Legalizing Public Morals in Bangladesh: Muslim Family Law in Context

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Abstract:In Bangladesh, many pieces of legislation are motivated by morality and religion. Public morals are a good drive for law jurisprudentially. Even in the historic timeframe prior to formal law, morality and law was indivisible. Moreover, morality is connected to religions and most mainstream religions in the world have certain moral dictates in common. For the practical purpose of this paper, religious commands are technically included under the purview of morality. Modern states tend to hold the moral obligations in high regard and work thereupon from a positivist approach gradually, whenever felt necessary. The prohibition of dowry in marriages, for example, gained momentum from religious, mainly Islamic, arguments. The legislating states were convinced that morality has a sacred place in lawmaking or should have one. This paper looks into the moral and/or equitable considerations in the statutory Muslim family laws and the legislature's role in legalizing such moral and equitable urges in the country.

Keywords: *Morality, personal law, representation, equity, abetment*

1. Introduction, relevancy and scope of public morals

As a general rule, the law is not disconnected from morality. Instead, in modern times, law and morality are seen to overlap, despite the jurisprudential debate surrounding the status of morality in connection to the law. In the history of legislation in Bangladesh, there are pieces that are motivated by public morality and can be found in the near past and centuries back. For this paper's practical purpose, public morality means and includes any established moral ideas objectively reasoned and religiously prescribed. For example, Hindu widows' remarriage law legalized marriages for those who were, due to a cruel so-called custom, believed to be disqualified for remarrying. While doing so, the then legislature uttered words of good morals and public welfare[1] in justifying its legislation. Whereas many Acts were on the grounds of singular morality, many were even for upholding religious permissibility. As most Bangladeshis are Muslim by religion, many religious instructions constitute, inter alia, public morals in this country. For example, the MussalmanWakf Validating Act, 1913, was intended to validate any transfer of property by way of Wakf by a follower of Muslim faith, given the religious instruction in favor of such Wakf. The doctrine of representation in the order of succession in Muslim inheritance law[2] is an example of legislative innovation based on the recommendations of a Committee[3] on an equitable consideration in favor of the orphaned grandchildren excluded under the textual personal law. Historically on the same grounds of equity, Bangladeshi legislation on inheritance brought about statutory modifications to Muslim law and laws of other faith groups. For example, an amending law on Hindu inheritance ordered a row of succession with granddaughter, sister and nephew in between a grandfather and an uncle in case where the propositus is a Hindu male dying intestate.[4] The legislative innovation in the form of the doctrine of representation is also seen in the inheritance law of Hindus by a statute back in 1937.[5] Out of many urges of popular morality and prescriptions of different religions, only those connected to Muslim family law are considered in the current paper. A sense of respect for public and/or religious morality was so empirically prevalent among the near-past legislators that they even penalized overloading beasts of burden on the ground of cruelty to animals[6] which is morally wrong and actually a despicable act in religions. In the past, even the legislators labelled some acts like undue brothel management as 'immoral' while penalizing the same by the law against immoral traffic.[7]

In current times, legalizing public morality is sometimes a grave necessity for a state. This is why the

[1]Hindu Widow's Re-marriage Act 1856, Preamble.
[2]Muslim Family Laws Ordinance 1961, s 4 (MFLO).
[3]The long title of MFLO reads as follows- "An Ordinance to give effect to certain recommendations of the Commission on Marriage and Family Laws".

[4]Hindu Law of Inheritance (Amendment) Act 1929, s 2.
[5]Hindu Women's Rights to Property Act 1937, s 3. The proviso to section 3 said: "Provided that the widow of a predeceased son shall inherit in like manner as a son if there is no son surviving of such predeceased son, and shall inherit in like manner as a son's son if there is surviving a son or son's son of such predeceased son".
[6]Cruelty to Animals Act 1920, s 5 (This old Act is now repealed by the Animals Welfare Act 2019).
[7]Suppression of Immoral Traffic Act 1933 (now repealed).

