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**Family Justice Then and Now: A Comparative Examination of the
Family Courts Ordinance 1985 and the 2023 Act**

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DECLARATION

I hereby declare that the dissertation title “**Family Justice Then and Now: A Comparative Examination of the Family Courts Ordinance 1985 and the 2023 Act**” was entirely prepared by me under the supervision of Shamshad Bashir, Senior Lecturer, Department of Law, East West University, to fulfil my graduation requirements. I further declare that the content of this work has never been submitted for any prior evaluation and is my sole responsibility. The information derived from other sources has been properly acknowledged in the references, and the work of other individuals and institutions has been credited appropriately.

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List of Abbreviations

AD	Appellate Division (Supreme Court of Bangladesh)
ADR	Alternative Dispute Resolution
BDT	Bangladeshi Taka
BLAST	Bangladesh Legal Aid and Services Trust
CHT	Chittagong Hill Tracts
CPC	Code of Civil Procedure, 1908
DLR	Dhaka Law Reports
FCA 2023	Family Courts Act 2023
FCO 1985	Family Courts Ordinance 1985
ICT	Information and Communication Technology
NGO	Non-Governmental Organisation
Tk	Taka
UNDP	United Nations Development Programme
UNICEF	United Nations Children's Fund

Abstract

This thesis examines the evolution of family justice in Bangladesh through a doctrinal comparison of the Family Courts Ordinance 1985 and the Family Courts Act 2023. Within Bangladesh's plural personal-law landscape, the 1985 Ordinance created specialised Family Courts to provide a comparatively expeditious and conciliatory forum for disputes relating to marital breakdown, dower, maintenance, and child guardianship or custody; the 2023 Act repeals and re-enacts this framework in Bangla, yet early commentary suggests largely modest textual change rather than structural transformation. The study pursues four objectives: tracing the historical and institutional context of family courts, comparing the two instruments' substantive-procedural design, analysing key judicial interpretations, and assessing whether the 2023 Act improves access to justice with particular attention to gender and child-centred outcomes. Methodologically, it applies doctrinal and comparative legal analysis of the two statutes alongside related instruments, relevant Supreme Court and subordinate-court decisions, and contextual secondary materials, adopting a primarily normative and analytical approach. The findings indicate strong continuity: jurisdictional scope, conciliation-centred trial structure, and enforcement mechanisms are largely preserved, while the principal novelties or refinements in pleadings or summons, increased fees, and adjustments to appellate arrangements do not amount to a paradigmatic shift. Notable procedural updates discussed include changes to court fees and the potential use of affidavit evidence, alongside the continuing emphasis on pre-trial settlement efforts. The thesis concludes by proposing targeted reforms - time standards, stronger enforcement tools, calibrated jurisdictional expansion, and institutionalised gender and child-sensitive procedures supported by legal aid and data-driven monitoring to realise a more effective rights-responsive family justice system.

Keywords: Family; justice; mediation; conciliation; dower(mahr); maintenance; child custody and guardianship; Bangladesh.

**Title: Family Justice Then and Now: A Comparative Examination of
the Family Courts Ordinance 1985 and the 2023 Act**

Chapter 1:

1. Introduction

1.1. Background of Family and Personal Laws in Bangladesh

Family law in Bangladesh operates within a pluralistic personal-law framework, where Muslims, Hindus and Christians are governed by their respective religious norms in matters such as marriage, divorce, maintenance, guardianship and succession, while the institutional and procedural aspects of dispute resolution are regulated by statute. After independence in 1971, Bangladesh largely retained the colonial legal architecture, including instruments such as the *Guardians and Wards Act 1890*, the *Christian Marriage Act 1872* and, for Muslims, the *Muslim Family Laws Ordinance 1961*. Within this landscape, a pressing need was soon felt for a specialised forum to handle family disputes in a manner that was expeditious, accessible and sensitive to the interests of women and children. This institutional gap led to the promulgation of the *Family Courts Ordinance 1985*, which established Family Courts with exclusive jurisdiction over suits relating to dissolution of marriage, restitution of conjugal rights, dower, maintenance, and guardianship and custody of children.¹ The Ordinance introduced simplified procedures, mandatory attempts at pre-trial conciliation and an expectation of relatively speedy disposal, thereby embedding a conciliatory and partly restorative model of family justice within the formal court system.²

However, over the following decades, it became evident that, despite its innovative features, the 1985 regime did not fully resolve entrenched problems of delay, cost, inadequate infrastructure and limited public awareness. Empirical accounts and advocacy materials reveal persistent case backlogs, underuse or misapplication of mediation provisions and uneven experiences of justice, particularly for women and children.³ ⁴In addition, the jurisdiction of Family Courts remained narrowly confined to a limited set of issues, leaving important aspects of family life, such as succession, adoption and parental maintenance, outside their direct purview.⁵ In 2023, Parliament enacted the *Family Courts Act 2023* (Act No 26 of 2023), which repealed the 1985 Ordinance and re-enacted the law in Bangla as part of a broader programme of legislative “Bangla-station”.⁶ Although the Act maintains the basic structure and subject-matter jurisdiction of Family Courts, commentators argue that it introduces only modest textual changes, such as revised provisions on amendment of pleadings, increased court fees and clarification of appellate forums without fundamentally addressing long-standing systemic shortcomings.⁷ This thesis is situated against that background of both continuity and contested reform.

¹ Family Courts Ordinance 1985 (Ordinance XVIII of 1985).

² Bangladesh Legal Aid and Services Trust, *Family Courts* (advocacy booklet, BLAST c 2006–07)

³ Bangladesh Legal Aid and Services Trust, *Family Courts* (advocacy booklet, BLAST c 2006–07)

⁴ Between Law and Life: The Human Cost of Delays in Family Court’ (NILS Bangladesh, 15 November 2024)

⁵ Replacing Family Courts Ordinance 1985 with Family Court Act 2023’ (Advocacy Legal, 20 January 2024)

⁶ *Family Courts Act 2023* (Act No 26 of 2023).

⁷ Abuzar Gifari, ‘An analysis of the Family Courts Act 2023’ *The Daily Star* (Dhaka, 22 December 2023).

1.2. Significance of Family Courts in Ensuring Justice

Family Courts occupy a pivotal position in the Bangladeshi justice system because they intervene directly in the intimate sphere of family relations, where disputes often involve vulnerable parties and deep-seated emotional, social and economic consequences. The creation of specialised Family Courts under the 1985 Ordinance was justified by the need to provide an accessible forum closer to litigants' homes, to reduce procedural technicalities and to foreground reconciliation wherever possible.⁸

In normative terms, the effective functioning of Family Courts is closely linked to constitutional guarantees of equality before the law, access to justice and the protection of children's best interests. By conferring exclusive jurisdiction over separation, restitution of conjugal rights, dower, maintenance and guardianship/custody on Family Courts, both the 1985 Ordinance and the 2023 Act designate these courts as the primary institutional guardians of family justice.⁹ Judicial interpretations have further underscored this centrality by construing Family Court jurisdiction broadly to cover matters "relating to or arising out of" the listed causes of action, thereby allowing questions of validity of marriage, genuineness of *Kabin Nama*, and even child legitimacy to be addressed within family proceedings.¹⁰

1.3. Problem Statement: Why a Comparative Study Is Important

Although the *Family Courts Act 2023* formally repeals and replaces the 1985 Ordinance, early commentary suggests that the new statute is, in many respects, a Bangla restatement of the earlier law rather than a transformative reform.¹¹ The core jurisdictional provision in section 5 of the 2023 Act largely mirrors section 5 of the 1985 Ordinance, and many of the longstanding criticisms raised by scholars, practitioners and civil-society organisations, such as constrained jurisdiction, inadequate integration of alternative dispute resolution and insufficient attention to enforcement, appear to remain only partially addressed.¹²

At the same time, Family Court jurisprudence has evolved over the years through a series of important decisions of the Supreme Court and subordinate courts, which have interpreted statutory provisions in a purposive, family-centred manner. These decisions significantly shape how family justice is experienced in practice, but the interaction between this body of case law and the 2023 legislative reforms has not yet been systematically examined in the academic literature. Decisions and policy debates reflect changing understandings of family, authority and rights in contemporary Bangladesh. A comparative analysis of the Ordinance and the Act is necessary to capture both the continuities and the points of departure in the development of family justice "then and now".

