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Chapter-I

1. Introduction

The role and status of women has increasingly become an issue of discussion in the 52 years since Bangladesh gained its independence from Pakistan. Although the 1972 constitution established equal rights for women and men in "all spheres of the State and public life", violence and discrimination against women reportedly remain common features of Bangladeshi society despite the introduction of a number of reforms to address these problems . This paper will examine the current situation of women's legal rights in Bangladesh and their practical application.

1.2 Background

According to the World Bank, Bangladesh is one of the poorest and most densely populated countries in the world, and women have suffered disproportionately more from poverty than have men. Bangladeshi women live in a state of dependency as a result of poverty and a lack of education, employment and training opportunities. Many of the systemic disadvantages facing women cut across religious lines. Furthermore, as one source has pointed out, international aid programmes have only increased these disparities, both in Bangladesh in general and between men and women in Bangladeshi society in particular. By working within established distribution systems these programmes have tended to reinforce already existing patterns of discrimination in Bangladesh, and have placed "the target population in the passive position of recipients rather than participants".

In accordance with the traditional Muslim practice of purdah, the seclusion or veiling of women, a woman was expected to stay within her bari or homestead and was discouraged from contact with anyone outside her close family. This practice limited the social and educational development of most Bangladeshi women and restricted their access to employment opportunities . Although the institution of seclusion is being challenged as poverty forces more and more women to seek employment outside the home, the ideals of purdah-modesty, humility, domesticity and noninvolvement in public life--are still strong, even if physical seclusion is not as commonly practised .

A woman's status is defined not only by gender but also by the occupation and income level of her nearest male relative. In general, Bangladeshi women are valued less than both children and property . For example, men are generally fed first and most while women usually eat last and least . Early marriage is a common practice in Bangladesh. According to

the UN, 73 per cent of women are married and 21 per cent have had at least one child by age 15 . Whereas the birth of a son is celebrated, the birth of a daughter is reportedly viewed as a "disappointment." Baby girls are given less food than are their male siblings and are therefore at greater risk of malnutrition and disease. As well, parents may be less likely to seek expert medical care for a sick girl .

Women are disadvantaged in the field of education. The literacy rate for females is estimated at roughly 20 per cent, about half the rate for males, despite government efforts to raise the level of literacy among females. Although there are constitutional guarantees of employment equity, in practice women have limited job opportunities. Figures indicate that women comprise a near insignificant minority of both the agricultural and industrial workforce. The government sector has been targeted for quotas and hiring initiatives, but these targets have not been met. Ironically, within the women's affairs ministry itself, all senior posts are held by men. The government's latest five year plan is attempting to reduce gender disparities once again and has identified women as a target group in all social development programmes .

Of seats in the national legislature, 50 out of a total of 350 have been reserved for women, (Constitution, 30 june 2011). As well, the UN notes that seats are reserved for women at the local and municipal levels. Nevertheless, women's participation in national and political movements in Bangladesh has been negligible. In the words of one observer, although in recent years two women have emerged as important political leaders in the country through their personal connections with deceased male political leaders of their respective parties, women usually do not participate in the political process. Both social norms and women's lack of access to resources have been cited as obstacles to their participation in politics.

1.3 Legal Status Of Women In Bangladesh

In Bangladesh, as in most other Muslim countries, "there is a kind of dual system of a secular civil and a religious family code." The constitution, penal code and civil and criminal procedure codes are secular in character and apply to Muslims and non-Muslims alike. Muslims, who account for over 80 per cent of the population of Bangladesh, are also governed by Muslim personal or family laws which are based on the principles of sharia. Bangladeshi Hindus, in turn, are governed by Hindu personal law. An estimated 90 per cent of the Muslim population of Bangladesh belongs to the Hanafi school of Islam. Most Bangladeshi Hindus follow the Dayaabhaga School of Hindu Law. Hindu personal law will not be discussed in this paper; for a brief examination of its discriminatory aspects and

property and inheritance provisions, please see. According to the Committee on the Elimination of Discrimination against Women, no steps have yet been taken to modify Hindu personal law.

Although ideally there are no areas of overlap between secular law and Muslim family or personal law, subsection 7. (2) of the constitution is unequivocal about how any such conflicts should be resolved: "This Constitution is the supreme law of the Republic. However, whether or not the constitution is given precedence over religious law seems to depend on the political objectives of the government. According to one source, if the government is feeling weak domestically or requires a broad-based popular mandate that hinges on the support of Islamic . In the words of one observer, "when the totality of state policy is considered, its championship of women's rights can be seen in an extremely cynical light. it professes to believe in both the emancipation of women as well as its negation."

Chapter-II

2.1 Human Rights of Women and the Constitution

The Constitution was written for the newly formed state of Bangladesh in 1972. The Constitution made under the directives of the Father of the Nation Bangabandhu Mujibur Rahman ensured human and fundamental rights of women. In article 27 of the constitution has it that, “all citizens are equal before law and are entitled to equal protection of law”. The article 28(1) says, “the State shall not discriminate against any citizen on grounds religion, race, caste, sex and place of birth” The article 28(2) says, “women shall have equal rights with men in all spheres of the state and public life.” The article 28(3) has it that, 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.” Article 28(4) says, “Nothing in this article shall prevent the state from making special provision in favor of women or children or for the advancement of any backward section of citizens.” Article 29(1) contains, `` there shall be equality of opportunity for all citizens in respect of employment or office in the service of the republic." Article 29(2) has it that `` no citizen shall, on grounds only of religion, race, caste, sex or place of birth, be ineligible for, or discriminated against in respect of, any employment or office in the service of the republic." In the article 65(3) there are 45 seats reserved for women and under article 9 the representation of women in the development of local government institutions.

Thus the constitution not only guarantees equality between the sexes, but by allowing for special provisions in their favour, acknowledges the reality of the unequal status of women. This "protectiveness" toward women also exists in the Civil Procedure Code and Criminal Procedure Code, where women are exempt from arrest for debts, as well as in provisions for preferential treatment in certain areas of the labour market. While these provisions demonstrate concern for the vulnerable position of women in Bangladeshi society, observers note that such laws may limit their opportunities to be treated as equals in all spheres of life. For example, government concern about women being lured into prostitution resulted in an executive order prohibiting "fourth class women employees from travelling abroad unless accompanied by their spouse" or in possession of a special government clearance. According to a World Bank report, "whenever women are perceived to be in danger, the system tends to curtail women's freedom of movement rather than to deal with the situation directly."

2.2 CEDAW

The Convention on the Elimination of All Forms of Discrimination against Women, adopted in 1979 by the UN General Assembly, is often described as an international bill of rights for women. Consisting of a preamble and 30 articles, it defines what constitutes discrimination against women and sets up an agenda for national action to end such discrimination.

The Convention defines discrimination against women as "any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field."

By accepting the Convention, States commit themselves to undertake a series of measures to end discrimination against women in all forms, including:

*To incorporate the principle of equality of men and women in their legal system, abolish all discriminatory laws and adopt appropriate ones prohibiting discrimination against women;

*To establish tribunals and other public institutions to ensure the effective protection of women against discrimination; and

*To ensure elimination of all acts of discrimination against women by persons, organizations or enterprises.

The Convention provides the basis for realizing equality between women and men through ensuring women's equal access to, and equal opportunities in, political and public life including the right to vote and to stand for election as well as education, health and employment. States parties agree to take all appropriate measures, including legislation and temporary special measures, so that women can enjoy all their human rights and fundamental freedoms.

The Convention is the only human rights treaty which affirms the reproductive rights of women and targets culture and tradition as influential forces shaping gender roles and family relations. It affirms women's rights to acquire, change or retain their nationality and the nationality of their children. States parties also agree to take appropriate measures against all forms of traffic in women and exploitation of women.

Countries that have ratified or acceded to the Convention are legally bound to put its provisions into practice. They are also committed to submit national reports, at least every four years, on measures they have taken to comply with their treaty obligations.

Chapter-III

3.1 Women Development Policy-2011

Half of the populations of our country are women. So women development is the precondition of national development. There should have equal opportunity and equal rights for women to ensure national development. In our constitution through several articles the equal rights and opportunity of both men and women have been established. It is a harsh reality that it needed 40 long years after its independence to come up with a policy guideline to ensure the rights of its women. The women development policy has created a great scope for the advancement of women empowerment. The national women development policy has ensured women's rights in formulation and implementation of economic policies.

3.2 The Objectives of National Women Development Policy

Objectives of National Women Development Policy are as follows-

A. establish equal rights of men and women in areas of state and public life in the light of the constitution of Bangladesh.

