

Faith and family law

How Christian personal status laws shape women's rights in Bangladesh, India, Myanmar and Pakistan



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Act Church of Sweden is the Church of Sweden's international aid and development organisation. Together with other churches, organisations, and volunteers, Act Church of Sweden works long-term against poverty, oppression, and injustice, and responds quickly in times of disaster. Thanks to local collaborations, the work is effective and proactive.

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About Act Church of Sweden

Act Church of Sweden (Act CoS) is the branch for international mission and diaconia of the Church of Sweden and thus constitutes the Church's international aid and development work. This means that Act CoS is a faith-based development and aid actor and an integral part of the Church of Sweden. Together with churches, civil society organisations, and thousands of volunteers, Act CoS works long-term against poverty, oppression, and injustice and acts quickly in the event of humanitarian disasters. Act CoS's strategic goal is to ensure people live in just, sustainable, and democratic communities, backed by global solidarity and based on human rights. Our programmes are centred on mobilisation, capacity development, collaboration, and advocacy.

Since 2020 Act CoS has been part of a Global Campaign for Equality in Family Law¹, together with Equality Now, the Latin American and Caribbean Committee for the Defense of Women's Rights (CLADEM), Musawah, Muslims for Progressive Values, UN Women, Women's Learning Partnership, and Solidarity for African Women's Rights (SOAWR) represented by the African Women's Development and Communications Network (FEMNET). The overarching goal of the campaign is to achieve equality for women girls, and other marginalised groups, under laws, policies, and practices that relate to families in all their diversity, regardless of religion and culture.

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Key terminology

Adultery is a legal term appearing in the material used in this overview referring to consensual sexual relations when one of the participants is in a legally recognised marital union.¹

CEDAW refers to the Convention on the Elimination of All Forms of Discrimination against Women, which has been ratified/acceded to by all the countries included in this research.

CEDAW Committee refers to the body of independent experts set up to monitor the implementation of CEDAW. The Committee consists of 23 experts on women's rights from all over the world.

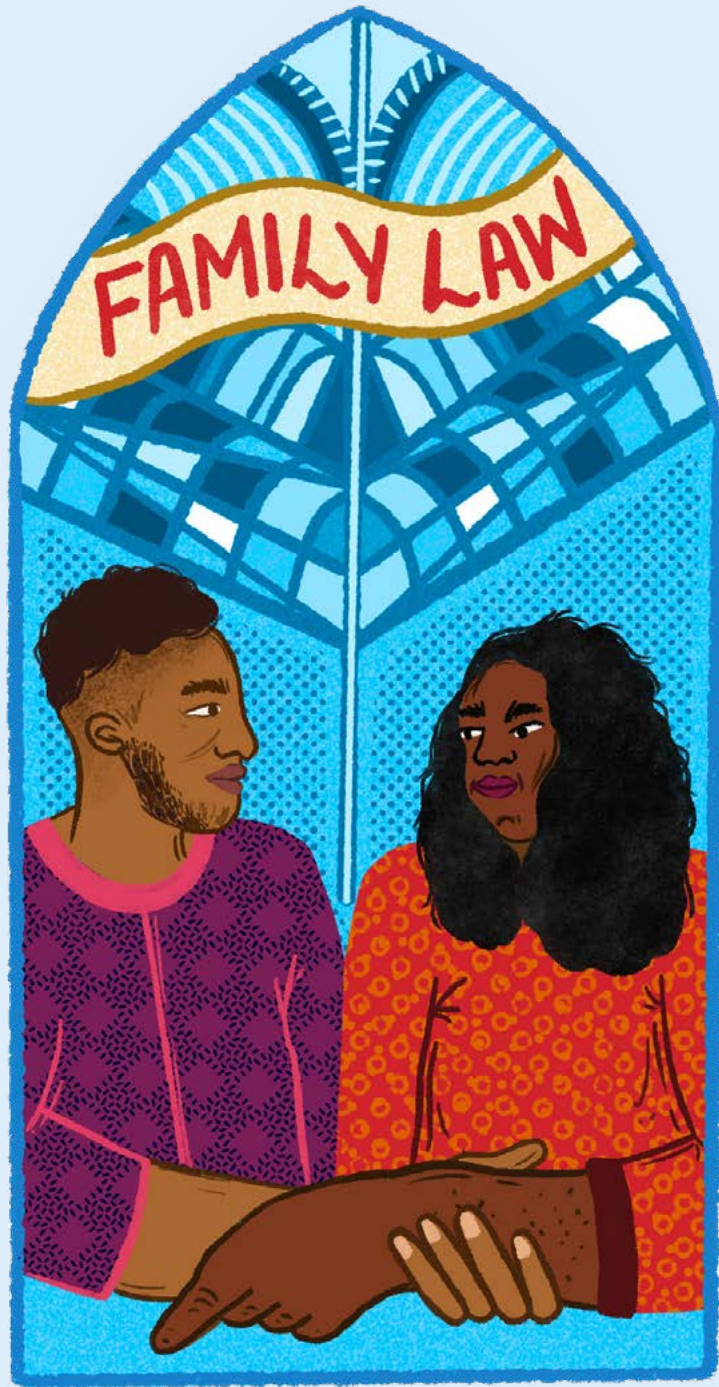
Child marriage refers to any formal marriage or informal union between a child under the age of 18 and an adult or another child.²

Domestic violence, also referred to as "intimate partner violence," can be characterised as 'a pattern of behaviour in any relationship that is used to gain or maintain power and control over an intimate partner.' It encompasses various forms of abuse, including physical, sexual, emotional, economic, or psychological actions, as well as the threat of such actions, all of which exert influence over another person. Such behaviours can induce fear, intimidation, terror, manipulation, harm, humiliation, blame, injury, or emotional distress in the targeted individual. It is vital to recognise that domestic abuse is not restricted to specific demographics and can impact individuals of any race, age, sexual orientation, religion, or gender.³

Mensa et toro (divorce from bed-and-board) is a legal term in the material used in this overview 'relating to a separation in which the parties remain husband and wife but without cohabitation'.⁴

Personal status law (also known as Family law) refers to the laws regulating relations within the family and the rights and responsibilities of individual family members. Family law and personal status law are used interchangeably globally, however, in the context of this report, all the countries refer to personal status law. These laws regulate issues, such as the legal age of marriage, the right to freely choose a spouse to marry, marital rape and violence within the marriage, divorce, custody of children, and inheritance laws. They may also regulate women's legal capacity – if women and men are equal as citizens and equal before the law. This may include women's right to work, open a bank account, or apply for a passport without a husband's permission.





Executive summary

This study focuses on personal status laws for Christians in four countries in Asia: Bangladesh, India, Myanmar, and Pakistan. In each of these countries, Christians are a religious minority, conditioning their public space in society. Moreover, the personal status laws are inherited from British colonial rule. These laws, which define the rules on entering into or dissolving marriages, as well as the rights and obligations of the husband and wife within the marriage, date back more than 100 years to the late 19th and early 20th centuries. These statutes reflect the patriarchal values of the colonial era as well as the policies of the British Empire, which separated the administration of personal status law according to religion.¹ This legal context continues to impact women's agency today and the extent to which they hold autonomy over personal status law matters. These legal structures have not been substantially reformed since independence and tend to give women fewer rights compared to men.

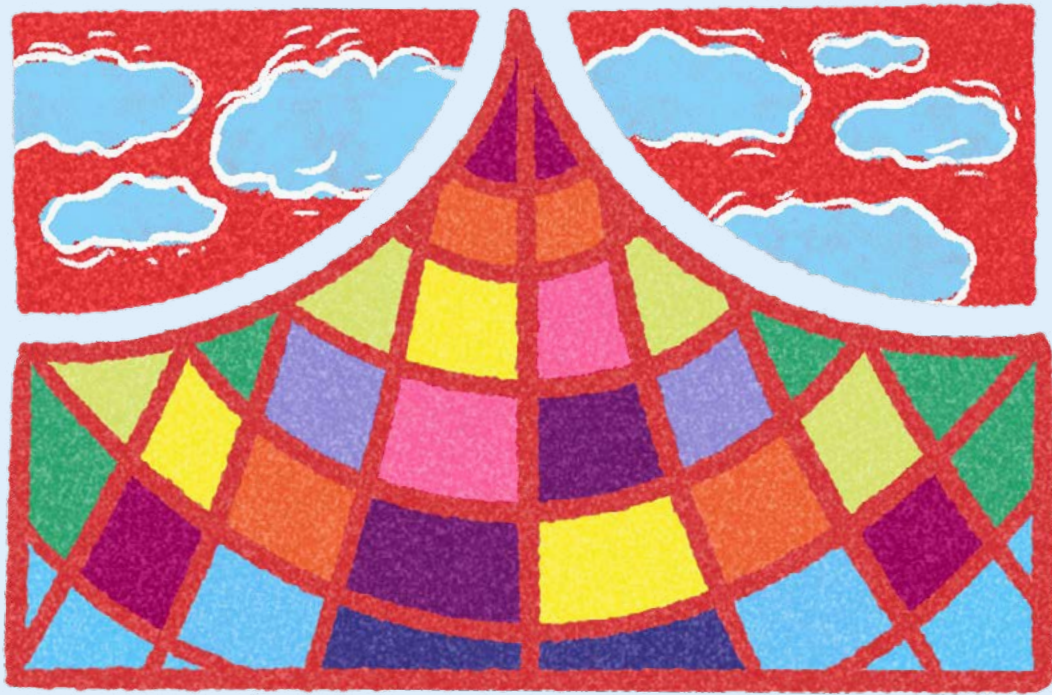
However, as is covered in this report,² there have been some attempts at reform. In Bangladesh, civil society organisations have advocated for reform of personal status laws to comply with international legal norms, such as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which Bangladesh has ratified. In India, the Indian Divorce (Amendment) Act (2001) made divorce laws equal for women and men. In Pakistan, a 2017 court case sparked public debate around extending the grounds for divorce, including calls to make violence a legitimate ground for divorce.

Another area in which there have been reforms is the minimum age of marriage, alongside legislative processes from the last couple of decades that recognised the right of a child, girl or boy, not to be married before 18. In this case, however, laws continue to provide clauses that allow child marriage below this age with the permission of their parents or guardians, thus undermining reforms to protect the rights of the child. In Myanmar, the Child Rights Law (2019) introduced a minimum age of marriage, and how this will be interpreted in relation to personal status laws remains to be seen.

In addition to these examples of reform initiatives, the periodic reports of the CEDAW Committee regarding discrimination against women in these countries also highlight the inequalities inherent in their current personal status laws. The Committee has presented recommendations on eliminating structures that hinder women from accessing their human rights. For example, the CEDAW Committee has urged India to take action and establish a time-bound national campaign to 'eliminate patriarchal attitudes and stereotypes that discriminate against women.'¹ In doing so, the CEDAW Committee draws attention to both the legal and cultural structures of discrimination based on gender that place the human rights of women and girls at risk.

1 Even though the British rulers were Christians, the Christian minorities in these countries did not receive any preferential treatment regarding personal status law. The administration of personal status law was separated according to religion, and the statutes reflected the patriarchal values of the colonial era.

2 The information in this study relies primarily on a desk review of publicly available sources compiled by two consultants between 2020 and 2021. It's important to emphasize that the data and materials underpinning this report were collected within specific timeframes. As a result, they do not reflect any reform initiatives or alterations that may have occurred after September 2021.



Key Findings:

Colonial laws have not been reformed.

Christian personal status laws originate from colonial rule under the British Empire. These laws govern matters, such as marriage, divorce, succession, custody, and inheritance. Christians are subjected to personal status laws that date back to the end of the 19th century, written for a different cultural and political context. However, this legal context continues to affect women's agency today and the degree to which they have autonomy over personal status law matters. These statutes reflect the patriarchal values of the colonial era and the policies of the British Empire, which separated jurisdiction in the private sphere according to faith affiliation.

Christian family laws generally give women fewer rights than men.

In general, where the laws make different provisions based on gender, women are afforded fewer rights. For example, due to unequal grounds for divorce, it is often easier for men to petition for divorce than for women and inheritance rights laws favour men over women. Such laws also contravene commitments under CEDAW to eliminate discrimination based on gender.

Limitations on protection against child marriage: different ages of marriage based on gender and consent.

In India, Bangladesh, and Myanmar national legislation states that the minimum age for marriage is at least 18 irrespective of gender. However, in India and Bangladesh, the minimum age is different for men (21) than women (18). In Pakistan, except for the province of Sindh, the minimum age is 16 for girls and 18 for boys. Moreover, both Bangladesh and Myanmar allow child marriage with the consent of a father or male guardian, with 13 as the minimum age for girls, and 16 for boys in Myanmar.

Domestic violence is not explicitly recognised as a ground for divorce.

Domestic violence is a documented problem in each of these countries, however, it is not explicitly considered a ground for divorce. In Bangladesh, Myanmar and Pakistan, a judicial separation may be obtained on the grounds of cruelty. In India, applicants may petition for divorce if the respondent has treated the petitioner with such cruelty as to cause a reasonable apprehension in the mind of the petitioner that it would be harmful or injurious for the petitioner to live with the respondent.

