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Research Monograph
On

"The powers and functions of the family court with reference to the laws and judicial development in Bangladesh: An overview"

A thesis submitted in partial fulfillment of the requirements for the Master of Laws [LL.M. (1 Year)] for Sonargaon University (SU)

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LETTER OF TRANSMITTAL

To

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Subject: Research Monograph on **"The powers and functions of the family court with reference to the laws and judicial development in Bangladesh: An overview"**

Dear Madam,

It is a great pleasure to submit my term paper on "Research Monograph" on "**The powers and functions of the family court with reference to the laws and judicial development in Bangladesh: An overview**". I have given best efforts to finish the research with relevant information that I have collected from various sources. I have concentrated my efforts to achieve the objectives of the work and hope that my endeavor will serve the purpose. I shall be grateful and obliged if you kindly accept my research and evaluate it.

Sincerely yours,

…….....
Md. Faysal Ahmed
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STUDENT'S DECLARATION

I hereby do solemnly declare that the work presented in this research has been carried out by me 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 forgoing obligations.

……...

Md. Faysal Ahmed
LLM. (1 Year)
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SUPERVISOR'S CERTIFICATION

This is to certify that the research on "**The powers and functions of the family court with reference to the laws and judicial development in Bangladesh: An overview"** is done by **Md. Faysal Ahmed**, LL.M (1 Year), ID No: LLM2402031011, Department of Law, Sonargaon University (SU).

The thesis has been carried out under my guidance and is a record of the benefited work carried out successfully.

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ABSTRACT

In Bangladesh, as in other diverse states of the world, individuals reside with their families. In a formal sense, a family consists of a husband and wife along with their offspring. It is often stated that to make mistakes is a human characteristic. Family disputes come from misconceptions. From this perspective, the Family Court in Bangladesh was instituted through the family courts ordinance of 1985, which significantly contributed to resolving disputes related to marriage, divorce, maintenance, guardianship, and child custody. The Family Courts Ordinance of 1985 provided a legal framework for these Courts; however, the family court act of 2023 introduces significant changes to expedite case resolution by abrogating that Ordinance. Moreover, significant judicial rulings have strengthened women's rights, child welfare, and the enforcement of maintenance orders. This paper provides an extensive discussion of the authority of family courts, along with the five areas of jurisdiction under Bangladeshi law. It also determines the courts authorized to adjudicate family-related cases and suggests methods to enhance the efficacy of the Family Court system.

Keywords: Bangladesh, family court, judicial development

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Chapter 1

INTRODUCTION

1.1 Introduction

The Family Court in Bangladesh plays a pivotal role in adjudicating matters related to family law, ensuring justice in domestic affairs, and addressing the complexities of family relationships. Established under the Family Court Act, 2023[1], these courts aim to provide a specialized forum for resolving disputes concerning marriage, divorce, child custody, and maintenance. This paper explores the functions and jurisdiction of Family Courts in Bangladesh[2], highlighting their significance in the broader legal framework and their impact on society.

The need for a dedicated family court system in Bangladesh arose from the inadequacies of existing legal frameworks to address family disputes[3] effectively. Before the establishment of Family Courts, such matters were handled by civil courts[4], which were often ill-equipped to deal with the emotional and sensitive nature of family-related issues. The introduction of

[1] Act no. XXVI of 2023. This act was made by the Parliament of the Peoples Republic of Bangladesh and was published in the Bangladesh Gazette, on 18.09.2023.

[2] BDLex. Functions and jurisdiction of the family court in Bangladesh. LinkedIn [Internet], 2024 [cited 2025 Apr 6]. Available from: https://www.linkedin.com/pulse/functions-jurisdiction-family-court-bangladesh-bdlex-manupatra-bz5zc

[3] Islam MS. Efficiency and effectiveness of alternative dispute resolution schemes towards the promotion of access to justice in Bangladesh. IIUC Stud.

[4] Babb BA. Fashioning an interdisciplinary framework for court reform in family law: A blueprint to construct a unified family court. South Calif Law Rev, 1997, p. 71.

Family Courts as aimed at providing a more accessible, efficient, and less adversarial environment for resolving family disputes[5].

Muslim Family Law Ordinance, 1961[6] personal laws relating to Muslim inheritance, marriage registration, polygamy, divorce, dowry and maintenance of the wives and children. With an object of enacting the law a declaration for amendment of Muslim family law was made on 7 October 1958, and accordingly the President of Pakistan promulgated the Ordinance in 1961, which is better known as Ordinance No. VIII of 1961[7]. This ordinance suggested formation of a 'Salish council' to resolve disputes and crises within the family. The council comprises three members with chairman of local union council as chairman and two adult members having one from each of the parties. Pourasabha (municipal) chairman in the pourasabha area and mayor or administrator in the municipal corporation area would be the chairman of the salish council.

This law shall come into force on all rules, laws, customs and practices prevailing in the country for resolving disputes within the purview of the ordinance. Section 4 of the ordinance has initiated a drastic change in the law of inheritance by the annulment of la-warish (non-inheritance) system. The earlier law was that the death of any son or daughter of a person before the opening of succession should deprive the children of such a son or daughter from inheritance. The ordinance has repealed this provision, and has

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[5] Hoque R, Khan MMM. Judicial activism and Islamic family law: A socio-legal evaluation of recent trends in Bangladesh. Islamic Law Soc.

