

Research Monograph

On

" From Patriarchy to Gender Equity: Family Law and Its Impact on Women in Bangladesh "

A Thesis Submitted in Partial Fulfillment of the Requirements for the Degree of
LLM (Master's), Department of Law, Sonargaon University (SU)

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To

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Subject: Submission of Research Monograph.

Dear Madam,

It is with great pleasure that I submit my research monograph entitled "**From Patriarchy to Gender Equity: Family Law and Its Impact on Women in Bangladesh**". I have made my best efforts to complete this research monograph with relevant information that I have collected from various primary and secondary sources. I have concentrated my efforts to achieve the objectives of the work and hope that my endeavor will serve its intended purpose.

I shall be grateful and obliged if you kindly accept my thesis and evaluate it.

Sincerely,

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Declaration

I hereby do solemnly declare that the work presented in this research monograph entitled "**From Patriarchy to Gender Equity: Family Law and Its Impact on Women in Bangladesh**" has been carried out by me under the supervision of **Mrs. Sharmin Jahan Runa, Assistant Professor, Head (Acting)**, Department of Law, Faculty of Arts and Humanities, Sonargaon University, and has not been previously submitted to any other institution. The work I have presented does not breach any copyright.

I further undertake to indemnify the university against any loss or damage arising from breach of the foregoing obligations.

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Certificate of the Thesis Supervisor

This is to certify that the research monograph on "**From Patriarchy to Gender Equity: Family Law and Its Impact on Women in Bangladesh**" was done by **Israt Jahan Mim** in partial fulfillment of the requirements for the degree of Master of Law (Master's) from Sonargaon University. The research monograph has been carried out under my guidance and is a record of the bona fide work carried out successfully.

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Acknowledgement

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I would also like to express my gratitude to those people who gave me relevant information to proceed with my research report, and to my friends whose cooperation helped me greatly. I extend my sincere thanks to all the authors and writers whose precious works and publications aided me in completing this work.

Thank You.

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Abstract

The transition from patriarchal legal structures to gender equity remains one of the most complex jurisprudential and sociological challenges in Bangladesh. This comprehensive research report critically evaluates the profound impact of pluralistic family laws—governing the Muslim, Hindu, and Christian communities—on the fundamental rights, socio-economic security, and bodily autonomy of women. Operating within a post-colonial framework where personal laws are strictly dictated by religious identity, the state inadvertently but actively maintains a system of structural legal discrimination that starkly conflicts with the secular, egalitarian guarantees enshrined in the Constitution of the People's Republic of Bangladesh. This report contends that the overarching architecture of family law in Bangladesh institutionalizes the economic and social vulnerability of women through unequal rights in marriage dissolution, archaic inheritance doctrines, restrictive maintenance provisions, and regressive legislative loopholes regarding child marriage.

Through an exhaustive doctrinal, historical, and comparative analysis, this research synthesizes primary statutes, including the Muslim Family Laws Ordinance 1961, the Hindu Married Women's Right to Separate Residence and Maintenance Act 1946, the Divorce Act 1869, the Child Marriage Restraint Act 2017, and the recently enacted Family Courts Act 2023. It maps the trajectory of judicial activism, highlighting landmark pronouncements on maternal guardianship, the welfare of the child, and the unconstitutionality of the restitution of conjugal rights. The analysis demonstrates that while the judiciary occasionally subverts patriarchal norms to dispense substantive justice, legislative inaction and powerful socio-political backlash continue to impede systemic reform. Ultimately, this report argues that achieving true gender equity necessitates the enactment of a secular Uniform Family Code, the withdrawal of state reservations to international human rights instruments, and a fundamental paradigm shift that elevates the rights of the citizen above the dictates of religious orthodoxy.

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CHAPTER ONE

INTRODUCTION

THE SOCIO-LEGAL CONTEXT OF PATRIARCHY

1.1 The Theoretical Framework of Patriarchal Domination The legal status of women in Bangladesh is inextricably linked to the personal laws governing the core facets of domestic life: marriage, divorce, maintenance, custody, and inheritance. In a society deeply entrenched in patriarchal norms, the struggle for gender equity is primarily fought within the boundaries of family law.¹ The theoretical framework of this analysis draws upon the extensive scholarly discourse surrounding patriarchal domination in South Asia, recognizing that the subordination of women is not merely a cultural artifact but a condition actively sustained by state-sanctioned legal structures.

The concept of patriarchy, in this context, refers to the systemic institutionalization of male supremacy within the family unit, which is subsequently reinforced by statutory laws and judicial interpretations that prioritize male authority over female autonomy.² Patriarchy in the legal sphere operates through a sophisticated mechanism of inclusion and exclusion, deciding who holds the legal capacity to act, own, and exit. To fully understand this dynamic, one must recognize that law does not operate in a vacuum; it acts as both a mirror reflecting societal values and a mold shaping human behavior. By embedding male supremacy into the legal code itself—such as dictating that men hold primary guardianship over children or disproportionate inheritance rights over familial property—the state effectively subsidizes and legalizes patriarchal control. The law transforms cultural biases into enforceable state mandates, meaning that a woman challenging her subordinate status is not merely fighting cultural stigma within her community, but is actively battling the coercive institutional apparatus of the state.

The transition toward gender equity requires dismantling these institutionalized hierarchies. However, the legal system in Bangladesh relies on a pluralistic framework inherited from British colonial rule, wherein family affairs are governed by the specific religious identities of the citizens. During the colonial era, British administrators, reluctant to interfere with the deeply held religious beliefs of their subjects following the 1857 uprisings, chose to codify personal laws. Crucially, they did so by consulting elite, conservative religious scholars—entirely excluding the lived realities and voices of women. Consequently, Muslims, Hindus, and Christians in modern Bangladesh are subject to distinct, parallel legal regimes that often prioritize traditional religious orthodoxies and historical interpretations over modern concepts of fundamental human rights.³

This legal pluralism creates a highly fragmented landscape where the degree of patriarchal control exerted over a woman varies significantly depending on her religious affiliation, fundamentally undermining the concept of a unified, equitable citizenship. Rather than treating women as autonomous individuals holding universal rights granted by the Republic, the pluralistic system treats them as subjects of their respective religious communities. The practical effect is a jurisprudential siloing: advancements in gender equity in one demographic do not translate to others, freezing family law in a state of rigid, segmented conservatism that resists comprehensive, national reform.

1.2 The Systemic Chasm Between Constitutional Law and Personal Practice A profound and highly contentious conflict exists between the pluralistic family law system and the secular, egalitarian promises enshrined in the Constitution of the People's Republic of Bangladesh. Following independence in 1971, the drafters of the Constitution envisioned a modern republic founded on democratic principles, human dignity, and absolute equality. Part III of the Constitution lays down a clear and unequivocal mandate for fundamental human rights. Article 27 guarantees that all citizens are equal before the law and are entitled to equal protection of the law.⁴ More specifically, Article 28(2) explicitly provides that women shall have equal rights with men in all spheres of state and public life. Furthermore, Article 28(4) empowers the state to make special provisions in favor of women or children to advance their status within society.⁵

Despite these robust constitutional safeguards, the state's persistent policy of non-intervention regarding the personal laws of religious minority communities, coupled with a selective, piecemeal approach to reforming Islamic personal law, establishes a tiered system of female citizenship. There is an undeniable legal paradox where public life—such as voting, employment, and criminal justice—is governed by a secular constitutional framework, while private life remains entirely beholden to theological dictates. A woman's legal capacity to dissolve a toxic and abusive marriage, inherit her parents' property to secure economic independence, or secure legal custody of her children is dictated not by a universal standard of justice, but by the religious doctrines her community follows. This results in a reality where the constitutional guarantee of equality remains an abstract ideal rather than a lived reality for the vast majority of women navigating domestic disputes. When family courts adjudicate matters based on traditional religious texts, they often bypass the constitutional test of equality, allowing the state to effectively outsource the regulation of women's private lives to orthodox interpretations.

