

**Family Courts in Bangladesh**

**Introduction**

Family Court is a division of the British Columbia Provincial Court. Other divisions of the Provincial Court deal with criminal, traffic and small claims matters. Provincial Court judges hear family law cases, youth and adult criminal cases, and small claims cases. Depending on your community, there might be a separate courtroom where family law cases are heard, or family law cases might be heard in one of the regular courtrooms on a particular day of the week. Usually there is a day each week or every other week when the court will hear a list of family law and child protection cases. From that concept family courts are established by the Family Courts Ordinance 1985 to serve the purpose of quick, effective and amicable deposal of some of the family matters. Family Court deals with a limited number of Family Laws. The family courts jurisdiction is limited. This research I discussed various laws relating to family matters, present situation of the family courts, various problems of the judges of family courts.

**Statement of the problem**

The establishment of the Family Courts in Bangladesh was a landmark step, which was the long felt demand of the people. Before the establishment of the Family Courts all litigations relating to family matters and other issues were adjudicated by the ordinary civil courts. The Family Courts had been established by the Family Courts Ordinance 1965. Now the courts are working in every districts of Bangladesh. However, the courts are facing different problems, as mentioned under:-

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

This research seeks to concentrate on the above problems.

**Objectives of Research**

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

*(I)To examine the laws relating to family courts*

(ii) To analyze the present situation of the family courts

(iii) To focus on the problems of the family courts

**Research Methodology**

This research is conducted by following the method of documentary analysis for achieving the inimitable outcome. This research work historical and interviewing. Apart from this historical method and interview will be followed.

**Sources and Materials**

In order to complete my research from various sources. I have collected materials from books, journals, internet, and law reports and responds data.

**Importance of the Research**

Research plays an important role in recommending solutions to the existing problems. This research will clarify the problems of the family courts in Bangladesh. It also analyzes the present condition of the family courts in Bangladesh. This research will also clarify the problems of the family courts judges. It will try to give a clear scenario of the present conditions of the family suits. Finally this research will be helpful for the protection of rights of women’s in family.

**Review of Literature**

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

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

This book contains different aspects of Family Courts Ordinance 1985.

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

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

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

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

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

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

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

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

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

**Scope of the Study and Limitation**

This study is conducted on only the family courts in Bangladesh. The scope of this research is very limited. This research will define the problems of the family courts in Bangladesh. It will also analyze the problems of the judges and the condition of family suits.

**Laws relating to Family Courts**

**Introduction**

 Bangladesh gained independence from Pakistan in 1971 and therefore shares with Pakistan the legislation promulgated prior to 1971, there are many Acts, Ordinance made after the independence of Bangladesh. Similarly a Family court was established by the Muslim Family Law Ordinance of 1961. Family law is the area of the law that deals with one of the most central and personal aspects of society of the family. Although the precursor of family court was really child or juvenile court, the framers of family court probably could not have fathomed it would become a tribunals for every family related dispute as it exists today.

It is evident that the setting up of these family courts was a dynamic step so far as reducing the backlog and disposing of cases while ensuring that there is an effective delivery of justice goes. The Bangladesh court s system is divided into two levels. There are the subordinate courts and the Supreme Court, both of which hear civil and criminal cases. The subordinate courts operate at district level and are the courts first instance. They are divided into civil and criminal courts. There are specialized tribunals for example; labor and tax issues and family court has jurisdiction over personal status matters, which are governed by a person’s religious affiliation.

**Family Courts in Bangladesh An Overview**

It is not unknown that a gaping loophole in the Bangladesh Judiciary is the backlog of cases. The number of family matters cases being filed in the Supreme Court and lower court in Bangladesh, Further, pertinent to note here is that Marriage as an institution has become the subject of great judicial scrutiny. There are a number of judicial provisions dealing with marriage and its various aspects. The result is that, in addition to the various advantages that these legal provisions may provide; the privacy of this institution has been threatened. As per studies conducted in Dhaka, 40 % of marriages are heading towards divorce. There are issues like alimony which become the topic of great controversy and cause harassment to families. What further becomes a problem is that personal issues get intertwined with the legal issues and lead to the unnecessary prolonging of the disposal of these cases. The younger generation, being made a scapegoat in the changing times due to the ensuing cultural war between Conservatives and Liberals, wastes its useful youth in the precincts of the litigating corridors of the family courts, criminal courts and magistrate courts waiting in long queues being expectant of receiving justice.