⁸ Bangladesh Legal Aid and Services Trust, *Family Courts* (advocacy booklet, BLAST c 2006–07).

⁹ *Family Courts Ordinance 1985* (Ordinance XVIII of 1985)

¹⁰ Replacing Family Courts Ordinance 1985 with Family Court Act 2023' (Advocacy Legal, 20 January 2024).

¹¹ Abuzar Gifari, 'An analysis of the Family Courts Act 2023' *The Daily Star* (Dhaka, 22 December 2023)

¹² Bangladesh Legal Aid and Services Trust, *Family Courts* (advocacy booklet, BLAST c 2006–07).

1.4. Objectives of the Study

Considering the above, the study pursues the following objectives:

1. To trace the historical development of family and personal laws in Bangladesh and situate the creation of Family Courts within broader post-colonial law-reform initiatives.
2. To examine and compare the substantive and procedural provisions of the *Family Courts Ordinance 1985* and the *Family Courts Act 2023*, with particular attention to jurisdiction, conciliation mechanisms, evidentiary rules and enforcement.
3. To analyse how judicial decisions have interpreted and operationalised Family Court powers under both regimes.
4. To assess whether, and to what extent, the 2023 Act enhances access to justice, gender-sensitive adjudication and child-centred outcomes, and to identify areas where further legislative or institutional reform is warranted.

1.5. Research Questions

To achieve these objectives, the study is guided by the following research questions:

1. How have the aims, scope, and institutional design of family courts in Bangladesh evolved from the Family Courts Ordinance 1985 to the Family Courts Act 2023, and what similarities and differences exist between the two frameworks in terms of jurisdiction, procedure, conciliation, remedies, and appellate structure?
2. How have Bangladeshi courts interpreted and applied key provisions of the 1985 Ordinance, and to what extent does the Family Courts Act 2023 address longstanding issues such as delay, limited jurisdiction, and gendered barriers to accessing family justice?

1.6. Methodology (Doctrinal and Comparative Legal Research)

The research adopts a doctrinal and comparative legal methodology. The primary materials consist of the texts of the *Family Courts Ordinance 1985* and the *Family Courts Act 2023*, read in conjunction with related instruments such as the *Muslim Family Laws Ordinance 1961* and the *Guardians and Wards Act 1890*.¹³¹⁴ These statutes are analysed using recognised principles of statutory interpretation, with attention to their structure, language and legislative context.

Judicial decisions of the Supreme Court of Bangladesh and relevant subordinate courts are examined to understand how Family Courts' jurisdiction, conciliation duties, powers over maintenance and custody, and enforcement mechanisms have been interpreted and applied in practice. Emphasis is placed on cases which clarify the breadth of Family Court jurisdiction

¹³ *Family Courts Ordinance 1985* (Ordinance XVIII of 1985).

¹⁴ *Family Courts Act 2023* (Act No 26 of 2023).

under section 5, delineate the relationship between Family Courts and personal law norms, or address procedural innovations such as pre-trial mediation and affidavit evidence.¹⁵¹⁶

Secondary sources, including law-commission reports, doctrinal articles, NGO publications, judicial training materials and contemporary commentaries on the 2023 Act, are used to contextualise the statutory and case-law developments and to triangulate critiques of the current system.^{17 18192021} The study is primarily normative and analytical rather than empirical; it does not involve interviews, surveys or quantitative analysis of court statistics.

1.7. Scope and Limitations of the Study

The scope of the thesis is confined to the legal and institutional framework governing Family Courts in Bangladesh. It focuses on the comparison between the 1985 Ordinance and the 2023 Act, and on the relevant case law that has developed around these instruments. While broader aspects of family law, such as inheritance, adoption and domestic-violence legislation, are referenced where necessary to clarify context or jurisdictional boundaries, they are not analysed in depth.^{22 23}

The study does not purport to provide an empirical assessment of how litigants experience Family Courts, nor does it systematically measure the impact of the 2023 Act on case-processing times or outcomes. The relative recency of the Act also means that the corpus of reported judicial decisions interpreting its provisions remains limited; several conclusions must therefore be regarded as provisional and open to refinement as further jurisprudence and empirical research emerge.^{24 25}

1.8. Structure of the Thesis

The thesis is organised into five chapters. Chapter 1 introduces the background, significance, problem statement, objectives, research questions, methodology, scope and limitations. Chapter 2 provides a historical and conceptual account of family and personal laws in Bangladesh, situating the emergence of Family Courts within broader trajectories of legal pluralism and law reform. Chapter 3 analyses the *Family Courts Ordinance 1985* in detail, examining its objectives, jurisdiction, procedures and key strands of case law. Chapter 4 turns to the *Family Courts Act 2023*, setting out its main provisions, identifying continuities and changes relative to the 1985 Ordinance, and critically evaluating early judicial and scholarly responses. Chapter 5 synthesises the comparative findings, responds to the research questions and offers recommendations for strengthening family-justice mechanisms in Bangladesh.

¹⁵ ‘Replacing Family Courts Ordinance 1985 with Family Court Act 2023’ (Advocacy Legal, 20 January 2024).

¹⁶ The powers and jurisdiction of the family court in Bangladesh’ (BDLex/Manupatra, 2024).

¹⁷ Bangladesh Legal Aid and Services Trust, *Family Courts* (advocacy booklet, BLAST c 2006–07)

¹⁸ Abuzar Gifari, ‘An analysis of the Family Courts Act 2023’ *The Daily Star* (Dhaka, 22 December 2023)

¹⁹ Replacing Family Courts Ordinance 1985 with Family Court Act 2023’ (Advocacy Legal, 20 January 2024).

²⁰ Between Law and Life: The Human Cost of Delays in Family Court’ (NILS Bangladesh, 15 November 2024).

²¹ Family Courts in Bangladesh’ (Tahmidur Rahman Remura, 2024).

²² Bangladesh Legal Aid and Services Trust, *Family Courts* (advocacy booklet, BLAST c 2006–07)

²³ Replacing Family Courts Ordinance 1985 with Family Court Act 2023’ (Advocacy Legal, 20 January 2024).

²⁴ Abuzar Gifari, ‘An analysis of the Family Courts Act 2023’ *The Daily Star* (Dhaka, 22 December 2023).

²⁵ Between Law and Life: The Human Cost of Delays in Family Court’ (NILS Bangladesh, 15 November 2024).

Chapter 2:

2. Historical Development of Family Justice in Bangladesh

Before the enactment of the Family Courts Ordinance, 1985, issues relating to marriage dissolution, maintenance, and custody were adjudicated by general civil courts under the Civil Procedure Code, 1908 (CPC). These courts handled family matters alongside other civil disputes, which often resulted in procedural delays and a lack of specialisation in sensitive domestic cases. Guardianship and custody of minors were governed by the Guardians and Wards Act, 1890, but proceedings under this Act frequently faced prolonged delays due to overlapping jurisdictions and the absence of procedural clarity. Consequently, litigants seeking timely remedies suffered significant hardships. Despite their domestic nature, many family disputes were procedurally treated like criminal or civil cases under the Criminal Procedure Code, leading to unnecessary complications, formalities, and adversarial confrontations. This misalignment between the nature of disputes and the procedures applied undermined reconciliation and the humane resolution of domestic conflicts. Recognising these inefficiencies, the Government of Bangladesh promulgated the Family Courts Ordinance, 1985, providing a specialised legal framework for family matters. The Ordinance sought to ensure accessible, prompt, and humane justice by promoting reconciliation and reducing adversarial litigation. It authorised the establishment of dedicated Family Courts at the district level, each presided over by a judge specifically assigned to hear family matters. The jurisdiction of these courts extended exclusively to suits relating to marriage, restitution of conjugal rights, dissolution of marriage, maintenance, dower, and custody of children. The Ordinance unified previously fragmented legal procedures governing family disputes into a single, coherent framework, thereby enhancing consistency and efficiency across districts. Moreover, it granted exclusive authority to Family Courts, ensuring that no other court could entertain such suits and thereby eliminating jurisdictional conflicts. A unique feature of the Family Courts Ordinance, 1985, was its emphasis on mediation and reconciliation. The law mandated that every Family Court attempt reconciliation between parties before proceeding to a formal trial, reflecting the social and moral value placed on preserving family relationships. Additionally, proceedings were required to be held in camera, protecting the privacy and dignity of the parties involved. Despite these reforms, challenges persisted, including limited court capacity, procedural backlogs, and inadequate technological infrastructure. To address these issues, the Family Courts Act, 2023, was enacted, modernising the system through the introduction of digital filing systems, expansion of family courts nationwide, and enhancement of procedural efficiency.