legislature is seen to make laws commanding certain moral obligations or proscribing certain moral or religious violations. This is so because the state is not *ipsofacto* against any religious sanctity and Bangladesh is also no exception in this respect as it believes in morality [8], secularism[9] and freedom of faith.[10] The modern trend is increasingly supportive of this ideal, meaning morality having a place in lawmaking. Even outside lawmaking, morality, and sometimes religious morality, are seen to play some big, if not biggest, roles. Things like Public Interest Litigation (PIL), judicial activism, environmental advocacy etc.- all are inspired, in the background, by public morality, public welfare and canons of equity. Moreover, all statutory enactments governing personal laws generally relate to some specific religions. As days go by in the twenty first century legal systems, the role of morality as an influential catalyst in the company of law is more manifest. Jurists maintain an observation that law is surpassed by morals while used in the lawyer's context. Chances are there for an 'advanced law' to overcome contemporary morality but such events are mostly exceptional and likely to occur during revolutions or major reform movements.[11] In normal courses of action, such advanced lawmaking is seldom practiced and moral values are hardly bypassed because the legislators don't work in vacuum and the values are more than potential materials for them.[12] This paper, hence, purports to look into the moral and equitable considerations in areas of maintenance and dowry prohibition in Bangladesh as these two areas have received two novel and recent statutes (maintenance in 2013 and dowry prohibition in 2018) and also as these areas have certain provisions rooted in moral (religious or extra-religious) arguments or other equitable grounds.

2. The idea of representation in maintenance

Maintenance is one of the fundamental issues the state has worked on from a positivist approach decades ago. Maintenance may arise out of relations of consanguinity or affinity. The husband must maintain his wife and other dependents. Likewise, a son has to maintain his parents. Generally, Bangladesh has legalized the provision of maintenance for all Bangladeshi wives and children, no matter what religion they belong to,[13] in the year 1985 by establishing family courts[14] and empowering them to try, inter alia, suits for maintenance.[15] However, even earlier, it provided for maintenance exclusively for Muslim wives by formalizing a law made back in 1961 during the undivided Pakistan era.[16] Before 2007, the maintenance of wives and children could also be availed of under the general law on criminal procedure, especially under a specific section [17] (now defunct as omitted in 2009 [18] with retrospection from 2007).

Maintenance is, like marriage, initially a religious prescription and the only reason the state interposed to legalize it is to stop people from defaulting on it. When people grossly violate religious or moral provisions, especially connected to others' rights, the state has no other way except to intervene. This is how a state generally responds to moral urges within a given territory to ensure the state's smooth functioning and prevent the breakdown in people's relationships. The latest legislation connected to legalizing maintenance in Bangladesh is the Parents Maintenance Act 2013 which legally obliged the children to maintain their parents and penalized non-maintenance as an offence to be tried in the court of first-class judicial magistrate or metropolitan magistrate.[19] A corresponding Draft Parents Maintenance Rules was formulated in 2017 by the Ministry of Social Welfare as empowered by the said Act.[20] Earlier, parents could, like wives and children, go to the family court to claim maintenance from their opulent children.[21] The Parents Maintenance Act 2013 has brought about some salient provisions relating to parental maintenance. It legalized maintenance for the biological parents by excluding the adoptive or foster ones and the wet nurses having milk kinship.[22] Such provision is the most precise reflection of Muslim textual law. From the Muslim law perspective, it is only the biological parents who the children are bound to maintain.[23]

However, the Parents Maintenance Act 2013 came up with the idea of representation in parental maintenance which is foreign to the general religious law domain. The Act said that if the biological parents die or otherwise disappear, the paternal grandparents will, for maintenance, technically assume the position of the father and the maternal grandparents the role of the mother.[24] The idea of grandparents representing the parents in case of maintenance could, at best, be found to be a mere moral inspiration in religions but the Act made this representation a purely legal substitute. Extension of the duties of maintenance upwards (toward ascendants) by way of representation is done here.

