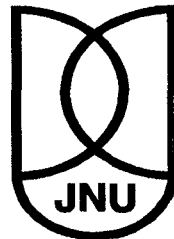


**PERSPECTIVES ON PERSONAL LAW AND UNIFORM FAMILY
CODE IN BANGLADESH**

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in partial fulfillment of the requirements
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MASTER OF PHILOSOPHY

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DECLARATION

This is to certify that the dissertation entitled “**Perspectives on Personal Law and Uniform Family Law in Bangladesh**”, submitted by me in partial fulfillment for the award of the degree of Master of Philosophy of Jawaharlal Nehru University is my own work. The dissertation has not been submitted for any degree of this university or any other university.

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For my Mom and Sister

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Contents

Acknowledgement	
Anonyms	
List of Tables	
I. Introduction	1-18
1.1 Colonial period	
1.2 Partition of India-India and Pakistan	
1.3 Rationale and scope of study	
II. Origin and Discourse of Uniform Family Code	19-39
2.1 Defining the concept	
2.2 Diverse practices of family law system and its outcome	
2.3 Feminist legal theory on equality and justice	
2.4 Personal laws of independent Bangladesh	
2.5 Origin of the discourse on Uniform Family Code	
III. Roles of Government, International Covenants and Agencies, and Civil Society	40-68
3.1 Issues under the Uniform Family Code	
3.2 Government of Bangladesh and its development initiatives for women	
3.3 Civil society: Response to women development	
3.4 International law on women's rights	
IV. The Hindu and Muslim Responses: A Comparative Analysis	69-88
4.1 The Hindus response to the propose uniform family code	
4.2 Muslim responses to the propose uniform family code	
4.3 Conventional outlook of Muslims and Hindus of Bangladesh	
4.4 Approaches and recommendation for reforms	
V. Conclusion	89-95
References	96-104
Appendices	105-133

List of Tables:	Pages
Table 4.1 Women in their personal law system in Bangladesh at a glance	83-87
Table 4.2 Dissolution of Marriages/Divorce	87
Table 4.3 Guardianship and custody of children	88
Table 4.4 Property	88

List of Appendices	Pages
Appendix I The Muslim Family Laws Ordinance, 1961	105-110
Appendix II Family Courts Ordinance, 1985	111-112
Appendix III The Dissolution of Muslim Marriages Act, 1939	113-115
Appendix IV Muslim Marriages and Divorces (Registration) Act, 1974	116-119
Appendix V Model Uniform Code Of Personal Law	120-133

Acronyms

AL	Awami League
ASK	Ain-O-Shalish Kendra
BBS	Bangladesh Bureau of Statistics
BLAST	Bangladesh Legal Aid and Service Trust
BMP	Bangladesh Mahila Parishad
BNP	Bangladesh National Party
BNWLA	Bangladesh National Women Lawyers' Association
BWHC	The Bangladesh Women's Health Coalition
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
GAD	Gender and Development
FOC	Friends of the Chair
IOJ	Islami Oikyo Jote
MOWCA	The Ministry of Women and Children Affairs
MFLO	Muslim Family Laws Ordinance
NAP	National Action Plan
NGO	Non-Governmental Organization
NCWCD	The National Council for Women and Child Development
NCWP	National Women's Development Policy
NPWA	National Policy for Women's Advancement
OWDEB	Organization for Women's Development in Bangladesh
UFC	Uniform Family Code
UN	United Nation
UNCEDAW	United Nation Convention on the Elimination of All Forms of Discrimination against Women
UPR	Universal Periodic Report
USAID	United States Agency for International Development
VAW	Violence against Women
WID	Women in Development

CHAPTER I

Introduction

This study is focus on personal laws. Here I shall start with an analysis of the development of religious personal laws in the Indian sub-continent. Law is a system of rules, usually enforced through a set of institutions. It shapes politics, economics and society in numerous ways and serves as a primary social mediator of relations between people. According to Ghosh (2007), law has two sources namely a written law and unwritten law. Firstly, a written law consist of the constitution, the law code and the court judgment. Secondly, unwritten laws include local or natural laws, cultural and family laws. Personal law implies those set of legal rights pertaining to family affairs, Therefore it does not entitle to an individual but on being a member to religious groups, community or any organisation. There are many types of laws and within that ambit and this study is focus on the personal laws and the Uniform Family Code in Bangladesh. This chapter would give a brief introduction on the origins of Hindu law and Muslim law in India in general and Bangladesh in particular.

The Hindu Law

Hindu law was believed to be of divine origin like most ancient system of law (Parashar 1992:48). Traditionally, ancient India is represented by a distinct law which has historically independent legal school theoretically and practically. The Hindu law is composed of the shashtric and customary traditions which are of age old practices. The Arthashastras which is dated back to 400 BC and the Manusmriti to 100 AD were the two most influential texts which have provided an authoritative legal guidance to Hindu law (Glenn 2000:276). The central philosophy of Manu's was tolerance and pluralism. Since it has not mention that Hinduism is based on single scripture or text, to trace back the origin of the personal law or to define the terms is not easy. Hindu law revolves around largely on the concept of dharma which in common parlance is religion. It also has its cultural connotation and has a broader meaning that encompasses righteousness.

Dharma is a Sanskrit term and according to the Indian philosophy and religion, dharma means law or natural law and is considered to be a concept of central importance constituting religious, moral, social and legal. Dharma refers to one's personal dues and obligations (Garcia 2002:31). Hindu dharma is affected by the person's age, caste, occupation and gender (Embree *et al.* 1998:215). Dharma as duty or propriety is derived from an idea found in India's ancient legal and religious text which believes that there is a divinely instituted natural order of things and justice, social harmony and human happiness. In traditional Hindu society, the term 'dharma' has denoted ideas like Vedic ritual, ethical conduct, civil and criminal law. There are two principles ideals besides them, firstly, that life of a social being should be structured through well defined and a well regulated classes like in the form of Varna. Secondly, an individual's life should be well organised into defined stages. Dharmasastras is important within the Hindu tradition as a source of religious law describing the life of an ideal householder and as a symbol of the summation of Hindu knowledge about religion, law and ethics.

The Dharmashastras describe three sources of dharma namely, the Vedas, the smritis and sadacara or good custom. The Vedic texts were revealed text to the ancient sages which they were 'heard' and handed down through generations. The smriti or memory is the source of dharma which encompasses both Dharmasutra and Dharmasastras treatises. It contains the texts on epic and the puranas. Sadacara signifies the orienting of religious life towards attaining spiritual merit. Good customs or sadacara refers to the practices of virtuous people whose conduct conforms to the teachings of the Vedas (Parashar 1992:48-49).

Manusmriti also known as Manava-Dharmasastra is the most important work of the Dharmasastra textual tradition of Hinduism (Olivelle 2005). It is generally considered to be the ultimate source of Hindu law. It is known in English as the Laws of Manu, which was first translated into English in 1794 by Sir William Jones, an English Orientalist and judge of the British Supreme Court of Judicature in Calcutta. Manusmriti had underlined the concept of Hindu law in terms of castes, guilds, families and regions or districts. It was written in simple verse as opposed to the rhythmic verse of the preceding Dharmasutras. The law in Manu Smriti gives a

positive stance towards the Brahmin caste in terms of concessions made in fines and punishments. It also gives certain verses in it to glorify the position of women, whereas other verses seem to attack the position and freedom women have.

Traditionally, the religious and ethnic minorities retain their personal and customary laws but in the latter stage with the drafting of the Indian constitution, the political debate on the Uniform Civil Code began to take place. In the eighties and nineties, the debate picked up its momentum with the Hindu nationalist who made a serious effort to capture the political power. Uniform Civil Code figured prominently in the agenda of the pro-Hindutva. They felt the retention of the Muslim personal law was the pampering tactics of the congress party and therefore it was perceived to be an impediment to national integration. At this point of time the Muslims were so concerned with the idea of the possible imposition of the Uniform Civil Code upon their personal laws and considered it a high handedness of the pro-Hindutva (Ghosh 2007:1). It was also criticized that the real problem lies with the pseudo secular Hindu politicians, including the Indira Gandhi's party and government who only value the vote of the Muslim but not the welfare and progress of them (Shah 1972:491).

Though every Constitution guarantees equality to every citizen, Agnes (1999) argues that the interpretation and application of these laws makes gender discriminatory. A strategy to improve women's economic rights in the family must appreciate how the actual implementation of personal law is itself heavily influenced by the political conflicts in India that exploit differences among the various religions and cultures. She also criticized that the Hindu right makes its claims that India needs to abolish the personal laws of minorities because they are antithetical to gender equality, while really intending to use the differences between the Hindu Code Bill and the Anglo-Indian derived Muslim Personal laws as a part of their struggle for political power. It also questions that the Hindu right criticism on sexual discrimination within minority personal laws even when they failed to interrogate Hindu personal law, and demands a uniform civil code of a similar type to the Hindu code bills, purportedly to liberate minority women.

Muslim Law

Islam was introduced into the Indian subcontinent in the early 8th century. In the 13th century the Shariat had been established but there is an intellectual and scholarly divide relating to the extent of the application of its rules (Parashar 1992:60). The Mughal Emperors were Hanafis and it is generally believed that that the Muslim rulers allowed their Hindu subjects to be governed by Hindu law except in criminal matters which were governed by Islam law. The Hindus were not provided with any courts or official bodies to which they could have recourse for resolving disputes but they are left to be governed by their laws (Jain 1966: 45-46). Later the English administrators introduced a judicial system essentially based on the British model on Hindu and Muslim laws.

Islam is a complete code for living and not just a religion. It combines the spiritual with the temporal and seeks to regulate not only the individual relationships with God but all human social relationships (Nasir 1986:1; Parashar 1992:54). According to Parashar (1992), there are two theories in the origin of Islamic law. The former is the classical theory which considers the law to be divine as it is based upon revelations made by God to the Prophet. The later is the modern theory of Islamic law which has developed over time through the changing needs and its response to the society. The classical theory has four material sources namely; the Koran, the Sunna, the consensus of the community (Ijma) and the analogical deduction. The modern theory of Islamic law provides an understanding of its historical development by tracing the various stages of change to explain the eventual formulation of legal theory that prevented any further growth or modification.

The central fact of the Muslim religious experience is Allah. In contrast to the polytheism of pre-Islamic Arabia, the God of the Quran is one and transcendent: "And your God is One God: there is no God but He, the Compassionate, the Merciful" (Esposito 1982:163). Muslims are broadly categorised into Sunnis and Shias in which the Sunni Muslims are the majority in South Asian states. The sacred law of Muslim is called Sharia which means 'way' or 'path'. Professor Bernard G. Weiss states that:

In archaic Arabic, the term shari'a means 'path to the water hole.' When we considered the importance of a well-trodden path to a source of water for man and beast in the arid desert environment, we can readily appreciate why this term in Muslim usage should have become a metaphor for a whole way of life ordained by God (Weiss 1998:17).

Moreover, Professor Irshad Abdal Haqq argues that 'Sharia, or more properly Al-Shariah, literally means the pathway, path to be followed, or clear way to be followed, and has come to mean the path upon which the believer has to tread. In original usage Shariah meant the road to the watering place or path leading to the water, which is the way to the source of life (Hosseni 2009:25). In Muslim belief it is the totality of God's will as revealed to the Prophet Muhammad. The technical application of the term as a reference to the law of Islam is traced directly to Quran, wherein the adherents of Islam, the believers, are admonished by Allah (God) to follow the clear and right way, the path of Shariah: then we thee on the (right) way of religion so follow thou that (Way), and follow not the desires of those who know not (Haqq 2006:4).

The term Sharia has been defined by many others scholars as well. Some of whom argues that it is a discussion that governs on the duties of Muslims while Hunt Janin and Andre Kahlmeyer defined the term as 'a long, diverse, complicated intellectual tradition,' rather than a "well defined set of specific rules and regulations that can be easily applied to life situations," (Janin and Kahlmeyer 2007:3) Most of the Muslims believe that Sharia is derived from two sources of Islamic law: firstly, the divine revelations set forth in the Quran and secondly, the examples set by Prophet Muhammad in the Sunnah. Fiqh¹ jurisprudence interprets and extends the application of Shari'ah to questions not directly addressed in the primary sources by including secondary sources. The secondary sources would include the consensus of the religious scholars embodied in ijma, and analogy from the Quran and Sunnah

¹Fiqh is an expansion of the Shari'ah Islamic law which is based directly on the Quran and Sunnah that complements Shari'ah with evolving rulings and interpretation of Islamic jurist.

through qiyas.² Fiqh is consisting of a vast literature produced by Muslim jurists through its interpretation and therefore considered as human, mundane, temporal and local. Its text is patriarchal both in spirit and form, and therefore it is frequently invoked as a means to silence and frustrate Muslim's search for world legal justice (Hosseni 2009:25). Muslims believe in Sharia which is God's law but the point is that they differ as to what it entails (Otto 2008:7). The reason behind is that the traditionalist interpretation of the Sharia is different from that of the fundamentalist and then from the modernist interpretation which leads to different schools of Islamic thought. According to this reason there also exist a certain degree of differences within the same religion with moderate teaching on one hand and fundamentalism on the other. These varying interpretations in various cultures and society in the world complicate the reform movement within the religion. According to Sir Roland Knyvet Wilson,

British statesmanship determines from time to time how much of Oriental precept is to be treated as Law in the English sense, how much left to the consciences of those who acknowledge it as religiously binding, how much forcibly suppressed as noxious and immoral; and when this has been determined, European scholarship sifts and classifies the Oriental authorities, the mental habits of English and Scotch lawyers influence the methods of interpretation, and Procedure Codes of modern European manufacture regulate the ascertainment of the facts and the ultimate enforcement of the rule.

Justice as a concept is deeply rooted in Islam's teaching which is based on the philosophy of the Shari'ah. But there is a contentious debate among the school of theological thoughts on what justice requires, permits; its scope and its manifestation in laws, and its roots in Islam's sacred texts. According to the prevailing Ashari School, it holds that their notion of justice is subject to

² Qiyas is a process of deductive analogy in which the teachings of the Hadith are compared and contrasted with those of the Quran in order to apply a known injunction to a new circumstance and create a new injunction. It is where the ruling of the Sunnah and the Quran may be used as a means to solve or provide a response to a new problem that may arise which is different from the set paradigm.

revealed texts and does not depend on extra-religious rationality. Whereas the Mutazili school on the contrary argues that justice is innate and has a rational basis, and exist independently of revealed texts. Hosseini (2009) argues that our understanding of revealed texts, is contingent on the knowledge around us and is shaped by extra-religious rationality. He further argues that laws are man-made jurist constructs and shaped by the social, cultural and political conditions. Therefore, to deny Muslim women justice and equality to men is contrary to the egalitarian spirit of Islam (ibid: 24).

1.1 Colonial Period

Tracing back to the colonial period would be a stepping stone to a clearer picture since the system of personal laws was a colonial construction. The British Raj emerged in the 18th century in the political context in Bengal. The East India Company which was a mercantile institution operating within the pre-colonial state shifted its interest to governing the people and to develop its own state-craft. Their main principle was to extract economic profit by setting up revenue system through the agrarian economy on one hand, and to maintain political control over the Indians with minimum effort. The establishment of the rule of law and the nature of the property right were the main principles and gradually, finds their direct expression in the permanent settlement in 1793 which gives way to the Anglo-Indian legal system (Mukhopadhyay 1994:10). According to Derret (1968), law in India was not fixed and immutable body of knowledge based on the scriptures before colonization by the British. It was always open to influence by jurists and modification and abrogation at the hands of the rulers. It was then overturned by the British according to their plans towards the existing customary and religious norms. Before the British came to India, the religious laws covered all areas of conduct of the Indian people. The division of law based on personal and other spheres was first introduced by the English administrators (Parasar 1992:46). The distinction created by them has subsequently gain differential treatment and those religious personal laws till the present day cannot be modified by the state.

The Warren Hastings Plan of 1772 which later became 'The Administration of Justice Regulation' of April 11th, 1780 proclaimed that the Sastris who are learned people on the indigenous Hindu laws would be consulted on matters pertaining to listed subjects only. The listed subjects include 'inheritance, marriage, caste and other religious usages' (Derret 1968:232-33). Though the indigenous laws were in the process of reform according to the advantage of their aspiration, the area of family law and religious endowments were kept aside to the Hindus and Muslims. The British retained the personal laws related to matters on family law (marriage, divorce, adoption, guardianship, etc.) inheritance and succession, caste, and religious endowments. In these fields, each community had its own laws, but they were applied in the government's courts and in the spirit far removed from that in indigenous tribunals (Galanter 1978:493). Customs like the family laws and the personal laws overrode the judicial system. Since the other customary laws was difficult to deal with the Indian society and therefore an attempt of the court to deal with the Indian people had force to impose on the Indian rulers. This brought changes in the Hindu law by a hierarchy of courts staffed by judges trained in the common law and interpreting the text according to the common law techniques. But the British after the sepoy mutiny of 1857 were reluctant to bring changes in the personal law of the indigenous people. With the gradual development of positive colonial law, customary law of the indigenous people started losing the position of eminence that it had earlier enjoyed. Matters other than the family laws, religion, and inheritance are to be governed by the government courts on the common law principle of 'justice, equity and good conscience' (Ghosh 2007:54).

The British administrators and jurists concentrated their efforts on obtaining an authoritative version of the Hindu law through the sastris. The administrators came to know of the Hindu law 'dharmastra', a body of rules. Then they began to compile the Hindu law and make it available to English judges in India under Warren Hastings' direction. In 1773, eleven Brahmin Pandits were made to assemble and given the order to compile a digest. The work was prepared in 1775 in Sanskrit under the name Vivadar-nava-setu and was translated into Persian and then into English. Later it was sent to England with the introduction by Warren Hastings, which was printed as 'A code of Gentoo Laws'(Zaman 2002:21) and this became the authentic

source of understanding the Hindu law by the British. This digest includes the topics on adultery, duties of women, marriage, adoption, property and inheritance (Mukhopadhyay 1994:11). This digest turns out to be a practical handbook of Hindu law for the administrative purposes of the British. In order to improve the sastric education on the Hindu law, there were efforts of the British through the establishment and setting up of Sanskrit College at Benares and the Sanskrit College in Calcutta.

Even though this digest is being used by the British judges to govern the laws, the confusion on the interpretation still looms large. Numerous attempts were made by the British to codify the Hindu law in the 18th century. Sir William Jones was one of the chief architects in the effort to codify the laws and later convinced that the multiplicity of interpretations provided by Pandits in different courts was the main reason of corruption. The Pandits could favour their own caste and relatives in a dispute by citing scriptural authorities which were not known to the British. The result is that the court has to decide on which version to believe. The adequacy and relevance of the sources had to have a Hindu character. This necessity needs a new and better understanding of the Hindu law. Jones work on Islamic and Hindu laws were published after his death and translated into English by his successors. But the reliability upon the Pandits is diminishing and the suspicion of the British keeps on growing. By the 1820's it became obvious to the British that there was no Hindu law that can be fixed in practice which could be applied invariably to all Hindus and therefore the court began to be almost fully governed by the doctrine of *stare decision* (decisions in earlier cases serving as precedents binding on late cases or lower courts) grew in relation to adjudication of disputes involving personal law. The publication of decisions of the courts from 1840's onwards and with the passage of the Indian Law Reports Act of 1875 made it possible for British judges to consult earlier rulings.

Marc Galanter (1978) argues that until nearly the end of the British rule in India, proposals that the legislature codify and reform the entire system of Hindu law, which was conceded to be a most confusing and uncertain body of law, was rejected on the ground that the legislature had no mandate to undertake such drastic changes. Cohn (1996) argues that by the end of the nineteenth century, the Hindu law became

mainly case law based on published cases. In the nineteenth century there was a sort of renaissance in the country because of the spread of English education which found its first expression in Bengal. There are three landmark reforms during this time, namely, the enactment of the Sutte Regulation of 1829, the Hindu Widow's Remarriage Act of 1856 and the Special Marriage Act of 1872. How did the British bring reforms in the personal law of the Hindus during the colonial period? One would argue that it is the initiatives of the British on one hand, and the learned Hindus on the other hand, who saw these practices as evils and wanted to abolish them and make it happen. The other important act was the Native Marriage Act of 1872 which prohibited polygamy, legalized divorce, made inter-caste or inter-religious marriages valid and raised the age of marriage substantially. Due to resistance from the conservative forces, it was later replaced by the Special Marriage Act of 1872. The Hindu Married Women's Property Rights Act of 1937 was one of the progressive acts which were certainly to benefit the Hindu women and also the Hindu Law of Inheritance introduced by G.V. Deshmukh concerning Hindu women's right to a separate residence and maintenance. But due to the existence of the various schools of Hindu law which created anomalies and therefore did not get approved on account of vociferous opposition.

Since religion was accepted as the basis of customs and indigenous legal norms, the evolution of Anglo-Mohammedan law followed more or less the same pattern of the Anglo-Hindu law. Though there was no specific source of law for Hindus, the Islamic shari'ah was relatively made simpler by providing three primary sources, namely, the Qur'an, the Sunna and the Hadith, Islamic jurisprudence had a multiplicity of schools of thought. The codification of Islamic law started during the time of Warren Hastings. For the British, establishing the rule of law was, after all, an important part of the edifice of maintaining and extending colonial control over the people. The assumed centrality of legal texts led them to the translation of Islamic text in English which would provide the British judges with rules to be applied in the court. Sir William Jones insisted on Hastings to endeavour in compiling a complete digest of Muhammadan laws. Hastings appointed three maulavis (Muslim clerics) to translate the Hanafi-treatise *al-Hidaya* from Arabic to Persian and then to English was undertaken by Charles Hamilton in 1791. This text lacked a treatise on inheritance

which the British considered the most intractable of Muhammadan law subjects. Therefore, in the very next year, William Jones had to translate al-Sirajiya in English, a treatise on inheritance, from Arabic. This translation greatly helped the judges and reduces their dependency on the indigenous law officers whom they had appointed to advise them. The other major translation was added to the list of text in the nineteenth century and this was Neil Baillie's translation of Fatawa Alamgiri, a digest of Muhammadan law published in 1865 (Anderson 1990:175). Unlike the Hindus, the reform system in the Muslim laws was much slower due to lack of reformist voices among the Muslim community. In the second quarter of the twentieth century, the Muslim open up to its law reforms due to the Hindu-Muslim controversy which had driven them into the composite struggle for freedom from the colonial rulers. The Muslim law reforms were engineered by Muslim League politicians whose primary motivation was to poach into the potential Muslim constituency of the Indian National Congress (Ghosh 2007:60). There are two important acts passed during this time, namely, the Muslim Personal Law (Shariat) Application Act in September, 1937 and the Dissolution of Muslim Marriages Act in 1939.

1.2 Partition of India: India and Pakistan

Personal law in India

Madhu Kishwar argues that in the first decade of India's independence, the codification and reform of the Hindu personal law was hailed as the symbol of the new government's supposed commitment to the principles of gender equality and non discrimination enshrined in the constitution. This shows that the government has been on the edge to reform the previous laws that does not ensure gender equality to all the people of the country. This has been a step forward to the history of legislation after the British rule in India. Indian leaders wanted a secular constitution on the model of the western democracy at that time but it was not secularism in the western sense of the word. It was intended to be a secular state with religious laws for its religious groups. Article 44 states that "The State shall endeavour to secure for citizens a uniform civil code throughout the territory of India" (Bakshi 1991:88). After independence, B.R. Ambedkar was entrusted the task to codifying the Hindu personal

law as the first step towards a uniform family code. The draft bill was presented in the Nehru's cabinet which unanimously approved it. But it was not approved in the parliament because it was conceived to be a threat to the Hindu family system. 'The Hindu family should be taken as a unit and fragmentation of the property should not be allowed so as to go away to other family through daughter (Chakravartty 2005: 26). The passage of the Hindu Code Bills in the 1950's aims thoroughly secularising the Hindu community and bringing its laws up to modern times, which in essence meant the abolition of Hindu and the enactment of laws based on western lines that enshrined the equality of men and women, and other progressive ideas. The Hindu Marriage Act, 1955 transformed a Hindu marriage from an ancient and vedic 'sanskrit' or sacrament into one of modern and dissoluble contract. The contract marriages are recognised and therefore all customary forms of marriages and divorce were validated by the act. Agnes argues that this act has provided ample of scope for a Hindu man to escape from criminal consequences of bigamous marriages and from economic responsibility towards the second wife. In Hindu religion has undergone a change on the right to maintenance, legitimacy and respectability with the introduction of the Act (Agnes 1995:3238).

Master Tara Singh opposed by denouncing the introduction of the Hindu Code Bill saying 'Sikh religion today is in great danger and in order to protect it, great sacrifices are needed'. His main aim, of course, was to get a separate state for the Sikhs, the so-called 'Punjabi suba' (Parthasarathi 1985: II, 290). Though the Hindu Code Bill was opposed by the Hindu conservative but it was passed by the parliament through the persuasive skill of Nehru, H.V.Pataskar and Vidyasagar. The bill was enacted in three parts, namely, the Hindu Marriage Act, 1955; the Hindu Adoptions and Maintenance Act, 1956; and the Hindu Succession Act, 1956. In fact this bill proves that the parliament have the power to legislate the Hindu personal laws. It became the first step towards the direction of the Uniform Civil Code. Setalvad says:

The Special Marriage Act, 1954 may perhaps be described as 'a uniform civil code of marriage; and a step towards the uniform civil code for all citizens contemplated by the constitution. Those who take advantage of its provisions will be Indians governed by a uniform law of marriage though belonging to different religions. The Hindu or the Muslim marrying under it, thought he

ceases to be governed by his personal law in important matters, will not cease to be Hindu or a Muslim (Setalvad 1967:52).

Like the Hindu community, the discourse on the Muslim personal laws divided the community into traditionalists and the modernists. The traditionalist (Indian Muslim League, 1955 and All India Muslim Majlis-e Mushawarat, 1964 headed by Faridi) defended and justified the application of their personal law. On the other hand, the progressive modernist Mohammadali Currim Chagla³ wanted reforms in the personal laws by giving the reasons of the prevailing socio-economic milieu. There is also the third category called the reformist who favoured the continuation of the personal law with suitable modifications. In early 1970's, Hamid Dalwai and his Muslim Satyashodhak Samaj (MSS), a group of forward Muslims articulated the grievances and demands of the weaker sections of the Muslim community which was seen as the first in the history of the Muslim world to organise a Muslim Women's Conference, which was held in Pune in December 1971, which demanded the introduction of the uniform civil code (Shah 1981: 114).

