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Research Monograph
On
"Critical Analysis on Legislative Changes of Family Courts in Bangladesh"

Research Paper submitted in partial fulfillment of the requirements of the degree of LL.M (1 year) under Sonargaon University

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LETTER OF TRANSMITTAL

To
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Subject: Letter regarding the submission of a Thesis on **"Critical Analysis on Legislative Changes of Family Courts in Bangladesh"**

Dear Sir,

1 am hereby pleased to submit the project on **"Critical Analysis on Legislative Changes of Family Courts in Bangladesh"** It was a great pleasure to work on such an important topic. This project was assigned to me in partial fulfillment of the requirements for the award of the degree Masters of Laws (1 Years).

I believe that this project will certainly help you in evaluating my work. I would be very happy to provide any assistance in interpreting any part of the paper whenever necessary.

Sincerely yours,

_____

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STUDENT DECLARATION

I do hereby solemnly declare that the work presented in this thesis has been carried out by me and has not been previously submitted to any other University/ College/ Organization for academic qualification or professional degree.

I hereby assure that the work that has been presented here does not breach any existing copyright law.

I further undertake to indemnify the university against any loss or damage arising from the breach of the forgoing obligation.

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CERTIFICATION

This is to certify that the thesis on **"Critical Analysis on Legislative Changes of Family Courts in Bangladesh"** done by **Shathey Akter,** ID: LLM 2301028018, in partial fulfillment of the requirement for the degree of LL.M (1 Years) from Sonargaon University (SU). The thesis has been carried out under my guidance and is a record of the bona fide work carried out successfully.

I do hereby certify that the project work has been carried out under my direct supervision and guidance.

.....

Sagor Hossain
Lecturer
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ACKNOWLEDGEMENT

I am extremely grateful to my Almighty Allah for His blessing and kindness. I could not have finished my work if He did not make it possible. I am thankful to my research supervisor **Sagor Hossain,** Lecturer, Department of Law, Sonargaon University (SU). Who guided my throughout the work. She provided me with the resources that I needed in terms of carrying out the work and gave me important guidelines whenever I was in dilemma.

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ABSTRACT

It is not unknown that a gaping loophole in the Bangladesh Judiciary is the backlog of cases. This dissertation is focused on the Critical Analysis on Legislative Changes of Family Courts in Bangladesh. The number of family matters cases being filed in the Supreme Court and lower court in Bangladesh, Further, pertinent to note here is that Marriage as an institution has become the subject of great judicial scrutiny. With this aim, this paper has tried to discuss present law, definition, legal effects, existing problems related to dissolution of marriage, dower, and restitution of conjugal rights, maintenance and guardianship, pre trail proceeding: mediation, institution of suits and proceedings. The aim of the writing is to show the weakness in the jurisdiction of family court in our country. Law is above to all. If the law is use in proper way not only family disputes but also all disputes must be solve. To solve the every disputes enforcement of law and clearance of justice is important. In my research I try to give in depth discussion about the family courts in Bangladesh. It has further attempted to recommend some possible solutions to the identified flaws of this system.

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Chapter 1
INTRODUCTION

1.1 Introduction

British Columbia Provincial Court has a Family Court division. The Provincial Court has other divisions that handle small claims, traffic, and criminal cases. Judges in provincial courts hear small claims court cases, juvenile and adult criminal cases, and family law cases. Families may have their own courtroom or, depending on your community, family law cases may be heard in one of the regular courtrooms on a specific day of the week. A list of family law and child protection cases is typically heard by the court on a certain day either every week or every other week. The Family Courts Ordinance of 1985 was based on this idea and established family courts to facilitate the prompt, efficient, and amicable resolution of certain family matters. Only a small number of family laws are handled by family court. The jurisdiction of the family courts is narrow. In this study, I covered a range of family law laws, the current state of family courts, and issues facing family court judges.

In order to expedite, effectively, and amicably resolve some family matters that the traditional civil courts had been unable to resolve, Family Courts were established in Bangladesh. Sadly, despite the passage of more than 20 years since the Family Courts' establishment, the admirable goal of establishing them has not yet been fully realized. There are a wide variety of causes for this kind of disappointment. The substantive and procedural flaws in the ordinance and related laws are not insignificant given the socioeconomic context. In addition, there are a few misunderstandings. This article aims to investigate those misunderstandings, ambiguities, and confusions in light of rulings from the nation's higher courts. Therefore, many active attorneys and acting judges may find this article to be of great assistance. However, the main goal of this study is to bring these issues before the authorities that have the power to make judges and attorneys aware of them and to

seek judicial interpretation from the highest court in the nation; second, the legislative authority that has the power to amend the laws as needed.[1]

1.2 Statement of the problem

The creation of Bangladesh's Family Courts was a historic move that answered the people's long-standing demand. All cases pertaining to family matters and other matters were decided by regular civil courts prior to the formation of the Family Courts. The Family Courts Ordinance of 1965 had created the Family Courts. Currently, courts are operational in all districts of Bangladesh.

However, the courts are facing different problems, as mentioned under:-

- Scarcity of the judge
- In every court the same judge trials civil and family matters
- Corruption of the stake Rolders
- There are no proper mediation facilities

This research seeks to concentrate on the above problems.

1.3 Objectives of Research

The main objective of the research is to review of the activities of the Family Courts in Bangladesh. These objectives as given below:-

(I) To review the family court laws;

(ii) To assess the current state of the family courts;

(iii) To concentrate on the family courts' issues

[1] [http://www.assignmentpoint.com/arts/law/family-courts-bangladesh.html, Last visited, 2 November, 2023].

1.4 Research Methodology

The unique result of this research is attained by employing the method of documentary analysis. This study used historical data and interviews. In addition, an interview and the historical method will be used.

Sources and Materials

to finish my research using a variety of sources. I have gathered information and responses from books, journals, the internet, and law reports.

1.5 Importance of the Research

Research is crucial in suggesting fixes for the issues that are currently facing society. The findings of this study will shed light on the issues facing Bangladesh's family courts. It also examines how Bangladesh's family courts are currently operating. Additionally, this research will shed light on the issues facing family court judges. It will make an effort to present a concise picture of the family suits' current state. Finally, the protection of women's rights within the family will benefit from this research.

1.6 Review of Literature

There are many books, journals and articles related to my research topic. Some of the relevant books and articles are reviewed bellow

(1) Obaidul Huq Chowdhury's, Hand book of Muslim Family Laws, Fifth Edition (1997), published by Esrarul Huq Chowdhury, Dhaka.

This book contains different aspects of Family Courts Ordinance 1985.

This book discuss very brief. It writes down the section of the Family Courts Ordinance 1985 and analyze with some case reference. There is nothing else in this book.

(2) Professor A. A. M. Moniruzzaman, Islamic Jurisprudence and Muslim Ain, First Edition January 2002, Shams publications, Nilkhet, Dhaka- 1205.

This book contains the following topics of Muslim Family laws:-

Sources of Muslim law, pre- Islamic custom and Muslim law, sources of Muslim laws and description, Inheritance and division of property, general principles of Miras, Hanafi law relating inheritance will, gift etc.

This book analyzes the historical base of Muslim family laws. It did not give the clear concept of the family court law.

(3) Shaheda Begum, Muslim law and Family Courts, First edition February 1994, Published by Bangla Academe, Dhaka.

This book focuses on the various aspect of the Muslim law and Family courts like……

Marriage and legal rights of women, Marriage and dower, Maintenance of women under Muslim law, Divorce under Muslim law, dowry and dowry prohibition Act etc.

