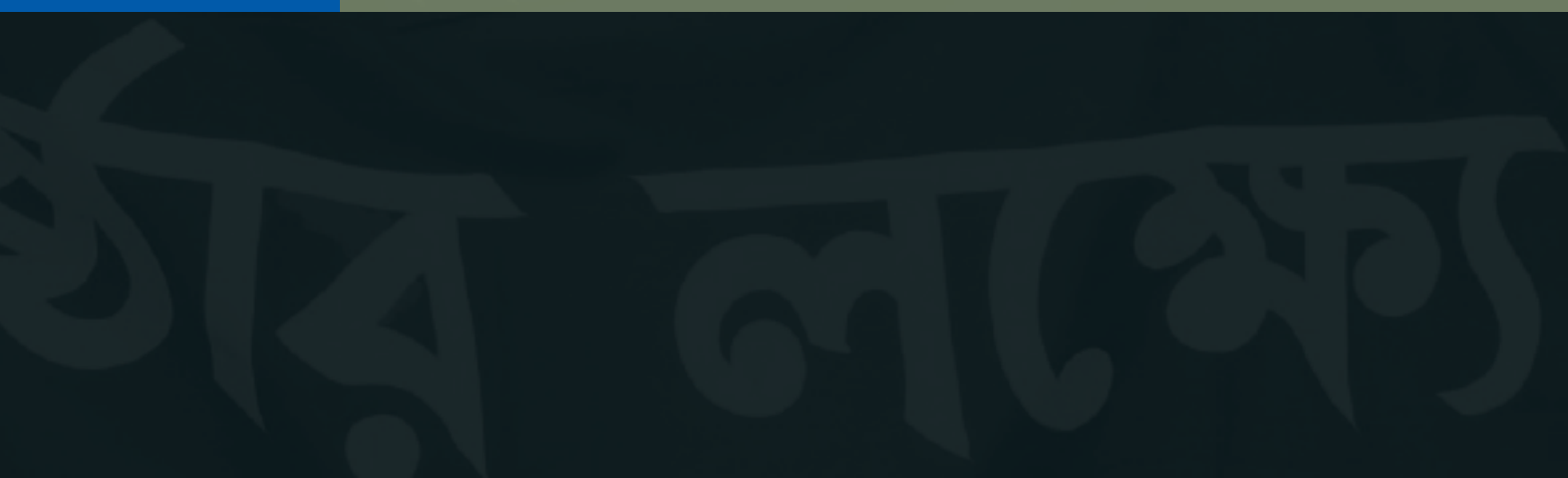




HUMAN  
RIGHTS  
WATCH

## “Will I Get My Dues ... Before I Die?”

Harm to Women from Bangladesh’s Discriminatory Laws  
on Marriage, Separation, and Divorce



## **“Will I Get My Dues ... Before I Die?”**

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Marriage, Separation, and Divorce

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Printed in the United States of America

ISBN: 1-56432-935-6

Cover design by Rafael Jimenez

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# “Will I Get My Dues ... Before I Die?”

## Harm to Women from Bangladesh’s Discriminatory Laws on Marriage, Separation, and Divorce

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## Glossary

Dowry	In practice, payments, gifts, or other property from the bride and her family to the groom and his family at the time of a wedding and during marriage. The practice is illegal yet widespread.
<i>Kabin-nama,</i> <i>Nikahnama</i>	A marriage contract in Muslim law. The Bangladesh government has a standard format for such contracts.
<i>Mahr,</i> Dower	A property right that accrues to a Muslim wife at the time of marriage, part or all of which may be payable on demand and part on dissolution of marriage. It is paid by the husband or his family, and can take the form of money or property.
Female-headed households	A household headed by a woman where there is no adult male. In using this term Human Rights Watch does not imply that all households where there is an adult male are in fact male-headed.
<i>Kazi</i>	A licensed official who registers Muslim marriages and divorces.
<i>Khula</i>	A form of divorce through mutual consent for Muslims. Many scholars say that this is initiated by the wife and is available to her as an option only if she pays consideration to her husband (usually foregoing <i>mahr</i> ).
<i>Talaq</i>	Unilateral, no-fault divorce, a power given to men under Muslim personal law.

## Summary

Shefali S., a Muslim, lived with her husband and in-laws. She worked in the family's fields and did all the household work. When she was pregnant with their first baby, she learned of her husband's plan to remarry and confronted him. He kicked her, and made her stand naked throughout a cold winter night as punishment. On one occasion he beat her to the point of unconsciousness. Eventually he abandoned her and remarried. Shefali continued to live with her in-laws and endure their beatings because her parents were too poor to support her and she felt she had no hope of securing maintenance.

Namrata N., a Hindu, gave her life savings to her husband to start a business. He misused the money, turned violent when she challenged him and demanded that it be returned, and eventually tricked her into drinking acid. "It felt like my mouth and insides were on fire," she told us. He fled, and she is now dependent on a feeding tube. Namrata wants to divorce her husband but Hindu personal laws do not allow her to.

Joya J., a Christian, said she did household work from 5:30am every day. If she took a break even to play with her little daughter, her mother-in-law got angry. Often she had no time to bathe, and if she dozed off after lunch, her mother-in-law would get angry and insult her. Joya's husband also occasionally beat and verbally abused her. Unable to bear the abuse, Joya escaped from her marital home several times, seeking refuge with a church and with her parents. Both the church and her parents forced her to return to her husband's home. The abuse continued so Joya, with nowhere else to go and no money for housing, hid on a family friend's verandah and in her bathroom. Her husband and in-laws spread rumors that she had run away with a man.

Shefali, Namrata, and Joya suffered the injustices of Bangladesh's discriminatory personal laws and its consequences in different ways. Each of them contributed, financially or otherwise, to their marital homes. But Bangladesh's laws do not recognize a wife's contributions to the marital home and fail to give her equal right to marital property during marriage and at the time of dissolution. None of them was aware of any social assistance program or how to access it.



Bangladesh's personal laws governing marriage, separation, and divorce overtly discriminate against women. Setting out separate rules for Muslims, Hindus, and Christians, many of these laws were codified decades (and in some cases more than a century) ago, and grant men greater powers than women in marriage and accessing divorce. The few economic entitlements for women recognized by these laws, namely maintenance and *mahr* (contractual amounts under Muslim marriage contracts), are often meager and difficult to secure.

As a result, rather than offer protection, Bangladesh's personal laws often trap women in abusive marriages or propel many of them into poverty when marriages fall apart. In many cases these laws directly contribute to homelessness, hunger, and ill health for divorced or separated women and their dependents.

This report is based on interviews with 255 people in 2011, including 120 women who have experienced the shortcomings of Bangladesh's personal laws, as well as lawyers, experts, government officials, and former judges. It finds that these laws discriminate against women during marriage, separation, and divorce, and exacerbate women's economic inequality.

It also finds that family courts, where women can claim their minimal rights related to marriage, are often so plagued by delays, dysfunction and burdensome procedures that women wait months or years for any result. The report finds that there are significant barriers to and shortcomings in Bangladesh's social assistance programs, which are failing to reach many women in extreme economic hardship after separation or divorce.

In Bangladesh, over 55 percent of girls and women over 10 years old are married. For many in the country, marriage offers economic security. But it might also result in financial hardship due to social pressure to leave jobs after getting married, the double burden of household work and reduced ability to participate in paid work, and a lack of control over income and savings. About 330,000 women in Bangladesh are divorced, according to government data, and an unknown number live separated from husbands.

The United Nations country team in Bangladesh has identified "marital instability" as a key cause of poverty and "ultra and extreme" poverty among female-headed households. The Bangladesh Planning Commission has said that women are more susceptible to becoming poor after losing a male earning family member due to abandonment or divorce.

Married women make contributions in many forms to family homes, businesses, fields and other assets, providing vastly more unpaid household and care giving labor than men. All married women whom Human Rights Watch interviewed for this report said they bore almost sole responsibility for household work, including cooking, cleaning, washing, grazing livestock, and fetching water. Many said they contributed significantly to their households at the time of, or during, marriage by selling jewelry, or relinquishing earnings or savings to their husbands. These contributions helped to buy property in the husband's name, further his education, establish businesses, or help him get occupational or business licenses or permits. Almost all women said they gave their husband or in-laws a dowry.

Yet despite these myriad contributions, all but a handful of the women we interviewed were unable to exercise control over their income and marital property. Nor were they able to recoup anything or have their economic value recognized when their marriages ended.

“The suffering that women go through only Allah knows,” one Muslim woman, who struggled to afford housing and food after her husband left her, told Human Rights Watch. “I wish Allah could make us men not women.”

After decades of inertia, there is momentum for change in Bangladesh. In 2010, a law against domestic violence was introduced, which defines causing “economic loss” as an act of domestic violence and recognizes the right to live in the marital home. The law also empowers courts to provide for temporary maintenance to survivors of domestic violence. In 2012, the Law Commission of Bangladesh, supported by the Ministry of Law, Justice and Parliamentary Affairs, completed nationwide research into reforms for Muslim, Hindu, and Christian personal laws. In May 2012, the cabinet approved a bill for optional registration of Hindu marriages. The Ministry of Law, Justice and Parliamentary Affairs is also considering reforms to civil court procedures—especially on issuance of summons—that will improve family court efficiency. These small but important steps follow decades of pressure by women's rights groups that have consistently demanded personal law and procedural reform.

Echoing their efforts, this report calls for personal law reform, procedural reform, better implementation of the limited protections currently available for women, and stronger state assistance for divorced or separated women, and women faced with domestic violence. Legal rights to a share of marital property on an equal basis with men and an

entitlement to appropriate support from husbands or ex-husbands should be paired with access to social assistance where necessary; land distribution programs should be non-discriminatory so that female-headed households are not disadvantaged or excluded; and protection measures including access to shelters should be expanded.

The report notes strong opposition to reform, including from religious leaders averse to government involvement in “religious” affairs, or who argue that “religious” teachings offer no scope for reform. Law reforms related to family and religion is often contentious. But it is noteworthy that other countries with Muslim, Hindu, and Christian populations—including countries with Muslim majorities or countries that incorporate Sharia in their family laws, as Bangladesh does—have reformed personal laws to recognize greater rights for women. These reforms reflect diverse interpretations of “religious” teachings on marriage and its dissolution, as well as government recognition that states have an obligation to eliminate discrimination regardless of the personal law applied.

## **Discriminatory Personal Laws**

Since its independence in 1971, the bulk of Bangladesh’s laws are applicable to all citizens without discrimination based on sex or religious belief, with one major anomaly: its personal laws. Some reforms, especially laws against domestic violence and acid attacks, have addressed family issues and apply across the religious spectrum. But personal laws on marriage, separation, and divorce, some dating to the 19<sup>th</sup> century, have remained largely frozen in time.

According to the 2001 census the large majority (89.7 percent) of Bangladesh is Muslim. Hindus constitute about 9.2 percent, Buddhists 0.7 percent, and Christians 0.3 percent of the population.

Muslims, Hindus, and Christians have separate laws on marriage, separation, and divorce. They are a mix of codified and uncodified (but officially recognized) laws, and are supplemented by authoritative decisions issued by the Supreme Court of Bangladesh and the High Court Division of the Supreme Court of Bangladesh. Buddhists are governed by Hindu personal laws.

Bangladesh also has four civil laws broadly related to family matters that apply to members of all religions; the Special Marriage Act, the Child Marriage Restraint Act, the Guardian and Wards Act, and the Family Courts Ordinance. The Special Marriage Act applies only to those who renounce their religion and so is rarely used. The “civil” divorce law applies only to Christians and the few couples that marry under the civil marriage statute.

All three sets of personal laws discriminate against women with respect to marriage, divorce, separation, and maintenance, as explained below. They also fail to recognize marital property and its division on an equal basis after divorce or upon separation. This almost always benefits men and disadvantages women, unless the title to property happens to be in both the husband’s and wife’s names. This is rarely the case: a 2006 World Bank survey found that less than 10 percent of women surveyed had their names on any marital property documentation (rented or owned).

### *Muslims*

Muslim personal laws are discriminatory in their embrace of polygamy for men, their unequal provisions on divorce, their limited rights to maintenance during marriage, and after divorce, their lack of maintenance beyond 90 days.

However, it is important to emphasize some positive aspects of Muslim personal law. It recognizes that the marriage is a contract. In fact a standard form marriage contract affords women the opportunity to negotiate better economic protection during marriage. But Human Rights Watch found that the 71 Muslim women whom we interviewed had little knowledge about the contract and the ways in which they could negotiate better terms.

Muslim personal law recognizes wives’ right to *mahr* pursuant to marriage contracts. But *mahr* amounts are often so small, especially for older women who have been married for a long time, that they fail to reflect the overall contributions a wife makes to marital assets. Moreover, even where higher *mahr* amounts were fixed for younger married women, Human Rights Watch found this right, more often than not, existed only on paper. Most women interviewed said their husbands defaulted on payments without sanction. Polygamy forms a key basis for discrimination. The Muslim Family Laws Ordinance of 1961 aims at restricting polygamy by imposing procedural conditions. The law requires a husband to treat all his wives equitably and to seek the permission of a local arbitration

council to take multiple wives, indicating to the council whether the previous wife or wives consented to the subsequent marriage. But of the 40 Muslim women Human Rights Watch interviewed in polygamous marriages, none said she had consented to polygamy or experienced an arbitration council review.

Experts said that local officials charged with convening arbitration councils are poorly trained, and that the government does not monitor compliance with polygamy authorization procedures. Moreover, while Muslim personal law calls for compulsory marriage registration, accessing and verifying records is difficult because marriage registrars maintain them manually and sometimes tamper with them. There are no centralized digital records. This, too, enables men to marry multiple times without authorization.

Muslim personal law also makes it far easier for men than for women to divorce. All Muslim men have an absolute right to unilaterally divorce at will (*talaq*, or no-fault divorce), whereas Muslim women may only do so if men “delegate” them this right in the marriage contract. While men’s right to divorce through *talaq* is supposed to be subject to arbitration council review, experts said this rarely happens.

Otherwise if a woman wants to divorce she must secure the consent of her husband. Men and women can divorce through mutual consent (*mubara’at*). Women may also seek a *khula* divorce—another form of divorce through mutual consent— but many experts say that this is available to women only if they pay consideration to their husbands (usually foregoing *mahr*). Alternatively, women can divorce through seeking court intervention under the Dissolution of Muslim Marriages Act of 1939, but only on specific grounds and via a lengthy process.

Muslim personal law recognizes wives’ right to maintenance during marriage, but upon divorce, maintenance is provided for only 90 days from the date of official notice, or if the wife was pregnant at the time of divorce, until the birth of the child. Family courts have sometimes denied maintenance during marriage where the wife has left the marital home and the husband claims that she has not been “dutiful,” “chaste,” or of “good character.” Lawyers did say that over time judges have been more willing to award maintenance during marriage if the reason wives left their marital homes was because of violence, dowry harassment, or abandonment by the husband.

### *Hindus*

Hindu personal law, which is only minimally codified, has similar discriminatory elements. It allows Hindu men to marry any number of times, without any procedural preconditions. Divorce is not permitted for men or for women. Under a 1946 statute that partially codified Hindu personal law, Hindu women can formally apply in family courts to seek a separate residence and maintenance from their husbands, but only on limited grounds. Even those minimal rights are nullified if a court finds that the woman is “unchaste,” has converted to another religion, or fails to comply with a court decree ordering restitution of “conjugal rights.”

Hindu women applying for maintenance or a separate residence must prove they were married in the first place, a difficult task since Hindu marriages lack a formal registration system. In May 2012, the cabinet approved a bill for optional registration of Hindu marriages.

### *Christians*

Christian personal law also discriminates against women. Divorce is allowed on limited grounds for both men and women, but the grounds are far more restrictive for women. Men can divorce if they allege their wife committed adultery. Wives, on the other hand, must prove adultery and one of a range of other acts. Such acts include: conversion to another religion, bigamy, rape, sodomy, bestiality, desertion for two years, or cruelty. Charges of adultery are particularly humiliating for women in Bangladesh’s conservative society.

Christian women are entitled to maintenance during marriage and alimony after divorce, but this is tied to their “chastity.”

## **Impact on Women and their Dependents**

Bangladesh’s discriminatory personal laws harm women and their dependents during marriage and upon separation or divorce, contributing to violence against women and poverty in female-headed households.

Many women interviewed described being trapped in violent marriages because they feared they would end up homeless and unable to manage financially if they divorced or separated. Many Muslim women in polygamous marriages said their husbands beat them if they protested against remarriage, or that their husband and other wives abused them.

Farida F., for example, said her husband and his other wife beat, starved, and verbally abused her, but she knew if she left him, she would face destitution. “I didn’t have anywhere to go,” she said, “so I just lived with whatever they did.”

Most divorced or separated women described severe economic hardship, including losing marital homes, living on the street, begging for food, working as live-in domestics to have a roof over their heads, pulling children from school to work, struggling with ill health, and lacking resources to deal with any of these problems. Aseema A., for example, said her husband threw her out of their home, and she got no maintenance or share of the marital property. She sent her 10-year-old daughter to work as a domestic worker, and Aseema lived and begged on the streets with her younger daughter until a landlord offered her housing and food in return for unpaid work in his fields. Mona M.’s husband abandoned her and took another wife, leaving her with no money to pay for health care after a miscarriage. She moved in with her widowed, impoverished mother.

## Courtroom Battles

Family courts have primary responsibility for enforcing Bangladesh’s personal laws, but are plagued with procedural and administrative problems. Lawyers, former judges, and activists told Human Rights Watch that enforcement of court orders can take years, and is often riddled with problems around summons and notice procedures and processes for executing court decrees. Sitara S. told Human Rights Watch what motivated her to seek legal assistance to file a case in court after her husband divorced her. She said, “After he left me he didn’t give me anything. Not even one piece of cloth,” she said. “I am begging [for food] all the time. When I told him I’m going to court he laughed, saying, ‘Go to court. You will get nothing.’ When will I get anything from court?”

Other problems in family courts include inconsistent practices among judges related to evidence, unpredictable awards, failure to award interim maintenance, and lack of clear criteria for awarding maintenance.

While Bangladesh’s personal laws say judges *can* award maintenance, they are unclear about *how* to determine amounts and terms. For example, Muslim personal law gives no guidance for setting maintenance amounts even though it says that a husband should maintain his wife “adequately.” The personal law for Hindus says only that a court setting

maintenance should “have regard to the social standing of the parties and the extent of the husband’s means.” For Christians and others who renounced their religion and married under the Special Marriage Act, a judge granting alimony may consider the wife’s “fortune,” her husband’s ability to pay, and the parties’ conduct. In practice, judges considered husband’s capacity to pay and the wife’s needs but there was little clarity on how these were assessed and men were able to argue against maintenance claims by asserting their wives were “unchaste,” not “dutiful,” or of bad “character.”

Other countries have much clearer statutory criteria for determining maintenance amounts. These often include consideration of the duration of the relationship, the impact of child-care and household responsibilities on the education and earning capacity of the dependent spouse, each spouse’s income, the health and age of the spouses, and contributions the dependent spouse made to realize the other’s career potential.

The summons and notice procedure required to get a husband to appear in family court for maintenance or *mahr* claims is also fraught with problems, including the failure of some judges to abide by legal timeframes and bribe-taking by officials who serve summons and notice. Lawyers told Human Rights Watch that these failings often lead to unreasonable delays in family court cases. In 2010 the Law Commission of Bangladesh recommended reforms to the summons and notice procedures, but the Bangladesh government has yet to amend these procedures.

Women seeking maintenance or *mahr* (available to Muslim women) in family court must first prove they are married. This can be a major obstacle for Hindu women who have no marriage registry, and for Muslims where registration practices are patchy and not digitized or centrally available. While evidentiary rules allow judges to consider oral evidence if documentary evidence is lacking, lawyers said this tends to happen only if women have children. A woman who cannot prove she has been legally married will fail in her claim. There is no legal protection for women who believe their marriage was legally recognized and cohabited, but later find that is not the case.

Even for women who succeed in maintenance or *mahr* claims, the battle is not over. To get husbands to pay, women must file for an execution decree and submit evidence of his assets or income, which they often lack. Human Rights Watch interviewed women who pursued execution decrees only to wait years for the court to act. A lawyer said one client



had waited 18 years for a maintenance decree to be enforced, while a judge said another maintenance case filed in the 1980s was still in the execution stage in June 2011. A lawyer representing a woman who waited years for her maintenance order to be executed said her client had asked her: “Will I get my dues at least before I die?” In 2010 the Law Commission of Bangladesh recommended that claimants be allowed to file for execution of decrees at the same time as filing their initial claim to speed the process. However, the government has yet to amend the procedures.

A final battlefield for women seeking maintenance or *mahr* in family court is defending against frivolous, harassing counter-suits or criminal complaints lodged by husbands. This includes petitions by husbands for “restitution of conjugal rights,” whereby a court can order a wife to return to live with her husband. The practice of husbands bringing counter-suits for restitution of conjugal rights continues even though the High Court Division of the Bangladesh Supreme Court has on several occasions held such orders unconstitutional (the court has also held otherwise). Experts also said that some husbands file criminal theft complaints if the wife leaves home with any of her belongings. Although husbands often drop the criminal charges, the complaints intimidate and harass women and their families.

## Social Assistance

Winning a court case for maintenance or *mahr* would be an empty victory for the many divorced or separated women whose husbands are simply too poor to pay. For these women, access to state assistance is critical. Divorced and separated women, and women who want to escape domestic violence, need adequate access to shelters on an emergency basis, and to social assistance to tide them over in the immediate aftermath of separation until they are financially stable.

While Bangladesh has made important strides in relation to social safety net schemes, women still face problems of access and eligibility, and the administration of social assistance leaves much to be desired. The social assistance schemes also do not sufficiently meet the needs of women who are left more vulnerable because of intersecting reasons such as disability, old age, and ill-health. In 2011, the Planning Commission of Bangladesh resolved to develop a cohesive national strategy on social security to address shortcomings in existing social assistance programs.

Although the government runs seven shelters for women across the country, a Ministry of Women and Child Affairs official admitted to Human Rights Watch that more are needed. Homeless women and women who beg risk being detained in vagrant homes and subjected to criminal penalties for begging or living on the street.

Bangladesh also has an impressive array of social assistance programs for poor people, including a cash allowance program for widows and “husband-deserted” (separated or divorced) women. Under that program, such women can receive 300 takas (US\$4) per month if they meet financial need criteria.

However, several factors hamper this assistance, including the fact that many eligible women are unaware of the program, women say the allowance is too small to meet basic needs, and disbursements are sometimes delayed. Family courts, where many eligible women turn for help, are not linked to such social assistance programs and are not equipped to supply information about the program.

Bangladesh also has a policy on the distribution of state-owned land (known as *khas* land) to landless rural households that can also benefit female-headed households. However, activists told Human Rights Watch that only those female-headed households that have an “able-bodied” son are eligible to receive land. The application of this discriminatory policy excludes female-headed households with only daughters, with no children, or with only sons with disabilities.

Bangladesh is party to international treaties—including those pertaining to the elimination of discrimination against women, to civil and political rights, and to economic social and cultural rights—that guarantee the right to equality during marriage and at its dissolution and the right to social security. UN bodies, charged with monitoring implementation of these treaties have specifically rejected the notion that women should not have equal rights to marital property because of social or religious expectations that husbands will support their wives, and have called for law reforms to make spousal maintenance more effective. Bangladesh has also undertaken to dramatically reduce poverty by 2015 pursuant to the UN’s Millennium Development Goals, yet as that deadline looms ever closer, too little is being done to address poverty driven by discriminatory personal laws.

The Bangladesh government has taken small but important steps toward meeting its international obligations by approving a bill for the optional registration of Hindu marriages and supporting the initiatives of the Law Commission to review personal law reforms. Moving ahead with these reforms is vital for Bangladesh to meet its commitments to promote gender equality and reduce poverty, and to alleviate the suffering of women in Bangladesh.

In order to take advantage of this momentum for change, the Bangladesh authorities should take measures outlined below.

## Key Recommendations

Work toward comprehensive reform of Bangladesh’s laws on marriage, separation, divorce, and related matters, in consultation with experts and civil society groups working on women’s rights and representatives including those working with minority communities. Launch a participatory process involving all affected communities to enact civil laws that do not discriminate based on religion and gender. In the interim, amend personal laws to eliminate discriminatory aspects, and strengthen mechanisms for implementing laws.

To this end, authorities should:

- Reform maintenance laws to:
  - Develop clear criteria to guide the discretion of family court judges when determining maintenance amounts. The criteria should include: the duration of the relationship; the impact of childcare and household responsibilities on the education and earning capacity of the dependent spouse (typically the wife); current and likely future income of each spouse; the dependent spouse’s capacity to support herself; the health and age of the spouses; the dependent spouse’s needs and standard of living; other means of support; and contributions made by the dependent spouse to realize the other’s career potential.
  - Abolish any link between a wife’s entitlement to maintenance and her “obedience,” “chastity,” “marital duties,” or “good character.”
- Review all family court and appellate procedures and streamline them to minimize delays. Urgently instruct existing family courts that their power to issue interim orders should be used to grant interim maintenance until final orders are passed. Enhance the capacity of family courts to handle separation, divorce, maintenance, and *mahr* cases expeditiously and fairly. Take measures to decrease backlogs and delays, including by appointing more family court judges or decreasing judges’ case load of other civil matters, and reforming summons and decree execution procedures.

- Fully recognize the concept of marital property and allow for its division on an equal basis between spouses at the time of dissolution of marriage for all communities, recognizing financial and non-financial contributions made by women.
- Initiate a nationwide awareness campaign against domestic violence in a variety of media and in formats accessible to those with disabilities, emphasizing the rights to marital home, protection against economic loss, and temporary maintenance. Encourage women to seek remedies under the law against domestic violence.
- Make marriage registration compulsory for all religions. Create digital records that are accessible throughout the country as proof of marriage.
- Ensure access to divorce is on an equal basis for men and women.
- Raise nationwide awareness about the negative consequences of polygamy, including its linkage with domestic violence, and work toward abolishing it. Ensure that such information is available in a variety of media and in formats accessible to those with disabilities.
- Until polygamy is completely eliminated in practice, ensure that any law abolishing polygamy protects the rights of subsequent wives and their children, including to property, *mahr*, and maintenance. Until a law abolishing polygamy is passed, strictly enforce laws that constrain men's ability to marry more than one wife and enhance the notice period and permission requirements with clear proof of financial status.
- Undertake broader dissemination of information on social assistance programs; make information available in a variety of media and in formats accessible to those with disabilities to improve women's awareness of existing programs, eligibility criteria, and application procedures. Link existing social assistance programs to family courts.

For full recommendations, see Section VII.

## Methodology

This report is based on field research conducted between March and October 2011, including six weeks of interviews in Bangladesh and secondary research between March 2011 and June 2012.

Interviews took place in Dhaka city and Madaripur, Gazipur, and Noakhali districts. We chose to focus on Dhaka because of its mix of religious communities and the large numbers of separated and divorced women who filed maintenance claims in family courts. We chose the other districts because they also represented a variety of communities and economic circumstances, including landless communities. Some interviewees described experiences with divorce or separation that occurred in other parts of Bangladesh.

A Human Rights Watch researcher interviewed 255 people. These included:

- Individual or small-group interviews with 71 Muslim, 45 Hindu, and 4 Christian women about their experiences with marriage, separation, and divorce.
- Individual or small-group interviews with 96 lawyers, activists, and researchers with expertise on divorce and separation.
- Individual or small-group interviews with five former family court judges (all of whom were sitting family court judges within the prior two years and handled marriage, separation, and divorce cases), five *kazis* or Muslim marriage registrars, five *union parishad* members, and nine government officials.

Individual women interviewees were identified with the assistance of local nongovernmental organizations (NGOs) providing services to women and most interviews occurred in their private offices. Where women were interviewed in villages, the interviews were conducted either in their homes or in courtyards, with as much privacy as possible. All participants were informed of the purpose of the interview, its voluntary nature, and the ways the information would be used. Each orally consented to be interviewed. Especially where women were recounting their personal experiences, they were told they could decline to answer questions or end the interview at any time. Interviews lasted between thirty minutes and three hours and were conducted in English or Bangla, depending on the interviewee's preference. Interviews in Bangla were conducted with the help of a female

interpreter. Care was taken to minimize the risk to women who were recounting experiences that could further traumatize them, and some women were referred to local organizations for legal services. Interviewees did not receive any material compensation, but were reimbursed the cost of public transport to and from the interview.

The names of all married, divorced, or separated women interviewed for this report have been substituted with pseudonyms in the interest of the privacy and security of the individuals concerned. In some cases other identifying information has been withheld upon request.

Human Rights Watch also conducted a review of relevant laws, policies, surveys, and reports from the Bangladesh government, the United Nations (UN), academics, NGOs, and other sources.

The scope of this report is limited to an analysis of the impacts on women of discriminatory personal laws with respect to divorce and separation in the three religions: Muslim, Hindu, and Christian. Buddhists are treated as falling within the purview of Hindu personal laws for the purpose of family matters. The report does not analyze all ways that Bangladesh's personal laws are discriminatory, nor trace the history of how these laws developed or the politics surrounding their codification during the colonial era. These topics are covered in many other sources.

The report does not examine the customary laws and practices of indigenous communities in Bangladesh. Bangladesh's family courts, which are a focus of this report, have yet to be set up in the Chittagong Hill Tracts, home to at least 11 indigenous communities.

Where women were forced to leave their marital homes and are living separately from their husbands, with or without any formal legal process for such separation, Human Rights Watch uses the terms separated or separation. Human Rights Watch also uses the terms abandoned or abandonment where husbands left wives behind without giving them any information about their whereabouts. But in cases of both separation and abandonment, the marriage still subsists in law.

# I. Women's Economic Status and the Implications of Marriage

She asked me, “My husband provides me a roof over my head and three meals a day. Can you guarantee that if I leave him?”

—Bashir-Al-Hossain, legal secretary, National Grassroots Disability Organization, Dhaka, March 30, 2011, recalling a question posed by a client experiencing domestic violence.

## Overview

Women fare worse than men in Bangladesh on many economic indicators, from employment to property ownership to poverty. Marriage may be a source of economic security for women, but may also be an impediment to women's employment and control over financial resources. This section provides background on women's economic status generally and on the financial implications of marriage for women. Later sections describe the economic harm resulting from divorce and separation due to Bangladesh's discriminatory personal laws.