Personal law in Pakistan

After the creation of Pakistan in 1947, there has been a constant undercurrent of strain between the traditionalist represented by Jamaat-e-Islami in general and the Ulema and Mullas in particular and modernist represented by the Muslim League under Jinnah. The dispute between the traditionalist and the modernist is on the question of who would have the final say in the interpretation of Qur'an and the Sunnah. Personal laws that were operative before independence continued to be valid even after the creation of Pakistan. Later new laws were enacted to extend the North West Frontier Province Shari'at Application Act of 1935 to the provinces of Punjab and Sind and the princely states of Bahawalpur and Khairpur. These laws enlarged the scope of the Muslim Personal Law (Shari'at) Application Act of 1937. The Commission on Marriage and Family Laws was set up in 1955, to survey the prevailing marriage and family laws, so as to ascertain the proper place of women in accordance with the

³ Mohammadali Currim Chagla, the then Education Minister of India and the Former Chief Justice of the Bombay High Court, 1948-58

fundamentals of Islam (Ghosh 2007:161). The Rashid Commission submitted the report which includes limiting the rights of Muslim men to polygamy, the abolition of triple talaq, compulsory registration of all marriages and divorces, and changing the scheme of succession regarding orphan grandchildren and this evoked controversy.

General Ayub Khan during his time subjected the Muslim Personal Law to modification to some extent. The Muslim Family Law Ordinance (MFLO), 1961 is the important steps taken up by him under intense pressure from women's organisation⁴ (Engineer 2001). This does not derived its legitimacy from the Rashid Commission but there are some certain recommendations which are present in both of them, such as restriction on polygamy and triple talaq. The reason behind his success in the introduction of Muslim Family Law Ordinance (MFLO) without the opposition of the traditionalist forces is that reform in the personal law of certain Muslim countries was visible during that time. For example, Tunisia code had prohibited polygamy and made divorce dependent on court verdicts in 1957 and Morocco in 1958 (Coulson 1963:240) The other reasons which are important to considered are as follows: he had already established his pro-Islamic credentials in Pakistan. Secondly, he introduces the Islamic ideology for the indoctrination of the armed forces in Pakistan. Thirdly, he had established control over the civil society institution such as television, writers' forum, etc. But it was not quite effective due to the strong undercurrents of Islamic politics and the traditionalist nature of the society. The traditionalists were always demanding to remove the Muslim Family Law Ordinance (Metcalf 2004:243).

⁴ During the regime of Ayub Khan, Triple divorce in one sitting was abolished and the Quranic concept of arbitration introduced as indicated in verse 4:35 under which women too have a right to appoint arbitrators to take care of their interests in the matter of divorce. Also, for polygamy, the Muslim family ordinance promulgated by Ayub Khan in 1961 made it obligatory on a man taking a second wife to notify the first wife, obtain her approval and also convince a court of law why a second wife is needed. This was a great relief for Muslim women of Pakistan. Bangladesh then was still part of Pakistan. This amended law continued in Bangladesh even after it seceded from Pakistan.

Later the West Pakistan Muslim Personal law (Shari'at) Application Act, 1962 repealed the previous act, the Muslim Personal Law (Shari'at) Application Act 1937 as well as the provincial legislation on the application of Muslim personal laws, notwithstanding any custom or usage, to all questions of personal status or succession where the parties were Muslims. At this instance the rights of the Muslim Females with respect to the immovable property held by them under the customary law was terminated (An-Na'im 2002:232). A reform in the Muslim personal laws in Pakistan was so difficult due to Islamisation of the country itself through the orthodox and conservative forces which applies Islam to every effort on reform. Besides all the laws governing the minorities (Hindus, Christians, etc) are following the same old personal laws which governed them right through the colonial rule. Against this background it is certain that the minorities are least considered as the citizen of Pakistan since it would not show any interest in reforming the personal laws of the minority communities. According to Ghosh (2001) all laws governing the minority communities were from the pre-independence period. The laws includes - the Christian Marriage Act 1872, the Parsi Marriage and Divorce Act 1836, the Hindu Widow's marriage Act 1856, the Hindu Marriage Disabilities Removal Act 1946, the Buddhist Law, the Arya Marriage Validation Act 1937, the Hindu Inheritance (Removal of Disabilities) Act 1928, the Hindu Disposition of Property Act 1916, the Hindu Law of Inheritance (Amendment) Act 1929, the Hindu Married Women's Right to Separate Residence and Maintenance Act 1946, the Hindu Women's Rights to Property (Sind Extension to Agricultural Land) Act 1943. However, the only law that was passed after post independence of Pakistan was the West Pakistan Hindu Women's Rights to Agricultural Land Ordinance 1959 (Ghosh 2001:183).

1.3 Rationale and scope of study

Any plural society faces the problem of having civil law for its various communities. Civil law essentially covers laws relating to marriage, divorce, adoption and inheritance. All traditional societies have civil laws governing these aspects of social existence. Of late, democratic societies are facing the challenge from liberal or majoritarian groups for having one common civil code for all communities. In India, the discourse on Uniform Civil Code is well known, though the state has not agreed to

implement one such uniform code. In Bangladesh which also is a plural society the debate is there but not as strong as in India. This dissertation deals with the discourse which has essentially three components: (1) represented by the majority Muslims, (2) represented by the Hindu minority and (3) represented by the progressive/liberal intellectuals. The subject has not received enough attention so far and probably this study will throw some light on the debate from its social and political analysis.

Law is a system of rules, usually enforced through a set of institutions. It shapes politics, economics and society in numerous ways and serves as a primary social mediator of relations between people. There are many types of laws but here I would focus on the personal laws and the Uniform Family Code in Bangladesh. Personal law is defined as 'part of the law that deals with matters pertaining to a person and his or her family. According to Ghosh (2007), law has two sources namely a written law and unwritten law. Firstly, a written law consist of the constitution, the law code and the court judgment. Secondly, unwritten laws include local or natural laws, cultural and family laws. Personal law implies those set of legal rights pertaining to family affairs, Therefore it does not entitle to an individual but on being a member to religious groups, community or any organisation.

The discourse on the Uniform Family Code in Bangladesh and the Uniform Civil Code in India has intended to bring about changes by removing the gender inequalities within the society and provide justice and equality to the people without discrimination. But on the contrary, it was perceived as negation to the personal right, interference or invasion into other religious practices. There are various covenants such as the International Covenant on Civil and Political Rights (1967), the International Covenant on Economic, Social and Cultural Rights (1967), the Convention on the Elimination of All Forms of Racial Discrimination (1969), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW, 1985), and the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (1992). These covenants act as an obstacle through upholding the minority rights in the name of identity issues.

The scope of Uniform Family Code in Bangladesh is yet to be realized fully. Since the ethnic majority is composed of the Bengali community and the huge differentiation lies only on religion, the aspiration of the people to have a uniform law would be immense which would be based on secular and democratic means. The huge initiative taken up by the progressive women and men shows that the people are willing to change besides it gives them respect and changes are welcome if it benefits both the religious community. It would be beneficial in digging up more information and issues about the various steps that are managed to be implemented; the hindrances upon its implementation, their feedbacks, planning for the future reforms in personal laws are to be research.

This dissertation focuses on the uniform family code in Bangladesh and the content mainly deals with Muslim and Hindu women and their rights within the context of personal law. The Christian women and her rights are comparatively better off than the two. A brief description about the Christian women and her rights is being addressed in the following chapters. Since there is a majority-minority problem in Bangladesh like the rest of the states in South Asia with concern to the personal laws; therefore I have taken into account, Muslim and Hindu personal law in my study. Some important questions are: 'Did democracy play any role in the reforms of personal law which is seen as very rigid in Hindu and Muslim communities'. And further it would analyse the assumption on whether the uniform family code has made the Hindu minority feel secure or otherwise.

Tracing the evolution of both the Hindu and Muslim laws, one finds the pre-colonial laws being practice even today in the form of family laws which are not being subjected to modern reforms. The reforms which was undertaken by the British is believed to be outside the sphere of personal laws but when we observed in the Indian sub-continent, it has made certain changes for the upliftment of women. Both India and Pakistan in the post colonial period made certain reforms for their personal laws on gender issues. The later chapters would look into the discourse of the uniform family code in Bangladesh and its reforms.

Chapter II deals with the concept of personal law, the various personal laws under different religious communities, and the origin of the Uniform Family Code in Bangladesh. The diverse practices of personal laws besides the general law that is uniformly applicable to all and how it does affect the society especially on women. Feminist legal perspective is also applied to understand on gender and inequality, the notion of patriarchy and how justice is denied in order to keep the society intact. The chapter also discussed on personal laws in independent Bangladesh and the discourse on the uniform family code that began to take forward by the progressive women groups.

Chapter III focuses on the main issues under the ambit of uniform civil code. The various problems faced by women is being considered to be a part of the private sphere and is dictated under the religious personal law. The main issue here is to remove this disability by reforming the religious personal laws into one single code which would look after every issue that is being under the private sphere. It discusses the role of the Government of Bangladesh and civil society, their responses and initiatives in consolidating the movement for further reforms in the personal laws. The laws and provisions under the government set up for the upliftment of women. The various conventions under the international forum signed by the Bangladesh Government and how this in turn pressurises by them to implement those provisions under the international laws are being discussed.

In chapter IV, an attempt has been made to comparatively analyse the responses of Hindus and Muslims on the discourse of Uniform Family Code. The issue of religious identity, culture and traditions which is under the concept of personal laws are being studied. In the later section, the various approaches on reforms in the religious personal laws which would be conducive to women are being discussed.

The conclusion wraps up the argument laid out in the main chapters. The analysis would present a brief idea on the roadmap of the uniform civil code and its progress.

CHAPTER II

Origin and Discourse of Uniform Family Code

Bangladesh is one of the multi-religious and multi-racial countries in the world. It got its independence in December 1971. It is situated in the north-eastern part of the sub-continent of South Asia having shared its boundaries with India from three sides and partly with Myanmar. According to 2001 Census, the total population size of Bangladesh was 129.25 million. A recent estimate of Bangladesh population is around 159 million in 2009. The majority of the population consists of the Muslims (89.5%), followed by Hindus (9.6%), Buddhist (0.7%), Christians (0.3%) and the remaining practices the Baha'i Faith (0.2%). There are several indigenous tribes as well (i.e. the Chakmas, Marmas, Tripuras, Garos, Santhals, Murong, Khasia, Kuki, Hazong etc.) living mostly in the hilly areas (BLAST 2009). Religion has always been a strong part of identity, but this has varied at different times in Bangladesh. The original Constitution of the country introduced in 1972, under the leadership of Sheikh Mujibur Rahman was a secular Constitution.

Bangladesh is a predominantly a Muslim country (about 89.5% Muslim) and it is not expected of it, therefore, to have a debate on a uniform civil code there. Still, there is vibrant liberal elite there, which includes a few powerful women's groups which consider it important that the country should have a liberal universalistic family code that should be based not on religious texts but on human rights. This discourse is important to understand especially on the violation of human rights in Bangladesh. The discourse got its voice more prominently during the anti-Ershad agitation that picked up momentum in the late 1980's. The demands that were articulated during this period were for human rights, legal rights and women's rights which were less prone to attract the wrath of the military ruler (Ghosh 2007:182). Later on the Bangladesh Mahila Parishad (BMP) and the Ain O Shalish Kendra push forward their demands for justice through democratic means.

There are two basic approaches that would be beneficial in order to understand the crossing point between the state and the law. The first is the centrist approach

where the democratic societies under one uniform rule of law, based on sets of statutes, legal principle and professionally organised legal training. The second is the pluralist approach which refers to the manner in which people are regulated by a variety of 'laws, besides those of the state, such as the rules associated with religious practices, educational institutions, families, and professional organisations (ibid: 21-22).

Every religious community have their own personal law that is governed under their respective religion. There is also a secular practice promoting equality and religious freedom in respect of the various customs and traditions that are practiced within a country. Some of the religion has stringent law that does not accept any changes or if it does then it provides very little scope to change the old practices of the society. Hence the question is why to interfere in the personal laws of one's religion if there is religious freedom and tolerance upon the various religious practices under democracy. It is argued that in order to bring the legal centralism into dominance; the legal pluralism has to be undermined. But the main problem here is that even within Islamic tradition, legal pluralism is reflected and therefore it further complicated the aim of centralising the law for all the people.

The relevant legislations under the People Republic of Bangladesh includes Guardian and Wards Act 1890, Child Marriage Restraint Act 1929, Muslim Personal Law (*Shariat*) Application Act 1937, Dissolution of Muslim Marriages Act 1939, Muslim Family Law Ordinance 1961, Muslim Marriages and Divorces Act 1974, Family Courts Act 1985 and also the Dowry Prohibition Act 1980, Cruelty to Women (Deterrent Punishment) Ordinance 1983, and the Repression against Women and Children Act 2000.

2.1. Defining the Concept

What is a personal law? The personal law are those that in any other country would refer to as family laws. The term 'personal law' is derived from the ancient distinction between territorial and personal laws (Parasar 1992:46). It is attached to an individual at birth and applied to the person wherever he is. Personal law is also defined as 'part

of the law that deals with matters pertaining to a person and his or her family. They are statutory and customary laws applicable to particular religious or cultural groups within a national jurisdiction. In almost all the cases, personal laws entrench inequalities with regard to women in two respects. Firstly, they sanction unequal rights between men and women within a given cultural or religious group. The main reason behind is that within the same religious groups there are many sub-caste group which practice the personal laws differently. Secondly, the application of personal laws results in unequal rights amongst women themselves, contingent on their religion or ethnicity. This results that in a given jurisdiction, the women who practices Islam may be entitled to smaller maintenance payment than other communities or vice versa due to personal laws (Panditaratne 2007: 83).

Then what is a family law? "Family Law" is the term applied to the legal regulation of marriage and parenthood, and as such, defines in large measure a society's accepted norms of family formation and attendant economic obligation (Merriam-Webster, 1996, Hudson and Bowen 2010:2). Family law is a practice area that encompasses the legal issues that face families. These issues include marriage, cohabitation, divorce, spousal support, child support, custody, adoption, inheritance, division of assets and liabilities due to divorce, termination of parental rights, paternity, dependency and child neglect and protection from abuse. There are family law which covers rules for living together, prenuptial agreements, alimony, and mediation, along with the laws on domestic violence, child custody and visitation, adoption, same-sex marriage, elder care, and senior law. Laws governing these things vary from nations to regions.

In India, personal law has two main features. The first feature seeks to control and regulate social relations in the 'private' sphere of the family. The main concern therefore lies on the definition of the relationship of men and women within the family. The second feature relates to the Personal law which is applicable to people principally on the grounds of their religion. The law is specific to and separate for particular religious communities namely Hindu, Muslim, Christian and Parsi (Mukhopadhyay 1994:5). In case of India, the boundaries may run through nations



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where several family law systems are accommodated, though the same criminal code applies to all citizens.

Indian law is largely based on English common law as it was under the British colonial rule for decades. Much legislation introduced by the British is still in effect in their modified forms today. The drafting of the Indian Constitution itself shows the incorporation of many laws from different countries in the world which were synthesized to get a refined set of Indian laws. Indian family law is complex, with each religion having its own specific laws which they adhere to. Due to this, the practice of personal laws differs from one community to another as they are derived from different religion (Baden *et al*, 1994:74) In most states, registering of marriages and divorces is not compulsory. There are separate laws governing Hindus, Muslims, Christians, Sikhs and followers of other religions. The exception to this rule is in the state of Goa, where a Portuguese uniform civil code is in place, in which all religion has a common law regarding marriages, divorces and adoption. It is uniform for all communities with certain specific provisions for particular sections. But Ghosh (2007) argues that the Goa Civil Code is not therefore adhering to a uniform code. Family laws in India are different for different religions and there is no uniform civil code. During the British Raj, the system of distinct laws for each religion was started under Warren Hastings who created provisions prescribing Hindu law for Hindus and Islamic law for Muslims, for litigation relating to personal matters which the other colonial rulers have shown little or no interest except the Portuguese in Goa.

In the 21st century, the family law systems have been practiced differently where some are guided by religion while others are guided by customs and practices. There are many countries which adopts changes overtime in the family law. For example, in central Asian republics, the countries like Kyrgyzstan and Tajikistan are considering legalizing the practiced of polygyny which was forbidden under the Soviet law (Hudson and Bowen 2010:4). On the other hand, there are certain cases where the changes are directed towards greater equality and safeguards for women in the society. Though most of the nations have ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted in

1979 by the UN General Assembly, is often described as an international bill of rights for women.

Today, there is an issue where any changes in the personal laws of any religious communities are taken up seriously. For example, people who settle in a foreign country want themselves to be governed by their own personal laws in association with their religious or traditional beliefs and practices. This sort of deep relation with the personal laws is gaining importance and the system of family law has increased in recent years. Even in Western nations, the religious plurality in the country shows the growing of different family laws within the country. This is due to migration and mixture of all sorts of people from different countries with different religions. Religious minorities maintain their own personal laws to guide their family laws which are in turn recognized as part of the legal fabric of the country. The legal systems that are differentiated by communities set up separate legal courts in order to deal with the minority communities where the community practice diverged from the majority community (Rudolph and Rudolph 2001: 43-44). In India, the British established a system of legal pluralism under their rule which recognized and accepted the legitimacy of the personal law of its diversified religious communities. From early 1800's till now, the Indian state continuously reflects the traditional separation of religious and cultural groups including those within the caste and sects by allowing self governance for religious and personal status issues (ibid:50).

Personal law plays an important part in the society as it controls and directs marriages, divorce, and maintenance, guardianship of children, adoption, succession and inheritance and as such concerns women intimately. The personal laws of all communities placed women as subordinate and dependent on men but there are few exceptions where it practices a matriarchal system. In most cases, women do not have a right to equal share of property with men.

2.2. Diverse Practices of Family Law System and its outcome

Family law has been one of the most politically and socially contested issues in Muslim contexts in the contemporary period. The issue has had both positive and

negative aspects. Firstly, it has opened up the conservative customs and traditions, the possibility of discussing matters and power relationships which was previously regarded as strictly belonging to the domain of private sphere. Secondly, the autonomy of women has at times been threatened in a sphere that holds the key to the realisation of their rights across all aspects of their lives. In the Muslim context, the positive change or protection of threatened family law rights has almost always been actively initiated by women, they are also increasingly demanding for equality and justice in the domain of family relationships. There are two countervailing forces that are clearly visible when it comes to reform in every society. Likewise in Bangladesh, there are women's collective activism for their rights as well as absolutist vision of religion that seek control of politics and society.

In South Asia, the main vehicle for changes in law began through the process of codification during the colonial period and then in the post-colonial period. Yet in the Gulf countries, codification of law has been raised only in the past decade while in other countries like Nigeria still have uncodified form of Muslim Family law. The Muslim legal system has been diverse in the interpretation and application of its jurisprudence that prevail in different parts of the world. The country such as Nigeria has plural legal system with parallel customary, Shari'ah and general courts while Turkey's legal systems are unitary (Zaman 2001). India has the customary and religious and the people have the choice in which they want to be governed. In Egypt and Sri Lanka, the Muslim couples are automatically governed under the Muslim Family law though they have majority and minority communities. Malaysia has a federal system in which the states have jurisdiction in developing and applying family laws while Algeria is a highly centralized unitary state (Endut 2000). It also has a varied court system in some of the countries of the world. Pakistan has a single family court system which looks after the cases of all the communities whereas multiple court system exists in Syria which oversees the matters of different religious communities of the country (Balchin 2009:211).

There are other issues where the criminal and family laws are sometimes interlinked and inseparable. Though the requirement of registration of marriage can be viewed as a positive step in reform movement yet this can be less beneficial to those

outside the purview of having valid marriages who are criminalized through Hudood laws. There is also a linkage between the family laws and the Constitutional law. The Constitutional law recognizes the status of customary and religious law and do not interfere into the personal laws but at times one finds the irresolvable contradictions between gender equality and the right to religious freedom.

Besides the diverse issues and differences on one religion (Islam) in different countries, there is a similar argument regarding the position of laws and customs on family law issues which indicatively representing the preservation of a nations religious or ethnic identity. In this the vast majority of women are marginalized from the power structures that determine processes of legislative reform and community identity formation. This kept the needs and concerns of the women in the watertight compartment and therefore rarely addressed them in local laws and customs. Nevertheless, over the pass some 100 years, women's demands for transformation have deeply impacted the family laws and it has widened the scope for more open engagement in the public sphere. The political space in different countries of the world has shown some improvement in the hierarchical ladder but unfortunately the majority still does not enjoy equality with the rights of their men folk.

2.3. Feminist legal theory on Equality and Justice

The study of feminist legal theory is a school of thought based on the feminist view that law's treatment of women in relation has not been equal or fair. The legal feminism emerged in the 1960's and through the late 1980's which saw cultural and political inequalities as inextricably linked. The demand for equality and justice in family law meets both reform as well as resistance to reform. The demand for justice and equality have arisen largely out of women's lives experiences and that legal systems do not meet what equality means and should have been in the society. Feminist theory has examined men, patriarch, and masculine characteristics predominantly as source of power, domination, inequality and subordination. The feminist challenged on inequality by revealing the structures of the society that reinforce the centrality of men and the male identity of a hierarchical power and economic structure (Weisberg 1993).

The Feminist have sought to explain the real inequality in relation to men even in those spaces where women are seen formally equal. By doing this, they exposed how even the process of reform can contain the seed of reconstituted inequality. The regulation of the family represented by and resulting from these new laws presents the opportunity for more than just an assessment of changing rules (Fineman 2005:15). This is a socially constructed process that conscripts people into a gendered way of seeing the world. It was argued that the new, improved equality standard set by the feminist lawyers did change after 1970's and 1980's but the world didn't, except for the privileged few (Scales 2006:84). Feminist theory seeks to analyze the conditions which shape women's lives and to explore cultural understanding of those societies of what it means to be a woman. The political aims of the women's movement initially are to understand women's subordination and exclusion from, or marginalization within, a variety of cultural and social arenas. The feminists do not accept that inequalities between men and women are natural and inevitable but question this view.

For most women, home is a place of social relations that are structured by power and inequality. It is the location of unpaid labour, still mainly the responsibility of women, despite the rapid rises in women's waged employment in the last decades of the twentieth century. For many women, home has become a place dominated by fears of domestic violence and abuses, where women and children are the victims of male aggression. Many women still bears the age old traditions and customs believing that this are the norms of the day and continue to live on. In the language of socialist feminism, the home is the place of patriarchal relations, the appropriation of women's labour by men in order to enable the daily maintenance of the household members and the reproduction of their labour power on both a daily and generational basis, since the home is also the location of a large proportion of the activities of early child rearing. The relevance of patriarchal model of gender relations and singular models of the home as a sphere of exploitation is also increasingly challenged (McDowell 2003:16).

Feminist argued that they do not produce an abstract intellectual activity outside women's lives but through studying and understanding the daily experience

and examining the ways in which they are represented within a range of cultural practices, such as the arts and the media (Jackson and Jones 1998:1). On the other hand, the feminist social theory analyzed inequality between women and men on the basis of male power over women. Its basic premise is that male dominance derives from the social, economic and political arrangements specific to particular societies. In most of Bangladesh, the basis of patriarchy is that men control property, income and women's labour and where her inheritance rights are forfeited (Pereira 2002:37). This theory focuses on the material conditions of women's lives and the ideological processes which legitimize and help to perpetuate women's subordination. Contemporary Feminist theory began not by rejecting the very idea of system or 'totality' but, on the contrary, by elaborating its own systemic analysis, in which, at least at first, 'patriarchy' was proposed as an alternative to, or occasionally the accomplice of, capitalism. In this theoretical framework, women were oppressed by a patriarchal system and had a common interest in opposing it. The project for feminism has been both intellectual and political: to raise women's consciousness of their oppression as women and promote social change through collectively organizing women as a distinct revolutionary class (Stabile 2004:24). But the post colonial feminist have argued that not all 'patriarchal' systems are the same because it encompasses qualitatively different relations within different societies and that these relations are themselves subject to historical changes. Therefore it run the risk of reproducing sexist understanding of gender rather the concept of women and its association with patriarchy.

Towards the end of the 20th century, many feminist look into Marxism as a means to answer the most basic question 'how can we account for women's subordination' which most of the feminist were searching for. The central idea of Marx offered an analysis of oppression as systematic, built into the structure of society. The women's subordination could be seen as social in origin, which is also built in the society through an ongoing process and not the natural evolution or an accidental appearance in the relation between men and women (Jackson 1998:13). Mackinnon argued that Feminism has so far accepted these constraints upon its alternatives: either the state, as primary tool of women's betterment and status transformation, without analysis for it as male; or civil society, which for women has

more closely resembled a state of nature (Mackinnon 1983: 635). The state with the law has been considered of having immense power above everything or which does not give any importance for the welfare of its people. The whole question of law and state is indicated as male in the feminist sense of the word and therefore whatever the men decides on women, the law follows.

There is also a debate where the hardened Marxist argued that oppression of women was rooted in capitalist social relations; for them the analysis of patriarchy was a product of 'bourgeois feminism' and antithetical to class struggle (Petty et al, 1987). On the other hand, Marxist feminist recognized male domination as a systematic feature of modern society and did not generally reduce women's subordination to a side effect of capitalism although some were reluctant to conceptualize patriarchy as a separate social system co-existing with capitalism. On the argument that if capitalism and patriarchy are to be put in one category where does the women's subordination fits into. To this, the Marxist feminist argued that rather than being rooted, like class, in relation of production, women's subordination was either a consequence of specific relations of reproduction or was primarily ideological (Jackson 1998:13-14).

Radical Feminist began to analyze the family, sexuality and forms of cultural representations after it was influenced by American feminist theorists. They are characteristically concerned with the differences between as well as different dispositions and characteristics. The 'problem with no name' and the 'women's question', was unwrapped as a number of issues such as: rape, domestic violence, low pay, division of labour, domestic labour, social and political exclusions and the connection between all these and sexualized representations. The first wave feminist represented by essentialist and anti-essentialists agreed that the liberal political slogan, 'equal but different', obviously mystifies the base fact that masculinity is valued over femininity and that men are guaranteed sanctioned domination over women (Shakib 2010:29). The structures themselves would need to be revised and revised according to different values of the society.