This book has given the sufficient guidelines for the preservation of women rights. Ti would be very helpful for my research.

1.7 Scope of the Study and Limitation

Only the family courts in Bangladesh are the subject of this investigation. This research has a very narrow scope. This study aims to delineate the issues facing Bangladesh's family courts. It will also examine the state of family suits and the issues facing judges.

Chapter 2

Historical Background of Family Court and Its History

2.1 Introduction

Family courts were first established in the nation over 20 years ago. British Columbia Provincial Court has a Family Court division. The Provincial Court has other divisions that handle small claims, traffic, and criminal cases. Judges in provincial courts hear small claims court cases, juvenile and adult criminal cases, and family law cases. Families may have their own courtroom or, depending on your community, family law cases may be heard in one of the regular courtrooms on a specific day of the week. A list of family law and child protection cases is typically heard by the court on a certain day either every week or every other week. The Family Courts Ordinance of 1985 was based on this idea and established family courts to facilitate the prompt, efficient, and amicable resolution of certain family matters. Only a small number of family laws are handled by family court. The jurisdiction of the family court is narrow. In this study, I covered a range of family law laws, the current state of family courts, and issues facing family court judges.[2]

2.2 General Concept of Family Court

Bangladesh separated from Pakistan in 1971, and as a result, it shares with Pakistan the laws enacted before that date as well as numerous Acts and Ordinances created after Bangladesh's independence. The Muslim Family Law Ordinance of 1961 also established a family court. The West Pakistan legislature passed the West Pakistan Family Courts Act, 1964 in response to the commission on marriage and family laws' recommendation, which emphasized the establishment of such special courts for the prompt settlement and disposal of disputes relating to marriage, maintenance, child

[2] [https://www.google.com/search?q=family-court-in-bangladesh&ie=utf-8&oe=utf-8, Last visited, 2 November, 2023].

custody, and other matters connected thereto, even though the Muslim Family Laws Ordinance, 1961 had already gone into effect on November 15, 1961. But unfortunately in the East Pakistan no such laws was enacted. Enactment of the *Family Court Ordinance 1985*, which was published in the Bangladesh gazette on the 30th March, 1985 and was given effect from 15th November, 1985 by notification by the Government in undoubtedly a step in the right direction.[3]

Establishment of Family Courts was on the one hand an expression of our sophisticated legal thought, on the other hand, an acknowledgement that our traditional civil courts had failed to successfully deal with the suits relating to family affairs. Family Courts were established by the *Family Courts Ordinance 1985*to serve the purpose of quick, effective and amicable disposal of some of the family matters. This purpose, though not perceptible from the preamble of the Ordinance, is evident in different places of the body of the Ordinance. The anxiety of the framers of the Ordinance for the said speedy disposal of the family cases is palpable in fixing only thirty days for the appearance of the defendant[2], in providing that if, after service of summons, neither party appears when the suit is called on for hearing the court may dismiss the suit.

The purpose is again manifest in providing a procedure for trial of cases in camera if required for maintaining secrecy, confidentiality and for effective disposal of some complicated and sophisticated matters which may not be possible under normal law of the land. Once more, the *Code of Civil Procedure 1908* except sections 10 and 11 *and the Evidence Act 1872* have not been made applicable in the proceedings under the Family Courts which is another sign that indicates the concern of the lawmakers to dispose of the family matters in congenial atmosphere of the Family Court, which was proven to be absent in the lengthy procedure of civil courts.

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[3] [http://www.assignmentpoint.com/arts/law/family-courts-bangladesh.html, Last visited, 2 November, 2023].

Before establishing the present Family Courts, there were no separate courts in Bangladesh for adjudicating disputes in relation to family matters. The inherited colonial system of this country is itself an impediment in expeditious trial procedure. In many cases, as a result, the aggrieved persons are being deprived of their right to get judicial relief

Sadly, despite the passage of more than 20 years since the Family Courts' establishment, the admirable goal of establishing them has not yet been fully realized. There are a wide variety of causes for this kind of disappointment. The substantive and procedural flaws in the ordinance and related laws are not insignificant given the socioeconomic context. A significant revision to the Ordinance was made in 1989 in response to these gaps; however, the law is not perfect, which has led to certain ambiguities and confusions. In addition, there are a few misunderstandings.

2.3 Dissolution of marriage or Talak

Sections 307 and 308 of Muslim law provide specifics on the dissolution of marriage. According to Muslim law, the marriage contract may be dissolved in any of the following ways: (i) at the husband's discretion, without the need for a court's intervention; (ii) with the husband and wife's mutual consent, without the need for a court's intervention; or (iii) by a judicial decree at the husband or wife's request. If the wife does not have the right to divorce her husband without his consent, it is not permitted by the Nikah Nama. We call this kind of talak, talak-e-toufiz. In terms of the parties' agreement, a divorce that is influenced by mutual consent is referred to as khulaor mubara'at.[4]

The dissolution of contract of marriage by the husband at his will without the intervention of the court is called talak. Talak may be oral or in writing. To talak orally husband with sound mind pronounces a few words willfully, which are

[4] Shahdeen Malik, 'Muslim Law and Law Reform,' *Bangladesh Journal of Law*, Vol. 1, Dhaka, Bangladesh, p.56.

expressed or well understood as implying divorce, and since pronouncement behaves accordingly. Talak in writing or talaknama is the written document of oral talak. The deed may be executed in the presence of the kazi, or the wife's father or of other witnesses. However, the deed should be in customary form and properly super scribed and addressed so as to show the name of the writer and person addressed. A wife can dissolve the contract of marriage with the intervention of the court on the grounds: (i) the whereabouts of the husband are unknown for a period of four years; (ii) failure of the husband to provide for the maintenance of the wife for a period of two years; (iii) sentence of imprisonment on husband for a period of seven years or more; (iv) failure without reasonable cause to perform marital obligations; (v) impotence of husband; (vi) insanity of husband or his suffering from virulent venereal disease; (vii) repudiation of marriage by wife; (viii) cruelty of husband; and (ix) marriage without her consent. This divorce is called talak-e-taufiz. According to Ameer Ali, "the reforms of Prophet Mohammadmarked a new departure in his history of Eastern Legislations. 'Prophet Mohammad restrained the power of divorce and gave to the woman the right of obtaining separation on reasonable grounds[5]

The woman's ritual purity at the time of the man's formula pronouncement and the way he recites it determine whether the divorce is traditional or non-traditional. A woman is ritually impure during her menstrual cycle and during her confinement following childbirth; she does not regain her purity until her circumstances change and she performs the major ablution (ghusl). In order for a traditional divorce to occur, the woman must be in a state of ritual purity and her husband cannot have had sexual relations with her during her most recent menstrual cycle (although this condition is added for accuracy, even though it is prohibited) or since the time she took the primary ablution following her period or confinement.

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[5] Aqil Ahmed and DR. I. A. khan, *the text book of Mohammedan Law*, 21st ed. (Allahabad: Central Law agency, 2004), p.163.

Shi'is hold that a woman can only be divorced after three months of waiting for her husband to assess her condition and determine whether or not she is pregnant if she is in the state known as mustaraba, which includes approaching menopause, delayed menstruation, and uncertainty about pregnancy. As will be explained below, the man needs to pronounce the formula three times, separated by a certain amount of time. acknowledges the pronouncing of talaq in any context., section 7(1). Shamsun Nahar Begum and Hefzur Rahman v.

