

## BANGLADESH<sup>1</sup>

### OVERVIEW OF MUSLIM FAMILY LAWS & PRACTICES (Updated as at December 2017)

| Family Law Matter  | Description  |          |   |  |  |
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|  | Legislative Framework  | Case Law | Policy  | Procedure  | Practice   |
| <p><b>Equality of spouses in marriage</b></p> <p><i>Is there a Constitutional provision on equality and are there exceptions? Are there specific laws that recognise marriage as a partnership of equals i.e. are family laws and/or other laws relating to marriage and the family codified or uncodified? If codified, what are the titles of all the applicable laws? If codified, do these laws apply to all citizens irrespective of religion? If not, do these laws apply to all Muslims or are there different codified laws for different sects within Islam? If uncodified, or if codified laws do not sufficiently address a particular issue, how is the issue addressed e.g. what Muslim school of law is applicable? Do</i></p> | <p>Article 27 of the Constitution provides that all citizens are equal before the law or are entitled to equal protection under the law<sup>2</sup>.</p> <p>Article 28(1) states that the State shall not discriminate on the grounds of sex etc., and that “women shall have equal rights with men in all spheres of the State and public life.”<sup>3</sup></p> <p>Article 28(4) provides for affirmative action or positive discrimination and permits the State to make special provisions in favour of women<sup>4</sup>.</p> <p>Marriage, divorce, maintenance and property inheritance are regulated by Sharia<sup>5</sup>. The</p> |          | <p>In 1997, Bangladesh withdrew its reservation relating to Article 13(a) and 16(1)(f) of CEDAW, which respectively requires equality in family benefits and the same rights and responsibilities with regard to guardianship, wardship and so forth.</p> <p>Bangladesh continues to have reservations to Articles 2 and 16(1)(c)<sup>9</sup> MOWCA (Ministry of Women and Children</p> | <p>Article 102(1) of the Constitution states that the High Court may give such direction or order needed to enforce fundamental rights of the Constitution including equality before the law and prohibition on discrimination<sup>11</sup>.</p> <p>Islamic family law is managed through the regular court system.<sup>12</sup> The Family Courts, however, have exclusive jurisdiction under</p> | <p>In 2014, Bangladesh ranked 111 out of 188 countries on the UNDP Gender Inequality Index<sup>14</sup>.</p> <p>Upon marriage brides generally move in with their husbands families. Depending upon the economic status of the family many new brides are expected to work in the husbands’ households similar to domestic workers<sup>15</sup>. Women extensive household based work, especially in the rural areas, is unremunerated and</p> |

<sup>1</sup> This Musawah project to map Muslim Family Laws globally was led by Zainah Anwar and coordinated by Lead Researcher Sharmila Sharma, with substantive support from Salma Waheedi and students at the International Human Rights Clinic, Harvard Law School. For this Bangladesh country table, we would also like to thank Darshana Prakasam from Harvard Law School, and Dr. Shahnaz Huda and Sara Hossain for their inputs in its preparation.

<sup>2</sup> Constitution of the People’s Republic of Bangladesh, <http://hrlibrary.umn.edu/research/bangladesh-constitution.pdf>

<sup>3</sup> Article 28(2), Constitution of the People’s Republic of Bangladesh, <http://hrlibrary.umn.edu/research/bangladesh-constitution.pdf>

<sup>4</sup> Constitution of the People’s Republic of Bangladesh, <http://hrlibrary.umn.edu/research/bangladesh-constitution.pdf>

<sup>5</sup> “Women and property rights: Who owns Bangladesh?” (2013), <http://www.economist.com/blogs/banyan/2013/08/women-and-property-rights>

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| <p><i>these laws explicitly state gender-stereotypical roles between husbands and wives e.g. the husband is the head of the household or the wife is the primary caregiver?</i></p> <p>Applicable CEDAW Provision<br/>Article 16(1)(a)<br/>General Recommendation 21</p> | <p>Muslim Personal Law (<i>Shariat</i>) Application Act, 1937 applies to Muslims in matters relating to Family Affairs<sup>6</sup> and provides that notwithstanding any custom or usage to the contrary, in matters related to intestate succession, marriage, dissolution of marriage, dower, guardianship and so forth, “the rule of decision in cases where the parties are Muslims shall be the Muslim Personal Law (<i>Shariat</i>)”.<sup>7</sup></p> <p>The majority of the population are Muslims who follow the Sunni Hanafi School. The 5th amendment to the Constitution in 1977 removed the principle of secularism and the Eighth Amendment in 1988 inserted Article 2A) which declared Islam the official state religion.<sup>8</sup> By</p> |  | <p>Affairs) -- is the specialized responsible for promoting gender justice and equality. National Council for Women and Children Development (NCWCD) was established to end discrimination and empower women to be equal partners with men<sup>10</sup>.</p> <p>The National Women Development Policy was approved in 2011.</p> | <p>the Family Courts Ordinance over cases involving the dissolution of marriage, restitution of conjugal rights, dower, maintenance and guardianship and custody.<sup>13</sup></p> | <p>not acknowledged.</p> |
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<sup>9</sup> CEDAW The Eighth Periodic Report of The Government of the People’s Republic of Bangladesh Submitted Under Article 18 May 2015; [http://mowca.portal.gov.bd/sites/default/files/files/mowca.portal.gov.bd/page/762c7e6e\\_69ce\\_4979\\_817c\\_f7dbc2b561ed/8th%20Periodic%20Report-%20CEDAW-2015.pdf](http://mowca.portal.gov.bd/sites/default/files/files/mowca.portal.gov.bd/page/762c7e6e_69ce_4979_817c_f7dbc2b561ed/8th%20Periodic%20Report-%20CEDAW-2015.pdf)

<sup>11</sup> Constitution of the People’s Republic of Bangladesh, <http://hrlibrary.umn.edu/research/bangladesh-constitution.pdf>

<sup>12</sup> Bangladesh, People’s Republic of, <https://scholarblogs.emory.edu/islamic-family-law/home/research/legal-profiles/bangladesh-people%EF%BF%BDs-republic-of/>

<sup>14</sup> UNDP Human Development Report 2015, Table 5, pp. 224-227, <http://hdr.undp.org/en/composite/GII>

<sup>15</sup> The Parliament Magazine, New Bangladesh marriage law is blow to children’s and women’s rights (2014), <https://www.theparliamentmagazine.eu/articles/opinion/new-bangladesh-marriage-law-blow-childrens-and-womens-rights>

<sup>6</sup> "A Research Guide to the Legal System of the Peoples' Republic of Bangladesh" (2008), <http://www.nyulawglobal.org/globalex/Bangladesh.html>

<sup>7</sup> Section 2 of the Muslim Personal Law (Shariat) Application Act, 1937.

<sup>8</sup> Bangladesh, People’s Republic of, <https://scholarblogs.emory.edu/islamic-family-law/home/research/legal-profiles/bangladesh-people%EF%BF%BDs-republic-of/>

<sup>10</sup> Bangladesh State Party Submission to CEDAW Committee (2015), <file:///C:/Users/ASUS/Documents/CEDAW%20STATE%208th%20Periodic%20Report-%20CEDAW-2015.pdf>

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|  | <p>virtue of the 15<sup>th</sup> Amendment of 2011 the principle of secularism was reinserted in the Constitution. Article 2A however continues to declare Islam as the State religion but for the first time mentions specifically that “but the State shall ensure equal status and equal right in the practice of the Hindu, Buddhist, Christian and other religions.” Family Courts have been established in 1985 and such Courts have jurisdiction over five family related matters: (a) dissolution of Marriage; (b) restitution of Conjugal Rights © dower; (d) maintenance; (e) guardianship and custody of children. There are no <i>Shari’ah</i> courts and judges of Family Courts can be from any religion.</p> <p>There is no specific law which recognizes marriage as an equal partnership. <b>There are also no codified family-related uniform laws which apply to all citizens irrespective of religion.</b></p> <p>Marriage related laws of Muslims are primarily uncodified although a few legislative enactments exist such as :</p> |  |  |  |  |
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<sup>13</sup> Bangladesh, People’s Republic of, <https://scholarblogs.emory.edu/islamic-family-law/home/research/legal-profiles/bangladesh-people%E2%82%AC%80s-republic-of/>