2.1. The Family Courts Act, 2023 – An Overview

The enactment of the Family Courts Act 2023 (FCA 2023) marks an important moment in the evolution of family justice in Bangladesh. By repealing the Family Courts Ordinance 1985, Parliament has both symbolically and substantively re-cast the legal framework governing family disputes, particularly those involving separation or dissolution of marriage, restitution of conjugal rights, dower, maintenance, and guardianship and custody of children.²⁶ In the

²⁶ Family Courts Ordinance 1985 (Bangladesh) (Ordinance No XVIII of 1985).

context of this thesis, *Family Justice Then and Now: A Comparative Examination of the Family Courts Ordinance 1985 and the 2023 Act*, this chapter provides a doctrinal overview of the new statute and prepares the ground for the comparative analysis undertaken in Chapter 3.

2.2. Background and Need for Reform

For almost four decades, the Family Courts Ordinance 1985 functioned as the principal legislation governing specialised family courts in Bangladesh. It conferred exclusive jurisdiction on family courts over disputes relating to dissolution of marriage, restitution of conjugal rights, dower, maintenance, and guardianship and custody of children, thereby removing such disputes from the general civil courts and promising speedier and more specialised adjudication.²⁷ Over time, however, several structural and procedural weaknesses became apparent. Delays in disposal, difficulties in enforcing decrees, particularly maintenance and custody orders and limited opportunities for effective alternative dispute resolution (ADR) came to be seen as serious obstacles to meaningful access to justice.²⁸

A further driver of reform was constitutional and political. The 1985 Ordinance was promulgated under a military regime, and successive democratic governments have pursued a policy of replacing martial-law-era ordinances with Acts of Parliament. The *Family Courts Bill 2023* was expressly introduced “aiming to replace an ordinance of the military regime”, underscoring a desire to re-legitimise the framework of family justice through ordinary legislative processes.²⁹ Scholarly and professional commentary also highlighted substantive gaps. The jurisdictional formula of section 5 of the 1985 Ordinance, and now section 5 of the FCA 2023, left important aspects of family life at the margin of the specialised courts, such as disputes involving marital property, succession, adoption, or maintenance of parents.³⁰ Judicial interpretation partially mitigated this by giving a broad reading to the phrase “relating to or arising out of” the enumerated matters, but commentators argued that a clearer and more comprehensive statutory design was required.³¹

2.3. Objectives of the Family Courts Act 2023

Although the FCA 2023 does not contain an explicit “objects” clause, its aims can be inferred from the text of the Act, parliamentary debates, and early scholarly analyses. First, the Act seeks to re-enact, in statutory form, the institutional framework of family courts for the entire country with limited territorial exceptions in the Chittagong Hill Tracts, thereby consolidating family-court jurisdiction under a democratically enacted statute.³² Secondly, the Act aims to improve efficiency and accessibility in family-court litigation. Academic commentary notes

²⁷ *ibid* s 5; see also ‘The Family Courts Ordinance, 1985’ (BDLaws) <http://bdlaws.minlaw.gov.bd/act-details-682.html> accessed 6 November 2025

²⁸ Khushnudi Raisa Ushika, ‘Between Law and Life: The Human Cost of Delays in Family Court’ (NILS Bangladesh Blog, 15 November 2024) <https://nilsbangladesh.org/between-law-and-life-the-human-cost-of-delays-in-family-court/> accessed 6 November 2025.

²⁹ Family Courts Bill 2023 passed in parliament’ *Bangladesh Sangbad Sangstha (BSS)* (Dhaka, 4 September 2023)

³⁰ Md Eistiak Bin Faruque, ‘Replacing Family Courts Ordinance 1985 with Family Court Act 2023’ (Advocacy Legal, 20 January 2024) <https://www.advocacylegalbd.com/family-court-act-2023/> accessed 6 November 2025.

³¹ *Md Chand Miah v Rupnagar* (1999) 51 DLR (HCD) 292.

³² *Parinaric Adalat Ain 2023* (Family Courts Act 2023) (Bangladesh) (Act No 26 of 2023) s 1–3.

that the 2023 Act introduces or reinforces measures for digital case management, online filing, stronger enforcement mechanisms, and an expanded role of ADR in pre-trial stages, all with a view to expediting the resolution of family disputes.³³ Thirdly, the FCA 2023 pursues a re-balancing of institutional workload. By widening the definition of “appellate court” to include not only the district judge but also other judges of equivalent status, such as judges of women and children or labour courts, it aims to distribute the appellate burden more evenly across the district-level judiciary and thereby reduce backlog.³⁴ Finally, the Act can be read as part of a broader movement towards a more gender-sensitive family justice system. Both judicial developments under the old Ordinance and contemporary scholarly writing emphasise women’s rights to dower, maintenance beyond *iddat*, and meaningful participation in custody decisions, and the new Act is framed as reinforcing these trajectories by enhancing enforcement and streamlining procedure.³⁵

2.4. Structure and Scope of the Act

The FCA 2023 broadly follows the architecture of the repealed Ordinance. Early sections deal with short title, application, and commencement; definitions; and an overriding-effect clause that gives the Act primacy over inconsistent laws.³⁶ The following provisions address the establishment of family courts, their territorial and subject-matter jurisdiction, the institution of suits, the issuance and service of summons, written statements, pre-trial proceedings, trial, judgment and decree, appeals and revisions, and execution. Section 5 is the central jurisdictional provision. It confers exclusive jurisdiction on family courts, subject to the Muslim Family Laws Ordinance 1961, to “entertain, try and dispose of” suits relating to: (a) separation; (b) restoration of conjugal rights; (c) dower; (d) maintenance; and (e) guardianship and supervision of children.³⁷ The language is closely aligned with the earlier Ordinance, but the term “separation” is used as an umbrella category encompassing divorce and other forms of marital breakdown. The Act retains the model of the assistant judge’s court functioning as the family court of first instance, with appeals lying to district-level courts of equivalent status and, ultimately, to the High Court Division and Appellate Division through revision or appeal, depending on the nature of the order or decree.³⁸

2.5. Key Procedural Innovations

2.5.1. Digital procedures and case management

A notable innovation attributed to the FCA 2023 is its emphasis on digitalisation. Scholarly analysis suggests that the Act allows for online case submission and digital case management, with the intention of enhancing accessibility for litigants and enabling more efficient tracking of cases.³⁹ In principle, such provisions can reduce transaction costs, for example, travel to court merely to file pleadings, aid transparency in scheduling, and provide better data for judicial administration. The success of these reforms will, however, depend on the

³³ Bhuiyan (n 8) 374–376.

³⁴ BSS (n 4); Faruque (n 5).

³⁵ Bhuiyan (n 8) 372–374.

³⁶ Family Courts Act 2023 (n 9) s 3.

³⁷ *ibid* s 5; Ushika (n 3).

³⁸ Bhuiyan (n 8) 372–373.

³⁹ *ibid* 373.

availability of ICT infrastructure, training of court staff, and digital literacy among litigants and lawyers, particularly in rural districts.

