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Sonargaon University (SU)

Department of Law

Research Monograph on

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

This research paper is submitted in partial fulfillment of the requirements of the degree of LLM (1year) under Sonargaon University.

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Letter of Transmittal

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To

Sharmin Jahan Runa
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Subject: Submission of the Thesis.

Dear Ma'am,

I am writing to submit my completed thesis report on **"The powers and functions of the family court with reference to the laws and judicial development in Bangladesh: An overview"** as a requirement of LLM Program, and I am glad to have finally completed this project under your guidance and support.

I am confident that this thesis will meet your expectations and fulfill the requirements for the degree program. It has been a great learning experience for me and I have put in my best effort to ensure that it meets the highest standards of academic excellence.

I look forward to your feedback and assessment of my work.

Sincerely Yours,

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Acknowledgement

At first I would like to acknowledge the immeasurable grace and profound kindness of Almighty Allah who bestowed us the capacity for successful completion of this research work.

This Research Monograph would not have been possible without the support of many people. Many thanks to my research adviser, **Sharmin Jahan Runa, Asst. Professor & Dept. Head Department of Law**, Sonargaon University, who helped me in many ways and helped make some sense of the confusion. Also thanks to my other honorable course teachers, Md Sagor Hossain, Mohammad Ali, Sunjida Akter, Joydeep Chowdhury and others, who offered guidance and support. Many thanks to my friends and elders, who provided supports for making this research monograph.

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Declaration

I am Tania Akter, Id: LLM2402031009, Department of Law, Sonargaon University, hereby Declare that this Research Monograph titles **"The powers and functions of the family court with reference to the laws and judicial development in Bangladesh: An overview"** represents my original own work which has been done after selecting the topic.

I declare that the thesis has been:

a. Composed by myself and that the work has not be submitted for any other degree or professional qualification.

b. My contribution and those of the other authors to this work have been explicitly indicated.

c. I confirm that appropriate credit has been given within this thesis where reference has been made to the work of others.

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Approval by the Research Advisor

This is to certify that the Research Monograph Titled **"The powers and functions of the family court with reference to the laws and judicial development in Bangladesh: An overview"** Submitted by Tania Akter (ID- LLM2402031009), in fulfillment of the requirements for the award of the graduate degree in Law from Sonargaon University, under my active supervision and guidance and that no part of this paper has been submitted anywhere earlier, as far as I know.

Sharmin Jahan Runa
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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 research 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.

Index of cases

1. **Krishnapada Talukder V. Geetasree Talukder** [14 (1994) BLD 415
2. **Nirmal Kanti Das Vs Sreemati Biva Rani** [14 (1994) BLD (HCD) 413],
3. **Pochon Rikssi Das Vs Khuku Rani Dasi and others** [50 (1998) DLR (HCD) 47]
4. **Mohammad Chad Miya Vs Rupnahar,** 51 DLR (1999), 292
5. **Safiqul Haque Vs Mina Begum** , 54 DLR (2002) 481
6. **Abul Hasem Vs Mahmuda Khaton** 64 DLR (2012) 494
7. **Maksuda Akhter Vs Md Seraju Islam** 51(199) DLR (HCD) 554
8. **Younus Mia Vs Abida Sultana Chanda** 47 (1995) DLR (HCD) 331
9. **Makbul Ahmed Vs Sufia Khatun and others** 40 (1998) DLR (HCD) 305
10. **Mrs. Jesmin Sultana vs Md. Elias** (46 DLR 1994 HCD)
11. **Abdul Hakim vs Sajeda Khatun** (47 DLR 1995 HCD
12. **Rahima Khatun vs Hafizuddin** (40 DLR 1988)
13. **Rabeya Khatun vs Md. Idris Ali** (48 DLR 1996
14. **Md. Shafiqul Islam vs Shahnaz Parvin** (60 DLR 2008)

List of Abbreviations

1. **AD**- Appellate Division
2. **HCD**- High Court Division
3. **AIR**- All India Reporter
4. **BELA**- Bangladesh Environmental Lawyers Association
5. **DLR**- Dhaka Law Reports
6. **ADR**- Alternative Dispute Resolution
7. **CPC**- Code of Civil Procedure
8. **Cr.P.C.-** Code of Criminal Procedure
9. **FR-** Fundamental Rights
10. **SPA-** Special Powers Act
11. **CJ-** Chief Justice
12. **MFLO-** Muslim Family Laws of Ordinance

Table of Contents

Chapters	Pages
Letter of Transmittal……..	I
Acknowledgement ……	II
Declaration ……	III
Approval by the Research Advisor ……..	IV
Abstract …….. …….	V
Index of cases ……..…….	VI
List of Abbreviations…….	VII

