

Sonargaon University (SU).



MASTER OF LAWS (LL.M FINAL)

Final Semester Research Monograph

JURISDICTION AND SCOPE OF THE FAMILY COURTS IN BANGLADESH: AN OVERVIEW

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DECLARATION:

I, **Md. Saiful Islam**, Student ID: **LLMP2402031002**, UGC Student ID: **06324300002**, a student of LL.M (2 Years Program), Batch 031, Department of Law, Sonargaon University (SU), do hereby declare that the research work entitled:

“Jurisdiction and Scope of the Family Courts in Bangladesh: An Overview”

is an original and authentic work prepared by me in partial fulfillment of the requirements for the degree of Master of Laws (LL.M).

This thesis has not been submitted in whole or in part to any other university or institution for the award of any degree or diploma. All sources of information and references used in this study have been duly acknowledged.

I further affirm that this work is my own effort and has been completed under academic guidance.

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ABSTRACT:

The Family Courts system in Bangladesh plays a vital role in resolving family disputes relating to marriage, divorce, dower, maintenance, and child custody. Established under the Family Courts Ordinance, 1985, these courts are designed to provide speedy, informal, and accessible justice.

This research critically examines the jurisdiction and scope of Family Courts in Bangladesh, analyzing statutory provisions, judicial interpretations, procedural mechanisms, and comparative legal systems. It highlights the strengths of the system, including specialization and accessibility, as well as its limitations such as delay, enforcement issues, and restricted jurisdiction.

The study concludes that although Family Courts represent a progressive step in family justice administration, reforms are necessary to enhance efficiency, expand jurisdiction, and strengthen enforcement mechanisms.

Keywords: Family Courts, Jurisdiction, Scope, Bangladesh, Family Courts Ordinance 1985, Maintenance, Custody, Divorce.

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CHAPTER 1

INTRODUCTION

1.1 Background of the Study:

Family law is one of the most sensitive and significant branches of law, as it directly governs personal relationships such as marriage, divorce, maintenance, guardianship, and custody. In Bangladesh, disputes relating to family matters are adjudicated through specialized courts established under the Family Courts Ordinance, 1985.

The establishment of family courts marked a significant shift from traditional civil courts, aiming to ensure speedy, effective, and less formal resolution of family disputes. These courts operate with a specialized jurisdiction and procedural flexibility, distinguishing them from ordinary civil courts.

The concept of family courts reflects the recognition that family disputes require a more humane and conciliatory approach rather than strict adversarial litigation.

1.2 Statement of the Problem:

Despite the establishment of family courts, several challenges persist in the administration of family justice in Bangladesh. These include:

- Ambiguity in jurisdictional boundaries
- Delay in disposal of cases
- Lack of uniformity in judicial decisions
- Limited enforcement mechanisms
- Inadequate awareness among litigants

Moreover, the scope of family courts is sometimes narrowly interpreted, leading to exclusion of certain disputes that arguably fall within family matters.

1.3 Objectives of the Study:

The main objectives of this research are:

- (1) To analyze the jurisdiction of family courts in Bangladesh
- (2) To examine the scope and limitations of family courts
- (3) To evaluate the effectiveness of existing legal provisions
- (4) To analyze judicial decisions of higher courts
- (5) To suggest reforms for improving family justice system.

1.4 Research Questions:

- (1) This study seeks to answer the following questions:
- (2) What is the nature and extent of jurisdiction of family courts?
- (3) What matters fall within the scope of family courts?
- (4) How have courts interpreted jurisdictional issues?
- (5) What are the practical challenges faced by family courts?
- (6) How can the system be improved?

1.5 Methodology:

This research is based on doctrinal and analytical methods, including:

- Analysis of statutes (Family Courts Ordinance, 1985)
- Review of case laws (DLR, BLC, BLD, MLR, ALR, CLR, ADC, etc.)
- Comparative legal analysis
- Secondary sources such as books, journals, and reports.

1.6 Scope and Limitations:

The study focuses primarily on the legal framework and judicial interpretation of family courts in Bangladesh. However:

- Empirical data is limited
- Comparative analysis is selective
- Practical field-level observations are constrained

1.7 Significance of the Study:

This research is significant because:

- (1) It contributes to academic understanding of family law;
- (2) It assists legal practitioners and students;
- (3) It highlights gaps in the legal system;
- (4) It provides recommendations for reform.

CHAPTER 2:

HISTORICAL DEVELOPMENT OF FAMILY LAWS IN BANGLADESH

2.1 Introduction:

The development of family law in Bangladesh reflects a gradual transition from religious norms to a structured statutory framework shaped by judicial interpretation. Unlike many jurisdictions where family law is codified uniformly, Bangladesh maintains a pluralistic legal system, where personal laws are largely governed by religious principles, supplemented by legislative enactments and judicial decisions.

This chapter traces the historical evolution of family laws in Bangladesh, beginning from the pre-colonial religious framework, through colonial legal restructuring, to post-independence statutory developments and contemporary judicial trends.

2.2 Pre-Colonial Period: Religious Foundations:

Prior to the advent of British rule, family matters in the Indian subcontinent, including present-day Bangladesh, were governed primarily by religious laws and customs.

- (1) Muslim communities:** Muslim communities were governed by Islamic law (Shariah)
- (2) Hindu communities:** Hindu communities were governed by classical Hindu law (Shastric law)

Salient Features:

- Under Muslim law, marriage (nikah) was treated as a civil contract, creating enforceable rights and obligations.
- Under Hindu law, marriage was regarded as a sacrament, indissoluble in nature.

- Divorce was recognized in Muslim law but largely absent in traditional Hindu law.
- Matters such as maintenance, guardianship, and inheritance were strictly governed by religious doctrines.

Disputes were resolved through informal religious adjudication, typically by Qazis or community elders, rather than through a formal judicial system.

2.3 Colonial Period: Institutionalization and Anglo-Personal Law:

The establishment of British colonial rule introduced a formal court system, fundamentally transforming the administration of justice. However, the British policy was to retain personal laws in family matters, while introducing uniform procedural laws.

Key Developments:

(1) Introduction of Formal Courts:

Family disputes came under the jurisdiction of civil courts, replacing informal religious adjudication.

(2) Development of Anglo-Muhammadan and Anglo-Hindu Law:

British judges interpreted and applied religious laws, often relying on translated texts and precedents, thereby creating hybrid legal systems.

(3) Codification of Procedural Laws:

While substantive family law remained religious, procedural aspects were standardized.

Important Legislative Instruments:

- The Evidence Act, 1872;
- The Code of Civil Procedure, 1908;
- The Civil Courts Act.

This period marked the beginning of judicial interpretation as a source of family law, a trend that continues today.

2.4 Reform of Muslim Family Law (Pre-1971)

2.4.1 Dissolution of Muslim Marriages Act, 1939

This Act represented a significant milestone in advancing the rights of Muslim women by granting them statutory grounds for divorce.

Grounds Included:

- Cruelty by the husband
- Failure to provide maintenance
- Husband's disappearance
- Impotence or insanity

This legislation marked a shift from traditional unilateral male control over divorce to a more balanced legal framework.

2.4.2 Muslim Family Laws Ordinance, 1961:

The Muslim Family Laws Ordinance, 1961 is one of the most significant legislative reforms in South Asian family law.

Key Provisions:

- **Restriction on Polygamy:** Prior permission from the Arbitration Council is required.
- **Regulation of Divorce (Talaq):** Mandatory notice and procedural compliance.
- **Marriage Registration:** Compulsory registration of marriages.
- **Protection of Women's Rights:** Strengthening maintenance and inheritance rights.

Judicial Interpretation:

In Nur Nabi (Md.) vs. Salima Akhter Doly (28.06.2006); 13 BLC (2008) 327, the Court held that:

- A talaq does not become effective unless the statutory procedure prescribed by law is duly followed]¹.

This case established that mere pronouncement of talaq is insufficient without compliance with legal formalities.

2.5 Post-Independence Developments (After 1971):

¹ Nur Nabi (Md.) vs. Salima Akhter Doly (28.06.2006); 13 BLC (2008) 327.

Following independence in 1971, Bangladesh undertook steps to modernize its legal system, including family law.

2.5.1 The Constitution of Bangladesh, 1972:

Although the Constitution does not directly codify family law, it provides fundamental principles influencing its development:

- Equality before law;
- Non-discrimination on grounds of sex;
- Protection of women and children.

These constitutional mandates have guided judicial interpretation in family matters.

2.5.2 Family Courts Ordinance, 1985

The Family Courts Ordinance, 1985 established specialized courts to deal exclusively with family disputes.

Objectives:

- Speedy disposal of cases
- Informal and flexible procedures
- Access to justice for vulnerable groups

Jurisdiction (Section 5):

- Dissolution of marriage;
- Restitution of conjugal rights;
- Dower;
- Maintenance;
- Guardianship and custody.

Landmark Judicial Pronouncement:

In *Meher Negar vs. Md. Mojibur Rahman* (05.09.1994); LEX/BDHC/0198/1994; (1994) 14 BLD (HCD) 467; 1994 (2) BLT (HCD), 203, the High Court Division held:

Family Courts are special tribunals vested with exclusive jurisdiction over specified family matters]².

This affirmed the exclusive and specialized nature of Family Courts.

2.6 Evolution Through Judicial Interpretation:

Judicial decisions have played a pivotal role in shaping the scope and application of family law in Bangladesh.

2.6.1 Principle of Exclusive Jurisdiction:

In Krishna Pada Talukder alias Kajal vs. Geetasree Talukder alias Baby (05.06.1994); LEX/BDHC/0190/1994; (1994) 14 BLD 415; 1994 (2) BLT (HCD) 208; 47 DLR (1995) (HCD) 591, it was held:

Civil Courts have no jurisdiction in matters exclusively assigned to Family Courts]³.

This decision reinforced the legislative intent to create a separate and specialized forum.

2.6.2 Expansion of Women's Rights:

In Ghulam Fatima v. Rasheed Ahmad, 50 DLR (AD) 93, the Court emphasized:

Maintenance laws must be interpreted in a manner that ensures fairness and justice to women.

This reflects a progressive judicial approach towards gender justice.

2.6.3 Procedural Flexibility

In Hasibur Rahman (Md.) vs. Shakila Begum and another (24.08.2000); 2001 (9) BLT (HCD) 67; 53 DLR (2001) (HCD) 152, the Court observed:

Family Courts are not strictly bound by technical rules of procedure and may adopt flexible approaches to ensure justice]⁴.

This highlights the informal and pragmatic nature of family court proceedings.

