Research Monograph

On

“ Women’s Position under The Family Laws of Bangladesh : A Critical Analysis ”.

This Research Submitted for the partial fulfillment of the award of the degree inLLB (Hon’s) Department of Law Sonargaon University (SU), Dhaka.

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Letter of Transmittal

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Subject: Submission of Research Monograph on " Women's Position under The Family Laws of Bangladesh : A Critical Analysis ".

Dear Sir,

I do herby please to submit the Research Monograph on the topic " Women's Position under The Family Laws of Bangladesh : A Critical Analysis ". It is a great pleasure to work on such important topic. This Research work has been done according to the requirements of the Sonargaon University for the fulfillment of my LL.B (Hon's) years course under the Department of Law.

I respectfully acknowledge your guidance, leadership and help for the preparation of this paper. It is worthwhile to mention that there might be some errors and mistakes in my report due to limited time and knowledge. I am still at learning stage. So I respect that you will pardon my unintentional mistakes in preparing this paper.

Sincerely. Yours,

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Solemn Affirmation

I do thereby solemnly declare that the work presented in this research has been carried out by meand has not been previously submitted to other University/College/Organization for any academic qualification, publication or a personal Degree. I hereby ensure that the work presentedhere not breach any existing copyright.

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Guide Certificate

This is to certified that the Research Monograph on **"" Women's Position under The Family Laws of Bangladesh : A Critical Analysis "** is prepared by Sumi Akter ID No.: LLB1802014022 for partial fulfillment of the requirement of the Program: LL.B (Hon's) from Sonargaon University, Dhaka. It also certified that the research work has been carried out under my supervision and intensive guidance.

It is to be certified that this research work is original and suitable in its style and contents for submission and fulfillment of his LL.B (Hon's).

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I express my sincerest gratefulness to Almighty **"Allah"** for his kindness on me in accomplishing this research monograph. I express my heart-string gratitude to my "Honorable" and distinguished cooperative supervisor **Sanjoy Pal,** Lecturer, Department of Law, Sonargaon University (SU), Dhaka who inspirit and guide me throughout the work. He provide me resources that I needed to carry out the work and gave me important guidelines whenever I was in a Dilemma.

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Thank you.

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Abstract

This research constitutes a detailed assessment of the legal position of women in Bangladesh and argues that, despite some recent reforms purporting to improve their status, there is no real change in the situation of patriarchal domination. It is further argued that the dominant patriarchal structures, with the interlinked forces of religion, tradition and seclusion, are sustained not only in family life but also in family law.

The research illustrates some confusions in the debates about the legal position of women and suggests that the lack of conceptual clarity has handicapped a discussion of the real needs of women in family law within a patriarchally-dominated legal framework.

Based on a detailed exposition of family law under the British colonial regime and Pakistani state law, the present study focuses on the more recent Bangladeshi legal developments. These were officially brought about to meet certain social needs and to improve the overall situation of women. However, apart from the reforms concerning the Family Courts Ordinance of 1985, and some glimpses of judicial activism, in reported as well as unreported cases, the existing family law reforms are shown to be mainly procedural. In particular, they appear unable to protect women effectively from violence and economic deprivation. While not arguing for absolute gender equality, although this is apparently provided as a paper right in the Constitution of Bangladesh, the present study proposes that gender equity in family law can be meaningfully developed by better implementation of the existing law, prominently by sensitising the judiciary and society about the particular needs of women.

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CHAPTER ONE

INTRODUCTION

1.1 Introduction :

'Family law and women' has always been a contentious issue. In South Asia, as elsewhere, there is a simmering discontent that family law does not allow gender equality, which is apparently granted at the level of international law as well as in the realm of constitutional law. In religious and official family law, on the other hand, women have only equitable rights. In social reality, women may even be denied such equitable treatment. There is, it would seem, a popular belief that family law is the last bastion in which women need to achieve equal rights with men.

The concept of sexual equality influences the discourse about the position of women in family law in any particular jurisdiction. But such discourse misses important points about the realities of women's lives in a patriarchally-dominated society such as Bangladesh. Where the ideal concepts underlying the debates do not match with social facts, the discussion actually confuses idealized positioning and realistic goal achievement.

Focusing on women and family law in Bangladesh, the present thesis argues that gender equity, rather than full-fledged equality is a desirable and realistic aim for the development of Bangladeshi family law. We are mainly dealing with Islamic family law and gender equity here, seen in a particular cultural context. Islam qualifies sexual equality with special rights and duties for both men and women in their social and natural roles and does not recognize absolute and undifferentiated equality. Thus, traditional models define the complementary roles of the sexes, i.e. that women should be protected in return for their obedience. But in social reality the situation is often not

reciprocal when women, in return for their submission, are economically deprived and physically abused.

The real demands of women in Bangladesh are not focused on a premise outside the framework of the family but on working out a situation within it, where women will be free from economic deprivation and from violence. Bangladeshi women are not demanding the same as some Western women, i.e. sexual equality, freedom and liberation as an individual. Rather they see their roles within social contexts and would prefer -gender equity within the traditional framework. Although there is some influence of idealized feminist thinking about sexual equality, women's proper place is seen to be within the family in the wider context of Bangladeshi society. In other societies, for example in Britain, it seems that absolute equality of rights is also not witnessed in practice.[1] The law, on the one hand, formally provides improvements in the legal position of women; on the other hand, it maintains its support to the patriarchal structures of the family.[2]

[1] See for details Brophy, Julia and Carol Smart: 'From disregard to disrepute: The position of women in family law'. In Whitelegg, Elizabeth et al. (ed.): The changing experience of women. Oxford 1989, pp.207-225.
[2] Ibid., p .208.

1.2 Objectives of the Study

Law may be termed as a behavioral science as it regulates human behaviour. Changes in society demand that law should move with the time if it has to remain alive and active. The objective of legal research is to find out lacunae or deficiencies in the existing laws and to suggest suitable measures to eliminate them.

The objective sets the boundaries of a research problem. The main focus of the research proposal is to set its objectives properly. The proposed study focuses on women's position under the family laws of Bangladesh.

The objectives of the proposed study are :

1. To elimination of gender discrimination,
2. To protect women's rights in legal and social regime,
3. To find out the drawbacks of family law and deprivation of some communities, and recommendations,
4. Determining women's position under family laws of Bangladesh etc.

1.3 Methodology of the Study

Sources

Since the work belongs to the field of law, the primary sources of the research are: (i) Constitutions of Bangladesh, Charter of the United nations and different Conventions, (ii) Acts and Statutes relating to trafficking in women in Bangladesh, and (iii) International Conventions and Instruments relating to women and human rights.

