



# ACHIEVING EQUALITY BEFORE THE LAW IN BANGLADESH

AN ASSESSMENT OF THE LAW  
FROM A GENDER PERSPECTIVE

© UN Women, October 2024.

The views expressed in this publication are those of the author and do not necessarily represent the views of UN Women, the United Nations or any of its affiliated organizations.

Author: Taslima Yasmin (PhD), Associate Professor,  
Department of Law, University of Dhaka

Legal Editor: Beatrice Duncan (PhD)

Design and Layout: Benussi&theFish

Produced in the United States. All rights reserved.

Photo credits:

- © UN Women/Fahad Kaizer (front cover)
- © UNICEF/UNI495713/Farhana Satu (page 7)
- © UNICEF/UNI701347/Royena Rasnat (page 10)
- © UNICEF/UNI664967/Suman Paul Himu (page 12)
- UN Women/Mohammad Rakibul Hasan (page 20)
- UN Women Bangladesh (page 22)
- UN Women/Allison Joyce (pages 26, 35, 37, 64, 73)
- © UNICEF/UNI622198/Ilvy Njiokiktjien (page 38)
- © UNICEF/UNI789755/Sultan Mahmud Mukut (page 40)
- © UNICEF/UNI146627/Shafiqul Alam Kiron (page 43)
- © UNICEF/UNI789756/Sultan Mahmud Mukut (page 44)
- © UNICEF/UNI171685/Tapash Paul (page 49)
- © UNICEF/UNI487260/Suman Paul Himu (page 61)
- © UNICEF/UNI146634/Shafiqul Alam Kiron (page 66)
- © UNICEF/UNI425068/Vlad Sokhin (page 67)

# TABLE OF CONTENTS

|  |           |   |           |
|--|-----------|---|-----------|
| <b>ACRONYMS</b>  | <b>5</b>  | <b>4.1 Introduction</b>   | <b>37</b> |
| <b>FOREWORD</b>  | <b>6</b>  | <b>4.2 Sexual Harassment at Workplaces</b>                                      | <b>37</b> |
| <b>ACKNOWLEDGEMENTS</b>  | <b>7</b>  | <b>4.3 Maternity Protection and Child-Care</b>                                  | <b>38</b> |
| <b>EXECUTIVE SUMMARY</b>   | <b>8</b>  | <b>4.4 Prohibition of the Employment of Women<br/>in Certain Hazardous Work</b> | <b>39</b> |
| <b>CHAPTER 1: INTRODUCTION</b>   | <b>11</b> | <b>4.5 Informal Sector</b>  | <b>40</b> |
| 1.1 Background   | 11        | <b>4.6 Domestic Workers</b>   | <b>40</b> |
| 1.2 The Specific Role of the Judiciary in<br>Advancing Women’s Rights                              | 13        | <b>CHAPTER 5: CITIZENSHIP, PROPERTY,<br/>MARRIAGE AND FAMILY</b>                | <b>43</b> |
| 1.2.1 Landmark Judgments of the Supreme<br>Court in Gender Equality Related Cases                  | 15        | 5.1 Introduction  | 43        |
| 1.2.1.1 Banning of the ‘Two-Finger Test’   | 15        | 5.2 Citizenship Law   | 43        |
| 1.2.1.2 Filing of Rape Complaints  | 15        | 5.3 Property Rights (Other than Family Laws)                                    | 44        |
| 1.2.1.3 Rape and Sexual Harassment Law<br>Reforms  | 16        | 5.3.1 Trust Law   | 44        |
| 1.2.1.4 Mother’s Eligibility as the Sole<br>Legal Guardian of her Child                            | 16        | 5.3.2 Settlement of Khas Land Policy  | 44        |
| 1.2.1.5 Removing Gender Discriminatory<br>Provisions in the Muslim Marriage Deed                   | 16        | 5.4 Laws on Marriage  | 45        |
| 1.3 Methodology  | 17        | 5.4.1 Muslim Marriage   | 45        |
| <b>CHAPTER 2: GLOBAL COMMITMENTS AND<br/>CONSTITUTIONAL GUARANTEES</b>                             | <b>20</b> | 5.4.2 Hindu Marriage  | 47        |
| 2.1 An Overview of Global Commitments  | 20        | 5.4.3 Special Marriage Act of 1872  | 47        |
| 2.2 Constitutional Guarantees  | 21        | 5.4.4 Dower and Maintenance   | 50        |
| 2.3 Marginalized/Excluded Communities and<br>the Absence of an Anti-discrimination Law             | 23        | 5.4.5 Dissolution of Marriage   | 54        |
| <b>CHAPTER 3: GENDER-BASED VIOLENCE<br/>AND SEXUAL AND REPRODUCTIVE HEALTH<br/>AND RIGHTS LAWS</b> | <b>25</b> | 5.3.6 Polygamy  | 57        |
| 3.2 Sexual Violence, Including Rape  | 25        | 5.5 Family Laws   | 60        |
| 3.2.1 Problems with the Definition of Rape   | 26        | 5.5.1 Muslim Law of Inheritance   | 60        |
| 3.2.2 Other Sexual Offences, Including<br>Sexual Assault and Sexual Harassment                     | 28        | 5.5.2 Law of Succession<br>of Other Religious Groups                            | 61        |
| 3.3 Domestic Violence  | 31        | 5.5.3 Child Custody, Guardianship and Adoption                                  | 62        |
| 3.4 Dowry Violence   | 33        | 5.5.4 Law of Restitution of Conjugal Rights                                     | 65        |
| 3.5 Sexual and Reproductive Health and Rights  | 35        | <b>CHAPTER 6: CONCLUSION</b>  | <b>67</b> |
| <b>CHAPTER 4: LABOUR LAWS</b>  | <b>37</b> | <b>APPENDIX I: LIST OF LAWS AND POLICIES<br/>ANALYSED IN THE STUDY</b>          | <b>68</b> |
|  |           | <b>APPENDIX 2: LIST OF CASES CONSULTED<br/>DURING THE STUDY</b>                 | <b>69</b> |
|  |           | <b>APPENDIX 3: SUMMARY OF<br/>RECOMMENDATIONS</b>                               | <b>70</b> |
|  |           | <b>BIBLIOGRAPHY</b>   | <b>73</b> |

# ACRONYMS

|              |  |                 |   |
|--------------|--|-----------------|---|
| <b>AD</b>    | Appellate Division   | <b>HCD</b>      | High Court Division   |
| <b>ASK</b>   | Ain o Salish Kendra  | <b>ICCPR</b>    | International Covenant on Civil and Political Rights              |
| <b>BLAST</b> | Bangladesh Legal Aid and Services Trust                                    | <b>ICESCR</b>   | International Covenant on Economic, Social and Cultural Rights    |
| <b>BLD</b>   | Bangladesh Law Digest  | <b>ILO</b>      | International Labour Organization                                 |
| <b>BNWLA</b> | Bangladesh National Women Lawyers Association                              | <b>MFLO</b>     | Muslim Family Law Ordinance                                       |
| <b>CEDAW</b> | Convention on the Elimination of All Forms of Discrimination Against Women | <b>MOWCA</b>    | Ministry of Women and Children Affairs                            |
| <b>CRC</b>   | Convention on the Rights of the Child                                      | <b>MR</b>       | Menstrual Regulation  |
| <b>DNA</b>   | Deoxyribonucleic Acid  | <b>SDG</b>      | Sustainable Development Goals                                     |
| <b>DVPPA</b> | Domestic Violence (Protection and Prevention) Act                          | <b>TFT</b>      | Two-finger test   |
| <b>FCO</b>   | Family Court Ordinance   | <b>UFC</b>      | Uniform Civil Code  |
| <b>GBV</b>   | Gender-based violence  | <b>UN Women</b> | United Nations Entity for Gender Equality and Women's Empowerment |
| <b>GWA</b>   | Guardians and Wards Act  | <b>WCRPA</b>    | Women and Children Repression Prevention Act                      |

# DEFINITIONS

---

*Hanafi*: followers of Imam Abu Hanifa

*Hijra*: community of third gender persons

*Hindu Shastras*: sacramental laws of the Hindu religion

*Hizanat*: care and custody of minor children

*Iddat*: wife's period of waiting after divorce or death of husband

*Kabinnama/ Nikahnama*: marriage deed

*Khas*: government-owned

*Khula*: dissolution of marriage at wife's request

*Mata'a*: provision/compensation paid to woman by the husband, who has arbitrarily divorced her

*Talaq*: unilateral divorce of wife by husband

*Talaq-i-tawfid*: delegation by the husband to the wife of an authority or power to pronounce divorce

*Two-finger test*: test allowing doctors to inspect the hymen of a woman during medical examination for rape

*Usool*: giving of wedding gifts

# FOREWORD

Recent decades have witnessed a transformation in women’s legal rights across the world. However, due to limited and weak monitoring of the implementation of these laws, we are still unable to see tangible changes in the lives of women and girls. Often laws on paper are not leading to equality and justice for women and girls in practice.

The creation of a more gender-equal world is a key priority of the 2030 Agenda for Sustainable Development. The Government of Bangladesh has reiterated its commitment to the Sustainable Development Goals in its ongoing 8th Five Year Plan, July 2020 - June 2025: *promoting prosperity and fostering inclusiveness, offering a renewed opportunity to accelerate progress*. The Plan identifies the need to invest more to improve women’s human capabilities, increase their economic participation and security, and enhance their voices and representation at all levels while creating an enabling environment for achieving gender equality and women’s empowerment. The plan also recognises the urgent need to take a wide range of measures to prevent, deter and prosecute violence against women in the country.

However, the continued existence of discrimination against women and girls in the legal framework of Bangladesh presents a serious obstacle to the achievement of these national priorities. Similar concerns are reflected in the 2016 Concluding Observations and Recommendations of the Committee on the Elimination of Discrimination against Women, in response to Bangladesh’s 8th State Party Periodic Report on progress being made on implementing the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). Similarly, in 2024, the Working Group of the Universal Periodic Review reiterated the need for Bangladesh to strive for full compliance with CEDAW, especially the fight against all forms of violence and discrimination.

Equality before the law and non-discrimination are core principles of the Constitution of the People’s Republic of Bangladesh. Recent successful law reform initiatives – such as the repeal of discriminatory provisions in the Evidence (Amendment) Act, 2022, the ongoing process of amending the Domestic Violence Act, 2010, and consideration of proposals to adopt combat sexual harassment are all quite promising. They highlight the vision of change that can be leveraged when the strengths of a dedicated civil society combine with that of genuine commitment from the Government—both clearly evident in Bangladesh.

UN Women commissioned **Achieving Equality Before the Law in Bangladesh: An Assessment of the Law from a Gender Perspective** as a contribution to the 30th review of the Beijing Declaration and Platform for Action, already underway, as well as the Government of Bangladesh’s ongoing efforts to achieve gender equality, especially in the context of implementing CEDAW.

We hope that the study will serve as a useful resource to support national stakeholders in taking stock of legislative achievements and assessing the gaps to be addressed as part of a longer-term legislative agenda.

We look forward to supporting the efforts of all our partners to advance this important cause.

**Gitanjali Singh**  
Representative  
UN Women Bangladesh

# ACKNOWLEDGEMENTS

This study was commissioned by UN Women Bangladesh to facilitate well informed, socially sensitive and evidence-based law reform in Bangladesh.

UN Women is grateful to Taslima Yasmin (PhD), Associate Professor, Department of Law, University of Dhaka for conducting the research and writing the report.

Special thanks to the international legal consultant, Lee Waldorf, for reviewing the report and to UN Women

staff (Beatrice Duncan (PhD), Nisha Nicole Arekapudi , Seodi White and Shrabana Datta) for their substantive technical contributions.

The preparation of the report was made possible through financial assistance from the Swedish International Development Cooperation Agency and the Government of Canada.



# EXECUTIVE SUMMARY

## Introduction

Repealing discriminatory laws is inherent to the achievement of gender equality and the full realization of the transformative ambitions of the 2030 Agenda for Sustainable Development in Bangladesh. This is underpinned by the Constitution of the People's Republic of Bangladesh, which provides for equality of opportunity (Article 19), equality before the law (Article 27) and protection from discrimination (Article 28).

The legal system of Bangladesh is influenced by the British colonial experience and geopolitical linkages with India and Pakistan.<sup>1</sup> The multidimensional nature of the legal system of Bangladesh is defined by religious laws (Muslim, Hindu, and Christian), traditional norms and the common law. Bangladesh also follows the dual method of adopting international treaties into domestic law, which means that the legislature must enact specific legislation to make them operational at the domestic level.

This study presents an in-depth analysis of laws that impact on the implementation of Sustainable

Development Goal 5 (Achieve gender equality and empower all women and girls), Target 5.1. (End all forms of discrimination against all women and girls everywhere) and Indicator 5.1.1 (Whether or not legal frameworks are in place to promote, enforce and monitor equality and non-discrimination on the basis of sex).

It is underpinned by a comprehensive review of wide-ranging primary and secondary sources - namely, statutes, legislative instruments, reported judgments, and other published resources. The study also benefitted from a series of consultations with different experts at various stages of the research, culminating in two validation workshops in December 2019 and January 2020 respectively.

A total of 32 laws were reviewed (together with traditional rules of personal laws) falling under the broad headings of laws related to marriage and family, employment, land, citizenship, gender-based violence, sexual and reproductive health and rights, and discrimination against marginalized or excluded people and communities.

## Key Findings

The study identifies several laws where there are either gender discriminatory provisions or gaps in addressing specific forms of gender-based discrimination. Based on an in-depth analysis, it proposes several pragmatic recommendations to address these shortfalls. In summary, this analysis identifies 19 laws which must be amended or revised to eliminate discrimination. It furthermore recommends the complete repeal of the Guardians and Wards Act of 1890, and its replacement by new legislation. Additionally, the study recommends the enactment of four new laws to bring Bangladesh's legal framework into line with its international and national obligations. This step would include a separate law on sexual harassment at workplaces and in educational

institutions; an anti-discrimination law; a law providing for post-divorce maintenance for Muslim women and giving Hindu women the right to seek divorce; and a new legislation to replace the Guardians and Wards Act, 1890.

There are also many areas that require thorough and comprehensive research and consultation among all concerned parties before any legal reform or advocacy strategy can be proposed. An inclusive roadmap is needed to identify effective advocacy strategies and push forward the agenda for law reform. The research therefore proposes seven social policy actions to complement those on law reform.

<sup>1</sup> Mohammad Ershadul Karim, 'The Legal System of the Peoples' Republic of Bangladesh' <<https://www.nyulawglobal.org/global-ex/Bangladesh1.html>> Accessed September 30, 2024.

Some of the key actions are summarized in line with the various thematic areas of the report as follows:

## Family Laws and Property Rights

Under the category of family law, the study reviews different areas of discrimination existing under Muslim, Hindu, and Christian personal laws. Proposals for legal reform include: 1) amending the Special Marriage Act, 1872; 2) reviewing the standardized marriage contract (*nikahnama*); 3) introducing post-divorce maintenance; 4) reforming the Divorce Act, 1869 applicable to Christians; 5) and introducing legislation to allow for

divorce among Hindu married couples. It furthermore recommends the removal of gender discriminatory provisions in the citizenship law and amending the Trust Act, 1882 to remove restrictions on a woman's right to alienate property as well as the factors which disqualify a married woman from being a *de facto* trustee of trust property.

## Gender-Based Violence

With respect to Gender-Based Violence (GBV), the study focuses on the need to revise provisions which are gender discriminatory as manifest in stereotypical and patriarchal language, particularly those relating

to rape and other sexual offences. Additionally, the study highlights several legislative gaps dealing with dowry-related violence and domestic violence which create judicial hurdles for women litigants.

## Labour Laws

Although the most recent amendment of labour rules in 2022 addresses the issue of sexual harassment at workplaces, it is still not in alignment with the ruling of the superior court of the country, which is the High Court Division of the Supreme Court of Bangladesh (HCD), in the 2009 case of *Bangladesh National Women Lawyers Association (BNWLA) v Government of Bangladesh and others*,<sup>2</sup> nor does it address the absence of a monitoring mechanism. The study therefore recommends

full compliance with the HCD Guidelines, as well as a comprehensive definition of sexual harassment in all relevant laws, including those addressing GBV. In this context, the study also proposes the enactment of separate legislation prohibiting sexual harassment in workplaces and educational institutions in line with the new International Labour Organization (ILO) Convention 190 on Violence and Harassment.

## Marginalized Populations and Communities

Finally, the study highlights the need to enact legislation prohibiting discrimination against marginalized populations and communities and recommends the

strengthening of advocacy efforts to support the enactment of such legislation.

---

<sup>2</sup> 29 Bangladesh Law Digest (BLD) (2009) 415.



# 1

## CHAPTER 1. INTRODUCTION

## 1.1 Background

An estimated 3.7 billion women and girls around the world live in countries where the law does not adequately protect them.<sup>3</sup> Discriminatory laws perpetuate inequalities between men and women and thereby negatively impact on women’s role in society. Conversely, laws that promote gender equality and respect human rights help build an inclusive, prosperous and just society.

The People’s Republic of Bangladesh is a parliamentary democracy, situated in South Asia, bordering India and Myanmar. The Population Census of 2022 places the country’s population at 165,158,616 of which 83,347,206 are female, 81,712,824 are male and 12,629 are Hijra.<sup>4</sup> The country is also predominantly Muslim (91 percent), with the presence of minority religious groups (8 percent), Buddhists (0.61 percent), Christians (0.30 percent) and others (0.12 percent).<sup>5</sup>

The legal system of Bangladesh is influenced by the British colonial experience and geopolitical linkages with India and Pakistan.<sup>6</sup> The multidimensional nature of the legal system of Bangladesh is defined by religious laws (Muslim, Hindu, and Christian), traditional norms and the common law.<sup>7</sup> The Constitution of the People’s Republic of Bangladesh guarantees some fundamental rights, along with an independent judiciary, headed by a Chief Justice who is appointed by the President (Article 94 (2)). The Constitution provides limited guidance on the legal effect of international treaties on domestic legislation.<sup>8</sup> Nevertheless, secondary sources provide that, as is the case among countries of the Commonwealth,

Bangladesh utilizes a dualist approach in adopting international treaties, meaning that parliamentary approval is required for the ratification of all treaties, followed by domestication, through the enactment of legislation.<sup>9</sup> Islam M. *et al* assert that “Bangladesh takes a cautious approach when ratifying international treaties. For example, Bangladesh has not consented to the compulsory jurisdiction of the ICJ although it has assented to many human rights treaties like the International Covenant on Civil and Political Rights, 1966 (ICCPR) and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990.”<sup>10</sup>

The Government of Bangladesh is committed to addressing discrimination in its existing laws, as well as the absence of laws in areas that are essential for ensuring the equal status of women in all spheres—social, economic, cultural, civil and political.

Critical to this study is Sustainable Development Goal (SDG) 5, which is to ‘achieve gender equality and empower all women and girls’, with the target to ‘end all forms of discrimination against women’ (Target 5.1). This target is to be measured by assessing ‘whether or not legal frameworks are in place to promote, enforce and monitor equality and non-discrimination based on sex,’ as per indicator 5.1.1.<sup>11</sup>

Reforming the law and eliminating those which are discriminatory is therefore critical to achieving gender equality and realizing the transformative ambitions of

3 Jeni Klugman and Beatrice Duncan, ‘Shaping the Law for Women and Girls: Experiences and Lessons from UN Women’s Interventions (2015-2020)’ (2022) UN Women <<https://www.unwomen.org/sites/default/files/2022-01/Shaping-the-law-for-women-and-girls-en.pdf>> accessed September 30, 2024.

4 Bangladesh Bureau of Statistics, ‘Population and Housing Census 2022: Preliminary Report’ <[https://sid.portal.gov.bd/sites/default/files/files/sid.portal.gov.bd/publications/01ad1ffe\\_cfef\\_4811\\_af97\\_594b6c64d7c3/PHC\\_Preliminary\\_Report\\_\(English\)\\_August\\_2022.pdf](https://sid.portal.gov.bd/sites/default/files/files/sid.portal.gov.bd/publications/01ad1ffe_cfef_4811_af97_594b6c64d7c3/PHC_Preliminary_Report_(English)_August_2022.pdf)> accessed September 30, 2024.

5 Ibid.

6 Mazharul Islam and others, ‘The Application of International Laws in Bangladesh: A Critical Evaluation’ (2022) Unnes Law Journal: Jurnal Hukum Universitas Negeri Semarang 8(1) 207-224 <<https://doi.org/10.15294/ulj.v8i1.56458>> accessed September 30, 2024.

7 Ibid.

8 Ibid.

9 Ibid.

10 Ibid.

11 Global indicator framework for the Sustainable Development Goals and targets of the 2030 Agenda for Sustainable Development, <[https://unstats.un.org/sdgs/indicators/Global%20Indicator%20Framework%20after%202019%20refinement\\_Eng.pdf](https://unstats.un.org/sdgs/indicators/Global%20Indicator%20Framework%20after%202019%20refinement_Eng.pdf)> accessed September 30, 2024.



the Agenda for Sustainable Development.<sup>12</sup> The SDGs were integrated into Bangladesh's 7th Five Year Plan (7FYP, 2016-2020): *Accelerating Growth, Empowering Citizens*, as well as its current 8th Five Year Plan, July 2020-June 2025: *promoting prosperity and fostering inclusiveness, offering a renewed opportunity to accelerate progress*.

This study is grounded in 'Equality in Law for Women and Girls by 2030: A Multistakeholder Strategy for Accelerated Action', a global framework and plan of action for eliminating gender discriminatory laws, globally, but more especially in UN Women's geographical areas of focus.<sup>13</sup>

The strategy was launched by UN Women, the Inter-Parliamentary Union, the African Union, the Commonwealth, Organisation Internationale de la Francophonie, the Secretaría General Ibero-Americana, the International Development Law Organization and other institutions at the 63<sup>rd</sup> Session of the Commission on the Status of Women in March 2019, to serve as a framework for accelerated action on eliminating *de jure* discrimination in the following six priority areas:

- *Enacting comprehensive reforms*: Repeal discriminatory laws that directly and indirectly impact women and girls.
- *Promoting women's economic empowerment*: Repeal laws that undermine equal pay, recognize unpaid care

work, protect domestic workers, enact parental leave and freedom of choice of employment.

- *Eliminating harmful and discriminatory minimum age of marriage provisions*: Promote 18 years as the minimum age of marriage, equalize the age of marriage between women and men, and eliminate related exceptions as appropriate.
- *Ending gender discrimination in nationality laws*: Uphold women's rights to equality in nationality and citizenship laws.
- *Addressing discriminatory rape laws*: Revise provisions that exempt perpetrators from rape charges if they marry the survivor.
- *Promoting equality in family relations*: Repeal gender discriminatory personal status laws, including in marriage, divorce, parental rights, and inheritance.

With this framework in mind, UN Women Bangladesh undertook a comprehensive analysis of the laws of Bangladesh from a gender perspective to provide an in-depth overview of existing laws and how these hinder or enable gender equality. The medium to long term goal of the organization is to establish a strong evidence base for future law reform that includes the enactment of new laws and the revision or repeal of discriminatory legislation as a key vehicle for advancing gender equality.

12 UN Women <<https://www.unwomen.org/-/media/headquarters/attachments/Sections/library/publications/2019/equality-in-law-for-women-and-girls-en.pdf?la=en&vs=5600>> accessed September 30, 2024.

13 UN Women, 'Equality in Law for Women and Girls by 2030: A Multistakeholder Strategy for Accelerated Action' (2019) <<https://www.unwomen.org/en/digital-library/publications/2019/03/equality-in-law-for-women-and-girls-by-2030>> accessed September 30, 2024.

## 1.2 The Specific Role of the Judiciary in Advancing Women’s Rights

The judicial system of any country plays a pivotal role in the enforcement of laws and gender equality principles and standards contained in international and regional

instruments. The court structure of Bangladesh is summarized in Box 1.2 below:

### BOX 1.2:

#### A SYNTHESIS OF THE JUDICIAL STRUCTURE OF BANGLADESH

The judicial system of Bangladesh comprises a hierarchical structure with several tiers:

**Supreme Court:** The apex judicial body consisting of the Supreme Court, which comprises the Appellate Division and the High Court Division. The Appellate Division hears appeals from the High Court Division, while the High Court Division deals with original and appellate civil and criminal matters.

**Subordinate Courts:** These include District Courts, Sessions Courts, Magistrate Courts, and other specialized courts and tribunals. They deal with cases at the district and lower levels and both civil and criminal matters.

**Specialized Tribunals or Courts:** These include family courts, labor courts, juvenile courts, and various tribunals dealing with specific types of cases.

Source: Constitution of the People’s Republic of Bangladesh

The Supreme Court is increasingly interpreting laws in the light of international treaties, which the country has ratified. Where national laws are clear but inconsistent with international laws, the court are expected to apply the national law in the state in condition in which they are and draw the attention of the legislative branch of government to amend the existing laws.<sup>14</sup> It is only when the law is unclear on a particular issue that the courts can refer to international norms and customs.<sup>15</sup> For example, in *State v Md. Roushan Mondal Hashem*<sup>16</sup>, with regard to the UN Convention on the Rights of the Child (CRC) the Court insisted that as a signatory to the CRC Bangladesh is ‘duty bound’ to apply its provisions in it’s national laws. The Court further observed that, ‘the time is ripe for our legislature to enact laws in conformity with the UNCRC... Let a copy of this judgment

be sent to the Ministry of Law Justice and Parliamentary Affairs for recommending legislation in line with the views expressed by us in this judgment.’<sup>17</sup>

The courts also follow case-laws from other common-law countries such as India, Australia, the UK and the USA.<sup>18</sup> Brief overviews of some of the landmark judgments of the Supreme Court that have had a crucial impact on gender-based discrimination in law and in practice are presented in relevant Sections of this report. Many of these judgments arose out of public interest litigation (PIL) filed by rights-based organizations.<sup>19</sup>

Lower courts and special tribunals are the courts of first instance for enforcing the majority of criminal laws, including those which relate to gender-based violence. Appeals from these courts lie to the Supreme Court

14 n 6.

15 Ibid.

16 59 DLR(HCD) (2006) 72.

