



Daffodil
International
University

**A RESEARCH MONOGRAPH
ON
“RIGHTS OF WOMEN UNDER PERSONAL LAW AND STATUTORY
LAW: A COMPARATIVE STUDY”**

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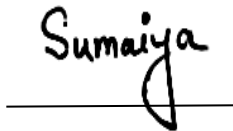
Subject: Submission of Research Monograph on “RIGHTS OF WOMEN UNDER PERSONAL LAW AND STATUTORY LAW: A COMPARATIVE STUDY”

Honorable Sir,

It is an immense pleasure to submit this Research Monograph on **“RIGHTS OF WOMEN UNDER PERSONAL LAW AND STATUTORY LAW: A COMPARATIVE STUDY”**. I have tried to fulfill all the requirements regarding preparing a standard research monograph and hope you will not be disappointed.

I therefore hope that you would be kind enough to accept my research monograph for evaluation. I am available for any further clarification of this paper at your convenience.

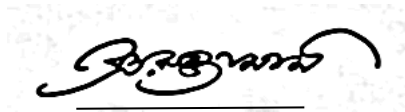
Sincerely yours,

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LETTER OF APPROVAL

This is to certify that, the work **“RIGHTS OF WOMEN UNDER PERSONAL LAW AND STATUTORY LAW: A COMPARATIVE STUDY”** is an original work prepared by **Sumaiya Binta Salam**, bearing ID: 0242310008133024, Department of Law, Daffodil International University. This research monograph is prepared with my guidance and under my supervision to partially fulfill the credit requirements for awarding the Master of Laws degree.

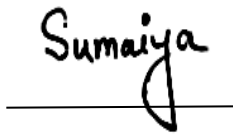


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DECLARATION

I do hereby solemnly affirm that the work presented in this research monograph has been carried out by me and has not been previously submitted to any other institution or by any other person. This work does not breach any copyright of any institution or of any person.

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

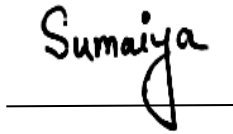
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Alhamdulillah, for the blessings of Almighty Allah.

I am grateful to my supervisor for his proper guidance and instructions. I am grateful to my university for making so much data and information available through the online library. Lastly, I express my gratitude and appreciation to my beloved Department of Law, which has provided me with these opportunities.

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LIST OF ABBREVIATIONS

- MFLO – Muslim Family Laws Ordinance
- ICCPR – International Covenant on Civil and Political Rights
- CEDAW – Convention on the Elimination of All Forms of Discrimination Against Women
- UDHR – Universal Declaration of Human Rights
- AD – Appellate Division
- BLD – Bangladesh Legal Decisions
- DLR – Dhaka Law Report
- HCD – High Court Division
- AP – Appellate Division
- IT – Information and Technology

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CHAPTER 1:

INTRODUCTION

1.1 GENERAL INTRODUCTION

The citizens of Bangladesh prefer religion over customs, and the People's Republic of Bangladesh, a secular nation, has smooth laws except for the Marital and Family laws. As marital family issues in Bangladesh are controlled by personal law, religion law is important. Citizens have the right to follow their religion, however there are doctrinal differences between Muslim and Hindu marital rights. Marital rights are consistently violated in Bangladesh. Married women in Islam are granted several rights, including life and liberty, marriage, education, dower, maintenance, and the right to divorce. Most Bangladeshis are opposed to granting married women rights. Most religious rules limit women's marital rights.

According to religious traditions, married women inherit differently depending on their religious views. In comparison to men, their share is often lower or nonexistent. The main fact is that women receive little or no share because of societal dominance. Gender inequality is increased by religion-based personal laws, and Muslim women have higher inheritance rights than Hindu women. Only patriarchy denies married women equal legal rights in our culture. Article 28(1) of the Bangladesh constitution prohibits discrimination based on religion, ethnicity, class, gender, or origin, whereas Article 28(4) allows the state to make special accommodations for women, children, and backward people. We should modify these old traditional rules for the sake of marital rights of women. There is a proverb that, injustice anywhere threatens justice everywhere so that Bangladesh will progress by recognizing marital the rights of women.

1.2 RESEARCH QUESTION

- (a) Main question of my research is, In Bangladesh, Muslim and Hindu law either protects or forbids women's marital rights; are there constitutional safeguards protecting marital rights?
- (b) Is it true that Hindu and Muslim laws have been more favorable to women through time as well as do the equality provisions in Muslim and Hindu law regarding marriage rights reflect violations of gender equality?

1.3 OBJECTIVES

My Research Objectives are categorized into two parts.

- My main Research objective is to bring attention to and look into the actual marital rights that Muslim and Hindu laws and social norms give to women in Bangladesh.
- Secondary is how the laws of Islam and Hinduism affect people's lives and society as whole. Many aspects of gender roles as given in Islamic and Hindu literature should be investigated.

1.4 SCOPE AND LIMITATION

In addition to other topics, the dissertation paper will analyze the marital rights granted to women in Bangladesh. In addition to this subject, I will talk about the rights that women have had in regards to marriage, both in the past and in the present. An inquiry into women's marital rights is to be carried out in conformity with the laws and treaties of the international organizations.

The rights of women in marriage according to both Hindu and Muslim law will also be discussed. A comparison of the rights accorded to women in marriage under Muslim law and Hindu law will be conducted out, as well as an analysis with the supporting existing law.

Every study has its limitations, and the topic of women's marital rights under Muslim and Hindu law is no exception. Collecting data on women's marital rights under Muslim and Hindu law in the field is a difficult and expensive task. They do not feel comfortable discussing the marital rights of women under Muslim and Hindu law in an interview, as this is truly personal family information. Due to the sensitive and personal nature of the topic, this creates a major limit. It is quite challenging to identify gaps in the research and then try to address them. Again, finding literature on Muslim and Hindu women's marital rights for analysis is challenging. Moreover, there is a lack of literature regarding the marital rights of women under both Muslim and Hindu law. To repeat, making current guesses based on the past is a significant limitation, and this is based on secondary information regarding the marital rights of women in the Muslim and Hindu legal systems.

1.5 REVIEW OF LITERATURE

The research study's topic is well-known, and a literature review found several important sources on Muslim and Hindu women's marital rights. This finding is supported by previous research findings. Here, the research is conducted an independent analysis to determine whether current laws are applicable. It should be noted that the current issue is a comparative study of Hindu and Muslim personal law concerning women's marital rights.

The researcher (me) refers to "Status of Women in Hindu and Muslim Law: Bangladesh" from The Lawyers & Jurists Journal, a comprehensive study based on Muslim and Hindu law, to gain a detailed understanding of the topic. Here, the author states that in terms of marital rights, including divorce, assets, gifts, and inheritance, Muslim women enjoy a greater degree of autonomy than their Hindu counterparts. Daughters, wives, and widows in Hindu families are not granted any property rights and are only allowed to utilize the home they were born into for the rest of their lives. Hindu marriages are non-dissolvable. Hindu marriages are not registrable. So the fact is that Hindu law does not place a higher value on marital rights, which is why Hindu married communities are falling behind.

