



Constitutional Interpretation and Gender Equality: Analyzing the High Court Division's Landmark Decision on Maternal Guardianship in Bangladesh

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Abstract

Research Objective: This research examines the significant ruling by the High Court Division of Bangladesh's Supreme Court on January 24, 2023, which recognized mothers as legal guardians of their children. It analyzes the significant shift from traditional frameworks that identified fathers as the primary custodians to a system emphasizing equal maternal rights in child custody matters. **Research Method:** The research employed a comprehensive socio-legal approach, combining normative legal analysis, case law examination, and interdisciplinary perspectives. It involved multiple analytical methods to assess statutory provisions, constitutional articles, and judicial precedents, while integrating sociological and psychological insights to evaluate broader societal implications. **Results.** The Court's ruling marks a fundamental transformation in Bangladesh's family law tradition, establishing a legal precedent for maternal guardianship rights. The analysis indicates a documented shift from patriarchal custody norms toward gender-neutral guardianship frameworks aligned with constitutional principles of equality. **Findings and Implications.** The research identifies multidimensional implications across legal, social, and psychological domains. Legally, the ruling affirms constitutional recognition of equal maternal custody rights. Socially, it reflects the transformation of traditional gender roles and advances women's empowerment within family structures. On an individual level, it enhances parenting choices, decision-making authority, and access to education and healthcare services for children under maternal guardianship. **Conclusion.** This landmark judgment represents a pivotal moment in the evolution of women's legal status within Bangladesh's family law system. It fundamentally challenges patriarchal norms and underscores the changing roles of women in legal contexts. **Contribution.** The study offers a comprehensive account of this transformation in family law, contributing to legal scholarship, gender studies, and social policy development. It

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demonstrates how judicial decisions can serve as catalysts for broader social change. **Limitations and Suggestions.** The research recommends further legal reforms to safeguard children's rights and addresses potential implementation challenges. It suggests comprehensive policy amendments to ensure the effective translation of this legal milestone into practice within Bangladesh's family law system.

Introduction

The issue of guardianship and custody frequently arises upon the dissolution of a marriage, particularly in situations where the father's identity is unknown or unacknowledged. It is important to distinguish between guardianship and custody, as they constitute separate legal concepts.¹ In certain cases, the custody of minor children may be granted to the mother, while the father retains his status as their natural guardian. In general, both parents have rights to custody of their children. Under the Majority Act of 1875,² however, and consistent with Muslim personal law, a mother is not recognized as a natural guardian. She is entitled to custody of her son until he reaches the age of seven, and of her daughter until she attains puberty.³

The Supreme Court of Bangladesh has developed significant jurisprudence in this domain

¹ Syeda Afroza Zerin, "Legal and Judicial Responses to Muslim Mothers' Rights to Guardianship in Bangladesh," *Pharmacognosy Magazine* (University of Dhaka, 2021); Asma Jahan, "LEGAL STATUS OF GUARDIANSHIP OF MINOR: BANGLADESH PERSPECTIVE" 1, no. 3 (2015): 76–95; Sonali Abhang, "Guardianship and Custody Laws in India-Suggested Reforms from Global Angle," *IOSR Journal Of Humanities And Social Science* 20, no. 7 (2015): 39–58, <https://doi.org/10.9790/0837-20763958>; Taslima YASMIN, "Judicial Trends in Child Custody Cases in Bangladesh: Traditional Islamic Law Rules versus Welfare Considerations," *Asian Journal of Comparative Law* 12, no. 2 (2017): 233–56, <https://doi.org/DOI:10.1017/asjcl.2017.14>; Rumana Sharmin Barsha, "An Overview of Violation of Mother's Right to Custody of Child and Patriarchal Influence: A Critical Analysis in Reference to Existing Statutes and Case Laws" 8, no. 1 (2021): 13–16; Maksuda Akter and Roquia and Begum, "Factors for Divorce of Women Undergoing Divorce in Bangladesh," *Journal of Divorce & Remarriage* 53, no. 8 (November 1, 2012): 639–51, <https://doi.org/10.1080/10502556.2012.725364>; David Pearl, "The Legal Rights of Muslim Women in India, Pakistan and Bangladesh," *New Community* 5, no. 1–2 (June 1, 1976): 68–74, <https://doi.org/10.1080/1369183X.1976.9975434>; Shafi Md Mostofa and Muhammad Sazzad Hossain and Siddiqui, "Faith Leaders and Child Well-Being in Bangladesh: An Empirical Study," *The Review of Faith & International Affairs* 22, no. 1 (January 2, 2024): 59–74, <https://doi.org/10.1080/15570274.2024.2303286>.

² YASMIN, "Judicial Trends in Child Custody Cases in Bangladesh: Traditional Islamic Law Rules versus Welfare Considerations"; Roundtable Conference, "' Comparative Analysis of Family Law in the Context of Islam,'" in *Comparative Analysis of Family Law in Context of Islam*, ed. Orzala Ashraf Nemat (Kabul, Afghanistan: Heinrich Böll Foundation, 2006), 1–55; Angela M Crossman et al., "Child Testimony in Custody Cases," *Journal of Forensic Psychology Practice* 2, no. 1 (January 1, 2002): 1–31, https://doi.org/10.1300/J158v02n01_01; Sarah C. White, "Patriarchal Investments: Marriage, Dowry and the Political Economy of Development in Bangladesh," *Journal of Contemporary Asia* 47, no. 2 (2017): 247–72, <https://doi.org/10.1080/00472336.2016.1239271>.