17 Ibid.

18 Ibid.

19 Public Interest Litigation (PIL) is a legal proceeding initiated under Article 102 of the Constitution to enforce the fundamental rights of marginalized or disadvantaged groups or communities, when breached by any action or omission of public authorities. For details see Muhd. Rafiquzzaman, ‘Public Interest Litigation in Bangladesh: A Case Study’ (2002) Bangladesh Journal of Law 6.

of Bangladesh, which as noted above, consists of a High Court Division (HCD) and an Appellate Division (AD). Although the lower courts and special tribunals play an important role in serving as the courts of first instance in securing justice for victims of violence, the human rights torchbearer role of the Supreme Court has been especially noteworthy in advancing gender justice. Several progressive judgments have been issued over the years, with important implications for gender discriminatory laws and policies. In particular, judicial activism in personal law is noteworthy – the court has over time endorsed liberal interpretations of various rigid personal law-based traditional norms, and addressed the unequal status of women in family matters.<sup>20</sup> For instance, in the area of child custody and guardianship,

the principle of the best interests of the child has been almost unequivocally upheld by the higher courts, in contrast to traditional personal law rules of guardianship, which principally rely on age and sex as criteria for awarding custody.<sup>21</sup>

However, issues such as delays in the disposal of cases, lack of victim protection laws, inaccessible court premises, insensitive court environments, inadequate legal aid services, and inefficient public prosecution services often create barriers to women and other marginalized groups in their search for justice through the formal legal system at all levels.<sup>22</sup> For instance, between July and September 2019, there were approximately 3.64 million pending cases within the formal justice system.<sup>23</sup>

## 1.2.1. Landmark Judgments of the Supreme Court in Gender Equality Related Cases

### 1.2.1.1. Banning of the ‘Two-Finger Test’

The *two-finger test* (TFT) was a widely practised procedure conducted during the medical examination of rape victims in Bangladesh. The test was humiliating for victims, as the sole purpose was to assess whether the victim was familiar with sexual intercourse by checking the vaginal laxity through the insertion of two fingers.<sup>24</sup> Such medical examinations often led to medical evidence concluding that ‘the victim was habituated to sex’, creating further scope to question the victim’s ‘moral character’ during the trial. In 2013, a PIL seeking a ban on the test was filed by several rights-based organizations on the grounds that the

test had no scientific value and was humiliating for victims of sexual assault. In 2018, the Supreme Court announced the banning of the controversial TFT in the examination of rape victims. The Judgment was not officially published until August 2023, when the court held that ‘the Two Finger Test is not scientific, reliable and valid, rather violative of the fundamental rights of the survivors/victims of rape guaranteed under... the Constitution, and not permitted by various Conventions of the United Nations...’.<sup>25</sup>

The Supreme Court also issued a number of new Guidelines for the examination of rape victims, such

20 For a relevant discussion on judicial activism in Bangladesh with regard to applying Muslim law principles in modern circumstances, see Ridwanul Hoque and Morshed Mahmud Khan, ‘Judicial Activism and Islamic Family Law: a Socio-Legal Evaluation of Recent Trends in Bangladesh’ (2007) 14 (2) *Islamic Law and Society* 204; also see Alamgir Muhammad Serajuddin, *Muslim Family Law, Secular Courts and Muslim Women of South Asia: A Study in Judicial Activism*, (OUP 2011).

21 The traditional rule of Muslim law followed in Bangladesh is that ‘the mother (or in her absence, other female custodians) is entrusted with the custody of her son until he attains seven years of age, and of her daughter until she attains puberty’; Taslima Yasmin, ‘Judicial Trends in Child Custody Cases in Bangladesh: Traditional Islamic Law Rules versus Welfare Considerations’ (2017) 4 *Asian Journal of Comparative Law* 1.

22 See Jamila Ahmed Chowdhury, ‘Legal Aid and Women’s Access to Justice in Bangladesh: A Drizzling in the Desert’ (December 2012). <[https://www.researchgate.net/publication/299445630\\_Legal\\_Aid\\_and\\_Women%27s\\_Access\\_to\\_Justice\\_in\\_Bangladesh\\_A\\_Drizzling\\_in\\_the\\_Desert](https://www.researchgate.net/publication/299445630_Legal_Aid_and_Women%27s_Access_to_Justice_in_Bangladesh_A_Drizzling_in_the_Desert)> accessed September 30, 2024.

23 Mohammad Ikbal Hasan and Fahmida Johura Rupa, ‘Digitalization of Bangladesh Judiciary and Access to Justice’ (2021) 3(3) *Asian Journal of Social Sciences and Legal Studies* 49.

24 *The Daily Star* <<https://www.thedailystar.net/country/hc-bans-controversial-two-finger-test-1561813>> accessed September 30, 2024.

25 Writ Petition No. 10663 of 2013 (Judgment Published on 24.08.23) para 53.

as: making available the healthcare protocol (Health Response to Gender-Based Violence Protocol for Healthcare Providers) to forensic experts/physicians, police officers and public prosecutors and lawyers involved in rape cases; referring cases of deep-seated

intra-vaginal examination to gynaecologists; appointing trained doctors and nurses for the medical examination of rape victims; and conducting the examinations in the presence of (preferably female) police officers, female relatives and female physicians.

### 1.2.1.2 Filing of Rape Complaints

In 2015, a 21-year-old woman from an indigenous community was reported to have been gang-raped in a running microbus in Dhaka after boarding.<sup>26</sup> The medical examination was conducted on 23 May 2015, two days after the attack.<sup>27</sup> Five rights-based non-governmental organizations filed a PIL in the High Court Division to challenge the delay in recording the First Information Report (FIR) as well as the delay in sending the victim for medical examination.<sup>28</sup>

As part of its judgment, the HCD issued a number of Guidelines to inform the treatment of survivors of rape in the justice system. These Guidelines included the immediate recording of cases involving sexual offences,

including rape, sexual assault or crimes of a similar nature, by the officer in charge of a police station and taking actions for non-compliance; operating a designated website enabling the informant to register her/his complaint online; ensuring the availability of female police officers and female social workers to assist and support victims; informing Victim Support Centres of the case; arranging for medical examination at the earliest time; conducting DNA tests in all rape cases or cases of sexual assault; keeping confidential the identity of the victim in all stages; and ensuring all types of protections to the victims.

### 1.2.1.3. Rape and Sexual Harassment Law Reforms

In 1995, a 15-year-old girl was raped and murdered while in police custody. The case attracted widespread public outrage and protests from rights groups, resulting in the conviction of the accused police officers.<sup>29</sup> In the judgment, the HCD issued a number of Guidelines to address some challenges with the rape legal framework.<sup>30</sup> These included shifting the burden of proof in cases of custodial rape to the person accused of the rape, who must prove that the conduct was not against the will and without the consent of the victim. A presumption is also to be made that the person or persons responsible for the custody were the rapists and placing the onus to

prove otherwise on them; compensation of rape victims by perpetrators; installing a Women's and Children's Desk in all police stations; amending the definition of rape to include any act of a sexual nature committed towards a person in circumstances that are coercive; and inserting the term 'sexual harassment' in place of 'outraging the modesty' in Sections 354 and 509 of the Penal Code. Sexual harassment was defined to include: (i) physical contact and advances; (ii) a demand or request for sexual favours; (iii) sexually coloured remarks; (iv) showing pornography; and (v) any other unwelcome physical, verbal or non-verbal conduct of a sexual nature.

26 Bangladesh Legal Aid and Services Trust <<https://bdpil.org/2015/05/23/73/>> accessed September 30, 2024.

27 Ibid.

28 Writ Petition No. 5541 of 2015; <<https://bdpil.org/2015/05/23/73/>> accessed September 30, 2024.

29 <https://lawhelpbd.com/criminal-law/analysis-judicial-decisions-death-sentence-bangladesh/> accessed September 30, 2024.

30 *State v. Md. Moinul Hoque and Others* 21 BLD (HCD) (2001) 485.

#### 1.2.1.4. Mother's Eligibility as the Sole Legal Guardian of her Child

In response to a PIL jointly filed by Bangladesh Legal Aid and Services Trust (BLAST), Bangladesh Mahila Parishad, and Naripokkho in 2009, the HCD issued a remarkable decision in January 2023 allowing either parent's name to be included singly as the sole legal guardian when filing any government documents.<sup>31</sup> This PIL was filed after a girl was denied an admission card for her Secondary

School Certificate examination after failing to name her father in the Student Information Form. The judgment is significant as it allows single mothers to navigate processes without having to add the father's name on government forms required in, for example, educational institutions and public examinations.

#### 1.2.1.5. Removing Gender Discriminatory Provisions in the Muslim Marriage Deed

Clause 5 of the Muslim Marriage deed, or *nikahnama*, as prescribed under the Muslim Marriages and Divorces (Registration) Act 1974, was challenged in a PIL filed in 2014 by a number of NGOs on the grounds of being unconstitutional, as it perpetuated discrimination between women and men and was contrary to the right to privacy.<sup>32</sup>

The *nikahnama* required information as to whether the bride was a 'maiden' or '*kumari*' (virgin). In August 2019, the High Court Division ruled that these words could not be used before the bride's name in the *nikahnama* and directed that the word 'unmarried' should be used instead. The judgment also ordered authorities to introduce the options 'unmarried, widower or divorced' for the groom on the certificate by including an additional clause in the marriage deed.<sup>33</sup>

Despite several decisions and Guidelines issued by the HCD in a number of PILs, their enforcement is extremely poor.<sup>34</sup> Government agencies that should proactively enforce these Guidelines are often reluctant to take action to ensure their proper implementation.<sup>35</sup> There is also no monitoring mechanism in place to assess the enforcement of these judgments because public records are not available to track how they are being implemented in practice. Efforts are ongoing among civil society organizations and development partners to promote some of the Guidelines of the HCD. These efforts are however not adequate for improving the overall state of implementation of the Supreme Court Guidelines, as they are limited in their scope and resources.<sup>36</sup>

### 1.3. Methodology

This study was undertaken through a qualitative analysis of secondary data, consisting of national laws, reports, case records, international legal instruments, journal articles, book chapters, news sources and other online materials. It not only analyses discriminatory provisions

in existing laws, but also focuses on the inadequacy or lack of necessary provisions in laws to effectively address gender-based discrimination or inequality in Bangladesh.

31 'Mothers can now be sole legal guardians of their children: HC' *The Business Standard* (Dhaka, 24 January 2023), <<https://www.tbsnews.net/bangladesh/court/mothers-can-now-be-sole-legal-guardians-their-children-hc-573082>> September 30, 2024.

32 *BLAST and others v Bangladesh and others*, Writ Petition No. 7878 of 2014.

33 The Guardian, 'Bangladesh to remove the word 'virgin' from Muslim marriage certificates' (August 27 2019) <<https://www.theguardian.com/world/2019/aug/27/bangladesh-to-remove-the-word-virgin-from-muslim-marriage-certificates>> accessed September 30, 2024.

34 See, Naim Ahmed, 'Litigating in the name of the people: Stresses and strains of the development of public interest litigation in Bangladesh' (PHD thesis, University of SOAS, 1998). <<https://eprints.soas.ac.uk/28638/1/10672798.pdf>> accessed 30 June 2024.

35 See for instance, 'HC Rulings Over Women's Rights Fall on Deaf Ears', *NEWAGE Bangladesh*, March 08, 2022 <<https://www.newagebd.net/article/164769/hc-rulings-over-womens-rights-fall-on-deaf-ears>> accessed 30 June 2024.

36 On the CSO efforts on implementation of the sexual harassment related HCD Guideline, see Taslima Yasmin, *Sexual Harassment at Educational Institution and workplaces: Implementation Status of the 2009 Supreme Court Guideline* (ActionAid Bangladesh 2018).

Based on this secondary analysis, an initial outline of key areas of law was prepared in 2019, which then led to further in-depth analysis of texts of a wide variety of national laws and corresponding rules. The identified areas of gender discriminatory laws were consequently shared among legal experts consisting of lawyers, former and current judges, academics, and rights activists through one-on-one consultations. Following this consultative process, an initial outline and draft of the report were prepared.

On completion of the first draft of the study, the findings were disseminated among representatives of civil society

organizations through an expert consultation meeting in December 2019. Based on feedback received from these consultations, the report was revised and disseminated at an inter-ministerial consultation meeting organized by the Ministry of Women and Children Affairs (MOWCA) in January 2020.

All of these consultations have fed into this report, the finalization of which was delayed due to the COVID-19 pandemic. In 2023, UN Women facilitated the resumption of updating of the report to capture legal, policy and institutional changes that had transpired in the course of the three years following the pandemic.

## 1.4 Structure of the Report

This analysis examines 32 laws, which are relevant to fulfilment of Bangladesh’s international obligations towards women in respect of ensuring gender-equality, by highlighting progress and the gaps that need to be addressed. The laws that were analysed are as follows:

1. Constitution of the People’s Republic of Bangladesh
2. Acid Control Act, 2002
3. Acid Prevention Act, 2002
4. Agricultural Khas Land Settlement Policy, 1997
5. Bangladesh Citizenship (Temporary Provisions) Order, 1972
6. Bangladesh Labour Act, 2006
7. Child Marriage Restraint Act, 2017
8. Children Act, 2013
9. Citizenship Act, 1951
10. Code of Criminal Procedure, 1898
11. Dissolution of Muslim Marriages Act, 1939
12. Divorce Act, 1869
13. Domestic Violence (Prevention and Protection) Act, 2010
14. Dowry Prohibition Act, 2018
15. Evidence Act, 1872
16. Family Courts Act, 2023
17. Guardians and Wards Act, 1890
18. Hindu Marriage Registration Act, 2012
19. Hindu Married Women’s Right to Separate Residence and Maintenance Act, 1946
20. Hindu Widow’s Remarriage Act, 1856
21. Hindu Women’s Right to Property Act, 1937
22. Muslim Family Law Ordinance, 1961
23. Muslim Marriages and Divorces (Registration) Rules, 1974
24. Labour Rules, 2015
25. Muslim Personal Law (Shariat Application) Act, 1937
26. National Women’s Development Policy, 2011
27. Penal Code, 1860
28. Rights and Protection of the Persons with Disabilities Act, 2013
29. Special Marriage Act, 1872
30. Transfer of Property Act, 1882
31. Trusts Act, 1882
32. Women and Children Repression Prevention Act, 2000



The report consists of four additional chapters.

**Chapter 2** reviews Bangladesh’s global commitment to non-discrimination and gender equality through its ratification of core international human rights treaties. It further highlights the constitutional guarantees of equality and non-discrimination, provides a brief overview of domestic legislations that are relevant for gender equality and justifies the need to enact anti-discriminatory legislation.

**Chapter 3** provides an in-depth analysis of the laws against gender-based violence including sexual violence, domestic violence and dowry-related violence. The chapter analyses a number of key gaps in the law and formulates several recommendations to address them. Sexual and reproductive health rights are also briefly discussed in this chapter.

**Chapter 4** examines labor law provisions (or absence thereof) that have implications for gender equality - including provisions on sexual harassment at workplaces, maternity protections and childcare. The Chapter highlights the lack of regulations in the informal sector where a large number of women are employed and proposes recommendations to address gaps in the law.

**Chapter 5** presents an in-depth overview of the applicable family laws and focuses on the key gaps in the statutory and relevant religious personal laws, citizenship laws and other property-related laws that discriminate against women and offers a number of recommendations for law reform.





# 2

## CHAPTER 2: GLOBAL COMMITMENTS AND CONSTITUTIONAL GUARANTEES

## 2.1 An Overview of Global Commitments

As a State Party to a wide variety of international instruments, Bangladesh is committed to promoting non-discrimination and gender equality in all of its laws, policies and practices. Bangladesh is a party to CEDAW, which is undoubtedly the most important international legal framework for advancing gender equality.<sup>37</sup>

CEDAW defines ‘discrimination against women’ as ‘any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field’.<sup>38</sup>

Bangladesh ratified CEDAW with reservations to Articles 2 (definition of discrimination) and 16(1)(c) (rights and responsibilities during marriage and at its dissolution). In stating the reasons for these reservations, Bangladesh specified that the two Articles conflict with the ‘Sharia law based on Holy Quran and Sunnah’. The Committee on the Elimination of Discrimination against Women (CEDAW Committee) has emphasized several times to Bangladesh that placing reservations on these two Articles is ‘incompatible with the object and purpose of the Convention.’<sup>39</sup>

All core human rights treaties and many other international instruments endorse the principles of gender equality and non-discrimination.<sup>40</sup> Bangladesh is a State Party to and has ratified the International Covenant on Civil and Political Rights (ICCPR); the International Covenant on Economic, Social and Cultural Rights (ICESCR); the Convention on the Rights of the Child

(CRC); the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; the Convention on the Rights of Persons with Disabilities (CRPD); the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages; ILO Equal Remuneration Convention, 1951 (No. 100); and ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111).

Monitoring bodies assigned to each Convention periodically make observations and recommendations on specific areas of concern. For instance, in addition to expressing concerns over the reservations to CEDAW, based on a review of Bangladesh’s *8th Periodic Report*, the CEDAW Committee also expressed similar concerns over the prevalence of violence against women and girls, specifically domestic violence, rape, dowry-related violence, and sexual harassment in private and public spaces. The Committee also observed that the implementation of existing policies and laws is challenging in Bangladesh, especially when coupled with widespread gender bias among law enforcement agencies.<sup>41</sup>

In its 2017 Concluding Observations to the initial report of Bangladesh, the Human Rights Committee, the monitoring body of the ICCPR, also found that discriminatory provisions against women continue to exist in law, and that legislation and constitutional provisions protecting women are not enforced, in part due to patriarchal attitudes towards women and girls.<sup>42</sup> Similarly in its 2018 Concluding Observations to the *Initial Report of Bangladesh*, the Committee on Economic, Social and Cultural Rights, the monitoring body of the ICESCR, expressed concerns about prevailing gender discrimination in religious personal laws governing women’s

37 1979, 34 UN GAOR Supp. No. 46, 193, UN Doc. A34/46.

38 Article 1, CEDAW.

39 CEDAW, ‘Concluding Observations on the 8th periodic report of Bangladesh: Committee on the Elimination of Discrimination against Women’ (CEDAW/C/BGD/CO/8) <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/N16/402/50/PDF/N1640250.pdf?OpenElement>> accessed September 30, 2024.

40 United Nations Human Rights Office of the High Commissioner, 2014. *The Core International Human Rights Treaties* (United Nations Publication New York and Geneva 2014) <[https://www.ohchr.org/sites/default/files/Documents/Publications/CoreInternationalHumanRightsTreaties\\_en.pdf](https://www.ohchr.org/sites/default/files/Documents/Publications/CoreInternationalHumanRightsTreaties_en.pdf)> accessed September 30, 2024.

41 Ibid.

42 Human Rights Committee, ‘Concluding Observations on the Initial Report of Bangladesh 2017’ (CCPR/C/BGD/CO/1) <<https://digitallibrary.un.org/record/1312170?ln=en#record-files-collapse-header>> accessed September 30, 2024.

rights, especially in the contexts of marriage, divorce, maintenance, and property inheritance.<sup>43</sup>

Similarly, in its 2015 Concluding Observations to the 5th Periodic Report of Bangladesh, the Committee on the Rights of the Child reiterated that *de facto* discrimination exists against certain groups of children, particularly

girls, children with disabilities, and children of ethnic and religious minorities.

Although several laws have been adopted to address unequal treatment before the law, much more need to be done to address discrimination in law. Any analysis of the law must begin from the Constitution, which by virtue of Article 7, is the supreme law of the land.

## 2.2 Constitutional Guarantees

As noted in the Introduction, the legal system of Bangladesh is plural in nature (Christian, Hindu, and Islamic laws and standards; common law and statutes), with the Constitution serving as the main legal source of human rights guarantees, including protection of women from all forms of discrimination. Formal equality is explicitly enshrined in the Constitution, and various articles reiterate the principle of non-discrimination.<sup>44</sup> Article 7

declares the supremacy of the Constitution and provides that any law that is inconsistent with its provisions will be void. Article 27 of the Constitution provides a general guarantee of equality, whilst Articles 28 and 29 enshrine the principle of non-discrimination. Box 2.2 highlights the various constitutional provisions which directly impact on gender equality.



43 Committee on Economic, Social and Cultural Rights, 'Concluding Observations on the Initial Report of Bangladesh 2018' (E/C.12/BGD/CO/1) <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/113/68/PDF/G1811368.pdf?OpenElement>> accessed September 30, 2024.

44 Shahnaz Huda, 'Combating Gender Injustice: Women and the Hindu Law of Personal Status in Bangladesh' in Faustina Pereira and others (eds), *Revisiting Personal Laws in Bangladesh: Proposal for Reform* (Brill 2019) 62.

## **BOX 2.2.:**

### **GENDER EQUALITY-RELATED CLAUSES IN THE CONSTITUTION OF BANGLADESH**

#### **Equality of opportunity**

19. (1) The State shall endeavour to ensure equality of opportunity to all citizens.  
(2) The State shall adopt effective measures to remove social and economic inequality between man and man and to ensure the equitable distribution of wealth among citizens, and of opportunities in order to attain a uniform level of economic development throughout the Republic.  
(3) The State Shall endeavour to ensure equality of opportunity and participation of women in all spheres of national life.

#### **Equality before law**

27. All citizens are equal before law and are entitled to equal protection of law.

#### **Discrimination on grounds of religion, etc.**

28. (1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex or place of birth.  
(2) Women shall have equal rights with men in all spheres of the State and of public life.  
(3) No citizen shall, on grounds only of religion, race, caste, sex or place of birth be subjected to any disability, liability, restriction or condition with regard to access to any place of public entertainment or resort, or admission to any educational institution.  
(4) Nothing in this article shall prevent the State from making special provision in favour of women or children or for the advancement of any backward section of citizens.

#### **Establishment of Parliament**

65. (1) There shall be a Parliament for Bangladesh (to be known as the House of the Nation) in which, subject to the provisions of this Constitution, shall be vested the legislative powers of the Republic: Provided that nothing in this clause shall prevent Parliament from delegating to any person or authority, by Act of Parliament, power to make orders, rules, regulations, bye laws or other instruments having legislative effect.  
(2) Parliament shall consist of three hundred members to be elected in accordance with law from single territorial constituencies by direct election and, for so long as clause (3) is effective, the members provided for in that clause; the members shall be designated as Members of Parliament.  
(3) Until the dissolution of Parliament occurring next after the expiration of the period of twenty five years beginning from the date of the first meeting of the Parliament next after the Parliament in existence at the time of the commencement of the Constitution (Seventeenth Amendment) Act, 2018, there shall be reserved fifty seats exclusively for women members and they will be elected by the afore-said members in accordance with law on the basis of procedure of proportional representation in the Parliament through single transferable vote: Provided that nothing in this clause shall be deemed to prevent a woman from being elected to any of the seats provided for in clause (2) of this article.  
(3A) For the remaining period of the Parliament in existence at the time of the commencement of the Constitution (Fifteenth Amendment) Act, 2011, Parliament shall consist of three hundred members elected by direct election provided for in clause (2) and fifty women members provided for in clause (3).  
(4) The seat of Parliament shall be in the capital.

Source: Constitution of the People's Republic of Bangladesh.

Apart from its constitutional and international treaty mandates, Bangladesh has also enacted special statutes, primarily to prevent violence against women (VAW). The Women and Children Repression Prevention Act, 2000 (WCRPA) is a unique statute, establishing specialized tribunals with speedier trial procedures and severe penalties for various criminal offences against women and children, including rape, sexual assault, trafficking, and dowry violence. This is complemented by the Acid Prevention Act, 2001 and the Acid Control Act, 2002, which are aimed at combatting violence caused by acid throwing. In 2010, the Domestic Violence Prevention and Protection Act (DVPPA) was passed with quasi-criminal remedies, giving jurisdiction to ordinary criminal courts. Furthermore, in 2018, the Dowry Prohibition Act repealed the earlier Act of 1980, providing for stricter punishments.

With the objective of criminalizing child marriage and thereby reducing its incidence, the Child Marriage Restraint Act, 2017 was enacted to repeal an earlier 1929 Act. Bangladesh also passed the Children Act, 2013 to repeal the earlier Children Act, 1974, making provision for protecting children coming into conflict or in contact with the law. Further, to protect the rights of people with disabilities, the Rights and Protection of Persons with Disabilities Act, 2013 provides for the prohibition of any kind of discrimination on the grounds of disability by any authority or institution.

To strengthen the legislative underpinnings of the legal system, the National Women's Development Policy 2011 serves as an important framework for government action on the promotion of gender equality. The Policy recognises the prevalence of violence against women and lists 'prevention of abuse of women' as one of the main aims.<sup>45</sup> It furthermore highlights the inadequacy of forensic facilities to investigate VAW cases and the elimination of all forms of abuse against women as a priority, including 'physical and mental abuse and sexual harassment, rape, dowry, family abuse and acid throwing in family, society and in the workplace.'<sup>46</sup> Additionally, the National Action Plan on VAW (2013-2030) was formulated by MOWCA to 'provide a blueprint for change' by coordinating, prioritising and strategizing the most effective forms of action in the short, medium and long term while also evaluating progress,<sup>47</sup> and integrating gender equality issues across sectors.<sup>48</sup>

Bangladesh is also committed to implementing and monitoring all SDG 5 indicators, including those related to ending violence against women (5.2.1; 5.2.2) and addressing discriminatory laws (5.1.1). Moreover, Bangladesh has taken several measures to achieve the SDGs by integrating the Goals into its 7<sup>th</sup> and 8<sup>th</sup> Five Year Plans (2016-2020 and 2021-2025, respectively); accomplishing the mapping of ministries/agencies by targets; preparing action plans for all relevant ministries/agencies; and putting in place the needed monitoring and evaluation framework.<sup>49</sup>

---

45 Ministry of Women and Children Affairs, Government of Bangladesh, 'National Women's Development Policy 2011' <National-Women-Policy-2011English.pdf (portal.gov.bd)> Accessed September 30, 2024.

46 Ibid .

47 Ministry of Women and Children Affairs, Government of Bangladesh, 'National Action Plan on VAW (2013-2025)' <[https://mowca.portal.gov.bd/sites/default/files/files/mowca.portal.gov.bd/page/bcf75e01\\_95e3\\_48ba\\_bfe4\\_3d88ea5f593c/English-National-Action-Plan-to-Prevent-Violence-Against-Women-and-Children-2013-20251.pdf](https://mowca.portal.gov.bd/sites/default/files/files/mowca.portal.gov.bd/page/bcf75e01_95e3_48ba_bfe4_3d88ea5f593c/English-National-Action-Plan-to-Prevent-Violence-Against-Women-and-Children-2013-20251.pdf)> accessed September 30, 2024.

48 General Economics Division, Bangladesh Planning Commission, 'Eighth Five Year Plan (July 2020 -June 2025)' <<https://oldweb.lged.gov.bd/UploadedDocument/UnitPublication/1/1166/8FYP.pdf>> accessed September 30, 2024.

49 UNDP, 'Sustainable Development Goals: Bangladesh Progress Report 2020' [https://info.undp.org/docs/pdc/Documents/BGD/SDGs-Bangladesh\\_Progress\\_Report%202020.pdf](https://info.undp.org/docs/pdc/Documents/BGD/SDGs-Bangladesh_Progress_Report%202020.pdf) September 30, 2024.

## 2.3 Marginalized/Excluded Communities and the Absence of an Anti-discrimination Law

In Bangladesh, discrimination and violence against groups such as religious minorities, indigenous people, the *dalit* community, *hijra* and transgender people, and people with disabilities persist.<sup>50</sup> The absence of anti-discrimination legislation, coupled with stigmatization, harassment and violence against different groups, continue to create barriers to securing the full realization of human rights for all people.