Methodology

This report arose from dialogue with civil society actors working on issues regarding the social and legal status of women in society and the problem of gender-based discrimination. As a result of these conversations, Act CoS identified the need to give more visibility to the existence of the gender inequalities arising from personal status laws applicable to Christian populations in Asia since little systematic attention has been paid to the issue. This report seeks to address this by providing an overview of Christian personal status laws in the following countries: Bangladesh, India, Myanmar, and Pakistan.

This report is not a comparative analysis of the different personal status laws in these four countries. The intention is to provide a resource for civil society actors, including women's rights organisations, working to address gender-based discrimination and advance gender equality.

The information in this study primarily relies on a desk review of publicly available sources compiled by two consultants between 2020 and 2021. The material was then revised during 2022 and 2023 and new sources were added.

There were significant difficulties in compiling this report in terms of accessing adequate documentation of the legal systems, including in academic writing. This mirrors the challenges of accessing information about the statutes for people in the countries in question. To address these information gaps, the consultants engaged in consultations with key informants drawn from Act CoS's ecumenical network. These informants possess extensive experience of the situation on the ground, particularly concerning the rights of Christian women. Their insights have been used to complement the available information. For confidentiality, most names of these informants have been omitted from the references.

The following chapters focus primarily on presenting legal material available in English and public sources for each of the four countries under review. This study does not aim to analyse current legal interpretation by courts or the theological reasoning by religious institutions regarding the Christian personal status law system, its statutes, and its application. Rather, this report seeks to give an overview of the legal context which impacts women's and girls' lives and to lay the groundwork for future studies to explore these questions in more depth. Examples of questions for further research are identified in the conclusion.

Each chapter begins with an overview of the legal situation in the country, including any reservations to CEDAW. For more detailed information regarding CEDAW and family law matters in general, see the Annex.





Bangladesh



Background

Bangladesh, as part of the Dominion of Pakistan, gained independence from the British Empire in 1956, and from Pakistan in 1971.¹ In July 2021, the country had a population of 164.1 million.² Figures from 2020 show that a large majority of Bangladeshis are Muslims (90.8 percent), 8.2 percent are Hindus, while Christians constitute less than 1 percent of the population.³ The majority of Christians are members of the Catholic church.⁴

	Men	Women
Age of marriage*	21	18*
Divorce	Adultery	Adultery with bigamy, incest, desertion, or husband's conversion and subsequent marriage
Annulment	Impotency, consanguinity, 'lunacy', bigamy, forced marriage	
Judicial separation	Adultery, cruelty, desertion without reasonable excuse	
Maintenance	If the divorce is due to the woman's adultery, settlement of her property may be ordered	Husband may be ordered to pay maintenance in the event of a divorce
Property rights	Right to own property and income	Right to own property and income
CEDAW	Reservations: Article 16 (1): Combatting discrimination against women and girls in all its forms	

*With provisions for exceptional circumstances

Legal Overview

Constitution

The Constitution of the People's Republic of Bangladesh (1972) sets out the legal framework of the nation, declaring that it is the supreme law of Bangladesh, and laws inconsistent with its statutes are void.⁵ Part III of the Constitution regulates the fundamental rights held by citizens, such as equality before the law (Article 27), and the right not to be discriminated against based on religion, race, caste, sex, or place of birth (Article 28). Article 28 also grants women 'equal rights with men in all spheres of the State and of public life.' Article 41 (1 b) guarantees freedom of religious practice, including the right of a religious community to 'establish, maintain and manage its religious institutions.' The Constitution stipulates:

Article 27: Equality before law – All citizens are equal before law and are entitled to equal protection of law.

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 41:

1. Subject to law, public order and morality –
 - (a) every citizen has the right to profess, practice or propagate any religion;
 - (b) every religious community or denomination has the right to establish, maintain and manage its religious institutions.
2. No person attending any educational institution shall be required to receive religious instruction, or to take part in or to attend any religious ceremony or worship, if that instruction, ceremony, or worship relates to a religion other than his own.

Personal Status Laws

The personal status laws of Bangladesh are a mixture of codified and uncodified rules. Upon independence in 1971, Bangladesh adopted all laws that were in effect before independence, and these have remained largely untouched since then.⁶ Each religious community is governed by their own personal status laws and some of these laws can be traced back to the colonial era. The significant laws applicable to Christians are:

The Christian Marriage Act (1872)⁷ and the Divorce Act (1869)⁸: set forth rules for marriage, divorce, dower, maintenance, guardianship, and custody.

The Married Women's Property Act (1874)⁹ and the Succession Act (1925)¹⁰: matters regarding property and inheritance.

The Supreme Court of Bangladesh and the High Court Division of the Supreme Court of Bangladesh are vested with judicial powers to interpret and enforce these laws.¹¹

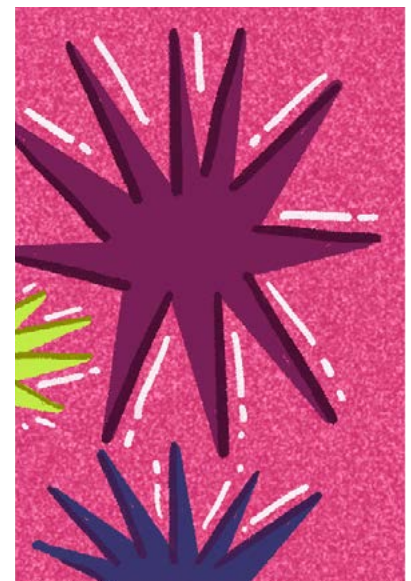
Four sets of civil laws relate to family matters, namely the Special Marriage Act (1872)¹²; the Child Marriage Restraint Act (2017)¹³; the Guardian and Wards Act (1890)¹⁴; the Family Courts Ordinance (1985)¹⁵; and the Dowry Prohibition Act (2018)¹⁶ that repealed the previous act from 1980.

International Treaties

Bangladesh ratified CEDAW in 1984 with the following reservations:

'The Government of the People's Republic of Bangladesh does not consider as binding upon itself the provisions of article 2, [... and ...] 16 (1) (c) as they conflict with *Sharia* law based on Holy Quran and Sunna.'¹⁷

These reservations have implications for women's human rights in Bangladesh, the CEDAW Committee in terms of monitoring the implementation of the Treaty, and the duties of Bangladesh as a state party. Based on these reservations, the Government of Bangladesh may argue that they are not bound by obligations to condemn discrimination against women in all forms, and the concurrent obligation to act to eliminate it, as well as the obligation to secure equality within marriage. Notably, however, the CEDAW Committee does address the existence of such reservations in its regular monitoring process by including a recommendation to withdraw them.¹⁸ Furthermore, the Committee explicitly expresses concerns regarding the system of different personal status laws for religious groups and the discriminatory consequences such a system has for women, urging Bangladesh to review and repeal all such discriminatory laws.¹⁹



General laws applicable to Christians

Marriage

The Special Marriage Act (1872) regulates secular civil marriages. However, such marriages require parties to renounce their religions.²⁰

Child Marriage

The Child Marriage Restraint Act (2017) sets the minimum age of marriage for men at 21 and for women at 18. An adult who marries a child is liable to two years' imprisonment and or a fine (Section 7). A registrar who officiates such a marriage may have their licence revoked (Section 11). Parents or guardians may also be prosecuted (Section 8).

The law applies to all, however, the Act provides an exemption in special cases for the minor, by the order of the court, and with the consent of parents, following the procedure of the law (Section 19).²¹ This has drawn widespread criticism from civil society and other actors, including the Catholic Church.²² The Bishop of Rajshahi said that Parliament had made a serious mistake in allowing a provision for special circumstances and that the Catholic Church would observe the limit of 18 for women and 21 for men.²³ In the words of one civil society advocate, '[m]arrying a girl off to her rapist or to a hooligan who sexually harasses her will definitely lower her dowry, but it will do nothing to guarantee a better life for her. If anything, her husband will use and abuse her further and throw her out. This will increase the stigma and destroy her life.'²⁴

The effectiveness of the Child Marriage Restraint Act to protect against child marriage is dependent on documents proving the age of the female and the male. Birth certificates are accepted for this purpose, amongst other documents (Section 12). However, many births are reported not to be recorded at the time of birth.²⁵ This means that determining the true age of a bride to protect them from child marriage may be challenging.

Alongside this law, Bangladesh has a National Plan of Action to End Child Marriage, 2018–2030, launched in partnership with UNICEF Bangladesh in 2018.²⁶

Christian Personal Status Laws

Marriage

The Christian Marriage Act (1872) regulates marriages between Christians. The Act defines the minimum age of marriage as 18 for both men and women (Section 60). Marriage of younger individuals is permitted with the consent of fathers or guardians (Sections 19, 44, and 60). According to the Act, boys can be married at 16 years and girls can be married at 13 years (Section 60). However, as mentioned above, The Child Marriage Restraint Act (2017) increased the minimum age of marriage (for men), although with exemptions.



However, it has been found that many confusing, illogical, and sometimes unlawful practices have arisen because the laws have not been updated for nearly 150 years.²⁷ For example, some ministers who are licensed marriage registrars do not know how to obtain and renew marriage licenses and are uncertain how to accept or reject the solemnisation of certain marriages.²⁸ Further research also found confusion over interfaith marriages, and conflict between religious family laws and other statutes, such as the Child Marriage Restraint Act (2017).²⁹

Divorce, Annulment, and Judicial Separation

The Divorce Act (1869) provides for divorces, judicial separation, nullity, protection orders regarding property (in the case of desertion of the wife by the husband), maintenance, custody of children, and restitution of conjugal rights. The Act applies only to Christians.

While the husband may petition for dissolution of marriage solely on the grounds of his wife's adultery, a wife cannot do the same based only on her husband's adultery. Instead, the dissolution of marriage based on she must combine the grounds of adultery with another act by the husband to petition for dissolution of marriage.

Chapter III, Section 10 sets out the provisions for the dissolution of marriage. A husband may petition for dissolution if his wife has been guilty of adultery. A wife may petition for dissolution of her marriage if:

- '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.'

A husband can make their wife's adulterous partner a co-respondent in the petition and claim damages from the co-respondent (Sections 34-35). No divorce may be granted if the petitioner is guilty of the same marital offences, connived with the respondent, or delayed in filing the petition (Section 14).

Research focusing on Christian couples in Bangladesh indicates incidences of domestic violence are at the same level as the national domestic violence incidence rate.³⁰ However, domestic violence is not explicitly listed as a ground for dissolution of marriage in Section 10.

A petition for nullity may be filed under Section 19 on the following grounds:

- (1) 'that the respondent was impotent at the time of the marriage and at the time of the institution of the suit;
- (2) that the parties are within the prohibited degree of consanguinity (whether natural or legal) or affinity;
- (3) that either party was a lunatic or idiot at the time of the marriage;
- (4) that the former husband or wife of either party was living at the time of the marriage, and the marriage with such former husband or wife was then in force.

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.'

Judicial separation may be obtained on the grounds of adultery, cruelty, or desertion without reasonable excuse for two years or more. A decree of judicial separation has the effect of a divorce a mensa et toro (Section 22).

Maintenance and Property

A husband can be ordered to pay maintenance (alimony) to his wife or her trustees (Sections 36–38 of the Divorce Act, (1869).

Under the Married Women's Property Act (1874), married Christian women are entitled to their property and are the absolute owners of all property vested in, or acquired by them. Marriage does not grant their husbands any interest in such property. All wages and earnings of a married woman, whether through employment, occupation or trade, money and property gained through the exercise of literary, artistic or scientific skill, and all savings and investment income are her separate property (Section 4).

However, in the case of divorce or judicial separation due to the wife's 'adultery', the Court may order the settlement of the wife's property for the benefit of the husband, or of the children of the marriage (Divorce Act (1869), Section 39).



Inheritance

The Succession Act (1925) provides, by and large, for equal inheritance rights for men and women (Section 33, Section 35 and Section 47). The only exception is in cases where the deceased dies intestate, without a will, in which for instance the father of the intestate inherits, to the exclusion of the mother (Section 42).

Children of an annulled marriage may inherit in the same way as legitimate children if the marriage was annulled on the grounds of bigamy where the parties were not aware that a presumed deceased spouse was living, or if the marriage was annulled on the grounds of insanity (Divorce Act (1869), Section 21).