B. To ensure socio-economic, political, administrative and legal empowerment of women while establishing gender equality

C. To ensure full and equal participation of women in the mainstream socio, economic development recognizing women's contribution in socio-economic areas

D. To bring up women as educated and skilled human resources delivering them from the curse of poverty

E. To remove existing male-female disparities as well as to eliminate all forms of abuse of women and female children

F. To innovate and import technology favoring the interest of women and prohibit anti-women technologies.

G. To take appropriate steps to ensure sound health and nutrition as well as proper shelter and housing of women .

H. To arrange rehabilitation of affected women in natural calamities and armed conflicts.

I. To ensure rights of the disabled women and women belonging to the smaller ethnic groups.

J. To ensure security and safety of women in all areas of state, social and family life including the widowed, aged, guardian less, divorced, unmarried and childless women.

K. To reflect gender equality in the mass media regarding the positive image of the women and female children .

L. To assist in flourishing the talented and genius women of their creative potentials.

3.3. Implementation Mechanism

The implementation mechanisms of National Women Development Policy are as follow-

1. National Level: The role of MOWCA (Ministry of Women and Children affair)
2. Field Level: District and Upazilla Levels
3. Grass root levels
4. Co-operation between the Go and NGOs
5. Empowerment of women and International Co-operation

3.4. Strategies of Women Development Policy

The strategies of women development policy- 2011 are given below:

A. All the ministries will take responsibilities to implement national women development policy.

B. All the ministries will focus on this sector so that equal rights of women are established.

C. There will be a time limit to implement this policy.

D. The process of these programs will be reviewed from time to time.

E. Trained personnel need to be recruited for planning and programming.

F. There shall be some awareness raising programs. These programs include (1) Anti-women laws need to be (1) Anti-women laws need to be removed; (2) Awareness of different ministries and government officials is a must; (3) Inclusion of women related subjects in the text books etc.

G. Law enforcing organizations, justice department, government and non-governmental organizations should pay special attention to these programs.

H. To help women, women harassment protection programs must be focused. Different organizations should come forward with a view to implementing these programs.

3.5. Application of National Women Development Policy

Women empowerment is a progressive concept. Experts have observed that development is directly connected to socio-economic issues like gender equality and women empowerment. Fortunately, Bangladesh government has realized the fact that the country can never develop until and unless women are given a fair chance to contribute to the development activities. Accordingly, the government has adopted and enacted women development policies at different times to establish gender equality and women

empowerment and achieved remarkable progress within a very short time. The adoption of the National Women Development Policy-2011 is the subsequent result of Bangladesh government in women welfare.

A. Women and National Development Plan Strategies.

The Sixth Five Year Plan (2011-2015) in addressing gender based discrimination will follow a two-way approach. Firstly, gender will be integrated into all sectoral interventions. Secondly, attention will be given to remove all policy and social biases against women with a view to ensuring gender equality as enshrined in the National Constitution. The vision for women's advancement and rights is to create a society where man and women will have equal opportunities and enjoy all fundamental rights on an equal basis.

For this, the main strategies and policies include different legal frameworks, productive employment, enabling environment, elimination of female health and education disparities etc. In addition to this, priority is to be given to women in social protection programs, political empowerment and participation. This will obviously help in addressing violence against women and gender mainstreaming.

B. Women Empowerment in Different Sectors of Bangladesh

Twenty first century is ushering in an era of new hopes and aspirations for the women-folk. The women of Bangladesh, with pride and hope, can look forward to having some outstanding and significant moments in their overall development that have taken place in the last two decades. Famous economist and Nobel laureate Amarta Sen has also praised Bangladesh's performance in women empowerment (An Uncertain Glory: India and its Contradiction, 2013). The women empowerment in different sectors of Bangladesh is highlighted here as a contribution of National Women Development Policy.

Women and Education

Gender priority has been achieved in primary education. Since 1990 primary school enrollment has increased 1.4 times from 11.9 million in 1990 to 16.7 in 2008. Secondary education enrollment for female students has increased significantly as girls (52% for girls) have surpassed boys (48% for boys) in 2000. Special emphasis has been given to girl child's education. Primary and secondary education is free for girls. Provision for stipends for girls and waiver of tuition fees have resulted in increased enrollment for girls. In order to increase women participation in technical and vocational education, three women polytechnic institutes have been established at three Divisional Headquarters. International Women University, Chittagong and Central Women's University, Dhaka have been established in

the country to offer higher studies and opportunities to women (GoB, Ministry of Women and Children Affairs, 2011).

Women and Health

Noticeable gains have been achieved in the area of women's health. Initiatives have been taken to deliver primary health care services to rural poor women through community clinics. Special attentions are being given to facilitate maternal health care resulting in decreased maternal mortality rate. Ten women friendly Model District Hospitals and three upazilla (sub-district) Health Complexes have been established to treat women and children. Maternal Health Voucher Scheme provides poor women in 35 sub-districts vouchers package which includes TK.2000 for three pre-natal checkups and a safe delivery, one post natal check up and transport cost. In addition, maternity allowance is given to 88 thousand extreme poor pregnant women for 24 months at the rate of tk.350/ per month. Maternal mortality ratio (MMR) has declined significantly from 574 in 1990 to 348 in 2008 (GoB, Ministry of Women and Children Affairs, 2008).

Employment of Women in Different Sectors

There is a growing trend of increased women participation in labor force. Women participation in the labor force has increased significantly from 23.9% in 1999-2000 to 29.2% in 2005-2006. Rural women's role as agricultural workers has expanded gradually from 25% to 34% between 2002-2003 and 2005-2006. This indicates an increase in female labor force in agricultural sector from 7.6% in 2002-2003 to 10.11% in 2005-06. A micro level study conducted in 2008, reveals that 88% women are engaged in agriculture related works (GoB, Ministry of Women and Children Affairs, 2011). In Garment sectors 40 lacs women are employed (GoB, Ministry of Labor and Manpower, 2010).

Social Empowerment

Increased number of women is engaged in various professions like Civil service and administration, Judiciary, Armed Forces, Navy and Air Forces. Recently women police officers have also been appointed. In the UN peace keeping mission, women are employed in the armed forces and the All Female Formed Police Unit (FPU) has been sent to Haiti. These are evidences that women can participate in conflict resolution, crisis management and post conflict rehabilitation as mandated in Security Council Resolution 1325. Maternity leave for all women employed in government service has been extended to six months whereas the number of Day Care

Centers has also increased. At present, the MoWCA runs 29 Day Care Centers to support working mothers.

Legal Empowerment

Bangladesh has a number of special laws to prohibit certain forms of violence against women, including the Penal Code 1960; Anti-Dowry Act 1980; Prevention of Repression Against Women and Children Act 2000 (revised in 2003), Acid Crime Control Act etc. Besides, there are some other mentionable acts enacted by the government for ensuring both legal protection and empowerment of women. They are as follows:

a. The Citizenship (amendment) Act, 2009. It entitles a Bangladeshi woman to transmit citizenship to her children;

b. Domestic Violence (Prevention and Protection) Act 2010;

c. The Representation of People's (amendment) Ordinance, 2008 (a woman is to be elected out of two vice chairpersons in each upazilla);

d. National Human Rights Commission Act, 2009 (at least a woman member is to be included in the Human Right Commission);

e. Right to Information Act, 2009 (having women as Information Commissioners);

f. Recognition of mother's identity has been ensured through a Gazette in 2000 that mother's name must be inserted along with father's name in all official documents as school admission form, the passport etc.

Political Empowerment

In Bangladesh, the progress of women in political arena is significant as women occupy the top positions in political leadership. At the highest decision making level, there is a remarkable number of women ministers in the cabinet including the Hon'ble Prime Minister of the state. Political empowerment of women has gained momentum in local government too. The local Government (Union Parishad) amendment act 1997 ensures direct election to the reserved seats for women. It is a milestone in ensuring equal access of women in political power structure. Subsequently, at the Upazilla level, vice chairman's position has been marked for directly elected women. At present, beside the Honorable Prime Minister, the leader of the opposition, Deputy Leader of the House, Speaker, Whip, Chairman and members of different standing committees in the parliament and remarkable members in the Cabinet are women and they demonstrate strong political place of women in leadership position. In the 10^{th} national election, 48 women were directly elected as members of parliament. This added to the reserved, constituted 28% of the total seats. The representation of people's (amendment) ordinance, 2008 provides that political parties should reserve at least 33% of all committee positions for women.

