

**Intimate Subversions:  
Minority women encountering laws and patriarchy**

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Joyce Mormita Das



*This thesis is dedicated to  
all those women who are speaking  
through this thesis*



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## Abstract

This thesis asks:

*How do multiple laws collude with patriarchy to define minority women's positions in the state, society, and the community?*

And

*How do religious minority women in a postcolonial context selectively seek, apply, and subvert these multiple laws to achieve their own objectives?*

Broadly speaking, this thesis examines the complex relationship between multiple laws and gender in religious minority groups in South Asia. In particular, it examines the roles, both constraining and liberating, played by laws, rules, and normative orders that together comprise a situation of legal pluralism to show how they affect women in the Christian community in Bangladesh.

In this thesis, I use a feminist standpoint to interrogate the theories of legal pluralism; hence, I argue for a feminist theory of legal pluralism. By engaging critically with feminist theories, I show that women's full experience of law cannot be captured if the state is considered as the sole source of laws. Instead, other social sources of laws should also be considered to understand and capture the complexities of legal and social realities that women experience. Therefore, I argue for a shift from the legal centralist to a legal pluralist paradigm in order to capture how women experience the plurality of laws. The second shift that is required for the same purpose is of the centre of analysis of legal pluralism from 'law' to 'women', by considering women's intersectional subjectivities where women's identities intersect with their sex, class, religion, sexuality, and physical location.

To illuminate the research questions, I used ethnographic methods in various sites in Bangladesh. The methods include in-depth interviews, archival research, participant

observation, and content analysis that were applied at multiple scales. First, I examine how law and gender interact with each other at the state level. I analyse the situation of legal pluralism of religious minority groups in terms of their respective state and non-state laws. I also seek a historical route to understanding how religious minority communities were created in South Asia; in particular, how the identities of Christians were shaped through colonisation, Christianisation, and the law-creation processes, and their gendered experiences of these processes.

At the next scale of analysis, I focus on the Christian community in Bangladesh as they construct their group identities, autonomy, and authority to see closely how gender intersects with community power, politics, and dynamics. At this scale, I examine the effects of the interaction of law with patriarchy by focusing on women's everyday lives in their homes, workplaces, community, churches, and elsewhere.

At the micro-scale of analysis, I examine, compare, and contrast the gendered treatment of multiple laws and normative orders. I do this by investigating three areas that are crucial to gender identities: marriage, divorce, and inheritance. Again, a feminist theory of legal pluralism helps me to reveal how individual women interpret, apply, choose alternative paths, and subvert both state and non-state laws.

The investigation underlines that complex socio-political context and the historical legacy of intimate colonisation by the British have combined to create an impasse, where achieving gender equality remains a distant dream for religious minority women. Consequently, the research not only converses with the feminist theory of legal pluralism but also contributes a legal pluralism angle to the rich and vibrant debates on gender and development.

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## Abbreviations

ADR	Alternative dispute resolution
ANU	The Australian National University
ASK	Ain O Salish Kendra
BANBEIS	Bangladesh Bureau of Educational Information of Statistics
BBCF	Bangladesh Baptist Church Fellowship
BBCS	Bangladesh Baptist Church Sangha
BLAST	Bangladesh Legal Aid and Services Trust
BMP	Bangladesh Mahila Parishad
BMS	Baptist Missionary Society
BNWLA	Bangladesh National Woman Lawyers' Association
CBCB	Catholic Bishop's Conference of Bangladesh
CEDAW	UN Convention on the Elimination of Violence Against Women
CEO	Chief Executive Officer
CMS	Church Missionary Society
CRWC	Christian Reform World Church
DC	Deputy Commissioner
EPCC	East Pakistan Christian Council
GNI	Gender-Nuanced Integration
HCD	High Court Division

HUJI	Ḥarakat ul-Jihād al-Islāmī Bangladesh
IFB	Isai Fellowship of Bangladesh
IS	Islamic State
JMB	Jamā‘ah ul-Mujāhidīn Bangladesh
LMS	London Missionary Society
MCC	Mennonite Central Committee
MP	Member of Parliament
NBS	National Baptist Society
NCCB	National Council of Churches – Bangladesh
NCFB	National Christian Fellowship of Bangladesh
NGO	Non-Government Organisation
RAJUK	Rajdhani Unnayan Katripakkha
S/RES/1325	UN Security Council Resolution 1325
SDO	Sub-Divisional Officer
SHED Board	Social Health and Education Development Board
UCFB	United Forum of Churches, Bangladesh
UN	United Nations
WMMS	Wesleyan Methodist Society
YWCA	Young Women’s Christian Association

## Glossary

<i>Adat</i>	Customary law
<i>Anuloma</i>	Hypergamy: marriage between an upper caste man and a lower caste woman
<i>Bhai-er-bou</i>	Sister-in-law; younger brother's wife
<i>Bhashur</i>	Brother-in-law; Husband's elder brother
<i>Bhita</i>	Homestead land
<i>Biday</i>	Saying goodbye
<i>Bigha</i>	Local measure of land in Bangladesh, varies from 1/3 to 1 acre
<i>Borobaba</i>	Great-grandfather
<i>Boromaa</i>	Great-grandmother
<i>Borqua</i>	Islamic veil
<i>Boudi</i>	Sister-in-law; Elder brother's wife
<i>Chithi</i>	Letter
<i>Dada</i>	Elder brother
<i>Dadababu</i>	Brother-in-law; Elder sister's husband
<i>Dain</i>	Witch
<i>Dewor</i>	Brother-in-law; Husband's younger brother
<i>Dharma baba</i>	Godfather
<i>Dharma maa</i>	Godmother
<i>Dharmapalli</i>	Parish

<i>Didi</i>	Elder sister
<i>Dokhol</i>	Possession (land or house)
<i>Dulabhai</i>	Brother-in-law; Elder sister's husband
<i>Ekghore</i>	Boycotted
<i>Fazr namaz</i>	Dawn prayer of Muslims
<i>Ghomta</i>	Veil; covering head with a saree
<i>Gonimoter mal</i>	Booty
<i>Heterozugeo</i>	Unequally yoked together
<i>Jail hajat</i>	Prison
<i>Jamaibabu</i>	Brother-in-law; Elder sister's husband
<i>Jubo samity</i>	Youth group in the church
<i>Kabin</i>	Muslim marriage contract
<i>Kabul</i>	Acceptance
<i>Kaka</i>	Paternal uncle (father's younger brother)
<i>Kala firingi</i>	Black foreigner
<i>Kali mondir</i>	Temple of <i>Kali</i> (Hindu Goddess)
<i>Kannyadan</i>	Gift of a maiden in marriage
<i>Kazi</i>	An Islamic legal scholar and judge who can conduct a marriage
<i>Khata</i>	Notebook
<i>Khula</i>	A type of Muslim divorce
<i>Kitabiya</i>	Followers of the religion brought by David, Moses, of Jesus who are referred to as 'people of the book'

<i>Kolonko</i>	Scandal
<i>Konnya Shampradan</i>	Daughter's bestowal
<i>Lex loci</i>	Law of the country
<i>Madi</i>	Godmother
<i>Mahila samity</i>	Women's groups in the church
<i>Mama</i>	Maternal uncle
<i>Mamabari</i>	Maternal uncle's house
<i>Mami</i>	Aunt; maternal uncle's wife
<i>Mana</i>	Elder sister
<i>Mangal sutra</i>	The small cord tied by the groom around the bride's neck
<i>Matobbor</i>	Village leader
<i>Mughal</i>	Muslim rulers in India from the 16th to the 19th century
<i>Naior</i>	Women's visits or access to her natal home after marriage in Bangladesh
<i>Namaz</i>	Islamic prayer
<i>Nanu</i>	Elder brother
<i>Nawab</i>	A 'native' governor during the time of the <i>Mughal</i> empire
<i>Nonash</i>	Sister-in-law; husband's elder sister
<i>Nonod</i>	Sister-in-law; husband's younger sister
<i>Oshomo jowal</i>	Unequal yoke
<i>Paal purohit</i>	Parish priest

<i>Padu</i>	Godfather
<i>Panchayat</i>	Caste council
<i>Pishi</i>	Aunt (father's sister)
<i>Polashir Juddho</i>	The Battle of Palassey
<i>Pratiloma</i>	Hypergamy: marriage between an upper caste woman and a lower caste man
<i>Puja</i>	The act of worship in a Hindu way
<i>Purdah</i>	Veiling
<i>Putu</i>	Paternal uncle
<i>Raja</i>	King
<i>Sali adhi gharwali</i>	Wife's younger sister is half-wife
<i>Salwar Kameez</i>	Pleated trousers and long top worn by women in South Asia
<i>Shaheber Dhormo</i>	Religion of white people
<i>Shakha</i>	White bangles of conch-shell
<i>Shali</i>	Sister-in-law; Wife's younger sister
<i>Shalish</i>	Mediation
<i>Shannyashi</i>	Monk
<i>Shashuri</i>	Mother-in-law
<i>Shastanga</i>	A form of respectful salutation by touching the ground with six body parts such as forehead, toes, knees, hands, chin, and nose
<i>Shoshur</i>	Father-in-law
<i>Sidoor</i>	Vermilion

<i>Songsar</i>	Family
<i>Streedhanam</i>	Dowry
<i>Union Parishad</i>	The smallest rural administrative and local government units in Bangladesh
<i>Vagna</i>	Nephew; sister's son
<i>Vedic</i>	Related to <i>Veda</i> (Hindu text)
<i>Vumidoshu</i>	Land bandit
<i>Warish</i>	Heir/heiress
<i>Zamidar</i>	A landowner in British India
<i>Zenana</i>	The part of a house for the seclusion of women



# Chapter One

## Introduction

*Rebecca Sarker is an educated Bengali woman in her late 20s from the minority Christian community in the north-western part of Bangladesh and now works in the private sector in Dhaka. When she was eighteen years old, Rebecca had a relationship with a Catholic man. Although initially, her family did not approve of her relationship, later they decided that she should marry him. So, in 2006, when she was only 19, they married in a Baptist church, of which she was a member. But her husband's church did not accept their marriage as it did not conform to the Catholic law. So later, to gain their acceptance, Rebecca converted to Catholicism and the couple had a second wedding in the Catholic Church. However, within a few months, they began to have severe marital problems because of her husband's violence against her and his alcohol and drug problems. Rebecca's in-laws and other relatives asked her to be patient. In a few years' time, she moved out and began to live with her mother. The Catholic Church became involved in the matter and called the couple in for counselling. Rebecca and her husband had several sessions with the church priests, but each time the church conveyed to them that Catholics do not divorce. Therefore, the church wanted them to think about how they could live within this marriage peacefully.*

*After living separately for about two years, both Rebecca and her husband decided that they wanted a divorce. Rebecca's lawyer explained that divorce would be difficult for her because of the Christian divorce law of the country. He told her that without adultery, divorce is not possible for Christians. Moreover, the lawyer explained that adultery alone would not be enough for Rebecca; she also would have to bring additional grounds such as cruelty. The claim of physical abuse would also have to be proven with evidence. Rebecca quickly realised that it would be almost impossible for her to obtain a decent and dignified divorce from the court. But later, from another lawyer, she discovered that there is an alternative process of 'mutual divorce' for Christians involving the signing of an affidavit to declare that the couple is divorced from now on. She also heard that many Christians were taking this path recently in order to avoid the difficulties of legal proceedings in courts and social scandal. Many of them who took this path of divorce alternative were even remarrying. Rebecca had doubts in this process and knew that there must be some gaps in this type of divorce. But in that particular moment, getting a divorce by affidavit appeared to be the best option for Rebecca without going through the trouble of the court proceedings and to minimise any social scandal. Finally, Rebecca and her husband proceeded and signed an affidavit in 2011 to declare that they were divorced and they could remarry if they wish.*

South Asian women share a common legacy of colonialism that binds them together through their respective personal laws, according to their religious

affiliation. Similar to other South Asian countries, Bangladesh has different personal laws — governing marriage, divorce, inheritance, and custody — comprising a situation of legal pluralism<sup>1</sup> for different religious groups, such as Muslims, Hindus, and Christians. These religion-specific personal laws, which are civil laws in nature, originated from British colonisation. Many provisions under these personal laws are highly gender-discriminatory, particularly for minority communities, and they have not been amended for more than a century. For example, Bangladesh still upholds personal laws for its Christian populations. The Christian Marriage Act, 1872, and the Divorce Act, 1869, have been enforced since colonial times and have not been amended. Moreover, the content of these laws does not necessarily reflect religious texts or practices, yet the personal laws and religions are firmly bound with each other even today.

Rebecca's interaction with laws as a religious minority woman accentuates the complexity of her situation. For South Asia, the issue of minorities sits at the heart of its political problems. The Partition of India in 1947 completely reframed the issue of minorities in this region. The Partition was carried out from a distance, hurriedly, by using only the censuses of 'minority' and 'majority' populations (Khan 2007, 3). Therefore, these postcolonial states inherited minority problems at their creation. Due to Partition, Muslims in India and Hindus in East Pakistan, along with other religious groups such as Christians and Buddhists, became 'Partition's orphans', with a minority identity.

Minorities are treated by the majority groups as proxy citizens of the country where they are a majority rather than as full citizens of their own country of origin (Chowdhury 2010). For example, Hindus in Pakistan and Bangladesh are not just minorities but are looked upon as proxy Indians and imagined as a threat or an enemy. Similarly, Muslims in India have to struggle to prove that they are

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<sup>1</sup> Generally, legal pluralism is defined as a situation where multiple legal systems co-exist within a broader legal context. The essential elements that commonly exist in order to create a situation of legal pluralism are multiple legal systems that contain law or other normative orders, a broader context where these legal systems cohabit, and all these laws and normative orders are active or interplay at the same time.

loyal citizens of India, their homeland, and that they are not pro-Pakistani or worse, proxy citizens of the neighbour and enemy.

In Bangladesh, minorities became the subject of violence by majority groups. Killing minorities and looting their properties and possessions are everyday events even today. For example, there has been systematic looting and grabbing of Hindu property by all the powerful political parties. A study of communal relationships in Bangladesh showed that during the period between October 2001 and February 2002, minorities were forced to move out of their houses, agricultural land, and business enterprises (shops) because of their minority identity from 797 villages in 137 sub-districts throughout the country; that they faced looting both in their houses and business enterprises in 588 villages in 128 sub-districts; and that their property, such as houses and business enterprises, were destroyed in 850 villages in 162 sub-districts (Rafi 2005). Violence against minorities by majority groups is, therefore, pervasive in Bangladesh.

In such a situation where the everyday lives of minorities encounter discrimination and violence from the majority groups, Rebecca, introduced in the anecdote, stands at a critical point wherein a postcolonial context, her minority identity intersects with gender and multiple laws. In order to receive a remedy of divorce, she needed to prove at least one of the eight conditions, such as cruelty, incest, bigamy, sodomy, and bestiality amongst other conditions, in addition to her husband's adultery; whereas it was enough for her husband to divorce her by bringing a single charge of adultery against her.<sup>2</sup> But Rebecca's story exposes us to a range of other issues beyond the boundaries of personal laws. For example, the church and the community became active players in her divorce process. Being a Catholic woman, her marriage was indissoluble and was considered a sacrament according to the Code of Canon Law. Moreover, the alternative form of divorce, which she and her husband mutually agreed on, was not a legal form although both parties regarded it as having the same consequences as a legal divorce. Additionally, society imposed patriarchal ideologies on her and told her to

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<sup>2</sup> According to Section 10, the Divorce Act, 1869.

endure her husband's abuse. The church could not offer her remedy by approving a divorce, and neither did the personal law provided her with a hassle-free, dignified remedy of divorce; consequently, Rebecca finally chose an alternative process, by bypassing the state and the church law that gave her what she wanted.

Rebecca's story illustrates multiple complexities that minority women face when laws intersect with patriarchy. Her story poses some important questions: In a postcolonial context, how do multiple laws collude with patriarchy to define minority women's positions in the state, society, and the community? How do religious minority women in this context selectively seek, apply, and subvert the plurality of laws available to them to achieve their own objectives? This thesis aims to answer these questions by examining the everyday lives of women of the minority Christian community in Bangladesh.

The Constitution of Bangladesh guarantees equality as a fundamental right (Articles 27 and 28) and specifically prohibits discrimination on the grounds of religious affiliation and gender (Article 28). However, this equality remains only at a theoretical level as different religious family laws continue to discriminate against women (Parashar 1992). Rebecca represents about 16 million<sup>3</sup> women in Bangladesh belonging to religious minority groups who not only encounter a lack of decent remedies for marital and other familial issues offered by laws but are also often subject to child marriage, adultery, domestic violence, substance abuse, restriction of freedom of movement and profession, parallel relationships and habitation with another person outside of marriage, no formal separation or divorce, no effective help from the churches or other religious institutions, and may even be prevented from meeting with their children.

A similar situation exists in other South Asian countries. Like Bangladesh, in India and Pakistan, for example, the state did not adopt consistent policies in reforming the personal and family laws for minority groups. In most cases, the

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<sup>3</sup> The total population of Bangladesh is 158.96 million (BBS 2015). Muslim: 90%, Hindu: 9%, Buddhist: 0.6%, Christian: 0.3%, Others: 0.1% (BBS 2011).

state only reformed laws for the majority religious group, such as Muslims in Pakistan and Hindus in India, where the personal laws for minority communities being “left virtually untouched” (Parashar 1992, 18), which is true even today. For instance, the Muslim Marriages and Divorces (Registration) Act, 1974, in Bangladesh and the Hindu Marriage Act, 1955, in India and the recent initiative of another reform of the Hindu law through the Marriage Laws (Amendment) Bill, 2010, reflect such initiatives by the state. However, it is worth noting that although such reforms took place among the majority communities, women in these communities did not “get formal equality in all aspects of family law” (Parashar 1992, 19). However, the state’s focus on the majority groups’ personal law reform provided women in these groups with some rights.

The state has taken a little initiative to reform the minority laws, particularly because of the reluctance of minority communities to reform these laws, claiming that their family laws are inviolate (Parashar 1992, 18-19). For example, in Bangladesh, no Christian personal laws have been amended since the Partition until now. The Hindu community also had been governed by the century-old personal laws until recently. It was only in 2012, the state enacted the Hindu Marriage (Registration) Act, 2012, to ensure marriage registration for the Hindu population. The relationship and interaction between law, minority groups, and gender can be better understood by positioning minority women under the situation of legal pluralism and patriarchy.

### **Situating the problem: Religious minority women under legal pluralism and patriarchy**

In a postcolonial setting, religion-based minority communities are viewed in the political sense as separate and isolated from the mainstream and as averse to change because the minority communities believe that such isolation would protect their interest and identity. Minority groups act somewhat similar to families, in which the members are closely tied, while simultaneously the groups also act as a nation, in which they are culturally united, centred on, and led by

men. So the question arises: What does it mean to be a woman in a religious minority community in a postcolonial setting? In other words: How and where are women within these communities situated or positioned? In responding to these questions, Rajan (2003) in her work on women, law, and citizenship in postcolonial India argues that women are neither excluded nor marginalised; instead, they take centre stage in identity politics. She further argues that it is also important to keep in mind that unlike men, these women are *not* seen as ‘constituting’ the communities; instead, they are described as ‘belonging’ to them and become “symbolic figures” for communities (Rajan 2003, 163-164). In this way, women become an instrument for the community to create and protect its identities.

Women’s position or belonging within a religious minority community in a postcolonial context such as South Asia becomes more complicated under a situation of legal pluralism. Legal pluralism in this region took the current shape because of the colonial encounters with the legal systems. A pluralistic legal context came to exist in the Indian subcontinent through the colonial encounters between the 18<sup>th</sup> and the 20<sup>th</sup> century. Pre-colonial India was ruled first by the Hindu kings and then by the Mughals, who were Muslims. There had already been pre-existing legal systems and institutions when the British arrived (Panday and Hossain Mollah 2011). Although the British initially entered India through a royally chartered private corporation, the East India Company, they gradually began to intervene in the country’s governance and laws. During the 19<sup>th</sup> century, the British had legislated a significant number of laws, particularly in relation to trade, which reflects their primary aim of economic rather than territorial or religious expansions (Chatterjee 2010). The colonial intervention increased the complexity of the legal system of the region.

Tamanaha (2008, 383) spoke about three strategies that the British deployed to incorporate customary or religious laws in pre-partitioned India: “the codification of customary or religious law; the application by state courts of unwritten customary or religious law in a fashion analogous to the common law; and the

creation or recognitions of informal or ‘customary’ courts run by local leaders”. Although these laws were labelled as ‘customary’ or ‘religious’ laws, they did not necessarily match many existing customs or social norms, neither were many parts of them based on religious text. Moreover, these laws were formulated in English, a language that the majority of ‘natives’ did not speak. It is no doubt that many of these laws remained “distant from the local law ... [and] its effective reach limited to urban areas where the institutionalised presence of the state legal system was strongest” (Tamanaha 2008, 384).

While legislating the state laws, the colonial rulers incorporated the local law and hence the legal system became a mixed system, with partly indigenous and partly foreign laws. The British were careful to govern Indians in accordance with their existing practices and traditions from the beginning of British rule (Newbiggin 2009). Since the main objective of the British was profit-making through trade, they did not want to disturb religion-based legal practices. They legislated the Anglo-Hindu and Anglo-Muslim laws by hiring interlocutors to interpret pre-colonial local Hindu and Muslim practices and customs (Mitra and Fischer 2002, Mallampalli 2010). These Anglo-Hindu and Anglo-Muslim laws provided the pre-colonial practices with a legal status in a modern sense.

## **State, society, and gender**

For most South Asian women, family relations are seen as one of the most important aspects of their lives. Women’s (and men’s) familial relations are governed by personal laws in the areas of marriage, divorce, inheritance, adoption, and maintenance, based on women’s respective religious affiliations. In this way, state personal laws, as well as community norms and practices, become vital aspects of women’s lives. As Parashar (1992, 17) argues, although law acts as an important institution in regulating, controlling, and pervading the everyday lives of people in most contemporary societies, it holds a “double significance” in women’s live in maintaining discrimination or mitigating that discrimination.

At the centre of minority issues, there is a conflict between the “state’s sensitivity on non-interference and territorial integrity” and minority autonomy (Manchanda 2009, 4). The situation of legal pluralism amalgamates with minority issues and creates a struggle and competition between the state and minority communities around the issue of regulating the family. In postcolonial countries that are multi-religious, multi-ethnic, and culturally plural, states and religious groups compete and struggle on the issue of governing and regulating the family. On the other hand, postcolonial states continue their efforts towards nation-building projects (Heuer 2005, Loos 2006), which require balancing economic development, social cohesion, and political stability, as well as creating national consciousness, by outlining shared meanings among their citizens through legislation, adjudication, and the enforcement of laws (Solanki 2011). With this aim, the states, therefore, seek to modernise key institutions, such as family and marriage, and shape ethnic, religious, sexual, and gender identities through law.

Within the struggle between the state and minority groups on the issue of governing the family, proponents of state-centric regulation of family argue that the state should be the locus of governance for families and the difference should be only recognised in the private sphere. For example, Rawls (1996) argues that diverse conflicting doctrines should be located within a single political conception in order to serve justice in the public domain of culturally or religiously plural societies. In other words, state-centric regulation should not recognise the difference in the public realm; difference should only be a matter of the private realm. Similarly, Sangari (1995) asks if gender justice should be sought within the framework of separate personal laws when it is desired both by state and community. Many feminists have relied on the similar argument to advocate for a uniform family code (Parashar and Dhanda 2008, Pereira 2002).

Among various religious and cultural groups, minorities especially show a sense of solidarity towards preserving their culture, traditions, religion or language at the subjective level (Mishra and Singh 2002). In this process, religious and cultural groups identify their respective customary laws as markers of their group

identities and hence promote self-autonomy (Woods 2004). Therefore, postcolonial states are confronted with such diverse societal groups, who seek autonomy over the governance of families through their customary laws. The state, as part of its strategy, accommodates peoples' aspirations for 'self-rule' by allowing them autonomy. Such accommodation of self-rule is used as a tool to allow minority groups "to exercise direct control over affairs", directly of interest to them while allowing the majority "to exercise those powers that govern common interests" (Manchanda 2009, 20). As a result, the state and religious or cultural groups engage in an on-going process of negotiation over personal laws and the extent to which these groups enjoy autonomy in the governance of their respective families. As Rajan (2003, 148) argues, "Personal law, since it is envisaged as a means of securing community identity and respecting religious difference .... Any proposed reform or removal of personal laws becomes a fraught issue and is perceived as a threat to community identity and/or traditional patriarchal arrangements". The threat perceived by the minority communities around the issue of reform or removal of personal law also creates a form of resistance to state's intervention for law reform.

The tensions between the state and the community are not confined within the boundaries of the state or the community. Such tension is widespread in the international arena of feminism and international law. For example, on the one hand, there is a pressure on national governments to conform to international laws related to the protection of the cultural rights of minorities. On the other hand, some feminists continue to advocate for a unified code of family law, whereas progressive nationalist or religious reformist groups promote multiple reformed family laws that conform to different cultural or religious values. A conflict becomes apparent between international community pressure and 'autonomous' feminists and finally, nationalist or religious reformist groups.

In the process of the struggle around the issue of who should govern the family between the state and the community, patriarchy plays a vital role. Although patriarchy flourished as a feminist concept in the late 1960s as a powerful way of

seeing the world (Millet 1970), it was heavily criticised by feminists who labelled the conception of patriarchy as one-dimensional, crude, and incapable of providing an accurate view of the world (Rowbotham 1982). However, I am in agreement with Walby (1990), who shows the importance of patriarchy as a concept or a theory and argues that an understanding of patriarchy is essential for an analysis of gender inequality. It is indispensable if we are to “capture the depth, pervasiveness and interconnectedness of different aspects of women’s subordination” (Walby 1990, 2). After Walby (1990), Bryson (1999) also revived the concept of patriarchy and argued that it was still politically useful for feminism; but at the same time acknowledged that it could not reduce *all* women’s experiences into a single category by showing *all* women as victims and *all* men as perpetrators. Bryson’s (1999) concept of patriarchy rejects other interpretations where patriarchy is seen as a system of oppression equivalent to capitalism.

Researchers have linked law and women with patriarchy. For example, Haksar and Singh (1986) examined in the Indian context the ways in which law reflects patriarchal oppression by connecting laws and their judicial interpretations to patriarchal social relations, which is the primary site of women’s oppression. A few years later, Gonsalves (1993, xiii) also showed by focusing on the enforcement (or lack of it) of laws that are intended to benefit women that laws continue to discriminate between men and women and “unconsciously tend to reflect traditional and rigid attitudes towards women”.

Patriarchy is one phenomenon that links the state, the community, and women both in private and public spheres. In order to ensure the groups’ autonomy, a situation of legal pluralism is essential in which multiple legal orders co-exist. However, in reality, neither the state nor the community plays a neutral role; instead, both involve themselves in ethnic competition and struggles. As a result, women from minority groups often have to fight patriarchy within their own communities along with tackling the patriarchy of the larger community. According to Sangari (1995), when the community is put in opposition to the

state around the issue of governing families, although women are the ones who remain as the 'object' of legislation for both, the community becomes a more intimate legislator among the two. In this process, both state and community become the agents of patriarchy. Sangari (1995) problematises both state and community involvement in governing women:

For women, community jurisdiction is as problematic as the state ... The former ... intensifies the difficulty of daily, local, interpersonal relationships, making it difficult to claim democratic rights contravened by personal law ... The latter involves problem of implementation, functions through a self-contradicting, increasing delegitimised, often coercive and patriarchal state machinery. (Sangari 1995, 3297)

To Sangari (1995), the relationship between the state and women is patriarchal. Women are persistently defined by the state in relation to men. The state plays a role that is undemocratic and class-differentiated, where it perpetuates the invisibility of domestic labour, governs both land relations and distribution of resources, enforces the rule of property in ways that treat women in an unjust way, and creates class and gender inequalities by reproducing women's economic dependence (Sangari 1995). The state colludes with local and community patriarchies and, therefore, a triangular relation is developed between personal laws, community and state representatives. In other words, "The coding of patriarchy as religion by community spokesmen has been and is by and large shared by the state" (Sangari 1995, 3295). Therefore, the agenda of regulating family by the state or community concentrates around a patriarchal agenda of governing women. For women, no matter who governs the family — be it state or community — they have to encounter patriarchy, as both the state and the community hold patriarchal agendas.

Group rights through personal law pose major challenges for realising women's rights. In South Asia, the dilemma of religious or cultural group rights versus women's rights is played out in the everyday lives of many women — through the denial of their rights of inheritance, divorce (or sometimes they are easily divorced), maintenance, and child custody, which appear to be a direct violation of the Article 16 of the UN Convention on the Elimination of Violence Against

Women (CEDAW) that provides them with equal rights within a marital relationship, to which many South Asian countries, including Bangladesh, are signatories.

Feminists, therefore, resist the idea of such group autonomy, particularly on family matters. They argue that groups tend to form their values and norms based on patriarchal ideologies that do not provide women with their full human rights. This mismatch between group autonomy and women's rights made many feminists criticise states' choices to adopt multiple laws to recognise cultural and religious pluralism over ensuring women's rights in their families (Cook 1994, Kukathas 1992, Mahajan 2005, Moghadam 1994, Okin 1997, 2005, Parashar 1992). According to Sangari (1995),

Community identities can be as much punitive as protective for patriarchal and proprietorial assumptions. If, as the more extreme arguments for reform of personal laws from 'within' seem to desire, communities were to legally govern, reform and adjudicate themselves, taking full responsibility for being either agents of change or protectors of the status quo, what will prevent them from trying to be self-legislating patriarchies; from strengthening local, interpersonal patriarchal control; and from continuing to hand power over to mullas, priests, pandits or other chosen interpreters? There is little evidence to show that communities are committed to internal democratisation of gender differences. (Sangari 1995, 3293)

In order to achieve both (group autonomy and women's rights) for minority communities, some scholars have attempted to find a balance by distributing autonomy between groups and states. For example, Kymlicka (1995) argues that minority groups should be enabled with three sets of group rights: special representation rights, self-governing rights, and polyethnic rights. Similarly, Young (1989) argues for special group rights for minority cultural communities. According to her, the public sphere created by liberalism is abstract, homogeneous and falsely universal, which usually excludes the experiences, voices, and perspective of these groups (Young 1989, 1990).

Recently, in the South African context, where Muslim personal law has not yet been recognised by the state, a particular form of secularism has been promoted

by the state that highlights the collaboration between the state and religion. Amien (2010) suggests that the state respects minority community's freedom to apply their respective personal laws without affecting much on women's equal rights; she explores three particular ways through which this collaboration takes place — assimilation, accommodation, and integration. However, she problematises these three approaches by arguing that they do not facilitate sufficient gender equality. Instead, Amien (2010) introduces an alternative model, which she calls the Gender-Nuanced Integration (GNI) approach that, on the one hand, promotes religious personal laws in order to establish legal pluralism in multi-religious societies, and on the other, protects gender equality. In other words, GNI approach promotes religious freedom only to the extent that it does not impact on gender equality negatively.

In her later work, Amien (2016, 53) traces the “creative ways” in which the judiciary enables Muslim women to access women's Islamic law rights in South Africa. One such creative way is to recognise the Muslim marriage as a contract that allows the judiciary to legally enforce the terms and customs that arise from this contract (Amien 2016). However, although different initiatives in different contexts have been taken in order to balance between group autonomy and gender equality, there have always been tensions between the two (group autonomy and gender equality). Shachar (1998, 299) advocates for “joint governance”, a framework in which the state and cultural or religious groups divide juridical authority in the governance of family laws.

Along with a similar line, Solanki (2011), in her ethnographic account in Mumbai, India, examines the ‘shared adjudication model’ that India as a state has adopted, where the state shares adjudicative authority with religious communities, by recognising customary laws and regulations, in governing the family. In defence of the Indian situation of legal pluralism in the areas of marriage and divorce among Hindus and Muslims, Solanki (2011) argues that such a model is capable of facilitating both cultural diversity and women's rights. She argues that the ‘shared adjudication model’, founded on values of both state and customary laws, enables

state-society interactions in order to resolve marriage and divorce conflicts.

Under this model, reforms that are initiated by the state from above, travel into and “cross-fertilize” with reforms led by society from below (Solanki 2011, xxiii).

Under this process, according to her, cultural pluralism and gender equality can be harmonised.

Methodologically, Solanki’s (2011) work captures the everyday experiences of 120 female litigants in Mumbai by situating them in a complex setting of laws (both state and customary law) negotiated by many legal actors such as lawyers, notaries, clergy, family members, and politicians. Within these negotiations, Solanki (2011) brings out the story of women’s everyday routines and resistance. Solanki (2011) does this within the boundary of legal institutes — both formal and informal legal forums (state and non-state institutes). In other words, by locating herself in state-run family courts, in different *panchayats* (caste councils), community courts, sect councils, and other informal legal forums, she examined women’s everyday experiences in specific locations where law and gender intersect.

This thesis extends the work carried out by Solanki (2011) in three ways. First, it focuses on a religious minority community in a postcolonial setting — particularly, on a Christian community in Bangladesh — and its creation and identity construction through the Christianisation and law-making processes during the colonial period. Second, it examines the effects of the interaction of law with patriarchy by focusing on women’s everyday lives in their homes, workplaces, community, churches, and elsewhere. Finally, it analyses women’s current gendered experiences of marriage, divorce, and inheritance practices by using a feminist theory of legal pluralism to reveal their interpretation, application, and subversion of these laws.

## **Feminist theory of legal pluralism**

In this thesis, I argue for a feminist theory of legal pluralism and I examine the research questions through this theoretical framework by taking a feminist lens<sup>4</sup>. While acknowledging the contributions that legal feminists have made in the last four decades, I also critically engage with their theories. I argue that most legal feminists have interacted only with the state law and have virtually overlooked the other sources of law that are vital to understanding women's experiences. Women's full experience of law cannot be captured only by engaging with the state law. In order to capture women's full experiences and interactions with law, we need to expand the horizon of law. Instead of seeing the state as the sole source of laws, we need to consider other social sources of laws in addition to the state law. Hence feminists should engage with a feminist theory of legal pluralism to understand and capture the complexities of legal and social realities that women experience.

Epistemologically, legal feminism has been engaged with the question of women's experience of law (Rhode 1989). Mainstream feminist legal theories are mostly situated within the legal centralist paradigm, where the state is seen as the primary locus of law (Gilissen 1971, Mehta 1987, Venkataramiah 1987, Jethmalani 1986, Fineman 2005, MacKinnon 1979). Some scholars have critiqued this legal centralist paradigm and argued that such a model is not adequate to fully capture women's experience of law and hence proposed to broaden the horizons of law (Kapur 1996, Parashar 1996).

By creating conflicts among laws and other normative orders, legal pluralism creates opportunities for individual beings, particularly for women, who can opportunistically choose from co-existing laws or normative orders to advance their goals. However, I argue that capturing women's full experience of law can be achieved by making a shift of the centre of analysis of legal pluralism from 'law' to 'women', by considering their intersectional subjectivity, which cuts

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<sup>4</sup> I will lay out the feminist theory of legal pluralism in detail in Chapter Two.

across race, caste, class, religion, gender, sexuality, amongst other factors. When the notion of intersectionality is linked with the concept of legal pluralism, it becomes clear why such a shift is necessary. Here, I must clarify that the proposed shift does not necessarily renounce the analysis of law (more specifically state law), but for the feminist purpose, such an analysis must be woman-centred.

## **Selection of the study area**

The case of Bangladesh depicts a paradox between women's economic and social progress and the flourishing development sector and human rights movements on the one hand and the increased radicalisation of Islam on the other. One aspect of the paradox is the improvement of women's socio-economic status through the enrolment in female primary and secondary school in Bangladesh that increased significantly since the 1990s. According to the Bangladesh Bureau of Educational Information and Statistics (BANBEIS), during the period from 1990 to 2000, Bangladesh achieved a sharp rise in girls' gross primary enrolment ratio from 64% to 98% (Asadullah and Chaudhury 2009). Similar progress has also been recorded in secondary schooling. The female-to-male ratio in secondary school enrollment experienced a significant increase from 62% in 1992 to 114% in 2005. Therefore, the proportion of females of total enrolment is now close to 55%, compared to less than 40% in the early 1990s (Asadullah and Chaudhury 2009).

In Bangladesh, there have also been phenomenal improvements in women's economic status through microcredit programmes and the ready-made garment sector (Kabeer 2011, 1997, Hashemi, Schuler, and Riley 1996, Pitt, Khandker, and Cartwright 2006, Bhattacharya, Rahman, and Raihan 2002, Amin and Becker 1998). Enormous development initiatives have been taken to increase women's participation towards their empowerment from national to local levels by the government, NGOs, and feminist activism, which have made positive impacts on the gender situation in the country (Khan and Ara 2006, Kabeer 1999). Moreover, Bangladesh has thrived as the 'breeding ground' for various development and

humanitarian initiatives through an enormous number of international and national NGOs and civil society organisations, many of which mobilise resources for women empowerment (Lam 2006, Rahman 2006, Buckland 1998).

The other aspect of the paradox is Bangladesh's experiences of radical Islamisation. Dastagir (2013) argues that during the military regimes (1975–1990) of General Ziaur Rahman and of H. M. Ershad, Islam had been instrumentalised by these rulers in order to increase their own legitimacy. An intensified Islamisation process took place during this period along with the construction of nationalist identity. During this period a state-run Islamic University was founded, Islamic studies were made mandatory for Muslim students in primary and secondary schools, and thousands of madrasahs and mosques were established across the country, many of which were funded by Saudi donors and NGOs. A number of Islamic schools, colleges, and universities (both public and private), Islamic hospitals and health clinics, Islamic banks, insurance companies, and other enterprises have been set up all over the country (Dastagir 2013).

The politicisation of Islam in Bangladesh gave rise to Islamic militarism. In the early 2000s, there were frequent attacks by bombs and grenades, supposedly executed by so-called banned militant Islamist groups, including *Ḥarakat ul-Jihād al-Islāmī Bangladesh* (HUJI) and *Jamā'ah ul-Mujāhidīn Bangladesh* (JMB). These groups attacked a number of religious and cultural institutes, including Sūfi shrines, the Ahmadiyyah Muslim community, temples and churches, liberal intellectuals, Bengali cultural festivals, civil judges, cinema halls, theatres, and musical programmes (Dastagir 2013). In broad daylight on 17<sup>th</sup> August 2005, over 500 small bombs were exploded simultaneously in 300 locations in almost all 63 districts, killing three people and wounding over a hundred (Dastagir 2013). Even today attacks from radical Islamist groups are still taking place. For example, on 1<sup>st</sup> July 2016, a group of Islamist militants took hostages and opened fire on the Holey Artisan Bakery in the diplomatic zone in Dhaka and 29 people were killed, including 18 foreigners (Marszal and Graham 2016). In November 2016, multiple crowds of Muslims in an organised way attacked 15 Hindu temples and 100 homes

in the eastern part of the country (Manik and Barry 2016). Such a contrasting scenario between remarkable improvement in human development indicators and gender equality initiatives on the one hand and radicalisation of Islam on the other makes Bangladesh an interesting location to study minority women.

### **Minorities-within-minority studies**

Religion-based minority studies in South Asia have concentrated on two particular areas. Most studies in the Bangladeshi context address the Hindu community and in the Indian context the Muslim community (Migheli , Majid 2015, Narain 2001). For example, Goswami and Nasreen (2003) focused on Hindu minority people in the context of Bangladesh while studying discourses that majority groups use for minority representation and how the minority groups prevail against these discourses by applying strategies and coping mechanisms. While conducting a policy analysis of the socio-political status of minority communities of Bangladesh, Mundhe (2016) also focused on the Hindu community. Similarly, much earlier, Menski and Rahman (1988) considered the Hindu laws in their study while analysing minority laws in Bangladesh.

On the other hand, Muslims occupy most of the discussions around minority issues in India. For example, Narain's (2001) work on gender and community in India examined the case of Muslim women and how they relate to religious freedom, minority rights, and state policy. While examining secularism in India, Majid (2015, 107) also founded his work on the Muslim community. He showed how almost all minorities (especially Muslims) "recall with despair and despondence how it has been constitutionally pushed to the wall". Similarly, Migheli (2016), linked the individual religiosity with life satisfaction among minority religious groups in the Indian context by considering the Muslim community.

In this way, Hindus in Bangladesh and Muslims in India have been overrepresented in studies of religious minority communities in these two

countries. In both cases, the Christian community as a religious minority group becomes invisible in the politics of minority. As a result, a homogenisation of the category of religious minority communities took place. This research is positioned within the conceptual framework of intersectionality that challenges such homogenisation by focusing on Christians and problematising the dichotomy of defining religious minority community as Hindus of Bangladesh and Muslims of India.

This research also challenges the notion of women as a homogeneous and oppressed group, a notion that produces the image of the “average third world woman”, as Mohanty (1988, 337) points out. Such homogeneity in the image of ‘Third World’ women presents women as victims of violence, as universally dependent, as existing within familial relations and systems in which they are powerless (Mohanty 1988) and “as an object of study or a subject to be rescued and rehabilitated by the feminist mission” (Kapur 2005, 4). This research engages with the “politics of positionality” (Kapur 2005, 3-4) and is concerned with questions such as who speaks for whom, how do they speak, where do they speak, who listens, and so on as parts of this politics (Kapur 2005, Rajan 1997).

So far, only scant attention has been paid by scholars to Christians in Bangladesh (or in fact in rest of the region). Some took a historical path in researching Christians in the Indian sub-continent and often linked their studies with imperialism. For example, Webster (2012) provided a historiography of Christianity in the Indian subcontinent. Burton (1990), on the other hand, showed how middle-class British women treated Indian women and considered them as ‘unfortunates’ who needed their help to overcome their misery.

Other researchers wrote about the history of the church and Christianity in Bengal. For example, Datta (1992) provides an account of how Christianity came to India, the roles of Portuguese traders in India and Bengal, missionaries in *Mughal* courts and in Bengal, and Protestant churches in Bengal. Sarker (2002) also provides a comprehensive historical account of Christianity in Bengal during

the period from 1576–1960. D'Costa (1988), on the other hand, focuses on the history of the Catholic Church since the 1500s.

Other scholars focus on the Christian identity creation of Anglo-Indians. In her work on Anglo-Indians in Kolkata, Andrews (2013) challenges stereotypes regarding how Anglo-Indians are viewed by and represented in the media and the broader community. Andrews (2013) focuses on the origins and characteristics of Anglo-Indian identity, their faith, and practice of Christianity, education, and their community care, and draws a newer picture of the Anglo-Indian community in Kolkata. More than a decade earlier, Lahiri-Dutt (1990) showed how, being marginalised both by British rulers in the colonial period and by 'native' Indians, in order to assert their identity, the Anglo-Indian community began searching for a homeland and settled in Lapra, near Ranchi, India, for a few years until the settlement began to decline.

Although some scholars have provided historical accounts of Christianity and the development of the churches in Bangladesh, and although others have examined and explored Christian identity and their marginality, important areas such as gender within the Bangladeshi Christian community have seen significantly under-researched. Very few scholars have specifically researched gender in the Bangladeshi Christian community. One such scholar is Rozario (1992), whose work focuses on the changing role of women in the processes of socioeconomic developments in the village in a Christian community in a Bangladeshi village called Doria. She also shows how the ideologies of purity, honour, and *purdah* (veiling) determine and legitimise the hierarchical relationships between men and women and between different communities. In one of her earlier works among Bangladeshi Christian women, Rozario (1986) explores how mature, unmarried women within the community became the target of 'ensuring purity' by initiating a 'women's movement' within Christian society that maintains the boundary between the Christian unmarried women and non-Christian men and restricts women's sexuality.

The Bengali Christian minorities in Bangladesh have yet to be comprehensively researched, particularly in relation to gender and law linking to patriarchy. However, Pereira (2002) in her research provides a comparative gender analysis of different personal laws for Muslims, Hindus, and Christians and makes a case for a uniform family code. Elsewhere, she analysed Christian personal law and its reform processes and the roles that the churches and the church institutes play with respect to this reform (Pereira 2011). The purpose of Pereira's (2011) research is to show the need for reform as well as identify the areas of required reforms to achieve gender equality. Her work is one of the very few pieces of research conducted on Christian personal law in the Bangladeshi context and provides a foundation for this thesis.

In this research, I examine the issues of minority community by linking it with gender, law, and patriarchy. I examine the issue from a different entry point with a particular focus on neglected areas of scholarship on religious minority's personal law and gender. I use the feminist theory of legal pluralism as the analytical framework through which I examine law interacting with patriarchy in the areas of marriage, divorce, and inheritance practices through the everyday lives of Bangladeshi Christians.

## **Research sites**

The research took a multi-sited approach, engaging with both Catholic and Protestant (particularly Baptist) denominations of the Christian community in Bangladesh. During the year 2013–2014, for the major part of the research, I was located in the capital, Dhaka city, but I also conducted a significant amount of fieldwork time in Barisal, a southern district, and Gazipur, adjacent to Dhaka city, and West Bengal, India.

During my fieldwork, one of the important reasons for choosing Dhaka was because, as the capital of Bangladesh, it gathers Christian populations from every corner of the country from all denominations, social, and economic backgrounds.

Most of the Christian religious organisations, the headquarters of the churches, women's movements, and human rights groups, active in legal and social reforms, are concentrated in Dhaka city. Moreover, the state courts, as well as the government offices, are also situated there. Because Dhaka was the second largest (after Kolkata) centre of trade and commerce during the colonial times, the city has historical significance. Basing myself in Dhaka city for the majority of time enabled me to access more women, and religious and community leaders, lawyers, and women's rights activists.

In Dhaka, I lived in the Farmgate area, which is one of the central hubs of the city both for commercial as well as transportation purposes. Choosing to live in Farmgate provided me with the advantage of being close to one of the largest and oldest Catholic churches, the Holy Rosari Church, which is commonly known as the Tejgaon Church. A significant Christian population resides close to this church. A few Baptist churches are also situated in this area and therefore not only Catholics but also a large proportion of Baptist population live in this area. As I was located in such a close proximity, I had easy access to women's homes, workplaces, and churches.

In Barisal, I spent more than two months in collecting data. I located myself in a village named Kathira in Gournadi Upazila (sub-district) of the Barisal district. In Barisal region, Christianity was introduced in 1764 by Portuguese missionaries (Adhikary 2012). Later, the Anglican missionaries from the Church of England also established their church in 1845 (Adhikary 2012). Much later, the Baptist Church was established in 1905 (Adhikary 2012). Therefore, Barisal has a rich history of Christianity of about two and a half centuries. The population of Kathira village is comprised of both Hindus and Christians and is still devoid of any Muslim population. The majority of Christians are Baptists. In this village, both Hindu and Christians live peacefully and participate in each other's religious and social events.

In Gazipur, a large part of my fieldwork was carried out in Nagori village, about 25 kilometres northeast of Dhaka city. Nagori is known for the Church of St.

Nicholas of Tolentino, a Catholic church that was constructed in 1695 by Portuguese missionaries. Due to the Catholic Church's presence, a large number of local people have been converted to Catholicism in Nagori and surrounding villages since the 1600s. Unlike urban Christians from Dhaka city, these Christians possess some specific characteristics, where many of the adult males work as chefs or cooks in Middle Eastern countries as part of labour migration and the households in these villages are generally run by the remittances sent by these men. Many households are women-headed and most people are much attached to church activities. While conducting the fieldwork in these areas, I located myself in women's homes, workplaces, churches, church organisations, human rights organisations, women's movements, and lawyer's offices to collect data.

I also conducted archival research in order to collect historical data at the archive of the Bishop's College in Kolkata. The Bishop's College was founded in 1820 by the first Anglican Bishop of Calcutta. The archive holds important records relating to the Anglican Church in South Asia and to the Church of Scotland's mission work. In West Bengal, I also visited Burdwan, a medium-sized urban centre of India, in order to have a comparative perspective of minority issues in the West Bengal area. I have conducted participant observation and in-depth interviews while locating myself in the Christ Church, a 200-year old Anglican church, and the Burdwan University.

## **Methods**

This research draws from the theories of feminist studies and anthropology in order to examine how law and patriarchy interact with each other and affect women's lives, and how these women subvert law and patriarchy, by analysing the situation as seen through the lens of gendered Bangladeshi life. The feminist lens is used to scrutinise women's lives, activities, and experiences by emphasising the interplay between gender and other forms of power and difference (Buch and Staller 2007, 190). The ethnographic approach I take allows

me to make sense of the lifeworld of others through the holistic study of lived experiences, daily activities, and social interactions in everyday life from the perspective of the people being studied. In order to study women's everyday life, I conducted the research in the natural environment of social life and was part of that environment for an extended period of time (Buch and Staller 2007). One can say that knowledge has been co-created in this research, both by me, as the researcher, and the researched through an interactive process that provided thick descriptions of the accounts of women's everyday lives. The research used the following data collection methods.

### **In-depth interviews**

I used semi-structured in-depth interviews as one of the primary methods for this research. These interviews were comprised of open-ended questions. The majority of the interviews were conducted with Christian women, both from Catholic and Protestant churches. The other participants undertaking in-depth interviews were men from different denominations, lawyers, women activists, religious leaders, community leaders, and women from other communities (Hindu and Muslim). Pseudonyms have been used to maintain the confidentiality of participants' identity, and for the same reason certain aspects of their situations have been omitted and altered.

### **Archival research**

By conducting archival research, I collected data to better understand the colonial law-making processes and the negotiations between the law-makers and local Christians in the colonial times. The archival research took place in the archive of the Bishop's College, Kolkata.

### **Participant observation**

By conducting participant observation, I actively engaged myself in studying the lived experiences, daily activities, and social interactions in everyday life from the perspective of Bangladeshi Christians as well as their social dynamics and

patterns. While conducting participant observation, I located myself in women's homes, social events (weddings, birthday parties, etc.), cultural events, churches (during church services), meetings of women's groups in churches and elsewhere, women's movements, legal aid organisations, amongst other locations. These locations facilitated the observation of women's and men's lived experiences in their everyday lives and their respective social settings, which helped me to understand gender and other social relations in the families, in churches, and elsewhere.

### **Content analysis**

Another method of data collection for this research is content analysis. By using this method, I systematically studied the texts, such as magazines, newspapers, journals, reports, and documents and other cultural products, such as audio-visual materials produced by the Christian community and by the broader society. By keeping myself within the feminist realm, I often undertook textual analysis by deconstructing the text to analyse not only what is in there but also what is missing, silenced, or absent.

### **Sampling and data collection**

As the research is qualitative in nature, I worked with a small sample size in order to develop an in-depth understanding of the issue and the data. As with other qualitative researchers, I have also used purposive or judgmental samples and selected women for interviews who have gone through family disputes, particularly in relation to marriage, divorce, and inheritance. As part of the research ethics, I sought informed consent from the interviewees before conducting the interviews. I took a snowball sampling approach in order to identify my informants. In this way, I succeeded in increasing a sample of participants by asking for recommendations from the initial pool. I conducted 76 in-depth interviews with Christian women and men, religious and community leaders, lawyers, and women leaders.

## **The researcher's subjectivity**

This research has allowed me to enter and roam around a familiar social and cultural landscape. As a Bangladeshi Christian woman, I am fairly familiar with the churches, their institutes and governance, the roles of the religious and community leaders, and how gender works in this setting. Both of my parents were prominent Christian leaders who served the church most of their lives. Since my teenage, I also became involved with church activities. Moreover, in my personal life, I experienced the process that women go through during the dissolution of their marriage and witnessed through my own experience how receiving a remedy of divorce as a Christian woman can be difficult legally and scandalous socially in Bangladesh. I could divorce my ex-husband only when I left Bangladesh and came to Australia for my studies, where my divorce was treated under Australian divorce law. I took this path as in Bangladesh being a woman leader of the community going to court for a divorce is significantly scandalous. In addition, the Christian divorce law holds the provisions that mentioned earlier makes it difficult for women to initiate a divorce.

Additionally, my own feminist deliberation through my work and education also made me comfortable to work on this topic. I was the National General Secretary of YWCA of Bangladesh, the only Christian women's movement in Bangladesh, prior to conducting this research. I was also an active member of several national feminist movements, particularly in the areas of law reform and women's rights. Moreover, I actively served as a member of the national network that advocated for and later served on the committee that drafted the Domestic Violence (Prevention and Protection) Act, 2010. I was also extensively involved with the on-going advocacy work of the reform of Christian personal law and represented the YWCA in the drafting committee. Besides, my education in gender and development made me familiar with the feminist debates and scholarship. My background as a women's rights activist as well as my personal experience of the process of divorce helped me to develop a keen interest in working with the Christian community for this research.

Although my background and education provided me with knowledge of gender issues within the Christian community, I consciously repeatedly revisited my previous assumptions and ideologies during my fieldwork as I interacted with my research participants through interviews and regular conversations. I also found that many of these conversations challenged my previous assumptions and understanding of issues. The theoretical framework that I have used that broadened the notion of law helped me to understand my participants' worldviews. Therefore, being a Bangladeshi Christian woman, in this research, I considered myself as an insider in the community, but the journey of revisiting of assumptions made me think like an outsider at the same time.

Moreover, I was aware of the possible influence that my class, gender, or social status, and particularly, my previous position as the National General Secretary of the YWCA of Bangladesh might have on the information-gathering processes, as Buch and Staller (2007) suggest. I minimised such influences through reflexivity and positionality (Haraway 1988, Harding 1987, Hawkesworth 1990) among a web of power relations constituting the research process (England 1994, Moss 2005). I continuously engaged with interpretive acts or analysis, as Moss and Dyck (2002) suggest, which helped me to contextualise my own social positioning *vis-à-vis* the position of research participants and the issues they identify.

Being an insider in the community helped me to gain significant access to the churches, church leaders, and women, which would have been difficult otherwise. As I dealt with sensitive matters, such as marriage break-ups and divorce, which the community still view conservatively, data collection certainly would have been disrupted if the researcher was from another community. Additionally, my previous position as a woman activist provided me with access to other women activists easily.

## Organisation of the thesis

The thesis is organised into nine chapters. After giving a background, introducing the research problem, context, and methodology in the first chapter, Chapter Two, titled “Theoretical framework: In search of a feminist theory of legal pluralism”, provides the theoretical framework of this thesis and argues for a feminist theory of legal pluralism. The next chapter, Chapter Three, titled “The situation of legal pluralism in Bangladesh” helps to understand the legal context of Bangladesh by analysing the plural legal systems and their gendered characteristics, including multiple personal laws and various non-state legal forums available to Christians through state courts, churches and church institutes, and non-state and non-religious forums such as women’s movements and human rights organisations.

