



Research Monograph
On
**“Family Law Reforms in Bangladesh: Balancing Tradition and
Modernity”**

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

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LETTER OF TRANSMITTAL

To

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Subject: Submission of research paper on **“Family Law Reforms in Bangladesh: Balancing Tradition and Modernity”**

Dear Sir,

It is a great pleasure for me to submit the thesis on **“Family Law Reforms in Bangladesh: Balancing Tradition and Modernity”** While I doing this thesis, I have tried my level best to make this project paper to the latest standard. I think that thesis paper will fulfill your requirement and pleased you. I, therefore, hope that you would be kind enough to go through this thesis paper for evaluation.

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

Thanking you

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CERTIFICATION

This is to certify that the thesis on “**Family Law Reforms in Bangladesh: Balancing Tradition and Modernity**” is done by Rabeya Akter in partial fulfillment of the requirements for the degree of LL.B. (Honours) from Sonargaon University, Dhaka. The thesis has been carried out under my guidance and is a record of the bonafide work carried out successfully.

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DECLARATION

I do hereby that this Research Monograph on the “**Family Law Reforms in Bangladesh: Balancing Tradition and Modernity**” have been done by me and this Research is free from all plagiarism and without help of other. I further declare that this monograph is prepared with my own effort and it was not and never submit to any institute for any academic reason.

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Abstract

This research paper critically examines the ongoing challenges and prospects of family law reforms in Bangladesh, focusing on the complex interplay between religious traditions and modern principles of gender equality and constitutional rights. It explores the legal frameworks governing Muslim and Hindu personal laws, highlighting discriminatory provisions affecting women's rights in marriage, divorce, inheritance, and guardianship. The study analyzes societal, political, and legislative barriers—including religious sensitivities, patriarchal norms, political reluctance, and legal pluralism—that hinder comprehensive reform. It further evaluates the role of the judiciary and civil society in promoting incremental changes within this contested domain. The findings underscore the necessity of harmonizing personal laws with constitutional equality while respecting cultural diversity. The paper concludes with recommendations for legislative modernization, judicial activism, institutional strengthening, and community engagement to achieve a balanced reform agenda that upholds women's rights without alienating religious and cultural identities. This research contributes to broader debates on legal pluralism, human rights, and gender justice in South Asia.

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Chapter-1: Introduction

1.1 Background of the Study

Family law in Bangladesh is shaped by a pluralistic legal system where religion plays a central role in governing personal matters such as marriage, divorce, maintenance, guardianship, and inheritance. This legal structure traces its origins to colonial rule, where the British applied separate personal laws for Muslims and Hindus, based on religious texts and community customs, and largely left these laws unreformed at the time of independence in 1947¹.

Following independence and later the liberation of Bangladesh in 1971, the newly formed nation adopted a Constitution that guaranteed equality before the law and non-discrimination on the grounds of religion, race, caste, sex, or place of birth under Articles 27 and 28 of the Constitution of the People's Republic of Bangladesh². However, these constitutional promises have not translated into uniform reforms in the realm of personal laws. Instead, Muslim family law has undergone limited statutory reform through laws like the Muslim Family Laws Ordinance, 1961, while Hindu family law remains largely unmodified and still relies heavily on uncodified and patriarchal customs³.

This dual system has led to unequal treatment and protection under the law, particularly in relation to women's rights. For instance, Muslim women have some legal access to divorce and maintenance, whereas Hindu women in Bangladesh still lack a legal right to divorce and face significant challenges in inheritance rights⁴. Moreover, the lack of a uniform family code often results in unequal application of justice, contradicting Bangladesh's obligations under international human rights treaties, such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which the country ratified in 1984⁵.

The debate over family law reform thus revolves around the delicate balance between preserving religious and cultural identity on one hand, and advancing gender equality, social justice, and legal modernization on the other. In recent decades, pressure has mounted from civil society, human rights activists, and women's organizations to revisit and reform personal laws in accordance with constitutional and international human rights principles⁶.

In this context, studying the reform needs of family laws in Bangladesh, particularly the differences and challenges in Muslim and Hindu family laws, is both timely and necessary.

¹ Menski, W. (2006). *Comparative Law in a Global Context: The Legal Systems of Asia and Africa*. Cambridge University Press, pp. 282–285.

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

³ Huda, S. (2019). *Reforming Muslim Family Laws in South Asia: The Experience of Bangladesh*. South Asia Journal of Law and Policy, 3(1), 45–67.

⁴ Maniruzzaman, T. (2015). *Hindu Women and Legal Rights in Bangladesh*. International Review of Law, 7(3), 30–48.

⁵ United Nations Treaty Collection. (2023). *Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) – Bangladesh Status*.

⁶ Naripokkho. (2018). *Policy Brief on Family Law Reform in Bangladesh: Challenges and Opportunities*. Dhaka.

1.2 Problem Statement

Despite constitutional guarantees of equality and non-discrimination, the family law regime in Bangladesh continues to operate under religion-based personal laws that often conflict with fundamental human rights principles, particularly those related to gender justice⁷. The lack of a uniform and codified family law system means that individuals in Bangladesh are governed by different legal standards depending on their religious affiliation—primarily Muslim and Hindu personal laws, both of which contain provisions that reinforce patriarchal norms and disproportionately affect women⁸.

While Muslim family laws have seen partial reforms—such as the *Muslim Family Laws Ordinance, 1961*, which introduced limited rights for women in marriage and divorce—such reforms are not comprehensive or uniformly implemented⁹. Conversely, Hindu family law in Bangladesh remains almost untouched, with no legal provision for divorce and only minimal rights for women in matters of inheritance, custody, and maintenance¹⁰. This legal asymmetry leads to discriminatory outcomes, especially in issues like child custody, property ownership, and spousal maintenance, thus violating not only the national constitution but also international commitments like the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)¹¹.

Moreover, the State's reluctance to enact meaningful reforms is often attributed to fears of backlash from religious groups and a general perception that personal laws are sacred and immutable¹². This has created a legal stagnation, where outdated practices continue under the guise of tradition, despite their adverse effects on women's autonomy and legal protection. As a result, the existing personal law framework fosters legal inequality, confusion in jurisprudence, and injustice in family-related disputes.

⁷ Khan, I. A. (2017). *Constitutional Paradoxes and Personal Laws in Bangladesh*. *Journal of Law and Society*, 29(2), 102–110.

⁸ Ahmed, N. (2020). *Gender and Family Law in Bangladesh: A Human Rights Perspective*. Dhaka: University Press Limited, pp. 23–24.

⁹ Huda, S. (2019). *Reforming Muslim Family Laws in South Asia: The Experience of Bangladesh*. *South Asia Journal of Law and Policy*, 3(1), 48–50.

¹⁰ Maniruzzaman, T. (2015). *Hindu Women and Legal Rights in Bangladesh*. *International Review of Law*, 7(3), 33–35

¹¹ UN CEDAW Committee. (2016). *Concluding Observations on the Combined Eighth and Ninth Periodic Reports of Bangladesh*, CEDAW/C/BGD/CO/8-9.

¹² Naripokkho. (2018). *Policy Brief on Family Law Reform in Bangladesh: Challenges and Opportunities*. Dhaka.

1.3 Objectives of the Study

1. To examine the legal structure and principles governing Muslim and Hindu family laws in Bangladesh.¹³
2. To identify the gender-based discriminatory elements within these personal laws¹⁴.
3. To explore the challenges and prospects of reforming family laws in Bangladesh¹⁵.

1.4 Justification of the Study

The justification for this study stems from the urgent need to evaluate and reform personal laws in Bangladesh that govern some of the most critical aspects of an individual's life—marriage, divorce, maintenance, custody, and inheritance. These areas are still regulated by religion-based laws, primarily Muslim and Hindu personal laws, many of which were formulated during the colonial period and have not evolved in step with contemporary constitutional, social, and international human rights standards.

Despite constitutional guarantees under Articles 27, 28, and 29 of the Constitution of Bangladesh—ensuring equality before the law, non-discrimination, and equal opportunity in public life—personal laws often perpetuate gender-based discrimination, especially against women. For example, Hindu women in Bangladesh still have no legal right to divorce, and Muslim women receive unequal inheritance shares compared to their male counterparts. These discrepancies not only undermine gender justice but also expose the limits of Bangladesh's commitment to international treaties such as CEDAW, which obligates state parties to eliminate discrimination in all forms, including in marriage and family relations.

Moreover, while family law reforms have taken place in other South Asian countries such as India and Pakistan—introducing legislation to modernize personal laws—Bangladesh has been slow to follow. This study is essential in identifying the legal gaps, socio-political barriers, and religious sensitivities that inhibit reform efforts.

1.5 Scope of the Study

This study primarily focuses on the family law framework in Bangladesh, with a specific emphasis on the Muslim and Hindu personal law systems. It explores how these laws govern critical personal and family matters, including marriage, divorce, maintenance, guardianship, and

¹³ Menski, W. (2006). *Comparative Law in a Global Context: The Legal Systems of Asia and Africa*. Cambridge University Press, pp. 280–286.

¹⁴ Ahmed, N. (2020). *Gender and Family Law in Bangladesh: A Human Rights Perspective*. Dhaka: University Press Limited, pp. 34–41

¹⁵ Huda, S. (2019). *Reforming Muslim Family Laws in South Asia: The Experience of Bangladesh*. *South Asia Journal of Law and Policy*, 3(1), 45–67.

inheritance, and assesses their compatibility with constitutional rights and international human rights obligations.

1.4 Research Questions

This study is guided by the following key research questions:

1. What are the main features of Muslim and Hindu family laws in Bangladesh, and how are they applied in matters such as marriage, divorce, maintenance, guardianship, and inheritance?
2. To what extent do these personal laws conform to or conflict with the constitutional guarantees of equality and non-discrimination, especially concerning women's rights?
3. What legal and policy reforms have been introduced or proposed to modernize Muslim and Hindu family laws in Bangladesh, and how effective have these reforms been?
4. What are the major obstacles—legal, social, political, and religious—to reforming family laws in Bangladesh?
5. How can Bangladesh achieve a balanced approach to family law reform, ensuring respect for religious traditions while upholding modern principles of justice, gender equality, and human rights?

1.5 Methodology

This research employs a qualitative legal methodology to critically examine the existing framework of family laws in Bangladesh, with a particular focus on Muslim and Hindu personal laws. The study is analytical and descriptive in nature, relying primarily on doctrinal legal research. It involves a detailed examination of statutory provisions, constitutional mandates, religious texts, judicial interpretations, and international legal instruments to understand the structure, application, and implications of family law in the country.

Secondary sources form the basis of this research. These include relevant legislations such as the Muslim Family Laws Ordinance, 1961, the Dissolution of Muslim Marriages Act, 1939, and the Hindu Married Women's Right to Separate Residence and Maintenance Act, 1946. In addition, key constitutional provisions concerning equality and non-discrimination, particularly Articles 27 and 28 of the Constitution of Bangladesh, are analyzed. Case law from the Supreme Court and High Court Division of Bangladesh has also been examined to assess judicial approaches to family law disputes and their implications for reform.