3.6. Problems of Women in Bangladesh

In the areas of women advancement and rights, the government has made strong commitment and undertaken various initiatives to reduce the gap between men and women. However, on the way for achieving the desired goals of gender equality and gender mainstreaming, some challenges still remain. These include:

a. Women's economic participation is low. Poor women have less earning capacity and their wages are lower than male wages. The female headed households usually face discriminations.

b. Violence against women is pervasive. Physical and sexual assaults including acid throwing are common. In addition, trafficking is also reported. Poverty, dowry, early marriage, superstition, social attitude etc are the major causes of violence against women.

c. Early marriage of women leads to discontinuity of education and results in early childbirths. They get less scope of employment and decision-making opportunities.

d. With higher incidence of droughts, floods, cyclone and other natural calamities, women are affected differently than men indicating the need to increase gender sensitivity in coping mechanisms and strategies.

e. The main problem with gender governance is the implementation of the existing laws, rules and regulations as well as state policy. In addition, reforms of some laws, rules and regulations, policies and institutional mechanisms are essential to make governance gender sensitive.

f. Further, traditional society and its limited social outlook, religious barriers, purdah system etc. remain as the constant drawbacks of women empowerment in Bangladesh.

3.7. Prospects of Women's Rights in Bangladesh

To empower women of Bangladesh, society must recognize the productive and reproductive roles of women. The process of empowerment could have been successful by the collective efforts of the government and the society. The following steps are useful in this regard:

a. The targets of National Women Development Policy should be re-evaluated; analyzed and necessary steps should be taken for further implement of the targets. Special monitoring cell can be formed and research should be done to know the causes of non-implementation.

b. The government should remove the disparity in education system. The NGOs along with the government should address the problem in education. A workable education policy should be adopted.

c. Women should be assisted if they want to go for business or other ventures. Special trainings and loans should be ensured. We need human resources in technical and vocational areas. Women should have the privilege to enter into such education or training.

d. Campaign should be carried out focusing on the utility of education so that the backward section of the society is made aware of. Proper understanding of women empowerment should be ensured among the women in both rural and urban areas.

e. Women from slums and tribal areas or from backward societies should have special education that can meet their specific demands.

f. Inter-relation between men and women should be focused through different management structures. Participation of women in development work and training programs should be ensured. Quota system may be introduced for some period to increase the number of women participation.

g. Superstitions and psychological constraints of people regarding women empowerment should be removed by the help of education. Awareness programs should be there to eliminate all kinds of differences.

h. Measure should be taken to build women capacity to be effective partners with their husband's in house hold decision making and resource allocation. More job facilities for women in private and public sectors should be ensured.

i. It is needed to go beyond gender-neutral investment in health to address disparities that directly and indirectly affect women.

3.8. Review of the policy:

It has been claimed that the national women's development policy is the holy combination of CEDAW charter, the constitution of Bangladesh along with the Quranic scriptures. Now, the questions is, is it possible to coordinate these three at all? Could such bizarreness bring women's empowerment at all?

The National Women Development Policy (1st section, 1st chapter) begins by stating that women constitute a massive part of the population of the entire country' and thus, Women's empowerment is an integral pre-condition for the national development of the country. It is vital to ensure equal rights and equal opportunity for all women in order to escalate national development. It is to be noted that Chapter 4.1 of the first section of the policy is titled as, "Charter for eliminating discrimination against women" (CEDAW charter). Clause 17.2 of the second section states the vitality of taking necessary action to eliminate discrimination against women. The 5th chapter of the 1st section (Women's right and constitution) restated the chapter 27th of the constitution: Each citizen is to be considered as equal and is eligible to obtain equal protection from the law of the country. Additionally chapter 27, 28(1), 28(2), 28(3), 28(4), 29(1), 29(2) and 65(3) of the constitution was also mentioned.

Chapter- IV

4.1 Ministry of Women and Child Affairs

The Ministry of Women and Child Affairs is a ministry of the Government of Bangladesh, which formulates policies and maintains women and children's institutional and developmental activities. The implementation of Vision 2021, the government of Prime Minister Sheikh Hasina has taken various initiatives for the development of women and children. A large part of the population are women and children. Prerequisite for the development of the national development. Overall rights of women and children, empowerment and overall development is a key milestone in the implementation of government programs for incriminating. In light of the election manifesto of Women and Children Affairs Ministry has taken various measures to alleviate women's poverty. Empower women, stop violence against women, trafficking of women, the protection of women in the workplace and women in the mainstream of socio-economic activity to ensure the full and equal participation of women in the overall socio-economic development with the main goal is to ensure. Women to increase efficiency by providing comprehensive training, employment, labor market participation confirmation, through small and medium entrepreneurs to patronize the extensive activities being conducted to ensure the economic empowerment.

4.2 Quota system in government jobs

The quota system in Bangladesh's government jobs has been a topic of debate and controversy in recent years. The quota system is a policy that sets aside a certain percentage of government jobs for specific groups, including women, ethnic minorities, and people with disabilities, among others. Incidentally, government jobs have a total of 20 grades as per the pay structure. Its first grade is occupied by secretaries. And those who are appointed as first or second class officers start from 9th to 13th grade. A gazetted or non-gazetted first class officers is appointed in 9th grade. In terms of appointment to these positions, currently there was a provision of reservation of 30 percent freedom fighter quota, 10 percent district quota, 10 percent women quota, 5 percent minority ethnic group quota and 1 percent disabled quota subject to conditions, i.e. a total of 56 percent quota.

History: The quota system was first introduced in Bangladesh in 1972 to address the under representation of certain groups in government jobs. Over the years, the percentage of

reserved seats has increased, with the current quota system reserving 56% of government jobs for various groups.

Controversy: The quota system has been a topic of controversy in recent years, with many students and job seekers protesting against the policy. Critics argue that the quota system has led to unfair treatment of qualified candidates, as some reserved seats are often filled by candidates who do not meet the necessary qualifications.

Reforms: In 2018, the government of Bangladesh announced plans to reform the quota system in government jobs. The proposed reforms include reducing the percentage of reserved seats from 56% to 10%, while also increasing the number of available jobs overall. However, the proposed reforms have faced opposition from some groups who support the existing quota system.

Current Status: As of now, the quota system in Bangladesh's government jobs remains in place, with reserved seats for various groups. However, the government has stated that it will continue to explore options for reforming the system in the future.

In conclusion, the quota system in Bangladesh's government jobs has been a topic of debate and controversy in recent years. While some argue that it is necessary to promote diversity and inclusion in government jobs, others believe that it has led to unfair treatment of qualified candidates. The government's proposed reforms to the system have faced opposition from some groups, and it remains to be seen what changes will be implemented in the future.

CHAPTER- V

Family Violence Prevention law-----

5.1- Muslim Family Law

Despite criticism from some political parties and minority groups, on 7 June 1988 the parliament of Bangladesh passed a bill making Islam the state religion. The move was reportedly an attempt by the government to curry favour with the Muslim faithful and politically undermine the fundamentalist Jamaat-i-Islami.

While Islam is the dominant ideology governing relations between women and men in Bangladesh, one observer notes that the country's geographic and historic isolation have made it resistant to the "divine, theocratic, centralist and establishment-based" version of Islam, linked to Arabic learning.

This fact partially explains the low support in Bangladesh for the type of fundamentalism characterizing state policy towards women in other Islamic countries, and has helped frustrate any systematic attempts to curtail women's rights in the name of Islam (ibid.; Kabeer Oct. 1989, 2).

The Qu'ran (Koran) forms the basis of Islamic law (sharia) and personal or family law in most of the Muslim world, including Bangladesh. The edicts in the Qu'ran most relevant to the treatment of women deal primarily with four major areas: marriage and related topics, divorce, inheritance and ownership of property, and veiling and seclusion. Because the Qu'ran is considered to be the "literal and unmitigated word of God", the precepts laid out in the Qu'ran are strictly followed and changes in Muslim family law occur slowly . With regard to Bangladesh specifically, civil laws such as the 1939 Muslim Marriage Dissolution Act and the 1961 Family Law Ordinance were formulated to counteract some of the most discriminatory effects of Muslim family law (Alam Sept. 1992, 4-5).

The concept and practice of divorce is one example of the unequal treatment accorded men and women under Muslim family law (Eggen Mar. 1990, 7). Muslim family law allows a man to divorce at any time, while a woman can do so only if stipulated in her marriage contract . Although the 1939 Muslim Marriage Dissolution Act gave Bangladeshi women the right to divorce in certain circumstances and the 1961 Muslim Family Law

Ordinance required that both parties serve their partner with notice of intention to divorce, these laws have not been effectively enforced. Furthermore, with respect to remarriage, one observer has pointed out that any woman opposing her husband's remarrying, in a system where there is no alimony for a divorced woman, and where she will rarely have been given an appropriate education to enable her to earn her own living, runs the risk of destitution (Kamal 1989, 7).