The Human Rights Committee notes in its Concluding Observations to Bangladesh that the lack of legal recognition of indigenous peoples also results in discrimination and restrictions with regard to civil and political rights, particularly in relation to land rights and participation in decision-making processes.<sup>51</sup>

There is currently no law in force to prohibit or ensure protection against discrimination across all population groups which exist in Bangladesh, e.g. based on gender, sex, caste, religion, or other protected grounds. A 2022 draft Anti-Discrimination Bill tabled in Parliament by the

Ministry of Law, Justice and Parliamentary Affairs has not been passed into law and awaits legislative review. Nevertheless, the draft bill received negative reactions from activist groups for being potentially ineffective in ensuring protection against discrimination, especially for marginalized and underrepresented groups.<sup>52</sup> It does not criminalize discrimination and the proposed punishment regime is ‘very loosely defined and provides only for a monetary penalty.’<sup>53</sup>

Moreover, the bill ‘creates several tiers of monitoring bodies’ to address complaints of discrimination, without a clear indication as to their specific roles and responsibilities.<sup>54</sup> It furthermore does not provide any option for directly filing a complaint in court for discrimination, instead creating an additional step that directs the victims to first approach the monitoring committees. The law as such clogs the process of filing a complaint of discrimination, making it potentially ineffective for victims to seek redress.

### Recommendation Related to an Anti-Discriminatory Law

#### 1. Review of the legal framework to address gender-based discrimination against marginalised communities

The existing legal framework inadequately addresses gender-based discrimination against marginalized and excluded communities and population groups. As such, a comprehensive review of the applicable laws and policies is necessary for assessing the scope of reform in this area, as well as for achieving a gender-inclusive and non-discriminatory legal and policy framework. At the same time, efforts need to be strengthened to create an advocacy movement in support of enacting an anti-discrimination law which comprehensively addresses all issues relating to discrimination against marginalized communities. Such an effort should ensure the active participation of all relevant stakeholders, including representation from marginalized/excluded communities.

<sup>50</sup> *Dalit* refers to a ‘group of population marginalized to the extreme by partly religious sanctions and partly by social and economic deprivations. The *Dalit* literally means deprived. The *Dalits* are socially and economically deprived and forced to work under abominable conditions at the lowest return of their labor. The term ‘*Dalit*’ is academically applied to all low castes marginalized and discriminated’. Banglapedia <[https://en.banglapedia.org/index.php/Dalit\\_Community](https://en.banglapedia.org/index.php/Dalit_Community)> accessed September 30, 2024. Also see: Concluding Observations on the Initial Reports of Bangladesh to the Human Rights Committee 2017 (CCPR/C/BGD/CO/1) para 11.

<sup>51</sup> *Ibid*; for details see, Nagorik Uddyog (Citizen’s Initiatives), ‘Land and Human Rights Situation of Indigenous Peoples of the Plain Land in Bangladesh’ <[https://nuhr.org/wp-content/uploads/2019/05/Parbotipur\\_Research\\_Report.pdf](https://nuhr.org/wp-content/uploads/2019/05/Parbotipur_Research_Report.pdf)> accessed September 30, 2024.

<sup>52</sup> See for instance, the *Dhaka Tribune* (Dhaka, 10 April 2022) <<https://www.dhakatribune.com/law-rights/2022/04/10/make-anti-discrimination-law-more-inclusive-says-think-tank>> accessed September 30, 2024.

<sup>53</sup> *The Daily Star* (Dhaka, 05 April 2022) <<https://www.thedailystar.net/law-our-rights/news/the-anti-discrimination-bill-2022-what-experts-say-3024531>> accessed September 30, 2024.

<sup>54</sup> *Ibid*.



# 3

CHAPTER 3:  
GENDER-BASED  
VIOLENCE AND SEXUAL  
AND REPRODUCTIVE  
HEALTH AND RIGHTS  
LAWS

### 3.1 Introduction

Although several statutes criminalize GBV, key provisions of the legal framework are generally clothed in colonial language, reflecting not only archaic, obsolete concepts, but also gender-stereotypical ideas that undermine women in general.<sup>55</sup> There are also overlapping laws where the same issues have been criminalized again

without addressing the link between similar existing laws or provisions, creating conflicts and discrepancies in the law.<sup>56</sup> Furthermore, despite a wide variety of laws, victims of GBV do not have access to appropriate redress and offenders remain free from legal consequences due to limited of implementation of the law.

### 3.2 Sexual Violence, Including Rape

Sexual violence is a major challenge in the elimination of violence against women in Bangladesh. Conviction rates in sexual offences cases are extremely low in comparison to the high rate of acquittal. A detailed study of six major sexual offence cases in five special Women and Children Tribunals from 2002 to 2016 reveals that in only 3 per cent of cases were the accused convicted, compared to a 97 percent rate of acquittal or dismissal.<sup>57</sup>

The current legal regime that defines and proscribes rape and other sexual offences consists mainly of two laws, namely, the Penal Code of 1860, enacted during the British colonial regime, and the WCRPA, a special statute enacted in response to increasing violence against women and children.<sup>58</sup> There are also general laws that govern the procedural aspects of sexual offence trials, namely the Evidence Act, 1872 and the Code of Criminal Procedure, 1898 (CrPC).

The definition of ‘rape’ as provided in Section 375 of the Penal Code was formulated in colonial times and remains largely unchanged. The new law, the WCRPA,

adopts the same definition as the Penal Code, although it prescribes different punishment regimes for rape, rape leading to murder, custodial rape, and gang rape.<sup>59</sup>

The law was amended in 2020, resulting in the punishment for rape being increased to the death penalty, replacing the earlier penalty of life imprisonment. Although a positive step towards ending rape, in reality, there is no evidence that capital punishment in itself has helped to eradicate the crime. For instance, though the punishment for rape followed by murder was the death penalty in the WCRPA of 2000, it did not help in reducing such incidents.<sup>60</sup> In addition, with archaic definitions of rape dating back to colonial times in place, mere changes in punishment have not fostered a corresponding framework to help in combatting the offence.<sup>61</sup>

Another 2020 change is the inclusion of a provision requiring mandatory DNA testing for all offences under the WCRPA. However, though DNA evidence can help in identifying the rapist, for example, the law does

55 See Taslima Yasmin, ‘Sexual Violence in Bangladesh: Addressing Gaps in the Legal Framework’ (2017) 28 Dhaka University Law Journal 109.

56 For instance, rape was originally penalized under the Penal Code, 1890; however, the WCRPA in 2000 had again incorporated new provisions on rape without deleting the previous provision on rape. Similarly, violence by throwing acid is penalized under Section 4 of the WCRPA, however keeping that provision intact, in 2002 a new law was enacted which again provided penal sanctions for causing injury by throwing acid.

57 *The Daily Prothom Alo* (Dhaka, 23 May 2018) <<https://www.prothomalo.com/bangladesh/article/1494576/>> accessed September 30, 2024.

58 *Nari-o-Shishu Nirjatan Daman Ain, 2000* (in Bengali) and Domestic Violence (Prevention and Protection) Act, 2010, Section 2.

59 See Sections 2 and 9 of the WCRPA.

60 As per the data collected by *Ain o Shalish Kendra* (ASK) the number of incidents where death occurred as a result of rape is consistently high even though the punishment for such offence has been the death penalty since the enactment of the law in 2000. For instance, as per ASK data, the number of such deaths in 2018 was 67 and the number of rapes was 732; whereas in 2021 (subsequent to the amendment), the total number of rapes was 1321, and number of incidents of death by rape was 47.

61 Taslima Yasmin, ‘The ‘Unreliable’ Rape Victims and their Plight for Justice: Analysis of the Supreme Court Decisions of Bangladesh’ (BLAST 2018) (Unpublished Report).

not prove the lack of consent, which is often the core character in a rape prosecution.<sup>62</sup> Furthermore, despite its importance, the inclusion of mandatory DNA testing in all offences under the WCRPA leads to delays in the overall investigation process due to the insufficiency of DNA laboratories and where they exist, the limited

expertise to manage these facilities and the consequential risks of mishandling of DNA samples and erroneous test results. Ultimately DNA samples may not always be available, and since it is mandatory under the law, its absence or inaccuracy weakens prosecutorial efforts.<sup>63</sup>

### 3.2.1. Problems with the Definition of Rape

The definition of rape as provided for in the Penal Code and WCRPA provides that to constitute ‘sexual intercourse,’ penetration is sufficient. Experts have determined that this definition can lead to the following challenges:

1. Traditionally, penetration often refers to the insertion of the penis into the vagina, or *penile-vaginal* penetration. ‘Penetration’ is however not defined in any of the existing laws. In modern times, the term penetration can mean the penetration of the penis or any other part of a man’s body or any object into the vagina, anus or mouth of a woman for sexual purposes.<sup>64</sup> Because the definition falls short of the full meaning of ‘penetration,’ the courts apply the traditional meaning of ‘sexual intercourse’ which leaves out several other forms of sexual penetration, considered rape in many jurisdictions.<sup>65</sup>
2. The current definition of rape also fails to elaborate on the meaning of the term ‘consent’. ‘As a result, courts have in most cases required evidence of force to demonstrate lack of consent’, and eventually have interpreted rape using stereotypical interpretations.<sup>66</sup>
3. Third, forcible intercourse with a girl child above 13 years of age has not been criminalized as rape when the child is married to the perpetrator. Although the WCRPA provides 16 years as the age of consent for statutory rape, this has been severely weakened by the Penal Code as it relates to girl brides above 13 years of age.<sup>67</sup>
4. The WCRPA also fails to address the marital rape of child brides, reinforcing the Penal Code’s definition by clearly specifying in Section 9 that the 16-year age limit, below which any sexual intercourse would be considered rape, does not apply to cases where the perpetrator is married to the victim. This position is particularly challenging, as it tacitly endorses child marriage and leaves no legal redress for a potential child victim of rape. It is contrary to Bangladesh’s international commitment to protect the girl child from sexual exploitation, and particularly its obligations to ensure the best interest of the child under CRC.<sup>68</sup> Such a provision also encourages a culture of forced marriage of a child victim of rape to marry her abuser resulting in exoneration.<sup>69</sup>

62 Taslima Yasmin, ‘Mandating DNA evidence in all violence against women cases: Will it help or hurt the victim?’ *The Daily Star* (Dhaka, 27 October 2020) <<https://www.thedailystar.net/opinion/news/mandating-dna-evidence-all-violence-against-women-cases-1984661?amp>> accessed September 30, 2024.

63 Ibid.

64 Yasmin, ‘Sexual Violence’ (n 55) 109.

65 For example, Section 375, the Indian Penal Code, 1890 (as amended by the Criminal Amendment Act of 2013).

66 Asmita Basu, ‘Use of Medical Evidence in Rape Cases in Bangladesh’ (2012) <[https://www.academia.edu/9384955/Use\\_of\\_medical\\_evidence\\_in\\_rape\\_cases\\_in\\_Bangladesh](https://www.academia.edu/9384955/Use_of_medical_evidence_in_rape_cases_in_Bangladesh)> accessed September 30, 2024.

67 Lyal S. Sunga and Kawser Ahmed, ‘A Critical Appraisal of Laws Relating to Sexual Offences in Bangladesh: A Study Commissioned by the National Human Rights Commission Bangladesh’ (IDLO 2015) 19–20.

68 Yasmin, ‘Sexual Violence’ (n 55) 111.

69 Shabina Begum, ‘Ending Early and Forced Marriage: Bangladesh and UK Perspective’ (2016) <<http://www.ohchr.org/Documents/Issues/Women/WRGS/Earlyforcedmarriage/SG/ShabinaBegum.pdf>> accessed September 30, 2024.

5. Furthermore, until recently, Section 155 (4) of the Evidence Act of 1872 permitted the admission of character evidence during rape trials to prove that the victim complainant was of ‘immoral character’.<sup>70</sup> The admissibility of such character evidence is potentially humiliating and degrading for victims and survivors of violence.<sup>71</sup> While a victim’s character has no bearing on determining consent, statements about the victim’s character made by the defence are often taken into serious consideration by the courts. Studies have shown that any suggestion that the victim is ‘of easy virtue’ could result in an acquittal for the accused, even where the court finds that the offense was non-consensual.<sup>72</sup> This specific provision was repealed through a 2022 amendment of the Evidence Act. Though the change is commendable, its real impact will depend on whether the courts will still allow defence counsels to produce evidence

on the character of victims to prove that such victims are not credible. Additionally, the scope of inadmissibility of character evidence is very narrow, it being applicable only to the offence of ‘rape,’ which is understood in the traditional sense of *penile-vaginal* penetration as discussed above. Accordingly, character evidence may still be relevant in other sexual offence related cases that do not fall within the purview of rape.

6. Finally, none of the provisions on rape or sexual offences in the WCRPA or the Penal Code contemplate a male or a *hijra* (transgender) person to be a potential victim of such offences. At the same time, the perpetrator is always assumed to be male. The legal framework for sexual offences, therefore, remains silent on rape or sexual assault against a *hijra* or a transgender person.

### 3.2.2. Other Sexual Offences, Including Sexual Assault and Sexual Harassment

Section 354 of the Penal Code provides for the punishment of assault of any woman, which results in ‘outraging her modesty’. Section 509 also criminalizes other acts without physical contact (e.g. any word, sound or gesture, or showing of any object) that outrage the modesty of a woman. Both these provisions are grounded in the concept of outraging or insulting the ‘modesty’ of a woman, and for a crime to be committed, such acts must have been carried out with that intent. The concept of ‘outraging modesty’, however, is a remnant of colonial language, remains ambiguous and opens the opportunity for victim blaming on the basis of stereotypical notions.<sup>73</sup> Thus, a woman who feels harassed or abused will not find redress under

these provisions if the man did not intend to make her feel that way. This intent requirement creates particular problems in sexual harassment, where feminist research has illustrated that discriminatory behaviour, including sexual harassment, occurs as a result of that behaviour becoming normalized and institutionalized.<sup>74</sup>

Similar to section 354 of the Penal Code, Section 10 of the WCRPA criminalises sexual assault, but with a higher penalty.<sup>75</sup> However, despite this harsher punishment, the provision does not cure the ambiguity of the existing provisions on sexual assault, as the offence still requires proving the vague concept of ‘outraging the modesty’ of a woman. Moreover, there is no mention of the term

70 Section 155(4), the Evidence Act, 1872.

71 Taslima Monsoor, *Management of Gender Relations: Violence Against Women and Criminal Justice System in Bangladesh* (British Council Dhaka 2008).

72 BLAST, ‘Character Evidence in Rape Trials: A Comparative Study of Rape Shield Laws and the Admissibility of Character Evidence in Rape Case’ (2015) A research note by Norton Rose Fulbright (South Africa) for the Bangladesh Legal Aid and Services Trust (BLAST) 2. <<https://www.trust.org/contentAsset/raw-data/7c70a653-6c85-4734-981b-72a1de7db614/file>> accessed September 30, 2024.

73 For a detailed discussion of this issue see Nuara Choudhury, ‘The Immodest Truth: An Evaluation of the Measures Taken to Combat Sexual Harassment in Bangladesh’ (2012) 12(1&2) *Bangladesh Journal of Law* 137.

74 *Ibid* 153.

75 Rigorous imprisonment which may extend up to ten years but shall not be less than three years and shall also be liable to additional fine.

‘sexual harassment’ in any of the penal legislation. The provision that comes closest is Section 509 of the Penal Code, which is, as mentioned earlier, clothed in stereotypical language influenced by patriarchal norms i.e. acts without physical contact (e.g., any word, sound or gesture, or showing of any object) that outrage the modesty of a woman.

Due to the inadequacy in the law, the HCD issued a set of Guidelines in 2009 to address sexual harassment at workplaces and educational institutions.<sup>76</sup> The Guidelines define sexual harassment and mandate all organizations to form committees to receive and investigate complaints of sexual harassment. The

definition encompasses sexual harassment as a ‘quid pro quo’ as well as within the context of a ‘hostile working environment’ and furthermore, includes a list of acts which fall under the category of sexual harassment.<sup>77</sup>

However, the implementation of the Guidelines remains on paper as it lacks an enforcement mechanism.<sup>78</sup> Under Bangladeshi law, as settled by the AD in the case of *A.H.M Mustafa Kamal v Bangladesh*, 29 BLD (AD) 5, in the absence of any consequence provided in a law or Guideline, the same is deemed to operate as a directive, rather than as a mandatory mechanism carrying consequences.

### Recommendations Related to Sexual Violence Laws

#### 1. The definition of rape should be amended

As discussed earlier, the definition of rape in Section 375 of the Penal Code is problematic and must be amended to ensure that victims receive redress for crimes committed against them. The term ‘penetration’ should be defined in more precise terms.<sup>79</sup> In addition, the wording of Section 375 should include ‘child’ along with ‘woman,’ so that penetration for sexual purposes against a child can also be considered as rape. The definition of ‘child’ in the WCRPA should furthermore specify that the term includes both female and male children for clarity among law enforcement agencies.<sup>80</sup> The term ‘consent’ in the definition of rape should also contain further clarity as to the conceptual understanding of rape as not always being associated with physical force by the accused and physical resistance by the victim.<sup>81</sup>

<sup>76</sup> *Bangladesh National Women Lawyers Association (BNWLA) v. Government of Bangladesh and Others* 29 (2009) BLD 415.

<sup>77</sup> The list includes the following: ‘a) Unwelcome sexually determined behavior (whether directly or by implication) as physical contact and advances; b) Attempts or efforts to establish physical relation having sexual implication by abuse of administrative, authoritative or professional powers; c) Sexually coloured verbal representation; d) Demand or request for sexual favours; e) Showing pornography; f) Sexually coloured remark or gesture; g) Indecent gesture, teasing through abusive language, stalking, joking having sexual implication; h) Insult through letters, telephone calls, cell phone calls, SMS, pottering, notice, cartoon, writing on bench, chair, table, notice boards, walls of office, factory, classroom, washroom having sexual implication; i) Taking still or video photographs for the purpose of blackmailing and character assassination; j) Preventing participation in sports, cultural, organizational and academic activities on the ground of sex and/or for the purpose of sexual harassments; k) Making love proposal and exerting pressure or posing threats in case of refusal to love proposal; and l) Attempt to establish sexual relation by intimidation, deception or false assurance.’

<sup>78</sup> Taslima Yasmin, *Sexual Harassment at Educational Institution and workplaces: Implementation Status of the 2009 Supreme Court Guideline* (ActionAid Bangladesh 2018).

<sup>79</sup> For instance, the term may include explanations such as penetration by the penis or by any other parts of a man’s body or by any object into the vagina, anus or mouth of a woman or child for sexual purpose.

<sup>80</sup> Taslima Yasmin (n 55).

<sup>81</sup> For instance, the 2013 Amendment Act in India had incorporated an explanation to Section 375 of the IPC defining consent as follows: ‘A woman consents to a penetrative act only when she unequivocally communicates her willingness to participate in a specific sexual act. The communication need not necessarily be verbal. It may be through gestures, or any other form of non-verbal communication. Physical resistance is not required to signify non-consent.’

## 2. **Rape of child brides should be criminalized**

In line with global commitments to eliminate child marriage, Bangladesh should repeal the age-related exception, applicable to children of 13 years and older, that renders them unable to file a complaint of rape if they are married to their abuser.<sup>82</sup>

## 3. **Provisions punishing sexual assault/torture should be revised**

Provisions for sexual assault under Section 354 of the Penal Code and Section 10 of the WCRPA should be revised to include acts that do not necessarily involve physical contact, but that can be equally sexually harmful, e.g. forcefully showing pornography, voyeurism, etc.<sup>83</sup> Most importantly, both of these provisions should be redefined with more gender sensitive language, free of any gender stereotype. Furthermore, the disparity in penal sanctions under the two laws should be removed and harmonized.

## 4. **Provision on sexual harassment should be incorporated into law**

Section 10 of the WCRPA and Section 509 of the Penal Code should be revised to include the offence of sexual harassment. A clear definition of sexual harassment must also be incorporated into the applicable criminal laws and aligned with the 2009 HCD Guidelines, bearing in mind ILO Convention 190 on Violence and Harassment, 2019.

## 5. **Provision for victims/witnesses with disabilities**

The law currently does not contain procedural provisions to support justice-seeking among persons with disabilities, particularly women. Provisions can be added to the CrPC to regulate the recording of statements of persons with mental or physical disabilities in the presence of an interpreter, special educator, or through videography.<sup>84</sup>

## 6. **The scope of inadmissibility of character evidence should be broadened**

The past sexual history of the victim or any evidence concerning the character of the victim should be made inadmissible in all sexual offence trials. Provisions should be incorporated to bar the accused's side from introducing any evidence or conducting cross-examination on any 'immoral' character or past behaviour of a rape victim.<sup>85</sup>

### 3.3. Domestic Violence

In Bangladesh, domestic violence, particularly against women by their husbands or in-laws, is an almost socially accepted practice, reflecting broader social and cultural norms that justify acts of violence against women and

nurture longstanding patriarchal values.<sup>86</sup> A Bangladesh Bureau of Statistics VAW survey of 2015 found that almost two-thirds (72.6 per cent) of married women

82 Although a reform discourse for prohibition against marital rape is also necessary, considering the broad spectrum of the current study, the reform proposal is kept limited to child brides only. However, the study does recognize the need for criminalizing marital rape against any woman irrespective of age.

83 For example, forcing a woman to be naked or forcefully showing her pornography, stalking her, exhibiting sexual organs, forced masturbation, etc. may be considered as sexual assault/torture and may not be defined as offences having a lower threshold.

84 Such a provision for recording statements of mentally or physically disabled persons has been incorporated in the Code of Criminal Procedure, 1973 in India under Section 164 (5A) through the 2013 Criminal Law Amendment Act.

85 BLAST 'Character Evidence in Rape Trials' (n 72).

86 Taslima Yasmin, 'Implementation of the Domestic Violence Legislation in Bangladesh: A Comparative Perspective' (BLAST 2015) (unpublished report).

experience intimate partner violence by their husbands at least once in their lifetime.<sup>87</sup>

A number of studies indicate that there is a common perception among both men and women that domestic violence against married women by their husbands is justified under certain circumstances.<sup>88</sup> Women's persistent endurance of domestic violence also stems from various other compelling factors, such as 'shame, fear of negative consequences such as retaliation or separation from their children, lack of support from family and friends', and perhaps most importantly, 'lack of economic alternatives'.<sup>89</sup>

The Domestic Violence (Protection and Prevention) Act, 2010 (DVPPA) was enacted to provide effective remedies to victims of domestic violence. The Act defines domestic violence comprehensively, incorporating physical abuse, psychological abuse, sexual abuse and economic abuse.<sup>90</sup> The law also creates a number of innovative and preventive remedies for victims of domestic violence, including specific roles for enforcement agencies, namely 'enforcement officers', 'police officers' and 'service providers,' to ensure that the victim receives appropriate redress.<sup>91</sup>

Because of how the Act defines the terms 'family relationship' and 'domestic violence', a large portion of women facing domestic violence are excluded. Therefore

one of the key gaps in the DVPPA has been the exclusion of divorced women.<sup>92</sup> According to Section 3, 'domestic violence refers to physical abuse, psychological abuse, sexual abuse or economic abuse against a woman or a child of a family by any other person of that family with whom the aggrieved person is in a family relationship'. The term 'family relationship' is defined as a relationship established through consanguinity, marriage, and adoption, or by being a member of a joint family.<sup>93</sup> A combined reading of these provisions clearly excludes divorced women from relief against former husbands or relatives, as both the terms 'family relationship' and 'domestic violence' connote existing relationships.<sup>94</sup> This enables husbands to simply divorce the victim in order to circumvent the provisions. In addition, the courts tend to refrain from dealing with such cases by dismissing petitions on the grounds that there is no longer a family relationship between the parties.<sup>95</sup> A 2020 study on the status of implementation of the DVPPA also drew similar conclusions.<sup>96</sup>

Additionally, the remedies envisaged in the Act are mostly civil in nature. Under the DVPPA, only the breach of a protection order is a punishable offence.<sup>97</sup> As the Act does not provide for penal sanctions, the courts cannot award punishment even in cases of aggravated physical, psychological, or sexual abuse. Whilst such aggravated abuse would attract penal sanctions under

87 UN Women Database, <<http://evaw-global-database.unwomen.org/-/media/files/un%20women/vaw/vaw%20survey/bangladesh%20vaw%20survey%202015.pdf?vs=2125>> accessed September 30, 2024.

88 National Institute of Population Research and Training (NIPORT), Mitra and Associates, and Macro International, 'Bangladesh Demographic and Health Survey 2007' (2009); R. T. Naved & L. A. Persson 'Factors Associated with Spousal Physical Violence against Women in Bangladesh' (2005) 36 *Studies in Family Planning* 289; M. A. Mannan, 'Baseline Survey for Assessing Attitudes and Practices of Male and Female Members and In-laws towards Gender Based Violence' (2004) Bangladesh Institute of Development Studies.

89 Sidney R Schuler and others 'Women's Rights, Domestic Violence, and Recourse Seeking in Rural Bangladesh' (2008) 14 *Violence Against Women* 326; See also Nusrat Ameen, *Wife Abuse in Bangladesh: An Unrecognized Offence* (University Press Limited 2005).

90 Section 3 of the DVPPA. Remedies include Interim Protection Orders under Section 13, Protection Orders under Section 14, residence order under Section 15, compensation order under Section 16 and safe custody order under Section 17.

91 See BNWLA, 'Ending Impunity: Monitoring Report for the Implementation of the Domestic Violence (Prevention and Protection) Act 2010' (Bangladesh National Woman Lawyers' Association 2013) 12 <[http://www.wecanbd.org/old/Publication/DV%20related%20others%20report/BNWLA\\_Ending%20Impunity%20%20Monitoring%20Report\\_Final.pdf](http://www.wecanbd.org/old/Publication/DV%20related%20others%20report/BNWLA_Ending%20Impunity%20%20Monitoring%20Report_Final.pdf)> accessed September 30, 2024.

92 Yasmin, *Domestic Violence Legislation* (n 93) 39.

93 Section 2(11) of the DVPPA.

94 Taslima Yasmin, *Exploring the Obstacles in Accessing Justice for Survivors of Domestic Violence: How Effective is the Domestic Violence (Prevention and Protection) Act, 2010?* (ActionAid Bangladesh 2020) [unpublished].

95 Ibid; Shahnaz Huda, *Five Years after Bangladesh's Domestic Violence (Protection and Prevention) Act 2010: Is it Helping Survivors?* (Plan International Bangladesh 2016).