Judge Kamal asserts that the Muslim Family Laws Ordinance of 1961 presumes Iddat as specified in the Quran when read in the context of Articles 8 and 8(la) of the constitution. Shamsun Nahar Begum v. Hefzur Rahman and others.[6]

2.4 Restitution of Conjugal Rights

A marriage under Muslim law is essentially a contract, and a suit for restitution of conjugal rights would be a suit for the specific performance of the terms of the marriage contract. The concept of matrimonial remedies is an indigenous part of the religions of Muslims, Christians, Jews, and Parsis. The party who feels wronged can file a lawsuit to regain their rights as husband and wife when one of them has left the other's society without permission.[7] It was stated in *Munshee Buzloor Raheem v. Shumsoonissa Begum* that if a wife stops living with her husband without a valid reason, the husband may file a lawsuit to regain their marital rights..[8]

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

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6 *HefzurRahman v ShamsunNahar Begum and others*,4 BLC AD 50.P.45.

7 Dr. BorhanUddin Khan '*Personal Laws in Bangladesh: the need for substantive Reforms*" in the Dhaka University Studies Part-F, Journal of the faculty of law, Vol 15 num 1 November 2004, p.108.

8 *MunsheeBuzloorRaheem v.ShumsoonissaBegum*(1867) 11 M.I.A. 551.

ceases to cohabit with her husband, the husband may sue the wife for restitution of conjugal right. *MoonsheeBuzlurRuheem v.Shumsoonnissa Begum*.Restitution of conjugal rights is at the courts discretion and the plaintiff must prove that he has come to the court with clean hands. Where he has married two wives he must prove that he is treating both the wives in equal footing. *MakhanBibi v. Muhammad Wazir Khan.* The restitution of conjugal right is a reciprocal right thus it is neither discriminatory nor violative of any of the provisions of the Constitution. *Md. Chan Mia v.Rupnaha.*

If the prompt dower is not paid, the wife may refuse to live with her husband and allow him to have sex. Bailli. The suit will be dismissed if the files a lawsuit against her for the restitution of marital rights before engaging in sexual activity and the dower is not paid. In the event that the lawsuit is filed after she has had sex with her free consent, a restitution decree subject to prompt dower payment should be issued rather than a dismissal decree. Salima v. Adul-Kadir (1886).

2.5 Dower (mohr)

"Everyone else is legal except for these," declared Allah, "as long as you pursue them in marriage with gifts from your property and desire chastity rather than lust"[9] In the Holy Quran, the term "dower" is typically translated as "ajr," which denotes a gift and reward given to the bride. Ajr is actually that which has gain but no loss. The Holy Quran once used the word saduqat to denote the gift given at marriage, along with other words from the same root that denoted dower or sudaq. In Hadith, the word "mahr" denotes dower or a gift given at marriage.

[9] Al-Quran , Surah AL-Nisa(the Women), iv: 24, Tanzil-ur- Rahaman, A code of muslimPersonal law, vol. 1 Karachi, Pakistan, p. 218.

According to AbdurRahim,"It is either a sum of money or other form of property to which the wife becomes entitled by marriage. It is an obligation imposed by law on the husband as a mark of respect for the wife."[10]

According to Mulla: Dower is a sum of money or other property which the wife is entitled to receive from the husband in consideration proceeding from the husband for contract of marriage. It is an obligation imposed by low upon the husband as a mark of respect to the wife. Moreover, the obligation to pay dower does not arise by any express agreement among the parties.[11]

Mahmood J in Abdul Kadir vs. Salima, gives the best description the nature of dower. He observes: "Dower, under the Muhammadan Law, is a sum of money or other property promised by the husband to be paid or delivered to the wife in consideration of the marriage and even where no dower is expressly fixed at the marriage ceremony, the law confers the right of dower upon the wife as a necessary effect of marriage.[12]

Where more than two years have passed since the demand for payment of prompt dower was made the wife would obviously be entitle to a decree for dissolution of marriage on the ground of failure to maintenance for two years.

2.6 Maintenance

There are some important definition of maintenance is given bellow:-

According to Hedaya, "All those things which are necessary to the support of life, such as food, cloths, and lodging; many confine it solely to food."[13]

According to Fatawa-i-Alamgiri, "Maintenance comprehends food, raiment and lodging, though in common parlance it is limited to the first."

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[10] Sayedkhalid Rashid,*Muslim law,* 4th ed. (Lucknow:Eastern Book Company),p.83.

[11] ShaukatMahmood, *Principles and Digest of Muslim Law*, 6th ed.(Lahor: Caravan Press, 2002) P. 47.

[12] *Mahmood J in Abdul Kadir v.Salima*, 2 DLR.230.

[13] Fatawa-i-Alamgiri.Vol. 1 p.732, Aqil Ahmed, p.229.

The main principles of maintenance may be recounted thus:

(1) A person is entitled to maintenance if he has no property

(2) Is related to the obligor within prohibit degrees, or is the wife or child, and

(3) The obligor in position to support him.

Maintenance is the monetary support that a wife, children, parents, and grand children can claim as a matter of legal right on the husband, parents, son, and grandfather respectively to maintain their livelihood. It includes food, clothing, lodging, medical support for the adults (in applicable cases), and also includes other necessary expenses for mental and physical well being according to their respective status in society. Grounds by which the obligation is imposed on a person in order of gravity are: (a) marriage, (b) kinship, and (c) inheritance. A father is bound to maintain his sons until they have attained puberty and his daughters until they are married.[14]

Maintenance defined: Maintenance includes food, clothing and lodging. The definition of maintenances is not exhaustive. The word includes other necessary expenses for mental and physical well being of a minor, according to his status in society. Educational expenses were included in the definition in *Ahmedullah v.MqfizUddin Ahmed*.[15]

Maintenance of wife and children: after divorce wife is entitle to maintenance up to iddat period; *Shah Azmallah v.Imtiaz Begum*. Which extends to three months; *Mitha Khan v.HemayetBibi*. Where a wife refused to live with the husband and perform marital obligations without valid reason, husband is not bound to maintain her. Past maintenance cannot be claimed by children unless already fixed by court. [16] *Section 3 of the Ordinance of 1985* only means that if there are provisions in the ordinance which are different from or are in conflict with the provisions of any other

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[14] Asaf A. A. Fayzee, *Outlines of Muhammadan Law*, 4th ed. (Delhi: Oxford University Press,1974), p.150.

[15] *Ahmedullah v.MqfizUddinAhmed* 4 DLR 613.

[16] *Mitha Khan v.HemayetBibi* 11 DLR (WP) 17.

law then the provisions of the said Ordinance will prevail. Section 3 does not debar the application of limitation Act to suits file under the Ordinance of 1985. The fact that the *Ordinance of 1985* speaks of 'suit',' 'plaint' 'Written statement', 'decree', etc. clearly attracts the Limitation Act under section 29 (2) thereof. *JamilaKhatun v Rustom All*.[17]

2.7 Guardianship or Custody of Children

In all cases father, if alive, is the natural guardian of the person and property of his minor child. In absence of father, the responsibility shifts to mother, and in case of absence or inability of mother grandfather or the nearest relation of the parents becomes guardian of the person and property of the minor. Even the government can be the guardian of the person and property of the minor in demanding situation. Prior to promulgation of *Family Court Ordinance 1985*, district judges were appointed the guardian of person and property of a minor, which is now vested on the concerned assistant judge of the Family court. All application for appointment of a guardian of the person or property or both of minor are to be under *the Guardians and Wards Act, 1890.* However, a prospective guardian may start working as a guardian of the minor as per Muslim law even before getting judgment of the court.[18]

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

An appeal against the judgment, decree or order of a Family court shall be preferred within thirty days of the passing of the judgment, decree or order excluding the time

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17 *JamilaKhatun v.Rustom All* 48 DLR (AD) 110.