Chapter One

Introductory Part

1.1. Introduction …….. 01

1.2. Rational of the Study …… 01-02

1.3. Objective of the Study …….. 02

1.4. Methodology of the Study …… 02-03

1.5. Limitation of the Study ……. 03

Chapter Two

History & Background

2.1 Historical development of Family courts ……04-05

2.2 Historical development of Family courts in Bangladesh…….05

i. Pre-Partition Era (Before 1947) ……..05

ii. Post-Partition & Pakistan Period (1947–1971) ……..….06

iii. Establishment of Family Courts in Bangladesh (1985) …….06

Chapter Three

Concept Analysis

3.1. Introduction……08

3.2. Function and Jurisdiction of the Family Court in Bangladesh…….…..08

3.3. Legal Framework Governing Family Courts……11

3.4. Court Proceeding…….…12

3.5. Conclusion……...12

Chapter Four

Powers and Functions of the Family Court in Bangladesh

4.1. Definition of Family Courts……...13

4.2. Establishment…….….13

4.3. Jurisdiction……14

4.4. Access to the Family Courts……..…...14-15

4.5. Procedure of Family Courts……...15-16

Chapter Five

Problematic Areas

5.1 Construction of Family Courts…….17

5.2 Jurisdiction of Family Courts…….…...17

5.3 Courts fee to be paid for the institution of suit in a Family Court……...17

5.4 Contempt of Family Courts……..18

5.5 Inherent powers of the Family Courts……..18

5.6 Family Courts: Whether courts for Muslim community only? …….…..18

5.7 Family Courts Proceedings in Camera: Whether possible? ……..18

5.8 Dual option for custody of children, dower and maintenance disputes…19

5.9 Lengthy process of summons and decree……..19

Chapter Six

Finding and Suggestions

6.1 Findings…….20-21

6.2 Final Results……..21

6.3 My Thoughts ……22

6.4 Recommendations……22-23

Chapter Seven

Concluding part

7.1 Conclusion……24

Chapter One

Introductory Part

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 Courts Ordinance of 1985, 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, highlighting their significance in the broader legal framework and their impact on society[1].

1.2 Rational of the Study

The rationale of this study lies in the critical role that Family Courts play in safeguarding the personal and legal rights of individuals within the family structure particularly in a socio-cultural context like Bangladesh, where family disputes are often influenced by religious norms, patriarchal values, and limited legal literacy. Despite the establishment of the Family Court through the Family Courts Ordinance, 1985, and the recent enactment of the Family Court Act, 2023, there remain numerous challenges in terms of effectiveness, accessibility, procedural clarity, and judicial capacity.

This study is essential to explore how the powers and functions of the Family Court are defined, exercised, and interpreted by the judiciary. It will also examine how judicial developments have contributed to the protection of vulnerable groups, such as women, children, and elderly parents, and how gaps in the law continue to affect the delivery of justice in family matters.

[1] linkedin.com/pulse/functions-jurisdiction-family-court-bangladesh-bdlex-manupatra-bz5zc

Furthermore, this research is rationally grounded in the need to evaluate:

- Whether the current legal framework adequately addresses modern family issues
- How judicial interpretation has expanded or limited Family Court jurisdiction
- The impact of alternative dispute resolution (ADR) mechanisms in reducing delays
- The practical implications of recent legal reforms (e.g., Family Court Act 2023)

By assessing both legal theory and practical judicial application, this study seeks to identify recommendations for legal reform, institutional strengthening, and improved access to family justice, contributing to a more just and equitable legal system in Bangladesh.

1.3 Objective of the Study

The main objective of this study is to examine the legal framework, jurisdiction, and practical functioning of the Family Court in Bangladesh in light of existing laws and evolving judicial interpretations.

The research aims to critically examine the powers and functions of Family Courts in Bangladesh, with a specific focus on how they operate in relation to existing laws and how judicial interpretations have shaped their development. The study will analyze the legal framework, assess the current situation of family courts, identify challenges, and explore potential solutions to improve their effectiveness in resolving family disputes and ensuring justice for all parties involved.[2]

1.4 Methodology of the Study

This research paper employs a comprehensive approach by integrating both qualitative and quantitative research methodologies, utilizing empirical tools to gather data. The study draws on a combination of primary and secondary sources to ensure a well-rounded analysis. For primary data, information was collected from individuals within my network who possess expertise in the field of law. Their insights and experiences provided valuable firsthand knowledge. Secondary data, on the other hand, were sourced from authoritative figures in the legal domain, various books, reputable journals, and reliable internet resources.

[2] chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https

Thorough data analysis was conducted while keeping the research objectives in focus. To enhance the clarity and precision of the report, AI tools were employed to assist with grammar and to effectively express ideas. By comparing and contrasting various sources, identifying areas of convergence, and triangulating the findings, the research report was meticulously finalized.