Chapter Four, titled “Intimate colonisation and resilient patriarchy: Christianisation and law creation”, takes a historical path to show how Christian identity in British India was created through colonisation, Christianisation, and personal law creation processes. Based on archival material, in this chapter, I present the case of a debate and negotiation between a colonial church body and ‘native’ Christians on the issue of marrying one’s deceased wife’s sister to show how colonisation was more intimate for the local Christians than for other religious groups and how, through these processes, patriarchy was reproduced and reinforced.

Chapter Five is called “Constructing minorityness: The raising of a mission-compound patriarchy” that situates the Christian community in the present time and analyses how their ‘minorityness’ has been created through its governmentality. The chapter also explores how the community is positioned as a minority group within the broader society in relation to the majority groups, which created a specific type of patriarchy, which I call the ‘mission-compound patriarchy’. The next chapter, Chapter Six, titled “Minority anxieties over marriages: Creating mutuality to accommodate difference”, examines kinship,

marriage, and gender by examining ‘unequal marriages’ or inter-religious marriages to see how the community actively creates and defines boundaries through marriage practices, while simultaneously accommodating differences and creating mutuality.

Chapter Seven, which is called “End of marriage: Bargaining with patriarchy in search of alternatives”, provides a closer look at the issue of divorce and its alternatives. By examining laws, social and gender ideologies, and practices around divorce, this chapter argues that although the community actively prohibits and discourages divorce, people, particularly women, are using alternative paths seeking divorce alternatives to exit their marriage. This chapter further argues that within the process of choosing a specific path of divorce or alternatives to divorce, women make strategic choices based on their own individual intersectional subjectivity and situations. The chapter is founded on a specific theory of legal pluralism called ‘forum shopping’ and ‘shopping forums’ and a feminist theory called ‘patriarchal bargaining’. The chapter shows how Christian women make conscious strategic choices, based on their subjective positions, of alternative paths bypassing the state as well as community laws to get a divorce or its alternatives, and how different institutions actively influence and shape their choices. The chapter also shows how they engage in bargaining with patriarchy in this process.

Chapter Eight, titled “Good laws, bad outcomes: Women’s inheritance rights and practices”, examines women’s land rights and inheritance practices among Bangladeshi Christians and shows how women have been deprived of their land rights in order to create and protect community identity, and how women, on the other hand, in order to reclaim their rights have to compromise and negotiate with patriarchal ideologies and continuously balance between the ‘good woman’ image that society puts on their shoulders and realising their legal rights. The chapter ends by showing how such unequal practices have inter-generational consequences and how women’s rights are being instrumentalised, which exacerbates the majority-minority group relations. The thesis ends with a

conclusion in Chapter Nine. The concluding chapter reprises the theory-ideas and pulls the themes together that have been discussed in various chapters of this thesis, grounded in the research findings. The chapter highlights the achievements of this research and the contributions it makes to the scholarly debates, including directions of future research.

## **Chapter Two**

# **Theoretical framework: In search of a feminist theory of legal pluralism**

### **Introduction**

This chapter provides the theoretical framework of this thesis through which I analyse and answer the research questions I posed earlier in the introductory chapter. Here I argue for a feminist theory of legal pluralism and show its importance as an analytical framework for feminist research. I also show that, while legal feminists have contributed significantly to the scholarship of gender and law, they have mostly interacted with laws that are associated with the state, and confined themselves within the legal centralist paradigm by leaving non-state laws out of their enquiries. Although many legal feminists are interested in how women experience law, the exclusive nature of their engagement to the state legal framework fails to capture women's full experience of law. Therefore, in order to capture women's full experiences and their interface with law, the boundaries of law (under legal centralist paradigm) need to expand. This expansion of the scope of law is possible when feminism interacts with legal pluralism. Thus this chapter argues for such interaction between feminism and legal pluralism that considers both the state and non-state laws while analysing women's encounters with law.

Generally, legal pluralism is defined as a situation where multiple legal systems co-exist within a broader legal context. By taking a specific path, according to the following steps, I proceed towards a feminist theory of legal pluralism. In the first step, I discuss different waves of legal feminism and critically analyse them to show how legal feminists have been entangled with a paradigm that puts the state law at the centre of analysis of gender and law. In other words, in this step, I

demonstrate that while scholars have made phenomenal contributions towards feminist legal theories, they have largely restricted themselves to the legal centralist paradigm. In this step, I also show how the confinement within this legal centralist paradigm disables legal feminism from being able to capture women's full experience of law.

In the second step, I argue that a shift from a legal centralist paradigm to a legal pluralist paradigm that recognises the co-existence of multiple legal systems (both the state and non-state) will enable feminism to resolve the issue of feminists' confinement within the legal centralist paradigm. Feminism's critical engagement with the legal pluralism scholarship can facilitate the shift from a legal centralist to a legal pluralist paradigm. Therefore, in the following step, in order to understand the legal pluralism scholarship, I analyse the theoretical debates of legal pluralism and identify a niche where feminism can anchor itself. In the final step, I bring feminism and legal pluralism together and show how they can combine their theories in particular ways. By using the theory of intersectionality, I argue that a feminist theory of legal pluralism should make this analytical shift by taking into account women's intersectional position and subjectivity.

## **Feminism and the legal centralist paradigm**

Feminists have a long association with the epistemological question of women's experiences and their subjugated knowledge both of which have been historically excluded from the mainstream knowledge creation processes. With respect to feminists' engagement with the politics of knowledge creation, Harding (1987, 3) argues that an epistemology provides the answers to crucial questions, such as, "who can be a 'knower' (can women?); what tests beliefs must pass in order to be legitimated as knowledge (only tests against men's experiences and observations?); what kinds of things can be known (can 'subjective truths' count as knowledge?), and so forth". She also provides an account of how feminists

have criticised traditional epistemologies that systematically excluded women as legitimate “knowers” or “agents of knowledge” by claiming that science, history or traditional sociology mostly carry men’s (of the dominant race and class) voices, are written from their point of view, in which men have always taken the subjective positions (Harding 1987, 3). However, feminist epistemology makes critiques of this ‘objective’ knowledge, which is claimed to be situated outside the knower, reflecting an independent external world, be tested and validated, and be universal in nature. By challenging such ‘objective’ knowledge, feminist epistemology proposes an alternative to the traditional epistemology that legitimises women as knowers. By this, feminist research considers women’s experiences as an important indicator of the reality.

Feminism’s epistemological engagement with legitimising women’s subjugated knowledge has also impacted in the field of legal feminism. This engagement has brought legal feminists to focus on the question of women’s experience of law. There is no doubt that feminist legal theories have contributed significantly towards promoting the feminist agenda. Rhode (1989) views these contributions on three different levels. First, at a political level, these theories actively seek to promote gender equality; second, at a substantive level, by making gender their focus of analysis, feminist legal theories aim to reshape legal practices by bringing women’s experiences and concerns into the scholarship that have been excluded or devaluated historically; and third, at a methodological level, they aspire to a worldview that corresponds to women’s experience.

However, the mainstream feminist legal theories tend to be situated within the legal centralist paradigm, where the state is seen as the primary locus of law. While researching women’s experience of law in post-colonial Africa, Manji (1999) argues that feminists’ theoretical work that privileges the state law is only capable of capturing partial accounts of women’s experiences of law and reproduces the male view. While feminists have been engaged in “an anti-sexist project, which involves challenging and deconstructing phallogocentric discourses”

(Grosz 2013, 190), Manji (1999, 436) argues that “the phallogocentric theoretical system of legal centralism — and its privileging of the state law — has been left untouched”. Through this process, feminism has conformed to legal monism by endorsing the idea that the state is the only source of law.

The first wave of feminist legal scholars focused on a feminist political agenda, with the mantra “the personal is the political”, and were interested in law reform towards a more gender-equal society (Fineman 2005, 15). Founded on an equality model, the early legal feminists made critiques of male-biased treatment of law that disallowed women to have equal opportunities and challenged such discriminatory law (Mehta 1987, Venkataramiah 1987, Jethmalani 1986). By attacking gender differences codified in law and the stereotypes that justified them, feminists arguments mostly relied on the doctrine, inspired by liberal feminism that asserts that law has exacerbated women’s oppression by discriminatory treatment (Kapur and Cossman 1996) and hence women and men should be treated equally by law (MacKinnon 1979). Fineman (2005, 16) argues that these early legal feminists believed that any provision for “special treatment” in recognition of difference would disadvantage women. However, the first wave legal feminists tended to rely entirely on the legal centralist paradigm. In their arguments, they deconstructed the male-biased treatment of law without challenging the state as the only source of law. Instead, they remained within the framework of positivist law while advocating law reform towards gender equality.

Another group of legal feminists made critiques of the equality model and argued that gender inequality is not produced by exclusion and discriminatory treatment alone, but can be created by law that appears ‘neutral’. However, they still did not challenge the centralist view of law. Bounded by the perimeter of the state law, this group of feminists argued that formal equal treatment by law can merely address the ideological and structural inequalities that women face. So they attempted to develop their theories based on the concept of gender ‘difference’ (MacKinnon 1979). These scholars have emphasised that since women are

'naturally weaker' than men, they should be 'protected' by law (read the state law) (Anthony 1985, Deshpande 1984, Kapur and Cossman 1996). Fineman (2005) analyses this group of feminists' work and argues that they demanded differential treatment for men and women as their respective social circumstances are very different. Women are situated in an inferior position in the society compared to their male counterparts, which requires 'special' concerns (MacKinnon 1979). Such an approach does not simply accept the traditional and patriarchal discourses and portray the role of law to be protecting women but also conforms to the centralist view of law.

Under the 'difference' paradigm, existing law was critiqued as male-biased and some scholars went so far as identifying law as male (Gilligan 1993). However, they did not challenge the positivist characteristics of law and its sole association with the state. For example, Stubbs (1991, 267) shows in her research on battered woman syndrome in Australia how law and the legal system is "poorly equipped to deal with the experiences of women ... where male standards of reasonableness or other legal tests apply". A decade earlier than Stubbs (1991), in the American context, Russell's (1982, 44-48) research found that many rape victims or victims of sexual assault by acquaintances often respond to the question, "Have you ever been raped?" with expressions such as, "Well ... not exactly". According to Russell (1982), the pause between 'well' and 'not exactly' indicates the gap between legal interpretation or understanding of rape and how women actually experience it in their lives and the ways information or data on such phenomenon are constructed and collected.

This traditional, male-vision, legal paradigm keeps women's experiences "hidden" and according to Wishik (1985, 68) it is feminists' role to uncover this hidden experience. However, as Wishik (1985) also argues that such scholarship neither questions patriarchy, its assumptions, and categories, nor does it clarify the definitions of experiences. Recently, a similar concern was also raised by Williams (2013, 81): "Asking how women are different from men focuses attention on

women's characteristics rather than on the ways in which institutions ... privilege certain people ... at the expense of others". Instead, it simply considers women's exclusion as "an error" (Wishik 1985, 68) and provides the "solution" suggesting to "add-women-and-stir" (Boxer 1982, 682). Moreover, within the difference model, feminists focused on how women's perspectives and experiences differ from those of men, in which again "men have remained the unstated standard of analysis" (Rhode 1989, 618). It is obvious that by challenging law (the state law) as being male-biased, these scholars have contributed significantly to the feminist agenda, but at the same time, by not disrupting legal centralism, and by not acknowledging law beyond the state and its institutions, they addressed the problem partially.

In the global south, feminists have engaged with the state law and its reform based on their belief that the state institutions can improve women's position in society. Feminists' such belief is evident in their engagement with the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) 1979 or the UN's Security Council Resolution 1325 (S/RES/1325). Moreover, feminists' engagement in advocating for a uniform civil code also indicates their reliance and trust on the state law, which they see as the most effective way to achieve gender equality, as discussed in the introductory chapter.

Manji (1999) identifies two main reasons for such over-reliance on the state and its law by feminist groups. First, during the 1990s, an increasing number of NGOs working on gender issues have been in operation in the developing countries. According to Manji (1999, 440), these NGOs function as "foreign-funded watchdogs on behalf of the international community". As a result, a state-centred ideology is promulgated from developed countries to developing countries through the development sector as well as in the feminist realm. Second, in developing countries legal practitioners and other professionals working on women's issues are members of the "post-colonial bourgeoisie" or in other words, "state bureaucratic elites" (Manji 1999, 440). Therefore, the NGOs' close

association with the state also influences their approaches, which results in “endeavours to ameliorate the position of women remain within the magnetic field of the state law and within the dominant paradigm of legal centralism” (Manji 1999, 440). In this way, the analysis of the relationships between women and law remains within the periphery of the state law.

Proponents of both the equality and difference models described earlier do not challenge the state-centric legal systems. Instead, they seek women’s experience of law within the centralist paradigm. Legal feminists contributed significantly to advancing legal theories by incorporating women’s voices, experiences, and concerns, which have become a rich resource for legal innovation and reform (Schneider 1986, Minow 1989). Soon legal feminists encountered a problem: Which women’s voices and experience would feminists take into account? Feminists’ attention on the recognition of ‘difference’ between men and women focused on the ‘differences’ within women as a category, their intersectional subjectivity. As women are not homogeneous, their race, class, age, religion, along with other intersectional positions, produce different experiences of women and, therefore, there can only be women’s experiences in the plural form and not woman’s experience (Harding 1987). Under this paradigm, legal feminism encountered the critique of focusing solely on white, middle-class, able-bodied, heterosexual women (Becker 1989, Crenshaw 1989, Rhode 1988, Hooks 2000). According to Minow (1989), by recognising women’s intersectional identities that cut across class, race, sexuality, age, amongst other factors, feminism recognises the multiplicity of women’s experiences. This recognition would alter the construction of the “person” imagined by the legal doctrines and institutions (Minow 1989, 130). Therefore, recognition of intersectionality challenges the positivist view of law that holds “one truth or one reality” (Minow 1989, 132) and enables legal doctrines to capture multiple truths and realities.

Parashar (1996) argues that although intersectionality has taken an important position in feminist legal theory by addressing race, it still centred on North

American concerns. Therefore, if women's experience is recognised as a valid source of knowledge, then feminism must incorporate the experience of non-Western women as well (Parashar 1996). She further argues that, "While it is difficult to determine when distinct voice exists, the challenge for legal feminism is to consider how to recognise the plural voices of women without losing the analytical category of woman" (Parashar 1996, 37). However, again the advocates of intersectionality argue in favour of the plurality of women's subjective positions and multiple experiences. However, feminists arguing for intersectionality do not challenge the plurality of law in their respective legal world; instead, they remain within the trajectory of the state law.

### **From legal centralism to pluralism**

The legal centralist paradigm provides us with a partial picture of women's encounters with law, as under this paradigm, law is only associated with the state and, in the process, other sources of law are not acknowledged. Recognising such shortcoming of legal centralist paradigm, some scholars argue for decentring and broadening the horizons of law. For example, Kapur (1996) challenges the traditional boundaries of law by examining women's broader social, political, cultural, and historical contexts within which law operates. She argues that it is necessary "to decentre law", which means "to make law but one area of inquiry into the multiple ways in which women are subordinated and oppressed" (Kapur 1996, 2). By decentring law, she attempts to challenge the positivist claim of law as an objective, neutral, and a singular truth and aims "to create a dissonance within the terrain of law that disrupts the universal script and permits multiple truths and narratives to emerge" (Kapur 1996, 2). In the same volume, Parashar (1996) argues how legal feminism should broaden its horizon and go further, beyond the debates on essentialism. However, although both Kapur (1996) and Parashar (1996) call for feminism to broaden its boundaries by moving law from the centre of analysis to the periphery, along with other factors such as contexts,

they do not challenge the positivist view of law, embedded in the legal centralism paradigm. Instead, they attempt to reduce the weight that has been traditionally assigned to law and incorporate contexts as part of the analysis of the relation between gender and law. Therefore, in such a situation, law has shifted from the centre of analysis to the periphery, but its association with the state has not been specifically challenged.

Other legal scholars also critiqued law's association solely with the state. For example, Ost and Van de Kerchove (2002) advocate for a paradigm change from the notion in which law is seen as a pyramid to the idea in which law is viewed as a network. Tuori (2002, 121-146) highlights the significance of both normative and practical "faces" of law. Before these scholars, Lacey (1998, 157) argues for revaluing "the horizontal without obscuring the vertical". By using a similar spatial metaphor to Lacey (1998), a decade later, Davies (2008, 282) outlines two modalities of law, vertical and horizontal, where the vertical is exclusively associated with the nation state and the horizontal is situated within the "relationships of actual proximity or contiguity". According to her, the vertical law, originating from a single authoritative centre, is understood as a "positivist superstructure", modelled upon the state (Davies 2008, 284). According to Davies (2008, 285), "The state provides the conceptual perimeter, the source, the territory, and ultimately the identity of law".

While Davies (2008) believes that for feminism it is still important to engage with the vertical law, particularly as regards promoting women's new rights, gender mainstreaming in projects and institutions and anti-discrimination initiatives at a formal level, feminists need to go beyond this framework. In order to broaden the sphere of law, Davies' (2008) notion of horizontal law is useful. According to Davies (2008), horizontal law replaces the hierarchical, positivist, and superior view of law by mutable relationships created between people and their communities. She writes, "[M]y intention is to build upon 'alternative' practices of law, 'alternative' knowledge about law, 'alternative' localities in which law

exists, and ‘alternative’ legal subjectivities” (emphasised in the original text). In my opinion, this approach has a political dimension as far as feminism is concerned. As long as we use the term *alternative*, we are again falling into the trap of acknowledging the state law as mainstream, primary, and pure, and the ‘other’ is an ‘alternative’ form of the mainstream. However, if we remove the term ‘alternative’, then Davies’ (2008) horizontal law theory becomes a cornerstone for legal feminism.

Similar to the notion of flat law, legal pluralism is also seen by some scholars as a path to exit the orbit of the legal centralist paradigm. Manji (1999) argues along this line and advocates that feminists should engage with legal pluralism. In modern society, law is “plural rather than monolithic, that it is private as well as public in character and that the national (public, official) legal system is often a secondary rather than primary locus of regulation” (Galanter 1981, 20). Based on this, Manji (1999) argues that it is particularly true for women whose legal world does not entirely depend on the state legal system but instead, depends on other systems. Therefore, by using the legal pluralism framework we would be able to obtain a more accurate picture of how law interplays with gender within a society.

While advocating that feminists should make a shift in analysis from the legal centralist paradigm to the legal pluralist paradigm in order to have a more accurate picture of women’s experiences of law, Manji (1999) does not provide insights into how legal pluralism scholarship should be applied for this purpose. I argue that a simple ‘shift’ from a legal centralist to a legal pluralist paradigm, which is prescribed by Manji (1999), is not enough to understand women’s full experience of law. Therefore, in order to have a successful conversation with legal pluralism, feminists must understand the scholarship better and find their niche within the scholarship.

During the 1970s, at the time when feminism drew significant attention of scholars, the concept of legal pluralism also emerged as a distinct but highly contested analytical concept in the fields of sociology and anthropology. Since then scholars such as Griffiths (1986), Moore (1973), Merry (1988), Pospisil (1978), von Benda-Beckmann (1979), von Benda-Beckmann (1981), Tamanaha (1993), Woodman (1998), Kleinhans and Macdonald (1997), and many others have critically engaged in the legal pluralism discourse and contributed to its rich debates in a robust way. Although all these prominent legal pluralists treat the notion of legal pluralism differently, there are a few essential elements that commonly exist in order to create a situation of legal pluralism: multiple legal systems that contain law or other normative orders<sup>1</sup>, a broader context where these legal systems cohabit, and all these laws and normative order are active or interplay at the same time.

The concept of legal pluralism as an analytical category emerged with a critique of a situation of legal centralism, in which law belongs to the state, is uniform for all, and is exclusively administered by the state institutions. Under the situation of legal centralism, other normative orders, such as religious, familial, or community orders, are subordinated to law and institutions of the state. According to this notion, the conception of law is as a single, unified, codified and exclusive hierarchical normative order and the state, being the fundamental unit of political organisation, is the only entity authorised to govern law. However, the lens of legal centralism has a chronic inability to see that the legal reality is not a tidy, consistent, organised, and ideal identification of law and legal system. The reality is rather an unsystematic collage of inconsistent and overlapping parts with no easy legal interpretation and that is incomprehensible in its complexity (Griffiths 1986, Merry 1988). As a critique of legal centralism, the concept of legal pluralism emerged that recognises that law, as a system, is not

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<sup>1</sup> Normative orders are — the rules, regulations, customs, norms — other forms of orders, which we do not consider as 'legal' per se, but they have significant influence in people's lives in terms of regulation.

single or unified; instead, it is a plural, multiple, and complex collection of systems that includes law as a formal system as well as other forms of normative orders.

Different scholars treated legal pluralism in different ways and attempted to define it. A significant approach to legal pluralism is the “semi-autonomous social field”, a term coined by Moore (1973, 721) to describe multiple systems of orders. According to Moore (1973), small fields that can be seen are semi-autonomous in nature and are capable of creating rules and customs within the particular system, while at the same time, these fields are also subject to the rules and customs of the larger field where they are situated. Griffiths (1986), one of the most authoritative scholars of legal pluralism, defines legal pluralism by extending Moore’s (1973) notion of ‘semi-autonomous social field’ in the following manner: “Legal pluralism’ refers to the normative heterogeneity attendant upon the fact that social action always takes place in a context of multiple, overlapping ‘semi-autonomous social fields’, which, it may be added, is in practice a dynamic condition” (Griffiths 1986, 38-39).

Tamanaha (2008) states that legal pluralism includes multiple uncoordinated, co-existing or developing but diverse bodies of law that exist everywhere from the local to a global level and can impose conflicting demands and/or norms and hence can create uncertainty for individuals or groups. On the other hand, Merry (1988, 886) treats the concept of legal pluralism in a more anthropological way, where she understands law as “a system of symbols, of meanings”. According to Merry (1988, 886), legal pluralism should be studied as “a system of meanings, a cultural code for interpreting the world”.

A number of scholars conducting research on gender have used the legal pluralism paradigm in their work. For example, Sezgin (2011) explores how the personal law affects women’s rights and their freedoms in postcolonial settings in Egypt and India and how women claim their rights in contexts that mostly deny

their rights. By using the legal pluralism framework, Sezgin (2011) finds astonishing similarity in women's experiences in these two completely different contexts, particularly around the gender-unequal divorce law and maintenance, where Egypt is a Muslim-majority, authoritarian state led by Sharia law and India is a Hindu-dominated state with a secular and democratic regime. By tracing the women-led reform movements since the 1990s in these both settings, Sezgin (2011) also finds that there is a steady but silent revolution taking place.

Another example of examining gender through a legal pluralism lens is conducted by Basu (2006) in her ethnographic work in family courts and Women's Grievance Cells of the Police in Kolkata, India. She presents cases of domestic violence allegations to problematise the categorisations of family violence and marks violence as a strategy of negotiation of economic and other kinship needs within marriage (Basu 2006). In a different study in Indonesia, Irianto (2004) examines the competition and interpenetration among different legal systems in the courtroom through which Batak women engage in negotiating their entitlement to inherit. The study shows how women become the subject of multiple laws and normative orders in a dispute and choose a specific legal mechanism in order to access their inheritance rights (Irianto 2004). In Botswana, Griffiths (1998) explores African women's access to law in a situation of legal pluralism, focusing on how familial and sexual relationships and marital status affect women's compensation for pregnancy, maintenance, and property rights claims (social and legal).

### **Understanding the theoretical debates of legal pluralism**

Although many scholars have engaged with the concept of legal pluralism, its journey has not been a smooth one. The discourses of legal pluralism took the position of the "central theme in the re-conceptualization of the law/society relation" (Merry 1988, 869) as a field of study. But there has always been "deep conceptual confusion and unusually heated disagreement" around the discourse

of legal pluralism (Tamanaha 2008, 390). One reason for this conceptual confusion is that legal pluralists come to this field from various disciplines, from international law to legal anthropology or from human rights to feminists studies (Tamanaha 2008), which makes legal pluralism a multi-disciplinary scholarship. Such multi-disciplinary nature of this scholarship brings in different interpretations of legal pluralism, which is clearly capable of creating conceptual confusions. The other reason for the conceptual confusion is the continuous debates among the legal pluralists on the definition of law. This latter reason is important to understand as long as feminism is concerned.

The concept of law and how it interacts within a society has been an area of interest for most legal pluralists. In fact, the discussion on law has become a major part of legal pluralism theories. By positioning law at the centre of their analysis, the legal pluralists often push people, individual beings who use and apply law, away from the centre of analysis towards the periphery. In other words, in most legal pluralism theories, law is considered as the primary analytical category and people are seen as subjects of law, a secondary category. This approach of analysis, where law is positioned in the primary category, is clear in a major part of the debates around legal pluralism.

One such example of this debate is the notorious contestation of what can be labelled as law and what cannot. In other words, it is the on-going never-ending debate: Can non-state normative orders be considered law? What is law and what is not law? These questions sit at the heart of the legal pluralism debates. One of the earliest scholars of law and society is Ehrlich (1936), who introduced for the first time the concept of socially-oriented legal pluralism in an era when different colonising powers occupying various parts of the world were putting their efforts into codifying the state law as part of their 'civilizing mission'. Ehrlich (1936) argues that such codification of law creates 'rules of decision' that clearly ignore the 'living law', which is also known as, 'rules of conduct'. Law consists of rules for decision, where law is defined from the point of view of a state official and

they must decide the legal disputes according to those laws (Ehrlich 1936). Law or the rules of decision serves the purpose of resolving disputes. However, according to Ehrlich (1936), the rules of conduct (living law) regulate the social relations that discourage women and men not to go to the state law for remedy; instead, the living law provides women and men with more flexible and acceptable ways to resolve disputes. He states that all of us live in some form of 'social association' that recognises certain rules of conduct, which regulates our conducts and actions through a wide range of rules such as the rules of law, of morals, of religion, of ethical custom, of honour, of decorum, and so on. Ehrlich (1936) was probably the first scholar to differentiate lawyers' law from the everyday law, which is the cornerstone of legal pluralism. This differentiation between lawyers' law and the everyday law is of particular importance for feminist researchers as women's lives are often governed by everyday law as opposed to formal state law.

According to Griffiths (1986), legal pluralism is so pervasive in every society in the world that the concept of legal centralism does not even exist in reality. But the ideology of legal centralism is so strong that it creates a disguised picture of the legal world, which has become the foundation of social and legal theory. Thus Griffiths (1986) took a destructive motive to break the idea that law is a single, unified and exclusive hierarchical normative orders subordinated by the state power (Griffiths 1986). However, later Tamanaha (1993) dismissed Griffiths' (1986) scientific pretensions to reconceptualise law by calling it the folly of the social scientific concept of legal pluralism. Tamanaha (1993) claims that law should be empirically and analytically distinct from other normative orders and there is an ontological distinction between the state law and other normative orders, and the term law must be under the custody of the state only. Otherwise, law becomes synonymous with normative order, which Tamanaha (1993) problematises as in such a case, the term law would lose its distinctive meaning. In a similar line, Moore (2001) criticised the legal pluralists who combine the state law with other forms of normative orders and label them as law; instead,

Moore (2001) shows the importance of distinguishing law from other normative orders for analytical and policy purposes.

How far can the concept of law be taken? In other words, should non-legal normative orders or social norms or customs, which are not considered as law per se, be included within the conception of law? These are some of the important questions asked by scholars such as von Benda-Beckmann (2002). For most lawyers and legal practitioners, the concept of law is mainly associated with the state recognition. However, for anthropologists, conceptualising law by dissociating law from the state becomes more useful (von Benda-Beckmann 1983, 1986, 2002). By dissociating law from the state, one can broaden the horizon of law.

To define law as an analytical concept, some scholars take a different route.

Pospisil (1971a) is one of them who states,

Law as a theoretical and analytical device is a concept which embraces a category of phenomena (ethnographic facts) selected according to the criteria the concept specifies. Although it is composed of a set of individual phenomena, the category itself is not a phenomenon — it does not exist in the outer world. The term ‘law’ consequently is applied to a construct of the human mind for the sake of convenience. The justification of a concept does not reside in its existence outside the human mind, but in its value as an analytical, heuristic device. (Pospisil 1971a, 39)

For Pospisil (1971b), legal pluralism is a cognitive phenomenon. However, von Benda-Beckmann (1979) advances Pospisil’s (1971b) conceptualisation of law from this point: “Law is a dimension of the cognitive and normative conceptions through which society’s members’ autonomy to behave and to construct their own cognitive and normative conceptions is restricted and recognized” (von Benda-Beckmann 1979, 27). Von Benda-Beckmann (1979) considers law as a part of the social organisation as opposed to a specific domain.

When the concept of law embraces normative orders and social norms by including them under the same umbrella of law, other scholars argue that such

process would consider 'anything' and 'everything' as law (Merry 1988) and essential differences between legal systems would "melt down" (Moore 1978). However, much later von Benda-Beckmann (2002) argues that although conceptualising law in light of legal pluralism

widens the range of legal phenomena, ... an analytical concept of law does not mean that crucial differences between legal phenomena or systems would be 'melted down', that 'anything' would be law, or that anything called law would be 'the same'. On the contrary, it is the strength of an analytical concept that it provides a starting point for looking at similarities and differences in several dimensions of variation in a consistent way, and therefore provides a much better perspective on differences in form and function than the state-connected concept. (von Benda-Beckmann 2002, 56)

The formulation of a 'semi-autonomous social field' is seen by Galanter (1981) as useful in the study of the lesser normative orders as parts of a larger, complex legal order, with which they interact. Galanter (1981) shows that although the two distinct sets of normative orders, namely law and customs, are parallel to each other, they also create a notion of hierarchy between them. In most cases, the state law takes up a higher position than do the other form of normative orders:

One of the striking features of the modern world has been the emergence of those institutional-intellectual complexes that we identify as national legal systems. Such a system consists of institutions, connected to the state, guided by and propounding a body of normative learning, purporting to encompass and control all the other institutions in the society and to subject them to a regime of general rules... These complexes consolidated and displaced the earlier diverse array of normative orderings in society, reducing them to a subordinate and interstitial status. (Galanter 1981, 19)

This hierarchy among the state law and other forms of normative orders is also observed by other scholars. Merry (1988) and then later Woodman (1998) observed similarly where the studies of legal pluralism mostly focused on the coincidence of the state law and then compared it with other non-state laws or normative orders. So in this way, the state law always becomes absolute and constant against which other normative orders are compared or contrasted.

Even after four decades of on-going debates on legal pluralism, particularly around the concept of law, the struggle is not yet over. Even after many efforts, the question ‘what is law?’ has not been resolved, partly because of adopting different definitions of law and their inability to distinguish law from other forms of normative orders (Tamanaha 2008). It is evident how the difficulty of defining law under a situation of legal pluralism remains at the heart of the debates around the subject. Although scholars have not yet been able to reach an agreed version of the definition of law, they have agreed on one thing for sure: the conceptual problem of law is “insoluble” (Tamanaha 2008, 376).

The ‘insoluble’ debate on what is law puts the notion of legal pluralism in question. Can legal pluralism be a robust analytical category when the concept of law has no agreed platform? Similar questions are also asked by scholars. For example, Tamanaha (1993) argues that in order to have an effective concept of legal pluralism, it is essential that legal orders or legal systems are identified clearly and therefore it is necessary to define law specifically. As the problem of having an agreed definition of law is virtually impossible, many scholars, who in fact contributed most to legal pluralism theory, are the ones now dismissing it (Tamanaha 2008) and according to them, legal pluralism can no longer be considered a useful concept (Woodman 1998). In continuation of the discussion on the question of whether legal pluralism is a useful category of analysis or not, in the next section, I will show how some scholars suggest a shift from law to people in order to make the notion of legal pluralism effective and robust.

However, this is an important place in which feminism’s engagement is needed. Legal feminism aims at to capture women’s experience of law, which the legal centralist paradigm fails to do so. Under legal pluralism scholarship, if the major debates revolve around what is law and what is not, then the purpose of shifting from a legal centralism to a legal pluralism paradigm does not harvest the expected results, which is to understand women’s experience of law. At this level,

legal pluralism does not appear to be a robust framework for understanding women's experience of law.

## **Feminism and legal pluralism<sup>2</sup>**

Legal pluralism is valuable not because of its capability to accommodate multiple laws and other normative orders but because it can create conflicting claims, norms and demands that challenge the legal authorities and their claims (Tamanaha 2008). For feminism, by creating conflicts among laws and other normative orders, legal pluralism also creates opportunities for individual beings, particularly for women, as well as groups within society that can opportunistically choose from co-existing laws or normative orders to advance their goals.

However, such usefulness of legal pluralism as an analytical category has not come into play so far because of the scholarship's consistent engagement with the debate on defining law. In my view, there are two reasons for such failure. The first reason is that legal pluralism is such a vast and complex field of study that it cannot be reduced into a single analytical category. This is coupled with another reason, which involves the centre of analysis. So far we have seen that women — an important factor for analysing legal pluralism using a feminist lens — have often been overlooked by scholars and most of these scholars focused on law in their analyses. Whilst some scholars have hinted at this problem, very few have gone deeper to unpack it.

As discussed in the previous section, the notorious debate around the definition of law, under the situation of legal pluralism, has almost made the concept unusable and has thrown it into a vicious circle. In particular, scholars such as Griffiths (2005), who played an outstanding role in developing and advocating

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<sup>2</sup> Part of this section has been published in the *Journal of Legal Pluralism and Unofficial Law* (Das 2016). For details, see: Das, J. (2016). Good laws, bad outcomes: land rights and inheritance practices for Christian women in Bangladesh. *The Journal of Legal Pluralism and Unofficial Law*, 48(2), 159-185.

the concept of legal pluralism, makes “a stunning series of assertions”, as Tamanaha (2008, 395) puts it, a decade after he made his confident argument for the concept of legal pluralism. Griffiths (2005) states,

In the intervening years, further reflection on the concept of law has led me to the conclusion that the word ‘law’ could be better be abandoned altogether for purposes of theory formation in sociology of law... It also follows from the above considerations that the expression of ‘legal pluralism’ can and should be reconceptualized as ‘normative pluralism’ or ‘pluralism in social control’. (Griffiths 2005, 63-64)

According to Tamanaha (2008, 395), by making these statements, Griffiths (2005) admits his “mistake” about the conceptualisation of legal pluralism and confirms that it is “impossible to adequately conceptualise law for social scientific purposes”. Instead, Tamanaha (2008, 396) argues that, “Law is a ‘folk concept’, that is, law is what people within social groups have come to see and label as ‘law’... [So] legal pluralism exists whenever social actors identify more than one source of ‘law’ within a social arena”. Similarly, Merry (2000, 8) argues while examining the colonisation of Hawai’i, that, “This is law at its bottom fringes, where it intersects the social life of ordinary people rather than where legal doctrines are created”. Therefore, for feminists, it would be a mistake to attempt to reduce law to a single scientific category.

In a situation when the original concept of legal pluralism has failed to keep the promises it made, it is now clear that in order to conduct an effective study of legal pluralism using a feminist lens, or broadly of women and law, one has to make a *shift* of the centre of analysis from *law* to *women*. In 1926, pioneer anthropologist Malinowski ([1926] 2013, 6, 12) in his prolific work among the Trobriand of Melanesia argues that law cannot be found in “central authority, codes, courts, and constables”, but rather “in all social relations ... legal mechanism can be traced”. Along with a similar line, Pospisil (1971b) argues that “every functioning subgroup of a society has its own legal system which is necessarily different in some respects from those of the other subgroups”

(Pospisil 1958). However, Pospisil (1978, 2) does not view law as “an autonomous institution but rather an integral part of a culture” and makes a deliberate effort to study individuals instead of the group. Therefore, instead of treating law as a distinct phenomenon than other normative orders or customs, Pospisil (1978) views it as part of culture. By taking the above views, legal feminists should look for law in women’s everyday lives.

Merry (1988) also talks about such a shift. According to her, legal pluralism should be studied as “a system of meanings, a cultural code for interpreting the world” (Merry 1988, 886). She suggests that one should view the plural legal phenomenon in its historical context, rather than in a conceptual manner, and study legal pluralism that leads to an examination of cultural or ideological characteristics of law and normative orders (Merry 1988). Another pioneer scholar, Vanderlinden (1989, 151-152), argues how “*sujet de droit*” or the ‘subject of law’ (in our case, women) becomes a subject of a “dialectical process” as members of multiple networks and/or forums with competing laws or regulatory orders, which is considered as a situation of legal pluralism. In this situation ‘*sujet de droit*’ takes the primary subjective position and not law. So Vanderlinden’s (1989) argues that “an approach to legal pluralism centred upon legal systems is fairly pointless, while one centred upon the ‘*sujet de droit*’ can be far more fruitful”. For feminism, Vanderlinden’s (1989) following statement is valid:

Thus instead of looking at the legal pyramid from the top, from the centres of decision, from the standpoint of power, one is brought to contemplate it at the level of ordinary men [and women] in their daily activities ... [Legal] pluralism is essentially a condition, thus a way of being, of existing. It is the condition of the person who, in his [and her] daily life, is confronted in his behaviour with various, possibly conflicting, regulatory orders, be they legal or non-legal, emanating from the various social networks of which he [and she] is, voluntarily or not, a member. (Vanderlinden 1989, 153-154)

Human-focused engagement with legal pluralism, which is crucial for feminist research, has also been examined by Kleinmans and Macdonald (1997), which they

called a critical legal pluralism, by linking the notion of legal pluralism with human agency. These scholars put people at the centre of their analysis. Kleinhans and Macdonald (1997) argue that a critical legal pluralism anchors on the understanding that legal subjects possess transformative capacity through which they produce legal knowledge, create realities, and hence constitute their legal subjectivity in multiple ways. According to them,

Social-scientific legal pluralism rests on an image of law as an external object of knowledge ... Legal subjects are exclusively constituted by law ... A critical legal pluralism, by contrast, rests on the insight that it is knowledge that maintains and creates realities. Legal subjects are not wholly determined; they possess a transformative capacity that enables them to produce legal knowledge and to fashion the very structures of law that contribute to constituting their legal subjectivity. (Kleinhans and Macdonald 1997, 37-38)

Instead of looking at law as the primary focus of their analysis, these scholars critically look at people and their actions. Macdonald (2011, 310) elsewhere argues that “a critical legal pluralism begins the quest for law elsewhere”. Under the notion of critical legal pluralism, legal subjects are law-inventing rather than law-abiding entities (Kleinhans and Macdonald 1997). Such an idea of legal pluralism transcends the traditional explanation of legal pluralism that generally sees people as passive, law-abiding agents. But Macdonald and Kleinhans’ (1997) approach to legal pluralism treats people as active agents and focuses not only on how societies and subjects are treated by law but also examines how these subjects actively treat, interpret, and apply law. Such an approach explores not only the question, “How are legal subjects seen in any given normative order?”, where the citizens — in particular women, as far as feminism is concerned — are viewed primarily as passive, but also, “What do legal subjects see in any given normative order?”, where the citizens are active with some form of agency in shaping their own lives (Kleinhans and Macdonald 1997, 46). In such a situation, every being, including a woman, becomes both a “law-maker” and a “law-applier”, hence a “legal agent” (Macdonald 2011, 310).

In order to capture women's full experience of law, therefore, I argue that a complete shift of the centre of analysis of legal pluralism from law to women is necessary. Such a shift from law to women, or what Kleinhans and Macdonald (1997) call 'legal agents', refocuses concentration from the state law or other forms of normative orders to women and their everyday lives. The primary reason for this shift lies in the fact that every woman is positioned in some kind of intersection of race, caste, class, religion, gender, sexuality, and so on. In reality, there is no one woman without an intersectional position and the factors of this intersection become the factors of discrimination in many instances. I have already critically dealt with this particular issue of intersectionality<sup>3</sup> substantially in an earlier section. But linking the notion of intersectionality with the concept of legal pluralism clearly suggests an analytical shift from the law to women as legal agents who hold such intersectional positions and subjectivities.

## **Conclusion**

When legal pluralism talks about different groups having different laws and other normative orders, it does not necessarily address the intersection within that specific group or community. Communities, no matter how small, are not a homogeneous category. Although superficially a community may look homogeneous, in reality even within that supposedly homogeneous community, factors such as gender, sexuality, class, amongst other factors play significant roles that often lead to substantial discrimination. So neither law applied to a particular community treats everyone equally, nor can every legal agent (in our case women) of that community interpret and apply law in a similar manner. More specifically, as the same law can treat men and women in two different

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<sup>3</sup> Intersectionality is defined as "the notion that subjectivity is constituted by mutually reinforcing vectors of race, gender, class, and sexuality, has emerged as the primary theoretical tool designed to combat feminist hierarchy, hegemony, and exclusivity" (Nash 2008, 2)

ways, the same law can be interpreted and applied differently by different women.

Therefore, one needs to go even further than just positioning woman at the centre of analysis within the legal pluralist framework in order to capture their experiences of law. We need to position women or the legal agents in their own social and gendered positions. In particular, we need to position them according to their own subjectivity and power structure, where their identity and intersectionality, two important dimensions of their lives situate them in the social (and/or legal) context.

One can question that when the centre of analysis is shifted from law to women, does the analysis of law hold no importance? In other words, would the analysis of law be excluded as a result of such shift? I must clarify here that the proposed shift does not necessarily exclude the analysis of law (more specifically the state law), but such analysis must be woman-centred. In other words, feminist theory of legal pluralism must analyse law by positioning women according to their context and subjective position to get a sense of their experiences of law.

Building on both feminist and legal pluralism theories, I have presented a feminist theory of legal pluralism in this chapter. I have argued for a feminist theory of legal pluralism by critically engaging with these two sets of scholarships and suggesting that, for feminism, in order to capture women's full experience of law, feminists should interact with legal pluralism and should exit the periphery of the state law and enter into a broader arena of law that includes the non-state laws. In order to shift from a legal centralism to a legal pluralism paradigm, feminists also should focus on a specific niche of the scholarship of legal pluralism that searches for law in people's everyday lives. For this purpose, an analytical shift from law to women is necessary for feminist analysis. I use this theoretical lens to explain the empirical findings in the rest of this thesis.

## **Chapter Three**

### **The situation of legal pluralism in Bangladesh**

#### **Introduction**

Bangladesh, amongst other postcolonial countries in South Asia, exists within a situation of legal pluralism in which multiple legal systems co-exist within a broader legal landscape. This chapter helps to understand the state of legal pluralism in Bangladesh by analysing the state and non-state laws and their gendered characteristics, which serves as the context of legal pluralism for the rest of the thesis. This chapter also outlines the legal processes and important provisions of these state and non-state laws that touch upon gender and the legal forums available for Christian women through state mechanisms, human rights organisations, women's movements, and churches and church institutions. Analysing the legal context is important to have a better understanding of the complexities caused by plural legal systems. In this chapter, I argue that when the state law amalgamates with non-state laws and other forms of normative orders (such as rules, customs, and norms), the legal realities of concerned people, particularly women, takes a complex shape.

This chapter is divided into five sections. The first section provides a bird's-eye view of the state legal system of Bangladesh. This section analyses the Constitution of Bangladesh through a gender lens, introduces the state's legal system and the personal laws for different religious communities, and presents other civil laws that intend to protect women's rights. The second section conducts a comparative gender analysis of Muslim, Hindu, and Christian personal laws, particularly in the areas of marriage, divorce, inheritance, guardianship and custody, and adoption. This section compares different

provisions and treatments of different personal laws that directly affect Muslim, Hindu, and Christian women in these areas. The following section conducts a deeper examination of the Christian personal laws that are applicable to the Christian community of Bangladesh. This section specifically covers the state laws for Christian marriage, divorce, and inheritance and conducts a gender analysis of these laws. The fourth section analyses non-state laws, particularly the Code of Canon Law that is applicable to the Catholic community. The final section lays out the various non-state forums available for Christian women that assist women with both state and non-state legal matters. Some of these forums are secular in nature, such as legal aid organisations, human rights organisations, and women's movements, whereas some are purely church-based, such as the Interdiocesan Ecclesiastical Tribunal and church council, amongst others.

## **A bird's-eye view of the Bangladeshi legal systems**

### **The Constitution of Bangladesh**

The Constitution of Bangladesh guarantees equality as a fundamental right and specifically prohibits discrimination on the grounds of religious affiliation and gender. Part III of the Constitution, titled "Fundamental Rights", holds different provisions and elements of equality between women and men as well as of non-discrimination on the grounds of religion, race, caste, and so on. In particular, Article 27 states, "All citizens are equal before law and are entitled to equal protection of law".<sup>1</sup> Therefore, at the constitutional level, women and men are considered equal as part of their fundamental rights. The constitutions of other South Asian countries, particularly India and Pakistan, also provide the citizens with equal rights and prohibit gender discrimination.<sup>2</sup>

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<sup>1</sup> See Appendix A.

<sup>2</sup> Sections 15 and 16 of the Constitution of India and Section 25 of the Constitution of Pakistan.

The Constitution of Bangladesh recognises women's lower status in society while providing equal fundamental rights to them. Comparing Article 28(2) with Article 28(4), Pereira (2002) notes that, on the one hand, the Constitution guarantees equal rights between women and men (Article 28(2)), but on the other hand, it provides the state with the right to make special provisions in favour of women (Article 28(4)). Therefore, in this way, the Constitution recognises that women in Bangladesh have a lower and more vulnerable status than that of men and hence reserves the right "to protect women as within the same category as the 'backward section of citizens'" (Article 29(3a)). According to Pereira (2002, 8), such "prejudicially protective, paternalistic attitude" of the Constitution flows down and is reflected in major laws and procedures. The reflection of the Constitution's paternalistic attitude can also be seen within the realm of personal laws.

One striking observation in the Constitution is how the state treats the public and private realms while addressing women's equal rights. Article 28(2) ensures equal treatment of women "in all spheres of the State and of public life". In this way, the state guarantees gender equality. However, in this Article, the Constitution comment only on women's public life and remains silent about their private life, the realm where many women face discrimination and domination. It is evident that the state does not explicitly guarantee full equality for women in every aspect of their lives, public or private. Instead, the state creates a notion of equal citizenship that is only applicable to the public spheres and not to the private spheres.

The mismatch between the guarantee of equality in the public and private spheres complicates the state's relationship with individual citizens, particularly women. According to Pereira (2002), an ambiguous relationship between the state and its citizens is created as a result of the lack of affirmation of equality in the personal sphere on the one hand, and a clear provision of equality in the public sphere on the other. Such a mismatch between equal rights in the public

and the private spheres begs the question: Why does the state create divisions between the public and the private on such a straightforward issue of women's equal rights? Pereira (2002, xix), while responding to this question, states that, "On a critical appraisal, however, it will be seen that the attitude behind, and the impact around, discriminatory treatment of women in Bangladesh are results of systemic and complex contexts and that they are subject to several levels of inquiry". Therefore, the state's differential treatment of the public and the private realms around women's equal rights is a reflection of the contexts that are comprised of the systems and ideologies that society is founded upon. Society's contexts not only impacted the constitutional principles of fundamental rights but also trickled down in the country's legal system, which I will address later in this chapter.

In addition to impacting women's lives, the Constitution also plays a role in multiple ways in creating minorities. For example, by declaring itself to be a unitary and culturally homogeneous nation (Article 6 and 9), Bangladesh, as a state, excluded non-Bengalis such as Chakmas, Marmas, Garos, and Tripuras amongst others. According to Article 6, the citizens of Bangladesh were to be known as *Bangalees* (otherwise known as Bengalis), converting the non-Bengali population into an ethnic minority. Similarly, by adopting Bengali as the state language (Article 3), it turned the non-Bengali-speaking population into linguistic minorities. Finally, by making Islam the state religion (Article 2A) it excluded Hindus, Buddhists, Christians, and animists and transformed them into religious minorities. According to Manchanda (2009), although the Constitution guarantees equality, in cases of communal tension, the state often dismisses the need to protect minorities separately and assumes that it should play a neutral role to protect every citizen.

The Constitution's role in creating minorities also trickles down to its other machineries, particularly the legal system. For example, Khan (2001) argues that the proclamation of the expression "*Bismillah-ir-Rahman-ir-Rahim*" (in the name

of Allah, the merciful and compassionate) before the preamble of the Constitution, which was added through the Proclamation Order No. 1 of 1977, is one of the bases of biased treatment in family courts. Khan (2001) shows that there are documented incidences where judges did not accept cases filed by Hindu or Christian women based on the arguments made by judges that state that the family court is only for Muslims. In this way, constitutional promises of 'equality' for both women and minority groups only remain in theory.

### **The state legal system of Bangladesh**

Bangladesh inherited a vast body of laws from pre-colonial India, British colonisation, and later the Pakistan period. After independence in 1971, these pre-existing laws were adopted into the legal system through the Bangladesh (Adaptation of Existing Laws) Order, 1972 (President's Order No. 48 of 1972) and became applicable in independent Bangladesh. While explaining the legal system of Bangladesh, Hoque (1980) mentions two branches of the Bangladeshi legal system: constitutional law and general law. Since the Constitution is considered to contain the supreme laws of the country, the general laws must conform to the Constitution, otherwise, they can be voided.

The General Law is comprised of the civil and the criminal laws. The civil and the criminal laws originated from the Civil Court Act of 1887 and the Criminal Procedure Code of 1898 respectively (Halim 2008). The judicial system of Bangladesh is comprised of a Supreme Court, a High Court Division (HCD), an Appellate Division (AD), and subordinate courts and tribunals (Panday and Hossain Mollah 2011). The Supreme Court is the apex court of the country and other courts and tribunals are subordinate to it.<sup>3</sup>

There is a number of subordinate courts and tribunals with special jurisdictions, which is where the family courts are located, established under the Family Courts

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<sup>3</sup> See Appendix B for the entire structure of the judiciary system of Bangladesh.

Ordinance 1985 (Panday and Hossain Mollah 2011). The jurisdiction of the family courts covers any suit in relation to the dissolution of marriage, restitution of conjugal rights, dower, maintenance and guardianship, and custody of children (Halim 2008). However, not all issues in relation to these suits come under the jurisdiction of the family court. For example, Christian divorce suits go to either the District Court or directly to the High Court Division (The Divorce Act 1869). It is up to the petitioner (either husband or wife) to choose between the District Court of the High Court Division to present their petition (Section 10). The laws governing the tribal and indigenous groups were codified under a different category from the above-mentioned laws. The tribal and indigenous people of Bangladesh are subject to a different set of laws based on their customs and practices.<sup>4</sup>

### **Personal laws**

Personal laws that govern marriage, divorce, inheritance, custody, and guardianship fall under the civil law category. Although the entire judicial system of Bangladesh, including the constitutional, criminal, and most of the civil procedures, are uniform, the personal laws, which govern the areas of family relations and personal lives, are compartmentalised on the basis of one's religious affiliation. Familial matters are governed by a specific set of civil laws applicable to one's religious identity (Muslims, Hindus, Christians, and Parsis). These personal laws typically co-exist with the general territorial law in criminal, administrative, and commercial legislations (Galanter and Krishnan 2000). In Bangladesh, three religious groups — Muslims, Hindus, and Christians — have specific sets of personal laws.<sup>5</sup>

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<sup>4</sup> Although other scholars, such as Chowdhury (2006), Mannan (1997), Muhammed et al. (2011), Riley (2004), and Roy (2006) amongst others, have focused their research in the area of tribal and indigenous groups in Bangladesh, I am not addressing issues in relation to these groups as it is not within the scope of this particular research.

<sup>5</sup> See Appendix C for the list of the personal laws for three religious groups (Muslims, Hindus, and Christians) of Bangladesh.

It is important to note that Buddhists, the second largest religious minority group in Bangladesh, do not have a distinct set of personal law, and their familial and personal issues are governed by the Hindu personal law. It should also be clarified that the personal laws are applicable anywhere within the country, with no territorial limitations. Galanter (1997) argues that in reality, religious identity is a description of civil status rather than of religious beliefs or practices. Likewise, a person will be considered Muslim by birth if their father is Muslim unless they explicitly renounce their faith (Fyzee 1999). For judicial consideration, a person must have a religious identity in order to establish one's rights within the relevant laws. Even if a person does not practise or believe in any religion, for the purpose of accessing legal matters, they have to possess a religious identity. Therefore, in such cases, religious identity becomes one's legal identity and these two become synonymous with one another.

### **Non-religion-based civil laws protecting women's rights**

Apart from the religion-based personal laws governing marriage, divorce, inheritance, and custody, a number of laws have been created to protect women from various forms of discrimination. These laws are applicable to all citizens uniformly, irrespective of their religion, caste, or creed. However, many of these laws do touch upon women's as well as men's private spheres, such as in areas of domestic violence or dowry.<sup>6</sup>

The passing of these laws enabled Bangladesh to achieve a number of milestones towards initiatives of safeguarding women's rights and social status legally. Many of these laws are the outcomes of the continuous activism of women's and human rights movements within the country. One example of such a milestone is that of the Dowry Prohibition Act, 1980, prohibits any person from giving or receiving dowry (Section 3), which was a result of advocacy work carried out by various women's and human rights movements. Another example is that the notion of

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<sup>6</sup> See Appendix D for the list of uniform laws for protecting women.

'rape' was broadened considerably for the first time in legal text and issues such as 'sexual assault' and 'sexual harassment' were included in the Nari-o-Shishu Nirjatan Daman Ain, 2000 (Law on the Suppression of Violence Against Women and Children, 2000) (Section 9 & 10).

Another significant milestone is the Domestic Violence (Prevention and Protection) Act 2010. This law has brought significant initiatives towards protecting women's rights, particularly in the private realm, their own house. Under this Act, the definition of 'domestic violence' has been expanded significantly. The scope of the term 'domestic violence' includes, apart from physical and sexual violence, economic torture or violence, mental torture, verbal torture, threatening, and even interfering or disrupting one's own personal freedom of movement, and to maintain contact or communication with others.

## **A comparative analysis of Muslim, Hindu, and Christian personal laws**

Although all the progressive laws mentioned in the previous section were passed to protect women's rights, important areas of women's lives, such as marriage, divorce, and inheritance amongst others, are still governed by the personal laws. These are the areas where women's rights are violated on a large scale. Pereira (2002) argues that when it comes to governing personal and/or familial relations and personal space, Bangladeshi women are burdened doubly: first on the basis of gender and then on the basis of religion. Moreover, different religious family laws are highly discriminatory towards women. In this section, I provide a comparative analysis of different personal laws for different religious communities and address a few areas in which laws discriminate against women.

## **Marriage**

The concept of marriage in Islam is a legal contract whereas, in Hinduism and Christianity, it is a sacrament and seen as a holy union. Some crucial areas under marriage are the age of marriage, marriage registration, dowry, polygamy, and inter-religious marriage. Apart from the religious personal laws that are specific to different religious groups, the state laws that are uniform in nature and are applied to every citizen irrespective of their religious affiliations, address some aspects of marriage.

