



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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To

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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 Sharmin 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

Family law in Bangladesh operates within a complex framework shaped by religious doctrines, colonial legal legacies, and evolving constitutional principles of equality and human rights. This research paper critically examines the ongoing efforts and challenges surrounding family law reforms in Bangladesh, with a particular focus on the struggle to balance tradition and modernity. The study explores the historical evolution of family laws, key legislative reforms, and the role of the judiciary in interpreting and shaping family law principles.

It highlights significant reforms such as the Muslim Family Laws Ordinance of 1961 and the Hindu Marriage Registration Act of 2012 while shedding light on the persistent gender biases and implementation gaps within the current system. Through a review of relevant statutes, case law, policy documents, and comparative legal frameworks from countries like India, Pakistan, and Malaysia, this paper analyzes the social, cultural, and political resistance to reform.

The research finds that while there have been incremental advancements towards gender equality and legal modernization, the dominance of religious personal laws continues to limit substantive progress. Judicial activism and policy proposals like those from the Women's Affairs Reform Commission offer potential pathways for change. However, effective reform will require a multi-stakeholder approach involving legislative action, judicial interpretation, institutional strengthening, and public awareness.

The paper concludes with actionable recommendations aimed at harmonizing Bangladesh's family laws with international human rights standards while respecting its socio-cultural context.

Table of Contents

<u>Chapter-1: Introduction</u>	<u>01-07</u>
1.1 Background of the Study	01
1.2 Research Problem	02
1.3 Objectives of the Study	03
1.4 Research Questions	03
1.5 Significance of the Study	03
1.6 Methodology	05
1.6.1 Research Design	05
1.6.2 Sources of Data	05
1.6.3 Data Collection Techniques	05
1.6.4 Analytical Approach	06
1.6.5 Ethical Considerations	06
1.7 Scope and Limitations	06
<u>Chapter-2: The Evolution of Family Law in Bangladesh</u>	<u>08-12</u>
2.1 Concept of Family Law	08
2.2 Historical Background of Family Laws	08
2.3 Legal Pluralism and Religious Personal Laws	10
2.4 Secular vs. Religious Influences	11
<u>Chapter-3: Major Family Law Reforms in Bangladesh</u>	<u>13-20</u>
3.1 Muslim Family Law Reforms	13
3.2 Hindu Family Law Reforms	14
3.3 The Role of the 1961 Muslim Family Laws Ordinance	16
3.4 Reforms through Judicial Interpretation	17
3.5 Recent Legislative Initiatives	18
<u>Chapter-4: Challenges in Reforming Family Laws</u>	<u>21-27</u>
4.1 Religious and Cultural Sensitivities	21

4.2 Political and Legislative Barriers	22
4.3 Legal Pluralism vs. Constitutional Equality	24
4.4 Societal Resistance and Gender Stereotypes	25
4.5 Enforcement Gaps	26
<u>Chapter-5: Judicial Activism and the Role of Courts</u>	<u>28-36</u>
5.1 Important Judicial Decisions	28
5.2 The Role of the Supreme Court and High Court Division	29
5.3 Development of Alternative Dispute Resolution (ADR) Mechanisms	31
5.4 The Debate over Uniform Family Code	33
5.5 Recent Government Initiatives (e.g., Women's Affairs Reform Commission Proposals)	35
<u>Chapter-6 : Recommendations and Conclusion</u>	<u>37-39</u>
6.1 Recommendations	37
6.2 Conclusion	39
Bibliography	40

Chapter-1: Introduction

1.1 Background of the Study

Family law in Bangladesh is deeply rooted in the country's colonial history, religious traditions, and socio-cultural values. The legal system of Bangladesh is a product of British colonial legacy, which introduced a pluralistic legal structure where personal matters like marriage, divorce, maintenance, custody, and inheritance are governed by religious laws¹. Consequently, different religious communities in Bangladesh, such as Muslims, Hindus, Christians, and Buddhists, are governed by their respective personal laws.

For the Muslim majority population, family matters are regulated primarily by Islamic law, supplemented by statutory reforms like the **Muslim Family Laws Ordinance of 1961** and the **Dissolution of Muslim Marriages Act of 1939**². In contrast, the Hindu community continues to be governed by uncodified religious practices, with limited legislative reforms such as the **Hindu Marriage Registration Act of 2012**, which made marriage registration optional but did not address issues like divorce and inheritance rights³.

Over the decades, the socio-economic landscape of Bangladesh has changed significantly, with increasing urbanization, women's empowerment movements, and greater awareness of human rights. These changes have created pressure for reforming existing family laws to ensure gender equality and social justice. However, such reform efforts often face resistance from conservative religious groups and political actors who perceive them as threats to religious identity and traditions⁴.

In recent years, debates around the need for a **Uniform Family Code (UFC)** have gained momentum in Bangladesh, inspired by similar discussions and reforms in neighboring countries like India and Pakistan. The judiciary in Bangladesh has also played a pivotal role in interpreting

¹ Ahmed, N. (2002). *Legal System of Bangladesh*. Dhaka: University Press Limited.

² Hoque, R. (2007). Judicial Activism and Islamic Family Law in Bangladesh: A Socio-Legal Evaluation. *ResearchGate*. Retrieved from <https://www.researchgate.net/publication/233544209>

³ Monsoor, T. (1999). *Gender Equity and Economic Empowerment: Family Law and Women in Bangladesh*. Dhaka: British Council.

⁴ UNICEF Bangladesh. (2018). *Child Rights and Family Laws in Bangladesh: A Review*. Dhaka: UNICEF.

family laws through a progressive lens, often filling legislative gaps by delivering judgments that promote gender equality and human rights.

Despite these efforts, Bangladesh still grapples with multiple challenges in balancing tradition with modernity in the area of family law reforms. The tension between religious personal laws and constitutional principles of equality continues to hinder the realization of a just and equitable family law system. This study aims to critically examine the trajectory, challenges, and prospects of family law reforms in Bangladesh within this complex socio-legal context.

1.2 Research Problem

The family law framework in Bangladesh continues to reflect a complex intersection between religious traditions, colonial legal legacies, and constitutional principles of equality and human rights. Despite constitutional guarantees of gender equality and non-discrimination under Articles 27, 28, and 29 of the Constitution of Bangladesh⁵, personal and family matters such as marriage, divorce, custody, maintenance, and inheritance remain governed by religious personal laws that often perpetuate gender inequality.

For Muslim families, partial reforms like the **Muslim Family Laws Ordinance of 1961** have been introduced, but many provisions remain outdated and discriminatory. Hindu family law remains largely untouched, with only limited reforms such as the **Hindu Marriage Registration Act of 2012**, which fails to address critical issues like divorce rights and women's inheritance. Minority religious communities also face legal ambiguities and lack adequate legal protection under the current pluralistic system⁶.

Efforts to introduce a **Uniform Family Code (UFC)** or comprehensive reforms have repeatedly faced political resistance, religious opposition, and societal reluctance. Judicial activism has helped bridge some gaps, but courts are constrained by statutory limitations and the sensitivity surrounding religious matters.

The core research problem, therefore, lies in how Bangladesh can reconcile its religious and cultural traditions with the constitutional imperative for gender justice, human rights, and social

⁵ Bangladesh Constitution (1972). Articles 27, 28, and 29. Retrieved from <https://bdlaws.minlaw.gov.bd/>

⁶ UNICEF Bangladesh. (2018). *Child Rights and Family Laws in Bangladesh: A Review*. Dhaka: UNICEF.

modernization in the realm of family law. Without systematic reform, discriminatory practices continue to affect women, children, and religious minorities in critical aspects of family life⁷.

This study seeks to investigate the barriers, challenges, and opportunities for implementing effective family law reforms in Bangladesh, focusing on striking a balance between preserving tradition and achieving modernity.

1.3 Objectives of the Study

The primary objective of this research is to critically analyze the trajectory, challenges, and prospects of family law reforms in Bangladesh with a focus on balancing religious traditions and modern constitutional principles of equality and human rights.

The specific objectives of the study are as follows:

1. To examine the historical evolution of family laws in Bangladesh.
2. To identify and analyze the major legislative reforms introduced in family law.
3. To explore the role of the judiciary in promoting family law reforms.

1.4 Research Questions

This study aims to address the following three main research questions:

1. What are the historical developments and major legislative reforms in family law in Bangladesh, and how have they impacted gender equality and human rights?
2. What are the key social, cultural, religious, and political challenges hindering comprehensive family law reforms in Bangladesh?
3. How can Bangladesh balance religious traditions with modern constitutional principles to create a more equitable and rights-based family law system?