This approach ensures that the research findings are robust and well-supported, providing a comprehensive understanding of the powers and functions of the family court with reference to the laws and judicial development in Bangladesh.

1.5 Limitation of the Study

There were several limitations encountered during the preparation of this research paper, with the main constraint being the restricted timeframe. The research had to be completed within a period of fewer than two months, which proved to be insufficient for conducting an extensive study. Another challenge was the scarcity of available research on the topic, leaving very limited sources to rely on. Most of the information gathered from online sources and books was not directly relevant to the research topic, requiring additional effort to extract pertinent data. Furthermore, as a researcher with limited experience in the field, there was a need to learn the basics before embarking on the research. Given these limitations, it is acknowledged that mistakes might have been made, and I ask for understanding and forgiveness in this regard.

Chapter Two

History & Background

2.1 Historical development of Family courts

Family courts were first established in the United States starting in the late 1910s at the behest of probation officers invested in the success of specialized domestic relations courts. Members of the National Probation Association (NPA) advanced the idea that "combining criminal nonsupport, juvenile delinquency, and divorce into a unified 'family court' would reduce jurisdictional overlap and ensure deep, rehabilitative treatment by probation officers across family-related conflicts. This idea was minimally successful and led to varied reformation of family courts throughout the 1920s and 1930s.[3]

The original criminal nature of family courts was slowly replaced by an impliedly civil approach, starting in the 1930s with a New York law designed to treat nonsupport cases as a civil matter. The shift to civil nonsupport across the country and the addition of divorce jurisdiction led to family court dockets becoming more civil in nature.[3] Those found in contempt in civil nonsupport cases were still incarcerated as they were in the criminal nonsupport system.

In 1933, New York established a standalone family court, "somewhat confusedly" called the Domestic Relations Court, to further remove family matters from criminal jurisdiction. However, in reality, this new family court and those that followed blended criminal and civil components, removing the constitutional protections offered by criminal procedure while still maintaining criminal-like enforcement mechanisms.In addition, New York passed the Uniform Support of Dependents Law (USDL) in order to provide a mechanism for interstate civil enforcement of family court rulings.[4]

[3] https://en.wikipedia.org/wiki/Family_court#cite_note-4
[4] "Federal Court Basics". uscourts.gov. 2013. Retrieved 31 July 2013

Later, as probation officer involvement dwindled (partially attributable to the model Family Courts Act produced by the NPA in 1959) and more family courts retained jurisdiction over divorce, the machinery of family courts began to look even more civil. However, some aspects of family court enforcement still retain their criminal roots in heavy state involvement, including incarceration as a consequence of nonpayment of child support, wage garnishment, revocation of driver's licenses, and denial of passport applications. Some family courts still use older criminal nonsupport statutes, even though protections afforded by constitutional criminal procedures are oftentimes not present. Most cases are presided over by a single judge without a jury, except in the State of Texas, where parents have a right to trial by jury. These muddy distinctions between criminal and civil proceedings within family courts have led to calls for reformation, arguing that the seemingly civil nature of family courts is a method used to circumvent criminal procedural protections while still maintaining criminal enforcement machinery.[5]

2.2 Historical development of Family courts in Bangladesh

The historical development of Family Courts in Bangladesh reflects a gradual evolution shaped by legal reforms, societal needs, and religious considerations. Here's a detailed overview:[6]

(i) Pre-Partition Era (Before 1947)

Before the partition of British India in 1947:

- Personal laws (based on religion) governed family matters such as marriage, divorce, maintenance, guardianship, and inheritance.
    - Muslims followed Sharia law, interpreted and applied through Hanafi jurisprudence.
    - Hindus followed their own religious customs and the Hindu Personal Laws.
- Civil courts had jurisdiction over family matters.
- There was no separate institution for family courts; disputes were addressed under general civil or district courts.

[5] https://en.wikipedia.org/wiki/Family_court#cite
[6] https://chatgpt.com/c/685e3828

(ii) Post-Partition & Pakistan Period (1947–1971)

After the creation of Pakistan, which included East Pakistan (now Bangladesh):

- Demand grew for a more accessible and specialized forum for resolving family disputes among Muslims.
- The Muslim Family Laws Ordinance (MFLO), 1961 was enacted in Pakistan:
    - It introduced reforms like registration of marriages and divorces, maintenance rights, and restrictions on polygamy.
    - But no separate family courts were established under this law.

(iii) Establishment of Family Courts in Bangladesh (1985)

After Bangladesh gained independence in 1971:

- Family disputes continued to be dealt with by civil courts, causing delay, expenses, and hardship for litigants—especially women and children.
- Recognizing the need for a specialized, simplified, and expedited system, the Family Courts Ordinance, 1985 was enacted.