³ Muhammad Adnan Aziz et al., "Custodial Challenges: Islamic and Pakistani Law in Child Custody Matters," *Current Trends in Law and Society* 3, no. 1 (2023): 88–102, <https://doi.org/10.52131/ctls.2023.0301.0019>; Syeda Afroza Zerin and Tahsina Tahmin Tarin, "REVISITING THE LAWS ON MUSLIM MOTHERS' RIGHT TO GUARDIANSHIP OF MINORS IN BANGLADESH," 2023, <https://doi.org/10.21868/PGnG.2023.2.1.Dr.>; Aayesha Rafiq, "Child Custody in Classical Islamic Law and Laws of Contemporary Muslim World (An Analysis)," *International Journal of Humanities and Social Science* 4, no. 5 (2014): 267–77.



through its rulings. While age-based guidelines are observed, family courts possess the discretion to determine custody eligibility,⁴ with the paramount consideration being the welfare and best interests of the child. In recent landmark decisions, the High Court Division has recognized the mother as the sole legal guardian. In the historic case of Bangladesh Legal Aid and Services Trust and Others v. Bangladesh, the Court affirmed that a mother may be acknowledged as the legal guardian of her child,⁵ including for school-related documentation.

This ruling represents a substantial advancement in the protection of women's rights and the promotion of gender equality. Historically, official documents recognized only fathers as legal guardians of students. The new provision allows for two alternatives: listing the mother's name or that of another legal guardian. Significantly, students cannot be compelled to disclose their father's name against their will.

This study seeks to examine the implications of this ruling in enabling mothers to assume the role of legal or sole guardian of a child.⁶ Its objectives address critical gaps in contemporary child guardianship law and policy. Specifically, it aims to conduct a comprehensive reevaluation of existing legal frameworks governing guardianship, with a focus on strengthening maternal rights within custody contexts. It also seeks to develop protective provisions for children of unknown or unestablished paternity, ensuring the safeguarding of their rights and welfare within existing legal structures.

Furthermore, the research critically interrogates discriminatory elements embedded in current guardianship legislation, particularly gender-based discrimination and systemic bias. It proposes the establishment of robust legal foundations that not only reinforce maternal guardianship rights but also safeguard children's identity rights and overall well-being. Collectively, these objectives contribute to evidence-based recommendations for legal and policy reforms that promote equity, protection, and the best interests of all parties in guardianship arrangements.

Methods

This research employed a qualitative methodology grounded in constitutional legal analysis and informed by theories of judicial interpretation to examine the landmark ruling of the High Court Division on maternal guardianship rights in Bangladesh. Adopting a comprehensive normative approach, the study aligned constitutional interpretation frameworks with

⁴ Nowrin Tamanna, Muhammad Amirul Haq, and Sara Hossain, "Chapter 3 Muslim Women's Rights under Bangladesh Law: Provisions, Practices and Policies Related to Custody and Guardianship" (Leiden, The Netherlands: Brill | Nijhoff, 2019), 145–94, https://doi.org/10.1163/9789004357273_005; Sidney Ruth Schuler, Islam Farzana, and Elisabeth and Rottach, "Women's Empowerment Revisited: A Case Study from Bangladesh," *Development in Practice* 20, no. 7 (September 1, 2010): 840–54, <https://doi.org/10.1080/09614524.2010.508108>; Fathima Sherin Ottakkam Thodukayil, Palaniswamy Udhayakumar, and Aswathy and Kunjumon, "The Causes of Divorce and Its Effects on Women: A Systematic Review," *Marriage & Family Review*, n.d., 1–36, <https://doi.org/10.1080/01494929.2025.2484781>; Md. Rizwanul Islam, "Judges as Legislators: Benevolent Exercise of Powers by the Higher Judiciary in Bangladesh with Not so Benevolent Consequences," *Oxford University Commonwealth Law Journal* 16, no. 2 (July 2, 2016): 219–34, <https://doi.org/10.1080/14729342.2016.1272943>.

⁵ Mahmuda Akand, "The High Court Division (Bangladesh) Verdict Acknowledging Mother as Legal Guardian of a Child and Its Probable Impact on the Person and the Respective Society," *Asian Studies, Jahangirnagar University Journal of Government and Politics* 42 (June 1, 2023): 85–93.

⁶ Martha C. Nussbaum, *WOMEN AND HUMAN DEVELOPMENT*, 1st Pub (Cambridge, New York, Melbourne, Madrid, Cape Town, Singapore, São Paulo Cambridge: Cambridge University Press, 2001). P.231



jurisprudential themes centered on gender equality. It investigated the extent to which the Court's decision in *Bangladesh Legal Aid and Services Trust and Others v. Bangladesh* marked a pivotal transformation in the legal understanding of maternal guardianship within the constitutional context of gender equality and fundamental rights.

Primary data collection involved a systematic examination of the High Court Division's ruling, including constitutional provisions on equality and non-discrimination, as well as statutory frameworks governing child guardianship under both secular and religious personal laws. Secondary sources comprised comparative constitutional jurisprudence from other South Asian jurisdictions, scholarly analyses of constitutional interpretation methodologies, and international legal instruments addressing gender equality and children's rights. A critical legal analysis was applied to scrutinize how constitutional equality principles were interpreted and operationalized in the context of maternal guardianship rights.