96 Taslima Yasmin, *Domestic Violence Legislation* (n 93).

97 Section 30 of the DVPPA.

other criminal statutes, such as the Penal Code, if cases are filed under the DVPPA, the court can only provide a civil remedy to the victim.<sup>98</sup> The lack of power of the courts to award penal sanctions discourages victims of aggravated abuse from reporting abuse and police and prosecutors from resorting to proceedings under the DVPPA.<sup>99</sup>

Moreover, the WCRPA fails to criminalize domestic violence although it is one of the most common forms

of violence against women in Bangladesh. The only situation in which the WCRPA can be used as the legal basis for prosecuting violence is when the violence is related to dowry demands.<sup>100</sup> As such, women who fall victim to domestic violence without a dowry claim (including emotional and verbal abuse) have no access to criminal remedies except under the general criminal law that punishes only physical violence.

### Recommendations Related to Domestic Violence

#### 1. The DVPPA should recognize divorced women

In order to extend the various reliefs under the DVPPA to divorced women, the Act should expressly recognize their inclusion. To that end, it is essential that the definitions of ‘family relationship’ and ‘domestic violence’ make specific reference to ‘past relationships,’ following the example of language used in the domestic violence law of India.<sup>101</sup>

#### 2. Introduce criminal sanctions for effective remedies

It is furthermore important that criminal sanctions are introduced to ensure speedy and effective enforcement of the remedies given under the DVPPA. In addition to affording higher protection to the aggrieved person, the introduction of sanctions in the Act may have a deterrent effect on perpetrators of domestic violence. Moreover, the WCRPA should include a specific provision that criminalizes any death or injury that occurs as a result of domestic violence.

## 3.4. Dowry Violence

The dowry system is the discriminatory practice of demanding money and other property by the groom’s family from the bride’s family and tends to be one of the leading causes of violence against women in Bangladesh.<sup>102</sup> It is established on patriarchal norms and justified on perceived notions of male superiority.<sup>103</sup>

According to Bangladesh Mahila Parishad,<sup>104</sup> a women’s rights civil society organization, at least 141 women were killed in dowry-related violence and 208 cases of dowry-related torture were reported in 2017. From January to June of 2023, a total of 38 dowry deaths were reported in daily newspapers, as per Ain o Shalish Kendra.<sup>105</sup>

98 Shahnaz Huda, *Five Years After* (n 102) 11.

99 Ibid, 12; Taslima Yasmin, *Domestic Violence Legislation* (n 93).

100 Section 11 of the WCRPA.

101 The Protection of Women from Domestic Violence Act, 2005.

102 A Study in the Northern Districts of Bangladesh revealed that in around 80 per cent of marriages, dowries had to be given from the bride’s side; Monsoor, *From Patriarchy to Gender Equity Family Law and Its Impact on Women in Bangladesh (Dhaka, 1999)* 237-238. Also see Taslima Yasmin, *Domestic Violence Legislation* (n 93).

103 Farah Deeba Chowdhury, ‘Dowry, Women, and Law in Bangladesh’, (2010) 24(2) *International Journal of Law, Policy and the Family* 203.

104 See <<https://mahilaparishad.org/>> accessed 30 September 2024.

105 Ain o Shalish Kendra, <<https://www.askbd.org/ask/2023/08/07/violence-against-women-dowry-jan-jul-2023/>> accessed September 30, 2024.

The dowry system is an important risk factor for child marriage which occurs because the dowry is usually a lower amount when the bride is very young and this places a “lower” value on the child in the eyes of society.<sup>106</sup> In 1980, the Dowry Prohibition Act outlawed the demand and giving of dowry. The Act was recently replaced by the Dowry Prohibition Act, 2018.<sup>107</sup> In addition to criminalizing the practice of giving or taking dowry, the WCRPA also provides penal sanctions for physical violence associated with dowry, which can include the death penalty for causing death due to dowry demand.<sup>108</sup>

A ‘Dowry’ was previously defined as property given or demanded ‘directly or indirectly’ by one party to another party ‘at the time of marriage or at any time before or after the marriage as consideration for the marriage’.<sup>109</sup> The vague requirement of dowry being ‘a consideration of marriage’, and the ambiguity in determining the scope of ‘indirect demand’, makes it difficult for the prosecution to establish a demand of dowry as falling within the ambit of the legal definition.<sup>110</sup> The new Act of 2018 adds further technicalities to the definition of dowry. Borrowing from the definition of dowry in the WCRPA, it adds further requirements, such as that dowry has to be demanded ‘on condition of keeping the marriage intact’ and is not only a ‘consideration of marriage,’ but also a precondition for entering into the marital relationship (although it is not clear as to how these two conditions differ from each other).<sup>111</sup>

Because of the convoluted definition of dowry, reported court cases on this practice are more concerned with technicalities in the application of the Act rather than the protection of women from the suppression that it causes.<sup>112</sup> For example, in *Poddar v Saha*, the HCD did not recognize the demand of money as a dowry, as it was not demanded as ‘a consideration for the marriage.’<sup>113</sup> The HCD distinguished between a demand as consideration of marriage (which would be dowry), and a demand made by a husband that was not agreed upon as given in consideration of the marriage, holding that the latter, while possibly amounting to extortion, could not be considered as dowry. In a subsequent case of *Rezaul Karim v Mosammat Taslima Begum*, however, the HCD gave an extended meaning to the word ‘marriage’, by including not only the ceremony but the legal status it creates between husband and wife. As such the broad interpretation also includes demands for money by the husband within the meaning of ‘dowry’, even though the money may not have been agreed upon at the time of the marriage ceremony.<sup>114</sup>

The AD attempted to settle these inconsistencies in *Abul Bashar Howlader v State* by holding that dowry is to be understood in its ordinary meaning, i.e., property claimed by one party to the marriage from the other party, and that the receiving or giving of dowry any time after marriage will also be considered as dowry.<sup>115</sup>

Similar decisions were also held in later cases, where the HCD took a liberal approach in deciding what is to be

---

106 Ibid 619.

107 Act No. 39 of 2018.

108 Section 11, WCRPA.

109 Section 2, the Dowry Prohibition Act, 1980 (the Act is now repealed).

110 A Study in the Northern Districts of Bangladesh revealed that in around 80 per cent of marriages, dowries had to be given from the bride’s side; Monsoor, *From Patriarchy to Gender Equity* (n 109) 232.

111 Section 2(j) of the WCRPA; Section 2(b) of the Dowry Prohibition Act, 2018. Also see Section 2(b) of the Dowry Prohibition Act, 2018.

112 Deeba Chowdhury (n 110) 213.

113 37 DLR (1985) 227.

114 40 DLR 360.

115 46 DLR (AD) (1994) 244. The facts of the case were that at the time of marriage the parents of the complainant bride gave ornaments and other household articles to the accused husband. Sometime after the marriage the accused put pressure upon the complainant and her parents to release certain land which was mortgaged to her father and to give him money to build a shop. The complainant refused to accept the demand for which the husband abused her, and when she protested he beat her and drove her away from the conjugal house, keeping all her ornaments with him. It was argued by the appellant accused that since the demands were made after marriage, those did not fall within the definition of ‘dowry’ as they could not be treated as ‘consideration of marriage’.

considered as dowry without relying on mere technical terms.<sup>116</sup> Nevertheless, there have been narrow technical interpretations of the term ‘dowry’. For instance, in the 2017 case of *N.M. Shafiqur Rahman v State*, the HCD insisted that ‘dowry’ is nothing but the amount claimed as a ‘consideration of marriage,’ and, as such, any fresh demand of money or property at a later stage of the marriage cannot be said to be dowry.<sup>117</sup> Unfortunately, the decision of the AD in the *Abul Bashar* case was not cited in the judgment.<sup>118</sup>

Another problematic area in the dowry prohibition law, which remains unchanged by the new Act, is that the law provides the same punishment for both the giving

and taking of a dowry.<sup>119</sup> By doing so, it overlooks the social reality of marriages in Bangladesh, where the groom’s family usually has higher bargaining power and the bride’s family is most often subdued by social and economic pressure into giving a daughter in marriage before she attains a certain age of maturity.<sup>120</sup> Furthermore, a claim of dowry during marriage is often accompanied by physical or mental abuse by the husband, which compels the wife or her family to meet the dowry demands.<sup>121</sup> It is thus discriminatory and insensitive to the reality of women to be penalized equally for giving in to dowry demands.

### Recommendations Related to Dowry Violence

#### 1. The definition of ‘Dowry’ needs to be amended

The definition of ‘dowry’ in the Dowry Prohibition Act, 2018 needs to be reviewed to ensure that victims of this practice receive appropriate justice for violations of their rights. Additionally, provisions prescribing equal punishment to dowry givers in the 2018 Act should be reconsidered in the social context of the practice of dowry, where a bride’s side often must submit to excessive demands of the groom under duress.



116 For instance, *Rezaul Karim vs. Mst. Taslima Begum*, 40 DLR (1988) 362.

117 *N.M. Shafiqur Rahman v State*, Criminal Miscellaneous Case No. 464 of 2012, Judgment of 9.4.2015, HCD.

118 Also see Taslima Yasmin, ‘The Legal Discourse Addressing Violence against Women in Bangladesh’, in Vani Swarupa and Silvia Trieri (eds) *Female Voices on South Asia* (2020) 7.

119 Monsoor, *Management of Gender Relations* (n 71) 213.

120 Jitka Kotalová, ‘Belonging to Others Cultural Construction of Womanhood in a Village in Bangladesh’ (1995) 1 *Journal of the Royal Anthropological Institute* 445.

121 According to the data collected by Ain o Shalish Kendra (ASK), in 2023 the total number of incidents of dowry violence was 142, out of which the number of deaths by torture was 64. ASK <<https://www.askbd.org/ask/2024/01/08/violence-against-women-dowry-jan-dec-2023/>> accessed September 30, 2024.

### 3.5. Sexual and Reproductive Health and Rights

The CEDAW Committee has observed that the right to safe termination of pregnancy is a human right.<sup>122</sup> Against this backdrop, several human rights bodies and mechanisms have recommended that States bring an end to the ‘prosecution and punishment of women or medical service providers for murder or manslaughter for termination of pregnancy.’<sup>123</sup>

Under Section 312 of the Penal Code, 1860, anyone who voluntarily causes a woman to miscarry, including the woman herself, commits a criminal offence.<sup>124</sup> The only exemption is where the act is undertaken for purposes of saving the woman’s life. Thus, this law restricts a women’s reproductive choices even if she becomes pregnant as a consequence of rape.

#### Recommendations Related to Sexual and Reproductive Health and Rights

##### 1. Develop menstrual regulation policies

Although abortion is illegal in Bangladesh, Menstrual Regulation (MR) is included in the national family planning program, under which doctors and paramedics are encouraged to provide services in all government hospitals, health and family planning centres.<sup>125</sup> When MR was introduced, it was noted that it was not regulated by the Penal Code since, through MR, pregnancy is difficult or impossible to prove. Rather, MR is an ‘interim method for establishing non-pregnancy’ for a woman at risk of being pregnant, whether or not she actually is pregnant.<sup>126</sup>

In the context of the present legal restrictions relating to abortion, it may be prudent to focus on expanding MR facilities and developing relevant policies. Although MR is not strictly an abortion in medical terms, it can serve as a framework for terminating specific types of pregnancies to be agreed upon by stakeholders.

##### 2. Amend the relevant provisions of the Penal Code

Efforts should be taken to assess the level of social acceptability and the practical impacts of bringing change to the abortion provisions of the Penal Code. Despite having MR services in both the public and private sectors, unsafe abortions by illegal, untrained providers are common in Bangladesh, leading to higher health and death risks for women. The criminalisation of abortion in almost all cases often contributes to such clandestine abortion practices.<sup>127</sup> The grounds of criminalisation of abortion should be thus reviewed.

122 OHCHR, ‘Women’s Autonomy, Equality and Reproductive Health in International Human Rights: Between Recognition, Backlash and Regressive Trends’ (October 2017) <<https://www.ohchr.org/sites/default/files/Documents/Issues/Women/WG/WomensAutonomyEqualityReproductiveHealth.pdf>> accessed September 30, 2024.

123 See CESCR General Comment 22, CEDAW General Recommendation 35, CRC General Comment 20. Also see relevant Working Group’s communication <<https://spcommreports.in.ohchr.org/TmSearch/Results>> accessed September 30, 2024.

124 See also Sections 313-316 of the Penal Code, 1860.

125 ‘Menstrual regulation (MR) has been part of Bangladesh’s national family planning program since 1979. MR is a procedure that uses manual vacuum aspiration (MVA) to safely establish non-pregnancy after a missed period.’ Guttmacher Institute, ‘Menstrual Regulation and Induced Abortion in Bangladesh’ <<https://www.guttmacher.org/sites/default/files/pdfs/pubs/FB-Bangladesh-MR.pdf>> accessed September 30, 2024; Also see R. Dixon-Mueller, ‘Innovations in reproductive health care: menstrual regulation policies and programs in Bangladesh’ (1988) 19(3) *Studies in Family Planning* 129.

126 ‘Bangladesh National Comprehensive Menstrual Regulation (MR) and Post-Abortion Care (PAC) Services Guidelines’ (June 2021) <[https://dgfp.gov.bd/sites/default/files/files/dgfp.portal.gov.bd/miscellaneous\\_info/b9fe53f4\\_f584\\_4339\\_88f2\\_fd3e1f4439od/2023-08-17-08-07-39bebebc46b89694d1b6e036044173b.pdf](https://dgfp.gov.bd/sites/default/files/files/dgfp.portal.gov.bd/miscellaneous_info/b9fe53f4_f584_4339_88f2_fd3e1f4439od/2023-08-17-08-07-39bebebc46b89694d1b6e036044173b.pdf)> accessed September 30, 2024.

127 Ibid.





# 4

CHAPTER 4.  
LABOUR LAWS

## 4.1. Introduction

Employment opportunities for women in Bangladesh have increased considerably due to the growth of the ready-made garment industry, as well as service-oriented businesses.<sup>128</sup> However, despite the increasing visibility of women in the labour force, labour laws not only lack sufficient protection for women workers but also foster

discrimination. The labour law of Bangladesh is mostly consolidated in the Bangladesh Labour Act, 2006.<sup>129</sup> This Act is complemented by sector-based legislation, judicial guidelines, and policies, which together form the corpus of labour legislation in Bangladesh.

## 4.2. Sexual Harassment at Workplaces

There is a clear absence of laws that address sexual harassment at workplaces.<sup>130</sup> The Labour Act, 2006 contained a vaguely worded provision that prohibited behaviour that is 'indecent or unmannerly or which is repugnant to the modesty or honour' of any woman.<sup>131</sup> The prohibition was enforceable by the general penalty of imprisonment of up to 3 months, or a fine of up to Taka 25000 (USD 213.67).<sup>132</sup> However, there are hardly any reported instances of a victim of sexual harassment at the workplace filing a case under this provision.<sup>133</sup>

This is perhaps due to the usual heavy backlog of cases in the labour courts and also the nominal punishment and fines prescribed in the law for such acts.<sup>134</sup> In addition, there is fear of retaliation, preventing workers from taking steps against harassment, as the law does not provide any protection against retaliation.<sup>135</sup>

In 2022, the Labour Rules of 2015 were amended,<sup>136</sup> adding Rule 361A, which introduced provisions on the prevention of sexual harassment against women at workplaces in line with the 2009 HCD Guideline on this issue. Although

the provisions follow the 2009 HCD ruling, the newly added Rule also includes a broad explanation of the term 'sexual harassment' and contains provisions on the formation of a five-member sexual harassment prevention committee led by a woman. There are however several concerns about the effectiveness of this Rule.

For example, there is no provision that requires employers' compliance with such rules or provides any sanction for non-compliance. This gives rise to the possibility that employers can influence the committees' functions, especially as these committees contain no external members. Furthermore, sexual harassment against 'women' is the only issue addressed, thereby leaving workers of other gender identities and sexual orientations out of the purview of this law. Finally, addressing such a broad issue with only a single provision seems inadequate. Workplace violence and harassment needs to be addressed under separate legislation to address the rights and obligations under ILO Convention 190 on Violence and Harassment, 2019.

128 'Women in workforce: Employment without empowerment', *Dhaka Tribune* (Dhaka, 1 May 2018) <<https://www.dhakatribune.com/business/2018/03/08/women-workforce-employment-without-empowerment/>> accessed 06 September 2023; 'Women's participation in the job market', *The Daily Star* (International Women's Day Supplement, 8 March 2018) <<https://www.thedailystar.net/supplements/womens-participation-the-job-market-1545181>> accessed September 30, 2024.

129 Bangladesh Labour Act, 2006 (Act No. XLII of 2006).

130 Nawaz Farhin, 'Workplace sexual harassment remains unreported, ignored' *Dhaka Tribune* (Dhaka, 21 May 2018) <<https://www.dhakatribune.com/opinion/special/2018/05/21/workplace-sexual-harassment-remains-unreported-ignored>> accessed September 30, 2024.

131 Section 332, the Bangladesh Labour Act, 2006.

132 Section 307, the Bangladesh Labour Act, 2006.

133 Taslima Yasmin, *Gender Based Violence at Workplace Is Real: Happening Every Day at Every Workplace* (ActionAid Bangladesh 2019) <<http://actionaidbd.org/gender-based-violence-at-workplace-is-real/>> accessed September 30, 2024.

134 See for instance ILO, 'Overview of laws, policies and practices on gender-based violence and harassment in the world of work in Bangladesh' <[https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-dhaka/documents/publication/wcms\\_757149.pdf](https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-dhaka/documents/publication/wcms_757149.pdf)> accessed September 30, 2024.

135 Ibid.

136 That supplements the parent law - the Bangladesh Labour Act, 2006.

### 4.3. Maternity Protection and Child-Care

The Labour Act, 2006 entitles women workers to paid maternity leave of 8 weeks before childbirth and a mandatory 8 weeks leave post-delivery.<sup>137</sup> The Act also prohibits employment in ‘arduous’ work or involving long ‘standing’ on feet during the 10 weeks before and after childbirth.<sup>138</sup> However, there is no provision for extension in case of medical complications, which is not in line with international standards.<sup>139</sup> ILO Maternity Protection Convention, 2000 (No. 183) mandates 14 weeks paid maternity leave, even recommending an extended 18 weeks in cases of complications.<sup>140</sup> However, Bangladesh is not a signatory to the Convention.

In 2022, two changes in the maternity provisions were made to the Labour Rules of 2015. First, was the introduction of four weeks’ leave in the event of miscarriage. Secondly, the amendment introduced a new method of calculating maternity benefits which in practice may reduce the amount that workers were previously entitled to.

Previously, the daily average wage was calculated by dividing the total wages earned during the preceding three months from the date on which the employee gives notice of pregnancy, and then dividing by the number of actual days of work during that period. In this way, though any leave taken was excluded, the wages over that period, including wages earned through overtime, were included in the total. Accordingly, the average amounts were higher. Under the new rule, however, wages of only the month immediately preceding maternity leave are considered and divided by 26 days,

rather than the actual days of work. In many cases, this ultimately lessens the average daily wage.

The Labour Act also mandates employers to provide childcare rooms in large workplaces with 40 or more employees only.<sup>141</sup> It does not make specific provisions for daily breaks for breast-feeding as mandated by the ILO Convention.<sup>142</sup> There is also no mention of providing breast-feeding facilities at workplaces. Recently, the HCD issued a rule on a writ petition asking the relevant authorities to show cause why there should not be a breastfeeding corner in all public spaces, including workplaces.<sup>143</sup>



137 Section 45, the Bangladesh Labour Act, 2006. Under Section 48 of the Act, the amount of maternity benefit is to be counted as such: ‘1) The maternity benefit which is payable under this act shall be payable at the rate of daily, weekly or monthly average wages, as the case may be, calculated in the manner laid down in sub-Section (2), and such payment shall be made wholly in cash. (2) For the purpose of sub-Section (1) the daily, weekly or monthly average wages, as the case may be, shall be calculated by dividing the total wages earned by the woman during the three months immediately preceding the date on which she gives notice under this act by the number of days she actually worked during the period.’

138 Ibid.

139 Maliha Khan, ‘How well are female workers protected by the law?’ *The Daily Star* (Dhaka, 4 February 2018) <https://www.thedailystar.net/star-weekend/how-well-are-female-workers-protected-the-law-1528474>. accessed September 30, 2024.

140 Article 4, the Convention No.183.

141 Section 48, the Bangladesh Labour Act, 2006. Also see: Workers with Family Responsibilities Convention (No. 1981) Article 5, Bangladesh is not a party to this Convention yet.

142 Article 10, Maternity Protection Convention, 2000 (No. 183).

143 *The Daily Star* (Dhaka, October 27 2019) <<https://www.thedailystar.net/country/breastfeeding-corners-at-public-places-1819360>> accessed September 30, 2024.

#### 4.4. Prohibition of the Employment of Women in Certain Hazardous Work

The Labour Act prohibits the employment of women workers in certain hazardous work, including work at any dangerous machine, or in any underground or under-water work.<sup>144</sup> These are jobs that are typically prohibited for adolescent workers.<sup>145</sup> The exclusion of women from jobs that are considered hazardous for adolescent workers is discriminatory, as it reflects a

generalised assumption that women cannot undertake jobs that are physically challenging, age-appropriate or dangerous, without considering that different women may have different interests and working abilities.<sup>146</sup> It also hinders equality of opportunity for all, prohibiting women from many lucrative jobs, creating occupational segregation and contributing to the gender wage gap.<sup>147</sup>

#### 4.5. Informal Sector

Nearly 85.1 per cent of employment in Bangladesh is in the informal sector, with the rate being 90.3 per cent for female workers.<sup>148</sup> However, informal sector workers are without a regulatory framework in Bangladesh, as the Labour Act does not cover them.

Furthermore, women in the informal sector are particularly vulnerable to violence and discrimination, as formal procedural and substantive labour law provisions do not apply to them.<sup>149</sup> The ILO recommends casting the net of labour law protection widely to cover workers who migrate from the informal economy to the formal economy.<sup>150</sup>

#### 4.6. Domestic Workers

Among the various sectors of the informal economy, those employed in household work need particular attention as they are particularly vulnerable to violence, prolonged hours of work and the lack of regulatory protection.<sup>151</sup> Bangladesh formulated the Domestic Workers Protection and Welfare Policy in 2015, providing maternity protection of 16 weeks, prohibiting the engagement of children below 12 years, and applying other labour law provisions to domestic workers. However,

the lack of specific legislation on this subject renders the policy ineffective.<sup>152</sup>

Earlier in 2012, Ain o Salish Kendra (ASK) proposed a draft 'Domestic Workers Registration and Protection Act' to protect the rights of domestic workers, especially from abuse and torture.<sup>153</sup> However, to date, no action has been taken to translate the Bill into law.<sup>154</sup> It is also concerning that the country is still not a party to the ILO Domestic Workers Convention, 2011 (No. 189).

144 Section 87, the Bangladesh Labour Act, 2006.

145 Sections 39, 40, 42, the Bangladesh Labor Act, 2006.

146 Nawmi Naz Chowdhury, 'Why are Women Still not Equal in the Eyes of the Law?' *Dhaka Tribune* (Dhaka, 8 March 2018) <<https://www.dhakatribune.com/special-supplement/2018/03/08/women-still-not-equal-eyes-law>> accessed September 30, 2024.

147 Afroza Bilkis and others, 'A Review of Discrimination in Employment and Workplace' (2010) 4(2) *ASA University Review* 144.

148 Bangladesh Bureau of Statistics, 'Labour Force Survey 2016-17' (2018); Also see Asian Development Bank (ADB), *Bangladesh Gender Equality: Diagnostic of Selected Sectors* (ADB 2017) 5.

149 *Ibid* 22.

150 See Transition from the Informal Economy to Formal Economy Recommendation 2015 (No. 204) <[https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:R204](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:R204)> accessed September 30, 2024.

151 Domestic Workers: Devaluation and Discrimination (Unnayan Onneshon 2014).

152 *Prothom Alo* (Dhaka, 5 October 2016) <<https://www.prothomalo.com/bangladesh/article/994677>> accessed September 30, 2024.

153 *DW* (2 July 2014) <<https://p.dw.com/p/1CTiQ>> accessed September 30, 2024. Also see <<https://www.change.org/p/ain-o-salish-kendra-ask-bangladesh-legal-aid-and-human-rights-organisation-demand-that-the-government-pass-the-draft-law-domestic-helps-registration-and-protection-act-to-protect-domestic-workers>>.

154 *Bangla Tribune* (Dhaka, 25 September 2019) <<http://www.banglatribune.com/others/news/554397/>> accessed September 30, 2024.

## Recommendations Related to Labour Laws

### 1. Enact a new law on sexual harassment in workplaces

The prevention and response to sexual harassment at workplaces should be addressed by enacting separate, comprehensive legislation covering all sectors of work (private, public, and informal) and educational institutions, in line with standards set by the ILO Violence and Harassment Convention, 2019 (No. 190) and the ILO Violence and Harassment Recommendation, 2019 (No. 206).<sup>155</sup> Until then, the newly introduced provisions under the Labour Rules, 2015 should be further amended to match the 2009 HCD Guideline. The offence should be considered ‘misconduct’ under the Act.<sup>156</sup> A proper monitoring mechanism should also be instituted to ensure compliance with the relevant provisions by employers.

### 2. Extend the duration of maternity leave to 18 weeks

Maternity leave should be extended to 18 weeks, in case of medical complications. The new rule for calculating maternity benefits should also be reviewed to assess its impact on the payments received by women workers during maternity leave.

### 3. Include a provision in the Labour Act for breastfeeding

The Government should consider introducing provisions into the Labour Act and its Rules for daily breaks for breastfeeding mothers, as mandated by ILO Convention No. 183.<sup>157</sup>

### 4. Include women working in ‘hazardous’ jobs in Labour Act

Provisions which exclude women from jobs that are considered ‘hazardous’ under the Labour Act should be repealed.