Key features of the Family Courts Ordinance, 1985:

- Applied to Muslims only (due to reliance on Muslim personal law).
- Established separate Family Courts at the upazila/thana level, presided over by Assistant Judges.
- Gave exclusive jurisdiction over five matters:
    1. Dissolution of marriage
    2. Restitution of conjugal rights
    3. Dower
    4. Maintenance
    5. Guardianship and custody of children
- Introduced conciliation and informal procedures to ensure quick and amicable settlements.
- Barred legal representation (lawyers) in certain phases to encourage informal dispute resolution.

Judicial Developments and Expansions

Over the years, the judiciary of Bangladesh has played a significant role in interpreting and expanding the scope of the Family Courts Ordinance:

- In several judgments, courts have emphasized:
    - The welfare of the child as the paramount consideration in custody disputes.
    - Equal access to justice and fair treatment of women.
- Legal scholars and women's rights groups have called for:
    - Expansion of Family Court jurisdiction to include non-Muslims.
    - Improved infrastructure and training for family court judges.

Present-Day Context

Today:

- Family Courts are functional throughout Bangladesh.
- Despite their benefits, challenges remain:
    - Lack of jurisdiction over non-Muslims.
    - Insufficient resources, court staff, and training.
    - Delays in case disposal, especially in urban areas.
- Reforms are under discussion to make the system more inclusive and efficient.[7]

[7] https://www.researchgate.net/publication/383459679_JURISDICTION_AND_SCOPE_OF_THE_FAMILY_COURTS_IN_BANGLADESH

Chapter Three

Concept Analysis

3.1 Introduction

The concept family courts are established by the Family Courts Ordinance 1985 to serve the purpose of quick, effective and amicable deposal of some of the family matters. Family Court deals with a limited number of Family Laws. The family court's jurisdiction is limited. By the Family Courts Ordinance 1985 the Family Courts get hold of exclusive jurisdiction for expeditious settlement and disposal of disputes in only suits relating to dissolution of marriage, restitution of conjugal rights, dower, maintenance, guardianship and custody of children.

3.2 Function and Jurisdiction of the Family Court in Bangladesh

The Family Court's main purpose is to assist the smooth and successful disposal of cases relating to family matters. However, like any other system there are certain issues which become a matter of concern when it comes to the working of these courts.

However, family courts were established by the Family Court ordinance 1985 to serve of the purpose of quick, effective and amicable disposal of some of the family matters. The purpose is again manifest in providing a procedure for trial of cases in camera if required for maintaining the secrecy, confidentiality and for effective disposal of some complicated and complicated maters which may not be possible under moral law of the land.

Section 5 of the Family Courts Act, 2023 speaks about the jurisdiction of the family courts which reads as: " Subject to the provisions of the Muslim Family Laws Ordinance 1961 a family courts shall have exclusive jurisdiction to entertain , try and dispose of any suit relating to, or arising out of, all or any of the following matters, namely-

[a] Dissolution of marriage
[b] Restitution of conjugal rights
[c] Dower
[d] Maintenance
[e] Guardianship and custody of children."

(i) Dissolution of marriage (Talak)

The dissolution of marriage under Muslim law is detailed in sections 307 and 308. Under Muslim law, the contract of marriage may be dissolved in any one of the following ways: (i) by the husband at his will, without the intervention of the court; (ii) by mutual consent of the husband and wife, without the intervention of the court; (iii) by a judicial decree at the suit of the husband or wife. The wife cannot divorce herself from her husband without his consent unless such right is given to wife in the Nikahnama. This type of talak is known as talak-e-toufiz. When the divorce is affected by mutual consent, it is called khula or mubara'at according to the terms of the contract between the parties.

The dissolution of contract of marriage by the husband at his will without the intervention of the court is called talak. Talak may be oral or in writing. To talak orally husband with sound mind pronounces a few words willfully, which are expressed or well understood as implying divorce, and since pronouncement behaves accordingly. Talak in writing or talaknama is the written document of oral talak. The deed may be executed in the presence of the kazi, or the wife's father or of other witnesses. However, the deed should be in customary form and properly superscripted and addressed so as to show the name of the writer and person addressed. In Muslim law, the wife too has 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 whereabouts of the husband are unknown for a period of four years; (ii) failure of the husband to provide for the maintenance of the wife for a period of two years; (iii) 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 suffering from virulent venereal disease; (vii) repudiation of marriage by wife; (viii) cruelty of husband; and (ix) marriage without her consent. This divorce is called talak-e-taufiz.[8]

(ii) Restitution of conjugal Rights

The husband may sue against the wife for restitution of conjugal life if the wife, without lawful cause, ceases to cohabit with her husband. This suit is maintainable only against legally married wife. However, a husband cannot file such a suit if the contract of marriage is dissolved.