18 Sayedkhalid Rashid, *Muslim law*, 4th ed. (Lucknow: Eastern Book Company), p.107.

required for obtaining true copies thereof. The High Court Division may, either on the application of any party or of his own accord transfer any suit under this Ordinance from the Family court to another court within the local limits of its jurisdiction. A Family court shall be deemed to be district court for the purposes of guardianship and custody of children.

As long as this Ordinance doesn't conflict with national personal law or religious law, its provisions will take precedence over other relevant regulations. The followers of those faiths that permit divorce are subject to these regulations. This court will follow religious precepts when conducting the trial and rendering its decision. Nevertheless, none of the provisions of the Muslim Family Law Ordinance of 1961 will be affected by this Ordinance.[19]

[19] *Muslim Family Law Ordinance of 1961.*

Chapter 3
Laws relating to Family Courts

3.1 Introduction

Bangladesh separated from Pakistan in 1971, and as a result, it shares with Pakistan the laws enacted before that date as well as numerous Acts and Ordinances created after Bangladesh's independence. The Muslim Family Law Ordinance of 1961 also established a family court. Family law is the branch of law that addresses one of the most fundamental and intimate facets of family life. The creators of family court probably had no idea that it would develop into a forum for all family-related disputes in its current form, even though child or juvenile court was actually its forerunner.

It is clear that the establishment of these family courts was a proactive move toward clearing the backlog of cases and guaranteeing the efficient administration of justice. There are two tiers to the legal system in Bangladesh. Both the Supreme Court and the lower courts hear cases in both the criminal and civil domains. The subordinate courts are the first instance courts and function at the district level. The courts are separated into criminal and civil divisions. Certain tribunals handle labor and tax matters, while family court handles matters pertaining to an individual's religious affiliation in relation to their personal status.

3.2 Family Courts in Bangladesh an Overview

The backlog of cases in Bangladesh's judiciary is well known to be a serious weakness. The quantity of family law cases that Bangladesh's Supreme Court and lower courts are receiving, It's also important to remember that marriage as an institution is currently under intense judicial scrutiny. The various facets of marriage are covered by a number of legal provisions. As a result, this institution's privacy has been jeopardized in addition to any potential benefits that these legal provisions may offer. As per studies conducted in Dhaka, 40 % of marriages are heading towards

divorce. There are issues like alimony which become the topic of great controversy and cause harassment to families. What further becomes a problem is that personal issues get intertwined with the legal issues and lead to the unnecessary prolonging of the disposal of these cases. The younger generation, being made a scapegoat in the changing times due to the ensuing cultural war between Conservatives and Liberals, wastes its useful youth in the precincts of the litigating corridors of the family courts, criminal courts and magistrate courts waiting in long queues being expectant of receiving justice.

One of the trends in women's legal reforms was the 1985 Family Courts Ordinance. Owing to mounting pressure from numerous organizations that advocate for women's rights across the nation, the Act was anticipated to enable amicable settlement of family-related conflicts through a forum that would act swiftly, fairly, and with an approach that guaranteed women's dignity and the maximum welfare of society. Indian women have been denied justice and fundamental human rights for centuries due to the prevalence of laws that are biased against women and oppressive social practices. The necessity for the formation of the Family Courts was demonstrated by

The Family Courts Ordinance, 1965

To this background, a significant development has been the recent setting up of the Family Court in Bangladesh. Though such courts

have been set up and are functioning in other districts, the setting up of a family court in the Bangladesh is a significant development and a step which was necessary to be taken. The main purpose behind setting up these Courts was to take the cases dealing with family matters away from the intimidating atmosphere of regular courts and ensure that a congenial environment is set up to deal with matters such as marriage, divorce, alimony, child custody etc. As mentioned earlier, an effective way of tackling the problem of pendency is to improve the efficiency of the system rather than changing the system altogether. A significant step is to make use of the available human resource. These family courts at Bangladesh are equipped with counselors and psychologists who ensure that the disputes are handled by experts who do not forget

that while there may be core legal issues to be dealt with; there is also a human and psychological dimension to be dealt with in these matters. The role of the counselors is not limited to counseling but extends to reconciliation and mutual settlement wherever deemed feasible.

3.3 Procedure followed by the Family Courts

Family courts have the liberty to develop their own procedural rules, which take precedence over those outlined in the Code of Civil Procedure once they are enacted. In actuality, the goal of the Family Court establishment was achieved by amending the Code of Civil Procedure.

Special emphasis is put on settling the disputes by mediation and conciliation. This ensures that the matter is solved by an agreement between both the parties and reduces the chances of any further conflict. The aim is to give priority to mutual agreement over the usual process of adjudication. In short, the aim of these courts is to form a congenial atmosphere where family disputes are resolved amicably. The cases are kept away from the trappings of a formal legal system. The shackles of a formal legal system and the regular process of adjudication causes unnecessary prolonging of the matter

and the dispute can worsen over time. This can be a very traumatic experience for the families and lead to personal and financial losses that can have a devastating effect on human relations as well. This again points to the importance of having guidance counselors and psychological experts to deal with such matters.

The Act stipulates that a party is not entitled to be represented by a lawyer without the express permission of the Court. However, invariably the court grants this permission and usually it is a lawyer which represents the parties. The most unique aspect regarding the proceedings before the Family Court are that they are first referred to conciliation and only when the conciliation proceedings fail to resolve the issue successfully, the matter taken up for trial by the Court. The Conciliators are professionals who are appointed by the Court. Once a final order is passed, the

aggrieved party has an option of filing an appeal before the High Court. Such appeal is to be heard by a bench consisting of two judges.

3.4 Function and Jurisdiction of the Family Court in Bangladesh

The primary goal of the Family Courts is to facilitate the efficient and successful resolution of cases pertaining to family law. But when it comes to how these courts operate, there are some problems that arise, just like with any other system. Continuity is one such problem. For instance, counselors in Tamil Nadu's family courts are replaced every three months. Because of this, when cases take longer than this, the woman or the resentful party needs to get used to new counselors and tell their story multiple times.

Nonetheless, the Family Court Ordinance of 1985 established family courts with the aim of resolving certain family disputes in a prompt, efficient, and civil manner. The fact that the framers only gave the dependent 30 days to appear and stipulated that the court may dismiss the lawsuit if, following summons service, neither party shows up when the case is called for hearing clearly indicates how anxious they were to get the family case resolved as quickly as possible. Once more, the goal is made clear by offering a process for in camera case trials when necessary to protect privacy and confidentiality as well as to effectively handle some complex and sophisticated matters that might not be able to be handled in accordance with the moral laws of the land.

By the Family Courts Ordinance 1985 the family courts get hold of exclusive jurisdiction for expeditious settlement and disposal of disputes in only suits relating to dissolution of marriage, restitution of conjugal rights, dower, maintenance, guardianship and custody of children. The courts began working all over the country except in the hill districts Rangamati, Bandarban, and khagrachhari. Soon after the court began functioning, questions raised whether the family courts would deal only with the family matters of Muslim community or of all communities. The uncertainty

lasted for a long time until in 1998 a special high court bench of the supreme court in a path finding judgment removed all the question regarding family court's jurisdiction. Every lawyers and judges dealing with family court are supposed to be aware of the judgment. But the common people for whose benefit the courts have been constituted seem still uninformed about the great decision relieving the justice-seekers in the family courts harming uncertainty.

