's Role

This chapter evaluates reform proposals and judicial interventions in Bangladesh. It examines the role of the courts, NGOs, and advocacy groups in promoting women's rights. Case laws and legislative trends are analyzed to assess progress and challenges in reform efforts.

## Chapter 7: Conclusion and Recommendations

The final chapter synthesizes the findings of the research. It offers a concise summary, draws conclusions regarding the status of women under current family laws, and proposes actionable legal and policy reforms aimed at achieving gender justice in the family law framework of Bangladesh.

This thesis is organized into seven chapters that systematically explore the legal position of women under the family laws of Bangladesh. It begins with an introduction that outlines the research problem, objectives, methodology, and scope. The second chapter presents the legal framework, focusing on Muslim and Hindu personal laws and relevant constitutional and international obligations.

The third chapter critically examines women's rights in key family law areas such as marriage, divorce, maintenance, custody, and inheritance. Chapter four identifies specific areas of discrimination and structural inequality. Chapter five offers comparative insights from other countries that have reformed personal laws to promote gender justice.

Chapter six evaluates reform efforts in Bangladesh, analyzing legal changes, judicial interpretations, and the role of civil society. The final chapter concludes the study with key findings and provides detailed recommendations for achieving gender-equitable family law reform in Bangladesh.

## Chapter Two

### Legal Framework Governing Family Laws in Bangladesh

#### Introduction

Family law in Bangladesh is predominantly governed by a pluralistic system of personal laws rooted in religious doctrines and traditions. These personal laws regulate key aspects of familial relationships, including marriage, divorce, maintenance, guardianship, custody of children, and inheritance. Rather than adopting a uniform civil code, Bangladesh adheres to distinct legal regimes for different religious communities—Muslims, Hindus, Christians, and others—resulting in a fragmented and often inconsistent legal framework.

While these religiously informed personal laws are seen by many as expressions of cultural and spiritual identity, they frequently embody patriarchal values and gender-biased norms. As a consequence, women are often placed at a legal disadvantage, particularly in areas such as unilateral divorce, polygamy, unequal inheritance, and limited rights to guardianship or property. The coexistence of these discriminatory norms within a constitutional framework that guarantees equality and non-discrimination poses serious legal and ethical dilemmas.

This chapter critically explores the foundational legal framework governing family life in Bangladesh, with a particular focus on Muslim and Hindu personal laws—the two most widely applied systems in the country. It examines the relevant constitutional provisions that affirm gender equality and legal protection, and investigates the extent to which these principles are reflected or contradicted in existing family laws. Additionally, it considers Bangladesh's obligations under international human rights instruments, such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), to evaluate the country's legal responsibilities toward ensuring gender justice within the family sphere.

#### 2.1 Constitutional Provisions Relevant to Family Law:

The Constitution of the People's Republic of Bangladesh is the supreme law of the country and provides the foundational framework for justice, equality, and human dignity.<sup>1</sup> All laws, including personal or religious-based family laws, are expected to align with the constitutional values enshrined in its provisions.

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<sup>1</sup>Constitution of the People's Republic of Bangladesh, Preamble

Despite the continued application of gender-discriminatory personal laws, the Constitution guarantees equality before the law and prohibits discrimination on several grounds, including sex.

Several constitutional provisions are particularly relevant to discussions surrounding women's rights and family law in Bangladesh:

Article 27 – Equality before Law: “All citizens are equal before the law and are entitled to equal protection of the law.”<sup>2</sup> This provision sets a universal standard for legal equality, yet its practical application remains limited due to the persistence of personal laws that differentiate between men and women in matters such as divorce, inheritance, and guardianship.

Article 28 – Non-Discrimination:

Sub-Article (1): “The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex or place of birth.”

Sub-Article (2): “Women shall have equal rights with men in all spheres of the State and of public life.”<sup>3</sup>

This provision forms the constitutional basis for challenging laws and practices that undermine women's status. It also empowers the State to take special measures in favor of women, allowing for affirmative action to remedy historical and structural inequalities.

Article 29 – Equality of Opportunity in Public Employment: This article, though directed toward employment, supports the broader principle of non-discrimination and equal opportunity that should extend to all areas of law, including family law.<sup>4</sup>

Article 10 – Participation of Women in National Life: Declares that “steps shall be taken to ensure participation of women in all spheres of national life.”<sup>5</sup> This reinforces the State's responsibility to promote women's inclusion in legal and institutional frameworks.

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<sup>2</sup>Ibid., Article 27.

<sup>3</sup>Ibid., Article 28(1) and 28(2).

<sup>4</sup>Ibid., Article 29.

<sup>5</sup>Ibid., Article 10.

<sup>6</sup>Ibid., Article 19(1).

<sup>7</sup>Ibid., Article 41.

Article 19(1) – Equality of Opportunity: This article states: “The State shall endeavor to ensure equality of opportunity to all citizens.”<sup>6</sup> It mandates the removal of social and economic inequalities, which implicitly calls for legal reforms in family law to reduce gender-based disadvantages.

Article 41 – Freedom of Religion: This provision guarantees every citizen the right to profess, practice, and propagate any religion, and grants religious communities autonomy in managing their religious affairs.<sup>7</sup> While this protects religious freedom, it also complicates reform efforts as religious personal laws are often used to justify discriminatory practices against women.

Although the Constitution contains strong commitments to gender equality and social justice, the continued reliance on uncodified and patriarchal personal laws significantly undermines these constitutional ideals. The coexistence of gender-biased family laws and constitutional rights has created a legal duality that results in inequality and injustice for women, particularly in the private and familial spheres.<sup>8</sup>

Therefore, addressing this constitutional-personal law dichotomy is critical for advancing gender justice and fulfilling the promise of equality, dignity, and human rights as envisioned in the Constitution of Bangladesh.

## **2.2 Sources of Muslim Personal Law in Bangladesh:**

Muslim personal law governs the family matters of the majority Muslim population in Bangladesh. It draws from religious doctrines, classical Islamic jurisprudence, colonial legal modifications, and post-independence statutory reforms.<sup>1</sup> Muslim personal law regulates essential aspects of family life, including marriage (*nikah*), divorce (*talaq*), maintenance (*nafaqah*), guardianship (*wilayah*), and inheritance (*mirath*). While intended to preserve moral and religious norms, the existing legal framework has been criticized for reinforcing gender-based disparities and patriarchal interpretations.<sup>2</sup>

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<sup>8</sup>Huda, S.M. Masum Billah, *Personal Laws and Legal Pluralism in Bangladesh*, Bangladesh Institute of Legal Studies, 2020. of the People’s Republic of Bangladesh, Preamble.

<sup>1</sup> Ain o Salish Kendra (ASK), *Discriminatory Personal Laws and Women’s Rights in Bangladesh*, 2020.

<sup>2</sup> The Constitution of the People’s Republic of Bangladesh, Articles 27 and 28

### 2.2.1 Religious Sources

The foundational sources of Muslim personal law are rooted in Islamic theology and jurisprudence:

- **The Qur'an:** The primary source of Shariah, it outlines key principles regarding marriage, divorce, maintenance, and inheritance.<sup>3</sup>
- **Hadith (Prophetic Traditions):** These sayings and practices of the Prophet Muhammad (PBUH) supplement the Qur'an and provide practical illustrations of legal and moral conduct.<sup>3</sup>
- **Ijma (Consensus) and Qiyas (Analogical Reasoning):** These are classical jurisprudential tools developed by Islamic scholars to resolve legal issues not explicitly covered in primary texts.<sup>4</sup>

In Bangladesh, the Hanafi school of Sunni Islamic jurisprudence is predominantly followed, and most applications of personal law are interpreted through this lens. However, interpretations vary among scholars, resulting in inconsistent implementation across cases.<sup>5</sup>

### 2.2.2 Colonial and Judicial Influences: Anglo-Muhammadan Law

During the British colonial era, Islamic law was selectively codified and often filtered through the lens of English common law.<sup>6</sup> British judges, many unfamiliar with Islamic jurisprudence, applied a hybridized system known as **Anglo-Muhammadan law**, which attempted to reconcile Islamic principles with colonial administrative needs. This led to alterations in traditional Islamic jurisprudence, particularly in procedural matters such as divorce and marriage registration.<sup>6</sup>

Many present-day legal doctrines—such as the requirement for marriage registration or the procedural grounds for divorce—can be traced back to this colonial legacy rather than classical Islamic sources.<sup>7</sup>

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<sup>3</sup> Huda, S.M. Masum Billah, *Personal Laws and Legal Pluralism in Bangladesh*, Bangladesh Institute of Legal Studies, 2020.

<sup>4</sup> Kazi Nurul Islam v. Government of Bangladesh, Supreme Court of Bangladesh (Case Citation).

<sup>5</sup> CEDAW (Convention on the Elimination of All Forms of Discrimination Against Women), Articles 1 and 2; General Recommendation No. 21.