[8] https://juralacuity.com/divorce-under-muslim-laws-in-bangladesh/

(iii) Dower (Mahr)

It is the sum of money or other property which the wife is entitled to receive from the husband in consideration of the marriage. Muslim law made it binding (farz) for all Muslim husbands to settle the amount of dower in marriage and record the same in the marriage contract popularly known as Kabinnama or Nikahnama. The amount of dower is settled basing the bride's social status, personal traits, and beauty. The husband may settle any amount he likes by way of dower upon his wife, which in any case must not be less than ten dirham or equivalent thereof. Husband is bound to pay the entire amount of dower settled even though it is beyond his means. It is the debt of husband to his wife, and he has to pay the wife the total amount on demand unless otherwise is stated in the marriage contract. Realization of dower is a right of wife and even a widow can keep her husband's properties in possession under a claim for her dower till the whole amount is paid.[9]

(iv) Maintenance

Maintenance (nafaqa) is the monetary support that a wife, children, parents, and grand children can claim as a matter of legal right on the husband, parents, son, and grandfather respectively to maintain their livelihood. It includes food, clothing, lodging, medical support for the adults, and also includes other necessary expenses for mental and physical well being according to their respective status in society. Grounds by which the obligation is imposed on a person in order of gravity are: (a) marriage, (b) kinship and (c) inheritance. A father is bound to maintain his sons until they have attained puberty and his daughters until they are married.

There are provisions for maintenance in other religions too. An able man should, in addition to his wife children and parents, subject to capability, maintain grandparents and other relations.[10]

[9] https://en.wikipedia.org/wiki/Mahr
[10] https://blog.ipleaders.in/an-exhaustive-overview-of-types-of-maintenance/

(v) Guardianship or custody of children

In all cases father is the natural guardian of the person and property of his minor child. In absence of father, the responsibility shifts to mother, and in case of absence or inability of mother, grandfather or the nearest relation of the parents becomes guardian of the person and property of the minor. Even the Government can be the guardian of the person and property of the minor in demanding situation. Prior to promulgation of Family Court Ordinance 1985, district judges were appointed the guardian of person and property of a minor, which is now vested on the concerned assistant judge of the Family court. All application for appointment of a guardian of the person or property or both of minor are to be under the Guardians and Wards Act, 1890. However, a prospective guardian may start working as a guardian of the minor as per Muslim law even before getting judgment of the court.[11]

3.3 Legal Framework Governing Family Courts

1. **Family Courts Ordinance, 1985**
   This is the principal legislation that provides for the establishment of Family Courts and outlines their jurisdiction, procedures, and powers.

2. **The Muslim Family Laws Ordinance, 1961**
   It deals with registration and procedures for marriage, divorce, and maintenance among Muslims in Bangladesh.

3. **The Guardians and Wards Act, 1890**
   Governs matters relating to the guardianship and custody of children.

4. **Other Applicable Laws:**
   - Dissolution of Muslim Marriages Act, 1939
   - Child Marriage Restraint Act, 2017
   - Hindu Marriage Registration Act, 2012 (for Hindus)

[11].thedailystar.net/law-our-rights/rights-advocacy/news/norms-custody-and-guardianship

3.4 Court Proceeding:

After filing of the plaint when written statement is filed by defended in the court, the Court shall fix a date within 30 days for pre-trial hearing. On that date the Court attempt to affect a compromise or reconciliation between the parties, if possible. Compromise or reconciliation failed Court take evidence of the parties and deliver his decision.

Family courts resolve problems arising out of the mentioned problems. A person may prefer a plaint to be presented to a Family court. The judge can pass the judgment and decree against which appeal petition may be filed with the district judge's court provided the judgment does not relate to (a) the article 2(8) of the Dissolution of Muslim Marriage Act, 1939 or (b) for dower not exceeding five thousand taka.

An appeal against the judgment, decree or order of a Family court shall be preferred within thirty days of the passing of the judgment, decree or order excluding the time required for obtaining true copies thereof. The High Court Division may, either on the application of any party or of his own accord transfer any suit under this Ordinance from the Family court to another court within the local limits of its jurisdiction. A Family court shall be deemed to be district court for the purposes of guardianship and custody of children.

3.5 Conclusion

The provisions of this Ordinance shall have priority over other concerned rules, provided that does not affect the personal law or the religious law prevailing in the country. These rules are applicable for the adherents of those religions in which dissolution of marriage is accepted. This court shall conduct the trial and shall pass the judgment as per religious provisions. However, this Ordinance shall not affect any of the provisions of Muslim Family Law Ordinance of 1961. [12]

[12] https://www.linkedin.com/pulse/family-courts-bangladesh-bdlex-manupatra

Chapter Four

Powers and Functions of the Family Court in Bangladesh

4.1 Definition of Family Courts:

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).[13]

4.2 Establishment:

Section 4 of the Family Courts Ordinance, 1985 establishes the Family Courts and reads as such:

i. There shall be as many Family Courts as there are Courts of [Assistant Judges].
ii. All Courts of [Assistant Judges] shall be Family Courts for the purposes of this Ordinance.
iii. 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.