## Background on Women's Economic Status

Women's participation in the labor force is far lower than men's in Bangladesh. A 2009 government survey (the latest available) found that about 87 percent of men and boys aged 15 and above are employed, compared to about 30 percent of women and girls aged 15 and above<sup>1</sup> and that “[f]emales, as compared with males, have [constitute]... higher proportions of unpaid family workers.”<sup>2</sup>

Even when women are employed for wages, they face wage discrimination, and there is a large earning gap between men and women.<sup>3</sup> Looking specifically into the wage gap in

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<sup>1</sup> Bangladesh Bureau of Statistics, “Report of Monitoring of Employment Survey 2009,” undated, [http://www.bbs.gov.bd/WebTestApplication/userfiles/Image/Latest%20Statistics%20Release/employsurvey\\_09.pdf](http://www.bbs.gov.bd/WebTestApplication/userfiles/Image/Latest%20Statistics%20Release/employsurvey_09.pdf) (accessed January 19, 2011), pp. 2-3. The report explains that the “[t]he low level of female activity rate is due to, among other things, the principal role of women considered to be in domestic work at home.”

<sup>2</sup> *Ibid.*, p. 4.

<sup>3</sup> See for example, Planning Commission of Bangladesh, “Sixth Five Year Plan (FY 2011-2015),” Part 1, [http://www.plancomm.gov.bd/SFYP-PDF-Final%2029-08-2011/SFYP-Final-%20Part-1-17-08-11\[1\].pdf](http://www.plancomm.gov.bd/SFYP-PDF-Final%2029-08-2011/SFYP-Final-%20Part-1-17-08-11[1].pdf) (accessed December 18, 2011), p. 153, (noting that female-headed households usually earn less income due to women's lower earning capacity and wages compared to men).



Bangladesh, the International Labour Organization found in 2008 that women earn an average of 21 percent per hour less than men.<sup>4</sup>

Women are also far less likely to own land and other property than men. Information from the 2008 agricultural census (the latest complete findings published) found that women owned only 2.95 percent of all farm holdings.<sup>5</sup> The United Nations Food and Agricultural Organization reported in 2011 that “male-headed households” in Bangladesh had land holdings more than twice the size of land owned by female-headed households.<sup>6</sup>

Women are also disadvantaged in registering land ownership. Land registration offices are typically staffed by men, which poses problems for women in conservative communities.<sup>7</sup> The registration process is also time-consuming and bureaucratic, a particular challenge for women who have lower levels of education and literacy than men. Corruption in the land registration processes has also been repeatedly documented.<sup>8</sup>

The International Property Rights Index, which ranks countries based on their property regimes, gives Bangladesh low marks on women’s property rights. In 2011, Bangladesh ranked 81 out of 83 non-OECD (Organization for Economic Cooperation and Development) countries based on women’s access to land, credit, non-land property, and inheritance practices. Only Chad and Zimbabwe ranked lower.<sup>9</sup>

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<sup>4</sup> Steven Kapsos, “The gender wage gap in Bangladesh,” 2008, ILO-Asia Pacific working paper series, ILO Regional Office for Asia and the Pacific, [http://www.ilo.org/wcmsp5/groups/public/@asia/@ro-bangkok/documents/publication/wcms\\_098063.pdf](http://www.ilo.org/wcmsp5/groups/public/@asia/@ro-bangkok/documents/publication/wcms_098063.pdf) (accessed February 15, 2011).

<sup>5</sup> Bangladesh Bureau of Statistics, Agricultural Census 2008, November 2010, <http://www.bbs.gov.bd/WebTestApplication/userfiles/Image/CenAgriz008/DetailedTable.pdf> (accessed August 27), Table 1, p. 51. World Bank, “Whisper to Voices: Gender and Social Transformation in Bangladesh,” Bangladesh Development Series, Paper No. 22, 2008, <http://siteresources.worldbank.org/INTBANGLADESH/Resources/295657-1205740286726/genderReport.pdf> (accessed November 3, 2011), p. 76, para. 5.11. The 2006 World Bank Gender Norms Survey found that younger women (ages 15 to 25) were more likely to receive parental property than their older counterparts (ages 45 to 60).

<sup>6</sup> United Nations Food and Agriculture Organization, “The State of Food and Agriculture, 2010-11,” 2011, [http://www.nfpcsp.org/agridrupal/sites/default/files/StateofFood&Agriculture2011\\_o.pdf](http://www.nfpcsp.org/agridrupal/sites/default/files/StateofFood&Agriculture2011_o.pdf) (accessed January 20, 2012), pp. 23-4.

<sup>7</sup> Human Rights Watch interview with Jinat Ara Haque, national coordinator, WE CAN Alliance to End Domestic Violence, Dhaka, March 28, 2011.

<sup>8</sup> See for example, Transparency International, “Corruption in the Service Sectors: National Household Survey 2010,” December 2010, [http://www.ti-bangladesh.org/research/Executive%20Summary\\_23122010%20FINAL.pdf](http://www.ti-bangladesh.org/research/Executive%20Summary_23122010%20FINAL.pdf) (accessed May 25, 2012). The household survey found that people identified the land administration system as the third most corrupt system among government services.

<sup>9</sup> Property Rights Alliance, “International Property Rights Index,” 2011, [http://www.internationalpropertyrightsindex.org/userfiles/file/ATR\\_2011%20INDEX\\_Web2.pdf](http://www.internationalpropertyrightsindex.org/userfiles/file/ATR_2011%20INDEX_Web2.pdf) (accessed January 19, 2011), p. 66.

Discriminatory inheritance laws and practices are partly to blame for women's lesser property ownership. Muslims, Hindus, and Christians have separate laws that govern inheritance.<sup>10</sup> In general for Muslims, daughters inherit one-half of what their male counterparts inherit.<sup>11</sup> Hindu women can inherit only a life interest in property, and cannot dispose of inherited property.<sup>12</sup> Hindu women who are believed to be unable to bear sons cannot inherit at all.<sup>13</sup> Christian laws permit more equal inheritance, but in practice Christian women do not always inherit on an equal basis with men.<sup>14</sup>

Even to the limited degree women can inherit, there is social pressure to forego this right. Some families use what might be women's future inheritance as dowry payments to husbands' families at the time of marriage, later leaving women out of inheritance.<sup>15</sup> Some married women decline their inheritance in deference to brothers, who they hope will support them in the event of marital breakdown.<sup>16</sup>

## Marriage and its Economic Implications

I was so young I didn't even know what marriage meant when I got married.... Even if I get money [wages] I come home and give it to my husband. If I don't give him the money he beats me.... We just have to live with it. We can come out and try to live separately but it is very difficult.

—Saloni S. (pseudonym), Hindu, Noakhali district, May 22, 2011

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<sup>10</sup> For more information on the Bangladesh legal system and personal laws in Bangladesh, see below, section titled "Laws Relating to Marriage, Divorce, and Separation."

<sup>11</sup> Dr. Faustina Pererira, *The Fractured Scales: The Search for a Uniform Civil Code* (Dhaka: Stree, 2002), p. 36. A Muslim widow inherits one-eighth or one-fourth of her husband's property depending on whether she has children or grandchildren through a son, or no children respectively. If there is more than one wife, then all wives share the one-eighth or one-fourth equally. Daughters inherit half of what sons inherit.

<sup>12</sup> *Ibid.*, pp. 44-46.

<sup>13</sup> *Ibid.* A daughter is fifth in line of preference for inheritance: she can inherit her father's property only if he does not have any sons, grandsons (through sons), great-grandsons (through son's sons), or a widow. Daughters' ability to inherit is closely tied to their ability to have sons. A daughter who is single and believed likely to give birth to a son in the future takes preference over a married daughter. Daughters who cannot have children and widowed daughters without children or with a daughter cannot inherit their father's property.

<sup>14</sup> *Ibid.*, pp. 51-52. For rules governing Christian succession, see Succession Act, 1925, secs. 33 and 34. A Christian widow inherits one-third, one-half, or all the property of her husband depending upon whether he has children, has no children but has siblings, cousins, and so on, or has no one else except his wife. As siblings, women and men inherit equally.

<sup>15</sup> Human Rights Watch group discussion with district panel lawyers from the Bangladesh Legal Aid Services Trust, Dhaka, April 2, 2011; interview with Shahnaz Huda, professor, department of law, University of Dhaka, Dhaka, March 30, 2011. For information on dowry, see below, section titled "Women's Contribution to Marital Households."

<sup>16</sup> *Ibid.*

Most women in Bangladesh marry quite young; the minimum age of marriage for girls in Bangladesh is 18.<sup>17</sup> The government estimates that more than 55 percent of women and girls over 10 years old in Bangladesh are married.<sup>18</sup> More than 2 million girls between ages 15 and 19, and another 250,000 girls between ages 10 and 14, are married.<sup>19</sup>

For many women and girls, marriage offers economic security. But it can also bring economic harm through pressure to leave jobs and do unpaid work at home, and loss of control over income and savings. Married women make financial contributions—both direct and indirect—to family homes, businesses, and other assets. But as later sections show, it is nearly impossible to recoup those contributions if their marriages end.

### *Impact of Marriage on Women's Paid Work and Control over Income and Savings*

Marriage, and the social expectations that accompany it, diminish women's participation in the labor force. Married women perform more household work than men. Those with children shoulder more of the child care responsibilities. These responsibilities limit women's ability to work for wages. Women who marry young and cut short their education have a further impediment to employment.

The Planning Commission of Bangladesh has found that “women face social pressure for early marriage, leading to loss of education, employment opportunities, decision-making power, and leading to early childbirth.”<sup>20</sup> A 2006 study found that more than 60 percent of husbands surveyed reported that their wives had no independent source of income. More than three-quarters of wives surveyed said that they had no income-generating activity of their own.<sup>21</sup>

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<sup>17</sup> The Child Marriage Restraint Act, 1929, sec. 2(a). The minimum age of marriage for boys is 21.

<sup>18</sup> Bangladesh Bureau of Statistics, “Population 10 Years and Over by Age Group, Sex and Marital Status,” *Statistical Yearbook of Bangladesh* (Dhaka: Bangladesh Bureau of Statistics, 2010), table 2.10, <http://www.bbs.gov.bd/WebTestApplication/userfiles/Image/SY2010/Chapter-02.pdf> (accessed June 15, 2011), p. 45. According to this source, of the 44,642,068 women and girls above age 10, 28,102,602 were married (based on 2001 population census data). See also Bangladesh Bureau of Statistics, *Report of Welfare Monitoring Survey 2009*, [http://www.bbs.gov.bd/WebTestApplication/userfiles/Image/Latest%20Statistics%20Release/welfaresurvey\\_09.pdf](http://www.bbs.gov.bd/WebTestApplication/userfiles/Image/Latest%20Statistics%20Release/welfaresurvey_09.pdf) (accessed December 15, 2011), p. 2.

<sup>19</sup> National Institute of Population Research and Training (NIPORT) et al., “Bangladesh Demographic and Health Survey, 2007,” 2009, [http://www.measuredhs.com/pubs/pdf/FR207/FR207\[April-10-2009\].pdf](http://www.measuredhs.com/pubs/pdf/FR207/FR207[April-10-2009].pdf) (accessed June 15, 2011), p. 54. The median age at first birth for women in the age group 20-24 was 19 at the time of the survey.

<sup>20</sup> Planning Commission of Bangladesh, “Sixth Five Year Plan (FY 2011-2015),” Part 1, [http://www.plancomm.gov.bd/SFYP-PDF-Final%202029-08-2011/SFYP-Final-%20Part-1-17-08-11\[1\].pdf](http://www.plancomm.gov.bd/SFYP-PDF-Final%202029-08-2011/SFYP-Final-%20Part-1-17-08-11[1].pdf) (accessed December 18, 2011), p. 168.

<sup>21</sup> Mark Pitt et al., “Empowering Women with Micro Finance: Evidence from Bangladesh,” *Economic Development and Cultural Change*, vol. 54, no. 4 (2004), <http://repository.library.brown.edu:8080/fedora/objects/bdr:5946/datastreams/PDF/content> (accessed November 11, 2011), p. 797.

Some women told Human Rights Watch that their husbands and in-laws pressured them to quit their jobs after marriage. Rumana R. stopped working in a sweater factory after she married and had to move. Her husband and in-laws did not want her to work. She said:

I preferred my earlier life. I could eat whatever I wanted to eat, could buy myself things. After marriage I could only work in the house.<sup>22</sup>

Similarly, Noorjahan N.'s husband refused to let her work after they married. She was forced to quit her job as a kindergarten teacher.<sup>23</sup> The same thing happened to Ravina R., who quit her job at a nongovernmental organization when her husband refused to let her work. She had hoped to keep working for pay, but instead she cooked, cleaned, washed, and fetched water for her family.<sup>24</sup>

Among women who do work after marriage, many receive no pay. The 2007 Bangladesh Demographic and Health Survey (latest complete findings published) found that about 14 percent of married women surveyed reported that they received no wages and another 4 percent reported receiving payment in kind only.<sup>25</sup>

Marriage can also diminish women's control over their earnings and savings. In the 2007 Bangladesh Demographic and Health Survey, 12 percent of married women surveyed reported that their husbands decided how the wife's income should be spent, 56 percent decided jointly with their husbands, and 31 percent decided independently.<sup>26</sup> However, a 2006 nongovernmental study found that 78 percent of married women respondents with an income said that they could not use it without consulting their husband.<sup>27</sup>

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<sup>22</sup> Human Rights Watch interviews with Rumana R. (pseudonym), Muslim, Gazipur district, June 4, 2011.

<sup>23</sup> Human Rights Watch interview with Noorjahan N. (pseudonym), Muslim, Dhaka, October 4, 2011. Other women who spoke with Human Rights Watch recounted similar experiences. For example, Human Rights Watch interviews with Lisa L. (pseudonym), Christian, Dhaka, October 3, 2011.

<sup>24</sup> Human Rights Watch interview with Ravina R. (pseudonym), Muslim, Gazipur district, June 4, 2011.

<sup>25</sup> NIPORT et al., "Bangladesh Demographic and Health Survey 2007," 2009, [http://www.measuredhs.com/pubs/pdf/FR207/FR207\[April-10-2009\].pdf](http://www.measuredhs.com/pubs/pdf/FR207/FR207[April-10-2009].pdf) (accessed June 15, 2011), pp. 181-2. A more recent DHS survey was conducted, but only preliminary results were released in 2011.

<sup>26</sup> Ibid., p. 182.

<sup>27</sup> Pitt et al., *Economic Development*, p. 797.

Women's control over their income increased with education level and household wealth. In the 2007 Demographic and Health Survey, 42 percent of women surveyed with secondary or higher education said they independently decided how their income should be used compared to 26 percent of women who had no education. Similarly, women in the wealthiest quintile were more likely to make independent decisions regarding their income than those in the lowest quintile.<sup>28</sup>

Marriage can also impede women's control over savings. A 2006 study found that among women who reported having independent savings, 90 percent said their husband was aware of the savings and 85 percent said that they could not exercise independent control over it.<sup>29</sup>

### *Women's Contribution to Marital Households*

She used to say: "I am like Durga [Hindu goddess]. I have ten hands. No one recognizes how much work I do in the house. I make all the food for everyone in the house but eat the least."

—Maksuda Akhter, lawyer, Bangladesh Mahila Parishad, Dhaka, October 4, 2011, recalling what a client told her.

Married women make significant contributions in many forms to family assets, including homes, family businesses, and other property. Married men do as well, but unlike men, women have virtually no prospect of recouping their contributions or enjoying their benefits if their marriage ends.

### *Non-Financial Contributions*

Married women in Bangladesh make many contributions to family property that enhance the property's value and are vital to sustaining the family, yet are not in the form of monetary or property contributions. While commentators tend to refer to these contributions as "non-financial," they clearly have economic value.

Married women spend far more time than men on unpaid household work. This reduces women's capacity to undertake paid employment.<sup>30</sup> A 2007 study found that 57 percent of

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<sup>28</sup> Bangladesh Demographic and Health Survey, 2007, pp. 186-7.

<sup>29</sup> Pitt et al., *Economic Development*, p. 797.

men and 55 percent of women surveyed estimated that women spent between 16 and 20 hours every day performing household work.<sup>31</sup> More than 40 percent of both men and women surveyed reported that men do no household work whatsoever.<sup>32</sup>

All married women interviewed by Human Rights Watch said they performed household work including cooking, cleaning, washing, grazing cows and goats, fetching water, and caring for children and elderly parents and in-laws. Joya J. described her everyday routine before she separated from her husband:

My day began at 5:30 [a.m.] I woke up and made *ruti-bhaji* for breakfast. If the breakfast was not served by 7:30 then my mother-in-law would start shouting at me. I soaked the clothes, served everyone breakfast, and then washed clothes.... Then I bathed my daughter and fed her. My daughter would want me to play with her but my mother-in-law would start screaming, “What’s going on? Who’s going to make lunch?”... I felt torn but would leave her [Joya’s daughter], cook, and wash vessels. Often I didn’t even have time for a bath. Soon after I fed my daughter I would make her sleep. And if I dozed off after lunch then my mother-in-law would get angry with me again. It was non-stop work.<sup>33</sup>

Many married women told Human Rights Watch that they worked without pay on family farms or in family businesses. For example, Mohima M. said she embroidered for her husband’s tailoring business, but was not paid.<sup>34</sup> Shefali S. did unpaid farm work as well as household work, saying:

I went to the fields and sowed seeds—paddy, wheat, sugarcane—and harvested the crop and also did all the work around the house—cleaning, cooking, bathing the children, and feeding them.<sup>35</sup>

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<sup>30</sup> United States Agency for International Development (USAID), “Country Brief: Bangladesh,” 2008, [http://www.usaid.gov/our\\_work/cross-cutting\\_programs/wid/pubs/usaid\\_booklet\\_bangladesh\\_508.pdf](http://www.usaid.gov/our_work/cross-cutting_programs/wid/pubs/usaid_booklet_bangladesh_508.pdf) (accessed June 23, 2011), p.2.

<sup>31</sup> Debra Efroymson et al., “The Economic Contribution of Women in Bangladesh Through their Unpaid Labor,” September 2007, <http://www.healthbridge.ca/economic%20contribution%20report.pdf> (accessed December 6, 2011), p. 13.

<sup>32</sup> *Ibid.*, p. 14.

<sup>33</sup> Human Rights Watch interview with Joya J. (pseudonym), Christian, Dhaka, September 29, 2011.

<sup>34</sup> Human Rights Watch interview with Mohima M., (pseudonym), Muslim, Dhaka, May 19, 2011.

<sup>35</sup> Human Rights Watch interview with Shefali S. (pseudonym), Muslim, Dhaka, May 19, 2011. Activists and women also cited examples of women doing unpaid work for their husband’s families either in farms or in small businesses. See for example,

### *Financial Contributions: Savings, Assets, and Dowry*

Many women also make financial contributions to marital households, adding value to the family's property. But even these direct financial contributions are virtually impossible for women to recoup upon divorce.

When Ravina R. got married, her in-laws' home had only one room. She and her relatives paid for the construction of a tin shed on the property for the newlyweds, spending 350,000 taka (US \$4,267). She said:

I gave them all my savings. Then my elder sister and uncle also gave money. They gave everything, they gave earrings, bangles, ring, furniture, showcase, steel *almirah* (cupboard), fan, sofa.<sup>36</sup>

Similarly, Rukshada R.'s father gave her some money, which she gave to her husband to purchase land in both their names. Her husband bought land, but put the title only in his name.<sup>37</sup>

In some cases married women said they gave up their earnings and personal assets, like jewelry, to advance their husbands' careers or businesses. Haseena H. and her mother spent all their savings—of 350,000 takas (US\$4,267)—to enable her husband to migrate to Italy for work. He later abandoned her.<sup>38</sup> Lawyer Farhana Afroz told Human Rights Watch how her client Leela L.'s father had given her 200,000 takas (US\$2,438), which she gave her husband for his business. He started beating her, forcing her to leave with no share in the business.<sup>39</sup> One former family court judge said he heard a case where the claimant and her father had given up all their savings to put her husband through medical school. After graduating, her husband divorced her, leaving her and her family with no savings.<sup>40</sup>

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Human Rights Watch interviews with Rumana R. (pseudonym), Muslim, Gazipur district, June 4, 2011; activist working on rights of people living with HIV (who chose to remain anonymous), Dhaka, May 18, 2011.

<sup>36</sup> Human Rights Watch interview with Ravina R., June 4, 2011. See also, Human Rights Watch interview with Nimmi N. (pseudonym), Muslim, Gazipur district, June 4, 2011.

<sup>37</sup> Human Rights Watch interview with Rukshada R. (pseudonym), Muslim, Dhaka, May 27, 2011.

<sup>38</sup> Human Rights Watch interview with Haseena H. (pseudonym), Madaripur district, May 28, 2011.

<sup>39</sup> Human Rights Watch interview with Farhana Afroz, senior staff lawyer in the litigation unit, Aio-o-Shalish Kendra, Dhaka, May 31, 2011.

<sup>40</sup> Human Rights Watch interview with a former family court judge who handled more than a thousand family court cases in 10 districts across Bangladesh (name and other details withheld upon request).

Dowry payments constitute another form of direct financial contribution to family property, or in effect the husband's or his family's property. Most often the practice of dowry is where the bride or her family gives money or other property to the husband at the time of, and sometimes after, marriage.

Since 1980 demanding or taking dowry has been a punishable offense.<sup>41</sup> Nonetheless, scholars and women's rights advocates say the practice of demanding dowry is widespread.<sup>42</sup> At least one study has found that it is on the rise.<sup>43</sup>

Almost all married women interviewed by Human Rights Watch said that they had paid dowry.<sup>44</sup> Some faced repeated demands for more dowry, which sometimes escalated to violence. For example, Asma A. fled her marital home after her husband threatened to burn her for failing to pay more dowry. She said:

He [Asma's husband] wants to improve his business... [He] doesn't have a trade license and needs money for it. He already took all my gold jewelry and sold it. He gets angry when I don't bring the money, closes the door and kicks me, chokes me, and beats me till I have bruises on my arms. Now he threatens to burn me even though I am pregnant. He says that if my parents don't give me money I should become a prostitute and bring him

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<sup>41</sup> Dowry Prohibition Act, No. 35 of 1980, sections 3 and 4. Sec. 3 criminalizes the taking dowry or its abetment, with a penalty of a minimum of one year imprisonment extendable up to five years, or a fine, or both. Sec. 4 criminalizes demanding dowry and imposes the same punishment.

<sup>42</sup> Scholars and activists advance different theories for why dowry continues despite being criminalized, including that brides' families perceive dowry as an insurance against divorce or separation, that it is akin to pre-mortem inheritance, or that it serves as compensation for women's reduced fertility with increased access to contraceptives. Human Rights Watch interview with Shahnaz Huda, professor, department of law, University of Dhaka, Dhaka, March 30, 2011; Human Rights Watch interviews with Ayesha Khanum and Maksuda Akhter, president and head of the litigation team respectively, Bangladesh Mahila Parishad, Dhaka, March 29, 2011. See also Berta Esteve Volart, "Dowry in Rural Bangladesh: Participation as Insurance Against Divorce," April 2004, [http://www.cepr.org/meets/wkcn/3/3520/papers/estev\\_e\\_volart.pdf](http://www.cepr.org/meets/wkcn/3/3520/papers/estev_e_volart.pdf) (accessed November 3, 2011); Luciana Suran et al., "Does Dowry Improve Life for Brides? A Test of the Bequest Theory of Dowry in Rural Bangladesh," Population Council Working Paper No. 195, 2004, <http://www.popcouncil.org/pdfs/wp/195.pdf> (accessed November 15, 2011); Erica Field et al., "Muslim family law, prenuptial agreements and the emergence of dowry in Bangladesh," 2008, [http://www.law.yale.edu/documents/pdf/Intellectual\\_Life/FieldAmbrusTorero\\_February08\\_\(2\).pdf](http://www.law.yale.edu/documents/pdf/Intellectual_Life/FieldAmbrusTorero_February08_(2).pdf) (accessed November 15, 2011); and Raj Arunachalam and Suresh Naidu, "The Price of Fertility: Marriage Markets and the Price of Fertility in Bangladesh," 2008, [http://www-personal.umich.edu/~arunacha/AN\\_dowry\\_fertility.pdf](http://www-personal.umich.edu/~arunacha/AN_dowry_fertility.pdf) (accessed November 15, 2011).

<sup>43</sup> Berta Esteve Volart, "Dowry in Rural Bangladesh," [http://www.cepr.org/meets/wkcn/3/3520/papers/estev\\_e\\_volart.pdf](http://www.cepr.org/meets/wkcn/3/3520/papers/estev_e_volart.pdf), p. 19 (noting that dowry is on the rise among Muslims).

<sup>44</sup> Human Rights Watch interviews with married women and lawyers in Dhaka city, Noakhali, Gazipur, and Madaripur districts, May, June, September, and October 2011. Barring a few cases where women said they had not given dowry, all other women said they had given dowry. For example, Human Rights Watch interview with Saira S. (pseudonym), Muslim, Noakhali district, May 20, 2011.



money, or [he] threatens to leave me. He says that he can easily get married again and get 200,000 takas (US\$2,438) as dowry.<sup>45</sup>

Shehnaz S.'s husband also harassed her for dowry. She said:

At the time of marriage my mother and I paid 40,000 takas (US\$488). Three months later he wanted another 35,000 takas (US\$427). My mother pawned her gold jewelry and borrowed money and gave it to him. He used to demand this money for his grocery shop business.<sup>46</sup>

### *Ownership and Control of Marital Assets*

Despite wives' contributions to marital property, husbands typically own and control family assets, moveable and immovable. The 2006 World Bank Gender Norms Survey in Bangladesh found that less than 10 percent of all women surveyed and less than 3 percent of younger women (ages 15 to 25) had their names on marital property (rented or owned).<sup>47</sup> A 2000 study by the International Food Policy Research Institute based on household surveys in 47 villages in three districts of Bangladesh found that "husbands consistently owned more assets than wives, both at present and at the time of marriage"<sup>48</sup> and "the mean value of a wife's current assets is only a tiny fraction of total household wealth."<sup>49</sup> While 70 percent of wives in the study owned jewelry, only 15 percent owned household durables.<sup>50</sup>

Lack of ownership and control over marital assets was a common theme among the women Human Rights Watch interviewed. Saloni S., for example, said:

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<sup>45</sup> Human Rights Watch interview with Asma A. (pseudonym), Muslim, Dhaka, May 24, 2011.

<sup>46</sup> Human Rights Watch interview with Shehnaz S. (pseudonym), Muslim, Dhaka, June 2, 2011.

<sup>47</sup> World Bank, "Whisper to Voices: Gender and Social Transformation in Bangladesh," Bangladesh Development Series, Paper No. 22, 2008, <http://siteresources.worldbank.org/INTBANGLADESH/Resources/295657-1205740286726/genderReport.pdf> (accessed November 3, 2011), p. 76, para. 5.11.

<sup>48</sup> Agnes Quisumbing and Bénédicte de la Brière, "Women's Assets and Intra-household Allocation in Rural Bangladesh: Testing Measures of Bargaining Power," Discussion Paper No. 86, International Food Policy Research Institute, 2000, <http://www.ifpri.org/sites/default/files/publications/fcnbr86.pdf> (accessed November 3, 2011), unpaginated.

<sup>49</sup> International Food Policy Research Institute, "Mother-Father Resources and Girl-Boy Health in Rural Bangladesh," Policy Brief No. 3, *Gender and Intra-household Aspects of Food Policy*, April 2000, [http://www.ifpri.org/sites/default/files/publications/mp17\\_brief03.pdf](http://www.ifpri.org/sites/default/files/publications/mp17_brief03.pdf) (accessed November 3, 2011), unpaginated.

<sup>50</sup> Agnes Quisumbing and Bénédicte de la Brière, "Women's Assets and Intra-household Allocation in Rural Bangladesh," <http://www.ifpri.org/sites/default/files/publications/fcnbr86.pdf>, unpaginated.

We struggled a lot to build the house. I sold my earrings, worked outside—worked in the fields, grazed cows—whatever money I got I gave my husband. But after all this the house is in my husband’s name.<sup>51</sup>

Neera N. worked in a poultry farm and gave all her earnings to her husband. He bought land in his name only. She said:

I spilt my blood and toiled for days to save the money. But what do I have to show for it? Nothing.<sup>52</sup>

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<sup>51</sup> Human Rights Watch interview with Saloni S. (pseudonym), Hindu, Noakhali district, May 22, 2011.

<sup>52</sup> Human Rights Watch interview with Neera N. (pseudonym), Hindu, Noakhali district, May 22, 2011.

## II. Laws Relating to Marriage, Divorce, and Separation

Bangladesh, despite its strong laws on some aspects of women’s rights such as domestic violence, maintains an antiquated and discriminatory set of laws on family matters, including marriage, divorce, and separation. For almost all aspects of marriage and dissolution of marriage, Bangladesh defers to the laws and rules—written and unwritten—applicable to religious communities. These personal laws are deeply discriminatory against women.

The Constitution says that the “state” shall not discriminate on the basis of sex and other grounds, and that “women shall have equal rights with men in all spheres of the state and of public life.”<sup>53</sup> It does not explicitly guarantee equality in the “private” or “family” sphere.

Bangladesh has passed laws that promote women’s and girls’ rights in the family or private sphere, and which apply to all religious communities. In 2010 it adopted a landmark law on domestic violence, and has long had laws against dowry, other forms of violence, and acid attacks.<sup>54</sup> Bangladesh should now act to establish laws that guarantee women and men equality in marriage and at its dissolution.

This section explores Bangladesh’s personal laws and how they regulate marriage, divorce, separation, and spousal maintenance. It also explains the absence of law on division of marital property upon divorce. Finally, it describes past and current legal reform efforts, from proposals to enact a uniform civil family code for all religions to efforts to reform existing personal laws incrementally.

### Personal Laws

Marriage, divorce, separation, and economic rights at dissolution of marriage are governed almost exclusively by personal laws of Bangladesh.<sup>55</sup> According to the 2001 census, the large majority (89.7percent) of Bangladesh is Muslim. Hindus constitute about 9.2 percent,

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<sup>53</sup> The Constitution of the Republic of Bangladesh, 1972,(as amended) art. 28. “Article 28(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex or place of birth. (2) Women shall have equal rights with men in all spheres of the State and of public life.”

<sup>54</sup> Domestic Violence (Prevention and Protection) Act, 2010; Nari-o-Shishu Nirjaton Daman Ain, 2000; Dowry Prohibition Act, 1980; and Acid Crime Control Act, 2002. Bangladesh also has the colonial era Child Marriage Restraint Act, 1929.

<sup>55</sup> Hindu personal laws apply to Buddhists in Bangladesh.

Buddhists 0.7 percent, and Christians 0.3 percent of the population.<sup>56</sup> No statistics are kept for persons who identify themselves as being of no religion.