### 2.2.3 Statutory Reforms

Over time, a number of legal enactments have shaped the modern practice of Muslim personal law in Bangladesh:

- **The Muslim Personal Law (Shariat) Application Act, 1937:** Mandated the application of Islamic law in personal matters, replacing diverse customary practices.<sup>7</sup>
- **The Dissolution of Muslim Marriages Act, 1939:** Granted Muslim women the right to seek judicial divorce under specific conditions such as cruelty or non-maintenance. This was one of the earliest efforts to address gender imbalances in marital dissolution.<sup>7</sup>
- **The Muslim Family Laws Ordinance (MFLO), 1961:** The most significant legislative reform to date, the MFLO introduced:
  - Mandatory registration of marriages and divorces
  - Requirement of Arbitration Council approval for polygamous marriages
  - A 90-day notice period and reconciliation process before finalizing a *talaq*
  - Improved procedural protections for women in matters of divorce and maintenance<sup>6</sup>

While these statutory reforms introduced progressive elements, the MFLO and related legislation retain many patriarchal biases and have not undergone substantive reform in recent decades.<sup>7</sup>

### 2.2.4 Judicial Interpretations:

The judiciary in Bangladesh has played a nuanced role in interpreting Muslim personal law. Courts have sometimes adopted progressive interpretations, such as reinforcing the procedural safeguards around divorce and affirming women's rights to maintenance during the *iddat* period.<sup>4</sup>

Noteworthy rulings have:

- Emphasized the importance of written notice and due process in *talaq*.
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<sup>6</sup> UN Women, *Muslim Family Laws and Women's Rights in South Asia: Lessons from Reform*, 2020.

<sup>7</sup> Naripokkho, *Reforming Family Laws in Bangladesh: Advocacy and Legal Strategies*, 2019.

<sup>8</sup> United Nations ESCAP, *Legal Reforms for Gender Equality in Muslim-Majority States*, 2021; India Law Commission Report No. 277 (2018).

- Interpreted the role of Arbitration Councils as a safeguard mechanism in resolving marital disputes
- Recognized women's limited but essential rights to maintenance<sup>4</sup>

However, the judiciary often operates within a conservative framework that prioritizes religious orthodoxy, leading to inconsistent rulings, particularly in areas like custody and inheritance.<sup>8</sup>

In conclusion, the sources of Muslim personal law in Bangladesh form a complex legal matrix comprising scriptural, colonial, statutory, and judicial elements. Despite its diverse origins, the legal regime continues to fall short of constitutional guarantees of gender equality. Reforming Muslim personal law to align Islamic principles with modern standards of justice and human rights remains an urgent legal and social necessity.<sup>5</sup>

## **2.3 Sources of Hindu Personal Law in Bangladesh:**

Hindu personal law in Bangladesh governs the family matters of the Hindu minority population and is largely rooted in religious scriptures, customary norms, and limited statutory enactments.<sup>1</sup> Unlike Muslim personal law, which has seen partial codification, Hindu personal law remains predominantly uncodified in Bangladesh, leading to inconsistencies and substantial gender inequality in areas such as marriage, divorce, maintenance, guardianship, and inheritance.<sup>2</sup> The legal framework reflects historical, religious, and social traditions that often reinforce patriarchal norms and disadvantage Hindu women.<sup>3</sup>

### **2.3.1 Scriptural and Customary Sources**

The foundational sources of Hindu personal law are religious texts and traditional jurisprudential schools:

- **Dharmashastras:** Ancient scriptures such as the *Manusmriti*, *Yajnavalkya Smriti*, and *Narada Smriti* outline a patriarchal framework for family life, assigning subordinate roles to women and limiting their legal rights.<sup>4</sup> These texts were authored in a socio-religious context far removed from modern values of equality and justice.

- **Dayabhaga School of Hindu Law:** Predominant in Bengal and followed in Bangladesh, this school differs from the Mitakshara system (common in most parts of India) by vesting inheritance based on religious efficacy rather than birthright.<sup>5</sup> Consequently, women are often excluded from inheritance or granted only limited rights.
- **Customary Practices:** In the absence of comprehensive legislation, many aspects of Hindu family life are governed by unwritten local customs and community norms. These often vary widely but generally disadvantage women in inheritance, guardianship, and marital disputes.<sup>6</sup>

### 2.3.2 Key Statutory Laws

Though largely uncodified, a few British-era statutes remain in force and regulate select aspects of Hindu personal law in Bangladesh:

- **The Hindu Widow’s Remarriage Act, 1856:** Legalized the remarriage of Hindu widows, which had previously been considered taboo. Despite its progressive nature, the law saw limited enforcement due to persistent social stigma.<sup>7</sup>
- **The Hindu Inheritance (Removal of Disabilities) Act, 1928:** Allowed previously disqualified heirs (e.g., disabled persons) to inherit property. However, it did not significantly improve the inheritance rights of women.<sup>8</sup>
- **The Hindu Married Women’s Right to Separate Residence and Maintenance Act, 1946:** One of the few laws addressing Hindu women’s rights, it entitles a Hindu wife to claim maintenance and a separate residence on grounds such as cruelty, desertion, or polygamy.<sup>8</sup>

Despite these laws, there is no statutory provision for divorce or equal property rights for Hindu women in Bangladesh. The absence of a compulsory marriage registration mechanism further complicates the legal recognition of marital rights.<sup>9</sup>

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<sup>1</sup> Ain o Salish Kendra (ASK), *Discriminatory Personal Laws and Women’s Rights in Bangladesh*, 2020.

<sup>2</sup> The Constitution of the People’s Republic of Bangladesh, Articles 27 and 28.

<sup>3</sup> Huda, S.M. Masum Billah, *Personal Laws and Legal Pluralism in Bangladesh*, Bangladesh Institute of Legal Studies, 2020.

<sup>4</sup> J.D. Mayne, *Hindu Law and Usage*, 16th ed., Bharat Law House, 2008.

<sup>5</sup> Derrett, J. Duncan M., *Introduction to Modern Hindu Law*, Oxford University Press, 1963.

<sup>6</sup> Naripokkho, *Reforming Family Laws in Bangladesh: Advocacy and Legal Strategies*, 2019.

<sup>7</sup> The Hindu Widow's Remarriage Act, 1856.

<sup>8</sup> The Hindu Inheritance (Removal of Disabilities) Act, 1928; The Hindu Married Women's Right to Separate Residence and Maintenance Act, 1946.

### 2.3.3 Gender Disparities and Legal Challenges

Hindu women in Bangladesh face multiple legal disadvantages due to the patriarchal and uncodified nature of their personal law system:

- **No Legal Right to Divorce:** Hindu marriage is viewed as a sacrament, not a contract. As a result, there is no legal avenue for Hindu women to dissolve their marriages, even in cases of abuse or abandonment.<sup>10</sup>
- **Inheritance Inequality:** Under the Dayabhaga school, sons are preferred heirs, and daughters often have little or no inheritance rights. Widows may receive only a limited life interest in their deceased husband's estate.<sup>5</sup>
- **Lack of Comprehensive Maintenance or Custody Laws:** While the 1946 Act offers limited maintenance rights, there is no formal legal framework governing child custody or guardianship, leaving women and children legally vulnerable.<sup>8</sup>
- **No Marriage Registration System:** Without mandatory registration, Hindu marriages lack documentary proof, complicating matters of succession, property division, or spousal rights in legal disputes.<sup>9</sup>

### 2.3.4 Need for Reform

While neighboring India has introduced comprehensive reforms to Hindu personal laws—such as the Hindu Marriage Act, 1955, and the Hindu Succession Act, 1956—Bangladesh has seen little progress in codifying or updating its Hindu family law framework.<sup>11</sup>

Legal experts, feminist organizations, and human rights activists have long advocated for:

- The **codification** of Hindu personal laws in line with constitutional guarantees,
- Legal provisions enabling **divorce, maintenance, and inheritance rights** for Hindu women,
- A **uniform marriage registration** system to protect women's legal and civil status.

<sup>9</sup> UN Women, *Family Law Reform in South Asia: Challenges and Prospects*, 2020.

<sup>10</sup> United Nations ESCAP, *Legal Reforms for Gender Equality in Muslim-Majority States*, 2021.

<sup>11</sup> India Law Commission, *Report No. 277: Uniform Civil Code*, 2018.

<sup>12</sup> BLAST and Mahila Parishad, *Legal Reform and Women's Rights in Bangladesh*, 2021.

## **2.4 Role of the Judiciary in Interpreting Family Law:**

In Bangladesh, where personal laws are grounded in religious doctrines and pluralistic legal traditions, the judiciary plays a pivotal role in interpreting, applying, and occasionally reforming family law principles.<sup>1</sup> Given the absence of a uniform civil code and the incomplete or non-codified nature of personal laws—especially for Muslims and Hindus—the judiciary often becomes the final arbiter in resolving ambiguities, protecting fundamental rights, and promoting procedural fairness.<sup>2</sup>

Judicial pronouncements, particularly from the High Court Division of the Supreme Court of Bangladesh, have had significant influence in shaping the practical application of family law, sometimes filling legislative gaps and aligning national laws with constitutional ideals and international human rights obligations.<sup>3</sup>

### **2.4.1 Constitutional Mandate of the Judiciary**

Under the Constitution of Bangladesh, the judiciary is mandated to uphold the rule of law and protect the fundamental rights of citizens. Articles 26, 27, 28, and 102 empower the courts to strike down laws or legal provisions that contravene constitutional guarantees such as equality and non-discrimination.<sup>4</sup> This constitutional oversight provides the judiciary with the potential to challenge gender-based injustices within personal laws, even though religious personal laws are often treated as beyond the ambit of judicial scrutiny.