[13] Black's Law Dictionary

4.3 Jurisdiction:

Section 5 of the Family Court Ordinance, 1985 provides the provisions relating to the jurisdiction of the Family Courts which reads as follows:

"Subject to the provisions of the Muslim Family Laws Ordinance, 1961 (VII of 1961), 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 following matters, namely:-

(a) Dissolution of marriage;
(b) Restitution of conjugal rights;
(c) Dower;
(d) Maintenance;
(e) Guardianship and custody of children.

It is to be noted here that A Family Court shall be deemed to be district court for the purpose of the Guardians and Wards Act, 1890 and an appeal shall lie to the Court of District Judge (Section 24 & Section 17)

4.4 Access to the Family Courts:

Dispute regarding the access to the family courts has been prevalent since its enactment. Section 5 containing the words "Subject to the provisions of the Muslim Family Laws Ordinance, 1961 (VIII of 1961)" emerged the distinguishing point as to whether only Muslims can go to Family Courts or every citizen can do so for the enforcement of their legal rights relating to family matters. The Supreme Court of Bangladesh has held several decisions regarding the matter which are contradictory with each other.

In ***Krishnapada Talukder V. Geetasree Talukder [14 (1994) BLD 415]*** the question was whether a woman, Hindu by faith, could file a suit in a Family Court for maintenance against her husband. The honourable justice of the High Court Division held that

"As per the provisions of the present Ordinance, all the sections of the 27 sections statute have been made available for the litigants who are Muslim by faith only."

But in ***Nirmal Kanti Das Vs Sreemati Biva Rani [14 (1994) BLD (HCD) 413]***, the High Court Division expressed totally opposite view. From the expression 'other laws', in section 3 it appears that the Family Court Ordinance controls the Muslim Family Laws Ordinance, 1961, and not *vice versa*. Thus, any person professing any faith has a right to bring a suit for settlement and disposal of disputes relating to dissolution of marriage, restitution of conjugal rights, dower, maintenance, guardianship and custody of children. However, a Hindu wife is entitled to bring a suit for maintenance against her husband in a Family Court.

Finally, *Pochon Rikssi Das Vs Khuku Rani Dasi and others [50 (1998) DLR (HCD) 47]* removed all the confusions and held that:

"the Family Court Ordinance has not taken away any personal right of any litigant of any faith.....Family Courts Ordinance applies to all citizens irrespective of religion."

4.5 Procedure of Family Courts:

Family courts Act, 2023 being a special law overrides the Code of Civil procedure about what is contained in the Act directly but CPC will apply in cases where the ordinance is salient. In Family Courts the proceeding is initiated with the presentation of plaint by the plaintiff under section 6 of the act. The defendant, after being noticed within the meaning of section 7 of the act, shall have to appear before the Family Court and file written statement under section 8 within 30 (thirty) days from the date of filing the suit. But, on the application of the defendant, the court may fix a further date not beyond twenty-one days for the presentation of the written statement of his defense.

Section 9 deals with the consequence of non-appearance of parties. Accordingly, if, on the day called on for hearing, neither the plaintiff nor the defendant appears in the court, the Court may dismiss the suit. Again, if the defendant does not appear in the court and the notice is duly served, the court may proceed the hearing *ex-parte* and a further notice can be directed to be served, if it is not proved that the notice has been duly served. The court may also extend for 21 days for appearance, if the notice is served but the defendant does not have enough time to appear before the Family Court. Furthermore, where the defendant appears and the plaintiff does not appear, on the day of hearing the Court shall dismiss the suit, unless the defendant admits the claim or part thereof.

As per section 10 the Family Court shall fix a date for ordinarily of not more than thirty days for a pre-trial hearing of the suit from the date of filing the writing statement. The family courts record the evidence according to rules laid down by section 12 of the ordinance. After the close of evidence of all parties, if compromise or reconciliation is not possible, the Court shall pronounce judgment and, on such judgment either at once or on some future day not beyond seven days of which due notice shall be given to the parties or their agents or advocates a decree shall follow.

A special feature has been laid down by section 11 that a Family Court may, if it so deems fit, hold the whole or any part of the proceedings under this Ordinance in camera. But where the both the parties request to hold the proceeding in camera, the court shall do so.

ADR in Family Courts:

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- Divorce / Talaq under Muslim Law: Bangladesh Perspective
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Alternative Dispute Resolution (ADR) does mean a alternative way to settle the dispute out of ordinary court procedure. There are four types of ADR namely negotiation, mediation, conciliation and arbitration. FCO, 1985 embodies two types of ADR e.g. negotiation and mediation. Section 10(3) deals with ADR in Pre-trial stage and says:

"At the pre-trial hearing, the Court shall ascertain the points at issue between the parties and attempt to effect a compromise or reconciliation between the parties, if this be possible."