In his work titled "Marital rape: Our laws and gaps," A. K. M. Nurul Amin reviews marital rape procedures, but he concludes that they are insufficient to prosecute an offender. Due to the difficulty of obtaining sufficient evidence of marital rape within the family, this offense should have a specific method for gathering evidence and a trial.

Lastly, husbands frequently commit rape against their wives due to legal ignorance. Victims of sexual rape have little legal protection. Therefore, amending, enacting, and enforcing legislation involving marital rape are urgently required. Here, the women of Bangladesh always face marital torture, but they cannot speak out because of the social status of their family as well as the society.

On the other hand, "A Comparative Study on Women's Rights in Bangladesh under Hindu and Muslim Personal Laws," a journal paper written by Md. Delwar Hossain, analyzes the differences between Hindu law and Muslim law about marital rights as well as the rights of women.

Some of the topics covered include marriage, divorce, child custody, guardianship rights, maintenance payments for divorced women, and property rights. By analyzing personal religious rules, this patriarchal society overlooks them, meaning that the marital rights of women have been completely ignored. In this male-dominated society, it is extremely difficult to ensure full gender rights for women, and they lag behind in every aspect of their lives.

Human Rights Watch's research, "Harm to Women from Bangladesh's Discriminatory Laws on Marriage, Separation, and Divorce," states that Muslim personal laws are unfair since they favor polygamy for men, have distinct divorce rules for men and women, restrict a woman's claim to maintenance during marriage as well as don't provide maintenance after divorce. Muslim personal law offers advantages. Marriage is a contract. Normal marital contracts give women more

economic protection. Political will is the biggest obstacle to marital property rights due to government opposition to personal law reforms.

The articles helped compare the references made in the assessment as well as legal precedents that guided the researcher in drawing conclusions. As a result, there is a significant difference in the married lives of Muslim and Hindu women, as well as the main aspect of religious culture and religion having a significant influence in every society in Bangladesh. The people of our country have blind trust in their religious beliefs about marital rights, so it's very hard to change the laws as well as the mindset of the people.

1.6 RESEARCH METHODOLOGY

The current concept requires doctrinal research in order to fully recognize and analyze the right to equality under Hindu and Muslim marital law, which is equally at the center of the present argument. In this part, I (the researcher) focus on abstracts and definitions in the process of developing knowledge of several legal topics. I will talk about marriage rights, focusing on both basic human rights and societal limits. In this study, laws, data, research results, and realistic ideas will be used to look at evidence related to the idea of marriage and the real state of things.

By reading the writers listed in the literature review, I will decide whether or not Muslim and Hindu marriage laws can protect the rights of women. This review will be based on the literature review's findings. The researcher focused on reading primary and secondary sources of legal material, such as journals, books, newspapers, and webpages, and verifying that they understood the contents.

This particular study will focus fully on a comparative analysis of Hindu and Muslim marriage traditions. The objective of this study is to discover whether or not the marriage laws in Bangladesh are discriminatory. Moreover, in addition to investigating the rights of married women, the researcher examined the customs surrounding marital rights in Bangladeshi society. In addition, the researcher suggests a variety of possible remedies to problems relating to marital rights and culturally motivated behaviors in Bangladesh.

CHAPTER 2

BASIC DISCUSSION ON MARITAL RIGHTS

2.1 Legal Marital Rights of Every Woman

However, the vast majority of married women are not aware of the legal safeguards to which they are entitled and therefore fail to exercise their rights. To safeguard their own interests, married women must be knowledgeable in the laws. Divorced or separated parents may have to deal with child custody conflicts. However, the mother is usually granted primary custody. In most cases, mothers are awarded sole custody of their children. Mothers have the legal right to custody of their children younger than the age. The income of both parents and the financial needs of the children together determine the amount of maintenance to be paid. Child support payments are usually provided until the child is 18, though this age can sometimes be extended.

Divorce can be granted without the agreement of either partner for a variety of reasons, including criminal behavior, disrespect, emotional and physical abuse, and other forms of sexual abuse. Daughters are entitled to inherit their father's property whether or not they ever marry. They also claim ownership of her husband's property. Marital properties are important now more than ever.

Women can report their husbands and their families for physical, emotional, sexual, or financial abuses, and they can sue them if they are found guilty. Additional claims for discrimination and dowry may be submitted by them. A woman may file a complaint if he receives a dowry. Women have the right to marry whoever they choose as long as they are at least 18 years old and of sound mind. In this country, women are legally allowed to marry anyone, regardless of their race or ethnicity.

Each religion has various laws, so a married woman's justice depends on her religion. Most of this legislation is outdated and patriarchal, making women helpless and inferior. Each religion's "religious personal law" handles marital rights recovery. Muslim marriages and divorces are registered according to the Muslim Marriages and Divorce (Registration) Act of 1974 and the Muslim Family Ordinance of 1961. The Hindu Widow's Remarriage Act of 1880 and the Hindu Marriages Disabilities Removal Act of 1946 are two pieces of legislation that were enacted to assert control over Hindu parties.

Penal Code 1860, sexual abuse:

Sec. 376: Rape Punishment (Of Offenses Relating to Marriage)

Sec.493 A false or misleading partnership by a man

Sec. 494: Remarrying during the lifetime of the husband or wife

Sec. 495: Keeping prior marriages hidden from the succeeding spouse

Sec. 496: Dishonest marriage

Hindu weddings in Bangladesh are traditionally organized according to caste and often violate the law. It is possible for Hindu women to file legal complaints thanks to the Family Court Ordinance (1985), the Dowry Act (1980), and the Women and Children Repression Act (2003).

Men in Hindu culture who remarry are opposed to progress. Despite the constitution's provisions No. 19 (1) and (2), no administration has modified Hindu laws to preserve Hindu women's rights.

2.2 Rights to Equality

Marriage equality is protected under Article 12 of the Human Rights Act. As a result, all adults can marry whoever they choose and start a family, regardless of gender. After marriage, women of all faiths are guaranteed equal rights under international human rights law.

CEDAW's Article 16 requires all efforts to stop married women's rights discrimination. They also ensure that each person retains the same rights and duties following divorce. Article 23 of the International Covenant on Civil and Political Rights (ICCPR) requires equality "during marriage and when it ends, as well as for all other rights." Hindu and Muslim law must include this idea. The CEDAW Committee requires nations to remove cultural distinctions between men and women and within marriage, and governments should encourage this. CEDAW recommends workplace gender equity. According to the UN Human Rights Committee, governments must prevent "traditional, historical, religious, or cultural attitudes from being used to justify violations of women's right to equality before the law" and ensure that women have equal access to the International Covenant on Civil and Political Rights' rights (ICCPR). "Religion-based discrimination is illegal in Bangladesh under Article 28. The government may favor women and children regardless of religion, caste, or gender. Article 19 guarantees equality in Bangladesh.

The state will minimize social and economic inequality and ensure fair distribution of resources and opportunities to promote equal economic growth across the Republic.”¹ (The Lawyers & Jurists, 2020)

Separate divorce rules for men and women, the inability of women to claim marital property after a divorce, the difficulty of women obtaining support, and the marriage registration are all parts of discrimination in marriage and the muslim and hindu families in Bangladesh. Bangladesh also doesn't follow international law because it doesn't protect married women who are legally married, even though they couldn't prove this or the torture matter in court.

