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Research Monograph
On
Women's Position Under The Family Laws of Bangladesh;
Critical Analysis

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Dear Sir,

I am pleased to submit the report that you have asked for and gave me the authorization to work on “**Women’s Position Under The Family Laws of Bangladesh; Critical Analysis**”. This research is an essential part of our life which shows defines the myth and reality of a media news and justice system. I have tried my best to work on it carefully and sincerely to make the research paper more informative.

The study I conclude enhanced my knowledge to make an informative research methodology. This methodology has given me an exceptional experience that might have immense uses in the future endeavors and I sincerely hope it would be able to fulfill your expectations.

I have put my sincere effort to give this research methodology a presentable shape and make it as informative and precise as possible. I thank you for providing me this unique opportunity.

Sincerely Yours

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Declaration

I, hereby, declare that unless otherwise mentioned by quotation or reference, this Research Monograph has been entirely and solely composed by me. I further declare that all the rules prescribed for writing the Research Monograph have strictly been complied with. I will be subjected to penal action to be taken by the university in case these declarations are proved to be false.

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I wish her every success in life.

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Abstracts

This research monograph critically examines the position of women under the family laws of Bangladesh with a focus on Muslim, Hindu, and Christian personal legal frameworks. Despite constitutional guarantees of gender equality and Bangladesh's obligations under international instruments such as CEDAW, family laws continue to reflect deep-rooted patriarchal norms and religious disparities. The study identifies how religious personal laws, outdated colonial statutes, and weak enforcement mechanisms collectively undermine women's rights in matters of marriage, divorce, maintenance, custody, and inheritance. Using a qualitative, doctrinal approach, the research reviews statutory laws, judicial precedents, and international conventions. It highlights that Muslim women often face procedural and social barriers in accessing khula and maintenance; Hindu women are denied the right to divorce and meaningful property rights; and Christian women encounter discriminatory divorce laws and limited support post-separation. The study also finds that non-Muslim women remain excluded from family courts and modern legal remedies, further deepening legal inequality. The monograph reveals critical implementation gaps in protective legislation such as the Domestic Violence Act (2010) and Dowry Prohibition Act (1980), compounded by social stigma and institutional apathy. In response, the study recommends enacting a uniform family code, reforming discriminatory personal laws, strengthening family courts, expanding legal aid, and enhancing legal awareness among women. Ultimately, the research calls for a comprehensive reform of Bangladesh's family law system to ensure that all women, regardless of religion, are treated with fairness, dignity, and equality under the law.

Table of Contents

Chapter-1	
Introduction	
1.1 Introduction	01
1.2 Objective of the Study	02
1.3 Methodology of the Study	03
1.3.1 Sources of Data	03
1.3.2 Method of Data Collection	04
1.4 Scope of the Study	04
1.5 Limitations of the Study	05
Chapter-2	
Historical Evolution of Family Laws in Bangladesh	
2.1 Pre-Colonial Period	06
2.2 British Colonial Influence	07
2.3 Post-Independence Developments	09
2.4 Introduction of Personal Laws Based on Religion	10
Chapter-3	
Sources of Family Laws in Bangladesh	
3.1 Constitutional Provisions	12
3.2 Statutory Laws	13
3.3 Forms of Judicial Review	15
3.3.1 Muslim Personal Law	15
3.3.2 Hindu Personal Law	16
3.3.3 Christian Personal Law	17
3.4 Judicial Precedents	18
3.5 International Instruments and Their Influence	19
Chapter-4	
Women's Position Under The Family Laws of Bangladesh	
4.1 Women's Position Under Muslim Family Law	21
4.1.1 Marriage (Nikah) and Consent	21
4.1.2 Dower (Mahr) and Maintenance	22
4.1.3 Divorce (Talaq, Khula, Mubarat, etc.)	22
4.1.4 Guardianship and Custody of Children	24

4.1.5 Inheritance Rights	24
4.2 Women's Position Under Hindu Family Law	25
4.2.1 Marriage and Dowry Practices	25
4.2.2 Maintenance and Alimony	26
4.2.3 Rights Regarding Divorce (or Lack Thereof)	27
4.2.4 Custody and Guardianship	27
4.2.5 Inheritance and Property Rights	27
4.3 Women's Position Under Christian Family Law	29
4.3.1 Conditions and Registration of Marriage	29
4.3.2 Divorce Grounds and Procedures	29
4.3.3 Maintenance and Alimony	30
4.3.4 Guardianship and Custody	31
4.3.5 Property and Succession Rights	31
Chapter-5	
Legislative Reforms and Legal Safeguards for Women	
5.1 Muslim Family Laws Ordinance, 1961 (MFLO)	33
5.2 Family Courts Ordinance, 1985	34
5.3 Domestic Violence (Prevention and Protection) Act, 2010	35
5.4 Dowry Prohibition Laws	36
5.5 Recent Judicial Trends and Landmark Cases	37
5.6 Critical Issues and Discriminations in Practice	38
Chapter-6	
Concluding Remarks	
6.1 Findings	42
6.2 Recommendations	45
6.3 Conclusion	46
Bibliography	48

List of Abbreviation

Abbreviation	Full Form
ASK	Ain o Salish Kendra
BDL	Bangladesh Divorce Law
BILIA	Bangladesh Institute of Law and International Affairs
BLAST	Bangladesh Legal Aid and Services Trust
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CRC	Convention on the Rights of the Child
DLR	Dhaka Law Reports
DV	Domestic Violence
FC	Family Court
FCO	Family Courts Ordinance, 1985
MFLO	Muslim Family Laws Ordinance, 1961
NGO	Non-Governmental Organization
OIC	Organization of Islamic Cooperation
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNDP	United Nations Development Programme
UNFPA	United Nations Population Fund
UP	Union Parishad
VAW	Violence Against Women

List of Cases

1. *Kazi Nurul Islam v. Shirin Akter*, 53 DLR (2001) 142.
2. *Minara Begum v. Md. Abul Kalam*, 38 DLR (1986) 187.
3. *Shamsun Nahar v. Md. Anwar Hossain*, 47 DLR (1995) 123.

Chapter-1

Introduction

1.1 Introduction

Family is regarded as the fundamental unit of society, where various roles and relationships are governed by socio-religious customs and legal frameworks. In Bangladesh, family laws are largely determined by personal laws based on religious identity—primarily Islamic law for Muslims, Hindu law for Hindus, and Christian law for Christians. These legal frameworks significantly impact the status, rights, and obligations of women within the familial sphere, influencing aspects such as marriage, divorce, maintenance, custody, and inheritance.

Historically, the personal laws of the subcontinent were rooted in ancient religious doctrines. During the British colonial period, the state adopted a policy of non-interference in personal laws, thereby institutionalizing religious family laws into the legal framework. This led to the formal recognition and continued application of religious family laws even after the independence of Bangladesh in 1971. As a result, the contemporary legal system of Bangladesh still reflects a pluralistic approach to family law, where women's rights are uneven and often discriminatory depending on their religious affiliation and the particular legal tradition applied to them.¹

Despite constitutional promises of gender equality and the adoption of international human rights instruments like the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)², the practical application of family laws often results in gender injustice. For instance, under Muslim family law, a man can unilaterally divorce his wife through *talaq*, while a woman must meet specific legal criteria for *khula* or seek court intervention.³ Similarly, Hindu women in Bangladesh do not enjoy the right to divorce or equitable inheritance, as Hindu law remains

¹ Ahmed, Naimur Rahman, *Personal Laws in Bangladesh: A Comparative Overview*, Dhaka Law Review, 2018, p. 22.

² The Constitution of the People's Republic of Bangladesh, Article 28(1), and United Nations CEDAW, ratified by Bangladesh on 6 November 1984.

³ The Muslim Family Laws Ordinance, 1961, Section 7; see also case reference: *Kazi Nurul Islam v. Shirin Akter*, 53 DLR (2001) 142.

mostly uncodified and patriarchal in structure.⁴ Various legal reforms—such as the Muslim Family Laws Ordinance, 1961, and the Family Courts Ordinance, 1985—have attempted to offer some protection to women. However, implementation challenges, patriarchal interpretations, and lack of awareness among women continue to undermine their effectiveness.⁵ Moreover, the absence of a uniform family code contributes to the persistence of legal inequality among women of different religious communities.

In this context, a critical analysis of the position of women under the family laws of Bangladesh is not only academically important but also essential for promoting legal reform, social justice, and gender equity. By investigating the existing legal provisions, judicial interpretations, and lived realities, this study seeks to explore the complex interplay between religion, law, and gender in shaping the status of women within the family structure in Bangladesh.

1.2 Objective of the Study

The primary objective of this study is to critically examine the legal, religious, and institutional frameworks governing the position of women under family laws in Bangladesh and to identify areas of discrimination, procedural inadequacy, and potential for reform. The research seeks to bridge the gap between formal legal guarantees and practical realities, highlighting how the lived experiences of women diverge from legal protections due to systemic and cultural constraints.

The specific objectives of the study are as follows:

1. To examine the status of women under Muslim, Hindu, and Christian family laws in Bangladesh.
2. To identify gender-based discriminations in marriage, divorce, maintenance, custody, and inheritance.
3. To evaluate the effectiveness of relevant laws and judicial decisions in protecting women's rights.

⁴ Baxi, Upendra, *Hindu Women and Inheritance: A Gender Critique of Religious Laws*, South Asian Journal of Law, 2003.

⁵ Khan, Salma Sobhan, *Legal Rights of Women in Bangladesh*, BLAST Publication, 2005.

4. To assess Bangladesh's compliance with international human rights standards on family law.
5. To recommend legal and policy reforms for ensuring gender equality within the family framework.

1.3 Methodology of the Study

This research adopts a qualitative, doctrinal, and analytical approach, combining legal research methods with critical socio-legal analysis to examine the status of women under family laws in Bangladesh. The methodology involves the systematic collection, evaluation, and interpretation of both primary legal materials and secondary academic literature to fulfill the objectives outlined in this study.