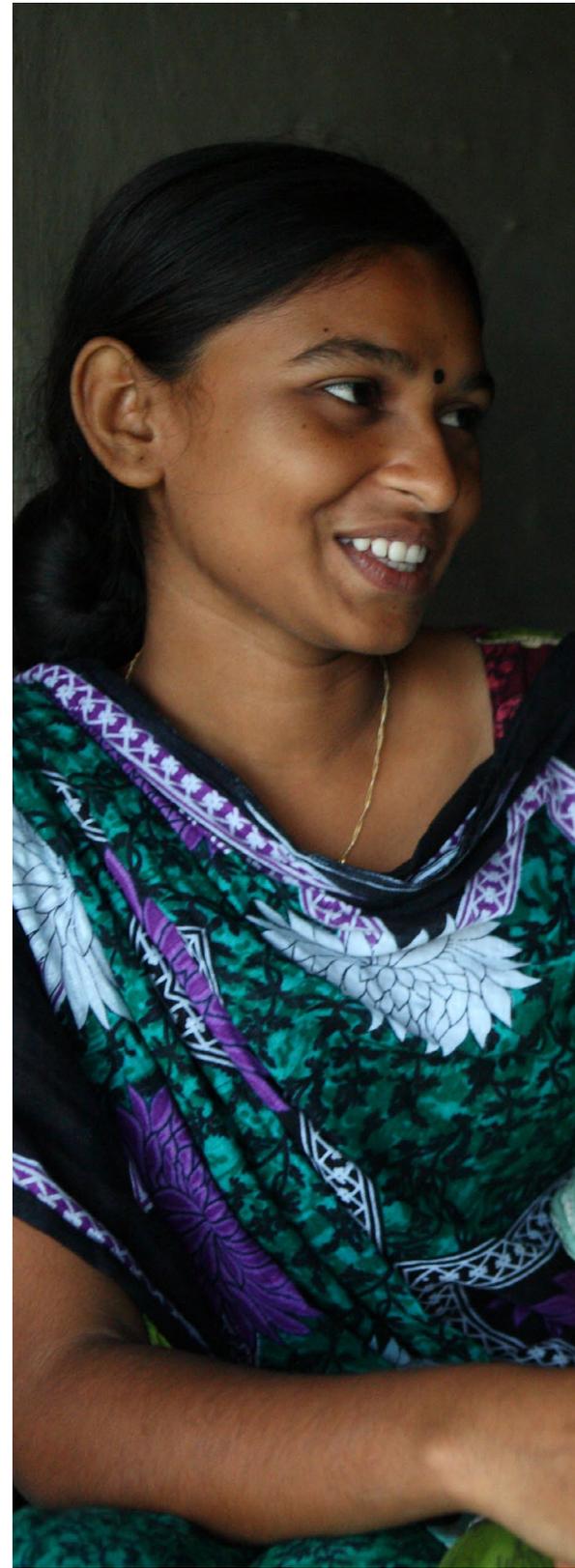
### 5. Inclusion of provision in the new law on sexual harassment to protect workers in formal and informal sector

Legislative and policy efforts should be strengthened to include workers in the informal sector (including domestic workers) within the regulatory framework to ensure that gender-based discrimination does not occur at any place of work. Most importantly, any effort to enact special legislation for sexual harassment at workplaces should introduce provisions that protect workers in both the formal and informal sectors. The proposed new law should be guided by ILO Convention 190 on Violence and Sexual Harassment, 2019 to ensure compliance with international norms and standards.

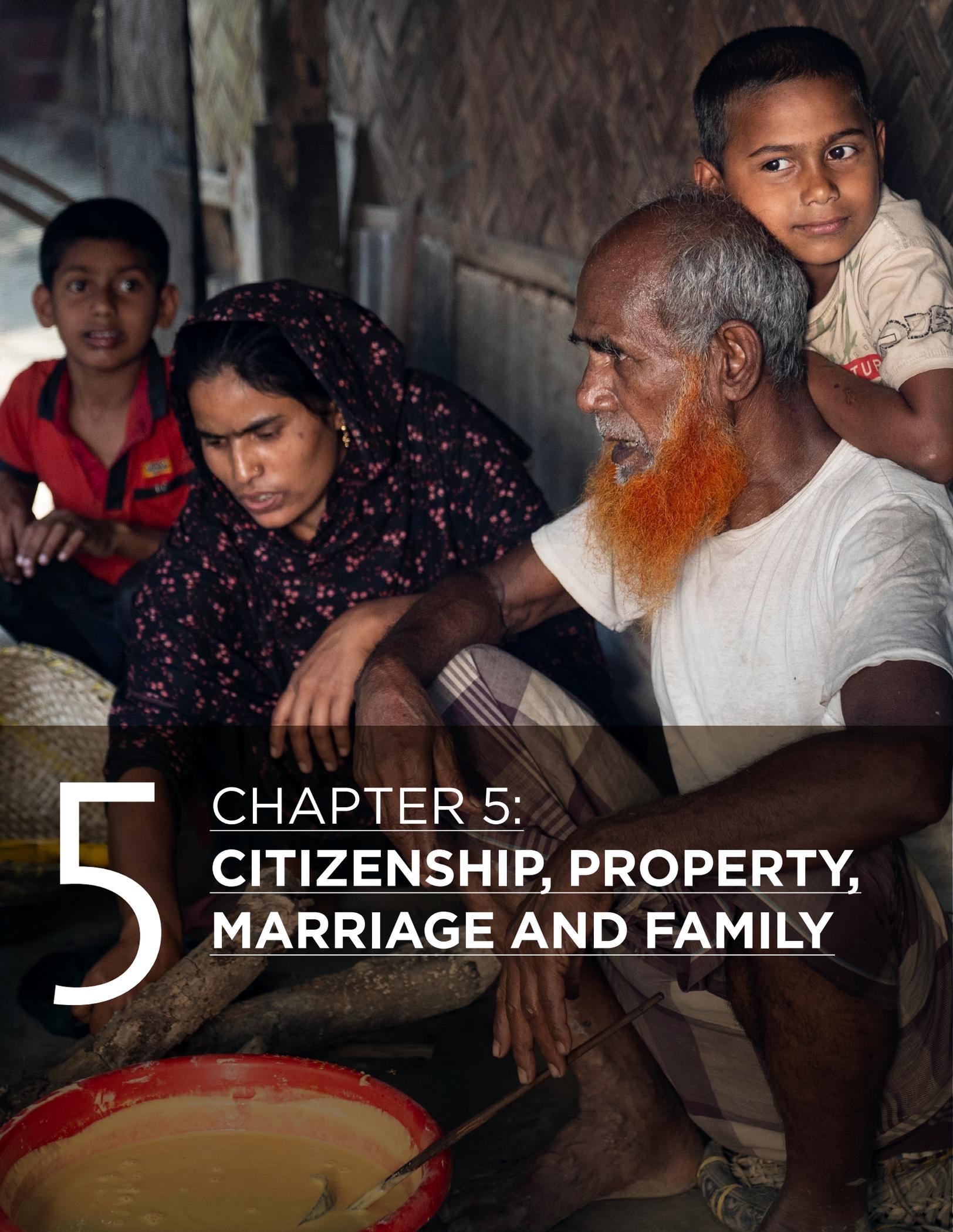
<sup>155</sup> Bangladesh is still not a party to this Convention.

<sup>156</sup> Section 23 and 24, the Bangladesh Labour Act, 2006.

<sup>157</sup> Article 10, ILO Maternity Protection Convention, 2000 (No. 183).







# 5

CHAPTER 5:  
**CITIZENSHIP, PROPERTY,  
MARRIAGE AND FAMILY**

## 5.1 Introduction

Previous Chapters reviewed issues purely under State control—the Constitution, Bangladesh’s obligations under international law, gender-based violence and labour legislation. In contrast, this Chapter deals with issues of personal law i.e. legal standards, which arise by virtue of an individual belonging to a particular lineage

or community. Although citizenship is defined by the State, citizenship can also be defined by descent and birth. The Chapter also deals with the different forms of marriage and accompanying regulations on family and property relations.

## 5.2 Citizenship Law

The Constitution of Bangladesh provides that citizenship is to be regulated by law.<sup>158</sup> On this basis, the principal laws that regulate citizenship in Bangladesh are the Citizenship Act, 1952 and the Bangladesh Citizenship (Temporary Provisions) Order, 1972. These laws recognize the two principal modes of acquiring citizenship, i.e., by territorial birth and descent, as well as by naturalization.<sup>159</sup>

The citizenship law contains a gender-biased provision in the case of citizenship through marriage, i.e., citizens’ ability to pass citizenship to foreign spouses. A foreign woman married to a Bangladeshi husband may acquire citizenship upon the fulfilment of domicile and allegiance. However, there is no provision that allows a Bangladeshi woman married to a foreigner to pass citizenship to her husband.<sup>160</sup> A consolidated citizenship bill drafted by the Law Commission of Bangladesh in 2009 included a gender-neutral provision with regard to passing citizenship to a foreign spouse.<sup>161</sup>

However, this proposal did not make its way into the 2009 amendment to the Citizenship Act.<sup>162</sup> In its 8th periodic report to the CEDAW Committee, Bangladesh declared that ‘a woman’s right to pass on her citizenship to her foreign spouse is under consideration.’<sup>163</sup>

A similar gender-biased provision with regard to citizenship by descent was present until the 2009 amendment. Before that, only children born outside Bangladesh to a Bangladeshi father were recognized as citizens by descent, preventing Bangladeshi women married to foreign nationals to transmit citizenship to their children. The amended provision is gender neutral and provides that children born to either a Bangladeshi father or mother are citizens of Bangladesh by descent.<sup>164</sup> The only issue of concern is that the Act does not apply retroactively to children born before its entry into force and was therefore a subject of comment by the CEDAW Committee.<sup>165</sup>

### Recommendation

The Citizenship Act should include a provision that allows Bangladeshi women married to foreigners to pass citizenship to their husbands.

<sup>158</sup> Art. 6, Constitution of People’s Republic of Bangladesh.

<sup>159</sup> See Ridwanul Hoque, ‘Report on Citizenship Law: Bangladesh’ (EUDO Citizenship Observatory 2016) 1 <[https://cadmus.eui.eu/bitstream/handle/1814/44545/EudoCit\\_2016\\_14Bangladesh.pdf](https://cadmus.eui.eu/bitstream/handle/1814/44545/EudoCit_2016_14Bangladesh.pdf)> accessed September 30, 2024.

<sup>160</sup> See Section 10(2), the Citizenship Act, 1951; Rule 4, the Citizenship Rules, 1978; Hoque, ‘Report on Citizenship Law’ (n 153).

<sup>161</sup> Law Commission of Bangladesh, ‘Report on the Proposed Amendment of the Draft of the Citizenship Act, 2009 along with Draft Citizenship Act, 2009 and the Table of Proposed Amendment Suggested by the Concerned Authority on 13.7.09’ (15 November 2009) <<http://www.lc.gov.bd/reports/89-Draft.pdf>> accessed on September 30, 2024.

<sup>162</sup> Most of the statutory reforms recommended by the Law Commission have largely remained unimplemented.

<sup>163</sup> CEDAW, *Concluding Observations* (n 39).

<sup>164</sup> Section 2, the Citizenship (Amendment) Act, 2009.

<sup>165</sup> See Paragraphs 26-27 of CEDAW, *Concluding Observations* (n 39).

## 5.3 Property Rights (Other than Family Laws)

### 5.3.1. Trust Law

The Trusts Act, 1882 contains a number of discriminatory provisions towards women, aliens and persons having a conflict of interest with beneficiaries.<sup>166</sup> Under Section 60, the beneficiaries of a trust have the right to expect

that the property subject to a Trust will be protected, held and administered for the beneficiaries by ‘proper’ persons. Explanation I to Section 60 clarifies that a married woman is not a ‘proper person’.

### 5.3.2. Settlement of Khas Land Policy

The Agricultural Khas Land Settlement Policy of 1997 contains provisions for the distribution of State owned (*khas*) lands among landless households. This is a policy mainly relied on by the Ministry of Land for management and distribution of agricultural khas lands.<sup>167</sup> Among landless households, five classes are included in the priority list, including destitute freedom fighter households; households who lost lands through river erosion;

households having no agricultural or homestead lands; households who became landless due to acquisition of lands by the government; and households of widowed or divorced women with ‘working sons’.<sup>168</sup> This last class is discriminatory towards landless women who may be single, or women who may have daughters or children with disabilities.

#### Recommendation Related to Property Rights

##### 1. Remove discriminatory provisions from the Trust Act

Discriminatory provisions concerning ‘married women’ need to be removed from the Trust Act, 1882. The Agricultural Khas Land Policy, 1997 should also be amended to remove the discriminatory rule of priority created for widowed or divorced women with ‘working sons’. Instead, the criteria should include women who are destitute, have no source of income, or have no children or daughters without any conditionality.

## 5.4 Laws on Marriage

Despite constitutional guarantees and the ratification of CEDAW, family law remains deeply discriminatory, especially towards women and girls. Stemming from the pluralistic nature of the legal system, while civil and criminal laws are broadly codified and secular in nature, matters of family law are generally governed by uncodified, traditional religious principles of different communities. Areas of personal law thus vary among Muslims, Christians and Hindus,<sup>169</sup> although a number of

statutes have been enacted since British colonial times to supplement, codify, and to some extent, reform the body of laws.<sup>170</sup>

Under the Family Courts Ordinance of 1985 (FCO), which is a secular law, family courts were established at the Assistant Judge’s court level, with jurisdiction over divorce, restitution of conjugal rights, dower, maintenance and guardianship and custody of children. The 1985

<sup>166</sup> The Trusts Act, 1882 (Act No. II of 1882).

<sup>167</sup> Ministry of Finance, <[https://mof.portal.gov.bd/sites/default/files/files/mof.portal.gov.bd/budget\\_mof/799b4a82\\_f259\\_4fd4\\_98ba\\_a1b17afoe9b5/G-3\\_17\\_146\\_Land\\_English.pdf](https://mof.portal.gov.bd/sites/default/files/files/mof.portal.gov.bd/budget_mof/799b4a82_f259_4fd4_98ba_a1b17afoe9b5/G-3_17_146_Land_English.pdf)> accessed 06 September 2023.

<sup>168</sup> Agricultural Khas Land Settlement Policy, 1997, Policy No. 11.

<sup>169</sup> Buddhists in Bangladesh generally follow Hindu personal law.

<sup>170</sup> The Supreme Court of Bangladesh had time to time progressively interpreted the traditional principles of religious laws, especially of Muslim law and those decisions also supplement the body of applicable personal law.

Ordinance was repealed and replaced by the Family Courts Act, 2023, which introduced very few changes.<sup>171</sup>

The following sub-Sections present an overview of key areas of religious personal laws of Muslims, Hindus,

and Christians where gender-based discrimination is evident. Each discussion focuses on the key areas of discrimination in Muslim personal law, followed by Hindu and Christian laws.

### 5.4.1. Muslim Marriage

Under Muslim personal law, a marriage is a solemn civil contract between a man and a woman.<sup>172</sup> However, a Muslim marriage is not purely a matter of contractual arrangement, as it also has religious elements attached to it.<sup>173</sup> There is no ritual requirement to constitute a Muslim marriage; rather, it is simply an offer and an acceptance in the presence of two witnesses.<sup>174</sup> However, the traditional elements of a valid marriage under Muslim law are discriminatory in a number of aspects.

Although the parties must generally consent and have legal capacity, under traditional Islamic law rules, a father can also give his minor child away in marriage.<sup>175</sup>

Islamic legal schools of thought are generally agreed that a father has the right to marry off his minor daughter or son unilaterally, although girls are at higher risk of being married off.<sup>176</sup> Therefore, the traditional rules regarding marriage stand opposed to prohibitions against child marriage, which require that in order for a marriage to lawfully exist under international standards, 'a person must meet the legal age requirements and must freely consent to the marriage.'<sup>177</sup>

Bangladesh has the highest prevalence of child marriage in South Asia and the eighth highest prevalence in the world.<sup>178</sup> Approximately 38 million women in Bangladesh were married before they turned 18 years and over 13 million women were married before they turned 15 years.<sup>179</sup> Perhaps the religious customs apparently endorsing child marriage can be linked to the high number of child marriages in Bangladesh and can also explain the absence of provisions that declare child marriage void. Under the Child Marriage Restraint Act, 2017, child marriage is made punishable with a maximum custodial sentence of two years and/or a maximum penalty of Taka 100,000 (approximately USD 855).<sup>180</sup>

The mandatory requirement of witnesses to constitute a valid Muslim marriage is also unequal. As per the rules, witnesses to Muslim marriages must be two men or a man and two women.<sup>181</sup> A single woman therefore cannot be a witness, and two women witnesses are considered as the equivalent of one male witness.

Another important aspect of a Muslim marriage is the *nikahnama*, commonly known as '*kabinnama*' in Bangladesh, which is the marriage contract prescribed

171 *The Daily Star* (Dhaka, 22 December 2023) <<https://www.thedailystar.net/law-our-rights/news/analysis-the-family-courts-act-2023-3500311>> accessed September 30, 2024.

172 David Pearl & Werner Menski, *Muslim Family Law*, (3<sup>rd</sup> edn, Sweet & Maxwell 1998) 139.

173 *Ibid*; also see Jamal J Nasir, *The Islamic Law of Personal Status* (2<sup>nd</sup> edn, Brill 1990) 42.

174 Asaf A. A. Fyzee, *Outlines of Muhammadan Law* (Tahir Mahmood ed 5<sup>th</sup> edn, OUP 2008)10.

175 In Hanafi Law (*i.e.* the Islamic school of thought followed by majority of Muslims in South Asia) by legal capacity to marriage, it refers to attaining age of puberty.

176 Although this was applicable for both minor daughters and sons, most of the Islamic jurists' discussion focused on the minor girls, indicating that this was common social practice. Also see Judith E. Tucker, *Women, Family and Gender in Islamic Law* (Cambridge University Press 2008) 43.

177 OHCHR, 'Child Marriage in Bangladesh: Impact of Discriminatory Personal Laws' <<https://www.ohchr.org/sites/default/files/Documents/Issues/Women/WRGS/ForcedMarriage/NGO/WomenAndJusticeFellow5.pdf>> accessed September 30, 2024.

178 UNICEF <<https://www.unicef.org/bangladesh/en/press-releases/global-polycrisis-creating-uphill-battle-end-child-marriage-unicef>> accessed September 30, 2024.

179 *Ibid*.

180 Section 7, The Child Marriage Restraint Act, 2017.

181 Nasir, *The Islamic Law* (n 180) 54.

under the Muslim Marriages and Divorces (Registration) Rules, 1974.<sup>182</sup> The *nikahnama* contains a number of standard conditions or stipulations that the parties to the Muslim marriage generally agree to during registration of marriage, such as the amount of dower, the conditions regarding delegating power to the wife to divorce the husband, any deed regarding maintenance, or any other special terms and conditions that the parties may agree upon.

#### 5.4.2. Hindu Marriage

After Bangladesh's independence from Pakistan in 1971, no attempts were made, until very recently with the Hindu Marriage Registration Act 2012, to modernize the personal laws of Hindus which continue to be governed by the uncodified sacramental laws. Regarding traditional Hindu Law, marriage is considered to be a sacrament, not a contract—a holy union for the performance of religious duties.<sup>183</sup> The primary and sacramental object of marriage is to give birth to male issues, thus leading to discrimination against the girl child from conception.<sup>184</sup>

Under Hindu law, a minor person is not disqualified from marrying and no minimum age is fixed as the age of consent. Therefore, an infant's marriage is deemed valid and complete under Hindu law.<sup>185</sup> Moreover, a woman is not regarded as playing an active part in a nuptial tie under Hindu law and her consent is therefore not required for a Hindu marriage.<sup>186</sup>

Under traditional norms, a Hindu wife cannot remarry even upon her husband's death. Under British rule, this uncodified norm was changed through the enactment of the Hindu Widow's Remarriage Act of 1856, which is still enforceable in Bangladesh. Although under this law Hindu widows are given the right to remarry, the Act retains a discriminatory provision in Section 2, which provides that a woman has to relinquish all her claims

In a landmark judgment, the HCD ruled that the word 'kumari,' or 'virgin,' could not be used before the bride's name in the *nikahnama* and directed use of the word 'unmarried' instead. Despite this change, however, the language used in the prescribed form of the *nikahnama* is still discriminatory toward women and clearly endorses the higher status of a Muslim man in a marriage. For example, clauses 2 and 4 of the *nikahnama* respectively ask for the names of the bride and the groom along with the names of their fathers, without any mention of mothers.

over her deceased husband's property prior to entering into a subsequent marriage.

Until now, the only statutory reform to Hindu Family Law in Bangladesh is the Hindu Marriage Registration Act, 2012, which regulates the registration of Hindu marriages. Although the preamble to the Act states that its purpose is to protect documentary evidence of sacramental marriages between Hindus, it did not make registration mandatory and retained its optional nature by declaring in Section 3(2) that the validity of marriages performed according to the Hindu *Shastras* (i.e., sacramental laws) is not affected by non-registration under the Act. Due to its optional nature, Hindus are registering their marriages only when there is a need for official documents (e.g. for immigration, work purposes etc.).<sup>187</sup>

However, in practice, registration of marriage is necessary for reasons connected to Hindu women's suffering, such as denial of the marriage by the husband, establishing the right of the wife to maintenance, and proof of legitimacy for children. Therefore, by providing for optional registration only, the Act did not have any notable impact on improving the status of Hindu women under the law.

---

182 Form E.

183 Observed by the Appellate Division in *Ramesh Chandra Adhikari vs. Bulbuli* 66 DLR (AD) (2014).

184 Huda, *Combating Gender Injustice* (n 44) 67.

185 RK Agarwala, *Hindu Law* (20th edn Allahabad 2000) 31.

186 Mahua Zahur 'The Hindu Marriage System in Bangladesh: Addressing Discrimination' (2014) 40 (4) Commonwealth Law Bulletin 613.

187 Huda, *Combating Gender Injustice* (n 44) 68.

### 5.4.3. Special Marriage Act of 1872

The Special Marriage Act, 1872 is a colonial law that is still in force in Bangladesh to administer the legality and consequences of inter-religious or inter-faith marriages. The Act aims to provide for a form of marriage between persons, neither of whom professes any religion, or between persons each of whom professes Hindu, Buddhist, Sikh or Jaina religion. This effectively means that when either party is a Muslim or Christian, both must declare that they do not profess any religion.<sup>188</sup> The Supreme Court decided in a 1966 case that the marriage was null and void without such a renunciation of faith.<sup>189</sup> In addition to these discriminatory conditions, ‘this law is unclear, inadequate and full of ambiguities, leaving many of the important legal questions relating to inter-religious marriages unanswered’.<sup>190</sup> For instance, it does not address questions of maintenance of wife and children or custody and guardianship of children.<sup>191</sup> Also, Section 24 provides that succession to the property of any person professing the Hindu, Buddhist, Sikh or Jain religions who marries under this Act, and the property of the issue of such marriage, shall be regulated by the

Succession Act, 1925. However, the Special Marriage Act is silent on succession by the parties to a special marriage when they do not belong to the above-mentioned religions.

In India, on the other hand, the British law of 1872 was replaced by the Special Marriage Act, 1954, which removed discriminatory provisions and is generally considered a major update of the 1872 text. Most importantly, this law allows marriage between ‘any two persons’ irrespective of religion or caste, without having to renounce faith. Similarly to all personal laws, the Special Marriage Act of India includes provisions on divorce and the parties registered under this Act can file for the same under the law.<sup>192</sup> Importantly, succession to the property of persons married under this Act is governed under the Indian Succession Act 1925. However, the Hindu Succession Act 1956 applies where the parties to the marriage belong to the Hindu, Buddhist, Sikh, or Jain religions.<sup>193</sup>



<sup>188</sup> Section 10 of the 1872 Act provides that the parties shall sign a declaration in the form contained in the second schedule of the Act renouncing their former faiths. Column 2 of the schedule contains a pro-forma of renunciation: ‘I (so and so) do not profess the Christian, Jewish, Hindu, Muslim, Parsi, Buddhist, Sikh or Jaina religion.’

<sup>189</sup> *Mustafizur Rahman v. Rina Khan* 18 DLR (1966) 509.

<sup>190</sup> Mohammad Moin Uddin, ‘Inter-religious Marriage in Bangladesh: An Analysis of the Existing Legal Framework’ (2008) XIII The Chittagong University Journal of Law 117, 118.

<sup>191</sup> *Ibid* 137.

<sup>192</sup> Section 4, the Act 1954. Also see Sonali Chauhan, ‘Special Marriage Act, 1954’ (ipleaders 2022) <https://blog.ipleaders.in/special-marriage-act/> accessed September 30, 2024.

<sup>193</sup> *Ibid*.

## Recommendations Related to Marriage Laws

### 1. Reform personal law and adopt a uniform civil code

In its concluding observations to the 8<sup>th</sup> periodic report of Bangladesh in 2016, the CEDAW Committee urged the Government to review existing personal laws and suggested the adoption of a uniform family code which would be applicable to members of all religions and faiths.<sup>194</sup>

Although women's rights organizations have demanded a Uniform Civil Code (UFC) for several decades, this has not materialized to date and the movement has weakened over time.<sup>195</sup> The religious sentiment attached to the issue of UFC and opposition by religious groups to such reform proposals has generally discouraged policymakers from taking effective steps towards adopting a UFC.<sup>196</sup> Such reforms might be difficult to achieve in the long term, as political regimes may be hesitant to support a move that has implications on the application of personal laws.<sup>197</sup> The Law Commission of Bangladesh also opined in a 2005 report that the personal laws of all communities are 'sensitive, complex and of diverse origin,' and any attempt to create a common family code is 'likely to cause injury to the religious sentiment, faith and beliefs of the people and country'.<sup>198</sup>

### 2. Amend religion-based discriminatory provisions

While the demand for a UFC remains, scholarly debates and even advocacy strategies of rights groups are also focusing on what socially desirable changes can be introduced to individual family laws without disturbing the religious sentiments of any community.<sup>199</sup> Therefore, rights-based organizations are also advocating for the removal of discriminatory aspects of religion-based laws, an outcome of which has so far been the 2012 law requiring the registration of Hindu marriages.

### 3. Reform the Special Marriage Act of 1872 or enact a new law

Another area that is now gaining focus is the possibility of amending the existing Special Marriage Act of 1872 to remove ambiguities and discriminatory provisions, or alternatively, by enacting an entirely new law.<sup>200</sup> Such reform may be a useful alternative for those who wish to opt for a secular marriage without having to renounce their own religious faiths.

At the same time, unlike the demand for a UFC, which was weakened by its potential negative impact on religious sentiment and the resultant political sensitivity attached to it, reforming the Special Marriage Act would perhaps be possible with less disagreement.

194 Steps Towards Development, 'UPR Stakeholders' Submission Under the 3<sup>rd</sup> Cycle of Universal Periodic Review on Gender based violence and Sexual and Reproductive Health Rights' (2017) <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/N16/402/50/PDF/N1640250.pdf?OpenElement>> accessed 30 June 2024.

195 Huda, *Combating Gender Injustice* (n 44) 96.

196 Discussed by stakeholders at the consultation meetings conducted during the study.

197 Huda, *Combating Gender Injustice* (n 44) 96.

198 Law Commission - Bangladesh (Report No. 69). <<http://www.lawcommissionbangladesh.org/reports/69.pdf>> September 30, 2024.

199 For instance see Huda, *Combating Gender Injustice* (n 44) 123-126.

200 This was shared by the UN representatives and Law Commission's representatives consulted during the study who noted that the Law Commission of Bangladesh was initiating a proposal for a new Special Marriage Act. However, there is no official confirmation yet with regard to such an initiative.