Personal laws in Bangladesh are a mixture of codified and uncodified rules. Codification happened mostly during the colonial era, with some personal laws dating back to the 19<sup>th</sup> century.<sup>57</sup> After becoming an independent country in 1971, Bangladesh adopted all laws that were in force prior to its independence.<sup>58</sup> These codified and uncodified rules are subject to interpretation by the Supreme Court of Bangladesh and the High Court Division of the Bangladesh Supreme Court, and as such case law also becomes a source of law.

Apart from the personal laws, the civil laws that apply to all religious communities in the context of marriage or divorce are the Special Marriage Act of 1872, the Child Marriage Restraint Act of 1929, the Family Courts Ordinance of 1985, and the Guardian and Wards Acts of 1890.<sup>59</sup>

The preamble to the Special Marriage Act of 1872 states that it is meant to apply to people who do not profess specified religions or for specified religious groups where marriages are of questionable legal validity.<sup>60</sup> Family law experts say that the Special Marriage Act is rarely used, and in practice the government requires couples to sign a declaration renouncing their faith to marry under the law, in effect making it a disincentive to

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<sup>56</sup> Bangladesh Bureau of Statistics, “Bangladesh Population Census 2001,” 2004, as cited in Bangladesh Bureau of Educational Information and Statistics, “Bangladesh: Country Profile,” [http://www.banbeis.gov.bd/bd\\_pro.htm](http://www.banbeis.gov.bd/bd_pro.htm) (accessed November 22, 2011). Hindu groups contest the official census estimates, claiming that Hindus constitute a larger percentage of the population. Human Rights Watch interview with Shubrato Chowdhury, advocate and Hindu leader, Dhaka, October 3, 2011.

<sup>57</sup> The politics surrounding the codification of personal laws during the British colonial period and how this affected women’s rights is covered extensively in other sources and is beyond the scope of this report. See for example, Janaki Nair, *Women and Law in Colonial India* (New Delhi: Kali for Women, 1996).

<sup>58</sup> Bangladesh (Adaptation of Existing Laws) Order, 1972.

<sup>59</sup> For more information about the Family Courts Ordinance, 1985, see below, section titled “The Legal Obstacle Course.” In 2010, the parliament also passed the Domestic Violence (Prevention and Protection) Act. For more information on this law see below, sections titled “Lack of Marital Property Law,” and “Impacts of Bangladesh’s Discriminatory Personal Laws on Married, Divorced, and Separated Women.”

Before the Family Courts Ordinance came into force, women from all religions sought maintenance in criminal trial courts as per section 488 of the Criminal Procedure Code. But lawyers told Human Rights Watch that the jurisdiction of these courts was barred after the passage of the Family Courts Ordinance. Human Rights Watch email correspondence with Dr. Zahidul Islam Biswas, advocate, Supreme Court of Bangladesh and consultant with NGO, the Bangladesh Legal Aid Services Trust (BLAST), Dhaka, June 6, 2012; Zahidul Islam, *Strengthening Family Courts: An Analysis of the Confusions and Uncertainties Thwarting the Family Courts in Bangladesh* (Dhaka, BLAST: 2006), [http://www.blast.org.bd/content/publications/family\\_courts.pdf](http://www.blast.org.bd/content/publications/family_courts.pdf), (accessed June 6, 2012), pp. 16-17.

<sup>60</sup> Special Marriage Act, 1872, preamble. “WHEREAS it is expedient to provide a form of marriage for persons who do not profess the Christian, Jewish, Hindu, Muslim, Parsi, Buddhist, Sikh or Jaina religion, and for persons who profess the Hindu, Buddhist, Sikh or Jaina religion and to legalize certain marriages the validity of which is doubtful.”

use the law.<sup>61</sup> The Divorce Act of 1869, originally only for Christians, applies to marriages formalized under the Special Marriage Act.<sup>62</sup>

**Chart: Key Elements of Muslim, Hindu, and Christian Personal Laws on Marriage and its Dissolution**

	Muslim	Hindus and Buddhists	Christian
Key codified laws governing marriage and divorce	Muslim Family Laws Ordinance, 1961; Dissolution of Muslim Marriages Act, 1939; Muslim Marriages and Divorces (Registration) Act, 1974	Hindu Married Women’s Right to Separate Residence and Maintenance Act, 1946	Christian Marriage Act, 1872; Divorce Act, 1869
Marriage / registration	Marriage contract and registration required.	No provision for registration of marriages.	Marriage registration required.
Mahr or dower	Marriage contract specifies mahr / dower. Mahr / dower may be paid wholly or partially at the time of marriage.	No equivalent of dower for Hindus.	No equivalent of dower for Christians.
Dowry	Illegal and not sanctioned by religion.	Illegal. Dowry demands are historically traced to religion, though scholars argue that in practice it has little to do with religion.	Illegal and not sanctioned by religion.
Polygamy	A man may have up to four wives with consent of the previous wife, and all wives should be treated equally. Official authorization needed.	A man can have any number of wives. No provision for consent of previous wives / equal treatment. No procedural protections.	Not allowed.

<sup>61</sup> Human Rights Watch discussions with Sara Hossain, honorary director, The Bangladesh Legal Aid Services Trust, Dhaka, March 26, 2011; Dr. Faustina Pereira, director, BRAC Human Rights and Legal Aid Services, Dhaka, May 31, 2011; Sultana Kamal, executive director, Aio-o-Salish Kendra, Dhaka, May 16, 2011.

<sup>62</sup> Special Marriage Act, 1872, sec. 17.

	Muslim	Hindus and Buddhists	Christian
<b>Divorce</b>	Husband: no-fault divorce through renunciation available and procedurally regulated. Wife: no-fault divorce available only if agreed by husband in marriage contract. Otherwise divorce available through mutual consent ( <i>mubara't</i> and <i>khula</i> forms). If no divorce out of court, then women can seek divorce through court intervention on certain grounds.	No provision for divorce. Wife can seek court decree for separate residence and maintenance.	Husband and wife can seek divorce on limited grounds. Grounds are more restrictive for women.
<b>Maintenance during marriage</b>	Husband should maintain his wife. Maintenance is tied to chastity and wife being dutiful.	Husband should maintain his wife. Maintenance is tied to chastity and wife being dutiful.	Husband should maintain his wife. Maintenance is tied to chastity and wife being dutiful.
<b>Post-divorce or post-separation maintenance</b>	Divorced women cannot get maintenance except during a 90-day waiting period from notice of divorce or during pregnancy, if pregnant at the time of divorce.	There is no divorce. Wives can seek a court decree for separate residence and maintenance on limited grounds. The rules on chastity and being dutiful apply.	Wives can claim maintenance post-divorce.
<b>Marital property</b>	Separate property only. Marital property not recognized, regardless of contributions.	Separate property only. Marital property not recognized, regardless of contributions.	Separate property only. Marital property not recognized, regardless of contributions.
<b>Institutions involved</b>	Local arbitration councils, family courts, and appeals courts.	Family courts and appeals courts.	Family courts and appeals courts. In case of divorce, the High Court Division of the Bangladesh Supreme Court has original jurisdiction.

## *Muslim Personal Laws*

The Sunni-Hanafi school of legal thought applies to the majority of Muslims in Bangladesh.<sup>63</sup> The Muslim Family Laws Ordinance of 1961 along with its rules codifies and amends some aspects of it.<sup>64</sup> Other laws that have a bearing on Muslim marriages and their dissolution are the Dissolution of Muslim Marriages Act of 1939 and the Muslim Marriages and Divorces (Registration) Act of 1974.

### **Marriage Contracts and Registration**

A Muslim marriage is formalized through a contract, known as a *kabin-nama* or *nikahnama*. The Bangladesh government has a standard *kabin-nama* that can be adapted.<sup>65</sup> The *kabin-nama* covers personal information, such as names, place of birth, marital status, and couples can specify the terms of marriage, such as the amount of *mahr* or maintenance.<sup>66</sup> The standard *kabin-nama* allows either party to introduce “special conditions,” including with respect to divorce and separation.<sup>67</sup> The standard contract is attached as Appendix I to this report.

The 71 Muslim women interviewed by Human Rights Watch had little knowledge or understanding of the significance of the *kabin-nama*, its clauses, and how they could negotiate the terms to protect their rights.<sup>68</sup>

Muslim marriages must be registered with a marriage registrar or *kazi*. The Bangladesh government appoints licensed *kazis* in accordance with the Muslim Marriages and Divorces (Registration) Act of 1974.

Marriage registrars told Human Rights Watch that many couples fail to register their marriages, in part due to poor awareness and poverty.<sup>69</sup> For example, one Muslim widow

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<sup>63</sup> The Muslim Personal Law (Shariat) Application Act, 1937.

<sup>64</sup> Bangladesh (Adaptation of Existing Laws) Order, 1972.

<sup>65</sup> Muslim Marriages and Divorces (Registration) Act, 1974, rule 9.

<sup>66</sup> Ibid. See below, subsections titled “*Mahr* or Dower” and “Maintenance” for more information.

<sup>67</sup> Muslim Marriages and Divorces (Registration) Rules, 1975, rule 9, *Nikahnama*, clauses 17, 19, and 20.

<sup>68</sup> Human Rights Watch interviews with Muslim women in Dhaka city, Noakhali, Madaripur, and Gazipur districts, May and June 2011. Almost all women knew that they could specify *mahr* at the time of marriage but did not know of any additional protections that they could negotiate in the *kabin-nama*. In a few cases, the women were old and claimed that there was no standard format *kabin-nama* at the time they got married. Activists confirmed that that was the case.

<sup>69</sup> Human Rights Watch interviews with five marriage registrars (names withheld upon request) in Noakhali and Madaripur districts, May 2011.

told Human Rights Watch that she got her daughter married by asking the couple to place their hand on the Quran in her house because she was not able to pay for the marriage ceremony or organize money to meet the groom's dowry demands, and the couple did not register the marriage.<sup>70</sup> Lawyers and activists who spoke to Human Rights Watch confirmed that this practice was not uncommon.<sup>71</sup> *Kazis* and activists said many couples marry by signing an affidavit before a notary, which has no legal validity.<sup>72</sup>

### ***Mahr* or Dower**

Muslim marriage contracts stipulate that husbands must pay wives a certain amount of money or other property known as *mahr* or dower.<sup>73</sup> Some part is paid at the time of marriage, and the remaining later.

In theory, the right to receive *mahr* could secure significant property rights for women. However, many women interviewed by Human Rights Watch said they had little or no role in fixing the *mahr* and several did not even know what the amount was.<sup>74</sup>

The manner in which *mahr* amounts are fixed is problematic. At times, *mahr* amounts are negligible, or become so over the course of a long marriage due to inflation and increased cost of living. Human Rights Watch interviewed women and a former family court judge about *mahr* amounts so small that they provided no economic security. In two cases women who sought *mahr* after decades of marriage could claim only a pittance: 101 takas (US\$1.23) in one case,<sup>75</sup> and 2.5 takas (US\$0.03) in another.<sup>76</sup> Human Rights Watch recorded

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<sup>70</sup> Human Rights Watch interviews with Zubaida Z. (pseudonym), Muslim, Noakhali district, May 20, 2011.

<sup>71</sup> See for example, Human Rights Watch interview with Nina Goswami, senior deputy director, Mediation and Rapid Response Unit, Aio-o-Shalish Kendra, Dhaka, May 25, 2011.

<sup>72</sup> Human Rights Watch interview with Nina Goswami, senior deputy director, Mediation and Rapid Response Unit, Aio-o-Shalish Kendra, Dhaka, May 19, 2011. Several women also told Human Rights Watch that they had married without getting their marriage registered and believed that it was valid. Human Rights Watch interview with Monira M. (pseudonym), Muslim, Dhaka, May 19, 2011.

<sup>73</sup> Muslim Marriages and Divorces (Registration) Rules, 1975, rule 9, *Nikahnama*. *Mahr* or dower is different from dowry. Dowry is a widespread social practice not sanctioned by religion, and refers to the husband's or his family's demands for money, gifts, or other property from the bride at the time of and during marriage.

<sup>74</sup> Human Rights Watch interviews with at least 50 Muslim women in Dhaka city, Gazipur, Madaripur, and Noakhali districts, March, May, and June 2011. Human Rights Watch also spoke to women who did not know what their *mahr* was. Some of them told Human Rights Watch that they fixed their thumbprint to a blank sheet of paper, which they later learned was their *kabin-nama*. Human Rights Watch interviews with Shahnaz S. (pseudonym), Muslim, Dhaka, May 18, 2011; Rubina R. (pseudonym), Muslim, Noakhali district, May 20, 2011; Anara A. (pseudonym), Muslim, Noakhali district, May 21, 2011; Farida F. (pseudonym), Muslim, Noakhali district, May 22, 2011.

<sup>75</sup> Human Rights Watch interview with a former family court judge, (name and details withheld upon request).

<sup>76</sup> Human Rights Watch interview with Akhtara A. (pseudonym), Noakhali district, May 20, 2011.



other cases where *mahr* amounts were set as low as 51 takas (US\$0.62), 500 takas (US\$6.10), and 600 takas (US\$7.31).<sup>77</sup> On other occasions, husbands had fixed high *mahr* with no evidence that he had the means to pay, and did nothing to pay it when the marriage ended, rendering *mahr* an economic entitlement merely on paper.<sup>78</sup>

A wife is entitled to any outstanding *mahr* at the time of dissolution of marriage. However, women typically find it extremely difficult to enforce this claim.<sup>79</sup>

### Polygamy

Two children—two wives—one drops out of school and becomes a rickshaw puller, and the other’s [child] finishes college.

—Maksuda Akhter, lawyer, Bangladesh Mahila Parishad, Dhaka, June 1, 2011

What permission? He [my husband] never said a word to me before he got married again. They get married again whenever they want to.

—Aseema A. (pseudonym), Muslim, Noakhali district, May 20, 2011

Polygamy among Muslim men in Bangladesh is common in many parts, but according to some sources is on the decline.<sup>80</sup> Human Rights Watch documented at least 40 cases of women in polygamous marriages and found that in all cases, polygamy had an adverse impact on women and their rights. Many said their husbands abandoned them after taking additional wives, leading to loss of housing and economic support.<sup>81</sup> Some also drew a link between polygamy and domestic violence, saying that their husbands beat them when they voiced opposition to taking another wife.<sup>82</sup> One activist recounted a case where the husband threw acid on his wife when she confronted him about remarrying.<sup>83</sup>

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<sup>77</sup> Human Rights Watch interviews with Amira A. (pseudonym), Noakhali district, May 21, 2011; Guljan G. (pseudonym), Noakhali district, May 21, 2011; and Zubaida Z. (pseudonym), Muslim, Noakhali district, May 20, 2011.

<sup>78</sup> Human Rights Watch recorded different *mahr* amounts. In many cases the *mahr* was less than 50,000 takas (US\$612). The highest *mahr* Human Rights Watch documented was 150,000 takas (US\$1,834).

<sup>79</sup> See below, section titled “The Legal Obstacle Course.”

<sup>80</sup> See for example, OECD, “Social Institutions and Gender Index,” <http://genderindex.org/country/bangladesh> (accessed April 3, 2011).

<sup>81</sup> Human Rights Watch interviews with women in Dhaka city, Noakhali, Madaripur, and Gazipur districts, May, June, September, and October 2011.

<sup>82</sup> Human Rights Watch interviews with Sharmila S. (pseudonym), Muslim, Dhaka, May 19, 2011; Hamida H. (pseudonym), Muslim, Noakhali district, May 22, 2011; Nimmi N. (pseudonym), Muslim, Gazipur district, June 4, 2011; Shefali S. (pseudonym),

According to Shari'a a man can marry up to four wives, but the Muslim Family Laws Ordinance seeks to impose some procedural safeguards.<sup>84</sup> A man seeking to marry more than one wife is supposed to apply for permission to the chairperson of his local government structure, indicating whether his existing wife has consented to remarriage.<sup>85</sup> The chairperson should convene an arbitration council comprised of himself or herself and representatives chosen by the husband and his wife or wives. The council should only grant permission if it is "satisfied that the proposed marriage is necessary and just,"<sup>86</sup> and can impose conditions.<sup>87</sup> The law does not define what is "necessary and just" but the Muslim Family Laws Rules provide an illustrative list of circumstances when polygamy would be considered "necessary and just." These are "sterility, physical infirmity, physical unfitness for the conjugal relation, willful avoidance of a decree for restitution of conjugal rights, or insanity, on the part of an existing wife."<sup>88</sup> In theory, arbitration councils could impose additional conditions for remarriage to secure financial protections for women whose husbands seek to remarry.<sup>89</sup>

Men who fail to follow this procedure are required to pay the entire *mahr* due to his existing wife or wives.<sup>90</sup> The wife can also file a criminal complaint against the husband, with potential penalties of one year in prison or a fine up to 10,000 takas (US\$122), and approach courts to dissolve the marriage.<sup>91</sup>

The bridegroom should disclose his marital status in the marriage contract, which marriage registrars should examine. The standard form of contract specifically asks "whether the bridegroom has any existing wife and, if so, whether he has secured the permission of the Arbitration Council...to contract another marriage."<sup>92</sup> The *kabin-nama* also allows women to negotiate additional protections, which lawyers state could be used to secure greater

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Dhaka, May 19, 2011; Farida F. (pseudonym), Noakhali district, May 22, 2011; Mohsina M. (pseudonym), Muslim, Noakhali district, May 22, 2011; Sayeda S. (pseudonym), Muslim, Noakhali district, May 22, 2011.

<sup>83</sup> Human Rights Watch interview with Maleka M. (pseudonym), Muslim, Dhaka, May 31, 2011.

<sup>84</sup> Muslim Family Laws Ordinance, 1961, sec. 6.

<sup>85</sup> Ibid.

<sup>86</sup> Ibid.

<sup>87</sup> Ibid.

<sup>88</sup> Muslim Family Law Rules, 1961, rule 14.

<sup>89</sup> Muslim Family Laws Ordinance, 1961, sec. 6; Dissolution of Muslim Marriages Act, 1939, sec. 2(ii) (a).

<sup>90</sup> Ibid.

<sup>91</sup> Ibid.

<sup>92</sup> *Nikahnama*, Bangladesh Muslim Marriages and Divorces (Registration) Rules, 1975, Rule 9, clause 21.

protections in case of polygamy.<sup>93</sup> For example, a lawyer from Mymensingh district told Human Rights Watch that one client had introduced a right to a separate residence if the husband remarried.<sup>94</sup>

Muslim personal laws require that a husband treat all wives “equitably” (the term used in the Muslim Family Laws Ordinance) or “equally” (the term used by the High Court Division of the Bangladesh Supreme Court in a decision on this requirement.)<sup>95</sup>

Legal procedures meant to regulate and limit polygamy are poorly enforced. Women, experts, and officials told Human Rights Watch that local bodies charged with handling polygamy applications did not discharge their functions, were poorly trained, and had little oversight. The legal protections on polygamy are also undermined by lax marriage registration procedures.

According to an activist from the Madaripur Legal Aid Association, many arbitration councils are inactive:

A lot of work needs to be done to activate the arbitration council....They need to serve notices, call parties to mediate when they receive applications for polygamous marriages, maintain records of their decisions....<sup>96</sup>

Of the 40 Muslim women in polygamous marriages interviewed by Human Rights Watch, each one said she learned from her husband, in-laws, other family members or friends of the other marriage, usually after the fact, and had no opportunity to oppose and prevent it even though she was against it. None of them had nominated a representative to the arbitration council, as is required under the law. For example, Saira S., whose husband remarried several times without seeking her permission, said:

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<sup>93</sup> Human Rights Watch group discussion with district panel lawyers from Bangladesh Legal Aid and Services Trust (BLAST), Dhaka, April 1, 2011.

<sup>94</sup> Ibid.

<sup>95</sup> Jesmin Sultana v. Mohammad Elias, [1997] 17 BLD 4.

<sup>96</sup> Human Rights Watch interview with Namita Rani Datta, activist, Madaripur Legal Aid Association, Madaripur district, May 29, 2011.

When my son was one year old my husband got married again. I didn't know about it then. But one day he brought the second wife home. She [the second wife] also did not know he was married. She stayed with us for three years and left. Then he went and brought another wife. When he went for another marriage [the fourth] I find out as they were making wedding arrangements because she [the fourth bride] lived in the same area.<sup>97</sup>

Rima R. also had no opportunity to protest her husband's remarriage, learning of it after the fact in a phone call to her in-laws as they celebrated the marriage. She said her husband claimed the marriage was under duress from his mother, who threatened to commit suicide if he did not remarry. Rima said, "It's okay if I commit suicide?"<sup>98</sup>

The arbitration councils are also at times a challenging environment for women opposing their husbands' polygamy applications. Some officials and experts said the fact that women are rarely appointed to sit on arbitration councils makes them inhospitable to women.<sup>99</sup> One *union parishad* chairperson said:

It is important to have women members on the arbitration council so they can speak to the women freely and understand the problem. Sometimes women do not speak to us [men] when they come here.<sup>100</sup>

The local officials responsible for assembling arbitration councils receive little training and support from the government, which limits their effectiveness in enforcing the law on polygamy.<sup>101</sup> Moreover, local authorities and activists said that oversight of arbitration councils, which should be provided by the Ministry of Local Government, is often lacking.

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<sup>97</sup> Human Rights Watch interview with Saira S. (pseudonym), Muslim, Noakhali district, May 20, 2011.

<sup>98</sup> Human Rights Watch interview with Rina R. (pseudonym), Muslim, Dhaka, May 24, 2011.

<sup>99</sup> Human Rights Watch interview with Namita Rani Dutt and Eureka Akhter, activists, Madaripur Legal Aid Association, Madaripur district, May 29, 2011.

<sup>100</sup> Human Rights Watch interview with Kazi Abul Basha, union parishad chairperson, Madaripur district, Madaripur, May 28, 2011. See also Alamgir Mohammed Serajuddin, *Shari'a law and society: Tradition and Change in the Indian Subcontinent* (Dhaka: Asiatic Society of Bangladesh, 1991), which cites a 1991 study that revealed that male-dominated arbitration councils rarely refused husbands the permission to remarry.

<sup>101</sup> Human Rights Watch interviews with Mitali Jahan, program manager, Bangladesh National Women Lawyers Association, Dhaka, May 19, 2011; Namita Rani Datta and Eureka Akhter, activists, Madaripur Legal Aid Association, Madaripur district, May 29, 2011; and union parishad members from Madaripur and Noakhali districts, May 2011.

The Ministry has no system for supervising and collecting reports from local government officials regarding polygamy proceedings.<sup>102</sup>

Lax marriage registration procedures have undermined legal protections on polygamy. Bangladesh has a marriage registration system for Muslims, but even when it is used, it is not an effective mechanism to prevent men from remarrying without authorization. Non-registration does not invalidate the marriage. The registry system is not computerized, nor coordinated among districts, so men can easily register multiple marriages in a variety of districts.<sup>103</sup> Until recently, some men remarried multiple times in single districts by falsifying their name, but this practice should be deterred by a 2011 rule requiring applicants to show their voter identity card at the time of marriage.<sup>104</sup>

### **Divorce**

Muslim personal law in Bangladesh permits several forms of divorce without resorting to court proceedings. The most common is *talaq*, or unilateral, no-fault divorce. Men have an absolute right to repudiate marriage through *talaq*, whereas a woman has a similar unilateral power of no-fault divorce only if her husband delegates this power to her in the marriage contract.<sup>105</sup>

In addition to the unilateral no-fault divorce powers, both the husband and wife can mutually agree to divorce (*mubara'at*). A less common form of divorce is *khula*, where a wife seeks the divorce and the husband must agree. Activists, lawyers, and *kazis* stated (and this is contested) that in this form of divorce, the wife must give some consideration, usually money or foregoing claims to *mahr*.<sup>106</sup>

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<sup>102</sup> Human Rights Watch interview with Namita Rani Dutt and Eureka Akhter, activists, Madaripur Legal Aid Association, Madaripur district, May 29, 2011. Human Rights Watch interview with Kazi Abul Basha, union parishad chairperson, Madaripur district, Madaripur, May 28, 2011, where he told us that union parishad was not required to submit any reports to the Local Government Division about decisions taken by the arbitration council. Similarly judges who spoke to Human Rights Watch and had appellate jurisdiction over decisions of arbitration councils said that they did not have the time or resources to discharge any oversight functions because these were administrative tasks.

<sup>103</sup> Human Rights Watch interviews with marriage registrars (names withheld upon request), Noakhali and Madaripur districts, May 2011.

<sup>104</sup> Ibid.

<sup>105</sup> Ibid.

<sup>106</sup> Human Rights Watch interview with Nina Goswami, senior deputy director of the Mediation and Rapid Response Unit, Dhaka, May 19, 2011; Human Rights Watch interview with a *kazi* who has had a license for more than 10 years (name and details withheld upon request), May 2011; Assistant Judge of Rangpur Family Court Mohammad Abdur Rahman, "Khula Talaq and essence of service of notice," *Law and Our Rights*, The Daily Star, May 27, 2006, <http://www.thedailystar.net/law/2006/05/04/advocacy.htm> (accessed June 23, 2012).

An additional form of divorce which women can initiate was established by the Dissolution of Muslim Marriages Act of 1939, where women can seek divorce through court intervention. This act specifies the grounds on which women can seek divorce,<sup>107</sup> and according to legal experts, is not widely used because of the procedural hurdles and time taken in court.

The Muslim Family Laws Ordinance introduced procedural requirements for effecting no-fault *talaq* divorces, with a view to curtailing the unilateral exercise of such power by husbands. It requires that the party seeking divorce (usually the husband, but possibly a wife if permitted under the marriage contract) to give notice in writing to the spouse and the chairperson of his local government body. Within 30 days, the chairperson should constitute an arbitration council to try to reconcile the parties. If they do not reconcile, the divorce takes effect 90 days from the date the notice is received by the chairperson, or if the wife was pregnant, after birth.<sup>108</sup> Women, lawyers, and activists told Human Rights Watch that men seeking divorce often ignore or flout the procedures, back-dating the notices to avoid paying maintenance during the 90-day waiting period.<sup>109</sup>

## Maintenance

Uncodified Muslim personal law requires that husbands “maintain” his wife or wives during marriage by providing food, shelter, and clothing. A wife is entitled to maintenance only if she is of “good character” and is a “dutiful” wife.<sup>110</sup> A wife can stipulate maintenance amounts and terms in the marriage contract.<sup>111</sup> None of the Muslim women who spoke to Human Rights Watch was aware of this possibility.<sup>112</sup> According to case law, if a

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<sup>107</sup> The grounds are: the husband has been missing for four years; he has neglected or failed to provide maintenance for two years; he has taken another wife without following legal procedures; he has been sentenced to seven or more years imprisonment; he has failed to perform, without reasonable cause, his marital obligations for three years; impotence; he has been insane for two years or is suffering from leprosy or a virulent venereal disease; that the wife was married before age 16 and repudiated (without it being consummated) before age 18; that the husband treats her with cruelty (forms of cruelty are enumerated in the law); and other grounds recognized under Muslim law. Dissolution of Muslim Marriages Act, 1939, sec. 2.

<sup>108</sup> Muslim Family Laws Ordinance, 1961, sec. 7.

<sup>109</sup> Human Rights Watch interviews with Salma Jabin, advocate, Aio-o-Salish Kendra, Dhaka, May 16, 2011; Maksuda and others, Bangladesh Mahila Parishad, Dhaka, June 1, 2011; and Farida Yeasmin and other staff members, Bangladesh Legal Aid Services Trust, Dhaka, May 28, 2011.

<sup>110</sup> See Pereira, *The Fractured Scales*, p. 30; Dr. Taslima Monsoor, *Gender Equity and Economic Empowerment: Family Law and Women in Bangladesh* (Dhaka: British Council, 2008), p. 66. Prof. Monsoor states that the only exception to this test of dutiful wife is where the husband has failed to pay at least some part of the dower at the time of marriage (prompt dower).

<sup>111</sup> Muslim Marriages and Divorce (Registration) Rules, 1975, rule 9, clause 20.

<sup>112</sup> Human Rights Watch interviews with Muslim women in Dhaka, Noakhali, Madaripur, and Gazipur districts, May and June, 2011.

husband fails to maintain his wife during marriage, she can assert a claim in family court for up to six years of “past-maintenance.”<sup>113</sup>

Upon divorce, however, Muslim women are entitled to maintenance only during the 90 days from notice of divorce until it is finalized, or if the woman was pregnant, until birth of the child.<sup>114</sup> Overturning a decision of the High Court Division, the Appellate Division of the Bangladesh Supreme Court controversially held that the Hanafi school of Islamic law does not give Muslim women the right to post-divorce maintenance.<sup>115</sup> Many women’s rights activists and lawyers have criticized this decision, arguing that the Supreme Court’s interpretation was too technical and flawed.<sup>116</sup>

### *Hindu Personal Laws*

Hindu personal laws governing marriage and separation are mostly based on the *Daya-bhaga* school of Hindu law. Other than the Hindu Married Women’s Right to Separate Residence and Maintenance Act of 1946, these laws are uncodified.

### **Marriage and Polygamy**

Hindu marriages are formalized through a religious ceremony, but do not require a marriage contract or registration.<sup>117</sup> Lawyers stated that many Hindu women were not aware of what constituted a valid Hindu ceremony in the eyes of law.<sup>118</sup> Some Hindu couples had married by placing their hands on the Bhagwad Gita without going through a religious ceremony.<sup>119</sup> In some cases, lawyers said that couples went to notaries and simply drew up an affidavit declaring that they were man and wife without going through the necessary religious ceremonies.<sup>120</sup>

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<sup>113</sup> *Jamila Khatoon v. Rustom Ali*, 16 BLD (AD) (1996) 61.

<sup>114</sup> Pereira, *The Fractured Scales*, p. 29.

<sup>115</sup> *Md. Hefzur Rahman v. Shamsun Nahar Begum*, 15 BLD (1995) 34.

<sup>116</sup> Human Rights Watch interview with Fawzia Karim, advocate, Dhaka, May 17, 2011; and Dr. Faustina Pereira, director, BRAC-Human Rights and Legal Aid Services, Dhaka, March 30, 2011.

<sup>117</sup> *Amulya Chondro Modak v. State*, 35 D.L.R. 160 (1983). See also Dr. Shahnaz Huda, “‘Double Trouble’: Hindu Women in Bangladesh—A Comparative Study,” *Dhaka University Studies, Part-F*, vol. 9 issue 1, 1998, p. 111.

<sup>118</sup> *Amulya Chondro Modak v. State*, *ibid.* The court controversially held that for a Hindu marriage to be held as legally valid two religious rites were essential—an invocation before a holy fire and the *saptapadi* or seven steps. Human Rights Watch interviews with Farida Yeasmin, deputy director (legal), Bangladesh Legal Aid Services Trust, Dhaka, May 25, 2011; Nina Goswami, senior deputy director of the Mediation and Rapid Response Unit, Dhaka, May 19, 2011; Shahnaz Huda, professor, department of law, University of Dhaka, Dhaka, March 30, 2011.