A number of sources have identified other aspects of Muslim family law, such as the laws on inheritance, which similarly discriminate against women (Begum 1992, 6-16).

5.2. The Child Marriage Restraint Act

The 1984 amendment to the 1929 Child Marriage Restraint Act raised the minimum age of marriage from 16 to 18 years for females, and from 18 to 21 for males. Section 4 of the amended act provides punishments for any individual (male or female) above the legal age of marriage who marries a person below the legal age (United Nations 11 Apr. 1986, 10-11). At least one source notes that the average age of marriage for females has risen to 17.6 years, but others suggest that the amendment is not being effectively enforced, particularly in rural areas where it is still customary for females to marry at 15 or 16 years of age. The Coordinating Council for Human Rights in Bangladesh indicates that girls as young as six or seven are being married to boys of nine or ten years by parents confronting poverty (CCHRB Mar. 1993, 69).

5.3. The Dowry Prohibition Act

The Dowry Prohibition Act, enacted in 1980 and amended in 1982, makes the giving, taking or demanding of a dowry an offence punishable by fine, imprisonment of up to one year or both (United Nations 11 Apr. 1986, 8-9; World Bank 1990, 21). However, according to the International Women's Rights Action Watch, an international network monitoring the implementation of the Convention on the Elimination of All Forms of Discrimination Against Women, the Dowry Prohibition Act "is so contrary to social norms and practices that it is simply ignored". Legislation and social bias against women".

Although the Dowry Prohibition Act offers protection to women in law, few Bangladeshi women have the financial resources to exercise these rights in the courts. Mohammad Abdul Matin, executive director of the Bangladesh Society for the Enforcement of Human Rights (BSEHR), notes that in most cases brought before the courts, "the women

are too poor to continue with costly and time-consuming procedures" . Social stigmatization is another factor keeping women from exercising their legal rights. In the words of one BSEHR investigating officer, "in 98 percent of the cases a woman who complains against her husband cannot return honourably to his home" (ibid., 23).

Slow administrative procedures and a lack of cooperation from law enforcement agencies have led to a large number of dowry-related cases being held up in the courts . Another problem is that charges under the Dowry Prohibition Act are often filed in reaction to dowry demands made by husbands and in-laws after the marriage has taken place. Because the act defines dowry as "property or valuable security given or agreed to be given as consideration for the marriage of the parties," investigating and court authorities have dismissed cases involving demands for money made after marriage. Other sources corroborate the fact that the Dowry Prohibition Act has not been effectively enforced (World Bank 1990, 21).

5.4. Cruelty to Women Act

The 1983 Cruelty to Women Act, also known as the Deterrent Punishment Act, reiterated certain offences that were first defined in the Penal Code of 1960, and strengthened the penalties for infractions (World Bank 1990, 20). The act made the rape, sexual exploitation for gain, abduction, kidnapping or attempt to cause the death of a woman, offences subject to life imprisonment or death. In September 1992 the government also brought in the Anti-Terrorism Ordinance, which provides stiff penalties for the abduction or harassment of women, among other offences (United Nations 8 Apr. 1993, 30-31).

In response to questions raised at the 12th session of the UN Committee on the Elimination of Discrimination against Women about the effectiveness in dowry disputes of the Cruelty to Women Act, a Bangladesh government representative indicated that the act has led to a decrease in the incidence of. Dowry practices remain the single largest cause of violence against women in Bangladesh (United Nations 8 Apr. 1993, 30). Because of the social stigma attached to crimes of domestic violence, few women have come forward to press charges under the act.

Crimes of violence against women are also common outside the home, and here too implementation and enforcement of the law are lacking. Although the Cruelty to Women Act provides sanctions against the sexual exploitation of women for gain, the traffic

in Bangladeshi women in the "slave trade market," mainly to Pakistan and India, remains "a major human rights concern" (CCHRB Nov. 1992, 79). According to police estimates, as many as 5,000 Bangladeshis, mostly women and children, are smuggled out of the country every year (Reuters 24 Apr. 1991).

In cases of rape, women are reluctant to go to the police because they are often harassed by the offender and because both police and witnesses are reportedly easily "influenced and bribed". Furthermore, the definition of rape employed in the Penal Code does not allow for cases where an employer obtains consent from an employee for sexual relations through the threat of job loss.

5.5. The Family Court Ordinance

The Family Court Ordinance of 1985 set up a system of family courts at the upazila county level, providing for the legal redress of cases involving marriage, divorce, dowry and the maintenance, custody and guardianship of children . Although the system has reportedly speeded up the disposition of such cases and "has been helpful for women in getting justice" (United Nations 8 Apr. 1993, 38), most women lack information about their legal rights, and together with the social stigma attached to taking these issues to court, this has limited the ordinance's effectiveness. Another source notes that the ordinance only affirms the unequal treatment accorded men and women: "while a husband does not need to go to court to obtain a divorce, a wife must litigate in this forum, which calls for an unnecessarily long procedure". Even if the court rules in favour of the litigant, the judgement still requires validation from the offices of the local government. The source further notes that this procedure is "not an improvement since women already had to seek dissolution of their marriage in court under the Muslim Family Law Ordinance of 1961".

5.6. Domestic Violence

Although reliable statistics on violence against women are non-existent (Country Reports 1992 1993, 1126), domestic violence does receive substantial coverage in the Bangladeshi press (ibid.; CCHRB Nov. 1992, 75; Encyclopedia of the Third World 1992, 113). Not only is domestic violence a common feature of Bangladeshi life, particularly in the early years of marriage (White 1992, 137), but the rate of suicide among women may be three times as high as it is among men (CCHRB Nov. 1992, 75; Encyclopedia of the Third World 1992, 113).

According to the Bangladesh Observer, women often have no basis for taking legal action against their husbands in domestic violence cases since many Muslim marriages

are not registered (6 Dec. 1990), perhaps as many as 50 per cent (Khan 1988, 19). Police allegedly view domestic violence as "a non-criminal, marital and social problem and not as a law and order issue" (Bhuiyan 1991, 14-15). Furthermore, lacking clear authority to enter private premises in order to investigate offences, police in several jurisdictions are said to be uncertain about what constitutes an appropriate response in cases of suspected domestic violence (ibid., 15).

A large number of domestic violence cases are related to the practice of dowry. One source estimates that at least 70 per cent of wife murders are dowry-related (Huq 1989, 208). Whereas payment by the groom's family used to be common in Bangladesh and parts of northern India, in the last two generations there has been an increase, among all religious groups, in the number of payments by the bride's family, and a dramatic increase in the amount of dowry paid (White 1992, 102). Whatever the underlying reasons for this change, women are reportedly open to mistreatment if their parents cannot pay the whole sum at once in full, and new, or even recurrent, demands may be made even several years after marriage. ...In extreme cases this leads to "dowry deaths", when women are either pushed to suicide or directly murdered by their husbands' families (ibid., 103-04). There are numerous reports of husbands who assault their wives, sometimes with the help of the husbands' relatives (Bhuiyan 1991, 11-31). In one instance a husband tortured his child in order to pressure his wife (ibid., 18). Women have been beaten, strangled and burned to death, and sometimes are driven to suicide to take dowry-related financial pressures off their families (Bangladesh Observer 24 Nov. 1990; Bhuiyan 1991, 15-19; CCHRB Nov. 1992, 75). According to a report in the Women's Feature Service, there has been a "phenomenal" rise in dowry-related crime (May-June 1989, 21). In the span of only a few months in 1989 the Ministry of Women's Affairs complaint unit registered 813 cases of harassment, most of them related to dowry (ibid.). According to another source, the "vast majority" of dowry-related cases of violence go unpunished as well as unreported (Country Reports 1992 1993, 1126).

5.7. Violence Against Tribal Women

Amnesty International has reported numerous incidents of rape by army personnel of tribal women in the Chittagong Hill Tracts [These violations have taken place in the larger and historically recent context of non-tribal settlement of the area, a process which has been encouraged by successive government administrations (Amnesty International Aug. 1991, 3; International Work Group for Indigenous Affairs Dec. 1984; 24-29; Survival International Annual Review 1984, 9-11). Human rights violations in the area have been extensively documented and continue to be reported (Amnesty International 1993, 63; Ibid. Aug. 1991, 1-15)]. (Amnesty International Aug. 1991, 10-12). In one incident on 19 October 1990, 16

women, most below the age of 18, were reportedly beaten and raped by soldiers at Bilai Chari Para (ibid., 11). A military officer later indicated that three of the five soldiers responsible for the incident had been dismissed from service and the other two were jailed, but it is not clear whether the latter two were ever charged or tried for the offence (ibid., 10-11).