Section 5 of the Family Courts Ordinance 1985 speaks about the jurisdiction of the family courts which reads as: " subject to the provisions of the Muslim Family Laws Ordinance 1961 a family courts shall have exclusive jurisdiction to entertain , try and dispose of any suit relating to, or arising out of, all or any of the following matters, namely……

[a] dissolution of marriage;

[b] Restitution of conjugal rights;

[c] Dower;

[d] Maintenance;

[e] Guardianship and custody of children"

3.5 Conclusion

It is clear that the establishment of these family courts was a proactive move toward clearing the backlog of cases and guaranteeing the efficient administration of justice. But as was already mentioned, these courts continue to face troubling issues. As stated in the examples pertaining to both the procedural and substantive aspects of the issues, the issues surrounding the overall operation of these courts must be considered. The particular provisions of the Family Courts Act give rise to a number of contentious and controversial issues, such as hiring legal counsel.

Chapter 4

Present situation of the Family Courts

4.1 Introduction

The creation of Family Courts was both an expression of our highly developed legal philosophy and an admission that family law lawsuits had proven too difficult for our conventional civil courts to handle. The Family Courts Ordinance 1985. 1 established Family Courts with the goal of resolving certain family disputes in a timely, efficient, and amicable manner. This goal is clear in various places throughout the Ordinance's body, even though it is not immediately apparent from the preamble. Fixing a mere thirty days for the defendant's appearance indicates how anxious the Ordinance's framers were to get the family cases resolved quickly. by stating that the court may dismiss the lawsuit if, following summons service, neither party shows up for the hearing. Once more, the goal is made clear by offering a process for in camera case trials when necessary to protect privacy and confidentiality as well as to effectively handle some complex and sophisticated matters that might not be able to be handled under standard state law. Again, the Evidence Act of 1872 and the Code of Civil Procedure 1908, with the exception of sections 10 and 11, have not been made applicable in the Family Court proceedings, which is another indication that the lawmakers' desire for the Family Court to handle family matters in a friendly environment, which has been demonstrated to be lacking in the drawn-out processes of civil courts. Sadly, despite the passage of more than 20 years since the Family Courts' establishment, the admirable goal of establishing them has not yet been fully realized. There are a wide variety of causes for this kind of disappointment.

4.2 Various problems in Family Courts

Various problems in Family Courts are given as follows:-

The Unacknowledged Problem

The family courts now use a variety of alternate dispute resolution procedures, stringent guardian ad item policies, court-ordered therapies, extensive psychological opinions, and forensic evaluations in court cases. These issues are all related to the therapeutic jurisprudence in the courts. The subtle degradation of long-standing principles of lawyer independence and due process has been one of the issues with the rise of therapeutic jurisprudence and the introduction of non-legal systems and non-legal professionals into the courts. One of the many ways this happens in the family courts has been, ironically, through the introduction of subtle and often unrecognized conflicts of interest afflicting lawyers' representations of their clients, created through the common development of multidisciplinary collegial relationships and business referrals, both informally and through the very multidisciplinary organizations which are promoting therapeutic jurisprudence ideas. The conflicts of interest arise because most lawyers represent different kinds of clients on ideologically oppositional sides in different cases. The typical family lawyer sometimes represents the wife, sometimes the husband, sometimes the "good guy", and sometimes the "bad guy". If a lawyer coming into a case runs up against an expert with whom he has a referral or employment relationship in other cases and that expert takes a position adverse to the lawyer's client in the new case, the lawyer will have a very difficult time adequately representing his client. Appropriate representation may require the lawyer to strenuously object to the expert's testimony or even the expert himself. But if the lawyer needs the good will and cooperation of that same expert in connection with the lawyer's other clients' pending cases, he cannot do that because he may put those other cases at risk. Even in cities, the legal community is small and frequently close-knit. Attorneys who practice in the same field frequently cross paths in various cases. Even fewer guardians ad litem (GALs) and forensic experts are typically available. Due to the fact that these specialists are frequently associated with cases, it is possible

for any one of them to occasionally appear on both the "right side" of a lawyer's cases as well as the "wrong side" of other lawyer's cases, either as a hired expert or one appointed by the court. Many of the same problems that arise from regular client conflicts of interest also arise from this.

4.3 How the Conflicts of Interest Affect the Lawyers and Their Clients' Cases

Attorneys in these situations may feel pressured to convince themselves and the public at large that an expert's conclusions, even when they are unfavorable to their client, are supported by science, even if they are seriously flawed or wholly untrue. Since attorneys are not "scientists," they may convince themselves that it is not their place to judge whether the science is valid. This issue will inevitably arise for the attorney who, whether on accident or on purpose, embarks on a multidisciplinary practice, frequently exchanges referrals, and forms other intimate relationships with nonpayer case participants. The roles of these other system participants and lawyers are significantly different. Even when these people work as independent contractors, there is less of a risk of conflict when attorneys directly hire paralegals, experts, and other support staff. Initially, until they testify, their work is protected by attorney work product. Second, in terms of their involvement in other cases and with other people, they are bound by the same conflict of interest regulations as the hiring lawyer because they were employed by the lawyer. However, this is untrue when it comes to "independent" experts like guardians ad item and custody evaluators. These so-called "court-appointed experts" who provide opinions "for the court" are a completely different story. These same kinds of conflicts also do not arise when lawyers engage in professional relationships with other lawyers who regularly are on the opposing sides of cases, because unlike the lawyer colleagues, the practitioners of therapeutic jurisprudence are actually case participants — witnesses and even parties. Although ostensibly working "for the court", they are not akin to neutral judges or magistrates, bailiffs or other courthouse personnel. None of these truly neutral courthouse persons advocates for a position in a case, testifies as a witness, or

participates as a party proper as do some GALs. Contrary to the rhetoric, court-appointed evaluators and opining GALs are not neutral participants in the system. Even if they initially were hired under that rubric, once their reports are rendered, and their opinions formed and ready to be given, they have become advocates for one or the other side or issue in a case. Thus, at a point, they are, just as any party would be, pointedly in favor of certain outcomes, and adverse to others. The routine broad involvement of these expert witnesses thus must be recognized by the legal profession as the egregious misjudgment it is, fostering legal ethical violations that must be addressed by state bar ethics rules. Ironically, the problem is worse for lawyers who are not ideologues, because these lawyers are more likely to advocate for different client perspectives. Such a lawyer confronts an unresolvable dilemma when an expert the lawyer is relying on in one case takes a similar position, including one that may lack scientific merit, against another of the same lawyer's clients in a different case. Because the expert and the lawyer have been, are currently, or will be in cahoots in these other cases, the lawyer is placed into a conflict, unable zealously to discredit the expert when that is necessary to protect his current client. Bar ethics rules must address this. In fact, the legal community is aware that experts themselves are equally tempted to distort their findings in order to appease the attorneys they regularly work with and refer business to. This surely adds to the ongoing corruption of the legal system and has prompted calls for the expulsion of these third parties (refer, for example, to Margaret Hagen's Whores of the Court, published by Regan Books in 1997). However, as a group, attorneys have not acknowledged or acknowledged the impact these practices have had on their own ethics and practices.