2.5.2. Pre-trial proceedings and ADR

The FCA 2023 maintains the requirement of pre-trial proceedings, now codified in section 11, under which the judge examines pleadings and documents, identifies issues in dispute, and endeavours to facilitate a compromise before proceeding to trial.⁴⁰ Recent doctrinal commentary interprets these pre-trial provisions as opening a statutory “window” for ADR processes, such as mediation or negotiation within the family-court setting.⁴¹ The Act is reported to strengthen the role of ADR at the pre-trial stage by requiring a genuine attempt at settlement and recognising that many family disputes are best resolved through consensual processes that preserve, rather than destroy, future relationships, especially where children are involved.⁴² At the same time, commentators criticise the legislature for failing to extend ADR mechanisms explicitly to the appellate stage, even though similar reforms have been introduced into the Code of Civil Procedure for ordinary civil appeals.⁴³

2.5.3. Appellate structure and court fees

The appellate framework under the FCA 2023 seeks to reduce the concentration of appeals in the hands of the district judge alone. According to the *Family Courts Bill 2023*, as passed, appeals from family-court decrees may lie not only to the district judge but also to other judges of equivalent rank, including those presiding over women and children or labour courts.⁴⁴ This is intended to distribute workload and alleviate chronic backlog in district judges’ courts. Section 25 of the FCA 2023 increases the court fee in family-court suits from Tk 50 to Tk 200.⁴⁵ While this change may be justified as aligning court fees with contemporary economic conditions and funding needs, it has drawn criticism from some practitioners who argue that, without adequate legal aid, any increase in upfront costs risks disproportionately burdening poor litigants, especially women seeking maintenance or dower in situations of financial vulnerability.⁴⁶

The Act also revises the threshold for appeals in low-value dower suits. Under the 1985 Ordinance, no appeal lay from a decree for dower not exceeding Tk 5,000. The FCA 2023 raises this ceiling to Tk 50,000, thereby rendering a larger category of small-value dower decrees final at the trial-court level.⁴⁷ This may contribute to speed and finality, but it also raises concerns about the quality of first-instance adjudication in cases that, though “low-value” in monetary terms, are often of high significance for indigent women.

⁴⁰ Family Courts Act 2023 (n 9) s 11; Faruque (n 5).

⁴¹ Bhuiyan (n 8) 373–374.

⁴² *ibid.*

⁴³ Faruque (n 5); Code of Civil Procedure 1908 (Bangladesh), s 89C (as amended 2006).

⁴⁴ BSS (n 4) 50–55.

⁴⁵ *ibid* 57–69; Faruque (n 5).

⁴⁶ Faruque (n 5).

⁴⁷ *ibid.*

2.5.4. Evidence and affidavits

Another procedural innovation lies in the treatment of evidence. Section 13(6) of the FCA 2023 reportedly allows witnesses to give evidence by affidavit without being physically present at trial.⁴⁸ This mechanism may reduce delay and cost by limiting unnecessary travel and adjournments for witness non-appearance. However, it also requires careful judicial control to ensure that the opposing party's right to cross-examination and to test credibility is not undermined. In family disputes, where factual narratives are often contested and turn on nuanced assessments of conduct and vulnerability, the balance between efficiency and procedural fairness is particularly delicate.

2.5.5. Enforcement and time-sensitive justice

Academic commentary on the new Act emphasises enhanced provisions for the enforcement of maintenance and custody orders, including the possibility of stricter penalties for non-compliance and a stronger statutory emphasis on expeditious disposal.⁴⁹ The explicit recognition that “justice delayed is justice denied” in the family-court context aligns with empirical accounts of prolonged execution proceedings and repeated adjournments in maintenance and custody cases.⁵⁰ The FCA 2023, by tightening enforcement tools and encouraging faster resolution, aspires to lessen the gap between formal legal entitlements and their practical realisation.

2.6. Women, Children and Other Vulnerable Litigants in the New Framework

The FCA 2023 operates within an existing body of constitutional norms and judicial decisions that have progressively expanded protections for women and children in family law. Decisions such as *Hefzur Rahman v Shamsun Nahar Begum*, 51 DLR (AD) 172, which recognised post-*iddat* maintenance obligations, and *Mrs Shireen Akhter v Md Ehsanul Haque* 61 DLR (AD) 67, which prioritised the best interests of the child over rigid personal-law rules in custody matters, have already pushed family courts towards a more egalitarian and child-centred jurisprudence.⁵¹ By reinforcing the jurisdiction of family courts over maintenance, guardianship and custody, and by seeking to strengthen enforcement, the FCA 2023 can be seen as consolidating these pro-rights trends. Recent doctrinal work argues that the combined effect of the new statute and the evolving case law is to enhance women's bargaining power in marital disputes, improve the security of dower and maintenance claims, and foreground the welfare of children in custody determinations.⁵² At the same time, critical commentary points to continuing blind spots. The jurisdictional list in section 5 does not expressly include issues such as marital property distribution, economic violence, or maintenance of parents, compelling litigants to rely either on ordinary civil courts or on creative judicial interpretation of the phrase “relating to or arising out of” the enumerated matters.⁵³ Furthermore, the increase in court fees, the lack of explicit ADR mechanisms at the

⁴⁸ *ibid* (discussing s 13(6) FCA 2023).

⁴⁹ Bhuiyan (n 8) 373–374

⁵⁰ Ushika (n 3).

⁵¹ *Hefzur Rahman v Shamsun Nahar Begum* (1999) 51 DLR (AD) 172; *Mrs Shireen Akhter v Md Ehsanul Haque* (2009) 61 DLR (AD) 67.

⁵² Bhuiyan (n 8) 372–374.

⁵³ Faruque (n 5).

appellate level, and persistent structural delays documented in practice-oriented commentaries on family-court backlog suggest that vulnerable litigants may continue to face significant barriers despite the new legislative framework.⁵⁴

2.7. Initial Scholarly and Professional Responses

Early reactions from legal scholars and practitioners reveal a mixed picture. On the positive side, commentators welcome the formal replacement of a martial-law-era ordinance with a democratically enacted statute, the modest but symbolically important steps towards digitalisation and evidence by affidavit, the widening of the appellate forum, and stronger textual emphasis on speedy resolution and enforcement of maintenance and custody orders.⁵⁵ At the same time, several critiques recur across newspaper columns, doctrinal articles, and practitioner blogs. First, the FCA 2023 is described as “pretty similar” to the 1985 Ordinance, with only a handful of genuinely new provisions and a failure to address longstanding jurisdictional gaps relating to marriage validity, marital property and parental maintenance.⁵⁶ Secondly, the legislature is criticised for not taking the opportunity to institutionalise ADR in appellate proceedings, despite evidence from both domestic and comparative scholarship that ADR is particularly well-suited to family disputes.⁵⁷ Thirdly, practitioners highlight the tension between increased court fees and the socio-economic realities of many family-court litigants, particularly women who file suits while already experiencing financial exclusion.⁵⁸

2.8. Conclusion

In summary, the Family Courts Act 2023 represents both continuity and change. It preserves the basic jurisdictional template of the 1985 Ordinance and the five core categories of family-court disputes, while introducing targeted reforms in relation to digital procedures, appellate structure, evidentiary techniques, court fees, and enforcement. Its overall orientation is towards a more efficient and, at least inspirationally, more gender-sensitive family justice system. Yet, as early scholarly and professional commentary makes clear, many of the structural challenges that plagued the previous regime, jurisdictional gaps, backlog, enforcement difficulties, and socio-economic barriers to access remain only partially addressed.

⁵⁴ Ushika (n 3); Faruque (n 5).

⁵⁵ Bhuiyan (n 8); BSS (n 4).

⁵⁶ Faruque (n 5); Abuzar Gifari, ‘An Analysis of the Family Courts Act 2023’ (Law & Our Rights, *The Daily Star*, 22 December 2023) <https://www.thedailystar.net/law-our-rights/news/analysis-the-family-courts-act-2023-3500311> accessed 6 November 2025.

⁵⁷ Bhuiyan (n 8); Faruque (n 5).

⁵⁸ Faruque (n 5); Ushika (n 3).

Chapter 3:

3. Comparative Analysis – Family Courts Ordinance 1985 and Family Courts Act, 2023

The repeal of the *Family Courts Ordinance 1985* - FCO 1985 and its replacement by the *Family Courts Act 2023* - FCA 2023 marks a significant moment in the history of family justice in Bangladesh. At first sight, however, the new Act appears less a radical overhaul than a linguistic and technical restatement of an existing procedural framework.⁵⁹ The following sections examine, in a structured way, how far FCA 2023 actually transforms the earlier regime in terms of (i) jurisdiction and scope, (ii) procedure and ADR, (iii) accessibility of justice, (iv) judicial interpretation and discretion, (v) enforcement of judgments and (vi) impact on vulnerable groups.