2.3 International and Constitutional Development

There are a few articles in the Constitution indicating that married Hindu and Muslim women do not enjoy marital rights. “Article 28(1) of our respective constitutions prohibits religious discrimination, ethnicity, caste, or the place of birth; nonetheless, discrimination is common in Hindu and Muslim marital laws. Article 28(4) states that the state may provide special accommodations for women, children, and other socially backward individuals; however, the government did not.”² (LCLS(S).2022)

According to Article 7 of the Constitution, any state law that violates the Constitution is invalid and is referred to as unconstitutional. Articles 27, 28, and 29 declare nondiscrimination. According to Articles 36, 39, and 65 of the Constitution, women are permitted to run for political office. Women and men are granted the equal legal safeguards throughout all spheres of public and state activity, as stated in Article 28(2). Nevertheless, divorce laws within Hindu and Muslim religions differ significantly.

UDHR and CEDAW-compliant laws must be passed in Bangladesh. In September 2000, Bangladesh signed the Optional Protocol to CEDAW, which prohibits discrimination. Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women mandates countries to implement CEDAW domestically, prohibit married women's discrimination, and reform discriminatory laws and regulations.

¹ The Lawyers & Jurists, Status of women in Hindu and Muslim law: Bangladesh, The Lawyers & Jurists (2020). Available at: <https://www.lawyersjurists.com/article/status-of-women-in-hinduandmuslim-law-bangladesh/> (Accessed: January 23, 2023)

² LCLS(S). Bangladesh's reservation in CEDAW & Human Right Protection; causes, justifications and prospects. (2022, January 2). Retrieved January 23, 2023, from <https://lclsouth.com/bangladeshs-reservation-in-cedaw-cause>.

“The UNCEDAW Committee recommended that Bangladesh set a timeframe for withdrawing objections to Articles 2 and 16.1(c) and adopt all unreserved provisions into domestic law in its 2004 review of Bangladesh's Convention implementation.

It advocated for equal citizenship rights for women and domestic abuse legislation.”³ (Hossain, S.R, 2019) Part IV of the Convention on the Elimination of All Forms of Discrimination against Women requires marriage and family law equality. This component assures that married women can enter into contracts, appear before courts or tribunals, choose where to reside, have equal rights and obligations in marriage, and possess and manage property. This Hindu and Muslim law development discriminates heavily.

The articles 2 and 16 of CEDAW with which Bangladesh strongly disagrees The Bangladeshi government does not consider articles 2 and 16 as legally valid since they conflict with Shari'ah law. As Bangladesh is already independent and distinct from CEDAW's standards, and as Bangladesh supports the religiously-based Bangladeshi culture, forbidding some things will not promote CEDAW.

2.4 Marriage Registration

State governments must register all marriages. Marriage criteria, age, and registration are required. In Bangladesh, marriage registration is not mandatory for all religious communities. Muslim marriages must be registered, but there are no digital records and some registrars have reportedly altered with documents. “Despite the fact that they view it as a civil contract, it is obvious that Muslim jurists do not ignore the religious significance and social seriousness of a Muslim marriage. In addition, they differentiate between marriage under Muslim law and marriage under Hindu law on the basis that social ceremonies are not necessary to establish the existence of a marriage under Muslim law, but are needed under Hindu law.”⁴ (Rahman, A. 2014)

Despite the fact that a law permitting Hindu marriages to be recorded voluntarily was authorized by the cabinet in May 2012, Hindu marriages have not been registered in any form since that time. Before the 2012 passage of the Hindu Marriage Registration Act, Hindu marriages could not be registered on Bangladeshi territory. Without registration, there is no way to confirm that a marriage took place, making it difficult to establish the legal validity of the marriage.

³ Hossain, S.R., Women's rights, Ain o Salish Kendra (ASK) (2019). Available at: <https://www.askbd.org/ask/womens-rights-2/> (Accessed: January 21, 2023)

⁴ Rahman, A., Development of Muslim family law in Bangladesh: Empowerment or streamlining of women, Academia.edu (2014). Available at: https://www.academia.edu/3356450/Development_of_Muslim_Family_Law_in_Bangladesh_Empowerment_or_Streamlining_of_Women (Accessed: January 24, 2023).

2.5 Marital Rights after Divorce

Muslim marriages are simple and lawful, yet contract violations lead to divorce. She can live alone if she doesn't like her husband's family. The ex-husband pays the maintenance. The discriminatory rule allows Muslim males to marry four times but not Muslim women. Section 6 of the 1961 Muslim Family Laws Ordinance (MFLO) prohibits polygamy by needing current wife approval and Arbitration Council authorization. Disobeying this result in punishment. Failure to comply includes a one-year jail sentence and a monetary penalty. Second marriages are legal even if the first wife consents. Muslim women can divorce for any reason, but Muslim wives are not authorized to divorce unless their husbands provide permission. The kabin-nama is needed to include both this right and the divorce grounds. In most cases, Muslim women who do not have this right cannot divorce.

Hindu law in Bangladesh recognizes marriage because once a promise is made, it cannot be broken. In Bangladesh, Hindu men may marry as often as they like; however, women are required to lead a holy life. A Hindu woman cannot divorce her husband. A Hindu may get the maintenance only under specific conditions. If she continues in unchaste behavior, converts to a different religion, or does not comply with a court order restoring marital privileges, she will lose her right to a separate residence.

2.6 Inheritance Rights

Muslims inherit Shariah and MFLO property laws in Bangladesh. Due to the fact that males are financially responsible for Mahr and Nafaqah, Muslim scholars think that Quranic verses guarantee married women's inheritance. In current Bangladesh, Shariah inheritance is gendered, and married women are entrusted with increased responsibilities while being subjected to abuse. Quranic verses that specifically demand property distribution show inequality. The Shariah grants the daughter half of the son's property. Each daughter receives two-thirds of the estate if the deceased had many daughters. If there are no surviving children, the deceased's wife receives 25% of his estate. The wife inherits one-fourth of the deceased's estate, or half if there are no children and no other heirs.

Here in Bangladesh, where Hindus follow Dayabhaga, married women who inherit have little control. If the father has sons, grandchildren, or spouses, the daughter cannot inherit then. The unmarried daughter is entitled to inherit as well as If not otherwise stated, the unmarried daughter is entitled to inherit as well as Her son, granddaughter, and great-granddaughter, along with her spouse, disinherit her. Dayabhaga girls get "Stridhana." The inheritance and property rights of Bangladeshi Hindu women are threatened. Wives who lack morals are unable to inherit. Hindu widows cannot inherit.

Both Islam and Hindu law address inequalities in inheritance rights based on the marital status of the heir. Although the vast majority of Bangladeshis are aware of the inheritance rights of married women, many are unwilling to grant them complete ownership of their property. The law restricts the inheritance a married woman can receive. Sons inherit inheritances before their sisters. When a parent wishes to avoid a dispute with his married daughter regarding the inheritance, he may transfer it to one of his sons. Women who are married fear that if they inherit, they will lose relationships or become engaged in disputes. This independence is not exercised by married women due to issues such as fear, misinformation, male dominance, and traditional dependence.

2.7 Marital Property

In some legal systems, "marital property" refers to property obtained through a marriage; however, in Bangladesh, the term has no functional use. The property an individual owned before their marriage, as well as the property they inherited or acquired as gifts during their marriage, is recognized as independent property. However, spouses must have a full understanding of the many types marital related property.