Academic literature, including legal textbooks, journal articles, research papers, and reports from women's rights organizations and international human rights bodies, has been reviewed to support critical evaluation and contextual understanding. Particular attention has been given to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW),

which Bangladesh has ratified, to assess the country's compliance with its international obligations.

The study also incorporates a comparative perspective by referencing reform initiatives in other South Asian countries such as India and Pakistan. This comparative approach provides useful insights into how similar religious and cultural contexts have addressed the challenges of personal law reform. Overall, the research adopts a rights-based and gender-sensitive lens to evaluate the compatibility of religious personal laws with modern principles of justice, equality, and human dignity.

1.8 Limitations of the Study

While this research attempts to provide a comprehensive analysis of family law reforms in Bangladesh with a focus on Muslim and Hindu personal laws, it is not without limitations.

First, the study is largely dependent on secondary sources, such as statutes, judicial decisions, academic writings, and reports. Due to time and resource constraints, no primary data (e.g., interviews with legal experts, religious scholars, or affected individuals) was collected. As a result, the research may not fully capture the lived experiences and practical challenges faced by individuals subject to these laws.

Second, although the paper includes comparative references to reform initiatives in countries like India and Pakistan, it does not undertake a deep cross-jurisdictional study of family law systems in other regions or religious communities (e.g., Christian or Buddhist laws) due to the limited scope and relevance to the majority population in Bangladesh.

Third, the socio-political sensitivity surrounding personal law reform, particularly regarding religion, may limit the scope of critique and proposal. The study has sought to maintain an objective balance between respecting religious traditions and advocating for gender justice, but interpretations may vary among scholars, religious authorities, and policymakers.

Lastly, legal reforms in personal law are constantly evolving, and the information presented in this research may become outdated if significant legal or policy changes occur after its completion.

Chapter-2 : Legal Framework of Family Law

2.1 Concept of Family Law:

Family law in Bangladesh is governed by a **pluralistic legal system**, where different religious communities—primarily Muslims and Hindus—are subject to their respective personal laws. These personal laws regulate family-related issues such as marriage, divorce, maintenance, guardianship, and inheritance. The plural legal framework is a legacy of British colonial rule, where the colonial administration allowed religious communities to be governed by their own personal laws to administer civil matters¹⁶.

The **Constitution of Bangladesh**, adopted in 1972, enshrines the principles of **equality before law** (Article 27) and **prohibition of discrimination on grounds of religion, race, caste, sex, or place of birth** (Article 28). Despite this, personal laws continue to be governed largely by religious doctrines, which often conflict with these constitutional guarantees, especially in relation to **gender equality** and women's rights¹⁷. The Constitution also recognizes the importance of religious freedom and the protection of religious practices, which has complicated attempts to enact uniform family laws¹⁸.

2.2 Muslim Family Law

In Bangladesh, the Muslim population—constituting the majority—is governed by **Muslim personal law** in matters related to family, including marriage, divorce, maintenance, guardianship, and inheritance. These laws are derived from a combination of **Islamic jurisprudence (Sharia)**, **customary practices**, and **codified statutes**, particularly those enacted during the colonial and post-colonial periods. Muslim family law in Bangladesh is thus a hybrid system that incorporates both **religious doctrines and statutory reforms**.

The foundational sources of Muslim family law include the **Qur'an**, **Hadith**, **Ijma (consensus)**, and **Qiyas (analogical reasoning)**, which collectively shape the classical interpretations of Islamic family principles¹⁹. However, many aspects of family law have also been codified through legislation to ensure greater clarity and administrative feasibility. One of the most important legal instruments in this regard is the **Muslim Family Laws Ordinance, 1961 (MFLO)**, which was introduced to modernize and regulate certain aspects of Muslim personal law in what was then East Pakistan, and remains applicable in Bangladesh today²⁰.

¹⁶ Menski, W. (2006). *Comparative Law in a Global Context: The Legal Systems of Asia and Africa*. Cambridge University Press, pp. 280–282.

¹⁷ Khan, I. A. (2017). *Constitutional Paradoxes and Personal Laws in Bangladesh*. *Journal of Law and Society*, 29(2), 102–110.

¹⁸ The Constitution of the People's Republic of Bangladesh, Articles 27, 28, and 41.

¹⁹ Esposito, J. L. (2001). *Women in Muslim Family Law*. Syracuse University Press, pp. 5–8.

²⁰ The Muslim Family Laws Ordinance, 1961 (Ordinance No. VIII of 1961).

Under Muslim law in Bangladesh, **marriage (nikah)** is viewed as a **civil contract**, not a sacrament, and it requires the consent of both parties, presence of witnesses, and the stipulation of a **dower (mahr)**. The MFLO mandates **registration of marriages** and provides a legal framework to prevent arbitrary polygamy by requiring permission from an Arbitration Council before a man can contract another marriage during the subsistence of an existing one²¹.

Divorce under Muslim law is also largely unilateral in favor of men through the mechanism of *talaq*, although women can seek dissolution through the **Dissolution of Muslim Marriages Act, 1939**, under certain conditions such as cruelty, desertion, or impotence²². The MFLO further requires that *talaq* pronounced by the husband be notified in writing to the Union Parishad and that a **90-day reconciliation period** be observed before the divorce becomes effective²³.

Inheritance under Muslim law is based on fixed shares prescribed in the Qur'an. However, these shares are often **gender-biased**, as daughters typically receive **half the share of sons**, and widows receive a **lesser portion** compared to male heirs. The system aims to reflect financial responsibilities within the family, though critics argue that it is **inconsistent with modern notions of gender equality and constitutional non-discrimination**²⁴.

Guardianship and custody of children under Muslim law also favor the father, who is recognized as the legal guardian, while the mother may be granted custody (*hizanat*) of minor children, particularly sons up to the age of 7 and daughters until puberty. However, in disputes, the **best interest of the child** is increasingly being used as a guiding principle by courts, though this is not yet firmly codified²⁵.

Despite these regulatory frameworks, the application of Muslim family law in Bangladesh continues to face criticism for being **inadequately reformed**, inconsistently implemented, and often **biased against women**. Furthermore, **informal mechanisms** such as *shalish* (village arbitration) continue to play a significant role, sometimes bypassing statutory protections provided under the law²⁶.

2.2.1 Sources of Muslim Family Law

Muslim family law in Bangladesh is primarily derived from **Islamic jurisprudence (Fiqh)**, which has been interpreted over centuries and partially codified through legislation. The sources

²¹ Siddiqi, D. (2006). *Shari'a, Gender, and Legal Pluralism in Bangladesh*. In *Religion and Law in Independent Bangladesh*, University of Dhaka, pp. 110–112.

²² Dissolution of Muslim Marriages Act, 1939 (Act VIII of 1939).

²³ Section 7, Muslim Family Laws Ordinance, 1961.

²⁴ Huda, S. (2019). *Reforming Muslim Family Laws in South Asia: The Experience of Bangladesh*. *South Asia Journal of Law and Policy*, 3(1), 50–52.

²⁵ Ahmed, N. (2020). *Gender and Family Law in Bangladesh: A Human Rights Perspective*. Dhaka: University Press Limited, pp. 89–91.

²⁶ Naripokkho. (2018). *Policy Brief on Family Law Reform in Bangladesh: Challenges and Opportunities*. Dhaka.

of Muslim family law can be broadly divided into two categories: **classical (religious) sources** and **statutory (codified) sources**.

The **classical sources** include:

1. **The Qur'an** – The foremost source of Islamic law, it contains clear injunctions on matters such as marriage, divorce, inheritance, maintenance, and the rights and responsibilities of spouses. For example, Surah An-Nisa (Chapter 4) lays down detailed guidelines on inheritance and women's rights²⁷.
2. **Hadith (Traditions of the Prophet Muhammad)** – These are sayings, actions, and approvals of the Prophet Muhammad (PBUH), which supplement the Qur'an in shaping family law, particularly in areas like marital conduct and divorce procedures²⁸.
3. **Ijma (Consensus)** – This refers to the consensus of Islamic jurists or scholars on particular legal issues. It has historically played a role in resolving questions not directly addressed in the Qur'an or Hadith²⁹.
4. **Qiyas (Analogical Reasoning)** – When the Qur'an and Hadith do not provide explicit guidance, scholars use analogy to derive rulings from existing legal principles. Qiyas has been instrumental in the development of Islamic legal doctrines over time³⁰.

In Bangladesh, however, these classical sources are not directly applied by courts; rather, they are mediated through **statutory enactments**, which constitute the **codified sources** of Muslim family law. These include:

- **The Muslim Family Laws Ordinance, 1961** – This key legislative reform introduced compulsory registration of marriage and divorce, imposed restrictions on polygamy, and formalized procedures for divorce³¹.
- **The Dissolution of Muslim Marriages Act, 1939** – This law provides women with statutory grounds for seeking a judicial divorce, such as cruelty, desertion, failure to provide maintenance, and impotence³².
- **The Child Marriage Restraint Act, 2017** – While not specific to Muslim law, this Act applies to all communities in Bangladesh and seeks to prevent underage marriages, although it controversially includes a clause allowing exceptions under “special circumstances”³³.

²⁷ Qur'an, Surah An-Nisa (4:11–12, 4:19–21).

²⁸ Kamali, M. H. (2008). *Shari'ah Law: An Introduction*. Oxford: Oneworld Publications, pp. 64–68

²⁹ Esposito, J. L. (2001). *Women in Muslim Family Law*. Syracuse University Press, p. 11.

³⁰ Hallaq, W. B. (2009). *An Introduction to Islamic Law*. Cambridge University Press, pp. 83–85.

³¹ The Muslim Family Laws Ordinance, 1961 (Ordinance No. VIII of 1961), Sections 5–7.

³² The Dissolution of Muslim Marriages Act, 1939 (Act VIII of 1939), Section 2.

³³ The Child Marriage Restraint Act, 2017, Section 19.

Additionally, **judicial precedents** in the form of case law from the **High Court Division** and **Appellate Division** also act as interpretative sources, clarifying ambiguities in statutory and religious provisions and occasionally expanding rights under the constitution.

The combination of these classical and codified sources forms a **dual framework** for Muslim family law in Bangladesh—rooted in religious tradition but shaped by evolving statutory reforms. However, the coexistence of outdated interpretations and inconsistent applications continues to challenge efforts at achieving gender equality and legal clarity.

2.2.2 Key Legal Provisions: Marriage, Divorce, Inheritance, Guardianship

Muslim family law in Bangladesh is governed by a blend of classical Islamic jurisprudence and statutory reforms. The most significant codified instruments include the Muslim Family Laws Ordinance, 1961, and the Dissolution of Muslim Marriages Act, 1939. These laws regulate core personal matters such as marriage, divorce, inheritance, and guardianship.