Family laws, published and unpublished articles, books of renowned Scholars and Jurists are important sources for this research. Government documents relating to the subject as a primary or secondary source have been used. In addition, Law Reports and Law Journals were major sources of materials for the thesis.

Law Reports, Law Journals and other published works in this field were available in the Library of the Supreme Court of Bangladesh; Bar Council Library, libraries of different bar associations and universities, and of the Government and non-governmental institutions.

Research and documentation cells of different human rights organisations as well as international agencies e.g. UNICEF, UNHCR, United Nations information Centre (UNIC), World Bank etc. stationed in Dhaka and concerned ministries were also used as sources of the research. The same work was also done within the country.

1.4 Method of Research

Method of research may be understood as the method or technique that is used for conducting a specific research. It does constitute a part of the many dimensions of the research methodology.

In conducting the study, several methods of legal research e.g. analytical, historical, comparative and critical were used. Books, published and unpublished articles, official documents, paper clippings, family laws etc. were helpful in this regard. In order to get a firsthand knowledge on the issue, the researcher while visiting these countries interviewed the concerned academicians, government officials, human rights activists, judges, lawyers and members of law enforcing agencies. In interpreting case laws, Internet, both analytical and critical approach was used and rational arguments have been made.

1.6 Limitations of the Study

Every study has some limitations in true sense. Therefore, this thesis is not the exception of this limitation and limitations reduced the scope of the study in some changes. The main limitation of the study is the time bindings work. The time is not enough for the study. To create any good dissertation on any topics and subject, that time prerequisites sufficient instrument and enhance more books in university library but our library is not sufficient for making this research on "Women's Position under family laws in Bangladesh : A critical Analysis".

Besides the electronic sources specially is not sufficient especially inheritance law regarding Bangladesh perspective.

CHAPTER TWO

SOCIO-ECONOMIC POSITION OF WOMEN

2.1 Socio-economic position of women

The position of women in a society cannot be simply attributed to their role in providing progeny. There are many other socio-economic roles of women than the stereotypical ones of mother and wife. The economic roles of women are shaped by socio-economic and political structures. According to an eminent author, these are reflected in women's:

1. Ability to own, or inherit and control, income earning assets;

2. Ability to participate in economic activities;

3. Control over their husband's income, which is usually determined by the level of their education, the age and pattern of their marriage, family structure and residential status;

4. Right and ability to control property.[3]

With regard to the right of women to own or inherit and to control property, the image of Muslim women having no choice other than submission to male dominance has been partially contradicted by Saunders, whose study of women's role in a Muslim society shows that women exercise limited but important power within the marriage relationships as well as in the economic sphere.[4] Islamic law allows women the right to inherit and own property in their own right.[5] However, a Muslim woman is entitled to less than a Muslim man.[6] The alleged reasoning behind this is that men are maintaining women.

[3] Ahmad, Alia: Women and fertility in Bangladesh. New Delhi, Newbury Park and London 1991, p.31.
[4] Saunders, Margaret 0. : 'Women's role in a Muslim Hausa town'. In Bourguignon, Erika (ed.): A world of women: Anthropological studies of women in the societies of the world. New York 1980, pp.57-86.
[5] Lateef, Shaheeda: 'In a community'. Paper presented in the seminar on the status of women, held in Dhaka. May 1973, pp.29-34; Serajuddin, Alamgir Muhammad: 'Muslim family law and the legal rights of Muslim women in South Asia'. In Journal of Asiatic Society of Bangladesh (Hum). Vol.xxxii, No.2, Dec. 1987, pp.128-147.
[6] On Islamic succession law see Ali (1917) , pp.65-116; Baillie, Neil B.E.: The Mohummudan law of inheritance. London 1874.

Next to property in serving the purpose of security is jewellery, which is regarded as an alternative to land.

Women may receive jewellery from their parents before their marriage, which may be enhanced with the property or gifts given at the time of marriage. Some women may be given a large quantity of it by their parents at the time of their marriage. The jewellery received from the groom's side may, however, reduce the amount of dower. Moreover, a detailed field study indicates that men often buy land by selling women's jewellery and then control the income accruing from this land.[7]

However, jewellery is still regarded as a reliable form of security for women in their rainy days. A look at the more recent socio-economic position of women shows that large-scale migration of men to the cities and foreign countries has been creating many female-headed households. Headship rates of women in rural areas are much higher than in the urban ones.[8] These households, although not matriarchal, certainly give more weight to women's decisions and have been described by a Pakistani author as "Matri-weighted households".[9] In fact, the drastic change in women's position within the family and kinship structures are most strikingly evident in the case of

[7] Westergaard (1983), p.74.
[8] Bangladesh Bureau of Statistics: Statistical pocket book of Bangladesh. Dhaka 1987, p.63.
[9] Rahat, I . Naveed: Male outmigration and Matriweighted households: A case study of a Puniabi village in Pakistan. Delhi 1990.

female-headed households.[10] It has been argued that there are five situational categories of female-headed households in Bangladesh.[11] They are:

1. Where there is no adult male member because a woman is divorced, deserted or widowed and consequently becomes the main supporter and chief decision maker in the household;

2. Where an adult male member may exist but does not contribute significantly towards supporting the household;

3. Where the earning male member is a transient who does not contribute regularly towards supporting the household;

4. Where the male member is an absentee (migrant to another country) who may send regular remittances but rarely visits the family, and

5. Where the earning member is a surviving son who is subservient to his mother.

However, there is a difference between the female headed households where women are the sole providers themselves as in cases of widowhood, deserted, divorced or separated women and those "matri-weighted households" where the male temporarily emigrated. In the latter case, men are earning wages in the oil-producing countries or in Indian restaurants in overseas, sending remittances to the wife who has more authority, influence and responsibility than her absent husband in local, domestic and village affairs.[12] However, in these households, women are only de facto heads; the de-jure heads are often

[10] See for details, Islam Mahmuda: Women heads of households in rural Bangladesh: Strategies for survival. Dhaka 1991, pp.1-81.
[11] Islam, Mahmuda: 'Female heads of households'. A report prepared for UNU, 1987; Hossain et al. (1990), p.42-43.
[12] Rahat (1990), p.13-14.

men; an attribute of patrilineal and patrilocal societies, which still exercise control over the major resources. This leads to the re-assertion of male dominance with its ambivalent mixture of protection and control.