Maintenance may be need-based or need-neutral. A wife's right to maintenance is regarded as need-neutral which means that the wife is to be maintained by the husband regardless of her financial condition. But the Parents Maintenance Act 2013 did not clarify whether the parents' right to maintenance is need-based or need-neutral. Apparently, the plain texts of the Act connotes that parents' right to maintenance is, within the purview of the Act, need-

[8] Constitution of the People's Republic of Bangladesh 1972, art 18 (Constitution).
[9] ibid, art 10.
[10] ibid, art 41.
[11] Roscoe Pound, 'Law and Morals-Jurisprudence and Ethics' (1945), 23(3) North Carolina Law Review 221.
[12] Raghunadha A. Reddy, 'Role of morality in lawmaking: A critical study' (2007) 49 Journal of the Indian Law Institute 194.
[13] *PochonRikssi Das v Khuku Rani Dasi and others*, [1998] 50 DLR 47 (AD).
[14] Family Courts Ordinance 1985, s 4.
[15] ibid, s 5.
[16] MFLO (n 2) s 9.
[17] Code of Criminal Procedure 1898, s 488.
[18] By Act XXXII of 2009.
[19] Parents Maintenance Act 2013, s 7 (PMA).
[20] ibid, s 9.
[21] *Jamila Khatun v Rustom Ali* [1996] 48 DLR 110 (AD).
[22] PMA (n 19) s 2.
[23] Abdullah Yusuf Ali, The Holy Quran (Wordsworth Editions 2014) Ch 17, Verses 23-25 (Holy Quran).
[24] PMA (n 19) s 4.

neutral.[25] However, in Jamila Khatun case,[26] the erstwhile Justice Mustafa Kamal said-"Children in easy circumstances under Mohammadan Law are bound to maintain their poor-parents, although the latter may be able to earn something for themselves. These poor parents may also file a suit in a Family Court for maintenance from their opulent children."

The stipulation of poverty by His Lordship Mustafa kamal, J, in the judgment somewhat suggests that the parents' right to maintenance is need-based because poverty generally symbolizes neediness.

Moreover, the Draft Parents Maintenance Rules 2017 has addressed this issue expressly and provided for the minimum standard of parental maintenance on the part of parents as well as children. According to the Draft Rules, the duty of the children to maintain their parents is based on their financial ability and the right of the parents to get maintenance is based on their financial need.[27] This ability-based duty of children and need-based right of parents reckons some goodness. In the context of parental maintenance, representation doubles the burden, at least in theory. While the children have to maintain a maximum of two parents in the normal course of action, they have to maintain up to four grandparents in case of representation. So, the Draft Rules posits that the parents' right to maintenance is need-based, not need-neutral. Therefore, the representative grandparents' right to maintenance from their grandchildren will also be need-based. If the right is considered need-neutral, chances are there that the representative grandparents, if wealthy, will yield to sheer greed. In such a case, chances are also high that the paternal or maternal uncles and aunts will exploit this opportunity and try to escape, in part or in full, their own duty to maintain their parents necessitous.

3. Moral Position of Dowry and Legal Intervention: A sub-continental appraisal in contrast

While dower is a religious prescription, dowry is a social danger. In Bangladesh, dower has become a mere rubber stamp in marriages, and dowry the ultimate incentive leading to continued violence against women. According to the latest series of the "Three-month Human Rights Monitoring Report on Bangladesh: July – September 2020" by Odhikar, a total of 121 incidents of dowry violence took place against women in Bangladesh in the first 9 months of 2020 and at least 17 women were killed for dowry in the three months from July to September 2020.[28] The moral ground against dowry is founded because it is the antithesis to dower prescription by Muslim personal law and a lead cause behind domestic violence. When people turned dowry into a binding social custom leading to violence against women, the law came on the scene and performed a twofold job. On one hand, the legislature protected the wife's right to dower and, on the other, penalized the husband's claim for dowry. Law generally empowered Muslim Personal Law (Shariat) to govern, inter alia, dower of Muslim wives[29] and the MFLO entitled Muslim wives to get all her dower immediately where her husband contracts a fresh marriage by defying the due process of law[30] and on demand where the mode to pay is not indicated.[31] Besides, there is also one more law that protected Muslim wives' right to dower in dissolutions.[32]