Marriage

Marriage (*nikah*) under Muslim law is a civil contract, not a sacrament. For a valid marriage, the presence of two adult witnesses, mutual consent, and a specified dower (*mahr*) are mandatory. The Muslim Family Laws Ordinance, 1961 made the registration of marriages compulsory and empowered the Nikah Registrar to record the details of the union³⁴. It also placed conditions on polygamy: a man must obtain written permission from an Arbitration Council before marrying again during the subsistence of an existing marriage³⁵. Failure to comply can lead to penal sanctions and the denial of conjugal rights to the second marriage.

Divorce

Under classical Islamic law, men enjoy a unilateral right to *talaq* (divorce) without requiring court approval, whereas women's rights to divorce are limited and conditional. However, the Muslim Family Laws Ordinance, 1961, introduced procedural safeguards by requiring that a man pronouncing *talaq* must submit written notice to the Union Parishad, initiating a 90-day reconciliation period³⁶. The divorce only becomes effective after this period, or upon the completion of pregnancy if the wife is pregnant.

Women may seek divorce under the Dissolution of Muslim Marriages Act, 1939, which provides several grounds including cruelty, desertion, impotence, failure to maintain, and disappearance of the husband³⁷. A woman may also include a right to divorce (*talaq-e-tafwid*) in the marriage contract, though this is rarely practiced due to social stigma and lack of awareness.

³⁴ Section 5, Muslim Family Laws Ordinance, 1961 (Ordinance No. VIII of 1961).

³⁵ *Ibid.*, Section 6.

³⁶ *Ibid.*, Section 7.

³⁷ Dissolution of Muslim Marriages Act, 1939, Section 2.

Inheritance

Muslim inheritance law in Bangladesh follows Qur'anic injunctions that assign fixed shares to heirs. Sons generally receive twice the share of daughters, and widows receive a lesser share than male relatives³⁸. These rules are justified by traditional Islamic scholars on the basis of financial responsibility being primarily placed on men. However, they have been criticized for perpetuating gender-based inequality, especially in light of constitutional guarantees and global human rights standards³⁹. Importantly, wills (*wasiyyah*) cannot exceed one-third of the total estate unless approved by the other heirs.

Guardianship

Guardianship (*wilayah*) and custody (*hizanat*) are governed by Islamic principles and judicial precedent. The father is considered the natural legal guardian of the child in matters relating to education, property, and marriage consent. In contrast, the mother is typically granted custody of minor children, especially daughters until puberty and sons until the age of seven⁴⁰. However, custody is not absolute and may be transferred if the mother remarries someone unrelated to the child, or if it is not deemed to be in the best interest of the child.

Bangladeshi courts have increasingly taken into account the welfare of the child, applying a flexible interpretation of custody rules in line with modern principles of child rights⁴¹. Yet, the lack of codification in custody and guardianship matters often results in inconsistency in judicial decisions.

2.2 Hindu Family Law

Hindu family law in Bangladesh governs the personal matters of the country's Hindu minority, which constitutes approximately 8–10% of the population. Unlike Muslim family law, which has undergone partial codification, **Hindu personal law remains largely uncodified** and is primarily based on **scriptural texts, customary practices**, and a few **colonial-era statutes**. The dominant school of Hindu law applied in Bangladesh is the **Dayabhaga school**, which differs in several aspects from the Mitakshara school prevalent in India⁴².

Marriage

Marriage under Hindu law is regarded not merely as a contract but a **sacrament** (*sanskara*), signifying a lifelong union. Hindu marriage laws in Bangladesh are not governed by any

³⁸ The Qur'an, Surah An-Nisa (4:11–12).

³⁹ Ahmed, N. (2020). *Gender and Family Law in Bangladesh: A Human Rights Perspective*. Dhaka: University Press Limited, pp. 68–74.

⁴⁰ Tyabji, F. B. (2008). *Muslim Law: The Personal Law of Muslims in India and Pakistan*. Oxford University Press, pp. 155–160.

⁴¹ Khan, I. A. (2017). *Constitutional Paradoxes and Personal Laws in Bangladesh*. *Journal of Law and Society*, 29(2), 108–110.

⁴² Derrett, J. D. M. (1968). *Introduction to Modern Hindu Law*. Oxford University Press, pp. 89–94.

comprehensive statute such as the Hindu Marriage Act (1955) in India. As a result, there is no legal provision for **registration of Hindu marriages**, nor is there any codified law regulating the **age of marriage, dowry, or grounds for separation**⁴³.

One of the most significant shortcomings of Hindu family law in Bangladesh is that it provides **no legal mechanism for divorce**. A Hindu couple cannot legally terminate their marriage through judicial or extrajudicial means. This legal vacuum particularly affects **Hindu women**, as they are left with **no remedy** in cases of cruelty, desertion, or incompatibility⁴⁴.

Maintenance and Residence

While there is no codified Hindu personal law on maintenance, the **Hindu Married Women's Right to Separate Residence and Maintenance Act, 1946**, allows a married Hindu woman to live separately and claim maintenance from her husband under specific grounds such as cruelty, the presence of another wife, or conversion of the husband to another religion⁴⁵. However, enforcement is rare due to limited awareness, patriarchal social norms, and judicial reluctance.

Inheritance

The law of inheritance for Hindus in Bangladesh is based on **Dayabhaga principles**, under which **sons have a superior right** to property compared to daughters. A daughter may inherit her father's estate only in the **absence of male heirs**, and even then, her share is usually less favorable⁴⁶. Widows may inherit from their deceased husbands, but only a limited estate (known as **widow's estate**), which reverts back to the husband's heirs after her death⁴⁷.

There has been **no legislative effort to amend or reform Hindu succession laws** in Bangladesh, despite growing calls from rights-based organizations for equal property rights for Hindu women. In contrast, India has already reformed its Hindu Succession Act in 2005 to give daughters equal rights in ancestral property⁴⁸.

⁴³ Ahmed, N. (2020). *Gender and Family Law in Bangladesh: A Human Rights Perspective*. Dhaka: University Press Limited, pp. 120–123.

⁴⁴ Naripokkho. (2018). *Policy Brief on Family Law Reform in Bangladesh: Challenges and Opportunities*, pp. 18–20.

⁴⁵ Hindu Married Women's Right to Separate Residence and Maintenance Act, 1946 (Act IV of 1946).

⁴⁶ Dayabhaga Law of Inheritance, as interpreted in Maniruzzaman, T. (2015). *Hindu Women and Legal Rights in Bangladesh*. *International Review of Law*, 7(3), 35–37.

⁴⁷ Ghosh, S. (2007). *Widow's Property Rights in Hindu Law: A Historical Overview*. *Indian Law Journal*, 5(1), 102–104.

⁴⁸ Hindu Succession (Amendment) Act, 2005, Government of India

Guardianship and Custody

Guardianship in Hindu law traditionally vests in the **father as the natural guardian** of the child. The mother has a secondary role and can become guardian only upon the father's death or incapacity. Courts, however, may intervene to determine custody based on the **welfare of the minor**, applying general principles under civil law⁴⁹.

The lack of codified guardianship and custody laws often results in **legal uncertainty**, especially in cases involving separation or remarriage. The absence of a unified legal framework makes it difficult to ensure **child welfare** and parental accountability in such cases.

The **Hindu personal law system in Bangladesh remains archaic, patriarchal, and unreformed**. It provides **limited protection** to Hindu women in key areas such as marriage, divorce, and inheritance. The absence of statutory provisions for divorce and property rights has led to significant human rights concerns. While neighboring India has made progressive reforms to Hindu personal laws, Bangladesh has remained largely silent on this front. Legal reform is urgently needed to ensure **equality, justice, and legal certainty** for the Hindu minority, especially its women.

2.2.1 Sources of Hindu Family Law

Hindu family law in Bangladesh is primarily based on ancient religious scriptures, customary practices, and a few colonial-era statutes. Unlike Muslim family law, which has seen partial codification and reform, Hindu personal law remains largely uncoded in Bangladesh, making it heavily reliant on interpretation of texts and customary usage.

The principal source of Hindu family law is **Dharmaśāstra literature**, which includes ancient texts such as the **Manusmriti, Yajnavalkya Smriti**, and various commentaries by Hindu jurists. Among these, the **Dayabhaga school of Hindu law** is the dominant authority applied in Bangladesh, as distinct from the Mitakshara school followed in much of India⁵⁰. The Dayabhaga school, compiled by **Jimutavahana**, governs issues like inheritance, succession, and women's property rights among Hindus in Bangladesh⁵¹.

Another important source is **customary law**, which plays a significant role in shaping family relations among Hindus. These customs, passed down through generations, cover aspects like

⁴⁹ Khan, I. A. (2017). *Constitutional Paradoxes and Personal Laws in Bangladesh*. *Journal of Law and Society*, 29(2), 111–113.

⁵⁰ Derrett, J. D. M. (1968). *Introduction to Modern Hindu Law*. Oxford University Press, pp. 90–92.

⁵¹ Maniruzzaman, T. (2015). *Hindu Women and Legal Rights in Bangladesh*. *International Review of Law*, 7(3), 35–36.

marriage ceremonies, dowry practices, and maintenance obligations. Courts in Bangladesh recognize valid customs provided they are **ancient, certain, reasonable, and not opposed to public policy**.

In addition to scriptural and customary sources, a few **British colonial legislations** enacted before the partition of India continue to apply to Hindus in Bangladesh. These include:

- The **Hindu Married Women’s Right to Separate Residence and Maintenance Act, 1946**, which gives Hindu women a limited right to claim maintenance under specific grounds⁴.
- The **Hindu Widows’ Re-marriage Act, 1856**, which legalized the remarriage of Hindu widows⁵.
- The **Child Marriage Restraint Act, 1929**, as amended, which applies to all religious communities, including Hindus, in Bangladesh.

Despite the importance of these statutory laws, the **absence of a comprehensive codified family law for Hindus** continues to cause **legal uncertainty and gender discrimination**, particularly in matters like divorce and inheritance.

Furthermore, there has been **no major legislative reform** in post-independence Bangladesh to modernize Hindu family law, unlike India, where significant reforms were made through the **Hindu Marriage Act (1955)**, **Hindu Succession Act (1956)**, and other legislation. In Bangladesh, **judicial interpretation** remains the primary means of addressing disputes, with courts often resorting to **colonial-era precedents** and interpretations of Hindu texts.

2.2.2 Key Legal Provisions: Marriage, Inheritance, and Guardianship

Hindu family law in Bangladesh remains largely uncodified, relying on ancient religious texts, customary practices, and a limited number of colonial-era statutes. As a result, critical family law issues such as marriage, inheritance, and guardianship are often governed by traditional interpretations and judicial precedents, leading to legal ambiguities and challenges, especially for women.

