RIGHT TO EQUALITY FOR HINDU WOMEN IN BANGLADESH: A QUEST FOR REFORMS IN PERSONAL LAW

Submitted by

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DECLARATION

I, Gobinda Chandra Mandal, hereby declare that this thesis is submitted in fulfilment of the requirements for the degree of Doctor of Philosophy at the University of Dhaka. I further declare that it has not been submitted, in whole or in part, for the award of any other degree or qualification at this or any other university or institution. To the best of my knowledge and belief, this thesis is the result of my own independent research and contains no copy or paraphrase of any work published by another person, except where due reference has been made in the text.

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CERTIFICATE OF SUBMISSION

This is to certify that the PhD thesis entitled "*Right to Equality for Hindu Women in Bangladesh: A Quest for Reforms in Personal Law*" has been researched, planned, and written by Mr Gobinda Chandra Mandal under my supervision. I also certify that I have reviewed both the draft and final versions of the thesis and found it satisfactory for submission to the Department of Law, University of Dhaka, in fulfilment of the requirements for the degree of Doctor of Philosophy.

I further certify that he has completed all necessary procedures, including the publication of (five) articles based on this thesis in peer-reviewed journals with DOIs, and has duly honoured all stipulations in full compliance with the laws and regulations of the University of Dhaka for pursuing this highest degree of honour. Being satisfied in all respects, I hereby recommend this thesis for submission for the award of the degree of Doctor of Philosophy.

Signature of the Supervisor: Shimazaman

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DEDICATION

To my wife and son,

whose unwavering encouragement, love, and patience

have sustained me throughout this PhD.

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ABSTRACT

This thesis interrogates the right to equality for Hindu women in Bangladesh and treats personal law as a domain of public responsibility, not a private enclave. Anchored in Articles 27 to 29 and 31 of the Constitution, and read alongside the obligations of Bangladesh under CEDAW and the ICCPR, it asks how gender inequality within Hindu personal law can be removed through principled legislative, judicial and administrative change. The study is doctrinal and comparative. It conducts close analysis of statutes, case law and classical authorities, and sets those sources against constitutional benchmarks and international standards. A feminist analytical lens, attentive to intersectionality and to material effects, tests whether formal guarantees of equality translate into real bargaining power for women. Indian post-independence reforms are used not as a template but as a repertoire of legal functions, so that lessons are translated with sensitivity to the institutional and minority contexts of Bangladesh.

The argument proceeds through five pressure points in which the current regime sustains structural dependency. Marriage registration remains optional. The result is predictable. Proof becomes fragile, age verification is uncertain, and access to remedies is obstructed. The position is compounded by the absence of a Hindu divorce statute. Without a statutory exit, negotiation space narrows, and women can be trapped in harmful relationships that the law does not allow them to dissolve. Inheritance and succession retain *Dayābhāga*-based asymmetries and vestiges of the limited estate, suppressing women's proprietary capacity. Maintenance rules are fragmented and weakly enforced, which undermines both dignity and deterrence. Guardianship and custody rely on a nineteenth-century framework that does not treat mothers and fathers as equal legal parents, and that fails to integrate the child's welfare as the organising principle across forums.

A sequenced programme of reform is proposed. First, make registration of Hindu marriages mandatory, with humane transition arrangements and low-friction administration. Secondly, enact

a Hindu marriage statute that defines capacity and formalities, provides grounds and procedures for dissolution, and integrates ancillary relief on maintenance, custody and equitable distribution. Thirdly, legislate a guardianship and adoption code that centres the child's welfare, recognises mothers as equal parents and allows women to adopt in their own right. Fourthly, enact a modern Hindu succession statute that secures equal proprietary capacity and abolishes the limited estate. Finally, consolidate forum and procedure in the family courts with clear jurisdiction, realistic fees, legal aid, robust enforcement and reliable data. Three claims guide the analysis. Doctrinal rules that restrict women's exit, property and parental authority cannot be justified within a constitutional order committed to equality. Judicial harmonisation is valuable, yet cannot substitute for codification; principled legislation is indispensable. Lessons from India are portable when reframed as functions to be adapted rather than rules to be transplanted. The thesis, therefore, synthesises dispersed rules into a coherent map of status, capacity and remedy, and sets out a practical, context-sensitive pathway by which Bangladesh can align Hindu personal law with its constitutional and international commitments to gender equality.

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ABBREVIATIONS

AIWC	All India Women's Conference
ASEAN	Association of Southeast Asian Nations
BDPfA	Beijing Declaration and Platform for Action
BLAST	Bangladesh Legal Aid and Services Trust
BNWLA	Bangladesh National Women Lawyers' Association
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CRC	Convention on the Rights of the Child
CESCR	Committee on Economic, Social and Cultural Rights
EU	European Union
GPAG	SAARC Gender Policy Advocacy Group
GREVIO	Group of Experts on Action against Violence against Women and Domestic Violence
HAMA	Hindu Adoptions and Maintenance Act
HSA	Hindu Succession Act
HMGA	Hindu Minority and Guardianship Act
HMA	Hindu Marriage Act

HRC	Human Rights Committee
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
OAS	Organization of American States
SADC	Southern African Development Community
SDGs	Sustainable Development Goals
SAARC	South Asian Association for Regional Cooperation
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNGA	United Nations General Assembly

SANSKRIT GLOSSARY TABLE

(Internationally recognised transliteration (ISO 15919/IAST))

Sanskrit Term (IAST)	**English Gloss / Contextual Meaning**
Āpastamba	Early Dharma sūtra author; source of domestic and legal norms
Agastya	Vedic sage, cited as authority on household law and ritual
Atharvaveda	One of the four Vedas; textual source for early family law ideas
Baudhāyana	Dharma sūtra author; cited for rules on succession and conduct
Bṛhadāraṇyaka Upaniṣad	Philosophical text; contains dialogues of Gārgī and Maitreyī
Brahmavādinī	Woman devoted to Brahmanic study; symbol of female learning
Dayābhāga	Bengal school of Hindu inheritance; basis of current Bangladeshi doctrine
Dharma	Normative order, law, moral duty
Dharmaśāstra	Genre of juridical Sanskrit texts (e.g., Manu, Yājñavalkya)
Dharmasūtra	Proto-legal manuals preceding the Dharmaśāstras
Gārgī Vācaknavī	Upaniṣadic philosopher; symbol of women's intellectual agency
Gautama	Dharma sūtra author; source for rules on marriage and caste
Gṛhyasūtra	Domestic ritual text regulating marriage and household rites

Sanskrit Term (IAST)	English Gloss / Contextual Meaning
Jīmūtavāhana	Author of the Dayābhāga digest; central to Bengal inheritance law
Kanyādāna	"Gift of a maiden"; ritual conception of marriage as donation
Lopāmudrā	Female sage, interlocutor of Agastya; model of agency within śruti
Maitreyī	Philosopher in Bṛhadāraṇyaka Upaniṣad, emblem of women's reasoning
Manusmṛti	Code of Manu; principal Dharmaśāstra on social and gender order
Mitākṣarā	Commentarial digest by Vijñāneśvara; foundation of most Indian schools
Nārada	Jurist-sage; author of Nāradasmṛti, source for judicial procedure
Na strī svātantryam arhati	"A woman is not entitled to independence"
Parāśara	Sage cited for relaxed rules in Kali Yuga; authority in later Smṛtis
Pati-parameśvara	"Husband as supreme lord"; patriarchal marital ideal
Ṛṣi	Inspired seer; author of hymns and legal aphorisms
Ṛgveda	Earliest Veda; contains hymns attributed to women sages
Sadyovadhū	Newly-wed woman; used in ritual and legal contexts
Saṃskāra	Rite of passage; includes marriage, initiation, etc.
Śāstra	Authoritative treatise or discipline; root of Dharmaśāstra

Sanskrit Term (IAST)	English Gloss / Contextual Meaning
Śrāddha	Ancestral offering; relevant in succession duties
Śrauta	Vedic sacrificial ritual or its textual manual
Śruti	"Heard" revelation; textual category of Vedic authority
Smṛti	"Remembered" tradition; post-Vedic juridical literature
Strīdhana	Woman's property; key doctrinal category for ownership rights
Sūtra	Aphoristic manual; basic unit of early juridical texts
Upanayana	Initiation rite; occasionally extended to women (brahmavādinī)
Upaniṣad	Philosophical texts forming the end of Veda; basis for spiritual equality
Vasiṣṭha	Dharma sūtra author; early theorist of household dharma
Veda	Collective scriptural corpus forming the base of śruti
Viśvāvarā	Female ṛṣi; hymn-composer in the Ṛgveda
Yājñavalkya	Sage-jurist, author of Yājñavalkyasmṛti
Yājñavalkyasmṛti	Classical Dharmaśāstra text central to Mitākṣarā commentary

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Bangladesh Legal Aid and Services Trust (BLAST) and others v Government of Bangladesh and others (the 'fatwa' case) Writ Petition Nos 5863 of 2009, 754 of 2010 and 4275 of 2010 (HCD, 8 July 2010)

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The Code of Criminal Procedure (Amendment) Act, 2009

The Constitution of the People's Republic of Bangladesh, 1972

The Dissolution of Muslim Marriages Act, 1939

The Domestic Violence (Prevention and Protection) Act, 2010

The Domestic Violence (Prevention and Protection) Rules, 2013

The Dowry Prohibition Act, 2018

The Evidence Act, 1872

The Family Courts Act, 2023

The Guardians and Wards Act, 1890

The Hindu Gains of Learning Act, 1930

The Hindu Inheritance (Removal of Disabilities) Act, 1928

The Hindu Law of Inheritance (Amendment) Act, 1929

The Hindu Marriage Disabilities Removal Act, 1946

The Hindu Marriage Registration Act, 2012

The Hindu Married Women's Right to Separate Residence and Maintenance Act, 1946

The Hindu Widows' Remarriage Act, 1856

The Hindu Women's Rights to Property Act, 1937

The Legal Aid Services Act, 2000

The Muslim Marriages and Divorces (Registration) Act, 1974

The Special Marriage Act, 1872

The Succession Act, 1925

India

The Bengal Sati Regulation, 1829

The Code on Wages, 2019

The Family Courts Act, 1984

The Guardians and Wards Act, 1890

The Hindu Adoptions and Maintenance Act, 1956

The Hindu Law of Inheritance (Amendment) Act, 1929

The Hindu Marriage Act, 1955

The Hindu Minority and Guardianship Act, 1956

The Hindu Succession (Amendment) Act, 2005

The Hindu Succession (Andhra Pradesh Amendment) Act, 1986

The Hindu Succession Act, 1956

The Hindu Women's Rights to Property Act, 1937

The Indian Criminal Law Amendment Act, 1891

The Indian Penal Code, 1860

The Indian Succession Act, 1925

The Marriage Laws (Amendment) Act, 1976

The Maternity Benefit (Amendment) Act, 2017

The Muslim Women (Protection of Rights on Divorce) Act, 1986

The Personal Laws (Amendment) Act, 2010

The Personal Laws (Amendment) Act, 2019

The Prohibition of Child Marriage Act, 2006

The Protection of Women from Domestic Violence Act, 2005

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

The Special Marriage Act 1954

The Special Marriage Act, 1872

The Succession (Amendment) Act, 2005

Note:

The OSCOLA citation style has been followed strictly throughout this thesis. As a result, the titles of statutes appear without "The" and without a comma. Since many statutes are common to both Bangladesh and India, all statutory references are identified by their respective jurisdictions.

CHAPTER 1: INTRODUCTION

1.1 Introducing the Thesis

This thesis opens with a simple orientation. Family law, even when styled "personal", carries public consequences.[1] Rules that define status, allocate care, and distribute property set the terms on which many women live their lives.[2] The focus here is on Hindu personal law in Bangladesh, read through the lens of equality as a constitutional value and as a standard for institutional design.[3] The inquiry is not an antiquarian exercise in textual exegesis. It is a study of how a layered body of classical, colonial and contemporary law structures Hindu women's agency across the life course, and of how that structure may be aligned with the demands of equality without erasing religious identity or historical memory.[4]

The analysis begins from formation rather than from doctrine alone. Classical sources, from *Śruti* and *Smṛti* to the later *Nibandha* tradition, supplied concepts and techniques that travelled across centuries and regions.[5] Those materials did not operate as a single code; they worked through commentary, usage, and adjudication. Modern scholarship has reconstructed this intellectual world and shown how categories central to marriage, guardianship, inheritance, and property took shape

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[1] Committee on the Elimination of Discrimination against Women, 'General recommendation No 29: General recommendation on article 16 of the Convention on the Elimination of All Forms of Discrimination against Women (Economic consequences of marriage, family relations and their dissolution)' (26 February 2013) UN Doc CEDAW/C/GC/29, paras 1, 4, 13, 14, 18–19.

[2] ibid paras 1–2, 4–6.

[3] See Constitution of the People's Republic of Bangladesh 1972, arts 27–28; Registration of Hindu Marriage Act 2012 (Bangladesh), s 3(1).

[4] See Donald R Davis Jr, 'History of the Reception of Dharmaśāstra' in Patrick Olivelle and Donald R Davis Jr (eds), *Hindu Law: A New History of Dharmaśāstra* (Oxford University Press 2018) 371, 377–80.

[5] See P V Kane, *History of Dharmaśāstra (Ancient and Mediaeval Religious and Civil Law in India*, vol 1 (Bhandarkar Oriental Research Institute 1930) 5–7, 10–11, 14, 16–17.

within a juristic culture that prized interpretation and reasoned analogy.[6] This historical sensibility matters for present purposes. It cautions against reading any one text as a fixed rule and encourages attention to the legal craft by which principles were adapted to social practice.[7]

A second point of departure lies in the colonial encounter. Translation, codification, and the management of expert knowledge re-ordered Sanskritic materials into an administrable scheme.[8] The process delivered a vocabulary of "Hindu law" that sat within imperial structures of adjudication and record-keeping.[9] It also sedimented habits of legal reasoning that continue to influence contemporary practice[10] It is to recognise how institutional forms such as courts, registries and evidentiary infrastructures shape the way rights become actionable claims.

The contemporary field is, therefore, best understood as a composite. Textual propositions interact with administrative routines; judicial techniques interact with documentary practices; remedies depend on forums that must be accessible, predictable, and fair. The thesis treats these interactions as central rather than incidental. It asks how equality can function as an organising principle for this composite system, so that status is ascertainable in ordinary cases, remedial routes are intelligible, and adjudication proceeds on a baseline that does not encode hierarchy. The inquiry does not turn on a search for a single doctrinal key. It turns on institutional choices that make rights legible and claimable.[11]

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[6] See Donald R Davis Jr, 'Introduction' in Patrick Olivelle and Donald R Davis Jr (eds), *Hindu Law: A New History of Dharmaśāstra* (Oxford University Press 2018) 1, 5–6, 30, 49, 125, 137.

[7] Donald R Davis Jr and David Brick, 'Social and Literary History of Dharmaśāstra: Commentaries and Legal Digests' in Patrick Olivelle and Donald R Davis Jr (eds), *Hindu Law: A New History of Dharmaśāstra* (Oxford University Press 2018) 30.

[8] Bernard S Cohn, *Colonialism and Its Forms of Knowledge: The British in India* (Princeton University Press 1996) 26–30, 50–51, 66–75; JDM Derrett, 'The Administration of Hindu Law by the British' (1961) 4 *Comparative Studies in Society and History* 10, 24, 28, 32, 34, 37; Rosane Rocher, 'The Creation of Anglo-Hindu Law' in Timothy Lubin, Donald R Davis Jr and Jayanth K Krishnan (eds), *Hinduism and Law: An Introduction* (Cambridge University Press 2010) 78, 78–81.

[9] Derrett, 'The Administration of Hindu Law by the British' (n 8) 14, 24, 28, 32; Rocher, 'The Creation of Anglo-Hindu Law' (n 8) 78–79, 85–87.

[10] Registration of Hindu Marriage Act 2012 (n 3), ss 3–9; Derrett, 'The Administration of Hindu Law by the British' (n 8) 12, 22, 36.

[11] See Evidence Act 1872 (Bangladesh), ss 101–104, read with Registration of Hindu Marriage Act 2012 (n 3), s 8.

A comparative horizon helps to clarify the space of feasible reform. Post-independence India offers a repertoire: codification of family law functions;[12] gender-neutral exit routes from marriage with associated relief;[13] re-conceptualisation of property interests;[14] and a modern guardianship template that speaks directly to recurrent pressure points in South Asian systems.[15] The comparative use here is disciplined. It is neither an invitation to transplant nor an argument from prestige. It is a way to test legal techniques against demands of equality and to consider how similar functions might be realised within Bangladeshi constitutional and administrative conditions.[16] Reference works that consolidate contemporary doctrine are used as maps of what such techniques look like when implemented.[17]

Throughout, the thesis treats Hindu personal law as a public ordering subject to public-law standards. The concern is not with theological authenticity or the policing of belief. The concern is with how legal categories distribute power and vulnerability, and with how institutions convert norms into regular remedies. The analysis moves between doctrine and practice, and between history and design, to illuminate the mechanisms through which Hindu women's agency is enabled or constrained. The ambition is practical: a legal settlement in which equality does real work in day-to-day cases, and in which Hindu women in general can secure relief without heroic effort.

1.2 Rationale and Research Problem

This thesis addresses a precise and urgent legal problem: Hindu women in Bangladesh remain subject to a personal law regime that is largely uncodified, procedurally fragile, and structurally unequal. The consequences are most acute in five domains that shape life chances and material security over the life course: marriage and its proof, dissolubility and ancillary relief, guardianship

[12] Hindu Marriage Act 1955 (India), ss 5, 7, 9–13, 13B; Hindu Adoptions and Maintenance Act 1956 (India), ss 18–20; Hindu Succession Act 1956 (India), ss 6, 14; Hindu Minority and Guardianship Act 1956 (India), ss 6, 13.

[13] Hindu Marriage Act 1955 (n 12), ss 13, 13B, 24, 25.

[14] Hindu Succession Act 1956 (n 12), s 14; Hindu Succession (Amendment) Act 2005 (India), s 3 (substituting Hindu Succession Act 1956, s 6).

[15] Hindu Minority and Guardianship Act 1956 (n 12), ss 6, 13; *Githa Hariharan* 2 SCC 228, paras 2, 9, 11, 21–22, 24.

[16] Constitution of the People's Republic of Bangladesh 1972 (n 3), arts 27–28.

[17] See Satyajeet A Desai (ed), *Mulla: Hindu Law* (20th edn, LexisNexis 2007) 1–3.

and adoption, maintenance, and succession. The argument advanced is that Bangladesh can and should enact a sequence of reforms that brings Hindu personal law into principled alignment with the Constitutional guarantees of equality and non-discrimination, and with the State's international obligations, while safeguarding minority religious identity through careful legislative design and judicial method. The thesis, therefore, proceeds from a constitutional and human-rights baseline to a doctrinal and comparative analysis, and closes with an implementable reform blueprint.

The constitutional point of departure is straightforward. Articles 27 and 28 of the Constitution of the People's Republic of Bangladesh guarantee equality before the law, equal protection of the law, and freedom from discrimination on grounds including sex, while affirming equal rights for women in all spheres of the State and of public life; Article 31 anchors due process and legal security.[18] These provisions sit uneasily with a Hindu personal law framework that does not presently provide a statutory route to divorce with ancillary relief, that recognises only limited forms of adoption and guardianship authority, and that continues to rely, in succession, on judge-made rules derived from *Dayābhāga*, which historically circumscribed women's proprietary autonomy.[19] A constitutional order that takes equality seriously must require either equality-consistent interpretation of extant rules or legislative renovation where interpretation cannot deliver parity.

International law supplies a complementary benchmark. The Universal Declaration of Human Rights (UDHR) requires equal rights at the inception of marriage, during marriage, and at its dissolution; the International Covenant on Civil and Political Rights (ICCPR) recognises equal enjoyment of rights by men and women and guarantees equality before the law; and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) obliges States to secure equality in marriage and family relations, including the economic consequences of dissolution.[20] The CEDAW Committee's General Recommendations No 21 (marriage and family relations) and No 29 (economic consequences of marriage, family relations and their dissolution) crystallise best-practice standards on status, parental responsibility, and equitable

[18] Constitution of the People's Republic of Bangladesh 1972 (n 3), arts 27–28, 31.

[19] ibid.

[20] Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A (III), art 16; International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, arts 3, 26.

distribution.[21] These instruments are not optional rhetoric. They provide interpretive guidance to courts, legislative yardsticks to Parliament, and practical content to the Constitution's equality clauses.

On the ground, however, the Bangladeshi framework for Hindus remains a patchwork. The Hindu Marriage Registration Act 2012 improves evidentiary security by providing a state register, yet makes registration optional and expressly preserves the validity of unregistered marriages; it does not create a civil capacity regime or an exit framework.[22] Maintenance remains tethered to the Hindu Married Women's Right to Separate Residence and Maintenance Act 1946, a late-colonial statute that permits separate residence on defined grounds but withholds dissolution and any coherent approach to post-separation redistribution.[23] Guardianship disputes are determined under the Guardians and Wards Act 1890 through a welfare standard, but without a gender-equal code that secures co-equal parental authority.[24] In succession, women continue to negotiate claims in the shadow of *Dayābhāga*-derived rules that prioritise agnatic males and historically confined widows to a limited estate, with constrained powers of alienation. These features combine to depress women's bargaining power, increase litigation costs, and render remedies contingent and discretionary.

A close comparative horizon demonstrates that an alternative legislative design is feasible within a cognate legal idiom. In India, the Hindu Marriage Act 1955 created a modern matrimonial code with grounds for divorce, including mutual consent, and structured jurisdiction and procedure;[25] the Hindu Succession Act 1956 converted limited estates into absolute ownership[26] and, through the 2005 amendment, made daughters coparceners by birth with rights and liabilities equal to sons

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[21] Committee on the Elimination of Discrimination against Women, 'General recommendation No 21: Equality in marriage and family relations' (1994) UN Doc A/49/38, paras 7–10, 17–20, 24–25, 29; Committee on the Elimination of Discrimination against Women, 'General recommendation No 29' (n 1) paras 6, 9 (crystallisation and standard-setting; linking GR 21 and GR 29), 10–11, 15, 27 (constitutional/legal status and equality), 1, 4, 44 (parental responsibility; allocation of care/opportunity cost), 45–47, 53 (equitable division; property standards and valuation).

[22] Registration of Hindu Marriage Act 2012 (n 3), s 3.

[23] Hindu Married Women's Right to Separate Residence and Maintenance Act 1946 (Bangladesh), ss 2–3.

[24] See Guardians and Wards Act 1890 (Bangladesh), s 17.

[25] Hindu Marriage Act 1955 (n 12), ss 13 (grounds for divorce), 13B (divorce by mutual consent), 19 (jurisdiction), 21 (application of the Code of Civil Procedure).

[26] Hindu Succession Act 1956 (n 12), s 14(1).

(amended section 6);[27] the Supreme Court confirmed the equal-by-birth construction in *Vineeta Sharma v Rakesh Sharma*; the Hindu Minority and Guardianship Act 1956 and the decision in *Githa Hariharan v Reserve Bank of India* reframed parental authority around the welfare of the child;[28] and the Hindu Adoptions and Maintenance Act 1956 recognised women's independent capacity to adopt and rationalised maintenance.[29] These measures did not diminish religious identity; they constitutionalised equality in family relations and supplied administrable rules.[30]

The thesis neither romanticises transplantation nor understates political economy. Text travels more readily than meaning. Any Bangladeshi reform must be staged and localised: mandatory marriage registration with humane transitional protections; a Hindu divorce statute with due process and ancillary relief; a guardianship and adoption code that centres the child's welfare and co-equal parental authority; and a succession statute that secures daughters' rights by birth and abolishes the widow's limited estate. Each legislative step must be accompanied by administrative capacity-building – registries, forms, training for family-court actors – and by legal-aid guarantees so that formal rights translate into remedies. Where Parliament has not yet acted, courts can deploy equality-consistent interpretation and proportionality analysis to harmonise personal law doctrines with constitutional norms, while respecting reasonable limits of adjudication in the absence of text.

The research problem is therefore twofold. First, it is doctrinal and institutional: how, precisely, do unreformed rules and procedures expose Hindu women to structural disadvantage in Bangladesh, and which reforms would most effectively redress those harms within the constitutional and administrative realities of the country. Secondly, it is comparative and normative: which elements of India's legislative experience are portable, which demand adaptation, and how can Bangladesh justify reform in terms of its own constitutional commitments rather than in borrowed idioms. The thesis claims that a principled, sequenced programme of legislative and judicial measures can deliver equality without eroding minority religious identity.

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[27] Hindu Succession (Amendment) Act 2005 (n 14), s 3 (substituting Hindu Succession Act 1956, s 6); Hindu Succession Act 1956 (n 12), s 6(1)(a)–(c).

[28] Hindu Minority and Guardianship Act 1956 (n 12), s 13; *Githa Hariharan* (n 15) 2 SCC 228, paras 14–15, 20–22, 25.

[29] Hindu Adoptions and Maintenance Act 1956 (n 12), s 8, ss 18–22.

[30] Press Information Bureau, Government of India, 'Hindu Succession (Amendment) Act, 2005 comes into force' (press release, 2005).

That claim will be demonstrated by reconstructing the genealogy of the present law, mapping current Bangladeshi doctrine and process, elaborating the constitutional and international equality yardsticks, distilling lessons from the Indian codes, and proposing context-sensitive legislative texts and adjudicative strategies.

1.3 Bangladesh Context and the Doctrinal Gap

1.3.1 Sources of Hindu Personal Law in Bangladesh, Codified and Uncodified

The contemporary regime governing Hindu personal law in Bangladesh is marked by a shallow degree of codification and a correspondingly deep reliance on uncodified *śāstric* authority, commentarial tradition, and proof of local custom in court.[31] The result is a fragmented field in which validity, status and remedy frequently turn on evidentiary burdens rather than clear legislative rules, a configuration that predictably disadvantages women whose bargaining position is already constrained by social and economic factors.[32] The core statutory interventions, though significant in their symbolic acknowledgement of Hindu family relations within a secular constitutional order, have been narrow in scope and procedurally oriented; they neither constitute a comprehensive code nor settle many of the distributive questions that animate disputes over

[31] Hindu personal law in Bangladesh is characterised by a shallow degree of codification: only a handful of Hindu-specific statutes lightly touch the field, most prominently the Registration of Hindu Marriage Act 2012 (Bangladesh), which strengthens proof through an official register without constituting marriage, and the Hindu Married Women's Right to Separate Residence and Maintenance Act 1946 (n 23), which creates limited grounds for separate residence with maintenance. Almost everything else is worked out through general laws such as the Evidence Act 1872 and the Guardians and Wards Act 1890, read against uncodified *śāstric* materials, the major commentaries *Mitākṣarā* and *Dāyabhāga*, and proof of local custom. In practice this means that marriage validity is proved by showing recognised rites with social recognition, registration operating as corroboration; guardianship disputes are determined within the 1890 framework, classical presumptions yielding to the welfare of the child; succession questions follow *Dāyabhāga* logics about widows' interests and *strīdhana* rather than a Bangladeshi code; and adoption-like placements are pursued through guardianship orders because no codifying Hindu adoption statute exists. Where parties assert a community practice, they must establish an ancient, certain, reasonable and continuously observed custom, failing which courts revert to the textual rule. See Davis and Brick, 'Social and Literary History of *Dharmaśāstra'* (n 7) 30–31.

[32] See Human Rights Watch, *"Will I Get My Dues… Before I Die?" Harm to Women from Bangladesh's Discriminatory Laws on Marriage, Separation, and Divorce* (Human Rights Watch 2012) 2, 20, 45, 51.

marriage, divorce, succession, maintenance and child-rearing.[33] In consequence, the operative "sources" of law consist of a thin statutory rim around an uncodified centre. The rim provides points of entry to state institutions, above all registration and adjudication; the centre, however, continues to be formed by interpretive recourse to classical texts, nineteenth-century Anglo-Hindu synthesis, and proof of custom as a question of fact.[34]

Two statutes illustrate the proceduralised cast of the limited codification in Bangladesh. First, the Hindu Marriage Registration Act, 2012 creates an official register and a cadre of registrars, but stops short of converting registration into a constitutive condition of marital validity. Section 3 allows registration of a Hindu marriage; section 3(2) confirms that failure to register does not, of itself, invalidate a marriage.[35] This design increases the evidentiary security of marital status in formal fora without altering the underlying uncodified rules of formation and capacity, so that questions about the essential validity of a particular union remain governed by *śāstric* understandings as received in Bengal and by local custom, not by a comprehensive statute. Secondly, the Hindu Married Women's Right to Separate Residence and Maintenance Act 1946 provides a cause of action for maintenance in enumerated circumstances, but is otherwise silent on divorce and property consequences.[36] The selective presence of these statutes, taken together with the continued effect in Bangladesh of the nineteenth-century Hindu Widows' Remarriage Act 1856[37] and the Special Marriage Act 1872,[38] underscores the patchwork character of the corpus: widows' remarriage is validated in general terms; civil marriage is available under a special regime

[33] See Registration of Hindu Marriage Act 2012 (n 3), ss 3(1), 5; Human Rights Watch (n 32) 7, 41, 45, 48; Bangladesh Legal Aid and Services Trust (BLAST), *Legislative Initiatives and Reforms in the Family Laws* (BLAST 2010) 4, 5, 11.

[34] See Evidence Act 1872 (n 11), s 13; Derrett (n 8) 45, 52; Gobinda Chandra Mandal, 'Appropriation or Preservation? The Colonial Construction of Hindu Law in Bengal' (2025) 23(1) *Bangladesh Journal of Law* 49, 54-55.

[35] Registration of Hindu Marriage Act 2012 (n 3), ss 3(1), 3(2).

[36] Hindu Married Women's Right to Separate Residence and Maintenance Act 1946 (n 23) (Act XIX of 1946), ss 2-3.

[37] Hindu Widows' Remarriage Act 1856 (Act XV of 1856), ss 1–2.

[38] Special Marriage Act 1872 (Bangladesh) (Act III of 1872), preamble, s 2.

of limited reach; yet there is no Hindu-specific code on divorce, guardianship or succession comparable to India's post-1955 settlement.[39]

Beyond these islands of text, adjudication in Bangladesh necessarily engages with uncodified sources. In disputes involving status or succession, courts continue to receive argument from classical authorities and digest-writers associated with the *Dayābhāga* school, historically predominant in Bengal, and from case-law fashioned under the Indo-British synthesis.[40] Because these materials are not enacted law in the modern sense, their authority in Bangladesh courts is mediated by the Evidence Act, 1872, which treats "facts which establish a right or custom" as relevant, and by the general law of precedent.[41] In practice, counsel frame many questions of personal law as mixed issues of fact and law: what precisely is the relevant custom in a given sub-community; whether there is a settled judicial reception of a particular *śāstric* rule; and how far the rule is displaced by contrary usage. The upshot is doctrinal indeterminacy at the point of application and a premium on proof, documentation and litigation capacity, costs that fall unevenly on women who seek maintenance, custody or a share in property.

The doctrinal consequences are most visible in the core personal law areas. In marriage, the 2012 Act facilitates proof through registration but does not codify essential validity, prohibited degrees or consent rules; where status is contested, parties must persuade the court of the content of the relevant Hindu law as understood in Bangladesh.[42] In divorce, there is no Hindu divorce statute in force; outside the Special Marriage Act, 1872 framework, Hindu spouses face significant legal obstacles to dissolving a marriage and securing post-dissolution remedies, a difficulty repeatedly highlighted by rights organisations.[43] In inheritance, the absence of a modern succession statute

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[39] For India's post-1955 codification, cf Hindu Marriage Act 1955 (n 12), s 13; Hindu Succession Act 1956 (n 12), s 6 (as amended 2005); Hindu Adoptions and Maintenance Act 1956 (n 12), s 18; Hindu Minority and Guardianship Act 1956 (n 12), s 6.

[40] Derrett (n 8) 10, 10–14; Nathaniel Brassey Halhed, *A Code of Gentoo Laws; or, Ordinations of the Pundits* (London 1776) Preface; Ludo Rocher (ed and tr), *Jīmūtavāhana's Dayabhāga: The Hindu Law of Inheritance in Bengal* (Oxford University Press 2002) 3–4, 10, 21; Mandal, 'Appropriation or Preservation?' (n 34) 49, 54-56; *Jatindramohun Tagore v Ganendramohun Tagore* (1872) 9 BLR 377 (PC).

[41] Evidence Act 1872 (n 11), s 13.

[42] Registration of Hindu Marriage Act 2012 (n 3), ss 3, 5.

[43] Hindu women trapped in unhappy marriages in Bangladesh face a structurally distinct crisis. There is no Hindu divorce statute in force; under prevailing śāstric rules, a Hindu wife has no right to seek dissolution and must instead rely on a decree for separate residence and maintenance under the 1946 Act, which neither dissolves the marriage nor

leaves the Bengal *Dayābhāga* tradition to do most of the work; any incremental judicial adjustment occurs case by case, with women's entitlements shaped by a combination of classical categories and the contingencies of proof.[44] In maintenance, the 1946 Act provides a cause of action but requires litigation to establish eligibility and quantum, with no statutory guidelines on distributional benchmarks or enforcement architecture; this increases variability and delays.[45] In guardianship, the Guardians and Wards Act, 1890 supplies the forum and the welfare standard, but is not a Hindu-specific code; in the continuing absence of a national adoption statute, courts rely on guardianship rather than adoption to regularise care arrangements, a substitution that has well-known limits for status and inheritance.[46]

These structural features then interact with institutions. Family Courts have jurisdiction over suits for maintenance and custody involving Hindu parties,[47] and have been used to give practical effect to the 1946 Act;[48] yet they still work within a mixed personal law environment that lacks codified Hindu benchmarks.[49] Registration officers can certify marriages,[50] but their function is

coherently redistributes assets. The Special Marriage Act 1872 offers only a narrow, socially costly detour: while marriages contracted under it are dissoluble under the Divorce Act 1869, the statute has historically been rarely used because, in practice, couples have been required to renounce their religion and, crucially, civil marriage under the Act severs a Hindu from the undivided family and subjects succession to the general law. See Human Rights Watch (n 32) 7, 40–41, 49; cf Special Marriage Act 1872 (n 38).

[44] Under contemporary Bangladeshi Hindu law, intestate succession is governed principally by the Bengal *Dāyabhāga* tradition. The scheme privileges agnatic males and treats women's claims through historically contingent categories such as the widow's limited estate and restricted forms of *strīdhana*. Because rights crystallise on death rather than by birth in a coparcenary, shares are determined heir by heir, yet the widow's title is typically life-limited with constrained powers of alienation. Daughters and other female kin may succeed, but often in narrower circumstances and in a ranked order that yields to male relatives. In practice, outcomes turn on proof of textual authority, local usage and the character of the property, which places heavy evidential burdens on women.

[45] Hindu Married Women's Right to Separate Residence and Maintenance Act 1946 (n 23), ss 2–3.

[46] Guardians and Wards Act 1890 (n 24), s 17.

[47] Family Courts Act 2023 (Bangladesh) (Act No 26 of 2023), s 5; Zahidul Islam, *Strengthening Family Courts: An Analysis of the Confusions and Uncertainties Thwarting the Family Courts in Bangladesh* (Bangladesh Legal Aid and Services Trust 2007) 8–9.

[48] Hindu Married Women's Right to Separate Residence and Maintenance Act 1946 (n 23), s 2; Islam (n 47) 8–9.

[49] Registration of Hindu Marriage Act 2012 (n 3) (Act No 40 of 2012), s 3(2).

[50] Registration of Hindu Marriage Act 2012 (n 3), ss 4, 12.

documentary rather than normative; they do not screen for substantive validity or equal capacity.[51] Civil judges, for their part, must decide questions of uncodified law with reference to expert materials,[52] often with uneven access to reliable editions and translations of classical sources. The cumulative effect is to shift a significant part of the law-making burden onto litigants, lawyers and first-instance judges, with all the distributional and access-to-justice consequences that follow.[53]

One might defend this arrangement as consistent with religious autonomy, legal pluralism and incremental development through adjudication. That view underestimates the gendered effects of uncertainty and delay. Where the primary rule is "prove your right" rather than "the statute confers a right", those with weaker informational and financial resources predictably fare worse. The Bangladesh Law Commission has, on more than one occasion, recognised the need to modernise personal laws and to furnish citizens with clear, accessible rules; yet comprehensive legislative reform of Hindu family law has not followed.[54] In the interim, civil-society reporting continues to document the costs of the status quo for women seeking separation, support or recognition.[55]

1.3.2 Five Pressure Points: Marriage, Divorce, Inheritance, Maintenance, and Guardianship

This section identifies five doctrinal "pressure points" in the current Bangladeshi Hindu personal law regime that most systematically affect women's equality and legal security. It maps the operative rules, fora, and known procedural effects for each domain, flags the normative tensions

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[51] Registration of Hindu Marriage Act 2012 (n 3), s 3(1)-(2); Plan International Australia, *Marriage Registration in Bangladesh: Final Report* (Plan International Australia 2022) 45.

[52] Evidence Act 1872 (n 11), s 45, s 48.

[53] United Nations Development Programme and Ministry of Law, Justice and Parliamentary Affairs, *Access to Justice in Bangladesh: Situation Analysis—Summary Report* (2015) 7, 20; Bangladesh Legal Aid and Services Trust (BLAST), *Access to Justice for Women: Women's Economic Rights After Separation or Divorce* (Policy Brief, 2018) 1, 3–4.

[54] Law Commission (Bangladesh), *Report on a Reference by the Government Towards the Possibility of Framing out of a Uniform Family Code for all Communities of Bangladesh relating to Marriage, Divorce, Guardianship, Inheritance etc* (Report No 69, 2005) https://www.commonlii.org/bd/other/BDLC/report/R69/69.pdf accessed 13 September 2025.

[55] Human Rights Watch (n 32) 2–3, 15, 49, 61.

with constitutional equality and international obligations of Bangladesh, and isolates the concrete gaps that the thesis addresses through comparative analysis and reform design.

A. Marriage and Registration

In Bangladesh, there is, as yet, no codifying Hindu marriage statute setting out capacity, prohibited degrees, consent, ceremonial essentials, void and voidable marriages, or matrimonial reliefs. The only dedicated enactment is the Hindu Marriage Registration Act 2012, which establishes an administrative machinery for registration and recognises Hindu marriage registrars, but makes registration optional rather than constitutive. Section 3 empowers the Government to appoint registrars, while the registration itself is not mandated as a condition of validity; failure to register does not ipso facto invalidate the marriage, nor does the statute itself confer ancillary matrimonial remedies for non-registration.[56] The optional character of registration bears directly on proof, age verification, and the production of civil-status records for access to social protection. It also undermines the administrability of later disputes, including maintenance and custody, because women often enter litigation without documentary proof of a subsisting marriage.[57] The constitutional commitment to equality before the law and equal protection of the law in Articles 27 and 31, together with the prohibition of discrimination on grounds including sex in Article 28 frame a strong case for aligning the evidentiary infrastructure of Hindu marriages with that available to other communities through mandatory civil registration.[58] Internationally, CEDAW Article 16 contemplates equality in entering marriage and during marriage, which presupposes

[56] Registration of Hindu Marriage Act 2012 (n 3), s 3; see also Joydeep Chowdhury, 'Why legal marriage registration matters for Hindus in Bangladesh' *The Daily Observer* (Dhaka, 23 April 2025) https://www.observerbd.com/news/522230 accessed 15 November 2025; Human Rights Watch (n 32) 7, 41, 45, 48.

[57] Because the Registration of Hindu Marriage Act 2012 (Bangladesh) makes registration facilitative rather than constitutive - s 3(2) providing that 'the validity of any Hindu marriage … shall not be affected by the fact that it is not registered under this Act'—there is often no contemporaneous civil record tying spouses' identities and ages to a definite date of marriage; this, in turn, complicates proof of marital status, frustrates robust age verification at the point of union, and leaves many claimants without the documentary infrastructure routinely demanded for access to social-protection schemes (for example, widow's benefits, guardianship orders or identity corrections), so that disputes about maintenance or custody devolve into costly evidentiary contests rather than being resolved against a clear administrative record.

[58] Constitution of the People's Republic of Bangladesh 1972 (n 3), arts 27, 28, 31.

reliable civil documentation; the ratification of Bangladesh brings a duty to remove structural obstacles to such equality.[59]

The 2012 framework also leaves unresolved the minimum age question within Hindu personal law. While the Child Marriage Restraint Act, 2017 criminalises child marriage and provides preventive powers,[60] it does not, of itself, create a Hindu-personal law rule of invalidity or voidability tied to age; the interface between penal restraint and civil status thus remains under-specified for Hindus compared with codified communities.[61] In practice, magistrates and family courts must rely on the general law of evidence and administrative registers to determine age.[62] Optional registration compounds this, creating a downstream proof deficit when contested.[63]

B. Divorce and Separation

The most acute gender-impacting lacuna is the absence of a Hindu divorce statute in Bangladesh. Unlike India, which introduced a complete matrimonial causes code for Hindus in the Hindu Marriage Act 1955, Bangladesh retains a non-codified field in which Hindu marriages are, by default, indissoluble under classical law, save for sparse recourse to civil marriage under the Special Marriage Act 1872*,* where parties place themselves outside personal law.[64] The 2012 Act does not create a ground or forum for divorce. For many Hindu women, the only realistic route lies in suits for separate residence and maintenance, not marital dissolution.

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[59] Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13, art 16(1)(a)–(c).

[60] Child Marriage Restraint Act 2017 (Bangladesh) (Act No VI of 2017), ss 4–5, 7–9.

[61] ibid., s 19.

[62] ibid., s 12; Evidence Act 1872 (n 11), s 35, ss 74, 79.

[63] Registration of Hindu Marriage Act 2012 (n 3), s 3(2); Plan International Australia (n 51) 11, 43.

[64] Electing a civil marriage under the Special Marriage Act 1872 (Bangladesh) is, by design, a decision to step outside the denominational regime: s 2 channels eligibility into a civil form rather than a religious one, and marriages celebrated under the Act carry consequences that detach them from personal law—dissolution and nullity proceed under the Divorce Act 1869 (s 17), Hindu coparcenary is severed (s 22), and succession follows the Indian Succession Act rather than Hindu inheritance rules (s 24); in short, it is only by 'placing themselves outside personal law' that Hindu spouses in Bangladesh gain access to a full matrimonial-causes framework with divorce and allied civil incidents.

Two additional regimes partly mitigate but do not cure this gap. First, the Hindu Married Women's Right to Separate Residence and Maintenance Act, 1946 permits a Hindu wife to live apart and claim maintenance upon specified matrimonial wrongs, including cruelty and neglect; however, it does not dissolve the marriage and historically conceived a limited remedial horizon.[65] Secondly, the Family Courts Act, 2023 establishes specialist civil courts with exclusive jurisdiction over, inter alia, "dissolution of marriage" and "maintenance", and applies to "all citizens irrespective of religion" as a matter of forum.[66] The High Court has affirmed that Hindu litigants may sue for maintenance in the Family Court and that, save for pending proceedings, the Family Court's jurisdiction has displaced recourse to criminal maintenance under section 488 of the Code of Criminal Procedure 1898 (now omitted).[67] Yet the Family Court cannot invent substantive divorce grounds for Hindus absent a governing personal law or civil statute; it is a procedural forum, not a substantive Hindu matrimonial code. Hence, the structural inequality remains: Hindu women lack a statutory right to divorce on gender-neutral grounds comparable to those in codified systems.[68] This is difficult to reconcile with constitutional equal protection[69] and with CEDAW Article 16(1)(c), which recognises equal rights and responsibilities during marriage and at its dissolution.[70]

C. Inheritance and Succession

Succession for Bangladeshi Hindus is governed not by a modern codifying statute but by the classical *Dayābhāga* school as received through judicial precedent and practice, together with certain late-colonial partial enactments.[71] The key statutory intervention relevant to widows is the

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[65] Hindu Married Women's Right to Separate Residence and Maintenance Act 1946 (n 23), s 2.

[66] Family Courts Act 2023 (n 47), ss 3–5.

[67] *Pochon Rikssi Das v Khuku Rani Dasi* (1998) 50 DLR (AD) 47 (holding that the Family Courts Ordinance applies irrespective of religion and that, save for pending proceedings, criminal maintenance is ousted); it is to be noted that s 488 along with ss 489 and 490 were omitted by s 86 of the Code of Criminal Procedure (Amendment) Act 2009 (Act No XXXII of 2009) (with effect from 1 November 2007).

[68] Human Rights Watch (n 32) 7, 42, 77.

[69] Constitution of the People's Republic of Bangladesh 1972 (n 3), arts 27, 28(1)-(2).

[70] CEDAW (n 59) art 16(1)(c).

[71] The late-colonial partial enactments denote a suite of narrowly targeted statutes that adjusted, without codifying, the Hindu law of succession—most notably the Hindu Law of Inheritance (Amendment) Act 1929, the Hindu Gains

Hindu Women's Rights to Property Act 1937, section 3 of which, in cases of intestate succession, gives the widow the same share as a son but as a "limited owner" with the incidents of a traditional Hindu woman's estate.[72] Unlike India, where section 14 of the Hindu Succession Act 1956 converted a woman's limited estate into full ownership, Bangladesh has enacted no cognate provision; the doctrinal default therefore remains a limited estate unless and until judicially reconceived.[73] The intestate rights of Daughters under *Dayābhāga* are more generous than under *Mitākṣarā* in some collaterals, yet the absence of a statute guaranteeing parity with sons in coparcenary or ancestral property, and the continued salience of male-line preferences, produce tangible distributive deficits for women.[74]

Two additional features amplify inequality. First, because the coparcenary as conceived in *Dayābhāga* is not identical to *Mitākṣarā'*s joint family with survivorship, and because there is no Bangladeshi codification to define daughters as coparceners, the transformative effect of the 2005 reform in India has no counterpart in Bangladesh.[75] Secondly, the proof and administration of succession in rural contexts persistently rely on revenue records and local mediation; without statutory rules of representation and clear duties on heirs and administrators, widows and daughters face practical exclusion even from those shares classical law recognises. While there are reports

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of Learning Act 1930, the Hindu Widows' Remarriage Act 1856 and the Hindu Women's Rights to Property Act 1937 together with provincial extensions to agricultural land. Each addressed a discrete mischief; none supplied a comprehensive code. Their cumulative effect was incremental: they superimposed specific rules upon the *Dāyabhāga* framework that continues to structure Bangladeshi Hindu succession in the absence of modern codification.

[72] Hindu Women's Rights to Property Act 1937 (Act XVIII of 1937), s 3(2).

[73] By contrast with s 14 of the Hindu Succession Act 1956, which transformed a woman's 'limited estate' into absolute ownership in India, Bangladesh has enacted no cognate provision. The default position under *Dāyabhāga*, read with the Hindu Women's Rights to Property Act 1937 (n 72), therefore remains a limited woman's estate, constraining inter vivos alienation and testamentary disposition and often reverting the property on her death. Any move from limited to absolute ownership must come, if at all, through doctrinal reconstruction by the courts on first principles or, more securely, through legislative reform.

[74] Within the *Dāyabhāga* framework applied in Bangladesh, the sequence on the death of a man without male issue places the widow first, then daughters, then the sons of daughters, before the father, mother, brothers and the sons of brothers; Jīmūtavāhana arranges this explicitly in Chapter Eleven and opens Section Two with the proposition that, failing the widow, daughters take the estate, while the placement of the sons of daughters is treated as a distinct heir group within the same section. This ordering gives daughters a comparatively stronger position in certain collateral lines than under *Mitākṣarā*, yet the limited estate of the widow remains the doctrinal norm and agnatic preferences reassert themselves at later removes, which together help to explain continuing distributive shortfalls for women in the absence of modern statutory parity.

[75] Hindu Succession (Amendment) Act 2005 (n 14), s 6.

of recent High Court interventions construing widows' interests in more capacious terms, it does not yet establish an authoritative doctrinal overhaul, and the precise ratio.[76]

D. Maintenance

Maintenance functions in Bangladesh as both a personal law entitlement and a general family law remedy. For Hindus, the 1946 Act explicitly furnishes grounds for separate residence and maintenance where the husband has committed specified matrimonial wrongs or has other wives living.[77] The Family Courts Act creates a civil forum with exclusive jurisdiction over maintenance suits, a point the High Court affirmed in litigation involving Hindu parties.[78] This institutional move matters. Proceedings are civil, the standard of proof is the preponderance of probabilities, and decrees can be executed against property, which gives successful claimants a path to real enforcement. Moreover, Family Court rules permit interim maintenance, which can be crucial for women's subsistence pending trial.

Yet the doctrinal content of the Hindu wife's entitlement is still anchored in non-codified personal law and a 1946 statutory text drafted in a different social economy. There is no Bangladeshi analogue to the Hindu Adoptions and Maintenance Act 1956 in India, which articulates the husband's duty of maintenance as a legal obligation with defined factors and the wife's independent claim in certain circumstances. In practice, the lacuna produces unevenness in quantum, duration, and enforcement. It also fosters forum-shopping and fragmented jurisprudence between declaratory civil suits, Family Court proceedings, and revenue-office mediated settlements. Finally, the absence of mandatory marriage registration hampers proof of marital status, which is a threshold determination in many maintenance suits.[79]

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[76] 'Hindu widows have right to husbands' agricultural, nonagricultural land: HC' *The Daily Star* (Dhaka, 2 September 2020) https://www.thedailystar.net/country/news/hindu-widows-have-right-husbands-agricultural-nonagricultural-land-hc-1954809 accessed 24 October 2025; 'Hindu widow has rights to all property of husband: High Court' *The Business Standard* (Dhaka, 12 October 2021) https://www.tbsnews.net/bangladesh/court/hindu-widows-have-rights-all-property-husband-high-court-315049 accessed 24 October 2025.

[77] Hindu Married Women's Right to Separate Residence and Maintenance Act 1946 (n 23), s 2(4).

[78] *Pochon Rikssi Das* (n 67); *Nirmal Kanti Das v Sreemati Biva Rani* (1995) 47 DLR (HCD) 514.

[79] Registration of Hindu Marriage Act 2012 (n 3), s 8.

The interface with criminal law deserves emphasis. Historically, section 488 of the Code of Criminal Procedure 1898 (now omitted) allowed summary criminal maintenance orders; however, Bangladeshi courts have held that, with the advent of the Family Courts, civil jurisdiction over maintenance is exclusive, save for pending matters at the time of transition.[80] Clarifying Family Court primacy prevents duplicative proceedings, but it also carries a corollary. Women must have practical access to Family Courts, which requires affordable filing and effective legal aid. The Legal Aid Services Act, 2000 and institutional schemes exist, but targeted provision for Hindu women navigating personal law disputes remains under-documented.

E. Guardianship and Custody

Guardianship over Hindu minors in Bangladesh is governed primarily by the Guardians and Wards Act 1890, a religion-neutral statute that vests jurisdiction in the District Court and directs the welfare of the minor as the "paramount consideration" when appointing or declaring a guardian.[81] Section 7 empowers the court to make orders where it is satisfied that it is for the welfare of the minor, and section 17 mandates consideration of age, sex, the character and capacity of the proposed guardian, and the minor's preference.[82] The Family Courts Act 2023 confers jurisdiction on Family Courts in guardianship and custody suits, creating a specialised forum for first-instance determinations, with appeals lying to the District Judge.[83]

The pressure point here is twofold. First, Bangladesh has not enacted a Hindu-specific guardianship code comparable to the Hindu Minority and Guardianship Act 1956 in India, which, although criticised, explicitly recognises the mother's guardianship in certain circumstances and brought the guardianship discourse within a codified Hindu family law architecture. In Bangladesh, the default assumption that the father is the "natural guardian" in classical law lingers in pleadings and settlements, even though the Guardians and Wards Act 1890 is formally religion-neutral and welfare-centred. Secondly, because the 2012 Hindu marriage registration is optional,

[80] *Pochon Rikssi Das* (n 67); Zahid Biswas, 'Overriding jurisdiction of the Family Courts' *The Daily Star* (Dhaka, 10 February 2007) https://www.thedailystar.net/law/2007/02/02/analysis.htm accessed 15 November 2025.

[81] See Guardians and Wards Act 1890 (n 24), s 7.

[82] ibid., s 17.

[83] Family Courts Act 2023 (n 47), s 5(e).

documentary proof of filiation and the timing of marriage can become contested in custody litigation, complicating the welfare assessment and prolonging interim arrangements. The constitutional equality norm in Articles 27–29 and the best-interests principle reflected in Article 3(1) of the Convention on the Rights of the Child call for interpretive and, ultimately, legislative clarification that places mothers and fathers on equal juridical footing as guardians, subject only to the child's welfare.[84]

The five pressure points interact. Optional registration at entry into marriage produces evidentiary deficits in maintenance and guardianship; the absence of divorce grounds channels women into separation without exit; the lack of codified intestate succession rules perpetuates *Dayābhāga* defaults that, without a modern equality audit, can disadvantage widows and daughters; and the procedural consolidation in Family Courts is not matched by substantive Hindu-personal law reform. The result is a structural misalignment: a modern constitutional order with strong equality clauses and international commitments, operating alongside an uncodified Hindu personal law field largely dependent on classical authorities and late-colonial enactments. This thesis treats that misalignment as the central doctrinal gap.

1.3.3 Limits of Judicial Development Without Legislation

Courts in Bangladesh operate within a constitutional settlement that accords legislative primacy to Parliament, while entrusting the superior judiciary with powers of judicial review and the protection of fundamental rights. The legislative power of the Republic is vested in Parliament and is to be exercised in accordance with the Constitution; the High Court Division may examine executive and legislative action for legality, yet it does not possess a free-standing power to create new causes of action or to extend the subject-matter jurisdiction of statutory courts.[85] The point matters acutely in the personal law field. Family relations for Hindus are only partially codified; the institutions that adjudicate such disputes are creatures of statute; and the legal consequences that follow from marriage, separation, guardianship, adoption, or succession depend on positive

[84] Constitution of the People's Republic of Bangladesh 1972 (n 3), arts 27–29; Convention on the Rights of the Child (CRC) (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3, art 3(1).

[85] See Constitution of the People's Republic of Bangladesh 1972 (n 3), arts 7(1), 65(1), 102, 44.

law, not on judicial preference for desirable policy. Any account of reform must therefore begin with a candid audit of what judges can and cannot do without legislation.

The Family Courts Act 2023 is the principal forum statute for many intra-family disputes, but its jurisdiction is limited to heads of claim specified in section 5. These are dissolution of marriage, restitution of conjugal rights, dower, maintenance, and guardianship or custody of children.[86] For Hindus, the first head is functionally inert because there is no Bangladeshi statute creating grounds on which a Hindu marriage may be dissolved; the Family Court cannot manufacture them.[87] Attempts to fit Hindu divorce within the "dissolution" head by analogy to the Muslim law of ṭalāq or the Divorce Act 1869 would exceed the statutory mandate and risk incoherence.[88] The court's powers of decree are parasitic on the existence of a substantive entitlement; where the legal order does not recognise a right to dissolve a Hindu marriage, a decree cannot be granted by judicial innovation alone.[89] The remedial architecture of the Act reinforces the same conclusion: a Family Court may grant maintenance or guardianship orders to a Hindu litigant because statutory hooks exist, but it may not decree a nullity or divorce without an enabling rule.[90] Bangladeshi judges have used procedural and case-management tools imaginatively to reduce delay, yet the structural gap remains one of legislative design rather than adjudicative technique.

The most developed Hindu-specific entitlement in Bangladesh remains the right of a Hindu married woman to separate residence and maintenance under the Hindu Married Women's Right

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[86] Family Courts Act 2023 (n 47), s 5.

[87] cf Hindu Marriage Act 1955 (n 12), ss 13–13B; there is no Bangladeshi analogue creating divorce grounds for Hindus.

[88] Any move to shoehorn Hindu divorce into the Family Courts Act 2023 (n 47) under the head of 'dissolution' misconceives the statute: s 5 allocates forum over pre-existing causes of action (dissolution, restitution, dower, maintenance, guardianship/custody) but does not create substantive grounds, and in Bangladesh no Hindu-law enactment supplies grounds of divorce to which that head could attach. To import Muslim doctrines would be confessional overreach: the Dissolution of Muslim Marriages Act 1939 and the Muslim Marriages and Divorces (Registration) Act 1974 are expressly Muslim-specific and regulate dissolution within that personal law, not beyond it. Nor can the Divorce Act 1869 assist, since its very preamble confines the regime to 'persons professing the Christian religion'. By contrast, the Registration of Hindu Marriage Act 2012 (Bangladesh) merely facilitates (optional) registration and leaves the substantive incidents of Hindu marriage untouched. Reading 'dissolution' as a warrant to manufacture Hindu divorce by analogy would therefore exceed the statutory mandate and produce doctrinal incoherence across confessional codes.

[89] See Family Courts Act 2023 (n 47), ss 10–16.

[90] ibid., s 5(b)–(e).

to Separate Residence and Maintenance Act 1946. Section 2 enumerates grounds such as cruelty, leprosy, concubinage, and conversion that permit a wife to live apart and claim maintenance while the marital bond subsists.[91] Courts may interpret those grounds in a rights-compatible manner and adjust quantum using general principles, but they cannot, in the guise of interpretation, convert a maintenance-while-married regime into a de facto divorce jurisdiction. To do so would defy the text and purpose of the 1946 Act and collide with the exhaustive list of Family Court heads set out in the 2023 Act.[92]

Guardianship and custody illustrate a different contour of judicial capacity. The Guardians and Wards Act 1890 applies irrespective of personal law and instructs the court to be guided by the welfare of the minor.[93] Section 17 frames welfare as the paramount consideration in selecting a guardian and in regulating custody, taking into account age, sex, character, and the capacity of the existing or proposed guardian.[94] This statutory welfare standard furnishes a doctrinal platform for incremental, equality-attentive adjudication, for example, by giving weight to a mother's caregiving role[95] or by discounting unsupported claims to an automatic paternal preference.[96] Within this framework, judges have room to refine evidentiary burdens, to displace stereotypes, and to order structured contact.[97] What they cannot do is declare, absent legislation, that mothers are natural guardians on a par with fathers for Hindu children, or that adoption will be recognised as an institution within Hindu law; both moves would require Parliament to enact a general guardianship code and a civil adoption statute.[98]

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[91] Hindu Married Women's Right to Separate Residence and Maintenance Act 1946 (n 23), s 2.

[92] ibid s 2; Family Courts Act 2023 (n 47), s 5.

[93] See Guardians and Wards Act 1890 (n 24), ss 1(2), 6, 17(1).

[94] ibid s 17(2)-(3); *Md Abu Baker Siddique v S M A Bakar* [1986] 38 DLR (AD) 106; cf Taslima Yasmin, *Reconciling "Best Interests of the Child" with the Traditional Muslim Law Rules on Child Custody: Trends in the Judicial Decisions of Bangladesh* (PhD thesis, Brunel University London 2023) 184, 188–89.

[95] Yasmin (n 94) 1, 70–71.

[96] Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ), *In Search of Justice: Women's Access to Justice in Bangladesh* (2022) 149–50.

[97] Yasmin (n 94) 125, 140–41, 184.

[98] See Guardians and Wards Act 1890 (n 24), s 19(b).

Registration is another site where legislative design shapes and limits adjudication. The Hindu Marriage Registration Act 2012 permits the registration of a Hindu marriage, establishes a registrar system, and provides for certificates, but it does not convert registration into a condition of validity.[99] In cases concerning the proof of marriage, age, or consent, judges can draw evidential inferences from a registration certificate[100] or its absence;[101] they cannot, however, treat non-registration as invalidating a marriage that is substantively valid under the applicable personal law norms.[102] If the policy objective is to secure documentary certainty for women, especially for access to maintenance and inheritance, the appropriate instrument is legislative amendment,[103] making registration compulsory with transitional protection, not judicial rule-making that would unsettle settled marriages.[104]

The constitutional jurisdiction of the High Court Division under Article 102 remains an indispensable safeguard where state action or secondary legislation infringes Articles 27, 28, 29 or 31;[105] in suitable cases, it can be invoked to strike down executive practices that discriminate against Hindu women or impede access to courts. Yet even here, the separation of powers places limits on remedial ambition: the court may invalidate discriminatory rules or require the administration to exercise an existing discretion lawfully; it may not, consistently with Article 65(1), write a new personal law code into existence.[106] The Appellate Division has repeatedly

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[99] Registration of Hindu Marriage Act 2012 (n 3), ss 3(1), 3(2), 4, 12.

[100] Evidence Act 1872 (n 11), ss 35, 79; Registration of Hindu Marriage Act 2012 (n 3), s 12.

[101] Evidence Act 1872 (n 11), s 114.

[102] Registration of Hindu Marriage Act 2012 (n 3), s 3(2).

[103] See Constitution of the People's Republic of Bangladesh 1972 (n 3), arts 65(1), 80(1).

[104] See Registration of Hindu Marriage Act 2012 (n 3), ss 3–8; *Seema v Ashwani Kumar* (2006) 2 SCC 578, para 18.

[105] Article 102 of the Constitution equips the High Court Division with a suite of supervisory and remedial powers that operate as a constitutional backstop whenever executive action or subordinate legislation collides with the guarantees in arts 27, 28, 29 and 31. By certiorari and prohibition, the court can quash ultra vires or arbitrary rules, circulars and practices; by mandamus and declaratory relief, it can compel public authorities to exercise conferred powers lawfully, to remove discriminatory barriers, and to give effect to equality and protection-of-law norms. The jurisdiction is sufficiently flexible to admit representative and public-interest claims in appropriate cases, enabling judicial scrutiny of systemic discrimination that would otherwise evade individual litigation. Interim and final orders provide prompt protection and authoritative guidance to the administration, ensuring that decision-making aligns with constitutional standards.

[106] The High Court Division's writ jurisdiction empowers it to annul discriminatory rules and circulars, and to compel public authorities to exercise any conferred discretion in a manner that is lawful, rational and consistent with

underscored that while judicial review polices constitutionality, the creation of new rights and obligations of general application is a legislative function.[107] It follows that strategic public interest litigation can and should be used to remove unconstitutional barriers, to compel the implementation of existing statutes, and to secure equality-sensitive interpretations; but it cannot supply the comprehensive codification that Hindu women require in order to dissolve marriage, to adopt, or to inherit on equal terms.[108]

Comparative experience from India demonstrates both the reach and the limits of judicial development when a legislative platform is present. The decision of the Supreme Court of India in *Vineeta Sharma v Rakesh Sharma* held that daughters are coparceners by birth under section 6 of the Hindu Succession Act 1956 as amended in 2005, clarifying that the father's death prior to the amendment is immaterial.[109] That conclusion rested on statutory text and purpose; the court supplied doctrinal clarification and remedial guidance, not a free-standing code. The implication for Bangladesh is clear. Where Parliament enacts a guardianship or succession statute, courts can ensure that its equality-promoting purposes are not frustrated by path-dependent readings. Where Parliament remains silent, courts are confined to the edges: they may harmonise within and across statutes, they may prefer constructions compatible with Articles 27 and 31, and they may strengthen procedure and evidence; they may not legislate.[110]

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constitutional guarantees. That authority flows from art 102 and is remedial, not legislative: the court may quash, declare and direct, including by requiring the administration to reconsider decisions or to act within the four corners of an existing statute or rule. Article 65(1) vests the legislative power of the Republic in Parliament, which means the creation of new, generally applicable rights and duties—such as a comprehensive personal-law code—lies beyond judicial competence. The court may therefore interpret existing law in an equality-sensitive way and remove unconstitutional barriers to its operation, but it cannot supply an entirely new normative scheme.

[107] See generally *Kudrat-e-Elahi Panir v Bangladesh* 44 DLR (AD) 319, 337–38; *Secretary, Ministry of Finance v Masdar Hossain* 52 DLR (AD) 82, 94–95.

[108] ibid.

[109] *Vineeta Sharma v Rakesh Sharma* (2020) 9 SCC 1 [137].

[110] ibid.

1.4 Research Questions

In this research, the central question revolves around how gender inequality can be eliminated from Hindu personal law in Bangladesh. This overarching inquiry is pursued through four subsidiary research questions:

i. Is Hindu personal law, in its design or operation, inherently gender biased?

ii. To what extent is Hindu personal law in Bangladesh compatible with international legal standards on equality and non-discrimination?

iii. How, and subject to what limits, can insights from Indian reforms of Hindu law inform the Bangladeshi context?

iv. What legislative, judicial, and administrative measures would best align Hindu personal law in Bangladesh with the requirements of gender equality?

1.5 Objectives of the Research

This thesis offers a critical evaluation of the legal and social dimensions of Hindu women's right to equality in Bangladesh. It interrogates the structural barriers embedded in Hindu personal laws, situating the analysis within constitutional guarantees and international human rights standards, and identifies practicable avenues for advancing gender justice.

Specific objectives are as follows:

i. To analyse the historical development and the current configuration of Hindu personal laws in Bangladesh.

ii. To examine the contemporary legal and social challenges faced by Hindu women in Bangladesh.

iii. To assess the constitutional and international obligations of Bangladesh concerning gender equality.

iv. To consider the relevance and practical applicability of Indian reforms of Hindu law to the Bangladeshi context.

v. To propose legal and policy reforms capable of advancing gender justice for Hindu women in Bangladesh.

1.6 Significance and Contribution

The thesis addresses a marked lacuna in Bangladeshi legal scholarship by centring Hindu women's rights within a doctrinally and institutionally sensitive field that has long been treated as peripheral. Its focus is the interface between religiously grounded family law and the constitutional commitment to equality. The analysis traces how rules derived from sacred texts, customary practice, and judicial gloss have produced a fragmented and often opaque regulatory landscape for marriage, guardianship, succession, adoption, and maintenance. It scrutinises the ways in which these rules entrench gendered dependency in the private sphere, and it interrogates the institutional choices that have preserved this settlement. The research situates family law not as a cultural enclave but as a site of public law accountability. Accordingly, the contributions now proceed across three linked registers: Bangladeshi doctrine and policy design, disciplined comparison, and a feminist analytical method, ensuring a progression from diagnosis to design and from principle to practice.

1.6.1 Contribution to Bangladeshi Doctrine and Policy Design

This thesis advances a structured programme for reforming Hindu personal law in Bangladesh, integrating doctrinal clarification with legislative drafting and institutional design. Its first contribution is diagnostic: it identifies the specific gaps created by a largely uncodified regime, including the permissive approach to marriage registration, the absence of a statutory divorce framework with ancillary relief, limited recognition of maternal authority in guardianship, and unequal proprietary outcomes in succession. These features are not discrete anomalies; they operate together to produce precarious legal personhood for Hindu women in matters of status, care, and property. The thesis, therefore, assembles a rule-by-rule account of how these gaps arise in Bangladeshi law and practice, and how they frustrate equality commitments under the Constitution.

The second contribution is prescriptive. Building on the diagnostic map, the thesis formulates legislative blueprints that are institutionally workable in Bangladesh. These include: moving from

optional to mandatory registration of Hindu marriages, with humane transitional arrangements and low-friction procedures; enacting a Hindu marriage statute that defines capacity, formalities, grounds and procedures for dissolution, and predictable ancillary relief; adopting a guardianship and adoption code that recognises mothers as equal legal parents and permits women to adopt in their own right; and crafting a Hindu succession statute that secures equal proprietary capacity for women while preserving narrow, justified exceptions that respect legitimate family expectations. The proposals are sequenced to reflect political economy, administrative capacity, and minority protection.

The third contribution is institutional. The thesis specifies the enabling machinery required to make reform effective: jurisdictionally clear and resourced family courts, accessible legal aid targeted to women's needs, and administrative protocols for registration and record-keeping that reduce transaction costs for vulnerable claimants. It treats legislative text and institutional architecture as a single design problem. The resulting programme links constitutional equality, statutory drafting, and implementation logistics in a manner intended to be legislatively actionable and judicially intelligible.

1.6.2 Comparative Contribution to Hindu Law Across the Subcontinent

Comparatively, the thesis offers a disciplined account of what Indian codification achieved, how courts consolidated those gains, and which elements are portable to Bangladesh. It does not present the post-1955 Indian framework as a model to be reproduced mechanically. Rather, it identifies legal functions that codification has served in India, for example, clarity of formation and dissolution of marriage, equal proprietary capacity, and a welfare-centred guardianship template, and then tests the portability of each function in Bangladesh against demographic context, institutional capacity, and minority-protection concerns. The analysis shows how statutory rules in India were subsequently clarified by the Supreme Court, which has, for example, affirmed daughters' coparcenary rights by birth and read guardianship statutes consistently with constitutional equality and the child's best interests.

Against this backdrop, the thesis contributes a comparative method, not merely a comparative catalogue. It shows how Indian provisions can be re-expressed for Bangladesh through narrower drafting, stronger attention to evidentiary administration, and careful calibration of transitional

rules. Registration models under section 8 of the Hindu Marriage Act 1955, divorce architectures under section 13 and section 13B, and proprietary equalisation through section 14 and the amended section 6 of the Hindu Succession Act 1956 are treated as design repertoires whose rationales can be adapted rather than transplanted wholesale. The result is a set of comparatively informed proposals which remain sensitive to the minority demography and political economy in Bangladesh.

1.6.3 Theoretical Contribution to Feminist Legal Analysis and Method

The thesis contributes to feminist legal scholarship by demonstrating how an equality-centred redesign of personal law requires attention to institutional vulnerability, not merely to formal rights. It operationalises feminist insights into doctrinal method, treating legal categories such as marriage, guardianship, and succession as historically gendered artefacts that allocate risk and dependency. It deploys a vulnerability lens to argue for state responsibility to anticipate and mitigate predictable harms in intimate relations, for example, economic dependence, care burdens, and exposure to coercion in the absence of a civil exit route. In doing so, it translates theory into an evaluative checklist for legislative clauses and judicial interpretation.

Methodologically, the thesis integrates feminist critique with comparative functionality and constitutional proportionality. It advances a template for reading religiously inflected family norms within a constitutional order that requires public reasons for private-law rules. The theoretical innovation lies in bringing together three strands: a feminist reconstruction of doctrinal categories, a functional comparative method that resists transplantation in favour of institutional fit, and a constitutional analysis that uses equality as both a limit on legislative discretion and an affirmative guide to institutional design. This triadic method yields concrete drafting principles that are normatively grounded and administratively realisable in Bangladesh.

1.7 Theoretical Lenses

1.7.1 Feminist Legal Theory: Key Propositions Used in This Thesis

This thesis proceeds from a set of propositions in feminist legal theory that supply the conceptual grammar for interpreting personal law as both doctrine and social practice. The first is that law is

not a neutral arbiter of private ordering, but a historically gendered institution that has helped constitute, rather than simply regulate, women's subordination. MacKinnon's diagnosis is foundational: "the state is male in the feminist sense", because legal form has evolved through, and continues to reflect, male-centred power and epistemology.[111] The implication for personal law is direct. When marriage, guardianship, or succession are juridified through mechanisms whose concepts were articulated in male vantage, the resulting rules tend to encode an apparently naturalised distribution of authority that mirrors patriarchal hierarchies, even where the text itself speaks in generalities.[112]

A complementary strand, associated with Smart, cautions against treating law as a simple instrument that can be recalibrated to cure inequality. Law operates as discourse, shaping the very categories through which claims become thinkable, speakable and justiciable.[113] Rights talk, while indispensable, can narrow feminist strategies by translating complex social harms into justiciable fragments.[114] For the Hindu personal law in Bangladesh, this alerts us to the limits of purely formal alignment with constitutional equality. Doctrinal reform that merely inserts sex-neutral language may leave untouched the interpretive repertoires through which judges, lawyers and families continue to reproduce authoritative masculinities.[115]

A third proposition concerns the critique of the public-private divide. Much of personal law inhabits what liberal legalism describes as the private realm of family, religion and custom. Feminist theory has demonstrated that relegating the family to the private obscures the role of the state in sustaining gendered power.[116] This is acute in the South Asian personal laws, because the forms of "private ordering" have long been mediated by courts, revenue authorities and registrars; they are, in effect, public choices that organise private life. When Bangladeshi personal law is treated as beyond the reach of constitutional equality because it is "personal", the exclusion

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[111] Catharine A MacKinnon, *Toward a Feminist Theory of the State* (Harvard University Press 1989) 179–80.

[112] ibid 178–80.

[113] Carol Smart, *Feminism and the Power of Law* (Routledge 1989) 12–16.

[114] Wendy Brown, 'Suffering the Paradoxes of Rights' in Wendy Brown and Janet Halley (eds), *Left Legalism/Left Critique* (Duke University Press 2002) 420, 420–21.

[115] Smart (n 113) 12–16.

[116] See Frances Olsen, 'The Family and the Market' (1983) 96 *Harvard Law Review* 1497, 1497–98, 1501–02, 1504–05, 1510.

operates as a doctrinal device for immunising gendered hierarchies rather than a principled jurisdictional rule.[117]

A fourth proposition is the distinction between formal and substantive equality. While this thesis engages constitutional doctrine in Chapter 4, its analytic orientation follows the feminist insistence that equal treatment rules often entrench status quo baselines, and that equality must be judged by outcomes and institutional design, not only by symmetrical wording.[118] Fraser's ideal of "participatory parity" is salient here: justice requires social arrangements that permit all to interact as peers, for which a threshold of material and status equality is a precondition.[119] In family law, parity requires more than identical default rules; it requires institutions that counteract structural disadvantage in bargaining, proof, access to adjudication and enforcement.[120]

Fifth, feminist political economy underscores how property, work and care interact with family law. Agarwal's bargaining approach demonstrates that women's independent claims to assets, particularly land, transform intra-household bargaining positions and mitigate vulnerability to marital breakdown or widowhood.[121] For Hindu women in Bangladesh, where *Dayābhāga*-influenced succession practices and guardianship norms intersect with sparse registration and weak documentary infrastructures, the absence of effective property claims magnifies dependency within the family and before the forum.

Sixth, feminist engagements in India offer methodological resources for Bangladesh. Agnes maps how post-Independence codification unsettled but did not fully displace patriarchal logics within Hindu law; the lesson is to scrutinise the granular design of reforms, the interpretive levers they leave intact, and the institutional ecosystems that shape application.[122] Kapur's postcolonial

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[117] Flavia Agnes, *Law and Gender Inequality: The Politics of Women's Rights in India* (Oxford University Press 1999) 54–55, 74, 82, 95–96.

[118] Sandra Fredman, 'Substantive Equality Revisited' (2016) 14(3) *International Journal of Constitutional Law* 712, 712–13, 718–20.

[119] Nancy Fraser, 'Rethinking the Public Sphere: A Contribution to the Critique of Actually Existing Democracy' (1990) 25/26 *Social Text* 56, 59, 63, 65, 77.

[120] ibid 63–64, 65, 73–74.

[121] Bina Agarwal, '"Bargaining" and Gender Relations: Within and Beyond the Household' (1997) 3(1) *Feminist Economics* 1, 1–4; Bina Agarwal, *A Field of One's Own: Gender and Land Rights in South Asia* (Cambridge University Press 1994) ch 2.

[122] See Agnes (n 117) 78–86, 88–90, 95–96.

feminist critique likewise warns that reforms framed in universalist liberal idioms can be co-opted into projects of cultural governance unless they attend to local histories, minority status and sexual politics.[123] These cautions are indispensable when designing law reform for a religious minority in a Muslim-majority state.[124]

1.7.2 Intersectionality and Vulnerability as Structuring Tools

Two analytic frameworks organise the doctrinal and comparative assessments of the thesis. The first is intersectionality. Crenshaw's account of intersectionality traces how legal and policy frameworks that treat gender or minority status in isolation erase those who inhabit both categories, producing remedial blind spots that the present analysis seeks to confront.[125] Intersectionality is not a new total theory of identity, but a method of mapping how power operates through overlapping structures.[126] The relevance to Hindu women in Bangladesh is immediate. They are subject to the gendered norms of personal law and to the contingent politics of belonging as a religious minority. Their interactions with registrars, family courts and local elites are filtered through class, locality, language and documentation practices. A doctrinal rule that appears facially neutral may, in application, magnify disadvantage at these intersections. For example, requirements of written proof or registration can differentially burden women whose natal families did not secure documents; parallel norms of guardianship can make access to remedies contingent on male consent or presence. The intersectional lens requires us to test every proposed reform not only for sex equality in the aggregate, but also for its effects on the least advantaged within the "Hindu women" category.[127]

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[123] See Ratna Kapur, *Erotic Justice: Law and the New Politics of Postcolonialism* (Glasshouse Press 2005) 2–3, 7, 25–26, 43–44.

[124] Kapur, *Erotic Justice* (n 123) 43–47, 100–01, 126–27.

[125] Kimberlé Crenshaw, 'Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory, and Antiracist Politics' in Anne Phillips (ed), *Feminism and Politics* (Oxford University Press 1998) 314; Kimberlé Williams Crenshaw, 'Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color' (1991) 43(6) *Stanford Law Review* 1241, 1241–44.

[126] Crenshaw, 'Mapping the Margins' (n 125) 1243–44.

[127] See Naila Kabeer, 'Resources, Agency, Achievements: Reflections on the Measurement of Women's Empowerment' (1999) 30(3) *Development and Change* 435, 437–39, 442–43.

The second, complementary framework is vulnerability theory. Fineman argues that vulnerability is universal and constant, a feature of the human condition that grounds a claim on a responsive state.[128] This reframes equality: rather than targeting only group-based discrimination, the law should secure the "asset environment" that equips all subjects to withstand and recover from inevitable dependencies and harms.[129] Applied to family law, this means designing institutions that reduce asymmetric exposure to loss of income, housing, care and status upon marital breakdown, widowhood or family conflict. It also means refusing to treat women's dependence as a naturalised private risk. In the institutional ecology of Bangladesh, a vulnerability-responsive personal law would expand documentary infrastructures, streamline low-cost registration, re-tool evidentiary presumptions to reflect lived realities, and ensure that maintenance, guardianship and succession entitlements are practically claimable by those with the least bargaining power.[130]

Intersectionality and vulnerability together supply a two-stage test used throughout the thesis. The intersectionality stage asks whether a rule or process differentially burdens those at specific axes of disadvantage along gender, minority status, class, disability or location, and whether doctrinal categories obscure these burdens. The vulnerability stage asks whether state institutions have been designed to provide the material, procedural and informational assets needed to convert formal entitlements into effective capabilities.[131] Situated in this way, equality analysis avoids two pitfalls. It resists an exclusively identity-based framing that neglects material preconditions for parity, and it avoids a purely distributive framing that misses how recognition, status and institutional scripts shape agency in family settings.[132]

The frameworks also discipline the comparative method. In Chapter 5, Indian reforms are parsed not merely for their textual provisions, but for how they altered bargaining positions and asset environments for women situated at different intersections. The 2005 coparcenary reform in India, for instance, is assessed against its capacity to shift property-backed bargaining power for

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[128] Martha Albertson Fineman, 'The Vulnerable Subject: Anchoring Equality in the Human Condition' (2008) 20 *Yale Journal of Law & Feminism* 1, 8–10.

[129] Fineman, 'The Vulnerable Subject' (n 128) 2, 5–6, 12–13; Martha Albertson Fineman, 'The Vulnerable Subject and the Responsive State' (2010) 60(2) *Emory Law Journal* 251, 255–56, 266–67.

[130] See Chapter 6 for institutional design; cf Agarwal (n 121).

[131] Fineman, 'The Vulnerable Subject' (n 128) 5–6, 15–16, 19–20; Kabeer (n 127) 435–36, 442–43, 460.

[132] Fraser (n 119).

daughters in rural patrilocal contexts, rather than only for its formal proclamation of equality. In Chapter 6, the Bangladesh reform blueprints are therefore sequenced and drafted with distributional and procedural levers in view: property rights that enhance fallback positions, registries that lower information and transaction costs, guardianship norms that recognise caregiving capacities, and remedial routes that do not presume male accompaniment.

1.7.3 Post-colonial Cautions and the Selective Use of Critical Legal Studies

Personal law in South Asia is neither a timeless emanation of faith nor a neutral legal category. It is a historical artefact produced through colonial governance that re-ordered textual traditions, institutionalised pundit interpretations, and translated Sanskritic materials into the registers of Anglo-legal administration. The post-colonial insight is therefore preliminary and methodological: analysis must begin by asking how the very object of study was constituted. Bernard Cohn's account of the "command of language and the language of command" shows how colonial knowledge projects organised law through philology, translation, and codification, thereby fixing fluid textual genres into administrable norms.[133] The consequences are particularly acute for Hindu personal law, whose contemporary categories and hierarchies often bear the impress of colonial textual choices and evidentiary practices.[134] These cautions do not entail antiquarianism. They require that doctrinal inquiry remain attentive to the historicity of its sources, to the politics of translation, and to the distributional effects of institutional design.[135]

At the same time, this thesis draws, with care, on certain arguments from Critical Legal Studies (CLS). CLS is valuable as a diagnostic of legal indeterminacy, of the ideological work of legal reasoning, and of the tendency of rights discourse to abstract from social structure. Duncan Kennedy's classic statement of the rights critique, developed within and against United States legal

[133] Cohn, *Colonialism and Its Forms of Knowledge* (n 8) 26–30, 54–55, 58, 65–75.

[134] See Cohn, *Colonialism and Its Forms of Knowledge* (n 8) 8, 26–30, 66–75; Bernard S Cohn, 'Law and the Colonial State in India' in June Starr and Jane F Collier (eds), *History and Power in the Study of Law: New Directions in Legal Anthropology* (Cornell University Press 1989) 131, 134, 136–37, 141–42, 144.

[135] For a classic statement of the knowledge–law nexus, see Nicholas B Dirks (ed), *Colonialism and Culture* (University of Michigan Press 1992) 8, 175–76.

liberalism, captures how rights can function as both emancipatory tools and rhetorical devices that leave background power intact.[136] Deployed unreflectively, such scepticism would risk disabling reform by dissolving doctrinal distinctions into an all-purpose indeterminacy. Deployed selectively, it equips the analysis to identify when apparently neutral categories, such as "family" or "custom", smuggle in gendered hierarchies under the colour of tradition and when judicial technique masks distributive choices as inevitabilities of interpretation.[137]

Two further cautions temper the CLS toolkit in a post-colonial setting. First, rights talk in South Asia has been ambivalent but not illusory. Ratna Kapur has traced how the juridical figure of the vulnerable woman can be mobilised for moral governance and carceral projects; yet she also acknowledges that feminist actors sometimes must engage rights strategically within actually existing institutions.[138] Second, grand theoretical claims of legal indeterminacy sit uneasily with the concrete achievements of codification and precedent in comparable jurisdictions, not least in India since 1955. Mark Tushnet's well-known scepticism about rights as determinate trumps needs to be read together with institutional and political economy accounts of how courts and legislatures interact; otherwise, the critique risks becoming an aesthetic of defeatism rather than a spur to design.[139] Accordingly, the thesis will treat rights and equality guarantees as contestable but indispensable resources, to be specified through careful doctrinal argument and empirically oriented institutional proposals.

A further strand of CLS, associated with Roberto Unger, is also used here in a constrained form.[140] Unger's insistence that alternative institutional forms are thinkable and buildable helps shift the analysis from lament to design; it authorises exploration of family law architectures beyond the

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[136] See Duncan Kennedy, 'The Critique of Rights in Critical Legal Studies' in Wendy Brown and Janet Halley (eds), *Left Legalism/Left Critique* (Duke University Press 2002) 179–80, 182, 188, 213.

[137] cf Smart (n 113) 10–16.

[138] Ratna Kapur, 'The Tragedy of Victimization Rhetoric: Resurrecting the "Native" Subject in International/Post-Colonial Feminist Legal Politics' (2002) 15(1) *Harvard Human Rights Journal* 1, 33; Kapur, *Erotic Justice* (n 123) 2, 8, 99–100.

[139] Mark Tushnet, 'An Essay on Rights' (1984) 62 *Texas Law Review* 1363, 1364–66; Mark Tushnet, *Weak Courts, Strong Rights: Judicial Review and Social Welfare Rights in Comparative Constitutional Law* (Princeton University Press 2008) Preface ix–xi.

[140] Roberto Mangabeira Unger, 'The Critical Legal Studies Movement' (1983) 96(3) *Harvard Law Review* 561.

status quo ante.[141] Yet the South Asian post-colonial context requires a thinner, practice-oriented adaptation of that ambition, keyed to administrative capacity, political settlement, and constitutional constraint.[142] This thesis, therefore, treats Unger's programmatic claims as a heuristic for comparative institutional design rather than as a wholesale theory of social transformation.[143]

1.8 Methodology and Research Design

The methodological stance is doctrinal at its core, anchored in close reading of authoritative texts and decisions, and disciplined by transparent citation practice. Primary sources, rather than commentary, supply the starting point: statutory text, constitutional provisions, reported judgments with neutral citations, and, for the classical layer, critical editions and reliable translations of Sanskritic materials. The doctrinal method proceeds in a series of iterative steps: identification of the operative text, reconstruction of its rule structure, extraction of ratio from obiter in the case-law, reconciliation of apparent conflicts by ordinary canons of construction, and only then recourse to secondary analysis to test competing interpretations. This is the sense in which doctrinal legal research "locates and analyses the primary documents of the law to establish the nature and parameters of that law", a formulation that will be followed here as a matter of method and discipline. In the service of verifiability and scholarly economy, every proposition is footnoted to an authority with a precise pinpoint; short forms will follow the Oxford Standard in a consistent scheme across chapters. Where a source is re-cited, short form cross-references will be used with "(n x) pinpoint", and "ibid" only sparingly where permitted.

The comparative component is functional and tightly scoped. India is selected as the comparator because it shares the same classical legal inheritance, a cognate colonial codification trajectory,

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[141] Roberto Mangabeira Unger, 'Legal Analysis as Institutional Imagination' (1996) 59(1) *Modern Law Review* 1, 3–4, 7, 19–20; Roberto Mangabeira Unger, *What Should Legal Analysis Become?* (Verso 1996) 1–3.

[142] See Mushtaq H Khan, *The Political Settlement, Growth and Technical Progress in Bangladesh* (DIIS Working Paper 2013:01) 12–13, 17, 56, 94; Matt Andrews, Lant Pritchett and Michael Woolcock, 'Escaping Capability Traps through Problem-Driven Iterative Adaptation (PDIA)' (2012) CGD Working Paper 299, 1, 5; Constitution of the People's Republic of Bangladesh 1972 (n 3), arts 26–29, 31; cf Kabeer (n 127).

[143] For sceptical evaluation, see Andrew Altman, *Critical Legal Studies: A Liberal Critique* (Princeton University Press 1990) 38–44.

and, crucially, a comprehensive post-1955 Hindu law code that Bangladesh lacks. The comparison is not for mimicry but for function, asking what social or institutional problem a rule serves and whether that function is performed by different doctrinal means across the border. The basic comparative commitment is, accordingly, functionalism: focus on how legal institutions solve problems, rather than on labels or taxonomies. Functional method is not a dogma. It is used critically and in a limited, question-specific way, with awareness of its well-known vulnerabilities, including the risks of underestimating path dependence and institutional fit. In practice, each Indian rule will be mapped to its function, its doctrinal structure, and the preconditions for portability, before any claim is made about its suitability for Bangladesh.

Legislative history, precedent tracing, and evidentiary evaluation are used to refine textual meaning and anticipate adjudicative behaviour. Legislative history is consulted cautiously and only where it helps to resolve ambiguity without contradicting enacted text; Statements of Objects and Reasons, official Bills, gazette notifications, and committee reports are treated as contextual materials rather than as binding sources. Precedent analysis isolates holdings, identifies controlling hierarchies, and records how later courts have read or confined earlier reasons; this is documented through a simple chain-of-authority table for each recurring issue. Evidentiary evaluation concerns the ecology within which rules are applied, not empirical claims about frequency. The analysis attends to what courts treat as persuasive or determinative in family disputes, to the role of corroboration, cross-examination, documentary registration, and to burdens and standards, so that doctrinal proposals are cognisant of the courts' evidentiary culture.

Constitutional and international materials supply the normative benchmark against which doctrinal and institutional proposals are tested. At the constitutional level, Articles 27 to 29 on equality and non-discrimination, together with Article 31 on legality, frame the equality yardstick and the reasonableness review that structures the analysis. Constitutional provisions are cited by article with authoritative text, and doctrinal tests are stated in terms that courts have recognised. At the international level, CEDAW is the principal treaty lens for personal law consequences affecting women, complemented by ICCPR and ICESCR where appropriate. In particular, General Recommendation No. 33 articulates six interrelated components of access to justice, namely justiciability, availability, accessibility, good quality, provision of remedies, and accountability; these components are used as a diagnostic grid for procedural proposals in Chapters 3 and 6.

Reliability and validity are pursued by triangulating doctrinal interpretation with these constitutional and treaty benchmarks, and by making the inferential steps explicit in the footnotes.

An ethical and positionality note governs the reading of religiously inflected sources. The thesis treats Dharmaśāstra and cognate Sanskritic materials as juridical, not devotional, genres, while acknowledging the deep interpenetration of religion and law in the tradition. Interpretations are framed as historically situated and text-specific, and the translation choices of modern editors and translators are identified in the citations so that readers can check wording and context. The operative stance is one of critical empathy, alert to patriarchal premises yet committed to careful textual reconstruction before normative evaluation. This approach follows leading scholarship that has argued for reading Hindu legal materials as law, with due attention to genre and to the limits of doctrinal transport across time and polity.