[6] BD Laws. The Muslim Family Laws Ordinance, 1961. Bangladesh Law [Internet], 2025 [cited 2025 Apr 6]. Available from: http://bdlaws.minlaw.gov.bd/act-print-305/section-print-13539.html

[7] BD Laws. The Muslim Family Laws Ordinance, 1961. Bangladesh Law [Internet], 2025 [cited 2025 Apr 6]. Available from: http://bdlaws.minlaw.gov.bd/act-305.html

incorporated that the children of the deceased in total will receive a share equivalent to the share which such son or daughter, as the case may be, would have received, if alive.[8]

1.2 Objective of the Study

Functions and effect of Muslim Family Laws Ordinance 1961 in Society of Bangladesh My Aims and Objectives of the study are as follows:

- To define the rules and function of Muslim Family Laws and Judicial; Development of Bangladesh.
- To explore the present situation of Muslim Family Laws and Courts.
- To find out the causes of the Muslim Family Laws and Courts.
- To identify the powers and judicial functions of Family Courts.
- To evaluate the role of the judiciary in the development of family law.
- To examine contemporary challenges and suggest reforms.

1.3 Justification of the Study

Undoubtedly, the condition of modern prisons is better than that in the past but still much remains to be done in the direction of Muslim Family Laws and Courts. There is no alternative but serious attention has to be paid by the society. Government should take necessary steps in order to make the Muslim Family Courts like less abnormal.

1.4 Scope of the Study

The scope of this study includes the area of information required to collect and analyze regarding, the determination of the Courts of Family Laws with Constitution of Bangladesh.

[8] http://en.banglapedia.org/index.php?title=Muslim_Family_Law_Ordinance,_1961

1.5 Research Methodology

It is difficult to complete a research without adopting any method. The methodology is one of the important parts of a thesis. A scientific methodology is a system of explicit rules and procedures upon which research is based on and against which claims for knowledge are evaluated by looking for new means of observation, analysis, logical inference, and generalization. I followed the some methods i.e. the imperial methods; analytical method etc. respectively where it is applicable. The methodology which is used in this research to collect relevant information to fulfill the objectives of the research is secondary data collection method. The data used in this report[9] are collected from secondary sources like the articles, journals, internet, newspapers, human rights organizations reports etc. A research work may put up by following types of methodology. There have three types of methodology such as (i) historical study, (ii) analytical study. Among them I particularly follow the analytical methodology.

1.6 Limitation of the Study

The study is the great importance; the study will help to know about the Muslim family Laws under Bangladesh frame work our society man and women are deprived in various sectors such as during prison which always remain silence. This study will help the policy makers, law-enforcing agencies, legislation and other researcher to establish of the right of Muslim family laws. Moreover, it will open wide opportunities for other researchers concerned with the arena. This research may be helpful for the students of law to enrich their knowledge.

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[9] Especially on Dhaka Law Reports (DLR), Bangladesh Legal Decisions (BLD), Bangladesh Law Chronicles (BLC), Bangladesh Law Times (BLT) and Mainstream Law Reports (MLR). In very limited cases help from other law reports or foreign jurisdiction has been taken.

Chapter 2

GENERAL CONCEPT OF FAMILY COURTS

2.1 Historical Background

The origin of family dispute resolution mechanisms can be traced to Islamic law, where qadis acted as family judges. During the colonial period, civil courts handled family disputes under general procedural laws. However, post-independence legal reform led to the Family Court Act, 2023[10], modeled after Pakistan's 1964 and 1965 reforms, aiming to introduce specialized courts with simplified procedures.

Since 1961, from the date of adoption of this Ordinance, there are many persons who supported it; and also many others who have opposed the law seriously. Many jurist and writers termed it as a conflict between traditionalists and the modernists.

2.2 Family Courts

Black's Law Dictionary defines Family Court as such: "The court that hears matters relating to members of a family."

Family court is a court that has jurisdiction over domestic disputes involving the rights and duties of husband, wife, parent, or child especially in matters affecting the support, custody, and welfare of children. It can further be defined as a court of law that hears cases involving domestic issues such as marriage, divorce and child custody. It is a court of special nature (Special Court). In Bangladesh Family Courts are established regulated under the Family Court Act, 2023[11] which contains 31 sections.

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[10] The Family Courts Ordinance, 1985. Bangladesh Law [Internet]. [Cited 2025 Apr 6]. Available from: http://bdlaws.minlaw.gov.bd/act-details-682.html

[11] Law of Family Court, 2013. Bangladesh Law [Internet]. [Cited 2025 Apr 6]. Available from: http://bdlaws.minlaw.gov.bd/act-1444.html

2.3 Establishment of Family Courts

Section 4 of the **Family Courts Act, 2023** establishes the Family Courts and reads as such-

> "(1) There shall be as many Family Courts as there are Courts of [Assistant Judges].
>
> (2) All Courts of [Assistant Judges] shall be Family Courts for the purposes of this Act.
>
> (3) All [Assistant Judges] shall be the Judges of Family Courts."

Accordingly, All the Assistant Judges Courts are the Family Courts in Bangladesh within the meaning of this section. Here the question lies regarding the capability of the judges of family courts who are the least experienced and newly appointed in the service whereas in India and Pakistan judges require comparatively compatible experience to hold the position.

According to **Section 4** of **Family Courts Act, 2023**:

> (1) For the purposes of this Act, the Government may, by notification in the Official Gazette, establish one or more Family Courts in every district: Provided that if more than one Family Court is established in a district, the Government shall, by notification in the Official Gazette, determine the local jurisdiction of such Courts.
>
> (2) The family court shall consist of 1 (one) judge of the rank of assistant judge or senior assistant judge.