The evidence on rape has been corroborated by the Chittagong Hill Tracts Commission (CHTC), which has interviewed a number of women reportedly raped by army personnel between 1985 and 1990 (May 1991, 106-08). The women gave accounts of being gang raped by soldiers, sometimes in front of their children or families. Notes the CHTC, women live in continuous fear of rape. Some young women told the Commission that they are no longer able to wear their traditional dress. If they do, they run the risk of being raped. For their own safety they are forced to hide their tribal identity as much as possible. It is also too dangerous for them to leave their houses at night (ibid., 107). There are also accounts of Bengali settlers raping women during attacks on tribal villages (ibid.). Although the details are not yet clear, in one recent incident a Bengali boy may have been killed after assaulting a tribal woman. Amnesty International has received reports that as a result of the boy's death, over 200 people in Logang were massacred by a civilian defence force on 10 April 1992 (Amnesty International Apr. 1993, 25).

Because of the social stigma attached to rape, women who have been victims of rape may be rejected by their husbands or find it difficult to marry. As well, if the woman becomes pregnant and bears a child, she likely will be ostracized and will have to leave her community (Chittagong Hill Tracts Commission May 1991, 107).

The CHTC has also documented cases of forced marriage of tribal women to Muslim men. According to the CHTC, "forced intermarriage is one way in which women are used as an instrument to integrate the hill peoples into Bengali society and to change the demographic balance in the area" (ibid., 108-09). A secret memorandum encouraging army officers to marry tribal women was reportedly circulated in the area in 1983 (ibid., 109).

Chapter-VI

6.1. BNWLA VS BANGLADESH

2011 BLD (HCD) 31

Md. Immun Ali and Sheikh Hassan Arif, JJ

BANGLADESH NATIONAL WOMEN LAWYERS ASSOCIATION (BNWLA), REPRESENTED BY SALMA ALI, EXECUTIVE DIRECTOR OF BNWLA, MONICO MONA TOWER (1 & 2 FLOOR), 48/3, WEST AGARGAON, SHERE BANGLA NAGAR, DHAKA-' 1207.

VS.

GOVERNMENT OF BANGLADESH, REPRESENTED BY THE CABINET SECRETARY OF CABINET DIVISION, BANGLADESH SECRETARIAT, DHAKA AND OTHERS'

When there is a gap in the municipal law in addressing any issue, the courts may take recourse to international conventions and protocols on that issue for the purpose of formulating effective directives and guide- lines to be followed by all concerned until the national legislature enacts laws in this regard.

Article 10 of our Constitution has man-dated participation of women in all spheres of national life; Article 17 made it obligatory on the State to ensure free and compulsory education for all children; Article 28 prohibits discrimination on the ground of sex; Article 29 guarantees equal opportunity of women in employment in the public sector; Article 31 guarantees equal protection of law and to be treated only in accordance with law; Article 32 prohibits deprivation of personal liberty save in accordance with law and, most importantly, Article 36 guarantees right of free movement to every citizen. Apart from Article 10, all other guarantees mentioned above are enshrined in the Constitution as fundamental rights of every citizen and thus put an obligation on the State to ensure them to the citizens. If the State fails to ensure those fundamental rights, Article 44 grants a person aggrieved another fundamental right to move the High Court Division under Article 102 (1) for the enforcement of such rights. (Para—16)

The guarantee of free and compulsory education for children, right to liberty and the right to freedom of movement guaranteed under Articles 17, 32 and 36 respectively arc meaningless if the girls and women of this country are kept away from school and colleges on account of sexual harassment in the streets, if they face obstruction and hindrance

in the streets or any other place, if they are subjected to sexual teasing or stalking, humiliation by Romeos at public or private places and so on. It is the obligation of the State to ensure those rights guaranteed by the Constitution under Part- II, and in case of failure of the State, as in the present case, the High Court Division is obliged to entertain their grievance and intervene to redress even at the instance of public-spirited organization like the petitioner.

(Para—17)

The Universal Declaration of Human Rights 1948 (UDHR) recognizes the equal rights of men and women (Preamble articles 1 and 2). Discrimination in the enjoyment of civil, political, economic, social and cultural rights on the basis of sex has been prohibited under the International Covenant on Civil and Political Rights 1966 (ICCPR) [article 2(1)], and the International Covenant on Economic. Social and Cultural Rights (ICESCR) [article 2(2)]). The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) 1979 is the most comprehensive

treaty on women's human right, establishing legally binding obligations to end discrimination against women. It states that the full and complete development of a country, the welfare of the world and the cause of peace require the maximum participation of women on equal terms with men in all fields. Bangladesh is a signatory and has acceded to the aove instruments' making it obliged to implement those provisions. (Para—18)

Ms. Fahima Nasrin with Ms. Salma Alj,

Advocates, For the petitioner.

Mr. Md. Motaher Hossain, D.A.G. with Mr. Samarcndra Nath Biswash, A.A.G., For the respondent no.2.

Judgment delivered on January 25 and 26, 2011.

Judgment

Sheikh Hassan Arif, J.

Background:

I. During a period from 2009 till date, this country has faced (and is still facing) a new social menace which has become widely known as "eve teasing" resulting in several suicides by the victim girls, killing of their relatives or other people who try to protect the victims from any attempt by the perpetrators of such menace. The sordid incidents of so called "eveteasing" have been taking place with numerous frequency all over the country including the streets, homes, neighbourhood

areas, transports, different stations, cinema halls, amusement parks, schools, colleges, universities, working places and other public places usually frequented by women and girls.

2. In the wake of such horrific situation putting the country on the edge of precipice, a public spirited and reputed non governmental organization, namely Bangladesh National Women Lawyers Association (BNWLA), represented by its executive director Advocate Salma Ali, has approached this court seeking some directives/guidelines as, according to them, the government has failed to contain the situation. Thereupon, this court by order dated 02.11.2010 issued Rule Nisi calling upon the respondents (mainly the concerned ministries and police} to show cause as to why they should not be directed to formulate guidelines, or issue policy statements or specific legislations, to address the issue of sexual abuse, sexual harassment, eve-teasing, stalking in order to protect and safeguard the rights of the women and girls in our society in their homes and on their way to and from educational institutions/schools /colleges and other public places wherever necessary. In view of the horrific turn of such events as highlighted in the writ petition, this court, upon hearing the submissions of the learned senior members of the bar present in the court, on the same day issued the following four interim directions:

"i) the Inspector General of Police (IGP) is hereby directed to take immediate steps to apprehend all stalkers /eve-teasers who physically, psychologically, emotionally or sexually abuse or harass women and children, in particular those against whom any allegation is made of harassing/stalking girls and women in any place including at their homes, in the streets, work places and other public places.

ii) the respondent No. | is directed to issue immediate instructions to all the Deputy Commissioners throughout the country and all Upazilla Nirbahi Officers to be on high alert and to deal with this particular menace of stalking/eve-leasing and sexual harassment separately and independently of any other crime and to take appropriate and immediate action against the alleged offenders.

iii) the Secretary, Ministry of Home Affairs and the Inspector General of Police are hereby directed to take immediate steps to direct the Superintendent of Police of every District as well as the officer-in-Charge of the Police Stations to take appropriate and immediate steps for providing protection to the family members as well as the civil society who come forward to assist in the event of any eve teasing, to ensure that no harm may come to them through any reaction by the stalkers/ceve teasers.

iv) the respondents No. 3 and 4 are hereby directed to take steps to ensure that the media, including the electronic media, namely radio and television, broadcast-the-

seriousness of the menace of eve-teasing and statking and also to notify the severe consequence that may be brought upon the perpetrators. The respondents No. 3 and 4 may also engage the NGOs and civil society in order to make the general public aware of the menace which now besieges us. The community must also be told how best to protect themselves."

3. In the above mentioned order, this court also expressed concern over limitations and inefficiencies of the existing laws to deal with the situation which had blown out of proportion and further directed respondent No. 2 (Ministry of Law, Justice & Parliamentary Affairs) to take immediate steps in consultation with the respondent Nos. 3 to 7 for formulating specific laws to counter the said menace keeping in mind that deterrence should be the aim of the new law, and the court directed respondent: No. 2 to report to the court about the steps taken in this regard.