There is much evidence at the local level that women are building up their own support system. For example, in certain parts of the country women with some capital buy cows and goats and rent them to poor women to raise under share cultivation (baraa) arrangements. The tenant gets the milk and the first calf, while the owner gets the subsequent calves and retains ownership of the cow or goat rented out.[13] There are, in the banking system, some credit facilities offered to women under the Bangladesh Small and Cottage Industries Corporation (BSCIC), Bangladesh Rural Development Board (BRDB) and under the Ministry of Social Welfare and Women's Affairs. There are also a few quasi-formal organizations like the Grameen Bank and Swanirvor Bangladesh. They have made impressive progress in extending credit facilities to rural women.

[13] Hossain, Mahbub and Rita Afsar: 'Credit for women's involvement in economic activities in rural Bangladesh'. In Bangladesh Institute of Development Studies Research Report. No.105, Dhaka, June 1989, pp.1-104, at p.7.

Chapter Three

THE DEVELOPMENT OF SOUTH ASIAN FAMILY LAW PRIOR TO THE EMERGENCE OF BANGLADESH

3.1 The Development of South Asian Family Law Prior to the Emergence of Bangladesh

This chapter traces in detail the development of family laws in South Asia before the emergence of Bangladesh in 1971. In our coverage of this necessarily huge area of study, we focus on those areas of family law which are of particular relevance to the current concerns of Muslim women in Bangladesh. The main reason for considering these family laws is of course that these laws are, with few exceptions, still in operation in Bangladesh today.

The chapter falls into two major sections. The first focuses on the development of family laws under British rule, while the second and much smaller section concentrates on the period between 1947 and 1971, when Bangladesh was part of Pakistan.

Our coverage of the British period first investigates the contradictory attitudes of the colonialist government towards women, not only concerning issues of family law, but also women's education, universal adult suffrage and prostitution. Above, different reasons for the subordination of women were depicted, primarily male domination by patriarchy and other socio-religious factors.

The impact of colonization on women will be shown as an added factor for the subordination of women in British India. The British interference in the family law is considered in some detail in the next sub-chapter, showing vividly the gradual interference in the indigenous religio-personal laws, contrary to earlier promises of noninterference.

Finally we analyses the relevant legislation in this period and examine the common assumption that it liberated women. It is shown that the colonial governments did not fully support many enactments, although they claimed credit for them. The new laws were often enacted as a result of the relentless efforts of Indian reformers and, increasingly, women's organizations. Moreover, it can be shown in many cases that the British administration was not seriously interested to implement the new laws.

Our coverage of the Pakistani period analyses the role of the state in the struggle between traditional and modern views of women's emancipation and touches on the concurrent debates and tensions between different shades of Muslim opinion on the legal status of women.

We have argued that the actual needs of women in South Asia are centered on being protected from economic deprivation and violence. In British India those needs were not defined and the discourse revolved around sexual equality, liberation and independence. In the Pakistani period, new legislation

brought in to improve the position of women could not be translated effectively to satisfy the real needs of women.

3.2 Women and family law in British India

In British India, the encroachment of the colonial government on Muslim family law occurred more through cases, while for the Hindu family law it was mainly through specific statutes. The statutes enacted under the Muslim family law, although seen as a significant step to ameliorate the legal status of women, were more concerned with Islamic debates than whether the reforms were beneficial to women.

3.3 Women and family law in the Pakistan era

The independence from colonialism certainly had a vibrant effect on the whole Indian subcontinent and Pakistan was not an exception to it. This part of the thesis concentrates on the progress of laws concerning women in the new nation. It does not review the changing trends affecting women in education, health, rural development, economic and political status, as done by other authors.201[14] It focuses on the progress of women's rights and legal status with reference to legislation within the parameters of family law. It is in this era that some attempts were made to improve the position of Muslim women through law.

[14] Chipp, Sylvia A. : 'The modern Pakistani women in a Muslim Society'. In Chipp, Sylvia A. and Justice J. Green (eds.): Asian women in transition. University Park and London 198 0, pp.2 04-220; Woodsmall, Ruth Frances: Women in the chancing Islamic system. Delhi 1983, (1st ed. Washington D.C. 1960). However the progress of women was rather limited to the urban women's life style. See for details Hafez, Sabiha: Metropolitan women of Pakistan. Karachi 1981.

The creation of Pakistan as a country for Muslims led to a dilemma concerning policies of law-making. Age-old questions were re-opened. Can man legislate, given that the Quran is God's law? Even the most modernist reformers in Pakistan would find it inconceivable to abandon the Islamic framework and to create secular laws. Instead, the focus shifted to reforms within Islamic law.202[15] Thus the debate runs on the line whether the reforms conform with the rights given by Islam. The rights of women under Islam have already been analysed in detail above. The present chapter considers the new legislation in family law produced in Pakistan in 1961 and subsequently inherited by Bangladesh.

3.4 The Commission on Marriage and Family Laws

Due to immense pressure from the women's organizations and their sympathizers, [16] the government established a Commission on Marriage and Family Laws on 4th August 1955 to review the situation and suggest necessary changes. The Commission was to decide whether,

The existing laws governing marriage, divorce, maintenance, and other ancillary matters among Muslims require modification in order to give women their proper place in society according to the fundamentals of Islam.[17]

[15] See for details Coulson, N. J. : Conflicts and tensions in Islamic jurisprudence. Chicago and London 1969.
[16] Carroll, Lucy: 'Nizam-i Islam: Processes and conflicts in Pakistan's programme of Islamisation, with special reference to the position of women'. In Journal of Commonwealth and Comparative Politics. Vol.xx, No.l, March 1982, pp.55-95, at p.59.
[17] The Marriage and Family Laws Commission Report was published in The Gazette of Pakistan. 20th June, 1956, p p .1197-1232, at p.1197 and is here after referred to as The Report.

The primary object of setting up the Commission was to examine whether the existing family law needed any alterations and modifications to enhance the position of women. Professor Coulson has argued that to some degree the Commission was set up to ensure that the existing laws conformed with Islamic principles.[18] But that was not the sole purpose of its formation. According to the Marriage Commission itself,

> The primary object of the Commission was to revive in a slightly modified form the rights, granted to women by Islam.[19]

[18] Coulson, N.J.: 'Reform of family law in Pakistan'. In Studia Islamica. Vol.7, Sept. 1957, pp.135-155, at p.136.
[19] The Report, p. 12 03.