Under the Child Marriage Restraint Act, 1929, any marriage before 21 years for men and 18 years for women is considered illegal. However, both the Muslim and Hindu laws allow the marriage of minors, but these marriages are usually consummated after the bride reaches puberty. The Christian Marriage Act, 1872, does not necessarily mention any specific minimum age of marriage. However, according to the Code of Canon Law (Can. 1083), the minimum age of marriage is considered 16 for men and 14 for women, which is considered the minimum age for Catholic marriages.

A particular piece of legislation, which is uniform in nature, entitled the Births, Deaths and Marriages Registration Act, 1886, is applicable to all citizens of the country irrespective of their religious affiliation. Although marriage registration has been made mandatory for Muslim marriages through the Muslim Marriages and Divorces (Registration) Act, 1974, and Christian marriages through the Christian Marriage Act, 1872, until recently, marriage registrations for Hindu marriages were not required. In 2012, the Parliament passed the Hindu Marriage (Registration) Act, 2012, through which Hindu marriage registration was made mandatory.

Similar to the minimum age of marriage and marriage registration, Bangladesh has legislated the Dowry Prohibition Act, 1980, that made any act of giving or receiving dowry illegal and punishable. However, for both the Muslim and Hindu

communities, dowry is a socially sanctioned practice. For Muslims, dowry is not a requirement of the religion but often practised. Under the Hindu law, sometimes dowry is considered as part of the marriage ceremony. Under the Christian law, dowry is not applicable. However, in recent times some instances of dowry have been observed within the Christian community.

Another critical matter that is often discussed under the broader issue of marriage is polygamy. Polygamy is punishable under Section 494 of the Penal Code, 1860 (Act no. XLV of 1860). Under the Muslim law, polygyny<sup>7</sup> is legal but polyandry<sup>8</sup> is illegal. Polygyny can be legally sanctioned if there is prior permission of an Arbitration Council before the husband takes more than one wife. Polygyny also requires the first wife's permission. Similarly, under the Hindu law, polyandry is illegal but polygyny is legal. But the Christian law made both polygyny and polyandry illegal.

With regard to inter-religious marriages, the Special Marriage Act, 1872, enables civil marriages between people from different religions, in which both parties have to renounce their respective faiths. In such cases, a Muslim woman (who renounces her faith) loses her inheritance rights, her dower and her religious identity (Khan 2001). Under the Muslim law, a woman cannot marry a non-Muslim man, but men can marry women from all religions. Under the Muslim law, a Muslim man can marry a woman from *kitabiyah*<sup>9</sup>, which is considered fully valid. On the contrary, if a Muslim man marries a non-*kitabiyah* woman, then the marriage will be irregular (Khan 2001). However, in both cases, these marriages will be legal marriages.

Under the Hindu law, marriages with non-Hindu men or women are prohibited. Under the Christian law (the Christian Marriage Act, 1872) inter-religious

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<sup>7</sup> A form of polygamy in which a man has more than one wife.

<sup>8</sup> Another form of polygamy in which a woman has more than one husband.

<sup>9</sup> A *kitabiyah* refers to the followers of the religion brought by David, Moses, of Jesus who are referred to as 'people of the book' (Jones, Leng, and Mohamad 2009).

marriages are not prohibited. According to Section 4 of the Act, marriages between persons can be solemnised when “one or both of whom is or are a Christian or Christians” (Section 4). Therefore, in order to marry under this Act, only one party must be Christian. No specific clause has been provided about the other party’s religious affiliation. Within the Christian community, the Catholic denominations allow marriages with non-Catholics, i.e., both non-Christians and Protestants. In both cases, they consider these types of marriages to be ‘mixed marriages’. However, Protestants do not allow mixed marriages (except with Catholics). According to the Protestant churches, only persons who practised Christianity and have been baptised are eligible for Christian marriages.<sup>10</sup>

### **Divorce/dissolution of marriage**

Under the Muslim Family Laws Ordinance, 1961, women do not have equal rights to initiate a divorce. Women’s rights are limited by certain conditions. A Muslim wife can only initiate a divorce if she has been delegated power to divorce in the *kabin* (marriage contract) during the marriage, whereas a Muslim husband can divorce his wife in his own right (Section 8). A specific form of Muslim divorce is called *khula*, in which a wife can initiate a divorce herself that does not require court intervention. However, under this type of divorce, the wife must be willing to give up or revoke her claims on her dower.

Under the Hindu law, there is no legal recognition of divorce, either by men or women. For Christians, under the Divorce Act, 1869, the right to divorce is bounded by conditions. Women and men have to fill different levels of conditions to initiate a divorce. For example, men can initiate a divorce only based on the ground of adultery of their wives. But for women to initiate a divorce, adultery alone is not sufficient. In the case of women, adultery has to be

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<sup>10</sup> I will discuss issues of Christian marriage in Chapter Six.

coupled with other grounds, such as cruelty, incest, bigamy, sodomy, or bestiality.<sup>11</sup>

### **Inheritance**

According to the Muslim law, women inherit half of what men inherit. For example, a wife inherits one-eighth of her husband's estate, whereas a husband inherits one-fourth of his wife's estate. A daughter inherits half of what a son inherits. In the case where there is no son, then a single daughter inherits only half of the estate.

According to Section 3 of the Hindu Women's Right to Property Act, 1937, a Hindu widow is entitled to inherit an equal share of the property with her son(s). However, she is not entitled to receive any agricultural property as her share of inheritance; instead, she is only entitled to receive maintenance from it. Once a Hindu widow remarries, she loses all her inheritance from her deceased husband. A Hindu daughter cannot inherit if her mother is alive, and moreover, unmarried daughters will be prioritised over married daughters. Hindu married daughters with only daughters or without children who have past their child-bearing age and who became widows without sons are completely excluded from the inheritance. The Christian law of inheritance, the Succession Act, 1925, provides both men and women with equal inheritance rights from their parents and spouses.<sup>12</sup>

### **Guardianship and custody**

Under the Muslim law, a mother can never be a legal guardian. She can claim custodianship under limited circumstances. Both the Hindu and the Christian laws state that the mother's right is secondary to the father's right of

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<sup>11</sup> I will discuss issues of Christian divorce in Chapter Seven.

<sup>12</sup> I will discuss issues of Christian inheritance in Chapter Eight.

guardianship. In fact, under the Christian law, the mother's rights become tertiary if the father appoints a legal guardian during his absence.

### **Adoption**

The Muslim law does not recognise the practice of adoption and hence it is prohibited. Under the Hindu law, only men have the right to adopt a male child. Women have no right to adopt. Moreover, female children cannot be adopted. However, the Christian law recognises the right to adopt and encourages it (Pereira 2002).

### **The state laws for Christians: personal laws**

The Christian community in Bangladesh is still governed by the personal laws that were created by the British colonisers during the pre-partition period. However, since the end of colonisation, the laws for Christians have never been amended either by the Pakistan government (during the Pakistan period) or by the Bangladesh government (after Independence). Although the personal laws for Muslims and Hindus have been amended to some extent, the Christian law is still virtually untouched.

In other countries of South Asia, particularly India and Pakistan, the same personal laws for Christian marriage, divorce, and inheritance that originated from British colonisation still mostly govern Christian communities in these countries. For example, in Pakistan, Christian marriage, divorce, and inheritance are governed by the Christian Marriage Act, 1872, the Christian Divorce Act, 1869, and the Succession Act, 1925, respectively, which are the same personal laws that govern Bangladeshi Christians today (Aqeel 2016). In India, it was only in the beginning of the 21<sup>st</sup> century when the Parliament passed the Indian Divorce (Amendment) Act, 2001. However, until now, Christian marriage and inheritance are governed by the Indian Christian Marriage Act, 1872, and the Indian

Succession Act, 1925, respectively, which are also applicable for Bangladeshi Christians.

### **Christian marriage**

As mentioned before, in Bangladesh, Christian marriages are governed by the Christian Marriage Act, 1872. While the Protestant community, which is half the size of the whole Christian population in Bangladesh, is entirely governed by this particular state law for their marriages, the Catholic community, which is the other half of the Christian population, is governed both by the Christian Marriage Act, 1872, as well as the Code of Canon Law.

The Christian Marriage Act, 1872 does not have a minimum age of marriage. However, Section 19 of the Act states that the father (or in his absence, the guardian) of a minor can consent to the minor's marriage. Therefore, the Christian law allows the marriage of minors. Usually, the minimum age of marriage is considered to follow the Canon Law: 16 for men and 14 for women.

However, with regard to consenting to the marriage of a minor, significant gender discrimination exists. According to Section 19 of the Christian Marriage Act, 1872, "The father, if living, of any minor, or, if the father be dead, the guardian of the person of such minor, and, in case there be no such guardian, then the mother of such minor, may consent to the minor's marriage ...".

Therefore, the father has the sole legal guardianship. When the father is present, he has exclusive rights to consent or not to his minor child's marriage. The mother, on the other hand, has absolutely no right to consent to the same. If the father is dead or absent, only then is the mother's right to consent created. But even this right will only apply if the father had not appointed a third party as the minor's legal guardian before his death. So, technically, a father can in fact completely exclude the mother from any guardianship rights by appointing a third party as a legal guardian of the minor.

### **Christian divorce and/or dissolution of marriage**

The divorce law for Christians, the Divorce Act, 1869, contains provisions that discriminate against women on the grounds for initiating a divorce.<sup>13</sup> A man can initiate a divorce based simply on the grounds of his wife's adultery, whereas a woman needs additional grounds apart from her husband's adultery to initiate a divorce (Section 10). According to Section 11, when the husband is the petitioner, the person who has been accused of committing adultery with the wife shall be made a co-respondent in the divorce suit. However, such provision is only available for the husband and not the wife. Moreover, according to Section 34, the husband can claim damages from the person who committed adultery with the wife. The wife does not have the right to claim such damages.

### **Christian inheritance**

Under the Succession Act, 1925, applicable to Bangladeshi Christians, a woman possesses significant rights to her deceased husband's estate as well as rights to her deceased father's and mother's property equal to her brother(s), in contrast to Hindu and Muslim inheritance practices. The law specifies that one-third of the deceased man's property should go to his widow, and equal shares of the remainder (two-thirds) to his daughters and sons (Section 33).

### **The non-state law: The Code of Canon Law**

The Code of Canon Law, which is non-state in nature, is applicable to the Catholic community. The main area of the Code of Canon Law, which conflicts with the state law, is divorce or dissolution of marriage. For Catholics, marriage is a sacrament and according to the Code of Canon Law, divorce is not allowed for Catholics. Although the Divorce Act, 1869, provides them with a civil remedy,

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<sup>13</sup> For relevant sections of the Divorce Act, 1869, see Appendix E.

divorce under this Act is not accepted by the Catholic Church. According to the Code of Canon Law, annulment of a marriage is permitted.

However, significant differences between divorce and annulment exist and these two concepts are not interchangeable. In the Catholic Church, a valid marriage is indissoluble. A few elements have to be fulfilled to call a marriage valid: first, it has to be contracted by two baptised (in a Catholic Church) parties; and second the union has to be ratified and consummated (Can. 1061). Any ratified and consummated marriage is absolutely indissoluble even the church has no power to break this bond. According to Colaco (2008), in one single circumstance, a marriage can be dissolved by the Roman Pontiff, where the marriage has not been consummated (Can. 1142).

Unlike divorce or the dissolution of a marriage, where a valid marriage is dissolved, an annulment brings in a different meaning and action, where the marriage is declared to be legally null and void. In other words, in the case of annulment, the church “declares that there no marriage existed between the parties concerned” (Appathurai 2012, 74). Although it might appear to the world that divorce or dissolution of marriage and annulment have similar consequences in the everyday lives of the concerned parties, legally this is not the case.

In the case of the nullity of a marriage, the civil law (The Divorce Act, 1869) and the Canon Law have somewhat similar grounds. According to the Divorce Act, 1869 (Section 19), the grounds on which the decree of the nullity of a marriage can be made are: first, if the respondent was impotent at the time of marriage; second, the parties are within the prohibited degrees of consanguinity or affinity; third, either party was a lunatic or idiot at the time of marriage; and fourth, the former husband or wife of either party was living and their previous marriage was in force at the time of the marriage. However, the Act states that “Nothing in this section shall affect the jurisdiction of the High Court Division to make decrees of nullity of marriage on the ground that the consent of either party was obtained

by force or fraud” (Section 19). Therefore, the Divorce Act, 1869, is significant as regards the consent of marriage from either party.

Similarly, under the Canon Law, a marriage can be declared null because of diriment impediments (Cans. 1083-1094), due to the absence of canonical form (Cans. 1108), or due to defect or lack of consent (Cans. 1095-1103). According to Colaco (2008, 38), “Diriment impediments are of Divine right and are those which the supreme authority in the church authentically declares when the divine law prohibits or invalidates a marriage (Can. 1075-1)”. Diriment impediments deal with the minimum age of marriage, impotence, a person bounded by a previous marriage, persons related within prohibited degrees of consanguinity, affinity or adoption, among other things. A defect or lack of adequate consent includes lack of capacity, i.e., lack of sufficient use of reason, lack of due discretion and inability to assume essential obligations of marriage (Can. 1095); lack of knowledge, i.e., ignorance (Can. 1096), defect in knowledge, i.e., error (Can. 1097 & 1099), and fraud (Can. 1098); and defect of will, i.e., simulation (Can. 1101), conditional consent (Can. 1102), and force and grave fear (Can. 1103). The process of annulment is conducted by an Interdiocesan Ecclesiastical Tribunal<sup>14</sup>, which I discuss below.

## **Available non-state forums for Christian women**

### **Interdiocesan Ecclesiastical Tribunal**

In the Catholic Church, the Interdiocesan Ecclesiastical Tribunal is the forum where Catholic marriages may go through an annulment process and can be declared null and void. However, to reach this forum, the parties have to go through a number of mechanisms and forums within the Catholic Church. According to the Catholic Church, no matter how serious the marital problems are, there is plenty of guidance available in the church in order to repair and deal

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<sup>14</sup> I will also call it ‘the Tribunal’ interchangeably.

with issues (Palma 2009). One such path is forgiveness that is capable of restoring a healthy conjugal life in the church's view. In the Catholic Church, marriage cannot be broken at any cost. So, there should be no thoughts beyond reunion and reconciliation (Palma 2009).

As part of the annulment process, the Interdiocesan Ecclesiastical Tribunal accepts only those cases that provide enough indication that they possess adequate grounds for annulment. One of the common qualifiers for a case to enter into the annulment process of the Tribunal is defective consent of the marriage. If the Tribunal can find that before the marriage the consent of either party was defective, the Tribunal may declare the marriage null and void.

During fieldwork, I found two Interdiocesan Ecclesiastical Tribunals operate in Bangladesh: One is the Dhaka Interdiocesan Ecclesiastical Tribunal, which is comprised of Dhaka, Chittagong, Mymensingh, and Sylhet Dioceses, and the other is the Rajshahi Interdiocesan Ecclesiastical Tribunal, which is comprised of Rajshahi, Dinajpur, and Khulna Dioceses. The Archbishop is the Moderator of the Dhaka Tribunal. There is a Judicial Vicar, who has four other Judges under him (all of them priests) and there are two more defenders of the bond, who protect and attempt to reconcile the marital bond. Once the decision of annulment is made, then the Tribunal sends the verdict to the other Tribunal for ratification, which works as the Appellate Tribunal for that case. The whole process takes between one and a half to two years.

Before being accepting by the Tribunal, a case has to be forwarded by the respective *paal purohit* (parish priest) after an identification and certification processes at the parish level. If the *paal purohit* finds that the marriage is broken and there is no scope for reconciliation, only then he will forward the case to the Tribunal. But if reconciliation is possible then he attempts to achieve it. But if the case cannot be reconciled, then the *paal purohit* examines the merits of that particular case, determining if the issues will fall under the Canon law.

After a case is being accepted by the Tribunal for trial, the members of the Tribunal collect as much background information as they can from and about both parties. If they see that the case is genuine and has merits, then they ask the party to apply to the Tribunal and provide the relevant documentation. Also, the Tribunal examines the marriage consent papers of both parties from their respective *dharmapalli* (parish). After all these, the Tribunal examines the merits of the case and makes the final decision as to whether the application of annulment should be accepted or not. If the couple has any children from this void marriage, they (the couple) are advised by the Tribunal to go to the civil law for the custody settlement.

### **Counselling centre**

The other mechanism that the Catholic Church actively deploys in order to address marital issues is counselling. Since the beginning of the 2010s, a dedicated counselling centre has been launched in Dhaka city. Before the counselling centre was established, the parish priests provided counselling to their respective church members. The counselling centre works to make marriages last and to help the Catholic community to hold its families together. The centre is run under the directorial leadership of the Judicial Vicar of the Tribunal of Dhaka. In the counselling centre, six couples work as counsellor couples. As this is the only counselling centre in Bangladesh for Catholics, Catholic men and women from all over the country come here for their services. Within the Protestant churches, counselling is not conducted as formally as in the Catholic Church. However, informal pastoral counselling is conducted by most of the priests and/or their wives when needed.

### **Church councils and committees**

Every Catholic Church in Bangladesh has a committee on family issues and the local church members go to their respective priests in their *dharmapalli* (parish) with their issues. The priest sometimes takes the cases of the church members to

these committees or directly sends them to the counselling centre or to the Tribunal.

Although the Catholic Church has established functionaries and mechanisms to deal with marital disputes, the Protestant churches do not have any uniform system in place to address similar issues. In most cases, the church councils deal with marital disputes and their related matters. Often ad hoc committees are formed in these churches in order to address such issues. During fieldwork, I found that recently a national church body had taken the initiative to create concrete rules and regulations with regard to marriage and its dissolution within the Protestant churches in order to have uniform policies or guidelines that the church body believes would help the local churches.

### **The Christian personal law reform committee**

A committee, led by the National Council of Churches of Bangladesh (NCCB), working on the Christian personal law reform, has been active since 2003. According to a report by the General Secretary of NCCB, the organizations and individuals in Bangladesh, who worked in the area of the reform of religion-based personal laws, have made in-depth studies of the laws relating to the various religious communities of Bangladesh including minority Hindu, Christian, and Buddhist laws (NCCB 2011). The committee was divided into four groups to study the existing Christian civil laws: the Marriage Act, 1872, the Divorce Act, 1869, the Succession Act, 1925, and the Adoption Acts of other religious groups were thoroughly examined. The committee also consulted with the process that was followed in Sri Lanka and India to reform their Christian personal laws. Currently, the committee has submitted drafts of amendments to three laws: The Marriage Act, 1872, the Divorce Act, 1869, the Succession Act, 1925 to the Bangladesh government's Law Commission. Moreover, a proposed draft of a new bill of the Christian Adoption and Maintenance Act has also been submitted to government's Law Commission by this committee.

## **Mediation and Legal Aid Organisations**

There is a number of national human rights- and women's rights-based mediation and legal aid organisations in Bangladesh that are functioning as non-state forums for promoting women's legal rights. Feminist and human rights movements in Bangladesh go back to the country's inception as a nation-state. According to Kabeer (1988), the first feminist consciousness in newly-born Bangladesh began its journey by working on the issues of the rape and torture of women from all classes both by the Pakistani military during the Liberation War and then by the home-grown paramilitary force called Rakkhi Bahini (Kabeer 1988). Even today, one of the top priorities of feminist groups and human rights organisations is to eradicate violence against women. But these movements also expanded their work towards other vital areas of women's lives, such as the legal realm.

The national human rights- and women's rights-based organisations provide women with mediation services and legal aid. These organisations are secular in nature and provide their services to all women, including Christian women in Bangladesh. They facilitate a number of legal interventions, including *shalish* (mediation) and provide legal aid services. One of these organisations is Bangladesh Mahila Parishad (BMP). BMP is a right-based activist voluntary women's organization with more than 135,000 general members, which was established in 1970. BMP, currently operating through 61 district branches around the country with 2278 local units at the grassroots level, has been playing an important role in providing legal assistance and training to women since the 1980s.

Ain o Salish Kendra (ASK) is another pioneer national legal aid and human rights organisation that provides legal and social support to the disempowered, particularly women. Among many other activities to promote human rights, ASK lawyers resolve disputes through mediation or litigation in ten legal aid clinics in

Dhaka, as well as in another seven districts in partnership with seven local NGOs. Bangladesh Legal Aid and Services Trust (BLAST) is one of the leading legal services organizations, currently operating in 19 districts across the country, and is the only one that provides access to legal aid across the spectrum from the frontlines of the formal justice system to the apex court. Alongside individual legal aid, BLAST undertakes strategic litigation, or public interest litigation, as a key part of its advocacy for law and policy reforms to ensure the effective legal protection of rights. The Bangladesh National Women Lawyers' Association (BNWLA), established in 1979, aims to promote the rights and status of women lawyers alongside fighting for access to justice for all women and children, particularly for the most disadvantaged women and children in Bangladesh.

The only faith-based Christian women's movement in the country is the Young Women's Christian Association (YWCA). With an affiliation with the World YWCA, the movement has developed in Bangladesh as a non-profit voluntary women's organization since 1961. Since then it has been working for the empowerment and development of the lives of women, girls, and children irrespective of their religious backgrounds. The YWCA also provides some legal support for women. For Christian women in Bangladesh, the above organisations and movements are available as non-state and non-religious forums where they can seek support in relation to marriage, divorce, inheritance, and custody.

## **Conclusion**

The complexities that arise with the conflicting laws, including conflicts between state laws, non-state laws and various forums available to women, are many. Clearly, these multiple complexities are created as a result of the co-existence of the state and non-state laws, the church, and secular forums, such as women's and human rights movements. The legal context of Bangladesh, including the Constitution, the legal system, and then the personal laws are gendered. The comparative analysis of three different personal laws — Muslim, Hindu, and

Christian — that I have presented shows how women are discriminated against in all three laws. However, further complications arise when non-state laws, such as the Code of Canon Law for Christians, come into play. The Catholic community is specifically subject to the Code of Canon Law under the Catholic Church, which has conflicting provisions compared to the Christian personal law of the state. At the same time, women also have access to various forums, both church-based and secular, apart from the courts of the state, where they can seek various legal remedies. Such co-existence of multiple laws and forums available for women accentuates the complexities of a situation of legal pluralism in a postcolonial state such as Bangladesh. This analysis will provide a background for the rest of this thesis.



## Chapter Four

### Intimate colonisation and resilient patriarchy: Christianisation and law creation

#### Introduction

Colonisation of the Indian subcontinent has impacted most people in many ways. My family was also one of those that was impacted by colonisation through conversion. In the beginning of the 20<sup>th</sup> century, my *borobaba* (great-grandfather) Dr Srimanta Das and his wife converted to Christianity after being inspired by Ms A. Arnold, a missionary of the Australian Baptist Mission, who had training in medical science and was running her clinic in Ataikula, Pabna. Dr Das was also a medical doctor, originally from a Hindu family of Dhaka, but he later settled in Sujanagar, Pabna. Dr Das and his wife, my *boromaa* (great-grandmother), came in contact of Ms Arnold when he took his wife to Ms Arnold for delivering their first child. Ms Arnold's teaching attracted both my *borobaba* and his wife and they converted to Christianity. But the other high caste Hindu leaders of Sujanagar could not accept their conversion and they made efforts to kill him (Dr Das). So Dr Das had to flee from Sujanagar and travelled by ship working as a doctor for a year before he could come back to Sujanagar after his brother-in-law used his influence to settle the matter with the local Hindu leaders.

Similar to many other colonisations worldwide, the British colonisation of the Indian subcontinent also perpetuated the idea that 'native' Indians were inferior, backward, and barbaric, who needed to be 'improved', 'developed', and hence 'civilized'. It was almost a 'self-justified duty' of British rulers, who had the burden to 'civilize' the 'natives' (Mann 2004b). Therefore, as part of bearing such 'duty', the Indian population was situated in variations of master-servant, teacher-pupil, parent-child, or as Nandy (1983) calls it, a husband-wife relationship that explained the imposition of discipline, education, and

upbringing. This relationship between the coloniser and the colonised was the essence of the ‘civilizing mission’ of British rulers (Mann 2004b). It became logical for the British to reform administration as well as to establish legal institutions and to formulate legislation. In other words, as Mann (2004b) argues, civilization was replaced with the terms rule of law and good governance.

In this chapter, I show how the ‘native’ Christian identity in British India was shaped through colonisation, Christianisation, and the personal law creation processes. The chapter is based on historical accounts of the Christianisation processes during British colonisation and my archival research in the Bishop’s College in Kolkata. In this chapter, I argue that the Bengali, as well as other Christians in undivided India, including pre-British converts, became the subject of a civilizing mission in a more intimate way than other religious groups, such as Hindus and Muslims. I call it an ‘intimate colonisation’, where ‘native’ Christians encountered a specific kind of colonisation that changed their everyday lives in a two-fold process, through Christianisation, and through law creation. In such processes of intimate colonisation, local Christians became intimate targets of colonisation. Through their civilising mission, British rulers attempted to ‘rescue’ the Indian Christians<sup>1</sup> from their situation, whom British rulers thought uncivilised. First, the British did so by conversion, as the anecdote exemplifies, then, by an inculturation process through which they attempted to change ‘native’ Christians’ traditional practices and lifestyles, and finally, by creating personal laws for them that govern marriage, divorce, inheritance, and guardianship.

I argue that ‘native’ Christians were the only group on which the colonial powers acted directly to craft and mould their lives and provided the group a new identity. But such identity creation was not a one-way process of intimate colonisation of the local Christian community by the British; instead, a range of negotiations between ‘native’ Christians and colonial rulers took place throughout history that made the identity of the colonised a ‘negotiated identity’.

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<sup>1</sup> By the term ‘Indian Christians’, I mean ‘native’ Christians in pre-partitioned India.

This chapter shows the intimate colonisation processes and the negotiation of identity creation through three major sections. In the first section, I show how the Christianisation processes led by the colonial rulers modified the traditions, customs, and lifestyle of 'native' Christians and how these processes made them intimately colonised. The second section deals with the processes of law creation, particularly with regard to inheritance, marriage, and divorce that reinforced the intimate colonisation processes. In this section, I critically analyse the history of personal law creation processes that was highly contested and negotiated. This law creation and negotiation processes were not gender-neutral; instead, it was highly gendered. The negotiation processes implicitly restored, reinforced, and reproduced patriarchy.

It is important to note, however, that I do not seek the usual interpretation of Bengalis or Indians as colonial subjects of oppression and their resistance, but emphasise the negotiation processes to establish their claims from the state (Mann 2004a). Colonised subjects were not passive, but instead, they operated as active agents to negotiate the law-making processes in order to reinstate patriarchy. Women, on the other hand, became subjects of colonisation by the British while remaining subjects of patriarchy by their own men. In this way, colonisation has multifaceted complexity. The British created personal law, 'in the image' of their own laws, in order to create 'civilised' subjects of the colonies in South Asia. But at the same time, these rulers were bargaining with patriarchal agents and accommodating patriarchal values. Thus women from minority communities were being doubly jeopardised: by the external, as well as the internal 'rulers'.

In this chapter, I portray a case that deals with the contestation, negotiation, and resistance between a church body and 'native' Christians with regard to the issue of marrying one's deceased wife's sister. For more than a quarter of a century, 'native' Christians struggled to regain their right, which they had before the creation of personal laws, for a man to marry his deceased wife's sister. These marriages were common within broader Indian society. By analysing the case, I

show that on the one hand, the negotiations aimed to restore the long-term practice that was culturally appropriate and accepted by the society, and on the other, the negotiations restored and reproduced patriarchy and hence increased the resilience of patriarchy. I use the term 'resilience' in order to show that patriarchy as a system holds the power or ability to return to the original form and position after being bent or compressed. In the case of marriage with one's deceased wife's sister, I argue that patriarchy, as an active system, negotiates through 'native' Christians to be restored and reproduced and become resilient.

### **Intimate colonisation through Christianisation processes**

The processes of Christianisation and the creation of the Christian community in Bengal is not a detached event; instead, it is intertwined with all Indian history of Christianity. Although many people associate Christianity and Christianisation processes in India with its colonial history, India had indeed a long history of Christianity since its pre-colonial time. In pre-partitioned India, Christianity existed for nearly 20 centuries, long before it was introduced in many European countries (Fernando and Gispert-Sauch 2004). Although the early Christians in undivided India were well-integrated with Hindu society, the integration broke down with the intervention of Portuguese traders, followed by the British Raj, which provided both Christianisation processes and Christian identity a new form, with a colonial packaging. The earliest form of Christianity in India grew naturally as part of the broader society. However, later, when India was colonised, Christianity was alienated from the broader society and Christian identity took a hybrid form with a blend of both colonial and 'native' Christian practices. I argue that such a hybrid Christian identity enabled the colonisers to intimately colonise 'native' Christians. In the processes of intimate colonisation, how were women situated and positioned? How did women negotiate their colonised subjectivity along with that of their male counterparts? This section addresses these questions.

## **Pre-colonial Christianity in India**

The Apostle St. Thomas, one of the twelve disciples of Christ, arrived in India to preach Christianity a few years after Christ's crucifixion (Fernando and Gispert-Sauch 2004). During that period many Jewish traders were already living permanently for their commerce and trade in Punjab and Sindh Province in the western part of pre-partitioned India as well as in the coastal areas of Konkan and Malabar in the south-western region. As Sarker (2002) describes, in the first century, the *Raja* (King) of Punjab, Gondophares, sent a Jewish trader to Palestine to bring a few skilled carpenters to ornate his capital Taxila. When the Jewish trader arrived in Palestine, he converted to Christianity after being touched by the appealing speech of St. Paul and while coming back to India, he brought St. Thomas with him. Soon after St. Thomas arrived in the Malabar region in India, he began preaching among the Jews. He baptised many Namboodiri Brahmins in two villages (Fernando and Gispert-Sauch 2004). The impact of these conversions quickly spread all over the Malabar region and many people were converted by him. Gradually St. Thomas established seven churches in the Malabar region by 52 CE (Sarker 2002). Therefore, fundamentally, Christianity in India is an ancient heritage religion of about two thousand years.

As soon as St. Thomas arrived in India, he integrated himself into the society and culture of India. His lifestyle became similar to an Indian *shannyashi* (monk). Therefore, he was often called 'Thomas *Shannyashi*' by common people, irrespective of whether they were Hindus or Christians (Sarker 2002). Hindus converted to Christianity by Thomas *Shannyashi* kept their original Hindu names. Thomas did not interfere in the caste system of the Hindu community. Therefore, the convert Christians in India remained within the sphere of the Hindu caste system by recreating the castes Brahmin Christians and non-Brahmin Christians, and their eating, drinking, clothing, manners, and everyday lifestyle went on according to Hinduism.

The seven churches built by St. Thomas resembled Hindu temples (Sarker 2002). Many similarities between performing rituals in those churches in Malabar and in

Indian temples remained. For example, washing the hands and face before going to the church, entering the church bare-footed, bowing by *shastanga*<sup>2</sup>, worshiping with incense, and so on were practised both in Hinduism and Christianity. During this period, the Churches and their rituals and worship took the form of the Syrian rite or liturgy. Hence these churches are known as Syrian churches (Fernando and Gispert-Sauch 2004). In this way, Christians in Malabar became a separate caste in the Hindu caste system with a different religion from Hinduism. Non-Christians in these areas did not consider Christianity to be a foreign religion, and Christianity grew naturally for about 15 centuries. The main reasons for this natural growth are that Christianity flourished during this early period without disturbing the existing social fabric, and by finding a space within the existing cultural system.

### **Re-arrival of Christianity with Portuguese traders**

The Portuguese, who were mostly Roman Catholics, came to India in 1498 for trade and conquest, with an initial intention of trading spices from India by using local Christians as intermediaries (Fernando and Gispert-Sauch 2004). However, the Portuguese traders found that Christianity took a different form in India from their own practices with a high prevalence of Hindu culture. They were astonished to see weddings without wedding-ring but instead, with a *mangal sutra*, where the groom ties a small cord round the bride's neck. Moreover, they were astounded to see that churches resembled temples and not the structure of churches in Portugal and that priests were allowed to get married.

In seeing all these, the Portuguese decided to bring these Indian Christians to the “right path” — “the Latin way!” (Fernando and Gispert-Sauch 2004, 76). As a result, Portuguese missionaries began to come to India and through the Padroado Portuguese<sup>3</sup> contract, Christianity re-arrived in India, protected by the

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<sup>2</sup> A form of respectful salutation by touching the ground with six body parts such as forehead, toes, knees, hands, chin, and nose.

<sup>3</sup> The Pope Leo X signed a contract with the Portuguese King, which is commonly known as the Padroado Portuguese (Sarker 2002). According to this contract the Portuguese King will preserve all the power to establish new Christian missions and Diocese and administer them. The contract

Portuguese crown. As part of their Christianisation project, the Portuguese devoted themselves to creating a similar (but not equal) Christian community to theirs. In this way, the Portuguese missionaries introduced the Latin liturgy in their churches in India, without considering the fact that Indian tradition and culture was completely different. Instead, they imposed the Christianity that was formed in the mould of European culture and cult practices on 'native' Christians. The missionaries were cautious to exclude the caste system of Hindu society. They took several measures so that the caste system was not reproduced within the new Christian community. As a result, they attempted to uproot these new converts socially from the broader Hindu society.

Sarker (2002) has described the efforts of deleting the traces of Hinduism in detail. He shows, in Bengal, how the missionaries attempted to erase 'native' Christians' original Bengali names that represent their caste and replaced them with a new Portuguese name and a surname, often the missionary's own surname. Until today, many Bengali Catholics use these Portuguese surnames, such as Gomes, Gonsalves, Rozario, D'Rozario, D'Cruze, Costa, D'Costa, and many more. Moreover, they forced the Bengali Christians to eat beef and pork and drink alcohol, which was never part of their diet as Hindus. They also attempted to change their clothing to Western clothing. They instructed them to boycott every social norm and custom that came from Hinduism, including attending any Hindu *puja*, or festival, or reading Hindu scripture.

By interfering with day-to-day life, the Christianisation project of the Portuguese created a new identity that did not exist earlier. Bengali Christian women were prohibited from wearing *shakha-sidoor*<sup>4</sup>. The new kin terms that were introduced to replace the Bangla words. For instance, they replaced *dharma baba* (godfather) with *padu*, *dharma maa* (godmother) with *madi*, *kaka* (uncle) with *putu*, *dada*

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also says that without the approval of the Portuguese King, even Pope cannot give any order anywhere in India and all the missionaries can only travel India by Portuguese ships (Sarker 2002).

<sup>4</sup> *Shakha* are white bangles of conch-shell and *sidoor* (also called *sidur*) is vermilion, which is applied on the parting of the hair, which are considered the signs of married women and they no longer can wear *shakha-sidur* when they become widow (Bhattacharyya 2011).

(elder brother) with *nanu*, *didi* (elder sister) with *mana*, and so on, which are still common among Catholics in some parts of Bangladesh (Sarker 2002). Such processes alienated the local Christians from their parent broader Hindu society and made them outcasts. It was absolutely unimaginable for non-Christians to see Christians worshipping in the church whilst wearing shoes, sitting on chairs or benches. The beauty of the church, the soothing tune of the organ, and the Gregorian chants also astonished them. Therefore, during the Portuguese period, in the eyes of the non-Christians of India, Christianity became *shaheber dhormo*, the religion of white people, and the Indian Christians became *kala firingi*, the black foreigner.

Moreover, patriarchal rules dominated the Portuguese era. For example, the general Portuguese soldiers, who had been coming to India since Vasco da Gama's<sup>5</sup> time, did not have permission to bring their wives and families from home. They were also not allowed to marry Indian women and, moreover, no ordinary Portuguese women were allowed to come to India. These restrictions resulted in the continuous oppression of Indian women by Portuguese soldiers. However, later at one point, the Portuguese King declared that Portuguese men were allowed to marry Indian women. After the declaration, as Fernando and Gispert-Sauch (2004) shows, many Portuguese soldiers married Indian women and settled in India permanently.

### **Colonised Christianisation during the British Raj**

After the Portuguese, in the beginning of the 17<sup>th</sup> century, the East India Company came to India. In 1757, the *Polashir Juddho*, the Battle of Plassey, was a decisive victory of the British East India Company over the *Nawab*<sup>6</sup> of Bengal and his French allies and slowly they took over the governing power to rule Bengal (Marshall 1987). The British wanted to make sure that people of Bengal did not go against the East India Company. Therefore, in order to keep them content, they ensured that 'natives' did not face any obstacle in practising their traditional

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<sup>5</sup> A great Portuguese explorer; the first European to reach India by sea.

<sup>6</sup> A 'native' governor during the time of the Mughal Empire.

religion and religious rituals and festivals. While doing so, the British patronised both Hindu and Muslim communities by allocating funds to repair or re-build old temples and mosques. Primarily in Bengal, the East India Company had no intention of expanding Christianity; instead, as Marshall (1987) points out, the Company's main agenda was to establish their own position to expand their business and earn vast profits.

British rulers feared that if missionaries arrived in Bengal, while preaching Christianity, and somehow they criticized, demeaned, or talked against Hinduism and Islam, the common people might become hostile towards the British. Hence, they made every effort to prevent the arrival of missionaries in Bengal, along with other parts of pre-partitioned India (Jayawardena 1995). But the missionaries, particularly from the Protestant groups, began to come to Bengal without the government's approval, and in Jayawardena's (1995, 22) words, "followed the flag and began the task of proselytizing the 'heathens'". Later, in 1813, the Charter Act of 1813 was approved by the Parliament of the United Kingdom, after which there were no restrictions on missionary operation in Bengal (Marshall 1987). As a result, a number of churches in different places was formed. Datta (1992) points out that after the Charter Act of 1813 was passed, a number of missionary societies, such as the Baptist Missionary Society (BMS), Church Missionary Society (CMS), London Missionary Society (LMS), and Wesleyan Methodist Missionary Society (WMMS) amongst others came to pre-partitioned India.

The notion of 'morality' played a crucial role in conversion. The English missionaries had negative ideas about 'natives'. The negative views and attitudes towards 'natives' also affected Bengal broadly. Charles Grant, a high-ranking official of the East India Company, who was also a Member of Parliament in England and an influential leader of the Church Missionary Society, was largely responsible for creating this negativity among the English missionaries. He wrote in his book titled *Observations on the State of Society among the Asiatic Subjects of Great Britain* that both Bengali Hindus and Muslims did not have any trustworthiness, honesty and there was no trace of faith in their lifestyle (Grant

1797). In Grant's opinion, they were deceptive and dishonest, whereas Muslims were bigger traitors than Hindus. According to Grant (1797), only Western education could bring drastic changes in such a situation and then the local Hindus and Muslims can be converted into Christians.

Most of the British missionaries were influenced by Grant's theory and criticized Hindus and Muslims as well as 'native' Christians, those who were leading their lives as Hindus in practising religious rituals. For instance, prominent missionary William Carey<sup>7</sup> wrote in 1800 as cited by Potts (1967, 6), "It is not to be thought that the moral character of people should be better than that of their Gods ... the Hindoos ... are literally sunk into the dregs of vice". These missionaries strongly believed that the native religions were the main causes of backwardness of the local population. So in order to build them as a civilized society, first the 'natives' should be converted to Christianity. These missionaries reported back to England about 'native' Hindus and Muslims and presented them as uncivilized and semi-barbarian, so that the missionaries could continue to have help, support, and financial contributions from the English (Sarker 2002).

Conversions to Christianity had a gendered dimension. According to Jayawardena (1995), the earliest missionary activities in India began with the conversion of boys who were trained to become 'native' preachers. Mukerji (2013) also argues in a study of the socio-cultural development and growth of educated Bengali Christian community in colonial Bengal that the first converts to the Christian missionaries were men, as according to the prevalent social conditions only men came into contact with the outside world. Men were dominant figures in every household; women sometimes followed in the footsteps of the master of the house or the husband or son, who had been baptised. Mukerji (2013) further argues that usually the particular male convert of the family was ostracised both from the family and from Hindu society. If he was a married man, he would have

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<sup>7</sup> Rev. William Carey was the first English missionary in Bengal in 1793 and he significantly contributed in the development of Bangla literature, including the translation into and printing of the Bible in Bangla (Sarker 2002).

to forsake his wife who was expected to live the rest of her life as a Hindu widow (Mukerji 2013).

According to Jayawardena (1995), the missionary activities had important consequences for local women. Missionaries thought that women were even more degraded than men and in need of salvation. As a result, Christianity through these missionary activities took over additional roles in challenging and changing women's status and realising their rights. Therefore, from the 1820s onward, missionaries established girls' schools and convents in most of the major cities and towns in colonial India, mostly providing primary and in some cases secondary education (Jayawardena 1995). The main purpose of educating the girls was simply to make the girls educated to become 'good wives'. For urban girls, missionaries educated them by teaching them English so that they could qualify to become wives of rich urban people. On the other hand, in rural settings the girls were taught how to become wives of farmers by acquiring the skills to perform everyday household chores, such as cooking, sewing, taking care of children, serving their husbands and the in-laws, amongst other things. Through this teaching, the central goals for women were emphasised for their marriage and motherhood, where "spinsters were regarded as failures" (Sen 2002, 3). However, the higher education of women was discouraged and it was often argued that it was harmful to women's health. However, as Sen (2002, 4) argues, women's labour was only required in the poorly paid employment of governesses, teachers, tutors or missionaries, and "insufficiently educated 'spinsters'" were assigned to these roles. Therefore, according to Sen (2002, 4), "[T]he colonies which were seen as a source of possible employment and livelihood for men were equally viewed as offering 'spinsters' opportunities for marriage or for employment as governesses or missionaries".

Jayawardena (1995) argues that these mission schools challenged tradition and local practices as part of their civilising mission and through these processes they brought up girls with a sense of cleanliness, modesty in their behaviour and dress, who were caring, pious, anxious to keep their children from bad morals

and the corruption of the 'heathens'. But simultaneously in the processes, they also created many professional women, female activists, and feminists in South Asia. Mukerji (2013) argues that the burgeoning educated Bengali Protestant community was a consequence of missionary activities in the 19<sup>th</sup> century and the new trends of thought that the missionaries brought with them affected the Bengali concept of patriarchy and the traditional Bengali notions of a woman and her social status and responsibilities, which changed considerably among the entire educated urban Bengalis.

Besides education, missionaries also had a large impact on healthcare services in India. Mukerji (2013) argues that when the missionaries came to India, healthcare facilities were scarce and primitive as compared to their (missionaries) own methods. Therefore, it was easy to win over physically distressed people through dedicated medical service. Upper-class citizens, who could afford expensive medical care, would seek professional help and if they called in a European doctor would not entertain religious instruction alongside a diagnosis of infirmity. However, Mukerji (2013) further argues that women of the upper classes, who remained confined within the four walls of their *zenanas*<sup>8</sup>, needed a physician to visit them when ailing or in labour. Hence women missionaries with medical training were the most appropriate individuals for the propagation of Christianity in the *zenanas*.

However, even when many activities and strategies were deployed, the conversion project of the British was not successful, according to Sarker (2002). Missionaries continued their efforts to convert non-Christians to Christianity. But the failure of the conversion project complicated the situation of existing 'native' Christians. I have mentioned earlier that British imperial interests were more inclined towards production and exchange relations. In such a context, Christianity came with a dual mission: conversion and modernisation (Jayawardena 1995). As missionaries did not see much success in converting people, they concentrated more on their second role, modernisation, where they

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<sup>8</sup> The part of a house for the seclusion of women.

made enormous efforts to break traditional beliefs and customs by imposing Western systems and values on local people. Clearly, when their conversion mission failed, missionaries lost their control over non-Christians. So their every effort to fulfil their role to modernise the society concentrated on 'native' Christians — thus making the colonisation more intimate.

But how did missionaries impose their modernisation efforts on 'native' Christians? The British missionaries attempted to alter the converts' everyday lives and make them European-like. Eating beef, drinking alcohol, wearing Western clothing such as trousers, shirts, and suits, and eating with ceramic crockery by using cutlery on a dining table were introduced to the 'natives' (Sarker 2002). Even the clothing of Christian women was influenced by Victorian fashion. Moreover, following Western practices, they also began to use curtains in their homes, wear shoes inside their houses, and so on. Wedding ceremonies began to take place in the church. The dress of the groom became coat and trousers and that of the bride became a white saree or gown, gloves on the hands and a white veil on the head. Wedding ceremonies began to be conducted in English in many churches (Sarker 2002). The missionaries ensured that these new converts did not have any traces of Hinduism in their lives.

Through Christianisation processes (both conversion and modernisation), a new social stratification emerged in colonial India. This new layer was not necessarily based on caste, but instead, the layering was based on relations between 'native' Christians and the rulers. Through this stratification, 'native' Christians became outcasts in the eyes of the broader Hindu community. But at the same time, they still remained 'black' or 'native' in the eyes of the English people, although these local Christians had accustomed themselves to Western customs and norms. As a result, a new blended form of identity emerged, presenting a mixture of Indian and Western culture.

## Intimate colonisation through law creation processes

Intimate colonisation has affected ‘native’ Christians not only through Christianisation processes but also through the state-building initiatives, such as law-making. The historical analysis of Christian personal laws (also known as family laws) in British India, compared to that of other personal laws, captures the overt complexity of the socio-legal situation within the ‘native’ Christian community. It also identifies the negotiation that took place within the processes to establish and provide a legal platform to ‘native’ Christians and their identity, which was often contested and competed over.

The notion of ‘respect for law’ was brought in by the British, which was evident in their efforts towards law-making and establishing the ‘rule of law’. Partly, the ‘respect for law’ that was introduced by the British led the minorities to demand separate laws for their groups. Moreover, according to Rajan (2003), personal law envisaged as a means of securing community identity and respecting religious difference. For this reason, since the 18<sup>th</sup> century, Christians in India had been demanding a separate set of laws. Through the Christianisation processes, ‘native’ Christians gained a new identity, but what they needed was legislation to establish the markers of community identities. Establishing their identities was one of the main reasons for ‘native’ Christians to claim their personal laws, which, they thought, would provide them with a stronger footing, a legal identity, as a community.

In 1833, the East India Company’s charter was renewed by the British Parliament and it appointed a Law Commission to investigate and recommend improvements to laws of India. The Law Commission proposed a uniform law that was applicable to all classes of inhabitants of India (Cassels 2010). Such uniform law should be the *lex loci*<sup>9</sup>, or ‘law of the country’, applicable to every

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<sup>9</sup> The term *lex loci* came from the great philosophic Jurists of Rome who “devised a body of principles and distinctions for applying Equity and good Conscience to the complicated affairs of men” (Cassels 2010, 258).

citizen (Chatterjee 2010). However, before deciding upon *lex loci*, the British legislators faced the dilemma of whether they should have a uniform family code or religion-specific personal laws. However, unlike today, their focus was not women's rights but the struggle that they had to go through was to "fit the legally defined categories of Muslim or Hindu" as, according to Chatterjee (2010, 1156, 1164), "It was not a simple proposition to arrive at a 'universal law' which transcended the exotic differences of India".

There were two reasons for deciding on the issue of *lex loci*. Firstly, as part of its 'civilizing mission', the British attempted to create and reform the legal institutions as well as laws, in which *lex loci* was the most logical choice. Secondly and finally, the British were careful to guarantee to their subjects in India the free exercise of their religion and to remain religion-neutral (Cassels 2010). The colonial rulers ensured to govern Indians in accordance with the existing practices and traditions in India since the beginning of British rule (Newbiggin 2009). Under such circumstances, the British colonisers did not want to disturb the religion-based legal practices and hence, again, *lex loci* was a safe choice, which itself seemed religion-neutral in nature. At the same time the Anglo-Hindu and Anglo-Muslim laws were created according to Hindu and Muslim practices and customs respectively, which provided these practices with a legal status in the modern sense (Mitra and Fischer 2002, Mallampalli 2010). The intention of the British rulers not to disturb Hindu and Muslim practices enabled Hindu and Muslim populations to be exempted from *lex loci* and simultaneously made Christians its only subject. In this way, Christians again became the subject of the intimate colonisation of the British Raj. As parts of *lex loci*, the Succession Act, the Marriage Act, and the Divorce Act were legislated, which I discuss below, and became instruments of intimate colonisation of the Christian community in undivided India.

## **The Succession Act**

In 1830, the Governor-General legislated called Regulation VII of 1832 of the Bengal Code to protect the civil rights of Indian convert Christians. Section IX of the Code states:

[I]n any civil suit, the parties to such suit may be of different persuasions, when one party shall be of the Hindoo [Hindu], and the other of the Mahomedan [Muslim] persuasion, or where one or more parties to the suit shall not be either of the Mohamedan or Hindoo persuasions, the law of those religions shall not be permitted to operate to deprive such party or parties of any property to which, but for the operation of such laws, they would have been entitled. (Bengal Regulation VII 1832, Section IX)

The debate around Bengal Regulation made it clear that there was no personal law for Christians in place. Instead, they were situated in such an inconclusive position because, on the one hand, 'native' Christians were excluded both from the Hindu and Muslim jurisdictions as they did not belong to those religions; on the other, these Christians could not get remedy from the English law as they were not English. Following these petitions to the Law Commission from Christian missionaries from Calcutta (now Kolkata), Nagpore, and Bombay (now Mumbai) began arriving, making queries about laws governing marriage, divorce, and inheritance (Cassels 2010). Among them, a petition from the Bishop of Bombay in 1849 was the most effective. The Bishop argued that 'native' Christians had no protection of their civil rights and immunities under the existing state of laws. Cassels (2010) shows that Bishop's letter included a number of case studies where many Christians, because of their conversion, were deprived of their share of inheritance.

Finally, in response to these petitions, Act XXI entitled the Caste Disabilities Removal Act, 1850, was enacted, which states that no person should suffer the loss of rights they otherwise possessed because of a loss of caste. But this law was unable to create rights as it was a negative law that protected converts from losing their inheritance, whereas inheritance itself was a substantive right. Later, the Indian Succession Act, 1865, and then the Succession Act, 1925, were

legislated, which were mostly modelled on English law. These laws were originally meant to be a uniform law of inheritance in India. However, the law was not accepted by both Hindus and Muslims as it was not in line with their respective religious inheritance practices. The Parsis accepted only the section on wills. Therefore, Hindus, Muslims, and Parsis were exempted from this particular law and after exemption, it could only serve the Christian population (Chatterjee 2010). In order to fulfil the civilizing mission of the British, the uniform law was seen as ideal. But instead of a uniform law, India received another set of personal laws for this particular community.

Such law creation and negotiation processes were not gender-neutral. The gender impact of the new Indian Succession Act, 1925, was enormous. Unlike the Hindu and Muslim inheritance practices, under this law, women gained a significant right to their deceased husband's property as well as rights to their deceased parents' properties, equal to their brothers<sup>10</sup>. Women's equal share of inheritance reduced the share of male members of the family, which resulted in a number of unsatisfied men. One can imagine that men were not eager to accept and embrace the law that "gave one-third of the male intestate's property to his widow, and equal shares of the residue to daughters and sons, excluding the joint family consisting of male agnates" (Indian Succession Act 1865, Sections 29 & 30, Succession Act 1925, Section 33). It became clearer that Christian men, in particular, were not content with the new inheritance law in which they had to potentially lose a significant portion of their inheritance property, which they did not occur otherwise under the Hindu laws. Many men began to be vocal in complaining that this particular law restricted their otherwise 'full rights' under the Hindu inheritance laws, in spite of the *lex loci* of 1850 (Chatterjee 2010). However, many Christians in India continued to claim their inheritance rights as per the Hindu law in which some were denied while others were accepted. Although through the Succession Act, 1925, was a gender-equal law available for governing Christian inheritance, its implementation was not consistent within

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<sup>10</sup> For detailed analysis of the Succession Act 1925, see Chapter Three and Chapter Eight.

the community<sup>11</sup>. In fact, the social practices and attitudes of passing property down through the male line remained predominant.

### **The Marriage Act**

The Act of Marriages in India, 1851, was another effort made by the British towards a uniform civil law. It was a law of purely civil marriage, under which at least one of the parties had to be Christian and both parties had to fulfil the necessary conditions of minimum age or consent of a guardian, the absence of a living spouse, not being related within prohibited degrees, and providing due notice to the Marriage Registrar. However, Chatterjee (2010) shows that the Indian Government objected to the requirement of parental consent in the case of under-age men and women, which it was thought might cause discrimination against Indian Christians. Being outcasts from their parents' religious community, many 'native' Christians did not have parental consent for their marriages and they had to wait until they reached 21 years of age. However, according to local practice, the average age of marriage was significantly lower in 19<sup>th</sup> century India. In most instances, girls even before reaching puberty were married, although the marriage was not consummated usually until after puberty (Gatwood 1985, Mandelbaum 1948). "Eleven years old and not married!" is the opening line of *Himself: The Autobiography of a Hindu Lady* which shows that it was shocking to see any unmarried girl around that age (Ranade and Gates 1938). Therefore, 21 years of age was unquestionably over age for marriage purposes.<sup>12</sup>

In the following year, Act V of 1852 was legislated, which was, by and large, a reflection of the British Parliamentary law. Only in two sections of this law, namely VII and XII, the issues of 'native' Christians were mentioned to make sure that they were aware of the obligations arising out of marriage and particularly that of monogamy. Later in 1864, the Christian Marriage Act, 1864 provided a marriage law for India that enabled Indian Christians to have civil as well as

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<sup>11</sup> I address this issue in Chapter Eight.

<sup>12</sup> For detailed work on the age of consent see Anagol-McGinn (1992), Sarkar (1993), and Desai and Andrist (2010).

church marriages. But in the following year, this law was amended and the Christian Marriage Act, 1865, excluded the requirement of parental consent for all 'native' Christians, following the Roman Catholic Church's recommendation. The law also fully exempted Roman Catholics from Part V of this law, dealing only with the marriages of 'native' Christians (Part V, Clause 53).

However, the President of the Bengal Christian Association, Reverend Krishna Mohan Banerjea, a Bengali scholar and a patriot who was converted to Christianity and later became an Anglican priest (Sarker 2002), criticized the removal of parental consent for marriages of under-aged parties (Chatterjee 2010). Finally, the latest version of the Christian Marriage Act, 1872, re-incorporated the requirement of parental consent until the age of 21, keeping the minimum ages of 13 and 16 for women and men respectively. Therefore, some traces of negotiations between the law-making colonisers and 'native' Christians can be found here. I will elaborate on such negotiation processes later in this chapter.