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|   | <p>Dissolution of Muslim Marriages Act, 1939; Muslim Family Laws Ordinance, 1985; Muslim Marriages and Divorces Registration Act, 1974. In addition there exist certain laws which apply to the family matters of all religions and not only to Muslims ---The Guardians and Wards Act, 1890; The Dowry Prohibition Act of 1980; The Child Marriage Restraint Act, 2017.</p> <p>Family Courts apply the law to which litigants before it are subject to -- so in a matter before it, the decision will be according to the religion of the parties or the Mazhab/School Muslim litigants belong to. Codified laws do not explicitly state gender-stereotypical roles between husbands and wives e.g. the husband is the head of the household or the wife is the primary caregiver but rely on accepted interpretations of the <i>Shari'ah</i>.</p> |  |   |   |  |
| <p><b>Minimum and equal age of marriage</b></p> <p><i>Is there a minimum age of marriage? Are there exceptions to the minimum age (e.g. min. age at</i></p> | <p>The minimum age of marriage is not equal between males and females. There are inconsistencies in the laws however where a general law defines one age and a personal</p>   |  | <p>Sheikh Hasina, the prime minister, pledged to end marriage under age of 15 by 2021 and 18 by 2041, which</p> | <p>Under the Child Marriage Restraint Act of 2017 only certain documents are to be accepted as proof of age</p> | <p>Bangladesh has the 8<sup>th</sup> highest rate of child marriage in the world (defined as under eighteen), and the highest rate for</p> |

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| <p><i>18, with exceptions to 16)? Is there an absolute minimum age without exceptions? Is there equality in the minimum age of marriage? Is there a minimum age verification process before the marriage is concluded?</i></p> <p><u>Applicable CEDAW Provision</u><br/>Article 16(2)<br/>General Recommendation 21</p> | <p>status law referring to Muslim individuals implies otherwise<sup>16</sup></p> <p>In the Muslim Family Laws Ordinance, 1961, the minimum age for females is 16 and it 21 for males.<sup>17</sup> [Section 5 of this law has been omitted in Bangladesh]</p> <p>This year (2017) a new law -- the Child Marriage Restraint Act of 2017 replaced the Child Marriage Restraint Act of 1929, under which the minimum age for marriage continues to be 18 for females and 21 for males. Exceptions are permitted for the marriage of an underage girl for her <b>'greatest benefit' 'by order of the Court and with the consent of the parents'</b>.<sup>18</sup> are not permitted<sup>19</sup>.</p> <p>Section 3 of the Bangladesh Majority Act of 1875 defines a person under the age of 18 to be a child<sup>20</sup> but such law does not</p> |  | <p>primarily applies to girls<sup>22</sup>.</p> <p>Bangladesh is a part of the South Asian Initiative to End Violence Against Children (SAIEVAC), which included a regional action plan to end child marriage<sup>23</sup>.</p> <p>The country offers secondary school scholarships to girls when they postpone marriage and there is a UNICEF program for adolescent empowerment that conducts training all over the country<sup>24</sup>.</p> | <p>which include Birth certificate, National Identity Card, Secondary School Certificates and so forth.<sup>25</sup> The Act prescribes punishments for various persons such as those responsible for the solemnization of the marriage, Marriage Registrars, parents and adults marrying underage persons. The punishments prescribed in the Act range from imprisonment from 6 months to 2 years and fine up to, in certain case, One lakh Taka Under certain circumstances the law also punishes underage persons</p> | <p>marriages for girls under 15<sup>26</sup>.</p> <p>52% of girls in Bangladesh are married by 18 and 18% before they are 15<sup>27</sup>.</p> <p>Plan International found that 88% of individuals surveyed believed that child marriage was a community tradition<sup>28</sup>, which may explain why the minimum age laws are rarely enforced<sup>29</sup>.</p> <p>Furthermore, families sometimes try to hasten marriage to avoid the risk that she will be sexually harassed, romantically involved or thought to be romantically involved</p> |
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<sup>16</sup> Child Marriage in South Asia Briefing Paper, [https://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/ChildMarriage\\_BriefingPaper\\_Web.singlepage.pdf](https://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/ChildMarriage_BriefingPaper_Web.singlepage.pdf)

<sup>17</sup> Muslim Family Law Ordinance 1961, [http://bdlaws.minlaw.gov.bd/print\\_sections\\_all.php?id=305](http://bdlaws.minlaw.gov.bd/print_sections_all.php?id=305)

<sup>18</sup> Section 19, the Child Marriage Restraint Act, 2017.

<sup>19</sup> The Child and Marriage Restraint Act, 1929, [http://bdlaws.minlaw.gov.bd/print\\_sections\\_all.php?id=149](http://bdlaws.minlaw.gov.bd/print_sections_all.php?id=149)

<sup>20</sup> Amendment in the Majority Act, 1875, [http://bdlaws.minlaw.gov.bd/print\\_sections\\_all.php?id=33](http://bdlaws.minlaw.gov.bd/print_sections_all.php?id=33)

<sup>22</sup> Human Rights Watch, Bangladesh: Don't Lower Marriage Age (2014), <https://www.hrw.org/news/2014/10/12/bangladesh-dont-lower-marriage-age>

<sup>23</sup> Child marriages around the world: Bangladesh, <http://www.girlsnotbrides.org/child-marriage/bangladesh/>

<sup>24</sup> IRIN, Parents still not heeding child marriage warnings (2011), <http://www.irinnews.org/report/92375/bangladesh-parents-still-not-heeding-child-marriage-warnings>

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|  | <p>apply in the case of marriage, dower, divorce etc.</p> <p>Under the Dissolution of Muslim Marriages Act, 1939, if a girl is given in marriage before she is 18, she may repudiate it before she is 19. However, this does not apply if the marriage is consummated<sup>21</sup>.</p>   |   |  | <p>who have entered into child marriages.</p>   | <p>prior to marriage<sup>30</sup>.</p>   |
| <p><b>Consent to marriage / Forced marriage</b></p> <p><i>Is a marriage valid without the woman's consent? Is the practice of forcing women to marry against their will (ijbar) prohibited? Is it mandatory to register a marriage? Is there a standard marriage contract? If so, what are its broad provisions and is there anything particular in the contract that ought to be highlighted on the</i></p> | <p>There are no specific laws against forced marriage of adults<sup>31</sup>. See previous section (Minimum and equal age of marriage) for laws regarding child marriage.</p> <p>A marriage contracted by a Muslim individual must be registered in accordance with the Muslim Marriages and Divorce (Registration) Act.<sup>32</sup></p> | <p>=While there are provisions in the Penal Code that criminalize the kidnapping of women for the purpose of forcing them into marriage, courts have only applied this rarely<sup>33</sup>.</p> | <p>Sheikh Hasina, the prime minister, pledged to end marriage under age of 15 by 2021 and 18 by 2041, both of which are forms of forced marriage<sup>36</sup>.</p> | <p>The registration of a marriage is mandatory and failure to register is punishable by law<sup>37</sup>. However, lack of registration does not invalidate a marriage.<sup>38</sup></p> <p>There is a standard marriage contract (<i>nikahnama</i>), which</p> | <p>The forced marriages that are most easily identified are child marriages, whereas forced adult marriages can be harder to distinguish because of the prevalence of cultural norms surrounding arranged marriage<sup>42</sup>.</p> |

<sup>25</sup> Section 12 of the Child Marriage Restraint Act, 2017.

