Chapter 1: Introduction

1.1. Introduction

Women's rights have become one of the fundamental principles of state law and policies in Bangladesh. They have dominated much of the government's administrative resolutions and various initiatives of non-governmental organisations (NGOs) in recent years.

International proliferation of human rights instruments in the last thirty years has extended the concept of 'women's rights' to embrace four generations[1] of human rights beyond legal rights guaranteed under state laws. In response to such proliferation, especially after the Beijing commitment,[2] Bangladesh ratified altogether fourteen international human rights instruments and undertook a range of formal plans to promote women's rights.[3] Despite these facts, subject to a few positive changes, the women of Bangladesh still lag behind many Asian countries, including India, in several respects. The underlying causes of this therefore necessitate an exploration of the background as well as other relevant factors through which women's rights have been evolved, defined, recognised and enforced in Bangladesh. The following discussion, and Chapter 3 attempt to identify and explain some of those causes that impair women's rights.

This chapter develops conceptual issues and evaluates the gradual importance of women's rights in a national and international perspective. It aims to explore ways women's rights have emerged, been elaborated and incorporated into the legal framework in Bangladesh, and how law became an essential basis for women's movements. It highlights how women's continued struggles for spreading education and political knowledge have become transformed into legal rights. An effort is also made to canvass women's rights as human rights to show their development and significance in an international context. The discussion begins with the introduction of Bangladesh as a sovereign state.

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[1] Civil and political rights, and socio-economic-cultural rights contained in the two Covenants of the Universal Declaration of Human Rights 1948 are respectively regarded as the 1st and 2 nd generations of right. While 3rd and 4th generations of human rights respectively refer to, inter alia, the right to development claimed by postcolonial states, and group rights developed by the indigenous people. See for details, D Otto, 'Rethinking the "Universality" of Human Rights Law' (1997) 29 Columbia Human Rights Law Review 1 at 5-8.

[2] Bangladesh was one of the participants to the 4 th World Conference on Women 1995 in Beijing. It has endorsed the Platform for Action adopted in the Conference without any reservation and formulated some national policies for women's advancement. See Ministry of Women and Children Affairs, 'Review and Appraisal of Implementation of the Beijing Platform for Action: Special Session of the UN General Assembly Meeting Women 2000: Gender Equality, Development and Peace for the Twenty-First Century (hereinafter Country Paper) (2000) Government of the People's Republic of Bangladesh at 2-3.

[3] Considered in detail in Chapter 3

1.2 The study's objectives

This study primarily aims to promote the protection of women's rights through examining critically the prevailing laws of Bangladesh in an international and comparative perspective. Towards this end, all legal issues are explored in the thesis from the viewpoint of women's rights. It evaluates, analyses and compares the domestic legislation that relates to women's rights, and their enforcement, with the laws and court practices of a number of common law countries, as required. This study also attempts to identify major impediments to, and their impact on, women's rights in Bangladesh. Special attention is given to the shortcomings in prevailing laws and their unsatisfactory enforcement mechanism regarding women's rights in a comparative perspective. It also seeks to focus on new devices developed by the legal feminist theories which advocate the restructuring of laws to accommodate women's differences.1 The complete transformation of this development may not be feasible for revising laws in Bangladesh, but it can provide an encouraging insight into remedying women's discriminatory positions in law. While women's rights are generalised in the discussion of conceptual and methodological issues, and in Chapter 3, the substantive four chapters aim to promote women's rights in four particular areas. To attain this goal, the following specific objectives are formulated. These are to:

(i) identify major constraints in Bangladesh that impair women's rights;
(ii) critically examine and review the prevailing laws and judicial decisions of Bangladesh;
(iii) identify flaws in the legislative, administrative and judicial initiatives in Bangladesh and to assess their impact on women's rights;
(iv) evaluate a range of legislation and court practices of other jurisdictions and remedy the above flaws in reference to proper practices;
(v) provide particular suggestions to strengthen the legal regime concerning women's rights.

1.3. Extent and Constraints of the Study

This study only examines laws in four areas of women's rights. The first two substantive chapters deal with laws on women's employment and political participation. The subsequent two chapters are concerned with the laws on dowry and rape. In addressing

crimes of dowry and rape, the discussion endeavours to draw a linkage between two fundamental rights and women's experiences in dowry and rape crimes. These fundamental rights are respectively: the right to freedom from torture and the right to life. The exclusive reasons for this linkage are twofold: (i) the Constitution of Bangladesh does not recognise cruelty and sufferings involved in dowry and rape as the deprivation of fundamental rights; and (ii) to develop and substantiate the argument that the severity of crime attached to dowry and rape should invoke an equivalent national and international legal attention/treatment in a similar way as the fundamental right to freedom from torture and right to life do. However, the discussion is not concerned with these two rights in every detail. In exploring dowry as a form of domestic violence, the study only focuses on the development in laws under the UN framework and particularly on US legislation for two reasons. Firstly, there is no law in Bangladesh to address domestic violence despite its serious persistence and the *Dowry Act* 1980 largely fails to curb dowry because of, *inter alia*, its weak enforcement measures. Secondly, a consolidated effort has been dedicated in the international arena to acknowledge the gravity of crime inherent in domestic violence through providing it with similar legal weight of the right to freedom from torture as considered in Chapter 6. To this end, progressive laws also exist in several foreign jurisdictions including the US. Needless to mention, drawing such a linkage in this study is designed to provide instructive guidelines for reformulating and developing laws in Bangladesh to cope with increasing crimes of domestic nature.

In addressing rape, Chapter 7 attempts to establish one of the arguments that the physical and emotional assault attached to rape deserve to be treated with equal value and legal gravity of the deprivation of the right to life. Some of the fundamental rights such as freedom from movement and right to protect bodily integrity can also be suited to develop a similar nature of argument. However, the right to life is chosen for two reasons. Firstly, it is the foremost and essential right for human existence. Secondly, to provide a favourable remedy to rape victims, a series of judicial decisions of international tribunal and foreign jurisdictions compare rape with the deprivation of the right to life. Thereafter, the rest of the discussion of this chapter remains exclusively with the examination of rape laws and trial proceedings.

Women's rights in Bangladesh are regulated simultaneously by the municipal laws of the country as well as the personal laws of the Muslim and other communities as referred to in Chapter 1. Women's rights under all personal laws are beyond the scope of the thesis. Nevertheless, in addressing dowry and other laws, indication of some rights under the personal law becomes inevitable to portray the practical situation of women in Bangladesh. In this case, only Muslim personal law is taken into account since 88% of the population of Bangladesh is Muslim. Other reasons for the exclusion of women's rights under Hindu or other personal laws are the lack of data and documentation and the limitation of the scope of the thesis.

Another important limitation of the thesis is that, in expanding and protecting women's rights it does not comprehensively deal with the role of the judiciary in Bangladesh. In analysing several decisions, the discussion primarily highlights the restrictive approach in dealing with women's rights and the delay in trial of the judiciary. It is undisputed in the country that the courts of law, especially the lower courts of Bangladesh, are often improperly influenced in delivering their decisions.[2] The unethical issues that cause the gradual erosion of women's confidence in the judiciary are outside the scope of the thesis to avoid contempt of court.

Before advancing with a discussion justifying the rationale for the research in the following section, this thesis duly acknowledges that strengthening the legal regime is not the only appropriate solution for ensuring women's rights in Bangladesh. Rather, problems largely remain with making those laws accessible and enforceable through developing women's capacities and with removing other barriers to rights. Nevertheless, law has been, and is still regarded as one of the most important instruments for legitimising women's claims. As Esq argues that laws 'can be a blessing to those it serves by addressing their needs and priorities.'[3] Numerous studies have found that women's rights are better ensured in those areas that are strictly regulated by the law.[4] Moreover, it is impracticable to address all aspects of women's rights in Bangladesh in a single study. Likewise, the overwhelming importance of law should not be obscured by raising an argument about all prevalent impediments that hinder women's rights in Bangladesh. However, the substantive chapters briefly and relevantly explain the ways legal measures can be useful to, or supportive of, women

and how they can be made capable of exploiting the benefits of all initiatives aiming to improve their rights.