The Family Courts Ordinance, 1985 was part of the trends of legal reforms concerning women. Because of the building pressure from various institutions lobbying for the welfare of women all over the country, the Act was expected to facilitate satisfactory resolution of disputes concerning the family through a forum expected to work expeditiously in a just manner and with an approach ensuring maximum welfare of society and dignity of women. Prevalence of gender biased laws and oppressive social practices over centuries have denied justice and basic human rights to Indian women. The need to establish the Family Courts was established by The Family Courts Ordinance, 1965

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

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

**Procedure followed by the Family Courts**

The Family Courts are free to evolve their own rules of procedure, and once a Family Court does so, the rules so framed over ride the rules of procedure contemplated under the Code of Civil Procedure. In fact, the Code of Civil Procedure was amended in order to fulfill the purpose behind setting up of the Family Courts.

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

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

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

**Function and Jurisdiction of the Family Court in Bangladesh**

The Family Courts’ main purpose is to assist the smooth and effective disposal of cases relating to family matters. However, like any other system there are certain issues which become a matter of concern when it comes to the working of these courts. One such issue is that of continuity. For example, in the family courts at Tamil Nadu, the counselors are changed every three months. Thus, when cases stretch for a period of time which is longer than this, the woman or the aggrieved person has to adjust with new counselors and their story has to be retold several times.

However, family courts were established by the Family Court ordinance 1985to serve of the purpose of quick, effective and amicable disposal of some of the family matters. The anxiety of the framer for the said speedy disposal of the family case is palpable in fixing only 30 days for the appearances of the dependant, in providing

that if, after service of summons neither party appears when the suit is called on for hearing the court may dismiss the suit. The purpose is again manifest in providing a procedure for trial of cases in camera if required for maintaining the secrecy, confidentiality and for effective disposal of some complicated and sophisticated maters which may not be possible under moral law of the land.

By the Family Courts Ordinance 1985 the family courts get hold of exclusive jurisdiction for expeditious settlement and disposal of disputes in only suits relating to dissolution of marriage, restitution of conjugal rights, dower, maintenance, guardianship and custody of children. The courts began working all over the country except in the hill districts Rangamati, Bandarban, and khagrachhari. Soon after the court began functioning, questions raised whether the family courts would deal only with the family matters of Muslim community or of all communities. The uncertainty lasted for a long time until in 1998 a special high court bench of the supreme court in a path finding judgment removed all the question regarding family court’s jurisdiction. Every lawyers and judges dealing with family court are supposed to be aware of the judgment. But the common people for whose benefit the courts have been constituted seem still uninformed about the great decision relieving the justice- seekers in the family courts harming uncertainty.

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

[a] dissolution of marriage;

[b] Restitution of conjugal rights;

[c] Dower;

[d] Maintenance;

[e] Guardianship and custody of children”

**Conclusion**

It is evident that the setting up of these family courts was a dynamic step so far as reducing the backlog and disposing of cases while ensuring that there is an effective delivery of justice goes. However, as aforementioned, there are still matters of concern which plague these courts. The issues relating to the functioning of these courts is to be seen in total, as quoted in the examples relating to the procedural as well as substantive aspects of the problems. There are many controversial and debatable issues such as engaging a lawyer due to the specific provisions of the Family Courts Act.

Furthermore, the lack of uniformity regarding the rules laid down by different states also leads to confusion in its application. Merely passing a central legislation is not in itself a complete step; for implementation in its spirit, it is to be ensured that some level of uniformity is maintained, at least in the initial stages of its coming into effect. Further, the need to amend certain laws is also to be examined and implemented effectively in order to ensure that these courts do not face any hindrance in their working. These small steps, if examined and implemented within time, will go a long way to ensure that the Family Courts are successful, to a greater degree, to fulfill the noble purpose for which they were created.

**Present situation of the Family Courts**

Establishment of Family Courts was on the one hand an expression of our sophisticated legal thought, on the other hand, an acknowledgement that our traditional civil courts had failed to successfully deal with the suits relating to family affairs. Family Courts were established by the Family Courts Ordinance 1985. 1, to serve the purpose of quick, effective and amicable disposal of some of the family matters. This purpose, though not perceptible from the preamble of the Ordinance, is evident in different places of the body of the Ordinance. The anxiety of the framers of the Ordinance for the said speedy disposal of the family cases is palpable in fixing only thirty days for the appearance of the defendant.2,  in providing that if, after service of summons, neither party appears when the suit is called on for hearing the court may dismiss the suit.3,  The purpose is again manifest in providing a procedure for trial of cases in camera if required for maintaining secrecy, confidentiality and for effective disposal of some complicated and sophisticated matters which may not be possible under normal law of the land. Once more, the Code of Civil Procedure 1908 except sections 10 and 11 and the Evidence Act 1872 have not been made applicable in the proceedings under the Family Courts4 which is another sign that indicates the concern of the lawmakers to dispose of the family matters in congenial atmosphere of the Family Court, which was proven to be absent in the lengthy procedure of civil courts. Unfortunately, the noble aim of introducing Family Courts has not been expectantly achieved though already more than two decades have passed after the courts’ coming into operation. There are many and diverse type of reasons behind such let down.