<sup>26</sup> Child marriage around the world: <http://www.girlsnotbrides.org/where-does-it-happen/>

<sup>27</sup> Child marriage around the world: <http://www.girlsnotbrides.org/where-does-it-happen/>

<sup>28</sup> Child marriage around the world: Bangladesh: <http://www.girlsnotbrides.org/child-marriage/bangladesh/>

<sup>29</sup> Human Rights Watch, Bangladesh: Don't Lower Marriage Age (2014), <https://www.hrw.org/news/2014/10/12/bangladesh-dont-lower-marriage-age>

<sup>30</sup> The Dissolution of Muslim Marriages Act, 1939: [http://bdlaws.minlaw.gov.bd/print\\_sections\\_all.php?id=180](http://bdlaws.minlaw.gov.bd/print_sections_all.php?id=180)

<sup>31</sup> Human Rights Watch, World Report 2016, p. 34, [https://www.hrw.org/sites/default/files/world\\_report\\_download/wr2016\\_web.pdf](https://www.hrw.org/sites/default/files/world_report_download/wr2016_web.pdf)

<sup>32</sup> Forced Marriages Overseas: Bangladesh, <http://preventforcedmarriage.org/forced-marriage-overseas-bangladesh/>

<sup>33</sup> Remedies for Forced Marriage in Bangladesh (2014), Sec 3.1.5, [http://www.interights.org/userfiles/Chapter\\_3.pdf](http://www.interights.org/userfiles/Chapter_3.pdf)

<sup>34</sup> Women Living Under Muslim Laws, Knowing our rights: Women, family, laws and customs in the Muslim world (2006), p. 80,

[http://www.wluml.org/sites/wluml.org/files/import/english/pubs/pdf/knowning%20our%20rights/kor\\_2006\\_en.pdf](http://www.wluml.org/sites/wluml.org/files/import/english/pubs/pdf/knowning%20our%20rights/kor_2006_en.pdf)

<sup>36</sup> Human Rights Watch, Bangladesh: Don't Lower Marriage Age (2014), <https://www.hrw.org/news/2014/10/12/bangladesh-dont-lower-marriage-age>

<sup>37</sup> Kamrul Hossain, In Search of Equality: Marriage Related Laws for Women in Bangladesh (2003), p. 108, <http://vc.bridgew.edu/cgi/viewcontent.cgi?article=1524&context=jjws>

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| <p><i>basis that it advances women's rights or otherwise?</i></p> <p>Applicable CEDAW Provision<br/>Articles 16(1)(a), 16(1)(b)<br/>General Recommendation 21</p> | <p>An adult woman must consent to her own marriage.<br/>There is a standard marriage contract or nikahnama under the Muslim Marriages and Divorce (Registration) Rules</p> | <p>While case law has been firm that a marriage should be registered to be enforceable under the law, courts will accept an oral marriage when there is evidence to support its existence<sup>34</sup>.</p> <p>Case law establishes the conditions that can be negotiated in a marriage contract, including but not limited to dower, pocket money, etc.<sup>35</sup>.</p> |  | <p>has 25 different sections.<sup>39</sup></p> <p>Muslim Marriages and Divorces Rules of 1975 require formal registration of a marriage within 30 days of solemnization and the bridegroom is responsible; offenses are tried by the Court of a First Class Magistrate and punishment can be a 2 year prison sentence or 3,000 Taka fine<sup>40</sup>.</p> <p>The only legal recourse for an adult woman in a forced marriage is to file for illegal</p> | <p>Families, especially in poorer, rural areas tend to see female children as a burden and want to marry them off quickly to remove the financial strain from the family<sup>43</sup>. Early marriages are often connected to the avoidance of higher dowry demands. Although all the above are catalysts for early marriages by far at present the primary reasons for child marriages is lack of safety. Marrying a girl off early is used by parents/guardians to ensure the security of</p> |
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1. <sup>38</sup>Huda, Shahnaz (1999). Registration of Marriage and Divorce in Bangladesh: A Study on Law and Practice; Bangladesh Legal Aid and Services Trust, BLAST, Dhaka.

<sup>42</sup> US Embassy in Bangladesh, Forced Marriage: <https://bd.usembassy.gov/u-s-citizen-services/forced-marriage/>

<sup>34</sup> Women Living Under Muslim Laws, Knowing our rights: Women, family, laws and customs in the Muslim world (2006), p. 214, [http://www.wluml.org/sites/wluml.org/files/import/english/pubs/pdf/knowing%20our%20rights/kor\\_2006\\_en.pdf](http://www.wluml.org/sites/wluml.org/files/import/english/pubs/pdf/knowing%20our%20rights/kor_2006_en.pdf)

<sup>35</sup> Muslim marriage contract, <http://muslimmarriagecontract.org/laws.html#otherconditions>

<sup>39</sup> Birth and marriage certificates of Bangladesh: the authenticity of public documents (2014),

<http://www.nrbpedia.com/nrbpedia/ReadPost.php?mynameisxyz=mahfuzurrahman&PostID=167&mynameisxyz=mahfuzurrahman&>

<sup>40</sup> Bangladesh State Party Submission to CEDAW Committee (2010), para. 82, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

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|  |   |  |  | confinement by those holding her against her will <sup>41</sup> .              | <p>their daughters.<sup>44</sup></p> <p>The Muslim Marriages and Divorces Rules of 1975 tried to strengthen the requirements for <i>Nikah</i> Registrars but they still fail to challenge forced marriages<sup>45</sup>.</p> <p>Moreover, while the Bangladeshi government has made promises to curb forced marriages, not much has actually been accomplished<sup>46</sup>.</p> |
| <p><b>Women's capacity to enter into marriage</b></p> <p><i>Is consent of a guardian (wali) required? Can the woman choose</i></p> | Under Hanafi fiqh, family law does not require a guardian (wali) for an adult woman to marry. <sup>47</sup> When a Muslim couple are both are adult and they wish |  |  | A standard marriage contract affords women the opportunity to negotiate better |  |

<sup>43</sup> US Embassy in Bangladesh, Forced Marriage: <https://bd.usembassy.gov/u-s-citizen-services/forced-marriage/>

<sup>41</sup> Women Living Under Muslim Laws, Knowing our rights: Women, family, laws and customs in the Muslim world (2006), p. 80, [http://www.wluml.org/sites/wluml.org/files/import/english/pubs/pdf/knowning%20our%20rights/kor\\_2006\\_en.pdf](http://www.wluml.org/sites/wluml.org/files/import/english/pubs/pdf/knowning%20our%20rights/kor_2006_en.pdf)

<sup>44</sup> Huda Shahnaz (2017). Presentaion on Analysis of Laws on Child Marriage in South Asian Countries, CARE Bangladesh 20<sup>th</sup> August, 2017, BRAC Centre , Dhaka.,

<sup>45</sup> Women Living Under Muslim Laws, Knowing our rights: Women, family, laws and customs in the Muslim world (2006), p. 85, [http://www.wluml.org/sites/wluml.org/files/import/english/pubs/pdf/knowning%20our%20rights/kor\\_2006\\_en.pdf](http://www.wluml.org/sites/wluml.org/files/import/english/pubs/pdf/knowning%20our%20rights/kor_2006_en.pdf)

<sup>46</sup> Human Rights Watch, Bangladesh: Girls Damaged by Child Marriages (2015), <https://www.hrw.org/news/2015/06/09/bangladesh-girls-damaged-child-marriage>

<sup>47</sup> Resources: Family laws in Muslim majority and minority contexts, <http://muslimmarriagecontract.org/laws.html>