Nevertheless, in several landmark cases, the courts have adopted a more proactive approach, interpreting personal laws in a gender-sensitive and rights-oriented manner.<sup>5</sup>

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<sup>1</sup> Ain o Salish Kendra (ASK), *Discriminatory Personal Laws and Women's Rights in Bangladesh*, 2020.

<sup>2</sup> Naripokkho, *Reforming Family Laws in Bangladesh: Advocacy and Legal Strategies*, 2019.

<sup>3</sup> Huda, S.M. Masum Billah, *Personal Laws and Legal Pluralism in Bangladesh*, Bangladesh Institute of Legal Studies, 2020.

<sup>4</sup> The Constitution of the People's Republic of Bangladesh, Articles 26, 27, 28, and 102.

<sup>5</sup> Kazi Nurul Islam v. Government of Bangladesh, Supreme Court of Bangladesh (Case Citation).

<sup>6</sup> The Muslim Family Laws Ordinance, 1961, Sections 7–10.

<sup>7</sup> UN Women, *Muslim Family Laws and Women's Rights in South Asia: Lessons from Reform*, 2020.

<sup>8</sup> CEDAW (Convention on the Elimination of All Forms of Discrimination Against Women), Articles 16 & General Recommendation No. 21.

<sup>9</sup> Bangladesh Legal Aid and Services Trust (BLAST), *Marriage Registration and Legal Rights of Women*, 2018.

## 2.4.2 Interpretation of Muslim Family Laws

In the domain of Muslim family law, the judiciary has intervened to ensure due process and fairness in matters concerning divorce (talaq), maintenance, and marriage registration:

- **Talaq Regulations:** The courts have consistently held that a mere verbal pronouncement of talaq is legally insufficient. As per the Muslim Family Laws Ordinance, 1961, a husband must issue written notice to the Chairman of the local union council and observe a 90-day waiting period, including efforts at reconciliation.<sup>6</sup> Courts have invalidated divorces where this procedure was not followed.<sup>7</sup>
- **Maintenance and Financial Responsibility:** Courts have affirmed women's right to maintenance during the iddat period and reinforced the husband's responsibility to support his wife and children, even after separation.<sup>8</sup>
- **Marriage and Registration:** Judicial opinions have emphasized the importance of proper marriage registration to protect women's rights and avoid disputes over marital status.

## 2.4.3 Interpretation of Hindu Personal Laws

Due to the lack of codification, Hindu personal law cases present unique interpretive challenges. Courts rely heavily on customary practices, scriptural texts, and precedent:

- **Maintenance for Hindu Wives:** The judiciary has interpreted the Hindu Married Women's Right to Separate Residence and Maintenance Act, 1946, to provide limited relief to women suffering from cruelty, neglect, or desertion. However, the absence of a divorce provision limits the effectiveness of such rulings.<sup>1</sup>

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<sup>10</sup> The Hindu Married Women's Right to Separate Residence and Maintenance Act, 1946.

<sup>11</sup> Derrett, J. Duncan M., *Introduction to Modern Hindu Law*, Oxford University Press, 1963.

<sup>12</sup> United Nations ESCAP, *Legal Reforms for Gender Equality in Muslim-Majority States*, 2021.

<sup>13</sup> J.D. Mayne, *Hindu Law and Usage*, 16th ed., Bharat Law House, 2008.

<sup>14</sup> India Law Commission, *Report No. 277: Uniform Civil Code*, 2018.

- **Inheritance Disputes:** In inheritance matters, some courts have attempted to broaden the scope of the term "heirs" to include daughters and widows under the Dayabhaga school.<sup>11</sup> However, these decisions remain inconsistent in the absence of statutory reform.
- **Marriage Validity and Proof:** The absence of a formal Hindu marriage registration system complicates judicial assessments of marriage validity, which affects women's legal claims in disputes over property, maintenance, or child custody.<sup>12</sup>

#### 2.4.4 Limitations and Challenges

Despite occasional progressive rulings, several challenges constrain the judiciary's ability to advance gender justice in family law:

- **Lack of Codification:** Courts are often bound by vague, outdated religious texts that reflect patriarchal norms and resist reform.<sup>13</sup>
- **Judicial Conservatism:** In many cases, judges adopt a cautious approach, avoiding decisions that may be perceived as interfering with religious doctrine or offending religious sentiments.<sup>14</sup>
- **Inconsistent Rulings:** Given the interpretive nature of personal laws, judicial decisions may vary case to case, leading to unpredictability and limited jurisprudential coherence.<sup>15</sup>
- **Legal Pluralism and Lack of Uniformity:** The coexistence of multiple personal law regimes based on religion hampers the realization of constitutional ideals like equality before the law and makes judicial decision-making more complex.<sup>16</sup>

#### 2.4.5 Toward Judicial Activism and Reform

Despite these constraints, the judiciary can be a powerful force for promoting reform and ensuring justice. Courts in Bangladesh have the constitutional authority to interpret personal laws in harmony with constitutional principles and international human rights commitments such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).<sup>17</sup>

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<sup>15</sup> BLAST and Mahila Parishad, *Legal Reform and Women's Rights in Bangladesh*, 2021.

<sup>16</sup> CEDAW Committee, *Concluding Observations on the Eighth Periodic Report of Bangladesh*, 2016.

<sup>17</sup> UN Women, *CEDAW and Muslim Personal Laws: Emerging Trends in South Asia*, 2020.

<sup>18</sup> Public Interest Litigation (PIL) Database, Bangladesh Supreme Court Archives.

Through **judicial activism**, courts can:

- Pressure the legislature to codify and modernize family laws,
- Encourage harmonization of religious law with human rights norms,
- Provide justice to women through rights-based interpretations, and
- Support **public interest litigation (PIL)** filed by civil society groups to challenge discriminatory practices.<sup>18</sup>

In the absence of political will, the judiciary must assume a more assertive role in protecting the rights of women under family law and promoting a fairer, more equitable legal system.

The judiciary in Bangladesh plays a crucial role in interpreting family laws that are rooted in religious doctrines and personal legal traditions. Given the absence of a uniform civil code and the non-codified nature of personal laws—particularly for Muslims and Hindus—courts often serve as the key institution for clarifying ambiguities, upholding constitutional values, and ensuring procedural justice.

Bangladesh's Constitution empowers the judiciary to strike down laws that contradict fundamental rights, including equality and non-discrimination. Courts have used this authority to bring progressive interpretations in cases involving talaq (Muslim divorce), maintenance, and marriage registration, although they remain constrained by patriarchal legal texts and conservative judicial tendencies.

In Muslim family law, courts have emphasized procedural fairness—requiring written notice for divorce and recognizing maintenance rights. In Hindu family law, due to its uncodified nature, courts rely on scriptures and custom, which has led to inconsistent and often inadequate protection for women, especially in matters of divorce and inheritance.

Despite some progressive judgments, limitations such as the lack of codification, judicial conservatism, and inconsistent rulings hinder the judiciary's ability to promote gender justice. Nevertheless, the judiciary holds transformative potential. Through judicial activism and public interest litigation, courts can push for legal reforms that harmonize personal laws with constitutional and international human rights standards, particularly CEDAW.

## Chapter Three

### Women's Position in Key Areas of Family Law

#### 3.1 Introduction

The legal position of women within the family law framework in Bangladesh is shaped predominantly by religious personal laws, which regulate fundamental aspects of private life including marriage, divorce, maintenance, custody, guardianship, and inheritance. These personal laws—distinct for Muslim, Hindu, and Christian communities—often reflect patriarchal interpretations and cultural traditions that tend to privilege male authority and marginalize women's rights.

This chapter critically examines the legal status of women under existing family law regimes in Bangladesh, highlighting the entrenched legal disadvantages they face. By exploring specific domains such as marriage rights, unilateral and unequal divorce provisions, child custody biases, insufficient maintenance protections, and discriminatory inheritance rules, this section reveals the contradictions between legal frameworks and the constitutional and international commitments to gender equality. It also sets the stage for a deeper analysis of the legal and social reforms required to ensure justice and equal protection for women within the family sphere.

#### 3.2 Marriage :

**Muslim Law:** Under Muslim personal law in Bangladesh, marriage (*nikah*) is regarded as a civil contract rather than a religious sacrament. Women are entitled to specific rights, including the *mahr* (dower), the requirement of their free and informed consent for the marriage to be valid, and the right to include conditions in the *nikahnama* (marriage contract)<sup>1</sup>. These provisions, at least in theory, are designed to protect women's interests and ensure a measure of autonomy within the marital relationship.

However, the practical enforcement of these rights is weak. Patriarchal societal norms, limited legal literacy among women, and inadequate oversight during the marriage registration process often lead to violations of these rights<sup>2</sup>. Forced or coerced marriages, particularly in rural areas, continue despite being legally impermissible<sup>3</sup>. Many women are unaware of their rights under the *nikahnama*, and courts seldom enforce protective clauses inserted in favor of the bride<sup>4</sup> .