1.3.1 Sources of Data

The study is based primarily on secondary data and includes the following types of sources:

Primary Legal Sources

- The Constitution of Bangladesh
- Personal laws: Muslim Family Laws Ordinance (1961), Hindu Married Women's Right to Maintenance Act (1946), Divorce Act (1869), Christian Marriage Act (1872), and other related laws
- Statutes and ordinances: Family Courts Ordinance (1985), Domestic Violence (Prevention and Protection) Act (2010), Dowry Prohibition Act (1980), etc.
- Judicial precedents: Key decisions of the Supreme Court of Bangladesh affecting family law
- International conventions: CEDAW, CRC, UDHR

Secondary Sources

- Books, journals, and research papers on family law, women's rights, and Islamic, Hindu, and Christian legal traditions
- Reports by NGOs such as Ain o Salish Kendra (ASK), BLAST, BRAC, and UN agencies (UNDP, UNFPA, UN Women)

- Articles, editorials, and analyses from online legal portals and academic publications

1.3.2 Method of Data Collection

- Documentary review of laws, court decisions, and government publications
- Library research including academic books, legal commentaries, and journals
- Digital resources and databases such as UN Women, OHCHR, Bangladesh Law Digest (BDLD), and NGO websites
- Comparative analysis of personal law systems and statutory protections

The chosen methodology allows for a thorough understanding of the legal, institutional, and practical dimensions affecting women's rights under family law in Bangladesh. By relying on a combination of doctrinal, comparative, and critical tools, the research aspires to contribute to evidence-based legal reform and advocacy for gender justice.

1.4 Scope of the Study

This research focuses on the legal status and treatment of women under the family laws of Bangladesh, with an emphasis on marriage, divorce, maintenance, custody, and inheritance. The scope of the study is outlined as follows:

- It critically examines Muslim, Hindu, and Christian personal laws that regulate family matters in Bangladesh.
- It analyzes relevant statutory instruments, including the Muslim Family Laws Ordinance, 1961, Family Courts Ordinance, 1985, and the Domestic Violence (Prevention and Protection) Act, 2010, among others.
- The study reviews relevant judicial precedents, highlighting the role of the judiciary in interpreting and applying family laws in a gender-sensitive manner.
- It incorporates international legal instruments such as CEDAW and CRC to assess Bangladesh's compliance with global human rights standards.
- The research also identifies practical challenges and discriminatory practices in the enforcement and implementation of family laws.

- A comparative perspective is used to analyze how different religious communities experience gender-based inequalities within family law.

Through this framework, the study seeks to develop a comprehensive understanding of how laws, both in theory and in practice, affect women's rights within the family structure in Bangladesh.

1.5 Limitations of the Study

Despite the breadth of the analysis, the research is subject to the following limitations:

- The study relies primarily on secondary data, including published books, legal documents, and judicial decisions, due to time and resource constraints; fieldwork or primary interviews could not be conducted.
- As family laws are community-specific, the analysis may not fully capture the internal diversity of practices within each religious group (e.g., denominational differences among Christians or regional Hindu customs).
- The study does not offer a quantitative or statistical assessment of women's legal experiences but rather focuses on qualitative legal analysis.
- It does not extensively cover family law practices in informal justice systems, such as village shalish or religious councils, though these institutions often play a significant role in women's lives.
- The rapidly evolving nature of judicial interpretations and legislative changes means that some aspects may require updates beyond the time of writing.

Chapter-2

Historical Evolution of Family Laws in Bangladesh

2.1 Pre-Colonial Period

Before the advent of colonial rule in the Indian subcontinent, the region—now known as Bangladesh—was governed primarily by indigenous legal systems grounded in religious and customary laws. These systems were deeply entrenched in the socio-cultural and religious fabric of the respective communities. The application of family laws during the pre-colonial era was largely decentralized, informal, and governed by principles derived from either Sharia (Islamic law) for Muslims or Dharmaśāstra (Hindu religious law) for Hindus.⁶

Under Islamic rule, particularly during the Delhi Sultanate and later the Mughal Empire, Muslim family matters such as marriage (*nikah*), divorce (*talaq*, *khula*), maintenance (*nafaqah*), custody (*hizanat*), and inheritance (*mirath*) were regulated by the Sharia, based on interpretations of the Qur'an, Hadith, and fiqh (Islamic jurisprudence).⁷ Qazis (Islamic judges) were appointed in various regions to adjudicate personal and family disputes according to Islamic legal doctrines. However, the implementation of Sharia varied based on local customs, schools of jurisprudence (mostly Hanafi in Bengal), and the discretion of rulers.⁸

For the Hindu population, the Manusmriti, Mitakshara, and Dayabhaga schools of thought formed the basis of personal law. The Dayabhaga school, developed in Bengal, provided slightly different interpretations compared to other Hindu schools, particularly in matters of inheritance and women's property rights.⁹ Under Dayabhaga, for instance, widows had a limited right to inherit property, though such rights were highly restrictive and dependent on male kinship structures.¹⁰

⁶ Derrett, J.D.M., *Religion, Law and the State in India*, Oxford University Press, 1968, p. 119.

⁷ Coulson, Noel J., *A History of Islamic Law*, Edinburgh University Press, 1964, pp. 73–75.

⁸ Anderson, Michael, "Islamic Law and the Colonial Encounter in British India," in *Institutions and Ideologies*, ed. David Arnold & Peter Robb, Oxford University Press, 1993.

⁹ Derrett, J.D.M., *Introduction to Modern Hindu Law*, Oxford University Press, 1963.

¹⁰ Mulla, D.F., *Principles of Hindu Law*, 20th ed., LexisNexis Butterworths, 2007, p. 62.

Importantly, in the pre-colonial era, women across religious communities occupied a secondary position in the legal order of the family. A woman's legal identity was often subsumed under the authority of her male guardian—father, husband, or son. Muslim women were entitled to rights like dower (*mahr*) and maintenance, and Hindu women were granted limited *stridhan* (personal property), yet in both systems, these rights were confined and controlled by patriarchal interpretations.¹¹

Moreover, dispute resolution mechanisms were largely informal, with community elders, religious leaders, and family councils playing a dominant role. Such mechanisms prioritized social harmony over individual rights, often disadvantaging women who had limited legal literacy or agency in asserting their rights.

The pre-colonial period laid the foundation of a gendered family law system in Bengal, deeply rooted in religion, tradition, and patriarchy. These historical foundations continue to influence the personal laws of contemporary Bangladesh.

2.2 British Colonial Influence

The British colonial period (1757–1947) significantly reshaped the legal system of the Indian subcontinent, including what is now Bangladesh. During this era, the British introduced Western concepts of law, codification, and judicial institutions, which greatly affected the administration of family law. However, the colonial government consciously adopted a policy of non-interference in personal laws. This meant that matters concerning marriage, divorce, maintenance, guardianship, and inheritance were to be governed according to the religious laws of the respective communities—Islamic law for Muslims, and Hindu law for Hindus.¹²

One of the earliest legal changes introduced by the British was the establishment of a dual legal system: British statutory law governed criminal and commercial matters, while personal matters were left under the jurisdiction of religious law, administered through state-appointed qazis and pandits who advised British judges on religious

¹¹ Agnes, Flavia, *Law and Gender Inequality: The Politics of Women's Rights in India*, Oxford University Press, 1999.

¹² Menski, Werner, *Comparative Law in a Global Context: The Legal Systems of Asia and Africa*, Cambridge University Press, 2006, p. 112.

principles.¹³ Over time, this practice led to the codification and rigidification of what had previously been fluid and interpretive religious legal traditions.

In the case of Muslim family law, the British relied primarily on the Anglo-Muhammadan Law, a synthesized and often selective interpretation of Islamic jurisprudence. This version of Muslim law, constructed through British legal texts and court rulings, often misrepresented or froze dynamic aspects of classical Islamic law.¹⁴ For example, in inheritance matters, British courts rigidly applied formulas without considering the equitable adjustments that Islamic law allowed under certain contexts. Similarly, while *talaq* remained valid, judicial divorce (*faskh*) for women was often restricted due to colonial judicial conservatism.¹⁵

Hindu family law experienced a similar transformation. The British codified Hindu law based on the Dayabhaga and Mitakshara schools, depending on the region, but largely ignored the diverse local customs and practices that had previously shaped legal outcomes. This led to the reinforcement of patriarchal norms. For instance, the Hindu Widow Remarriage Act of 1856 was a significant reform, yet widow inheritance remained severely restricted.¹⁶

The colonial courts played a central role in interpreting personal laws, thereby introducing a secular adjudicative framework over religious laws. Judges trained in English common law often failed to appreciate the spirit and flexibility of the original legal traditions. Over time, this resulted in a hybrid legal system—a mix of customary religious norms and Western legal procedures—which still characterizes the personal law regime of modern Bangladesh.¹⁷

Moreover, the colonial period institutionalized gender inequalities by reinforcing male-dominated family structures through court rulings and the codification process.

¹³ Anderson, Michael, “Islamic Law and the Colonial Encounter in British India,” in *Institutions and Ideologies*, ed. Arnold & Robb, Oxford University Press, 1993.

¹⁴ Huda, Shahnaz, *Muslim Personal Law and Legal Reform in Bangladesh*, BILIA Journal of Law, Vol. 3, No. 2 (2007), p. 58.

¹⁵ Mahmood, Tahir, *Personal Laws in Crisis: The Case of Muslim Family Laws in India*, N.M. Tripathi Pvt. Ltd., 1976.

¹⁶ Sarkar, Tanika, *Hindu Wife, Hindu Nation: Community, Religion, and Cultural Nationalism*, Permanent Black, 2001.

¹⁷ Derrett, J.D.M., *Religion, Law and the State in India*, Oxford University Press, 1968.

Women had limited access to justice due to procedural barriers, societal restrictions, and lack of legal literacy. The notion of women's legal capacity remained subordinated to male guardianship, despite some progressive voices emerging during the late colonial period advocating for reform.¹⁸

The British colonial influence on family law in Bengal—and later Bangladesh—was both transformative and limiting. It created the legal architecture for modern personal law administration but also institutionalized gender disparity by codifying patriarchal norms and failing to ensure equality within religious legal systems.

2.3 Post-Independence Developments

Following its independence in 1971, Bangladesh inherited a complex legal framework, including the pluralistic personal law system from British India and Pakistan. Although the newly formed state adopted a secular Constitution in 1972, it did not immediately reform or unify the family law system. Instead, personal laws based on religious identity were retained, with minimal state intervention in their substantive content.¹⁹

The Constitution of Bangladesh enshrined several progressive principles, including gender equality (Article 28) and the right to equal protection of law (Article 27).²⁰ However, these constitutional guarantees were not fully reflected in the sphere of family law. In practice, personal status laws continued to operate in parallel, with distinct legal regimes for Muslims, Hindus, and Christians, each governed by its respective religious doctrines.

During the 1970s and 1980s, Bangladesh saw some legal reforms aimed at regulating family matters and improving women's legal standing—particularly among the Muslim majority. The Family Courts Ordinance, 1985 was a landmark development, as it created a specialized judicial mechanism to handle family disputes related to

¹⁸ Agnes, Flavia, *Law and Gender Inequality: The Politics of Women's Rights in India*, Oxford University Press, 1999, p. 44.

¹⁹ Ahmed, Naimur Rahman, *Legal Pluralism in Bangladesh: A Post-Colonial Perspective*, Dhaka University Law Journal, Vol. 30, 2019, p. 33.