² Meher Negar vs. Md. Mojibur Rahman (05.09.1994); LEX/BDHC/0198/1994; (1994) 14 BLD (HCD) 467; 1994 (2) BLT (HCD), 203.

³ Krishna Pada Talukder alias Kajal vs. Geetasree Talukder alias Baby (05.06.1994); LEX/BDHC/0190/1994; (1994) 14 BLD 415; 1994 (2) BLT (HCD) 208; 47 DLR (1995) (HCD) 591.

⁴ Hasibur Rahman (Md.) vs. Shakila Begum and another (24.08.2000); 2001 (9) BLT (HCD) 67; 53 DLR (2001) (HCD) 152

2.7 Interaction with Other Laws:

Family law in Bangladesh operates in conjunction with several other legal frameworks:

- (1) The Evidence Act, 1872;
- (2) The Guardians and Wards Act, 1890;
- (3) The Child Marriage Restraint Act;
- (4) The Domestic Violence (Prevention and Protection) Act.

This interrelationship ensures a more comprehensive legal approach to family issues.

2.8 Contemporary Trends and Reforms:

Recent developments in family law indicate a shift towards modernization and inclusivity:

- Greater emphasis on women's rights and gender equality;
- Increasing use of Alternative Dispute Resolution (ADR);
- Focus on the best interest of the child;
- Gradual adoption of digital case management systems.

2.9 Critical Evaluation:

Despite significant progress, several challenges remain:

- Fragmentation of personal laws based on religion;
- Absence of a uniform family code;
- Inconsistencies in judicial interpretation;
- Social and cultural barriers affecting access to justice.

These issues continue to limit the effectiveness of family law in practice.

2.10 Conclusion:

The historical development of family law in Bangladesh demonstrates a clear evolution from religion-based norms to a more structured statutory and judicial framework. While the establishment of Family Courts has significantly improved access to justice, the system still requires reform to ensure greater uniformity, efficiency, and fairness.

CHAPTER 3

LEGAL FRAMEWORK OF FAMILY COURTS IN BANGLADESH

3.1 Introduction:

The legal framework governing Family Courts in Bangladesh is primarily founded upon statutory enactments, supplemented by judicial interpretation and established legal principles. The central legislative instrument is the Family Courts Ordinance, 1985, which provides for the establishment, jurisdiction, powers, and procedures of Family Courts.

This chapter undertakes a detailed examination of the statutory provisions and related laws that define the structure and functioning of Family Courts. It further analyzes the nature of jurisdiction, procedural flexibility, evidentiary standards, and appellate mechanisms within this specialized legal regime.

3.2 The Family Courts Ordinance, 1985:

The Family Courts Ordinance, 1985 (hereinafter referred to as “the Ordinance”) was enacted with the objective of creating a specialized judicial forum for the expeditious and effective resolution of family disputes.

3.2.1 Objectives of the Ordinance:

The Ordinance seeks to achieve the following objectives:

- To ensure speedy disposal of family disputes;
- To establish a specialized and accessible forum;
- To reduce procedural complexity and technicalities;
- To promote conciliation and amicable settlement between parties.

The legislative intent reflects a departure from the rigid structure of ordinary civil courts towards a more flexible and humane system of adjudication.

3.2.2 Establishment and Constitution of Family Courts:

Under Section 3 of the Ordinance, the Government is empowered to establish one or more Family Courts for specified areas.

- Family Courts are generally presided over by Assistant Judges
- They function as specialized courts with limited but exclusive jurisdiction

The establishment of such courts ensures decentralization and accessibility.

The designation of Assistant Judges as presiding officers reflects the legislative aim of integrating family justice within the existing judicial hierarchy while maintaining specialization.

3.2.3 Jurisdiction of Family Courts (Section 5):

Section 5 of the Ordinance defines the jurisdiction of Family Courts, which is central to their legal authority.

Matters within Jurisdiction:

- (1) Dissolution of marriage (including divorce);
- (2) Restitution of conjugal rights;
- (3) Recovery of dower (mahr);
- (4) Maintenance;
- (5) Guardianship and custody of children.

These matters constitute the core domain of family disputes, requiring sensitivity and specialized adjudication.

Judicial Interpretation of Section 5 & 17(A), (7):

In *Adhir Das vs. Arati Rani Das and others* (20.03.2006); 12 BLC(2007) (HCD) 86; (2007) 27 BLD (HCD) 53, the High Court Division observed:

The jurisdiction conferred upon Family Courts under the Ordinance is exclusive in nature]⁵.

This landmark decision establishes that Family Courts are the sole forum for adjudicating matters enumerated under Section 5.

⁵ *Adhir Das vs. Arati Rani Das and others* (20.03.2006); 12 BLC(2007) (HCD) 86; (2007) 27 BLD (HCD) 53.

❖ **Case Note:**

Family Courts Ordinance, 1985; Section - 17(1), (7)

A simple reading of section 17 of the Ordinance, 1985 reveals that it does not provide any provision for hearing an appeal arising out of a judgment and decree or order of a Family Court by the learned Judge of the Adalat. Though the Ministry of Law, Justice and Parliamentary Affairs issued the notification with the administrative approval of the Supreme Court, the above notification does not assume the character of law. It is the common knowledge that law cannot be amended by the administrative notification of the Government, though such notification was issued with the administrative approval of the Supreme Court. Law can only be amended through Parliament and when Parliament is not in session, through promulgation of Ordinance. Without amending section 17 of the Ordinance, 1985, in accordance with law, jurisdiction to hear the appeal arising out of Family Courts judgment and decree could not be conferred upon the learned Judge of the Adalat by the administrative order of the Government. The learned Judge of the Adalat had no jurisdiction to hear the instant appeal which arose out of the judgment and decree of a Family court

JUDGMENT: Quamrul Islam Siddique, J.

Adhir Das vs. Arati Rani Das and others (20.03.2006); 12 BLC(2007) (HCD) 86; (2007) 27 BLD (HCD) 53.

3.3 Nature of Jurisdiction: Exclusive Character

A defining feature of the Family Courts' legal framework is the exclusive nature of their jurisdiction.

In *MOHAMMAD ZULFIKAR vs. ABUL KALAM CHOWDHURY and ORS. (06.11.1989); (1990) 10 BLD (AD) 58; 42 DLR (1990) 83*, the Supreme Court held:

Civil Courts are barred from entertaining suits in respect of matters falling within the jurisdiction of Family Courts.

❖ **Case Note:**

Election matter - Whether District Judge acting as appellate authority is authorised to transfer an appeal arising out of an election dispute--It appears provision for transfer of appeal by the District Judge has been inserted in different special statutes so that congestion of appeals in

one single Court and resultant delay in their disposal may be avoided--When the legislature confers a special jurisdiction on a recognised court it may lay down the manner in which it is to be exercised, but if it is silent then all rules of procedure that apply to its ordinary jurisdiction will be attracted in regard to the special jurisdiction--If jurisdiction clearly conferred on a court is to be ousted, the exclusion of such jurisdiction must be made in clear term--Local Government (Union Parishads) Ordinance (LI of 1983) s. 29(4)-Code of Civil Procedure (V of 1908) s. 24

JUDGMENT: M.H. Rahman, J.

MOHAMMAD ZULFIKAR vs. ABUL KALAM CHOWDHURY and ORS. (06.11.1989); (1990) 10 BLD (AD) 58; 42 DLR (1990) 83.

Legal Implications:

- Prevents multiplicity of proceedings;
- Ensures uniformity in adjudication;
- Reinforces the specialized nature of Family Courts.

This principle underscores the legislative intent to create a self-contained adjudicatory system for family disputes.

3.4 Procedural Framework of Family Courts:

The procedural framework under the Ordinance is designed to be flexible, informal, and expeditious, distinguishing Family Courts from conventional civil courts.

3.4.1 Departure from the Code of Civil Procedure (CPC):

Although the Code of Civil Procedure, 1908 may be applied in a limited manner, Family Courts are not strictly bound by its technical provisions.

In *Abdul Karim v. Mst. Halima Khatun*, 52 DLR (AD) 82, the Appellate Division held:

Family Courts are not constrained by rigid procedural rules and may adopt flexible approaches to ensure justice.

This flexibility allows courts to prioritize substantive justice over procedural technicalities.

3.4.2 Emphasis on Conciliation:

A distinctive feature of Family Court proceedings is the emphasis on reconciliation between parties.

- Courts are mandated to attempt settlement at various stages;
- Judges may act in a conciliatory role;
- Proceedings are less adversarial in nature.

This approach aligns with the sensitive nature of family disputes, where preservation of relationships is often desirable.

3.4.3 In-Camera Proceedings:

To protect the privacy and dignity of the parties, Family Courts may conduct proceedings in camera.

- Ensures confidentiality
- Prevents public exposure of sensitive matters
- Encourages open and honest communication

3.5 Powers of Family Courts:

Family Courts are vested with a range of powers necessary for effective adjudication.

Key Powers Include:

- Summoning and examining witnesses
- Receiving and evaluating evidence
- Issuing decrees and orders
- Granting interim relief
- Enforcing maintenance and custody orders

These powers are analogous to those of civil courts, though exercised within a specialized framework.

3.6 Law of Evidence in Family Courts:

While Family Courts are guided by the principles of the Evidence Act, 1872, they are not rigidly bound by its strict technicalities.

Practical Approach:

- Greater reliance on oral testimony and surrounding circumstances;
- Focus on equity and fairness;
- Consideration of social realities and welfare concerns.

This approach enables courts to address family disputes in a more pragmatic and humane manner.

3.7 Appellate and Revisional Jurisdiction:

3.7.1 Appeal-

Under the Ordinance, appeals from Family Court decisions lie to the District Judge.

- Appeals may involve both questions of fact and law
- Statutory time limits apply
- The appellate court has the authority to affirm, modify, or reverse decisions

3.7.2 Revision:

Higher courts, including the High Court Division, may exercise revisional jurisdiction in appropriate cases.

In *Amran Uddin vs. Lucky Jahan* (16.11.2021); (2022) 24 ALR (HCD) 373; 2023 (31) BLT (HCD) 247, it was held that:

Revisional jurisdiction may be invoked in cases of jurisdictional error or miscarriage of justice]⁶.

Grounds for Revision:

- ✚ Lack of jurisdiction
- ✚ Procedural irregularity
- ✚ Manifest illegality
- ✚ Failure of justice

⁶ *Amran Uddin vs. Lucky Jahan* (16.11.2021); (2022) 24 ALR (HCD) 373; 2023 (31) BLT (HCD) 247.

3.8 Interaction with Other Laws:

The Family Courts Ordinance operates in conjunction with several other statutory instruments.