1.4 Justification and Significance of the Study

Protection of women's rights has become an important aspect of national and international rights discourse. The achievement of this broad goal warrants a scholarly inquiry into the legal framework of the country. To the best of knowledge of the writer, there has been a serious dearth of legal analytical research on the core theme of the thesis. Although there are some socio-legal studies on women in Bangladesh, their central focus is neither concern with the recent development of law in women's rights in a comparative context nor with an in-depth assessment into the impact of prevailing laws on women. Legal development in rights has emerged as a key issue for the women's movement over the past three decades. Women's continued engagement with law has been able worldwide to shift the attention of law from its apparent objectives to its diverse and discriminatory effect on women. Pursuant to this development, a very sophisticated legal literature has evolved to meet the traditional, unequal and particular experiences of women in employment and political participation and in violence and rape trials. Recent modification of laws in those areas in other jurisdictions is totally absent in the legal framework of Bangladesh (as is observed in substantive chapters) and such changes should have been incorporated much earlier to assist in achieving the real equality of women, and for their protection from violence and indignity. Existing laws of Bangladesh also suffer from the lack of determination of the liability for the violation of, or non-compliance with, laws ensuring women's equal and other rights. All of these factors indicate that there is a need and scope for undertaking legal research on this issue. Such a study is also necessary for the assessment of the impact of prevailing laws on women. The present study is devoted to filling this gap in legal literature with the central objective of ensuring women's rights.

1.5. Methodology of the Investigation

An assessment of the limits and effectiveness of laws regarding women in Bangladesh in a comparative and international perspective is the prime concern of the thesis, as mentioned.

This study draws on published primary and secondary materials. Laws and judicial decisions dealing with employment, political participation, dowry and rape of different jurisdictions are taken into account to compare and improve the corresponding laws in Bangladesh. To undertake a comparative review of laws in Bangladesh, a number of research methods are adopted. These are to:

- Collect and review the relevant primary and secondary literature on women's rights;
- Analyse statutes and Acts of national and international jurisdictions;
- Evaluate judicial decisions in their proper perspective;
- Consider initial State Reports to the CEDAW Committee and to other UN bodies;
- Examine the relevant public records, available statistical data and several reports of the government of Bangladesh;
- Seek opinion on political participation from 27 Women Commissioners of local government of Bangladesh by sending them specific questionnaires;
- study the press and media reports, and the annual and evaluation reports of national and international NGOs in pertinent aspects.

Chapter 2: Women's rights under the constitution

2.1 Introduction of Bangladesh as an Independent Nation

Bangladesh emerged as a sovereign state in 1971. It had experienced more than 200 years of British domination as a part of undivided India.[4] The federal government of British India, formed in 1935, recognised Bangladesh as a part of the 'Province of Bengal'.[5] The Indian subcontinent was partitioned in 1947, separating India and Pakistan as two different states. At the time of separation, the 'Province of Bengal' consisted of two separate provinces, namely: East Bengal and West Bengal.[6] Following the partition, East Bengal became a province of Pakistan and West Bengal remained with India.[7] East Bengal was acknowledged as a 'Province of East Pakistan' (the present Bangladesh) in the Constitution of Pakistan adopted in 1956. Pakistan was divided with many unresolved issues and a gulf of inconsistencies about the language, culture and heritage between the West (currently Pakistan) and the East. The West being the seat of the government had a monopoly of all economic and political power and exercised neo-colonialism on the people of the East (Bengalis). Notwithstanding having a large population and the resources for foreign earnings of the East, its people were systematically discriminated against in relation to all socio-economic and political rights. This exploitation and cultural disparity eventually led the Bengalis to resist the Pakistani regime. On numerous occasions, ranging from the Language Movement 1952 to the struggle for autonomy of the East, the Bengalis started a rebellion against the West. In the 960s, they were united under the leadership of Sheikh Mujibur Rahman, the founder of Awami League (a major political party in Bangladesh) for realising the autonomy of the East through the launching of a six-point formula and the People's Upsurge in 1969. The Awami League got the mandate to form the Central Government of Pakistan in the general election held in 1970 but the take-over of state power was denied by the leader of West Pakistan. In protest of this, a non-cooperation movement took place in the East. To confront the situation, Pakistan rulers on the night of 25 March 1971, 'attacked the civilians of Dhaka causing one of the greatest massacres in modern history.' All these unjust events subsequently helped the

[4] Since 1757, the East India Company had governed the territory of Bengal for a period of 100 years and thereafter the British government directly ruled it until 1947. Before 1757, the territory was administered for centuries by the Hindu, Buddhist and Muslim administrators. For details see, M S Alam, 'Bangladesh' in H Kritzer (ed), Legal Systems of the World: A Political, Social, and Cultural Encyclopedia (2002) Vol-1 California: ABC-CLIO 116 at 116.

[5] Government of India Act 1935 s 46

[6] Indian Independence Act 1947 ss 2-3

[7] Ibid

'autonomy' transform into a struggle for the right to self-determination of the Bengalis. Bangladesh declared its independence on 26 March 1971 and was finally liberated on 16 December 1971 after waging a bloody war of nine months and enduring the Pakistani subjugation of twenty-four years. In this war, three million Bengalis died and 'two hundred thousand women were raped'. With an estimated population of 130 million and a land area of 144,000 km, it is one of the poorest and most densely populated countries in the world. Women, 90% of whom live in rural areas, constitute 48.5% of the total population. Nearly 40% of the population of Bangladesh lives below the poverty level[18] and in the fiscal year 2001-2002, its per capita Gross Domestic Product (GDP) was US$362. Muslims account for 88% of the total population, while 11% are Hindus and the remaining are Christians, Buddhists and other religious sects.

2.2 The development and growth of women's rights in the specific context of Bangladesh

Until the early twentieth century women in undivided India were generally subjugated and segregated from the outside world regardless of their religious beliefs, culture or caste.

They were allowed to learn only religious lessons with the objectives of how to be submissive and obedient to their husbands and elders. A number of social reformers such as Raja Rammohan Roy (1772-1833), Ishwar Chandra Bidyashagar(1820-1891) and Mohishi Debendranathh Thakur (1817-1905) played a significant role in spreading female education and in changing social attitudes towards women. Their pioneering efforts abolished many social and cultural practices including child marriage, prohibition on widow marriage and the *sati*[22] through enacting legislation.[8]

2.3 Definition of Women's Rights

'Women's rights' in their literal meaning simply refer to a set of rights which are exclusively enjoyed, or rather enjoyable, by women in particular, to the exclusion of men. A narrow sense of the phrase implies only those rights that are recognised in an individual

[8] See for example, *Hindu Widow's Remarriage Act* 1856, *Child Marriage Restraint Act* 1929. See also, Research Unit on Women's Studies, *Women in India–A Handbook* (hereinafter Women in India) (1975) Bombay: Smt. Nathibai Damodar Thakersey Women's University at 69.

state. In this regard, the definitional formats of rights are the socio-economic-cultural religious and legal settings of a particular country in which women stand. Accordingly, the scope of rights varies from country to country. In a broader sense, women's rights signify a wide range of 'entitlements' that women are entitled to by virtue of their humanity, and are the same for all. Unlike the narrower approach, it transcends the limitations of legal rights recognised in a specific country. This particular concept captures the essence of human rights such as universality, inalienability and indivisibility. Human rights principles originate from, and respond to, the very nature of human being. Accordingly, the only qualifying criterion to have these rights is to be a human being. Pursuant to this criterion, 'universality' tends to support inclusion of all human rights in the class of 'women' without regard to race, colour or place, since the way of becoming a right holder is alike for all humans. 'Inalienability' entails the inherent abilities that women possess since their birth as dignified creatures of God instead of being accorded by any material source of power. These abilities entitle them to a number of rights that cannot be dissociated from without impairing their dignity and without which it ceases to exist. These rights, being inextricably linked with human nature, cannot be taken away by any force, or be divisible like other possessions. These three qualities have distinguished human rights from other rights. The consequence of the broad formulation of human rights also results in the notion of 'secular' and 'equal' natural/ethical claim, justice as well as legal rights guaranteed under the system of law. This ethical and legal significance empowers women to enjoy these rights regardless of nationality, religion, culture or colour. However, Burrows, beyond the generalised concept, has identified reproductive choice, childbirth and related rights as central to women's rights. The right to a minimum wage for work, right to literacy and right to freedom from domestic violence are also considered potential women's rights, which most disadvantaged women lack. This approach seemingly intends to divert the international vocabulary of rights to the private domain in order to make rights meaningful to the majority of women.