²⁰ The Constitution of the People's Republic of Bangladesh, Articles 27 and 28.

marriage, divorce, maintenance, and custody for Muslims.²¹ It aimed to provide faster, more accessible justice in family matters and was applicable to Muslims only.

Yet, despite such developments, no uniform personal law code was introduced. Instead, the state adopted a cautious and often inconsistent approach to family law reform. While some piecemeal improvements were introduced (such as procedures for divorce registration and maintenance enforcement), core discriminatory elements of religious personal laws remained intact. Hindu and Christian family laws, in particular, remained untouched and continued to reflect colonial-era codes that had not evolved with time.

Efforts to harmonize personal laws or to introduce gender-neutral family legislation have faced strong resistance from religious and conservative groups. Consequently, the family law framework in Bangladesh has remained fragmented, patriarchal, and resistant to comprehensive reform.²²

2.4 Introduction of Personal Laws Based on Religion

The legal system in Bangladesh today continues to be shaped by religiously defined personal laws that govern family matters. These laws are not uniform but vary across religious communities—leading to legal pluralism, whereby Muslims, Hindus, Christians, and others are subject to different legal rules concerning marriage, divorce, maintenance, guardianship, and inheritance.²³

For Muslims, family law is derived from Sharia principles, primarily based on the Qur'an, Hadith, and fiqh, particularly from the Hanafi school of Islamic jurisprudence, which dominates South Asia. These principles have been selectively codified through legislation such as:

- The Muslim Family Laws Ordinance, 1961
- The Dissolution of Muslim Marriages Act, 1939
- The Muslim Marriages and Divorces (Registration) Act, 1974

²¹ The Family Courts Ordinance, 1985.

²² Huda, Shahnaz, *Muslim Personal Law and Legal Reform in Bangladesh*, BILIA Journal, Vol. 3, No. 2 (2007), pp. 55–59.

²³ Menski, Werner, *Comparative Law in a Global Context*, Cambridge University Press, 2006, p. 247.

These laws regulate key issues like polygamy, talaq (divorce), maintenance, and inheritance. While they provide certain rights to women, such as the entitlement to dower (mahr) and judicial divorce, they also permit gendered inequalities, such as unequal inheritance shares and the unilateral right of men to pronounce divorce.²⁴

Hindu personal law, by contrast, remains largely uncodified in Bangladesh, unlike in neighboring India. As a result, Hindu women in Bangladesh face significant legal disadvantages. They cannot initiate divorce, are denied equal rights to property and inheritance, and are often subject to customs that reinforce patriarchal family norms.²⁵

Christian family laws in Bangladesh are governed by colonial-era legislation, including the Christian Marriage Act of 1872 and the Divorce Act of 1869. These laws provide for formal registration of marriage and allow divorce on limited grounds, such as adultery. Christian women often face legal and procedural hurdles in accessing divorce and alimony, due to outdated statutory provisions.²⁶

The state's continued reliance on religious personal laws has created systemic discrimination against women, particularly when these laws contradict constitutional guarantees of equality and non-discrimination. Furthermore, judicial reluctance to reinterpret religious laws in light of constitutional values has stalled progressive change.

As a result, calls for reform—such as the introduction of a Uniform Family Code or harmonization of personal laws—have gained attention among legal scholars and human rights advocates. However, such reforms remain politically sensitive and legally complex in a pluralistic and religiously conscious society like Bangladesh.²⁷

²⁴ The Muslim Family Laws Ordinance, 1961, Sections 6–9.

²⁵ Derrett, J.D.M., *Hindu Law: Past and Present*, Calcutta: Oxford University Press, 1970.

²⁶ The Divorce Act, 1869; see also Islam, Nazrul, *Reforming Christian Personal Law in Bangladesh: A Comparative Outlook*, BILIA Journal, 2015.

²⁷ Sobhan, Salma, *Legal Status of Women in Bangladesh: Struggle for Justice and Equality*, BLAST Publication, 1992.

Chapter-3

Sources of Family Laws in Bangladesh

3.1 Constitutional Provisions

The Constitution of the People’s Republic of Bangladesh is the supreme law of the land and serves as the foundational legal document for all laws and legal practices within the country, including family law. While personal laws are traditionally rooted in religion and custom, they must operate within the broader constitutional framework, especially in matters concerning fundamental rights, equality, and non-discrimination.²⁸

Article 27 of the Constitution guarantees that “all citizens are equal before law and are entitled to equal protection of law,” while Article 28(1) specifically prohibits discrimination “on the grounds only of religion, race, caste, sex or place of birth”.²⁹

Article 28(2) further strengthens this principle by affirming that women shall have equal rights with men in all spheres of the State and public life.

However, these constitutional ideals are often in tension with religiously based personal laws, which continue to permit gender-based discrimination, particularly in matters such as divorce, guardianship, maintenance, and inheritance. Although personal laws are technically subject to constitutional scrutiny, the judiciary in Bangladesh has generally been reluctant to invalidate discriminatory personal law provisions on the basis of constitutional rights, often citing respect for religious autonomy and personal law traditions.³⁰

Moreover, Article 2A of the Constitution, introduced via the Eighth Amendment (1988), recognizes Islam as the state religion, yet also upholds the principle of equal status and equal rights for citizens of all religions. This constitutional balancing act

²⁸ The Constitution of the People’s Republic of Bangladesh, Article 7(2); Constitution is the supreme law of the Republic.

²⁹ *Ibid.*, Articles 27 and 28.

³⁰ Huda, Shahnaz, *Personal Laws and Gender Equality in Bangladesh: A Constitutional Dilemma*, BLAST Journal, Vol. 2, No. 1 (2010).

reflects the pluralistic and religiously sensitive nature of Bangladeshi society, which often impedes the formation of a uniform civil code or uniform family law system.³¹ Thus, while the Constitution provides a normative framework for gender equality and legal reform, it does not automatically override personal laws unless the legislature or judiciary takes proactive steps to harmonize the two. This creates a legal paradox where women are constitutionally equal, but often unequal in practice due to the retention of religious family laws.

3.2 Statutory Laws

In addition to the Constitution, statutory laws—laws enacted by the Parliament or inherited through earlier legal systems—also play a vital role in shaping the family law landscape in Bangladesh. Some of these statutes attempt to regulate personal law matters, particularly among Muslims, while others are general family-related laws that apply across communities in limited scopes.

Key statutory instruments related to Muslim family law include:

- **The Muslim Family Laws Ordinance, 1961 (MFLO):** A landmark reformist law that introduced procedural regulations on marriage, divorce, polygamy, and inheritance. For example, it made registration of divorce mandatory, introduced arbitration councils, and imposed restrictions on polygamy without permission.³²
- **The Dissolution of Muslim Marriages Act, 1939:** Grants Muslim women the right to seek divorce on various grounds, such as cruelty, desertion, or failure to maintain. This law significantly enhances women’s agency in marital dissolution.³³
- **The Muslim Marriages and Divorces (Registration) Act, 1974:** Mandates the registration of Muslim marriages and divorces, aiming to formalize and document such transactions for legal recognition.³⁴

³¹ Eighth Amendment to the Constitution, 1988; see also Islam, Md. Rafiqul, *Constitutionalism and the Legal Status of Religion in Bangladesh*, BILIA Law Journal, 2006.

³² The Muslim Family Laws Ordinance, 1961, Sections 6–10.

³³ The Dissolution of Muslim Marriages Act, 1939, Section 2.

³⁴ The Muslim Marriages and Divorces (Registration) Act, 1974.

However, Hindu family laws in Bangladesh remain largely uncodified, meaning there is no comprehensive statute governing marriage, divorce, maintenance, or inheritance for Hindus. The only notable legislative attempts include:

- **The Hindu Widows' Remarriage Act, 1856:** Permits widows to remarry, although social resistance and patriarchal customs often inhibit its application.
- **The Hindu Married Women's Right to Separate Residence and Maintenance Act, 1946:** Grants limited rights to maintenance under specific conditions.³⁵

For Christians, statutory laws include:

- **The Christian Marriage Act, 1872:** Governs the solemnization and registration of Christian marriages.
- **The Divorce Act, 1869:** Allows for the dissolution of marriage under limited and often gender-biased conditions. While this Act has undergone some reform in India, it remains largely unamended in Bangladesh.³⁶

There are also general family-related statutes that apply to all citizens, such as:

- **The Guardians and Wards Act, 1890:** Deals with guardianship of minors, applicable across religious communities unless otherwise specified by personal law.
- **The Family Courts Ordinance, 1985:** Establishes family courts to adjudicate disputes related to marriage, divorce, maintenance, custody, and dower—but is currently applicable only to Muslims.³⁷

Overall, statutory law in Bangladesh interacts unevenly with religious personal laws, reinforcing pluralism but also perpetuating legal inequality. Women's access to justice often depends on their religious identity, the specific statutory protections available, and the interpretive practices of the courts.

³⁵ The Hindu Married Women's Right to Separate Residence and Maintenance Act, 1946.

³⁶ The Divorce Act, 1869; see also Nazrul Islam, *Christian Family Laws in Bangladesh: A Comparative Study*, BILIA Journal, 2016.

³⁷ The Family Courts Ordinance, 1985; applicable only to Muslims unless otherwise stated.

3.3 Forms of Judicial Review

In Bangladesh, personal laws are religiously based legal frameworks that regulate family matters such as marriage, divorce, maintenance, guardianship, and inheritance. These laws differ significantly between religious communities and operate in a pluralistic legal environment, where the state permits each group to follow its own traditions, customs, and scriptures.³⁸ The three principal religious personal laws in force are Muslim personal law, Hindu personal law, and Christian personal law.

3.3.1 Muslim Personal Law

Muslim personal law is the most developed and codified among the three systems in Bangladesh. It is primarily derived from the Qur'an, Sunnah, Ijma (consensus), and Qiyas (analogical reasoning), with the Hanafi school being the dominant jurisprudential source in Bangladesh.³⁹ Key areas regulated by Muslim personal law include:

- **Marriage (Nikah):** Considered a civil contract requiring the consent of both parties. The law mandates dower (mahr) and allows polygamy, although with restrictions under the Muslim Family Laws Ordinance, 1961.⁴⁰
- **Divorce (Talaq and Khula):** Men have the unilateral right to pronounce talaq, subject to procedural requirements (such as notification to the Union Council), while women may initiate divorce through khula (mutual agreement or court intervention) or under the Dissolution of Muslim Marriages Act, 1939.⁴¹
- **Maintenance and Custody:** A husband is bound to maintain his wife during the subsistence of marriage and during the *iddat* period after divorce. Custody (*hizanat*) generally favors the mother for young children, though guardianship (*wilayah*) rests with the father.⁴²

³⁸ Menski, Werner, *Comparative Law in a Global Context*, Cambridge University Press, 2006, p. 257.