Reform Initiatives

Over the past 30 years there have been sporadic initiatives to reform Christian personal status laws and to address the discrimination inherent in assigning individuals different rights based on their sex and religion. Some advocates have questioned the constitutionality of women having different rights for divorce, maintenance, custody, and inheritance based on their sex and religion.³¹ In 1998, Mahila Prashad, a rights-based civil society organisation, advocated for a unified family code. However, groups from different communities protested these proposals over fears of losing their identity. There was also pushback from those who benefitted from the existing legal regime, for example from unequal inheritance distribution or unequal rights to divorce.³²

In 2002, the Jatiya Church Parishad Bangladesh (National Council of Churches Bangladesh, NCCB) advocated for amendments to the Divorce Act similar to those passed in India in 2001 [see the chapter on India].³³ Research indicated confusion within the Christian community over how to access the law, and how they are affected by the national legal regime, including questions regarding the application of civil laws versus religious laws.³⁴

Other civil society organisations have advocated for reform to family laws to comply with international legal norms, such as CEDAW and the Convention on the Rights of the Child (CRC), which Bangladesh has ratified. One report by Bangladesh Legal Aid and Services Trust, states that ‘the existing Christian civil laws are so outdated that they are quite useless in practical terms.’³⁵

In 2012, the Law Commission of Bangladesh issued the report Recommendations for the Amendment of the Divorce Act of 1869 (Divorce of Christian Couples) and Enactment of a New Law on Adoption by the Christians.³⁶

The following amendments have also been proposed by advocates and researchers:

- expanding the grounds for divorce or separation to include domestic violence, addiction to alcohol or drugs, or irreparable breakdown of marriage such that a continuation would be injurious to one or both parties;
- removing differential grounds for divorce or judicial separation for husbands and wives;
- removing the ability to make the person with whom the wife is said to have committed adultery a co-respondent;
- removing settlement of property in favour of the husband in the event of the wife’s adultery;
- removing the cap on the amount of maintenance awardable of one-fifth of the husband’s income.³⁷

Finally, advocates have urged the government to amend the Special Marriage Act (1872). Though the Act provides for secular civil marriage, it still requires parties wishing to marry under the Act to renounce their religions.³⁸

Conclusion

Bangladesh’s Constitution guarantees equality before the law and the right not to be discriminated against due to religion, race, caste, sex, or place of birth.

The Christian population constitutes less than 1 percent of the population in Bangladesh, equating to roughly 1,641,000 individuals. As citizens, they are considered part of a religious minority. The legal system allows each religious community to be governed by their personal status laws meaning that the Muslim majority and the Christian minority are governed by two different personal status law systems.

The Christian personal status laws originate from the colonial rule of the British Empire and are influenced by religion, local customs, and traditions. These laws govern personal status matters, such as marriage, divorce, succession, custody, and inheritance. Christians are subjected to personal status laws that date back to the end of the 19th century, written for a different cultural and political context. Yet this legal context continues to impact the agency of women today and the extent to which they hold autonomy over family matters. Statutes, such as the Christian Marriage Act (1872) and the Divorce Act (1869), reflect the patriarchal values of the colonial era, and the policies of the British Empire, which separated jurisdiction in family law matters according to religious affiliation. The influence of patriarchal values is evident in areas, such as minimum marriage age and the legitimate grounds for divorce.

Though the Christian Marriage Act (1872) stipulates the minimum age for marriage is 18 for either gender, it provides a loophole, allowing the marriage of minors with the consent of fathers or guardians. In 2017, new legislation was adopted to eliminate the practice of child marriage. This Child Marriage Restraint Act (2017) applies to all, irrespective of religion. However, despite opposition, the Act retains provisions for the marriage of minors. Debate continues, and civil society, including faith leaders, criticises this discrepancy, and the failure of the legislation to void pre-existing child marriages.



Another area of concern for the women's rights is that domestic violence is not explicitly recognised grounds for dissolution of marriage while adultery is, reflecting the values at the end of the 19th century. However, the law imposes different requirements for wife and husbands when petitioning for dissolution on the grounds of adultery. A wives cannot petition for divorce solely on the grounds of adultery, it must be accompanied by other grounds, such as desertion, or the husband's marriage to another woman. In contrast, a husband can petition for dissolution of marriage based solely on adultery.

Though there has been some progress in recent years, and there are reform campaigns from both faith communities and civil society, personal status laws in Bangladesh continue to discriminate against women. This is a reason for further research that directs attention to the concerns voiced by women regarding the consequences of existing personal status law legislation. Their experiences will shed more light on a system that provides unequal access to human rights as a result of inherited colonial values over a century old.



India



Background

India gained independence from the British Empire in 1947, as part of the Partition of British India into India and Pakistan. In 2022, the country had a population of 1.39 billion people.¹ Figures from 2020 show that the major religious groups are Hindu (79.8 percent), Muslim (14.2 percent), Christian (2.3 percent, around 32 million

	Men	Women
Age of marriage	21	18
Divorce	Adultery, conversion, mental ill health, venereal disease, presumed death, lack of consummation, desertion, cruelty. A wife may also divorce her husband for rape, 'sodomy' or 'bestiality'. Divorce by mutual consent is also permissible	
Annulment	Permissible but grounds not detailed in the report	
Judicial separation		
Maintenance		A court may order a husband to pay alimony for the duration of his former wife's life
Property rights	There is no joint property as a result of marriage, except for Goa, where marriage renders all assets as common between the spouses	
Inheritance	Equal between women and men	
CEDAW	Reservations to: Article 5 (a), 16 (1), and 16 (2): India will not interfere with discrimination against women in marriage and family life Article 29: India is not subject to arbitration by the CEDAW Committee in disputes with other state parties	

people), and Sikh (1.7 percent).² The majority of Christians (60 percent) live in rural areas.³ According to the 2011 census, three states have Christian majorities: Nagaland (87.93 percent), Mizoram (87.16 percent), and Meghalaya (74.59 percent). About 60 percent of the Christian population lives in Kerala.⁴

The largest Christian denomination in India is the Roman Catholic Church. Other prominent denominations in India include the Assemblies of God in India, the Syro-Malabar Catholic Church, the Church of South India, the Indian Pentecostal Church of God, the Malankara Orthodox Syrian Church, the Church of North India, the Seventh-Day Adventist Church, the New Apostolic Church, the Jacobite Syrian Christian Church, the Malankara Mar Thoma Syrian Church, as well as Baptist, Lutheran, and Presbyterian churches. In addition to these, there are various other smaller Christian denominations.⁵

Legal Overview

Constitution

India is governed by the Constitution of India, which was adopted by the Constituent Assembly in 1949 and entered into force on January 26, 1950.⁶ It guarantees equality before the law and equal legal protection (Article 14) and prohibits discrimination against any person because of their religion, race, caste, sex, place of birth or any of them (Article 15). It expressly permits the state to make special provisions for women and children (Article 15 (3)). The Constitution also stipulates rights regarding freedom of speech and expression, forming associations or unions, or moving freely in India (Article 19). The right to freedom of religion, that is, the right to freely profess, practice, and propagate faith, is also safeguarded in the Constitution (Article 25). The Indian Constitution stipulates:

Article 14: Equality before law – The state shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

Article 15: Prohibition of discrimination on the grounds of religion, race, caste, sex, or place of birth – (1) The state shall not discriminate against any citizen on grounds of religion, race, caste, sex, place of birth, or any of them. (3) Nothing in this article shall prevent the state from making any special provision for women and children.

Article 19: Protection of certain rights regarding freedom of speech.

Article 25: Freedom of conscience and free profession, practice and propagation of religion.

Personal Status Laws

India's laws are heavily influenced by British common law. Under British Colonial rule, personal status laws were instituted for different religious communities in India, such as Hindus, Muslims, and Christians. Since independence, many of these statutes have remained in place. These laws include laws on marriage, divorce, and inheritance. Marriages are solemnised by religious rituals and ceremonies, codified by personal statutory regulations, except for Muslim personal law, which is not codified.⁷ For the Christian community, the relevant personal status laws are the Indian Christian Marriage Act (1872),⁸ the Indian Divorce Act (1869),⁹ the Special Marriage Act (1954),¹⁰ and parts of the Indian Succession Act 1925.¹¹

The Family Courts Act (1984)¹² established a unified family court with jurisdiction over cases arising under personal status laws, meaning that despite the diversity of personal status laws for four religious communities (Hindu, Muslim, Parsi, and Christian), a central court hears all cases.¹³ The Family Court was established to promote conciliation and secure swift settlement of disputes relating to marriage and family affairs. It has jurisdiction over marriage, dissolution of marriage, and custody and guardianship of children,¹⁴ and is governed by the Civil Procedure Code.¹⁵ The Court is not a religious court, and cases are heard by civil magistrates and judges, irrespective of the religious affiliation of applicants and respondents.¹⁶

International Treaties

India ratified CEDAW in 1993 with the following declarations and reservations:

Declarations:

- i) With regard to articles 5 (a) and 16 (1) of the Convention on the Elimination of All Forms of Discrimination Against Women, the Government of the Republic of India declares that it shall abide by and ensure these provisions in conformity with its policy of non-interference in the personal affairs of any Community without its initiative and consent.
- ii) With regard to article 16 (2) of the Convention on the Elimination of All Forms of Discrimination Against Women, the Government of the Republic of India declares that though in principle it fully supports the principle of compulsory registration of marriages, it is not practical in a vast country like India with its variety of customs, religions, and level of literacy.

Reservation:

With regard to article 29 of the Convention on the Elimination of All Forms of Discrimination Against Women, the Government of the Republic of India declares that it does not consider itself bound by paragraph 1 of this article.¹⁷

India's declarations on Articles 5(a) and 16(1) mean that the state will not interfere when women are discriminated against in marriage and family life under religious personal status laws or address discriminatory religious or cultural norms and traditions. The reservation made to Article 29 means that India is not subject to arbitration by the CEDAW committee for disagreements arising with other state parties.

In its 2014 report, the CEDAW Committee urged India to withdraw the declarations to Article 5 (a), 16 (1), and 16 (2). The Committee urged India to establish a time-bound national campaign to 'eliminate patriarchal attitudes and stereotypes that discriminate against women'¹⁸ and to 'strengthen its awareness-raising and educational efforts, targeting both women and men [...] to eliminate all harmful traditional practices.'¹⁹



General laws applicable to Christians

Marriage

The Special Marriage Act (1954) allows for the solemnisation of marriages between two individuals without religious customs, rituals, or formal requirements. This allows for the registration of interfaith marriages. Couples from the same religious community who do not want their marriage (and ancillary issues like divorce) to be regulated by religious personal laws can also register their marriage under this law. Registration under this law does not preclude a marriage being performed with religious rites.

Although the Special Marriage Act applies to all interfaith marriages, a new law, the Prohibition of Unlawful Conversion of Religion Ordinance was passed in the Indian state Uttar Pradesh in 2020. The purpose of the law was to ban 'unlawful conversion, by force, fraudulent means or marriage.'²⁰ Implementation of the law appears to primarily target Muslim men who are framed as a threat to Hindu women and accused of seducing these women to make them fall in love and convert to Islam. Arrests were made within days of the passage of the law.²¹ The state of Madhya Pradesh has instituted a similar Freedom of Religion Ordinance (2020), prohibiting interfaith marriage, and averaged one case per day in the first month.²² Critics maintain such laws are unconstitutional.²³ In the case of *Shafin Jahan v Ashok KM* (2018), which concerned a Hindu woman who converted to Islam and subsequently decided to marry a Muslim man, the Supreme Court ruled:

The Constitution protects the ability of each individual to pursue a way of life or faith to which she or he seeks to adhere...The right to marry a person of one's choice is integral to Article 21 of the Constitution. (...) Intrinsic to the liberty which the Constitution guarantees as a fundamental right is the ability of each individual to make decisions on matters central to the pursuit of happiness.²⁴

Child Marriage

Child marriage is criminalised under the Prohibition of Child Marriage Act (2006).²⁵ It is a cognisable and non-bailable offence (Section 15). According to Section 2 of the law:

- a) "'child" means a person who, if a male, has not yet completed twenty-one years of age, and if a female, has not completed eighteen years of age;
- b) "child marriage" means a marriage to which either of the contracting parties is a child.'

Child marriages are legally voidable if challenged by the party who was a child at the time of the marriage within two years of their attaining the age of marriageability (Section 3). Section 12 also declares the following marriages to be void where a child, being a minor:

- (a) 'is taken or enticed out of the keeping of the lawful guardian; or
- (b) by force compelled, or by any deceitful means induced to go from any place; or
- (c) is sold for the purpose of marriage; and made to go through a form of marriage or if the minor is married after which the minor is sold or trafficked or used for immoral purposes, such marriage shall be null and void.'

Custody and Guardianship

The Guardians and Wards Act (1890)²⁶ regulates guardianship and custody irrespective of religion. Section 4 (2) defines a guardian as 'a person having the care of the person of a minor or of his property, or of both his person and property.' The Law Commission of India refers to custody as the 'upbringing and day-to-day care and control of the minor,' in a report from 2015.²⁷

The Guardians and Wards Act authorises district courts to appoint guardians when natural guardians, as defined by personal status law in relation to the minor's religion, or testamentary guardians assigned by a will, fail to fulfil their duties. The Act details 'the rights and obligations of the guardians, procedure for their removal and replacement, and remedies for misconduct.'²⁸



Section 17 sets out the considerations for appointing a guardian:

- (1) In appointing or declaring the guardian of a minor, the court shall, subject to the provisions of this section, be guided by what, consistently with the law to which the minor is subject, appears in the circumstances to be for the welfare of the minor.
- (2) In considering what will be for the welfare of the minor, the court shall have regard to the age, sex, and religion of the minor, the character and capacity of the proposed guardian and his nearness of kin to the minor, the wishes, if any, of a deceased parent, and any existing or previous relations of the proposed guardian with the minor or his property.
- (3) If the minor is old enough to form an intelligent preference, the court may consider that preference.

Christian Personal Status Laws

Marriage

The law regulating the solemnisation of marriages among Christian communities in India is set out in the Indian Christian Marriage Act (1872).