The analytical framework integrated constitutional interpretation theory, with particular attention to how the judiciary reconciled traditional legal tenets with evolving constitutional values of gender equality and human rights. The study critically assessed the Court's reasoning, the constitutional provisions invoked, and the interpretive techniques employed in arriving at the ruling. A comparative perspective situated this judicial intervention within broader constitutional developments across jurisdictions, underscoring its significance in advancing gender equality through constitutional adjudication.

Data analysis entailed a detailed examination of legal reasoning, constitutional argumentation, and judicial precedents to identify how the High Court Division's decision reflected wider trends in constitutional interpretation related to gender equality. The research explored the dynamic interaction among constitutional mandates, statutory provisions, and judicial activism in reshaping the legal approach to maternal rights. Ultimately, it evaluated the ruling's contribution to the evolution of gender equality jurisprudence and its potential implications for future constitutional litigation and reform.

Results and Discussions

Statutory Provisions and Constitutional Challenges

In Bangladesh, guardians are legally obligated to meet the needs of minors, whether related to their welfare or property. Under Section 4(2) of the Guardian and Wards Act, 1890,⁷ A guardian is defined as an adult entrusted with the responsibility of safeguarding a minor's well-being, assets, or both. Guardianship involves overseeing the minor's care throughout childhood and may be exercised by a legal guardian appointed by the court or by a natural guardian, such as a parent. In the best interests of the minor, a legal guardian assumes responsibilities typically associated with parenting. This subsection outlines the key legal instruments and provisions that form the foundation of guardianship law in Bangladesh.

⁷ Legislative and Parliamentary Affairs Division, Justice and Parliamentary Affairs Ministry of Law, and Bangladesh Secretariat, "The Guardians and Wards Act, 1890," Laws of Bangladesh, accessed April 21, 2024, <http://bdlaws.minlaw.gov.bd/act-64/section-19359.html?lang=en>.

Table 1. *Relevant Constitutional Articles and Statutory Provisions*

Legal Instrument	Section/Article	Key Provision	Relevance to Guardianship
The Constitution of Bangladesh	Article 26	Protection of fundamental rights	Serves as the basis for challenging laws that are discriminatory or inconsistent with fundamental rights.
The Constitution of Bangladesh	Article 27	Equality before the law	Guarantees equal treatment for all individuals under the law.
The Constitution of Bangladesh	Article 28(2)	Prohibition of sex-based discrimination; equal rights for men and women	Ensures gender equality in public life and within legal frameworks.
The Guardians and Wards Act, 1890	Section 19(b)	Father as a minor's natural guardian	Historically discriminatory clause, subject to constitutional challenge.
The Guardians and Wards Act, 1890	Section 29(b)	Father as a minor's natural guardian	Considered inconsistent with constitutional provisions on equality.
The Guardians and Wards Act, 1890	Section 7	Court's obligation to appoint a guardian for a minor's welfare	Establishes the court's authority and obligation to appoint a guardian, prioritizing the child's best interests.
The Guardians and Wards Act, 1890	Section 17	Criteria for selecting a guardian	Guides the court in assessing a guardian's suitability.
The Guardians and Wards Act, 1890	Section 4(2)	Definition of a guardian	Offers the statutory definition of a guardian.
The Family Courts Act, 2023	Section 5	Family court jurisdiction over child custody and guardianship	Grants exclusive jurisdiction to family courts in matters of guardianship and custody.
The Family Courts Act, 2023	Section 27	Alignment with Guardians and Wards Act 1890	Requires family court decisions to comply with existing guardianship legislation.

Custody refers to the physical care and control of a child until they reach a certain age, which may be vested in one or both parents. Relevant legislation outlines the rights and obligations of parents concerning child custody, particularly in the context of Muslim families. Under Muslim law, custody (*hizanat*) and guardianship (*wilayat-e nafs*)⁸ are distinct concepts, although the terms are sometimes used interchangeably. *Hizanah* (*custody*) applies to children during their formative years, generally until the age of seven for both boys and girls. During a child's minority, the father, or, in his absence, the paternal grandfather, typically holds comprehensive supervisory authority over the child, a role recognized as guardianship. Family courts, established under the Family Courts Act 2023, serve as the exclusive forum for resolving

⁸ Abdul Mannan Bhuyean, "The Powers and Functions of the Family Court with Reference to the Laws and Judicial Development in Bangladesh : An Overview," *International Journal of Social Science and Education Research* 7, no. 1 (2025): 371-74.



family disputes, including those related to child custody. This legislation empowers judges to prioritize the child's welfare in custody determinations. Under Section 5 of the Family Courts Act 2023, family courts are mandated to adjudicate cases concerning both custody and guardianship.⁹

Judgments from the High Court Division of the Supreme Court of Bangladesh affirm that the Family Courts Act does not infringe upon the religious freedoms of any litigants. Although its applicability to non-Muslims is not explicitly settled, the Act is interpreted to apply to all families, regardless of religious affiliation. It sets out criteria for determining the best interests of the child and provides a legal framework for appointing guardians for minors. In cases where provisions of the Guardians and Wards Act conflict with Muslim personal law, the Guardians and Wards Act of 1890 prevails.