1.9 Scope and Limitations

This thesis is doctrinal in character. It relies on authoritative legal texts and reported decisions, and it applies recognised methods of legal interpretation to reconstruct and evaluate the rules that govern the position of Hindu women in Bangladesh. No formal survey or interview has been conducted. Socio-legal context is engaged through published and reputable secondary materials, including official statistics, demographic surveys, administrative reports, and peer-reviewed scholarship, which are read descriptively to situate the legal analysis rather than to generate primary empirical findings.

The inquiry is jurisdictionally anchored in Bangladesh. The term “Hindu” is used in its conventional legal sense within Bangladesh, encompassing adherents of the Hindu religion resident in the country, while acknowledging internal sectarian and regional variation that does not amount to distinct legal orders for doctrinal purposes. India serves as the sole comparator, selected for its shared classical inheritance, cognate colonial trajectory, and comprehensive post-1955 codification of Hindu law. The temporal horizon is contemporary: the post-1971 constitutional period in Bangladesh, read against the Hindu Code period in India since 1955. Pre-codification materials are used only where historically necessary to illuminate current doctrine or to explain the persistence of *Dayābhāga*-derived practices in Bengal-based questions of inheritance, guardianship, and related family law issues.

Several matters are excluded to maintain analytical focus. Muslim and Christian personal law regimes in Bangladesh fall outside the scope, save where institutional arrangements or common procedural rules of the family courts bear directly on Hindu women's claims. Civil marriage outside religious personal law is treated only insofar as it changes status, remedies, or procedural protections for Hindu litigants. The institutional lens privileges the fora and processes in which Hindu family disputes are decided, namely the family courts and the superior judiciary, together with the statutory framework governing jurisdiction, pleadings, evidence, decrees, and appeals. Interfaces with the general law, including guardianship and evidentiary statutes, are considered insofar as they structure adjudication or condition the effectiveness of the reforms proposed here.

Three constraints shape the evidentiary base. First, the absence of primary fieldwork means that litigant experience is accessed indirectly through judgments, procedural rules, and published commentary. Secondly, reporting practices are uneven: family matters are decided largely at first instance, while reporting concentrates on appellate decisions, which introduces selection effects and may under-represent everyday adjudication. Thirdly, administrative data disaggregated by religion for specific family law outcomes are limited, and the statutory position of Hindu personal law in Bangladesh remains only partially consolidated, requiring careful triangulation among enacted provisions, reported decisions, and reliable editions or translations of classical sources.

These limitations are addressed through three mitigation strategies. First, doctrinal reconstruction proceeds from the text outward, with each proposition tied to enacted provisions or binding precedent and with inferential steps made explicit. Classical materials are treated as juridical, not devotional, sources and are cited in reputable editions or translations, used to illuminate present law rather than to import historical norms uncritically. Comparative claims are confined to provisions and doctrines for which there is demonstrable functional equivalence and reasonable institutional fit; portability is tested against the constitutional equality guarantees of Bangladesh and relevant international standards. Finally, when drawing on secondary socio-legal materials, the analysis distinguishes clearly between descriptive context and normative evaluation, and it avoids causal claims that would require primary empirical verification. The result is a focused, documentary inquiry capable of yielding legally actionable findings within the contemporary system of Bangladesh.

1.10 Normative and Constitutional Signposts

1.10.1 Constitutional Equality and Protection of Law as Benchmarks

The constitutional benchmarks against which this thesis tests Hindu personal law in Bangladesh are clear in text and demanding in implication. Article 27 guarantees that "all citizens are equal before law and are entitled to equal protection of law", while Article 28 proscribes discrimination on grounds including sex, and authorises special measures for women and children where appropriate. [144] Article 29 extends equality to public employment, reflecting a broader constitutional hostility to systemic exclusion.[145] Article 31 secures the "protection of law" as a justiciable entitlement that attaches to every person within the Republic, not only to citizens.[146] Read together with article 26, which renders void any law inconsistent with fundamental rights, these provisions establish a strong commitment to formal and substantive equality as constitutional norms.[147] Although the text does not prescribe a doctrine of strict scrutiny, the Appellate Division has read article 27 to permit reasonable classifications only where they are founded upon an intelligible differentia bearing a rational relation to the object of the law.[148] On any account, sex-based hierarchies in marital capacity, guardianship, maintenance or succession stand in tension with the constitutional promise unless they can be justified as proportionate, rights-compatible, and aimed at legitimate objectives.[149]

The same Part III framework also provides procedural means to vindicate equality. Article 44(1) gives every person the right to move the High Court Division for the enforcement of fundamental rights, while article 102 confers a plenary writ jurisdiction to test administrative and legislative action.[150] In family matters this constitutional avenue matters because disputes in personal law often reach the courts by collateral routes, such as challenges to registration practices, refusals of

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[144] Constitution of the People's Republic of Bangladesh 1972 (n 3), arts 27, 28.

[145] ibid art 29.

[146] ibid art 31.

[147] ibid art 26.

[148] See *Sheikh Abdus Sabur v Returning Officer, District Education Officer-in-Charge, Gopalganj and others (1989)* 41 DLR (AD) 30

[149] Constitution of the People's Republic of Bangladesh 1972 (n 3) (n 144) arts 27–29, 31.

[150] ibid arts 44(1), 102.

state benefits tied to marital status, or guardianship decisions implicating public authorities. The constitutional text does not insulate personal law from review. Article 7(2) affirms the supremacy of the Constitution, and article 26(1) voids inconsistent laws.[151] Where legislation gives effect to religious norms, it remains subject to ordinary constitutional tests of reasonableness and equality. This thesis proceeds on the doctrinal position that personal law is law within the meaning of article 7, hence amenable to judicial review for conformity with articles 27, 28, 29 and 31.[152] To avoid formalism that would immunise gender harms, the equality inquiry must attend to effects as well as form, and must recognise the public significance of rules that structure intimate relations.[153]

A principled interpretation of the equality clauses requires attention to both direct and indirect discrimination. Article 28 forbids sex discrimination simpliciter, yet practices that are facially neutral may reproduce disadvantages for Hindu women through documentary hurdles or procedural norms that allocate burdens of proof unevenly. The High Court Division has emphasised that equality is not only a formal guarantee but a command to the State to refrain from measures that have unequal impact without adequate justification.[154] The protection-of-law clause in article 31 complements this analysis by insisting on legal processes that are accessible, predictable and respectful of personhood, especially for those with limited bargaining power within families.[155] These constitutional benchmarks, viewed through proportionality, require that any differentiation in personal law pursue a legitimate aim, rest on evidence rather than stereotype, and impair rights no more than necessary, with careful regard to less restrictive alternatives such as gender-neutral registration, equal guardianship, or non-fault maintenance.[156]

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[151] ibid arts 7(2), 26(1).

[152] ibid art 7; see also the Family Courts Act 2023 (n 47), s 5, read subject to Part III of the Constitution of Bangladesh.

[153] See, for example *Bangladesh Legal Aid and Services Trust (BLAST) and others v Bangladesh and others*, Writ Petition No 10663 of 2013 (HCD, 12 April 2018) 60–61; *Bangladesh National Women Lawyers Association (BNWLA) v Government of Bangladesh and others*, Writ Petition No 5916 of 2008 (HCD, 14 May 2009) 23, 26.

[154] See *BNWLA v Government of Bangladesh and others*, Writ Petition No 5916 of 2008 (HCD, 14 May 2009) 23, 26; *Bangladesh Legal Aid and Services Trust (BLAST) and others v Government of Bangladesh and others* (the 'fatwa' case), Writ Petition Nos 5863 of 2009, 754 of 2010 and 4275 of 2010 (HCD, 8 July 2010) 10–11, 19–21.

[155] Constitution of the People's Republic of Bangladesh 1972 (n 3) (n 144) art 31.

[156] See *Farida Akhter and others v Bangladesh represented by the Bangladesh Public Service Commission* (2006) 11 MLR (AD) 169, [26]–[27], [31]–[36].

1.10.2 International Obligations Relevant to Family Relations and Access to Justice

International obligations of Bangladesh reinforce and concretise these constitutional standards. The State is party to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, which together require equal rights of men and women in the enjoyment of all civil, political, economic, social and cultural rights.[157] The Human Rights Committee has clarified that article 3 of the ICCPR imposes an immediate obligation to remove discrimination in law and practice, including within the family; it warns that stereotyping family roles can breach articles 3 and 26.[158] The Committee has also explained that article 14's guarantees of equality before courts and a fair hearing apply to "rights and obligations in a suit at law", which include many family law disputes about status, custody or maintenance.[159] For its part, the Committee on Economic, Social and Cultural Rights has insisted that article 3 of the ICESCR requires States to address inequality in the private sphere through appropriate legislative and institutional measures.[160]

The Convention on the Elimination of All Forms of Discrimination against Women supplies specific standards for marriage and family relations. Article 16 obliges States to eliminate discrimination in entering marriage, during marriage and at its dissolution, including equal rights in guardianship of children, property and inheritance.[161] General Recommendation No 21 stresses that equality in marriage and family relations is foundational to women's autonomy and economic

[157] International Covenant on Civil and Political Rights (n 20) arts 2(1), 3, 26; International Covenant on Economic, Social and Cultural Rights (ICESCR) (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3, art 3.

[158] UN Human Rights Committee, 'General Comment No 28: Article 3 (The equality of rights between men and women)' (29 March 2000) UN Doc CCPR/C/21/Rev.1/Add.10, paras 3, 5, 26.

[159] UN Human Rights Committee, 'General Comment No 32: Article 14 (Right to equality before courts and tribunals and to a fair trial)' (23 August 2007) UN Doc CCPR/C/GC/32, para 16.

[160] UN Committee on Economic, Social and Cultural Rights (CESCR), 'General Comment No 16: The Equal Right of Men and Women to the Enjoyment of All Economic, Social and Cultural Rights (Art 3 of the Covenant)' (11 August 2005) UN Doc E/C.12/2005/4, paras 7–14.

[161] CEDAW (n 59) art 16.

security.[162] General Recommendation No 29 specifies that the economic consequences of marriage and its dissolution must be addressed by regimes that recognise non-monetary contributions and ensure equitable division of property, with attention to women's unpaid care work.[163] Access to justice is not incidental. General Recommendation No 33 articulates the constitutive features of women's access to justice, including justiciability, availability, accessibility, good quality, provision of remedies, and accountability of justice systems.[164] These elements map closely onto article 31's protection-of-law guarantee and provide operational content for evaluating family-court processes in Bangladesh. In child-related matters, the Convention on the Rights of the Child requires that the best interests of the child be a primary consideration, and recognises parental responsibilities on a basis of common responsibilities, which supports gender-equal guardianship frameworks.[165] The Committee on the Rights of the Child has elaborated the best-interests principle in General Comment No 14, emphasising reasoned, evidence-based determinations and the need to avoid discriminatory stereotypes that compromise children's interests.[166]

Treaty-body oversight has repeatedly urged Bangladesh to reform discriminatory personal laws, with particular attention to inheritance and guardianship.[167] While domestic courts cannot directly enforce treaty provisions absent incorporation, the Constitution's interpretive openness, together with the courts' established practice of using international law as an interpretive aid, permits reliance on these standards to construe equality and protection-of-law clauses in family law

[162] Committee on the Elimination of Discrimination against Women, 'General recommendation No 21' (n 21) paras 1, 7, 10, 16, 26, 31, 32, 37.

[163] Committee on the Elimination of Discrimination against Women, 'General recommendation No 29' (n 1) paras 1, 4, 44, 45–47, 53.

[164] UN Committee on the Elimination of Discrimination against Women (CEDAW), 'General Recommendation No 33: Women's access to justice' (3 August 2015) UN Doc CEDAW/C/GC/33, para 14.

[165] CRC (n 84) arts 3(1), 5, 18(1).

[166] UN Committee on the Rights of the Child (CRC), 'General Comment No 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art 3, para 1)' (29 May 2013) UN Doc CRC/C/GC/14, paras 1–6, 32.

[167] UN treaty bodies have repeatedly pressed Bangladesh to reform discriminatory personal laws, focusing in particular on inheritance and guardianship. In its 2016 concluding observations, the CEDAW Committee expressed concern that the State's personal-status laws regulating marriage, divorce, inheritance and guardianship continue to discriminate against women and girls, and urged comprehensive legislative action; those concerns echo earlier reviews and are reinforced by the Committee's general recommendations on equality in family relations, the economic consequences of marriage and dissolution, and women's access to justice.

contexts.[168] In practical terms, the combined effect of constitutional and international norms yields three benchmarks that inform the evaluative framework adopted in this thesis. First, parity of legal status in marriage, guardianship, maintenance and property is a core requirement, not an optional ideal.[169] Procedures must therefore be designed to secure effective access for women. That entails low-cost and simple registration, clear and workable evidentiary rules, and remedies that take seriously economic dependency and unpaid care work when determining entitlement and quantum.[170] Thirdly, institutional arrangements should be designed to prevent indirect discrimination, for example, by ensuring that registration offices, family courts and legal-aid schemes are practically accessible to Hindu women in minority-religion settings.[171] These benchmarks underwrite the doctrinal analysis that follows and shape the proposed legislative blueprints.

1.11 Structure of the Thesis

The thesis is organised to move from diagnosis to design. It begins by establishing the problem and its analytical scaffolding, proceeds through a doctrinal and historical excavation, turns to a Bangladesh-centred account of the contemporary law and its effects, tests those outcomes against constitutional and international baselines, undertakes a structured comparison with Indian reforms, and, finally, proposes a sequenced programme for change. The chapters are cumulative. Each lays the foundation for the next and together they furnish a coherent route from normative principle to legally workable reform.

Chapter 1 introduces the inquiry, situating the thesis in the Bangladesh context and setting out the research questions that animate the analysis. It explains the doctrinal–comparative method with

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[168] See Constitution of the People's Republic of Bangladesh 1972 (n 3) (n 144) arts 25, 26–28; *Hussain Muhammad Ershad v Bangladesh* 29 CLC (AD) 1 (2000).

[169] CEDAW (n 59) art 16; Committee on the Elimination of Discrimination against Women, 'General recommendation No 21' (n 21) paras 7, 8, 10, 17, 20, 26, 31, 32; Committee on the Elimination of Discrimination against Women, 'General recommendation No 29' (n 1) paras 9–11, 27, 38, 46–47, 53.

[170] UN Committee on the Elimination of Discrimination against Women (CEDAW), 'General Recommendation No 33' (n 164) paras 14–18; ICCPR (n 157) art 14; UN Human Rights Committee, 'General Comment No 32' (n 159) para 16.

[171] ICCPR (n 157) art 26; ICESCR (n 157) art 3; CESCR, 'General Comment No 16' (n 160) paras 10–14.

socio-legal inflections, identifies the theoretical lenses employed, and marks the constitutional and international signposts against which personal law outcomes are evaluated. The chapter also delineates scope and limitations, and clarifies the contribution of the thesis to Bangladeshi doctrine, to comparative Hindu law, and to feminist legal method. In doing so, it provides the conceptual vocabulary and the evaluative benchmarks that guide the remainder of the work.

Chapter 2 turns to the intellectual and doctrinal genealogies of Hindu law as they bear upon women's status and entitlements. It traces how classical sources and their commentarial traditions articulated gendered hierarchies, how custom moderated or entrenched those hierarchies in particular regions, and how colonial codification re-selected Brahmanical materials while marginalising practices that were more protective of women. The chapter emphasises the tension between symbolic veneration and practical subordination, and shows how the interpretive moves of colonial courts reshaped *strīdhan*, succession and marital status in ways that continue to structure contemporary disputes. The result is a historically grounded account of how women's disabilities became legally thinkable and administratively durable.

Chapter 3 offers a domain-by-domain diagnosis of the current Hindu personal law regime in Bangladesh and its gendered consequences. It examines marriage and divorce, inheritance and succession, *strīdhan*, adoption and guardianship, and maintenance, alongside the procedural conditions that determine whether rights are realisable in practice. The analysis foregrounds the effect of weak or optional registration, evidentiary fragility, forum confusion and uneven enforcement, and it documents how these features interact with doctrine to produce cumulative disadvantage for Hindu women. The account is doctrinally fine-grained yet institutionally attentive, distinguishing what the texts appear to promise from what courts and administrative systems routinely deliver.

Chapter 4 pivots from description to evaluation. It measures the outcomes identified in Chapter 3 against the equality and non-discrimination guarantees of the Constitution of Bangladesh and the State's binding and programmatic international commitments. The chapter is organised by five terrains of regulation: inheritance and succession; marriage and divorce; adoption and guardianship; maintenance; and the procedural architecture of registration, forum allocation, proof, delay and enforcement. In each terrain, it asks what equality-consistent reforms are normatively required and, crucially, what is institutionally feasible in the Bangladeshi legal system. By reading

doctrine together with delivery, the chapter fixes the constitutional baseline and clarifies the treaty benchmarks that structure subsequent proposals.

Chapter 5 undertakes a structured comparison with post-independence reforms of Hindu family law in India and tests their compatibility with Bangladeshi institutions and commitments. It identifies the major barriers to equality in Bangladesh, then canvasses Indian statutory solutions and judicial developments across marriage and divorce, inheritance and succession, adoption and guardianship, and maintenance. The analysis situates key instruments in their doctrinal functions: the Hindu Marriage Act 1955 as an integrated regime for marital validity and dissolution and a jurisprudential anchor for registration; the Hindu Succession Act 1956 and the 2005 amendment to section 6 as the abolition of the daughter's disability in coparcenary; the Hindu Minority and Guardianship Act 1956 and the best-interests reading of parental roles; and the Hindu Adoptions and Maintenance Act 1956 as the principal codification of adoption and maintenance entitlements. The chapter then assesses portability to Bangladesh using institutional fit, path dependence and rights-compatibility, distinguishing techniques that travel from those that do not.

Chapter 6 consolidates the findings into a practical roadmap for reform in Bangladesh. It links constitutional principle to statutory drafting, to equality-attuned judicial method, and to administrative routine. The proposals are concrete. On status, a modernised marriage–dissolution regime with compulsory yet accessible registration and consent-based exit; on responsibilities, bilateral maintenance calibrated to unpaid care and informal-economy earnings, supported by standardised financial disclosure; on property, an equal-heirship succession statute that abolishes limited estates and secures administrability through partition-deeming and limitation rules; on children, guardianship re-cast around the welfare principle and adoption law that separates ritual roles from civil effects while guaranteeing equal authority for women. The chapter also specifies evidence-producing procedures, including standardised notices, certified extracts from registers and privacy-protective access protocols, and emphasises the need to sequence legislative change with reforms in titling, civil registration and legal aid so that rights are not merely formal.

The thesis closes by identifying two persistent lacunae that require careful staging: optionality in marriage registration, which undermines proof and bargaining power in disputes about status and maintenance, and the weakness of land records and accessible legal aid, which risks undercutting inheritance equality for poorer and rural women. These are framed not as reasons for delay but as

reasons to integrate administrative investment with legal reform, so that law on the books can become law in action. The concluding chapter, therefore, offers a sequenced programme that Parliament, courts and ministries can adopt within the Bangladeshi constitutional frame, drawing selectively on regional experience for technique and administrability rather than authority.

1.12 Conclusion

This chapter has set the terms of inquiry and the contours of the argument. It identified a persistent doctrinal and institutional gap in Bangladesh, where Hindu personal law remains largely uncodified, unevenly administered, and insufficiently aligned with constitutional guarantees of equality before the law, equal protection, and due process of law.[172] The chapter framed this gap through five pressure points that structure women's lived vulnerabilities in family relations: marriage and its incidents, divorce and exit options, inheritance and property, maintenance, and guardianship. It showed that the present configuration, rooted in a mosaic of text, custom, and judicial gloss, has produced opacity and gendered dependency that constitutional law cannot ignore.[173] The normative benchmark was therefore fixed in two registers. Domestically, the Constitution requires non-discrimination and permits affirmative measures to secure women's equal citizenship.[174] Internationally, obligations of Bangladesh under the UDHR, ICCPR, ICESCR and CEDAW supply a complementary architecture for non-discrimination in family relations.[175]

Against that benchmark, the chapter mapped the current statutory environment. Registration of Hindu marriages remains possible but optional, which weakens proof, enforcement, and access to remedies for women.[176] Family adjudication is now governed by the Family Courts Act 2023, which consolidates jurisdiction and creates a dedicated appellate tier. Even so, the scope of relief still turns on the underlying content of personal law.[177] Protection against child marriage exists in general law, but its effectiveness turns on credible age verification and the integration of

[172] The Constitution of the People's Republic of Bangladesh 1972 (n 3), arts 27, 28(1), 31.

[173] See the Constitution of the People's Republic of Bangladesh 1972 (n 3), arts 27, 28(4).

[174] ibid., art 28(4).

[175] Universal Declaration of Human Rights 1948 (n 20) art 16(1); ICCPR (n 157) art 26; CEDAW (n 59) art 16(1).

[176] Registration of Hindu Marriage Act 2012 (n 3) (n 22) s 3.

[177] Family Courts Act 2023 (n 47) (n 66) ss 5, 18.

registration practices.[178] Guardianship determinations continue to be anchored in the child's welfare, a standard read consistently with constitutional equality and the development of parental roles.[179] Exit remedies for Hindu women, and the allocation of maintenance, remain structurally thin; separate residence and maintenance are available on limited statutory grounds rather than through a gender-neutral matrimonial remedies code.[180]

The comparative lens explained why the codification experience of India matters analytically rather than prescriptively. Indian legislation instituted mutual-consent divorce and articulated a modern matrimonial remedies framework, and it reorganised succession to recognise daughters as coparceners.[181] Subsequent constitutional adjudication normalised these statutory shifts by reading gender equality into guardianship and coparcenary rules.[182] This thesis does not treat those outcomes as a template. It uses them to test institutional fit and rights-compatibility for Bangladesh, given different paths of legislation, administration, and politics. The theoretical scaffolding is expressly plural: a modest feminist jurisprudence attentive to power within the household; an intersectional method that tracks caste, class, minority status, disability, and age; post-colonial caution about the genealogy of "Hindu law" as a colonial-academic artefact; and a historically informed hermeneutics for classical sources that distinguishes textual ideals from operative rules.

[178] Child Marriage Restraint Act 2017 (n 60), ss 7–8.

[179] Guardians and Wards Act 1890 (n 24), s 17.

[180] Hindu Married Women's Right to Separate Residence and Maintenance Act 1946 (n 23), s 2.

[181] Hindu Marriage Act 1955 (n 12), s 13B; Hindu Succession Act 1956 (n 12), s 6, as amended by Hindu Succession (Amendment) Act 2005.

[182] *Vineeta Sharma* (n 109) para 21; *Githa Hariharan* (n 15) 2 SCC 228, paras 2–3, 15–16, 24.

Chapter 2

+WOMEN IN HINDU JURISPRUDENCE: GENEALOGIES AND DOCTRINAL FOUNDATIONS

2.1 Introduction

Building on Chapter 1, which set out the constitutional commitments, theoretical frameworks, and methodological choices that orient this thesis, the present chapter turns to the doctrinal and historical foundations of Hindu jurisprudence as they shape the legal position of women. Having established the normative horizon of equality and the interpretive tools of feminist legal theory, critical legal studies, and intersectionality, the analysis here reconstructs the normative architecture of Hindu law from its earliest sources through classical redaction, colonial reconfiguration, and modern codification. The purpose is to expose the pathways through which reverent symbolism of the feminine coexists with, and at times masks, juridical regimes of dependency and exclusion in marriage, guardianship, and property.

The earliest strata of Hindu thought offer ethical grammars rather than codes. Vedic hymns frame household prosperity and conjugal cooperation as goods within a larger cosmological order, a frame later jurists convert into rules of ritual competence and domestic governance. The *Ṛgveda*'s marriage hymn, for instance, imagines a partnership that sustains sacrificial life and social continuity, themes that subsequent legal writers translate into the wife's ritual standing within the *grihastha* order.[1] *Upanisadic* dialogues, notably the exchange between *Yājñavalkya* and *Maitreyi*, probe questions of knowledge, kinship, and value in a register that does not reduce women to silence or invisibility, even if later legal formulations restrict women's access to learning and

[1] Ṛgveda 10.85, in Stephanie W Jamison and Joel P Brereton (trs), *The Ṛgveda: The Earliest Religious Poetry of India*, vol 3 (Oxford University Press 2014) 1412.

sacramental authority.[2] Read alongside the account of method in Chapter 1, these materials underscore the need to distinguish philosophical anthropology from prescriptive law, and to trace how meanings travel from cosmology to norm.

Classical *Dharmaśāstra* consolidates this travel into a positive legal imaginary. The *Manusmṛti* expresses a guardianship norm under which a woman is positioned within a triadic sequence of male authority in youth, marriage, and widowhood, a rule whose reach extends across education, residence, sexuality, and patrimony.[3] The *Yājñavalkyasmṛti* preserves a circumscribed domain of women's property in the concept of *strīdhan*, while the commentarial traditions limit its content and disposition in ways that protect agnatic capital and coparcenary control.[4] Schools diverge on doctrinal rationale and succession technique. The *Mitākṣarā*, with its theory of birthright in joint family property, and the *Dayabhaga*, with its emphasis on religious efficacy and post-mortem offerings, nonetheless converge in a patrilineal core that renders daughters' succession contingent and widows' estates typically life-limited.[5] As Chapter 1 foreshadowed in its theoretical discussion of patriarchy's institutional forms, these doctrinal moves transform a diffuse moral cosmos into a regulatory architecture of dependency.

Symbolic elevation of the feminine sits uneasily with these rules. The veneration of *Saraswati*, *Laksmi*, and *Durga* signifies wisdom, prosperity, and power. Symbolic empowerment does not, by itself, confer equal legal agency within the family. A sacramental conception of marriage continues to anchor women's ritual capacity to roles as wife and mother, while succession and guardianship rules consolidate agnatic authority. The friction between theology and rule is thus not incidental, but constitutive. Comparative scholarship shows that the classical texts were neither exhaustive

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[2] Bṛhadāraṇyaka Upaniṣad 2.4, in Patrick Olivelle (tr), *The Early Upaniṣads: Annotated Text and Translation* (Oxford University Press 1998) 76.

[3] Manusmṛti 9.2, in Patrick Olivelle (tr), *The Law Code of Manu* (Oxford University Press 2004) 169.

[4] Yājñavalkya Smṛti 2.143–144; Gooroodas Banerjee, *The Hindu Law of Marriage and Stridhan* (Tagore Law Lectures, Thacker Spink 1879) 275–78; JDM Derrett, *Hindu Law: Past and Present* (A Mukherjee & Co 1957) 234; Gobinda Chandra Mandal, 'Stridhana and Hindu Women's Property Rights in Bangladesh: A Legal Analysis of the Dayabhaga Tradition' (2024) 35(2) *Dhaka University Law Journal* 63, 65.

[5] Ludo Rocher, 'Inheritance and Śrāddha: The Principle of Spiritual Benefit' in Donald R Davis Jr (ed), *Studies in Hindu Law and Dharmaśāstra* (Anthem Press 2012) 267; Ferdousi Begum, 'Analyzing Hindu Women's Right to Property in Bangladesh: Absolute Interest versus Limited Interest' (2018) 6(1) *Kathmandu School of Law Review* 103, 105–08.

nor uniform; regional practice and caste custom often mediated, modified, or resisted textual prescriptions in ways that created pockets of economic or marital flexibility for women.[6] This plurality becomes crucial once the colonial courts, seeking administrable law, privilege a narrow canon.

Colonial adjudication and legislation reconfigured Hindu law by elevating select Sanskrit texts and their commentaries into quasi-codes and by subordinating living custom unless "clearly proved" to the contrary. The Privy Council's well-known statement recognises the juridical status of usage, yet the imperial tendency was toward text-centred orthodoxy and procedural burdens that disadvantaged those, including women, who relied on local practices to claim property or marital relief.[7] As Chapter 1 observed in relation to institutional power, the colonial forum translated hermeneutic plurality into positive hierarchy. Scholarly reconstructions have shown how this textualism hardened patriarchal rules, narrowed grounds for widow remarriage, and rendered women's property claims more precarious than some customary regimes had permitted.[8]

Post-colonial codifications in India exposed these hierarchies and, in part, corrected them. The Hindu Marriage Act 1955 introduced statutory grounds for divorce and validated marriages that caste orthodoxy had constrained, thereby modestly strengthening women's decisional autonomy.[9] The Hindu Succession Act of 1956 rationalised intestate succession and widened female heirs'

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[6] Werner Menski, *Hindu Law: Beyond Tradition and Modernity* (Oxford University Press 2003) 96, 122–25, 135–40; Archana Parashar, *Women and Family Law Reform in India: Uniform Civil Code and Gender Equality* (Sage 1992) 12, 71–72, 91, 117, 132.

[7] Although the Privy Council acknowledged that established usage could displace textual rules, its jurisprudence increasingly treated custom as a narrowly confined exception requiring rigorous proof. Thus, while *Collector of Madura v Moottoo Ramalinga Sathupathy* affirmed that clear proof of usage may outweigh the written text, the Board simultaneously insisted that any special usage modifying ordinary law be 'ancient and invariable' and proved by clear and unambiguous evidence, a standard reiterated in later appeals. The result was a text-centred orthodoxy coupled with procedural burdens that made it difficult for litigants, among them women relying on local practice for property or marital relief, to prevail unless they could meet exacting evidentiary thresholds: *Collector of Madura v Moottoo Ramalinga Sathupathy* (1868) 12 MIA 397.

[8] JDM Derrett, *Religion, Law and the State in India* (Oxford University Press 1999) 148-150; Lata Mani, *Contentious Traditions: The Debate on Sati in Colonial India* (University of California Press 1998) 36–44.

[9] Hindu Marriage Act 1955 (India), ss 5, 13; See Flavia Agnes, *Law and Gender Inequality: The Politics of Women's Rights in India* (Oxford University Press 1999) 83-85, 95-99, 118-120.

claims, although it initially stopped short of recognising daughters as coparceners.[10] The 2005 amendment to section 6 rectified that omission by recognising daughters as coparceners by birth, a reform later affirmed and clarified by the Supreme Court of India in *Vineeta Sharma v Rakesh Sharma*, which insisted that the right accrues irrespective of whether the father was alive on the date of the amendment.[11] These developments, read through the equality lens of Chapter 1, show how legislative and judicial interventions can recalibrate the relation between tradition, custom, and constitutional value. Yet they also demonstrate that statutory form alone cannot dissolve entrenched social asymmetries.

By contrast, the Bangladeshi position has remained largely uncodified. Hindu personal law continues to be administered through *Dayabhaga*-based tenets and judicial exposition. Inheritance entitlements for daughters and widows remain comparatively narrow, coparcenary equality has not been enacted, and marriage is primarily conceived as a sacrament, with restrictive consequences for exit and autonomy. The Hindu Marriage Registration Act of 2012 improved evidentiary certainty through registration, but it did not restructure marital or property rights.[12] As Chapter 1 explained in setting the constitutional frame, the practical supremacy accorded to personal law in family matters limits the immediate justiciability of equality guarantees for Hindu women in core domains of status, guardianship, and property. The result is a structural disjuncture between constitutional aspiration and private-law reality.[13]

Against this backdrop, the chapter proceeds in four moves, each linked to themes introduced previously. First, it reconstructs the conceptual field by close reading of *Śruti* and *Smṛti* passages and of the principal commentaries, identifying the categories through which women's ritual and civil capacities are structured and curtailed. This permits a careful distinction, urged in the methodological discussion of Chapter 1, between description of practice, prescription of duty, and

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[10] Hindu Succession Act 1956 (India), ss 8–10, 14; Bina Agarwal, *A Field of One's Own: Gender and Land Rights in South Asia* (Cambridge University Press 1994) 260–269.

[11] Hindu Succession (Amendment) Act 2005 (India) s 3; *Vineeta Sharma v Rakesh Sharma* (2020) 9 SCC 1 [44], [63]–[64], [75].

[12] Registration of Hindu Marriage Act 2012 (Bangladesh) s 3.

[13] Upasana Mahanta, Sameena Dalwai and Albeena Shakil, 'Women and Law in South Asia' (2019) 10 *Jindal Global Law Review* 149; Farah Deeba Chowdhury, 'Dowry, Women, and Law in Bangladesh' (2010) 24(2) *International Journal of Law, Policy and the Family* 198, 199, 203, 213.

positive legal rule. Second, it analyses the interaction of text and custom across regions and castes, recovering spaces where practice exceeded prescription and attending to the evidentiary standards by which colonial and post-colonial courts assessed claims grounded in usage. Third, it examines colonial juridification, showing how court-centred textualism and the institutional role of pandits transformed plural hermeneutics into narrow orthodoxy with gendered effects. Fourth, it evaluates post-colonial trajectories, contrasting Indian codification and judicial development with the absence of comprehensive reform in Bangladesh, and drawing out doctrinal, institutional, and political reasons for divergence as they bear on marriage, guardianship, maintenance, and succession.

Two analytic threads tie these moves back to Chapter 1. The first is interpretive, asking how legal meaning is produced from religious sources and how that meaning migrates from divinity to code, from counsel to command. The second is institutional, asking how legislatures, courts, and community authorities mediate among text, custom, and constitutional equality in concrete disputes. Together, these threads ground a doctrinal critique that is historically attentive and comparatively engaged. They also identify resources internal to the Hindu legal tradition that may support reform consistent with the constitutional commitments of Bangladesh, while remaining sensitive to the social and religious contexts within which family law is lived. On that basis, the chapter furnishes the doctrinal and historical foundations needed for the normative and reformist arguments that follow.

2.2 Women in the Religious and Philosophical Foundations of Hindu Law

2.2.1 Women in the Vedic Era

A. Daughters in the Household

The Vedic household, organised around the *grihastha* ideal, registers daughters as integral to domestic economy and ritual sociability, even where son-preference is expressed in benedictory verse. A marriage hymn prays that the bride “may rule over her husband’s father, over his mother, over his brothers,” a vivid image of delegated authority within the conjugal household that scholars

treat as normatively aspirational rather than descriptive of universal practice.[14] A related verse blesses the bride to "be mistress of the house, mistress of the people," which, at minimum, encodes a jurisprudence of ritual indispensability and managerial status in the married home.[15] Although charms for male offspring occur in the *Atharvavedic* repertoire, the *saṃhitās* also imagine a flourishing household in which daughters and sons are raised to maturity before marriage, with the girl's socialisation connected to skill, discretion, and auspicious presence.[16]

Classical social history collates numerous notices of daughters engaged in productive labour that sustained pastoral and early agrarian regimes. Weaving, dairy processing, grain storage, and domestic management recur in Vedic prose and early *śrauta–gṛhya* materials, which P. V. Kane summarises as evidencing recognised economic contribution.[17] Altekar adduces passages in which the daughter is "affectionately nurtured" and protected by natal kin, a trope consistent with the early textual emphasis on kin solidarity rather than a mere pathway of transfer.[18] Classic sociological work sharpens the picture. Karve's analysis of kinship terms and residence patterns shows that patrilocal moves were not absolute, and that daughters could retain consequential ties to natal households with implications for gifts, support, and counsel.[19] Sharma's materialist account links the value of daughters' labour to transitional agrarian economies, suggesting that productive capacity could secure status, albeit within a patriarchal frame.[20] Roy's edited studies reinforce the point that the daughter's early training was constitutive of household competence.[21]

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[14] Ṛgveda 10.85.46–47, in Jamison and Brereton (n 1) 1414–1415. Also see Gobinda Chandra Mandal, 'The Rights and Status of Women in Ancient India: Insights from Hindu Legal Literature' (2025) 70(1) *Journal of the Asiatic Society of Bangladesh (Hum.)* 1, 3-4.

[15] ibid. 10.85.26–27, in Jamison and Brereton (n 1) 1411–1412.

[16] *Atharvaveda* 6.11; 14.2, in William Dwight Whitney (tr), *Atharva-Veda Saṃhitā*, vol 2 (Harvard University Press 1905) 694–700; Mandal, 'The Rights and Status of Women in Ancient India' (n 14)1, 4.

[17] See PV Kane, *History of Dharmaśāstra (Ancient and Mediaeval Religious and Civil Law in India)*, vol 2 pt 1 (Bhandarkar Oriental Research Institute 1941) 109, 295, 366, 669, 684.

[18] AS Altekar, *The Position of Women in Hindu Civilization* (Motilal Banarsidass 1956) 4, 10-11.

[19] Irawati Karve, *Kinship Organization in India* (Asia Publishing House 1965) 44–47.

[20] RS Sharma, *Material Culture and Social Formations in Ancient India* (Macmillan 1983) 69-70.

[21] A S Altekar, 'The Position of Women in Hindu Civilisation: Retrospect and Prospect' in Kumkum Roy (ed), *Women in Early Indian Societies* (Manohar 1999) 49; N N Bhattacharya, 'Proprietary Rights of Women in Ancient India' in Kumkum Roy (ed), *Women in Early Indian Societies* (Manohar 1999) 113.

"Fathers were commended for having excellent daughters," a phrase preserved in later retellings that likely echoes Vedic metaphors of the quiver filled with effective darts, connoting pride and utility.[22] While the tenor of household ideology remained patrilineal, the textual record permits neither a picture of uniform devaluation nor a denial of the daughter's embeddedness in family welfare and ritual propriety.[23]

B. Social Attitude Towards Daughters

The social valuation of daughters oscillates between ritual asymmetries and recognitions of honour, maturity, and prospective motherhood. The *Ṛgveda* depicts households seeking "long life with sons and daughters by our side," a formula that discloses the affective grammar of companionship and continuity rather than simple demographic preference.[24] Jamison reads the nuptial corpus as imagining the bride not as a passive appendage, but as a partner whose presence completes the sacrificial unit, and whose fertility and prudence are celebrated in figured speech.[25] Doniger's translations draw out the poetic ambivalence of desire for sons alongside open expressions of affection for daughters; desire is not a code of status by itself.[26]

Thapar cautions that early Indian social history spans diverse ecological and lineage contexts; Vedic and early post-Vedic ideologies should not be reduced to a single rule for all regions or strata.[27] Altekar and Bhattacharya similarly warn against retrospective projection of later dowry-centred anxieties onto Vedic households, urging attention to genre, chronology, and social location.[28] Dube's anthropological lens proposes continuity and change in valuations of daughters

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[22] Altekar (n 18) 4, 14, 17; Mandal, 'The Rights and Status of Women in Ancient India' (n 14) 1, 6-7.

[23] Menski (n 6) 127–145.

[24] Ṛgveda 10.85.42, in Jamison and Brereton (n 1) 1413; Mandal, 'The Rights and Status of Women in Ancient India' (n 14) 1, 5.

[25] Stephanie W Jamison, *Sacrificed Wife/Sacrificer's Wife: Women, Ritual, and Hospitality in Ancient India* (Oxford University Press 1996) 25–33, 55–63.

[26] Wendy Doniger O'Flaherty (tr), *The Rig Veda: An Anthology: One Hundred and Eight Hymns, Selected, Translated and Annotated* (Penguin Classics 1981) 47–52.

[27] Romila Thapar, *Ancient Indian Social History: Some Interpretations* (Orient Longman 2003) 11-20, 36-37.

[28] Altekar, 'The Position of Women in Hindu Civilisation: Retrospect and Prospect' (n 21) 49; Bhattacharya, 'Proprietary Rights of Women in Ancient India' (n 21) 113.

as repositories of family honour, mediators of alliance, and participants in economies of reciprocity.[29]

The Atharvaveda includes charms that aim to ensure a son or to avert markers read as feminine, yet it also carries prayers for robust offspring without sharp devaluation of daughters as such.[30] Where later legal texts sometimes characterise daughters as a burden, the earlier poetic register remains more capacious. “Let her be happy in her father’s house until maturity,” states a nuptial benediction, a line that, however stylised, supports the social expectation that early childhood and adolescence were nurtured, not hurried into marriage.[31]

C. Recognition of Women’s Intellectual and Spiritual Contributions

Named female interlocutors and composers stand at the centre of the best-attested evidence for women’s intellectual presence in *Vedic* and early *Upanisadic* literature. In the *Bṛhadāraṇyaka Upanisad*, *Maitreyi* interrogates *Yājñavalkya*: “What should I do with that by which I do not become immortal?” and later, “Tell me, sir, of that alone which you know to be the means to immortality.”[32] The dialogue is not decorative; it structures the argumentative path from wealth to knowledge and from the relational self to the unconditioned. In the same text, *Gārgī Vācaknavī* challenges the revered scholars at Janaka’s court: “On what, pray, is the warp woven?” pressing metaphysical inquiry to the limit of speech.[33] The register is public, disputational, and uncompromising, which is why Olivelle’s notes identify these scenes as among the clearest attestations of learned women in the philosophical arena.[34]

Within the *Ṛgveda*, hymns attributed to the seers *Lopāmudrā* and *Viśvavārā* display sophisticated poetics. *Lopāmudrā* addresses *Agastya* in *hymn 10.95* with frankness about desire and conjugal reciprocity; *Viśvavārā*’s hymn in 5.28 addresses the gods with confident ritual voice.[35] Jamison’s

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[29] Leela Dube, *Anthropological Explorations in Gender: Intersecting Fields* (SAGE 2001) 112–119.

[30] Atharvaveda 14.2, in Whitney (n 16) 697–699.

[31] Ṛgveda 10.85.37–39, in Jamison and Brereton (n 1) 1412–1413.

[32] Bṛhadāraṇyaka Upaniṣad 2.4.2–3, in Olivelle (n 2) 74–79, 76–78.

[33] ibid. 3.6–8, in Olivelle (n 2) 102–112, 106–110.

[34] ibid. 2.4.2–3, in Olivelle (n 2) 75–76, 105–110.

[35] Ṛgveda 10.95; 5.28, in Jamison and Brereton (n 1) vol 3, 1543–1547; vol 2, 724–729.

philology demonstrates that these compositions register a self-reflexive voice that is neither incidental nor anonymised, and that they integrate the female perspective into sacrificial and social speech.[36] Witzel surveys lists of female *ṛṣis* and argues that editorial layering did not erase the memory of women as composers and ritual participants.[37]

Beyond authorial presence, Vedic and early *sutra* materials remember categories of learned women. Kane collects references to *Brāhmavādinī*, women devoted to lifelong study, and to *Sadyovadhū*, who studied until marriage, with texts noting memorisation of hymns and observance of rites.[38] "The wife is half the ritual," say later ritual digests in compressed form; the *śrauta–gṛhya* framework presupposes the sacrificial pair.[39] "Together kindle the fire, together offer the oblation," reads a nuptial formula, mapping ritual equality within a hierarchised polity.[40] Patton's edited case-studies trace how women's authority could be textual and performative, even when later jurisprudence narrowed eligibility.[41] Bhattacharji documents sustained female voices across genres, while Bhattacharyya situates female learning within goddess theologies of speech, sovereignty, and prosperity.[42]

This dossier does not dissolve asymmetries. It shows that women could be students, interlocutors, and co-ritualists with recognised speech acts and competencies, after which Brahmanical jurisprudence progressively restricted Vedic study and sacramental agency for women.[43]

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[36] Jamison (n 25); cf Jamison and Brereton (n 1) vol 1, 73–76.

[37] Katherine K. Young, 'Women and Hinduism', in Arvind Sharma (ed), *Women in Indian Religions* (Oxford University Press 2002) 3, 16-17, 32.

[38] Kane (n 17) 391–98, 566–73; Mandal, 'The Rights and Status of Women in Ancient India' (n 14) 1, 8-9.

[39] ibid. 574–80.

[40] Ṛgveda 10.85.26–27, in Jamison and Brereton (n 1) 1411–1412; Mandal, 'The Rights and Status of Women in Ancient India' (n 14) 1, 11-12.

[41] See Mary McGee, 'Ritual Rights: The Gender Implications of Adhikāra' in Laurie L Patton (ed), *Jewels of Authority: Women and Textual Tradition in Hindu India* (Oxford University Press 2002) 32, 36, 38; Katherine K Young, 'Om, the Vedas, and the Status of Women with Special Reference to Śrīvaiṣṇavism' in Laurie L Patton (ed), *Jewels of Authority: Women and Textual Tradition in Hindu India* (Oxford University Press 2002) 84, 87–88; Laurie L Patton, 'Introduction' in Laurie L Patton (ed), *Jewels of Authority: Women and Textual Tradition in Hindu India* (Oxford University Press 2002) 3, 3–4.

[42] See Sukumari Bhattacharji, *Women and Society in Ancient India* (Academic Publishers 1994) 1–2, 16, 36; NN Bhattacharyya, *History of the Śākta Religion* (Munshiram Manoharlal 1990) 56–67.

[43] Uma Chakravarti, *Gendering Caste: Through a Feminist Lens* (Sage 2018) 23–35, 41–49, 52–67.

D. Social Roles and Autonomy

i. ***Education and Learning*:** The memory of *Brāhmavādinī* sits alongside the later doctrinal move to restrict upanayana for women. *Manu* states, "For women no sacramental rite is performed with sacred texts; thus the law is settled," thereby identifying marriage as the analogue of initiation and displacing the possibility of Vedic study for most women.[44] Olivelle's apparatus clarifies how this norm belongs to a wider reordering of authority around domesticity and male guardianship.[45] Roy and Chakravarti observe that practice remained uneven; lineage, locality, and class mediated access to learning, and epigraphic as well as narrative sources attest to women's literacy and ritual knowledge beyond prescriptive limits.[46]

ii. ***Marriage and Choice*:** Vedic nuptial liturgy makes the wife's ritual presence constitutive of valid performance. "Take my hand for happiness," the groom intones, "that you may grow old with me," an exchange that formalises mutuality in sacramental terms.[47] Scenes of counsel and consent in Vedic prose do not amount to a general regime of unilateral female choice, yet they unsettle assumptions that women were without voice in arrangements that affected them.[48] Jamison emphasises the wife's indispensable ritual office rather than passive domesticity; the liturgy binds status to function.[49]

iii. ***Ritual Partnership and Domestic Authority*:** "Let her be queen over the household," another nuptial verse declares, while *śrauta* texts presuppose the couple as a sacrificial

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[44] *Manusmṛti* 2.66; 9.18, in Olivelle (n 3) 33, 169–171; Mandal, 'The Rights and Status of Women in Ancient India' (n 14) 1, 5-6.

[45] ibid 168–71.

[46] Roy (n 21) 1–17, 41–49.

[47] Ṛgveda 10.85.36, in Jamison and Brereton (n 1) 1412.

[48] Patton (n 41) 118–132; Mandal, 'The Rights and Status of Women in Ancient India' (n 14) 1, 10-11; Gobinda Chandra Mandal, 'Revisiting Hindu Marriage Norms: Unveiling Women's Agency in Ancient India' (2024) 69(1) *Journal of the Asiatic Society of Bangladesh (Hum.)* 1, 11-12, 19-20.

[49] Jamison (n 25) 55–63.

unit.[50] The juridical minimum is participation, but ritual indispensability sits uneasily with later civil incapacities. Menski and Kane track this slippage from co-ritualism to guardianship doctrines that limit women's civil agency even as their ritual standing remains acknowledged.[51]

iv. ***Economic Labour and Resources*:** The Vedic record links women to dairying, textiles, and household provisioning, which Sharma and Mandal read as indexing real economic contribution to emergent agrarian regimes.[52] Agarwal's comparative analysis of land and movable wealth in South Asia clarifies why control over productive resources translates into bargaining power within and across households, a structural lens through which early textual hints are best understood.[53]

E. Shifts in Gender Dynamics

From later Vedic through the *Dharmasūtra* and *Dharmaśāstra* periods, a tightening is visible in eligibility for study, sacrament, and succession. The code of *Manu* crystallises guardianship in the famous formula that a woman in childhood is under her father, in youth under her husband, and in old age under her sons, "*na strī svātantryam arhati*," commonly translated as "*a woman is not fit for independence*."[54] Elsewhere, *Manu* asserts that "for women no sacrament is performed with Vedic texts," explicitly folding initiation into marriage and thereby withdrawing Vedic study.[55]

The *Dharmasūtras* diverge on inheritance. *Gautama*, *Baudhāyana*, and *Vasiṣṭha* restrict daughters' succession, while *Āpastamba* recognises daughters as heirs in the absence of male issue.[56] *Yājñavalkya* systematises *strīdhan* as women's peculiar property, yet commentarial

[50] Ṛgveda 10.85.26–27, 46–47, in Jamison and Brereton (n 1) 1411–1415; Mandal, 'The Rights and Status of Women in Ancient India' (n 14) 1, 11-13; Mandal, 'Revisiting Hindu Marriage Norms) (n 48) 1, 25-26.

[51] Menski (n 6) 146–56; Kane (n 17) 574–80.

[52] Sharma (n 20) 150–155; Mandal, 'The Rights and Status of Women in Ancient India' (n 14) 1, 21-22.

[53] Agarwal (n 10) 260–269.

[54] *Manusmṛti* 9.2, in Olivelle (n 3) 169.

[55] ibid. 2.66; 9.18, in Olivelle (n 3) 33, 170.

[56] The Dharmasūtras diverge sharply on female succession. Āpastamba is the outlier: after sons and agnates (and, failing them, teacher or student), he explicitly places the daughter as heir, with the king only in default of a daughter—an unmistakable recognition of her capacity to take the estate in the absence of male issue (Āpastamba Dharmasūtra

traditions limit content and disposition, often placing management in male hands.[57] The *Mitākṣarā* makes coparcenary rights arise by birth in unobstructed heritage, a rule that marginalises daughters; the *Dayabhaga* relocates succession to spiritual benefit, creating default lines that position female heirs with curtailed estates.[58]

There are countervailing notes. "*One's daughter is equal to one's self*," a late classical maxim asserts, pressed by some jurists to justify the daughter's claim in certain circumstances when there is no son.[59] Yet the dominant trend moves from multivocal ritual roles to sharpened hierarchies in education, guardianship, and property. Thapar connects this consolidation to changes in economy and kingship; Roy and Chakravarti show how control over women's sexuality and labour is central to Brahmanical ordering.[60] Jamison and Witzel remind us that the textual memory of learned women and co-ritualism did not evaporate; rather, it was reframed and sometimes domesticated by jurisprudential technique.[61]

These developments matter for later legal histories. As Kane and Mandal document, the scholastic debate over *strīdhan*, life estates of widows, and daughters' succession continued into the classical schools, producing a sophisticated but restrictive regime.[62] Altekar's synthesis, while dated in

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2.13.12-2.14.20). Gautama channels a sonless man's property to agnates and the widow and allows a daughter to figure only through the special device of an "appointed daughter" (putrikā), while confining women's succession to women's property - "the wife's property goes to her daughters who are unmarried or indigent" - rather than to the paternal estate (Gautama Dharmasūtra 28.1.17). Baudhāyana is more categorical still, quoting a Vedic text to exclude women from inheritance - "women … do not inherit property" - while acknowledging only claims to a mother's jewellery and customary gifts (Baudhāyana Dharmasūtra 2.3.43–6). See Olivelle P (tr), *Dharmasūtras: The Law Codes of Ancient India* (Oxford University Press 1999).

[57] Yājñavalkya Smṛti 2.143–146, in Kane (n 17) 566–73, 568–69.

[58] Vijñāneśvara, *Mitākṣarā* on Yājñavalkya Smṛti chs 1–2, in Kane (n 17) 390–413, 402–05; Jīmūtavāhana, *Dāyabhāga* ch 11, in Ludo Rocher (ed and tr), *Jīmūtavāhana's "Dayabhāga": The Hindu Law of Inheritance in Bengal* (Oxford University Press 2002) 145–62, 148–51.

[59] Manusmṛti 9.130–131, in Olivelle (n 3) 190–91; Also see Mandal, 'The Rights and Status of Women in Ancient India' (n 14) 1, 3-4.

[60] Thapar (n 27) 131–139; Roy (n 21) 101–120; Chakravarti (n 43) 52–67.

[61] Jamison (n 25) 121–27; Michael Witzel, 'Early Sanskritization: Origins and Development of the Kuru State' in Bernhard Kölver (ed), *Recht, Staat und Verwaltung im klassischen Indien / The State, the Law, and Administration in Classical India* (Oldenbourg 1997) 27, 27–31.

[62] Kane (n 17) 585–98; Also see Mandal, 'The Rights and Status of Women in Ancient India' (n 14) 1, 21-25.

places, remains useful for collating dispersed materials on women's ritual and civil status from Vedic through medieval periods.[63] Doniger and Patton reveal the persistence of narrative resources that sustain alternative valuations of women's knowledge and authority, even within patriarchal structures.[64] Menski's jurisprudential frame shows how colonial textualism, by elevating select Sanskrit authorities to quasi-codes, often hardened these hierarchies in adjudication, narrowing spaces where custom had afforded women more latitude.[65] The comparative horizon developed in Chapter 1 finds here its doctrinal substrate, against which modern reforms or their absence in South Asia can be judged.

2.2.2 The Dharmashāstras and Gender Hierarchies

A. Portrayal of Women as Dependents

Dharmashastric jurisprudence converts diffuse household ideals into a juridical architecture of guardianship. *Manu*'s canonical injunction, "*in childhood a woman is subject to her father, in youth to her husband, and when her lord is dead to her sons, a woman is never fit for independence*," crystallises the rule of tutelage across the life-course.[66] The same redaction links women's eligibility for Vedic initiation to marriage, stating that "*for women no sacramental rite is performed with sacred texts; thus the law is settled*."[67] *Yājñavalkya* preserves a sphere of women's property in *strīdhan*, yet the commentarial tradition construes its content and management in ways that reinforce agnatic control.[68] The code of *Narada* accentuates male headship in succession and household governance, even while recognising maintenance as a juridical duty owed to wives and widows.[69] Read historically, these norms reflect the move from a sacrificial partnership to a civil regime of dependence, as social historians of early India have

[63] Altekar (n 18) 64–84, 121–136.

[64] Doniger (n 26) 89–96; Patton (n 41) 95–132.

[65] Menski (n 6) 156–175.

[66] *Manusmṛti* 9.2, in Olivelle (n 3) 169.

[67] ibid. 2.66; 9.18, in Olivelle (n 3) 33, 170.

[68] Yājñavalkya Smṛti 2.143–146, in Kane (n 17) 566–73.

[69] Richard W Lariviere (ed and tr), *The Nāradasmṛti* (Motilal Banarsidass 2003) 13.29–31.

long observed.[70] Feminist legal scholarship maps the technique by which sexuality, labour, and mobility are subjected to Brahmanical supervision through guardianship, marriage, and narrowed access to learning.[71] Anthropological and kinship studies register the congruence between these legal ideals and patrilocal residence, while also noting sub-regional variation that the later scholastic synthesis tended to compress.[72]

B. Gendered Constructs of Purity and Chastity

Dharmaśāstra also encodes a moralised grammar of purity, with chastity as a paradigmatic female virtue. *Manu* invests the wife's fidelity with cosmic significance, while structuring impurity regimes that regulate menstruation, childbirth, and food through graded seclusions and prohibitions.[73] The juridical effect is double. First, ritual disablement is translated into limits on participation in rites, study, and public roles. Second, sexual normativity underwrites property and status rules that privilege agnates and restrict women's civil capacity.[74] Philological readings of Vedic nuptial verses that enjoin the bride to "be mistress of the house, mistress of the people" complicate a simplistic narrative, yet *Dharmaśāstra* harnesses that liturgical indispensability to a model of marital obedience rather than equal authority.[75] Comparative treatments show how chastity and honour supply the justificatory vocabulary for surveillance of women's bodies, with caste inflecting the severity of control.[76] Textual-historical syntheses trace how goddess theologies of speech, sovereignty, and prosperity are domesticated within household purity codes, leaving the symbolic feminine elevated while the juridical female is constrained.[77]

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[70] Thapar (n 27) 131–139; Sharma (n 20) 140–148.

[71] Chakravarti (n 43) 52–67; Roy (n 21) 101–120.

[72] Karve (n 19) 24–30; Dube (n 29) 112–119.

[73] *Manusmṛti* 5.147–5.155, in Olivelle (n 3) 112–116.

[74] Menski (n 6) 127–145; Agarwal (n 10) 260–269.

[75] Ṛgveda 10.85.26–27, in Jamison and Brereton (n 1) 1411–1412.

[76] Bhattacharji (n 42) 29–44; N N Bhattacharyya, *History of the Śākta Religion* (n 42) 56–67.

[77] Patton (n 41) 95–117; Wendy Doniger O'Flaherty (ed), *Hindu Myths: A Sourcebook Translated from the Sanskrit* (Penguin Classics 1975) 89–96.

C. Contradictions in the *Dharmashāstras*

The same *Manu*als that entrench guardianship preserve counter-currents that jurists later mobilised for limited relief. *Manu* famously declares that "where women are honoured, there the gods rejoice," a sentiment that sits uneasily beside the injunctions to control women's movement and learning.[78] *Yājñavalkya*'s catalogue of *strīdhan* recognises women's peculiar property, even as management is frequently vested in male kin.[79] The *Parāśara* tradition, invoked in later digest literature, admits remarriage for a woman whose husband is "lost, dead, has taken renunciation, is impotent, or is fallen," a narrow but notable aperture in the sacramental model.[80] The *Dharmasūtras* themselves diverge on daughters' succession, with *Āpastamba* allowing inheritance in default of sons while others restrict more sharply, indicating a jurisprudence still in formation.[81] Modern historians and jurists therefore read *Dharmaśāstra* as a layered discourse, not a monolith: it consolidates a patriarchal settlement, yet retains doctrinal seams through which custom, region, and later equity-minded reform could occasionally work.[82]

2.2.3 Philosophical Contradictions

The scriptural archive presents an uneasy oscillation between affirmations of women's intellectual agency and the later textualisation of dependence. The *Upanisadic* dialogues figure women as interlocutors in metaphysics: *Maitreyi* presses *Yājñavalkya* on immortality and the limits of possessive wealth, a debate that presupposes philosophical parity rather than tutelary hierarchy.[83] *Gārgī*'s public interrogation of ontology at *Janaka*'s court similarly presumes the capacity to test a sage's claims.[84] Vedic hymnody even lets Speech speak in the first person, "I move among the gods," asserting autonomous, world-ordering agency.[85] Yet the *Dharmaśāstra* corpus codifies

[78] *Manusmṛti* 3.56, in Olivelle (n 3) 71.

[79] Yājñavalkya Smṛti 2.143–146, in Kane (n 17) 566–73, 568–69.

[80] Parāśara Smṛti 4.30, cited and discussed in Kane (n 17) 585–98, 592.

[81] Olivelle, *The Dharmasūtras* (n 56) 112–116, 225–229.

[82] Witzel (n 61) 27–31; Thapar (n 27) 131–39; Roy (n 21) 101–20.

[83] Olivelle (n 2) 74–79 ('Bṛhadāraṇyaka Upaniṣad 2.4, "Maitreyi"').

[84] ibid. 119–27 ('Bṛhadāraṇyaka Upaniṣad 3.6–8, "Gargī–Yājñavalkya"').

[85] Jamison and Brereton (n 1) vol 3, 1463–65 (Ṛgveda 10.125 'Vāc Sūkta').

guardianship as a legal rule. *Manu* inculcates the doctrine that a woman is placed under father, husband, or son at each life-stage, a presumption of structural tutelage, not spiritual incapacity.[86] The same literature circumscribes women's ritual authority while retaining their indispensability to sacrificial completeness, a paradox that underwrites presence without parity.[87] Certain *Smṛti* materials concede limited proprietary capacity, such as enumerations of *strīdhan*, but embed these within a patrilineal template that prioritises agnatic succession.[88] Read alongside the chapter's source text, the pattern is consistent: philosophic equality at the level of *Śruti* and interlocution, juridical subordination at the level of norm and sanction.

2.2.4 Symbolic Empowerment versus Practical Subjugation

The divine feminine is magnified in theology, yet diminished in law and custom. *Shakta* theology celebrates *shakti* as the enabling power of creation and protection, while the *Devi* speaks as sovereign in Vedic diction; this symbolic plenitude does not translate into inheritable rights, coparcenary status, or autonomous guardianship in the classical household.[89] Ritual theory names the wife the sacrificer's indispensable partner, but her role is often instrumentalised to complete male sacrificial subjecthood.[90] In parallel, prescriptive texts intensify chastity codes and menstrual taboos, producing regimes of purity that restrict women's ritual and spatial mobility.[91] Notwithstanding scattered concessions, such as the *Parāśara* rule permitting remarriage on narrowly defined "calamities," the juridical baseline remains control and containment.[92] Historical and philological syntheses by leading scholars illuminate the mechanism. Brahmanical redaction and later legalism channelled diverse early images of women into a narrower domestic ideal, and

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[86] Ganganath Jha (tr), *Manusmṛti with the Commentary of Medhātithi* (Wisdom Library 2018, online edn) 9.3: pitā rakṣati kaumāre bhartā rakṣati yauvane | rakṣanti sthavire putrā na strī svātantryam arhati || ('Her father protects her in childhood, her husband in youth, and her sons in old age; a woman is never fit for independence').

[87] Jamison (n 25) 15–21, 113–120.

[88] See Kane (n 17) 558, 569–70, 596.

[89] Jamison and Brereton (n 1) vol 3, 1463–65 (Ṛgveda 10.125 'Vāc Sūkta'); NN Bhattacharyya, *History of the Śākta Religion* (n 42) 81–92.

[90] ibid.

[91] Altekar (n 18) 104, 174, 308–14; Chakravarti (n 43) 32–39.

[92] Parāśara Smṛti 4.28, in Kane (n 17) 580–81.

colonial codification further ossified those hierarchies.[93] The upshot, borne out by the analysis in this chapter, is a stark gap between the reverence accorded to goddesses and the restricted legal subjectivity of mortal women.

2.3 Women's Rights and Obligations in Classical Hindu Law

2.3.1 Marriage and Kinship

Classical Hindu law located marriage within the sacramental sphere, treating it as a *samskara* that bound the partners not merely in a civil tie but in a religious vocation, with consequences for ritual status, capacity, and autonomy. The *shastric* insistence that marriage is indispensable for the proper performance of domestic rites entrenched a normative asymmetry, since the wife was principally configured as the facilitator of the husband's sacrificial duties, while her own legal standing was refracted through his person. In textual discourse, this is reflected in the repeated elevation of *kanyādāna*, the "*gift of the maiden*," a ritual that encoded the transfer of guardianship from father to husband and rendered the bride's agency residual at the moment of transition.[94] The doctrinal logic of *pati-parameśvara*, the "*husband as lord*," consolidated this hierarchy, not only in didactic literature but also in the patterning of social expectations that equated feminine virtue with fidelity, obedience, and ritual purity.[95] Within such a sacramental order, consent operated under the shadow of guardianship, and the durability of the union was construed as a religious benefit that ordinarily superseded considerations of individual choice.[96]

Kinship structure intensified these predicates. Patriliny, patrilocal residence, and the primacy of agnatic succession created a world in which women were cast chiefly as daughters, wives, and mothers rather than as independent legal actors. Moving to a husband's household typically loosened ties to the natal family and curtailed bargaining power within the new lineage unit,

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[93] Romila Thapar, *Early India: From the Origins to AD 1300* (University of California Press 2002) 363–69; Irawati Karve, *Hindu Society: An Interpretation* (Deccan College 1961) Introduction v, 41–42, 96–97; Leela Dube, 'On the Construction of Gender: Hindu Girls in Patrilineal India' (1988) 23(18) *Economic and Political Weekly* WS11,WS11–WS14; Witzel (n 61) 27, 35–37, 40, 47–48; Laurie L Patton, *Bringing the Gods to Mind: Mantra and Ritual in Early Indian Sacrifice* (University of California Press 2005) 142–49; Wendy Doniger and Brian K Smith (trs), *The Laws of Manu* (Penguin 1991) 2, 15–18.

[94] Olivelle (n 3) ch 3; Kane (n 17) 557–64; Mandal, 'Revisiting Hindu Marriage Norms) (n 48) 1, 3-5.

[95] Doniger and Smith (n 93) 121–27; Chakravarti (n 43) 41–48.

[96] Altekar (n 18) 172–83; Roy (n 21) 203–04, 223–25, 256–58.

particularly where inheritance, ritual authority, and decision making were concentrated in male elders.[97] The valuation of sons as indispensable performers of *śrāddha* and as continuators of the line reinforced son-preference, while daughters were positioned within the circulation of marriage alliances.[98] Anthropological writing on South Asia's kinship regimes has long identified this as a structurally gendered economy of honour and exchange, one that allocates moral responsibility for household cohesion to women, yet withholds commensurate rights.[99]

The *shastric* materials nevertheless contain doctrinal strands that complicate the picture. Some *Dharmasūtras* and *Smṛtis* admit the daughter as heir in defined contingencies, and several texts recognise the wife's life interest in her husband's share, even while withholding full coparcenary participation.[100] Occasional concessions to women's property interests, as discussed below, illustrate how jurisprudence attempted to reconcile patrilineal continuity with minimum security for wives and daughters.[101] These concessions, however, were tethered to male oversight and rarely destabilised the underlying logic of agnatic control over lineage property.

2.3.2 Inheritance and Property Rights

Property regimes in classical Hindu law were anchored in patrilineal transmission. The doctrine of unobstructed heritage in *Mitākṣarā* vested birth-right in male coparceners, consolidating collective control of ancestral property within the male line and excluding women from coparcenary governance.[102] In the *Dayabhaga*, which shaped Bengal and thus much of present-day Bangladesh, succession turned on the performance of obsequies and propinquity, yet the practical effect, again, was to privilege male heirs and to confine women, notably widows and daughters, to limited

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[97] Karve (n 93) 82–91; Dube (n 29) 75–86; Mandal, 'Revisiting Hindu Marriage Norms) (n 48) 1, 9-10.

[98] Ram Sharan Sharma, *Śūdras in Ancient India: A Social History of the Lower Order Down to Circa AD 600* (2nd edn, Motilal Banarsidass 1980) 282–88; Romila Thapar, *Cultural Pasts: Essays in Early Indian History* (Oxford University Press 2000) 258-259.

[99] N N Bhattacharyya, *History of the Śākta Religion* (n 42)1–12;

[100] *Gautama Dharmasūtra* 28.1–2; *Āpastamba Dharmasūtra* 2.14.4–5; translated and discussed in Kane (n 17) 414–421.

[101] Manusmṛti 9.192–9.194, in Olivelle, *The Dharmasūtras* (n 56); Mandal, 'The Rights and Status of Women in Ancient India' (n 14) 1, 21-25.

[102] Satyajeet A Desai (ed), *Mulla: Hindu Law* (20th edn, LexisNexis Butterworths 2007) 99, 110.

interests.[103] The general position restricted daughters to *stridhan*, and even where they succeeded in default of sons, their estates were often life interests that reverted to the agnates.[104]

Stridhan offered the principal doctrinal avenue for women's proprietary capacity. Gifts before, at, and after marriage, including ornaments and movable property, were recognised as a woman's separate estate, designed to furnish a measure of economic security in widowhood or separation.[105] The concept, elaborated by classical jurists and systematised in the digests, was not a charter of equal property rights so much as a protective enclave bounded by male guardianship and ritual constraints.[106] The historical overlay of dowry demands complicated this enclave. Originally an array of voluntary gifts associated with nuptial rites, the dowry hardened into coercive exactions controlled by the husband's family, eroding the woman's practical access to her own paraphernalia and mutating a protective doctrine into a vehicle of patriarchal extraction.[107]

Textual authorities reveal both the reach and the limits of women's property claims. The *Yājñavalkya Smṛti* contains an influential enumeration of *stridhan* categories and contemplates the wife's independent power of disposal over certain items, although juristic glosses curtail such powers in the interests of family solidarity.[108] The notorious guardianship rule of *Manusmṛti* undercut the recognition of proprietary autonomy by instituting a presumption of dependence across the life-course.[109] Certain *Smṛtis*, including *Parāśara*, acknowledged remarriage in defined misfortunes, a limited recognition of women's relational agency that, by implication, also affected the devolution of gifts and maintenance, yet customary strictures frequently negated this

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[103] Rocher (n 58) ch 11, esp 11.6.17 (sapinda-range and piṇḍa logic cross-linked at 11.1.40 and 11.6.7 with Manusmṛti 9.186; widow's priority failing male issue affirmed at 11.1.54–55); see also R C Dutt, *A Digest of Hindu Law* (Calcutta 1903) 211–219.

[104] Kane (n 17) 293–304; Altekar (n 18) 188–195.

[105] Yājñavalkya Smṛti 2.143–147, strīdhana categories, in Julius Jolly (tr), *The Institutes of Hindu Law or Ordeals ascribed to Vyāsa, Yājñavalkya, etc.* (Clarendon 1889) 96–98; discussed in Kane (n 17) 293–302.

[106] Laurie L Patton, *Myth as Argument: The Bṛhaddevatā as Canonical Commentary* (Walter de Gruyter 1996) 33, 85, 121, 199; Doniger and Smith (n 93) xxv–xxxii.

[107] Chakravarti (n 93) 117–123; Dube (n 93) 143–151.

[108] Kane (n 17) 299–304; Altekar (n 18) 197–202.

[109] *Manusmṛti* 9.2, in Patrick Olivelle, *Manu's Code of Law: A Critical Edition and Translation of the Mānava-Dharmasāstra* (Oxford University Press 2005) 170–171; see also Doniger and Smith (n 93) 146–147.

latitude.[110] Inheritance treatises of the Bengal school, most prominently *Jīmutavahana*'s *Dayabhaga*, fashioned an elegant theory of spiritual benefit that explained succession without dismantling male precedence.[111]

Long-run legal development illustrates the tenacity of these classical patterns. In India, codification and subsequent amendment have partially reversed this historical exclusion by conferring coparcenary status on daughters,[112] although guardianship statutes still encode hierarchies that have needed steady judicial recalibration.[113] Bangladesh, by contrast, continues to rely on largely uncodified Hindu law, with *Dayābhāga* principles limiting women's rights in ancestral property and withholding coparcenary entitlements from daughters and widows.[114] These comparative trajectories underscore how the classical logic of patriliny remains institutionally potent where reform has not intervened.

2.3.3 Social Status and Legal Constraints

The social and legal status of women was shaped by a cluster of doctrinal and customary constraints that folded ritual purity, caste, and hierarchical guardianship into the grammar of everyday life. The *Dharmaśāstra* literature framed women as dependants, assigning guardianship duties to male kin and associating feminine virtue with chastity, seclusion at specified times, and service within the household economy.[115] Prescriptions on menstruation, life-cycle rites, and widowhood restricted ritual participation and circumscribed mobility, even where the same cultural field venerated the feminine divine.[116] The result was a structural dissonance between symbolic exaltation and quotidian disablement. These norms also produced a jurisprudence of

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[110] *Parāśara Smṛti* 4.30 ('naṣṭe mṛte pravrajite klībe ca patite patau'), cited and translated in Kane (n 17) 572–573.

[111] Rocher (n 58) 23–31; Sharma (n 98) 289–93.

[112] Hindu Succession Act 1956 (n 10) s 6, as amended by Hindu Succession (Amendment) Act 2005 (n 11) s 3; See Bina Agarwal and Shruthi Naik, 'Do Courts Grant Women Their Inheritance Shares? An Analysis of Case Law in India' (2024) 182 *World Development* 106688 1, 2–3.

[113] Hindu Minority and Guardianship Act 1956 (India), s 6; see also case-law discussion in Rahul Shrivastava, 'Co-parcenary Rights of Daughters…' (2010) SSRN Working Paper 1–12.

[114] Kane (n 17) 558–570; Doniger and Smith (n 93) 121–129.

[115] ibid.

[116] NN Bhattacharyya (n 99) 13–21; Bhattacharji (n 42) 131–36.

ranked rights, in which a woman's claims were routinely secondary to those of her husband, sons, and male agnates.[117]

Caste magnified these asymmetries. The interplay between *varna* ideology and *jati* practice entailed differentials in marriage forms, widow remarriage, and access to property, with lower-status groups sometimes preserving pragmatic accommodations that high-caste orthodoxy repudiated, and with regional matrilineal exceptions offering partial counter models that nonetheless coexisted with wider patrilineal norms.[118] Inheritance treatises and ritual *Manu*als register these variations, yet the dominant legal discourse aligned with upper caste patriarchy, treating the chastity and subordination of women as axiomatic goods of social order.[119] Where widows were recognised as successors, their estates were ordinarily life interests under the surveillance of male kin; where daughters succeeded, their tenure was constrained and defeasible.[120] The conceptualisation of women as guardians of household morality, celebrated in literary and prescriptive texts, did not translate into equal juridical personhood.[121]

The cumulative effect was a regime of constrained autonomy, calibrated across ritual, economic, and familial domains. Marriage entrenched guardianship while conferring status; property doctrines created islands of separate wealth ring-fenced by oversight; kinship mapped women into circulatory roles that served lineage continuity. Classical jurists occasionally acknowledged the inequities, crafting exceptions for necessity and misfortune, or widening maintenance in narrow bands, yet the architecture of dependency remained intact. In South Asian legal modernity, these legacies continue to matter, both where statutory reform has sought to dissolve them and where uncodified norms continue to govern.

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[117] Altekar (n 18) 205–212; Karve (n 93) 92–98.

[118] Kumkum Roy, *The Power of Gender and the Gender of Power* (Oxford University Press 2010) 53, 196, 213; Thapar, *Cultural Pasts* (n 98) 319–20.

[119] Kane (n 17) 571–578; Sharma (n 98) 294–301.

[120] Rocher (n 58) 47–55; Vijñāneśvara, *Mitākṣarā* 1.1.27, in Jha (n 102) vol 1, 146–52.

[121] Patton (n 106) 23–27; Dube (n 97) 187–194.

2.4 Customary Practices and Regional Variations

2.4.1 Role of Custom in Hindu Jurisprudence

Classical Hindu law treats custom not as a peripheral usage, but as a constitutive source of normativity. The dharma literature opens with the hierarchy of sources, yet it immediately accommodates lived practice. "The Veda is the root of the Law," declares *Manu*, "and the tradition and conduct of those who know the Veda," together with "the conduct of good people," and "what is pleasing to oneself," are also standards of right.[122] *Yājñavalkya* states the maxim with even greater economy, locating dharma in *Śruti*, *Smṛti* and *Achara*, a triad that places accepted practice alongside revelation and remembered precept.[123] The *Dharmasūtras* record courts recognising usages of regions, castes and families, with Gautama directing that "*the country's law*" and "*the usage of the people*" be applied when no text governs.[124] This doctrinal openness is not an afterthought; it is the method by which a plural, stratified society was juridically governed.

Custom mattered especially to women's rights and obligations because it could mitigate the restrictions that later scholastic synthesis placed on education, movement, marriage exit and succession. Kane's collation shows how *Achara* generated locally stable rules about gifts to daughters, widow remarriage in some communities, and women's management of *strīdhan*.[125] Altekar's synthesis assembles scattered notices of daughters receiving movables from natal kin and widows administering household assets, practices that sat uncomfortably with the more austere Brahmanical ideal.[126] Karve's kinship studies, and Dube's anthropological work, demonstrate how residence and lineage patterns produced distinct rules of entitlement and authority, including zones of matrilineal transmission that afforded women secure claims to dwellings, tools and land.[127]

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[122] *Manusmṛti* 2.6–2.12, in Olivelle (n 3) 18–21, 20–21.

[123] Yājñavalkya Smṛti 1.7, in JR Gharpure (tr), *Yājñavalkya-Smriti with Mitakshara and Viramitrodaya* (1936); Donald R Davis Jr, *The Spirit of Hindu Law* (Cambridge University Press 2010) ch 1; Robert Lingat, *The Classical Law of India* (JDM Derrett tr, University of California Press 1973) 6.

[124] Yājñavalkya Smṛti 1.7–1.8, in Kane (n 17) 5–7.

[125] Kane (n 17) 566–573, 585–598.

[126] Altekar (n 18) 64–84, 121–136.

[127] Karve (n 19) 24–40; Dube (n 29) 112–129.

Vedic and epic passages that the liturgists preserved also supplied rhetorical and ritual resources for validating custom. The nuptial hymn prays that the bride "be mistress of the house, mistress of the people," a line often invoked to ground the wife's managerial authority over household resources.[128] The *Bṛhadāraṇyaka* remembers *Maitreyi* and *Gārgī* as intellectual actors in public disputation, a memory later communities could mobilise to authorise women's learning in particular milieus.[129] Jamison's reading of the marriage liturgy stresses the indispensability of the wife to sacrificial life, an indispensability that local usage frequently translated into shared control over domestic wealth.[130]

The classical schools themselves preserve apertures. *Yājñavalkya*'s catalogue of *strīdhan* includes gifts from parents, brothers, husband and in-laws, and recognises women's "peculiar property," even while later commentators circumscribe its disposition.[131] *Parāśara* permits remarriage in specified calamities, a rule that digest writers deployed where custom had never entirely foreclosed second unions for deserted or widowed women.[132] Narada foregrounds maintenance as a juridical duty owed to wives and widows, furnishing a textual hook for enforcing customary sustenance.[133] Historical work by Thapar, Roy and Sharma links these doctrinal resources to economies in which women's productive labour in dairying, textiles and market exchange made them visible rights-holders.[134]

Judicial method before codification could, at its best, give effect to such usages. The Privy Council's formulation that "*clear proof of usage will outweigh the written text of the law*" registered the formal priority of custom in adjudication when demonstrated with probative certainty.[135] Menski has shown how this principle, properly applied, would have preserved plural

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[128] ibid.

[129] Bṛhadāraṇyaka Upaniṣad 2.4; 3.6–8, in Olivelle (n 2) 74–79, 102–112.

[130] Jamison (n 25) 55–63.

[131] Yājñavalkya Smṛti 2.143–146, in Kane (n 17) 566–73, 568–69.

[132] Parāśara Smṛti 4.30, discussed in Kane (n 17) 592.

[133] Lariviere (n 69) 13.29–31.

[134] Thapar (n 27) 131–139; Sharma (n 20) 140–155; Roy (n 21) 101–120.

[135] *Collector of Madura* (n 7).

settlements more protective of women's interests than the narrow textual canon often allowed.[136] In agrarian regions of western India and parts of the eastern delta, usages recognised daughters' succession to self-acquired property in default of sons, and allowed widows managerial control over holdings, especially where their labour sustained family capital.[137] Agarwal's comparative political economy explains why control over productive assets translates into bargaining power in kinship systems, clarifying how custom could recalibrate gendered obligations notwithstanding formal patriarchal premises.[138]

2.4.2 Erosion of Customary Practices

The historical arc that follows shows a progressive narrowing of these usages through scholastic consolidation and, later, colonial codification. *Manu*'s guardianship formula supplied the organising trope by which jurists recoded ritual indispensability into civil tutelage.[139] The same compilation states that "*no sacrament is performed with sacred texts for women*," repositioning initiation into marriage and pulling study and authority into male hands.[140] When the *Mitākṣarā* grounded coparcenary in unobstructed heritage by birth, daughters' claims were marginalised within joint family capital; under the *Dayabhaga*, succession by spiritual benefit often placed female heirs on default lines with curtailed estates.[141] Kane documents how commentarial glosses further constrained the content and management of *strīdhan*, placing practical control in agnatic guardians even when the title was acknowledged.[142]

Custom, however, did not simply vanish; it was subordinated. Roy's and Chakravarti's reconstructions show how Brahmanical hegemony re-described practices of widow remarriage, female mobility and premarital sociability as deviations to be disciplined, rather than settled usages

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[136] Menski (n 6) 127–156.

[137] Kane (n 17) 585–598; Altekar (n 18) 129–136.

[138] Agarwal (n 10) 260–269.

[139] *Manusmṛti* 9.2, in Olivelle (n 3) 169.

[140] ibid.

[141] Vijñāneśvara, *Mitākṣarā* chs 1–2, in Kane (n 17) 390–413, 402–05; Jīmūtavāhana, *Dāyabhāga* ch 11, in Rocher (n 58) 148–51.

[142] Kane (n 17) 566–573, 585–598.

to be recognised.[143] Bhattacharji and Bhattacharyya trace how goddess theologies of sovereignty, speech and abundance were domesticated within purity regimes that elevated symbolic femininity while constraining living women through surveillance of sexuality and labour.[144] Patton's case-studies reveal a similar domestication in textual communities, where female authority is acknowledged rhetorically, yet contained institutionally.[145]

The decisive procedural shift occurred under colonial rule. Seeking administrable law, courts privileged a narrow canon of Sanskrit authorities, treated as exhaustive codes. The expectation that usage be proved with uncommon exactitude, coupled with a scepticism toward oral testimony and women's voices, displaced many woman-protective practices that had survived beneath the textual surface.[146] As Derrett showed, the Anglo-Hindu synthesis hardened a Brahmanical ideal into positive rules, while living custom, especially of non-elite groups, was discounted as "*irregular*."[147] Menski's analysis of case-law indicates that the Privy Council's own statement on the priority of usage was under-applied in domains most consequential for women, such as maintenance, remarriage and succession in default of male issue.[148]

Comparative regional histories make the loss legible. In Kerala, matrilineal *taravad* structures once centred women's claims to residence and shares, before codification dismantled *Mappila*, *Nayar* and allied usages in favour of agnatic succession.[149] In parts of Bengal operating under the

[143] Roy (n 21) 39–55, 101–120; Chakravarti (n 43) 52–67.

[144] Bhattacharji (n 42) 29–44; Bhattacharyya (n 76) 56–67.

[145] Patton (n 41) 95–132.

[146] Derrett (n 8) 97-100; Menski (n 6) 146–175.

[147] ibid.

[148] Menski (n 6) 140–45, 160–65, 178.

[149] In Kerala, the *taravad* was the corporate matrilineal household through which property, residence, and lineage were organised, typically under the management of a senior maternal male (the *karnavan*) and with inheritance flowing through women rather than through agnatic lines; it was characteristic of Nayar society and, in variant forms, was also observed among sections of the Mappila Muslim community under *marumakkathayam*. Codification across the twentieth century, undertaken first in the princely states and the Madras Presidency and later at the state level, progressively dismantled these structures by converting collective *taravad* property into divisible shares and by re-centring succession on the conjugal unit and male-line heirs. The effect was to displace women from the positional advantages that the matrilineal house had afforded in respect of residence, maintenance, and claims over ancestral resources, thereby replacing a kinship order that centred maternal descent with one aligned to agnatic succession; See K P Padmanabha Menon, *History of Kerala*, vol 3 (Asian Educational Services 1983 reprint) 112–130; Robin Jeffrey, 'Legacies of Matriliny: The Place of Women and the "Kerala Model"' (2004) 77(4) *Pacific Affairs* 647.

Dayabhaga, village panchayats enforced arrangements by which widows managed holdings and daughters succeeded to movables upon failure of sons; later courts narrowed these practices through stringent proof requirements and a preference for textual lines.[150] Karve documents similar contractions where patrilocality intensified and urban markets monetised dowry, converting voluntary gift into coercive demand and displacing older *strīdhan* protections.[151]

The Vedic and early classical repertoire that had legitimised women's ritual presence was not itself abrogated; it was re-read. The nuptial blessing that the bride "rule over her husband's father, over his mother" became a liturgical flourish, not a legal warrant.[152] The *Upanisadic* memory of women as philosophers was retained as a mark of civilisational depth, not as a guide to present entitlements.[153] Doniger's and Jamison's philologies remind us that the earlier register never promised systematic equality, yet they also show that subsequent juridification closed interpretive space that communities had used to sustain women's agency.[154]

2.5 Codification and Women's Position in Colonial Hindu Law

2.5.1 Colonial Engagement with Hindu Jurisprudence

A. Reliance on Brahmanical Texts in Codifying Hindu Law

Company and Crown courts sought a stable, textually anchored basis for adjudication. In practice, they elevated a narrow Brahmanical canon to the status of code and translated fluid scholastic guidance into binding rules. The move began with the first Anglophone mediations of Hindu law. William Jones published his English rendering of *Manusmṛti* as the "*Institutes of Hindu Law*," presenting it as a civil code rather than a juristic treatise shaped by commentary and custom.[155]

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[150] Sures Chandra Banerji and Tapan Kumar Chakraborty, 'Hindu Law' in *Banglapedia: National Encyclopedia of Bangladesh* (online edn, Asiatic Society of Bangladesh 17 June 2021) https://en.banglapedia.org/index.php/Hindu_Law accessed 15 November 2025; *Ramalakshmi Ammal v Sivanatha Perumal Sethurayar* (1872) 14 Moo IA 570, 585 (PC).

[151] Karve (n 19) 84–97.

[152] Ṛgveda 10.85.46–47, in Jamison and Brereton (n 1) 1414–1415.

[153] Bṛhadāraṇyaka Upaniṣad 3.8, in Olivelle (n 2) 108–110.

[154] Doniger (n 26) 47–52; Jamison (n 25) 121–127.

[155] William Jones (tr), William Jones (tr), *Institutes of Hindu law: or, the ordinances of Menu, according to the gloss of Cullúca,* (Calcutta 1794) (London 1794) xxv–xxvii.

Nathaniel Brassey Halhed's *Gentoo Code* preceded Jones and reinforced the conviction that Hindu law could be captured in an ordered compendium.[156] Henry Thomas Colebrooke's *Digest* then consolidated a method that foregrounded *shastric* authority while filtering it through court-centred needs.[157]

The Sanskrit materials themselves offer a capacious hierarchy of sources. "*The Veda is the root of the Law*," *Manu* declares, adding the "*tradition and conduct of those who know the Veda*," and "*the conduct of good people*," to the catalogue of sources.[158] *Yājñavalkya* speaks in the same register, locating dharma in *Śruti*, *Smṛti*, and *Achara*.[159] Colonial courts cited such passages, yet operationalised Hindu law as if it were a single textual code. Kane's collation shows how the scholastic tradition expected jurists to read text with custom, region, and family usage, not against them.[160] The failure to sustain that method mattered acutely for women. Provisions that in their scholastic setting had been mediated by practice, such as guardianship and limits on female initiation, were treated as unconditional commands. *Manu*'s famous formula, "*in childhood a woman is subject to her father, in youth to her husband, and when her lord is dead to her sons, a woman is never fit for independence*," became a default civil rule rather than a presumption to be interpreted in context.[161]

Liturgical and philosophical materials that had sustained female ritual presence were recast as ornaments, not authorities. The nuptial blessing, "*be mistress of the house, mistress of the people*," was read as poetic excess rather than a foundation for managerial authority.[162] The *Bṛhadāraṇyaka* 's memory of *Maitreyi* and *Gārgī* as reasoning agents in open debate was celebrated as heritage, yet it did not temper the emergent code.[163] Read against the longer legal history presented in

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[156] Nathaniel Brassey Halhed, *A Code of Gentoo Laws* (London 1776) iii–viii.

[157] Jagannātha Tercapanchānana, *A Digest of Hindu Law, on Contracts and Successions: With a Commentary by Jagannátha Tercapanchánana* (HT Colebrooke tr, Cambridge University Press 2013) i–xii.

[158] *Manusmṛti* 2.6–2.12, in Olivelle (n 3) 18–21, 20–21.

[159] Yājñavalkya Smṛti 1.7–1.8, in Kane (n 17) 5–7.

[160] Kane (n 17) 1–12.

[161] *Manusmṛti* 9.2, in Olivelle (n 3) 169.

[162] Ṛgveda 10.85.26–27, in Jamison and Brereton (n 1) 1411–1412.

[163] Bṛhadāraṇyaka Upaniṣad 2.4; 3.6–8, in Olivelle (n 2) 74–79, 102–112, 106–110.

Chapter 1, this represents a methodological shift from plural hermeneutics to text-centred positivism, with gendered consequences that later scholarship has made plain.[164]

B. Marginalisation of Customary Laws that Were More Progressive for Women

Pre-colonial adjudication recognised usages of regions, castes, and families, particularly where they structured women's claims to maintenance, *strīdhan*, remarriage, or succession in default of sons. The *Dharmasūtras* themselves instruct that, in the absence of governing text, "*the country's law*" and "*the usage of the people*" prevail.[165] *Yājñavalkya*'s catalogue of *strīdhan* lists gifts from natal and marital kin as a woman's "*peculiar property*," while later commentators debated scope and management.[166] Narada imposes maintenance as a juridical duty owed to wives and widows.[167] *Parāśara*, in a much-cited verse, permits remarriage where a husband is "lost, dead, has taken renunciation, is impotent, or is fallen."[168] In many regions, such apertures, supported by usage, translated into concrete entitlements. Agarwal's political economy helps to explain why, where women's labour sustained household capital, custom recognised managerial control or succession in default of sons.[169]

Colonial adjudication nominally accepted the priority of proven usage. The Privy Council's well-known statement that "*clear proof of usage will outweigh the written text of the law*" appears often in reports.[170] Yet the procedural burden of proof imposed on women claiming customary rights, combined with scepticism toward oral testimony and preference for Sanskrit textual lines, meant that usages favouring women's property or marital exit were frequently displaced. Derrett traced how this Anglo-Hindu synthesis hardened an upper-caste Brahmanical ideal into positive law, narrowing space for plural practice.[171] Menski showed that, in maintenance, widow remarriage,

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[164] Menski (n 6) 127–156.

[165] *Gautama Dharmasūtra* 1.1–1.2; 11.20–22, in Olivelle (n 56) 9, 147–149.

[166] Yājñavalkya Smṛti 2.143–146, in Kane (n 17) 566–573, 568–569.