CHAPTER 4

THE DEVELOPMENT OF FAMILY LAW IN BANGLADESH

4.1 The Development of Family Law in Bangladesh

This part of the thesis gives an overview of the policy debates surrounding the development of family law in Bangladesh, concentrating on the establishment of the Family Courts and their effects on women. Before going into details on legal enactments and case-law, we first consider how women were treated by the legislature in the newly independent country and whether the stated aim to ameliorate women's rights was more than rhetoric. In this light, women's rights in Bangladesh have been analyzed within the constitutional framework, indicating the disparity between the personal law and the constitutional rights, showing vividly the internal contradictions within the Constitution between granting legal equality and making special laws for women.

The personal law system is then analyzed projecting how the Constitution ensures that the personal law system continues to survive although it is lagging behind some basic principles which have been accepted by the Constitution. The minority laws and their position vis-avis uniformity of laws are also given some consideration.

The chapter then concentrates on the recent establishment of Family Courts. Finally, the position dependence reforms in family law are analyzed generally to see whether the legal reforms have actually operated to the advantage of women.

4.2 Reforms to family law in independent Bangladesh

This part of the chapter gives a general overview of all the family law reforms in independent Bangladesh which aimed to enhance the legal status of women in Bangladesh. In the next section of this chapter, we analyses in detail the reforms regarding the establishment of Family Courts in Bangladesh, exploring whether the aims or intentions of the law makers to ameliorate the status of women were achieved.

The development of family laws in South Asia shows generally that the aim of reforms was not so much to emancipate women but that concern with religious politics has been dominant. The personal law system of Bangladesh has seen hardly any substantial change in contrast to the changes in the general law regarding violence against women, dowry, cruelty and the establishment of Family Courts. Men as law makers have been blamed for not making substantial reforms in the discriminatory features of the religio-personal laws, as this would weaken their own interests.[20] In fact the major portion of family law reforms made in Bangladesh was in the general law effecting all the communities. Legislative enactments in Bangladesh have been made on the issues of restraining dowry by the Dowry Prohibition Act.

[20] Khan, Salma: The fifty percent: Women in development and policy in Bangladesh. Dhaka 1988, p.17.

1980, prohibition for cruelty to women by the Cruelty to Women (Deterrent Punishment) Ordinance, 1983 and establishment of Family Courts by the Family Courts Ordinance 1985 which are general law affecting all communities. Only the issue of registration of marriage and divorce has been tackled for the majority of the population by the Muslim Marriages and Divorces (Registration) Act. 1974. However, there is a demand for registration of marriage and divorce in all communities as it is becoming more widely recognized that non-registration works against the interests of women. This might be regarded as a modified version of achieving uniformity of family laws in Bangladesh. We are regarding it as a better method of uniformity as it does not generate agitation, conflict and tension in the communities concerned because only procedural uniformity is effected, while substantive rights are not curtailed.

The legal reforms of family law in Bangladesh have also included many amendments to existing legislation. Prominent among them are the Child Marriage Restraint (Amendment) Ordinance. 1984, the Dissolution of Muslim Marriages (Amendment) Ordinance. 1986, the Dowry Prohibition (Amendment) Ordinances of 1982, 1984 and 1986, the Cruelty to Women (Deterrent Punishment) (Amendment) Act, 1988, the Muslim Family Laws (Amendment) Ordinances of 1982, 1985 and 1986, the Muslim Marriages and Divorces (Registration) (Amendment) Ordinance. 1982 and the Family Courts (Amendment) Act 1989. If the purpose of some of these amendments was to give more protection to women, this was not achieved completely, but attempts have been made to make the Acts and Ordinances more effective. The amendments of these Acts will be discussed in chapters 5 and 6 below when the respective areas of the law will be analyzed.

In Bangladesh the ambivalence of the government to enhance the rights of women under family law can be gathered by analyzing the different Acts and Ordinances, which were enacted at different times. On the surface, the Acts show that they are ameliorating the status of women. But in fact, in social reality, the legislature could not put themselves out of the patriarchal interpretation of the laws. For example, there are still no laws which state that the minimum age of marriage of males and females are at par; girls have always an earlier age of marriage.

However, laws enacted after independence to enhance the position of women signify that the legislature is now more sympathetic to women. On the other hand, there is a growing reluctance against the effective implementation of such laws. The main obstacle that lies in the way of the practical application of the legal rights of women in Bangladesh is primarily the inherent contradiction of attitudes, that persist in a male dominated society.38 Thus, whatever legal rights women may have officially, they are not necessarily being recognized by the society.

4.3 Overview of the reforms to pre-independence family laws in Bangladesh

We have already discussed the reforms with regard to marriage, divorce and intestate succession and related issues in British India and the Pakistani period these are applicable in Bangladesh but have been amended after independence in Bangladesh. As such, there are areas of the law in which Pakistani law and Bangladeshi law now differ. The present section gives a

brief overview of the reforms made to pre-independence family laws in Bangladesh.

In the field of child marriage, the Child Marriage Restraint (Amendment) Ordinance 1984 has increased the legal minimum ages of marriage. The Child Marriage Restraint Act. 192 9 had sought to restrain the solemnization of marriages of children below the age of 18 for the boy and 14 years for the girl. The MFLO 1961, section 12 had raised the girl's age to 16 years. The Amendment of 1984 raised the legal marriage ages for both sexes, for the male to 21 years and for the female to 18 years and prescribed punishments to anyone marrying below that age.83[21] Under section 4, substituted by the Child. Marriage Restraint (Amendment) Ordinance 1984, the following is provided:

> *Punishment for male adult above twenty-one years of age or female adult above eighteen years of age marrying a child- Whoever, being a male above twenty-one years of age, or being. A female above eighteen years of age, contracts a child marriage shall be punishable with simple imprisonment which may extend to one month or with fine which may extend to one thousand taka,- -or with both.*

[21] It is to be noted that this is the same in India since the Child Marriage Restraint (Amendment) Act of 1978.

CHAPTER 5

FAMILY LAW AND WOMEN IN BANGLADESH

5.1 Family Law and Women in Bangladesh

The aim of this chapter is to assess comprehensively to what extent the legislative enactments in family law, especially on marriage laws and marriage-related issues, have contributed to giving women in Bangladesh better protection from economic deprivation and violence. The laws concerning registration of marriage and divorce, restitution of conjugal rights, polygamy, dissolution of marriage, dower, maintenance, custody and guardianship are analyzed in this chapter.

This chapter also focuses on the question whether women in Bangladesh stand to benefit from judicial activism. Along with the trend for more modern legislation in Bangladesh, this indicates a clear manifestation of a new sensitivity in issues involving the welfare of women, particularly protecting them from abuse.1 One example of such recent judicial activism would certainly be the provocative judgment delivered by Justice S.M. Hussain in Nelly Zaman v Giasuddin Khan.2 where he held that the concept of forceful restitution of conjugal rights by the husband against an unwilling wife has become outmoded and does not fit in with the public principle and policy of equality of all men and women. This might be a consequence of social changes in Bangladeshi society, as women's contribution to the national economy is now being better valued and recognized.