### **The Divorce Act**

Conversion to Christianity by one spouse broke up many marriages as the non-Christian spouse often abandoned the other and in many cases remarried. For example, Laxmibai Tilak, a writer and reformer in the late 19<sup>th</sup> century, did not convert initially to Christianity when her husband converted in 1895. She separated from him for a few years until she converted (Anagol 2010). However, unlike Laxmibai, when other spouses did not convert to Christianity the Christian spouse had to go through a lengthy procedure to break the marriage legally, sometimes lingering more than two or three years, to get permission for their remarriage in the church (Chatterjee 2010). Although this procedure was never legally formalised, it was working to some extent. However, it ended with the formulation of the Act of Marriages in India in 1851, followed by the Acts of 1864 and 1865, which restricted marriages for Christians (including 'native' Christians) with a living spouse (Act of Marriages in India 1851, Christian Marriage Act 1864, 1865). Numerous petitions were filed by convert Christians complaining about

the restrictions of remarriage that they were subject to and when abandoned by their non-Christian spouse they could not obtain a divorce as there was no divorce law in place until 1866. In fact, Christians, who had already remarried through the earlier procedure, had committed the criminal offense of bigamy according to the Act of Marriages in India, 1851 and the Christian Marriage Act, 1864, 1865. Such a situation essentially forced Indian Christians to defer remarriage until the death of their spouse.

Although a few women such as Laxmibai Tilak, mentioned before, used their agency rather than being passive objects and denied conversion to Christianity following their husbands (Anagol 2010), there were not many instances in which women alone went for conversion, leaving their husbands and children. It is quite understandable that most of the convert Christians were men, as during the 19<sup>th</sup> century most married women would not have the power and authority over themselves to convert to Christianity alone, without their husbands, and leave them after conversion. So the converted men, whose wives left them due to their conversion and who remarried, were mostly the victims of this rule that restricted them from remarrying. There was a country-wide protest by the Christian community, both from the Catholic and Protestant groups, complaining about how their men were suffering because of the restriction on remarriage when their previous marriages were already broken and beyond reconciliation (Chatterjee 2010). They also argued, according to Chatterjee (2010), that it was a unique situation that the Indian Christians had to face by themselves, as polygamy was not illegal among Hindus and Muslims.

Responding to the petitions from the Christian community, the Government proposed a new law of divorce, entitled the Native Converts' Marriage Dissolution Act, 1866. Under this law, the deserted spouse would demand the restoration of conjugal rights and if the deserting non-Christian partner refused to comply, the marriage would be dissolved between the two parties. However, most Christian missionaries objected to the proposed law on the grounds that it was unnecessarily complicated, time-consuming, and undignified for women as it

required establishing the fact of consummation in court among others. Also the law required the deserting spouse to appear in the courtroom, which was not possible as most of these spouses were usually untraceable. Moreover, the Catholic Church sought permission to follow the Code of Canon Law for handling cases to dissolve the marriages. The Protestant leaders rejected the law by arguing that such a law would not retain any scope for reconciliation, which is widely encouraged in Christian marriages. Because of this rejection, further opportunity to preach Christianity might have ended. Reflecting on the events that followed, Chatterjee (2010, 1189) quotes Reverend Krishna Mohan Banerjea in his remarks on the speech of the Earl of Ellenborough: “the law was entirely the creation of missionaries who were totally unrepresentative of Indian Christians and who treated the latter as their serfs”.

The Indian Divorce Act of 1869 after two years added yet another Act in the uniform category, which again had the same consequences of serving the Christian population in undivided India. According to this particular Act, which was formulated following the British law of divorce, adultery was the most necessary and compulsory condition for divorce. However, the law was highly gender-discriminatory with separate conditions for the husband and the wife, except on the common ground of adultery, as mentioned in earlier chapters<sup>13</sup>. The gender differences impacted Christians significantly. The remarriage of non-Christian wives of convert Christian husbands easily qualified as adultery and provided men with sufficient grounds for divorce. So divorce became easy for men. On the other hand, similar acts by non-Christian husbands of Christian women did not provide these convert women with sufficient grounds for divorce and these cases had to be built differently.

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<sup>13</sup> For a detailed discussion on this, see Chapter Three and Chapter Seven.

## **Marriage with a deceased wife's sister**

Marrying one's deceased wife's sister has been long practised in the Indian subcontinent. Traditionally, marrying one's sister-in-law, if she is eligible for marriage, has been an acceptable and preferred practice when a man becomes a widower. In the third quarter of the 19<sup>th</sup> century, this long-practised custom was prohibited for members of the Anglican Church in India. This prohibition resulted in debates and conflicts that lasted for about half a century. Before the formulation of the personal laws that began to govern the Christian society in undivided India, marrying one's deceased wife's sister was such a socially accepted and common practice that it did not even exist as an issue. Soon after the personal laws were legislated, the governance of Christian communities changed significantly and in this process, long-term and well-established practices began to fall apart. But this prohibition affected only Anglican Christians, who were directly associated with the Church of England. Catholics and the other Protestant groups either encouraged or tolerated these marriages. However, the Anglican community had strictly banned marriage with a deceased wife's sister. But the question is: What made the Anglican Church take such action? Perhaps the answer lies within the political and legal context of Britain in the reign of Queen Elizabeth I.

In the 17<sup>th</sup> century, Elizabeth I prepared the table of consanguinity prohibiting certain types of marriages, including marriages with a deceased brother's wife and a deceased wife's sister. Later, in 1835, a new law was passed in Britain that ratified past marriages with a deceased wife's sister and prohibited any further marriages of the same nature (Kippen 2009, Wallace n.d., Anderson 1982). This law made all marriages with a deceased wife's sister, along with the other prohibited degrees conducted after the bill was passed, illegal. So India, as its colony, also felt the impacts of the English law that prohibited marriages within certain degrees of consanguinity, including a deceased wife's sister. This prohibition particularly affected the Anglican community in India that was governed by the Church of England directly.

In a letter dated 20<sup>th</sup> June 1878 to the Secretary to the Government of Madras, the Officiating Secretary to the Government of India of the Home Department, C. Bernard wrote that “... as the English law governs questions of marriage with a deceased wife’s sister in the case of East Indians, such a marriage is not legal among that community” (Bernard 1878, 1). He argued that unlike Hindus and Muslims, who had their own personal laws in place, Christians were governed by the ‘territorial law of India’ (uniform law), which was a modified form of English law. Back in Britain, the prohibition of certain types of marriage had received royal approval, but not parliamentary approval, which made these marriages not void, but voidable. In other words, these marriages were legal unless challenged in the ecclesiastical courts within the lifetime of the marriage (Kippen 2009, Bernard 1878).

However, the prohibition on a customary practice of the Indian Christian community had a significant impact. Dissatisfaction eventually took the shape of protests from the Indian Christian community. On 21<sup>st</sup> May 1879, a memorandum capturing the views of ‘native’ Christians that showed respect for marriage to a deceased wife’s sister, written on behalf of the ‘native’ Christian community in South India, was sent to the Indian Bishops (Native Christians 1879). The memorandum showed in detail why such marriages were important and common in the Indian context. A number of profound reasons were provided by the protesting Christians. They showed that among ‘natives’, the deceased wife’s sister was found to take a greater interest than a wife from another family in the welfare of the children of the first wife, who was her sister. This interest of children’s welfare was particularly highlighted in the event of the husband’s death after a second marriage. A second wife from another family was generally found more or less neglectful of her husband’s children from a previous marriage and after his death the level of neglect became severe. They also brought in the role of the grandmother in her grandchildren’s lives and where the second wife was the sister of the first, the children by both marriages had the benefit of the care of one and the same grandmother. This advantage was more apparent after the husband’s death.

In the memorandum, 'native' Christians also claimed that, predominately, the second marriages between the widower and his deceased wife's sister best promoted domestic peace. When the second wife was a stranger, it was often found that she promoted the interests of her own children to the disadvantage of the children by the former marriage. In many instances, a second wife who is not his deceased wife's sister tended to deprive or misappropriate the children's inherited property. In the case where a wife did not have her own children, she often pursued this course for the benefit of her relations. The petitioners also argued that such marriages tended to preserve and promote good feeling among the relations of the married persons (Native Christians 1879). When a man married his deceased wife's sister, he maintained his connection with the family into which he had married before. Marrying a stranger did not allow such relationships.

The memorandum also stated that such marriages involved the least expenditure. A new dowry was not needed for the deceased wife's sister if she married her brother-in-law. The dowry that was provided to her sister, which was generally land in the rural areas, was passed on without trouble or expense to the second wife. Moreover, when a 'native' became a widower with young children, he found it difficult to search for a suitable second wife. The junior sister in such cases considered it her 'duty' to step into her senior sister's place.

'Native' members of the Church of England believed that they were placed at a greater disadvantage in this regard than the members of other Christian denominations in India. In Roman Catholic missions and in missions of the non-Episcopal communities, whether connected with Great Britain, Germany, or America, marriage with a deceased wife's sister was either encouraged or tolerated. It was only in the Church of England that such marriages were absolutely prohibited. Finally, 'native' Christians stated, "...of all marriages that to a deceased wife's sister is the most dutiful, charitable, and laudable, and therefore most in accordance with Christian ideas" (Native Christians 1879, 2).

However, even after all those reasoning, the Anglican Bishops did not accept such changes in the Anglican Church. Bishop R. Caldwell wrote in a memorandum, endorsed by Bishop E. Sargent, on 21<sup>st</sup> July 1879,

... [I]t seems desirable to explain that we (the writers of the memorial) should be decidedly opposed to any relaxation of the rule in England, where family life has grown up and flourished under this restriction. If we were at home and had a vote, we should vote for the retention of the existing law. It need not be added, we think, that the Natives for whom we plead, never could entertain the idea of imposing their wishes upon the people of England. (Caldwell 1879, 1)

Bishop Caldwell argued that such prohibition rested solely on a Canon, the 99<sup>th</sup> of 1603, citing the words of a Table put forth by Archbishop Parker in 1563. Parker wrote:

This Canon speaks of the consanguinity as 'prohibited by the laws of God'...I may add that there is no probability of the Indian Christians ever proposing that the wife should be permitted to marry her deceased husband's brother, the discredit attaching in India to a widow who remarries and the honour attaching to her who remains 'the wife of one husband' being sufficient preventives. (Caldwell 1879, 2, 4)

However, it is important to note here that the Bishop wrote this memorandum approximately two decades after the Hindu Widows' Remarriage Act, 1856, was enacted legalising the remarriages of Hindu widows in every jurisdictions of undivided India under East India Company rule.

The Diocesan Registry Office confirmed on 28<sup>th</sup> July 1879 that in a marriage between an English-born British subject, who had lost his English domicile, and his deceased wife's sister was absolutely void. On the other hand, although marriages between Christians within the prohibited degrees of consanguinity might be unlawful, they were not absolutely void. In other words, they were not made void until they were set aside by a competent court (Upton 1879). The letter referred to the Advocate General's advice that it was certainly not unlawful for Hindus and Mahamedans (Muslims) who became Christians to marry their deceased wives' sisters not only because it was a common practice but also there were no provisions in their respective personal laws forbidding such marriages.

By the end of the 19<sup>th</sup> century, the shape of protest and appeal took a more organized form. In 1901, the Anglican bishops received another memorandum, along with a statement of their arguments, signed by about 3,200 South Indian Christians, including some of the lay church leaders (Native Christians 1901). The memorandum argued for why the issue of marriage of deceased wife's sister was a question of great importance to the Indian church. Many Christians from the Church of England who were affected by this prohibition were solving the situation by leaving the Church of England and joining other church bodies, as they accepted such marriages. They felt that membership of the Church of England means a curtailment of personal liberty in innocent social customs. Therefore, according to the writers of the memorandum, it was high time that the church does something to prevent the loss of members.

The memorandum also argued that according to Resolution XVIII of the Lambeth Conference<sup>14</sup>, for the growth and development of an indigenous Indian church it was “of the utmost importance that from the very beginning the idea that the Church ... [was] ... their own, and not a foreign Church should be impressed upon converts” (Native Christians 1901, 1). In addition, Resolution XIX stated, “it is important that so far as possible the Church should be adapted to local circumstances and the people brought to feel in all ways that no burdens in the way of foreign customs are laid upon them” (Native Christians 1901, 1).

The petitioners further argued with regard to widowers marrying their deceased wife's sister that this was not only an inconvenience but also a “real hardship” for them, as the best selection of a second wife in such a situation was already prohibited (Native Christians 1901, 1). They also showed that in the Indian context, the wife often goes to her father's house and ordinarily she stays with her parents during the period of pregnancy and confinement<sup>15</sup>. The children became

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<sup>14</sup>Decennial assemblies of bishops of the Anglican Communion convened by the Archbishop of Canterbury.

<sup>15</sup> Post-delivery confinement is about keeping a new mother and her baby at home for a certain number of days (usually 40 days) after delivery. It is an Indian traditional practice, in which the new mother has many restrictions during the confinement period.

familiar with the faces of the wife's sisters as the features of their mother and her sisters had much in common. Therefore, in the case of the death of the wife, there was a natural inclination towards the same home for the benefit of the children. Therefore, it was the best selection that could be made by them, especially considering the benefit to the motherless children. They said, "It is seldom that a man of our country will choose another woman if he has a marriageable sister of his deceased wife. This prohibition is therefore not only an inconvenience but a real hardship" (Native Christians 1901, 1). According to them, "[N]o reasonable man will say that a person who married his deceased wife's sister loses his salvation just because he violates Archbishop Parker's rule. How then can the Church which calls itself Christian exclude a man from Holy Communion just for this reason?" (Native Christians 1901, 1).

As a colonial subject, India experienced the impacts of the political and legal changes that occurred in Britain. The issue of the deceased wife's sister's marriage was one such example. In Britain, in 1842, the first bill for legalising marriage with a deceased wife's sister was first introduced in the Parliament but was not legislated until 1907. After the bill was introduced, the issue was repeatedly debated and defeated almost every year until it finally passed by the Parliament (Anderson 1982). In addition, a number of pamphlets, letters, statements, and articles from all sides were published continuously during this period (Wallace n.d.). Although marriage with a deceased wife's sister was prohibited in Britain during this period, a survey by the Commission appointed to inquire into the state and operation of the law of marriage as relating to the prohibited degrees of affinity showed that 90% of voidable marriages were with a deceased wife's sister (Wallace n.d.). Finally, the Deceased Wife's Sister's Marriage Act of 1907 was legislated by the English Parliament.

To what extent did Anglican Christians in India benefit from the Britain's Deceased Wife's Sister's Marriage Act of 1907? In an opinion of the law officers of the Crown, written on 6<sup>th</sup> October 1911, it was explained that this particular Act was to legalise marriages with a deceased wife's sister in all cases where, at the

time of the marriage, the parties were domiciled in the United Kingdom, whether the marriage was celebrated in the United Kingdom or elsewhere, and whether the parties were British subjects or not. The legality of such marriages depended on the law of the domicile and had no concern with nationality or with the place where the marriage was celebrated. According to the legal officers of the Crown, the Act of 1907 had no application to the people who were domiciled in India at the time of marriage. So Indian Christians were able to use this Act only when they moved to the United Kingdom and began to live there. However, this restriction in the operation of the Act was not confined to East Indians (Anglo-Indians) and 'native' Christians but extended to all persons of British birth who were domiciled in India (Law Officers of the Crown 1911).

Although the Act of 1907 was in place in England, it did not change the situation of Indian Christians with respect to the deceased wife's sister's marriage question. In 1915, through Resolution 29, the Episcopal Synod resolved that clergy (ordained priests) still regarded it as forbidden to celebrate these marriages. In the beginning of the year 1916, in an opinion, the Advocate General wrote:

Assuming the correct view to be that the English Act is limited in its application to marriages of persons domiciled in the United Kingdom, a marriage in India with a deceased wife's sister by persons of the domiciled community would seem to be voidable, and not null and void until so declared by a competent tribunal during the lives of both parties thereto, ... has been held to have no application in the case of persons domiciled in India.

On the same assumption, in the case of Indian Christians domiciled in India marriage with a deceased wife's sister would be seem to be null and void, as the prohibited degrees in their case would be the degrees prohibited by the customary law of the class [i.e. denomination] to which they belong, i.e., the Church of England..., and marriage with a deceased wife's sister is within a degree prohibited by the law of the Church of England, though it has been legislated by the law of England by the Deceased Wife's Sister's Marriage Act 1907. (Advocate General 1916, 2-3)

Although it appears that first, the Advocate General recognised marriage with one's deceased wife's sister as one of the customs in India, later it is evident that he stepped back and dismissed these marriages by providing a religious

interpretation. However, later, the issue of marriage with a deceased husband's brother, along with marriage with a deceased wife's sister, was discussed. In 1924 in the Episcopal Synod a resolution (Resolution 6) was made which stated that, "The Metropolitan be asked to enquire from the Bishops of the Province the facts as to the local customs and views in the Indian communities regarding the question of marriage with a deceased wife's sister or deceased husband's brother" (Episcopal Synod 1924, 3). In response to this resolution, Christians from Madras (now Chennai), Bombay (now Mumbai), Rangoon, Colombo, Calcutta (now Kolkata), Tinnevely, Lahore, Dornakal, and Assam provided their opinions on the matter. The summary of their opinion was that marriage with a deceased wife's sister was customary, decent and proper amongst all Hindus except Brahmins. Muslims were allowed to practise this type of marriage and some continued to do so. They also stated that marriage with a deceased brother's wife was forbidden and never practised by the upper classes of Hindus, the Brahmins, and if practised by others, it was thought to be wrong. Their latter statement about marriage to a deceased brother's wife contradicts other sociological and anthropological findings. It is, in fact, argued that such marriages were part of custom in most of the lower castes across India. K.P. Chattopadhyay (1922) argues that in most parts of North India, including Bihar, Bengal, Agra, Oudh, Punjab, and the North-Western Provinces, it was most common and even the preferred practice of *dewor* (the husband's younger brother) to marry his *boudi* (elder brother's wife) after his brother's death. In fact, in some places, if the widow refused to marry her available *dewor*, she would lose both her rights to maintenance and her children from her previous marriage. Moreover, in other places, if the widow married anyone else than her available *dewor*, then he (the *dewor*) would be compensated by money or cloth (Chattopadhyay 1922). However, marrying a deceased husband's elder brother (*bhashur*) in all cases was strictly prohibited. In most cases, it was considered improper for her to talk or even show her face to her *bhashur*. On the other hand, *boudi* and *dewor* would enjoy great freedom to talk to each other, even with some amount of mild flirtation (Chattopadhyay 1922).

Although the prohibition of marriage to deceased wife's sister mostly came from Britain both at the church and the political levels, some church leaders, such as Bishop of Mumbai, who were living in India at that time understood the importance of the local custom. The Bishop pointed out that to the majority of Indian Christians the union is not objectionable; instead, it is the most suitable and desirable. He recommended a number of alternative ways of relaxation of the prohibition: First, refusal to allow such marriages by the clergy or in the churches, but admission to communion at the discretion of the Bishop; second, the marriage to be allowed at the Bishop's discretion based on a criterion and not to be performed without reference to him; third and final, removal of a deceased wife's sister from the Table of Affinity (Episcopal Synod 1932).

In 1926, the debate turned around. In this year, the Episcopal Synod enacted a resolution (Resolution 8) that states, "No evidence of custom having been elicited by action under 1924 resolution, no need to approach Archbishop about modification of existing church law" (Episcopal Synod 1926, 4). Finally, the Episcopal Synod resolved in 1932 that it would recommend that the General Council to consider the amendment of Chapter XXIV of the Canons and Rules of the Church of India, Burma, and Ceylon so that the marriage of a man with his deceased wife's sister would no longer be prohibited (Episcopal Synod 1932). This resolution, prepared by the Bishop of Bombay (Mumbai) at the Metropolitan's request in accordance with custom, was taken by the Episcopal Synod.

Later, in 1947, after many debates, arguments and counter-arguments, the Table of Prohibited Degrees was relaxed with respect to marriage to a deceased wife's sister. The new Canon II of Chapter XXIV was passed by Decision 7 of GC 1944 and confirmed by Decision 8 of GC 1947, which superseded all previous resolutions of the Episcopal Synod in relaxing the Table of Prohibited Degrees (viz 33 of 1932, 27 of 1935, 13 of 1938 and 10 of 1940). As per Resolution 31, "[M]arriages between a man and his deceased wife's sister be hereafter contracted under civil sanction the Holy Communion should not be administered to the parties without previous reference to the Bishop" (General Council 1947, 2).

At around the same time, it is important to note that it was not Britain or British India alone that went through the process of dealing with the issue and controversy with regard to marriage to a deceased wife's sister. The issue also reached other British colonies, such as Australia (Kippen 2009). In the 1870s the Australian colonies went through the process of passing the Deceased Wife's Sister Marriage Act. In 1873, when the bill was introduced to the Parliament in Tasmania, it created huge debate and controversy. A number of petitions against the bill were presented, including a petition from 285 women residents. They argued that such marriages would "disturb family life, and would be dangerous to the peace, comfort and sanctity of many homes" (Kippen 2009, 4). The local Anglican church under the Church of England also argued against the bill by saying that such marriages would be incestuous and adulterous, and would jeopardise the relationship of a man and his wife's sister who at present treat each other as brother and sister. Some opponents of the bill, including parliamentarians and members of the community, thought that the law would interrupt social harmony and it was likely that all men would regard their sisters-in-law as potential partners. Moreover, they thought that all married women would feel uncomfortable with an unmarried sister who seemed ready to take the married sisters' places at any moment (Kippen 2009). Some thought that the law would ensure the welfare of the children, who needed a mother and a loving aunt would fit in naturally. The bill allowing marriage to a deceased wife's sister was passed in 1873 (Kippen 2009). Colonial law-making encountered local resistance across the globe, both in India and Australia. But what gendered impact did these negotiation processes had on women of the Christian community? The next section answers this question.

### **The resilient patriarchy**

Traditionally, in South Asia, the relationship between a man and his wife's younger sister is characterised by sweet and mild flirtation. In Bangla, a wife's

younger sister is known as *shali* and her brother-in-law is known as *dadababu*<sup>16</sup>. It is common in Bengal, along with other parts of South Asia, that the *dadababu* would be slightly flirtatious with his *shali* and vice versa. In fact, there is a saying in Hindi, “*sali adhi gharwali*” (which means that *shali* is a half-wife). The negotiation that took place between the colonial church authorities and ‘native’ Christians on marriage to a deceased wife’s sister provides an extraordinary insight into how colonial domination was resisted by Indians year after year. Marriage with a deceased wife’s sister question provides a story of how British India was not only dominated by the colonial power but also tells a story of the continuous negotiation that the ‘natives’ undertook in order to continue long-practised local culture and norms. The case of marriage with a deceased wife’s sister provides an idea of the impact of the uniform laws that the British legislated that often altered the lives and practices of the intimately colonised groups. The story also has a reverse aspect to it, with a particular gendered consequence. The colonial civilizing mission was not gender-neutral; instead, it impacted women at a greater but different level than it did men, although in most cases the impacts on women were invisible and unnoticed.

The negotiation to re-allow men to marry their deceased wife’s sister restored and reinforced patriarchy and made it more resilient. Such resilient patriarchy is also called the ‘new patriarchy’ by many historians, including Sen (2000). The new patriarchy or the resilient patriarchy, no matter what it is called, has been founded on the ideological and symbolic location of women, strengthened by legal and administrative measures (Sen 2000). I argue that the term ‘deceased wife’s sister’ is a construction of patriarchy that came out as the subject of debate and bargain through the law creation processes.

According to Gruner (1999, 429) in the context of Britain, “For the deceased wife’s sister does not, in some sense, even exist until law creates her, constructing her as not just any sister-in-law but a particular one, not just any sister but a desired

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<sup>16</sup> Sister’s husband is called as *dulabhai* by Muslims, *jamaibabu* by Hindus, and *dadababu* by Christians in Bangladesh.

and desiring one”. Such construction had repeatedly addressed only the man’s question reflecting the man’s desire. In fact, the way the debate is formulated, entitled ‘marriage with deceased wife’s sister question’, it clearly made men the subject and objectified women. The debate never addressed the issue from a woman’s perspective — ‘marriage with deceased sister’s husband’ — instead, it deliberately put men in the principal subjective position and women’s voice and position are hardly seen anywhere. For the entire debate, women’s voices are remarkably absent (Gruner 1999). The main reason for this silence of women could be the fact that, “Women in the colonies tend to be understood as neither the subject nor the object of colonization” (Mascarenhas 2014, 434).

Women were not only absent from this debate, but their identity, as typical in patriarchy, was constructed as sister, wife, and mother, based on men’s identity. In this case, women were labelled as wife’s sister, without a single self-identity, which completely relied on men. Moreover, according to Gruner (1999, 429), “[t]he sister, in most discussions... is a silent participant in the conflict. Defined more by her relationship to the dead than to the living, to the past rather than to the present or future, she figures most often as an object of exchange between men”.

In the processes of negotiation with regard to marriage to a deceased wife’s sister, a number of events indicate that the entire process had an active role in restoring and reinforcing patriarchy. The protests and advocacy conducted by ‘native’ Christian men to allow the church to continue the practices of the marriage of a deceased wife’s sister restored patriarchy. During the time at the beginning of 19<sup>th</sup> century, when the Christian population in India was almost negligible in numbers, the creation of such a movement with more than 3000 people signing a petition had a lot more significance than it may seem.

The first collective petition from South India elaborates why ‘native’ Christian men should be allowed to marry their deceased wife’s sister (Native Christians 1879). Their arguments were entirely based on a number of patriarchal assumptions and these assumptions had been naturalised. The main point of the

petitioners was that such marriages should be permitted for the welfare of the children of men from their first marriage. The children were at the centre of their arguments each and every time. The point was that as a stepmother, who was also the children's aunt, the deceased wife's sister had a greater interest in the welfare of the children of her sister than any woman from another family. Myths and stereotypical assumptions about the stepmother as a negative, evil, cruel, jealous, selfish, and wicked character are rampant. Salwen (1990) argues that the role of the natural mother, no matter if she is dead, absent, or available, becomes idealised with regard to the stepmother. The 'wicked stepmother' from old fairy tales still holds significant power in today's imagination. A number of the fairy tales, Western or Indian, more specifically Bengali, have a 'wicked stepmother' character who is an evil person. Starting from the Western fairy tales, such as Snow White, Cinderella, Hansel and Gretel, many Indian and Bengali fairy tales, such as *Sat Bhai Champa* (Flower brothers and their sister), *Nilkamal aar Lalkamal* (The magnificent adventures of the two princes), *Dalimkumar* (Controlled by the seed), *Sukhu aar Dukhu* (Friend of the Animals), have a 'wicked stepmother' character. The presence of a 'wicked stepmother' in many fairy tales is indeed a reflection of the social values and a product of patriarchy. As Barzilai (1990, 253) argues, "[M]yths and fairy tales are complex reflectors of the conscious and unconscious concerns of their readers". Thus, in our case of marrying one's deceased wife's sister can be considered a strategy to protect the children from the 'wicked stepmother' as the stepmother in this particular case was the children's aunt herself who was assumed to have a greater interest towards her sister's children.

Marrying the deceased wife's sister would enable the children to be closer to their grandmother from their mother's side who usually had a significant role in the children's lives. Such marriages also allowed the children to easily exercise their inheritance rights as their stepmother, who is their mother's sister, will have care and sympathy 'naturally' towards them. However, perhaps what the petitioners did not want to point to was the benefits that they were getting from such marriages, apart from the children's welfare. During that century, the health care

system was not as good as it is today and at that time the infant mortality rate was much higher. Therefore, it was a common practice to have many children in every family, so that even if some of them die, they would still have some living. Such practices impacted the mothers' health negatively. Women were married off at a very young age, and early and frequent pregnancies had an adverse impact on the mother's health. Therefore, many young mothers died either during delivery of a child or post-delivery period, leaving their husbands widowed.

The search for a suitable spouse also had to consider a number of issues. In the marriage market, if a widower had a number of small children, he would not find a second wife that easily, except if he was a very rich man. The majority of the converts came from lower Hindu castes and poor Muslim communities. The majority of 'native' Christians were poor. Therefore, their low economic status made the situation harder for men to find a suitable second wife. On the other hand, the father of the deceased wife, who had an unmarried young daughter(s) at home, would go through difficulty to organise the amount for his unmarried daughters' wedding and the payment of dowry. However, if he could marry his younger daughter to his widower son-in-law, then the dowry that he provided for his deceased daughter's wedding earlier would pass on to his younger daughter. In this case, the father did not have to provide any additional dowries. From both sides, for the widower as well as the father, these marriages were associated with significant benefits that brought these two men in a win-win situation. In my opinion, these mutual benefits were the main reasons why native' Christians became extremely resistant to the prohibition of such marriages.

The entire process reproduced, reinstated and reinforced patriarchy. In such a process the deceased wife's sister's role was mostly passive, conforming to norms and customs, if not totally invisible. After all, "rules formulated in a male-dominated society reflect male needs, male concerns, and male experience" (Taub 1980, 1694). These marriages were based on familial ideology, which, as argued by Cossman and Kapur (1996), refers to a set of assumptions about the roles and responsibilities of the family members that are strictly allocated on the

basis of gender. Under these familial ideologies, women's gender roles were as wives and mothers, responsible for child care and domestic labour. Men, on the other hand, had the role as breadwinners who should provide the financial support for the family. However, women's roles as wives and mothers had been so deeply embedded in the dominant discourse that it was universalised and naturalised and as a result it had been accepted as nothing but common sense (Cossman and Kapur 1996).

When the wife died, according to the familial ideology, the person with the role of wife and mother was absent and hence childcare and domestic labour functions were interrupted. In such a situation, it became the responsibility of the deceased wife's family to supply a substitute for the reproductive roles that the deceased wife performed. The easiest, safest, and the most convenient option was to provide her unmarried sister. The deceased wife's sister was expected to conform to two prescribed conditions. First, to become a 'good' daughter, where she accepted her father's decision to marry a widower, her own brother-in-law, and stepped into her sister's place. And second, to become a 'good' wife, where she became the wife of her brother-in-law and performed her gender role obediently, including taking care of her sister's children (or her stepchildren). From a different angle, the controversy regarding marriage to a deceased wife's sister had established how the kin terms, such as brother, sister, sister-in-law, brother-in-law, husband, wife, amongst others are contested as well as fluid over time and space (Wallace n.d.). Such fluidity of kinship posed questions over the dominant discourse of shapes, forms, and stability of 'family' and/or 'household'. It is a reminder that family, as well as kin, is not a stable category; rather, they are fluid concepts.

## **Conclusion**

India's story can never be told in simplistic terms of colonisation and resistance. Christians were intimately colonised by British rulers compared to Muslim and Hindu groups, first, through their Christianisation processes and then, through the law-making processes. Intimate colonisation provided the shape of the 'native' Christian identity. On the one hand, the British aimed for civilising mission through creating laws; on the other, 'native' Christians negotiated with these law-creation processes to reach their own political goal of establishing their Christian identity. This identity creation, which was a result of negotiation and resistance, is reflected in the case of a deceased wife's sister's marriage.

Christians, who were intimately colonised, at once relied on 'colonial' religion to legitimate their existence and at the same time resisted its applicability in some parts of their lives. Furthermore, they were up not only against the British rulers but also churches and Christian men themselves that provided a multifaceted shape of the colonisation and resistance. The next chapter situates the Christian community at the present time and explores the type of patriarchy that operates within the community.



## **Chapter Five**

# **Constructing minorityness: The raising of a mission-compound patriarchy**

### **Introduction**

In this chapter, I examine how the Christian community in Bangladesh is positioned as a religious minority group both by the majority community — predominantly made up of Muslims — and by Christians themselves in the broader context of Bangladeshi society, how the Christian community relates to the state and the majority communities, and how inter-denominational dynamics work. In order to achieve the above, it is important to examine the community both from inside and outside by exploring how the Christian community is organised, how their governmentality works, and more importantly, how gender works within these broader pictures of their ‘minorityness’. I use the term ‘minorityness’ to show a community’s experiences of its minority status. In other words, ‘minorityness’ is the position that a person or a community acquires from being a minority, which is different from having a ‘minority status’; instead, ‘minorityness’ is an identity that people or communities acquire through their experiences of being a minority.

In this chapter, I also show how patriarchy coalesces with minorityness and the community’s governmentality and creates another variation of patriarchy, which I call a ‘mission-compound’ patriarchy. Understanding the patriarchy within the Christian community and the factors responsible for the creation of such a patriarchy will help readers across the next few chapters to have an in-depth understanding of gender relations and how laws, particularly the personal laws, interact with gender.

The chapter is divided into three sections. In the first section, I discuss and review the literature and debates on minority issues. In this section, I link these debates on minority with the notion of patriarchy. I show how minorityness blends with private and public patriarchy and how a specific type of patriarchy emerges in this community. In the second section, I examine the minorityness of the Bangladeshi Christian community, which is constructed by the influence of different factors, such as the state policies, the majority community's attitudes and actions towards Christians, and inter-denominational dynamics and politics. The final section unpacks the concept of mission-compound patriarchy and shows how this specific type of patriarchy is created within the Christian community in Bangladesh through its internal governance and politics and how gender plays a role in these factors. In this section, I specifically analyse women's leadership in the Christian community and show how women in this community become subject to this mission-compound patriarchy.

## **Minorityness and patriarchy**

Members of minority and majority groups are differently positioned, often by the state and its mechanisms, with regard to both status and power and are subject to different conditions in the enjoyments of their rights. In post-colonial states such as India and Bangladesh, the constitutions support preferential policies, including affirmative actions, to ensure equal rights for recognised minorities, which creates a private sphere within the 'common domain' or public sphere.<sup>1</sup> In her research on religious and ethnic minorities in six South Asian countries, including Bangladesh, Manchanda (2009) analyses the causes of the powerlessness and the non-domination of minorities. She argues that differences in positions, status, and power between majority and minority tend to produce 'minoritisation', where day-to-day discrimination reflects the constitutional

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<sup>1</sup> For a discussion on the Constitution of Bangladesh and its treatment of minorities see Chapter Three.

limitations in safeguarding minority rights as opposed to the values of tolerance and justice in society (Manchanda 2009). She also articulates that at the centre of this minority-majority dichotomy, the key factor is the discourse of power that lies particularly within the relation between the state and national minorities.

Besides the discourse of power between the state and minorities, multiculturalism and autonomies have emerged as two critical strategies, produced to accommodate the difference in post-colonial multi-ethnic, and multi-religious societies. Manchanda (2009, 18) further argues that while accommodating differences through the strategy of multiculturalism, “the majority culture is uncritically accepted and used to judge the claims and define the rights of minorities”. Therefore, the critics of multiculturalism wipe this out as a strategy for accommodating difference as it only protects cultural identity and fails to promote equality, non-discrimination, equity, and moreover, it directly depends on the distribution of power.

The other strategy to accommodate peoples’ aspiration for ‘self-rule’ is autonomy, which is used as a tool to allow minority groups “to exercise direct control over affairs”, directly of interest to them, while allowing the majorities “to exercise those powers that govern common interests” (Manchanda 2009, 20). Autonomy, according to Manchanda (2009, 20), is also deployed as a “device for resolving conflicts over peoples’ struggle for justice and dignity” and hence redesigning power relations and multiple control over resources. The notion of ‘self-rule’ or autonomy may have consequences on intra-group equality. For example, Eisenberg and Spinner-Halev (2005) argue that often ‘external protections’ and ‘internal restrictions’ cannot be separated and one may lead to the other. For example, for minority groups, ‘external protections’ appear to be valuable, which provides them with more power to govern their own affairs. Such governance involves imposing traditions and practices on their members that are sometimes discriminatory and oppressive against some of their members (Eisenberg and

Spinner-Halev 2005). In Shachar's (2001, 2-3) words, "Under such conditions, well-meaning accommodation by the state may leave members of minority groups vulnerable to severe injustice within the group, and may, in effect, work to reinforce some of the most hierarchical elements of a culture". Therefore, even when the state promotes self-governance of minority groups, the groups themselves do not treat their members equally and such inequality is often gendered.

Irrespective of the strategies adopted, scholars argue that women in minority groups become 'minorities within minorities'. According to Rajan (2003, 164), minority groups function "as an enclave within the space of a larger public life from which it is isolated", which provides an impression of women within that community being hostages, prisoners or deluded subjects, living under a "state-within-a-state". These women often have to fight the patriarchy within their own communities along with tackling the patriarchy of the larger community, thus, "living under two states" (Manchanda 2009, 23). Therefore, minorityness becomes not only a gendered experience, where women's experience of minorityness differs from men's experience of the same, but also these different experiences form some sort of hierarchy, where men experience their minorityness directly from the state and the broader society and women experience the same both from the state, the broader society, and men within their own communities.

A number of contributors analyse the notion of 'minorities within minorities' in a volume edited by Eisenberg and Spinner-Halev (2005). From the disciplinary perspective of political science, the volume deals with questions such as: To what extent should the state accommodate minority groups that discriminate against some of their own members? Under what circumstances must the state interfere in the internal matters of a minority group when such discriminations take place? According to Eisenberg and Spinner-Halev (2005, 4), multicultural theories of

citizenship do not adequately address these questions related to “minorities within minorities”.

The tension between multiculturalism and feminism has been explored by a number of feminist scholars. One of these scholars is Kukathas (2001, 88), who believes that, “[F]eminism and multiculturalism remain in tension to the extent that there are *any* groups which neglect the interests of women, and which seek accommodation within the polity” (emphasis in the original text). Kukathas’ (2001) above statement is in agreement with Spinner-Halev’s (2001) argument that group autonomy can harm women of that group. Levy (2000, 51-62) labels such acts “internal cruelty” that elaborates the problematic cultural practices that harm women and girls. According to Friedman (2003, 179), it is clearly “no surprise” that “minority cultural practices” particularly affect women. In her words:

[Minority groups] may find that the only areas of life in which they can hope to exercise some communal control over their lives and practice their cultural traditions unimpeded are areas commonly treated as matters of ‘privacy’ by the surrounding ... society. (Friedman 2003, 179)

Women’s access to full rights as a citizen of their nation-state is virtually impossible when they remain obliged to the traditions and religious and cultural practices of their respective minority groups. Shachar (2001, 68) argues, “Women may *either* enjoy the full spectrum of their state citizenship rights *or* participate in their minority communities. They cannot have both simultaneously” (emphasis in the original text). In both cases, if women exercise their full rights as citizens or they confine themselves within traditional religious and cultural practices, patriarchy plays a significant role. Linking women’s minorityness to patriarchy becomes vital to understanding their experiences of law and governmentality.

Radical feminists have systematically examined the concept of patriarchy since the 1970s (Bryson 1999), but my specific focus will be on the two types identified

by Walby (1990): private and public patriarchy. According to Walby (1990, 24), private and public patriarchy are two distinct categories of classic patriarchy<sup>2</sup>: “private patriarchy is based upon household production as the main site of women’s oppression”, whereas “public patriarchy is based principally in public sites such as employment and the state”. Under private patriarchy, the senior male member exercises power over junior (also sometimes senior) female and male members of the household, whereas, under public patriarchy, patriarchs collectively share and exert power based on the stratification system that exists among them (Moghadam 2004, Hapke 2013, Walby 1990). In the last few decades, Bangladeshi society experienced significant changes in household organisations (from a joint family to a nuclear family system), education, employment, and citizenship, which redefined or blurred (in some cases) the boundaries between the private and the public (Hapke 2013). Women gained significant achievements in the areas of politics, employment, and education, along with other rights. Although there has been a reduction in the degree of patriarchy, patriarchal forms of organisation have continued within the family, society, and the state. This transformation is often seen as “the product of the encounter between modernity and tradition” (Hapke 2013, 13).

The dichotomy noted by Walby (1990) and others resonates in the works of scholars who suggest that the home and the state are situated at the two ends of the private and public domains. For example, Feldman (2001, 1115) considers that both home and state are in a “mutually constitutive” situation, where they create boundaries to represent particular interests of patriarchy. In other words, as much as the home is a locus of patriarchal domination through private

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<sup>2</sup> Under classic patriarchy, property, residence, and descent proceed through the male line (Kandiyoti 1988). According to classic patriarchy, the older men hold authority over almost all women and younger men. Also, a distinct sexual division of labour exists under classic patriarchy, where childrearing is considered the principal labour of women (Hapke 2013). Moreover, women are considered as property, their sexual piety is seen as the key to the women’s as well as family’s honour (Hapke 2013).

patriarchy, the state and its institutes also enable a similar domination through public patriarchy.

Patriarchy can be made up of different types and forms. Walby (1990) argues that the patriarchy within different ethnic groups can be in different forms. In Bangladeshi context, Cain et al (1979, 406) defined patriarchy “as a set of social relations with a material base that enables men to dominate women”. According to them, in Bangladesh patriarchy defines how power and resources within families are distributed, where men maintain power and control the resources and women are powerless and mostly dependent on men. Cain et al (1979, 406) point out that “the structural elements of patriarchal control are reinforcing and include aspects of the kinship system, political system, and religion”.

I argue that for minority communities, such as Christians in Bangladesh, private and public patriarchy is not a straightforward division. Most scholars, while describing private-public patriarchy, associate the home with the private realm and the state or workplace with public patriarchy as mentioned earlier. It is important to recognise that there are other influential actors in between the home and the state and workplace. These in-between entities (which cannot be categorised as either purely private or completely public) often become more powerful in some ways than both the home and the state in governing peoples’ lives. Here, I problematise the sharp dichotomy between the private and the public and focus on the intermediate groups and/or institutions that can be considered both to be an expansion of the private, the home, and a shrinking of the public, the state. In this way the boundary of private and public shifts with the entry of this third party, in our case the religious groups and/or institutions.

The presence of this third space in between the home and the state gives rise to a third kind of patriarchy. For Bangladeshi Christians, the patriarchy that emerged due to the involvement and influence of Christian missions gave rise to what I call a ‘mission-compound patriarchy’. The mission-compound offers a space that

lies in between the home and the state that provides a 'safe' space for women, where they enjoy free mobility outside their home boundaries. The mission-compound patriarchy allows women to come out of the home to the mission compound but not into the state. As regards the term mission-compound, I do not necessarily mean the physical boundaries of the mission compound. Instead, by mission-compound, I mean Christian institutions such as the church, Christian schools, hospitals, NGOs, and other church institutions. Under such patriarchy, gender roles are also expanded beyond families to the church. It became men's role to provide leadership to their families as well as in the community, whereas women's roles remained limited to reproductive caring work in families as well as in the community through prayers, running Sunday Schools for children, and *mahila samity* (women's group within the church).

### **Bangladeshi Christian minorityness**

The processes of the construction of minorityness among the Bangladeshi Christians take a complex form that involves some external factors, such as the role of the state and the broader society where the Christian community is situated, and some internal factors, such as missionary activities, inter- and intra-church relationships, and the governance of the churches. This section addresses these processes of construction of minorityness among Christians in Bangladesh. A prominent Christian leader, Dr Dennis Dilip Datta, is one of the few who has written on the government and church's interactions in the context of Bangladesh. Two of his books (titled *Government's Decision: Church's Response*, published in 2010, and *Council theke Fellowship* (From Council to Fellowship), published in 2009) focus on the relationship of the church with the state, highlight a number of historical events that has provided a shape to the contemporary Christian community as a minority group in Bangladesh, and portrays the roles of missionaries and the inter- and intra-denominational dynamics. During my fieldwork, I met Dilip Datta and interviewed him. This

section discusses both the books penned by him and extensive interviews with him. If some of the following discussions appear as snippets of historical accounts, then that is intentional in order to help the readers understand how the minorityness of the Christian community is produced and reproduced, and what the state's — as well as the broader society's — roles and reactions are in these processes.

### **The changing role of the state in Bangladesh**

Before Partition in 1947, British India was governed by the Government of India Act of 1935. After East and West Pakistan were formed, it took nine years for the Pakistan government to adopt a new constitution in 1956. Islamisation of state began with this constitution. The name of the country was chosen to be the Islamic Republic of Pakistan. According to this constitution, the President of the country was required to be a Muslim and no law would be passed against the teachings of the Quran and the Sunnah.<sup>3</sup> Such Islamisation of the state gradually trickled down to many of the state's policies and actions and this contributed in constructing and intensifying the minorityness of the Christian community.

After Partition of India, the Pakistan government (for East and West Pakistan) undertook a number of nation-building activities (Phadnis and Ganguly 2001, Jaffrelot 2002). In pursuing various projects, the government began to acquire land in both East and West Pakistan. As land had always been an important factor in the church's identity and existence as a minority group, Christians of East Pakistan (now Bangladesh) became concerned about protecting the properties of both the church and the Christian population.<sup>4</sup> These concerns of Christians made them protective of the state's intervention in these matters. In 1949, as Datta (2009) points out that, the East Pakistan Christian Council (EPCC),

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<sup>3</sup> Sunnah is the verbally transmitted record of the teachings, deeds and sayings, and silent permissions (or disapprovals) of the Islamic prophet Muhammad, as well as various reports about Muhammad's companions.

<sup>4</sup> I will discuss how land contributed to the creation of Christian identity in Chapter Eight.

which was created to provide the churches a common platform, requested that the central government of Pakistan not acquire the properties of the church, church institutions, and houses of the members of the Christian community.

A similar fear emerged much later in 1972. Bangladesh then was a new nation-state, just liberated from Pakistan after a nine-month-long Liberation War in which, according to the government of Bangladesh, about three million civilians died and about 400,000 women became victims of systematic campaign of genocidal rape (Dummett 2011, Totten and Parsons 2004, Cheldelin and Eliatamby 2011, Roychowdhury 2016). After independence, nation-building activities began immediately. One of these activities, initiated by Bangabandhu Sheikh Mujibur Rahman, the Father of the Nation, was to bring revolutionary changes in the country's education policy. As part of these proposed changes, the government intended to nationalise all primary schools (Datta 2010).

However, this intention of the government made the Christian community concerned as they (Christians) had been providing educational services by running schools and colleges for children from all communities for a long period. In fact, the most of the well-reputed schools in the country were, and still are, run by Christian missionaries and the churches. As many of these schools were situated in the church compound, the leaders of the community feared that if the schools were nationalised, then church activities might be hampered and the government would easily enter and interfere in church matters. Therefore, in 1973, in a joint meeting between the Catholic and the Protestant groups, including the Anglican and Baptist, a decision was made, which stated that if the schools were nationalised, then they would take the necessary steps to separate the school properties from church properties to avoid any possible interference in the peaceful functioning of religious activities on church premises (Datta 2010). So the Christian community has always been apprehensive of possible state interference in the church's activities, which may risk the church's independence.

After the Liberation War, a number of international missionary organisations came to Bangladesh and began operating as voluntary organisations with the aim of ‘developing’ the country, both economically and socially. These organisations included the Mennonite Central Committee (MCC), the Christian Reform World Church (CRWC), World Vision, Food for the Hungry, World Relief USA (in Bangladesh this organization is known as the Christian Service Society), and World Concern, amongst others. Additionally, a number of churches also established their NGOs and began undertaking development work. For example, Caritas had been working as an NGO of the Catholic Church, the Social Health and Education Development Board (the Shed Board) had been functioning as the service organisation of the Bangladesh Baptist Church Sangha (BBCS), and Baptist Aid had been working as part of the Bangladesh Baptist Church Fellowship (BBCF), and so on.

After President Ziaur Rahman came to power in 1977 after political unrest leading to martial law, the relationship between foreign donors and the government was at stake. During this period, according to Datta (2010), the success rate of the projects implemented by the government was much lower than that of the Christian NGOs. The government’s poor performance made the international donor community, including the UN, highly dissatisfied with the government’s performance in the development sector. In 1974, the Secretary of State of the United States, Henry Kissinger, during his visit to Dhaka, called Bangladesh, as Ahmed (2011) and Mannan (2010) reported, a ‘bottomless basket’, which is commonly known as a ‘bottomless pit’. The high performance of the Christian NGOs and their ability to run large projects and programs all around the country brought them into the limelight within the sector, which caused high dissatisfaction among state bureaucrats (Datta 2010).

In 1978, the government enacted the Foreign Donations (Voluntary Activities) Regulation Ordinance, 1978 (Ordinance No. XLVI of 1978), which had provisions that controlled the activities of the church, through the control of missionary

activities and Christian NGOs, along with any other NGOs. Under the definition of ‘voluntary activity’ in Section 2(d) of the Ordinance, missionary activities were included, which enabled the government to regulate their activities as part of voluntary activities.<sup>5</sup> The Christian community leaders (both Catholic and Protestant) met President Ziaur Rahman in 1979 under the leadership of Archbishop Michael Rozario and submitted a memorandum appealing to the President to keep the church outside the scope of this Ordinance (Archbishop et al. 1979). After a year of persuasion, the government finally decided that the churches would not be included within the scope of the Ordinance.

But, later, during the Ershad regime (1983–1990), a number of initiatives directly or indirectly exacerbated the minorityness of Christians. During Ershad’s time, he attempted to ban religious conversion. In 1982, a national daily reported such initiatives by the government (Montu 1982). In 1988, Islam was declared the religion of the state. This was a time when Christians were significantly concerned about their minority status. When President Ershad brought a bill to make Islam as the religion of the state before the Parliament, the leaders of the Christian community wrote him a memorandum (Archbishop et al. 1988), followed by an open appeal in a national daily (New Nation 1988), categorically explaining that the concept of state religion is against the spirit of Bangladesh’s independence movement.

Islamic fundamentalism in a number of ways constructed the minorityness of Christians. In 1992, after Begum Khaleda Zia came to power, the Secretary General of Jamaat-e-Islami, Moulana Motiur Rahman Nizami<sup>6</sup> placed the Blasphemy Bill before the Parliament, which was almost a copy of the Blasphemy Law of Pakistan, with the intention of protecting the respect and honour of the

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<sup>5</sup> Other activities apart from missionary activities included under the definition of “voluntary activity” in the Ordinance (Section 2(d)) were agricultural, relief, educational, cultural, vocational, social welfare, and developmental activities.

<sup>6</sup> In 2016, Moulana Motiur Rahman Nizami was executed for war crimes by the state, convicted of genocide, rape and massacres.

Quran and the Prophet Mohammad (Ittefaq 1994). However, large protests were carried out by secular cultural groups and after a number of demonstrations, seminars, meetings, and reports, the Bill was not tabled in the Parliament (Datta 2010). Later, during the second ruling period of Begum Khaleda Zia (2001-2006), minority religious communities, including Christians, suffered enormously from rape, arson, loot, and murder (Daily Star 2002).

In 1999, the first land survey began, which created problems for the church land. The Catholic Church, in every part of the world including Bangladesh, purchases land in the name of the Holy See (the Pope). On the other hand, most of the land that belonged to the Church of Bangladesh (Anglican Church) was purchased and registered during the British Raj in the name of the Diocese of India, Ceylon, and Burma. Such notion of land ownership within the churches created huge confusion and misunderstandings among the local land surveyors and attestation officers as they had no prior historical knowledge in this area. As a result, they immediately declared all of these lands to be Vested Property.<sup>7</sup> Later, most of these issues were resolved by continuous representation to government officials, including Ministers (Datta 2010). Still, the community suffers from the Vested Property issues to some extent. A Catholic priest, who is in-charge of the legal and land matters of Catholic Church in Dhaka, also confirmed this during my fieldwork. He told me that not only had the church's property been taken under the Vested Property Act, but the land of a number of Christian families had also been seized. Those who resided along with Hindu populations, such as in Barisal, Khulna, Jessore, Gazipur, and so on, and who had now migrated to India had been taken by the government under this Act.

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<sup>7</sup> The Vested Property Act is a controversial law in Bangladesh that allows the Government to confiscate property from individuals it deems as enemies of the state. Before the independence of Bangladesh in 1971, it was known as the Enemy Property Act and is still referred to as such in common parlance. The Act is criticized as a tool for appropriating the lands of minority population.

A gradual Islamisation had taken place in the country first, after Partition in 1947, and then later, after Independence from Pakistan in 1971. In this Islamisation process, the state played a critical role by changing its laws, policies, and actions in order to gain more control over the church and the church organisations, and the NGOs run by Christians, including their land and financial resources. Such a changing role of the state, since Partition, compounded the construction of minorityness of the Christian community.

### **Violence by fundamentalists**

The minorityness of the Christian community is also impacted by violence and fundamentalism. The Christian community, along with other minority groups, has been subject to a number of incidents of violence by fanatic and fundamentalist groups. Even in recent times, such violent acts are still going on. The Christian community faced violence on a number of occasions whenever Muslims were violated in other countries. For example, when the Babri Mosque was attacked by Hindu fanatics in India in 1992, Muslims in Bangladesh attacked both Hindus (Bhardwaj 2003) and Christians and their religious premises in various locations (Datta 2010).

One common form of violence that minority groups, including Christians, face is looting. Datta told me when I interviewed him that in Bangladesh there has been a 'loot culture' throughout history. He gave me two examples of incidents of looting where the Christian community became a victim. In his first story, in the 1990s in Malumghat Hospital in Chittagong (a renowned Christian hospital), some rumours about conflicts between a Christian and a Muslim were circulated, which were apparently not true. But listening to the rumours, the local Muslims looted the properties of local Christians. In another incident also in the 1990s, in Sadar Ghat Anglican Church in Old Dhaka, Muslims lit a fire based on a rumour that the church attacked the local mosque physically. The Christian leaders guessed that the agitated Muslims might attack the church. So they advised the

Home Minister, who also went to visit that church, to send instructions to all police stations in that area and inform them that there might be possibilities of looting Christians' properties the next dawn, right after the *fazr namaz*.<sup>8</sup> The Home Minister took the advice and also declared in the media that the church did not attack or cause any damages to the mosque. Additionally, the Minister, while declaring this, also provided strict instructions to the media not to misreport the incident, as there was a risk of misreporting by a number of pro-Islamic dailies. The next day, after dawn, right after *fazr namaz*, many Muslims who attended *namaz* were ready to loot Christians' properties. However, because of the prior instructions of the Home Minister, police managed to prevent the agitated Muslims from carrying out any destruction.

Bangladeshi Christians also experienced more severe violence than looting. During the 2000s, a number of Christians were killed in different districts of the country, including two in Faridpur (in 2005), two in Jamalpur (one in 2003 and the other in 2004), and one in Sathkhira (in 2004). Two Christian men survived the attack in Mymensingh in 2005. In recent times, such killings again are occurring; more than 40 people were killed (2013-2016) in a series of attacks targeting activists and non-Muslims, including a number of Christians. For example, in October 2013 attackers attempted to slit the throat of a Christian pastor in Bangladesh's northern region (BBC 2016). In June 2016, a Christian man was knifed to death after Sunday prayers near a church in northwest Bangladesh in an attack claimed by Islamic State (IS) (Guardian 2016). Moreover, there were a number of death threats against many Christians, including a priest, in Dhaka and other places (Prothom Alo 2015). The recent attack and massacre at the Holey Artisan Bakery in July 2016 in Dhaka and the killing of foreigners has created enormous fear among Christians in Bangladesh (The Telegraph 2016). In this way, violence shaped the minorityness of the Christian community in Bangladesh.

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<sup>8</sup> Dawn prayer of Muslims.