This chasm between constitutional rights and practical realities is further deepened by Bangladesh's international posture, specifically its reservations to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).⁶ By claiming that Article 2 (the core obligation to eliminate discriminatory laws) and Article 16(1)(c) (equal rights during marriage and its dissolution) conflict with Shari'ah-based personal laws, the state maintains a political shield that legitimizes systemic legal discrimination and deflects international scrutiny.⁷ The government's stance communicates a concerning message: that the fundamental human rights of women to be free from discrimination in their own homes are subordinate to the preservation of specific religious legal customs. These reservations signal a profound lack of political will to harmonize domestic personal laws with universal human rights standards, effectively freezing family law in a state of patriarchal preservation.

¹ T Monsoor, *From Patriarchy to Gender Equity* (UPL 1999).

² S S Ali, *Gender and Human Rights in Islamic and International Law* (Kluwer Law International 2000).

³ A M Serajuddin, *Sharia Law and Society* (Asiatic Society of Bangladesh 2011).

⁴ The Constitution of the People's Republic of Bangladesh 1972, art 27.

⁵ The Constitution of the People's Republic of Bangladesh 1972, art 28(2), 28(4).

⁶ Convention on the Elimination of All Forms of Discrimination Against Women (1979)

CHAPTER TWO

THE INSTITUTION OF MARRIAGE: AUTONOMY, COMMODIFICATION, AND COERCION

2.1 The Divergent Conceptualizations of Marriage The conceptual foundation of marriage varies significantly across the legal regimes in Bangladesh, fundamentally shaping the rights, obligations, and exit strategies available to the women entering these unions. Marriage is not a monolithic institution in the eyes of Bangladeshi law; rather, it takes on entirely different legal characters based on the religious registry involved, dictating the very nature of a woman's autonomy from her wedding day onward.

Under Muslim personal law, marriage (*nikah*) is fundamentally a civil contract requiring a formal offer, acceptance, and consideration in the form of dower. Because it is a contract, it inherently assumes a level of mutual consent and the capacity for negotiation between the parties. This contractual nature theoretically provides flexibility, allowing spouses to insert specific conditions into the marriage deed (*kabin-nama*), such as delegating the right of divorce to the wife.⁸ If fully utilized by a legally literate bride and a supportive family, the *kabin-nama* can be a powerful tool for a woman to secure her autonomy, allowing her to negotiate stipulations regarding her right to work, her right to maintain a separate residence, or the explicit restriction of the husband's ability to take a second wife without her written consent. However, pervasive patriarchal norms often prevent women from engaging in this negotiation, treating the standard contract merely as a formality to be signed rather than a document to be drafted.

In stark contrast, traditional Hindu law conceptualizes marriage as a sacrosanct, divine, and indissoluble sacrament. It is viewed as a holy union that creates a lifelong spiritual bond extending beyond death, a conceptualization that historically formed the basis for the absolute prohibition of divorce and the expectation of perpetual female devotion.⁹ Because it is a sacrament rather than a contract, the concept of negotiating terms or inserting exit clauses is entirely alien to the framework. The woman is traditionally viewed as being given as a gift (*kanyadan*) by her father to her husband, transferring her completely and irrevocably into the patriarchal lineage of her spouse. This sacramental nature strips the Hindu bride of contractual agency.

Christian marriage, while possessing a deep spiritual and sacramental dimension, is governed strictly by the Christian Marriage Act 1872 and the Divorce Act 1869, establishing a rigid statutory framework for both its solemnization and its dissolution.¹⁰ It bridges the gap between sacrament and contract by relying heavily on statutory regulation, requiring formal registration and allowing for dissolution, albeit under highly restrictive and often discriminatory statutory conditions inherited from Victorian England.

2.2 The Economic Dynamics: Dower (Mahr) vs. The Dowry System The financial exchanges surrounding marriage heavily influence the power dynamics within the home, dictating a woman's vulnerability to exploitation. In Muslim marriages, the provision of dower (*mahr*) is an essential and non-negotiable element of the contract, serving as a token of respect and providing a baseline measure of financial security for the wife.¹¹ Fixed in the marriage contract, it is typically divided into two components: the prompt portion, which is payable immediately upon demand, and the deferred portion, which becomes payable upon the dissolution of the marriage by death or divorce. The deferred *mahr* specifically acts as a financial deterrent against arbitrary divorce by the husband, theoretically securing the wife's economic future if the marriage breaks down. While *mahr* is a legally enforceable right designed to protect Muslim women, the practical reality is that its realization is frequently obstructed by protracted litigation and intense societal pressure to forgive the debt. Women are often emotionally manipulated into "waiving" their *mahr* on their wedding night or during the marriage to prove their selfless devotion, completely nullifying its protective intent.

More perniciously, the legal concept of *mahr* is frequently overshadowed by the illegal, yet culturally pervasive, system of dowry (*joutuk*). Dowry represents a systemic inversion of economic security, where the bride's family is socially coerced into transferring significant assets, cash, or property to the groom's family as a condition of the marriage. Unlike *mahr*, which flows from the husband to the wife as a protective measure, dowry flows from the bride's family to the groom, acting as a price paid to secure the marriage and ensure the bride's "good treatment." This practice effectively commodifies the bride, reducing her worth to the financial transaction accompanying her transfer between households.¹²

Although the state enacted the Dowry Prohibition Act to criminalize the giving and taking of dowry, enforcement remains chronically weak.¹³ Societal complicity, the secretive nature of these transactions (often disguised as "gifts"), and the reluctance of victims' families to approach the police make policing incredibly difficult. Consequently, dowry-related violence, harassment, and murder remain leading causes of female mortality and marital breakdown in Bangladesh. When dowry demands are not met or subsequent demands are issued after marriage, brides face severe physical and psychological abuse, often culminating in tragic fatalities disguised as suicides or kitchen accidents. Notably, Hindu and Christian legal frameworks lack any statutory equivalent to the protective mechanism of *mahr*, leaving minority women entirely dependent on the equitable distribution of familial assets or vulnerable to similar dowry extortions without any built-in contractual safeguards to mitigate the financial imbalance.

2.3 The Scourge of Child Marriage and the CMRA 2017 The regulation of the minimum age of marriage serves as a critical indicator of a state's commitment to protecting the bodily autonomy, educational prospects, and health of its female citizens. Child marriage severely curtails a girl's potential, pulling her out of education, exposing her to the physical trauma of early pregnancy, and trapping her in a cycle of economic dependence before she reaches cognitive maturity. For decades, Bangladesh operated under the colonial-era Child Marriage Restraint Act of 1929, which proved entirely ineffective against deeply entrenched cultural practices. The 1929 Act suffered from pitifully low penalties and, critically, did not invalidate the marriage itself once consummated, rendering it a toothless deterrent. In 2017, the legislature enacted the Child Marriage Restraint Act (CMRA) 2017, intended to provide a more robust mechanism to curb the exceptionally high rates of child marriage in the region.¹⁴

The CMRA 2017 establishes the minimum age of marriage at 21 for males and 18 for females.¹⁵ It explicitly criminalizes the contracting, facilitating, and solemnization of underage unions. The Act, alongside the Child Marriage Restraint Rules formulated in 2018, mandates the creation of Child Marriage Prevention Committees at local levels—comprising local government officials, teachers, and law enforcement—to intervene and halt prospective child marriages. Punishments were significantly enhanced, stipulating that any adult contracting a child marriage, or any parent facilitating one, faces imprisonment and significant fines, while a minor contracting such a marriage may face detention up to one month or a fine up to 50,000 Taka.¹⁶ This represented a major legislative leap forward, providing authorities with actual enforcement power to disband ceremonies and penalize perpetrators.

However, the efficacy of the entire legislative framework is severely compromised, if not entirely undermined, by the inclusion of a highly controversial "special provision" under Section 19 of the Act.¹⁷ Section 19 permits the marriage of minors below the statutory age under "special circumstances" in the "best interests of the minor," provided there is parental consent and judicial authorization. Crucially, the legislation fails to define what constitutes these special circumstances, nor does it establish an absolute minimum age floor for such exceptions (e.g., forbidding marriage entirely below the age of 16 regardless of circumstances), creating a vast legal vacuum.¹⁸

This provision acts as a legal loophole that effectively validates and legalizes child marriage under the guise of state authorization. In practice, it is frequently utilized by conservative families and sympathetic local courts to formalize marriages resulting from elopement, to cover up statutory rape, or to legitimize pregnancies out of wedlock in order to protect family "honor". Instead of protecting the vulnerable minor from statutory rape, the law allows the perpetrator to legally marry his victim, effectively erasing the crime from the judicial record. By legally prioritizing patriarchal concepts of female chastity, virginity, and social reputation over the physical, psychological, and developmental well-being of the girl child, Section 19 represents a profound legislative regression. It directly contradicts the state's broader international commitments and its National Plan of Action to completely eradicate child marriage, demonstrating how the law is manipulated to serve patriarchal social preservation over the absolute rights of the child.