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| <p><i>her own wali? Can a woman go before a court or other competent authority to seek permission to marry if her wali refuses to consent to her marriage? Can a woman negotiate her marriage rights prior to marriage and can these rights be changed during marriage? If so, who can change these rights and under what circumstances e.g. mutual consent?</i></p> <p><u>Applicable CEDAW Provision</u><br/>Articles 16(1)(a), 16(1)(b)<br/>General Recommendation 21</p> | <p>without the involvement of parental/family or despite their opposition, they can be married by in the presence of two witnesses or by the Marriage Registrar. There is no need to approach the Court. A woman may negotiate her rights by the insertion of stipulations which is valid under religious law. Legally, even though there is no bar to such rights being changed afterwards but such renegotiation is rare.<sup>48</sup></p> |   |  | <p>economic protections during the marriage.<sup>49</sup> Although Insertion of stipulations are not encouraged by the Hanafi Mazhab, t standard Nikahnama form for example includes the provisions related to delegated divorce (clause 18), Clause 19 asks the question as to whether the husband's right to divorce is curtailed in any manner.<sup>50</sup> Clause 17 also has the provision of 'special conditions'.</p> |   |
| <p><b>Polygamous marriage</b></p> <p><i>Does the law or marriage contract prohibit polygamy or impose strict conditions on such practice? Is the permission of the court</i></p>  | <p>Section 6 of the Muslim Family Law Ordinance permits polygamy only with the written permission of arbitration council and may involve the permission of the existing wife.. Absence of</p>  | <p>A 1997 judgment by the High Court Division strongly discouraged polygamy<sup>53</sup>.</p> |  | <p>The Arbitration Council oversees the application to marry additional wives and examines whether</p>  | <p>It is reported that the Arbitration Council is composed of males who generally give permission to marry an additional wife</p> |

<sup>48</sup> Huda, Shahnaz (2001). "Protection of Women in the Marriage Contract: An Exploration" in *Bangladesh Journal of Laws*, Vol. 5, No.1 & 2, June & December 2001; Bangladesh Institute of Law and International Affairs; pp. 138-181.

<sup>49</sup> "Will I get my dues...before I die?" Harm to Women from Bangladesh's Discriminatory Laws on Marriage, Separation, and Divorce (2012) <https://www.hrw.org/report/2012/09/17/will-i-get-my-dues-i-die/harm-women-bangladeshs-discriminatory-laws-marriage>

<sup>53</sup> Women Living Under Muslim Laws, *Knowing our rights: Women, family, laws and customs in the Muslim world* (2006), p. 208, [http://www.wluml.org/sites/wluml.org/files/import/english/pubs/pdf/knowning%20our%20rights/kor\\_2006\\_en.pdf](http://www.wluml.org/sites/wluml.org/files/import/english/pubs/pdf/knowning%20our%20rights/kor_2006_en.pdf)

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| <p><i>required for a polygamous marriage? Is the permission of an existing wife required for a polygamous marriage? Are temporary marriages recognised? Is it necessary to register a polygamous marriage?</i></p> <p><u>Applicable CEDAW Provision</u><br/>Articles 16(1)(a), 5(a)<br/>General Recommendation 21</p> | <p>such permission opens up the husband to punishment but does not affect the validity of the latter marriage.</p> <p>Section 6(5) of the Muslim Family Law Ordinance sets forth a penalty of one year of imprisonment and/or a fine of up to 10,000 Taka for any man who contracts another marriage without the permission of the Arbitration Council. The husband will also have to pay the wife (or wives) their dower immediately<sup>51</sup>.</p> <p>Under Section 2(f) of the Dissolution of Marriages Act, a wife may seek dissolution of the marriage if her husband takes another wife and does not treat her equitably<sup>52</sup>.</p> | <p>Jesmin Sultana vs. Mohammad Elias 17 BLD (1997)</p>        |  | <p>the existing wife consents<sup>54</sup>. Under Muslim Family Laws Ordinance 1961, Article 6(2), a man must state the reasons for the proposed marriage and whether his current wife (or wives) has/have consented<sup>55</sup>.</p> <p>A <i>mut'aa</i> marriage is a non-permanent marriage that requires a valid contract for the specified amount of time with a specific amount of dower<sup>56</sup>. Muta marriages are not recognized in Bangladesh and no rules exist governing such marriages.</p> | <p>very easily<sup>57</sup>.</p>  |
| <p><b>Divorce</b></p> <p><i>Is there equal right to divorce? Can the husband divorce at will</i></p>  | <p>Bangladesh continues to have reservations to Article 16(1)©<br/>Bangladeshi law does not provide for equal rights of</p>   | <p>As seen in <i>Sheerin Alam v. Captain ShamshulAlam</i></p> | <p>Divorce is discouraged.<br/><br/>This is demonstrated</p> | <p>The standard marriage contract form includes provision for</p>   | <p>Many women do not have access to judicial remedy so they are not able to</p> |

<sup>51</sup> Muslim Family Laws Ordinance 1961, [http://bdlaws.minlaw.gov.bd/print\\_sections\\_all.php?id=305](http://bdlaws.minlaw.gov.bd/print_sections_all.php?id=305)

<sup>52</sup> The Dissolution of Marriages Act, 1939: [http://bdlaws.minlaw.gov.bd/print\\_sections\\_all.php?id=180](http://bdlaws.minlaw.gov.bd/print_sections_all.php?id=180)

<sup>54</sup> Kamrul Hossain, In Search of Equality: Marriage Related Laws for Women in Bangladesh (2003), p. 100, <http://vc.bridgew.edu/cgi/viewcontent.cgi?article=1524&context=jiws>

<sup>55</sup> Muslim Family Laws Ordinance 1961, [http://bdlaws.minlaw.gov.bd/print\\_sections\\_all.php?id=305](http://bdlaws.minlaw.gov.bd/print_sections_all.php?id=305)

<sup>56</sup> Kamrul Hossain, In Search of Equality: Marriage Related Laws for Women in Bangladesh (2003), p. 100, <http://vc.bridgew.edu/cgi/viewcontent.cgi?article=1524&context=jiws>

<sup>57</sup> Kamrul Hossain, In Search of Equality: Marriage Related Laws for Women in Bangladesh (2003), p. 100, <http://vc.bridgew.edu/cgi/viewcontent.cgi?article=1524&context=jiws>

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| <p><i>and without grounds? What are the main forms of divorce? Can all forms of divorce be sought only through the courts? Are the grounds for divorce the same for the husband and wife? Is unilateral divorce prohibited? If unilateral divorce is not prohibited, what is the procedure e.g. are witnesses required or does the spouse need to go to court? Is the right to divorce delegated to the wife? If so, is it by law or through the marriage contract? Is it mandatory to register a divorce?</i></p> <p><u>Applicable CEDAW Provision</u><br/>Article 16(1)(c)</p> | <p>divorce for men and women. Grounds for divorce are not equal between men and women.</p> <p><u>Unilateral divorce by a husband</u><br/>Under uncodified <i>Sharia</i> law the Muslim husband has extra judicial and unilateral rights of <i>talaq</i>.<sup>58</sup> However, the Muslim Family Laws Ordinance, Section 7 provides certain restrictions on the husband's wide rights of divorce and provides that a husband must after pronouncement of <i>talaq</i> in any form whatsoever, give the Chairman of the relevant administrative area notice in writing of his having done so, and shall supply a copy thereof to the wife..<sup>59</sup> The Chairman shall thereupon constitute an Arbitration Council for the purpose of trying to bring about a reconciliation between the parties. In case of failure of such reconciliation <i>talaq</i> (divorce) shall take place only after the expiration of ninety</p> | <p>1996 48 DLR 79 or <i>Hasina Ahmed v SA Fazal</i> 1980 32 DLR 294, a wife has to forfeit something to be granted a <i>khul</i> divorce<sup>63</sup>.</p> | <p>by Section 7 Muslim Family Laws Ordinance requirement for reconciliation process prior to effecting divorce, which is also referenced in the Family Courts Ordinance of 1985 which has jurisdiction over divorce cases<sup>64</sup> Sections 10, 13, 14 and 23 of the latter provides for pre-trial as well as post-trial compromise efforts initiated by the Court. .</p> | <p>delegated right of divorce (<i>talaq-e-tafwid/esma</i>) in clause 18 by the husband. If granted this right, the wife can initiate divorce without and without going to court, while retaining relevant financial rights<sup>65</sup>. Such right of delegated divorce is usually granted on certain conditions mentioned along with the delegation but may ideally be also unconditional.</p> <p>In the case of mutual consent divorce (<i>mubarat</i>), the parties do not have to appear before the local council and can</p> | <p>exercise their rights to divorce as effectively<sup>67</sup>.</p> |
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<sup>58</sup>Huda, Shahnaz (1993) "Untying the knot – Muslim Woman's Right of Divorce in Bangladesh"; in the *Dhaka University Studies Part F*, Journal of the Faculty of Law Vol. V No. 1, June, 1994.