1.5 Significance of the Study

The significance of this study lies in its timely contribution to the ongoing discourse on family law reforms in Bangladesh, where the intersection of religious norms and constitutional

⁷ Human Rights Watch. (2012). "Will I Get My Dues Before I Die?": Harm to Women from Bangladesh's Discriminatory Laws on Marriage, Separation and Divorce. <https://www.hrw.org>

principles continues to generate legal, social, and political debates. Family law directly impacts the lives of millions of citizens, particularly women and children, in matters of marriage, divorce, maintenance, guardianship, and inheritance⁸.

Despite constitutional guarantees of gender equality under Articles 27 and 28 of the Constitution of Bangladesh, discriminatory provisions in personal laws persist across different religious communities. This research is essential for understanding how legislative reforms, judicial activism, and policy interventions can play a transformative role in promoting gender justice within the family law framework⁹.

The study also addresses the growing national and international concern over the rights of women and minorities in Bangladesh. It examines how the country can align its domestic family laws with international human rights standards, particularly the **Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)**, to which Bangladesh is a signatory.

Furthermore, this research will provide valuable insights for policymakers, legal scholars, human rights organizations, and advocacy groups who are working towards achieving a balanced family law system that respects religious traditions while ensuring equality, justice, and human dignity. By offering evidence-based analysis and comparative perspectives from other countries, the study aims to contribute to informed policy-making and legal reform initiatives in Bangladesh¹⁰.

Ultimately, this study will help bridge the gap between tradition and modernity in the Bangladeshi family law context, fostering a legal environment that protects individual rights without undermining cultural and religious values⁷.

⁸ Monsoor, T. (1999). *Gender Equity and Economic Empowerment: Family Law and Women in Bangladesh*. Dhaka: British Council.

⁹ Hoque, R. (2007). Judicial Activism and Islamic Family Law in Bangladesh: A Socio-Legal Evaluation. *ResearchGate*. <https://www.researchgate.net/publication/233544209>

¹⁰ Human Rights Watch. (2012). *"Will I Get My Dues Before I Die?": Harm to Women from Bangladesh's Discriminatory Laws on Marriage, Separation and Divorce*. <https://www.hrw.org>

1.6 Methodology

This research adopts a qualitative and doctrinal legal research methodology, combined with elements of comparative legal analysis and socio-legal review, to critically examine family law reforms in Bangladesh.

1.6.1 Research Design

The study is descriptive, analytical, and exploratory in nature. It examines relevant statutes, judicial decisions, scholarly articles, government reports, and international conventions to explore the evolution, challenges, and prospects of family law reforms in Bangladesh.

1.6.2 Sources of Data

This research relies mainly on secondary data sources collected from:

- Legislative texts: Such as the Muslim Family Laws Ordinance (1961), Dissolution of Muslim Marriages Act (1939), Hindu Marriage Registration Act (2012), and constitutional provisions.
- Judicial decisions: Selected High Court and Supreme Court rulings relevant to family law reforms and gender justice in Bangladesh.
- International conventions: Primarily the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and other UN human rights instruments.
- Academic journals and books: Works by scholars like Dr. Taslima Monsoor and Dr. Ridwanul Hoque.
- NGO and human rights organization reports: Publications by Human Rights Watch, UNICEF, and Bangladesh Legal Aid and Services Trust (BLAST).

1.6.3 Data Collection Techniques

- Documentary analysis of primary and secondary legal materials.
- Case study review of landmark judgments and legislative reforms.
- Comparative analysis with family law reforms in other Muslim-majority countries like India, Pakistan, and Malaysia.

1.6.4 Analytical Approach

The study follows a content analysis and comparative legal analysis approach to interpret legal provisions, judicial reasoning, and reform proposals. It critically evaluates how tradition and modernity interact within the Bangladeshi family law context.

1.6.5 Ethical Considerations

Since the study is primarily based on secondary data and legal documents, there is no direct involvement of human subjects, minimizing ethical concerns. However, the researcher remains committed to academic integrity, objectivity, and acknowledgment of all sources.

1.7 Scope and Limitations

Scope of the Study

This research focuses primarily on the family law reforms in Bangladesh, emphasizing the balance between religious traditions and modern constitutional principles of equality and human rights. It covers:

- Key legislative reforms such as the Muslim Family Laws Ordinance of 1961, Dissolution of Muslim Marriages Act of 1939, and the Hindu Marriage Registration Act of 2012¹¹.
- The role of the judiciary in interpreting family laws and promoting reform through judicial activism¹².
- The challenges and barriers faced in reforming family law, including social, cultural, religious, and political factors.
- A comparative perspective analyzing reforms in other South Asian and Muslim-majority countries to draw lessons applicable to Bangladesh.

The study aims to contribute to the academic and policy debates on family law reform and provide recommendations for a more equitable and rights-based legal framework.

¹¹ Hoque, R. (2007). Judicial Activism and Islamic Family Law in Bangladesh: A Socio-Legal Evaluation. *ResearchGate*. <https://www.researchgate.net/publication/233544209>

¹² Creswell, J.W. (2014). *Research Design: Qualitative, Quantitative, and Mixed Methods Approaches*. Sage Publications.

Limitations of the Study

- The research primarily relies on secondary data sources, including legislative texts, court judgments, academic literature, and reports. Due to time and resource constraints, primary empirical data (such as interviews or surveys with stakeholders) were not collected¹³.
- While the study addresses family law across different religious communities, the focus is largely on Muslim and Hindu personal laws, reflecting the predominant legal issues and reform debates in Bangladesh.
- Given the sensitivity and ongoing nature of family law reforms, some recent legislative changes or proposed reforms may not be fully reflected in the available literature.
- The study acknowledges the diverse socio-economic and regional variations in how family laws are applied and experienced but does not delve deeply into localized practices or ethnographic details.
- Judicial decisions and reform efforts are analyzed from a legal and doctrinal perspective, with limited exploration of the broader sociological or anthropological dimensions.

Despite these limitations, the study provides a comprehensive overview of the legal framework, reform trajectory, and key challenges, serving as a foundation for further research and policy development.

¹³ Hasan, M. (2017). Religion and Law: The Politics of Family Law Reform in Bangladesh. *Dhaka Tribune*. <https://www.dhakatribune.com>

Chapter-2: The Evolution of Family Law in Bangladesh

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 matters¹⁴.

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 rights¹⁵. The Constitution also recognizes the importance of religious freedom and the protection of religious practices, which has complicated attempts to enact uniform family laws¹⁶.

2.2 Historical Background of Family Laws

The family law system in Bangladesh is deeply influenced by its historical and socio-political contexts, reflecting a confluence of indigenous customs, Islamic jurisprudence, Hindu religious traditions, and colonial legal legacies. Before the establishment of Bangladesh in 1971, the region was part of British India and later Pakistan, during which the foundations of its current family law framework were laid¹⁷.

Under British colonial rule, a dual legal system was introduced, where personal matters such as marriage, divorce, inheritance, and guardianship were governed primarily by religious personal laws rather than secular legislation. This approach was based on the colonial policy of non-

¹⁴ Menski, W. (2006). *Comparative Law in a Global Context: The Legal Systems of Asia and Africa*. Cambridge University Press, pp. 280–282.

¹⁵ Khan, I. A. (2017). *Constitutional Paradoxes and Personal Laws in Bangladesh*. *Journal of Law and Society*, 29(2), 102–110.

¹⁶ The Constitution of the People's Republic of Bangladesh, Articles 27, 28, and 41.

¹⁷ Nasir, M., & Islam, M. (2024). The Duality of Secular and Islamic Laws in Bangladesh: A Legal Perspective. *International Journal of Academic Research in Business and Social Sciences*, 14(2), 45-60.

interference in religious affairs, leading to the codification of personal laws for major religious communities.

For Muslims in Bengal, family laws were derived largely from Shariah (Islamic law) principles as interpreted by Hanafi jurisprudence, supplemented by colonial statutes like the Mohammedan Marriage Act (1939) and the Dissolution of Muslim Marriages Act (1939). These laws governed marriage contracts, divorce procedures, maintenance, and custody but lacked comprehensive reform to address emerging social realities.

Hindu personal laws, on the other hand, were based on the Dayabhaga school prevalent in Bengal, differing from the Mitakshara school followed in other parts of India. Unlike Muslim personal law, Hindu family law remained largely uncodified, relying on religious texts and customary practices. The British administration introduced some legislative interventions, such as the Hindu Widow Remarriage Act (1856), but comprehensive codification like the Hindu Marriage Act was absent in the region¹⁸.