Although Feminist and Marxist differences have been worked out to some extent but it has criticized on the following: Firstly, the general claim is that historical materialism reduces structures of oppression to class exploitation, thereby ignoring or minimizing sexism, racism, and homophobia. Though it has placed relation of production at the foundation of society, there is nothing simple or reductive about how these relations structure oppression. The charge of reductivism is against anti-Marxist feminism. The feminist have been forced to confront the inequalities that exist among and between women and yet underestimate the inequalities that exist among and between women and men. Secondly, Mackinnon (1983) argued instead of examining only one form of oppressions – like sexism, racism, etc. would explore the way they all function with the overarching system of class domination in determining women's and men's life choices. For example, if there can be no standards of truth, justice, or reason then the struggle have no basis for supporting or justifying resistance to oppression. Thirdly, historical materialism has excluded female labour from its analysis and it has always been debatable (Mackinnon 1983:640).

From the perspective of the present day women's movement, one significant outcome of the events is that it has sparked considerable world interest in the values and ideals of Islam in relation to gender in Muslim societies. There already exists a wide range of theories, methods, policies, and strategies related to the women's rights movement worldwide. This reveals that feminists as well as women researchers and activists all over the world do not share the same views on some of the concepts related to the empowerment of women. This is also true for scholars of Muslim societies, which are geographically, culturally, and politically diverse. It is, therefore, difficult to come up with a monolithic understanding of feminist theory and strategy acceptable to every Muslim society. It is relevant to note that, in Bangladesh, religions and religious beliefs form a critical point of reference for both individual conduct and institutional development. An equally strong pull is exerted by socio-economic and other cultural considerations (Kabir 1989). As a result, a wide spectrum of approaches is evident among scholars in relation to the problems posed by women's social and legal status, ranging from a completely secular approach to the traditional and rigid approach of Islam with some moderate views in between.

2.4. Personal Law of Independent Bangladesh

The Constitution of Bangladesh states under article 149 that all existing laws shall continue to have effect but may be amended or repealed by laws made under the Constitution. The personal laws continue to exist under to its effect till today. Moreover, the Constitutional clause of sexual equality only applies to the public sphere and is not applicable to the private sphere which is perceived as under the personal law (Mansoor1999:130). The personal laws cannot be considered inconsistent with the Constitution when one of the fundamental rights under article 28 (1) provided by the Constitution states that no citizen shall be discriminated on the ground of religion by the state. This provision ensures freedom of religion and also safeguards the personal laws based on religion. The directive principles of state policy, fundamental for the governance of the country, although not judicially enforceable or justiciable, do give preference to the religion of the majority of the population.

During the liberation movement in Bangladesh, women played a significant role in the freedom movement. The contribution of women are often overshadow by primarily portraying them as rape victims of Pakistani soldiers and collaborators or left alone by a freedom fighter father, brother or husband (Ahmed 1985:48). After independence the Constitution was adopted on 4 November, 1972 under Sheikh Mujibur Rahman. The sovereign Democratic Republic of Bangladesh gave new promises to women acknowledging their contribution in the liberation movement. In March 1972, in Dacca, the father of the nation stated that ‘in the past religion has been exploited in order to enslave women but this won’t repeat anymore. Appreciating the role of the women played in the freedom movement, the leader promised that his government would secure that women may enjoy equal rights and privileges with men in free Bangladesh. To make the rape victims of the liberation movement acceptable to the society, they were declared as war heroines by Sheikh Mujibur Rahman (Monsoor 1999:123).

During the time of independence, Bangladesh opted for a secular nationalist ideology as embodied in its Constitution; the principle of secularism was

subsequently replaced by a commitment to the Islamic way of life through a series of Constitutional amendments and government proclamation between 1977 and 1988 under the dictatorship of its military generals. But after his death in 1975 things fell apart. On 21st April 1977, Major General Ziaur Rahman became the President of Bangladesh where he removed the principle of secularism that had been enshrined in Part II: Fundamental State Policy, replacing it with 'absolute trust and faith in Almighty Allah'. Later on, the Constitution establishes Islam as the state religion but it provides the right to practice of other religion of one's choice besides it should be subjected to law, public order and morality (Ahmed 1985; Mansoor 1999:129-31). The Eight Amendment of 1988 inserted Article 2A which mentions that 'the state religion of the republic is Islam.' But the said article also declares that 'other religions may be practised in peace and harmony in the republic' (Ghosh 2001:180). Some women groups challenged this move on the grounds that it risked exposing women to discriminatory laws. But the change in the Constitution overturned the vision of the founders of Bangladesh. Though the West Pakistan Family Courts Act 1964 continues to govern the jurisdiction and functioning of the Pakistani Family Courts; the Act was never applied to East Pakistan before Bangladeshi independence (Mahmood 1972b:247). The Government generally respects this provision in practice; however, some members of the Hindu, Christian, Buddhist, and Ahmadiyya communities experience discrimination (Mansoor 1999:132). The Government (2001-2006) led by an alliance of four parties Bangladesh Nationalist Party, Jamat-e-Islami Bangladesh, Islami Oikya Jote and Bangladesh Jatiyo Party banned the Ahmadiya literatures by an executive order. Family laws concerning marriage, divorce, and adoption differs depending on the religion a person is associated with.

There are two major communities in Bangladesh, namely, Muslim and Hindus. The majority Muslims of Bangladesh follows the Hanafi school of thought and the personal law is defined by Sharia't Law which is primarily the practice of the colonial period (Baden *et al*, 1994:74). The Hanafi school was founded by Imam Abu Hanifa an-Nu'man. Under the Sharia't law, the existence of legal rights for women does not guarantee on the use of legal system to uphold them, but it depends on the basis of socio-economic status, the knowledge of the provision of the law to confront the barriers upon their rights (Bhuiyan, 1986b:49) Though there were modifications in

the personal laws in Pakistan before and after its independence. Bangladesh inherited the legal system of Pakistan in 1971 through the retrospective operation of Bangladesh (Adaptation of Existing Bangladesh Laws) Order 1972. In 1985, Bangladesh amended the Muslim Family Laws Ordinance 1961 which is known as East Pakistan Muslim Family Law Rules 1961 on administrative front. Later, the Dissolution of Muslim Marriages Act 1939 was amended to modify the law on options of puberty (Mahmood 1995b; Abd Allah Ahmad Naim 2002:218). Jahan (1988) argues that though this amendment has modified the inequitable provisions of Sharia't Law but the socio-economic factor and the widespread ignorance of legal rights have been the main hindrance to women's rights.

The legal system of Bangladesh consists of the general laws and the personal or the family law of the religious communities. During the colonial rule in the Indian sub-continent, they have codified some of the laws for their convenience of ruling over the people which later became the general laws and are common for all the citizens under the Constitution. Mansoor (1999) has raised some important question in the context of Bangladesh Constitution and personal laws:

Firstly, the Constitution of Bangladesh states under article 149 that all existing laws shall continue to have effect but may be amended or repeal by laws made under the Constitution. Thus the personal laws as existing laws continue to have effect and it is doubtful whether the Constitution can override the personal laws. Secondly, the Constitutional clause of sexual equality [under article 28(2)] only applies to the public sphere and is not to the private sphere. Thirdly, personal laws cannot be considered inconsistent with the Constitution when one of the fundamental rights [under Article 28 (1)] provided by the Constitution is that the state shall not discriminate against any citizen on the ground of religion. This provision ensures freedom of religion and also safeguards the personal laws based on religion. Fourthly, the directive principles of state policy, fundamental for the governance of the country, although not judicially enforceable or justiciable, do give preference to the religion of the majority of the population. But this shows that the Constitution itself is biased towards the religion.

In Bangladesh, there is no special marriage act like in India where both the partners can retain their respective faiths. Marriage between a non-Muslim man and a

Muslim woman is dealt with the Muslim laws. This marriage is considered void and therefore the legal paternity of the father is not recognized in it. But there is one such law that makes this marriage possible to make his legal paternity recognized. In order to make this possible, the couples can marry under the colonial Special Marriage Act of 1872, but in this case both the partners have to denounce and declare themselves as 'non-faith'. But the act's preamble states that though a certain form of marriages for the 'non-faith' and can be legalized but the validity is doubtful. Muslim man can contract a valid marriage with Kitabiya (one who believes in a Kitab, or Holy Book such as the Bible or Torah, thus meaning Christians or Jews) woman (Pereira 2002:15; Ghosh 2007:181). But when a Muslim man marries a Hindu woman then the marriage would become irregular. For example, in an irregular marriage, the legal paternity of the man over the children is recognized but there are no rights of inheritance or maintenance established between the spouses.

Ghosh (2001) alleged that there is no law that has been passed in Bangladesh to influence the minority communities regarding the personal law related to marriage and divorce. But there are some certain laws passed after independence which apply to all communities in respect of preventing cruelty to women in 1983, deterring child marriage in 1984 and prohibiting the practice of dowry in 1984. The Constitution guarantees women's equality in public life but not in the personal sphere, which is governed by the personal law of religious communities. The Muslim personal laws in Bangladesh, applicable in cases of marriage, divorce, inheritance, and child custody, continued to discriminate against women despite reforms in 1961. Men's rights to polygamy, easier divorce, larger inheritance of property, and authority over children after divorce are examples of inequities in personal laws (Kar, 2005:469-471). Naim observes the provisions in the Constitution which guarantee equality to all the people as follows:

The state law in South Asia has maintained and recognized the application of the personal family laws of different religious communities. There are Constitutional provisions which provide protection to women's rights and the assertion of gender equality comes under the Fundamental Principles of State Policy and is enshrined in Article 10 on the Participation of women in national life as well as in Articles 26 to 29 of the section on fundamental

rights affirming equality of all citizens before the law. This is balanced against the Constitutional protection of minority rights provided for in Article 41 on freedom of religion and the freedom of every religious community or denomination to establish, manage and maintain its religious institutions (Subject to law, public order and morality). This affects the significant Hindu minority in Bangladesh (roughly equivalent in proportion to India's Muslim minority), in addition to Christian and Buddhist minorities (Naim 2002:214-215).

The fact is that inequality exists in the society. The whole problem is due to the complex system of laws in Bangladesh. The majority Muslim personal law had potential conflicts with the general law while the minority laws have been eventually marginalized. The Muslim personal law in the new state also partly constituted a legacy inherited from the British Indian and Pakistani period, made applicable to Bangladesh by the Bangladesh (Adaptation of Existing Bangladesh Laws) Order 1972 (Monsoor 1999:132). The Muslim personal law with regard to marriage, divorce and succession is generated by Islamic law and its application is regulated by the Muslim Personal Law (Shariat) Application Act, 1937. The matters like adoption and inheritance are subjected to local customs and usage, unless a person declares he or she should subject to Islamic law. The Act of 1937 was amended as West Pakistan Muslim Personal Law (Shariat) Application Act in 1962; it did not extend to erstwhile East Pakistan (Mahmood 1972b:247).

Muslim personal law in Bangladesh has undergone many reforms. But for the Hindus, Buddhist, Christians, Parsis and the tribal communities, they still continued with the customary laws and the laws that were enacted during the time of the British. The practice of the minority communities are outmoded and in need of reform (Menski and Rahman 1998:111-113). The recent trend in Bangladesh is that they are striving to introduce a uniform family code which could bring uniformity of all the personal laws. There is no provision in the Constitution of Bangladesh about the uniform family code but in India it has provision for the uniform civil code under Article 44 of the Indian Constitution though it has not been implemented in any form.

2.4. Origin of the discourse on Uniform Family Code

In 1980's, Bangladesh was under the dictatorship of Lieutenant General Hussain Mohammed Ershad. During this time, the progressive forces started the movement to restore democracy which began to pick momentum in a bid to remove the military dictatorship and initiated the discourse on the uniform family code (UFC). Political activities were banned and their leaders and organizers were either killed or forcibly imprisoned and therefore left with no scope for the democratic forces to openly agitate in order to restore democracy. The post independent opposition democratic forces like Awami League and the Bangladesh National Party were suppressed and shattered under the military rule. The political forces and pressure groups including students, intellectuals, professional, trade union workers, women groups and labourers were the main actors who wanted to change the system. Therefore, they employed different form of democratic means to avoid direct confrontation and to ensure that the tactics used were least prone to attract the wrath of the dictator. Agitations were carried out in the form of going against human rights violation, legal rights and women's rights. This was a step taken by the Bangladesh Mahila Parishad (BMP) and other women's organization to push their cases for justice for all women who are oppressed and it also gave a thrust to democratic movement forward (Uddin 2006:6-7).

Oppression of women was not a recent trend in Bangladesh but since the formation of the patriarchal society, the women were subjected under the dominance of men. In the 19th century, people like Raja Ram Mohan Roy and Chandra Vidyasagar brought changes in the society through their contribution towards women rights while in the 20th century Begum Rokeya came forward to fight for women's rights. The Bangladesh Mahila Parishad, which is known as Women's Council, came into being in 1970 carried forward their movement even during the military regime. Bangladesh Mahila Parishad organized the seminar to exchange views with the representatives of different religions on the proposed uniform family code. The Parishad has been trying to form the family code in line with the 'Convention on the Elimination of all forms of Discrimination against Women (CEDAW).' They also called for raising awareness among the people and more campaigns before the

formation of the family code to avoid objections from different religious communities. The uniform family code calls for equality between men and women in the case of marriage and divorce registration, guardianship of the children, women rights to the assets, child adoption and subsistence after divorce.

In 1985, Bangladesh Mahila Parishad took upon itself the task of drafting a uniform family code. Some other women's groups like Ain O Shalish Kendra (ASK- Legal Aid and Mediation Centre) joined them in their initiatives. The uniform family code has asked for gender equality and liberation from oppression but it is provocative for the orthodox elements where the Muslim community consist of 90 per cent approximately and remaining consist of Hindus and the rest of the minority religious communities. The Muslim's believed that the traditional Islamic law had enough safeguards for their women, the Hindus were on the other hand, afraid that this would further aggravate their identity problems of being a minority. Therefore, the idea of the uniform family code remained confined to the progressive women as well as men of the diverse religious communities

Bangladesh Mahila Parishad organized a workshop on October, 1989 at the Development Planning Academy under the title 'A preliminary proposal for a common family law for all men and women in Bangladesh,' which, in a way became the first tangible step in the direction of a Uniform Family Code. Again a seminar was held in January 1992 titled 'Reform of Laws on Women in Bangladesh and a Uniform Family Code' at the National Press conference (Pereira 2002:188). When democracy returns after a decade and a half, the progressive groups were hopeful on the democratic government over their struggle but the BNP nor the AL pay heed on the UFC. This does not pull back their progress but the women activists went ahead on their agenda.

In 1993, the Bangladesh Mahila Parishad brought out the draft model code after a series of seminars and workshops. Several other organizations joined the BMP and tried to improve the draft code to make it a model that would be truly uniform for all the Bangladeshis irrespective of religion and gender. The revised draft was jointly brought out by BMP and Ain-O-Shalish Kendro in 1996. The model code was framed

with the consultation of the intellectuals and later circulated for public debate. The basic features of the draft code on UFC are as follows:

1. Equality and responsibility as the basis for marital relationship. In matters of marriage, divorce, inheritance, and custody and guardianship of children, men and women are to be treated equally by law.
2. All marriages are to be registered irrespective of whatever rituals have been followed to solemnize them.
3. Child marriage is to be declared illegal and the minimum age for marriage should be eighteen for both boys and girls.
4. Polygamy is to be abolished.
5. During the subsistence of marriage, maintenance would depend on the following: irrespective of which spouse is the earning member, both spouses will participate equally in matters of family finance. If either, whatever be the gender is unemployed, s/he would be entitled to maintenance from the other spouse.
6. Both mother and father will be the natural as well as legal guardians of children. In the absence of parents, either the closest relatives or persons designated by the parents will be the guardians.
7. Following the dissolution of marriage, the responsibility for maintaining the children will be the joint responsibility of the parents depending upon their financial situations.
8. Equal conditions and standards will be applicable to both spouses to effect a dissolution of marriage. It would, however, be mandatory for both spouses to find ways and means for reconciliation and mediation. Therefore, there has to be a minimum lapse of time before divorce becomes effective.
9. The practice of enforcing restitution of conjugal rights will be abolished.
10. Property acquired during the subsistence of marriage will be divided as equitably as possible after the dissolution of marriage.

11. After the dissolution of marriage, if either spouse opts to take care of the children the other spouse will make adequate compensation to her or him.
12. There is to be no gender discrimination in the case of inheritance.
13. Every adult male and female, whether married or unmarried, will have the right to take a child in adoption. However, in matters of adoption, the welfare of the child, and the financial capacity and custodial qualities of the adopter will be of vital consideration. The consent of the natural parents of the child being adopted, where applicable, would have to be obtained (Pereira 2002:189; Ghosh 2007: 182-83).

Though the draft formulated by Bangladesh Mahila Parishad came as a breakthrough in 1996 but on the other hand, it has numerous shortcomings. It is undergoing under several levels of scrutiny over those shortcomings and improving the draft by various organizations especially the Ain-O-Shalish Kendro.

The doctrine of the Muslim is such that it opposed to any kind of reform through the means of uniform family code. In 2000, the Bangladesh High Court ruled in its secular and democratic means to reform the personal law that mere utterance of the word 'talaq' thrice does not constitute a valid and legally permissible divorce. The court further directed that the practice of issuing 'fatwas' (religious edicts) was illegal and not valid. It also ordered the arrest of the Mullah (Cleric) Azizul Huq, who had forced the divorced Sahida, on pronouncement of triple talaq on her by her husband, Saiful, into marrying his paternal cousin. This judgment has attracted the wrath of the right wing Islamic groups lead by Moulana Fazlul Huq Amini's Islamic Oikkya Jote (IOJ) and ultimately issued a death fatwa against Justices Mohammed Gholam Rabbani and Nazmun Ara Sultana (Ahmed 2001:618-19).

Chanda (2006) argues from the theoretical perspective of legal pluralism, that since law and culture are closely linked, reforms in existing family laws should be introduced to provide a culture-specific legal system that provides the maximum possible justice to all people, women, men and children of different communities in Bangladesh. It also observes that the existing literature on today's South Asian states shows that reforms are on the majority law whereas the minority laws are remained

untouched. Though the state has enacted several laws with general application to all to deal with disputes like repression of women, domestic violence, guardianship yet many family disputes are resolved through local customs, practices and various methods of informal dispute resolution including shalish (a traditional form of dispute resolution). In Bangladesh, the reform on the Muslim family law is cosmetic because the state has made only some procedural changes to it and remains silent about reforms on minority Hindu, Buddhist, Christian and indigenous family laws (Chanda (2006).

The progress of the movement towards the uniform family code is slow. But it has been argued that the scope for uniformity of family laws in Bangladesh is more than in India because of its greater homogeneity and compactness (Menski 1990:292). It is also argued that religious personal laws have developed to reach the present form due to human endeavour and just as they have undergone a change in the past so they can be modified to accord with the change circumstances of the present. The religious personal laws ought to be reform so as to incorporate legal equality for women. It is further stated that the conduct of the colonial state with respect to personal laws is not informed by concerns of justice but is intended to suit its wider ends of governance (Parashar 1992:8).

CHAPTER III

Roles of Government, International Covenants and Agencies, and Civil Society

The protection of women's freedom of religion and belief is a paradigm test of the conflict between religious freedom as a community right and the rights of individuals in that community. A core problem in the application of religious freedom is the inherent conflict between religious freedom, if it is given a group dimension, and women's right to equality and individual religious freedom. No international human rights instrument has, to date, comprehensively addressed or solved this difficult problem.

(Scolnicov 2011:1)

Women constituted half of the population of Bangladesh. The development intervention of any society cannot be fully achieved without the participation of women. But we find that women suffered from the status of discriminations under all major religions in Bangladesh. Though women should have equal rights and privileges with men in society but practically they are deprived of equal rights and oppressed under the patriarchal system. The right to equality and the right of individual religious freedom of women also stand in conflict with community religious freedom (ibid: 2). Different religion has different custom and traditions along which they treated their women accordingly. The Muslims patriarchy would claim that they have placed their women in an honourable place. However, in reality the women are perceived and groomed to assume roles and responsibilities invented exclusively for them by the Muslim Men. The conditions of the Hindu and Buddhist women are worst than the rest of Bangladeshi women counterparts besides the Muslim women. Among them, the Christian women are comparatively better off as they are treated equally in terms of inheritance of ancestral property, marriage, dissolution of marriage, guardianship and adoption.

Bangladesh is a home to what has been described as a 'vibrant' women's rights movement. The progress in enhancing women status has been widely celebrated on one hand and sometimes even posed as a puzzle due to many inabilities on the

other. The dramatic growth in female secondary education, the eradication of gender inequality in infant mortality, the vast numbers of young women employed in the garment factories moving out of their secluded existence are all tremendous changes that have contributed to women's status in Bangladesh. Yet a great deal on women's empowerment remains to be done in terms of increasing women's labour force participation, reducing and punishing violence, increasing political participation and visibility in leadership position, inheritance of property, equal rights, and family laws and therefore, we need to understand who and which policies are playing the role in assisting the positive gains that has been achieved.

Religion and women rights are interlinked to each other besides non believers. The relation between women's right to equality and community of religious freedom stands in conflict and therefore it affects individual women's right of religious freedom. Mackinnon (1987) argued that legal and indeed human rights concept should be defined and address in ways that matters to women, the scope of rights protected within the idiom of religious freedom may thus have to be redefined. Besides these, there is uniqueness in Bangladeshi society when we observed in the context of South Asia. Bangladeshi rural society has a high degree of linguistic, religious and ethnic homogeneity. It does not have a stratification system based on caste like in India and Nepal or the biradari system in Pakistan. The Gushtis which is based on kinship groupings in Bangladesh exercise a hold on their members but do not fragment the society like the rest. This is one of the positive features that make it possible in the campaigns for the welfare of women in society.

3.1 Issues under the Uniform Family Law

Under the Bangladeshis Uniform Family Code, there are many issues of concerned. Some important issues are marriage, dower and divorce, polygamy, divorce and separation, maintenance, guardianship and custody of children, and right to property or inheritance.

1) Marriage

The Child Marriage Restraint Act, 1929 fixed the eligibility age to contract marriage as 21 years for men and 18 years for women irrespective of religion (*Section – 1 (2) of the Child Marriage Restraint Act, 1929*). This law is applicable to all citizens of the country and whosoever breaks the law is punishable with simple imprisonment. This act was enforced to check the illegal marriages. The Dissolution of Muslim Marriages Act (Amendment) Ordinance 25 (1986) allows married girls less than 18 years old to annul unconsummated marriages (Baden *et al*, 1994). In many countries, marriages of girl child are still arranged by families without her consent. According to the Child Marriage Restraint Act, 1929, the marriage age are fixed for both male and female.

The BLAST (2009) report shows that it is far from practical reality as 68% girls is getting married before attaining the age of 18 years. This shows that parents tend to impose their decisions regarding marriage of the children with or without their consent. But this certain percentage shows a huge margin where the majority of the girls are forced to give their consent to marry the man chosen by the parents. It further shows that the decision of the women about their personal lives is discourage and treated women as their subordinate. They have to obey the rules of their male dominated society. According to the Shari'ah law, two male or one male or two female witnesses are necessary for contracting a valid marriage (Pereira 2002:14). And under the Evidence Act, the married couples are accorded equal status. Likewise, the Christian marriage also requires witnesses like the Muslim marriage for a valid marriage. However, according to the Hindu law, the Hindu marriage does not need witnesses but if the need arises for any legal purposes, the male priest officiating at the time of marriage marriage would stand as its witness. In the Hindu customs and traditions, women do not have any scope of having a witness or witnesses to their marriage.

2) Dower

Dower refers to the age old practice of giving marriage payments of cash or kind at the time of marriage (Mertus 1995:139-140). It is also refers to a sum of money

payable to the wife by the husband in consideration of marriage. It is prevalent in numerous cultures of Africa, India, Pakistan, Middle East and Bangladesh. According to the Muslim law, the dower money concept undermines the dignity of the women but some scholars interpreted by arguing that it is a token of respect for women and essentially for their economic security. But the concept of dower money payable to the wife does not exist in other personal laws of the country. Dower has two types: Prompt dower (payable immediately upon demand by the wife) and Deferred dower (payable on the dissolution of marriage). Most of the women do not asked for dower to keep their marriage intact and due to fear of being deprived of rights to see their children after divorce. The amount payable as dower is never recovered due to non-registration of marriages (Pereira 2002:19).

Women not only face difficulty in claiming dower, but subjected to physical abuse and mental torture for not being able to pay the dowry demanded by their husbands. According to Pereira (2002), 70 per cent of all the domestic cases are related to dowry. Dowry has been a feature of Hindu marriage in Bangladesh. Even in other religions like Christianity and Islam, dowry system is becoming the norm. Under pressure from the women's organization of Bangladesh, the government has passed the legislation prohibiting the practice of dowry under the Dowry Prohibition Act, 1980 but it has been effective only to a limited extent (Baden *et al*, 1992).

3) Polygamy

Polygamy is a marriage which includes more than two partners. In Muslim law, marriage is considered as contract between a man and a woman. Registration of marriage is compulsory under the Muslim Marriages and Divorces (Registration) Act, 1974 but in actual practice it does not conform to the act which gave rise to many problems (Pereira 2002:14). In some countries where the practice of polygamy is considered acceptable but in certain cases women can use their marital contracts to restrict their husbands' right from taking additional wives. Although in most of the cases the decision solely depends with the husband and not the wife. In Bangladesh, husbands who wish to take on additional wives must notify the Arbitration Council under the Muslim Family Laws Ordinance (Bhuiyan 1986a). But the MFLO remains

inadequate and ineffective as only few men obey those rules. On the other hand, Hindus, Christian, and Buddhist men can keep as many wives at a time if they wish to. There is no law that prohibits polygamy in Bangladesh (BLAST 2009). The Bangladesh High Court in 1996 makes a landmark judgment on polygamy in the case of *Jesmin Sultana v Mohammad Elias*. The Court observes that Islam has not approved polygamy and therefore Muslim family law should be suitably amended prohibiting polygamy. Justice Mohammad Gholam Rabbani and Justice M Fazlur Rahman Talukder observed that Section 6 of the Muslim Family Law Ordinance, 1961 should be deleted as it is against the principle of Islamic law (Engineer, 1997:3190). This judgment is accompanied by the Quranic verses on polygamy which insists on equal justice to all the wives and also calls for restraint if the person can't do justice to all of them. It is also argued that men rarely register their marriages and therefore even if women complaints they face many legal and socio-economic barriers to receiving justice (Bhuiyan 1986a:49).