2.4 Women's Rights as Human Rights

Women's rights gained international recognition for the first time in the United Nations (UN) Charter 1945.[42] Since then, a series of international covenants, treaties and conferences have been concluded under UN auspices to reaffirm and elaborate women's rights. The International Bill of Rights[43] was pioneering in providing a comprehensive list of rights. To address women's rights exclusively, some specific international treaties were also developed.

These are, for example, the *Convention on the Political Rights of Women* 1953, the *Convention on the Nationality of Married Women* 1957, the C*onvention against Discrimination in Education* 1960 and more importantly, the *Convention on the Elimination of all Forms of Discrimination against Women* (CEDAW) 1979. These instruments provide provisions, aiming to place women in parallel with men in the public sphere. The CEDAW is the most comprehensive attempt in the international arena to address gender equality,[46] and is regarded as 'universal in reach, comprehensive in scope, and legally binding in character.' CEDAW articulates a broad definition of discrimination and addresses almost all aspects of women's rights.

The ruling and recommendations of major Committees[49] established by the international human rights treaties also have positive significance in identifying new aspects and thereby providing suitable remedies for women. The Committee under the *Convention on the Rights of the Child* (CRC) 1989, for example, identified traditional attitudes and stereotypes discriminatory towards girls, and called on the government of Bangladesh to eliminate those.

The World Conferences on Women[51] and the Vienna Declaration affirmed that women's rights are 'an inalienable, integral and indivisible part of universal human rights'. The result of the World Conference in 1993 demonstrated what Bunch described as 'the power of women to bring concerns from the grassroots into the public arena.' The Vienna commitments were reinforced in the subsequent conferences held between the periods of 1993-1995. The recommendations of the Vienna Declaration led the General Assembly to adopt the *Declaration on the Elimination of Violence against Women* in 1993. This Declaration is much more explicit and clear than prior conferences in defining the nature and scope of violence against women. Article 3 of the Declaration provides, amongst other things, women's rights to life, rights to equal protection of law and rights to be free from all forms of discrimination. It seeks to strengthen and complement the process of effective implementation of the CEDAW.

2.5 BNWLA vs Bangladesh

BNWLA vs Bangladesh refers to the legal battles and advocacy efforts undertaken by the Bangladesh National Women Lawyers' Association (BNWLA) to promote and protect women's rights in the country.[^1] BNWLA, as an organization, has been instrumental in challenging gender inequalities, advocating for legal reforms, and raising awareness about women's rights issues in Bangladesh. Through their legal expertise and activism, BNWLA has played a

significant role in addressing various challenges faced by women in the country, including gender-based violence, discriminatory laws, and limited access to justice. The organization's work has contributed to advancing women's rights and promoting gender equality in Bangladesh's legal and social landscape.[^2]

[1] - BNWLA: Bangladesh National Women Lawyers' Association.

[2] - For more information, please visit the official website of BNWLA.

Chapter 3: Women's rights under the statutes

3.1 Administrative Framework

The Ministry of Women's and Children's Affairs (MOWCA) established in 1978 has been the principal organ dealing with women's concerns in Bangladesh. Its role includes the formulation of national policies and the implementation of various programs and plans aiming to promote the legal and social rights of women. The Department of Women's Affairs (DWA) 1990, an implementing arm of the MOWCA, is concerned with raising awareness on women's rights and related issues. This Department is currently conducting various training programs for women to provide, *inter alia*, credit facilities and legal aid services. In 1997, the National Council for Women's Development (NCWD) was formed as the highest policy making body on women under the direct leadership of the Prime Minister. A 42-member Council comprising ministers and secretaries from several Ministries, members of parliament and public representatives is primarily responsible for monitoring national policies on women's development. It provides guidelines for the formulation and coordination of rules and regulations for the development work of different Ministries, divisions and other agencies of the government. In addition, a national organisation of women, the Jatiya Mohila Shangstha (JMS), has been functioning under the MOWCA with the objective of making progress in education and other socio-economiccultural affairs. It undertook various skill development training programs, including handicrafts, tailoring, family planning, sanitation and micro-credit. Apart from these, since 1990 Women's Development has been integrated into various projects of all Ministries in Bangladesh.

3.2 A Brief Evaluation of Government Plans and Policies

The above diversified plans and programs of the government appear to be sound in advancing women's rights in Bangladesh, yet the question then becomes: to what extent can these programs work in the real lives of the majority of women. This is not to deny the fact that the government's intervention helps generate awareness of women in relation to education, self- employment and development. A few positive changes are: the increased

proportion of girls' enrolment in primary school, the reduction of maternal mortality and child death rates and the gradual enhancement of women's participation in economic activities, particularly in manufacturing sectors. In addition, recent years have witnessed an unprecedented involvement of women in the micro-credit program that supports their empowerment, although the impact of micro-credit on poverty-reduction in Bangladesh remains controversial. A large number of women became visible in informal, relatively low-paid sectors and as chief economic earners of female-headed households. In the 1990s, women represented roughly one-quarter of the labour force in the export-oriented manufacturing sector, mostly concentrated on garment production. Nevertheless, the overall achievement remains too far from the desired goal. Bangladesh still falls behind even its neighbouring countries in several social indicators. For example, the female literacy rate is 26.1%, compared to 37.7 % in India, 78% in Indonesia, 78.1% in Malaysia and 83% in Sri Lanka. Life expectancy for women is 59.91 years, substantially below 63.13 in India and 74 years in Sri Lanka. The Infant mortality is still six times higher than Sri Lanka and one-third greater than India. Approximately 70% of married women are afflicted by nutritional deficiency. Living standards of female-headed households remain below the poverty threshold. According to the indicators (based on country's achievement in terms of women's life expectancy, literacy, and real income, compared to men) published by the UNDP, Bangladesh ranks 103 on a list of 130 countries, behind all its neighbouring countries.

3.3 The Legal System of Bangladesh

Bangladesh inherited its present legal system largely from British India. In pursuance of article 149 of the Constitution of Bangladesh 1972, a substantial proportion of its laws have been incorporated into the legal framework of the country.[9] The origin of the existing court system in Bangladesh also lies with the common law. Legislation, judicial decisions, the divine laws (for example, Muslim personal law) and customs are the basic sources of laws. Notwithstanding its different sources of law, Bangladesh belongs to the common law system.[10] It is a unitary state and 'a uniform law is applied across the country'.[11]

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[9] *The Constitution of the People's Republic of Bangladesh* (hereinafter The Constitution) 1972 art 149

[10] The legal systems of the world are split into a number of families. For details see, R David and J E C Brierley, *Major Legal Systems in the World Today: An Introduction to the Comparative Study of Law* (3rd ed 1985) London: Stevens & Sons at 17-31

3.4 The Legal Framework of Women's Rights in Bangladesh

Since independence, a range of legislative measures have been undertaken to safeguard women's rights in Bangladesh. Among others, *The Constitution of the People's Republic of Bangladesh* (the Constitution) 1972, the *Penal Code* 1860, the *Criminal Procedure Code* 1898, the *Dowry Prohibition Act* 1980, and the *Women and Children Repression (Special Provisions) Act* 2000 are noteworthy. Part III of the Constitution containing altogether 19 articles (26-47A) provides fundamental rights. The rights include: the right to equal opportunity in the public sphere, non-discrimination, equal protection of law, right to life and personal liberty, safeguards against arrest and detention, freedom of movement, assembly, association, conscience, speech, profession, occupation and religion, rights to property, protection of privacy, home and correspondence. The socio-economic rights under the *Fundamental Principles of State Policy* are accorded in Part II of the Constitution. The *Penal Code* 1860 defines some crimes such as, rape, abduction and kidnapping, against women and provides stringent punishment for them. To address the multi dimensional forms of dowry, the *Dowry Prohibition Act* was enacted in 1980 and was amended on a number of occasions

3.5 The Judicial System in Bangladesh

The judicial system in Bangladesh is constitutionally divided into two categories. These are the Supreme Court (SC) and the Subordinate Courts. The SC stands on the top of the hierarchy of courts comprising the Appellate Division (AD) and the High Court Division (HCD). The AD is the highest court of justice in the country; however, the President of Bangladesh has the prerogative to grant pardon for any sentence passed by any court, tribunal or other authority under article 49 of the Constitution.