<sup>119</sup> *Ibid.*

<sup>120</sup> Human Rights Watch interviews with five *kazis* (names withheld upon request), Noakhali and Madaripur districts, May 2011.

Lack of registration is a barrier to proving marriage, including for women who seek maintenance when separated from their husbands. Lawyers and women’s rights activists have repeatedly called for a law requiring compulsory registration of Hindu marriages but that has been met with stiff resistance from the Hindu community. But the president of the Bangladesh Hindu, Buddhist, and Christian Unity Council told Human Rights Watch that despite public opposition, many Hindu leaders privately want a registration system. He said:

Hindu activists oppose marriage registration. But when they face personal problems—like sons going abroad—they come and ask for certificates from the Dhakeshwari *mandir* [temple]. Every week we are issuing four or five certificates for marriages conducted in the *mandir*.<sup>121</sup>

In May 2012, the Bangladesh cabinet approved a bill for optional registration of Hindu marriages.<sup>122</sup>

Hindu law permits polygamy for men, with no pre-conditions or limits on the number of wives. If a husband remarries, however, the wife can petition the family court for a separate residence and maintenance.<sup>123</sup>

### **Separation and Maintenance**

Divorce is not permitted under Hindu personal law in Bangladesh. Hindu women can, however, seek a court decree for a separate residence and maintenance on limited grounds outlined in the Hindu Married Women’s Right to Separate Residence and Maintenance Act of 1946. The grounds are that the husband is suffering from a “loathsome disease not contracted from her,” treats her with “such cruelty” that it becomes “unsafe” or “undesirable” to live with him, the husband abandons her without her consent, remarries, converts to another religion, “keeps a concubine or habitually resides with a concubine,” and “other justifiable cause.”<sup>124</sup>

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<sup>121</sup> Human Rights Watch interview with Kajal Debnath, president and member, Hindu, Buddhist and Christian Unity Council, Dhaka, October 3, 2011.

<sup>122</sup> Haroon Habib, “Dhaka for Hindu marriage law,” *The Hindu*, May 22, 2012, <http://www.thehindu.com/news/international/article3443443.ece> (accessed May 22, 2012); “Registration Optional for Hindu Marriage,” May 21, 2012, [http://www.thedailystar.net/newDesign/latest\\_news.php?nid=37859](http://www.thedailystar.net/newDesign/latest_news.php?nid=37859) (accessed May 22, 2012).

<sup>123</sup> Hindu Married Women’s Right to Separate Residence and Maintenance Act, 1946, sec. 2.

<sup>124</sup> *Ibid.*



A Hindu woman is not entitled to maintenance if she is “unchaste,” converts to another religion, or fails to comply with a court decree for restitution of conjugal rights.”<sup>125</sup>

#### **NAMRATA’S STORY<sup>126</sup>**

The impossibility of divorce under Hindu personal law means that even under the cruelest of circumstances, such as those endured by Namrata N., marriages cannot be dissolved.

Namrata N., a Hindu woman in her twenties, married an artisan who wanted to start a workshop of his own, and asked Namrata for money. Namrata had saved about 200,000 takas (US\$2,438) from working more than four years in a hospital, and gave her entire savings to him. Instead of using that money to start a business, he gave it to his parents. Namrata demanded that he return the money, and the relationship soured. Namrata’s husband started beating her.

One night in 2009 when Namrata was ill, on the pretext of giving her water, her husband instead gave her acid. *“He said he had brought me water to drink,” she said. “I drank some and felt like my mouth and insides were on fire.”*

Namrata’s husband fled after the attack, and continues to evade arrest. To this day, Namrata cannot eat or drink. She is fed through a bag with a tube inserted into her intestine. Namrata needs assistance to bathe or go to the bathroom, and her widowed mother had to quit her job to care for her.

Namrata told Human Rights Watch that she wants not only justice, but also a divorce. *“I want to see him in jail,” she said. “And when I get out of here [hospital] I will give him talaq [divorce]. If I can marry him, I can divorce him.”* Namrata was unaware that despite this unthinkable cruelty, Hindu personal law would not, in fact, allow her to divorce.

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<sup>125</sup> Hindu Married Women’s Right to Separate Residence and Maintenance Act, 1946, sec. 2.

<sup>126</sup> Human Rights Watch interview with Namrata N., Dhaka, May 31, 2011. Human Rights Watch email correspondence with Monira Rahman, executive director, Acid Survivors Foundation, Dhaka, September 4, 2011. Through the email correspondence, Human Rights Watch received a brief history of Namrata’s diagnosis and treatment.

## *Christian Personal Laws*

Christian marriage and divorce is governed by laws enacted in the late 19<sup>th</sup> century. Chief among these are the Christian Marriage Act of 1872 and the Divorce Act of 1869.

### **Marriage**

Christian marriages are performed by a priest, a licensed minister of religion, or a marriage registrar in the presence of at least two witnesses.<sup>127</sup> They must be registered.<sup>128</sup> Polygamy is not permitted in Christian law. For Catholics, a marriage solemnized in church is governed by canonical laws also.

### **Divorce and Maintenance**

Christians can divorce pursuant to the Divorce Act of 1869. Under this act, a husband can divorce his wife on the basis of adultery.<sup>129</sup> Wives, on the other hand, must prove adultery *and* one or several other acts. These include: conversion to another religion, bigamy, incest, rape, sodomy, bestiality, desertion for two years, or cruelty.<sup>130</sup>

Because the grounds for divorce under Christian law are so narrow, it often requires husbands and wives to trade accusations of adultery, including false ones, in order to divorce through courts. This particularly results in humiliation in court for women in the conservative Bangladeshi society. Human Rights Watch spoke to women whose husbands had filed for divorce on false charges of adultery. Rita R.'s husband, who had abandoned her for over a decade and migrated abroad for work, returned to Bangladesh and filed for divorce, alleging adultery. Rita said:

I was so humiliated. People I didn't know would come and say they were sorry about what he was saying. I am not of bad character. Ask my neighbors. Ask

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<sup>127</sup> Christian Marriage Act, 1872, sec. 5.

<sup>128</sup> Christian Marriage Act, 1872, secs. 27-37.

<sup>129</sup> Divorce Act, 1869, sec. 10.

<sup>130</sup> Ibid. Section 10 of the Divorce Act provides: "Any wife may present a petition to the District court or to the High Court Division, praying that her marriage may be dissolved on the ground that, since the solemnization thereof, her husband has exchanged his profession of Christianity for the profession of some other religion, and gone through a form of marriage with another woman; or has been guilty of incestuous adultery, or of bigamy with adultery, or of marriage with another woman with adultery, or of rape, sodomy or bestiality, or of adultery coupled with such cruelty as without adultery would have entitled her to a divorce *mensa et toro*, or of adultery coupled with desertion, without reasonable excuse, for two years or upwards."

my parents. Ask in the community. Even the opposite party lawyer—my husband’s lawyer—came to me and said sorry.<sup>131</sup>

In 2006 the Law Commission of Bangladesh reviewed the Divorce Act and recommended that the “inequality and discrimination between men and women needs to be removed... by widening the grounds and making most of them common for both the husband and wife to make a petition for dissolution of their marriage.”<sup>132</sup> The commission also said that there “appears to be a need for inclusion of a provision enabling the Christian spouses to get a divorce by mutual consent” and recommended adding such a ground.<sup>133</sup> The Bangladesh government has yet to amend the Divorce Act based on the recommendations of the Law Commission.

The Married Women’s Property Act of 1874 protects a Christian married woman’s right to her own wages or earnings as separate from matrimonial property; and for a separated or divorced Christian woman Christian personal law obliges a husband to pay his wife alimony if she is “chaste.”<sup>134</sup> Christian women can pursue post-divorce maintenance claims in court, and can also seek interim maintenance when the proceedings are pending.

## Lack of Marital Property Law

Despite the significant contributions that Bangladeshi women make to their marital households and assets, Bangladesh has no legal regime governing marital property. The 2010 law against domestic violence fills this legal gap to some extent. It gives a victim of domestic violence the right to reside in a “shared residence.”<sup>135</sup> The law also treats acts that cause “economic loss” as domestic violence. These include cases where a man refuses to let his wife enjoy or use properties and facilities that she is entitled to use because of her family relationship, denies her daily necessities, or deprives her of gifts she

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<sup>131</sup> Human Rights Watch interview with Rita R. (pseudonym), Dhaka, September 27, 2011. See also, Human Rights Watch interview with Sarah S. (pseudonym), Dhaka, October 3, 2011.

<sup>132</sup> Law Commission of Bangladesh, “A Final Report on the Proposed Amendment of the Divorce Act, 1989 (Act IV of 1869) along with a draft of the Divorce Act, 1869 (Amendment) Bill, 2006,” 2006, <http://www.lawcommissionbangladesh.org/reports/72.pdf> (accessed June 5, 2012), unpaginated.

<sup>133</sup> Ibid.

<sup>134</sup> Dr. Faustina Pereira, *The Fractured Scales*, p. 51.

<sup>135</sup> Domestic Violence (Prevention and Protection) Act, 2010, secs. 10 and 15. There is no official English translation of the law. According to a translation provided by the Bangladesh Legal Aid Services Trust, section 10 gives women the right to live in a shared house and section 15 grants courts the power to pass a range of residence orders to enforce this right.

received during marriage.<sup>136</sup> However, apart from these protections in the law against domestic violence neither civil laws nor personal laws in Bangladesh recognize, define, or set out rules for control over marital property during marriage or the division of marital property on an equal basis between spouses upon divorce.<sup>137</sup>

Without any codified law on marital property, Bangladesh has a *de facto* “separate property” regime.<sup>138</sup> Each individual spouse has separate ownership of property they acquire during marriage. The other spouse’s contributions to the household are not recognized as conferring any right to claim a share of it upon divorce. As explained in Section I, most property in Bangladesh is formally owned by men, so this *de facto* separate property regime disproportionately penalizes women and ignores their contributions to households.

For divorced or separated women in Bangladesh, this legal void puts them at far greater risk of economic hardship and poverty than men. No matter how great their contribution to the marital household or to their husbands’ careers or businesses, and no matter how much they sacrificed their own careers or earning capacity after marriage by performing home and family care work, the law does not take this into account. Many women and lawyers told Human Rights Watch that after years of contributing to their households, women were forced to leave their marital homes with nothing more than personal jewelry or small household items.<sup>139</sup>

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<sup>136</sup> *Ibid.*, sec. 3(d). Section 3 (d) defines “economic loss” and lists five different situations where economic loss is said to have occurred. According to a translation provided by the Bangladesh Legal Aid Services Trust, these include “To deprive the aggrieved person from any gift given during the marriage...or to obstruct him/her from the exercise of legal rights over it” (section 3[d][iii]), “To transfer any immoveable or moveable property owned by the aggrieved person without his/her permission, or to obstruct him/her from the exercise of legal rights over it” (section 3[d][iv]) and “To deprive the aggrieved person from the properties and facilities that he/she is entitled to use or enjoy by dint of family relations, or to obstruct him/her from the exercise of legal rights over them.” (section 3[d][v]).

<sup>137</sup> Countries use different legal approaches to identifying and dividing property acquired by couples during marriage or separate property that is improved through joint effort. In some cases this is done through a “community of property” regime, which typically involves a legal regime where all property acquired during marriage is presumptively owned jointly by both spouses. Community of property systems usually recognize that property that is owned before the marriage, inherited, or received as a gift remains separate property. Some countries have mixed systems of separate and community property, and allow spouses to elect which regime will apply when they marry. Some others follow a separate property regime but recognize the concept of conjugal partnership gains through joint effort, allowing for their distribution based on the extent of contribution made by each spouse. Some systems like the Philippines and Goa state in India also allow for an absolute community of property, where all property acquired prior to marriage and during marriage are presumptively jointly owned.

<sup>138</sup> For married women who are Christian there is a statutory separate property regime. See Married Women’s Property Act of 1874, [http://bdlaws.minlaw.gov.bd/print\\_sections\\_all.php?id=30](http://bdlaws.minlaw.gov.bd/print_sections_all.php?id=30) (accessed April 15, 2012). Article 2 of this Act provides that it does not apply to women who, when they married, were “Hindu, Muslim, Buddhist, Sikh or Jaina religion, or whose husband, at the time of such marriage, professed any of those religions.”

<sup>139</sup> See for example, Human Rights Watch interview with Asma A. (pseudonym), Muslim, Dhaka, May 24, 2011. See below, section titled “Legal Harassment,” for information on how husbands file theft complaints to harass women when they leave even with their personal belongings.

Other countries as diverse as Malaysia, Singapore, Indonesia, Tunisia, Morocco, and Turkey have reformed their laws, giving married women rights to a share of the marital property upon divorce.<sup>140</sup> Marital property laws exist in countries with Muslim, Hindu, and Christian populations, and in countries which give official legal status to religious laws.<sup>141</sup>

Married couples in Bangladesh can take steps to jointly own property, such as by putting title to land or houses in both spouses' names, even without any legal presumption that family assets are co-owned. Given how rarely women hold title to property, it appears that few couples take this step. When they do, it offers economic security for both spouses. Human Rights Watch interviewed two widows who had joint title to marital property, enabling them to keep it and

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<sup>140</sup> In Malaysia, the Islamic Family Law (Federal Territories) Act, 1984, sec. 58, governs division of property at the time of divorce for a Muslim couple. Section 58 gives court the power to order division of assets acquired jointly during marriage or assets previously owned by one party but whose value has “substantially improved” through the efforts of the other spouse or through joint efforts. While ordering such division, the court should take into consideration different factors, including “the extent of contributions made by each party in money, property, or labour” and subject to these factors “the court shall incline towards equality of division.” Similar provisions exist in the Malaysian Law Reform (Marriage and Divorce) Act, 1976, <http://www.agc.gov.my/Akta/Vol.%204/Act%20164.pdf#http://www.agc.gov.my/Akta/Vol.4/Act164.pdf#> (accessed February 29, 2012), art. 76, which governs non-Muslims in Malaysia.

In Singapore, division of marital property for Muslim couples is governed by the Administration of Muslim Law Act, 1966 (revised in October 2009), <http://statutes.agc.gov.sg/aol/search/display/view.w3p;page=0;query=DocId%3A%223e90fc65-b364-434b-b2dc-ced1d9608640%22%20Status%3Apublished%20Depth%3A0;rec=0> (accessed June 5, 2012),

In Tunisia, Law 98-91 of 1998 on the regime of community of property between spouses, <http://www.jurisetetunisie.com/tunisie/codes/csp/biens1000.htm#> (accessed February 29, 2012), art. 1, gives couples the right to opt into a community of property regime at the time of marriage or at a later date.

In Morocco, the Moroccan Family Code (Moudawana), 2004, <http://www.hrea.org/moudawana.html#24> (accessed February 29, 2012), art. 49, states that each of the two spouses has an estate separate from each other but spouses can draw up an agreement on the distribution and management of assets acquired during marriage. In the absence of such an agreement, to determine the distribution of assets the following factors will be considered “the work of each spouse, the efforts made as well as the responsibilities assumed in the development of the family assets.”

In Indonesia, the Marriage Act, Law No. 1, 1974, [http://sdm.ugm.ac.id/main/sites/sdm.ugm.ac.id/arsip/peraturan/UU\\_1\\_1974.pdf](http://sdm.ugm.ac.id/main/sites/sdm.ugm.ac.id/arsip/peraturan/UU_1_1974.pdf) (accessed December 14, 2011), art. 35 governs marital property. According to article 35, properties that are acquired during marriage belong to both husband and wife, and properties that were inherited by either husband or wife, or properties received as gifts, are separate property, unless the parties agree otherwise.

In Turkey, the Civil Code, 2001, as cited in Women Living Under Muslim Laws, “Knowing Our Rights: Women, family laws, and customs in the Muslim World,” 2006, [http://www.wluml.org/sites/wluml.org/files/import/english/pubs/pdf/knowning%20our%20rights/kor\\_2006\\_en.pdf](http://www.wluml.org/sites/wluml.org/files/import/english/pubs/pdf/knowning%20our%20rights/kor_2006_en.pdf) (accessed February 29, 2012), arts. 186-237, p. 173 governs distribution of marital property.

For law governing marital property for Muslims in the Philippines, see the Code of Muslim Personal Laws of the Philippines, Presidential Decree No. 1083, <http://www.chanrobles.com/presidentialdecreeno1083.htm> (accessed June 5, 2012), arts. 14, 37, and 38. Article 14 of this code states that marriage settlements may to a certain extent fix the property relations of the spouses. Article 37 says that spousal property shall be governed first by contract, the provisions of the Code, and then by custom. In the absence of a contract governing marital property, article 38 states that spouses shall follow complete separation of marital property, supplemented by Islamic law and the Civil Code of the Philippines. Non-Muslims in the Philippines are governed by the Family Code of the Philippines, 1987, <http://www.chanrobles.com/executiveorderno209.htm> (accessed May 22, 2012) read together with the Civil Code of the Philippines, 1950, <http://www.chanrobles.com/civilcodeofthephilippinesfulltext.html> (accessed June 5, 2012).

<sup>141</sup> Ibid.

rent it out after their husbands died.<sup>142</sup> Another woman told Human Rights Watch that she and her husband purchased land and put both their names on the title, enabling her to build a home for her three children and widowed mother after her husband abandoned her.<sup>143</sup>

The main barrier against enacting marital property rights appears not to be doctrinal religious constraints, but rather a lack of political will on the part of the government in light of the opposition to reforms of personal laws by some conservative religious leaders, as explained below.

## Reform of Personal Laws

In the forty years since Bangladesh gained independence, it has undertaken significant legal reforms, including some on women’s rights, especially related to violence against women within the family.<sup>144</sup> But when it comes to matters of marriage, separation, divorce, and economic rights after separation and divorce, little has changed. Codified and uncodified personal laws dating to the colonial era, indeed some to the 1860s, remain virtually untouched despite massive changes in society and family life in Bangladesh. The one notable reform to substantive law since independence—the Muslim Marriages and Divorces (Registration) Act of 1974—did not fundamentally change the rights of married and divorced couples. The only other major reform since independence is the enactment of the Family Courts Ordinance of 1985, which while setting up a network of family courts and procedures for redress, implements existing personal law without any additional reform.<sup>145</sup>

The lack of personal law reforms is not due to broad social acceptance of the status quo. In fact, many women’s rights activists, NGOs, and individuals have called for reform. Some have long called for secular civil laws that could apply to all religions.<sup>146</sup> More recently, groups have emphasized the need for at least *separate* reforms for each religious group. Either approach could bring Bangladesh’s personal laws more in line with international human rights law. But reforms are stalled in a contentious political and religious environment.

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<sup>142</sup> Human Rights Watch interview with Shahnaz S. (pseudonym), Muslim, Dhaka, May 18, 2011; Meena M. (pseudonym), Hindu, Dhaka, May 18, 2011.

<sup>143</sup> Human Rights Watch interview with Nafisa N. (pseudonym), Muslim, Dhaka, May 19, 2011.

<sup>144</sup> See for example the Nari-o-Shishu Nirjaton Daman Ain, 2000 and the Domestic Violence (Prevention and Protection) Act, 2010.

<sup>145</sup> For more information on family courts, see section titled “The Legal Obstacle Course.”

<sup>146</sup> For a detailed discussion of the history of the women’s rights movement’s demands for a uniform family code, see Pereira, *The Fractured Scales*.

Proposals to establish a mandatory civil law governing marriage, separation, divorce and related matters for all religions have gotten little traction. The Law Commission of Bangladesh considered a proposal for a “common family code” in 2005, and rejected it summarily, without any research to look at the social need or legal amendments in other parts of the world.<sup>147</sup> While women’s groups continue to reiterate the importance of having civil laws that do not discriminate based on religion and gender, there have been no further efforts by lawmakers or official bodies to move this forward.

There is currently more momentum for reforming personal laws to remove the discriminatory elements of these laws. In 2012, the Law Commission of Bangladesh completed research on marriage and divorce issues under Muslim, Hindu, and Christian laws and recommended reform.<sup>148</sup> On Christian personal law, among other things, the commission’s report reiterated its earlier recommendations from its 2006 report and called on the government to remove the discrimination in grounds for divorce between men and women and the inclusion of mutual consent as a ground for divorce.<sup>149</sup> Similarly, underscoring the need for Hindu personal law reform, the commission recommended that the government prohibit polygamy, make marriage registration compulsory, and allow Hindu couples to divorce.<sup>150</sup> The Ministry of Law, Justice and Parliamentary Affairs is supporting the commission’s research, with funding from the United Nations Development Program.<sup>151</sup> Similarly, in April 2012 the NGO South Asian Institute of Advanced Legal and Human Rights Studies (SAILS) published three study reports advocating for personal law reform for Muslims, Hindus, and Christians.<sup>152</sup>

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<sup>147</sup> Law Commission of 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.,” July 18, 2005, <http://www.lawcommissionbangladesh.org/reports/69.pdf> (accessed March 30, 2011). Human Rights Watch interview with Justice Shah Alam, chairperson, Law Commission of Bangladesh, Dhaka, October 3, 2011.

<sup>148</sup> Human Rights Watch email communication with Sharmin Nigar, joint district judge and senior research officer, Law Commission of Bangladesh, Dhaka, August 12, 2012. Nigar informed Human Rights Watch that the commission was yet to finalize its report on Muslim family law reform. The reports on Christian and Hindu family law reforms were completed and shared with the Ministry of Law, Justice, and Parliamentary Affairs.

<sup>149</sup> Law Commission of Bangladesh, “Final Report on the Law Commission’s Recommendations for the Amendment of the Divorce Act of 1869 (Divorce of Christian Couples) and Enactment of a New Law on Adoption by the Christians,” <http://www.lawcommissionbangladesh.org/reports.htm> (accessed June 26, 2012).

<sup>150</sup> “Final Report by the Law Commission on the recommendations for reform of Hindu Family Law,” (“Hindu Paribarik Ain shongshkarer shuparish bishoyok ain commissioner churanto protibedon”), August 2012. Copy on file with Human Rights Watch. Human Rights Watch email correspondence with Sharmin Nigar, joint district judge and senior research officer, Law Commission of Bangladesh, Dhaka, August 12, 2012.

<sup>151</sup> Ibid. See also Human Rights Watch email communication with Doel Mukherjee, United Nations Development Programme, Dhaka, April 9, 2012. The funds are being provided as part of the UNDP-supported project on Promoting Access to Justice and Human Rights in Bangladesh.

<sup>152</sup> Nowrin Tamanna et al, *Muslim Women’s Rights under Bangladesh Law: Provisions, Policies, and Practices related to Custody and Guardianship* (Dhaka: SAILS, 2012); Dr. Shahnaz Huda, *Combating Gender Injustice: Hindu Law in Bangladesh*

Within each religious group, there are proponents of personal law reforms, and also critics. Conservative religious-political leaders have vehemently opposed Muslim law reforms, claiming that any change would likely deviate from their interpretation of Shari'a.<sup>153</sup> In contrast, other countries whose family laws incorporate Shari'a or have significant Muslim populations have indeed reformed their laws to mitigate or eliminate discriminatory elements. For example, Tunisia and Turkey have completely forbidden polygamy and countries like Morocco have introduced stringent procedures curtailing polygamy.<sup>154</sup> Malaysia, Indonesia, Singapore, Tunisia, Morocco, and Turkey all allow for marital property division upon divorce.<sup>155</sup>

Among Hindus, there is active discussion of personal law codification and reform, but also significant resistance. In 2011 women's rights activists and religious leaders organized regional consultations across Bangladesh, with the aim of developing a draft law on family matters, especially Hindu marriage and divorce.<sup>156</sup> The *Hindu Bibaho Ain Pronoyone Naree Jot* (Women's Coalition for the preparation of a Hindu marriage law) collected 3,000 case studies documenting how Hindu women suffered because of the discriminatory treatment meted out to them under personal laws.<sup>157</sup> As a result of these discussions, the coalition is demanding not just compulsory marriage registration but also equal rights in marriage and divorce. Some Hindu leaders told Human Rights Watch that the lack of marriage registration

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(Dhaka: SAILS, 2012); Dr. Faustina Pereira, *Civil Laws Governing Christians in Bangladesh: A Proposal for Reform* (Dhaka: SAILS, 2012).

<sup>153</sup> Human Rights Watch interviews with activists and lawyers, Dhaka, March, May and June 2011. For example, in March 2011, the Bangladesh government introduced the National Women's Development Policy. Even though the policy did not bring about any substantial changes to personal laws, Muslim religious conservatives organized massive protests misrepresenting what the policy sought to do. See for example, "Bangladesh protest against women's rights left one dead," *BBC News*, April 3, 2011, <http://www.bbc.co.uk/news/world-south-asia-12950866> (accessed May 22, 2012).

<sup>154</sup> Morocco forbids polygamy in two situations. Moroccan Family Code (Moudawana), 2004, <http://www.hrea.org/moudawana.html#24> (accessed February 29, 2012), art. 40. "Polygamy is forbidden where there is a risk of inequity between the wives. It is also forbidden when the wife stipulates in the marriage contract that her husband will not take another wife." Article 40 and 41 state that where the wife does not include a clause in the marriage contract precluding polygamy, the husband should apply to the court for its authorization providing an "exceptional and objective justification" and attach his financial statement.

Tunisia's Code Du Statut Personnel (Personal Status Code), 1956, [http://www.e-justice.tn/fileadmin/fichiers\\_site\\_francais/codes\\_juridiques/Statut\\_personel\\_Fr.pdf](http://www.e-justice.tn/fileadmin/fichiers_site_francais/codes_juridiques/Statut_personel_Fr.pdf) (accessed June 5, 2012), art. 18. Tunisia bans polygamy and anyone who contracts a second marriage when the first is subsisting can be imprisoned for a year, or with a fine of 240,000 francs (now equivalent to 240 Tunisian dinars or USD149), or both.

See *Women Living Under Muslim Laws, Knowing Our Rights: Women, family, laws, and customs in the Muslim world*, (London: WLUML, 2006) p. 197, which states that Turkey has banned polygamy.

<sup>155</sup> See above, section titled "Lack of Marital Property Law" for more information on laws from other countries.

<sup>156</sup> Human Rights Watch interview with Rina Roy, director (rights), Manusher Janno Foundation, Dhaka, June 1, 2011.

<sup>157</sup> Dr. Shahnaz Huda, *Combating Gender Injustice: Hindu Law in Bangladesh* (Dhaka: SAILS, 2012), p. 45.



poses a particular problem for Hindus not just for purposes of proving marriage in family court proceedings, but also for practical matters like producing documentation to travel abroad.<sup>158</sup>

Nonetheless, some conservative Hindu leaders and groups oppose personal law reforms. The reasons voiced relate to a sense of Hindus being a marginalized minority group, and to a history of laws being used to deny their rights. Some express a growing sense of isolation after the Bangladesh constitution was amended in 2011, whereby Islam was retained as the state religion. Others invoke the history of Bangladesh's "vested property" laws, which led to government takeover of minority-owned properties, and causes suspicion of any new government regulation of property rights.<sup>159</sup> But in 2011, the parliament enacted a law on the return of vested property, which was hailed by Hindu leaders as a move in the right direction. Finally, after decades of inaction in the face of such protest, in May 2012, the Bangladesh cabinet approved a draft bill for *optional* registration of Hindu marriages.<sup>160</sup> Though this is a welcome move, this falls short of the reform demands of many women's rights activists.

Parts of the Christian community are also debating personal law reforms. In 2002 the *Jatiya Church Parishad of Bangladesh* (National Council of Churches in Bangladesh or the NCCB) led Christian personal law reform discussions, with the participation of Christian religious leaders including the Catholic Bishop.<sup>161</sup> In 2010, the Bangladesh Christian Lawyers Association was established, and one of its objectives is to initiate personal law reform.<sup>162</sup>

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<sup>158</sup> Human Rights Watch interview with Kajal Debnath, president, Hindu, Buddhist and Christian Unity Council, Dhaka, October 3, 2011.

<sup>159</sup> A 2001 law sets out a process for returning these properties, but was not implemented. See Abul Barkat et al., *Deprivation of Hindu Minority in Bangladesh, Living With Vested Property* (Dhaka: Pathak Shamabesh, 2008); Human Rights Watch interview with Kajal Debnath, president, Hindu, Buddhist and Christian Unity Council, Dhaka, October 3, 2011. The Bangladesh Vesting of Property and Assets Order, 1972 and the Ordinance XCIII of 1976 established that the government could take over properties belonging to the minority Hindu communities who fled Bangladesh during liberation in 1971. Although the 2001 Vested Property Return Act stated that properties categorized by the government as "returnable" would be returned to their owner or managing committees of those properties, the government has yet to publish a finalized list of returnable properties and to return them.

<sup>160</sup> Haroon Habib, "Dhaka for Hindu marriage law," *The Hindu*, May 22, 2012, <http://www.thehindu.com/news/international/article3443443.ece> (accessed May 22, 2012); "Registration Optional for Hindu Marriage," May 21, 2012, [http://www.thedailystar.net/newDesign/latest\\_news.php?nid=37859](http://www.thedailystar.net/newDesign/latest_news.php?nid=37859).

<sup>161</sup> Dr. Faustina Pereira, *A Proposal to Reform the Civil Laws pertaining to Christians in Bangladesh*, (Dhaka: SAILS, 2011), p 32.

<sup>162</sup> *Ibid.*

### III. Impacts of Bangladesh’s Discriminatory Personal Laws on Married, Divorced, and Separated Women

Bangladesh’s discriminatory personal laws have harmful impacts on married, divorced, and separated women, as well as children and other family members who depend on them. The personal laws reinforce and perpetuate women’s economic dependence on men, and contribute to the risk of domestic violence. They also contribute to the high rates of poverty among female-headed households in Bangladesh.

Women interviewed by Human Rights Watch described the different ways in which their inferior rights under personal laws contributed to their suffering. Many described being trapped in violent marriages because they feared if they divorced or separated, apart from the overall stigma, they would have nowhere else to go and have little chance of securing “*bhoron-poshon*” (maintenance). Most women who had divorced or separated from their husbands described their experiences of economic hardship. These included losing homes, living on the street when they had nowhere else to go, begging for food and water, pulling children out of school to work, struggling with ill health, and lacking the resources to deal with any of these problems.

This section illustrates through personal accounts how inequality in Bangladesh’s personal laws harms women and their dependents. With high rates of marriage, more than 330,000 divorced women,<sup>163</sup> and an unknown number of separated women in Bangladesh, the problems these women described are quite likely widespread.