Any assets gained either by spouse during marriage are marital property. It can be the personal or investment property and it may include cars, furniture, and other assets that neither partner obtained independently. Retirement funds, bank accounts, pensions, and stock assets are included.

The legal concept of marital property exists primarily to safeguard the rights of married couples. The terms of a divorce determine how the assets of the marriage will be distributed. The marital property acquired throughout the course of the marriage is owned equally by both spouses, but Bangladesh's lack of legislation addressing this highly significant issue is a source of considerable regret. The Muslim and Hindu laws do not include this, but it is now practiced in many developed as well as developing countries. Again, married Muslim and Hindu women are unaware of this marital property; it can be included as part of their rights.

2.8 Marital Rape

Generally, the rape of a wife is the most serious sexual offense, and it is unthinkable that a rape could occur within a legal relationship. Currently, many nations criminalize marital rape, but Bangladesh does not have its own legislation. Our substantive laws do not address marital abuse, thus it remains unpunished. The Penal Code of 1860 criminalizes rape but excludes rape between spouses.

A man is guilty of "rape" according to Sec. 375, Bangladesh Penal Code of 1860 if he rapes a woman against her will, without her consent, with her acceptance, or by placing her in fear of death or bodily harm. Here, according to this law, sexual relations between a man and his wife older than thirteen are not considered rape. This law's exception provision indicates that a husband's sexual relationship with his wife beyond the age of 13 is not considered rape.

However, by law, girls cannot marry at age 13. “More than 100 nations have made marital rape a criminal offense, yet Bangladesh lacks the necessary legislation. The procedures of The Code of Criminal Procedure, 1898 attempts to outline the procedure for marital rape. Section 561 of the Code of Criminal Procedure of 1898 is a specific provision regarding the offense of rape committed by a husband.”⁵ (K. M. Nurul Amin, A.K.M.N, 2019)

The Penal Code (1860), Section 376, reduces the punishment for a husband who commits rape. The provisions of Sections 375 and 376 distinguish between general and marital rape. Thus, the concept of marital rape in the Penal Code of 1860 of Bangladesh conflicts with the Child Marriage Restrain Act and other international laws. The government has protected women from violence for two decades, but it has not addressed marital rape. Government ignores marital rape. The 2010 Domestic Abuse (Prevention and Protection) Act shows marital rape as the most serious form of domestic violence. Due to legal ignorance, husbands frequently commit rape against their wives. Victims of actual sexual abuse have little legal protection. It is now high time to amend, adopt, and enforce laws against marital rape.

⁵ K. M. Nurul Amin, A.K.M.N., Marital rape: Our laws and lacks, lawyersclubbangladesh.com(2019). Available at: <http://lawyersclubbangladesh.com/en/2019/11/24/marital-rape-our-laws-and-lacks/> (Accessed: January 29, 2023).

CHAPTER 3

LEGAL DEVELOPMENT ON MARITAL RIGHTS OF WOMEN

Each religion's "religious personal law" system tackles issues including women's matrimonial and marital rights. Muslim parties are governed under the 1961 Muslim Family Ordinance and 1974 Muslim Marriages and Divorce (Registration) Act. The 1946 Hindu Marriages Disabilities Removal Act and 1856 Hindu Widow's Remarriage Act govern Hindu parties. The National Framework and some marital rights are governed by the Civil Procedure Code of 1908, Penal Code of 1860, and Criminal Procedure Code of 1898.

3.1 Marital Rights under Muslim Law

Injustice in Muslim family law shows the discriminatory practices of married women and their limitation of marital rights. Muslim married Women cannot hold public office with the same authority as men; they inherit half as much as men; and individuals who benefited from gender discrimination may have influenced the way Islam views married women. Marriage in Islam includes both marriage and sexual activity. If a woman marries without her consent, the court may dissolve the marriage. “The 1961 Muslim Family Law Ordinance handles talaq in Section 7 and marriage dissolution in Section 8.”⁶ (The Lawyers & Jurists, 2020) There were few marital options for women. Marriage approval is questioned. In most marital agreements, women's consent is not considered, but their silence is seen as consent. In Islam, women face discrimination in marriage, and the practice continues. Related Bangladeshi Muslim laws are listed below.

- Muslim Marriage Dissolution Act, 1939
- Muslim Family Law Ordinance, 1961
- Muslim Marriages and Divorces (Registration) Act, 1974
- Family Courts Ordinance, 1985

⁶ The Lawyers & Jurists, Status of women in Hindu and Muslim law: Bangladesh, The Lawyers & Jurists (2020). Available at: <https://www.lawyersnjurists.com/article/status-of-women-in-hindu-and-muslim-law-bangladesh/> (Accessed: January 23, 2023)

The Prophet (pbuh) considered divorce to be the most shameful religious act in God's eyes. Muslims should follow Shariah divorce law, which is less logical than Western divorce law. Muslim law schools have an influence on the divorce procedure.

By including legal clauses in the marriage contract, the husband may restrict the wife's ability to divorce, which is discriminatory. When couples cannot cooperate, the Prophet of Islam allows for divorce. Classical Muslim law permits divorce on the grounds of death, mutual consent, or action by a party, but women have less divorce-related power than men. Classical Muslim law allows the spouse's entire authority over divorce. If a woman has talaq-e-tafweez, her husband can give her control. Khula and Mubaraat divorced one another. In a khula divorce, the wife gives the husband restitution. "Classical Hanafi law supports spouse talaq-al-Ahsan, talaq-ul-Hasan, and talaq-ul-Bidat. Husbands must announce the talaq during tuhr and refrain from engaging in sexual behavior during iddat. Husbands must recite three verses of the Quran during talaq-ul-hassan. The Tuhr is composed of three talaqs. Talaq-ul-bidat necessitates that the spouse make three proclamations in a single tuhr." ⁷(BDLAWS,2018) She must sacrifice her economic rights in exchange for his announcement of talaq. Typically, the wife gets a certain amount and forfeits the alimony in order to terminate a marriage. Mubaraat is mutual talaq, wherein both parties can give and accept mubaraat with no financial compensation. Under the Talaq-i-Tafweez, a wife may divorce her husband if she can prove that he failed to fulfill his responsibilities. Thus, a woman cannot divorce independently. Except for Khula and Mubaraat, only the spouse is allowed to do so. According to Section 7, MFLO, a husband who desires to divorce by talaq must notify the union council or city council, as well as the other party. Talaq commences ninety days after the chairman's notice. MFLO allows the husband to immediately end the marriage with minimal talaq requirements besides the chairman's reconciliation council mandate.

Based on the Qur'an, Islamic law grants widows mehr and a portion of her husband's inheritance. If the wife dies before the husband, the husband's share is reduced by half. The heirs of that estate donated one-eighth of the estate to the widow. She gets one-fourth of the property without heirs. Several widows must distribute funds correctly. The Qur'an states that the surviving wife inherits the total estate, like husbands.