Marriage

Under Hindu law, marriage is considered a sacrament (Sanskara) rather than a contract. It signifies an indissoluble spiritual union between husband and wife. Unlike in India, where the Hindu Marriage Act, 1955 has codified Hindu marriage laws, Bangladesh still lacks any comprehensive statute governing Hindu marriages⁵².

There is currently no legal provision for registration of Hindu marriages in Bangladesh, although there have been discussions about introducing such measures to prevent fraudulent marriages and to protect women’s rights. Additionally, Hindu law in Bangladesh does not recognize divorce,

⁵² Ahmed, N. (2020). *Gender and Family Law in Bangladesh: A Human Rights Perspective*. Dhaka: University Press Limited, pp. 121–124.

leaving Hindu women with no legal remedy for marital dissolution even in cases of cruelty, desertion, or incompatibility. This absence of divorce provisions continues to raise serious concerns regarding gender justice and women's human rights.

Inheritance

Inheritance among Hindus in Bangladesh follows the Dayabhaga School of Hindu Law, which differs from the Mitakshara system followed in much of India. Under Dayabhaga law, property inheritance is determined based on the right of religious offerings (pinda and shraddha) rather than birthright⁵³.

In practice, this means that male heirs enjoy preferential rights over females. Daughters inherit from their father's estate only in the absence of male heirs, and even then, their shares are often limited. Hindu widows are entitled to inherit a limited widow's estate, which gives them possession of property during their lifetime but without the right to dispose of it freely. Upon the widow's death, the property reverts to the deceased husband's male heirs.

Despite the constitutional promise of gender equality, no legislative reforms have been undertaken in Bangladesh to address the gender disparities in Hindu inheritance law, unlike in India where the Hindu Succession (Amendment) Act, 2005 granted daughters equal coparcenary rights in ancestral property.

Guardianship

Under traditional Hindu law, the father is regarded as the natural guardian of a minor child for both person and property. The mother's guardianship rights are secondary and become relevant only upon the death or incapacity of the father. In cases of child custody disputes, however, Bangladeshi courts have occasionally invoked the best interests of the child principle, applying general civil law standards in the absence of specific codified Hindu guardianship laws⁵⁴.

There is no statutory Hindu Guardianship Act in Bangladesh, and guardianship matters are often settled by courts using equitable principles and judicial discretion. This creates legal uncertainty, especially for mothers seeking custody or guardianship after separation or the father's death.

The lack of codified and gender-sensitive provisions in Hindu family law regarding marriage, inheritance, and guardianship continues to create significant challenges for Hindu women in Bangladesh. Despite constitutional commitments and international obligations under CEDAW, reform efforts have been limited, leaving Hindu family law one of the most outdated and discriminatory areas within the country's legal system.

⁵³ Ghosh, S. (2007). *Widow's Property Rights in Hindu Law: A Historical Overview*. Indian Law Journal, 5(1), 103–104.

⁵⁴ Khan, I. A. (2017). *Constitutional Paradoxes and Personal Laws in Bangladesh*. Journal of Law and Society, 29(2), 116–117.

Chapter-3 : Gender Inequality in Personal Laws

3.1 Discrimination under Muslim Law

Despite partial reforms, Muslim family law in Bangladesh still exhibits multiple forms of discrimination, especially towards women, in key areas like marriage, divorce, inheritance, and guardianship. While the Muslim Family Laws Ordinance, 1961, and other legislative measures aimed to modernize certain aspects of family law, deep-rooted gender biases persist.

3.1.1 Discrimination in Marriage

Muslim personal law allows polygamy, permitting a Muslim man to marry up to four wives simultaneously, subject to certain conditions outlined in the Muslim Family Laws Ordinance, 1961. However, there is no corresponding right for Muslim women, who cannot legally have more than one husband at the same time (polyandry is strictly prohibited)⁵⁵. Moreover, social and familial pressures often discourage women from negotiating their rights in the marriage contract, such as stipulating conditions against polygamy or securing delegated divorce rights (talaq-e-tafwid).

3.1.2 Discrimination in Divorce

The divorce process under Muslim law is also heavily skewed in favor of men. A Muslim husband has the unilateral right to divorce his wife through talaq, without requiring any court approval. While the Muslim Family Laws Ordinance, 1961, introduced procedural safeguards like written notification and a reconciliation period, the inherent imbalance remains⁵⁶.

By contrast, a Muslim woman can only seek divorce under limited and specific grounds through the Dissolution of Muslim Marriages Act, 1939, such as cruelty, desertion, or non-maintenance. Additionally, the social stigma attached to women-initiated divorce (khula) often acts as a barrier to exercising this right.

3.1.3 Discrimination in Inheritance

Inheritance under Muslim law follows Qur'anic prescriptions, which, while progressive compared to pre-Islamic Arabia, assign women smaller shares compared to men. For example, daughters inherit half the share of sons, and widows receive a smaller portion than male heirs. While Islamic jurists often justify this disparity by citing the husband's financial responsibility to provide for the wife, critics argue that in the modern socio-economic context, these rules reinforce gender-based economic disadvantages.

This discriminatory inheritance pattern directly conflicts with Article 28 of the Constitution of Bangladesh, which guarantees equal rights for men and women in all spheres of public life⁵⁷.

⁵⁵ Section 6, Muslim Family Laws Ordinance, 1961 (Ordinance No. VIII of 1961).

⁵⁶ Section 7, Muslim Family Laws Ordinance, 1961

⁵⁷ The Constitution of the People's Republic of Bangladesh, Article 28.

3.1.4 Discrimination in Guardianship

Under traditional Muslim law, the father is considered the sole natural guardian of minor children, while the mother's role is usually limited to custody (hizanat) of young children. The law does not recognize the mother as a legal guardian, especially for purposes like managing the child's property or consenting to marriage.

Although Bangladeshi courts have occasionally used the "best interests of the child" principle to override this, the absence of statutory reform leaves mothers in a weaker legal position regarding guardianship rights.

While some reforms, such as the Muslim Family Laws Ordinance, 1961, have attempted to introduce procedural protections and balance gender inequities, substantive discrimination against women remains embedded in Muslim family law in Bangladesh. These inequalities persist due to both religious interpretations and the lack of comprehensive legal reforms, raising serious concerns about compliance with constitutional rights and international human rights standards⁵⁸.

3.2 Discrimination under Hindu Law

Hindu family law in Bangladesh remains largely uncodified, male-centric, and discriminatory towards women. While neighboring India has introduced substantial legislative reforms in Hindu personal laws, Bangladesh has lagged far behind, leaving Hindu women vulnerable to systematic legal inequalities in matters such as marriage, inheritance, divorce, and guardianship.

3.2.1 Discrimination in Marriage

One of the most glaring forms of discrimination under Hindu law in Bangladesh is the absence of legal provisions for divorce. Hindu women have no statutory right to dissolve their marriage, regardless of cruelty, desertion, or other forms of marital abuse⁵⁹. This forces many women to remain trapped in unhappy or violent marriages.

Additionally, there is no legal requirement for marriage registration for Hindus in Bangladesh. This lack of registration creates significant problems for women in proving the legality of their marriage for inheritance, maintenance, or child custody cases.

The Hindu Married Women's Right to Separate Residence and Maintenance Act, 1946 provides some protection by allowing women to live separately and claim maintenance, but the grounds are very limited and enforcement remains poor.

3.2.2 Discrimination in Inheritance

Under the Dayabhaga school of Hindu law, which applies in Bangladesh, sons are preferred over daughters in matters of inheritance. A daughter inherits only in the absence of male heirs, and even then, her share is often inadequate and restricted. Unlike in India, where the Hindu

⁵⁸ Khan, I. A. (2017). *Constitutional Paradoxes and Personal Laws in Bangladesh*. *Journal of Law and Society*, 29(2), 110–112.

⁵⁹ Naripokkho. (2018). *Policy Brief on Family Law Reform in Bangladesh: Challenges and Opportunities*, pp. 20–22.

Succession (Amendment) Act, 2005 granted daughters equal coparcenary rights in ancestral property, Bangladesh has made no similar reforms⁶⁰.

Additionally, widows inherit only a limited estate, known as the "widow's estate", which she holds for life without the right to alienate or transfer it. After her death, the property reverts back to the deceased husband's male heirs. This restricts widows' economic independence, reinforcing their vulnerability within patriarchal family structures.

3.2.3 Discrimination in Guardianship and Custody

In Hindu law, the father is considered the sole natural guardian of a minor child, with the mother's role coming into effect only upon the father's death or incapacity. The mother's rights over guardianship are secondary, and she cannot be appointed as the natural guardian while the father is alive and legally competent.

Although courts in Bangladesh occasionally apply the "best interests of the child" principle when adjudicating custody cases, the absence of a codified Hindu Guardianship Act leaves women in a legally disadvantaged position when seeking guardianship rights.

3.2.4 Lack of Legal Reform

Unlike India, where several progressive reforms have taken place through legislation like the Hindu Marriage Act (1955) and the Hindu Succession Act (1956), Bangladesh has not undertaken any major legislative reform in Hindu family law since its independence. This has resulted in continued discrimination and denial of basic rights to Hindu women in Bangladesh.

Discrimination against women under Hindu family law in Bangladesh is systemic and deeply rooted in outdated religious doctrines and colonial-era legal frameworks. The absence of divorce rights, gender-biased inheritance laws, and limited guardianship rights collectively restrict Hindu women's access to justice and economic independence. Legal reform is urgently needed to bring Hindu family law in line with constitutional principles of equality and international human rights standards.

3.3 Impact on Women's Rights and Social Status

The discriminatory provisions under both Muslim and Hindu family laws in Bangladesh have had profound and far-reaching effects on women's rights and their social status. These personal laws, shaped by religious doctrines and lacking comprehensive reform, have contributed to systemic gender inequality, limiting women's autonomy, financial independence, and access to justice.

3.3.1 Economic Disempowerment

One of the most visible impacts is the economic marginalization of women, especially through discriminatory inheritance laws. Under Muslim law, women receive half the share of men, while

⁶⁰ Hindu Married Women's Right to Separate Residence and Maintenance Act, 1946 (Act IV of 1946).

under Hindu law, daughters and widows have almost negligible property rights. This has resulted in restricted ownership of property and financial dependence on male family members, making women more vulnerable to poverty and exploitation⁶¹.

Without equitable access to family property and inheritance, women are often unable to assert control over their lives, start businesses, or ensure better education and healthcare for their children.

3.3.2 Limited Access to Legal Remedies

The lack of divorce provisions under Hindu law and the gender-biased divorce procedures under Muslim law leave many women with no legal way to escape abusive or unhappy marriages³. This leads to psychological trauma, domestic violence, and social isolation.

For Muslim women, while the Dissolution of Muslim Marriages Act, 1939, offers some grounds for divorce, accessing the legal system remains difficult due to financial barriers, lack of legal awareness, and social stigma. For Hindu women, the absence of divorce rights means they must endure lifelong abuse or seek informal community-based separations, which hold no legal standing.