[167] Lariviere (n 69) 13.29–31, 205–208.

[168] *Parāśara Smṛti* 4.30, discussed in Kane (n 17) 585–598, 592.

[169] Agarwal (n 10) 260–269.

[170] *Collector of Madura* (n 7).

[171] Derrett (n 8) 242–260.

and daughters' succession to self-acquired property, courts under-applied their own principle on usage.[172]

The impact was regionally legible. In Kerala, matrilineal *taravād* arrangements that centred women's claims to residence and shares were dismantled through codification and adjudication that privileged agnatic succession.[173] In parts of Bengal under *Dayabhaga* influence, village institutions had sustained arrangements by which widows managed holdings and daughters took movables on failure of sons; later courts narrowed these practices in favour of patrilineal lines.[174] Karve documents similar contractions as patrilocality intensified and dowry monetised, a shift that converted protective *strīdhan* into a vehicle for male-side extraction.[175] The combined effect was an erosion of woman-protective custom and a consolidation of textual orthodoxy at the expense of lived practice.[176]

C. Colonial Orientalist Scholarship and the Construction of "Hindu Law"

Orientalist philology and court practice co-produced "Hindu law" as a bounded legal system. Jones's encomium to *Manu* as a timeless code helped to cast a prescriptive treatise as a civil statute.[177] Colebrooke's treatises on inheritance and the *Digest* systematised scholastic materials for adjudication, yet their presentation encouraged judges to treat śāstra as exhaustive.[178] Halhed's *Gentoo Code*, compiled with pandits for the Nawab's court and translated for Company officials,

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[172] ibid.

[173] Padmanabha Menon (n 150) 112–30.

[174] Ludo Rocher, *Jimutavahana's Dayabhaga: The Hindu Law of Inheritance in Bengal* (n 58); Jennifer Brown and Sujata Das Chowdhury, *Women's Land Rights in West Bengal: A Field Study* (RDI Reports on Foreign Aid and Development No 116, Rural Development Institute 2002) 1, 20; Debarati Halder and Jaishankar Karuppanam, 'Property Rights of Hindu Women: A Feminist Review of Succession Laws of Ancient, Medieval, and Modern India' (2008) 24(2) *Journal of Law and Religion* 663; GC Mandal, 'Born to be Unequal? An Assessment of the Rights and Status of Hindu Women in Bangladesh' (2024) 35(1) *Dhaka University Law Journal* 113.

[175] Karve (n 19) 84–97.

[176] Thapar (n 27) 131–139; Roy (n 21) 101–120.

[177] Jones (n 156) xxv–xxvii.

[178] HT Colebrooke (tr), *Two Treatises on the Hindu Law of Inheritance* (Calcutta, AH Hubbard 1810) 1–6; Jagannātha Tercapanchānana (n 157) i–xii.

mediated Persianate digests into an English idiom that confirmed the textualist impulse.[179] Ludo Rocher has shown how this construction reified Brahmanical legal science and its commentaries as "*the*" law of Hindus, converting a juristic library into an official code.[180] Bernard Cohn's account of colonial knowledge explains the epistemic grammar of this move, which turned textual citation into a technique of governance.[181]

The scholar-pandit as court expert became the gatekeeper of meaning. In the hands of conservative interpreters, verses that could be read in light of custom, economy, or equity were recited as literal commands. Thus, *Manu*'s statement that "*for women no sacramental rite is performed with sacred texts*" was taken to disable female initiation universally, rather than to mark a particular ritual economy.[182] The same *Manu*als kept counter-currents in view. *Manu*'s "*where women are honoured, there the gods rejoice*" preserved an ethic of regard.[183] *Yājñavalkya*'s *strīdhan* scheme recognised women's peculiar property even as management was narrowed by commentators.[184] The nuptial blessing that the bride be "*queen over the household*" remained available as a resource.[185] Yet the colonial synthesis preferred a single line of control.

Later scholarship has read this construction with care. Thapar links it to changes in economy and kingship, and to the politics of canon formation.[186] Roy and Chakravarti show how caste and patriarchy mediated the selection and application of texts.[187] Sharma connects the consolidation to agrarian transformation and elite interest.[188] Feminist jurists have traced how the colonial text-centrism entrenched male guardianship and curtailed spaces that custom had reserved for

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[179] Halhed (n 156) iii–viii; Gobinda Chandra Mandal, 'Appropriation or Preservation? The Colonial Construction of Hindu Law in Bengal' (2025) 23(1) *Bangladesh Journal of Law* 49, 61.

[180] Ludo Rocher, *Hindu Law: Texts and Cases* (Oxford University Press 2012) 1; Mandal, 'Appropriation or Preservation?' (n 179) 49, 55-56.

[181] Bernard S Cohn, *Colonialism and Its Forms of Knowledge* (Princeton University Press 1996) 57–75.

[182] *Manusmṛti* 2.66; 9.18, in Olivelle (n 3) 33, 170.

[183] ibid. 3.56, in Olivelle (n 3) 71.

[184] Yājñavalkya Smṛti 2.143–146, in Kane (n 17) 566–573, 568–569.

[185] Ṛgveda 10.85.46–47, in Jamison and Brereton (n 1) 1414–1415.

[186] Thapar (n 27) 131–139.

[187] Chakravarti (n 43) 52–67; Roy (n 21) 39–55.

[188] Sharma (n 20) 140–155.

agency.[189] Philologists remind us that the Vedic and *Upanisadic* repertoire never offered a univocal egalitarianism, yet they insist that editorial memory of female learning and ritual indispensability persisted even as legal capacity was re-described.[190]

2.5.2 Impact of Codification on Women's Rights

A. Redefinition of *Stridhan* under Colonial Interpretations

Colonial codification translated a capacious, practice-attuned notion of women's property into a narrow and rigid legal category. In pre-colonial usage, *stridhan* encompassed gifts at life-cycle rituals, earnings from labour or craft, immovables acquired during marriage, natal inheritances, and judicial awards, all of which could buffer the risks of widowhood or marital breakdown. British courts, guided by textual monism and selective readings of the *Mitākṣarā* and *Dayabhaga*, pared this diversity to a short list of ceremonial gifts, often excluding wages and inheritances on the ground that such assets reverted to the husband or his agnates unless explicitly gifted as *stridhan*. This chapter records this contraction in the late nineteenth-century case-law of Bombay and Madras, where widows' and daughters' claims to natal property failed unless they fitted the tightened colonial definition. The canonical sources never mandated such parsimony. *Manusmṛti* lists as women's property "what is given by father, mother, husband, or brothers, what is received at the nuptial fire, what is given on supersession, what is gifted by relatives, the bride-price, and gifts thereafter," a formula echoed and expanded in *Yājñavalkya Smṛti*.[191] The colonial move from contextual adjudication to code-like rule displaced regional and caste usages that had treated acquisitions more generously, converting *stridhan* from a substantive economic safeguard into a largely symbolic residue. Scholarly syntheses confirm that nineteenth-century textualism privileged Brahmanical authority over customary practice, thus narrowing women's independent estates.[192]

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[189] Agnes (n 9) 75–97; Nivedita Menon, *Seeing Like a Feminist* (Zubaan–Penguin 2012) 24–26, 30; Kalpana Kannabiran, *Tools of Justice: Non-Discrimination and the Indian Constitution* (Routledge 2012) 309, 334, 375–76.

[190] Jamison (n 25) 121–27; Witzel (n 93) 27–31; Patton (n 41) 95–132; Doniger (n 26) 47–52.

[191] Doniger and Smith (n 93) 189–190 (9.194–9.195); Patrick Olivelle (tr), *Yājñavalkya Smṛti* in *Dharmasūtras and Smṛtis: Translations* (Oxford University Press 2019) 2.143–2.146.

[192] Kane (n 17) 622–636; Altekar (n 18) 176–184; Mandal, 'Appropriation or Preservation?' (n 179) 49, 76; Mandal, 'Stridhana and Hindu Women's Property Rights in Bangladesh' (n 4) 63, 68-71.

B. Exclusion of Women from Inheritance and Property Rights

Codification also recast succession around agnatic preference. As the chapter notes, daughters and widows were confined to maintenance or life estates that lapsed to male collaterals, while local norms recognising daughters in default of sons, or widows with powers of alienation, were downgraded as "*deviations*" from the Brahmanical norm. The reification of the patrilineal joint family as the default locus of ownership meant that women's formal status as heirs rarely matured into secure title or managerial control. Classic *Dayabhaga* rules did permit succession to daughters in the absence of male issue, yet colonial courts set demanding evidentiary thresholds for such claims and privileged male agnates.

The Brahmanical archive itself contains resources for less restrictive settlement. *Narada* and *Katyayana* enumerate categories of women's separate property and, in situations of default of sons, admit female succession; *Yājñavalkya Smṛti* recognises widows' authority over certain acquisitions and gifts.[193] Kane's collation of the *Smṛtis* shows that pre-colonial jurists debated women's powers over distinct classes of property, a doctrinal plurality flattened by colonial codification.[194]

C. Legal Disempowerment and Economic Dependency

The juridical shift from plural forums to a centralised, Sanskritic canon had institutional effects. As explained, women once pursued practice-based equality through caste *panchayats* and local fora. After codification, litigation required male intermediaries, documentary proof, and resources many women, particularly from lower-caste and rural backgrounds, could not mobilise. Courts construed *stridhan* and maintenance narrowly, channelling claims into ceremonial gifts and rejecting work-based or customary entitlements. The architecture of rule and proof thus replaced ownership with dependency, offering maintenance allowances in place of rights in rem.

Feminist legal scholarship has long traced the causal chain from proprietary exclusion to economic vulnerability. Agarwal demonstrates that command over land is the decisive variable for

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[193] JDM Derrett (tr), *The Nārada Smṛti* (Motilal Banarsidass 2004) 11.11–11.15; Richard W Lariviere (tr), *The Kātyāyana Smṛti* (Motilal Banarsidass 2003) 1.21–1.25; Olivelle, *Yājñavalkya Smṛti* (n 191) 2.143–2.146.

[194] Kane (n 17) 629–636; Mandal, 'Appropriation or Preservation?' (n 179) 49, 75; Mandal, 'Stridhana and Hindu Women's Property Rights in Bangladesh' (n 4) 63, 72-73.

bargaining power and exit options; where women lack a secure title, their fallback position within the household is weakened, and the risk of poverty in widowhood rises.[195] Agnes, reading the colonial jurisprudence against post-colonial reform, shows how the coparcenary and the "limited estate" of widows entrenched economic dependency until statutory change.[196] South Asian research on gendered labour markets further indicates that deprivation of assets compounds constraints on mobility and work, thereby reinforcing intergenerational disadvantage.[197]

D. Social and Cultural Impacts

Property rules shape social power. The chapter records how juridical contraction relegated women from decision making in the household economy and excluded them from intergenerational wealth transfers that structure status. Widows, already constrained by ritual prescriptions, confronted the alignment of austerity norms with legal limits on alienation and control. The doctrinal exaltation of the feminine principle in theology did not translate into legal capacity. In the *Ṛgveda* Vac proclaims, "*I move among the gods*," asserting creative agency, yet the colonial legal order converted living women into dependents with limited estates.[198]

Historical analyses locate the cultural mechanics of this translation. Thapar, Mandal and Sharma trace how Brahmanical redaction channelled diverse early images of women into domesticated roles; later legalism and colonial codification froze these hierarchies.[199] Roy and Chakravarti show that caste ordering and control of female sexuality became juridically naturalised under the rubric of "*law and custom*," a process intensified when courts disqualified non-textual usages as "*irregular*."[200] In Bangladesh and eastern India, the erasure of practices more favourable to women, such as certain bilateral or matrilineal successions, was a social loss as well as a legal one.

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[195] Agarwal (n 10) 23–27, 260–269.

[196] Agnes (n 9) 66–74, 103–110.

[197] See Naila Kabeer, *Reversed Realities: Gender Hierarchies in Development Thought* (Verso 1994) 150-153, 155; Dina M Siddiqi, 'Do Bangladeshi factory workers need saving? Sisterhood in the post-sweatshop era' (2009) 91(1) *Feminist Review* 154.

[198] Jamison and Brereton (n 1) vol 3, 1463–1465 (RV 10.125, Vāc Sūkta).

[199] Thapar (n 93) 363–369; Mandal, 'Appropriation or Preservation?' (n 179) 49, 76; Sharma (n 93) 233–240.

[200] ibid.

E. Differential Impact by Class and Caste

The harms were stratified. As noted, elite patrilineal households used codified rules to consolidate corporate control over joint estates. Marginalised and non-Brahmanical communities, which had preserved contractual marriage, widow remarriage, divorce, and broader succession for daughters in default of sons, saw these practices invalidated as "*non-scriptural*." Women in lower-caste and tribal groups, who relied on direct access to land or usufructs, were disproportionately affected by the preference for agnatic succession and indissoluble marriage.

Ethnographic and historical research bears out this unevenness. Dube's studies of kinship practices show that the displacement of bilateral or matrilineal arrangements narrowed women's avenues to property.[201] Bhattacharyya and Bhattacharji document how *Shakta* and regional ritual economies could sustain female authority that colonial adjudication later ignored.[202] Karve's account of joint-family structures clarifies how codification reinforced the agnatic corporation, tightening control at the expense of women's managerial roles.[203] Contemporary Bangladeshi work on gender, labour, and social protection further shows that lack of assets intersects with class and caste to deepen vulnerability, particularly for widows and deserted women.[204]

2.5.3 Colonial Judicial Practices and Patriarchy

Colonial adjudication translated a plural field of practice into a narrow hierarchy that centred agnatic control, curtailed women's proprietary capacity, and naturalised the joint family as corporate owner. Judges, intent on system and certainty, elevated a selective Brahmanical canon while discounting customary proof that had secured women's access to property in several regions.

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[201] See Leela Dube, *Women and Kinship: Comparative Perspectives on Gender in South and South-East Asia* (The United Nations University, 1997) 6, 14-15, 18, 39, 159.

[202] Bhattacharyya (n 76) 81–92; Bhattacharji (n 89) 55–63.

[203] Karve (n 93) 89–96.

[204] Ferdousi Sultana Begum, *Discussion Paper: Gender Diagnostics of Social Protection Issues* (Social Security Policy Support (SSPS) Programme, Cabinet Division and General Economics Division (GED), Government of the People's Republic of Bangladesh 2017) 24; Ayesha Siddequa Daize and Mst Shirin Sultana, 'Casual Analysis of the Violence Against Dalit Women at Munshiganj District of Bangladesh' (2019) 9(1) *Jagannath University Journal of Arts* 156, 157–58; World Bank, *Allowances for the Widow, Deserted and Destitute Women: Program Brief* (2019) 1; Naila Kabeer, Simeen Mahmud and Sakiba Tasneem, 'Does paid work provide a pathway to women's empowerment? Empirical findings from Bangladesh' IDS Working Paper 2011(375) (2011), pp 7-12; Mandal, 'Stridhana and Hindu Women's Property Rights in Bangladesh' (n 4) 63, 83-85.

The chapter details how courts repeatedly confined *stridhan* to ritual gifts and recast earnings, inheritances, and awards as assets presumptively absorbed by the husband's estate, with the effect that widows were channelled toward maintenance and life interests rather than title. The same pattern appears in succession, where agnatic preference displaced cognatic claims and evidential thresholds were set that many women could not meet. As the Privy Council formulated it, "*clear proof of usage will outweigh the written text of the law*," a maxim that nonetheless sat uneasily with many trial courts' reluctance to credit women's customary claims.[205]

The textual authorities themselves did not compel so parsimonious a regime. *Manusmṛti*'s canonical list of women's property, "what is given by father, mother, husband, or brothers, what is received at the nuptial fire, and thereafter," admits a wide spectrum of gifts across the life-cycle, and *Yājñavalkya*'s enumeration recognises distinct categories of *strīdhana* with separable incidents.[206] Patrick Olivelle's translation of *Yājñavalkya Smṛti* 2.143–146 confirms these categories, while P. V. Kane's synoptic collation shows a long juristic debate on a widow's powers of management and female succession in default of sons.[207] Where courts hewed to a narrow textual monism, they collapsed this plurality into a single restrictive template, notwithstanding occasional acknowledgements that "*clear proof of usage will outweigh the written text of the law*."[208] The chapter notes this tension and records how, in practice, usage lost out to the drive for doctrinal uniformity.

Court-appointed pandits became the gatekeepers of meaning, concentrating interpretive authority in a small circle of Sanskritic experts whose selections hardened into rules. As the chapter shows, their opinions were regularly used to displace regionally grounded practices more favourable to women, including matrilineal succession among Nayars and Khasis, bilateral inheritances in parts of Maharashtra and Bengal, and locally recognised separate property for married women. The result was an exclusionary funnel: proceedings demanded documentary title, male guarantors, or authoritative male witnesses, thresholds that many widows and unmarried women were

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[205] *Collector of Madura* (n 7).

[206] Manusmṛti 9.194–195, in Olivelle, *Manu's Code of Law* (n 110) 9.194–9.195; Olivelle, 'Yājñavalkya Smṛti' (n 191) bk 2, vv 143–146.

[207] Kane (n 17) (strīdhana classifications and widow's powers of management).

[208] *Collector of Madura* (n 7).

structurally unable to satisfy. The scriptural archive contains resources for a less restrictive settlement. *Manusmṛti* 9.194–195 and *Yājñavalkya Smṛti* 2.143–146 preserve the conceptual distinctness of women's separate property, and *Parāśara Smṛti* 4.28 admits remedial remarriage when marital protection collapses, "*naṣṭe mṛte pravrajite klībe ca patite patau*."[209] Yet, as JDM Derrett, Ludo Rocher, and Robert Lingat each show, the colonial forum, by treating Brahmanical texts as if they were codes, fossilised one strand of a diverse tradition and re-authored it through expert mediation.[210] The account of pandit practice in the section illustrates precisely this mechanism in action.

The jurisprudential *Manu*facture of patriarchy had consequences far beyond the courtroom. The section traces how the contraction of women's property rights removed them from intergenerational transfers, aligned ritual prescriptions for widowhood with legal incapacities, and institutionalised economic dependency. Because litigation required resources, literacy, and male brokerage, the forum amplified class and caste stratifications, particularly where courts invalidated customary pathways that had permitted daughters' succession or robust widows' management. The dissonance between symbolic exaltation and juridical subordination is stark: the Rigvedic voice of *Vac* proclaims creative agency, "*I move among the gods*," yet the colonialised legal order reduced living women to dependants with limited estates.[211] Modern feminist legal scholarship clarifies the economic logic. Bina Agarwal demonstrates, with comparative evidence from South Asia, that command over land determines bargaining power and exit options within households, and that where women lack secure title, vulnerability in widowhood and marital breakdown is structurally produced.[212] Flavia Agnes shows how the limited estate and coparcenary doctrine entrenched dependency until modern statutory reform, with long afterlives in uncodified spaces.[213]

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[209] *Manusmṛti* 9.194–195 (as in Olivelle (n 109)); *Yājñavalkyasmṛti* 2.143–146 (as in Olivelle (n 191)); *Parāśarasmṛti* 4.28.

[210] JDM Derrett, 'The Administration of Hindu Law by the British' (1961) 4 *Comparative Studies in Society and History* 10; Ludo Rocher, 'Hindu Conceptions of Law' (1978) 29 *Hastings Law Journal* 1283, 1299–1302, 1305; Lingat (n 123).

[211] Jamison and Brereton (n 1) RV 10.125.1–2 (Vāc hymn).

[212] Bina Agarwal, '"Bargaining" and Gender Relations: Within and Beyond the Household' (1997) 3(1) *Feminist Economics* 1, 1–3, 36–39.

[213] Agnes (n 9); Flavia Agnes, *Family Law*, vol II: *Marriage, Divorce and Matrimonial Litigation* (Oxford University Press 2011) 2–4, 120, 208, 238, 260.

Uma Chakravarti situates these legal forms within a deeper social history of Brahmanical consolidation and caste patriarchy, while Donald R. Davis Jr explains how the triadic relationship among text, custom, and state law was rebalanced by the colonial forum to women's detriment.[214]

2.6 Post-colonial Divergence and the Impact on Hindu Women's Rights

2.6.1 Codification in India and the Non-codification Strategy in Bangladesh

At independence, the two successor states inherited a common stock of Anglo-Hindu doctrine, administered through a mixture of classical textualism and colonial judicial improvisation. India chose to break decisively with that inheritance by codifying Hindu personal law in a sequence of parliamentary statutes between 1955 and 1956. The Hindu Marriage Act 1955 introduced a civil law of marriage for Hindus, including grounds and procedures for judicial separation and divorce, a uniform scheme for nullity and legitimacy, and ancillary reliefs regarding custody, disposal of property and enforcement of decrees.[215] The Hindu Succession Act 1956 recast intestate succession rules and, after the 2005 amendment, placed daughters on an equal footing with sons in the coparcenary by rewriting section 6, thereby abolishing the agnatic preference that had structured joint-family property.[216] The Hindu Minority and Guardianship Act 1956 articulated welfare as the paramount consideration in guardianship and rationalised the hierarchy of natural guardians.[217] The Hindu Adoptions and Maintenance Act 1956 completed the architecture by creating a common framework for adoption and codifying spousal and dependent maintenance entitlements.[218] The cumulative effect was to convert a judge-made, school-based system into a general, portable statutory regime, accompanied by national appellate supervision.

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[214] Donald R Davis Jr, *The Spirit of Hindu Law* (n 123) 7, 12–13, 16, 34–35; Chakravarti, 'Conceptualising Brahmanical Patriarchy in Early India: Gender, Caste, Class and State' (1993) 28(14) *Economic and Political Weekly* 579, 579–82; See Donald R Davis Jr, 'Law and "Law Books" in the Hindu Tradition' (2008) 9 *German Law Journal* 309, 310, 314–16, 319–25.

[215] Hindu Marriage Act 1955 (n 9), ss 10–13, 26–28A.

[216] Hindu Succession (Amendment) Act 2005 (n 11) s 3 substituting Hindu Succession Act 1956 (n 10) s 6 ('daughter of a coparcener shall … be a coparcener in her own right in the same manner as the son').

[217] Hindu Minority and Guardianship Act 1956 (n 113), ss 6, 13, India Code (Act 32 of 1956)

[218] Hindu Adoptions and Maintenance Act 1956 (India), esp ss 5–9 (adoption) and ss 18–20 (maintenance).

Bangladesh moved in a different direction. After 1971, there was no comprehensive codification of Hindu family relations. The single post-independence statute addressed registration rather than status: the Hindu Marriage Registration Act 2012 created a public registry in order to preserve documentary proof of Hindu marriages and set up an appointment and supervisory scheme for Hindu marriage registrars.[219] Crucially, section 3(2) preserves the validity of a marriage solemnised according to Hindu custom even if it is not registered, a choice that facilitates documentary recognition while leaving the status itself to custom and religious rites rather than to a constitutive civil act.[6] In the absence of a Hindu divorce statute, Bangladesh retains a fragmented regime in which separation, maintenance, guardianship and custody are pursued through the general family-court system and colonial-era instruments. The principal substantive protection specific to Hindu married women remains the Hindu Married Women's Right to Separate Residence and Maintenance Act 1946, which entitles a wife to separate residence and maintenance on enumerated grounds such as cruelty, desertion and the husband's bigamy, but also contains exclusions that reproduce patriarchal controls.[220] Guardianship and custody are governed predominantly by the Guardians and Wards Act 1890, under which the court may appoint a guardian where that is for the minor's welfare, and where the welfare principle supplies the controlling test.[221] Family-court process is now supplied by the Family Courts Act 2023, which replaces the Family Courts Ordinance 1985 but largely carries forward its jurisdiction over dissolution of marriage, restitution of conjugal rights, dower, maintenance and guardianship or custody.[222]

The distributional and procedural consequences of these divergent choices are visible at ground level. In India, codification first created and later equalised statutory rights that women could assert in their own names. The 2005 reform of section 6 of the Hindu Succession Act is emblematic: by naming daughters as coparceners "in the same manner as the son", it confers both a status and a pathway to a share in joint-family property without the uncertainties of custom.[223] In Bangladesh,

[219] Registration of Hindu Marriage Act 2012 (Bangladesh), ss 3(1)-(2).

[220] Hindu Married Women's Right to Separate Residence and Maintenance Act 1946 (Bangladesh) ss 2–3.

[221] Guardians and Wards Act 1890 (Bangladesh) s 7.

[222] Family Courts Act 2023 (Bangladesh) s 5.

[223] Hindu Succession (Amendment) Act 2005 (n 11) s 3 substituting Hindu Succession Act 1956 (n 10) s 6.

by contrast, the absence of a general Hindu marriage code, of a statutory divorce framework for Hindus, and of a codified marital-property regime means that women tend to rely on separation-maintenance claims, piecemeal equitable remedies, or criminal overlays, none of which regularise the ownership and division of assets built up during marriage. Contemporary socio-legal evidence documents how these structural features leave many women navigating prolonged litigation for modest maintenance, with little prospect of a principled division of marital property at exit.[224]

The net result is that India's codification has produced a rights-bearing statutory vocabulary that courts and litigants can invoke, amend and equalise over time, while the path of Bangladesh has preserved a largely non-codified Hindu personal law space supplemented by administrative registration and general family-court process. The two trajectories therefore start from a common doctrinal past yet generate very different present-day repertoires for Hindu women seeking equality within marriage, exit, guardianship and property.

2.6.2 Institutional, Political, and Social Explanations for Divergence

Several intersecting explanations help account for why India codified Hindu law in the 1950s, whereas Bangladesh did not, even after 1971. Institutionally, India inherited and strengthened a legislative capacity oriented to nation-building through uniform civil statutes. The Hindu Code Bills, ultimately enacted as four statutes, were framed as national projects of legal modernisation, consolidating and replacing a patchwork of regional custom and colonial precedent with general rules capable of appellate harmonisation.[225] Codification created stable handles for future equalisation, which later enabled Parliament to amend section 6 of the Hindu Succession Act in 2005 to entrench daughters' coparcenary rights.[226] That kind of incremental statutory equalisation presupposes the existence of a code.

The political economy of family law reform has been different in Bangladesh. Post-independence legislative energies prioritised constitutional reconstruction, land reform, language and cultural

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[224] Human Rights Watch, *'Will I Get My Dues… Before I Die?' Harm to Women from Bangladesh's Discriminatory Laws on Marriage, Separation, and Divorce* (Human Rights Watch 2012) 7, 42, 63.

[225] Hindu Marriage Act 1955 (n 9) ss 10–13, 26–28A; Hindu Succession Act 1956 (n 10); Hindu Minority and Guardianship Act 1956 (n 113) ss 6, 13; Hindu Adoptions and Maintenance Act 1956 (n 218) esp. ss 5–9, 18–20.

[226] Hindu Succession (Amendment) Act 2005 (n 11) s 3, substituting Hindu Succession Act 1956 (n 10) s 6.

policy, and the rebuilding of institutions after war and authoritarian interruptions. In the family law arena, policy attention and reform capacity were absorbed by the larger Muslim-majority framework, while the Hindu minority's personal law space remained largely governed by inherited doctrine and forum. Where state action did occur for Hindus, it tended to be administrative and facilitative rather than constitutive. The Hindu Marriage Registration Act 2012 follows this pattern: it provides a framework for registration and the appointment of Hindu marriage registrars, yet it keeps unregistered marriages legally effective, avoiding any recasting of status.[227]

Procedurally, Bangladesh has relied on general courts to absorb family disputes across communities under a common civil-process envelope. The Family Courts Act of 2023 maintains jurisdiction across maintenance, dower, restitution, dissolution, and guardianship or custody, and consolidates some appellate and fee changes while leaving the underlying Hindu status rules untouched.[228] Substantively, the main Hindu-specific statute is the 1946 Act on separate residence and maintenance, which recognises certain exit-adjacent entitlements yet stops short of a full divorce and marital-property code.[229] Guardianship questions are resolved under the Guardians and Wards Act 1890, with the welfare principle guiding appointment and control.[230] This institutional configuration makes courts central to case-by-case equity but deprives them of a comprehensive statutory mandate to redistribute marital property or to equalise status rules at exit.

Socially and politically, reform coalitions and frames also diverged. In India, the political class linked codification to a self-conscious modernising project, including the formation of a national family law commons for Hindus that could then be adjusted to meet equality claims. The subsequent 2005 amendment demonstrates how a codified platform can be used to accelerate distributional change in favour of women.[231] In Bangladesh, women's groups and legal aid organisations have long documented the poverty risks and bargaining deficits that follow marital breakdown where no marital-property framework exists and where maintenance orders are low,

[227] Registration of Hindu Marriage Act 2012 (n 12) ss 3(1)–(2) (Act No 40 of 2012, Laws of Bangladesh).

[228] Family Courts Act 2023 (n 222) s 5.

[229] Hindu Married Women's Right to Separate Residence and Maintenance Act 1946 (n 220) ss 2–3 (Act XIX of 1946, Laws of Bangladesh).

[230] Guardians and Wards Act 1890 (n 221) s 7.

[231] Hindu Succession (Amendment) Act 2005 (n 11) s 3 substituting Hindu Succession Act 1956 (n 10) s 6.

delayed, or difficult to enforce, particularly for Hindu women who cannot access a no-fault divorce code.[232] Yet in the absence of a prior code, legislative efforts have gravitated to registration, court-process improvement and piecemeal protective statutes, leaving the core personal-status rules to be worked out through custom, community practice and general private law.

2.6.3 Impacts of Divergence on Hindu Women's Equality in Bangladesh

The post-colonial divergence between India's codified Hindu-law regime and retention of largely uncodified, court-shaped personal law in Bangladesh has produced a set of interlocking disadvantages for Hindu women in Bangladesh, visible at entry into marriage, during its subsistence, at exit, and in the distributional afterlife of marital relations. At the constitutional plane, Bangladesh guarantees equality before the law, equal protection, and non-discrimination, while promising due process and protection of law; yet pathways through which Hindu women actually invoke those guarantees remain narrow and contingent, because the primary rules governing status, guardianship, maintenance, and succession have not been comprehensively equalised in personal law form.[233] In India, the Hindu Succession (Amendment) Act 2005 recast the Mitākṣarā coparcenary, conferring by-birth coparcenary rights on daughters, equal to sons, with clear textual pinpoints and a repudiation of the pious-obligation debt rule; that single move altered bargaining positions within households and at partition, and supplied courts with determinate language to vindicate women's proprietary claims.[234] In Bangladesh, by contrast, the absence of a modern Hindu succession code leaves courts and families to negotiate claims within the received *Dayābhāga*-centred practice and general civil law, a configuration repeatedly criticised by practitioners and reform bodies for gender asymmetry that weakens daughters' and widows' economic security.[235] The result is that questions of joint family property, life interests, and collateral succession continue to be processed through customary understandings rather than explicit equality-oriented statutory directives, so that women's post-separation and widowhood trajectories remain precarious in ways now largely foreclosed across the border.

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[232] Human Rights Watch (n 224) 2, 7, 40, 78.

[233] Constitution of the People's Republic of Bangladesh 1972 arts 27–29, 31.

[234] Hindu Succession (Amendment) Act 2005 (n 11) s 6 (equal coparcenary by birth) and ss 4, 23–24 (omitted).

[235] Begum, (n 5)103.

The divergence is equally stark in relation to marriage registration. In Bangladesh, the Hindu Marriage Registration Act 2012 makes registration available, but non-registration does not affect the validity of a marriage solemnised according to śāstric rites.[236] For women, optionality functions less as a liberty and more as an evidentiary hazard: without a contemporaneous civil record, age, identity of parties, and date of marriage can be litigated ex post, a recurrent obstacle in suits for restitution, maintenance, guardianship, and proof of legitimacy.[237] The hazard is compounded by the 'special provision' of the Child Marriage Restraint Act 2017, which permits exceptions in undefined 'best interests' circumstances supervised by administrative actors, a design that weakens the normative clarity of minimum-age rules and can normalise under-age unions rather than prevent them.[238] India's equal-coparcenary reform and the routine use of registration in many states illustrate how bright-line statutory techniques, backed by administrative infrastructure, invert these proof burdens; Bangladesh's current architecture, in contrast, places a premium on adversarial proof in family courts.

On process and remedies, the Family Courts Act 2023 in Bangladesh modernised the forum created in 1985 but retained a narrow subject-matter jurisdiction centred on dissolution, restitution of conjugal rights, dower, maintenance, and guardianship and custody.[239] This preserves a critical pocket of justiciability, yet it does not itself create substantive personal law entitlements for Hindus to divorce or adopt, nor does it equalise inheritance; litigants must therefore rely on a patchwork of colonial-era or general laws. The principal statutory lifeline for married Hindu women remains the Hindu Married Women's Right to Separate Residence and Maintenance Act 1946, which permits suits for separate residence and maintenance on specified fault-based grounds, expressly withholding relief where the woman is found 'unchaste' or has left Hinduism.[240] The remedy is important but limited: it does not dissolve the marriage, does not restructure guardianship as of right, and leaves property relations untouched.

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[236] Registration of Hindu Marriage Act 2012 (n 12), s 3(1)–(2) (registration available; validity of a śāstric marriage unaffected by non-registration).

[237] Registration of Hindu Marriage Act 2012 (n 12) ss 6, 10–12 (applications, inspection and certified copies).

[238] Child Marriage Restraint Act 2017 (Bangladesh), s 19 ('special provision').

[239] The Family Courts Act 2023 (Bangladesh) (replacing the Family Courts Ordinance 1985).

[240] Hindu Married Women's Right to Separate Residence and Maintenance Act 1946 (n 220) s 2 and proviso.

The guardianship field exemplifies the structural effects of divergence. India's Hindu Minority and Guardianship Act 1956, read through the *Githa Hariharan* case, constitutionalised a reading that recognises maternal guardianship consistent with equality, thereby softening the father-first default.[241] In the absence of a cognate Hindu guardianship code, Bangladesh relies on the welfare standard and discretionary appointments provided by the Guardians and Wards Act 1890, a practical device rather than an equality-grounded recasting of parental status.[242] For Hindu mothers, this means guardianship claims often turn on discretionary welfare assessments rather than a statutory presumption of co-equal parental status, with consequent uncertainty in education, travel, and property management decisions for minors.

These doctrinal features generate distributional and procedural effects that accumulate over time. At entry into Hindu marriage in Bangladesh, weak registration incentives[243] and a permissive exception to the child-marriage bar[244] can entrench vulnerability at the very moment when capacity and consent ought to be most robustly policed. At subsistence, the absence of a no-fault or consent-based divorce track for Hindus[245], together with a maintenance regime tethered to fault and chastity[246], narrows exit options and exposes women to leverage by spouses and affines in negotiations over residence, custody, and economic support. At exit and bereavement, the lack of an equal-coparcenary rule[247] and a modern intestacy code for Hindus[248] curtails daughters' and widows' autonomous claims to family property, feeding inter-generational wealth gaps. The

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[241] Hindu Minority and Guardianship Act 1956 (n 113) s 6; *Githa Hariharan v Reserve Bank of India* (1999) 2 SCC 228 [2], [9], [11], [21-22], [24].

[242] Guardians and Wards Act 1890 (n 221), s 17.

[243] Registration of Hindu Marriage Act 2012 (n 12) s 3(2)

[244] Child Marriage Restraint Act 2017 (n 238) s 19 (special provision permitting under-age marriage in 'special circumstances').

[245] Bangladesh Legal Aid and Services Trust, *Legislative Initiatives and Reforms in the Family Laws of Bangladesh* (2009) 9 ('Hindu and Buddhist women have no legal right to bring a suit for divorce').

[246] Hindu Married Women's Right to Separate Residence and Maintenance Act 1946 (n 220) s 2 and proviso

[247] 'Reform "discriminatory, unjust" Hindu laws' *The Daily Star* (Dhaka, 4 September 2021) https://www.thedailystar.net/news/bangladesh/news/reform-discriminatory-unjust-hindu-laws-2168001 accessed 28 November 2025; cf Hindu Succession (Amendment) Act 2005 (n 11) s 6.

[248] Hindu Law of Inheritance (Amendment) Act 1929 (Bangladesh); Hindu Women's Rights to Property Act 1937 (Bangladesh) (pre-partition piecemeal reforms; no modern comprehensive intestacy code).

procedural superstructure compounds these patterns: family-court jurisdiction, though real, is bounded[249]; proof burdens are heavy where registration is absent[250]; and legal aid and appellate pathways, while improved, still leave many women practically unable to convert constitutional equality into concrete remedies.[251]

These outcomes sit in palpable tension with the international obligations of Bangladesh. Bangladesh remains a party to CEDAW with reservations to Articles 2 and 16(1)(c), a stance that continues to blunt the internalisation of equality in family relations.[252] CEDAW's interpretive guidance is unequivocal that States must equalise the economic consequences of marriage, family relations, and their dissolution, and secure women's effective access to justice through justiciable rights, accessible fora, and remedies.[253] In Bangladesh, the absence of a codified, equality compliant Hindu family law package means that the constitutional promise of equality is mediated by discretionary adjudication, evidentiary luck, and localised custom, rather than by clear rules that reallocate status and property at scale.

2.7 Literature Review and Historiography

2.7.1 Doctrinal and Historical Scholarship

The doctrinal and historical scholarship on Hindu law has developed along three partly intersecting trajectories: philological work on the *Dharmaśāstra* corpus and its commentaries; legal-historical analyses of Anglo-Hindu law and the institutional production of precedent; and doctrinal as well

[249] Family Courts Act 2023 (n 222) s 5 (enumerated, limited subject-matter jurisdiction).

[250] Registration of Hindu Marriage Act 2012 (n 12) s 3(2) (non-registration not affecting validity); See also Imran Hossain, 'Hindu Marriage Registration Act: A protective shield for women' *Dhaka Tribune* (Dhaka, 1 February 2020) <https://www.dhakatribune.com/bangladesh/200206/hindu-marriage-registration-act-a-protective> accessed 15 November 2025.

[251] Legal Aid Services Act 2000 (Bangladesh); Family Courts Act 2023 (n 222) s 19 (appeals); Constitution of the People's Republic of Bangladesh 1972 (n 233) arts 27–28.

[252] Office of the UN High Commissioner for Human Rights (OHCHR), 'Status of Ratification: Convention on the Elimination of All Forms of Discrimination against Women — Bangladesh' (reservations to arts 2 and 16(1)(c)).

[253] Committee on the Elimination of Discrimination against Women, 'General Recommendation No 29 on Article 16 of the Convention on the Elimination of All Forms of Discrimination against Women (Economic Consequences of Marriage, Family Relations and Their Dissolution)' (30 October 2013) UN Doc CEDAW/C/GC/29; UN Committee on the Elimination of Discrimination against Women (CEDAW), 'General Recommendation No 33: Women's Access to Justice' (3 August 2015) UN Doc CEDAW/C/GC/33.

as feminist critiques of post-colonial personal law regimes and their distributional effects. Each of these currents illuminates, in different registers, how the categories that regulate Hindu women's family law entitlements were constructed, stabilised, and periodically unsettled.

A first body of scholarship reconstituted the classical genre as a juristic tradition rather than a loose compendium of moral dicta. Donald R Davis contends that the *Dharmaśāstra* corpus articulates law in a technical sense, and that the legal grammar of dharma is recoverable only when read as a practice-oriented normative order rather than as scripture alone.[254] Ludo Rocher's classic essay on "law books in an oral culture" shows how the śāstric form combined textual authority with juristic techniques of interpretation, referencing, and reconciliation, in a milieu where oral transmission and local praxis shaped legal meaning.[255] These philological reconstructions have been consolidated by critical editions and translations, notably Patrick Olivelle's edition of the *Mānava-Dharmaśāstra*, which situates the authority of *Manu* and its contestation within the long history of legal redaction and reception.[256] The upshot for contemporary analysis is twofold. First, rules on marriage, guardianship and inheritance cannot be treated as a static canon; they were historically plural, exegetically contested, and routinely mediated by commentators and digests. Secondly, the very idea of a unitary "Hindu law" was a product of selections and hierarchies within this textual field, rather than an antecedent fact of social life.[257]

A second, overlapping literature traces the translation of śāstric materials into Anglo-Hindu law through the colonial courts. Here, the scholarship problematises the familiar narrative that colonial adjudication merely applied pre-existing rules. Rocher's chapter on *Dayābhāga* inheritance demonstrates how the King's Courts and later the High Courts shifted away from pundit opinion to a case-law method, privileging precedent over the juristic reasoning of the commentarial schools and sometimes re-describing ritual prerequisites as dispensable matters of "intention" and

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[254] Donald R Davis Jr, 'Hinduism as a Legal Tradition' (2007) 75(2) *Journal of the American Academy of Religion* 241, 243.

[255] Ludo Rocher, 'Law Books in an Oral Culture: The Indian Dharmaśāstras' (1993) 137(3) *Proceedings of the American Philosophical Society* 254, 254–55.

[256] Olivelle (n 110) 13–15, 79.

[257] See Donald R Davis Jr, 'Introduction' in Patrick Olivelle and Donald R Davis Jr (eds), *Hindu Law: A New History of Dharmaśāstra* (Oxford University Press 2018) 1, 3–4, 5–6.

"substance".[258] Derrett's programmatic essay on the administration of Hindu law by the British shows, with doctrinal detail, how selection, abrogation and importation operated: rules were retained or discarded by reference to perceived social acceptability; gaps were "filled" with concepts from equity and English private law; and the deference of the Privy Council to established courses of decision entrenched judicially created doctrines as if they were śāstric givens.[259] These findings have been revisited in recent historiography that emphasises the colonial power to reshape the very object of *Dharmaśāstra*, a point pressed in the new Oxford History, which underlines the extent to which modern Hindu personal law bears the imprint of nineteenth- and early twentieth-century judicial method rather than any pristine textual orthodoxy.[260] Together, these works locate the genesis of many present-day doctrinal asymmetries, including the differential treatment of widows, daughters and coparceners, in the Anglo-Hindu moment of re-systematisation.[261]

A third strand concerns the post-colonial doctrinal settlement and its feminist critique. Doctrinal syntheses such as the standard treatises and leading textbooks made "modern Hindu law" legible to bench and bar, while critical scholarship interrogated both the social premises of codification and its effects on women. Flavia Agnes's early work framed the family law field as a site where gendered citizenship was negotiated through institutions that often mediated women's claims to marital status, maintenance and property via patriarchal valuations of family integrity.[262] Political–sociological histories of personal law have since excavated the parliamentary and party contestations that shaped the Hindu Code's architecture, showing how political bargains, religious authority claims, and constitutional vocabularies of equality and secularism were mutually constitutive of legislative design.[263] The most textured recent account, Saumya Saxena's history of personal law after Independence, demonstrates how divorce, guardianship and adoption became arenas in which courts, ministries and social movements struggled over the meaning of gender

[258] Ludo Rocher, 'Inheritance: Dāyabhāga' in Patrick Olivelle and Donald R Davis Jr (eds), *Hindu Law: A New History of Dharmaśāstra* (Oxford University Press 2018) 164, 173–76.

[259] Derrett, 'The Administration of Hindu Law by the British' (n 210) 12–13, 28–29.

[260] Davis, 'Introduction' (n 257) 1, 18; Rocher, 'Inheritance: Dāyabhāga' (n 258) 175–77.

[261] Rocher, 'Inheritance: Dāyabhāga' (n 258) 173–75, 186.

[262] See Agnes (n 9) 28, 78, 100–05, 207–08, 215.

[263] See Narendra Subramanian, *Nation and Family: Personal Law, Cultural Pluralism, and Gendered Citizenship in India* (Stanford University Press 2014) 16, 69, 84, 88, 99.

equality and the permissible reach of state law into intimate life.[264] In parallel, feminist mappings of the wider Indian personal law field set Hindu-law debates alongside Muslim and Christian law reform, urging sensitivity to legal pluralism and shared adjudication rather than simple replacement by a uniform code.[265]

Within this third strand, the property literature is crucial. Bina Agarwal's foundational research established that independent command over property, especially agricultural land, is the single most decisive factor for women's economic and social bargaining power in South Asia. Her World Development article documented the persistent gap between formal rights and effective control, and identified administrative, social and ideological barriers to realising statutory entitlements. This economic perspective frames the stakes of succession reform sharply: without enforceable rights to natal and marital property, women's access to maintenance and their resilience against marital breakdown remain structurally weak, whatever the doctrinal elegance of family law rules on guardianship or custody.[266]

Bangladeshi scholarship engages these debates in the distinctive context of non-codification. While India's post-1955 codification created a statutory platform for incremental equality claims, the Hindu personal law of Bangladesh has remained largely uncodified, with piecemeal legislative interventions and administrative accommodations. A recent Dhaka University Law Journal article surveys the landscape, documenting how the absence of comprehensive marriage, divorce and succession legislation sustains interpretive uncertainty and often disadvantages women in litigation over maintenance, guardianship and property.[267] The same analysis underscores that optional marriage registration has proved normatively and practically inadequate for securing basic incidents of status, including proof of marriage in disputes and access to civil documentation.[268] The Bangladeshi debate therefore joins the wider South Asian feminist argument but adds a

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[264] See Saumya Saxena, *Divorce and Democracy: A History of Personal Law in Post-Independence India* (Cambridge University Press 2022) 1–3, 11, 21, 74.

[265] See Tanja Herklotz, 'Law, Religion and Gender Equality: Literature on the Indian Personal Law System from a Women's Rights Perspective' (2017) 1(3) *Indian Law Review* 250, 250–52, 254, 260.

[266] Agarwal (n 10) 1–3.

[267] See Mandal, 'Born to be Unequal? An Assessment of the Rights and Status of Hindu Women in Bangladesh' (n 174) 113, 114–115, 123, 125, 127.

[268] Human Rights Watch (n 224) 6–7, 41, 50.

distinct institutional variable: where rules are left to be derived from case-law, pundit-influenced practice and dispersed textual authorities, the burdens of proof and procedure fall unevenly on women who must navigate a plural legal terrain without the coordinating benefits of a code.[269]

Comparative scholars of Hindu law caution, however, against treating codification as a panacea. The Indian experience shows that statutory text is only the beginning of doctrinal change. Courts read equality clauses through the lens of family law values, administrative capacity mediates access to the new rights, and social movements are often necessary to translate legislative promises into enforceable practice.[270] The historiography of the Hindu Code Bills and subsequent amendments, combined with socio-legal work on litigation patterns, reveals a recursive dynamic in which legal opportunity structures invite claims that, in turn, reshape doctrinal interpretation.[271] For Bangladesh, this body of work suggests two lessons for the literature. First, that a principled codification anchored in constitutional equality can recalibrate baselines, especially in succession and guardianship. Secondly, that design choices must attend to institutional fit: registration systems, evidentiary rules, and legal aid architectures determine whether women can actually use the law.

2.7.2 Feminist and Socio-legal Critiques

The feminist and socio-legal critique of South Asian personal laws identifies a common problematic: gendered membership in the polity is mediated through rules that are at once formally protective of community identity and substantively permissive of women's subordination. A generation of scholarship has moved beyond doctrinal exegesis to interrogate the institutional sites and social practices through which such subordination is reproduced or resisted. Three strands, often intertwined, are salient. First, feminist doctrinal analyses map discriminatory rules and their justificatory tropes. Secondly, legal-anthropological and socio-legal studies track how women manoeuvre among state courts, community institutions and informal forums. Thirdly, movement-centred accounts examine political strategies and the conditions of legal change. Read together,

[269] See Mandal, 'Born to be Unequal? An Assessment of the Rights and Status of Hindu Women in Bangladesh' (n 174) 113, 113–15, 117, 124.

[270] See Saxena (n 265) 2, 5, 11, 323; Herklotz (n 266) 250–51, 253, 256–57.

[271] See Saxena (n 265) 2, 39, 158.

these literatures show that the crucial questions are not exhausted by the black-letter content of Hindu personal law, but extend to the architecture of adjudication, expertise and proof, and to the distributional consequences of plural legal orders for differently situated Hindu women in India and Bangladesh.[272]

Within the Indian debate, feminist jurists exposed early the costs of celebrating "reform" that consolidates majoritarian respectability while leaving intact the hierarchies embedded in family law. Flavia Agnes' critique of the Uniform Civil Code project remains emblematic. Her argument is not a defence of status-quo patriarchy, but a warning that codification which universalises upper-caste, urban norms can narrow rather than widen the space for gender justice, particularly when "reform" is marshalled to communalise the women's question.[273] The analytic move here is double. It rejects an idealised secularism that treats personal law as the singular obstacle to equality, and it insists that doctrinal change without procedural and institutional transformation will often under-deliver for poor and marginalised women.

Socio-legal work on "shared adjudication" provides the complementary lens. Gopika Solanki theorises the Indian family law field as one in which the state has long shared authority with religious and societal actors. In this landscape, multiple legal sites, including state family courts, caste and sect councils, doorstep forums, lawyers' chambers, and women's organisations, co-produce norms of marriage, divorce, and guardianship.[274] The virtue of this account is neither celebration nor denunciation of pluralism as such. Rather, it specifies how, in practice, forum design, evidentiary cultures and the relative bargaining power of parties mediate outcomes. Solanki shows that the same plural architecture can entrench gender-regressive settlements when power asymmetries go unaddressed, yet it can also be harnessed for remedial creativity where women mobilise support networks, switch fora strategically, and extract concessions that formal adjudication might not deliver.[275]

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[272] Herklotz (n 266) 255–57.

[273] Flavia Agnes, 'Hindu Men, Monogamy and Uniform Civil Code' (1995) 30(50) *Economic and Political Weekly* 3238, 3240.

[274] See Gopika Solanki, 'Adjudication in Religious Family Laws: Cultural Accommodation, Legal Pluralism, and Gender Equality in India' (PhD thesis, McGill University 2007) Abstract ii, 75–78, 212–16.

[275] Solanki (n 274) 48–50, 237, 247, 255.

Feminist and socio-legal critiques converge on three methodological cautions. First, doctrinal yardsticks must be tethered to processes. Srimati Basu's ethnographic engagement with family courts, widely cited in this literature, underscores how conciliation oriented judicial routines and the moral economy of "adjustment" can mute statutory entitlements and recast violence or desertion as matters for mediated compromise; the institutional script often expects women to trade legal rights for social peace.[276] Secondly, equality analysis must be intersectional. As Tanja Herklotz synthesises, the Indian canon that matters most to feminist personal law critique has been shaped by Third World feminism and intersectionality, and it treats secular-religious, public-private, and formal-informal binaries as unstable.[277] The implication is clear: the same rule on maintenance or guardianship may mean different things in the capital city and in a remote village; caste location, class precarity, migration and household form inflect both legal need and legal strategy. Thirdly, legality travels through translation. The projects of rights-vernacularisation and "making law work" require attention to how women, activists and officials domesticate legal concepts in local idioms.[278]

For Bangladesh, the feminist critique adds a distinct institutional register. The absence of a codified Hindu family law, together with the continuing influence of the Dayabhaga tradition, produces a field in which classical categories are mediated through contemporary judicial method, registration practice and professional expertise.[279] The optional design of Hindu marriage registration illustrates how procedures shape outcomes without settling underlying status rules.[280] Recent scholarship shows that uncertainty about sources and interpretive latitude generate variability felt most acutely by Hindu women seeking maintenance, guardianship or property relief.[281] The socio-legal problem concerns not only patriarchal doctrine but also the transaction

[276] Herklotz (n 266) 252, citing Srimati Basu, *The Trouble with Marriage: Feminists Confront Law and Violence in India* (University of California Press 2015) 97.

[277] ibid.

[278] See Sally Engle Merry, *Human Rights and Gender Violence: Translating International Law into Local Justice* (University of Chicago Press 2006) 1–3, 6–15, 120.

[279] Mandal, 'Stridhana and Hindu Women's Property Rights in Bangladesh: A Legal Analysis of the Dayabhaga Tradition' (n 4) 63, 64-66, 68, 83-84.

[280] Registration of Hindu Marriage Act 2012 (n 12) s 3(2).

[281] Shahnaz Huda, '"Double Trouble": Hindu Women in Bangladesh—A Comparative Study' (1998) 9(1) *Dhaka University Studies (Part F)* 111, 113–14, 129; Human Rights Watch (n 224) 7, 41, 66, 89.

costs that flow from indeterminacy of law, including lawyer gatekeeping, evidentiary burdens in proving custom or textual authority, and the chilling effect when outcomes appear to depend on the forum or the individual judge.[282] Analysis of *stridhan* under Dayabhaga indicates that, although the school adopts a more liberal view of separate property than some alternatives, lack of codification and uneven judicial approaches diminish predictability and bargaining power; the case for codification, gender sensitive adjudication and targeted legal aid therefore follows.[283] The Bangladesh specific implication of the comparative literature is to foreground institutional design, including registration, documentary infrastructures and family-court capacity, alongside doctrinal reform.[284]

A further point of convergence across the Indian and Bangladeshi literatures is the centrality of property to women's substantive freedom. While economists and legal scholars disagree about the optimal legislative route, feminist socio-legal writing insists that rights to enter, exit and renegotiate intimate relations are materially conditioned by access to assets and income. The doctrinal equality of daughters in coparcenary, or secure recognition of women's separate property, cannot be evaluated in the abstract; the effects depend on procedural enforceability, the availability of interim relief, and the credibility of sanctions for non-compliance.[285] Hence the weight placed, in socio-legal evaluation, on everyday enforcement practices in family courts and on the design of remedies. Solanki's materials on how "consensual" dispositions are produced in family courts, and how forum switching can be politically enabling only when backed by organisational support, illustrate why equality analysis must remain attentive to the institutional micro-politics of adjudication.[286]

International feminist legal theory supplies the normative vocabulary for assessing these arrangements without erasing cultural claims. The worry, articulated in different registers by scholars engaged with legal pluralism, is twofold: states may instrumentalise women's status as

[282] Human Rights Watch (n 224) 8, 61, 63.

[283] Mandal, 'Stridhana and Hindu Women's Property Rights in Bangladesh: A Legal Analysis of the Dayabhaga Tradition' (n 4) 63, 63–64, 73–74, 84, 87.

[284] Faustina Pereira, Shahnaz Huda and Sara Hossain (eds), *Revisiting Personal Laws in Bangladesh: Proposals for Reform* (Brill 2019) 47, 53, 83; Human Rights Watch (n 224) 47, 63, 98, 100.

[285] Herklotz (n 266) 255–56, 258.

[286] See Solanki (n 275) 67, 75, 80–81, 102, 255.

bargaining chips in multicultural settlements, and anti-pluralist projects may instrumentalise women to police minorities. The most compelling feminist prescriptions therefore combine two moves suggested within the shared-adjudication literature itself. First, reject the false binary between uniformity and relativism by adopting design principles that disperse authority yet build justiciable baselines into all fora. Secondly, institutionalise conditions that support women's agency: legal aid, evidentiary rules that credit non-financial contributions and care work, and rigorous appellate oversight, so that forum choice enlarges rather than narrows opportunities.[287] On this reading, the critical question for Bangladesh is not whether to abandon pluralism, but how to re-engineer personal law institutions so that pluralism is compatible with equality for Hindu women.

Finally, movement-centred scholarship shows that doctrinal improvement depends on political economy. The Indian experience demonstrates that landmark statutory or judicial moments are typically the product of long campaigns that combine courtroom strategy with legislative advocacy and public pedagogy. Herklotz's review traces how women's organisations have shifted frames over time, from appeals to secular uniformity, to calls for intra-community reform, to hybrid strategies that leverage constitutional equality while negotiating community authority.[288] For Bangladesh, the lesson is less about replicating the code of India than about calibrating advocacy to institutional fit: building registries and templates that reduce adjudicative variance, professionalising family-court practice, and articulating reform proposals that speak to both Hindu community concerns and constitutional equality. The feminist and socio-legal critique, at its most persuasive, therefore resists easy answers. It offers instead a set of disciplined questions about doctrine, institutions and effects, and a toolkit for evaluating whether any given reform increases the real capacity of Hindu women to choose, to leave, to keep, and to inherit.

2.7.3 What Remains Unsettled and Why This Thesis is Needed

The existing literature, rich though it is in doctrinal exposition and historical reconstruction, leaves a number of issues unsettled in ways that materially matter for Hindu women's equality in

[287] Solanki (n 275) 36–39, 42–43, 75–78; cf discussion of Ayelet Shachar's 'joint governance' approach as summarised ibid 42–43.

[288] Herklotz (n 266) 253–54, 260, 262.

Bangladesh. First, there is no consensus on how to read the Bangladesh constitutional equality clauses in relation to uncodified personal law rules that continue to be administered in family courts. The standard position that Articles 27, 28 and 31 supply the general equality yardstick is uncontested, but it remains under-theorised whether, and how, these provisions permit searching review of religion-specific family norms in the absence of explicit legislation. The result is a methodological gap between constitutional text and personal law adjudication, with downstream effects on remedies and standards of review in family disputes.[289] Secondly, the scholarship has not adequately addressed the interpretive consequences of Bangladesh's choice not to codify Hindu family law after independence. The Hindu Marriage Registration Act 2012 introduced an administrative apparatus for registration, yet left registration optional and did not create substantive grounds for divorce or civil consequences for non-registration. The literature notes these features, but rarely traces their effects across proof burdens, evidentiary culture, and access to maintenance, particularly for women who cannot easily establish a valid marriage in court.[290] This leaves unresolved how far procedural hurdles entrench substantive inequality.

A third unsettled area concerns guardianship and adoption. Much Indian commentary assumes that the conceptual shift achieved in the *Githa Hariharan* case, which read the expression "after" in section 6 of the Hindu Minority and Guardianship Act 1956 so that mothers are not automatically subordinated to fathers, can be generalised to South Asian Hindu law.[291] That assumption does not travel to Bangladesh, where the Guardians and Wards Act 1890 still structures guardianship and where section 19(b) has historically privileged the husband as guardian of a married minor. The High Court's recent rule nisi questioning the constitutionality of that clause signals doctrinal movement, yet there is little Bangladesh-centred scholarship analysing the constitutional pathway and its implications for routine family court practice.[292] The position on adoption is equally undertheorised. Bangladesh has no general civil adoption statute and resort is largely to

[289] Constitution of the People's Republic of Bangladesh 1972 (n 233) arts 27, 28, 31.

[290] Registration of Hindu Marriage Act 2012 (n 12); see Plan International, *Marriage Registration in Bangladesh: Final Report* (Melbourne, 2022) 16.

[291] *Githa Hariharan* (n 241).

[292] Guardians and Wards Act 1890 (n 221) s 19(b).

guardianship under the 1890 Act, with uncertain consequences for women's caregiving claims and for the recognition of adopted daughters in succession.[293]

Fourth, the comparative literature often treats "Hindu law reform" in broad strokes by reference to the post-1955 Indian codification and the 2005 coparcenary amendment. Yet, precisely because Hindu succession in Bangladesh continues to be read through *Dayābhāga* practices and custom, the functional comparators are not straightforward. The Indian materials are internally contested on timing and retrospectivity even within a codified system, as demonstrated by *Vineeta Sharma v Rakesh Sharma*.[294] Without an account of institutional fit, path dependence, and procedural capacity in Bangladesh, it remains uncertain which elements of the Indian regime are portable as equality-advancing reforms and which would misfire if transplanted.

Fifth, there remains a conceptual under-supply in the socio-legal literature connecting doctrinal rules to economic outcomes for Hindu women in Bangladesh. There is robust global scholarship showing that secure rights in marital and immovable property are central to women's bargaining power and wellbeing, yet Bangladesh-specific evidence on how optional registration, the absence of divorce, and guardianship rules shape asset trajectories remains sparse and methodologically uneven.[295] Where NGO and policy reports document hardship generated by discriminatory personal law rules and weak family court processes, they are not consistently mined to build doctrinally informed causal accounts that could guide reform design.[296] The equality analysis mandated by international law is better developed, but the implications for specific Bangladesh rules remain under-specified: General Recommendation No 29 requires equal rights and responsibilities during marriage and at dissolution, including in marital property regimes, and General Recommendation No 33 articulates core elements of women's access to justice, yet these international standards have not been translated into concrete doctrinal tests to review Hindu personal law rules in Bangladesh.[297]

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[293] Guardians and Wards Act 1890 (n 221); see also US Department of Justice, *Adoption Procedures in Bangladesh* (2013) 2.

[294] Hindu Succession Act 1956 (n 10) s 6 (as amended 2005); *Vineeta Sharma* (n 11).

[295] Agarwal (n 10) chs 1–2; Law Commission of India, *Consultation Paper on Reform of Family Law* (2018) 1–3.

[296] Human Rights Watch (n 224) 49, 67.

[297] CEDAW, 'General Recommendation No 29 on Article 16 of the Convention on the Elimination of All Forms of Discrimination against Women (Economic Consequences of Marriage, Family Relations and Their Dissolution)'

Finally, the historiography leaves unresolved how to integrate classical authority, Anglo-Hindu precedents, and contemporary constitutionalism in a method faithful to both legal pluralism and women's equality. Important work in Hindu law studies shows that the tradition is juristic, dynamic, and embedded in household governance, which cautions against assuming that codification is the sole route to reform.[298] Yet, without a Bangladesh-grounded doctrinal map that ties this insight to present institutions, courts, and litigation patterns, the normative implications remain diffuse.

This thesis is needed to close these gaps. It offers a Bangladesh-centred doctrinal analysis that treats constitutional equality as judicially cognisable in personal law disputes, reconstructs the present legal regime across marriage, divorce, guardianship, adoption, and succession with primary authorities, and then builds a comparative argument about what, if anything, can travel from India's experience. It operationalises international equality standards into concrete tests suitable for Bangladesh courts, and it specifies legislative blueprints that are institutionally feasible. In short, the contribution is to replace generalities about "religion versus equality" with a rule-by-rule evaluation anchored in Bangladesh law, attentive to institutional capacity and socio-legal effects, and framed to deliver practicable reform.

2.8 Conclusion

This chapter has traced, in layered fashion, the long history of Hindu jurisprudential thinking on women, from Vedic invocations that position the bride as "mistress of the household" to post-classical scholastic techniques that both preserved and constrained female capacities, and from colonial jurisprudence that privileged demonstrable custom over Sanskritic text to modern statutory reform that has, at least in India, re-aligned property and family law with constitutional equality. Read together, the sources disclose neither an unbroken arc of subordination nor a simple narrative of emancipation, but a field marked by ambivalence, doctrinal plasticity, and historically contingent institutional choices.

(2013) (n 253) paras 37–38, 45–47, 29, 42, 53; CEDAW, 'General Recommendation No 33: Women's Access to Justice' (n 253) para 2.

[298] Davis, 'Hinduism as a Legal Tradition' (n 254) 241; Menski (n 6) 45–50, 110–15, 190–95.

The Vedic and *Upaniṣadic* records are not bereft of female agency. The marriage hymn of the *Ṛgveda* speaks of the bride assuming lordship within the domestic sphere, while the famed dialogues of *Maitreyī* and *Gārgī* in the *Bṛhadāraṇyaka Upaniṣad* attest to women's authoritative participation in metaphysical reasoning. These episodes do not map neatly onto later private-law capacities, yet they reveal a repertoire from which later communities could, and sometimes did, argue for status and competence.[299]

Classical *Dharmaśāstra* tightened guardianship and marital control, encapsulated in *Manu*'s admonition that women should not be independent. At the same time, other sources, notably *Yājñavalkya*, elaborated categories of *strīdhan* (woman's separate property) that jurists later refined with considerable sophistication. The doctrinal picture is therefore internally variegated: a restrictive family governance model coexisted with recognitions of proprietary entitlement, with the balance mediated by school, region, and custom.[300]

Colonial courts rendered this plural inheritance more indeterminate by elevating provable usage over the written text when the two conflicted. The Privy Council's canonical statement, that "*clear proof of usage will outweigh the written text of the law*", entrenched a decisional method that licensed regional and communal variation and, in practice, often allowed patriarchal customs to prevail unless rebutted by evidence.[301]

Post-Independence India moved from this unstable synthesis to incremental codification and, ultimately, to substantive equality in coparcenary rights. The Hindu Succession (Amendment) Act 2005 rewrote section 6 to confer on daughters the status of coparceners by birth, and the Supreme Court in *Vineeta Sharma v Rakesh Sharma* settled the contested retrospectivity and "father alive" questions by holding, in terms, that coparcenary is a birthright and does not depend on the father being alive on 9 September 2005. The doctrinal architecture is now clear, even if its administration remains uneven.[302]

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[299] Ralph TH Griffith (tr), 'Rig Veda, Book X, Hymn 85' (Sacred Texts, 1896) RV 10.85.26–27 https://www.sacred-texts.com/hin/rigveda/rv10085.htm accessed 15 October 2025; Olivelle, Bṛhadāraṇyaka Upaniṣad 2.4.1–14 (n 2) ('Maitreyī'); Olivelle, Bṛhadāraṇyaka Upaniṣad 3.6–3.8 (n 2) (Gārgī at King Janaka's court).

[300] See Olivelle, *Manu's Code of Law* (n 110) 9.3; Olivelle, 'Yājñavalkya Smṛti' (n 191) 2.143–2.146.

[301] *Collector of Madura* (n 7).

[302] Hindu Succession (Amendment) Act 2005 (n 11) s 6; *Vineeta Sharma* (n 11) [44], [55], [62]–[64]; Supreme Court Observer, 'Court Clarifies Application of S 6 of Hindu Succession Act, 1956' (12 August 2020)

Bangladesh, by contrast, has only partially engaged statutory levers. The Hindu Marriage Registration Act 2012 created a framework for registration but, crucially, preserved the validity of unregistered marriages, thereby leaving evidentiary vulnerability in place, especially for women seeking maintenance, inheritance, or exit. Constitutionally, Articles 27, 28 and 31 set non-discrimination and due-process baselines that any future reform must satisfy. The gap between these constitutional commitments and the extant Hindu personal law regime frames the normative problem that later chapters address.[303]

International standards reinforce that trajectory. CEDAW's General Recommendations on the economic consequences of marriage and on access to justice press States to ensure registries, remedies, and evidentiary architectures that protect women's rights across the marital life-cycle. These instruments do not dictate substantive personal law content. They do, however, require that institutional design remove structural barriers that predictably disadvantage women.[304]

The doctrinal-comparative upshot is plain. Textual traditions offer resources for both restriction and reform; colonial and customary layering multiplied variance. The codification in India culminated in property-equalising jurisprudence; Bangladesh instituted a registration scaffold that still leaves core issues of guardianship, maintenance, succession, and exit underspecified in positive law.

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https://www.scobserver.in/journal/court-clarifies-application-of-s-6-of-hindu-succession-act-1956/ accessed 15 October 2025.

[303] Registration of Hindu Marriage Act 2012 (n 12) ss 3(1)–(2); Constitution of the People's Republic of Bangladesh 1972 (n 233) arts 27, 28, 31.

[304] CEDAW, 'General Recommendation No 29 on Article 16 of the Convention on the Elimination of All Forms of Discrimination against Women (Economic Consequences of Marriage, Family Relations and Their Dissolution)' (2013) (n 253) paras 1, 4, 6, 19–20, 25–26, 41–42, 46–47, 53; CEDAW, 'General Recommendation No 33: Women's Access to Justice' (n 253) paras 8–9.

Chapter-3

QUEST FOR EQUALITY: CHALLENGES IN THE CURRENT HINDU LAW OF BANGLADESH

3.1 Introduction

Chapter 2 recovered the intellectual architecture through which classical Hindu jurisprudence positioned women within a ritual-patrilineal order. That historical cartography matters for Bangladesh today, since personal law doctrines and institutional habits continue to reflect the emphasis of *Dayabhāga* on religious efficacy and agnatic priority, even as constitutional equality norms have matured. This chapter takes up the contemporary implications. It maps where doctrinal rules and institutional practices still produce gendered disadvantage, and it sets out a reform-oriented method that reads the inherited law against constitutional and international standards and against the realities of adjudication and enforcement.

Two premises orient the analysis at the threshold. First, the operative grammar of intestate succession in Bangladesh remains the *Dayabhāga* of *Jīmūtavāhana*, whose decisive criterion is ritual capacity rather than mere proximity of kin. The consequence is a structural preference for male heirs and, for women, residual or limited interests unless positively enlarged by statute. Authoritative editions bring out both the doctrinal logic and its distributive effects.[1] Secondly, in the absence of a comprehensive codified Hindu family law code, the legal landscape is a mosaic

[1] Ludo Rocher (ed), *Jīmūtavāhana's Dayabhāga: The Hindu Law of Inheritance in Bengal* (OUP 2002) 11.1.2–3 (widow as heir failing male issue), 11.1.56–57, 60–62, 65–67 (widow's limited usufruct; no gift, mortgage or sale save for necessity; reversion to the husband's heirs, with the same logic extended to daughters), 11.2.1–3, 31 (daughters' title predicated on obsequial service and subject to reversion), 11.6.17 (succession by nearest *sapinda* measured through *piṇḍa*-offering); P V Kane, *History of Dharmaśāstra* (Bhandarkar Oriental Research Institute 1962) vol V pt II 799–808.

of classical authorities and scattered enactments, including the Hindu Marriage Registration Act 2012, which facilitates documentary proof of marriage without addressing capacity, divorce, or equality-sensitive incidents of the status.[2] The yardstick for evaluating this landscape is supplied by Articles 27 and 28 of the Constitution, together with the obligations of Bangladesh under the Convention on the Elimination of All Forms of Discrimination against Women, including Article 16 on equality in family relations and the recorded treaty acts of Bangladesh.[3]

Working from those premises, the chapter proceeds thematically across the principal sites where Hindu women in Bangladesh encounter legal or institutional headwinds. In marriage, the normative model remains sacramental rather than contractual, a frame that complicates consent and exit in cases of violence or desertion. The 2012 Act regularises proof but does not render registration mandatory nor introduce a divorce jurisdiction for Hindus, which leaves women reliant on piecemeal remedies and on general criminal or child protection statutes when things go wrong.[4] Child marriage persists despite an ostensibly robust floor-age regime; the Child Marriage Restraint Act 2017 empowers injunctions and penalties, yet its section 19 "special circumstances" clause, overseen by a court, remains a recognised pathway for exceptional approvals, a device that rights organisations have warned may be misused unless constrained by best-interests standards and independent verification.[5] These tensions, between a legal form that signals protection and institutional practices that may undermine it, typify the terrain addressed here.

Succession illustrates a second line of difficulty. The equality clauses of the Constitution supply a clear vocabulary, but without legislative restatement of female estates and orders of heirs, judges are asked to reconcile structural features of *Dayabhāga* with contemporary equality. That reconciliation is uneven. A notable High Court Division decision in 2020 clarified that a Hindu widow's share extends to agricultural as well as non-agricultural land, a correction to long-

[2] Hindu Marriage Registration Act 2012 (Bangladesh), s 3.

[3] Constitution of the People's Republic of Bangladesh 1972, arts 27–28; Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13, art 16.

[4] Constitution of the People's Republic of Bangladesh 1972 (n 3) art 27.

[5] Child Marriage Restraint Act 2017 (Bangladesh), s 19; UNICEF Office of Research–Innocenti, '*Child Marriage Evidence Profile: Bangladesh*' (2025) 3–4.

standing administrative practice that had excluded the former.[6] Media analysis captured both the doctrinal significance and the entrenched resistance on the ground, including obstruction in mutation offices and family pressure, which reminds us that enforcement and administration are as decisive as legal principle.[7] In guardianship, a different strand of jurisprudence has moved towards equality, with the High Court holding on constitutional grounds that a mother may be the sole legal guardian for official purposes, a step that aligns personal status administration with Articles 27 and 28 and with children's interests.[8] As a comparative point of method, Indian equality-centred decisions such as *Githa Hariharan v Reserve Bank of India* demonstrate how constitutional interpretation of guardianship provisions can recalibrate parental authority toward gender parity, a technique this chapter treats as instructive rather than transplantable.[9]

Property regimes supply a third and fourth cluster of concerns. In the enclave of *strīdhan*, classical law recognises the woman's separate property. Yet appropriation within the marital household, evidentiary deficits, and confusion with dowry often reduce that formal autonomy to a claim that must be negotiated rather than enforced. Comparative Indian authority has insisted that non-return of *strīdhan* is a cognisable legal injury. In *Pratibha Rani v Suraj Kumar*, the Supreme Court treated retention of a wife's *strīdhan* as criminal breach of trust and underscored her absolute title, a jurisprudential stance that shifts the burden from sentiment to legal remedy.[10] The anti-dowry framework of Bangladesh, updated in 2018, criminalises demands or exchanges but does not by

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[6] *Heirs of late Jotindranath Mondal v Gouri Dasi* (HCD, Bangladesh, 2 September 2020) Civil Revision No 2477 of 2004 (holding that Hindu widows in Bangladesh are entitled to inherit all property of their late husbands, including agricultural land, and rejecting restrictive colonial-era readings of the Hindu Women's Right to Property Act 1937); see also 'High Court ruling: Hindu widows have right on husbands' land' *The Daily Star* (Dhaka, 3 September 2020) https://www.thedailystar.net/frontpage/news/high-court-ruling-hindu-widows-have-right-husbands-land-1954901 accessed 25 October 2025; 'Hindu widow has rights to all property of husband: High Court' *The Business Standard* (Dhaka, 12 October 2021, last modified 13 October 2021) https://www.tbsnews.net/bangladesh/court/hindu-widows-have-rights-all-property-husband-high-court-315049 accessed 24 October 2025.

[7] Ummay Marzan Jui, 'The law protects Hindu widows. But there are many other factors at play' *The Business Standard* (Dhaka, 14 October 2021) https://www.tbsnews.net/features/panorama/law-protects-hindu-widows-there-are-many-other-factors-play-315613 accessed 15 November 2024.

[8] *Bangladesh Legal Aid and Services Trust (BLAST) and others v Bangladesh and others*, Writ Petition No 5343 of 2009 (HCD, final orders 24 January 2023).

[9] *Githa Hariharan v Reserve Bank of India* (1999) 2 SCC 228 [2], [3], [21], [22], [24].

[10] *Pratibha Rani v Suraj Kumar* (1985) 2 SCC 370 [21]–[24]

itself provide a summary civil route for *strīdhan* recovery, inviting conflation and hesitation in front-line institutions.[11] A reform-minded reading would separate these tracks, preserving robust penalties for dowry while codifying *strīdhan*'s incidents and a speedy recovery process.

Maintenance, finally, displays the tension between conditionality and equality. The Hindu Married Women's Right to Separate Residence and Maintenance Act 1946 constructs entitlement as a fault-mediated response, conditioned by chastity and obedience, rather than as a gender-neutral social right grounded in need and capacity. Family Court jurisdiction has been interpreted to include Hindu parties and to consolidate civil remedies, which is institutionally significant, but the normative core remains anchored in the 1946 template. Against that, Article 16 of CEDAW requires equality in the rights and responsibilities of spouses in marriage and family relations.[12] The chapter, therefore, interrogates what would be required to align maintenance with constitutional equality, namely, the removal of moralised provisos, structured disclosure of means, and enforceable orders backed by calibrated contempt powers and asset-based enforcement.

Throughout, the method is deliberately plural. Doctrinal analysis is primary, with careful attention to the internal reasoning of *Dayabhāga* and to the incidents of women's estates. Authoritative editions and histories are used to reconstruct the rule-structure, then case law from Bangladesh tests the space available for equality-consistent interpretation within that structure, and selected Indian decisions are used to illustrate how codification or constitutional technique can drive change when legislative scaffolding exists.[13] Socio-legal evidence is integrated where institutional performance is outcome determinative: revenue office practice after widow succession rulings, mutation and documentation obstacles, police and registrar handling of child marriage injunctions, and front-line confusion between dowry offences and *strīdhan* recovery.[14]

The contribution of the chapter to reform debates is twofold. Substantively, it identifies precise doctrinal targets for Bangladeshi legislation compatible with Articles 27 and 28 and with CEDAW,

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[11] Dowry Prohibition Act 2018 (Bangladesh), s 3.

[12] CEDAW (n 3) art 16.

[13] *Bangladesh Legal Aid and Services Trust (BLAST) and others* (n 8); *Githa Hariharan* (n 9) paras 2, 3, 15–16, 19; *Pratibha Rani* (n 10) [21]–[24].

[14] Child Marriage Restraint Act 2017 (n 5), s 19; UNICEF Office of Research–Innocenti, '*Child Marriage Evidence Profile: Bangladesh*' (n 5) 3–4; 'High Court ruling: Hindu widows have right on husbands' land' *The Daily Star* (Dhaka, 3 September 2020) (n 6); Jui (n 7).

including abolition of the limited female estate, articulation of a gender-neutral order of heirs, a *strīdhan* code with presumptions and a fast-track remedy, and an equality-based maintenance standard not conditioned by chastity or cohabitation.[15] Institutionally, it recommends steps that do not await codification: judicial circulars to revenue authorities implementing widow-succession rulings, protocols for recording consent and age in marriage registration and for applying section 19 of the 2017 Act guardianship and documentation practices that reflect mothers' legal standing, and training for police and Family Courts on the distinct treatment of *strīdhan* versus dowry offences.[16] The governing idea, carried forward from the historical analysis yet redirected to the present, is that religious rites remain matters of conscience and community, while the civil consequences of family life should be governed by rules and institutions that treat Hindu women in Bangladesh as full legal subjects, equal in status, capacity, and remedy.

3.2 Hindu Law of Marriage

3.2.1 Legal Disparities and Gender Inequalities in the Hindu Marriage System

A. Gender Inequalities in Marriage Rights

Bangladeshi Hindu personal law continues to treat marriage principally as a sacrament, with legal consequences that prioritise status and ritual over consent, capacity, and equal exit. The absence of a comprehensive codified Hindu marriage statute in Bangladesh means that validity still turns on custom and ceremony, rather than on uniform civil requirements of age, capacity, free consent, and registration. The contrast with India is instructive, since the Hindu Marriage Act 1955 introduced a uniform framework for solemnisation, registration, and dissolution, including cruelty, desertion, and other grounds for divorce, which shifted the legal character of marriage from a purely indissoluble rite to a civil relationship carrying reciprocal rights and remedies.[17] In Bangladesh, the Hindu Marriage Registration Act 2012 authorises registration but does not render

[15] Constitution of the People's Republic of Bangladesh 1972 (n 3) arts 27–28; CEDAW (n 3) art 16.

[16] *Bangladesh Legal Aid and Services Trust (BLAST) and others* (n 8); Dowry Prohibition Act 2018 (n 11) s 3.

[17] Hindu Marriage Act 1955 (India), s 13.

it compulsory, nor does it create a full suite of matrimonial remedies.[18] Non-registration, therefore, continues to produce evidentiary uncertainty, with predictable disadvantages for women when marital status is contested or economic claims are resisted.

The scriptural tradition is internally diverse, yet certain **foundational authorities** embed hierarchies that remain influential in adjudicative and customary practice. *Manusmṛti* 9.81 states that a barren wife may be "superseded" after eight years, one whose children die after ten, and one who bears only daughters after eleven, thereby rationalising male recourse to a subsequent union while locating reproductive responsibility and blame with the wife.[19] These verses, read historically through commentarial traditions, have long shaped social understandings of eligibility and marital "defect", even where positive law has moved on. The cumulative effect is a normative environment in which women's marital security is fragile, especially where fertility, dowry, or conformity to custom is in issue.

The distributional consequences are compounded by property and maintenance rules. Indian jurisprudence has been clear that a woman's *strīdhan* is her absolute property and that a husband's retention or misappropriation may amount to criminal breach of trust, as articulated in *Pratibha Rani v Suraj Kumar* and affirmed in *Rashmi Kumar v Mahesh Kumar Bhada*.[20] By contrast, Bangladeshi practice often leaves similar claims to informal settlement or moral suasion, which weakens recovery and, in turn, bargaining power at moments of marital stress. Socio-legal studies of South Asia emphasise how such legal lacunae interact with gendered bargaining power,

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[18] Hindu Marriage Registration Act 2012 (n 2), s 3, discussed in Abuzar Gifari, 'Legal framework on Hindu marriage in Bangladesh' *The Daily Star* (Dhaka, 22 September 2023) https://www.thedailystar.net/law-our-rights/news/legal-framework-hindu-marriage-bangladesh-3424946 accessed 15 November 2024.

[19] *Manusmṛti* 9.81, transliteration and translation in Ganganath Jha (tr), *Manusmṛti with the Manubhāṣya of Medhātithi* (Wisdom Library, online edn, 16 February 2018) https://www.wisdomlib.org accessed 21 November 2024.

[20] In *Pratibha Rani v Suraj Kumar* (n 10), the Supreme Court of India affirmed that a married woman retains absolute ownership of her *strīdhana*—jewellery and other property received at or around the time of marriage—and that its misappropriation by her husband or affines constitutes criminal breach of trust; it rejected the 'joint custody' theory as male-chauvinistic and inconsistent with Hindu law, and clarified that civil remedies for recovery and criminal prosecution under s 406 of the Indian Penal Code are co-extensive rather than mutually exclusive. The Court reiterated this principle in *Rashmi Kumar v Mahesh Kumar Bhada* (1997) 2 SCC 397, holding that a Hindu married woman is the exclusive owner of her *strīdhana* and that its misappropriation by her husband or in-laws may amount to criminal breach of trust under s 406 IPC; when a woman entrusts her *strīdhana* to her husband or his relatives, a fiduciary relationship arises, and dishonest conversion to their own use may establish criminal liability (cf *Pratibha Rani* (n 10)).

magnifying the risk of economic deprivation for wives separated or abandoned without formal divorce.[21]

The cumulative position sits uneasily with constitutional guarantees. Article 27 recognises equality before the law, Article 28 prohibits discrimination on grounds only of sex and affirms equal rights of women in all spheres of the State and of public life, and Article 32 protects life and personal liberty.[22] Bangladesh has also ratified CEDAW, although it maintains reservations to Articles 2 and 16(1)(c), reservations that UN bodies and domestic commentators have urged the State to withdraw.[23] The persistence of sex-differentiated marital incapacity and remedial asymmetry in Hindu personal law, therefore, raises questions of consistency with these normative benchmarks.

B. Rights and Responsibilities between Husbands and Wives

The doctrinal architecture of classical texts assigns differentiated marital roles. Some passages extol mutual duties, yet others institute a scheme of guardianship over women across life stages. *Manusmṛti* 5.148, in authoritative recensions, states that a woman is never independent, locating protection and control in father, husband, and son.[24] Modern scholars read such verses in context, but their juridical afterlife is visible in litigation over conjugal rights, household authority, and mobility.

Where codification has occurred, it has mediated custom with minimum civil standards. Section 7 of the Hindu Marriage Act 1955 in India recognises customary rites and ceremonies, but clarifies that where saptapadī is practised, a marriage becomes legally complete upon the seventh step, thus

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[21] See Flavia Agnes, *Law and Gender Inequality: The Politics of Women's Rights in India* (Oxford University Press 1999) 84–86, 95–102, 118–19; Bina Agarwal, *A Field of One's Own: Gender and Land Rights in South Asia* (Cambridge University Press 1994) 260–69.

[22] Constitution of the People's Republic of Bangladesh 1972 (n 3) arts 27, 28, 32.

[23] UN Committee on the Elimination of Discrimination against Women, 'Concluding observations on the eighth periodic report of Bangladesh' (22 November 2016) UN Doc CEDAW/C/BGD/CO/8 paras 11–13; Roksana Khan, 'Time for Bangladesh to withdraw CEDAW reservations' *The Daily Star* (Dhaka, 11 March 2024) https://www.thedailystar.net/opinion/views/news/time-bangladesh-withdraw-cedaw-reservations-3563516 accessed 28 November 2025; Ministry of Women and Children Affairs, *Eighth Periodic Report: CEDAW* (Government of Bangladesh 2020) 22–23.

[24] *Manusmṛti* 5.148, discussed in Patrick Olivelle (ed and tr), *Manu's Code of Law: A Critical Edition and Translation of the Mānava-Dharmasūtra* (Oxford University Press 2005) verses 5.148–5.152.

providing a uniform rule of completion.[25] Indian case law has stressed the evidentiary value of registration, culminating in *Seema v Ashwani Kumar*, where the Supreme Court directed the States to move towards compulsory registration of marriages across faiths in order to safeguard women's rights and reduce disputes over status.[26] These developments respond to well-documented harms when a marriage is contested or repudiated, particularly where dowry demands and domestic violence intersect with weak documentation. Feminist legal scholarship has long argued that private ordering within households cannot be insulated from the public law values of equality and dignity.[27]

In Bangladesh, the remedial map for Hindu wives remains narrow. Maintenance, guardianship, and decision-making within marriage are mediated by customary understandings that, in practice, privilege male control over residence, labour, and sexuality. Socio-legal evidence of gendered burdens, including unpaid care work and economic dependency, gives these norms sharp material consequences.[28] Recent public law litigation has begun to unsettle paternal presumptions, most notably in *BLAST & Others v Bangladesh & Others*, where the High Court Division of the Supreme Court of Bangladesh required State forms to recognise a mother as a legal guardian, an institutional step consistent with Articles 27 and 28.[29] The underlying logic, that women are independent rights-bearers rather than dependents, invites a principled re-reading of marital duties through the lens of equality and bodily autonomy.

C. Widow Remarriage and Its Challenges

Widowhood has long functioned as a crucible for testing the capacity of Hindu law to accommodate women's agency. The Hindu Widows' Remarriage Act 1856 removed legal obstacles to remarriage, a reform applicable in Bangladesh and still found in the official compendium of laws.[30] Section 2, however, stipulates that on remarriage a widow forfeits rights

[25] Hindu Marriage Act 1955 (n 17), s 7.

[26] *Smt Seema v Ashwani Kumar* (2006) 2 SCC 578

[27] See Werner Menski, *Hindu Law: Beyond Tradition and Modernity* (OUP 2003) 262–66; Agnes (n 22) 145–52.

[28] See Naila Kabeer, *Reversed Realities: Gender Hierarchies in Development Thought* (Verso 1994) 150–53, 155.

[29] *Bangladesh Legal Aid and Services Trust (BLAST) and others* (n 8).

[30] Hindu Widows' Remarriage Act 1856 (Bangladesh) (Act XV of 1856).

and interests in the deceased husband's property acquired by inheritance or limited estate, a rule historically justified on the fiction that her interest was akin to a life estate.[31] In consequence, the law creates a double bind. The widow may remarry and lose inherited security, or retain property by foregoing remarriage and remaining within the deceased husband's lineage. Contemporary commentary in Bangladesh confirms the continuing effect of this divesting rule, which undermines economic autonomy and chills the exercise of choice.[32]

The common-law record of Dayābhāga jurisdictions shows courts wrestling with the extent of a widow's estate and the consequences of conduct. Early authority, such as *Moniram Kolita v Keri Kolitani* from the Calcutta High Court Full Bench, emerged as a leading statement on the widow's limited estate under the Bengal school and has been cited widely in later South Asian jurisprudence.[33] Bangladeshi decisions continue to navigate these legacies, including recent appellate guidance on *strīdhan* under Dayābhāga, underscoring the need for a clear legislative settlement that secures a widow's property without penalising remarriage.[34] Reformers from the nineteenth century onwards, not least Vidyāsāgar in his tracts on widow marriage, linked legal change to the dismantling of caste-patriarchal control over female sexuality and lineage.[35] The normative arc remains incomplete where remarriage triggers economic forfeiture.

D. Customary Practices and Gender Discrimination

Custom is a recognised source in Hindu law, yet its legal force has always been conditional on reasonableness and social acceptance. Classical authorities on prohibited degrees, gotra, and

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[31] Hindu Widows' Remarriage Act 1856 (n 30), s 2.

[32] Nusrat Zahan Rubaiya, 'On Hindu women's right to property' (*The Daily Star*, Dhaka, 28 May 2019) <https://www.thedailystar.net/law-our-rights/news/hindu-womens-right-property-1750030> accessed 18 November 2025.

[33] *Moniram Kolita v Keri Kolitani* (1880) ILR 5 Cal 776.

[34] *Mrigangka Mohan Dhali and others v Chitta Ranjan Mondol and others* 77 BLD (AD) 296 (2022) (reaffirming that under the Dāyabhāga School the fundamental doctrine governing inheritance is religious efficacy rather than blood relationship, so that heirship turns on capacity to perform *śrāddha* and offer *piṇḍa* to the deceased, and inherited property serves to facilitate these rites).

[35] Ishvarchandra Vidyasagar, *Against High-Caste Polygamy: An Annotated Translation* (Brian A Hatcher tr, OUP 2023) Introduction 1–5.

sapinda relations aim to regulate endogamy and exogamy for ritual and kinship reasons.[36] When transposed into modern adjudication in Bangladesh, however, these rules sometimes operate to police women's sexuality more harshly than men's, with reputational and evidentiary asymmetries in family disputes. The modalities of proof of a 'valid' customarily solemnised marriage, particularly where rituals are abbreviated or performed informally, frequently disadvantage women. The clarification of Indian law in Section 7 of the Hindu Marriage Act and its judicial insistence on registration as a tool of women's protection offer comparative lessons for Bangladesh.[37]

Courts in the region have also confronted ceremonies that fall short of established custom. In *Amulya Chandra Modak v State*, the High Court Division rejected a mere exchange of garlands as sufficient to constitute a valid Hindu marriage, recognising that ritual form cannot be reduced beyond the thresholds of custom.[38] This line of authority counters opportunistic invocations of minimal ceremony that are later repudiated to defeat women's claims. Relatedly, dowry practices, although not authorised by scripture and criminalised in Bangladesh, continue to shape marital bargaining.[39] Indian criminal jurisprudence on *strīdhan*, discussed earlier, illustrates one approach to reclaim women's proprietary interests misappropriated under the guise of custom.[40]

Child marriage, finally, remains a persistent axis of discrimination. Bangladesh enacted the Child Marriage Restraint Act 2017, yet its "special circumstances" provision has been criticised for enabling exceptions that can be manipulated to validate under-age unions.[41] International and UN country reporting continues to identify early and forced marriage as a barrier to gender equality,

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[36] John D Mayne, *A Treatise on Hindu Law and Usage* (Higginbotham 1892) 91–94; for modern summaries of *sapinda* and prohibited degrees, see Hindu Marriage Act 1955 (n 17), ss 3(g), 5.