(3) Until the establishment of a Family Court under sub-section (1), the Court of Assistant Judge or the Court of Senior Assistant Judge under its jurisdiction shall perform the duties as a Family Court.

2.4 Objectives of Family Courts

Expeditious Justice: Family Courts are designed to ensure the quick resolution of disputes, minimizing the lengthy processes typically associated with civil litigation.

Specialized Knowledge: Judges in Family Courts are trained to handle sensitive family matters, promoting an understanding of the emotional and psychological dimensions involved.

Access to Justice: Family Courts aim to make justice more accessible, particularly for women and children, who are often the most affected by family disputes.

Promotion of Reconciliation: These courts emphasize reconciliation between parties, encouraging mediation and negotiation rather than adversarial proceedings.

2.5 Jurisdiction of Family Courts[12]

The jurisdiction of Family Courts in Bangladesh is extensive, covering a range of family law issues. Below are the primary areas of jurisdiction:

1. Marriage and Divorce

Family Courts have exclusive jurisdiction over matters relating to the dissolution of marriage.[13] This includes:

[12] Farque MO. Jurisdiction and scope of the family courts in Bangladesh: An overview. SSRN Electron J, 2021. DOI: 10.13140/RG.2.2.20143.55204

- **Filing for Divorce**: Either spouse can file for divorce, and the court will assess the grounds, such as mutual consent, irretrievable breakdown of marriage, or specific grounds outlined in personal laws.

- **Maintenance during Divorce**: The court determines maintenance payments for spouses during the divorce proceedings, ensuring that financial support is provided to the dependent party.

2. Child Custody and Guardianship

One of the most sensitive areas under the jurisdiction of Family Courts is child custody and guardianship. The court considers the best interests of the child, making decisions based on factors such as:

- **Living Arrangements**: The court decides which parent the child will live with, often favoring arrangements that ensure stability and continuity in the child's life.

- **Visitation Rights**: Non-custodial parents are granted visitation rights, ensuring they maintain a relationship with their children.

- **Guardianship**: In cases where parents are deceased or unable to care for the child, Family Courts appoint guardians to act in the child's best interest.

3. Maintenance and Alimony

Family Courts have the authority to order maintenance for spouses and children. Key aspects include:

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[13] The Civil Courts Act, 1887. Bangladesh Law [Internet]. [Cited 2025 Apr 6]. Available from: http://bdlaws.minlaw.gov.bd/act-details-59.html

- **Child Maintenance**: Parents are obligated to support their children financially, and the court determines the amount based on the needs of the child and the financial capabilities of the parents. [14]
- **Spousal Maintenance**: Courts may order one spouse to provide financial support to the other, particularly in cases where one party is economically disadvantaged.

4. Inheritance and Property Matters

Family Courts also address issues related to inheritance and the distribution of property among family members. This includes:

- **Distribution of Marital Property**: In divorce proceedings[15], the court may determine how marital property is to be divided between the parties.

- **Inheritance Rights**: The court resolves disputes regarding inheritance, ensuring compliance with applicable personal laws governing the distribution of assets after a family member's death.

5. Domestic Violence and Protection Orders

Family Courts have jurisdiction to handle cases of domestic violence, providing protection to victims. This includes:

- **Issuing Protection Orders**: Courts can issue orders to protect victims from further violence or harassment by an abusive spouse or family member.

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[14] Yusuf MF, Thalib MC, Kamba NM. Imposition of ex-wife's post-divorce livelihoods: A socio-legal overview. Estudios Derecho. 2020;2:478-91. DOI: 10.33756/ESLAJ.V2I3.14923

[15] Divorce laws and procedures in Bangladesh: A comprehensive guide. Legal Seba [Internet], 2025 [cited 2025 Apr 6]. Available from: https://legalseba.com/bd-services/divorce-laws-and-procedures-in-bangladesh-comprehensive-guide/

- **Interim Relief**: In urgent cases, Family Courts can provide immediate relief, such as temporary custody or maintenance, to ensure the safety of victims.

6. Adoption

Family Courts oversee adoption proceedings, ensuring that all legal requirements are met and that the best interests of the child are upheld. This includes:

- **Assessing Suitability**: The court evaluates the suitability of prospective adoptive parents and the conditions under which the adoption will take place.

- **Finalizing Adoptions**: After thorough scrutiny, Family Courts can grant adoption orders, providing legal recognition to the new parent-child relationship.

7. Restitution of Conjugal Rights [16]

Restitution of conjugal rights primarily falls under the Family Courts Act 2023 (FCA 2023) and previous ordinances, such as the Family Courts Ordinance 1985. Section 5 of the FCA 2023 grants Family Courts the jurisdiction to handle cases related to restitution of conjugal rights along with other family matters.

2.6 Procedure in Family Courts

The procedure in Family Courts is designed to be more informal and accessible compared to traditional civil courts.[17] Key features include:

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[16] BDLaws. The Divorce Act, 1869 | Restitution of Conjugal Rights. Bangladesh Law [Internet], 2025 [cited 2025 Apr 6]. Available from: http://bdlaws.minlaw.gov.bd/act-20/chapter-details-34.html

1. Simplified Filing Process

The filing process in Family Courts is streamlined to ensure that individuals can easily present their cases. There is minimal documentation required, making it easier for litigants, especially women, to access justice.

2. Mediation and Conciliation

Family Courts prioritize mediation as a means of resolving disputes. Judges often refer parties to mediation sessions, aiming to reach amicable settlements without resorting to adversarial litigation. This approach not only reduces court congestion but also fosters better relationships post-dispute.[18]

3. Expedited Hearings

Family Courts are mandated to conduct hearings swiftly, with specific timelines set for different stages of proceedings. This ensures that cases are resolved in a timely manner, reducing the emotional toll on the parties involved.