To penalize dowry transactions, Bangladesh in the early '80s passed the Dowry Prohibition Act 1980. This Act penalized acts of demanding, giving and taking dowry and nullified all dowry agreements. However, this Act of 1980 is now defunct and a new Act was passed on October 1, 2018 with immediate effect. The 9-section Act of 1980 is repealed and replaced by the 11-section Act of 2018.[33] The Dowry Prohibition Act 2018 prohibited dowry in all marriages of all faith groups in Bangladesh and penalized, anew, false dowry charges filed mala fide.[34]

The moral position of dowry as against the religious prescription is hinted in the defining clause of the 2018 Dowry Act of Bangladesh and it has, while defining dowry, separated, inter alia, dower or 'mehr' from the purview of dowry.[35] Under the 2018 Act, a mere demand for dowry is a criminal offence independent of actual giving and taking of dowry but all three offences (demanding, giving and taking) are punished with an equal penalty- imprisonment ranging from one year to five years or fine to a maximum amount of fifty thousand taka or both.[36] But equitably, a mere demand should not be considered as grave as actual taking and the severity of punishment should be in light of the gravity of the offence. Hence the penalty for demanding dowry could have been lighter than that of the actual taking and the penalty for taking dowry should have been heavier than that of mere demanding. Such considerations are not unprecedented in history and such difference of degree is maintained in India where her Dowry Prohibition Act 1961 penalized the taking or the giving of dowry with a maximum of five years imprisonment coupled with a maximum of fifteen thousand rupees fine[37] but the said Act penalized 'mere demanding' of dowry with less imprisonment (maximum of two years) and less fine (maximum of ten thousand rupees).[38] The Indian law also provided that the dowry property already taken be transferred to the wife concerned.[39] The 2018 Bangladeshi law nullified all dowry agreements but did not specifically discuss the vesting of dowry properties (already moved to the groom) in the bride.

Another loophole of the Act of 2018 is that it exempted bridal gifts in Muslim marriages from being classed as dowry[40] but dowry is often disguised as gifts in

[25] ibid, s 3.
[26] (n 21).
[27] Draft Parents Maintenance Rules 2017, r 11.
[28] Odhikar, 'Three-month Human Rights Monitoring Report on Bangladesh: July–September 2020'<http://odhikar.org/wp-content/uploads/2020/10/Odhikar_Three-month-HRR_July-September-2020_English.pdf> accessed 18 October 2020.

[29] Muslim Personal Law (Shariat) Application Act 1937, s 2.
[30] MFLO (n 2) s 6(5)(a).
[31] ibid, s 10.
[32] Dissolution of Muslim Marriages Act 1939, s 5.
[33] Dowry Prohibition Act 2018, s 10 (DPA 2018).
[34] ibid, s 6.
[35] ibid, s 2(b).
[36] ibid, s 3-4.
[37] Dowry Prohibition Act 1961, s 3(1).
[38] ibid, s 4.
[39] ibid, s 6(1).
[40] (n 35).

Bangladesh. In this respect, Pakistani law has identified this loophole and restricted the size of bridal gifts to prevent them from serving the purpose of dowry. The Pakistani law has provided that the total value of bridal gifts by the bride's parents either to the bride or to the groom must not exceed five thousand rupees.[41] As for the presents by others like relatives or friends (except for the parents), the maximum size of the individual gift is down to a hundred rupees.[42] The ceiling of a hundred rupees by outsiders may be said to be most extreme but that of five thousand rupees by parents may serve a purpose against 'dowry in disguise'. Another provision this Pakistani law has incorporated is vesting of all bridal presents or dowries in the bride herself. Bangladesh has checked many challenges connected to the dowry violence against women by her 2018 law but it left the bridal gifts unchecked and with no borderline.