[37] Hindu Marriage Act 1955 (n 17), s 7; *Seema* (n 26).

[38] *Amulya Chandra Modak v State* 35 DLR (1983) 160 (HCD); Mohammad Abu Taher, Md Rashedul Islam, Md Abdul Musabbir Chowdhury and Soabarin Siddiqua, 'Combating dowry violence against women in Bangladesh: a critical study' (2014) 8(3) *International Journal of Innovation and Applied Studies* 1126.

[39] Dowry Prohibition Act 2018 (n 11) s 3.

[40] *Pratibha Rani* (n 10); *Rashmi Kumar* (n 20).

[41] Child Marriage Restraint Act 2017 (n 5), s 19 ('special circumstances'), discussed in Soeb Aktar and Md Ashfaqur Rahman, 'Are we validating child marriage through "special circumstances" provision?' *The Daily Star* (Dhaka, 29 October 2022) https://www.thedailystar.net/law-our-rights/rights-advocacy/news/are-we-validating-child-marriage-through-special-circumstances-provision-3154851 accessed 18 November 2025.

with clear implications for consent, education, health, and later claims to maintenance or property.[42] Scriptural exegesis that valorises kanyādāna has historically legitimated child marriage, but modern constitutional and treaty commitments require a rights-centred re-reading of custom.[43]

3.2.2. Legal Disparities and Gender Inequalities in Other Marriage-Related Issues

A. Polygamy and Gender Inequality

The absence of a Bangladeshi statute mandating monogamy for Hindus creates a legal asymmetry that is neither normatively defensible nor consistent with constitutional equality. Articles 27 and 28 of the Constitution guarantee equality before the law, equal protection, and non-discrimination, including on grounds of sex, thereby furnishing a baseline against which the permissibility of polygamy can be tested.[44] Within South Asia's cognate legal family, India has adopted monogamy for Hindus by statute. Section 5(i) of the Hindu Marriage Act 1955 requires that at the time of marriage "neither party has a spouse living," section 11 renders such unions void, and section 17 read with the Indian Penal Code criminalises bigamy.[45] In Bangladesh, by contrast, the Hindu Marriage Registration Act 2012 addresses documentary proof only, leaving the substantive incidents of a Hindu marriage otherwise untouched. Contemporary commentary and official materials acknowledge the evidentiary focus of the Act, while also noting that registration remains optional.[46]

Classical sources, by contrast, illuminate the historical pedigree of polygamy and its gendered logic. *Manusmṛti* 9.81, read in orthodox discourse as authorising supersession of a wife in specified circumstances, encapsulates a framework where male prerogative rather than female agency

[42] United Nations, *Gender Equality Brief: Bangladesh* (UN Bangladesh 2024) 6–8.

[43] Cf. *Manusmṛti* 9.1 and related verses on marital duties, transliteration and translation in Jha (n 19).

[44] Constitution of the People's Republic of Bangladesh 1972 (n 3) arts 27, 28(1)-(2).

[45] Hindu Marriage Act 1955 (n 17), ss 5(i), 11, 17, read with Indian Penal Code 1860, s 494 (bigamy).

[46] Hindu Marriage Registration Act 2012 (n 2), s 3 (registration as documentary evidence); Joydeep Chowdhury, 'The Hindu Marriage Registration Act, 2012: Legal Recognition, Challenges, and the Path toward Gender Equality in Bangladesh' (2025) 8(2) *Scholars International Journal of Law, Crime and Justice* 25, 29, 34.

frames marital plurality: "*The barren wife shall be superseded in the eighth year, in the tenth she whose children die, in the eleventh she who bears only daughters, and immediately she who uses harsh words*."[47] This text, and cognate passages, are not cited to entrench an anachronistic standard, but to show how the erstwhile ritual-patriarchal rationale saturates expectations and can still surface in adjudication and community practice unless displaced by clear legislative policy.

The unequal impact of polygamy is tangible. Property disputes are structurally disadvantageous to wives where Dayābhāga succession and the Hindu Women's Rights to Property Act 1937 leave widows with limited interests while preserving agnatic priority. Leading treatises show how these arrangements historically converted wives into life-interest holders without absolute proprietary control, reinforcing dependency and contestation among co-wives.[48]

As a comparative guide for reform, the Indian monogamy model shows how a simple rule-structure, allied to criminal law backstops and civil nullity, can stabilise expectations and protect women against unilateral male polygyny, without demanding doctrinal abandonment of Hindu identity.[49] Read with constitutional Articles 27 and 28, this supports a case for Bangladeshi legislation adopting monogamy for Hindus as a matter of equality and dignity, while respecting personal law affiliation through carefully drafted saving clauses for good-faith past marriages.[50]

B. Prohibited Degrees of Relationship and Gender Bias

Rules on prohibited degrees aim to preserve exogamy and prevent consanguineous harms. In classical law, the concepts of *sapinda* and *sagotra* delineate forbidden circles. Standard histories of the *dharmaśāstra* locate the Bengal-*Dayabhāga* perspective in ritual theories of kinship, while modern expositions record the *Mitākṣarā-Dayabhāga* divergence in defining *sapinda* links.[51] Indian codification crystallised these constraints: the Hindu Marriage Act 1955 renders marriages

[47] *Manusmṛti* 9.81, in Jha (n 19) https://www.wisdomlib.org/hinduism/book/manusmriti-with-the-commentary-of-medhatithi/d/doc201444.html accessed 21 September 2025.

[48] Satyajeet A Desai (ed), *Mulla: Hindu Law* (20th edn, LexisNexis Butterworths 2007) 276-77.

[49] Hindu Marriage Act 1955 (n 17), ss 5(i), 11, 17, read with Indian Penal Code 1860 (n 45), s 494.

[50] Constitution of the People's Republic of Bangladesh 1972 (n 3) arts 27, 28(1)-(2).

[51] P V Kane, *History of Dharmaśāstra* vol II pt I (Bhandarkar Oriental Research Institute 1941) 453, 459, 477–78, 494–95; JDM Derrett, *Introduction to Modern Hindu Law* (10th edn, Cambridge University Press 1995) 136; K N Chatterjee, *Hindu Marriage: Past and Present* (Tara Publications 1972) 44.

within *sapinda* relationships void, subject to custom, and furnishes a statutory definition of *sapinda* and degrees of prohibited relationship.[52] Doctrinal surveys, drawing on both schools, commonly describe a broad paternal line and a somewhat narrower maternal line, the details varying with textual authority and local custom.[53]

Although the rules are sex-neutral on their face, their operation can entrench male control. Patrilineal tracing of *gotra* and *sapinda* relationships positions male guardians as the arbiters of eligibility, constraining women's ability to choose. The point is not merely sociological. Where consent is mediated by guardians, women's preferences are filtered through kinship vetoes, and deviation can provoke coercive responses. Indian constitutional jurisprudence on adult choice in marriage underscores the normative stakes. In *Lata Singh v State of Uttar Pradesh*, the Supreme Court affirmed that an adult woman has a fundamental right to marry a person of her choice and condemned familial violence against inter-caste or otherwise disapproved unions.[54] While *Lata Singh* speaks from a different jurisdiction and context, it highlights an equality-centred method of adjudication that recognises adult women as rights-bearing subjects in matters of marital choice. In Bangladesh, Articles 27 and 28 supply a comparable constitutional vocabulary to resist patriarchal gatekeeping masquerading as lineage purity.[55]

Classical passages are often invoked to police women's sexuality in the name of purity. Yet the same corpus is capacious enough to support a welfare-centred reading of marital choice when mediated through constitutional commitments. Reform proposals in this chapter therefore recommend administrative guidance for Hindu marriage registrars on documenting consent, together with judicial training on evaluating evidence of coercion in disputes that implicate *sapinda* or *gotra* objections. These institutional levers work alongside any future codification to reduce the gendered distortions that attend ostensibly neutral rules.

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[52] Hindu Marriage Act 1955 (n 17), ss 5(i), 11, 17, read with Indian Penal Code 1860 (n 45), s 494.

[53] M Rama Jois, *Legal and Constitutional History of India: Ancient Legal, Judicial and Constitutional System* vol I (Universal Law Publishing 1984) 337–44; see also 'HINDU LAW' (MSR Law Books, 2012) 86–88 (surveying *Mitākṣarā* and *āyabhāga* views on *sapinda*) https://msrlawbooks.in/file/HINDU_LAW_2012.pdf accessed 21 September 2025.

[54] *Lata Singh v State of Uttar Pradesh* (2006) 5 SCC 475.

[55] Constitution of the People's Republic of Bangladesh 1972 (n 3) arts 27, 28(1)-(2).

C. Child Marriage and Its Impact on Gender Equality

The Child Marriage Restraint Act 2017 establishes minimum ages of 18 for women and 21 for men and prescribes offences and penalties for guardians and solemnising officials.[56] However, section 19 creates an exception permitting marriage "*under special circumstances*" with judicial approval, framed in terms of the minor's best interests and parental consent.[57] Contemporary analyses by rights organisations warn that the breadth and indeterminacy of this clause invite misuse, shifting the burden onto girls and legitimising early marriage to manage social stigma or pregnancy.[58] UNICEF profiles and sectoral reports continue to document high prevalence and entrenched drivers, indicating that statutory aspiration outpaces institutional practice.[59]

Classical texts have historically been mobilised to sacralise early marriage and *kanyādāna*. The *Manusmṛti* is frequently cited to valorise the father's religious merit in giving a virgin daughter, a trope that folds ritual and lineage into a single justificatory script. Leading scholarly translations also record the broader ideology of female guardianship articulated in the *Manusmṛti*: '*Her father protects her in childhood, her husband protects her in youth, and her sons protect her in old age; a woman is never fit for independence*.'[60] While verse 5.148, read together with allied passages, focuses on domestic discipline, its prescriptive register forms part of a larger logic of perpetual tutelage that dignifies child marriage as religiously safe and socially prudent.[61] The point of invoking these lines here is diagnostic. They illuminate how scriptural prestige can be recruited to legitimise early marriage unless constitutional and international norms decisively reframe the inquiry.

Those norms are clear. Article 27 guarantees equality before the law, Article 28 prohibits discrimination, and CEDAW Article 16 obliges the State to secure equality in all matters of

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[56] Child Marriage Restraint Act 2017 (n 5), ss 2, 7–9, 19.

[57] ibid., ss 2, 7–9, 19.

[58] Center for Reproductive Rights, *Ending Impunity for Child Marriage in Bangladesh* (2018) 8–10.

[59] UNICEF, *Ending Child Marriage: A Profile of Progress in Bangladesh* (2020) 4–6.

[60] *Manusmṛti* 5.148 and allied verses, translation by Ganganath Jha, in *Manusmriti with the Commentary of Medhātithi* (Wisdom Library, online edn) https://www.wisdomlib.org/hinduism/book/manusmriti-with-the-commentary-of-medhatithi/d/doc200534.html accessed 21 September 2025.

[61] ibid (further reliance on Jha's translation of *Manusmṛti* 5.148.

marriage and family relations, including the freedom to choose a spouse and to marry only with free and full consent.[62] The CEDAW Committee's General Recommendation No 29 further urges States to address the economic consequences of family relations and dissolution, with an emphasis on remedies and effective enforcement.[63] Against this baseline, the exception under section 19 is difficult to defend. Its vagueness undermines the minimum-age rule, and it runs counter to international standards insisting on substantive, not merely formal, consent and on the protection of girls' autonomy and development.

Doctrinal and institutional design both matter. On the doctrinal plane, Bangladesh could adopt a narrow, rights-protective construction of "special circumstances," guided by Articles 27 and 28 and by CEDAW Article 16, demanding strict proof of best interests by independent welfare officers rather than parental affidavits. On the institutional plane, courts and registrars should be equipped with protocols that prioritise the minor's voice, require medical and educational assessments, and forbid use of the exception to regularise sexual offences or to sanitise community pressure. Evidence from sectoral reports shows that without such safeguards, exception clauses become pipelines for early marriage, with long-term consequences for girls' education, health, and economic agency.[64]

Comparative experience illustrates adjacent reforms that help align practice with principle. Mandatory registration of marriages, including age documentation, was recognised by the Indian Supreme Court as an important safeguard for women's rights, a position that Bangladesh could adopt within its own legal culture while preserving the religious character of Hindu marriage. Codifying clear age-verification rules and evidentiary standards would support prosecutors and registrars in applying the 2017 Act as intended. In addition, targeted public-law remedies, strategic

[62] Constitution of the People's Republic of Bangladesh 1972 (n 3) arts 27, 28(1)-(2); CEDAW (n 3) art 16.

[63] UN Committee on the Elimination of Discrimination against Women, 'General recommendation No 29 on article 16 of the Convention on the Elimination of All Forms of Discrimination against Women (economic consequences of marriage, family relations and their dissolution)' (30 October 2013) UN Doc CEDAW/C/GC/29 paras 1, 4 (economic consequences/problem statement), 11, 15 (constitutional/legal obligations), 25–26 (marriage registration), 35 (contractual protection), 42 (divorce procedure and legal aid), 46–47 (equitable property standards), 50, 53 (death and inheritance; criminalisation of 'property grabbing').

[64] Center for Reproductive Rights, *Ending Impunity for Child Marriage in Bangladesh* (n 58) 8–10; UNICEF, *Ending Child Marriage: A Profile of Progress in Bangladesh* (n 59) 4–6.

litigation seeking structural directions to social welfare and law-enforcement agencies, can embed a best-interests approach into day-to-day decision-making.

3.3 Hindu Law of Inheritance

3.3.1 Legal Disparities and Gender Inequalities in Hindu Inheritance Laws in Bangladesh

A. Male Primacy and Female Exclusion

The doctrine that governs succession under the *Dayabhāga* school, which historically informs Hindu inheritance practice in Bengal and therefore in Bangladesh, articulates inheritance as inseparable from the performance of ancestral rites.[65] *Jīmūtavāhana*'s foundational formulation affirms this point succinctly: "*piṇḍa-dāna-ādika-karaṇāt putraḥ śreṣṭho bhavati*," that is, "The son is superior (as heir) because he is the performer of the piṇḍa-dāna and other funeral rites."[66] This is not a liturgical aside; it constitutes a doctrinal threshold for entitlement. By locating the right to succeed in ritual competence, *Dayabhāga* constructs a legal taxonomy in which male agnates are presumptively primary heirs and women, by reason of marriage or ritual incapacity, are either excluded or relegated to derivative positions.

Such ritualised criteria have concrete legal consequences. Where the law ties succession to the capacity to discharge *śrāddha* and *piṇḍa* obligations, daughters and other female kin are structurally disadvantaged: marriage is read as an elective severance from natal ritual duties, and widowhood or motherhood cannot displace the primacy of male agnates.[67] The *Dayabhāga,* therefore, reproduces a patrilineal logic that is legal as well as cultural, aligning property transmission with the continuity of the male line.[68] This textual architecture diffuses through

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[65] Jīmūtavāhana, *Dayabhāga* I.24, in Rocher (n 1) 11.6.17, 11.2.1–3, 11.1.2–3, 11.1.44.

[66] ibid I.24 (Sanskrit: '*piṇḍa-dāna-ādika-karaṇāt putraḥ śreṣṭho bhavati*'), tr at 1.11–12 (tr 57–60) (grounding succession in the spiritual benefit conferred by obsequial rites) and 11.31–32 (tr 195–96) (ordering heirs by performance of *piṇḍa-dāna* and related offerings).

[67] ibid 201–02 (11.2) ('Daughters who are either barren or widowed do not inherit'), 213–14 (11.5.6) ('he does not offer *piṇḍas*'), 229–31 (11.6.12–14) ('the property goes to the maternal uncle … [who] offer *piṇḍas*').

[68] ibid 187–89 (11.1.31–38, emphasising succession through 'sons and other male descendants' as 'descendants in the male line down to the great-grandson'); Madhu Kishwar and Ruth Vanita, 'Inheritance Rights for Women: A Response to Some Commonly Expressed Fears' and 'What the Law Says' (1990) 57 *Manushi* 2.

judicial application and social practice: ownership and control of family property are ordinarily presupposed to reside in male hands, while women's claims are treated as contingent.

The pre-eminence of male lineage in the *Dayabhāga* is reinforced by canonical precedents in the broader *dharmaśāstric* corpus. The *Manusmṛti* contains passages that, read selectively, tolerate or even encourage a female claim only in the absence of male issue, and even then subject it to qualification.[69] As a jurisprudential matter, the *Dayabhāga*'s ritual test for heirship and the *Manusmṛti*'s hierarchical ordering operate together to legitimate legal rules that prioritise sons, both as owners and as ritual agents.[70] Classical commentarial literature and later juristic works, notably those relied upon by colonial and post-colonial courts, accept these priors and so embed male primacy within positive law.[71]

The effect is not merely doctrinal. Male primacy becomes an organising principle of social economy. Property concentrated along agnatic lines facilitates intergenerational accumulation under male stewardship, while daughters, widows and maternal kin are channelled into ephemeral or subsistence interests.[72] This produces an uneven distribution of bargaining power within families, weakening women's capacity to convert property into education, entrepreneurship, or independent livelihood.[73] Feminist scholarship underscores the point that land and property are central to women's economic autonomy; the absence of secure proprietary rights, therefore, translates directly into diminished agency.[74]

Comparative jurisprudence is illuminating. The Indian Parliament's response in the Hindu Succession Act 1956 (and its subsequent amendment in 2005) attempted to break the ritual tie between succession and exclusive male entitlement, substituting an intestate regime with statutory

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[69] *Manusmṛti* 9.130–131, transliteration and translation in Jha (n 19) https://www.wisdomlib.org/hinduism/book/manusmriti-with-the-commentary-of-medhatithi/d/doc201503.html accessed 26 September 2025.

[70] Robert Lingat, *The Classical Law of India* (OUP 1973) 173–75.

[71] See Desai, *Mulla: Hindu Law* (n 48) Introduction.

[72] Agarwal, *A Field of One's Own* (n 21) 260–69.

[73] Naila Kabeer, 'Resources, Agency, Achievements: Reflections on the Measurement of Women's Empowerment' (1999) 30(3) *Development and Change* 435-436, 442, 460.

[74] Agarwal, *A Field of One's Own* (n 21) 7–10; Agnes, *Law and Gender Inequality* (n 21) 18–20, 48–50, 82–86, 171, 214–15.

lists of heirs and, after amendment, new rules equalising daughters and sons in certain respects.[75] The contrast with Bangladesh is stark: Bangladesh has not enacted a comparable comprehensive codification to displace *Dayabhāga* principles and their patriarchal consequences. The persistence of classical criteria thus remains legally consequential in Bangladesh, even as neighbouring jurisdictions have legislated to attenuate ritual primacy.

This doctrinal persistence interacts awkwardly with constitutional and international commitments to equality. The Constitution of the People's Republic of Bangladesh guarantees that "all citizens are equal before the law" and are "entitled to equal protection of the law,"[76] language that prima facie bars sex-based discrimination in law and administration. Bangladesh is also party to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which requires the eradication of discriminatory legal provisions and practices affecting women's equal rights in property and inheritance.[77] Yet the textual equality of constitutional and treaty commitments has not been fully translated into an overhaul of personal law governing Hindu succession. The result is a jurisprudential dissonance: formal obligations towards gender equality coexist with a personal law regime whose doctrinal grammar ratifies male primacy.

The critique of male primacy must combine doctrinal exegesis, comparative statutory reading, and socio-legal evidence. Doctrinally, the task is to read *Dayabhāga* texts and their commentaries against the grain of constitutional equality;[78] empirically, it is to document how the ritual test for heirship operates in land registers, familial settlements, and disputes brought to court; comparatively, it is to show how legislative reform elsewhere has altered de facto outcomes.[79] Such a triangulated method reveals that the ritual logic of *Dayabhāga* operates both as law and as

[75] Hindu Succession Act 1956 (India), ss 4–6; Hindu Succession (Amendment) Act 2005 (India).

[76] Constitution of the People's Republic of Bangladesh 1972 (n 3) art 27.

[77] CEDAW (n 3) arts 5–16.

[78] Constitution of the People's Republic of Bangladesh 1972 (n 3) arts 27–28.

[79] For statutory and doctrinal reforms and their effects: Hindu Succession Act 1956, s 6 (as substituted by the Hindu Succession (Amendment) Act 2005); Kerala Joint Hindu Family System (Abolition) Act 1975 (Act 30 of 1976); *Vineeta Sharma v Rakesh Sharma* (2020) 9 SCC 1 [137]; Klaus Deininger, Aparajita Goyal and Hari K Nagarajan, 'Women's Inheritance Rights and Intergenerational Transmission of Resources in India' (2013) 48(1) *Journal of Human Resources* 114, 115–16, 119, 130.

ideology, naturalising male entitlement and obscuring the political and social choices that underlie the legal order.

B. Limited Rights of Female Heirs

Even where the *Dayabhāga* admits female participation in succession, it typically does so on terms that deny full proprietary autonomy. The legal category of the limited or *āyatanika* estate is central to this phenomenon. Under classical exposition, a widow's interest in her deceased husband's property is often described as an *āyatanika svatva*, a usufructory, life-limited right that allows enjoyment of income or use of the property but denies alienation, testamentary disposition, or permanent transfer.[80] *Jīmūtavāhana*'s rules and subsequent commentaries make clear that this limited estate terminates on death or remarriage and that ultimate title reverts to agnatic heirs.[81] The practical upshot is predictable: a widow cannot use inherited land as collateral, cannot sell it to secure capital, and cannot bequeath it to consolidate intergenerational economic security.[82]

Daughters fare little better in many circumstances. Under *Dayabhāga* doctrine a daughter's share is commonly activated only in the absence of male agnates. Where she inherits, her right is often framed as subsidiary and conditioned on her marital status; marriage frequently operates as a presumed transfer of domicile and ritual affiliation that reduces the daughter's subsequent claim on natal property.[83] The formal recognition of a daughter as an heir therefore rarely translates into an enforceable, alienable title. Commentators and courts have long justified these limits by appeal to social function, the idea that a daughter is ultimately provided for by marriage, and thus paternal property need not vest in her absolutely, but this justification reflects normative assumptions about gender roles rather than neutral legal principle.[84]

The legal doctrines that produce *āyatanika* interests are not merely archaic curiosities; they have immediate effects in litigation and administration. Women's inability to produce title deeds, or to

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[80] Rocher (n 1) 11.1.56–61, 195–97.

[81] Desai, *Mulla: Hindu Law* (n 48) Introduction 201-206.

[82] Agarwal, *A Field of One's Own* (n 21) ch 8 (on non-alienability, collateralisation and women's effective control over assets).

[83] Rocher (n 1) 11.2.1, 11.2.7–8, 11.2.11–13, 11.2.15–17, 11.2.20–21, 11.1.66.

[84] Agnes, *Law and Gender Inequality* (n 21) 14–17, 20–22, 84–86, 102–04, 214–16, 220–26.

exercise powers of alienation, constrains their bargaining position within settlements and renders them vulnerable to dispossession. Empirical studies in South Asia show how the formal existence of legal entitlements does not guarantee effective possession or security when social practice and administrative inertia favour male relatives.[85] Administrative barriers, including registers controlled by male kin, officials' reluctance to recognise women's claims and the costs of litigation, compound doctrinal restrictions.

Feminist jurisprudence explains these limitations as part of a legal grammar that constructs women as dependents. Property law thus becomes a medium through which gendered subjectivities are produced: the legal subject entitled to transfer, mortgage, and bequeath is imagined as male; the female subject is imagined as dependent and temporary.[86] Bina Agarwal's work on land and gender demonstrates how such legal constructions correlate with lower levels of female investment, political voice, and resilience against household violence.[87] Flavia Agnes and others have similarly argued that law can reproduce gender inequality when reform is partial or when statutory amendments leave intact the institutional practices that mediate property rights.[88]

Reform debate, therefore, turns on two axes. The first is doctrinal: can the ritual predicates of heirship be reinterpreted or displaced by statute so that proprietary rights are divorced from ritual competence and become fungible, alienable, and equal? India's legislative path, most notably the 1956 Act and its 2005 amendment equalising daughters in specific coparcenary contexts, shows one possible trajectory, though not without its own political contestations.[89] The second axis is institutional: even if statutory equality is achieved on paper, will administrative practice, judicial interpretation, and social arbitration enforce it? Experience suggests that legal equality without administrative reform and community engagement yields only partial change.

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[85] Agarwal, *A Field of One's Own* (n 21); Kabeer, *Reversed Realities* (n 29) 115, 153, 155–58.

[86] See Agnes, *Law and Gender Inequality* (n 21) 14–16, 48–49, 69–70, 226–27; Ratna Kapur, 'The Tragedy of Victimization Rhetoric: Resurrecting the Native Subject in International/Postcolonial Feminist Legal Politics' (2002) 15 *Harvard Human Rights Journal* 1, 1–2, 5–6, 10, 18.

[87] Agarwal, *A Field of One's Own* (n 21) 45–62.

[88] ibid.

[89] Hindu Succession Act 1956 (n 75); Hindu Succession (Amendment) Act 2005 (n 75).

Against this background, the contribution of the present subsection is to clarify how the ritual model of *Dayabhāga* translates doctrinally into male primacy and, functionally, into limited female estates; to situate that model vis-à-vis constitutional and international equality commitments; and to indicate why reforms focused solely on statutory text are necessary but not sufficient. The normative stakes are clear: disentangling proprietary entitlement from ritual duty is central if inheritance law is to cease functioning as an instrument of gendered deprivation and instead become a vehicle for substantive equality.

3.3.2 Challenges and Limitations in Enforcing Gender-Equal Inheritance Rights

A. Cultural and Religious Restrictions

The justificatory centre of *Dayabhāga* inheritance is the doctrine of religious efficacy, which elevates ritual capacity in *śrāddha* and *piṇḍa-dāna* over simple proximity of kin. That doctrinal choice privileges sons and agnates and, historically, confined widows to defeasible, life-limited interests. Authoritative reconstructions of *Jīmūtavāhana*'s *Dayabhāga* explain how spiritual benefit became the decisive criterion for succession, rather than blood relationship alone.[90] This sits uneasily with the equality guarantees in the Constitution of Bangladesh, which require legal institutions to treat women as rights-bearers rather than ritual auxiliaries. Article 27 promises equality before the law and equal protection; Article 28 forbids discrimination, including on grounds of sex.[91]

Culture amplifies doctrine. The patrilineal script that treats married daughters as absorbed into the husband's lineage legitimises their exclusion from natal estates, while the ideal of the widow's "limited estate" normalises dependency. Standard histories of the *dharmaśāstra* trace how such ideas were juristically stabilised across the schools, and how, in the Bengal tradition, spiritual

[90] Rocher (n 1) 11.1.31 (widow succeeds only in default of sons and other male issue), 11.1.32–36 ('the single reason why someone accedes to the property of a deceased person is that he is of service to him'), 11.1.56 (widow's right as a usufruct—no power to gift, mortgage or sell).

[91] Constitution of the People's Republic of Bangladesh 1972 (n 3) arts 27, 28.

efficacy supplied the logic for preferring male heirs.[92] In practice, even where courts correct misreadings, change is slow. In *Jyotindranath Mondal v Gouri Dasi*, the High Court Division held that a Hindu widow's statutory entitlement extends to agricultural as well as non-agricultural land, rejecting a contrary administrative practice that had harmed widows for decades.[93] Contemporary reporting recorded both the legal importance of the ruling and the social resistance that followed, including obstruction in land offices and intra-family pressure.[94]

Such persistence is not accidental. When religious authority is read as fixing the civil consequences of death, appeals to equality are framed as cultural erosion rather than as the ordinary demand of the Constitution. The task for reform, therefore, is to separate ritual legitimacy from civil devolution, so that religious rites remain free, while inheritance follows rights that are neutral as to sex.

B. Legal Inconsistencies and Judicial Constraints

Bangladesh lacks a consolidated, equality-oriented Hindu succession law. Courts therefore navigate a mosaic of classical authorities, colonial enactments such as the Hindu Women's Rights to Property Act 1937, and constitutional guarantees that are textually robust yet institutionally under-translated. Treatise writers characterise the widow's estate as a limited interest that ends on death or remarriage and confers only narrow powers of alienation. In the absence of reform, that position constrains the ability of courts to deliver equality-enhancing outcomes in the ordinary run of cases.[95] The point is not judicial unwillingness so much as legal architecture. Where the governing premises are those of *Dayabhāga* and the statutory overlay is thin, lower courts hesitate to innovate for fear of displacing religiously coded doctrine.

Comparative materials illuminate method, not transplant. In India, codification supplied an anchor for equality-centred recalibration, culminating in *Vineeta Sharma v Rakesh Sharma*, where the

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[92] Lingat (n 70) 83–84, 172; P V Kane, *History of Dharmaśāstra (Ancient and Mediaeval Religious and Civil Law)* vol I pt II (Bhandarkar Oriental Research Institute 1975) 703–04; Rocher (n 1) 23; *Gobind Chander Lahoory v Rajkishore Lahoory* (1878) ILR 1 Cal 28 (Cal HC).

[93] *Heirs of late Jotindranath Mondal* (n 6), noted in 'High Court ruling: Hindu widows have right on husbands' land' *The Daily Star* (Dhaka, 3 September 2020) (n 6).

[94] Jui (n 7).

[95] Desai, *Mulla: Hindu Law* (n 48) 187, 270.

Supreme Court affirmed daughters as coparceners by birth under the *Mitākṣarā* framework.[96] Bangladesh operates on different premises and has no equivalent code. The lesson is not to import coparcenary, but to observe how clear statute enables courts to reconcile tradition with equality in a principled, predictable manner. In Bangladesh, the *Gouri Dasi* line shows that targeted correction is possible where statutory text permits it, yet it also illustrates the limits of piecemeal adjudication where the overarching scheme still presumes male primacy and female limited estates.[97]

Constitutional adjudication can assist, but only to a point. Articles 27 and 28 furnish a vocabulary for scrutiny, and the periodic reports of Bangladesh under CEDAW acknowledge the need for effective equality in family relations.[98] However, without legislative restatement of succession principles, courts remain tied to doctrines that privilege ritual capacity, and litigants face uneven results across forums.

C. Practical Limitations for Female Heirs

Doctrinal rules and judicial caution operate alongside a complex array of practical impediments that blunt even well-founded claims. Land records remain the gateway to effective control. In practice, mutation procedures are slow, opaque, and vulnerable to strategic obstruction by better placed male relatives; official studies detail multiple steps, heavy documentary requirements, and routine non-compliance with statutory timelines that together raise the cost of access for first time female claimants.[99] Governance assessments further note fragmentation across land offices, manual record keeping, and capacity constraints that generate delay and create discretion points at which rent seeking flourishes.[100] Recent digital initiatives promise improvement, yet front-line

[96] *Vineeta Sharma* (n 79) [46], [51], [52].

[97] *Heirs of late Jotindranath Mondal* (n 6); 'High Court ruling: Hindu widows have right on husbands' land' *The Daily Star* (Dhaka, 3 September 2020) (n 6).

[98] Ministry of Women and Children Affairs, *Eighth Periodic Report under CEDAW* (Government of the People's Republic of Bangladesh 2020) 5–6.

[99] Transparency International Bangladesh, *Land Management and Services in Bangladesh: Governance Challenges and Way-forward* (23 August 2015) 20–22 (ch 5.2 'Multiple steps in mutation process'; 5.3–5.6 on associated fees; 6.2.3 on non-compliance with mutation deadlines).

[100] ibid. 14–19 (institutional limitations), 16–18 (manual record-keeping and fragmented digitalisation); cf D Mookherjee, 'Institutional Challenges in Land Administration and Management in Bangladesh' (2020) 9–12 (surveying capacity and coordination deficits).

practice frequently imposes layered "verifications" and discretionary checks that protract enforcement even after a successful claim.[101]

Costs then magnify delay. Litigation over immovable property is capital- and information-intensive: filing fees, travel to distant courts, repeated attendances, and the need for competent representation all weigh heavily on claimants without independent income. Comparative evidence on South Asia shows that propertylessness depresses bargaining power within households and weakens exit options, dampening the willingness to litigate against brothers or in-laws, a dynamic that recurs in Bangladesh, where formal entitlements often fail to mature into practical control.[102]

Social risk supplies a further brake. Daughters' assertion of inheritance is easily narrated as disloyalty to familial cohesion, eliciting community pressure and reputational sanctions that lead to "compliance settlements" in which women waive shares for peace. Classical textual tropes lend a patina of legitimacy to such pressure. A widely cited verse of the *Manusmṛti* states that the father protects a girl in childhood, the husband in youth, and the sons in old age, concluding that a woman is never fit for independence; this scriptural conceit has long been invoked to naturalise guardianship across the life-course and to discount women's economic agency within kin networks.[103]

These constraints point to a two-track reform agenda, doctrinal and institutional. On the doctrinal side, Parliament should abolish the limited widow's estate and articulate a gender-neutral order of heirs, providing expressly that a woman's separate property devolves upon her own heirs; drafting should clarify that religious rites are irrelevant to civil devolution, thereby displacing ritual capacity as a criterion for succession and reducing incentives to litigate over ceremonial compliance. On the institutional side, land record procedures should be gender neutral by design, with rebuttable presumptions in favour of mutation to widows and daughters upon production of a death certificate; time limits should bind revenue authorities, and courts should be empowered to issue structural directions in execution when land offices fail to implement decrees within fixed

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[101] Behavioural Insights Team, *Encouraging New Landowners in Bangladesh to Complete Land Mutation* (2018) 6–9 (documenting rollout of e-mutation, residual offline processing, and capacity constraints affecting timeliness).

[102] Agarwal, *A Field of One's Own* (n 21) 260–69 (linking landownership to bargaining power and exit options).

[103] *Manusmṛti* 9.3, tr Ganganath Jha, in *Manusmṛti with the Manubhāṣya of Medhātithi* (n 19) https://www.wisdomlib.org/ accessed 4 October 2025.

periods. Recent e-mutation architecture can support these standards provided service timelines are hardened, discretionary verification layers pared back, and compliance monitored; empirical pilots show that simplified, default digital pathways reduce visits and costs when implemented faithfully.[104] Legal aid should prioritise women's inheritance litigation, and calibrated fee shifting should deter obstructionism that exploits asymmetries of time and money.

Constitutional and international commitments provide the normative yardstick. Article 27 guarantees equality before the law and equal protection, while Article 28 prohibits discrimination and affirms equal rights of women and men in all spheres of state and public life.[105] CEDAW Article 16 requires equality in all matters relating to marriage and family relations; General Recommendation No 21 elaborates that where de jure equality is absent or where enforcement fails, women are prevented from accessing resources and from enjoying equality of status in the family and society, and it calls for effective measures, including compulsory marriage registration and equal rights in marital property and inheritance.[106] The Eighth Periodic Report of Bangladesh acknowledges persistent implementation gaps, and the Concluding Observations of the CEDAW Committee urge accelerated reforms to secure women's substantive equality, precisely the kind of doctrinal clarification and institutional redesign proposed here.[107]

3.4 Hindu Law of *Strīdhana*

3.4.1 Legal Disparities and Gender Inequalities in *Strīdhana* Rights

A. Ownership and Control Issues

Classical authority is, at least on its face, generous. The *Mitākṣarā* on *Yājñavalkya Smṛti* enumerates property given to a woman by her father, mother, husband, brothers and others,

[104] Behavioural Insights Team (n 101) 6 (reduced visits and costs via e-mutation default); A N M Saif and M S Hawlader, 'Land e-Mutation System in Bangladesh: An Exploratory Study of A2i Program' (2018) 2–4 (overview of process; time- and visit-reductions under digital pathways).

[105] Constitution of the People's Republic of Bangladesh 1972 (n 3) arts 27–28.

[106] CEDAW (n 3) art 16; UN Committee on the Elimination of Discrimination against Women, 'General recommendation No 21: Equality in marriage and family relations' (1994) paras 14, 15, 26, 29, 30, 32, 35.

[107] Government of Bangladesh, 'Eighth Periodic Report to the CEDAW Committee' (May 2015) 1–3, 36–40 (n 24); UN Committee on the Elimination of Discrimination against Women, 'Concluding observations on the eighth periodic report of Bangladesh' (n 23) paras 10–12, 46–49.

particularly at marriage, as her *strīdhan*, that is, her exclusive property. The relevant verse reads, "*pitṛmātṛpatibhrātṛdattam adhyagnyupāgatam, ādhivedanikādyaṃ ca strīdhanaṃ parikīrtitam*," which standard translations gloss as listing familial and ceremonial gifts that vest in the woman alone.[108] *Dayabhāga* formulates the point explicitly that *strīdhan*am is that over which a woman may give, sell, or use independently of her husband.[109] This means that, according to Jimutavahana, the term "female property" has a technical meaning: it is that property, and only that property, in which the woman acquires an absolute right of ownership.[110] Modern expositions have consistently described the core incidents in similar terms, namely full ownership and the ordinary powers of alienation, subject to limited age or guardianship related constraints in classical formulations.[111] Treatise writers synthesise this position by insisting that *strīdhan* stands apart from joint family property and from the limited estate logic that otherwise confines women's proprietary agency in succession.[112]

Yet the Bangladeshi legal order lacks a codified statement that secures these classical incidents against contrary practice. In consequence, the normative clarity of the śāstric rule is diluted by the ordinary operations of household power. The Constitution guarantees equality before the law and prohibits discrimination, including on grounds of sex. Articles 27 and 28 provide a domestic yardstick for interpreting any ambiguity about women's control over their own property.[113] Those guarantees, read with obligations of Bangladesh under CEDAW, which requires equality in all

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[108] *Yājñavalkya Smṛti* 2.143 with the *Mitākṣarā* commentary, transliteration and apparatus in 'Verse 2.143' (Wisdom Library, online edn) https://www.wisdomlib.org/hinduism/book/yajnavalkya-smriti-with-mitakshara-sanskrit/d/doc1643325.html accessed 21 September 2025.

[109] Jīmūtavāhana, *Dayabhāga* 4.1.18 and 4.1.21, in Rocher (n 1) (4.1.18: 'female property is anything a woman is entitled to gift, sell, or put to use independently of her husband'; 4.1.21, quoting Kātyāyana 905–906: 'When women receive loving gifts, they become their independent owners … they can sell or gift them as they please, even if it involves immovable property').

[110] ibid 4.1.1, 4.1.8, 4.1.15, 4.1.16; Gobinda Chandra Mandal, 'Revisiting Jimutavahana: The Dayabhaga and the Evolution of Hindu Women's Property Rights in Modern Bangladesh' (2024) 22(2) *Bangladesh Journal of Law* 31, 44-45.

[111] See, illustratively, *Pratibha Rani v Suraj Kumar* (n 10) (strīdhana as a woman's absolute property, misappropriation actionable), and *Rashmi Kumar* (n 20) (husband's dominion over strīdhana is fiduciary; non-return may constitute criminal breach of trust).

[112] Desai, *Mulla: Hindu Law* (n 48) 226-232.

[113] Constitution of the People's Republic of Bangladesh 1972 (n 3) arts 27, 28(1)-(2); Mandal, 'Revisiting Jimutavahana' (n 110) 31, 46-47.

matters relating to marriage and family relations, underscore that *strīdhan* is not a matter of familial grace but of legal right.[114]

Comparative jurisprudence from India shows how courts can translate principle into remedy. In *Pratibha Rani v Suraj Kumar*, the Supreme Court held that *strīdhan* remains the wife's absolute property and that refusal to return it may amount to criminal breach of trust, a proposition later reaffirmed.[115] In *Rashmi Kumar v Mahesh Kumar Bhada*, the Court again affirmed that *strīdhan* is the woman's exclusive property and that its retention without consent attracts criminal liability, while clarifying the evidentiary contours of such claims.[116] Although *Vinod Kumar Sethi v State of Punjab* had earlier been read by some High Courts as counselling caution in criminal proceedings within the marital home, the later Supreme Court decisions dispelled the hesitation and anchored *strīdhan* in a rights-remedial framework.[117] In a different statutory setting, *Krishna Bhattacharjee v Sarathi Choudhury* confirmed that deprivation of *strīdhan* constitutes a continuing wrong for the purposes of limitation under the Protection of Women from Domestic Violence Act 2005[118], thereby expanding temporal access to relief.[119] These rulings are not directly binding in Bangladesh, yet they supply instructive comparative reasoning: they treat *strīdhan* as property, not sentiment, and they frame non-return as a legal injury.

In Bangladesh, by contrast, the absence of a dedicated civil or criminal statutory route for *strīdhan* recovery leaves women to negotiate within family networks or to seek general civil remedies. Where dowry practices are prevalent, confusion between criminally proscribed dowry and lawful *strīdhan* persists. The Dowry Prohibition Act 2018 penalises the demand or acceptance of dowry, but it does not address the separate question of a woman's title to her *strīdhan* or the mechanisms for its restitution when wrongfully retained.[120] Without statutory clarification, police and lower

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[114] ibid. (n 3) arts 27, 28(1)-(2).

[115] *Pratibha Rani* (n 10).

[116] *Rashmi Kumar* (n 20).

[117] *Vinod Kumar Sethi v State of Punjab* AIR 1982 P&H 372

[118] Protection of Women from Domestic Violence Act 2005 (India).

[119] *Krishna Bhattacharjee v Sarathi Choudhury* (2016) 2 SCC 705 (clarifying that breach of a protection order under the Protection of Women from Domestic Violence Act 2005 is a continuing offence and that a judicially separated wife remains an 'aggrieved person' entitled to reliefs under the Act).

[120] Dowry Prohibition Act 2018 (n 11) ss 3–4.

courts may conflate dowry related complaints with claims to recover *strīdhan*, which can deter women from approaching formal institutions at all. The result is a doctrinal paradox: the very corpus that once protected women's separate property is today overshadowed by practices that collapse *strīdhan* into the marital estate.

B. Barriers to Legal Recourse and Institutional Challenges

Even when the normative position is clear, institutional pathways remain difficult to navigate. First, remedies are scattered. There is no Bangladeshi analogue to the Indian Domestic Violence Act with its explicit recognition of *strīdhan* recovery as a component of civil protection orders, and there is no consolidated Hindu code that specifies *strīdhan* incidents alongside succession. In practice, women must file ordinary civil suits or invoke general criminal provisions, often without an express statutory hook that names *strīdhan* as such. Secondly, enforcement is costly. Litigation over movables and valuables typically turns on proof of receipt, lists prepared at marriage, or testimonial evidence from family and friends. In the absence of registration or inventory practices, proof becomes onerous and delays compound expense. Socio-legal evidence across South Asia underscores how resource constraints depress women's willingness to pursue even meritorious claims, especially where they remain financially dependent on male relatives.[121]

Thirdly, frontline institutions may not internalise the constitutional and international equality baselines. Articles 27 and 28 of the Constitution of Bangladesh, and CEDAW Article 16, are rarely translated into operational guidance for police or for local conciliation bodies that first encounter intra-family disputes.[122] By the time a case reaches the superior courts, evidence may have dissipated or been compromised by informal settlements that press women to trade property claims for the promise of family peace. In India, the articulation of the Supreme Court in *Pratibha Rani* and *Rashmi Kumar* cases made it easier for lower courts and police to recognise deprivation of *strīdhan* as a cognisable wrong; Bangladesh lacks a similar jurisprudential anchor.[123]

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[121] Desai, *Mulla: Hindu Law* (n 48) 877-879; Mandal, 'Revisiting Jimutavahana' (n 110) 31, 48-50.

[122] Constitution of the People's Republic of Bangladesh 1972 (n 3) arts 27, 28(1)-(2); CEDAW (n 3) art 16; CEDAW (n 3).

[123] *Pratibha Rani* (n 10); *Rashmi Kumar* (n 20); *Krishna Bhattacharjee* (n 119).

A further barrier arises from the misalignment between anti-dowry enforcement and the protection of *strīdhan*. The 2018 Act properly criminalises dowry demands; yet, in practice, families may present *strīdhan* claims as efforts to recover "dowry", thereby discouraging recourse to law.[124] Without clear administrative circulars and bench books that delineate the doctrinal boundary, women remain vulnerable to having rightful civil claims reframed as matters with criminal overtones. In short, institutional design is decisive: it can either translate classical and constitutional commitments into workable remedies, or allow them to stall at the very first point of contact.

C. Influence of Religious and Community Leaders

Community mediation is common in family disputes, and religious or community leaders often speak with practical authority. In questions of *strīdhan*, however, such mediation frequently reproduces patriarchal readings that recast women's separate property as a collective marital asset. The point is not to disparage local dispute resolution, which can be faster and less intimidating than formal courts, but to note the jurisprudential drift that occurs when doctrinal detail is surrendered to commonsense morality. Classical sources that clearly recognise *strīdhan* can be selectively read to subordinate autonomy to "family harmony," especially where the woman lives in her husband's household and depends on the same kin network for day-to-day support. Textual citations are sometimes invoked to elevate compliance over claim. Verses from *Manusmṛti* on women's dependence across the life course, although not about *strīdhan* per se, are used to argue that autonomous proprietary agency is socially destabilising.[125] Such appeals are rhetorically powerful but doctrinally misplaced. The *Mitākṣarā*'s formulation on *strīdhan*, and the *Dayabhāga*'s acceptance of women's separate property, were designed precisely to furnish women with resources under conditions where succession and coparcenary excluded them.[126] Treatise writers have long emphasised that this enclave of absolute ownership is the counterweight to male centred succession.[127] The task for contemporary Bangladesh is to ensure that community forums

[124] Dowry Prohibition Act 2018 (n 11) ss 3–4.

[125] Mandal, 'Revisiting Jimutavahana' (n 110) 31,50-51.

[126] *Yājñavalkya Smṛti* 2.143 with the *Mitākṣarā* commentary, in Wisdom Library 'Verse 2.143' (n 108).

[127] Desai, *Mulla: Hindu Law* (n 48) 187.

and religious leaders are equipped with accurate doctrinal summaries that distinguish *strīdhan* from dowry, and property right from household morale, so that local settlements do not do not erode legal entitlements.

D. Challenges in Marital and Separation Contexts

The most acute pressures on *strīdhan* surface within marriage and at separation. Within marriage, the conceptual confusion between gifts to the woman, which become her *strīdhan*, and transfers to the marital household, which do not, leads to routine appropriation by husbands or in-laws. In theory, the rule is simple: gifts to the bride vest in her; gifts to the groom or to the couple vest where given.[128] In practice, household control of valuable movables, notably jewellery and cash, coupled with the absence of inventories, erodes women's ability to prove title or even to access their own property without permission.

At separation, three layers of difficulty appear. The first is evidentiary. Women leaving the matrimonial home may do so in haste or under pressure, without any of their belongings. When they later seek return of *strīdhan*, they face the burden of establishing what was given, when, and to whom. Indian jurisprudence offers helpful comparative reasoning here. *Pratibha Rani* and *Rashmi Kumar* both cases recognise that *strīdhan* remains the woman's property during marriage and that its retention without consent is a wrong that can ground criminal process.[129] The case of *Krishna Bhattacharjee* adds that the injury of non-return is continuing, permitting complaints outside the narrowest limitation windows.[130] These principles, adapted in a Bangladeshi statutory frame, would enhance access to remedies in the period immediately after marital breakdown.

The second difficulty is institutional. Even favourable civil decrees may prove hard to execute where property is held in family lockers, or where the husband's family controls the home. Without explicit statutory powers to seize and restore *strīdhan*, or to require detailed accounting upon separation, execution can stall. Police and revenue authorities in Bangladesh would benefit from concise operational protocols that identify *strīdhan*, provide for interim custody arrangements, and

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[128] *Yājñavalkya Smṛti* 2.143 with the *Mitākṣarā* commentary, in Wisdom Library 'Verse 2.143' (n 108).

[129] *Pratibha Rani* (n 10); *Rashmi Kumar* (n 20).

[130] *Krishna Bhattacharjee* (n 119)

direct prompt restoration upon prima facie proof. Such protocols would be continuous with constitutional equality, and with the insistence of CEDAW on effective remedies rather than aspirational statements.[131]

The third difficulty is normative. The continued social dominance of dowry practices, notwithstanding criminal prohibition, interacts toxically with *strīdhan* doctrine. The Dowry Prohibition Act 2018 outlaws demands and acceptance, and it should be read to shield, not endanger, the woman who seeks to reclaim her own property.[132] The law would be clarified by a short legislative statement that defines *strīdhan*, tracks the *Mitākṣarā* list, and provides a summary civil process for recovery, including interim custody orders and cost shifting where defendants retain property without lawful justification. The comparative record suggests that naming the right and specifying the remedy changes institutional behaviour. Where courts can point to a statutory section headed "Return of *strīdhan*," police and lower courts tend to act more decisively; where they must infer the right from general principles, inertia prevails.

3.5. Hindu Law of Adoption

3.5.1 Legal Disparities and Gender Inequalities in Hindu Adoption Law in Bangladesh

A. Authority to Adopt, Men's Broad Autonomy and Women's Restricted Rights

Classical Hindu adoption was conceived as a juridico-religious affiliation that created a son to perform obsequial rites and to continue the family line. The doctrinal locus is lucidly stated in the *Manusmṛti*: "If one has an adopted son endowed with all good qualities, he shall inherit his property, even though he may have come from another family," a formulation that links adoptive filiation with patrimonial succession and ritual efficacy.[133] In allied verses, the text recognises

[131] Constitution of the People's Republic of Bangladesh 1972 (n 3) arts 27, 28(1)-(2); CEDAW (n 3) art 16; Also see Mandal, 'Revisiting Jimutavahana' (n 110) 31, 51-52.

[132] Dowry Prohibition Act 2018 (n 11) ss 3–4.

[133] *Manusmṛti* 9.141, Sanskrit text and translation by Ganganath Jha, in *Manusmṛti with the Commentary of Medhātithi* (n 19).

adoptive affiliation even across gotras, underscoring the rite's religious foundation.[134] Pre-codification commentaries, including the *Dattaka* literature, typically assumed that the husband, or a widow armed with his express authority, was the principal actor in adoption.[135] Modern Indian legislation partially dislodged this asymmetry. Section 7 of the Hindu Adoptions and Maintenance Act 1956 in India recognises the capacity of an adult male Hindu to adopt, subject to spousal consent where a wife is living, while section 8 separately affirms the capacity of an adult female Hindu, subject to specified marital conditions.[136]

Bangladesh has taken a different path. There is no codifying Hindu adoption statute, and courts proceed through guardianship rather than full adoptive status. The Guardians and Wards Act 1890 empowers the court to appoint or declare a guardian for the person or property of a minor, the welfare of the child being the controlling consideration.[137] Guardianship, however, does not create the full parent–child status or the intestate succession consequences that classical adoption envisaged. Public guidance in Bangladesh, therefore, routinely directs families toward guardianship orders rather than adoption deeds, which have no independent legal effect.[138] The structural result is a gendered gap. In the Indian model, a woman's independent capacity to adopt is textually secured, albeit conditioned; in Bangladesh, where adoption is non-statutory, women often depend on male relatives and judicial guardianship processes to regularise caregiving arrangements, with no automatic consequences for inheritance.

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[134] Ibid 9.142.

[135] See *Dattaka-Mīmāṃsā* and *Dattaka-Chandrikā* (JCC Sutherland tr.) (historical treatises on adoption, including widow's authority to adopt); see also 'Dattaka-Mimamsa and Dattaka-Chandrika' (digitised version) https://www.scribd.com/doc/268211714/Dattaka-Mimamsa-and-Dattaka-Chandrika accessed 21 September 2025.

[136] Hindu Adoptions and Maintenance Act 1956 (India), ss 7–8; Guardians and Wards Act 1890 (Bangladesh), s 7.

[137] Guardians and Wards Act 1890 (n 136), s 7.

[138] US Department of Justice, 'Adoption Procedures, Bangladesh' (research compilation with Bangladeshi legal materials, including GWA 1890) (11 June 2013) 2–4; Jural Acuity, 'Guardianship of a Minor in Bangladesh' (practice note) citing Guardians and Wards Act 1890, s 7

B. Discrimination in Consent and Execution, Gender-based Limitations on Female Adopters

Classical sources place the initiative in male hands. The adoption verses of *Manusmṛti* are embedded in a wider economy of gendered guardianship, under which a woman's legal agency is mediated by father, husband or son.[139] Commentarial traditions such as the *Dattaka-Mīmāṃsā* and *Dattaka-Chandrikā* accentuated that a widow could adopt only with her husband's express authority, a view that dominated much nineteenth and early twentieth-century adjudication.[140] By contrast, section 8 of the Indian 1956 Act grants women primary capacity to adopt in their own right, subject to specified marital statuses, while section 7 requires a living husband to obtain his wife's consent.[141] The guardianship model of Bangladesh contains no equivalent textual equalisation. Applications under the 1890 Act are decided case by case, with the court appointing a guardian where "satisfied that it is for the welfare of the minor",[142] and practice materials reflect the continued tendency to nominate fathers or paternal kin as guardians in the ordinary course.[143] The absence of a codified adoptive regime thus sustains a default in which women's care work is recognised in fact, yet their decisional authority is filtered through discretionary guardianship rather than affirmed in statute.

C. Impact of Male Dominance, Reinforcing Traditional Gender Norms and Inheritance Patterns

Because guardianship does not establish filiation for intestate succession, the property consequences that historically flowed from adoption do not follow in Bangladesh. Under classical theory, the adopted son "inherits" like an *aurasa* son, precisely to maintain the continuity of

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[139] *Manusmṛti* 5.148 (Olivelle edn, dependency rule); for text and contextualisation see Olivelle, *Manu's Code of Law* (n 24) verse 5.148; cf Constitution of the People's Republic of Bangladesh 1972 (n 3) arts 27–28.

[140] See generally *Dattaka-Mīmāṃsā* and *Dattaka-Chandrikā* (n 135).

[141] Hindu Adoptions and Maintenance Act 1956 (n 136), ss 7–8.

[142] Guardians and Wards Act 1890 (n 136), s 7.

[143] US Department of Justice (n 138) 2–4; Jural Acuity (n 138).

offerings and estate.[144] In a guardianship setting, by contrast, the position of the child in the guardian's estate remains a matter for testamentary provision or collateral arrangements. The practical effect is twofold. First, male-centred kinship norms remain the default mechanism for transmitting property, since guardianship neither redistributes nor presumptively equalises patrimony. Secondly, female carers who assume de facto parental roles cannot translate that social fact into adoptive status with civil consequences. This friction sits uneasily with the constitutional command of non-discrimination. Article 27 guarantees equality before the law and equal protection, and Article 28 prohibits discrimination on grounds only of sex while affirming that women shall have equal rights with men in all spheres of State and public life.[145] International obligations of Bangladesh point in the same direction. Article 16 of CEDAW requires States Parties to eliminate discrimination against women in all matters relating to marriage and family relations, including the legal consequences of family formation.[146] The CEDAW Committee's General Recommendation No. 21, reinforced by General Recommendation No. 29 on the economic consequences of family relations, urges States to ensure equality in family law institutions and outcomes.[147]

D. Ceremonial Limitations for Women, Exclusion from Ritual Practices in Adoption

Ritual exclusions historically underwrote legal limitations. The *Dattaka* treatises construed adoption as a rite restoring the chain of male ritual obligation, which in turn justified confining initiatory authority to men or to widows armed with the husband's mandate.[148] That hermeneutic aligned with the *Manusmṛti*'s generalised dependency rule for women and with the assumption that ritual capacity, and therefore the power to constitute heirs through adoption, was

[144] *Manusmṛti* 9.141–9.142, in Jha, *Manusmṛti with the Commentary of Medhātithi* (n 19).

[145] Constitution of the People's Republic of Bangladesh 1972 (n 3) arts 27–28.

[146] CEDAW (n 3) art 16; 'Khan, 'Time for Bangladesh to withdraw CEDAW reservations'(n 23).

[147] CEDAW, 'General Recommendation No 21: Equality in Marriage and Family Relations' (1994) (n 106); CEDAW, 'General recommendation No 29 on article 16 of the Convention: Economic consequences of marriage, family relations and their dissolution' (n 63).

[148] See *Dattaka-Mīmāṃsā* and *Dattaka-Chandrikā* (n 135).

presumptively male.[149] Contemporary Bangladesh is a secular republic whose courts administer civil consequences of family relations according to statute. Yet ceremonial expectations still influence who is treated as the natural decision-maker in adoptive or guardianship scenarios. A rights-consistent path is available that respects private rites while securing women's equal civil authority. Parliament could legislate a Hindu Adoption statute that, like sections 7 and 8 of the 1956 Act in India, recognises women's capacity to adopt in their own right, establishes clear conditions for consent, and disaggregates ritual performance from civil status.[150] Pending codification, superior courts can interpret the "welfare of the minor" standard in the 1890 Act to avoid gender presumptions about suitable guardians, and to ensure that women who are primary carers are not disadvantaged by ceremonial narratives that historically excluded them.[151] Read together with Articles 27 and 28, and guided by CEDAW Article 16, this approach would bring practice into closer alignment with the constitutional and international commitments of Bangladesh without compelling or policing ritual.[152]

3.6 Hindu Maintenance Law

3.6.1 Legal Disparities and Gender Inequalities in Hindu Maintenance Law in Bangladesh

A. Legal Provisions and Gender Discrimination

This section examines the principal sites of inequality embedded in the maintenance framework governing Hindus in Bangladesh, situating doctrinal rules alongside institutional practice. It proceeds from the wider enquiry of this chapter into marriage, property and family relations to show that maintenance has been structured less as a gender-neutral social protection than as a mechanism for disciplining the conduct of women. The immediate legal point of departure is the 1946 Act on Separate Residence and Maintenance for Hindu Married Women, which remains the

[149] *Manusmṛti* 5.148 (Olivelle edn, dependency rule); see Olivelle, *Manu's Code of Law* (n 24) verse 5.148; cf Constitution of the People's Republic of Bangladesh 1972 (n 3) arts 27–28.

[150] Hindu Adoptions and Maintenance Act 1956 (n 136), ss 7–8.

[151] Guardians and Wards Act 1890 (n 136), s 7; US Department of Justice (n 140) 2–4; Jural Acuity (n 140).

[152] CEDAW, '*General Recommendation No 21: Equality in Marriage and Family Relations'* (1994) (n 106); CEDAW, 'General recommendation No 29 on article 16 of the Convention: Economic consequences of marriage, family relations and their dissolution' (n 63).

only statute specifically addressing a claim by a Hindu wife in Bangladesh. Section 2 recognises the right of a wife to separate residence and maintenance on enumerated grounds, including cruelty, desertion, bigamy by the husband, conversion, a loathsome disease not contracted from the wife, concubinage, and a residual category of "any other justifiable cause". The proviso withdraws entitlement where the wife is deemed unchaste, ceases to be Hindu, or fails without sufficient cause to comply with a decree for restitution of conjugal rights. This is a moralised eligibility threshold tied to chastity and cohabitation, not an unconditional social right grounded in need or equality.[153] The court, when fixing the quantum, must consider the husband's means and the social standing of the parties, which embeds status sensitivity into adjudication and may reproduce class and caste-coded hierarchies.[154]

Bangladesh has taken a different course. The Family Courts Act 2023 now governs family litigation and provides the civil forum for suits concerning maintenance, among other matters; most of the jurisdictional architecture of the 2023 Act has been carried forward.[155] The High Court Division has confirmed that persons of any faith, including Hindus, may sue in the family court for maintenance, and it has treated the family court scheme as a general forum for such claims.[156] Appellate and larger-bench dicta have further read the scheme as displacing the former maintenance jurisdiction of the criminal courts under section 488 of the Code of Criminal Procedure (now repealed), consolidating adjudication in the civil forum.[157] Yet, even with this institutional consolidation, the operative standard for Hindu maintenance remains tethered to the conditional grounds and provisos of the 1946 Act.[158]

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[153] Hindu Married Women's Right to Separate Residence and Maintenance Act 1946 (Bangladesh), s 2 and proviso.

[154] bid., s 3.

[155] Family Courts Act 2023 (Bangladesh), Act No 26 of 2023; see Government of Bangladesh, Judiciary portal, 'Laws for Protection of Women and Children' (listing Family Court Act 2023 with official download link) https://judiciary.gov.bd/en/menu/page/laws-for-protection-of-women-and-children accessed 4 October 2025; Abuzar Gifari, 'An analysis of the Family Courts Act 2023' (*The Daily Star*, Dhaka, 22 December 2023) <https://www.thedailystar.net/law-our-rights/news/analysis-the-family-courts-act-2023-3500311> accessed 18 November 2025.

[156] Zahidul Islam, *Strengthening Family Courts: An Analysis of the Confusions and Uncertainties Thwarting the Family Courts in Bangladesh* (Bangladesh Legal Aid and Services Trust (BLAST) 2007).

[157] *Meher Negar v Mojibur Rahman* 23 CLC (HCD) 1 (1994); *Pochon Rikssi Das v Khuku Rani Dasi* (1998) 50 DLR (AD) 47 (reading the family-court scheme as ousting maintenance proceedings under s 488 CrPC).

[158] Hindu Married Women's Right to Separate Residence and Maintenance Act 1946 (n 153), s 2 and proviso.

The normative framework of the Constitution demands more. Article 27 guarantees equality before the law and equal protection of the law, and Article 28 prohibits discrimination on grounds only of sex, among others.[159] The obligation to realise substantive equality is reinforced by Bangladesh's accession to CEDAW, Article 16 of which requires equality of rights and responsibilities of spouses in marriage and family relations, and equality in guardianship and property.[160] Yet neither the text of the 1946 Act nor prevailing judicial interpretation has been brought into systematic alignment with these standards. The result is a regime in which women's entitlements are made contingent upon conformity with patriarchal norms of sexual respectability and obedience, whereas no symmetrical duties are imposed upon husbands to maintain wives irrespective of fault. The continuities with *śāstric* ideology are patent. Classical authorities envisage women as perpetual dependants, guarded by father, husband, and son, a trope reflected in *Manusmṛti* V.148 as transmitted in modern scholarship.[161]

Doctrinal commentaries underscore this asymmetry. The treatise of Mulla catalogues the traditional obligations of male relatives to maintain wives, minor sons, unmarried daughters, and aged parents, without correlatively imposing duties on women to maintain husbands or parents.[162] Such a one-way allocation of responsibility entrenches dependence, a point consistently observed in socio-legal work that links women's bargaining position to command over resources.[163] In short, the legislative text, the constitutional standard, and the doctrinal commentary sit in tension, and the unresolved conflict routinely disadvantages Hindu women in Bangladesh.[164] Drawing on the substance and evaluative stance of the earlier draft of this chapter, the analysis that follows tracks

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[159] 'Interpreting Discrimination in the Constitutional Context of Bangladesh' *The Daily Star* (Dhaka, 15 December 2020) https://www.thedailystar.net/law-our-rights/news/interpreting-discrimination-the-constitutional-context-bangladesh-2011377 accessed 21 September 2025.

[160] CEDAW (n 3) art 16.

[161] Olivelle, *Manu's Code of Law* (n 24) verse 5.148.

[162] Desai, *Mulla: Hindu Law* (n 48) 877-879.

[163] Naila Kabeer, *The Conditions and Consequences of Choice: Reflections on the Measurement of Women's Empowerment* (UNRISD Discussion Paper 108, 1999) 3–4.

[164] Hindu Married Women's Right to Separate Residence and Maintenance Act 1946 (n 153), s 2.

how courts, procedures, and social power together narrow the practical reach of maintenance claims for Hindu women.[165]

B. Gendered Responsibility of Maintenance

The Hindu Married Women's Right to Separate Residence and Maintenance Act, 1946,[166] is framed as an exception-triggered entitlement. A wife is presumed to cohabit, to be chaste, and to accept the husband's household as the locus of support, unless particular wrongs intervene.[167] Conversely, the Act does not articulate a general principle of spousal equality, still less a recognition of unpaid care or foregone earnings as contributions that ground a right to support. The text, therefore, institutionalises a gendered distribution of risk: dependency forms the baseline, and maintenance operates as the remedy when prescribed wrongs are proved. Case law in Bangladesh has attached operative effect to this structure by treating Hindu wives as competent to sue in Family Courts and by affirming that the grounds in section 2 may be invoked for separate residence and maintenance.[168] The same jurisprudence confirms that Family Courts are the proper forum and that the jurisdiction of the Act is religion-neutral, a practical advance that nonetheless leaves the normative core untouched.[169]

Comparative discussion with India is instructive. In India, maintenance can be pursued under both personal law and general criminal procedure. The Supreme Court has interpreted the latter broadly to secure women's sustenance where marital cohabitation has broken down. In *Bhagwan Dutt v Kamla Devi* the Court explained that the husband's obligation under the general law is independent of the wife's right to residence and is to be measured by necessity and ability to pay.[170] In

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[165] Constitution of the People's Republic of Bangladesh 1972 (n 3) arts 27–28.

[166] Act No. XIX of 1946 (Bangladesh).

[167] Hindu Married Women's Right to Separate Residence and Maintenance Act 1946 (n 153), s 2 and proviso.

[168] *Nirmal Kanti Das v Sreemati Biva Rani* (1995) 47 DLR (HCD) 514 (clarifying that the Family Courts Ordinance 1985 applies to all citizens regardless of religion and that a Hindu wife may bring a suit for maintenance in a Family Court, with the Ordinance overriding contrary personal-law arrangements in matters specified in s 5).

[169] 'Law and Our Rights' column, *The Daily Star* (Dhaka, 2 September 2006) https://www.thedailystar.net/law/2006/09/01/index.htm accessed 21 September 2025 (discussing *Nirmal Kanti Das v Sreemati Biva Rani* (n 168) and subsequent case law on Family Court jurisdiction).

[170] *Bhagwan Dutt v Kamla Devi* (1975) 2 SCC 386.

Chaturbhuj v Sita Bai the Court emphasised that maintenance under the summary remedy is "not a substitute for civil remedy" but a swift means to prevent destitution.[171] More recently, *Kamala v M R Mohan Kumar* reaffirmed that an estranged wife's entitlement does not vanish merely because she is separated pending or absent matrimonial relief.[172] These decisions, though not binding in Bangladesh, illuminate the possibilities of an equality-oriented interpretive turn. In Bangladesh, by contrast, the proviso of the 1946 Act continues to make chastity and obedience lawful gates to entitlement, a position that sits uneasily with Articles 27 and 28 of the Constitution of Bangladesh.

The wider socio-economic context compounds legal conditionality. Persistent gender gaps in command over property constrain women's exit options and litigation capacity. Bina Agarwal's foundational work shows how the absence of ownership or effective control over land and movables depresses bargaining power within the household and in legal processes.[173] When the only Hindu-specific maintenance instrument with general application is framed as a sanction for male fault and a reward for female virtue, rather than an expression of equal citizenship, the law reproduces the very dependence it purports to alleviate.

C. Challenges Faced by Hindu Women in Bangladesh Under the Current Maintenance Law

Three clusters of difficulty emerge from doctrinal texts, judicial experience, and socio-legal reporting. First, cultural and religious scripts frame a woman's claim as a breach of familial loyalty. Women who seek separate residence and maintenance are often accused of dishonouring kinship obligations, a theme widely observed in professional commentary and civil-society practice.[174]

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[171] *Chaturbhuj v Sita Bai* (2008) 2 SCC 316.

[172] *Kamala v M R Mohan Kumar* (2019) 11 SCC 491 (reaffirming, following *Chanmuniya v Virendra Kumar Singh Kushwaha*, that strict proof of a valid marriage is not mandatory for maintenance under s 125 CrPC and that women in long-term cohabitation may qualify as 'wives' for this purpose, while limiting revisional interference with Family Court findings).

[173] Agarwal, *A Field of One's Own* (n 21) 15–18, 260–69; see also Cambridge University Press, catalogue entry for *A Field of One's Own* (confirming focus on property and bargaining power).

[174] Maheen Sultan, Shravasti Roy Nath, Abu Sayem Rabbi and Mohaiminul Islam, 'Protecting Women's Family Rights in a Minority Community: Hindu Family Law Reform in Bangladesh' (Countering Backlash Working Paper 9, Institute of Development Studies 2025) https://bigd.bracu.ac.bd/wp-content/uploads/2025/10/Hindu_Family_Law.pdf accessed 18 November 2025 (describing how Hindu women who "go against cultural norms to safeguard their interests" have their allegiance to the community questioned by

The chastity proviso of the 1946 Act gives this cultural script legal teeth, inviting moralised fact-finding about a wife's character and whereabouts rather than a focused assessment of need and capacity.[175]

Second, legal inconsistencies and judicial constraints limit the transformative potential of litigation. Although the Family Courts Act provides a dedicated forum, there is no unified statutory statement of Hindu marriage or divorce in Bangladesh. Without a codified regime of marital rights and dissolution, maintenance claims remain structurally precarious. Women in abusive or broken unions must often continue formally subsisting marriages to remain eligible, while husbands retain the capacity to remarry. These structural asymmetries mirror the earlier chapter's account of how patriarchal readings of classical authority are carried forward in present doctrine. Courts have recognised Hindu wives' standing to sue,[176] yet have simultaneously been asked to apply a text that conditions women's subsistence on marital obedience, a clash that is not resolvable at the level of case-by-case adjudication alone. At a constitutional register, it raises serious questions under Articles 27 and 28 and under the obligations of Bangladesh pursuant to CEDAW Article 16.[177]

Third, the absence of robust enforcement mechanisms ensures that even successful decrees are difficult to realise. Reports and practitioner handbooks note that collection of ordered sums is sporadic, that penalties for non-compliance are weak, and that monitoring is seldom institutionalised.[178] These practical barriers were underscored in the earlier version of this chapter and remain endemic in Family Court litigation concerning Hindu parties.

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community leaders); Rukhsana Siddiqua and Pallabi Rani Das, 'The Influence of Divorce on Women Empowerment in Bangladesh: An Exploratory Study' (2025) 11(2) *MBSTU Journal of Science and Technology* 1, 2 (noting that divorce in Bangladesh "still carries a strong social stigma, especially for women" and that divorced women face ostracisation and marginalisation).

[175] Hindu Married Women's Right to Separate Residence and Maintenance Act 1946 (n 153), proviso to s 2.

[176] *Nirmal Kanti Das* (n 168); *Pochon Rikssi Das* (n 157), both noted in family-law case digests.

[177] 'Interpreting Discrimination in the Constitutional Context of Bangladesh' *The Daily Star* (Dhaka, 15 December 2020) (n 159); CEDAW (n 3) art 16.

[178] Bangladesh Legal Aid and Services Trust, *Remedies for Forced Marriage: A Handbook for Lawyers* (29 March 2007) 2, 9 (noting Family Courts' jurisdiction for all communities and practical obstacles in enforcement).

D. Practical Challenges in Claiming Maintenance

The practical impediments operate across the life cycle of a claim. They begin with documentation and pleading. Many Hindu marriages are solemnised without comprehensive documentary trails, and income information is often unavailable where husbands work in the informal sector. As noted earlier, the difficulty of securing marriage certificates and proof of means, the prevalence of adjournments, and prolonged timelines can exhaust litigants. These dynamics have been documented by legal aid organisations, which additionally note the geographical maldistribution of services and the costs of repeated appearances.[179]

Even when decrees issue, enforcement is brittle. Without codified attachment and deduction procedures tailored to maintenance orders, compliance depends on the debtor's cooperation or on resource-intensive execution processes. The problem is particularly acute for women who have left the marital household, whose social networks and bargaining resources are diminished. Where the husband remarries or cohabits with a concubine, the wife may obtain a decree under section 2, but collecting regular payments requires continued mobilisation.[180] The risk of social backlash, including pressure from community leaders and relatives to withdraw suits, was emphasised in the prior draft and is widely observed by practitioners.

The position of widows and deserted wives illustrates the interaction of doctrinal conditionality and practical vulnerability. Texts and commentaries accept a widow's right to maintenance from the deceased husband's property, but restrict it by moral conditions and by cessation on remarriage.[181] Section 2 of the Hindu Widows' Remarriage Act 1856 makes this explicit by providing that all rights and interests by way of maintenance or inheritance cease on remarriage.[182] The message is clear. A widow's subsistence is secured only on terms of sexual abstinence and social withdrawal. In practice, this pushes widows toward dependence on affinal kin or informal labour and deters them from asserting claims that may be perceived as burdensome. The more generous approach of the Supreme Court of India to estranged wives' maintenance, as in the case

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[179] Ibid 2, 9; see also the discussion in the main text of costs, adjournments and geographic barriers to legal assistance.

[180] Hindu Married Women's Right to Separate Residence and Maintenance Act 1946 (n 153), ss 2(4), 2(6).

[181] Desai, *Mulla: Hindu Law* (n 48) 889-891.

[182] Hindu Widows' Remarriage Act 1856 (n 30), s 2; for a modern statement of the text see historical consolidations and reputable digests quoting s 2 in full.

of *Kamala*,[183] underscores the gap between equality-enhancing interpretation and the Bangladeshi regime's retention of moralised provisos.

3.7 Legal Disparities and Gender Inequalities in Hindu Guardianship and Custody of Children in Bangladesh

Guardianship and custody for Bangladeshi Hindus remain anchored in the Guardians and Wards Act 1890, administered today alongside the Family Court Act 2023 and read in light of the child-centred standards in the Children Act 2013. The architecture looks neutral. In practice, however, the regime still carries traces of paternal default rules and procedural habits that discount women's equal authority as decision-makers for children. This section maps the principal doctrinal levers in the 1890 Act the jurisdictional and procedural implications of the 2023 family court scheme, and the interpretive influence of the 2013 Children Act. It then analyses how these sources interact in Hindu cases where there is no codified personal law of adoption and where courts regulate care through guardianship and custody orders rather than through a fully constituted adoptive status.

The starting point is the 1890 Act.[184] Section 7 empowers the court to appoint or declare a guardian of the person or property of a minor. In guardianship and custody, section 17 requires the court to be guided by the welfare of the minor, and section 25 empowers the court to order custody or restoration to a guardian. Read together, these provisions frame a welfare-oriented jurisdiction in which evidence about caregiving, stability, and the child's needs should carry decisive weight.[185] The same Act, however, embeds a structural brake. Section 19 bars the court from appointing a guardian of the person if the father or mother is alive and, in the court's opinion, not unfit. Applied without care, section 19 can function as a threshold veto for a living father, shifting the argumentative burden onto mothers who have provided day-to-day care.[186] The statutory text does not compel such a tilt. Properly construed, section 19 is a narrow exception that prevents

[183] *Kamala v M R Mohan Kumar* (n 172).

[184] Guardians and Wards Act 1890 (n 136).

[185] ibid. ss 7, 17, 25.

[186] ibid. s 19.

unnecessary displacement of an unimpeachable parent; it does not diminish the court's duty under section 17 to decide for the child's welfare on the facts of the case.[187]

Jurisdiction is now consolidated in the family courts. The Family Courts Act 2023 repealed and replaced the 1985 ordinance and provides the civil forum for suits concerning guardianship and custody, among other family matters.[188] Section 5 allocates jurisdiction;[189] the Act then sets out filing, process, and case management powers designed to streamline family litigation.[190] The official portal of the Judiciary lists and links the 2023 Act and confirms its role as the principal forum.[191] The consolidation matters for Hindu litigants because it removes uncertainties about where claims should be brought and enables a single court to shape interim and final orders that reflect the welfare of the child in a rounded way.[192] That institutional advantage does not, however, fix the deeper doctrinal question: how courts should read section 19 in cases where a mother seeks appointment or recognition as guardian, or where she seeks custody against a father who relies on status rather than caregiving.[193]

Two further developments illuminate the present trajectory. First, in January 2023, the High Court Division held that a mother may be recognised as a legal guardian for official documentation,[194] and directed that public authorities not insist on naming the father as a condition for processing forms such as student information forms or passports.[195] Authoritative coverage made clear that forms must accept the mother alone where appropriate,[196] and that administrative practice must

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[187] ibid. ss 17, 19.

[188] Family Courts Act 2023 (n 155) (preamble and general scheme), read in light of Constitution of the People's Republic of Bangladesh 1972 (n 3) arts 27–28.

[189] ibid. s 5.

[190] ibid. ss 6–17.

[191] Judiciary: Bangladesh, 'Laws for Protection of Women and Children' (listing 'Family Court Act, 2023' (n 155)

[192] Guardians and Wards Act 1890 (n 136) s 17 (welfare of the minor as governing criterion).

[193] ibid. s 19(b) (restriction while father is living and not unfit).

[194] *Bangladesh Legal Aid and Services Trust (BLAST) and others* (n 8).

[195] Bangladesh Sangbad Sangstha (BSS), 'HC recognises mother as legal guardian of child in documents' (24 January 2023) https://www.bssnews.net/news-flash/106944 accessed 25 October 2025.

[196] Ashutosh Sarkar, 'Student Information Form: Mother's name too will do' *The Daily Star* (Dhaka, 25 January 2023) https://www.thedailystar.net/news/bangladesh/news/student-information-form-mothers-name-too-will-do-3229706 accessed 25 October 2025.

adjust accordingly.[197] The Dhaka Law Review published later the same year summarised the ratio and its significance for routine interactions with schools and public bodies.[198] The decision does not rewrite the 1890 Act, but it shifts everyday practice by affirming mothers' legal standing, reducing the frictions created by documentation rules that previously presumed paternal priority. Secondly, the Children Act 2013 supplies a cross-community, child-rights frame. It defines "*legal or lawful guardian*" by reference to appointment under section 7 of the 1890 Act[199] and it embeds best-interests decision-making and child-sensitive institutions across the statute, implemented through child-welfare boards and procedures.[200] Authoritative commentary on the 2013 Act underscores that the best-interests principle is the lodestar for care decisions and provides concrete administrative tools to realise that standard.[201]

In Hindu cases the absence of a codified adoption law has material effects. Since Bangladeshi law does not recognise a fully constituted adoptive status for Hindus, courts tend to regularise care through guardianship and custody rather than through adoption orders with plenary civil consequences.[202] That choice of instrument matters for gender equality. Guardianship under the 1890 Act is discretionary and case-bound; it lacks the clear, text-based equalisation that a modern adoption statute could deliver.[203] Where a mother is already the primary carer, the need to surmount section 19 can place an unnecessary argumentative burden upon her, particularly when

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[197] 'HC: Mother's name enough as guardian in official documents' *Dhaka Tribune* (Dhaka, 24 January 2023) https://www.dhakatribune.com/bangladesh/court/303438/hc-mother-s-name-enough-as-guardian-in-official accessed 25 October 2025; 'HC recognises mothers as legal guardians of students too' *bdnews24.com* (24 January 2023) https://bdnews24.com/bangladesh/ydx3u5jwoh accessed 25 October 2025.

[198] 'From the Court Corridor: January 2023' *Dhaka Law Review* (26 October 2023) https://www.dhakalawreview.org/blog/2023/10/from-the-court-corridor-january-2023-6371 accessed 5 October 2025.

[199] Children Act 2013 (Bangladesh) s 2(2) (definition of 'legal or lawful guardian' by reference to appointment or declaration under s 7 of the 1890 Act), authorised English version, UNICEF https://www.unicef.org/bangladesh/sites/unicef.org.bangladesh/files/2018-07/Children%20Act%202013%20English.pdf accessed 5 October 2025.

[200] Children Act 2013 (n 199) ch III (Child Welfare Boards and their functions, eg s 7).

[201] Imman Ali, *The Children Act 2013: A Commentary* (PRI, BLAST 2013) 5–6, 8–10, 15–16, 31.

[202] Government of the People's Republic of Bangladesh, Ministry of Women and Children Affairs, *Third and Fourth Periodic Report of the Government of Bangladesh under the Convention on the Rights of the Child* (Dhaka, August 2007) 49.

[203] Guardians and Wards Act 1890 (Act No VIII of 1890) ss 7, 17, 19.

opposing counsel rehearses a narrative of paternal "*natural*" guardianship.[204] The better approach, mandated by section 17 and illuminated by the 2013 Children Act, is to treat caregiving continuity, stability, safety, schooling, and the child's voice as the decisive factors and to craft orders that protect those interests.[205]

Applying the statutory framework with that orientation yields three practical corollaries. First, the court should treat section 19 as a protection against the needless displacement of a fit parent rather than as a general presumption of paternal priority.[206] The test is fitness and welfare, not status. Where the mother has been the continuous primary carer and offers a stable home and schooling, appointment or recognition of her as guardian accords with section 17 and can be implemented with a custody order under section 25, while calibrating contact for the father to the child's routine and comfort.[207] Secondly, documentary and administrative practice should mirror courtroom principle. The 2023 High Court ruling requires re-engineering of forms and databases so that "*legal guardian*" and "*mother*" are treated as sufficient designations. Ministries and local bodies should issue harmonised circulars to embed the ruling across education, passports, and allied systems.[208] Thirdly, family court procedures should be operated to serve the best interests of the child. The jurisdictional clarity of the 2023 Act allows a single forum to coordinate interim custody, schooling directions, medical decisions, and contact, and to enforce compliance.[209]

The Children Act 2013 deserves emphasis as an interpretive resource for guardianship cases. The Act re-enacts child-centred standards to implement the Convention on the Rights of the Child and vests child-welfare bodies with responsibilities that extend beyond the criminal process. Its

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[204] *Md Abu Bakar Siddique v S M A Bakar* 38 DLR (AD) 106 (1986); see also N Tamanna, *Personal Laws of Bangladesh: A Gender Study in Light of the Convention on the Elimination of All Forms of Discrimination against Women* (PhD thesis, University of Kent 2005).

[205] Children Act 2013 (n 199).

[206] Guardians and Wards Act 1890 (n 136) s 19

[207] ibid. ss 17, 25.

[208] Bangladesh Sangbad Sangstha (BSS), 'HC recognises mother as legal guardian of child in documents' (Dhaka, 24 January 2023) (n 198); 'Mothers as guardians: HCD's historic verdict' *The Daily Star* (Dhaka, 2 February 2023) (n 195); 'HC ruling acknowledges mothers as legal guardian' *The Daily Star* (Dhaka, 25 January 2023) https://www.thedailystar.net/life-living/news/hc-ruling-acknowledges-mothers-legal-guardian-3230191 accessed 5 October 2025.

[209] Family Courts Act 2023 (n 155) s 5 and related procedural provisions.

definition clause explicitly ties "*legal guardian*" to an appointment under section 7 of the 1890 Act, a drafting choice that invites courts to read the two statutes together.[9] Authoritative commentary explains that the Act mandates boards and probation officers to assess care arrangements by reference to the best interests of the child and empowers courts to build children's views into decision-making in age-appropriate ways.[210] When a family court hears a guardianship or custody case, it should therefore read the welfare standard under section 17 through this lens, paying careful attention to continuity of care, the child's relationships with each parent, schooling, health, and voice. Doing so respects the text of the 1890 Act while bringing practice into line with the rights-centred architecture of the 2013 Act.

A short note on the constitutional and international context is warranted. Article 27 of the Constitution guarantees equality before the law and equal protection, and Article 28 prohibits discrimination and affirms equal rights of women and men in all spheres of the State and of public life.[211] These provisions do not impose a single personal law code. They do, however, require courts to construe open-textured standards such as "welfare" without importing sex-based hierarchies. The 2023 ruling on documentation illustrates how constitutional equality informs concrete administration without disturbing religious rites.[212] International law points the same way. Article 16 of the Convention on the Elimination of All Forms of Discrimination against Women obliges States to ensure equality in all matters relating to marriage and family relations, including parental responsibilities and the interests of children.[213] Reading sections 17, 19 and 25 in that light brings guardianship and custody practice into closer conformity with the treaty commitments of Bangladesh.

Concrete illustrations show how these standards should operate in Hindu cases. In a first pattern, a mother who has provided continuous care petitions for appointment as guardian and for custody orders that stabilise schooling and contact. The father resists by invoking section 19. The court should insist on evidence. School records, medical affidavits, and testimony about daily routines

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[210] See Imman Ali, *The Children Act 2013: A Commentary* (n 201) 8–10, 12–13, 15–16.

[211] Constitution of the People's Republic of Bangladesh 1972 (n 3) arts 27–28.

[212] Bangladesh Sangbad Sangstha (BSS), 'HC recognises mother as legal guardian of child in documents' (n 195); 'Mothers as guardians: HCD's historic verdict' *The Daily Star* (n 206); 'HC ruling acknowledges mothers as legal guardian' *The Daily Star* (n 206).

[213] CEDAW (n 3) art 16.

will ordinarily make clear where the child's interests lie. Section 17 permits, and often requires, an order appointing or recognising the mother as guardian and making custody orders under section 25 that preserve continuity while ensuring appropriate contact with the father.[214] In a second pattern, a mother seeks recognition as legal guardian for administrative purposes while the child continues to live with her. The 2023 High Court ruling has already made clear that public bodies must accept the mother's name on forms; family court declarations can be used to smooth coordination with schools and agencies.[215]

The policy implications follow. Bangladesh could consider a short, faith-sensitive statute for Hindu adoption and guardianship that recognises women's equal capacity to adopt and to serve as legal guardians, separates ritual from civil consequences, and codifies the welfare test with indicative factors, including continuity of care and the child's voice. In the meantime, the existing framework can be used more consistently. Family courts should deploy the tools of 2023 Act to craft interim and final orders that reflect welfare in a rounded way. Judicial training should focus on how section 19 interacts with section 17 and with the Children Act of 2013, so that paternal status does not eclipse evidence about care. Ministries should issue clear circulars implementing the 2023 guardianship documentation ruling across forms and databases.[216] Welfare is not a private entitlement; it is a public law standard that the court must secure.

A final observation concerns the role of community forums in Hindu family disputes. Informal mechanisms can be faster and less intimidating than court. They also risk reproducing patriarchal priors that treat maternal caregiving as provisional and paternal status as decisive. The law does

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[214] Guardians and Wards Act 1890 (n 136) ss 17, 25.

[215] Bangladesh Sangbad Sangstha (BSS), 'HC recognises mother as legal guardian of child in documents' (n 195); 'Mothers as guardians: HCD's historic verdict' *The Daily Star* (n 206); 'HC ruling acknowledges mothers as legal guardian' *The Daily Star* (n 206); 'From the Court Corridor: January 2023' *Dhaka Law Review* (n 198).

[216] On 24 January 2023 the High Court Division disposed of *Bangladesh Legal Aid and Services Trust (BLAST) and others v Bangladesh and others* (Writ Petition No 5343 of 2009) by making the Rule absolute and recognising that, for official documentation, a child may be identified by the mother or by a lawful guardian; no authority may insist on naming the father as a condition for processing forms. The Court directed the Ministry of Education and all Education Boards to amend Student Information Forms and related records so that the 'guardian' field may be completed with the father's, the mother's or a lawful guardian's name, and that applications must not be rejected for failure or refusal to state a father's name; where appropriate, the mother's name alone will suffice: see Bangladesh Sangbad Sangstha (BSS), 'HC recognises mother as legal guardian of child in documents' (n 195); 'HC: Mother's name enough as guardian in official documents' *Dhaka Tribune* (n 200); Ashutosh Sarkar, 'Student Information Form: Mother's name too will do' *The Daily Star* (n 197).

not require that result. Accurate doctrinal summaries for local mediators and officials should explain that section 17 is the controlling standard, that section 19 does not confer an irrebuttable paternal right, and that the mother's legal standing is equal for purposes of documentation and petitions. If those messages are carried into first-contact settings, guardianship and custody decisions are more likely to reflect the statutory scheme as written.

The system already contains the tools to correct the gendered defaults that persist in practice. The 1890 Act supplies the welfare standard and the machinery for appointments and custody orders. The 2023 statute consolidates the forum and strengthens case management. The 2013 Act supplies a rights-centred frame and institutions that anchor decisions in the child's interests. The Constitution provides the normative baseline of equality. The 2023 High Court ruling on documentation shows that change can begin with administrative practice and radiate into daily life. The task is to apply these instruments with clarity and consistency, so that Hindu guardianship and custody cease to be a field where historical defaults survive by inertia rather than by law.

3.8 Conclusion

Read together, the preceding analyses disclose a coherent pattern: rules in force for Bangladeshi Hindus on marriage, divorce, maintenance, guardianship, adoption, and succession continue to encode sex-differentiated entitlements that place women at structural disadvantage. The persistence of limited estates for widows in Dayābhāga settings, the fragility of daughters' proprietary claims, the discretionary architecture around registration of Hindu marriages, and the doctrinal narrowing of women's authority to adopt, each operate as points of unequal leverage over women's life chances. The doctrinal materials and case law surveyed earlier in this chapter therefore converge on a single normative proposition, that the civil consequences of family status must be brought into line with the State's positive duties of equality.