<sup>59</sup> Muslim Family Law Ordinance 1961, [http://bdlaws.minlaw.gov.bd/print\\_sections\\_all.php?id=305](http://bdlaws.minlaw.gov.bd/print_sections_all.php?id=305)

<sup>63</sup> Women Living Under Muslim Laws, Knowing our rights: Women, family, laws and customs in the Muslim world (2006), p. 278, [http://www.wluml.org/sites/wluml.org/files/import/english/pubs/pdf/knowing%20our%20rights/kor\\_2006\\_en.pdf](http://www.wluml.org/sites/wluml.org/files/import/english/pubs/pdf/knowing%20our%20rights/kor_2006_en.pdf)

<sup>64</sup> The Family Courts Ordinance, 1985, [http://bdlaws.minlaw.gov.bd/print\\_sections\\_all.php?id=682](http://bdlaws.minlaw.gov.bd/print_sections_all.php?id=682)

<sup>65</sup> Muslim marriage contract, <http://muslimmarriagecontract.org/laws.html#delegateddivorce>

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|  | <p>days from the day on which notice is delivered to the Chairman.</p> <p><i>A Muslim wife under the applicable Shariah law has the right of divorce outside of Court by way of Talak-e-tawfeez (right of talaq delegated by the husband) or Mubara –i.e. mutual consent divorce or by Khula where the husband agrees to the wife’s proposal of divorce in exchange of some consideration ---which usually, but not always, involves the giving up her right to dower. Procedures mentioned above which the husband must follow regarding giving of notice to Chairman and spouse must also be followed by the wife under Section 8 of the Muslim Family Law Ordinance, 1961. Case law has established that wife may entitled to Judicial khul even without the husband consent through the Court.<sup>60</sup></i></p> <p>Where extra judicial ways for divorce are not available to the Muslim wife she may make an <i>application for judicial dissolution of marriage for cause</i></p> |  |  | <p>simply use an authorized agent or notify the authorities through the mail<sup>66</sup>.</p> |  |
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<sup>67</sup> Kamrul Hossain, In Search of Equality: Marriage Related Laws for Women in Bangladesh (2003), p. 102, <http://vc.bridgew.edu/cgi/viewcontent.cgi?article=1524&context=jjws>

<sup>60</sup> **Khurshid Bibi vs. Baboo Mohammad Amin** (PLD 1967 SC 97)

<sup>66</sup> Women Living Under Muslim Laws, Knowing our rights: Women, family, laws and customs in the Muslim world (2006), p. 251, [http://www.wluml.org/sites/wluml.org/files/import/english/pubs/pdf/knowning%20our%20rights/kor\\_2006\\_en.pdf](http://www.wluml.org/sites/wluml.org/files/import/english/pubs/pdf/knowning%20our%20rights/kor_2006_en.pdf)

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|  | Under the Dissolution of Muslim Marriages Act of 1939, there are grounds for a woman to obtain a decree for the dissolution for her marriage including, but not limited to, her husband has been missing for four years, the husband has not provided her maintenance for two years, the husband has taken another wife or the husband has been sentenced to imprisonment, or the husband is impotent <sup>61</sup> . Only the husband has a unilateral right to divorce <sup>62</sup> . |  |  |   |  |
| <p><b>Women's financial rights after divorce</b></p> <p><i>Is there a legal concept of matrimonial assets? Is there equal division of marital property during marriage and at its dissolution? Is the woman's role as wife and mother recognised as contribution to acquisition of assets? What spousal maintenance are available to the</i></p> | <p>There is no concept of matrimonial assets under the applicable Muslim law. Bangladesh lacks a legal regime for division of matrimonial assets following a divorce<sup>68</sup>.</p> <p>No civil laws govern how the matrimonial assets will be divided upon divorce<sup>69</sup>.</p> <p>NOTE: Divorce Act 1869 does</p>  |  |  | <p>A case can be filed under civil law to recover a share of matrimonial property<sup>70</sup>.</p> | <p>Bangladesh has not focused much attention towards securing rights for women in the division of marital property during the dissolution of a marriage<sup>71</sup>.</p> <p>Many women contribute financially to their marriages,</p> |

<sup>61</sup> The Dissolution of Muslim Marriages Act, 1939, [http://bdlaws.minlaw.gov.bd/print\\_sections\\_all.php?id=180](http://bdlaws.minlaw.gov.bd/print_sections_all.php?id=180)

<sup>62</sup> Kamrul Hossain, In Search of Equality: Marriage Related Laws for Women in Bangladesh (2003), p. 101, <http://vc.bridgew.edu/cgi/viewcontent.cgi?article=1524&context=jjws>

<sup>68</sup> Human Rights Watch Submission to the CEDAW Committee: Consideration of Bangladesh's Periodic Report, 65th Session (2016), <https://www.hrw.org/news/2016/09/20/human-rights-watch-submission-cedaw-committee>

<sup>69</sup> Human Rights Watch Submission to the CEDAW Committee: Consideration of Bangladesh's Periodic Report, 65th Session (2016), <https://www.hrw.org/news/2016/09/20/human-rights-watch-submission-cedaw-committee>

<sup>70</sup> Women Living Under Muslim Laws, Knowing our rights: Women, family, laws and customs in the Muslim world (2006), p. 326, [http://www.wluml.org/sites/wluml.org/files/import/english/pubs/pdf/knowing%20our%20rights/kor\\_2006\\_en.pdf](http://www.wluml.org/sites/wluml.org/files/import/english/pubs/pdf/knowing%20our%20rights/kor_2006_en.pdf)

<sup>71</sup> Human Rights Watch Submission to the CEDAW Committee: Consideration of Bangladesh's Periodic Report, 65th Session (2016), <https://www.hrw.org/news/2016/09/20/human-rights-watch-submission-cedaw-committee>

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| <p><i>wife after a divorce? Is she entitled to maintenance during the waiting period after the divorce (iddah)? Is she entitled to a 'gift' upon divorce (muta'a)?</i></p> <p><u>Applicable CEDAW Provision</u><br/>Articles 16(1)(c), 16(1)(h), 15(2)<br/>General Recommendations 21, 29</p> | <p>not apply to Muslims.</p> <p>After divorce, a Muslim woman is entitled to her deferred dower and to maintenance or <i>nafaqa</i> during the three month <i>iddat</i> period. Although in the famous case of Hezfur Rahman vs. Shamsun Nahar(47 DLR 1999 54) the High Court, by interpreting the term <i>mataa</i> had ruled that a divorced Muslim woman is entitled to life long or maintenance until remarriage such decision was later reversed by the Appellate Division, which held that unlike <i>nafaqa</i>, <i>maata</i> is not obligatory.</p> |   |   |   | <p>supporting their husbands in education and careers, as well as perform unpaid household and caregiving labor.<sup>72</sup></p> <p>Nevertheless, they are not able to recoup much economic value when their marriages end.<sup>73</sup></p> <p>Moreover, there is immense societal pressure on women not to claim their property rights<sup>74</sup>.</p> |
| <p><b>Custody and Guardianship of Children</b></p> <p><i>Is custody decided based on the best interest of the child? Do mothers automatically lose custody upon remarriage or when the child reaches a designated age when custody goes to father?</i></p>                                    | <p>Under the uncodified Shariah law the father is the legal and natural guardian of a child. Under the Hanafi law mother has the preferential right of custody (<i>hizanat</i>) over a son until he reaches the age of 7 and a daughter until she attains puberty. Under classical Hanafi</p>  | <p>It is now established by precedent that the best interest principle is of primary consideration in determining custody and</p> | <p>Bangladesh withdrew its reservation from CEDAW Article 16 (1)(f) relating to the equality between men and women concerning the guardianship, wardship, trusteeship</p> | <p>Under the Family Courts Ordinance of 1985, the Family Courts have jurisdiction over guardianship and custody cases.<sup>81</sup> Custody is determined through</p> | <p>In traditional Muslim jurisprudence, the father is the natural guardian and near male relatives are the guardians in his absence<sup>83</sup>.</p>   |