Lessons may be learned from the Indian Special Marriage Act, 1954, which was passed with little controversy.<sup>201</sup> Similar to the Indian experience, Bangladesh could initiate public discourse to reform the existing Special Marriage Act. Such a new law could ‘offer a viable option to couples to be regulated by a more equitable law.’<sup>202</sup>

#### 4. Reforms on the minimum age of marriage

Under both Muslim and Hindu religious traditions, there is generally no minimum age of marriage, and in light of the fact that Bangladesh has ratified the CRC and other binding instruments that emphasise minimum age and free consent in marriage, the country should reconsider its position regarding child marriage. The current law, the Child Marriage Restraint Act, 2017 provides 18 years and 21 years as the minimum legal age of marriage respectively for women and men. However, because of marriages being regulated by religious principles, the Act only criminalizes marriage below the prescribed ages and does not declare such marriages void. Moreover, the very fact that the marriageable ages are different for males and females is discriminatory. There is also a special provision (Section 19) that allows marriage at any age with the permission of the court.<sup>203</sup>

In such contexts, in order to secure greater protection against child marriages, a special clause could provide a minimum age limit below which a court will not grant permission. Also, in light of the concern that declaring child marriages could generate religious sensitivities, the 2017 Act could include exceptional circumstances in which a minor could unilaterally seek a court decree to annul her marriage.<sup>204</sup>

### 5.4.4. Dower and Maintenance

#### Dower

The Dower is considered an essential component of Muslim marriage under all schools of Islamic law. In essence, it is a sum of money or other property that becomes payable by the husband to the wife in consideration of the marriage.<sup>205</sup> Islamic law also places a legal obligation on the husband to pay a reasonable amount of maintenance to the wife and children.<sup>206</sup> However, these significant rights secured for Muslim

women under traditional Muslim law are difficult to enforce for many women, especially after divorce.<sup>207</sup>

The amount of dower to be due from the husband is usually specified in the Islamic marriage contract (*nikahnama*) and can be partially prompt and partially deferred. Prompt dower is the amount that is to be given to the bride on demand anytime during the marriage, while deferred dower can generally be claimed only at

201 Werner F. Menski, *Hindu Law – Beyond Tradition and Modernity* (OUP 2003) 216; also see Huda, *Combating Gender Injustice* (n 44).

202 UNDP, ‘Social and legal implications of withdrawing the CEDAW reservations on the Bangladesh legal system and social norms’ (UNDP 2019).

203 Section 19 of the 2017 CMRA reads: *Notwithstanding anything contained in any other provision of this Act, if a marriage is solemnised in such manner and under such special circumstances as may be prescribed by rules in the best interests of the minor, at the directions of the court and with the consent of the parents or the guardian of the minor, as the case may be, it shall not be deemed to be an offence under this Act.*

204 See Taslima Yasmin, ‘A Review of the Effectiveness of the New Legal Regime to Prevent Child Marriages in Bangladesh: Call for Law Reform’ (2020 Plan International Bangladesh).

205 Pearl & Menski (n 179) 86.

206 Ibid.

207 Human Rights Watch (2012), “Will I Get My Dues ... Before I Die?” Harm to Women from Bangladesh’s Discriminatory Laws on Marriage, Separation, and Divorce’ <<https://www.hrw.org/report/2012/09/17/will-i-get-my-dues-i-die/harm-women-bangladesh-discriminatory-laws-marriage>> September 30, 2024.

the dissolution of the marriage.<sup>208</sup> Although it became common practice to award half of the dower money as deferred, traditional Muslim law does not make it obligatory. While rarely practised in Bangladesh, it can also be agreed and stipulated in the marriage contract that the entire dower should be paid on demand by the wife.

In practice however, the amount fixed as dower is negligible, or it becomes payable throughout a potentially long marriage, which due to inflation and increased cost of living, becomes insignificant and provides little to no economic security.<sup>209</sup> The deferred dower awards the exact amount fixed during the marriage without having recourse to the rate of inflation or increase in the cost of living at the time of payment. The statutes are however silent on the mode of payment and scope for recalculating the amount at the time when it is claimed.

Another concerning dower practice is the custom of *usool*, which generally considers wedding gifts as payment of dower. Such a custom does not allow women to raise the argument that their dower has not been paid.<sup>210</sup> The *nikahnama* also contains a clause (no. 15) that asks the parties whether any portion of the dower was paid at the time of marriage. It is under this clause where the marriage register inserts an amount that is equivalent to the market price of any gold jewellery that the groom may have given to the bride as a wedding present, which then will be deducted from the total agreed dower amount to be paid to the wife. Often, the wives are completely unaware of such arrangements and there is not much scope for them to negotiate the *usool* amount based on the market price of the actual gold jewellery received as wedding gifts.

### Recommendations on Dower

#### 1. The payment of the dower should be informed by its market value at the time of payment

The stipulation of the dower in the *nikahnama* should take into account the cost of living and inflation at the time of payment. Experts also suggest that the depreciation of the dower could be addressed by expressing the dower in terms of movable assets such as gold or immovables such as land.<sup>211</sup> This option could be utilized under Section 16 of the existing *nikahnama*, which provides the option of giving property in lieu of the whole or any portion of the dower. This clause remains under-utilized and could be a response to the current state of dower depreciation.<sup>212</sup> In a similar vein, to counter the practice of misusing the *usool*, where jewellery is given as payment in lieu of dower, this must be specifically mentioned in the *nikahnama*, including specific descriptions and market price for each ounce.

#### 2. Detail specifications on the mode and timing of dower payment

To address the common occurrence of non payment of the dower, the *nikahnama* should include specifications on the mode and timing of payment, ensuring that it is honoured.

### Maintenance

According to the traditional rules of Muslim law, maintenance to the wife is given only for a period of 90 days

after the divorce is effective (i.e., the period of gestation, otherwise called *iddat*, or if the wife was pregnant at the

208 Pearl & Menski (n 179) 110.

209 Ibid.

210 Ibid.

211 BLAST, 'Policy Brief: Women's Economic Rights after Separation or Divorce' <<https://www.blast.org.bd/content/publications/policy-brief-WR.pdf>> accessed September 30, 2024.

212 UNDP (n 209).

time of divorce, until the birth of the child).<sup>213</sup> Under Muslim personal law, ‘a Muslim man has a unilateral right to divorce, whereas women’s right to divorce is conditional’.<sup>214</sup> However, there appears to be ample and respectable Islamic authority for the proposition that, under Muslim law, the divorcing husband is bound to provide maintenance for his divorced wife until death or remarriage.<sup>215</sup> With the almost unfettered right of a Muslim husband to pronounce divorce with or without fault, and with no recognition of the concept of marital property, a divorced Muslim wife with or without children can become destitute. In classical Muslim law text, strong support can be found in favour of this concept of post-divorce maintenance, originally termed as *mata’a*.<sup>216</sup> In a leading judgment by the HCD, *Hefzur Rahman vs Shamsun Nahar Begum*, 47 DLR (1995) 74, the court argued, by way of interpreting a key verse of the Quran that enjoins a Muslim man to give *mata’a* to his divorced wife, that the former husband is liable to pay maintenance to his divorced wife until she remarries.<sup>217</sup> The HCD also cites examples of a number of Muslim countries where *mata’a* is allowed as post-divorce maintenance beyond the period of *iddat* to divorced Muslim women.

Although it was hailed for its courageous interpretation, the AD of the Supreme Court reversed the decision of the HCD on appeal.<sup>218</sup> While admitting that *mata’a* is referred to in the Quran as recompense to the divorced woman, the

AD was of the view that the word *mata’a* was not rightly interpreted to be equated to ‘maintenance’ under Muslim law. The AD also stated that the legislature had the power to enact a law to provide for post-divorce maintenance, taking into account the *mata’a*.

The decision of the AD in the case was heavily criticized as a missed opportunity for interpreting the Quranic text in a progressive manner.<sup>219</sup> However, the Muslim Family Law Ordinance (MFLO), 1961 provides for an alternative mechanism for Muslim women to seek maintenance from their husbands from an arbitration council, constituted as per the provisions of the Ordinance with representatives from the local government authority.<sup>220</sup> This alternative forum, however, is only applicable in maintenance claims of married Muslim women. The MFLO is also silent on post-divorce maintenance, although the right to maintenance for 90 days (*iddat*) after divorce is mandatory.<sup>221</sup>

Further, none of the statutory laws or rules applicable to family matters in Bangladesh provides any criteria for adequate maintenance. As such, maintenance awards left to the discretion of the courts and are often inadequate. These instances have been frequent in family courts, where concepts like ‘wife’s obedience’ to the husband, borrowed from classical Muslim law texts, have been held against the claim for maintenance or dower by the wife.<sup>222</sup>

213 Pearl & Menski (n 179) 173.

214 BLAST, ‘Legislative Initiatives and Reforms in the Family Laws’ <[https://www.blast.org.bd/content/publications/Legislative\\_Initiatives\\_Family\\_Law.pdf](https://www.blast.org.bd/content/publications/Legislative_Initiatives_Family_Law.pdf)> accessed 30 June 2024. Generally a Muslim woman can dissolve the marriage only when the husband has delegated her the power to divorce in the marriage deed. There is also scope for judicial divorce under the Dissolution of Muslim Marriages Act, 1939 on certain grounds.

215 Danial Latifi, ‘Muslim Law’ in *Annual Survey of Indian Law* (New Delhi 1985) 185.

216 Although it differs in interpretation from ‘maintenance’ or *nafaqa* to be given to a wife during *iddat*, *mata’a* as mentioned in the Quran is a reasonable amount to be given to the wife upon divorce: Ayesha Shahid, ‘Post-Divorce Maintenance for Muslim Women in Pakistan and Bangladesh: A Comparative Perspective’ (2013) 27(2) *International Journal of Law, Policy and the Family* 215.

217 Verse 241.

218 Md. Mahiuddin Khalid and Ridwanul Hoque, ‘Right to Post-Divorce Maintenance in Muslim Law: the Shamsun Nahar Revisited’ (1999) 4 *The Chittagong University Journal of Law* 10.

219 Serajuddin, *Muslim Family Law* (n 20) 228-229. Rashida Mohammad Hussain Patel, *Woman Versus Man: Socio Legal Gender Inequality in Pakistan* (OUP 2003) 26.

220 The MFLO enacted during the Pakistan period and inherited later by Bangladesh, is considered to be the most significant legislative reform brought to Muslim law in the South Asian region. In fact, since 1961, no other significant statutory reform had taken place in Bangladesh in the area of Muslim family law. Also see: Section 9, the Muslim Law Ordinance, 1961.

221 See for instance Nahid Ferdousi, ‘Protection of Wife’s Right to Maintenance in Bangladesh: An Overview’ (2021) 9(1) *Malaysian Journal of Shariyah and Law* 173.

222 The concept of obedience came from a patriarchal classical interpretation of the following verse from the Quran ‘Therefore/so the righteous women are devoutly obedient (to the husband), and guard in (the husband’s) absence what Allah would have them guard (4:34).’ Also see: Human Rights Watch (n 214).

## Recommendations on Maintenance

### 1. Enact a statute for post-divorce maintenance

Legislation incorporating the details of payment of post-divorce maintenance should be introduced to prevent Muslim women from experiencing destitution through the arbitrary exercise of divorce by husbands.

### 2. Establish detailed criteria for awarding maintenance

It is to be noted that although the award of maintenance is within the jurisdiction of the family courts, there is no uniform criteria as to the amount to be paid. Therefore, amounts awarded tend to be inadequate,<sup>223</sup> and oppressive and unjust norms, such as wife disobedience, sometimes are put forward to defeat her maintenance claims.<sup>224</sup> It is therefore important that the Family Courts Act is amended to include a detailed criteria for awarding maintenance, the amount and mode of payment.<sup>225</sup>

### 3. Amend maintenance provision in section 9 of the Muslim Family Laws Rules

In Bangladesh, both the family courts and the Arbitration Council can award maintenance under the MFLO. The option for *nikahnama* can also be utilized to secure maintenance by adding special conditions (clause 17) and submitting particulars of any document drawn up regarding dower and maintenance (clause 20). These clauses can be utilized to specify an amount of maintenance, taking into account the inflation rate, and the time and mode of payment, during the marriage contract.

The criteria for determining the adequacy of a maintenance award should be adopted for adjudicating claims before Arbitration Councils. This can be incorporated by way of an amendment to the Muslim Family Laws Rules (rules corresponding to the MFLO). The maintenance provision in Section 9 of the MFLO should also extend to post-divorce maintenance and maintenance for children along with the wife.

## 5.4.5. Dissolution of Marriage

Under uncodified, traditional rules of Muslim law, a Muslim marriage may be dissolved by the death of either party or by an act of the parties.<sup>226</sup> The power of the husband to divorce his wife is called '*talaq*' and is commonly described as an absolute power available exclusively to the husband, although it is possible for the husband to delegate the power to pronounce *talaq* to some other person or even to his wife.<sup>227</sup> The wife then

uses the so-called 'delegated *talaq*', or '*talaq-i-tawfid*,' to free herself from the marital bond.<sup>228</sup> Typically, in the marriage deed, or *nikahnama*, there is a clause where the husband is asked whether he wishes to delegate his power of *talaq* to the wife and, if so, on what conditions. Although generally in Bangladesh this power is delegated to the wife, studies show that it is not unanimous and that there are instances where such delegated

223 Taslima Monsoor, 'Maintenance to Muslim Wives: the Legal Connotations' (1998) IX (1) Dhaka University Studies 63-86.

224 See, M. Afzal Wani, 'Maintenance of Women and Children under Muslim Law: Legislative Trends in Muslim Countries' (2003) 45 (3/4) Journal of the Indian Law Institute 409.

225 See BLAST, *Policy Brief* (n 218) giving examples of such maintenance criteria.

226 Ibid 118.

227 Ibid 120. And see Abdullahi A. An-Na'im (eds), *Islamic Family Law in a Changing World: A Global Resource Book* (Zed Books 2002) 280.

228 Lucy Carroll, 'Talaq-i-Tafwid and Stipulations in a Muslim Marriage Contract: Important Means of Protecting the Position of the South Asian Wife' (1982) 16 (2) Modern Asian Studies 277.

power to divorce is denied in the *nikahnama*.<sup>229</sup> Other than *talaq-i-tawfid*, there is also an option for mutual divorce through *khula* and *mubara'at*.<sup>230</sup> However, both these forms of dissolution require the consent of both husband and wife. *Khula* (where the first offer comes from the wife) has to be in exchange of consideration from the wife.<sup>231</sup> However, reports suggest that *khula* has 'frequently been abused by husbands who demand very large sums in return for consenting to divorce the wife, rather than giving *talaq*, which would give rise to the wife's entitlements to dower and maintenance.'<sup>232</sup>

In cases where there is no delegated power of divorce given to a wife, the only alternative for the wife would be to seek a judicial divorce. Traditional Islamic law principles allow judicial divorce for women, but only on limited grounds.<sup>233</sup> This is in contrast to the Dissolution of Muslim Marriages Act of 1939, under which Muslim women possess wider grounds to seek divorce in a court of law. These grounds include situations such as when the husband: is missing for a period of four years; has neglected or failed to provide maintenance to the wife for a period of two years; has contracted a polygamous marriage; is sentenced to imprisonment for a period of seven years or more; has failed to perform, without reasonable cause, his marital obligations for a period of three years; was impotent at the time of the marriage and continues to be so; has been insane for a period of two years; is suffering from leprosy or a virulent venereal disease; or treats his wife with cruelty.<sup>234</sup> However,

seeking judicial divorce for a woman in Bangladesh can be very cumbersome, in light of the limited access to courts, the cost of litigation and the lengthy judicial process.<sup>235</sup>

With regard to Hindu personal laws, the main issue that prejudices the status of women is the indissolubility of a Hindu marriage, as it is considered a sacramental union between the parties. Although this is equally applicable to both men and women, it causes greater suffering for women, as Hindu men are allowed polygamous marriage while polyandry for Hindu women is prohibited. Though there is no option for divorce in Bangladesh for Hindus, legal separation and maintenance is allowed under the reform statute enacted during the British period, the Hindu Married Women's Right to Separate Residence and Maintenance Act, 1946. On proof of certain grounds described in the Act, a Hindu woman is entitled to separate residence and maintenance.<sup>236</sup> However, the Act also provides that a Hindu woman shall be disentitled to her right to maintenance and separate residence if she loses her 'chastity' or converts to any other religion.<sup>237</sup> This disqualification is not applicable to men and is therefore discriminatory.

The applicable law for Christians is the Divorce Act 1869, Section 10 of which provides that a husband can divorce his wife on the basis of adultery. Wives, on the other hand, must prove adultery *and* one of several other acts, including: conversion to another religion, bigamy, incest, rape, sodomy, bestiality, desertion for

229 Sometimes unconditionally, but mostly with conditions. Some of the common conditions would be non-payment of maintenance and contracting polygamous marriage. Also see An-Na'im (n 234) 204.

230 The difference between a *khula* divorce and a *mubara'at* divorce is that in *khula* the wife desires the divorce and initiates it, while in *mubara'at* both spouses desire the separation.

231 Pearl & Menski (n 179) 128.

232 An-Na'im (n 234) 284.

233 In classical *Hanafi* law, the only ground on which the woman was permitted to obtain a judicial termination of her marriage was the incapacity of her husband to consummate.

234 See Section 2, the Act of 1939.

235 A number of studies have documented hardships for women attempting to access formal justice systems. See for instance, UNDP (n 209); Atia Nazneen, 'Women's Right to Access to Justice: The Role of Public Interest Litigation in Bangladesh' (2021) 21(2) Australian Journal of Asian Law 99; Lena Hasle, 'Too Poor for Rights? Access to Justice for Poor Women in Bangladesh' (2003) 29 The Bangladesh Development Studies, 99.

236 The grounds are as follows: '(1) If he is suffering from any loathsome disease not contracted from her; (2) if he is guilty of such cruelty towards her as renders it unsafe or undesirable for her to live with him; (3) if he is guilty of desertion, that is to say, of abandoning her without her consent or against her wish; (4) if he marries again; (5) if he ceases to be a Hindu by conversion to another religion; (6) if he keeps a concubine in the house or habitually resides with a concubine; and (7) for any other justifiable cause'.

237 Section 2.

at least two years, or cruelty.<sup>238</sup> According to a report by Human Rights Watch (HRW), it was emphasised that ‘because the grounds for divorce under Christian law are so narrow, it often requires husbands and wives to trade accusations of adultery, including false claims in order to divorce through courts. This causes humiliation, particularly for women in conservative Bangladeshi society.’<sup>239</sup>

Section 39 of the Divorce Act provides: “Whenever the Court pronounces a decree of dissolution of marriage or judicial separation for adultery of the wife, if it is made to appear to the Court that the wife is entitled to any property, the Court may, if it thinks fit, order such settlement as it thinks reasonable to be made of such property or any part thereof, for the benefit

of the husband, or of the children of the marriage, or of both.” This is discriminatory towards women, as no such provision exists for men who commit adultery.<sup>240</sup>

Furthermore, the Succession Act of 1925, which is the inheritance law applicable to Christians in Bangladesh, provides for the distribution of property of an intestate (i.e., a deceased person who leaves no will) where there are no lineal descendants and provides that “if the intestate’s father is living, he shall succeed to the property” (Section 42). It is only if the intestate’s father is deceased, that a mother and siblings of both sexes can succeed to the property (Sections 43-46). Because Section 42 excludes a mother from consideration as a successor of property of her child, it should be amended to read “father and mother.”<sup>241</sup>

### Recommendations on Dissolution of Marriage

#### 1. Reform the delegated talaq as unconditional at all times

*Talaq-i-tawfeez*, or delegated talaq, could be used to neutralize the husband’s unfettered power of divorce in Muslim marriages. Using the *nikahnama* as a tool, clause 18 of which asks whether the delegated talaq is unconditional should be rephrased as an unconditional question as there is no ban in Islamic law on giving an unconditional delegated talaq to the wife during marriage. It is only when the right of delegated divorce is given unconditionally that the rights of the husband and wife will become equal.

#### 2. Reform and suggest a standard gender neutral *nikahnama*

Clause 17 of the *nikahnama* provides parties with an option to insert a ‘description of special conditions, if there are any.’ As Muslim marriage is a civil contract, inserting certain conditions in the contract is generally considered to be a valid practice by all schools of Muslim law, provided a stipulation is not forbidden.<sup>242</sup> Allowing stipulations in marriage contracts generally favours women, as it is possible for a Muslim wife to include conditions that would have the effect of reducing inequality in the marriage.<sup>243</sup> Therefore, this clause, among other conditions, can insert grounds on which the wife will be able to divorce the husband at any time.

<sup>238</sup> Human Rights Watch (n 214).

<sup>239</sup> Ibid.

<sup>240</sup> Faustina Pereira, ‘Civil Laws Governing Christian in Bangladesh: A Proposal for Reform’ in Faustina Pereira and others (eds) *Revisiting Personal Laws in Bangladesh: Proposals for Reform* (Brill 2019) 44.

<sup>241</sup> Ibid 45; Section 42, the Succession Act, 1925.

<sup>242</sup> Nasir, *The Islamic Law* (n 180).

<sup>243</sup> Shahnaz Huda, ‘Protection of Women in the Marriage Contract: An Exploration’ (2001) 15 (1 & 2) *Bangladesh Journal of Law* 71, 65-83.

Similarly, clause 19 asks whether any restrictions have been imposed on the husband's right to *talaq*. This provision allows women to provide specific conditions on which the wife can limit the unfettered right of divorce exercised by the husband. However, as evidence suggests, in Bangladesh, due to lack of awareness regarding the stipulations in the *nikahnama* and lesser bargaining power on the bride's side, the conditions given are seldom utilized or negotiated during marriage.<sup>244</sup> A recent study on the subject showed that the majority of the *nikahnama* examined for the study had answered in the negative in response to the stipulation in clause 19.<sup>245</sup>

In this context, by way of reform, the Muslim Marriages and Divorces (Registration) Rules, 1974 may prescribe a new standardized *nikahnama* that is more gender neutral. At the same time, it should contain a non-exhaustive list of examples of stipulations that can help both parties.

### 3. **Enact new legislation for Hindu couples for mutual or judicial divorce**

In the context of the Hindu community, the lack of any form of dissolution of marriage is the biggest cause of suffering for Hindu women. It is necessary to allow some form of mutual or judicial divorce for Hindu couples. In a proposed draft of a revised Hindu Marriage Act in 2006, the Bangladesh Law Commission recommended the inclusion of the right to dissolution of marriage on certain grounds.<sup>246</sup>

By way of comparison, Section 13 of the Hindu Marriage Act, 1955 of India provides that either party to the marriage may file a petition to the court to obtain a decree of divorce on certain grounds provided for in the Act. By way of an amendment in 1976, the 1955 Act already provides for divorce by mutual consent. Although the introduction of the concept of dissolubility was rigorously opposed in India, proponents pointed out that 'not only has such dissolution been practised amongst the lower classes of Hindu society, but...the religious texts themselves allow divorce in certain circumstances'.<sup>247</sup> Learning from these developments, efforts should be strengthened at both policy and advocacy levels to introduce similar legislative reforms to provide for the dissolution of marriage.

### 4. **Enforce mandatory Hindu marriage registration by amending the Hindu Marriage Registration Act**

The Hindu Marriage Registration Act, 2012 should be amended to include the mandatory registration of Hindu marriages. Registration of marriages would provide greater certainty to the Hindu wife especially when the husband at any point denies the marriage.

### 5. **Amend the Divorce Act to be more gender equal for the Christian community**

With respect to the Christian community, existing discrimination between men and women in Section 10 of the Divorce Act, 1869 with respect to the grounds for divorce needs to be replaced by broader, gender-equal grounds. At the same time, Section 39 should be replaced or amended to include a provision for settlement of property to protect the rights of the children and parties.<sup>248</sup>

---

244 Ibid.

245 UNDP (n 209).

246 Huda, *Combating Gender Injustice* (n 44) 131.

247 Ibid 112.

248 Faustina Pereira (n 247) 44.

#### 5.4.6. Polygamy

Muslim traditional laws allow polygamy for only men, creating a key distinction between women and men in marital relations.<sup>249</sup> There is increasing consensus under international human rights law that the practice of polygamy by men violates a woman's right to be free from all forms of discrimination.<sup>250</sup> For a Muslim woman, although she can contract a subsequent marriage after divorce, polyandry is absolutely prohibited.<sup>251</sup>

In Bangladesh, the Muslim law of polygamy is regulated by Section 6 of the MFLO, which introduced certain procedural restrictions in exercising polygamy. Under the law, a man seeking to marry another wife or wives must seek permission from existing wives or wife, as well as from an Arbitration Council. The Council comprises the chairperson of the local government body where he resides and representatives of the family of the husband and the wife or wives. The husband's application for such permission must state the reasons for the marriage and that the permission of the existing wife or wives has been obtained. If a man contracts a marriage without such permission, he will be liable to pay the entire amount of dower due to the existing wife or wives and may also be subjected to imprisonment, with a fine. Thus, the Ordinance does not prohibit polygamous marriages, but merely imposes some procedural restrictions on its unbridled exercise.<sup>252</sup> It is the view of some experts that such restrictions have

acted as a deterrent, significantly curtailing the practice of polygamy in Bangladesh.<sup>253</sup>

However, the necessity of obtaining the permission of the Arbitration Council and implicitly, the consent of the existing wife or wives has, in reality, no practical importance for most women in Bangladesh.<sup>254</sup> This is because consent can be easily obtained from a wife who is financially or otherwise dependent on the husband.<sup>255</sup>

According to HRW, 'legal procedures meant to regulate and limit polygamy are poorly enforced... local bodies charged with handling polygamy applications did not discharge their functions, were poorly trained, and had little oversight (from the government). The legal restrictions under Section 6 of the MFLO on polygamy are further undermined by lax marriage registration.'<sup>256</sup>

While in several Muslim majority countries, restrictions have been put on polygamy by interpreting the relevant text of the Quran, in Tunisia polygamy has been prohibited absolutely.<sup>257</sup> In Bangladesh, a similar attempt favouring an absolute ban on polygamy through broad judicial interpretation of the Qur'anic provision was taken by the HCD in *Jesmin Sultana vs. Mohammad Elias* 17 1997 BLD 4. In this landmark judgment, the HCD, by citing 'a number of Qur'anic verses and *hadith*, affirmed that "to be able to deal justly" is a condition precedent to polygamous marriage, and the condition "justice" in this context should mean equality in love and affection

249 Although modernist Muslim scholars argue that polygamy is rather discouraged in the Quran, the fundamental source of Muslim law, as the precondition for polygamy is to treat all wives equitably in terms of love and affection, which is not humanely possible: Dr. Rabia Bhuiyan, *Gender and Tradition in Marriage and Divorce*, (Dhaka, 2010) p.92. Jamal J. Nasir however rightly notes, 'it is now widely held, because the condition of justice and fairness in all things is too difficult to fulfill, that men should lead monogamous lives, unless the circumstances of any particular Muslim society necessitate otherwise': Jamal J. Nasir, *The Status of Women under Islamic Law and Modern Islamic Legislation*, (Leiden Boston 2009) 26. Also see HRW Report (n 214).