3.1. Jurisdiction and Scope of Cases

Section 5 of the FCO 1985 conferred exclusive jurisdiction on family courts over suits relating to: dissolution of marriage, restitution of conjugal rights, dower, maintenance, and guardianship and custody of children.⁶⁰ These categories were deliberately narrow, but the forum was conceived as a *specialised civil court* designed to secure quick and amicable disposal of sensitive family disputes.⁶¹ FCA 2023 retains this basic jurisdictional architecture. Section 5 of the new Act again vests family courts with exclusive competence over suits concerning separation or dissolution of marriage, restoration of conjugal rights, dower, maintenance and guardianship or supervision of children.⁶² Contemporary doctrinal commentary repeatedly notes that the list of justiciable matters is essentially unchanged from the Ordinance, even though the statute has been re-enacted in Bangla and re-numbered.⁶³ The six “classic” family-law issues, marriage breakdown, conjugal restitution, dower, spousal/child maintenance and guardianship/custody, remain at the heart of the jurisdiction.⁶⁴ Two points of continuity and one point of modest change emerge:

- **Continuity of subject-matter** – Both instruments exclude important family-related questions such as inheritance, *hiba* (gift), wills, adoption and parental maintenance; these must still be pursued under other statutes or in ordinary civil or magistrate courts.⁶⁵
- **Continuity of overriding effect** – Both FCO 1985 and FCA 2023 provide that their provisions prevail over other laws in case of conflict, entrenching the centrality of family courts for the enumerated matters.⁶⁶

⁵⁹ See generally *Paribarik Adalat Ain, 2023 o Alochona* (Universal Book House 2024) description; Abuzar Gifari, ‘An analysis of the Family Courts Act 2023’ *The Daily Star* (Dhaka, 22 December 2023)

⁶⁰ Family Courts Ordinance 1985 (Bangladesh) (Ordinance XVIII of 1985) s 5; Bangladesh Legal Aid and Services Trust (BLAST), *Family Courts* (brochure, c 2006).

⁶¹ Md Omar Farque, ‘Jurisdiction and Scope of the Family Courts in Bangladesh: An Overview’ (2025).

⁶² Family Courts Act 2023 (Bangladesh) (Act No XXVI of 2023) s 5; see also extraordinary gazette, 18 September 2023

⁶³ ‘Replacing Family Courts Ordinance 1985 with Family Court Act 2023’ (Advocacy Legal, 20 January 2024).

⁶⁴ *Paribarik Adalat Ain, 2023 o Alochona* (n 1)

⁶⁵ Gifari (n 1) 162–166

⁶⁶ FCO 1985, s 3; FCA 2023, s 3

- **Expansion of personal coverage in practice** – Under the Ordinance, all communities could, in theory, litigate in family courts, but Muslim personal law disputes dominated the docket.⁶⁷ Recent scholarship notes that FCA 2023 has facilitated the **use of family courts by Hindu litigants**, especially Hindu women seeking maintenance, who previously tended to rely on general civil courts.⁶⁸ This is not because the jurisdictional clause itself is new, but because judges and lawyers are increasingly willing to apply uncodified Hindu law within the procedural framework of FCA 2023.⁶⁹

3.2 Procedural Changes: Filing, Trial Process, ADR and Appeals

One of the most distinctive features of FCO 1985 was its special procedure. The Ordinance limited the time for appearance of the defendant, typically 30 days, allowed for dismissal for non-appearance, relaxed strict application of the Code of Civil Procedure and the Evidence Act, and provided for *in camera* hearings where appropriate.⁷⁰ Sections 10 and 13 mandated conciliation efforts at both pre-trial and post-evidence stages, making family courts the first formal judicial forum in Bangladesh to institutionalise mediation within the court process.⁷¹ FCA 2023 preserves this procedural skeleton but introduces several targeted adjustments:

1. Pleadings and filing

FCA 2023 retains the towers and ante-and-written-statement model, but introduces an explicit provision on amendment of pleadings, allowing courts greater flexibility to correct or clarify claims and defences during proceedings.⁷² This codifies what many courts already did under inherent powers, and is intended to reduce multiplicity of proceedings and technical dismissals.

2. Summons and service

Section 7 of the new Act refines the rules on issuing and serving summons and notices, emphasising procedural fairness and efficiency. Commentators note that courts are required to fix a specific date and to ensure more structured modes of service, including, where necessary, public advertisement.⁷³ These adjustments respond to longstanding concerns that defective service under the Ordinance contributed to delays and *ex parte* decrees.

3. Pre-trial process and mediation

Under FCO 1985, pre-trial conciliation under section 10 was a key innovation. FCA 2023 continues and clarifies this approach. Section 11 now requires the court to hold a

⁶⁷ BLAST, *Legislative Initiatives and Reforms in the Family Laws* (policy paper, c 2010).

⁶⁸ The Concept of Maintenance under Hindu Law: A Legal Analysis in the Context of Bangladesh' (2025).

⁶⁹ GC Mandal, 'Born to be Unequal? An Assessment of the Rights and Protection of Hindu Women in Bangladesh' (2024) *Dhaka University Law Journal* 35(1).

⁷⁰ BLAST, *Family Courts* (n 2)

⁷¹ 'Alternative Dispute Resolution in Bangladesh: A Legislative Review' (Asian Journal of Social Sciences and Legal Studies 2020)

⁷² *Paribarik Adalat Ain, 2023 o Alochona* (n 1)

⁷³ 'Bangladesh Civil Summons Laws' (training material)

pre-trial hearing, ordinarily within thirty days of filing the written statement, to identify issues and attempt settlement or reconciliation through mediation.⁷⁴ If conciliation fails, issues are framed, and a date is fixed for recording evidence. Read together with the conciliation provision at a later stage of proceedings, the Act thus embeds a two-stage mediation model within the trial process.

4. Appeal structures

The most visible procedural reform is the creation of specialised family appellate courts. While appeals under FCO 1985 also lie to the District Judge, FCA 2023 expressly establishes appellate courts consisting of one District Judge in each district to hear appeals from family courts.⁷⁵ This is widely regarded as one of only two major textual innovations of the new Act.⁷⁶ At least in theory, a dedicated appellate forum may contribute to more consistent jurisprudence and to some reduction in delay at the appellate level.

5. Court fees and cost-related procedure

The second major change highlighted in the commentary is the increase in the court fee from BDT 25 to BDT 200.⁷⁷ This aligns family-court fees more closely with contemporary economic realities, but it also raises questions about affordability for low-income litigants, especially women seeking maintenance.

Despite these adjustments, many procedural elements remain essentially unchanged between the two regimes. The new Act does not introduce comprehensive provisions on digitalisation, such as mandatory e-filing or virtual hearings; such initiatives are being pursued primarily through separate e-judiciary projects and administrative reforms rather than through FCA 2023 itself. Nor does the Act provide for ADR at the appellate level, a gap that has been explicitly criticised by legal scholars.⁷⁸

3.3 Accessibility of Justice: Time, Cost, Gender Sensitivity and Rural–Urban Divides

From its inception, FCO 1985 was justified as a mechanism for quick, inexpensive and amicable resolution of family disputes.⁷⁹ The 30-day limit for appearance and the emphasis on conciliation were meant to counteract the chronic delays of ordinary civil courts.⁸⁰ Yet empirical work and policy briefs over the past two decades reveal a stark gap between this legislative aspiration and experience. A former family-court judge reported a backlog of around 700 cases in a single district, and many women seeking maintenance face multiple

⁷⁴ Couple Therapy in the Divorce Process of Bangladesh' (2025) *International Journal of Social, Political and Economic Research*.