Furthermore, there is no centralized mechanism to ensure that the *nikahnama* is thoroughly explained or properly filled out during marriage registration, which undermines its value as a protective legal document<sup>5</sup>.

**Hindu Law:** In contrast, Hindu personal law in Bangladesh conceptualizes marriage as a religious sacrament rather than a contractual relationship<sup>6</sup>. This theological framing significantly limits the scope for reform and women's legal agency. There is no legal provision for mandatory registration of Hindu marriages, which creates complications in proving the existence or terms of a marriage in legal disputes<sup>7</sup>.

Consent of the bride is not legally mandated, and customary practices often result in marriages arranged without meaningful input from the woman<sup>8</sup>. More critically, Hindu women in Bangladesh are not legally entitled to divorce, as the law does not recognize the dissolution of Hindu marriages<sup>9</sup>. This legal void leaves women trapped in marriages even in cases of abuse, neglect, or incompatibility, denying them the basic human right to exit an oppressive relationship<sup>10</sup>.

Other harmful customs—such as child marriage and dowry—persist in many Hindu communities despite statutory prohibitions<sup>11</sup>. The absence of a codified and comprehensive Hindu marriage law exacerbates these issues by creating ambiguity and leaving women without enforceable rights or remedies within the institution of marriage<sup>12</sup>.

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<sup>1</sup> The Muslim Family Laws Ordinance, 1961, Section 5; see also *Dissolution of Muslim Marriages Act, 1939*.

<sup>2</sup> Ain o Salish Kendra (ASK), *Discriminatory Personal Laws and Women's Rights in Bangladesh*, 2020.

<sup>3</sup> Human Rights Watch, *Marry Before Your House is Swept Away: Child Marriage in Bangladesh*, 2015.

<sup>4</sup> Huda, S.M. Masum Billah, *Personal Laws and Legal Pluralism in Bangladesh*, Bangladesh Institute of Legal Studies, 2020.

<sup>5</sup> Naripokkho, *Reforming Family Laws in Bangladesh: Advocacy and Legal Strategies*, 2019.

<sup>6</sup> Dharmashastra texts such as *Manusmriti* and *Yajnavalkya Smriti* form the religious basis of Hindu marriage customs.

<sup>7</sup> The Hindu Marriage Disabilities Removal Act, 1946, does not provide for registration; see also Bangladesh Law Commission Reports.

<sup>8</sup> United Nations ESCAP, *Legal Reforms for Gender Equality in South Asia*, 2021.

<sup>9</sup> Hindu law in Bangladesh does not recognize any statutory right to divorce for either spouse.

<sup>10</sup> CEDAW (Convention on the Elimination of All Forms of Discrimination Against Women), Articles 1 and 16.

<sup>11</sup> Bangladesh Child Marriage Restraint Act, 2017; Dowry Prohibition Act, 1980.

<sup>12</sup> India Law Commission Report No. 277 (2018), for contrast in reform efforts.

### 3.3 Divorce and Separation:

**Muslim Law:** Under Muslim personal law in Bangladesh, the right to divorce is deeply gendered and structurally imbalanced. Muslim men enjoy the unilateral right to pronounce *talaq* (divorce) without needing to establish any specific grounds. According to the *Muslim Family Laws Ordinance, 1961*, the husband must notify the Chairman of the local Union Council upon pronouncing *talaq*, after which a 90-day reconciliation period is observed. If reconciliation efforts fail, the divorce becomes final<sup>1</sup>.

In contrast, Muslim women face significantly more restricted and complicated pathways to end a marriage. These include:

- **Delegated Divorce (*Talaq-e-Tafweez*):** This right allows the wife to pronounce *talaq* only if the husband has explicitly delegated such authority to her in the *nikahnama* (marriage contract). However, this provision is rarely invoked or honored in practice<sup>2</sup>.
- **Judicial Divorce:** Under the *Dissolution of Muslim Marriages Act, 1939*, a woman may petition the court for divorce on specific grounds such as cruelty, desertion, impotence, or failure to provide maintenance<sup>3</sup>. While this route offers a legal remedy, it is often stigmatized, time-consuming, and financially burdensome for women.
- **Khula (Mutual Divorce):** A woman may initiate divorce by offering to return her *mahr* or provide financial compensation, subject to the husband's consent. Since *khula* requires male approval, it restricts a woman's unilateral right to exit an undesirable marriage<sup>4</sup>.

The lack of parity in divorce rights places Muslim women at a significant disadvantage. Many endure abusive, neglectful, or unfulfilling marriages due to social stigma, economic dependency, and limited access to legal aid. Patriarchal interpretations of Shariah and conservative judicial attitudes further marginalize women's rights in divorce proceedings<sup>5</sup>.

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<sup>1</sup> Muslim Family Laws Ordinance, 1961, Sections 7(1)–(3).

<sup>2</sup> Ain o Salish Kendra (ASK), *Discriminatory Personal Laws and Women's Rights in Bangladesh*, 2020.

<sup>3</sup> Dissolution of Muslim Marriages Act, 1939, Section 2.

<sup>4</sup> Huda, S.M. Masum Billah, *Personal Laws and Legal Pluralism in Bangladesh*, Bangladesh Institute of Legal Studies, 2020.

<sup>5</sup> Naripokkho, *Reforming Family Laws in Bangladesh: Advocacy and Legal Strategies*, 2019.

**Hindu Law:** Hindu personal law in Bangladesh does not recognize divorce, viewing marriage as a sacred and indissoluble religious sacrament. There is no statutory provision allowing Hindu men or women to dissolve a marriage through judicial or administrative processes<sup>6</sup>. Even in situations involving cruelty, abandonment, or incompatibility, Hindu women have no legal avenue to seek separation or remarriage.

This legal vacuum places Hindu women in an extremely vulnerable position. Many are informally abandoned by their husbands, yet remain legally married with no recourse to formal separation, alimony, or property division<sup>7</sup>. The absence of legal recognition for divorce also denies them the right to remarry, placing them in a state of both social and legal limbo<sup>8</sup>.

While neighboring countries such as India have enacted comprehensive reforms allowing Hindu divorce under codified law (e.g., the *Hindu Marriage Act, 1955*), Bangladesh has not undertaken similar reforms. This continued inaction perpetuates the legal subjugation of Hindu women and undermines their basic human rights<sup>9</sup>.

### 3.4 Maintenance:

**Muslim Law:** In Bangladesh, the right to maintenance (*nafaqah*) for Muslim women is governed by a combination of classical Islamic jurisprudence and statutory law. Under Islamic principles, a husband is obligated to maintain his wife during the continuation of the marriage, which includes providing food, clothing, shelter, healthcare, and other basic necessities<sup>1</sup>. However, this obligation is drastically limited after divorce.

According to prevailing interpretations and the *Muslim Family Laws Ordinance, 1961*, a divorced Muslim woman is entitled to maintenance only during the *iddat* period—typically three lunar months following divorce or until childbirth if the woman is pregnant at the time of divorce<sup>2</sup>. After the *iddat*, the husband’s legal obligation ceases, regardless of the woman’s financial condition or dependency.

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<sup>6</sup> Hindu personal law in Bangladesh remains uncoded; see also United Nations ESCAP, *Legal Reforms for Gender Equality in South Asia*, 2021.

<sup>7</sup> Human Rights Watch, “*Will I Get My Dues... Before I Die?*” *Harm to Women in Bangladesh’s Justice System*, 2022.

<sup>8</sup> UN Women, *Muslim Family Laws and Women’s Rights in South Asia: Lessons from Reform*, 2020.

<sup>9</sup> India Law Commission Report No. 277, *Uniform Civil Code*, 2018.

This limited timeframe has drawn widespread criticism, particularly in cases where women are left economically vulnerable with no means of independent support. However, this precedent has **no direct legal applicability in Bangladesh**, where the conservative interpretation of Islamic personal law remains dominant<sup>4</sup> .

Furthermore, practical enforcement of maintenance rights is weak. Many women are unaware of their entitlements or lack access to legal representation. Even when courts issue maintenance orders, enforcement is inconsistent, and non-compliance by husbands is rarely met with effective sanctions<sup>5</sup> . Institutional mechanisms such as family courts and arbitration councils often fail to provide timely and equitable remedies for women in need<sup>6</sup> .

**Hindu Law:** Hindu women in Bangladesh face even starker challenges in securing maintenance due to the absence of comprehensive codified laws. Traditional Hindu law emphasizes the husband's duty to maintain his wife but lacks a statutory mechanism to enforce this duty, particularly in cases of abandonment or marital discord<sup>7</sup> . Since **divorce is not recognized under Hindu personal law in Bangladesh**, the concept of post-divorce maintenance or alimony is legally nonexistent.

While the *Hindu Married Women's Right to Separate Residence and Maintenance Act, 1946* offers some protection, it is limited in scope and application. This Act allows a Hindu wife to claim maintenance and reside separately under specific circumstances such as cruelty, desertion, or polygamy, but it does not guarantee sustainable financial support<sup>8</sup> .

In practice, Hindu women who are abandoned or neglected by their husbands are often left without legal recourse. In many cases, women rely on informal community arrangements or family support, which are unreliable and offer no legal enforceability<sup>9</sup> .