Maternal custody Regardless of her marital status, the mother has priority over her child. A close female relative, such as the mother's mother, will assume custody if the mother declines. Mothers' custody rights are debated. Traditional Hanafi grants a woman custody of her children until they turn seven. Maliki custody lasts until puberty for boys and marriage for girls, whereas Anaf custody lasts seven years. Moms should initially care for sick children. There is no prophetic or Quranic tradition that addresses the issue of child custody, and Muslim jurists disagree on it.

⁷ BDLAWS, A comparative study on women's right in Bangladesh under Hindu and Muslim personal laws. A Comparative Study on Women's Right in Bangladesh under Hindu and Muslim Personal Laws. (2018). Retrieved February 3, 2023, from http://bdlaws24.blogspot.com/2013/02/a-comparative-study-on-womens-right-in_8893.html

The Mulla is obligated to assist her per the Mohammedan Law Principle of the Mulla (unless she is too young for matrimony). He is not bound to provide for a disloyal wife. Unless fast-dower nonpayment authorizes opposition or disobedience (sec. 290), the wife may sue the husband for maintenance if he neglects or refuses to maintain her without legitimate grounds. an application for an order of maintenance under Section 488 of the Code of Criminal Procedure, 1908, which could require the spouse to pay 400 taka per month. Pregnant women get care till birth.

3.2 Marital Rights under Hindu Law

Protections for married women under the law Hindu weddings are both religious and cultural. In Bangladesh, there is no marriage registration for Hindus. Hinduism's marriage system is not as well-regulated as it is against Hindu law for a woman to file a domestic violence lawsuit against her husband and his family. In Bangladesh, people have different castes and cannot marry members of different castes. Hindu women are not prevented from escaping violent marriages, which calls into question the legitimacy of Hindu weddings. "Hindu marriages are solemnized through religious procedures, in accordance with Hindu social conventions. Hindu marriages in Bangladesh are unregistered. The country lacks a Hindu marriage statute and registrar. Thus, a Hindu lady abused by her in-laws has no legal grounds." ⁸(Baul, T.K. and Rahman, K.F, 2006) Hindu women can petition for marital rights since 1946. Hindu women can sue under the Family Court Ordinance, Dowry Act, and Women and Children Repression Act. Hindu marriage registration is shockingly absent. Hindu woman mistreated by in-laws cannot get legal advice. No administration has amended Hindu laws to defend Hindu women's rights notwithstanding the constitution's social and economic equality. Laws oppress Hindu women. Their society forbids inter-caste marriage and tortures those who do. Hindu-related laws:

- The Hindu Married Women's Right to Separate Residence and Maintenance Act, 1946
- The Family Courts Ordinance, 1985
- Hindu Marriage Registration Act, 2012;
- Hindu Marriage Registration Rules, 2013;

Bangladesh has no Hindu Marriage and Divorce law. Hindu married women's right to separate residence and maintenance was established in 1946. Section 2 allows Hindu married women to request separation and support from their husbands. Due to weak regulations, our Hindu married women are unable to exercise their marital rights. Women are not allowed to divorce in Hinduism,

⁸ Baul, T.K. and Rahman, K.F. "Personal rights of women in Hindu laws," The Daily Star, 25 February. (2006). Available at: <https://www.thedailystar.net/law/2006/02/03/index.htm> (Accessed: January 22, 2023)

and Manu believed that a wife's responsibilities never ended. Hindu marriages are unbreakable, since divorce is impossible in the absence of laws.

Hinduism prohibits divorce, and Hindu women in Bangladesh have the lowest divorce rate compared to other women. "Hindu marriage registration is supported by the Hindu Marriage Registration Act, 2012 and Rules, 2013. Before 2013, Bangladeshi Hindu marriages were illegal. Marriage registration is obligatory and legal under Section 3 of the act. Section 6 regulates marriage registration. After the marriage, either party can register."⁹(The Lawyers & Jurists, 2020) Dower is forbidden under Hindu law. The Vedas demand the bride's family to pay the husband dowry. Manu thought that a wife's responsibilities went beyond death and that she could never remarry. Marriage is an eternal relationship between a man and a woman, according to Hinduism. They are unable to divorce their partners due to our rules, even when their partners harass them in order to obtain dowry. They are unable to divorce their partners due to our rules, even when their partners harass them in order to obtain dowry.

Under Hindu law, legal protections for adopting a child are needed. Through the adoption process, biological parents transfer paternal responsibility to other families. Married Women in Bangladesh who adhere to the Hindu faith are unable to adopt sons. This right is dependent on her partner's consent; without her husband's assistance, she has no such right. The most important portion is that a woman who converts should lose custody, while a father will not. Unless custom permits remarriage, a woman loses the privilege of guardianship over her firstmarried children if she remarries.

Married Women inheriting In Bangladesh, Hindu women have limited inheritance rights. Society does not accept female heirs. Daughters cannot inherit if there are sons, grandchildren, or even great-grandsons. In contrast, the legal system of Bangladesh has remained untouched since 1947. Indian law protects the property rights of Indian women. The stridhana of a woman is her legal right to her own property. During either her virginity or widowhood, Stridhana may be sold without her husband's consent. Hindu women are not permitted to appeal the distribution of property. The Hindu wife will enjoy her share of the property throughout her lifetime. Without a son, the widow inherits the property of her deceased husband. Although this is not stridhana, Hindu mothers receive their deceased sons' property. The property rights of Hindu spouses are restricted. The heirs of her spouse receive her property.

⁹ The Lawyers & Jurists, Status of women in Hindu and Muslim law: Bangladesh, The Lawyers & Jurists (2020). Available at: <https://www.lawyersnjurists.com/article/status-of-women-in-hinduand-muslim-law-bangladesh/> (Accessed: January 23, 2023).

CHAPTER 4

CRITICAL ANALYSIS ON MARITAL RIGHTS

4.1 Analysis of Muslim Law

Polygamy, unequal divorce procedures, limited maintenance rights during marriage, and no maintenance beyond 90 days are all examples of discriminatory practices that are allowed under Muslim personal law and that favor men. Generally, women are granted greater financial security within the context of a marriage contract. The payment of mahr is a customary part of Muslim marriage contracts. Mahr the figures rarely reflect a wife's overall contributions to the marital property, especially for older women who have been married for a long time. In addition, the outcomes showed that the greater mahr amounts for younger married women are, in the majority of cases, imaginary. Before marrying multiple women, a man is required to show that he treats each of his wives with equal respect and obtain permission from a local arbitration committee. He must also disclose whether or not any of his previous wives provided their consent. The government does not keep a close eye on whether or not polygamy is legal. "Muslim law requires your ex-husband to assist you and your children. Muslim law requires only men to support divorced women. Seek spousal support from the court. The husband pays maintenance. They can do so by iddat to the remarriage period. If maintenance isn't enough, you can ask for more, since dead husbands can't pay."¹⁰ (Nyaaya.org, 2022) It is difficult to gain access to and verify information since marriage registrars manually keep records and periodically make changes to them. No authoritative digital information and Men can remarry. Men divorce easier than women in Muslim personal law. Muslim women can only get talaq, or no-fault divorce, if their husbands "give" it in the marital contract. Without her husband's consent, a woman is unable to end her relationship. Mutual consent (mubara't) divorces men and women. Women have the ability to have a khula divorce, which is a form of divorce that is obtained via mutual consent. In the event of a divorce, maintenance is granted for 90 days from the official notice or until the woman gives birth if she was pregnant. Thus, this Muslim personal rule grants married women care.