⁸ J A Nasir, *The Islamic Law of Personal Status* (1990).

⁹ M Kamal, 'Marital Rights of Hindu Women in Bangladesh' (OSUN Global Commons 2023).

¹⁰ The Christian Marriage Act 1872; The Divorce Act 1869.

¹¹ T Monsoor, 'Maintenance to Muslim Wives: The Legal Connotations' (1998) IX(1) Dhaka Uni. Studies.

¹² Human Rights Watch, 'Will I Get My Dues Before I Die?' (HRW Report 2012).

¹³ Dowry Prohibition Act 2018.

¹⁴ Child Marriage Restraint Act 2017.

¹⁵ Child Marriage Restraint Act 2017, s 2.

¹⁶ Child Marriage Restraint Act 2017, s 7.

CHAPTER THREE

THE DISSOLUTION OF MARRIAGE: THE ASYMMETRY OF EXIT

3.1 Unilateral Talaq and the Promise of Delegated Divorce The ultimate power dynamic within any contractual or social relationship is determined by the ease with which a party can exit that relationship. In Bangladesh, the dissolution of marriage is characterized by profound and systemic gender asymmetry. Under uncoded Muslim personal law, a husband of sound mind possesses the unilateral, arbitrary, and extra-judicial power to divorce his wife (*talaq*) at any time, without attributing any cause, providing justification, or seeking judicial approval. This absolute, unchecked power generates a perpetual state of psychological and economic insecurity for the wife, who can be summarily discarded at the husband's whim. The sheer threat of unilateral *talaq* is often weaponized within the domestic sphere to ensure a wife's absolute obedience and subservience, heavily skewing the marital balance of power.

Recognizing the chaotic and devastating effects of instant, unrecorded divorces, the state historically intervened to regulate the procedure. The Muslim Family Laws Ordinance (MFLO) 1961 attempted to introduce vital procedural safeguards to mitigate the abruptness of *talaq*.¹⁹ Section 7 of the MFLO requires the husband to send a written notice of the divorce to the local Union Parishad Chairman and officially supply a copy to the wife. The divorce does not become legally effective until the expiration of a 90-day conciliation period, during which an Arbitration Council attempts to mediate a reconciliation between the estranged parties.²⁰ While this procedural delay prevents immediate destitution and ensures that marriages are not abruptly terminated in a momentary fit of rage, it does not alter the fundamental legal asymmetry: the husband's substantive right to initiate the divorce remains entirely unfettered. He does not have to prove fault; he merely has to follow the administrative steps.

Conversely, a Muslim woman does not possess an inherent, reciprocal right to unilateral divorce. Her ability to dissolve the marriage without engaging in protracted judicial intervention relies entirely on the concept of *talaq-e-tafwid* (delegated divorce). This right must be explicitly delegated to her by the husband in the marriage contract (*kabin-nama*).²¹ When this right is unconditional and properly documented at the time of marriage, it serves as a powerful equalizing tool, allowing the wife to pronounce divorce upon herself and dissolve the marriage using the exact same procedural steps required of the husband. However, pervasive societal pressure heavily discourages the utilization of this clause. Marriage registrars (*Kazis*) frequently cross out the relevant column in the standard *kabin-nama* without consulting the bride, acting as patriarchal gatekeepers to actively prevent women from acquiring the power to exit the marriage autonomously.

3.2 Judicial Khula and the Financial Penalties of Freedom When a Muslim wife lacks delegated divorce rights—which represents most women, particularly in rural areas—her primary recourse to escape an abusive, neglectful, or untenable marriage is a judicial divorce or a *khula*. Traditionally, *khula* is a form of divorce initiated by the wife, requiring the husband's explicit consent, given in exchange for the wife waving her financial rights, most notably the return or absolute forfeiture of her dower (*mahr*). In classical, orthodox interpretation, if a vindictive husband simply refused to grant consent, the wife remained permanently trapped, regardless of her aversion to him or the abuse she suffered.

Fortunately, modern judicial activism has significantly expanded the boundaries of khula in Bangladesh. Recognizing the inherent injustice and cruelty of trapping a woman in a defunct marriage simply because an abusive husband refuses to grant his consent, progressive courts now permit a wife to petition the Family Court for khula even without the husband's agreement. The court can dissolve the marriage if it is satisfied that the marriage has irretrievably broken down, or based on specific, statutorily defined grounds such as extreme cruelty, abuse, or prolonged desertion as outlined in the Dissolution of Muslim Marriages Act 1939.²² This judicial evolution represents one of the most critical legal lifelines available to Muslim women, allowing them to bypass the husband's malicious refusal to release them from a toxic bond.

However, while judicial khula provides an essential, life-saving exit strategy, the patriarchal cost exacted by the system is exceedingly steep. To secure her physical and emotional freedom, the woman must legally forfeit her hard-won financial security. The court typically requires her to waive her right to the deferred mahr and often mandates the return of any prompt mahr already received. This creates a deeply inequitable system where women are economically penalized for seeking a divorce—even when fleeing severe domestic violence—often plunging them into immediate poverty. Meanwhile, husbands who may have directly caused the marital breakdown through abuse or neglect suffer no corresponding financial detriment for their actions. The law essentially demands that a woman purchase her own freedom, reinforcing the commodification of the marital relationship and ensuring that independent women start their post-divorce lives at a severe economic disadvantage.

3.3 The Discriminatory Architecture of the Divorce Act, 1869 The dissolution of Christian marriages in Bangladesh is governed exclusively by the Divorce Act of 1869, an antiquated colonial statute that operates strictly through adversarial judicial intervention. Unlike Muslim law, which offers some extra-judicial pathways, there are no extra-judicial methods or modern provisions for divorce by mutual consent under the current Christian statutory framework in Bangladesh. This stricture forces all Christian marital breakdowns into the highly public, expensive, and emotionally draining arena of the adversarial court system.

Section 10 of the Divorce Act embodies severe, explicit statutory discrimination against women, reflecting Victorian-era moral double standards that have no place in a modern constitutional republic.²³ The law was drafted during an era that viewed male infidelity as a forgivable social trespass, but female infidelity as an absolute destruction of the family unit. Under this archaic section, a Christian husband can easily petition the District Court or the High Court Division for a dissolution of marriage on the single, standalone ground that his wife has committed adultery. He is not required to prove any other fault, abuse, or aggravating factor.

In stark, unconstitutional contrast, a Christian wife cannot obtain a divorce merely by proving her husband's adultery. She bears a compounded and extraordinarily difficult burden of proof. To secure a divorce, she must demonstrate that her husband has changed his religion and married another woman, or she must prove his adultery is coupled with severe aggravating factors such as incest, bigamy, rape, sodomy, bestiality, extreme cruelty, or desertion without reasonable excuse for two years or more.²⁴ This asymmetrical standard explicitly codifies female suffering into the law. It forces Christian women to legally endure blatant infidelity and humiliation unless it is accompanied by severe physical abuse or total abandonment. Even when physical abuse is present, proving "extreme cruelty" to the strict satisfaction of a court involves a traumatic evidentiary process that acts as a major deterrent to seeking legal relief.

3.4 The Indissolubility of Hindu Marriage While Muslim women face severe financial penalties and Christian women face discriminatory burdens of proof, the legal framework for Hindu women represents the most profound denial of marital autonomy and bodily integrity in the country. Under the orthodox Shastric law strictly applied to the Hindu community in Bangladesh, marriage is an eternal, holy sacrament that simply cannot be dissolved under any circumstances.²⁵ Consequently, there is no codified statutory law permitting absolute divorce for Hindus.