⁷⁵ Dhaka Tribune, 'Major Laws Passed by the Bangladesh Parliament in 2023' (8 January 2024)

⁷⁶ Gifari (n 1) 159–160

⁷⁷ *ibid*, *Paribarik Adalat Ain, 2023 o Alochona* (n 1)

⁷⁸ Gifari (n 1) 166–167.

⁷⁹ Farque (n 3)

⁸⁰ BLAST, *Family Courts* (n 2)

adjournments, abusive countersuits and prohibitive costs for transport and witness attendance.⁸¹ FCA 2023 does not substantially alter this structural picture:

- **Time:** The new Act refines timelines for pre-trial hearings and written statements but does not introduce stringent statutory deadlines for disposal of suits. Socio-legal research conducted after the Act notes that delays remain pervasive, and that the “human cost of delay”, particularly for women and children dependent on maintenance, continues largely unabated.⁸²
- **Cost:** The increase in court fees to BDT 200 is modest in absolute terms but can be significant for poor litigants.⁸³ When combined with travel, lost wages and the need to finance repeated appearances, the overall cost of litigation under FCA 2023 may be higher than under the Ordinance for the most vulnerable users. Legal aid organisations such as BLAST and other NGOs, therefore, remain central actors in making the forum meaningful in practice.⁸⁴
- **Gender sensitivity:** Neither FCO 1985 nor FCA 2023 explicitly codifies gender-sensitive procedures (for example, mandatory separate waiting rooms, child-friendly spaces or survivor-centred approaches to domestic violence within family courts). However, both instruments operate within a broader constitutional and statutory environment that is increasingly attentive to gender equality.⁸⁵ Scholarship on women’s economic rights after separation emphasises that, although family courts potentially offer a powerful forum for claims to maintenance and dower, women still confront patriarchal attitudes, unfamiliarity with legal procedures and social stigma.⁸⁶ FCA 2023 does little to transform these underlying dynamics; any progress depends largely on judicial attitude and administrative reforms rather than on new statutory language.
- **Rural–urban disparities:** Under FCO 1985, the formal exclusion of the hill districts from the Ordinance, coupled with weaker infrastructure and fewer legal professionals in rural areas, created serious disparities in access.⁸⁷ Advocacy and case-law have since pushed for extension of family-court facilities to the CHT and other underserved regions, and FCA 2023 has been framed politically as part of this drive.⁸⁸

In comparative terms, FCA 2023 does not fundamentally improve accessibility relative to FCO 1985; rather, it consolidates an existing model whose virtues and deficiencies are by now well-documented.

⁸¹ BLAST, *Access to Justice for Women: Women’s Economic Rights after Separation* (policy brief)

⁸² NILS Bangladesh, ‘Between Law and Life: The Human Cost of Delays in Family Court’ (15 November 2024).

⁸³ Gifari (n 1) 159

⁸⁴ BLAST, organisational profile; Helberg, ‘The Implementation of Women’s Rights to Penal Remedies for Violence in Bangladesh’ (2023).

⁸⁵ South Asia State of Minorities Report 2022, ch 4.

⁸⁶ BLAST, *Access to Justice for Women* (n 29).

⁸⁷ BLAST, *Family Courts in the CHT* (n 12).

⁸⁸ President’s Address (n 13).

3.4 Judicial Interpretation and Discretion

Because both the Ordinance and the Act are procedural instruments, most substantive questions, such as the content of spousal duties, the scope of dower or the best interests of the child, are left to personal law and judicial interpretation.⁸⁹ This makes the jurisprudence of the High Court Division and Appellate Division crucial for understanding how each framework operates. Under FCO 1985, courts expansively interpreted section 5's jurisdiction, holding that questions about the validity of marriage, the authenticity of the *kabinnama* and related incidents of marital status fall within the enumerated heads of dissolution or restitution.⁹⁰ In *Nelly Zaman v Giasuddin Ahmed*, 1991, the High Court Division read Articles 27 and 31 of the Constitution, equality before and equal protection of the law to reject the notion that only husbands could seek restitution of conjugal rights, opening the door for wives to be claimants as well.⁹¹ Yet, as later analysis shows, lower courts did not consistently internalise this equality-based reading, and confusion persisted.⁹² Commentary on FCA 2023 laments that the new Act fails to codify these advances. The jurisdictional clause in section 5 is essentially identical, and Parliament did not clarify whether both spouses may seek restitution or how far post-divorce maintenance obligations extend.⁹³ As a result, judges retain broad discretion to either reinforce or challenge patriarchal norms embedded in personal laws. More recent jurisprudence and scholarship illustrate how FCA 2023 interacts with constitutional principles:

- In litigation on maternal guardianship, the High Court Division has begun to interpret guardianship provisions considering constitutional guarantees of gender equality and the child's best interests, referring to FCA 2023 alongside the *Guardians and Wards Act 1890*.⁹⁴
- Academic analyses of marriage and family law in Bangladesh similarly treat FCA 2023 as part of a complex "legal - social" field in which judicial discretion mediates between formal rules and social practice.⁹⁵

3.5. Enforcement of Judgments: Effectiveness and Challenges

Sections 17 and 18 of FCO 1985 dealt with the enforcement of decrees and appeals, largely by reference to the ordinary machinery of civil procedure execution.⁹⁶ Family-law decrees, especially for periodic maintenance, often required repeated applications and could be frustrated by non-cooperation or evasion by judgment-debtors. Socio-legal studies and doctrinal analyses point to persistent confusion and delay in executing family-court decrees, including ambiguity about the use of coercive measures and the relationship between family-

⁸⁹ *Paribarik Adalat Ain, 2023 o Alochona* (n 1)

⁹⁰ Farque (n 3).

⁹¹ *Nelly Zaman v Giasuddin Ahmed* (1991) 43 DLR (HCD) (as discussed in Gifari (n 1) 163–164)

⁹² *ibid*

⁹³ Gifari (n 1) 162–166.

⁹⁴ Constitutional Interpretation and Gender Equality: Analysing the High Court Division's Landmark Decision on Maternal Guardianship in Bangladesh' (2025)

⁹⁵ ST Hoque, 'Rethinking Marriage: Blurring the "Legal" and the "Social"' (2025) *Law and Social Inquiry*.

⁹⁶ FCO 1985, ss 17–18; see also bdlaws (Legislative and Parliamentary Affairs Division).

court orders and parallel criminal proceedings, for example, under the Muslim Family Laws Ordinance 1961.⁹⁷ FCA 2023 largely carries forward the same enforcement framework. Commentators stress that the Act does not introduce new tools such as:

- specialised enforcement units or family-support divisions,
- automatic wage-deduction mechanisms for maintenance, or
- simplified procedures for cross-district enforcement.⁹⁸

Policy briefs focused on women's economic rights after separation emphasise that, in both regimes, the real bottleneck lies not in obtaining a decree, but in enforcing it.⁹⁹ Backlogs in execution, lack of up-to-date information on the debtor's assets and the absence of systematic follow-up by court staff mean that successful claimants often receive only partial or sporadic payments, if any. These problems disproportionately affect women and children, who may lack the resources to pursue repeated enforcement applications.¹⁰⁰

3.6. Impact on Vulnerable Groups: Women, Children and Marginalised Families

Finally, the impact of the two regimes must be assessed from the standpoint of those whom family courts are supposed to protect: women, children and marginalised families. Under FCO 1985, the creation of specialised family courts undoubtedly improved the formal availability of judicial remedies for dissolution, dower, maintenance and custody disputes, especially for Muslim women.¹⁰¹ Yet multiple studies show that socio-economic barriers, patriarchal norms and regional disparities limited the real impact of these remedies.¹⁰² Women frequently confronted stigma, intimidation and lengthy, costly proceedings. Children's interests, though present in custody disputes, were not always assessed through a child-centred lens, and attendance of children in court remained largely unregulated.¹⁰³ For indigenous and minority communities in the CHT and other areas, the formal exclusion or weak presence of family courts compounded pre-existing marginalisation.¹⁰⁴ FCA 2023 operates in a changed socio-legal landscape and has had some positive implications:

- Recent scholarship documents that Hindu women can now more readily use family courts to pursue maintenance claims grounded in traditional Hindu law, which are generally faster and less formal than ordinary civil suits.¹⁰⁵
- The centrality of FCA 2023 in guardianship and custody disputes, alongside the Guardians and Wards Act 1890, has encouraged more explicit judicial engagement with the best interests of the child and with constitutional equality guarantees.¹⁰⁶

⁹⁷ MG Sarwar, 'Conciliation and Other Alternative Procedures of Dispute Resolution in Bangladesh' (2003).