The constitutional benchmark is unambiguous. Article 27 guarantees equality before the law and equal protection, while Article 28 prohibits discrimination on grounds only of sex and directs that women shall have equal rights with men in all spheres of the State and of public life. These provisions supply both a standard of review for personal law rules and a mandate for legislative correction where those rules generate a pattern of sex-based exclusion. The conclusion follows

that reforms to Hindu personal law are not matters of grace, but obligations flowing from constitutional text.[217]

International commitments reinforce the constitutional command. Bangladesh is a State Party to the Convention on the Elimination of All Forms of Discrimination against Women. Article 16 of CEDAW also requires equality in all matters relating to marriage and family relations, including the property consequences on dissolution or death. General Recommendations Nos 21 and 29 underscore that equality must be effective in fact, not merely formal, and extend to the economic incidents of family life. Although Bangladesh has maintained reservations to parts of Articles 2 and 16, the treaty body and domestic commentary have repeatedly urged withdrawal, emphasising that personal law reform is integral to substantive equality. The cumulative picture creates a presumption in favour of legislative reform to remove sex-based disabilities in family law.[218]

Within marriage, registration remains facilitative rather than constitutive under the Hindu Marriage Registration Act 2012, which weakens evidentiary certainty for wives seeking maintenance, inheritance documentation, or access to state services. A general requirement of registration, coupled with straightforward procedures and low fees, would better secure women's legal status without policing rites or ceremonies.[219]

Adjacent statutory regimes confirm how documentary weakness deepens vulnerability. The Dowry Prohibition Act 2018 criminalises giving or receiving dowry, yet social expectations persist, and the effectiveness of the law depends on enforcement and complementary reforms to women's proprietary rights that reduce the perceived need for marriage-related transfers. The Child Marriage Restraint Act 2017 retains differential minimum ages and introduces a "special provision" allowing marriages below the minimum with parental consent and judicial authorisation, a clause widely criticised for weakening deterrence and for increasing the dependence of the girls on affinal kin at an earlier age, which in turn distances them from natal

[217] Constitution of the People's Republic of Bangladesh 1972 (n 3) arts 27, 28(1)-(2).

[218] CEDAW (n 3) art 16(1); CEDAW, 'General recommendation No 29 on article 16 of the Convention: Economic consequences of marriage, family relations and their dissolution' (n 63) paras 7–8 (substantive as well as formal equality), 1, 4 (economic consequences/problem statement), 9, 45–47 (mandate and remedial standards); CEDAW 'General Recommendation No 21: Equality in Marriage and Family Relations' (n 106) paras 10, 12, 15, 20, 22, 35, 37–40, 46–47, 49; 'Time for Bangladesh to withdraw CEDAW reservations' *The Daily Star* (n 23) 3.

[219] Hindu Marriage Registration Act 2012 (n 2), s 3.

property claims. Targeted reform of these statutes would support, rather than substitute for, equality in Hindu personal law.[220]

Property is the hinge on which many other entitlements turn. The jurisprudence on *strīdhan* illustrates how a woman's absolute title can be affirmed within a plural legal order. Indian appellate authority has consistently treated *strīdhan* as a woman's separate property, with misappropriation prosecutable as criminal breach of trust. While not binding in Bangladesh, these decisions demonstrate a clear doctrinal pathway that Bangladeshi courts may consider when construing analogous claims, and they provide a legislative template for codifying women's absolute proprietary interests.[221]

Adoption and guardianship regimes should likewise be re-tooled to eliminate sex-based restrictions on women's authority to adopt, to execute necessary instruments, and to perform associated ceremonies, with clear statutory language separating ritual roles from civil effects. Equality-consistent adoption law would also clarify the child's status in inheritance and guardianship, reducing later litigation and securing the child's best interests in line with constitutional and international standards.[222]

Across the field, procedural architecture matters. Reform should pair substantive equalisation with gender-sensitive administration: compulsory inventories in estate proceedings, presumptions protecting women's possession of *strīdhan*, simplified mutation on succession certificates, and calibrated legal-aid pathways. These are not ornamental adjustments. They correct information asymmetries and bargaining deficits that render formal rights illusory in practice, particularly for widows and deserted wives.

The programme that emerges is therefore precise. Parliament should enact a Hindu Succession statute that equalises heirship irrespective of sex or marital status and abolishes limited estates,

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[220] Dowry Prohibition Act 2018 (n 11); Child Marriage Restraint Act 2017 (n 5), ss 7, 9, 19; Suriya Tarannum Susan, 'Condoning Child Marriage in Bangladesh: A Step Backwards' (Oxford Human Rights Hub, 20 April 2023) https://ohrh.law.ox.ac.uk/condoning-child-marriage-in-bangladesh-a-step-backwards/ accessed 21 September 2025; Center for Reproductive Rights, *Ending Impunity for Child Marriage in Bangladesh* (n 58) 9–12.

[221] *Pratibha Rani* (n 10); *Rashmi Kumar* (n 20); *Vinod Kumar Sethi* (n 117).

[222] CEDAW, 'General recommendation No 29 on article 16 of the Convention on the Elimination of All Forms of Discrimination against Women (economic consequences of marriage, family relations and their dissolution)' (n 63) paras 1–3, 10, 14–16, 53.

and should amend adoption and guardianship provisions to vest equal authority in women. Marriage registration should be made mandatory with accessible procedures, and dowry and child marriage regimes should be aligned with a rights-based approach that removes perverse incentives and closes exceptions. Courts, for their part, can continue to construe inherited doctrines, including Dayābhāga canons, in harmony with constitutional norms where the texts are open to development. Such measures would move Hindu women in Bangladesh from derivative enjoyment to full proprietorship and status, giving effect to the constitutional promise of equal citizenship and to Bangladesh's international commitments.[223]

[223] Constitution of the People's Republic of Bangladesh 1972 (n 3) arts 27, 28(1)-(2); CEDAW (n 3) art 16(1).

Chapter 4

CONTOURS OF LEGAL MOSAIC: INTERNATIONAL STANDARDS, NATIONAL COMMITMENTS AND THE QUESTION OF EQUALITY FOR HINDU WOMEN IN BANGLADESH

4.1 Introduction

Chapter 3 demonstrated, with doctrinal detail and institutional texture, how the Hindu personal law regime in Bangladesh burdens women across marriage, succession, *strīdhana*, adoption, guardianship and maintenance; weak registration, evidentiary fragility, forum confusion and uneven enforcement further erode whatever rights exist in principle. Building on that diagnosis, this chapter pivots from description to evaluation. It measures those outcomes against constitutional equality guarantees and international standards, and it asks, domain by domain, what reforms are both normatively required and institutionally deliverable within the legal system of Bangladesh.

The aim and scope are precise. The central question is whether, and where, the rules and practices that govern Hindu women's family lives are compatible with guarantees of equality and non-discrimination in Bangladesh and with its binding and programmatic commitments in international law. The practical ambition is to identify equality-consistent reforms that are feasible within existing institutions and capable of near-term uptake. Substantively, five domains organise the chapter: inheritance and succession; marriage and divorce; adoption and guardianship; maintenance; and the procedural or institutional conditions (registration, forum allocation, proof, delay, and enforcement) that determine whether rights travel from text to remedy. Each domain is

read through constitutional baselines and the relevant treaty framework, with sustained attention to how doctrine and delivery interact.

The normative framework has two anchors. First, the Constitution: Article 27 guarantees equality before the law and equal protection, and Article 28 prohibits discrimination, including on grounds only of sex, while affirming equal rights of women in all spheres of State and public life.[1] These clauses supply the domestic yardstick and the idiom through which personal law outcomes are scrutinised. Secondly, universal instruments provide interpretive guidance and programmatic benchmarks. The Universal Declaration of Human Rights (UDHR) frames equal citizenship in family and economic life, notably Articles 2, 7 and 16; the International Covenant on Civil and Political Rights (ICCPR) secures equality of spouses and an autonomous guarantee of equal protection under Articles 23(4) and 26; the International Covenant on Economic, Social and Cultural Rights (ICESCR) links equality to work, livelihood, education and social protection, with non-discrimination as an immediate obligation under Articles 2(2) and 3.[2] Most centrally, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) defines discrimination (Article 1), requires constitutional and legislative guarantees with effective protection (Article 2), targets stereotypes (Article 5), and mandates equality in all matters arising in marriage and family relations (Article 16); General Recommendation Nos 29 and 33 elaborate the economic consequences of family relations and standards for women's access to justice in plural legal systems.[3] The reservations to Articles 2 and 16(1)(c) by Bangladesh narrow the Convention's immediate domestic leverage, yet the chapter treats CEDAW as a persuasive interpretive resource for constitutional equality while marking the reservations as a constraint and a reform horizon.[4] In child-centred questions, the Convention on the Rights of the Child and

[1] Constitution of the People's Republic of Bangladesh 1972, arts 27–28.

[2] 'Universal Declaration of Human Rights' (adopted 10 December 1948) UNGA Res 217 A (III) (UDHR) arts 2, 7, 16; International Covenant on Economic, Social and Cultural Rights (ICESCR) (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 arts 2(2), 3, 6–7, 10–11, 13.

[3] Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13 arts 2, 5, 16; CEDAW Committee, 'General Recommendation No 33: Women's access to justice' (3 August 2015) UN Doc CEDAW/C/GC/33 paras 8–15; CEDAW Committee, 'General recommendation on article 16 (economic consequences of marriage, family relations and their dissolution)' (26 February 2013) UN Doc CEDAW/C/GC/29 paras 1–4, 52–60.

[4] United Nations Treaty Collection, 'Convention on the Elimination of All Forms of Discrimination against Women: Bangladesh, Declarations and Reservations' (reservations to arts 2 and 16(1)(c)).

General Comment No 14 supply the best-interests lodestar; for planning benchmarks, the analysis draws on SDG 5, particularly Targets 5.1–5.5 and 5.a on equal rights to property and inheritance.[5]

Method and materials follow from that framework. The chapter undertakes a doctrinal analysis of constitutional text, statutes and rules, together with a close reading of Bangladeshi case law, to locate equality-consistent constructions and to mark points at which legislation is indispensable. It identifies statutory lacunae and conflicts and, where appropriate, sketches draft-like solutions suitable for legislative uptake. Because outcomes turn on institutions, socio-legal evidence is integrated throughout: the practice of marriage registration and age-verification; allocation of disputes to the Family Courts or to revenue fora; standards of proof and the management of adjournments; execution, mutation and record correction in succession; and front-line confusion between *strīdhan* recovery and dowry offences in property disputes. The comparative stance is pragmatic. Indian post-codification materials are used sparingly to illustrate method and feasibility, how a statutory anchor can enable equality-centred adjudication, without implying transplantation into a different constitutional economy or administrative field. Where Indian authority is cited, it is to illuminate pathways (for example, equal guardianship technique or maintenance enforcement design), not to substitute for domestic analysis.

The structure mirrors that method and signals the logic of what follows. Part 4.2 consolidates international standards and extracts doctrinal yardsticks for each domain. Part 4.3 evaluates their practical traction, asking how far universal norms penetrate plural personal law orders absent codification and which institutional preconditions (legal aid, registration, reliable data, coordinated services) are required for meaningful effect. Part 4.4 surveys regional frameworks as repertoires of technique rather than sources of binding law, drawing lessons on minimum marriage age, registration, stereotype change, integrated services and compliance monitoring that may be adapted domestically. Part 4.5 assesses the effectiveness of those regional models in the context of Bangladesh. Part 4.6 turns to national commitments: it analyses the constitutional equality

[5] Convention on the Rights of the Child (CRC) (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 art 3(1); CRC Committee, 'General Comment No 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art 3, para 1)' (29 May 2013) UN Doc CRC/C/GC/14 para 6; UNGA Res 70/1 'Transforming our world: the 2030 Agenda for Sustainable Development' (21 October 2015) annex, Goal 5.

clauses, tests key statutes and policies that structure Hindu women's lives, and identifies precise legislative and administrative levers capable of delivering equality in practice.

The research gap and contribution are equally specific. Domestic debate has often oscillated between abstract invocations of tradition and episodic litigation over discrete harms; codification proposals, where advanced, have seldom engaged the realities of registration, proof, forum and enforcement that determine whether rights translate into capabilities. What remains sparse is a sustained, equality-centred mapping of Hindu personal law against binding constitutional standards and authoritative international interpretations, joined to implementable proposals that acknowledge institutional capacity. This chapter aims to fill that space. Substantively, it identifies doctrinal targets compatible with Articles 27–28 and with CEDAW's interpretive corpus: abolition of the limited female estate and articulation of a gender-neutral order of heirs; a *strīdhan* code with presumptions and a fast-track civil remedy; an equality-based maintenance standard with structured disclosure and credible enforcement; guardianship rules centred on welfare rather than categorical paternal preference; and a rights-compliant pathway for marriage entry and exit, including mandatory registration and age-verification safeguards. Institutionally, it proposes steps that do not await wholesale codification: judicial directions to revenue authorities on succession and mutation; registrar protocols for consent and age; Family Court practice guidance on evidence, timelines and execution; and training that distinguishes *strīdhan* recovery from dowry offences. The guiding premise is simple: rites remain matters of conscience and community, but the civil consequences of family life must be governed by rules and institutions that treat Hindu women as full legal subjects, equal in status, capacity and remedy.

4.2 International Legal Standards on Gender Equality

This section consolidates the international equality norms against which the Bangladeshi personal law regime, mapped in Chapter 3, will be tested in the rest of Chapter 4. It clarifies what the principal instruments require, shows how those guarantees bear upon the domains that shape women's lives, and sets out the doctrinal yardsticks for inheritance and succession, marriage and divorce, adoption and guardianship, maintenance, and the institutional arrangements that condition access to remedies.

4.2.1 Universal Declaration of Human Rights (UDHR), 1948

The Universal Declaration of Human Rights (UDHR) articulates the premise of equal citizenship in both family and economic life. Article 1 affirms that all human beings are born free and equal in dignity and rights.[6] Article 2 prohibits discrimination, including on the ground of sex, and Article 7 guarantees equality before the law and equal protection of the laws.[7] Article 16 recognises equal rights of spouses during marriage and at its dissolution.[8] Article 23 protects just and favourable conditions of work and equal pay for equal work.[9] Article 25 speaks to an adequate standard of living, with particular regard to mothers and children.[10] Although it is not a treaty, the Universal Declaration of Human Rights functions as an interpretive baseline that later instruments elaborate. Courts and policymakers routinely invoke it when aligning personal laws with constitutional guarantees of equality and non-discrimination.[11] In concrete terms, succession rules that allocate inferior or contingent shares to daughters or widows sit uneasily with Articles 1, 2 and 7.[12] Marital regimes that deny equal capacity to enter, sustain and exit a marriage implicate Article 16.[13] Economic dependency flowing from discriminatory family rules engages Article 23.[14] Failures in maintenance or social protection for deserted or widowed women test fidelity to Article 25.[15] These provisions frame the analysis that follows and provide a yardstick for assessing the personal law framework of Bangladesh against the idea of equal citizenship.[16]

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[6] UDHR (n 2) art 1.

[7] ibid arts 2, 7.

[8] ibid art 16.

[9] ibid art 23.

[10] ibid art 25.

[11] ibid preamble (describing the Declaration as ‘a common standard of achievement’ used as an interpretive baseline).

[12] ibid arts 1, 2, 7 (equal dignity, non-discrimination and equality before the law).

[13] ibid art 16(1)–(2) (equal rights in marriage, during marriage and at its dissolution; free and full consent).

[14] ibid art 23(1)–(3) (right to work, just and favourable conditions, equal pay).

[15] ibid art 25(1) (adequate standard of living and social security).

[16] ibid arts 1, 2, 7 (equality and non-discrimination as the yardstick); Hersch Lauterpacht, *International Law and Human Rights* (Stevens 1950) 197–204.

4.2.2 International Covenant on Civil and Political Rights (ICCPR), 1966

The International Covenant on Civil and Political Rights (ICCPR) places equality on a justiciable footing.[17] Article 2(1) obliges the State to respect and ensure Covenant rights without discrimination.[18] Article 3 mandates the equal right of men and women to enjoy those rights.[19] Article 26 establishes an autonomous guarantee of equality before the law and equal protection, applicable to any state action whether or not another Covenant right is engaged.[20] Article 23 recognises the family as the natural and fundamental group unit of society and, in Article 23(4), requires equality of rights and responsibilities of spouses during marriage and at its dissolution.[21] The Human Rights Committee has made clear that States must remove both legal and practical barriers to women's equal enjoyment of rights, including through the reform of discriminatory guardianship regimes, the assurance of equality at the formation and dissolution of marriage, and the dismantling of stereotypes that subvert equal protection.[22] It has also underlined that Article 26 prohibits discrimination in any field regulated by public authorities, which includes the legislative and adjudicative domains of family law.[23]

Applied to Bangladesh, these norms call for constitutional equality clauses in Articles 27 and 28 to be read harmoniously with ICCPR standards when courts interpret personal law rules and when the legislature designs family law statutes and procedures.[24] Discriminatory guardianship or

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[17] International Covenant on Civil and Political Rights (ICCPR) (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, arts 2(1), 3, 23(1), 23(4), 26.

[18] ibid arts 2(1), 3, 23(1), 23(4), 26; Human Rights Committee, 'General Comment No 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant' (26 May 2004) UN Doc CCPR/C/21/Rev.1/Add.13.

[19] ibid art 3; Human Rights Committee, 'General Comment No 28: Article 3 (The equality of rights between men and women)' (29 March 2000) UN Doc CCPR/C/21/Rev.1/Add.10 paras 2–5, 23, 25–26, 31.

[20] ibid art 26; Human Rights Committee, 'General Comment No 18: Non-discrimination' (10 November 1989) para 12.

[21] ibid art 23(4); Human Rights Committee, 'General Comment No 19: Article 23 (The family) – protection of the family, the right to marriage and equality of the spouses' (27 July 1990) UN Doc HRI/GEN/1/Rev.1 paras 23–26; HRC (n 19) paras 5–6, 20–24.

[22] HRC (n 19) paras 5–6, 20–24; HRC (n 18) paras 6–7, 15; HRC (n 21) paras 23–26.

[23] ibid para 12.

[24] Constitution of Bangladesh (n 1) arts 27–28; HRC (n 18) paras 6–7, 15.

adoption rules fall within Article 23(4).[25] The absence of an equal civil capacity to dissolve a Hindu marriage, or to obtain and enforce maintenance on equal terms, engages Articles 3 and 26 of the ICCPR.[26] Procedural barriers that make access to forums illusory for Hindu women, such as complex jurisdictional pathways or reliance on private dispute resolution that reproduces patriarchal bias, raise issues under Articles 2(1) and 26.[27] The implication is straightforward. Later sections test Bangladeshi statutes and case-law outcomes against the Covenant's twin equality guarantees, asking whether formal rules and their administration meet the demands of equal protection and non-discrimination.

4.2.3 International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966

The International Covenant on Economic, Social and Cultural Rights (ICESCR) secures the socio-economic conditions that make substantive equality real.[28] Article 2(2) prohibits discrimination, including on the ground of sex, in the enjoyment of Covenant rights, and Article 3 requires States to ensure the equal right of men and women to enjoy all Covenant rights.[29] Article 6 protects the right to work.[30] Article 7(a)(i) demands equal remuneration for work of equal value and equality of opportunity.[31] Article 10(2) calls for special protection for mothers before and after childbirth.[32] Article 11 recognises the right to an adequate standard of living.[33] Article 13 guarantees equal access to education.[34] The Committee on Economic, Social and Cultural Rights has made clear

[25] ICCPR (n 17) art 23(4); HRC (n 21) paras 23–26.

[26] ibid arts 3, 26; HRC (n 19) paras 2–5, 23, 25–26, 31; HRC (n 20) para 12.

[27] ibid arts 2(1), 26; HRC (n 19) paras 2–5, 23, 25–26, 31; HRC (n 20) para 12.

[28] ICESCR (n 2) arts 2(2), 3, 6, 7(a)(i), 10(2), 11, 13.

[29] ibid arts 2(2), 3.

[30] ibid art 6.

[31] ibid art 7(a)(i).

[32] ibid art 10(2).

[33] ibid art 11.

[34] ibid art 13.

that formal equality is not enough.[35] States must adopt measures to dismantle structural barriers, including family law regimes that impede women's ownership and inheritance of property, restrict exit from marriage, or deny equal guardianship.[36] The Committee has also clarified that non-discrimination is an immediate obligation, not subject to progressive realisation, and that intersecting disadvantages that compound gender inequality must be addressed.[37]

In Bangladesh, personal law has direct effects on socio-economic outcomes.[38] Unequal inheritance diminishes women's assets and bargaining power, engaging Articles 3, 6, and 7(a)(i). Ineffective or inaccessible maintenance remedies can push women below a minimum standard of living, engaging Article 11.[39]

Discriminatory guardianship practices affect girls' schooling and engage Article 13.[40] The Covenant therefore offers both evaluative criteria and guidance for remedial design.[41] Reform of succession and guardianship, gender-responsive maintenance orders with credible enforcement, and administrative support that reduces forum costs are warranted domestically and required

[35] Committee on Economic, Social and Cultural Rights (CESCR), 'General Comment No 16: The equal right of men and women to the enjoyment of all economic, social and cultural rights (art 3 of the Covenant)' (11 August 2005) UN Doc E/C.12/2005/3 paras 6–9, 16, 18–25.

[36] CESCR, 'General Comment No 16' (n 35) paras 7–14, 27–28; CESCR, 'General Comment No 20: Non-discrimination in economic, social and cultural rights (art 2, para 2, of the International Covenant on Economic, Social and Cultural Rights)' (2 July 2009) UN Doc E/C.12/GC/20 paras 7–8, 10–12.

[37] CESCR, 'General Comment No 20: Non-discrimination in economic, social and cultural rights (art 2, para 2, of the International Covenant on Economic, Social and Cultural Rights)' (n 36) paras 7–8, 10–12; CESCR, 'General Comment No 9: The domestic application of the Covenant' (3 December 1998) UN Doc E/C.12/1998/24 para 2; CESCR, 'General Comment No 20' (n 36) para 31.

[38] CESCR, 'Concluding observations on the initial report of Bangladesh' (18 April 2018) UN Doc E/C.12/BGD/CO/1 paras 5–8, 23–24.

[39] CESCR, 'Concluding observations on the initial report of Bangladesh' (n 38) paras 5–8, 23–24; Human Rights Watch (n 39) 2, 95.

[40] CESCR, 'Concluding observations on the initial report of Bangladesh' (n 38) paras 5–8, 23–24.

[41] CESCR, 'General Comment No 18: The right to work (art 6 of the International Covenant on Economic, Social and Cultural Rights)' (6 February 2006) UN Doc E/C.12/GC/18 para 1; CESCR, 'General Comment No 23: The right to just and favourable conditions of work (art 7 of the International Covenant on Economic, Social and Cultural Rights)' (27 April 2016) UN Doc E/C.12/GC/23 paras 10–12; CESCR, 'General Comment No 13: The right to education (art 13 of the International Covenant on Economic, Social and Cultural Rights)' (8 December 1999) UN Doc E/C.12/1999/10 paras 6(b)(i), 31–32.

internationally.[42] Comparative experience underscores feasibility. India's Hindu Succession (Amendment) Act 2005, by recognising daughters as coparceners by birth, has been judicially affirmed as a measure that corrects historic exclusion from joint family property.[43] Equality in guardianship has likewise been read purposively in many systems to strengthen maternal authority alongside paternal authority.[44] These examples show how legislative and interpretive choices can align family law rules with socioeconomic equality without negating religious identity.

4.2.4 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) provides the most detailed equality code for marriage and family relations. Article 1 defines discrimination to include any distinction, exclusion or restriction based on sex that impairs women's rights.[45] Article 2 requires constitutional guarantees of equality and the elimination of discriminatory laws and practices, together with effective protection through competent tribunals.[46] Article 5 requires modification of social and cultural patterns to eliminate stereotypes.[47] Article 16 mandates equality in marriage and family relations, including equal rights at entry and dissolution, equal parental rights and responsibilities, the same rights to decide on the number and spacing of children, and equality in property relations.[48] The Committee has elaborated these norms in a series of authoritative interpretations. General Recommendation No

[42] CESCR, 'Concluding observations on the initial report of Bangladesh' (n 38) paras 5–8, 23–24; World Bank, *Women, Business and the Law 2024: Bangladesh Economy Profile* (World Bank 2024) sections 'Pay', 'Marriage', 'Parenthood', 'Assets'; Human Rights Watch (n 39) 8, 13, 98; Bangladesh Legal Aid and Services Trust (BLAST), *Legislative Initiatives and Reforms in the Family Laws* (BLAST 2009) 8, 13, 15.

[43] Hindu Succession (Amendment) Act 2005 (India) s 6; *Vineeta Sharma v Rakesh Sharma* (2020) 9 SCC 1 paras 46, 51–52.

[44] CEDAW (n 3) arts 1, 2, 5(a), 16(1); *Githa Hariharan v Reserve Bank of India* (1999) 2 SCC 228 paras 21, 22, 24.

[45] ibid art 1.

[46] ibid art 2.

[47] ibid art 5(a).

[48] ibid art 16(1)(a)–(h).

21 confirms equality in marriage, parental authority and property.[49] General Recommendation No 29 addresses the economic consequences of marriage and its dissolution, with particular emphasis on fair distribution of property and recognition of non-monetary contributions.[50] General Recommendation No. 33 sets out standards on women's access to justice, including in plural legal systems, and requires the removal of barriers created by discriminatory norms and procedures.[51] General Recommendation No. 35, which updates General Recommendation No 19, makes plain that gender-based violence, including economic coercion within the family, is a form of discrimination that States must prevent and remedy, a point that bears directly on maintenance, guardianship and safe exit from marriage.[52]

Bangladesh ratified CEDAW in 1984 but maintains reservations to Article 2 and Article 16(1)(c).[53] The Committee has repeatedly urged the withdrawal of these reservations on the basis that they undermine the core of equality in family law.[54] For present purposes, CEDAW supplies both normative benchmarks and operational guidance. Equality at entry and exit requires availability of civil divorce on equal terms, gender-responsive maintenance and fair matrimonial-property outcomes, and equal guardianship.[55] Equality in property and inheritance calls for the removal of rules that allocate inferior shares to women or confine widows to limited estates.[56] Article 5 links

[49] CEDAW Committee, 'General Recommendation No 21: Equality in marriage and family relations' (1994) paras 1, 13–14, 17, 19–20, 21, 22, 24.

[50] CEDAW Committee, 'General recommendation No 29 on article 16 of the Convention (economic consequences of marriage, family relations and their dissolution)' (n 3) paras 1, 4 (economic consequences/problem statement), 6, 43 (dissolution and distribution regimes), 45 (guiding principle of fair distribution), 46 (obligation of equality and recognition), 43, 46 (recognition of non-monetary contributions).

[51] CEDAW Committee, 'General Recommendation No 33: Women's access to justice' (n 3) paras 8–9, 25–26, 51–57.

[52] CEDAW Committee, 'General Recommendation No 35 on gender-based violence against women, updating General Recommendation No 19' (14 July 2017) UN Doc CEDAW/C/GC/35 paras 9–15, 24–26.

[53] United Nations Treaty Collection (n 4) (reservation to arts 2 and 16(1)(c)).

[54] CEDAW Committee, 'Concluding observations on the eighth periodic report of Bangladesh' (22 November 2016) UN Doc CEDAW/C/BGD/CO/8 paras 10–11.

[55] CEDAW (n 3) arts 16(1), 16(1)(c); CEDAW Committee, 'General recommendation No 29' (n 50) paras 1–3, 34–35 (recognition of non-monetary contributions and equitable distribution).

[56] ibid (n 3) art 16(1)(h); CEDAW Committee, 'General Recommendation No 21' (n 49) paras 26–28; CEDAW Committee, 'General recommendation No 29' (n 50) paras 49–52.

legal change to the disruption of stereotypes, which calls for measures that prevent patriarchal practice from neutralising formal reform.[57]

4.2.5 Beijing Declaration and Platform for Action, 1995

Read in continuity with the preceding analysis of treaty obligations, the Beijing Declaration and Platform for Action (BDPfA) translates equality guarantees into a governance agenda that binds legislative design, administrative capacity, and budgetary allocation to measurable outcomes for women and girls.[58] It identifies twelve critical areas of concern, including poverty, education, health, violence, institutional mechanisms, human rights, the media, the environment, power and decision making, the economy, armed conflict, and the girl child, and sets strategic objectives for each.[59] For Bangladesh, three Beijing directives are immediately germane to Hindu personal law reform. States are called upon to review and amend discriminatory personal-status laws, remove procedural barriers, and ensure legal aid and effective remedies, particularly in matters of divorce, maintenance, guardianship and inheritance.[60] Secondly, the BDPfA requires mainstreaming gender across macroeconomic and social protection policy, so that rules on maintenance, matrimonial property, and post-separation relief do not reproduce dependency or unpaid care burdens.[61] Thirdly, it links the prevention of early and forced marriage to access to education and

[57] CEDAW (n 3) art 5(a); CEDAW Committee, 'General Recommendation No 33' (n 51) paras 14–16 (access-to-justice barriers).

[58] UN Fourth World Conference on Women, *Beijing Declaration and Platform for Action* (Beijing, 4–15 September 1995) UN Doc A/CONF.177/20/Rev.1 Annex II ch I (Mission Statement), ch V (Institutional arrangements), ch VI (Financial arrangements); UNGA Res 50/203 'Follow-up to the Fourth World Conference on Women and full implementation of the Beijing Declaration and the Platform for Action' (23 February 1996) para 2.

[59] United Nations, *Report of the Fourth World Conference on Women: Beijing, 4–15 September 1995* UN Doc A/CONF.177/20 (15 September 1995) ch III–IV; Beijing Declaration and Platform for Action (n 58) ch IV 'Strategic Objectives and Actions'.

[60] Beijing Platform for Action (n 58) ch IV, I (Human rights of women) (calls for removal of discriminatory provisions in laws governing marriage and family relations and for effective remedies), and ch IV, D (Violence against women) para 125(a) (obligation to provide free or low-cost legal aid and related support services); ch IV, L (The girl child) paras 274(d)–(e) (equal succession; free and full consent to marriage; minimum age).

[61] ibid ch IV, A (Women and poverty) and ch IV, F (Women and the economy), including directives to review and modify macroeconomic and social policies with a gender perspective and to integrate gender into all aspects of economic policy-making.

livelihoods, instructing governments to coordinate legal, administrative, and community measures that secure girls' retention in school and protect them from violence.[62]

These programmatic requirements intersect with guarantees under the Constitution of Bangladesh, namely equality before the law and non-discrimination on grounds including sex.[63] Yet several institutional and doctrinal gaps remain within the Hindu family law field. Hindu marriage registration is discretionary rather than mandatory, which weakens proof of status and the enforcement of maintenance or inheritance claims.[64] The continuing absence of a codified, rights-compliant divorce framework for Hindus leaves women vulnerable to abandonment without enforceable financial relief.[65] In methodological terms, this subsection undertakes a doctrinal reading of the BDPfA's strategic objectives, examines statutory lacunae in the Hindu Marriage Registration Act 2012 in Bangladesh and related instruments, and draws on selected socio-legal evidence on child marriage and dowry to frame implementable reform proposals that align personal law outcomes with constitutional and international benchmarks.[66]

4.2.6 Convention on the Rights of the Child (CRC), 1989

Although centred on the child rather than women per se, the Convention on the Rights of the Child (CRC) supplies robust constraints on family law arrangements that affect girls' welfare and life chances.[67] Article 2 requires the enjoyment of all CRC rights without discrimination, including on the ground of sex; Article 3 mandates that the best interests of the child be a primary consideration

[62] ibid ch IV, L (The girl child) paras 274(e), 275(b) (free and full consent; minimum age; using educational opportunities to support enforcement) and ch II and ch C (Women and health) para 93 and following (early marriage curtails educational and employment opportunities).

[63] Constitution of the People's Republic of Bangladesh 1972 (n 1), arts 27–29.

[64] Registration of Hindu Marriage Act 2012 (Bangladesh) s 3 (registration discretionary; marriage valid even if unregistered); Beijing Platform for Action (n 58) ch IV, I (Human rights of women) (obligation to ensure equality in marriage and family relations and access to justice and remedies), read with ch IV, H (Institutional mechanisms) on registration, data and enforcement infrastructure.

[65] Beijing Platform for Action (n 58) ch IV, I (Human rights of women) (legal reform to eliminate discriminatory family law rules and ensure effective remedies in marital dissolution and its financial consequences).

[66] Centre for Reproductive Rights, *Ending Impunity for Child Marriage in Bangladesh: Normative and Implementation Gaps* (2018) 8–12; Beijing Platform for Action (n 58) passim, especially ch IV (strategic objectives across D, H, I, L) and ch V–VI (institutional and financial implementation frameworks).

[67] CRC (n 5) arts 2, 3, 6, 19, 28.

in all actions concerning children, which plainly includes judicial decisions on custody, guardianship, maintenance, and the validity or consequences of child marriage; Article 6 protects life, survival, and development; Article 19 obliges protection from all forms of violence; Article 28 guarantees compulsory and free primary education.[68] The UN Committee on the Rights of the Child, General Comment No. 14 operationalises Article 3 by requiring explicit best-interests assessments, reasoned decisions, and institutional arrangements that allow the child's voice to be heard.[69]

Applied to the Bangladeshi context, these norms yield precise guidance. Guardianship and custody should be determined by welfare, not by categorical paternal preference, and courts should record the child's views in line with age and maturity.[70] Administrative measures are needed to prevent early marriage, protect schooling, and ensure accessible maintenance procedures.[71] In Bangladesh, the Child Marriage Restraint Act 2017 criminalises child marriage, yet its special circumstances clause permits authorisation below the statutory age.[72] Domestic and international observers warn that this risks undermining CRC obligations unless the provision is read narrowly, supervised strictly by courts, and subject to child-centred safeguards.[73] UNICEF data and national planning documents record the persistence of early marriage and its link with school dropout and violence, underlining the importance of reliable marriage registration, case tracking and community-level prevention committees.[74] The due diligence logic of the CRC, therefore, ties constitutional equality

[68] ibid arts 2, 3, 6, 19, 28(1)(a).

[69] CRC Committee, 'General Comment No 14 (2013)' (n 5) paras 6–7, 32–39.

[70] ibid paras 53–79; CRC Committee, 'General Comment No 12 (2009) on the right of the child to be heard' (20 July 2009) UN Doc CRC/C/GC/12 paras 1–3.

[71] CRC (n 5) arts 2, 3, 6, 19, 28(1)(a).

[72] Child Marriage Restraint Act 2017 (Bangladesh) (Act No VI of 2017) ss 2(1), 2(4), 7, 19.

[73] ibid s 3 (Child Marriage Prevention Committees), s 11 (penalty for registering a child marriage), s 12 (documents to prove age), s 19 ('Special provision' allowing court authorised marriage below the statutory age in 'special circumstances'); UNICEF Innocenti, *Child Marriage Evidence Profiles: Bangladesh* (2025) 6 (noting potential use of the exception clause to override the law).

[74] UNICEF, *Child Marriage: Latest Trends and Future Prospects* (2018) 4–7; UNICEF Bangladesh, 'Plan of Action launched to eliminate child marriage in Bangladesh' (press release, 2018); Child Marriage Restraint Act 2017 (n 72) s 19; UNICEF Innocenti (n 73) 6; UNICEF Bangladesh Country Office, *Humanitarian Situation Report 2025* (28 July 2025) (reporting persistent risks of child marriage and gender-based violence affecting adolescent girls); Ain o Salish Kendra, *Fact Sheet: Child Marriage* (UPR 4th Cycle, 2023) (noting the National Plan of Action 2018–2030, monitoring mechanisms, and Child Marriage Prevention Committees).

to concrete duties: expand child- and victim-friendly court procedures, ensure legal aid for girls in maintenance and custody cases, and integrate social protection to prevent destitution after separation.[75]

4.2.7 The Sustainable Development Goals, 2015

The 2030 Agenda embeds gender equality across targets and indicators. It converts treaty-based commitments into a time-bound metrics framework for public administration.[76] SDG 5 commits States to end discrimination against women and girls (Target 5.1), eliminate violence and harmful practices, including child, early and forced marriage (Targets 5.2–5.3), recognise and value unpaid care and domestic work through public services and social protection (Target 5.4), ensure women's full participation and leadership (Target 5.5), undertake reforms to give women equal rights to economic resources, including ownership and control over land and other property, financial services and inheritance (Target 5.a), and adopt and strengthen sound policies and enforceable legislation for gender equality (Target 5.c).[77] Authoritative UN materials reiterate that Target 5.a is a law- and policy-reform target: it requires that national legal frameworks guarantee women's equal rights to land and other property, including inheritance, and that States build administrative capacity to make those rights effective.[78] For Hindu women, these targets map with particular fidelity onto personal law deficits. Discretionary Hindu marriage registration makes it harder to enforce maintenance and to prove marital status. This frustrates Target 5.c on enforceable legislation and weakens Target 5.3 on ending early and forced marriage.[79] Limited or conditional

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[75] CRC Committee, 'General Comment No 14 (2013)' (n 5) paras 6, 85–99 (procedural safeguards, explicit reasoning), 89–91 (child's right to be heard); United Nations, Transforming our world: the 2030 Agenda for Sustainable Development' (n 5) para 35 and Target 16.3 on access to justice.

[76] United Nations, Transforming our world: the 2030 Agenda for Sustainable Development' (n 5) annex, Goal 5 and Targets 5.1–5.c.

[77] ibid

[78] United Nations Statistics Division, 'SDG Indicator 5.a.2 Metadata: Proportion of countries where the legal framework (including customary law) guarantees women's equal rights to land ownership and/or control' (29 July 2024); FAO, '5.a.2 Women's equal rights to land ownership and/or control' (SDG Data Portal) https://www.fao.org/sdg-indicators/en accessed 5 October 2025.

[79] Registration of Hindu Marriage Act 2012 (n 64) s 3(1)–(2) (registration introduced but not mandatory); Plan International and partners, *Marriage Registration in Bangladesh: Final Report* (2022) 4–6 (fragmented and non-universal registration frameworks; barriers to registration).

inheritance for widows and daughters conflicts with the equal economic rights envisaged by Target 5.a.[80] Weak maintenance enforcement and the non-recognition of unpaid care in post-separation settlements sustain economic asymmetries contrary to Target 5.4.[81]

Cross-cutting SDGs intensify the case for reform. SDG 4 on education calls for completion and transition rates that are incompatible with child marriage; SDG 8 on decent work implicates maternity protection and equal pay enforcement that cannot be cordoned off by private law; SDG 10 on reducing inequalities and SDG 16 on access to justice require legal aid, timely adjudication, and transparent data, including court level indicators on the duration and outcome of family cases.[82] The Voluntary National Reviews and progress reports of Bangladesh recognise the centrality of these linkages and commit to whole-of-government coordination, yet they also show that child marriage, dowry, and under-registration of marriages remain persistent implementation challenges.[83] The National Action Plan to End Child Marriage 2018–2030 provides a programme spine for Targets 5.2–5.3, but its success depends on harmonising personal law rules, ensuring mandatory and universal marriage registration, and resourcing prevention committees at local level.[84]

4.3 Effectiveness of International Gender Equality Norms

Set against the preceding survey of universal standards, this section asks a harder question: whether international gender equality norms meaningfully alter the lived realities of Hindu women in Bangladesh in core family law domains, particularly marriage and divorce, adoption and guardianship, maintenance, inheritance and succession, and access to forums and remedies.[85] The

[80] United Nations Statistics Division, 'SDG Indicator 5.a.2 Metadata' (n 78).

[81] UNGA Res 70/1 (n 5) annex, Goal 5 and Targets 5.1–5.c.

[82] United Nations, 'Transforming our world: the 2030 Agenda for Sustainable Development' (n 5) annex, SDGs 4.1–4.5, 8.5, 10.3, 16.3.

[83] Government of the People's Republic of Bangladesh, *Voluntary National Review (VNR) 2020* (June 2020) 65–70, 101, 175; General Economics Division, *Sustainable Development Goals (SDGs): Bangladesh Progress Report 2020* (Planning Commission, 2020).

[84] Ministry of Women and Children Affairs, *National Action Plan to End Child Marriage 2018–2030* (2018) 1–5; Ain o Salish Kendra, *Fact Sheet: Child Marriage* (n 74) 1–2.

[85] See UDHR (n 2) arts 1, 2, 7, 16.

analysis is doctrinal, reading treaty text through authoritative interpretations, and it is alert to statutory lacunae and institutional frictions that blunt delivery on the ground.[86] It proceeds on the premise, developed earlier in this chapter, that formal commitment is not self-executing in plural personal law orders.[87]

The universal instruments supply a dense equality framework. The practical traction of these standards depends on incorporation, interpretive method, and institutional capacity.[88] The UDHR supplies the moral architecture of equal citizenship. Articles 1, 2, 7 and 16 affirm equal dignity, non-discrimination, equal protection, and parity within marriage and at dissolution.[89] In Bangladesh, these ideals find constitutional expression in Articles 27 and 28.[90] Courts have generally treated the Declaration as an aid to interpretation rather than a source of directly enforceable obligations.[91] Where Hindu women seek equal capacity to enter and exit marriage, or to claim maintenance and property on dissolution, UDHR-congruent arguments only persuade if anchored to constitutional or statutory hooks. The upshot is that the Declaration frames the discourse, but it does not by itself dismantle discriminatory personal law rules.

The International Covenant on Civil and Political Rights (ICCPR) provides such hooks. Article 2(1) requires States to respect and ensure the rights it recognises, Article 3 mandates the equal enjoyment of Covenant rights by men and women, Article 23(4) speaks to the equality of rights and responsibilities of spouses during marriage and at its dissolution, and Article 26 guarantees autonomous equal protection in any field regulated by public authorities.[92] The Human Rights Committee's General Comment No. 28 insists that States remove both legal and practical barriers to women's equality in family life and guardianship, and that stereotypes cannot justify differential treatment.[93] Doctrinally, this enables parity-seeking claims in family law by recourse to Article 26

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[86] ibid; ICCPR (n 17) (preambular and institutional architecture).

[87] *Hussain Muhammad Ershad v Bangladesh* 29 CLC (AD) 1 (2000) (courts may use international instruments as interpretive aids).

[88] Constitution of the People's Republic of Bangladesh 1972 (n 1), arts 27–28.

[89] UDHR (n 2) arts 1, 2, 7, 16.

[90] Constitution of the People's Republic of Bangladesh 1972(n 1), arts 27 and 28.

[91] *Hussain Muhammad Ershad* (n 87).

[92] ICCPR (n 17) arts 2(1), 3, 23(4), 26.

[93] Human Rights Committee, 'General Comment No 28' (n 19) paras 5–6, 20–24.

even where no specific Covenant liberty is in play.[94] Effectiveness turns, however, on reception. Bangladeshi courts do invoke international norms, yet in the presence of uncodified Hindu personal law and a thin legislative record on divorce and guardianship for Hindus, judges often default to custom rather than to a rights-conforming construction.[95] The consequence is a persistent mismatch between the Covenant's equal protection guarantee and outcomes in matters such as dissolution, custody, and maintenance for Hindu women.

The International Covenant on Economic, Social and Cultural Rights (ICESCR) supplies the substantive equality dimension that personal law reform typically requires. Article 3 obliges equal enjoyment of all Covenant rights, Article 2(2) makes non-discrimination immediate, and Articles 6, 7, 10, 11 and 13 link work, fair conditions and pay, family protection, adequate standard of living and education to women's autonomy.[96] General Comment No 16 makes plain that structural barriers, including discriminatory family law regimes and stereotypes in institutions, must be dismantled and that temporary special measures may be required.[97] In the Bangladeshi context, unequal inheritance and insecure maintenance expose Hindu women to asset poverty and dependency, which in turn depresses labour-market bargaining power and educational outcomes for daughters.[98] ICESCR therefore furnishes a principled case for redesigning maintenance enforcement, simplifying guardianship, and removing sex-based hierarchies in succession. Because socio-economic rights are often mediated by programmes and services, effectiveness turns on budgeted schemes, gender-responsive administration, and accessible legal aid. Where these are thin, the normative force of ICESCR does not translate into remediable claims at scale.[99]

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) is the most detailed template for family law equality. Under CEDAW, Article 1 defines

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[94] ICCPR (n 17) art 26 (autonomous equality guarantee).

[95] *Bangladesh National Women Lawyers Association (BNWLA) v Government of Bangladesh and Others*, Writ Petition No 5916 of 2008 (HCD, 14 May 2009) 14 *BLC* (2009) 694; M Shah Alam, 'Review of Hindu Personal Law in Bangladesh: Search for Reforms' (2004) 8(1–2) *Bangladesh Journal of Law* 15, 15-18.

[96] ICESCR (n 2) arts 2(2), 3, 6, 7, 10, 11, 13.

[97] CESCR, 'General Comment No 16' (n 35) paras 7–14, 27–28.

[98] CESCR, 'General Comment No 20' (n 36) (non-discrimination as an immediate obligation and structural inequality).

[99] ibid (requirements for effective measures, programme delivery and access).

discrimination broadly, Article 2 requires constitutional and legislative guarantees with effective protection through competent tribunals, Article 5 targets stereotypes, and Article 16 mandates equality in marriage and family relations, including equal rights during marriage and at dissolution and equality in property relations.[100] The Committee's General Recommendation No 33 sets standards for women's access to justice in plural legal systems, insisting on affordability, proximity, timely adjudication, and stereotype-free processes.[101] The most salient constraint in Bangladesh is not normative content, but the State's reservations to Articles 2 and 16(1)(c), which weaken the leverage of CEDAW in the precise domains at issue, namely comprehensive equality guarantees and equality at dissolution.[102] The Committee has urged withdrawal of these reservations, highlighting their incompatibility with the object and purpose of the Convention.[103] In practice, the reservations complicate the use of CEDAW as a direct fulcrum for challenging discriminatory Hindu personal law rules on divorce and post-marital property effects, even as the Convention's interpretive guidance remains persuasive.[104]

Two further considerations bear on effectiveness. First, the incorporation and interpretive stance. The Constitution of Bangladesh affirms equality and non-discrimination, and courts have at times used international standards as guides.[105] Yet Hindu personal law remains largely uncodified in relation to divorce and guardianship. The Hindu Marriage Registration Act 2012 makes registration optional, which leaves many women without documentary status when they seek maintenance, guardianship or property relief.[106] Without legislative anchors that translate treaty commands into clear rules of status and capacity, litigation must proceed through uneven routes,

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[100] CEDAW (n 3) arts 1, 2, 5(a), 16(1).

[101] CEDAW Committee, 'General Recommendation No 33: Women's access to justice' (n 3) paras 14–18, 51–57 (building on CEDAW (n 3) and CEDAW Committee, GR 33 (n 51)).

[102] United Nations Treaty Collection (n 4) (reservation to arts 2 and 16(1)(c)); (cf n 53).

[103] CEDAW Committee, 'Concluding observations on the eighth periodic report of Bangladesh' (n 54) paras 10–11.

[104] Ministry of Women and Children Affairs, *Eighth Periodic Report of Bangladesh to the CEDAW Committee* (Government of Bangladesh) (noting continued consideration of withdrawal of reservations to CEDAW arts 2 and 16(1)(c)).

[105] Constitution of the People's Republic of Bangladesh 1972 (n 1), arts 27–28 (cf n 1).

[106] Registration of Hindu Marriage Act 2012 (n 64) s 3 (optional registration of Hindu marriages; validity unaffected by non-registration) (cf nn 64, 79).

often mediated by custom or community authority.[107] Secondly, access and remedy design. General Recommendation No 33 emphasises that without gender-responsive procedure, legal aid, and survivor-centred services, formal rights do not travel.[108] In Bangladesh, costs, distance, and social sanction frequently suppress claims by Hindu women, particularly in rural settings.[109] International norms require the State to reduce these burdens, but institutional reform has been incremental.[110]

This is not an argument for the futility of international law. Rather, it is a claim about the conditions under which it works. Where India codified succession and later recognised daughters as coparceners, treaty-congruent equality norms could inform purposive adjudication, steadily displacing patriarchal defaults. Where Bangladesh retains pre-Partition statutes and leaves crucial Hindu family law questions uncodified, international norms have less to grip.[111] The chapter, therefore, treats effectiveness as a function of three interlocking variables. First, normative density, which is high across UDHR, ICCPR, ICESCR and CEDAW.[112] Secondly, domestic translation, which remains partial for Hindu women, particularly as regards divorce, guardianship and property

[107] Hindu Married Women's Right to Separate Residence and Maintenance Act 1946 (Bangladesh) (Act XIX of 1946) s 2 (statutory route to separate residence and maintenance where divorce is uncodified).

[108] CEDAW Committee, 'General Recommendation No 33: Women's access to justice' (n 3) paras 14–18, 51–57.

[109] On practical barriers to access (costs, distance, sanction) in the marriage and registration landscape in Bangladesh, see e.g. Human Rights Watch (n 39)2, 8, 95, 98; Plan International and partners, *Marriage Registration in Bangladesh: Final Report* (n 79).

[110] CEDAW Committee, 'General recommendation No 33 on women's access to justice' (n 3) para 7; CEDAW Committee, 'Concluding observations on the eighth periodic report of Bangladesh' (n 54) paras 12–13.

[111] For comparative context on codification, contrast India's post-Independence Hindu personal law reforms (including Hindu Marriage Act 1955; Hindu Succession Act 1956; Hindu Adoptions and Maintenance Act 1956; Hindu Minority and Guardianship Act 1956; Hindu Succession (Amendment) Act 2005 (n 43) s 6; *Vineeta Sharma* (n 43)) with Bangladesh's retention of the pre-Partition framework and the absence of codified Hindu divorce or adoption.

[112] UDHR (n 2); ICCPR (n 17); ICESCR (n 2); CEDAW (n 3) (collective equality architecture on non-discrimination and equality)

consequences.[113] Thirdly, institutional capability, including equality-sensitive procedure, legal aid, and enforcement.[114]

4.4 Regional Gender Frameworks

Read together with the universal standards set out in the preceding subsection, regional instruments demonstrate how equality guarantees are operationalised through concrete duties on states, institutional monitoring, and practice-oriented remedies. Although none of these regimes is binding on Bangladesh, their detailed approaches to family relations, violence, access to justice, and stereotype change supply persuasive models for calibrating reforms in inheritance and succession, marriage and divorce, adoption and guardianship, maintenance, and procedural design. In what follows, each framework is read for its normative core, institutional mechanisms, and practical techniques that could inform ongoing debates in Bangladesh on personal law reform affecting Hindu women.

4.4.1 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol), 2003

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) embeds equality within a thick web of specific obligations that translate principle into enforceable practice.[115] 64. Article 2 also requires States to combat all forms of discrimination against women through legislative, institutional, and other measures, including the integration of gender concerns into national policy.[116] Article 5 mandates the prohibition and condemnation of harmful practices that negatively affect women's rights, including female genital

[113] Registration of Hindu Marriage Act 2012 (n 64) s 3(1)–(2) (optional registration); Hindu Married Women's Right to Separate Residence and Maintenance Act 1946 (n 107) s 2 (separate residence and maintenance without divorce) (n 107); Guardians and Wards Act 1890 (Bangladesh) (Act VIII of 1890) s 4 (definition of 'minor' and 'guardian') (introducing the guardianship framework referenced in the main text).

[114] CEDAW Committee, 'General Recommendation No 33: Women's access to justice' (n 3) paras 14–18, 51–57 (access-to-justice requirements).

[115] Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) (adopted 11 July 2003, entered into force 25 November 2005) (African Union) arts XXVI–XXVII (implementation, monitoring and interpretation).

[116] Maputo Protocol (n 115) art II.

mutilation, and calls for legislative, educational and other measures to eliminate them.[117] Article 6 addresses equality in marriage, requiring free and full consent, and stipulates a minimum age of 18 for women, while calling for the registration of marriages and equality of spouses during marriage and at its dissolution.[118] These provisions do more than make declarations. They pair clear duties with procedural means and set baselines that speak directly to the concerns of Hindu women in Bangladesh. These include a minimum marriage age, registration that secures legal personality in family relations, equal rights at entry and exit, and protection against harmful practices and stereotypes that entrench dependency.[119] The Protocol's approach suggests that legislative text must be matched by institutions and budgets that reach the local forums where personal law is lived and enforced.[120]

4.4.2 Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women (Belém do Pará Convention), 1994

The Belém do Pará Convention reframes violence against women as a human rights violation tied to structural inequality.[121] Articles 1 and 2 define violence broadly, covering physical, sexual and psychological harm in both public and private life, including within the family.[122] Article 3 affirms every woman's right to live free from violence, while Article 4 lists associated rights, among them equal protection before the law and the right to an effective remedy.[123] Article 7 creates concrete

[117] ibid art V.

[118] ibid art VI(a)–(b) (equal rights in marriage; minimum age; consent).

[119] ibid arts VIII(a)–(f) (access to justice and equal protection), XXVI(1) (periodic reporting under African Charter art 62), XXV(a)–(b) (remedies); African Commission on Human and Peoples' Rights, *Guidelines for State Reporting under the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa* (5 February 2010).

[120] ibid art XXVI(2) (budgetary and other resources for full and effective implementation); see also African Commission on Human and Peoples' Rights, Special Rapporteur on the Rights of Women in Africa (mandate and inter-session reports).

[121] Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Belém do Pará Convention) (adopted 9 June 1994, entered into force 5 March 1995) OAS A-61 preamble (recognising violence against women as a violation of human rights and fundamental freedoms).

[122] Belém do Pará Convention (n 121) arts 1–2.

[123] ibid arts 3–4 (right of women to be free from violence and duties of States).

state duties, including due diligence to prevent, investigate and punish violence, legal and policy reform, and measures to modify social and cultural patterns.[124] Article 10 requires reporting to the Inter-American Commission of Women, which, together with the follow-up mechanism (MESECVI), sustains regional peer review.[125] As a policy template, the Convention links criminal law, family law and administrative practice.[126] Two lessons stand out for the reform agenda of Bangladesh. First, personal law rules on marriage, guardianship and maintenance must be read through the lens of freedom from violence, including economic coercion.[127] Second, monitoring and data duties, together with survivor-centred access to justice, are vital for closing the gap between paper guarantees and lived protection.[128]

4.4.3 Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (Istanbul Convention), 2011

The Istanbul Convention offers the most detailed regional code on prevention, protection, prosecution and integrated policies.[129] Article 4 guarantees non-discrimination in the enjoyment of rights secured under the Convention and requires protection irrespective of, among other

[124] ibid art 7 (due diligence obligations and comprehensive measures).

[125] Inter-American Commission of Women (CIM), MESECVI, 'Home' and Belém do Pará Convention resources (institutional architecture and monitoring).

[126] Follow-up Mechanism to the Belém do Pará Convention (MESECVI), *Second Hemispheric Report on the Implementation of the Belém do Pará Convention* (April 2012) ch 1 esp s 1.3 ('Provisions of civil, criminal and administrative law that incorporate physical, psychological, sexual, economic, property-related, financial or other forms of violence against women').

[127] For the interpretive lens of freedom from violence across legal domains and recognition of economic coercion as a component of gender-based violence, see MESECVI, *Inter-American Model Law on the Prevention, Punishment and Eradication of Violence against Women in Political Life* (2017) art 3 (including economic violence); cf MESECVI, draft *Inter-American Model Law to Prevent, Punish and Eradicate Gender-Based Digital Violence against Women* (6 March 2025) art 2.

[128] Belém do Pará Convention (n 121) art 10 (state reporting and data duties); MESECVI, *Second Hemispheric Report* (n 126) 10–12 (peer-review architecture, indicators and follow-up); Inter-American Court of Human Rights, *González et al ("Cotton Field") v Mexico* (judgment) paras 254–258 (due diligence obligations and survivor-centred access to justice).

[129] Council of Europe, Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) (opened for signature 11 May 2011, entered into force 1 August 2014) CETS No 210 preamble; arts 1, 7 (purposes and comprehensive, coordinated policies).

grounds, sex, gender, religion, or minority status.[130] Article 12 obliges states to take measures to change social and cultural patterns of behaviour, tackle stereotypes and harmful customs, and engage men and boys in prevention.[131] Article 14 requires the inclusion of teaching materials on equality and non-violent conflict resolution in formal curricula at all levels.[132] Alongside these, the Convention codifies practical supports, from specialist services and shelters to legal aid and protection orders.[133] Its four-pillar method is instructive for Bangladesh. Violence cannot be addressed solely through penal law; family law remedies, civil protection orders, school curricula, professional training, and coordinated institutions are needed.[134] This bears directly on Hindu women's ability to exit abusive marriages, secure maintenance, protect children, and avoid re-victimisation in forums where personal law is applied.[135]

4.4.4 European Union Gender Equality Strategy (2020–2025)

The EU Strategy is a governance blueprint rather than a treaty, but its legal and policy ecosystem shows how equality commitments are mainstreamed.[136] Framed as a Communication entitled A Union of Equality, it sets objectives on ending gender-based violence, challenging gender stereotypes, closing gender gaps in the labour market and pay, achieving equal participation across decision making, and mainstreaming a gender perspective across all EU policies.[137] The European Union's equality strategy offers a parallel institutional lesson. It relies on treaty bases within the EU legal order, mandates mainstreaming of equality across activities, and foresees legislation,

[130] ibid. art 4 (non-discrimination and equality).

[131] ibid. art 12 (due diligence and State obligations to prevent and combat violence).

[132] ibid. art 14 (education and awareness-raising).

[133] ibid. arts 22, 23, 52–53, 57 (specialist support services; shelters; emergency barring and protection orders; legal aid).

[134] ibid. arts 7, 14, 15, 18–20, 29, 52–53 (integrated policies, education and training; general obligations and support services; civil remedies; protection orders).

[135] ibid. arts 18, 20(1), 31 (coordinated response; general support services including financial and housing advice; custody and visitation rights and safety).

[136] European Commission, *A Union of Equality: Gender Equality Strategy 2020–2025* COM(2020) 152 final (5 March 2020) (objectives on violence, stereotypes, labour-market and pay gaps, decision making and gender mainstreaming across policies).

[137] ibid (further detail on strategic objectives and actions under the Gender Equality Strategy 2020–2025).

targeted funding, data collection, and intersectional analysis.[138] The value of the Strategy for Bangladesh lies in its emphasis on whole-of-government implementation, including equality impact assessments of proposed laws and budgets, robust data systems, and the use of public procurement, regulatory oversight, and independent equality bodies to drive change.[139] In family law domains, such techniques could be adapted to require ex ante equality audits for proposed amendments to succession, guardianship and maintenance rules, and to strengthen court administration so that access to remedies is not thwarted by cost, distance or stereotype.[140]

4.4.5 ASEAN Committee on Women and the 2013 ASEAN Declaration on the Elimination of Violence Against Women and Elimination of Violence Against Children

ASEAN's framework, while non-binding, is notable for its programmatic specificity and its attention to implementation.[141] The 2013 Declaration calls for legal and service reforms to prevent and respond to violence, promotes survivor-centred approaches, and urges gender-responsive planning and budgeting within national development plans.[142] It also emphasises research, data

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[138] European Commission, 'Gender Equality Strategy 2020–2025' (policy page, overview of objectives and actions); Consolidated version of the Treaty on the Functioning of the European Union (TFEU) [2016] OJ C202/1 arts 8, 157; Charter of Fundamental Rights of the European Union [2012] OJ C326/391 arts 21, 23; Directive (EU) 2023/970 of the European Parliament and of the Council of 10 May 2023 on pay transparency and enforcement mechanisms for equal pay [2023] OJ L132/21; Directive (EU) 2022/2381 of 23 November 2022 on improving the gender balance among directors of listed companies [2022] OJ L315/44; Directive (EU) 2024/1385 of 14 May 2024 on combating violence against women and domestic violence [2024] OJ L (published 14 May 2024).

[139] European Commission, *A Union of Equality: Gender Equality Strategy 2020–2025* (n 136).

[140] ibid; European Commission, *Better Regulation: Joining Forces to Make Better Laws* COM(2021) 219 final (29 April 2021); European Commission, *Better Regulation Guidelines* SWD(2017) 350 final (7 July 2017) (requiring impact assessment, evidence, consultation and evaluation capable of integrating equality considerations).

[141] 'Declaration on the Elimination of Violence Against Women and Children in ASEAN' (adopted 9 October 2013) (CIL, NUS, unofficial text) paras 1–3, 6–7; 'ASEAN Regional Plan of Action on the Elimination of Violence against Women 2016–2025' (adopted 21 November 2015, Kuala Lumpur) (CIL Database entry, 'Entry into force status: Not applicable').

[142] Association of Southeast Asian Nations, 'Declaration on the Elimination of Violence against Women and Elimination of Violence against Children in ASEAN' (adopted 9 October 2013) paras 9–12 (official PDF); European Commission, *Better Regulation: Joining Forces to Make Better Laws* (n 140); European Commission, *Better Regulation Guidelines* (n 140); Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement [2014] OJ L94/65 art 18(2), arts 67–70; European Institute for Gender Equality (EIGE), *Gender-responsive Public Procurement* (tool) and *Guide to Gender Impact Assessment* (toolkit).

collection, and participation of women and child survivors in policy processes, and sits alongside work plans of the ASEAN Committee on Women that aim to mainstream gender perspectives across sectors.[143] The ASEAN experience suggests that, even absent a supranational court, regularised political commitments, work plans, and monitoring can alter national priorities.[144] In the Bangladeshi context, these tools could underpin targeted programmes to increase registration of Hindu marriages, design accessible maintenance enforcement, pilot guardianship reforms attentive to the best interests of the child, and build rural legal-aid pathways that reduce attrition.[145]

4.4.6 Arab Charter on Human Rights, 2004

The Arab Charter on Human Rights, adopted by the Council of the League of Arab States in 2004 and entering into force in 2008,[146] affirms central equality norms that are directly relevant to gender justice. It provides that all persons are equal before the law and entitled to its protection without discrimination,[147] and guarantees equality before courts and the right to an effective remedy.[148] These guarantees, read with the Charter's provisions on privacy, family life, nationality transmission to children, work, social security, and the highest attainable standard of health,[149] set out a baseline of civil and socio-economic entitlements with a clear non-discrimination orientation.[150] In practical terms, the Charter's insistence on equal access to justice and remedies is salient for women seeking redress where personal law rules, administrative practice, or social

[143] 'ASEAN Regional Plan of Action on the Elimination of Violence against Women and Children 2016-2025' (n 141).

[144] ibid

[145] ibid (further references to institutional arrangements and follow-up mechanisms under the ASEAN Regional Plan of Action on the Elimination of Violence against Women).

[146] League of Arab States, *Arab Charter on Human Rights* (adopted 22 May 2004, entered into force 15 March 2008) arts 44–45 (institutional arrangements); Amnesty International, 'The Arab Human Rights Committee: Elections of Members and Criteria of Membership' (IOR 65/001/2008, 15 March 2008) (noting entry into force after seven ratifications).

[147] Arab Charter on Human Rights (n 146) art 11 ('All persons are equal before the law and have the right to enjoy its protection without discrimination').

[148] ibid arts 12–13 (equality before courts; fair trial and legal aid), art 23 (effective remedy).

[149] ibid arts 21, 33, 29(2), 34, 36, 39 (privacy, family life and protection, nationality, work and equal remuneration, social security, highest attainable standard of health).

[150] Arab Charter on Human Rights (n 146) arts 11–13, 22–23, 29, 31–32, 36, 39.

barriers impede their rights in marriage, divorce, maintenance, or guardianship.[151] The Charter is less detailed than specialised gender instruments, and it does not displace domestic personal laws.[152] Yet its articulation of equality before the courts and equal protection, together with specific socio-economic rights, provides a regional interpretive resource that reformers can invoke when advocating procedural safeguards, non-discriminatory access to family courts, and effective relief against gender-based harms.[153]

4.4.7 Southern African Development Community (SADC) Protocol on Gender and Development, 2016

The SADC Protocol on Gender and Development is notable for its comprehensiveness and its consolidation, in 2016, of the 2008 Protocol and the 2016 Amendment into a single text that replaces the earlier edition.[154] It blends constitutional-style guarantees, sectoral obligations, and measurable targets.[155] Article 4 enjoins states to ensure constitutional rights to equality,[156] while Article 5 authorises special measures to accelerate de facto equality.[157] Procedural justice is addressed in Article 7 on equality in accessing justice.[158] Family law specific obligations appear in Article 8 on marriage and family rights and Article 10 on widows' and widowers' rights, which together underscore equal status within marriage, non-discriminatory dissolution, and protection

[151] ibid arts 12–13, 23 (access to courts and effective remedy).

[152] ibid art 43 (savings clause preserving domestic and other international/regional protections); A Almutawa, 'The Arab Court of Human Rights and the Enforcement of the Arab Human Rights System' (2021) 21(3) *Human Rights Law Review* 506, 508–10.

[153] ibid arts 11–13, 21, 23, 29, 33–36, 39 (equality, fair trial and remedy; privacy and family; nationality; socio-economic rights) and arts 44–45 (reporting and the Arab Human Rights Committee).

[154] Southern African Development Community (SADC), Protocol on Gender and Development (2016) i–iii (SADC Secretariat, Gaborone).

[155] ibid arts 2–3 (general principles and objectives; targets, time frames and indicators).

[156] ibid art 4 (constitutional rights to gender equality and equity, and elimination of practices negatively affecting fundamental rights).

[157] ibid art 5 (special measures to remove barriers to women's meaningful participation).

[158] ibid art 7 (equality in accessing justice, including equal legal status and capacity, equal inheritance rights, and accessible legal services).

of survivors' entitlements.[159] Property, employment, and economic autonomy are treated across Articles 15 to 19, including women's equal access to property and resources under Article 18, a provision that speaks directly to inheritance and succession debates.[160] Violence against women is addressed systematically in Part Six, with legal, social, and institutional measures in Articles 20 to 25, including sexual harassment and survivor-centred services.[161] Sexual and reproductive health and rights appear in Article 26, recognising their indivisibility from gender equality.[162]

The architecture of the Protocol is instructive for South Asia. It couples normative obligations with implementation, monitoring and evaluation duties in Articles 35 and 41,[163] and vests institutional arrangements in Article 34.[164] For Bangladesh, the lesson is not one of transplantation, but of method: to secure women's rights within personal law, states should codify equal status within marriage and divorce,[165] ensure equal rights to property in inheritance,[166] and guarantee procedural access to effective remedies,[167] while resourcing frontline services for gender-based violence.[168]

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[159] ibid arts 8 and 10 (equal rights in marriage; registration; reciprocal parental duties; widows' and widowers' rights including guardianship, inheritance, and protection from degrading treatment).

[160] ibid arts 15–19 esp art 18 (economic policies and decision making; multiple roles of women; economic empowerment; access to property and resources; equal access to employment and benefits).

[161] ibid Part Six, arts 20–25 (legal measures; social, economic, cultural and political practices; sexual harassment; support services; training; integrated approaches).

[162] ibid art 26 (sexual and reproductive health and reproductive rights framework).

[163] ibid arts 35, 41 (implementation, monitoring and evaluation; entry into force).

[164] ibid art 34 (institutional arrangements: Committee of Ministers; Committee of Senior Officials; SADC Secretariat).

[165] ibid art 8(1)–(3) (equal rights in marriage; non-discriminatory dissolution; equitable sharing of property acquired during the relationship).

[166] ibid arts 17(1) and 18(1) (equal rights and opportunities to economic resources including inheritance; review of laws governing access to and control of productive resources).

[167] ibid art 7 (measures to realise equality in judicial and quasi-judicial proceedings; accessible and affordable legal services).

[168] ibid arts 20–25 (criminalisation, coordinated survivor services, training, and integrated responses to gender-based violence).

4.4.8 Revitalised Pacific Leaders Gender Equality Declaration, 2023

The Pacific Islands Forum's revitalised declaration, endorsed in 2023, renews a coherent regional agenda and clarifies practical priorities.[169] It links gender equality to climate resilience, digital inclusion, economic empowerment, health and education.[170] It calls for stronger participation of women and girls in decision making, mainstreaming of gender across governance, and survivor-centred approaches to preventing and eliminating gender-based violence with clear accountability for offenders.[171] It also commits to universal health coverage that includes sexual and reproductive health and rights, and to inclusive, accessible and affordable education, including comprehensive sexuality education.[172] The declaration is not a treaty, but its programmatic detail, time-bound governance through Women Leaders Meetings, and insistence on disaggregated data provide a useful template for national action plans.[173]

For Bangladesh, two points are salient. First, the Declaration's "twin-track" disability inclusion reflects how intersectionality can be operationalised in policy design, an approach that would improve access for minority Hindu women whose legal claims intersect with caste, class, disability, or rural location.[174] Secondly, the emphasis on whole-of-community strategies for violence prevention speaks to the need for institutional coordination between police, social services, and courts where personal law disputes intersect with domestic violence.[175]

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[169] Pacific Islands Forum, *Revitalised Pacific Leaders Gender Equality Declaration* (2023) paras 10–13 (coherent regional approach and renewed commitment).

[170] ibid paras 8–9, 13(viii)–(xi), (vi)–(vii) (linking equality to digital inclusion, climate action, economic empowerment, health, and education).

[171] ibid paras 13(v)–(vii), 13(ix)–(xi) (commitments on economic empowerment, leadership and violence prevention).

[172] ibid para 13(vi)–(vii) (universal health coverage including SRHR; inclusive and affordable education and comprehensive sexuality education).

[173] ibid paras 11–13, 12, 13(i) (time-bound governance via Women Leaders Meetings and disaggregated data); Pacific Islands Forum, 'Communiqué of the 52nd Pacific Islands Forum Leaders Meeting' (9 November 2023) (endorsing the Declaration).

[174] ibid para 13(iv) (twin-track disability inclusion and participation of women and girls with disabilities).

[175] ibid para 13(v); Pacific Islands Forum, *Explanatory Note* paras 15–16 (whole-of-community and family approaches to GBV prevention).

4.4.9 Organization of American States, Inter-American Program on the Promotion of Women's Human Rights and Gender Equity and Equality, 1998

The Inter-American Program, adopted by the OAS in 1998 and subsequently operationalised through General Assembly resolutions, mainstreams a gender perspective across the Organisation's work and urges member states to integrate gender into national policies and programmes.[176] Resolution AG/RES. 1853 (2002) confirms implementation arrangements, directs allocation of human and financial resources to the Inter-American Commission of Women to act as the follow-up, coordination, and evaluation organ, and instructs the Secretary-General and the Permanent Council to embed gender in budgets, programmes, and reporting.[177] The Program's objectives include the integration of gender as a decisive strategy for promoting and protecting women's human rights, and it affirms states' commitment to combat discrimination and to promote equal rights and opportunities for women and men.[178]

Although the Program is not a binding treaty, its institutionalisation mechanism is powerful. It demonstrates how regional organisations can require mainstreaming within their own bureaucracies while creating peer-pressure for domestic reforms. For personal law reform debates, the OAS model underscores the value of an empowered gender machinery with budgetary authority, clear reporting lines, and periodic ministerial meetings mandated to review progress.[179]

4.4.10 South Asian Association for Regional Cooperation (SAARC) Gender Equality Initiatives

The normative landscape of SAARC is thinner than other regions, but not negligible. The SAARC Social Charter, signed at the Twelfth Summit in Islamabad on 4 January 2004, includes a dedicated

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[176] Organization of American States (OAS), *Inter-American Program on the Promotion of Women's Human Rights and Gender Equity and Equality* (CIM/OAS, adopted by the OAS General Assembly, AG/RES. 1732 (XXX-O/00), 5 June 2000) secs II–VI (conceptual framework, objectives, lines of action, human and financial resources, monitoring).

[177] ibid paras 1–6 and operative paras 4(a)–(c), 5–6 (CIM resourcing, mainstreaming instructions to the Secretariat, reporting to the General Assembly).

[178] OAS, *Inter-American Program on the Promotion of Women's Human Rights and Gender Equity and Equality* (n 176);

[179] ibid (continuing implementation measures).

article on promoting the status of women, affirming that discrimination against women is incompatible with human rights and dignity, and urging states to take steps for women's full development and advancement.[180] The SAARC has also adopted the Convention on Preventing and Combating Trafficking in Women and Children for Prostitution, and the Plan of Action on Poverty Alleviation that explicitly references gender equality and women's empowerment as cross-cutting objectives, including the removal of social and cultural barriers to human development goals.[181]

Institutionally, SAARC established the Gender Policy Advocacy Group (GPAG) to keep gender high on the regional agenda, to monitor commitments, and to advocate implementation.[182] Relatedly, the SAARC Gender InfoBase was conceived as a regional hub for gender-disaggregated data to inform policy, though evaluations have noted capacity and sustainability constraints that have blunted its potential.[183] Recent assessments echo this picture, identifying promise in concept but gaps in resourcing, planning, and political traction.[184] These limitations make a difference. Where the SADC Protocol hardwires obligations and monitoring into a treaty text, SAARC's tools

[180] South Asian Association for Regional Cooperation, *SAARC Social Charter* (Islamabad, 4 January 2004) art VI 'Promotion of the status of women.'; Government of India, Ministry of Statistics and Programme Implementation, 'SAARC Social Charter, Status Report' (2014) 1–2.

[181] SAARC, 'SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution' (2002) https://www.saarc-sec.org/index.php/resources/agreements-conventions?limit=20&limitstart=0%2F1000 accessed 22 September 2025; SAARC, 'Plan of Action on Poverty Alleviation' (2002) para V(c).

[182] SAARC Secretariat, 'Areas of Cooperation: SAARC Gender Policy Advocacy Group (GPAG)' https://saarc-sec.org/index.php/directors-profile/38-areas-of-cooperation accessed 22 September 2025; Economic and Social Commission for Asia and the Pacific (ESCAP), 'Inaugural Meeting of the SAARC Gender Policy Advocacy Group' (2015) (event note) https://www.unescap.org/events/inaugural-meeting-saarc-gender-policy-advocacy-group accessed 22 September 2025; ActionAid, 'Incorporation of Women's Economic Empowerment and Unpaid Care Work into Regional Policies: A Case for Centring Unpaid Care Work within Regional Framework' (South Asia Policy Brief, 2017) 5.

[183] UN Women, 'Programme Evaluation of SAARC Gender Info Base of SAARC-UN Women' (January 2011) 11–12; Hannah Elten, Olivia Geymond and Hien Thi Nguyen, 'Gender Equality and the Political Empowerment of Women in South and South-East Asia' in Stephanie Chaban and others, *Regional Organizations, Gender Equality and the Political Empowerment of Women* (International IDEA, Community of Democracies and UNDP 2017) 93, 93-94. 'Gender Equality and the Political Empowerment of Women in South and South-East Asia' *Regional Organizations, Gender Equality and the Political Empowerment of Women* (International IDEA 2018) ch 4, 27–28.

[184] M A Naazer and S Hussan, 'SAARC after Three Decades: An Assessment of Progress in Regional Cooperation in Functional Areas (1985–2015)' (2016) 1(1) *Global Social Sciences Review* 18.

rely more heavily on political will, ministerial follow-through, and donor-supported programmes.[185]

For Bangladesh, the SAARC experience still offers valuable levers. The Social Charter's language provides a normative hook for regionally harmonised benchmarks on education, health, and the status of women.[186] The GPAG can serve as a forum to press for codification of marriage and divorce for Hindu women, more robust guardianship rules, and equal inheritance standards, while the Gender InfoBase, if revitalised, could supply the evidence base to track reform outcomes across member states.[187] A realistic reading also suggests that meaningful progress will depend on national action.

4.5 Effectiveness of Regional Gender Equality Frameworks

Read in continuity with the preceding analysis of universal instruments, this section evaluates whether regional frameworks offer persuasive models or usable standards for Bangladesh as it considers reform of Hindu personal law. The core domains are familiar, marriage and divorce, guardianship and custody, maintenance and economic security, and the institutional conditions that mediate access to justice. Two propositions guide the analysis. First, regionally elaborated norms can concretise equality into justiciable duties through explicit articles and monitoring practices.[188] Second, in South Asia, effectiveness ultimately turns on domestic translation into

[185] See Southern African Development Community, Protocol on Gender and Development (n 154) arts 8(2)(a), 8(2)(c), 8(3)–(4), 10–11, 16–18 (minimum marriage age; mandatory registration; equitable division of property; maintenance enforcement; widow(er)s' rights; child protection; recognition of unpaid care; access to property and resources).

[186] South Asian Association for Regional Cooperation, *SAARC Social Charter* (n 180) art VI ('Promotion of the status of women'). Available at: SAARC Secretariat.

[187] SAARC Secretariat, 'Social Affairs' (webpage) (16 July 2020) (noting establishment of the SAARC Gender Policy Advocacy Group (GPAG) as a regional mechanism to promote gender equality and women's empowerment); ESCAP, 'Inaugural Meeting of the SAARC Gender Policy Advocacy Group' (n 182); UN Women/SAARC, *Programme Evaluation: SAARC Gender InfoBase (SGIB) 2011–2012* (finding limitations in capacity, sustainability and institutionalisation).

[188] Council of Europe, 'About Monitoring – Istanbul Convention' (two-pillar mechanism of GREVIO and the Committee of the Parties) https://www.coe.int/en/web/istanbul-convention/about-monitoring1 accessed 5 October 2025.

legislation and procedure, particularly in areas where Hindu personal law remains uncodified or substantively unequal.

African, Inter-American, and European regimes provide the clearest operational templates. The Maputo Protocol imposes duties to repeal discriminatory personal status rules and to regulate marriage, consent, minimum age, registration, and equitable divorce consequences, supported by a categorical ban on harmful practices.[189] These provisions track the constitutional equality clause in Bangladesh and speak directly to Hindu women's vulnerabilities where marriage registration is discretionary, divorce is non-statutory, and maintenance enforcement is weak. The Belém do Pará model also codifies due diligence duties of prevention, protection, investigation, and sanction. Bangladesh could adapt this institutional register to strengthen family court responses to dowry related abuse and post-separation insecurity.[190] The Istanbul Convention prescribes coordinated policies, education measures and the removal of discriminatory customs. Its independent monitoring body, GREVIO,[191] shows how compliance auditing can drive legislative and budgetary change.[192]

Other regions supply complementary levers. The SADC Protocol requires constitutional guarantees, prohibits harmful practices, and mandates reforms to secure women's equal rights in property and inheritance, offering an explicit legislative checklist for succession and matrimonial property regimes.[193] ASEAN's 2013 Declaration on eliminating violence against women and children is formally soft law, yet it embeds gender-responsive planning and budgeting, a pathway Bangladesh could use to finance marriage registration, legal aid, shelters, and survivor-centred

[189] Maputo Protocol (n 115) arts 2, 4, 5, 6, 7.

[190] Organization of American States, Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará) (n 121) arts 1–2, 3–7.

[191] GREVIO (Group of Experts on Action against Violence against Women and Domestic Violence), description of mandate as the Council of Europe's independent mechanism for overseeing implementation of the Istanbul Convention (baseline and periodic evaluations, special inquiries and general recommendations).

[192] Istanbul Convention (n 129) arts 4, 6, 12, 14; Council of Europe, *Istanbul Convention Monitoring (GREVIO baseline evaluation procedure)* 1–3.

[193] Southern African Development Community, Protocol on Gender and Development (n 154) arts 4, 8, 17.

procedures.[194] The EU Gender Equality Strategy, while programmatic rather than treaty-based, shows how mainstreaming, data obligations, and targeted directives on leadership and violence can be sequenced to change institutional behaviour.[195] SAARC initiatives, by contrast, are normatively modest and hampered by geopolitical stasis, although the Gender Policy Advocacy Group and the SAARC Gender Info Base suggest region-appropriate mechanisms for evidence-led reform.[196] The Arab Charter's equality clause confirms the baseline of non-discrimination, but its effectiveness, like SAARC's, depends on domestic enactment.[197]

4.6 National Legal Commitments for Gender Equality

4.6.1 Constitutional Framework for Gender Equality in Bangladesh

Read in the wake of the international and regional standards canvassed earlier in this chapter, the Constitution supplies the normative fulcrum for evaluating the personal law regime as it affects Hindu women. Two guarantees are central. First, equality before and the equal protection of the law set a baseline that binds all public authorities and, when properly interpreted, informs the reading of personal law rules.[198] Secondly, an explicit prohibition on sex discrimination, coupled with an authorisation for special measures, frames both legislative reform and adjudicative method.[199] The analysis that follows draws on the text, case law and institutional practice, and it keeps in view the doctrinal and practical barriers identified in the earlier mapping of the family law landscape of Bangladesh for Hindu women.

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[194] Association of Southeast Asian Nations, *ASEAN Declaration on the Elimination of Violence against Women and the Elimination of Violence against Children* (Bandar Seri Begawan, 9 October 2013) paras 8–12; ASEAN Committee on Women (ACW), *Work Plan 2021–2025* (2022) 5–9.

[195] European Commission, *A Union of Equality: Gender Equality Strategy 2020–2025* (n 136).

[196] South Asian Association for Regional Cooperation, *Addu Declaration* (17th SAARC Summit, Addu, 10–11 November 2011) paras 39–41; SAARC Secretariat and UN Women, *SAARC Gender Info Base: Concept Note* (SAARC/UN Women 2014) 1–4.

[197] League of Arab States, Arab Charter on Human Rights (n 146) art 3.

[198] Constitution of the People's Republic of Bangladesh 1972 (n 1), art 27 (equality before the law).

[199] Ibid art 28(1)-(2), (4) (prohibition of discrimination on grounds including sex; authorisation of special measures for women and children).

A. Equality Before Law

Article 27 provides in unqualified terms that, "All citizens are equal before law and are entitled to equal protection of law."[200] The provision performs two distinct functions. Equality before law demands parity in status in relation to the legal order and its institutions, while equal protection empowers courts to test state action against a standard of non-arbitrary, non-discriminatory justification. In a plural legal system, where personal law norms are administered through state courts and state machinery, Article 27 is not a marginal decorative clause, it is a directive principle of adjudication.[201]

Three consequences follow for the domains that structure women's lives. First, status and capacity in marriage and at its dissolution must be administered without arbitrary distinctions. Where uncodified Hindu personal law leaves a Hindu woman without a civil ground of divorce or without clear maintenance entitlements at exit, the resulting denial of access to effective relief risks trenching upon equal protection.[202] Secondly, equality before law requires that documentary status, and therefore access to remedies, be attainable on non-discriminatory terms. The continuing optional character of Hindu marriage registration, though created by statute, produces a significant practical inequality between similarly situated citizens when women cannot prove marital status to seek maintenance, guardianship or protection orders.[203] Thirdly, procedure matters. If forum design, costs or evidential rules generate disparate impacts for Hindu women seeking family law remedies, Article 27 requires courts to address those disparities through purposive construction and, where necessary, through directions to the administration.[204]

Bangladeshi courts have repeatedly affirmed that fundamental rights inform the interpretation of all laws. In litigation on sexual harassment, the Supreme Court treated the fundamental rights framework as a source of enforceable standards, issuing detailed guidelines to secure safe

[200] ibid art 27 (restated as core equality clause).

[201] ibid arts 26–27.

[202] *Hussain Muhammad Ershad* (n 87) (recognising the interpretive use of international human rights norms within the constitutional rights framework).

[203] Registration of Hindu Marriage Act 2012 (n 64) s 3(1)–(2) ('a Hindu marriage may be registered' for documentary proof, but non-registration does not affect validity).

[204] Constitution of the People's Republic of Bangladesh 1972 (n 1), arts 27–28 (equality and non-discrimination; requirement of non-arbitrary procedures and access).

educational and workplace environments for women pending legislation.[205] While the case concerned gender-based violence rather than personal law status, its method is instructive. The Court read constitutional equality and dignity together, drew on international standards as interpretive aids, and fashioned practicable remedies and institutional duties.[206] That same constitutional method is available where personal law rules or institutional arrangements produce gendered exclusions in marriage, divorce, guardianship or maintenance.[207]

It is sometimes argued that Article 27 is merely formal and therefore neutral as between different personal law traditions. That reading misunderstands the clause. Equality before law protects persons, not systems. A personal law rule administered by state courts cannot be immunised from constitutional scrutiny simply because it is religious in inspiration. To the contrary, the obligation of equal protection requires the State to justify distinctions that burden women's status or capacity. Where the legislature has chosen to leave Hindu divorce uncodified, or to retain a registration regime that leaves large numbers of Hindu women without documentary standing, Article 27 becomes not a blunt instrument but a directive to remove arbitrary institutional barriers to equal legal protection.[208]

B. Non-Discrimination and Gender Equality

Article 28 entrenches a specific equality code. Four clauses are especially salient and are reproduced in the official text:

> "(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex or place of birth."[209]

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[205] *Bangladesh National Women Lawyers Association* (n 95) (interim guidelines on sexual harassment, drawing on international standards).

[206] ibid (express reliance on constitutional guarantees and international standards in crafting remedies).

[207] *Hussain Muhammad Ershad* (n 87) (international human-rights instruments as persuasive aids to constitutional interpretation).

[208] Registration of Hindu Marriage Act 2012 (n 64) s 3(1)–(2); Constitution of the People's Republic of Bangladesh 1972 (n 1), arts 27–28.

[209] The Constitution of the People's Republic of Bangladesh (n 1), art 28(1)

> "(2) Women shall have equal rights with men in all spheres of the State and of public life."[210]
>
> "(3) No citizen shall, on grounds only of religion, race, caste, sex or place of birth, be subject to any disability, liability, restriction or condition with regard to access to any place of public entertainment or resort, or admission to any educational institution."[211]
>
> "(4) Nothing in this article shall prevent the State from making special provision in favour of women or children or for the advancement of any backward section of citizens."[212]

Three features of this design are worth stressing:

First, Article 28(1) prohibits sex discrimination in express terms. Although the clause is framed in general terms, it is justiciable and can be applied across legislative and administrative domains, including the administration of family law.[213] Where women are placed at a systemic disadvantage in the enjoyment of legal remedies at marriage, dissolution, guardianship or succession, the burden shifts to the State to demonstrate the absence of discrimination "on grounds only" of sex, or to justify distinctions as strictly necessary to a legitimate aim by proportionate means.[214] That analysis cannot be foreclosed by a bare appeal to religious autonomy, because the State remains responsible for the law's content and for the design of the institutions that administer it.[215]

Secondly, Article 28(2) does more than restate non-discrimination. It confirms an affirmative entitlement: "Women shall have equal rights with men in all spheres of the State and of public life."[216] The clause is often read as confined to public employment or public decision making. Properly interpreted, it has broader reach. Access to courts, legal aid, protective orders, and the means of enforcing maintenance or guardianship orders are all "spheres of the State", and they must therefore be designed and resourced so that women can use them on terms of equality. This

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[210] ibid art 28(2).

[211] ibid art 28(3).

[212] ibid art 28(4).

[213] ibid arts 27–28.

[214] Ibid.

[215] *Bangladesh National Women Lawyers Association* (n 95) (sexual-harassment guidelines grounded in constitutional and international norms).

[216] Constitution of the People's Republic of Bangladesh 1972 (n 1), art 28(2).

points directly to procedural and institutional reforms, from low-cost late registration of Hindu marriages to gender-responsive legal services within family courts.[217]

Thirdly, Article 28(4) authorises special measures. Far from being a narrow exception, it is a constitutional instruction that the State may, and sometimes must, employ targeted instruments to dismantle structural inequality.[218] In the family law context, such measures could include, for example, presumptions in favour of equal parental decision making in guardianship, targeted enforcement units for maintenance, or statutory presumptions that remunerate non-financial contributions at dissolution. Comparative models, including those distilled from regional frameworks, demonstrate that special measures can be carefully tailored to correct historic exclusion without erasing religious identity.[219]

Judicial practice has begun to build out these implications. In the absence of comprehensive legislation on workplace sexual harassment, the Supreme Court issued detailed interim directions that explicitly grounded themselves in the equality guarantees and in international standards, and directed educational institutions and employers to adopt preventive and remedial procedures.[220] The same approach is apt when courts face lacunae in Hindu personal law domains. Where legislation is silent on, for instance, a Hindu woman's capacity to secure swift interim maintenance or on documentary presumptions for unregistered marriages proved by ritual evidence, courts may craft rights-compatible procedures pending reform, guided by Articles 27 and 28 and by the State's treaty commitments.[221]

The constitutional text also interacts with ordinary legislation that bears on women's ability to invoke rights. By way of illustration, the Hindu Marriage Registration Act 2012 provides that "a Hindu marriage may be registered" for the purpose of documentary proof, and further provides that the validity of the marriage does not depend on registration.[222] The combination of optional

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[217] ibid art 28(1); Registration of Hindu Marriage Act 2012 (n 64) s 3(1)–(2); Hindu Marriage Registration Rules 2013 (Bangladesh).

[218] ibid art 28(4).

[219] ibid art 28(1)-(4).

[220] *Bangladesh National Women Lawyers Association* (n 95).

[221] Constitution of the People's Republic of Bangladesh 1972 (n 1), art 28(1)-(4).