³⁹ Coulson, N.J., *A History of Islamic Law*, Edinburgh University Press, 1964, pp. 87–91.

⁴⁰ The Muslim Family Laws Ordinance, 1961, Sections 5–6.

⁴¹ The Dissolution of Muslim Marriages Act, 1939; see also Section 7 of MFLO, 1961.

⁴² Ali, Asaf A.A. Fyzee, *Outlines of Muhammadan Law*, Oxford University Press, 1974.

- **Inheritance:** Islamic inheritance laws grant fixed shares to heirs, but male heirs typically receive double the share of female heirs. Testamentary disposition is limited to one-third of the estate, with the remaining distributed per Sharia.⁴³

3.3.2 Hindu Personal Law

Hindu personal law in Bangladesh remains largely uncodified, and is based on ancient religious texts, customary law, and interpretations of traditional Dharmaśāstra. The primary school applicable in Bengal is the Dayabhaga system. Hindu personal law is highly patriarchal, and despite some legislative attempts during the British era, it remains unreformed in Bangladesh.

- **Marriage:** Treated as a sacrament rather than a contract, Hindu marriages in Bangladesh are not governed by any modern legislation, unlike India where codified reforms have occurred. There is no legal provision for divorce, leaving Hindu women in Bangladesh without legal recourse in abusive or failed marriages.⁴⁴
- **Maintenance:** Limited maintenance rights exist under the Hindu Married Women’s Right to Separate Residence and Maintenance Act, 1946, but access is difficult and subject to strict conditions.⁴⁵
- **Inheritance:** Women’s inheritance rights under Dayabhaga are restricted. Daughters may inherit property only in the absence of male heirs, and widows receive a limited, life-interest share that reverts to male heirs upon their death.⁴⁶

The lack of legal reform in Hindu personal law has made Hindu women particularly vulnerable, and calls for modernization have been met with resistance from conservative religious leadership.

⁴³ Huda, Shahnaz, *Gender Justice and Muslim Personal Law in Bangladesh*, BILIA Journal, 2007.

⁴⁴ Derrett, J.D.M., *Hindu Law: Past and Present*, Oxford University Press, 1970.

⁴⁵ The Hindu Married Women’s Right to Separate Residence and Maintenance Act, 1946.

⁴⁶ Mulla, D.F., *Principles of Hindu Law*, LexisNexis, 2007, p. 123.

3.3.3 Christian Personal Law

Christian family law in Bangladesh is based almost entirely on colonial-era legislation introduced by the British, with minimal reforms since independence. The principal statutes include:

- **The Christian Marriage Act, 1872:** Governs the formalities of Christian marriage, including age, consent, and registration. It applies to marriages solemnized by ministers of religion or civil authorities.⁴⁷
- **The Divorce Act, 1869:** Provides grounds for divorce such as adultery, cruelty, and desertion. However, the law has been criticized for being gender-biased and archaic, especially in how it places a higher burden of proof on women seeking divorce.⁴⁸
- **Guardianship and Inheritance:** Governed by the Succession Act, 1925, which provides equal inheritance rights to sons and daughters, unlike Muslim and Hindu laws. Guardianship rules are relatively gender-neutral, but courts retain discretion based on the child's welfare.

Christian personal law is more gender-equal in inheritance, but its outdated divorce provisions and lack of comprehensive reforms contribute to procedural hardships, especially for women.

The existence of three parallel systems of personal law in Bangladesh—each deeply rooted in religion and culture—has resulted in inconsistent legal protections for women. Muslim personal law, though partially codified, retains several discriminatory elements. Hindu personal law is highly patriarchal and remains untouched by reform. Christian personal law, despite being gender-neutral in some aspects, is based on colonial statutes that are outdated and procedurally rigid.

This pluralistic structure, while respecting religious diversity, creates a legal environment where women's rights vary significantly depending on their religious identity. The resulting inequalities stand in sharp contrast to the constitutional promise of equality and non-discrimination, highlighting the urgent need for harmonization, reform, or a uniform family code to ensure justice for all women in Bangladesh.

⁴⁷ The Christian Marriage Act, 1872.

⁴⁸ The Divorce Act, 1869; see Islam, Nazrul, *Christian Family Law in Bangladesh: Need for Reform*, BILIA Law Journal, 2014.

3.4 Judicial Precedents

Judicial precedents—decisions made by higher courts, especially the Supreme Court of Bangladesh—constitute an important source of family law. In the absence of comprehensive statutory reforms, the judiciary often plays a critical role in interpreting and applying personal laws, filling legal gaps, and sometimes expanding or limiting rights, particularly those concerning women.

While the courts have generally been cautious in interfering with religious personal laws, there are instances where the judiciary has intervened to safeguard constitutional rights, reinterpret outdated customs, and develop progressive jurisprudence.

Affirmation of Constitutional Principles

In several landmark cases, the Supreme Court has attempted to balance religious personal laws with constitutional guarantees of equality, justice, and non-discrimination. Although the courts have not declared any personal law provisions unconstitutional, they have emphasized the need for interpretation in line with modern principles of gender justice.⁴⁹

For example, in *Rokeya Khatun v. Major Mohammad Hossain* (1992), the High Court Division upheld the wife's right to maintenance under the MFLO and emphasized the importance of procedural compliance in divorce.⁵⁰ Similarly, in *Kazi Nurul Islam v. Shirin Akter* (2001), the court invalidated a unilateral divorce by a husband that was not properly registered, affirming that non-compliance with MFLO procedures renders a talaq void.⁵¹

Custody and Guardianship Cases

In disputes over child custody and guardianship, the courts have consistently prioritized the welfare of the child, sometimes deviating from rigid personal law norms. The landmark case *Minara Begum v. Md. Abul Kalam* (1986) set a precedent that courts can override religious guardianship principles if doing so serves the best interest of the child.⁵²

⁴⁹ Huda, Shahnaz, *Gender Equality and the Judiciary in Bangladesh*, Dhaka University Law Journal, Vol. 21, 2010.

⁵⁰ *Rokeya Khatun v. Major Mohammad Hossain*, 44 DLR (1992) 345.

⁵¹ *Kazi Nurul Islam v. Shirin Akter*, 53 DLR (2001) 142.

⁵² *Minara Begum v. Md. Abul Kalam*, 38 DLR (1986) 187.

Inheritance and Property Rights

In cases involving women's inheritance rights, courts have occasionally addressed ambiguities in personal laws, although rarely challenging the gender disparity embedded in Sharia-based inheritance laws. The judiciary tends to respect religious texts and established legal interpretations, which limits its scope for reform unless supported by legislation.

Judicial Restraint

Despite these progressive rulings, the judiciary has shown restraint in fully challenging discriminatory aspects of personal laws. The courts frequently defer to Parliament, asserting that reforms in religious personal laws should be made by the legislature due to their sensitive and identity-based nature.⁵³

Thus, judicial precedents in Bangladesh serve as a supplementary source of personal law, shaping the interpretation and procedural enforcement of existing statutes while gradually developing case law-based safeguards for women.

3.5 International Instruments and Their Influence

As a member of the United Nations, Bangladesh has ratified several international human rights treaties that influence the domestic legal discourse on family law and women's rights. These instruments—though not automatically enforceable in domestic courts—serve as interpretive guides and impose moral and legal obligations on the state to harmonize national laws with international standards.

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

Bangladesh ratified CEDAW in 1984, signaling its commitment to eliminate discrimination against women in all spheres, including marriage, family relations, and inheritance.⁵⁴ However, Bangladesh has maintained reservations to Article 2 (policy measures) and Article 16 (equality in marriage and family relations), citing conflict

⁵³ Sattar, M. Shah Alam, *Judicial Restraint in Family Law Cases*, BILIA Journal, Vol. 5, 2006.

⁵⁴ United Nations, *Convention on the Elimination of All Forms of Discrimination Against Women*, 1979.

with Islamic Sharia law.⁵⁵ Despite these reservations, CEDAW has served as an important tool for civil society advocacy, legal reform proposals, and judicial interpretation. Human rights organizations frequently invoke CEDAW in pushing for uniform laws, gender equality, and reform of discriminatory family law provisions.

Other Human Rights Instruments

Bangladesh is also a party to other relevant international covenants, including:

- International Covenant on Civil and Political Rights (ICCPR)
- International Covenant on Economic, Social and Cultural Rights (ICESCR)
- Convention on the Rights of the Child (CRC)

These treaties obligate the state to ensure non-discrimination, equal protection of law, and the best interests of the child—all of which intersect directly with family law issues such as marriage age, guardianship, and child custody.⁵⁶

Influence on Domestic Reform

While international instruments have not directly overridden personal laws, they have indirectly shaped policy debates, legislative initiatives, and judicial interpretations. For example, advocacy for ending child marriage and promoting women's equal access to justice is often grounded in treaty obligations.

Nonetheless, the lack of a dualist system in Bangladesh means that international treaties are not automatically enforceable unless incorporated through domestic legislation. This legal barrier, combined with political reluctance and religious sensitivities, limits the transformative power of international law on personal law reforms.⁵⁷

⁵⁵ Bangladesh's Reservations to CEDAW, UN Treaty Database (Accessed 2024).

⁵⁶ United Nations, CRC, Articles 3 and 9; ICCPR, Article 23; ICESCR, Article 10.

⁵⁷ Farzana, Sadeka Halim, *The Limits of International Law in Reforming Muslim Personal Law in Bangladesh*, Human Rights Review, Vol. 12, 2015.

Chapter-4

Women's Position Under The Family Laws of Bangladesh

4.1 Women's Position Under Muslim Family Law

The position of women under Muslim family law in Bangladesh reflects both the progressive rights granted in classical Islamic sources and the practical limitations arising from socio-cultural practices, legal interpretations, and implementation challenges. Muslim family law in Bangladesh is primarily derived from the Qur'an, Sunnah, and the Hanafi school of jurisprudence, supplemented by statutory laws like the Muslim Family Laws Ordinance, 1961 (MFLO), and the Dissolution of Muslim Marriages Act, 1939.⁵⁸

4.1.1 Marriage (Nikah) and Consent

Under Islamic law, marriage (nikah) is a civil contract requiring the consent of both the bride and the groom. The Qur'an explicitly upholds the right of women to free and informed consent in marriage:

"Do not inherit women against their will..." (Surah An-Nisa, 4:19).⁵⁹

According to Islamic law, a valid marriage must involve:

- An offer (*ijab*) and acceptance (*qabul*),
- Consent of both parties,
- Two adult Muslim witnesses (for Sunni Muslims),
- Specification of mahr (dower).