The practical implications of this indissolubility doctrine are devastatingly unequal and highly gendered. While a Hindu husband is legally permitted to practice polygamy and can freely abandon his wife to establish an entirely new family without facing any legal consequence, the deserted wife is completely denied the reciprocal right to sever the legal bond. Because she cannot obtain a divorce, she is permanently barred from remarriage and forced into a state of perpetual legal, social, and economic subjugation. She is rendered a legal ghost—neither fully married in practice, nor legally divorced in the eyes of the state.

The only available legal relief is provided under the Hindu Married Women's Right to Separate Residence and Maintenance Act of 1946, which merely allows a wife to live separately and claim a maintenance allowance under highly restrictive conditions, such as the husband suffering from a loathsome disease or taking a second wife.²⁶ However, this minor financial relief does not dissolve the marriage itself. It merely provides a minimal financial stipend while keeping the woman permanently tethered to her abuser.

¹⁹ The Muslim Family Laws Ordinance 1961.

²⁰ The Muslim Family Laws Ordinance 1961, s 7.

²¹ 'Divorce Laws and Procedures in Bangladesh' (Legal Seba 2024).

²² The Dissolution of Muslim Marriages Act 1939, s 2.

²³ The Divorce Act 1869, s 10.

²⁴ S Aktar, 'Protecting Divorced Muslim Women's Right' (2012) III N.U. Journal of Law.

²⁵ M Kamal, 'Marital Rights of Hindu Women in Bangladesh' (OSUN Global Commons 2023).

²⁶ The Hindu Married Women's Right to Separate Residence and Maintenance Act 1946.

CHAPTER FOUR

SPOUSAL MAINTENANCE: THE PRECARITY OF ECONOMIC SECURITY

4.1 Nafaqa and the Adjudication of Past Maintenance Economic security is the bedrock of female autonomy, particularly in societies where women's participation in the formal labor market is structurally hindered. In Islamic jurisprudence, the concept of maintenance (*nafaqa*) is a foundational pillar of the marital contract, encompassing the mandatory provision of food, clothing, and shelter commensurate with the husband's financial capacity and the wife's social standing.²⁷ The logic inherent in traditional Islamic law is that in exchange for the wife's obedience and restriction to the domestic sphere, the husband assumes total, uncompromising financial responsibility for her upkeep. Under statutory law in Bangladesh, Section 9 of the Muslim Family Laws Ordinance (MFLO) 1961 provides a localized remedy, allowing a wife to apply to the Arbitration Council if the husband fails to maintain her adequately.²⁸ This mechanism was initially intended to provide a swift, accessible administrative route to prevent destitute wives from having to navigate complex, drawn-out civil court procedures.

However, a major historical deficiency in the legal application of this right within the courts was the treatment of "past maintenance" or arrears. Historically, a Muslim wife could not legally claim maintenance for a past period (arrears) unless there was a specific, pre-existing written agreement in the marriage contract stipulating such a right. This archaic rule caused immense, often insurmountable hardship for women abandoned by their husbands for years before seeking legal recourse. A husband could completely desert his wife, leave her to starve or rely entirely on her natal family for half a decade, and when she finally reached the court, the judge would only award her maintenance, starting strictly from the date she filed the lawsuit. The years of willful neglect were legally forgiven, effectively rewarding the husband's dereliction of duty.

This profound systemic injustice was rectified in the landmark Appellate Division case of *Jamila Khatun v Rustom Ali* (1996) 48 DLR (AD) 110.²⁹ The Supreme Court overturned the prevailing orthodox view, ruling decisively that a wife's right to maintenance arises from the exact moment the husband neglects his legal duty, and importantly, she is entitled to claim arrears for up to six years under the residuary provisions of the Limitation Act. By recognizing that the obligation to maintain is continuous and enforceable retroactively, the Supreme Court provided a vital legal mechanism to heavily penalize husbands for desertion and allowed women to legally recoup the immense financial losses they endured during periods of abandonment.

4.2 The Conundrum of Post-Divorce Provision (Mata'a) While the judiciary successfully expanded legal protections for maintenance *during* the subsistence of the marriage, the legal framework fails catastrophically regarding post-divorce economic security. The moment a marriage is formally dissolved, a woman's financial safety net is abruptly, and legally, severed. Under classical interpretation, a Muslim husband's financial obligation to his divorced wife terminates unequivocally upon the expiration of the *iddat* period (typically three months). This strict temporal limitation frequently results in immediate destitution for older women, or women who sacrificed their education and career prospects to manage the household and raise children.

The intense jurisprudential debate surrounding long-term post-divorce maintenance centers deeply on the interpretation of the Qur'anic concept of *mata'a* (a reasonable provision for divorced women).³⁰ Does *mata'a* represent a mandatory legal obligation to ensure the divorced wife's long-term survival, or is it merely a moral suggestion—a parting gift left to the arbitrary generosity of the ex-husband?

The contrasting legal trajectories in the Indian subcontinent provide a fascinating, comparative study in judicial philosophy. In India, following the massive political backlash of the *Shah Bano* case, the Indian Supreme Court in *Danial Latifi v Union of India* (2001) utilized purposive interpretation to hold that the statutory language requiring a "reasonable and fair provision" meant the husband must proactively calculate a lump-sum payment sufficient to secure the wife's future livelihood, entirely payable within the iddat period.³¹ The Indian judiciary recognized the harsh socio-economic realities of divorced women and actively interpreted the law to prevent vagrancy, ensuring that a husband could not simply discard his wife into extreme poverty after decades of marriage.

Tragically, the judiciary in Bangladesh adopted the diametrically opposite approach. In the highly controversial case of *Hefzur Rahman v Shamsun Nahar Begum* (1999) 51 DLR (AD) 172, the Appellate Division overturned a highly progressive High Court ruling that had briefly recognized *mata'a* as an enforceable right to ongoing maintenance.³² Adopting a strict, narrow, and traditionalist textual interpretation, the apex court ruled that *mata'a* is merely a voluntary, "consolatory gift" from a righteous man, and crucially, not a legally enforceable obligation in a court of law.³³

This deeply conservative decision cemented a vast legal vacuum, stripping divorced Muslim women of any legal right to financial support beyond the 90-day iddat period. By flatly refusing to read the religious text through a modern human rights lens or consider the economic realities of Bangladeshi women, the Appellate Division actively entrenched the feminization of poverty in the country. A divorced woman, regardless of her decades of unpaid domestic labor, is left to fend entirely for herself after just three months.

4.3 Maintenance Deficits for Hindu and Christian Women The extreme vulnerabilities associated with spousal maintenance are significantly amplified for women of minority faiths due to the harsh intersection of archaic personal laws and insurmountable procedural hurdles. For Hindu women, because absolute divorce is unrecognized by law, post-divorce maintenance is a complete impossibility. Their only formal recourse is the Hindu Married Women's Right to Separate Residence and Maintenance Act, 1946.³⁴ While this Act provides a limited right to claim maintenance while living separately, the entire burden of proof rests squarely on the wife to prove the husband's fault in court.

Furthermore, a significant, weaponized patriarchal trap exists within this framework: a Hindu wife entirely forfeits her right to maintenance if she is deemed "unchaste," converts to another religion, or fails to comply with a court decree ordering the restitution of conjugal rights. Her financial survival is tied directly to ensuring her absolute physical and social compliance. The condition of "chastity" is particularly egregious in practice, as it is frequently utilized by abusive husbands to launch baseless, humiliating character assassinations in open court simply to avoid paying the meager stipends ordered by the judge.

For Christian women, the right to maintenance is governed by the Divorce Act of 1869, which provides for alimony pendente lite (temporary support during active litigation) and permanent alimony.³⁵ While the provision of permanent alimony sounds protective on paper, the granting of permanent alimony is strictly contingent upon the court first issuing a decree of divorce or judicial separation, which as previously discussed, is exceptionally difficult for a Christian woman to obtain due to discriminatory evidentiary burdens. Because she must overcome the nearly impossible burden of proving aggravated adultery, she is procedurally locked out of obtaining the very decree required to secure her financial independence. Therefore, the statutory discrimination embedded in the rules of marital dissolution directly translates to a complete denial of economic security.

²⁷ J J Ferdaus, 'Rights of Maintenance of a Muslim Wife' (2017) 13(20) BJI Thought.