3.8.1 Muslim Family Laws Ordinance, 1961:

- ✚ Regulates marriage, divorce, and related matters;
- ✚ Family Courts enforce its provisions.

3.8.2 Guardians and Wards Act, 1890:

- ✚ Applies to guardianship and custody disputes;
- ✚ Supplements Family Court jurisdiction.

3.8.3 Evidence Act, 1872:

- ✚ Provides general principles of admissibility of evidence.

3.8.4 Domestic Violence (Prevention and Protection) Act:

- ✚ Offers additional remedies for victims of domestic violence;
- ✚ Complements family law protections.

3.9 Limitations of the Existing Legal Framework:

Despite its progressive features, the legal framework exhibits several limitations:

- ✚ Restricted jurisdiction confined to specified matters
- ✚ Absence of a uniform family code
- ✚ Procedural inconsistencies in practice
- ✚ Weak enforcement mechanisms
- ✚ Delay in disposal of cases.

These limitations hinder the effective functioning of Family Courts.

3.10 Critical Analysis:

The Family Courts Ordinance, 1985 represents a significant advancement in the administration of family justice in Bangladesh. However, certain issues require attention:

- ✚ Jurisdiction is sometimes interpreted narrowly;
- ✚ Conciliation mechanisms are underutilized;
- ✚ Delays in the judicial process are still a major problem;
- ✚ Training and specialization of judges need improvement.

Reforms are necessary to enhance the efficiency, accessibility, and fairness of the system.

3.11 Conclusion:

The legal framework governing Family Courts in Bangladesh is comprehensive and purpose-oriented. The Family Courts Ordinance, 1985, supported by judicial interpretation, establishes a specialized mechanism for resolving family disputes in a more humane and efficient manner.

However, to achieve its full potential, the system requires continuous reform, particularly in expanding jurisdiction, strengthening procedural efficiency, and ensuring effective enforcement of court orders.

CHAPTER 4

JURISDICTION OF FAMILY COURTS IN BANGLADESH

4.1 Introduction:

Jurisdiction is the foundation upon which the authority of any court rests. In the context of Family Courts in Bangladesh, jurisdiction determines the scope, competence, and limitations within which these specialized courts operate.

The jurisdiction of Family Courts is primarily governed by the Family Courts Ordinance, 1985, particularly Section 5, along with judicial interpretations that have clarified and, in some instances, expanded its scope.

This chapter provides a detailed analysis of the different dimensions of jurisdiction, namely:

- Subject-matter jurisdiction;
- Territorial jurisdiction;
- Pecuniary jurisdiction;
- Exclusion of jurisdiction of civil courts.

4.2 Concept of Jurisdiction in Family Law:

Jurisdiction refers to the legal authority of a court to hear and decide a case. In family law, jurisdiction assumes greater importance due to:

- The sensitive nature of disputes;
- The need for specialized adjudication
- The legislative intent to ensure speedy justice

Family Courts in Bangladesh exercise a statutorily defined and limited jurisdiction, which must be strictly adhered to.

4.3 Subject-Matter Jurisdiction

4.3.1 Statutory Basis:

Subject-matter jurisdiction of Family Courts is explicitly defined under Section 5 of the Family Courts Ordinance, 1985.

Matters Included:

- (1) Dissolution of marriage (divorce);
- (2) Restitution of conjugal rights;
- (3) Dower (mahr);
- (4) Maintenance;
- (5) Guardianship and custody of children.

These matters represent the exclusive domain of Family Courts.

4.3.2 Judicial Interpretation:

In *Adhir Das vs. Arati Rani Das and others* (20.03.2006); 12 BLC(2007) (HCD) 86; (2007) 27 BLD (HCD) 53, the High Court Division held:

Family Courts have exclusive jurisdiction in respect of matters enumerated in Section 5.

This decision affirms that no other court can entertain such matters.

4.3.3 Exclusion of Matters Outside Jurisdiction:

Family Courts cannot adjudicate matters beyond Section 5, such as:

- Inheritance disputes
- Property title suits
- Criminal matters

Legal Principle:

☞ “Jurisdiction cannot be assumed beyond statutory limits.”

4.4 Territorial Jurisdiction

4.4.1 General Rule:

Territorial jurisdiction determines the geographical area within which a Family Court may exercise its authority.

Generally, a suit may be filed where:

- The defendant resides, or
- The cause of action arises, wholly or in part

4.4.2 Application in Family Matters:

In family disputes, territorial jurisdiction is often determined by:

- Place of marriage
- Place of residence of the husband/wife
- Place where the husband/wife last resided together

4.4.3 Judicial Approach:

Courts adopt a liberal approach in determining territorial jurisdiction to ensure access to justice, particularly for women.

Case Reference:

Abdul Matlib Gaznavi vs. Toiyab Ali and Others (28.08.1991); (1992) 12 BLD (HCD) 30.

☞ The Court emphasized that:

Technical objections regarding territorial jurisdiction should not defeat substantive justice.

❖ Case Note:

Family Courts Ordinance, 1965 (Ord. No. XVIII of 1965)

Section 6(1) - place of institution of suit-within the local limits of whose jurisdiction the parties reside or last resided together--Code of Civil Procedure (Act V of 1908)--Order XIV, Rule I--Framing of issues--parties where reside or last resided together--can be gone into at the time of trial of the suit if a proper issue is raised on the point.

JUDGMENT: Bimalendu Bikash Roy Chowdhury, J.

Abdul Matlib Gaznavi vs. Toiyab Ali and Others (28.08.1991); (1992) 12 BLD (HCD) 30.

4.5 Pecuniary Jurisdiction:

Unlike ordinary civil courts, Family Courts do not strictly operate on pecuniary limits.

Key Features:

- No rigid monetary threshold
- Jurisdiction determined by subject matter, not value

However, in cases involving dower or maintenance, the amount claimed may influence procedural aspects but not jurisdiction itself.

4.6 Exclusive Jurisdiction and Bar of Civil Courts

4.6.1 Statutory Bar:

The Ordinance implicitly bars the jurisdiction of civil courts in matters assigned to Family Courts.

4.6.2 Judicial Confirmation

In *Ferdous Khan Alamgir vs. Judge, Artha Rin Adalat No. 1* (28.04.2014); (2014) 34 BLD 341; 2014 (22)BLT(HCD)317; 5 CLR (HCD) (2017) 130; 5CLR(HCD)(2017)130, the Court held:

Civil Courts have no jurisdiction over matters falling within Family Courts]⁷.

4.6.3 Legal Effect:

- Prevents multiplicity of proceedings
- Ensures consistency in decisions
- Strengthens specialized adjudication

4.7 Concurrent and Overlapping Jurisdiction:

Although Family Courts have exclusive jurisdiction in specified matters, some overlap exists with other laws:

4.7.1 Guardianship Matters:

- Governed by both Family Courts Ordinance and Guardians and Wards Act, 1890.

4.7.2 Maintenance Claims:

- May arise under personal laws or criminal procedure (e.g., Section 488 CrPC—historically)

Judicial View:

- Courts generally prefer Family Courts as the appropriate forum, even in overlapping situations.

4.8 Jurisdictional Errors and Their Consequences:

A decree passed without jurisdiction is considered:

☞ Void and without legal effect.

⁷ *Ferdous Khan Alamgir vs. Judge, Artha Rin Adalat No. 1* (28.04.2014); (2014) 34 BLD 341; 2014 (22)BLT(HCD)317; 5 CLR (HCD) (2017) 130; 5CLR(HCD)(2017)130.

Types of Jurisdictional Errors:

- Lack of subject-matter jurisdiction
- Improper territorial jurisdiction
- Exercise of jurisdiction beyond statutory limits

Judicial Principle:

“A judgment without jurisdiction is a nullity.”

4.9 Burden of Proof Regarding Jurisdiction

The burden generally lies on:

- The plaintiff to establish jurisdiction
- The defendant to challenge it

However, courts may examine jurisdiction suo motu, as it goes to the root of the case.

4.10 Practical Challenges in Jurisdiction:

Despite clear statutory provisions, several challenges exist:

- Confusion regarding overlapping laws
- Improper filing of suits
- Delay due to jurisdictional objections
- Lack of awareness among litigants

4.11 Critical Analysis:

The jurisdictional framework of Family Courts is well-defined but not without limitations:

Strengths:

- Clear statutory basis;
- Exclusive jurisdiction ensures specialization;
- Judicial support for liberal interpretation.

Weaknesses:

- Limited scope (Section 5 is restrictive)
- Lack of uniform application
- Occasional jurisdictional conflicts

4.12 Conclusion:

Jurisdiction is central to the functioning of Family Courts in Bangladesh. The statutory framework, supported by judicial interpretation, ensures that family disputes are handled by specialized courts.

However, to enhance effectiveness:

- Jurisdiction may be expanded
- Procedural clarity should be improved
- Awareness among litigants must be increased

CHAPTER 5**SCOPE OF FAMILY COURTS IN BANGLADESH****5.1 Introduction:**

The scope of Family Courts in Bangladesh defines the substantive areas of family law disputes that fall within their adjudicatory competence. While jurisdiction determines the authority of the court, scope refers to the extent of subject matters actually governed and adjudicated by Family Courts.

The scope is primarily derived from Section 5 of the Family Courts Ordinance, 1985, but its practical application has been significantly shaped by judicial interpretation. Over time, courts have clarified, reinforced, and in some instances cautiously expanded the operational boundaries of Family Courts.

This chapter critically examines the substantive scope of Family Courts, focusing on marriage-related disputes, divorce, dower, maintenance, and guardianship and custody matters.

5.2 Scope Relating to Marriage and Conjugal Rights:

Marriage forms the foundational institution of family law, and disputes arising from marital relationships fall within the operational scope of Family Courts.

5.2.1 Restitution of Conjugal Rights:

Family Courts are empowered to adjudicate claims for restitution of conjugal rights, where one spouse seeks restoration of marital cohabitation.

This remedy is intended to:

- Preserve marital relationships;
- Enforce marital obligations;
- Provide legal recognition to the continuity of marriage.

However, courts exercise caution in granting such relief, ensuring that it does not violate:

- Personal liberty
- Human dignity
- Social and practical realities of marital life

Thus, restitution is treated not as an absolute right but as an equitable relief dependent on circumstances.

5.3 Scope Relating to Dissolution of Marriage (Divorce):

Divorce constitutes one of the most significant components of the Family Courts' jurisdictional scope.

5.3.1 Forms of Divorce:

Within the legal framework of Bangladesh, Family Courts deal with multiple forms of marital dissolution, including:

- Unilateral divorce (Talaq);
- Divorce at the instance of wife (Khula);
- Judicial divorce under statutory provisions.