¹⁰ nyaaya.org (2022) Maintenance for woman under Muslim marriage law, Nyaaya (2022). Available at: <https://nyaaya.org/legal-explainer/maintenance-for-woman-under-muslim-marriagelaw/> (Accessed: January 25, 2023).

4.2 Analysis of Hindu Law

The Hindu personal law is not defined clearly, which could lead to discrimination in some situations. Hindu men can marry unlimitedly. Nobody can get a divorce in this culture, and that includes women. An ordinance that was passed in 1946 that codified Hindu personal law to a significant extent made it possible for Hindu women to petition family courts for a separate home and financial assistance from their spouses under specific circumstances. This was made possible as a result of the codification of Hindu personal law. Even these fundamental legal safeguards can be taken away from a woman if the state judges that she is "immoral," if she switches to a religion that is different from the one in which she was raised, or if she disobeys a court order that demands "conjugal rights." "Article 11 of the Convention on the Elimination of All Forms of Discrimination against Women enables State Parties to the International Covenants on Human Rights to ensure gender equality. However, article 16(1) of the Convention emphasizes equal rights and duties for men and women during and after marriage. Thus, the government should pass a comprehensive divorce law for Bangladeshi Hindu women."¹¹(The Daily Star, 2015)

As Hindu marriages are not registered, it is difficult for Hindu women who are searching for financial support or a separate home to establish that they were married. This presents a difficulty for Hindu women who are asking for a separate home. According to the civil law of Hinduism, men are entitled to have many wives; however, they are not permitted to divorce their spouses under any circumstances. According to the Hindu civil code, women are not allowed to inherit property in addition to their share of the marital property.

4.3 Comparative Analysis

Legality of Divorce:

Hindu women in Bangladesh have no divorce rights previously. In the case that a woman wants to live apart from her husband, she is able to do so provided that she files a complaint with the court for maintenance. If a marriage does not work out, a woman in Bangladesh is permitted under Muslim law to file for divorce and to seek compensation for any liabilities that she has suffered as a result of the marriage.

¹¹ Hindu women's divorce rights, The Daily Star (2015). Available at: <https://www.thedailystar.net/law-our-rights/hindu-womens-divorce-rights-3558> (Accessed: January 29, 2023)

Right to Marriage Registration:

A Hindu marriage in Bangladesh is regarded as holy and must be performed in accordance with the country's religious customs; it also does not need to be registered. This is despite the fact that marriage registration is permitted under Bangladeshi Muslim law.

“In order to safeguard women's rights, Bangladesh's Muslim-majority Prime Minister Sheikh Hasina enacted a legislation enforcing Hindu marriage registration. Civil rights activists and Hindu women welcome the measure, which is passed already.”¹² (Alam, S. 2012) So here is the fact: This is the case regardless of whether or not marriage registration is important or not.

Right to Property:

If her husband has no son, a widow gets his property. A Hindu wife cannot appeal for property division. Hindu women are unable to transfer their limited property interests for life.

Muslim women receive a certain portion of their husband's property. She can legally divide her portion of the property. She has access to the land. Widows in Islam have property rights.

Right to Remarriage:

A major difficulty for the law is posed by the practice of remarriage, as it is specifically prohibited by Hindu law. If the wife escapes her husband, she will be prohibited from remarrying as long as she abides by Hindu rules. This is due to the fact that polygamy is disfavored in Hinduism for married women. For any reason, a widow is not allowed to remarry.

Muslim law enables a woman to remarry if her husband is unpleasant or infertile. The remarriage of a Muslim widow is seen as the responsibility of the community as a whole, but the widow's willingness to do so is not a bar to the marriage.

Right to Dower:

However, the tradition of dowry persists, with the family of the bride offering financial support to the husband. The wedding can be canceled if the bride's family cannot raise the necessary amount.

In contrast, according to Islamic law, the husband is required to give the bride dower. The amount of the dowry should not be high. Each couple is entitled to their own view of the dower settlement. "Dower" is a present given to the wife by the husband in Islamic culture.

¹² Alam, S. Bangladesh's Hindu women fight for divorce rights, Yahoo! News. Yahoo! (2012) Available at: <https://sg.news.yahoo.com/bangladeshs-hindu-women-fight-divorce-rights065841265.html> (Accessed: January 21, 2023).

Right to Guardianship:

When the father dies, the woman becomes the caretaker of the children according to Hindu law. Mother could lose guardianship if she remarries an unknown individual.

The father is the child's guardian under Islamic law, whereas the mother is only a custodian. The children's legal representative is the father's executor, not the mother.

Right to Maintenance

According to Hindu law, the wife is committed to her husband's custody and is required to live under his control. After her husband's passing, she has really no legitimate claim to any of his property under the law.

On the other hand, according to Muslim law, A widow is legally entitled to receive financial assistance from the estate of her late spouse.

Discriminatory Personal Laws

The only laws in Bangladesh that discriminate on the basis of religion or gender are those regulating marital rights. Marital laws regulating domestic violence and threats apply to people of all religions.

All marriage, divorce, separation, and maintenance laws discriminate against women and their marital rights. After a divorce, their marital assets are not equally shared. Unless the property is jointly owned, men benefit and women suffer.

4.4 Related Case Law

- **Abu Bakar Siddique vs. S. M. A. Bakar (1986) 38 DLR(AD)**

This exceptional instance of Muslim personal law upholds child custody. A single event of Sharia law violation sets the road for natural justice. Abu Bakar Siddique petitioned the Dhaka District Judge for custody of his eight-year-old son under Section 25 of the Guardian and Wards Act (Act VIII of 1890). He married an M.B.B.S. doctor from Saudi Arabia, and she left the child with his father after obtaining employment. In July 1978, she brought the boy into her home. His spouse and child now stay in Saudi Arabia. In June 1982, she filed for divorce from the appellant. The respondent brought her son to Bangladesh in May 1984 before returning to Saudi Arabia and leaving him in the care of relatives. The appellant made a motion for custody. She denied the claim in writing. The child was identified as "Hirshring." The child should remain with the mother. The High Court Division dismissed the appeal on similar grounds.

Custody Laws

The mother keeps custody of the baby boys unless they reach the age of seven, whereas she retains custody of her female children until they achieve puberty. Until the mother remarries, the father is entitled to custody of the children in the event of a divorce. It is possible for a father to have custody of both an unmarried, teenage daughter and an older than seven-year-old son.

Discussion of the fact and Judgment

“Child welfare determines guardianship. Respecting Islamic law is crucial, but child welfare comes first. The young kid was sick and needed professional care, and his mother who can better manage for him, thus remaining with her is vital for his physical progress. Patients need doctors, but kids need parents. The judge's decision should remain. The court ordered the kid to stay with his mother or be named her guardian for his welfare, stating that women's economic independence is more important for their rights. For a sick child, the mother's M.B.B.S degree and financial independence are most vital.”¹³ (Abu Bakar Siddique vs. S. M. A. Bakar)

- **HafizurRahman v. Shamsun Nahar Begum1999) (51 DLR (AD)**

This determined the husband's obligation to provide maintenance. This High Court Division ruling was modified because it contradicts Islamic law. The court rules on the issue sine qua non. Shumsun Nahar Begum claimed 50,001 in dowry and support for her mother and son in family court. The defendant divorced the plaintiff and their son, born in 1987. “The family court ordered Taka 89,000 on October 30, 1990, including Taka 3,000 to the wife for Iddat maintenance at Taka 1,000 per month. The appellant's family court appeal reduced wife maintenance from 1,000 to 600, resulting in a reduction from 89,000 to \$72,000. Hafizur Rahman reversed the sentence in a civil manner.” ¹⁴(Shahnewaj, 2018) The High Court Division confirmed the Family Court judgment and order, forcing the defendant to pay 1,000 per month to the wife and child until they remarry or gain majority. The Bangladesh Supreme Court Appellate Division received an appeal.