4. Informal Environment

The courtroom environment in Family Courts is designed to be less intimidating. Judges may engage with parties in a more conversational manner, promoting open dialogue and reducing the adversarial nature often associated with legal proceedings.

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[17] Bychkova SS, Churpita AV. Relationship between the rules of family law and the procedural form of non-recourse civil proceedings. J Natl Acad Legal Sci Ukr. N.D, 1.

[18] Feehily R. Separability in international commercial arbitration: Confluence, conflict, and the appropriate limitations in the development and application of the doctrine. Arbitr Int. 2018;34:355-83. DOI: 10.1093/ARBINT/AIY026

2.7 An Analysis of the the Family Court Act 2023

The Parliament of Bangladesh has recently enacted the Family Courts Act 2023 (referred to as FCA 2023), replacing the Family Courts Ordinance 1985, which previously governed the procedures for Family Courts in the country. Unfortunately, the new act has not fully met public expectations and has not adequately addressed the existing shortcomings and challenges of the Ordinance 1985. Apart from a few new provisions, the FCA 2023 largely resembles the flawed previous ordinance.

The FCA 2023 introduces two significant procedural changes for Family Courts in Bangladesh: an increase in court fees for family cases and enhancing definition of the family appellate court.

Section 25 of FCA 2023 has increased the family court cases court fee to BDT 200 from BDT 25 and after the FCA 2023 comes into force appeals against the decree of Family Trial Courts can be brought to the Courts of District Judges including to any courts of other judges equivalent to district judges, e.g., Woman and Children or Labor Courts, which will help to reduce the burden of cases. Other than that, the FCA 2023 has permitted to adduce witness evidence in the court through affidavit without being present at the trial, which has been newly added to the family courts procedures by Section 13(6) of the FCA 2023.

Previously, Section 17(2)(b) of the Ordinance 1985 stipulated that no appeal could be made from a decree issued by a Family Trial Court for a dower[19] not exceeding BDT 5,000. The FCA 2023 has abolished this provision and raised the dower limit for appeals to BDT 50,000. However, despite the passage of the FCA 2023, several challenges and shortcomings from the

[19] The concept of mahr under Muslim Law. iPleaders [Internet], 2025 [cited 2025 Apr 6]. Available from: https://blog.ipleaders.in/concept-mahr-muslim-law/

previous Ordinance 1985 persist regarding the jurisdiction of Family Courts and who is eligible to seek redress. Issues such as restitution of marital rights, parental maintenance[20], post-divorce support[21], and the lack of Alternative Dispute Resolution (ADR)[22] options at the appellate level remain unresolved.

According to Section 5 of the FCA 2023, Family Courts have the authority to hear and decide cases related to the dissolution of marriage, restitution of conjugal rights, dower, maintenance, and guardianship and custody of children, which mirrors the provisions of Section 5 of the previous Ordinance 1985.

However, several significant aspects of family law, including marriage, adoption, wills, heba (gift), succession, and parental maintenance, still fall outside the jurisdiction of Family Courts even after the FCA 2023 came into effect.

The High Court Division of the Bangladesh Supreme Court has indicated that Family Courts can address any matters "relating to or arising out of" the dissolution of marriage, restitution of conjugal rights, dower, maintenance, and guardianship and custody of children. Therefore, Family Courts possess broad jurisdiction over family matters, and the interpretation of Section 5 of the FCA 2023 should be flexible. For instance, the validity of a marriage can be examined by Family Courts, as determined by the High Court in previous cases. The ambiguity regarding who can petition the Family Court for restitution of marital rights remains unresolved, similar to the situation under

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[20] BDLaws. Law of Maintenance of Parents, 2013. Bangladesh Law [Internet]. 2025 [cited 2025 Apr 6]. Available from: http://bdlaws.minlaw.gov.bd/act-1132.html?lang=en

[21] Shannon G. Post-divorce maintenance for spouses. In: Routledge Handbook of International Family Law, 2019, p. 79-92. DOI: 10.4324/9781315613079-6

[22] Judiciary: Bangladesh. Bangladesh Judiciary [Internet]. [Cited 2025 Apr 6]. Available from: https://judiciary.gov.bd/en/menu/page/adr-in-bangladesh-

the previous Ordinance 1985. Historically, there was a clear judicial guideline that only husbands could seek restitution of conjugal rights in Family Courts. Despite the judiciary's commendable decision, the parliament failed to resolve this dilemma through the FCA 2023, which is disappointing. Another shortcoming of the FCA 2023 is the absence of provisions for Alternative Dispute Resolution (ADR)[23] at the appellate stage. While the new act includes Sections 18 and 19, which address appeals from family trial court decisions and aim to alleviate pressure on district judges, it should have also tackled the growing backlog of cases by incorporating explicit ADR provisions for the appellate stage.

In contrast, the parliament successfully introduced Section 89C to the Code of Civil Procedure 1906 through the Code of Civil Procedure (Amendment) Act 2006, allowing ADR in civil case appeals to help reduce case backlogs.[24] However, there has been no similar initiative for family disputes. Although both Section 10 of the previous Ordinance 1985 and Section 11 of the new FCA 2023 include provisions for pre-trial proceedings that allow for ADR in family disputes, there are no provisions for ADR at the appellate stage that could have been included in the FCA 2023.