Following independence in 1971, Bangladesh inherited this pluralistic legal system. The Constitution of Bangladesh, promulgated in 1972, enshrined fundamental rights, including equality before the law and non-discrimination, but retained the application of personal laws for family matters. This created a legal tension between constitutional guarantees of gender equality and the discriminatory nature of some personal laws, especially regarding women's rights in marriage, divorce, and inheritance.

Efforts to reform family law began soon after independence, with the Muslim Family Laws Ordinance of 1961 continuing to apply and reforms such as the Hindu Marriage Registration Act of 2012 introduced much later. However, these reforms have been limited and cautious, largely constrained by political, religious, and societal factors¹⁹.

¹⁸ Bangladesh Constitution (1972). Retrieved from <https://bdlaws.minlaw.gov.bd/>

¹⁹ Hasan, M. (2017). Religion and Law: The Politics of Family Law Reform in Bangladesh. *Dhaka Tribune*. <https://www.dhakatribune.com>

2.3 Legal Pluralism and Religious Personal Laws

Bangladesh's family law system is characterized by legal pluralism, where multiple legal systems coexist and operate simultaneously within the same national jurisdiction. This pluralism primarily manifests in the application of religious personal laws that govern family matters—marriage, divorce, inheritance, maintenance, and custody—based on the religious affiliation of individuals and communities²⁰.

The Constitution of Bangladesh recognizes the importance of religious identity and allows the continuation of religious personal laws in family matters, while also guaranteeing fundamental rights such as equality and non-discrimination. This duality has created a complex legal landscape where religious laws often take precedence over secular principles, leading to inconsistencies and challenges in the application of family law.

For the Muslim majority, family law is principally governed by Islamic personal law, predominantly based on the Hanafi school of Sunni jurisprudence. This body of law is codified in several statutes, including the Muslim Family Laws Ordinance (1961) and the Dissolution of Muslim Marriages Act (1939). These laws regulate marriage contracts, polygamy, divorce (including talaq and khula), maintenance, and inheritance, often reflecting traditional interpretations of Shariah²¹.

The Hindu minority is governed by Hindu personal laws, which in Bangladesh remain largely uncodified and are based on religious texts and customary practices influenced by the Dayabhaga school prevalent in Bengal. Legislative reforms, such as the Hindu Marriage Registration Act (2012), have been minimal and limited in scope, failing to fully address issues such as divorce, maintenance, and inheritance rights.

Christian, Buddhist, and other minority communities are subject to their respective religious personal laws and customary practices, further contributing to the pluralistic nature of family law in Bangladesh.

²⁰ Nasir, M., & Islam, M. (2024). The Duality of Secular and Islamic Laws in Bangladesh: A Legal Perspective. *International Journal of Academic Research in Business and Social Sciences*, 14(2), 45-60.

²¹ Bangladesh Constitution (1972). Articles 27 and 28. Retrieved from <https://bdlaws.minlaw.gov.bd/>

While legal pluralism aims to respect religious diversity and cultural autonomy, it also raises significant concerns regarding gender equality and human rights. Religious personal laws often contain provisions that discriminate against women in areas such as marriage age, divorce rights, custody, and inheritance shares. These disparities create tension between the state's constitutional commitments and the continued application of religious personal laws, complicating efforts to harmonize family law reforms.

The coexistence of multiple legal regimes governing family matters has also resulted in jurisdictional conflicts, legal uncertainties, and difficulties in enforcement, particularly for vulnerable groups such as women and children. Scholars and activists advocate for reforms aimed at creating a more uniform and equitable family law system that respects religious traditions while ensuring constitutional protections for all citizens²².

2.4 Secular vs. Religious Influences

The legal framework governing family matters in Bangladesh is shaped by a persistent tension between secular constitutional principles and religious personal laws. This dichotomy is a legacy of the country's colonial past and its socio-political evolution, which has led to an ongoing struggle to harmonize religious traditions with modern legal standards, particularly regarding gender equality and human rights²³.

Bangladesh's Constitution, adopted in 1972, declares the country a secular state and guarantees fundamental rights such as equality before the law and non-discrimination based on religion, sex, or social status (Articles 8, 27, 28). Despite this, family laws continue to be primarily governed by religious doctrines derived from Islamic law for Muslims, Hindu customs for Hindus, and respective personal laws for other minorities²⁴. This results in a dual legal order where secular constitutional mandates coexist with religiously grounded personal laws.

²² Human Rights Watch. (2012). *Will I Get My Dues Before I Die?* Harm to Women from Bangladesh's Discriminatory Laws on Marriage, Separation and Divorce. Retrieved from <https://www.hrw.org>

²³ Constitution of the People's Republic of Bangladesh (1972). Articles 8, 27, 28. Retrieved from <https://bdlaws.minlaw.gov.bd/>

²⁴ Hoque, R. (2007). *Judicial Activism and Islamic Family Law in Bangladesh: A Socio-Legal Evaluation*. *ResearchGate*. <https://www.researchgate.net/publication/233544209>

The influence of Islamic law is particularly prominent, as Bangladesh is a Muslim-majority country where Shariah-based personal laws regulate crucial family issues including marriage, divorce, custody, and inheritance. These laws often embody traditional interpretations that may conflict with contemporary notions of gender equality and women's rights as articulated in international human rights instruments such as CEDAW.

In contrast, the secular legal system, rooted in British colonial legislation, promotes universal principles of justice and equality. However, its application to family law has been limited by political and social resistance, fearing that reforms may undermine religious identity and cultural norms. The lack of a unified family code illustrates the prevailing dominance of religious influences over secular law in personal matters.²⁵

This tension is further complicated by the political landscape, where religious parties and conservative groups exert significant influence over family law policy-making, often opposing reforms perceived as Western or secular impositions. As a result, legislative reforms tend to be incremental and cautious, attempting to balance religious sensitivities with constitutional commitments.

Judicial activism in Bangladesh has sought to bridge this divide by interpreting personal laws in ways that align more closely with constitutional values, particularly regarding women's rights. Nonetheless, the overarching influence of religious norms continues to shape family law, underscoring the challenge of achieving a comprehensive legal framework that equally respects tradition and modernity.

²⁵ United Nations. (1979). *Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)*. Retrieved from <https://www.un.org/womenwatch/daw/cedaw/>

Chapter-3: Major Family Law Reforms in Bangladesh

3.1 Muslim Family Law Reforms

Muslim family law in Bangladesh is primarily derived from Shariah principles, specifically the Hanafi school of jurisprudence, which has historically governed personal status matters including marriage, divorce, maintenance, custody, and inheritance among the Muslim population²⁶. However, recognizing the need for reform to address social changes and gender disparities, the Bangladeshi government has introduced several legislative measures aimed at modifying and codifying aspects of Muslim family law.

One of the earliest and most significant reforms is the Muslim Family Laws Ordinance of 1961. This ordinance was enacted to regulate the practice of polygamy and set conditions under which a Muslim man may contract additional marriages. It requires that a man obtain written permission from an Arbitration Council and his existing wife or wives before marrying again, aiming to protect the rights of women and ensure family stability²⁷. While this was a progressive step, enforcement has often been weak, and many polygamous marriages continue without adherence to the law.

Another important legislative reform is the Dissolution of Muslim Marriages Act of 1939, which grants Muslim women specific grounds on which they may seek divorce, including cruelty, abandonment, and failure to maintain. This law marked a departure from the traditional unilateral talaq system, empowering women with legal recourse to end marriages under specified conditions.

In recent years, judicial activism has played a crucial role in expanding women's rights within Muslim family law. Courts have interpreted provisions relating to maintenance, child custody, and inheritance with increasing attention to gender equity and constitutional guarantees²⁸. For example, the Supreme Court of Bangladesh has emphasized the importance of protecting

²⁶ Hoque, R. (2007). Judicial Activism and Islamic Family Law in Bangladesh: A Socio-Legal Evaluation. *ResearchGate*. <https://www.researchgate.net/publication/233544209>

²⁷ Muslim Family Laws Ordinance (1961), Bangladesh. Retrieved from <https://bdlaws.minlaw.gov.bd/>

²⁸ Kabir, M.H. (2009). The Supreme Court and Social Change in Bangladesh: Judicial Activism in Protecting Human Rights. *Asia-Pacific Journal on Human Rights and the Law*, 10(1), 1-23.

women's rights in divorce proceedings and ensuring fair maintenance, reflecting a gradual shift toward more gender-sensitive interpretations.

Despite these reforms, significant challenges persist. Many Muslim family law provisions still reflect patriarchal norms, such as unequal inheritance shares and the controversial practice of talaq (repudiation of marriage by the husband), which is not yet fully regulated under statutory law. Furthermore, socio-cultural resistance and limited awareness of women's legal rights impede the effective implementation of reforms²⁹.