²⁸ The Muslim Family Laws Ordinance 1961, s 9.

²⁹ Jamila Khatun v Rustom Ali (1996) 48 DLR (AD) 110.

³⁰ M Rahman, 'Post-Divorce Maintenance (Maa'ta) for Muslim Women' (2018) 23(2) IOSR-JHSS.

³¹ Danial Latifi v Union of India (2001) 7 SCC 740.

³² Muhammad Hefzur Rahman v Shamsun Nahar Begum (1995) 15 BLD 34.

³³ Hefzur Rahman v Shamsun Nahar Begum (1999) 51 DLR (AD) 172.

³⁴ The Hindu Married Women's Right to Separate Residence and Maintenance Act 1946.

³⁵ The Divorce Act 1869.

CHAPTER FIVE

RESTITUTION OF CONJUGAL RIGHTS: A TOOL OF PATRIARCHAL COERCION

5.1 Restitution of Conjugal Rights: An Archaic Infringement on Liberty The legal remedy of "restitution of conjugal rights" represents one of the most direct, state-sanctioned infringements on a woman's bodily autonomy and personal liberty within the family law framework of Bangladesh. Inherited directly from British Christian ecclesiastical law—where marriage was viewed under canon law as an indissoluble joining of flesh that could be enforced by the church—this remedy was subsequently grafted onto the personal laws of the Indian subcontinent during the colonial era. The remedy allows a spouse to petition a Family Court for a civil decree ordering their estranged partner to officially resume marital cohabitation.³⁶ Essentially, if a wife leaves the marital home, the husband can utilize the coercive power of the state to legally force her to return to his bed and board.

While the statutory language of the remedy is ostensibly gender-neutral (meaning, a wife could theoretically sue a husband to return to the matrimonial home), in practical, socio-legal reality, the remedy is overwhelmingly and disproportionately weaponized by husbands. In a deeply patriarchal society where the public sphere is male dominated, the private sphere is strictly policed, and women lack independent economic resources, restitution suits serve as a powerful tool of domestic control. It is frequently deployed as a retaliatory and coercive tactic against wives who have fled severe domestic abuse, dowry harassment, or psychological torture. When a woman finally musters the courage and resources to escape a violent household, the restitution decree acts as a legal lasso, attempting to drag her back into the zone of danger.

Furthermore, husbands routinely utilize this legal mechanism as a strategic countermeasure to frustrate suits filed by women for divorce, recovery of dower (*mahr*), or spousal maintenance. If a destitute wife sues for her rightful financial support, the husband will immediately file a countersuit for restitution. By doing so, he shifts the entire judicial narrative: he argues to the court that he is not failing to maintain her, but rather that she is a disobedient and rebellious wife (*nashizah*) who has unlawfully abandoned the marital home without "just cause."

For a Hindu woman, refusing to obey such a decree is particularly devastating, as it results in the absolute and permanent forfeiture of her right to claim maintenance under the 1946 Act. To compound the abuse, husbands often couple these civil petitions for restitution with fabricated criminal theft complaints. They falsely accuse fleeing wives of stealing valuable gold ornaments, cash, or property when they left the marital home, utilizing the threat of police harassment, criminal warrants, and potential arrest to intimidate the woman and her natal family into total submission. This transforms a civil family dispute into a traumatic criminal ordeal.

5.2 The Judicial Conflict: Constitutional Equality vs. Traditional Sanctity The judicial reception of this coercive remedy in Bangladesh demonstrates a profound internal conflict within the legal system regarding the prioritization of modern constitutional rights versus the traditional preservation of the family unit. It highlights the tension between viewing a woman as an independent citizen with fundamental rights, versus viewing her as a subordinate component of a patriarchal family structure.

The jurisprudence experienced a watershed moment of progressive clarity in the seminal case of *Nelly Zaman v. Giasuddin Khan* (34 DLR (1982) 221).³⁷ In this landmark ruling, the High Court Division boldly declared that compelling a wife to cohabit through a suit for restitution of conjugal rights is entirely outmoded, untenable, and directly violative of the constitutional guarantees of equality (Article 28) and personal liberty (Article 32). The court reasoned with striking modernity, asserting that in a contemporary society founded on equal rights and human dignity, state-sanctioned forced cohabitation amounts to state-sanctioned cruelty and marital slavery. The judgment powerfully articulated that a woman cannot be treated as a piece of chattel or property to be "restored" to its owner against her will. Subsequent High Court decisions over the next decade, such as *Hosne Ara Begum v. Md. Rezaul Karim* (1991) and *Sherin Akther v. Md. Ali* (1999), strongly upheld this finding of unconstitutionality, signaling a growing, robust judicial consensus against the archaic practice.³⁸

However, this progressive trajectory was severely fractured and ultimately stalled by parallel benches adopting highly conservative interpretations. In reactionary cases like *Chan Mia v. Rupnagar* (1999) and *Hosna Jahan v. Md. Shajahan* (1999), the High Court Division adopted a distinctly patriarchal stance, declaring that the remedy of restitution is neither discriminatory nor violative of the Constitution.³⁹ These conservative benches argued that the remedy preserves the "sanctity of marriage" and prevents the breakdown of the social order, suggesting that constitutional rights to liberty must yield to religious personal laws and the preservation of the family structure.

Because the Supreme Court's Appellate Division has not yet definitively resolved this conflicting jurisprudence to establish a single, binding precedent for the entire country, Family Courts established under the 1985 Ordinance (and now the 2023 Act) continue to possess statutory jurisdiction to entertain these suits. This prolonged judicial ambivalence demonstrates exactly how patriarchal coercive tools remain functionally embedded in the legal system, surviving despite explicit constitutional contradictions. Until the remedy is explicitly and definitively repealed by the legislature, it will continue to hang like a Sword of Damocles over vulnerable women seeking to escape abusive marriages.

³⁶ T Monsoor, *From Patriarchy to Gender Equity* (UPL 1999).

³⁷ *Nelly Zaman v Giasuddin Khan* (1982) 34 DLR 221.

³⁸ *Hosne Ara Begum v Md. Rezaul Karim* (1991) 43 DLR 543; *Sherin Akther v Md. Ali* (1999) 51 DLR 33.

³⁹ *Chan Mia v Rupnagar* (1999) 51 DLR 292; *Hosna Jahan v Md. Shajahan* (1999) 51 DLR 180.

CHAPTER SIX

GUARDIANSHIP, CUSTODY, AND THE SUBVERSION OF PATERNAL SUPREMACY

6.1 Traditional Hizanat vs. The Paramount Welfare Principle The adjudication of child custody and guardianship highlights the sharpest tension between rigid, traditional religious doctrines and the modern jurisprudential emphasis on human rights and child welfare. The legal framework in Bangladesh operates at the complex intersection of uncoded religious personal laws and the overarching, secular Guardians and Wards Act of 1890.⁴⁰

Under classical Islamic jurisprudence (specifically the Hanafi school predominantly followed by the majority in Bangladesh), there is a strict legal and conceptual bifurcation between physical custody (*hizanat*) and legal guardianship (*wilayat*). The father is considered the natural and absolute legal guardian of both the child's person and the child's property. He is vested with the ultimate decision-making power regarding the child's education, religion, and wealth. The mother, in the eyes of classical law, is not recognized as a natural guardian; rather, she is merely entitled to the right of physical custody, nurturing, and rearing (*hizanat*) up to a specific, arbitrary age limit: seven years for a male child and until puberty for a female child.⁴¹

Once the child reaches this specific age threshold, the father possesses an absolute, almost unchallengeable right to claim physical custody, regardless of his prior involvement in child-rearing, his physical absence, or the emotional bond forged between the mother and the child. Furthermore, traditional rules are exceptionally punitive toward women: they dictate that a mother immediately forfeits her right to *hizanat* if she remarries a person not within the prohibited degrees of relationship to the minor (essentially, anyone outside the child's immediate family), or if she simply relocates her residence far from the father's domicile. These forces divorced or widowed mothers into an agonizing choice: remain unmarried and destitute to keep their children, or remarry for economic survival and automatically lose their offspring.