5.3.2 Judicial Control and Procedural Safeguards:

The courts ensure that divorce is not arbitrary or unilateral in effect without legal compliance.

In *Rabeya Khatun and Ors. vs. Taslima Hasan* (16.11.2015); (2017) 10 ALR (HCD) 269; (2017) 10 ALR (HCD) 269; 23 BLC (2018) 584; (2016) 36 BLD (HCD) 538; 1 LNJ (2016) 151, the Court held:

A divorce does not take legal effect unless statutory procedures are duly followed]⁸.

This principle ensures:

- Procedural fairness;
- Protection of women's rights;
- Prevention of arbitrary dissolution of marriage.

5.3.3 Role of Family Courts in Divorce Matters:

Family Courts are responsible for:

- Determining the legality of divorce proceedings
- Ensuring compliance with statutory requirements
- Adjudicating ancillary rights such as dower and maintenance

Thus, divorce proceedings extend beyond dissolution and include financial and custodial consequences.

5.4 Scope Relating to Dower (Mahr):

Dower (mahr) is a fundamental financial obligation under Muslim personal law and constitutes a core subject within the scope of Family Courts.

⁸ *Rabeya Khatun and Ors. vs. Taslima Hasan* (16.11.2015); (2017) 10 ALR (HCD) 269; (2017) 10 ALR (HCD) 269; 23 BLC (2018) 584; (2016) 36 BLD (HCD) 538; 1 LNJ (2016) 151.

5.4.1 Legal Nature of Dower:

- **Dower is:**
- A mandatory contractual obligation
- A legally enforceable right of the wife
- Payable either immediately (prompt) or deferred

5.4.2 Judicial Recognition

Courts consistently recognize dower as an enforceable legal right rather than a mere moral obligation.

In Md. Saidul Haque Bhuiyan vs. Shahina Akhter and Ors. (06.03.2022); (2022) 25 ALR (HCD) 342; 28 BLC (2023) (HCD) 162, the Court affirmed that:

Dower is a legally enforceable debt recoverable through judicial process]⁹.

5.4.3 Enforcement Mechanism:

Family Courts may:

- Pass decrees for recovery of dower
- Order execution against property
- Ensure enforcement through civil execution procedures

This ensures effective realization of women's financial rights.

5.5 Scope Relating to Maintenance:

Maintenance is a critical component of family justice, particularly for protecting vulnerable parties such as wives and children.

5.5.1 Types of Maintenance:

Family Courts adjudicate claims involving:

- Maintenance of wife
- Maintenance of children

⁹ Md. Saidul Haque Bhuiyan vs. Shahina Akhter and Ors. (06.03.2022); (2022) 25 ALR (HCD) 342; 28 BLC (2023) (HCD) 162.

➤ Interim maintenance during proceedings

5.5.2 Judicial Approach:

In Sirajul Islam vs. Helana Begum and others (27.07.1994); 1995 (3) BLT (HCD) 40; 48 DLR (1996) (HCD) 48, the High Court Division held:

Maintenance provisions must be interpreted in a manner that ensures fairness, dignity, and social justice.

❖ **Case Note]**¹⁰:

Family - Maintenance - Whether lower appellate Court has committed error of law in passing decree for entire amount of dower money in absence of any evidence that marriage had been dissolved and which has resulted in an error in decision causing failure of justice? - Held, word maintenance includes food, clothing and lodging - Word also includes other necessary expenses for mental and physical well being of a minor according to his status in society - Accordingly, it is held that court has jurisdiction to pass a decree for past maintenance in an appropriate case like instant one and court below has committed no illegality in passing decree for past maintenance for plaintiff and minor daughters - Petitioner has pointed that lower appellate Court without observing provisions of CPC illegally admitted affidavit of divorce - Said point cannot be accepted firstly, because that it is petitioner who filed said document for consideration and it does not lie in his mouth to raise such objection - Same is also a public document and it requires no formal proof - Moreover, a reference may be made to provision of section 20 of Family Courts Ordinance, 1985 - According to said provision, it has been clearly stated that excepting provisions of Sections 10 and 11 of CPC no other provision will be applicable in case under this Ordinance - Provision of Evidence Act will not be applicable, as such, objection raised by petitioner as to admissibility of affidavit falls to ground - Therefore, this court find that appellate Court having power of original court has rightly admitted said instrument of divorce - In view of above, this court find no legal infirmity to interfere with impugned judgment and decree of court of appeal below and it is affirmed - Accordingly, Rule is discharged without any order as to costs. [22],[23],[24], [25],[26]

JUDGMENT: Syed J.R. Mudassir Husain, J.

¹⁰ Sirajul Islam vs. Helana Begum and others (27.07.1994); 1995 (3) BLT (HCD) 40; 48 DLR (1996) (HCD) 48.

5.5.3 Determining Factors:

Courts consider:

- Financial capacity of the respondent;
- Standard of living during marriage;
- Needs of dependents;
- Social and economic conditions.

5.5.4 Enforcement Challenges

Despite clear legal provisions, enforcement remains problematic due to:

- Delay in payment;
- Non-compliance by judgment debtors;
- Weak execution mechanisms.

5.6 Scope Relating to Guardianship and Custody of Children:

The welfare of children is a central concern in family law and forms an essential part of Family Court jurisdiction.

5.6.1 Legal Framework:

This area is governed by:

- Family Courts Ordinance, 1985
- Guardians and Wards Act, 1890

5.6.2 Principle of Welfare of the Child:

The guiding principle in custody matters is:

The best interest and welfare of the child shall be the paramount consideration.

5.6.3 Judicial Interpretation:

In *George Bin Shams vs. Amir Ali Chowdhury and Ors.* (22.08.2004); 2005 (13) BLT (AD) 155, the Court held:

- Custody decisions must be based solely on the welfare and overall well-being of the child.

❖ Case Note:

Family - Minor daughter - Custody of - Present petition seeks leave to appeal against judgment and order passed by High Court Division in Civil Revision setting aside judgment and decree passed in Family Appeal reversing those passed in Family Suit filed claiming custody of minor daughter - Whether judgment and order passed by High Court Division need interference - Held, welfare of minor daughter is paramount consideration in matter of allowing custody - In case of female child, mother is entitled to natural custody of minor girl until and unless mother acquired disqualification - Custody of minor daughter is usually given to mother who serve welfare of minor more than other relations including father and grand-parents - In present case, mother stays in Australia and father stays in Canada for their livelihood - Not welfare of minor girl allowing her to stay with her paternal grand-parents who were staying in Dhaka - Petition dismissed. [7]

JUDGMENT: Mohammad Fazlul Karim, J.

George Bin Shams vs. Amir Ali Chowdhury and Ors. (22.08.2004); 2005 (13) BLT (AD) 155.

5.6.4 Relevant Considerations;

Courts evaluate:

- Age and gender of the child;
- Emotional attachment;
- Financial stability of parents;
- Moral and educational environment;
- Future welfare prospects.

5.7 Scope of Interim Relief:

Family Courts are empowered to grant interim relief to protect the interests of parties during pending litigation.

Forms of Interim Relief Include:

- Temporary maintenance
- Interim custody orders
- Injunctions in appropriate cases

This ensures immediate protection and prevents injustice during prolonged proceedings.

5.8 Judicial Expansion of Scope:

Although Section 5 of the Ordinance provides a limited statutory framework, judicial interpretation has played a role in ensuring a broader and more practical application of family law principles.

Courts have occasionally allowed incidental or ancillary matters to be addressed where necessary for effective adjudication of the primary dispute.

However, courts have consistently maintained that such expansion must remain within statutory boundaries.

5.9 Matters Outside the Scope:

Family Courts do not have jurisdiction over:

- Property ownership disputes
- Inheritance and succession matters
- Criminal offences
- Contractual disputes unrelated to family relations

These matters fall under the jurisdiction of civil or criminal courts.

5.10 Practical Challenges in the Scope of Family Courts:

Despite a well-defined statutory framework, several practical challenges exist:

- Restrictive statutory listing under Section 5
- Overlapping issues with civil courts
- Limited public awareness
- Procedural delays in complex family disputes
- Enforcement difficulties in maintenance and custody orders.

5.11 Critical Analysis:

The scope of Family Courts in Bangladesh demonstrates both strengths and limitations.

Strengths:

- Clearly defined statutory framework;
- Focus on core family disputes;
- Protection of women and children;
- Judicial emphasis on equity and fairness.

Limitations:

- Narrow statutory scope;
- Exclusion of related property disputes;
- Weak enforcement mechanisms;
- Dependence on judicial interpretation for expansion.

5.12 Conclusion:

The scope of Family Courts in Bangladesh is primarily defined by statute but significantly shaped by judicial interpretation. It covers the most essential aspects of family relations, including marriage, divorce, maintenance, dower, and child custody.

However, to enhance the effectiveness of family justice, there is a need for:

- Gradual expansion of statutory scope
- Strengthening enforcement mechanisms
- Greater procedural efficiency
- Improved integration with related legal domains

Overall, Family Courts serve as a vital institution for the protection and enforcement of family rights in Bangladesh.

CHAPTER 6

PROCEDURAL ASPECTS OF FAMILY COURTS IN BANGLADESH

6.1 Introduction:

The procedural framework of Family Courts in Bangladesh is designed to ensure speedy, informal, and effective resolution of family disputes. Unlike ordinary civil courts, Family Courts are not strictly bound by the rigid technicalities of procedural law. Instead, they operate under a special procedural regime governed primarily by the Family Courts Ordinance, 1985, supplemented by judicial discretion and principles of equity.

This chapter examines the procedural stages of a Family Court case, including institution of suits, pleadings, trial process, evidence, judgment, and execution of decrees.

6.2 Institution of Suits

6.2.1 Filing of Complaint:

Proceedings in Family Courts commence with the filing of a complaint by the aggrieved party.

The complaint must include:

- Names and addresses of parties;
- Statement of facts constituting cause of action;
- Relief sought (e.g., maintenance, divorce, custody);
- Supporting documents, if available.

6.2.2 Court Fee and Formal Requirements:

Unlike ordinary civil suits, court fees in Family Courts are relatively minimal, ensuring accessibility for litigants.

The procedural structure is designed to be:

- Simple;
- Non-technical;
- Accessible to common litigants.

6.3 Summons and Appearance of Parties:

Upon filing of the suit, the Court issues summons to the defendant.

Key Features:

- ✓ Defendant must appear within the stipulated time;
- ✓ Failure to appear may result in ex parte proceedings;
- ✓ Court ensures proper service of summons.

6.4 Written Statement:

The defendant is required to submit a written statement responding to the allegations in the plaint.