However, this outlook of the judiciary is only indicated in a few family law cases and is not a general tendency.

This chapter also seeks to examine, through the analysis of cases, the attitude of the Judges in the Courts of Bangladesh to the question of family law reform. Have the Courts been influenced in their interpretation of the statutory provisions by the patriarchal sentiments of society? How far are the judges achieving an extension of the sphere of sharia to influence the condition of women? It is, therefore, also discussed in this thesis whether the lower courts, specially the Family Courts, are applying the traditional rules or deviating from them to give women more rights. The fieldwork for this thesis involved collection of unreported decisions of the Family Courts of Dhaka.

Before discussing cases on a particular issue, it is useful to demarcate its salient features in Islamic law and its reworking by the modern reforms to know the correct position of the legal matrix within which such family issues are adjudicated and determined in Bangladesh today. It seems accepted that law as an instrument of social change can be analyzed by examining the legislation and the judgments of the judiciary to bring about social justice. This will also allow us to consider whether the modern legal apparatus of reforms is finding expression in social reality and how beneficial the modern reforms have been to women in practice.

5.2 Opinion of Law Commission; on the Study Report for Marriage, Inheritance and Family Laws in Bangladesh towards a Common Family Code

The UNESCO and Women for Women have jointly prepared a Study Report in respect of "Marriage, Inheritance and Family Laws in Bangladesh- Towards a Common Family Code" and submitted the same to the Government in the Ministry of Law, Justice and Parliamentary Affairs for its opinion on the report. The Government has thereafter referred the joint study report to the Law Commission for opinion in the matters raised in the Report vide Memo No-177 dated 23/03/05, where the chairman was Justice Mustafa Kamal, and other two members are Justice M.D. Sirajul Islam and Dr. M. Enamul Haque.

According to Law Commission,

The Muslim Personal Law (Shariat) Application Act, 1937 (XXVI of 1937) is still an existing law in Bangladesh providing for the application of Muslim Personal Law in all matters relating to Muslim Family Affairs. A reference may be made to the case of Hefzur Rahman Vs Shamsun Nahar Begum, 51 DLR (AD) 172, in which a question of maintenance of a divorced Muslim woman was decided by the Appellate Division. Justice Mustafa Kamal (then a Judge of the Appellate Division) in his Judgment has quoted section 2 of the Muslim Personal Law (Shariat) Application Act, 1937 which is as follows:

"Application of Personal Law to Muslims- Notwithstanding any custom or usage to the contrary, in all questions (save questions relating to agricultural land) regarding intestate succession, special property of females, including personal property inherited or obtained under contract or gift or any other provision of Personal Law, marriage, dissolution of marriage, including talaq, ila, zihar, lian, khula and mubara'at, maintenance, dower, guardianship, gifts, trusts and trust properties, and wakfs (other than charities and charitable institutions and charitable and religious endowments) the rule of decision in cases where the parties are Muslims shall be the Muslim Personal Law (Shariat)." In this case mention has been made of Article 8 (1) of the Constitution which says that "The principles of absolute trust and faith in the Almighty Allah .....shall constitute the fundamental principles of state policy" and of Article 8 (1A) of the Constitution which says that "Absolute trust and faith in the Almighty Allah shall be the basis of all actions."

From the above quoted provision of Act XXVI of 1937 supported by then provisions of the Constitution, it can be said that the Muslim personal law is an eternal law prevailing as the only law for all Muslim Family Affairs and hence there cannot be any change in it nor can it be amalgamated with any other personal law of any other religion.

The Hindu law is one of the most ancient laws in Bangladesh. The Hindu jurisprudence regards the Smritis, which are often designated as Dharmashastras, as constituting the foundation of an important source of Hindu law. In Hindu religion, the law is considered as a branch of Dharma. The rights and obligations of Hindus are determined by the principles of

Hindu law which is the traditional law of this religious community and which is regarded as law of the religion itself. Therefore, Hindu law also cannot be amalgamated with other religious law in favour of a Common Family Code.

Although some changes have been made by a number of enactments in India in the Hindu personal laws, but that have been made applicable to the people of Hindu, Buddhist, Jaina and Sikh communities only in the whole of India and are not applicable to the people of Muslim and Christian communities. The Christians in Bangladesh are mostly followers of Canon laws that are based on traditions of their respective Churches. Christian law is also the personal law of the Christians and is called the law of the religion of the community. The Buddhist community of our country has no separate system of law. They are mostly governed by the principles of Hindu law. The different Tribal Communities are guided by their indigenous religious beliefs, customs and culture. Most of the tribal people follow a Matriarchal family system.

Whenever the laws of Bangladesh admit the operation of a personal law, the rights and obligations of Muslims, Hindus, Christians and Buddhists are determined by their personal laws which their traditional laws are called the law of the respective religions. Hindu and Christian personal laws are not static but empiric and progressive, but even then it will be very difficult in our country to make substantial changes or modifications in those laws. The hypothesis of a Uniform Family Code and the suggested recommendations made in the Study Report cannot be given any legal coverage in our country

where five different religions and their respective codes of life are practically the determinant factors in their respective family affairs. The religious laws of different communities of Bangladesh differ from each other in their origin, base, faith and beliefs. It will, therefore, be impossible in our country to make substantial changes in these laws to make room for a Common Family Code as proposed in the Study Report.

The personal laws of marriage, divorce, guardianship, maintenance, inheritance etc. of all the communities including the tribal communities of Bangladesh are different from each other in nature and in their manners of application. All these religious or personal laws are based on religious injunctions, faith and beliefs. More so, the personal laws of all communities are sensitive, complex and of diverse origin. It is impossible to bring uniformity in these differing laws by way of modification or reforms for purposes of incorporation in a Common Family Code. Any such attempt is likely to cause injury to the religious sentiment, faith and beliefs of the people of the country.

Lastly they said that there cannot be any Common Family Code for all the communities in our country as proposed by a few persons only which does not reflect the wish or opinion of all the people of the country.

5.3 Some Important Case Analysis on Family Laws in the Supreme Court of Bangladesh

Some Important Case Analysis on Family Laws in the Supreme Court of Bangladesh

Case Reference 1

Amulya Chandra Modak v. The State[36]

This case is a milestone under the Hindu Personal Law, to decide requirement of valid marriage, of Hindu community.