However, the judiciary in Bangladesh has systematically, if incrementally, subverted these rigid patriarchal rules by elevating the secular legal concept of the "welfare of the minor" as the paramount consideration in any custody dispute. Relying on Section 17 of the Guardians and Wards Act, which mandates courts to act in the best interest of the child, the paradigm shifted decisively with the landmark Appellate Division ruling in *Abu Bakar Siddique v. S.M.A. Bakar* (38 DLR (AD) 106) in 1986.⁴²

In this case, the Supreme Court explicitly and boldly deviated from the strict Hanafi age-rule, granting custody of an eight-year-old boy to his mother despite him having passed the traditional seven-year cutoff. The court established the critical precedent that traditional religious rules of *hizanat* are subordinate to the welfare of the child. The judges reasoned that Islamic legal principles were not intended to be rigid, draconian strictures that ignore human reality. If the literal application of the religious age-rule would harm the child's developmental environment, emotional well-being, or educational prospects, the court ruled that a deviation is not only legally permissible but judicially necessary. This ruling represented a massive blow to absolute paternal supremacy, allowing judges to evaluate custody based on the mother's fitness and the child's actual needs, rather than arbitrary theological age limits.

6.2 The Historic Recognition of Maternal Guardianship (2023) While courts systematically expanded physical custody rights through the welfare principle over the decades, the statutory and administrative framework historically barred mothers from acting as the legal guardians of their children's civic identity. For decades, administrative systems and educational institutions in Bangladesh rigidly mandated the inclusion of the father's name as the sole recognizing guardian for school admissions, board examinations, passports, banking, and all state forms.⁴³

This systemic erasure of maternal identity severely marginalized single, divorced, abandoned, or widowed mothers. Women who had independently raised and entirely financially supported their children were bureaucratically invisible to the state. They were routinely forced to rely on absent, neglectful, or actively abusive ex-husbands just to secure their children's basic civic and educational rights. If a father refused to sign a form out of spite, a child could be denied school enrollment or the ability to travel. This framework perpetuated a cycle of patriarchal dependency long after a marriage had dissolved, punishing the mother for her independence.

This patriarchal monopoly was finally dismantled by a historic, transformative High Court Division ruling issued on January 24, 2023.⁴⁴ Arising from a public interest writ petition challenging the refusal of educational boards to register students based solely on maternal identity, the Court issued a decisive rule declaring that mothers are legally recognized as guardians in their own right. This landmark verdict formally dictates that individuals can be identified using only their mother's name in official documents and state forms.

This ruling represents a monumental shift in family law jurisprudence, moving the state from a paternalistic default to a framework of gender-neutral parental recognition. It fundamentally alters societal perceptions of individual identity, human dignity, and gender relations. By legally recognizing the mother's independent capacity to act for her child, the judiciary demonstrated its immense capacity to force the administrative apparatus of the state into alignment with constitutional guarantees of equality. It dismantled a cornerstone of institutionalized patriarchy, finally granting legal visibility and autonomy to millions of female-headed households across Bangladesh.

⁴⁰ The Guardians and Wards Act 1890.

⁴¹ J A Nasir, *The Islamic Law of Personal Status* (1990).

⁴² *Abu Bakar Siddique v S.M.A. Bakar* (1986) 38 DLR (AD) 106.

⁴³ 'Mothers get legal recognition as guardians' The Daily Star (Dhaka, 25 January 2023).

⁴⁴ High Court Division Writ Petition (January 24, 2023).

CHAPTER SEVEN

INHERITANCE, PROPERTY RIGHTS, AND ECONOMIC DISENFRANCHISEMENT

7.1 Muslim Fractional Shares and Socio-Cultural Coercion True economic empowerment and individual autonomy are fundamentally inextricably linked to property ownership and the accumulation of capital. In an agrarian and developing economy like Bangladesh, land ownership is not merely a source of wealth; it dictates social status, acts as collateral for financial credit, and serves as the ultimate safety net against destitution. Yet, inheritance laws across all religious communities in Bangladesh are structurally designed to systematically disadvantage women, deliberately restricting their capital accumulation and ensuring their ongoing, lifelong economic dependence on male relatives.

Under Islamic inheritance laws, fixed fractional shares are meticulously mandated by the text of the Qur'an. While a Muslim woman's right to inherit is absolutely guaranteed—which was a highly progressive and revolutionary concept at the dawn of Islam compared to pre-Islamic tribal customs that treated women themselves as inheritable property—the quantum she receives in the modern context is distinctly unequal. The foundational mathematical rule of Islamic inheritance dictates that a female heir typically receives exactly half the share of a male heir of the same degree of relationship. For example, a daughter inherits exactly half of what a son inherits from a deceased parent's estate.⁴⁵

While this mathematical system prevents absolute disinheritance and guarantees women at least a fraction of the estate, the structural inequality inherently reinforces male economic supremacy across generations. It concentrates the vast majority of wealth, particularly high-value assets like real estate and agricultural land, firmly within the patriarchal lineage. The theological justification historically provided for this disparity is that men bear the absolute financial responsibility to maintain the women in their families (as discussed in the concept of *nafaqa*). However, in the modern socio-economic reality where marriages frequently break down, men often abscond from their maintenance duties, and women increasingly serve as primary breadwinners, this 2:1 inheritance ratio acts as a severe structural penalty against women.

Furthermore, even the limited legal protections granted by personal law are frequently nullified by entrenched socio-cultural practices and emotional manipulation. Societal norms, intense familial pressure, and the implicit threat of being ostracized frequently coerce Muslim women into voluntarily surrendering their legally mandated shares to their brothers.⁴⁶ This "voluntary" relinquishment—often formalized through legally binding gift deeds (*hiba*)—is driven by the patriarchal expectation that women should rely entirely on their husbands for economic support. Brothers, conversely, are perceived to require the inherited property to maintain the ancestral household, care for aging parents, and support the extended family.

Women are conditioned to believe that claiming their rightful inheritance will "destroy the family bond" and result in their brothers abandoning them if their marriages fail. Consequently, women are systematically stripped of their safety nets, resulting in a reality where women, despite having a statutory legal right, continue to own only a minuscule fraction of agricultural land and real estate in the country.

7.2 The Dayabhaga School and the Plight of the Hindu Widow If the Muslim system of inheritance is mathematically unequal, the inheritance rights of Hindu women in Bangladesh represent the most severe, archaic, and absolute form of proprietary disenfranchisement in the country. The Hindu community in Bangladesh is governed almost exclusively by the orthodox *Dayabhaga* school of Hindu law, authored by Jimutavahana in the 12th century.

Succession under the strict Dayabhaga system is entirely predicated on the theological doctrine of "religious efficacy"—which is defined as the capacity of an heir to confer spiritual benefit upon the deceased ancestor by offering specific ritual sacrifices (*pinda*, or rice balls) in the afterlife.⁴⁷ Because traditional orthodox doctrine assumes females are less capable of performing these specific post-mortem religious rites, they are heavily marginalized, and mostly excluded entirely, in the line of succession. Property is not distributed based on blood proximity or financial need, but strictly on the perceived spiritual utility of the heir to the deceased male.

Under uncoded Dayabhaga law, the exclusion of women is staggering. There are only five female *sapindas* (recognized heirs) permitted to inherit: the widow, the daughter, the mother, the father's mother, and the father's father's mother. Crucially, a daughter cannot inherit any property whatsoever if she has a living brother; the brother's existence completely extinguishes her claim. Even if she is the sole surviving child with no brothers, she can only inherit if she fits specific patriarchal criteria: she must be an unmarried daughter, or a daughter who has already given birth to a son (or is deemed physically capable of doing so). Barren daughters, widows without sons, or daughters who only have female children are entirely and ruthlessly excluded from inheriting their own father's estate. They are viewed as having no spiritual utility.

Furthermore, on the rare occasions when a Hindu woman does successfully navigate this maze and inherit property, she does not receive absolute ownership of the estate. She receives a "limited interest," legally termed a "widow's estate" or "woman's estate". She possesses only a lifetime right to enjoy the income or usufruct generated by the property. She is strictly prohibited by law from selling, gifting, mortgaging, or alienating the real estate, except under extreme circumstances of severe "legal necessity". This legal necessity is narrowly defined by the courts as paying off the deceased husband's debts, financing his funeral rites, or maintaining herself to prevent starvation.