3.3.3 Violation of Constitutional and International Rights

The discriminatory provisions under both laws violate the Constitutional guarantee of equality (Article 28) and Bangladesh's obligations under international human rights instruments, particularly the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). Bangladesh has repeatedly faced criticism from international bodies for failing to reform its family laws to ensure gender equality.

The legal pluralism that allows religious personal laws to override constitutional principles has thus created a dual system, where women's fundamental rights are denied in the name of religious freedom.

3.3.4 Social Stigmatization and Psychological Impact

Women suffering from discriminatory family laws also face social stigma. Divorced women (where permitted), single mothers, or women challenging inheritance rights are often labeled as dishonorable or rebellious in conservative communities⁶². This not only affects their mental health and social acceptance but also limits their opportunities for remarriage, employment, and education.

In rural areas, where legal literacy is low, many women are unaware of their limited existing rights, making them even more susceptible to manipulation by family members and community leaders.

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⁶² Ghosh, S. (2007). *Widow's Property Rights in Hindu Law: A Historical Overview*. Indian Law Journal, 5(1), 106–108.

3.3.5 Hindrance to National Development Goals

The gender inequality perpetuated by discriminatory family laws undermines Bangladesh's national development objectives, including the Sustainable Development Goals (SDG 5: Gender Equality). Without legal reforms, women's empowerment and participation in social and economic life remain hindered, slowing progress on broader development indicators⁶³.

The continued existence of discriminatory family laws for both Muslims and Hindus in Bangladesh has a direct negative impact on women's rights and social status, affecting their economic security, personal freedom, and mental well-being. Legal reform is essential not only for protecting women's human rights but also for achieving social justice and national development goals.

⁶³ UNDP Bangladesh. (2020). *Gender Equality and Women's Empowerment Strategy for Bangladesh Vision 2041*.

Chapter-4 : Attempts at Reform and Judicial Interventions

4.1 Muslim Family Law Reforms

In Bangladesh, reforms in Muslim family law have been selective and procedural, rather than substantive. The reforms mainly aimed at addressing administrative gaps and procedural delays, leaving key areas like inheritance, divorce rights, and polygamy largely untouched in terms of gender justice and equality.

4.1.1 The Muslim Family Laws Ordinance, 1961

The most significant reform initiative in Muslim personal law in Bangladesh was the promulgation of the Muslim Family Laws Ordinance (MFLO), 1961, enacted during the Pakistan period and still in force today.

Key features of this ordinance include:

- Mandatory registration of marriages and divorces, helping to reduce fraudulent claims.
- Introduction of an Arbitration Council to regulate polygamy, requiring a Muslim man to seek permission before contracting a second marriage.
- Establishment of procedural safeguards in divorce, mandating written notification to the Union Parishad and enforcing a 90-day reconciliation period before a divorce becomes effective.

Although the MFLO has been praised for introducing administrative controls, critics argue that it falls short of addressing core gender-discriminatory provisions, such as unequal inheritance rights or unilateral male divorce.

4.1.2 Dissolution of Muslim Marriages Act, 1939

Another milestone was the Dissolution of Muslim Marriages Act, 1939, which provides Muslim women with specific grounds for seeking divorce, such as cruelty, non-maintenance, impotence, desertion, and the husband's disappearance for four years or more⁶⁴. However, the law places the burden of proof on women, making it difficult to access relief, especially for economically or socially disadvantaged women.

4.1.3 Judicial Activism and Progressive Interpretations

Over the years, Bangladeshi courts have, on occasion, adopted a progressive approach while interpreting Muslim family laws. Some landmark rulings emphasized the welfare of women and children, especially in guardianship and maintenance cases. However, judicial activism remains inconsistent due to the absence of a uniform legislative framework, leaving much discretion to individual judges.

⁶⁴ Dissolution of Muslim Marriages Act, 1939 (Act VIII of 1939), Section 2.

4.1.4 Limitations of the Reforms

Despite these reforms, many gender-discriminatory aspects remain unaddressed, such as:

- Inequitable inheritance shares for women, rooted in traditional Islamic jurisprudence.
- Lack of recognition of marital property rights, leaving women financially vulnerable after divorce.
- Continued allowance of polygamy, albeit regulated.
- Limited divorce rights for women and social stigma attached to female-initiated divorce.

In addition, there has been no significant legislative amendment to Muslim family laws in Bangladesh after independence in 1971, reflecting a lack of political will and social consensus for more progressive reform.

4.1.5 Emerging Reform Demands

Women's rights organizations and legal scholars continue to advocate for:

- Revising inheritance laws to promote gender equality.
- Strengthening enforcement mechanisms for maintenance and custody.
- Introducing marital property regimes that recognize women's contributions to household assets.
- Providing uniform and simplified divorce procedures with adequate protections for women⁶⁵.

However, religious sensitivities, political conservatism, and fear of social backlash continue to stall substantive reforms.

While the Muslim Family Laws Ordinance, 1961, and the Dissolution of Muslim Marriages Act, 1939, introduced some procedural safeguards, core discriminatory provisions remain deeply entrenched in Bangladesh's Muslim family law framework. Without comprehensive legal reform, the goal of achieving gender equality in family matters remains distant.

4.2 Hindu Law Reforms in Bangladesh

Unlike Muslim family law, Hindu family law in Bangladesh has seen virtually no substantive legal reforms since the country's independence in 1971. Hindu personal law remains governed by ancient religious texts, customary practices, and a handful of British colonial-era statutes, making it one of the most outdated and gender-biased areas of Bangladeshi law.

4.2.1 Colonial-Era Legislative Framework

The primary legislative instruments still governing Hindu personal law in Bangladesh include:

⁶⁵ Naripokkho. (2018). *Policy Brief on Family Law Reform in Bangladesh: Challenges and Opportunities*, pp. 28–30.

- The Hindu Married Women’s Right to Separate Residence and Maintenance Act, 1946, which allows Hindu women to live separately and claim maintenance on limited grounds.
- The Hindu Widows’ Re-marriage Act, 1856, which legalized the remarriage of Hindu widows.
- The Child Marriage Restraint Act, 1929, which applies uniformly across all religious communities in Bangladesh.

However, these laws are narrow in scope and do not address critical issues like divorce, guardianship, or inheritance equality for Hindu women.

4.2.2 Lack of Divorce Rights

One of the most severe gaps in Hindu family law in Bangladesh is the absence of statutory provisions for divorce. Hindu women have no legal right to dissolve their marriage, irrespective of circumstances like cruelty, desertion, or mental harassment. Unlike India, where the Hindu Marriage Act, 1955, provides for divorce, judicial separation, and restitution of conjugal rights, Bangladesh remains stagnant on this front.

4.2.3 Inheritance Law Stagnation

Inheritance among Hindus continues to be governed by the Dayabhaga school of Hindu law, which prioritizes male heirs over female heirs. Despite growing advocacy for reform, Bangladesh has not adopted any legislation similar to India’s Hindu Succession (Amendment) Act, 2005, which granted daughters equal rights in ancestral property.

As a result, Hindu women in Bangladesh remain largely excluded from property ownership, reinforcing economic dependency on male relatives and contributing to their marginalization in both family and society.

4.2.4 Judicial Responses

Bangladeshi courts have occasionally taken a progressive stance, particularly in maintenance and custody cases, invoking general principles of equity and justice when statutory guidance is lacking. However, in the absence of comprehensive legislative reform, judicial interventions remain sporadic and inconsistent.

4.2.5 Barriers to Reform

Efforts to reform Hindu family law in Bangladesh have faced strong resistance from conservative religious groups within the Hindu community. Concerns about state interference in religious practices, coupled with minority sensitivities, have contributed to political reluctance to initiate reforms.

Moreover, the lack of organized advocacy within the Hindu community, compared to Muslim women’s rights movements, has further delayed reform initiatives.

4.2.6 Recent Reform Proposals

In recent years, there have been calls from women's rights organizations, legal scholars, and international bodies urging the Bangladeshi government to:

- Introduce Hindu marriage registration laws.
- Enact legislation allowing for divorce and judicial separation for Hindus.
- Reform Hindu inheritance laws to ensure gender equality.
- Establish clearer laws regarding guardianship and child custody.

However, as of now, no major legislative action has been taken to address these longstanding legal gaps.

Hindu family law in Bangladesh remains highly discriminatory and archaic, offering minimal legal protection to Hindu women. The lack of divorce rights, gender-biased inheritance laws, and absence of statutory guardianship provisions continue to violate constitutional principles and international human rights obligations. Comprehensive reform is urgently needed to protect the dignity, autonomy, and legal rights of Hindu women in Bangladesh.

4.3 Role of the Judiciary in Reform

In the absence of comprehensive legislative reforms in family law, the judiciary in Bangladesh has played a limited but occasionally progressive role in interpreting and applying personal laws, particularly in cases related to women's rights, child custody, and maintenance. Although judicial activism in family law reform remains sporadic, certain decisions by Bangladeshi courts have paved the way for incremental progress, especially in procedural protections and human rights interpretations.

4.3.1 Progressive Judicial Interpretations

Bangladeshi courts have, at times, adopted a progressive approach when interpreting ambiguous provisions of Muslim and Hindu family laws. For instance, in matters of guardianship and custody, courts have prioritized the "best interests of the child" over rigid interpretations of religious laws.

In *Swapna Rani Das vs. Subhash Chandra Das* (1995), the High Court Division (HCD) ruled in favor of granting child custody to the mother, even though Hindu law traditionally prioritizes paternal guardianship. Similarly, in several Muslim family law cases, the judiciary has ordered fair maintenance and dower payments to protect the rights of Muslim women.

4.3.2 Enforcement of Procedural Safeguards

The judiciary has also been instrumental in ensuring compliance with procedural safeguards introduced by the Muslim Family Laws Ordinance, 1961, particularly regarding polygamy and divorce procedures. For example, courts have declared marriages invalid when husbands failed

to obtain the necessary approval from the Arbitration Council before contracting a second marriage.

Similarly, in cases where husbands bypassed the mandatory notification process for talaq (divorce), courts have ruled the divorces invalid, thereby upholding women's rights under the MFLO⁶⁶.

4.3.3 Limitations of Judicial Role

Despite these positive interventions, the judiciary's role in family law reform has been severely limited by the absence of comprehensive legislation. Since both Muslim and Hindu family laws remain largely uncodified or minimally reformed, courts often rely on colonial-era precedents, religious texts, and conservative interpretations.

Additionally, many judges are reluctant to interfere in religious personal laws, viewing such matters as falling under the domain of parliamentary legislative authority rather than judicial activism. This cautious approach has hindered the development of a more gender-equitable family law jurisprudence.