**Various problems in Family Courts**

Various problems in Family Courts are given as follows:-

**The Unacknowledged Problem**

There are many problems with therapeutic jurisprudence in the family courts, which now runs the gamet from all manner of alternate dispute resolution procedures, to excessive guardian ad item practices, to various court-ordered therapies, to extensive psychological opining and forensic evaluation in court cases. One of the problems with the rise of therapeutic jurisprudence and the placement of non-legal systems and non-legal professionals into the courts has been the subtle denigration of long-established precepts of lawyer independence and due process. One of the many ways this happens in the family courts has been, ironically, through the introduction of subtle and often unrecognized conflicts of interest afflicting lawyers’ representations of their clients, created through the common development of multidisciplinary collegial relationships and business referrals, both informally and through the very multidisciplinary organizations which are promoting therapeutic jurisprudence ideas. The conflicts of interest arise because most lawyers represent different kinds of clients on ideologically oppositional sides in different cases. The typical family lawyer sometimes represents the wife, sometimes the husband, sometimes the “good guy”, and sometimes the “bad guy”. If a lawyer coming into a case runs up against an expert with whom he has a referral or employment relationship in other cases and that expert takes a position adverse to the lawyer’s client in the new case, the lawyer will have a very difficult time adequately representing his client. Appropriate representation may require the lawyer to strenuously object to the expert’s testimony  or even the expert himself. But if the lawyer needs the good will and cooperation of that same expert in connection with the lawyer’s other clients’ pending cases, he cannot do that because he may put those other cases at risk. The legal community, even in urban areas, is limited and often close-knit. Lawyers in the same area of practice regularly encounter each other in different cases. The pool of forensic experts and guardians ad litem (GALs) tends to be even smaller. The repeated association time and again of these specialists in cases means that at any time and from time-to-time any given one of them may show up on the “wrong side” of a lawyer’s case — and simultaneously also be on the “right side” of other of the lawyer’s cases, whether as a hired expert or a court-appointed expert. This creates many of the same dilemmas that ordinary client conflict-of-interest issues do.[1]

**How the Conflicts of Interest Affect the Lawyers and Their Clients’ Cases**

Lawyers in these positions will be tempted to rationalize to themselves, as well as maintain the posture in the community at large, that the expert’s opinions, even when they are adverse to his client, are scientifically valid even when they may not be, even if they are deeply flawed or completely specious. These lawyers may rationalize to themselves that the validity of the science itself is not their responsibility because, after all, lawyers are not “scientists”. The lawyer who naively or purposefully steps down the path of multidisciplinary practice, regularly exchanging referrals and engaging in other close associations with nonpayer case participants simply cannot avoid encountering this problem. Lawyers and these other participants in the system have very different roles. When lawyers directly hire paralegals, experts, and others to assist them, there is not as much of a potential conflicts problem, even when these individuals are independent contractors. First, their work is covered by attorney work product unless and until they testify. Second, because they were hired by the lawyer, they are subject to the same conflict of interest rules as is the hiring lawyer, as far as their involvement in other cases and with other people. This is not true, however, in the case of “independent” experts, such as custody evaluators and guardians ad item. These individuals who render opinions “for the court” as so-called “court-appointed experts” are a very different matter. These same kinds of conflicts also do not arise when lawyers engage in professional relationships with other lawyers who regularly are on the opposing sides of cases, because unlike the lawyer colleagues, the practitioners of therapeutic jurisprudence are actually case participants — witnesses and even parties. Although ostensibly working “for the court”, they are not akin to neutral judges or magistrates, bailiffs or other courthouse personnel. None of these truly neutral courthouse persons advocates for a position in a case, testifies as a witness, or participates as a party proper as do some GALs. Contrary to the rhetoric, court-appointed evaluators and opining GALs are not neutral participants in the system. Even if they initially were hired under that rubric, once their reports are rendered, and their opinions formed and ready to be given, they have become advocates for one or the other side or issue in a case. Thus, at a point, they are, just as any party would be, pointedly in favor of certain outcomes, and adverse to others. The routine broad involvement of these expert witnesses thus must be recognized by the legal profession as the egregious misjudgment it is, fostering legal ethical violations that must be addressed by state bar ethics rules. Ironically, the problem is worse for lawyers who are not ideologues, because these lawyers are more likely to advocate for different client perspectives. Such a lawyer confronts an unresolvable dilemma when an expert the lawyer is relying on in one case takes a similar position, including one that may lack scientific merit, against another of the same lawyer’s clients in a different case. Because the expert and the lawyer have been, are currently, or will be in cahoots in these other cases, the lawyer is placed into a conflict, unable zealously to discredit the expert when that is necessary to protect his current client. Bar ethics rules must address this. The legal profession actually does recognize that the experts themselves have the same temptation to manipulate their opinions to please those lawyers with whom they have ongoing relationships and receive referrals. This undoubtedly contributes to yet more corruption of the judicial system, and even has led to calls to banish these third parties (see e.g. Margaret Hagen’s Whores of the Court, Regan Books, 1997). Nevertheless, lawyers have not, as a group, either recognized or acknowledged how these practices have affected their own ethics and practices.