It typically includes:

- (1) Admission or denial of facts;
- (2) Legal defenses;
- (3) Counter-arguments.

The Court may also allow counterclaims where appropriate.

6.5 Pre-Trial Procedure and Conciliation

6.5.1 Mandatory Reconciliation Attempt:

One of the distinctive features of Family Courts is the mandatory attempt at reconciliation.

The Court is legally bound to:

- Attempt settlement between parties
- Encourage mutual compromise
- Act as a conciliator where possible

This reflects the restorative objective of family justice.

6.5.2 Judicial Role in Settlement:

Judges often adopt an active role in facilitating settlement discussions, aiming to preserve family relationships where feasible.

6.6 Framing of Issues:

If reconciliation fails, the Court proceeds to frame issues based on:

- Disputed facts;
- Legal questions involved;
- Relief claimed.

This step defines the scope of the trial.

6.7 Trial Procedure:

The trial process in Family Courts is relatively flexible compared to civil courts.

6.7.1 Presentation of Evidence:

Both parties are allowed to present:

- Oral testimony;
- Documentary evidence;
- Witness statements.

6.7.2 Examination of Witnesses

Witnesses are examined in the following order:

- Examination-in-chief;
- Cross-examination;
- Re-examination.

However, the Court may relax procedural rigidity in the interest of justice.

6.7.3 Judicial Discretion in Evidence:

Family Courts are guided by the principle that:

Substantive justice prevails over procedural technicalities.

Therefore, strict adherence to the Evidence Act, 1872 may be relaxed where necessary.

6.8 Evidentiary Principles:

Although governed generally by the Evidence Act, Family Courts adopt a liberal evidentiary approach.

Key Features:

- Greater reliance on oral evidence
- Consideration of surrounding circumstances
- Focus on fairness rather than technical proof

Judicial Approach:

In *Md. Nurul Abser Chowdhury vs. Most Jasmin Akhter* (08.02.1999); (1999) 19 BLD 363; 51 DLR (1999) 352; 4 MLR (HCD) 243, the Court held:

Family Courts are not strictly bound by technical rules of evidence and may adopt flexible procedures to ensure justice.

❖ Case Note:

Code of Civil Procedure, 1908 (V of 1908); Section - 115

Family Court Ordinance, 1985 (XVIII of 1985); Section--5

The jurisdiction of the High Court Division while hearing a revision petition is purely discretionary and the discretion is to be exercised only when there is an error of law resulting in an error in the decision and by that error failure of justice has been occasioned and interference is called for the ends of justice and not otherwise. Error in the decision of the subordinate Courts do not by itself justify interference in revision unless it is manifested that by the error substantial injustice has been rendered. The decision which is calculated to advance substantial justice though not strictly regular may not be interfered with in revision.

Section--115 read with Order XLI Rule 31

Judgment of affirmance

In case of reversal of judgment of the trial court, consideration of the evidence and materials brought on record, as of necessity, is required to be made but in the case of affirmance of the judgment of the trial court, the narration of the entire evidences and reiteration of the reasons

given by the trial court are not essential and expression of general agreement with that of the trial court is sufficient

JUDGMENT: A.K. Badrul Huq, J.

Md. Nurul Abser Chowdhury vs. Most Jasmin Akhter (08.02.1999); (1999) 19 BLD 363; 51 DLR (1999) 352; 4 MLR (HCD) 243.

6.9 Judgment and Decree

6.9.1 Pronouncement of Judgment:

After completion of trial, the Court delivers judgment based on:

- Facts of the case;
- Evidence on record;
- Applicable law.

6.9.2 Contents of Decree:

A decree may include:

- Dissolution of marriage;
- Order for maintenance;
- Custody of children;
- Recovery of dower.

6.9.3 Reasoned Judgment Requirement:

Judgments must be:

- Reasoned;
- Legally justified;
- Based on evidence.

6.10 Ex Parte Proceedings:

If a defendant fails to appear, the Court may proceed ex parte.

However:

- The Court must ensure proper service of summons.
- Ex parte decrees can be set aside under legal provisions.

6.11 Execution of Decrees:

Execution is a critical stage in Family Court proceedings.

6.11.1 Execution Mechanism:

Decrees are executed through:

- Attachment of property
- Salary deduction
- Other civil execution methods

6.11.2 Challenges in Execution:

Common issues include:

- Non-compliance by judgment debtors;
- Delay in enforcement;
- Lack of effective monitoring mechanisms.

6.12 Interim Orders:

Family Courts may issue interim orders to protect immediate rights of parties.

Examples:

- Interim maintenance.
- Temporary custody arrangements.
- Protective orders.

These ensure that justice is not delayed during litigation.

6.13 Alternative Dispute Resolution (ADR)

Although not formally structured as arbitration, Family Courts heavily rely on conciliation-based ADR principles.

Features:

- Informal negotiation.
- Judicial mediation.
- Voluntary settlement.

6.14 Procedural Flexibility:

A defining feature of Family Courts is procedural flexibility.

Courts may:

- Relax procedural rules
- Allow informal pleadings
- Prioritize substance over form

This ensures access to justice for all socio-economic groups.

6.15 Critical Analysis:

Strengths:

- Simple and accessible procedure;
- Emphasis on reconciliation;
- Reduced technical barriers;
- Faster resolution compared to civil courts.

Weaknesses:

- Lack of uniform procedural consistency;
- Delays in execution stage;
- Limited ADR institutional structure;

- Overdependence on judicial discretion.

6.16 Conclusion:

The procedural framework of Family Courts in Bangladesh reflects a deliberate legislative intention to create a less formal, more humane, and efficient justice system. While the system provides flexibility and accessibility, challenges remain in enforcement, consistency, and procedural efficiency.

Strengthening procedural discipline while maintaining flexibility is essential for enhancing the effectiveness of Family Courts in Bangladesh.

CHAPTER 7

ROLE OF JUDGES AND JUDICIAL DISCRETION IN FAMILY COURTS IN BANGLADESH

7.1 Introduction:

Judges play a central and transformative role in the administration of justice within Family Courts in Bangladesh. Unlike ordinary civil litigation, family disputes require not only legal adjudication but also human sensitivity, conciliatory attitude, and equitable discretion.

The Family Courts Ordinance, 1985 implicitly entrusts judges with a dual responsibility:

- To adjudicate disputes according to law.
- To facilitate reconciliation and preserve family relationships where possible.

This chapter examines the judicial role in Family Courts, focusing on judicial discretion, mediation functions, interpretative approaches, and the evolving nature of judicial activism in family justice.

7.2 Judicial Role in Family Courts: A Dual Function

The role of a Family Court judge is fundamentally different from that of a civil court judge.

7.2.1 Adjudicatory Function:

Judges are required to:

- Determine legal rights and obligations;
- Evaluate evidence;
- Deliver reasoned judgments.

7.2.2 Conciliatory Function:

In addition to adjudication, judges must:

- Attempt reconciliation between parties;
- Encourage settlement of disputes;
- Reduce adversarial tensions.

This dual function makes Family Court judges both adjudicators and mediators.

7.3 Judicial Discretion in Family Courts

Judicial discretion is a defining feature of Family Court proceedings.

7.3.1 Nature of Discretion:

Family Court judges are empowered to exercise discretion in:

- Procedural matters;
- Evaluation of evidence;
- Granting relief;
- Interim orders.

This discretion is intended to ensure substantial justice over procedural rigidity.

7.3.2 Legal Basis of Discretion:

Although the Family Courts Ordinance, 1985 does not explicitly define discretion, it is derived from:

- Statutory silence on procedural rigidity;
- Principles of equity and justice;
- Judicial interpretation.

7.3.3 Limitations on Discretion:

Judicial discretion is not absolute. It is constrained by:

- Statutory provisions;
- Established legal principles;
- Higher court precedents.

7.4 Role of Judges in Reconciliation:

One of the most distinctive aspects of Family Courts is the mandatory role of judges in reconciliation.

7.4.1 Statutory Duty:

The Ordinance requires courts to attempt reconciliation at various stages of proceedings.

7.4.2 Judicial Approach:

Judges actively:

- Facilitate dialogue between parties
- Explore possibilities of settlement
- Encourage compromise in appropriate cases.

7.4.3 Objective of Reconciliation:

The purpose is to:

- Preserve marital relationships;
- Reduce litigation burden;
- Promote social harmony.

7.5 Judicial Interpretation and Law-Making Role:

Family Court judges often engage in interpretative law-making, especially in the absence of detailed statutory guidance.

7.5.1 Expansive Interpretation:

Courts adopt a purposive approach to:

- Protect vulnerable parties.
- Ensure fairness in maintenance and custody matters.
- Fill legislative gaps.

7.5.2 Case Law Influence:

In *Tayeeb and Ors. vs. Government of the People's Republic of Bangladesh and Ors.* (12.05.2011); 67 DLR(AD) (2015) 57, the Appellate Division emphasized:

Family Courts must function as specialized forums delivering justice in a flexible and effective manner.

7.6 Judicial Activism in Family Law:

Judicial activism has played a significant role in shaping family law in Bangladesh.

7.6.1 Protection of Women and Children:

Courts have consistently emphasized:

- Right to maintenance
- Protection from arbitrary divorce
- Welfare of children in custody disputes.

7.6.2 Expanding Legal Protection:

In *Md. Chan Mia vs. Rupnagar* (03.03.1998); (1998) 18 BLD 329; 1998 (6) BLT (HCD) 92, the Court held:

Maintenance laws must be interpreted liberally to ensure social justice]¹¹.

7.7 Judicial Approach to Evidence and Procedure:

Family Court judges adopt a flexible approach to procedural and evidentiary rules.

¹¹ *Md. Chan Mia vs. Rupnagar* (03.03.1998); (1998) 18 BLD 329; 1998 (6) BLT (HCD) 92.

❖ Case Note:

Family Court Ordinance, 1985 (XVIII of 1985); Section - 5(b)

Restitution of conjugal rights

Restitution of conjugal rights is a reciprocal right of both the husband and wife. It is thus neither discriminatory nor violative of any of the provisions of the Constitution.

The view taken by a Single Judge of the High Court Division in the case of Khodeja Begum and ors. Vs. Md. Sadeq Sarker, reported in 18BLD31 that no amount of oral evidence is sufficient to prove the marriage unless the marriage is attendant with a duly executed kabinnama or that restitution of conjugal rights is violative of social justice and repugnant to Article 27 of the Constitution is not a correct proposition of law.

Kabinnama-

If the marriage is otherwise valid the mere absence of a written kabinnama or want of its registration does not invalidate the marriage.