The government and civil society continue to advocate for comprehensive reforms, including the codification of a Uniform Muslim Family Code, which would harmonize and modernize Muslim family laws while respecting Islamic principles. However, such efforts face opposition from conservative religious groups who view them as threats to Shariah and Islamic identity.

3.2 Hindu Family Law Reforms

Hindu family law in Bangladesh is primarily governed by religious customs and traditional practices derived from Hindu scriptures, notably influenced by the Dayabhaga school of law prevalent in Bengal³⁰. Unlike Muslim family law, which has seen some codification and statutory reform, Hindu personal law in Bangladesh remains largely uncodified and subject to diverse interpretations based on local customs and community practices.

One of the significant legislative attempts to regulate Hindu family matters is the Hindu Marriage Registration Act of 2012, which made the registration of Hindu marriages optional but legally recognized. This act marked an important step toward formalizing Hindu marriages and protecting the legal status of spouses and their offspring. However, the law did not address critical areas such as divorce, maintenance, adoption, or inheritance, leaving many legal issues unresolved for the Hindu community³¹.

²⁹ Hasan, M. (2017). Religion and Law: The Politics of Family Law Reform in Bangladesh. *Dhaka Tribune*. <https://www.dhakatribune.com>

³⁰ Monsoor, T. (1999). *Gender Equity and Economic Empowerment: Family Law and Women in Bangladesh*. Dhaka: British Council.

³¹ Hindu Marriage Registration Act (2012), Bangladesh. Retrieved from <https://bdlaws.minlaw.gov.bd/>

Divorce among Hindus remains largely unregulated, and customary practices continue to dominate. While the Hindu Marriage Act of India (1955) provides for divorce provisions, no equivalent law exists in Bangladesh, resulting in legal uncertainties and limited protection for women seeking dissolution of marriage.

Inheritance laws among Hindus in Bangladesh are based on customary rules and religious texts but lack uniform codification. Issues such as unequal inheritance rights for women and disputes over ancestral property remain prevalent, often disadvantaging Hindu women and daughters.

Efforts to reform Hindu family law have been slow and limited, partly due to the small size of the Hindu minority and political sensitivities surrounding religious matters. The lack of comprehensive legislation reflects the broader challenge of reforming personal laws within a plural legal system.

Civil society organizations and legal scholars have advocated for codifying Hindu personal laws in Bangladesh to ensure clarity, fairness, and gender equity. Proposals include introducing legislation to regulate divorce, maintenance, adoption, and inheritance, thereby aligning Hindu family law with constitutional guarantees of equality.

Judicial interventions have been sporadic but have sometimes provided relief to Hindu women in specific cases, reinforcing constitutional protections over customary discrimination³². Nonetheless, without comprehensive legislative reform, many Hindu families continue to navigate a complex and uncertain legal environment.

³² Kabir, M.H. (2009). The Supreme Court and Social Change in Bangladesh: Judicial Activism in Protecting Human Rights. *Asia-Pacific Journal on Human Rights and the Law*, 10(1), 1-23.

3.3 The Role of the 1961 Muslim Family Laws Ordinance

The Muslim Family Laws Ordinance (MFLO) of 1961 stands as a cornerstone legislative reform in the domain of Muslim personal law in Bangladesh, marking the first substantial attempt by the state to regulate family matters within the Muslim community and introduce protections for women's rights within an Islamic legal framework³³.

The primary purpose of the Ordinance was to regulate polygamy and limit its practice by requiring a Muslim man to obtain prior written permission from an Arbitration Council before contracting a subsequent marriage. This mechanism was designed to protect the rights of existing wives and promote family harmony by ensuring that men did not engage in polygamy arbitrarily. Additionally, the Ordinance empowered the Arbitration Council to deny permission if the man failed to provide valid reasons or was unable to maintain multiple wives³⁴.

Besides polygamy, the MFLO also set procedural safeguards concerning talaq (divorce) and maintenance, aiming to improve the legal position of Muslim women. For instance, it introduced regulations on the registration of marriages and divorces and provided a legal framework for the enforcement of maintenance orders³⁵.

Despite these progressive intentions, the Ordinance has faced challenges in enforcement and implementation. The requirement for permission to contract a new marriage has often been circumvented, and many polygamous marriages continue without legal authorization⁵. Moreover, socio-cultural resistance and lack of awareness among women regarding their rights under the Ordinance limit its practical impact.

The Ordinance also did not address other critical areas such as inheritance rights, custody, or the unilateral power of talaq by the husband, which remain contentious issues in Muslim family law. This partial reform illustrates the limitations of the MFLO in comprehensively addressing gender inequality within the personal law framework.

³³ Muslim Family Laws Ordinance (1961), Bangladesh. Retrieved from <https://bdlaws.minlaw.gov.bd/>

³⁴ Hoque, R. (2007). Judicial Activism and Islamic Family Law in Bangladesh: A Socio-Legal Evaluation. *ResearchGate*. <https://www.researchgate.net/publication/233544209>

³⁵ Hasan, M. (2017). Religion and Law: The Politics of Family Law Reform in Bangladesh. *Dhaka Tribune*. <https://www.dhakatribune.com>

Judicial interpretations have occasionally reinforced the Ordinance's provisions, emphasizing the necessity of adherence to its requirements and the protection of women's rights. However, calls for a more comprehensive and uniform Muslim Family Code that consolidates and modernizes these laws remain unmet due to political and religious opposition.

In conclusion, the 1961 Muslim Family Laws Ordinance represents a significant yet partial step in the reform of Muslim family law in Bangladesh. Its role highlights both the possibilities and constraints of state-led legal reform in a context deeply influenced by religious tradition and socio-political dynamics.

3.4 Reforms through Judicial Interpretation

Judicial interpretation has played a pivotal role in shaping family law reforms in Bangladesh, particularly in bridging the gap between traditional religious personal laws and the constitutional mandates of equality, justice, and human rights. In the absence of comprehensive legislative reforms, the judiciary has increasingly resorted to judicial activism to reinterpret and adapt family laws in ways that advance gender justice and protect vulnerable groups, especially women³⁶.

The Supreme Court and High Court Division of Bangladesh have, through landmark judgments, asserted the primacy of the Constitution's fundamental rights—notably Articles 27 and 28, which guarantee equality before the law and prohibit discrimination on grounds of sex or religion. These courts have utilized constitutional interpretation to challenge discriminatory provisions in Muslim and Hindu personal laws and to promote a rights-based approach to family justice.

For instance, in cases relating to maintenance and alimony, courts have expanded the scope of financial support obligations beyond the traditional confines, ensuring better protection for divorced and abandoned wives. Similarly, judicial rulings have emphasized the welfare and

³⁶ Kabir, M.H. (2009). The Supreme Court and Social Change in Bangladesh: Judicial Activism in Protecting Human Rights. *Asia-Pacific Journal on Human Rights and the Law*, 10(1), 1-23.

custody of children as paramount, sometimes overruling rigid religious prescriptions to serve the child's best interests³⁷.

Courts have also scrutinized the procedures and conditions surrounding talaq (divorce) to prevent arbitrary repudiation and protect women from unjust treatment. Through judicial intervention, the requirement of following due process in divorce has been underscored, including the need for reconciliation efforts and proper registration of divorce.

Furthermore, the judiciary has played a transformative role in interpreting laws related to marriage registration, advocating for formalization to reduce disputes and protect women's legal status³⁸. This judicial activism has not only filled legislative gaps but also stimulated public debate and awareness about the need for family law reforms.

However, judicial reforms face limitations due to the deeply entrenched nature of religious norms and political sensitivities. Courts often must navigate carefully to avoid backlash from conservative groups, resulting in incremental rather than sweeping changes.

In sum, judicial interpretation serves as a vital mechanism for advancing family law reforms in Bangladesh, fostering a dynamic interplay between tradition and modern constitutional principles, and promoting gender equity within a complex socio-legal environment.

3.5 Recent Legislative Initiatives

In recent years, Bangladesh has undertaken several legislative reforms aimed at modernizing family law, enhancing gender equality, and addressing the evolving needs of society. These initiatives reflect a concerted effort to balance traditional legal frameworks with contemporary human rights standards.

³⁷ Hoque, R. (2007). *Judicial Activism and Islamic Family Law in Bangladesh: A Socio-Legal Evaluation*. ResearchGate. <https://www.researchgate.net/publication/233544209>

³⁸ Monsoor, T. (1999). *Gender Equity and Economic Empowerment: Family Law and Women in Bangladesh*. Dhaka: British Council.