**Why Has No One Said Anything Before?**

One possible reason that multidisciplinary ideas have taken such hold in the area of family law and (except for the drug court idea where they are also increasing), otherwise kept in check in other areas of legal practice, is that unlike lawyers who practice in many other substantive areas, and who may retain their clients for years, family lawyers typically need a steady stream of new one-shot clients. Also, family lawyers tend to work in smaller firms, where they are not cross-referring the same clients among different lawyers in different practice areas of the same firm. So family lawyers value those who send them business. As a result, it appears that too many family lawyers, perhaps without recognizing or acknowledging the conflicts of interest that have caused their discomfort and unwillingness adequately to represent some of their clients in some of their cases, in fact have sacrificed these clients on the altar of maintaining their professional relationships, associations, and referral sources. Some busy family lawyers do admit to feeling “burnout”. Some have rationalized that their unwillingness to zealously advocate for their clients, as well as their vague discomfort with some clients and positions, stems from the frequent “high conflict” created by unreasonable clients, or the high emotional toll their cases are taking on them. Others have retained their enthusiasm by becoming ideologues, including proponents of bad science favored by their own favorite therapeutic jurisprudence colleagues. These lawyers take only those cases in which they will not feel conflicted or simply suspend their judgment and integrity in the interests of churning cases and making money. For example, this is seen among lawyers who assert in case after case with very different facts that their clients have been the victims of “parental alienation”. The fathers’ rights advocates also would lay this charge on the domestic violence practitioners. Whether the ideological lawyer is taking cases which do involve only one kind of client position or whether the lawyer just “sees” the same things in different cases is not the issue. The issue is that the lawyer has resolved his cognitive dissonance by committing to propositions outside of law and outside of the lawyer’s academic expertise, and — maintaining a deliberate self-serving ignorance — is carrying both good and bad ideas into the media of the legal field. This alone explains the constant propagation in family law of bad science, and the seemingly endless “controversies” over bad psychological ideas that are pervasive in the justice system but which do not get resolved by any amount of publication of “good science”. Some lawyers caught in this vortex have justified their lack of vigorous representation, and the coerced settlements they’ve foisted on some clients, as hailing from a perpetual concern for “the best interests of children”, or as taking the reasonable compromise position, or the high road, or “just helping people to get along”. These lawyers have attempted to redefine their jobs, paternalistically, as dictators who must “control” their clients, instead of being agents at law for them. And again, therapeutic jurisprudence explains why this problem has become so much more pervasive in family law than in other areas of law.  Other lawyers profess to themselves and each other and everyone else around a great affinity for mediation and therapy and collaborative resolution, and all manner of alternate dispute resolution (therapeutic jurisprudence) as being superior to traditional justice system litigation and negotiation practices, and in the interests of everyone, because they have been encouraged to think this way by a steady drip of literature emanating from the mental health trade organizations — as well as new referral retainers. Little in the way of objective research substantiates these opinions, or the resulting negative impact many of them have on formal justice system procedures and due process. This kind of thing again is just not as pervasive in other areas of the law, no matter how heated the conflicts get, and it is one substantial reason the public has such a generally dim view of the family courts and family lawyers. “Therapeutic jurisprudence” is a primary reason the family courts are seen as not working, unjust, and broken.