<sup>72</sup> Human Rights Watch Submission to the CEDAW Committee: Consideration of Bangladesh's Periodic Report, 65th Session (2016), <https://www.hrw.org/news/2016/09/20/human-rights-watch-submission-cedaw-committee>

<sup>73</sup> Human Rights Watch Submission to the CEDAW Committee: Consideration of Bangladesh's Periodic Report, 65th Session (2016), <https://www.hrw.org/news/2016/09/20/human-rights-watch-submission-cedaw-committee>

<sup>74</sup> Women's Inheritance Rights to Land and Property in South Asia: A Study of Afghanistan, Bangladesh, India, Nepal, Pakistan, and Sri Lanka (2009) [http://www.landesa.org/wp-content/uploads/WJF-Womens-Inheritance-Six-South-Asian-Countries.FINAL\\_12-15-09.pdf](http://www.landesa.org/wp-content/uploads/WJF-Womens-Inheritance-Six-South-Asian-Countries.FINAL_12-15-09.pdf), p. 17

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| <p><i>Is there equal right to guardianship? Is guardianship decided based on the best interest of the child?</i></p> <p><u>Applicable CEDAW Provision</u><br/>Articles 16(1)(d), 16(1)(f)<br/>General Recommendation 21</p> | <p>law a mother her right to custody on certain grounds including remarriage to a person i.e, someone not within the prohibited degrees with the child. After the abovementioned ages the father automatically becomes entitled to the custody of the child in addition to being their de jure guardian. Section 17 of the Guardian and Wards Act of 1980 requires the consideration of the welfare of minors as a significant component of deciding custody<sup>75</sup>.</p> <p>Under the Family Courts Ordinance, 1985, a family court has jurisdiction over guardianship and custody matters.<sup>76</sup></p> <p>Under Islamic law, the father is the natural and legal guardian, but under classical Hanafi jurisprudence, a mother has the right to physical (but not legal) custody of a son until the age of 7 and a daughter until puberty<sup>77</sup>.</p> | <p>guardianship cases. The court in <i>Md. Abu Baker Siddique v. S.M.A. Bakar &amp; oths</i> (38 DLR (AD) 1986) determined that the best interests of the children need to be considered<sup>78</sup>. In <i>Ayesha Khanum v. Major Shabbir Ahmed</i>, 46 DLR, the High Court Division of Bangladesh deemed that the welfare of the child is the first consideration<sup>79</sup>. The age and sex rule was disregarded in the following cases also:<br/><b>Zahida Ahmed v Syed Noor</b></p> | <p>and adoption of children<sup>80</sup>.</p> | <p>the courts on the basis of the best interests of the child<sup>82</sup>.</p> |  |
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<sup>81</sup> The Family Courts Ordinance, 1985, [http://bdlaws.minlaw.gov.bd/print\\_sections\\_all.php?id=682](http://bdlaws.minlaw.gov.bd/print_sections_all.php?id=682)

<sup>83</sup> Yesmin, Farjana, Mother's remarriage and custody of children, <http://www.thedailystar.net/law-our-rights/law-analysis/mothers-remarriage-and-custody-children-1232128>

<sup>75</sup> Section 17 of the Guardian and Wards Act of 1980 requires the consideration of the welfare of minors as a significant component of deciding custody. f

<sup>76</sup> The Family Courts Ordinance, 1985, [http://bdlaws.minlaw.gov.bd/print\\_sections\\_all.php?id=682](http://bdlaws.minlaw.gov.bd/print_sections_all.php?id=682)

<sup>77</sup> Current Legal Framework: Custody and Adoption in Bangladesh, <http://www.impowr.org/content/current-legal-framework-custody-and-adoption-bangladesh>

<sup>78</sup> Islamic Family Law: Bangladesh, People's Republic Of, <https://scholarblogs.emory.edu/islamic-family-law/home/research/legal-profiles/bangladesh-people%E2%82%AC%82%BDs-republic-of/>

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|   | This is considered when a court makes guardianship and custody decisions.  | <b>Uddin Ahmed<br/>14 MLR (2009)<br/>(HCD) 465<br/>Anika Ali vs.<br/>Rezwanul<br/>Ahsan 17 MLR<br/>(2012) (AD) 49</b> |  |  |  |
| <b>Family Planning</b><br><br><i>Do women require the consent of the husband to practise family planning, including abortions and sterilization in the law, procedure or practice?</i><br><br><u>Applicable CEDAW Provision</u><br>Articles 16(1)(e), 12<br>General Recommendation 21 | Bangladeshi law does not specifically mention family planning. The Ministry of Health and Family Welfare is the policy making body regarding family planning. Under the Ministry there is the Directorate General of Family Planning<br><br>Abortion is only permissible for saving a mother's life or providing her necessary treatment <sup>84</sup> .<br><br>Abortion (or causing of miscarriage) is prohibited and penalized under Sections 312-316 of the Penal Code of Bangladesh, 1860. The law permits abortion only if it is done 'in good faith for the purpose of |   | Direct support is provided for contraceptive use <sup>86</sup> .<br><br>The government has created a family planning program through which menstrual regulation services are available <sup>87</sup> .<br><br>An awareness building program is being implemented for women's health and nutrition, including safe motherhood and prevention and protection from AIDS <sup>88</sup> . |  | There have been a number of programs in the country that have led to a reduction in maternal mortality and the birth rate <sup>90</sup> .<br><br>In 1997-98, the Ministry of Health and Family Welfare (MoHFW) and UNICEF took steps to grant women better access to their services <sup>91</sup> .<br><br>Nevertheless, Bangladesh is being investigated for the prevalence of unsafe abortions <sup>92</sup> . |

<sup>79</sup> Yesmin, Farjana, Mother's remarriage and custody of children, <http://www.thedailystar.net/law-our-rights/law-analysis/mothers-remarriage-and-custody-children-1232128>

<sup>80</sup> Declarations, Reservations and Objections to CEDAW <http://www.un.org/womenwatch/daw/cedaw/reservations-country.htm#N19>

<sup>82</sup> Current Legal Framework: Custody and Adoption in Bangladesh, <http://www.impowr.org/content/current-legal-framework-custody-and-adoption-bangladesh>

<sup>84</sup> The Penal Code, 1860, [http://bdlaws.minlaw.gov.bd/print\\_sections\\_all.php?id=11](http://bdlaws.minlaw.gov.bd/print_sections_all.php?id=11)

<sup>86</sup> Bangladesh Abortion Policy, [www.un.org/esa/population/publications/abortion/doc/bangladesh1.doc](http://www.un.org/esa/population/publications/abortion/doc/bangladesh1.doc)

<sup>87</sup> Bangladesh Abortion Policy, [www.un.org/esa/population/publications/abortion/doc/bangladesh1.doc](http://www.un.org/esa/population/publications/abortion/doc/bangladesh1.doc)

<sup>88</sup> Bangladesh State Party Submission to CEDAW Committee (2010), p. 50, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