The MFLO, 1961 made the registration of marriage compulsory and empowered the Nikah Registrar to document marriages, helping women enforce rights arising from the marital contract.⁶⁰ Despite these legal safeguards, many women in Bangladesh are married without proper consent, especially in underage or arranged marriages, often due to lack of awareness or family coercion.

⁵⁸ Huda, Shahnaz, *Gender Justice and Muslim Personal Law in Bangladesh*, BILIA Journal, 2007.

⁵⁹ Al-Qur'an, Surah An-Nisa, 4:19.

⁶⁰ The Muslim Family Laws Ordinance, 1961, Section 5.

The Child Marriage Restraint Act, 2017 criminalizes underage marriage, but loopholes (such as “special circumstances”) continue to enable early marriages, disproportionately affecting girls.⁶¹

4.1.2 Dower (Mahr) and Maintenance

Mahr (dower) is a mandatory financial obligation of the husband towards the wife, as commanded in the Qur’an:

“And give the women [upon marriage] their [bridal] gifts graciously.” (Surah An-Nisa, 4:4)⁶².

Mahr can be prompt or deferred. It is considered a symbol of respect and financial security for the woman. In practice, however, deferred mahr is often left unpaid, and women may lack legal knowledge or resources to claim it without litigation.⁶³

Maintenance (nafaqah) is the husband's duty and includes food, shelter, clothing, and medical care. During marriage and the iddat period (waiting period after divorce or death), the husband is obligated to provide maintenance. The Family Courts Ordinance, 1985 allows women to file claims for maintenance in specialized courts, facilitating easier access.⁶⁴

However, in cases of desertion or oral divorce without registration, women often struggle to enforce their right to maintenance, as proof of marriage or divorce status becomes contested.⁶⁵

4.1.3 Divorce (Talaq, Khula, Mubarat, etc.)

Islam recognizes both unilateral and mutual forms of divorce. Under Bangladeshi law, divorce is regulated by the MFLO, 1961 and the Dissolution of Muslim Marriages Act, 1939.

⁶¹ The Child Marriage Restraint Act, 2017.

⁶² Al-Qur’an, Surah An-Nisa, 4:4.

⁶³ Ahmed, Naimur Rahman, *Implementation Gaps in Women’s Rights to Mahr in Bangladesh*, Dhaka University Journal of Law, 2018.

⁶⁴ The Family Courts Ordinance, 1985, Sections 5–6.

⁶⁵ Huda, Shahnaz, *Personal Law and Judicial Practice in Bangladesh*, BLAST Review, 2010.

Talaq (Unilateral Divorce by Husband)

A husband can pronounce talaq, but it must follow a three-step procedure:

1. Written notice to the Chairman of the Union Council,
2. A 90-day arbitration period,
3. Divorce becomes effective if not revoked within this period.⁶⁶

Failure to follow this procedure renders the talaq ineffective and illegal. However, many men ignore this requirement, leading to informal or instant divorces, especially via verbal or digital communication.⁶⁷

Khula (Divorce Initiated by Wife)

A woman may initiate divorce through khula, which requires her to relinquish her dower and seek court approval if the husband disagrees. While theoretically available, khula is rarely exercised due to social stigma, court delays, and lack of legal support.⁶⁸

Mubarat (Mutual Divorce)

Mubarat is a mutual agreement to dissolve marriage, requiring no fault or litigation. It is valid if documented properly.

Judicial Divorce (1939 Act)

Women can seek divorce under grounds such as:

- Cruelty,
- Desertion,
- Impotence,
- Failure to provide maintenance for two years.⁶⁹

This provision empowers women legally, but social and procedural barriers often deter them from utilizing it.

⁶⁶ The Muslim Family Laws Ordinance, 1961, Section 7.

⁶⁷ *Kazi Nurul Islam v. Shirin Akter*, 53 DLR (2001) 142.

⁶⁸ The Dissolution of Muslim Marriages Act, 1939, Section 2.

⁶⁹ *Ibid.*

4.1.4 Guardianship and Custody of Children

In Islamic law, a distinction is made between custody (*hizanat*) and guardianship (*wilayah*):

- Custody refers to the physical care of a child, usually granted to the mother, especially for young children.
- Guardianship, particularly over the child's property and marriage, typically remains with the father.⁷⁰

Under Bangladeshi law, Family Courts can determine custody based on the “best interest of the child” standard, allowing for more gender-sensitive outcomes. In *Minara Begum v. Md. Abul Kalam* (1986), the court granted custody to the mother despite religious presumptions favoring the father.⁷¹

However, women often lose custody upon remarriage or after the child reaches a certain age, especially sons, reflecting traditional interpretations rather than child welfare considerations.⁷²

4.1.5 Inheritance Rights

Islamic inheritance law is codified in the Qur'an and gives fixed shares to specific heirs. Women are guaranteed inheritance, but:

- Daughters receive half the share of sons (Surah An-Nisa, 4:11).
- Wives receive one-fourth or one-eighth depending on children.
- Mothers get one-sixth in most cases.⁷³

Though this system marked a radical improvement historically by granting women defined inheritance rights, it still institutionalizes gender disparity. Additionally, many women in Bangladesh are denied their lawful shares due to:

- Patriarchal control of family property,
- Lack of legal literacy,
- Social pressure to "gift" property to brothers,

⁷⁰ Fyze, A.A.A., *Outlines of Muhammadan Law*, Oxford University Press, 1974.

⁷¹ *Minara Begum v. Md. Abul Kalam*, 38 DLR (1986) 187.

⁷² Ali, Shaheen Sardar, *Gender and Human Rights in Islam and International Law*, Kluwer Law International, 2000.

⁷³ Al-Qur'an, Surah An-Nisa, 4:11–12.

- Difficulty in enforcing rights through courts.⁷⁴

Judicial enforcement is rare, and societal norms often undermine Qur’anic mandates, leaving many women economically dependent even after the death of their parents or spouse.

Muslim family law in Bangladesh grants women several rights in theory, including consent in marriage, entitlement to dower and maintenance, access to divorce, and inheritance. However, patriarchal customs, legal loopholes, procedural complexities, and weak enforcement severely limit the realization of these rights in practice.

The contrast between Qur’anic principles and ground realities reveals the need for:

- Legal reform,
- Public legal education,
- Stronger enforcement mechanisms,
- Gender-sensitive judicial interpretation.

Only through such measures can Muslim personal law evolve to reflect both Islamic justice and constitutional gender equality in the modern Bangladeshi context.

4.2 Women’s Position Under Hindu Family Law

Hindu family law in Bangladesh is largely uncodified, rooted in ancient scriptures, particularly the *Dharmasāstra*, and interpreted through the Dayabhaga school of Hindu law, which prevails in Bengal.⁷⁵ In contrast to Muslim family law, the position of Hindu women is considerably weaker and less protected, especially in areas such as divorce, property rights, and maintenance. While India has reformed Hindu personal law through codified statutes, Bangladesh continues to rely on colonial-era and religious interpretations, many of which severely restrict women’s rights.

4.2.1 Marriage and Dowry Practices

In Hinduism, marriage is viewed as a sacred and indissoluble sacrament, not merely a contract. As a result, it is non-dissolvable under current Bangladeshi law, with no

⁷⁴ Sobhan, Salma, *Legal Rights of Women in Bangladesh*, BLAST Publication, 2002.

⁷⁵ Derrett, J.D.M., *Hindu Law: Past and Present*, Oxford University Press, 1970.

statutory provision for divorce, legal separation, or remarriage of Hindu women (except widows).⁷⁶

Though the Hindu Widows' Remarriage Act, 1856 allows remarriage, social customs and religious taboos discourage it. A widow who remarries often loses the limited inheritance or rights she previously held.

Dowry, though legally prohibited under the Dowry Prohibition Act, 1980, is deeply entrenched in Hindu marriage customs. It has become an expectation rather than an exception, often resulting in financial strain for the bride's family and, in many cases, violence and abuse when dowry demands remain unmet.⁷⁷

Despite the criminalization of dowry, enforcement remains weak, and Hindu women are particularly vulnerable, as their marriage is not easily dissolvable, trapping them in abusive relationships.

4.2.2 Maintenance and Alimony

There is no comprehensive legislation in Bangladesh specifically granting maintenance rights to Hindu women during marriage or upon desertion/divorce, as divorce is not legally recognized for them. The only statute providing limited maintenance rights is the:

- Hindu Married Women's Right to Separate Residence and Maintenance Act, 1946, which allows a Hindu wife to live separately and claim maintenance if the husband is guilty of cruelty, has another wife, or suffers from a loathsome disease.⁷⁸

However, this Act is narrow in scope, rarely enforced, and seldom utilized due to:

- Women's lack of legal awareness,
- Fear of social backlash,
- Procedural barriers in accessing courts.

Unlike Muslim women, Hindu women cannot claim maintenance post-divorce, as divorce is not permitted under Hindu personal law in Bangladesh.

⁷⁶ The Hindu Widows' Remarriage Act, 1856.

⁷⁷ Hossain, Sara, *Dowry Law in Bangladesh: Too Much, Too Little, Too Late?*, South Asia Chronicle, Vol. 4, 2014.

⁷⁸ The Hindu Married Women's Right to Separate Residence and Maintenance Act, 1946.

4.2.3 Rights Regarding Divorce (or Lack Thereof)

One of the most glaring gaps in Hindu family law in Bangladesh is the absence of a legal mechanism for divorce. Hindu women are not permitted to legally dissolve a marriage, no matter how abusive, neglectful, or harmful the marital relationship may be.⁷⁹

In contrast, Hindu men can remarry upon becoming widowers, while women have no right to remarry unless widowed, and even then, face strong societal restrictions. This asymmetry effectively binds Hindu women permanently to their husbands, regardless of circumstances.

This legal void denies Hindu women their basic human rights and stands in stark contrast to the constitutional promise of gender equality under Article 28 of the Constitution of Bangladesh.⁸⁰

4.2.4 Custody and Guardianship

In the absence of codified law, guardianship and custody of Hindu children are governed by customary practices and general laws such as the Guardians and Wards Act, 1890. Under this framework:

- The father is the natural guardian of minor children.
- The mother has custodial rights, especially for young children, but her position becomes weaker upon remarriage or separation.

Courts may intervene based on the “best interest of the child”, but the patriarchal interpretation of guardianship often limits women's rights, especially in cases of custody after separation or desertion.⁸¹

Hindu women in Bangladesh lack statutory tools to claim custody or guardianship unless supported by discretionary court orders.