⁹⁸ Gifari (n 1); BLAST policy materials.

⁹⁹ BLAST, *Access to Justice for Women* (n 29).

¹⁰⁰ *ibid.*

¹⁰¹ BLAST, *Legislative Initiatives and Reforms in the Family Laws* (n 9).

¹⁰² Helberg (n 32); South Asia State of Minorities Report 2022 (n 33).

¹⁰³ UNICEF, *Justice, Accountability and Support* (2023).

¹⁰⁴ BLAST, *Family Courts in the CHT* (n 12).

¹⁰⁵ Mandal (n 11); 'The Concept of Maintenance under Hindu Law' (n 10).

¹⁰⁶ 16 Days of Activism: Readers' Queries' *The Daily Star* (8 December 2024)

- FCA 2023 is increasingly embedded within a wider architecture of ADR and access-to-justice initiatives, which, if implemented sensitively, can reduce adversarial conflict and improve outcomes for children.¹⁰⁷

At the same time, serious continuities and new risks remain:

- The Act is, as commentators emphasise, purely procedural; it does not codify substantive standards on equality, non-discrimination or child protection, leaving these to constitutional interpretation and sectoral statutes such as the Domestic Violence (Prevention and Protection) Act 2010.¹⁰⁸
- Mandatory pre-litigation mediation and arbitration schemes linked to section 5 FCA 2023 may, in the absence of strong safeguards, expose victims of domestic violence to pressure to reconcile or settle on unfavourable terms. Legal experts have warned that such schemes can become an additional layer of harassment rather than an avenue of relief.¹⁰⁹
- Without substantial improvements in legal aid, court infrastructure and gender-sensitive training, FCA 2023 risks reproducing the same classed and gendered patterns of exclusion that limited the transformative potential of FCO 1985.¹¹⁰

3.7. Conclusion

The comparative analysis of FCO 1985 and FCA 2023 reveals a pattern of strong institutional continuity with limited procedural reform. Jurisdictional scope, basic procedure, conciliation-centred trial structure and enforcement mechanisms are largely preserved. The principal textual novelties, the creation of dedicated family appellate courts, the increase in court fees and some refinements regarding pleadings and summons, do not amount to a paradigmatic shift in family-court justice. From a doctrinal perspective, therefore, FCA 2023 should be understood less as a new substantive family-law code and more as a re-enacted procedural framework which consolidates, in Bangla, the institutional design first introduced by FCO 1985. Whether this framework can be made genuinely responsive to the needs of women, children and marginalised families depends not only on future amendments to the Act itself, but also on the development of case-law, the design of ADR and legal-aid schemes and the broader constitutional commitment to equality and access to justice.

¹⁰⁷ The Dynamism of the Structure and Mechanism of the ADR System in Bangladesh' (2025)

¹⁰⁸ *Paribarik Adalat Ain, 2023 o Alochona* (n 1); Gifari (n 1)

¹⁰⁹ Jago News (n 25); Views Bangladesh (n 26).

¹¹⁰ BLAST, Helberg and related access-to-justice literature (nn 29, 32, 51).

Chapter 4

4. Family Justice in Practice – Challenges and Prospects

This chapter evaluates how family justice operates in practice under the *Family Courts Act 2023* (FCA 2023), considering whether it has remedied weaknesses of the *Family Courts Ordinance 1985* (FCO 1985), and outlining key challenges and reform prospects.

4.1 Effectiveness of the 2023 Act in Addressing Past Shortcomings:

FCA 2023 formally repeals FCO 1985 and re-enacts the law on family courts in Bangla, with some procedural refinements.¹¹¹ It retains the core jurisdiction over dissolution of marriage, restitution of conjugal rights, dower, maintenance, and guardianship or custody of children, and preserves the conciliation-centred model first introduced in 1985.¹¹² Provisions on amendment of pleadings, clearer pre-trial hearings and a more explicit appeal structure are positive developments, making the framework neater and somewhat more coherent.¹

4.2 Backlog, Delay and Enforcement:

Case backlog and delay remain the most visible obstacles to effective family justice. The overall judicial system in Bangladesh carries a very high volume of pending cases, and family courts form part of this wider congestion.¹¹³ Each adjournment in a maintenance or custody suit prolongs uncertainty for women and children and can entrench economic hardship.

Enforcement is an equally serious weakness. Under both FCO 1985 and FCA 2023, decrees are enforced through the ordinary civil procedure machinery, with attachment of property or, occasionally, arrest and detention.¹¹⁴ In practice, women frequently report difficulties in collecting maintenance or dower, particularly where husbands have informal income or move between jurisdictions.¹¹⁵ NGOs and legal-aid providers consistently describe enforcement as the “second litigation”, often more draining than the original suit.¹¹⁶ FCA 2023 does not introduce specialised tools such as automatic wage-deduction orders or dedicated execution units, so the structural problems of weak and slow enforcement persist.

4.3. Socio-Cultural Barriers in Family Dispute Resolution

Formal access to family courts operates within a powerful socio-cultural context. Gendered norms, economic dependency, fear of stigma, and concern for children’s security can all deter

¹¹¹ Abuzar Gifari, ‘Analysis of the Family Courts Act 2023’ *The Daily Star* (Dhaka, 22 December 2023); ‘Replacing Family Courts Ordinance 1985 with Family Court Act 2023’ (Advocacy Legal, 20 January 2024).

¹¹² *Family Courts Ordinance 1985* (Ordinance No XVIII of 1985) ss 5–6; *Family Courts Act 2023* (Act No XXVI of 2023)

¹¹³ M Rahman, ‘Reducing Backlog of Cases in the Judicial System of Bangladesh’ (2023) 9(5) *International Journal of Law* 45; ‘From Case Backlog to Justice: A Practical Blueprint for Bangladesh’s Courts’ *The Daily Star* (Dhaka, 2 October 2025)

¹¹⁴ *Family Courts Ordinance 1985* (Ordinance No XVIII of 1985) ss 5–6; *Family Courts Act 2023* (Act No XXVI of 2023).

¹¹⁵ UNDP, *Women’s Access to Justice in Bangladesh: Project Document* (United Nations Development Programme 2015)

¹¹⁶ Bangladesh Law Commission, *Report on Marriage, Inheritance and Family Laws in Bangladesh* (Report No 69, 2005); BLAST, *Legislative Initiatives and Reforms in the Family Laws* (Bangladesh Legal Aid and Services Trust 2009)

women from litigating or push them towards unfavourable settlements.¹¹⁷ In many communities, disputes are first taken to informal forums such as *shalish*, religious leaders, or elders, which may prioritise family cohesion or community honour over women's legal entitlements.

FCA 2023 is largely silent on these socio-cultural dynamics. The statute does not, for example, establish survivor-centred protocols for cases involving domestic violence or coercive control, nor does it mandate child-friendly procedures. Instead, it leaves room for judges and lawyers to respond sensitively within the existing framework, supported by policy initiatives and training. UNDP and UNICEF programmes on women's access to justice and child protection illustrate how external projects can complement the statutory scheme, but such support is uneven across districts.¹¹⁸¹¹⁹ Without sustained investment in legal literacy, economic support and protection services, socio-cultural barriers will continue to blunt the transformative potential of the 2023 Act.

4.4. Role of Legal Professionals, Judges and NGOs:

The operation of family justice is shaped crucially by legal professionals, judges and non-governmental organisations. Lawyers can either facilitate focused, settlement-oriented litigation or exacerbate delay through unnecessary interlocutory applications and adjournments.

NGOs such as BLAST and other legal-aid providers play a vital bridging role, offering free or low-cost representation, legal counselling, shelter, and psycho-social support.¹²⁰ They make it possible for low-income women and marginalised families to reach, and remain in, the court process. Children's organisations and social-work actors similarly help ensure that custody and guardianship decisions take proper account of the best interests of the child.¹²¹ FCA 2023 does not formally integrate these actors into the statutory design, but in practice, family justice in Bangladesh is increasingly a multi-institutional project in which courts, bar and civil society share responsibility.