4) Divorce/ Separation

Islamic family law is applied throughout the regular court system. There are two levels in the judiciary namely the subordinate courts and a Supreme Court with Appellate and High Court Divisions. The Family Courts are the courts of first instance for personal status cases of all religious communities, although different religious communities are governed by the Family Court Act 1985 (*see* page 82).

a) By mutual consent

Section-7 of the Muslim Family Laws Ordinance, 1961 lays down the procedure for execution of divorce which is *mutatis mutandis* applicable for all forms of dissolution of marriage. Muslim law allows the parties to separate from one another if every attempt to maintain the marriage fails. Khul (Redemption) and mubara'at (mutual freeing) are the two forms of divorce by mutual consent though in both cases, the husband has been vested with unfettered power and the wife's status has been reduced to a divorcee. Khul and Mubara'at operate as a single irrevocable divorce (Pereira 2002:21). In the context of hula, however, the wife has to relinquish the claim of

dower. The Bangladesh government has not lifted its reservation on Article 16 (1) (c) since its Constitution also mandates for equal rights for men and women in public life. BLAST has rightly pointed out that the Fundamental Principles of State Policy in the Constitution of Bangladesh which incorporated Articles in Part I and II to provide gender equality only existed in the public domain and does not touch upon in the private life. On Khula, the marriage commission has recommended that incompatibility of temperament should give a right to demand for divorce (Mansoor 1999:101; Hosseini 2009:32) but critics says that this would means a social ruin for the society.

b) Talaq-E-Taufiz

The husband has the power to delegate his exclusive right of pronouncing divorce to some third person or to his wife by virtue of this provision enumerated in the 18th column of kabinnama (marriage written contract). This provision empowers a Muslim wife to obtain her freedom from a failed or broken marriage without the intervention of any court. The wife, if the power to divorce is delegated, has a right to divorce herself extra-judiciously. This is contradictory to the earlier cases, as it follows the principles of Shari'a which validates oral contract as binding on the parties and does not required kabinnama to show the legal validity of the marriage (Pereira 2002:27). If written contract is agreed upon at the time of marriage, the position of women would be protected by making it possible for the wife to seek enforcement by the court in case of contravention of any clauses in the kabinnama (Mansoor 1999:109).

According to BLAST (2009), there are some groundbreaking decisions in response to a woman's claim for the protection of her rights relating to the family where the court has provided progressive interpretation of women's rights. It pointed out that in spite of the legal procedures and provisions laid down under section 7 (1) of the Muslim Family Laws Ordinance, 1961, men tend to arbitrarily exercise his power of divorce on simple grounds. To cite some certain instances, in *Kazi Rashed Akhter Shahid (Prince) V. Rokshana Choudhury (Sanda)* 58 DLR (HC) 271 (2006) the High Court made an observation with regard to Section 7 (1) of Muslim Family

Law Ordinance, 1961 which requires the husband to give a notice in writing of his having pronounced Talaq (Divorce) to the Chairman. If the husband fails to issue such notice to the Chairman, then the Court observed that it would be deemed as the husband has revoked the talaq and the marital status would remain unchanged.

There are other cases related on maintenance like *Ikhtiar Hossain Choudhury v. Shahenoor Akhter* and *Hefzur Rahman v. Shamsunnhar Begum*. In the first case, the court has granted past maintenance to the wife after separation for 4 years 10 months including 3 months for Iddat period. The second case, the Court ruled that a person after divorcing his wife is bound to maintain her on a logical scale beyond the period of Iddat (*for an indefinite period which means until she gets remarried to another person and losses the status of a divorcee*) (Baden *et al*, 2009). But it was later overturned on appealed before the Appellate Division of the Supreme Court of Bangladesh which has been a setback on the progressive action of the court order for the protection and promotion of women's rights in Bangladesh.

c) Contested divorce

A Muslim wife is allowed to claim divorce in the Court on some specific grounds laid under The Muslim Marriage Dissolution Act, 1939. Both the Christian spouses are entitled to dissolve their marriage through Court under the provision dealt in the Divorce Act, 1869. There is no legal provision for divorce by mutual consent or contest for the Hindus and the Buddhists. Hazong (indigenous tribe) women enjoy the right to divorce though they claim themselves to be followers of Khatrio of Hindu religion.

d) Right to separate residence and maintenance

As there is no scope for a Hindu married woman to divorce or marry another person, by virtue of Section 2 of The Hindu Married Women's Separation and Maintenance Act, 1946. She is entitled to separate residence and maintenance from her husband on any one of the seven grounds provided in the statute. In Bangladesh, a Hindu woman under no circumstances can take any recourse to bring a suit for dissolution of

marriage. A Hindu man can practice polygyny or even accorded unequal treatment but this does not provide grounds for relief for marriage dissolution (Pereira 2002:42). However, the Hindu married woman seeking maintenance for separate residence should be able to prove her chastity and continue to practice her religion.

5) Maintenance

After termination of marriage, a Muslim wife is entitled to be maintained all kinds living expenses by her husband till the expiration of three terms of menstruation or to the end of pregnancy whichever is longer. Unlike Islam, the concept of Iddat (waiting period) is unrecognized in other religious communities and therefore it is not available among them. According to the Muslim Law both legitimate and illegitimate sons are entitled to maintenance until they attain puberty; whereas only legitimate daughters are entitled to maintenance until they are married. It is a husband's duty to maintain his wife regardless of her own personal means, even before the obligation to maintain his children. But ironically, maintenance begins only when the wife reaches puberty and allows him full access to her at all lawful times (Pereira 2002:29-30).

The first judgment on maintenance was reported in The Dhaka Law Reports (p.54). The judgment was delivered by Justice Mohammad Gholam Rabbani and Justice Syed Amirul Islam in the case of *Hefzur Rahman vs Shamsun Nahar Begum*, 47 DLR 54 (1995) HCD. The court ruled that maintenance should be provided on a reasonable scale as according to the interpretation of Quran and therefore, 'a women who is divorced is entitled to household stuff utensil, goods, chattel, provision, convenience which is know, recognized, honourable, good and befitting' (Engineer 1997:3189-90). The learned Justice of the High Court gave its pronouncement that a man after divorcing his wife is bound to maintain on a reasonable scale not within the period of iddat but until she loses the status of a divorcee by remarrying another person.

6) Guardianship and Custody of Children:

In Muslim Islamic jurisprudence, the father is the natural guardian of the children. Upon his death bed, the guardianship falls on the father's executor, the paternal

grandfather and the paternal grandfather's executor. The question is that why the mother is deprived from being a legal guardian of her children? According to Islamic jurisprudence, a Muslim mother can never be the legal guardian of her own children. The reason behind is that by disallowing this right, it re-emphasizes the paternal line of ancestry and reinforces the social workings of a traditional, patriarchal, patrilineal and patrilocal system (Pereira 2002:32). Hence, she is instead entitled to custody of her children only under the age of seven years if it is a son and for 9 years if it is a girl child or when the boy reach puberty or girls reach a marriageable age. In case if the right to custody is being denied to her then under Article 102 of the Constitution, the aggrieved mother can move the High Court Division for immediate custody of the children.

The Doctrine of Welfare of Children has been evolved under the virtue of the Guardian and Wards Act, 1890. In the case of *Amirul Bor Choudhury v. Nargis Sultana* 19 BDL (HCD) 213 (1999), the Court held that father's remarriage is a disqualification and awarded custody to the mother. The Court observed that it appears that the defendant petitioner has got married again and therefore the welfare is undoubtedly not to be transferred to the step mother but to the mother of the children. In the *Sharon Laily Begum's case* was brought to court by Ain O Shalish Kendro as she is a British Christian citizen. It cites from Ameer Ali that 'the milk of a Muslim mother is not more nutritious than that of a Christian mother' and therefore the Family Court granted full custody of her four minor children (*Abdul Jalil V. Sharon Laily Begum*, family suit no. 145 of 1995 and family suit no. 183 heard analogously and judgment delivered by the Family Court on 1st April 1999. 50 DLR (AD) 55 & 1998 BLD (AD) 21). Though the legal custody of the children was maintained in Bangladesh, there is not technical division to guardianship and custody of children exists under the Hindu or Christian personal laws. The legal reform on guardianship is therefore not uniform and therefore the practice is based on the dictate of the different religious personal laws.

7) Right to Property

According to United States Agency for International Development report on Gender Assessment of Bangladesh, women's property ownership is very rare. There are less

than 10% of all women and less than 3% of younger women have their names on marital property (USAID, 2010). Women from all communities except the Christians suffered from discrimination with regard to claiming their right to property. In the Qur'anic verse, the rules of inheritance are fixed and the shares of property are allotted to the designated heirs including women (Jansen 2007:183). According to the Golden Rule of the principle of law of inheritance for the Muslims, female co-sharer gets half of a male of same grade, that is, husband gets $\frac{1}{2}$ and $\frac{1}{4}$ in two capacities while wife gets $\frac{1}{4}$ and $\frac{1}{8}$ in the same capacities respectively. Brothers and sisters inherit at 2:1 ratios. Muslims ideology on inheritance is reinforced with the claim on the Qur'anic verse that says men have authority over women because Allah has made men superior to women and because men spend their wealth to maintain women (Pereira 2002:37). In Islam, therefore, women are not treated at par with men. Though reforms were being made through the Muslim Family Laws Ordinance, 1961 but it is argued that the position of women has not benefited in any significant way.

A Bangladeshi Hindu women's right to inheritance is non-existent. In Bangladesh the limited right of life estate or widow's estate accorded to a woman, is sometimes referred to as inheritance, although this is an anomaly within the strict understanding of the term inheritance. However, a Hindu widow is not entitled to alienate the immovable property inherited by her. A Christian woman is comparatively in a better position than Muslim or Hindu woman under the law of inheritance as she is entitled to inherit equally as that of her brother. The Married Women's Property Act, 1874 provides that the earnings of any married woman would remain exclusive and as her separate property. Among indigenous tribes the Marma women inherit equally. Tanchanga daughters cannot claim ancestral property if there is a son and Tripura & Chakma daughters as a matter of practice do not claim their right to ancestral property.

The constitution of Bangladesh promotes equal rights to women yet they still suffer from discrimination and violence that occurs at home, in the work place and in the society. The women in rural areas are hard working and perform heavy household work throughout the days but they are reducing to nothing when it comes to men and his work. Women's contribution to the family income is not recognized to the same

extent as men's, but they are however involved in many activities, such as post harvest activities, farming, fuel gathering, rice husking, making and selling handicrafts, and rearing domestic animals (Hultberg 2008:2). Men's earning outside home is seen as hard money and women's work and earning is seen through the four corners of the house in the patriarchal society which makes their status invisible in comparison to them. Although women's work is hard and time-consuming, such work does not provide them equal status to men. The patriarchal society has the tendency to think that woman seldomly earns money on her own but is financially dependent on her father, then husband and thereafter her son for economic security (Hartman & Boyce 1998).

3.2 Government of Bangladesh and its Development Initiatives for Women

The Government of Bangladesh is pursuing legal and protective measures for minimizing all sorts of violence against women for many years. Some of the legal measures are directly related to violence against women and some are indirectly related to violence against women but conducive for upholding the rights and privileges of women. The legal measures are as follows:

- i) Section 375 of the Penal Code, 1860
- ii) The Code of Criminal Procedure, 1898
- iii) The Child Marriage Restraint Act, 1929 (Amended in 1984)
- iv) The Suppression of Immoral Traffic Act, 1933
- v) The Dissolution of Muslim Marriage Act, 1939 (Amended in 1986)
- vi) The Muslim Marriage and Divorce Registration Act, 1974 (Amended in 1982)
- vii) The Dowry Prohibition Act, 1980 (Amended in 1982, 1984, 1986)
- viii) The Muslim Family Laws (Amendment) Ordinances of 1982, 1985 and 1986
- ix) The Family Court Ordinance, 1985 (Amended in 1989)
- x) Cruelty to Women (Deterrent Punishment) (Amendment) Act, 1988
- xi) Repression against Women and Children (Special Enactment) Act xviii of 1995
- xii) The Legal Aid Providing Act, 2000

- xiii) The Suppression against Women and Children Act, 2000
- xiv) The Acid Crime Prevention Act, 2002
- xv) The Acid Control Act, 2002

Source: (BBS Report 2009: “The Status of Statistics Pertaining to Violence against Women in the Context of Bangladesh” in Meeting of the Friends of the Chair of the United Nations Statistical commission on Statistical Indicators on Violence against Women, 9-11 December, 2009, Aguascalientes, Mexico)

During the time of Sheikh Mujibur Rahman’s, it was reported that the 5% quota of government employment reserved for the rape victims identified in the society. As majority of the war victims during the liberation movement of Bangladesh was not accepted in the society and his government was not able to rehabilitate them. This measure was taken up along with the provision of jobs to wives of freedom fighters who died or were crippled, but could not improve the overall status of women (Ahmed, 1985:48; Baden *et al*, 1994:69). From 1975-1981, there was a military regime under President Ziaur Rahman. But during his regime the United Nation’s international women’s year was started and it integrated more women in the development process. Under him a separate full-fledged Ministry of Women’s Affairs was set up and seats reserved for women in Parliament were increased from 15 to 30 (Kabeer 1991:125). The reserved seats were not open to voting and election but they were filled through the nomination of the majority party, which was simply another means to increase the powers of the ruling party (White 1992:15). The government under him also wanted to improve the legal position of women and the Dowry Prohibition Act of 1980, was enacted for the purposed.

The rule under President Ershad (1982-90) continued the same policy of his predecessor in order to incorporate the WID programme by making used of this hidden resource through employment (Kabeer 1991:45-46). In this the foreign funds were also attached to it. Some important legal measures were set up under his regime to support for the advancement of women’s welfare and to prevent crimes against women through Cruelty to Women (Deterrent Punishment) Ordinance, 1983 and the Family Courts Ordinance, 1985. The UN CEDAW was not fully ratify as certain

clauses were in conflict with the Shari'ah and therefore kept as reservations which will be discuss in the latter part.

In 1991, the first democratic government was formed by the country's first woman Prime Minister, Begum Khaleda Zia after the long military regime in Bangladesh. She also carried forward the policy of her predecessors to mobilize more women in the employment market. More jobs opportunities were provided in garment, plastic and pharmaceutical industry. In Sheikh Hasina's government, attempts are being made to make women and men at par in society and to eliminate violence against women. But all these attempts were in the public sphere which in reality does not affect the family law which is under the domain of private affair.

The present democratic government of Bangladesh is striving hard to improve the quality of life of all the citizens eliminating all sorts of discrimination among the people. Article 10 states that steps shall be taken to ensure participation of women in all spheres of national life. Article 11 says that the republic shall be a democracy in which fundamental human rights and freedom and respect for the dignity and worth of the human person shall be guaranteed, and in which effective participation by the people through their elected representatives in administration at all levels shall be ensured. The constitution of Bangladesh ensures equal rights to all citizens, prohibiting discrimination and inequality on the basis of sex and strives to promote social and economic equality. According to Article 27 of the Constitution of Bangladesh, all citizens are equal before the law and are entitled to equal protection of the law. Article 28 states that the State shall not discriminate against any citizen on the grounds of religion, race, caste, sex or region. With respect to women, Article 28 also states "women shall have equal rights with men in all spheres of state and public life". Article 28 further states, "nothing shall prevent the State from making special provision in favour of women or for the advancement of any backward section of population (*Constitution of the People's Republic of Bangladesh, 4th November 1972, International Relations and Security Network: Primary Resources in International Affairs (PRIA). ISN ETH Zurich*).

The Government of Bangladesh adopted the 'National Policy for Women's Advancement' (NPWA), 2008 that aims at removing all forms of discrimination against women by empowering them to become equal partners of development. The overall development goal for women's empowerment stands at:

- i) Promoting and protecting women's human rights;
- ii) Eradicating the persistent burden of poverty on women;
- iii) Eliminating discrimination against women;
- iv) Enhancing women's participation in mainstream economic activities;
- v) Creating opportunities for education and marketable skills training to enable them to participate and be competitive in all economic activities;
- vi) Incorporating women's needs and concerns in all sectoral plans and programmes;
- vii) Providing safe custody for women and children victims of trafficking and desertion, and creating an enabling environment for their integration in the mainstream of society;
- viii) Ensuring women's empowerment in the field of politics and decision making;
- ix) Taking action to acknowledge women's contribution in social and economic spheres;
- x) Ensuring women's social security against all vulnerability and risks in the state, society and family;
- xi) Eliminating all forms of violation and exploitation against women;
- xii) Developing women's capacity through health and nutrition care;
- xiii) Facilitating women's participation in all the national and international bodies;
- xiv) Strengthening the existing institutional capacity for coordination and monitoring of women's advancement;
- xv) Taking action through advocacy and campaigns to depict positive images of women;
- xvi) Protect women from the adverse effects of environmental degradation and climate change;
- xvii) Take special measures for skills development of women workers engaged in the export-oriented sectors;

- xviii) Incorporate gender equality concerns in all trade-related negotiations and activities; and
- xix) Ensure gender sensitive growth with regional balance.

The Government created a “Law Commission” to review laws related to the protection of women’s rights and to recommend necessary changes. The Ministry of Women and Children Affairs (MOWCA) has undertaken multi-sectoral projects to eliminate violence against women including setting up One-stop Crisis centre in medical hospitals in six divisions for acid throwing and rape victims to ensure quick delivery of necessary services. Facilities for DNA testing have created in Dhaka Medical College for identifying rape criminals. At the National, District, and Sub-district levels, Committees for the Prevention of Violence against Women have been formed. Violence prevention cells also exist in the Department of Women’s Affairs and the National Women Organization. Homes for abused women and women in safe custody have been established both by the Government and NGOs.

Political Empowerment and Participation in the Decision-making process

The most important progress in politics is in the area of local government. In the 2002 election a large number of women became elected not only in reserved seats but also in the regular seats. All city corporations have kept one-third of the seats of Commissioners for directly elected women commissioners. In 2006, the Parliament passed a bill, which increased reserved seats for women to 45 from 30. The National Women Development Policy, 2008 has suggested that one-third of the seats in the Parliament be reserved for women to be elected through direct elections.

In the historic election at the end of 2008 in Bangladesh, the Awami League was elected to power by an overwhelming majority. The Awami League’s election platform included promises to restore women’s rights to inheritance through legal reform in family laws and to place women in key governance positions, by enforcing the reservation of seats for women in the Parliament, local government, and in all levels of government services. Furthermore, the AL has vowed to end discriminatory

laws by implementing the proposed National Women's Development Policy (NCWP) and CEDAW (USAID 2010).

The National Women's Development Policy aims at establishing gender equality at all levels of national life, and to ensure the socio-economic and political empowerment of women. The demand for a uniform family law civil code to end discriminatory inheritance laws is gathering momentum, putting pressure on the on the government to adopt and implement the NWDP.

Institutional Mechanism for Addressing Women's Advancement and Rights Issues

The Ministry of Women and Children Affairs is acting as the focal point and catalyst for actions regarding women's issues and responding to the needs and priorities of women in activities of all government agencies. MOWCA and its implementing agencies have been undertaking different projects for women. They are being assigned to implement different programs in 64 districts and 396 sub-districts of Bangladesh for empowering women at the grass roots level and for improving socio-economic status of women. But the Government of Bangladesh is yet to demonstrate its interventions with regard to effecting reforms within the family laws on the basis of gender equality (Baden *et al*, 2009).

The National Council for Women and Child Development (NCWCD) was established in 1995 under the Honourable Prime Minister Khaleda Zia as the chair to recommend amendment to laws, rules for protection of women and children. In 2008, the caretaker Government formulated the National Women's Development Policy with the objectives of amending existing laws and enacting new laws on the basis of gender equality. The policy includes enacting new laws to ensure equal opportunity for women, ensuring women's security at national, social and family level, empowering of women in political, social and economic sector and ensuring that women are entitled to equal rights as that of men concerning property, employment (Baden *et al*, 2009). The Government has adopted a National Policy for Women's Advancement. As a follow-up on the Beijing Platform for Action, the Government

has formulated a National Action Plan, which aims at translating the NPWA into measurable time-bound achievements. To fulfill the commitments of NAP, the Parliamentary Standing Committee for MOWCA has been established. But the Beijing Declaration and platform for action, the fourth in the world conference on women failed to include any effect of religion or even to women's rights in marriage which are very crucial to women (Scolnicov 2011:4). The Bangladesh government has also accepted the recommendation to take up further steps in order to promote and protect human rights in the country. It has also separated judiciary from the executive to promote an effective justice delivery system. The government has amended the citizenship law and removed the discrimination between men and women. Though it has accepted many recommendation of the UN under the universal periodic review of Bangladesh but not the recommendation made on the UFC. It observes that Bangladesh being a country of diversified cultures and religious groups; it needs to have a broad agreement on a Uniform Family Code that will be acceptable to all the communities and not accepting the recommendation haphazardly. Further it says that the government will consult with all the concern parties and members of various religious organizations so as to achieve a consensus on it (UPR Report 2009:27-28).

Despite efforts to achieve gender equality in the constitution and the dominance of two female leaders in contemporary Bangladesh, Begum Khaleda Zia, leader of the Bangladesh Nationalist Party and Sheikh Hasina, leader of the Awami League, the political influence of most women in Bangladesh remains low. In 1997, Bangladesh has introduced the system of 33 per cent reservation for women in local bodies. Women's participation in local bodies, however, means that while it promotes women's role in politics but it does not facilitate their contribution to the legislative process, which is all that matters in enhancing their legal rights (Ghosh 2007:236). The attempts to improve the status of women which have been taken by the politicians have remained largely rhetoric and did not reduce the domination of males. It remains to be seen as to what extent the various measures could protect women from economic deprivation and violence. In Bangladesh, the Acts and Ordinances shows that they are ameliorating the status of women but in reality the legislature could not put themselves out of the patriarchal interpretation of the laws (Monsoor 1999:135). The Laws are enacted to enhance the status of women in the society but on the other

hand there is a growing reluctance against the effective implementation of such laws. The main obstacle that lies in the way of the practical application of the legal rights of women in Bangladesh is primarily the inherent contradiction of attitudes that persist in a male-dominated society (Ahmed and Jahanara Choudhury 1979:287). Therefore, whatever the legal rights of women are officially made in the Constitution does not necessarily been recognised the society as the implementation process are rather ineffective.

3.3 Civil Society: Response for Women Development

Bangladesh has a long tradition of women's rights organizations which focused on issues such as welfare, education, skills, income generation and child care. There are various women's rights movement organizations which work in varied ways. The various women's groups include the women's wings of political parties as well as independent non-governmental organizations, professional bodies, students associations and trade unions. In 1980's there was a growth in women's movement both number and scope due to the environment created by democracy. The women's rights organizations drew specific programmes in order to end discriminatory practices against women such as VAW, dowry, trafficking of women, unequal wages, work place exploitation, access to credit and unequal political and social rights. Though these groups led to mobilization in both the urban and the rural women but their movement was met with slow response and less interest from the male dominated political system. In 1980's, the state intervene to enhance the women's participation in politics but remained peripheral. The emergence of women's movement in Bangladesh took place in the realm of indigenous issues as the worldwide consciousness among women activist about the persistent gender inequality in the society.

Bangladesh Mahila Parishad (Bangladesh Women Council)

Bangladesh Mahila Parishad was established in 1970 with the objective of upholding the rights and privileges of women in Bangladesh. A major area of activities of the Parishad is its local, regional and national conferences that take place at intervals of

two to three years to propagate the ideas, programmes and achievement of the organization and its members, and to steer movements for ensuring better role and place of women in society. The Mahila Parishad has been active in fighting for women's labour rights (Baden *et al*, 1994:71). The Parishad has a significant role in organizing mass movement against polygamy, child-marriage, women trafficking and prostitution. As torture on women emerged as an issue of increasing concern in 1980s, the Parishad started a legal aid programme to assist the oppressed women and to offer law training to all women in general. It submitted for consideration of the government a set of recommendations for adoption in the Parliament. One such recommendation is about formation of a Uniform Family Code. In order to implement this and other legal reforms, the government formed a Law Reforms Committee. Bangladesh Mahila Parishad is now a big organization with 21 primary committees in Dhaka city. It has about 75,000 registered members in 150 sub-districts of 60 districts of the country. Its activities are managed by a 41-member central committee and a number of sub-committees responsible for conducting programmes in different areas within the mandate of the organization.

Women's rights are given a broader interpretation by the left-wing parties. Mahila Parishad has been active on a wide range of issues: it has fought for the rights of women workers both in factories and in middle-class occupations like banking, kept up the pressure on the government to implement the 10 per cent quota for women in employment and opposed reserved parliamentary seats for women as an anti-democratic ploy to strengthen the party in power. More recently, it spearheaded a campaign against dowry and violence against women and opened up shelters for women who had been victims of violence. The pressure put forward by the Mahila Parishad came with the positive nod by certain laws passed by the government.

Though the Bangladesh Mahila Parishad's has an undeniable strength but due to its links with the Communist Party, it was prevented from giving an independent significance to women's oppression. The struggle for women's rights tends to be subsumed within the 'wider' struggle for socialism and democracy; the politics of gender in personal relations and everyday life, and the ideological bases of women's subordination, does not get enough attention from the members.

Ain O Salish Kendra

ASK was established in 1986 in order to assist the disenfranchised through legal literacy training, mediation, legal counseling and activism. Its main objective is to reform the law through its representation of women, children and other organized groups. It provides legal aid primarily on those issues concerning with family matters like marital disputes guardianship, inheritance, maintenance, custody, child support, violence against women, polygamy and dower. It carries out its objectives through informal and other alternative methods of dispute resolution.

ASK is also engage in other various activities such as making people aware of their rights; pressurize to change the laws which are oppressive for the people, to bring about new legal remedies and to implement those new laws. It tries to bring awareness to the people through theatrical presentations on various legal issues which are oppressive to the people, through publications and conducting community discussions. It also has a research unit which covers a variety of issues including a uniform family code, gender violence in urban areas labour migration, etc. There are also steps taken up in favour of women for their advancement like adopting the Domestic Violence (prevention and protection) Act, measures to approve six month maternity leave, submitting report under the CEDAW (Human Rights in Bangladesh, 2010). It advocates for gender equality and justice, protection of human rights and provisioning of basic needs.