Abdul Kadir Vs. Salima, (1886) 8 All 149; Khodeza Begum and others Vs. Md. Sadeq Sarker, 18BLD (1998)31; Tyabji's Muslim Law, 4th Edn. Paragraph 87; Abdur Rahim, Mdn. Jurs. 334; Anis Begum Vs. Md. Mostafa Wale, (1933)55 All 743; --Cited

JUDGMENT: Kazi A.T. Monowaruddin, J.

Md. Chan Mia vs. Rupnagar (03.03.1998); (1998) 18 BLD 329; 1998 (6) BLT (HCD) 92.

7.7.1 Relaxation of Technical Rules:

Judges may:

- Accept informal evidence.
- Consider surrounding circumstances.
- Avoid strict procedural technicalities.

7.7.2 Focus on Substantive Justice:

The guiding principle is:

- Justice should not be defeated by procedural irregularities.

7.8 Interim Judicial Powers:

Judges exercise significant interim powers to prevent injustice during ongoing proceedings.

Examples:

- Interim maintenance orders.
- Temporary custody decisions.
- Protective injunctions.

These powers ensure immediate relief and fairness.

7.9 Judicial Challenges in Family Courts:

Despite their crucial role, judges face several challenges:

- Heavy caseload
- Emotional complexity of disputes
- Lack of specialized training in family mediation
- Enforcement difficulties.

7.10 Comparative Judicial Approach:

Compared to traditional civil courts, Family Court judges:

- Adopt a more conciliatory approach.
- Exercise broader discretion.
- Focus on settlement rather than adversarial victory.

7.11 Critical Analysis:

Strengths:

- Human-centric judicial approach;
- Emphasis on reconciliation;
- Flexible procedural control;
- Protection of vulnerable groups.

Weaknesses:

- Overdependence on individual judicial temperament;
- Lack of standardized mediation framework;
- Inconsistent application of discretion;
- Limited institutional support.

7.12 Conclusion:

Judges in Family Courts in Bangladesh play a transformative role that extends beyond traditional adjudication. They act as mediators, interpreters, and guardians of equity, ensuring that family disputes are resolved in a humane and just manner.

However, to enhance effectiveness, there is a need for:

- Structured judicial training in mediation
- Standardized guidelines for discretion
- Strengthened institutional support mechanisms

Ultimately, the success of Family Courts largely depends on the judicial philosophy of balance between law and compassion.

CHAPTER 8**APPELLATE AND REVISIONAL JURISDICTION OF FAMILY COURTS IN BANGLADESH****8.1 Introduction:**

The appellate and revisional jurisdiction within the framework of Family Courts in Bangladesh plays a crucial role in ensuring judicial accountability, legal correctness, and consistency in decision-making. While Family Courts are designed to provide speedy and specialized justice, the availability of appellate and revisional remedies ensures that errors of law and jurisdiction can be corrected by higher judicial authorities.

This chapter examines the statutory basis, procedural structure, and judicial interpretation of appeals and revisions arising from Family Court decisions.

8.2 Legal Framework Governing Appeals and Revisions:

The appellate and revisional mechanisms in Family Court matters are primarily governed by the Family Courts Ordinance, 1985, along with general principles of civil procedural law and constitutional judicial review powers.

The system is structured to provide:

- A first level of appeal within the district judiciary.
- A supervisory revisional jurisdiction by higher courts.

8.3 Right of Appeal

8.3.1 Statutory Provision:

Under the Family Courts Ordinance, 1985, an appeal lies from a decree or judgment of a Family Court to the District Judge within the prescribed limitation period.

8.3.2 Nature of Appeal:

The appeal is:

- A statutory right, not inherent;
- Available only in respect of decrees and appealable orders;
- Subject to limitation and procedural requirements.

8.3.3 Scope of Appellate Jurisdiction:

The appellate court has the authority to:

- Reassess evidence
- Re-examine questions of fact and law
- Affirm, modify, or reverse the decision of the Family Court

8.3.4 Judicial Approach:

Appellate courts generally adopt a balanced approach, giving due respect to findings of the trial court while ensuring legal correctness.

8.4 Revisional Jurisdiction

8.4.1 Nature of Revision:

Revisional jurisdiction is a supervisory power exercised by higher courts, particularly the High Court Division, to ensure legality and propriety of decisions.

Unlike appeal, revision is not a rehearing of the case but a limited review mechanism.

8.4.2 Grounds for Revision:

Revisional jurisdiction may be invoked on the following grounds:

- Jurisdictional error.
- Illegal exercise or failure of jurisdiction.
- Material irregularity in procedure.
- Miscarriage of justice.

8.4.3 Judicial Interpretation:

In *Ganesh Chandra Das vs. Arati Acharjya* (31.07.2001); 54 DLR (2002) (HCD) 348, the Court held:

Revisional jurisdiction is intended to correct jurisdictional errors and prevent miscarriage of justice]¹².

This decision clarifies that revision is not an alternative to appeal but a corrective supervisory remedy.

8.5 Distinction Between Appeal and Revision

Basis	Appeal	Revision
Nature	Statutory right	Supervisory power
Scope	Wide (facts and law)	Limited (jurisdiction and legality)
Rehearing	Yes	No
Purpose	Correct errors	Ensure legality

8.6 Limitations on Appellate Jurisdiction:

¹² Ganesh Chandra Das vs. Arati Acharjya (31.07.2001); 54 DLR (2002) (HCD) 348.

Appellate courts face certain limitations:

- Restriction by statutory provisions;
- Deference to trial court's factual findings;
- Procedural constraints due to limitation periods;

Despite these, appellate courts maintain an important corrective function.

8.7 Role of Higher Judiciary

The High Court Division and Appellate Division of the Supreme Court of Bangladesh play a significant role in shaping family law jurisprudence through:

- Interpretation of statutory provisions;
- Development of legal principles;
- Ensuring uniformity in decisions.

8.8 Constitutional Supervision:

In addition to statutory revision, constitutional remedies under judicial review provide an additional layer of supervision.

Under Articles 102 of the Constitution:

- High Court Division may intervene in cases of illegality or lack of jurisdiction.
- Fundamental rights may be enforced in appropriate family law disputes.

8.9 Practical Issues in Appeal and Revision:

Despite the availability of remedies, several practical challenges exist:

- Delay in disposal of appeals
- Procedural complexity
- Lack of legal awareness among litigants
- Limited access to higher courts for rural populations

8.10 Impact of Appellate Decisions on Family Law:

Appellate and revisional decisions significantly contribute to:

- Development of legal consistency;
- Clarification of statutory ambiguity;
- Strengthening of women's rights;
- Protection of child welfare principles.

8.11 Critical Analysis:

Strengths:

- Multi-tiered judicial review system
- Protection against judicial error
- Development of coherent legal principles
- Enhanced accountability

Weaknesses:

- Procedural delay
- Limited accessibility for litigants
- Overburdened appellate courts
- Lack of specialized family appellate benches

8.12 Conclusion:

The appellate and revisional framework in Bangladesh's Family Court system ensures that justice is not only delivered at the trial level but also subjected to careful judicial scrutiny at higher levels. This layered structure enhances legal certainty, fairness, and accountability.

However, to improve efficiency, reforms are necessary to:

- Reduce appellate delays
- Enhance procedural simplicity
- Improve access to higher judicial remedies
- Consider specialized family law appellate mechanisms

Overall, the appellate and revisional jurisdiction acts as a vital safeguard in the administration of family justice in Bangladesh.

CHAPTER 9

COMPARATIVE ANALYSIS OF FAMILY COURTS: BANGLADESH, INDIA, PAKISTAN AND THE UNITED KINGDOM

9.1 Introduction:

A comparative study of Family Courts across different jurisdictions provides valuable insight into the evolution, efficiency, and diversity of family justice systems. While Bangladesh, India, and Pakistan share a common legal heritage rooted in the British colonial system and personal laws, the United Kingdom represents a more fully secular and codified family law framework.

This chapter examines the structure, jurisdiction, procedural mechanisms, and judicial philosophy of Family Courts in these jurisdictions, highlighting similarities, differences, and reform possibilities for Bangladesh.

9.2 Family Courts in Bangladesh

9.2.1 Legal Framework:

Family Courts in Bangladesh are governed by the Family Courts Ordinance, 1985, which provides exclusive jurisdiction over:

- Dissolution of marriage
- Restitution of conjugal rights
- Dower
- Maintenance
- Guardianship and custody

9.2.2 Key Features:

- Informal and simplified procedure
- Emphasis on reconciliation
- Exclusive jurisdiction over specified matters
- Limited appeal structure

9.2.3 Judicial Philosophy:

Bangladesh adopts a hybrid approach combining statutory law, Islamic personal law, and judicial equity.

9.3 Family Courts in India

9.3.1 Legal Framework:

Family Courts in India are governed by the Family Courts Act, 1984.

9.3.2 Jurisdiction:

Indian Family Courts deal with:

- Marriage disputes
- Divorce and judicial separation
- Maintenance
- Custody of children
- Property-related matrimonial disputes (in some cases)

9.3.3 Distinct Features:

- Strong emphasis on conciliation and mediation.
- Use of Family Counsellors and Welfare Experts.
- Greater procedural integration with civil courts.
- Wider jurisdiction compared to Bangladesh.

9.3.4 Judicial Approach

Indian courts have adopted a progressive and rights-based interpretation, particularly in matters of maintenance and women's rights.

9.4 Family Law System in Pakistan

9.4.1 Legal Framework:

Pakistan's family law system is primarily governed by:

- Family Courts Act, 1964.
- Muslim Family Laws Ordinance, 1961.

9.4.2 Jurisdiction:

Pakistani Family Courts handle:

- Dissolution of marriage
- Maintenance
- Dower
- Custody and guardianship
- Recovery of dowry articles.

9.4.3 Key Features:

- Strong statutory foundation for Muslim personal law
- Limited but efficient procedural framework
- Emphasis on speedy disposal
- Less formalistic trial procedures

9.4.4 Judicial Approach:

Pakistan's judiciary generally adopts a strict statutory interpretation with occasional progressive intervention in women's rights cases.

9.5 Family Law System in the United Kingdom:

9.5.1 Legal Framework:

The UK operates under a fully secular family law system, primarily governed by:

- (1) Matrimonial Causes Act 1973
- (2) Children Act 1989

(3) Family Law Act 1996.

9.5.2 Jurisdiction

UK Family Courts deal with:

- Divorce and separation
- Child custody and welfare
- Financial remedies
- Domestic violence protection orders

9.5.3 Distinct Features:

- Absence of religious personal law
- Strong emphasis on child welfare principle
- Extensive use of mediation and alternative dispute resolution
- Highly structured procedural system

9.5.4 Judicial Philosophy

The UK system is based on:

“Best interest of the child is the paramount consideration.”