**How Are We Going To Fix This?**

Given that clients are entitled to their choice of attorneys, and are entitled to independent, uncomplicated agents at law who are committed to furthering their interests and goals (as the client, not the attorney, has defined them), one immediately viable solution would be a rule of disqualification of any GAL or forensic expert who previously was associated in any prior case with either of the lawyers in a current case, and the striking and nullification of all testimony and reports of that expert, no matter at what stage the lawyer may have entered the case. Court appointed witnesses and parties in other people’s private civil cases are interlopers in the justice system and must be excised. The very integrity of the justice system is at stake. To the extent well-meaning individuals promoting these ideas did not fathom the repercussions of them, and were swayed by sweet-sounding “solutions” that simply do not work well in practice, it’s time for an honest reappraisal. In addition, the loss to the justice system, if any, would be slight. It does not actually take an “expert” to do a home study or to investigate readily observable facts. The proof of this is in how often court-hired opines are not specialists at all, but lawyers and laypersons, and in how often cases in which funds are unavailable to engage so-called mental health experts manage to be reasonably adjudicated without them. The perception of need for psychological expertise in most family law cases is especially misguided too, because, unlike scientific and technical experts in other fields, the field of applied psychology is overrun with political machinations, nonsensical theories, and outright misrepresentations (see generally, Robyn Dawes, House of Cards, The Free Press, 1994, and other criticisms of applied psychology). Too often what is posited as within the realm of a psychologist’s or other mental health practitioner’s expertise is not close to research-based or experiential technical knowledge? Much of the time, it is more akin to an expertise in astrology, or theology: there is high familiarity with complicated ideas and methods of calculating answers, and the body of literature that discusses all of that, but the professional output otherwise is somewhere between unhelpful and misleading when it comes to ascertaining the facts and guiding reasonable decision-making. It is time to start substantially limiting, and even eliminating the use of forensic experts, GALs, and other therapeutic ideas in family court. In the vast majority of cases, custody evaluators and mental health practitioners have no actual expertise to offer. When this is objectively understood, and then considered in light of the problems their presence creates, the solution is no longer arguable.

**Dowry and Maher**

    One of the worst problems related to marriage in Islam in the context of our society is the issue of dowry. So much of abuse against women is related to this matter. Much of it is because lack of misunderstanding about Islam, lack of education, and lack of effective law enforcement.   Maher, mutually agreed upon by parties to marriage, is an Islamic requirement. Maher is to be offered by the groom. There is no restriction on what or how much Maher can/should be. However, it is desired that it should be according to groom’s ability, and subject to BRIDE’s consent. Maher can/should also serve as an economic protection for the wife. Given the abuses that exist in our society, the following are important considerations:  Maher should not be an exorbitant amount that the groom can’t afford; Maher should be paid off at the time of marriage; Maher is for the BRIDE, not her parents or relatives and therefore, Maher should be transferred to BRIDE; Bride ought to be fully informed about the offered Maher and her explicit consent should be sought. As far as dowry – marriage gift sought/demanded by grooms from brides’ side – is simply UNISLAMIC. Our dowry related problems are exacerbated by the fact that bride’s parents often try to get a specific groom by offering high dowry to the groom’s side. While any gift, given by anyone or any side, must be treated differently, any elicitation/demand has no Islamic validity and vigorous education is needed in this regard to bring this matter to the limelight of society.

**Case study**

Dhaka, 11 September 2009 (IRIN) – When parents in Bangladesh fail to come up with a promised dowry for their newly married daughter’s things can get nasty. He started beating me,” 22-year-old Shopna Rani said of her new husband, just hours before dying of her injuries at a Dhaka hospital: Her parents had reneged on a promise to pay the dowry. According to the Hong Kong-based Asian Legal Resource Centre such cases in Bangladesh are nothing new. “This is a social cancer. It continues unabated and everybody suffers,” Mohammad Ashrafuzzaman, an ALRC programmer officer, told IRIN.Dowry related violence including torture, acid attacks and even murder and suicide also stigmatizes women, the group says. In the first half of 2009, 119 cases of dowry-related violence, including 78 deaths, were reported, said Ain O Salish Kendro (ASK), a local NGO working for human rights. In 2008, 172 women were killed and the figure for 2007 was 187, ASK said, adding that there were at least five reported cases of women committing suicide in the first half of this year when dowries went unpaid.“There are terrible stories of suffering,” Ashrafuzzaman said, adding that the problem is more prevalent in poverty-afflicted rural parts of the country. Dowry payments – ranging from hundreds to thousands of US dollars – can impoverish a girl’s family overnight. According to a study by Peter Davis, a former lecturer at the Centre for Development Studies at Bath University in the UK, dowry payments of more than 200 times the average daily wage and costly medical expenses are major causes of chronic poverty.“Some families face a ‘double whammy’, having to pay wedding expenses and dowry for their daughters at the same time in life as elderly relatives are needing more expensive medical care,” said Davis, who spent several months in the country conducting interviews with families for the study. But according to Ashrafuzzaman, it is not just the poor who are suffering.

Girls, regardless of their education or social standing, have little choice but to provide a dowry. Most marriages do not take place until details of the dowry are finalized and agreed, say activists.  In 1980, Bangladesh banned dowries, and sanctions were imposed: Those taking or demanding a dowry face imprisonment, a fine, or both. But the practice continues. “In some cases, the law is effective and in some cases it is not. Mainly for lack of cooperation from the family members, women do not get the required support from the law,” Sara Hossain, a prominent lawyer and human right activist, told IRIN. Others blame the government. “Of course there is a law, but this law has been ineffective given the dysfunctional nature of the country’s judicial system,” Ashrafuzzaman said, noting how perpetrators often pay off officials to avoid arrest. “They manipulate the system and ultimately the problem continues,” he said.