## **Missionary activities**

Missionary activities and their attitude towards the 'native' Christians as well as broader Bangladeshi society influenced the construction of minorityness among Christians. The missionaries imposed a number of restrictions on the lifestyle of local Christians, particularly that of the young generations. For example, in my conversation with Datta, he told me that he also experienced these restrictions from the missionaries in his youth. According to him, the restrictions imposed by missionaries disconnected Christians from the broader society and this developed a sort of 'ghetto mentality' among Christians in Bangladesh. In his words:

I remember the missionaries used to say that it will be a 'sin' if someone goes to the cinema/theatre or even smoke cigarette. So what they were basically saying is that we should not go and mix with the outer world. As if, when we mix with the outer world, we will be spoiled. This might be one of the reasons for our ghetto mentality.

The restriction of missionaries also impacted the education of 'native' Christians. It is true that missionaries built schools and colleges all over the country, which are still considered the best educational institutes. However, the missionaries also impacted the education of Christians in other ways. During my fieldwork, a Protestant leader told me a story about how missionaries impacted the education of Christians. Nihar Sarker was one of the few Christians who was a communist leader in the 1940s. Nihar Sarker was from the Barisal area. Nihar Sarker was then studying at Zila School<sup>9</sup> in Barisal. By that time he had already joined the communist party. One day, Nihar sneaked through the fence and entered the DC's residence and put up a communist flag. Nihar's act created enormous controversy and became the talk of the town. Everyone began talking about who would do something like this in the DC's residence, particularly when the DC was the most powerful official in the town. The missionaries investigated the matter and Nihar finally confessed that he had done it. The issue was managed internally by the missionaries and the DC did not find out about Nihar.

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<sup>9</sup> A renowned public school.

As a consequence, Nihar was sent to Kolkata on the instruction of those missionaries. But they did not stop there, the leader I interviewed said. Soon after that incident, the missionaries took a decision that no boy should be allowed to study beyond class IV. The missionaries thought that if boys are educated beyond primary schooling, they might become anti-state rebels, which would be harmful to the mission as well as the British government. However, this restriction was not imposed on girls but only on boys.

Later, when I met Datta again, he told me that the missionaries did not stop girls' education for two particular reasons. First, since the missionaries established a number of schools across the country, they needed teachers to run these schools. At that time, only women could become teachers and therefore the missionaries continued women's education. Second, besides schools, the missionaries also established hospitals all over the country. So they were in need of nurses for these hospitals. During that period, the nursing profession was not seen as a noble one and, therefore, not many women took up this profession. The missionaries trained Christian women in nursing and only women worked in this sector. So the missionaries had to educate Christian girls to fill the shortage of nurses in the hospitals. Datta said that when his sisters were studying in class IV or V, he read their *khata* (notebooks) one day. He saw that a number of times the question was written: What will you become when you grow older? He said, "One of my sisters wrote that — I will be a teacher — and the other one wrote — I will be a nurse". Although Christian women had almost no participation in state activities, the only places where they were found were either in the primary schools (both government and missionary schools) as teachers or in the hospitals (government and missionary hospitals) as nurses.

Apart from intervening in the lives of the local Christians, the attitude that the missionaries had towards broader Bangladeshi society also contributed to the minorityness of the Christian community. Some missionaries were arrogant and often neglected local administration. For example, Datta (2010) described an

incident in Brahmanbaria (a district in east-central Bangladesh), where the New Zealand Baptist Missionary Society was running a primary school, and where some irregularities emerged due to the politics of the local church. A teacher in that school, and who belonged to that particular local church, lodged a complaint against school management to the Sub-Divisional Officer (SDO) of the government. The SDO called in the missionary who ran the school for questioning. The missionary became angry and behaved rudely and discourteously to the SDO. In Datta's (2010, 14) words, "At one stage, he supposedly said, by slapping the table, that the school was established by New Zealand missionaries and is run by the funds of New Zealand. So he [the SDO] should not interfere in school matters". However, the missionary did not realise that the office of an SDO is also an Executive Magistrate of the government with substantial judicial power and hence the missionary was at risk of going to jail. Datta (2010) also described a similar story where the missionary had to spend a night in *jail hayat* (prison) in Faridpur (in central Bangladesh) until he was released the next day.

Such arrogant attitudes had an influence on how broader Bangladeshi society began to view Christians. As the missionaries brought in huge foreign funds and employed a number of 'native' Christians, these Christians had limited choice but to be loyal to the missionaries. As a result, instead of mixing with broader society, the Christian community limited itself to the mission-compound, with the mentality that the state and the broader community was 'dangerous' for them and they would be safe in the mission environment. This idea also trickled down to women, which I will discuss later in this chapter.

### **'NGO-isation'**

I have already mentioned that since liberation there was a number of Christian NGOs, both faith-based and directly church-based, operating in Bangladesh. These organisations appointed a number of Christian young people (but not at

the decision-making levels). But most of the decision-makers of these organisations were expatriates and hence the local Christians were mostly carrying out their decisions. Almost no Bangladeshi local staff were promoted to decision-making roles until recently. As a result, the leadership and capacity of the local Bangladeshi Christians did not flourish. When I interviewed Rev Shubrata Sarker, an Anglican priest, in my fieldwork he also confirmed this. He told me that,

All these Christian NGOs have destroyed our capabilities and ambition. When I passed my Secondary School Certificate examination, I received a letter, which asked if I was interested in working in the World Vision. A number of my Christian friends also received the same letter. Although many of us did not go for that job and decided to continue with our studies, some did take the job. One of our friends, who joined there, had to end his higher education to continue working.

Due to such NGO-isation, jobs in NGOs were easily available for most Christian men and women. Because of such easily available jobs that did not require high competition equal to public service or private sector jobs, a number of Christian men and women became employees of these different national and international NGOs. Most local Christians preferred to work in a Christian environment and were not keen to compete for the government or other private sector jobs. This is why Christians were almost absent from working for any state institutions. Even today, the number of Christians in public service or in private sector is still limited. A similar situation occurred in the military forces, where very few Christians entered. Their minorityness worked as a barrier to entering into these sorts of jobs.

### **Divisions within the church**

The Bangladeshi Christian population is highly diverse and divided into small groups that make it difficult for them to unite and have one single voice, which is particularly important when in a minority status. The reasons for this division are a lack of coordination among the various denominations, the difference in

theological ideologies, their affiliation with different churches globally, and church politics. The Christian population in Bangladesh is half Catholic and half Protestant. The Catholic Church operates under the Catholic Bishop's Conference of Bangladesh (CBCB).<sup>10</sup> Most Protestant churches, on the other hand, are associated with two major alliances with different theological stances: the National Council of Churches (NCCB)<sup>11</sup>, which is ecumenical in nature, and the National Christian Fellowship of Bangladesh (NCFB)<sup>12</sup>, which is evangelical in nature.<sup>13</sup> Although there are some networks that exist among these church groups and denominations, all of them have separate and autonomous governance as well as different theological basis, which often makes it difficult to bring them together.

Although there has not been much coordination found among different denominations of the Christian community, occasionally, and particularly during crisis moments, they acted as one community. According to Datta (2009), the Catholic and the Protestant churches united only when there were perceived threats to the Christian community. Otherwise, during normal times, such unity was almost non-existent. Their apparent unity surfaced when the government made decisions, adopted policies, or passed laws that directly threatened the

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<sup>10</sup> The year of establishment was 1971. The Dhaka Archdiocese consists of seven Dioceses: Dhaka, Chittagong, Dinajpur, Khulna, Mymensingh, Rajshahi, and Sylhet.

<sup>11</sup> The year of establishment was 1949. Member churches are the Bangladesh Baptist Church Sangha (BBCS), the Church of Bangladesh, the Bangladesh Methodist Church, the Salvation Army, the Gospel for Bangladesh Church, the Bagura Christian Church, the Bangladesh Evangelical Holiness Church, the Church of God, the United Church of Bangladesh, the Presbyterian Church of Bangladesh, the United Pentecostal Church of Bangladesh, the Bangladesh Christian Church, and Bangladesh Bom Tribal Baptist Church.

<sup>12</sup> The year of establishment was 1980. Member churches are the Bangladesh Assemblies of God Church, the Bangladesh Association of Baptist Church, the Bangladesh Baptist Church Fellowship, the Bangladesh Free Baptist Churches, the Bangladesh Lutheran Church, the Bangladesh Northern Evangelical Lutheran Church, the Bangladesh Tribal Association of Baptist Churches, the Bethel Assemblies of God, the Church of God (Administrative Council), the Church of God Lumdonbok, the Church of the Nazarene, the Evangelical Christian Church, the Evangelical Church of Bangladesh, the Evangelical Lutheran Church in Bangladesh, the Free Christian Churches of Bangladesh, the Garo Baptist Convention, the Sylhet Presbyterian Synd, the Churches of God, and the Talithakumi Evangelical Churches.

<sup>13</sup> There are a few other churches that are not part of these alliances. Among them the Seventh Day Adventist Church and All in One in Christ Fellowship are notable.

Christian community as a whole. Those were the only moments when they came together, discussed, made decisions, and submitted joint memorandums to the government. I have elaborated on this in the previous section.

It was only recently, in 2011, that there was an initiative to institutionalise this loose forum between the Catholic and Protestant churches and as a result the United Forum of Churches, Bangladesh (UFCB) was created, which is currently working as a common platform for these churches. The UFCB is comprised of the Catholic Church, the NCCB, and the NCFB. However, the Muslim evangelical churches<sup>14</sup> are not part of this forum. They have created another forum called the Isai Fellowship of Bangladesh (IFB).

When I interviewed the President of a national Protestant church body, Tapan Halder, he said that it was not only between the Catholic and the Protestant groups that are divided, but even within the Protestant groups, that most denominations were scattered. In his words: “We, the Protestant communities, have created our own space and we do not want anyone to interfere in our matters. We want to be content in our own small bubbles. Whereas in the Catholic Church, everything happens under the Archbishop’s leadership”. Such division among the churches increased the feeling of minorityness within the Christian population.

The church also contributes to the construction of minorityness by creating boundaries through a number of its activities. The church prefers that its members would remain within those boundaries. During fieldwork, I met Shubrata Sarker, an Anglican priest, who explained to me how the church sets up this boundary. He said,

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<sup>14</sup> Muslim evangelism is becoming increasingly controversial in Bangladesh. Muslim evangelism has integrated Islamic prayers (*namaz*) and culture, including language, into Christianity and the converts do not announce publicly that they have converted to Christianity; instead, they continue as Muslims superficially and follow *Isa Nabi* (Jesus is known as Isa in the Quran). They have excluded baptism and communion from their rituals. Since my topic does not directly relate to Muslim evangelism, I am not elaborating on it in this thesis.

Yes, as a Christian community, we are a minority group here and we are continuously subject to violence, injustice, and insecurity. But it is hard to feel such intense insecurity in our day-to-day lives if we openly interact with the broader society that we live in. For example, I never realised as being in a minority in this country until I joined the church as a priest.

In my childhood and in my young age, we used to live in a town where we were the only Christian family among about 500 Muslim families. We lived there in harmony and peace. Overall, I never felt discriminated against just being a minority Christian. But as soon as I joined the church, this minority feeling became prominent in front of me. It became evident to me that we, as a minority group, are also responsible for creating our minority identity to some extent.

When I entered the church as a priest, I felt like I have confined myself within a boundary. Until my undergrad level, I never felt that I am alone or we are very few in numbers. I used to feel enormous strength around me even living with Muslim people all around me. I knew if anyone wants to harm me, I will have hundreds of my friends around me. But when I entered into my church work, I realised that all of a sudden I was within a boundary and I was neither going outside that boundary nor I was letting anyone enter that boundary from outside. Now I feel more insecure than ever before.

Clearly, the state, broader Bangladeshi society, the missionaries, NGO activities, and the church's politics and its divisions all contribute to the construction of the minorityness of the Bangladeshi Christian community. Does this minorityness touch men and women in a similar way? Or do they experience this differently? What are the implications of such minorityness within community's governance, particularly in the governance of women? I will address these questions in the next section.

### **Mission-compound patriarchy**

The minorityness that has been constructed among Christians in Bangladesh by different factors, as discussed in the previous section, has deep implications within the group. Scholars have critiqued multiculturalism policies in Western countries and have shown the effects of such policies on minority groups around

their relations and status within the broader context (Barry 2002, Joppke 2004, Kymlicka 2010). But when the community confines itself away from the state and the rest of society, its internal governance is affected the most, particularly in the area of community leadership, where men come to assume disproportionate power with regard to decision-making involving women. In this process, women within the community experience minorityness in an intensified way that has resulted in the mission-compound patriarchy as mentioned earlier. Mission-compound patriarchy is a form of classic patriarchy and is situated between public and private patriarchy. As I have shown, the churches and the missions had been educating women, which made women go out of their homes and work. Christian women, compared to other communities, became more educated and increasingly went for paid employment, but effectively, their free movement has always been within the mission compound. Although a number of Christian women worked in public hospitals as nurses, their mentality has always been to be confined within the mission-compound. So there has been a shift of the boundary of the public-private dichotomy, where the boundary to some extent shifted up to the mission compound but women were not and still are not encouraged to go beyond this limit. This mission-compound patriarchy isolates Christian women from the state's mechanisms.

The state is thought to be a 'dangerous' place for Christian women. If women go outside the church environment, they will be 'spoiled' — this has been the mentality of the Christian community. The community had played an over-protective role in keeping women within the 'safe' compound. The Christian community perceived that Christian women (similar to other minority women) are seen as '*gonimoter mal*' (booty) by the majority community. However, the idea is not only a perception within the community but also is widespread. During the Liberation War in 1971, the Pakistani Army usually picked up Bengali girls and women with the help of Razakar, Al-Badar, and Al-Shams<sup>15</sup> by declaring

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<sup>15</sup> The local Islamist paramilitary forces, those who were convicted as war criminals.

them as '*gonimoter mal*' (booty) to rape them. Even today, minority girls are still called '*gonimoter mal*'. This is one reason for the overprotective mentality. Until now, people have thought that the mission-compound is a safe place for women and they can go there anytime. However, the community perceived that going outside the mission-compound is dangerous for Christian women.

The mobility of women within the mission-compound provides them with a false illusion of having free mobility. During my fieldwork, I heard from a number of men, women, and even from Christian leaders that the Christian community is very open and women of this community are also free to do anything they wish. But the fact is that while they exercise certain freedoms within the mission-compound, this does not necessarily provide access to exercise their rights in the wider world.

In an interview during my fieldwork with Rev. James Sarker, the General Secretary of the National Baptist Society (NBS)<sup>16</sup>, a national-level Protestant church body, he told me that he thought that the gender relations within the Christian community were much better than those in other societies, such as Muslim and Hindu societies. He thought that at least Christian women have the opportunities to raise their voice, compared to other communities. I asked the General Secretary about the leadership roles that women were playing in NBS. He showed his satisfaction with women's leadership in NBS. He informed me that in NBS, a position for Vice President is reserved for women. Also, a number of women serve on various committees. However, later, the Women's Desk Coordinator of NBS, Nancy Poddar, told me a different story. In their Executive Council, there is no woman except one, who has been elected to fill the constitutional requirement. In the committees, the ratio of men and women is not even close as men far outnumber women and there is no woman leading the committees as a convenor. The maximum number of female participates only in

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<sup>16</sup> The actual name of the church body has been altered.

the Education Committee since most female leaders are in the teaching profession, there has been a natural inclination of these women to serve in this specific committee.

When I analysed the constitution of NBS, I found that although it reserves one position of Vice President for women and one for ethnic minorities out of three positions of Vice President (Section 8.1), it does not provide any indication of gender regarding the selection of general members as representatives in its General Meetings. If a particular church decides to send only men as its representatives in the General Meeting, the Constitution (Section 3.1) does not have any provision to restrict this or ensure a gender balance in the General Meeting. Hypothetically, if the churches increasingly chose men over women as their representatives, then the opportunity for women to be nominated in the Executive Council will become slimmer and slimmer. Moreover, according to their constitution (Section 8.5), the Nomination Committee, which is responsible for nominating suitable persons in various positions of the Council, should be formed with three 'senior' persons. These three 'senior' persons have almost always been men as historically men led this institute and therefore when the general members nominated the Nomination Committee, they chose three elderly men by default. This is an example of classic patriarchy (institutional) within the mission-compound, where the highest power concentrates in the hands of senior/elderly males.

I also interviewed Dr Swapan Halder, the newly elected President of NBS. When I asked him about this woman-specific Vice President position and overall women's leadership in their church body, he told me,

Every time the same woman comes to this Vice President position. Only two or three women serve in different committees. Every year, you will see the same faces. They do not allow other women to come in the leadership, whereas they talk about gender equality and gender equity when they are not ready to leave their space for other women!

Swapan sounded frustrated. I asked him if NBS provides the local churches under it with any instructions to balance male and female delegations for the general meetings. He said that, “NBS does not provide any formal instructions on this. But even if they do, don’t you think they will bias the delegation? All churches have the right to send women delegation as much as they want. They are free to do it”.

Pastor Sunil Saha, a leader of NBS as well as the priest in a local church in Dhaka told me, “It is some sort of compassion that NBS shows towards women to allocate one position at the Executive Council”. He explained that often the leaders say that there is no barrier or restriction for women to come in any of the other positions in the Council, but that still it is hard to reach those positions. He said, “By this ‘compassion position’ of one Vice President reserved for women, we, the men are giving a message to women that if we do not give you the opportunity, you do not have the qualification to come to the leadership”.

Swapan Halder, the President of NBS echoed Pastor Saha. He said, “We men feel high satisfaction by giving just one seat to women as a Vice President. But this is basically a kind of ‘compassion’ which we show to women”.

But why are there so few female leaders at the national level? Is it because there is a lack of female leaders at the local church level? Is it because women are not interested in church leadership? Or is it because they are not enabled to become leaders in the church? Why cannot women grow as leaders, when their participation in the mission-compound is free and encouraged? In my view, there is a number of factors resulting in this situation. First, monopolisation of leadership by older women. In my fieldwork, I observed that the majority of the female leaders, at the local church, district, and national levels are older women; most of them are in their 50s and a number of them have passed their 60<sup>th</sup> birthday. All of the national-level female leaders in NBS are wives of the country’s prominent Christian leaders and pastors. Their age, which provides them with huge power (under classic patriarchy), and moreover, their social status as being

Christian leaders' and pastors' wives provide them with additional power to hold these positions. In such a situation, it is very hard for younger women to rise to the leadership positions.

For example, Nancy Poddar, who is now working as the Women's Desk Coordinator of NBS told me that she faced enormous problems to work in this position. She said, "Because I am younger than most female leaders, they do not give me enough importance in the role that I am playing in this organisation". Some female leaders in the *mahila samity* (women's group), both at local and national levels, monopolise power and authority. But this monopolisation is not unique among women only. The monopolisation of leadership is also a common practice within the mainstream leadership (among men); there are a few leaders who monopolise the power and authority at that level also. Exactly the same situation is reproduced or replicated by female leaders in *mahila samity*. Nancy often organises women's training programmes for the development of women's leadership. But every time these elderly women who are already leaders come as participants without allowing younger women to participate. So, virtually no new female leaders are created through these training programmes.

Second, women's leadership is limited in leading the *mahila samity's* activities. Although one of the purposes of the formation of *mahila samity* is to develop female leadership in the church, over the years, *mahila samity* became their only territory to practise their leadership. The other place where women can practise their leadership skills is at Sunday School for children. Women's traditional gender roles in childcare have been extended under this mission-compound patriarchy and women are made responsible for teaching children Christ's teachings. I have observed in a number of church services and women's camps how women are made responsible for rearing future Christians. The other major roles beside childcare are praying, fasting, and holding Bible study. In the church in Bangladesh, I have seen only women devote their time to praying (in many times with fasting) and to conduct Bible study. I did not find any similar activities

run with or for men. So, most of the *mahila samity*'s activities revolve around praying, fasting, and studying the Bible, none of which provides them with any direct opportunity to build or practise their leadership skills. The most that women do is to conduct a Sunday service in every few months. Therefore, it is evident that although *mahila samity* had been established to build and nurture women's leadership to lead the church, it has taken a very limited and confined shape and has failed to function as a leadership-building platform.

Third, the church's leadership-building mechanism does not specifically include women. Local churches usually rely on their *jubo samity* (youth group) to supply the future leaders of the church. For example, both Swapan Halder (President) and Rev James Sarker (General Secretary) of NBS, used to be active youth leaders in *jubo samity* of their respective churches. But for women, being in *jubo samity* does not enable them to be future church leaders for two related reasons. One is that they leave their natal church if they marry a man from another church and usually become a member of their husband's church. Once this happens, a woman will directly enter into *mahila samity* instead of *jubo samity* there as often married women are not considered being youth ideologically; instead, they are viewed as 'adult' women after their marriage. A similar practice is also common even when a girl marries a man from her natal church. Nancy experienced the same when she married a few years ago. She said that as soon as a girl gets married, they are considered a *mahila* (woman) as opposed to *meye* (girl) and are encouraged to join *mahila samity* and not *jubo samity*. So marriage or marital status determines if a woman is still a youth or an adult woman. But this practice is not particularly strictly observed among men who are married. A number of married men is seen providing leadership in *jubo samity*. Leadership creation as a whole usually happens in *jubo samity*, where women are discouraged to attend once they become married. So in this way women are drained from the process of the mainstream leadership development and confined to the leadership of women's groups.

Finally, it is important to understand the politics of how women are brought into church leadership. Julian Folia, an Anglican Church leader, helped me to understand this. He told me that in his church when they held elections for the Central Committee, there was a quota in their constitution for women that says that at least three women should be elected to the committee. This quota was interpreted in such a way that it ignored the fact that three was the minimum number and above three any number of women could be elected. I found a similar interpretation of the constitution of NBS that states that at least one female Vice President should be elected to the council. In order to comply with the constitution, NBS elects only one woman in the Council in every term just to fulfil the constitutional quota.

Similarly, in his church also, Julian Folia told me that, every time, they just filled the quota and elect three women to the committee. All three women were brought under specific categories, mostly as ex-officio members of the committee. For example, one of them became the person in-charge of the Sunday School, which has been a norm (even if the quota was not there, Sunday School was always in the charge of a woman) as no man was interested in Sunday School and everyone assumed that it was a women's job. Another member was usually from *jubo samity* (because they thought that a young woman should represent the youth) and the third woman became the women's representative on the committee. Julian said that "these women came with different roles with specific criteria. As a result, in the mainstream leadership, no woman remained to take those positions". In most cases, these women became ornamental in the committees. Recruiting these women, on the one hand, fulfilled the constitution, and on the other, showed that the church is promoting women's leadership. But in effect, women were still absent from the mainstream leadership in the church. Julian told me that when three women were elected to the Central Committee, as their roles were pre-defined and no more women were brought in the committee, the Officers positions, for example, Secretary or Treasurer, were never been filled up by a woman. Otherwise, these women had to be provided with a dual role (for

example, Secretary and Sunday School in-charge), which was not a regular practice, hence all the officers' positions were held by men only. In his observation, whenever women's leadership came under consideration, the church limited it both by numbers (quota) and women's roles (Sunday school or *mahila samity* representative).

I met Arpita Malakar in my fieldwork who is now working as the CEO of an international donor organisation in Dhaka and is married to a Bangladeshi Anglican priest. She came from a reputable Christian (Baptist) family in India and studied in an evangelical and ecological college in Kolkata. After she moved to Dhaka by marrying a Bangladeshi, her first work was with the Moderator of the Anglican Church. She joined the church as the Coordinator of Social Development as they also run development work.

After a few years working at the Anglican Church, Arpita wanted to resign and move on to other external jobs because she was not professionally satisfied working at the church. The Bishop (Moderator) told her that it was her 'duty' to work for the church, especially being a priest's wife. But slowly tensions began to arise between her and the Bishops and the other priests as she was not a woman who conformed to or complied with all that the Bishops told her to do. She told me that, "the church already became aware that I have a strong personality and it will be hard for them to make me work and behave the way they want".

The fight between Arpita and the Moderator began in 2007 when she received a scholarship to travel to the UK to study for a Master's degree in theology. When she informed Bishop about this opportunity, his first reaction was very positive. He told her that she deserved it and encouraged her to take it up. She then took the IELTS test, received her visa, and even bought her air ticket. With each progress of her travel arrangements, she informed Bishop and his reaction in each time was, "very good, fantastic". But when she submitted her leave application, things began to change. Another Bishop, who was the Deputy Moderator then,

sat down with her and had a long discussion. She said, “He told me that ‘actually that old man is jealous of you, he feels threatened by your capabilities. So probably he will not approve your leave. So if you want to go for this studies, you better resign and go.’ I didn’t understand that it was part of the politics and was stunned to hear that”.

Then after a few days, she received a long letter from the Bishop, which said that as per their church constitution, being the wife of a priest, she could only do things that the Bishop approved. “That flared me up”, she said, “I have read the constitution so well, where on earth the constitution says that thing? So basically he was trying to bully me. So I confronted him”. Finally, she submitted her resignation and left for the UK for her higher studies.

The Bishop then wrote a pastoral letter, which was published in the church magazine as well, and she said the whole letter was about her — how she was too ambitious, how she should be controlled, and so on so forth. But even after all these, when she came back to Bangladesh with her degree, she still showed an interest in serving the church again. In her words, “I thought I would be more useful to the church and I wanted to serve my church”. But after waiting for about five months without any response from them, she joined a theological college and began teaching there. She said,

From this what I have realised as a woman is that, the church is happy as long as you have done things according to their way. So they will not allow you to be empowered. But simultaneously, they also have an agenda to show to the outside world that they are promoting women’s empowerment. And as a woman, you just have to play the roles where you fit into. It is no way women empowerment.

Although the mission-compound patriarchy provides women with freedom outside the boundaries of their homes, it also restricts their mobility to reach out to the state and its mechanisms. However, women’s freedom within the mission-compound does not liberate them to lead the community. Men still hold the mainstream leadership positions in the church and women’s leadership is

confined to women's groups only, except for a few token positions in the council. As women are not viewed as mainstream leaders of the church, they often are excluded from the church's leadership development processes. Women such as Arpita, who do not conform this norm of leadership, often face discrimination and become easy victims of church politics.

## **Conclusion**

In this chapter, I have shown how minorityness has been constructed within the Bangladeshi Christian community. By linking the community's minorityness to patriarchy, I have also shown how mission-compound patriarchy developed within the community. Through this mission-compound patriarchy, the churches operate as a mechanism to maintain patriarchy. The mission-compound patriarchy creates a third category of space outside women's homes by providing them with freedom but, at the same time, restricts women from connecting with the state and practising their rights as full citizens of the country. Therefore, women in the Bangladeshi Christian community become disconnected from state mechanisms and hence become invisible to the state. In other words, the mission-compound patriarchy works as a crack through which Christian women fall and become absent or invisible to the state.

The invisibility of Christian women has also made it difficult for state institutions and feminist and human rights movements to intervene to advocate their issues. As a result, the mission-compound patriarchy feeds into the strength of the community leadership and increases its autonomy in controlling the fate of community members, particularly women. On the one hand, the mission-compound patriarchy restricts women from exercising their rights as full citizens; on the other hand, because women are excluded from the community's mainstream leadership, they cannot exercise their rights as full members of the community. Therefore, Christian women are doubly affected by not being able to exercise their rights as both full citizens of the state and full members of the

church. This understanding of Bangladeshi Christian women's position in the state as well as in the community helps to gain a deeper understanding of the context of legal pluralism that Christian women encounter in their daily lives.



## Chapter Six

# Minority anxieties over marriages: Creating mutuality to accommodate difference

### Introduction

Since my childhood, many times have I heard the story of how one of my *pishis* (aunt; father's cousin)<sup>1</sup> fell in love with a Muslim man and married him and how my father, being her only male cousin (in the absence of her father, who had died long back and she had no brother), decided that our extended family must cut all contact with her as she had done a 'terrible thing' by marrying a Muslim man. For many years, my *pishi* was prohibited from contacting her family, even her own mother. It was only when she became a widow with three small children that my father accepted her back in the family.

I do not remember how many times I have heard this story from my two never-married grandaunts. But I remember one thing very distinctly. Every time they told this same story, two points were emphasised: one was that it was an awful act that my *pishi* committed by marrying a Muslim man; the other was how kind and considerate my father was to accept her and her children back into the family during the crisis in her widowhood. In the Christian community, marrying a non-Christian is considered unacceptable, as the anecdote suggests.

This chapter examines the marriage practices within the Christian community in Bangladesh, particularly the issue of mixed marriages between a Christian and a non-Christian party. By examining 'unequal marriages' or inter-religious

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<sup>1</sup> Usually a father's cousin is a first cousin once removed. But in Bangladesh, a parent's first cousin sister is considered an aunt and a parent's first cousin brother is considered an uncle.

marriages (mixed marriages) using the concepts of kinship, marriage, and gender, I show how the community creates and defines boundaries through marriage, while simultaneously accommodating differences in order to create mutuality. While marriage is commonly described through a lens of mutuality and symmetry, what can be achieved empirically, theoretically, and politically by observing the so-called non-mutual and asymmetrical marriages? How can asymmetrical unions be positioned in this ideal picture of 'Christian marriage'? How do the concepts of asymmetry, mutuality, and difference within marriage circulate within the community? How can mutuality be created out of asymmetrical marriages? How can the difference be accommodated within marriage? These questions are at the heart of this chapter. I explore these questions through the theories of mutuality and difference (Sahlins 2011a, b, Goldfarb and Schuster 2016) and social structure and agency (Lévi-Strauss 1969, Rubin 1975).

Inter-faith or inter-religious marriages are often seen as 'unequal marriages' within the Bangladeshi Christian community. In Bangladesh, marriage is a universally stable institution. In other words, most people marry early and remain married throughout their lives. However, mixed marriages between Christians and non-Christians is taboo and highly discouraged both in Catholic as well as Protestant groups. In fact, in order to prevent mixed marriages, both the Catholic and the Protestant churches have introduced a number of initiatives among young people, such as Bible camps, Christian students' movements, Sunday School, and other church activities, so that the young generations have the opportunity to choose a Christian spouse. However, in Bangladesh, mixed marriages are particularly prohibited for women as compared to men. There has been a constant effort to ensure that Christian women do not marry non-Christian men under any circumstances.

Marriage is considered one of the sacraments in the Catholic Church, a direct contract with God. The sacramental characteristic of marriage is also part of

Hinduism. Within Christianity, different denominations of the Protestant church consider marriage to be an institution that is approved and sanctioned by God and hence a permanent union between a man and a woman. The civil law that governs marriage for Christians in Bangladesh is the Christian Marriage Act, 1872 (Act XV of 1872). The Christian Marriage Act, 1872, does not prohibit inter-religious marriages. According to Section 4 of this law, “Every marriage between persons, one or both of whom is or are a Christian or Christians, shall be solemnised in accordance with the provisions of the next following section; and any such marriage solemnized otherwise than in accordance with such provisions shall be void”. As the same law, the Christian Marriage Act, 1872, is also applicable to Christians in India (which is entitled the Indian Christian Marriage Act, 1872), the Law Commission of India (2008) confirms that, under this Act, not only are marriages between two Christian parties solemnised but also the marriages between a Christian and a non-Christian parties are solemnised. In order to have a valid marriage, only one party must be Christian, which means the other party may or may not be Christian. The Catholic Church allows marriages with non-Catholics. By the term ‘non-Catholic’, the Catholic Church means both non-Christians and Protestants. Marriages between a Catholic and a non-Catholic party (either a Protestant or a non-Christian) is known as ‘mixed marriages’ in the Catholic Church. Although the state law allows Christians to marry outside their religion, the Protestant churches do not allow mixed marriages (except with Catholics). According to the Protestant churches, only persons who practise Christianity and has been baptised are eligible for Christian marriages. Therefore, the Protestant churches only apply the Christian Marriage Act, 1872 when both parties to a marriage are Christians.

Before discussing how mixed marriages affect women and men differently, understanding the concept of marriage with respect to kinship and gender is vital. Although kinship and gender are two distinct concepts, they are interlinked, which I am going to demonstrate in this chapter. As I have mentioned, both Hindu and Catholic traditions consider marriage a sacrament;

according to Hinduism and Catholicism, marriages cannot be broken. As most Bangladeshi Christians or their ancestors had a Hindu background, such ideology is deep-rooted among all Christians, both Catholics and Protestants.

Although there are differences between Hindu and Christian (both Catholic and Protestant) marriages doctrinally, ideologically Holden's (2008) argument about Hindu marriages is somewhat true for Bangladeshi Christians:

Divorce is very often declared to be unknown within Hindu tradition. Such a purported absence is framed within the notion of Hindu marriage as conceptualized in the classical Hindu texts: the union sanctioned by the performance of the sacred rites that bring a permanent change to the spouses and yield a sacred and indissoluble union. Accordingly, once the rituals are properly accomplished, the conjugal bond is established for eternity because of the indelible and internal changes produced within the spouses by very performance of the rites. (Holden 2008, 1)

Based on the sacramental characteristic of marriage in Christianity, the churches (both Catholic and Protestant) strongly discourage and prohibit mixed marriages. This chapter traces women's experiences of mixed marriages and the church's roles in these marriages. The chapter has five sections. The first section provides a theoretical basis to explain these mixed marriages. In this section, I particularly unpack the theories of mutuality and difference, coined by Sahlins (2011a, b) and later expanded by Goldfarb and Schuster (2016), and the theory of social structure by Rubin (1975). In the second section, I show how the concept of mixed marriage has been portrayed within the Bangladeshi Christian community, how the concept circulates, and how it is gendered. The third section explores how these 'love' marriages or in other words 'self-chosen' marriages with non-Christian parties have created a moral panic within the community. In this section, I show that although the community has been attempting significantly to protect and prohibit its young generation from entering these 'unequal' relationships (in their terms), at the same time they accommodate the differences by creating mutuality in order to include these marriages in various processes.

The following section discusses this mutuality creation processes. This section also shows that these mutuality creation processes occasionally take a violent form, which remains unseen and unrecognised within the community. Finally, in the last section, I depict these blindspots within the processes of creating mutuality through these mixed marriages.

### **Kinship, marriage, and gender**

Although kinship, marriage, and gender can be considered to be distinct concepts, they are closely entangled with each other. These three notions are mutually constructed and they cannot “be treated as analytically prior to the other because they are realized together in particular culture, economic, and political systems” (Collier and Yanagisako 1987, 7). Therefore, in order to understand marriage and gender, we also need to understand kinship and vice versa. Traditional kinship studies focus on conceptualising different ideas and elements about “bounded integrity” (Franklin and McKinnon 2001, 19) of a group (Schneider 1969, Delaney 1995, Williams 1995). However, Franklin and McKinnon (2001) argue that, recently, kinship theories are not only confined to within how a nation or a community or a group is bounded but also how crossing those boundaries between these categories takes place. Therefore, in order to understand kinship and gender, we need to have an understanding of not only how the boundaries are created but also how they are crossed.

Scholars working on and/or critiquing kinship studies have been involved in a range of debates around the issue of what should and what should not be included under the umbrella of kinship studies, particularly when kinship is more and more becoming fluid and complex in this globalised world (Schneider 1984, Franklin and McKinnon 2001). According to Franklin and McKinnon (2001, 18), “[K]inship becomes a signifier of the power relations, inclusions, and exclusions that are definitive of religious faith and community”. In such a situation, it is important to examine how kinship ties are both assembled and disassembled in

different cultures. It also becomes vital to see how choice and agency come into play in this assembling/disassembling process of kinship. While examining this process, Franklin and McKinnon (2001, 13) argue that we should also take an account of “how kinship is created in ways that coexist with, push against, complement, contradict, erase, and make explicit divergent means of connections and disconnections”, in Weston’s (2001, 152) words, “connecting some different and less familiar dots”.

For Weston (2001, 168), kinship is neither a pre-existing phenomenon, nor it is a “coherent ideology or core concept”. But instead, it is something “congealed” and those who choose to cross the boundary of kinship rules are seen as disloyal to their respective community. Weston (2001, 168) asks a vital question, which is at the heart of my argument: “Congealed how, for whose benefit, and from what?” According to Franklin and McKinnon (2001):

[K]inship can be mobilized to signify not only specific kinds of connection and inclusion but also specific kinds of disconnection and exclusion — as well as the boundary-crossing trickster movements that confound such classifications. Since relations of power are central to the articulation of such classificatory boundaries and movements, kinship is also utilized to articulate the possibilities for social relations of equality, hierarchy, amity, ambivalence, and violence. In so doing, it becomes evident that kinship’s classificatory maneuvers can be mobilized to bring into being other categories of relationality — including genders, sexualities, races, species, machines, nature, and culture. (Franklin and McKinnon 2001, 15)

Leach (1961) argues that marriage cannot be considered an isolated institution, which is why understanding marriage in a holistic manner is important. Therefore, understanding the concept of marriage should not only be confined by law. No matter if the marriage is arranged by the family or relatives, or chosen by the couple for love, the institution of marriage is structured based on a set of social practices and relations. In South African context, Palriwala and Kaur (2014) depict the holistic nature of marriage that brings together more than just two individuals or families, which is equally true for the South Asia region. In their view:

[A] marriage is articulated as more than an ongoing relationship between two individuals. It establishes a tie between two social groups such as family-households, lineages, or clans, at times, reiterates an already existing tie between them. Whether viewed primarily as a contract or a sacrament, marriage establishes a relationship between more than just the two in the conjugal pair. In other words, marriage is an alliance in structuralist and political terms, entailing affinal relations. (Palriwala and Kaur 2014, 4)

The holistic and complicated nature of marriage has also been depicted by other scholars. For example, Lévi-Strauss (1965), while examining the number of marriage types for different clans within Crow-Omaha systems, had to appoint a mathematician for calculation purposes. One of the results he derived with the help of mathematicians was that in a society comprising of 30 clans the number of marriage types potentially was 297,423,855. However, Leach (1961, 108) concludes that “the nature of the marriage institution is partially correlated with principles of descent and rules of residence”. Based on this view of Leach (1961), Needham (1971) argues that marriage is more than a jural institution, which accommodates unpredictable and uncontrollable types of moral and mystical concepts as well.

A few years later of Lévi-Strauss’ (1965) mathematical calculations on marriage types, Korn and Needham (1970) made an intensive analysis of kinship and concluded that mathematical techniques are neither capable of nor convenient to helping conceptualise the complexity with regards to kinship and marriage even in such simple and closed forms of societies. In my opinion, a parallel can also be drawn between mathematics and law, where both are incapable of capturing all the complexities associated with marriage. So in order to understand marriage, one has to go beyond law and see marriage in a holistic way.

Understanding marriage within a society is a key to understanding the society inside out. To explain marriage, Needham (1971) cites Onvlee’s (1949) findings in eastern Sumba, where matrilineal cross-cousin marriages are the most preferred forms of marriages and one would not be able to understand a completely

unrelated issue, such as dam-building, unless they understand the norms with regard to marriages. Similarly, without understanding the forms of cooperation that follow marriages, one would not be able to understand the marriage system within that society. According to Rivière (1971), marriages should be viewed as expressions of social structure. In other words, a marriage itself can be a consequence of a social structure, and moreover, it can have a consequence for the social structure. Therefore, according to Rivière (1971, 63), questions such as, “Would you let your daughter marry a Negro (dustman, or peer)?” is a question about the social structure. Each marriage that crosses the boundary has some kind of consequence for that respective social structure.

According to Sahlins (2011a, 11), “mutuality of being” makes kinsmen “persons who belong to one another, who are members of one another, who are co-present in each other, whose lives are joined and interdependent”. However, Goldfarb and Schuster (2016) critically engage with Sahlins’ (2011a, b) theory of mutuality that asks ‘what kinship is’ and offer an alternative argument. Goldfarb and Schuster (2016) conclude that instead of focusing on an identity of similarity that struggles with mutuality and difference, they take up non-mutuality and turn it into the comparative frame itself. According to them:

Notably, our attention to difference as a key factor for understanding kinship as precisely a systematic interplay between similarity and difference, between self and other, parsing those who are too similar to marry from those incorporable as marriage partners ... — a process that, in turn, has long been understood to produce lasting hierarchies and inequalities. (Goldfarb and Schuster 2016, 8)

Thus, as Goldfarb and Schuster (2016) suggest, the difference lies right at the centre of kinship. So by expanding Sahlins’ (2011a, 11) concept of “mutuality of being”, Goldfarb and Schuster (2016) trigger some of the kinship experiences (not all) and reveal culturally and historically contingent ways in which kinship is materialised and de-materialised, which is similar to how people negotiate both similarities and differences in their daily lives.

In pre-state societies, kinship is the idiom of social interaction, organizing economic, political, ceremonial, and sexual activities. One's duties, responsibilities, and privileges vis-à-vis others are defined in terms of mutual kinship or lack thereof. The exchange of goods and services, production, and distribution, hostility and solidarity, ritual and ceremony, all take place within the organizational structure of kinship. (Rubin 1975, 169-170). Although in this particular instance Rubin (1975) talks about pre-state societies, most of her analysis is still applicable in today's societies in one way or the other. According to Rubin (1975), kinship systems from culture to culture vary significantly. Kinships determine rules that govern who can and/or cannot marry whom. For Christians in Bangladesh, a combination of Christian values and pre-Christian kinship rules have created the current kinship practices, particularly around issues of marriage (who can and/or cannot marry whom).

Both Lévi-Strauss' *Elementary Structure of Kinship* and Mauss' theory of primitive social organization theorise the 'gift', a very significant feature of primitive societies. Lévi-Strauss (1969) takes it further and argues that "marriages are a most basic form of gift exchange, in which it is women who are the most precious gifts" (Rubin 1975, 173). Lévi-Strauss (1969) argues that marriage is a complex form of social transaction that involves the exchange of women, dually articulated by two factors, the 'gift' and the 'incest taboo' that prohibits people from marrying within a degree of relationships. So in order to understand such exchanges, as Lévi-Strauss (1969) suggests, one should deeply understand incest taboo within a society.

The concept of incest taboo is universal but its content varies from society to society (Rubin 1975). So examining the incest taboo reveals "the social aim of exogamy and alliance upon the biological events of sex and procreation" (Rubin 1975, 173). It is the incest taboo that sets the boundary between permitted and prohibited sexual partners. However, I argue that by examining the incest taboo in a particular society, one can only capture the inner boundary of permitted and

prohibited sexual partners. But most societies also put an outer boundary to define how far one can go in choosing their sexual partner. In this way, the pool of possible sexual partners would be limited to these two — inner and outer — boundaries. If exogamy is preferred, then the question of how much exogamy is accepted becomes vital.

Coming back to the ‘gift’ component in marriage, Lévi-Strauss (1969) further argues:

The total relationship of exchange which constitutes marriage is not established between a man and a woman, but between two groups of men, and the woman figures only as one of the objects in the exchange, not as one of the partners ... This remains true even when the girl’s feelings are taken into consideration, as, moreover, is usually the case. In acquiescing to the proposed union, she precipitates or allows the exchange to take place, she cannot alter its nature. (Lévi-Strauss 1969, 115)

Therefore, in such exchanges, women become a channel of the relationship, rather than being a partner to it (Rubin 1975). However, Rubin (1975, 174) does not necessarily argue that such exchanges objectify women but they “imply a distinction between gift and giver”. According to her, if women are the gifts, then men are the exchange partners and in such a situation “women are in no position to realize the benefits of their own circulation ... [instead,] it is men who are the beneficiaries of the product of such exchanges.” (Rubin 1975, 174). A similar exchange that Rubin (1975) describes can be seen in the *konnya shampradan* (daughter’s bestowal) ceremony held as part of the wedding rituals among Bengalis. Nicholas (1995, 141) describes this ceremony as making “a selfless ‘gift of the bride’ ... to the groom with no expectation of return”, is a ceremony held during both Bengali Christian and Hindu weddings. *Konnya shampradan* is a classic example that creates a symbolic meaning where the father (or uncle in the father’s absence) bestows his daughter on the groom. A mother cannot bestow her daughter as she does not have rights to be her daughter’s guardian equal to her father (Rubin 1975).

This discussion leads to the fact that, according to Rubin (1975, 176-177), in the most general sense, a kinship system is a 'production' system where "a transformation of objects (in this case, people) to and by a subjective purpose ... It has its own relations of production, distribution, and exchange, which include certain 'property' forms in people". According to Rubin (1975, 177), "In this sense, the exchange of women is a profound perception of a system in which women do not have full rights to themselves". It is important to note that these sorts of property rights are not equivalent to private property rights. Such an 'exchange of women' is an expression to say that men hold certain rights over their female kin that women do not hold over themselves or over their male kin.

### **Unequal marriages: *Oshomo jowal***

During my PhD fieldwork, I stayed in my father's house in Dhaka in between travelling to different places around the country. My father has an enormous collection of books. While staying there, one of the activities that I enjoyed the most was to browse through his books. In the process, one day my eyes were stuck at a corner of his bookshelf. It was not a new book. I have seen this same old book (written in Bangla) in our bookshelf since I was a child. Yet, this old familiar book all of a sudden appeared to be an important piece of the puzzle that I wanted to solve at the time. The title of the book is *Oshomo Jowal*. A direct English translation will be 'unequal yoke'. The book was published in 1982 by the Association of Baptists in Chittagong, and written by a Christian female writer, Basanti Das (Das 1982). The book is a collection of fictional stories that aims to describe the negative effects on Christian girls of marrying non-Christians.

*Oshomo jowal* (unequal yoke) is a metaphor that came from the Bible (II Cor. 6:14-18)<sup>2</sup> and is used to describe mixed marriages between a Christian and a non-

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<sup>2</sup> "Be ye not unequally yoked together with unbelievers: for what fellowship hath righteousness with unrighteousness? And what communion hath light with darkness? And what concord hath Christ with Belial? Or what part hath he that believeth with an infidel? And what agreement hath

Christian in Bangladesh. There are Hindu equivalent terms — *anuloma*<sup>3</sup> and *pratiloma*<sup>4</sup> — and in most cases, Hindu *vedic* text has prohibited *pratiloma*. Under Christianity, the phrase ‘unequally yoked together’ is the translation of just one Greek word, *heterozugeo*, which means, to yoke up differently; to associate discordantly; unequally yoke together. The word yoke means a coupling as when two oxen are coupled or yoked together by a pulling beam to do work such as ploughing a field or pulling a wagon. The notion of ‘unequal yoke’ has been translated in Bangla and became *oshomo jowal*, where the word *oshomo* means unequal and *jowal* means yoke. When Christian men and women enter into mixed marriages with non-Christian parties, it is often said that the person has entered into an *oshomo jowal* relationship or the person has become involved in *oshomo jowali*.

I took the book in my hand. The cover of the book summarises clearly the intended message of it. A sketch of a crying woman has taken half of the book cover (see Figure 6.1). Half of her face is visible and the sadness and tears in her eyes certainly catch readers’ attention. I turned to the cover page and opened the inner cover. What I saw there made me stunned for a few moments. Three particular words are written in small fonts within parenthesis, right below the title *Oshomo Jowal*. It says, “*Khrishtan torunider jonno*”, which means ‘for young Christian girls’. The author Basanti Das wrote a small note as a preamble to the book, which can be translated as “A portrait of our modern young Christian women has been presented in this book through small stories. I hope my book will speak to them” (Das 1982).

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the temple of God with idols? For ye are the temple of the living God; as God hath said, I will dwell in them, and walk in them; and I will be their God, and they shall be my people. Wherefore come out from among them, and be ye separate, says the Lord, and touch not the unclean thing; and I will receive, and will be a Father unto you, and ye shall be my sons and daughters, says the Lord Almighty”, (II Cor. 6:14–18).

<sup>3</sup> Anuloma Marriage in Hinduism refers to the hypergamy form of marriage, under which a boy from an upper caste can marry a girl from a lower caste.

<sup>4</sup> Pratiloma refers to the hypogamy form of marriage, in which a man of lower caste marries a girl of higher caste. Many Hindu religious texts have condemned such union.

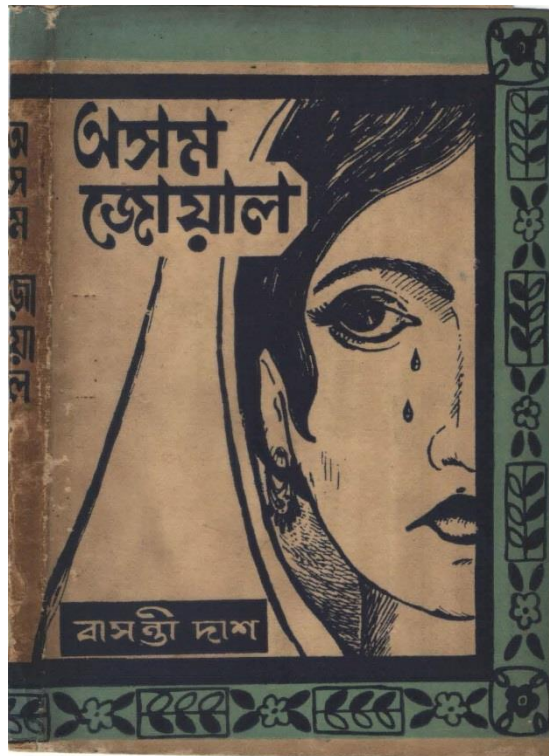


Figure 6.1  
Cover page of the book *Oshomo Jowal*  
(Picture used with permission)

After reading such a preamble, I had no other choice but to read the entire book in one sitting. The book clearly provides evidence that *oshomo jowal* is an issue about which the Christian community has been concerned particularly with respect to women. The book contains six small stories; each one of them portrays how appalling women's lives could be if they marry a non-Christian man. One of them, titled "*Chithi*" (the letter), tells a story of a young Christian girl, Ranu, who married a Hindu man, Samir, when they were very young. In the first few months, they had a happy life together. But none of their families accepted their marriage. They did not have a regular income as both were still students. Reality began to become harsh after some time. In the meantime, Ranu became pregnant. But Samir could not endure the hardship any longer and hence one day he left her and went back to his parents' house without telling her. After a few weeks, she came to know about Samir's return to his parents'. But she could not

go back to her own house as she was pregnant and she thought her parents would not be able to face society if she returned home in this situation. So finally Ranu committed suicide. The story provides her narrative that repeatedly stated that how she has committed this awful 'sin' by marrying a non-Christian man and she will be 'burnt in hell' for her action. In her words, "[I]f you choose to be apart from God and only cling human, this is the misery that you have to go through" (Translated by the author) (Das 1982, 22).

Interestingly, all of the stories in this book depict *oshomo jowal* as a sin, the definite consequence of which is unhappiness. Not even one single story shows a situation where a Christian girl became happy in her life after marrying a non-Christian man. In the Bangladeshi Christian community, *oshomo jowal* is seen as a women's issue. Some myths circulating around this notion include those that state that girls who married non-Christian men would never be able to become happy in their lives, they have removed themselves from God, and they have committed sin.

What makes a woman writer write such fictions? Who are the readers of this book? Later I asked these questions of a Protestant lay leader. He told me that during the 1980s, a number of Christian girls married non-Christian men, mostly Muslims, and left the community. Most of them converted to Islam as they had to move to their husbands' family and live with them. He continued, "The whole Christian community in Bangladesh began to panic about our girls leaving the community. During that time many churches organised seminars for young boys and girls and attempted to raise awareness on this issue". The book *Oshomo Jowal* was written in the same period. He informed me that the writer Basanti Das was approached by the church to write a book such as this. Three thousand copies were printed of the first edition of the book and were made available through different churches, Christian bookstores and other Christian or church-based organisations around the country at a minimum price. The book is still available in the Association of Baptist and other Christian bookstores.

*Oshomo jowal* is a concept that circulates widely within the community. When a Christian woman marries a non-Christian man, particularly a Muslim man, it becomes the talk of the town for some time. In informal social settings, you will often hear statements such as ‘so-and-so’s daughter *Muslimer shathe vege gache*’, a direct English translation of which would be ‘fled with a Muslim’. What they mean by this expression is that she married a Muslim man. In formal settings, the term *oshomo jowal* is often used to mean the same situation. This particular term is often heard in Christian youth meetings and at Bible camps for young people. Even sometimes from the church pulpit, the term is pronounced. A Protestant church body runs similar Bible camps every year for the Christian students who recently completed the Secondary School Certificate Examination. In the Bible camp, the church body includes a complete course on *oshomo jowal* in their curriculum each year and they run these courses for girls and boys separately in the camp.

### **Love marriages create moral panic**

The anecdote at the beginning of this chapter, followed by the stories from the book *Oshomo Jowal*, shows that Christian women marrying non-Christian men are considered a sin against God by the church. These inter-religious marriages are only accepted by the community if the non-Christian party converts to Christianity. During my fieldwork, I saw that a number of Christian women who married non-Christian men were excluded from society. In many instances, even when their parents had accepted their marriages, they were still not encouraged to attend the usual extended family or church events.

Traditionally, in Bangladesh, similar to elsewhere in South Asia, parents are the ones who arrange their children’s marriages. However, in recent times, a child finding their own spouse by themselves for love has become increasingly common. Inter-religious marriages are clearly a form of love marriage. Vatuk (2014) explores the changes in marriage patterns in contemporary South Asia,

and how people are moving away from traditionally arranged marriages (by parents and relatives) towards love marriages. She also explores whether today's marriages strictly follow the principles of endogamy and/or exogamy. According to Vatuk (2014), there is a considerable increase, particularly among the urban, educated, young people, to choose for 'arranged love marriage', where parents allow their children to choose their own spouse and then they proceed with a wedding that includes traditional wedding rituals. However, Donner (2002) found that even when parents continue to initiate the choosing of mates for their children, both daughters and sons are allowed to have more control than they used to have in the past over the process of choosing their respective spouse.

I observed that in most places in Bangladesh people still associate the concept of 'love marriage' with a significant level of negativity. People often assume that whoever entered into a 'love marriage' violated their parents' wish. Therefore, according to Vatuk (2014), the couples who have entered marriage for love, will try to downplay or conceal this part of their relationship history when talking about their marriage.

I met Jacinta Rozario in my fieldwork in Dhaka, who had married a Muslim man named Rezaul Haque. They have a three-year-old son and now live in Australia. Jacinta was explaining to me when I visited their house in Dhaka during her visit to Bangladesh, how her parents and other relatives became very upset and to some extent aggressive about her marriage and how they repeatedly convinced Jacinta that she should return to her parent's even after their marriage. Jacinta told me:

I am from a Catholic family. When my parents and siblings came to know that I was going to marry Reza soon, they were angry with me. One day I fled with him and married him in the court. Then when we went to his house, we had our second wedding in an Islamic way, conducted by a *kazi*. My in-law's family never asked me to convert to Islam. I just had to say *kobul* three times. My parents repeatedly called me and Reza and threatened us in many ways. They tried to make me understand what will

be the consequences in my society. At one point they gave up and cut all contacts with me. Even my siblings did not talk to me.