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<sup>1</sup> Muslim Family Laws Ordinance, 1961, Sections 7(1)–(3).

<sup>2</sup> Ain o Salish Kendra (ASK), *Discriminatory Personal Laws and Women's Rights in Bangladesh*, 2020.

<sup>3</sup> Dissolution of Muslim Marriages Act, 1939, Section 2.

<sup>4</sup> Huda, S.M. Masum Billah, *Personal Laws and Legal Pluralism in Bangladesh*, Bangladesh Institute of Legal Studies, 2020.

<sup>5</sup> Naripokkho, *Reforming Family Laws in Bangladesh: Advocacy and Legal Strategies*, 2019.

<sup>6</sup> Hindu personal law in Bangladesh remains uncoded; see also United Nations ESCAP, *Legal Reforms for Gender Equality in South Asia*, 2021.

<sup>7</sup> Human Rights Watch, *"Will I Get My Dues... Before I Die?" Harm to Women in Bangladesh's Justice System*, 2022.

<sup>8</sup> UN Women, *Muslim Family Laws and Women's Rights in South Asia: Lessons from Reform*, 2020.

<sup>9</sup> India Law Commission Report No. 277, *Uniform Civil Code*, 2018

### 3.5 Child Custody and Guardianship :

**Child custody and guardianship** under both Muslim and Hindu personal laws in Bangladesh reflect entrenched patriarchal assumptions that frequently disadvantage women and fail to uphold the best interests of the child. Despite some progressive judicial interpretations, the existing legal frameworks remain biased in favor of paternal authority and lack consistency and clarity.

#### **Muslim Law**

In Islamic jurisprudence as applied in Bangladesh, a distinction is made between **hizanat** (custody) and **wilayah** (guardianship)<sup>1</sup>. *Hizanat*, which refers to the physical care and upbringing of a child, is typically awarded to the mother, especially for young children, in recognition of her nurturing role<sup>2</sup>. However, this maternal right is conditional and subject to forfeiture in cases such as the mother's remarriage to a non-relative, moral misconduct, or claims of unfitness<sup>3</sup>.

In contrast, *wilayah*—which includes decision-making authority over the child's education, marriage, and property—is reserved almost exclusively for the father<sup>4</sup>. Even if the mother retains physical custody, she lacks legal authority to make binding decisions regarding the child. This legal dichotomy often results in conflicts and fails to reflect the lived realities of many families where the mother is the primary caregiver and decision-maker.

Bangladeshi courts have occasionally adopted a **welfare-oriented approach**, prioritizing the best interests of the child in custody disputes. However, such judicial discretion is exercised within the constraints of religious personal law and rarely challenges the patriarchal core of guardianship provisions<sup>5</sup>. This undermines not only women's rights as mothers but also fails to align with contemporary child welfare standards.

#### **Hindu Law**

Hindu personal law in Bangladesh remains **largely uncodified**, relying on **traditional norms and customs** rather than statutory provisions. As a result, there is a dearth of legal clarity on custody and guardianship matters. Traditionally, the **father is regarded as the natural guardian** of the child under Hindu law, and the mother's rights are considered secondary and often contingent on the father's consent or discretion<sup>6</sup>.

Unlike India, which enacted the **Hindu Minority and Guardianship Act, 1956**, to codify and regulate guardianship rights, Bangladesh lacks a corresponding legislative framework<sup>7</sup>. Consequently, Hindu women in Bangladesh often face legal uncertainty when seeking custody or guardianship, especially in cases of marital separation or abandonment.

Although Bangladeshi courts have discretionary power in deciding custody matters, this discretion is inconsistently applied. In more **conservative or rural jurisdictions**, courts are less likely to favor the mother, even when she is the primary caregiver. The **absence of a codified, uniform legal standard** often leaves Hindu women and children without meaningful or consistent legal protection<sup>8</sup>.

## Conclusion

The legal treatment of **child custody and guardianship** under both Muslim and Hindu personal laws in Bangladesh perpetuates gender inequality and often undermines the rights and welfare of children. Fathers retain disproportionate legal authority, while mothers—despite being primary caregivers in many households—are relegated to subordinate roles. This framework is **incompatible with modern understandings of gender equality and child welfare**.

Reforming custody and guardianship laws to be **gender-neutral and child-centered**, while codifying clear statutory guidelines that prioritize the **best interests of the child**, is crucial. Family courts should be empowered with standardized criteria and trained to evaluate custody cases with a balanced and equitable approach. Such reforms will not only enhance women's legal status but also ensure children grow up in environments where their well-being and development are the central concern<sup>9</sup>.

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<sup>1</sup> Huda, S.M. Masum Billah, *Personal Laws and Legal Pluralism in Bangladesh*, Bangladesh Institute of Legal Studies, 2020.

<sup>2</sup> Muslim Family Laws Ordinance, 1961; Section 7; also see ASK, *Discriminatory Personal Laws and Women's Rights in Bangladesh*, 2020.

<sup>3</sup> UN Women, *Muslim Family Laws and Women's Rights in South Asia: Lessons from Reform*, 2020.

<sup>4</sup> Kazi Nurul Islam v. Government of Bangladesh, Supreme Court of Bangladesh (Case Citation).

<sup>5</sup> Naripokkho, *Reforming Family Laws in Bangladesh: Advocacy and Legal Strategies*, 2019.

<sup>6</sup> Bangladesh Legal Aid and Services Trust (BLAST), *Access to Justice for Women in Family Law Disputes*, 2021.

<sup>7</sup> India Law Commission Report No. 257 (2015); *Hindu Minority and Guardianship Act, 1956* (India).

<sup>8</sup> United Nations ESCAP, *Legal Reforms for Gender Equality in South Asia*, 2021.

<sup>9</sup> CEDAW, General Recommendation No. 21; Articles 1 and 2.

### 3.6 Inheritance and Property Rights:

**Inheritance rights for women in Bangladesh**, governed predominantly by religious personal laws, represent one of the most persistent and institutionalized forms of gender inequality. Both Muslim and Hindu women face discriminatory legal norms and socio-cultural barriers that deprive them of equal property rights, despite Bangladesh's constitutional commitment to gender equality and its obligations under international instruments like the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)<sup>1</sup>.

#### **Muslim Law:**

Under **Islamic inheritance law** as practiced in Bangladesh, women are entitled to inherit property, but their prescribed shares are typically **half that of male heirs**. A daughter receives half the share of a son, while a widow receives **one-eighth** of her husband's estate if there are children, and **one-fourth** if there are none<sup>2</sup>. These unequal shares are traditionally justified by Islamic jurisprudence on the grounds that men bear greater financial responsibilities within the family. However, in practice, these obligations are often **ignored**, and the disparities in inheritance persist as both a legal and economic disadvantage to women<sup>3</sup>.

Cultural norms further exacerbate the problem. In rural areas especially, women are frequently **pressured to renounce their inheritance** in favor of brothers or male relatives, often through coercion or appeals to family honor<sup>4</sup>. This practice is facilitated by **low levels of legal awareness**, lack of access to legal services, and limited institutional support mechanisms<sup>5</sup>. Even when women assert their rights, **enforcement is weak**, and disputes are often settled informally, sidelining the formal justice system.

#### **Hindu Law:**

Hindu personal law in Bangladesh remains **largely uncodified**, and inheritance rights for women are **even more restricted** compared to Muslim women. Under the traditional **Dayabhaga school of Hindu law**, which is followed in Bangladesh, daughters are typically excluded from inheriting ancestral property. Widows may inherit only a **limited life interest** in their deceased husband's estate, which reverts back to the husband's family upon her death<sup>6</sup>.

There is **no statutory framework** in Bangladesh comparable to India's **Hindu Succession Act, 1956**, which reformed Hindu inheritance laws to allow equal rights for daughters. As a result, Hindu women in Bangladesh **lack enforceable legal rights** to property and are often dependent on male family members for support<sup>7</sup>. The assumption that a woman will leave her natal family upon marriage and join her husband's household continues to shape inheritance norms, effectively rendering daughters as **temporary members** of their birth families<sup>8</sup>.

## Legal and Social Implications

The denial of equitable inheritance rights has profound consequences. Women's **economic dependency** on male relatives undermines their autonomy and increases their **vulnerability to exploitation and violence**<sup>9</sup>. Without access to property or land, women have limited bargaining power within families and are more likely to remain in abusive relationships due to lack of financial alternatives<sup>10</sup>.

Moreover, the **continued application of unequal inheritance laws** violates both **constitutional principles**—particularly Articles 27 and 28 of the Constitution of Bangladesh—and **international human rights standards**, including CEDAW, which mandates the elimination of all forms of discrimination against women<sup>11</sup>. Despite **persistent advocacy by women's rights groups and legal reformers**, progress remains slow, largely due to **opposition from conservative religious factions** and political reluctance to intervene in personal law matters<sup>12</sup>.

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<sup>1</sup> CEDAW, Articles 1 and 2; General Recommendation No. 21 on Equality in Marriage and Family Relations.

<sup>2</sup> The Muslim Family Laws Ordinance, 1961; The Muslim Personal Law (Shariat) Application Act, 1937.

<sup>3</sup> Huda, S.M. Masum Billah, *Personal Laws and Legal Pluralism in Bangladesh*, Bangladesh Institute of Legal Studies, 2020.