Some NGOs like ASK and the Bangladesh Legal Aid and Services Trust (BLAST) offer victims legal support, but many victims do not want it. “Some victims do not want to continue the legal battle against their husbands for fear of their husbands,” Elina Khan, executive director of Bangladesh Manabadhikar Bastobayan Sangstha (BSEHR), a local NGO working for human rights, told IRIN. As most victims come from poorer families, losing the shelter of the husband’s home can be a particularly frightening prospect. Asked how best to combat the problem, human rights activist Hossain cited the need to change the “get rich quick” mentality among poorer men who use their wife’s parents’ money to better secure their own futures. “This mentality has to be changed to stop dowry violence. A mass social awareness campaign can change this mentality,” she said.

**Conclusion**

This chapter is mainly discussed about present situation of the family courts, various problems in family courts, dower and Maher and some case study related to the family courts. I work on this chapter I get important information about the family courts.

**Problems of the Judges of the Family Courts**

Problems and solutions are interrelated between one another. All sides of every state organ are not free from problems, similarly judiciary part of the state are not free. It has many problems. In this chapter of my research I discuss various problems of the judges and I try to give the overall discussion various problems of the judges in Bangladesh.

**Multiplicities of the suits**

Multiplicity of the family suits is one of the most burning problems in the administration of justice in the Bangladesh. The main reasons of the multiplicity of the suits are as follows-

**a)    Over population**

The area of Bangladesh is 147570 sq. m. but the population of it is about 160 millions. So the density of the population there are many cases are open in every year, most of the cases are family matters. For that reason judges are facing many problems.

**b)    Lengthy process of trial**

The delay in litigation is equally known to all and nevertheless it may sound inconsistent with due process of law. The fact remains that the very cases are misused and abused in order to delay cases for an indefinite period and ultimate success in the cause often proves false. Now, law is an effective weapon in the hands of the state to mitigate the social needs by ensuring proper justice in time. Such effort of law is liable if justice fails to mitigate the misery of the mass people due to delay in litigation only and the faith in justice can never be instilled in the mass people if the state doesn’t ensure the speedy process of justice. In the field of justice, delay in litigation is traditionally practiced in our country as like at the same time as denying due process of law. The result is that cases are piled up in all the courts hugely day by day. Basically, the delay in litigation is incredibly practiced in civil courts. A number of causes seem to be responsible for creating this crippling situation in the way of our justice. An attempt has been made here to pinpoint some of the causes and suggest measures to remove them. It also seen that the lawyers may not be ready to argue the case and hence regularly submit ‘time petitions’. So, frequent taking of time by the lawyers must be stopped.

**c)     Less numbers of the family courts**

Less numbers of the family courts is one of the reasons of multiplicity of the judges. There is no enough family courts room in every district. So lots of cases are pending in every year’s especially family matter.

**d)    Less numbers of the judge**

Judges are not available in every Family court. With Family matters lots of cases are open in every day. One judge of every Family court is not able to deal those cases so the multiplicity of the suits is being high day by day.

**e)     Lack of the family laws**

The prevailing family laws are not exhaustive to solve the family suits. It depends on other laws. The purpose of the family Courts Ordinance is to provide for speedy disposal of family matters by the same forum. Provisions made in the Family Courts Ordinance have ousted the jurisdiction of the Magistrate to entertain application for maintenance which is a family court matter. A complete opposite view to the effect is that the Criminal Courts as usual way entertain a case filed under section 488 of the Code of Criminal Procedure for maintenance. To dissolve this issue the Court considered (i) section 3 of the Family Courts Ordinance which provides that the provisions of this Ordinance shall have effect notwithstanding anything contained in any other law for the time being in force, (ii) section 4 which provides that all courts of Assistant Judges shall be the Family Courts for the purpose of this Ordinance, and (ii) section 5 that provides that the Family Courts shall have exclusive jurisdiction to entertain, try and dispose of any suit relating to the subjects enumerated in this section that includes maintenance. The Court held that these sections clearly indicate the ouster of the jurisdiction of other courts in dealing with the matters enumerated in section 5 of the Ordinance. The husband may sue against the wife for restitution of conjugal life if the wife, without lawful cause, ceases to cohabit with her husband. This suit is maintainable only against legally married wife. However, a husband cannot file such a suit if the contract of marriage is dissolved.