After a couple of years, Jacinta and Rezaul migrated to Australia and within a year they became parents of a baby boy. Jacinta said, “Things began to become normal after we had a baby. Now my parents are happy about my life”. But Jacinta told me that although she has reconnected with her immediate family, she is still not in touch with her extended family or her church friends and other relatives.

However, Shiuli Sarker did not face issues as intensive as did Jacinta. Shiuli is a daughter of a prominent Protestant lay leader. When she married a Muslim man, who is also from a very educated and politically influential family in Dhaka, the whole community began to discuss it as no one expected anything like this from her. Shiuly did not convert to Islam and did not face serious objection from her own family while marrying this man. But some church leaders made an effort to attach great significance to this issue and they attempted to force her husband to convert to Christianity. But Shiuly told me while describing her experience that she and her husband went to Canada soon after their marriage, where her husband was a permanent resident. Shiuly thinks that as she went and lived overseas for a few months just after their marriage, the church leaders could not continue with the conversion issue for long. However, Shiuly told me that although her family had accepted this marriage, she, for an extended period of time, had to stay out of contact with the church so that she did not encounter controversial questions from other church members. In my view, Shiuli escaped community control of mixed marriage because of her family’s influential position. Shiuli, being a daughter of one of the most influential leaders of her church, managed to position herself beyond the radar of the church.<sup>5</sup>

A Catholic interpretation of mixed marriages is different from a Protestant interpretation. According to the Catholic Church, any marriage between a

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<sup>5</sup> I will elaborate on how women use their socio-economic and political status to achieve their goals in the following chapter (Chapter Seven).

Catholic party and a non-Catholic (both Protestant and non-Christian) party are considered to be mixed marriages. But the term 'mixed marriage' has two distinct meanings: one is a marriage between a Catholic and a non-Christian and the other is a marriage between a Catholic and a non-Catholic (Christians from other Protestant denominations). The former is referred to as inter-religious marriage and the latter as inter-church marriage. In the Catholic Church, mixed marriage between two persons mentioned above is highly discouraged, acceptable only in exceptional cases, and depends on the merit of the particular case.

According to the Canon Law, "A marriage between two persons, one of whom has been baptized in the Catholic Church or received into it and has not defected from it by a formal act and the other of whom is not baptized, is invalid" (section 1986). Only in certain exceptional, urgent, and serious cases can such inter-religious marriages be approved by the respective Bishop. However, such marriages will not be considered 'sacramental marriages'. In cases of inter-church marriages, according to the Canon Law, without the permission of the respective Bishop, a marriage is prohibited between two baptised persons of whom one is baptised in the Catholic Church and the other is from another non-Catholic/Protestant church (Section 1124).

The Catholic Church provides a number of justifications for the prohibition of such mixed marriages, both inter-religious and inter-church. However, most reasons directly justify prohibiting Catholic women specifically from marrying a non-Catholic man and not vice versa. According to a Bangla book titled *Marriage and conjugal life: Light up our hearts with love* (translated by the author), written by Dr Fr Minto L. Palma, Judicial Vicar of the Interdiocesan Ecclesiastical Tribunal Dhaka, some of the most common reasons to discourage any forms of mixed marriages are when a Catholic woman marries a non-Catholic man, she has to move to a non-Catholic environment where she may encounter unhappy conjugal life or even marriage break-up or divorce; she may lose her faith; she may face an adverse residential environment to practise her faith; and, she will

not be able to raise her children in the Catholic way (Palma 2009). Although overall the Catholic Church discourages mixed marriages for both men and women, and in this particular context it focuses on women more than men and leaves the burden to maintain a family in the Catholic way only to women. In fact, a section (page 91) of the book describes how there are different complications when a Catholic man marries a non-Catholic woman and when a Catholic woman marries a non-Catholic man. The latter case is strictly discouraged by the Catholic Church, although it shows reasonable flexibility in cases of the former scenario. Among the Protestant churches, mixed marriage refers to only inter-religious marriages, in other words, marriages between Christian (Catholic or Protestant) and non-Christian. Marriages between a Protestant and a Catholic are not considered mixed marriage. However, under this interpretation, in Protestant churches provision for mixed marriages is almost absent, unless the non-Christian party converts to Christianity.

While conducting my fieldwork, a Protestant national church body organised a theological consultation meeting on Christian marriage and its dissolution. The General Secretary of the organising church body told me that the Catholic Church has its own rules and regulation with regards to marriage and its dissolution. But, unfortunately, the Protestant churches do not have anything concrete. The churches have been solving their issues on a case-by-case basis and the church leaders around the country feel that there should be some uniform policies or guidelines to solve these increasing marriage and divorce related problems in churches. The consultation meeting was an initiative along that line, where leaders from different denominations, including Anglican and Baptist, were invited to contribute to the discussion. The meeting was attended by 27 church leaders and pastors, out of whom only five were women.

In the consultation meeting, the Chairperson and the General Secretary explained the issue with regard to mixed marriages and its associated crisis. According to the Chairperson, "As the family is the smallest unit of the church

when the unit becomes weak, the whole church experiences some sort of damage. Mixed marriages have done this damage in the church”. The General Secretary also spoke along with a similar line. According to him,

The churches have developed a deep wound around the issues of marriage and its associated issues. There have been controversial debates going on in the churches around the questions, how should these people be punished? Who should take the lead to punishing them? What should be the degree of this punishment? Will the parents of the involved party also be included in this punishment?

According to the church leadership, mixed marriages are responsible for weakening the church and, in this case, the leaders of the church intended to have a separate set of regulations that would set out the boundary in relation to marriage and specify how people should be ‘punished’ when they break these regulations by entering into mixed marriages. Most leaders agreed with the view of creating regulations in the church in order to “make this society orderly”, in their words. Some leaders present at the meeting provided emphasis to pre- and post-marriage counselling, which they thought was not being conducted properly at present. According to them, Christian boys and girls need “adequate teaching” on these issues. They recommended a manual both for pre- and post-marital counselling and establishing a counselling centre. Some other leaders thought that they do not have sufficient policies in place. According to them, besides the state laws, the church should have its own rules. Also, they recommended the creation of a special committee that would be responsible for monitoring, investigating, and reporting these marital issues to the council. There was also a recommendation to organise additional youth events for eligible young people so that they can meet their potential spouses.

Mixed marriages were seen by these leaders as wrong deeds of young men and women and they believed that the young generations need ‘proper guidance’ from the church in order to overcome the tendency of entering into mixed marriages. The leaders also believed that creating rules and regulations in the

church and punishing people by withholding church membership or rights to Holy Communion from those who entered these types of marriages would reduce mixed marriages in the Christian community.

A leader present at the consultation meeting raised the question of what happens when the children of church leaders enter into *oshomo jowali*? Will the punishment for them be equal to that of other general members? According to him, “From the Bible’s teaching we see that if leaders fail to keep their commitment as leaders, they must step down from their positions”. This is a similar view I found in the Constitution of another Protestant national church body. According to their Constitution, if a person from that community lives together or marries a non-Christian person, then they or any member of their family will not be eligible to be part of the leadership of that church body (Clause 72(7)). In this way the church believes that not only the persons entering into mixed marriages have committed a ‘sin’ and are, therefore ‘punishable’ but also their family members, particularly their parents, are responsible for their children’s deeds and therefore these parents have lost their eligibility to be leaders of the community.

Many members and leaders of the community are concerned about young people who have the possibility of crossing the boundary of the community and entering into *oshomo jowali*. Such moral panic leads them to take a whole range of initiatives, as I have discussed above. Most leaders are occupied in thinking what punishment they should hand to someone who has entered into such a marriage. Shaping the young people’s thoughts and values through pre-marriage counselling or by including a certain curriculum in their Bible camps are symptoms of this panic. Moreover, the eagerness and the urgency that they show towards creating concrete rules and regulations within the church also indicate the existence of the moral panic around mixed marriages. In my view, this moral panic is often created by the community’s minorityness. Because of Islamic radicalisation and the instances of torture and violence that the community often

experiences both from the state and the majority communities, when its members engage with marital unions with members of the majority community, the Christian community feels threatened and often attempts to protect its members from such unions.<sup>6</sup>

### **The gendered effect of mixed marriage**

The moral panic that the mixed marriages create among the Christian community is not un-gendered. Men and women of the community experience the effects of this panic when they marry outside the community. Women are particularly targeted in this process and become more affected than their male counterparts. Due to social structure and practices, when two people from different religions enter into marital unions, women are the ones who commonly convert to their husband's religion. One of the main reasons for this conversion is explained by the virilocal marriage system that exists in most parts of Bangladesh and South Asia. As per the virilocal marriage system, a wife moves out from her parent's house and lives at her in-law's house. Therefore, it makes more sense to the particular community if the wife converts and takes her husband's religion so that the wife can be integrated into their husband's family better. Therefore, when a Christian woman marries a non-Christian man, the usual assumption is that she will convert to her husband's religion. This assumption often results in a greater level of panic within the community. But the questions that follow this discussion are: Why does the community fear losing women? Why do they become so concerned about this whole issue of Christian women marrying non-Christian men? The panic has a twofold explanation: first is the kinship and marriage explanation and second is the minorityness-related explanation.

Under the kinship and marriage explanation, as mentioned before, women become a channel of the relationship in the marriage exchanges, instead of being

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<sup>6</sup> For detailed discussion on 'minorityness', see Chapter Five.

a partner to it (Rubin 1975). As Rubin (1975) shows, marriage is an exchange between two men, where women are seen as the channels of the relationship, instead of being a partner to it, and women become the 'gift'. Breaking this exchanges often leads to the fear of losing authority as the father of the bride when she chooses to leave the community with an external man. It becomes almost losing 'property' that they possess. It is not acceptable generally that daughters will choose their spouses by themselves. Although these days some parents are flexible about this matter, traditionally it is still expected that parents will decide who their daughters will marry. Moreover, through the marriage ceremony, the father plays an important role, which is a symbolic one, in the 'exchange' process of the bride. Most of the churches now practice *konnya shampradan* (daughter's bestowal) and *biday* (after the wedding saying goodbye to the daughter when she goes with her husband to her in-laws' place), which symbolises this exchange that Rubin (1975) talks about.

However, when a daughter chooses her spouse by herself for love, if the spouse is from the Christian community, and once her parents agree with her choice, the rest of the ceremonies becomes equivalent to a marriage traditionally arranged by the parents. Similar to arranged marriages, in this case, the two families will sit together and plan accordingly. So although the marriage is for love, it is easily convertible to a traditional marriage by adding necessary features. But when it involves choosing a non-Christian man, all these traditions and rituals collapse and the 'exchange' breaks down. Both the parents and the community perceive this as a failure from their ends particularly of her father. So, controlling women's choice is a vital part of keeping the 'exchange' intact.

The other reason for this panic is at a somewhat greater level, with regards to the group and its identity. The minority identity<sup>7</sup> comes into play in creating such panic. Religion-based minority communities function as a separate and isolated

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<sup>7</sup> For detailed discussions on minority identity, see Chapter Five.

entity from the mainstream community in order to protect their interest and identity. In this process of identity protection, women's position in the community becomes a critical factor. Under these circumstances, when the community loses women through mixed marriages, the community become protective of them. Therefore, being a minority group in a majority Muslim-dominated society, the panic of losing women creates another layer of complexity.

### **Creating mutuality and accommodating difference**

Despite the measures and precautions that the Bangladeshi Christian community has taken to prevent *oshomo jowal*, both young men and women marry people from different religions, mostly Muslims and Hindus. This section explores how mutuality is created and differences are accommodated within the Christian community with regard to these inter-religious marriages. During my fieldwork in Dhaka, I interviewed a number of Christian lay leaders of the Protestant community. Among them, John Adhikary was one of the most prominent Baptist leaders. Apart from his church leadership, he was also a leader in the amendment process of the Christian personal law. When I interviewed John, he told me that he had carried out an informal survey among the Protestant community on the issue of mixed marriages to understand the current trend. According to his survey, 14% of educated young people from the Protestant community marry someone from another religion. Out of this 14%, 70% leave the church. Moreover, 80% of Protestant young men who marry Muslim women leave the church. Out of these young men who leave the church, 50% convert to other religions. About 75% of those who do not keep their affiliation with the church because of mixed marriages are children of church leaders. As this particular survey was conducted in an informal way, I am assuming that it was not conducted by following sampling and other formal research techniques. However, in the absence of any other statistics, these ratios can provide us with some idea about what actually is

going on in the ground. John Adhikary told me that as part of his work in relation to mixed marriages, he also ran a workshop in 2009 for couples who have entered into mixed marriage relationships and where the non-Christian spouse has converted to Christianity. He also provided me with a copy of the report of the workshop.

The workshop, titled 'Mixed Marriage and Culture', was held on the premises of a national NGO in Dhaka under the leadership of John Adhikary. In the workshop, more than ten couples with different religious backgrounds were present and shared the different experiences that they had been through because of their mixed-marriage situations. Among the couples, there were both husbands and wives who had Muslim and Hindu backgrounds and who had now converted to Christianity. However, while sharing their experiences, the most common experience stated was that due to their mixed marriages, they have lost family support from both sides. The Christian parties who married a Muslim or a Hindu found that their family had stopped maintaining relationships with them because of their marriage outside the Christian community. At the same time, those who came from other religious backgrounds and married a Christian and have converted also experienced their families cutting all contact because of their marriage and conversion. So from both sides, they have lost their familial and social support.

Although mixed marriages have created various issues within families and communities, John Adhikary thinks that mixed marriages actually bring good to society as long as the non-Christian party can be integrated through conversion. In the workshop, a summary of John Adhikary's address goes like this: Mixed marriages have enriched the Christian community. But in this globalisation era, this new commitment has not only challenged the older values. Mixed marriages lead to having a more brilliant generation. Science has proven that genetically the more distance exists between couples, the probability increases of having healthy and brilliant children. Those who have entered into mixed marriages, they have

strengthened community in this way. The time has come to see mixed marriages from different angles. Those who have entered mixed marriages, they should consider having more children, because they are genetically in a stronger position. The Christian community needs intelligent people as this is how a developed society can be created. The community needs good citizens and intelligent members.

While some leaders show their anxiety for mixed marriages, some others find ways to accommodate these types of marriages. John Adhikary's effort is closer towards the latter. In order to justify mixed marriages, his first condition was conversion. In the workshop, only couples where the non-Christian party has converted to Christianity were invited. Therefore, as per John Adhikary's argument, mixed marriages can only be accepted in the community as long as the non-Christian spouse converts to Christianity. In this way, apart from the moral panic of the community, there is a clear case of mutuality creation taking place in other parts of the community. In this specific case, through converting the non-Christian spouse and their enculturation, mutuality is created.

Shumi Halder's story provides another example of the creation of such mutuality. Shumi is a woman in her 30s from a Protestant family. She had a relationship with Sujay, a Hindu man, for more than ten years, beginning with their time at university. However, because of their different religious backgrounds, none of their parents agreed to their marriage. When I was conducting fieldwork, Shumi shared the story about how she and Sujay had been suffering for years. Finally, her father gave Shumi a condition. He said that he will only provide his consent as her father to this marriage if Sujay converts to Christianity. As both Shumi and Sujay were determined that they would go for a social marriage, finally, Sujay converted to Christianity to marry Shumi. She said,

Sujay had no other choice but to convert. But I know this is not a conversion in the true sense. He just needed to satisfy my father by showing that he became Christian. No one from his family also know

about his 'fake' conversion [laughs]. The pastor took a few classes and taught him about Christianity and then baptised him two days prior to our marriage. Sujay doesn't even care about any religion. So it was not a big deal for him. But at least through this, we could marry socially and received social recognition in my community.

Another example of creating mutuality is provided by Elizabeth Saha's conversion experience when, as a Protestant (Baptist) women, she married a Catholic man, Julian D'Costa. Elizabeth told me that their marriage was also for love. When both families met to talk about their marriage, they decided that the wedding should be held in Elizabeth's church in a Baptist way. Julian's family did not have any objections then. So, after a few months, their wedding took place and Elizabeth moved into her husband's house. However, the local Catholic Church, to which her husband and his family members belonged, did not accept this marriage. Since Julian's family did not inform the Catholic Church or seek their permission for this marriage and, moreover, since their marriage was not held in a Catholic way, the church informed them that such marriages cannot be accepted in the church. In order to resolve this issue, Elizabeth had to attend classes in the Catholic Church and converted to Catholicism. After her conversion, the couple remarried in the Catholic Church. Both Shumi and Elizabeth's stories depict how, through conversions, mutuality is created and differences are accommodated in cases of mixed marriages. But in both cases, the non-Christian (in Shumi's case) and the non-Catholic (in Elizabeth's case) parties were only accepted by their respective societies once they converted and accepted the religion of that community.

### **Violence within *oshomo jowali***

The processes of creating mutuality in the cases of mixed marriages take various forms and degrees. However, within these processes, some blindspots exist which are not visible to the community, intentionally or unintentionally. In fact, some of these processes of creating mutuality even take violent forms and result in

domestic violence. The Christian community is occupied with protecting women from going to another community. But the Christian community often forgets about women who came to their community through marriage, followed by conversion. The blindspot exists in the latter cases, where women from other religious communities married Christian men and converted to Christianity.

I met Chobi Biswas during fieldwork in Dhaka. Chobi is a convert Christian woman in her late 40s, now working as a cleaner in a school in Dhaka. Before marriage, Chobi was a Muslim woman. Her original name was Anwara Begum. After marriage, she converted to Christianity and took a new name. When she first met her husband in Dhaka, he was working as a caretaker of a foreign missionary doctor's clinic. When I interviewed Chobi, she told me, "I never saw a Christian in my life before meeting my husband. I lived in a Muslim environment where we had no interactions with any non-Muslim community". After her visit to the clinic, a relationship between them grew. But during their relationship, her husband never told her that he was a Christian man. Chobi assumed that her husband was a Muslim. It was only after her marriage, that she came to know about his religion. They married at a court.<sup>8</sup>

After marriage, she came to know that her husband was a Christian. I asked Chobi why after her husband's deceptive behaviour, she did not consider going back to her own family. She told me, "Once my honour has been destroyed, what is the use of going back? I could easily leave him after knowing that he was not a Muslim and go back to my family as until then no one in my family knew that I married this person. But I decided to live with him and took it as my fate". It was her decision to convert. In her words, "If I live with him in his *songsar* [family] and when we will have children someday, what identity will my children have? Thinking these consequences, I finally converted". She also explained how the

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<sup>8</sup> Some people marry in the court through the Notary Public. This type of marriage is often referred to as a 'court marriage', but this type of marriage is not considered legal marriage as they are not performed under any marriage law. Many people still go through this type of marriage and live as married couples.

priest of a Baptist Church provided her with Christian teaching and then baptised her. After baptism, Chobi and her husband again married in the church.

However, later, when her family and relatives were informed about her marriage and conversion, they did not accept her or her husband. Instead, they treated her poorly. Her family wanted to disown her legally, but her father did not go through with it. Because of her marriage, their community made her family *ekghore*, i.e., they were boycotted. But all this could not provide Chobi with a decent marital life. She told me how violent her husband becomes when anything goes wrong. Chobi has been enduring serious physical abuse just for the sake of protecting her marriage. She approached her church and a number of community leaders explaining her situation, but she has received no support from them so far. However, she still wants to believe that he is her husband and this is her family and no matter what happens, she should be there. She thinks she has already gone too far by marrying a Christian man, so she cannot afford to break this marriage and commit another 'sin', in her view.

Chobi's case shows the other side of creating mutuality, which is often unnoticed in the Christian community. The story depicts her extreme vulnerability that has been created by marrying a man from another religion, leaving her own religion and converting to her husband's religion, and by losing her family support because of her marriage and conversion. Her gender ideologies of honour and chastity also played a role in her endurance of her husband's abuse. She further became vulnerable in her new community after conversion as she entered the community from outside and she does not have adequate support within the community. All these factors shaped her situation in a rather complex way. As a result, Chobi thinks that now she has to endure severe violence from her husband.

During my fieldwork, I also met Jhumu Baroi, who is also a converted Protestant woman in her late 40s. Jhumu had similar experiences to Chobi. Currently, she

works in a national NGO and serves as a woman leader in her local church in Dhaka as the Secretary of *mahila samity*. Jhumu was a Hindu woman before her marriage. She used to work for her husband's construction firm as an accountant. He was a Catholic. She described her marriage as "an accident". Jhumu had a relationship with another Hindu man and her husband (then boss) knew about it. She said, "I never ever imagined that I would marry someone from the Christian community". She told me that while working there she had no idea that her husband loved her secretly as he never told her about his love for her.

In 1988, Jhumu travelled with her employer for work in a district town. But when Jhumu and her boss reached there, he attempted to create fear in her by telling her that he came to know that some of the local men were planning to abduct her, but he stopped them by claiming that Jhumu was his wife. Jhumu's boss also said that those men demanded to see a proof that they were a married couple and, therefore, they should get married. Jhumu told me that she was a young girl back then and easily believed her boss' story and became frightened and finally, she agreed to marry him. But after their marriage, she came to know that he lied to her in order to marry her. Their marriage was held according to Hindu customs in a *kali mondir* (temple).

She said, "I had no feelings for my husband at all. But when he gave me the 'honour' of being his wife, then some responsibilities arises from my side as being his wife. Willingly or unwillingly, I am then bound to perform my responsibilities as his wife and accept him as my husband". Moreover, she was from a Hindu family, with a particular set of values about the husband-wife relationship and marital life. After their marriage, her husband's family did not accept her; instead, she was abused by them. Her in-laws' family belonged to the Catholic Church. Because of their marriage, her father-in-law stated that he had lost all his honour because of her. Jhumu's father-in-law told a Baptist priest, who visited their house, "Pastor, please make this 'creature' [Jhumu] civilized. Please teach her according to your church rules and make her 'human'. My son has picked her up

from somewhere and brought her home". Jhumu told me that both her father- and mother-in-law mistreated her for many years. Moreover, after listening to them, her husband beat her badly on several occasions. She said, "But after all these, how could I leave him and his family? I had no support anywhere else. Even if I wanted to go back to my parents' place, they would never accept me. Moreover, I had fear of public shame".

I asked her if she had a shelter at that time and had an opportunity to leave him, would she do it? She confidently said,

No, I would not. After my mother-in-law took me to her house, my father contacted me and they planned to rescue me from this marriage by sending me to India to our relative's house. They also wanted to arrange a marriage for me there and I could restart my life. But I refused my father's proposition as marriage is something which we have only once. So I told them that at any cost, I would not leave. My husband can commit mistakes, but I cannot. Maybe he has married me by bluffing me, but once he is my husband, I can't betray him.

She further told me that after three months of Christian teaching, Pastor Ghosh baptised her. She said that the pastor's wife taught her how to live in a Christian community, how to read the Bible, how to pray, and even how to talk in a Christian environment. Finally, after sometimes, thinking about her future children, she decided to convert. In her words, "If I do not give importance to my husband's religion, then what will our children do? If I could not raise the children properly, then I would be blamed by this family as well as by the society. So it was logical for me to leave my previous religion. My previous religion is not going to help me anymore in my situation". I asked her, why had she endured so much? She said,

Because of the fear of society, fear of dishonour. If I leave my husband today, people will point me out as a 'bad woman'. Why would I take that *kolonko* [scandal]? Already one *kolonko* has been printed on my forehead that I have left my own religion through my conversion. Do you think it is worth to take another *kolonko* on my forehead?

In Jhumu's case, we can also see deception, about which the Christian community remains inactive. Moreover, similar to Chobi's situation, Jhumu became vulnerable after losing her family support and became subject to her husband's violence. In both Chobi and Jhumu's cases, the processes of creating mutuality by their conversion took a violent turn. Most likely since both of their husbands know that they have no family support they continue to take advantage of their vulnerable situations.

## **Conclusion**

In this chapter, by examining mixed marriages within the Christian community, I have shown the trepidations of a minority community even when the state law allows mixed marriages for the Christian community. The community actively discourages and prohibits inter-religious marriages and maintain its integrity by building boundaries and in the process, the community shows a fear of a 'sin' of mixed marriages and blame all unhappiness on these inter-religious unions. Mixed marriage is a greater issue within the Protestant community than the Catholic community as the Catholics accept mixed marriages (both inter-religious and inter-denominational) in the church. In this process, a moral panic is developed within the community, which is interlinked with gender ideologies. As a reaction to this panic, the community takes initiatives and creates additional rules and regulations in order to stop mixed marriages and this type of marriages play a crucial role in self-identification by blurring the boundaries of what constitutes a religious minority in South Asia.

The community accommodates differences and in the process, mutuality is created. In many instances, the violence becomes a part of the process of mutuality creation. Here, a paradox can be seen around the issue of mixed marriages. On the one hand, the entire community overemphasises 'protecting' the young generation, particularly women, from leaving the community and marrying someone from other religion. On the other hand, they are

simultaneously accommodating the differences by creating mutuality, sometimes through violence.



## **Chapter Seven**

### **End of marriage: Bargaining with patriarchy in search of alternatives**

#### **Introduction**

When I first told my father that I wanted to divorce my husband to escape an abusive marriage, he specifically provided me with two suggestions: one, I should resign from my position as the National General Secretary of the YWCA of Bangladesh, and two, I should leave the country and seek divorce elsewhere. I realised that there were two particular reasons for my father's suggestions: first, the gender-discriminatory provisions of the divorce law for Christians makes it significantly difficult for women to initiate a divorce under the Divorce Act, 1869, and second, being a woman in the Christian community, particularly in a leadership position, it is scandalous to be divorced. I took both suggestions of my father. I came to Australia and obtained a divorce under the Australian divorce law. However, not many women can leave their jobs or leave the country to obtain a divorce. In that sense, I was one of the few fortunate women in this situation. Many Christian women in Bangladesh are forced to continue living in marriages that do not any longer exist as a bond between two people.

In the academic realm, until very recently, marital dissolution or divorce did not draw the attention of many South Asian scholars or media as much as dowry or early marriage. Grover (2011) argues that the singular reason for this lack of attention is the prevailing view stating that South Asia still has much lower official divorce rates compared to the Western world. Simpson (1994, 831) found that divorce has become a “central demographic features of most European countries”. Comparatively, as a region, South Asia scores much lower divorce rate

than the Western countries. It was in the 1980s when the Shah Bano case stirred up controversy over Muslim women's maintenance rights in India that issues such as divorce and maintenance began to be the subjects of debate among scholars as well as in the popular media. Consequently, recent times have seen considerable discussion on the question of divorce in both academia and in the human rights and women's rights movements.

This chapter examines divorce and associated practices in the Bangladeshi Christian community. As noted, under the situation of legal pluralism, divorce and its related issues for its Christian population are governed in Bangladesh by the Divorce Act, 1869. This 150-year-old civil law has not been amended since its passing during the colonial rule. This law contains several gender discriminatory provisions.<sup>1</sup> Although the Divorce Act, 1869, allows the members of the Christian community to divorce their spouses, the idea of divorce itself remains a contested issue within the community. Many times, community members, including leaders, assert that Christians do not get divorced and they justify their assertion with the community's religious, gender, and social ideology.

By examining laws, social and gender ideologies, and practices around divorce, I make two arguments in this chapter. First, although the community prohibits and discourages divorce, both men and women actively seek to receive the remedy of divorce. In most cases, since the gender-biased provisions of law and social and gender ideologies do not enable them to initiate or receive a legal divorce, both men and women in the community choose different paths of alternatives to divorce by bypassing the state legal system. Second, within the processes of choosing the divorce alternatives, women, being within their own individual subjective positions, make strategic choices and engage in patriarchal bargaining in order to fulfil their objectives.

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<sup>1</sup> For details, see Chapter Three.

This chapter is divided into four sections. The first section discusses two specific theories regarding legal pluralism and feminism. I anchor my empirical findings and discussions that are elaborated in the latter sections in these theories. I use the concepts of ‘forum shopping’ and ‘shopping forums’ (von Benda-Beckmann 1981) and ‘patriarchal bargaining’ (Kandiyoti 1988) to theorise the practices of divorce amongst Christians of Bangladesh. The second section takes up the concepts of forum shopping and shows how Christian women take alternative paths bypassing the state law to receive a remedy of divorce or its alternatives. Based on the concept of shopping forums, the third section analyses how different institutions actively influence or shape the choices of women with regard to divorce alternatives. Finally, the last section shows how, within the contestation of the processes of forum shopping and shopping forums, women consciously use different strategies, based on their subjective positions, in achieving their goals (through divorce and divorce alternatives) and how they engage in patriarchal bargaining.

### **Forum shopping, shopping forums, and the patriarchal bargaining**

The theoretical lens that has been commonly used by scholars in order to understand marriage and divorce are modernity, capitalist development, globalisation or individualism amongst other things, which has been recently questioned by other scholars. For example, according to Palriwala and Kaur (2014, 1), the questions that we should ask in order to understand marriage and divorce better are: Do we need to “rethink the theoretical models with which we have looked at marriage?” Or are these divorces results of modernity, transformation to a capitalist society, or globalisation or have the themes been long present? By keeping these questions in mind, I make use of two distinct but inter-related concepts: first, from the theories of legal pluralism the concept of forum shopping and shopping forums, coined by von Benda-Beckmann (1981) and then from feminist theories, the concept of the patriarchal bargaining,

introduced by Kandiyoti (1988). Although these two notions are distinct from each other, I demonstrate that they can be drawn together as one in order to theorise the practices of divorce among Bangladeshi Christians.

Forum shopping under a situation of legal pluralism is articulated by von Benda-Beckmann (1981) in her research in Minangkabau village in west Sumatra through a close examination of various institutions that deal with disputes. In pre-colonial times, village life was governed by *adat* (customary law). Although during the 16<sup>th</sup>-century people of Minangkabau village converted to Islam, the norms of Islamic law had a very limited role in their social relationships and behaviour. Instead, Minangkabau's social and political organizations operated based on matrilineal systems. Within such a situation, she found that the disputants in the village could choose between a number of institutions for dispute resolution (von Benda-Beckmann 1981). To explain, she invoked the idea of forum shopping and argued that "disputants have a choice between different institutions and they base their choice on what they hope the outcome of the dispute will be, however vague or ill-founded their expectations may be" (von Benda-Beckmann 1981, 117).

The story does not end there. Von Benda-Beckmann (1981, 117) further argued that it is not only the disputants who shop between various forums but also that the forums shop for disputes "for their own, mainly local political ends". In most cases, these institutions act as individual functionaries that have different interests from those of the parties. These institutes take advantage of the processing of disputes in order to fulfil their interests (von Benda-Beckmann 1981). In her words, "So besides forum-shopping disputants, there are also 'shopping forums' engaged in trying to acquire and manipulate disputes from which they expect to gain political advantage or to fend off disputes which they fear will threaten their interests" (von Benda-Beckmann 1981, 117). Therefore, as much as disputants shop for the forum, the forums shop for disputes. Von Benda-Beckmann (1981, 145) calls these acts "reciprocal shopping". In my view, instead of

being reciprocal, the disputants and forums are often engaged in more competitive processes, which I elaborate later in this chapter.

Since the processes of forum shopping and shopping forums are dynamic ones that, in many cases, involve bargaining, negotiations, and socio-political moves and acts, the disputes are not resolved due to the manipulations of various functionaries (von Benda-Beckmann 1981). Although the disputants can always go to state courts capable of taking executive decisions, in most cases they do not see state courts as a “real alternative” as the outcomes of these cases are unpredictable and the processes are expensive (von Benda-Beckmann 1981, 145).

Before going any further, however, let me define the term ‘divorce’ prior to explaining how women engage in patriarchal bargaining in the dissolution of marriage. For Bangladeshi Christians, divorce means the dissolution of marriage under the Divorce Act, 1869. However, apart from divorce or dissolution of marriage, there are other terms that are usually associated with the discussion of divorce. One is the annulment of marriage and the other is separation.<sup>2</sup> It is important to note that although these three terms — dissolution, annulment, and separation — are very different legally, all of them enable a person to live outside of marriage. The divorce practices of Christians in Bangladesh involves all three types of remedy and in many instances, these notions overlap and cross their respective boundaries from time to time. In other words, they sometimes bring the same meaning and consequences in the lives of women in the Christian community.

The commonly understood meaning of the term ‘divorce’ is the legal divorce that couples receive from state courts. Because of this specific and narrowed definition, even today, the rates of divorce are still low and the distinction between the notions of divorce, dissolution of marriage, nullity of marriage, and separation becomes blurred and ambiguous. For example, as Parry (2001)

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<sup>2</sup> For detail discussion of the Divorce Act, 1869, see Chapter Three.

observes, there are many cases where couples have not seen each other, have no trace of their spouses, let alone any relationship, but have still remained legally married for years. In these specific cases, couples were living outside of marriage, no matter if they are legally divorced or not. Many of them remarried without being legally divorced. I found very similar findings in the Christian community in Bangladesh. Therefore, although distinguishing between jural and conjugal stability is essential (Parry 2001), we need to contextualise divorce as an umbrella of concepts which holds the whole spectrum of notions that lead to living out of marriage (dissolution, annulment, and separation). According to Parry (2001), it would be a mistake to assess the divorce situation in South Asia, including in Bangladesh, based on the official divorce rate. In fact, official statistics only show us the tip of the iceberg.

Coming to the second concept — that of the patriarchal bargaining — I find Kandiyoti's (1988) view useful in analysing the cases I studied. The patriarchal bargaining examines women's strategies — based on their respective subjective positions — to fight the ideologies that oppress them in their everyday lives. According to Kandiyoti (1988, 275), “women strategize within a set of concrete constraints that reveal and define the blueprint of ... *patriarchal bargain* of any given society, which may exhibit variations according to class, caste, and ethnicity” (emphasis in the original text). Therefore, based on women's intersectionality that cuts across class, age, ethnicity, amongst other factors, women's strategies vary. Kandiyoti (1988) illustrates women's patriarchal bargains by contrasting two systems of patriarchy in sub-Saharan Africa on the one hand and the Middle East, South Asia, and East Asia on the other. By analysing different studies in these two regions, Kandiyoti (1988) shows that in sub-Saharan Africa, women resisted unfavourable labour relations in their respective households. However, in other areas, such as the Middle East or South Asia, women living under classic patriarchy<sup>3</sup> employed interpersonal strategies to

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<sup>3</sup> For a detailed discussion on classic patriarchy, see Chapter Five.

ensure their financial and social security in their old age through manipulating the affections of their husbands and sons.

Although many scholars have developed Kandiyoti's (1988) notion of patriarchal bargaining further by using the concept in different contexts and in different ways, I argue that Kandiyoti's (1988) concept is still equally useful even after three decades.

Molyneux (1998), a decade later than Kandiyoti (1988), used the concept of patriarchal bargaining to analyse women's movements by combining discussions from feminist political theory and development studies. Around the same period, Read and Bartkowski (2000) also used Kandiyoti's (1988) concept of patriarchal bargaining to examine the conflicting meanings of the veil among Muslim religious elites and Islamic feminists living in Austin, Texas.

Later, Lahiri-Dutt and Sil (2004) found women's similar bargaining against patriarchal ideologies through their income-generating activities among middle-class societies in Burdwan, India. They trace these women's efforts to push back the boundaries of social and cultural norms that they are subject to (Lahiri-Dutt and Sil 2004). However, they argue that these women negotiate with these boundaries "without overtly threatening the social system into which ... [they belong]" (Lahiri-Dutt and Sil 2004, 258). In this article, the authors explore how through various kinds of informal income-generating activities, the ordinary middle-class women in non-metropolitan locations reconstruct their new identities and challenge and redefine their ideological gender boundaries that are products of patriarchy. However, in this process, women do not necessarily act in a collective form. Moreover, they do not assert their independence through their actions. But they take more a strategic stance by appearing "as subordinate, subservient and subject to patriarchal oppression" (Lahiri-Dutt and Sil 2004, 270).

In a more recent work in Kenya, Gatwiri and Mumbi (2016) explore silence as a form of power that is used tactfully by women to negotiate and/or renegotiate

their positions. They use a feminist lens to understand and theorise the use of soft power in the form of silence. Gatwiri and Mumbi (2016, 13, 14) argue that using women's voices as a form of resistance may intensify their oppression and abuse in many instances, which can be understood as "patriarchal backlashes". However, in such situations, various forms and uses of silence can shift the gendered power structure in some instances.

Coming back to Kandiyoti's (1988) notion of the patriarchal bargaining, the concept acts as an influential driver in shaping women's intersectional and gendered subjectivity. The concept of patriarchal bargaining also reveals gender ideologies in a specific context. However, by no means is women's bargaining with patriarchy monolithic or single-fold; instead, its nature is multifaceted. Women's resistance in this particular case could take active or passive forms, which are usually flexible. In other words, women's patriarchal bargaining is somewhat fluid in nature, a more strategic battle, in Kandiyoti's (1988, 286) words, "which may nonetheless be contested, redefined, and renegotiated".

Kandiyoti (1988) concludes that the nature of patriarchal systems in that specific culture, class, and temporal concreteness can be captured by systematic analyses of the strategies and coping mechanisms that women deploy in order to push the boundaries of patriarchal ideologies, and resist, accommodate, and conflict over rights, resources, and responsibilities. It is important to note that women's bargaining with patriarchy does not always reflect their rational or intended choices. Women's bargaining with patriarchy also indicates their unconscious gendered subjectivity, which is a result of their early socialisation and adult cultural background (Kandiyoti 1987a, b). The strategies and choices are the results of women's complex and contested personal and political struggles and negotiations. Therefore, women's bargaining with patriarchy is multifaceted, flexible, and fluid, depending on their context, situation, and objectives in a particular situation.

## **Divorce and its alternatives: Forum shopping**

Under the Divorce Act, 1869, the option for mutual divorce does not exist in Bangladesh and, moreover, divorce cannot be received unless adultery is proven. Clearly, the state law does not treat men and women equally as it provides different conditions for men and women to initiate a divorce.<sup>4</sup> In addition to all of these technical and legal factors, it is indeed hard for women to initiate a divorce by making a complaint of adultery in a court that is mostly occupied by male judges, lawyers, experts, and reporters. In such a male-dominated environment in a country where gender equality is still a distant dream, for a woman from a religious minority community to discuss her husband's or her own adultery in a courtroom is commonly avoided to escape social scandal.

All these factors contribute to making the divorce law unusable by the majority of men and women seeking a dissolution. As a result, many of them do not initiate a divorce under this Act, which was also reflected in my fieldwork findings. I examined all the divorce suits filed during the period from 2001–2016 at the High Court from the Divorce Suit Register at the High Court Division.<sup>5</sup> However, divorce suits can also be filed at the District Court as per the Divorce Act, 1869 (Section 10) as the petitioner has a choice to present their petition in either of these courts. Therefore, the number of suits at the High Court Division cannot provide us with a full picture of how many divorce suits are filed per year around the country. However, it surely provides an indication of how much the members of the Christian community use this particular Act. According to the Divorce Suit Register at the High Court Division, during the 16-year period from 2001–2016, the average number of divorce suits per year was only three. During this period, in 2009, the highest number of divorce suits was filed, which was seven. In 2002, there was no divorce suit filed at the High Court Division. These numbers show

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<sup>4</sup> For a detailed discussions on the provisions of the Divorce Act, 1869, see Chapter Three.

<sup>5</sup> See Appendix F.

how the Divorce Act, 1869 is almost never used by the members of the Christian community in Bangladesh.

If the divorce law for Christians is unused in most cases as the above statistics show, then the question that arises is: How do men and women deal with their marital breakups and related issues? How do they exit a marriage? The ideological beliefs and practices among Bangladeshi Christians do not stop them from exiting marriages. Although the statistics relating to divorce suits in the High Court Division show that the rate of legal divorce has been consistently low, in fact, in the last couple of decades, marriage breakups have greatly increased among Bangladeshi Christians. During interviews, many members of the Christian community, both from the Catholic and Protestant groups, expressed concerns about the increasing number of marriage breakups.

During my fieldwork, I interviewed 50 Christian women who went through a process of a marriage breakup and, surprisingly, I found only one among them went to the court and received a legal divorce under the Divorce Act, 1869. This finding is also consistent with the number of divorce suits filed each year in the High Court Division. However, the rest of the women I interviewed did not go to the court for a legal divorce due to many reasons that I have mentioned above. Instead, they took alternative paths to exit their marriages by avoiding court cases and minimising social scandals in order to escape abuse, discrimination, and inequality.

Some of the women I interviewed chose to be permanently separated from their husbands; some used other divorce laws (such as the Muslim law) and sent/received a divorce notice to/from the other party and considered it a divorce; some went for a mutual affidavit and declared themselves to be divorced, bypassing the court; and some applied to their church (Catholic) and received an annulment of their marriage. Many of these women (and their ex-husbands) remarried. Most of these women did not care if they received a legal divorce from

the court, instead, they were content simply by exiting their marriages. Many of them did not remarry, but some did.

In this way, women from the Bangladeshi Christian community take alternative paths, bypassing the state law, in order to reach their goals and use various legal, semi-legal, or non-legal means in getting a divorce or its alternatives. However, it should be noted that these alternative divorces cannot be called 'legal divorce' and if they are challenged in the court, most of them will not be accepted by the court as a 'proper' divorce. But in reality, when people are 'legally trapped' with a century-old civil law that does not help them to receive a remedy of a decent and dignified divorce, these alternative measures become their only pathway that can provide them with a remedy for their problems. Below, I discuss the various paths that women take to exit their marriages.

#### **Divorce under the Divorce Act, 1869**

During my fieldwork, I found only one woman, Angela Baroi, who received a remedy of divorce under the Divorce Act, 1869. Angela is a Baptist woman, in her mid-30s from Barisal, now working in a national NGO in Dhaka. When she was 25, she married a Baptist man (who was 26 years old at the time) in a local church in Dhaka. But after their marriage, he began to doubt her, thinking that she had affairs with her male colleagues. Moreover, her husband did not have a stable career. All these issues contributed towards the breakup of the marriage. Angela decided to divorce her husband. She moved out of their home and rented a place.

After she left their house, she approached her husband to settle the case mutually through affidavit (which I will discuss later in this chapter). But he did not cooperate with the process. After about six months, she filed a divorce suit in the High Court Division under the Divorce Act, 1869. Her lawyer advised her to file the case directly in the High Court instead of in a lower court as the latter would entail a lengthier process.

Angela further told me that she was informed by her lawyer before filing the suit that they have to prove his adultery as one of the grounds for divorce. She said that although there was no adultery committed by her husband, she had no other choice but to make a false complaint about his adultery. Later, I found from the court order that the High Court approved a decree nisi<sup>6</sup> in favor of Angela. Her husband did not appear in the court. After six months of decree nisi, the couple's divorce was made absolute by the High Court, according to the state law. As Angela's husband (or his lawyer) did not appear in the court and defend himself (or his client), she did not have to provide any proof of his adultery. Otherwise, she might have had to provide some proof of his adultery. The whole process took about two years.

She believes that instead of going to the court if she had gone to the church leaders for help and support, she could never have succeeded in getting a legal divorce. The leaders would have tried to "fix" their issues, in her words, and drag out the whole process in such a way that it would never be possible for her to exit the marriage. So she entirely avoided the community leadership and directly accessed the state court, which, she thinks, made it possible for her to get this divorce. She purposefully excluded herself from most social events so that the community could not interfere in the process. In fact, she said that she virtually stopped contact with most of her relatives, friends, and other members of her church. She did not attend church services during these years in order to avoid questions, comments, and scandal.

It is indeed true that since Angela's husband did not appear in the court, the process did not take a complicated turn. Otherwise, in a male-dominated court setting, it might have been difficult for Angela to receive this remedy. But it is important to note that before filing the suit, Angela attempted to convince her

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<sup>6</sup> A decree nisi is an order by the court stating the date on which a marriage will end unless a good reason not to grant a divorce is produced.

husband to take an alternative path of a mutual affidavit by declaring that they were divorced. Therefore, if her husband had cooperated, she might not have filed this suit; instead, they would have taken the alternative path. It was only because her husband did not agree to have a mutual affidavit that she took the path of filing a divorce suit.

### **Life-long separation**

Unlike Angela, not every woman takes the path of filing a divorce suit in the court. Instead, they take a number of alternative paths to exit the marriage. One such path is living separately from their husbands for the rest of their lives. Technically, living in separation is not a divorce, but I found that many women have taken this path for various social reasons. I met Marline Gomes during fieldwork in Dhaka, who had also taken a similar path.

Marline is a Catholic woman in her 50s, a mother of two grown-up children. She married at a very young age when she was studying for the Higher Secondary School Certificate (HSC). For many years after their marriage, her husband lived in the Middle East, working as a chef, while she and her children lived in Bangladesh. But he had never been stable in one job, Marline explained. She thinks that because of her husband's drinking problem, he did not have a stable career. After a few years, he came back to Bangladesh for good. But again, he could not settle in a job. Moreover, he became abusive, both physically and mentally, towards Marline. When the situation worsened, she often fled to her brother's house and then after a few days, came back when Marline's husband became sober.

Marline tried many options available to her socially for a remedy for her situation. She said that a number of times she and her husband went to the church for counselling. But counselling did not help them. She also made a formal complaint to the parish council, but they did not do anything for her. Later, she again went to the church to get a separation. But the priests did not

cooperate with her. The priests wanted the couple to resolve their issue and keep their marriage intact. She told me, “They used to say, look we do not have any divorce in the Catholic Church. If you want to be separated from your husband how will you raise your son? How will you give marriage to your daughter?” When I asked her why she did not apply for an annulment in the church, she told me that she did not know what it was and no one told her about this option before, not even the priests when she visited them so many times.

She also went to Ain O Shalish Kendra (ASK), a legal aid organisation for mediation. Many times ASK facilitated *shalish* (mediation) between her and her husband. But the situation did not improve. Finally, she left the house and moved into her brother’s house along with her children. During her time at her brother’s, she took some skill training and found a job and rented a place.

When I asked her why she did not initiate a legal divorce, she told me that first of all, she thought about the possible scandals that she had to encounter if she sought a divorce. Second, she thought keeping her status as ‘married’ could help to protect her from other men who may be interested in her both in her workplace and her community. Third, she also considered the possible social impact of her divorce on her daughter, particularly when she married. In her words,

Not everyone in the place of my work knew that I was a separated woman. I did not need to tell them. Only my bosses and a few more people whom I trusted knew that I was a single woman. If everyone knew that I lived separated from my husband, then many of my male colleagues would want to take advantage of me. You know what I mean, right? So keeping my marital status as ‘married’ helped me a lot to protect me from these kinds of people.

In Marline’s case, a number of factors led her to take the path of life-long separation and not to seek a divorce or annulment. First, her consciousness of the possible social scandal, particularly the possible impact on her daughter’s future, had stopped her from seeking legal remedies. Marline placed significant

importance on thinking about her daughter's future marriage, more so than on her son's, which is a result of a gendered ideology that exists in Bangladeshi society. In many cases, a girl is judged by her mother's deeds. It is often believed that if the mother has problems in her life, for example, if she becomes a divorcee, then her daughter's chance of a good marriage reduced. However, the same thing does not necessarily apply to sons in most cases. Because of this difference, Marline was conscious about her daughter's future more than her son's.

Second, her own financial insecurity did not provide her with the strength to fight for her rights. When she moved out of her house and began to live separately, she was unemployed at that time. Therefore, by the time she became financially solvent, many years had already passed, which did not make her concerned about initiating a legal divorce. Third, the church's involvement in her conjugal problems made her think that she did not have any other option but to live separately as a way of exiting her marriage. Moreover, the church did not properly explain all her options to her; for example, they did not inform her about the annulment that she could apply for. So, her lack of knowledge about this particular process also reduced her options. Finally, Marline wanted to keep her marital status as 'married' in order to protect herself from other men in her workplace and community. Therefore, being 'married' worked for her as a shield for her protection.

### **Muslim divorce**

Although the Muslim divorce law is not legally applicable to any person who is a non-Muslim, I found that even then many Christians have been taking this path in order to exit their marriages. Divorce for the Muslim community is governed by Section 7 of the Muslim Family Law Ordinance, 1961. According to the Muslim Family Law Ordinance, 1961, there are three mandatory steps to divorce for both husband and wife. However, the wife can only divorce her husband when the

power of giving a divorce has been delegated in the *kabin* (marriage contract). According to Section 7 of the Ordinance, the initiator provides a notice of divorce to the local Chairman of the Union *Parishad*<sup>7</sup> and supplies a copy of the notice to the initiator's spouse (Section 7(1)). The divorce becomes effective after 90 days of providing the notice to the Chairman (Section 7(3)). After the expiry of 90 days, the concerned parties can receive a registration certificate from a registered *kazi*.<sup>8</sup>

However, Christians cannot divorce under the Muslim Family Law Ordinance, 1961. But it is important to note that in Bangladesh more than 90% of the population is Muslim, which means the Muslim family law governs the majority of the country's population. Lawyers with a wider knowledge and education, practising in large cities such as Dhaka, usually have in-depth knowledge of different personal laws for different religious groups. However, many lawyers in smaller towns outside Dhaka or in rural areas have a significant lack of knowledge about the Christian family law. So when a Christian man or a woman goes to a lawyer for advice, they direct them towards the Muslim family law without realising that there is a separate set of laws applicable to them.

In my fieldwork, a lawyer, practising in the Supreme Court in Dhaka, confirmed this type of divorce practice among Christians. He told me that it is not only the lack of knowledge but also the lack of expertise that explains why these lawyers do not proceed with the Christian Divorce Act, 1869. Therefore, although some lawyers have knowledge of the Christian personal law, they do not necessarily know its detailed clauses and provisions and hence consciously direct their clients towards the Muslim Family Law Ordinance, 1961, knowing that this law cannot be applicable to the Christian population. Moreover, the lawyer I spoke with told me that many of his Christian clients also want to frighten their spouses just by sending them a divorce notice, which is only possible under the Muslim

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<sup>7</sup> The smallest rural administrative and local government units in Bangladesh.

<sup>8</sup> An Islamic legal scholar and judge who can conduct a marriage.

law. Therefore, in many cases, these Christian clients insist the lawyers take the path of the Muslim divorce law while knowing that that particular law is not applicable to them. Many of them consider themselves to be divorced simply after serving a notice to their spouses.

Moly Biswas had the experience of being divorced under the Muslim personal law. Moly is a Protestant woman in her early 30s from the northern districts of Bangladesh, now running her own beauty parlour in Dhaka. She is the mother of a seven-year-old daughter. She lived separately from her husband for a few years as their marriage was not working at all. However, when her daughter was four years old, her husband sent her a “divorce letter”, as she described it. When I asked her what kind of divorce it was, she told me that she was not sure. In her words, “After I received the divorce letter, I did not respond to it. In the letter it was written if I do not respond, then after 90 days, the divorce will be finalised. So now we are divorced”. She did not consult with any lawyer or anyone else about it. Moly still believes that she has already been divorced and does not have any idea about laws. She also heard that her husband remarried after their ‘divorce’.

However, after being divorced (as she described it), I found that Moly still describes her marital status as ‘married’ in official documents and uses her husband’s name in her national ID, bank account, and other official documents. I asked her why. She told me that, otherwise, she has to tell the bank manager or government officials that she is divorced and it will not be dignified for her to discuss the matter in those offices. She thought that she would be safe if people see that there is a name written on the ‘husband’s name’ section or the ‘married’ box is ticked in a form. Otherwise, people want to take advantage from a divorced or a single woman.

Moly’s lack of knowledge about the personal laws that are applicable to her enabled her to think that the way she was divorced is a legal form of divorce.

However, similar to other women I met in my fieldwork, Moly is also conscious about the social scandal that a divorced woman face in their day-to-day lives. Therefore, she still decided to use her 'married' status in official ID and documents in order to avoid the scandal and to protect herself. However, during fieldwork, I also met Shukla Baroi, who used the Muslim Family Law Ordinance, 1961 to divorce her husband.

Shukla is a Protestant woman in her mid-40s from a poor family from Barisal, now living in Dhaka. She works as a menial staff in a Christian NGO. Shukla married a Protestant man who was married before. She told me that her husband told her that he divorced his previous wife, which actually did not take place. Shukla came to know about her husband's false statement about his divorce after living with him as a married woman for a few years. But at one point her husband left her and began to live with his first wife. She told me that after her husband deserted her, she divorced him. She was not closely associated with any church and, therefore, she did not feel the need to seek help from the church. When I asked her about the divorce process that she followed, she explained that she divorced her husband "in the court", as she expressed it. She described how she went to the court and met a lawyer, who asked her to sign a paper and told her that he would then send it to her husband. The lawyer also told her that within the following three months, their divorce would be finalised. Shukla has remarried another Protestant man, who works as a tailor in Dhaka.

In Shukla's case, both her poor socio-economic background, the lack of association with the church, and the lack of legal knowledge led her to take a path of divorce that is not applicable to her as a Christian woman. The first two factors are interlinked. Because of her poor background, her absence in the church was not noticed. Therefore, the church did not become involved in her divorce process. However, her lack of knowledge of laws misled her to take a path that is not applicable to her circumstances. But it clearly helped her to exit the marriage and even to remarry.

## **Mutual affidavit**

The mutual affidavit is one of the most common forms of alternative divorce paths that Bangladeshi Christians have been increasingly taking in recent times. In my fieldwork, I met a number of women (and men) who took the path of a mutual affidavit as they did not want (or did not have the option) to go to the court to get a divorce. Recently, many lawyers have been presenting this path to Christians as the Divorce Act, 1869, is difficult to use because of its gender-biased provisions. By signing a mutual affidavit, social scandal can also be minimised as neither party has to go to the court. For this reason, the mutual affidavit is increasingly becoming a common practice in order to receive a remedy of a 'decent' divorce. However, this particular form of alternative divorce can only be received with mutual consent. In other words, if both parties cannot come to a mutual agreement, then this kind of affidavit is not possible.

I observed that mutual affidavits are being increasingly socially accepted as a form of divorce within the Christian community. Although many people already know that mutual divorce is not a legal divorce per se, however, many men and women are using this sort of affidavit to declare themselves to be divorced. I found that many men and women who took this path have also remarried. Some of these remarriages took place in churches, while some occurred in the court through a notary public.<sup>9</sup>

I met Bani Halder in my Dhaka fieldwork, who is an educated Protestant woman in her early 30s. Bani told me about her experience of taking the path of the mutual affidavit in order to exit the marriage. Bani was married to a Protestant man in 2008. Within a few years' time, when their marriage broke down, she left her husband and began to live with her mother. Before moving out, for a number of years she lived with her husband even after she knew that their marriage was already broken and there was no way to revive it. Although they were living

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<sup>9</sup> For discussion on marriages through the notary public, see Chapter Six.

under the same roof, they hardly interacted or lived as a married couple. Bani did not want to initiate the social breakup of the marriage after she calculated the associated risks of being blamed by her husband's family and the community for the marriage breakup. She said, "I never said I wanted to break this marriage. I knew in my mind that things will not work eventually, but I kept quiet. I also decided not to take any children as things will complicate even more".