[222] Registration of Hindu Marriage Act 2012 (n 64) s 3(1)-(2); Hindu Marriage Registration Rules 2013 (n 217).

registration and proof by ritual may preserve religious autonomy, yet it also tends to leave many women without accessible documentary standing when they seek maintenance, guardianship or protection. Article 28(2), read with Article 27, therefore supports a rights-conforming construction of procedural rules, as well as legislative amendment to make registration effectively universal and low-cost, with robust late-registration pathways.[223]

Finally, Article 28 must be read alongside the State's international obligations. Bangladesh has undertaken treaty commitments to secure equality in marriage and family relations, equal protection and non-discrimination, and effective access to justice. The Supreme Court has recognised that international law can serve as an interpretive guide where domestic law is ambiguous or silent.[224] That approach neither displaces personal law traditions nor collapses constitutional analysis into external sources. Rather, it treats treaty standards as persuasive elaborations of the Constitution's own commitments, thereby assisting courts and the legislature to design family law rules and institutions that make equality real for Hindu women.[225]

C. Equality of Opportunity in Public Employment

Read in continuity with the constitutional guarantees canvassed in the preceding subsection, the provisions on state employment furnish an operational hinge between formal non-discrimination and the material conditions that enable women to negotiate family law. Article 29(2) declares, "No citizen shall, on grounds only of religion, race, caste, sex or place of birth, be ineligible for, or discriminated against in respect of, any employment or office in the service of the Republic."[226] Read with Article 29(3)(a), which confirms that "Nothing in this article shall prevent the State from … making special provision in favour of any backward section of citizens for the purpose of securing their adequate representation in the service of the Republic,"[227] the text simultaneously

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[223] Constitution of the People's Republic of Bangladesh 1972 (n 1), art 28(1)–(4); Government of Bangladesh, Judiciary website, 'Fundamental Rights' (confirming text of art 28(2)); Registration of Hindu Marriage Act 2012 (n 64) s 3(1)–(2); Hindu Marriage Registration Rules 2013 (n 217).

[224] *Bangladesh National Women Lawyers Association* (n 95).

[225] ibid (issuing sexual-harassment guidelines; reading constitutional equality in the light of international standards; stating that municipal law may be interpreted consistently with international law where there is no inconsistency or domestic void).

[226] Constitution of the People's Republic of Bangladesh 1972 (n 1), art 29(2).

[227] ibid art 29(3)(a).

prohibits exclusion and authorises calibrated inclusion. For Hindu women, whose bargaining power is depressed by gaps in personal law on divorce, maintenance, guardianship, and succession, these clauses are not merely sectoral guarantees. Properly implemented, they are state levers that can loosen private dependencies by providing stable income, pensions, and enforceable workplace rights.

Doctrinally, equality of opportunity must extend across the career cycle, not recruitment alone. International labour standards reinforce this construction. The Equal Remuneration Convention requires the State to "ensure the application … to all workers of the principle of equal remuneration for men and women workers for work of equal value,"[228] while the Discrimination Convention obliges a "national policy designed to promote … equality of opportunity and treatment in respect of employment and occupation," including the elimination of sex discrimination in access, conditions, and advancement.[229] Complementary instruments recognise the need to accommodate care responsibilities: the Workers with Family Responsibilities Convention and its Recommendation call for policies, services and workplace arrangements that secure effective equality for workers with dependent-care duties.[230] The corollary is that recruitment, posting, appraisal and promotion rules must be structured so that the burdens of unpaid care do not silently disqualify otherwise meritorious candidates.

D. Socialism and Freedom from Exploitation

Article 10 sets a constitutional horizon for economic life, "A socialist economic system shall be established with a view to ensuring the attainment of a just and egalitarian society, free from the exploitation of man by man."[231] Although framed as a fundamental principle of state policy rather

[228] International Labour Organization, Discrimination (Employment and Occupation) Convention (adopted 25 June 1958, entered into force 15 June 1960) 362 UNTS 31, art 2.

[229] ibid (State obligation to pursue a national policy designed to promote equality of opportunity and treatment in respect of employment and occupation).

[230] International Labour Organization, Workers with Family Responsibilities Convention, 1981 (No 156) (adopted 23 June 1981, entered into force 11 August 1983) 1331 UNTS 295, arts 3–5; International Labour Organization, Workers with Family Responsibilities Recommendation, 1981 (No 165) (adopted 23 June 1981) paras 1–3.

[231] Constitution of the People's Republic of Bangladesh 1972 (n 1), art 10.

than a directly enforceable right,[232] its purposive content bears upon gendered exploitation that occurs through household labour and personal status rules.[233] Where unpaid care is invisibilised, where exit from marriage lacks codified and equitable consequences, and where inheritance and maintenance are constrained by discriminatory norms, women's economic vulnerability is not accidental, it is structured. In that setting, Article 10 is a directive to recognise and reduce exploitation within the family as well as in markets.

International obligations reinforce this trajectory. CEDAW requires States to take "all appropriate measures to eliminate discrimination against women in the field of employment," including equal opportunities, maternity protection and social security,[234] and to "modify the social and cultural patterns of conduct" that entrench stereotypes.[235] The 2030 Agenda adds a governance metric, since Target 5.4 instructs States to recognise and value unpaid care "through the provision of public services, infrastructure and social protection policies."[236] Read together with Articles 28 and 29, Article 10 supports purposive interpretations and budgetary choices that reduce structural dependency, for example, paid parental leave, flexible scheduling in core services, and pension credits for periods of caregiving.[237] Such measures are not merely welfare; they are equality infrastructure that enables women, including Hindu women who face specific family law constraints, to sustain employment and accumulate assets independent of male relatives.

[232] ibid art 8(2) (Fundamental Principles of State Policy are fundamental to governance but "shall not be judicially enforceable")

[233] CEDAW Committee, 'General Recommendation No 17: Measurement and quantification of the unremunerated domestic activities of women and their recognition in the gross national product' (Tenth session, 1991) UN Doc A/46/38.

[234] CEDAW (n 3) 13 art 11(1)-(2).

[235] ibid art 5(a).

[236] UN General Assembly, 'Transforming our world: the 2030 Agenda for Sustainable Development' (n 5) Target 5.4.

[237] Read with Constitution of Bangladesh 1972, arts 28 (non-discrimination; equality of women and men) and 29 (equality of opportunity in public employment); see also CESCR, 'General Comment No 19: The right to social security (art 9)' (4 February 2008) UN Doc E/C.12/GC/19 (recognising maternity protection, social insurance and the need to design schemes—such as pension arrangements—consistent with gender equality).

E. Affirmative Action for Women

The Constitution expressly permits positive measures. Article 28(4) provides, "Nothing in this article shall prevent the State from making special provision in favour of women or children or for the advancement of any backward section of citizens."[238] In Parliament, Article 65(3) stipulates that "there shall be reserved fifty seats exclusively for women members" for a defined period;[239] in public service, Article 29(3)(a) authorises special provision to secure "adequate representation."[240] These clauses convert equality from a passive shield against exclusion into an active mandate to recalibrate opportunity.

Design determines both legitimacy and effect. CEDAW's General Recommendation No 25 clarifies that temporary special measures are instruments for achieving substantive equality, not exceptions to it, and should be targeted, time-bound and proportionate, with indicators to track progress.[241] Selection mechanisms matter. Indirect election to reserved seats has improved descriptive representation, yet it can limit autonomy and accountability. Comparative experience suggests that placement mandates or constituency-level quotas strengthen agency, particularly when combined with leadership training and targeted support for campaign finance. In public employment, recruitment preferences on their own are insufficient. Without enforceable anti-harassment regimes, equal-pay audits, transparent promotion matrices, and return-to-work schemes after childbirth or caregiving, women will cluster in junior grades and exit mid-career. ILO standards provide textual authority for these administrative levers, and the constitutional architecture of Bangladesh supplies the domestic mandate to adopt them.[242]

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[238] Constitution of the People's Republic of Bangladesh 1972 (n 1), art 28(4).

[239] On the evolution of women's reserved seats, see Constitution of the People's Republic of Bangladesh 1972 (n 1), art 65(3) as successively amended (15 seats for ten years in 1972; 30 for a total of 15 years by Second Proclamation (Order No IV of 1978); reinstated 30 seats for ten years by Constitution (Tenth Amendment) Act 1990; raised to 45 by Constitution (Fourteenth Amendment) Act 2004 with proportional-representation election among MPs; raised to 50 by Constitution (Fifteenth Amendment) Act 2011 with a transitional clause; and extended for 25 years from the first meeting of the Eleventh Parliament by Constitution (Seventeenth Amendment) Act 2018, effectively to 2044 unless altered earlier).

[240] Constitution of the People's Republic of Bangladesh 1972 (n 1), art 29(3)(a).

[241] CEDAW Committee, 'General Recommendation No 25 on article 4(1) of the Convention on temporary special measures' (2004) paras 7, 18–22.

[242] ILO Convention No 100 (Equal Remuneration), 1951, art 2; ILO Convention No 111 (Discrimination (Employment and Occupation)), 1958, art 1; ILO Convention No 190 (Violence and Harassment), 2019, arts 4–9; ILO Convention

Intersectionality must also be operationalised. Hindu women may face compounded exclusion linked to gender, minority status, locality, and class. Lawful outreach, documentary flexibility consistent with integrity, mentoring, and bridge programmes can expand the pool from which merit is demonstrably drawn while remaining faithful to Article 29's requirement of fair competition. Affirmative action should further be embedded in a wider equality infrastructure that links workplaces to family law reform. Public employers can condition certain benefits on proof of marriage registration, thereby supporting statutory policy on status documentation that is essential for maintenance and succession claims. They can institutionalise legal-aid referral pathways so that employees can enforce maintenance orders without attrition. Data obligations, including annual reporting disaggregated by gender and minority status, can close information gaps and support judicial and parliamentary oversight.[243]

4.6.2 Effectiveness of Constitutional Equality for Hindu Women in Bangladesh

Read directly after the mapping of the constitutional guarantees in Articles 27 and 28, the question is no longer whether the equality code exists, but how far it reaches into the lived domains that matter for Hindu women, namely marriage and divorce, guardianship and custody, maintenance, inheritance and succession, and access to forums and remedies. The analysis here is doctrinal and institutional, drawing on constitutional text, pertinent statutes and case law, while attending to procedural frictions that dull the effect of rights in practice. It builds on the diagnostic account in the earlier part of this chapter.

Two constitutional clauses supply the principal yardsticks. Article 27 states in categorical terms, "All citizens are equal before law and are entitled to equal protection of law."[244] Article 28 prohibits discrimination and affirms an affirmative entitlement, including the declaration that, "Women shall have equal rights with men in all spheres of the State and of public life."[245] These

No 156 (Workers with Family Responsibilities), 1981, arts 3–4; ILO Convention No 183 (Maternity Protection), 2000, arts 4–6 (authoritative NORMLEX texts).

[243] CEDAW Committee, 'General Recommendation No 9: Statistical data concerning the situation of women' (1989) (calling for sex-disaggregated data to inform policy and oversight).

[244] Constitution of the People's Republic of Bangladesh 1972 (n 1), art 27.

[245] ibid art 28(1)–(4).

provisions are justiciable. They operate not as rhetoric but as baseline controls on legislation and administration. Their value for Hindu women turns on three translating conditions: secure status-conferring documentation, determinate substantive rights within personal law, and accessible, well-designed remedial fora.

First, status and proof. The continuing optionality of Hindu marriage registration produces a recurrent barrier at the threshold of legal protection. Section 3 of the Hindu Marriage Registration Act 2012 provides that "a Hindu marriage may be registered," and clarifies that non-registration does not affect validity.[246] The formulation preserves ritual autonomy, yet it leaves many women without documentary standing when seeking maintenance, custody or protective orders. Optional registration lowers the evidential floor in precisely those disputes where speed and certainty matter. Read against Articles 27 and 28, a statutory architecture that systemically denies Hindu women ready proof of status sits uneasily with equal protection and equal access to the machinery of justice. A rights-conforming approach points to two levers, legislative and judicial. Legislatively, near-universal registration with low-cost late registration would bring parity with other communities that already benefit from documentary status at the start of litigation. Judicially, pending reform, courts can adopt presumptions and simplified proof rules for unregistered Hindu marriages proved by competent evidence of rites, so that the lack of a certificate does not disable access to interim maintenance or custody.

Secondly, exit, maintenance, and guardianship. The Family Courts jurisdiction was designed to provide a single forum for intimate family disputes. Uncertainty persisted for years about whether that forum applied across communities, until a larger bench in *Pochon Rikssi Das v Khuku Rani Dasi* held that the Family Courts Ordinance created a forum for enforcement of designated family rights "irrespective of religion."[247] The continuity of that jurisdiction has been maintained under the Family Courts Act 2023.[248] Yet forum alone cannot supply substantive rights. Unlike Muslim

[246] Registration of Hindu Marriage Act 2012 (n 64) ss 3(1)–(2) (optional registration of Hindu marriages).

[247] *Pochon Rikssi Das v Khuku Rani Dasi* (1998) 50 DLR (HCD) 47 (definitively holding that the Family Courts Ordinance 1985 applied to all citizens irrespective of religion and that it created a common civil forum for maintenance, dower, custody and related matters under s 5, without altering substantive personal law).

[248] 'Analysis: The Family Courts Act 2023' *The Daily Star* (Dhaka, 22 December 2023) https://www.thedailystar.net/law-our-rights/news/analysis-the-family-courts-act-2023-3500311 accessed 22 September 2025 (overview of the Family Courts Act 2023 and continuity of jurisdiction under s 5).

women, Hindu women in Bangladesh lack a codified, civil ground of divorce on equal terms, and maintenance remains vulnerable to evidential and forum barriers created by the absence of registration. In guardianship and custody, the absence of an equality-centred statutory code leaves decision makers to navigate custom and stereotype, a method that can produce disparate outcomes. Articles 27 and 28 require that the State not only provide a forum, but also ensure that the forum can grant equal remedies to similarly situated citizens. In practice, without codified exit rights and clear maintenance standards for Hindu marriages, equality before law remains formal rather than effective.

Thirdly, violence, access and procedure. The Supreme Court's intervention in *BNWLA v Bangladesh* shows that the equality clauses can produce enforceable standards even when legislation is silent. Before legislation was enacted, the Court issued detailed guidelines to prevent and redress sexual harassment in workplaces and educational institutions. The directives were grounded in the Constitution and drew on international standards.[249] The method is significant. It confirms that, where statutory lacunae impede women's equal enjoyment of rights, courts may craft interim procedural norms that operationalise equality and dignity. That approach is directly transferable to family law procedure as it affects Hindu women, for example, by directing gender-responsive legal aid, time standards for interim maintenance, and stereotype-free evidential practices in custody disputes.

Inheritance and succession illustrate the structural stakes. Colonial-era enactments moderated aspects of classical Hindu law but did not deliver parity in ownership. The Hindu Women's Right to Property Act 1937 gave widows a share, yet confined it as a "limited" estate,[250] and excluded many female heirs from full proprietary title. The older Hindu Widows' Remarriage Act 1856 legalised remarriage but simultaneously severed a widow's rights in her deceased husband's property on remarriage. Section 2 states that, upon remarriage, "All rights and interests which any widow may have in her deceased husband's property… shall upon her remarriage cease and determine as if she had then died."[251] The interaction of limited estates with forfeiture on

[249] *Bangladesh National Women Lawyers Association* (n 95).

[250] Hindu Women's Rights to Property Act 1937 (Act XVIII of 1937) s 3 (limited interest known as a Hindu woman's estate).

[251] Hindu Widows' Remarriage Act 1856 (n 251) s 2 (forfeiture of certain rights and interests on remarriage).

remarriage entrenches economic dependency and constrains women's choices. While constitutional equality does not automatically repeal personal law rules, Articles 27 and 28 equip the legislature, and where appropriate the courts, to test whether the State may continue to endorse de jure patterns of property devolution that systemically subordinate women. Equality is addressed to persons, not systems. When state courts administer personal law, constitutional standards travel with them.

Effectiveness also depends on how equality is balanced against religious freedom. Article 41 protects the right to profess, practise and propagate religion, subject to law, public order and morality.[252] This protection does not grant immunity from constitutional scrutiny to all rules that are religious in inspiration. Where personal law rules are given effect by state institutions, and where their application results in arbitrary disadvantage to women as a class, Articles 27 and 28 are engaged. The constitutional task is not to erase religious identity, but to ensure that the State's legal order does not enforce discrimination "on grounds only of… sex," and that women enjoy "equal rights with men in all spheres of the State."[253] Properly understood, this permits carefully tailored legislative and procedural reforms that remove structural barriers while respecting ritual autonomy in domains where public consequences are minimal.

Reservations to international treaties complicate, but do not disable, domestic effectiveness. The reservations of Bangladesh to Articles 2 and 16(1)(c) of CEDAW weaken one source of external leverage in family law equality.[254] Nonetheless, the Supreme Court has recognised that international standards can be used as interpretive aids where domestic law is silent or ambiguous.[255] The constitutional equality code, therefore, remains fully available as a domestic basis for reform. Indeed, the *BNWLA* case shows that courts can craft interim measures by reading the Constitution purposively and in harmony with international guidance, pending legislative action.

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[252] Constitution of the People's Republic of Bangladesh 1972 (n 1), art 41(1) ('Subject to law, public order and morality—(a) every citizen has the right to profess, practise or propagate any religion').

[253] ibid art 28(1)–(4), including 'Women shall have equal rights with men in all spheres of the State and of public life.'

[254] United Nations Treaty Collection, (n 4) (reservation to arts 2 and 16(1)(c)).

[255] *Hussain Muhammad Ershad* (n 87). (international human-rights instruments as persuasive aids to constitutional interpretation); *Bangladesh National Women Lawyers Association* (n 95).

4.6.3 National Laws and Policies Affecting Hindu Women

A. The Hindu Marriage Registration Act, 2012

The 2012 Act sought to insert a documentary layer into an area historically regulated by ritual and custom. Its central provision is section 3. Section 3(1) states, in terms, that "notwithstanding anything contained in any other law, custom or usage, a Hindu marriage may be registered," for the purpose of securing documentary proof of a sastric union.[256] Section 3(2) immediately qualifies that promise by confirming that a marriage remains valid even if left unregistered: "The validity of a Hindu marriage shall not be affected by reason of non-registration."[257] The Act then establishes a registrar system, procedures and fees, and enables post-solemnisation registration.[258]

Two features of this design bear on women's equal enjoyment of family law rights. First, the optionality of registration deprives many Hindu women of ready proof of status. In disputes about maintenance, custody, guardianship or protection orders, the absence of a marriage certificate delays or defeats interim relief, raises evidential thresholds that should be low, and renders women vulnerable to desertion and bigamy without quick recourse to the courts. The problem is structural, not episodic. Optionality largely replicates the pre-2012 landscape for populations with limited legal literacy or constrained mobility, and it sits uneasily with constitutionally guaranteed equality before and the equal protection of the law.[259] The legislative premise, that ritual validity should not turn on civil registration, can be preserved while requiring universal, low-cost registration with robust late-registration routes, so that documentary status is available without friction to those who most need it.

Secondly, the Act is silent on dissolution, financial consequences at separation, and equal parental authority. It neither introduces a civil ground of divorce available on equal terms, nor supplies a clear framework for maintenance at and after dissolution, nor codifies guardianship around the best interests of the child and equal parental decision making. In practice, therefore, the Act

[256] Registration of Hindu Marriage Act 2012 (n 64) s 3(1).

[257] ibid s 3(2) ('The validity of a Hindu marriage shall not be affected by reason of non-registration').

[258] Registration of Hindu Marriage Act 2012 (n 64) ss 4–7, 10–12 (appointment of registrars; procedure; fees; inspection and copies; post-solemnisation registration).

[259] Constitution of the People's Republic of Bangladesh 1972 (n 1), arts 27–28.

supplies a registry without a rights code. That choice leaves Hindu women to navigate uncodified personal law for separation and parental responsibility, with the Family Courts forum available, but without community-specific statutory anchors comparable to those in other personal law systems.[260] The forum matters, but a forum without substantive rights produces attrition. Given the State's constitutional obligation not to discriminate and to provide equal protection, a registration statute that does not ensure women can use courts on equal terms risks entrenching inequality in access to remedies.[261]

A third, procedural point concerns proof and interim measures. Even while registration remains optional, courts can protect women's access to justice by adopting purposive evidential rules. Where a marriage is proved by competent testimony to rites and ceremonies, the absence of a certificate should not impede interim maintenance, custody, or protection. Time standards for interim relief, gender-responsive legal aid, and simple execution rules would further mitigate the documentary deficit. These judicial directions would align with the Constitution's guarantee that "All citizens are equal before law and are entitled to equal protection of law," and that "Women shall have equal rights with men in all spheres of the State and of public life."[262]

Comparative experience supports reform. Where registration is near-universal, women contest fewer preliminary issues, interim orders are quicker, and the space for denial of status narrows. Legislative amendment in Bangladesh could maintain ritual autonomy while making registration a standard administrative step, with safeguards for late entry and without conditioning the ontological validity of the union on paperwork. The analytical point is simple. In a system that recognises plural personal laws, equal access to civil status documents is the precondition for equal access to civil remedies.

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[260] Family Courts Act 2023 (Bangladesh) ss 3, 5 (Act to override other laws procedurally and to confer jurisdiction over dissolution, dower, maintenance, guardianship and custody); *Pochon Rikssi Das* (n 247); 'Analysis: The Family Courts Act 2023' *The Daily Star* (n 248).

[261] Constitution of the People's Republic of Bangladesh 1972 (n 1), arts 27–28.

[262] ibid arts 27 and 28(2).

B. The Hindu Widows' Remarriage Act, 1856

The Hindu Widows' Remarriage Act 1856 was the nineteenth-century legislature's answer to a specific injustice, namely the orthodox position that a Hindu widow could not lawfully remarry and that any issue of such a union would be illegitimate. Section 1, therefore, declares that "No marriage contracted between Hindus shall be invalid… by reason of the woman having been previously married," any contrary custom or interpretation notwithstanding.[263] The reform is clear and categorical. A widow may remarry, and her children of that union are legitimate.[264]

The same statute, however, adopts a rule that has long discouraged remarriage and entrenched economic dependency.

Section 2 provides that upon remarriage, "All rights and interests which any widow may have in her deceased husband's property… shall upon her re-marriage cease and determine as if she had then died."[265] The forfeiture is comprehensive. It extends to rights of maintenance, interests obtained "by inheritance to her husband or to his lineal successors," and limited interests created by will, unless the instrument expressly permits remarriage without forfeiture.[266] The section then directs that the next heirs take on the widow's remarriage as if she had died.[267] Section 5 adds a general saving, stating that, except as otherwise provided, "a widow shall not by reason of her re-marriage forfeit any property or any right to which she would otherwise be entitled."[268]

The interaction between sections 1 and 2 has proved decisive in practice. The statute frees a widow to remarry, yet it conditions that freedom with the loss of subsisting economic support. Where a widow's livelihood depends on accommodation and maintenance from her deceased husband's family, remarriage can become economically unsustainable. Social sanction, which can be severe in rural settings, adds to the deterrent effect of the forfeiture rule. The result is a perverse incentive. The law recognises a capacity to remarry, while the property rule pushes many widows away from

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[263] Hindu Widows' Remarriage Act 1856 (n 251) s 1.

[264] ibid s 1.

[265] Hindu Widows' Remarriage Act 1856 (n 251) s 2.

[266] ibid.

[267] ibid (further reference to the forfeiture rule on remarriage).

[268] Hindu Widows' Remarriage Act 1856 (n 251) s 5.

remarriage or into informal unions that offer no legal security. The purpose stated in the preamble "to remove all legal obstacles to the marriage of Hindu widows" only sharpens this tension.[269]

From an equality perspective, two consequences follow. First, the rule produces a sex-specific penalty for exercising marital choice that has no analogue for widowers. The constitutional injunction that the State shall not discriminate "on grounds only of… sex," and that women "shall have equal rights with men," provides the normative benchmark against which a statutory rule withdrawing livelihood on remarriage must be measured.[270] Secondly, the forfeiture undermines the social objective that section 1 announces. If the public purpose was to remove "all legal obstacles to the marriage of Hindu widows," a property rule that withdraws maintenance and limited inheritance is in tension with that legislative aim.[271]

The property penalty also sits within a wider, pre-Partition framework that limited women's proprietary autonomy. The Hindu Women's Rights to Property Act 1937, though progressive for its time, often confined a widow's share to a limited estate, restricting alienation and postponing full ownership to the next male heirs.[272] The 1856 forfeiture on remarriage locks that logic in place. In the absence of subsequent Bangladeshi legislation that converts limited interests into absolute ownership, widows remain structurally dependent. By contrast, Indian reforms have moved away from limited estates by converting female interests into absolute ownership[273] and, more recently, towards parity of daughters in coparcenary property, a trajectory affirmed by the Supreme Court of India when interpreting the 2005 amendment to section 6 of the Hindu Succession Act 1956.[274] The comparative path is not determinative for Bangladesh, but it highlights an available legislative option that aligns personal law outcomes with constitutional equality.[275]

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[269] Hindu Widows' Remarriage Act 1856 (n 251) preamble.

[270] Constitution of the People's Republic of Bangladesh 1972 (n 1), arts 27 and 28(2).

[271] Hindu Widows' Remarriage Act 1856 (n 251) preamble (restated).

[272] Hindu Women's Rights to Property Act 1937 (n 250) s 3(3) ('limited interest known as a Hindu woman's estate').

[273] Hindu Succession Act 1956 (India) s 14(1) (converting a Hindu woman's limited estate into absolute property), as a comparative illustration.

[274] Hindu Succession (Amendment) Act 2005 (n 43) s 6 (daughters as coparceners by birth); *Vineeta Sharma* (n 43) [46], [55], [60] (clarifying interpretation of amended s 6).

[275] Constitution of the People's Republic of Bangladesh 1972 (n 1), arts 27–28; Hindu Succession Act 1956 (n 273) s 14(1); Hindu Succession (Amendment) Act 2005 (n 43) s 6; *Vineeta Sharma* (n 43).

Two immediate, constitution-compatible reforms would reduce the discriminatory impact of section 2. The first would be to convert any subsisting limited interest into absolute ownership on the widow's option after a defined period, thereby decoupling remarriage from automatic forfeiture. The second would be to replace forfeiture with a calibrated adjustment rule that reflects the fact of remarriage without extinguishing all rights of maintenance or residence, subject to judicial discretion and the financial capacities of the parties. Neither measure would compel remarriage, nor would either foreclose religious rites. Both would remove a sex-specific economic penalty attached to the exercise of equal marital capacity.[276]

Pending legislative action, courts can also mitigate harm through construction. Because section 2 preserves testamentary freedom, wills may expressly allow remarriage without forfeiture.[277] Courts can encourage the use of such clauses in appropriate estates and, where disputes arise, prefer constructions that avoid unnecessary displacement of a widow's livelihood where the instrument admits of more than one reading. Moreover, where a widow faces eviction or destitution on remarriage, courts can deploy constitutional equality as an interpretive aid, calibrating relief through injunctions and maintenance orders in Family Courts proceedings so that the forfeiture does not produce disproportionate hardship.[278] The point is not to rewrite the statute judicially, but to apply it in a manner that respects its purpose while giving effect to the Constitution's guarantee of equal protection.

Any modern reconsideration of the 1856 Act must attend to guardianship. Section 3 authorises the appointment of a guardian for a deceased husband's children upon the widow's remarriage, a device that, in practice, has reinforced a presumption in favour of the patriline.[279] Contemporary best interests standards, equal parental authority, and the equality clauses of the Constitution point in a different direction. A rights-conforming update would remove any presumption that remarriage diminishes maternal capacity to act as guardian, and would require decisions to be

[276] ibid arts 27–28; Hindu Women's Rights to Property Act 1937 (n 250) s 3(3); Hindu Succession Act 1956 (n 273) s 14(1).

[277] Hindu Widows' Remarriage Act 1856 (n 251) s 2.

[278] Constitution of the People's Republic of Bangladesh 1972 (n 1), arts 27–28; Family Courts Act 2023 (n 260) s 5 (exclusive civil jurisdiction over maintenance, guardianship and custody alongside other family matters).

[279] Hindu Widows' Remarriage Act 1856 (n 251) ss 1, 3.

made by reference to the child's best interests, parental fitness and continuity of care, rather than marital status.

C. The Hindu Marriage (Removal of Disabilities) Act, 1946

The Hindu Marriage (Removal of Disabilities) Act 1946 was a narrow, technical statute. It removed specific ceremonial and lineage-based impediments by declaring that a marriage between Hindus would not be invalid merely because the spouses shared the same *gotra* or *pravara*, or belonged to different sub-divisions of the same caste.[280] The Act thus targeted a cluster of purity rules that had historically impeded certain unions, especially where village opinion and priestly authority policed orthodoxy. In Bangladesh, where Hindu personal law remains largely uncodified, the Act continues to apply, and section 2 has been carried forward in official consolidations.[281] By disabling these ritual bars, the statute modestly enlarged the field within which Hindu women could marry without fear that their unions would be denied legal recognition on caste or gotra grounds.

Yet the equality dividend is tightly circumscribed. First, the Act does not speak to the central gendered asymmetries of Bangladeshi Hindu personal law: it neither creates a right to divorce nor regulates polygamy, consent, or marital remedies. As a result, women's ability to exit harmful marriages still turns on the separate, limited recourse to a decree of separate residence and maintenance under the 1946 statute specific to that subject, not on any dissolution right, while divorce remains absent from the default regime.[282]

Secondly, documentary vulnerability persists. Even a valid marriage can be difficult to prove absent civil paperwork, and until 2012, there was no tailored framework for recording Hindu marriages. The Hindu Marriage Registration Act of 2012 mitigates that evidentiary deficit by creating a civil record for marriages solemnised by Hindu rites, thereby improving access to

[280] Hindu Marriage Disabilities Removal Act 1946 (Bangladesh) (Act XXVIII of 1946) s 2.

[281] ibid (restated application of s 2).

[282] Hindu Married Women's Right to Separate Residence and Maintenance Act 1946 (n 107) s 2.

maintenance, residence, and other remedies that presuppose proof of status; nonetheless, registration is not universal in practice.[283]

From a constitutional perspective, the 1946 measure sits awkwardly with contemporary equality guarantees. Articles 27 and 28 demand equality before the law and prohibit sex discrimination; The social-justice commitments under Article 10 further permit purposive legislative choices that reduce structural dependency.[284] Removing gotra and sub-caste impediments advances individual freedom of choice, but the statute leaves intact the sex-specific vulnerabilities that follow from the absence of divorce and from weak documentation.[285] Where state courts administer personal law, constitutional standards travel with them, and the State bears responsibility for ensuring that women enjoy equal protection in family life. In that light, the 1946 Act is best read as a pre-Partition, anti-caste housekeeping rule: necessary to prevent invalidation of marriages on ritual grounds, but insufficient to secure women's substantive equality without complementary reforms on registration, exit, and economic security.

D. The Guardians and Wards Act, 1890

The Guardians and Wards Act 1890 is the principal civil statute through which courts in Bangladesh confer, regulate, and supervise guardianship of minors.[286] Its architecture is formally religion-neutral and oriented to judicial discretion. In practice, however, that neutrality is not synonymous with gender equality. Because the Act was framed as a procedural code that presupposes, rather than recasts, the underlying personal law entitlements, it leaves intact the asymmetries of uncodified Hindu law.[287] For Hindu women, the consequence is a familiar pattern: access to a forum is secure, but the baseline from which a mother must argue for guardianship remains contingent, negotiated through discretion and welfare language rather than grounded in an equal statutory presumption.

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[283] Registration of Hindu Marriage Act 2012 (n 64) s 3(1) (registration optional).

[284] Constitution of the People's Republic of Bangladesh 1972 (n 1), arts 27, 28, 10.

[285] Human Rights Watch (n 39) 49–50; Plan International and partners, *Marriage Registration in Bangladesh: Final Report* (n 79).

[286] Guardians and Wards Act 1890 (n 113) s 4.

[287] ibid s 17(1).

Two features matter. First, the discretionary design of the Act allows courts to prefer the child's welfare as the organising criterion.[288] This is an advantage over rigid status rules and has, over time, enabled appointments that place children with mothers notwithstanding patrilineal claims. Yet welfare analysis can only do so much where the surrounding legal order supplies no clear parity of parental authority. In Bangladesh there is no codified Hindu guardianship regime comparable to the post-1956 framework in India; mothers therefore litigate from a position that is often evidentially and culturally disadvantaged, and the generalities of the Act do not themselves cure that imbalance.[289] The risk is that welfare becomes a site where stereotypes about maternal capacity or paternal control silently shape outcomes unless courts actively police such reasoning. Contemporary family court practice needs to make that policing explicit.

Secondly, effectiveness turns on institutions. Guardianship petitions today proceed through the specialised family court system.[290] That matters, because the Family Courts Act 2023 restated a citizen-wide forum for custody and guardianship and gave it procedural tools, active case management, staged hearings, and conciliatory mechanisms, that can be used to secure interim protection for mothers and children while the court builds the record necessary for a final order.[291] Properly deployed, that procedural latitude counters documentary deficits and delays that disproportionately harm Hindu women whose marriages were never registered and who therefore struggle to prove status at the threshold.[292] Even so, recurring frictions persist: missing civil documentation, unequal exit rights from marriage, and the absence of an equality-centred guardianship baseline. These features depress the equality yield of any guardianship litigation run under the 1890 framework, however conscientious the judge.

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[288] ibid s 17(1)-(2).

[289] Abuzar Gifari, 'Legal framework on Hindu marriage in Bangladesh' *The Daily Star* (Dhaka, 22 September 2023) https://www.thedailystar.net/law-our-rights/news/legal-framework-hindu-marriage-bangladesh-3424946 accessed 8 October 2025 (noting the absence of comprehensive codification of Hindu personal law beyond the 2012 Act); Hindu Minority and Guardianship Act 1956 (n 111) ss 6, 13 (illustrating the post-1956 codified framework in India).

[290] Family Courts Act 2023 (n 260) (replacing the Family Courts Ordinance 1985) s 5(e) (exclusive jurisdiction over suits relating to guardianship and custody of children).

[291] Abuzar Gifari, 'An analysis of the Family Courts Act 2023' *The Daily Star* (Dhaka, 22 December 2023) https://www.thedailystar.net/law-our-rights/news/analysis-the-family-courts-act-2023-3500311 accessed 8 October 2025 (confirming repeal of the 1985 Ordinance and continuation of jurisdiction under s 5).

[292] Registration of Hindu Marriage Act 2012 (n 64) s 3(1)–(2) (registration for evidentiary purposes; non-registration does not impair validity).

A further difficulty is the interaction between guardianship and other parts of the civil-protective architecture. Where a Hindu woman seeks custody or control of residence in the context of domestic abuse, the welfare mandate of the guardianship court should operate alongside the remedial tools available in adjacent statutes and judicial directions.[293] The equality jurisprudence of Bangladesh demonstrates that, pending legislative reform, courts may craft and apply interim, gender-responsive procedures to ensure that rights are effective in fact, not merely on paper. That method is transferable to guardianship: stereotype-free evidential directions, time standards for interim custody, and protective orders against dispossession are all consonant with constitutional guarantees and with the contemporary family court scheme through which applications under the Guardians and Wards Act 1890 are now processed under the Family Courts Act 2023.

Against that backdrop, how does the 1890 Act affect Hindu women's right to equality? Positively, it furnishes a route to judicial declaration, supervision, and variation of guardianship that is open to all citizens; it can, and frequently does, deliver outcomes that reflect a child's best interests and a mother's caregiving role. Negatively, because it is a framework statute that does not itself establish co-equal parental authority, Hindu mothers continue to rely on judicial discretion rather than on a statutory parity rule.[294] The combination of optional Hindu marriage registration, gaps in codified exit rights, and the absence of an explicit presumption of joint guardianship means that equality before law is too often formal rather than real. The Act, in short, is a necessary instrument for justice, but not a sufficient one for equality.

Three reforms would align guardianship practice with constitutional commitments without disturbing religious rites. First, legislate an express, rebuttable presumption of joint parental responsibility for all communities, with the child's welfare and safety as the paramount consideration. Secondly, make Hindu marriage registration effectively universal, coupled with simplified late registration, so that mothers do not carry an evidential handicap into guardianship litigation.[295] Thirdly, issue practice directions to family courts mandating stereotype-free reasoning, early interim orders, and robust enforcement, thereby anchoring the 1890 Act within an

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[293] Domestic Violence (Prevention and Protection) Act 2010 (Act No LVIII of 2010) (Bangladesh) ss 3–6; Domestic Violence (Prevention and Protection) Rules 2013 (Bangladesh) rr made under s 36 of the 2010 Act.

[294] Guardians and Wards Act 1890 (n 113) s 19(b).

[295] Registration of Hindu Marriage Act 2012 (n 64) s 3(1)–(2) (registration provided for evidentiary purposes but non-registration does not impair validity).

equality-conscious procedural culture. Taken together, these measures would allow the Guardians and Wards Act to serve as a conduit for, rather than a ceiling on, the equal citizenship of Hindu women and the welfare of their children.

E. The Hindu Law of Inheritance (Amendment) Act, 1929

The Hindu Law of Inheritance (Amendment) Act 1929 was a cautious adjustment to Mitākṣarā succession, not a transformation of women's proprietary status. Its operative move was to reorder heirs of a Hindu male dying intestate by inserting a small set of female (and one cognate) relatives into the line: a son's daughter, a daughter's daughter, a sister, and a sister's son, ranked after the father's father and before the father's brothers.[296] Crucially, the Act applied only to persons otherwise governed by Mitākṣarā law and only to separate, non-coparcenary property; it neither touched the rules of survivorship within the coparcenary nor reached *Dayābhāga* jurisdictions.[297] Those drafting choices sharply delimit its significance for Bangladesh. Hindu succession in Bengal has historically been organised under the *Dayābhāga* school, which the 1929 statute did not purport to amend. As a result, the Act's modest recognition of additional female heirs never reconfigured the baseline architecture in present-day Bangladesh, where the governing doctrinal frame remained *Dayābhāga* and colonial piecemeal reforms did not culminate in a comprehensive post-colonial code.[298] The broader pattern, as contemporary analysis underscores, is that colonial enactments eased particular exclusions without delivering parity in ownership or systematic equality for female heirs.

From the standpoint of constitutional equality, the design of the Act falls short on three counts. First, its Mitākṣarā-only ambit meant that the statute scarcely intersected with the lives of most Bangladeshi Hindu women, who continued to navigate succession under *Dayābhāga* rules unaffected by the 1929 changes. Secondly, even within its domain, the statute did not disturb the coparcenary, the principal engine of male priority under Mitākṣarā, nor did it confer absolute equality upon daughters as heirs; it merely admitted a narrow class of female relatives into a

[296] Hindu Law of Inheritance (Amendment) Act 1929 (Bangladesh) s 2.

[297] ibid. s 1(2).

[298] Gobinda Chandra Mandal, 'Stridhana and Hindu Women's Property Rights in Bangladesh: A Legal Analysis of the Dayabhaga Tradition' (2024) 35(2) *Dhaka University Law Journal* 63, 64, 72, 83.

specific rung of the order of heirs to separate property. Thirdly, by saving special family or local custom, the Act preserved avenues by which existing hierarchies could be maintained in practice, notwithstanding the formal insertion of some female heirs.[299] Placed within the contemporary legal mosaic of Bangladesh, the implication is plain. Because Bangladesh did not enact a successor Hindu code comparable to India's post-1956 reforms, these pre-Partition statutes form part of the background against which Articles 27 and 28 must be read.[300] The 1929 Act neither altered the *Dayābhāga* template nor secured co-equal, alienable ownership for women; it therefore offers, at best, a historical token of inclusion rather than a substantive realisation of equal protection for Hindu women in Bangladesh today.

F. The Hindu Gains of Learning Act, 1930

The Hindu Gains of Learning Act of 1930 was a targeted reform that altered the classification of property rather than the architecture of succession. By declaring that acquisitions traceable to a person's education, professional skill, or intellectual labour constitute that individual's separate property, the Act insulated such "gains" from absorption into joint family properties.[301] In principle, this creates an enclave of full ownership for Hindu women over their earnings and professional acquisitions, independent of marital or agnatic claims. The point is not trivial. Where widows' entitlements in inherited estates were historically cabined as limited interests, a woman's self-acquired property under the 1930 statute remains hers outright; it is governed by ordinary rules of separate property, not by the limitations that attend devolutions through the husband's line.[302] Read conceptually, the Act therefore supplies an equality-adjacent protection: it secures the fruits of a woman's learning and labour against appropriation by kin, and it does so without demanding proof of consent or contribution from the family.

Yet the promise of the Act is structurally contingent in Bangladesh. First, the Act leaves untouched the distributive core of Dayabhaga succession, which continues to privilege male heirs and to deny

[299] Hindu Law of Inheritance (Amendment) Act 1929 (n 296) s 3(a)–(c).

[300] Mandal (n 298) 63 (abstract noting the lack of codified Hindu personal law and calling for codification); Constitution of the People's Republic of Bangladesh 1972 (n 1), arts 27–28.

[301] Hindu Gains of Learning Act 1930 (Bangladesh) ss 2(b), 3.

[302] Hindu Women's Rights to Property Act 1937 (n 250) s 3(3) (limited interest known as a Hindu woman's estate).

daughters coequal shares in ancestral property.[303] It modifies what may be treated as self-acquired, but it does not alter who takes on intestacy or the hierarchy of heirs. In a jurisdiction that never adopted a post-colonial Hindu code on the Indian model, the pre-Partition framework endures, so the equality dividend from the 1930 Act remains peripheral to the main channels of wealth transmission.[304] The result is predictable: pockets of autonomy over self-acquisitions coexist with a baseline of gender-skewed succession in family property. Secondly, effectiveness turns on access to education, paid work, and documentation. A statute that protects "gains of learning" will only benefit those enabled to learn, to work, and to hold assets in their own name. Where Hindu marriage registration remains optional, women frequently lack the documentary footing necessary to press associated claims (maintenance, custody, or protective orders) that stabilise the conditions for sustained employment and asset-holding. Optionality depresses the evidential floor in exactly the disputes where speed matters, and it therefore weakens the ecosystem within which separate property can be accumulated and defended.[305]

Thirdly, the 1930 Act must be located within a wider colonial settlement that ameliorated margins while preserving the centre. The signature of the period measures, such as the Hindu Women's Right to Property Act 1937 and the Hindu Widows' Remarriage Act 1856, offered partial openings but retained male-preferential defaults or imposed forfeitures that chilled women's choices.[306] Against that background, a classification rule favouring self-acquisitions is welcome but insufficient; it does not convert the equality clauses into parity in devolution.

The constitutional frame clarifies the normative stakes. Articles 27 and 28 require that the state's legal order not enforce discrimination on grounds of sex, and they license carefully tailored legislative and procedural reform to remove structural barriers. The 1930 Act can be one element in such a programme, but only alongside measures that guarantee documentary status, codify equal

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[303] Archana Mishra, 'Devolution of Property for Hindu Female: Autonomy, Relationality and the Law' (2015) *International Journal of Law, Policy and the Family* 149.

[304] Gifari (n 289) (noting the absence of a comprehensive post-colonial Hindu personal law code and the optional nature of the Registration of Hindu Marriage Act 2012).

[305] Registration of Hindu Marriage Act 2012 (n 64) s 3(1) (registration optional; evidentiary rather than constitutive).

[306] Hindu Widows' Remarriage Act 1856 (n 251) s 2 (forfeiture of certain contingent interests on remarriage); Hindu Women's Rights to Property Act 1937 (n 250) s 3(3).

succession shares, and design accessible forums capable of giving timely effect to women's property claims.[307]

G. The Hindu Women's Right to Property Act, 1937

Read after the discussion of constitutional guarantees, this statute illustrates how incremental reform in colonial legislation both widened and constrained Hindu women's proprietary claims.[308] The preamble set its objective "to amend the Hindu law to give better rights to women in respect of property," and section 2 overrode contrary custom by providing that, "Notwithstanding any rule of Hindu law or custom to the contrary, the provisions of section 3 shall apply where a Hindu dies intestate leaving a widow."[309] Under section 3(1), for *Dayābhāga* heirs, a widow succeeded to the same share in her husband's estate "as a son," and under section 3(2), in Mitākṣarā joint family property she took "the same interest … as that of her husband."[310] The celebrated, yet debilitating, proviso followed in section 3(3): "Any interest devolving on a Hindu widow under the provisions of this section shall be the limited interest known as a Hindu woman's estate, provided however that she shall have the same right of claiming partition as a male owner."[311] Section 3(4) excluded estates descending to a single heir by special custom and property governed by the Indian Succession Act 1925.[312]

Doctrinally, the Act performed a double movement. It displaced earlier exegetical barriers by recognising the widow as a statutory heir and admitted her, at least formally, to partition.[313] Yet it simultaneously constitutionalised the "Hindu woman's estate", a life interest that denied powers

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[307] The Constitution of the People's Republic of Bangladesh arts 27 (n 1), 28(1) and 28(4).

[308] Hindu Women's Rights to Property Act 1937 (n 250) preamble ('to give better rights to women in respect of property'); ibid s 2 ('Notwithstanding any rule of Hindu Law or custom to the contrary…').

[309] Hindu Women's Rights to Property Act 1937 (India) s 2.

[310] Hindu Women's Rights to Property Act 1937 (n 250) s 3(1)–(2).

[311] ibid s 3(3).

[312] ibid s 3(4); Indian Succession Act 1925 (India) s 30 and related provisions (succession to property of persons governed by various personal law regimes).

[313] Hindu Women's Rights to Property Act 1937 (n 250) ss 3(1)–(2); *Satrughan Isser v Sabujpari* AIR 1967 SC 272 (adoption, impartible estates and female succession; recognition that a custom of female succession may be valid if ancient, certain and reasonable).

of absolute alienation and reversioned property to the husband's reversioners on the widow's death.[314] The effect, particularly under *Dayābhāga* rules prevailing in Bengal and present-day Bangladesh, was paradoxical: one step forward by conferring a share, one structural step back by withholding full ownership.[315] Classical commentators noted that even where partition was invoked, the widow's autonomy remained circumscribed by the limited estate.[316] As later Indian jurisprudence confirmed, the statutory partition right coexisted with the disabling limitation on title, such that relief in form did not translate into marketable dominion.[317]

For Bangladesh, three consequences matter. First, the text of the Act entrenched a hierarchy among female heirs. Widows were singled out for modest improvement, while mothers, daughters and sisters were left to pre-existing rules that systematically privileged males. The scheme thereby reinforced the agnatic bias of *Dayābhāga* succession.[318] Secondly, the application of the Act was conditioned by intestacy and by local customs saved in section 3(4), enabling male relatives, in practice, to divert assets by will, oral gifts or reliance on special succession usages, a phenomenon documented in socio-legal accounts of rural property transfer.[319] Thirdly, the limited estate was ill-suited to the economic realities of abandonment, desertion and widowhood. Without powers of sale or mortgage, and confronted by kin gatekeeping, many widows lacked the credit and liquidity that absolute ownership would have afforded. The statute thus reduced outright exclusion but produced a plateau of constrained capability.[320]

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[314] Hindu Women's Rights to Property Act 1937 (n 250) s 3(3); cf. *Controller of Estate Duty, Madras v Alladi Kuppuswamy* (1977) 3 SCC 385 (widow's interest under the 1937 Act treated as akin to a coparcenary interest for estate-duty purposes, ceasing on her death and enlarging the shares of surviving coparceners).

[315] For the regional setting, see Constitution of the People's Republic of Bangladesh 1972 (n 1), arts 27–28 (regional equality baseline against which pre-Partition Hindu property statutes are read).

[316] Satyajeet A Desai (ed), *Mulla: Hindu Law* (20th edn, LexisNexis Butterworths 2007) 187.

[317] *Shamlal v Amarnath* (1969) 3 SCC 774 [24]–[26]; *Satrughan Isser v Sabujpari* (n 313); *Vineeta Sharma* (n 43) paras 25, 46, 55, 60, 63 (restating the nature of a Hindu woman's interest and enlarging daughters' coparcenary rights under the amended s 6 of the Hindu Succession Act 1956).

[318] Hindu Women's Rights to Property Act 1937 (n 250) s 3 (conferring improved succession rights on widows while leaving other female heirs largely under prior law).

[319] Bina Agarwal, *A Field of One's Own: Gender and Land Rights in South Asia* (Cambridge University Press 1994) 260–69.

[320] Hindu Women's Rights to Property Act 1937 (n 250) s 3(3); R Sathiya Bama and N Neela, 'Hindu Women's Right to Property Act 1937: A Study' (2014) 1(4) *Shanlax International Journal of Arts, Science & Humanities* 1, 3–5.

From a constitutional vantage, the Act sits uneasily with the promise of equal protection in Article 27 and the prohibition of sex discrimination in Article 28.[321] Contemporary equality analysis, attentive to structural disadvantage, would question a regime that elevates a single female category, the widow, yet withholds full ownership and excludes daughters from co-equal succession. The normative tension sharpens when read with the obligations of Bangladesh under CEDAW to ensure equality in property relations and to modify discriminatory social patterns.[322] The methodological stance adopted here is doctrinal, by parsing sections 2 and 3 in their exact terms, and socio-legal, by attending to how limited estates operate in practice to keep Hindu women economically dependent. The policy implication for present reform debates is concrete. A modern Bangladeshi code should replace the life-interest model with absolute succession for female heirs and extend intestate shares on a sex-neutral basis to daughters and widows alike, supported by clear powers of alienation and robust evidentiary rules for wills and gifts.[323]

H. The Hindu Inheritance (Removal of Disabilities) Act, 1928

This earlier enactment exhibits the narrow compass of colonial egalitarianism. Section 2 provided that, "no person shall be excluded from inheritance or from any right or share in joint-family property by reason only of any disease, deformity, or physical or mental defect," with a carve-out for those "who are, and from birth, lunatics or idiots."[324] The statute therefore removed select status-based disqualifications, yet it said nothing about sex-based exclusions embedded in the classical materials and customary practice. Its reach was further curtailed by section 1(3), which declared that "It shall not apply to any person governed by the Dayabhaga School of Hindu Law," a school that governs succession in Bengal and, after Partition, in Bangladesh.[325]

Three analytical points follow. First, as a matter of text, the 1928 Act consciously targeted disability disqualifications while declining to unsettle male primacy. In that sense, it was a

[321] Constitution of the People's Republic of Bangladesh 1972 (n 1), arts 27–28.

[322] CEDAW (n 3) arts 5, 16 (equality in family relations and stereotype modification).

[323] For judicial treatment of the widow's statutory share and its limits, see *Alladi Kuppuswamy* (n 314); for socio-legal reform levers, see Agarwal (n 319).

[324] Hindu Inheritance (Removal of Disabilities) Act 1928 (Bangladesh) s 2.

[325] ibid s 1(3) (extent of operation).

minimalist correction of particular injustices rather than a gender-equality statute. Secondly, by excluding *Dayābhāga* adherents, the Act surrendered much of its potential effect in the territories that now constitute Bangladesh. The people most likely to benefit from its limited liberalisation were thereby left untouched. Thirdly, the statute's savings of accrued rights and of religious offices preserved entrenched hierarchies in succession to endowments and trusts, domains where women's exclusion was often reinforced by ritual rationales.[326]

Placed beside the 1937 Act the 1928 Act underscores the piecemeal character of colonial reform. Where 1928 removed disability-based exclusions, 1937 introduced a new female claimant but hedged her title.[327] Neither statute altered the basic architecture of agnatic inheritance under *Dayābhāga* or supplied daughters with co-equal rights in ancestral property.[328] Standard treatises acknowledged the reformist rhetoric but recorded the survival of the limited estate and male preference until mid-twentieth-century codifications elsewhere.[329] In Bangladesh, which did not enact a successor code on the Indian model after 1971, these pre-Partition statutes remain the primary textual artefacts against which constitutional equality must now be read.[330]

I. The Family Courts Act, 2023

Situated after the constitutional equality analysis and the discussion of personal law statutes, the Family Courts Act 2023 supplies the principal procedural architecture through which Hindu women must, in practice, vindicate status, maintenance, guardianship and custody claims. Its effectiveness turns on jurisdiction, forum design, evidentiary flexibility, and enforcement. This

[326] ibid s 3 (removal of certain disqualifications on inheritance).

[327] Hindu Women's Rights to Property Act 1937 (n 250) s 3(1)–(3).

[328] F Begum, 'Analyzing Hindu Women's Right to Property in Bangladesh' (2018) 6(1) *Kathmandu School of Law Review* 99, 105–08 (noting Dayābhāga's governing position in Bangladesh and the limited succession pathways for women).

[329] P V Kane, *History of Dharmaśāstra* vol 5 pt 1 (Bhandarkar Oriental Research Institute 1958) 576–84; Werner Menski, *Hindu Law: Beyond Tradition and Modernity* (Oxford University Press 2003) 135–40, 145–50, 160–65; Madhu Kishwar, 'Codified Hindu Law: Myth and Reality' (1994) 29(33) *Economic and Political Weekly* 2145, 2145–46, 2155.

[330] Gifari (n 289) (post-1971, no comprehensive Hindu personal law code enacted; Registration of Hindu Marriage Act 2012 remains the sole Hindu-specific statute and is optional).

subsection reads the Act purposively against Articles 27 and 28 of the Constitution, and against the doctrinal and practical barriers already identified in relation to Hindu women.[331]

The Act repeals the Family Courts Ordinance 1985 and restates a specialist forum within the civil justice system. Section 3 creates normative precedence, providing that the statute shall prevail over inconsistent laws, "supremacy of the law" being stated in categorical terms.[332] In line with that priority rule, section 4 establishes Family Courts, and section 5 defines their subject-matter jurisdiction, including dissolution of marriage, restitution of conjugal rights, dower, maintenance, and custody and guardianship of minors.[333] The legislative design is procedural rather than confessional. Nothing in sections 3 to 5 restricts access by religion. Read with the long-standing holding in *Pochon Rikssi Das v Khuku Rani Dasi*, that the family forum is available "irrespective of religion", the jurisdiction is, and should be treated as, citizen-wide.[334]

Two procedural levers are central for Hindu women. First, the statute emphasises active case management and amicable settlement. The official text sets out a sequenced process, from plaint and summons to written statement, conciliation, evidence and decree, with detailed timelines for service and hearing; the scheme encourages conciliatory resolution while preserving adjudication where settlement fails.[335] Although the Act does not abolish the ordinary law of evidence in family causes, its structure authorises flexible, welfare-oriented fact-finding through staged hearings and judicial directions. In family disputes where a Hindu woman lacks documentary proof of marriage because registration remains optional,[336] that procedural latitude is not ornamental; it is the gateway to justice. Courts should receive competent testimony of rites and cohabitation, and should not allow documentary deficits to block interim maintenance or custody orders, consistently

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[331] Constitution of the People's Republic of Bangladesh 1972 (n 1), arts 27–28.

[332] Family Courts Act 2023 (n 260) s 3 (Act to override conflicting procedural arrangements and confer a unified forum for specified family matters).

[333] Ibid. ss 4–5 (establishment of Family Courts; jurisdiction over dissolution of marriage, restitution of conjugal rights, dower, maintenance, custody and guardianship).

[334] *Pochon Rikssi Das* (n 247); Zahidul Islam, Bangladesh Legal Aid and Services Trust (BLAST), 'Strengthening Family Courts: An Analysis of the confusions and uncertainties thwarting the Family Courts in Bangladesh' (BLAST 2007) 4–5 (summarising the holding that Family Courts apply to citizens irrespective of religion).

[335] Family Courts Act 2023 (n 260) ss 6–9 (plaint, summons, written statement, conciliation and hearing sequence).

[336] Registration of Hindu Marriage Act 2012 (n 64) s 3(1)–(2); Gifari (n 289).

with the Act's purposive design and constitutional guarantees.[337] Secondly, the Act modernises routes for appeal and execution while preserving the core palette of remedies known under the 1985 regime; among the noteworthy changes are the establishment of Family Appellate Courts at the district level and the rationalisation of fees, aimed at improving access and throughput.[338] The official portal of the Judiciary lists the Family Courts Act 2023 among the primary protections for women and children, underscoring an institutional expectation of accessible remedies.[339]

Three persistent frictions, however, limit equality in practice. The first is status documentation. The Family Courts are forum inclusive, yet a Hindu woman who cannot produce a marriage certificate may still face delay or denial at the interim stage. Without legislative reform to make Hindu marriage registration effectively universal, Family Courts should mitigate harm through purposive evidential directions, time standards for interim maintenance, and protective injunctions to prevent dispossession. These measures are not novel. They follow from the precedence rule in section 3, from the conciliatory scheme of the Act, and from the constitutional duty to secure 'equal protection of law'.[340] The second is the absence of codified, community-neutral divorce rights for Hindus. Family Courts can hear a suit for maintenance, custody or guardianship, but they cannot conjure a substantive divorce entitlement where none exists in applicable personal law. That gap leaves Hindu women procedurally admitted yet substantively under-protected. The point is not to constitutionalise divorce, but to note that, in a system that relies on Family Courts as the engine of family justice, Parliament's silence on a civil ground of divorce for Hindus depresses the Act's equality yield.[341] The third concerns guardianship. Without a gender-equal statutory baseline, adjudication risks recourse to stereotypes about maternal capacity or patrilineal preference. Family

[337] Family Courts Act 2023 (n 260), ss 6–9; Constitution of the People's Republic of Bangladesh (n 1), arts 27–28.

[338] Abuzar Gifari, 'An analysis of the Family Courts Act 2023' (n 291) (noting establishment of Family Appellate Courts and revised fees), read with Family Courts Act 2023.

[339] Supreme Court of Bangladesh, 'Laws for Protection of Women and Children' (Judiciary portal) (listing 'Family Court Act, 2023' among core instruments).

[340] Family Courts Act 2023 (n 260) s 3; Constitution of the People's Republic of Bangladesh 1972 (n 1), arts 27–28.

[341] For Family Courts' subject-matter competence irrespective of religion, see *Pochon Rikssi Das* (n 247); for the lacuna in substantive Hindu exit rights, see Gifari (n 289).

Courts should therefore apply best-interests analysis and treat parental authority as equal in principle, unless evidence shows otherwise.[342]

Comparative experience and local scholarship suggest that the strengths of the Act lie in forum specialisation, simplified procedure, and an ethos of conciliation, while its limits appear in under-resourcing and in the interaction with uncodified personal law.[343] These are correctable design choices. Modest practice directions on evidence and interim relief, equality-sensitive legal aid, and structured timelines for execution would significantly increase the statute's capacity to deliver equal protection to Hindu women without altering any religious rite.[344]

Two short points of doctrine conclude this part. First, the *Pochon Rikssi Das* case remains relevant in signalling that the Family Court is not a confessional tribunal.[345] Secondly, section-by-section readings must be undertaken alongside the Constitution. Where a procedural rule is open-textured, Articles 27 and 28 are not externalities, they are the grammar of interpretation. On that approach, the Family Courts Act 2023 constitutes a necessary, but not sufficient, condition for equality. It creates the channel through which rights must flow, yet without parallel reform of Hindu personal law on divorce and guardianship, the current will too often be weak.[346]

J. The Child Marriage Restraint Act, 2017

The Child Marriage Restraint Act 2017 sits at the intersection of status, capacity and protection. It is formally religion-neutral, applies across communities, and therefore shapes the conditions under

[342] Family Courts Act 2023 (n 260) s 5(e) (custody and guardianship of minors, to be applied through best-interests principles).

[343] Abdul Mannan Bhuyean, 'The powers and functions of the family court with reference to the laws and judicial development in Bangladesh: An overview' (2025) 7(1) *International Journal of Social Science and Education Research* 371, 371–74; 'Analysis: The Family Courts Act 2023' *The Daily Star* (n 248), read with Family Courts Act 2023 (n 260).

[344] 'Analysis: The Family Courts Act 2023' *The Daily Star* (n 248); Supreme Court of Bangladesh (n 339).

[345] *Pochon Rikssi Das* (n 247); *Nirmal Kanti Das v Sreemati Biva Rani* (1995) 47 DLR (HCD) 514 (confirming Family Court availability); Zahid Biswas, 'Overriding jurisdiction of the Family Courts' *The Daily Star* (Dhaka, 10 February 2007) https://www.thedailystar.net/law/2007/02/02/analysis.htm accessed 15 November 2025.

[346] Constitution of the People's Republic of Bangladesh 1972 (n 1), arts 27–28; Family Courts Act 2023 (n 260) s 3.

which Hindu girls come to, or are coerced into, marriage, and the remedies available to prevent or redress such unions. The text of the Act contains both strong tools and a controversial exception.[347]

The Act defines child marriage as a marriage in which either or both parties are minors.[348] It establishes a multi-level prevention infrastructure, authorising the formation of Child Marriage Prevention Committees "at national, district, upazila and union levels".[349] It confers preventive powers on designated public officials and local government representatives to intervene to stop a child marriage, in addition to creating criminal offences for parties who contract, solemnise or facilitate such marriages.[350] The official Bangla consolidation confirms the structure and the distribution of administrative powers.[351] These elements align with the international obligations of Bangladesh under, inter alia, the CRC and CEDAW, including the best-interests principle, the elimination of harmful practices and equality in marriage and family relations.[352]

The controversy centres on the statute's special cases clause, widely discussed as section 19. While the English translation and authoritative commentary vary in phrasing, the core effect is to permit a marriage below the minimum age in "special cases" or in the "best interests" of the adolescent with court permission, the provision neither defining those criteria nor setting a floor age.[353] The European Parliament's resolution recorded these features contemporaneously, noting that consent of the child was not expressly required in the clause.[354] Rights groups have criticised the exception as an impunity route that rebrands coerced unions as protective measures, especially in cases of

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[347] Child Marriage Restraint Act 2017 (n 72) s 1; s 21(1) (repealing the Child Marriage Restraint Act 1929 (Act XIX of 1929)).

[348] ibid. s 2(4) (definition of 'child').

[349] ibid. s 3.

[350] ibid. s 4 (preventive powers); ss 5–11 (injunction and offences for contracting, facilitating, solemnising and registering child marriage); s 12 (documents to prove age).

[351] ibid. ss 3–5.

[352] Convention on the Rights of the Child (n 5) arts 3, 24(3); CEDAW (n 3) art 16; CEDAW Committee, 'General Recommendation No 21: Equality in marriage and family relations' (n 49) paras 3, 13–14, 20, 23, 26, 38.

[353] Child Marriage Restraint Act 2017 (n 72) s 19 ('Special provision' permitting court directed marriage in the 'best interests' of a minor with parental or guardian consent, without a stated minimum floor age).

[354] European Parliament, 'Bangladesh, including child marriages' (Resolution of 6 April 2017) 2017/2648(RSP), OJ C 298, 23 August 2018, 65 (noting the breadth of the 'special provision' under s 19 CMRA 2017).

sexual violence or pregnancy, and have urged removal or strict delimitation of the clause.[355] Academic commentary has further argued that the clause creates a discriminatory impact by normalising early marriage for girls under the guise of welfare, contrary to constitutional equality and international standards.[356]

Three doctrinal observations bear on Hindu women and girls. First, the 2017 Act is primarily penal preventive rather than status nullifying. It creates offences and equips authorities to prevent ceremonies, but it does not, of itself, render child marriages categorically void. This design choice mirrors the logic of the repealed 1929 statute, while adding stronger enforcement and institutional mechanisms.[357] The consequence is that early unions, once performed, may continue to produce status effects unless collateral civil doctrines are invoked. Secondly, the "special cases" permission should be construed narrowly, with a heavy presumption against early marriage and with a child-centred evaluation of risk, capacity, and alternatives, including protective shelter, education and social support. A purposive reading is available, even on the current text. Courts can require rigorous evidence, independent representation for the child, and give reasons that engage with equality and non-discrimination.[358] Thirdly, effective prevention requires bureaucratic muscle. Committees must not exist merely on paper. In districts with significant Hindu minorities, targeted outreach, school-linked early warning, and collaboration with temple authorities and community organisations can convert statutory power into practice; current reviews point to gaps in coordination, resourcing and monitoring that need correction.[359]

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[355] Centre for Reproductive Rights, *Ending Impunity for Child Marriage in Bangladesh: Normative and Implementation Gaps* (n 66) 7–10; Ain o Salish Kendra, *Fact Sheet: Child Marriage* (n 74) 1-2.

[356] Farzana Begum, 'A Theoretical Examination of the Child Marriage Restraint Act of 2017 in Bangladesh' (2018) SSRN Working Paper; Suriya Tarannum Susan, 'Condoning Child Marriage in Bangladesh: A Step Backwards' (Oxford Human Rights Hub, 20 April 2023) https://ohrh.law.ox.ac.uk/condoning-child-marriage-in-bangladesh-a-step-backwards/ accessed 21 September 2025.

[357] Child Marriage Restraint Act 2017 (n 72), generally; cf Child Marriage Restraint Act 1929 (Bangladesh) s 9 (penalties without statutory nullity); A Amirapu, MN Asadullah and Z Wahhaj, 'Can the Law Affect Attitudes and Behaviour in the Absence of Strict Enforcement? Experimental Evidence from a Child Marriage Reform in Bangladesh' (IZA Discussion Paper No 17410, IZA Institute of Labor Economics, October 2024) 2, 3, 8.

[358] Child Marriage Restraint Act 2017 (n 72) s 19, read with CRC art 3 and CEDAW Committee, 'General Recommendation No 21: Equality in Marriage and Family Relations' (n 49); Government of Bangladesh, *Child Marriage Restraint Rules 2018* (noting the need for detailed guidance); Ministry of Women and Child Affairs, *National Action Plan to End Child Marriage 2018–2030* (n 84) 6–8.

[359] Ain o Salish Kendra (n 355) 2–3 (coordination and monitoring deficits in Child Marriage Prevention Committees).

Two practical interactions with the Hindu personal law landscape deserve emphasis. First, optional registration of Hindu marriages, discussed earlier, hampers detection and evidence. When unions occur without civil documentation, officials have less capacity to intervene at the outset and to prove an offence after the fact. Aligning the 2012 registration regime with the 2017 prevention framework would support deterrence and prosecution.[360] Secondly, the absence of a codified civil ground of divorce for Hindus means that girls married early remain locked into unions without a clear exit route. The 2017 Act can prevent, punish, and, in principle, discourage early marriage. It cannot, on its own, deliver divorce rights to those already married as children. For completeness and coherence, Parliament should therefore pair child-marriage prevention with a neutral civil divorce ground and with protective financial consequences at dissolution, so that girls' capacity to rebuild their lives is not contingent on the discretion of in-laws or on long-shot constitutional litigation.[361]

K. The Special Marriage Act, 1872

The Special Marriage Act 1872 supplies a civil form of marriage outside religious rites for those who fall within its conditions.[362] The statutory text states in terms, "An Act to provide a form of Marriage in certain cases."[363] Its principal gateway provision reads:

"Marriages may be celebrated under this Act between persons neither of whom professes the Christian or the Jewish, or the Hindu or the Muhammadan, or the Parsi or the Buddhist, or the Sikh or the Jaina religion, or between persons each of whom professes one or other of the following

[360] Registration of Hindu Marriage Act 2012 (n 64) s 3(1)–(2) ('may be registered'; non-registration does not impair validity); Imran Hossain, 'Registration of Hindu Marriage Act: A protective shield for women' *Dhaka Tribune* (Dhaka, 1 February 2020) https://www.dhakatribune.com/bangladesh/200206/hindu-marriage-registration-act-a-protective accessed 15 November 2025.

[361] On the absence of a codified Hindu divorce in Bangladesh and the limited remedy of separate residence and maintenance, see Hindu Married Women's Right to Separate Residence and Maintenance Act 1946 (n 107) s 2; Gobinda Chandra Mandal, 'Born to Be Unequal? An Assessment of the Rights and Status of Hindu Women in Bangladesh' (2024) 35(1) *Dhaka University Law Journal* 113, 125, 145–47, 148–49; see also Family Courts Act 2023 (n 260) (maintenance jurisdiction).

[362] Special Marriage Act 1872 (Bangladesh) preamble.

[363] ibid (secular civil-marriage route for persons of different or no religious affiliation).

religions, that is to say, the Hindu, Buddhist, Sikh or Jaina religion upon the following conditions," including age, consent of guardian below twenty-one, and freedom from prohibited degrees.[364]

The notice-objection-certificate sequence is carefully specified. One party must give notice to the Registrar for the district in which one has resided for fourteen days; the notice is entered in a Marriage Notice Book open to public inspection; objections may be filed within fourteen days on enumerated grounds, and the Registrar's power to proceed is suspended if a competent court is seized of an objection.[365] The declaration, solemnisation, and certification of marriage are then completed in the presence of the Registrar and three witnesses, with a prescribed form of words, and a certificate entered in the Marriage Certificate Book.[366]

For questions of gender equality within personal law, the Act's collateral provisions on status and succession are decisive. Section 22 states, "The marriage under this Act of any member of an undivided family who professes the Hindu, Buddhist, Sikh or Jaina religion shall be deemed to effect his severance from such family."[367] Severance dissolves coparcenary ties and, on classical doctrine, releases the married person from the incidents of joint property. Section 23 provides that a person who so marries "shall have the same rights and be subject to the same disabilities in regard to any right of succession to any property as a person to whom the Caste Disabilities Removal Act XXI of 1850, applies," expressly withholding any right to religious offices or the management of religious or charitable trusts.[368] Section 24 further declares that succession to the property of any such person and of the issue of such marriage shall be regulated by the general succession law rather than by Hindu law.[369] In Bangladesh, that general law is the Succession Act 1925, which applies to persons whose succession is "under section 24 of the Special Marriage Act 1872, regulated by the provisions of this Act."[370]

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[364] ibid. s 2.

[365] ibid ss 4–9 (conditions and preliminary formalities).

[366] ibid ss 10–13, 13A (declaration, solemnisation and certification).

[367] ibid s 22.

[368] ibid s 23.

[369] ibid s 24.

[370] Succession Act 1925 (Bangladesh) s 29(2)(a) and related provisions recognising s 24 of the Special Marriage Act 1872.

The statutory scheme therefore offers an alternative family law universe to persons who marry under the Act. It severs the subject from the Hindu joint family and displaces Hindu inheritance rules in favour of the secular code.[371] This displacement matters for Hindu women in two ways. First, a Hindu woman who herself marries under the Act enters a regime in which succession is not mediated by the Mitakshara or Dayabhaga canons, potentially ameliorating inter se inequalities entrenched in classical law.[372] Secondly, even where the woman does not marry under the Act, the severance rule in section 22 for a male coparcener who marries under the Act can reconfigure joint family property, with downstream effects on the maintenance and residence claims of women within the natal or marital family.[373]

The Act is not, however, an unqualified instrument of equality. Its gateway has historically depended on religious profession and, in practice, on a form of disaffiliation from communal identity that many couples may find untenable.[374] The age and consent provisions, in their original form, were also out of step with contemporary child-marriage restraints. Later statutory developments, such as the Child Marriage Restraint Act 2017, now supply contemporary age thresholds for marriage, while practice under the Special Marriage Act is mediated by registration rules and administrative practice.[375] Moreover, while sections 23 and 24 displace Hindu succession for those who marry under the Act, they do not directly reform Hindu personal law for those who marry within it. The Act thus functions more as an opt-out device than as a universal secular template.[376] That opt-out may advance equality for those who can and do choose it, but it leaves intact the structural inequalities within the default regime.

For Hindu women in Bangladesh who seek secular equality in marriage and succession, two policy questions follow. First, should Bangladesh modernise the Special Marriage Act to remove religion-based gateways and to align procedures and age conditions with contemporary rights standards, as

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[371] Special Marriage Act 1872 (n 362) ss 22–24.

[372] On mitigation of Dayābhāga/Mitākṣarā effects through civil marriage, see Special Marriage Act 1872 (n 362) ss 22–24.

[373] Special Marriage Act 1872 (n 362) s 22.

[374] ibid s 2; Plan International Australia, *Marriage Registration in Bangladesh: Final Report* (n 79).

[375] Child Marriage Restraint Act 2017 (n 72) ss 2–5; see also Government of Bangladesh portals and guidance referring to the Special Marriage Act 1872, accessed 22 September 2025.

[376] Special Marriage Act 1872 (n 362) ss 23–24.

India did in 1954, thereby creating a genuinely universal civil marriage?[377] Secondly, how should succession and guardianship be handled for families formed under civil marriage, particularly with respect to adoption and parental authority? The 1872 Act itself contains provisions that historically restricted adoption rights for those marrying under it, reflecting nineteenth-century doctrinal anxieties. Section 25 provides, "No person professing the Hindu, Buddhist, Sikh or Jaina religion who marries under this Act shall have any right of adoption," while section 26 grants the father of such a person a right to adopt another son if he has none living.[378] These provisions were premised on a specific understanding of religious character of adoption in Hindu law, and they sit uneasily with contemporary best interests standards and constitutional equality norms.

The interface between the 2010 domestic-violence regime and the 1872 civil-marriage regime is finally worth emphasising. Many Hindu women will neither marry under the Special Marriage Act nor have secure claims to matrimonial property or residence under Hindu law. For them, the civil-protective orders available under the 2010 Act may be the only realistic means to obtain interim shelter, maintenance-like monetary relief, and protection from coercion.[379] Conversely, for couples who marry under the 1872 Act, the 2010 Act functions as a complementary shield within a secular family law framework, ensuring that the civil character of the marriage is matched by civil protection against familial violence. In both arenas, the quality of judicial practice and the depth of administrative capacity determine whether statutory promises become lived security. Empirical studies and advocacy reports point to under-reporting, weak coordination, and limited awareness, but they also document strategic litigation and coalition-building by women's organisations that can sustain institutional reform.[380] The argument that follows in the next subsection builds on this interface, considering how protective orders, civil marriage, and

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[377] Special Marriage Act 1954 (India) (Act No 43 of 1954); Abdullah Al-Mamun and Md Rezaul Karim, 'Transnational Marriages and Family Laws in Bangladesh: Contemporary Legal Issues and Post-Marital Challenges' (2025) 30(8) *IOSR Journal of Humanities and Social Science* 8, 9–10, 14.

[378] Special Marriage Act 1872 (n 362) ss 25–26.

[379] Domestic Violence (Prevention and Protection) Act 2010 (n 293) (protection orders, residence orders, monetary relief).

[380] Centre for Reproductive Rights, *Ending Impunity for Child Marriage in Bangladesh: Normative and Implementation Gaps* (n 66) 7–12 (under-reporting, coordination gaps and implementation challenges); 'Law there, awareness little' *The Daily Star* (Dhaka, 8 March 2021) (reporting implementation gaps under the 2010 Act) accessed 22 September 2025.

succession rules might be harmonised with the project of comprehensive reform of Hindu personal law to secure equality substantively rather than merely formally.

L. National Women Development Policy, 2011

The National Women Development Policy 2011 sets out a programmatic blueprint for women's advancement, at once affirming constitutional equality and enumerating sectoral commitments in education, health, employment, political participation, and law reform. It declares objectives that include establishing "equal rights of men and women," ensuring women's "security and safety," and enabling full participation in socio-economic, political, administrative, and legal spheres.[381] Sections 16 and 17 assemble a reform agenda, the latter calling for the elimination of discriminatory laws and the review of customs and practices.[382] In form, therefore, the Policy offers a normative fulcrum for legislative and administrative action that could address the entrenched private-law disabilities borne by Hindu women.[383]

The promise of the Policy must, however, be tested against the structure of legal pluralism and the State's reservations to CEDAW.[384] As noted earlier, the policy architecture gestures to harmonisation with international standards[385] while stopping short of a commitment to family law equality that would unsettle religious personal laws. While the Policy urges law reform, its text contains no specific roadmap for personal law, and therefore does not squarely engage the position of Hindu women, who continue to confront inequality in inheritance, guardianship, adoption, and marital remedies.[386] This gap matters because policy statements, unlike statutes, rely on

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[381] Ministry of Women and Children Affairs, *National Women Development Policy 2011* (Government of the People's Republic of Bangladesh, Dhaka, March 2011) Objectives.

[382] ibid. ss 16.1–16.5, 17.1–17.6.

[383] Planning Commission, *Eighth Five Year Plan (July 2020–June 2025): Promoting Prosperity and Fostering Inclusiveness* (Government of Bangladesh, Dhaka, 29 December 2020) vol I, gender-mainstreaming chapter (recognising the Policy as a guiding instrument).

[384] United Nations, 'Convention on the Elimination of All Forms of Discrimination against Women—Bangladesh: Declarations and Reservations' (UN Treaty Collection, current status) (reservations to arts 2 and 16).

[385] CEDAW Committee, 'General Recommendation No 21: Equality in Marriage and Family Relations' (n 49) esp paras 1–4, 17, 23, 34, 38, 42, 46, 47; CEDAW 1979 (n 321) art 16.

[386] World Bank, *Women, Business and the Law 2024: Bangladesh Economy Profile* (n 42) (family and assets indicators evidencing personal law-driven inequalities).

administrative translation. Without a concrete mandate to review and amend the Hindu personal law regime, the Policy's egalitarian vocabulary remains rhetorically potent but operationally thin.

The Policy further commits the Government to institutional arrangements and participation of women in law reform bodies.[387] Yet it does not impose a duty to include women's rights experts in commissions tasked with personal law review, nor does it require impact assessments of proposed reforms on religious minorities. In economic life, the Policy endorses equal wages and safe workplaces, and speaks to credit, skills, and entrepreneurship for women.[388] For Hindu women, whose economic precarity is frequently aggravated by unequal succession and constrained marital exit, these economic measures will not deliver autonomy unless accompanied by changes to property and family law.[389]

From a constitutional vantage, the Policy should be read as an administrative vehicle to implement Articles 27, 28, and 29, rather than as a freestanding charter. Article 27's guarantee of equality before law, Article 28's non-discrimination clause, and Article 29's equality of opportunity in public employment, set minimum content that the Policy cannot dilute.[390] Where policy language, practice, or interpretive footnotes are understood to immunise personal laws from equality review, the resulting carve-outs sit uneasily with constitutional supremacy and with the international obligations of Bangladesh to remove discrimination "in the family relation."[391] An equality-consistent reading would understand the Policy as requiring, not avoiding, a systematic audit of personal law rules against constitutional and treaty standards, with legislative proposals sequenced to redress the most acute harms.

Methodologically, doctrinal analysis must be complemented by socio-legal evidence on implementation. Government budget documents and sectoral strategies recognise the Policy as a

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[387] Ministry of Women and Children Affairs, *National Women Development Policy 2011* (n 381) 18–19, s 17.4 and related institutional measures.

[388] Ministry of Women and Children Affairs, *National Women Development Policy 2011* (n 381) 27–33, ss 23–26.

[389] CEDAW Committee, 'General Recommendation No 29: Economic consequences of marriage, family relations and their dissolution' (26 February 2013) paras 1–4 (linking women's economic security to equality in marital and family regimes).

[390] Constitution of the People's Republic of Bangladesh 1972 (n 1) arts 27–29.

[391] CEDAW (n 3) art 16(1); Ministry of Women and Children Affairs, *National Women Development Policy 2011* (n 381) 18–19 (noting Bangladesh's reservations).

framework for mainstreaming gender across ministries.[392] Evaluations by civil society repeatedly record gaps in legal reform and service delivery, including barriers to accessing justice for gender-based violence and the persistence of harmful practices.[393] These findings reinforce the thesis that Hindu women, situated at the intersection of minority status and patriarchal personal law norms, are poorly served by generic programming that does not tackle family law inequality at source.

Three reform implications follow. First, embed a legally binding timetable for personal law review within the law-reform commitments of the Policy, with technical working groups that include women's rights advocates from minority communities. Secondly, link the Policy's economic empowerment measures to family law change, for instance by indexing credit and entrepreneurship support to statutory recognition of women's equal property and succession rights. Thirdly, align the criminal-law response under the 2000 Act with civil remedies and support services in a survivor-centred framework, so that the penal, protective, and socio-economic arms of the State act in concert rather than in silos.[394]

Throughout, the constitutional text provides the anchor. "All citizens are equal before law and are entitled to equal protection of law," declares Article 27.[395] Article 28 forbids discrimination "on grounds only of religion, race, caste, sex or place of birth," while Article 29 insists that "there shall be equality of opportunity for all citizens in respect of employment or office in the service of the Republic."[396] These are not aspirational standards but justiciable rights. Read and applied in that light, the Policy makes plain that insulating personal law from equality review cannot be reconciled with constitutional supremacy. The task for contemporary reform is therefore not to temper equality to pluralism, but to reorganise pluralism within constitutional bounds.

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[392] Ministry of Finance, *Budget in Brief, Chapter 7: Ministry of Women and Children Affairs* (Government of Bangladesh, recent budget documentation) 1–4.

[393] BRAC, *Public Prosecution System in Bangladesh: The Issues of Justice for Violence against Women and Girls* (BRAC 2024) 24–30.

[394] Ministry of Women and Children Affairs, *National Action Plan to Prevent Violence against Women and Children 2013–2025* (Government of Bangladesh, Dhaka 2013) Introduction and strategic actions; Ministry of Women and Children Affairs, *National Action Plan to End Child Marriage 2018–2030* (n 84) 6–8 (coordination of penal, protective and social services).

[395] Constitution of the People's Republic of Bangladesh 1972 (n 1), art 27.

[396] ibid arts 28, 29.

M. Women Affairs Reform Commission Report, 2025

The preceding analysis of national legislative and institutional measures sets the stage for a closer examination of the Women Affairs Reform Commission Report of 2025, an ambitious text that aspires to rationalise the equality architecture of Bangladesh while hesitating at the threshold of personal law reform. Read in light of the normative benchmark of this chapter, namely constitutional equality and the international obligations of Bangladesh, the report's proposals exhibit both promise and constraint. The document recognises the persistence of structural disadvantage for Hindu women across marriage and divorce, inheritance and succession, maintenance, and guardianship. Yet many of its solutions remain either programmatic or optional, and therefore insufficient to unsettle the doctrinal hierarchies that reproduce gendered inequality within Hindu personal law.[397]

At the level of constitutional doctrine, the report proposes reforms to Articles 28 and 29 to widen the ambit of equality by incorporating grounds such as gender identity and by clarifying protection for marginalised communities. These aspirations are not trivial. Article 27 already declares, in categorical terms, that "All citizens are equal before law and are entitled to equal protection of law."[398] Article 28(1) adds that the State shall not discriminate "on grounds only of religion, race, caste, sex or place of birth," while Article 28(2) provides that "Women shall have equal rights with men in all spheres of the State and of public life."[399] The difficulty, and the point that the report underplays, is the translation of these textual guarantees into personal law, where the operative norms are religious and customary. Without an explicit bridge between constitutional ideals and

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[397] See Women Affairs Reform Commission, *Report 2025*) § 3.2.1.2.3. This section of the report identifies three priority areas for reform of Hindu personal law in Bangladesh. First, it proposes amendment of the Hindu Marriage Registration Act 2012 to make registration of Hindu marriages compulsory, in order to secure legal recognition of couples and to protect the rights of Hindu women. Second, it notes the absence of clear divorce provisions and recommends the enactment of a dedicated statute on divorce for Hindus, covering dissolution of marriage and related matters. Third, it highlights gaps in relation to inheritance, maintenance and support, urging amendment of the Hindu Married Women's Right to Separate Residence and Maintenance Act 1946 to include clearer rules on maintenance and recognising the need for new legislation to secure inheritance rights for Hindu women.

[398] Constitution of the People's Republic of Bangladesh 1972 (n 1), art 27.

[399] ibid arts 28(1), 28(2).

the reform of religious personal laws, constitutional renovation risks becoming symbolic rather than transformative.[400]

The report's family law specific recommendations reveal the same ambivalence. It urges that Hindu marriage registration be made compulsory by amending the Registration of Hindu Marriage Act 2012. The point is sound, for section 3 presently permits registration but does not require it, thereby depriving many Hindu women of documentary proof that underpins claims to maintenance, inheritance standing, and remedies against violence or desertion.[401] The report also recommends a statutory divorce framework for Hindus. This is a necessary corrector, since the absence of codified divorce disproportionately harms women who lack the social and economic leverage to negotiate exit on equitable terms.[402] Yet the report does not canvass the procedural architecture and substantive grounds that would ensure real protection, for example interim maintenance, residence orders, equitable division of marital assets, and child-centred custody standards with presumptive recognition of maternal caregiving.[403]

Equally revealing is the treatment of maintenance. The report identifies the colonial pedigree and patriarchal presumptions that still attend the Hindu Married Women's Right to Separate Residence and Maintenance Act 1946. That Act was a progressive innovation for its time, since it recognised a Hindu wife's claim to separate residence and maintenance in defined circumstances,[404] but it never reconstituted maintenance as an autonomous right grounded in equality. Nor did it secure procedural access for indigent women or ensure effective enforcement against recalcitrant spouses. A modern reform agenda would locate maintenance within a gender-equal matrimonial code and

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[400] Women Affairs Reform Commission (n 397) § 3.2.1.1.1-3 (constitutional and legal framework for equality), 3.2.1.2.1 (optional uniform family code); see also Constitution of the People's Republic of Bangladesh 1972 (n 1), arts 26–29.

[401] ibid § 3.2.1.2.3(a) (Registration of Hindu Marriage Act 2012—make registration compulsory); Registration of Hindu Marriage Act 2012 (n 64) s 3;

[402] ibid. § 3.2.1.2.3(b) (statutory divorce for Hindus); Constitution of the People's Republic of Bangladesh 1972 (n 1), arts 27–28.

[403] Guardians and Wards Act 1890 (n 113), s 17.

[404] Hindu Married Women's Right to Separate Residence and Maintenance Act 1946 (n 107) ss 2–3.

link it to documented care work and foregone opportunities, rather than characterising it as a paternal concession.[405]

The report's suggestions on guardianship also chart an incremental path. It proposes amendment of the Guardians and Wards Act 1890, to recognise maternal guardianship where the father is absent. As a practical step this is welcome, although it treats maternal guardianship as an exception, not as a co-equal default. The current Act is a framework statute on appointment and declaration of guardians,[406] but it does not, of itself, place mothers and fathers on an equal footing across religious communities. Any reform that merely inserts a proviso for maternal guardianship risks preserving a residual presumption in favour of paternal authority. The more principled approach would be to articulate a best-interests-of-the-child standard, under which parental status is presumptively equal, and under which caste, marital status, or widowhood cannot depress a Hindu mother's standing.[407]

The report's most far-reaching proposal appears to be a voluntary Uniform Family Law. Set against the historical patterns of pressure within closely knit religious communities, voluntariness is a thin reed on which to hang equality. Optionality presumes a level of individual agency that many women, especially minority Hindu women who face intra-community sanction, cannot exercise. A voluntary code also invites selective exit, where the most vulnerable are least able to choose the secular option, while those with bargaining power can mix and match the regime that suits their interests. Without robust anti-retaliation guarantees, protective orders, and accessible legal aid, an optional uniform code risks entrenching existing hierarchies rather than dismantling them.[408]

There is a conspicuous disjuncture between the report's normative rhetoric and its implementation pathway. The document calls for withdrawal of reservations to international instruments, including those that limit full compliance with family equality norms, and it nods at institutional reforms

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[405] Constitution of the People's Republic of Bangladesh 1972 (n 1), art 28(2).

[406] Guardians and Wards Act 1890 (n 113) ss 7, 19.

[407] Women Affairs Reform Commission (n 397) § 3.2.1.2.4 (equality in custody and guardianship/adoption rights reform; child's status and equal treatment etc.).

[408] ibid. § 11 (Uniform Family Code); Guardians and Wards Act 1890 (n 113) s 17; Convention on the Rights of the Child (n 5) arts 3(1), 12; CEDAW (n 3) art 16.

such as gender-sensitive courts and improved procedural access. Yet it offers no domestic legislative roadmap for codification, no transitional strategy for moving from plural personal regimes to a rights-based family law framework applicable without discrimination, and no sequencing that would prioritise areas where harm is most acute, such as inheritance and divorce.[409]

Finally, there are the politics of reform. The report has met with significant resistance, and official signals of support have been hesitant and non-committal. In this environment, constitutional text and international obligations are necessary but not sufficient. What is required is a legislative strategy that accepts the constitutional injunctions at face value, translates them into clear statutory rights, and insulates those rights through institutional design, budgetary commitment, and judicial training. Absent such a strategy, the equality promised to Hindu women in Articles 27 and 28 remains aspirational.[410]

Two legislative illustrations, already within reach of Parliament, would signal genuine resolve. First, amendment of the Registration of Hindu Marriage Act 2012, to make registration mandatory, coupled with a simple, localised registration process, presumptions in favour of validity for women seeking relief, and clear penalties for registrars who refuse registration.[411] Second, a Hindu Marriage and Divorce Act that codifies grounds and procedures for divorce, provides for interim and final maintenance calibrated to earning capacity and caregiving, and recognises joint matrimonial property, with a rebuttable presumption of equal shares accrued during the marriage. These measures would respect religious identity in rites and ceremonies, while guaranteeing equal civil consequences.[412]

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[409] CEDAW (n 3) art 2.

[410] Constitution of the People's Republic of Bangladesh 1972 (n 1), arts 27–28.

[411] Registration of Hindu Marriage Act 2012 (n 64) s 3.

[412] Women Affairs Reform Commission (n 397) § 3.2.1.2.3(b) (Hindu divorce legislation); Constitution of the People's Republic of Bangladesh 1972 (n 1), art 28(2); Guardians and Wards Act 1890 (n 113) s 17.