Fact behind the Case

This case for the prosecution in brief is that complaint Kalpona Rani Modak (aged about 17/18 years at the time of occurrence) used to lived with her parents in the house whice is adjacent to the house of accused Amulya Chandra Modak (aged about 22 years at the time of the occurrence) the accused mother was ailing. The accused in month of Baisakh 1383 B.S. took her to his house to look after his mother and also work in his house. The accused mother also asked her to nurse and work in her house about 10/15 days latter the condition of accused mother deteriorated and she was transferred to her elder son's house at Mymensing town. After his mother went Mymensing the accused proposed to marry her by exchanging garlands and also proposed to marry her ceremonially after his mother returned from Mymensing.

On 17th Baishakh 1383 B.S. at night the accused brought two readymade garlands (made of paper) and secretly exchanged garlands with her in night. She was made to understand that she was married to appellant. Thereafter

Kalpana Rani co-habited with him under the belief thatshe was lawfully married to him. In this way the accused co-habited with her about one and a half month. There after the accused mother came back from Mymensing , Kalpana Rani told him to marry her ceremonially. The accused promised to marry her within 2/3 days. But his parents did not agree with this and drove her out from their house. Kalpana Rani told the accused that she is pregnant by him when the accused again promised to marry her. The accused brought some roots and ask her to eat the same so that a miscarriage could take place but se denied to do this. Thereafter she narrated the occurrence to her parents, her father reports this to the villagers, they request to the accused father to get his son married to Kalpana Rani as the accused had made her pregnant even after such request the parents of the accused refused to agree.

Related Law and Custom of Marriage

According to Hindu law there are two essentials for a valid marriage are

invocation before the sacred fire and 'Saptapadi', that is the taking of seven steps by the couple and some other rites amongst the Hindu in Bangladesh.

As stated in Mulla's Hindu Law(eleventh edition) at page 547, invocation before the sacred fire and 'Saptapadi', that is the taking of seven steps by the bridegroom and the validity of a hindu marriage other in the Bruhma form or in Ausura form.

Discussion on this Fact

Actually for valid marriage in Hindu Law there are mainly two essentials, First one, invocation before the sacred fire and second is, 'Saptapadi', that is the taking of seven steps by the couple.

However in this marriage case the main ritual for valid marriage has not done by the both parties. For breaking the religious and customary law of Hindu marriage must not be accepted to the court. The court always presumed that there have all kinds religious customary may done. But above in all situations, according to the fact and other circumstances in this religious is not pure or valid. According to the other case law as a precedent here is a true example on Raghanath Padhy v. The State.[37]

Relevant Case Laws

Penal Code (XIV of 1860)

Under Section 493

If we want to prove that this marriage was not valid for that time there are some relevant case like Raghanath Padhy v The State,[38] in this case the accused Raghanath a Brahmin with his wife living was asked by the complainant Racharani Devi a Brahmin widow, to marry her by writing bond. The complainants put bangles, new cloth and exchange garland. From the fact of writing a bond by the accused and handing over the same to the complainant and participating in some sort of ceremony it was held that the accused acted in good faith and his subsequent act of assertion of a pregnant woman; however censurable it may be would not suffice to make a criminal liability under section 493 of the Penal Code.

In the case of Abed Ali v. The State,[39] it was held that,

"A mere promise of marriage made by the accused to her (the complainant) of to her guardian intending never to fulfill his promise does not warrant a conclusion that a false belief was caused in her mind that she was the lawfully married wife of the accused."

Judgment

According to 493 of the Penal Code, Muhammed Habibur Rahman, j accused Amulya Chandra Modak has been convicted by Mr. S.M.A. Rahman, Assistant Session Judge. Second Court, Mymensing on 30.12.1978 under section 493 of the Penal Code and sentenced to suffer rigorous imprisonment for five years and pay a fine of taka 1,000.00 in defaults to suffer 2 months more.

Findings of the case

After analysis of the above case it is clear that the marriage of Hindu community is not specified. The form of the evidence of the case is inadequate. There is no provision of marriage registration so there has the scope to confusion. If there would a binding force to the registration of marriage there will no confusion of validity of a marriage.

Case Reference 2

Abu Bakar Siddique v. S.M.A. Bakar and Others[40]

This case is a unique case in Muslim personal law, it maintain the doctrine of welfare of child. This is the only case which gave judgment which is separate from sharia law which opens a new door to ensure natural justice.

Fact behind the Case

Appellant Abu Bakar Siddique filed an application under section 25 of the Guardian and Wards Act (Act VIII of 1890) in the Court of District Judge, Dhaka for Custody of his minor son. The boy is about 8 years, was born on 22nd may 1976. He married respondent who is an M.B.B.S. doctor on 10th June 1973 she on getting a job left for Saudi Arabia leaving the boy with his father. In July 1978, she came back home and after two months she again left for Saudi Arabia. This time she took the boy with her. Appellant also went to Saudi Arabia and lived with his wife and son. But come back in April 1981 leaving the boy with his wife.

In a suit for dissolution of marriage is filed at the instance of respondent. Her marriage with the appellant was dissolve in June 1982. in may 1984 respondent returned with her son to Bangladesh and went back to Saudi Arabia keeping the boy with her relations. At this stage the appellant filled an application for the custody of the boy. She filed a written statement thereafter denying the allegation. It was stated that, the boy has been suffering from 'Hirshtring' a diseases. Steps were to taken to take boy to the UK. Welfare of

the boy would be best served if he is allowed to live with his mother District Court agreed with her statement and dismissed the suit, and then the appellant go to High Court Division, however, it was also dismissed in the same ground.

Related Rules and customs of Custody

Question regarding Hizanat (custody) of a minor boy or daughter is depended on his or her age.

The right of mother to custody of infant child: the mother is entitling to the custody of her male children until he has completed the age of seven years and of her female child until she has attained puberty. The right continues though she is divorced by her husband unless she marries a second husband in which case the custody belongs to the father.

The right of father to custody of infant child: right of father to custody of a boy over seven years of age and an unmarried girl who has attained puberty. Failing the father the custody belongs to the paternal relations. If there be none of these it is for the court to appoint a guardian of the person of the minor. - Mulla's Principle of Mohammedan Law.

Rules of Hizanat as formulated in Islamic Law find place in Hedaya. The following tradition of the Holy prophet (upon whom be peace) is quoted, "A women once applied to the Prophet, saying O' Prophet of God! That is my son the fruit of my womb, cherished in my bosom and suckled at my breast, and his father is desirous to taking him away from me into his own care," to which Prophet replied,

“thou hast a right in the child prior to that of thy husband, so long as thou do’st not marry with a stranger”. (Chapter XIV ‘on Hizanat’)
In the hedaya there is also mentioned of the reason as to why the mother should have the custody of a infant child. Thus it is stated that, “a mother is naturallynot inly more tender, but also better qualified to cherish a child during infancy, so that committing the care to her is of advantage of the child.”