#### Domestic Violence

Personal laws’ failure to address control and use of marital property during marriage, its division upon divorce, and their limitations on access to maintenance have been major barriers to escaping domestic abuse,<sup>164</sup> which affects more than half of all married women in Bangladesh.

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<sup>163</sup> Bangladesh Bureau of Statistics, “Population 10 Years and Over by Age Group, Sex and Marital Status,” *Statistical Yearbook of Bangladesh* (Dhaka: Bangladesh Bureau of Statistics, 2010), p. 45.

<sup>164</sup> Human Rights Watch interviews with Mitali Jahan, program manager against domestic violence, Bangladesh National Women Lawyers Association, Dhaka, May 19, 2011; Nina Goswami, senior deputy director of the Mediation and Rapid

The Domestic Violence (Prevention and Protection) Act, 2010, fills this legal gap to some extent. Among other things, the definition of domestic violence covers acts that cause “economic loss,” including where a man refuses to let his wife enjoy or use properties and facilities that she is entitled to use because of her family relationship, denying her daily necessities, or depriving her of gifts she received during marriage.<sup>165</sup>

The 2007 Bangladesh Demographic and Health Survey found that 53 percent of married women surveyed reported that their husbands had sexually or physically abused them.<sup>166</sup> One in five married women aged 15-24 reported marital sexual violence.<sup>167</sup>

Women described to Human Rights Watch enduring months and sometimes years of domestic violence because they knew if they separated or divorced, they faced economic desperation. For example, Farida F. said her husband and his first wife beat, starved, and verbally abused her. She said:

The first wife used to ill-treat me but I couldn't do anything. My parents were poor and couldn't support me. My husband also treated me badly. Some days they would not give me food. *Gaali-galaaj* [verbal abuses]. Beatings. I didn't have anywhere to go so I just lived with whatever they did.<sup>168</sup>

Similarly, Shefali S. endured abuse by her husband and his family for years, unable to leave because she had no means to support herself. The violence started when Shefali was pregnant and complained about her husband's plan to take a second wife. She said:

He kicked me in the chest and told me to keep quiet or else he will beat me more. It was during the winter and was very cold. He made me take off all my clothes and stand near the bed all night. He played a recorder in the

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Response Unit, Dhaka, May 19, 2011; Ayesha Khanum and Maksuda Akhter, March 29, 2011; group discussion with Salma Ali, executive director, Rehana Sultana, director (legal aid), Mitali Jahan, program manager against domestic violence, Bitika Hasan, project coordinator of child protection and anti-trafficking program, Mohsur Alam, assistant program manager of the advocacy and research unit, Bangladesh National Women Lawyers Association, Dhaka, March 30, 2011. See also, Rabia Bhuiyan, *Gender and Tradition in Marriage and Divorce* (Dhaka: UNESCO, 2010), p. 255.

<sup>165</sup> Domestic Violence (Prevention and Protection) Act, 2010, sec. 3.

<sup>166</sup> NIPORT et al., *Bangladesh Demographic and Health Survey, 2007*, p. 201.

<sup>167</sup> *Ibid.*, p. 202.

<sup>168</sup> Human Rights Watch interview with Farida F. (pseudonym), Muslim, Noakhali district, May 22, 2011.

room so that no one else could hear. I stood by the bedside all night and if I moved a little, he would kick and beat me.<sup>169</sup>

One day Shefali's husband beat her unconscious. Shefali's parents could not support her, so she stayed with her husband. He later abandoned her, but her in-laws kept up the abuse.<sup>170</sup>

## Economic Harm

Divorced or separated women struggle to cope financially, and there is no doubt that personal laws' failure to provide for division of marital property and their restrictive rules on maintenance contributes to this hardship.

The United Nations country team in Bangladesh has identified "marital instability" as a key cause of poverty and "ultra and extreme" poverty among "female-headed households."<sup>171</sup> The Bangladesh Planning Commission acknowledges that "women are more susceptible to becoming poor when they lose the male earning member of the family because of abandonment, divorce, or death."<sup>172</sup>

About 13 percent of households in Bangladesh are headed by women.<sup>173</sup> Estimates for poverty levels among female-headed households vary. The 2005 progress report on the UN Millennium Development Goals in Bangladesh estimated that 49 percent of all female-headed households fell below the poverty line, compared to 39 percent of male-headed households.<sup>174</sup> A different 2005 UN report found that 95 percent of all female-headed households

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<sup>169</sup> Human Rights Watch interview with Shefali S. (pseudonym), Muslim, Dhaka, May 19, 2011. Other women reported similar domestic violence. Human Rights Watch interviews with Trishna T., Muslim, Dhaka, May 18, 2011; Sharmila S. (pseudonym), Muslim, Dhaka, May 19, 2011; Monira M. (pseudonym), Muslim, Dhaka, May 19, 2011; and Akhtara A. (pseudonym), Muslim, Noakhali district, May 20, 2011.

<sup>170</sup> Ibid.

<sup>171</sup> UN Country Team in Bangladesh, "United Nations' Common Country Assessment of Bangladesh, 2005," 2005, [http://www.undp.org/asia/country\\_programme/CCA/CCA-Bangladesh2005.pdf](http://www.undp.org/asia/country_programme/CCA/CCA-Bangladesh2005.pdf) (accessed June 20, 2011), para. 2.1.4.

<sup>172</sup> Planning Commission, Sixth Five Year Plan, [http://www.plancomm.gov.bd/SFYP-PDF-Final%2029-08-2011/SFYP-Final%20Part-1-17-08-11\[1\].pdf](http://www.plancomm.gov.bd/SFYP-PDF-Final%2029-08-2011/SFYP-Final%20Part-1-17-08-11[1].pdf), p. 153.

<sup>173</sup> NIPORT et al., *Bangladesh Demographic and Health Survey*, 2007, p. 14. This includes both *de facto* and *de jure* female-headed households.

<sup>174</sup> Government of Bangladesh and UN Country Team, "Millennium Development Goals: Bangladesh Progress Report," 2005, <http://www.undp.org.bd/mdgs/Bangladesh%20MDGProgress%20Report%202005%20-%202.pdf> (accessed July 18, 2011), p. 22. The Millennium Development Goals progress reports do not consistently present information on poverty among female-headed households. The 2006, 2007, and 2008 progress reports do not have any information on poverty among female-headed households.

fell below the poverty line.<sup>175</sup> The 2009 Millennium Development Goals Progress Report says that while poverty levels in the country have declined overall, “female headed households show little improvement in standard of living.”<sup>176</sup> It did not include a poverty rate estimate.<sup>177</sup>

The Bangladesh Household Income and Expenditure Surveys paint a different picture. They show that income poverty for female-headed households has declined over the years. The survey estimated that 35.4 percent of female-headed households were poor compared to 34.2 percent of male-headed households in 2000. But by 2010 the survey showed that 14.6 percent of female-headed households were poor compared to 17.9 percent of male-headed households. Experts attribute overall declines and differences in estimates in part due to the difficulty in isolating de facto female-headed households. The estimates also include those women whose husbands have migrated abroad and are sending remittances back home.<sup>178</sup>

### *Housing*

Housing is often the first casualty for divorced or separated women. Since the title to homes are virtually always in men’s names, and since personal laws do not grant women a right to marital property upon divorce, men tend to keep the homes and women are on their own. Many have family or friends who might help, though often begrudgingly, and others end up on the street until they find some assistance.

Kohinoor K. separated from her husband when he remarried without asking her, and she had no choice but to leave her marital home. She had no means to pay for new housing, so she and her daughters turned to her natal family. She said:

My father told me, “You are my daughter so we have to feed you. But why should I feed your daughters? They are not my responsibility.” He told me I had to fend for them or leave them.<sup>179</sup>

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<sup>175</sup> UN Country Team in Bangladesh, “United Nations’ Common Country Assessment,” para. 2.1.4.

<sup>176</sup> Planning Commission of Bangladesh, “The Millennium Development Goals, Bangladesh Progress Report 2009,” <http://www.undp.org.bd/info/pub/Bangladesh%20MDGs%20Progress%20Report%202009.pdf> (accessed July 18, 2011), p. 44.

<sup>177</sup> Ibid. The latest 2011 MDG progress report does not include a specific estimate for poverty among female-headed households compared to couples but states that the former are more food insecure.

<sup>178</sup> Human Rights Watch telephone interview with Goran Jonsson, project manager, Rural Employment Opportunities for Public Assets (REOPA), June 10, 2012.

<sup>179</sup> Human Rights Watch interview with Kohinoor K., Muslim, Madaripur district, May 29, 2011.

Other women told Human Rights Watch of seeking shelter with friends, neighbors, and religious institutions when they lost their homes upon separation or divorce. Joya J. left the marital home several times when the abuse from her mother-in-law and husband became unbearable. The first couple of times she fled, a church offered her shelter. She later went to live with her parents, but neighbors pressured her to return to her husband. He abused her again, and she fled to a family friend. Joya said:

The auntie's husband did not want me in the house. So I stayed in their verandah for 10-12 days. I got a cold and fell sick. It was winter. So auntie shifted me from there and hid me in the bathroom—the one that was not used. They had two bathrooms. I spent a month like this. I would come out of the bathroom when he [the husband] went to work. One day I got caught and they had a fight. Auntie fought for me.<sup>180</sup>

Some women told Human Rights Watch that after losing their homes due to separation or divorce, they found work as full-time live-in domestic workers to have a roof over their heads.<sup>181</sup> For example, after being abandoned by her husband, Tabassum T. joined her younger sister as full-time help to take care of her niece when her sister worked. Tabassum's husband stayed in their marital home, and she received no maintenance or share of the marital property.<sup>182</sup>

Some women found themselves homeless and on the street after separation or divorce. Saira S., a mother of two in her thirties, separated from her husband after years of domestic violence. Her husband kept the home, and she fled with her children and a few personal belongings. Her natal family took her in for a short time, but pressured her to leave. She said:

My father and brothers refused to give me food properly. They were angry that I had come back and wanted me to get married again. I didn't want to

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<sup>180</sup> Human Rights Watch interview with Joya J. (pseudonym), Christian, Dhaka, September 29, 2011.

<sup>181</sup> Human Rights Watch interview with Hamida H. (pseudonym), Noakhali district, May 22, 2011. Lawyers and activists recounted similar experiences of their clients. Human Rights Watch interviews with Salma Jabin, advocate, Aio-o-Salish Kendra, Dhaka, May 16, 2011; Mitali Jahan, project manager against domestic violence, Bangladesh National Women Lawyers' Association, Dhaka, May, 19, 2011; and Rehana Sultana, director (legal aid), Bangladesh Women Lawyers' Association, Dhaka, May 24, 2011.

<sup>182</sup> Human Rights Watch interview with Tabassum T. (pseudonym), Muslim, Gazipur district, June 4, 2011.

marry so I left the house with my children. I stayed under the big tree and begged for food until they [a local organization] helped me.<sup>183</sup>

Aseema A., in her forties, was also forced to leave her marital home and ended up on the streets. She and her husband lived with her in-laws, and when he remarried and abandoned her, the in-laws kicked Aseema out. Unable to get maintenance or seek a share of the marital assets, Aseema sent her 10-year-old daughter to live with another family as a domestic worker. Aseema and her younger daughter lived on the streets and begged until a landlord offered housing and food in return for unpaid work in his fields.<sup>184</sup>

A few women told Human Rights Watch that they were able to stay in their marital homes after separation or divorce. But some of them still faced economic hardship. Without being able to secure maintenance payments from their husbands, keeping the home may not be enough to spare women from poverty or debt. Ruxana R., age 35, stayed in her marital home after her husband abandoned her. But she was unable to pay the rent, manage household expenses, and care for her two children. She took a loan until she found employment as a garment worker, but still found it difficult to make ends meet.<sup>185</sup>

### *Food*

Food security is in jeopardy for many divorced and separated women in Bangladesh, as well as their dependents. The lack of legal protections for division of marital property and securing maintenance contribute to hunger.

Food insecurity is a significant problem among female-headed households generally in Bangladesh. The UN World Food Program (WFP) found in 2012 that nearly double the number of female-headed households had only two meals per day, compared to their

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<sup>183</sup> Human Rights Watch interview with Saira S. (pseudonym), Muslim, Noakhali district, May 20, 2011.

<sup>184</sup> Human Rights Watch interview with Aseema S. (pseudonym), Muslim, Noakhali district, May 20, 2011. Other women Human Rights Watch spoke to had similar experiences. For example, Human Rights Watch interviews with Zubaida Z. (pseudonym), Muslim, Noakhali district, May 20, 2011; Fatima F. (pseudonym), Muslim, Noakhali district, May 20, 2011; and Sherine S. (pseudonym), Muslim, Noakhali district, May 21, 2011.

<sup>185</sup> Human Rights Watch interview with Ruxana R., Muslim, Dhaka, May 27, 2011. See also, Human Rights Watch interview with Mahsuda Rehana Begum, coordinator, Gopibagh Legal Aid Clinic, Dhaka, May 27, 2011.

male counterparts.<sup>186</sup> Overall, 38 percent of female-headed households were classified by the WFP as “food insecure”<sup>187</sup> compared to 23 percent of couples.<sup>188</sup>

Many women interviewed by Human Rights Watch said they struggled to feed themselves and their children after divorce or separation. For example, Sitara S., a mother of two in her thirties, said that after her husband divorced her, she could not afford both food and rent in a Dhaka slum.

Of my 2,000 takas (US\$24) [income], I pay 1,300 takas (US\$16) as rent. [I spend] another 500 takas (US\$6) on my children. I have no money left for food,” she despaired. “I work in houses and beg them to give me something to eat and bring back leftovers for my children. I can’t even buy clothes for myself. I request my employers to give me some old clothes to wear,” she said, holding out her torn saree.<sup>189</sup>

Similarly, Mehbooba M., in her fifties, said she often lacked money for food after her husband abandoned her. “I eat left-over *pantha bhath* [moistened and left over white rice] in the houses where I work,” she said.<sup>190</sup>

## *Health*

Bangladesh’s discriminatory personal laws also put divorced and separated women, as well as their dependents, at risk of ill health. The difficulty in securing maintenance and the lack of legal provision for division of marital property often result in poverty, which contributes to poor health and is a barrier to accessing health care.

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<sup>186</sup> Human Rights Watch email correspondence with Nusha Yamina Choudhury, Head, Vulnerability Analysis and Mapping (VAM) Unit, The United Nations World Food Programme, Dhaka, May 5, 2012. In response to a letter from Human Rights Watch to Christa Rader, the Country Director of UN WFP, April 30, 2012, seeking the latest estimates for food insecurity among female-headed households, Ms. Choudhury wrote: “Eleven percent of the total female headed households consume only two meals a day against 5.6 percent of male headed households. Overall 38 percent of the total female headed households were classified as food insecure as compared to 23 percent of male headed households. Coping strategy index has been reported to be higher for female headed households 23 against male headed households which is 13,” and explained that “[a] higher CSI score suggests a higher level of food insecurity.”

<sup>187</sup> Ibid.

<sup>188</sup> Ibid.

<sup>189</sup> Human Rights Watch interview with Sitara S. (pseudonym), Muslim, Dhaka, May 24, 2011.

<sup>190</sup> Human Rights Watch interview with Mehbooba M. (pseudonym), Muslim, Dhaka, May 24, 2011. See above, section titled “Housing” for information regarding women who were forced to beg after their marriages ended. These women reported struggling for food.



Research has shown dramatic differences in terms of health and access to health care for children of female-headed (divorced) households. A 2001 study, for instance, found that infant mortality was more than double for infants with divorced mothers than married mothers in the location studied.<sup>191</sup> A 2000 survey found that 65 percent of sick children in “male-headed households” had access to health care compared with only 44 percent of sick children in female-headed households.<sup>192</sup>

Several divorced or separated women told Human Rights Watch that they had little or no money to spend on health care, which in some cases exacerbated health problems. For example, Mona M., age 30, told Human Rights Watch that her husband remarried and abandoned her after she had a miscarriage. With no income, and unable to get maintenance, Mona was forced out of her marital home and went to live with her widowed mother. Mona said:

After my miscarriage I needed medicines. I couldn't manage this [expense] myself. My mother couldn't help me because she did not have the money. So I couldn't take the medicines. I had pain and was weak for many days.<sup>193</sup>

### *Children's Education and Child Labor*

The economic toll from Bangladesh's discriminatory personal laws leads some divorced and separated women to pull their children out of school and put them to work. Studies show that school drop-outs are a major problem for children in female-headed households, some of which are female-headed due to divorce or separation. The 2009 Millennium Development Goals progress report for Bangladesh stated that about 88 percent of female-headed households reported that their children had dropped out of school.<sup>194</sup>

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<sup>191</sup> N. Alam et al., “The Effect of Divorce on Infant Mortality in a Remote Area of Bangladesh,” *Journal of Biosocial Science*, vol. 33, 2001, p. 271. The study, conducted by the International Center for Diarrhoeal Disease Research looked at infants who were born after divorce, within 12 months of the divorce, or before 12 months of the divorce.

<sup>192</sup> M. A. Mannan, “Female Headed Households in Rural Bangladesh: Strategies for Well Being and Survival,” Paper 10: Center for Policy Dialogue and UNFPA, 2000, <http://www.cpd-bangladesh.org/publications/cpdunfpa/unfpa10.pdf> (accessed January 27, 2011), p. 11. The study was conducted by the UN Population Fund and the Center for Policy Dialogue, a local NGO.

<sup>193</sup> Human Rights Watch interview with Mona M. (pseudonym), Christian, Dhaka, October 3, 2011. A lawyer interviewed by Human Rights Watch also narrated a case where one of her clients had two miscarriages and was abandoned, with little money to meet her health expenses. Human Rights Watch interview with Maksuda Akhter, head of the litigation unit, Bangladesh Mahila Parishad, October 4, 2011.

<sup>194</sup> Planning Commission of Bangladesh, “The Millennium Development Goals, Bangladesh Progress Report 2009,” p. 59.

Several divorced or separated women told Human Rights Watch that they sent their daughters to work as domestic workers when they were forced out of their marital homes, usually cutting short the girls' education. One of those girls was Jemma J., who dropped out of school when her father remarried and abandoned Jemma, her mother, and her sister. Having no maintenance or any share of the marital property, Jemma's mother could not afford to support her daughters and keep them in school. Jemma resorted to work in a garment factory, and her mother and sister did domestic work for distant relatives in Dhaka.<sup>195</sup>

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<sup>195</sup> Human Rights Watch interview with Jemma J. (pseudonym), Muslim, Noakhali district, May 22, 2011. See also, Human Rights Watch interview with Mehbooba M. (pseudonym), Muslim, Dhaka, May 24, 2011.

## IV. The Legal Obstacle Course

Women attempting to assert their limited rights under personal laws in Bangladesh confront procedural and practical barriers that often delay or defeat any remedies. With no legal entitlement to a share of marital property, and limited rights to *mahr* or maintenance, divorced and separated women have little hope of gaining economic security through legal claims. Yet in a country with high poverty rates, especially for female-headed households, securing financial awards through mediation or the courts would be meaningful.

Unfortunately, procedures for asserting legal claims upon separation and divorce are fraught with problems, as this section explains.

Informal mediation (*shalish*) with community elders is the first stop for many women seeking *mahr* or maintenance payments. This form of recourse has positive aspects: it is informal, close to home, and accepted in communities. Yet it also has significant disadvantages. Elders are not bound by consistent procedures and flout legal standards, there is no government oversight, and the (typically male) elders sometimes exclude women from fully participating in the process.

Bangladesh has established a family court system to deal with personal law matters. But women seeking maintenance or *mahr* in courts also confront barriers. Some relate to the family court's capacity to handle cases expeditiously. Others relate to the vague laws, especially on the crucial issue of criteria for granting maintenance. Many are procedural, including ineffective summons procedures, strict and unrealistic evidentiary requirements, and faulty processes for executing judgments. Abuse of process and frivolous counter-claims by men trying to avoid paying *mahr* or maintenance, such as claims for restitution of conjugal rights and criminal theft charges, constitute another barrier to justice for divorced or separated women.

There is some prospect of reform to civil court procedures, which could ease some of the barriers to seeking *mahr* and maintenance. In 2011 the Ministry of Law, Justice and Parliamentary Affairs initiated discussions on procedural reforms that are still ongoing.<sup>196</sup> But

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<sup>196</sup> Human Rights Watch email communication with Doel Mukherjee, United Nations Development Programme, Dhaka, February 2, 2012.

even with improved procedures, divorced and separated women in Bangladesh will face daunting challenges in using the courts to secure economic relief until there is more fundamental law and justice system reform.

## Informal Mediation or *Shalish*

In many places, especially rural communities, women seeking *mahr* or maintenance turn to community or village elders for informal mediation. Informal dispute resolution may save them time and money (in travel costs and court fees), but is far from a reliable mechanism for women asserting personal law claims.

Human Rights Watch interviewed several women who attempted to secure maintenance or *mahr* through informal mediation with community leaders, as well as advocates who helped them.<sup>197</sup> They reported mixed experiences. Some women did say that they were satisfied with the experience and that mediators awarded them *mahr* or maintenance. But many women and activists said that the male elders were unwilling to let women speak for themselves, that they decided cases with insufficient facts, and in some cases, demanded a share of the award for handling the case.

An activist from Madaripur Legal Aid Association who has assisted many women with informal mediation said that almost all informal mediation is done by male community leaders. She said these mediators seldom allowed women to participate freely, and thus decided with only partial facts:

They [village elders] even decide maintenance cases without speaking to women. They don't follow any procedures. The local elders will say, "You go inside and sit," to the woman. And if the union chairperson is present there he will not intervene and tell the village elders that the woman should be present there and talk.<sup>198</sup>

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<sup>197</sup> Human Rights Watch did not seek to examine the issue of informal mediation or shalishes in detail because of the extensive documentation on this subject. See for example, Debasish Kumar Kundu, "Understanding Alternative Dispute Resolution for the Rural Women in Bangladesh: Some Illustrations from BRAC HRLS Program," Working Paper No. 13, October 2010, [http://www.bracresearch.org/workingpapers/red\\_wp13\\_new.pdf](http://www.bracresearch.org/workingpapers/red_wp13_new.pdf) (accessed May 22, 2012).

<sup>198</sup> Human Rights Watch interview with Namitha Rani Datta, activist, Madaripur Legal Aid Association, Madaripur district, May 29, 2011. Other activists shared similar concerns. Human Rights Watch interview with Nina Goswami, senior deputy director, Mediation and Rapid Response Unit, Aio-o-Shalish Kendra, Dhaka, May 25, 2011.

Although informal mediation is presumed to be less expensive than formal court procedures, advocates told Human Rights Watch that some local elders pocketed a part of the award to cover “costs” of such mediation.<sup>199</sup> In one case village elders ordered the husband to pay 130,000 takas (US\$1,585) in *mahr* and maintenance, but the woman only got 110,000 takas (US\$1,341) and the elders took the rest.<sup>200</sup>

Advocates and women also told Human Rights Watch that lack of government oversight and any requirement that they adhere to the law resulted in mediation rulings that not only harmed women, but were also illegal. Shefali S. recounted how, after her husband beat her during her pregnancy, village elders demanded that her father pay outstanding dowry to the husband, even though dowry has been illegal for decades.<sup>201</sup>

The Bangladesh law does not recognize these informal mediators and does not provide any oversight or appeal from such informal decisions.<sup>202</sup> Leading local NGOs have tried to intervene and monitor such processes to ensure that communities take decisions in accordance with women’s legal entitlements.<sup>203</sup> Local NGOs also conduct informal mediation sessions through their lawyers to try and settle family disputes out of court to save time and money on litigation.<sup>204</sup>

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<sup>199</sup> Human Rights Watch interviews with Humayun Lasker, project coordinator, Madaripur Legal Aid Association, Madaripur district, May 29, 2011; Nina Goswami, senior deputy director, Mediation and Rapid Response Unit, Aio-o-Shalish Kendra, Dhaka, May 25, 2011.

<sup>200</sup> Human Rights Watch interview with Namita Rani Datta, Madaripur district, May 29, 2011. Other activists recounted similar experiences. Human Rights Watch interviews with Humayun Lasker, May 29, 2011; Nina Goswami, Dhaka, May 25, 2011; group interview with Farida Yeasmin, deputy director (legal), M.D.Barkat Ali, assistant director (legal), and Taposhi Rabeya, assistant coordinator (mediation), Bangladesh Legal Aid Services Trust, Dhaka, May 25, 2011.

<sup>201</sup> Human Rights Watch interview with Shefali S. (pseudonym), Muslim, Dhaka, May 19, 2011.

<sup>202</sup> See *BLAST and others v. Government of Bangladesh and others*, Writ Petition 5863 of 2009 along with Writ Petitions 754 and 4275 of 2010, <http://www.blast.org.bd/content/judgement/ejp-judgment-8July2010.pdf> (accessed April 30, 2012), where the court held that shalishes cannot impose extrajudicial punishments. For more information about the case and related rulings, see “Bangladesh: Protect Women Against Fatwa Violence,” Human Rights Watch News Release, July 7, 2011, <http://www.hrw.org/news/2011/07/06/bangladesh-protect-women-against-fatwa-violence>.

<sup>203</sup> See for example, Dina Siddiqi, “Paving the Way to Justice: The Experience of Nagorik Uddyog,” undated, <http://www.gadnetwork.org.uk/storage/29.%20Paving%20the%20Way%20to%20Justice.pdf> (accessed April 30, 2012).

<sup>204</sup> Human Rights Watch interviews with lawyers from BRAC-Human Rights and Legal Aid Services, the Bangladesh Legal Aid Services Trust, Bangladesh Mahila Parsiahd, Ain-o-Shalish Kendra, Bangladesh National Women Lawyers Association, and Madaripur Legal Aid Association, March, May, June, and October 2011.

## Courtroom Battles

After he left me he didn't give me anything. Not even a piece of cloth. I am begging [for food] all the time. When I told him I'm going to court he laughed saying "Go to court. You will get nothing." When will I get anything from court?

—Sitara S. (pseudonym), Muslim, Dhaka, May 24, 2011

Bangladesh's family courts are the main avenue for pursuing *mahr* or maintenance in the formal justice system.<sup>205</sup> These courts, which operate pursuant to the Family Courts Ordinance of 1985,<sup>206</sup> are integrated into the lowest civil courts in each district. Some family court judges handle only family matters, and others handle an array of civil matters.

Members of all religious communities can petition family courts for their rights, including to *mahr* (for Muslim litigants) and maintenance. The judges apply substantive personal laws of Muslims, Hindus, and Christians, but follow uniform procedures under the Family Courts Ordinance and the Code of Civil Procedure.<sup>207</sup> As explained below, family court proceedings are far from a perfect solution for women seeking *mahr* or maintenance.

### *Family Court Backlogs*

Former family court judges who spoke to Human Rights Watch on the condition of anonymity said that family courts routinely have large case backlogs. One former judge said that he dealt with a backlog of 700 family court cases in one district alone.<sup>208</sup> Advocates told Human Rights Watch that family courts struggled to manage the volume of cases in areas with large populations.<sup>209</sup> In Dhaka, for instance, there are only three family courts to serve a vast area

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<sup>205</sup> In addition, in theory Muslim women can approach chairpersons of the local bodies within whose jurisdiction they are residing to enforce their right to maintenance. The wife can enforce this right to maintenance during the subsistence of the marriage by approaching the chairperson of the local body, who should constitute an arbitration council to look into the matter. The arbitration council can issue a certificate asking the husband to pay maintenance. See Muslim Family Laws Ordinance, 1961, sec. 9. However, none of the Muslim women Human Rights Watch spoke with had approached arbitration councils to claim such maintenance either because they were unaware of this option or because such councils were dysfunctional or non-existent.

<sup>206</sup> Family Courts Ordinance, 1985, sec. 4.

<sup>207</sup> *Ibid.*, sec. 5.

<sup>208</sup> Human Rights Watch interview with a former family court judge (name and details withheld upon request), May 2011.

<sup>209</sup> Human Rights Watch interviews with Salma Jabin, advocate and Farhana Afroz, senior staff lawyer in the litigation unit, Aio-o-Shalish Kendra, Dhaka, May 16, 2011; Maksuda Akhter, head of the litigation unit, Bangladesh Mahila Parishad, June 1, 2011; Farida Yeasmin, deputy director (legal), Bangladesh Legal Aid Services Trust, Dhaka, May 25, 2011; and A.N.M. Abdul Rahman, advocate, Noakhali district, May 21, 2011.

covered by “43 police stations.”<sup>210</sup> Family court experts said the case backlog is particularly bad in districts where one judge handles both family and other civil law disputes.<sup>211</sup>

The backlogs, as well as the procedural challenges described below, make legal recourse for divorced and separated women a painfully slow proposition. Although the amounts they might claim as *mahr* or maintenance are generally small, many women need this economic support immediately to manage the loss of housing and financial support that usually accompanies separation and divorce. They cannot afford to wait months or years for a family court judgment, yet that is exactly what they have to do.<sup>212</sup> In some cases, women have waited absurdly long times for courts to make a determination or execute judgments.<sup>213</sup> A lawyer for the Bangladesh Legal Aid Services Trust described one case where a family court took 18 years to execute a woman’s petition for *mahr* and maintenance.<sup>214</sup> Similarly, a former family court judge told Human Rights Watch about a maintenance case decided in the 1980s but left unexecuted as of June 2011. He said:

He [the husband] must have spent more money on lawyers and court fees than the maintenance amount itself. And this poor lady has not received anything for more than 20 years.<sup>215</sup>

BRAC-Human Rights and Legal Aid Services, a nongovernmental organization that has filed maintenance cases in family courts in 61 of 64 districts in Bangladesh collected and shared with Human Rights Watch information on pending maintenance cases since 1998 (when they

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<sup>210</sup> Human Rights Watch interview with Salma Jabin, advocate, Aio-o-Shalish Kendra, Dhaka, May 16, 2011.

<sup>211</sup> Human Rights Watch interview with former family court judges (names and details withheld upon request).

<sup>212</sup> Family Courts Ordinance, 1985, secs. 10, 13, and 14. In order to reduce delays in family court proceedings, the Family Court Ordinance, 1985 allows for pre-trial and post-trial mediation to try and reach a compromise between the litigants. Where the parties reach a compromise, the court can issue a compromise decree.

<sup>213</sup> Human Rights Watch interviews with M. D. Barkat Ali, assistant director (legal), the Bangladesh Legal Aid Services Trust, Dhaka, May 25, 2011; Rehana Sultana, director (legal aid), Bangladesh National Women Lawyers’ Association, Dhaka, May 24, 2011; Salma Jabin, advocate, Aio-o-Salish Kendra, Dhaka, May 16, 2011; former family court judge (name and details withheld upon request).