Upon her death, the property does not pass to her own heirs or daughters; rather, it reverts immediately to the deceased husband's nearest surviving male relatives, known in law as the "reversioners".⁴⁸ These male reversioners constantly monitor the widow, frequently dragging her to court to block any attempt she makes to sell land, ensuring she remains economically paralyzed until her death.

The Hindu Women's Right to Property Act, 1937, attempted minor colonial-era reforms by allowing a widow to inherit a share equal to that of a son, but it strictly retained the restrictive "limited interest" framework, refusing to grant her full ownership. While neighboring India boldly abolished these archaic restrictions via the Hindu Succession Act 1956—granting Hindu women absolute, unrestricted ownership of inherited property—Bangladesh's state policy of non-interference has frozen Hindu family law in the 19th century, ensuring total, generational economic deprivation for Hindu women.⁴⁹

7.3 The Hindu Law Reform Movement and Landmark Judicial Interventions The profound stagnation of legislative reform regarding Hindu inheritance has generated a modern civil rights movement and forced desperate activists into the courts. The Hindu Family Law Reform (HFLR) movement, gaining significant momentum since 2016, is spearheaded by internal community groups such as the Mahila Hindu Bouddha Christian Oikyo Parishad and the Bangladesh Hindu Law Reform Council. These dedicated organizations demand the elimination of systemic discrimination, the granting of absolute inheritance rights for women, and the institution of mandatory marriage registration to prevent fraud.

However, they face intense, organized backlash from conservative alliances like the Bangladesh National Hindu Grand Council (Mohajote). These anti-reform groups instrumentalize their status as a persecuted religious minority, arguing that any state intervention in family law threatens their fragile religious identity. They argue that protecting the community from external violence and majoritarian assimilation is infinitely more important than ensuring gender equality within the family, effectively silencing women's pleas for justice in the name of communal preservation.

In the face of absolute legislative paralysis, the judiciary has occasionally delivered critical, albeit limited, relief. For decades, the 1937 Act was maliciously misinterpreted by lower courts and predatory male relatives to exclude agricultural land from the properties a Hindu widow could inherit. Because Bangladesh is an agrarian society where the bulk of wealth is tied to farming, this interpretation forced widows off farmlands, limiting their survival resources solely to the physical homestead and pushing them into extreme, degrading poverty.

This discriminatory interpretation was decisively overturned in a historic, exhaustive judgment by the High Court Division in September 2020 in the case of *Jyotindranath Mandal v. Gouri Dasi*.⁵⁰ The court ruled comprehensively that the phrase "any property" utilized in the text of the 1937 Act encompasses all assets, definitively and unambiguously including both agricultural and non-agricultural land. While the property inherited legally remains a restricted "limited estate," this ruling represents a monumental milestone in Bangladeshi jurisprudence. By securing a widow's legal right to access, cultivate, and profit from agricultural land, the judiciary subverted a century of patriarchal property deprivation, affirming that access to land is essential for a widow's economic survival and basic human dignity.

⁴⁵ S S Ali, *Gender and Human Rights in Islamic and International Law* (2000).

⁴⁶ 'Women's Access to Justice in Bangladesh' (2017) Jurnal Undang-Undang.

⁴⁷ M Kamal, 'Marital Rights of Hindu Women in Bangladesh' (OSUN Global Commons 2023).

⁴⁸ *Ibid.*

⁴⁹ Hindu Succession Act 1956 (India); The Hindu Women's Right to Property Act 1937.

⁵⁰ *Jyotindranath Mandal v Gouri Dasi* (2020) High Court Division.

CHAPTER EIGHT

INSTITUTIONAL MECHANISMS: FROM THE 1985 ORDINANCE TO THE 2023 ACT

8.1 The Family Courts Act, 2023: An Infrastructure Overhaul The substantive rights discussed in the previous chapters—whether it be the right to divorce, maintenance, custody, or inheritance—are functionally meaningless without robust, efficient, and accessible institutional mechanisms to enforce them. A right delayed is undeniably a right denied, particularly in family law where women and children rely on swift judicial intervention for their daily survival. The architecture of family justice in Bangladesh has undergone a significant recent transition, aiming to improve accessibility and radically reduce the crippling delays that historically characterize civil litigation in the subcontinent.

For nearly four decades, family justice was administered under the Family Courts Ordinance, 1985.⁵¹ This Ordinance was originally heralded as a revolutionary step. It established specialized courts at the district level, exclusively empowered to adjudicate five core matters of domestic life: dissolution of marriage, restitution of conjugal rights, dower, maintenance, and the guardianship/custody of children. The primary legislative objective was to bypass the highly complex, time-consuming procedural laws of ordinary civil courts (such as the rigid strictures of the Code of Civil Procedure) and provide summary, rapid disposal of sensitive family disputes.

However, the reality of the 1985 system soon proved disastrous. The system buckled under its own weight, becoming notorious for massive case backlogs, procedural labyrinths, and severe deficits in executing decrees once a judgment was handed down. The maintenance decrees were particularly catastrophic. If a husband refused to pay court-ordered maintenance, the 1985 framework often treated the recovery of these funds as a cumbersome administrative process of recovering "arrears of land revenue". This meant relying on overburdened local administrative magistrates to seize property, a process so slow and corruptible that many women abandoned their claims out of sheer exhaustion.

In a major legislative overhaul aimed at modernization and procedural efficiency, the government repealed the 1985 Ordinance and enacted the Family Courts Act, 2023 (Act No. 26 of 2023).⁵² While the fundamental institutional structure and the exclusive jurisdiction over the five core areas remain preserved, the new Act introduces critical infrastructural updates designed to streamline justice and close procedural loopholes.

The most significant and impactful reform under the 2023 Act is the establishment of dedicated Family Appellate Courts in each district or metropolitan area, to be presided over by a judge not below the rank of a Joint District Judge. Under the previous system, appeals from Family Courts were funnelled directly into the general, heavily overcrowded civil appellate system, causing years—sometimes decades—of delay for desperate women. A husband could completely freeze a maintenance order simply by filing a frivolous appeal in the general District Court. By creating specialized appellate tribunals strictly focused on family matters, the 2023 Act aims to expedite the finality of litigation, theoretically providing swifter financial relief to women claiming essential dower and maintenance.

8.2 The Promise and Pitfalls of Alternative Dispute Resolution (ADR) Because family disputes are deeply personal and emotionally charged, both the repealed 1985 Ordinance and the new 2023 Act integrate Alternative Dispute Resolution (ADR) firmly into the fabric of family litigation.⁵³ The underlying jurisprudential philosophy is that familial disputes are uniquely sensitive and are better resolved through consensual mediation that preserves relationships, rather than adversarial, winner-takes-all litigation that destroys them.

To achieve this, the laws statutorily mandate presiding judges to attempt conciliation and mediation between the disputing parties at two distinct, critical phases: during a pre-trial hearing (before any evidence is formally recorded), and again following the closure of evidence but before the final pronouncement of judgment. Furthermore, quasi-judicial ADR mechanisms are firmly embedded in local government structures via the Arbitration Council under the Muslim Family Laws Ordinance 1961, which is tasked with handling maintenance claims and regulating polygamy and talaq at the grassroots level.

While these mechanisms theoretically provide a rapid, inexpensive, and localized forum for women to seek justice without the need to hire expensive lawyers, the practical reality of ADR in Bangladesh is highly problematic and frequently prejudicial to women.⁵⁴

In rural and peri-urban settings, localized arbitration boards and court-annexed mediation sessions frequently mirror the prevailing patriarchal power dynamics of the broader society. Mediators are overwhelmingly male community leaders, union parishad chairmen, or conservative elders. Because these mediators inherently prioritize "saving the marriage," avoiding community scandal, or maintaining social harmony over ensuring strict legal justice for the abused party, women are routinely pressured into compromising on their fundamental statutory rights.

The power imbalance during these private sessions is stark. Mediators often actively coerce women to waive their financial claims to dower (*mahr*) or accumulated past maintenance as the necessary "price" for securing a husband's consent for a divorce. Alternatively, they force desperate women to accept highly inadequate, sub-subsistence maintenance awards just to avoid the threat of further, prolonged litigation. ADR, therefore, often acts as a mechanism of forced compromise, utilizing the language of "peace" to silence female victims and shield male perpetrators from the full financial and legal consequences of their actions.