4.3.4 Constitutional Interpretation and Human Rights Concerns

Some recent judgments reflect a growing judicial willingness to invoke constitutional provisions (especially Articles 27, 28, and 29, which guarantee equality and non-discrimination) when adjudicating family law disputes. However, the courts have yet to issue any landmark ruling declaring any part of the personal laws unconstitutional due to gender discrimination.

There is an ongoing debate among legal scholars on whether the judiciary should take a more proactive role in harmonizing personal laws with constitutional rights and international human rights obligations, especially under CEDAW and ICCPR, to which Bangladesh is a party.

While the judiciary in Bangladesh has taken some progressive steps towards protecting women's rights within the framework of existing personal laws, its overall impact on substantive family law reform has been limited. Without comprehensive legislative changes, judicial activism alone cannot eliminate systemic gender discrimination embedded in Muslim and Hindu family laws. Nonetheless, the judiciary continues to play an important role in interpreting laws progressively, enforcing procedural protections, and upholding fundamental rights in individual cases.

4.4 The Family Court Reform 2023

In 2023, Bangladesh introduced significant reforms to its family court system aimed at strengthening access to justice in family law matters and streamlining dispute resolution processes. These reforms are part of the government's broader commitment to modernizing the legal infrastructure and addressing longstanding inefficiencies and delays in family law adjudication.

⁶⁶ Ibid., Section 7; **Abul Bashir vs. Rokeya Khatun**, 2002, 54 DLR (HCD) 350.

Objectives of the Reform

The primary objectives of the 2023 family court reform include:

- Expedited resolution of family disputes such as divorce, custody, maintenance, and inheritance to reduce prolonged litigation.
- Specialized training for judges and court staff to improve the sensitivity and effectiveness of handling family law cases, particularly those involving women and children.
- Enhanced mediation and alternative dispute resolution (ADR) mechanisms to resolve conflicts amicably outside the traditional adversarial system.
- Improved record-keeping and case management systems to ensure transparency and accountability within family courts.

Key Provisions and Changes

The reform mandates the establishment of dedicated family courts with jurisdiction over all family-related legal issues, thereby consolidating fragmented judicial forums.

It introduces a mandatory pre-trial mediation process, requiring disputing parties to attempt reconciliation before proceeding to formal litigation.

The reform includes provisions to protect vulnerable parties, especially women and children, by ensuring confidentiality and security during court proceedings.

There is an emphasis on integrating legal aid services within the family courts to assist indigent litigants in asserting their rights.

Impact and Challenges

While the 2023 reform is hailed as a positive step towards modernizing family justice, it faces challenges such as:

- Resource constraints in fully staffing and training family courts across urban and rural areas.
- Resistance from traditional actors who prefer informal dispute resolution mechanisms, potentially limiting the reform's reach.
- Ensuring that ADR mechanisms respect women's rights and do not pressure them into unfavorable settlements⁶⁷.

The 2023 family court reform in Bangladesh reflects an important move toward strengthening legal protections and procedural fairness in family law disputes. To maximize its effectiveness, the reform requires continued political support, adequate resource allocation, and community sensitization to overcome societal barriers and deliver gender-sensitive justice⁶⁸.

⁶⁷ Huda, S. (2023). Implementation challenges of family court reforms in Bangladesh. *Bangladesh Journal of Legal Reform*, 8(1), 30–34.

⁶⁸ Rahman, M. (2023). Traditional dispute resolution and family law reforms: A critical review. *Dhaka Law Journal*, 12(2), 89–92.

4.4.1 The Family Court Ordinance 1985 vs. the Family Court act 2023:

The **Family Courts Act, 2023** has repealed and replaced the **Family Courts Ordinance, 1985** in Bangladesh. While the new Act aims to modernize the legal framework for family disputes, many sources indicate that it has not brought about significant substantive changes, retaining much of the original Ordinance's provisions.

Here's a breakdown of the key aspects and differences:

Family Courts Ordinance, 1985:

- **Establishment:** This Ordinance first established dedicated Family Courts in Bangladesh to handle disputes related to family matters, which were previously dealt with under civil law.
- **Jurisdiction:** It granted Family Courts exclusive jurisdiction over five specific matters:
 - Dissolution of marriage (divorce)
 - Restitution of conjugal rights
 - Dower (mahr)
 - Maintenance
 - Guardianship and custody of children
- **Scope:** It applied to all citizens of Bangladesh, irrespective of their religious faith, for the specified matters.
- **Limitations:** Despite its progressive nature at the time, the Ordinance faced criticisms for:
 - Lack of clarity on issues like post-divorce maintenance and who could seek restitution of conjugal rights.
 - Absence of clear provisions for Alternative Dispute Resolution (ADR) at the appellate stage.
 - The burden of appeals falling solely on District Judges.
 - Exclusion of the three hill districts (Rangamati, Bandarban, and Khagrachari) from its purview.

Family Courts Act, 2023:

- **Purpose:** The primary objective of the 2023 Act was to repeal and re-enact the 1985 Ordinance, bringing it in line with the current legal landscape and addressing some of the shortcomings. It also aimed to replace an ordinance from the military regime with a parliamentary act.
- **Key Changes (though limited):**
 - **Court Fees:** Increased the court fees for family court cases from BDT 25 to BDT 200.

- **Appellate Forum:** Expanded the appellate forum. While previously appeals against Family Court decrees only went to the District Judge, the new Act allows appeals to other judges equivalent to District Judges (e.g., judges of Women and Children Repression Prevention Tribunals), aiming to reduce the burden on District Judges. Family appellate courts, consisting of one district judge, have been established.
- **Witness Evidence:** Permits adducing witness evidence through affidavit without physical presence at the trial (Section 13(6)).
- **Dower Appeal Limit:** Increased the dower amount not exceeding which no appeal lies from BDT 5,000 to BDT 50,000.
- **Online Case Submission:** The Act facilitates online case submission and digital case management for improved accessibility.
- **Expeditious Resolution:** Emphasizes expeditious resolution of family disputes.
- **Continuity:**
 - **Jurisdiction:** The core jurisdiction of the Family Courts remains the same as in the 1985 Ordinance, covering dissolution of marriage, restitution of conjugal rights, dower, maintenance, and guardianship and custody of children. Matters like marriage formation, inheritance, will, heba (gift), maintenance of parents, and adoption still generally fall outside the Family Court's jurisdiction.
 - **Pre-trial Conciliation:** Both the Ordinance and the Act contain provisions for pre-trial proceedings that open a window for ADR in family disputes before going to trial.
 - **Exclusion of Hill Districts:** Unfortunately, the 2023 Act continues to exclude the three hill districts (Rangamati, Bandarban, and Khagrachari) from its jurisdiction.
- **Criticism:** Many legal experts have criticized the 2023 Act for not bringing about more significant changes or resolving long-standing ambiguities, such as those related to post-divorce maintenance and the scope of restitution of conjugal rights, which continue to be subjects of judicial interpretation.

In essence, the Family Courts Act, 2023 is largely a re-enactment of the Family Courts Ordinance, 1985, with some procedural and minor substantive updates. While it aims for better case management and expanded appellate options, it leaves many of the fundamental issues and jurisdictional limitations of its predecessor largely unaddressed.

4.4.2 The Family Court Act Need More changes:

While the Family Courts Act, 2023, was a step towards modernizing family law in Bangladesh, many legal experts and stakeholders agree that it falls short of addressing several critical issues and requires further significant changes to truly meet the needs of justice-seekers.

Here are some of the key areas where the Family Courts Act, 2023, needs more changes:

1. Expanding the Jurisdiction of Family Courts:

- **Marriage Formation, Inheritance, Will, Heba, Adoption:** Currently, the Family Courts only have jurisdiction over five specific matters (dissolution of marriage, restitution of conjugal rights, dower, maintenance, and guardianship and custody of children). Other crucial family matters, such as marriage formation, inheritance, will, heba (gift), and adoption, are still dealt with by ordinary civil courts or through personal laws.

- **Need for Change:** Bringing all family-related disputes under the umbrella of Family Courts would create a more streamlined and specialized system, preventing fragmented litigation and ensuring holistic resolution of family issues. This would reduce the burden on civil courts and provide a dedicated forum with specialized judges for sensitive family matters.

- **Maintenance of Parents:** The maintenance of parents is currently governed by the Parents' Maintenance Act 2013 and tried by magistrate courts.

- **Need for Change:** Including the maintenance of parents within the Family Court's jurisdiction would consolidate family-related cases and allow for a more comprehensive approach to familial responsibilities.

2. Clarifying Ambiguous Provisions:

- **Restitution of Conjugal Rights:** The 1985 Ordinance, and consequently the 2023 Act, lacked clarity on who could seek restitution of conjugal rights. While judicial precedents have broadened its applicability beyond just husbands, the Act should explicitly state that either spouse can seek this remedy, aligning with constitutional principles of equality.

- **Need for Change:** A clear statutory provision would remove ambiguity, ensure consistency in judicial decisions, and uphold gender equality.

- **Post-Divorce Maintenance:** The issue of post-divorce maintenance for women has been a contentious and unclear area under the previous Ordinance. While courts have often interpreted personal laws to grant such maintenance, a clear statutory provision is lacking.

- **Need for Change:** The Act should explicitly provide for post-divorce maintenance, including its scope, duration, and factors for determination, to provide greater financial security for divorced women and reduce the need for prolonged litigation.

3. Strengthening Alternative Dispute Resolution (ADR):

- **ADR at the Appellate Stage:** While the Act maintains provisions for pre-trial conciliation (a form of ADR), it does not explicitly provide for ADR at the appellate stage. This is a significant missed opportunity to reduce the backlog of cases and promote amicable settlements, even after a judgment has been passed by the trial court.
 - **Need for Change:** Incorporating mandatory or encouraged ADR mechanisms at the appellate stage, similar to Section 89C of the Code of Civil Procedure 1908, could significantly reduce the burden on higher courts, facilitate quicker resolutions, and preserve family relationships where possible.

4. Expanding Geographical Scope:

- **Exclusion of Hill Districts:** The Family Courts Act, 2023, continues to exclude the three hill districts of Rangamati, Bandarban, and Khagrachari from its purview. This means residents in these areas still rely on ordinary civil courts for family disputes, depriving them of the benefits of specialized family law.
 - **Need for Change:** The Act should be amended to extend its application to these districts, ensuring equal access to specialized family justice for all citizens of Bangladesh.

5. Improving Case Management and Execution:

- **Dedicated Family Courts and Judges:** While the Act provides for the establishment of family courts, there's a need for more dedicated family courts and a sufficient number of judges specializing in family law. Often, the same judges handle both civil and family matters, which can lead to delays and a lack of specialized attention.
 - **Need for Change:** Establishing separate and adequately staffed family courts, with judges receiving specialized training in family law, child psychology, conflict resolution, and domestic violence, would enhance the quality and speed of justice.
- **Expedient Execution of Decrees:** Obtaining a decree from a Family Court is often followed by a lengthy and challenging process of execution.
 - **Need for Change:** The Act should streamline the processes for judgment execution, perhaps by introducing stricter penalties for non-compliance or enabling more proactive enforcement mechanisms, to ensure timely relief for decree-holders.
- **Digitalization and Online Systems:** While the Act facilitates online case submission, further investment and development in digital case management systems are needed to enhance efficiency, transparency, and accessibility.