250 HRW Report (n 214).

251 For details on polygamy under Islamic law, see Md. Khurshid Alam and Mohammad Ekramul Hoque 'An Overview of Modern Statutes on Polygamy under Muslim Law' <[http://journal.library.du.ac.bd/index.php?journal=DUJ&page=article&op=view-File&path\[\]=1691&path\[\]=1597](http://journal.library.du.ac.bd/index.php?journal=DUJ&page=article&op=view-File&path[]=1691&path[]=1597)> accessed September 30, 2024.

252 Md. Khurshid Alam and Muhammad Ekramul Haque, 'An Overview of Modern Statutes on Polygamy under Muslim Law' (2012) 23(2) Dhaka University Law Journal 43.

253 Serajuddin, *Muslim Family Law* (n 20) 194.

254 Huda, *Combating Gender Injustice* (n 44) 77.

255 Ibid.

256 Human Rights Watch (n 214) 39.

257 The Code of Personal Status, 1956.

which cannot be fulfilled because of the “weakness of human nature” and “modern social and economic conditions.”<sup>258</sup> The judgment, however, faced outrage from Islamic groups and the AD eventually overruled the decision on appeal, criticizing the HCD for “indulging” in the discussion on polygamy, which was “unnecessary” and was not an issue required to be decided in the context of the pleading of the parties.<sup>259</sup>

Under uncodified traditional principles, Hindu men enjoy unlimited polygamy and no statutory restriction is in

place to restrict the practice.<sup>260</sup> On the other hand, the practice of polyandry is not permitted for Hindu women and there is also no legal provision for dissolution of a Hindu marriage. The practical consequence of this is that, in Bangladesh, a Hindu man may potentially abandon or desert his wife/wives and marry several times, while the wife is restricted to marrying one man even though she may be abused, neglected or abandoned by the husband.<sup>261</sup>

### Recommendations on Polygamy

#### 1. Enforce existing legal procedures against polygamy

Existing legal procedures under the MFLO that are meant to regulate and limit polygamy are poorly enforced.<sup>262</sup> Local bodies charged with handling polygamy applications do not always discharge their functions efficiently and also lack proper training.<sup>263</sup> Legal protections against polygamy are also undermined by lax marriage registration.<sup>264</sup> In addition to making policy level changes to safeguard against these procedural gaps, Section 6 of the MFLO should provide for specific grounds to guide the Arbitration Council’s granting of permission for such marriages.<sup>265</sup>

#### 2. Incorporate the prohibition of polygamy for Hindu men while enacting the Hindu Family Code

A number of draft Hindu family law codes (proposed by different rights groups) have proposed the prohibition against polygamy or limited grounds for allowing polygamous marriages.<sup>266</sup> These proposals should be taken into consideration in any reform efforts related to Hindu marriage and divorce.

## 5.5 Family Laws

### 5.5.1. Muslim Law of Inheritance

Noticeable progress toward gender equal provisions in family law has been made in a number of Muslim

countries on issues such as marriage and divorce. However, the issue of reforming inheritance laws

258 Nowrin Tamanna, ‘Recognition of ‘Difference’ in *Shari’a*: A Feminist Scrutiny Through the Lens of Substantive Equality’ (2013) 35(3) Journal of Social Welfare and Family Law 329, 343.

259 *Md. Elias vs. Jesmin Sultana* 19 BLD (AD) (1999) 122.

260 Werner F. Menski, ‘Marriage: Inability to Handle Tradition, or Skill in Abusing it?’ in Werner F. Menski (ed), *Modern Family Law* (Routledge 2001) 46.

261 Huda, *Combating Gender Injustice* (n 44) 95.

262 Human Rights Watch (n 214).

263 *Ibid.*

264 *Ibid.*

265 Similar recommendation was also proposed by the Law Commission- Bangladesh in its Report No. 120; <<http://www.lc.gov.bd/reports/120-Final%20Report%20of%20Muslim%20Law-05%20sir%20.pdf>> accessed 02 August 2022.

266 Huda, *Combating Gender Injustice* (n 44).

remains a challenge, although change is possible and is taking place in some jurisdictions.<sup>267</sup>

Although Muslim law principles expressly recognize and specify shares of female heirs, in most situations, they are entitled half the share of males.<sup>268</sup> Particularly when the deceased Muslim had no son and only daughter(s), a substantial share of the property goes out of the immediate family to the next of kin of the deceased (the brother, brother's family, etc.). This unequal division of property, coupled with the social practice of having to pay dowries for the marriage of daughters, not only has an impact on women's economic position in society but also contributes to the prejudicial treatment of the girl child.<sup>269</sup>

According to the HRW study mentioned above, 'even to the limited degree women can inherit, there is social pressure to forego this right. Some married women decline their inheritance in deference to brothers, who they hope will support them in the event of marital breakdown.'<sup>270</sup>

However, it is also important to note that in Bangladesh women's right to inherit even half a brother's share is 'more formal than real'.<sup>271</sup> In practice, patriarchal social and cultural norms, together with insufficient access to resources and education, do not allow women to retain control over their share of the family property. 'Many women waive their right to ancestral property in favour of their brothers, in a kind of bargain in which they retain the right to visit the natal home, from which they seek support and protection in time of crisis'.<sup>272</sup>

Under Section 4 of the MFLO, which was adopted during the period of Pakistan colonization, the children of the predeceased son or daughter get the share of their deceased parent from their grandfather, which they were not previously entitled to under Sharia law.<sup>273</sup> As the Section implies, even when there is only a daughter and no son of the predeceased father, the daughter receives the entire share. However, according to general principles of inheritance, if the father dies leaving only daughter(s) and no son, the daughter does not receive the whole property, part of which would then be shared among collaterals, i.e., uncles.<sup>274</sup> Such a situation is discriminatory and also unfairly puts pressure on a daughter when the decedent's property opens to succession.

In its Report No. 113, the Bangladesh Law Commission recommended that a daughter inherit the whole of the property without it being passed on to the collaterals, even when there is no son of the decedent.<sup>275</sup> Although the inherent discrimination regarding a daughter's share was not removed, awareness was raised regarding this issue.

A similar, gender-neutral inheritance reform was also introduced in Indonesia by a Supreme Court 1994 decision which held that a male or a female child of the decedent could exclude collaterals.<sup>276</sup> Tunisian legislation of 1959 also enabled a daughter or a son's daughter to exclude collateral male agnates from inheritance.<sup>277</sup> An amendment in 1963 to the Code of Personal Status of Iraq similarly enabled female descendants of the decedent to exclude any collateral male agnate.<sup>278</sup>

---

267 Abdur Rab and Hasan Mahmud, 'The Quranic Inheritance Law: The Case for a Gender-Neutral Understanding' (2023) <<https://hasanmahmud.com/index.php/articles/islamic-english/109-inheritance-law>> accessed September 30, 2024.

268 Nasir, *The Status of Women* (n 243) 19. And see: Pearl & Menski (n 179) 102.

269 UNDP (n 209).

270 Human Rights Watch (n 214).

271 An-Na'im (n 234) 211.

272 Ibid.

273 Prior to independence in 1971, Bangladesh was part of Pakistan formerly known as the 'East-Pakistan'.

274 Section 4, MFLO does not stipulate that when there is only a daughter of the predeceased father the share will be passed on to some other collaterals, implying thereby a provision that is equal for both daughter and son of predeceased father. Also see Report No. 113 of the Law Commission-Bangladesh, 'Recommendation of the Law Commission for Possible Increase of Daughter's Share in the Succession of Parents' Property in Absence of Son' <<http://www.lc.gov.bd/reports/113.doc>> accessed September 30, 2024.

275 Ibid.

276 Rab and Mahmud (n 274).

277 Personal Status Law of 1959.

278 Law Commission Report 113 (n 281).

## Recommendations on Muslim Law of Inheritance

### 1. Advocacy for the implementation of the extended right of inheritance to the daughters

Having considered these developments in other jurisdictions and progressive interpretations of Islamic law, it is noted that the report of the Law Commission recommended adding, in Section 4 of the MFLO, an extended right of inheritance to a daughter where she does not have any brother.

To secure Muslim women's entitlement to heritable properties, it is equally important to take effective measures at the policy and advocacy levels to provide awareness and redress against deprivation by women from family property.



### 5.5.2. Law of Succession of Other Religious Groups

Under traditional religious law, Hindu widows and daughters are excluded from inheriting their deceased husband and father's property. When there is no male issue, the daughter's right to inheritance is solely dependent on her having a son or being capable of giving birth to a son.<sup>279</sup>

However, with the enactment of the Hindu Women's Right to Property Act, 1937, a widow is entitled to inherit equally as a son.<sup>280</sup>

Moreover, in all circumstances when a Hindu woman inherits, her legal rights are limited, which means she can only enjoy the property during her lifetime, without the right to dispose of or alienate the property.<sup>281</sup> Having such limited interest over the inherited property also

means that, after her death, the property will not devolve upon her heirs but rather to the heirs of the original owner.<sup>282</sup> In India, which is a Hindu majority country, the Hindu Succession Act of 1956 codified the law of succession and ensured gender-equal provisions. The Act gave women the right to hold property as absolute owners, abolishing the limited estates of females. It also gave daughters and sons the equal status of co-heirs in their father's property and, significantly, made daughters' inheritance share equal to that of sons.<sup>283</sup> Similar suggestions have also been proposed for the context of Bangladesh, with efforts to codify the Hindu law of succession along the same lines.<sup>284</sup> However, similar to Islamic law reform discourse, there is a risk of agitating Hindu religious sentiments.

#### Recommendations on the Law of Succession of Other Religious Groups

##### 1. Develop consensus on equal status for Hindu women through national social dialogue

In the absence of an alternative option, such as a progressive Special Marriage Act, efforts should be directed towards achieving consensus among the Hindu community on reversing the discrimination faced by Hindu women under the traditional religious rules. The Government should focus on increasing national level dialogue between policy makers and Hindu community leaders, as well as rights groups, advocating for the equal status of Hindu women in family matters to gradually achieve this consensus.

##### 2. Amend section 42 of the Succession Act 1925 for equal succession of inheritance for Christians

In terms of the inheritance law applicable to Christians in Bangladesh, Section 42 of the Succession Act of 1925 should be amended to make both the father and mother of an intestate succeed equally to the property without excluding the other. The phenomenon of depriving women from family property due to customs or social norms is true for women belonging to all communities. Hence, efforts to secure women's equal access and rights to family properties is crucial, together with the proposals for law reform.

### 5.5.3. Child Custody, Guardianship and Adoption

The traditional religious principles of Muslim law related to guardianship of children are discriminatory: Islamic jurists agree that the father is the natural or legal guardian of his young children and their properties.

However, under Islamic law, a distinction is made between guardianship and custody. Physical custody, or *hizanat*, is generally considered to be a priority right of the mother over her young children, while guardianship

<sup>279</sup> Huda, *Combating Gender Injustice* (n 44) 96.

<sup>280</sup> Ibid.

<sup>281</sup> Under section 3(3) of the Hindu Women's Right to Property Act, 1937.

<sup>282</sup> Ibid 95.

<sup>283</sup> Maitrayee Mukhopadhyay, *Legally Disposed – Gender, Identity and Process of Law* (Kolkata 1998) 98.

<sup>284</sup> Huda, *Combating Gender Injustice* (n 44).

of both person and property remains with the father.<sup>285</sup> In terms of *hizanat*, as per the classical *Hanafi* Muslim law text, the mother (or in her absence, other female custodians) is entrusted with the custody of her son until he attains seven years of age, and of her daughter until she attains puberty.<sup>286</sup> This tradition is generally referred to as the *age-sex rule*, which in itself is not only discriminatory, but also goes against the best interest of the child as enshrined in the CRC.<sup>287</sup> The CRC Committee, in its concluding observations on certain Muslim States' country reports, disapproved of laws 'under which custody is determined by the child's age rather than the child's best interests' and considered such laws as arbitrary and discriminatory towards women.<sup>288</sup>

The Guardians and Wards Act of 1890 (GWA) governs guardianship and custody disputes in Bangladesh. Although the GWA is a secular statute and applies to people of all religious faiths, the applicable law based for guardianship claims are the personal laws of the parties concerned.<sup>289</sup> While Section 7 of the GWA provides that to determine an application for guardianship under the law, the welfare of the child should be the primary consideration, Section 17 gives primacy to the personal law of the concerned minor in determining what is to be considered as the welfare of the child. Thus, the courts in Bangladesh have often come across situations where there is a conflict between traditional religious rules and principles governing the welfare of the child.<sup>290</sup>

Although there were a number of progressive decisions from the Supreme Court of Bangladesh stating that in case of conflict, the welfare principle should be the paramount consideration, studies show that there is still a consistent pattern of decisions in which the court has relied on the orthodox and discriminatory age-sex rule from classical texts in deciding custody or guardianship of the minor.<sup>291</sup> There is also evidence to show that even courts which tend to be progressive towards women's rights commonly lean towards ruling that the father is the natural or legal guardian of the minor.<sup>292</sup>

Further, the GWA itself preserves this superior authority of the father in Section 19, which provides that the court cannot appoint or declare anyone as guardian of a minor under the Act if the father of that minor is alive and is not, in the opinion of the court, unfit to be guardian.

As to guardianship of children under traditional Hindu law, the father is the natural guardian of the minor's person and property. The father also has the power to exclude the mother by appointing another person by a testamentary disposition or will, effectively superseding the mother's right over guardianship.<sup>293</sup> The law is therefore clearly discriminatory towards women, giving complete authority to the father to act as the guardian of the minor, even to the extent of taking away the mother's right upon his death by means of a Will.<sup>294</sup>

---

285 Mahdi Zahraa and Normi A Malek, 'The Concept of Custody in Islamic Law' (1998) 13(2) Arab Law Quarterly 155.

286 Ibid.

287 Article 3 para 1, the Convention 'gives the child the right to have his or her best interests assessed and taken into account as a primary consideration in all actions or decisions that concern him or her, both in the public and private sphere'.

288 Kamran Hashemi, 'Religious Legal Traditions, Muslim States and the Convention on the Rights of the Child: An Essay on the Relevant UN Documentation' (2007) 29(1) Human Rights Quarterly 194, 114.

289 By virtue of the Muslim Personal Law (Shariat) Application Act, 1937; it is also interesting to note that the GWA contains substantive provisions as well, so the courts generally have to consider both personal laws and the provisions of GWA.

290 Family Courts as established under the Family Courts Ordinance, 1985 exercises jurisdiction for deciding applications under the GWA. Also see: *Aminul Bor Chowdhury v Nargis Sultan* [1999] 19 BLD AD 213; *Anika Ali v Rezwanul Ahsan* [2012] 17 MLR (AD) 49; *Ayesha Khanam and others v Major Sabbir Ahmed and others* [1994] 46 DLR (HCD) 399; For detailed discussion on the cases see Yasmin, 'Judicial Trends' (n 21).

291 For instance see *Aminul Bor Chowdhury v Nargis Sultan* [1999] 19 BLD AD 213; *Anika Ali v Rezwanul Ahsan* [2012] 17 MLR (AD) 49; *Ayesha Khanam and others v Major Sabbir Ahmed and others* [1994] 46 DLR (HCD) 399.

292 Ibid.

293 Ibid 89.

294 Ibid 90.

## Recommendations on Custody, Guardianship and Adoption

### 1. Amend the GWA

Amend Section 19 of the GWA to remove discriminatory language by including ‘mother’ alongside ‘father’ as competent guardians. The Act should also provide more objective and non-discriminatory criteria for determining the welfare of the child, which should be the paramount consideration in a guardianship application under the Act. There is also ambiguity in the present Act with regards to what comprises ‘guardianship’ and ‘custody’. This needs to be addressed through clarity in definitions and concepts.

### 2. Enact comprehensive legislation for guardianship alternate to GWA

The GWA is a British law, which is secular and applicable to all, irrespective of religion. However, as discussed previously, the law is convoluted and ambiguous in its attempt to keep alive the religious rules of different communities together with modern principles of welfare or the best interests of the child. This creates difficulty for the courts when adjudicating cases which involve the application of the Act. In accordance with the progressive trend of the higher judiciary upholding the welfare of the child as the primary consideration in a custody dispute, new, secular legislation should replace the existing GWA.

### 3. Review laws regarding adoption of children

Concerning adoption, the Bangladesh Law Commission recommended in its report No.120 of 2013 to enact legislation allowing Muslim parties to adopt children and explained in detail the rationale for such a proposal.<sup>295</sup> The Law Commission relied primarily on interpretations of the Quranic verses that are relevant to the issue of adoption and on the fundamental tenets of Islam that enjoin kindness towards orphaned children, concluding that the Quran does not prohibit adoption.<sup>296</sup> The Commission also cited laws from other Islamic countries that allowed adoption through statutory reforms to support its contention.<sup>297</sup> The Government could therefore initiate further policy dialogue with legal and Islamic scholars to assess the viability of a statutory provision allowing adoption for Muslims.



<sup>295</sup> Law Commission Report 120 of 2013.

<sup>296</sup> Verse 33: 4/5.

<sup>297</sup> For instance, the report referred to the Turkish Civil Code 2001 that allows adoption of children based on certain conditions, *i.e.* consent of the child’s parents, age and marital status of the adopter, etc. Similar statutes allowing adoption and inheritance rights of the adopted child from countries like Indonesia, Tunisia and Algeria were referred to in the Report. See pp. 15-16 of the Report No. 120.



#### 5.5.4. Law of Restitution of Conjugal Rights

Restitution of conjugal rights refers to restoring the marital life between husband and wife after a party ceases to cohabit with the other.<sup>298</sup> Under Section 5 of the Family Courts Ordinance, 1985, family courts are statutorily empowered to adjudicate on suits for restitution of conjugal rights.<sup>299</sup> This remedy was developed by courts in British India following the principles of Christian ecclesiastical law, and has been incorporated into personal laws for more than a century.<sup>300</sup> Before that, no comparable remedy was available in either Muslim or Hindu religious laws.<sup>301</sup> Though the right to enforce it is open to both spouses, it is perceived as mostly targeting women, and is often abused by a husband to counter suits for dower and maintenance instituted by the wife.<sup>302</sup>

Ordering forcible restitution against an unwilling spouse goes against the rights to liberty and equality. The HCD declared in five decisions that the law on restitution of conjugal rights violates the provisions of the Constitution. These are: *Nelly Zaman v Giasuddin Khan*, 43 DLR (1991) 543; *Hosne Ara Begum v Alhaj Md. Rezaul Karim & others*, 43 DLR (1991) 543; *Sharmin Hossain alias Rupa v Mizanur Rahman*, 2 BLC (1997) 509; *Khodeja Begum and other v Md. Sadeq Sarker*, 50 DLR (1991) 181; and *Sherin Akther v Md Ismail* 51 DLR (1999) 512. In contrast, in two decisions, *Chan Mia (Md.) v Rupnaha*, 51 DLR (1999) 292 and *Hosna Jahan (Munna) v Md. Shahjahan (Shaju) and Other*, 51 DLR (1999) 295, the HCD declared that the law on restitution of conjugal rights is neither discriminatory nor in violation of any provision of the Constitution. The decision in *Hosna Jahan* was later affirmed by the AD. The outcome of that case therefore remains the valid position of the law on restitution of conjugal rights in Bangladesh.<sup>303</sup>

#### Recommendation on Restitution of Conjugal Rights

##### 1. Conduct a comprehensive study on court practices and experiences of enforcing the restitution of conjugal life

As enforcing the restitution of conjugal life is generally impracticable, and the decree can be violative of the fundamental rights and freedoms of any citizen, the possibility of its exclusion from the FCO should be seriously considered. However, such an option can sometimes prove to be beneficial for the woman in the marriage, or it may happen that both parties to the marriage desire such a decree. Hence, a proposal for outright exclusion of this option from the family court's jurisdiction should be backed by a comprehensive study of court practices and the experiences of litigants seeking such claims under the FCO.

298 Md. Khurshid Alam, 'Legal Aspects of Restitution of Conjugal Rights' (1998) 9(1) *The Dhaka University Studies* 135.

299 Section 5, *The Family Court Ordinance*, 1985.

300 See Shahbaz Ahmad Cheema, 'Islamization of Restitution of Conjugal Rights by Federal Shariat Court of Pakistan: A Critique' *SSRN* (2019) <SSRN: <https://ssrn.com/abstract=3329168>> accessed September 30, 2024.

301 Preet Singh, 'Restitution of Conjugal Rights: A Comparative Study' (PhD Thesis, Maharshi Dayanand University 1995) 98-99.

302 Shahnaz Huda, 'The Confusing Conundrum of the Law of Restitution of Conjugal Rights under Muslim Law in Bangladesh' (2014) 10 *Journal of Islamic States Practice in International Law* 116. Also see BLAST, 'Policy Brief: Women's Economic Rights after Separation or Divorce' <<https://www.blast.org.bd/content/publications/policy-brief-WR.pdf>> accessed September 30, 2024.

303 *Ibid.*; *Hosna Jahan vs Md Shahjahan* (1999) 4 BLC (AD) 117.



# 6

CHAPTER 6:  
CONCLUSION

The existing legal framework of Bangladesh contains several areas that discriminate against women. This analysis identifies 19 laws which must be amended or revised to eliminate discrimination. It furthermore recommends the complete repeal of the Guardians and Wards Act of 1890, and its replacement by new legislation. Additionally, the analysis highlights several reforms needed in relation to the applicable interpretations of the Muslim and Hindu personal laws and in this context, recommends the enactment of four new laws to bring Bangladesh's legal framework into line with its international and national obligations. This step would include a separate law on sexual harassment at workplaces and in educational institutions; an anti-discrimination law; a law providing for post-divorce maintenance for Muslim women and giving Hindu women the right to seek divorce; and a new legislation to replace the Guardians and Wards Act, 1890.

A concerted law reform effort is needed at the national level to address these gender discriminatory laws individually and collectively, engaging active participation from the relevant Ministries, government agencies, civil society and other relevant stakeholders. A number of such laws blatantly create discrimination between genders, which can be removed and replaced with more

gender sensitive provisions. However, there are also many areas that require thorough and comprehensive research and consultation among all concerned parties before any legal reform or advocacy strategy can be proposed. An inclusive roadmap is needed to identify effective advocacy strategies and push forward the agenda for law reform. The research therefore proposes seven social policy actions to complement those on law reform.

This analysis of discriminatory laws serves as an essential tool for formulating such advocacy strategies for law reform. Any legal reform effort should also be informed by the reality on the ground, in terms of the practical barriers to the enforcement of laws. In Bangladesh, issues like delays in investigation and disposal of cases, inefficiency and corruption of enforcing agencies, lack of legal awareness and gender sensitivity among duty bearers, and lack of political will all work against the successful implementation of laws, particularly those addressing gender issues. Weak enforcement has thus often overshadowed the existence of good laws. Gaps in the implementation of laws therefore also need to be identified and addressed concurrently with efforts to strengthen the movement for reforming gender discriminatory laws.



## Appendix I:

# LIST OF LAWS AND POLICIES ANALYSED IN THE STUDY

1. Constitution of the People's Republic of Bangladesh
2. Acid Control Act, 2002
3. Acid Prevention Act, 2002
4. Agricultural Khas Land Settlement Policy, 1997
5. Bangladesh Citizenship (Temporary Provisions) Order, 1972
6. Bangladesh Labour Act, 2006
7. Child Marriage Restraint Act, 2017
8. Children Act, 2013
9. Citizenship Act, 1951
10. Code of Criminal Procedure, 1898
11. Dissolution of Muslim Marriages Act, 1939
12. Divorce Act, 1869
13. Domestic Violence (Prevention and Protection) Act, 2010
14. Dowry Prohibition Act, 2018
15. Evidence Act, 1872
16. Family Courts Act, 2023
17. Guardians and Wards Act, 1890
18. Hindu Marriage Registration Act, 2012
19. Hindu Married Women's Right to Separate Residence and Maintenance Act, 1946
20. Hindu Widow's Remarriage Act, 1856
21. Hindu Women's Right to Property Act, 1937
22. Muslim Family Law Ordinance, 1961
23. Muslim Marriages and Divorces (Registration) Rules, 1974
24. Labour Rules, 2015
25. Muslim Personal Law (Shariat Application) Act, 1937
26. National Women's Development Policy, 2011
27. Penal Code, 1860
28. Rights and Protection of the Persons with Disabilities Act, 2013
29. Special Marriage Act, 1872
30. Transfer of Property Act, 1882
31. Trusts Act, 1882
32. Women and Children Repression Prevention Act, 2000

## Appendix 2:

# LIST OF CASES CONSULTED DURING THE STUDY

1. Abdul Jalil v Sharon Laily Begum, [1998] 50 DLR (AD) 55
2. Abul Bashar Howlader v State, [1994] 46 DLR (AD) 244
3. Anika Ali v Rezwanul Ahsan, [2012] 17 MLR (AD) 49
4. Ayesha Khanam and others v Major Sabbir Ahmed, [1994] 46 DLR 399
5. Bangladesh National Women Lawyers Association (BNWLA) v Government of Bangladesh and others, [2009] 29 BLD 415
6. BLAST and others v Bangladesh and others, (Writ Petition No. 7878 of 2014, HCD)
7. Hefzur Rahman v Shamsun Nahar Begum, [1999] 4 MLR (AD) 41
8. Md. Elias v Jesmin Sultana, [1999] 19 BLD (AD) 122
9. Mustafizur Rahman v Rina Khan, [1966] 18 DLR 509
10. N.M. Shafiqur Rahman v State, (Criminal Miscellaneous Case No. 464 of 2012, Judgment of 9.4.2015, HCD)
11. Poddar v Saha, [1985] 37 DLR 227
12. Ramesh Chandra Adhikari v Bulbuli, [2014] 66 DLR (AD) 104
13. Rezaul Karim v Mosammat Taslima Begum, [1998] 40 DLR 360

## Appendix 3:

# SUMMARY OF RECOMMENDATIONS

The following Section details the recommended constitutional, legislative and policy changes to be taken forward.