4. Abetment in cases of maintenance and dowry provisions: Over-punishing at issue

Many provisions of statutory Muslim family law are due to religious morality and abetting their violations is dealt with by the same statutes. Abetment is considered a serious crime and, even, in light of the Penal Code 1860, abetment of abetment is also regarded as a distinct offence.[43] Abetment is considered to be an offence regardless of whether it succeeded or not[44] whether it is committed with uniform intention or different intention[45] and also whether a different act is, instead, committed.[46] However, considering the subsequent courses of action, the same offence of abetment is punished by penalties of various degrees. So, abetment as an offence does not depend on the subsequent success or failure of the abetted act. However, the punishment for abetment should vary depending on the situations where abetment succeeded or failed or succeeded with a variation. Usually, abetment sentence gets stricter when abetment succeeds consequently [47] and multiplies when the abetted act is, while being committed, coupled with one or more additional criminal acts. [48] A Roman principle postulated in Marcus Tullius Cicero's famous dialogue '*De Legibus*' (On the Laws) tells the legislators to let the punishment fit the crime. Again, the theory of retributive as well as reformative punishment provides a jurisprudential check to make sure that no offence is over-punished. Even in criminology, there is a grouping of crimes based on the degree of gravity and crimes are classed into two broad kinds- 'felony' being graver and 'misdemeanor' being lighter. The idea behind such classing of crimes is primarily to connect them to the correspondingly fitting punishments such as heavier penalties for felonies and lighter ones for misdemeanors. A clear postulation of this insight can also be found in our criminal laws. Besides the fluctuation in the length of imprisonment and the size of the fine, other issues prove that the law of the land does differentiate between offences in terms of gravity. This is exactly why some offences are tagged as cognizable while some are not, some as bailable while some are not, and some as compoundable while some are not.[49]

There are two things intertwined- abetment and the offence abetted- and these two offences should be treated differently, in general. Abetment as a criminal offence may take multiple forms like mere instigation, collective conspiracy or wilful act of aiding.[50] The crucial thing is that all forms of abetment should not be punished uniformly. There are instances where abetment seems to be over-punished or is not given a severe thorough-enough thought. For example, the Parents Maintenance Act 2013 penalized abetment, by any husband, wife, son, daughter or any other near relatives, of non-maintenance of parents by the concerned children but, while doing so, the Act provided the same punishment for abetment which is provided for the offence itself.[51] The Act did not distinguish between cases of abetment followed by actual commission and abetment being a failed attempt. The law is not clear enough in this regard and as much as the grammatical interpretation of statutes is concerned, abetment with or without subsequent actual commission may be penalized by the highest punishment prescribed by this Act for the original offence of parents' non-maintenance. The same problem occurred in abetment of dowry-related offences, too. The Dowry Prohibition Act 2018 also provided some vague provisions regarding abetment. The Act punished the original offence of taking or giving dowry and the abetment thereof uniformly, with the same punishment and without any further discourse. [52] It even punished mere making of a contract to give or take dowry, which is also an act of abetment, with the highest punishment provided by the Act with no regard to whether that very contract is finally executed or not.[53]

5. Multi-grade intellectual bounds in moral considerations or religious prescriptions: Challenges for legislators

The philosophy of intuitionism, advanced by some moral philosophers like Ross, [54] can greatly avail in legalizing moral and religious prescriptions in times of necessity by the statesmen. Ross raised a simple question and asked what makes right acts right[55] and suggested that right acts are good acts. All right acts are right because they produce more good than any other act.[56] Based on what Ross advanced back in 1930, the American philosopher Robert Audi developed the idea of moderate intuition proposing that man's general prima facie duties are self-

[41]Dowry and Bridal Gifts (Restriction) Act 1976, s 3(1).
[42]ibid, s 4.
[43]Penal Code 1860, Explanation 4 to s 108 (Penal Code).
[44]ibid, Explanation 2 to s 108.
[45]ibid, s 110.
[46]ibid s 111.
[47]ibid, s 109.
[48]ibid, s 112.
[49]Code of Criminal Procedure 1898, Schedule II.
[50] Penal Code (n 43) s 107.
[51] PMA (n 19) s 5(2).
[52]DPA 2018 (n 33) s 4.
[53]ibid.
[54]William David Ross, *The Right and the Good* (Clarendon Press, OUP 2002).
[55]ibid, p 16.
[56]ibid.

evident.[57] The legislators should use their inherent intuition while legislating for their nation and see the differences of various moral grades through the lens of moral philosophy and religions in context.