- **Need for Change:** Fully embracing digital solutions for filing, tracking, and managing cases can significantly reduce delays and improve overall court administration.

6. Addressing Emerging Family Law Issues:

- **Parental Abduction:** With increasing cross-border marriages and international mobility, issues like parental abduction are becoming more prevalent. Bangladesh is not a signatory to The Hague Convention on the Civil Aspects of International Child Abduction.
 - **Need for Change:** While a separate international convention would be ideal, the Family Courts Act could incorporate provisions to address internal parental abduction, ensuring the best interests of the child are prioritized and outlining clear procedures for such cases.
- **Protection against Domestic Violence:** While separate laws exist (e.g., Domestic Violence (Prevention and Protection) Act, 2010), stronger linkages and possibly concurrent jurisdiction for Family Courts in certain domestic violence cases could provide more comprehensive relief.
 - **Need for Change:** Exploring mechanisms for better integration of domestic violence cases within the family court system, while respecting existing specialized legislation, could offer victims a more streamlined path to justice and protection.

In conclusion, while the Family Courts Act, 2023, is a step in the right direction by replacing an older ordinance, it largely represents a missed opportunity for substantial reforms. To truly achieve its objectives of providing quick, effective, and amicable resolution of family disputes, the Act requires further comprehensive amendments that expand its scope, clarify ambiguities, strengthen ADR, ensure equitable application across all regions, and improve procedural efficiency.

Chapter-5 : Challenges to Reforming Family Laws

5.1 Religious and Cultural Sensitivities

One of the most significant challenges to family law reform in Bangladesh is the issue of religious and cultural sensitivities. As family laws are closely linked to religious doctrines and community identity, any attempt at reform is often met with strong emotional, political, and religious opposition, making the process highly complex and delicate.

5.1.1 The Religious Significance of Personal Laws

For both Muslims and Hindus in Bangladesh, family laws are seen as an integral part of their religious faith and moral code. Any perceived interference by the state in matters like marriage, divorce, inheritance, or guardianship is often interpreted as an attack on religious freedom and communal identity. This perception creates a social and political environment hostile to reform initiatives, even when the objective is to promote gender equality⁶⁹.

5.1.2 Fear of State Overreach

Many religious groups argue that state-led reforms may erode religious autonomy and lead to a secularization of personal laws, which they fear would undermine their religious values and traditions. This fear has often been used by religious leaders and political parties to mobilize public sentiment against proposed reforms, labeling them as "Western impositions" or "anti-religious" agendas.

For example, earlier initiatives to codify Hindu marriage registration or reform Muslim inheritance laws faced strong objections from religious clerics and conservative community organizations, making it difficult for lawmakers to proceed.

5.1.3 Social Conservatism and Gender Norms

Beyond formal religious institutions, cultural conservatism within society plays a critical role in resisting family law reforms. Patriarchal social attitudes, deeply rooted in both Muslim and Hindu communities, reinforce the idea that women's primary role is within the home and family, with limited legal autonomy.

As a result, gender-biased provisions in family law are often seen as natural and justifiable, making legal reform a sensitive topic that challenges long-standing social norms and power structures.

5.1.4 Political Reluctance

Given the religious sensitivities attached to family laws, politicians in Bangladesh have shown reluctance to initiate reforms, fearing electoral backlash and accusations of undermining religious values. Unlike in countries like India, where constitutional mandates for gender

⁶⁹ Khan, I. A. (2017). *Constitutional Paradoxes and Personal Laws in Bangladesh*. *Journal of Law and Society*, 29(2), 131–133.

equality have driven legislative changes in family law, Bangladesh's political environment remains cautious and risk-averse in this area.

5.1.5 Impact on Reform Efforts

Due to these religious and cultural sensitivities:

- Proposals for reform are often stalled or diluted before reaching parliamentary debate.
- Public consultations on family law reforms are rare, for fear of offending religious groups.
- Women's rights organizations advocating for reform often face intimidation and social backlash⁷⁰.

In many cases, incremental judicial activism has been the only tool to address injustices, but without comprehensive legislative action, systemic change remains elusive.

Religious and cultural sensitivities continue to be a major obstacle to family law reforms in Bangladesh. Striking a balance between respecting religious diversity and ensuring gender justice remains one of the country's most difficult legal and policy challenges. Meaningful reform will require broad-based dialogue, awareness campaigns, and strong political will, alongside community engagement to build public support for change.

5.2 Political and Legislative Barriers

The process of family law reform in Bangladesh faces not only religious and cultural sensitivities but also significant political and legislative barriers. These obstacles stem from political reluctance, lack of legislative initiative, inconsistent policy priorities, and weak institutional frameworks, all of which contribute to the stagnation of family law reform efforts.

5.2.1 Lack of Political Will

One of the most prominent barriers is the lack of political will among policymakers and legislators. Successive governments have shown hesitation in addressing family law reforms, fearing religious backlash, loss of voter support, and political controversies¹. As a result, progressive reform agendas—especially those related to women's rights and gender equality in family laws—are often sidelined or postponed indefinitely⁷¹.

Politicians, regardless of their party affiliations, often adopt a conservative stance on personal law reforms, particularly during election periods, to avoid alienating religious constituencies and influential clerics².

⁷⁰ Maniruzzaman, T. (2015). *Hindu Women and Legal Rights in Bangladesh*. *International Review of Law*, 7(3), 47–49.

⁷¹ Khan, I. A. (2017). *Constitutional Paradoxes and Personal Laws in Bangladesh*. *Journal of Law and Society*, 29(2), 135–137.

5.2.2 Absence of Comprehensive Policy Framework

Unlike countries with well-established family law reform commissions or gender justice frameworks, Bangladesh lacks a coordinated and systematic policy approach toward personal law reform³. There is no permanent institutional body tasked with reviewing and recommending reforms in family law, leaving the process ad hoc and fragmented.

Law reforms generally take place only in response to judicial decisions, NGO advocacy, or international pressure, rather than as part of a national legislative agenda.

5.2.3 Legislative Inertia

Most of the existing family laws governing Muslims and Hindus in Bangladesh are colonial-era statutes or pre-independence laws, with minimal post-1971 legislative updates⁵. For instance, Muslim Family Laws Ordinance (1961) and Dissolution of Muslim Marriages Act (1939) remain the primary legislative frameworks for Muslims, while Hindus still rely on the Hindu Widows' Remarriage Act (1856) and Hindu Married Women's Right to Separate Residence and Maintenance Act (1946).

The failure of the Jatiya Sangsad (National Parliament) to introduce comprehensive family law reform bills, despite repeated calls from women's rights organizations and human rights bodies, reflects deep legislative inertia⁷².

5.2.4 Inadequate Representation of Women's Voices

The under-representation of women in legislative bodies and law-making institutions also contributes to the slow progress of family law reform. Even when women are present in parliament, party politics and conservative pressures often limit their ability to push for gender-sensitive reforms.

Additionally, civil society organizations working on women's rights often lack direct channels of influence in the legislative process, making it difficult for their recommendations to be translated into law.

5.2.5 Influence of Religious Political Parties

The presence and influence of religious political parties and pressure groups such as Jamaat-e-Islami and other conservative forums often act as a significant deterrent to any legislative change

⁷² Huda, S. (2019). *Reforming Muslim and Hindu Family Laws in Bangladesh: Challenges and Prospects*. South Asia Journal of Law and Policy, 3(1), 67–69.

perceived as affecting religious family laws. These groups often lobby aggressively, organize protests, and label reform advocates as anti-Islamic or anti-Hindu, creating a chilling effect on lawmakers⁷³.

The political and legislative barriers to family law reform in Bangladesh are deeply entrenched in the country's socio-political landscape. The lack of political commitment, legislative inertia, institutional gaps, and fear of religious backlash have all contributed to the continuing discrimination within family laws. Without addressing these structural barriers, meaningful reform and gender justice in personal laws will remain unattainable.

5.3 Legal Pluralism vs. Constitutional Equality

Bangladesh's legal system is characterized by legal pluralism, where multiple personal laws based on religion coexist alongside the secular constitutional framework. This coexistence creates an inherent tension between respect for religious diversity and the constitutional mandate for equality and non-discrimination, especially regarding gender justice in family laws.

5.3.1 Legal Pluralism in Bangladesh

Legal pluralism in Bangladesh allows for separate personal laws governing Muslim, Hindu, Christian, and other religious communities in matters of marriage, divorce, inheritance, and guardianship. This pluralistic system is rooted in the country's colonial past and is protected by the Constitution of Bangladesh under the guarantee of freedom of religion and religious personal laws.

While this system respects religious identity and autonomy, it has resulted in different legal standards for citizens based on their religion, leading to unequal rights and protections, particularly for women.

5.3.2 Constitutional Guarantees of Equality

The Constitution of Bangladesh guarantees equality before the law and prohibits discrimination on grounds of sex, religion, or social status under Article 27 and Article 28. Article 28(2) explicitly mandates the state to take steps to ensure equality of opportunity in all spheres of public life.

However, the application of religious personal laws often conflicts with these constitutional guarantees, especially where family laws discriminate against women in matters of inheritance, divorce, and custody.

⁷³ Muslim Family Laws Ordinance, 1961; Dissolution of Muslim Marriages Act, 1939; Hindu Widows' Remarriage Act, 1856; Hindu Married Women's Right to Separate Residence and Maintenance Act, 1946.

5.3.3 Conflicts Between Personal Laws and Constitutional Rights

Several instances highlight the conflicts between personal laws and constitutional rights:

- Muslim inheritance laws grant women half the share of men, violating constitutional equality.
- Hindu personal laws deny women equal coparcenary rights in ancestral property, conflicting with equality guarantees.
- The absence of divorce rights for Hindu women contradicts the constitutional right to personal liberty and equality.

These conflicts pose significant legal and policy challenges, as courts must balance respect for religious laws with upholding constitutional rights.

5.3.4 Judicial Approaches to Reconciling Pluralism and Equality

Bangladeshi courts have been cautious in challenging religious personal laws, often deferring to parliamentary authority on family law matters. However, some judicial pronouncements have emphasized the primacy of constitutional rights, advocating for interpretations of personal laws consistent with gender equality and human rights.

The judiciary's limited but growing role in harmonizing personal laws with constitutional principles marks a gradual shift towards addressing the tensions inherent in legal pluralism.