4.5 Comparative Lessons from India and Pakistan:

Experience from neighbouring jurisdictions provides useful comparative insights. India's *Family Courts Act 1984* created specialised family courts with counsellors and welfare officers, aiming at speedy, conciliatory resolution of disputes.¹²² Yet Indian family courts

¹¹⁷ Bangladesh Law Commission, *Report on Marriage, Inheritance and Family Laws in Bangladesh* (Report No 69, 2005); BLAST, *Legislative Initiatives and Reforms in the Family Laws* (Bangladesh Legal Aid and Services Trust 2009)

¹¹⁸ UNDP, *Women's Access to Justice in Bangladesh: Project Document* (United Nations Development Programme 2015).

¹¹⁹ UNICEF Bangladesh, 'Child Protection: Access to Justice and Children's Courts' (UNICEF Bangladesh 2025).

¹²⁰ BLAST, *Access to Justice for Women: Women's Economic Rights after Separation* (policy brief, Bangladesh Legal Aid and Services Trust 2018).

¹²¹ UNICEF Bangladesh, 'Child Protection: Access to Justice and Children's Courts' (UNICEF Bangladesh 2025).

¹²² *Family Courts Act 1984* (India); National Commission for Women (India), *Working of Family Courts in India* (NCW Report).

today also struggle with backlog, uneven quality of counselling, and challenges in enforcing maintenance. Three broad lessons emerge for Bangladesh:

1. **Specialisation is necessary but not sufficient:** creating family courts helps, but without adequate resources and enforcement tools, delay and frustration will remain.
2. **Integrated support services matter:** counsellors, mediators and social workers can make family courts more responsive, particularly to children and survivors of violence, when they are properly trained and funded.¹²³
3. **A rights-based judicial culture is essential:** constitutional guarantees of equality and child welfare must inform day-to-day adjudication, not remain abstract principles.

Chapter 5:

5. Conclusion and Recommendations

This concluding chapter synthesises the findings of the comparative analysis of the *Family Courts Ordinance 1985* (FCO 1985) and the *Family Courts Act 2023* (FCA 2023), evaluates the extent to which the 2023 Act improves upon its predecessor, identifies remaining gaps in law and practice, and sets out policy recommendations for strengthening family justice in Bangladesh.

5.1. Remaining Gaps in Legal Framework and Implementation

First, there are substantive and jurisdictional gaps. The jurisdiction of family courts continues to be confined to a narrow set of causes of action, leaving important family-related issues such as succession, adoption, parental maintenance for elderly parents, and many aspects of domestic violence outside their direct remit.¹²⁴ This fragmented landscape can force litigants into parallel or sequential proceedings in different forums, increasing cost and complexity.

Second, there are procedural and enforcement gaps. FCA 2023 does not introduce strong, time-bound case-management obligations or specialised enforcement mechanisms for maintenance and dower. Execution still depends on general civil-procedure tools that are often ill-suited to debtors with informal or concealed income.¹²⁵ The absence of clear statutory guidance on modern tools such as salary attachment, automatic deductions, or central registers of maintenance liabilities weakens the practical effectiveness of family-court decrees.

Third, there are implementation and socio-cultural gaps. Court infrastructure, judge–staff ratios, and availability of trained mediators or counsellors vary widely between districts.

¹²³ *Family Courts Act 1984* (India); National Commission for Women (India), *Working of Family Courts in India* (NCW Report).

¹²⁴ *Family Courts Ordinance 1985* (Ordinance No XVIII of 1985) ss 5–6; *Family Courts Act 2023* (Act No XXVI of 2023)

¹²⁵ Bangladesh Law Commission, *Report on Marriage, Inheritance and Family Laws in Bangladesh* (Report No 69, 2005); BLAST, *Legislative Initiatives and Reforms in the Family Laws* (Bangladesh Legal Aid and Services Trust 2009)

Socio-cultural norms, economic dependency, and fear of stigma continue to deter women and children from asserting their rights.¹²⁶ Initiatives by UNDP, UNICEF and national NGOs have improved access in specific projects and locations, but there is no consistent, nationwide programme integrating legal aid, psycho-social support and child-sensitive procedures into the family-court system.¹²⁷

5.2. Policy Recommendations for Strengthening Family Courts

Considering these findings, several interlinked reforms are recommended to move from a merely re-stated framework to a more effective and rights-centred system of family justice:

1. Introduce robust case-management and time standards

The Supreme Court, possibly supported by legislative amendment, should adopt realistic but firm timelines for key procedural stages - pre-trial, evidence, judgment, execution in family cases, backed by internal monitoring and publication of performance data.¹²⁸ This would signal that a delay in family matters is institutionally unacceptable.

2. Strengthen enforcement mechanisms for maintenance and dower

Parliament should consider amending FCA 2023, or related legislation, to empower family courts to order salary attachment, direct automatic deductions from certain benefits or pensions, and use simplified procedures to trace assets and income.¹²⁹ A dedicated execution protocol for family courts would help ensure that decrees translate into actual financial support.

3. Broaden and rationalise jurisdiction

In the medium term, the jurisdiction of family courts could be expanded to cover closely related matters such as parental maintenance and selected inheritance disputes, reducing the need for multiple proceedings and enabling more holistic resolution of family breakdown.¹³⁰ Any expansion should be accompanied by adequate resourcing and training.

4. Institutionalise gender- and child-sensitive procedures

FCA 2023 or accompanying rules could explicitly require child-friendly facilities, private waiting areas, survivor-sensitive handling of cases involving domestic

¹²⁶ UNDP, *Women's Access to Justice in Bangladesh: Project Document* (United Nations Development Programme 2015)

¹²⁷ BLAST, *Access to Justice for Women: Women's Economic Rights after Separation* (policy brief, Bangladesh Legal Aid and Services Trust 2018)

¹²⁸ M Rahman, 'Reducing Backlog of Cases in the Judicial System of Bangladesh' (2023) 9(5) *International Journal of Law* 45; 'From Case Backlog to Justice: A Practical Blueprint for Bangladesh's Courts' *The Daily Star* (Dhaka, 2 October 2025).

¹²⁹ Bangladesh Law Commission, *Report on Marriage, Inheritance and Family Laws in Bangladesh* (Report No 69, 2005); BLAST, *Legislative Initiatives and Reforms in the Family Laws* (Bangladesh Legal Aid and Services Trust 2009).

¹³⁰ *Family Courts Ordinance 1985* (Ordinance No XVIII of 1985) ss 5–6; *Family Courts Act 2023* (Act No XXVI of 2023)

violence, and regular training for judges and staff on gender equality and children's rights.¹³¹ ¹³²This would anchor good practice in binding norms rather than leaving it to individual initiative.

5. Integrate legal aid, counselling and social work into the court system

Building on existing programmes, the government should formalise cooperation with NGOs and international partners so that legal aid, psycho-social support, and counselling services are available in or near family courts across the country.

6. Adopt a data-driven reform strategy

Finally, systematic collection and publication of disaggregated data on filings, disposal times, outcomes and enforcement broken down by gender, age, location and case type would allow policymakers to identify where bottlenecks are most acute and to evaluate the impact of specific reforms over time.¹³³

If pursued coherently, these measures would help transform FCA 2023 from a modest procedural update into the foundation for a genuinely accessible, efficient and rights-responsive system of family justice in Bangladesh.

¹³¹ UNDP, *Women's Access to Justice in Bangladesh: Project Document* (United Nations Development Programme 2015).

¹³² UNICEF Bangladesh, 'Child Protection: Access to Justice and Children's Courts' (UNICEF Bangladesh 2025)

¹³³ M Rahman, 'Reducing Backlog of Cases in the Judicial System of Bangladesh' (2023) 9(5) *International Journal of Law* 45; 'From Case Backlog to Justice: A Practical Blueprint for Bangladesh's Courts' *The Daily Star* (Dhaka, 2 October 2025).

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