<sup>214</sup> Human Rights Watch interview with M.D. Barkat Ali, May 25, 2011. Human Rights Watch email correspondence with Abdul Malek, co-coordinator, investigation and monitoring cell, the Bangladesh Legal Aid Services Trust, Dhaka, May 29 and May 30, 2012. Malek provided a preliminary list of family court cases handled by BLAST panel lawyers in various districts, which were initiated more than 10 years ago and were still pending. These included seven cases from Sylhet district, three cases from Mymensingh district, two cases from Khulna district, and two cases from Rajshahi district. All of these cases are pending at the execution stage.

<sup>215</sup> Human Rights Watch interview with a former family court judge (name and details withheld upon request), Dhaka, June 3, 2011.

started offering legal aid) until May 31, 2012.<sup>216</sup> This data, presented in Appendix II, shows delays in thousands of cases in family courts.

Although the Family Courts Ordinance of 1985 empowers family courts to pass interim orders “for preventing any party from frustrating the purpose of the suit,” judges rarely use this power to grant interim financial relief to women seeking *mahr* or maintenance.<sup>217</sup>

### *Vague Criteria for Granting Maintenance*

Even a protracted legal battle will often guarantee nothing more than small amounts in terms of maintenance. While maintenance awards varied from one case to another, lawyers told Human Rights Watch that they had dealt with cases where family courts had awarded maintenance sums as little as 800 takas (US\$10) per month based on the husband’s capacity to pay and the wife’s needs. One judge said:

In the suit filed by the wife in 1980s, the family court judge ordered a small amount like 2,000 takas (US\$24) maintenance per month.... [On appeal] Supreme Court reduced it to 800 takas (US\$10). Even now [June 2011] the decree has not been executed.<sup>218</sup>

Both the Family Courts Ordinance and personal laws make clear that family court judges can issue orders for maintenance. The scope for doing so varies depending on the religion. As explained in Section II, for Muslims, personal law permits maintenance only during marriage and the 90-day waiting period (or through pregnancy if the wife is pregnant upon divorce). For Hindus, maintenance is available during marriage or separation (there is no divorce). Christian women can seek maintenance during marriage or separation, or after divorce, and during the course of proceedings.

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<sup>216</sup> Human Rights Watch email correspondence with Ishita Islam, Senior Program Specialist, BRAC-HRLS, Dhaka, July 4, July 5, and July 29, 2012. Cases were pending at the pre-trial stage “primarily because of summons, based on BRAC-HRLS field experience.”

<sup>217</sup> Family Courts Ordinance, sec. 16A provides that if a court is satisfied that “immediate action should be taken for preventing any party from frustrating the purpose of the suit, it may make such interim order as it deems fit.” Human Rights Watch learned of only one case in which a family court issued an order for “interim maintenance” in 2011. The interim order was then revoked on appeal by the husband. Human Rights Watch telephone interview with a family court judge (name and details withheld upon request), June 2, 2011.

<sup>218</sup> Human Rights Watch interview with former family court judge (name withheld upon request), Dhaka, June 3, 2011. Courts assessment of the husband’s capacity to pay can also result in larger sums.



Although the laws are clear that judges *can* award maintenance, they are unclear about *how* to determine maintenance amounts and terms. The personal law for Muslims has no codified criteria for setting maintenance amounts except for stating that the husband should maintain his wife “adequately.”<sup>219</sup> For Hindus, the personal law says only that a court setting maintenance should “have regard to the social standing of the parties and the extent of the husband’s means.”<sup>220</sup> For Christians and others who renounced their religion and married under the Special Marriage Act, the Divorce Act says only that a judge granting “alimony” may consider the wife’s “fortune,” the husband’s ability to pay, and the conduct of the parties.<sup>221</sup>

The absence of clear criteria to guide judicial discretion while arriving at maintenance amounts is problematic for women from all religious communities. But Muslim women are in the most precarious position since they are not entitled to post-divorce maintenance, and if they seek maintenance during marriage or separation, husbands can arbitrarily divorce them and cut off their entitlement to maintenance.<sup>222</sup>

Other countries have developed concrete, detailed statutes that guide judges in determining maintenance and provide for some predictability for claimants.<sup>223</sup> Although international and regional treaties do not spell out criteria for determining maintenance awards, one regional body has developed a model law. The Caribbean Community (CARICOM) Model Legislation on Maintenance and Maintenance Orders provides a useful example of maintenance criteria.<sup>224</sup>

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<sup>219</sup> The Muslim Family Laws Ordinance refers to maintenance during marriage, stating that an arbitration council may order maintenance, but gives no criteria for determining maintenance. The law also uses the term “adequately” when discussing husbands’ paying maintenance for their wives. Muslim Family Laws Ordinance, 1961, sec. 9(1).

<sup>220</sup> Hindu Married Women’s Right to Separate Residence and Maintenance Act, 1946, sec. 3.

<sup>221</sup> Divorce Act, 1869, sec. 37.

<sup>222</sup> Human Rights Watch interview with Rehana Sultana, director (legal aid), Bangladesh National Women Lawyers Association, Dhaka, May 26, 2011.

<sup>223</sup> Human Rights Watch telephone interview with Halijah Mohamad, advocate, Singapore, June 5, 2012. As long as the marriage subsists, Muslim wives can seek maintenance under the Women’s Charter. After divorce, Muslim women are entitled to “compensation” or *mutaah* in Singapore in accordance with the Administration of Muslim Law Act. All other women can seek maintenance during and after marriage in accordance with the Women’s Charter. Singapore Women’s Charter, 1961, <http://statutes.agc.gov.sg/aol/search/display/view.w3p?page=0;query=Compld%3A61deee43-1e42-490f-a5ae-33054850e926;rec=0;whole=yes#P1VIII> (accessed April 4, 2012), sec. 69(4) and sec. 114. Section 69(4) states that a court while ordering maintenance should take into account a set of criteria. These include, the financial needs of the wife, the earning capacity (if any) of the wife, physical and mental disability, age at marriage and duration of marriage, and contributions made by each of the parties to the marriage to the welfare of the family, including any contribution made by looking after the home or caring for the family. See also, for example, The South African Divorce Act, 1979, <http://www.justice.gov.za/legislation/acts/1979-070.pdf> (accessed April 4, 2012), sec. 7(2), and the Australian Family Law Act, 1975, [http://www.austlii.edu.au/au/legis/cth/consol\\_act/fla1975114/](http://www.austlii.edu.au/au/legis/cth/consol_act/fla1975114/) (accessed April 4, 2012), sec. 75.

<sup>224</sup> CARICOM Model Legislation on Maintenance and Maintenance Orders, [http://www.caricom.org/jsp/secretariat/legal\\_instruments/model\\_legislation\\_maintenance.jsp](http://www.caricom.org/jsp/secretariat/legal_instruments/model_legislation_maintenance.jsp) (accessed November 15, 2011).

The criteria includes: contributions made by the dependent spouse to realize the other's career potential; the duration of the relationship; the impact of household responsibilities on the earning capacity of the dependent spouse; the effect of childcare responsibilities on the earning capacity and career development of the dependent spouse; current and likely future income of the dependent spouse and respondent; the dependent spouse's capacity to support him or herself; mental and physical health and age of the spouses; the dependent spouse's needs and standard of living; and other means of support.<sup>225</sup>

Human Rights Watch interviews with five former family court judges, lawyers, experts, and individual women indicate that the lack of legal criteria for maintenance in Bangladesh leads to inconsistent practices among judges, unpredictable awards, and a failure to consider women's contributions to households and their economic inequality during and after marriage.

Former judges and lawyers told Human Rights Watch that family courts in Bangladesh primarily consider the husband's "capacity to pay" and "wife's needs" while deciding on maintenance amounts, but there was little clarity about how they assessed these factors.<sup>226</sup>

Former judges told Human Rights Watch that when determining maintenance amounts the law did not require them to consider the wife's loss of educational opportunities and earning capacity because of marriage, work disruption from marriage, child care, other household work, and financial contributions to husbands' businesses or professional training.<sup>227</sup> Discussing one case where the wife and her family gave their entire savings to put her husband through medical school, the judge said that he did not take this contribution into account in setting the maintenance amount because there was no legal mandate to do so.

Other judges told Human Rights Watch that they did not consider the ability of the wife to enter into the labor market upon separation or divorce when setting maintenance amounts, again because the law did not lay down any clear guidelines.<sup>228</sup> Many women cut short

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<sup>225</sup> *Ibid.*, sec. 8(5).

<sup>226</sup> Human Rights Watch interview with former family court judges (names and details withheld upon request), May and June, 2011. Human Rights Watch interviews with Salma Jabin, May 16, 2011; Rehana Sultana, May 24, 2011; and Maksuda Akhter, head of the litigation unit, Bangladesh Mahila Parishad, June 1, 2011.

<sup>227</sup> Human Rights Watch interviews with former family court judges (names and details withheld upon request).

<sup>228</sup> *Ibid.*

education or quit jobs when they marry due to social expectations of women to do household work and family caregiving, putting them at a disadvantage in the labor force later on.

Having a disability or caring for a child with a disability could also leave women with reduced earning capacity at the time of separation or divorce, yet there is no certainty a judge would consider this in determining maintenance. Trishna T., an HIV positive woman, said her husband abandoned her when she was pregnant. She has lived with painful uterine prolapse since giving birth. Unable to work, she depends entirely on her elderly widowed mother. Even a small amount of maintenance would be a tremendous help to their household, but Trishna failed to secure such support through informal mediation, and cannot afford to pursue maintenance in court.<sup>229</sup> Samira S., divorced due to domestic violence, is now unable to find work that accommodates caring for her child with a disability. Her husband pays no child support, and did not pay maintenance during the 90-day period before their divorce was final.<sup>230</sup>

It is also unpredictable whether family courts would consider old age, disability and related ill-health when determining maintenance, despite how this may limit women's ability to earn a living after divorce or separation and despite the fact that older women may have dedicated decades to household work and family caregiving.

#### **MEHBOOBA'S STORY**

I am old—maybe in my 50s—there is no one to even give me a glass of water.

I live all alone.

—Mehbooba M., Muslim, Dhaka, May 24, 2011

The case of Mehbooba M. represents many of the factors that could be relevant to determining maintenance awards. But Mehbooba has no guarantee that the family court will consider these factors when it finally decides her maintenance claim.

Mehbooba, now in her fifties, spent most of her childhood as a full-time domestic worker after her father remarried, abandoning the family. Her employer arranged her marriage to a much older man soon after her *maashik* [commencement of menstruation].

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<sup>229</sup> Human Rights Watch interview with Trishna T. (pseudonym), Muslim, Dhaka, May 18, 2011.

<sup>230</sup> Human Rights Watch interview with Samira S. (pseudonym), Muslim, Madaripur district, May 29, 2011.

Mehbooba did not know that her husband had already been married to another woman for more than 20 years. The first wife knew nothing of his plans to remarry, and took her dismay out on Mehbooba:

She [first wife] did not give me proper food. She beat me. If I complained to him [husband] he beat me too. One time he stripped me naked and dragged me to the pond and pushed me in it. Even after that I continued to stay there. I had nowhere else to go. People told me that if I gave birth things would become better. I had three sons. One day the beatings got so bad that I took my youngest son whom I was breast-feeding and ran from home and gave my husband talaq.

Mehbooba moved with one son to Dhaka. Her husband did not pay her the *mahr* he owed her, maintenance during the 90-day waiting period, or any child support. She did domestic work and later worked at a garment factory. She and her son settled into a Dhaka slum, where she sent him to a *madrassa* because she could not afford regular school.

A few years later Mehbooba married the *mullah* from the *madrassa*, only to discover that he, too, had another wife and four children in his village in Jessore district.

When they lived together in Dhaka, Mehbooba paid the rent. Her husband demanded money, and beat her when she refused. He took all her savings—60,000 takas (US\$731)—and disappeared.

When Human Rights Watch spoke with Mehbooba in May 2011, she had not heard from her husband in four years. An accident in 2009 left Mehbooba with trouble walking and deteriorating health. She was forced to give up her job as a garment worker and turned to domestic work, earning just 2,200 takas (US\$27) per month. She told Human Rights Watch:

I had saved enough money to survive in my old age but now I have nothing... I got nothing from him—not even laal suta [literally, “red thread”]. Do you know what I eat now-a-days? I eat left over pantha bhath [moistened white rice] in the houses where I work.<sup>231</sup>

Fearing for her future, Mehbooba filed a case for *mahr* and maintenance in 2009. She has no indication that the court will decide her case soon. She was not aware of government assistance programs that could help her. She fears the court might not take her full circumstances into account, and she may again be left with nothing.

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<sup>231</sup> Human Rights Watch interview with Mehbooba M. (pseudonym), Muslim, Dhaka, May 24, 2011.

Another vague element of Bangladesh’s personal laws is the notion that the woman must be “chaste” and “dutiful” to be eligible for maintenance. Only the Hindu personal law specifically provides that maintenance and a separate residence will be unavailable if the wife is “unchaste.”<sup>232</sup> The codified Muslim and Christian personal laws say nothing on chastity or dutiful behavior, yet family lawyers and other experts told Human Rights Watch that uncodified personal law continues to condition maintenance on wife’s “marital duty” or “chastity,” leaving it open to discussion in courts.

A law professor from Dhaka University has documented many instances where courts refused Muslim wives’ maintenance claims for failure to perform “marital duties.”<sup>233</sup> Several lawyers said that husbands seeking to avoid paying maintenance allege that wives have failed their “marital duties” by being unfaithful or moving out, implying that they are unavailable for sexual intercourse.<sup>234</sup> However, lawyers have also said that family courts in recent years have awarded maintenance when married women left their marital homes to reside with their parents, especially in cases of dowry harassment, polygamy without their consent, or domestic violence.<sup>235</sup>

### *Burdensome and Unrealistic Court Procedures*

Court procedures, both under the Family Courts Ordinance of 1985 and the Code of Civil Procedure of 1908, should facilitate women’s claims for maintenance or *mahr*. But in practice, courts fail to adhere to some procedures, and certain procedural rules themselves are so burdensome and unrealistic that they defeat valid maintenance claims. The most problematic are the procedures for summons and notice, presenting evidence, and executing family court decrees.

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<sup>232</sup> Hindu Married Women’s right to Separate Residence and Maintenance Act, 1946, sec. 2. This section also says women are disqualified from maintenance and a separate residence if they change religions or fail to comply with an order for restitution of conjugal rights.

<sup>233</sup> Dr. Taslima Monsoor, *Gender Equity and Economic Empowerment: Family Law and Women in Bangladesh* (Dhaka: British Council, 2008), p. 66.

<sup>234</sup> Human Rights Watch interview with Salma Jabin, advocate, Aio-o-Shalish Kendra, Dhaka, May 16, 2011; and Rehana Sultana, director (legal aid), Bangladesh National Women Lawyers Association, Dhaka, May 26, 2011.

<sup>235</sup> Human Rights Watch interviews with lawyers from Bangladesh Mahila Parishad, Bangladesh Legal Aid Services Trust, and Aio-o-Shalish Kendra, Dhaka, May, June, and September 2011.

## Summons and Notice Procedures

For a family court case to proceed, a summons (telling the defendant to appear in court) and notice of the lawsuit must be issued in accordance with the Family Courts Ordinance<sup>236</sup> and the Code of Civil Procedure.<sup>237</sup> Unfortunately, lawyers and former family court judges interviewed by Human Rights Watch unanimously agreed that the summons procedure is fraught with problems and delays, which routinely run into months or years. The problems include courts' failure to adhere to fixed timeframes for summons, demands for bribes by officers who serve the summons, and poor oversight of the process by judges.<sup>238</sup>

The Family Courts Ordinance provides that when a plaint is presented in court, the court will fix a date "ordinarily of not more than 30 days" for the defendant to appear, and issue summons in accordance with the Code of Civil Procedure.<sup>239</sup> The serving officer should follow the procedure laid down in the Bangladesh Code of Civil Procedure, which states that after exercising "due and reasonable diligence" if a defendant's location is unknown or he does not accept service of summons, the officer can affix a copy of the summons on a conspicuous part of a residence where the defendant usually resides or carries on business.<sup>240</sup> Alternatively, where the court is "satisfied that there is reason to believe" that the defendant is avoiding the summons or that it is difficult to serve it following usual procedure, the court can order that a copy of the summons be posted in a prominent place in the court complex, or displayed on a conspicuous part of a residence where the defendant last resided or carried on business (known as substituted service of summons).<sup>241</sup>

In addition to the summons, the court also serves notice of the suit on the defendant with a copy of the plaint. The notice is deemed served when the court receives the defendant's acknowledgement. The Family Courts Ordinance stipulates that if notice was sent properly, it is deemed served after 30 days, whether or not the defendant sends an acknowledgment.<sup>242</sup>

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<sup>236</sup> Family Courts Ordinance, 1985, sec. 7.

<sup>237</sup> Code of Civil Procedure, 1908, order V.

<sup>238</sup> See also, the Law Commission of Bangladesh, "Report on Recommendations for Expediting Civil Proceedings," December 2010, <http://www.lawcommissionbangladesh.org/reports.htm> (accessed November 3, 2011) for additional information on problems with service of summons in Bangladesh.

<sup>239</sup> Family Courts Ordinance, 1985, sec. 7.

<sup>240</sup> Code of Civil Procedure, 1908, order V, rule 17.

<sup>241</sup> Code of Civil Procedure, 1908, Order V, Rule 20.

<sup>242</sup> Family Courts Ordinance, 1985, sec. 9.

If the defendant does not appear on the hearing date, the court can proceed *ex parte* (hearing from only one side) where the plaintiff proves that the summons or notice was duly served, or can direct that a fresh summons and notice be served. If summons and notice were served with insufficient time for the defendant to prepare an answer, the hearing can be postponed for 21 days.<sup>243</sup>

Despite these procedural rules on timing for service summons and notice, and for proceeding *ex parte* if the defendant does not respond or appear, lawyers and former judges told Human Rights Watch that some courts have waited months or years to proceed *ex parte* on claims for maintenance and *mahr*.<sup>244</sup> One lawyer said it took a client two-and-a-half years to get the summons served and in May 2011 they were still waiting for the written response of the defendant-husband. The court has the power to proceed *ex parte* much sooner.<sup>245</sup>

Lawyers and judges also said that service of summons and notice is at times stymied by demands for bribes by the serving officers. “To get summons served, we have to spend at least 500 to 1,000 taka [US\$6-12] as bribe,” said a lawyer with the Bangladesh Mahila Parishad.<sup>246</sup> Another lawyer said:

It is very easy for the husband not to receive the summons. The [husband’s] family can give the server money and tell them to say that no one’s available at the address.<sup>247</sup>

One former judge who oversaw the *nezarat* department (division charged with serving summons) for his family court admitted to Human Rights Watch that there was corruption within the department.<sup>248</sup> Another judge agreed, saying the corruption stemmed from departments

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<sup>243</sup> Family Courts Ordinance, 1985, secs. 7, 8, and 9.

<sup>244</sup> Ibid. Human Rights Watch interviews with former family court judges (name and details withheld upon request), June 2011. Human Rights Watch interviews with Salma Jabin, May 16, 2011; Rehana Sultana, May 26, 2011; and A.N.M. Abdul Rahman, May 21, 2011.

<sup>245</sup> Human Rights Watch interview with Salma Jabin, advocate, Aio-o-Salish Kendra, Dhaka, May 16, 2011.

<sup>246</sup> Human Rights Watch interview with Maksuda Akhter, head of the litigation unit, Bangladesh Mahila Parishad, Dhaka, October 3, 2011.

<sup>247</sup> Human Rights Watch interview with Debashish Dutta, lawyer, Bangladesh National Women’s Lawyers’ Association, Dhaka, May 26, 2011.

<sup>248</sup> Human Rights Watch interview with a former family court judge (name and details withheld upon request), June 2, 2011.

being under-staffed and government failing to reimburse out-of-pocket travel expenses for serving officers.<sup>249</sup>

Poor oversight by judges of the summons and notice procedures also contributes to delays in maintenance and *mahr* cases. Judges are charged with this oversight role, on top of their heavy case load. One former judge said:

A sitting judge is made in charge of the *nezarat* department. He barely has any time to see whether the records are maintained properly, what back-log [in summons] there is, and to take action against process servers who are corrupt.<sup>250</sup>

Several former judges told Human Rights Watch that family court judges do not always have a good grasp of summons and notice procedures, and blamed this on inadequate training and inexperience. They said the family court is often the first assignment for new judges, who generally receive just one week of training for the post. One said:

When you receive one week training you are not sure of the procedure.... So you allow more time for summons, allow more time before *ex parte* decrees are passed.<sup>251</sup>

In its 2010 Report on Recommendations for Expediting Civil Proceedings, the Law Commission of Bangladesh urged that amendments be made to summons and notice procedures. They recommended that service of summons through private courier (instead of government postal service), fax, and email be permitted to speed the process.<sup>252</sup> As part of its review of civil court procedures, the Bangladesh government is now considering amendments to summons and notice procedures.

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<sup>249</sup> Human Rights Watch interview with Syed Aminul Islam, district judge and director, National Legal Aid Authority, Dhaka, September 28, 2011.

<sup>250</sup> Human Rights Watch interview with a former family court judge (name and details withheld upon request), June 2, 2011.

<sup>251</sup> Human Rights Watch interview with a former family court judge (name and details withheld upon request), June 3, 2011.

<sup>252</sup> Law Commission of Bangladesh, "Report on Recommendations for Expediting Civil Proceedings," December 2010, <http://www.lawcommissionbangladesh.org/reports.htm> (accessed November 3, 2011), pp. 2-3.



## Evidentiary Barriers

To successfully claim *mahr* or maintenance in court, women must provide evidence of their marriage.<sup>253</sup> Bangladesh law does not provide for maintenance payments where women cohabited believing themselves to be married but did not legally marry.<sup>254</sup>

Where possible, women should provide documentary evidence of marriage, such as copies of marriage registration.<sup>255</sup> Where documentary proof is not available, courts should allow oral evidence or affidavits, but do not always do so.<sup>256</sup>

Obtaining documentary proof of marriage is difficult for many wives. Hindus have no formal marriage registration, and so official documents are not available. They must provide other evidence—such as witness statements—that they complied with the Hindu religious marriage rites. Muslims and Christians are required to register their marriages. In some cases Muslim couples did not register their marriage.<sup>257</sup> And even where marriages are registered, in practice it is difficult to obtain copies of registration documents, especially for Muslims.

Muslim women interviewed by Human Rights Watch said that when they married, *kazis* had not given them a copy of their marriage registration. Obtaining a copy later, when seeking maintenance or *mahr*, was difficult. There is no computerized database of marriage registrations, making it especially difficult for women who have moved since marriage to obtain copies from another district. Another challenge is cost, not just for the duplicate, but also for improper fees that some *kazis* demand.<sup>258</sup>

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<sup>253</sup> Evidence Act, 1872, sec. 101: “Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist.

When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.”

<sup>254</sup> For more information, see subsections on marriage in section above, titled, “Laws Relating to Marriage, Divorce, and Separation.”

<sup>255</sup> Family Courts Ordinance, 1985, secs. 20, 10, 11, and 12. Section 20 of the Family Courts Ordinance states that the Evidence Act, 1872 will apply as far as sections 10 and 11 are concerned, that is, pre-trial proceeding and trial in camera. Section 12 of the Family Courts Ordinance outlines how witnesses may be examined, and specifically says that witnesses will provide testimony in court in their own words or can permit giving evidence through affidavit.

Evidence Act, 1872, secs. 61, 62, and 64. Section 61 states that a document can be proved through primary or secondary evidence. Section 62 defines primary evidence as “the document itself produced for the inspection of the Court.” Section 64 states that documents must be proved by primary evidence unless otherwise specified in circumstances outlined in section 65.

<sup>256</sup> *Ibid.*, secs. 63 and 65. Section 63 defines secondary evidence as including oral testimony of the contents of the document by someone who has himself seen it. Section 65 of the Evidence Act outlines the circumstances under which “secondary evidence may be given” to “prove the existence, condition, or contents of a document.”

<sup>257</sup> For more information, see above, section titled “Marriage Contracts and Registration” for Muslims in Section II.

<sup>258</sup> Human Rights Watch interviews with Human Rights Watch interviews with Fazlul Huq, secretary, Madaripur Legal Aid Association, Madaripur district, May 29, 2011; Nimmi N. (pseudonym), Muslim, Gazipur, June 4, 2011.

Fazlul Huq, a founder of a legal aid organization in Bangladesh, and who now heads the Madaripur Legal Aid Association, which handles many family law cases, said that some *kazis* tamper with marriage registers if bribed by husbands who want to avoid paying *mahr* or maintenance: “*Kazis* can be purchased. I have seen entire pages from marriage registers torn out.”<sup>259</sup> One *kazi* who spoke to Human Rights Watch admitted to such corruption. On the condition of anonymity, he said:

We do not get any honorarium from the government. We get a percentage of the marriage registration fee and the remaining goes to the government. The inspection process is corrupt and they demand money from us. We have to generate more money somehow so we take bribes.<sup>260</sup>

Although courts should admit oral evidence of marriage, they do not always do so.<sup>261</sup> A lawyer with the Bangladesh Legal Aid Services Trust said that courts are more inclined to allow oral evidence if the wife has children.<sup>262</sup>

Even if a court allows oral evidence of marriage, this often involves calling witnesses, an expensive prospect considering travel and lodging costs. Such costs are not paid by the court or the legal aid fund. Many poor women simply cannot afford to pay for witnesses to travel to courts.<sup>263</sup>

### Executing Court Decrees

Even after a family court has issued a decree on maintenance or *mahr*, women have to petition the court again for an execution decree.<sup>264</sup> The family court can impose fines or even imprisonment for up to three months if the husband fails to pay.<sup>265</sup> Despite these penalties, execution of decrees can be a lengthy process. One lawyer told Human Rights

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<sup>259</sup> Human Rights Watch interview with Fazlul Huq, secretary, Madaripur Legal Aid Association, Madaripur district, May 29, 2011.

<sup>260</sup> Human Rights Watch interview with a *kazi* who has had a license for more than 10 years (name and details withheld upon request), May 2011.

<sup>261</sup> Human Rights Watch interview with Shahana Saili, government lawyer, Madaripur district, May 29, 2011.

<sup>262</sup> Human Rights Watch interview with Farida Yeasmin, May 25, 2011.

<sup>263</sup> Human Rights Watch interview with Rehana Sultana, May 26, 2011.

<sup>264</sup> Family Courts Ordinance, 1985, sec. 16(3).

<sup>265</sup> *Ibid.*, sec. 16.

Watch that a client, frustrated by her long wait for a 2008 maintenance decree to be executed, asked: “Will I get my dues at least before I die?”<sup>266</sup>

Although not specified under the Family Courts Ordinance, in practice when women file petitions for decrees to be executed, judges often require them to show proof that their husband owns property or has a salary or bank accounts. This is difficult for many women.<sup>267</sup> Not all wives have access to such records, especially when their marriage has broken down. Moreover, some husbands acquire and control property, but do not put formal title in their own names. Some put title to land and housing, for example, in their parents’ names as a sign of respect (or in some cases to avoid taxes).<sup>268</sup>

Multi-generational households also pose a challenge. Many lawyers stated that they had cases where married women contributed not just to the “husband’s household,” but to a household that comprised of the husband and her in-laws.<sup>269</sup> The marital home itself in many cases was owned by the father-in-law.

Poverty also posed a considerable challenge. Many activists stated that they felt helpless and were unable to get court orders implemented for poor women seeking *mahr* and maintenance because their husbands were also poor.<sup>270</sup> They agreed that there was a need for a strong mechanism that linked the family court procedures with social assistance where husbands were unable to pay any maintenance.

Petitioning for execution of maintenance and *mahr* decrees can be a lengthy process, and meanwhile many women are in desperate financial need. Family courts can grant interim financial relief,<sup>271</sup> but experts said they seldom do so.

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<sup>266</sup> Human Rights Watch interview with Maksuda Akhter, head of the litigation unit, Bangladesh Mahila Parishad, Dhaka, June 1, 2011.

<sup>267</sup> Human Rights Watch interviews with A.N.M. Abdul Rahman, advocate, Noakhali district, May 21, 2011; and Salma Jabin, advocate, Aio-o-Shalish Kendra, Dhaka, May 16, 2011.

<sup>268</sup> Human Rights Watch interview with Fawzia Karim, advocate, Dhaka, May 19, 2011; Nina Goswami, senior deputy director, Mediation and Rapid Response Unit, Aio-o-Shalish Kendra, Dhaka, May 19, 2011; and Salma Jabin, advocate, Ain-o-Shalish Kendra, Dhaka, May 16, 2011.

<sup>269</sup> Human Rights Watch interviews with Rehana Sultana, director (legal aid), Bangladesh National Women Lawyers Association, Dhaka, May 24, 2011; Farida Yeasmin, deputy director (legal), Bangladesh Legal Aid Services Trust, Dhaka, May 25, 2011; Maksuda Akhter, head of the litigation team, Bangladesh Mahila Parishad, Dhaka, June 1, 2011; and Salma Jabin, advocate, Aio-o-Shalish Kendra, Dhaka, May 16, 2011.

<sup>270</sup> Ibid. Human Rights Watch interview with Khushi Kabir, coordinator, Nijera Kori, Dhaka, May 16, 2011.

<sup>271</sup> Family Courts Ordinance, 1985, sec. 16A.

Lawyers and former family court judges told Human Rights Watch that delays in executing decrees are so common that reforming execution proceedings and developing effective enforcement mechanisms was urgent. In its 2010 report on Recommendations for Expediting Civil Proceedings, the Law Commission of Bangladesh called for filing simultaneous execution petitions with the original suits.<sup>272</sup>

### *“Legal” Harassment*

Husbands who are defendants in *mahr* or maintenance lawsuits sometimes assert counter-claims or file criminal complaints to harass their wives and defeat the claims. These include claims for “restitution of conjugal rights” and criminal theft charges.

### **Restitution of Conjugal Rights**

Bangladesh’s personal laws allow lawsuits for “restitution of conjugal rights.” This legal claim is recognized by family courts for all religions. The Divorce Act (for Christians) provides that when a spouse has “without reasonable excuse withdrawn from the society of the other,” the spouse may apply for restitution of conjugal rights.<sup>273</sup> The Hindu Married Women’s Right to Separate Residence and Maintenance Act states that women are not entitled to maintenance or a separate residence if they fail to comply with a court decree for restitution of conjugal rights.<sup>274</sup> The Muslim Family Laws Rules enable a husband to remarry if his first wife refuses to comply with a court decree for “restitution of conjugal rights.” Family courts have jurisdiction to handle claims for restitution of conjugal rights.<sup>275</sup>

The High Court Division of the Bangladesh Supreme Court has issued conflicting decisions on this issue. At least in three cases the court has held that no court can order a husband and wife to live together because such orders would violate constitutionally guaranteed rights to equality before the law, women’s equality before the state and in public life, and to life, personal liberty, and body.<sup>276</sup>

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<sup>272</sup> Law Commission of Bangladesh, “Report on Recommendations for Expediting Civil Proceedings,” pp. 6-7.