4.4 Dowry and Maher

The issue of dowry is one of the worst aspects of marriage in Islam in the context of our society. There is a strong connection between this issue and the abuse of women. Lack of knowledge about Islam, a lack of education, and ineffective law enforcement are major contributing factors. Maher is a requirement of Islam, mutually agreed upon by the parties to a marriage. The groom is to make Maher an offer. Maher is not limited in what or how much he is or should be. But, it is preferred that it be contingent upon the groom's capacity and BRIDE's approval. Maher can and ought to protect the wife's finances as well. In light of the wrongdoings prevalent in our society, the following should be taken into account: The bride should be fully informed about the offered Maher and her express consent should be sought. Maher should not be an outrageous amount that the groom cannot afford. Maher should be paid off at the time of marriage. Maher is for the BRIDE, not her parents or relatives. The dowry, which is a gift from the bride's family that grooms request or demand for their marriage, is purely Islamic. The fact that the bride's parents frequently attempt to woo a particular groom by offering a large dowry to the groom's side exacerbates our dowry-related issues. While every gift, regardless of who gives it or from what source, needs to be handled differently, any elicitation or demand has no Islamic validity, and in order to bring this issue to the public's attention, extensive education is required.

Chapter 5

Problems of the Judges of the Family Courts

5.1 Introduction

There is a relationship between problems and their solutions. Each branch of government has its share of issues, and the state's judiciary is no exception. It has a lot of issues. In this research chapter, I address a variety of judge-related issues and attempt to provide a comprehensive overview of these issues facing Bangladeshi judges.

5.2 Multiplicities of the suits

One of the biggest issues facing Bangladesh's justice system is the proliferation of family lawsuits. The following are the primary causes of the suits' abundance:

a) Over population

Bangladesh has a land area of 147570 square meters and a population of roughly 160 million people. Due to the population density, a large number of cases are open each year, with family matters accounting for the majority of these cases. Judges thus deal with a variety of issues.

b) Lengthy process of trial

Even though everyone is aware of the litigation delay, it may still seem incompatible with the rule of law. The fact remains that cases themselves are abused and misused to prolong cases indefinitely, and the eventual success of the cause frequently turns out to be untrue. Today, the state can effectively mitigate social needs by using the law to ensure timely and proper justice. Such legal efforts are accountable if the slow pace of litigation prevents justice from alleviating the suffering of the masses, and if the state fails to guarantee a prompt and efficient administration of justice, the masses will never develop a faith in justice. When it comes to justice, tardiness in In our nation, litigation has historically been done in tandem with depriving people of their

legal due process. As a result, the number of cases in all courts is increasing dramatically every day. In civil courts, the practice of delaying litigation is extremely common. This dire circumstance impeding our justice system appears to be the result of several factors. Here, an effort has been made to identify a few of the causes and offer solutions. Also, it has been observed that the attorneys frequently file "time petitions" because they might not be prepared to present their case. As a result, the attorneys' constant time-stealing needs to end.

c) Less numbers of the family courts

One of the causes of the diversity of judges is the smaller number of family courts. Not every district has enough family court rooms. There are a lot of cases that go unresolved each year, particularly family matters.

d) Less numbers of the judge

Not all family courts have judges available. Many cases pertaining to family matters are open every day. Every Family court has one judge, but they are unable to handle all the cases, which is why the number of lawsuits is increasing daily.

e) Lack of the family laws

The current family laws do not provide a comprehensive solution for family lawsuits. Depending on other laws. The Family Courts Ordinance aims to expedite the resolution of family matters through the same forum. The Magistrate no longer has the authority to consider maintenance applications, which are family court matters, due to provisions in the Family Courts Ordinance. The Criminal Courts typically consider a maintenance case filed under section 488 of the Code of Criminal Procedure, which is the exact opposite viewpoint. The Family Courts Ordinance's (i) section 3 states that the provisions of the Ordinance shall take effect regardless of any other law currently in effect. (ii) Section 4 designates all Assistant Judge courts as Family Courts for the purposes of this Ordinance. (iii) Section 5 stipulates that the Family Courts have exclusive jurisdiction to hear, determine the outcome of, and handle any suit pertaining to the subjects listed in this section, including maintenance. These provisions were taken into consideration by the Court in order to resolve this

issue. According to the Court, these sections unequivocally declare that other courts' jurisdiction to hear cases enumerated in section 5 of the Ordinance is eliminated. If the wife stops living with her husband without a valid reason, the husband may file a lawsuit to regain their conjugal life. This lawsuit may only be filed against a wife who is lawfully married. However, if the marriage contract is dissolved, the husband is not permitted to bring such a lawsuit.

f) Lack of expert lawyer

There isn't a family law expert attorney in our nation. The attorneys are opposed to finding a different solution to the issue. The judges and attorneys do not agree with the tenets of alternative dispute resolution procedures. There is no better option than to strive to develop alternative modes of dispute resolution by establishing facilities for providing settlement of disputes through arbitration, conciliation, mediation, negotiation, etc. in a developing nation like Bangladesh where significant economic reforms are underway within the framework of the rule of law. Strategies for faster resolution of disputes are also needed to lessen the burden on the courts and to provide means for expeditious resolution of disputes. Not every lawsuit ends in a satisfactory resolution. Both in terms of money and time, it is costly. Winning or losing a legal case does not alter the adversarial mindset of the parties involved, who will continue to battle it out in successive appeals. Formalized alternative dispute resolution (ADR) was introduced in Bangladesh in June 2000 through court-annexed judicial settlement pilot projects. The goal of these projects was to reduce costs, delays, and the frustrations that litigants experienced during the traditional trial process.. The pilot program started as a joint venture between Bangladeshi legal studies of Californian ADR systems and ISDLS. In the Dhaka Judgeship, three Pilot Family Courts were set up, and they solely used judicial settlement to settle family law disputes, such as divorce, maintenance, dower, and child custody. A 1985 Family Courts Ordinance allowed the trial judge to mediate a settlement between the parties both before and during the trial, negating the need for an amendment to the Code of Civil Procedure. Thirty Assistant Judges, comprising both lawyers and non-lawyers

from all over Bangladesh, worked in the pilot courts after receiving mediation training from a US expert in the field.

g) Complexity of the family laws

Sections 307 and 308 of Muslim law provide specifics on the dissolution of marriage. According to Muslim law, the marriage contract may be dissolved in any of the following ways: (i) at the husband's discretion, without the need for a court's intervention; (ii) with the husband and wife's mutual consent, without the need for a court's intervention; or (iii) by a judicial decree at the husband or wife's request. Except in cases where the wife is granted this right in the Nikah Nama, she is not permitted to divorce her husband on her own. We call this kind of talak, talak-e-toufiz. Referred to in the terms of the agreement between parties as khula or mubara'at when the divorce is influenced by mutual consent.