Chapter 3

ANALYSIS MUSLIM FAMILY COURT

3.1 Preface Muslim Family Courts: The Muslim Family Court Act, 2023 attempts to resolve legal conflicts including marriage breakup, reinstatement of conjugal relations, dower, maintenance, guardianship, and custody of children.

[23] Bansal N. Role of alternative dispute resolution (ADR) in resolving family disputes. Int J Law Manag Humanit. 2024;7(1)

[24] Though there are opposing opinions on this.

This Ordinance was issued in 1985. The contents chosen for consideration in the Ordinance are based on Muslim law, Hindu law, the Civil Procedure Code, the Evidence Act, the Dissolution of Muslim Marriage Act, and the Muslim Family Law Ordinance. According to this law, all munsif courts will be Family courts, with munsifs serving as Family court judges. Essentially, family courts have exclusive authority to hear, try, and decide cases involving marriage, conjugal relations, dower, maintenance, guardianship, and child custody.

3.2 Dissolution of Marriage (talak)[25]

Sections 307 and 308 of Muslim law outline how marriages are dissolved. Under Muslim law, the marriage contract can be dissolved in one of three ways: (i) by the husband at his own will, without the intervention of the court; (ii) by mutual consent of the husband and wife, without the intervention of the court; or (iii) by a judicial decree at the husband's or wife's request. The wife cannot divorce herself from her husband without his approval unless this privilege is granted to her in the Nikahnama. This style of talak is called as talak-e-toufiz. When a divorce is finalized by mutual consent, it is known as khula or mubara'at, depending on the terms of the contract between the parties.

Talak refers to the husband's unilateral dissolution of the marriage contract without the intervention of the court. Talak can be spoken or written. To talak verbally, a sound-minded husband pronounces a few phrases that are spoken or well understood as signifying divorce, and then acts accordingly. Talak in writing, or talaknama, is a written record of spoken talak. The deed may be completed in the presence of the kazi, the wife's father, or other witnesses. However, the deed must be in usual form, correctly superscripted, and

[25] Shawline H. Divorce under Muslim laws in Bangladesh. Jural Acuity [Internet], 2025 [cited 2025 Apr 6]. Available from: https://juralacuity.com/divorce-under-muslim-laws-in-bangladesh/

addressed to reveal the identity of the writer and the person addressed. In Muslim law, the wife has a limited right to divorce her husband judicially. A wife can dissolve the contract of marriage with the intervention of the court on the grounds: (i) the husband's whereabouts are unknown for a period of four years; (ii) the husband's failure to provide for the wife's maintenance for a period of two years; (iii) a sentence of imprisonment on husband for a period of seven years or more; (iv) failure without reasonable cause to perform marital obligations; (v) impotence of husband; (vi) insanity of husband or his This divorce is known as talak-e-taufiz.

3.3 Restitution of Conjugal Relations

If the wife ceases to cohabit with her husband without valid cause, the husband has the right to seek for restitution of conjugal life. This suit[26] is only valid against a legally married wife. However, if the marriage contract is dissolved, the husband is unable to file such an action.

3.4 Dower (Mahr)[27]

It is the amount of money or other property that the wife is entitled to receive from the husband in exchange for the marriage. Muslim law made it mandatory (farz) for all Muslim husbands to settle the amount of dower in marriage and record it in the marriage contract, also known as Kabinnama or Nikahnama. The amount of dower is determined based on the bride's social rank, personal characteristics, and beauty. The husband may settle any sum he wishes as dower on his wife, but it must not be less than ten dirham or its equivalent. Husband is obligated to pay the full amount of dower settlement, even if it

[26] Section 9(1)

[27] Rao MAA. The protection of woman's right to dower in Islamic law. SSRN Electron J, 2019. DOI: 10.2139/SSRN.3469072

exceeds his means. It is the husband's debt to his wife, and unless otherwise mentioned in the marriage contract, he must pay the full sum on demand.[28] Realization of dower is a wife's right, and even a widow can maintain her husband's properties in possession while filing a claim for her dower until the full sum is paid.[29]

3.5 Maintenance

Maintenance (nafafa) is the monetary support that a wife, children, parents, and grandchildren can legally demand from their husband, parents, son, and grandfather to support their livelihoods. It covers food, clothes, shelter, and medical care for adults, as well as other expenses for mental and physical well-being based on their social position. The grounds for imposing the obligation on a person are, in order of gravity, marriage, kinship, and inheritance. A parent is required to support his boys until they reach puberty and his daughters until they marry.[30]

Fathers must also provide for their widowed or divorced daughters. If the father is destitute and incapable of supporting himself, the mother will take on the duty. If the father is impoverished and infirm, and the mother is likewise poor, the grandfather is responsible for the children, assuming he is in good financial standing. Wife is the first and primary claimant of maintenance, and she has every right to realize the claim even if she is financially better off than

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[28] The Daily Sun. Law of dower in Bangladesh. The Daily Sun [Internet], 2025 [cited 2025 Apr 6]. Available from: https://www.daily-sun.com/printversion/details/598371

[29] Mostofa M, Rahman S, Tasnim KS. Obstacles in recovery of dower in Bangladesh. Legal Res Anal. 2024;2:21-26. DOI: 10.69971/FZNG4989

[30] LawfimBD. Muslim divorce law and process in Bangladesh. Law Firm Bangladesh [Internet], 2025 [cited 2025 Apr 6]. Available from: https://lawfirm.com.bd/muslim-divorce-law-and-process-in-bangladesh/

her husband or if the husband has the resources to fulfill the claim. After divorce, the wife is entitled to maintenance for up to the iddat period, which can be extended to three months. Other religions also include measures for maintenance. An able man should support grandparents and other relatives in addition to his wife, children, and parents, subject to his abilities.[31]