Family Courts Act, 2023

In September 2023, the Bangladesh Parliament passed the Family Courts Act, 2023, repealing the Family Courts Ordinance of 1985. This new legislation introduced several significant changes:

- **Expanded Appellate Jurisdiction:** Appeals from family trial courts can now be made not only to district judges but also to other courts of equivalent status, such as women and children or labor courts, thereby reducing the burden on district judges and streamlining the appellate process.
- **Increased Court Fees:** The court fee for family court cases was raised from BDT 50 to BDT 200, aiming to enhance the financial sustainability of family courts.
- **Affidavit-Based Evidence:** The Act permits the submission of witness evidence through affidavits, allowing for more efficient proceedings and accommodating individuals who may face challenges attending court in person.
- **Increased Dower Threshold for Appeals:** The threshold for appealing cases involving dower was increased from BDT 5,000 to BDT 50,000, broadening the scope for legal recourse in such matters.

Despite these advancements, the Act retains certain limitations from the previous ordinance, such as the absence of provisions for Alternative Dispute Resolution (ADR) at the appellate stage, which could further alleviate case backlogs and promote amicable settlements.

Women's Affairs Reform Commission Report

In April 2025, the Women's Affairs Reform Commission, led by activist Shireen Parveen Huq, submitted a comprehensive report to the interim government. The report outlined 433 recommendations aimed at eliminating gender disparities in laws, policies, and institutions. Key proposals include:

- **Uniform Family Code:** The introduction of a Uniform Family Code to replace religion-based personal laws, ensuring equal rights in marriage, divorce, inheritance, and maintenance for women across all religions.

- **Constitutional Amendments:** Recommendations to amend the Constitution to eliminate discriminatory provisions and enact a Discrimination Elimination Act.
- **Strengthening Women's Institutions:** The establishment of a permanent and independent National Women's Commission and the restructuring of the Ministry of Women and Children Affairs to integrate gender equality responsibilities across all ministries.
- **Gender-Sensitive Planning:** The incorporation of gender-sensitive planning and monitoring mechanisms into national policies and budgets.

These recommendations represent a significant push towards comprehensive gender justice reforms. However, they have faced opposition from conservative groups who argue that certain proposals conflict with religious principles, particularly regarding inheritance laws. Legal challenges have been filed in the High Court seeking to suspend the implementation of specific recommendations, such as equal inheritance rights for men and women, citing contradictions with Islamic Sharia law.

Chapter-4: Challenges in Reforming Family Laws

4.1 Religious and Cultural Sensitivities

Religious and cultural sensitivities constitute one of the most significant barriers to family law reform in Bangladesh. The country's legal framework for family matters is deeply intertwined with religious doctrines and cultural norms, which shape social attitudes and influence policymaking. These sensitivities often complicate efforts to introduce progressive reforms, particularly those aimed at enhancing gender equality and women's rights³⁹.

Bangladesh is a Muslim-majority country, where Islamic principles hold a central place in personal and family life. For many, family law is not merely a legal issue but a religious mandate derived from Shariah. Attempts to reform Muslim personal laws, therefore, are frequently perceived as challenges to religious authority and identity, prompting resistance from religious leaders, political parties, and conservative communities. This resistance is especially pronounced on issues such as polygamy, inheritance rights, and divorce procedures, where traditional religious interpretations prescribe specific roles and rights⁴⁰.

Similarly, minority religious communities, including Hindus, Christians, and Buddhists, adhere to their respective personal laws rooted in long-standing customs and religious teachings. Any proposed reforms that seem to interfere with these traditions can be met with apprehension and opposition, as they are viewed as threats to cultural autonomy and religious freedom⁴¹.

Cultural norms and patriarchal values also play a crucial role in maintaining the status quo. Social expectations about gender roles, family honor, and community cohesion often discourage women from asserting their legal rights or seeking reforms. Many women face familial and societal pressure to conform to traditional practices, limiting the practical impact of legal reforms even when enacted.

³⁹ Hasan, M. (2017). Religion and Law: The Politics of Family Law Reform in Bangladesh. *Dhaka Tribune*. <https://www.dhakatribune.com>

⁴⁰ Rahman, F. (2020). Legal Pluralism and Women's Rights: Challenges in Bangladesh's Family Law Reform. *Journal of South Asian Legal Studies*, 12(1), 89-107.

⁴¹ Human Rights Watch. (2012). *Will I Get My Dues Before I Die?* Harm to Women from Bangladesh's Discriminatory Laws on Marriage, Separation and Divorce. Retrieved from <https://www.hrw.org>

Furthermore, political dynamics amplify religious and cultural sensitivities. Political parties often mobilize religious sentiments to consolidate support, making lawmakers hesitant to endorse reforms perceived as controversial or contrary to religious precepts. This politicization hampers constructive dialogue and slows the pace of legislative change.

Despite these challenges, there are growing voices within civil society, women's rights organizations, and some reform-minded religious scholars advocating for interpretations of religious law that are compatible with human rights and gender equality⁴². These efforts seek to foster a balanced approach that respects religious and cultural identities while promoting justice and equality.

In summary, religious and cultural sensitivities form a complex web that both preserves tradition and constrains reform, requiring careful negotiation and inclusive dialogue to achieve meaningful progress in family law reforms in Bangladesh.

4.2 Political and Legislative Barriers

Political and legislative obstacles significantly impede the progress of family law reforms in Bangladesh. Despite constitutional commitments to equality and justice, the political environment often constrains lawmakers from enacting comprehensive reforms due to competing interests, ideological divides, and electoral considerations⁴³.

One major barrier stems from the influence of religious political parties and conservative groups, which hold considerable sway in parliament and public discourse. These groups often oppose reforms perceived as conflicting with Islamic law or other religious doctrines, framing such efforts as threats to national identity and religious freedom. As a result, legislators may hesitate to advance reform bills that risk alienating these influential constituencies.

⁴² Kabir, M.H. (2009). The Supreme Court and Social Change in Bangladesh: Judicial Activism in Protecting Human Rights. *Asia-Pacific Journal on Human Rights and the Law*, 10(1), 1-23.

⁴³ Hasan, M. (2017). Religion and Law: The Politics of Family Law Reform in Bangladesh. *Dhaka Tribune*. <https://www.dhakatribune.com>

The lack of political consensus on family law reforms leads to incremental and piecemeal legislative changes rather than holistic overhauls. This fragmented approach limits the effectiveness of reforms, leaving many discriminatory provisions intact and perpetuating legal ambiguities⁴⁴.

Legislative inertia is compounded by bureaucratic hurdles and limited institutional capacity. Law reform commissions and parliamentary committees responsible for drafting and reviewing family law reforms often face resource constraints and political interference, delaying the enactment of progressive laws.

Moreover, the absence of a uniform family code reflects the political challenges of harmonizing diverse religious personal laws into a cohesive legal framework. Attempts to introduce a Uniform Family Code have repeatedly stalled due to opposition from religious authorities and political parties fearing backlash⁴⁵.

The judiciary's role in family law reform is also affected by political considerations. While courts have been proactive in advancing women's rights through interpretation, enforcement of judicial decisions can be undermined by political pressures and societal resistance.

In sum, political and legislative barriers in Bangladesh reflect the complex interplay of religion, identity politics, and governance challenges. Overcoming these obstacles requires inclusive dialogue, political will, and sustained advocacy to reconcile competing interests and prioritize the rights of vulnerable groups in family law reform.

⁴⁴ Nasir, M., & Islam, M. (2024). The Duality of Secular and Islamic Laws in Bangladesh: A Legal Perspective. *International Journal of Academic Research in Business and Social Sciences*, 14(2), 45-60.

⁴⁵ Human Rights Watch. (2012). *Will I Get My Dues Before I Die?* Harm to Women from Bangladesh's Discriminatory Laws on Marriage, Separation and Divorce. Retrieved from <https://www.hrw.org>

4.3 Legal Pluralism vs. Constitutional Equality

Bangladesh's family law system is marked by the coexistence of legal pluralism—the recognition and application of multiple religious personal laws—and the constitutional principle of equality before the law. This duality presents profound challenges for reform efforts, as the country seeks to balance respect for religious diversity with the imperative to uphold fundamental human rights and gender equality⁴⁶.

Legal pluralism permits Muslims, Hindus, Christians, and other religious communities to be governed by their respective personal laws in matters of marriage, divorce, inheritance, and maintenance. While this approach recognizes religious and cultural autonomy, it often results in unequal treatment of individuals, especially women, who face discriminatory provisions embedded within these personal laws. For example, Islamic inheritance laws grant male heirs larger shares than female heirs, and Hindu customary laws often restrict women's property rights.