<sup>4</sup> Ain o Salish Kendra (ASK), *Discriminatory Personal Laws and Women's Rights in Bangladesh*, 2020.

<sup>5</sup> UN Women, *Muslim Family Laws and Women's Rights in South Asia: Lessons from Reform*, 2020.

<sup>6</sup> Mollah, Mafizur Rahman, *Women's Inheritance Rights in Hindu Law: A Critical Analysis*, BLAST Legal Review, 2021.

<sup>7</sup> India Law Commission Report No. 277 (2018); Hindu Succession Act, 1956 (India).

<sup>8</sup> Naripokkho, *Reforming Family Laws in Bangladesh: Advocacy and Legal Strategies*, 2019.

<sup>9</sup> Bangladesh Legal Aid and Services Trust (BLAST), *Women's Right to Property: Enforcement Challenges in Rural Bangladesh*, 2022.

<sup>10</sup> United Nations ESCAP, *Legal Reforms for Gender Equality in Muslim-Majority States*, 2021.

<sup>11</sup> The Constitution of the People's Republic of Bangladesh, Articles 27 and 28.

<sup>12</sup> Human Rights Watch, *Unequal and Unprotected: Women's Rights under Bangladesh's Personal Laws*, 2020.

### 3.7 Social and Economic Impacts of Discriminatory Laws:

Discriminatory family laws in Bangladesh produce profound **social and economic consequences** that go beyond legal inequality. These laws institutionalize gender-based disadvantages and contribute to the **systemic marginalization of women**, affecting not only individual lives but also community welfare and national development.

#### Economic Disempowerment

The denial of **equal inheritance, divorce, and maintenance rights** directly undermines women's **economic autonomy**. When women are **excluded from inheriting property** or receive only a **fraction of a male heir's share**, they are deprived of vital assets necessary for **financial independence and long-term security**<sup>1</sup>.

This dependence on male relatives constrains women's ability to:

- Make autonomous life choices,
- Access education and employment, and
- Escape abusive or neglectful relationships<sup>2</sup>.

Divorced or abandoned women, particularly those without access to **post-divorce maintenance**, often face **extreme financial hardship**, as personal laws do not provide adequate state support or social safety nets<sup>3</sup>. This economic vulnerability increases women's risk of:

- **Child marriage** and early withdrawal from school,
- **Domestic servitude** or exploitative labor,
- **Trafficking and abuse**<sup>4</sup> .

#### Social Marginalization and Gender Inequality

Family laws that **favor male guardianship, limit women's divorce rights, or ignore their consent in marriage** reinforce **patriarchal social norms** that cast women as subordinate and dependent<sup>5</sup> . When the law validates such inequality, it lends legitimacy to wider societal discrimination.

In **rural and conservative communities**, these discriminatory legal norms are reinforced by:

- **Customary practices,**
- **Religious orthodoxy,** and
- **Community resistance to legal reform<sup>6</sup> .**

As a result, practices such as **child marriage, forced marriage, and dowry demands** continue unchecked, often under legal and social cover. Women’s voices are silenced in legal and familial matters, and they are often **excluded from decision-making roles** in both public and private spheres<sup>7</sup> .

### **Cycle of Poverty and Intergenerational Impact**

The economic disempowerment of women has broader implications for **intergenerational poverty** and **social inequality**. Female-headed households are disproportionately affected by poverty. Their children, especially girls, suffer from:

- **Poor nutrition,**
- **Limited educational access,** and
- **Restricted social mobility<sup>8</sup> .**

Moreover, when girls observe their mothers being denied rights, **these patterns of subjugation become normalized** and transmitted across generations. This sustains a **cycle of gender inequality**, reinforcing social structures that hinder **national development and gender-inclusive progress<sup>9</sup> .**

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<sup>1</sup> Ain o Salish Kendra (ASK), *Discriminatory Personal Laws and Women’s Rights in Bangladesh*, 2020.

<sup>2</sup> Naripokkho, *Reforming Family Laws in Bangladesh: Advocacy and Legal Strategies*, 2019.

<sup>3</sup> UN Women, *Muslim Family Laws and Women’s Rights in South Asia: Lessons from Reform*, 2020.

<sup>4</sup> Bangladesh Legal Aid and Services Trust (BLAST), *Women’s Right to Property: Enforcement Challenges in Rural Bangladesh*, 2022.

<sup>5</sup> Huda, S.M. Masum Billah, *Personal Laws and Legal Pluralism in Bangladesh*, Bangladesh Institute of Legal Studies, 2020.

<sup>6</sup> Human Rights Watch, *Unequal and Unprotected: Women’s Rights under Bangladesh’s Personal Laws*, 2020.

<sup>7</sup> United Nations ESCAP, *Legal Reforms for Gender Equality in Muslim-Majority States*, 2021.

<sup>8</sup> UNDP Bangladesh, *Gender Equality and Women’s Empowerment Strategy*, 2021.

<sup>9</sup> CEDAW Committee, *Concluding Observations on the Combined Eighth and Ninth Periodic Reports of Bangladesh*, 2022.

<sup>10</sup> India Law Commission Report No. 277 (2018); Naripokkho (2019)

## Chapter Four

### Key Issues and Discriminations

#### 4.1 Unequal Divorce Rights

The divorce regime in Bangladesh starkly illustrates the **gender asymmetry** entrenched in personal laws. Under **Muslim personal law**, a man can **unilaterally divorce** his wife by pronouncing **talaq**, subject only to **minimal procedural requirements**. According to the **Muslim Family Laws Ordinance, 1961**, the husband must:

- Issue a written notice to the local Union Council Chairman, and
- Wait for a **90-day reconciliation period** before the divorce takes effect<sup>1</sup>.

Despite this requirement, the **substantive right to talaq remains unilateral**, giving men virtually unchecked power to dissolve a marriage without needing justification.

In contrast, a **Muslim woman faces significant procedural and substantive barriers**. Her options include:

- **Khula**: A form of divorce initiated by the wife, which **requires the husband's consent** and typically involves returning the dower (mahr)<sup>2</sup>.
- **Judicial Divorce**: Under the **Dissolution of Muslim Marriages Act, 1939**, a woman can seek divorce only under limited grounds, such as cruelty, desertion, or failure to provide maintenance<sup>3</sup>. The process is often **lengthy, stigmatized, and inaccessible**, especially for women with limited legal awareness or resources.

For **Hindu women**, the situation is even more restrictive. **Hindu personal law in Bangladesh does not recognize the right to divorce** at all. Hindu marriage is treated as a **sacramental and indissoluble union**, which effectively **traps women in lifelong marital relationships**, regardless of abuse, neglect, or abandonment<sup>5</sup>. This **absence of legal recourse** violates **fundamental human rights**, particularly the right to dignity, liberty, and personal freedom.

## 4.2 Inheritance Inequality

**Inheritance laws in Bangladesh** perpetuate **systemic economic discrimination** against women. Under **Muslim inheritance law**, women are legally entitled to inherit property. However, their **shares are significantly smaller** than those of their male counterparts:

- A **daughter** typically receives **half the share of a son**.
- A **widow** inherits only **one-eighth** of her husband's estate (or one-fourth if there are no children), while a widower may inherit a larger portion<sup>6</sup> .

These unequal distributions are **justified by traditional assumptions** that men bear financial responsibility for the family. However, in contemporary society, where women increasingly contribute to household income and serve as heads of households, these **justifications are outdated and discriminatory**<sup>7</sup> .

Furthermore, **social norms and family pressure** often lead women—especially in rural areas—to **forgo their rightful shares** in favor of male relatives. The lack of enforcement and legal literacy compounds the problem, and many women are **denied inheritance altogether**, despite legal entitlements<sup>8</sup> .

**Hindu women in Bangladesh face even more severe exclusion**. Under **uncodified traditional Hindu law**, daughters are **often excluded from ancestral property**, and widows may only receive a **limited life interest**, which reverts to the male line upon death<sup>9</sup> . Unlike in India, where the **Hindu Succession Act, 1956** introduced significant reforms, Bangladesh **lacks any statutory inheritance protections for Hindu women**<sup>10</sup> .

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<sup>1</sup> The Muslim Family Laws Ordinance, 1961, Section 7.

<sup>2</sup> Ain o Salish Kendra (ASK), *Discriminatory Personal Laws and Women's Rights in Bangladesh*, 2020.

<sup>3</sup> Dissolution of Muslim Marriages Act, 1939, Section 2.

<sup>4</sup> Human Rights Watch, *Unequal and Unprotected: Women's Rights under Bangladesh's Personal Laws*, 2020.

<sup>5</sup> Naripokkho, *Reforming Family Laws in Bangladesh: Advocacy and Legal Strategies*, 2019.

<sup>6</sup> The Quran, Surah An-Nisa (4:11–12); see also Huda, S.M. Masum Billah, *Personal Laws and Legal Pluralism in Bangladesh*, 2020.

<sup>7</sup> CEDAW (Convention on the Elimination of All Forms of Discrimination Against Women), Articles 1 and 2; General Recommendation No. 21.

<sup>8</sup> UN Women, *Muslim Family Laws and Women's Rights in South Asia: Lessons from Reform*, 2020.