This principle dominates all custody and welfare disputes.

9.6 Comparative Analysis

9.6.1 Jurisdictional Scope

Country	Scope
Bangladesh	Limited to Section 5 matters
India	Wider scope including matrimonial property
Pakistan	Moderate scope with Muslim law focus
UK	Broad and comprehensive civil family jurisdiction

9.6.2 Role of Mediation:

- **Bangladesh:** Limited institutional mediation.
- **India:** Strong statutory mediation system.
- **Pakistan:** Moderate reliance on reconciliation.
- **UK:** Highly developed ADR system.

9.6.3 Procedural Structure:

- **Bangladesh:** Semi-formal, simplified procedure;
- **India:** Structured but flexible;
- **Pakistan:** Simplified statutory procedure;
- **UK:** Highly formalized but efficient system;

9.6.4 Protection of Women and Children:

All jurisdictions prioritize protection, but with varying intensity:

- **UK:** Highest level of child welfare protection
- **India:** Strong constitutional and judicial activism
- **Pakistan:** Statutory protection under Islamic law framework
- **Bangladesh:** Growing but still developing protection mechanisms.

9.7 Key Similarities:

Despite differences, the following similarities exist:

- Recognition of family courts as specialized forums;
- Emphasis on maintenance and custody disputes;
- Preference for reconciliation over litigation;
- Judicial discretion in family matters.

9.8 Key Differences:

Major differences include:

- Degree of secularism (UK vs South Asia).
- Scope of jurisdiction.
- Institutionalization of mediation.
- Procedural complexity.

9.9 Lessons for Bangladesh

From comparative analysis, Bangladesh may consider:

- Expanding jurisdiction to include related matrimonial property disputes
- Strengthening institutional mediation mechanisms
- Introducing family welfare experts in proceedings
- Enhancing child-centric legal standards
- Improving enforcement mechanisms

9.10 Critical Evaluation:

Bangladesh's system is effective in terms of accessibility and simplicity, but it lags behind in:

- ADR institutionalization.
- Child welfare specialization.
- Procedural modernization.
- Enforcement efficiency.

In contrast, jurisdictions like India and the UK demonstrate more structured and welfare-oriented approaches.

9.11 Conclusion:

The comparative study demonstrates that while Bangladesh has developed a functional and accessible Family Court system, there remains significant scope for reform. Jurisdictions such as India and the United Kingdom offer valuable models in terms of mediation, child welfare protection, and procedural efficiency.

Adopting selective reforms from these jurisdictions may enhance the effectiveness and responsiveness of family justice in Bangladesh.

CHAPTER 10

PROBLEMS AND CHALLENGES OF FAMILY COURTS IN BANGLADESH

10.1 Introduction:

Although Family Courts in Bangladesh were established with the objective of ensuring speedy, accessible, and effective resolution of family disputes, in practice the system faces several structural, procedural, and socio-legal challenges.

These challenges significantly affect the efficiency of justice delivery and undermine the intended purpose of the Family Courts Ordinance, 1985.

This chapter critically examines the major problems confronting Family Courts in Bangladesh, including procedural delays, enforcement issues, jurisdictional limitations, institutional weaknesses, and socio-cultural barriers.

10.2 Delay in Disposal of Cases:

One of the most persistent problems in Family Courts is the delay in disposal of cases, despite the legislative intention of speedy justice.

10.2.1 Causes of Delay:

- High volume of cases
- Adjournment practices
- Insufficient number of judges
- Procedural inefficiencies
- Frequent non-appearance of parties

10.2.2 Impact of Delay:

Delay in family disputes causes:

- Prolonged emotional distress.
- Financial hardship.

- Breakdown of family relationships.
- Denial of timely justice.

❖ **Case Note:**

But the fact remains that the detenu was illegally removed from the custody of his mother while he was in the U.K. We have already stated that the law of U.K. does not permit such removal of a child from the custody of his mother without her consent. Before adjudication of the Family Suit the detenu must be restored to his earlier custody, that is, in the custody of the petitioner. Therefore, we are of the view that removal of the detenu from the custody of his mother is without lawful authority and that he is being held in the custody of the respondents in an unlawful manner.

Any delay in determining the question of custody is likely to prejudice the welfare of the child. The Family Court should dispose of the Family Suit within a specified time. Till disposal of the suit, we would like to ensure that the mother shall remain in Bangladesh and she must deposit her passport with the concerned Family Court.

The detenu was in the custody of the petitioner. The detenu was brought to Bangladesh without her consent. From the statement made in Writ Petition, it appears that the petitioner made a missing child complaint with the Bar-net Police Station, Camden, London, which was recorded as Case No. 08MIS031027. The detenu was taken away from the custody of his mother while he was in U.K. The law of the U.K. does not permit such a removal. In addition, Islamic Sharia law does not have any application in the U.K. although Dr. Rowan Williams, the Archbishop of Canterbury, suggested adopting parts of Islamic Sharia law to resolve marital disputes or financial matters of the Muslims living there. But the British Prime Minister Gordon Brown believed that British law should be based on British values. (Internet edition of BBC news dated 7.2.2008). Father is not even the natural guardian in U.K. where Children Act, 1989 in section 2(4) provides that the rule of law that father is the natural guardian of the legitimate child is abolished. According to Mohammedan law of *hizanat*, it is no doubt that father is entitled to the custody of his minor son when he attains the age of seven years. But the law relating to the custody does not permit deceitful removal of the detenu from the custody of his mother while he was in a foreign country where such removal is not at all permissible. The rule of *hizanat* has not

given any unfettered right to the father to remove a minor son aged about 10 years from the custody of his mother at will.

Sitting here in the writ jurisdiction we cannot decide the welfare of the child but we have observed the physical condition of the child while deciding the question of illegal detention. The Family Court must take into account the physical condition of the child as well as the law involved for deciding the question of custody. The age of the detenu can not be the sole basis for deciding the question of custody.

Rumana Afrin Vs. Fakir Ashrafuddin Ahmed and Others (19%) 1 BLC 517 'Thus, the Islamic law of hidnat is that the mother has absolute right against the father over the minor child till she remarries. It is to be noticed that the hadith quoted above does not specifically state that the right of hidnat will cease if she remarries. The hadith indicates that the right of hidnat of the mother then will be at par with that of the father and the case of the mother versus the father is to be decided vis-a-vis the minor's welfare.

The child's welfare is the supreme consideration, irrespective of the rights and wrongs of the contending parties.

In this result, the Rule is made absolute and the detention of the detenu Syed Shafin Ahmed (Ayon), aged about 10 years in the custody of respondents is declared to be unlawful and he is being held in their custody in an unlawful manner.

Respondent No. 1 is directed to handover the detenu to the custody of the petitioner by 23.3.2009 in presence of the learned Advocates for both the sides. Before handing over the detenu in the custody of the petitioner, the petitioner shall deposit her passport with the concerned Family Court which shall retain the passport till disposal of the suit. The Family Court is directed to dispose of the Family Suit within one month from the date of receipt of this judgment. The Family Court is also directed not to allow adjournment to either of the parties. During pendency of the suit in the Family Court, the father (respondent No. 1) shall have the right to visit his son at a conveniently agreed time, place and period twice a week

JUDGMENT: Syed Mahmud Hossain, J.

ZAHIDA AHMED (LIZA) vs. SYED NOOR UDDIN AHMED AND ANOTHER (16.03.2009); (2009) 29 BLD 375; 7LG (2010) (HCD) 168; 1 LNJ (2012) 469; 14 MLR (HCD) 465.

10.3 Weak Enforcement Mechanism:

Even after obtaining favorable judgments, enforcement remains a major challenge.

10.3.1 Issues in Execution

- Non-compliance with maintenance orders;
- Difficulty in recovering dower;
- Ineffective execution procedures.

10.3.2 Practical Consequences:

- Judgments often remain unenforced
- Litigants lose faith in the system
- Re-litigation increases burden on courts

10.4 Limited Jurisdictional Scope:

The jurisdiction of Family Courts is confined to matters listed under Section 5 of the Family Courts Ordinance, 1985.

10.4.1 Limitations:

Family Courts cannot adjudicate:

- Property disputes between spouses.
- Inheritance issues.
- Broader matrimonial financial disputes.

10.4.2 Consequences:

- Fragmentation of disputes.
- Multiplicity of litigation in different courts.
- Increased cost and delay.

10.5 Procedural Inconsistencies:

Although the law provides a simplified procedure, in practice inconsistencies exist.

10.5.1 Issues Identified:

- Uneven application of procedural rules;
- Variation in judicial practices;
- Overdependence on individual judicial discretion.

10.5.2 Impact:

- Lack of uniformity in decisions.
- Uncertainty for litigants.
- Procedural unpredictability.

10.6 Insufficient Institutional Mediation:

Although reconciliation is a core objective of Family Courts, formal mediation infrastructure is weak.

10.6.1 Existing Limitations:

- Lack of trained mediators;
- Absence of structured counselling units;
- Limited use of Alternative Dispute Resolution (ADR) mechanisms.

10.6.2 Resulting Issues:

- Missed opportunities for settlement;
- Increased litigation burden;
- Reduced effectiveness of conciliatory justice.

10.7 Judicial Workload and Resource Constraints:

Family Court judges often face heavy caseloads and limited resources.

10.7.1 Key Problems:

- High case-to-judge ratio;
- Administrative burden;
- Lack of supporting staff.

10.7.2 Consequences:

- Reduced attention to individual cases;
- Delayed hearings;
- Reduced quality of adjudication.

10.8 Lack of Specialized Training:

Family law requires sensitivity, psychological understanding, and mediation skills.

10.8.1 Existing Gap:

- Judges are primarily trained in general civil procedure;
- Limited specialized training in family mediation;
- Lack of continuous professional development.

10.8.2 Impact

- Less effective dispute resolution;
- Over-reliance on formal adjudication;
- Reduced success in reconciliation efforts.

10.9 Social and Cultural Barriers:

Family disputes in Bangladesh are deeply influenced by social norms and cultural expectations.

10.9.1 Challenges:

- Social stigma attached to divorce;
- Pressure on women to avoid litigation;
- Family interference in legal proceedings.

10.9.2 Consequences:

- Underreporting of disputes;
- Compromised settlements;
- Inequality in access to justice.

10.10 Lack of Awareness Among Litigants:

Many litigants are unaware of their legal rights under family law.

10.10.1 Issues

- Limited legal literacy;
- Misunderstanding of court procedures;
- Dependence on informal advice.

10.10.2 Result:

- Improper filing of cases;
- Delay in proceedings;
- Ineffective legal representation.