4. Pursuant to the above orders and directions, respondent no.2, through its acting Secretary, Legislative Wing, sent a report on 07.12.2010 mentioning therein some steps taken by it and other concerned ministries for the purpose of preventing the said social menace. The steps include a proposed amendment to the Nari-O-Shisho Nirjaton Daman Ain 2000 by incorporating a new section "10 Ka. Penalty for Sexual Harassment" after the existing section 10 — proposing thereby a definition of a separate offence named 'Sexual Harassment" as well as punishment of one to seven years' imprisonment and fine for committing the same. The report, in particular, refers to another step taken by the government through inclusion of section 509 of the Penal Code 1860 in the Schedule to the Mobile Court Act, 2009— thereby empowering the Executive Magistrates to punish the offenders / eve teasers on the spot.

5. By the writ petition and two supplementary affidavits, the petitioner has brought to our notice numerous macabre incidents of eve teasing/stalking along with the resultant suicides and killings of the victims and their relatives. To avoid detailed narrations, a few of them are noted below in short:

* Suicide by Rupali (Daily Samakal on 03.11.2010):

Rupali, a Hindu girl, was a student of class nine. She was kidnapped by a youth on the way to her private tutor and the youth put vermillion on her forehead — signifying Hindu marriage. Failing to tolerate the insult and social humiliation, Rupali protested
by taking her life.

* lti lost mental balance (Daily Sangbad on 04.11.2010:

The eve teasers/stalkers made Junicy School Certificate (JSC) candidate Iti to lose her mental balance. A youth named Shahriar had been teasing/stalking her for two years, but the father through fear even could not lodge a G. D. (General Diary) with the police station.

* Eve Teasers mutilated Marry's face by axe (Bhorer Kagaj on 04.11.2010)

Marry, a HSC student of Mothbaria Government College, Borishal, was attacked by local youths Rajib, Showrav and others as she protested their teasing/stalking on her way back from college. The perpetrators mutilated her face with a Chinese axe and also injured her father while he came to her rescue. Police even turned down her father's request for help as the attackers are mates of the local UP chairman.

* Class-V student Shabnur commits suicide (Shangbad on 21.11.2010):

Poor mother named her Shabnoor, after the name of a popular heroine of Bangladeshi films, as she looked pretty. Bulu's father and his people mercilessly beat Shabnoor's parents as they protested Bulu's teasing /stalking her. Failing to tolerate humiliation and mental trauma, she shamed this world by hanging herself at night.

* College girl Choiti commits suicide in fear of her pornographic exposure (Jana Kantho on 14.12.2010):

Choiti fell in love with Shagor who took her pornographic video and threatened to upload them in the internet. In fear of losing her family reputation, she committed suicide.

* Champa Rani, mother of victims, killed bv teaser/stalker (Prothom Alo on 04.11.2010):

Stalker Debashish admitted that he deliberately ran over Champa Rani with motor-bike because she protested his teasing/stalking on her daughters. Champa Rani died consequently.

* Teasers/stalkers kill teacher as he protested teasing (Bhorer Kagoj on 25.10.2010):

Eve teasers/Stalkers in Natore killed teacher Mizanur Rashid as he protested teasing/stalking on his female students,

According to the Daily Bhorer Kagoj report dated 25.10.2010, the suicide from eve-teasing/stalking drew attention in 2001 when Simi, a fine-arts student, chose to take her own life in protest of teasing in Khilgaon, Dhaka. It further reported that according to the rights' organizations 16(sixteen) girls had committed suicide as a result of such teasing/stalking in the first five months of 2010.

The above-mentioned and numerous other incidents of like nature have already raised huge concern and protests around the country. People demanded immediate actions by the government; civil society and human rights organizations organized seminars

to find a solution to this social epidemic and formed human-chains to demonstrate their grievance and frustration; and the government apparently took some steps in this regard — but the menace remained unabated. As against the above back drop, this court took up the matter for hearing at the instance of the petitioner.

Parties appeared before the Court:

6. Although the notices of the rule nisi have been duly served on all the respondents, only respondent no.2- the Ministry of Law, Justice and Parliamentary Affairs, represented by the Secretary, appeared before this court with an affidavit-in-compliance reiterating the steps taken by it as mentioned in the above noted report sent by it to this court. Non-appearance of the respondent Nos. 3 and 6, namely Ministry of Children & Women Affairs and Ministry of Home Affairs respectively, who are intimately, rather inalienably, connected to the issues being dealt with, signifies their lack of interest in the matter and is thus unbecoming and is highly dep-
recated.

Submissions:

7. Ms. Fahima Nasreen, the learned advocate appearing for the petitioner, at the very outset, draws our attention to the different news paper clippings as annexed to the writ petition as annexure-C series She submits that the problem has reached such extent that the whole conceptual perspective regarding the issue has to be changed, and since the government has not so far taken sufficient steps to tackle the problem, the court should intervene to fill up the vacuum created by the absence of sufficient faws and the lack of appropriate actions by the government. She submits that the proposed definition of 'sexual harassment' does not address the consequences of the said offence and the mental trauma of the victim and her family — which are the main causes of suicides by the victims. She argues that the term "eve teasing" as widely used now to describe the mischief is in fact doing injustice to the victims, as the term itself is contributing to undermine or lessen the gravity of the real harm caused to them.

8. Referring to the inclusion of section 509 of the Penal Code in the schedule to the Mobile Court Act 2009, she contends that this is not what the civil society and rights organizations wanted. The procedure of Mobile Court in punishing an accused is such that the accused does not have any right to engage a lawyer or 10 cross examine the witnesses resulting in unsafe and unfair victimization, she argues. Drawing our attention to different fact-finding reports prepared by the petitioner organization, as annexed to the supplementary affidavit as annexure-H, she submits that the situation is so unique that even the victims and their relatives do not feel safe to assist police or to give information to the rights

organizations to get any relief. Referring to the unabated situation prevailing in the country, she submits that the right to free movement as guaranteed to a woman under Article 36 of the Constitution has been rendered nugatory and the Government is not. taking adequate measures in this regard.

9. Mr. Motaher Hossain Saju, the learned Deputy Attorney General, appearing for respondent No. 2, on the other hand, submits that some effective steps have already been taken by different Ministries and law enforcing agencies pursuant to the decision of a meeting held on 04.11.2010 chaired by the Chief Secretary to the Prime Minister and another Inter Ministerial Meting held on 10.11.2010 chaired by the Hon'ble State Minister for Ministry of Women and Children Affairs. Referring to a letter dated 14.11.2010, annexure — 2 to the Affidavit in Compliance, he submits that the Ministry of Women and Children Affairs has already proposed an effective amendment to the Nari-O-Shishu Nirjatan Daman Ain 2000 by way of incorporating a new provision "Section 10(Ka)" after section 10. He submits that since the proposed amendment covers all the relevant mischief, the situation would be effectively taken care of once the same is incorporated in the statute book after completion of all formalities. He further submits that after inclusion of section 509 of the Penal Code in the Schedule to the Mobile Court Act, 2009, the Mobile Courts are now effectively functioning to punish the perpetrators on the spot and has already punished several offenders.

The term "Eve Teasing":

10. Heard the learned advocates, perused the writ-petition, affidavit-in-compliance and supplementary affidavit submitted by the parties. For better understanding of the issue, we may first deal with the term eve-teasing. The meaning of the words "eve" and "tease" are separately given in some dictionaries, but not the word "eve-teasing". As per Wikipedia, the word 'Eve' signifies the biblical eve, the first woman on the earth. 'Tease' on the other hand means 'to laugh at somebody and make jokes about 'them, either in a friendly way or in order to annoy or embarrass them". However, according to Wikipedia, 'eve teasing' is a euphemism used in India, Pakistan, Bangladesh and Nepal for public sexual harassment, street harassment or molestation of women by men. Whatever may be the real meaning. the word 'eve teasing' in our country has in the mean time attained notoriety to such extent that demands are abound even to change the term itself so that the real gravity of the mischief of 'eve teasing' is reflected in the name'. "Calling it 'Eve-teasing' trivialises the act; it isn't teasing, it's harassment", observed Aisha Zakaria, Director of Hollaback!, Mumbai

11. However, in our common knowledge, the word 'teasing' refers to funny comments for amusement passed by one or more individuals Lo others. It is usually harmless

if it is done between friends in a friendly environment and if the same is welcomed by the female recipient. But if it is not received easily because it connotes sexuality, it may cause mental harm to her which may sometimes lead to direct or indirect physical harm. The degree of harm caused to the female recipient depends on her social background, mental. setup, the context in which the teasing has taken place etc.