Discussion of the fact

In case involving the question of guardianship their decision are seen to be influenced by the concept of welfare of the minor child concerned. In this connection it may be mentioned that under the provision of Guardianship Act, the court to whom an application is made under that Act is to be satisfied that the welfare of minor required the appointment of a particular person as his guardian. But the court is to make appointment consistently with the law to which the minor is the subject. Indeed, the principle of Islamic Law has to be regarded, but deviation there from would seem possible as the paramount consideration should be child’s welfare.

In this case the minor son was sick and needed to medical treatment and his mother is an M.B.B.S doctor who can take batter care of her child and to stay with his mother is really needed for his physical improvement. Though father and mother both are important for children but necessity of a doctor for a patient can not be overlooked. In present case the learned Single judge while considering the welfare of the boy was rightly determined the question which need not be disturbed.

Relevant Case Law

In case Zohora Begum v. Ahmed Munawar[41] here the court observed as followed,

"…… it would be permissible courts to differ from the rule of Hizanat stated in the text book on Muslim Law for there is no Quranic or traditional text on the point. Courts which have taken the place of Quazis can, therefore, come to there own conclusion by process of Ijtihad which, according 'Imam-al- Shafei" included in the doctrine Qiyasit has been mentioned earlier that the rule propounded in different text books on the subject of Hizanat is not uniformed. It would therefore be permissible to depart from the rule stated therein, if on the fact of a given case its application is against the welfare of the minor, I am fortified in this view by the instance in which a Quazi of another school of law which took a liberal view of the matter." Judgment

The court held that, for the minor's welfare the minor should be live with his mother or she should be appoint as his guardian.

Findings of the case

In this case it is appears that the women's economic independence is most needed for accruing there right. This is only case where the welfare of the child is prevailed over the Muslim Law, beyond this judgment the most influencing reason is that the mother is an M.B.B.S doctor she is economically independent and a doctor which is most needed for a sick child.

Case Reference 3

Hafizur Rahman v. Shamsun Nahar Begum[42]

This case is under the Muslim Law, maintenance. In this case the court determined how much and how far the husband is bound to maintain his wife as well as the child. In this case the decision of the High Court Division was set aside because of that it is beyond of the Islamic Law. And court decide the point so moto.

Fact behind the case

Shumsun Nahar Begum filed Family count suit no.60 of 1988 in the Family Court and the Court of Assistant Judge, Doudkandi, Comilla on 2-11-1988 for realization of dower money of taka 50,001.00 and for maintenance of each of the plaintiffs, mother and son. The parties are married on 25-3-1985 at dower money of taka 50,000.00. The son borned in their wedlock, on 15-2-1987, and the defendant divorced plaintiff on 10-08-1988. The family court by judgment and order dated 30-10-1990, decreed the suit for Taka 89,000.00 including taka 3,000.00 to the wife as maintenance during the Iddat period at Taka 1000 per month.

In family appeal no.2 of 1991, preferred by the appellant, the learned District Judge, Comilla by judgment and decree dated 20-04- 1992, reduced the amount of Taka 1,000.00 to Taka 600.00 per month in respect of maintenance of wife. The learned District judge deleted Taka 2,000.00 claimed to have been spend by plaintiff at the time of holding that the Family Court

Ordinance did not provide for realization of any such amount. The total decretal amount was reduced from taka 89,000.00 to 72,000.00.

Hafizur Rahman preferred Civil Revision no.2067 of 1992 against the judgment and decree of the Learned District Judge and obtained a rule and stay on 30-08-1992. The High Court Division restored the judgment and decree of the Family Court with the modification that the wife and the child shall get maintenance at the rate of Taka 1,000.00 each month from the defendant till the wife and child respectively remarries or attains majority. The appellant thereafter seek appeal to the Appellate division of the Supreme Court of Bangladesh.

Related rules and customs of maintenance

According to Mulla's Principle of Mohammedan Law, the husband is bound to maintain his wife (unless she is too young for matrimonial intercourse) so long as she is faithful to him and obey his reasonable orders. But he is not bound to maintain her who refuses herself to him[43] or is otherwise disobedient. Unless the refusal or disobedient is justified of nonpayment of prompt dower (sec. 290)[44].

If the Husband is neglect or refuses to maintain his wife without any lawful cause the wife may sue him for maintenance, unless the claim is based on a specific agreement[45] or she may apply for an order of maintenance under the provision of the Code of Criminal Procedure, 1908, section 488, in which case the court may order the husband to make a monthly allowance not exceeding four hundred Taka.

After divorce the wife is entitle to maintenance during the period of Iddat (sec.257)[46]. A pregnant woman is entitled to maintenance till she delivers the child.

Discussion of the Fact:

Under Mohammedan Law maintenance during the period of Iddat is incumbent upon a former husband. A divorced wife can legally and lawfully realized maintenance for the period of iddat. But the right of "Mattaa" loosely used as maintenance beyond the period of Iddat may be statutorily provided for the poorer women who are destitute and suffering in the hand of unjust and cruel husbands. It can be argued that for giving benefit to Muslim women laws may be made as has been made in several counties and the beneficial legislation will not be against Muslim personal law and will be consonance with the ideas of justice tolerance and composition of Holy Qur-an enjoins upon all righteous and true Muslim.

The High Court Division is appears to be too wide, but as in our country many women are divorced by their husbands without any fault on their part some legislation may be made for the good of Muslim women community in Bangladesh. Many divorced women in our county suffer as they have no economic and educational background to support them. She urges to provide for a fair, just and reasonable legislation to remove the extreme hardship of divorced women in our society. Such statutory recognition of benefits and privileges for a divorced woman will not be in conflict of Muslim Law.

Relevant Case Laws

Aga Muhammed Jaffer v. koolsom Beebee[47]

The plaintiff was married to the defendant on May 17, 1950. A son was born of the marriage and thereafter the husband neglected the wife and refuse to maintain her and her son on the plea (held to be false) that he had divorced her on the night of the wedding. The trial court moved by the wife, granted a decree for maintenance for both mother and son.
In Asmatullah v. Mst khatunessa[48], after divorce the wife is entitled to maintenance during the period of Iddat. She was held not entitle to past maintenance unless there was a specific agreement.