Section 17(2) of the Guardians and Wards Act specifies factors to be considered in appointing a guardian: the minor's age, gender, and religion; the character and capability of the prospective guardian; familial relationships; the wishes of deceased parents; the nature of the guardian's relationship with the minor or their property; and, where appropriate, the minor's own considered preference. While the father is recognized as the child's natural guardian, the mother retains custody rights until the child reaches the age specified under law. This right is sometimes referred to as *hazmat*. The father holds both natural and legal guardianship of the child until they attain the age of majority.¹⁰

First woman in Bangladesh to be granted legal guardianship of a child

Actress Azmeri Haque Badhon made legal history as the first mother in Bangladesh to be granted full guardianship of her daughter. This landmark decision marks a major step forward in the fight for gender equality and women's empowerment, drawing attention to the persistent gender gap in guardianship laws and the barriers women face when advocating for themselves. In a landmark ruling on April 22, 2024, the High Court closed a significant legal loophole by granting Badhon exclusive guardianship of her daughter and authorizing the formation of a panel to establish criteria for appointing a guardian for a minor. This development signals a shift in Bangladeshi law towards greater recognition and protection of women's rights in child custody matters.¹¹

Historically, under Section 19(b) of the Guardians and Wards Act, 1890, fathers were typically granted sole guardianship of a minor, marginalizing mothers in the legal process. This outdated provision has been challenged as incompatible with constitutional guarantees, sparking important debates about reforming antiquated legislation to align with modern principles of justice and equality. Badhon's arduous journey to obtain guardianship exposed the structural barriers women face in navigating the legal system. Despite being the sole provider and primary caregiver, she encountered resistance in asserting her rights, underscoring the entrenched gender biases that persist in legal and societal frameworks.¹²

This case, along with a chronological overview of related judicial decisions, reveals a clear trend of evolving legal interpretations and increased judicial engagement in advancing mothers'

⁹ "The Family Courts Act, 2023," Pub. L. No. 26, § 5 (2023), <http://bdlaws.minlaw.gov.bd/act-details-1444.html>.

¹⁰ The Guardians and Wards Act, 1890.

¹¹ Showtime Desk, "Badhon Wins Sole Guardianship of Daughter," *Dhaka Tribune*, 2024, <https://www.dhakatribune.com/showtime/344829/badhon-wins-sole-guardianship-of-daughter>.

¹² Sajed Karim, "Badhon's Victory as a Mother: The First Woman to Win Legal Guardianship of Child in Bangladesh," *Share-Net Bangladesh* (Bangladesh, April 2024), <https://www.share-netbangladesh.org/a-mothers-victory-badhon-makes-history-as-the-first-women-to-win-legal-guardianship-in-bangladesh/>.

guardianship rights in Bangladesh. Together, these developments indicate a significant shift in legal precedent over time.

Table 2: Summary of Key Guardianship Verdicts in Bangladesh

Case/ Incident	Key Parties/ Petitioners	Date of Key Ruling	Cour/ Body	Core Issue	Outcome/Ruling
Rajshahi Education Board Case	BLAST, Bangladesh Mahila Parishad, Naripokkho	August 2, 2009 (Initial Incident)	HCD	Denial of the admit card due to the absence father's name	Initial writ petition filed.
Rajshahi Education Board Case	BLAST, Bangladesh Mahila Parishad, Naripokkho	August 3, 2009 (Initial Ruling)	HCD	Discriminatory clause obstructing equality and access to education	A rule was issued questioning the discriminatory clause.
Rajshahi Education Board Case	BLAST	June 6, 2021 (Supplemental Affidavit)	HCD	Support for the petitioners' position	Supplemental affidavit submitted in support.
Rajshahi Education Board Case	BLAST, Bangladesh Mahila Parishad, Naripokkho	January 24, 2023 (Final Verdict)	HCD	Mother's right to sole legal guardianship	Rule declared invalid; mothers permitted to be sole legal guardians.
Azmeri Haque Badhon Case	Azmeri Haque Badhon	April 30, 2018 (Custody Grant)	Family Court	Custody of daughter	Custody granted to mother.
Azmeri Haque Badhon Case	Azmeri Haque Badhon	April 22, 2024 (Guardianship Grant)	High Court	Mother's right to sole legal guardianship	Sole guardianship granted; panel to formulate appointment criteria.

Lawyer Sara Hossain told reporters at the court premises, *“This is a very big achievement. In Bangladesh, although women are often granted custody of their children, guardianship is rarely given, except in one case. Our actress, Azmeri Haque Badhon, obtained custody of her child.”* She noted that, apart from this, there has been no other instance in the history of Bangladesh where a woman has been granted guardianship of a child. Six years earlier, on April 30, 2018, the 12th Assistant Judge and Family Court Judge in Dhaka, Israt Jahan, awarded custody of Badhon’s only daughter, Michelle Amani Saira, to her.¹³

Application and Interpretation of Child Custody Laws in Bangladesh: Statutory Provisions and Judicial Precedents.

When a marriage dissolution results in divorce, disputes concerning child custody and guardianship may arise. In Bangladesh, these matters are primarily governed by the *Family Courts Act 2023* and the *Guardians and Wards Act 1890*. At times, conflicts emerge between Muslim

¹³ Desk, “Badhon Wins Sole Guardianship of Daughter.”



personal law and the provisions of the *Guardians and Wards Act*; however, in such instances, the *Guardians and Wards Act 1890* takes precedence.