While teasing may be enjoyable and pleasant to an American or British female of young age, it may be unpleasant and harmful to a Bangladeshi female of the same age because of cultural difference and/or. the relationship, of the person doing the teasing. Teasing of younger sister-in-law is a common phenomenon in Bangladesh and is generally accepted in good grace. Sometimes the same teasing in Bangladesh may cause different degree of harm to the girls/women of different mental, social and psychological make-up. What may be normal for a girl in Dhanmondi or Gulshan, may be the reason for mental disturbance of a girl in a remote conservative village. Therefore, most of the time the effect of teasing is dependent on the recipient girl, in that a somewhat normal friendly gesture sometimes turns into sexual harassment-- making it very difficult to prove sexual harassment done in the form of so called 'cve teasing' in a patriarchal society like ours.

Existing domestic Laws:

1. Be that as it may, the academic discussion on eve teasing is not that much relevant in the instant matter. What is important is how it is affecting our society and how it can be contained. We have examined the existing relevant provisions in the Penal Code 1860, Nari-O-Shisho Nirjaton Daman Ain, 2000, Mobile Court Act, 2009 and Dhaka Metropolitan Police Ordinance, 1976. Scction 292 of the Penal Code provides for three months imprisonment or finc or both for exhibiting or selling pornographic or obscene materials ete; section 354 provides for two years imprisonment for assault or criminal force to a woman with intent to outrage her modesty; Section 75 of the Dhaka Metropolitan Police Ordinance, 1976° provides for imprisonment for three months or fine or both if some one uses indecent language or behaves indecently in public places or street etc; Section 76 of the same Ordinance provides for one year's imprisonment or fine or both for teasing a woman; Section 9 (Ka) of the Nari-O-Shisho Nirjaton Daman Ain, 2000 provides for rigorous imprisonment for a period from five to ten years for inducing a woman to commit suicide; and Section 10 of the same Ain (Act) provides for rigorous imprisonment for a period between three and ten years for touching the body of a woman for the purpose of gratification of sexual desire and so on. In addition, in the face of quick rise of the incidents of so-called eve-teasing, the government has included section 509 of the Penal Code, 1860 in the Schedule to the Mobile

Court Act, 2009*— empowering, the Executive Magistrates to impose punishments on the perpetrators on the spot. Section 509 of the Penal Code is quoted below:

509. Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture. or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may cxtend to one year, or with fine, or with both."

2. In-depth and perspicacious analysis of the provisions mentioned hereinabove reveal that they are simply not enough (o deal with the prevailing situation in this country, and to that extent we are in full agreement with the submissions put forward by the learned advocate for the petitioner organization. Intention to outrage or insult the modesty of any woman used in several sections mentioned above, particularly in section 509 of the Penal Code, was unheld by the then Pakistan Supreme Court, proves the inbuilt impediments in those provisions.

3. We have also examined the above mentioned proposed amendment, namely proposed section 10 (ka) of the Nari-O-Shisho Nirjaton Daman Ain, 2000. For ready reference the said proposed amendment is quoted below:

It appears that the above proposed amendment has covered some of the issues and mischief—but not enough to tamp down the prevailing amorphous social-epidemic. Just for example, the proposed amendment has not addressed the mischief of statking and mental trauma of the victims and their family members --although the mental disturbance resulting from the so called eve teasing and stalking is apparently the main reason for the suicides of the victims. Moreover, it docs "not address sufferings of the well wishers of the victim like relatives, teachers and neighbours who come forward to the rescue of the victim or to protest and/or resist eve-teasing and stalking.

4. There is no doubt that while enacting those laws our legislature took into account the prevalent mischief at the relevant time and the predicted harm and effect of the crime. In enacting a law, no legislature can predict everything with meticulous certainty. We also should not attribute to the legislature of past prescience of the present social menace like eve-teasing. There lies the case for change of law to cope with the changing demands of time.

5. Article 10 of our Constitution has mandated participation of women . in all spheres of national life; Article 17 made it obligatory on the State to ensure free and compulsory education for all children; Article 28 prohibits discrimination on the ground of sex; Article 29 guarantees equal opportunity of women in employment in the public sector; Article 31 guarantees equal protection of law and to be treated only in accordance with law;

Article 32 prohibits deprivation of personal liberty save in, accordance with Jaw and, most importantly, Article 36 guarantees right of free movement to every citizen. Apart from Article 10, all other guarantees mentioned above are enshrined in the Constitution as fundamental rights of every citizen and thus put an obligation on the State to ensure them to the citizens, If the State fails to ensure those fundamental rights, Article 44 grants a person aggrieved another fundamental right to move the High Court Division under Article 102 (1) for the enforcement of such rights.

6. The guarantee of free and compulsory education for children, right to leberty and the right to freedom of movement guaranteed under Articles 17, 32 and 36 respectively are meaningless if the girls and women of this country are kept away from school and colleges on account of sexual harassment in the streets, if they face obstruction and hindrance in the streets or any other place, if they are subjected to sexual teasing or stalking, humiliation by Romeos at public or private places and so on. It is the obligation of the State to ensure those rights guaranteed by the Constitution under Part- II, and in case of failure of the State, as in the present case, the High Court Division is obliged to entertain their grievance and intervene to redress even at the instance of public-spirited organization like the petitioner.

Applicability of International Instruments:

7. The Universal Declaration of Human Rights 1948 (UDHR) recognizes the equal rights of men and women (Preamble articles | and 2). Discrimination in the enjoyment of civil, political, economic, social and cultural rights on the basis of sex has been prohibited under the International Covenant on Civil and Political Rights 1966 (ICCPR) [article 2(1)], and the International Covenant on Economic, Social and Cultural Rights (ICESCR) [article 2(2)}. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) 1979 is the most comprehensive treaty on women's human right, establishing legally binding obligations to end discrimination against women. It states that the full and complete development of a country, the welfare of the world and the cause of peace require the maximum participation of women on equal terms with men in all fields. Bangladesh is a signatory and has "acceded to the above instruments' making it obliged to implement those provisions.

8. In addition, the present Government has also adopted (National Women Development Policy) 2008. In the said policy the Government reiterated its position to comply with different international covenants and instruments to protect the rights of women, These are not Just meaningless commitments.

9. It has now been settled by several decisions of this subcontinent that when there Is a gap in the municipal law in addressing any issue, the courts may take recourse lo international conventions and protocols on that issue for the purpose of formulating effective directives and guidelines to be followed by all concerned until the national legislature enacts laws in this regard. The highly regarded observation of Mr, Justice Bimalendu Bikash Roy Chowdhury addressing this issue is quoted below:

"The national courts should not, 1 feel, straightway ignore the international obligations, which a country . undertakes. If the domestic laws are not clear enough or there is nothing therein the national courts should draw upon the principles incorporated in the international instruments. But in the cases where the domestic laws are clear and inconsistent with the international obligations of the state

concerned, the national courts will be obliged to respect the national laws, but shall draw the attention of the law makers to such inconsistencies."

Applicability of international covenants and conventions was again considered by this court in State Vs. Metropolitan Police Commissioner', a case involving rights of children in our country. After examining several decisions of this subcontinent (including the one mentioned above), this court concluded that if the domestic laws were not clear enough ar there was nothing therein, the national courts should draw upon the principles incorporated in the international instruments'.

10. A different bench of this court has recently refied on international instrument: in BNWLA vs. Bangladesh and issued several directives to prevent scxual harassments in education institutions and workplaces of women. We have also had the opportunity to examine the definition of 'Sexual Harassment' given by this court in the said decision which is reproduced herein below:

Definition.

(i) Sexual Harassment includes-

a. Unwelcome sexually determined behaviour (whether directly or by implication) as physical contact and advances.

b. Attempts or efforts to establish physical relation having sexual implication by the abuse of administrative. authoritative or professional powers.

c. Sexually coloured verbal representation;

d. Demand or request for sexual favours;

e. Showing pornography;

f. Sexually coloured remark or gesture;

g. Indecent gesture, teasing through abusive language, stalking, jokes having sexual implication.

h. Insult through letters, telephone calls, cell phone calls, SMS, pottering[sic], notice, cartoon, writing on bench, chair, table, notice boards, walls of offices, factory, classroom, washroom having sexual implication.

i. Taking still or video photographs for the purpose of blackmailing and character assassination.

J. preventing participation in sports, cultural, organisational and academic activities on the ground of sex and for for the purpose of sexual harassment.

k. Making love proposal and exerting pressure or posing threats in case of refusal to love proposal;

1. Attempt to establish sexual relation by intimidation, deception or false assurance.

11. It has to be borne in mind that the judgment and decision of the above noted case was given in a context relating to sexual harassment of girls and women in educational institutions and work places. The court, following the well celebrated judgment of the Indian Supreme Court in Vishaka case "", issued some directives in the form of guidelines for preventing sexual harassment of girls/women in the educational institutions and workplaces in Bangladesh.