Judgment

It was held that the learned judge of the High Court Division had no jurisdiction to give her any further relief beyond what was granted by the first two courts below. The decision of the High Court Division was set aside because of that it is beyond of the Islamic Law. And court decide the point so moto.

Findings of the Case

I am also agreeing with the observation from the case of Rashida Begum Vs. Shadhin Din & others,[49] with the view that if the interpretation of the Holy Qur-an by the commentators who lived in thirteen or twelve hundred years ago is considered as the last word on the subject then the whole Islamic society will be shut up in a iron cage and not allow to develop along with the time. The decisions of the High Court Division was a unique decision over time the judge consider the literal meaning of the first part of Verse 241 of Sura Baquara and finally held that a person after divorcing his wife is bound

to maintain her on a reasonable scale beyond the period till she loses the status of a divorce by re marring another person……., I think it is a milestone to prevent polygamy and violence against women. But unfortunately the Appellate Division set aside the decision and re-imposes the decree that the husband is bound to maintain his wife till Iddat period.

Chapter Six

Conclusion & Recommendation

6.1 Conclusion :

The first principal purpose of this chapter is to summarize the issues involving the different paradigms of family law in this dissertation. The prospects for further, more detailed and fieldwork-based research are examined in the second sub-section. Finally, the concluding part of this chapter considers what recommendations may be made to protect women in Bangladesh better against violence and economic deprivation.

In the last decades of the 20th century there was a declaration of Principle of Family Law. In June 1993 at the Family Laws Conference it was recognized that Women's position under family laws, Violence against Women is Violence against Humanity. From then there is movements for ensuring women's as to a man and for removing gender discrimination. In our country the women are mostly discriminated by the Personal Law & Family Law. After the above analysis it is clear that under the existing family law the women position cannot be possible at all, in this circumstance the Law Commission refuses the possibility of a common personal law & family law prepared by the UNESCO and Women for Women.

We have seen that there are some reformation has occurred in personal law & family law for the welfare of the people and we think that the uniform family law is also possible for the benefit of the people. The Law Commission States that the uniform family law is the desire of a few people…..but this is not true because in Bangladesh all women are suffering by the hardship of the personal laws & family law, not only one community but by all personal law & family law.

The question of women has acquired great importance throughout the world today among all communities. This is for obvious reasons. For centuries, women have been in total subjugation in male-dominated patriarchal societies. It has been a “natural law” to regard women as the inferior sex and for them to submit to male authority for the smooth functioning of society in its day to day progress. In the today’s world it is an issue of impartiality of law irrespective of race was clearly crucial. Indeed the law which prevented women from achieving their full development as individuals must be bad law.

So the personal law which is discriminate against women should be reformed the only solution of this gender discrimination by the personal law is enacting a Uniform Personal Law, the women must not be deprived any more. Since we see there are many barriers in implementing necessary reforms in the personal laws, we need to accelerate awareness programs among the common people against the violence oppression and deprivation to women.

6.2 Recommendations :

It follows from section above that the existing legislation on family law in Bangladesh does not lack the potential to protect women from economic deprivation and violence. We have also seen that the judiciary has been able to pronounce enlightened judgments in some instances. Since we have argued that a major onus for improving the position of Bangladeshi women lies on society, recommendations could be made about how social reforms could work towards better protection of women against violence and economic deprivation. Clearly, the main impediment in the way of freedom for women from violence and economic deprivation in Bangladesh is the discrepancy of liberal legal concepts tending towards equitable rights and of traditional attitudes persisting in a male-dominated society.[22] Thus, it is suggested here that new law is not the answer, but there need to be changes within the social sphere. Men, in particular, should be conscious of their duties to protect women from violence and economic deprivation. Everybody in society should be aware that it is morally unacceptable to treat any woman with cruelty or to deprive her of economic assets or entitlements by illegal and illicit means.

In the present thesis, we need to concentrate on the legal sphere. It is reiterated here that the existing family law of Bangladesh could, after some amendments, fulfill the requirements for better protection of women. In particular, there must be proper enforcement of the family law reforms and of judicial decisions. The reluctance of the law enforcing agencies to assist women should be eliminated as far as possible. This can be felt most

[22] Ahmed, Sufia and Jahanara Choudhury: 'Women's legal status in Bangladesh'. In Women for women: Research and Study Group (ed.): The situation of women in Bangladesh. Dhaka 1979, pp.285-331, at p.287.

obviously in cases of domestic violence, where despite the threat of deterrent punishments offences against women have increased, the police are not inclined to interfere in household affairs and many women faced with violence are left unprotected.

The operation of the judicial process in Bangladesh, with few exceptions, works against the interests of women. To benefit the concerns of women within the judicial process, they should be involved more directly or indirectly as police officers, judges, prison officers and lawyers. Women should not be in fear of custodial rape in police stations. In reaction to evidence from Pakistan that 72% of women in custody had been physically or sexually abused,[23] women police stations have been introduced there. This model of women police stations should be adopted in Bangladesh, as custodial rape is -also a problem there.

Moreover, custodial rape should be included in the definition of the offence of rape under the Penal Code. I860.[24]

It is interesting to note that there are already 52 lady judges in the judiciary, some lady police officers and prison officers and significant numbers of women lawyers. The large participation of women in universities and law colleges allows for hope that in the near future the judicial system of Bangladesh will be more sympathetic towards protecting women from economic deprivation and violence. However, it could not. be substantiated in

[23] See already Bhuiyan, Rabia: Aspects of violence against women. Dhaka 1991, p.44.
[24] Goodwin, Jan: 'Jailed for being raped'. In Marie Claire. No.70, June 1994, pp.54-62.

this study that lady judges have been making significant contributions towards the protection of women. Lady judges, too, are appointed from the elites of the society who may be unable to understand the real needs of poor litigants.

The Bangladesh government should take the following key measures:

Reform all personal laws to remove discriminatory features, especially polygamy; grant equal access to divorce to men and women; remove barriers to securing maintenance; and ensure women's equal right to marital property during marriage and upon divorce.

Disseminate information about the protections available in the law against domestic violence in different media, including through disabled-friendly methods, and monitor implementation of the law.

Review and reform family court proceedings to eliminate delays and ensure that judges grant interim maintenance in eligible cases.

Strengthen social assistance programs, including access to shelters for poor women, divorced and separated women, and survivors of domestic violence.

"For decades Bangladesh has ignored how discriminatory personal laws impoverish women," said Kashyap. "By immediately heeding calls for personal law reform by its own women's rights advocates Bangladesh will demonstrate its commitment to women's equality and poverty eradication."

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