There are arguments of moral particularism as opposed to moral generalism and contrary to popular belief, the moral arguments are not just plain and simple. This is why, while killing is generally a moral wrong, killing the dacoits in operation is mainly a moral right. Moreover, things dictated by morality and equity are critical, and some religious morality forms are usually sensitive. Given all these realities, lawmaking on aspects of personal law is more intellectual a job and, therefore, lawmakers should not be some lay people 'elected only'; but rather, they should also be intellectually fit. Formal education is generally accepted as an effective process to develop a person's intellects and reasoning. Though a person may be self-educated outside the fencing of the formal education system, such self-education is not measurable and not highly likely. There is no legal framework in Bangladesh to ensure this kind of educational index for those walking to the House of the Nation. Age and citizenship are the only legal requirements for a person to contest in the general parliamentary elections [58] and no further educational requirements are put up. Even none of the Constitutional disqualifications[59] for parliamentary elections is based on educational failings. The Representation of the People Order 1972 only reiterated the stipulations of Article 66(1) of the Constitution as qualifications for parliamentary elections.[60]

Though the Bangladeshi lawmakers have a Constitutional bar to their exercise of vote against the party they belong to,[61] they do not have one to proposing a bill or an amendment to a statute under the Constitution. [62] According to the Constitution, lawmaking is fundamentally a business of the Parliament[63] performed by the members of the Parliament (MPs). The MPs cannot enter upon their office without taking their Constitutional oath[64] and as a part of their oath, they commit to the faithful discharge of their legal duties.[65] It is only in exchange for their oath and discharge of their duties that they receive certain remuneration,[66] privileges and immunities[67] as MPs. The oath of the MPs says the following:"I, having been elected a Member of Parliament do solemnly swear (or affirm) that I will faithfully discharge the duties upon which I am about to enter according to law."[68]

According to the Constitution of Bangladesh, lawmaking is the primary business of the parliament and, hence, the fundamental duty of the MPs. The vital question is- "How can the MPs possibly discharge their duty of lawmaking without having adequate knowledge related to lawmaking itself?" If they do not have the threshold knowhow of the fundamental considerations in lawmaking and the related intellectual capacity, they must fail their oath. Critically, the language of the oath of the MPs provides an implication that the MPs must have the knowledge of lawmaking to execute their oath in practice properly. Rays of hope are increasing as the situation is improving in Bangladesh. As seen in the 11th general parliamentary elections in Bangladesh, 112 elected MPs are found to be graduates and 124 MPs are seen to hold post graduate degrees belonging to the grand alliance (Mahajote). [69] However, this shining curve is not guaranteed as the law is silent on mandating educational qualifications for the parliamentary candidature.