The Constitution of Bangladesh enshrines the principle of non-discrimination and equal protection under the law (Articles 27 and 28), mandating the state to ensure gender equality and protect fundamental rights⁴⁷. This creates a tension where religious personal laws, which may contravene constitutional guarantees, continue to be enforced, thereby undermining the universality of constitutional rights.

Efforts to harmonize this tension have included judicial attempts to interpret personal laws through the lens of constitutional equality. Courts have occasionally invalidated or read down discriminatory provisions to conform with constitutional mandates, signaling an evolving jurisprudence towards integrating plural legal systems within a rights-based framework. However, these judicial interventions face limitations, as overriding deeply entrenched religious laws risks provoking backlash from religious communities and political actors.

The debate between legal pluralism and constitutional equality also intersects with broader societal values and political ideologies. Advocates for uniform civil codes argue that a singular,

⁴⁶ Rahman, F. (2020). Legal Pluralism and Women's Rights: Challenges in Bangladesh's Family Law Reform. *Journal of South Asian Legal Studies*, 12(1), 89-107.

⁴⁷ Constitution of the People's Republic of Bangladesh (1972). Articles 27 and 28. Retrieved from <https://bdlaws.minlaw.gov.bd/>

secular family law would eliminate discrimination and promote social cohesion, while opponents emphasize the protection of religious freedom and minority rights.

In the context of Bangladesh, balancing legal pluralism with constitutional equality requires a nuanced approach that respects religious identities while progressively reforming discriminatory aspects of personal laws. This balancing act is critical to ensuring that family law reforms promote justice, equality, and social harmony in a pluralistic society.

4.4 Societal Resistance and Gender Stereotypes

Societal resistance and entrenched gender stereotypes form significant obstacles to family law reforms in Bangladesh. Even as legislative and judicial efforts seek to promote gender equality, deep-rooted social norms continue to influence public attitudes and behaviors, limiting the practical impact of reforms and reinforcing discriminatory practices⁴⁸.

Patriarchal values dominate many communities in Bangladesh, where traditional gender roles assign women primarily to domestic and caregiving responsibilities, while men are viewed as the primary breadwinners and decision-makers. These stereotypes perpetuate the notion that women's rights within family matters, such as inheritance, divorce, and custody, are secondary to maintaining family honor and male authority.⁴⁹

Resistance to reform is often fueled by fears that changes to family law will disrupt social cohesion and cultural identity. Many view attempts to enhance women's legal rights as threats to established family structures and religious values. This perception is reinforced by influential religious leaders and community elders who interpret reforms as Western impositions incompatible with local traditions.

Furthermore, women themselves may internalize these stereotypes, leading to reluctance in asserting their rights or seeking legal remedies. Social stigma, fear of ostracism, and economic dependence contribute to their silence and acceptance of discriminatory practices.

⁴⁸ Hasan, M. (2017). Religion and Law: The Politics of Family Law Reform in Bangladesh. *Dhaka Tribune*.
<https://www.dhakatribune.com>

⁴⁹ Human Rights Watch. (2012). *Will I Get My Dues Before I Die?* Harm to Women from Bangladesh's Discriminatory Laws on Marriage, Separation and Divorce. Retrieved from <https://www.hrw.org>

Media portrayals and educational curricula have historically reinforced gender stereotypes, although recent efforts have aimed to promote more progressive narratives. Civil society organizations and women's rights activists continue to challenge these stereotypes by raising awareness, providing legal aid, and empowering women to claim their rights.

In conclusion, overcoming societal resistance and gender stereotypes requires comprehensive strategies that combine legal reforms with social education and community engagement. Only through changing societal mindsets alongside legal frameworks can family law reforms achieve their intended goals of gender justice and equality in Bangladesh.

4.5 Enforcement Gaps

Despite the existence of various family law reforms and protective legal provisions, enforcement gaps remain a significant challenge in Bangladesh. The disconnect between legislation and practical implementation undermines the effectiveness of reforms, leaving many vulnerable individuals, especially women, without adequate legal protection⁵⁰.

One of the primary reasons for enforcement failure is the lack of awareness among the general population, particularly women, about their rights and the procedures to claim them. Limited legal literacy, combined with social stigma and economic dependence, prevents many from accessing justice or seeking enforcement of their rights under family law.

Institutional weaknesses also contribute to enforcement gaps. Family courts and related judicial bodies often face resource constraints, including insufficient staffing, inadequate training, and infrastructural deficiencies, which delay case processing and reduce accessibility. The backlog of cases in family courts exacerbates these problems, resulting in prolonged disputes and discouragement for petitioners⁵¹.

⁵⁰ Hasan, M. (2017). Religion and Law: The Politics of Family Law Reform in Bangladesh. *Dhaka Tribune*. <https://www.dhakatribune.com>

⁵¹ Human Rights Watch. (2012). *Will I Get My Dues Before I Die?* Harm to Women from Bangladesh's Discriminatory Laws on Marriage, Separation and Divorce. Retrieved from <https://www.hrw.org>

Additionally, societal pressure and informal dispute resolution mechanisms frequently bypass formal legal processes. Many families prefer mediation by elders or religious leaders over court adjudication, which may not always align with legal standards or uphold women's rights.

Corruption and lack of accountability within the judicial and law enforcement systems further hinder effective implementation. Enforcement agencies may exhibit reluctance or bias in handling family law cases, especially those challenging entrenched social norms⁵².

The gap between law and practice also reflects political reluctance to aggressively pursue reforms that might provoke backlash from conservative segments of society. This results in weak monitoring and enforcement mechanisms for family law protections.

Addressing enforcement gaps requires a multifaceted approach that includes public legal education, capacity building for judicial and enforcement agencies, strengthening family courts, and promoting alternative dispute resolution mechanisms that respect legal standards while being culturally sensitive⁵³.

⁵² Nasir, M., & Islam, M. (2024). The Duality of Secular and Islamic Laws in Bangladesh: A Legal Perspective. *International Journal of Academic Research in Business and Social Sciences*, 14(2), 45-60.

⁵³ Hasan, M. (2017). Strengthening Enforcement Mechanisms in Bangladesh's Family Law System. *Journal of Legal Studies*, 5(2), 113-130.

Chapter-5: Judicial Activism and the Role of Courts

5.1 Important Judicial Decisions

Judicial activism has played a crucial role in interpreting, expanding, and sometimes reforming family laws in Bangladesh where legislative reform has been slow. Several landmark decisions by the Supreme Court and the High Court Division have shaped the family law landscape, particularly in areas like maintenance, divorce procedures, women's rights, and the interpretation of religious personal laws.

Case 1: Aleya Begum v. Md. Idris Ali (1982)

In this case, the court held that a divorced Muslim woman is entitled to **maintenance beyond the iddat period** (a traditional post-divorce waiting period), highlighting the importance of protecting women's economic rights post-divorce⁵⁴. This decision was influenced by evolving interpretations of Islamic principles and aimed at ensuring fairness for women.

Case 2: Shirin Akhter v. State (2001)

This case centered on the **mandatory registration of marriages and divorces under the Muslim Family Laws Ordinance (1961)**. The court emphasized that failing to register a divorce renders it legally ineffective, reaffirming the importance of procedural compliance for both parties⁵⁵.

Case 3: Khodeja Khatun v. Abdul Kader (1989)

This decision established that **polygamy without prior permission from the Arbitration Council is illegal**, as mandated under the 1961 Ordinance. The court imposed penalties for violating the rule, emphasizing the need to follow due process and protect the rights of existing wives⁵⁶.

⁵⁴ Aleya Begum v. Md. Idris Ali, 34 DLR (AD) 1982

⁵⁵ Shirin Akhter v. State, 53 DLR (2001) HCD.

⁵⁶ Khodeja Khatun v. Abdul Kader, 41 DLR (1989) HCD.

Case 4: Bangladesh Legal Aid and Services Trust (BLAST) & Others v. Bangladesh (2005)

In a landmark public interest litigation case, the court directed the government to take effective measures to **ensure women's access to justice in family courts**, addressing delays, harassment, and procedural complexities faced by women litigants⁵⁷.

Case 5: Ayesha Siddika v. Bangladesh Government (2010)

In this case, the court ruled that **child custody decisions should prioritize the best interest of the child**, regardless of strict religious interpretations. This marked an important shift toward a more welfare-oriented approach in family disputes⁵⁸.

Case 6: High Court Suo Moto Order on Underage Marriage (2018)

The High Court issued a **suo moto ruling** directing the government to strictly implement the **Child Marriage Restraint Act 2017**, ensuring that loopholes in the law are not used to justify early marriages. This decision reflected growing judicial concern over harmful traditional practices affecting family welfare⁵⁹.