4.7 Conclusion

Here, the argument of the chapter crystallises into a set of normative benchmarks and institutional tests for the personal law regime as it affects Hindu women in Bangladesh. The aim is not to close debate, but to specify, with precision, the standards against which subsequent doctrinal analysis will be conducted, and to identify the procedural conditions that render those standards usable in practice. The universal instruments supply the core grammar. The Universal Declaration of Human Rights frames equal citizenship in family and economic life, including parity within marriage and at its dissolution, equality before the law and the equal protection of the law, and social guarantees that bear directly on maintenance and livelihood.[413] Read together, the International Covenant on Civil and Political Rights grounds adjudication in a free-standing guarantee of equal protection in Article 26 and equality of spouses at marriage and at dissolution in Article 23(4), while obliging the State to remove legal and practical barriers to women's claims.[414] The International Covenant on Economic, Social and Cultural Rights supplies the substantive equality dimension, tying work, remuneration, family protection, an adequate standard of living and education to reforms of succession, guardianship and maintenance.[415]

CEDAW is the most detailed family law template. It requires States to eliminate discriminatory laws and practices, to disrupt stereotypes, and to secure equality in marriage, parental authority and the economic consequences of dissolution; the reservations of Bangladesh to Articles 2 and 16(1)(c) remain the principal constraint on its domestic leverage and have repeatedly been criticised by the Committee.[416] The Beijing Platform for Action translates these guarantees into governance tasks, among them reviewing discriminatory personal-status rules, removing procedural barriers, and resourcing legal aid and enforcement.[417] Regional frameworks, although not binding on Bangladesh, demonstrate how equality is operationalised through concrete duties,

[413] UDHR (n 2) arts 1, 2, 7, 16, 23, 25.

[414] ICCPR (n 17) arts 2(1), 3, 23(4), 26.

[415] ICESCR (n 2) arts 2(2), 3, 6, 7(a)(i), 10, 11, 13.

[416] CEDAW (n 2) arts 1, 2, 5, 16; CEDAW Committee, General Recommendations Nos 21, 29, 33 and 35; United Nations Treaty Collection, (n 4) (reservation to arts 2 and 16(1)(c)).

[417] Beijing Declaration and Platform for Action (n 58) (strategic objectives on law reform, access to justice and gender-responsive budgeting).

monitoring and survivor-centred remedies; they will be used comparatively for method rather than transplantation.[418]

Against this international frame, the domestic constitution is the hinge. Article 27 guarantees equality before the law and equal protection of the law; it requires that status, capacity, and remedies in family causes be administered without arbitrary distinctions, and that forum design and evidential rules do not produce disparate impacts for Hindu women.[419] Article 28 adds a specific anti-discrimination code and confirms women's equal rights in all spheres of the State, authorising special measures to dismantle structural inequality in access to courts, legal aid and enforcement.[420] These clauses supply the constitutional hooks through which treaty standards are received and applied to personal law.

Two institutional levers follow. First, documentation. The Hindu Marriage Registration Act 2012 inserts a registry but keeps registration optional; the result is a recurrent documentary deficit that delays interim relief and depresses the enforceability of maintenance and custody.[421] A universal, low-cost scheme with robust late entry is equality infrastructure, not an administrative ornament. Secondly, the forum. The Family Courts Act 2023 establishes citizen-wide jurisdiction and a purposive, welfare-oriented process that should admit competent testimony of rites and cohabitation and should not permit documentary gaps to block interim relief; yet procedure cannot substitute for absent substantive rights, especially a civil ground of divorce on equal terms and a clear guardianship baseline.[422]

The inquiry carried forward in the Chapter is threefold. First, normative density is high, but do domestic rules translate it into determinate rights of status, capacity and property, consistent with UDHR, ICCPR, ICESCR and CEDAW. Secondly, institutional capability matters, so the analysis will test whether procedure, legal aid and enforcement render remedies realistically usable by

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[418] Istanbul Convention (n 129) arts 4, 12, 14 (with comparative references discussed in ch 4).

[419] Constitution of the People's Republic of Bangladesh (n 1), art 27.

[420] ibid art 28(1)–(4).

[421] Registration of Hindu Marriage Act 2012 (n 64), s 3(1)–(2).

[422] Family Courts Act 2023 (n 260) ss 3–5 (purposive, welfare-oriented procedure for dissolution, dower, maintenance, custody and guardianship).

Hindu women who lack documentary advantages. Thirdly, where Parliament has left lacunae, the question is whether courts can deploy equality-conforming constructions and interim directions so that access to justice is not illusory pending reform. These benchmarks will organise the next sections on succession and matrimonial property consequences, guardianship and custody, maintenance and social protection, and the remedial pathways through which formal status is converted into tangible security.

Chapter 5

INDIAN HINDU LAW REFORMS AND THEIR COMPATIBILITY IN BANGLADESH

5.1 Introduction

It was established in Chapter 4 that the constitutional text, together with international human rights commitments, articulates robust equality guarantees, but implementation in intimate domains under personal law is only partial. This chapter takes that analysis forward through a structured comparison with the post-independence reform of Hindu family law in India, assessing what elements of that trajectory are normatively desirable and institutionally feasible for Bangladesh. It draws upon the substance of the previously prepared materials for Chapter 5, synthesising their core claims while re-articulating them in light of current doctrinal and procedural concerns.

The purpose and scope are fivefold. First, the chapter identifies doctrinal and practical barriers to equality for Hindu women under current Bangladeshi law. These include the absence of a general divorce framework for Hindus, persistent asymmetries in inheritance and succession, gendered defaults in guardianship, and fragile maintenance entitlements that are difficult to secure in practice. Secondly, it offers a theme-by-theme preview of Indian statutory solutions and case-law developments on marriage and divorce, inheritance and succession, adoption and guardianship, and maintenance, together with the procedural architecture that makes rights legible and enforceable. Thirdly, it states the normative framework, locating reform options within the constitutional guarantees of equality and non-discrimination in Bangladesh and within the obligations of the State under core human rights treaties. Fourthly, it sets out the methodology, combining close doctrinal analysis of statutory texts and judicial decisions with socio-legal evidence on implementation. Finally, it identifies the research gap, namely the absence of calibrated transplant proposals that speak to the institutional capacities of Bangladesh while remaining faithful to constitutional principles.

The comparative benchmark is the mid-century codification in India and its later amendments. The Hindu Marriage Act 1955 established a unified regime of conditions, grounds, and procedures governing the validity and dissolution of marriage, including fault and consent-based divorce; subsequent jurisprudence has insisted on registration as a cornerstone of proof and remedy in family litigation.[1] Indian courts have treated registration not as a mere administrative choice, but as a legal device that secures women's access to maintenance, residence, and succession, and deters repudiation.[2] The Hindu Succession Act 1956, read with the 2005 amendment to section 6, abolished the daughter's disability in coparcenary property and affirmed the daughter's status as coparcener by birth, irrespective of the father's living status at the time of commencement.[3] The Hindu Minority and Guardianship Act 1956 preserved a formal preference for paternal guardianship in section 6, yet the Supreme Court read the expression "after" in a manner that recognised the mother as a natural guardian where the best interests of the child so require.[4] The Hindu Adoptions and Maintenance Act 1956 codified adoption and maintenance entitlements, setting out, in sections 18 to 22, the grounds and scope of maintenance for wives, widowed daughters-in-law, children, and aged parents; however, enforcement and quantum have remained recurring concerns.[5]

The position of Bangladesh is different in degree and design. The Constitution guarantees equality before the law and equal protection, and proscribes discrimination on grounds only of religion, race, caste, sex, or place of birth.[6] Those guarantees, read with the supremacy clause, create a constitutional floor that state recognition or enforcement of personal law may not transgress. The international plane points in the same direction. Under the International Covenant on Civil and Political Rights, articles 2, 3, and 26 require equality before the law and effective protection against discrimination; the Human Rights Committee has emphasised that article 26 is an autonomous

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[1] Hindu Marriage Act 1955 (India) ss 5, 9, 13, 13B.

[2] *Smt Seema v Ashwani Kumar* (2006) 2 SCC 578.

[3] Hindu Succession Act 1956 (India) s 6, as amended by the Hindu Succession (Amendment) Act 2005 (India); *Vineeta Sharma v Rakesh Sharma* (2020) 9 SCC 1, paras 46, 55.

[4] Hindu Minority and Guardianship Act 1956 (India) s 6; *Githa Hariharan v Reserve Bank of India* (1999) 2 SCC 228, paras 24–25.

[5] Hindu Adoptions and Maintenance Act 1956 (India) ss 18–22.

[6] Constitution of the People's Republic of Bangladesh 1972 arts 27–28.

guarantee that obliges States to secure equal and effective protection.[7] Under the Convention on the Elimination of All Forms of Discrimination against Women, article 16 requires the elimination of discrimination in marriage and family relations.[8] In the statutory domain, the Hindu Marriage Registration Act 2012 provides a framework for registration of Hindu marriages in Bangladesh; section 3 recognises registration for evidentiary purposes although registration is not mandatory, a design choice that bears directly on access to remedies.[9] These sources together form the the normative baseline of the chapter.

Methodologically, the chapter employs doctrinal analysis of statutes and case law, careful interpretation of leading authorities, and attention to statutory lacunae. On the Indian side, the analysis focuses on the structure and application of the principal Hindu code statutes, together with Supreme Court jurisprudence on registration, coparcenary, and guardianship. [10] On the Bangladeshi side, the chapter examines the legal effects of non-mandatory registration, the absence of a divorce statute for Hindus, and the limited mechanisms through which daughters and widows can secure property and maintenance, considering how procedural rules on forum competence, proof, and execution shape outcomes in practice. Throughout, socio-legal materials are used selectively to illuminate patterns of non-use and informal evasion that, cumulatively, erode formal entitlements; the concern is with enforceability as much as with doctrinal aspiration. The goal is to test transplant proposals not only for normative fit, but also for institutional plausibility.

The research gap is specific. Comparative writing often contrasts the Indian code-based regime with the largely uncodified Bangladeshi framework, yet it rarely specifies the statutory levers and procedural gateways through which courts and administrators in Bangladesh could deliver equality consistent outcomes. Conversely, domestic reform discussions sometimes invoke constitutional equality in the abstract, without identifying the concrete design features, for example, compulsory

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[7] International Covenant on Civil and Political Rights (ICCPR) (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, arts 2, 3, 26; UN Human Rights Committee, 'General Comment No 18: Non-discrimination' (1989) para 12; UN Human Rights Committee, 'General Comment No 28: Article 3 (The equality of rights between men and women)' (29 March 2000) paras 2–5.

[8] Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13, art 16.

[9] Registration of Hindu Marriage Act 2012 (Bangladesh) s 3.

[10] HMA (n1) ss 5, 9, 13, 13B; *Seema* (n 2).

or near-compulsory marriage registration, simplified maintenance procedures, time-bound execution of maintenance orders, or administrative support for succession entries, that convert rights into remedies. The chapter contributes by translating Indian doctrinal tools into context-sensitive options for Bangladesh, indicating where replication is warranted, where adaptation is essential, and where rejection is prudent.

The principal themes are therefore signposted here. On marriage and divorce, section 5.2 considers whether a statutory divorce framework for Bangladeshi Hindus, combined with clear grounds, conciliatory processes, and compulsory or near-compulsory registration, would enhance women's access to relief, drawing on Indian experience and case law on registration.[11] On inheritance and succession, section 5.3 evaluates the implications of the 2005 coparcenary reform, especially the clarification of the Supreme Court that daughters are coparceners by birth, and then considers pathways for strengthening daughters' and widows' claims within the *Dāyabhāga*-influenced landscape in Bangladesh.[12] On adoption and guardianship, section 5.4 interrogates the gendered asymmetries that persist under the Indian model, the judicial turn to a best-interests standard, and the relevance of those developments for any Bangladeshi reform of guardianship rules.[13] On maintenance, section 5.5 examines statutory criteria, quantum, and enforcement, and proposes procedural mechanisms that would reduce attrition, for example summary procedures, presumptive guidelines, and strengthened execution. The chapter concludes by drawing together the normative and institutional criteria that any reform must meet, if Bangladesh is to honour its constitutional and international commitments in the personal-law field.

5.2 Evolution of Hindu Law Reforms in India

The present section reconstructs the colonial and post-colonial trajectory of reform in Hindu personal law and clarifies how that trajectory supplied the intellectual and legislative premises for the post-1950s Code legislation in India. The purpose is not antiquarian. It is to furnish the analytical backdrop for assessing, in later sections, which Indian moves are normatively and

[11] *Seema* (n 2).

[12] *Vineeta Sharma* (n 3) paras 25, 46, 55, 63; HSA (n3) s 6, as amended by the Hindu Succession (Amendment) Act 2005 (India).

[13] *Githa Hariharan* (n 4) [5], [14]–[16], [21–22].

institutionally compatible with the constitutional equality guarantees of Bangladesh in Articles 27–28 and state obligations under the ICCPR and CEDAW. Taken together, colonial codification, social and women-led reform, and nationalist politics generated a repertoire of ideas, institutions, and techniques of statutory intervention, especially across marriage and divorce, adoption and guardianship, inheritance and succession, and maintenance. They also exposed procedural chokepoints, notably notice-and-objection requirements, judicial gate-keeping, and the weight of social stigma, that often limited women's practical access to rights.

5.2.1 Pre-Independence Developments

The pre-independence record is best understood as the conceptual and institutional substrate upon which the mid-century Hindu Code was built in India, and against which the present compatibility questions of Bangladesh must be posed. Colonial courts fashioned "Anglo-Hindu" law by reading Sanskritic texts through pundit opinions and common-law method, consolidating rules while fixing a patriarchal baseline across marriage, guardianship, *strīdhan* and the "Hindu woman's estate".[14] Reform then proceeded by a series of targeted enactments, movement-led demands, and judicial techniques that incrementally widened women's legal personality, even as procedural architectures often blunted those gains. This history supplies both a repertoire of statutory tools and a cautionary map of chokepoints for any Bangladeshi transplant.

Company and Crown courts stabilised Anglo-Hindu doctrine through case-law and selective textual authority, which reproduced upper-caste, Brahmanical understandings of women's status in family property and guardianship.[15] The same field soon became a site of contest: abolitionist campaigns, widow-remarriage advocacy, and organised demands for minimum marriage age, guardianship control, and limited inheritance for women. Substantively and symbolically, the Sati Regulation of 1829 announced state power to restrain gender-harmful practices. It declared that "the practice of sati or burning or burying alive the widows of Hindus is hereby declared illegal and punishable by the Criminal Courts", and directed executive prevention of attempted

[14] JDM Derrett, *Introduction to Modern Hindu Law* (Oxford University Press 1963) 3–13; JDM Derrett, 'The Administration of Hindu Law by the British' (1961) 4 *Comparative Studies in Society and History* 10, 12–18.

[15] Werner Menski, *Hindu Law: Beyond Tradition and Modernity* (OUP India 2003) 85–90, 120–25, 150–55; Ludo Rocher, 'Indian Response to Anglo-Hindu Law' (1972) 92 *Journal of the American Oriental Society* 419, 419–20, 423–24.

immolations.[16] In 1856, the legislature validated widow remarriage while coupling recognition with a sharp proprietary penalty. Section 1 removed the bar to remarriage, and section 2 provided that a widow's rights in her deceased husband's property "shall upon her re-marriage cease and determine as if she had then died; and the next heirs of her deceased husband… shall thereupon succeed".[17] The technique is instructive: criminal or civil relief was conceded, yet material incentives were structured to preserve male-line control.

Legislative interventions in the marriage market reflected a gradual turn to administrative machinery. The Age of Consent Act 1891 raised the minimum for sexual intercourse, including within marriage, by amending the Indian Penal Code and Code of Criminal Procedure; enforcement remained uneven but the move registered a statutory repudiation of sexual access to child wives.[18] The Child Marriage Restraint Act 1929 introduced penal restraints on solemnising underage marriages without invalidating them, creating a magistracy-centred enforcement system.[19] In guardianship, the Guardians and Wards Act 1890 installed a court-supervised regime that prioritised welfare over formal hierarchies. Section 17 directed that, in appointing a guardian, the court "shall… be guided by what… appears in the circumstances to be for the welfare of the minor", and the Act required prior judicial leave for alienations of a ward's immovable property by a guardian appointed by the court.[20] In inheritance, the Hindu Law of Inheritance (Amendment) Act 1929 made limited but telling inroads into *Mitākṣarā* agnatic privilege by inserting the son's daughter, the daughter's daughter and the sister into the order of heirs.[21]

A parallel track opened through civil marriage. The Special Marriage Act 1872 created an exit from religious personal law for those able to meet stringent procedural gateways. Its record-

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[16] Sati Regulation 1829, s 2.

[17] Hindu Widows' Remarriage Act 1856 (Bangladesh) ss 1–2.

[18] Indian Criminal Law Amendment Act 1891 (Act X of 1891) (amending IPC s 375 and CrPC; raising age from 10 to 12); Prabha Anagol-McGinn, 'The Age of Consent (1891) Reconsidered' (1992) 12 *South Asia Research* 100, 101–04.

[19] Child Marriage Restraint Act 1929, s 5 (now repealed).

[20] Guardians and Wards Act 1890 (India), s 17 (welfare principle) and s 29 (court's prior permission for alienation of immovable property by a court-appointed guardian).

[21] Hindu Law of Inheritance (Amendment) Act 1929 (India) s 2 (re-ordering to include son's daughter, daughter's daughter and sister).

keeping regime required the Marriage Certificate Book to be "open for inspection", facilitating community surveillance;[22] its later successor entrenched a notice-and-objection machinery authorising objections and inquiry prior to solemnisation within a fixed period.[23] Pre-independence reform would have been thinner without women's theorising, organisation, and institutional labour. Pandita Ramabai's critique of scriptural patriarchy was coupled with shelters and schools that translated suffering into legal propositions and practical refuge; Ramabai Ranade's civic work linked education, vocation, and legal literacy to agency.[24] From 1927, the All-India Women's Conference (AIWC) aggregated these energies, and its 1946 Charter articulated equality claims in marriage, divorce, guardianship, and property, insisting upon procedures that made rights usable.[25] The method was eclectic, petitions, draft bills, testimony, and public campaigning, and it produced a cadre that would engage the Constituent Assembly and the Law Ministry.

The case-law method and colonial codification had gendered implications that persisted even as reforms accrued. Narrow conceptions of *strīdhan*, the doctrine of the limited estate, and guardianship hierarchies that privileged fathers or husbands entrenched male control, while "progressive" enactments often arrived with doctrinal caveats and forfeitures.[26] The effect was a legal order that could accommodate humanitarian gestures while preserving patriarchal structure, an ambivalence that later code-makers had to confront explicitly. Nationalist constitutional imagination widened the legitimacy space for state intervention in family law, even as it normalised compromise.[27] Women's participation reframed family questions within a language of citizenship, dignity, and equal status, yet anxieties about religious autonomy and the spectre of

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[22] Special Marriage Act 1872 (India) s 15.

[23] Special Marriage Act 1954 (n 22) ss 5–8.

[24] Pandita Ramabai, *The High-Caste Hindu Woman* (1887) Intro, 54, 58–59; Ramabai Ranade, *Himself: The Autobiography of a Hindu Lady* (Longmans, Green 1938) 152–60.

[25] All-India Women's Conference, *Draft of the Indian Woman's Charter of Rights and Duties* (1946) chs III, VII (civic rights; women and work).

[26] Derrett, *Introduction to Modern Hindu Law* (n 14) 218–25 (limited estate and *strīdhan* constraints under Anglo-Hindu constructions).

[27] Geraldine Forbes, *Women in Modern India* (Cambridge University Press 1996) 133–41 (women's organisations and constitutional moment; engagement with codification).

colonial moralism produced counter-pressures that the Constituent Assembly eventually mediated through a piecemeal codification strategy.

Enforceability turned on institutional and procedural design. Notice regimes exposed parties to community pressure, criminal law levers depended on police gate-keeping, guardianship oversight required access to district courts and legal assistance, and property claims faltered against land-record opacity and costs. Law on the books frequently met stigma in action, with reputational sanctions and marriage-market penalties constraining women's rights-claiming behaviour. These features anticipate contemporary obstacles in Bangladesh, where equality in Articles 27 and 28 of the Constitution, and obligations under the ICCPR and CEDAW, must be implemented through accessible forums, reliable records, and protected procedures.

By the 1940s, the ingredients for comprehensive reform were in place: precedents for policing harmful practices, a welfare-centred guardianship template, penal tools disciplining marriage markets, statutory recognition of women as heirs, and a women's movement fluent in constitutional argument and legislative drafting. Intellectual histories of Dharmaśāstra and its reception, and the Assembly's equality and non-discrimination commitments, licensed a state-led recasting of personal law, subsequently delivered through the Hindu Code. For Bangladesh, which retains colonial-era Hindu personal law largely unchanged, the transferable techniques are clear: criminal prohibition where bodily integrity is at stake, civil recognition coupled with equitable consequences, court-centred guardianship with best-interests review, and incremental inclusion of female heirs, provided that design avoids the very features that historically blunted reform, such as forfeiture clauses and intrusive notice procedures.

5.2.2 The Hindu Code Bills

The political compromise of the early 1950s was to abandon the ambition of a single, omnibus Hindu Code and instead legislate in four instalments, so as to carry through a coherent reform programme while diffusing resistance. The gender-equality stakes were explicit: to replace status with contract in marriage; to chisel space for women's choice in divorce; to refashion guardianship as child-centred; and to recast succession in terms of equal citizenship rather than patriarchal hierarchy.

The decision to split the Code proved decisive. Parliament enacted the Hindu Marriage Act 1955; the Hindu Succession Act 1956; the Hindu Minority and Guardianship Act 1956; and the Hindu Adoptions and Maintenance Act 1956. Each statute had its own architecture, yet together they formed a doctrinal ensemble aimed at dismantling inherited disabilities and stabilising a modern, secular, and uniform framework for those governed by Hindu law. In comparative terms, these enactments matter for Bangladesh because they supply tested legislative models—on registration, divorce access, guardianship standards, maintenance, and intestate equality, against which the institutional capacities of Bangladesh and its constitutional equality benchmark in Articles 27–28 can be assessed.[28]

5.2.2.1 Background and Objectives of the Reforms

The genealogy of the Bills lies in the conviction of the Constituent Assembly that the new Republic required civil laws consonant with constitutional morality. Reformers, including B. R. Ambedkar as Law Minister, argued that codification should secure women's equal citizenship within the family by creating justiciable rights in marriage, divorce, guardianship, adoption, maintenance and succession.[29] Parliament's rejection of the omnibus Hindu Code was a tactical defeat but a strategic victory: the agenda was preserved through four Bills calibrated to pass.[30] Doctrinal histories concur that the objectives were to replace diffuse, custom-mediated personal rules with positive law, to make consent and capacity central to marriage, to introduce divorce, to prioritise child welfare in guardianship, and to equalise the devolution of property.[31] The reform logic was neither purely liberal nor purely managerial; it combined rights talk with administrative feasibility, notably by linking evidentiary devices (such as registration) to remedial access and by tying maintenance to realistic enforcement.[32]

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[28] ibid s 5.

[29] ibid s 7.

[30] ibid s 8.

[31] *Seema* (n 2).

[32] HMA (n1) ss 11–12.

5.2.2.2 Key Provisions of the Hindu Code Bills

A. The Hindu Marriage Act 1955

The Hindu Marriage Act (HMA) 1955 was the cornerstone of the codification strategy because it replaced a heterogeneous, custom-mediated regime with a uniform statute that re-ordered entry, status, capacity, and exit in Hindu marriage, and tied remedies to a basic procedural architecture of proof, privacy, and expedition. It is the lynchpin around which the subsequent statutes on succession, guardianship, adoption and maintenance became meaningful, since the distribution of assets, the allocation of parental authority, and the incidence of support all presuppose a clear and justiciable marital status.

The Act's entry code appears in section 5, which provides that "A marriage may be solemnized between any two Hindus, if the following conditions are fulfilled," then stipulates monogamy, capacity, age thresholds, and bars based on prohibited degrees and *sapinda* relationship. Section 7 locates validity in customary ritual, stating that "A Hindu marriage may be solemnised in accordance with the customary rites and ceremonies of either party," and, where *saptapadi* is a rite, the marriage "becomes complete and binding when the seventh step is taken."[33] Section 8 empowers State rules for registration and adds the protective sentence that "the validity of any Hindu marriage shall in no way be affected by the omission to make the entry."[34] Indian courts have treated registration as an evidentiary device that secures women against denial and trafficking, while not being constitutive of marriage. In *Seema v Ashwani Kumar* the Supreme Court directed all States to provide for compulsory registration of marriages across communities in order to prevent child marriage, bigamy, and desertion disguised as non-proof.[35]

The nullity and separation architecture pursues two aims, weeding out marriages that offend the entry code and providing breathing space without immediate dissolution. Section 11 declares void marriages that contravene the monogamy and prohibited relationship clauses; section 12 renders a marriage voidable on grounds including impotence, invalid consent induced by fraud or force, or

[33] ibid s 7.

[34] ibid s 8.

[35] *Seema* (n 2).

the respondent's pre-marital pregnancy.[36] Section 9 retains restitution of conjugal rights and section 10 provides for judicial separation. The constitutional debate over restitution has centred on privacy and autonomy. Although the Andhra Pradesh High Court in *T Sareetha v T Venkata Subbaiah* struck section 9 as unconstitutional, the Supreme Court in *Saroj Rani v Sudarshan Kumar Chadha* upheld the provision, construing it as a conciliatory remedy whose enforcement is mediated by the availability of divorce, rather than as a tool of physical compulsion.[37] The practical question for Bangladesh is whether any restitution analogue can be designed with safeguards for bodily integrity and due process, given Articles 27 and 28 of the Constitution and international obligations on equality in the family.

The incorporation of the provision for divorce is the most visible modernisation of the Act. Section 13 enumerates fault-based grounds open to both spouses and adds wife-specific grounds that reflect gendered harms.[38] Section 13B creates divorce by mutual consent. Its text requires parties to file a joint petition, then move a second joint application after a cooling-off period.[39] Judicial interpretation has balanced celerity with genuine consent. In *Hitesh Bhatnagar v Deepa Bhatnagar* the Court held that withdrawal of consent before the second motion defeats a decree.[40] In *Amardeep Singh v Harveen Kaur* the Court clarified that the six-month interval in section 13B(2) is directory and may be waived to avoid hardship where separation is established, efforts at conciliation have failed, and there is no possibility of cohabitation.[41] These moves align the text with the Act's animating policy, choice with procedural good faith.

Collateral status and children's rights are protected by section 16, which provides that "Notwithstanding that a marriage is null and void under section 11, any child of such marriage who would have been legitimate if the marriage had been valid, shall be legitimate," and similarly

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[36] HMA (n1) ss 11–12.

[37] *T Sareetha v T Venkata Subbaiah* AIR 1983 AP 356; *Saroj Rani v Sudarshan Kumar Chadha* (1984) 4 SCC 90 [9]–[12].

[38] HMA (n1) ss 13(1), 13(2).

[39] ibid s 13B.

[40] *Hitesh Bhatnagar v Deepa Bhatnagar* (2011) 5 SCC 234 [13]–[16].

[41] *Amardeep Singh v Harveen Kaur* (2017) 8 SCC 746.

for voidable marriages prior to decree.[42] The Supreme Court has read legitimacy here as carrying inheritance in the parents' property, including the share that would accrue on partition, while withholding coparcenary by birth.[43] For Bangladesh, where disputes often turn on proof of marriage and the collateral status of children, this technique of insulating children from parental fault is normatively attractive and administratively practicable.

Maintenance and procedure supply the enforcement spine. Section 24 authorises *pendente lite* maintenance and litigation expenses to either spouse who lacks sufficient income, and section 25 provides for permanent alimony, adjustable on change of circumstances.[44] In *Rajnesh v Neha* the Supreme Court issued harmonising directions on affidavits of disclosure, interim timelines, and criteria, which now guide trial practice across matrimonial statutes.[45] Procedurally, section 21B requires expedition, and section 22 permits in-camera hearings, both of which mitigate stigma and reduce attrition.[46] These features matter for Bangladesh. Standardised interim and final maintenance with affidavit-based disclosure, privacy rules for family hearings, and time-bound case management can be introduced with modest textual and practice-direction changes, while respecting institutional capacities.

B. The Hindu Succession Act 1956

Set against the backdrop of the Hindu Code Bills, the Hindu Succession Act (HAS)1956 sought to replace a patchwork of textual, customary and judge-made rules with a codified scheme ordering intestate succession and the proprietary status of Hindu women. The discussion that follows isolates the provisions that matter most for equality analysis.

At the threshold, section 4 gives the Act primacy over earlier sources: "Save as otherwise expressly provided in this Act, any text, rule or interpretation of Hindu law or any custom or usage as part

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[42] HMA (n1) s 16(1)–(2).

[43] *Revanasiddappa v Mallikarjun* 2023 SCC OnLine SC 1087 (three-judge bench clarifying that children born of void or voidable Hindu marriages are legitimate under s 16 of the Hindu Marriage Act 1955 and may inherit their parents' self-acquired property and the parents' notional coparcenary share, without acquiring coparcenary status by birth).

[44] See *Revanasiddappa* (n 43).

[45] *Rajnesh v Neha* (2020) 2 SCC 324 [72]–[104].

[46] HMA (n1) ss 21B, 22.

of that law in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act."[47] This overriding clause was designed to displace inconsistent custom. Section 6, as substituted by the Hindu Succession (Amendment) Act 2005, provides that a daughter of a coparcener in a Mitakshara joint family "shall by birth become a coparcener in her own right in the same manner as the son," with the "same rights in the coparcenary property" and subject to the "same liabilities."[48] The general scheme of intestate succession appears in sections 8 to 10 read with the Schedule. Section 8 directs that the property of a male Hindu dying intestate devolves first upon Class I heirs; failing them, upon Class II;[49] then agnates; then cognates.[50] Section 9 prefers Class I heirs over all others and orders priority within Class II.[51] Section 10 prescribes distribution among Class I, including equal shares for surviving sons, daughters and the mother.[52] The Schedule lists, inter alia, "son; daughter; widow; mother" as Class I heirs.[53] For female intestates, sections 15 and 16 reorder devolution, beginning with sons and daughters and the husband, and then "the heirs of the husband," before reverting to her natal family, an architecture that has drawn sustained critique.[54]

Section 14 is the most radical intervention of the Act. It abolishes the limited estate and declares that "any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner."[55] The subsection operates as a rule of absolute ownership rather than a mere rule of succession and has been applied expansively to convert pre-existing limited holdings into absolute estates. In parallel, the override clause of section 4 and the conversion principle of section 14 together dismantle a central plank of patriarchal property doctrine.

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[47] HSA (n3) s 4(1).

[48] Hindu Succession (Amendment) Act 2005 (India) s 2, substituting HSA (n3) s 6.

[49] HSA (n3) ss 8–10 and Sch (Class I, Class II) (framework governing devolution to Class I and Class II heirs and representative succession).

[50] ibid s 8.

[51] ibid s 9.

[52] ibid s 10.

[53] See HSA (n3) Sch, Class I.

[54] ibid ss 15–16.

[55] ibid s 14(1) ('Any property possessed by a female Hindu…').

Judicial interpretation has entrenched the 2005 amendment's egalitarian logic. In *Vineeta Sharma v Rakesh Sharma*, a three-judge Bench resolved conflicts within the Court's own precedent and held that a daughter's status as coparcener by birth does not depend on the father being alive on 9 September 2005. The Court's operative conclusions are set out at paragraph 137. They include that "the provisions contained in substituted Section 6 of the Hindu Succession Act 1956 confer status of coparcener on the daughter born before or after the amendment in the same manner as son with the same rights and liabilities." The Court further clarified the position on partitions and pending proceedings.[56] A subsequent order of the Supreme Court reproduces paragraph 130 verbatim, underscoring the binding effect of those propositions. For present purposes, two interpretive hinges matter. First, the right is by birth; it is not a deferred expectancy triggered by the father's death. Secondly, the explanation to section 6 contemplates partition by a registered instrument or a court decree, and the *Vineeta Sharma* case warns that informal partitions will be scrutinised closely, given the risk of sham arrangements designed to defeat daughters' claims.[57]

Institutional and procedural detail decides whether statutory rights translate into remedies. In practice, daughters must prove Class I heirship or coparcenary status through evidence of lineage and of coparcenary property, and they must meet burdens where a family resists partition by alleging an earlier separation. Registration rules and stamp duties shape the enforceability of partition instruments and family settlements; courts typically require registered deeds or decrees to recognise a completed partition and place a premium on contemporaneous documentary proof. Execution of decrees in partition matters depends upon accurate metes-and-bounds description, revenue demarcation and mutation, none of which can be assumed to be swift or uniform. Legal aid for women litigants and the cost of valuation, court-fees and commissioners' reports are recurrent barriers.

C. The Hindu Minority and Guardianship Act 1956

The guardianship reforms occupy a complementary place in the architecture of the Hindu Code Bills. Having examined succession and coparcenary, the focus now shifts to the allocation and supervision of decision-making for minors, with three nodes of doctrine to the fore: natural

[56] *Vineeta Sharma* (n 3) 130 (operative conclusions on s 6 and partition).

[57] Supreme Court of India, Order (5 September 2023) reproducing para 137 of *Vineeta Sharma* case (n 3).

guardianship, powers over property, and the welfare principle. The discussion sets out the operative provisions, notes interpretive landmarks, and then assesses what is usable in light of equality and the best interests of the child.

Section 6 of the Hindu Minority and Guardianship Act (HMGA) 1956 identifies natural guardians. For a boy or unmarried girl, "the father, and after him, the mother," subject to the important proviso on custody; for an illegitimate child, the mother, and after her, the father; for a married girl, the husband.[58] The phrase "after him" in section 6(a) was long read literally. In *Githa Hariharan v Reserve Bank of India*, the Supreme Court construed "after" to mean "in the absence of," thereby avoiding a construction that would subordinate mothers in a manner inconsistent with constitutional equality. The Court explained that "the word 'after' need not necessarily mean 'after the lifetime'. In the context in which it appears in Section 6(a) … it means 'in the absence of', the word 'absence' therein referring to the father's absence from the care of the minor's property or person for any reason whatever."[59] The judgment affirms that both parents are natural guardians, and that the test is functional and child-centred rather than formal. The welfare principle is then made explicit in section 13: "the welfare of the minor shall be the paramount consideration," and no person is entitled to guardianship if the court concludes that such guardianship would not be for the minor's welfare.[60] Section 8 restricts the powers of a natural guardian over immovable property by requiring prior court permission for any mortgage, charge, sale, gift or exchange, on pain of voidability.[61] Section 11 closes a notorious backdoor by providing that no de facto guardian may dispose of a Hindu minor's property merely on the ground of being the de facto guardian.[62] The Act also recognises testamentary guardians appointed by will, with gender-symmetric powers under section 9.[63]

The combined effect is a structure that places welfare at the apex, balances parental authority with judicial supervision over property transactions, and removes the possibility of clandestine

[58] HMGA 1956 (n 4) s 6 ('the father, and after him, the mother…').

[59] *Githa Hariharan* (n 4) [24], [25].

[60] HMGA 1956 (n 4) s 13(1)-(2) ('the welfare of the minor shall be the paramount consideration').

[61] ibid s 8(1)-(2) (prior permission for mortgage, charge, sale, gift, exchange of immovable property).

[62] ibid s 11 (de facto guardian not to deal with minor's property).

[63] ibid s 9 (testamentary guardians and their powers).

alienations by self-appointed guardians. On procedure, applications for leave to alienate property are adjudicated on affidavit evidence, valuation, and necessity or evident advantage to the minor; courts routinely require security or conditions and scrutinise consideration and purpose. Orders are enforceable in execution with the aid of registration machinery; alienations in contravention are open to challenge by or on behalf of the minor within limitation. The litigation costs of such challenges are not trivial; access to legal aid and the appointment of child-sensitive guardians ad litem are therefore crucial for meaningful protection.

D. The Hindu Adoptions and Maintenance Act 1956

Read as the culminating limb of the Hindu Code Bills, the Hindu Adoptions and Maintenance Act 1956 (HAMA) rationalises two domains that decisively shape women's and children's life chances: the constitution of legal parentage by adoption, and enforceable claims to maintenance. Building on the overview of the Code, this section offers a doctrinal reading of HAMA, draws out its institutional architecture, and indicates the constraints that historically mediated women's ability to realise statutory rights.

HAMA's point of departure is its overriding and exclusive design. Section 5 stipulates that "No adoption shall be made after the commencement of this Act by or to a Hindu except in accordance with the provisions contained in this Chapter, and any adoption made in contravention of the said provisions shall be void."[64] The rule eliminates the pre-existing patchwork of custom and case-law, but couples formalisation with a strong invalidity sanction, thereby disciplining informal adoptions that historically exposed women and children to insecurity.

Three clusters of provisions constitute the adoption code: capacity and consent, eligibility and conditions, and evidentiary presumptions with anti-trafficking safeguards. First, capacity is gender-inclusive, yet qualified by marital-status asymmetries. A male Hindu of sound mind, not a minor, may adopt, and if married, must obtain the consent of his wife unless she has renounced the world, ceased to be Hindu, or is of unsound mind.[65] A female Hindu of sound mind, not a minor, may adopt if unmarried, widowed, divorced, or if her marriage has been dissolved; a

[64] HAMA 1956 (n 5) s 5.

[65] ibid s 7.

married woman's capacity to adopt in her own right is conditioned by the husband's status, a hierarchy that has been criticised as entrenching conjugal control over women's family-formation choices.[66] Secondly, the statute defines who may be adopted and prescribes further conditions: the adoptee must be Hindu, not already adopted, and ordinarily under fifteen unless a custom permits otherwise; parties may not adopt a child of the same sex if they already have a child of that sex; and an age-gap of at least twenty-one years is required for opposite-sex adoptions.[67] These limits seek to reflect familial balance and to guard against covert sexual exploitation. Thirdly, HAMA constructs a proof-and-prevention apparatus. A valid adoption cannot be cancelled, nor can the adopted child repudiate status: "No adoption which has been validly made can be cancelled by the adoptive father or mother or any other person, nor can the adopted child renounce his or her status as such and return to the family of his or her birth."[68] The Act also creates a presumption that a registered document of adoption is evidence of a valid adoption, subject to rebuttal.[69] Payments or rewards for adoption are prohibited, with penal consequences, signalling an early policy against commodification of children.[70]

HAMA also regulates the legal effects of adoption with a clarity that serves both personal identity and property order. Upon adoption, the child is "deemed to be the child of his or her adoptive father and mother for all purposes," and ceases to have ties to the birth family, subject to protection of vested estates.[71] This mitigates later disputes about status, guardianship, and succession, and remains a critical model for any Bangladeshi codification of adoption, given the constitutional duty of equal protection and the prohibitions on discrimination.

The maintenance code in Chapter III gives concrete content to familial obligations, deploying an explicit, gender-aware scheme. A Hindu wife is entitled to be maintained by her husband "during her lifetime",[72] and, without forfeiting the claim, may live separately if he is guilty of specified

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[66] ibid s 8.

[67] ibid ss 10–11.

[68] ibid s 15.

[69] ibid s 16.

[70] ibid s 17.

[71] ibid s 12.

[72] ibid s 18(1).

matrimonial wrongs; the statute then limits entitlement where the wife is unchaste or has converted from Hinduism.[73] The asymmetry is evident: although framed to secure the subsistence of women, the statutory text embeds moralised conditions that can be used against vulnerable claimants. The Act extends the net of obligation beyond the two spouses. A widowed daughter-in-law unable to maintain herself from any property may claim maintenance from her father-in-law, conditional on his means and her remaining unmarried, a rule that both recognises and reinscribes affinal dependency.[74] Parents and children are placed within a reciprocal frame: "The obligation of a person to maintain his or her aged or infirm parent or a daughter who is unmarried extends in so far as the parent or the unmarried daughter, as the case may be, is unable to maintain himself or herself out of his or her own earnings or other property."[75] Courts have treated this provision as a substantive floor, reading it with criminal-procedure remedies to secure unmarried daughters' subsistence until marriage.[76]

Two further features matter institutionally. First, the Act defines maintenance capaciously to include provision for residence, education, medical attendance and treatment, enabling courts to craft orders responsive to need and status.[77] Secondly, quantum and variation are judicially managed: courts must weigh the claimant's needs, the respondent's means, and the circumstances of the family, and may vary orders on a change of circumstances, a flexibility necessary for living law but one that can also produce inconsistency absent guiding scales.[78]

On enforcement and procedure, HAMA mixes substantive rights with mechanisms that try to lower evidentiary and transaction costs. The Section 16 presumption in favour of a registered adoption instrument reduces litigation over status. The irrevocability of valid adoption under Section 15 protects the adoptee from post-hoc repudiation. The penal bar on payments attempts to deter

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[73] ibid ss 18(2), 18(3).

[74] ibid s 19.

[75] ibid s 20(3).

[76] *Jagdish Jugtawat v Manju Lata* (2002) 5 SCC 422 (holding that a minor child of a divorced Muslim wife may claim maintenance from the father under s 20 of the Hindu Adoptions and Maintenance Act 1956 notwithstanding the Muslim Women (Protection of Rights on Divorce) Act 1986).

[77] HAMA 1956 (n 5) s 3(b) (definition of 'maintenance'); RSIS International, 'Provisions of Maintenance of Wife under HAMA, 1956' (2019) 336–37.

[78] ibid ss 23, 25.

middlemen and trafficking. Yet chokepoints remain: registration is not mandatory for validity; proving custom to escape general conditions can invite manipulation; and the moralised exclusions in maintenance can fuel adversarial stigma. Feminist and socio-legal scholarship has accordingly argued for clarifying women's autonomous capacity to adopt, for calibrating maintenance to real costs of living, and for insulating claims from character attacks.[79]

5.2.2.3 Gender Dimensions of the Hindu Code Bills

Read against the comparative frame of this chapter, the four mid-century Indian enactments on marriage, succession, guardianship, adoption and maintenance together recast the legal personality of Hindu women by joining substantive entitlements to a recognisable architecture of proof and procedure. The technique was cumulative. The Hindu Marriage Act 1955 stabilised entry, exit and collateral status, the Hindu Succession Act 1956 redistributed power over property, the Hindu Minority and Guardianship Act 1956 anchored parental authority in a welfare standard, and the Hindu Adoptions and Maintenance Act 1956 formalised adoption while converting diffuse moral claims to maintenance into actionable rights. Read with Articles 27 and 28 of the Constitution of the People's Republic of Bangladesh and with obligations under the International Covenant on Civil and Political Rights and the Convention on the Elimination of All Forms of Discrimination against Women, the Indian model is significant not because it is flawless, but because it shows how statutory design, evidentiary devices and judicial doctrine can be made to work together in the intimate field.

The Hindu Marriage Act 1955 begins with an entry code that converts monogamy, capacity and consent into legal conditions. Section 5 provides that, "A marriage may be solemnised between any two Hindus, if the following conditions are fulfilled," before listing, among other matters, the survival of no spouse from an existing marriage, competence to consent, and minimum ages, twenty-one for the bridegroom and eighteen for the bride.[80] Section 7 protects validity through custom by declaring that "A Hindu marriage may be solemnized in accordance with the customary

[79] Flavia Agnes, *Family Law, vol 1: Family Laws and Constitutional Claims* (Oxford University Press 2011) 9, 19, 35, 59, 102, 158, 167–68, 178; Bina Agarwal, *A Field of One's Own: Gender and Land Rights in South Asia* (Cambridge University Press 1994) 260–69.

[80] HMA (n1) s 5.

rites and ceremonies of either party," and, where saptapadi is performed, the marriage "becomes complete and binding when the seventh step is taken."[81] Section 8 authorises State registration rules but adds the protective clause that "the validity of any Hindu marriage shall in no way be affected by the omission to make the entry."[82] These provisions locate validity in ritual or civil form, then attach an evidentiary scaffold. In *Seema v Ashwani Kumar*, the Supreme Court insisted that compulsory registration across communities is a necessary device to deter child marriage, bigamy and repudiation disguised as non-proof, thereby connecting women's remedies to administrative design.[83]

Exit is structured to balance autonomy with fair process. Section 11 renders bigamous and other prohibited marriages void; section 12 makes marriages voidable where consent is vitiated or impotence is proved.[84] Section 13 introduces symmetrical fault grounds and wife-specific grounds that track gendered risk, and section 13B creates divorce by mutual consent subject to a cooling-off interval that the Court has treated as directory in order to avoid hardship where separation is established and reconciliation has failed.[85] The Act also guards collateral status. Section 16 declares that, "Notwithstanding that a marriage is null and void under section 11, any child of such marriage who would have been legitimate if the marriage had been valid, shall be legitimate," with parallel protection for voidable marriages prior to decree.[86] In *Revanasiddappa v Mallikarjun* the Supreme Court held that such children may inherit from their parents, including shares that would accrue on a partition, thereby translating status protection into economic effect.[87] Maintenance provisions supply an enforcement spine. Section 24 provides for pendente lite maintenance and litigation expenses "to the petitioner or the respondent" who lacks sufficient income, and section 25 authorises permanent alimony, subject to variation.[88] In *Rajnesh v Neha*, harmonising directions

[81] ibid s 7.

[82] ibid s 8.

[83] *Seema* (n 2).

[84] HMA (n1) ss 11–12.

[85] ibid ss 13, 13B; *Amardeep Singh* (n 41).

[86] ibid s 16(1)–(2).

[87] *Revanasiddappa* (n 43).

[88] HMA (n1) ss 24–25.

on disclosure, timelines and criteria have begun to discipline practice in trial courts, reducing attrition that disproportionately harms women.[89] For Bangladesh, where the Hindu Marriage Registration Act 2012 recognises registration but does not make it constitutive, the Indian synthesis of customary solemnisation with robust, near-compulsory registration offers an immediately usable device consistent with constitutional equality and treaty commitments.[90]

If the Marriage Act targeted status and remedy, the Hindu Succession Act 1956 reconfigured economic citizenship. Section 4 gives the statute an overriding effect, "save as otherwise expressly provided," displacing inconsistent custom, text and usage.[91] Section 14(1) abolishes the limited estate by providing that "any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner," a conversion rule that courts have construed liberally so that pre-existing holdings ripen into absolute title.[92] The intestate code places daughters, widows and mothers in Class I heirs alongside sons, with distribution among Class I governed by section 10 and the listing of heirs in the Schedule, thereby equalising shares in separate property.[93] The citadel of hierarchy was the *Mitākṣarā* coparcenary. The Hindu Succession (Amendment) Act 2005 substituted a new section 6, under which "the daughter of a coparcener shall by birth become a coparcener in her own right in the same manner as the son," with "the same rights in the coparcenary property" and the same liabilities.[94] In *Vineeta Sharma v Rakesh Sharma*, the Court resolved conflicting strands by affirming that the right is by birth and does not depend on the father being alive at commencement, while warning that informal partitions will be scrutinised given the risk of shams designed to defeat daughters.[95] By contrast, section 15's rules for female intestates track lineage in a manner that can

[89] *Rajnesh* (n 45).

[90] Registration of Hindu Marriage Act 2012 (n 9) s 3; Constitution of the People's Republic of Bangladesh 1972 (n 6) arts 27–28; ICCPR (n 8) arts 2, 3, 26; CEDAW (n 9) art 16.

[91] HSA (n3) s 4(1).

[92] ibid s 14(1).

[93] ibid ss 8–10 and Sch Class I.

[94] ibid s 6, as substituted by Hindu Succession (Amendment) Act 2005 (India) s 3.

[95] *Vineeta Sharma* (n 3) para 129(v).

privilege the husband's heirs over the woman's natal family, and source-based reversion under section 15(2) can undermine the stickiness of women's gains in their natal line.[96]

Guardianship reform weaves equality into parental authority and protection of children's property. Section 6 of the Hindu Minority and Guardianship Act 1956 names the "father, and after him, the mother" as natural guardians of a boy or unmarried girl, a hierarchy long criticised as inconsistent with gender equality, and recognises the husband as guardian of a married minor girl.[97] Judicial interpretation has aligned the text with constitutional principle. In *Githa Hariharan v Reserve Bank of India*, the Court construed "after" to mean "in the absence of," holding that the mother is a natural guardian when the father is absent in a real and legal sense, which includes neglect, incapacity or lack of concern.[98] Section 13 then makes the welfare of the minor "the paramount consideration" in any guardianship order and precludes appointment where welfare would be compromised.[99] Control of property is subject to judicial oversight. Section 8 requires prior court permission for a natural guardian's mortgage, charge, sale, gift or exchange of a minor's immovable property, on pain of voidability; section 11 bars de facto guardians from alienating a child's property.[100] The upshot is a structure that tempers parental hierarchy with a welfare test and subjects dealings with girls' immovable property to court oversight.

The adoption and maintenance code completes the ensemble. Section 5 of the Hindu Adoptions and Maintenance Act 1956 creates an overriding code. It provides that "No adoption shall be made ... except in accordance with the provisions contained in this Chapter," and renders any contrary adoption void, thereby disciplining informal practices that historically exposed women and children to insecurity.[101] Capacity rules are formally symmetric but substantively unequal. A married man may adopt with his wife's consent unless specified exceptions apply; a woman may adopt in her own right only if unmarried, widowed, divorced or where the marriage has been

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[96] HSA (n3) s 15(1)-(2).

[97] HMGA 1956 (n 4) s 6.

[98] *Githa Hariharan* (n 4) [24-25].

[99] HMGA 1956 (n 4) s 13.

[100] ibid ss 8, 11.

[101] ibid ss 7–8.

dissolved.[102] The asymmetry entrenches conjugal control over women's family-formation choices. Status consequences are clear and protective: section 12 provides that an adopted child "shall be deemed to be the child of his or her adoptive father and mother for all purposes," while section 15 makes a valid adoption irrevocable, and section 16 creates a presumption that a registered instrument evidences a valid adoption, easing proof burdens.[103] Payments or rewards for adoption are prohibited and penalised, signalling an early policy against commodification of children.[104] The maintenance chapter makes wives, widowed daughters-in-law, children and aged parents statutory creditors. Section 18(1) declares that a wife is entitled "to be maintained by her husband during her lifetime," with section 18(2) preserving entitlement on separate residence in specified circumstances, and section 18(3) denying maintenance where the wife is unchaste or has ceased to be Hindu, a moralised exclusion that has drawn sustained feminist critique.[105] Section 19 imposes a duty on the father-in-law to maintain a widowed daughter-in-law unable to maintain herself, subject to his means, and section 20 creates a reciprocal obligation to maintain unmarried daughters and aged or infirm parents to the extent they cannot maintain themselves.[106] Courts have read these provisions purposively, and in allied fields have treated criminal-procedure remedies as supplementary, for example, securing subsistence for unmarried daughters until marriage.[107]

Without enforceability, doctrinal reform remains rhetorical. Indian experience shows that textual gains for women are most effective when coupled with registration, documentary presumptions and expedited procedure. The reliance of the Hindu Marriage Act on ceremonies plus registration reduces scope for repudiation and strengthens access to maintenance and residence. The displacement of custom by rules of succession and the conversion of the estates of women into absolute title translate into landholding only when mutation, partition, proof and execution are administratively tractable. The welfare test in guardianship protects girls where courts can act quickly on applications for leave to alienate and can police non-compliant transactions. The

[102] ibid.

[103] HAMA 1956 (n 5) ss 12, 15–16.

[104] ibid s 17.

[105] ibid s 18(1)–(3).

[106] ibid ss 19–20.

[107] See *Jagdish Jugtawat* (n 76).

evidentiary presumptions of Adoption secure children's status where registration is accessible. Maintenance jurisprudence has moved toward standardised disclosures and timelines.

The Hindu Code Bills do not expunge patriarchy. Restitution of conjugal rights survives, the guardianship provision that treats the husband as guardian of a married minor girl still appears in the text, and adoption capacity remains gender-asymmetric. Yet the legislative grammar they embody, status plus remedy, equality plus enforceability, points to a practical path.

5.2.2.4 Socio-Political Implications of the Reforms

The Hindu Code Bills reconfigured family law not only at the level of doctrine but across the political economy of reform. The decision to legislate in four Acts was a statecraft choice, a response to organised resistance in the Constituent Assembly and beyond, that enabled a workable coalition for change while accepting calibrated compromises. Those compromises are visible in the retention of conjugal-restoration decrees, in optional marriage registration, in lineage-biased rules for female intestates, and in guardianship defaults that required later constitutional reconstruction. At the same time, the package consolidated transformative norms, absolute female ownership, equal intestate shares, coparcenary by birth for daughters after 2005, and a welfare-centred approach to minors. The point is that legal text operated through institutions, records, and adjudicatory cultures; the politics of implementation, not legislative intent alone, determined women's ability to use the new rights.

The legislative strategy mattered for state capacity. By splitting the omnibus Code into the Hindu Marriage Act 1955, the Hindu Succession Act 1956, the Hindu Minority and Guardianship Act 1956, and the Hindu Adoptions and Maintenance Act 1956, Parliament sequenced controversy, insulated progress on one front from stalemate on another, and enabled administrative learning. The strategy, however, came with doctrinal trade-offs. In marriage, section 8 of the 1955 Act authorised registration but added the protective caveat that "the validity of any Hindu marriage shall in no way be affected by the omission to make the entry," which avoided sacramental rupture yet left proof dependent on witnesses and custom where registers were absent.[108] Restitution of conjugal rights survived in section 9, defended as conciliatory, even as feminist critique and later

[108] HMA (n1) s 8 ('the validity of any Hindu marriage shall in no way be affected by the omission to make the entry').

privacy jurisprudence underscored its chilling potential. In succession, the move from the "Hindu woman's estate" to absolute ownership under section 14(1), "any property possessed by a female Hindu… shall be held by her as full owner," was radical,[109] yet the structure for female intestates in section 15 retained traces of agnatic preference. These accommodations illustrate how coalition-building imprinted the content of rights.

Codification renegotiated the boundary between religion and citizenship rather than abolishing it. In the 1955 Act, section 7 tied validity to "customary rites and ceremonies," including *saptapadi,* where practised, while section 8 inserted a secular evidentiary device.[110] In succession, section 4 of the 1956 Act gave statutory law overriding effect over "any text, rule or interpretation of Hindu law or any custom or usage" on matters the Act covered, signalling a modern state's authority to standardise rules within a religiously demarcated jurisdiction.[111] Section 14(1) then converted women's limited holdings into absolute estates, a statutory equality that displaced custom by design.[112] After 2005, section 6, "the daughter of a coparcener shall by birth become a coparcener in her own right in the same manner as the son," and the accompanying liabilities clause, brought joint-family governance within the ambit of equal citizenship, with courts policing claims of past partitions to deter sham evasion.[113] The effect was to recast the locus of authority over intimate status and property, placing statutory equality and constitutional reason at the centre of a domain long governed by customary authority.

Administrative and evidentiary infrastructures mediated outcomes. The direction of the Supreme Court in *Seema v Ashwani Kumar* that all States provide for compulsory registration across communities reflected an appreciation that registers are not mere archives but enforcement tools that secure maintenance, residence, and succession, and deter child marriage and bigamy.[114] In succession litigation after 2005, daughters' claims turned on land and revenue records, mutation,

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[109] HSA (n3) s 14(1) ('any property possessed by a female Hindu… shall be held by her as full owner thereof and not as a limited owner').

[110] HMA (n1) ss 7–8.

[111] HSA (n3) s 4(1).

[112] ibid s 14(1) ('any property possessed by a female Hindu… shall be held by her as full owner thereof and not as a limited owner').

[113] ibid s 6 as substituted by Hindu Succession (Amendment) Act 2005 (India); *Vineeta Sharma* (n 3) para 129(v).

[114] *Seema* (n 2).

and the proof of partition. The Explanation to section 6 privileges partitions by registered instrument or by decree, which increases the evidentiary cost of informal transactions that disinherit women and reduces litigation about alleged oral divisions.[115] Welfare-centred guardianship under section 13 of the 1956 Act, "the welfare of the minor shall be the paramount consideration," required courts to manage lists, hear child-sensitive evidence, and supervise alienations; without docket capacity and legal aid, the principle could falter in practice. In maintenance, the substantive entitlements in HAMA were tractable only with standardised affidavits, interim timelines, and execution protocols, later supplied by the Supreme Court's practice directions. Administrative design, therefore, determined whether doctrinal gains travelled from paper to life.

Gender politics shaped both interpretation and uptake. Women's organisations and professional associations campaigned for registration, access to divorce, and recognition of daughters' property claims; their advocacy informed judicial innovations that closed gaps left by political compromise. In *Githa Hariharan v Reserve Bank of India*, the Court construed the phrase "after him" in section 6(a) of the 1956 guardianship statute to mean "in the absence of," thereby avoiding a reading that would subordinate mothers in a manner incompatible with equality.[116] In *Vineeta Sharma v Rakesh Sharma*, a three-judge Bench settled conflicting lines within the Court's own precedent, holding that daughters' coparcenary by birth does not depend on the father being alive at commencement, and warning against unproved oral partitions.[117] These decisions both filled lacunae and constitutionalised the Codes' normative direction. Conservative mobilisation continued, often framed around tradition and community autonomy, and manifested in private ordering that blunted statutory equality through inter vivos transfers, wills, or social pressure to renounce shares. Uptake therefore varied by region, caste, class, and urban–rural location, with stigma and community surveillance modulating women's willingness to claim.

Distributional impacts were heterogeneous. Urban and educated women, with better access to counsel and records, were more likely to secure registration, maintenance, and succession. Rural

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[115] HSA (n3) s 6 as substituted by Hindu Succession (Amendment) Act 2005 (India); *Vineeta Sharma* (n 3) paras 47, 139(v).

[116] *Githa Hariharan* (n 4) paras 24, 25.

[117] *Vineeta Sharma* (n 3) paras 62–63, 129(v).

women faced higher costs of proof and execution, weaker record keeping, and denser social sanctions. Among daughters, the equal intestate rules for separate property and the 2005 birthright reform produced real gains where mutation practice was supportive and male relatives were cooperative; elsewhere, daughters traded shares for peace or dowry-like transfers. For widows, section 14(1) expanded autonomy by converting limited holdings into full ownership, yet widows without documentation or with dependent minor children still confronted guardianship and maintenance chokepoints. Such patterns underscore the difference between law on the books and law in action, and they explain why later amendments and practice directions gravitated toward evidentiary simplification, registration drives, and maintenance standardisation.

Judicial constitutionalism supplied the hinge between statutory text and equality. Welfare in guardianship, equal intestacy, daughters' coparcenary, legitimacy of children of void or voidable marriages under section 16 of the 1955 Act, and harmonised maintenance practice across family fora were all deepened through purposive interpretation and procedural innovation. The effect was a drift toward constitutional morality within the personal-law field, delivered case by case but anchored in statutory hooks.

5.2.3 Subsequent Amendments and Progressive Changes

Since the mid-century codification, reforms to the four Hindu Code statutes have proceeded unevenly but cumulatively in a direction that strengthens women's equal status in family law. The most far-reaching changes concern succession. The Hindu Succession (Amendment) Act 2005 substituted a new section 6 to confer upon daughters, by birth, the same coparcenary rights and liabilities as sons in a *Mitākṣarā* joint family, and removed collateral constraints such as the dwelling-house bar and the widow's limited estate that had previously entrenched male control over ancestral assets.[118] The Supreme Court has since settled the interpretive controversy, holding that a daughter's right as coparcener is by birth and is not conditioned by the father's being alive on the commencement date of the amendment, thereby overruling earlier restrictive readings and regularising pending claims.[119] Several States anticipated the 2005 design by earlier amendments

[118] Hindu Succession (Amendment) Act 2005 (India) s 6; Sch and s 23 (omitted); 'The Hindu Succession (Amendment) Act, 2005' (PRS Legislative Research 2005) 1–3.

[119] *Vineeta Sharma* (n 3).

creating the daughter as a coparcener, which underscores both the feasibility of reform and the institutional lessons for implementation.[120]

Marriage and divorce law has also been re-tooled to reduce exit costs and dignitary harms. The Marriage Laws (Amendment) Act 1976 liberalised the Hindu Marriage Act 1955 by introducing divorce by mutual consent and by converting certain grounds for judicial separation into grounds for divorce, a shift that better reflects adult autonomy and reduces strategic gate-keeping by the economically stronger spouse.[121] Subsequent Parliament-led corrections have eliminated health-status based exclusions. The Hindu Marriage Act was amended in 1999 to remove epilepsy from the catalogue of matrimonial disability, dislodging a ground that had operated as a stigma rather than a reasoned basis for dissolution.[122] In 2019, the Personal Laws (Amendment) Act erased leprosy as a ground for divorce across personal laws, including the Hindu Marriage Act and the Hindu Adoptions and Maintenance Act, aligning family law with medical evidence and the constitutional guarantee of equality.[123] Procedurally, the Supreme Court's direction in *Seema v Ashwani Kumar* that all marriages be compulsorily registered has sought to secure evidentiary certainty for women with respect to status, maintenance and inheritance, while tasking States with rule-making to operationalise registration.[124]

Guardianship and adoption have been re-interpreted and amended to diminish patriarchal defaults in parental authority. In *Githa Hariharan v Reserve Bank of India*, the Court construed section 6(a) of the Hindu Minority and Guardianship Act 1956 in light of Articles 14 and 15, reading "after" to mean "in the absence of" and thereby recognising the mother's co-equal claim as natural guardian during the father's absence or incapacity.[125] Parliament has complemented this jurisprudence. The Personal Laws (Amendment) Act 2010 amended the Guardians and Wards Act 1890 and the Hindu Adoptions and Maintenance Act 1956 so that both parents are recognised as

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[120] See Hindu Succession (Andhra Pradesh Amendment) Act 1986 (Act 13 of 1986) (India) s 29A.

[121] HMA (n1) s 13B, inserted by Marriage Laws (Amendment) Act 1976 (India); HMA (n1) s 13 as amended by Marriage Laws (Amendment) Act 1976 (India).

[122] Press Information Bureau, Government of India, 'The Marriage Laws (Amendment) Act, 1999' (13 October 2000).

[123] Personal Laws (Amendment) Act 2019 (India) ss 2–6.

[124] *Seema* (n 2).

[125] *Githa Hariharan* (n 4) [24-25].

having equal capacity to give a child in adoption, and so that a woman's capacity to adopt is stated in gender-neutral terms, subject only to carefully specified exceptions.[126] These moves, while modest in drafting, recalibrate everyday administrative practice in district courts and adoption agencies, expanding women's decisional authority over children's welfare.

Beyond the Code, a suite of cross-cutting statutes has sought to render equality operational in the domains where women most often encounter the state. The Protection of Women from Domestic Violence Act 2005 created civil remedies for domestic violence, defined broadly to include physical, sexual, verbal, emotional and economic abuse, and empowered magistrates to issue residence orders, protection orders, and monetary reliefs with accessible procedures and interim safeguards.[127] The Prohibition of Child Marriage Act 2006 made child marriages voidable at the instance of the child spouse and, in specified exploitative circumstances, void ab initio, while authorising preventive injunctions and best-interests custody orders, thereby addressing a pipeline that has historically undermined women's education and bargaining position.[128] In the workplace, the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013 mandated Internal Committees in establishments and set out employer duties, creating a rights-bearing architecture for bodily integrity and dignity at work.[129] Labour-market equality has been reinforced by the Code on Wages 2019, which prohibits gender-based discrimination in wages and recruitment for the same or similar work, and by the Maternity Benefit (Amendment) Act 2017, which expanded paid maternity leave and introduced associated entitlements, improvements with tangible effects on women's economic security.[130] Institutional design has also mattered: the Family Courts Act 1984 established specialised forums with conciliation duties and simplified procedure, intended to reduce cost and delay in family disputes where women disproportionately bear the burdens of litigation.[131]

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[126] Personal Laws (Amendment) Act 2010 (India) ss 3–4, amending Guardians and Wards Act 1890 (India) and HAMA 1956 (n 5) ss 8–9.

[127] Protection of Women from Domestic Violence Act 2005 (Act 43 of 2005) (India) ss 3, 17–23.

[128] Prohibition of Child Marriage Act 2006 (India) ss 3, 12, 13.

[129] Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013 (Act 14 of 2013) (India) ss 4, 19.

[130] Code on Wages 2019 (India) s 3; Maternity Benefit (Amendment) Act 2017 (India) s 5.

[131] Family Courts Act 1984 (Act 66 of 1984) (India) s 9.

Two design lessons emerge from this trajectory. First, rights without records rarely bite. Hence the emphasis on registration, written orders, and serviceable evidentiary rules, which are prerequisites for enforceability and for portability of entitlements across forums. The registration mandate, when coupled with privacy-respecting procedures, can improve access to maintenance, succession and social security while minimising exposure to community vetoes.[132] Secondly, equality flourishes when formally private relations are opened to public law standards. Jurisprudence on guardianship and coparcenary, and statutes on domestic violence, child marriage and workplace safety, insert constitutional reasonableness and due process into domains historically insulated by status. The effect is cumulative rather than linear: no single enactment delivers gender parity, but the interaction of property, personhood and procedure narrows the space for patriarchal vetoes. For jurisdictions contemplating reform, the Indian experience suggests a toolkit of amendatory clauses, interpretive strategies and institutional supports that can be adapted to local constitutional texts, provided the design avoids well-known chokepoints of notice regimes, forfeiture penalties and inaccessible forums.

5.2.4 Judicial Interventions Advancing Women's Rights

Judicial interventions since independence have been central to the slow but steady recalibration of Hindu personal law towards women's equality. Early codification created openings yet preserved patriarchal residues, so courts were repeatedly called upon to construe text purposively, to police procedure, and to articulate standards that would bind lower fora. What follows maps the Supreme Court's principal interventions across succession and property, marriage and divorce, guardianship and adoption, maintenance and protection from violence, highlighting how doctrinal moves, procedural directions, and constitutional idiom have converged to expand Hindu women's substantive and practical equality.

A first axis is inheritance and succession. The Court's generous reading of section 14(1) of the Hindu Succession Act 1956 (HSA) in *V Tulasamma v Sesha Reddy* converted a Hindu woman's limited estate into absolute ownership where property was possessed in lieu of maintenance, a

[132] *Seema* (n 2).

construction that has underwritten countless claims to secure widows' economic autonomy.[133] In *Arunachala Gounder v Ponnusamy*, the Court affirmed that a daughter inherits her father's self-acquired property by succession in preference to collaterals, even if the father died intestate prior to 1956, clarifying the doctrinal pathway and closing a persistent route by which daughters were displaced.[134] The second modern axis concerns coparcenary. The trilogy culminating in *Vineeta Sharma v Rakesh Sharma* settled the effect of the Hindu Succession (Amendment) Act 2005, holding that a daughter's coparcenary right is by birth and does not depend on whether the father was alive on 9 September 2005, thus aligning Mitakshara structures with constitutional equality in substance and form.[135]

Property protection has also been reinforced through the Court's *strīdhan* jurisprudence. In *Pratibha Rani v Suraj Kumar* the Court recognised the wife's *strīdhan* as her exclusive property, and that its unlawful retention may constitute criminal breach of trust.[136] A later three-judge bench in *Rashmi Kumar v Mahesh Kumar Bhada* consolidated this position, emphasising entrustment and dominion as the elements of the offence, a stance repeatedly cited to secure return of women's movable assets.[137] These holdings have practical bite, not merely symbolic reach.

In the domain of marriage and divorce, judicial technique has ranged from standard-setting to structural relief. The celebrated synthesis of the Court in *Samar Ghosh v Jaya Ghosh* produced a non-exhaustive matrix of indicators of mental cruelty under section 13(1)(i-a) of the Hindu Marriage Act 1955 (HMA), which has guided family courts in moving beyond formalism to lived harms.[138] Building on decades of debate about "dead marriages", the Constitution Bench in *Shilpa Sailesh v Varun Sreenivasan* confirmed that the Supreme Court may, under Article 142, dissolve marriages on the ground of irretrievable breakdown and, where appropriate, waive statutory cooling-off periods, thereby preventing prolonged litigation from compounding women's

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[133] *V Tulasamma v Sesha Reddy* (1977) 3 SCC 99.

[134] *Arunachala Gounder (Dead) by LRs v Ponnusamy* (2022) 5 SCC 613.

[135] *Vineeta Sharma* (n 3) paras 62–63, 129(v).

[136] *Pratibha Rani v Suraj Kumar* (1985) 2 SCC 370.

[137] *Rashmi Kumar (Smt) v Mahesh Kumar Bhada* (1997) 2 SCC 397 [13].

[138] *Samar Ghosh v Jaya Ghosh* (2007) 4 SCC 511.

vulnerability.[139] Procedurally, in *Seema v Ashwani Kumar* the Court directed compulsory registration of all marriages, recognising its evidentiary significance for maintenance, inheritance and bigamy prosecution, and placing the legislative competence in the Concurrent List to spur state action.[140]

Maintenance has been another site of active judicial governance. In *Rajnesh v Neha* the Court issued nationwide guidelines requiring standardised disclosure affidavits, criteria for quantum, and directions on overlapping claims under CrPC, HMA and the Domestic Violence Act, seeking to reduce delay and forum-shopping that disproportionately burden women.[141] These directions, frequently circulated to trial courts, have made maintenance less a matter of unguided discretion and more one of norm-governed adjudication.

Guardianship and adoption jurisprudence has similarly pressed towards parity and child-centred reasoning. In *Githa Hariharan v Reserve Bank of India*, interpreting section 6(a) of the Hindu Minority and Guardianship Act 1956, the Court read "after" the father as "in the absence of" in a functional sense, thereby permitting the mother to act as natural guardian where the father is indifferent or unavailable, consonant with the child's welfare and Article 14.[142] On adoption, *Lakshmi Kant Pandey v Union of India* framed safeguards for inter-country adoptions that became the template for later regulation.[143] and in *Shabnam Hashmi v Union of India,* the Court clarified that the Juvenile Justice legislation provides a secular pathway to adoption irrespective of religion, expanding possibilities for women to constitute families with full legal incidents where personal laws were restrictive.[144]

Protection from domestic violence has seen constitutional pruning of statutory exclusions. In *Hiral P Harsora v Kusum Narottamdas Harsora* the Court struck down the words "adult male" from the definition of "respondent" in the Protection of Women from Domestic Violence Act 2005,

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[139] *Shilpa Sailesh v Varun Sreenivasan* (2023) 9 SCC 555.

[140] *Seema* (n 2).

[141] *Rajnesh* (n 45).

[142] *Githa Hariharan* (n 4) paras 23–25.

[143] *Lakshmi Kant Pandey v Union of India* (1984) 2 SCC 244 (guidelines and procedures for inter-country adoption of Indian children under art 32 of the Constitution).

[144] *Shabnam Hashmi v Union of India* (2014) 4 SCC 1 [43]–[46].

enabling complaints against female relatives and non-adult respondents where appropriate, and removing an irrational barrier to redress.[145] Child-marriage related harms were addressed in *Independent Thought v Union of India*, where the Court read Exception 2 to section 375 of the Penal Code to 18 years, treating forced sex with a minor wife as rape, a move that protects married girls within Hindu communities as well.[146] Although not Hindu-specific, these rulings recalibrate the remedial architecture within which Hindu women seek protection.

Across these fields, the method is notable. The Court has repeatedly preferred purposive construction anchored in constitutional equality and dignity, has supplied implementable procedural guidelines to address endemic delay and evidentiary deficits, and has been attentive to institutional feasibility. Its equality-inflected reading of post-codification statutes has done much of the heavy lifting that incremental legislative reform has delayed. At the same time, the jurisprudence leaves unfinished business: statutory recognition of irretrievable breakdown remains for Parliament, matrimonial property regimes are largely undeveloped, and maintenance enforcement continues to depend on local capacity. Even so, the trajectory is clear. Through case-law that secures women's proprietary interests, stabilises status and dissolution, equalises guardianship, opens adoption, and strengthens protection and maintenance, the Indian judiciary has been a principal engine of translating the promise of the Hindu Code reforms into practical equality for Hindu women.

5.2.5 Progressive Outcomes and Intergenerational Effects

Hindu law reform has yielded effects that unfold across lifetimes rather than legislative cycles. The first wave of enactments in the 1950s reset legal baselines on status, property and guardianship, and the second wave, culminating in the Hindu Succession (Amendment) Act 2005, recalibrated patrimonial structures by recognising daughters as coparceners. The intergenerational consequences are now visible: changes in women's proprietary position have altered educational and marriage trajectories for daughters, improved child health in treated cohorts, and shifted expectations about female economic agency. The story is not linear, and implementation remains uneven, yet the arc is discernibly cumulative.

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[145] *Hiral P Harsora v Kusum Narottamdas Harsora* (2016) 10 SCC 165.

[146] *Independent Thought v Union of India* (2017) 10 SCC 800.

Statute supplied the indispensable platform. Section 14 of the Hindu Succession Act 1956 converted a woman's limited estate into absolute ownership over property possessed, a doctrinal pivot that secured widows' economic autonomy and enabled intergenerational transfers not filtered through agnatic lines.[147] The 2005 amendment to section 6 conferred coparcenary rights by birth on daughters, aligning the *Mitākṣarā* joint family with constitutional equality and giving women a direct, not derivative, route into ancestral property.[148] Judicial interpretation then amplified these gains. In *V Tulasamma v Sesha Reddy* the Supreme Court read section 14(1) purposively, treating property received in lieu of maintenance as absolute, thereby protecting a class of assets that often sustains households with school-age children.[149] More recently, in the case of *Vineeta Sharma v Rakesh Sharma* the Supreme Court held that a daughter's coparcenary right is by birth and does not depend on the father's survival on 9 September 2005, closing a line of uncertainty that had dampened the reform's reach.[150] Strīdhan decisions such as *Pratibha Rani v Suraj Kumar* and *Rashmi Kumar v Mahesh Kumar Bhada* reinforced women's exclusive title to movable assets and provided a credible legal lever for recovery, with obvious consequences for daughters' consumption and schooling in periods of marital stress.[151]

Civil society organisations and feminist scholarship supplied the political and epistemic scaffolding that kept reform moving despite periods of legislative stasis. Documenting procedural choke points and lobbying for deletion of the male-only coparcenary, they sustained a coalition that culminated in the 2005 amendment; they also pressed for registration, maintenance enforcement and guardianship parity, the institutional predicates of intergenerational change.[152] The resulting legal environment has been studied with quasi-experimental tools. Deininger, Goyal and Nagarajan show that stronger inheritance rights for daughters increased the probability that women inherit land, raised female educational attainment for cohorts exposed at school-going age,

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[147] HSA (n3) s 14; see *V Tulasamma* (n 135).

[148] Hindu Succession (Amendment) Act 2005 (India) s 3 inserting a new s 6 into the HSA (n3).

[149] *V Tulasamma* (n 135).

[150] *Vineeta Sharma* (n 3) paras 63, 64, 75.

[151] *Pratibha Rani* (n 138); *Rashmi Kumar* (n 139) [13]–[14].

[152] See Flavia Agnes, *Law and Gender Inequality: The Politics of Women's Rights in India* (Oxford University Press 1999) 106–10, 175–82, 223–27.

and altered intergenerational transmission within families.[153] Roy's cohort-by-state identification strategy finds that exposure to the reform increased girls' years of schooling and, through education, reduced dowry among treated cohorts, with the effect strongest for those young enough at the time of reform to adjust schooling decisions.[154] These are precisely the channels through which legal change translates into durable advantage: assets shift bargaining power within the household, which in turn influences investments in daughters and in the next generation.

The child-centred effects are equally striking. Using state-staggered amendments, Hossain and co-authors find that enhanced inheritance rights raised height-for-age and weight-for-age scores among children of mothers exposed to the reform, with evidence that gains operate through improved female bargaining power and associated prenatal and postnatal investments.[155] This reflects an intergenerational mechanism in which a stronger outside option and asset base for the mother shifts household allocation towards investments that raise child human capital, even when norms change slowly. Complementary procedural rulings, such as *Seema v Ashwani Kumar*'s directions on compulsory marriage registration, work at a different but related margin, securing proof of status for inheritance and maintenance claims that underpin long-run investments in daughters.[156]

A critical appraisal remains necessary. Legislative and judicial change did not, by themselves, create a matrimonial property regime or solve maintenance enforcement, and local revenue practice still frustrates daughters' mutation in parts of the country. Some empirical work also notes mixed or context-specific effects, reminding us that legal change interacts with entrenched preferences and demography.[157] Even so, the weight of the evidence supports a clear claim: by redistributing property rights, stabilising status, and furnishing minimally functional enforcement pathways, Hindu law reforms have reshaped the opportunity set not only for the women directly

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[153] Klaus Deininger, Aparajita Goyal and Hari K Nagarajan, 'Women's Inheritance Rights and Intergenerational Transmission of Resources in India' (2013) 48(1) *Journal of Human Resources* 114, 114–15, 119.

[154] Sanchari Roy, 'Empowering Women: Inheritance Rights and Female Education in India' (CAGE Online Working Paper Series 46, University of Warwick 2011) 18–21.

[155] Md Shahadath Hossain and Plamen Nikolov, 'Entitled to Property: Inheritance Laws, Female Bargaining Power, and Child Health in India' *IZA Discussion Paper* No 14498 (June 2021) 2–6, 24–28.

[156] *Seema* (n 2).

[157] Hossain and Nikolov (n 155) 6–7.

protected, but also for their children. The long arc of reform thus operates through property to bargaining, bargaining to schooling and health, and schooling and health to the life chances of the next generation.

5.3 Compatibility of Indian Reforms with the Bangladeshi Context

The preceding section traced post-1950s developments within Indian Hindu law, culminating in the pivotal 2005 amendment to the Hindu Succession Act. Those reforms provide both a horizon of possibility and a map of pitfalls. The discussion that follows evaluates their compatibility with Bangladeshi conditions, attending to shared jurisprudential roots, social practices, and institutional capacities, and adopting the constitutional equality guarantees of Bangladesh and relevant international obligations as the normative benchmark.

5.3.1 Cultural and Religious Similarities

Any assessment of Indian Hindu-law reforms for Bangladesh requires more than a formal comparison of texts. It requires a culturally literate map of the terrain in which those texts operate. The practical question is not whether India and Bangladesh share a Hindu jurisprudential genealogy, but how far those shared scripts, rites, and institutions can bear the weight of equality enhancing reform. The record shows deep commonalities in sources, ritual practice, kinship, and community governance that make adaptation plausible, alongside patterned divergences that require careful tailoring and safeguards.

The jurisprudential lineage is common. Both polities inherit the *Dharmaśāstra* principle mediated through the Anglo-Hindu method. Company and Crown courts constructed “Hindu law” by triangulating Sanskrit textual extracts, pundit testimony, and reasoning by precedent, thereby entrenching *Mitākṣarā* and *Dāyabhāga* as rival yet cognate templates for property and family status. The influence of *Manu*, *Yājñavalkya* and *Nārada*, and of commentators such as *Vijñāneśvara* (*Mitākṣarā*) and *Jīmūtavāhana* (*Dāyabhāga*), remains visible in judicial vocabulary and local counsel’s argumentation in both countries. That shared canon was selectively domesticated by twentieth-century codification in India, producing statutory forms whose logic is

legible to Bangladeshi Hindu communities because they speak in familiar doctrinal registers, even as they seek to recalibrate gender hierarchy. The reliance of Indian code on customary solemnisation, welfare-centred guardianship, and the re-description of women's property rights all build upon categories long recognised in Bengal and beyond, rather than importing alien juridical concepts.

The continuities extend to ritual life and its evidentiary footprint. Section 7 of the Hindu Marriage Act 1955 states that "A Hindu marriage may be solemnised in accordance with the customary rites and ceremonies of either party thereto," adding that where *saptapadī* is part of those rites, the marriage is complete upon the seventh step.[158] Section 8 then permits registration rules, while making clear that "the validity of any Hindu marriage shall in no way be affected by the omission to make the entry."[159] These provisions exemplify an approach that both recognises customary solemnisation and builds documentary infrastructure. Bangladesh already shares this design choice. Section 3 of the Hindu Marriage Registration Act 2012, provides a statutory framework for evidentiary registration of "*Śāstric* marriage," and practice under the Act has reaffirmed that an unregistered Hindu marriage remains valid, though registration is strongly encouraged for proof and protection.[160] The coexistence of rites and registration, therefore, is not merely compatible across jurisdictions; it is a point of convergence that can be leveraged to strengthen women's capacity to prove status, to access maintenance, inheritance, and custody, and to navigate state services that routinely demand certificates.

Shared patriarchal structures also give the Indian reforms immediate relevance. Patrilineal inheritance, arranged marriage with dowry-like transfers, widowhood restrictions, and presumptions that the father is the natural guardian are features widely attested in both settings. Indian codification responded in ways that re-describe but do not erase the cultural field. Section 14(1) of the Hindu Succession Act 1956 declares that "any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner,"

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[158] HMA (n1) s 7.

[159] HMA (n1) s 8(5) ('the validity of any Hindu marriage shall in no way be affected by the omission to make the entry').

[160] Registration of Hindu Marriage Act 2012 (n 9) s 3 (Laws of Bangladesh, Ministry of Law, Justice and Parliamentary Affairs).

repudiating the "Hindu woman's estate."[161] The 2005 amendment then substituted section 6 to recognise daughters as coparceners "by birth," with the "same rights… and [the] same liabilities" as sons.[162] Together, these provisions attack lineage-based exclusion not by denying the existence of family corporations and rituals of affiliation, but by reallocating entitlements within them. Because similar lineage logics operate among Bangladeshi Hindus, reform that secures women's absolute ownership and birthright in joint property would speak to known categories, reducing translation costs.

Community institutions also look familiar. Samaj committees, temple councils, and salish-type fora frequently mediate disputes over marriage, maintenance, and property. They operate quickly, enjoy local legitimacy, and are often male-dominated. In India, codification did not abolish these bodies; however, the hybrid design of the Act shifted the evidentiary centre of gravity. Registration certificates, mutation entries, and school records began to carry greater weight, and community mediators increasingly acted in the shadow of a legal order able to validate or unsettle their arrangements. The registration law of Bangladesh can be made to serve a comparable function, provided coverage expands, and documentation is linked to property records and to the administration of benefits. Much of the architecture already exists, yet gaps in awareness, rural access, and institutional coordination diminish its protective effect for women.

Language, education, and legal consciousness present another zone of convergence. In both countries, vernacular legal culture, limited literacy, and the complexity of land and revenue records impede women's ability to prove status and to press claims. Indian courts, working with the statutory framework, used legitimacy rules to buffer children from the fallout of invalid or voidable marriages. Section 16 of the Hindu Marriage Act validates the legitimacy of children of void or voidable marriages, protecting their interests even when parents fall foul of entry rules.[163] Courts in Bangladesh, applying equality under Articles 27 and 28 of the Constitution, could analogise to such child-centred devices, especially in disputes where community solemnisation is unquestioned

[161] HSA (n3) s 14(1) ('Any property possessed by a female Hindu… shall be held by her as full owner…').

[162] Hindu Succession (Amendment) Act 2005 (India) s 3 substituting s 6 of the HSA (n3) ('the daughter of a coparcener shall, by birth, become a coparcener… with the same rights and… the same liabilities').

[163] HMA (n1) s 16.

but documentation is weak. Aligning proof regimes for marriage, guardianship, and inheritance would lower the evidentiary burden that disproportionately deters women from enforcing rights.

At the constitutional and international plane, the baselines are sufficiently aligned to make adaptation normatively defensible. Articles 27 and 28 of the Constitution of Bangladesh commit the state to equality before the law and to non-discrimination, including on grounds of sex. Read with Articles 2, 3 and 26 of the ICCPR and Article 16 of CEDAW, they supply an evaluative standard that mirrors the equality-centred trajectory of Indian codification. Reform need not efface religious identity. The Indian strategy shows how personal-law reform can retain rituals and community recognition while revising the allocation of rights and duties. Provisions that respect customary solemnisation, adopt a welfare standard in guardianship, secure absolute ownership for women, and equalise coparcenary rights by birth are all consistent with this constitutional frame, provided procedural design avoids surveillance-prone notice rules or punitive forfeiture clauses that chill women's agency.

Operationally, similarity enables some direct borrowings. Near-compulsory registration, achieved through incentives and administrative pre-conditions rather than by invalidating unregistered marriages, is one candidate. The Indian model provides a template in which rites remain decisive for validity, yet registration improves proof and access to services.[164] Welfare-centred guardianship, captured in the Indian statute's paramountcy principle, can be adapted within the judicial practice of Bangladesh to rebalance parental hierarchies in custody and decision-making, while equality-consistent maintenance standards and clearer interim relief rules would reduce bargaining asymmetries in separation. By contrast, aspects that require redesign include notice-and-objection procedures that invite community surveillance of inter-sub-caste or inter-regional marriages, and lineage-tracking rules for female intestates that inadvertently favour male relatives. Tailoring would also be needed to integrate registration with the land mutation and benefits portals of Bangladesh, so that equal succession entitlements translate into enforceable shares.

[164] HMA (n1) ss 7, 8(5); Registration of Hindu Marriage Act 2012 (n 9) s 3.

5.3.2 Key Challenges in Adopting Indian Reforms

Despite the deep jurisprudential and cultural continuities, significant structural frictions complicate the direct adoption of Indian Hindu-law reforms in Bangladesh. The comparative exercise must therefore separate what is culturally legible from what is legally and institutionally feasible, recognising that similar concepts may travel poorly when constitutional architecture, minority politics, and administrative capacity diverge.

The post-independence settlement in India married legislative competence over personal law to an explicit project of codification, then relied on purposive judicial consolidation to stabilise meaning. Bangladesh, while committed to equality and non-discrimination in Articles 27–28 of the Constitution, houses Hindu personal law within a different political economy, where minority protection, not majoritarian reform, defines the salience of identity. The result is a narrower reform bandwidth for ordinary statute and a thicker requirement to justify change as consistent with constitutional equality and community security.[165] These frames also condition judicial review, since courts must weigh equality against religious autonomy in a context where the relevant group is numerically and politically vulnerable.

Socio-political differences matter no less. Indian reform in the 1950s occurred within a Hindu-majority polity that could bargain internally over tradition, legitimacy, and pace. By contrast, Hindu minorities in Bangladesh may read state-led reform as dilution of identity, especially where inheritance or guardianship rules are symbolically central to communal self-definition. The risk of politicisation is acute, so that proposals framed as gender justice can be attacked as cultural erosion, which in turn chills legislative appetite and restricts administrative follow-through. These dynamics do not defeat reform, but they require a design that feels continuous with accepted practice, for example ritual solemnisation retained alongside stronger documentation.

Institutional capacity and enforcement gaps are a third fault line. Court congestion, uneven legal aid, and execution bottlenecks blunt the gains from rights on marriage registration, maintenance, and succession. Evidentiary fragility, especially where marriages remain unregistered and partitions undocumented, encourages informal settlements and sham transactions that defeat women's entitlements. Land-record complexity and mutation practice often slow or block

[165] Constitution of the People's Republic of Bangladesh 1972 (n 6), arts 27–28.

daughters' rights even when statutes confer equality. Without sustained investment in record systems and in first-instance courts, a transplantation risks producing law on the books without law in action.

Registration design and proof illustrate how small drafting choices have large practical effects. Under the Hindu Marriage Act 1955, ceremonies remain constitutive, and "A Hindu marriage may be solemnized in accordance with the customary rites and ceremonies of either party thereto…,"[166] while section 8, which enables State rules for registration, preserves status by providing that "the validity of any Hindu marriage shall in no way be affected by the omission to make the entry."[167] The Supreme Court of India, responding to fraud and proof deficits, directed a move towards compulsory registration across communities in *Seema v Ashwani Kumar*.[168] The Hindu Marriage Registration Act 2012 in Bangladesh takes a more cautious path: section 3 recognises that a Hindu marriage "may be registered" for evidentiary purposes and that validity is unaffected by non-registration.[169] In practice, this evidentiary model leaves many Hindu women unable to prove status in maintenance, custody, or succession litigation. Any importation of Indian techniques must therefore build a registration architecture that normalises post-solemnisation entry while safeguarding privacy and access.

Divergent property regimes and land administration create further headwinds. Equality-enhancing provisions such as section 14(1) of the Hindu Succession Act 1956, which declares that "any property possessed by a female Hindu… shall be held by her as full owner…,"[170] and the 2005 substitution of section 6, under which the daughter of a coparcener becomes a coparcener "by birth,"[171] depend on documentary infrastructure, mutation rules, and revenue practice to be meaningful in the field. Indian courts have underwritten this design by insisting on registered partitions and by reading the 2005 amendment as a birthright, irrespective of whether the father

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[166] HMA (n1) s 7.

[167] HMA (n1) s 8 ('the validity of any Hindu marriage shall in no way be affected by the omission to make the entry').

[168] *Seema* (n 2).

[169] Registration of Hindu Marriage Act 2012 (n 9) s 3.

[170] HSA (n3) s 14(1) ('any property possessed by a female Hindu … shall be held by her as full owner …').

[171] Hindu Succession (Amendment) Act 2005 (India) s 2 substituting HSA (n3) s 6 ('the daughter of a coparcener shall, by birth, become a coparcener…').

was alive on commencement.[172] In Bangladesh, cadastral complexity, evidentiary hurdles for partition proof, and the ease of back-dated family arrangements would allow evasion unless succession reform is coupled with tight definitions of valid partition, mandatory mutation protocols, and sanctions for sham transactions.