The Act applies to marriages between Christians, and where one of the parties is a Christian. Marriages that are not solemnised according to the provisions of the Act are considered void (Section 4). However, case law has upheld the rights of interfaith couples to marry under the Special Marriage Act (1954), superseding Sections 4 and 5 of the Christian Marriage Act which states that the Act covers all marriages where one party is a Christian. For example, *A.A. Balasundaram v. Vijaya Kumari* upheld the validity of a marriage between a Hindu man and a Christian woman under the Special Marriage Act.²⁹

Section 60 of the Indian Christian Marriage Act (1872) sets out the conditions of marriage, including the minimum age of 21 for men and 18 for women. Marriages must also be monogamous (Section 60) and carried out in the presence of a licensed official (Section 9) and two further witnesses (Section 25). Section 10 defines the hours a marriage may take place and provisions for special dispensation. Bigamy is criminalised in the Indian Penal Code (1860) and punishable with imprisonment of up to seven years, and a fine (Section 494).³⁰

Though dowries are prohibited under the Dowry Prohibition Act (1961),³¹ Syrian Christian brides in Kerala customarily enter marriages with streedhan. This is considered to be a woman's wealth, not a dowry, and she keeps it if the marriage ends.³²

Divorce and Annulment

Divorces for Christians are regulated by the Indian Divorce Act (1869). This law has been amended by the Indian Divorce (Amendment) Act (2001),³³ which changed the terms for dissolution of marriage and introduced provisions for nullification of marriages.

Grounds for dissolution of marriage

The Indian Divorce (Amendment) Act (2001) made grounds for divorce equal between men and women. It applies to all marriages, even those solemnised before the act. Under Section 10, after the amendments, applicants may petition for divorce if the respondent:

- i. "has committed adultery; or
- ii. has ceased to be Christian by conversion to another religion; or
- iii. has been incurable of unsound mind for a continuous period of not less than two years immediately preceding the presentation of the petition; or
- iv. has for a period of not less than two years immediately preceding the presentation of the petition, been suffering from venereal disease in a communicable form; or
- v. has not been heard of as being alive for a period of seven years or more by those persons who would naturally have heard of the respondent if the respondent had been alive; or
- vi. has wilfully refused to consummate the marriage, and the marriage has not therefore been consummated; or
- vii. has failed to comply with a decree for restitution of conjugal rights for a period of two years or upwards after the passing of the decree against the respondent; or
- viii. has deserted the petitioner for at least two years immediately preceding the presentation of the petition; or
- ix. has treated the petitioner with such cruelty as to cause a reasonable apprehension in the mind of the petitioner that it would be harmful or injurious for the petitioner to live with the respondent."

Under the same section, a wife may also petition for the dissolution of her marriage if her husband has been found guilty of rape, 'sodomy', or 'bestiality' since the solemnisation of the marriage.

After the amendments, the Indian Divorce Act (1869) Section 11 stipulates:

On a petition for dissolution of marriage presented by a husband or wife on the ground of adultery, the petitioner shall make the alleged adulterer or adulteress a co-respondent, unless the petitioner is excused by the Court from so doing on any of the following grounds, namely:

- a. 'that the wife, being the respondent, is leading the life of a prostitute, or the husband, being the respondent, is leading an immoral life and that the petitioner knows of no person with whom the adultery has been committed;

- b. that the name of the alleged adulterer or adulteress is unknown to the petitioner, although the petitioner has made due efforts to discover it;
- c. that the alleged adulterer or adulteress is dead.'

Divorce by Mutual Consent:

The 2001 Indian Divorce (Amendment) Act also introduced a provision for dissolution of marriage by mutual consent. According to Section 10(a) 'subject to the provisions of this Act and the rules made thereunder, a petition for dissolution of marriage may be presented to the District Court by both the parties to a marriage together, whether such marriage was solemnized before or after the commencement of the Indian Divorce (Amendment) Act, 2001 (51 of 2001), on the grounds that they have been living separately for a period of two years or more, that they have not been able to live together and they have mutually agreed that the marriage should be dissolved.'

In *Molly Joseph vs. George Sebastian* (1996), the Supreme Court held that a decree of annulment issued by a church does not dissolve a marriage, and a civil petition for divorce must be granted before parties can remarry.³⁴ In this case, Molly Joseph remarried after obtaining an annulment from the Roman Catholic Church. When she subsequently petitioned for a civil divorce from her second marriage, her husband argued that as she had not obtained a civil divorce from her first marriage, her second marriage was invalid. The Supreme Court upheld the husband's plea, and Molly Joseph lost crucial rights that she would have had in a divorce settlement. Subsequently, church authorities have begun to issue warnings on annulment decrees that parties are also required to obtain a civil divorce before they get married again.³⁵



Maintenance and Property

The Indian Divorce Act (1869) makes provision for a wife to claim interim alimony support (Section 36) and permanent alimony (Section 37). A Christian woman is eligible to claim maintenance through either criminal or civil proceedings.³⁶

Under Section 37, a wife may apply for alimony in a civil court or the High Court, and her former husband will be liable to pay such a sum as the Court may order for the duration of her life. The Court will determine the payment's amount and frequency (monthly or weekly). Section 38 provides for the payment to be made either to the wife or to a trustee on her behalf approved by the Court. This may be subject to any terms or restrictions which the Court deems reasonable, and the Court may at times appoint a new trustee.

There is no concept of joint property after marriage, even if the property is acquired after marriage and one of the spouses has contributed in-kind (non-monetarily). This is not the case under the Goan Civil Code, where marriage renders all assets common between spouses. Unless otherwise agreed upon during a divorce, each partner is entitled to half of the assets. The Goan Civil Code has been raised as a potential model for a uniform civil code.³⁷

Inheritance

Christian succession and inheritance are generally regulated by the Indian Succession Act (1925), although there are a few variations and customary practices that continue

to influence the principles of inheritance. In the state of Goa and the Union Territories of Daman and Diu, the Portuguese Civil Court Code (1867)³⁸ continues to apply to Christians. The French Civil Code (1804) continues to apply to Christians in Pondicherry.³⁹

The Indian Succession Act (1925) recognises three types of heirs in cases where a Christian dies intestate: the spouse, lineal descendants, and kindred.⁴⁰ Under the Act, male and female heirs inherit equally. Part V, Chapter II of the Act stipulates the rules for the distribution of the estate:

‘Section 33. Where intestate has left a widow and lineal descendants, or widow and kindred only, or widow and no kindred.—Where the intestate has left a widow—

- (a) if he has also left any lineal descendants, one-third of his property shall belong to his widow, and the remaining two-thirds shall go to his lineal descendants, according to the rules hereinafter contained;
- (b) if he has left no lineal descendant but has left persons who are of kindred to him, one-half of his property shall belong to his widow, and the other half shall go to those who are kindred to him, in the order and according to the rules hereinafter contained;
- (c) if he has left none who are of kindred to him, the whole of his property shall belong to his widow.’

Previously, two other laws applied to Christians in Kerala. The Cochin Christian Succession Act and the Travancore Act. Until 1986, a mother or widow who became entitled to the deceased’s estate could only take a life interest, terminable upon her death or remarriage. Any male heirs would then divide the estate equally amongst themselves. The justification for this discrimination was said to be because the daughters would have received *streedhan*,⁴¹ considered a woman’s wealth, not a dowry.⁴²

However, this unequal distribution was held to have been unconstitutional by the Supreme Court in the case of *Mary Roy*, in 1986. The Court encouraged the repeal of both laws and held that the Indian Succession Act applied to all Christians.⁴³

Rainbow Families

In 2018, in *Navtej Singh Johar v. Union of India*, the Supreme Court held that same-sex acts between consenting adults are protected by the right to life guaranteed under Article 21 of the Constitution. This repealed Section 377-A of the Indian Penal Code, which criminalised same-sex acts between consenting adults. This case established rights to sexual identification, sexual autonomy, and choice of sexual partner.⁴⁴

The Secretary to the Indian Catholic Bishops’ Office for Justice, Peace and Development argued, however, that legal validity does not make a practice morally acceptable, stating that ‘it



violates the purpose of human sexuality, which is procreation ... This is the moral stand of the Catholic Church.⁴⁵

Same-sex relations have also been discussed previously. In 2013, the Roman Catholic Archbishop of Mumbai, former president of the Episcopal Conference of India said, 'as Christians, we express our full respect for homosexuals. The Catholic Church is opposed to the legalisation of gay marriage, but teaches that homosexuals have the same dignity of every human being and condemns all forms of unjust discrimination, harassment or abuse.'⁴⁶

Reform Initiatives

There has been long-term pressure for reform of Christian personal status laws. The Law Commission of India recommended urgent amendments to the Indian Divorce Act (1869) in its 1983 report *The Grounds of Divorce Amongst Christians in India*, Section 10 Indian Divorce Act 1869. The report found that the current Act violated the constitutional mandate for gender equality.⁴⁷

Amendments were eventually introduced through the Indian Divorce (Amendment) Act (2001). The amendments were hailed as a 'milestone in the long struggle of the community, especially the Joint Women's Programme, the Catholic Bishops' Conference of India (CBCI) and the National Council of Churches in India (NCCI) ... as an ecumenical effort to the entire community, including women's groups within the community.'⁴⁸

The landmark case of *Mary Roy v State of Kerala* in 1986 challenged unequal inheritance rights between men and women.⁴⁹ However, though the Supreme Court found in favour of Roy, she did not receive her inheritance until 2009.⁵⁰ This case drew the support of a range of advocates who filed intervention briefs in support of the petitioner, though it did not receive overt support from women within the Syrian Christian community in Kerala, to which Roy belonged.¹

The Church reportedly opposed the decision in the Roy case, 'conducting a "pulpit campaign" to contain the "damage" by means, such as encouraging the drafting of wills to safeguard sons' shares and attempting to gather support for a bill which would invalidate the retrospective effect of the judgment.'⁵¹ On the other hand, then-Archbishop Mar Gregorios of Trivandrum of the Syro-Malankara Catholic Church said that the 'time and conditions when the law was made (in 1916) have changed. I am happy that women have been given equal rights, and the church will not stand in their way.'⁵²

In 2018, the Supreme Court struck down the criminalisation of adultery in the case of *Joseph Shine v. Union of India*.⁵³ Before this, a husband had the power to prosecute the man with whom his wife committed adultery. According to the Court, this was a way for a husband 'to enforce patriarchal ownership over the wife's body and sexuality.'⁵⁴

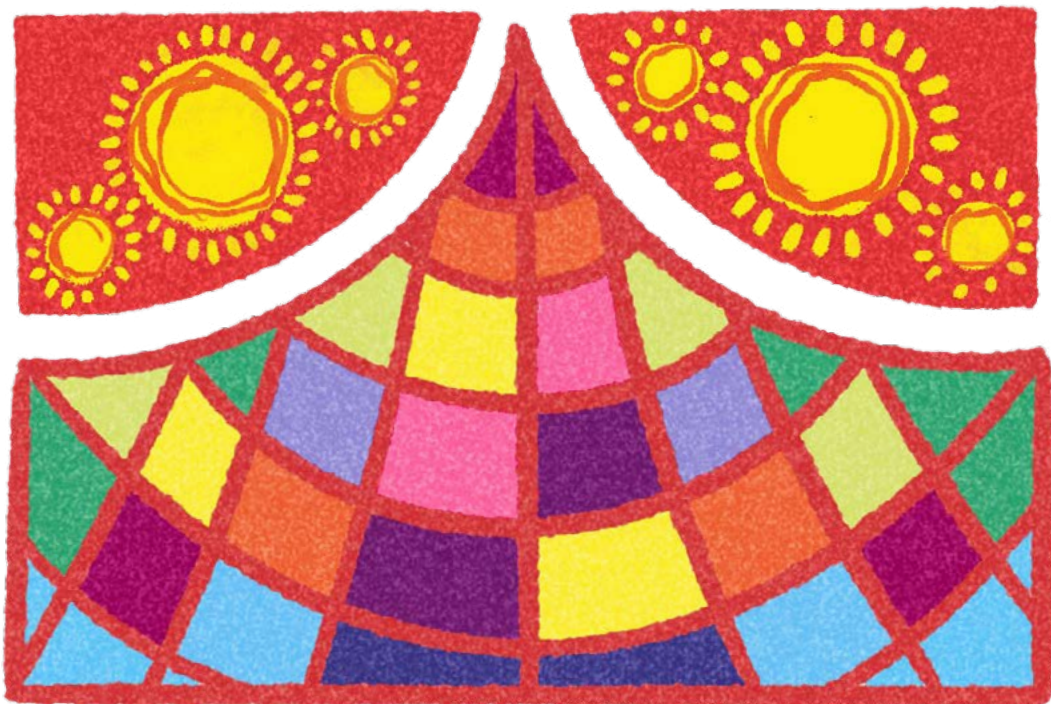
¹ While overt community support was not apparent, it does not necessarily mean the case was opposed by Syrian Orthodox women nor the subsequent decision unwelcome.

Conclusion

India's Constitution guarantees equal rights before the law for all citizens and freedom of religion and non-discrimination based on factors, such as religion, race, caste, sex, place of birth, or any of them. Article 15 (3) specifically allows the state to make special provisions for women and children. Despite this, India has made declarations to Articles 5 (a), 16 (1), and 16 (2) of CEDAW. This means that women and girls can be subject to discrimination because of religion and cultural practices without protection from the state. The CEDAW Committee has encouraged India to withdraw these declarations and to work to eliminate patriarchal values and harmful traditional practices.