The *Guardians and Wards Act* requires the court to apply the laws specifically relevant to the minor. As stipulated in Section 17(2), the welfare of the minor is the paramount consideration in appointing a guardian. In making this determination, the court evaluates factors such as the minor's gender, religion, age, physical and mental health, and the prospective guardian's capability, character, and relationship with the minor. The court also considers the wishes of deceased parents and any past or present connections between the prospective guardian and the minor or their property. Where the minor is of sufficient age and maturity, their preferences may also be taken into account.

Under Section 5 of the *Family Courts Act 2023*, family courts have exclusive jurisdiction over matters relating to child custody and guardianship. Rulings from higher courts have affirmed that the Act does not infringe upon the personal rights of litigants, regardless of their faith, although it remains uncertain whether this interpretation explicitly extends to non-Muslims. Judicial precedents, however, suggest the Act's applicability to all individuals irrespective of religious affiliation.

According to both Muslim and Hindu guardianship laws, the father is regarded as the natural and legal guardian of a minor. The *Majority Act 1875* affirms that the father holds this role until the child reaches the age of majority. In Islamic law, custody (*hizanat*) and guardianship (*wilayat-e nafs*) are distinct, though at times used interchangeably. A child under guardianship is subject to close supervision, typically by the father (or his appointed executor) or, in his absence, the paternal grandfather.¹⁴

Custody (*hizanat*) refers to the physical care and possession of a child until a specified age. Under Islamic law, the mother is entitled to custody of her child until a certain age, even if she is not the legal guardian. Across all schools of Islamic jurisprudence, the general principle is that the mother retains custody of her infant until a set age, typically until the male child reaches seven years and the female child reaches puberty, often around fifteen years. If the mother remains unmarried following divorce or the death of her spouse, she continues to hold custody rights.¹⁵

In *Ali Akber v. Mst. Kaniz Maryam*, the Court controversially granted the father custody of the minor son, despite clear indications that the mother was better suited to safeguard the child's welfare. Rigid adherence to traditional rules in such cases can jeopardize a child's well-being and have long-term negative consequences. Today, however, courts increasingly prioritize the overall welfare of the child when making custody determinations. In this case, the Court awarded the mother custody of her infant son, thereby departing from the traditional Hanafi age restriction.¹⁶

Under classical Hanafi law, a mother relinquishes custody of her son when he reaches the age of seven. However, in this ruling, the Court held that "as the child's welfare should be the primary consideration, deviation from the principle of Islamic law, in this case, the rule of *hizanat* as articulated in the Hanafi school, would seem permissible." The Court further noted that Islamic jurists themselves have been unable to reach consensus on this issue, and that neither the Qur'an nor the Sunnah contains a clear and unequivocal directive on the matter. This lack of definitive authority justifies a departure from the classical position. Consequently, it is reasonable to conclude that, depending on the circumstances and the child's best interests, both the mother and

¹⁴ Tamanna, Haq, and Hossain, "Chapter 3 Muslim Women's Rights under Bangladesh Law: Provisions, Practices and Policies Related to Custody and Guardianship."

¹⁵ Asma Jahan, "LEGAL STATUS OF GUARDIANSHIP OF MINOR: BANGLADESH PERSPECTIVE," *Journal of Asian and African Social Science and Humanities* 1, no. 3 (2015): 75–95.

¹⁶ *Zohra Begum v. Latif Ahmed Munawar* (1965)17 DLR(WP) and PLD 1965 (Lah) 695 (n.d.).



the father may share custody and guardianship.¹⁷

Furthermore, the establishment of gender equality is guaranteed by Article 27 of the Constitution. Moreover, Article 28(2) of the Constitution ensures men's and women's equal rights in all facets of public life and the state. In decisions such as *Rahmatullah v. Sabana Islam*, 54 DLR, and *Ayesha Khanum v. Major Shabbir Ahmed*, 46 DLR, similar precedents were established where a widow was held to retain her guardianship only because she remarried for the protection of the minor.¹⁸

The principle of gender equality is enshrined in Article 27 of the Constitution.¹⁹, while Article 28(2) guarantees equal rights for men and women in all spheres of public life and the state. In precedents such as *Rahmatullah v. Sabana Islam*, 54 DLR, and *Ayesha Khanum v. Major Shabbir Ahmed*, 46 DLR, courts have upheld similar principles, including cases where a widow retained guardianship despite remarrying, on the basis that doing so served the protection and welfare of the minor.

Procedural Requirements for Guardian Appointment under the Guardian and Wards Act, 1890

The *Guardians and Wards Act, 1890*, as set out in Section 7, provides that if the Court is satisfied that the welfare of a minor requires it, the Court is obligated to appoint a guardian. The Court may designate or declare any person as the minor's guardian, provided that the individual is a citizen of Bangladesh. The Appellate Division of the High Court has affirmed that, in reviewing an application under the Act, the Court must be convinced that appointing the proposed guardian is in the best interests of the minor.²⁰

A new guardian cannot be appointed to replace one designated by will or other legal instrument unless the powers of the existing guardian have expired under the law. Section 17 of the Act outlines the criteria for selecting a guardian. The Court must first determine whether the appointment is necessary for the welfare of the minor and whether it complies with legal requirements. In assessing welfare, the Court considers several factors, including the minor's age, sex, and religion; the proposed guardian's character, abilities, and proximity to the minor; the wishes of any deceased parents; and any past or ongoing relationship between the proposed guardian and the minor or their property. The proposed guardian's consent to the appointment is also required.