The dissolution of contract of marriage by the husband at his will without the intervention of the court is called *talak*. Talak may be oral or in writing. To talak orally husband with sound mind pronounces a few words willfully, which are expressed (*saheeh*) or well understood as implying divorce, and since pronouncement behaves accordingly. Talak in writing or *talaknama* is the written document of oral talak. The deed may be executed in the presence of the kazi, or the wife's father or of other witnesses. However, the deed should be in customary form and properly super scribed and addressed so as to show the name of the writer and person addressed. In Muslim law, the wife too has limited right to divorce her husband judicially. A wife can dissolve the contract of marriage with the intervention of the court on the grounds: (i) the whereabouts of the husband are unknown for a period of four years; (ii) failure of the husband to provide for the maintenance of the wife for a period of two years; (iii) sentence of imprisonment on husband for a period of seven years or more; (iv) failure without reasonable cause to perform marital obligations; (v) impotence of husband; (vi) insanity of husband or his suffering from virulent venereal

disease; (vii) repudiation of marriage by wife; (viii) cruelty of husband; and (ix) marriage without her consent. This divorce is called *talak-e-taufiz*.

h) Dependence of the poor on informal justices system

It has been noted that the impoverished often resort to informal justice systems due to difficulties gaining access to formal systems. In addition to less common serious crimes like rape, murder, and acid violence, the majority of issues faced by the impoverished include family conflicts, small-time theft, petty disputes, sexual abuse, etc. Due to the small number of these cases compared to the vast number of more serious ones, formal courts typically do not take them into consideration. If filed in a formal court, these small cases are frequently referred to the Village Court (VC). But one peculiarity of these seemingly unimportant issues is that, despite their apparent insignificance, they have the ability to become important and possibly even cause harm to the parties concerned. If the issues had been addressed sooner through the village court or other unofficial channels, more serious issues (violence, severe injury, etc.) might have been avoided. All rural residents agree that issues should be prevented before they become serious rather than waiting to be noticed after harm has already been done. They say, court.

only takes into account issues when they get to the extreme, but if issues are appropriately handled in the early stages through local level institutions, the extreme stage can be avoided (Ali and Alim, 2005; World Bank-BRAC ongoing research on justice, 2006). Nonetheless, there are issues with the informal justice systems and procedures at the local level. The limitations that the impoverished encounter when attempting to obtain justice through unofficial institutions are discussed in the following section.

5.3 The Prime Object of Family Court

The nation's family courts were founded in 1985 to handle cases involving divorce, restitution of marital rights, maintenance, dower, guardianship, and child custody. In the past, these matters were heard by magistrate courts in accordance with the Code of Criminal Procedure and by civil courts in accordance with the Code of Civil

Procedure. However, these courts were unable to resolve the lawsuits in a timely manner due to their massive caseloads. In addition to requiring a significant investment of time, money, and skill, the premature dismissal of the lawsuit exacerbated family strife. Regretfully, the family's lawsuit for relief ended up becoming a curse. People's faith and confidence in the court was therefore being undermined by the delays in resolving the lawsuits. Therefore, the goal of creating family courts was to restore public confidence in the legal system while also providing a prompt and efficient means of resolving conflicts involving family matters. The Family Courts Ordinance of 1985 establishes a unique procedure that takes into account the unique purpose of family courts. Among other things, it sets a thirty-day deadline for the defendant to appear and states that the suit may be dismissed by the court if, following summons service, neither party shows up to consent to it. [20]

As a conventional alternative dispute resolution method, mediation became just another venue for the local elite to dominate and exercise their power. In actuality, the main goal behind the creation of the Family Courts was and still is the resolution of disputes through mediation.

5.4 Process of Mediation

Roles

a) Mediator

The mediator's main responsibility is to mediate disputes between the parties by serving as an impartial third party. The mediator can also assist in the process by making sure that all prerequisites are met.

b) Parties

[20] [https://books.google.com.bd/books?id=TJgtBQAAQBAJ&pg=PA10&lpg=PA10 &dq Mediation the=prime=object-of-the-family-court source, Last visited, 2 November, 2023].

The roles that the parties play in mediation vary depending on their goals and abilities, as well as the role of legal counsel, the mediation model, the mediator's style, and the culture of the setting. Their roles may also be impacted by legal requirements. An emerging method called Party-Directed Mediation (PDM) involves a pre-caucus between the parties and the mediator prior to the joint session. The goal is to assist the parties in developing their interpersonal negotiation abilities so that they can speak with each other in the joint session with minimal intervention from the mediator.[21]

c) Authority

One of the fundamental prerequisites for a successful mediation is that the parties' respective representatives must have complete authority to negotiate and resolve the conflict. In the event that this is not the case, there is what Spencer and Brogan refer to as the "empty chair" phenomenon, which is the absence of the person who should be having a conversation about the issue.

d) Arrangement

The first step is for the parties to agree to mediate, maybe even before any preparations are made. Then, the parties get ready pretty much the same way they would for any other kind of negotiation. Position statements, valuation reports, and risk assessment analyses are all acceptable from the parties. The mediator might oversee or assist with their preparations and might even demand specific ones.

e) Disclosure

Disclosure requirements may be found in mediation agreements, mediation guidelines, and court-based referral orders. Mediators may be able to order parties to produce records, reports, and other materials either explicitly or implicitly. When a matter is brought before a court for mediation, the parties typically share all information that could be obtained through discovery or disclosure rules, such as witness statements, valuations, and statement accounts.

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[21] [https://en.wikipedia.org/wiki/Mediation#Process, Last visited, 25 November, 2023].

5.5 The Unacknowledged Problem

The family courts now use a variety of alternate dispute resolution procedures, stringent guardian ad item policies, court-ordered therapies, extensive psychological opinions, and forensic evaluations in court cases. These issues are all part of the problem with therapeutic jurisprudence in the family courts. The subtle degradation of long-standing principles of lawyer independence and due process has been one of the issues with the rise of therapeutic jurisprudence and the introduction of non-legal systems and non-legal professionals into the courts. Ironically, one of the numerous ways this occurs in the family courts is the introduction of subtle and frequently unacknowledged conflicts of interest that affect attorneys' representations of their clients. These conflicts are brought about by the informal development of multidisciplinary collegial relationships and business referrals, as well as by the very multidisciplinary organizations that support the concepts of therapeutic jurisprudence. The majority of attorneys represent a variety of clients on opposing ideologies in various cases, which gives rise to conflicts of interest.[22]

5.5.1 Over Population.

The prevalence of family suits is one of the biggest issues facing Bangladesh's justice system; the country has a land area of 147570 square meters but a population of roughly 160 million people. Due to the population density, a large number of cases are open each year, with family matters accounting for the majority of these cases. Judges thus deal with a variety of issues.[23]

5.5.2 Lengthy Process of Trial

Even though everyone is aware of the litigation delay, it may still seem incompatible with the rule of law. The fact remains that cases themselves are abused and misused

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[22] [https://www.google.com/search?q=Assignment+Point.htm&ie=utf-8&oe=utf-8, Last visited, 10 July, 2023].

[23] [http://bdlaws.minlaw.gov.bd/pdf_part.php?id=682, Last visited, 18 July, 2023].

to prolong cases indefinitely, and the eventual success of the cause frequently turns out to be untrue. Today, the state can effectively mitigate social needs by using the law to ensure timely and proper justice. Such legal efforts are accountable if the slow pace of litigation prevents justice from alleviating the suffering of the masses, and if the state fails to guarantee a prompt and efficient administration of justice, the masses will never develop a faith in justice. In the field of justice, delay in litigation is traditionally practiced in our country as like at the same time as denying due process of law.