5.3.5 Need for Uniform Family Law or Harmonization

Scholars and activists argue that to resolve the legal pluralism versus constitutional equality dilemma, Bangladesh needs either:

- The enactment of a uniform family law applicable to all citizens regardless of religion, ensuring equal rights and protections; or
- The harmonization and reform of existing personal laws to eliminate discriminatory provisions and align them with constitutional and international human rights standards.

Both approaches face significant political and social challenges, but are essential for advancing gender justice and equality.

The coexistence of legal pluralism and constitutional equality in Bangladesh creates complex challenges for family law reform. While respecting religious diversity is important, the constitutional mandate for gender equality and non-discrimination must prevail to protect women's rights. Resolving this tension requires legal innovation, judicial courage, and political commitment to ensure that all citizens enjoy equal rights under the law.

5.4 Societal Resistance and Gender Stereotypes

Alongside religious and political challenges, societal resistance fueled by entrenched gender stereotypes forms a formidable barrier to family law reforms in Bangladesh. These deeply ingrained social attitudes and norms influence public opinion, hinder women's empowerment, and often justify the maintenance of discriminatory family laws.

5.4.1 Patriarchal Social Structures

Bangladeshi society is predominantly patriarchal, with men holding primary authority over family, property, and decision-making. This social structure enforces a gendered division of roles, where women are expected to be obedient wives, nurturing mothers, and caretakers, limiting their access to legal rights and autonomy⁷⁴.

Such patriarchal values permeate communities regardless of religion, affecting both Muslim and Hindu populations, and shape the perceptions about women's roles in family law contexts.

5.4.2 Stereotypes About Women's Roles

Common stereotypes in Bangladesh portray women as dependent, vulnerable, and primarily responsible for domestic duties, reinforcing the idea that family laws should prioritize men's rights and control. These stereotypes legitimize gender discriminatory practices such as:

- Unequal inheritance shares favoring male heirs.
- Restrictive divorce rights for women.
- Limited guardianship and custody rights.
- Social stigma attached to women who seek legal redress.

5.4.3 Resistance to Women's Legal Empowerment

Efforts to reform family laws and enhance women's rights are often met with resistance from within families and communities, who view such changes as threats to social order and traditional values. Women who assert their rights may face social ostracism, domestic violence, and economic marginalization.

Moreover, many women themselves internalize these stereotypes, leading to limited awareness of their legal rights and reluctance to challenge discriminatory norms.

5.4.4 Role of Media and Education

While media campaigns and education programs have started to challenge gender stereotypes, their reach remains limited in rural and conservative areas. Misrepresentation of women's rights activists as "Westernized" or "against culture" further fuels societal resistance to family law reform.

5.4.5 Implications for Reform Efforts

⁷⁴ Khan, I. A. (2017). *Constitutional Paradoxes and Personal Laws in Bangladesh*. *Journal of Law and Society*, 29(2), 148–150.

The persistence of societal resistance means that:

- Legal reforms alone are insufficient without broader social change.
- Awareness-raising and community engagement are critical to shift public attitudes.
- Empowering women through education, economic participation, and legal literacy is essential to overcoming stereotypes

Societal resistance grounded in patriarchal values and gender stereotypes remains a profound obstacle to achieving meaningful family law reforms in Bangladesh. Combating these deeply rooted norms requires multifaceted strategies that combine legal reform with social education, empowerment, and community dialogue.

Chapter-6 : Recommendations and Conclusion

6.1 Recommendations:

To address the complex challenges and barriers identified in the study of family law reforms in Bangladesh, a multi-pronged and inclusive approach is essential. The following recommendations are proposed to promote gender justice, legal modernization, and social harmony while respecting religious and cultural diversity:

- **Enact Comprehensive Family Law Legislation:** The government should prioritize the drafting and enactment of comprehensive family law reforms that harmonize Muslim, Hindu, and other personal laws with constitutional principles of equality and non-discrimination. This could include creating a Uniform Civil Code or, at minimum, reforming existing personal laws to eliminate discriminatory provisions.
- **Codify and Modernize Personal Laws:** Codification would help reduce ambiguity and inconsistent application, particularly in marriage registration, divorce procedures, inheritance rights, and guardianship.
- **Introduce Legal Provisions for Divorce in Hindu Law:** To address the glaring gap, Hindu family law must provide for divorce and judicial separation on equitable grounds.
- **Strengthen Judicial Training:** Enhance judges' understanding of gender rights, constitutional mandates, and international human rights standards to encourage progressive interpretation of family laws.
- **Encourage Judicial Activism within Constitutional Limits:** Courts should be encouraged to uphold gender equality principles actively, striking down discriminatory practices where possible, and ensuring enforcement of procedural safeguards.
- **Establish a Family Law Reform Commission:** An independent commission comprising legal experts, religious scholars, women's rights activists, and policymakers should be formed to guide reforms, facilitate dialogue, and draft proposals.
- **Enhance Legal Aid and Access to Justice:** Strengthen legal aid services and awareness campaigns to empower marginalized women to claim their rights effectively.
- **Integrate Gender Sensitivity in Law Enforcement:** Train law enforcement and local government officials to sensitively handle family law disputes and protect women's rights.
- **Promote Public Awareness Campaigns:** Nationwide awareness programs should educate communities about women's rights under family law and the benefits of reform, helping to reduce stigma and resistance.

- Engage Religious and Community Leaders: Partner with progressive religious scholars and community leaders to advocate for reform within the framework of religious teachings, reducing fear of cultural erosion.
- Empower Women through Education and Economic Opportunities: Broader socio-economic empowerment will enable women to better assert their legal rights and challenge discriminatory norms.
- Respect Religious Sensitivities: Reform efforts must carefully balance respect for religious traditions with the imperatives of human rights and gender equality, ensuring that changes are contextualized and community-driven.
- Phased and Consultative Approach: Implement reforms gradually with extensive consultations, allowing time for societal adaptation and minimizing backlash.

Family law reform in Bangladesh requires holistic strategies that go beyond legal amendments to address social, political, and cultural dimensions. The recommendations outlined emphasize the importance of inclusive dialogue, political commitment, judicial support, and community participation. By following these measures, Bangladesh can move closer to achieving a family law framework that respects tradition while advancing modern principles of gender justice and equality.

6.2 Conclusion:

Family law reforms in Bangladesh represent a critical intersection of tradition, religion, and modern legal principles. This study reveals that while Bangladesh upholds a pluralistic legal system that respects religious personal laws, these laws often perpetuate gender discrimination and social inequities, especially against women in both Muslim and Hindu communities.

The deep-rooted religious and cultural sensitivities, combined with political reluctance and legislative inertia, have significantly impeded the progress of meaningful reform. Furthermore, entrenched societal resistance and gender stereotypes continue to hinder women's empowerment and obstruct legal modernization.

Nonetheless, the judiciary has played a cautiously progressive role, interpreting laws in light of constitutional guarantees of equality, though judicial activism cannot substitute for comprehensive legislative reform. The tension between legal pluralism and constitutional equality remains one of the foremost legal challenges in Bangladesh, requiring a careful balancing act between respecting religious identity and ensuring fundamental human rights⁷⁵.

Ultimately, advancing family law reform demands political commitment, inclusive dialogue with religious communities, and broad social awareness. Incremental reforms that harmonize personal laws with constitutional mandates while addressing community concerns offer a promising path forward. Without such efforts, discriminatory practices embedded in family laws will continue to undermine women's rights and Bangladesh's obligations under international human rights frameworks⁷⁶.

This study underscores that achieving justice in family law is not only a matter of legal texts but also of transforming societal attitudes and institutional practices to ensure dignity, equality, and protection for all citizens, irrespective of gender or religion.

⁷⁵ Rahman, M. (2015). *Judicial Approach to Personal Law Reform in Bangladesh: Scope and Limitations*. Bangladesh Journal of Law, 10(2), 80–82.

⁷⁶ UN CEDAW Committee. (2016). *Concluding Observations on the Combined Eighth and Ninth Periodic Reports of Bangladesh*, CEDAW/C/BGD/CO/8-9.

Bibliography

- Ahmed, N. (2020). *Gender and family law in Bangladesh: A human rights perspective*. Dhaka: University Press Limited.
- Begum, R. (2018). Women's rights under Muslim family law: Challenges and reforms in Bangladesh. *Journal of South Asian Legal Studies*, 12(2), 101–119.
- Chowdhury, S. (2017). The dynamics of personal law and women's rights in Bangladesh. *Asian Journal of Law and Society*, 4(1), 45–67.
- Ghosh, S. (2007). Widow's property rights in Hindu law: A historical overview. *Indian Law Journal*, 5(1), 113–118.
- Huda, S. (2019). Reforming Muslim and Hindu family laws in Bangladesh: Challenges and prospects. *South Asia Journal of Law and Policy*, 3(1), 61–82.
- Islam, M. S. (2016). Legal pluralism and constitutional challenges in Bangladesh. *Bangladesh Law Review*, 15(3), 120–138.
- Khan, I. A. (2017). Constitutional paradoxes and personal laws in Bangladesh. *Journal of Law and Society*, 29(2), 128–153.
- Maniruzzaman, T. (2015). Hindu women and legal rights in Bangladesh. *International Review of Law*, 7(3), 47–62.
- Mollah, A. R. (2014). Women's access to justice under family laws in Bangladesh: Barriers and prospects. *Dhaka Law Journal*, 11(1), 88–102.
- Naripokkho. (2018). *Policy brief on family law reform in Bangladesh: Challenges and opportunities*. Dhaka: Naripokkho.
- Rahman, M. (2015). Judicial approach to personal law reform in Bangladesh: Scope and limitations. *Bangladesh Journal of Law*, 10(2), 65–82.
- Rahman, S. (2019). Gender justice and inheritance laws in Bangladesh. *Journal of Gender Studies*, 22(4), 375–389.
- Sarkar, P. (2017). The role of judiciary in family law reforms in South Asia. *Asian Journal of Comparative Law*, 12(2), 210–230.
- Shah, T. (2018). Religious freedom and women's rights: The family law dilemma in Bangladesh. *International Journal of Human Rights*, 24(6), 781–797.

- Siddiqui, K. (2016). Legislative reforms in Muslim family law: The Bangladesh experience. *South Asian Studies Quarterly*, 18(1), 59–75.
- The Constitution of the People's Republic of Bangladesh. (1972). Government of Bangladesh.
- UN CEDAW Committee. (2016). *Concluding observations on the combined eighth and ninth periodic reports of Bangladesh* (CEDAW/C/BGD/CO/8-9). United Nations.
- Uddin, M. A. (2017). The impact of cultural norms on women's legal status in Bangladesh. *Journal of Social Sciences*, 9(3), 200–215.
- Wazed, S. (2015). Gender discrimination in Hindu personal law: A critical analysis. *International Journal of Law, Policy and the Family*, 29(1), 72–88.
- Zaman, H. (2018). Balancing religious traditions and modern rights: Family law reforms in Bangladesh. *Bangladesh Legal Studies*, 21(2), 140–160.