Christians constitute around 2.3 percent of the population (32 million people), while the majority, 78.9 percent, are Hindus. The legal system allows each religious community to be governed by its own personal status laws. Thus, Hindus, Muslims, and Christians are subject to different family laws.

Christian personal status laws originate from colonial rule under the British Empire. These laws govern personal status matters, such as marriage, divorce, succession, custody, and inheritance. Christians are subjected to personal status laws that date back to the end of the 19th century, written for a different cultural and political context. Yet this legal context continues to impact women's agency today and the extent to which they hold autonomy over personal status law matters. Statutes, such as the Christian Marriage Act (1872) and the Indian Divorce Act (1869), reflect the patriarchal values of the colonial era and the policies of the British Empire, which separated jurisdiction in the private sphere according to faith affiliation.

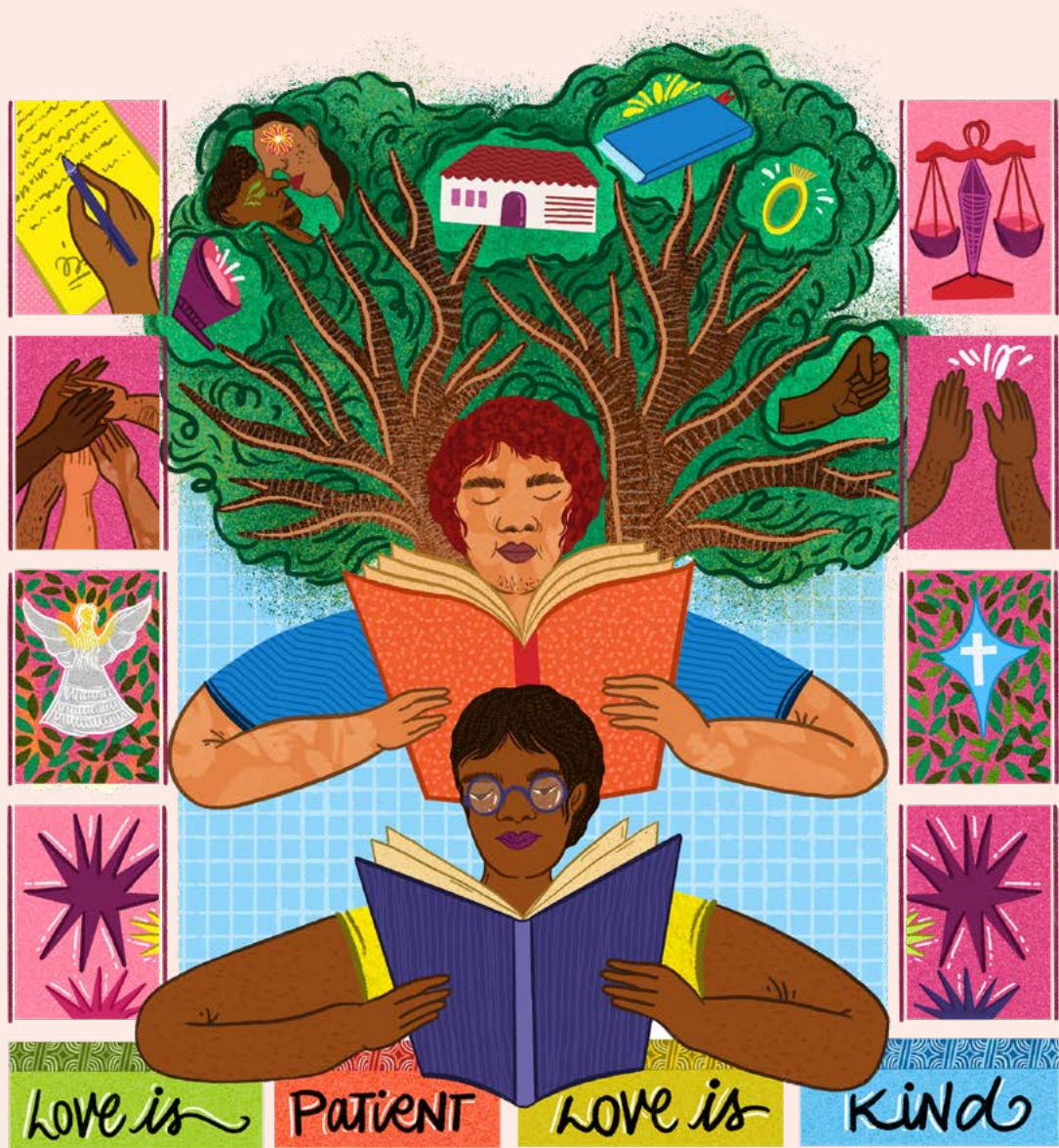


During recent decades, there has been intense work to reform India's Christian personal status laws, which are considered both unconstitutional and discriminatory against women. The introduction of the Indian Divorce Amendment Act (2001) was an important step towards gender equality in law.

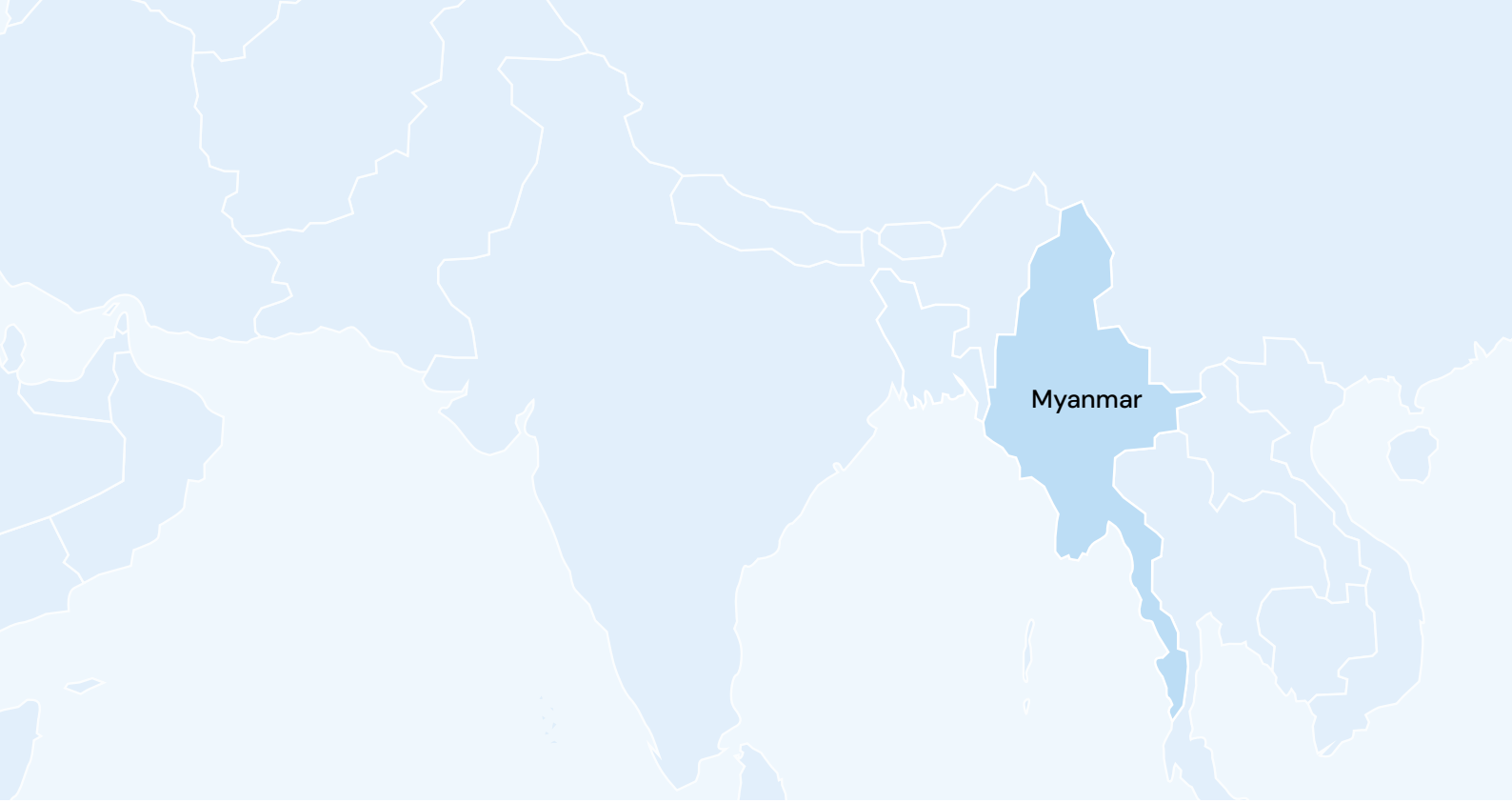
Another milestone was the case of *Mary Roy v State of Kerala* (1986). In its decision, the Supreme Court clarified that women and men have equal inheritance rights according to the Indian Succession Act (1925), which applies to all of India.

Despite these efforts, laws still tend to discriminate against women and girls. For example, the Prohibition of Child Marriage Act (2006) criminalises child marriages in India. However, the marriage is not legally void unless the party who was a child at the time of the marriage challenges the decision within two years. This presumes that children are aware of their rights, and more importantly, are empowered to claim these rights. In this context, it is also notable how the law defines 'a child' differently based on gender, where a girl is considered an adult at 18, while a boy is an adult at 21. Regarding LGBTIQ rights, the Supreme Court ruled in 2018 that same-sex acts between consenting adults are protected by the right to life guaranteed in the Constitution of India. Nevertheless, same-sex marriages are not allowed under Christian family law.

The rise of Hindu nationalism in India is now reflected in the legislation in some regions. Although the Special Marriage Act (1954) allows for the solemnisation of interfaith marriages, a new law, the Prohibition of Unlawful Conversion of Religion Ordinance, was passed in Uttar Pradesh in 2020. This law bans marriages where one of the parties has converted. The law appears to specifically target Muslim men who wish to marry Hindu women. It has been criticised as unconstitutional, contravening Article 21 of the Constitution, which stipulates the right to marry a person of one's choice.



Myanmar



Background

Myanmar gained independence from British rule in 1948.¹ In July 2021, the country had a population of 57.0 million, of which the majority (87.9 percent) were Buddhist, mainly Theravada. The largest religious minority groups are Christians, constituting around 6.2 percent of the population, and Muslims, 4.3 percent.² A few smaller communities practice Hinduism, traditional Chinese, and indigenous religions.

	Men	Women
Age of marriage	Minimum age of 18 regardless of gender	
Divorce	Adultery	Adultery with incest, bigamy, marriage with another woman, rape, 'sodomy' or 'bestiality', cruelty, desertion, or conversion of the husband
Annulment	Impotency, consanguinity, mental ill health at the time of marriage, bigamy	
Judicial separation	Adultery, cruelty, desertion without reasonable excuse	
Maintenance		
Property rights		
Inheritance	Theoretically equal, however regional laws and customs have differing impacts. Land is often also registered to men which makes it hard for women to claim rights to property	
CEDAW	Reservations to: Article 29: Myanmar is not subject to arbitration by the CEDAW Committee in disputes with other state parties	

The Christian communities are divided into Baptists, Roman Catholics, Anglicans, and a variety of Protestant denominations. In Myanmar, Christianity is mostly practiced by people from the Kachin, Chin, Naga, Karen, and Karenni ethnic groups.³

Legal Overview

Constitution

The Constitution of the Republic of the Union of Myanmar (2008) is the supreme law of Myanmar. It guarantees equal rights before the law and equal legal protection (Article 347), and non-discrimination based on race, birth, religion, official position, status, culture, sex and wealth (Article 348).

Myanmar is officially a secular country, and freedom of religion is guaranteed under Article 34, subject to certain conditions detailed below. However, Buddhism is granted a special position as the majority religion (Article 361). Other officially recognised religions are Christianity, Islam, Hinduism, and Animism (Article 362).⁴ In particular, the Constitution stipulates:

Article 34: every citizen is equally entitled to freedom of conscience and the right to freely profess and practice religion subject to public order, morality or health and to the other provisions of this Constitution.

Article 347: the Union shall guarantee any person to enjoy equal rights before the law and shall equally provide legal protection.

Article 348: the Union shall not discriminate any citizen of the Republic of the Union of Myanmar, based on race, birth, religion, official position, status, culture, sex and wealth.

Article 361: the Union recognizes special position of Buddhism as the faith professed by the great majority of the citizens of the Union.

Article 362: the Union also recognises Christianity, Islam, Hinduism, and Animism as the religions existing in the Union at the day of the coming into operation of this Constitution.