Under the *Family Courts Act*, the Family Court has exclusive jurisdiction over cases relating to the "guardianship and custody of children." When deciding guardianship matters, the Family Court must follow the provisions of the *Guardians and Wards Act, 1890*, as referenced in Section 27.²¹ The High Court Division has further clarified that individuals of any religion have the right to file suits on matters specified in Section 5 of the *Family Courts Ordinance*, which applies to all citizens of Bangladesh.²² Accordingly, non-Muslim individuals may also seek legal recourse for

¹⁷ Rafiq, "Child Custody in Classical Islamic Law and Laws of Contemporary Muslim World (An Analysis)."

¹⁸ juralacuity, "Child Custody in Bangladesh," *Jural Acuity* (blog), October 7, 2019, <https://juralacuity.com/child-custody-in-bangladesh-2/>.

¹⁹ "The Constitution of the People's Republic of Bangladesh," The Constitution of 1972 to P. O. No. 76 of 1972 § (1971), <http://bdlaws.minlaw.gov.bd/act-367.html>.

²⁰ Muhammad Abu Bakar Siddique vs S.M.A. Bakar & others, 38 DLR (Appellate Division (AD), Supreme Court of Bangladesh 1986).

²¹ The Family Courts Act, 2023.

²² Nirmal Kanti Das vs. Sreemati Biva Rani, 47 DLR (n.d.).



guardianship matters involving minors when disputes arise.

Background and the Way of Verdicts

On August 2, 2009, the High Court Division (HCD) delivered its ruling in a public interest litigation (PIL) writ petition jointly filed by BLAST, Bangladesh Mahila Parishad, and Naripokkho. The petition arose after the Rajshahi Education Board denied an SSC examination admit card to a girl from Thakurgaon because she had not included her father's name in the Student Information Form (SIF). Media reports later revealed that the girl had been raised solely by her mother, as her father had abandoned the family.²³

A bench comprising Justice Naima Haider and Justice Md Khairul Alam declared the contested rule invalid, thereby allowing mothers to be recognized as sole legal guardians in such situations. The ruling was widely applauded by all parties involved, as it marked a substantial step toward eliminating gender discrimination and resolving numerous challenges faced by unmarried mothers and fatherless children.²⁴

Taslina Yasmin, an adjunct professor of law at the University of Dhaka, praised the Supreme Court's judicial activism, noting that legislators had made little effort to address such issues. *"This decision has created opportunities for the legislature to address discrimination in other laws related to custody and guardianship in Bangladesh and to strive for a progressive future that prioritizes the well-being of the child,"* she said. She stressed that the legislature must now review all official forms requiring both parents' names and remove discriminatory provisions to comply with Bangladesh's international obligations. She also expressed concern over the fourteen-year delay in delivering the verdict, highlighting the urgent need for judicial reforms. *"Our higher judiciary must consider the grievances caused by substantive delays in disposing of writ petitions to ensure gender equality,"* she added.²⁵

This issue has long resulted in discrimination against both students and single mothers, beginning with primary school enrollment and continuing through higher education. Priority is now afforded to mothers in cases where fathers are absent from their children's lives. While such legal progress takes time and persistence, these decisions inspire women in Bangladesh with the belief that gender equality is attainable. Advocate Ainun Nahar Siddiqui, who represented the petitioners, explained that the writ petition had been filed 14 years earlier in response to a requirement that children list their father's name as the legal custodian on official forms, with the mother's name only appearing afterward.²⁶

"The High Court Division has now determined that recording the name of either the father, mother, or legal guardian in official documents will be sufficient," she stated. Advocates Ayesha Akhter and MM Rezaul Karim also represented the petitioner in court, while Deputy Attorney General Amit Dasgupta appeared on behalf of the state. On August 2, 2009, Bangladesh Mahila Parishad, Bangladesh Legal Aid and Services Trust (BLAST), and Nari Paksha, three human rights

²³ Senior Correspondent, "HC Recognises Mothers as Legal Guardians of Students Too," bdnews24.com, 2023, <https://bdnews24.com/bangladesh/ydx3u5jwoh>; Bhuyean, "The Powers and Functions of the Family Court with Reference to the Laws and Judicial Development in Bangladesh: An Overview."

²⁴ Nishat Tasnim Hridi, "From the Court Corridor: February 2023," *Dhaka Law Review*, October 26, 2023, <https://www.dhakalawreview.org/blog/2023/10/from-the-court-corridor-february-2023-6373>.

²⁵ YASMIN, "Judicial Trends in Child Custody Cases in Bangladesh: Traditional Islamic Law Rules versus Welfare Considerations"; Taslima Yasmin, "Reconciling 'Best Interests of the Child' with the Traditional Muslim Law Rules on Child Custody: Trends in the Judicial Decisions of Bangladesh" (Brunel University London, 2023).

²⁶ Tanha Tanzania, "Mothers as Guardians: HCD's Historic Verdict," *The Daily Star*, February 3, 2023, <https://www.thedailystar.net/law-our-rights/news/mothers-guardians-hcds-historic-verdict-3238756>.



organizations, jointly filed a writ petition in response to this incident, arguing that it served the public interest. The next day, the High Court bench, comprising Justices Syed Refat Ahmed and Moinul Islam Chowdhury, issued a ruling asking why this discriminatory clause, which impedes equality, human rights, and, in particular, the right to education, should not be declared unconstitutional and unlawful. The bench also directed the relevant authorities to submit a report on the arrangements available for students eligible to take public examinations who choose not to disclose their father's name.