**f)      Lack of expert lawyer**

The expert lawyer on family laws is not available in our country. The lawyers do not want to solve the problem by alternative way.  The philosophy of Alternate Dispute Resolution systems is not well to the lawyers as well as to the judges. In a developing country like Bangladesh with major economic reforms under way within the frame-work of rule of law, strategies for swifter resolution of disputes for lessening the burden on the Courts and to provide means for expeditious resolution of disputes, there is no better option but to strive to develop alternative modes of dispute resolution by establishing facilities for providing settlement of disputes through arbitration, conciliation, mediation, negotiation, etc. Litigation does not always lead to a satisfactory result. It is expensive in terms of time and money. A case won or lost in court of law does not change the mindset of the litigants who continue to be adversaries and go on fighting in appeals after appeals. In June 2000, formalized ADR was introduced in Bangladesh by means of court annexed judicial settlement pilot projects, in an effort to decrease delays, expenses, and the frustrations of litigants laboring through the traditional trial process. The pilot program began in a collaborative effort with ISDLS in a series of Bangladeshi legal studies of Californian ADR systems. Three Pilot Family Courts were established in the Dhaka Judgeship, which exclusively used judicial settlement to resolve family cases including: divorce, restitution of conjugal rights, dower, maintenance and custody of children. An amendment to the Code of Civil Procedure was not necessary due to an existing 1985 Family Courts Ordinance, which authorized the trial judge to attempt reconciliation between parties prior to and during trial. The pilot courts were staffed by 30 Assistant Judges selected from all over Bangladesh, lawyers and non-lawyers, who were given training by a United States mediation expert. During this assignment, the Assistant Judges were relieved of all other formal trial duties107.

**g)    Complexity of the family laws**

The dissolution of marriage under Muslim law is detailed in sections 307 and 308. Under Muslim law, the contract of marriage may be dissolved in any one of the following ways: (i) by the husband at his will, without the intervention of the court; (ii) by mutual consent of the husband and wife, without the intervention of the court; (iii) by a judicial decree at the suit of the husband or wife. The wife cannot divorce herself from her husband without his consent unless such right is given to wife in the *Nikah Nama*. This type of talak is known as *talak-e-toufiz*. When the divorce is affected by mutual consent, it is called *khula*or *mubara’at* according to the terms of the contract between the parties.

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

**h)    Dependence of the poor on informal justices system**

We have observed that the poor face problems in accessing formal justice systems and tend to use informal systems. Apart from serious crimes like murder, rape and acid violence, which are less frequent, majority of the problems that the poor experience consist of family matters, petty disputes, petty theft, sexual abuse etc. Usually a formal Court does not consider these cases because of the insignificance of their nature and the Enormity of their amount of more serious cases. Often, these petty cases, if filed in a formal court, are redirected to the Village Court (VC). However, a particular characteristic of these apparently insignificant problems is that from being insignificant they can gain significance and may potentially cause probable injury to the people involved. If resolved earlier through village court or informal systems then the bigger problems (severe injury, violence etc.) could have been averted if they were nipped in the bud. The opinion of the rural people is unanimous here- problems should be forestalled at the first sign of it, not after the damage is done. According to them, court

Only considers problems when they reach the extreme, whereas the extreme stage can be prevented if addressed properly in the primary stages through local level institutions (Ali and Alim, 2005; World Bank-BRAC ongoing research on justice, 2006). However, the local level informal justice institutions and processes are not free of problems. The next section describes the constraints that the poor face when they try to access justice through informal institutions.

**i)       Gender discrimination**

One of the main reasons behind the success of traditional Salish is its support towards traditional values, customs and power structure. On the other hand, this traditional outlook supports patriarchy and thus prevents women from getting justice. Women cannot enjoy the opportunity to participate or express opinionin a traditional shalish. The women are not considered even as witnesses. For instance, an Asia Foundation report describes a case in which a victim’s husband’s Dowry demands led to beating her and casting out of the home. She asked for help from

Salish but it was quite fruitless as “I could not speak up…I didn’t have the chance to Say anything.”

**j)      Lack of legal awareness**

Still today, most people of rural Bangladesh are unaware of their legal rights. Dowry is a common phenomenon in village and the villagers just do not know that giving or receiving dowry is prohibited by the law. Every now and then, the women come to the NGO legal aid offices to file charge against her husband for battering. In almost all cases, the reason is, failure to pay dowry .The actual meaning of “Denmohor” (dower) is not yet understood by women and most of them failed to collect it in time. For its patriarchal nature, traditional Salish fails to provide justice in these cases and NGOs cannot provide legal help in case of dowry related incidents until they renamed it as “Bhoronposhon” (maintenance). Thus, with a case of different nature, legal aid is provided but the problem of dowry does not end.