Bangladesh National Women Lawyers' Association

Bangladesh National Women Lawyers' Association is one of the pioneer organizations working for the establishment of human rights in Bangladesh. The Association was formed in 1979 at the initiative of some prominent women lawyers of Bangladesh, and subsequently registered as a legal aid body in 1981. The Association works for the uplift of women by providing legal aid, conducting training on rights of women, lobbying for necessary reforms of the existing laws, lobbying the authorities on women's rights, issues and laws, investigating reports on violence

against women and carrying out different activities for the rehabilitation of the survivors of different types of violence.

Steps towards Development

Steps towards Development are working since 2003 for achieving its goal of gender equality good governance and human rights. To reach this goal it has launched different programs at various working areas. From 2007, along with its core program Steps has started a program for increasing women's political participation as it recognized that without women's political participation, the gender equality goal cannot be changed. At the same time, increased women's political participation can help to change the power structure of country and can contribute to good governance. Through the program, 101 women fellows have been developed who have interest in working on increasing women's contribution in the political sphere. Along with these women fellows, at present more than 5000 women activists are working on women human rights issues in the working areas of Steps.

Organization for Women's Development in Bangladesh

OWDEB is a women led socio-cultural development organization started on February 01, 1995. The core concern of OWDEB's development strategy are effective participation of the women in decision making process that effect their life and livelihood, gender equality, social justice, cultural and economic growth with equality, sustainable and productive resource management and finally environmental protection and regeneration.

The Bangladesh Women's Health Coalition

The BWHC came into existence in 1980. Gradually it got expanded into ten comprehensive women's development projects in 1993. It primarily deals with the reproductive health services. BWHC also imparts literacy classes, health education, raising awareness on family law governing marriage, divorce, inheritance and guardianship of children in Bangladesh.

Bangladesh Legal Aid and Service Trust

BLAST as a legal services organization in Bangladesh prioritizes its support to women, men and children living in poverty or facing disadvantage or discrimination. It covers a range of areas such as civil, criminal, family, labour and land law, as well as constitutional rights and remedies. BLAST advocates for law and policy reform in order to ensure legal protection of rights to every individual. Besides providing legal aid, it conducts awareness trainings for women and girls to learn about their legal rights in relation to matters affecting their daily lives which would benefit them. BLAST's litigation clients are mostly poor and disadvantage women, who seek legal assistance in relation to family or matrimonial disputes following by threats of violence against them.

Grameen Bank

Various rural development models have been set in Bangladesh, and among them Grameen Bank project is one of the international recognized banks. Grameen bank was established in 1983 as a specialized bank. It is a microfinance organization and community development bank started in Bangladesh that makes small loans known as microcredit system to the impoverished without collateral. It was institutionalized twenty years ago by Bangladeshi economist and a Nobel Peace Prize awardee Muhammad Yunus. It was observed that the overwhelming majority of its borrowers are women (*see* Grameen Bank). Women members constituted about 94 percent of the Grameen Bank (Khandker 1996:66). They are poorer than men and have fewer opportunities in rural structure but they are much more likely to spend new earnings on their children, and also make long term, profitable investment compared to their menfolk. According to Pereira (2002) there are 3.5 million women borrowers approximately from Grameen bank and twin organisation which amounts to 20 per cent of Bangladesh's population if it accounts their dependents (Pereira, 2002:38).

Besides the above mention organisations, the main location of struggles for women's rights is in grassroots development organizations which flourish outside the confines of official efforts. There are significant numbers of these non-governmental

organizations which place women's oppression as a central objective in their programmes that needs to change. The NGOs such as Proshika¹, Nijera Kori (It is an action programs for landless peasant women and men) and Saptagram have shifted their primary objectives from meeting the immediate needs of poor and landless women and men which is a short term goal to that of their long term empowerment of women (Freire 2006:74). To fulfill this objective, these NGOs are working together as collective organization rather than on its individual basis. They organized landless men and women into groups often on the basis of welfare or economic activities such as health delivery, credit, cultivation of collective lease of land, etc. In the words of Friere (2006), through the process of 'conscientization', they are encouraged to analyze the roots of their oppression and to break the culture of silence which is part of the condition of poverty. The training sessions include analysis of feminist issues such as male violence, dowry, polygamy, verbal repudiation, wages and land rights (ibid: 30-32).

These strategies represent an important break with past efforts to change women's lives. It is primarily directed towards rural women who are outside the orbit of conventional political organizations. The power of ideology in maintaining gender subordinations is given greater dominance. It has acknowledged the importance of transforming the individual consciousness in the struggle against oppression on women. The NGOs have been to look beyond the parameter of conventional left politics and extended towards the arena of the women's movement.

There are also a large number of independent women's organizations such as professional organization (example, the Federation of University Women, the Federation of Business and Professional Women), the Bangladesh Women's Rights movement (mainly working around legal discrimination), Naripokko (an autonomous feminist group) and various women's research groups such as Women for Women

¹ Proshika is one of the largest Non-Governmental Organisations in Bangladesh. Its organisation was launch in October, 1976. It stands for training, education, and action. Some of the main objectives of Proshika are improvement in women's status and increasing people's capacity to gain and exercise democratic and human rights.

and Nari Shongoti (It works with rural women). Kabeer argued that it is unlikely women could have been active in such numbers and on such a range of issues if the state had been a more monolithic presence and displayed a firmer commitment to its Islamic programme (Kabeer 1991:54). Significantly, the first demonstrations and rallies in opposition to the government's Eighth Amendment were called by women's groups. Women's opposition to the Amendment drew its moral roots from the humanistic values which had inspired the liberation struggle.

One of the women's groups that initiated the protest against the Eighth Amendment, Naripokko declared its opposition to any attempt to mix religion with politics on the grounds that it strengthened the fundamentalist hand and vested every man with the moral authority to police women's behavior. The organization has now issued a writ against Ershad on the grounds that his Amendment contravenes the equal rights guaranteed to women and to religious minorities by the Bangladesh constitution, by the Charter of the UN and by the Universal Declaration of Human Rights. The progressive women's groups in Bangladesh came at the critical stage when women rights are almost non-existent. Their human values are ignored and see it as a priceless object to play with. At this critical juncture the women's group sprang up as many groups to demand their rights against the injustice done to them.

3.4 International Laws on Women's Rights

Bangladesh is a signatory of Convention on the Elimination of All Forms of Discrimination against Women. This women's convention calls for an end to all religious laws and customary practices that treat their women unequally in their society (Behrouz 2003:1137). Due to lack of 'uniform family code' there is a chance of discrimination between Muslims and Hindus and therefore in reality this affects the Hindu and Muslim women in their socio-economic life. The CEDAW Committee raises concern over this issue and urges the Government of Bangladesh to take measures to amend the religious based laws. The UNCEDAW was approved by the Government of Bangladesh on November 6, 1984 with reservation to four important articles and in September 2000, Bangladesh became the first to ratify the Optional Protocol to CEDAW which ensures the implementation to the tools to eradicate

discrimination. In 1997, it had partially lifted two reservations from Article 13 (a) and Article 16 (f) of the CEDAW. The Government of Bangladesh in the 5th periodic report to the United Nations on the implementation of CEDAW is committed to various rules (1) to remove incompatibilities between personal laws and the Constitution; (2) to withdraw reservation from articles 2 and 16 (1) (c) of CEDAW.

Article 2 states that States parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

- (a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;
- (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;
- (c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;
- (d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;
- (e) To take all appropriate measures to eliminate discrimination against women by any persons organization or enterprise;
- (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;
- (g) To repeal all national penal provisions which constitute discrimination against women.

Article 16 (1) says that states parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women: (c) the same rights and responsibilities during marriage and at its dissolution (*see Division for the Advancement of Women. Department of Economic and Social Affairs. CEDAW 29th Session 30 June to 25 July 2003*).

(3) to improve the women's economic and social empowerment condition with a view to facilitating the process of eliminating dowry, polygamy and early marriages; (4) to prepare the society for ensuring greater acceptance of measures taken for reformation of personal / religious laws while the Government endorses the need for undertaking measures for fresh reforms in Shari'ah and Personal laws (Baden *et al*, 2009).

Bangladesh is now working to implement different articles of CEDAW, but argues that such reservation to the very pledge to eradicate gender discrimination is therefore contradictory and questionable (Abdullah 2007:62). BLAST has reported that there is a wide gap between the commitments made by Bangladesh government and on its implementation. The incompatibilities between personal laws and the Constitution remain and there was no initiative to remove them. Bangladesh's reservation to those two articles of CEDAW which is in contradiction with its own constitutional guarantee provided under Articles 10, 19 27, 28, 29 which pledge that the State shall not discriminate against any citizen on the ground of religion, race, caste, sex or place of birth and women shall have equal rights with men in all spheres of the state and public life. The continued reservation of these fundamental provisions acts as a grave obstacle towards ensuring full equality between men and women. The justification on the ground of Shar'iah is not untenable because all the women do not belong to Muslim. Under the legal obligation, Bangladesh is to comply the norms of the International Human Rights Instruments by enforcing, enacting and reforming national laws so that to conform to the principles of non-discrimination and equality (Pereira 2002:112).

The Government of Bangladesh adopted a number of national and international policies for bringing the women in the mainstream of development and their empowerment. These are as follows:

- a) Beijing Platform for Action 1975
- b) Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979
- c) National Children Development Policy, 1994
- d) Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, 1998
- e) International Day for the Elimination of Violence Against Women, 1999
- f) Millennium Development Goals 2000
- g) SAARC Declaration to Combat VAW (Violence Against Women), 2002
- h) Policy for the Advancement of Women 2008
- i) National Plan of Actions (15 Ministries)
- j) National Strategy for Accelerated Poverty Reduction (NSAPR), 2008

BBS indicated that Bangladesh does not have detailed data on VAW as suggested by the FoC. No national survey has so far been done to address the issue of VAW. It has only some few data which is being collected from the department of police and also compilations of the Violence against Women information from National Dailies. The Special Ordinances against gender-based violence originated in 1983 and were expanded to include children in the 1990's. The government of Bangladesh is also a signatory of CEDAW, yet enforcement of these domestic, constitutional, and international initiatives remain limited by corruption and weak enforcement mechanisms. As in the rest of South Asia, many women, particularly poor women, are not aware of their rights (Asian Development Bank 2001, 6)

In the Fourth World Conference on Women in Beijing, it has declared by the international community on the Committee's concern regarding reservation that Governments of the member countries should limit the extend of any reservations to the convention, formulate any such reservations incompatible with the object and purpose of the Convention or international treaty so that based on reviewing the reservations regularly would bring in compliance with the provision of the

Convention (*Reservation to the Convention on the Elimination of Discrimination against Women*". Sixteen Session, New York, 12-31 January, 1997). In Bangladesh, almost all international development agencies have women's programs. Generally these agencies have either a bilateral or multilateral agreement with the Government of Bangladesh. They provide aid and assistance and also help in the formulation of policies in close cooperation and coordination with the Government, NGOs, civil society, research and women's groups, etc. They also have a donor consortium where the country's performance is reviewed and the major policy thrust is decided and the aid is sanctioned. Donors also liaise with each other and with their national partners in a donors' liaison committee. In addition to ADB, the major multilateral bodies include the UN System, the World Bank, and the European Community. Major bilateral aid agencies include the Canadian International Development Agency, Japan International Cooperation Agency, United States Agency for International Development, Danish International Development Assistance, Department for International Development UK, Swedish International Development Cooperation Agency, and Norwegian Agency for Development Cooperation, etc. Overall, donor agencies have exerted a positive influence by helping to bring the gender issue closer to the top of Bangladesh's development agenda.

Bilateral and multilateral donors have contributed toward the implementation of gender and development (GAD) policies in different government and nongovernment programs by (i) preparing guidelines for inclusion of GAD policies in the education, health, infrastructure, and transportation sectors; (ii) preparing and implementing GAD indicators for evaluation of different projects; (iii) including gender-related information in the management information system and as a part of the regular reporting system; and (iv) establishing a system of accountability on gender-related reporting within the organization.

In the Bangladeshi context they have also played an active role in establishing coordination between government and non-government efforts for the implementation of GAD policies. They provided financial and technical assistance to the Government for pre- and post-Beijing actions. They have also made positive contributions to the preparation of the NAP.

Besides this, in South Asia, under the framework of SAARC which is a forum of inter-governmental co-operation of the South Asian countries made some steps for improvement of the situation of the women its member states. In January 5, 2002, convention on prevention and combating the trafficking in women and children for prostitution was adopted. The latest SAARC summit of August 2-3, 2008 also gave emphasis on the development of women. The declaration of 15th SAARC summit under the heading 'Women and Children' mentioned the following:

- 1) The Heads of State or Government noted with satisfaction the increased co-operation in the region towards achieving the all important goal of bringing women fully into the mainstream of development, on the basis of gender equality.
- 2) They called for focused attention on women's economic empowerment and skill development, while addressing key health issues and violence against women. The leaders directed to work for a regional co-operation for the elimination of all forms of discrimination and abuse against women in general and widows in particular and guarantee their rights to live in the society in a dignified manner.

There is a huge aid that comes from various international agencies and countries for the empowerment of women, yet one finds that in every international convention signed by Bangladesh, there is reservation which makes it unable to comply on those provisions. The various international governments' raises doubt on Bangladesh over the reservation accommodated in the name of personal laws of different religious communities of the country. They see no reason for the objectives and purpose of the Convention if the reservations are not withdrawn and fully comply with the provisions of the Convention. Since Bangladesh is hugely dependent on international aid, donors can effectively influence on the discourse of social development especially that of gender justice (Ghosh 2007:190). But in order to ensure political stability in a Muslim majority country like Bangladesh from destabilizing the Islamic fundamentalism, they have opted to keep off from intruding into the sensitive area covered under the personal law.

CHAPTER IV

The Muslim and Hindu Responses: A Comparative Analysis

In Bangladesh, the Hindu laws are not reformed due to the politicization of religion. According to Sharmin Aktar Abu Syead Muhammed Abullah, bringing reforms to laws in Bangladesh is difficult because it affects the majority population of the country and therefore impossible to do so in the case of minorities (Abdullah, 2007). The matters such as maintenance, divorce, marriage, custody, adoption and so forth are governed by the laws of the respective religion for its communities. Muslim and the Hindu women in Bangladesh suffered from various laws as they are being guided by Shari'ah for Muslims and the ancient shastric law for the Hindus. Although there is a long time struggle demanding for the introduction of a 'uniform family code' where it would be applicable for all communities irrespective of their religion yet it has not been implemented at any stage by the government in Bangladesh. The cold response towards the call for the introduction of uniform family code is rather may be because of the probable negative impact on Muslim religious sentiments, fear of riots, the possibility of losing the vote banks and also the strong opposition from the religious based political parties, deep crisis on identity have restrained any of the ruling government from adopting such a law. The situation of Muslim women is widely discussed in Bangladesh but when it comes to the minority communities, it has not brought any law under review or subjected to scrutiny for reforms. This chapter deals with the various responses over the introduction of the uniform family code in Bangladesh.

During the British period, some Hindu laws were being codified and this continued to be practice in Bangladesh without further codification. Those codified laws include:

1. The Racial Inability Remission Act, 1850
2. The Hindu Widow's Remarriage Act, 1856
3. The Sati Regulation, 1929
4. The Child Marriage Restraint Act, 1930

5. The Earned Property Affairs Act, 1930
6. The Inheritance Act, 1925
7. The Hindu Women's Right to Property Act, 1937
8. The Hindu Women's Right to Separate Residence and Maintenance Act, 1946

Except these codified laws, the rest which is based on scriptures and philosophies of the ancient and primary sources remained uncoded. In Bangladesh, the uniform family code has some key factors which are to be analyzed such as marriage, adoption, maintenance, divorce, etc. Hindu marriage is considered to be a sacrament according to ancient Hindu law. One of the important element of Shastric Hindu marriage is that the marriage of children was brought about by the parents and the minority of the child was not consider a bar to his or her marriage. This marriage is indissoluble till the end of their lives. In Bangladesh, the Hindu marriage system does not approve any marriage with a lunatic person or any marriage conducted against the wishes of the person who is getting married. Therefore, this is similar to that of a contract marriage (Abdullah 2007:64).

Regarding to age of marriage, the 'Majority Act, 1875' does not apply to Hindu marriage in Bangladesh. On the other hand, the 'Child Marriage Restraint Act, 1929' does not allow the solemnization of marriage between the male and the female whose age is below 18 years and 15 years but this does not affect the validity of Hindu marriage in Bangladesh. Later, the 'Child Marriage Restraint Act, 1929' was amended by Ordinance in 1989 in Bangladesh. This ordinance fixed the age of marriage as 21 years for men and 18 years for women. This legislation provides penal sanctions against those who participate in contracting the marriage of the underage but this does not invalidate such marriage. This was made applicable to both the Hindus and the Muslim in Bangladesh.

The validity of the Hindu marriage in Bangladesh requires that both the parties must be within the same caste. The Hindus in Bangladesh practices endogamy and discouraged exogamous marriages which is considered to be invalid. Inter-caste marriage is barred and marriage outside of one's own caste is considered to be against one's religious law and practices. For example, a marriage between a Brahmin bridegroom and a Kayastha bride is invalid. But there are instances where inter-caste

marriages are allowed. In the district of Chittagong and Comilla a marriage between Vaidiya and Kayastha is valid by custom (Ghosh 2007). The Hindu Marriage Disabilities Removal Act, 1946 otherwise valid shall not be invalid due to the fact that the parties belonged to the same sub-groups of the same caste namely, sagotra and sapinda marriages. In all whatever the codification has done to the Muslim personal law is affecting only Muslim community and therefore that does not have any implication with the rest of the other communities in Bangladesh.

4.1 The Hindus Response to the Propose Uniform Family Code

In Bangladesh, most of the Hindu personal laws continued with the same Anglo-Hindu laws till today. In India, Buddhist, Jains and Sikhs are club under the Hindu fold for the purposed of civilian law but it is not coherent as to whether the Buddhist are governed by the same Hindu law. Buddhism is the third largest religion in Bangladesh adhering to Theravada Buddhism. It consists of about 0.7% from the total population of Bangladesh. Most of the practitioners of Buddhism are from the south eastern district of Chittagong and Chittagong Hill Tracts (*see* Buddhism in Bangladesh).

Hindu laws in Bangladesh remains uncodified after the British left the Indian subcontinent. The Hindu women in Bangladesh continue to face disabilities due to the application of ancient discriminatory laws (Pereira 2002:39-40). The widespread ignorance about the legality of their rights has gravely impacted upon them. Though there has been a long time demand for the introduction of 'uniform family code' but it has not been introduced for the fact that such a code may be a probable negative impact on Muslim religious sentiment, the possibility of losing the vote bank and strong opposition for the religion based political parties and have restrained any government to pursue the adoption of such a law (Abdullah 2007:62). There are very few Hindu litigation in Bangladesh and the Hindu judges are appointed to hear them. Ghosh (2007) highlighted that in the lower courts of Bangladesh, the Hindu litigations are haphazardly decided on the questionable 'authoritative' sources. Thus the legal system that deals with the validity of marriage, divorce, adoption and succession are based on case law. Serajuddin argued that there is hardly any judicial activism in relation to the Hindu family law but there are few reported cases at the most two or

three in a year involving succession and inheritance rights, and rare in marriage, divorce and adoption (Serajuddin 2010).

Since there is not much judicial activism in the country, the possibility of legal reforms under such pressure is limited (Ghosh 2007:186). In Bangladesh, the Hindu family law is unreformed and static which subjected the women to bear the inequality existing within the system. There is still a practice of polygamy in Hindu society where men are allowed to take any number of wives without the legal sanction of providing equality to all of them. But women are prohibited from practicing polygamous marriages. There is a significant number of reputed cases on the Hindu Joint family, but the result out of these judgement are new case law that has been development in context of the general law, and with very little reference to traditional Hindu law (Menski and Rahman, 1988:125).

The South Asian countries follow a uniform policy of non-interference in the religious affairs and personal laws due to the existence of the many different minority religious communities. The state will act only when the demand for change comes from the relevant community on the basis of a broad consensus but this kind of changes differs from country to country. The state plays a delicate political balance, through which it tries particularly to avoid conflict with minority communities which may perceive any intervention in the status quo of religious law as Government's encroachment (Scolnicov 2011. 13). Though the Hindu community of Bangladesh feels the need for reform and regeneration of their family law, they have not so far evolved a broad consensus on the specific areas and substances of reforms. Though the Hindu law remains unreformed but there is no demand from community at large to reform it. As we observed elsewhere, for the state to treat the minority family law reform as the exclusive concern of the minority community itself and abdicate its own responsibility in the matter may, no doubt, be politically expedient in view of the delicate nature of the issue, but it tends to perpetuate the sex discrimination, inequities and male privileges inherent in the religion-based, patriarchal family laws system of the minorities and widen the social gap between the majority and minority communities (Serajuddin 2008).

According to the Hindu leaders in the Hindu-Bouddha-Khristan Oikyo Parishad, the situation of the Hindus has become so bad time and again in 2001 that they are force to assert their Hindu identity lest the community be totally wiped out from Bangladesh. There are instances where the mischievous Muslims would throw cow bones or cow blood into the village ponds making the water undrinkable for the Hindus (Ghosh 2005:256). The fear of losing one's identity is so acute for the Hindu community leadership that they don't want any changes into their personal law. This made them even opposed the uniform family code, which is spearheaded by the Bangladeshi progressive women across religious affiliation fighting against the women rights in the country.

In Bangladesh, besides the initial years of euphoria, most of the time there was a widespread ill feeling against the Hindus, especially in the rural areas. There are several reasons behind this feeling. Firstly, the basic intolerance of the Muslim towards the infidels. The urban middle class and the upper classes of Bangladesh are free from this kind of prejudices, but the rural masses who are illiterate suffers are not spared from this kind of injustice. Secondly, the irresistible appeal that Bengali woman has for the Muslim male. The reason behind is that they are prettier than that of the Muslim sisters. The Muslim man would try to possess Hindu women and then converting them into Islam creates a problem to the Hindus. It so happens that when a girl is of age of marriage there it is send to India to its relatives. Thirdly, the Hindus in the rural areas are rich and have in possession a considerable property. The Muslims are mostly peasants and therefore there is a hunger to acquire more land. Fourthly, every Hindu is view as an agent of India, a sympathiser and every Hindu is thus the obvious 'fall guy' in real or imagined Indian acts against the interests of Bangladesh, such as robbing their share of water (causing drought) or sending too much water at times making it flood driven by operation of the dams in India (Roy 2007:317).

The Bangladesh political parties are also indifferent to the sufferings of the Hindus. The BNP of Begum Khaleda Zia is strongly anti-Hindu which also indicates in its relations with India. Besides the BNP, the AL led by Sheikh Hasina Wajed, whose party is supposed to be sympathetic to Hindu community in Bangladesh, shows considerable ambivalence in this regard, and is said to be so interest in gaining the Hindu votes rather than strengthening and protecting them for their welfare or their

security (ibid:319). Moreover, the horrific persecutions of the Hindus in Bangladesh depicted by various authors like Talisma Nasrin and Salam Azad raises concern about their situation making them insecure.

The Hindu leaders argued that Hindu personal law is based on the Shastric tradition and therefore if it surrenders that marker of its identity then they are bound to perish. The cultural preserves them from losing its identity and on the other hand it also sustains them economically. The major component of the uniform family code is on equality of women rights. The Hindu leaders also argue that if theoretically there cannot be any debate that civil law be gender neutral because the ground realities tell a different story altogether. Ghosh (2007) in his book describes about how the leaders of the Hindu-Bouddha-Khristan Oikyo Parishad argues on the uniform civil code by saying that in a home stead if there would be a division of land among brothers and sisters of the same family, then there would be a possibility where the sister might sold out her share of property. The reason behind is their argument is that a girl can be married off to another village and since land is an immovable property it cannot be taken along with her. So upon selling this piece of land, the brothers might not necessarily be the buyer and therefore if the land is bought by a person of another religion, it would create animosity between the brother and that person. If this happen and the buyer happens to be a Muslim then during the Eid festival which is a grant celebration for the Muslim community attaches to the institution of Qurbani (the sacrifice of cow in the Bangladesh context). He would slaughter the sacrificial cow in the courtyard; the spill blood of the cow would reach the tulsi plant which is considered sacred by the Hindus. Though this happens every Eid in Bangladesh and the Hindus are living in this environment but one would not like this to happen in ones courtyard where the sacred tulsi (Basil) plant is worship (Ghosh 2007:187).

Women and the younger generation both men and women have different argument from their leaders of the Hindu community. It admits that Islamic conservativeness is a threat to the Hindu community but depriving their women's right to property through that logic does not bring any solution rather it shows a poor vision of equality and discrimination. It can further be argued that even the sons can sell a part of their land not necessarily to his brothers. This is not taken into

consideration because he is a male member of the family even if he sells a part of the property it is not a matter of concern to the society. But the focus of the so called patriarchal society is one sided view, that is, women and her rights. Therefore the Hindu leaders do not necessarily represent the views of the Hindu community in general.

There is around 40-50 per cent of Hindus in the Bangladesh Mahila Parishad. Though its members are spread across the country but in conferences when the focus of attention comes on the topic of uniform family code, the Hindu leaders would not turn up for the discussion. This shows that the Hindu leaders are reluctant to discuss on issues of personal laws which they claim that they have better understanding at the grassroots level. Ghosh (2007) argues that the Bangladesh Mahila Parishad have a much better knowledge when it comes to grassroots level as it is they who handled such cases like women's rights and women's upliftment from discrimination in villages and towns. He also emphasizes that though the Hindu women have a higher female literacy rates than the Muslims women. But when it comes to comparison with the personal laws that their counterparts enjoy then the Hindu women are much worse sufferer than the rest. The Hindu leaders identity based on conservatively traditions makes the Hindu women suffers inequality and discrimination.

4.2 Muslims Response to the Propose Uniform Family Code

In 1971, a new country was born with the principles of socialism, democracy and secularism. The Awami League spearheaded the movement for an Independent Bangladesh with a secular policy. The national party led the movement as Bengali nationalism which accommodates all religions in the new state. But in the process of nation building, many attempts have been made to Islamized the state. During Zia and Ershad's periods there were some constitutional changes like the insertion of 'Bismillah' or absolute trust and faith in Almighty Allah, and proclaimed Islam as the state religion of the Republic of Bangladesh by adding the eight amendment to the constitution in 1988 (Ghosh 2001:188). But the changes done under the military regimes have remain mostly symbolic and have never been invoked, either in substantive public policies or in any of the major constitutional or legal cases that

have come up to the apex courts in Bangladesh. These do not have any operational significance for law making in Bangladesh (Ahmad 2008:52-53). But this brought back the legitimacy of Islamic political parties and their participation in national politics. However, the pressure from the country's fundamentalist was put under control and it remains a People's Republic rather than an Islamic State. In Bangladesh, there was no attempt equivalent to Pakistan in enforcing Islamic norms of behaviour and dress code for women as a means to demonstrate state commitment to Islam.