¹³ (Abu Bakar Siddique vs. S. M. A. Bakar)

¹⁴ Shahnewaj., Women's right over matrimonial property, The Daily Star (2018). Available at: <https://www.thedailystar.net/law-our-rights/womens-right-over-matrimonial-property-1543912> (Accessed: January 25, 2023).

- **Aga Muhammed Jaffer v. Koolsom Beebee (1897 25 Cal. 9)**

The parties married on May 17, 1950. After the marriage, the husband neglected the wife and her kid, claiming (falsely) that he had divorced her on the wedding night. The wife's petition for mother and son maintenance was granted.

- **Asmatullah v. Mst khatunessa (39.A.All.p,592)**

The wife receives Iddat maintenance after divorce. She was not entitled to past maintenance without a formal agreement.

Judgment

The High Court Division was unable to provide her more relief. The ruling of the High Court Division was reversed for violating Islamic law. The Appellate Division determined, however, that the husband must support his wife until Iddat.

- **Harnan v. Perm Kaur**

“In the case it was determined that Hindu Widow's Remarriage Act, 1856 did not apply to widow mothers who wedded according to custom. All remarriages recognized by this Act deprived mothers of their natural guardianship, even though they were suitable candidates for appointment as guardians. In determining guardianship, courts have also considered the best interest of the child.”¹⁵ (Assignment Point, no date)

¹⁵ Assignment Point, Rights of a Hindu woman in Bangladesh, Assignment Point (no date). Available at: <https://assignmentpoint.com/rights-hindu-woman-bangladesh/> (Accessed: January 26, 2023).

CHAPTER 5

CONCLUSION

5.1 SUMMARY OF MAJOR FINDINGS

Laws dealing with marriage, divorce, and separation in Bangladesh are affected by bias as well as a lack of gender equality. Under Hindu and Muslim law, men have traditionally had more control over marriage and divorce. Bangladeshi personal laws compel women into abusive marriages or destitution after divorce. As a result, the few economic rights that these regulations provide for women, known as maintenance and mahr, are insufficient and difficult to achieve. “Hindu law replaces dower for women's inheritance rights. Men frequently claim that women receive dowry upon marriage. Dowry consists of cloth, jewelry, crockery, furniture, and other household items. Consideration of dowry as a substitute is prohibited by Islamic law.”¹⁶ (Mostofa, M. 2019) As a result of these limitations, women frequently experience discrimination during the procedures of getting married, separating, and divorcing. In addition, economic inequality is compounded in family courts, which require women to wait several months or even years before they may use their rights relating to marriage. Because of their lack of management over their income and marital assets, several women reported selling jewelry or giving up their husbands' incomes or savings to pay the debts. Domestic abuse was amended to include "economic loss" in 2010. In May 2012, the government enforced Hindu marriage registration. Individual legislative change, administrative law modernization, improved application to women's restricted rights, and increased state help for divorced or separated women and domestic abuse victims are notable developments. These changes are part of an effort to improve women's legal status. Women should have legal rights to equal marital assets and assistance from their husbands or ex-husbands and a social obligation to help them.

Changes in the law relating to families and religious practices are handled in a manner that is distinct from one another, and religious doctrines and practices are not subject to change. These amendments reflect "religious" views on marriage and divorce and the government's acknowledgment that states must prevent bias regardless of individual law.

¹⁶Mostofa, M., “Rules and practices of women’s inheritance rights in Islam: Bangladesh perspective,” *International Journal of Islamic Business & Management*, 3(1), pp. 14–20 (2019). Available at: <https://doi.org/10.46281/ijibm.v3i1.245>

“During the course of the year, Research Initiatives in Bangladesh and MJF discovered that 26.7% of Hindu males and 29.2% of Hindu women would like to divorce but are unable to do so due to current rules.”¹⁷ (Ians, 2017) In addition, these changes reflect the government's recognition that states are required to protect individuals from discrimination. Also, these changes show that the government understands that it is up to the states to make sure discrimination isn't allowed.

5.2 RECOMMENDATION

Now, marital rights are an important element of the law, work with women's rights specialists, civil society organizations, and minority community leaders to amend Bangladesh's marriage, separation, and divorce laws. In the meantime, personal laws should be changed to remove discrimination and strengthen enforcement of marital rights.

- Establish standards to control the judgments of family court judges regarding maintenance of marital rights, the impact of childcare and housekeeping upon that dependent spouse's learning but also earnings, the dependent spouse's demands and level of life, and supplemental support.
- Reduce delays in marital rights cases through refining family court and appellate processes. Improve family courts' capacity to deal with marital rights matters such as divorce, maintenance, and mahr cases efficiently and fairly. Appoint more family court judges, reduce civil cases, and speed up summons and decree execution to reduce backlogs.
- Understand and accept the theme of marital assets and give an equal amount upon separation, acknowledging the contribution of women in accordance with both Muslim and Hindu law. Start a statewide campaign to raise awareness about domestic violence in easy-to-find media and formats. The campaign should focus on the marital home, protection from economic loss, and temporary support after a divorce.
- All religions must register marriages and create national digital marriage records. Equalizing divorce laws for men and women is now an absolute necessity for society. Remove "good character" from the list of marital responsibilities.
- According to Special Marriage Act, all religious groups should be permitted to marry without renouncing their faith, and reasons of divorce under the Divorce laws should be enlarged. Recognize the marital property of women and its equal distribution following divorce.

¹⁷ Ians, I.A.N.S., Hindus can practice polygamy in Bangladesh; forbidden to divorce, remarry, Business Standard News. Business-Standard (2017). Available at: https://www.businessstandard.com/article/international/hindus-can-practice-polygamy-in-bangladesh-forbidden-to-divorce-remarry-117081600447_1.html (Accessed: January 26, 2023)

- Establish regulations to control the maintenance judgments of family court judges. Ensure that any rule prohibiting polygamy maintains the property, mahr, and maintenance rights of wives and their children until the practice is totally terminated.
- Improve marital rights family courts' ability to process divorce, maintenance, and mahr cases quickly and fairly. Reduce backlogs by adding family court judges or reducing civil caseloads. Urge family court judges to defend Hindu and Muslim women's marital rights.
- Set up and staff social assistance desks in each family court with the Department of Social Services so petitioners and court employees can learn about their married rights. Marital home rights, economic security, and temporary support, Encourage women to sue for marital abuse.
- The 1898 Guardianship and Ward Act require spousal and child support. Women should have equal parental rights and adoption access. Allow women to marry, divorce, possess property, and restore conjugal rights.
- Marriage should include marriage registration and equal divorce rights for both sexes. Women should have equal rights to shared or inherited property.
- Eliminate Hindu caste and religion and encourage inclusiveness. Polygamy should also be banned. Support the expansion of emergency temporary shelters for Bangladeshi women and girls suffering family abuse, forced or polygamous marriages, and divorce.
- Make sure that the help from donors for justice sector reform focuses on research and lobbying to get rid of family law discrimination and change family court procedures like issuing summonses, carrying out court orders, and keeping track of the Progress Millennium Development Goals in the meantime.