Section 13(1) deals with ADR in Post-trial stage and puts it thus:

"After the close of evidence of all parties, the Family Court shall make another effort to effect a compromise or reconciliation between the parties."

Presiding judge can be the mediator for this ADR purpose. In case the parties fail to settle the dispute by reconciliation or compromise, the proceeding will be restituted in normal proceeding.

Chapter Five

Problematic Areas

Family Courts in Bangladesh face several problematic areas, including delays in case processing, lack of resources, and procedural inefficiencies. These issues contribute to a backlog of cases, lengthy trials, and difficulties in enforcing court orders. Furthermore, a lack of public awareness about family laws and the court system, as well as potential corruption among stakeholders, exacerbate these problem.[14]

5.1 Construction of Family Courts

According to section 4 of the Family Courts Act, 2023 provides that 'there shall be as many family courts as there are courts of Assistant Judges, all courts of Assistant Judges shall be family court for the purpose of the act and all Assistant Judges shall be the judges of family courts'. Most of the Family Courts have no separate court rooms and separate judges. For this reason, family cases take years together to come to an end.

5.2 Jurisdiction of Family Courts

According to section 5 of the Family Courts Act, 2023 'the jurisdiction of family courts has been sharply ascertained by its parent law. The act asserts that subject to provision of Muslim Family Laws Ordinance, 1961 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 following matters, namely: dissolution of marriage, restitution of conjugal rights, dower, maintenance, guardianship and custody of children'. But Family Courts Act does not include some other related matters which are felt necessary, such as, inheritance, repression of women, domestic violation etc.

5.3 Courts fee to be paid for the institution of suit in a Family Court

The Family Court does not follow the rules of the Court-Fees Act, 1870. According to section 25 of the Family Courts Act, 2023, 'the court-fees to be paid on any plaint presented to a family court shall be two hundred taka for any kind of suit'. It cannot be said that all those who seek remedy in the family courts are poor. A rich man may have the cause to file a plaint before a family court. In the cases of the rich men, the government is being deprived of reasonable court-fees illogically.

[14] https://www.thedailystar.net/law-our-rights/news/analysis-the-family-courts-act-2023

5.4 Contempt of Family Courts

Contempt of any court is considered as an offence in all events. A person who commits this offence should be punished reasonably. Family court may forthwith try such person for such contempt and sentence him to a fine not exceeding taka 200. Nowadays taka two hundred as a fine is considered very poor. Moreover, there is no alternative punishment if the money is not realized.

5.5 Inherent power of the Family court

Under the family courts ordinance, a family court does not enjoy an inherent power but a civil court does. Absence of inherent power is a drawback due to which family courts fail to give some remedy by means of applying discretionary power depending on the sense of equity, justice and good conscience.

5.6 Family Courts: Whether courts for Muslim community only?

Sometimes it is a matter of debate that family court is a court for Muslim community only. In the Family Courts Ordinance, it is not clearly stated that this law is exercised by the people of all religions. For that only a Muslim family takes the privilege of this law. People of other religions seldom go to the Court.

5.7 Family Courts Proceedings in Camera: Whether possible?

The necessity of camera trial is undeniable for maintaining secrecy of disputes between the married couples, avoiding publicity in the matter and expediting the disposal of the family court cases in an amicable way. Expectantly, the Family Courts under section (11) provides the procedure for trial of cases in camera if requested by the parties to the suits. But this provision exists in theory and is seldom applied in practice; hence the common public as well as the justice seekers in the family courts is unaware of the provision, which makes them averse to take recourse in the family courts.[15]

[15] https://www.observerbd.com/news/208952

5.8 Dual option for custody of children, dower and maintenance disputes

Though the legal position was clarified long ago, a considerable portion of lawyers, as the BLAST report 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 Cr PC; again for this one can bring a suit in a family court.

5.9 Lengthy process of summons and decree

Family courts have primary responsibility for enforcing Bangladesh's personal laws, but are plagued with procedural and administrative problems. Lawyers, former judges, and activists told Human Rights Watch that enforcement of court orders can take years, and is often riddled with problems around summons and notice procedures and processes for executing court decrees.

Chapter Six

Finding and Suggestions

6.1 Findings:

Throughout this research, we have delved into the powers and functions of the family court with reference to the laws. Here are the key findings:

1. Limited Number of Family Courts

- Many districts have insufficient or no family courts, especially in rural areas.
- Overburdened courts result in delayed justice.

2. Delay in Disposal of Cases

- Though designed for quick resolution, cases often take years due to procedural delays and adjournments.
- Lack of strict case management further hampers efficiency.