### Law to be repealed

| Law under consideration      | Action to be taken                                 |
|------------------------------|--|
| Guardians and Wards Act 1890 | Repeal the Act and replace it with new legislation |

### Laws (and policies) to be amended

| Law under consideration                                 | Action to be taken  |
|---|---|
| Penal Code, 1860  | <ul style="list-style-type: none"> <li>a. Definition of rape needs to be amended.</li> <li>b. Presumption as to consent in certain cases should be created.</li> <li>c. Scope of banning character evidence should be broadened.</li> <li>d. Rape with child brides should be criminalized.</li> <li>e. Provisions punishing sexual assault/torture need to be revised.</li> <li>f. Provision for sexual harassment needs to be incorporated in offences under Section 354 and 509.</li> <li>g. Provisions for victims/witnesses with disability should be incorporated.</li> </ul> |
| Domestic Violence (Prevention and Protection) Act, 2010 | <p>Relief has to be ensured for divorced women and women living in marriage-like relations by redefining the concept of 'family relationship'.</p> <p>Some form of criminal sanction needs to be introduced into the law.</p>   |
| The Women and Children Repression Prevention Act, 2000  | The Act should be revised to include a specific provision criminalizing death or injury that occurs as a result of domestic violence.   |
| Child Marriage Restraint Act, 2017                      | <ul style="list-style-type: none"> <li>a. Exceptional circumstances should be added to provide that a minor contracted into marriage will have the option to seek a court decree annulling her marriage within a certain period of attaining majority.</li> <li>b. In an application seeking permission for a child marriage under the special provision, obtaining full and free consent of the minor concerned needs to be specified.</li> </ul>  |
| Dowry Prohibition Act, 2018                             | <ul style="list-style-type: none"> <li>a. The definition of 'dowry' needs to be revised.</li> <li>b. The provision prescribing equal punishment to dowry givers and receivers in the Act should be reconsidered.</li> </ul>   |

| Law under consideration   | Action to be taken   |
|---|--|
| Dowry Prohibition Act, 2018   | a. The definition of 'dowry' needs to be revised.<br>b. The provision prescribing equal punishment to dowry givers and receivers in the Act should be reconsidered.  |
| Labour Act, 2006  | Maternity and child-care provisions in the Act and/or its rules need to be reconsidered to give women workers maximum benefits.  |
| Agriculture <i>Khas</i> Land Policy, 1997                                   | The Agricultural <i>Khas</i> Land Policy, 1997 needs to be amended to remove the discriminatory rule of priority created for a widow or divorced woman having an 'abled son'.  |
| Citizenship Act, 1951   | The Act should be amended to include gender-neutral provisions on passing citizenship by a married Bangladeshi woman to her foreign spouse.  |
| The Trusts Act, 1882  | The Act should be amended to remove the disqualification of married women from being trust administrators.   |
| Personal Laws   | a. Give Muslim women an unconditional delegated <i>talaq</i> during marriage.<br>b. Prescribe a new standardized <i>nikahnama</i> which can be more gender neutral as to giving Muslim women equal rights in case of dissolution of marriage.<br>c. Add stipulations in the <i>nikahnama</i> regarding every detail as to dower money so that Muslim women may not be deprived of their due payment of dower money.<br>d. Add detailed criteria as to factors in awarding maintenance to Muslim women and also some indication as to the 'adequacy' of the amount of maintenance and mode of payment in FCO, or alternatively in <i>nikahnama</i> .<br>e. Amend section 4 of the MFLO.<br>f. Consider the inclusion of non-discriminatory provisions for adoption of children under Hindu laws.<br>g. Consider the restriction of Hindu polygamous marriage. |
| Muslim Family Law Ordinance, 1961   | Section 6 should provide specific and narrow grounds authorizing the Arbitration Council to allow polygamous marriages of Muslim men.  |
| Hindu Marriage Registration Act, 2012                                       | Amend the Act to include mandatory registration of Hindu marriages.  |
| Hindu Married Women's Right to Separate Residence and Maintenance Act, 1946 | Omit degrading and discriminatory grounds such as 'losing chastity' to disentitle a woman from claiming maintenance.   |
| Hindu Widow's Remarriage Act, 1856  | Remove provision requiring women to relinquish claims to deceased husbands' property when entering into subsequent marriage.   |
| Special Marriage Act, 1872  | Repeal and enact a new law with unambiguous provisions.  |
| Divorce Act, 1869   | Amend Section 10 to provide broader gender-equal grounds for divorce to Christian couples.   |
| Succession Act, 1925  | Amend Section 42 to make both father and mother of an intestate succeed equally to the property without excluding each other among Christians.   |
| Guardians and Wards Act, 1890   | Until a new law is passed, more objective and non-discriminatory criteria for determining the welfare of the child need to be adopted, which should be the paramount consideration in a guardianship application under the existing Act.   |
| Family Courts Act, 2023   | Exclusion of the conjugal rights provision should be considered.   |

## Proposal for new laws

| Law under consideration                         | Action to be taken  |
|---|---|
| Dissolution of marriage for Hindu women         | Strengthen efforts at both at the policy and advocacy levels to introduce legislative reform, similar to India, to provide for an option for dissolution of marriage for Hindu women.   |
| Guardians and Wards Act, 1890                   | Enact new legislation to replace the Guardians and Wards Act, 1890.   |
| Sexual Harassment Prevention and Protection Act | <p>a. Sexual harassment at the workplace should be addressed by enacting separate comprehensive laws covering all sectors of work and educational institutions. Until then, the newly inserted provisions under the Labour Rules, 2015 should be aligned with the 2009 HCD Guideline and implementation ensured.</p> <p>b. Legislative or policy efforts should be undertaken to extend protections to workers in the informal sector (including domestic workers).</p> |
| Anti-discrimination Law                         | Enact legislation to protect the rights and dignity of marginalized and excluded groups.  |

## Social policy related actions

1. Take effective measures at the policy and advocacy level to provide awareness and redress against the deprivation of Muslim women from their family property.
2. Direct efforts towards achieving a consensus among the Hindu community regarding changing the suffering and discrimination of Hindu women under the traditional religious rules of succession.
3. Steps need to be taken to expand menstrual regulation facilities and develop relevant policies.
4. A comprehensive review of the applicable laws and policies is needed to address gender-based discrimination against marginalized and excluded communities.
5. Efforts need to be strengthened to create a strong advocacy movement in support of enacting an anti-discrimination law.
6. Address the backlog of cases in the courts.



# BIBLIOGRAPHY

## Books

1. Agarwala RK, *Hindu Law* (20th edn, Allahabad 2000).
2. Ameen N, *Wife Abuse in Bangladesh: An Unrecognized Offence* (University Press Limited 2005).
3. An-Na'im A A (ed), *Islamic Family Law in a Changing World: A Global Resource Book* (Zed Books 2002).
4. Mahmood T, *Asaf A.A Fayzee Outlines of Muhammadan Law* (5th edn, New Delhi 2008).
5. Menski W F (ed), *Modern Family Law* (Routledge 2001).
6. -- *Hindu Law – Beyond Tradition and Modernity* (OUP 2003).
7. Nasir J J, *The Islamic Law of Personal Status* (2<sup>nd</sup> edn, Brill 1990).
8. -- *The Status of Women under Islamic Law and Modern Islamic Legislation*, (Leiden Boston 2009).
9. Patel R M H, *Woman Versus Man: Socio Legal Gender Inequality in Pakistan* (OUP 2003).
10. Pearl D and Menski W, *Muslim Family Law* (3<sup>rd</sup> edn, Sweet & Maxwell 1998).
11. Pereira F and others (eds), *Revisiting Personal Laws in Bangladesh: Proposals for Reform* (Brill 2019).
12. Serajuddin A M, *Muslim Family Law, Secular Courts and Muslim Women of South Asia: A Study in Judicial Activism* (Oxford University Press 2011).
13. The Qur'an.
14. Tucker J E, *Women, Family and Gender in Islamic Law* (Cambridge University Press 2008).

## Journal Articles

1. Alam M K, 'Legal Aspects of Restitution of Conjugal Rights' (1998) 9(1) The Dhaka University Studies.
2. Alam M K and Hoque M E, 'An Overview of Modern Statutes on Polygamy under Muslim Law' <[http://journal.library.du.ac.bd/index.php?journal=DUL&page=article&op=viewFile&path\[\]=1691&path\[\]=1597](http://journal.library.du.ac.bd/index.php?journal=DUL&page=article&op=viewFile&path[]=1691&path[]=1597)> accessed 04 September 2023.
3. Bhuiyan R, 'Gender and Tradition in Marriage and Divorce' (2009) 15 Asian Yearbook of International Law.
4. Bilkis A and others, 'A Review of Discrimination in Employment and Workplace' (2010) 4(2) ASA University Review.
5. Carroll L, 'Talaq-i-Tafwid and Stipulations in a Muslim Marriage Contract: Important Means of Protecting the Position of the South Asian Wife' (1982) 16 (2) Modern Asian Studies.
6. Choudhury N, 'The Immodest Truth: An Evaluation of the Measures Taken to Combat Sexual Harassment in Bangladesh' (2012) 12 (1&2) Bangladesh Journal of Law.
7. Chowdhury F D, 'Dowry, Women, and Law in Bangladesh' (2010) 24 (2) International Journal of Law, Policy and the Family.
8. Chowdhury J A, 'Legal Aid and Women's Access to Justice in Bangladesh: A Drizzling in the Desert' (December 2012).
9. Dixon-Mueller R, 'Innovations in reproductive health care: menstrual regulation policies and programs in Bangladesh', (1988) 19(3) Studies in Family Planning.
10. Ferdousi N, 'Protection of Wife's Right to Maintenance in Bangladesh: An Overview', Malaysian Journal of Shariyah and Law.
11. Hoque R and Khan M M, 'Judicial Activism and Islamic Family Law: a Socio-Legal Evaluation of Recent Trends in Bangladesh' (2007) 14 (2) Islamic Law and Society.
12. Huda S, 'Protection of Women in the Marriage Contract: An Exploration' (2001) 15 (1 & 2) Bangladesh Journal of Law.
13. -- 'The Confusing Conundrum of the Law of Restitution of Conjugal Rights under Muslim Law in Bangladesh', (2014) 10 Journal of Islamic States Practice in International Law.
14. Khalid M M and Hoque R, 'Right to Post-Divorce Maintenance in Muslim Law: the Shamsun Nahar Revisited', (1999) 4 The Chittagong University Journal of Law.
15. Monsoor T, 'Maintenance to Muslim Wives: the Legal Connotations', (1998) IX (1) Dhaka University Studies.
16. Naved R T and Persson L A, 'Factors Associated with Spousal Physical Violence against Women in Bangladesh' (2005) 36 Studies in Family Planning.
17. Rafiquzzaman M, 'Public Interest Litigation In Bangladesh: A Case Study' (2002) 6 Bangladesh Journal of Law.
18. Shahid A, 'Post-Divorce Maintenance for Muslim Women in Pakistan and Bangladesh: A Comparative Perspective' (2013) 27(2) International Journal of Law, Policy and the Family.
19. Uddin M M, 'Inter-religious Marriage in Bangladesh: An Analysis of the Existing Legal Framework' (2008) XIII The Chittagong University Journal of Law.
20. Yasmin T, 'Judicial Trends in Child Custody Cases in Bangladesh: Traditional Islamic Law Rules versus Welfare Considerations' (2017) 4 Asian Journal of Comparative Law.
21. -- 'Sexual Violence in Bangladesh: Addressing Gaps in the Legal Framework' (2017) 28 Dhaka University Law Journal.
22. Zahraa M and Malek N A, 'The Concept of Custody in Islamic Law' (1998) 13(2) Arab Law Quarterly.

## UN Sources

1. Begum S, *Ending Early and Forced Marriage: Bangladesh and UK Perspective* (2016) <<http://www.ohchr.org/Documents/Issues/Women/WRGS/Earlyforcedmarriage/SG/ShabinaBegum.pdf>>.
2. CESCR General Comment 22, CEDAW General Recommendation 35, CRC General Comment 20.
3. Concluding Observations on Eighth Periodic Review by Bangladesh (CEDAW/C/BGD/CO/8).
4. Concluding Observations on the Initial Reports of Bangladesh to the Human Rights Committee, 2017 (CCPR/C/BGD/CO/1).
5. Elaborated in UN Women, 'Equality in Law for Women and Girls by 2030: A Multistakeholder Strategy for Accelerated Action' (2019) <https://www.unwomen.org/en/digital-library/publications/2019/03/equality-in-law-for-women-and-girls-by-2030>.
6. Global indicator framework for the Sustainable Development Goals and targets of the 2030 Agenda for Sustainable Development <[https://unstats.un.org/sdgs/indicators/Global%20Indicator%20Framework%20after%202019%20refinement\\_Eng.pdf](https://unstats.un.org/sdgs/indicators/Global%20Indicator%20Framework%20after%202019%20refinement_Eng.pdf)> .
7. Maternity Protection Recommendation, 2000 (No. 191), <[https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100::NO:12100:P12100\\_ILO\\_CODE:R191:NO](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100::NO:12100:P12100_ILO_CODE:R191:NO)> .
8. OHCHR, 'Child Marriage in Bangladesh: Impact of Discriminatory Personal Laws' <<https://www.ohchr.org/sites/default/files/Documents/Issues/Women/WRGS/ForcedMarriage/NGO/WomenAndJusticeFellow5.pdf>> ].
9. OHCHR, 'Women's Autonomy, Equality and Reproductive Health in International Human Rights: Between Recognition, Backlash and Regressive Trends' (October 2017) <<https://www.ohchr.org/sites/default/files/Documents/Issues/Women/WomenAutonomyEqualityReproductiveHealth.pdf>>.
10. Steps Towards Development, 'UPR Stakeholders' Submission Under the 3rd Cycle of Universal Periodic Review on Gender based violence and Sexual and Reproductive Health Rights' (2017) <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/N16/402/50/PDF/N1640250.pdf?OpenElement>>.
11. Summary of Stakeholders' submissions on Bangladesh, Report of the Office of the United Nations High Commissioner for Human Rights, p. 3; <<https://documents-ddsny.un.org/doc/UNDOC/GEN/G18/061/83/PDF/G1806183.pdf?OpenElement>>.
12. Transition from the Informal Economy to Formal Economy Recommendation 2015 (No. 204). <[https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:R204](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:R204)>.
13. UN Women <<https://www.unwomen.org/-/media/headquarters/attachments/Sections/library/publications/2019/equality-in%20law-for-women-and-girls-en.pdf?la=en&vs=5600>>.
14. UN Women <<https://www.unwomen.org/-/media/headquarters/attachments/Sections/library/publications/2019/equality-in%20law-for-women-and-girls-en.pdf?la=en&vs=5600>>.
15. UN Women Database, <<http://evaw-global-database.unwomen.org/-/media/files/un%20women/vaw/vaw%20survey/bangladesh%20vaw%20survey%202015.pdf?vs=2125>>.
16. Working Group's communication, <<https://spcommreports.in.ohchr.org/TmSearch/Results>>.

## Newspaper Sources

1. *Bangla Tribune* (Dhaka, 25 September 2019) <<http://www.banglatribune.com/others/news/554397/>>.
2. Chowdhury N N, 'Why are Women Still not Equal in the Eyes of the Law?' *Dhaka Tribune* (Dhaka, 8 March 2018) <<https://www.dhakatribune.com/special-supplement/2018/03/08/women-still-not-equal-eyes-law>>.
3. *Dhaka Tribune* (Dhaka, 10 April 2022) <<https://www.dhakatribune.com/law-rights/2022/04/10/make-anti-discrimination-law-more-inclusive-says-think-tank>> accessed 06 September 2023.
4. *Dhaka Tribune*, 'Women in workforce: Employment without empowerment' (Dhaka, 1 May 2018) <<https://www.dhakatribune.com/business/2018/03/08/women-workforce-employment-without-empowerment/>> accessed 06 September 2023.
5. DW (2 July 2014) <<https://p.dw.com/p/1CTiO>> accessed 06 September 2023.
6. Farhin N, 'Workplace sexual harassment remains unreported, ignored' *Dhaka Tribune* (Dhaka, 21 May 2018) <<https://www.dhakatribune.com/opinion/special/2018/05/21/workplace-sexual-harassment-remains-unreported-ignored>>.
7. Maliha Khan M, 'How well are female workers protected by the law?' *The Daily Star* (Dhaka, 4 February 2018) <<https://www.thedailystar.net/star-weekend/how-well-are-female-workers-protected-the-law-1528474>>.
8. *The Business Standard*, 'Mothers can now be sole legal guardians of their children: HC' (Dhaka, 24 January 2023), <<https://www.tbsnews.net/bangladesh/court/mothers-can-now-be-sole-legal-guardians-their-children-hc-573082>>.
9. The Daily Prothom Alo, (*Dhaka*, 23 May 2018) <<https://www.prothomalo.com/bangladesh/article/1494576/>>.
10. *The Daily Star* ( 05 April 2022) <<https://www.thedailystar.net/law-our-rights/news/the-anti-discrimination-bill-2022-what-experts-say-3024531>>.
11. The Daily Star (Dhaka, October 27 2019) <<https://www.thedailystar.net/country/breastfeeding-corners-at-public-places-1819360>>.
12. *The Daily Star*, 'HC bans degrading 'two-finger test' for rape victims' (April 12, 2018) <<https://www.thedailystar.net/country/hc-bans-controversial-two-finger-test-15618131>>.
13. *The Daily Star*, 'Women's participation in the job market' (International Women's Day Supplement, Dhaka, 8 March 2018) <<https://www.thedailystar.net/supplements/womens-participation-the-job-market-1545181>> accessed 06 September 2023.

14. *The Guardian*, 'Bangladesh to remove the word 'virgin' from Muslim marriage certificates' (August 27 2019) <<https://www.theguardian.com/world/2019/aug/27/bangladesh-to-remove-the-word-virgin-from-muslim-marriage-certificates>>.
15. *The Prothom Alo* (Dhaka,5 October 2016).
16. Yasmin T, 'Mandating DNA evidence in all violence against women cases: Will it help or hurt the victim?' *The Daily Star* (Dhaka, 27 October 2020), <<https://www.thedailystar.net/opinion/news/mandating-dna-evidence-all-violence-against-women-cases-1984661?amp>>.

## Reports/Guidelines/Surveys

1. Ain o Shalish Kendra <<https://www.askbd.org/ask/2023/08/07/violence-against-women-dowry-jan-jul-2023/>>.
2. Asian Development Bank (ADB), *Bangladesh Gender Equality: Diagnostic of Selected Sectors* (ADB 2017).
3. 'Bangladesh Demographic and Health Survey 2007' (National Institute of Population Research and Training, Dhaka, Bangladesh, and ORC Macro, Calverton, MD, 2008).
4. 'Bangladesh National Comprehensive Menstrual Regulation (MR) and Post-Abortion Care (PAC) Services Guidelines' (June 2021) <[https://dgfp.gov.bd/sites/default/files/files/dgfp.portal.gov.bd/miscellaneous\\_info/b9fe53f4\\_f584\\_4339\\_88f2\\_fd3e1f44390d/2023-08-17-08-07-39bebdcb46b89694d1b6e036044173b.pdf](https://dgfp.gov.bd/sites/default/files/files/dgfp.portal.gov.bd/miscellaneous_info/b9fe53f4_f584_4339_88f2_fd3e1f44390d/2023-08-17-08-07-39bebdcb46b89694d1b6e036044173b.pdf)>.
5. BLAST, 'Character Evidence in Rape Trials: A Comparative Study of Rape Shield Laws and the Admissibility of Character Evidence in Rape Case' (2015) A research note by Norton Rose Fulbright (South Africa) for the Bangladesh Legal Aid and Services Trust (BLAST), <<https://www.trust.org/content/Asset/raw-data/7c70a653-6c85-4734-981b-72a1de7db614/file>>.
6. BLAST, 'Policy Brief: Women's Economic Rights after Separation or Divorce' <<https://www.blast.org.bd/content/publications/policy-brief-WR.pdf>>.
7. BNWLA, 'Ending Impunity: Monitoring Report for the Implementation of the Domestic Violence (Prevention and Protection) Act 2010' (Bangladesh National Woman Lawyers' Association 2013) <[http://www.wecanbd.org/old/Publication/DV%20related%20others%20report/BNWLA\\_Ending%20Impunity%20\\_%20Monitoring%20Report\\_Final.pdf](http://www.wecanbd.org/old/Publication/DV%20related%20others%20report/BNWLA_Ending%20Impunity%20_%20Monitoring%20Report_Final.pdf)>.
8. *Domestic Workers: Devaluation and Discrimination* (Unnayan Onneshon 2014).
9. Huda S, *Five Years After Bangladesh's Domestic Violence (Protection and Prevention) Act 2010: Is it Helping Survivors?* (Plan International Bangladesh 2016).
10. Human Rights Watch (2012), "'Will I Get My Dues ... Before I Die?' Harm to Women from Bangladesh's Discriminatory Laws on Marriage, Separation, and Divorce' <<https://www.hrw.org/report/2012/09/17/will-i-get-my-dues-i-die/harm-women-bangladeshs-discriminatory-laws-marriage>>.
11. Kotalova J, *Belonging to Others Cultural Construction of Women hood in a Village in Bangladesh* (Dhaka 1996).
12. *Labour Force Survey 2016-17* (Bangladesh Bureau of Statistics, January 2018).
13. Latifi D, 'Muslim Law' in *Annual Survey of Indian Law* (New Delhi, 1985).
14. Law Commission - Bangladesh (Report No. 69) <<http://www.lawcommissionbangladesh.org/reports/69.pdf>>.
15. Law Commission- Bangladesh (Report No. 120); <<http://www.lc.gov.bd/reports/120-Final%20Report%20of%20Muslim%20Law-05%20sir%20.pdf> ]>.
16. Law Commission of Bangladesh, 'Report on the Proposed Amendment of the Draft of the Citizenship Act, 2009 along with Draft Citizenship Act, 2009 and the Table of Proposed Amendment Suggested by the Concerned Authority on 13.7.09' (15 November 2009) <<http://www.lc.gov.bd/reports/89-Draft.pdf>>.
17. Law Commission-Bangladesh (Report No. 113), 'Recommendation of the Law Commission for Possible Increase of Daughter's Share in the Succession of Parents' Property in Absence of Son' <<http://www.lc.gov.bd/reports/113.doc>>.
18. Law Commission-Bangladesh, 'Final report on the proposed law of domestic violence along with a draft bill namely, The Domestic Violence Act, 200...', (2005).
19. Mannan M A, 'Baseline Survey for Assessing Attitudes and Practices of Male and Female Members and In-laws towards Gender based Violence' (Bangladesh Institute of Development Studies 2004).
20. Nagorik Uddyog (Citizen's Initiatives), 'Land and Human Rights Situation of Indigenous Peoples of the Plain Land in Bangladesh' <[https://nuhr.org/wp-content/uploads/2019/05/Parbotipur\\_Research\\_Report.pdf](https://nuhr.org/wp-content/uploads/2019/05/Parbotipur_Research_Report.pdf)>.
21. The Bangladesh Bureau of Statistics, 'Population and Housing Census, 2011' <<http://203.112.218.65:8008/WebTestApplication/userfiles/Image/National%20Reports/Union%20Statistics.pdf>>.
22. Hoque R, 'Report on Citizenship Law: Bangladesh' (EUDO Citizenship Observatory, 2016) <[https://cadmus.eui.eu/bitstream/handle/1814/44545/EudoCit\\_2016\\_14Bangladesh.pdf](https://cadmus.eui.eu/bitstream/handle/1814/44545/EudoCit_2016_14Bangladesh.pdf)>.
23. Sunga LS and Kawser Ahmed K, 'A Critical Appraisal of Laws Relating to Sexual Offences in Bangladesh: A Study Commissioned by the National Human Rights Commission Bangladesh' (IDLO 2015).
24. Yasmin T, 'Gaps in the Legal Protections against Gender-based Violence for transgender Persons in Bangladesh' (Policy Brief) (Bandhu 2021) <[https://www.bandhu-bd.org/wp-content/uploads/2021/11/Policy-Brief\\_GBV-2021.pdf](https://www.bandhu-bd.org/wp-content/uploads/2021/11/Policy-Brief_GBV-2021.pdf)>.
25. -- 'The 'Unreliable' Rape Victims and their Plight for Justice: Analysis of the Supreme Court Decisions of Bangladesh' (BLAST 2018).
26. -- *Exploring the Obstacles in Accessing Justice for Survivors of Domestic Violence: How Effective is the Domestic Violence (Prevention and Protection) Act, 2010?* (ActionAid Bangladesh 2020).
27. -- *Gender Based Violence at Workplace Is Real: Happening Everyday at Every Workplace* (ActionAid Bangladesh, 2019) <<http://actionaidbd.org/gender-based-violence-at-workplace-is-real/>>.
28. -- *Sexual Harassment at Educational Institution and workplaces: Implementation Status of the 2009 Supreme Court Guideline* (ActionAid Bangladesh 2018).

## Online Articles and Miscellaneous

1. Ahmed N, 'Litigating in the name of the people: Stresses and strains of the development of public interest litigation in Bangladesh' (PHD thesis, University of SOAS, 1998) <<https://eprints.soas.ac.uk/28638/1/10672798.pdf>>.
2. Basu A, 'Use of Medical Evidence in Rape cases in Bangladesh' (2012) <[https://www.academia.edu/9384955/Use\\_of\\_medical\\_evidence\\_in\\_rape\\_cases\\_in\\_Bangladesh](https://www.academia.edu/9384955/Use_of_medical_evidence_in_rape_cases_in_Bangladesh)>.
3. Banglapedia <[https://en.banglapedia.org/index.php/Dalit\\_Community](https://en.banglapedia.org/index.php/Dalit_Community)>.
4. Chauhan S, 'Special Marriage Act, 1954' (iPLEADERS 2022) <https://blog.iPLEADERS.in/special-marriage-act/>>.
5. Cheema S A, 'Islamization of Restitution of Conjugal Rights by Federal Shariat Court of Pakistan: A Critique' *SSRN* (2019) <SSRN: <https://ssrn.com/abstract=3329168>>.
6. Ministry of Finance, <[https://mof.portal.gov.bd/sites/default/files/files/mof.portal.gov.bd/budget\\_mof/799b4a82\\_f259\\_4fd4\\_98ba\\_a1b17afoe9b5/G-3\\_17\\_146\\_Land\\_English.pdf](https://mof.portal.gov.bd/sites/default/files/files/mof.portal.gov.bd/budget_mof/799b4a82_f259_4fd4_98ba_a1b17afoe9b5/G-3_17_146_Land_English.pdf)>.
7. Monsoor T, *From Patriarchy to Gender Equity Family Law and Its Impact on Women in Bangladesh* (Dhaka, 1999).
8. -- *Management of Gender Relations: Violence Against Women and Criminal Justice System in Bangladesh* (British Council Dhaka 2008).
9. Mukhopadhyay M, *Legally Disposed – Gender, Identity and Process of Law* (Kolkata 1998).
10. Rab A and Mahmud H, 'The Quranic Inheritance Law: The Case for a Gender-Neutral Understanding' (2023) <<https://hasanmahmud.com/index.php/articles/islamic-english/109-inheritance-law>> accessed 06 September 2023.
11. S R and others, 'Women's Rights, Domestic Violence, and Recourse Seeking in Rural Bangladesh', (2008) 14 *Violence Against Women*.
12. Singh P, 'Restitution of Conjugal Rights: A Comparative Study' (PhD Thesis, Maharshi Dayanand University 1995).
13. Yasmin T, 'Implementation of the Domestic Violence Legislation in Bangladesh: A Comparative Perspective' (BLAST 2015).
14. -- 'The Legal Discourse Addressing Violence against Women in Bangladesh', in Vani Swarupa and Silvia Tieri (eds) *Female Voices on South Asia*, (2020).
15. Zahur M, 'The Hindu Marriage System in Bangladesh: Addressing Discrimination' (2014), 40(4) *Commonwealth Law Bulletin*.