Subsequently, on June 6, 2021, BLAST filed a supplementary affidavit in support of the petitioners. After numerous hearings, the High Court bench of Justices Razik-Al-Jalil and Naima Haider delivered its decision on January 24, 2023. This judgment is significant not only for safeguarding the right to education but also for encouraging consideration of alternative yet conventional naming practices and personal identity.²⁷

Justifications for Submitting a Writ Petition in the High Court Division of the Supreme Court

This writ was filed by the petitioners in the public interest, asserting that Section 19(b) of the Guardians and Wards Act, 1890, infringes upon the fundamental rights of women to equality and nondiscrimination. Moreover, they requested a declaration that women and men should be regarded equally when applying for or being appointed as a minor's Guardian. By the Guardians and Wards Act of 1890, Articles 26, 27, and 28 of the Constitution protect fundamental rights.²⁸ The High Court Division has questioned the validity of clause "b" of section 19 of the Guardians and Wards Act, 1890, which only names the father as a minor's natural Guardian. The Court directed the pertinent government agencies to explain why the Guardians and Wards Act, 1890s clause "b" in section 19, should not be declared unconstitutional. Compliance with the regulation has been mandated by the National Human Rights Commission (NHRC), the Law Commission, the Secretary for Women and Children's Affairs, and the Law Secretary. The bench of Justices Naima Haider and Kazi Zinat Haque issued the ruling after considering the writ petition submitted by the organizations.²⁹

Position of Bangladesh and the Necessity of Fair Guardianship Laws

The legal framework governing guardianship and custody of children in Bangladesh is rooted in a blend of Islamic family law, civil law, and statutory regulations. It draws heavily on the provisions of the Muslim Family Laws Ordinance of 1961 and the Guardians and Wards Act of 1890, while also being shaped by customary and religious practices. The protection of children's rights is further reinforced by the Constitution of Bangladesh, which aligns with international standards, most notably the United Nations Convention on the Rights of the Child (CRC), to which Bangladesh is a signatory.³⁰ As Bangladesh advances in legal reform, it is essential to bridge the gaps between secular and religious laws, promote gender equality in custody decisions, and

²⁷ Mahmuda Akand, "The High Court Division (Bangladesh) Verdict Acknowledging Mother as Legal Guardian of a Child and Its Probable Impact on the Person and the Respective Society," *Jahangirnagar University Journal of Government and Politics* 42 (2023): 85–93.

²⁸ Tribun Desk, "High Court Issues Rule Nisi to Formulate Guidelines on Guardianship Rights," *Dhaka Tribune* (Dhaka, Bangladesh, April 2024), <https://www.dhakatribune.com/bangladesh/court/344599/high-court-issues-rule-nisi-to-formulate>.

²⁹ Bikashju, "HC Questions Legality of Father as Sole Natural Guardian of a Minor," *The Financial Express* (Bangladesh, April 2024), <https://thefinancialexpress.com.bd/national/hc-questions-legality-of-father-as-sole-natural-guardian-of-a-minor>.

³⁰ Syeda Afroza Zerin, "Legal and Judicial Responses to Muslim Mother's Rights to Guardianship in Bangladesh" (UNIVERSITY OF DHAKA, 2025), p. 113.



ensure the effective enforcement of custody orders. Such measures would enable the country to establish a more consistent and equitable approach to child custody and guardianship, ultimately safeguarding the rights and welfare of children.³¹

Child custody and guardianship in Bangladesh are currently regulated through a combination of civil law, Islamic law, and statutory provisions. While there are safeguards in place to protect children's welfare, significant gaps remain that hinder the fair and efficient resolution of custody disputes.³² Disparities in financial resources, gender bias, inconsistent application of legal principles, and the absence of clear, uniform criteria for determining the best interests of the child all contribute to these challenges.³³

One of the most significant shortcomings in the current system is the conflict between civil law and religious law, particularly between Islamic family law and the Guardians and Wards Act of 1890. These conflicts often create confusion in court, especially in cases involving interfaith families or where religious customs diverge from the principles of the Guardians and Wards Act, which prioritizes the welfare of the child. Inconsistent application of the law can result in custody decisions that fail to serve the child's best interests, thereby creating uncertainty and instability in such cases.³⁴

Bangladeshi law exclusively recognizes fathers as natural guardians, effectively denying this status to mothers. Under Section 29(b) of the *Guardianship and Trusteeship Act 1890*, only fathers are considered natural guardians of children, a provision that violates the Constitution. Article 27 of the Bangladesh Constitution guarantees equality before the law, yet existing laws fail to ensure such equality. Article 28 explicitly prohibits discrimination based on sex, thereby prohibiting the legislature from enacting laws that discriminate based on gender.³⁵

Gender inequality persists in child custody decisions. In cases where mothers are the primary caregivers and better suited to meet the emotional and physical needs of their children, gender bias can still lead to unjust outcomes. This imbalance in guardianship proceedings undermines women's rights and can adversely affect children's mental health. The current legal framework breaches the fundamental rights safeguarded under Articles 27 and 28 of the Bangladesh Constitution, as well as Article 26. Furthermore, the *Family Courts Act 2023*, which addresses guardianship matters, remains aligned with the discriminatory provisions of the

³¹ Tasnuva Anika, "Custody, Guardianship, and Adoption: Comparing Bangladesh and Malaysia," *The Daily Star* (Dhaka, Bangladesh, December 2024), <https://www.thedailystar.net/law-our-rights/news/custody-guardianship-and-adoption-comparing-bangladesh-and-malaysia-3769496>.