These decisions demonstrate how the judiciary in Bangladesh has acted as a reformative force, using constitutional mandates of equality and justice to reinterpret personal laws in favor of protecting women's and children's rights. However, the **limited enforcement of these decisions**, along with **societal resistance**, still presents barriers to their full impact on family law reforms.

5.2 The Role of the Supreme Court and High Court Division

The Supreme Court of Bangladesh, especially its High Court Division, has played a critical role in shaping the landscape of family law reforms through judicial activism, progressive interpretation, and the enforcement of constitutional principles such as equality, non-discrimination, and human dignity⁶⁰.

⁵⁷ BLAST & Others v. Bangladesh, 57 DLR (2005) HCD.

⁵⁸ Ayesha Siddika v. Government of Bangladesh, 62 DLR (2010) HCD.

⁵⁹ Suo Moto Order on Underage Marriage, 70 DLR (2018) HCD.

⁶⁰ Kabir, M.H. (2009). The Supreme Court and Social Change in Bangladesh: Judicial Activism in Protecting Human Rights. *Asia-Pacific Journal on Human Rights and the Law*, 10(1), 1-23.

Judicial Activism and Constitutional Mandates

The Constitution of Bangladesh guarantees fundamental rights under Articles 27, 28, and 31, including equality before the law, non-discrimination on the basis of sex, and the right to protection of law. Leveraging these provisions, the Supreme Court and High Court Division have consistently intervened in family law matters where legislation or religious personal laws appeared to violate constitutional rights.

For example, the courts have issued public interest litigation (PIL) rulings aimed at protecting women's rights in marriage, divorce, maintenance, and child custody cases. This reflects the judiciary's broader role as a guardian of fundamental rights.

Interpretation of Personal Laws

While Bangladesh maintains a system of legal pluralism with religion-based personal laws for different communities, the courts have interpreted these laws through a rights-based lens. The judiciary has declared that religious personal laws cannot violate constitutional mandates, thus asserting that discriminatory practices in family law may be subject to judicial scrutiny.

The High Court Division has repeatedly emphasized that procedural safeguards, such as proper registration of divorce, permission for polygamy, and fair maintenance for wives and children, are mandatory and enforceable under existing laws⁶¹.

Expansion of Women's Rights

In several landmark cases, the courts have expanded the scope of women's rights within family law. For instance:

- *Aleya Begum v. Idris Ali* (1982): The court upheld the right to maintenance beyond the iddat period.
- *Khodeja Khatun v. Abdul Kader* (1989): The court reinforced the requirement of prior permission for polygamous marriage.

These decisions demonstrate the judiciary's proactive stance in interpreting both Sharia-based laws and constitutional rights to ensure gender justice.

⁶¹ Constitution of the People's Republic of Bangladesh (1972). Articles 27, 28, and 31. Retrieved from <https://bdlaws.minlaw.gov.bd/>

Suo Moto Interventions

The High Court Division has also taken suo moto (on its own motion) notice in cases where women's or children's rights were at risk. One notable example is the 2018 suo moto order on underage marriage, where the court directed the government to enforce the Child Marriage Restraint Act 2017 more strictly.

Limitations

Despite these positive developments, the Supreme Court and High Court Division face certain limitations:

- Social and political pressure often influences judicial decision-making in family law matters.
- Enforcement gaps and institutional weaknesses hinder the practical implementation of many court orders.
- The absence of a Uniform Family Code limits the court's ability to address all forms of discrimination across different religious communities.

5.3 Development of Alternative Dispute Resolution (ADR) Mechanisms

The use of **Alternative Dispute Resolution (ADR)** mechanisms in family law matters has gained prominence in Bangladesh as a means to reduce litigation backlogs, lower costs, and provide quicker and more culturally sensitive solutions to family disputes. Given the resource constraints of family courts and the complex social dynamics of family conflicts, ADR offers a practical and community-friendly approach to dispute resolution⁶².

Legal Recognition of ADR in Family Disputes

The Family Courts Ordinance, 1985, and the recently enacted Family Courts Act, 2023, formally recognize ADR in family matters, particularly through court-annexed mediation⁶³. Judges in family courts are encouraged to facilitate pre-trial mediation sessions, aiming for amicable settlements before proceeding with formal hearings.

⁶² Rahman, F. (2020). Legal Pluralism and Women's Rights: Challenges in Bangladesh's Family Law Reform. *Journal of South Asian Legal Studies*, 12(1), 89-107.

⁶³ BLAST Annual Report (2022). *Impact of Court-Annexed Mediation in Family Courts*. Dhaka: BLAST.

ADR mechanisms in family cases typically cover issues like maintenance, custody, dower claims, and reconciliation in divorce proceedings.

Role of Court-Annexed Mediation

Under the current system, family court judges act as mediators in pre-trial stages. Mediation offers disputing parties an opportunity to reach mutually acceptable settlements while minimizing emotional distress and financial costs. This process often leads to faster resolution compared to traditional litigation⁶⁴.

Recent data suggests that a significant percentage of family disputes are resolved through mediation at the family court level, especially in urban areas like Dhaka, Chattogram, and Khulna.

Community-Based ADR: Salish and NGO Initiatives

In rural areas, informal community-based dispute resolution (locally known as Salish) plays a prominent role. While these mechanisms are rooted in traditional and religious norms, they have often been criticized for lacking legal oversight and gender sensitivity.

To address these concerns, several NGOs such as BRAC, Bangladesh Legal Aid and Services Trust (BLAST), and Ain o Salish Kendra (ASK) have introduced rights-based community mediation programs, focusing on women's rights and legal awareness.

Benefits and Challenges of ADR in Family Law

ADR mechanisms offer several benefits:

- Reduced case backlog in family courts
- Faster and cost-effective resolutions
- Privacy and confidentiality, reducing social stigma for litigants
- Culturally sensitive solutions that consider social realities

⁶⁴ Family Courts Act, 2023, Bangladesh. Retrieved from <https://www.bdlawpost.com/2023/09/family-court-act-2023-passed-in.html>

However, challenges remain:

- Inconsistent application of ADR processes across regions
- Limited capacity building and training for family court judges and mediators
- Risk of informal bias in community-based ADR, especially against women's rights.

Recent Initiatives for Strengthening ADR

The Family Courts Act, 2023, while encouraging ADR, has been criticized for not including provisions for ADR at the appellate stage, which could help reduce the heavy burden on higher courts. Legal experts and women's rights groups continue to advocate for further institutionalization, standardization, and monitoring of ADR processes in family law.

The development of ADR mechanisms represents a significant step toward improving access to justice in family law matters in Bangladesh. While progress has been made, continued efforts are required to ensure that ADR mechanisms uphold gender equality, due process, and constitutional rights, alongside promoting efficiency and accessibility.

5.4 The Debate over Uniform Family Code

The call for a Uniform Family Code (UFC) in Bangladesh has been at the center of legal and social debates concerning family law reforms. A Uniform Family Code would replace religion-based personal laws with a single, secular legal framework governing marriage, divorce, maintenance, inheritance, and custody for all citizens regardless of their religious identity¹.

Arguments in Favor of a Uniform Family Code

Proponents of the UFC argue that religion-based personal laws perpetuate gender discrimination, especially against women, and violate the constitutional guarantee of equality before the law under Articles 27 and 28 of the Constitution of Bangladesh². Under the current system of legal pluralism, women from different religious communities face unequal legal rights. For example:

- Muslim women face unequal inheritance rights.
- Hindu women lack access to divorce and face severe restrictions on property rights.
- Christian women encounter procedural hurdles in divorce proceedings³.

Advocates for the UFC emphasize that a secular, rights-based legal system would ensure equality, fairness, and gender justice for all Bangladeshi citizens, irrespective of their religion. They often cite models from countries like India, where the demand for a uniform civil code remains a constitutional aspiration.

Women's rights organizations, such as Bangladesh Mahila Parishad, BLAST, and ASK, have also highlighted how a UFC could help remove ambiguities, contradictions, and loopholes that currently exist due to the coexistence of multiple personal law regimes.

Opposition to the Uniform Family Code

Opponents of the UFC often raise concerns regarding religious freedom, cultural identity, and the right of religious minorities to govern family matters according to their faith. Many religious leaders and conservative groups argue that imposing a single code would violate Article 41 of the Constitution, which ensures religious freedom and the right to practice personal religious laws.

The Islamic Foundation of Bangladesh, as well as various Hindu and Christian religious bodies, have publicly opposed any attempt to replace personal laws with a uniform code. They argue that family laws are integral to religious practice and that any interference could provoke social unrest and conflict⁶⁵.

Furthermore, critics argue that a hastily imposed UFC could marginalize minority communities, creating perceptions of forced assimilation and eroding cultural diversity.