3.6 Guardianship or Custody of Children.

In all circumstances, the father has natural guardianship over his minor child's person and property. In the absence of the father, the responsibility shifts to the mother, and if the mother is absent or unable to care for the minor, the grandpa or the parents' closest relative becomes guardian of the minor's person and property. In difficult circumstances, the government may even act as the minor's guardian of person and property. Prior to the Family Court Ordinance 1985, district judges were designated guardians of a minor's person and property, a role that is currently held by the concerned Assistant Judge of the Family Court. All applications for the appointment of a guardian of a minor's person or property, or both, must be made under the Guardians and Wards Act of 1890. However, a prospective guardian may begin operating as a guardian of the minor under Muslim law before receiving a court verdict.

3.7 Court Proceeding

When the defended files a written statement in court following the filing of the plaint, the court will set a date for the pre-trial hearing within 30 days. On such date, the Court will endeavor to reach a settlement or reconciliation between the parties, if practicable. When compromise or reconciliation fails, the court will hear evidence from both parties and make a decision.

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[31] Wikipedia. Divorce in Islam [Internet], 2025 [cited 2025 Apr 6]. Available from: https://en.wikipedia.org/wiki/Divorce_in_Islam

Family courts manage issues that arise as a result of the aforementioned situations. A person may elect to present a complaint to a Family Court. The judge may issue a judgment and decree against which an appeal petition may be filed with the district judge's court, provided that the judgment does not relate to (a) article 2(8) of the Dissolution of Muslim Marriage Act, 1939 or (b) for dower not exceeding five thousand taka.[32]

An appeal against a Family Court decision, decree, or order must be filed within thirty days[33] of its issuance, minus the time required to collect true copies. The High Court Division may, on the application of any party or on its own initiative, transfer any litigation under this Ordinance from the Family Court to another court within its local jurisdiction. In cases of guardianship and custody of children, a Family Court is recognized to be a District Court.

Chapter 4

LAW AND REGULATING OF MUSLIM FAMILY COURTS IN BANGLADESH

4.1 Constitutional Status of Muslim Law

The Constitution was adopted on 4 November 1972. An amendment to the constitution under president Ziaur Rahman in 1977 removed the principle of secularism that had been enshrined in Part II: Fundamental State Policy, replacing it with 'absolute trust and faith in Almighty Allah'. The eighth Amendment of 1988 inserted Article 2A, affirming that 'The state religion of

[32] Akter MS. Imbursement of dower right: A study on married Muslim women in Dhaka City. Dhaka Univ Repos [Internet], 2019 [Cited 2025 Apr 6]. Available from: http://reposit.library.du.ac.bd:8080/xmlui/xmlui/handle/123456789/583

[33] Section 7(a)

the Republic is Islam'. Some women's groups challenged this move on the grounds that it risked exposing women to discriminatory laws.[34]

At the same time, state law in South Asia has always afforded recognition to, and left a sphere for, the application of the family laws of different religious communities. Constitutional protection of women's rights and the assertion of gender equality come under the Fundamental Principles of State Policy and is enshrined in Article 26 to 29 of the section on fundamental rights affirming equality of all citizens before the law. This is balanced against the constitutional protection of minority rights provided for in Article 41 on freedom of religion and the freedom of every religious community or denomination to establish, manage and maintain its religious institutions. This affects the significant Hindu minority in Bangladesh in addition to Christian and Buddhist minorities.

4.2 Acceptance of the Family Court Act, 2023 by retracting the Family Courts Ordinance, 1985

The Family Court Act, 2023 presented the following noteworthy improvements[35]

1. To uphold the prior maximum legal provisions.

2. To facilitate online case submission and digital case management for improved accessibility.

3. Provisions are included for the stricter enforcement of maintenance and

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[34] Abdullahi A. An-Na'im, Islamic Family Law in a Changing World: A Global Resorce Book, 3rd ed. (London: Zed Books Lts, 2008), p. 214.

[35] An analysis of the Family Courts Act 2023. The Daily Star [Internet]. [Cited 2025 Apr 6]. Available from: https://www.thedailystar.net/law-our-rights/news/analysis-the-family-courts-act-2023-3500311

custody orders, along with penalties for non-compliance with the Court's directives.

4. The effective and encouraging measures regarding mandatory Alternative Dispute Resolution (ADR) prior to trial initiation have been incorporated, resulting in the resolution of the majority of litigations amicably through the procedures outlined in the ADR processes before the issuance of a verdict.

The legislation stipulates that expeditious resolution of family disputes is essential to prevent excess and postponement, aligning with the adage that justice delayed is justice denied. These enhancements aim to ensure a more expedient, efficient, and user-friendly family justice system. These improvements are intended at guaranteeing a faster, more operative, and people-friendly family justice scheme.

Chapter 5

FAMILY COURT'S OVERRIDING JURISDICTION

As to jurisdiction section 5 of the Family Courts Ordinance 1985 clearly states that a Family Court shall have exclusive jurisdiction to entertain, try and dispose of any suit relating to, or arising out of, all or any of the five matters, namely (a) dissolution of marriage (b) restitution of conjugal rights (c) dower; (d) maintenance; (e) guardianship and custody of children. Once more, section 3 says that notwithstanding anything contained any other law the provisions of this Ordinance shall apply to cases relating to above mention matters. Subsequently, through case laws, the position regarding jurisdiction has been made clearest. Nevertheless, a considerable portion of lawyers, as a BLAST

report[36] reveals, still thinks that there are dual options for claiming custody of children, dower and maintenance of wives, that is, for custody of children and dower money and maintenance one can bring suit under section 100 and 488 of CrPC; again for the same, one can bring a suit in a family court. In fact, such misconception is not an anomaly when earlier we got some diametrically opposite judicial views regarding this, and when the habit of vast reading is still absent in our lawyer society as a whole.