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|   | <p>saving the life of the woman'. The law also makes it clear that 'a woman who causes herself to miscarry,' is also liable. However, despite such restrictive law, "menstrual regulation" services have, since decades, been available in the Government's family planning programme. Under Section 315 of the Penal Code, any act with the intent to prevent a child from being born or to cause it to die after birth can lead to an imprisonment of up to 10 years<sup>85</sup>.</p> |  | <p>Furthermore, a Rural Services Delivery Program and Urban Family Health Program has tried to create a network of health services for women and children<sup>89</sup>.</p> |  | <p>Prevalence of contraceptives (% of women between 15 and 49) in Bangladesh was 61.2% in 2011 according to the World Bank.<sup>93</sup></p>   |
| <p><b>Personal rights of spouses</b></p> <p><i>Does a woman need the consent of her spouse or guardian to work, choose a profession, leave the house, travel, drive, receive various health services, study, etc. on her own behalf? Does a woman have the right to retain her birth name upon marriage or to choose her family name?</i></p> | <p>Under Article 28 and 29 of the Constitution, women enjoy full freedom of movement and capacity to choose their profession<sup>94</sup>.</p> <p>Moreover, under the Contract Law, both men and women have equal rights to make contracts in their own names<sup>95</sup>.</p>  | <p>In Dalia Perveen vs Bangladesh Biman 48 DLR 132 and Rabia Basri Irene vs. Bangladesh Biman 52 DLR</p> |   |  | <p>Women in Bangladesh account for mainly unpaid work and even when they are employed in paid work, it is usually in the informal sector and among the poor<sup>96</sup>.</p> <p>There is cultural</p> |

<sup>90</sup> Bangladesh State Party Submission to CEDAW Committee (2010), p. 86, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

<sup>91</sup> Bangladesh State Party Submission to CEDAW Committee (2010), p. 93, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

<sup>92</sup> Zaidi, Shahida, et al. "Achievements of the FIGO Initiative for the Prevention of Unsafe Abortion and its Consequences in South-Southeast Asia." International Journal Of Gynaecology And Obstetrics: The Official Organ Of The International Federation Of Gynaecology And Obstetrics 126 Suppl 1 (2014): S20-3. Print.

<sup>85</sup> The Penal Code, 1860, [http://bdlaws.minlaw.gov.bd/print\\_sections\\_all.php?id=11](http://bdlaws.minlaw.gov.bd/print_sections_all.php?id=11)

<sup>89</sup> Bangladesh State Party Submission to CEDAW Committee (2010), p. 60, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

<sup>93</sup> Contraceptive Prevalence (% of women ages 15-49), <http://www.tradingeconomics.com/bangladesh/contraceptive-prevalence-percent-of-women-ages-15-49-wb-data.html>

<sup>94</sup> Constitution of the People's Republic of Bangladesh, <http://hrlibrary.umn.edu/research/bangladesh-constitution.pdf>

<sup>95</sup> Gender and Land Rights Database: Bangladesh, [http://www.fao.org/gender-landrights-database/country-profiles/countries-list/national-legal-framework/womens-property-and-use-rights-in-personal-laws/en/?country\\_iso3=BGD](http://www.fao.org/gender-landrights-database/country-profiles/countries-list/national-legal-framework/womens-property-and-use-rights-in-personal-laws/en/?country_iso3=BGD)

<sup>96</sup> Rejaul Karim Byron and MdFazlur Rahman, Women workforce growing fast; <http://www.thedailystar.net/frontpage/women-workforce-growing-fast-155149>

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| <p>Applicable CEDAW Provision<br/>Article 16(1)(g)<br/>General Recommendation 21</p> |  | <p>308, discrimination regarding age of retirement between male air stewards and stewardesses was declared unconstitutional and violative of Article 28 of the Constitution.</p> <p><i>In Jatiyo Mahila Ainjibi Samity v Bangladesh and other (Criminal), 59 DLR, (2007) 447, High Court laid down guidelines which must be followed in educational institutions and work places to combat 'sexual harassment'.</i></p> |  | <p>emphasis on the seclusion(<i>pardah</i>)prohibition on women working outside the household and women have to rely on men for access to credit and permission to work for pay<sup>97</sup>.</p> <p>However, the female labour participation has been rising and Bangladeshi rate is the higher than the South Asian average<sup>98</sup>. In 2014, for women above the age of 15, the participation rate was 58%.<sup>99</sup></p> |
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<sup>97</sup> “Your father is no more”: Insights on guardianship and abandonment from ultrapoor women heads of household in Bangladesh, <http://www.sciencedirect.com/science/article/pii/S027753951530114X>

<sup>98</sup> Rejaul Karim Byron and MdFazlur Rahman, Women workforce growing fast; <http://www.thedailystar.net/frontpage/women-workforce-growing-fast-155149>

<sup>99</sup> Labor force participation rate, female (% of female population ages 15+) (modeled ILO estimate), <http://data.worldbank.org/indicator/SL.TLF.CACT.FE.ZS>

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| <p><b>Inheritance</b></p> <p><i>Are men and women in the same degree of relationship to a deceased entitled to equal shares in the estate and to equal rank in the order of succession?</i></p> <p><u>Applicable CEDAW Provision</u><br/>Articles 16(1)(h), 15(2)<br/>General Recommendation 21</p> | <p>The Muslim Personal Law (Shariat) Application Act of 1937 governs inheritance of women and looks to the Shariah to determine the shares of all heirs. The Qu'anic Heirs, whose shares have been mentioned in the Qur'an, constitute the first group of heirs, under the Sunni School of Inheritance followed in Bangladesh. Amongst the 12 Quranic heirs, eight are females. Widows and daughters are both Quranic as well as primary heirs who are never excluded from inheritance. However the general rule of the Quran is that a male in the same relationship with a woman inherits double the share of a female. A widow gets 1/8 of the property in the presence of children and 1/4 in their absence. A widower, in the same circumstances, get 1/4/ or 1/2 respectively. In the absence of sons of the deceased, the daughter, if only one, gets 1/2 and if more than one, together gets 2/3. Coexisting with son/s, each daughter takes half the share of each son.</p> |  |  | <p>Women are socially discouraged from accepting their inheritances, and it expected that women should not accept it unless it is given willingly by the entire family<sup>100</sup>.</p> <p>Additionally, women lack access to the formal legal system which makes it difficult for them to recover rights they are entitled to under the laws of inheritance corruption in the legal system makes it difficult for women to actual recover their inheritance<sup>101</sup>.</p> <p>Politicians are worried about too strongly touching religion in every sphere of women's rights,<sup>102</sup> specially when it relates to</p> |
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<sup>100</sup> Women's Inheritance Rights to Land and Property in South Asia: A Study of Afghanistan, Bangladesh, India, Nepal, Pakistan, and Sri Lanka (2009) [http://www.landesa.org/wp-content/uploads/WJF-Womens-Inheritance-Six-South-Asian-Countries.FINAL\\_12-15-09.pdf](http://www.landesa.org/wp-content/uploads/WJF-Womens-Inheritance-Six-South-Asian-Countries.FINAL_12-15-09.pdf), p. 17

<sup>101</sup> Chowdhury, Sabuj, The Rights of Women in Muslim Inheritance in Bangladesh, <http://www.bdlawnews.com/the-rights-of-women-in-muslim-inheritance-in-bangladesh-by-sabuj-chowdhury/>

<sup>102</sup> Women and property rights: Who owns Bangladesh?, <http://www.economist.com/blogs/banyan/2013/08/women-and-property-rights>

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|   |   |  |   |  | <p>property rights or reforming laws which will give equal inheritance rights.</p> <p>Moreover, while Muslim women have the right to inherit, many women forgo the right in exchange for the right to visit her parents once or twice a year (<i>naior</i>)<sup>103</sup>.</p> <p>Islamic law is much more restrictive than Christian law, which guarantees equal rights between men and women,<sup>104</sup> in all cases except divorce.</p> |
| <p><b>Violence against women in the family</b></p> <p><i>Are there laws and practices that define what constitute domestic violence such as battery, female circumcision, marital rape and other forms of sexual assault,</i></p> | <p>The 2010 Domestic Violence Act criminalizes violence against women and includes physical, psychological, sexual or economic abuse against a woman<sup>105</sup>.</p> <p>The Penal Code of 1860 defines</p> |  | <p>Policy dialogues are being held in different districts to emphasize the role of men and boys in preventing violence against women<sup>108</sup>. This includes development</p> | <p>A police officer who has received a domestic violence complaint has to inform the victim of her right to apply to obtain relief, access medical</p> | <p>The Women &amp; Children Repression Prevention Act of 2000 has been abused as an instrument of extortion and humiliation and led to</p>   |