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[11] S M Solaiman, Investor Protection in a Disclosure Regime: An International and Comparative Perspective on Initial Public Offerings in the Bangladesh Securities Market (2003) (unpublished PhD Thesis, University of Wollongong) at 62. For a detailed discussion on the legal system of Bangladesh with its historical background, see generally A Hoque, The Legal System of Bangladesh (1980) Dhaka: Bangladesh Institute of Law and International Affairs; M P Join, Outlines of Indian Legal History (5th ed 1990) Nagpur: Wadhwa and Company and V D Kulshreshtha, Landmarks in Indian Legal and Constitutional History (7th ed 1995) Lucknow: Eastern Law Book Company.

Chapter 4: Affirmative action by government policies:

4.1 Introduction

The enjoyment of legal rights is closely linked with the socio-economic-cultural and religious situation of the country.1 Further, effective implementation of rights inevitably depends on the due process of law, good governance, an independent and strong judiciary, efficient law enforcing agencies, and above all, on the honest commitment of the government. Transparent and accountable administration by state organs with a delicate balance of power is widely believed to afford and preserve rights. Having regard to this contention and to avoid excessive concentration of power on a single branch of the government, the original Constitution of Bangladesh 1972 was premised on the principle of separation of powers between the three organs of the state: the Parliament, the Judiciary and the Executive Nevertheless, the Constitution was manipulated through numerous amendments soon after its adoption, with a far-reaching negative impact on fundamental rights. It was frequently amended to grant preventive detention, to proclaim States of Emergency to suspend fundamental rights, to provide a stamp of validity to unconstitutional access to state power, to protect the perpetrators of genocide, and so on. The desperate desire for power and the political intolerance that ensued over time in the wake of mutual disregard and confrontational behaviour of the political parties4 resulted in a single-person centric strong Executive in Bangladesh. The arbitrary exercise of Executive power has undermined the democratic and independent entities of the Parliament and Judiciary. The parliamentary majority of the Executive has often been misused to achieve its single-minded goal. Some enactments of the Parliament erode constitutional safeguards of fundamental rights enjoyed previously by women.

On the other hand, all attempts to grant legal separation to the Judiciary from the Executive have been restrained recently in a coercive manner and judicial appointment has become amalgamated with other civil services. In addition, the lower judiciary and the law enforcing agencies have created a very damaging image of their roles in implementing rights. The enactment and enforcement of laws are outweighed by the political necessity or monetary consideration. The power of the police is often exercised beyond the lawful authority and, even then, has been unaccountable since the government itself condones their misuse to ensure its position. Further,

Bangladesh quite contrary to its Asian counterparts, has failed to develop any national institution to oversee its human rights situation.

This chapter argues that the socio-economic-cultural-religious environment of the country, and the government's attitude, are not appropriate to women's rights. It seeks to explore in brief the prevailing socio-economic-cultural situation of Bangladesh along with the government's behaviour to determine whether these are actually operating to the advantage of women and to what extent the political process of the country impacts on the meaningful exercise of legal rights. It also identifies unlawful decisions of the Muslim Clerics and inquires about the government's role in developing and protecting rights.

Given the scope and central concern of the thesis, the discussion of the chapter however, does not comprehensively deal with these issues. The relevance of this discussion is that the socio-economic-cultural norms of the country, an effective implementation process and the government's strong will largely shape legal rights and create the scope for the enjoyment of rights. The protection of rights requires that the state functionaries which bear a direct relationship with enforcing rights 'are not bent to accommodate extra-legal and especially political concerns.' By contrast, a subservient and conservative judiciary, inefficient law enforcing agencies and the absence of an independent national institution present causes for concern for ensuring rights.6 The concern becomes magnified and exaggerated when these are dealt with by traditionally underprivileged women in terms of their socio-economic powerlessness. Without consideration of these factors, it is difficult to understand why women in Bangladesh fail to keep up with many Asian countries and legal rights lack proper implementation.

4.2 Affirmative Action

An affirmative action is defined as 'a systematic means, determined by each employer in consultation with management, employees and unions, of achieving equal employment opportunities for women...' [12] It requires states to adopt different strategies and positive action suitable to a particular context to balance women's ratio in various sectors where they are under-

[12] Affirmative Action Implementation Manual (1985) Affirmative Action Resource Unit, Office of the Status of Women, Commonwealth of Australia at 1.

represented. As one of the parts of an affirmative measure, Bangladesh incorporated a provision for special measures for women in its constitutional framework.

4.3 Socio-economic-cultural Landscape of Women in Bangladesh

The life-styles of women in Bangladesh, subject to a few exceptions, have been strictly shaped and governed by the socio-cultural and religious values. Excessive allegiance to those values, combined with poverty, ignorance and the lack of education, engendered women's subordination over the decades. Traditionally, Bangladesh has been running through a patriarchal, patrilineal and patrilocal social system. All social institutions ranging from the household, the community to the state in Bangladesh uphold the traditional standards for patriarchy, which operates to the detriment of women's interests. The social systems recognise a rigid division of labour and separate roles for women. Family, being the basic unit, largely measures women's roles within 'motherhood', which should encompass householding, all relevant activities thereto and keeping the family sound, yet such works go unpaid, unrecognised as 'economic activity' and unaccounted for in any official statistics. Against this backdrop, all authority in relation to the economy and decision-making, and the controlling power over women's mobility remain with the male members of the family. Customarily, the word 'woman' has been best suited to roles of a 'docile daughter, a compliant wife and a dependent mother.' In various capacities, women are subject to the control of men. For example, marriage transfers the controlling authority of women from fathers or brothers to their husbands. After marriage, women are required to seek prior permission from the husbands for performing any activity outside conjugal duties or residence such as normal mobility outside the home, further education and employment and for all related activities. This social construction debars women from being visible in public life.

4.4 Religious Perspectives on Women:

Bangladesh is a predominantly Muslim country (88% Muslim) with a rigid attitude towards women. State Shariah law (Muslim personal law) is based on the Quran (divine revelation), the Sunnah and the consensus of opinion of learned expertise on Islam. To solve some of the issues which were left unsettled by the primary two sources, the Quran and Sunnah, expert opinions have been resorted to since the early stage of Islam. As already referred to in the preceding section that there has been a growing academic debate as to whether Shariah (based on Islam) has discriminated against women or treated them equally. However, the debate is not within the

ambit of this section, rather it explores the negative attitude of Muslim Leaders who interpret the provisions of Shariah in relation to women's rights. It has been broadly argued that the interpretation of Muslim leaders sometime suffers from misconception and is not supported by the divine text of Islam. Some of the religious dictates (fatwa) developed through the unrestricted exercise of personal opinion and have become customary in nature. For example, some myths prevail in rural areas in Bangladesh that 'Islam prohibits secular education and encourages only religious education' for women , 'a woman's paradise is under the feet of her husband' and so on. Subsequently, many women (being illiterate and ignorant) sacredly accept these myths and bear all sorts of violence to gain the paradise.

4.5 Good Governance and the Government's Commitment Towards Rights and Justice

The quest for good governance has become an important concern for Bangladesh. The necessity to improve governance has long been expressed in academic writings and been endorsed as a pre-condition to many foreign assistance programs in Bangladesh. The United Nations Development Program (UNDP) has set in place some operational strategies in favour of good governance. According to UNDP, governance refers to a set of mechanisms, processes and institutions through which people 'can articulate their interests, exercise their legal rights, meet their obligations and mediate their differences'. 'Good governance accomplishes these objectives in a manner that is essentially free of abuse and corruption, and with due regard for the rule of law'. However, in this context, good governance for Bangladesh denotes a system where the three organs of the government − the Executive, the Parliament and the Judiciary − function independently and transparently, and where their responsibilities are ultimately directed to the people. It is one of the essentials for democracy as well as for the sound and effective exercise of legal rights. Unfortunately, Bangladesh, unlike India, has maintained an unhappy culture of governance since its inception as an independent state. Corruption, political violence, non-accountability of the government, incompetent exercise of law and the inept bureaucracy have been chronic obstacles to good governance. 'Continued defiance of rule of law and [government] immunity have promoted a non-accountable, non-transparent administration in nearly all spheres of national life'. The autonomy and independent functions of the other two organs of the government have frequently been hindered by the unfair pursuits of the Executive. In addition,

the law enforcing agencies of Bangladesh are randomly used in the same spirit. The Executive's inaction, sometimes outright to oversee their failure, encourages police to routinely inflict physical and mental torture on people or to engage in other legal rights abuses in contravention of laws. The overall effect ultimately blocks the way of exercising or promoting rights.