There is a diversity of Islamic expressions in Bangladesh when it comes to religio-intellectual situation of Islam. There are at least six distinct categories namely; orthodox Islam, Sufi Islam, reformist/liberal Islam, revivalist/fundamentalist Islam, Islamic patriotism and a nascent postmodern, non establishmentarian Islam. Ulama represent the orthodox Islam and they are regarded as guardians of the Sunnah of the Prophet. There are three schools which are under the orthodox Islam – firstly, the orthodox Deobandi school (the product of the Quomi madrasas), which constitutes the largest group among the traditional Ulama in Bangladesh. Secondly, the Sufi-oriented Barelvi School, who is mostly the product of Alia madrasas. Thirdly, the extreme right wing Wahhabi school of Ahl-e-Hadith, who constitute the smallest number in Bangladesh but they are seen as the most active in radical politics than the previous two schools (Ahmad 2008:54-55).

As a bearers of legal and political tradition of the late Abbasid period, the Ulama have four primary concerns: the unity and integrity of the Islamic ummah (the collective nation of states) as a universal religious community; the integrity of the orthodox beliefs and practice of Islam as represented by 'Asha'ari theology and the consensus (Ijma') of the classical jurist; the implementation of the Sharia under their supervision, especially in matters pertaining to family law and religious rituals; and the preservation and dissemination of the Islamic religious sciences. The Ulama resolve disputes and issue fatwas as they are the interpreters of divine law. It held an important place in Islam where they conduct congregation prayers, supervise the celebration on festivals, conduct marriage ceremonies and burial rituals The Ulama have vigorously resisted state efforts in introducing changes to the traditional religious practices and Muslim family law (Zaman 2002:61). But on the contrary to

the general perception, they have shown a remarkable flexibility in adapting to changing socio-economic and political conditions. Lying behind and consolidating the contextualisation of identity is a somewhat more abstract point. The argument is that identity occupies the minds of theorist only in the primitive stages of inquiry (Quine 1960). The question of Islamic identity is shaped by a prior political interest in the reform of Islam. Therefore the fate of the reformist movement of Islam would depend on the extent to which Muslim population will consider the details of their identification with Islam as negotiable, in the face of other values which they also cherish. Bilgrami argues that in a highly diverse and internally conflicted religious community through the eye of an absolutist projection, there is no reason, in most part, to doubt that even a devout Muslim, will and do take their commitment to Islam not only as one among other values, but also as something which is itself differentiated internally into a number of, in principle, negotiable detailed commitments (Bilgrami 1992:1071). In reality, the requirement to eradicate all the Muslim laws and practices that discriminate against women is highly problematic and impossible. Islam have developed highly specific ethical codes and comprehensive views on almost every aspect of public and private life and therefore, they are required to live according to Islamic law, which treats men and women somewhat unequal (Behrouz 2003:1137-1138).

Bangladesh predominantly a Muslim state has reformed their personal law because it was found easier to intervene than the Hindu personal laws (Scolnicov 2011:13). Though much legislation has been introduced in Muslim law but what one's witnesses is that laws remains in books rather than practicing it in actual life. In most of the cases one finds that the minority community within one religion are ignored and reforms to their beliefs and practices are left untouched as it is harder to intervene in discriminatory Hindu personal law (ibid: 13). The existence of this complex system makes it hard for the Muslim community to come to terms with the reforms in their personal law. As pointed by Hosseini (2009), people practice religion according to the text inscribed in the religious books but failed to understand that interpretations are man-made and involves extra-religious rationality. This rather complicates the system and therefore unequal justice is being spelt out to govern the Muslim women.

4.3 Conventional Outlook of Muslim and Hindus in Bangladesh

Bangladesh has a complex communal relationship between the Hindus and the Muslims. While at the one hand the popular Islam and popular Hinduism virtually merged into one religion called Sahajaya, then, later the two communities got distanced from each other, eventually even violently. During the early decades of the twentieth century, Hindu-Muslim riots were many, a subject which has been dealt in detail by studies of Suranjan Das (1990) and Rakesh Batabyal (2005). Again a phase of democratic coexistence was achieved after the creation of Bangladesh that was introduced in 1972. After the death of Mujibur Rahman in 1975 the situation again became topsy-turvy and Hindus were at the receiving end. The rise of Islamic politics made the life of the minority Hindus precarious. There is a constant fear that one's identity could be compromised if one surrenders a part of its personal law and therefore that prohibits changes or if at all there is a change then it has to be assure that it does not affect its identity.

The Hindu population in Bangladesh and its constant decrease is a cause of concern. According to the 'Statistical Year Book of Bangladesh 1987' the Hindu population was 28% in 1941 but the record of negative growth sharply declines to 9.2% in 2001 census reports. This sharp decline of population question on where they disappeared the following decades after 1941. Besides the partition of Indian and Pakistan, millions of Hindus fled to India in 1947. During the Bangladesh liberation war of 1971, Hindus in particular bore the brunt of Pakistan army's onslaught, leading to more migration. After the formation of Bangladesh, many returned back and in 1974 census, it population is around 13.5 per cent. According to Barkat (2002), The Vested Property Act which was renamed after the Enemy Property Act in 1965 is still in force and has caused a gross denial of all types of freedom to the Hindu community. The denial of the most basic choice like the freedom to make a choice to deal with one's own life, property, ownerships and assets including the denial of legal, political and civil liberties by authoritarian regimes handicapped the free will of the people. This Act is contradictory to the Constitutional provisions of equity, equality, freedom, and justice promised in it. The very existence of such act is anti-democratic

and fanatic as their basic premises is build upon to divide people based on their religious affiliation and rule them which is symbolised by inequality and disunity.

From the historical point of view, Bangladesh is deeply a segmented society with a long colonial history and therefore it is not homogenised or having a uniform cultural and political self representation, rather a long dialectical tension between multilayered world views with political and ideological manifestations. For Nasrin's account on Muslim men raping Hindu women in retaliation for the destruction of Babri Masjid mosque in Ayodhya, India in 1992 reveals the reaction of the Muslim of Bangladesh. It not only ends there but the obscure Muslim religious groups of Bangladesh issued a fatwa that accused Nasrin of blasphemy and conspiracy against Islam. Thus, it is the continuity of the patriarchal relations in the context of both traditional and modernist discourse that creates the problem of gendered self-representation (Alam 1998:429-30).

Religious conservatives principally seek to apply the teaching of particular religions to politics, sometimes by merely proclaiming the value of those teaching; at other times by having those teachings influence laws (Anderson and Taylor 2006:470). The changing role of women in society and the influence of the feminist movement as threatening traditional 'family values' and undermining what they see as natural arrangement between women and men. The existence of rival faith breeds religious fanaticism. In most of the South Asian countries we find this sort of rivalry between religious communities. In Bangladesh, it is highlight that the Hindus are becoming more communal and these communal leaders are being used by their Muslim counterparts for the purpose of politics between the two groups. There is also an effort by the Hindu leaders to go back to traditions which is very conservative and identity centric. This is been supported by the pro-Islamic political forces, who takes the opportunity to get additional votes at the cost of rival political party, the Awami League (Ghosh 2007:189).

The retention of the religious traditions is being encouraged and their religious celebrations are celebrated with fanfare participated by the BNP leaders through their propaganda and advertisements. The co-existence of different religion is allowed but

the motive behind this propaganda is to get the political votes from the minority Hindus. The fact is that the Hindus in Bangladesh began to shift their doctrines which earlier view the Awami league to be supportive towards them but they realised that this is not the solution. Therefore, they began to enter into the BNP fold which would give them security from being harassed or tortured due to their extensive support towards the Awami league to thrive without looking towards India as their saviour. After the political unrest in 1990, there saw a rise of organised religious parties and the cult of the pir, a Muslim sage, whom people look upon for consolation, guidance and advice the people. The local pir of Zakiganj founded a religious party and later elected to the national parliament. Since it is strategically located and close to the Indian border, the religious party gain importance and became an ally to the fundamentalist political parties.

The demand for UFC was question on whether most of the Hindus would consider any attempt to remove the personal laws of both the Hindus and Muslim personal laws as an interference to each other's religious space and unacceptable. The Muslim community leaders were not ready to accept this decision even if a demand for a uniform code is made jointly by Hindus and Muslims or by Muslims alone. There are some certain organisations like Jamaat-e-Islami, the Majlis-e-Mushawarat who are against the idea of secularism and democracy and try to established Islamic state in every Muslim domain (Shah 1972:491). Even in India the Uniform Civil Code lies in the constitution which was not implemented at all due to its complexities. Shah also pointed out that the western educated Muslims remain silent or openly supported the plurality of the state.

4.4 Approaches and Recommendation for Reforms

The proposed uniform family code in Bangladesh is the dream for many women and men. The progressive groups are trying to bring equality in both public to private spheres of life. The progress in reforms is going to be slow but what is important is a consistent, cost-effective, efficient and non-discriminatory legal delivery system (Pereira, 2002:184). From the above discussion, it is clear that women's rights are beset with both legal and cultural obstacles. These obstacles are highly contextual,

and can vary widely among countries, regions, religions, tribes, clans, ethnic groups, castes, and class. In some community it is feasible but it may not be so in other religious communities. Since most of the factors that contribute to gender inequality under the personal laws are structural, the mere technical adjustments to intervention on them would not really bring a positive change into them (Baden *et al*, 1994:95). The mechanism therefore has to be in context with the state and the people specific. The increasing vibrant women's rights movement and NGOs which has consistently lobbying the government on a number of national issues, especially that of the uniform family code, should rightly be the protagonist to take forward the debate and implementation of that code.

Legislative reform is required to establish equal access to property rights, by bringing religious personal law into alignment with national law, and removing exclusions in national laws that provide for the application of religious personal law. Traditional norms and beliefs that -pressure females to be complacent about, or even relinquish their property rights, are of particular concern and need to be addressed through awareness raising and knowledge building on the link between women's property, marriage, dower, dowry, divorce, maintenance and inheritance rights and their social, economic and personal development.

The dissolution of Muslim Marriage Act, 1939 was a mere legislation that provides the ground for Muslim women to dissolution of their marriage through a court but it does not give the right to divorce. It gives the Muslim women to sue her husband for divorce on the grounds of cruelty, desertion or non-maintenance for two years. But on the contrary this is not so in the preamble of the act which continued to be overshadow by the provision of renunciation of Islam by a married Muslim women. A Muslim man can divorce his wife with or without citing reason which threatens the married status of the women (Pereira 2002:190-191). Since the Muslim Family Laws Ordinance, 1961 has already elaborated on the dissolution of Muslim marriages, the previous law has become redundant and therefore it should be considered automatically void under Article 24 of the constitution.

The Muslim Family Laws Ordinance, 1961 also provides protection of Muslim women in marriage. It discourages polygyny and further regulates that if the Muslim men wish to remarry for the second wife, then the permission of the first wife should be sought. The ordinance also tries to do away with triple talaq by imposing stringent measures where the husband is required send a written notice to the chairman of the Arbitration Council, with a notice to his wife (Monsoor 1999:180). The recommendation over the issue on polygyny is to have stringent measures on defaulters in the ordinances by imposing non bailable offences and increasing the severity of punishment of offenders. The simple punishment such as full payment of dower and a year imprisonment or with a fine of one thousand taka or both is not helpful and therefore this could be amended to five years imprisonment and with a fine of ten thousand taka. If the offenders could not pay the fine then his sentence could be extended by one more year in addition to the sentence.

The Family Court Ordinance, 1985 along with other laws governing areas of personal laws, is not always uniformly applied. There is confusion as to whether the ordinance is applicable to all citizens of Bangladesh or whether it is only applicable to the Muslim communities. For instance, in the case of *Nirmal Kanti Das v. Sreemati Biva Rani*, the High Court Division held that the provisions of the Family Courts Ordinance apply not only to Muslim communities but to other communities as well (Monsoor 1999:151). On the other hand, in the very same year there is another case *Krishna Pada Talukdar v. Geetasree Talukdar*, and *Meher Negar v. Muhammad Mojibor Rahman*, where the High Court Division overruled itself that under Section 5 of the Ordinance only a Muslim litigant is entitled to bring a suit in the family court of Bangladesh. This should be made applicable to all the citizens of Bangladesh irrespective of their faiths which includes tribals as well as non-tribals. The High Court Division should try to accommodate all the citizens irrespective of socio-economic barriers and lack of political connection which would make the people feel secure and accommodated.

There are important things which different religious communities needs to consider by putting aside the past history haunting them on various reformatory approaches. One way is to stop demonizing each other, for Muslim to stop seeing the

Hindus as a conspirators, anarchic and supporters of India and for the Hindus to see Muslim as land grabbers, conversionist and enemy of them. This understanding is being influenced by the surrounding environment and its past, no doubt about it, but it needs to ensure the success of democracy rather than jumping into conclusion that anything happening in the surrounding area threatens their sovereignty. The practice of democracy has therefore become rather disappointing due to mismanagement and inefficiency of its leaders. By removing the corrupt leaders, it can ensure free and fair election, which means adequate representation of every religious community especially women, would help safeguard democratic ethos and institutions.

Another priority is education in the state. People should get access to affordable, high quality education so that they can be at par with other countries. Muslims need to rebuild an idea of Islam, which includes justice, integrity, and tolerance. Most importantly, women should be given their rightful place in the society (Ahmed 2003:153-155). The Turkish civil code should become an example to other nations that are undergoing reformation in their personal laws. The laws are made for the good of human beings but sometimes the traditionalists tend to think vice versa. People have to change to adapt to the laws because they think that laws whether reliable or not are derived from religion. It is pointed out that the religious sector of society does not always view the transformation positively (Oguz 2005:374). Since, Bangladesh is largely dependent on foreign aid; the transition to a uniform family code is possible only under the foreign influence or a colonial relationship but there are constraints to this argument. The Turkish reformation happen since 1920's during the colonial rule and even in India to a certain extent, the reforms like sati prohibition act was possible during that time due to its subjugation under the colonial rule.

As already seen in the previous chapter, this section highlights the Christian personal law along with Hindu and Muslim laws and its suggested reforms which give a clearer picture about the various personal laws practiced in Bangladesh. Table 4.1-4.4 summarizes the personal laws system for Bangladeshi women of three major religious communities. These tables highlight some the various practices of the Muslims, Hindus and Christians which are under the uniform family code in Bangladesh.

TABLE 4.1 Women in their Personal Law System in Bangladesh at a glance

MARRIAGE

	Marriage Law	Hindu Law	Christian Law	Suggested Reforms
Age	Minimum age of marriage is lower for women than for men (general threshold: Puberty/ varies for boys and girls)	Minimum age of marriage is lower for women than for men. (General threshold: Puberty/ varies for boys and girls)	Minimum age of marriage is lower for women than for men. (Threshold for Catholics according to the Code of Canon law (Can. 1083) is 16 for a man and 14 for a woman)	Should be either the same age for both men and women (Threshold could be voting age); or a strict implementation of the civil law of minimum age of consent (18 for women and 21 for men)
Consent	Express or implied consent by both parties necessary. No formal means of gauging full, free consent exist.	Declaration of consent, by either party, not a necessity.	Express consent by both parties necessary. Formal means of gauging full, free consent exist.	Express, unambiguous consent by both parties mandatory. Formal means of gauging full, free and adequate consent mandatory.
Witness	Women's capacity to stand as witness is lesser (one half) than that of men.	Witness at marriage not a necessity. But male priest officiating at marriage considered witness for legal proposes.	Men and women stand on the equal footing.	Recognition of equal capacity as witnesses for men and women. Registration of all marriages, whether civil or religious, to be made mandatory. One registration form for all marriages can be governed by respective city corporation/municipal offices under the Births, Deaths and Marriages Registration Act, 1986.
Registration	Required of both parties. Made out by licence.	Not required	Registration required entered at the time of marriage Irrespective church registers	

Dower	Mandatory requirement of marriage. Women are entitled to it as of right.	Not required.	Not required	The concept of dower to undergo further scrutiny within Bangladeshi context. Premise should be the objective assessment of financial solvency and access to economy of each spouse. Gradual abolishment of the present system of dower desirable.
Dowry	Socially sanctioned. Not required by religion. Giving or taking punishable by law.	Socially sanctioned. In some cases part of marriage ceremony. Giving or taking punishable by law.	Not applicable. Some recent instances have come to light, but severely rebuke by Parish	Rigorous implementation of Dowry prohibition provision under the Women's Act, 2000.
Child Marriage	Punishable by law, but marriage legally valid	Punishable by law, but marriage legally valid.	Punishable by law, but marriage legally valid.	This serious anomaly must be removed forthwith. Reform of the Child Marriage Restriant Act, 1929. The act as well as effect of such marriage should be made void ab initio.
Marital Rape	Limited or no recognition under the Penal code or (and Women's Act, 2000)	Limited or no recognition under the Penal code (and Women's Act, 2000)	Limited or no recognition under the Penal code (and Women's Act, 2000)	Full recognition of non-consensual sex in marriage as a punishable offence. Maritalrape to fall within definition of rape under general law, and remedy under the Penal Code and the Women's Act 2000

Polygamy	Polyandry illegal. Polygyny legal, though subsequent marriage subject to permission of first wife. Polygamy punishable under Section 494 of Penal Code.	irregular (non Kitabiya), but all Polyandry illegal. Polygyny legal. Polygamy Punishable under Section 494 of the penal code.	Polygyny as well as Polyandry illegal and antithetical to religious practice. Polygamy punishable under Section 494 of Penal code.	Bigamy (Polygyny/polyandry) to be prohibited. Declared illegal and strictly punishable. As with dower, matter of maintenance to be determined according to individual capacity and access to resources. Right to adopt to be open to all irrespective of gender or marital status. Welfare of child and competence of adoptees to be basis for consideration. No restrictions or discrimination whatsoever on the basis of caste in keeping with constitutional guarantees of equality. All marriages to be compulsory recognized unions, irrespective of religious ceremonials, which would be considered additional to the marriage contract, on the preference of the marriages legally effective
Maintenance/ Alimony	Mandatory element. Women entitled to maintenance as of right. Enforcement difficult in case of non-payment.	Mandatory element. Women entitled to maintenance as of right. Enforcement difficult in case of non-payment.	Mandatory element. Women entitled to maintenance as of right. Enforcement difficult in case of non-payment.	
Adoption	No recognition of the concept. Prohibited.	Only men have the right to take a male child in adoption. Women have no right to adopt. Female children cannot be adopted.	Right to adopt recognized and encouraged.	
Caste/Group	No legal recognition of caste or social grouping	Legal recognition of caste system. Inter caste marriage in some cases illegal, although constitution provides non discrimination on the basis of caste.	No legal recognition of caste or social groupings. Marriage with non-Christian recognized for both men and women,. In case of marriage of Catholics(baptized)with baptized non Catholics, it come under the purview of 'mixed	
Marriage outside religious affiliation	Women cannot marry non Muslim parties. Men can marry women of all religions, the effect in some being fully valid (Kitabiya), in some cases	Marriage with non-Hindu is prohibited for both men and women.		

marriage' and in marriage of Catholics with non- Christians or non baptized persons as 'disparity or cult Both marriages are recognized as valid by the church and is binding on the Catholic party.

parties marrying, the basic ingredient being a satisfaction of all civil elements of a valid marriage.

Table 4.2 Dissolution of Marriages/Divorce

	Muslim Law	Hindu Law	Christian Law	Suggested reforms
Legislation / Enactments	Women do not have equal rights to initiate divorce. Women's right limited by conditions.	No legal recognition of divorce, either for men or women.	Right severely restricted by conditions. Women's right to initiate divorce more restricted than men's so as to amount to an almost non-existent right.	Men and women to have equal rights to seek either no fault divorce or dissolution for just cause or mutual consent or annulment in void ab intio circumstances.
Division of matrimonial property in community	No recognition of the concept. Muslim women have to observe iddat for a period of 90 days in order to determine pregnancy and paternity of the child. They cannot remarry during this period. But are free to remarry after iddat. Neither party is allowed to remarry each other if they have undergone an irrevocable divorce.	No recognition of the concept.	No recognition of the concept.	Need for recognition of the concept. Need to develop system for assessing and partitioning matrimonial property. Women's contribution to the matrimonial home to be given adequate consideration.
Remarriage after divorce		No recognition of the concept since divorce is not recognized.	Either party may remarry at any time after divorce or dissolution	Both parties to be free to remarry after divorce proceedings are finalized.

Table 4.3 Guardianship and custody of children

Muslim Law	Hindu Law	Christian Law	Suggested Reforms
Mother never legal guardian. Can only claim custodianship in limited circumstances. Under classical Shariah, mother's custodianship over suckling infants and very young children assured.	Mother's right of guardian ship secondary to father's right.	Mother's right of guardianship secondary to father's right. Mother's right becomes tertiary if father appoints legal guardian during his absence.	Proper implementation of the Guardians and Wards Act, 1890, and ensure equitable construction of welfare doctrine of child.

Table 4.4 Property

	Muslim law	Hindu law	Christian law	Suggested Reforms
Inheritance	Women do not enjoy equal rights with men.	Women do not enjoy equal rights with men.	Both men and women enjoy equal rights	In cases of testamentary succession, wishes of the propositus to be final. In intestate succession, devolution on the basis of gender neutrality and equality.
Transfer of property	Both men and women enjoy equal rights	Women do not enjoy right of alienation, transfer or sale	Both men and women enjoy equal rights	General rights of transfer on an equal basis for all capable citizens

Sources: Pereira 2002:53-58

CHAPTER V

Conclusion

The personal laws are, as can be seen, a veritable minefield of identities. Discussions about the personal law invariably slip into debates about identity, about the antagonism between politicised religious identities (Hindu and Muslim), about their relationship to the state. What is virtually impossible to foreground in these debates is the issue that the personal law of all communities subordinates women to men in the family. To rephrase this statement, it is virtually impossible to discuss women's rights in relation to the state. The actual need of women in Bangladesh concerns protection from socio-economic deprivation, violence, awareness of their rights and literacy. Uniformity and consistency in delivery of justice is a vital factor in achieving gender equity and national development. Asghar Ali Engineer has argued that Muslim personal law can be reformed by following the Qur'an itself. Neither the triple talaq nor polygamy has any Qur'anic sanction if one reads the text carefully. Hosseini (2009) also suggest that arguments and strategies for Muslim family law reform need to be at the same time placed within Islamic and human rights frameworks. Many illustrious Islamic scholars of the nineteenth and early twentieth century's like Maulvi Imtiaz Ali Khan, Maulvi Chiragh Ali and the legal luminary like Justice Amir Ali had advocated these changes (Engineer 1994). Legal reforms constitute an integral part of the women's question in Bangladesh. Despite various law reform efforts undertaken by government and the initiatives of numerous non-government organisations and aid agencies, there seems little improvement of the status of women in Bangladesh. This has compelled scholars and activists to confront rigorously the issue of compatibility of western models of legal reform based on the concept of gender-equality.

Some of the reasons behind the poor status of women in Bangladeshi society is that the patriarchal system of Bangladesh has always denied women equal participation in the political and social decision-making process. The ignorance of the law and the lack of their implementation along with the poverty created by patriarchal norms, play an important role in creating and perpetuating women's subordination and inequality. In dealing with women's position under various areas of laws, the

notion of gender equality as perceived by the Constitution and international law could in no way sort out the solution to the problem. The discriminatory dimension of personal laws highlights, inter alia, in the need for greater uniformity. Moreover the changes within any law have to be gradual to suit the needs of the women in particular and all the citizens in general. However, while persistent about the need for women-friendly and equality-based legal reform, it may take a long time for the idea of a 'Uniform Family Code' to be realized in Bangladesh. Therefore, the up-gradation of the existing personal laws in the light of reforms already introduced in many other countries like Turkey and Tunisia would essentially be the process of implementing the Uniform Family Code. For example, polygamy should be made illegal, as many Muslim countries have already done so and Hindu laws should be reformed along the lines similar to India. But the feasibility of "up-gradation" of personal laws seems to be doubtful as numerous incidents in the past have shown that even the slightest intervention in the personal laws can cause severe political backlash from the minority communities in the Sub-Continent who want to preserve their religious identity at any cost. As such, the viability of a wholesale application of this equality approach in the Bangladesh context may be questioned.

The Constitution of Bangladesh is the touchstone for determining the validity of all existing laws. Though the Constitutional provisions specifically guarantee gender 'equality' to all citizens; they do not acknowledge the concept of gender 'equity', whether directly or indirectly. Further, the feminist argument against the notion of 'home' as women's dominion and patriarchy has to be given lesser emphasis without which changes in the society is impossible. This 'false honour' which, inter alia, discourages state intervention in the personal sphere, tends to conceal the reality of discrimination and violence suffered by women in the home. More interestingly, such a false notion of honour represents women as a 'protected species' and operates against their dignified existence. Finally, in the socio-political context of Bangladesh, any kind of progressive intervention in the personal sphere is often a crucial and difficult task. It has been observed in the past that whenever any change was introduced to modify and develop the personal laws, dissent followed from religious groups which tried to resist such efforts.

Therefore, to enforce religious laws to their core is fraught with many strategic dangers. One danger is that the issue of women's rights may be placed in the wrong hands of some fundamentalist religious leaders. The analogy of "protection endangered species" was drawn by Sobhan (1978). For example, when the Muslim Family Law Ordinance 1961 was introduced during the Pakistan period, it gave rise to mass unrest led by the religious groups. More recently, when the High Court Division of Bangladesh attempted to question the validity of fatwa [verdicts delivered by religious leaders] in the light of the Rule of Law principle, religious groups organized a series of violent political programmes and even declared a price on the head of the presiding judge on the subject.

One of the draw backs upon uniformity in all the personal laws is due to complexity of each religion. Each religion has multiple sects or caste which adds to its complexity. To maintain mythological or purity of sects, the conservative forces tends to stick to old traditions which makes it difficult for the progressive forces to advance. Therefore, even after any kind of progressive intervention, it is not making any headway. The resultant of this progressive intervention is perceived to be an intrusion upon personal laws of the traditionalist. To keep up the status of age old traditions, the conservative force would try to topple and block the way to any intervention into their comfort zone. Women are seen as carriers of tradition. This notion has to be change to a certain point if equality is sought. The process to bring reform is not easy. Each religion has to be reform and equality maintained then this would mark the beginning of the uniform family code in Bangladesh.