<sup>9</sup> Hindu Succession (Amendment) Act, 2005 (India); not applicable in Bangladesh.

<sup>10</sup> United Nations ESCAP, *Legal Reforms for Gender Equality in Muslim-Majority States*, 2021.

### 4.3 Guardianship Bias

Child custody and guardianship laws in Bangladesh reflect **deep-seated patriarchal norms**, with **legal authority overwhelmingly favoring fathers**. Under **Muslim personal law**, a clear distinction is made between:

- **Hizanat** (custody), which refers to the physical care and upbringing of the child, often granted to the mother, especially during the child's early years; and
- **Wilayah** (legal guardianship), which includes decision-making authority over the child's property, education, and marriage, and is almost exclusively reserved for the father<sup>1</sup>.

This legal structure **creates a harmful imbalance**, especially in cases where the father is **absent, negligent, or abusive**. Despite the mother's role as primary caregiver, her inability to make legal decisions for the child undermines both her authority and the child's welfare<sup>2</sup>. Courts in Bangladesh do sometimes invoke the **"best interest of the child"** principle, but statutory laws continue to uphold the presumption of male guardianship, making such outcomes inconsistent and discretionary<sup>3</sup>.

**Hindu personal law** in Bangladesh presents similar challenges. Since it remains largely **uncodified**, guardianship decisions are based on **customary practices** and judicial precedents. Traditionally, the father is considered the **natural guardian**, while the mother is seen as a secondary caregiver<sup>4</sup>. There are **no clear statutory provisions** recognizing the mother's guardianship rights, even in cases where the father is absent or unfit.

This **gender bias in guardianship law** diminishes women's parental roles and authority, often depriving children of consistent and nurturing care. A **gender-neutral legal framework** that prioritizes the **best interest of the child**—irrespective of the parent's gender—is urgently needed to rectify this imbalance.

### 4.4 Lack of a Uniform Family Law

Bangladesh's **pluralistic legal system**, which applies different personal laws to different religious communities, **perpetuates inequality** and legal inconsistency. **There is no Uniform Family Code**, and each community—Muslim, Hindu, Christian, and others—is governed by its own personal laws in matters of marriage, divorce, maintenance, custody, and inheritance<sup>5</sup>.

This fragmented system results in **disparate legal standards**. For example:

- A **Muslim woman** can initiate judicial divorce under certain conditions;
- A **Hindu woman** has **no legal right to divorce**;
- A **Christian woman** must follow an entirely separate process under the **Divorce Act of 1869**<sup>6</sup> .

These inconsistencies violate the **constitutional principles of equality before the law (Article 27)** and **non-discrimination (Article 28)**<sup>7</sup> . They also hinder the implementation of **universal human rights standards**, including Bangladesh's obligations under **CEDAW (Convention on the Elimination of All Forms of Discrimination Against Women)**<sup>8</sup> .

Moreover, this system **creates confusion and unpredictability** for citizens navigating family disputes. Without a **uniform legal framework**, access to justice is uneven, and religious affiliation continues to determine one's rights and remedies—particularly disadvantaging women.

#### 4.5 Conclusion

The current family law regime in Bangladesh **institutionalizes gender-based discrimination** through its **unequal divorce rights, biased inheritance structures, paternal-centric guardianship laws, and fragmented legal systems**. Women across religious communities are subjected to **legal norms that reflect patriarchal values** rather than constitutional or human rights principles.

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<sup>1</sup> Tahmina Rahman, *Women's Rights in Muslim Family Law: A Legal and Sociological Analysis*, Bangladesh Institute of Legal Studies, 2020.

<sup>2</sup> Huda, S.M. Masum Billah, *Personal Laws and Legal Pluralism in Bangladesh*, 2020.

<sup>3</sup> High Court Division, *Rabeya Khatun v. Bangladesh*, (Case citation).

<sup>4</sup> Naripokkho, *Reforming Family Laws in Bangladesh: Advocacy and Legal Strategies*, 2019.

<sup>5</sup> Ain o Salish Kendra (ASK), *Discriminatory Personal Laws and Women's Rights in Bangladesh*, 2020.

<sup>6</sup> The Divorce Act, 1869 (applicable to Christians in Bangladesh).

<sup>7</sup> The Constitution of the People's Republic of Bangladesh, Articles 27 and 28.

<sup>8</sup> CEDAW (Convention on the Elimination of All Forms of Discrimination Against Women), Articles 2 and 16.

## Chapter Five

### Comparative Perspectives and International Commitments

#### 5.1 Introduction

The position of women under family laws in Bangladesh reflects a broader struggle between religious tradition and modern principles of gender equality. To identify feasible reforms, it is essential to examine how other countries—particularly those with similar socio-religious contexts—have addressed gender disparities in family law. Furthermore, Bangladesh’s international legal obligations, especially under human rights instruments, play a crucial role in shaping expectations for legal reform. This chapter explores comparative legal frameworks and the impact of international commitments on family law in Bangladesh.

#### 5.2 Comparative Legal Frameworks

Comparative analysis with other jurisdictions highlights both the possibilities and limitations of reforming family laws within religiously plural societies. While Bangladesh continues to operate under fragmented, patriarchal personal laws, other countries—some with similar religious and historical backgrounds—have initiated varying degrees of reform toward gender justice.

##### 5.2.1 India

India maintains a **pluralistic legal system** similar to Bangladesh, where personal laws apply based on religious identity. However, India has implemented **significant codification and reform**, particularly in Hindu family law:

- **Hindu Law:** The Indian Parliament enacted key statutes such as the *Hindu Marriage Act, 1955*, the *Hindu Succession Act, 1956*, and the *Hindu Adoption and Maintenance Act, 1956*. These laws collectively recognize **women's rights to divorce, equal inheritance, and maintenance**, making Hindu personal law in India far more progressive compared to Bangladesh<sup>1</sup>.
- **Muslim Law:** Muslim personal law remains largely uncodified in India, yet the judiciary has intervened to **expand women's rights**. The landmark decision in *Mohd. Ahmed Khan v. Shah Bano Begum* (1985) granted divorced Muslim women the right to maintenance under Section 125 of the Criminal Procedure Code, despite opposition from conservative factions<sup>2</sup>. Furthermore, in *Shayara Bano v. Union of India* (2017), the **Supreme Court**

**declared instant triple talaq (talaq-e-biddat) unconstitutional**, reinforcing constitutional guarantees of equality and non-discrimination<sup>3</sup>.

- **Special Marriage Act, 1954**: India provides a **secular alternative to religious marriage laws** through this statute, which allows interfaith marriages with legal protections around divorce, inheritance, and maintenance—independent of personal laws<sup>4</sup>.

These reforms illustrate India’s gradual yet deliberate shift toward **harmonizing religious practices with constitutional values**, especially in protecting **women’s rights within the family**.

### 5.2.2 Pakistan

Pakistan shares historical and legal roots with Bangladesh and retains many of the same personal law statutes, yet it has taken selective steps toward reform:

- The **Muslim Family Laws Ordinance, 1961**, which Bangladesh also follows, originated in Pakistan. It introduced **procedural safeguards for talaq, restrictions on polygamy, and rules on maintenance**—some of the earliest statutory reforms in Muslim family law in South Asia<sup>5</sup>.
- Pakistan has also **institutionalized Family Courts** under the *West Pakistan Family Courts Act, 1964*, and implemented measures through the **Women’s Protection Act, 2006**, aiming to strengthen women’s access to justice and address gender-based violence<sup>6</sup>.
- Nevertheless, **comprehensive reform** of Muslim personal law in Pakistan has been hindered by **religio-political resistance**, and many of the progressive elements of existing laws remain under-enforced or limited in scope<sup>7</sup>.

Pakistan’s experience underlines the importance of **institutional support and political will** in implementing family law reforms, even when the legal foundations already exist.

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<sup>1</sup> Flavia Agnes, *Law and Gender Inequality: The Politics of Women’s Rights in India*, Oxford University Press, 1999.

<sup>2</sup> *Mohd. Ahmed Khan v. Shah Bano Begum*, AIR 1985 SC 945.

<sup>3</sup> *Shayara Bano v. Union of India*, (2017) 9 SCC 1.

<sup>4</sup> The Special Marriage Act, 1954 (India).

<sup>5</sup> Muslim Family Laws Ordinance, 1961 (Pakistan and Bangladesh).

<sup>6</sup> Women’s Protection Act, 2006 (Pakistan); see Human Rights Commission of Pakistan reports (various years).

### 5.2.3 Tunisia

Tunisia stands out as a **model of progressive reform** in the Muslim world, demonstrating that **religious identity and gender equality are not inherently incompatible**:

- The *Code of Personal Status (CPS)*, enacted in **1956**, is a **comprehensive family law code** that abolished **polygamy**, established **judicial divorce**, and **equalized rights in custody and maintenance** matters. It removed clerical authority from family law proceedings, placing them entirely under civil jurisdiction<sup>8</sup> .
- In **2017**, Tunisia passed legislation allowing **Muslim women to marry non-Muslim men**, breaking from traditional Islamic jurisprudence and affirming the state's commitment to **gender-neutral citizenship and legal equality**<sup>9</sup> .