<sup>273</sup> Divorce Act, 1869, sec. 32.

<sup>274</sup> Hindu Married Women’s Right to Separate Residence and Maintenance Act, 1946, sec. 2.

<sup>275</sup> Family Courts Ordinance, 1985, sec. 5(b).

<sup>276</sup> *Sharmin Hossain alias Rupa v. Mizanur Rahman*, 2 BLC 509; *Nelly Zaman v. Giasuddin*, 34 DLR 221; *Sherin Akhter and another v. Md Ismail*, 51 DLR 512.

Family court lawyers and former judges told Human Rights Watch that restitution of conjugal rights claims are often asserted by husbands who want to harass wives, especially those who have petitioned for maintenance or *mahr*.<sup>277</sup> An advocate from the Bangladesh National Women Lawyers Association explained:

Just to avoid paying *mahr* and maintenance, in some cases ... the husband files a counter-suit for restitution of conjugal rights. Most of these cases don't reach the decree stage. Usually the husband will agree during the pre-trial stage not to press his suit for restitution. It is mainly to cause mental torture to the woman, you can say it's like a harassment idea.<sup>278</sup>

While restitution of conjugal rights decrees would violate women's rights irrespective of her religious community, they are especially problematic for Hindu women since divorce is impossible for Hindus. No matter how abusive a Hindu marriage might be, it cannot be dissolved. Women can seek separate residence and maintenance, but their husbands may in turn petition for restitution of conjugal rights.<sup>279</sup>

### Theft Charges

Activists and lawyers told Human Rights Watch that in some cases when women left their marital homes and petitioned for maintenance or *mahr*, husbands filed criminal theft charges, claiming that their wives stole personal property when they left. The women then had to spend time, energy, and money defending themselves in criminal courts.

A lawyer with Bangladesh Legal Aid Services Trust (BLAST) who has helped women with their maintenance and *mahr* claims for years said many wives are falsely charged with

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<sup>277</sup> Human Rights Watch interview with Farhana Afroz, senior staff lawyer in the litigation unit, Aio-o-Shalish Kendra, Dhaka, May 16, 2011; Human Rights Watch interview with a former family court judge (name and other details withheld as upon request), May 2011. See also Alamgir Muhammad Serajuddin, "Judicial Activism and Family Law in Bangladesh," 2009, Professor Mahfuza Khanam and Barrister Shafique Ahmed Trust Fund Lecture, Asiatic Society of Bangladesh, [http://www.asiaticsociety.org.bd/journals/June\\_2010/contents/03\\_Alamgir%20Muhammad%20Serajuddin.htm#\\_ftn1](http://www.asiaticsociety.org.bd/journals/June_2010/contents/03_Alamgir%20Muhammad%20Serajuddin.htm#_ftn1) (accessed January 15, 2011). Lawyers told Human Rights Watch that in a few instances married women are forced to use the remedy of restitution of conjugal rights when husbands do not respond to maintenance and *mahr* requests.

<sup>278</sup> Human Rights Watch interview with Rehana Sultana, director (legal aid), Bangladesh National Women Lawyers Association, Dhaka, May 24, 2011.

<sup>279</sup> Hindu Married Women's Right to Separate Residence and Maintenance Act, 1946, sec.2.

theft for having fled from their marital homes with their personal jewelry, clothes, and cash. “We receive 30 to 50 such theft cases every year,” she said.<sup>280</sup>

Recalling another case where a wife left her marital home after she was brutally beaten, a mediation expert from BLAST said their client started mediation for maintenance and *mahr*. But before this was completed, the husband filed criminal charges, alleging that she stole 160,000 takas (US\$ 1,951) worth of cash, gold jewelry worth four lakh takas (US\$4,884), land documents, and clothes valued at 40,000 takas (US\$488).<sup>281</sup>

Lawyers who have defended married women and their families in such cases said that in most cases the husband did not press for prosecution because he settled the case outside court, and the court eventually dismissed the case.<sup>282</sup> In some cases, where the women were arrested, the court released them on bail or charges were dropped.

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<sup>280</sup> Human Rights Watch interview with Farida Yeasmin, deputy director (legal), Bangladesh Legal Aid Services Trust, Dhaka, May 25, 2011.

<sup>281</sup> Human Rights Watch interview with Taposhi Rabeya, assistant coordinator (mediation), Bangladesh Legal Aid Services Trust, Dhaka, May 25, 2011.

<sup>282</sup> Human Rights Watch group interview with Farida Yeasmin, deputy director (legal), M.D.Barkat Ali, assistant director (legal), and Taposhi Rabeya, assistant coordinator (mediation), Bangladesh Legal Aid Services Trust, May 25, 2011; group discussion with 20 legal aid panel lawyers from BLAST, April 2, 2011.

## V. State Assistance to Divorced and Separated Women, and Women Facing Domestic Violence

Fixing personal laws and court procedures to help married women secure maintenance, *mahr*, or a share of marital property would help tremendously. But for some, this would not be enough to provide economic security. In families with few assets or where the husband has little or no income, divorced, separated, or abandoned women need the option of support from state social assistance programs. Many will go on to find jobs and be able to support their families, but in the critical period after marital breakdown, they need immediate access to social assistance.

This section looks at the state's role in alleviating the adverse economic impact of divorce and separation. Bangladesh has undertaken important measures, such as establishing women's shelters, creating social assistance programs for female-headed households, and ensuring that some land distribution programs benefit women. But at the same time, these programs are not reaching many women who need them, and some laws and programs (especially vagrancy laws criminalizing homelessness and a land distribution program requiring that women have an "able-bodied" male) undermine these positive measures.

### Government Women's Shelters

Access to temporary government shelters is critical for those women who want to leave violent marriages<sup>283</sup> or are forced out of their marital homes after divorce, separation, or abandonment.

Bangladesh has established women's shelters, but advocates and officials say there are not enough to meet the needs. An official from the Ministry of Women and Child Affairs told Human Rights Watch that the ministry runs seven shelters—one shelter in each division—for

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<sup>283</sup> See also the Domestic Violence (Prevention and Protection) Act, 2010, sec. 15. This law has created some other measures to secure housing for a victim of domestic violence. A court may issue a residence order ordering the perpetrator to allow exclusive or part access to the "shared residence." The court may also order the perpetrator to arrange for alternative accommodation or pay rent for an alternative accommodation where the "shared residence" is deemed unsafe for the victim. The law also obliges the government to create shelter homes that victims of domestic violence may be referred to as a temporary measure.

women and children. Each shelter can house 50 women and 100 children for up to six months. While this is positive, the official said that more shelters are needed at the district level:

What is the use of having one shelter in every division? Women are not going to travel all the way to the division headquarters when they want a shelter.... We need at least one shelter in every district to help women in distress. And these shelters should be linked to income-generating programs for women.<sup>284</sup>

## Vagrant Homes

The government also runs six “vagrant homes” across Bangladesh. These homes were established under the Bengal Vagrancy Act of 1931, which has since been replaced by the Vagrants and Shelterless Persons (Rehabilitation) Act of 2011. On the one hand this law is supposed to help “rehabilitate” people declared by courts as “vagrants,” give them temporary shelters, and curb criminal gangs that use poor people for begging.<sup>285</sup> On the other hand, the law is so vague that it can be used to arbitrarily detain and restrict individuals’ freedom of movement, punishing them for poverty and homelessness on the pretext of “rehabilitation.” In this manner the vagrancy law acts as a status law, criminalizing individuals who are poor and homeless rather than criminal behavior. Such laws offend basic principles of fairness and legality, enshrined in international standards. For a criminal law to be legitimate it should target specific conduct accompanied by the requisite intent. Human rights standards and the rule of law require that the law be foreseeable and predictable, obligating states to define precisely and in a foreseeable manner all criminal offences.<sup>286</sup> The vagrancy law does not meet these standards.

The law defines vagrants as persons engaged in begging, who are shelterless and have no place to stay at night, or who are wandering about without any specific purpose and

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<sup>284</sup> Human Rights Watch interview with a senior government official from the Ministry of Women and Child Affairs who is part of a team that implements the Multisectoral Program on Violence Against Women (name withheld upon request), Dhaka, October 5, 2011.

<sup>285</sup> The 2011 law replaced the Vagrancy Act, 1943.

<sup>286</sup> The requirement of “clarity” of the law is to be found in two aspects of human rights law. Firstly, it is required when defining proscribed criminal behavior in penal statutes, a doctrine often referred to as the “void for vagueness” doctrine enshrined in article 15 of the ICCPR (International Covenant on Civil and Political Right). And secondly, it is required in the limitations on the enjoyment of certain fundamental rights, which must be prescribed by, established by, or in accordance with “law” (such as those enshrined in articles 17 – 22 of the ICCPR). Manfred Nowak, UN Covenant on Civil and Political Rights: CCPR Commentary, 2nd rev. ed., (Kehl am Rhein: Engel, 2005), p.361.



thereby creating nuisance to the public.<sup>287</sup> But it excludes those who receive food, financial help, or any gift on charitable or religious grounds and use it for that purpose.<sup>288</sup> Penalties for vagrancy include detention in a “rehabilitation center” for up to two years and imprisonment for up to three months for those who escape from such centers.<sup>289</sup>

While women who are forced out of their marital homes upon separation or divorce often end up staying with relatives or friends, and eventually may secure independent housing, some do live and beg on the streets. Human Rights Watch interviewed several women who lived on the streets when their marriages fell apart.<sup>290</sup> Women like them might easily face criminal penalties and be detained in “rehabilitation centers.”

Human Rights Watch spoke with officials from the Department of Social Services, which oversees these centers, about women detained in them subject to the vagrancy law. They confirmed that female “vagrants” were in these homes, but would not explain their circumstances. When specifically asked whether vagrant homes also housed any divorced or separated women, one official said, “Such cases are rare but do happen. We may have four or five such cases.”<sup>291</sup>

## Social Assistance Programs

Bangladesh does not have an overarching law governing social assistance, but it does have a host of social assistance programs.<sup>292</sup> But according to UNDP (United Nations

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<sup>287</sup> Vagrant and Shelterless Persons (Rehabilitation) Act, 2011, sec. 2 (14). Human Rights Watch email communication with Sara Hossain, advocate and women’s rights activist, Bangladesh Legal Aid and Services Trust, Dhaka, October 7, 2011; email communication with Nina Goswami, senior deputy director, Mediation and Rapid Response Unit, Aio-o-Shalish Kendra, Dhaka, May 25, 2011.

<sup>288</sup> *Ibid.*

<sup>289</sup> Vagrant and Shelterless Persons (Rehabilitation) Act, 2011, sec. 10 (3)(b) and sec. 22(1)(b).

<sup>290</sup> Human Rights Watch interviews with Aseema S. (pseudonym), Muslim, Noakhali district, May 20, 2011; Zubaida Z. (pseudonym), Muslim, Noakhali district, May 20, 2011; Fatima F. (pseudonym), Muslim, Noakhali district, May 20, 2011; and Sherine S. (pseudonym), Muslim, Noakhali district, May 21, 2011.

<sup>291</sup> Human Rights Watch interviews with two officials from the department of social services who were part of the team that oversaw or managed vagrant homes (names and details withheld upon request), Dhaka, October 3, 2011.

<sup>292</sup> These include social benefits in connection with old age, widowhood, desertion, disability, and maternity. Bangladesh has also linked employment to social protection through employment generation programs. Of the 30 different social assistance programs, seven are focused on helping poor women. For more information see UNDP and Power and Participation Research Centre (PPRC), “Social Safety Nets in Bangladesh, Volume 1,” February 2012, <http://www.undp.org.bd/info/pub/PPRC%20Social%20Safety%20Nets%20in%20Bangladesh.pdf> (accessed May 22, 2012), pp. 38-42; Bangladesh Ministry of Social Welfare, “Old Age Allowances,” [http://www.dss.gov.bd/index.php?option=com\\_content&view=article&id=59:old-age-allowances&catid=39:social-cash-transfer&Itemid=71](http://www.dss.gov.bd/index.php?option=com_content&view=article&id=59:old-age-allowances&catid=39:social-cash-transfer&Itemid=71) (accessed February 21, 2012).

Development Program) “only about 23 percent of the ten percent of the poorest households are reached by any kind of social safety net programme.”<sup>293</sup>

Despite the overall problem of social exclusion, some of these social assistance schemes could benefit separated and divorced women in economic need.<sup>294</sup> One social assistance program is a government cash allowance for “widows, husband-deserted, and destitute women” of 300 takas (US\$4) per month if they meet financial need criteria.<sup>295</sup>

While there is little government data on access to social assistance programs by separated and divorced women, Human Rights Watch interviews with women and with local officials who administer social programs indicate that there are significant barriers. These include lack of awareness, uneven coverage, and misuse of funds. Moreover, social assistance programs do not adequately address intersecting vulnerabilities, such as disability, abandonment, and ill health. The Planning Commission of Bangladesh has found that “the main challenges of implementing social protection programs are coverage issues, targeting beneficiaries, leakages, and disparity in regional distribution.”<sup>296</sup>

Many women who might have been eligible for the “deserted” women allowance told Human Rights Watch that they were not aware of the program. None had received any government assistance from this program.

Samira S., for example, said her husband threw her out of their marital home because she gave birth to a child with a disability, and they later divorced. Samira is unable to find work that enables her to also care for her child, and her husband has not paid child support.

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<sup>293</sup> Human Rights Watch email communication with Stefan Priesner, UNDP country director for Bangladesh, Dhaka, May 31, 2012.

<sup>294</sup> Recent studies of social safety net schemes in Bangladesh are available and in-depth analysis of the different social assistance programs is beyond the scope of this report. For the most recent studies, see UNDP and PPRC, “Social Safety Nets in Bangladesh, Volumes 1 and 2,” February 2012, <http://www.undp.org.bd/info/pub/PPRC%20Social%20Safety%20Nets%20in%20Bangladesh.pdf> and <http://www.undp.org.bd/info/pub/Social%20Safety%20Net%20Volume-2%20qxd.pdf> (accessed May 22, 2012).

<sup>295</sup> Ministry of Social Welfare, Department of Social Services, “Allowances for Widow and Husbands’ Deserted Women,” [http://www.dss.gov.bd/index.php?option=com\\_content&view=article&id=62:allowances-for-widow-and-husbands-deserted-destitute-women&catid=39:social-cash-transfer&Itemid=71](http://www.dss.gov.bd/index.php?option=com_content&view=article&id=62:allowances-for-widow-and-husbands-deserted-destitute-women&catid=39:social-cash-transfer&Itemid=71) (accessed February 22, 2012). See UNDP and PPRC, “Social Security Nets in Bangladesh, Volume 2,” p. 62. Each beneficiary may be entitled to 18,000 takas (US\$220) over a five-year period of support.

<sup>296</sup> *Ibid.*

She told Human Rights Watch that she was not aware of any social assistance programs and did not know whom to approach.<sup>297</sup>

Several women said they knew some government assistance programs existed, but when they sought help, they were turned away for questionable reasons. For example, Trishna T.'s husband abandoned her, and she and her three-year-old daughter now depend on her widowed mother, who has a meager salary from domestic work and a small widow's allowance. Trishna has a painful disability and is unable to work. Trishna approached her local *union parishad* members for help, asking if she could access any social assistance programs. But they told her she was barred from assistance because her mother already received the widow's allowance.<sup>298</sup>

Family courts are clearly a place that women in need of social assistance may visit, yet there is no systematic effort to ensure that these courts are linked to social assistance programs in any way. None of the women Human Rights Watch interviewed who had pending matters in family courts knew of the allowance for deserted women. The court administration did nothing to link women with these programs or provide basic information about these programs.

Aside from information barriers, access to social assistance may also be hampered by bureaucratic inefficiencies and misuse of funds. The cash allowance is administered through local governments, including *union parishads*. Several *union parishad* members told Human Rights Watch that they decided which deserted or widowed women should receive funds, but sometimes the ministry was delayed in disbursing these funds. At the time Human Rights Watch spoke with them in May 2011, the 2011 disbursements were yet to be made.<sup>299</sup>

Once the funds are disbursed to local government officials, there appears to be no guarantee that they will reach the neediest members of the community. In fact, more than three dozen women interviewed by Human Rights Watch (individually and in small groups) said

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<sup>297</sup> Human Rights Watch interview with Samira S. (pseudonym), Muslim, Madaripur district, May 29, 2011.

<sup>298</sup> Human Rights Watch interview with Trishna T. (pseudonym), Muslim, Dhaka, May 18, 2011.

<sup>299</sup> Human Rights Watch interview with two men and two women union parishad members (names and details withheld upon request), May 23, 2011.

that they knew of cases from their communities where a *union parishad* member chose relatives and friends as beneficiaries for such programs, not necessarily based on need.<sup>300</sup>

The most recent UNDP-sponsored study of social assistance programs in Bangladesh found that planned coverage for cash allowance programs is about 32 percent, and it recorded a 21 percent “inclusion error” in the cash allowance scheme for widows, deserted, and destitute women.”<sup>301</sup> It also found that the scheme had leakages because many women reported paying an unofficial and improper “entry fee” to receive benefits. The “entry fee” burden was significantly higher in the poor districts, “indicating a more intense competition among the poor for the limited allowance cards available.”<sup>302</sup> The average size of the “entry fee” for such cash transfer schemes was 2,000 takas (US\$24) in the poorer districts compared to 1,500 takas (US\$ 18) in the less poor districts. <sup>303</sup>

The Bangladesh Planning Commission acknowledges shortcomings in Bangladesh’s approach to social assistance. It has stated that the government will devise “coherent and integrated national social protection strategy” between 2011 and 2015.<sup>304</sup>

## Land Distribution Programs

Another state program that could help divorced or separated women attain economic security is the program for distribution of *khas* (state-owned) land. This program—established by the 1987 Land Reform Action Program—is intended to benefit landless communities, and female-headed households are eligible. However, activists told Human Rights Watch that the government policy restricts distribution of *khas* land only to those female-headed households that have a *shokkhom purush* (an able-bodied male).<sup>305</sup>

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<sup>300</sup> Human Rights Watch interviews with Amina A. (pseudonym), Muslim, Dhaka, May 18, 2011; Hena H. (pseudonym), Muslim, May 21, 2011. Human Rights Watch group interviews with 18 women in small groups, (location withheld), May 21, 2011; interview with Afroza A. (pseudonym), Muslim, (location withheld), May 22, 2011; group interview with 16 Hindu women, (location withheld), May 22, 2011.

<sup>301</sup> UNDP and PPRC (Power and Participation Research Centre), “Social Safety Nets in Bangladesh, Volume 2,” February 2012, <http://www.undp.org.bd/info/pub/Social%20Safety%20Net%20Volume-2%20qxd.pdf> (accessed May 22, 2012), pp. 43 and 56.

<sup>302</sup> UNDP and PPRC, Social Safety Nets in Bangladesh, Volume 2, pp. 59-60. 50-80 percent of women in the poor districts reported paying “entry fees” compared to 7-20 percent in the less poor districts.

<sup>303</sup> *Ibid.*, p. 60.

<sup>304</sup> Planning Commission, Sixth Five Year Plan, p. 168.

<sup>305</sup> Human Rights Watch interview with Khushi Kabir, coordinator, Nijera Kori, Dhaka, May 16, 2011.

Despite repeated calls to the government to rid its land distribution program of this discriminatory treatment of female-headed households, it has yet to revise the policy.<sup>306</sup> The director of the NGO Association for Land Rights and Development told Human Rights Watch:

Female-headed households will be able to access *khas* land provided they have a male child. We have raised this with the government. In principle the government agrees that this is discrimination and has to go, but no amendments yet.<sup>307</sup>

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<sup>306</sup> Ibid.

<sup>307</sup> Human Rights Watch interview with Shamsul Huda, director, Association of Land Rights and Development, March 30, 2011.

## VI. Bangladesh's Obligations under International Law

Bangladesh is party to a number of binding international human rights treaties relevant to marriage and its dissolution. These include the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW);<sup>308</sup> the Option Protocol to CEDAW;<sup>309</sup> the International Covenant on Civil and Political Rights (ICCPR);<sup>310</sup> the International Covenant on Economic, Social and Cultural Rights (ICESCR);<sup>311</sup> the Convention on the Rights of Persons with Disabilities (CRPD);<sup>312</sup> and the Convention on Consent to Marriage, Minimum Age of Marriage, and Registration of Marriages.<sup>313</sup> The Bangladesh government has also committed to implementing other international standards and goals that address gender equality, including the Beijing Platform for Action<sup>314</sup> and the UN Millennium Development Goals.<sup>315</sup>

### Right to Equality during Marriage and at Its Dissolution

International human rights law explicitly guarantees equality within and after marriage. Article 16 of CEDAW obliges states to take all appropriate measures to eliminate discrimination against women in “all matters relating to marriage and family relations,” and to ensure “the same rights and responsibilities during marriage and at its dissolution.”<sup>316</sup> The impact of

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<sup>308</sup> Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted December 18, 1979, G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, entered into force September 3, 1981, acceded to by Bangladesh on November 6, 1984. Bangladesh currently has a reservation to articles 2 and 16(1)(c), “The Government of the People’s Republic of Bangladesh does not consider as binding upon itself the provisions of article 2, [... and ...] 16 (1) (c) as they conflict with *Sharia* law based on Holy Quran and Sunna.”

<sup>309</sup> Optional Protocol to the Convention on the Elimination of Discrimination against Women, adopted October 6, 1999, G.A. res. 54/4, annex, 54 U.N. GAOR Supp. (No. 49) at 5, U.N. Doc. A/54/49 (Vol. I) (2000), entered into force December 22, 2000. Bangladesh ratified the Optional Protocol on September 6, 2000.

<sup>310</sup> International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S.171, entered into force March 23, 1976. Bangladesh acceded to the ICCPR on September 28, 2000.

<sup>311</sup> International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force January 3, 1976. Bangladesh acceded to the ICESCR on October 12, 1999.

<sup>312</sup> Convention on the Rights of Persons with Disabilities (CRPD), adopted December 13, 2006, G.A. Res. 61/106, entered into force May 3, 2008. Bangladesh ratified the CRPD on November 30, 2007.

<sup>313</sup> Convention on Consent to Marriage, Minimum Age of Marriage, and Registration of Marriages.

<sup>314</sup> Fourth World Conference on Women, Beijing Declaration and Platform for Action, 1995, <http://www.un.org/womenwatch/daw/beijing/pdf/BDPfA%20E.pdf> (accessed November 28, 2011).

<sup>315</sup> UN Millennium Declaration, September 18, 2000, G.A. Res. 55/2, U.N. GAOR, 55th Sess., Supp. No. 49, at 4, U.N. Doc. A/55/49 (2000).

<sup>316</sup> CEDAW, art. 16(1)(c).

Bangladesh's reservations to CEDAW are discussed in detail below. Article 23 of the ICCPR also guarantees equality between spouses "during marriage and at its dissolution."

International human rights law obligates states to ensure *substantive*, not just *formal*, equality. The CEDAW Committee (the expert group that monitors implementation of CEDAW) has explained that this means governments should foster an "enabling environment" where there can be "equality in results."<sup>317</sup> It has said that states must also take into account biological, social, and cultural differences between men and women, and can provide differential treatment under some circumstances.<sup>318</sup> In order to achieve substantive equality, authorities can take "affirmative action in order to diminish conditions which cause or perpetuate discrimination" or "preferential treatment in specific matters" to correct *de facto* discrimination. Such differential treatment should not be seen as discrimination.<sup>319</sup> On the contrary the CEDAW committee has stated that "identical or neutral treatment of women and men might constitute discrimination against women if such treatment resulted in or had the effect of women being denied the exercise of a right because there was no recognition of the pre-existing gender-based disadvantage and inequality that women face."<sup>320</sup>

States cannot invoke religion or custom to justify sex-based discrimination in marriage. In an authoritative interpretation of the principle of equality within marriage, the CEDAW committee stated that "whatever the legal system, religion, custom or tradition within the country, the treatment of women in the family both at law and in private must accord with the principles of equality and justice for all people."<sup>321</sup> The UN Human Rights Committee (the expert group that monitors implementation of the ICCPR) has stated that governments should ensure that "traditional, historical, religious or cultural attitudes are not used to justify violations of

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<sup>317</sup> UN Committee on the Elimination of Discrimination against Women (CEDAW Committee), General Recommendation No. 25, Temporary special measures (2004), HRI/GEN/1/Rev.9 (Vol.II), p. 365, [http://www.un.org/womenwatch/daw/cedaw/recommendations/General%20recommendation%2025%20\(English\).pdf](http://www.un.org/womenwatch/daw/cedaw/recommendations/General%20recommendation%2025%20(English).pdf) (accessed August 27, 2011), para. 8.

<sup>318</sup> *Ibid.*

<sup>319</sup> UN Human Rights Committee, General Comment No. 18 on Non-discrimination (1989), [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/3888b0541f8501c9c12563ed004b8d0e?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/3888b0541f8501c9c12563ed004b8d0e?Opendocument) (accessed August 27, 2011), para. 10.

<sup>320</sup> CEDAW Committee, General Recommendation No. 28, Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women (2010), CEDAW/C/2010/47/GC.2, <http://www2.ohchr.org/english/bodies/cedaw/docs/CEDAW-C-2010-47-GC2.pdf> (accessed April 7, 2012), para. 5.

<sup>321</sup> CEDAW Committee, General Recommendation No. 21, Equality in marriage and family relations (1994), HRI/GEN/1/Rev.9 (Vol.II), p. 337, <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom21> (accessed August 27, 2011), para. 13.

women’s right to equality before the law” and to equal enjoyment of all rights guaranteed under the ICCPR.<sup>322</sup> Moreover, article 5(a) of CEDAW obliges states to:

Modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.

Bangladesh’s personal laws do not guarantee equality within a marriage. As explained below, elements of Bangladesh’s laws that contravene its human rights obligations on nondiscrimination in marriage and the family include: the absence of full and free consent to marriage and the legal recognition of polygamy; unequal divorce criteria for men and women; women’s inability to claim marital property upon divorce; barriers to women accessing maintenance; and the lack of mandatory marriage registration. Bangladesh also falls short of international law by providing no legal protections for women who believed their marriage was legally valid and cohabited, but failed to prove a lawful marriage in court.

### *Bangladesh’s Reservations to CEDAW*

Bangladesh has entered a reservation to articles 2 and 16 of CEDAW, which address the basic obligation of states to eliminate discrimination under law (article 2) and to eliminate discrimination in marriage and family relations (article 16). The reservation states that the government of Bangladesh does not consider articles 2 and 16 binding as they conflict with Shari’a law. The CEDAW committee has said that reservations to these articles are incompatible with the object and purpose of the convention, are therefore impermissible under international law and should be withdrawn. It has repeatedly called on Bangladesh to withdraw its reservations.<sup>323</sup> In 2010 the government said in its report to the CEDAW committee that “withdrawal of the reservations...was under consideration.”<sup>324</sup>

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<sup>322</sup> UN Human Rights Committee, General Comment No. 28, para. 5.

<sup>323</sup> CEDAW Committee, “Concluding observations of the Committee on Elimination of Discrimination Against Women, Bangladesh,” 48<sup>th</sup> session, January 17–February 4, 2011, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/417/30/PDF/G1141730.pdf?OpenElement> (accessed December 5, 2011), para. 11; CEDAW Committee, “Concluding observations of the Committee on Elimination of Discrimination Against Women, Bangladesh,” 31<sup>st</sup> session, June 2004, <http://www2.ohchr.org/english/bodies/cedaw/docs/co/BangladeshCO31.pdf> (accessed December 5, 2011), para. 236.

<sup>324</sup> Combined sixth and seventh periodic report of States parties, Consideration of reports submitted by states parties under article 18 of CEDAW, CEDAW/C/BGD/6-7, March 2010, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N10/288/51/PDF/N1028851.pdf?OpenElement> (accessed December 5, 2011), para. 68.



The question of compatibility of reservations with human rights treaties has been addressed by the UN Human Rights Committee, which has noted that reservations are subject to the Vienna Convention on the Law of Treaties, which provides (in article 19(3)) that reservations may not be incompatible with the object and purpose of the treaty.<sup>325</sup> This means that reservations that offend peremptory norms and provisions that represent customary international law may not be the subject of reservations. Equally reservations to obligations to respect and ensure the rights in a treaty or to take the necessary steps at the domestic level to give effect to the rights in a treaty (as Bangladesh's reservation purports to do) are not acceptable.<sup>326</sup> The committee drew particular attention to the types of reservations, like Bangladesh's, that are widely formulated and in practical terms render ineffective the rights which would require any change in national law.<sup>327</sup>

### *Polygamy*

The UN Human Rights Committee has stated that “polygamy violates the dignity of women” and that “it is an inadmissible discrimination against women” which “should be definitely abolished wherever it continues to exist.”<sup>328</sup> The CEDAW committee has also stated:

Polygamous marriage contravenes a woman's right to equality with men, and can have such serious emotional and financial consequences for her and her dependents that such marriages ought to be discouraged and prohibited.<sup>329</sup>

Bangladesh's personal laws permit polygamy for Muslim and Hindu men. This violates women's right to equality. In situations where a man misrepresents his marital status and marries again, the subsequent wife or wives' right to full and free consent to marriage (also guaranteed by CEDAW, the ICCPR, and other treaties) is also violated.<sup>330</sup>

Human Rights Watch found that in many cases women in polygamous marriages experienced domestic violence, calling into question the Bangladesh government's efforts to

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<sup>325</sup> General Comment No. 24: Issues relating to reservations made upon ratification or accession to the Covenant or the Optional Protocols thereto, or in relation to declarations under article 41 of the Covenant, April 11, 1994, para. 6, HRI/GEN/1/Rev.9 (Vol.I), p. 210.

<sup>326</sup> *Ibid.*, paras. 8 and 9.

<sup>327</sup> *Ibid.* para. 12.

<sup>328</sup> UN Human Rights Committee, General Comment No. 28, para. 24.

<sup>329</sup> CEDAW Committee, General Recommendation No. 21, para. 14.

<sup>330</sup> CEDAW, art. 16(b); ICCPR, art. 23(3); ICESCR, art. 10(1).

prevent violence against women. For example, the Bangladesh government has failed to enforce legal pre-conditions for husbands to remarry, the failure of which contributes to domestic violence. In its General Recommendations 19 and 28, the CEDAW committee emphasized that states may be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence.<sup>331</sup>

### *Unequal Divorce Criteria for Men and Women*

The obligations of states to ensure the same rights of men and women during marriage “and at its dissolution” include an obligation to ensure that laws do not set higher barriers to divorce for women than for men.