Personal Status Laws

Myanmar has a predominantly common law legal system introduced under British colonial rule. The principal sources of law are legislation, judicial decisions, and customary law, which covers personal status law, such as marriage and divorce, adoption, succession, wills, intestacy, transfer of property, and religious practice.⁵

The personal status laws of four religious groups, Buddhists, Muslims, Hindus, and Christians are formally recognised by the legal system.⁶

International Treaties

Myanmar ratified CEDAW in 1997, with the following reservation to Article 29 concerning dispute and arbitration:

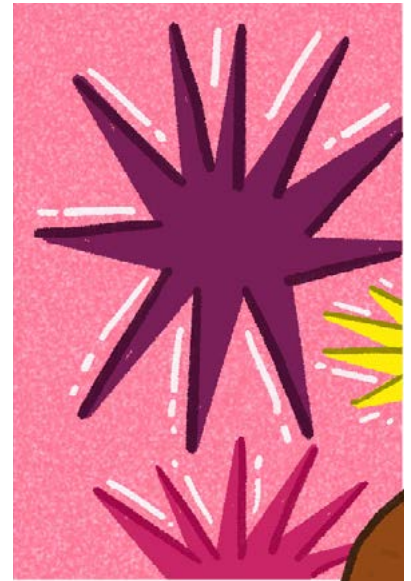
'[The Government of Myanmar] does not consider itself bound by the provision set forth in the said Article [29].'⁷

General laws applicable to Christians

Marriage

In 2015, the Government of Myanmar passed the Buddhist Women's Special Marriage Law,⁸ a revision of the Buddhist Women's Special Marriage and Succession Act (1954).⁹

This law places restrictions on Buddhist women marrying outside their faith. To enter such a marriage the parties must apply for registration with a government agency (Article 11). Additionally, both partners must be over 18, and if the woman is under 20, she needs her parents' approval (Article 9). The non-Buddhist man grants his wife and children the right to practice their religion freely (Article 24). A cohabitating couple where the female partner is Buddhist and the male partner is not, are treated as married under the law (Article 26). Upon divorce, the law grants custody of the children to the Buddhist wife (Article 25). The law does not place any restrictions on Buddhist men who wish to marry or cohabit outside their faith.



Alongside the Buddhist Women Special Marriage Law, Myanmar passed three other laws which collectively aim 'to protect the [Buddhist] religion and [Barma] race.'¹⁰ These are:

- The Monogamy Law: discourages and penalises polygamy.¹¹
- The Religious Conversion Law: anyone who wishes to convert to another religion must apply to the State for approval. A Board of Registration is empowered to scrutinise applications for conversions and interrogate applicants. The person who wishes to convert must also commit to a period¹ of religious studies. At the end of this period, the person will receive a "certificate of religious conversion", issued by the Registration Board.¹²
- The Population Control Law: grants authorities the discretion to control and limit reproductive rights if 'population growth, accelerating birth rates, or rising infant or maternal mortality rates are negatively impacting on regional development.'¹³

Child marriage

There are no official statistics on child marriage in Myanmar. However, the civil society organisation *Girls Not Brides* estimates that 16 percent of girls in Myanmar are married before they turn 18. In July 2019, Myanmar passed the Child Rights Law, stipulating the minimum age for marriage as 18 years, regardless of gender.¹⁴

¹ The period shall 'not exceed 90 days from the date of application, but extendable to 180 days at the applicant's request.'

Inheritance

Myanmar Customary Law regulates various personal law matters, including inheritance; however, the law only applies to Buddhists.¹⁵ The Farmland, the Vacant, Fallow and Virgin Lands Management Act, adopted in 2012, requires land to be registered in the name of the 'head of the family,' which is generally the man. This makes it very difficult for widows and divorced women to claim their right to land and property, and so reduces their rights to inheritance.¹⁶



Certain communities also practice 'widow inheritance,' whereby a widow is cared for by her brother-in-law. Though the purported purpose of the practice may be to ensure she is cared for, the custom has been criticised for treating women as property to be inherited, rather than people with inheritance rights. This has further human rights implications as widows are often deemed to be sexually accessible to the male relative.¹⁷

Christian Personal Status Laws

Marriage

The Christian Marriage Act (1872)¹⁸ sets out that a marriage may be solemnised by a person identified under the Act either in a religious ceremony or at a Registrar's Office, and recorded with the Registrar-General of Births, Deaths, and Marriages (Sections 19 and 20). According to Section 4, a Christian can contract a valid marriage with a person belonging to another religious affiliation. Cohabitation without formal solemnisation does not constitute a valid marriage. The minimum age of marriage is 18 for both women and men (Section 60), though marriage of minors is permitted under the Act with the permission of a parent or guardian (Section 19). The minimum age for minors is 16 for boys and 13 for girls (Section 60). How the provisions of this Act will be interpreted in light of the recent Child Rights Law (2019), which raises the age of marriage to 18 for all remains to be seen.

Divorce, Annulment and Judicial Separation

The Burma Divorce Act (1869) applies only to Christians and outlines the law around divorce.¹⁹ A husband may petition for divorce on the grounds of adultery of the wife (Section 10). A women may only petition for divorce in the case of adultery if her husband:

- 'has been quilty 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 *a mensa et toro*,
- or of adultery coupled with desertion, without reasonable excuse, for two years or upwards.'

A wife may also petition for divorce on the grounds that her husband has renounced Christianity and married another woman (Section 10).

Either husband or wife may petition for annulment of marriage under Section 19 on the grounds:

- 'that the respondent was impotent at the time of the marriage and at the time of the institution of the suit;
- that the parties are within the prohibited degrees of consanguinity (whether natural or legal) or affinity;
- that either party was a lunatic or idiot at the time of the marriage;
- that the former husband or wife of either party was living at the time of the marriage, and the marriage with such former husband or wife was then in force.'

The law also provides for judicial separation on the grounds of:

- 'adultery;
- cruelty;
- desertion without reasonable excuse for two years or upwards.'

Such a decree shall have the effect of a divorce a mensa et toro under the existing law (Section 22)

Furthermore, when either the husband or the wife has, without reasonable excuse, withdrawn from the society of the other, the law also allows either husband or wife to petition for restitution of conjugal rights (Section 32).

Custody

The Burma Divorce Act (1869) allows the Court to make orders pertaining to the custody, maintenance, and education of children but does not set out the criteria for deciding custody (Sections 41–44).

Conclusion

Myanmar's Constitution guarantees equal rights before the law for all citizens, as well as freedom of religion and non-discrimination based on factors, such as race, gender, and religion. However, Buddhism is the main religion and is granted special status in Myanmar.

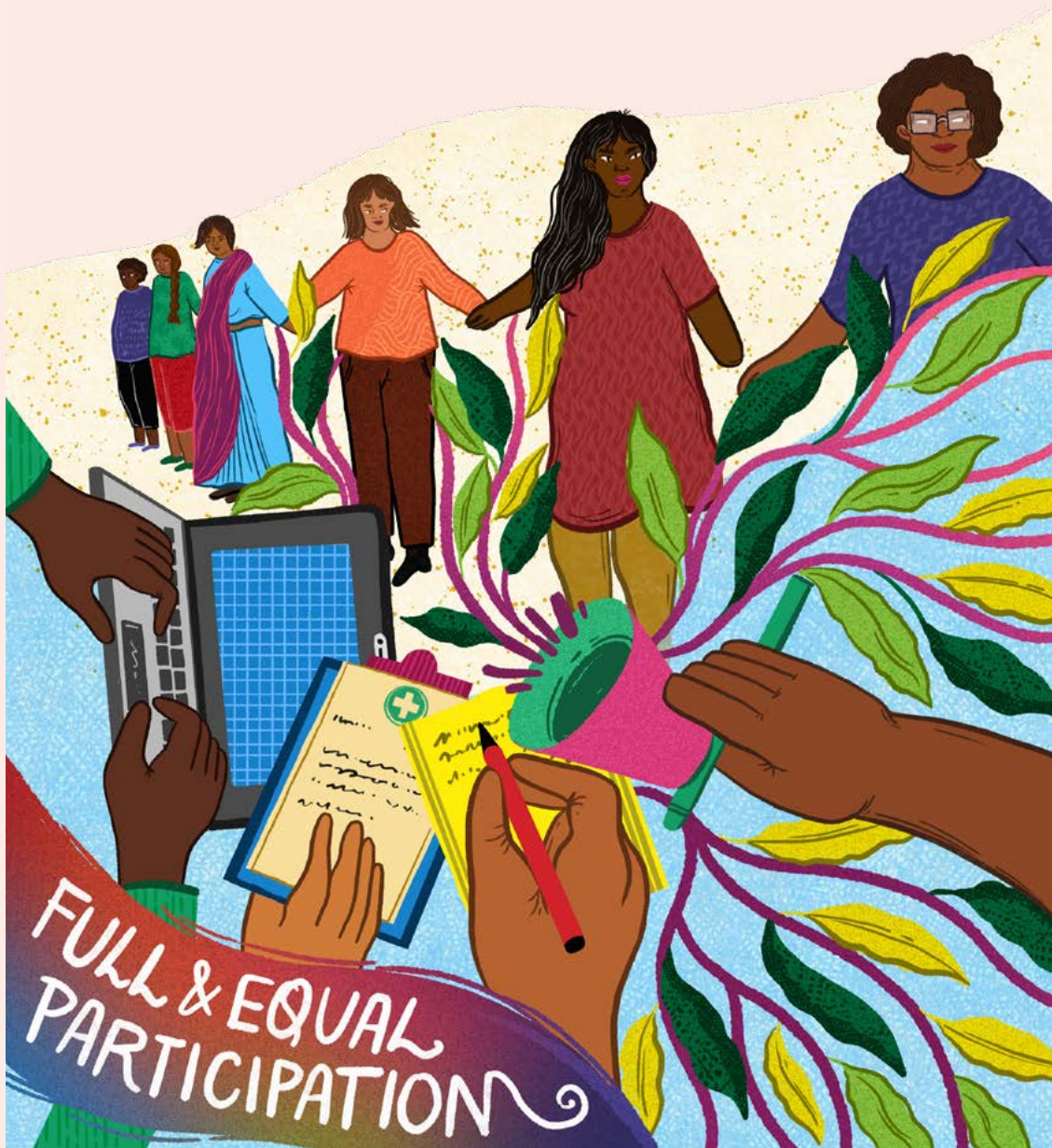
Christians constitute around 6.2 percent of the population, equating to roughly 3.5 million individuals, while the majority, 87.9 percent, are Buddhists. Each religious community is governed by its own personal status law. Thus, Buddhists, Hindus, Muslims, and Christians are subject to different family law systems.

The personal status laws originate from colonial rule under the British Empire and are influenced by religion, local customs and traditions. These laws govern matters related to marriage, divorce, succession, custody, and inheritance. Christians are subjected to personal status laws that date back to the end of the 19th century. This outdated legal context has a significant impact on the agency of women today and the extent to which they hold autonomy in their lives and families. Statutes,

such as the Christian Marriage Act (1872) and the Divorce Act (1869) reflect the patriarchal values of the colonial era when jurisdiction in the private law sphere was separated according to faith affiliation.

Christian personal status laws in Myanmar tend to discriminate against women. Though Myanmar has passed the Child Rights Law, which defines the minimum marriage age as 18 years for both genders, this is not generally enforced. The Christian Marriage Act also stipulates the minimum age for marriage as 18 years for both women and men, but provides a loophole, allowing the marriage of minors with the permission of a parent or guardian. The minimum age for girls is 13, three years younger than the minimum age for boys, which is 16. The 2019 Child Rights Law has introduced a minimum age of marriage, and how this will be interpreted in relation to personal status laws remains to be seen. Divorce laws also grant unequal rights. Men can petition for divorce on the grounds of adultery. Women, on the other hand, are only allowed to plead for a divorce based on certain kinds of adultery, or of rape, 'sodomy', or 'bestiality'. Moreover, although Myanmar Customary Law guarantees equal inheritance rights for women and men, the practice of registering land in the man's name often result in women struggling to claim land and property.





Pakistan



Background

Pakistan gained independence from the British Empire in 1947, as part of the Partition, which separated British India into Pakistan and India.¹ According to the 2017 Census, Pakistan has a population of 207 million people, the majority of whom are Sunni Muslims.² Estimates from 2020 show that the Christian population is the second largest religious minority in Pakistan, comprising 3.3 million people (1.6 percent).³ Other religious minorities include Hindu (the largest minority), Shi'a Muslim, and Sikh.⁴

Approximately half of the Christian population are Roman Catholic and half Protestant, including a small and growing number of evangelical communities.⁵ The majority of Christians live in Karachi, Lahore and Faisalabad, and there are many small communities in Punjab, Peshawar, and Khyber Pakhtunkhwa.⁶

The Church of Pakistan was established in 1970 as a communion between the Anglican, Scottish Presbyterian, Methodist, and Lutheran Churches. The United Presbyterian Church refrained from joining.⁷

	Men	Women
Age of marriage	Minimum age of 18	Minimum age of 16, except in Sindh, where it is 18 for both women and men
Divorce	Adultery	Adultery with an aggravating factor; if her husband has converted and married another woman, if her husband is convicted of rape, 'sodomy', or 'bestiality'
Annulment	Impotency, relationships prohibited on the grounds of consanguinity or affinity, bigamy, insanity, or consent obtained by coercion, fraud, or force	
Judicial separation	Adultery, cruelty, desertion without reasonable cause	
Maintenance	If the divorce is due to the woman's adultery, settlement of her property may be ordered	Husband may be ordered to pay maintenance in the event of a divorce up to one-fifth of his income
Property rights	Men do not acquire rights to their wife's property in marriage	Married women are entitled to their property and earnings. In the event of dissolution or separation due to the wife's adultery, the Court may order a settlement of the wife's property for the husband or children
Inheritance	In the case of intestacy: a widow receives one-third and two-thirds goes to lineal descendants, if no descendants then the widow receives half and relatives half, if no descendants or relatives, the whole property belongs to the widow	
CEDAW	Reservation to: Article 29: Pakistan is not subject to arbitration by the CEDAW Committee in disputes with other state parties	

Legal Overview

Constitution

The Constitution of the Islamic Republic of Pakistan defines the legal structure of the State, along with the rights and freedoms of citizens, including minority groups.⁸ Fundamental rights are defined in the first chapter, including equality before the law and equal protection of law (Article 25 (1)). Article 25 specifically states that there should be no discrimination based on sex, but also allows for special provisions for protecting women and children.