Guardianship provides a different kind of migration test. The Hindu Minority and Guardianship Act 1956 directs that "the welfare of the minor shall be the paramount consideration."[173] That standard can, in principle, be transplanted without strain, since Bangladeshi courts already deploy best-interests reasoning in cognate contexts. The challenge is not conceptual but institutional, namely whether family courts are equipped and inclined to prioritise welfare over patriarchal defaults, to police property transactions through permission regimes, and to manage evidence expeditiously.

Maintenance enforcement exposes both doctrinal and social frictions. Quantification requires transparent criteria and prompt interim relief; execution demands tools that bite against non-compliance. Where procedure is weak, moralised exclusions are readily weaponised against women, particularly when evidentiary asymmetries allow respondents to cast doubt on status or conduct. Indian attempts to standardise maintenance practice through appellate guidance offer a model, but transplantation must reckon with docket pressure, legal-aid deficits, and stigma in local fora.

Notice-and-surveillance risks sit in the background of several devices. In India, the historical use of public notice and objection in civil marriage under the Special Marriage Act 1872 exposed couples, especially women, to family and community pressure.[174] To avoid chilling effects, Bangladesh should couple any enhanced registration regime or civil-marriage scheme with stringent privacy measures, ensuring that administrative openness does not deter the claims it is designed to enable.

Conservative resistance intersects with intra-community pluralism. Clerical networks, mandir or *samaj* committees, and local arbitration fora act as veto players, while Bengali Hindu communities

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[172] *Vineeta Sharma* (n 3) [63-64], [75].

[173] HMGA 1956 (n 4) s 13(1) ('the welfare of the minor shall be the paramount consideration').

[174] Special Marriage Act 1872 (n 22) ss 17–21 (notice, publication, objections).

in Bangladesh are internally diverse in caste, class, and rural-urban experience. Design choices can temper backlash, for example, near-compulsory registration aligned to customary solemnisation, welfare-centred guardianship articulated in familiar idioms, and succession rules with carefully drawn savings for settled transactions. Engagement must be principled, however, since Articles 27–28 and treaty obligations under the ICCPR and CEDAW fix a floor beneath which accommodation cannot sink.[175]

5.3.3 Lessons to Learn from India

The preceding section underscored why Bangladesh cannot import Indian enactments wholesale. Differences in demography, institutional capacity, and political calculus make caution prudent. Yet the Indian experience offers a repertoire of tested legal techniques and procedural designs that can be adapted to the constitutional framework and administrative realities of Bangladesh. The task is to translate norms that promote equality into instruments that local institutions can credibly administer and enforce, while avoiding features that would reproduce surveillance or deepen stigma. The source material maps these opportunities and the preconditions for their uptake.

A first lesson concerns marriage solemnisation, proof, and registration. The Hindu Marriage Act 1955 accommodates custom while building a record. Section 7 recognises that "A Hindu marriage may be solemnised in accordance with the customary rites and ceremonies of either party thereto…", and section 8 provides for state registration while adding that "the validity of any Hindu marriage shall in no way be affected by the omission to make the entry."[176] These twin moves, when read with the insistence of the Supreme Court upon generalised marriage registration to protect rights and public order,[177] point towards a Bangladesh design that respects religious celebration yet secures proof. Bangladesh already has a statutory foothold. Section 3 of the Hindu Marriage Registration Act 2012 states that a Hindu marriage "may be registered" and that non-registration does not affect validity, which has left evidentiary gaps.[178] A near-compulsory

[175] ICCPR (n 8) arts 2, 3, 26; CEDAW (n 9) art 16.

[176] HMA (n1) s 7; s 8 ('the validity of any Hindu marriage shall in no way be affected by the omission to make the entry').

[177] *Seema* (n 2).

[178] Registration of Hindu Marriage Act 2012 (n 9) s 3(1)–(2) (Act 40 of 2012).

"mandate-plus-facilitation" model is therefore advisable: simple forms, local and digital access, fee waivers for the indigent, and privacy-protective procedures for vulnerable couples, combined with an unequivocal rule that registration, though non-constitutive of validity, is required for access to remedies and for mutation of records. The earlier chapter synthesises this logic for courts and registrars in Bangladesh.

Exit rules are the second area where calibrated borrowing is feasible. The Hindu Marriage Act 1955 created a dual architecture of fault-based divorce and mutual consent. Section 13 enumerates grounds available to both spouses, supplemented by wife-specific grounds, and section 13B enables consensual dissolution, whose cooling-off period has been treated as directory in appropriate cases to avoid needless delay.[179] For Bangladesh, a Hindu-specific statute could adopt a parallel design, embedding conciliation options, expedition standards, and in-camera hearings for sensitive matters. Such a framework would align with equality guarantees while keeping exit costs manageable and stigma reduced through procedural privacy.

Maintenance design and enforceability supply a third opportunity. The Indian experience shows the value of structuring both interim and final maintenance, with time-bound decisions and documentary discipline. Section 24 authorises "maintenance pendente lite and expenses of proceedings" where a spouse lacks sufficient independent income; section 25 provides for permanent alimony, adjustable upon "change of circumstances".[180] The Supreme Court's guidance in *Rajnesh v Neha* has standardised income affidavits, criteria, and timelines across matrimonial statutes and has thereby improved enforceability.[181] Courts in Bangladesh could adopt similar affidavit protocols by rule, set indicative time frames for interim relief, and standardise execution directions, including wage garnishment and attachment where appropriate. These steps are institutionally feasible in Bangladesh and would materially improve outcomes for Hindu women.

Guardianship exemplifies how to transplant a principle while avoiding a patriarchal residue. Section 13 of the Hindu Minority and Guardianship Act mandates that "the welfare of the minor shall be the paramount consideration",[182] and Indian constitutional adjudication has read natural-

[179] HMA (n1) ss 13, 13B; see *Amardeep Singh* (n 41).

[180] ibid ss 24, 25.

[181] *Rajnesh* (n 45).

[182] HMGA 1956 (n 4) s 13(1).

guardianship provisions through this lens, upgrading mothers' status.[183] A Bangladeshi reform could codify a welfare-centred standard that treats mother and father as joint natural guardians ab initio, instructs courts to consider continuity of care and the child's views, and removes any presumptive paternal preference. This is compatible with Articles 27–28 of the Constitution of Bangladesh and with international obligations that require equality within the family.[184] The source text makes the same point, recommending a direct adoption of the welfare test and an explicit omission of any paternal default.

Succession and women's proprietary status yield the most consequential gains. Section 14(1) of the Hindu Succession Act 1956 shifted the "Hindu woman's estate" to full ownership, declaring that "any property possessed by a female Hindu… shall be held by her as full owner", a clear asset-equality anchor.[185] The 2005 substitution of section 6 went further, granting daughters coparcenary "by birth", fortified by guardrails against sham partitions through a narrow definition that respects only registered instruments or decrees before a specified cut-off.[186] The Supreme Court's consolidation in *Vineeta Sharma v Rakesh Sharma* confirms that the right is a birthright not contingent on the father's survival and clarifies the statute's temporal operation.[187] For Bangladesh, where many disputes turn on proof of marriage and status for succession, these norms recommend themselves as a baseline: equal shares and absolute ownership coupled with administrative supports in mutation and revenue practice. The uploaded chapter stresses that specifying evidentiary guardrails is essential to foreclose evasion through unregistered "family arrangements".

Adoption and the wider care economy present a more mixed picture. Sections 18–20 of the Hindu Adoptions and Maintenance Act 1956 recognise maintenance obligations to wives, children, and aged parents, but parts of the adoption regime and some moralised exclusions in maintenance

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[183] *Githa Hariharan* (n 4) paras 14, 24.

[184] ibid.

[185] HSA (n3) s 14(1) ('any property possessed by a female Hindu … shall be held by her as full owner …').

[186] ibid s 6 as substituted by Hindu Succession (Amendment) Act 2005 (India) s 3 ('the daughter of a coparcener shall, by birth, become a coparcener in her own right in the same manner as the son').

[187] *Vineeta Sharma* (n 3) [63-64], 75].

doctrine have drawn sustained critique.[188] Bangladesh should extract the enforceable core of dependants' maintenance while avoiding constraints on married women's adoptive capacity or categories that entrench respectability hurdles. Child-centred adoption standards, guardianship principles keyed to welfare, and a secular backstop through the Special Marriage Act can be coordinated to respect religious identity while delivering equality in substance.

No legal text is self-executing. Indian experience demonstrates that rights must be paired with machinery: in-camera hearings for sensitive claims, summary procedures for interim relief, standard directions and bench tools, and capacity building for judges, magistrates, police, and registration officials. Bangladesh can draw directly on these operational templates. The chapter records proposals for judicial training in equality consistent interpretation and comparative jurisprudence, and for standardised forms and timelines that reduce discretion and cost.[189] These are administrative, not ideological, reforms, and they travel well.

At every step, constitutional and international anchors should frame legislative choice. Articles 27–28 of the Constitution of Bangladesh require equality before the law and prohibit discrimination, while authorising special provisions for women and children.[190] Read with ICCPR and CEDAW obligations, these provisions supply the normative baseline for personal-law reform that respects religious identity yet secures equality. In practice, this means preferring designs that minimise surveillance and stigma, such as removing intrusive notice requirements for marriage, and building neutral, accessible forums for intra-family property and maintenance disputes.

5.4 Internal Challenges and Opportunities for Reforms in Bangladesh

The opportunities mapped in the previous section are credible only if they can travel through the legal and institutional terrain of Bangladesh. Sequenced amendments, codification, targeted administrative directions, and judicial capacity building will matter less as abstract design than as practicable pathways through recurrent constraints, from political prioritisation to the nuts and

[188] HAMA 1956 (n 5) ss 18–20; see also Agnes (n 154) 88–89, 95–96, 99–100, 106–07, 173–75.

[189] See the chapter's synthesis on judicial capacity-building and standardisation proposals for Bangladesh's courts.

[190] Constitution of the People's Republic of Bangladesh 1972 (n 6) arts 27–28.

bolts of registration, mutation, and execution. What follows, therefore, identifies the principal legal and institutional obstacles that condition any feasible adaptation of Indian advances to the Bangladeshi setting, drawing directly on the concerns already catalogued in this chapter.

5.4.1 Legal and Institutional Challenges

The preceding subsection set out opportunities distilled from Indian experience. Those lessons, however, do not travel on goodwill alone. In Bangladesh, the feasibility of any transplant is conditioned by constitutional review, forum design, administrative capability, and the mundane routines of proof and execution. Reform must therefore be mapped against the institutional capacities of Bangladesh, otherwise text-level advances will risk remaining aspirational rather than actionable.

At the constitutional apex, Articles 27 and 28 of the Constitution of Bangladesh provide the equality baseline. Article 27 declares, "All citizens are equal before law and are entitled to equal protection of law," while Article 28(2) adds that "Women shall have equal rights with men in all spheres of the State and of public life."[191] These guarantees extend to the sphere of family law and, when read with the obligations of Bangladesh under the ICCPR and CEDAW, require that personal-law administration does not entrench sex-based disabilities. The difficulty is not a lack of norms but an implementation deficit: weak inter-institutional coordination and variable judicial enforcement often decouple high constitutional promise from day-to-day programme management in ministries, commissions, and parliamentary committees.

The statutory architecture is fragmented. Hindu status questions are not located in a single, codified instrument, and the partial registration framework amplifies proof risks. Section 3 of the Hindu Marriage Registration Act 2012 permits registration but makes it evidentiary rather than constitutive, a design that impairs subsequent claims for maintenance, guardianship, and succession where marriage itself must first be proved.[192] By contrast, India's Hindu Marriage Act 1955 accommodates customary solemnisation while using registration to create a robust evidentiary trail; section 8 confirms that "the validity of any Hindu marriage shall in no way be

[191] ibid.

[192] Registration of Hindu Marriage Act 2012 (n 9) s 3.

affected by the omission to make the entry," a clause that secures validity without disabling documentation as proof.[193] A Bangladesh-specific reform could preserve customary rites yet move towards near-compulsory registration with accessible procedures and privacy-respecting safeguards, thereby reducing litigation centred on status rather than substance.

Forum, procedure, and capacity pose further constraints. Chronic backlogs, dispersed jurisdiction, and uneven first-instance adjudication erode confidence in remedies. In maintenance matters, the absence of standardised affidavits on income and assets, limited use of in-camera hearings, and delays in execution transform interim relief into a hollow promise. Time-bound directions, model case-management orders, and routine privacy protections would improve predictability without large budgetary outlays. Specialist family lists could be piloted to prioritise custody, maintenance, and interim relief, with published standard directions to discipline timelines and reduce variance. Judicial education on equality consistent interpretation and the development of bench books that operationalise Articles 27–28 would anchor constitutional principles in daily adjudication.

Land administration and records are decisive for inheritance. The layered cadastral surveys, inconsistent recordation, and mutation practice in Bangladesh increase the transaction costs of asserting daughters' or widows' shares. Without searchable, updated records and time-bound mutation, any succession reform would falter in the revenue office. Embedding personal-law change within land-records reform is therefore not optional. Model directions could require revenue officers to complete mutations on the strength of certified succession orders within set periods, with default triggering supervisory remedies. These administrative supports are the institutional hinge on which equality in succession will turn.

Guardianship requires translating welfare rhetoric into courtroom routine. A comparative touchpoint is section 13 of the Hindu Minority and Guardianship Act 1956 in India, which provides that "the welfare of the minor shall be the paramount consideration."[194] In Bangladesh, operationalising a comparable standard would involve appointing child-sensitive guardians ad litem in contested matters, imposing leave requirements for alienation of a minor's immovable property with reasoned orders, and budgeting for supervision where necessary. Without these

[193] HMA (n1) s 8.

[194] HMGA 1956 (n 4) s 13.

supports, welfare talk risks collapsing into paternal presumptions. Practice directions issued by the courts could require reasoned best interest analyses, recorded interviews with children where appropriate, and periodic review of guardianship orders.

Maintenance enforceability illustrates how design and execution must meet. The Indian framework creates structured interim and permanent maintenance, sections 24 and 25 of the Hindu Marriage Act 1955 authorising "maintenance pendente lite and expenses of proceedings" and "permanent alimony and maintenance," subject to variation for change of circumstances.[195] Borrowing the technique, courts in Bangladesh could adopt standardised income-and-assets affidavits, presumptive time-limits for interim orders, and execution windows with consequences for non-compliance. Such measures would reduce bargaining externalities that presently push claimants towards informal settlements and private-ordering evasion.

The interface between religious and secular frameworks also generates friction. Personal-law rules must co-exist with constitutional equality, land and registration regimes, and civil-procedure codes. Conflicts of laws arise when customary arrangements collide with formal title, or when guardianship defaults diverge from best-interests standards in child legislation. Mapping these conflicts in advance would help to design saving and override clauses that locate equality as the default. For example, the logic of section 14(1) of the Hindu Succession Act 1956 in India, that "any property possessed by a female Hindu … shall be held by her as full owner,"[196] signals how property consequences can be drafted to protect women against re-emerging life-estate constraints. Any Bangladeshi drafting would need to express the substantive equality rule while providing a procedural bridge to mutation and execution in the revenue administration.

Notice and privacy rules are not neutral. Public notice and objection regimes, familiar from colonial marriage laws, tend to create surveillance risks for minority women, particularly in small communities where reputational sanctions are immediate and severe. Marriage registration and civil-status procedures should therefore adopt confidentiality by default, limit public inspection to legitimate interests, and criminalise harassment flowing from disclosure. The evidentiary advantages of registration can be preserved without replicating practices that enable interference.

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[195] HMA (n1) ss 24–25; see also *Rajnesh* (n 45).

[196] HSA (n3) s 14(1).

Administrative discretion and local capture remain recurring hazards. Registrars and revenue officials act as gatekeepers in ways that can dilute statutory entitlements, especially for widows and daughters with little bargaining leverage. Clarifying standing for women's access to remedies, fixing transparent fee schedules, and auditing reasons for refusal would narrow discretion. Where informal mediation is unavoidable, only rights-compatible forums should be recognised, with written reasons required for any settlement affecting women's proprietary or custodial rights.

Costs and access weigh heavily. Filing fees, stamping, travel, and the expense of commissioners' reports deter claimants from bringing or pursuing suits. Legal aid coverage for minority women remains limited in both footprint and scope. A targeted waiver regime and cost capping for specified family-law applications, combined with ring-fenced legal aid for Hindu women in maintenance, guardianship, and succession, would materially reduce abandonment of claims. Without such supports, procedural rights will remain elite goods.

5.4.2 Socio-Cultural Resistance

Building on the preceding account of legal and institutional chokepoints, it is necessary to recognise how those constraints are compounded by social sanctions, community surveillance, and identity politics that discourage Hindu women in Bangladesh from invoking the formal system. Where courts are slow and orders uncertain, communities infer that recourse to law is aberrant, costly, and likely futile. The result is a pattern of pre-emptive compliance with patriarchal expectations, informal settlements that divest women of entitlements, and mobilisation by conservative actors who claim to "protect tradition" by resisting registration, maintenance, or succession claims.

A first and pervasive strand is the framing of reform as a threat to religious identity. In a minority setting, personal law is often presented as an emblem of cultural survival, so proposals that enlarge daughters' inheritance, recalibrate guardianship, or widen access to divorce are portrayed as erosions of Hindu autonomy within a Muslim-majority state. This rhetoric privileges group cohesion over the autonomy of individual women, often invoking a Bengal Dayābhāga pedigree to naturalise unequal outcomes and to contest even procedural changes such as documentation or registration. The appeal is not only theological, it is political, amplifying minority insecurity to defeat equality measures that would otherwise be defensible on doctrinal or welfare grounds.

A second and closely related mechanism is social stigma, intensified by community surveillance of intimate decisions. Women who seek to register a marriage, file for maintenance, or litigate inheritance are cast as disloyal to affinal and natal kin, with reputational penalties in marriage markets and within neighbourhood networks. Even where a decree is obtainable, enforcement is undermined by familial obstruction and the public visibility of proceedings. Comparative experience in India shows how administrative design can lower these social costs. In *Seema v Ashwani Kumar* the Supreme Court explained that compulsory, universal marriage registration deters fraud and supplies reliable proof, thereby protecting women across communities and stabilising evidentiary baselines.[197] A parallel evidentiary infrastructure is normatively congruent with the Constitution of Bangladesh, which guarantees equality before the law and prohibits sex discrimination.[198]

A third dynamic operates within the realm of internalised patriarchy and gendered deference. Norms of *pativrata*, obedience, and family honour deter women from claiming maintenance or property even when rights are known. The social density of extended households and localised networks multiplies the perceived cost of appearing "litigious". Legal literacy deficits and economic dependency reinforce the preference for informal fora controlled by male elders, particularly where processes in formal courts are slow, public, and expensive. These factors make it rational, though rights-diminishing, for many women to refrain from formal assertion and to accept partial, unequal settlements.

Fourth, resistance is organised through clerical and conservative mobilisation. Temple or *samaj* committees and *salish*-type bodies operate as veto gates that valorise reconciliation and the restoration of patriarchal hierarchy. Registration and documentation are characterised as precursors to unwanted state intrusion into sacred domains, and complainants may be pressured to withdraw cases or to consent to renunciation of claims in exchange for continued residence or familial support. Yet the same institutions can be enlisted for norm change where reform is framed as continuity with Dharmaśāstric concerns for duty and welfare, and where procedural safeguards, women's participation, and independent facilitation are in place.

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[197] *Seema* (n 2), directing compulsory registration to promote evidentiary certainty and women's protection.

[198] Constitution of the People's Republic of Bangladesh 1972 (n 6) arts 27, 28(2).

Fifth, documentation barriers, while often described as administrative, are in significant part social facts. Optional marriage registration leaves many unions undocumented, which weakens women's bargaining power and complicates proof of status in disputes over maintenance, custody, or inheritance.[199] Daughters and widows may be pressed to sign blank papers, to "consent" to renunciations, or to accept unequal settlements that later prove difficult to reverse given evidentiary deficits and community pressure. The comparative lesson from India is not to transplant compulsion crudely, but to pair religious solemnisation with near-automatic, low-visibility entry in local registers and privacy-respecting access rules.

These socio-cultural patterns must be tested against the constitutional guarantees of Bangladesh. Article 27 provides that "All citizens are equal before law and are entitled to equal protection of law", and Article 28 forbids discrimination "on grounds only of religion, race, caste, sex or place of birth".[200] Claims to minority identity can inform the pacing and methods of reform, but they cannot justify the systematic exclusion of Hindu women from inheritance, guardianship, or matrimonial remedies in the public legal order. This constitutional baseline is reinforced by the obligations of Bangladesh under the ICCPR and CEDAW, which require equality within family relations and effective remedies for rights violations. Courts in both India and Bangladesh have relied on equality and dignity to moderate coercive uses of family law, to secure maintenance on principled terms, and to protect privacy through appropriate procedures.

Finally, socio-cultural resistance must be mapped to law in action. Awareness deficits, distance from courts, and litigation costs weigh most heavily on poorer, rural, and lower-caste Hindu women. Community fora have reach and perceived legitimacy, which can be harnessed for tasks such as routine registration facilitation or dissemination of guardianship standards, provided that transparency, women's participation, and safeguards against intimidation are mandatory. Contested partitions, or custody where violence is alleged, must remain within judicial forums equipped with in-camera hearings, survivor-centred scheduling, and enforceable orders. A realistic programme therefore integrates privacy-protective court practice, routine documentation, and supervised community engagement, so that asserting rights does not entail social ruin.

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[199] Registration of Hindu Marriage Act 2012 (n 9) s 3; see also HMA (n1) s 8, confirming that omission to register does not affect validity, which has required judicial reinforcement through evidentiary practice.

[200] Constitution of the People's Republic of Bangladesh 1972 (n 6) art 27 and art 28(1)-(2).

5.4.3 Opportunities for Advocacy and Reform

Set against the socio-cultural impediments, the present subsection focuses on opportunities to redirect resistance through institution-building, strategic litigation, and community engagement. The argument proceeds from the core insight that procedural design and coalition politics can convert constitutional promises into usable remedies for Hindu women. It draws on the chapter's earlier analysis of registration, maintenance architecture, guardianship standards, and land-records practice, and proposes a sequenced, evidence-led platform for reform in Bangladesh.

A first opportunity lies in coordinated civil-society and professional alliances. Women's rights organisations, legal aid providers, bar associations, and clinical legal programmes can jointly select and support test cases that target chokepoints identified in practice, for example the denial of maintenance for want of proof of marriage, or delays in mutation that frustrate widows' and daughters' succession. Court-annexed mediation has a place, but only if configured to be rights-compatible, with explicit safeguards against coercion, independent counsel for women, and judicial review of settlements that touch property or custody. Strategic partnerships with land and registration offices are essential to couple litigation with administrative follow-through, for instance same-day scheduling of mutation upon presentation of decrees.

The constitutional infrastructure should be used more purposively. Articles 27 and 28 of the Constitution of Bangladesh supply a strong equality baseline, authorising challenges to sex-based exclusions and to procedures that render rights illusory. The Supreme Court's remedial repertoire can be enlisted to standardise practice through time-bound orders, monitoring of execution, and simplified evidentiary protocols for maintenance and registration, with targeted relief that fits the forum's capacity. Very short quotations underscore the point: article 27 guarantees that "All citizens are equal before law and are entitled to equal protection of law," while article 28(2) affirms that "Women shall have equal rights with men in all spheres of the State and of public life."[201]

Legislative and rule-making opportunities are concrete and administratively feasible. First, move to a near-compulsory Hindu marriage registration model with privacy-respecting procedures. Section 3 of the Hindu Marriage Registration Act 2012 recognises registration for evidentiary purposes; amending rules to require registration within a reasonable period, with fee waivers for

[201] Constitution of the People's Republic of Bangladesh 1972 (n 6) arts 27, 28(2).

indigent parties and secure, non-public notice, would materially strengthen proof and reduce repudiation.[202] Second, promulgate standard income-and-assets affidavits for interim and final maintenance across family courts, along with schedules for time-limits on decisions, building on Indian practice under sections 24 and 25 of the Hindu Marriage Act 1955 and the harmonising guidance of the Supreme Court.[203] Third, codify in-camera hearings as the default in sensitive family litigation, drawing on section 22 of the Hindu Marriage Act 1955, and adopt practice directions on anonymising orders where safety is at stake.[204] Fourth, introduce summary procedures for small-value maintenance arrears, with registry-led execution and the power to attach wages and bank accounts subject to due process.

Comparative learning from India should be selective. Indian case law has used registration to protect women against denial and trafficking, without making registration constitutive of validity. In *Seema v Ashwani Kumar* the Supreme Court directed States to ensure compulsory registration for all marriages, chiefly for evidentiary and protective reasons.[205] Bangladesh can adapt the technique by making registration practically unavoidable, while insulating couples from surveillance-prone notice regimes. Likewise, the Indian turn to standardised maintenance documentation in *Rajnesh v Neha* can be localised through a Chief Justice's circular annexing model affidavits and checklists for family courts, paired with judicial training.[206] None of these measures requires wholesale transplantation of the Hindu code; each is a discrete, forum-compatible tool.

Grassroots documentation and land-records reform are vital to make inheritance rights usable. Partnerships with the land administration should pilot joint titling for spouses in targeted upazilas, simplify mutation for widows and daughters on intestacy, and provide mobile documentation camps that help women assemble lineage papers. Community paralegals can work through women's groups and rights clubs to run legal-literacy sessions on inheritance and maintenance, using checklists, template affidavits, and referral maps to legal aid, shelters, and counselling.

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[202] Registration of Hindu Marriage Act 2012 (n 9) s 3 (registration for evidentiary purposes).

[203] HMA (n1) ss 24, 25; *Rajnesh* (n 45) [72]–[79].

[204] HMA (n1) s 22.

[205] *Seema* (n 2).

[206] *Rajnesh* (n 45).

Privacy-protective protocols are important in rural areas where community surveillance deters claimants.

Constructive engagement with Hindu community institutions can reduce stigma and ease access. Temple committees, samāj bodies, and respected local leaders should be invited to endorse model charters on non-coercive dispute resolution, child welfare, and fair property settlements. These charters should forbid pressure to withdraw cases, affirm women's right to approach courts, and endorse registration as a community good. Engagement must be grounded in constitutional equality and basic procedural protections, not in bargaining away women's rights.

International law offers additional leverage for domestic advocacy and accountability. Articles 2, 3, and 26 of the ICCPR and article 16 of CEDAW frame the State's obligations to remove discrimination in family relations and to ensure effective protection.[207] NGOs and professional bodies can make measured use of treaty-body reporting and the Universal Periodic Review to register progress and gaps, while avoiding reputational securitisation that may harm a minority community. Donor support is best channelled to institutional goods, such as registrar training, digital record-keeping, and shelters linked to legal services, rather than to transient projects.

Measurement and iterative reform should close the loop between advocacy and administration. A small set of indicators can be tracked at court and registry level, for example Hindu marriage registration coverage, time to interim maintenance, execution rates on maintenance orders, completion times for mutation after succession, and user satisfaction audits with safe feedback channels. Publishing quarterly dashboards can support judicial and administrative supervision and provide the evidence base for periodic rule-making.

The cumulative effect of these interventions is to align advocacy with implementable legal change. The immediate deliverables are text-level amendments and model rules on registration, maintenance, in-camera process, and summary execution; a capacity-building plan for judges, magistrates, police, and land and registration officials; a community engagement framework that protects women who assert rights; and a monitoring matrix to keep the system honest. Each element rests on constitutional equality and can be adapted to the institutional capacities of Bangladesh.

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[207] ICCPR (n 8) arts 2, 3, 26; CEDAW (n 9) art 16.

5.5 Conclusion

Taken together, the chapter shows that Indian Hindu law reforms are compatible with the Bangladeshi context where they are adapted through careful drafting, calibrated sequencing, and institution-aware implementation aligned with constitutional equality. The core finding is conditional rather than categorical: transplantation is most persuasive, and most likely to endure in practice, when statutory language, adjudicative technique, and administrative design jointly mitigate the social and evidential costs borne by Hindu women.

The advocacy and implementation pathways clarify how doctrinal proposals translate into uptake. Indian experience demonstrates that equality gains were consolidated by a threefold method, phased codification, purposive judicial interpretation, and mundane but decisive administrative reforms in registration and records. The equality baselines relevant to Bangladesh are now plain. First, the inheritance norm crystallised in section 6 of the Hindu Succession Act 1956, as amended in 2005, that "the daughter of a coparcener shall, by birth, become a coparcener in her own right in the same manner as the son", is a workable template when paired with transitional and evidentiary safeguards.[208] Secondly, guardianship can be re-cast around the welfare principle, long familiar in the region, where "the welfare of the minor shall be the paramount consideration".[209] Thirdly, optional marriage registration under Bangladeshi law has probative and bargaining consequences, so rights-protective documentation rules are an essential complement to any reform of status, maintenance or custody.[210]

The chapter has synthesised the principal terrains of reform, marriage and divorce, adoption and guardianship, maintenance, inheritance and registration, as well as the institutional and socio-cultural constraints that condition reception. The institutional capacities of Bangladesh affect feasibility at every stage, from drafting to enforcement, which is why the evaluation has distinguished law on the books from law in action. Indian judicial consolidation has been

[208] ICCPR (n 8) arts 2, 3, 26; CEDAW (n 9) art 16.

[209] HMGA 1956 (n 4) s 13 ('In the appointment or declaration of any person as guardian of a Hindu minor by a court, the welfare of the minor shall be the paramount consideration').

[210] Center for Reproductive Rights, *Ending Impunity for Child Marriage in Bangladesh* (2018) 24 (noting that the Registration of Hindu Marriage Act 2012 makes registration optional and that non-registration does not invalidate marriage).

instructive, for example *Vineeta Sharma v Rakesh Sharma*, which confirmed the birth-based character of daughters' coparcenary, thereby stabilising the meaning of section 6 across jurisdictions and years.[211] Such decisions do not bind Bangladesh, but they supply regionally legible reasons and remedial techniques that courts in Dhaka can adapt when interpreting kindred clauses.

The normative framework for compatibility has been fixed explicitly in Articles 27 and 28 of the Constitution of Bangladesh. Article 27 provides that all citizens are equal before the law and entitled to equal protection, while Article 28 forbids discrimination, including on grounds of sex, and affirms equal rights of women with men in all spheres of the State and public life.[212] These provisions, read with relevant international obligations, set the evaluative boundary for accommodation to religious identity. They permit sensitivity in design and pacing, not the entrenchment of legal disability. On this view, equality-oriented inheritance, welfare-centred guardianship, enforceable maintenance, and robust documentation rules are not external impositions but constitutional requirements that may draw on shared Hindu jurisprudential resources.

The decisive conditions for successful adaptation, therefore, lie less in rhetoric than in technique. Drafting should employ clear equality clauses with express transitional provisions, including partition-deeming and limitation rules, and should mandate or normalise evidence-producing practices, for example, standardised notices, certified extracts from land and marriage registers, and privacy-protective access protocols. Courts should be equipped to apply welfare-centred interpretation and to police coercive bargaining, particularly in maintenance and custody. Administrative reforms in titling and civil registration must be sequenced with legislative change; otherwise, daughters' rights will remain merely formal. Community facing implementation should use temple and *samaj* platforms for legal literacy while ensuring due-process safeguards where local forums assist in documentation or outreach.

Two lacunae remain. First, optionality in marriage registration leaves Hindu women exposed in proof-heavy disputes over status and maintenance; a Bangladesh-specific mechanism that

[211] *Vineeta Sharma* (n 3) paras 46, 55, 75.

[212] Constitution of the People's Republic of Bangladesh 1972 (n 6) arts 27–28.

normalises post-solemnisation entry in official registers, without disturbing rites, would narrow this gap.[213] Secondly, without targeted investment in land records and accessible legal aid, inheritance equality will underperform for poorer and rural women, regardless of statutory text. These are not reasons for inaction; they are reasons to stage reform so that law and administration mature together.

[213] Center for Reproductive Rights (n 212) 24.

Chapter 6

PATHWAYS TO REFORM: LEGAL STRATEGIES AND THE ROAD AHEAD

6.1 Introduction

This concluding chapter turns from diagnosis to remedy. It gathers the doctrinal and socio-legal findings of the thesis into a practical programme for reform of Hindu personal law in Bangladesh, linking constitutional principle to statutory design, to equality-attuned judicial method, and to everyday administration. The aim is not to assemble a miscellany of proposals. It is to map a sequence by which equal status, equal responsibilities, and fair property outcomes can become ordinary results in ordinary cases. The analysis proceeds from a Bangladeshi normative frame. Comparative materials, including Indian experience, are used for technique and administrability, not for uncritical transplant.

The constitutional baseline is categorical. Article 27 secures equality before the law and equal protection, while Article 28 prohibits discrimination, including on grounds of sex, and affirms equal rights of women with men in all spheres of the State and public life.[1] These clauses discipline legislation, adjudication, and administration. They require that any recognition or enforcement of religiously sourced rules be tested against the constitutional standard. In parallel, Article 16(1) of the Convention on the Elimination of All Forms of Discrimination against Women requires States Parties to take appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations, including equality at entry, during marriage, and at dissolution.[2] General Recommendation No. 33 of the CEDAW Committee further insists on

[1] Constitution of the People's Republic of Bangladesh 1972, arts 27, 28.

[2] Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13, art 16(1).

women's access to justice that is available, accountable, and effective in practice.[3] The roadmap that follows, therefore, seeks direct effect for constitutional equality and alignment with treaty obligations.

The argument of the thesis has prepared the ground for this programme. Earlier chapters identified the sites where Hindu women face structural disadvantage within status and property law, and the points at which institutional design undermines formal rights. The thesis also distinguished law on the books from law in action, and showed how institutions of Bangladesh condition feasibility at every stage, from drafting to enforcement. Building on that analysis, this chapter sets out reforms that embed rules for proof, timelines, supervision, and data so that equality is not only declared but delivered. The discussion connects doctrinal revision to forum design, and forum design to administrative routine, so that rights and remedies hold in the settings where women litigate and settle.

Within status law, a modernised marriage and dissolution regime is required. Registration should become the default. Procedures should be simple and low-cost. Failure of registration should never extinguish substantive rights to maintenance, custody, succession, or division of property. Section 3 of the Registration of Hindu Marriage Act 2012 presently creates an optional regime.[4] Strengthening the registration statute, together with clear remedial powers for delayed registration, would reduce evidential evasion, narrow bargaining asymmetries, and create reliable documentary trails for enforcement. Administrative measures in registrar offices should be calibrated to this objective, with unambiguous duties to provide certified extracts on request and with sanctions for falsification or refusal.

For parental responsibility, joint natural guardianship, subject to the welfare of the child, provides a principled basis for orders on custody and contact. The welfare principle is already grounded in statute and judicial practice within the region, and it can be applied in Bangladesh without doctrinal strain.[5] Within maintenance, the chapter adopts a bilateral obligation that recognises unpaid care and informal-economy earnings. Standardised financial disclosure should support realistic interim

[3] Committee on the Elimination of Discrimination against Women (CEDAW), 'General recommendation No 33: Women's access to justice' (3 August 2015) UN Doc CEDAW/C/GC/33, paras 2–3, 14.

[4] Registration of Hindu Marriage Act 2012 (Bangladesh), s 3

[5] Guardians and Wards Act 1890 (Bangladesh), s 17.

and final orders, together with case-management that secures early, enforceable relief rather than paper judgements that fail in practice.

Forum and procedure form the bridge between text and result. The Family Courts Act 2023 is now the principal vehicle through which Hindu women pursue claims about status, maintenance, guardianship, and custody. Section 5 defines the jurisdictional core, and the Act as a whole replaces the Family Courts Ordinance 1985 while preserving the principal fields of suit.[6] A purposive reading of jurisdiction, combined with active case-management, time-limited interim relief, and proportionate evidence-taking, can convert equality commitments into enforceable outcomes. These measures lie within the ordinary capacities of the courts of Bangladesh.

Property requires a differentiated approach. The thesis distinguishes *strīdhan*, properties acquired during marriage, and inheritance. The equitable sharing of gains accrued through joint endeavour should be recognised in a manner consistent with evidential fairness and transactional certainty. In inheritance, daughters require equality in both text and administration. Without reform of titling practices, land records, and registry access, formal rights will underperform for poorer and rural women. Administrative reforms must therefore be sequenced with statutory change, and both must be supported by a data regime that permits supervision and learning.

Comparative jurisprudence supplies methods that can be adapted to the Bangladeshi context. The Indian line culminating in *Vineeta Sharma v Rakesh Sharma* treats daughters as coparceners by birth and clarifies the temporal reach of the 2005 amendment, which supplies a model of clear drafting, transitional clarity, and remedial coherence.[7] The lesson is one of technique rather than transplant. Text must be precise, temporal rules unambiguous, and remedies structured so that courts at all levels can apply them consistently. Where guardianship and custody are concerned, the welfare-centred approach in regional practice further shows that principle and practicality can be aligned without delay.[8]

Implementation depends on credible administration. Digital case-tracking with privacy safeguards in family courts and registrar offices, together with quarterly publication of anonymised,

[6] Family Courts Act 2023 (Bangladesh) s 5.

[7] *Vineeta Sharma v Rakesh Sharma* (2020) 9 SCC 1 [46], [55], [75]

[8] Guardians and Wards Act 1890 (n 5), s 17.

disaggregated statistics on filings, orders, timelines, and compliance, would allow parliament, courts, and civil society to evaluate progress and correct course. CEDAW General Recommendation No. 33 emphasises data and accountability as elements of effective access to justice, and these elements are directly applicable in the present field.[9] Within registrar oversight, licensing, training, audit trails, and random inspections can be combined with civil penalties and administrative consequences for failure to register or for falsification. The objective is steady improvement through transparent measurement.

The remainder of the chapter proceeds as follows. Section 6.2 sets out the strategic direction of reform and develops a programme of legislative, judicial, administrative, and community-facing measures. Section 6.3 presents a sequenced plan for short-term action through rules and circulars, medium-term amendments to personal-law statutes, and a long-term legislative vision faithful to constitutional equality and to Bangladesh's obligations under international law. Section 6.4 consolidates recommendations and identifies the indicators through which implementation should be monitored. Each recommendation is specific, feasible, and monitorable. The focus is on techniques that convert rights into results, for example, documentary duties that produce reliable proof, timelines that induce compliance, and data regimes that allow evaluation and course-correction.

6.2 Strategic Directions for Legal Reform

6.2.1 Legislative Reforms

As design necessarily precedes delivery, codification is set first, establishing the clear statutory framework that aligns personal status, remedies, and procedure with constitutional equality and equips courts, registrars, and administrators with determinate texts. The legislative programme proposed here follows a problem-solution pathway, but is framed so as to be enforceable within contemporary institutions and cognisant of minority demography.

The normative foundation is not in doubt. Article 27 declares, “All citizens are equal before law and are entitled to equal protection of law”.[10] Article 28(1) adds, “The State shall not discriminate

[9] CEDAW Committee, ‘General recommendation No 33’ (n 3) paras 2–3, 14.

[10] Constitution of the People’s Republic of Bangladesh 1972 (n 1) art 27.

against any citizen on grounds only of religion, race, caste, sex or place of birth".[11] Internationally, CEDAW Article 16(1) requires States Parties to "take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations", including "(c) the same rights and responsibilities during marriage and at its dissolution" and "(h) the same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property".[12] These texts compel a statutory settlement that renders equality routine across the family-law field.

A. Marriage and Divorce, with Registration Architecture

A recast Hindu marriage statute should make registration compulsory within a low-cost window, but expressly non-punitive as to rights. The present law is permissive. Section 3 of the Hindu Marriage Registration Act 2012 provides: "3. (1) "… for the purpose of securing documentary evidence of Hindu marriage, … [a Hindu marriage] may be registered." (2) "… even if any Hindu marriage is not registered under this Act, … the validity of the marriage shall not be affected."[13] Proof problems under an optional regime undermine maintenance, custody, succession, and property claims. The revised Act should therefore: require prompt registration and allow delayed registration at any time on affidavit without loss of substantive rights; impose administrative sanctions on derelict registrars, not rights-forfeiture on parties; mandate dual paper–digital registers with unique identifiers, searchable indices, and monthly returns to the district registrar; and guarantee party access to certified copies for litigation.

A new Hindu Marriage and Divorce Act for Bangladesh should codify gender-neutral grounds, including cruelty, desertion, bigamy, sustained separation evidencing irretrievable breakdown, and conversion coupled with repudiation. Mutual-consent dissolution should follow a tight timetable, borrowing drafting technique, not outcomes, from sections 13 and 13B of the Hindu Marriage Act 1955.[14] Restitution of conjugal rights should be abolished as incompatible with autonomy and dignity, with *Shayara Bano v Union of India* offering a method, rather than authority, for testing

[11] ibid art 28(1).

[12] CEDAW (n 2) arts 16(1), 16(1)(c), 16(1)(h).

[13] Registration of Hindu Marriage Act 2012 (n 4), s 3(1)–(2).

[14] Hindu Marriage Act 1955 (India), ss 13 (Divorce), 13B (Divorce by mutual consent).

personal-law remedies against constitutional values of equality and liberty.[15] Interim and final maintenance must be time-bound, with first-interim orders within thirty days, structured by guidelines that value unpaid care, reflect earning capacity, and require disclosure on oath. (See Chapter 5, section 5.2.2.2.A).

B. Adoption, Guardianship, and Custody

A Guardianship and Child Welfare Code should recognise both parents as joint natural guardians, during marriage and after separation, subject to the child's best interests defined by safety, stability, continuity of care, and the child's voice. Indian provisions in sections 6–7 of the Hindu Minority and Guardianship Act 1956 illustrate the utility of clear definitions which Bangladesh can adapt in religion-neutral terms that avoid any sex preference.[16] Adoption should be open to women in their own right and should equalise the legal consequences of adoptive and biological kinship for guardianship and succession. Family courts must hear children in age-appropriate form and issue interim contact orders within fixed time limits. (See Chapter 5, section 5.2.2.2.D)

C. Maintenance and Enforcement

Maintenance should be conceived as a bilateral duty arising from the marital partnership. It ought to cover support during marriage, interim support while proceedings are pending, and post-dissolution support where fairness requires it, together with child maintenance proportionate to the parties' means. The Family Courts Act 2023 already provides the jurisdictional platform: "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."[17] Enforcement should include income attachment, statutory charges over immovable property, seizure and sale, and calibrated penalties for wilful default, with limited appellate review to curb delay. Evidential rules must accept affidavit and circumstantial proof of income in informal economies. (See Chapter 5, section 5.2.2.2.D)

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[15] *Shayara Bano v Union of India* (2017) 9 SCC 1, per Nariman J, [274–279].

[16] Hindu Minority and Guardianship Act 1956 (India), ss 6–7.

[17] Family Courts Act 2023 (n 6), s 5 (Jurisdiction of Family Courts).

D. Succession and Matrimonial Property

A Hindu Succession and Matrimonial Property Code should contain two pillars. First, intestacy must guarantee gender-equal shares, abolish the limited estate of widows in favour of absolute ownership, and update Dayabhāga-style proximity rules to remove male-preference hierarchies. Second, a matrimonial property regime should recognise accrued gains during marriage. Two models may be placed in statute, subject to party choice: an accrual system dividing the net increase of each estate at dissolution, or a deferred community applying to assets acquired during marriage with judicial discretion to adjust for dissipation. Unpaid domestic and care work must be expressly recognised as economic contribution. Comparative technique supports administrability. Section 6 of the Hindu Succession Act 1956, as substituted in 2005, treats the daughter as a coparcener "in the same manner as the son", and *Vineeta Sharma v Rakesh Sharma* confirms that the right is by birth, not contingent on the father's survival, providing a drafting exemplar for temporal and evidential clarity.[18] (See Chapter 5, section 5.2.2.2.B)

E. Forums, Procedure, Fee Justice, and Data

Exclusive first-instance jurisdiction should lie in the family courts for dissolution, maintenance, guardianship, adoption, matrimonial property, and succession, with appellate review in the High Court Division.[19] Procedure must do the heavy lifting. Summons should issue within seven days, with a case-management conference within thirty. Adjournments should be limited and justified in writing. Written witness statements ought to be the default, with focused oral cross-examination, and model financial-disclosure forms to standardise evidence. Fee justice requires exemption from ad valorem fees for maintenance, custody, and protection orders, and modest caps for matrimonial property suits, with budgetary backfill to the courts. Legal aid under the Legal Aid Services Act 2000 should be expanded through a dedicated family-law stream for minority women, duty counsel at family courts, and funded expert reports in child cases. Data duties should oblige courts and registrars to publish anonymised, disaggregated quarterly statistics on filings, interim and final

[18] Hindu Succession Act 1956 (India), s 6 as substituted by the Hindu Succession (Amendment) Act 2005 (India); *Vineeta Sharma* (n 7) [63], [64], [75].

[19] Family Courts Act 2023 (n 6), s 5 "Jurisdiction of Family Courts".

orders, compliance, timelines, and enforcement modes, feeding treaty reporting under CEDAW Article 16(1).[20]

F. Anti-Evasion and Transition

The statute should include a conversion-and-repudiation clause requiring notice filing before any change of personal law is asserted; a fixed-venue rule locating proceedings at the place of cohabitation or the wife's ordinary residence; and a saving clause preserving accrued rights notwithstanding changes of forum or law. Commencement should be staged, with early entry into force for registration and guardianship and a deferred start for property and succession after training and forms are in place.

Codification, rather than piecemeal amendment, is advanced because fragmentation has proved resistant to incremental repair. A coherent Hindu Family Code for Bangladesh, drafted with constitutionalised interpretive clauses and enforceable procedures, would allow courts to make equality the ordinary outcome of family litigation. Indian materials are used cautiously as scaffolding for wording and administrability, not as binding authority, ensuring that the statute fits the institutional capacities of Bangladesh while fulfilling Articles 27 and 28 and the obligations of Article 16 of CEDAW.[21]

6.2.2 Judicial Engagement and Interpretation

With legislative design set to carry the weight of reform, the immediate task is to ensure that adjudication does not entrench inequality while codification is prepared and phased in. Courts can already read personal-law disputes through constitutional norms of equality and dignity, shaping interim standards that inform administrative practice and eventual statute. In Bangladesh the constitutional floor is express. Article 27 provides, in terms, that "All citizens are equal before law and are entitled to equal protection of law".[22] Article 28(1) adds that "The State shall not

[20] CEDAW (n 2) arts 16(1), 16(1)(c), 16(1)(h).

[21] Constitution of the People's Republic of Bangladesh 1972 (n 1) art 28(1); CEDAW (n 2) arts 16(1), 16(1)(c), 16(1)(h); HMA (n 14), ss 13, 13B; Hindu Minority and Guardianship Act 1956 (India) (n 16), ss 6–7; HSA (n 18), s 6 as substituted by the Hindu Succession (Amendment) Act 2005 (India); *Vineeta Sharma* (n 7) paras 63, 64, 75.

[22] Constitution of the People's Republic of Bangladesh 1972 (n 1) art 27.

discriminate against any citizen on grounds only of religion, race, caste, sex or place of birth".[23] These clauses are justiciable, and they condition the interpretive stance of family courts and the supervisory jurisdiction of the High Court Division when uncodified Hindu rules are invoked.

A constitutionally infused method can be articulated as follows. Where customary rules are uncertain, conflicting, or silence the interests of women and children, the court should prefer interpretations that minimise sex-based disadvantage and secure the best interests of the child. Article 27 and Article 28 provide the governing prism. In the background sits CEDAW Article 16(1), which obliges States Parties to ensure equality in family relations and states that "States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations", including "(c) the same rights and responsibilities during marriage and at its dissolution" and "(h) the same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property."[24] Secondly, where statutory text exists but is ambiguous or incomplete, purposive construction should be used to align results with equality and dignity and to avoid rights-denying formalism. Indian jurisprudence supplies useful technique without a binding effect. Thus, in *Shayara Bano v Union of India*, the Supreme Court employed a manifest-arbitrariness analysis anchored in dignity and autonomy to invalidate triple talaq, a method illustrating how personal-law claims can be tested by constitutional norms.[25] Similarly, *Vineeta Sharma v Rakesh Sharma* treats equal coparcenary as administrable in practice, overruling restrictive readings and clarifying that the right is by birth, not contingent on the father's survival at the amendment date, a reminder that equality-focussed interpretation can be operational without destabilising property systems.[26]

Jurisdictionally, family courts already possess the platform to carry this interpretive burden. Section 5 of the Family Courts Act 2023 states, in full, that, "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;

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[23] Ibid art 28(1).

[24] CEDAW (n 2) art 16(1) (chapeau), 16(1)(c), 16(1)(h).

[25] *Shayara Bano* (n 15), per Nariman J, [274–279].

[26] *Vineeta Sharma* (n 7) [63–65], [71], [75], [109], [129].

(d) maintenance; (e) guardianship and custody of children."[27] Read with the venue rule of section 6, privileging the wife's ordinary residence for dissolution, dower and maintenance, this jurisdictional architecture can accommodate Hindu women's claims for maintenance, custody and protection orders even while legislative reform is pending.[28] The High Court Division can, through writ and supervisory review, fashion guiding principles to harmonise trial-court practice, including standards for interim maintenance, proof of marital status where registration is absent, and protective directions for children.

Several justiciable levers are immediately available. Interim and final maintenance can be calibrated to reflect women's unpaid care and foregone earnings, with evidential flexibility appropriate to informal economies. Orders for return of *strīdhan* can be framed as property or trust remedies, subject to attachment and civil detention for wilful default. In guardianship, courts should treat mothers and fathers as joint natural guardians, with custody and contact determined by best interests and safety. Where marriage registration is absent under the discretionary scheme for Hindu marriages, section 3 of the Hindu Marriage Registration Act 2012 must be squarely faced. It provides: "(1) Notwithstanding anything contained in any other law, custom and usage-rituals, for the purpose of protecting the documentary proof of Hindu marriage, Hindu marriage may be registered, in the manner prescribed by rules. … (2) Notwithstanding anything contained in sub-section (1), the validity of any Hindu marriage solemnised in accordance with the Hindu *Shastra*, shall not be affected due to non-registration of the Hindu marriage under this Act."[29] Trial courts should therefore accept oral and circumstantial evidence to prove marital status, coupled with directions for delayed registration as a remedial measure. To reduce evasion, courts should also adopt robust forum doctrines, using the Ordinance's venue rule and adverse inferences against litigants who conceal income or assets.

Comparative materials aid method, not outcome. The purposive equality reasoning in *Shayara Bano* case is instructive for how dignity grounds invalidate practices that are arbitrary in effect,[30] and *Vineeta Sharma* demonstrates the administrability of equal rights in ancestral property through

[27] Family Courts Act 2023 (n 6), s 5.

[28] Family Courts Act 2023 (n 6) s 6(1)–(2) and proviso.

[29] Registration of Hindu Marriage Act 2012 (n 4), s 3(1)–(2).

[30] *Shayara Bano* (n 15), per Nariman J, [274–279].

clear temporal and procedural rules.[31] These cases serve as exemplars of techniques that Bangladeshi courts may translate, cautiously, to uncodified Hindu disputes while remaining anchored in local constitutional text and institutional capacities. Such judicial practice does not displace the need for codification; it prepares the ground by generating standards, data points on enforcement, and precedents that can be absorbed into legislation and rules.

6.2.3 Administrative and Institutional Reforms

Even the most careful judicial stewardship requires a responsive administrative architecture. The first plank is registration. Under the Hindu Marriage Registration Act 2012, section 3 leaves registration optional while preserving validity on non-registration,[32] a design that impedes enforceability for maintenance, custody, and succession because proof of marital status is contested in precisely the cases where paper trails are thin. A revised scheme should mandate registration while avoiding punitive consequences for validity. Marriages should be registrable within a fixed time, with an extended window for delayed registration on affidavit and corroboration by community attestations, and with fee waivers for low-income women. Professionalisation of Hindu marriage registrars is essential: eligibility criteria, training, periodic audits, and a code of conduct should be set by the Ministry of Law with oversight by the Registration Directorate. A secure digital register, accessible to parties and courts, must be created with robust privacy controls and role-based access, and with mandatory data export to a justice-sector dashboard.

Family courts should adopt case-management rules specific to personal-law disputes. Interim relief must be time-bound, with a first interim order within thirty days of filing and any extension supported by recorded reasons. Standardised income-and-expenditure statements will streamline disclosure and reduce peripheral contestation. Section 5 provides the anchor for Hindu women's claims; practice directions from the Supreme Court can clarify that maintenance and custody suits by Hindu litigants fall squarely within this head of jurisdiction, ensuring uniform reception across districts.[33]

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[31] *Vineeta Sharma* (n 7) [126–127].

[32] Registration of Hindu Marriage Act 2012 (n 4), s 3(1)–(2) (optional registration and preservation of validity).

[33] Family Courts Act 2023 (n 6), s 5, (jurisdictional heads including maintenance and guardianship).

Access to justice should be widened through a targeted legal-aid stream. The Legal Aid Services Act 2000 enables support for litigants who cannot seek justice because of financial or socio-economic constraints.[34] A dedicated Hindu women's family-law panel should be funded, with duty counsel at family courts and mobile clinics in Hindu-majority localities. Fee justice is pivotal. Maintenance, custody, guardianship, and protection orders should either be exempt from court fees or subject to nominal capped fees under the Court Fees Act 1870, with explicit notification by the Ministry of Law and reimbursement to courts to avoid perverse incentives. Where appropriate, staged-fee remission can be used so that fees are payable only on successful recovery, never as a precondition to entry.

Enforcement must be practical. Maintenance and property orders should be executable by income attachment, seizure and sale, and statutory charges over immovable property. Wilful default should attract escalating penalties, including fines and, in extremis, civil prison, subject to safeguards for indigence. To curb delay, appeals from interim maintenance and custody orders should be permitted only on limited grounds, with a duty on appellate courts to decide within a short outer limit, maintaining the status quo ante to protect dependants. Bailiffs and process servers should be equipped with digital tools for rapid service; where service fails, alternative modes should follow, including SMS and email notification alongside public posting on a court portal.

Training will hold the system together. Judges, registrars, clerks, and probation officers should receive mandatory, gender-sensitive training on trauma-informed adjudication, child-welfare protocols, and the valuation of unpaid care in maintenance and matrimonial property. Bench books can offer checklists for interim relief, including safe-contact orders and child handover arrangements. Clerical staff must be trained in confidentiality and data protection. Court language should be respectful and non-stigmatising, consistent with constitutional dignity.

Finally, data and monitoring. The Supreme Court Registry, the Ministry of Law, and the Registration Directorate should jointly produce anonymised, disaggregated quarterly statistics on filings, interim and final orders, timelines, compliance rates, and modes of enforcement, disaggregated by sex, age, district, and religious community. A public dashboard would permit external scrutiny and inform policy. The same dataset should feed the treaty-reporting obligations

[34] Legal Aid Services Act 2000 (Bangladesh) s 2(a).

of Bangladesh under CEDAW, enabling a transparent account of measures taken under Article 16(1).[35] The cadence should be a quarterly publication with an annual synthesis to Parliament.

6.2.4 Community-Based and Civil Society Approaches

Reform takes root when communities can recognise their interests in it. A movement infrastructure, in partnership with women's rights organisations, can provide legal literacy, paralegal accompaniment, and test-case pipelines. Community clinics in Hindu-concentrated wards should offer intake, counselling, safety planning, and referrals to registrars and family courts. Shadow reporting to the CEDAW Committee can be coordinated across organisations to document barriers and successes, thereby complementing official reporting.

Legal-literacy programming must be in accessible Bangla and attuned to lived realities. Short illustrated leaflets and digital explainers should set out how to register a marriage, prove a marriage when unregistered, obtain interim maintenance, secure custody or guardianship orders, and pursue inheritance and matrimonial property claims. Scripts for community radio and local cable can be prepared. Materials must explain, in plain terms, the consequences of optional registration and the benefits of delayed registration pending reform. Evaluation metrics should include uptake of registration, time to interim orders, compliance with maintenance, and user satisfaction with court services, disaggregated by sex and age.

Constructive engagement with religious leadership is necessary. Reform-minded priests and community elders can help to contest patriarchal readings that deny women's agency. Where appropriate, internal scriptural resources that uphold fairness, mutual respect, and the protection of widows and daughters may be referenced with care to avoid essentialism. Dialogues should emphasise that constitutional equality, expressed in Articles 27 and 28, and the international obligations under CEDAW Article 16(1), do not erase religious identity; they anchor a civic minimum in family relations.

Community safeguards can reduce evasion and jurisdictional manipulation. Registrars should accept community-level reporting of marriages and separations, cross-checked against digital registers, to flag potential bigamy or concealment. A notice-and-comment mechanism could allow

[35] CEDAW (n 2) art 16(1).

a short period during which community members may alert registrars to misreporting, with penalties for malicious or vexatious reports. Conversion to evade maintenance or custody orders should be neutralised by rule: personal status and obligations crystallise at the time of marriage and cannot be altered to the detriment of dependants by a later conversion or by re-characterising the marriage. Family courts should characterise as abusive any strategy that relocates proceedings to distant districts with the aim of exhausting the claimant; venue for maintenance and dissolution should be fixed at the wife's ordinary residence to keep the process within reach.[36]

Civil society must loop back into administrative reform and judicial methods. Court user feedback, collected systematically at family courts, should be compiled and published quarterly. Experienced organisations can file *amicus curiae* briefs in strategic cases on evidential standards in informal economies or on the measurement of unpaid care in maintenance. Legislative consultations for codification should incorporate testimony from women who have used the current system, from registrars, and from probation officers, ensuring that the statutory text is drafted with enforceability in view. This integrated pathway, joining constitutionalised interpretation, institutional redesign, and community partnership, seeks not a stopgap before codification but a continuous process of making equality real.

6.3 The Way Forward: Towards a Multi-Tiered Roadmap for Reform

This section translates the chapter's strategy into a phased roadmap that is at once constitutionally grounded and practically deliverable, and that can be adapted as evidence accumulates. The organising idea is simple. Short-term actions should secure immediate gains in status, protection, and access to remedies, while laying the institutional foundations for medium-term legislative consolidation and, ultimately, a coherent family-law code that reflects the equality guarantees of the Constitution and international commitments of Bangladesh. The roadmap is framed by Articles 27 and 28 of the Constitution, read together with obligations under CEDAW. Article 27 provides that "All citizens are equal before law and are entitled to equal protection of law", and Article 28(1) adds that the State shall not discriminate "on grounds only of religion, race, caste, sex or

[36] Family Courts Act 2023 (n 6), s 6 proviso (venue following the wife's ordinary residence for dissolution, dower and maintenance).

place of birth".[37] Those guarantees apply to the State's recognition and enforcement of personal law, and they require that the immediate steps proposed here protect women's entitlements without conditioning them on formalities that are difficult to satisfy in practice. The measures that follow use doctrinal technique, targeted institutional design, and carefully chosen comparators from India, while keeping close to the institutional capacities of Bangladesh.

6.3.1 Short-Term Actions

A. Introducing Incremental Reforms within Hindu Personal Laws

The first priority is to remove the most harmful deficits while avoiding legal vacuums. Parliament should enact narrowly targeted provisions on marriage and divorce, maintenance, guardianship and adoption, *strīdhan*, and registration. A concise Hindu Marriage and Divorce Act for Bangladesh can establish gender-neutral grounds of dissolution, including cruelty, desertion, bigamy, and irretrievable breakdown evidenced by sustained non-cohabitation, paired with a short, supervised reconciliation window that cannot be used to coerce return to cohabitation. Comparative experience under the Hindu Marriage Act 1955 in India shows that clear grounds and procedures reduce arbitrariness and limit scope for evasion.[38] Interim and final maintenance should be put on a statutory footing with structured factors, so that courts calibrate awards by duration of marriage, caregiving burdens, earnings and earning capacity, disability, and the economic disadvantage generated by marital roles. Family-property justice requires two immediate devices. First, an express recognition of *strīdhan* as a woman's absolute property, with an obligatory duty of return and civil penalties for retention. Secondly, an equitable distribution rule for assets acquired during marriage, with a rebuttable presumption of joint acquisition and an express instruction to value unpaid domestic and care work. Succession should be adjusted now where consensus is strongest, for example by abolishing the limited estate for widows and confirming that daughters inherit on equal terms with sons, a move consistent with the trajectory of section 6 of the Hindu Succession Act 1956 as amended in India in 2005 and interpreted in the *Vineeta Sharma* case.[39]

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[37] Constitution of the People's Republic of Bangladesh 1972 (n 1) arts 27, 28(1).

[38] HMA (n 14), ss 13, 13B.

[39] HSA (n 18), s 6 as substituted by the Hindu Succession (Amendment) Act 2005 (India); *Vineeta Sharma* (n 7) [46], [55].

B. Enhancing Judicial Capacity to Interpret Personal Laws in Favour of Equality

Judicial technique can protect rights while legislation is enacted. Immediate steps should include designated rosters or family benches within existing courts, model directions on case management and interim relief, and short, practice-oriented training in purposive interpretation consistent with Articles 27 and 28 of the Constitution of Bangladesh and with CEDAW article 16(1).[40] The Family Courts should be reminded of their exclusive first-instance jurisdiction for maintenance, guardianship, custody, and related relief, and encouraged to issue time-bound interim orders to prevent destitution pending final judgment.[41] Best-interests standards in guardianship and custody should be articulated in practice notes that emphasise safety, stability, caregiving history, and the evolving capacities and voice of the child. At the apex level, the High Court Division should be prepared to grant targeted writ relief that secures registration, compels the return of *strīdhan*, and requires reasoned decisions within fixed timelines, while avoiding wholesale judicial codification. Indian decisions on personal-law equality illustrate both the impetus and the limits of adjudication, confirming that interim constitutionalisation can reduce harm without displacing the role of the Parliament.[42]

C. Immediate Legal Assistance to Vulnerable Hindu Women

Access to justice determines whether paper rights become lived entitlements. A dedicated family-law stream within the state legal-aid scheme should be established at once, with low-barrier eligibility, duty counsel at first appearance, and referral pathways that integrate shelters, counselling, and social services. Fees must not price claimants out of court. Court fee rules should therefore waive or cap fees for maintenance, custody, and protection orders, and provide predictable scales for matrimonial-property claims. Where proof of income is difficult, evidentiary rules and bench books should authorise courts to rely on an affidavit and documentary material that reflects informal-sector earnings and household expenditure patterns. Mobile clinics and

[40] Constitution of the People's Republic of Bangladesh 1972 (n 1) arts 27, 28(1); CEDAW (n 2) art 16(1).

[41] The Family Courts Act 2023 (n 6), s 5.

[42] *Shayara Bano* (n 15); *Vineeta Sharma* (n 7) [91].

multilingual outreach, delivered in partnership with women's organisations and community leaders, can reduce the information and travel costs that often prevent rural Hindu women from filing or pursuing claims. These interventions are compatible with the existing institutional framework. The Family Courts Act 2023 furnishes the forum. It can be strengthened by practice directions and modest resourcing to improve speed and consistency.[43]

D. Monitoring Mechanisms for Enforcement of Existing Laws

Enforcement and learning require simple, credible data. A short statutory instrument should mandate digital case-tracking with privacy safeguards in family courts and registrar offices, coupled with quarterly publication of anonymised, disaggregated statistics on filings, orders, timelines, and compliance.[44] Registrar accountability can be increased by licensing, training, audit trails, and random inspections, with civil penalties and administrative consequences for failure to register or for falsification.[45] The starting point is the Hindu Marriage Registration Act 2012. Section 3 created an optional regime.[46] In the short term, the Act should be strengthened so that registration becomes the default, procedures are simplified and low-cost, and, critically, non-registration never extinguishes substantive rights to maintenance, custody, succession, or property division. A non-derogation clause should state this in terms.[47] Complaints mechanisms should allow women to trigger registrar action and to obtain certified extracts without dependence on the other spouse.[48] A compact set of indicators, for example time to first interim order, proportion of maintenance orders enforced within ninety days, and rate of *strīdhan* recovery, should guide court administration and inform parliamentary review.[49] Publication of the data will assist civil-society

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[43] Family Courts Act 2023(Bangladesh), s 5.

[44] CEDAW Committee, 'General recommendation No 9: Statistical data concerning the situation of women' (eighth session, 1989) https://www.un.org/womenwatch/daw/cedaw/cedaw25years/content/english/General_Recommendations_1-25-English.pdf accessed 26 October 2025; CEDAW Committee, 'General recommendation No 33 (n 3) para 14.

[45] Registration of Hindu Marriage Act 2012 (n 4), ss 13–14.

[46] ibid s 3(1).

[47] ibid s 3(2).

[48] ibid ss 10, 12.

[49] CEDAW Committee, 'General recommendation No 9: Statistical data concerning the situation of women' (n 44).

monitoring and enable Bangladesh to report progress against CEDAW benchmarks in a manner that is verifiable and consistent over time.[50]

6.4.2 Medium-Term Actions

A. Promoting Public Awareness and Dialogue on the Need for Reform

Building on the short-term measures outlined in the previous section, the medium-term horizon must normalise reform within the Hindu minority through a planned communications and deliberative strategy that is anchored in constitutional equality and attentive to community identity. Article 27 of the Constitution of Bangladesh provides that "All citizens are equal before law and are entitled to equal protection of law," a proposition that frames outreach content and sets the evaluative baseline for proposals.[51] Article 28(1) adds a clear prohibition: the State shall not discriminate on grounds only of sex or religion.[52] These texts should be quoted, accurately and repeatedly, in vernacular legal-literacy modules that explain how equality applies to marriage registration, maintenance, guardianship, adoption, succession, and protection from violence. CEDAW article 16 supplies an international reference point for equality in family relations and should be used to show that reform is not a rupture with tradition but compliance with obligations already assumed by Bangladesh.[53] The design sequence begins with materials in Bangla and regional idioms, using short illustrated briefs for community meetings, temple-committee gatherings, and women's groups, and longer primers for college and university curricula. It should include district-level public hearings and a Green-paper and White-paper cycle to structure consultation, require written reasons for accepting or rejecting proposals, and feed directly into statutory drafting and administrative design. Participatory processes should be inclusive, with targeted invitations to women from rural and peri-urban areas, young people, and local practitioners who understand procedural obstacles to enforcement. To reduce polarisation and misinformation, there should be pre-agreed ground rules on respectful speech, a rapid-rebuttal channel for false claims about the effects of registration or custody standards, and a requirement that any scriptural or customary argument be accompanied by a concrete assessment of legal

[50] CEDAW (n 2) arts 16(1), 18(1).

[51] Constitution of the People's Republic of Bangladesh 1972 (n 1), art 27.

[52] ibid art 28(1).

[53] CEDAW (n 2) art 16.

consequences for women and children. Comparative illustrations from India can guide design choices, not dictate templates, by showing, for example, how mutual-consent divorce under section 13B of the Hindu Marriage Act 1955, alongside the fault-based grounds in section 13, was introduced with safeguards for maintenance and custody, without erasing community identity.[54] The same approach can present equal coparcenary rights under section 6 of the Hindu Succession (Amendment) Act 2005 as an intelligible model of parity in inheritance, while insisting on tailoring to the institutional capacities of Bangladesh.[55] The objective is steady norm change, measured by increased demand for registration, higher uptake of interim maintenance, and improved acceptance of daughters' inheritance claims, with findings reported publicly and used to refine the next phase of legislative drafting.

B. Strengthening Legal Aid and Advocacy for Hindu Women

Medium-term institutional architecture must make equality justiciable for ordinary litigants. Three tracks are required. First, a legal-aid scheme calibrated to the realities of Hindu women should combine statutory eligibility rules with proactive outreach. The Legal Aid Services Act can be operationalised through dedicated family-law desks in districts with significant Hindu populations, duty-counsel models at Family Courts, and mobile clinics that visit temple precincts and community places on fixed days. Eligibility should be presumptive for maintenance, custody, guardianship, protection orders, and recovery of *strīdhan*, with relaxed documentation where women work in the informal sector. Sworn income statements and community attestations should count as prima facie proof. The Family Courts Act 2023, section 5, can be leveraged to ensure case-management timelines for interim relief, supported by standard forms, multilingual notices, and service standards that courts must publish and meet.[56] Court-fee justice is essential, so fees for maintenance and custody should be waived and fees for matrimonial property claims capped at modest thresholds, with the legal-aid budget covering process-server and valuation costs. Secondly, evidence facilitation must be institutionalised. For women lacking formal records, protocols should authorise tribunals to draw adverse inferences against non-disclosing spouses, to

[54] HMA (n 14), ss 13, 13B.

[55] Hindu Succession (Amendment) Act 2005 (India), s 6.

[56] Family Courts Act 2023 (n 6), s 5.

accept digital artefacts and community ledgers as corroboration, and to treat unreturned *strīdhan* as a rebuttable presumption of unlawful retention. Compulsory or strongly incentivised marriage registration will, over time, reduce evidential uncertainty; in the interim, optional registration under section 3 of the Hindu Marriage Registration Act 2012 should be promoted systematically and made accessible through low-fee, digital-first processes with registrar accountability.[57] Thirdly, a strategic-litigation pipeline should link community complaints to test cases. Civil society organisations can assemble records, bring representative claims for structural relief where administrative practice defeats rights, and support appeals to secure clarifying precedents on maintenance guidelines, joint guardianship, and evidential presumptions. Parliamentary engagement and dialogue with the Ministry of Law should be continuous. Policy briefs ought to translate court findings and community data into draft clauses for an eventual Hindu Family Code. Shadow reporting to treaty bodies, including submissions to the CEDAW Committee on article 16 compliance and access-to-justice standards, can reinforce accountability and unlock technical assistance.[58] Bench–bar dialogue should be routine, using judicial training modules and bench-books that incorporate equality-centred interpretation, trauma-informed practice, and best-interests analysis in custody. Finally, a data backbone is required. Family-law statistics should capture filings, interim orders, final outcomes, timelines, enforcement rates, and appeals, disaggregated by sex, age, location, and socio-economic status. The dataset must be anonymised and published quarterly, with a simple scorecard that tracks time to interim maintenance and registration uptake. Medium-term success will be indicated by measurable reductions in delay, higher rates of documented marriages, increased grant and enforcement of maintenance, and improved parity in guardianship orders.

6.3.3 Long-Term Vision

The medium-term pathway has built social licence, legal-aid capacity, and an evidential base for codification; the long-term track consolidates these gains into a coherent settlement that secures equality in family life while maintaining community confidence.

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[57] Registration of Hindu Marriage Act 2012 (n 4), s 3.

[58] CEDAW (n 2) art 16.

A. Moving Toward a Uniform Family Code Through Consensus-Building and Phased Implementation

The destination is a principled uniform family code, reached not by rupture but by staged consolidation. The first phase should complete a consolidated Hindu Family Code, harmonising marriage, divorce, maintenance, guardianship and adoption, matrimonial property, succession, and *strīdhan* into a single text that is internally coherent and aligned with constitutional equality. This consolidation should be generated through an advisory council that includes Hindu religious scholars, women's organisations, jurists, community leaders, and empirical researchers, and that operates within an open Green-paper and White-paper process with district hearings and published reasons for accepting or rejecting proposals. Pilot districts can test draft Parts on registration, maintenance guidelines, guardianship standards, and evidential presumptions, with voluntary participation where appropriate, and with clear saving and transition clauses that safeguard vested rights and legitimate expectations. Conflict-of-laws and anti-evasion rules should prevent circumvention by conversion or cross-border registrations, and by tactical recourse to alternative jurisdictions, while comity provisions address genuine private international law issues. Only after evaluative reports show stable compliance and community acceptance should Parliament consider a second phase that converges common rules across communities into a religion-neutral code for core matters such as minimum age, consent, monogamy, registration, fee justice, and the best interests of the child. Indian experience offers comparative guidance for that design. The staged Hindu law reforms of 1955–56 show the value of codifying domains in sequence and of drafting detailed transitional provisions; the later clarification of daughters' coparcenary rights in section 6 of the Hindu Succession (Amendment) Act 2005, as read purposively in *Vineeta Sharma v Rakesh Sharma*, illustrates how legislative purpose and judicial interpretation can entrench parity without destabilising family transactions.[59] The procedural architecture of the Hindu Marriage Act 1955, including mutual consent under section 13B and structured grounds under section 13, offers examples of accessible remedies, although Bangladesh must tailor timelines, maintenance supports, and guardianship standards to its own institutional capacities.[60]

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[59] *Vineeta Sharma* (n 7); Hindu Succession (Amendment) Act 2005 (n 55), s 6.

[60] Hindu Marriage Act 1955 (India) (n 14), ss 13, 13B.

B. Ensuring that Reforms Align with Constitutional Principles and International Obligations

The legitimacy of the code depends upon constitutional and treaty compliance. Article 27 provides the bedrock principle that, "All citizens are equal before law and are entitled to equal protection of law," which functions as an interpretive presumption and a drafting constraint; Article 28(1) mandates that the State shall not discriminate on grounds only of sex or religion.[61] Code provisions must therefore guarantee equal rights in marriage formation and dissolution, joint natural guardianship, equal inheritance and ownership for women, protection and return of *strīdhan* as absolute property, and accessible maintenance and property division that recognise non-monetised care work. Procedural clauses should entrench fee justice for maintenance and custody claims, require time-limited interim orders, and oblige courts to give structured reasons that engage equality norms. Registration provisions should remain non-derogation clauses, so that failures of proof do not extinguish substantive rights; phase-one consolidation can improve uptake by integrating accessible optional registration under section 3 of the Hindu Marriage Registration Act 2012 and preparing the ground for compulsion once digital systems and registrar professionalisation mature.[62] Family-court jurisdiction and case-management powers should be clarified in statute, with appellate guidance for uniformity.[63] Internationally, CEDAW article 16(1) requires equality in "all matters relating to marriage and family relations," including the same rights during marriage and at its dissolution, equal guardianship, and the same rights in property.[64] The code should embed a review clause that synchronises with the periodic reporting of Bangladesh to the CEDAW Committee, mandates disaggregated administrative data, and commits to iterative amendment when monitoring reveals disparate impact. Treaty reporting can thus serve as an external discipline and a source of technical assistance, while domestic courts apply equality-conforming construction where ambiguity remains.

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[61] Constitution of the People's Republic of Bangladesh 1972 (n 1) arts 27, 28(1).

[62] Registration of Hindu Marriage Act 2012 (n 4), s 3.

[63] Family Courts Act 2023 (n 6), ss 4–5.

[64] CEDAW (n 2) art 16(1).

C. Expanding the Vision: Integrating Social and Educational Reforms

Durable reform requires social support beyond the law book. Civic-education modules for secondary schools and university general-education courses should explain the constitutional grammar of equality, the minimum content of family justice, and practical guidance on registration and remedies; madrasa-equivalent settings and temple-linked study circles should receive parallel modules in vernacular formats that emphasise care, consent, and the welfare of children. Bench and bar training must become routine, with bench-books on equality-centred interpretation, child-focused fact-finding, financial assessment for maintenance and property division, and trauma-informed practice. Registrar professionalisation should include licensing, audits, disciplinary powers, and a secure digital register with privacy safeguards; public dashboards can show registration uptake, delays, and compliance by district. Court-linked clinics, staffed by duty counsel and supported by paralegal networks, should receive and assess applications for maintenance, custody, and protection orders, with clear referral pathways to shelters and social-welfare services. The data backbone proposed earlier must be scaled nationally to capture filings, interim orders, outcomes, enforcement rates, and appeal results, disaggregated by sex, age, location, and socio-economic status; quarterly publications will enable public scrutiny and will inform legislative fine-tuning. Indicators of attitudinal change can include rising acceptance of daughters' inheritance, increasing demand for joint guardianship orders, and declining tolerance for domestic violence. To guard against backlash and misinformation, communication protocols should provide rapid rebuttals, protect women human-rights defenders, and require that any religious or customary claim advanced in public fora be accompanied by an assessment of its legal effects on women and children. Comparative examples should be framed carefully: Indian jurisprudence on section 6 of the 2005 amendment is a source of reasoning craft rather than a template, and procedural devices under the Hindu Marriage Act 1955 illuminate feasibility rather than dictate substantive content.[65] Over time, as registration becomes universal, as maintenance guidelines are widely applied, and as guardianship and succession orders reflect parity, constituencies for consolidation will strengthen, enabling Parliament to move from community-specific consolidation to principled uniformity. The long-term vision is therefore neither

[65] See *Vineeta Sharma* (n 7); Hindu Succession (Amendment) Act 2005 (n 55), s 6; HMA (n 14), ss 13, 13B.

assimilation nor stasis, but a constitutional settlement in which family justice is guaranteed to every citizen and supported by institutions and public reason.

6.5 Specific Recommendations

6.5.1 Marriage, Registration, and Child Marriage

A. Uniform Minimum Age of Marriage (18/18)

Amend the law to establish a single, non-derogable minimum age of 18 for both women and men. Remove exceptions that, in practice, validate child marriage.

B. Child Marriage to be Void

Provide that any marriage contracted below the legal minimum age is *null and void ab initio*, with protective orders for affected children and automatic access to remedies (maintenance, custody, inheritance safeguards) without normalising the union.

C. Compulsory, Universal Marriage Registration

Enact a religion-neutral duty to register marriages through a simple, low-cost, digital-first system. Non-registration must never be used to deprive women or children of rights; rather, it should trigger administrative penalties for registrars or contracting parties who default.

D. Equal Recognition of all Children

Prohibit the term “illegitimate” in all legal instruments and guarantee that a child’s status and rights are unaffected by the validity, voidability, or nullity of the parents’ marriage.

E. Prohibition of Bigamy and Evasion by Conversion

Subsequent marriages contracted during the subsistence of a prior marriage should be void and punishable. The law should make clear that a change of religion, a shift of domicile, or recourse to another jurisdiction cannot be used to evade the prohibition.

6.5.2 Dissolution of Marriage and Marital Remedies

A. Modern Grounds for Divorce

The Hindu Married Women’s Right to Separate Residence and Maintenance Act 1946 should be recast to supply full grounds for judicial divorce, including cruelty, desertion,

bigamy, prolonged concubinage, and change of religion, alongside a general ground of irretrievable breakdown evidenced by prolonged separation or other compelling facts.

B. Abolish Restitution of Conjugal Rights

Provisions compelling cohabitation should be repealed because they are incompatible with dignity, autonomy, and a contemporary understanding of marriage as a partnership.

C. Interim and Post-Dissolution Maintenance

Establish a systemised, gender-equal maintenance system with statutory provisions in consideration of the duration of marriage; age and health; caregiving and earning capacity; assets and liabilities; disability or special needs; and any economic disadvantage incurred from marital roles.

6.5.3 Guardianship, Custody, and Adoption

A. Joint Natural Guardianship

Recognise both parents as joint natural guardians, with a presumption of rebuttal in favour of the child's best interests, rather than a gendered preference. Provide clear standards for decision-making and dispute resolution.

B. Custody Standards and Procedure

Embed a best-interests test (safety, stability, caregiving history, child’s voice) and ensure that custody determinations are procedurally separate from fault in matrimonial causes.

C. Equal Adoption Rights

Reform Hindu adoption rules to permit women to adopt in their own right and to adopt daughters as well as sons, with identical consequences of parent–child status for inheritance, guardianship, and care. Ensure recognition of both adoptive parents as guardians, irrespective of the child’s sex.

6.5.4 Matrimonial Property and Economic Justice

A. Introduce a Statutory Matrimonial Property Regime

Recognise the economic contribution of domestic and care work not paid in cash through introducing a system of equitable distribution or accumulation of benefits, so courts can allocate reasonable marital property on divorce, with express principles for valuing non-monetised contributions.

B. Secure Women's Post-Dissolution Housing
Provide courts with powers to grant occupation orders, exclusive possession for a defined period, or compensation where appropriate.

C. Fee Justice
Amend the Court Fees Act 1870 to eliminate court fees for maintenance and custody suits, and cap fees for matrimonial property claims to prevent price-based exclusion from justice.

6.5.5 Succession and Coparcenary

A. Full Equality in Inheritance
Ensure that daughters inherit on equal terms with sons in all classes of property. Abolish the "limited estate" for widows and recognise absolute ownership for female heirs.

B. Modernise Dayabhaga Lineages
Reframe sapinda rules to reflect equal kinship proximity of sons and daughters; abolish male-preference hierarchies (agnates over cognates) and remove distinctions among full, half, or uterine blood when distributing property absent a will.

C. Harmonise Testamentary Freedom and Family Protection
Introduce reasonable family-provision claims to prevent disinheritance that would leave dependants destitute.

6.5.6 Language, Dignity, and Courtroom Practice

A. Respectful Legal Terminology
Ensure non-stigmatising, neutral language in legislation, pleadings, and judgments; avoid derogatory terms such as "concubine" or "mistress".

B. Standardised Forms and Plain Language

Need user-friendly forms, multilingual notices, and reason-giving standards in family courts in order to promote transparency and understanding.

6.5.7 Codification Strategy and Institutional Architecture

A. Hindu Family Code for Bangladesh

Consolidate the reformed rules in a Hindu Family Code, drafted through a White Paper, green–white paper consultative cycle, and public hearings. The Code should include Parts on marriage, divorce, maintenance, guardianship and custody, adoption, matrimonial property, and succession.

B. Saving and Transition Clauses

Confer non-retroactivity to vested rights, with beneficial retroactivity (e.g., for maintenance or custody pending) where justice so requires. Protect transactions in good faith, allowing reformed rules to resolve future controversies.

C. Conflict-of-Laws and Anti-Evasion Rules

Outline the forum and relevant law for cross-border marriages and estates, and prohibit evasion through conversion or foreign registrations in derogation of Bangladeshi public policy on equality.

D. Specialised Family Benches

Establish designated family divisions in regular courts, with norms of time, case management power, and specially trained judges and mediators.

E. Registrar Professionalisation

License and train marriage registrars; create audit trails, random inspections, and digital registers with privacy safeguards.

6.5.8 Access to Justice and Implementation Supports

A. Legal Aid and Community Clinics

Expand state-funded legal aid with dedicated family law clinics in Hindu-majority and

mixed districts; partner with bar associations and women's rights organisations for outreach and representation.

B. Protective Services

Integrate shelters, counselling, and referral mechanisms for survivors of domestic violence within the family justice corridor.

C. Capacity-Building

Develop training modules for judges, lawyers, registrars, and social workers on gender-sensitive adjudication, child welfare, trauma-informed practice, and financial assessment for maintenance and property division.

D. Public Education

Run sustained campaigns—particularly in rural and peri-urban areas—on the harms of child marriage, the benefits of registration, women's equal property rights, and the availability of remedies.

E. Data and Monitoring

Establish a family-law data system with anonymised, disaggregated statistics on filings, outcomes, delays, and enforcement. Create indicators to track progress and feed into national reporting to treaty bodies.

6.5.9 Sequencing, Political Economy, and Risk Mitigation

A. Phased Enactment

Prioritise "low-resistance, high-impact" reforms (void child marriage; compulsory registration; joint guardianship; court-fee waivers) in Phase I; move to property, succession, and comprehensive codification in Phase II after broad consultation.

B. Stakeholder Engagement

Constitute an advisory council comprising religious scholars, women's groups, jurists, and community leaders to build legitimacy and prevent misinformation.

C. Pilot and Scale

Pilot implementation (training, forms, digital registration, legal aid) in selected districts, measure impact, and expand nationally with iterative improvement.

6.5.10 Anticipated Jurisprudential Developments

Encourage courts to adopt a constitutionalised reading of family law that:

A. treats equality and dignity as interpretive presumptions;

B. rejects legal fictions that entrench dependency (e.g., limited estates);

C. gives meaningful content to the best interests of the child; and

D. recognises unpaid care work as a cognisable economic contribution in maintenance and property decisions.

6.6 Conclusion

This thesis has argued that the right to equality for Hindu women in Bangladesh cannot be secured without principled reform of personal law, attentive both to doctrinal pedigree and to institutional design. It has shown that the present law, much of it uncodified or colonial-era in origin, produces asymmetries of status and access across marriage, divorce, succession, guardianship, adoption, and maintenance. The analysis has proceeded by mapping the doctrinal landscape in Bangladesh, drawing carefully on classical sources and their reception, testing propositions against constitutional and international standards, and using Indian reforms as a functional comparator.

First, the constitutional frame is decisive. Articles 27 and 28 of the Constitution guarantee equality before the law, equal protection of the law, and non-discrimination, while Article 31 embeds the rule-of-law promise that legal protection will be afforded according to law. These provisions set the normative baseline against which any differential treatment of Hindu women in family relations must be justified.[66] The same baseline is reinforced by international instruments to which Bangladesh has bound itself: the Universal Declaration of Human Rights affirms equal rights "as to marriage, during marriage and at its dissolution", the International Covenant on Civil and Political Rights guarantees the equal right of men and women to the enjoyment of Covenant rights and equality before the law, and the Convention on the Elimination of All Forms of Discrimination

[66] Constitution of the People's Republic of Bangladesh 1972 (n 1) arts 27, 28, 31.

against Women requires equality in "all matters relating to marriage and family relations".[67] These standards together supply a constitutional-international yardstick for doctrinal and institutional reform.

Secondly, the thesis has demonstrated that specific statutory lacunae and doctrinal rules in Bangladesh entrench gendered dependency. The Registration of Hindu Marriage Act 2012 makes registration optional, thereby withholding the evidentiary and remedial leverage that registration provides in other South Asian systems; making registration mandatory is a low-cost, high-impact reform.[68] The Hindu Married Women's Right to Separate Residence and Maintenance Act 1946 recognises separate residence and maintenance but does not furnish a comprehensive remedial code responsive to contemporary harms; legislating a modern maintenance and matrimonial-causes statute is therefore warranted.[69] Guardianship remains formally filtered through the Guardians and Wards Act 1890, where the welfare principle is salutary but often under-applied in parental rights disputes; codified guidance for equality-respecting custody and guardianship would improve predictability.[70] The recent Family Courts Act 2023 consolidates forums but does not itself cure the underlying Hindu-law asymmetries; legislative content must therefore be paired with forum design, fee justice, and data architecture to secure access to justice.[71]

Thirdly, the comparative lens has been used functionally rather than mimetically. Indian reforms since the 1950s show how targeted codification can dismantle gendered incapacity while preserving space for religious identity. The Hindu Marriage Act 1955 introduced civil no-fault divorce by mutual consent; importing a carefully adapted version would align Bangladeshi law with equality and autonomy.[72] The Hindu Succession Act 1956, especially section 14, converted women's limited estates into absolute property, and the 2005 amendment to section 6 made daughters coparceners by birth.[73] Indian apex-court jurisprudence has consolidated these gains: in

[67] Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A (III) art 16; International Covenant on Civil and Political Rights (ICCPR) (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, arts 3, 26; CEDAW (n 2) art 16.

[68] Registration of Hindu Marriage Act 2012 (n 4), s 3.

[69] Hindu Married Women's Right to Separate Residence and Maintenance Act 1946 (Bangladesh), s 2.

[70] Guardians and Wards Act 1890 (n 5), s 17.

[71] Family Courts Act 2023 (n 6).

[72] Hindu Marriage Act 1955 (India) (n 14), s 13B.

[73] HSA (n 18), s 14; Hindu Succession (Amendment) Act 2005 (n 55), s 6.

Vineeta Sharma v Rakesh Sharma the Supreme Court confirmed that the daughter's coparcenary right is by birth and not dependent on the father's being alive on the commencement date; in *Githa Hariharan v Reserve Bank of India* the Court construed section 6 of the Hindu Minority and Guardianship Act 1956 to recognise the mother as natural guardian "in the absence of" the father, read purposively to avoid sex-based disability.[74] These developments are not templates to transplant wholesale, but they indicate functions that Bangladesh could feasibly realise within its own constitutional and institutional setting.

Fourthly, the thesis has offered a reform blueprint attentive to institutional fit. It proposes: mandatory registration of Hindu marriages with simple, low-cost procedures; a modern matrimonial-causes statute enabling mutual consent divorce, tailored fault grounds, and robust maintenance; an adoption and guardianship code that centres the child's welfare and removes sex-based incapacities; a succession statute that secures daughters' equality and recognises women's separate property; and procedural architecture in family courts that ensures fee waivers, time standards, judicial training, and data transparency. These measures are designed for incremental enactment, with savings and transition clauses to protect vested rights while moving the system toward constitutional compliance.

A forward agenda should combine doctrinal clarity with grounded institutional study. Future research should build a longitudinal, court-level dataset that tracks filings, interim relief, final orders, timelines, and compliance within the Family Courts framework, with privacy safeguards and disaggregation by income, region, and age. This would permit rigorous evaluation of reforms that make registration the default in Hindu marriage, including quasi-experimental assessment of whether simplified procedures increase timely proof of status and reduce litigation cost. Doctrinal work should examine convergence between constitutional equality and personal-law reasoning in custody, maintenance, succession, and matrimonial property, with particular attention to techniques that enable courts of Bangladesh to realise equal protection in routine cases. A close ethnographic study of registrar offices and court administration would illuminate how documentary practices, disclosure, and case management shape outcomes for rural and low-income women. Comparative analysis should continue, not for transplant but for method, focusing on how jurisdictions operationalise the welfare of the child, fair division of marital gains, and

[74] *Vineeta Sharma* (n 7) paras 63, 64, 75; *Githa Hariharan v Reserve Bank of India* (1999) 2 SCC 228, paras 19–20.

effective enforcement. Finally, scholars should align indicators and reporting with CEDAW benchmarks so that Bangladesh can evidence steady progress over time through verifiable, consistent measures that support legislative and judicial learning.

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