After the independence of Bangladesh, it was hope that the governance reforms would change the scenario of women but nothing much has been done to improve their status. The new state has adopted all the democratic principles but it has failed to implement them. Political leaders could not fulfill the aspirations of its people which led to failure of the state and military regime for the next fifteen years. Habib argued that there is only a superficial appearance of a parliamentary democracy in Bangladesh since all the powers are concentrated to only few people who maintain and control the entire administration (Habib 1987:464). The government of

Bangladesh led by Awami League and BNP are yet to implement the complete international laws.

This paper focuses on the various issues of personal law beginning with the brief introduction to relocate the origins of Hindu and Muslim laws of the pre-colonial period. Here we find that in ancient times, the Hindu law is considered to have been derived from Dharmashastras and likewise the Muslim law from its religion. During this period there is no differential treatment between personal laws and criminal laws. But with the arrival of colonial imperialist the concept of personal law which differentiated from the criminal law has been distinguished. The influence of the imperial rulers is such that they have no regards for the well being of the indigenous people. Besides there are some few initiatives that they began during their time but after 1857 they began to avoid reforms in the personal sphere which they think is not important or beneficial to them. The religious fundamentalism is deeply rooted during this time due to the influence of the British policy of divide and rule. This legacy continues to rule the minds of the people by dividing them into many nations on religious grounds. Even after the partition of the Indian subcontinent into many nations based on religion for example, Pakistan and Bangladesh, it does not end the struggle of religious identity but continue to salvage them for years. India, though guided by the democratic and secular principles through a strong Constitution, it is not free from religious fundamentalism. The delay of implementing the Uniform Civil Code in India shows the stiff resistance of the traditionalist forces against the progressive reformers.

A brief introduction to the population and its composition of different religious communities are presented in chapter two. The concept of personal law is defined in the negative connotation because inequality is seen within the ambit of its laws in the context of South Asian states. Under Islam, there are various practices of Muslim personal laws which seem that in some countries they are more liberal than others. For example, the Turkish civil law has a unique character due to its radical transition from the religious Islamic law to the secular western justice system (Oguz 2005:373). The legal system of Turkey is unitary whereas Nigeria has a plural legal system.

The theoretical debate on equality and justice is focus in the next section on the basis of the arguments presented by the liberal feminist and Marxist feminist. The liberal feminists view patriarchy as a challenge because they define it as a dominating and accumulator of power. On the other hand, the Marxist feminists view it as a product of capitalist social relation. A brief study on personal law after Bangladesh became a republic has been made. One can see that most of the laws existed during the colonial period is carried forward in all the religions personal laws. Though to some extent, the Muslim Family Law has been codified but the rest are left untouched and needed reformation. In the latter part of the chapter deals with the origin of the discourse on uniform family code, its challenges and difficulties under the military regimes and the drafting of the model code.

The various issues on personal law dealt under the third chapter shows the inadequate response of the government to the proposed uniform family code. Although there are many laws amended under the Constitution of Bangladesh but mostly they are entitled only to the Muslim women and therefore women of other religious communities do not get the benefit of that law. To cite an example, it was argued that the Family Court Ordinance, 1985 (amended in 1989) is restricted only to Muslim family and does not entitled to other religious community (*see* chapter 4). There are some government initiatives which are being set up for the upliftment of women in Bangladesh namely; National Policy for Women's Advancement, National Women's Development Policy and National Council for Women and Child Development. It is argued that many acts and ordinances are ameliorating the status of women but in reality due to the influence of religious groups, the legislature could not fulfilled the aim of the policy and therefore becomes ineffective.

In Bangladesh there are multiple organizations working for women rights. The most important among them is the Mahila Parishad. It spearheaded the movement of uniform family code in Bangladesh through propagation of ideas, conducting programmes and seminars to raise awareness among the masses on the rights of women. Along with BMP, Ain O Shalish Kendra is one of the important organizations which provide legal aid primarily on those issues relating to family

laws. It played an active part in coordinating and framing the model code of the uniform family code in Bangladesh. Besides these, there are many organizations like Bangladesh National Women Lawyers Association, Steps towards Development and Organization for Women's Development in Bangladesh to name a few. They included various plans and programmes under their own organization but they also deals with the development of women in various ways. One can conclude that these organizations can lobby the government in framing policies and programmes for the welfare of all women irrespective of religious affiliation in the country.

Bangladesh is a signatory of United Nation Convention on the Elimination of all forms of Discrimination against Women. The convention calls all its members to shed all the religious laws and customary practices that act as a hindrance from treating women equally in the society. The international community raises concern to the Government of Bangladesh on the reservation of some specific articles which is considered mandatory for its implementation. But the issue could not be resolve as its religious laws dominate over the general laws in Bangladesh. The argument is that the religious personal laws contradicts the rules of the convention and the Constitution itself which states that there shall not be discrimination of any citizen on the basis or religion, race, caste, sex and gender. Therefore, Bangladesh has failed to implement its Constitutional laws and its affiliation to international conventions becomes meaningless.

A comparative analysis has been drawn to understand the responses of the Hindus and Muslims on the discourse and implementation of the uniform family code in Bangladesh. It was argued in chapter four that the Hindu laws, to name a few, like the Hindu Widow's Remarriage Act, 1856; the Sati Regulation Act, 1929 and the Hindu Women's Right to Property Act, 1937 is still practiced without reforms even after decades back in independent Bangladesh. The Muslim women are better off comparative than the Hindu women because the Muslim laws that governed them are codified according to the present scenario. On the other hand, the Hindu women suffered the cruelty and disabilities of the ancient discriminatory laws which remain uncoded to the needs to the present situation (Pereira 2002). The codification of personal laws in India during the colonial period was possible because the learned

Hindus wanted to do away with inequality through either abolition or reforming the law. But the scenario is different in Bangladesh due to the following reasons: (a) the Hindus are the minority in Bangladesh, (b) asking for reforms would be suicidal in a state where Islam is declared as the state religion under the 8th Amendment, 1988 during the regime of General Ershad which is continuing with been amended till today, (c) the rapid decrease of Hindu population shows acculturation or conversion to other religion, and (d) identity crisis itself. On the other hand, the Muslims are not interested in reforming the personal laws of the Hindu minority.

The complexity of majority-minority issues is still sustaining and haunting them to demarcate their boundaries through religious identity rather than Bengali nationalism. One of the major problems is that everything is taken into consideration based on religion and therefore it contradicts the secular principles of the Constitution of Bangladesh. In the latter part of chapter four, I argued that history has been the force which divide people based on religious affiliation and therefore created disunity. Both the communities try to encourage other to maintain their own customs and traditions by participating in festivities. Shah (1972) has pointed out that the educated Muslims remain silent over the issue of personal law and openly supported the plurality of the state. Although these have been maintained to differentiate between the religious personal laws which in turn preserve the identity through its ancient customs and traditions but on the other hand, women were the sufferers in the hands of ancient laws especially the case of Hindu women in Bangladesh.

The above discussion has led to raise few issues and recommendations which are been seen as the pillars in the uniform family code. The model code is a progressive one but it is yet to be implemented in reality. For implementing any progressive law is not easy as the traditionalist who holds power in the religious domain would not accept them. Therefore, one would assert that it is in the process and have to go through a long way before it becomes a reality. The progressive forces have a tough job ahead in convincing the masses from every field to realize their dream of making it a reality.

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Appendix I

THE MUSLIM FAMILY LAWS ORDINANCE, 1961 [ORDINANCE NO. VIII OF 1961] [15th July, 1961]

Preamble

Whereas it is expedient to give effect to certain recommendations of the Commission on Marriage and Family Laws; Now, therefore, in pursuance of the Proclamation of the seventh day of October, 1958, and in exercise of all powers enabling him in that behalf, the President is pleased to make and promulgate the following Ordinance:

1. Short title, extent, application and commencement.

- (1) This ordinance may be called the Muslim Family Laws Ordinance, 1961.
- (2) It extends to the whole of Pakistan, and applies to all Muslim citizens of Pakistan, wherever they may be.
- (3) It shall come into force on such date as the Central Government may, by notification in the official Gazette, appoint in this behalf.

2. Definitions. In this Ordinance, unless there is anything repugnant in the subject or context:

- (a) 'Arbitration Council' means a body consisting of the Chairman and representative of each of the parties to a matter deal with in this Ordinance: Provided that where any party fails to nominate a representative within the prescribed time, the body formed without such representative shall be the Arbitration Council;
- (b) 'Chairman' means the Chairman of the Union Council or a person appointed by the Central or a Provincial Government, or by an officer authorized in that behalf by any such Government, to discharge the functions of Chairman under this Ordinance:

Provided that where the Chairman of the Union Council is non-Muslim or he himself wishes to make an application to 'the Arbitration Council, or is owing to illness or any other reason, unable to discharge the functions of Chairman, the Council shall select one of its Muslim members as Chairman for the purposes of this Ordinance;

- (c) 'Prescribed' means prescribed by rules made under section 11;

- (d) 'Union Council' means the Union Council or the Town Committee constituted under the Basic Democracies Order, 1959 (P.O (No, 18 of 1959), and having in the matter jurisdiction as prescribed;
- (e) 'Ward,' mean a ward within a Union or Town as defined in the aforesaid Order.
3. Ordinance to override other laws, etc.
- (1) The provisions of this Ordinance shall have effect notwithstanding any law, custom or usage, and the registration of Muslim marriages shall take place only in accordance with these provisions.
- (2) For the removal of doubt, it is hereby declared that the provisions of the Arbitration Act, 1940 (X of 1940), the Code of Civil Procedure 1908 (Act V of 1908), and any other law regulating the procedure of Courts shall not apply to any Arbitration Council.
4. Succession. In the event of the death of any son or daughter of the propositus before the opening of succession, the children of such son or daughter, if any, living at the time the succession opens, shall per stripes receive a share equivalent to the share which such son or daughter, as the case may be, would have received if alive.
5. Registration of marriages. –
- (1) Every marriage solemnized under Muslim Law shall be registered in accordance with the provisions of this Ordinance.
- (2) For the purpose of registration of marriages under this Ordinance, the Union Council shall grant licences to one or more persons, to be called Nikah Registrars, but in no case shall more than one Nikah Registrar be licensed for any one Ward.
- (3) Every marriage not solemnized by the Nikah Registrar shall, for the purpose of registration under this Ordinance be reported to him by the person who has solemnized such marriage.
- (4) Whoever contravenes the provisions of sub-section (3) shall be punishable with simple imprisonment for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both.
- (5) The form of nikahnama, the registers to be maintained by Nikah Registrars, the recorders to be preserved by Union Councils, the manner in which marriage

shall be registered and copies of nikahnama shall be supplied to the parties, and the fees to be charged thereof, shall be such as may be prescribed.

- (6) Any person may, on payment of the prescribed fee, if any, inspect at the office of the Union Council the record preserved under sub-section (5), or obtain a copy of any entry therein.

6. Polygamy. –

- (1) No man, during the subsistence of an existing marriage, shall except with the previous permission in writing of the Arbitration Council, contract another marriage, nor shall any such marriage contracted without such permission be registered under this Ordinance.
- (2) An application for permission under Sub-section (1) shall be submitted to the Chairman in the prescribed manner together with the prescribed fee, and shall state reasons for the proposed marriage, and whether the consent of existing wife or wives has been obtained thereto.
- (3) On receipt of the application under Sub-section (3), Chairman shall ask the applicant and his existing wife or wives each to nominate a representative, and the Arbitration Council so constituted may, if satisfied that the proposed marriage is necessary and just, grant, subject to such conditions if any, as may be deemed fit, the permission applied for.
- (4) In deciding the application the Arbitration Council shall record its reasons for the decision and any party may, in the prescribed manner, within the prescribed period, and on payment of the prescribed fee, prefer an application for revision, in the case of West Pakistan to the Collector and, in the case of East Pakistan, to the Sub-Divisional Officer concerned and his decision shall be final and shall not be called in question in any Court.
- (5) Any man who contracts another marriage without the permission of the Arbitration Council shall,
- (a) pay immediately the entire amount of the dower whether prompt or deferred, due to the existing wife or wives, which amount, if not so paid, shall be recoverable as arrears of land revenue ; and
- (b) on conviction upon complaint be punishable with simple imprisonment which may extend to one year, or with fine which may extend to five thousand rupees, or with both.

7. Talaq. –

- (1) Any man who wishes to divorce his wife shall, as soon as may be after the pronouncement of talaq in any form whatsoever, give the Chairman a notice in writing of his having done so, and shall supply a copy thereof to the wife.
- (2) Whoever, contravenes the provisions of sub-section (1) shall be punishable with simple imprisonment for a term which may extend to one year, or with fine which may extend to five thousand rupees, or with both.
- (3) Save as provided in sub-section (5) talaq, unless revoked earlier, expressly or otherwise, shall not be effective until the expiration of ninety days from the day on which notice under sub-section (1) is delivered to the Chairman.
- (4) Within thirty days of the receipt of notice under Sub-section (1), the Chairman shall constitute an Arbitration Council for the purpose of bringing about conciliation between the parties, and the Arbitration Council shall take all steps necessary to bring about such reconciliation.
- (5) If the wife be pregnant at the time talaq is pronounced, talaq shall not be effect until the period mentioned in Sub-section (3) or the pregnancy, whichever later, ends.
- (6) Nothing shall debar a wife whose marriage has been terminated by talaq effective under his section from remarrying the same husband, without an intervening marriage with a third person, unless such termination is for the third time so effective.

8. Dissolution of marriage otherwise than by talaq. -Where the right to divorce has been duly delegated to the wife and she wishes to exercise that right, or where any of the parties to a marriage wishes to dissolves the marriage otherwise than by talaq the provisions of section 7 shall, mutatis mutandis and so far as applicable, apply.

9. Maintenance.-

- (1) If any husband fails to maintain his wife adequately, or where there are more wives than one, fails to maintain them equitably, the wife, or all or any of the wives, may in addition to seeking any other legal remedy available apply to the Chairman who shall constitute an Arbitration Council to determine the matter, and the Arbitration Council may issue a certificate specifying the amount which shall be paid as maintenance by the husband.

(2) A husband or wife may, in the prescribed manner, within the prescribed period, and on payment of the prescribed fee, prefer an application for revision of the certificate, in the case of West Pakistan, to the Collector and, in the case of East Pakistan, to the Sub-Divisional Officer concerned and his decision shall be final and shall not be called in question in any Court.

Any amount payable under Sub-section (1) or, (2) if, not paid in the due time, shall be recoverable as arrears of land revenue.

10. Dower. Where no details about the mode of payment of dower are specified in the nikahnama or the marriage contract, the entire amount of the dower shall be presumed to be payable on demand.

11. Power to make rules. The Provincial Government may make rules to carry into effect the purposes of this Ordinance.

The rules made under this section in the former Province of West Pakistan are given at page 28 (infra) in this Manual. (Deleted by Ordinance XXVII of 1981.

12. Amendment of Child Marriage Restraint Act, 1929 (XIX of 1929).

In the Child Marriage Restraint Act, 1929 (XIX of 1929)-

(1) In section 2; --

(a) in clause (a) for the word 'fourteen' the word 'sixteen' shall be substituted ;

(b) in clause (c), the word 'and' shall be omitted, and

(c) in clause (d), for the full-stop at the end, a comma shall be substituted and thereafter the following new clause (e) shall be added, namely :-

(e) 'Union Council' means the Union Council or the Town Committee constituted under the Basic Democracies Order, 1959 (P.O. No. 18 of 1959), within whose jurisdiction a child marriage is or is about to be solemnized.'

(2) Section 3 shall be omitted.

(3) In section 4, for words 'twenty-one' the word 'eighteen' shall be substituted.

(4) In section 9, after the words 'under this Act', the words 'except on a complaint made by the Union Council, or if there is no Union Council in the area, by such authority as the Provincial Government may in this behalf prescribe, and such cognizance shall in no case be taken' shall be inserted ; and

(5) Section 11 shall be omitted.]

Scope and object. The amendment of Child Marriage Restraint Act, 1929 has made the following changes in existing law:-

- (1) A female under 16 years age shall be a child under the Act and it would be an offence to marry her.
- (2) Previously male who married a child was liable to punishment under the Act if he was above 21 years of age. Now that age has been reduced to 18 years so that a male of 18 years marrying a girl under 16 years of age would be liable to punishment under section 4 of the Act.
- (3) Under section 9 offences under the Act would be cognizable only on the complaint made by the Union Council, or if there is no Union Council in the area, by such authority as the Provincial Government may in this behalf prescribe.

(2) Deleted by Ordinance XXVII of 1981.)

- I3. Amendment of the Dissolution of Muslim Marriages Act, 1939 (VIII of 1939). In the Dissolution of Muslim Marriages Act, 1939 (VIII of 1939), in section 2:
 - (a) After clause (ii), the following new clause (ii-a) shall be inserted, namely (ii-a) that the husband has taken any additional wife in contravention of the provisions of the Muslim Family Laws Ordinance, 1961'; and
 - (b) In clause (vii), for the word 'fifteen' the word 'sixteen' shall be substituted.]

Appendix II

Family Courts Ordinance, 1985
(ORDINANCE NO. XVIII OF 1985)
[30th March, 1985]

An Ordinance to provide for the establishment of Family Courts

WHEREAS it is expedient to provide for the establishment of Family Courts and for matters connected therewith;

NOW, THEREFORE, in pursuance of the Proclamation of the 24th March, 1982, and in exercise of all powers enabling him in that behalf, the President is pleased to make and promulgate the following Ordinance:-

1. Short title, extent and commencement.

(1) This Ordinance may be called the Family Courts Ordinance, 1985.

(2) It extends to the whole of Bangladesh except the districts of Rangamati Hill Tract, Bandarban Hill Tract and Khagrachari Hill Tract.

(3) It shall come into force on such date as the Government may, by notification in the official Gazette, appoint

2. Definitions.

(1) In this Ordinance, unless there is anything repugnant in the subject or context,-

(a) "Code" means the Code of Civil Procedure, 1908 (V of 1908);

(b) "Family Court" means a Family Court established under this Ordinance;

(c) "prescribed" means prescribed by rules made under this Ordinance.

(2) Words and expressions used in this Ordinance, but not defined, shall have the meanings respectively assigned to them in the Code.

3. Ordinance to override other laws.

The provisions of this Ordinance shall have effect notwithstanding anything contained any other law for the time being in force.

5. Establishment of Family Courts.

Subject to the provisions of the Muslim Family Laws Ordinance, 1961 (VIII of 1961), a Family Court shall have exclusive jurisdiction to entertain, try and dispose of any suit relating to, or arising out of, all or any of the following matters, namely:-

- (a) dissolution of marriage;
- (b) restitution of conjugal rights;
- (c) dower;
- (d) maintenance;
- (e) guardianship and custody of children.

[The words "Assistant Judges" were substituted for the word "Munsifs" by section 2 of the Family Courts (Amendment) Act, 1989 (Act No. XXX of 1989)].

23. Ordinance VIII of 1961 not affected.

- (1) Nothing in this Ordinance shall be deemed to affect any of the provisions of the Muslim Family Laws Ordinance, 1961 (VIII of 1961), or the rules made thereunder.
- (2) Where a Family Court passes a decree for the dissolution of a marriage solemnised under the Muslim Law, the Court shall, within seven days of the passing of the decree, send by registered post a certified copy of the same to the appropriate Chairman referred to in section 7 of the Muslim Family Laws Ordinance, 1961 (VIII of 1961), and upon receipt of such copy, the Chairman shall proceed as if he had received an intimation of talaq required to be given under the said Ordinance.
- (3) A decree passed by a Family Court for the dissolution of a marriage solemnised under the Muslim Law shall-
 - (a) not be effective until the expiration of ninety days from the day on which a copy thereof has been received under sub-section (2) by the Chairman; and
 - (b) be of no effect if within the period specified in clause (a) a reconciliation has been effected between the parties in accordance with the provisions of the Muslim Family Laws Ordinance, 1961 (VIII of 1961).

24. Family Court deemed to be a District Court for purposes of Act VIII of 1890

- (1) A Family Court shall be deemed to be a District Court for the purposes of the Guardians and Wards Act, 1890 (VIII of 1890), and notwithstanding anything contained in this Ordinance, shall, in dealing with matters specified in that Act, follow the procedure specified in that Act.
- (2) Notwithstanding anything contained in the Guardians and Wards Act, 1890 (VIII of 1890), an appeal from an order made by a Family Court as District Court under that Act shall lie to the Court of District Judge, and the provisions of section 17 shall apply to such appeal.

Appendix III

The Dissolution of Muslim Marriages Act, 1939

An Act to consolidate and clarify the provisions of Muslim law relating to suits for dissolution of marriage by women married under Muslim law and to remove doubts as to the effect of the renunciation of Islam by a married Muslim woman on her marriage tie.

WHEREAS it is expedient to consolidate and clarify the provisions of Muslim law relating to suits for dissolution of marriage by women married under Muslim law and to remove doubts as to the effect of the renunciation of Islam by a married Muslim woman on her marriage tie; It is hereby enacted as follows:-

1. Short title and extent:

(1) This Act may be called the Dissolution of Muslim Marriages Act, 1939.

(2) It extends to the whole of ¹[Bangladesh].

2. Grounds for decree for dissolution of marriage: A woman married under Muslim law shall be entitled to obtain a decree for the dissolution of her marriage on any one or more of the following grounds, namely:-

(i) that the whereabouts of the husband have not been known for a period of four years;

(ii) that the husband has neglected or has failed to provide for her maintenance for a period of two years;

²[(iia) that the husband has taken an additional wife in contravention of the provisions of the Muslim Family Laws Ordinance, 1961;]

(iii) that the husband has been sentenced to imprisonment for a period of seven years or upwards;

(iv) that the husband has failed to perform, without reasonable cause, his marital obligations for a period of three years;

(v) that the husband was impotent at the time of the marriage and continues to be so;

(vi) that the husband has been insane for a period of two years or is suffering from leprosy or a virulent venereal disease;

(vii) that she, having been given in marriage by her father or other guardian before she attained the age of ³[eighteen years], repudiated the marriage before attaining the age of ⁴[nineteen years]:

Provided that the marriage has not been consummated;

(viii) that the husband treats her with cruelty, that is to say,-

(a) habitually assaults her or makes her life miserable by cruelty of conduct even if such conduct does not amount to physical ill-treatment, or

(b) associates with women of evil repute or leads an infamous life, or

(c) attempts to force her to lead an immoral life, or

(d) disposes of her property or prevents her exercising her legal rights over it,
or

(e) obstructs her in the observance of her religious profession or practice, or

(f) if he has more wives than one, does not treat her equitably in accordance with the injunctions of the Qoran;

(ix) On any other ground which is recognised as valid for the dissolution of marriage under Muslim law:

Provided that-

(a) no decree shall be passed on ground (iii) until the sentence has become final;

(b) a decree passed on ground (i) shall not take effect for a period of six months from the date of such decree, and if the husband appears either in person or through an authorised agent within that period and satisfies the Court that he is prepared to perform his conjugal duties, the Court shall set aside the said decree; and

(c) before passing a decree on ground (v) the Court shall, on application by the husband, make an order requiring the husband to satisfy the Court within a period of one year from the date of such order that he has ceased to be impotent, and if the husband so satisfies the Court within such period, no decree shall be passed on the said ground.

3. Notice to be served on heirs of the husband when the husband's whereabouts are not known

In a suit to which clause (i) of section 2 applies-

- (a) the names and address of the persons who would have been the heirs of the husband under Muslim law if he had died on the date of the filing of the plaint shall be stated in the plaint,
- (b) notice of the suit shall be served on such persons, and
- (c) such person shall have the right to be heard in the suit:

Provided that paternal uncle and brother of the husband, if any, shall be cited a party even if he or they are not heirs.

4. Effect of conversion to another faith

The renunciation of Islam by a married Muslim woman or her conversion to a faith other than Islam shall not by itself operate to dissolve her marriage: Provided that after such renunciation, or conversion, the woman shall be entitled to obtain a decree for the dissolution of her marriage on any of the grounds mentioned in section 2:

Provided further that the provisions of this section shall not apply to a woman converted to Islam from some other faith who re-embraces her former faith.

5. Rights to dower not to be affected

Nothing contained in this Act shall affect any right which a married woman may have under Muslim law to her dower or any part thereof on the dissolution of her marriage.

¹ The word “Bangladesh” was substituted for the word “Pakistan” by section 3 and the Second Schedule of the Bangladesh Laws (Revision And Declaration) Act, 1973 (Act No. VIII of 1973)

² Clause (iia) was inserted by section 13 of the Muslim Family Laws Ordinance, 1961 (Act No. VIII of 1961)

³ The words “eighteen years” were substituted for the words “sixteen years” by section 2 of the Dissolution of Muslim Marriages (Amendment) Ordinance, 1986 (Ordinance No. XXV of 1986)

⁴ The words “nineteen years” were substituted for the words “eighteen years” by section 2 of the Dissolution of Muslim Marriages (Amendment) Ordinance, 1986 (Ordinance No. XXV of 1986)

Appendix IV

Muslim Marriages and Divorces (Registration) Act, 1974

(ACT NO. LII OF 1974).

[24th July, 1974]

An Act to consolidate and amend the law relating to Registration of Muslim marriages and divorces

WHEREAS it is expedient to consolidate and amend the law relating to registration of Muslim marriages and divorces;

It is hereby enacted as follows:-

1. Short title and application

(1) This Act may be called the Muslim Marriages and Divorces (Registration) Act, 1974.

(2) It applies to all Muslim citizens of Bangladesh wherever they may be.

2. Definitions

In this Act, unless there is anything repugnant in the subject or context,-

(a) "Inspector-General of Registration" and "Registrar" respectively mean the officers so designated and appointed under the Registration Act, 1908 (XVI of 1908);

(b) "prescribed" means prescribed by rules made under this Act.

3. Registration of marriages

Notwithstanding anything contained in any law, custom or usage, every marriage solemnized under Muslim law shall be registered in accordance with the provisions of this Act.

4. Nikah Registrars

For the purpose of registration of marriages under this Act, the Government shall grant licences to such number of persons, to be called Nikah Registrars, as it may deem necessary for such areas as it may specify:

Provided that not more than one Nikah Registrar shall be licensed for any one area¹:

Provided further that the Government may, whenever it deems fit so to do, extend, curtail or otherwise alter the limits of any area for which a Nikah Registrar has been licensed.]