Article 23 states 'Every citizen shall have the right to acquire, hold, and dispose of property in any part of Pakistan.'

Article 25:

- (1) All citizens are equal before law and are entitled to equal protection of law.
- (2) There shall be no discrimination on the basis of sex.
- (3) Nothing in this Article shall prevent the State from making any special provision for the protection of women and children.

Article 35 provides for protection of family by obligating the State 'to protect marriage, the family, mother and the child.'

Personal Status Laws

Legislation related to Christian marriage, succession and inheritance dates back to British rule, through the Christian Marriage Act (1872),⁹ the Divorce Act (1869),¹⁰ and the Succession Act (1925).¹¹ The laws apply to Christians of various denominations. However, Roman Catholics are also governed by the Canon Law of the Catholic Church, which does not recognise divorce. So far, the church has not been compelled to accept divorce.¹²

International treaties

Pakistan became a state party to CEDAW by accession in 1996 with the following declaration and reservation:

Declaration: The accession by [the] Government of the Islamic Republic of Pakistan to the [said Convention] is subject to the provisions of the Constitution of the Islamic Republic of Pakistan.

Reservation: The Government of the Islamic Republic of Pakistan declares that it does not consider itself bound by paragraph 1 of article 29 of the Convention.¹³

This reservation exempts Pakistan from arbitration in the case of disputes with another state party. It is worth noting that Pakistan did not make any reservations to Article 16 about equal rights in marriage and family relations.

In 2017, in its fifth periodic report to the CEDAW Committee, Pakistan commented on the idea of withdrawing its Declaration on Article 29, claiming that it has not affected legislative processes.¹⁴ In March 2020, the CEDAW Committee raised their concerns about Pakistan's reluctance to withdraw the Declaration on Article 29, despite Pakistan's explanation.¹⁵

In the same Concluding Observations, the Committee also addressed the need for a more detailed definition of discrimination against women in the Constitution. The Committee referred to target 5.1 of the Sustainable Development Goals and the core obligations of state parties to end all forms of discrimination against women, and directed the following recommendation to Pakistan:

Amend Article 25 of the Constitution and adopt, without delay, a comprehensive definition of discrimination against women in its Constitution, covering all internationally recognized prohibited grounds of discrimination and encompassing direct and indirect discrimination in both the public and private spheres, including intersecting forms of discrimination against women.¹⁶



General laws applicable to Christians

Child Marriage

The Child Marriage Restraint Act (1929)¹⁷ defines child marriage (Article 2 (b)) and defines childhood as under 16 years for a girl and under 18 years for a boy (Article 2 (a)). According to Article 2(b) "child marriage" means a marriage to which either of the contracting parties is a child.' The same article also defines a minor as 'a person of either sex who is under eighteen years of age' (Article 2 (d)). Article 5 regulates

punishment for solemnising a child marriage, including imprisonment or a fine. A parent or guardian may also be punished for failing to prevent a minor from contracting a child marriage (Article 6). However, the same article states that women are not punishable with imprisonment.

The Sindh Child Marriages Restraint Act (2014)¹⁸ repeals the provisions of the Child Marriage Restraint Act (1929) for the province of Sindh (Article 13). The Act defines a child as anyone, male or female, under the age of 18 (Article 2 (a)), and “child marriage” as a marriage to which either of the contracting parties is a child (Article 2 (b)).

It is worth noting neither legislation voids pre-existing marriages contracted while one or both parties were minors.

Custody and Guardianship

The Divorce Act (1869), Part XI, Sections 41–42 regulates the power of the courts to make orders for the custody of children in suits for judicial separation, both for interim custody and custody after the decree of judicial separation.

The Guardian and Ward Act (1890)¹⁹ also has implications for how legal matters regarding custody of children have been addressed by courts. Both this law and the Divorce Act are remnants of colonial legislation. Today, Muslim personal law also informs the decisions of the courts, and the complexity of this legal context with a range of legislation in effect has been criticised as leading to inconsistencies in judgements.²⁰



Christian Personal Status Laws

Marriage

The Christian Marriage Act (1872), regulates the solemnisation of marriage of ‘persons professing the Christian religion’ (Section 3) and it applies to marriages where one or both people are Christian (Section 4).

Part VI of the Act regulates the conditions under which marriages of Christians may be certified. According to Section 60, ‘no marriage shall be certified under this Part when either of the parties intending to be married has not completed his or her eighteenth year, unless such consent as is mentioned in Section 19 has been given to the intended marriage.’ Under the terms of the act, with consent, a boy can marry from 16 years old, and a girl from 13 years (Section 60 (1)).

The Christian Marriage Act, Section 3 defines a ‘minor’ as a person under the age of 21 (Section 3). The rules of consent are set out in Section 19. A father or male guardian may give their consent to a minor’s marriage. If the minor has no father or male guardian, the mother can also consent. The father or guardian (or -- if there is no father or guardian – a mother) may also protest in writing at the time of the marriage, preventing the issuing of a certificate until the protest is resolved (Section 44).

If the requirements for consent are not observed, both the parent or guardian and the person solemnising the marriage may face penalties under Part VII of the Act.

Section 70 states that any Minister of Religion licensed to solemnise marriage may be punished if the required consent is not obtained.

There have been reported cases of Christians officially converting to Islam to solemnise second and subsequent marriages while continuing to practice Christianity.²¹

Divorce

The Divorce Act (1869) provides limited and unequal grounds for dissolution of marriage for husband and wife respectively. Section 10 details the grounds for divorce. A husband may petition the court for the dissolution of marriage on the grounds of adultery. A wife can petition for dissolution of the marriage if her husband has changed his profession of some other religion and married another woman, or adultery with a further aggravating factor, or if her husband has been guilty of rape, 'sodomy', or 'bestiality.'

Section 10 of The Divorce Act (1869):

10. When husband may petition for dissolution. Any husband may present a petition to the ¹ [Court of Civil Judge] praying that his marriage may be dissolved on the ground that this wife has, since the solemnization thereof, been guilty of adultery.

When wife may petition for dissolution. Any wife may present a petition to the ¹ [Court of Civil Judge] 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 *a mensa et toro*.

or of adultery coupled with desertion, without reasonable excuse, for two years or upwards.

Contents of petition. Every such petition shall state, as distinctly as the nature of the case permits, the facts on which the claim to have such marriage dissolved is founded.'

The Court requires proof of adultery, and not simply allegations, to grant a divorce. In *Inayat Bibi v Harbans*, the Court found that matrimonial offences must be proved beyond reasonable doubt by criminal (not civil) standards of proof.²² In another case, the Court refused to infer that the husband's regular late nights suggested he had a mistress.²³

The Divorce Act also allows a husband to claim damages from a person who has committed adultery with his wife (Section 34). In *Mushtaq vs Fareeda*, the Court

examined the husband's allegations that his wife had committed adultery with unknown people in his own home, and had become pregnant from these liaisons, and found them to be improbable. The wife did not appear before the Court. The Court questioned why the husband did not name the men who allegedly committed adultery with his wife as co-respondents.²⁴

Moreover, Pakistan's Penal Code (1860)²⁵ further complicates matters, as it criminalises false accusations of fornication with imprisonment for up to five years and a fine (Section 496(c)). Fornication (sex outside of marriage) is punishable with a similar term (Section 496 (b)). Notably, Section 497 also refers to the Offences of Zina (Enforcement of Hudood) Ordinance, (1979), which details punishment for sexual relations outside marriage, including corporal punishment.²⁶

Other than the grounds stipulated in the Divorce Act, a wife cannot petition for divorce. In *Mst. Parveen Amanul v Additional District Judge-III* the Court found that a divorce had been wrongly granted by the Family Court. A Christian wife had applied for divorce on the grounds that she was not willing to live with her husband. Unwillingness to continue with the marriage (*khul'*) is only recognised under Muslim personal status laws, given that there is no corresponding provision under the Divorce Act, the divorce was deemed invalid.²⁷

Section 7 of the Divorce Act (1869) provided more liberal grounds for divorce. However, this section of the Act was omitted in 1981 through the Federal Laws Ordinance (1981).²⁸ This led many Christians to officially convert from Christianity in order to apply for the dissolution of their marriage, by citing conversion as the ground.²⁹

In 2017, Ameen Masih, a Christian, petitioned the Lahore High Court to reinstate Section 7 of the Divorce Act.³⁰ He argued that he should be allowed to divorce his wife in a dignified manner without being forced to resort to false accusations of adultery. He also argued that Section 7 was wrongly repealed, so the change should be declared unconstitutional. He contended that this had led many Christians to carry out fake conversions from Christianity to obtain a divorce.

The Court accepted several submissions from interested parties, including the Christian community and church leaders. The Additional Advocate General, Punjab, submitted that the Government had made efforts to amend the Act and meetings had been held, chaired by the Minister for Human Rights, to develop provisions for grounds for divorce besides adultery. 'However, consensus could not be reached because the representatives of the Catholic Church, the Presbyterian Church and the Church of Pakistan expressed reservations and contended that amendment in Section 10 of the Act would be in contravention of the Holy Scriptures.'³¹

In June 2017, the Lahore High Court ruled in favour of Masih and restored Section 7 of the Divorce Act in the 1981 version. The Court extensively examined divorce laws in other Christian-majority countries and noted that the laws in those countries had been liberalised for 'the protection of the right to a happy family life and right to dignity of a human being, who cannot be left chained to a dead marriage forever or forced to convert to another religion just to be released of the bondage of an unhappy marriage.'³² The Court declared that it was existing State law and the





question of restoring Section 7 of the Act that was under consideration, 'hence the Act can be examined on the touchstone of the fundamental rights read with the other penumbral rights and values under the Constitution.'³³ Contestations based on Biblical teaching regarding a revival of the amendment of Section 7 were not deemed to fall under the considerations of the Court.

Annulment and judicial separation

The Divorce Act (1869) provides for annulment of a marriage on the grounds of impotence, prohibited relationship (consanguinity or affinity), bigamy at the time of marriage, insanity at the time of the marriage, or if consent to the marriage was obtained by fraud or coercion or force (Section 19).

The Act also allows parties to obtain a decree of judicial separation on the grounds of adultery, cruelty, or desertion without reasonable cause for two years or more. Such decree will have the effect of a divorce a mensa et toro (Section 22).

A husband or a wife may also file a petition for the restitution of conjugal rights if either spouse is not cohabitating with the other without reasonable cause (Section 32).

Maintenance and Property

Part VI of the Divorce Act (1869) relates to protection orders. A wife who has been deserted by her husband may seek an order from the Court to protect any property which she may have acquired or may acquire after such desertion, against her husband, his creditors, or any person claiming under him (Section 27).

The husband may be ordered to pay alimony to the wife or her trustees (Sections 36–38). Section 36 of the Act provides that a wife may petition the Court for temporary alimony pending a suit, in an amount not exceeding one-fifth of her husband's net average income. The Court may also order permanent alimony post-divorce or judicial separation (Section 37).

Section 39 provides that when the Court pronounces a decree of dissolution of marriage or judicial separation on the grounds of the wife's adultery, the Court may order the settlement of the wife's property for the benefit of the husband, or of the children of the marriage, or of both.

Under the Married Women's Property Act (1874)³⁴ married women are entitled to their property and are absolute owners of all property vested in, or acquired by them. A husband does not acquire any interest in such property through marriage. Any wages or earnings of any married woman from employment, occupation or

trade are also deemed her separate property. This applies to any money or other property so acquired as well as all savings and investments (Preamble and Section 4).

Inheritance

The Succession Act (1925) codifies Christian succession laws. Chapter VI deals with the construction of wills. According to Section 59, every person of sound mind and not a minor may make a will.

Chapter I, Section 30 defines when a person is deemed to die intestate (without making a legally valid will) and the rules for how the estate should then be distributed are found in Chapter II of Part V.

The property of a person dying intestate is distributed to the spouse of the deceased, or to those who are relatives of the person deceased. If there are lineal descendants, one-third of the estate shall belong to the widow and the remaining two-thirds to the lineal descendants. (Part V, Chapter II, Section 33 (a)). If there are no lineal descendants but people who are related to the deceased, the property will be divided into two halves: one half to the widow and the other half to those who are related to him (Part V, Chapter II, Section 33 (b)). If the deceased has no relatives, the whole property belongs to the widow. (Part V, Chapter II, Section 33 (c)).

If any of their children predeceased the intestate, the shares of the intestate's estate are divided equally between the living children. (Part V, Chapter II, Section 38).