5.6 Less Numbers of the Family Courts and Judges

One of the causes of the diversity of judges is the smaller number of family courts. Not every district has enough family court rooms. There are a lot of cases that go unresolved each year, particularly family matters. There is a relationship between problems and their solutions. Each branch of government has its share of issues, and the state's judiciary is no exception. It has a lot of issues. Not all family courts have judges available. Many cases pertaining to family matters are open every day. Every Family court has one judge, but they are unable to handle all the cases, which is why the number of lawsuits is increasing daily.[24]

5.6.1 Lack of the Family Laws

The current family laws do not provide a comprehensive solution for family lawsuits. Depending on other laws. The Family Courts Ordinance aims to expedite the resolution of family matters through the same forum. The Magistrate no longer has the authority to consider maintenance applications, which are family court matters, due to provisions in the Family Courts Ordinance. The Criminal Courts typically

[24] Shahdeen Malik, 'Muslim Law and Law Reform, *'Bangladesh Journal of Law*, Vol.1, Dhaka, Bangladesh, p.64.

consider a case filed under section 488 of the Code of Criminal Procedure, 1898 for maintenance, which is the exact opposite viewpoint. [25]

5.6.2 Lack of Expert Lawyer

There isn't a family law expert attorney in our nation. The attorneys are opposed to finding a different solution to the issue. The judges and attorneys do not agree with the tenets of alternative dispute resolution procedures. There is no better option than to strive to develop alternative modes of dispute resolution by establishing facilities for providing settlement of disputes through arbitration, conciliation, mediation, negotiation, etc. in a developing nation like Bangladesh where significant economic reforms are underway within the framework of the rule of law. Strategies for faster resolution of disputes are also needed to lessen the burden on the courts and to provide means for expeditious resolution of disputes.

5.6.3 Complexity of the Family Laws

Sections 307 and 308 of Muslim law provide specifics on the dissolution of marriage. According to Muslim law, the marriage contract may be dissolved in any of the following ways: (i) at the husband's discretion, without the need for a court's intervention; (ii) with the husband and wife's mutual consent, without the need for a court's intervention; or (iii) by a judicial decree at the husband or wife's request. If the wife does not have the right to divorce her husband without his consent, it is not permitted by the Nikah Nama. We call this kind of talak, talak-e-toufiz. In terms of the parties' agreement, a divorce that is influenced by mutual consent is referred to as khulaor mubara'at.[26]

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[25] *Code of Criminal Procedure, 1898,* s.*488.*

[26] Aqil Ahmed and DR. I. A. khan, *The text book of Mohammedan Law,* 21st ed. (Allahabad: Central Law agency, 2004), p. 163.

Talak is the term for the husband's unilateral, out-of-court dissolution of the marriage contract. Talak can be written down or spoken. A husband in good mental health willfully says a few words that are understood or expressed to imply a divorce, and since the statement behaves accordingly, the marriage is talak. Written talak, also known as talaknama, is an oral talak recorded in writing. The wife's father, the kazi, and other witnesses may be present when the deed is carried out. The following situations allow a wife to dissolve their marriage legally with the help of the court: (i) the husband's whereabouts are unknown for more than four years; (ii) the husband fails to support the wife for two years; (iii) the husband is sentenced to seven years or more in prison; (iv) the husband fails to fulfill marital obligations without a valid reason; (v) the husband is impotent; (vi) the husband is insane or suffering from a severe sexual disease; (vii) the wife repudiates the marriage; (viii) the husband is cruel to her; and (ix) the husband marries without her consent. We refer to this divorce as talak-e-taufiz.[27]

5.6.4 Lack of legal Awareness

The majority of rural Bangladeshis still don't know what their legal rights are. In a village, dowries are customary, and the locals are unaware that it is against the law to give or accept dowries. The women occasionally visit the NGO legal aid offices to accuse their husbands of beating them. The inability to pay the dowry is the cause in nearly all cases. Women still don't fully understand what "Denmohor" (dower) really means, and the majority of them didn't get it in time. Because of its patriarchal structure, traditional Salish are unable to provide justice in these situations, and until they rename it as "Bhoronposhon" (maintenance), NGOs are unable to offer legal

[27] GaziShamsurRahman, *Islamic law,* 1st ed. (Dhaka: Islamic foundation, 1981), p.194.

assistance in cases involving dowries. Legal assistance is thus given in a case of a different kind, but the dowry issue persists.[28]

5.7 Case study

September 11, 2009 (IRIN) – Dhaka Things can get ugly in Bangladesh when parents are unable to provide the promised dowry for their recently married daughter. Shopna Rani, 22, spoke these last words about her new husband, just hours before she passed away in a Dhaka hospital from her wounds: "He started beating me." Her parents had broken their pledge to cover the dowry. The Asian Legal Resource Center, situated in Hong Kong, claims that these types of cases in Bangladesh are not unprecedented. This is a cancer of society. Everybody suffers as it goes on unchecked, according to ALRC programmer officer Mohammad Ashrafuzzaman, who spoke with IRIN. The group claims that dower-related violence, such as acid attacks, torture, and even murder and suicide, stigmatizes women. According to Ain O Salish Kendro (ASK), a local NGO that promotes human rights, 119 cases of dowry-related violence, including 78 fatalities, were reported in the first half of 2009. According to ASK, 172 women died in 2008, compared to 187 in 2007. The organization also stated that in the first half of 2008, there were at least five documented cases of women taking their own lives due to unpaid dowries. "There are horrifying accounts of agony."

5.8 Conclusion

This chapter primarily discusses the state of family courts today, a number of issues they face, dower and Maher, and a few case studies that are connected to them. As I work on this chapter, I learn vital facts regarding family courts.

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[28] Shahed Ahmed Chowdhury, '*Women's Rights to Dissolution of Marriage in Islam'*, MaimulAhsanKhan, ed.,Womens Rights in Islam *(*Dhaka: TheNahar Light Foundation, 2009).

Chapter 6
CONCLUSION

6.1 Major Finding of the Study

The study's main finding is that family courts in Bangladesh are becoming more and more well-known. That is critical to my success as a law student. My understanding of family courts is lacking. I'm learning a lot about family courts and gathering a lot of information for my research. I also learned about the current state of family courts, their various issues, and the kinds of issues judges encounter during trial proceedings. In addition, I make an effort to research different family-related laws and talk about different cases involving family issues.

6.2 Recommendations

Thus, I go over a variety of terms, facts, laws, issues, and trial procedures pertaining to family courts in chapters 1 through 5. Lastly, I would like to offer some advice that has proven to be effective:

- A comprehensive explanation of family court law is required.
- Turning on the trial's camera is necessary.
- A quick and simple method of enforcing the judgment decree is required.
- In family courts, gathering evidence is an extremely important process. Who has the authority to document an admission before it has been properly and legally described?
- In order to resolve any family issues, alternative dispute resolution should be used.
- The general public ought to be conscious of their right to judgment.
- It should be necessary for judges to receive specialized training.
- Any interference should be turned off when a family trial is taking place.
- It is necessary to reform the family dispute trial system.

- It is time to activate the judicial system.
- The trial's camera needs to be turned on.
- There must be a quick and simple method for enforcing the judgment decree.
- Gathering evidence is a crucial step in the family court process. Who has the authority to document an admission that is not made in the proper and lawful order?
- Any family dispute should be resolved through the use of alternative dispute resolution.
- It is important for the public to understand their right to judgment.
- It should be necessary for judges to receive specialized training.
- Any interference should be turned off when a family trial is taking place.
- It is necessary to reform the family dispute trial system.
- It is necessary to activate the legal system.
- It is necessary to implement a requirement for marriage registration.
- The ability to dissolve a marriage or get a divorce through legal intervention.

6.3 Conclusion.

The law is supreme over everything. All disputes, not just family disputes, must be resolved if the law is applied correctly. Enforcing the law and ensuring justice is served are crucial to resolving all disputes. I attempt to provide a thorough analysis of Bangladesh's family courts in my research. First, I make an effort to learn about the different issues facing the family courts, and then I do my best to analyze them. Ultimately, we always try to enforce the law properly, respect it, and obey it.

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