²[5A. Jurisdiction under this Act

Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act No. V of 1898), an offence under this Act shall be triable by a Magistrate of the first class.]

³[5. (1). Solemnization of a marriage to be reported and registered

Where a marriage is solemnized by the Nikah Registrar himself, he shall register the marriage at once.

(2) Where a marriage is solemnized by a person other than the Nikah Registrar, the bridegroom of the marriage shall report it to the concerned Nikah Registrar within thirty days from the date of such solemnization.

(3) Where solemnization of a marriage is reported to a Nikah Registrar under sub-section (2), he shall register the marriage at once.

(4) A person who contravenes any provision of this section commits an offence and he shall be liable to be punished with simple imprisonment for a term which may extend to two years or with fine which may extend to three thousand taka, or with both.]

6. Registration of divorces

(1) A Nikah Registrar may register a divorce effected under Muslim Law within his jurisdiction on application being made to him for such registration.

(2) An application for registration of a divorce shall be made orally by the person or persons who has or have effected the divorce:

Provided that if the woman be a parda-nashin, such application may be made by her duly authorised wakil.

(3) The Nikah Registrar shall not register a divorce of the kind known as Talaq-i-tafweez except on the production of a document registered under the Registration Act, 1908 (XVI of 1908), by which the husband delegated the power of divorce to the wife or of an attested copy of an entry in the register of marriages showing that such delegation has been made.

(4) Where the Nikah Registrar refuses to register a divorce, the person or persons who applied for such registration may, within thirty days of such refusal, prefer an appeal to the Registrar and the order passed by the Registrar on such appeal shall be final.

7. Manner of registration

The Nikah Registrar shall register a marriage or divorce in such manner as may be prescribed.

8. Registers

Every Nikah Registrar shall maintain separate registers of marriages and divorces in such forms as may be prescribed and all entries in each such register shall be numbered in a consecutive series, a fresh series being commenced at the beginning of each year.

9. Copies of entry to be given to parties

On completion of the registration of any marriage or divorce, the Nikah Registrar shall deliver to the parties concerned an attested copy of the entry in the register, and for such copy no charge shall be made.

10. Superintendence and control

(1) Every Nikah Registrar shall perform the duties of his office under the superintendence and control of the Registrar.

(2) The Inspector-General of Registration shall exercise a general superintendence over offices of all Nikah Registrars.

11. Revocation or suspension of a license

If the Government is of the opinion that a Nikah Registrar is guilty of any misconduct in the discharge of his duties or has become unfit or physically incapable to discharge his duties, it may, by order in writing, revoke his licence, or suspend his licence for such period, not exceeding two years, as may be specified in the order :

Provided that no such order shall be made unless the Nikah Registrar has been given a reasonable opportunity of showing cause why that order should not be made.

12. Custody of registers

Every Nikah Registrar shall keep safely each register maintained by him under section 8 until the same is filled, and shall then or earlier if he leaves the district or ceases to hold a licence, make over the same to the Registrar for safe custody.

13. Inspection of registers

Any person may, on payment of the prescribed fee, if any, inspect at the office of the Nikah Registrar or of the Registrar any register kept in such office or obtain a copy of any entry therein.

14. Power to make rules

- (1) The Government may, by notification in the official Gazette, make rules to carry into effect the purposes of this Act.
- (2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for-
 - (a) qualifications to be required from persons to whom licences under section 4 may be granted;
 - (b) fees payable to a Nikah Registrar for registration of a marriage or divorce;
 - (c) any other matter for which rules are required to be made.

15. Amendment of Muslim Family Laws Ordinance, 1961 (VIII of 1961)

In the Muslim Family Laws Ordinance, 1961 (VIII of 1961),-

- (a) in section 3, in sub-section (1), the comma and words “, and the registration of Muslim marriages shall take place only in accordance with those provisions” shall be omitted;
- (b) section 5 shall be omitted;
- (c) in section 6, in sub-section (1), for the words “under this Ordinance” the words, comma, figures and brackets “under the Muslim Marriages and Divorces (Registration) Act, 1974 (LII of 1974)” shall be substituted.

16. Repeal - The Muslim Divorces Registration Act, 1876 (Ben. Act I of 1876), is hereby repealed.

17. Provision relating to existing Nikah Registrars

All Nikah Registrars licensed under the Muslim Family Laws Ordinance, 1961 (VIII of 1961), before the commencement of this Act, shall be deemed to have been licensed as Nikah Registrars under this Act.

¹ The colon (:) was substituted for the full stop (.) and the proviso was inserted by section 2 of the Muslim Marriages and Divorces (Registration) (Amendment) Ordinance, 1982 (Ordinance No. XLIX of 1982)

² Section 5A was inserted by section 3 of the Muslim Marriages and Divorce (Registration) (Amendment) Act, 2005 (Act No. IX of 2005).

³ Section 5 was substituted by section 2 of the Muslim Marriages and Divorces (Registration) (Amendment) Act, 2005 (Act No. IX of 2005)

Appendix V

Possible Construction for a Uniform Personal Law MODEL UNIFORM CODE OF PERSONAL LAW

Part I

Marriage and Divorce Registration

Whereas is expedient to make provision for marriage and divorce registration laws for all citizens of Bangladesh

1. The Short Title of this law shall be ‘Uniform Marriage and Divorce Registration Act.’

2. APPLICATION AND EXTENT

(a) This law shall apply upon every citizen of the Peoples’ Republic of Bangladesh.

(b) This law shall be applicable to all citizens of Bangladesh wherever they may reside notwithstanding any other law on registration of marriage and divorce in force.

3. DEFINITIONS

Unless there is anything repugnant in the subject or context, in this law:

(a) ‘Inspector General Registration’ and ‘Registrar’ will respectively mean the officers so designated and appointed under the Registration Act 1908 (Act 16 of 1908)

(b) ‘Prescribed’ means prescribed by rules needed and made under this law.

(c) ‘Notice’ means a notification under this law.

(d) ‘Arbitration Council’ means an arbitration council formed under this law.

4. QUALIFICATIONS AND DISQUALIFICATIONS OF MARRIAGE

Any citizen who is 18 years of age or more, who marries a person who is not directly related to him or her by reason of affinity or consanguinity, shall freely and independently register the marriage under Section 4 and 5 of this Act within the stipulated time and before their respective competent witnesses by appearing before the Marriage Registrar’s office in their local jurisdiction.

5. REGISTRATION OF ALL MARRIAGES COMPULSORY

Notwithstanding anything contained in any law, custom, usage or practice, registration of marriage shall be compulsory.

6. REGISTRATION WITHIN PRESCRIBED TIME

Any marriage performed under any law, custom, usage or social practices shall be registered:

- (a) Within 15 days in the Metropolitan areas.
- (b) Within 30 days for other areas.
- (c) The husband and wife shall, within the prescribed time and within their local jurisdiction, appear in person before the Registrar to register the marriage.

7. PROCEDURE FOR REGISTRATION OF MARRIAGE

- (a) Every Registrar licensed by the Government shall register every marriage in the presence of the parties and by their application within their respective jurisdictions and shall provide them with a certificate of registration of marriage.
 - (b) If any Registrar, for any lawful reason refuses to register any marriage, the aggrieved person or persons shall, within 30 days of such refusal appeal to the District Registrar and in such case the decision of the District Registrar shall be final.
 - (c) Every Registrar shall register every marriage under this law in the prescribed form provided below under Schedule 1 as Form A and shall enter a serial number of the registration in the form.
8. Under this law every divorce must be registered in the prescribed manner provided below under schedule 2 as Form B and shall enter a serial number of the registration in the form.

Polygamy

7. Polygamy prohibited, illegal and punishable

- (a) No person who, during the subsistence of a valid marriage, enters into a second marriage shall be permitted to register the second marriage in accordance with this law.
- (b) Under this law polygamy is prohibited, illegal, invalid and a punishable offence.
- (c) When any person conceals or fails to inform the fact of his or her subsisting first marriage, the second marriage will not be registered under this law.

- (d) Under this law, any person guilty under Sub-section a, b or c of this Section shall punishable under Sections 493, 494, 495 and 496 of the Penal Code, as the case may be.

Divorce

12. If, for any lawful reason a husband or wife, either individually or mutually wishes to terminate the marriage, either one or both parties may bring about such termination, provided that it is approved finally by the Arbitration Council as defined under Section 3 (d).

13. GROUNDS FOR DIVORCE

- (a) Any person, after recording his or her reasons for seeking divorce shall, with 30 days' notice, make a written application to the Arbitration Council of his or her local jurisdiction, after which the Arbitration Council shall send notices to both parties of the marriage and shall, in the presence of both parties within 15 days after the parties receive the notice or if one party is absent twice consecutively before the Arbitration Council, the Arbitration Council will, either after hearing both parties or after making an *ex parte* decision, make an order for divorce or cancel the application for divorce, as the case may be, and send the matter to the Family Court for approval.

(b) Grounds for Which a Person May Claim Divorce

- (i) If the whereabouts of the applicant's spouse is not known for two years or
- (ii) If the husband fails to provide maintenance for two years.
- (iii) If the spouse has been convicted of an offence and has been punished with imprisonment for a period of 5 or more years.
- (iv) If the spouse was impotent or sexually debilitated at the time of the marriage and continues to be so.
- (v) If the spouse is addicted to drugs of any kind, or he or she is an alcoholic.
- (vi) If the spouse is insane or is suffering from virulent or venereal diseases for one year.
- (vii) If the spouse is adulterous.
- (viii) If the spouse compels the applicant to lead an immoral life.

(ix) If the spouse directly or indirectly claims dowry from the applicant or his or her parents or guardians and tortures the applicant physically or mentally for the purpose.

(x) During the interim period of divorce the husband and wife shall live separately. The Family Court shall, seven days after receiving the decision of the Arbitration Council, send a notice to the parties and after assessing the statements and opinions of both parties shall, and within 30 days after the date of the notice, finally dispose of the matter.

14. DIVORCE DURING PREGNANCY OF WIFE PROHIBITED

Under this law, neither party to the marriage may make an application to the Arbitration Council to terminate the marriage if the wife is pregnant. No measures whatsoever to effectuate a divorce shall be taken during the pregnancy of the wife, including registration of divorce.

15. REGISTRATION OF DIVORCE COMPULSORY

All divorces, notwithstanding any provision in any other law, must be registered under this law.

16. REGISTRATION OF DIVORCE

Every Registrar licensed under nomination or appointment by the Government shall register every divorce in the presence of the parties and by application within their local jurisdiction.

17. REGISTRAR OF DIVORCE

For the purpose of registration of marriage and for the purpose of registration of divorce the Government shall appoint such a number of Registrars as may be deemed necessary. In case of marriages and divorces respectively they shall be known as 'Registrar of Marriage' and 'Registrar of Divorce' and shall perform their duties as Registrar of Marriage and Registrar of Divorce under this law. The secretaries of the Union Council, Municipal Board and City Corporation may, upon Executive orders, serve as Registrars of Divorce.

18. Under this law, registration of marriage and divorce shall be recognized and treated as a bilateral document under Section 16 of the Registration Act of 1908.

19. PAYMENT OF FEES, PROVISION OF SEPERATE RECEIPTS AND CERTIFIED COPIES

- (a) After examining the parties and the witnesses to the marriage and personally filling out the form in the Marriage Register Book and obtaining the signature of both parties, the Registrar of Marriage shall register the marriage.
- (b) After receiving the prescribed fees for the registration of marriage the Registrar of Marriage shall provide the parties with a receipt for the amount, after which the Registrar shall provide the parties with a copy of the certificate of marriage bearing the same serial number, which will be recorded by the Registrar and shall have his or her signature and seal.

20. REGISTRATION BOOKS

Every Registrar shall maintain and serially number the prescribed marriage and divorce registration forms in separate Register Books. The Registrar shall also maintain a Registry, containing a record of all marriage and divorce registrations.

- 21. After the registration of marriage the Registrar will provide the parties with a copy certifying that the registration has been copied, entered and attested from the separate Registrar Book into the Registry.

22. MAINTENANCE OF REGISTER BOOKS

Every Registrar shall maintain the Register Book until it is completed, or, if the Registrar leaves or is transferred from the local jurisdiction, the Register Book shall be handed over to the appropriate authority.

23. INSPECTION OF THE REGISTER BOOK

Any person may, on payment of a fee (if applicable or if prescribed by Government) inspect the Register Books in the Office of Registrations and may make a copy of the document inspected in the Registration Book.

24. CANCELLATION OF NOMINATION, APPOINTMENT, LICENSING OR SUSPENSION OF THE REGISTRAR

If the Government is satisfied that a Registrar is guilty of any misconduct in the discharge of his or her duties or due to physical illness is unable to so discharge his or her duties, the Government may, by order in writing revoke the Registrar's license or appointment, or it may suspend the license for two years.

25. ALREADY FUNCTIONING REGISTRARS

Before the commencement of this law, all Registrars recognized by the laws of Muslim marriage and dissolution and by any prescribed law for the registration of

Christian marriage or for other special marriages, shall be deemed to be licensed as Registrars and shall register marriages and divorces.

26. CANCELLATION OF ENTRIES IN REGISTER BOOK

If the parties to the registration of marriage or divorce fail to sign or provide their thumb impressions in the Register Book, all entries in the Register Book relating to such marriage or divorce shall be cancelled by the Registrar who shall sign a statement providing the reasons for cancellation and any fees paid by the parties shall be refunded.

26a. RULE MAKING POWER

The Government may by notification in the official Gazette, frame rules with a view to materializing the object of the law and without prejudice to the powers mentioned above, the following may be included in the rules:

- (i) Qualification of persons to whom the license may be granted.
- (ii) Publication and preservation of forms, the Register Book, the Registry and other document.
- (iii) Fees payable to a Registrar of marriage or divorce.
- (iv) Any other matter for which rules are required to be made.

27. The procedure for registration and rules of entries, and maintenance prescribed under Sections 19 to 27 shall apply in the same manner for registration of divorces.

Schedule 1

FORM A

Marriage Register Book according to Section 5 of the Marriage and Divorce Registration Law of 200...

Marriage Registration Form

1. Office of the Marriage Registrar
2. Full address where marriage has been performed, including village and police station, where applicable
3. Date and time of marriage

4. Name of the Groom's father and mother his date of birth, age, profession, educational qualification (if applicable), religion (optional), nationality, permanent and present address:
5. Whether the Groom is already in a subsisting marriage/ is a widower/ or divorced:
 - (a) If a widower, the date and place of first wife's death, including cause and death.
 - (b) If divorced, the particulars of the registration of divorce, including date and serial number of the registration form, and the place where it was issued.
 - (c) If there exist a child or children from a previous marriage or marriages, the name/s, age/s and place/s of residence of each.
6. Name of the Bride, her father's and mother's names, her date of birth, age, profession, educational qualification (if applicable), religion (optional), nationality, permanent and present address.
7. Whether the Bride is already in a subsisting marriage/ is a widow/ or divorced:
 - (a) If a widow, date and place of death of first husband, including cause of death.
 - (b) If divorced, particulars of the registration of divorce, including the date and serial number of the registration form and the place where it was issued.
 - (c) If the Bride has a child or children from a previous marriage or marriage, the name/s, age/s and place/s of residence of child.
8. Name of the Identifier for the Bride
 - (a) Present and Permanent address of the Identifier.
 - (b) Relationship between Bride and Identifier
10. Names of the witnesses, and their addresses and relationship to the parties marrying.
16. Whether prescribed fees of registration have been paid in full
17. Full name and signature of thumb imprint of the husband
18. Full name and signature or thumb imprint of the wife
19. Signature of the Identifier
20. Signature of the Witnesses
21. Date and time of registration of marriage

Declaration of Marriage Registrar

I.....empowered under the Uniform Marriage and Divorce Registration Law of 200...,do hereby certify and declare on this(date), at.....(place)

at.....(time), after having in my presence the said bride and groom and their respective witnesses, and after being satisfied with the descriptions and records of the parties and having witnessed their signatures/thumb imprints to the marriage contract, solemnly record this marriage registration bearing serial number.....in book.....of the Marriage Registration Record.

Signature and Official Seal of the Registrar:

Schedule 2

FORM B

Serial No. _____ of the Divorce Registration Book according to Sections 13 and 14 of the Uniform Marriage and Divorce Registration Law of 200.....

Divorce Registration Form

1. Office of the Registrar of Divorce.
2. Detailed address of where the marriage was registered, including registration number of marriage certificate.
3. Name of the husband, his father's name, mother's name, his date of birth and age, profession, educational qualification, religion, nationality, permanent and present address.
4. Name of the wife, her father's name, mother's name, her date of birth and age, profession, educational qualification, religion, nationality, permanent and present address.
5. Party bringing the application for divorce and date upon which the other party was provided a notice of the divorce application.
6. Description of the Arbitration Council approving the divorce:
 - (a) The Chairperson
 - (b) Representative of the husband
 - (c) Representative of the wife
 - (d) Representative from local legal society
 - (e) Representative from a women's organization.
7. Primary Reason for Divorce.

8. Description of the earned, acquired, saved property, whether moveable or immovable by the husband and wife, individually or mutually, during the subsistence of the marriage:
 - (a) Monetary value of the husband's immovable properties and assets
 - (b) Monetary value of the husband's moveable properties and assets
 - (c) Monetary value of the wife's immovable properties and assets
 - (d) Monetary value of the wife's moveable properties and assets
9. Whether distribution of properties and assets between the spouses after the divorce has been carried out according to Section 10 of this law.
10. Name, age and present and permanent address of child or children at the time of divorce.
15. Decision of Arbitration Council regarding guardianship custody and maintenance of children.
16. Whether the Arbitration Council has found either party eligible for maintenance after divorce by the other party. If so, the weekly or monthly or annual sum determined.
17. Date of final approval of divorce by the Arbitration Council.
18. Amount paid as prescribed divorce registration fees.
19. Signature of the husband.
20. Signature of the wife.
21. Signature of the verifiers.
22. Signature of the witnesses.
23. Date of registration of divorce.

Declaration of Registration of Divorce

I, empowered under the Uniform Marriage and Divorce Registration Law, 200... do hereby certify and declare that on(date) at.....(time), at(place), in the presence of(husband),(wife), and their respective witnesses,, having witnessed their signatures to this registration form and having satisfied myself with the particulars and descriptions presented to me by the respective parties, I record this divorce registration bearing serial number.....in book.....in the Divorce Registration Record.

24. Name, signature and Seal of the Registrar of Divorce.

UNIFORM CIVIL LAW ON MARRIAGE RECOMMENDED BY AIN-O-SALISH
KENDRO (ASK)

The Marriage Act of 200....

Act No. of 200...

An Act of Provide a Form of Marriage for the Citizens of Bangladesh.

Preamble

WHEREAS it is expedient to provide a form of marriage for citizens of Bangladesh, it is hereby enacted as follow:-

1. Short title:

This Act may be called the Marriage Act, 200.... (Act no.... of 200....).

It extends to the whole of Bangladesh.

2. Definitions:

Unless there is anything repugnant in the subject or context,

(a) Citizens of Bangladesh' means any person who is a citizen of Bangladesh under the provisions of Bangladesh Citizenship (Temporary Provisions) Order, 1972.

(b)'Marriage' means a union between two adult persons in compliance with the provisions of this Act.

(c) 'Registrar' means a registrar of marriage appointed under this Act.

(d) 'Consent' means the expression of willingness, whether in writing or oral, by a person to do or to abstain from doing something, while in a sound mind and having sufficient understanding, being free from any undue influence, coercion, fraudulent misrepresentation or other like reasons.

3. Conditions upon which marriages to be officiated under the Act:

Every marriage shall be officiated between two persons, upon the fulfillment of the following conditions:

(1)At least one of the parties to a marriage must be a citizen of Bangladesh.

(2) Neither of the persons must, at the time of the marriage under this Act, have a spouse living, whether married under this Act or under any other law or custom having the force of law for the time being, provided that the marriage under this Act is not contracted between the same spouses.

(3) Both the persons must have completed the age of eighteen years.

(4) Both the parties must express their consent to the marriage.

4. Appointment of Marriage Registrars:

The Government may appoint one or more Registrars of Marriage under this Act, either by name or as holding any office for the time being, in every district.

5. Notice of Marriage

(1) When a marriage is intended to be officiated under this Act, one of the parties must give notice in writing to the Registrar before whom it is to be officiated.

(2) Such notice may be in the form given in the first schedule to this Act.

(3) The Registrar shall file all such notices and keep them with the records of his or her office, and shall also forthwith enter a true copy of every such notice in a book to be for that purpose furnished as a marriage Notice Book, to be called the Marriage Notice Book under Act I of 200.... and such book shall be open at all reasonable times, without fee, to all persons desirous of inspecting the same, and such notice thereupon shall be posted in the notice board to be kept in the office of the Registrar.

6. Objection to Marriage

(1) Fourteen days after notice of an intended marriage has been given under Section 5, such marriage may be officiated unless it had been previously objected to in the manner hereinafter mentioned.

(2) Any person may object to any such marriage on the ground that it would contravene one or more of the conditions prescribed in clauses (1), (2), (3) or (4) of the Section 3.

(3) The nature of the objection made shall be recorded in writing by the Registrar in the register and shall if necessary be read over and explained to the person making the objection, and shall be signed by the objector or on his or her behalf.

7. Procedure on receipt of objection

On receipt of such notice of objection the Registrar shall not proceed to officiate the marriage until the parties intending to marry have sworn an affidavit affirming that they comply with the conditions contained in Section 3, and have claimed in writing that the objection is liable to be dismissed.

8. Procedure in lieu of notice

- (1) The parties to an intended marriage may, by an application in writing and having shown urgent and reasonable cause, seek the permission of the Registrar, to swear an affidavit instead of serving a notice under Section 5.
- (2) Such an affidavit must contain affirmations to the effect that the deponents fulfill the conditions contained in Section 3 and that there are urgent causes for not giving notice under Section 5.
- (3) The Registrar shall, thereafter, proceed as he or she would have proceeded if a notice had been given.

11. Marriage how to be officiated

- (1) The marriage shall be officiated in the presence of the Registrar and of two competent witnesses, who also have attained the age of majority and are of sound mind. It may be officiated in any form, provided that each party says to the other, in the presence and hearing of the Registrar and witnesses. 'I (A) take you (B) to be my lawful wife/husband/spouse,' and has signed the marriage register immediately subsequent to such oral declaration. The declaration and signature must take place at the same meeting.
- (2) The Marriage may be officiated either at the office of the Registrar or at such other place, within reasonable distance of the office of the Registrar as the parties desire and on the agreement of the Registrar to officiate therein: Provided that the Government may prescribe the conditions under which such marriages may be officiated at places other than the Registrar's office, and additional fees to be paid thereupon.

12. Certificate of Marriage

Where the marriage has been officiated, the Registrar shall enter a certificate thereof in a book to be kept by him/her for that purpose and to be called the 'Marriage Certificate Book under Act I of 200...' in the form given in the third schedule to this Act and such certificate shall be signed by the parties to the marriage and the two witnesses.

- #### 13. Transmission of Certified Copies of Entries in Marriage Certificate Book to the Registrar General of Births, Deaths and Marriages for the territories within which his/her district is situated, at such intervals as the Government from the time to time directs, a true copy certified by him/her, in such form as the Government

from time to time prescribes, of all entries made by him/her in the said marriage certificate book since the last of such intervals.

14. Fees

- (1) The Government shall prescribe the fees to be paid to the Registrar for the duties to be discharged by him/her under this Act.
- (2) The Registrar may, if he/she thinks fit, demand payment of any such fee before the officiation of the marriage or performance of any other duty in respect of which it is payable.
- (3) The said Marriage Certificate shall at all reasonable times be open for inspection and shall be admissible as evidence of the truth of the statements therein contained. Certified extracts there from shall on application be given by the Registrar on the payment to him/her by the applicant of a fee to be fixed by the Government for each such extract.

15. Punishment for Bigamy

- (1) Every person married under this Act who, during the life time of his or her spouse, contracts any other marriage, whether under this Act or any other law or custom having the force of law for the time being, shall be liable to be punished with imprisonment of either description which may extend to 7 years and with fine, and the marriage so contracted is *void ab initio*.
- (2) No court other than the court of a 1st Class Magistrate shall be competent to take cognizance of the offence under sub-section (1).

16. Dissolution of Marriage

- (1) Any party to a marriage shall be entitled to obtain a decree for the dissolution of marriage on any one or more of the following grounds, namely:
 - (d) That the whereabouts of the applicant's spouse have not been known for a period of four years;
 - (e) that the applicant's spouse has been sentenced to imprisonment for a period of seven years or upwards;
 - (f) that the applicant's spouse has failed to perform, without reasonable cause his or her marital obligations for a continuous period of three years;
 - (g) that the applicant's spouse has been insane for a period of two years or is suffering from a virulent venereal disease;

(h) that the behaviour or treatment of the applicants spouse is so irreconcilable that it is desirable to part with the spouse.

(2) The wife may seek for a decree for the dissolution of her marriage on the ground that the husband has been impotent at the time of marriage and continues to be so.

(3) Nothing contained in sub-section (1) and (2) shall prejudice the right of either party to a marriage to have their marriage dissolved by mutual consent.

(4) No Court or authority other than the Family Courts constituted under the Family Courts Ordinance, 1985 shall have the jurisdiction to pass a decree for the dissolution of marriage under the preceding sub-sections.

17. Saving of marriages solemnized otherwise than under Act

Nothing contained in this Act shall affect the validity of any marriage not officiated under its provisions: nor shall this Act be deemed directly or indirectly to affect the validity of any mode of contracting marriage: but, if the validity of any such mode shall hereafter come into question before any Court, such question shall be decided as if this Act had not been passed.

18. Penalty for signing declarations of certificates containing false statements

Every person making, signing or attesting any declaration which is false, and which he/she either knows or believes to be false or does not believe to be true, shall be deemed guilty of the offence described in Section 199 of the Penal Code.

19. The application of the Succession Act, 1925

Persons contracting marriage under this Act shall be subject to the provisions of the Succession Act, 1925 concerning their mutual rights and obligations, and the succession to each of them by their issue: shall also be governed by the said Act, provided that no such person shall be debarred from succeeding to any other right accrued to him/ her by virtue of any other law to which such person is otherwise subject

20. Application of the Guardians and Wards Act, 1890

Children born to or adopted by persons contracting marriage under this Act shall be subject to the provisions of the Guardians and Wards Act, 1890, concerning the guardianship and custody of the children, in all cases of which the welfare of the children in question will be the paramount consideration.