³² Meherun Wahed, "On Norms of Custody and Guardianship," *The Daily Star* (Dhaka, Bangladesh, November 2018); Nahid Ferdousi, "The Establishment of Children's Courts in Bangladesh: From Principle to Practice," *Oxford University Commonwealth Law Journal* 15, no. 2 (July 3, 2015): 197–221, <https://doi.org/10.1080/14729342.2016.1191158>.

³³ Xin Zhang, Shi Chen, and Mengyuan Wang, "Gender Bias in Child Custody Judgments: Evidence from Chinese Family Court," *PLoS ONE* 19, no. 7 July (2024): 1–17, <https://doi.org/10.1371/journal.pone.0305479>; Cynthia McNeely, "Lagging behind the Times: Parenthood, Custody, and Gender Bias in the Family Court," *Florida State University Law Review Volume* 25, no. 4 (1998): 891–956.

³⁴ YASMIN, "Judicial Trends in Child Custody Cases in Bangladesh: Traditional Islamic Law Rules versus Welfare Considerations."

³⁵ Kawser Ahmed, "Interpreting Discrimination in the Constitutional Context of Bangladesh," *The Daily Star* (Dhaka, Bangladesh, December 2020), <https://www.thedailystar.net/law-our-rights/news/interpreting-discrimination-the-constitutional-context-bangladesh-2011377>.



*Guardianship and Trusteeship Act 1890.*³⁶

Although the Guardianship and Conservatorship Act emphasizes child safety in custody decisions, the criteria for determining the “best interests of the child” remain vague. This lack of clarity can result in rulings that disregard the child’s psychological and emotional well-being, potentially placing them in an unsuitable environment.

In Bangladesh, custody often goes to wealthier parents. Financial status can unfairly tip the balance, leading to children from low-income households being placed with financially stronger but less caring parents who may not prioritize their well-being. Moreover, the legal system lacks an adequate support structure for parents and children involved in custody disputes. This absence of comprehensive support prolongs custody battles and exacerbates the emotional toll on both children and parents.

Conclusion

The landmark ruling by the High Court Division in Bangladesh marks a pivotal milestone in recognizing women as legitimate legal guardians. This decision challenges entrenched patriarchal structures and advances gender equality within family law. By empowering mothers to make crucial decisions regarding their children’s welfare, the ruling reshapes the legal landscape and aligns with constitutional principles of non-discrimination. Beyond affirming maternal rights, the judgment sets a progressive precedent that reflects the evolving social dynamics of contemporary family structures. It calls for comprehensive legal reforms, including amendments to existing legislation and the development of standardized guidelines that prioritize the best interests of the child over traditional gender norms.

The broader implications of this ruling extend far beyond its immediate legal context, serving as a catalyst for social transformation and underscoring the judiciary’s commitment to safeguarding fundamental rights. While challenges in implementation and societal acceptance persist, the decision represents a significant step toward establishing a more equitable legal framework that recognizes the equal rights of both parents in matters of child guardianship. Currently, guardianship and custody laws in Bangladesh operate under a problematic hybrid civil-religious system that inadequately protects children’s welfare. Addressing these shortcomings requires comprehensive legal reforms to create a unified framework that prioritizes the child’s best interests over traditional parental roles and religious conventions.

Key reforms should harmonize civil and religious laws while establishing clear guidelines for Family Courts to ensure consistent and fair decision-making. The legal system must explicitly define the factors that determine a child’s best interests, such as emotional well-being, stability, and the quality of parental relationships, while eliminating gender bias by granting both parents equal custody rights. The framework should also encourage shared parenting arrangements and provide essential support mechanisms for women, including free legal aid and counseling services.

Practical implementation will require substantial amendments to the outdated Guardians and Wards Act of 1890 to clarify legal guardianship concepts and ensure constitutional compliance. Administrative measures should also update official forms to recognize both parents as legal guardians. Together, these reforms would create a modern, equitable legal framework that effectively safeguards children’s rights while supporting family welfare across Bangladesh.

³⁶ Daniel B Pickar, “Countertransference Bias in the Child Custody Evaluator,” *Journal of Child Custody* 4, no. 3–4 (March 1, 2008): 45–67, https://doi.org/10.1300/J190v04n03_04; Claire Paterson-Young, Meanu Bajwa-Patel, and Richard Hazenberg, “‘I Ain’t Stupid, I Just Don’t like School’: A ‘Needs’ Based Argument for Children’s Educational Provision in Custody,” *Journal of Youth Studies* 25, no. 4 (2022): 452–69, <https://doi.org/10.1080/13676261.2021.1900553>.



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Asmaul Hosna Jusi: Conceptualization, Methodology, Writing -original Draft. **Mohi Uddin:** Supervision, Methodology, Writing - review & editing.

Declaration of Competing Interest

The authors declare that they have no competing financial interests or personal relationships that could influence the work reported in this paper.

Data Availability

Data will be made available on request.

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