**k)    Multiplicity of laws on a particular issue.**

Family Court Ordinance, 1985 aims at resolving legal disputes related to dissolution of marriage, restitution of conjugal relation, dower, maintenance, and guardianship and custody of children. This Ordinance was promulgated in 1985. The contents selected for consideration in the Ordinance are compiled from Muslim law, hindu law, civil procedure code, Evidence Act, Dissolution of Muslim Marriage Act, and the Muslim family law ordinance. This Ordinance extends to whole of Bangladesh except the hill districts of Rangamati, Khagrachhari and Bandarban. This law provides that all courts of munsifs shall be Family courts and the munsifs shall be the judges of Family courts. Basically Family Courts shall have exclusive jurisdiction to entertain, try and dispose of matters relating to marriage, conjugal relations, dower, maintenance, guardianship and custody of children.

**Interviews of the judge**

For the purpose of my research I meet with a judge of family court. She is Shammi Akter, the Family Court of 5th Assistant judge of CMM Court, Dhaka. She gives me the appropriate answers by my questions. The interviews of family court judge is given below:-

**Ques: 1:** How many family suits are pending at present in your court? On average how many cases are disposed of in your court per year?

**Ans:**The families suits are pending at present in my courts are approximately 1517 cases. On average 800 cases are disposed in my court per year.

**Ques: 2:** What kind of problems a judges faces in the trial of family suit?

**Ans:** The judges of family court have to face various problems are given below:-

A)  Absence of witness

B)   Lengthy time petition of the advocate

C)   Matters of arguments

D)  Laciness of judges of the family court

E)   Lack of proper environment of the family court

F)    Lots of family suits in a court

G)  Laciness of proper knowledge of the family judge in relating to Alternative Dispute Resolution(ADR)

H)  Others

**Qus:3:** Are the plaintiffs obtaining proper remedy through family court?

**Ans:** We try to provide the proper judgment about the disputes of family matters of the plaintiff as soon as possible in very short time for our best.

**Qus: 4:** As there any time limit for disposal of a family suit? If the answer is negative, generally how long time does it take?

**Ans:**There is no any time mentioned in the Family Court Ordinance 1985 but in general when the written statement in filed, the family court shall fix a date ordinarily of not more than 30 days for a pre- trial hearing the suit. If no compromise or reconciliation in possible then in general it will take to solve the dispute within 6 or 7 months. But in case of ex-partee decree within 45 days.

**Qus: 5:** how is decree for maintenance/ dower executed? What sort of problems may arise in executing such a decree?

**Ans:** The dependent are given time may be minimum 30/ 35 days for executing of maintenance / dower after the judgment by order of the court. Time mention in the judgment for the execution of dower and maintenance then the court serve the notice to the dependent. If he is unable for the execution after receiving the notice the court shall send him in custody it not more than three months.

**Conclusion**

In this chapter I discuss various types of problems of the judges in family courts and I analysis it with the interview of the family judge.

**General Conclusion**

Family Courts is important elements to discuss every family matters. To solve the family problems family courts plays an importance rules in the society. There are many suits are open every day in Bangladesh. Most of the suits are family matters. Although it has many problems, last chapter of my research I try to analysis various problems of the family courts and write down lots of information about family courts. In my last chapter I write major finding of the study and give some recommendation about family courts.

**Major Finding of the Study**

The major finding of the study is known more and more about family courts in Bangladesh. That is very important for me as a law student. I have in poor concept about family courts. For the purpose of my research I learn more and more and get lots of information about family courts. I also find out this topic various problems of the family courts, present situation of the family courts, and what’s a type of problems judge’s faces in the proceeding of trials? I also try to find out various laws relating to family matters and discussion various cases relating to family problems.

**Recommendation**

So the chapter 1 to 5, I discuss various terms, information, laws, and problems of the family courts and proceeding of the trial relating to family courts. Finally I want to give some recommendation, which as given bellow…….

1. There is needed in depth description on the law of family courts.
2. Camera in trial should be activated.
3. The system of the enforcement of the decree of the judgment is needed to easy and fast.
4. Taking evidence is very vital procedure in family courts. Who can record the admission out of the order that admission should be described in a proper and legal way?
5. Alternative dispute resolution should be active to solve any family matters.
6. The people should be aware about the consciousness about the right of the judgment.
7. The special training for the judges should be needed.
8. Any interference should be deactivated at the time of any family trial.
9. The system of the trial of the family dispute should be reformed.
10. The judiciary system should be activated.

**Conclusion**

Law is above to all. If the law is use in proper way not only family disputes but also all disputes must be solve. To solve the every disputes enforcement of law and clearance of justice is important. In my research I try to give in depth discussion about the family courts in Bangladesh. Firstly I try to find out various problems of the family courts and secondly I analysis it with my best. Finally we always respect our law, obey the law and try to enforcement in proper way.