After living separately for approximately three years but under the same roof, Bani's husband finally told her that he wanted a divorce. After a moderate argument, she left the house. Soon her husband was desperate to divorce her. When he asked for a divorce, she went to a lawyer for advice. The lawyer told her that, under the circumstances, she can easily demand a good deal of money from her husband as compensation. The lawyer provided her with a list of reasons, based on which she could demand the money. For example, the amount her family spent for her marriage, the mental stress that she had gone through, and her maintenance for a number of years, and he also advised Bani to ask for the loss of her virginity. She began to negotiate with her husband. At first, she demanded a large sum of Tk.25 lacs (USD 32,000), gradually going down to finally settle at Tk.7 lacs (USD 9,000). Her husband then contacted a lawyer who prepared a draft for 'mutual divorce' agreement which both parties agreed on. Finally, the document was signed and the amount was fully paid by cheque at the time of signing.

Bani showed me the affidavit they signed. This legal paper states on the top, 'Before the Notary Public, Dhaka: Affidavit: Dissolution of Marriage by the Mutual Consent of Husband and Wife'. In the document, a declaration was made by both parties that state that as within their conjugal life significant differences have now arisen and because counselling by friends, relatives, and acquaintances has failed to achieve the desired result and the parties have also begun to live separately for the last four months. So, under the circumstances, it has become extremely difficult for the couple to live together as a married couple. Therefore,

both parties have mutually decided to discontinue their conjugal life and to dissolve their existing marriage. According to the affidavit, the marriage is considered dissolved, null, and void. Moreover, there were some conditions to fulfil this decision. For example, both parties must live separated; no party should interfere in each other's lives and lifestyle; both will possess absolute liberty to live their respective lives as per their desire and may be remarried in the future as per their wish without any kind of hindrance from the other; and neither of them should harass, annoy or interfere with the other and should always maintain a mutually respectful disposition. Four years after signing the affidavit, Bani remarried a Protestant man and their wedding took place in a Protestant church. She said there were no issues with this divorce paper and she did not face any problems during her second marriage.

In this case, Bani and others who received a remedy of mutual divorce through an affidavit, the couple enforced a number of mutually agreed-on conditions that will allow them to exit the marriage without going to the court. The consequences of such exit strategies are almost similar to those of a legal divorce from the court. Although it is not a legal divorce per se, the couple and their families become convinced that it is a form of legal divorce. They also obtain the satisfaction by believing that they have taken a legal path. As the document is prepared by a lawyer, printed using a stamp paper and signed duly by both parties, along with the lawyer, as well as witnesses from both sides, to them it becomes a legal form of divorce. As it is done mutually, they also feel ensured that the other party cannot challenge or sue on the basis of this document. This process has become increasingly common among Bangladeshi Christians as it leads to minimum scandals and provides them with a feeling of legally executed divorce although in the true sense it is not a legal divorce.

In this way, minority women take multiple, alternative paths, for example, life-long separation, using majority divorce law, mutual affidavit and so on, in order to bypass the state law as it is difficult for them to conform to all the provisions as

well as to avoid scandals. By choosing alternative paths of divorce, women engage in forum shopping in order to achieve their goals. I will come back to these forum shopping strategies to show how women engage in bargaining with patriarchy while conduct forum shopping later in this chapter. Before that, let me show the flipside of forum shopping, that is, the shopping forums within the Christian community with regard to divorce.

### **Institutional anxiety: Shopping forums**

Within the Bangladeshi Christian community, an anxiety of some sort is observable. This anxiety is seen within both Catholic and Protestant denominations. In the previous chapter, I showed how minority anxiety works in the case of marriage.<sup>10</sup> But divorce is another phenomenon that creates anxiety among minority groups. Often, this anxiety takes an institutional form. In this section, I show how this institutional anxiety creates 'shopping forums', in von Benda-Beckmann's (1981) terms, where different institutions or forums attract or catch divorce-related disputes.

According to the Preamble of the Divorce Act, 1869, this particular law is applicable to any person who professes the Christian religion. In this sense, this law is applicable to both Protestants and Catholics. However, both of these groups persuade themselves and others by asserting that divorce is not available in their respective communities. However, I have observed that Catholics are stronger than the Protestants in persuading the non-existence of divorce in Christianity. A number of Catholic priests I met during fieldwork told me that Catholics are exempted from the Divorce Act, 1869, as they are governed by the Canon Law in relation to their marriage and its dissolution or annulment. However, later I was assured by another Christian lawyer, who practises in both High Court and Supreme Court that this state law applies to all Christians,

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<sup>10</sup> For details, see Chapter Six.

irrespective of being Catholic or Protestant. Therefore, the civil law for Christian divorce includes every Christian in Bangladesh and neither has it specifically exempted a particular group of Christians nor does it recognise the Code of Canon Law. But because of the misleading information about the applicability of the Divorce Act, 1869, most men and women in the Catholic community do not know that although the Catholic Church does not recognise divorce, they can still go to the court and receive a remedy of divorce as a citizen of Bangladesh under the Divorce Act, 1869.

Bangladeshi Christian community leaders, as well as community members, suffer from the anxiety of divorce and as a result, they actively discourage (read, 'prohibit') members from taking any steps along the path of divorce. They also undertake institutional initiatives that actively discourage men and women from living outside their marriages. When there are cases of marital problems among some couples, community leaders actively attract those cases towards them and try to solve them internally, without letting the parties go to the court or other mainstream support systems, such as human rights and legal aid organisations. However, if any party goes to mainstream functionaries to receive a remedy, the leaders actively intervene in those processes and often pull those cases back to them. So within the state and non-state forums, such as churches, a competing and dynamic relationship develops that actively searches for disputes towards them.

For example, in the Catholic Church, an alternative forum for divorce is achieved through the Interdiocesan Ecclesiastical Tribunal, where Catholic marriages may go through an annulment process and can be declared null and void.<sup>11</sup> The Interdiocesan Ecclesiastical Tribunal acts as a shopping forum for Catholics that draws cases of marital breakups towards it. During fieldwork, I met the Judicial Vicar of the Interdiocesan Ecclesiastical Tribunal, Dr Fr Mintoo L. Palma, who

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<sup>11</sup> For details, see Chapter Three.

has written a book on marriage and conjugal life, titled *Marriage and conjugal life: Light up our hearts with love* (Palma 2009). The Vicar told me that he wrote this book to create awareness among Catholic men and women about the non-existence of divorce in the Catholic community.

In his book, the Vicar showed a number of reasons for marriage breakups. However, most of his reasons blame women's modernity and their changes of gender ideologies for these breakups. He writes:

In old days, the household chores were women's main duties after marriage. Their social circles also were limited within their relatives. After marriage, in most of the time, women were under the control and care of her in-laws. In those days it would take years to reduce the length of *ghomta* [covering head with saree] from their head.<sup>12</sup> By that time, they would already be a mother of several children. But these days, even if a girl gets married at a young age, they do not prefer their in-laws' interference in their lives. Now instead of putting a long *ghomta*, their tendency is to show their faces to everyone. In today's time, they like to move freely and have a broader social circle even after their marriage. They have the desire to move alone and work outside. Under the circumstances, they face the reality. And through these, they gain consciousness to see their lives differently and begin to regret their early-age marriage. This realisation results in ambivalence in their minds and starts doing mishaps. (Palma 2009, 20)<sup>13</sup>

However, the Vicar, Palma (2009), agrees that, in today's society, marital problems often lead to severe violence. However, having said that, he immediately makes the clarification that no matter how violent or severe the problems become, the couple's 'duty' is to seek help and support at the church and not elsewhere. He clearly states that,

It should be kept in our minds that a husband or wife must come to the church in order to seek help to restore peace in their conjugal lives. Without doing this properly, it is not acceptable that they (wives) call the

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<sup>12</sup> Initially the *ghomta* used to fully cover the head and almost half of the face and then as time passed it reduced and an elderly woman will now have a *ghomta* only covering part of her head.

<sup>13</sup> Translated by the author.

police to lock their husbands up in the jail or they (husbands) beat their wives and send them to their father's house. (Palma 2009, 82)

The entire book emphasises one particular aspect of marriage i.e., that marriage is indissoluble. He states that no matter how serious incidents of abuse are, there is plenty of guidance available in the church in order to repair and heal those incidents (Palma 2009). He shows forgiveness as one such path that is capable of restoring a healthy conjugal life. But, according to him, in this process many times the families of both parties create additional hurdles to interrupt this repairing process (Palma 2009). In many instances, family members provide both parties with 'destructive advice' that exacerbates their situation. These advice and the actions taken by these parties are all acts against the church's rules and regulations and more importantly against the Code of Canon (Palma 2009). The Vicar asserts that family and friends, who provide either parties with advice for divorce, are breaking the Canon Law. In the Catholic Church, marriage is one and it cannot be broken at any cost. So there should be no thoughts beyond reunion and reconciliation (Palma 2009).

Most Catholic priests in Bangladesh assert that Catholics do not have divorce and they are exempted from the Divorce Act, 1869. I met a number of priests during my fieldwork who claimed that such exemption existed. However, I found that this assertion has also been passed among the general members of the Catholic community. Most priests never clearly let them know that, as a citizen of the country and as a Christian, one *can* use the state law in order to receive a remedy of divorce. Instead of explaining that, although according to the Code of Canon law they cannot receive a remedy of divorce, but as a citizen of the country they have the rights to seek a remedy under the particular civil law, the priests simply assert that Catholics are exempted from the civil law. So, whenever a priest says that the Divorce Act, 1869 is not applicable to Catholics, most people in the general community, who honour and respect their priests diligently, believe the same without enquiring it further. In this way, most of the members of the

Catholic community believe that the Divorce Act, 1872 is not applicable to them and hence they are not eligible for a divorce.

However, it is not only that Catholics believe that they are exempted from the Divorce Act, 1869, but also that they are not informed about the available options of annulment and separation under the Canon law. For example, Marline, whose story was discussed in the previous section, stayed in a life-long separation. Marline was not aware of her option of annulment being a Catholic woman. Moreover, although she went to the church and sought a separation, the church did not cooperate with her to approve a separation. Instead, Marline told me that the priests made her understand that her divorce or separation would not be good for her daughter's future. Therefore, an active force within the Catholic Church prohibits women from seeking a remedy that they want for themselves. Instead, the priests and other church leaders play an active role in shaping the outcomes as per their own interpretation.

Another mechanism that the Catholic Church actively deploys in order to address marital issues is counselling.<sup>14</sup> During fieldwork, I met Sr. Muriel, a Catholic nun, who is the Director of the counselling centre in Dhaka. Sr. Muriel told me that, "Many people think that the Counselling Centre will help them in breaking their marriages or in receiving a divorce. They come here after deciding to break the marriage and seek help to accomplish their goals. But the centre does not work in that way. We are here to reconcile, not break marriages". In many cases, the Judicial Vicar of the Interdiocesan Ecclesiastical Tribunal refers men and women seeking an annulment to the counselling centre and the centre provides them with counselling services to mediate the situation. This forum also acts as a shopping forum in order to divert men and women from going to the court or to human rights organisations.

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<sup>14</sup> For details, see Chapter Three.

Although the Catholic Church has its established functionaries and mechanisms dealing with marital disputes, the Protestant churches, on the other hand, do not have any uniform system in place to address the same issue. However, the institutional anxiety of divorce is also significantly present within the Protestant churches. One piece of evidence for this anxiety is the theological consultation session that a Protestant church body organised on Christian marriage and divorce in 2014. During my fieldwork, this consultation meeting was held where many church leaders, both men, and women, were present.<sup>15</sup> The General Secretary of the organising national church body told me that the main purpose of this consultation meeting was to create concrete rules and regulations with regard to marriage and its dissolution so that there are some uniform policies or guidelines that would help the local churches.

Apart from various issues with regard to laws, the consultation meeting discussed the role of the church in cases of divorce, what punishment should be sanctioned if people get divorced, who should be included in the punishment, how much sympathy the church should show to the parties, and so on. Some members in the meeting thought that divorce has become a common phenomenon within the Christian community, which has been damaging to the church. A church leader commented in the meeting that although some churches have rules on punishment, most of them cannot be implemented for fear of losing members, the influence of leaders, compromise, and so on. He believes that church should take strict decisions where necessary in order to establish and re-establish the church's 'discipline'.

Some other members in the consultation meeting thought that there should be clear policies created in relation to marriage and divorce within the church. They also suggested that there should be special committees appointed to monitor and investigate the marital and divorce issues for the Council. One member stated

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<sup>15</sup> For a detailed discussion on marriage as discussed in the consultation meeting, see Chapter Six.

that in relation to divorce, there are state laws, but that there should also be church orders. Another member suggested that before going through the process of divorce, the couple must undertake counselling and, if they are still eager for a divorce, then they should seek permission from the church and the church should have the authority to approve a divorce. In this way, he thought, the members do not necessarily have to go to court. Some also thought that the church should be proactive and become involved when they have information about any marital issues that may lead to divorce, no matter if the parties invite the church to be involved or not. But some others thought that if the church recognised divorce, then the tendency to initiate divorce will increase, so the church should not allow divorce in the first instance, instead, they can approve separation.

The extent of institutional anxiety that both Bangladeshi Catholic and Protestant groups have around the issue of divorce is clear from the above discussion. This anxiety actively encourages the church, as a forum, to attract the marital disputes towards it and at the same time prevents its members from approaching state mechanisms such as the court or other mainstream legal aid organisations.

A similar anxiety was also expressed by Monica Adhikary, a woman leader and Assistant Pastor of a Protestant church. She is one of the two women who is leading their churches in the pastoral role in the Protestant community. She said, “We, the Christians, usually do not encourage to go to the state law”. When I asked her why she told me,

If you go to the law, it will never bring good. Suppose, if a husband tortures his wife, she can easily go to the police and file a case on violence against women. But if she does that what good can it bring? Maybe the police will put him in the jail. But we do not want a Christian family or a man is harassed like that. The other reason is there are a lot of financial involvement occurs when someone files a case. Now think how many Christians have so much financial capabilities? No one knows how long that case will continue. Because of all these reasons, many people do not want to take this path and we do not encourage them either.

A complicated relationship exists between the state and the community.<sup>16</sup> Similar to Monica Adhikary, other Christian leaders strictly think that Christians should avoid any state mechanisms, particularly in relation to private matters such as divorce. This avoidance led the community to practise resolving issues internally without involving the state. Because of this tendency of the church to resolve issues internally, Monica Adhikary also thinks that issues such as divorce should be dealt internally within the community and preferably should be conducted mutually. She also thinks that due to social ideologies, a “shy culture” (her term) exists in the community that holds back Christian men and women from seeking help from the church at the initial stage. Instead, according to her, the parties try to handle the issue by themselves with relatives and friends and then come to the church when the issue is already too complicated to resolve.

In my opinion, the ‘shyness’ that Monica Adhikary referred to occurs in order to avoid social scandal. This ‘shyness’ is created by the power of the community, through its representatives, over women. Due to this ‘shyness’, women can neither go to the church to seek help nor can they go to the state mechanisms or to the mainstream human rights and legal aid organisations to receive a remedy. But within such situations when the community actively prohibits women from seeking help outside the church, some women still go to these mainstream mechanisms in order to reach their goals. One of these women is Koli Gomes from Gazipur district. Koli went to Ain O Shalish Kendra (ASK) to file a complaint about her husband’s second marriage. She wanted to live with her husband peacefully without his second wife. With her permission, the lawyers of the ASK allowed me to read her case. However, along with Koli’s complaint, I found another letter to the ASK authority written by the Judicial Vicar, Dr Fr Mintu Palma. He wrote in his letter that he was aware of Koli’s situation. According to the letter, although he thinks her husband is an “inhuman, oppressive, drug addict, and a vile criminal, ... it is [nevertheless] important to

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<sup>16</sup> For details, see Chapter Five.

note that within our Catholic community there is no divorce exists". The Judicial Vicar recommended that ASK sends Koli's complaint back to the church so that the church could handle her case internally.

In this way, the churches function as shopping forums to attract cases towards them. Moreover, the shopping forums become active not only within their own boundary and community but also often cross their boundaries to intervene when women actively engage in forum shopping. In this sense, forum shopping and shopping forums are not reciprocal but they engage themselves in active negotiation and contestation.

### **Bargaining with patriarchy**

In the last two sections, I have shown how different actors, particularly women, engage in forum shopping and use various alternative forums in order to get a divorce or an alternative to divorce and how various forums shop for disputes related to divorce or marriage breakups and finally how these two processes compete with each other. In this section, I will again concentrate on forum shopping and demonstrate how women, while undertaking forum shopping, use different forums strategically in order to engage in patriarchal bargaining. Women, while engaging with forum shopping, strategically chose different actions, such as cutting all forms of contact with the community, living separately from their husbands but officially remaining married for their protection from scandal, projecting themselves as victims of their husbands' deeds to the community and managing to live with society's sympathy, and using their class positions, particularly their poor socio-economic status, to live outside the radar of the church. Below I elaborate upon each of these groups.

### **Leaving the community**

The first group of women took drastic measures, such as leaving the community, by avoiding and discontinuing any community contacts except for a few selected

ones. These women could take such measures because of their financial independence. Moreover, their workplaces are located outside the community and church boundaries, which also helped them to avoid contacts with the community members. For example, Angela Halder used such a strategy in order to obtain her divorce. Although she took the legal path and divorced her husband under the Divorce Act, 1869, she thinks that she succeeded because she completely avoided the church and the community in the process. However, Angela is a financially established woman with a promising career and she works outside the Christian community. So, in a way, her own financial positions and wider social network helped her to achieve her goals.

Among Christians in Bangladesh, divorce is seen as directly linked not only to religion but also to family honour and shame. Gatwiri and Mumbi (2016) explain that when women demand a divorce, they (those women) are often seen as a direct threat to the honour of their family and community. Linking divorce with honour and shame results in increased control over women's mobility and sexuality due to the perceived threats towards their group cohesion (Gatwiri and Mumbi 2016, Yuval-Davis and Werbner 1997, Moghissi 1999). In Angela's case, by discontinuing every form of contact with her relatives, friends, and other members of the church and community, she managed to be out of sight of them, which helped her to be seen as outside of such perceived threats. Her absence from the community for an extended period helped her to loosen the community's monitoring and control over her.

### **Using marital status as a shield**

The second group of women who obtained alternative divorce still use their once 'married' status to protect themselves from social judgments and shame as a divorced woman. Both Marline and Moly used this strategy for a number of reasons. Both of them thought, similar to many other women and men, that being divorced is a matter of shame to their family. Guru (2009) argues that,

A respectable woman is one who avoids eye contact with unrelated men, is modest in her attire and does not flaunt her 'dangerous' sexuality. Her honour, prestige, and reputation (izzat and sharam) are closely tied to the representation of her body and to the male protection that she finds. Women without the defense of men can be left extremely vulnerable and easy sexual targets. (Guru 2009, 293)

By identifying as 'married' in their national ID and other official documents, both Marline and Moly hoped to have some kind of shield that would protect them from judgemental comments and from being easy sexual targets of other men. Marline was also concerned about her daughter's marriage in the future since divorced and single mothers are often stigmatised, which impacts on their daughters' marriages. Choudhary (1996) reports similar findings in her study in Pakistan. According to her, when a woman leaves her husband, even if he is violent, she is seen as someone who has dishonoured her family and community and this dishonour transfers from mothers to their children, particularly to their daughters, that may jeopardise their chances of marriage (Choudhary 1996). So Marline, being separated and not specifically divorced, strategised her subjectivity for her daughter's chance of securing a 'good' marriage.

### **Using the image of victimization to gaining social sympathy**

Divorce is a matter of stigmatisation and shame among Bangladeshi Christians, as it is with other religious groups. Scholars such as Sakraida (2005) and Sandfield (2006) show that divorce results in both material loss, as well as relationship loss (spouse and other associated relationships), that often leads to extended periods of grief or mourning and many women, experience depression, loss of self-esteem, and loss of confidence. Bangladeshi and other South Asian societies hold a similar image of divorced women. Therefore, Bangladeshi society also expects to see women suffering after experiencing a divorce. The community wants to see a 'victim' in a woman in such a situation. It is uncommon that, in Bangladesh, women, after their divorce, they will portray themselves as having a lifetime prospect to revive and rediscover themselves, which is shown as one of the

positive impacts of divorce by scholars such as Baum, Rahav, and Sharon (2005). However, usually, Bangladeshi society does not expect to see something similar to this in a divorced woman. Marline, when I interviewed her, told me that,

Being a separated woman from my husband, when I went to the priests and community leaders, they did not help me to overcome my situation. I think that the society was not happy with me because I wanted to survive by myself, without their help. They want to see a divorced or a single woman dependent on them, living by their mercy. When they cannot do that, they begin to talk bad stuff about you.

But not all women, such as Marline, live independently on their own. Some women, such as Bani, who are partially or fully dependent on their husbands or families, use a different strategy to reach their goals. For example, Bani consciously did not initiate her divorce, although she wanted it as badly as her husband. Instead, she waited for him to initiate the divorce process and then she demanded compensation. Bani became successful in two senses, first, she received a handsome amount of money that has secured her future life, and second, by not initiating a divorce, she was portrayed by her family and the community as a 'victim' of this divorce and that helped her to gain society's sympathy. If she had initiated the divorce, there was a fair chance that she might not achieve any of the above. Moreover, later she and her family submitted an application to the church stating what happened to her life, entirely blaming her husband and, more importantly, without mentioning that a huge amount of money was transacted in the process. The church became very sympathetic towards her and punished her ex-husband by suspending his church membership for the next year.

By presenting herself as the victim of her husband's actions, Bani managed to gain society's sympathy. In fact, after her divorce through an affidavit, Bani remarried socially in the church. Her remarriage was only possible because Bangladeshi society perceived her as a 'victim' as opposed to an independent being. Referring to Gatwiri and Mumbi's (2016) work, where women show silence

as power, it is interesting to see how Bani first used silence and then her voice alternatively to negotiate when her husband initiated a divorce. Here, the timing of silence is used very strategically and, as a result, she could gain the community's sympathy, which was very important for her to live in the community. Women's silence and their voice co-exist and are used as a strategy for patriarchal bargaining.

### **Using women's class position**

The final group of women is those who use their poor class positions in their strategies of bargaining with patriarchy. In my fieldwork, both in urban and rural areas, I found that divorce (mostly alternative divorce) and remarriage are more common among women from the poor socio-economic backgrounds than from women from middle-class or upper-middle-class backgrounds. Grover (2011) also observes a similar finding among the urban poor in India, which is not that common among the middle-class. Grover (2011) argues that these divorces and remarriages have a "functional, purposeful, and agential role in the lives of low-caste women" (Grover 2011, 74). However, the strategy that these poor women use is "having been left with no choice but to remarry" in a way to justify their multiple divorces and remarriages "[a]s a survival mechanism women actively exercise their agency to initiate new marriages" (Grover 2011, 75).

Gender ideology plays a significant role here. A woman should not be alone as she is vulnerable and must have a male figure to protect and provide for her; ideologies similar to this are embedded in the social fabric. However, for Bangladeshi Christians, these ideologies are prevalent among the poor as well. Therefore, whereas middle-class urban Christians tend to strictly keep themselves within the ideology of marriage as a sacrament and strongly believe that a woman must remain to her conjugal life, many poor women cross the boundary of divorce and remarriage. For example, Shukla Baroi in the previous section is someone who had divorced and remarried. I also met a Catholic poor

woman, Shilpi Rozario, from Gazipur during my fieldwork, who also divorced two times and married three times. These women are not visible in the church and in a way they remain below the church's radar. Women's invisibility from the church helps them to be 'free beings'. By taking this path, many of these women use their class position to receive a remedy of divorce or its alternatives and to remarry.

## **Conclusion**

Although the Bangladeshi Christian community actively prohibits and discourages divorce, people, particularly women, use alternative processes to receive a remedy of divorce or alternative divorce. In this chapter, I have examined the laws, social and gender ideologies and practices around the dissolution of marriage. Women become actively engaged in forum shopping by choosing a specific path of divorce or its alternatives. However, not only do women forum shop in this particular context, the church and its associated functionaries also become shopping forums to attract disputes towards them. In this process, while forum shopping, women make strategic choices to choose a specific path based on their own individual intersectional subjectivity and situations. Therefore, through the processes of forum shopping and shopping forums, women engage in patriarchal bargaining to reach their objectives.



## Chapter Eight

# Good laws, bad outcomes: Women's inheritance rights and practices

### Introduction

Land rights is one of the critical entry points for women's empowerment in South Asia. Women's struggle for their rights to inheritance and landed property are critical gender issues in this region as property mediates relationships not only between men and women but also between women (Agarwal 1994). However, the land rights of women is a complex topic affecting women's (and men's) material lives, social relationships and symbolic identities and, therefore, needs to be understood in a holistic manner (Rao 2008). In this chapter, I consider women's land inheritance rights and practices in the Christian community in Bangladesh. I show a wide range of complexities that Christian women face in accessing land as inheritable property. I examine only the issue of land inheritance in this thesis as land, as a productive resource, has more value and significance than other forms of property, especially movable ones. As Goody (1962) points out, land has a completely different set of interests than that of movable properties and people are more anchored with landed property than any other forms of property in general.

As a productive resource, land is more contested and disputed than any other resource. Many of these disputes are gendered in nature. According to Agarwal (1994, 12), to understand the links between gender subordination and land, it is important to analyse both who owns the land and who controls it. In other

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<sup>1</sup> Part of this chapter has been published in the *Journal of Legal Pluralism and Unofficial Law* (Das 2016). For details, see: Das, J. (2016). Good laws, bad outcomes: land rights and inheritance practices for Christian women in Bangladesh. *The Journal of Legal Pluralism and Unofficial Law*, 48(2), 159-185.

words, gender equality in land rights that law permits does not necessarily guarantee gender equality in actual ownership. In the same manner, gender equality in ownership does not guarantee gender equality in control. Therefore, there is a vast gendered difference between rights, ownership, and control of productive resources such as land.

Across South Asia, the actualisation of women's land inheritance rights from law into practice is still elusive. Under the Succession Act, 1925, applicable to Bangladeshi Christians, a woman possesses significant rights to her deceased husband's estate as well as rights to her deceased parents' property equal to their brother(s), in contrast to Hindu and Muslim inheritance practices.<sup>2</sup> The law specifies that one-third of the deceased man's property should go to his widow, and equal shares of the remainder (two-thirds) to his daughters and sons (Succession Act 1925, Section 33).

Unlike Hindu and Muslim women, who are legally provisioned to inherit a lot less than men in their respective communities, Bangladeshi Christian women enjoy equal inheritance rights as Christian men on the surface. But the actual practices of such rights are far from what the personal law permits. A large gap between the formal law that is embedded in the Christian personal law — the Succession Act, 1925 — and the inheritance practices in the community exist. Although the Christian personal law provides women with substantial inheritance rights, in practice most women do not succeed in exercising these rights. The issue of women's disinheritance in South Asia is not uncommon. Not only within the Christian community but also among other religious groups, women continue to be disinherited. Many scholars catalogue the reasons behind such divergence and show that one of the reasons is that many women give up their share of inheritance in favour of their brothers voluntarily as part of cultural practice (Agarwal 1994, Goody 1962, 1990, Basu 1999). But if women's

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<sup>2</sup> For an analysis of Muslim and Hindu inheritance laws, see Chapter Three.

disinheritance is pervasive in most communities in South Asia, then the question is: What makes this practice among the Bangladeshi Christians different from others? In this chapter, I address this question by linking women's inheritance rights and practices with social ideologies and minority community's identity creation and protection.

To understand women's inheritance rights and practices, it is not only important to understand what 'property' means in that particular society but also what ideological, legal, and actual relationships are associated with the property in that context. Understanding property in such a broad way is important because, in a particular society, the concept of property is not an isolated phenomenon, but it is heavily loaded with politics as well as ideologies (Hann 1998). While introducing their edited volume titled *Changing Properties of Property* that challenges the concept of property by providing an anthropological analysis, von Benda-Beckmann, von Benda-Beckmann, and Wiber (2006, 15) argue, "Empirically, property finds expression in a wide variety of social phenomena, in cultural ideals and ideologies, in legal institutions, in actual social relationships and in social practices". Through the different "layers of social organisation," the authors identified specific terms of property, where the layers are interrelated with each other in multiple ways: through legal-institutions, social relationships, and ideologies (von Benda-Beckmann, von Benda-Beckmann, and Wiber 2006, 15).

Based on the notion of the 'layers of social organisation' (von Benda-Beckmann, von Benda-Beckmann, and Wiber 2006), in this chapter, I analyse women's inheritance rights and practices by considering three particular phenomena: the social ideologies, legal framework, and actual practices. I take this concept forward by linking the ideological and legal phenomena and actual practices with minority identity creation and protection. I argue that in addition to the ideological factors that hold women back from claiming their rights, for Bangladeshi Christians, women's land rights are critically linked with the creation

and protection of community identity. I also link women's land rights with the notion of the 'good woman', an ideological concept introduced by Rao (2008) in her rich ethnographic work on Santal women's struggle to claim their land rights in India. According to Rao (2008), a 'good woman' is one who accepts subordination at the hands of her father, husband, brother or son in different stages of her life; she is strictly monogamous and possesses a strict sexual morality. In the case of the Bangladeshi Christian community, both the processes of creation and protection of community identity and the 'good woman' image impose significant influence on and struggle over women's land rights. Further, the land inheritance struggle and women's disinheritance among Bangladeshi Christians generates inter-generational consequences, which I show before ending this chapter.

The chapter has four major sections. In the first section, I analyse the social gendered ideological assumptions responsible for the disjuncture between women's inheritance rights and practices. In this section, I show how these ideologies deprive women of their inheritance rights that law permits and how women often themselves voluntarily accept their disinheritance and justify it through these ideologies. The second section analyses personal laws governing inheritance among Christians and shows the contrast between law and the actual practices within the community. In the third section, I focus on the actual inheritance practices. In this section, I bring in Rao's (2008) notion of 'good woman' and show how women in the Christian community balance between maintaining a 'good woman' image and asserting their inheritance rights. I also show here how their individual subjectivity and class position influence this process. Finally, in the fourth and last section, I link women's inheritance with the community's identity creation and protection processes and show the inter-generational consequences of women's disinheritance as a normative practice that the community is currently facing.

## **Social ideology of women's land disinheritance**

Social ideologies have significant roles in the distribution of resources, particularly the landed property, within the communities in South Asia. In most cases, the social ideological assumptions lead women to be disinherited land in the region. Scholars, such as Goody (1962), Agarwal (1994), Basu (1999), and Rao (2008), have catalogued these ideologies that cause women not to inherit their parental or spousal property. These scholars have found that social practices such as women's disinheritance revolve around the familial relations and gender ideology within Bangladeshi society. One of the causes of women's disinheritance, commonly noted, is women giving up inheritance rights voluntarily in favour of their brothers. Goody (1962), Agarwal (1994), and Basu (1999) explored similar issues relating to the cooperation and conflict between siblings with regard to property relations. They found that women believe that if they claim their parental land, it would damage their relationship with their brothers. For example, some women in Rajasthan told Agarwal (1994, 261, 263) that "a sister gives up her claim in order to keep the passage to her natal village open. If a woman stakes her claim, her brother's wife will refuse to invite her home or speak to her ... [A]fter the parents' deaths, a brother's home becomes woman's natal home".

Similarly, by focusing on women's "profound desires to stay connected with and feel loved by their natal families" among the middle-class and poor Hindu women in Delhi, India, Basu (1999, 225) finds that women often refuse their share of parental inheritances so that it does not cause any rift in the relationships with their brothers. Earlier, Sharma (1980, 57) had similar findings: "If a brother and sister are on good terms then ... she will tell her brother that she does not want her share of the inheritance. After all, if he eats, then she can eat". Agarwal (1994) analysed rural women's life-situation and showed why the brothers have been such important figures in women's lives. One of the reasons for the brothers'

importance in women's lives is women's early marriages, which are virilocal in nature. Gupta (2000) describes virilocal marriages and their implications in the following way:

... [O]nly *men* constitute and reproduce the social order. The mother merely gives birth: it is through the father that a child acquires a social identity and is incorporated into the social order. Since only boys remain in the lineage, the significant social reproduction is that by the father of the son. Men are the fixed points in this social order, and women are the moving points because when they marry they leave their home and lineage, and are absorbed into their husbands' lineage. (emphasis in the original text)(Gupta 2000, 3-4)

The virilocal marriage system and its associated implications make women economically, socially and physically vulnerable and entirely dependent on their husbands and their families.

During my fieldwork, I found a number of people, including community leaders, who regarded this norm as "not always bad", as expressed by Rev. Jonas Halder, a Protestant priest and the CEO of a Protestant national church body. According to him, such norms have enabled Bangladeshi society to operate smoothly. Rev Halder said, "If we think deeply, we could see that our norm, where women do not claim their inheritance, actually brings good within the society. Yes, the rights were not equally realised, but it restored peace within the society".

Although the state law provides equal inheritance rights for women, the practice of depriving women of their share of inheritance has been developed as part of the local normative system. Therefore, besides the discrepancy between law and practice, there are also tensions that exist between the state law and a locally developed normative system.

According to Agarwal (1994), in the case of marital issues, domestic violence, marriage break-ups or widowhood, brothers, particularly in the absence of their parents, become key support figures in these women's lives. Moreover, she also found that visits to the natal home allow women to have a rest from housework, childcare, and fieldwork (cultivation) and more freedom than in their in-laws'

home (Agarwal 1994). The behavioural norms are more relaxed for daughters than daughters-in-law. So when a woman visits her natal village, she receives a greater degree of freedom to dress as she wishes and her mobility increases, meaning she can visit anywhere within the village.

I have similar findings to Agarwal (1994) in my fieldwork. The difference in the behavioural norms between the daughters, while visiting their natal families, and daughters-in-law in the same families, was vivid in both of my rural field sites. For example, both in Barisal and Gazipur, the married daughters could wear *salwar kameez* (which is mostly worn by younger unmarried women) when they were visiting their natal home, but the daughters-in-law in the same families always dressed in *sarees*. Moreover, the married daughters visiting their natal homes could go anywhere in the village whereas the daughters-in-law had comparatively restricted movements. Additionally, the daughters-in-law were expected to do all the household chores and when the daughter came to visit her natal family, she did no household work. In Gazipur, my host, Teresa Gomes, told me with pride that she never 'allows' her daughter-in-law to walk in the village without a *ghomta* (covering her head with her *saree*), whereas I have seen when both her daughters visited them, as soon as they entered the house they changed their *sarees* and wore *salwar kameez* and went to every house in that village dressed like that. Therefore, married (or unmarried) daughters exercise more freedom in their respective natal home compared to daughters-in-law.

In Bengali culture, brother sisters love is often romanticised. A number of local Bengali songs, poems, and folklores describes the sweet and affectionate bond between brothers and sisters. Brothers and sisters grow up together playing, fighting and so on and when the sisters leave their natal family after marriage, living apart creates strong emotions for both. The following Bengali folk song depicts similar emotion of a sister towards her brother:

*Ke jaas re bhaaty gang baiya  
Amar bhai dhon re koiyo naiyor nito boila  
Tora ke jaas, ke jaas.*

*Bochor khani ghaira gaalo gaalo re  
Bhaiyer dekha pailam na pailam na  
Koilja amar paira gaalo gaalo re  
Bhaiyer dekha pailam na pailam na  
Chhilam re kotoi asha loiya  
Bhai na aailo gelo gelo rother mela choila  
Tora ke jaas, ke jaas.*

*Pran kande kande  
Pran kande kande pran kande re pran kande  
Noyon jhore jhore noyon jhore re noyon jhore  
Pora monre bujhaile bojhena  
Pran kande kande pran kande  
Shujon majhi re bhaire koiyo giya  
Na aasile swaponete dekha dito boila.*

[Who is going there with his boat in an ebb tide?  
Please tell my beloved brother to take me *naior*.  
Who is going there? Who is going?

The year has passed by  
But I did not see my brother  
My heart has saddened  
But I did not see my brother  
I was waiting with great hope  
But my brother did not come  
Who is going there? Who is going?

My heart cries, cries, cries;  
My tears drop, drop, drop  
I cannot make my heart understand,  
My heart cries, cries, cries  
O dear boatman, please go and tell my brother  
To come in my dreams if he cannot come in real  
Who is going there? Who is going?]<sup>3</sup>

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<sup>3</sup> Translated by the author.

In Bangladesh, a woman's access to her ancestral home, known as *naior*, is seen as her right (Alamgir 1977, Jahan 1975, Sobhan 1978). Women often exchange their inheritance rights in lieu of their right of *naior*. Such practices are not uncommon in South Asia and many places in Africa as well (Philips 2003). For example, as noted by Yalman (1967), women's similar right is seen on their brothers' home among the Kandyan Sinhalese in Sri Lanka when inheritance is not claimed by women.

Not only between brother and sister, the bond and relationship are often extended between the *mama* (uncle – mother's brother) and *vagna* (nephew – sister's son). In most cases, this relationship becomes the sweetest. Visiting *mamabari* (uncle's house) becomes fond memories from childhood. Therefore, women also trade their inheritance rights so that their children have access to their uncles' house and they can have this special relationship and memories with their uncles' families. A popular children's rhyme goes on like this:

*Tai tai tai mama bari jai*  
*Mama dilo dudh vaat pet bhorey khai*  
*Mami elo lathi niye, palai palai*

[Clap Clap Clap, we are going to *mamabari*  
*Mama* gives us rice with milk, we eat until we are full  
But *mami* (*mama's* wife) comes with a stick, and we all flee, flee, flee.]<sup>4</sup>

Apart from the bonding between brother(s) and sister(s), the relationships between women is also important with regard to women's land rights. The relationships between *nonod/nonash* (*nonod*, husband's younger sister; *nonash*, husband's elder sister) and *boudi/bhai-er-bou* (*boudi* (or *bhabi*), elder brother's wife; *bhai-er-bou*, younger brother's wife) is often seen as opposite to the relationships between brother(s) and sister(s). The popular media, both in Bangladesh and India have enormous movies and TV shows and serials that depict the complicated relationships between *nonod-boudi*.

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<sup>4</sup> Translated by the author.

The above rhyme depicts a similar story, where the mother teaches her children that their *mami* comes with a stick to beat them up, while their *mama* provides them with good food. So it is commonly assumed by people that the *boudis* have a negative role sanctioning their *nonods* to claim their inheritance rights. In my view, such negative role of the *boudis* with respect to inheritance rights of their *nonods* is not as straightforward as it seems. The *boudis* are often deprived by their own brothers and their wives from their inheritance rights on her parental properties. So she plays a similar role in the case of her *nonods* and the *boudis* often treat the *nonods* in a similar way as they have been treated by their natal family members, thus creating a chain effect. I found women in my fieldwork who were not willing to let their *nonods* receive their share of inheritance as they (*boudis*) did not receive their share of inheritance from her natal family. So these women do not think that it is justified to let their *nonods* to claim their shares.

Because of the close bond between brothers and sisters, in many cases, a ‘moral dilemma’ is created among women. As a result, they have “to choose between gender equality and kinship obligations, because of [the] ideological burden of preserving the moral requisites of family unity rests heavily, if not solely, on the shoulders of women” (Philips 2003, 249). Often such an ideological burden blends normatively and becomes invisible by becoming a common sense and is naturalised under the hegemony of gender roles expectation and kinship norms (Comaroff 1994). According to Philips (2003), this “moral dilemma ... is a manifestation of the tension between the hegemony of traditional cultural norms and religious laws, on the one hand, and the counter-hegemony generated by secular laws, awareness of legal rights and the discourse around gender equality, on the other” (Philips 2003, 261). Therefore, this ‘moral dilemma’ that is created among the sisters is an indicator of patriarchal domination.

Such tradition of ‘brother-sister love’ is not apolitical. Instead, I argue that this relationship is based on mutual benefits. The sister keeps the door of her natal home open where she and her family receives a good and respectful treatment

during their visits and, moreover, she receives financial and moral support from her brother when in need. All these take place in lieu of her share of inheritance. On the other hand, the brothers can possess all of their sisters' shares of their parental property and all they need to do is treat their sisters and their families well once a year during their visits and provide some support when they are in need.

Chowdhry (2008) problematises this 'brother-sister love' and argues that such love only lasts if the sister gives up her rights and does not claim her share of inheritance. Philips (2003, 249) describes this relationship as "kinship mutuality", which becomes "a critical determinant of women's responses in property situations". However, as Rao (2008, 37) suggests, "We see the rural woman not claiming her right to land as a sign of subordination alone. This may be the case, but it is simultaneously a conscious act, an investment being made by her towards a different future". Therefore, for sisters, in order to ensure financial and social security for their future lives, giving up their share of inheritance in favour of their brothers becomes a conscious and strategic investment.

Monica Adhikary, whom I met during my fieldwork, has made such strategic investment to have good relationships with her brothers by giving up her inheritance rights. Monica is a Protestant woman from Barisal, currently working in an NGO as a fieldworker. She told me that usually, the daughters do not demand their father's property; instead, all of it goes to the brothers. When her deceased *shoshur's* (father-in-law) property was distributed, none of her *nonods* claimed any of it. Monica also did not claim her father's property when he died. In her words:

After my parents died, I have my brothers as my only family. Whenever I go to their house, they take good care of me. They also love my children a lot. It is a pleasure for us to visit them from time to time. But if I had claimed my father's property, I surely would not get such care and love from them. I would not be able to go to them if I need any help from

them. If I had taken my share of my father's property, their door would have been closed for me by now.

Monica added that if someday her brothers do not treat her as well as they do now, then she would demand her share of her deceased father's property. In this way, women are investing in their future security and create a 'contingent capital' by not claiming their share of inheritance. For these women, land is important but land alone is not sufficient to protect her in a bad situation. They need the support of a male figure. So these women believe that the trade-off is worth it for them.

However, in practice, the notion of 'contingent capital' does not work in a simple manner as when the sister(s) returns to their brothers' home or are in need of financial help, many times the brothers and their families become reluctant to help them. In many cases "the returning sister is viewed as an economic burden" (Agarwal 1994, 267) and she is perceived as a potential threat to the brothers and their wives in claiming their share of inheritance. So, sacrificing inheritance rights, in reality, does not always ensure women's future welfare during adverse situations.

However, not all women sacrifice their share of inheritance in favour of their brothers in order to secure their future; but at the same time, many brothers also deprive their sisters by using different strategies or tactics. Patrick Ribeiro, a land surveyor in Gazipur, told me some of the tactics that brothers deploy to deprive their sisters of land inheritance. For example, he said that if their sisters are living far away in another village after their marriage, the brothers record the entire land officially (both their and their sisters' shares) in their own names, leaving out the sisters. He said that it can easily be done by spending some money to bribe the local Union Parishad (the lowest unit of local government) Chairman to get a false *warishan* (heir) certificate, listing only the brothers' names as *warish* (heirs), leaving out the sisters' names. This *warishan* certificate can then be used in the land office to record the land in their names. Many brothers sell the land

by using a false *warishan* certificate even before the sisters become aware of such action on the part of their brothers.

Patrick further told me that the false *warishan* certificate can be challenged by the sisters in the court by filing a case stating that their share of the property has been wrongly recorded in another name. However, to recover their records it takes more than a year and many sisters cannot spend such large amount of time and money for court cases and often give up the attempt to recover their share. Another tactic followed by the brothers is that they allocate their sisters' share of land from different plots in small pieces. Thus it becomes practically impossible to use or cultivate or even sell these small pieces of land from different places and locations. As a result, the sisters are left with no other choice but to sell the land to their brothers at a lower price than the market.

Another reason for women's land disinheritance is paying a dowry of 'gift' on their wedding by their natal families, which is often seen as 'pre-mortem' inheritance. The idea of women receiving a marriage settlement from her natal family in the form of *streedhanam* (as it is known in India), or *kanyadan* (gift of a maiden in marriage) or dowry is long-established (Caplan 1984). Most Bangladeshi Christians assert that they do not have such practices, but in reality, such 'gift-giving' are commonly practised and women continue to bring in to her husband's family as much 'gift' as her natal family can provide. A number of women, while telling me their stories, mentioned what the 'gifts' were that their parents gave them during their wedding, mostly in the form of jewellery, furniture, and other household items. Dowry or 'gift' giving at marriage from the bride's family has often been seen as a form of inheritance (Goody 1990). However, the norm of 'gift'-giving at marriage has also been used as a tool to ensure women's disinheritance of landed property (Kishwar 1986, Philips 2003, Chowdhry 2008).

But can a dowry or 'gift' in the form of cash or kind be considered equivalent to land inheritance? Some scholars, such as Sharma (1980) and Hershman and Standing (1981), have dismissed the idea that substitutes land inheritance with a dowry or 'gift' that is mostly provided in the form of cash or in material forms such as gold jewellery, furniture, and household items, or motor cycles or vehicles. They argue that whatever comes as dowry, cash or kind, does not generate income in the same way that land can. Moreover, the dowry transactions are usually held between the bride's and the groom's parents or guardians, where the bride, in most cases, does not have any access to it.

Apart from the sisters, who often are deprived of their parental inherited property, the elderly mothers also do not receive their shares of their deceased husbands' property in many instances, particularly when they have a son(s). Instead, their share of inheritance from their deceased husband's side goes straight to the sons. I met Jharna Rozario in Gazipur during my fieldwork, who explained that usually, if a man dies, instead of a third of his property going to his widow, it directly goes to his son(s) and sometimes to his daughter(s) too. She told me, "Usually the widow lives with her sons. So what would she do with her share? Isn't it rather logical to go to her sons as they are the one who looks after her? So it is seen unnecessary to separate the property and allocate to the widow". Allocating resources, especially land, to men and women separately in a family is seen as a potential threat leading to the breakup of the family. In order to stabilise the family as an institution, sustaining unequal resource positions between men and women is necessary.

### **Christian inheritance law and its (non-)implementation**

Significant differences exist between the ideologies around women's land inheritance and the provisions of the state law governing inheritance among the Christian population. The Succession Act, 1925, which is applicable for Christians

in Bangladesh, is egalitarian in nature.<sup>5</sup> The law does not differentiate between sons and daughters, living and deceased children (if any child died before their parents, their heirs/heiresses will inherit their share), and full-blood and half-blood children. Moreover, it recognises the rights of widows substantially, as equal to that of a widower. The law provides priority to the widow/widower of the deceased person in the inheritance of their shares. The Christian inheritance law specifies that after the widow/widower gets their share (one-third), the rest of the property (two-thirds) is divided between the children equally. Even if a family member converts to another religion, the law does not deprive that person of their share of inheritance. No time limit is provisioned to claim one's inheritance. According to the law, every *warish* will get their share up to the degree they are traceable. Moreover, the law does not differentiate between movable and immovable property.

The Christian inheritance law is highly regarded in the Bangladeshi legal community. A Christian lawyer, practising in the Supreme Court, told me during my fieldwork that he had seen in his law school and later in his career that mainstream lawyers always praise the inheritance law for Bangladeshi Christians as it provides equal rights for men and women. However, although a gender-equal law has been in place since the time of British colonisation, in reality, the provisions of the law are rarely implemented in practice. In fact, the social practices and attitudes of passing property down through the male line have remained dominant within the Bangladeshi Christian community, ignoring law (Cossman and Kapur 1996). Legal feminist scholars have argued that law is a male discourse, particularly when it comes to practice and therefore there is an obvious disjuncture seen between law and the realities that women experience (Griffiths 1997, MacKinnon 1989, Smith 1993). However, in the early 1980s in Bangladesh, a number of researchers found that many women from the majority

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<sup>5</sup> See Chapter Three and the Introduction to this chapter for the provisions of the Succession Act 1925.

Muslim groups were claiming or at least planning to claim their inheritance entitlements (Abdullah and Zeidenstein 1982, Aziz and Aziz 1979, Jansen 1983, Nath 1984, Taniguchi 1987). But among minority communities, particularly in the Christian community, the tendency of women to claim their inheritance is still very low. I found only a few Christian women in my fieldwork who have claimed and/or received their share of inherited property.

**Table 8.1: Inheritance practices of parental properties among Christians in Bangladesh**

	Catholic		Protestant		Total	
	No.	%	No.	%	No.	%
<b>Total no of respondents whose father passed away</b>	17		19		36	
<b>Father's property has been distributed/registered</b>	7	41	6	32	13	36
<b>Father's property has not been distributed/registered</b>	10	59	13	68	23	64
<b>Brother(s) and sister(s) got equal shares</b>	2	12	1	5	3	8
<b>Only brother(s) received all shares of parental property</b>	2	12	3	16	5	14
<b>Sister(s) received less than brother(s)</b>	3	18	1	5	4	11

During my fieldwork, I interviewed 36 women (17 Catholic and 19 Protestant) whose fathers had passed away, to find their inheritance practices. Table 8.1 depicts the findings relating to the inheritance practices among these 36 women. I found only three (8%) among them, had actually received an equal portion of land compared to their brothers. One of these three women reported that she was the only one of her sisters who received some land because of her low economic status, and it was less than half of each of her brother's share.

The practice of equal distribution among all siblings is slightly more common among Catholics (12%) than among Protestants (5%). There were also some cases

(11%) in which the sister(s) received some land but significantly less than the land that their brother(s) received. Moreover, the tendency not to distribute or register the land among the heirs after the father's or husband's death is also very common among Christians (Desa 2012, Baroi 2011). According to my findings, in 23 cases (64%), the deceased father's property was not distributed and registered among the heirs/heireesses. In many instances, land was still registered in the name of a deceased grandfather. This implies that in most of those cases, the land is occupied and used by the son(s) alone as, due to the virilocal marriage system, the daughter(s) had left their natal home after marriage to live with their husband's family, usually in another village.

Apart from the reasons for women's land disinheritance described in the previous section, such as women giving up land voluntarily in favour of their brothers to ensure future financial and social security, there are some other reasons specific to the Christian community in Bangladesh. D'Costa (2011) describes a number of reasons for such discrepancies between laws and practice among Bangladeshi Christians. One factor is that the lack of awareness of the laws results in many women being deprived of their inheritance rights (D'Costa 2011). Another is that spreading false information or propaganda, mostly orally, served to create further assumptions and misconceptions with regards to the Succession Act, 1925, among the Christian population. One example of such false information is the assertion that, due to Christian inheritance law, a woman inherits both from her father and husband. So women are getting property from two parties, meaning women are getting more than men, which is unbalancing the property distribution within the community. But when people talk about the propaganda, they often omit the fact that the same law is also applicable to men as well. When a man's wife dies, he would also receive one-third of his wife's property and therefore, the law does not particularly favour women over men.

A further example of false information that discourages women's equal inheritance is that, if a married woman does not claim her inheritance rights

from her deceased father within 12 years of his death, then she completely loses her inheritance rights and cannot claim them anymore. Misleading information such as this contributes to creating false assumptions and misconceptions among Christian people. Many of them, particularly those who are not aware of the inheritance law, believe them and act accordingly, which adds to the disconnection between laws and practice.

### **Keeping the ‘good woman’ image and asserting inheritance rights**

Across South Asia, including Bangladesh, a ‘good woman’ image has taken an important place in every community, majority or minority. The notion of ‘good woman’ plays a vital role in power, ideology, and culture (Rao 2008). But who are these ‘good women’? According to Rao (2008), a ‘good woman’ is one who conforms to the norms of patriarchal subordination and possesses a strict sexual morality. As opposed to the ‘good woman’ image, there is the notion of ‘*dain*’ (or witch), where women would be more assertive, with a free sexuality, not a good mother or wife, and is seen as a threat to both production and reproduction (Rao 2008).

The image of the ‘good woman’ becomes even more complex when women’s identity cuts across the notion of property and resources. Society provides women with an identity based on their gender roles as home-makers, mothers, daughters, carers, and more recently as working women or working mothers. For Christian women in Bangladesh, the notion of a ‘good woman’ is added to the notion of a ‘good Christian woman’. In Christianity, women’s sexuality plays an important role and hence a ‘good woman’ is always associated with strict monogamy and being sexually abstinent before marriage. Christian values, particularly for Catholics, bring in the concept of one marriage. However, among Protestants, the concept of remarriage is not alien, but people, usually women, prefer not to remarry because of various social ideologies. The concept of ‘one marriage’ has partly originated from Hindu cultural practices and since most

Christians or their ancestors converted from Hinduism, there are some cultural practices from the previous practices still in place. So even when Christian women become divorced or widowed, most did not remarry unless the remarriage was initiated by their families. Therefore, control of women's sexuality is an important condition for being a 'good Christian woman'.

During my fieldwork Bangladesh, I consistently observed that the image of a 'good Christian woman' is highly valued by both men and women. In addition to the above-mentioned qualities based on gender roles and subordination, a 'good Christian woman' has some socio-religious 'duties'. For example, she is a regular church-goer and is actively involved in most church activities for women. During my stay in Bangladesh for fieldwork, I attended many church services of various denominations and observed that without any exception the majority of church attendees, up to two-thirds, were women. An important role of women in the church as seen by the community is praying. In most churches, there are women's groups that routinely pay visits to hospitals and the houses of the sick members to pray for them. In a Protestant community in Dhaka, with which I was closely associated, there are a few elderly women who are well-known for their special prayers. Many people believe that if these women pray, those prayers will be answered. They were always shown as 'role models' for women and many other women within the church community followed their paths.

Motherhood is also commonly associated with the image of a 'good Christian woman'. In fact, I observed that women were often referred to as mothers from the church pulpit or in the women's fellowship meetings. I also found that in many instances, the terms 'women' and 'motherhood' were used synonymously. In other words, a 'good Christian woman' was also equivalent to a 'good mother'. During my stay in Barisal, I attended a three-day women's camp in a Protestant church, where about three hundred women came from all over the Barisal area. One of the speakers in the camp was speaking about how important it is to be patient as a woman. She said, "As mothers, we need a lot of patience. Without

patience, everything will be destroyed in our lives”. To her, reading the Bible and praying can help women to gain more patience. Another speaker in the camp discussed how the situation of faith in the church is fading among Christians these days and how the church politics is taking its place, particularly in the Protestant churches. In such a situation, he thinks that it is the mothers’ responsibility to raise their children ‘properly’ so that faith is restored in the church. Restoring the church faith is also put on the shoulders of a ‘good Christian woman’.

Moreover, ‘sacrifice’ and ‘suffering’ are two other terms that are closely associated with the notion of a ‘good Christian woman’. According to Kapur and Cossman (1996, 97), the ‘familial ideology’ constructs women as “self-sacrificing mothers, loyal and chaste wives, [and] dutiful and virginal daughters .... Women who live up to the ideals of motherhood and womanhood are given some protection: Those who fail to measure up are penalized”.