Given the scope of this section, the discussion primarily focuses on the inefficient and corrupt practices of the government in administering state affairs which contribute to the denial of fundamental rights. The abusive exercise of state power along with the government's attitude towards the enactment and implementation of laws, justice and the overall protection of rights can be partly understood from the following discussion:

i) Executive and Parliament

ii) Independence of the Judiciary

iii) The role of law enforcing agencies

iv) Institutional mechanism for protection of human rights

4.6 Equal Right to Employment

The Constitution and a range of labour laws of Bangladesh recognise women's equal right to employment. In addition, a quota system has been in place in the country since 1985 to improve women's positions in employment. It helped women gain 9% more jobs in the second grade of the Secretariat in 1991.[13] In the 1980s, the significant growth of the Garment Industries (GIS) generated an unprecedented level of waged employment for women.[14] The rapid influx of women into low-scale jobs has contributed a substantial increase to foreign earnings of Bangladesh in recent years. Despite that fact, the percentage of women in high-ranking services is still below 9% and gross discrimination exists in nearly all stages of employment, especially in the GIS where women constitute 90% of the total employees.[15] economic status. 4 The existing provisions of 'equality of employment' fail to respond to this practical situation. Equality of employment entails an identical and fair treatment of all equally qualified individuals in the

[13] J Mertus et al, Local Action Global Change (1999) UNIFEM and the Center for Women's Global Leadership at 114.

[14] P P Majumder, 'Violence and Hazards Suffered by Women in Wage Employment: A Case of Women Working in the Export-Oriented Garment Industry of Bangladesh' (2000) 7 Empowerment-A Journal of Women for Women 1 at 1.

[15] A K M Nuruzzaman, Human Rights and Women in the Garments Industry in Bangladesh, Sixth Women in Asia Conference 2001 in Australia, the Australian National University, Canberra, 23-26 Sep 2001.

access to, and the enjoyment of, all rights in public jobs. 5 The constitutional de jure equality, when it seeks to equate the equals in public service, ignores the unequal educational and economic opportunities of men and women. In this regard, the Supreme Court of India maintained that '[equality] of opportunity for unequals can only mean aggravation of inequality'. 6 Women's unique experiences such as their primary roles of household and childcare, and pregnancy are also overlooked by, or 'veiled' under, that equal approach. 7 In contrast, the protective legislation 8 which purports to accommodate women's different needs, proves counterproductive and has a damaging effect on women in Bangladesh since it imposes extra costs on the employer.

4.7 Women's Quota in Bangladesh

In pursuance of constitutional mandates for special measures, the Ministry of Establishment of Bangladesh reserved 10% of the 1st grade jobs and 15% for other grade jobs in public services for women since 1985. This initiative has increased women's chances of getting more employment in Bangladesh. Nevertheless, educated women fail to obtain jobs as per quota. According to the Bangladesh Bureau of Statistics, 'a total of 116,915 posts remain vacant, including 31,219 posts of 1st and 2nd grade officers and 85,696 posts for 3rd and 4th grade employees'. Women have so far been selected only for 8.4% of the 1st grade and 8.54% for other grades. The government report to the CEDAW Committee acknowledged these vacancies. A large number of government jobs remain vacant because the quota is not realised. Thus, on the one hand, women fail to get jobs due to their inabilities, while on the other, the quota remains unfilled. This indicates that some other actions, including the strong political will of the government to implement the quota and create a balance between men and women in employment, are required to achieve the result. This action should also purport to raise awareness among women so that they can make rights enforceable.

4.8 Women's Right to Participate in Politics and Legal Provisions in Bangladesh

A range of constitutional provision ensures women's rights to vote and stand for national elections in Bangladesh. 11 As one of the fundamental rights, the equal participation of women in all spheres of public life is guaranteed under article 28(2) of the Constitution.

Article 10 recognises that the promotion of equal power of women in decision-making is a fundamental principle of State Policy. Article 9 stresses the significance of political empowerment of women and obligates the State to encourage special representation of women in local governance. The local government Ordinances further add to the process by providing women with reserved seats at local levels. Beyond these national measures, international human rights instruments underscore the priorities of women's involvement in politics[16] under which the government of Bangladesh owes affirmative obligations to give effect to those commitments. For example, the importance and relevance of women's participation in politics led to the creation of a separate convention, namely the Convention on the Political Rights of Women 1952. Women's rights to vote and to contest for positions in elected bodies received the exclusive attention of that Convention. The CEDAW goes one step further by requiring the government to undertake special and positive measures including the preferential treatment or a quota system, to ensure women's equal integration into decision making at national and international levels.

4.9 Women in the Parliament

Since the independence of Bangladesh in 1971, national elections have been held eight times. In the first and second parliamentary elections held in 1973 and 1979 respectively, no woman was elected. In the third and fourth elections of 1986 and 1988, women won only five and four seats respectively, constituting 1.6% and 1.3% of the total seats. In the elections of 1991 and 1996, the elected positions of women were eight (2.6%) and 11 (3.6%) respectively. The election result of 2001 demonstrated a lower representation of women compared to 1996. They obtained only 6 (2%) seats in the Parliament.[17]

A similar trend is also observed at ministerial levels. In holding ministries, women's positions never exceed 3%. The first cabinet of 1972 had only two women state ministers and more than two decades later (in 1996) the number was increased to four. Before 1996, no women MPs were appointed to serve in the top rank in the Parliament, nor entrusted with the full responsibility of a ministry. Except for one, women MPs were provided with traditional responsibilities such as culture, social welfare and women's affairs. At present, in a 60-member Council of Ministers, except for the Prime Minister, only two women are holding the portfolios of Women and

[16] The United Nations (UN) Charter for the first time, accorded international recognition to the organised struggle for women's rights to politics. Since then, the commitment of the UN to this end has been reflected in a series of international conventions and numerous resolutions and recommendations of its major Organs and Human Rights Committees.

[17] N Chowdhury, Bangladesh: Gender Issues and Politics in a Patriarchy, in B J Nelson & N Chowdhury (ed), Women and Politics Worldwide (1994) London: Yale University Press at 99.

Children Affairs, and Cultural Affairs. In the Fifth Parliament (1991-1995), there were 49 Parliamentary Standing Committees (PSCs). Women held only 9.1% positions and 46.80% PSCs had no women. In the Seventh Parliament (1996-2001), there were 9.4% women in PSCs and 53.19% Committees had no women. Under the present government, only 9 Committees among 39 PSCs have women members. Except for the Women and Children Ministry, each of the eight Committees has only one woman member.[18]

The Twelfth Amendment of the Constitution in 1991 created scope for the ruling party to choose one-tenth of its members from technocrats and professionals or other qualified persons in the Council of Ministers. Nevertheless, this provision has hardly been used in the last ten years to appoint a woman from those criteria. In addition, women MPs admitted that the Party Whips debarred them from raising any issue of gender discrimination, concerned that it may negatively affect the images of parties in traditional society. Therefore in the last three decades, women MPs, due to their weak positions in the Parliament, neither developed their own power nor initiated any separate discussion for empowerment of women. On some occasions the unfamiliarity with the proceedings of the parliament also hampers their contribution.

The status of women in the Parliament thus implies that constitutional guarantees cannot offer much help to them. Chowdhury argued that the 'equal participation in national life is more ideal than real. Socio-cultural factors shape and limit the nature of women's political engagement...' Apart from socio-cultural factors, a number of reasons related to the politics in Bangladesh and the organisation of political parties contribute to women's under-representation in elected offices. The following section outlines those reasons and provides a number of recommendations to achieve women's better representation in legislative offices in Bangladesh.

[18] Collected from the Bangladesh Parliament through a personal communication with Mr Jasim Uddin, Officer, Legislative Section, Bangladesh Parliament.

4.9.1 Women in Local Government

At present, the local government in Bangladesh runs through the Corporations, Municipalities and the Union Parishads (UP). This section considers only women's participation in Corporations and UP. Municipalities are excluded from the discussion since there is not sufficient information on women's representation in Municipalities to conduct a research study. However, the provisions and practices in Municipalities are similar to the other two levels of local government in relation to women's participation. Therefore the political status of women in Municipalities may largely be understood from practices that prevail under the other two tiers of local governance. The discussion shows that women politicians in Bangladesh face similar problems and discrimination in exercising their official powers and functions in Corporations and UPs. Thus, to avoid repetition, recommendations to attain a better women's participation in local governance are provided altogether at the last part of the section.