⁵¹ The Family Courts Ordinance 1985.

⁵² The Family Courts Act 2023.

⁵³ The Family Courts Act 2023, s 10, 13; The Family Courts Ordinance 1985.

⁵⁴ Taslima Monsoor, 'ADR in Family Court: A Critical Review' (Daffodil Int'l University).

CHAPTER NINE

SYNTHESIS, RECOMMENDATIONS, AND CONCLUSION

9.1 The Imperative of a Uniform Family Code (UFC) The exhaustive doctrinal, historical, and comparative analysis of personal laws operating in Bangladesh reveals a highly fragmented, contradictory, and deeply discriminatory legal ecosystem. By maintaining a system where fundamental human rights—such as the right to exit an abusive marriage, the right to inherit property equitably, and the right to economic security post-divorce—are entirely contingent upon a citizen's religious identity, the state actively sustains and subsidizes systemic gender inequity. The current framework essentially forces women to approach the state not as equal citizens of a modern republic, but as subordinate members of specific religious communities, fundamentally undermining the unifying constitutional premise of the nation.

For decades, prominent civil society organizations, notably the Bangladesh Mahila Parishad, alongside leading legal scholars, human rights advocates, and progressive jurists, have forcefully campaigned for the enactment of a comprehensive Uniform Family Code (UFC).⁵⁵ A UFC would consolidate, modernize, and secularize the laws governing marriage, divorce, maintenance, custody, and inheritance, applying a single, egalitarian, and rights-based standard to all citizens regardless of their faith. It would transition family law from a theology-based system to a rights-based system.

The enactment of a UFC would have immediate, transformative effects across all demographics. It would instantly eliminate the overt statutory discrimination embedded in Section 10 of the Christian Divorce Act of 1869, granting Christian women the right to divorce on equal footing with men. It would provide Hindu women with the absolute statutory right to divorce and equitable, absolute inheritance by dismantling the archaic Dayabhaga restrictions that currently trap them in lifelong economic paralysis. Furthermore, it would override the conservative Islamic interpretations that currently deny Muslim women post-divorce maintenance (*mata'a*) and strictly mandate unequal fractional inheritance shares.

Conservative actors and orthodox political alliances vehemently oppose this, arguing that the absence of a specific constitutional directive for a Uniform Civil Code (such as Article 44 of the Indian Constitution) precludes its enactment in Bangladesh. They argue that interfering with personal law violates the freedom of religion. However, this argument is constitutionally flawed. Freedom of religion protects the right to profess and practice faith; it does not grant religious communities the right to systematically violate the fundamental rights of female citizens. The overarching constitutional principles of absolute equality and non-discrimination (Articles 27 and 28) provide incontrovertible legal authority and a profound moral imperative for such a comprehensive legislative overhaul. The Constitution reigns supreme over personal laws, and the state cannot abdicate its responsibility to protect women under the guise of religious non-interference.

9.2 Recommendations for Immediate Statutory Harmonization While the theoretical and legal consensus required to pass a full UFC is built among civil society, the political reality is that enacting a UFC will face immense political resistance. Therefore, while working toward that ultimate goal, immediate, targeted statutory amendments are urgently required to align domestic law with constitutional guarantees and international obligations:

- **1. Absolute Withdrawal of CEDAW Reservations:** The Government of Bangladesh must immediately and unconditionally withdraw its reservations to Articles 2 and 16(1)(c) of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).⁵⁶ Article 2 is the core obligation of the treaty to eliminate discriminatory laws, and Article 16 guarantees equality in marriage and its dissolution. Utilizing religious personal law to justify treaty reservations provides a permanent, internationally recognized shield for patriarchal policies. Under international law, a state cannot invoke its internal laws as justification for its failure to perform a treaty. Full ratification without reservations is the necessary first step to legally obligate the state to systematically reform its discriminatory marriage and dissolution laws.
- **2. Repeal of the "Special Provision" in the CMRA 2017:** Section 19 of the Child Marriage Restraint Act 2017 must be immediately repealed. Permitting the marriage of minors under undefined "special circumstances" completely contradicts international child rights frameworks and effectively legalizes gender-based coercion and statutory rape under the guise of protecting family honor. The legislature must amend the Act to establish a hard age floor, declaring any marriage involving a minor absolutely void *ab initio* (void from the beginning), rather than merely penalizing the adults involved while leaving the child trapped in the marriage.
- **3. Amendment of the Christian Divorce Act 1869:** The legislature must urgently amend Section 10 of the Divorce Act to provide identical, gender-neutral grounds for divorce for both Christian husbands and wives. Furthermore, the legislature must introduce a modern provision allowing for divorce by mutual consent, bringing the law in line with modern jurisprudential standards and saving families from the trauma of adversarial, fault-finding litigation.
- **4. Statutory Abolition of Restitution of Conjugal Rights:** The legislature must formally remove suits for the "restitution of conjugal rights" from the statutory jurisdiction of the Family Courts. By codifying the progressive constitutional principles established in the landmark case of *Nelly Zaman v. Giasuddin Khan*, the state can permanently prevent the legal coercion of women into forced cohabitation and dismantle a primary tool of patriarchal harassment.
- **5. Legislative Reversal of the *Hefzur Rahman* Precedent:** The Muslim Family Laws Ordinance 1961 must be amended to explicitly define *mata'a* as an enforceable right to a "reasonable and fair provision" for the future of the divorced wife. This statutory amendment would legislatively overturn the conservative Supreme Court precedent set in the *Hefzur Rahman* case, guaranteeing long-term financial security for Muslim women post-divorce and mitigating the feminization of poverty.

- **6. Immediate Codification of Hindu Marriage and Divorce:** To end the profound suffering of Hindu women, the state must immediately enact a standalone Hindu Marriage and Divorce Act. This Act must mandate the compulsory registration of Hindu marriages (to prevent fraudulent bigamy) and introduce absolute divorce, allowing Hindu women to legally exit abusive marriages and remarry if they choose.

9.3 Concluding Remarks This comprehensive research illustrates that the journey from patriarchy to gender equity in Bangladesh is profoundly obstructed by a socio-legal framework that continuously prioritizes religious tradition and male authority over constitutional equality. The pluralistic nature of family law creates an unjust, formalized hierarchy of disadvantage, where a woman's fundamental rights to bodily autonomy, financial security, and property ownership are systematically and relentlessly curtailed by the state's refusal to interfere with orthodox doctrines.

While the judiciary has occasionally acted as a vital, courageous catalyst for progressive change—evidenced by the historic 2023 recognition of maternal guardianship, the *Abu Bakar Siddique* ruling establishing the supremacy of child welfare over strict religious age-rules, and the 2020 *Jyotindranath Mandal* decision securing agricultural land for Hindu widows—judicial activism alone is inherently insufficient to dismantle centuries of institutionalized patriarchy. Judicial progress is inherently fragmented; it relies heavily on the ideological disposition of individual appellate benches, requires vulnerable women to undertake years of expensive litigation, and is highly susceptible to sudden regression, as tragically demonstrated by the Appellate Division's denial of post-divorce maintenance in the *Hefzur Rahman* case.

The systemic discrimination against women requires definitive, uncompromising legislative intervention. The recent transition to the Family Courts Act 2023 indicates a willingness to reform procedural and appellate infrastructure, but procedural efficiency cannot substitute for substantive justice. Expediting a fundamentally unfair law merely results in the expedited delivery of an injustice.

Ultimately, until Bangladesh summons the political courage to enact a comprehensive Uniform Family Code that elevates the fundamental rights of the citizen above the dictates of religious personal law, gender equity will remain a fractured, elusive, and unfulfilled constitutional promise. True justice demands that a woman's rights within her home reflect the absolute equality guaranteed to her by the Republic.

⁵⁵ Citizens' Initiatives on CEDAW, Bangladesh, 'Alternative Report on the Sixth and Seventh Periodic Report' (OHCHR 2011).

⁵⁶ 'Time for Bangladesh to withdraw CEDAW reservations' The Daily Star (Dhaka, 3 March 2025).

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