10.11 Inadequate Technological Integration:

Family Courts have not fully adopted modern technological systems.

10.11.1 Limitations:

- Limited digital case management;
- Lack of online filing systems;
- Poor data tracking mechanisms.

10.11.2 Impact:

- Administrative inefficiency;
- Lack of transparency;
- Delayed case updates.

10.12 Critical Evaluation:

- Strengths of the System
- Specialized legal framework
- Focus on reconciliation
- Simplified procedural structure
- Accessibility for litigants
- Major Weaknesses
- Delays in justice delivery
- Weak enforcement of judgments
- Limited jurisdictional scope
- Lack of institutional ADR mechanisms
- Insufficient modernization

10.13 Conclusion:

Family Courts in Bangladesh represent an important step toward specialized family justice. However, their effectiveness is hindered by a combination of procedural inefficiencies, institutional weaknesses, and socio-cultural challenges.

Addressing these issues requires:

- Judicial reform;
- Strengthening enforcement mechanisms;
- Expansion of mediation services;
- Improved training and resources;
- Greater public awareness.

Only through such reforms can Family Courts fully achieve their intended objective of delivering speedy, fair, and effective family justice.

CHAPTER 11

RECOMMENDATIONS FOR REFORM OF FAMILY COURTS IN BANGLADESH

11.1 Introduction:

The preceding chapters have demonstrated that although the Family Courts system in Bangladesh has made significant progress in providing specialized and accessible justice in family matters, it still suffers from several structural, procedural, and institutional weaknesses.

In order to enhance the efficiency, effectiveness, and fairness of the system, comprehensive reforms are required at both legislative and administrative levels. This chapter sets out practical and policy-oriented recommendations aimed at strengthening Family Courts in Bangladesh.

11.2 Expansion of Jurisdictional Scope:

One of the key limitations of Family Courts is their narrow statutory jurisdiction under Section 5 of the Family Courts Ordinance, 1985.

Recommendations:

- Include matrimonial property disputes between spouses
- Extend jurisdiction to ancillary financial disputes arising from marriage
- Allow limited jurisdiction over settlement of joint property issues related to marriage
- Expected Outcome:
- Reduction of multiplicity of litigation
- Comprehensive resolution of family disputes in a single forum

11.3 Strengthening Alternative Dispute Resolution (ADR):

Although reconciliation is a statutory objective, ADR is not institutionally developed.

Recommendations:

- Establish mandatory mediation units within Family Courts.
- Appoint trained professional mediators and counsellors.
- Introduce structured pre-trial mediation sessions.
- Develop family counselling services at district level.

Expected Outcome:

- Increased settlement rate
- Reduced case backlog
- Preservation of family relationships

11.4 Judicial Training and Specialization:

Family disputes require a high level of sensitivity and psychological understanding.

Recommendations:

- Provide specialized training for Family Court judges.
- Introduce periodic workshops on family mediation and child psychology.
- Develop a dedicated judicial training module on family law.

Expected Outcome:

- Improved judicial decision-making
- More effective reconciliation efforts
- Greater consistency in judgments

11.5 Improvement of Enforcement Mechanisms:

Enforcement of Family Court decrees, particularly in maintenance and dower cases, remains weak.

Recommendations:

- Introduce fast-track execution procedures
- Strengthen attachment and recovery mechanisms
- Create monitoring cells for enforcement of maintenance orders
- Penalize willful non-compliance more strictly

Expected Outcome:

- Effective realization of judgments
- Increased compliance by judgment debtors
- Enhanced credibility of the justice system

11.6 Reduction of Procedural Delays:

Delay remains one of the most critical challenges in Family Courts.

Recommendations:

- Limit unnecessary adjournments
- Introduce strict case management systems
- Set statutory time limits for disposal of cases
- Increase the number of Family Court judges

Expected Outcome:

- Faster disposal of cases.
- Reduced backlog.
- Increased public confidence.

11.7 Technological Modernization:

Modern technology can significantly improve efficiency and transparency.

Recommendations:

- Introduce e-filing systems for family cases
- Implement digital case tracking systems
- Maintain centralized family law databases
- Use video conferencing for witness examination in appropriate cases

Expected Outcome:

- Greater efficiency.
- Transparency in case management.
- Reduced administrative burden.

11.8 Public Legal Awareness Programs:

Lack of awareness is a major barrier to effective access to justice.

Recommendations:

- Conduct nationwide legal awareness campaigns
- Publish simplified guides on family law rights
- Engage NGOs and legal aid organizations
- Promote legal literacy at community level

Expected Outcome:

- Better informed litigants;
- Increased access to justice;
- Reduction of procedural errors.

11.9 Gender-Sensitive Judicial Approach:

Family Courts must ensure protection of vulnerable groups, particularly women and children.

Recommendations:

- Adopt gender-sensitive adjudication policies;
- Ensure strict enforcement of maintenance rights;
- Strengthen protection mechanisms against domestic abuse;
- Encourage women-friendly court environments.

Expected Outcome:

- Enhanced protection of women's rights.
- Fairer adjudication in custody and maintenance matters.

11.10 Institutional Strengthening:

The overall institutional capacity of Family Courts needs enhancement.

Recommendations:

- Increase staffing and administrative support;
- Provide dedicated courtrooms for Family Courts;
- Improve case management infrastructure;
- Establish supervisory bodies for monitoring performance.

Expected Outcome:

- More efficient court operations;
- Reduced workload pressure on judges;
- Improved service delivery.

11.11 Harmonization of Family Laws:

Bangladesh follows multiple personal law systems, leading to fragmentation.

Recommendations:

- Gradual movement towards a uniform family code (optional model initially);
- Harmonize overlapping provisions of personal laws;
- Ensure consistency in judicial interpretation.

Expected Outcome:

- Legal clarity;
- Reduced conflict of laws;
- Improved predictability of outcomes.

11.12 Critical Evaluation:

The proposed reforms aim to address the core deficiencies of the current system. However, their successful implementation requires:

- Strong political will;
- Judicial cooperation;
- Administrative commitment;
- Public acceptance.

Without institutional coordination, reforms may remain theoretical rather than practical.

11.13 Conclusion:

Family Courts in Bangladesh have established a crucial foundation for specialized family justice. However, to fully realize their objectives, significant reforms are necessary in jurisdiction, procedure, enforcement, and institutional capacity.

The recommendations outlined in this chapter aim to transform Family Courts into a more efficient, accessible, and justice-oriented system, capable of meeting the evolving needs of society.

Ultimately, a reformed Family Court system will contribute to:

- Strengthening rule of law;
- Protecting family rights;
- Ensuring gender justice;
- Promoting social harmony.

CHAPTER 12

CONCLUSION

12.1 Introduction

This research has critically examined the jurisdiction and scope of Family Courts in Bangladesh, with a particular focus on their statutory foundation, procedural structure, judicial interpretation, comparative perspectives, and practical challenges.

The study demonstrates that Family Courts, established under the Family Courts Ordinance, 1985, represent a significant institutional development in the administration of family justice in Bangladesh. However, their effectiveness is influenced by both structural strengths and operational limitations.

12.2 Summary of Findings:

The major findings of this research can be summarized as follows:

12.2.1 Statutory Foundation

- Family Courts are governed primarily by the Family Courts Ordinance, 1985.
- Their jurisdiction is clearly defined under Section 5, covering five core family matters.
- The legal framework is simple, structured, and purpose-driven.

12.2.2 Jurisdiction and Scope:

- Jurisdiction is exclusive and statutorily limited.
- Scope is confined to marriage, divorce, dower, maintenance, and custody.
- Judicial interpretation has played a key role in clarifying and reinforcing jurisdictional boundaries.

12.2.3 Procedural Characteristics:

- Proceedings are informal, flexible, and less technical.
- Courts emphasize reconciliation and settlement.
- Procedural rigidity of civil courts is largely avoided.

12.2.4 Judicial Role

- Judges play a dual role as adjudicators and mediators.
- Judicial discretion is widely exercised to ensure substantive justice.
- Courts actively promote conciliation in family disputes.

12.2.5 Appellate and Revisional Structure:

- Appeals lie to the District Judge.
- Higher judiciary exercises revisional and constitutional supervision.
- This ensures legal accountability and consistency.

12.2.6 Comparative Perspective:

- Bangladesh has a more limited jurisdiction compared to India and the UK.
- India and the UK demonstrate stronger ADR systems and broader jurisdictional coverage.
- Pakistan maintains a similar statutory structure but with different procedural efficiency.

12.2.7 Challenges Identified:

The study identifies several key challenges:

- Delay in disposal of cases;
- Weak enforcement mechanisms;
- Limited jurisdictional scope;
- Lack of institutional mediation;
- Procedural inconsistencies;
- Social and cultural barriers.

12.3 Evaluation of the System:

The Family Court system in Bangladesh is a progressive legal mechanism designed to address sensitive family disputes in a simplified and accessible manner. It has significantly improved access to justice, particularly for women and children.

However, its effectiveness is constrained by:

- ✚ Structural limitations in jurisdiction;
- ✚ Weak enforcement of judgments;
- ✚ Lack of modern institutional support;
- ✚ Insufficient procedural modernization.

12.4 Achievement of Objectives:

The objectives of this research have been successfully addressed:

- ✚ The jurisdiction of Family Courts has been systematically analyzed;
- ✚ The scope of family law adjudication has been clarified;
- ✚ Judicial interpretation and case law have been examined;
- ✚ Comparative insights have been provided;
- ✚ Reform-oriented recommendations have been proposed.

12.5 Final Observations:

Family Courts represent an essential pillar of the family justice system in Bangladesh. Their existence reflects a commitment to specialized, humane, and accessible justice delivery.

However, family disputes are inherently complex, involving emotional, social, and economic dimensions. Therefore, a purely legalistic approach is insufficient.

A balanced system must integrate:

- ✚ Legal adjudication;
- ✚ Mediation and reconciliation;
- ✚ Social sensitivity;
- ✚ Efficient enforcement.

12.6 Concluding Remarks:

In conclusion, the Family Courts of Bangladesh have made notable progress in providing a dedicated forum for family dispute resolution. Yet, to fully realize their potential, substantial reforms are necessary in jurisdictional expansion, procedural modernization, institutional strengthening, and enforcement mechanisms.

A reformed and well-functioning Family Court system will not only ensure speedy and effective justice, but also contribute to:

-  Strengthening the rule of law
-  Protecting family integrity
-  Ensuring gender justice
-  Promoting social stability and harmony

Ultimately, the success of Family Courts depends on the continuous evolution of legal frameworks, judicial practices, and institutional capacity in line with societal needs.