4.9.2 Women in the City Corporations

The Dhaka City Corporation Ordinance was enacted in 1983 to enhance women's participation in urban local governance. It provided reserved seats for women in non-elected positions of the Corporation. Under this provision, elected commissioners nominated 19 Women Ward Commissioners (WCs) for the Dhaka City Corporation in 1994. In 1997, the government introduced direct election for those reserved seats, when the nomination process resulted in some difficulties in enjoying women's official status. The City Corporation Amendment Bill for Dhaka, Chittagong, Khulna and Rajshahi 1999 further provided WCs with one-third reserved seats of four City Corporations in Bangladesh. At present, the numbers of elected WCs are 30 for Dhaka, 13 for Chittagong and 10 for each Khulna and Rajshahi. The functions of WCs are primarily concentrated on issues related to 'poor women', which include family disputes, social welfare, micro- credit and handicrafts. The Amendment Bill of 1999 is one of the prominent steps towards political empowerment of WCs in several respects. The integration with disadvantaged poor women helps WCs develop a better understanding about the causes and nature of gender discrimination and other problems that engulf women's practical lives. This practical experience of WCs works to make women aware, organised and active in urban and local politics.

The provision for reserved seats for elected positions was also acclaimed at home and abroad as it was assumed that WCs could participate in the governance of Corporations more confidently than before and obtain their legal status. Despite this fact, it was soon evident that WCs are not allowed to participate fully in activities in the Corporation. Discriminatory administrative decisions, particularly the lack of sincerity of the government in determining official functions and responsibilities of WCs, remains the major problem. The government gazette contains elaborate provisions regarding responsibilities of the Mayor (administrative head of the Corporation) and the male commissioners. These are, inter alia, the functions and power with regard to the nature of meetings and panel chairpersons, but there is no definite responsibility for WCs. In addition to these, a government notification barred WCs from performing four major functions. These are: (i) birth and death registration and the issuance of certificates for nationality and character; (ii) examining the designs of buildings; (iii) assisting in census and all other demographic surveys; and (iv) monitoring law and order[19].

4.9.3 Women in the Union Parishad

The Local Government (Union Parishads) Ordinance 1983 acknowledges the special significance of women's participation in local governance. Under section 5 of the Ordinance, a Union Parishad (UP) consists of a Chairman and 12 members. Among 12 seats, three are reserved for women. Until 1997, the government nominated women in these seats. The Union Parishad (Amendment) Act 1997 introduced direct election to reserved seats, under which women can contest general seats as well. Six UP elections have so far been held in Bangladesh. In the first election held in 1973, only one woman was elected in 4352 UPs. In the 1977 and 1984 elections, women won four and six seats (including two Chairmen) respectively. The elected positions of women in the 1988 and 1992 elections were 863 (out of 114,699 posts) and 1135 (out of 169,643) respectively, constituting only 7% of positions in both cases. The 1997 Act had a rapid impact on the subsequent election. In the 1997 election, nearly 14,030 women were elected in the UP. This number demonstrates a significant shift from their under-representation to a broader share in the power of UP. In recent instances, women contested positions against their husbands

[19] Cited in Staff Reporter 2003 n 221

and sons. This political identity undoubtedly accords women special status and power within the community.[20]

Despite this, a number of impediments are still powerful factors in Bangladesh to undermine their participation in a similar way as faced by women MPs in the Parliament. In addition, reports of NGOs and the daily media revealed numerous incidents ranging from discriminatory practices to harassment and sexual assault against Women Members (WMs) of the UP. In performing official duties, women face discrimination and '[reserved seats] are not seen as having same value as general ones.' For women, the assignments are largely concentrated on family planning and social welfare. Even in conducting these functions they are expected to deal with only women. Some of the discriminatory practices are: (i) nearly all development and financial projects of the UP are exclusively controlled by the Chairman along with male members;239 and (ii) under clause 38(1) of the Local Government (Union Parishad) Ordinance 1986 (Amendment), an elected WM is entitled to act as Chairperson in at least three Standing Committees (SCs) of the UP. Nonetheless, many of the UPs are yet to form any committee.240 To address the situation, the Local Government Ordinance (Amendment) was enacted in 2001. It increases the numbers of SCs of the UP from seven to 12 but provides that WM shall have to chair at least one committee. Under another proposal in the Parliament, a Social Welfare Committee was formed in each Ward. It provides that a WM of the UP shall chair the committee. Nonetheless, until the end of 2002, WMs were not given any specific power and responsibility. According to a survey of the World Food Program, more than half of the interviewed WMs are not given any membership of any SCs of the UP. Male members still dominate meetings and WMs are sidelined in the process of decision making in the UP.

In addition, the Human Rights in Bangladesh 1998 reported a series of cases which were filed against Chairmen and members of the six UPs on charges of rape, kidnapping and attempted rape and gang rape. Amongst them, a number of victims are WMs of the UP. The similar report in 2000 further revealed that in one month, two WMs were allegedly raped by the Chairman and members of a UP. However, the police in both cases took no legal action. The enactment of 1997 thus fails to provide adequate protection against these situations.

[20] S R Qadir, 'Participation of Women at the Local Level Politics Problems and Prospects' in Women and Politics n 78 at 6

To determine the effects of legislative changes on WMs in the UP, questionnaires were sent to 17 WMs in Nawabganj District under Rajshahi Division on November 2002. Their opinions were sought in five issues. These were: (i) the compliance of the Manual (UP Charter) with the formal activities of UP; (ii) the co-operation and behaviour of male colleagues; (iii) the participation in finance and development of UP; (iv) the community-attitude and (v) domestic responsibility.

Regarding the first issue, 13 WMs replied that in terms of their responsibilities, official functions of the UP did not comply with the Manual (which describes the powers and functions of the UP). Among the13, one said that her objection to this issue did not bring any positive result. Out of the remaining four, two responded that the Manual was complied with on a few occasions. One of the two WMs said that her consent was obtained for particular issues through 'good behaviour' when her opinion was in conflict with her male colleagues. One of the remaining two said that she was yet to understand the issue, while the other expressed that she only received her salary in pursuance of the Manual. In regard to the second issue, four responded that the attitudes of their male colleagues (MCs) were very negative towards them. The MCs even raised objections about WMs 'sitting on a chair' in their early days in office. One said that MCs were not cooperative and were very reluctant to accept her as their colleague. Three WMs were yet to understand their attitudes to them but they could realise that their functions were very limited, compared to MCs. Four were of the same views that their (MCs) behaviour were totally discriminatory to them. Among four, one WM said that her MCs thought that she would not be able to do any work without the help of MCs. Two responded that MCs were not good in their behaviour but they are gradually improving.

In responding about financial issues, eight WMs replied that they knew very little but their opinions were not taken into account in decision making. Five did not have any participation in this regard. One WM had to marry a Chairman (administrative head of the UP) when she kept raising complaints about her subordinate status regarding finance to the higher authority. Two responded that they did not get any opportunity to take part in financial aspects of the UP but

they were aware of some development projects. One reported that she tried to be involved in this issue but failed.

In replying about community-attitudes towards women, ten WMs expressed that, leaders of the community were generally very traditional in their attitudes and opposed women's standing for election as their representatives. Among ten, one told that some leaders raised fatwa (religious dictate) to prevent her from participating in politics with men and five opined that family encouragement helped them contest the election and overcome these difficulties. Out of the remaining seven, one WM said that in the initial stage, community attitudes were very strict and negative towards her. One did not face such a problem and one responded that the community and family both were against her. Four WMs did not respond to this issue.

About the domestic tasks, 12 WMs responded that they shoulder the prime responsibility because male family members expected that women do household work. One took the full responsibility for fear of breaking her marital bond. The remaining four were to perform similarly but their husband helped them in doing some of the household work.

Thus, it is revealed from the above discussion that the new legislation, while placing a significant number of women in formal positions in local governance, failed to recognise discriminatory practices against them and to ensure their equal access to important responsibilities. It is also observed from opinions of women members (WMs) that the community and male attitudes are more acute and negative in the UP than that of the City Corporation. In addition, WMs, in comparison with women commissioners, are to bear the full responsibility for domestic chores after performing their official duties. The comparatively high level of socio-economic and educational status of women commissioners appears to make this difference.

The level of women's representation in local legislative bodies of a number of foreign countries does not reflect their equitable participation either. However, discrimination in sharing political and financial power against women members is more noticeable and severe in Bangladesh, compared to other countries. In a comparative study covering 13 countries, including Bangladesh, the deprivation of women of their legal responsibilities is not found in several

countries, even in India. Incidents of sexual harassment have also occasionally occurred. For example, findings of the same study show only one incident of harassment and intimidation of one chief executive in Australia that led to a public inquiry and 'subsequent dismissal of the council.'