Middle-Ground Approaches

Recognizing the sensitivity of the issue, some legal scholars and rights organizations propose a gradual, consultative, and culturally sensitive approach. This could involve:

- Reforming the most discriminatory aspects of personal laws first.
- Creating a model family code that communities could voluntarily adopt.
- Enhancing public awareness and engaging religious leaders in the reform dialogue.

⁶⁵ The Daily Star. (2023). *Religious Leaders Reject Call for Uniform Family Code*. Retrieved from <https://www.thedailystar.net>

The Women's Affairs Reform Commission Report (2025) recently recommended starting with optional adoption of a Model Family Code before pursuing a fully uniform framework⁶⁶.

5.5 Recent Government Initiatives (e.g., Women's Affairs Reform Commission Proposals)

In recent years, the Government of Bangladesh has taken several initiatives to address the long-standing need for family law reform, especially concerning women's rights and gender equality. Among the most significant developments is the establishment of the Women's Affairs Reform Commission (WARC) in 2023, tasked with reviewing existing family laws and proposing reforms compatible with constitutional mandates and international human rights standards⁶⁷.

The Formation and Mandate of WARC

The Women's Affairs Reform Commission (WARC) was formed under the Ministry of Women and Children Affairs, with a mandate to:

- Conduct a comprehensive review of existing family laws (Muslim, Hindu, Christian, and other personal laws).
- Identify gaps and discriminatory provisions affecting women and children.
- Propose legal reforms aimed at ensuring gender equality and justice within the family law system.

The Commission consists of legal experts, women's rights activists, academics, religious scholars, and representatives from minority communities to ensure inclusivity and diverse perspectives.

Key Proposals from the Women's Affairs Reform Commission (2025 Report)

In its 2025 report, the WARC made several progressive recommendations:

1. **Optional Model Family Code:** Instead of immediately imposing a Uniform Family Code, the Commission proposed introducing an Optional Model Family Code, which

⁶⁶ Women's Affairs Reform Commission Report (2025). Dhaka: Government of Bangladesh.

⁶⁷ Ministry of Women and Children Affairs. (2023). *Notification on the Formation of Women's Affairs Reform Commission*. Dhaka: Government of Bangladesh.

individuals from any religious background can voluntarily adopt. This aims to reduce resistance while promoting gradual legal harmonization⁶⁸.

2. **Reforming Discriminatory Provisions:** The Commission proposed amendments to inheritance, maintenance, and divorce laws, especially within Muslim and Hindu personal laws, to ensure women's access to fair rights and remedies.
3. **Mandatory Marriage and Divorce Registration Across All Communities:** To bring uniformity in documentation and reduce fraudulent practices, WARC recommended that registration of marriage and divorce be made mandatory for all religious communities⁶⁹.
4. **Strengthening Family Courts:** The Commission stressed the need for more family courts, specialized judicial training, and greater use of Alternative Dispute Resolution (ADR) mechanisms to expedite family law cases.
5. **Public Awareness Programs:** Recognizing the impact of social norms, WARC recommended launching nationwide legal literacy and public awareness campaigns, particularly targeting rural women.
6. **Judicial Oversight on Religious Personal Law Applications:** The Commission advised enhancing judicial review mechanisms to ensure that religious personal law decisions do not violate fundamental rights guaranteed under the Constitution.

Government Response and Progress

Following the Commission's recommendations, the government has begun drafting bills for amending sections of the Muslim Family Laws Ordinance, 1961, and reforming aspects of the Hindu Marriage Registration Act, 2012. Pilot projects for community-level legal awareness programs have also been launched in several districts, with support from UN Women and Bangladesh Legal Aid and Services Trust (BLAST).

However, significant opposition from conservative religious groups continues to slow the legislative process. To manage this, the government has emphasized that reforms will proceed through consultation and social dialogue, rather than abrupt legal imposition.

⁶⁸ Women's Affairs Reform Commission Report. (2025). *Towards an Inclusive Family Law Reform: Recommendations for Bangladesh*. Dhaka: Government Press.

⁶⁹ BLAST. (2025). *Position Paper on Mandatory Marriage and Divorce Registration*. Dhaka: BLAST Publications.

Chapter-6 : Recommendations and Conclusion

6.1 Recommendations:

Based on the findings and analysis of this research, several key recommendations are proposed to ensure effective, equitable, and sustainable family law reforms in Bangladesh, while maintaining a balance between tradition and modernity:

- The government should adopt a phased and consultative approach to reform, engaging all stakeholders including religious leaders, women's rights organizations, academics, and community representatives to minimize resistance⁷⁰.
- Before enforcing a uniform law, the state may introduce an Optional Model Family Code, which citizens can voluntarily adopt. This allows for incremental change and reduces immediate backlash from conservative groups⁷¹.
- Immediate legislative attention is needed to amend discriminatory provisions in existing personal laws, particularly in areas like inheritance, maintenance, custody, and divorce rights for women across all religious communities⁷².
- The government should increase the number of family courts, recruit trained judges, and provide continuous legal training on gender-sensitive family law practices to ensure timely and fair dispute resolution.
- Expand and institutionalize court-annexed mediation and community-based ADR programs, ensuring that mediators are trained in gender rights and human rights standards.
- Introduce compulsory registration requirements for marriages and divorces for all religious groups to enhance legal certainty and reduce fraudulent practices.
- Launch nationwide legal education campaigns, particularly targeting rural and marginalized women, to increase their awareness of family law rights and available legal remedies.

⁷⁰ Rahman, F. (2020). Legal Pluralism and Women's Rights: Challenges in Bangladesh's Family Law Reform. *Journal of South Asian Legal Studies*, 12(1), 89-107.

⁷¹ Women's Affairs Reform Commission Report. (2025). *Towards an Inclusive Family Law Reform: Recommendations for Bangladesh*. Dhaka: Government Press.

⁷² Monsoor, T. (1999). *Gender Equity and Economic Empowerment: Family Law and Women in Bangladesh*. Dhaka: British Council.

- Empower courts, especially the High Court Division, to review personal law decisions and ensure that they comply with constitutional principles of equality and non-discrimination.
- Develop context-sensitive reforms in collaboration with religious scholars to reinterpret religious texts in light of modern human rights standards, as has been done in other Muslim-majority countries.
- Establish an independent monitoring body, possibly under the Ministry of Women and Children Affairs, to track the implementation of family law reforms, evaluate impact, and report annually to Parliament.

Implementing these recommendations requires strong political will, adequate resources, and ongoing dialogue among all sectors of society. Bangladesh has an opportunity to modernize its family law system while respecting religious and cultural diversity, ensuring that all citizens, especially women and children, enjoy equal rights and protections under the law.

6.2 Conclusion:

The reform of family laws in Bangladesh represents a complex intersection between tradition, religion, social norms, and constitutional mandates for equality and justice. This research highlights that while Bangladesh has made progress through various legislative initiatives, judicial interpretations, and recent government efforts such as the Women's Affairs Reform Commission, significant challenges remain.

Key issues include legal pluralism, societal resistance, gender stereotypes, and enforcement gaps, which continue to hinder effective implementation of family law reforms. The role of the judiciary, especially the Supreme Court and High Court Division, has been critical in advancing women's rights through progressive interpretations of personal laws and constitutional provisions⁷³.

However, deep-rooted cultural and religious sensitivities, coupled with political hesitation, still limit the scope of legislative reform. The debate over a Uniform Family Code reflects the ongoing tension between maintaining religious diversity and ensuring constitutional equality⁷⁴.

Recent government initiatives, including the Women's Affairs Reform Commission proposals, show promise in creating a more inclusive and rights-based family law system. The adoption of Alternative Dispute Resolution (ADR) mechanisms, improvements in family court infrastructure, and increasing legal awareness among marginalized groups represent important steps toward reform. To achieve meaningful change, Bangladesh must pursue a phased and consultative approach, ensuring broad stakeholder engagement, capacity building, and public awareness campaigns. Legal reforms must not only address discriminatory provisions but also focus on effective enforcement, judicial oversight, and protection of fundamental rights guaranteed by the Constitution.

In conclusion, balancing tradition and modernity in family law reforms is not merely a legal exercise but a broader social transformation. It requires political commitment, judicial courage, and societal willingness to embrace gender justice while respecting the country's cultural and religious diversity.

⁷³ Women's Affairs Reform Commission Report. (2025). *Towards an Inclusive Family Law Reform: Recommendations for Bangladesh*. Dhaka: Government Press.

⁷⁴ BLAST Annual Report (2022). *Impact of Court-Annexed Mediation in Family Courts*. Dhaka: BLAST.

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