3. Lack of Trained and Specialized Judges

- Judges are often appointed from general judicial cadres with no specialized training in family law.
- Lack of gender sensitivity and understanding of the emotional complexity of family disputes.

4. Ineffective Conciliation/Mediation Mechanism

- Though the law mandates conciliation efforts, in practice it is often formally conducted without meaningful engagement.
- Lack of professional mediators or trained counselors.

5. Poor Infrastructure

- Inadequate courtroom facilities, lack of privacy, and absence of child-friendly environments.
- Sensitive family matters are sometimes heard in open courtrooms,which violates confidentiality.

6. Limited Enforcement Power

- Difficulty in enforcing maintenance orders or custody rulings.
- No effective follow-up mechanism for compliance.

7. Lack of Legal Awareness

- Many women, especially in rural areas, are unaware of their rights and the functions of family courts.
- Social stigma and pressure discourage them from seeking legal remedies.

8. Inadequate Legal Aid

- Although legal aid services exist, access is limited and poorly administered.
- Many deserving litigants do not receive proper representation.

9. Lack of Monitoring and Evaluation

- No regular audits or performance assessments of family courts.
- Absence of a central database to track case statistics and outcomes.

6.2 Final Results

The final result of this research is a deeper understanding of into the powers and functions of the family court with reference to the laws, particularly in the context of judicial development. We have explored various factors that contribute to this powers and functions of the family court, such as power dynamics, legal limitations, access to justice, and the role of civil disobedience. Additionally, we have discussed the importance of questioning authority and upholding a systematic family court function standard.

While there is no definitive solution to completely change Family court structure, we have highlighted the significance of addressing it through awareness, education, legal reforms, and promoting equal access to justice. By recognizing the complexities of the issue and striving for a balance between respecting legal authorities and pursuing justice, we can work towards a fairer and more inclusive judicial development.

It is important to note that the findings of this research are based on the information and perspectives of my own and mainly internet sources and books, so further research and analysis may be necessary to fully comprehend the intricacies of this complex topic.

6.3 My Thoughts

After carefully examining all the information, it is clear that the powers and function of the family court is limited and not in a modern systematic procedure. solving the issue is not a quick or simple task. It will take administrative effort to truly overcome finding the weak point of family court and its development. One important area to focus on is reforming the jurisdiction of the family court.

It is important to recognize that the conclusions drawn here may be limited by the constraints of time and resources. However, the findings highlight the significance of long-term commitment, education, judicial development, and collective action in addressing limitations of family court and striving for establish a Self-sufficient family court.

6.4 Recommendations

Although it is difficult for me to give an opinion on this matter, I have tried to give some recommendations after carefully examining all the information.

1. Expand and Decentralize Family Courts

- Establish family courts in every upazilla (sub-district) for better access.
- Increase the number of judicial officers appointed specifically for family matters.

2. Ensure Timely Disposal of Cases

- Adopt fast-track procedures for urgent matters (e.g., child custody, maintenance).
- Use strict scheduling and case monitoring tools.
- Penalize unnecessary adjournments by either party.

3. Introduce Stronger Enforcement Mechanisms

- Empower courts to enforce orders through:
    - Bank account seizure
    - Salary deductions
    - Legal penalties for non-compliance
- Set up a Family Court Enforcement Cell to monitor and execute court orders.

4. Improve ADR and Conciliation Services

- Assign trained mediators and counselors to help with dispute resolution.
- Encourage pre-trial mediation and in-court settlement conferences.
- Make conciliation confidential and safe, especially for women.

5. Upgrade Court Infrastructure

- Design private, child-friendly, and gender-sensitive courtrooms.
- Ensure separate waiting areas for men and women.
- Improve basic facilities (washrooms, seating, safety).

6. Reform the jurisdiction of family court

According to section 5 of the Family Courts Act, 2023 'the jurisdiction of family courts has been sharply ascertained by its parent law. the 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 following matters, namely: dissolution of marriage, restitution of conjugal rights, dower, maintenance, guardianship and custody of children'. But Family Courts Act does not include some other related matters which are felt necessary, such as, inheritance, repression of women, domestic violation etc.

Chapter Seven

Concluding part

7.1 Conclusion

Throughout the discussion, it became clear that, The Family Courts in Bangladesh play a crucial role in resolving personal and domestic disputes with sensitivity and legal fairness. While the Family Courts Ordinance, 1985 provides a strong foundation, the challenges in implementation must be addressed through reform and modernization. A more systematic, gender-sensitive, and accessible family justice system is essential for ensuring justice in domestic and marital relations in modern Bangladeshi society.

To ensure justice in family matters, Bangladesh needs a modern, people-friendly, and technologically equipped family court system. These recommendations aim to make the system more accessible, efficient, and just, especially for women and children, while upholding the values of fairness, privacy, and sensitivity.

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