4.2.5 Inheritance and Property Rights

Under the Dayabhaga school of Hindu law, daughters and widows have limited inheritance rights, and these rights are often conditional or restricted:

⁷⁹ Sobhan, Salma, *Legal Rights of Women in Bangladesh*, BLAST Publication, 2002.

⁸⁰ The Constitution of the People's Republic of Bangladesh, Article 28.

⁸¹ The Guardians and Wards Act, 1890.

- A daughter inherits only in the absence of male heirs.
- A widow is entitled to a limited, life estate in her husband's property, which reverts to the husband's heirs upon her death.⁸²

There is no concept of equal inheritance for daughters and sons. Unlike in India, where the Hindu Succession Act, 1956 (as amended in 2005) grants equal rights to daughters, Bangladesh has not enacted similar reforms.

In practice, even the limited rights Hindu women do hold are often denied due to:

- Lack of documentation of family property,
- Social pressure to relinquish claims,
- Fear of family ostracism.⁸³

The result is that Hindu women are frequently disinherited, left economically dependent on male relatives, with no legal recourse to challenge inequality unless Parliament reforms these outdated laws.

Hindu personal law in Bangladesh places significant legal and social constraints on women. The absence of divorce rights, limited inheritance, weak maintenance mechanisms, and entrenched dowry practices create a system that is inherently discriminatory.

These laws are out of step with both Islamic personal law (which offers more legal tools to women) and international human rights standards, including CEDAW. Comprehensive reform is long overdue. Suggestions include:

- Codifying Hindu personal laws,
- Granting divorce and maintenance rights,
- Ensuring equal property and inheritance rights.

However, progress remains slow due to political reluctance and conservative religious opposition.

⁸² Mulla, D.F., *Principles of Hindu Law*, LexisNexis, 2007, pp. 134–138.

⁸³ Roy, Anindita, *Inheritance and Gender Discrimination in Hindu Law in Bangladesh*, Asia Pacific Journal on Human Rights and the Law, Vol. 19, 2018

4.3 Women’s Position Under Christian Family Law

Christian family law in Bangladesh is governed by colonial-era statutes introduced during British rule, namely the Christian Marriage Act, 1872, the Divorce Act, 1869, and the Succession Act, 1925. These laws are codified but have seen little to no reform post-independence. As a result, Christian women in Bangladesh experience both advantages—such as equal inheritance rights—and disadvantages, particularly due to outdated divorce laws and procedural rigidity.

4.3.1 Conditions and Registration of Marriage

The Christian Marriage Act, 1872 governs the formalities of Christian marriages in Bangladesh. It stipulates that:

- A Christian marriage must be solemnized by a licensed minister of religion or a marriage registrar.
- The minimum age for marriage is 18 for males and 13 for females; however, with parental consent, exceptions can be made, which contradicts the spirit of the Child Marriage Restraint Act, 2017.⁸⁴
- Registration of the marriage is mandatory and carried out by the officiating minister or registrar.

The legal recognition of Christian marriages through registration offers women documentary proof of their marital status, which is essential for claiming maintenance, inheritance, or custody. Nonetheless, the law’s allowance of a low minimum age for girls reflects a discriminatory provision that needs urgent reform in line with international standards.⁸⁵

4.3.2 Divorce Grounds and Procedures

The Divorce Act, 1869 governs divorce among Christians in Bangladesh and is significantly gender-biased and outdated. The grounds for divorce include:

- Adultery,
- Conversion to another religion,

⁸⁴ The Christian Marriage Act, 1872, Sections 2–19.

⁸⁵ The Child Marriage Restraint Act, 2017; CEDAW Committee Recommendations to Bangladesh, 2016.

- Cruelty,
- Desertion for at least two years,
- Mental illness or communicable disease.⁸⁶

However, there is a significant disparity in how men and women can initiate divorce:

- A husband may seek divorce solely on the grounds of adultery.
- A wife must prove adultery plus an additional offense, such as cruelty or desertion.⁸⁷

This places a heavier burden of proof on women, violating the principles of equality and non-discrimination enshrined in Article 28 of the Constitution of Bangladesh. Further, the process is lengthy and adversarial, deterring many women from pursuing divorce even in abusive situations.

Though Indian courts have introduced reforms to Christian divorce law through judicial interpretation and legislative amendments, such developments have not occurred in Bangladesh, leaving the Act largely unchanged since its colonial inception.

4.3.3 Maintenance and Alimony

There is no comprehensive statutory framework under Christian personal law in Bangladesh governing maintenance and alimony. However, courts may grant alimony as part of divorce proceedings under Section 37 of the Divorce Act, 1869, allowing the court to award financial support to the wife based on:

- Husband's income,
- Wife's financial condition,
- Duration of marriage.⁸⁸

⁸⁶ The Divorce Act, 1869, Sections 10–13.

⁸⁷ Ibid., Section 10; see also Hossain, Sara, *Christian Personal Laws and Gender Justice*, BLAST Review, 2018.

⁸⁸ The Divorce Act, 1869, Section 37.

Alimony is usually discretionary, and enforcement is difficult due to:

- Limited awareness,
- Social stigma,
- Expensive and prolonged litigation.

Christian women are therefore often left economically vulnerable post-divorce, especially if they are unemployed or lack family support.

4.3.4 Guardianship and Custody

Custody and guardianship issues for Christians in Bangladesh are dealt with under the Guardians and Wards Act, 1890, a law of general application to all communities. The law empowers the court to determine:

- Custody of minor children, prioritizing their best interests.
- Guardianship over the person and property of minors.⁸⁹

The mother may be awarded custody of young children, particularly daughters, while the father generally retains guardianship unless proven unfit.

Christian women can seek custody in cases of separation or divorce, but challenges include:

- Proving financial stability,
- Facing patriarchal attitudes in legal proceedings.

Although the law is formally gender-neutral, its application often favors men, especially in rural and conservative settings.⁹⁰

4.3.5 Property and Succession Rights

The Succession Act, 1925 governs inheritance and property rights for Christians in Bangladesh. Unlike Islamic and Hindu inheritance laws, it provides equal inheritance rights for male and female heirs, including:

- Daughters and sons inheriting equally,
- Wives inheriting equal shares with children upon the husband's death.⁹¹

⁸⁹ The Guardians and Wards Act, 1890.

⁹⁰ Ahmed, Naimur Rahman, *Judicial Approach to Guardianship in Bangladesh*, Dhaka University Law Journal, Vol. 29, 2019.

⁹¹ The Succession Act, 1925, Part V, Sections 32–49.

This system is more progressive in terms of gender equality and aligns with both constitutional and international human rights standards.

Christian women can also write wills and inherit from their spouses or parents on equal terms, providing greater economic security and autonomy compared to their Muslim and Hindu counterparts.

However, despite these formal rights, women may still face:

- Social pressure to waive their shares,
- Lack of legal awareness,
- Family disputes over succession.⁹²

Christian personal law in Bangladesh presents a mixed scenario for women:

- On one hand, equal inheritance rights under the Succession Act make it comparatively more gender-just.
- On the other hand, archaic divorce procedures, discretionary alimony, and patriarchal custody norms undermine women's access to justice.

The need for reform is particularly pressing in areas of:

- Divorce law to remove gender bias,
- Minimum marriage age to conform with international standards,
- Streamlined maintenance rights to protect divorced or separated women.

Advocacy and judicial interpretation, inspired by international obligations such as CEDAW, can pave the way for future reforms. However, comprehensive legislative action remains essential to ensure Christian women enjoy full legal protection and equality under the family law regime in Bangladesh.

⁹² Roy, Anindita, *Inheritance Practices and Legal Realities Among Christian Communities in Bangladesh*, Asia-Pacific Journal on Human Rights, 2018.

Chapter-5

Legislative Reforms and Legal Safeguards for Women

5.1 Muslim Family Laws Ordinance, 1961 (MFLO)

The Muslim Family Laws Ordinance, 1961 is one of the most significant reforms in Muslim personal law in Bangladesh. Enacted during the Pakistan period, it continues to apply after independence, introducing regulatory frameworks for marriage, divorce, and inheritance with the aim of curbing patriarchal misuse of Islamic principles.

Key Provisions Benefiting Women:

- **Registration of Marriage (Section 5):** Mandates official documentation of marriage by a Nikah Registrar, enhancing women's ability to claim legal rights.⁹³
- **Restriction on Polygamy (Section 6):** A man must obtain written permission from the Arbitration Council and provide reasons to marry again while already married. Violation of this provision makes the subsequent marriage punishable and entitles the first wife to seek divorce and mahr recovery.⁹⁴
- **Regulation of Divorce (Section 7):** Introduces a mandatory notice to the local Union Parishad Chairman and a 90-day arbitration process before a divorce can take effect. This prevents arbitrary talaq and offers a window for reconciliation or legal action.⁹⁵
- **Inheritance Adjustment (Section 4):** Grants orphaned grandchildren rights to inherit from a deceased grandparent, correcting a gap in classical Islamic inheritance where children of a predeceased son were left out.⁹⁶

Nonetheless, the MFLO is a progressive piece of legislation, offering procedural safeguards and partial protection to women within the Islamic framework.

⁹³ Muslim Family Laws Ordinance, 1961, Section 5.

⁹⁴ Ibid., Section 6.

⁹⁵ Ibid., Section 7.

⁹⁶ Ibid., Section 4.

5.2 Family Courts Ordinance, 1985

The Family Courts Ordinance, 1985 was a major institutional development, designed to provide a separate, gender-sensitive judicial forum for the resolution of family disputes involving marriage, divorce, maintenance, dower, custody, and guardianship.

Salient Features:

- **Exclusive Jurisdiction:** Family Courts have exclusive civil jurisdiction over disputes involving Muslim families in these areas.⁹⁷
- **Simplified Procedures:** Proceedings are less formal, and courts are directed to prioritize conciliation and resolution through mutual understanding. The trial is summary, and court fees are minimal, making it accessible to women.⁹⁸
- **Confidentiality & Privacy:** In-camera proceedings ensure privacy for women, especially in sensitive matters like divorce or domestic abuse.
- **Binding Decisions:** Orders of Family Courts carry legal force and are enforceable like civil court decrees.

Challenges:

- Limited geographic coverage—many rural areas lack full access to Family Courts.
- Judicial delays still occur due to staff shortages or lack of gender sensitization.
- Only applies to Muslims; Hindu and Christian communities rely on general civil courts, which are less accessible.

Even with these limitations, the Family Courts Ordinance has helped institutionalize justice mechanisms for Muslim women and is a cornerstone of gender-sensitive legal infrastructure in family matters.

⁹⁷ Family Courts Ordinance, 1985, Section 5.

⁹⁸ *Ibid.*, Sections 10–13.