Reform Initiatives

The case *Masih vs Lahore* sparked public debate around whether centuries-old colonial laws should be reformed. This case prompted the government to address the issue of reforming the Christian personal status laws. From 2016–2019, consultations were held between the government and the Christian community. On International Women's Day in 2017, the Punjab government announced that it was proposing to reform Christian personal status laws so that women are no longer forced to stay in abusive marriages.³⁵

Christian communities and other parts of civil society also held their discussions and consultations. A church committee was established by a majority of the churches, with female representatives added later. Christian parliamentarians also provided support.³⁶

A new law, the Marriage and Divorce Act (2019) was drafted. The draft proposed raising the age of marriage for both men and women to 18 years and changing the grounds for divorce so that men and women could file for divorce on equal grounds. It allowed the solemnisation of marriages at places other than a church or chapel (for example marriage halls). Other changes included the recognition and incorporation of violence as grounds for divorce. The definition of violence is quoted in an article by Bangash as: 'any offence committed against the human body of the aggrieved person including abetment of an offence, domestic violence, sexual violence, psychological abuse, economic abuse, stalking or a cybercrime.'³⁷

Another proposed ground for divorce was a lack of understanding of matrimonial rights and obligations. The draft also updated the language of the law by removing references to 'lunacy' and 'idiocy' and replacing them with '*mental disorder*.' It also raised the potential maintenance for the former wife and children from one-fifth to at least a quarter of the former husband's income.³⁸

Conclusion

The Constitution of the Islamic Republic of Pakistan defines fundamental rights in the first chapter, including equality before the law and equal protection of law. Article 25 (2) specifically declares that there should be no discrimination based on sex. However, in its 2020 Concluding Observations the CEDAW Committee recommended Pakistan amend Article 25 of the Constitution and adopt a more comprehensive definition of discrimination against women encompassing direct and indirect discrimination in both the public and private spheres.

According to the 2017 Census, Pakistan has a population of more than 207 million people, of whom the majority are Muslim. Estimates from 2020 show that the Christian population is the second largest religious minority in Pakistan, comprising 3.3 million people (slightly over 1.6 percent).

The family law system of Pakistan maintains personal status laws determined by faith affiliation. This manifests in separate laws adopted for the Christian, Muslim, and Hindu populations for matters, such as marriage, divorce, and inheritance.

Christians are subjected to personal status laws that date back to the end of the 19th century and British colonial rule. Statutes such as the Christian Marriage Act (1872) and Divorce Act (1869), reflect the patriarchal values present in society at that time. Nevertheless, this legal context continues to affect women's agency today and the degree to which they have autonomy over personal status law matters.

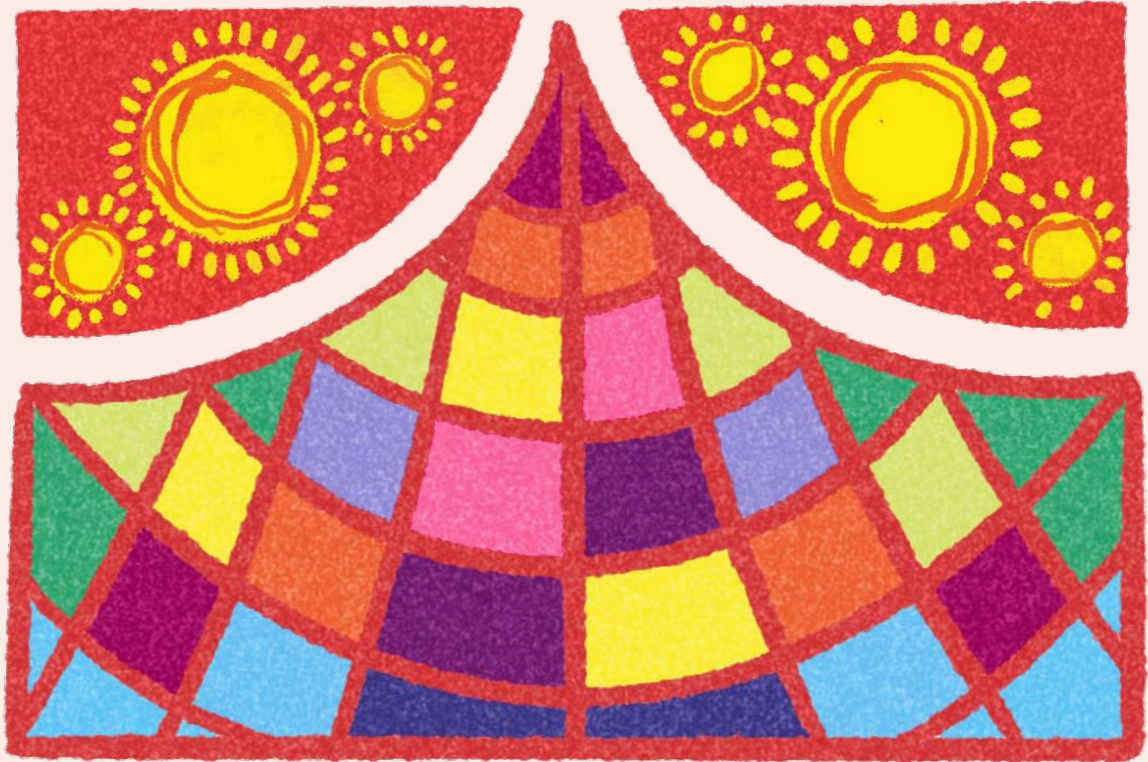
The Christian Marriage Act (1872) and the Child Marriage and Restraint Act (1929) offer conflicting definitions of the minimum age of marriage. It is unclear from the research conducted for this report, how the legal system addresses the inconsistency between the two laws, or whether the more recent legislation supersedes the 1872 Act.

Recently, the need to revise legislation regarding marriage and divorce for the Christian population has been discussed. This topic was brought to public attention through a court case in 2017. The judgement addressed the consequences of a 19th-century Divorce Act for Christians today, which continued to define adultery as the only ground for Christians to base a petition for dissolution of marriage. The Court found legal grounds to restore Section 7 of the Divorce Act. By doing so, other legal grounds for divorce than adultery were reintroduced for Christians. Thereafter, debate has continued, and proposals have been presented in terms of a proposed new Marriage and Divorce Act. This Act is expected to expand the legitimate grounds for divorce and integrate the recognition of violence as a ground for divorce.¹



¹ Information is not available whether this law has been passed.

Conclusion



This study has focused on the personal status laws for Christians in four countries in Asia: Bangladesh, India, Myanmar, and Pakistan. In these countries, the personal status laws are inherited from British colonial rule dating back more than 100 years to the late 19th and early 20th centuries. These statutes reflect the patriarchal values of the colonial era as well as the policies of the British Empire which separated the administration of personal status law according to religion. These legal structures have not been substantially reformed since independence, and one observation from the report is that they tend to give women fewer rights than men.

The information in this study primarily relies on a desk review of publicly available sources compiled by two consultants between 2020 and 2021. Consequently, these findings do not account for any reform initiatives or alterations that may have transpired after September 2021.

During the compilation of this report, significant challenges were encountered, particularly in obtaining sufficient documentation of the legal systems, including academic literature. These challenges reflect the difficulties faced by individuals seeking information about the legal statutes in the countries under consideration.

This situation raises several important questions for future research. These include:

- To what extent is information available and accessible to women within the local contexts of these four countries?
- Do women possess the necessary knowledge of the personal status law system to make informed decisions in personal status law matters and address gaps in the protection of their human rights?
- What are the practices of the churches and Christian communities in these countries concerning the existing legal system?
- Is there interest and space to advocate for changes that would strengthen the human rights of women of today?

These questions highlight the need for further investigation into the accessibility of information and the empowerment of women in navigating the complexities of their legal rights.

By providing this overview of Christian personal status law in Asia, this report aims to raise awareness about how personal status laws, can perpetuate gender inequalities and to support advocacy efforts for legal reforms that promote gender justice and women's rights. The legal situation for women needs to be further studied and discussed in relation to universal human rights, particularly the CEDAW convention and the Sustainable Development Goals (SDGs), in particular SDG 5 on gender equality.

Although it may not be explicitly evident from the available material, it is important to note that changing Christian personal laws which apply to a minority group of female citizens, requires support is needed not only from the Christian community but also from a majority in the legislative authority of each country. Therefore, for women to achieve gender justice in their personal lives and as equal members society, it is of crucial that they have the space to be heard and the agency to act as rights-holders in accordance with human rights.

Annex:

Personal Status Laws and International Human Rights

CEDAW and other International human rights treaties

Equality and non-discrimination are central to human rights, guaranteed and detailed in a range of international human rights instruments, from the 1948 Universal Declaration of Human Rights (UDHR) to human rights treaties, such as the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Rights of Persons with Disabilities (CRPD), and the Convention on the Rights of the Child (CRC). A core human rights treaty for discussions of the impact of personal status law on women is the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

CEDAW, adopted in 1979 and entered into force in 1981, is one of the most widely ratified international human rights treaties in the world, with 189 ratifications.¹ The Convention has 16 substantive articles as well as articles establishing the monitoring of implementation by a Committee and processes of arbitration of disputes between State parties.² The most relevant articles for the discussion of personal status laws are: Article 9 on nationality; Article 15 on equality before the law; and Article 16 on marriage and family relations. Article 16 on marriage also prohibits child marriage, and while the article itself does not define a minimum age, a joint general recommendation from the CEDAW Committee and the Committee for the Convention on the Rights of the Child state that the minimum age of marriage should be 18 for men and women, with an absolute minimum of 16 for exceptional circumstances.³

State Parties can enter reservations to specific articles within the Convention and this is the case regarding Article 16.⁴

Composed of 23 independent experts from around the world, the Committee oversees the implementation of the Convention and provides guidance on its principles and application.

Article 16:

1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and, in particular, shall ensure, on a basis of equality of men and women:
 - (a) The same right to enter into marriage;
 - (b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;
 - (c) The same rights and responsibilities during marriage and at its dissolution;
 - (d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases, the interests of the children shall be paramount;
 - (e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education, and means to enable them to exercise these rights;
 - (f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship, and adoption of children or similar institutions where these concepts exist in national legislation; in all cases, the interests of the children shall be paramount;
 - (g) The same personal rights as husband and wife, including the right to choose a family name, a profession, and an occupation;
 - (h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment, and disposition of property, whether free of charge or for a valuable consideration.
2. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

CEDAW requires not only that state parties not pass legislation that discriminates against women but also that they take active steps to address discrimination against women, whether due to state actions or by private actors. This obligation is defined under Article 2 and was reaffirmed by the CEDAW Committee in General Recommendation 28, which emphasised that state obligations entailed not only changes in conduct but in results in terms of meaningful elimination of discrimination and full participation of women in society.⁵

Freedom of Religion and Belief, Gender Equality and CEDAW

In the General Comment 21 of 1994, the CEDAW Committee makes clear that 'whatever the legal system, religion, custom or tradition within the country, the treatment of women in the family both at law and in private must accord with the principles of equality and justice for all people.'⁶

This was supported by the UN Special Rapporteur on Freedom of Religion or Belief in 2001, who made it clear that religious belief is not a justification for discrimination, stating that 'it is essential to distinguish between tolerance, which is necessary, and



blind acceptance of custom... it is vital that the right to difference which that freedom implies should not be interpreted as a right to indifference to the status of women.⁷ In an addendum study to the Special Rapporteur's report on civil and political rights, he focused on the status of women in relation to religion and tradition and called for states to increase protections against discrimination arising from religious beliefs, such as child marriage and inequality in marriage rights and protections.⁸

CEDAW and personal status law

Regarding personal status law, the CEDAW Committee has noted that identity-based personal status laws often discriminate against women and that the preservation of multiple legal systems is itself discriminatory against women.⁹ The Committee reminds States parties to address this inequality and bring personal status laws into line with their obligations under the convention. In the absence of unified laws, the Committee states that personal status laws should provide for individual choice concerning 'the application of religious law, ethnic custom or civil law at any stage of the relationship'.¹⁰ It is clear that custom, religion, or belief is not considered a justification either for permitting discrimination in general or for allowing discriminatory systems of personal status laws to be applied to specific groups within a state.

Convention on the Rights of the Child (CRC)

The 1989 CRC is the most ratified human rights convention in the world, with 196 state parties. It contains wide-ranging protections of children's rights, including the right to be protected against discrimination (Article 2) and from violence (Article 19), the right to family life (Article 16), and freedom of religion (Article 14). Article 3 of the Convention enshrines the best interests of the child as paramount to decision-making, whether by public or private actors. Though the Convention itself does not contain specific provisions on child marriage, the Committee does report on it and recommends higher legal minimum ages for marriage and the elimination of gender disparity.¹¹ However, in a joint general recommendation with the CEDAW Committee, the Committee for the Convention on the Rights of the Child stated that the minimum age of marriage should be 18 for men and women, with an absolute minimum of 16 for exceptional circumstances.¹²

Sustainable Development Goals (SDGs)

The SDGs, adopted in 2015, build on the Millennium Development Goals and call for action towards a more sustainable future. SDG 5 focuses on Gender Equality and includes targets related to family relations, violence against women, and child marriage.¹³

SDG Indicator 5.1.1 has already identified personal status law as one of the four legal frameworks that must be reformed to accelerate progress in achieving gender equality and empower all women and girls (SDG 5).



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