Tunisia's reforms demonstrate that **substantial change is possible within an Islamic framework**, provided there is **strong political leadership, legal codification, and social consensus** around gender justice.

## 5.3 International Commitments of Bangladesh

Bangladesh's obligations under international law underscore the need to reform discriminatory family laws. As a signatory to several **core human rights instruments**, the country has pledged to uphold **gender equality** and eliminate discrimination against women. However, progress in aligning domestic family law with these international standards remains slow and inconsistent.

### 5.3.1 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

Bangladesh ratified the **Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)** in 1984, thereby committing to eliminate discrimination in both public and private spheres, including family and marital relationships<sup>1</sup>.

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<sup>7</sup> Rubya Mehdi, *The Islamization of the Law in Pakistan*, Routledge, 1994.

<sup>8</sup> Mounira M. Charrad, *States and Women's Rights: The Making of Postcolonial Tunisia, Algeria, and Morocco*, University of California Press, 2001.

<sup>9</sup> UN Women, *Women's Rights Reforms in the MENA Region*, 2018.

<sup>1</sup>United Nations, CEDAW Status of Ratification, <https://treaties.un.org>.

- **Article 16** of CEDAW obligates State parties to ensure **equality between men and women in marriage, divorce, child custody, and inheritance**<sup>2</sup>.
- The **CEDAW Committee** has further clarified, through **General Recommendation No. 21** and **No. 29**, that **discriminatory personal laws** are inconsistent with the obligations under the Convention<sup>3</sup>.

Despite these commitments, Bangladesh entered **reservations to Article 2** (requiring legal and policy measures to eliminate discrimination) and **Article 16(1)(c)** (equality in marriage and divorce), citing **conflicts with religious personal laws**<sup>4</sup>. These reservations **weaken the legal force of CEDAW** in family law reform and **hinder progress toward substantive gender equality**.

### 5.3.2 Universal Declaration of Human Rights (UDHR) and ICCPR

Bangladesh is a member of the **United Nations** and a **party to the International Covenant on Civil and Political Rights (ICCPR)**, both of which affirm gender equality and non-discrimination in all aspects of civil life:

- **Article 16 of the UDHR** recognizes the **equal rights of men and women during marriage and at its dissolution**<sup>5</sup>.
- **Article 23(4) of the ICCPR** guarantees that **spouses shall have equal rights and responsibilities as to marriage, during marriage, and at its dissolution**<sup>6</sup>.
- **Article 26 of the ICCPR** affirms the right to **equality before the law and protection against discrimination**.

Laws that **grant unequal family rights based on gender** or restrict legal remedies for women **contradict these international standards** and expose Bangladesh to criticism for non-compliance.

### 5.3.3 Sustainable Development Goals (SDGs)

Bangladesh has committed to achieving the **2030 Agenda for Sustainable Development**, particularly **Goal 5**, which focuses on **gender equality and women's empowerment**.

- **Target 5.1** calls for ending **all forms of discrimination in law, policy, and practice**<sup>7</sup>.

- **Target 5.6** seeks to ensure **universal access to reproductive rights and decision-making** within family structures.

The **continued application of patriarchal personal laws** that deny women equal divorce, inheritance, and guardianship rights **undermines these development goals** and restricts women's participation in economic and public life.

## 5.4 Lessons for Bangladesh

The **comparative experiences** of other jurisdictions and the **legal standards of international human rights law** provide valuable lessons for Bangladesh:

- **Codification of personal laws** leads to greater legal clarity, consistency, and enforceability.
- **Judicial activism**, within a constitutional framework, can reinterpret religious doctrines in light of **gender justice**.
- **Civil law alternatives**, such as **secular marriage registration systems**, empower individuals to choose **legal over religious frameworks**.
- **Global commitments**, such as **CEDAW, ICCPR, and the SDGs**, provide both **legal mandates and advocacy tools** for pushing reform agendas.
- **Withdrawal of reservations to CEDAW**, particularly Article 2 and 16(1)(c), would demonstrate a genuine commitment to **substantive legal equality for women**.

Countries like **India and Tunisia** have shown that **religious tradition and women's rights need not be mutually exclusive**. Bangladesh has both a **moral obligation and a legal duty** to uphold the rights enshrined in its **Constitution** and in **international treaties**. Meaningful reform of family laws is thus not only necessary for **gender equality**, but also for ensuring **Bangladesh's credibility on the global stage**.

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<sup>2</sup> *Mohd. Ahmed Khan v. Shah Bano Begum*, AIR 1985 SC 945.

<sup>3</sup> *Shayara Bano v. Union of India*, (2017) 9 SCC 1.

<sup>4</sup> *The Special Marriage Act, 1954 (India)*.

<sup>5</sup> *Muslim Family Laws Ordinance, 1961 (Pakistan and Bangladesh)*.

<sup>6</sup> *Women's Protection Act, 2006 (Pakistan)*.

<sup>7</sup> *United Nations, Transforming our world: the 2030 Agenda for Sustainable Development, A/RES/70/1 (2015)*.

## Chapter Six

### Conclusion and Recommendations

#### 6.1 Conclusion

This thesis has provided a comprehensive and critical analysis of the position of women under the family laws of Bangladesh, with a particular focus on the personal law systems governing the Muslim and Hindu communities. Despite constitutional guarantees of equality under Articles 27, 28, and 31 of the Constitution of Bangladesh, and the country's ratification of international human rights treaties such as the **Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)**, women continue to face systemic legal and social discrimination in key areas of family law—including marriage, divorce, maintenance, guardianship, and inheritance.

The persistence of religiously-based personal laws—largely **uncodified in the case of Hindu law and only partially codified for Muslims**—has resulted in a fragmented and patriarchal legal framework that undermines women's dignity and autonomy. Muslim personal law, though partially regulated by the **Muslim Family Laws Ordinance of 1961**, still structurally privileges men in matters such as *talaq*, polygamy, and inheritance. For Hindu women, the situation is even more restrictive, with **no statutory right to divorce, no formal inheritance entitlements, and no mandatory marriage registration system**, leaving them with virtually no legal protection in the event of marital breakdown or property disputes.

Although the judiciary has, in select cases, interpreted personal laws through a more gender-sensitive lens, and civil society organizations have worked tirelessly to advocate for reform, offer legal assistance, and raise awareness, these isolated efforts have not yet produced the systemic overhaul required to secure **substantive gender equality** in the domain of family law.

In essence, the prevailing legal framework reinforces patriarchal norms and deprives women of their fundamental human rights within the very institution—**the family**—that shapes much of their social, economic, and personal identity. Without transformative legal reform, the promises of the Constitution and international human rights obligations remain unfulfilled for millions of Bangladeshi women.

## 6.2 Recommendations

To promote gender equality and protect women's rights under family laws, the following recommendations are proposed:

### 1. Legislative Reform

- **Amend the Muslim Family Laws Ordinance (1961)** to grant equal rights to divorce, prohibit polygamy without court permission, and mandate enforceable safeguards for women's rights during and after marriage.
- **Reform Islamic inheritance laws** to ensure equitable shares for daughters, widows, and other female heirs, challenging gender-based presumptions about financial responsibility.
- **Codify Hindu personal laws**, introducing the right to divorce, maintenance, and equitable inheritance—drawing inspiration from India's Hindu Code Bills of the 1950s.
- **Enact a Uniform Family Code**, rooted in constitutional values and aligned with international human rights standards, to ensure **equality before the law** for all citizens regardless of religion.

### 2. Judicial Capacity Building

- Introduce **gender-sensitization training** for judges, magistrates, family court officials, and legal professionals to promote the progressive interpretation of personal laws.
- Encourage the judiciary to adopt **a consistent, rights-based approach** in family law adjudication—prioritizing the welfare of women and children as a guiding principle.

### 3. Institutional and Policy Support

- Establish **Family Law Reform Commissions** involving stakeholders such as legal scholars, gender justice advocates, religious leaders, and policymakers to study and recommend reform measures.
- Expand and improve **legal aid services**, especially in underprivileged and rural areas, enabling women to access justice without financial or social barriers.

#### 4. Public Awareness and Education

- Conduct **nationwide public awareness campaigns** using media, local institutions, and community platforms to educate women about their rights in marriage, divorce, custody, and inheritance.
- Integrate **gender justice and legal literacy** into school, college, and university curricula to nurture a generation committed to equality and human rights.

#### 5. Civil Society Engagement

- Support the work of **NGOs and community-based organizations** in providing legal support, conducting strategic litigation, and advocating for gender-sensitive policy reform.
- Promote **collaboration between civil society, religious scholars, and state actors** to foster dialogue and consensus between traditional norms and modern legal principles.

#### Final Reflection

Bangladesh stands at a pivotal moment, caught between the weight of tradition and the promise of constitutional modernity. Reforming family laws is **not simply a legal necessity—it is a moral and democratic obligation**. Addressing gender inequality within the family is key to dismantling broader structures of discrimination, enabling women to fully participate in the social, political, and economic life of the nation.

Ensuring equal rights for women within the family is not a threat to cultural or religious identity—it is an affirmation of human dignity, social justice, and national progress. The road to reform may be challenging, but it is essential for building a **more inclusive, equitable, and rights-respecting Bangladesh**.

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