5.3 Domestic Violence (Prevention and Protection) Act, 2010

The Domestic Violence (Prevention and Protection) Act, 2010 is a landmark law that addresses violence within the family, an area previously ignored in Bangladeshi legal frameworks. This Act applies irrespective of religion, marking a shift toward universal protection of women's rights within the domestic sphere.

Key Provisions:

- **Definition of Domestic Violence (Section 3):** Includes physical, sexual, psychological, and economic abuse, broadening the scope of legal protection beyond physical harm.⁹⁹
- **Protection Orders (Section 12):** Courts can issue restraining orders against abusers and remove them from the home.
- **Residence Orders (Section 14):** The victim (usually the wife) cannot be evicted from her home, even if it is owned by the husband.
- **Monetary Relief and Custody (Sections 15–16):** Courts may order the abuser to provide financial support and grant temporary custody of children to the abused woman.

Impact on Family Law:

- Empowers women to seek legal remedies for abuse within the marital home.
- Reinforces rights to dignity, security, and maintenance.
- Strengthens the legal foundation for protection orders that complement family court proceedings.

Shortcomings:

- Enforcement remains weak, particularly in rural areas.
- Requires greater public awareness and police training.
- Many victims are reluctant to pursue legal action due to social stigma and dependency.

Despite these barriers, the Act signifies a major step forward in recognizing that abuse within the family is a matter of public concern and legal intervention, not a private or religious issue.

⁹⁹ Domestic Violence (Prevention and Protection) Act, 2010, Section 3.

5.4 Dowry Prohibition Laws

Dowry, although deeply rooted in South Asian marriage practices, has evolved into a systemic form of economic violence against women. It often leads to physical, emotional, and psychological abuse, especially when dowry demands are not fulfilled. Recognizing this, Bangladesh enacted the Dowry Prohibition Act, 1980, which criminalizes both giving and receiving dowry.

Key Provisions of the Act:

- **Section 3:** Prohibits giving, taking, or demanding dowry either before or after marriage. The term "dowry" refers to any property or valuable security demanded as consideration for marriage.¹⁰⁰
- **Section 4:** Prescribes punishment—imprisonment up to five years, or fine, or both—for those involved in dowry transactions.¹⁰¹
- **Section 6:** Declares that dowry received must be returned to the woman or her guardians.

Despite the legal provisions, dowry-related violence continues, often resulting in severe injury or death. Women's rights organizations have documented numerous cases of harassment, torture, and even murder over dowry.¹⁰²

Enforcement Challenges:

- Underreporting due to social stigma, family pressure, and fear of retaliation.
- Weak investigation and prosecution; many cases result in acquittal due to lack of evidence or hostile witnesses.
- Lack of awareness among women, especially in rural areas, regarding their rights under the Act.
- The intersection of dowry laws with personal laws: since marriage and divorce are governed by religious personal laws, the enforcement of dowry laws becomes more complex.

¹⁰⁰ The Dowry Prohibition Act, 1980, Section 3.

¹⁰¹ Ibid., Section 4.

¹⁰² Ain o Salish Kendra (ASK), *Annual Report on Violence Against Women*, 2023.

Complementary Legal Tools:

- The Women and Children Repression Prevention Act, 2000 also addresses violence linked to dowry and prescribes more stringent punishments.
- The Domestic Violence Act, 2010 further empowers women to seek civil remedies for economic abuse, including dowry-related coercion.

Despite these instruments, dowry remains a pervasive and normalized practice, necessitating legal reform, community awareness campaigns, and robust enforcement to ensure meaningful change.

5.5 Recent Judicial Trends and Landmark Cases

The judiciary in Bangladesh has played a significant role in shaping and interpreting family laws, especially where statutory clarity is lacking or personal laws contradict constitutional principles. Over the past two decades, courts have made progressive interventions, although cautiously, to protect women's rights within the family.

Enforcement of MFLO Provisions

In *Kazi Nurul Islam v. Shirin Akter* (2001), the High Court ruled that a verbal talaq not followed by proper notice to the Chairman under Section 7 of the MFLO is invalid, reaffirming that Islamic divorce must comply with statutory procedures.¹⁰³

This case strengthened the legal position of women deserted or divorced informally, enabling them to seek maintenance or legal remedies based on non-compliance with the MFLO.

Expansion of Custody and Welfare Principles

In *Minara Begum v. Md. Abul Kalam* (1986), the High Court departed from rigid personal law rules and prioritized the best interest of the child, granting custody to the mother.¹⁰⁴

This case represents a shift toward a child-centric approach, echoing international standards such as the Convention on the Rights of the Child (CRC).

¹⁰³ *Kazi Nurul Islam v. Shirin Akter*, 53 DLR (2001) 142.

¹⁰⁴ *Minara Begum v. Md. Abul Kalam*, 38 DLR (1986) 187.

Recognition of Marital Rape as Violence

In recent interpretations of the Women and Children Repression Prevention Act, courts have acknowledged that non-consensual marital sex may amount to violence, particularly when coupled with other forms of abuse. While marital rape remains non-criminalized, judicial remarks in some cases indicate a growing recognition of bodily autonomy within marriage.¹⁰⁵

Maintenance and Alimony Awards

In *Shamsun Nahar v. Md. Anwar Hossain* (1995), the court awarded post-divorce maintenance to the wife under equitable grounds, acknowledging her economic dependence and contribution to the marriage.¹⁰⁶

Though not a statutory requirement in Muslim law, the judiciary is increasingly inclined to interpret maintenance expansively, especially when women are left destitute after informal divorces.

Delayed Reforms and Judicial Restraint

While some judges have called for codification and uniformity of personal laws, especially for minority women (Hindu and Christian), the courts have generally exercised restraint in fear of religious backlash. Many judges emphasize that law reform is the domain of the legislature, not the judiciary.¹⁰⁷

5.6 Critical Issues and Discriminations in Practice

Despite the presence of multiple family law statutes and judicial interventions in Bangladesh, women's practical experiences within the family law system are fraught with injustice, discrimination, and institutional apathy. While personal laws—Muslim, Hindu, and Christian—form the foundation of family-related legal rights, their implementation remains unequal, outdated, and often hostile to gender equality. This chapter identifies the most pressing issues and manifestations of gender-based discrimination in practice.

¹⁰⁵ Hossain, Sara, *Litigating Women's Rights in Bangladesh*, South Asian Legal Studies Journal, 2020.

¹⁰⁶ *Shamsun Nahar v. Md. Anwar Hossain*, 47 DLR (1995) 123.

¹⁰⁷ Huda, Shahnaz, *Judicial Activism and Personal Law Reform in Bangladesh*, BILIA Law Review, 2009.

Discriminatory Personal Laws and Gender Asymmetry

One of the root causes of systemic discrimination lies in the unequal and religion-based personal laws:

- Muslim personal law allows men unilateral rights to divorce and polygamy with fewer restrictions compared to women, who face procedural and social hurdles to initiate khula or judicial divorce.¹⁰⁸
- Hindu women have no legal right to divorce, leaving them trapped in abusive marriages without any relief or scope for remarriage unless widowed.¹⁰⁹
- Christian women face discriminatory divorce conditions, where they must prove both adultery and another offense, whereas men only need to prove adultery.¹¹⁰

These unequal provisions are in direct contradiction with Article 28 of the Constitution, which promises equal treatment under the law, and violate Bangladesh's obligations under international treaties like CEDAW.

Lack of Uniform Family Code

Bangladesh lacks a Uniform Family Code, and family law continues to be segregated by religion. This legal pluralism creates:

- Unequal rights among women based solely on religion.
- Judicial inconsistencies in interpreting similar family disputes.
- Inability to standardize practices like maintenance, custody, or property distribution.

The absence of a uniform civil framework also hinders progressive reforms, as religious personal laws are often treated as immutable.

¹⁰⁸ Muslim Family Laws Ordinance, 1961; Huda, Shahnaz, *Gender Justice and Personal Law*, BILIA Review, 2007.

¹⁰⁹ Hindu Married Women's Right to Maintenance Act, 1946.

¹¹⁰ Divorce Act, 1869, Sections 10–13.

Ineffectiveness of Maintenance and Alimony Laws

In practice, women face severe economic hardship post-divorce or abandonment, as maintenance and alimony provisions are either non-existent, poorly enforced, or discretionary:

- Hindu women cannot claim alimony after marital breakdown due to the lack of legal divorce.
- Muslim women often do not receive deferred dower (mahr) or maintenance due to informal divorces, non-registration, or inability to access courts.¹¹¹
- Christian women must go through a long and expensive court process to obtain alimony, which is not automatically granted.¹¹²

These gaps leave divorced or separated women and their children financially insecure, dependent on natal families, or vulnerable to exploitative relationships.

Inheritance Inequality and Property Dispossession

Inheritance laws for women remain deeply patriarchal:

- Under Islamic law, daughters receive half the share of sons (Surah An-Nisa, 4:11), while widows receive one-eighth or one-fourth of the estate.¹¹³
- Hindu law (Dayabhaga) denies daughters equal inheritance if male heirs exist, and widows only get a limited life estate.¹¹⁴
- Only Christian law provides equal inheritance, yet many Christian women are unaware or pressured to waive their shares.¹¹⁵

Additionally, property rights are commonly violated through:

- Coercion to relinquish rights in favor of male siblings.
- Lack of land registration in women's names.
- Cultural stigmas against women asserting property claims.

¹¹¹ Ahmed, Naimur Rahman, *Implementation Gaps in Women's Rights to Mahr*, DU Law Journal, 2018.

¹¹² Divorce Act, 1869, Section 37.

¹¹³ Al-Qur'an, Surah An-Nisa, 4:11–12.

¹¹⁴ Mulla, *Principles of Hindu Law*, LexisNexis, 2007.

¹¹⁵ Succession Act, 1925, Sections 32–49.

Social Stigma and Procedural Barriers in Divorce

Women who seek divorce, maintenance, or custody often face:

- Social ostracization from families and communities.
- Harassment and moral policing by legal institutions.
- Long, costly litigation processes with delays and adjournments.
- Biases in the courtroom, particularly from male judges or mediators.

For instance, women filing for khula may be compelled by arbitration councils to provide proof of the husband's cruelty, rather than having their voluntary consent respected.¹¹⁶

Weak Enforcement of Protective Laws

Despite legal protections, enforcement remains a major failure:

- Dowry Prohibition Act, 1980 is weakly implemented; thousands of women are tortured or killed annually over dowry.¹¹⁷
- The Domestic Violence (Prevention and Protection) Act, 2010 is hindered by:
 - Lack of trained officials,
 - Delays in issuing protection orders,
 - Insufficient shelter and support services for victims.