In the early 1990 in Abdul Khaleque V Selina Begum (42 (1990) DLR (HCD) 450) a High Court Division Bench held that '.... the purpose of the family Courts Ordinance is to provide for speedy disposal of family matters by the same forum. There will be anomaly and multiplicity of proceedings, if, in spite of the establishment of family court, the Magistrate constitutes to entertain cases for maintenance. Provisions made in the Family Courts Ordinance have ousted the jurisdiction of the Magistrate to entertain application for maintenance which is a family court matter'.

But just after four years in 1994 in **Meher Nigar Vs Md Mujibur Rahman (14(1994) BLD (HCD) 467)** another Division Bench expressed a complete opposite view to the effect that the Criminal Courts as usual way entertain a case filed under section 488 of the Code of Criminal Procedure for maintenance. In section 5 of the Family Courts Ordinance it has been mentioned that the Court shall decide the suits filed in respect of the five

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[36] The report entitled "Towards identifying the advocacy issues concerning Family courts and Nari O Shishu Nirjaton Domon Tribunal" was prepared in October 2005 by PIL and Advocacy Cell of Bangladesh Legal Aid and Services Trust (BLAST), which had been working on the issue all a year round. The report in its opening statements claims: "BLAST is well aware of the fact that there are many constraints, legal or non-legal, substantive or procedural, for which the Family Courts and Nari O Shishu Nirjtaton Domon Tribunals are not being able to work efficiently. What exactly are those reasons? And what are the ways to get out of those constraints? To find out the answers of the questions, BLAST, PIL and Advocacy Cell, began working one year ago. As the primary steps, it arranged advocacy issue raising meetings in all of its branches throughout the country. Judges, practicing lawyers, public prosecutors, political leaders, social activists, local govt. representatives, development activists, journalist, victims of different offences, in strait words, people from all walks of life have spoken in those meetings. They have not only spoken and discussed matters from their own experience, but also rendered many invaluable recommendations. The report is based on those common people as well as experts' speech, discussion and recommendations as well." Hence is the reason that induced me to rely on the report to a large extent.

subjects enumerated in the section. There is difference in between a suit and a case. And Family Courts Ordinance has not created any impediment in the proceeding of the case filed under section 488 of the Code of Criminal Procedure. That is, the gist of the decision is that one may choose any of the two forums.

In the same way, in 1996, there came another judgment in **Rezaul Karim vs Rashsida Begum 16 (1996) BLD (HCD) 11**. The judgment held that ' [a] relief provided by an Act cannot be taken away by implication simply becasue similar relief has been provided in a subsequent Act without repealing the provision for relief in the previous Act. The power of the Magistrate to act under section 488 of CrPC has not been taken away by promulgation of the Family Courts Ordinance.'

Following such contradictory judgments, confusion emerged as a natural consequence. But such confusion did not continue to long as a Special High Court Bench comprising three judges dissolved the issue finally in **Pochon Rikssi Das Vs Khuku Rani Dasi (50 (1998) DLR (HCD) 47) in 1997**.

To dissolve this issue the said Court considered - (i) section 3 of the Family Courts Ordinance which provides that the provisions of this Ordinance shall have effect notwithstanding anything contained in any other law for the time being in force, (ii) section 4 which provides that all courts of Assistant Judges shall be the Family Courts for the purpose of this Ordinance, and (ii) section 5 that provides that the Family Courts shall have exclusive jurisdiction to entertain, try and dispose of any suit relating to the subjects enumerated in this section that includes maintenance. The Court held that these sections clearly indicate the ouster of the jurisdiction of other courts in dealing with the matters enumerated in section 5 of the Ordinance.

However, the court did not overlook the argument as submitted in Meher Nigar Vs Md Mujibur Rahman that the word 'suit' as mentioned in section 5 indicates a civil proceeding and the cases filed under section 488 of the Code of Criminal Procedure is a criminal procedure; so there is a no ouster of the jurisdiction of the Criminal Courts in the matters relating to maintenance. Hence, the Court held that:

'... it is well settled that a proceeding under section 488 of the Code of Criminal Procedure is quasi criminal and quasi civil in nature and this section has given certain powers to the Magistrates to grant maintenance to wives and children who are unable to maintain themselves. Sub-section (1) of section 488 of the Code of Criminal Procedure is quasi civil in nature as order for maintenance is passed under this part. But subsection (3) is quasi criminal. So, in a word, section 488 of the Code of Criminal Procedure is both quasi civil and quasi criminal in nature. On consideration of the provisions of sections 3, 4, 5, and 27 of the Ordinance, we hold that the jurisdiction of the Magistrate is clearly ousted. Before coming into force of this Ordinance maintenance matters used to be decided by the Magistrates under section 488 of the Code of Criminal Procedure. Now section 27 of provides that all suits, appeal and other legal proceedings relating to, or arising out of any matter specified in section 5 pending in any Court immediately before the commencement of this Ordinance shall continue in the same Court and shall be heard and disposed of by that Court as if this Ordinance had not been made. This clearly says that after the coming into force of the Family Courts Ordinance the criminal court jurisdiction has been ousted in respect of awarding maintenance except in case of pending Proceedings (award) except in case of pending proceedings.'