6. Compliance with textual personal law: A comparative appraisal

In Bangladesh, some statutory enactments relating to Muslim family laws are amended and some are enacted anew while some others are still left for long without necessary modifications. The Dowry Prohibition Act 2018 is an excellent example of legislative awareness that repealed its earlier version of 1980. The Parents Maintenance Act 2013 is another example of legislative endeavor to enact new statutes, whenever required, on family law issues. However, the MFLO is yet to receive any fundamental amendment argued over time basing on the textual personal law. This is to be noted that Bangladesh has no activist NGO or specialized judicial mechanism to work on the compliance issue connected to personal laws. Unlike Bangladesh, India has, since 1972, 'All India Muslim Personal Law Board' (AIMPLB) to work exclusively on Muslim personal laws and to positively influence the legislature accordingly. AIMPLB, though an NGO, appeared as a leading body of opinions and represented different Muslim sects and schools of thought. AIMPLB checks feasibility and compliance of statutory family law with the textual personal law under the purview of the Indian "Muslim Personal Law (Shariat) Application Act 1937", a law Bangladesh, too, adapted historically. In Pakistan, the case is more extreme, and there is even a specialized judicial body that is basically the highest appellate unit to take necessary care of personal statutory laws in connection to Shariat principles. Pakistan, through a Constitutional amendment and insertion of a new Chapter 3A in 1980, has set up Federal Shariat Court[70] to check the statutory laws' compliance with Shariat injunctions. The notable feature is that besides acting on the petition of the citizens, the Shariat Court is empowered even to act *suomoto*.[71] Out of a maximum of eight judges, the Shariat Court mandatorily has a maximum of three Ulema (pundit in Islamic law, research etc.). [72] There is, moreover,

[57] Robert Audi, 'Moderate Intuitionism and the Epistemology of Moral Judgment' (1998) Ethical Theory and Moral Practice 15, 16.
[58] Constitution (n 8), art 66(1).
[59] ibid, art 66(2).
[60] Representation of the People Order 1972, art 12.
[61] Constitution (n 8) art 70.
[62] ibid, art 80.
[63] ibid, art 65(1).
[64] ibid, art 69.
[65] ibid, Oath 5 of Third Schedule.
[66] ibid, art 68.
[67] ibid, art 78.
[68] (n 65).
[69] The Daily ProthomAlo, <https://en.prothomalo.com/bangladesh/182-businessmen-elected-to-parliament> accessed 10 March 2020
[70] Constitution of Pakistan 1973, art 203C(1).
[71] ibid, art 203D(1).
[72] ibid, art 203C(3A).

ShariatAppellate Bench [73] under the Supreme Court of Pakistan to take appeals thereto from the Federal Shariat Courts.

Bangladesh has family courts to enforce statutory family laws. Though she has, being a secular country, no activist NGOs like AIMPLB or specialized judicial units to check compliance, she obviously has a general experts' body to check the feasibility of and/or recommend any necessary changes to the laws. That general body is the nation's Law Commission established in 1996 under an Act of Parliament. [74] The Law Commission comprises three members with one of them being the Chairman. However, the size of the Commission may be reconsidered to add a few authoritative Muslim law experts as members to the Commission to check compliance of existing and future laws connected to the Muslim family law. Such reconsideration is possible as the Law Commission Act 1996 made room for this and provided that the size of the total membership of the Commission can be expanded, if necessary, by the government.[75]

Furthermore, it is pertinent to mention that Bangladesh has also another specialized body, under the Ministry of Religious Affairs, generally responsible for carrying out research into Islamic law, philosophy etc. and that body is the Islamic Foundation (hereinafter 'Foundation') established in 1975. According to the Islamic Foundation Act 1975, the Foundation has a wide range of functions, including promoting research in Islamic history, philosophy, culture, law and jurisprudence.[76] It also has the task of organizing debates, symposia, conferences etc on, inter alia, Islamic law and jurisprudence.[77] These functions can stand in parallel to the broad aspects of Muslim law in general and to the domain of Muslim family law in particular. In cases of family law legislation or laws connected to religious morality in Bangladesh, the role of the Foundation can supplement that of the Law Commission, if liaised officially and formally.

7. Conclusion

Laws once made need continuous amending and piecemeal reforms over time. Bangladesh has a designated Law Commission with a statutory duty to examine the existing laws and propose amendments or enactments. As time demands, some statutory enactments relating to Muslim family law need periodic reforms and the Commission is responsible for, inter alia, the overall health and development of the laws in force for the time being in Bangladesh.

[73] ibid, art 203F(3).
[74] Law Commission Act 1996, s 5.
[75] ibid, s 5(1).
[76] Islamic Foundation Act 1975, s 11(e).
[77] ibid, s 11(g).