12. While in full agreement with the said directives and guidelines issued in that case, we are of the view that in thc present perspective and in the context of the issues raised in the instant writ petition, we should issue separate supplemental directives and guidelines so that the present horrific situation caused by the so called eve-teasing and stalking in the streets, neighbourhood, public places, rail and bus station, public and private transports, in and around the home extending to the remote villages of this country may be effectively dealt with. We hold that the definition and directive guidelines given, and / or to be given by this court in this case, are law of this country, and in view of Article [11 of the Constitution, they are binding on all concerned and are to be implemented everywhere until an effective legal measure is evolved and/or enacted by our legislature.

13. Keeping intact the definition of “sexual harassment™ given by this court in the above mentioned case’, we wish to add a "new sub-clause (m) to address the issue of ‘stalking’ of women and girls and for this purpose the term “Stalking” has to be defined in clear terms. We have examined relevant Jaws of other countries in this regard and tock help froin the definition of ‘stalking’ in the Australian law, namely “Stalking Intervention Order Act, 2008’. Although the term stalking has been defined and used in that statute in a gender neutral context, the mischief of stalking in our country in the present scenario has sexual

connotations and implications and as such the same is defined herein below in consonance with the same.

14. Since this court's earlier decision in the above mentioned case has not dealt with sexual harassment in places apart from educational institutions and work places, we hold that the mischief of sexual harassment as defined by this court and its application are not confined only to educational institutions and work places but extend to all private and public places, railway and bus stations, public and private (ransports, streets, shops, markets, cinema halls, parks and so on. The above mentioned places are not exhaustive. With the above observations and findings; we issue the following directives/ guidelines in the context of the present scenario:

Directives/ Guidelines:

1. The euphemistic expression "Eve Teasing" should not be used anymore. The expression "sexual harassment" is the appropriate term to be used by all including the law enforcing agencies, government organizations/ establishments and the media (public or private) for describing the incidents or mischief of so called cve teasing and/or stalking;

2. The definition of Sexual Harassment as given by this court in the case of BNWLA Vs. Bangladesh reported in 14 BLC(2009) - 694 is hereby adopted with modification to suit the present need and scenario and that the modified definition stated here in below including the definition of "stalking" shall apply to all places including bus, train, steamer, public and private transport terminals and stops, airports, streets, neighbourhoods, shops, markets, cinema halls etc, in addition to the workplaces and educational institutions. After the said modification, the definition of sexual harassment in the present context shall be as follows:

Definition of Sexual Harassment:"

(i) Sexual Harassment includes-

a. Unwelcome sexually determined behaviour (whether directly or by implication) as physical contact and advances.

b. Attempts or efforts to establish physical relation having sexual implication by the abuse of administrative, authoritative or professional powers.

c. Sexually coloured verbal representation ;

d. Demand or request [or sexual favours ;

e. Showing pornography;

f. Sexually coloured remark or gesture;

g. Indecent gesture, teasing through abusive language, jokes having sexual implication.

h. Insult through letters, telephone calls, cell phone calls, SMS, pottering [sic], notice, cartoon, writing on bench, chair, table, notice boards, walls of officer, factory, classroom, washroom having sexual implication.

i. Taking still or video photographs for the purpose of blackmailing and character assassination.

j. preventing participation in sports, cultural, organizational and academic activities on the ground of sex and /or for the purpose of sexual harassment.

k. Making love proposal and exerting pressure or posing threats in case of refusal to love proposal;

l. Attempt to establish sexual relation by intimidation, deception or false assurance;

m. 'Stalking' as defined below;

Definition of Stalking:

A male individual stalks a female if the male engages in a course of conduct-

(a) with the intention of causing sexual harassment or of arousing apprehension of sexual harassment in the female and

(b) that includes any of the following:

i) following the female;

ii) contacting the female by post, telephone, fax, text message (SMS/MMS/ blogging/ twitting), email or other electronic communication or by any other means whatsoever;

iii) causing an unauthorized computer function in a computer owned or used by the female or her family members;

vi) entering or loitering outside or near the female's place of residence or place of business or work or any other place frequented by the female;

v) keeping the female under surveillance;

vi) acting in any other way that could reasonably be expected to arouse apprehension or fear in the female for her own safety or the safety of her family members.

Exceptions:

The following lawful acts are excluded from the above definition of stalking:

a) the enforcement of the criminal female;

b) the administration of any Act of Parliament;

c) the enforcement of a law imposing a pecuniary penalty;

d) the execution of warrant;

e) the protection of the public revenue;

3. Every Police Station in Bangladesh will have separate cell or team, designated only for the purpose of dealing with complaints/instances of sexual harassments in

the streets, public places, shops, markets, stations or terminals, bus, train, steamer (private or pubic) and any other transport and different neighbourhood areas. Particular attention should be given to the places and areas near schools, colleges and universities, parks, cinema halls, theatres, markets and shopping malls attended by the girls and women.

4. The above cells/teams under every Police Station shall report to the existing District Law and Order Committee of each district through their respective Superintendent of Police / Police Commissioner or an officer designated by the concerned SP or Police Commissioner for this purpose.

5. The District Law and Order Committee will time to time (at least once in a month) organize and hold a "Meet the People™ session to be attended by the press and women and children rights activists and update them about the occurrences! incidences of sexual harassment in the concerned district and the steps taken to punish the perpetrators and to prevent recurrence;

6. After consultation with the cyber café service providers, the Government shall, within a reasonable time, make it mandatory for the internet users in the Cyber Cafe service providers to seek identity card from users and record their names and addresses as well as login time and duration of use including the number of the computer used;

7. Government shall, on an urgent basis. complete its initiative (0 inseit a new section in the Nari-O-Shishu Nirjatan Daman Ain, 2000 defining the mischief of "Sexual Harassment' in the light of the definition given by us hereinabove and providing appropriate punishment for the same keeping in mind that the main aim of the law or any other measures should be preventive and not retributive;

8. Government shall take immediate steps to enact law for introduction of witness and victim protection system for effective protection of victims and witnesses of sexual harassment as well as the people who come forward to resist sexual harassment. The law will provide measures for taking account of the mental trauma of the victims and for redressing the same:

9. Government shall take immediate steps to formulate law or amend the existing law for incorporating specific provisions giving evidential value to the audio/video recorded statements of victims or witnesses of sexual harassment so that the perpetrators can be punished solely on the basis of such recorded evidence of sexual harassment in case of unwillingness of the victim or other witnesses to give evidence fearing further attack and humiliation and/or torture.

10. The four directives issued by this court at the time of issuance of the Rule in this writ petition shall remain operative unless they are in conflict with the above

directives. Before concluding, we should note our appreciation for the contributions of Ms. Fahima Nasrin and other learned advocates for the BNWLA, as in this kind of cases -- where the victims do not come forward before the courts the presence of public spirited lawyers like them is the demand of the time. We also thankfully acknowledge the book published by BNWLA" titled “Eve-Teasing: The Social Menace” -- containing results of research and recommendations of the experts -- as the same has enlightened us to a great extent. Effective assistance of Mr. Md. Motaher Hossain, learned D.A.G representing respondent No. 2 (Ministry of Law, Justice and Parliamentary Affairs), is also highly appreciated.

With the above directives and observations, the Rule issued in the instant writ petition is made absolute without any order as to costs.

Let a copy of this judgment be communicated to the Ministry of Law, Justice and Parliamentary Affairs, Ministry, of Children and, Women Affairs and Ministry of Home Affairs for information and necessary actions to be taken in the light of the directives /guidelines hereinabove.

MMHS.

6.2. Concluding Remarks :

Women of Bangladesh are a driving force for the development of Bangladesh. As the women constitute half of the total population of Bangladesh, they can contribute a lot to uphold the fragile economy of Bangladesh. So women of Bangladesh need to be viewed as potential contributors to all development process. Without empowering women, the development of the country is impossible. Empowering women might achieve fast growth in the country’s development.

According to World Bank, Bangladesh will be transformed into a middle income country within 2021. Bangladesh is one of the 11 prospective countries that will transcend countries of European Union within 2030 (National Intelligence Council of USA). Therefore the active co-operation and participation of both male and female is needed for true development of our country. In this regard, implementation of National Women Development Policy is a must. Implementation of this policy can ensure the empowerment and the overall development of women in Bangladesh. So GOs, NGOs, international bodies, civil society and social workers have to play a key role to implement the National Women Development Policy.

6.3. References

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