A number of administrative and legislative strategies have been developed across nations to ensure effective participation of women in local government. Despite limitations, some of these have been successful in achieving their objectives. For example, the Department of Women and Child Development in India is maintaining sex-desegregated data to evaluate and monitor the development of women at all levels of government services. Local governments of India are obligated to pay due regard to gender issues in formulating their policies and programs. To this end, municipal governments are required 'to collect, compile and maintain vital statistics in their city limits.' Special attention is given to the training and capacity-developing skills of all elected representatives in local government. The All India Institute of Local Self Government (established in 1929) including 58 other institutions are imparting training to elected women members. The Constitution (74th Amendment) Act 1992 provided a reservation of one-third of posts of Chairman for women along with a provision for reservation of one-third of general seats of the local government for women members.

In Australia, the Local Government Act 1990 requires every local government to give effect to the Equal Employment Opportunities (EEO) policy to employees and elected representatives in carrying out official duties. The EEO aims to ensure that women are treated fairly in the workplace and to remove practices that are discriminatory to women. Under this legislation, local governments are obliged to produce draft annual management plans 'which are advertised for public comment'. The public also has access to meetings in some local bodies. In New Zealand, all council meetings are required to be open to the public and the press under the Local Government Official Information and Meeting Act 1987. 'The Local Government Act 1974 obligates all Councils to prepare annual plans, detailing its policies, activities, performance targets and cost... [and to] publish an annual report which matches these policies and activities against the annual plan and be subject to independent audit.'[21]

[21] The IWAW Reports n 4.

Chapter 5: Findings, Recommendation & Conclusion

5.1 Findings :

Chapter 1 developed conceptual issues regarding women's rights in Bangladesh. After introducing Bangladesh as an independent state and as a country of the common-law system, it considered the evolution of women's rights since the mid 1800s. It explained how social reformers abolished social evils such as sati and the prohibition on widow remarriage by enacting legislation and how women used law as a site for struggle to legitimise their claims ranging from political rights to bringing substantial changes in family law. The significance of women's activism is enormous in independent Bangladesh, particularly in framing the country's Constitution which provides women with equal civil and political rights. Successive governments of the country have recognised the increasing need and priority of women's rights by formulating a series of laws and formal plans. The governments' commitments to protect and promote women's rights are also reflected in undertaking international obligations through ratifying more than a dozen human rights instruments. Nevertheless, recent experience shows very little improvement in women's legal status. The discussion has provided extensive evidence of arrest, detention and cruelty in the face of fundamental rights to freedom from discrimination and from torture guaranteed by the Constitution.

Developed and substantiated its central claim that the socio-cultural atmosphere of the country and the government's attitude are not conducive to women's rights. It elucidated the contradiction between law and local settings and considered ways women's inferior status has become an accepted social norm in Bangladesh. The discussion showed that the patriarchal tradition upholds men's supremacy and depicts women as socially and economically unworthy of significance. The religious dictates issued under fatwa further reinforce women's subordinate status and undermine their dignity. On the other hand, state functionaries which have vital links with developing and ensuring rights are paralysed by inappropriate interventions of the all powerful Executive. The Constitution and other institutional frameworks/capacities have often been manipulated to serve the Executive's goals. The lack of integrity and efficiency of the lower judiciary and the law enforcing agencies are also evident which facilitates further the unfettered exercise of state power by the Executive. A functionally independent judiciary and Human Rights Commission are essential elements of legal scrutiny over the Executive's action or

inaction towards its citizens. These have not yet developed in Bangladesh. This Chapter also attempted to explore how all of these practices erode the respect for law and have had extensive and damaging impact on persons, including women, seeking to exercise legal rights. It further observed that Bangladesh is recognised as the worst in corruption among 133 countries and that the scale of corruption unduly diverts state's resources to a few people and thereby impairs the basic rights of the disadvantaged. The chapter concluded that a transparent and accountable government which is a sine qua non for the meaningful exercise of lawful rights, can largely be established in Bangladesh should the two organs of the government:

the Parliament and the Judiciary, endeavour to achieve their independent authority as in India, instead of playing subservient roles. For example, the Supreme Court in India has been able to enhance its power to restrain undue authority of the Executive and to defend individual rights. 3 To borrow an important comment from Madhava Menon: 'judicial review is a weapon to discipline abuse of executive power... Any institution with such vast powers can become a threat if it does not have judges of the highest integrity, sensitivity to constitutional values and great professional competence.'

5.2 Recommendations:

Employment

In considering women's employment rights, Chapter 4 demonstrated that the de jure 'equality of employment' as guaranteed by the Constitution, in many respects, fails to maintain international standards and to promote a sufficient basis for obtaining real equality. The discussion examined the dilemma between the promises of formal equality and the obvious unequal power relations in Bangladesh where women are far behind men in terms of resources, status and power. It revealed further that the implementation of constitutional provisions of equality has produced substantial inequality for women by excluding them from employment in major industries. As was evident, in the absence of any statutory definition or classification of discrimination and of a monitoring body to oversee the implementation of equality, women are experiencing glaring discrimination in the workplace. The findings also conveyed that employers could easily escape punishment for violating laws due to the flaws in, and the 'softness' of, the current liability provisions. On the other hand, to recognise women's special needs, laws impose certain restrictions on women's work such as limitation on work at night time and on the weight to be lifted by women and so on.

This different treatment is justified on the grounds of 'protection' of women's biological roles, without making any alternative employment arrangements for them. This occupational restriction, in turn, reaffirms the exclusive childcare roles for women, while relieving men from this responsibility. Consequently, women alone are to bear the social cost of child bearing and rearing, and are not compensated for that. This legal mistreatment works to reduce women's employability by increasing employers eagerness for men. The actual situation of women in Bangladesh thus is observed to have challenged the rationale for the equality legislation.[22]

As regards the regulation of the contemporary workplace, the discussion also canvassed that Bangladesh is yet to enact any law with an objective to investigate or conciliate discrimination against women. No legal policy of gender mainstreaming in the labor market has been developed either, which requires an employer to maintain a minimum ratio of women in the job, or to provide for preferential treatment, where they are under represented. In addition, the existing laws of Bangladesh were seen as ambiguous, and scattered in different statutes that resulted in complexity in their interpretations and applications. Even these laws lack proper implementation. For example, the Garment Industries (GIS) of Bangladesh were found to have operated a hire and fire system without complying with basic provisions.6 Existing literature also demonstrates numerous precedents for violation of labour laws, which causes disparity in employment opportunities for women and unexpected deaths of them in the fire incidents of the GIS. Given the situation in Bangladesh, it is suggested that if the 'equality provision' and protective legislation are to really serve to the advantage of women, authorities /law must acknowledge women's specific experiences and offer favourable solutions suitable to their practical circumstances. In that case, the findings of the chapter adhere to the substantive approach which upholds the concern for equality of result and recommends the affirmative use of law to suit women's realities. It shifts the legal focus from the formal/different approaches to equality to the historic and systematic underprivileged condition of women in 366 a particular society. It also suggests that the extensive accommodation of women's differences into the law is the only way to achieve equality. Accordingly, a number of specific recommendations are advanced to achieve the outcome of equality of employment in Bangladesh.[23] These are:

[22] Bangladesh Legal Aid and Services Trust, Labour Code for Bangladesh: Perspective and Necessities, (written in Bengali) (1999) Dhaka: BLAST at 41.

[23] A K M Nuruzzaman, 'Human Rights and Women in the Garments Industry in Bangladesh', this paper was presented at the Sixth Women in Asia 2001 Conference, the Australian National University, Canberra, 23-26 September 2001 at 4.