The personal laws that allow divorce, namely for Muslims and Christians, make access to divorce much more restrictive for women than for men. Muslim men have an absolute right to repudiate marriage through *talaq*, whereas a woman can only do so if her husband agrees to this in the marriage contract. Muslim women can also divorce through *mubara’at* (where both parties agree) or *khula* (where the wife seeks divorce and the husband must consent) and many argue that they have to give some consideration (usually money or foregoing claims to *mahr*) to get the husband to consent under the *khula* form. Women can also approach courts for divorce pursuant to the Dissolution of Muslim Marriages Act. Divorce under the Dissolution of Muslim Marriages Act involves court intervention, which renders the process expensive and time-consuming. The law also restricts the circumstances under which women can seek divorce.

Christians can divorce pursuant to the Divorce Act, which allows a husband to divorce his wife for adultery alone, but sets more onerous conditions for wives to seek a divorce, as outlined above.

### *Lack of Legal Recognition of Marital Property*

Women’s right to equality during marriage and at its dissolution includes their right to marital property. Article 16 of CEDAW requires that states ensure: “The same rights for both

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<sup>331</sup> CEDAW Committee, General Recommendation No. 28 on the Core Obligations of States Parties under Article 2, October 2010, CEDAW/C.2010/47/GC.2, para. 19.

spouses in respect of ownership, acquisition, management, administration, enjoyment and disposition of property.”<sup>332</sup>

The UN Human Rights Committee has stated that equality within marriage means equality “in all aspects of marriage,” including “administration of assets.” It also has stated that:

States parties must ensure that the matrimonial regime contains equal rights and obligations for both spouses with regard to...ownership or administration of property, whether common property or property in the sole ownership of either spouse.

It urged states to review their legislation to ensure that married women have equal rights in regard to ownership and administration of property.<sup>333</sup>

The Committee on Economic, Social and Cultural Rights (the CESCR), which monitors implementation of the ICESCR, has also stated that governments must ensure that women have an equal right to marital property.<sup>334</sup>

The CEDAW committee has specifically rejected the notion that women should not have equal rights to marital property because of social or religious expectations that husbands will support their wives. It has stated that laws on division of marital property are discriminatory if they allow a greater share to the man on the premise that the “man alone is responsible for the support of the women and children of his family” and “will honorably discharge this responsibility.”<sup>335</sup> Noting that many countries allow marital property to be divided when a marriage is dissolved, the committee criticized those countries that recognize married women’s financial, but not non-financial, contributions.<sup>336</sup> It recommended that states give equal weight to financial and non-financial contributions made by women in marriage, including raising children, caring for elderly relatives, and discharging household duties.<sup>337</sup>

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<sup>332</sup> CEDAW, art. 16(1)(h).

<sup>333</sup> UN Human Rights Committee, General Comment No. 28, para. 25.

<sup>334</sup> UN Committee on Economic, Social and Cultural Rights, General Comment No. 16, The equal right of men and women to the enjoyment of all economic, social and cultural rights, E/C.12/2005/4, 2005, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G05/435/39/PDF/G0543539.pdf?OpenElement> (accessed August 27, 2011), para. 27.

<sup>335</sup> CEDAW Committee, General Recommendation No. 21, para. 28.

<sup>336</sup> *Ibid.*, paras. 30-33.

<sup>337</sup> *Ibid.*, para. 32.

Bangladesh's laws completely disregard women's contributions to the marital household and husband's property, instead recognizing a strict *de facto* separate property regime.<sup>338</sup> Barring the limited but important recognition afforded to the marital home or shared residence and the concept of "economic loss" under the 2010 law against domestic violence, there are no laws that specifically define and address women's equal rights to control and use marital property during marriage, and division of marital property upon dissolution of marriage.<sup>339</sup> The marriage contract for Muslims may be used creatively to introduce rules regarding marital property. In practice, men almost always retain marital homes, land, and other property upon separation or divorce, despite women's contributions. The lack of legislation on marital property violates women's right to equality in marriage and at its dissolution. It also interferes with women's right to an adequate standard of living,<sup>340</sup> including adequate housing, since women are often forced out of their marital homes and into poor housing conditions upon dissolution of marriage. The CEDAW committee, in its last review of Bangladesh's compliance with the treaty, asked about division of marital property at the time of divorce. The committee suggested that Bangladesh adopt a "progressive approach to improve women's rights in such areas, even under an overall regime of personal status legislation." It also suggested that:

All economic consequences of marriage could be redefined as civil contractual matters, and the concept of sharing in marital property could be drawn from the implied contracts theory that could be attributed to every marriage.<sup>341</sup>

### *Barriers to Securing Maintenance*

Although international human rights treaties do not specifically address access to spousal maintenance, women's ability to access such support is critical to their right to nondiscrimination in marriage and at its dissolution.

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<sup>338</sup> The Married Women's Property Act of 1874, which applies to Christians, recognizes that married women's property is separate.

<sup>339</sup> Domestic Violence (Prevention and Protection) Act, 2010, secs. 10 and 15.

<sup>340</sup> ICESCR, art.11 read with the Committee on Economic, Social and Cultural Rights, 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 International Covenant on Economic, Social and Cultural Rights), 2005, E/C.12/2005/4, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G05/435/39/PDF/G0543539.pdf?OpenElement> and 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), 2009, E/C.12/GC/20, <http://www2.ohchr.org/english/bodies/cescr/comments.htm>.

<sup>341</sup> CEDAW Committee, "Consideration of reports submitted by States parties under article 18 of the Convention, Combined sixth and seventh periodic reports of Bangladesh," para. 51.

In all countries, there remain strong social expectations that women will subordinate their careers and economic activity to their family and household duties. Marriage often brings about a drop in earnings and career advancement, if not a complete end to wage work. Women perform a far greater proportion of household and family care work than men throughout marriage, and their contributions often enable their husbands' career advances, growth of family businesses, and increased value of their homes. For women and men to enjoy their rights to equality during and upon dissolution of marriage, it is essential that laws recognize the reality of when marriage serves as a constraint on the economic independence of women, leaving them with fewer assets and economic prospects than men at the end of marriage. Laws on maintenance should serve to ensure that if a marriage dissolves, both spouses are in an equal economic position taking into account different roles fulfilled during marriage.

Despite the lack of explicit treaty language on maintenance, UN treaty bodies have remarked on its importance, encouraged law reforms to make it more effective, and explained that it should be available on a nondiscriminatory basis. The UN Human Rights Committee has said that article 23 of the ICCPR prohibits “discriminatory treatment in regards to grounds and procedures... for maintenance and alimony.”<sup>342</sup> The CEDAW committee has also encouraged states to reform maintenance laws to better reflect gender-based economic disparities between spouses and women's greater share in unpaid work.<sup>343</sup>

Members of the CEDAW committee have also discussed maintenance in a ruling on a case brought by a divorced woman under the Optional Protocol to CEDAW.<sup>344</sup> The case was dismissed for failure to exhaust domestic remedies, but two committee members dissented and addressed criteria the local court should have considered. The dissenting members observed that the local court had failed to award “decent” maintenance, and should have considered the woman's years of unpaid work in the family while her husband advanced his career and income, her uncertain financial situation, her lack of work experience outside, and her prospects of finding work and supporting herself given her age. These

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<sup>342</sup> UN Human Rights Committee, General Comment No. 19, Protection of the family, the right to marriage and equality of the spouses (art. 23), HRI/GEN/1/ Rev. 2 (1990), [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/6f97648603f69bc12563ed004c3881?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/6f97648603f69bc12563ed004c3881?Opendocument) (accessed December 22, 2012), para. 9.

<sup>343</sup> CEDAW Committee, Concluding Observations on Germany (2009), CEDAW/C/DEU/CO/6, <http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-DEU-CO6.pdf> (accessed April 7, 2012), para. 55.

<sup>344</sup> *Ms. B-J v. Germany*, Communication No. 1/2003, Decision of the Committee on the Elimination of Discrimination against Women, declaring a communication inadmissible under the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, decision adopted on 14 July 2004, 31<sup>st</sup> session, Appendix.

criteria have some commonalities with the more extensive list of factors for determining maintenance developed by the Caribbean Community (described in Section IV).

Bangladesh's personal laws provide only vague criteria for maintenance. With the lack of clear standards, there is no guarantee of consistency in what courts (or traditional authorities) will consider when setting maintenance amounts. In effect, maintenance awards are often small, and fail to rectify women's and men's unequal financial status upon dissolution of marriage.

Further, maintenance proceedings in Bangladesh are routinely prolonged, sometimes running into decades, rendering ineffective married women's petitions for economic support upon dissolution of marriage. The Bangladesh government has yet to ensure that family courts abide by time limits for such cases or ensure, at the very least, that interim maintenance is granted when final maintenance orders are delayed. Other countries, such as Pakistan, have resolved this problem by providing for interim maintenance when the case is pending.<sup>345</sup>

### *Marriage Registration*

The Convention on Consent to Marriage, Minimum Age of Marriage, and Registration of Marriages obliges states to ensure that "all marriages are registered in an appropriate official register by the competent authority."<sup>346</sup>

In Bangladesh, however, marriage registration is patchy, and is not compulsory for all religious communities. Christians and Muslims are required to register their marriages but there are no digitized records, and some registrars tamper with Muslim marriage records. Hindus have no marriage registration at all, though in May 2012 the cabinet approved a bill for optional registration of Hindu marriages.

### *Protections for Women in Unrecognized Relationships*

In Bangladesh, as described above, women may be in a relationship with a man to whom they believe they are married only to discover, when the relationship ends, that they are not married in compliance with the law or that there is no legal proof of the marriage.

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<sup>345</sup> Pakistan's Family Courts Act, 1964, sec. 17A; Malaysia's Islamic Family Law (Federal Territories) Act, 1984, sec. 70; Morocco and Malaysia also provide for interim maintenance.

<sup>346</sup> Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, adopted November 7, 1962, G.A. res. 1763 (XVII), entered into force December 9, 1964, <http://www2.ohchr.org/english/law/convention.htm> (accessed August 17, 2011), art. 3. Bangladesh acceded to this convention on October 5, 1998.

International human rights law embraces a flexible understanding of the term “family,” and UN treaty bodies have encouraged states to recognize rights related to the family as applying to a variety of family situations. For example, the Human Rights Committee, in its General Comment on article 23 of the ICCPR, which guarantees the rights to family, marriage, and equality of spouses, stated that the states have an obligation to recognize different types of families, including single parents and their children, and to ensure the equal treatment of women in these contexts.<sup>347</sup>

In Bangladesh, with its lack of clear standards on what constitutes a valid marriage for some religions and with poor enforcement of marriage registration practices, many couples understand themselves to be married, but in fact have not met legal requirements. Women who find themselves in this situation are not entitled to maintenance or any other protections, minimal though they are, under personal laws. To comply with international law, Bangladesh should develop clear guidelines for judges to evaluate under what circumstances individuals in a relationship that falls short of legal requirements for marriage should be entitled to claim rights based on such a relationship.

## Right to Social Security

Several human rights treaties ratified by Bangladesh address the right to social security. Article 9 of the ICESCR recognizes the “right of everyone to social security, including social insurance.” Article 11(e) of CEDAW states that states should provide social security to women “particularly in cases of... unemployment, sickness, invalidity and old age and other incapacity to work,”<sup>348</sup> and article 14(c) states that women in rural areas should benefit directly from social security programs.<sup>349</sup> Article 28 of the CRPD obliges governments to ensure that persons with disabilities, especially women and girls, have access to social protection and poverty reduction programs. In particular, it requires governments to ensure that poor families living with disability have access to programs that provide for disability-related expenses.<sup>350</sup>

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<sup>347</sup> UN Human Rights Committee, General Comment No. 19, para. 2.

<sup>348</sup> CEDAW, art. 11(e).

<sup>349</sup> *Ibid.*, art. 14(c).

<sup>350</sup> CRPD, art. 28.

In its General Comment No. 19, the CESCR stated that the right to social security includes a right to benefits in cash or kind to protect oneself from “insufficient family support.”<sup>351</sup> It said that states have an obligation to “provide benefits to cover the loss or lack of earnings due to the inability to obtain or maintain suitable employment.”<sup>352</sup> While everyone has the right to social security, the CESCR recommends that states give “special attention” to certain categories of persons, including women, children and adult dependents, people with disabilities, and older persons.<sup>353</sup> Where there are contributory social security schemes, states should factor in women’s inability to make contributions due to lack of workforce participation and family responsibilities.<sup>354</sup>

The Bangladesh government has taken commendable steps to provide small cash allowances to widowed and “deserted” women, as well as other assistance programs. But many women are unaware of these programs, information about them is hard to access with bodies such as local government offices or family courts not disseminating information about them. These programs are also plagued by disbursement delays and misuse of funds. Other social programs, such as the land distribution also have discriminatory elements that undermine their effectiveness. For example, the government’s *khas* land distribution program restricts eligibility to only those female-headed households that have an able-bodied male.

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<sup>351</sup> UN Committee on Economic, Social, and Cultural Rights, General Comment No. 19, para. 2.

<sup>352</sup> *Ibid.*, para. 16.

<sup>353</sup> UN Committee on Economic Social and Cultural Rights, General Comment No. 19, para. 31.

<sup>354</sup> *Ibid.*, para. 32.



## VII. Recommendations

### Government of Bangladesh

*To Members of Parliament, the Cabinet Division, and the Ministry of Law, Justice, and Parliamentary Affairs*

- Work toward comprehensive reform of Bangladesh’s laws on marriage, separation, divorce, and related matters, in consultation with experts and civil society groups working on women’s rights including those working with minority communities. Launch a participatory process involving all affected communities to enact civil laws that do not discriminate based on religion and gender. In the interim, amend personal laws to eliminate discriminatory aspects, and strengthen mechanisms for implementing laws.

To this end, authorities should:

- Enable members of all religious groups to marry under the Special Marriage Act without renouncing their religious affiliation and expand the grounds for divorce under the Divorce Act, in accordance with the recommendations of the Law Commission of Bangladesh and in consultation with women’s rights groups.
- Make marriage registration compulsory for all religions. Create digital records that are accessible throughout the country as proof of marriage.
- Fully affirm the concept of marital property and allow for its division on an equal basis between spouses at the time of dissolution of marriage for all communities, recognizing financial and non-financial contributions made by women.
- Reform maintenance laws to:
  - Develop clear criteria to guide the discretion of family court judges when determining maintenance amounts. The criteria should include: the duration of the relationship; the impact of childcare and household responsibilities on the education and earning capacity of the dependent spouse; current and likely future income of each spouse; the dependent spouse’s capacity to support herself; the health and age of the spouses; the dependent spouse’s needs and standard of living; other means of support; and contributions made by the dependent spouse to realize the other’s career potential.

- Abolish any link between a wife’s entitlement to maintenance and her “obedience,” “chastity,” “marital duties,” or “good character.”
- Abolish the legal claim for restitution of conjugal rights, in accordance with decisions of the High Court Division of the Bangladesh Supreme Court that have held it to be unconstitutional.
- Raise nationwide awareness about the negative consequences of polygamy, its linkage with domestic violence, and work toward abolishing it. Ensure that such information is available in a variety of media and in formats accessible to those with disabilities.
- Until polygamy is completely eliminated in practice, ensure that any law abolishing polygamy protects the rights of subsequent wives and their children, including to property, *mahr*, and maintenance. Until a law abolishing polygamy is passed, strictly enforce laws that constrain men’s ability to marry more than one wife and enhance the notice period and permission requirements with clear proof of financial status.
- Ensure access to divorce is on an equal basis for men and women.
- Enact a comprehensive law on social security, setting out clear criteria for eligibility for social assistance for divorced, separated, and abandoned women.
- Abolish or amend the Vagrants and Shelterless Persons (Rehabilitation) Act, 2011, to ensure that poor or homeless people, including women after marital breakdown, are not arbitrarily arrested and detained. Immediately review all existing cases with a view to releasing all those arbitrarily detained, including those who have not engaged in any criminal acts.

### *To the Ministry of Social Welfare*

- Undertake broader dissemination of information in a variety of media and in formats accessible to those with disabilities to improve women’s awareness of existing social assistance programs, eligibility criteria, and application procedures.
- Consult with the Cabinet and the Planning Commission about law reforms on social security, and ensure that separated and divorced women have adequate access to social assistance programs for housing, food, employment, and health care.
- In consultation with the Local Government Division, improve oversight of cash allowance programs, including the widows and “deserted” women program, to ensure that

disbursed funds reach the intended beneficiaries and to detect corruption and misuse of funds.

*To the Ministry of Law, Justice, and Parliamentary Affairs and the Chief Justice of the Supreme Court of Bangladesh*

- Enhance the capacity of family courts to handle separation, divorce, maintenance, and *mahr* cases expeditiously and fairly. Take measures to decrease backlogs and delays, including by appointing more family court judges or decreasing judges' case load of other civil matters.
- Urgently instruct family court judges that their power to issue interim orders under the Family Courts Ordinance should be utilized to provide interim maintenance pending final determination of maintenance claims.
- Work with the ministry of social welfare to create and staff special desks in every family court to provide petitioners and court officials information on social assistance programs.
- Review all family court and appellate procedures and streamline them to minimize delays. In particular, improve summons procedures in family courts by taking the following steps:
  - Promote reforms to the Code of Civil Procedure and Family Courts Ordinance to (1) enable summons and notice of family court cases to be served by additional means, such as private couriers, faxes, and emails and (2) streamline time taken for summons and substituted summons processes before proceeding *ex parte*.
  - Improve oversight of the *nezarat* department and its service of summons functions. Investigate allegations of corruption by *nezarat* staff.
  - Provide funds to cover *nezarat* staff travel expenses for service of summons.
- Develop a strong enforcement mechanism to execute family court decrees in a timely manner. Allow parties petitioning family courts for maintenance or *mahr* to file simultaneous petitions for the decree and its execution.
- Improve training for family court judges on women's rights, civil procedures, and evidence rules to ensure that they allow, in appropriate circumstances, substituted summons and oral evidence to prove a marriage in court.
- Create, in consultation with local legal aid NGOs, a fund for poor petitioners to cover some costs of pursuing legal relief in family court, including some costs related to appearance of witnesses.

- Develop programs to ensure procedural accommodations in all legal proceedings, in order to enable persons with disabilities to fully participate in them.

#### *To the Ministry of Women and Children Affairs*

- Initiate a nationwide awareness campaign against domestic violence in a variety of media and in formats accessible to those with disabilities, emphasizing the rights to marital home, protection against economic loss, and temporary maintenance. Encourage women to seek remedies under the law against domestic violence.
- Strengthen and expand measures to prevent child marriages and implement the Child Marriage Restraint Act, 1929.
- Increase the number of government women’s shelters, aiming for at least one shelter in every district. Ensure that women and girls in economic need after separation or divorce, as well as those subjected to domestic violence, are eligible for temporary housing in shelters.
- Work with other ministries to establish measures to help women transition from temporary emergency housing to affordable housing of their own, including through income-generation and other social assistance programs.
- Liaise with the Ministry of Social Welfare to review cases of all women housed in vagrant homes and secure the release of any made homeless due to marital breakdown.

#### *To the Ministry of Land*

- Eliminate the requirement in the *khas* land distribution program that female-headed households have an “able-bodied” male to be eligible for *khas* land distribution.
- Liaise with other concerned ministries and urgently implement the Vested Property Return Act without delay.

#### *To the Ministry of Religious Affairs*

- Institute a mechanism to receive and investigate complaints against *kazis* of corruption, tampering with, and falsification of marriage records.
- Undertake wide dissemination of information in a variety of media and in formats accessible to those with disabilities to improve women’s and girls’ awareness of their

rights during and after marriage. Ensure that special measures are taken to improve Muslim women's awareness about the significance of the *kabin-nama* and its clauses and how women can negotiate them at the time of marriage.

### *To the Local Government Division*

- Monitor the implementation of social assistance programs, creating complaints mechanisms for corruption and abuse of power by local government authorities.
- Train local government authorities regarding their duties as members of arbitration councils under the Muslim Family Laws Ordinance and provide adequate funds to enable them to discharge their functions on such councils.
- Enable participation of female local government officials in arbitration councils.

### *To the Planning Commission of Bangladesh*

- Consistently include information about female-headed households and poverty in government reports, particularly the Millennium Development Goals progress reports.
- Periodically analyze the effectiveness and impact of social assistance programs on female-headed households, including divorced, separated, and widowed women.

## **International Donors**

- Expand support for initiatives to increase women's awareness of their economic entitlements and legal rights, including the fact that under Bangladesh law, causing "economic loss" may constitute domestic violence.
- Expand support for initiatives to reform the personal laws and end discrimination against women in law and practice. In particular, expand support for legal aid for separated, abandoned, and divorced women, or married women facing domestic violence.
- Provide support for a process to create a law on the right to social security in Bangladesh, highlighting scope for women to access social assistance.
- Ensure that donor support for social assistance programs in Bangladesh systematically includes female-headed households and links family courts to the provision of information and access to social assistance programs.

- Research and develop social protection schemes that recognize and redistribute women's household work, giving them a greater chance to participate in paid work, including through expanded child care.
- Provide support for expansion of access to emergency temporary shelters for women and girls across Bangladesh, including for divorced or separated women, women escaping family violence, and those fleeing early and forced marriages or polygamous marriages.
- Ensure that donor support for justice sector reform pays specific attention to supporting research and advocacy to address discrimination in family laws and to amend family court procedures, including streamlining summons issuance, decree execution procedures, and granting interim maintenance.
- Support efforts to improve family courts, including reducing case backlogs and training family court judges.
- Ensure that Millennium Development Goals progress reports include information on female-headed households, especially on their poverty levels.

## Acknowledgments

This report was researched and written by Aruna Kashyap, researcher for the Women's Rights Division of Human Rights Watch. The report was edited by Janet Walsh, deputy director, Liesl Gerntholtz, director of the Women's Rights Division, and Danielle Haas, senior editor. Aisling Reidy, senior legal advisor, and Tom Porteous, deputy program director, also reviewed the report. Joseph Amon, director of the Health and Human Rights Division; Shantha Rau Barriga, researcher and advocate on disability rights, Bede Sheppard, Asia researcher for the Children's Rights Division; and Tej Thapa, South Asia researcher for the Asia Division; provided input and comments on portions of the report.

We are particularly indebted to the external reviewers who commented on sections of an early version of the report. These include Khushi Kabir, coordinator, Nijera Kori; Dr. Faustina Pereira, director, BRAC Human Rights and Legal Aid Services; Prof. Shahnaz Huda, professor, department of law, University of Dhaka; Nina Goswami, senior deputy director, Mediation and Rapid Response Unit, Ain-o-Shalish Kendra; Sara Hossain, honorary director, the Bangladesh Legal Aid and Services Trust, and Marsha Freeman, director, International Women's Rights Action Watch.

Sanhita Ambast, intern in the Women's Rights Division, provided extensive and important research support. Matthew Rullo and Rumbidzai Chidoori, associates in the Women's Rights Division provided editing and production assistance. Grace Choi, publications director, Kathy Mills, publications specialist, Anna Lopriore, creative manager and Fitzroy Hepkins, administrative manager, provided production assistance.

We are very grateful to the many family law experts, local NGOs, lawyers, and others who assisted our research, in particular, Ashar Alo, the Bangladesh Legal Aid Services Trust, Bangladesh Mahila Parishad, Bangladesh National Women Lawyers Association, BRAC Human Rights and Legal Aid Services, Karmojibi Nari, Madaripur Legal Aid Association, and Nijera Kori.

We also thank BLAST for providing research support by allowing Human Rights Watch to use their documentation center and library. We are particularly grateful to Shirin Lira, Maimuna Ahmed, and Mahbuba Akter, then research fellows and communications and

advocacy coordinator at the Bangladesh Legal Aid Services Trust, who provided coordination and translation support during the field research.

Above all, we thank all women who recounted their experiences of marriage, separation, and divorce. We also acknowledge the government officials, judges, *kazis*, and donors who agreed to be interviewed at length for this report.

The views expressed in this report are those of Human Rights Watch and Human Rights Watch takes full responsibility for any errors or omissions.

We acknowledge with gratitude the financial support the Ford Foundation and the other generous donors who support the work of the Women's Rights Division of Human Rights Watch.







# NIKAH NAMA

True Copy under the Rule 9 of the Muslim Marriage & Divorce (Registration) Act, 1974.



1. Name of the Ward, Town/Union, Tahsil/P.S and the District in which the marriage solemnized  
\_\_\_\_\_
2. Name of the bridegroom and his father's name with their respective residence:  
\_\_\_\_\_
3. Age of the bridegroom : \_\_\_\_\_
4. The name of the bride and her father with their residences:  
\_\_\_\_\_
5. Whether the bride is a Maiden, a widow or a divorcee: **MAIDEN**
6. Age of the bride : \_\_\_\_\_
7. Names of the Wakil, if any appointed by the bride his father's name and his residence:  
\_\_\_\_\_
8. The names of the witnesses to the appointment of bride's Wakil with their father's name, their residences and their relationship with the bride:  
I. \_\_\_\_\_  
II. \_\_\_\_\_
9. Name of the Wakil, if any appointed by the bridegroom father's name and his residence :  
//
10. The name of the witness of the appointment of the bridegroom's Wakil with their father's name:  
//
11. Name of the witness to the marriage their father's name and their residence:  
I. \_\_\_\_\_  
II. \_\_\_\_\_
12. Date on which the marriage was contracted (Marriage date): \_\_\_\_\_
13. Amount of dower: \_\_\_\_\_
14. How much of the dower is Mujjal (Prompt) and how much Mujjal (deferred):  
**HALF / HALF**
15. Whether any portion of the dower was paid at the time of marriage, if so, how much:  
**PAID TK. \_\_\_\_\_ ONLY FOR ORNAMENTS.**

ATTESTED  
  
 07-11-10  
 MD. MANZUR HOSSAIN B.T. (U)  
 Notary Public  
 Address: Bangladesh Supreme Court Building  
 Chamber: Lobby, 1st Floor, Room: 11/1  
 10, Jinnah Road, Dhaka-1100  
 Phone: 01711644462

Continued Page No. 2



- 16. Whether any property was given in lieu of the whole or any portion of the dower, with specification of the same and its valuation agreed to between the parties:  
//
- 17. Special conditions, if any: MONTHLY MAINTENANCE PAID BY THE HUSBAND TIMELY & GENTLY.
- 18. Whether the husband has delegated the power of divorce to the wife, if so, under which conditions: YES DELEGATED, IF MISSING, LONG TIME IMPRISONED, DOES NOT PROVIDE MAINTENANCE THERE IS MALADJUSTMENT THEN WIFE CAN TAEWIZ TALAQUE HERSELF.
- 19. Whether the husband's right of divorce is in any way curtailed: NO.
- 20. Whether any document was drawn up at the time of marriage relating to dower maintains etc, if so contents thereof in brief:  
//
- 21. Whether the bridegroom has any existing wife and If so, whether he has secured the permission of The Arbitration Council under the Muslim Family Laws/Ordinance, 1961, to contract another marriage :  
//
- 22. Number and date of the communication conveying to the he bridegroom the permission of the Arbitration Council to contract another marriage :  
//
- 23. Name, and address of the permission by whom the marriage was solemnized his father:  
\_\_\_\_\_
- 24. Date of registration of marriage: \_\_\_\_\_
- 25. Registration fee paid : PAID

SD/- \_\_\_\_\_  
Signature of Bridegroom or his Wakil

\_\_\_\_\_  
Signature of the witness to the appointment of bridegroom's wakil.

SD/- \_\_\_\_\_  
Signature of the bride

\_\_\_\_\_  
Signature of the Wakil of the bride.

\_\_\_\_\_  
Signature of the witnesses regarding the appointment of the bride's wakil.

Signature of the witnesses to the marriage :

1. SD/- \_\_\_\_\_  
2. SD/- \_\_\_\_\_

SD/- \_\_\_\_\_  
Signature of the person who solemnized the marriage

SD/- ILLIGIBLE  
25-03-2004

Signature and Seal of the Nikah Register.

SEAL

## Appendix II

The following table presents data shared by BRAC-Human Rights and Legal Aid Services for the number of maintenance cases they currently have pending in family courts in 61 districts. The cases are pending at different stages—pre-trial, trial, and execution.

Number of years maintenance cases have been pending (from 1998 to May 31, 2012)	Cases pending at the pre-trial stage	Cases pending at the trial stage	Cases where maintenance awarded but execution pending	Total number of cases pending
Less than 2	3,031	1,109	1,657	5,797
2 and above but less than 5	897	648	1,264	2,809
5 and above but less than 10	176	113	296	585
10 and above	3	1	10	14
<b>Total</b>	<b>4,107</b>	<b>1,871</b>	<b>3,227</b>	<b>9,205</b>



# “Will I Get My Dues ... Before I Die?”

## Harm to Women from Bangladesh’s Discriminatory Laws on Marriage, Separation, and Divorce

For decades Bangladesh’s antiquated personal laws governing marriage, divorce, and separation have discriminated against women and remained frozen in time. The different laws for Muslims, Hindus, and Christians establish greater barriers to divorce for women than men, provide vague guidance on maintenance claims, ignore women’s contributions to households, and lack provisions for division of marital property upon divorce.

Based on interviews with 120 women who have experienced the shortcomings of Bangladesh’s personal laws, as well as the expertise and experience of judges, family court lawyers, women’s rights experts, and government officials, *“Will I Get My Dues...Before I Die?”* highlights the adverse consequences of these discriminatory laws on women, their dependents, and their ability to enjoy basic rights. The report documents the difficulties of enforcing even the limited maintenance or alimony awards women might get in family courts.

The discriminatory family laws, which are incompatible with international human rights law, contribute to the impoverishment of many women at the time of marital breakdown. The United Nations country team in Bangladesh has identified “marital instability” as a key cause of poverty among female-headed households and the Bangladesh Planning Commission has said that women are more susceptible to poverty after abandonment or divorce. The laws also exacerbate other rights violations such as domestic violence, as well as ill-health, food insecurity, and lack of secure housing.

The Bangladesh government has taken small but concrete steps toward law reform recently. This report highlights the demands of women’s rights groups in Bangladesh for law reform and calls on the government to forge ahead with reforms, amend family court procedures, and improve social assistance programs to meet the profound needs of many divorced and separated women.



*The members of Bangladesh Mahila Parishad, a leading women’s rights organization, attend a rally to mark International Women’s day in Dhaka, Bangladesh on Saturday, March 8, 2008. The banner reads “International Women’s Day rally. Gender equality needs equal rights to property and resource.”*

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