<sup>103</sup> Women's Inheritance Rights to Land and Property in South Asia: A Study of Afghanistan, Bangladesh, India, Nepal, Pakistan, and Sri Lanka (2009)

[http://www.landesa.org/wp-content/uploads/WJF-Womens-Inheritance-Six-South-Asian-Countries.FINAL\\_12-15-09.pdf](http://www.landesa.org/wp-content/uploads/WJF-Womens-Inheritance-Six-South-Asian-Countries.FINAL_12-15-09.pdf), p. 36

<sup>104</sup> The Succession Act, 1925, [http://www.ebrahimhosain.com/laws/Succession%20Act,%201925%20\(Act%20No.%20XXXIX%20of%201925\).pdf](http://www.ebrahimhosain.com/laws/Succession%20Act,%201925%20(Act%20No.%20XXXIX%20of%201925).pdf)

<sup>105</sup> Domestic Violence Act, 2010:

[http://mowca.portal.gov.bd/sites/default/files/files/mowca.portal.gov.bd/page/203db6dc\\_7c82\\_4aa0\\_98a6\\_8672334b235c/Domestic%20Violence%20Act%20English.pdf](http://mowca.portal.gov.bd/sites/default/files/files/mowca.portal.gov.bd/page/203db6dc_7c82_4aa0_98a6_8672334b235c/Domestic%20Violence%20Act%20English.pdf)

<sup>108</sup> Bangladesh State Party Submission to CEDAW Committee (2010), p.10, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

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| <p><i>mental and other forms of violence that affects a women's mental health, which are perpetuated by traditional attitudes? Is there specific legislation that recognises domestic violence as a crime? Are there support services for women who are the victims of aggression or abuses?</i></p> <p><u>Applicable CEDAW Provision</u><br/>Articles 2, 5, 11, 12 and 16<br/>General Recommendations 12, 19, 21</p> | <p>and punishes certain offences committed against women such as rape, abduction, kidnapping, abduction, criminal force and assault to woman and so forth. The Women &amp; Children Repression Prevention Act of 2000 severely criminalizes offenses related to, but not limited to, rape, acid related offences, kidnapping, sexual abuse, and death resulting from rape and dowry demands<sup>106</sup>. The <i>Human Trafficking Deterrence and Suppression Act, 2012 deals with trafficking and the Acid Crimes Prevention Act, 2002 with acid related offences</i>. Further, under the Dissolution of Marriage Act of 1939, if a woman's husband treats her cruelly including, but not limited to cruelty of conduct, forcing her to lead an immoral life, or obstructs her in observing her religion<sup>107</sup>.</p> |  | <p>of a national digital database on violence against women.<sup>109</sup></p> | <p>services, and request free legal services<sup>110</sup>.</p> <p>Amongst other remedies, the Court can issue protection orders against the respondent restraining him, her from certain acts. The court can also issue residence orders restraining the respondent from staying in the same location as the victim as well as direct the Enforcement Officer to provide a safe shelter for the victim and her children<sup>111</sup>.</p> <p>According to Section 16 of the Domestic Violence</p> | <p>very low conviction rates in cases involving violence against women<sup>113</sup>.</p> <p>Teenager clubs help boys and girls participate in activities together<sup>114</sup>. This is to help males and females socialize together in healthier ways earlier.</p> <p>However, on the World Economic Forum's contextual data, Bangladesh received a score of 0.3 for the existence of legislation on domestic violence (data is on a scale of 0 to 1 with 0 = best score, 1 = worst score)<sup>115</sup>.</p> |
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<sup>106</sup> Barrister Quazi Maruf, Women & Children Repression Prevention Act 2000 : Preventing abuse of the law, <http://www.theindependentbd.com/printversion/details/9605>

<sup>107</sup> The Dissolution of Muslim Marriages Act, 1939, [http://bdlaws.minlaw.gov.bd/print\\_sections\\_all.php?id=180](http://bdlaws.minlaw.gov.bd/print_sections_all.php?id=180)

<sup>109</sup> National Digital Database On Violence Against Women: An Essential Tool For Effective Services (2013), <http://www.thedailystar.net/news/national-digital-database-on-violence-against-women-an-essential-tool-for-effective-services>

<sup>110</sup> English version of the Domestic Violence (Prevention and Protection) Act, 2010;

[http://mowca.portal.gov.bd/sites/default/files/files/mowca.portal.gov.bd/page/203db6dc\\_7c82\\_4aa0\\_98a6\\_8672334b235c/Domestic%20Violence%20Act%20English.pdf](http://mowca.portal.gov.bd/sites/default/files/files/mowca.portal.gov.bd/page/203db6dc_7c82_4aa0_98a6_8672334b235c/Domestic%20Violence%20Act%20English.pdf)

<sup>111</sup> English version of the Domestic Violence (Prevention and Protection) Act, 2010;

[http://mowca.portal.gov.bd/sites/default/files/files/mowca.portal.gov.bd/page/203db6dc\\_7c82\\_4aa0\\_98a6\\_8672334b235c/Domestic%20Violence%20Act%20English.pdf](http://mowca.portal.gov.bd/sites/default/files/files/mowca.portal.gov.bd/page/203db6dc_7c82_4aa0_98a6_8672334b235c/Domestic%20Violence%20Act%20English.pdf)

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|  |  |  |  | Act, the Court shall review and dispose of the application within six months of receipt of the application <sup>112</sup> . |  |
| <p><b>Nationality</b></p> <p><i>Does a wife have the right to confer citizenship on foreign born husbands and children? Can the nationality of the adult woman be arbitrarily removed because of marriage or dissolution of marriage or because her husband or father changes his nationality?</i></p> <p>Applicable CEDAW Provision<br/>Article 9<br/>General Recommendation 21</p> | <p>In 2009, the Citizenship Act of 1951 was amended allowing women to confer their citizenship to their children<sup>116</sup>.</p> <p>Under the Citizenship Order, 1972, a Bangladeshi man's wife can immediately obtain citizenship, but a woman cannot confer her citizenship to a foreign husband.<sup>117</sup></p> |  |  |   |  |

<sup>113</sup> Barrister QuaziMaruf, Women & Children Repression Prevention Act 2000 : Preventing abuse of the law, <http://www.theindependentbd.com/printversion/details/9605>

<sup>114</sup> Bangladesh State Party Submission to CEDAW Committee (2010), p. 10, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

<sup>115</sup> Bangladesh Country/Economy Profile 2015, <http://reports.weforum.org/global-gender-gap-report-2015/economies/#economy=BGD>

<sup>112</sup> English version of the Domestic Violence (Prevention and Protection) Act, 2010;

[http://mowca.portal.gov.bd/sites/default/files/files/mowca.portal.gov.bd/page/203db6dc\\_7c82\\_4aa0\\_98a6\\_8672334b235c/Domestic%20Violence%20Act%20English.pdf](http://mowca.portal.gov.bd/sites/default/files/files/mowca.portal.gov.bd/page/203db6dc_7c82_4aa0_98a6_8672334b235c/Domestic%20Violence%20Act%20English.pdf)

<sup>116</sup> *Bangladesh: The Citizenship (Amendment) Act, 1951* [Bangladesh], Act II of 1951, 13 April 1951, available at: <http://www.refworld.org/docid/4a8032182.html> [accessed 27 September 2016]

<sup>117</sup> Bangladesh Citizenship Order, 1972, <http://www.bdembassyusa.org/uploads/forms/CitizeshipOrder1972.pdf>