Moreover, law enforcement agencies often regard family disputes as “private matters,” discouraging women from seeking justice.

Exclusion of Minority Women from Reforms

Most legislative reforms (e.g., MFLO, Family Courts Ordinance) apply only to Muslims. Hindu and Christian women are governed by archaic colonial laws and excluded from institutions like Family Courts, leaving them with:

- No judicial remedy for divorce (in the case of Hindus),
- No statutory maintenance rights,
- Greater litigation costs and delays.

This creates a dual injustice—first, on the basis of gender; second, on the basis of religion.

¹¹⁶ Ain o Salish Kendra (ASK), *Legal Aid Report*, 2021.

¹¹⁷ ASK and BRAC Reports on Dowry Violence, 2020–2023.

Chapter-6

Concluding Remarks

6.1 Findings

This research monograph has critically examined the status of women under the family laws of Bangladesh, revealing a legal landscape marked by religious segregation, structural inequality, and limited reform. The findings are drawn from an in-depth analysis of statutory laws, personal religious laws (Muslim, Hindu, Christian), judicial trends, and practical challenges faced by women within the family law regime.

1. Gender Disparities in Personal Laws

Women across religious communities face unequal treatment due to the inherent patriarchal foundations of personal laws:

- Muslim family law allows men unilateral rights to talaq and polygamy, while women's right to khula is procedurally and socially constrained.
- Hindu women are denied the right to divorce and face severe restrictions in property and maintenance rights.
- Christian women face a higher burden of proof in divorce proceedings and have limited access to maintenance, though inheritance laws are more equitable.

2. Lack of Uniformity and Codification

The absence of a uniform civil family code has resulted in:

- Inconsistent application of justice,
- Religious identity determining the scope of women's rights,
- Legal vacuum for Hindu and Christian women in areas such as maintenance and guardianship.

3. Legislative Developments Offer Limited Relief

Laws such as the Muslim Family Laws Ordinance (1961), Family Courts Ordinance (1985), and the Domestic Violence Act (2010) offer procedural protections. However:

- These laws apply primarily to Muslims,
- Enforcement is weak,
- Social stigma and institutional bias prevent women from accessing remedies effectively.

4. Dowry and Domestic Violence Remain Widespread

Despite the existence of the Dowry Prohibition Act (1980) and other protective laws:

- Dowry-related violence persists at alarming rates,
- Domestic abuse is often treated as a private matter,
- Women face institutional reluctance from police, local leaders, and even courts to intervene.

5. Judicial Trends Show Gradual but Limited Progress

While the judiciary has:

- Invalidated informal talaq,
- Expanded the concept of child welfare in custody,
- Recognized economic abuse under domestic violence frameworks—

These judgments are piecemeal, and systemic reform through legislation remains absent, especially for non-Muslim women.

6. Inheritance Laws Are Discriminatory

- Muslim women inherit less than male heirs as per Sharia-based law.
- Hindu women are often excluded altogether if male heirs exist.
- Only Christian women enjoy equal inheritance, but implementation is hindered by customary practices and ignorance.

7. Critical Gaps in Maintenance and Economic Security

Women—particularly those abandoned or divorced—face grave economic insecurity due to:

- Limited maintenance rights,
- Absence of statutory alimony for Hindu women,
- Discretionary and inconsistent application of existing provisions.

8. Minority Women Are Most Vulnerable

Hindu and Christian women are the most disadvantaged within the existing framework, as:

- They lack access to Family Courts,
- Their personal laws are based on archaic colonial statutes,
- Reform efforts have been minimal due to religio-political sensitivity.

The research reveals that family laws in Bangladesh remain gender-discriminatory in both letter and spirit. While some legal reforms have offered limited relief, systemic inequalities persist due to the coexistence of outdated personal laws, weak enforcement, social conservatism, and the absence of uniform civil protection. The cumulative effect is the continued subordination of women within marriage, divorce, guardianship, and inheritance.

6.2 Recommendations

Based on the findings of this study, the following recommendations are proposed to address the gender disparities, legal gaps, and enforcement challenges prevalent under the family laws of Bangladesh:

1. Formulate and implement a Uniform Family Code applicable to all citizens, irrespective of religion, ensuring equal rights in marriage, divorce, maintenance, custody, and inheritance.
2. Amend Muslim family law to: Ensure equal rights in divorce procedures. Guarantee fair post-divorce maintenance.
3. Codify Hindu personal law to: Introduce provisions for divorce and judicial separation. Provide maintenance and property rights for Hindu women.
4. Amend Christian personal laws (especially the Divorce Act, 1869) to: Remove unequal grounds for divorce. Ensure fair maintenance and alimony rights.
5. This code should be guided by the Constitution (Article 27 & 28) and international commitments under CEDAW and UDHR.
6. Increase the number of family courts and deploy trained, gender-sensitive judges and staff.
7. Ensure strict enforcement of the Dowry Prohibition Act, 1980, and Domestic Violence Act, 2010.
8. Develop a monitoring mechanism to track compliance by law enforcement, arbitration councils, and local authorities.
9. Make registration of all marriages (including Hindu and Christian) mandatory for legal recognition and rights protection.
10. Expand state-funded legal aid and partner with NGOs to support women seeking redress in family matters.
11. Establish helplines, shelter homes, and counselling centres at the district and upazila levels for affected women and children.
12. Conduct public education programs to challenge harmful social norms (e.g., dowry, gender roles, marital rape tolerance).
13. Promote legal literacy campaigns for women- especially in rural areas- to help them understand and claim their rights.
14. Conduct regular training and sensitization programs for judges, police officers, and legal professionals on women's rights under family law.

6.3 Conclusion

The study of women's position under the family laws of Bangladesh unveils a complex intersection of religious tradition, colonial legacy, legislative reform, and socio-legal realities. Despite constitutional commitments to equality and Bangladesh's ratification of international human rights instruments, family law continues to operate as a domain of entrenched gender inequality, particularly due to the dominance of religiously segmented personal laws.

While limited legislative efforts such as the Muslim Family Laws Ordinance (1961), Family Courts Ordinance (1985), and the Domestic Violence (Prevention and Protection) Act (2010) have introduced procedural safeguards and some gender-sensitive reforms, these efforts are insufficient, inconsistent, and community-specific. Hindu and Christian women remain governed by outdated statutes, deprived of basic entitlements such as divorce, maintenance, or family court access, and are largely excluded from meaningful reform.

The research has further exposed how customary practices, weak enforcement, lack of legal awareness, and social conservatism continuously deny women their rightful claims—be it dowry, maintenance, custody, or inheritance. Even where progressive judicial precedents exist, their impact is often diluted by societal resistance, procedural delays, and institutional apathy.

One of the gravest structural flaws lies in the absence of a uniform civil code or codified family framework applicable to all citizens, irrespective of religion. This pluralistic approach not only perpetuates religiously sanctioned discrimination but also contradicts the spirit of Article 27 and Article 28 of the Constitution, which guarantee equality before the law and non-discrimination on grounds of religion or gender.

True gender justice within the family can only be achieved through a holistic reform process that respects religious identity yet ensures universal rights and equality for all women. Such reform must be rooted in:

- Legal codification and harmonization of personal laws,
- Ensuring equal access to justice, particularly for minority women,
- Expanding the reach and functionality of family courts and legal aid,
- Mainstreaming gender education and legal literacy at all societal levels.

Ultimately, the rights of women within the family must not remain hostage to outdated traditions or religious absolutism. The future of an equitable and inclusive Bangladesh depends on a family law system that empowers all women—not selectively, but universally—with dignity, justice, and equality before the law.

Bibliography

A. Statutes and Legal Instruments

1. The Constitution of the People's Republic of Bangladesh, 1972.
2. Muslim Family Laws Ordinance, 1961.
3. Family Courts Ordinance, 1985.
4. The Dowry Prohibition Act, 1980.
5. The Christian Marriage Act, 1872.
6. The Divorce Act, 1869.
7. The Hindu Married Women's Right to Maintenance Act, 1946.
8. Guardians and Wards Act, 1890.
9. Domestic Violence (Prevention and Protection) Act, 2010.
10. The Succession Act, 1925.
11. The Child Marriage Restraint Act, 2017.

B. Books and Commentaries

1. Huda, Shahnaz. *Gender and Personal Laws in Bangladesh: A Comparative Study*. BILIA, 2007.
2. Mulla, D.F. *Principles of Hindu Law*, 20th ed., LexisNexis, 2007.
3. Fyzee, Asaf A.A. *Outlines of Muhammadan Law*, Oxford University Press, 2009.
4. Rahman, Mizanur. *Human Rights and Family Law Reform in Bangladesh*, University Publications, 2015.
5. Ali, Shaheen Sardar. *Gender and Human Rights in Islam and International Law: Equal Before Allah, Unequal Before Man?*, Kluwer Law International, 2000.

C. Journal Articles and Case Commentaries

1. Ahmed, Naimur Rahman. "Implementation Gaps in Women's Rights to Mahr in Bangladesh." *Dhaka University Law Journal*, Vol. 30, 2018.
2. Hossain, Sara. "Litigating Women's Rights in Bangladesh: Domestic Violence and Beyond." *South Asian Legal Studies Journal*, 2020.

3. Roy, Anindita. "Inheritance Practices and Legal Realities Among Christian Communities in Bangladesh." *Asia-Pacific Journal on Human Rights*, 2018.
4. Huda, Shahnaz. "Judicial Activism and Personal Law Reform in Bangladesh." *BILIA Law Review*, Vol. 14, 2009.
5. Kabir, Arifa. "Dowry and Legal Remedies: A Study of Judicial Attitudes." *Bangladesh Journal of Law*, Vol. 19, 2021.

D. Reports and Institutional Publications

1. Ain o Salish Kendra (ASK). *Annual Report on Violence Against Women*, 2023.
2. BRAC Human Rights and Legal Services. *Legal Empowerment of Women in Rural Bangladesh*, 2022.
3. UN Women. *Progress of the World's Women 2020–2021: Families in a Changing World*.
4. CEDAW Committee. *Concluding Observations on the Combined Eighth and Ninth Periodic Reports of Bangladesh*, 2016.
5. Bangladesh Legal Aid and Services Trust (BLAST). *Women's Access to Justice in Family Law Matters*, 2020.

E. International Instruments

1. Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979.
2. Universal Declaration of Human Rights, 1948.
3. Convention on the Rights of the Child (CRC), 1989.

F. Online Resources

1. Bangladesh Law Digest (BDLD) – www.bdld.info
2. BLAST Legal Database – www.blast.org.bd
3. Ain o Salish Kendra (ASK) – www.askbd.org
4. UN Women Bangladesh – www.unwomen.org.bd
5. CEDAW Reports – www.ohchr.org