Personal Law Reform

Bangladesh has not significantly reformed women's marital rights, particularly domestic violence, mostly the four decades since its independence. No changes have been made to marital rights such as marriage, divorce, or economic rights following divorce. Despite significant changes in Bangladeshi culture and family life, the majority of historic and 1860s personal laws and marital rights have still did survive. “The Muslim Marriages and Divorces (Registration) Act, 1974, and the Family Courts Ordinance, 1985, which established a family court system and redress processes without changing personal law, were the only notable reforms after independence.”¹⁸ (Hossain, M.E, 2020)

¹⁸ Hossain, M.E., A comparative study on the condition of marital rights of women of the Hindu community in Bangladesh and India: In Hindu Law Perspective, NILS Bangladesh (2020). Available at:

Proposals for a universal civil law governing marital rights regarding marriage, separation, and divorce have ended in failure. In 2005, the Bangladesh Law Commission rejected a proposed "universal family code." Legislators and other organizations have failed to pass marriage legislation that don't discrimination by race or gender. In 2012, the Bangladeshi Law Commission proposed banning polygamy, registering marriages, and enabling Hindu marriages to dissolve. Hindu leaders and conservative organizations reject personal law reforms. In May 2012, after decades of opposition, the Bangladeshi government approved a draft bill allowing voluntary Hindu marriage registration.

In order to reduce bias, countries with Shari'a or substantial Muslim populations have to modify their marital rights. Although many Muslim countries like Tunisia and Turkey prohibit polygamy, Malaysia, Singapore, Indonesia, and Turkey divide marital property upon divorce. These countries also follow Islamic law, but with modifications.

A Unified Family Code

Regardless of race or gender, religion, color, caste, or origin, the Bangladesh Mahila Parishad proposed a unified family code. Government mandates, equality, and non-discrimination support it. According to them, the Bangladeshi Constitution guarantees public life rights for men and women as well as Gender, religion, race, caste, etc. laws were proposed by this group. Every individuals must record marriages and divorces around one month according the Uniform Marriage and Divorce Registration Act. Husband-wife, wife-husband, and child maintenance were granted by the Uniform Maintenance Act. The Uniform Guardian Act makes parents guardians. Regardless of faith, this Uniform Law for Inheritance compels male and female successors to share property equally. This concept is composed of the following 5 categories-

- Uniform Law of Inform of Inheritance Act,2005
- Uniform Adoption Act,2005
- Uniform Maintenance Act,2005
- Uniform Guardian and Ward Act,2005
- Uniform Marriage and Divorce Registration Act,2005

"Marriage, Inheritance, and Family Laws in Bangladesh: Towards a Common Family Code" is a UNESCO and Women for Women Research Report of the Law Commission of Bangladesh's Muslim Personal Law (Shariat) Application Act, 1937, which relates to every Muslim Family Matters.

<https://nilsbangladesh.org/a-comparative-study-on-the-condition-of-marital-rightsof-women-of-the-hindu-community-in-bangladesh-and-india-in-hindu-law-perspective/> (Accessed: January 22, 2023).

Besides Hefzur Rahman Vs. Shamsun Nahar Begum 51 DLR(AD)172, the Appellate Division considered Muslim divorcee maintenance.”¹⁹ (Kona, S.A, 2019)

Muslim family law cannot be amended or mixed with other religions' personal rules. Hindu law precedes Bangladesh. Smritis (Dharmashastras) govern Hindu law. A Common Family Code cannot mix Hindu and other religions' laws. Indian laws have altered Hindu personal laws. Our government cannot legalize the Uniform Family Code hypothesis and Study Report ideas. Bangladeshi religious laws differ by community, creed, and belief. Thus, we cannot alter these laws to adopt the study report's common family code. Marriage, divorce, guardianship, maintenance, inheritance, and other personal laws vary across Bangladesh, including tribal cultures. Personal laws vary by culture. Adding these laws to a family code is impossible. They came to the conclusion that a select group of people could not propose a country's family code acceptable to every group throughout this country without public approval.

Restitution of Marital Rights

"Restitution of marital rights" litigation must be permitted under Bangladeshi personal law, and all religious family courts must recognize this claim. Hindu women have no access to assistance or a private home if they do not comply with a court order for marital rights recovery. If a “Muslim husband's first wife disagreed to cooperate with the court ruling for "settlement of marriage rights," he cannot remarry. Marital rights issues are heard by family courts. Men who violate a woman's right to liberty, property, and equity before law must be punished. Reparation of marital rights harms Hindu women's rights because Hindu marriages cannot be terminated without violence.”

²⁰(Rayhan, M. B., 2018) Marital rights can be requested by wives who want separate housing and support.

5.3 CONCLUDING REMARKS

Men rule in our culture, which is also biased towards women. Comparing the marital rights doctrines of other religions, such as Islam and Hinduism, to the reality of our culture shows that our society controls women in every way. In our society, a woman's economic, marital, and property rights are severely restricted. It is an obstacle for women who want to learn about their marital rights.

¹⁹ Kona, S.A., The issue of a Common Family Code , The Financial Express (2019). Available at: <https://thefinancialexpress.com.bd/views/the-issue-of-a-common-family-code-1577720744> (Accessed: January 22, 2023).

²⁰ Rayhan, M. B., Restitution of the conjugal rights: Preconditions and enforcement: The Asian Age Online, Bangladesh. The Asian Age. (2018, March 10). Retrieved January 3, 2023, from <https://dailyasianage.com/news/111944/restitution-of-the-conjugal-rights-preconditions-and-enforcement>.

This is due to Hindu and Muslim ideas regarding the rights of married women and women's dependence on men. To conclude, both religions want consistent personal family law. Bangladesh Hindu personal law is the oldest. The government should create an expert council to reform Hindu and marital laws. Muslim and Hindu-married women in Bangladesh experience prejudice in law and society. The Family Courts Ordinance, 1985 and The Dowry Prohibition Act, 1980 apply to everyone areas, although married women's rights are not protected. Muslim women receive a higher inheritance on average than Hindu women. Generally speaking, Muslim women can also inherit less than Hindu women. The patriarchy is solely responsible for denying married women equal property rights. In a number of instances, jurists have defined equality and ruled that discriminatory laws based on sexual orientation, gender, religion, and marital rights are also inequitable. Personal law would be excluded from both the Constitution and the Legal Rights, and the concept of equal marriage rights would be limited to the area of equality. Individual rules that apply to married women in Bangladesh permit the fulfillment of religious responsibilities, but they violate the constitutional mandate that men and women have equal rights in all other areas. It is time to safeguard married Bangladeshi women's marital rights, which are tied to the protection of all women's marital rights internationally.

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Case Study

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