The more a woman can endure, the more she falls in the category of a ‘good Christian woman’. A number of my informants had to endure continuous physical and mental abuse from their husbands, but they never thought of leaving them although they wanted to leave. When I asked them why, they told me consistently that if they leave their husbands, they will lose their image as a ‘good woman’ in the eyes of the people in the community, which they do not want no matter how much they have to suffer otherwise. So for them, it is better to be in an abusive relationship than to fall from the category of ‘good Christian woman’.

When it comes to women’s inheritance, another effect of keeping the ‘good woman’ image is that many women and their husbands tend to think that it is not a matter of honour to claim their parental property. They perceive it as a ‘shameful’ act to claim women’s shares (Westergaard 1983). Moreover, socially, it is seen as shameful for the husbands if their wives claim their parental property,

especially among the educated middle-class Christians. During my fieldwork, I saw a number of middle-class Christian women proudly saying that their husbands told them that they should never claim their father's property. The reasons for this assertion are that in most cases women claiming an inheritance is seen as lowering the 'prestige of the family' (Chowdhry 2008). Chowdhry (2008, XXV) found similar findings in his studies: "The college-going women firmly asserted that '... they would neither claim their respective shares in their parents' property nor would they accept such shares even if their parents decide to offer them'". Moreover, women claiming inheritance are seen as challenging their husbands' masculinity as a breadwinner. For all these reasons, women not claiming their share of inheritance is often considered the Christian idea of sacrifice that is noble and indicates a higher status.

But how do women keep the balance between keeping the image of a 'good Christian woman' and asserting their land rights simultaneously? It is not easy for women to challenge the image that has been constructed by Bangladeshi society based on social and gender ideologies and claim their land rights. Women I found in my fieldwork asserted their land rights often had to challenge their 'good woman' image. However, I also found that both the conformation to the 'good woman' image and assertion of land rights varies depending on their class position within the community. In order to explain this, let me introduce Mridula, Margaret, and Parul, three Bangladeshi Christian women who asserted their land rights according to their class and social status.

Mridula Baroi is a single mother from a lower middle-class family from Kathira village in Barisal. She is a Protestant woman in her 40s and has a 10-year old school-aged daughter, named Mishti. Since Mridula's husband deserted her, both she and Mishti live with her parents' family, with her two brothers and their families. Mridula completed her Bachelor degree and teacher's training and now works as a school teacher at a Christian school in the next village. Before moving into her parents' house, Mridula had a good relationship with her brothers and

their wives. But as soon as they came to know that her husband had deserted her, problems began to arise. Both her brothers and their wives perceived her as a threat when Mridula declared that she would claim her share of her father's property as per law after his death. But her brothers expected that similar to most other women, Mridula would never claim her father's property. As this issue heated up, Mridula's father allocated her a portion of his *bhita*, the homestead land, and attempted to resolve these issues among his children while he was still alive. Accordingly, he gave her a small piece of his homestead land (about 61 square metre) at the back of the main house and told her to build a house and move in there.

When I met her in Barisal during my fieldwork, Mridula already began to fill the land with earth to raise it in order to build the house and was planning to proceed with it as soon as she could save some money. I asked her: What if she was still with her husband, would she receive the land from her father? Mridula does not think she would have received anything from her father's property if she was with her husband. Her physical presence in her father's home was vital to receiving some land, although not equal to what she would inherit otherwise according to the state law. Her presence in her father's home did not ensure her rights to land automatically until she asserted her rights and demanded them. Her assertion of rights damaged her image as a 'good woman'. But considering her vulnerable situation, she thought, unless she asserted her rights while her father was still alive, she would not have received any of her share of inheritance once her father dies. Mridula used her circumstances in order to claim her rights.

However, Margaret Gomes experienced asserting her land rights differently than did Mridula. Margaret is an educated Catholic woman in her early 50s, who belongs to a middle-class family from the Gazipur area. In her natal family, Margaret is the sixth child among her five brothers and three sisters. When her father died about five years ago, he left a huge amount of land in Gazipur. She told me that she did not know exactly how much land her father had. Margaret

said, “My brothers know everything about my father’s land, but they did not let the sisters know how much total land our father left us”. A couple of years before I met her in my fieldwork, her siblings had a meeting on distributing their inherited property. In the meeting her brothers asked the sisters if they wanted to take their share and if so how much they wanted. Her eldest brother told them that each sister is legally entitled to inherit 0.63 acres of land. Then he further asked them that since culturally sisters do not claim their share of inheritance, whether they would claim theirs or whether they would let their brothers have them.

Margaret said, “None of my sisters spoke out when he asked us this. It was only I who said to hand over all my land and then I said I will decide what I would do with it”. Her brothers became angry with her as none of her sisters demanded anything but her. Then her brothers finally decided that the sisters should receive Tk. 25 lacs (USD 31,000) each plus their share of a particular piece of land (0.22 acre each) which had a high market price at that moment. However, this amount is significantly less than their actual share of their father’s property:

After that meeting, all of my brothers and their wives have stopped talking to me. They became very upset with me as I claimed all of my land. My brothers told me that I was the greediest among all my sisters. They told me that how I could demand all of it where my other sisters were happy with whatever they were offered. I just kept quiet, did not bargain more.

Margaret’s story also shows how she asserted her rights by challenging the norms. She was perceived as ‘greedy’ by her brothers and their families as she was the only sister who claimed her legal rights.

Unlike Mridula and Margaret, Parul Rozario’s land inheritance experience brings in another dimension of women’s struggle to balance between their image of the ‘good Christian woman’ and the assertion of land rights. Parul is a Catholic woman in her 40s, from Gazipur. Parul lives with her 70-year old mother and two teen-aged sons in poverty. I had to take about an hour’s walk from the village bazaar to reach her house as there were no means of transportation to go to her

house. Upon reaching it, I saw a very old, decayed hut, made of mud and with a tin-roof. The roof looked very rusty and slanted. It felt as if the hut would fall down any moment. I tried to look inside, but it was very dark and there was hardly any furniture in the house.

Parul came out from the hut to receive me with a bright welcoming smile on her face. Next, to their hut, there is a large piece of land that belongs to Parul's mother. Parul told me that her mother, who became a widow very early, looked after her grandparents in their old age and therefore her grandfather gave her (Parul's mother) some part of his land and her grandmother gave her entire portion of land to her mother before they both died. Inheriting this land meant that Parul's mother owned more land than her *mamas* (Parul's uncles). Since then, Parul's *mamas* were not content with Parul and her mother and did not maintain good relations with her mother, thinking that they were deprived of their inheritance rights, and often used to threaten her mother and Parul with their lives. A number of court cases are still going on this dispute.

Being the only child, Parul farms a part of her mother's land by herself. She told me that they are so poor that they cannot hire agricultural labourers to cultivate the land. Also, they intentionally do not give their land to others to cultivate because of the land disputes that are going on with her *mamas* and that have been continuing for years. Parul's mother had to send her to a boarding school in Dhaka city just to keep her safe from her *mamas*. After a few years, Parul married a Catholic man and became the mother of a son. But her marriage did not work out and hence she left her husband and came back to her mother's house, along with the son. Later she remarried, but she did not leave her mother's house this time. Her husband visited her from time to time. Gradually, she gave birth to another son. But unfortunately, her second marriage did not work out either. She said, "Like my first husband, my second husband also wanted me to sell my mother's land. He wanted me to dispose of everything and leave this place and settle in his village. I didn't do it".

In the meantime, the dispute with her *mamas* had begun affecting her sons. They threaten her sons with their lives. After a few years' time, she remarried for the third time, now to a policeman. She said, "I had to marry this policeman just to protect our land". She continued, "But even this time I will not leave my mother's place at any cost. If I leave, all of my mother's property will be taken away by other people". Parul's incidence shows her extreme vulnerability. At the same time, it shows how she is asserting her land rights by protecting her mother's land by marrying multiple times, which is completely against laws as well as against social norms and ideologies. Parul directly asserted her land rights without conforming to the 'good woman' image.

In order to claim their land rights, all three women, Mridula, Margaret, and Parul decided not to keep the image of a 'good Christian woman' that the society had imposed on them. Rao (2008) also made similar findings:

[A]sserting one's identity becomes possible only when we learn to say 'No', something that women ... often dream of doing but do not find the courage to do ... Land becomes a means of asserting one's identity as a full member of the community. In this process of assertion, social norms and customs are challenged. (Rao 2008, 2-3, 16-17)

Mridula continuously fought and negotiated with her brothers and their wives to gain the land from her father. Margaret had to say 'no' to her brothers who expected that all of her land will become theirs. And Parul had to break many gender norms to hold on to and secure her future inheritance. All of them, in different ways, reclaimed their identity not as a 'good Christian woman', but as an individual human being, as a person.

However, reclaiming identity through asserting land rights involves a continuous struggle for women to have a balance between keeping themselves within the 'good woman' criteria and asserting their rights and identity. Most women, such as Mridula and Margaret, continue to claim their rights by keeping themselves within the framework of the 'good woman'. Mridula, for instance, fought for her land rights with her brothers, but she consciously kept herself within the

framework of a 'good woman'. As Rao (2008) argued, most women want to possess the 'good woman' title fearing that otherwise they might be excluded from the community. In any adverse scenario where their 'good woman' character is challenged, they tend to take their natal family's (or other villagers') support and help and return to their natal family to avoid such accusations. Mridula wanted to remarry, but she feared that she would lose whatever possession she gained of her father's property and most importantly she fears to lose her natal family's support. Moreover, Mridula works in a church-based school. She goes to the church, along with her daughter regularly. Her daughter attends the Sunday School in the church. Working in a church environment also puts extra pressure on her to maintain her image of a 'good woman'. She told me once that she does not speak to any of her male colleagues in the street so that people cannot comment negatively about her life. She chose to fight with her brothers for the land by keeping herself within a limit as she thought that if she had fought excessively with her brothers over the land, she would lose their shelter. So for Mridula, control of her sexuality was essential but not sufficient. She had to prove continuously that she was a 'good Christian woman'.

On the other hand, in Margaret's case, even after challenging her brothers to hand over all of her inherited land, Margaret stepped back from further bargaining with her brothers to protect her 'good woman' character. When Margaret found that her 'good woman' profile was challenged, as she was seen as greedy, non-sacrificing, selfish by her brothers and their wives, she stopped her negotiation with them and finally agreed with what everyone decided for her. So Rao's (2008) binary of 'good woman' and '*dain*' becomes more fluid for these women and they continuously struggle to strike a balance so that they do not fall under the category of 'good woman' but still strive to realise their rights.

However, although most women negotiate for their rights by being within the 'good woman' category, some women do not. One of the factors contributing towards such non-conformity is women's class position. Parul is clearly one of

them. She did not conform to the 'good woman' category in either way. Parul married thrice and each time she discontinued her relationship with her husband when she felt that her mother's property, of which she was the sole heiress, was at stake. She did not leave her mother's house in order to protect her future inheritance.

What made Parul take a different path from the others? Why did she not conform the 'good woman' criteria? I argue that Parul's socio-economic situation did not allow her to conform to maintain her image as a 'good woman'. She was brought up by a single mother and had struggled her entire life with extreme poverty. She had to fear for her life all along because of the land dispute with her *mamas*. Because of her poverty, her previous husbands also wanted her to control her mother's land. She hardly has any relationship with the church. Neither she nor her children or her mother go to church or to any other community's activities. So in a way she is below the community's radar. Therefore, her low socio-economic class position enabled her to remain under the community's radar, which allowed her to break many gender norms and completely deny the 'good Christian woman' image that society imposed on her.

### **Community identity defined by women's land inheritance**

The issue of women's land inheritance is linked with the community's identity and the history of this identity creation. During the 18<sup>th</sup> century, a number of Portuguese Catholic priests became *zamidars*.<sup>6</sup> The Portuguese Mission Estates had *zamidari* rights on Nagori, Hashnabad, and Padrishibpur. Until the middle of the 20<sup>th</sup> century, Nagori Estate constituted 25,000 acres of land (Goedert 1958). With the beginning of missionary *zamidari* in these areas, a huge Christian population was baptised by these missionaries and settled. Among the villages,

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<sup>6</sup> A landowner, especially one who leases his land to tenant farmers; in British India, a landlord required to pay a land tax to the government.

some, including Tiria, Seitan, and Nagari, became entirely Christian villages, whereas other villages included a Hindu and Muslim population. According to Father Edmud Goedert (1958), the *zamidari* of Christian missionaries constituted a protection for Christians in Nagari. However, all *zamidari* in Bengal were abolished by the East Bengal State Acquisition and Tenancy Act of 1950, also known as East Pakistan Estate Acquisition Act 1950.

Because of *zamidari*, the governed villages became exclusively Christian villages and the land was known as the Christian land. Ownership of this land contributed to the creation of a Bangladeshi Christian identity. According to von Benda-Beckmann et al (2006), the property is an important element that constitutes individual and group identity. In other words, land has defined, to some extent, what Bangladeshi Christians are. Most of the Christian population was and still is poor, which made them began to sell parts of the large plots received from the *zamidari* in the case of shortage of cash. Land was mostly sold to the majority Muslim community as they had enough money to buy land at a market price. In this way, many Muslims have gradually entered these Christian villages, which had threatened the identity of the Christian community as a whole.

During my fieldwork, I spoke with many Christians who have a feeling of losing their identity and existence through losing their land. In Gazipur, one elderly villager told me, “Before we had so much land. Village after village you could only find Christians. But now we have lost a lot of land and we are nothing without this land. If you do not own land, how can you exist in today’s world? Land gives us power, strength, and confidence”. I have seen that among Christians, as a minority group, a siege mentality has occupied their minds, with a shared feeling of victimization and defensiveness. This siege mentality has been exacerbated by losing a good deal of land. However, it was almost impossible to protect the land from going to Muslim majority. Many Christians were still selling land to

Muslims who had the financial means to pay a better price than Christians themselves.

As I mentioned before, there is a strong link between women's land inheritance and marriage practices. This issue has been addressed by many scholars, including Goody (1973, 1976, 1990). On the one hand, marriage between close kin is not allowed in Christianity, usually, rural women will be married far from their own natal village. On the other hand, land is seen as the most important form of property in agrarian economies, and the inheritance practices ensure that land never flows out of the kin group. Therefore, one way to ensure the latter is to make the land only flow along the male line, excluding women heiresses. According to Goody (1976), if a daughter's land inheritance right is strictly subject to the physical proximity of her residence, meaning her residence in the natal home, then she loses her rights if she resides elsewhere. A number of Christian leaders in Bangladesh told me that, since women live in their in-laws' village, which is usually far away from their parents' village, women are unable to make good use of their inherited land. As a result, when women receive their inherited property, they often sell it to Muslims to obtain a higher price. In order to stop this outflow of land, the norm that was developed was to let the brothers have all the land so that they could make their efficient use. Because of this notion, when the Succession Act, 1925, was introduced by the British Raj to Christians, the community completely ignored the law and continued to keep land within male lines.

A feeling of indirect threat of losing group identity and existence through losing land was a common observance during my fieldwork both in the Catholic and the Protestant communities. During the 1990s, a prominent Protestant national church body reviewed their land-selling policy in order to protect land. Before this policy review, the church body allocated and sold the Mission land among the respective church members at a minimum price, less than half of the market price. But the church body have found that many of their members who received

land in this way began to sell them to Muslims. In this way, many Muslims occupied the Mission's land. Later, this particular church body stopped selling land to their members and instead, they began to lease it to them for 99 years, with a condition that if they want to sell it, they must have permission from the church body and, in any case, they will not be able to sell it to anyone but Christians. Through this measure, the church body managed to keep the church land within the Christian community. But such control was not applicable to private land, which people own individually.

In order to stop land from passing into the hands of Muslims, many fathers in Gazipur area registered their entire land to their sons, while they were still alive. Teresa Gomes, my host during my fieldwork, confirmed this. She said that her father registered all of his property to his sons while he was still alive so that none of his daughters could receive any land after he died. She said:

My *pishi* [aunt, father's sister] inherited some land and when my *baba* [father] and *kakas* [uncles] wanted to keep the land, she demanded Tk.40 lacs [USD 51,000]. So my *baba* and *kakas* had to pay her Tk.40 lacs for her land, otherwise, she would have sold her share to Muslims for a better price. In my *baba's* village many women sold their land to Muslim people and due to this, our village has become chaotic and not as peaceful as it used to be. It has now almost transformed to a Muslim village. This is why my *baba* decided this from the very beginning.

A local Christian leader from the same village stated that he completely supports Teresa's father's act as at least his land is still owned by Christians and has not gone to Muslim people. He said, "This is how we need to protect our land from Muslims". He blamed women for selling their land to Muslims. In his opinion, women in the Christian community have excessively favourable inheritance rights. He also said that community organisations such as the church parish, Christian credit union amongst other organisations sometimes buy back some of the land that had been sold to Muslims at a higher price than the current market price to protect the land that originally belonged to Christians. A tendency was seen among these people to make women's inheritance rights solely responsible

for such chaos and the instability occurring in the community. They tend to avoid the fact that many Christian men also sell their land to Muslim people.

In this way, women's disinheritance in respect to land became a custom although personal laws allow women to inherit equally with men. This custom has become a marker of the community's identity. Women's disinheritance of land has become a key dimension of the processes of community identity creation, re-creation, and protection. When the collective community identity has been defined by women's land inheritance, how and where are women within these communities situated or positioned? In responding to this question, Rajan (2003) argues that women are neither excluded nor marginalised; rather they take centre stage in identity politics. In this process, the personal law acts as the symbol of community identity. Based on Rajan's (2003) argument, I argue that it is true that the creation of personal law contributes to the strengthening of community identity. However, it is also true that violating or breaking those laws creates or recreates or, in other words, protects, community identity. Although we have seen here that women's disinheritance is an act of breaking the state law, it has been consistently done in order to protect community identity and existence. But such an act does not come without a price. There are indeed consequences of women's disinheritance, which I discuss next.

### **Coming back from the dead and claiming land**

Here I examine the consequences of inequalities in land inheritance practices between men and women in the Bangladeshi Christian community. In order to protect community identity, Christians in Bangladesh not only deprive women of their share of inheritance but also women's rights have been instrumentalised for other people's gain. All of these factors have cumulative consequences, which pass down from one generation to another and exacerbate conflicts within intra- and inter-communal relations. Below I provide some examples of

instrumentalisation of women's land rights and the inter-generational consequences associated with it.

Kabita D'Cruze was a Catholic woman from the Gazipur area. She died in 1999 when she was 71 years old. Kabita was married to a man from another village, also from the Gazipur area. Her husband died seven years before her death. She left five children, two daughters and three sons and four sons- and daughters-in-law, seven grandchildren and two great-grandchildren. Kabita had four brothers and two sisters. She and all her sisters married when they were about 15 years old. After marriage, they began living in their respective in-laws' places. After Kabita's father died, her brothers took all of her father's property and the sisters did not receive anything. "As far as I have heard, in fact, they did not claim any of their shares", says Peter Gomes, Kabita's brother's grandson. When I met Peter during my fieldwork, he told me that as part of their custom those days, women did not receive their share of inheritance. But this transaction occurred in verbal terms. Kabita and her sisters, similar to many other women, verbally gave their brothers their share of inheritance. The land that was supposed to be Kabita's and her sisters' remained theirs legally and the land was still registered in their father's name. So legally Kabita and her sisters remained the legal owners of that land.

In 2013, 14 years after Kabita's death, Peter's father (Kabita's nephew) heard from local leaders that Kabita's grandchildren wanted to retrieve Kabita's share of land and had given power of attorney to a local land agent in that area. Peter told me that the land agent was a very influential person from the Muslim community and also politically active. "He has a very close liaison with local political leaders and even with the MP [Member of Parliament]", said Peter. Listening to Kabita's grandchildren's intention, Peter's father became very scared: "My grandaunt (Kabita) died long before, and now they have come to claim her land! My grandaunt never wanted her land, and now her grandchildren want it!" Peter sounded astonished.

Peter's father negotiated with the land agent and offered him cash instead of land. Peter said, "My ancestors have been ploughing this land for decades and all of a sudden how can they belong to some Muslims? So my father paid cash instead of the land". Finally, it was settled for Tk. 4 lacs (USD 5,000) and was registered to Peter's father's name. But later they heard that out of these Tk. 4 lacs (USD 5,000), the original owner (Kabita's grandchildren) received only Tk. 50,000 (USD 600) and the rest were taken away by the land agent himself.

Recently, in the Gazipur area incidents such as those Peter experienced became notably common. Peter's relatives used their deceased mother's inheritance rights and claimed her share of land. But the complexity had risen when they involved people from outside of the community. Immediately, Peter's father felt insecure and settled the issue for cash.

I also met Gilbert in my fieldwork, who told me the story of Juliet Dores, his *shashuri* (mother-in-law). Juliet died in 2005 at the age of 47, leaving two sons and one daughter. Juliet's natal village was in Gazipur, but after her marriage, she moved in to her husband's house in Dhaka city and lived there for the rest of her life. Similar to most women, Juliet did not claim her father's property after his death and her two brothers owned the entire inheritance. Juliet's mother also did not receive an inheritance when she became a widow as she was living with one of her brothers and died several years after her husband's (Juliet's father) death. However, neither she nor her mother registered their share of inheritance in their brothers' names. So, similar to Kabita, Juliet and her mother remained legal owners of that land. In 2014, Juliet's three children sought to claim their mother's share of land and gave the power of attorney to a local land surveyor, who also works as an agent of land sale in that area. This land surveyor was from the Muslim community. "When we gave this man the power of attorney, he went to my mother-in-law's brother and showed the paper", said Gilbert. He said,

Look, do you have any idea how much the land in Gazipur area costs? In the last ten years, the land price in that area has increased how many

times God knows. Who doesn't want to make fortune out of it? Go and find yourself, now whoever has any inheritance links they are going and claiming it. If you have one *bigha*<sup>7</sup> of land, you can get Tk. 1-2 crores [USD 127,000] easily.

I asked him: Why did they provide the power of attorney to the agent? Why did they not just go to their relatives and claim the land? He said, "Who is going to give away land that is so precious now? So my *shashuri*'s family was not ready to let us have the land. It is easy if someone 'professional' is involved. They can easily rescue the land". By 'professional' he meant someone who has local influence.

### **Inter-generational consequences of women's land (dis)inheritance**

The stories of Kabita and Juliet show us a reverse process of inheritance. According to Cole (1932), the process of inheritance enables the living persons into the dead persons' property. However, in both Kabita and Juliet's cases, the inheritance process has taken the opposite route. In my opinion, this reverse inheritance process is a consequence of the violation of law by the society, which has an inter-generational implication.

In the last decade, there has been a sudden increase in land prices in the areas near the capital city, Dhaka. Of particular note is the Government's Purbachal New Town Project, the biggest township in the country, comprising about 6150 acres land located between the Shitalakhya and the Balu River at Rupgonj thana in the Narayangonj district and at Kaligonj Thana in the Gazipur district, on the north-eastern side of Dhaka. The project implementation period was from 1995 to 2015. According to RAJUK, Capital Development Authority of Bangladesh, the township will be linked with an eight-lane-wide express way from the Airport Road-Progati swarani crossing. There will be provision for about 26,000

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<sup>7</sup> Local measure of land (one-third of acre)

residential plots of different sizes, 62,000 apartments with all necessary infrastructure, and urban facilities. Kaligonj, a Catholic-dominated area, is in the Gazipur area and it, along with other places in the Gazipur area, has experienced a huge increase in land price. Patrick Rebeiro, the land surveyor that I interviewed in Gazipur, provided me with an idea of the change in land price before and after Purbachal Project. According to him, in the Gazipur area before Purbachal, the price of a *bigha* was Tk. 2-3 lacs (USD 2,500-3,800). But after the Purbachal Project, the same land now costs Tk. 2-3 crore (USD 255,000-383,000). Immediately it made sense why these people were rushing and claiming dead people's share of inheritance.

It has become increasingly common in the Gazipur area to claim land by using the inheritance rights of one's deceased ancestors, mostly women. The Succession Act, 1925, does not have any time limit to claim the inheritance and the inheritance can flow up to the degree of heirs or heiresses who can be tracked. By using this clause, many Christians are obtaining their ancestors' land. In most cases women's rights are being used and have been instrumentalised by their descendants. Some people, including lawyers I interviewed, argue that this can be considered a post-mortem realisation of women's land rights. However, in my view, their rights have been used as an instrument to fulfil the descendants' goals. If the descendants did not have anything to gain, would they fight equally to realise their dead ancestor's rights? The most credible answer would be 'No'. So these descendants fight for their own gain, not for the realisation of their dead relative's rights. Therefore, it is a clear case of instrumentalisation of women's rights that is used for other peoples' gain.

When the children, grandchildren, and even great-grandchildren of deceased Christians return and claim women's land, in most cases, they are involving land agents and other influential people from the majority Muslim community. Both Kabita and Juliet's children and grandchildren used land agents from the Muslim community. The land surveyor, Patrick, stated that usually, Christians will not

fear other Christian people. But they fear Muslim people. This fear of the majority group let most people involving Muslims. This involvement from the majority group has provided access to them to become involved in the land issues of the minority group. Such practice has become increasingly common these days, which has created a feeling of insecurity among minority Christian people.

Property-centred conflicts and struggles between majority-minority groups are prevalent throughout the history of South Asia. As von Benda-Beckmann et al (2006) argue, property-focused struggles exist not only at the family and community levels but also at the class, religion, and state levels. Since Partition of India and the creation of East and West Pakistan, land has taken centre stage in majority-minority issues in this part of the world. Hindu land has been particularly contested and often taken by influential Muslims (Datta 2004, Mohsin 2004, Feldman and Geisler 2012, Chowdhury 2010). However, Hindus are not the only minority group that has been the subject of land grabs. Indigenous groups and, the focus of this research, Christians, have also been affected. Perhaps the least discussed group as the subject of land-grabs has been the Christian population.

One of my informants from the Muslim community told me a story from his area. A few years back a group of Hindu men came to an influential politician of their area who happened to be an MP from the ruling party. They told him that some of their Muslim neighbours have been taking portions of their land every now and then. They came to this political leader for protection as they feared that soon all of their land would be taken. When the politician heard about their situation, he told those men from the Hindu community to select one specific area to which all of them could move and he promised them that he would provide protection so that no one else could take their land. But the area where they had to move to was much smaller than the total amount of land they had originally. The politician said, "I will make sure that no one disturbs you".

However, my informant somehow came to know that the rest of their land had been taken by the same politician as soon as they moved to this new place.

A local *Matobbor* (village leader) in Gazipur area, who is also a member of the local parish council, said,

Presently, there are syndicates in these villages, led by Muslims. Some Christian people also joined them. We call them *vumidosshu* [land bandits]. These people collect old land documents from the local Land Office and find out which *warish* [heirs] have not claimed their inherited land. They find their descendants and offer a huge amount of money to sell that land by using their ancestors' inheritance rights. In many time these descendants had no prior idea that their ancestors had left the unclaimed land, which they can get on their behalves. So the descendants easily get convinced to sell it. These *vumidosshus* prepare the documents secretly in the middle of the night, usually after mid-night. Once the documents are done, they go for *dokhol* [possession]. We also have heard that our local MP patronises these syndicates.

The priest of the local parish church also told me that within the community, there is a feeling of insecurity, particularly in relation to land related matters. This insecurity arises due to the tension with the majority Muslim group who are increasingly buying Christians' land. "The local administration and even the state is in their favour and they are the majority group and we are just a minority. Unfortunately, many Christians have joined them into such land-grabbing business," the local priest continued.

The feeling of insecurity is also seen among the villagers. In the village in Gazipur, where I lived for my fieldwork, many told me that there had been no Muslims living in that village not even a few decades earlier. But now it is almost being converted to a Muslim village. Right at the entrance of the village, now there is a large mosque that you cannot miss, which has been newly constructed in the last couple of years. One of the villagers told me, "Before you could never see someone with a *borqua* [veil], but now if you come out from your house, you could see them everywhere".

There were also some responses to this issue from the Catholic community, particularly from the church, in the last few years. Through the Justice and Peace Commission, working on various issues of the Catholic community, including land disputes, which has its unit in each parish church, the Catholic Church has taken a number of initiatives so that women receive recognition of their inheritance rights through alternative dispute resolution (ADR), without going to court or to people from the Muslim community. The Commission advocates and promotes that each daughter should receive their share of inheritance before she dies in order to avoid the situation which has arisen in Gazipur. A priest told me, “In order to stop such chaos, a counter advocacy was developed from the Catholic Church that promoted various means of alternative dispute resolution. The Catholic Church became very active to engage people to realise their rights through other means, without going to the court”. However, Patrick, the land surveyor, confirmed that although the Justice and Peace Commission promotes women’s inheritance rights and encourages women to take their share of inheritance, many women still do not take their share of inheritance; instead, they give their share to their brothers either for free or for a minimum price, but the difference is that now they register the land in their brothers’ names instead of giving it to them verbally in order to avoid possible future conflict with the future descendants. Patrick said, “Now that the Commission is initiating women’s recognition of their inheritance rights, most women are happy just to be recognised and then they give away their land to their brothers. But the realisation of equal right is yet to be achieved”. The Justice and Peace Commission is now encouraging the community that after a parent’s death their land must be distributed among the children and if the daughters do not take their share they should register the land in their brothers’ names. Some fear that this might be the practice for the future and might become a new norm and women will never get equal rights equal to their brothers’.

The local *matobbor* I interviewed told me a story. A Christian man in their village remarried a Muslim woman after he divorced his wife<sup>8</sup>. When he married the Muslim woman, he registered all of his properties in her name. The man refused to pass any of his properties to his son from his first marriage. Then the Justice and Peace Commission used the man's *pishi*'s (aunt, father's sister) inheritance rights (where his *pishi* did not claim her share in her lifetime) and gave her share to the man's son. So, women's land inheritance rights are being used in various ways to achieve different people's goals, instead of their own benefits.

## Conclusion

Women's land inheritance rights is a critical issue within the gender debates in Bangladesh, as well as in other countries of South Asia. The gaps between the inheritance law and local practices of land inheritance and transactions are huge. Such a gap between law and practice is directly linked with social ideologies and the creation and protection of community identity. Women's land rights become the price paid for both keeping a 'good woman' image and minority identity creation and protection.

In this chapter, I have revealed the complexities that Bangladeshi Christian women experience in realising their inheritance rights, which have been provisioned in the formal law equally between men and women. Many times the emotional and moral pressure felt by women to maintain amicable relations with their brother(s) override the assertions to claim the land equally. This moral pressure fundamentally translates to women voluntarily giving up such rights in favour of their brothers who they assume will eventually reciprocate by providing the necessary emotional and financial support in times of trouble or otherwise. Some other times, women still face the dilemma of choosing an identity either of that of a 'submissive sacrificing good Christian woman' or of an 'assertive,

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<sup>8</sup> It was not a legal divorce. See Chapter Seven for detail discussion on divorce.

individualistic, self-centred, bad woman'. In this process, women's choice of either of these categories is not straightforward. Their sexuality, class position, and social image influence the choice that they make and moreover, women have to keep a fine balance between the two extremes in most cases.

A minority community's identity creation instrumentalises women's rights, particularly in landed property. The instrumentalisation of women's land rights has an inter-generational consequence, as well as a complicated outcome creating intra- and inter-religious conflicts. Bangladeshi Christians feel a threat to their existence when they see that land, previously belonging to Christians, is often transferred to members of the Muslim community. In most cases, women's land inheritance is made solely responsible for such transfers of land to other communities. Therefore, in order to protect the land of Christians, women's disinheritance with respect to land has been made a custom although the personal law allows women to inherit equally to men. So, women's disinheritance regarding land has become the instrument for community identity creation and protection.

The custom of women's land disinheritance has a cumulative consequence, generation after generation. Although many women have verbally provided land user rights to their brothers, they have not transferred formal rights. Thus, legally, women continue to be entitled to land that they do not till or use. Difficulties arise when the female owners' children and/or grandchildren claim the land. Because of the virilocal marriage system, the progeny is most likely to live in a different village and may sell it to people from the dominant Muslim community in the village where the land is located. Such sales tend to exacerbate inter- and intra-religious conflicts and tensions.

## Chapter Nine

### Conclusion

This thesis has painted a picture of multiple complexities that arise when religious minority women's identities intersect with multiple laws and patriarchy in a postcolonial setting, in a situation of legal pluralism. I asked two questions at the beginning of this thesis: In a postcolonial context, how do laws interact with patriarchy to define minority women's positions in the state, society, and the community? How do religious minority women in this context selectively seek, apply, and subvert the plurality of laws available to them to achieve their own objectives? This thesis has addressed these questions by taking the case of a single religious minority community, that is, the Christian community, in Bangladesh.

Rebecca Sarker, the protagonist of my story and whom I had introduced at the beginning of this thesis, took an alternative path to exit her marriage. She bypassed the state as well as church laws by signing an affidavit along with her husband declaring themselves to be divorced. Rebecca's alternative divorce was not a 'legal' remedy in the eyes of either the state or the church as the path that she took did not comply with the state or the church laws. Although Rebecca was aware of the difficulties and disadvantages of the process she followed, it did not stop her from taking the alternative path. She said, "I had reached a point, where I just needed some sort of document, which somehow falls within the legal framework, and that states my marital status as 'divorced'. I just needed to come out of that relationship and this option seemed the best among what I had". For Rebecca, the perceptions of the state and the church were less important than her own need to get away from her previous husband.

I have foregrounded Bangladeshi Christian women's experiences of law and patriarchy by underlining that although the state and the church wield significant power and

influence, women's agency and subversion cannot be forgotten. The complexities that arise from a situation of legal pluralism can only be understood through the eyes of religious minority women such as Rebecca and traced stories of their subversion of law and patriarchy within the boundaries of specific socio-legal contexts.

The practices of marriage, divorce, and inheritance among Bangladeshi Christians must also be placed within the complex socio-political context and the historical legacy of British colonisation. Together, they have created an impasse, where true gender equality remains a distant dream for religious minority women. Situating Rebecca in the complex intersectional interstices of minorityness, multiple laws, gender, and patriarchy, we receive a snapshot of how women like her experience and subvert ruthless oppression of patriarchy at different levels and aspects of life. How these women make strategic choices to subvert the constraints created by both law and patriarchy by taking alternative paths has been a crucial task. I have shown minority women's experience of law and patriarchy and their subversion through the feminist theory of legal pluralism by adding a legal pluralism angle to the rich and vibrant debates on feminist theory and gender and development.

The need is to link the plurality of laws with manifestations of patriarchy and show their impacts on minority women in a particular context. In order to establish this link, I have examined how patriarchy plays its role in the contestation and negotiation of the state and the community around the issue of governing the family. This thesis extends the arguments made by Rajan (2003), Manchanda (2009), and Solanki (2011) on the dynamic and contested relationships between the state and the community by showing the role of patriarchy in this struggle.

The multi-layered approach allowed me to unpack the role of multiple laws and patriarchy first at the state level, then at the community level, and finally, at the individual level. The focus on a religious minority community, its creation and identity construction through the Christianisation and law-making processes during the colonial period show the wider processes at play. The effects of the interaction of

law with patriarchy are felt on women's everyday lives and at various sites, such as their homes, workplaces, community, churches, and elsewhere. At the microscopic scale, women's gendered experiences of marriage, divorce, and inheritance practices show their agency.

First, this thesis has examined how laws and patriarchy operate within the state mechanisms. At this level, it has shown that when the state laws interact with non-state laws and other forms of normative orders, the situation of women takes a complex shape. In fact, the complexities arise with the conflicts between the state and non-state laws and various forums available to women. By adopting a historical route, this thesis has also shown how patriarchy was reproduced and reinforced in the processes of identity creation through colonisation, Christianisation, and the state's law-creation processes. The Bengali Christians were 'intimately colonised', because the identity of 'native' Christians was a product of negotiations between the colonial state and the local Christian community in order to protect patriarchal practices. In these processes, women became the subjects of further and possibly more intimate colonisation simultaneously by the two groups: the colonial rulers and by men in their own community.

Second, this thesis has described the encounters between the state, the community, and patriarchy in a postcolonial setting by unpacking the Christian community's group identities, autonomy, and governmentality. By situating the community within broader Bangladeshi society, this thesis has also shown how gender intersects with community power, politics, and dynamics. I have situated the Christian community at the present time and analysed how the community's governmentality contributed in creating their minorityness. Moreover, the position of the community as a minority group within the broader society in relation to the majority groups, demonstrates how minorityness blends with patriarchy to create a specific type, the 'mission-compound patriarchy'.

Finally, this thesis has examined, compared, and contrasted gender dimensions, treatment, and experiences of multiple laws and normative orders with respect to three specific issues: marriage, divorce, and inheritance. By examining the cases of *oshomo jowal* or mixed or inter-religious marriages between a Christian and a non-Christian party, this thesis has shown how the Bangladeshi Christian community actively creates and defines boundaries, particularly for women, while simultaneously creating mutuality in order to accommodate differences. Although the state law for Christian marriage does not prohibit inter-religious marriages, this type of marriages are often highly discouraged and create a moral panic within the community that is often linked with the community's minority identity. In order to overcome this panic, the mutuality creation processes sometimes take a violent form, which remains a blindspot in the community and that is most cases unseen and unrecognised by the members of the community.

The state and the community struggle around the governance of the family. This struggle is seen around the issue of Christian divorce; while the community actively prohibits and discourages divorce within the Christian community, its members, particularly women, take alternative paths to get a divorce or its alternatives and exit marriages. While taking these paths to divorce alternatives, women make strategic choices depending on their respective individual intersectional subjectivity and situations. Minority women engage in patriarchal bargaining through their strategic choices while simultaneously conducting forum shopping by taking the most suitable alternative paths in order to receive a remedy of divorce, bypassing the state as well as community laws, according to their individual subjectivity.

Women's land inheritance rights and practices within the Christian community exemplify another aspect of the state and the community struggle over governing women's lives. Although the state personal law provides women with equal rights to their male counterparts to inherit land, in order to protect the community identity, women have been deprived of their land rights systematically by the community. While the personal law allows women to inherit equally to men, the community uses

gendered and ideological assumptions in order to make women's land disinheritance a custom, which the community considers as a marker of their group identity. In this way, women's disinheritance of land became a key instrument of community identity creation, re-creation, and protection.

By combining two disciplinary lenses of feminism and legal pluralism, this thesis contributes to both the theories through the development of a feminist theory of legal pluralism. Three distinct but interrelated aspects of a feminist theory of legal pluralism have been presented in this thesis. First, a feminist theory of legal pluralism suggests a shift from the legal centralism to legal pluralism paradigm. This shift is important in order to capture women's full experiences of law. The shift from legal centralism to pluralism expands the horizon of law and instead of seeing the state as the sole source of law, it also considers other social sources of laws, such as customs, norms, rules, amongst others.

Second, a feminist theory of legal pluralism not only makes a shift from legal centralism to pluralism but also pursues a second shift that involves the centre of analysis — from law to women. Instead of analysing how laws affect the lives of women, a feminist theory of legal pluralism puts women at the centre of its analysis and examines how women experience and navigate the plurality of law. The shift from legal centralism to pluralism, and shifting the centre of analysis from law to women, is evident in the analysis of marriage, divorce, and inheritance in this thesis. By using a feminist theory of legal pluralism, this thesis has not only captured how women experience and use plural laws but also how they subvert them. Neither a legal centralism paradigm nor placing law at the centre of analysis could explain the various alternative paths that women take to apply and/or subvert law and patriarchy. Third and finally, a feminist theory of legal pluralism explores women's experiences of law by contextualising women in their respective intersectional subjective positions that cut across race, caste, class, religion, gender, sexuality, amongst other factors of discrimination.

All three aspects of a feminist theory of legal pluralism — a shift from legal centralism to pluralism, a second shift of the centre of analysis from law to women, and women’s intersectional subjectivity — have been deployed in this thesis while examining marriage, divorce, and inheritance practices of the Bangladeshi Christian community. In all three cases, by keeping Christian women at the centre of analysis, this thesis has captured women’s experiences of the plurality of laws, including the state and non-state laws and other forms of normative orders. Women have also been situated into their respective intersectional subjective positions while applying a feminist theory of legal pluralism.

The recognition of intersectionality among Bangladeshi Christian women not only built the feminist theory of legal pluralism but also has challenged the homogenisation of minority women, or more specifically, Christian women. This thesis has demonstrated the heterogeneity that exists even within a small population of the country, which cuts across denomination (Catholic or Protestant), location (rural-urban), education (educated-literate), socio-economic status, and age, amongst other things. Moreover, addressing the intersectionality of women in this thesis has also challenged the homogeneous notion of ‘average third world women’ that commonly presents women as victims of violence, universally dependent, and powerless. Instead, this thesis has engaged with the positionality of these women and revealed their agency and subversion.

A homogenisation of the category of the religious minority communities has been taking place in South Asia. Although issues of minorities have been an area of interest for many scholars, Hindus in Bangladesh and Muslims in India are being overrepresented in the scholarly studies of religious minority communities in these two countries. The Christian community becomes invisible in the politics of minority in the region. This thesis has also challenged such focus on the homogeneity of religious minority groups by focusing on the Christian community of Bangladesh. In other words, this thesis has problematised the dichotomous definition of the religious minority community in the region only as Hindus of Bangladesh and Muslims of India.

Bangladeshi Christian minority women are not only barely present in the scholarly work on minority issues in Bangladesh or the rest of the South Asian region but also invisible to the state and its mechanisms and human rights and legal aid organisations. This thesis has revealed this invisibility of Christian women to both the state and these human rights and legal aid organisations. One of the reasons for this invisibility is the minorityness of the Christian community and the other is mission-compound patriarchy that restricts women from reaching the state apparatuses. Particularly, the absence of Christian women became vivid in the analysis of Christian women seeking a remedy of divorce. Instead of going to the court, most Christian women seeking divorce take alternative paths of divorce to bypass state legal systems. As a result, these women not only remain obscure to the state apparatus but also to the mainstream human rights and legal aid organisations.

An implicit understanding of marriage exists within the community, which makes women (and men) think that marriage cannot be broken. Since the inception of Bangladesh as a nation, not a single Christian divorce case has attracted the attention of the judicial community or human rights activists for debate or discussion. Moreover, Christian women's issues were virtually absent in the agenda of the legal and human rights activist and feminist communities. As a result of all of these factors, Christian women's issues and Christian personal law reform is nowhere to be found on the mainstream agenda, which makes Christian women almost invisible from the state.

The ways in which women from religious minority communities subvert laws and undermine (and even challenge) patriarchy are intimate and occur at a personal scale. Women are tired of oppression and subjugation, caught in frustrating and unhappy marriages or had been disinherited by their own families, constantly being told what they *should* do in order to be a decent, ideal woman who presents the best face of Christians to rest of the world. They choose not to partake in public demonstrations, waving flags of independence. A Christian woman in Bangladesh resist male domination and oppressive social control by the church and the family, charting their

own paths, sometimes using local cultural customs or sometimes bargaining with those who represent patriarchal dominance, and express their agency in the very personal and intimate spheres, in areas of marriage, divorce, and inheritance. In all three areas, there are conflicts between state laws and non-state laws, including church laws and community norms. For example, in the area of marriage, the state law for Christian marriage allows inter-religious marriages, whereas the church and community prohibit such unions. Similarly, although the state law provides the Christian population the right to divorce, the community prohibits divorce. Inheritance is another area where a conflict between the state law and community law exists. While the state law for Christian inheritance allows women to inherit equal to their male counterparts, actual inheritance practices do not enable women to inherit equally.

The experience of conflicting plural laws in the areas of marriage, divorce, and inheritance, how women apply these conflicting state and community laws that are often shaped by patriarchal ideologies, and how they subvert these laws in order to fulfil their objectives show agency. In the area of divorce, how women undertake forum shopping by choosing one out of a number of alternative paths available to them in order get a divorce (or an alternative to divorce) and how they engage in patriarchal bargaining in this process is critical in this regard. Women's subversion of law and patriarchy in inheritance occurs by striking a balance between the 'good woman' image that the community imposes on their shoulders and by asserting of their inheritance rights, as they make strategic choices between claiming and not claiming their rightful share of an inheritance.

This research converses with the vast and vibrant literature of three distinct but interrelated scholarships: legal pluralism, feminism, and gender and development. By engaging extensively with the feminist legal theories and legal pluralism theories, this thesis argues for a feminist theory of legal pluralism that facilitates both legal pluralism and legal feminism to collaborate and to strengthen the dialogue between the two scholarships, which was not adequately present until now. Such dialogue is

useful for both areas of scholarship. By engaging with legal feminism, legal pluralism will be able to incorporate a feminist angle. Likewise, legal feminism scholarship will benefit from legal pluralism scholarship by expanding the horizon of law. The research has also engaged significantly with the intersectionality and minority theories of gender and development scholarship that have enriched the scholarship by bringing intersectionality and minority theories into the feminist theory of legal pluralism. Moreover, the case of Bangladeshi Christian community has also contributed to South Asian minority studies.

However, although this thesis advocates for a feminist theory of legal pluralism, it has only examined this theory in the single case of Bangladeshi Christians. No other case in comparison has been presented to explore the applicability of this theory in a different context, with or without a colonial legacy. Future research can address this gap by applying the feminist theory of legal pluralism in other contexts. For example, an area of future research would be to draw a comparison between two former British colonies, such as India and South Africa, by applying a feminist theory of legal pluralism. Another area of future research would be to explore the notion of minorityness for Christians as well as other minority communities. Particularly, such research could explore the minorityness of Bangladeshi Christians in the diaspora. Conducting historical research on Baptists and/or Catholics amongst other denominations also could be conducted to flesh out the social and legal issues relating to the early formation and location of the Christian communities, in Bangladesh as well as in other countries of South Asia.

I end this thesis with a personal note. This research has marked as much an emotional journey as an intellectual one. Through this thesis, I have seen my own community in a new and different light, and my own experiences have been that tiny little drop of water through which one can see the ocean of experiences of many others like me. Decades ago, feminists rallied around the cry that 'the personal is political'. Today, as we march ahead in a different day and different context, I cannot deny how true this statement remains for many women like me.



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## **Appendix**

### **Appendix - A**

#### **Relevant sections of the Constitution of the People's Republic of Bangladesh**

##### Article 1

Bangladesh is a unitary, independent, sovereign Republic to be known as the People's Republic of Bangladesh.

##### Article 2A

The state religion of the Republic is Islam, but the State shall ensure equal status and equal right in the practice of the Hindu, Buddhist, Christian and other religions.

##### Article 3

The state language of the Republic is Bangla.

##### Article 6(2)

The people of Bangladesh shall be known as Bangalees as a nation and the citizens of Bangladesh shall be known as Bangladeshies.

##### Article 9

The unity and solidarity of the Bangalee nation, which, deriving its identity from its language and culture, attained sovereign and independent Bangladesh through a united and determined struggle in the war of independence, shall be the basis of Bangalee nationalism.

## Article 28

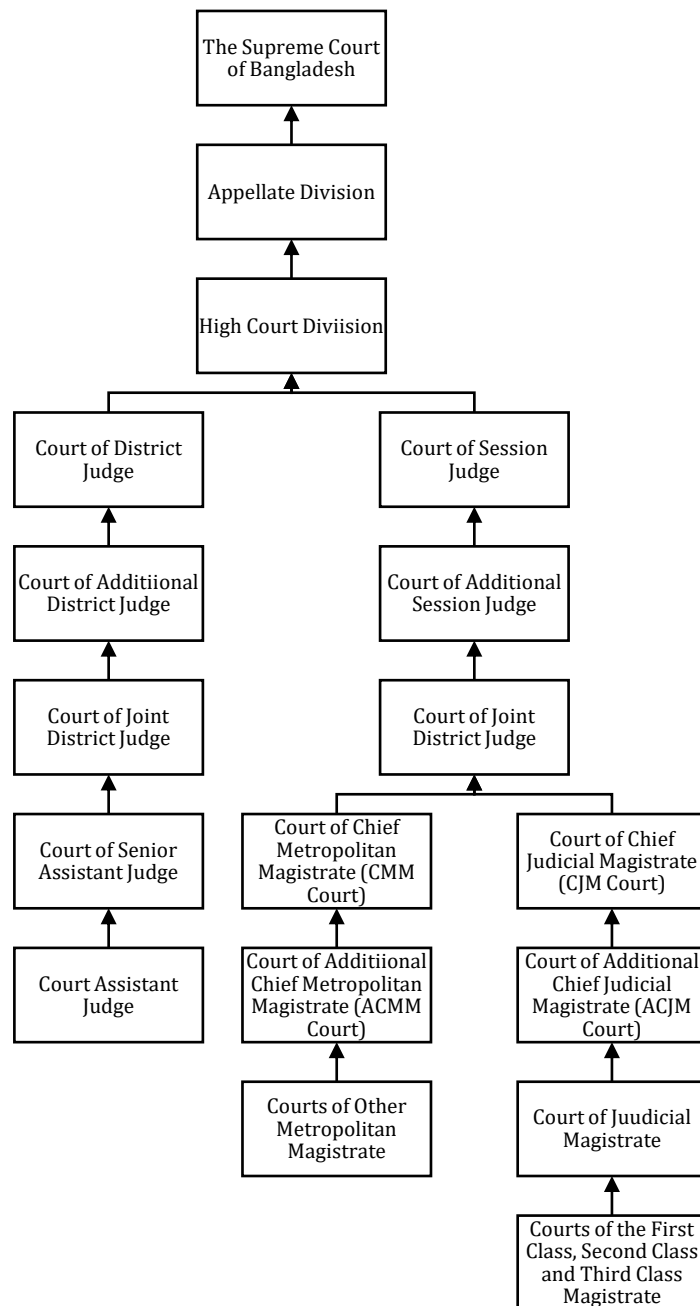
- (1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex or place of birth.
- (2) Women shall have equal rights with men in all spheres of the State and of public life.
- (3) No citizen shall, on grounds only of religion, race, caste, sex or place of birth be subjected to any disability, liability, restriction or condition with regard to access to any place of public entertainment or resort, or admission to any educational institution.
- (4) Nothing in this article shall prevent the State from making special provision in favour of women or children or for the advancement of any backward section of citizens.

## Article 29

- (1) There shall be equality of opportunity for all citizens in respect of employment or office in the service of the Republic.
- (2) No citizen shall, on grounds only of religion, race, caste, sex or place of birth, be ineligible for, or discriminated against in respect of, any employment or office in the service of the Republic.
- (3) Nothing in this article shall prevent the State from –
  - a. making special provision in favour of any backward section of citizens for the purpose of securing their adequate representation in the service of the Republic;
  - b. giving effect to any law which makes provision for reserving appointments relating to any religious or denominational institution to persons of that religion or denomination;
  - c. reserving for members of one sex any class of employment or office on the ground that it is considered by its nature to be unsuited to members of the opposite sex.

## Appendix - B

### The structure of the state judiciary system of Bangladesh



Source: Panday & Hossain Mollah, (2011)

## **Appendix – C**

### **List of personal laws for three religious groups of Bangladesh**

#### For Muslims

- The Muslim Personal Laws (Shariat) Application Act, 1937 (Act no. XXVI of 1937)
- The Dissolution of Muslim Marriages Act, 1939 (Act no. VIII of 1939)
- The Muslim Family Laws Ordinance, 1961 (Ordinance no. VIII of 1961)
- The Muslim Marriages and Divorces (Registration) Act, 1974 (Act no. LII of 1974)
- The Muslim Marriages and Divorces (Registration) Rules, 1975.

#### For Hindus

- The Hindu Widow's Re-Marriage Act, 1856 (Act no. XV of 1856)
- The Hindu Disposition of Property Act, 1916 (Act no. XV of 1916)
- The Hindu Inheritance (Removal of Disabilities) Act, 1928 (Act no. XII of 1928)
- The Hindu Law of Inheritance (Amendment) Act, 1929 (Act no. II of 1929)
- The Hindu Women's Rights to Property Act, 1937 (Act no. XVIII of 1937)
- The Hindu Marriage Disabilities Removal Act, 1946 (Act no. XXVIII of 1946)
- The Hindu Married Women's Right to Separate Residence and Maintenance Act, 1946 (Act no. XIX of 1946)
- The Hindu Marriage (Registration) Act, 2012 (Act no. XL of 2012)

#### For Christians

- The Divorce Act, 1869 (Act no. IV of 1869)
- The Christian Marriage Act, 1872 (Act no. XV of 1872)
- The Married Women's Property Act, 1874 (Act no. III of 1874)
- The Succession Act, 1925 (Act no. XXXIX of 1925)
- The Catholic community is also governed by the Code of Canon Law, which are not state law.

## **Appendix - D**

### **List of uniform state laws for protecting women in Bangladesh**

- The Guardians and Wards Act, 1890 (Act no. VIII of 1890)
- The Dowry Prohibition Act, 1980 (Act no. XXXV of 1980)
- The Cruelty to Women (Deterrent Punishment) Ordinance, 1983 (Ordinance no. LX of 1983)
- The Family Courts Ordinance (Ordinance no. XVIII of 1985)
- The Family Courts Rules, 1985
- The Nari-o-Shishu Nirjatan Daman Ain, 2000 (Law on the Suppression of Violence against Women and Children, 2000) (Act no. VIII of 2000)
- Domestic Violence (Prevention and Protection) Act, 2010 (Act no. LVIII of 2010)

## Appendix – E

### Relevant sections of the Divorce Act, 1869

#### Section 10

When husband may petition for dissolution

Any husband may present a petition to the District Court or to the High Court Division, praying that his marriage may be dissolved on the ground that his wife has, since the solemnization thereof, been guilty of adultery.

When wife may petition for dissolution

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

#### Section 11

Upon any such petition presented by a husband, the petitioner shall make the alleged adulterer a co-respondent to the said petition, unless he is excused from so doing on one of the following grounds, to be allowed by the Court:-

- (1) that the respondent is leading the life of a prostitute, and that the petitioner knows of no person with whom the adultery has been committed;
- (2) that the name of the alleged adulterer is unknown to the petitioner although he has made due efforts to discover it;
- (3) that the alleged adulterer is dead.

## Section 34

Any husband may, either in a petition for dissolution of marriage or for judicial separation, or in a petition to the District Court or the High Court Division limited to such object only, claim damages from any person on the ground of his having committed adultery with the wife of such petitioner.

## Appendix F

### Year wise Divorce Suits filed at the High Court<sup>1</sup>

Sl.	Year	No. of Suits
1	2001	2
2	2002	Nil
3	2003	3
4	2004	3
5	2005	3
6	2006	3
7	2007	1
8	2008	2
9	2009	7
10	2010	1
11	2011	3
12	2012	5
13	2013	6
14	2014	3
15	2015	1
16	2016	5

<sup>1</sup> Source: Divorce Suit Register at the Supreme Court, High Court Division