It can be noted here that the abovementioned view was also taken in Pakistani jurisdiction in Adnan Afzal vs. Capt. Sher Afzal [PLD 1969 (SC) 187; 21 DLR (SC) 123] Eventually, the position is that for custody of children, dower and maintenance disputes one has to resort only to a Family Court under the Family Courts Ordinance, and not to any other courts.

Chapter 6

CONCLUDING REMARKS

Conclusion

Given the aforementioned facts and situations, it is now evidently apparent that the matters are significantly related to the research article. The inhabitants of Bangladesh reside with their families and hold deep affection for their relatives. They consistently avoid involvement in familial disputes. In most situations, they alleviate or overcome the conflicts arising from their sense of misunderstanding. In the absence of alternatives, individuals present themselves before the Family Court to seek suitable resolution for the established disputes as stipulated in the Family Court Act 2023, and such disputes are civil in nature. The Family Court system in Bangladesh is effective in delivering justice in familial matters[37]. The Family Court Act, 2023 has facilitated transactions; however judicial interpretations continue to uphold fairness and gender justice. Conversely, obstacles persist, requiring additional adjustments, public awareness, and proactive execution to ensure justice for all.

[37] Changing family structure in rural Bangladesh: A sociological study in Chandpur district of Bangladesh. Asian J Soc Sci Legal Stud.

The Family Court system in Bangladesh represents a critical advancement in the pursuit of justice for family-related issues. By providing a specialized forum for resolving disputes, these courts aim to protect the rights of vulnerable individuals, especially women and children. Despite the challenges they face, Family Courts continue to evolve, promoting a more equitable legal landscape for families. As society progresses, it is essential to strengthen the capacity of Family Courts through increased resources, awareness campaigns, and training for judges and legal practitioners. By doing so, Bangladesh can ensure that its Family Courts remain effective in upholding the principles of justice and equity in family law, ultimately fostering a healthier and more harmonious society.

Bibliography

Book

1. Rahim, Abdur, *The Principles of Muhammedan Jurisprudence*,2nd ed. (Delhi: Gyan Books Pvt. Ltd,1995).
2. Abdullahi A. An-Na'im, *Islamic Family Law in a Changing World: A Global Resorce Book*, 3rd ed. (London: Zed Books Lts, 2008).
3. Akil Ahmed, *Mohammedan Law,* 21st ed. (Allahabad: Central Law Agency, 2004).
4. Salena Akhter, A.N.M Arifur Rahman, Md. Jahid Hossain Dolon, *Muslim Law*, 1st ed. (Dhaka: Hira Publications, 2012).
5. V.P Bhatiya, Syed Khalid Rashid, *Muslim Law*, 5th ed. (Lucknow: Eastern Book, 2009).
6. Dr. I. A. Khan, *Mohammedan Law,* 21st ed. (Allahabad: Central Law Agency, 2004).
7. Syed Khalid Rashid, *Muslim Law,* 3rd ed. (Lucknow: Eastern Book Company, 1996).

Journal

1. Shamima Binte Habib, 'State of women in the Laws of Bangladesh: A Descriptive Study', Stamford *Journal of Law,* vol. X no. 4 (April 2014)
2. Salma Sobhan, *Legal Statutes of Women in Bangladesh,* (Dhaka: Bangladesh Institute of Law and International Affairs, 1978)
3. Borten LD. Sex, procreation, and the state interest in marriage. Columbia Law Rev. 2002;102
4. Reid CJ. Marriage in its procreative dimension: The meaning of the institution of marriage throughout the ages. Augustine Mod Law. 2017;481-512.

5. Yusuf MF, Thalib MC, Kamba NM. Imposition of ex-wife's post-divorce livelihoods: A socio-legal overview. Estudios Derecho. 2020;2:478-91. DOI: 10.33756/ESLAJ.V2I3.14923.

Statutes

1. *The Muslim Laws Ordinance, 1961.*
2. *Code of Civil Procedure, 1908.*
3. *Muslim Family Law Ordinance, 1985.*
4. *The Limitation Act, 1908.*
5. *The Dissolution of Muslim Marriage Act 1939.*
6. *The Civil Courts Act, 1887*
7. *Law of Maintenance of Parents, 2013*

Electronics Data

1. http://faculty.washington.edu/wtalbott/phil338/trFCSS&N.htm
2. https://plato.stanford.edu/entries/rights-group/
3. http://www.wisegeek.com/what-is-the-difference-between-natural-rights-and-legal-rights.htm
4. http://www.amnestyusa.org/research/human-rights-basics
5. https://en.wikipedia.org/wiki/Women%27s_rights#cite_note-quarterly-2
6. http://who.int/reproductivehealth/en/
7. http://www.answering-christianity.com/karim/women_rights_for_sex.htm]
8. http://www.linkedin.com/pulse/20141033040 55-314687442-the-rights-of-a-divorced-women-in-islam]
9. Supreme Court of Bangladesh. Home: Supreme Court of Bangladesh [Internet]. 2025 [cited 2025 Apr 6]. Available from: https://www.supremecourt.gov.bd/web/indexn.php?page=judgments.php&menu=00&div_id=1&lang=
10. BDLaws. Law of Maintenance of Parents, 2013. Bangladesh Law [Internet]. 2025 [cited 2025 Apr 6]. Available from: http://bdlaws.minlaw.gov.bd/act-1132.html?lang=en