(i) a law should be in place, which will define, clarify and outlaw the dynamics of discrimination. It should also address sexual harassment and provisions for preferential treatment for women where they are underrepresented;

(ii) under this law, employers of all public and private industries should be liable to give effect to equal and special provisions seeking to improve women's positions in employment. Pursuant to this law, the onus of proof of discrimination should lie with the employer;

(iii) failure to comply with these provisions should attract a fine of TK 50,000 (US$ 833) on the employer;

(iv) a constitutional amendment should be adopted requiring the government to establish educational institutions and special training programs at national and local levels exclusively for women, to promote their capacity and skill for contemporary needs of the workplace;

(v) there must be an alternative employment arrangement for women to remedy the consequences of legal restrictions under which they are not 'permitted' to do certain types of jobs;

(vi) a sound reconciliation policy aiming to develop anti-stereotype thinking of the employer and to balance household and paid works needs to be recognised in employment policies and programs. Under this policy, employers should be required to provide parental leave and to encourage the shared parental responsibility of the spouse;

(vii) to adopt a single labour code which can provide lawyers and judges with comfortable access to, and clear understanding of, the complex laws;

(viii) to establish an independent Equality Commission with proper authority to monitor laws in public/private industries along with the power to hear complaints of discrimination and to raise awareness among all employees about women's work. The Commission should also be

responsible for undertaking affirmative measures such as imparting special training and other relevant programs to support women acquiring skills for employment,

(ix) a new and dynamic approach must be developed in the judicial culture as in foreign jurisdictions to deal with women's current problems in employment. Applying this approach, the Supreme Court of Bangladesh should, as in India, issue guidelines for obligating the government to establish institutions for women and for prohibiting employers from practising discrimination and sexual harassment in the workplace[24].

Political Participation

Two major findings of Chapter 5 were: (i) the electoral system makes a significant contribution to women's enhanced participation in the National Parliament; and (ii) the candidate's selection process, the level of occupational and educational status and a sound political environment are important elements of political empowerment. With regard to women's placement in elected offices, the discussion showed that the Proportional Representation (PR) system in many countries resulted in a substantial increase of women in the National Parliaments. However, in Bangladesh, all of these variables were not found to be supportive of women's practical experiences, notwithstanding a series of legislative reforms undertaken over the three decades to promote their participation in politics. Indeed, the government's affirmative measure has made women MPs 'ornamental and passive beneficiaries' and is highly flawed in its objectives. It allows the government to manipulate its strength in the Parliament and has been proved to be ineffective for and degrading to women. In addition, the review of the existing literature and opinions of women interviewed confirmed that recently enacted Local Government Acts and Ordinances have failed to ensure their due participation in local elected offices. Women are constantly denied their equal rights and privileges in office for which the insensitive attitudes of the government and men have been observed to be primarily responsible. Law must combat these examples of women's disempowerment and provide a diverse approach suitable to the real context. Taking into account women's grossly uneven position in legislative offices, this diverse approach must encompass a number of specific modifications in the prevailing laws and policies of Bangladesh. These should be as follows:

[24] How changes in the language of law can better address women's unequal positions in their practical lives-see generally J St Joan and A B McElhiney, Beyond Portia: Women, Law and Literature in the United States

(i) a shift to the Proportional Representation (PR) system;

(ii) a de-centralised mode of nomination process;

(iii) the 30%-35% reserved positions for women within the party;

(iv) one-third reserved seats of the Parliament for women and direct election for these seats

(v) an efficient education policy accompanied by a proper monitoring and evaluation process, given the very low rate of women's literacy, this policy must seek 25% reserved seats for women in all public universities and provide room for developing technical institutions exclusively for women;

(vi) reservation of 35% nomination of the general seats in local governance and one- third positions of Chairman in the Union Parishad for women;

(vii) the restoration of the four major functions of the City Corporations from which Women Commissioners have unjustifiably been deprived;

(viii) a mandatory training program for males under the strict supervision of the government, which should address the constitutional principle of non-discrimination and its consequences, reflecting international practices.[25]

[25] A C Scales, 'The Emergence of Feminist Jurisprudence: An Essay' (1986) 95 Yale Law Journal 1373 at 1394.

5.3 Conclusion

The promotion of women's status depends on their advancement with rights. Law has been an effective instrument for legitimising these rights. As is evident in substantive chapters, while law operates to the disadvantage of women, at the same time it has been used as an efficient means of challenging discriminatory norms practised against women. Smart and Brophy argued that '[law], through its oppressive restrictions on women, served as a catalyst to a unified movement of resistance, but ironically it also appeared at that time to provide the major solutions to women's oppression'. Drawing on this insight, this thesis submits to review and reconceptualise laws in Bangladesh to accommodate women's specific realities. In so doing, it surveys the legal literature and experience of some common law countries which are striving for developments in law and have generated volumes of case law to address contemporary problems that women experience in employment and politics, and in violence and rape trials. Upon this finding, this study seeks to uncover deficiencies and loopholes in existing legislation in Bangladesh, and examines the ways law works to subjugate women.[26]

[26] Women, Law and Development International and Human Rights Watch Women's Rights Project, Women's Human Rights Step by Step: A Practical Guide to Using International Human Rights Law and Mechanisms to Defend Women's Human Rights (1997) United States: Women, Law & Development International and Human Rights Watch at preface.

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- Affirmative Action Implementation Manual (1985) Affirmative Action Resource Unit, Office of the Status of Women, Commonwealth of Australia at 1.
- Asia Conference 2001 in Australia, the Australian National University, Canberra, 23-26 Sep 2001.
- Bangladesh Legal Aid and Services Trust, Labour Code for Bangladesh: Perspective and Necessities, (written in Bengali) (1999) Dhaka: BLAST at 41.
- Bangladesh was one of the participants to the 4 th World Conference on Women 1995 in Beijing. It has endorsed the Platform for Action adopted in the Conference without any reservation and formulated some national policies for women's advancement. See Ministry of Women and Children Affairs, 'Review and Appraisal of Implementation of the Beijing Platform for Action: Special Session of the UN General Assembly
- Chowdhury 1994 n 16 at 99-101.
- Chowdhury 2000 n 178 at 123.
- Cited in Staff Reporter 2003 n 221
- Civil and political rights, and socio-economic-cultural rights contained in the two Covenants of the Universal Declaration of Human Rights 1948 are respectively regarded as the 1st and 2 nd generations of right. While 3rd and 4th generations of human rights respectively refer to, inter alia, the right to development claimed by postcolonial states, and group rights developed by the indigenous people. See for details, D Otto, 'Rethinking

the "Universality" of Human Rights Law' (1997) 29 Columbia Human Rights Law Review 1 at 5-8.

- Collected from the Bangladesh Parliament through a personal communication with Mr Jasim Uddin, Officer, Legislative Section, Bangladesh Parliament.
- Considered in detail in Chapter 3
- Elections of Bangladesh become the monopoly of the money and muscle power.' See for details, M R Islam, 'Good Governance and the Rule of Law in Bangladesh: Challenges and Prospects in the New Millennium', this paper was presented in a conference hosted by the Department of Economics, University of Queensland on January 2002 at 15; see also, Chowdhury 1994 n 16.
- Government of India Act 1935 s 46
- Hamid 1996 n 20 at 93.
- How changes in the language of law can better address women's unequal positions in their practical lives-see generally J St Joan and A B McElhiney, Beyond Portia: Women, Law and Literature in the United States
- Ibid.
- Indian Independence Act 1947 ss 2-3
- J Mertus et al, Local Action Global Change (1999) UNIFEM and the Center for Women's Global Leadership at 114.
- M J Frug, 'A Symposium on Feminist Critical Legal Studies and Postmodernism: Part One: A Diversity of Influence' (1992) 26 New England Law Review 665 at 667
- Meeting Women 2000: Gender Equality, Development and Peace for the Twenty-First Century (hereinafter Country Paper) (2000) Government of the People's Republic of Bangladesh at 2-3.
- N Chowdhury, Bangladesh: Gender Issues and Politics in a Patriarchy, in B J Nelson & N Chowdhury (ed), Women and Politics Worldwide (1994) London: Yale University Press at 99.
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- Rule 1987 n 38 at 486; Women in Politics n 18 at 49.
- S M Solaiman, Investor Protection in a Disclosure Regime: An International and Comparative Perspective on Initial Public Offerings in the Bangladesh Securities Market (2003) (unpublished PhD Thesis, University of Wollongong) at 62. For a detailed discussion on the legal system of Bangladesh with its historical background, see generally A Hoque, **The Legal System of Bangladesh** (1980) Dhaka: Bangladesh Institute of Law and International Affairs; M P Join, **Outlines of Indian Legal History** (5th ed 1990) Nagpur: Wadhwa and Company and V D Kulshreshtha, **Landmarks in Indian Legal and Constitutional History** (7th ed 1995) Lucknow: Eastern Law Book Company.
- S R Qadir, 'Participation of Women at the Local Level Politics Problems and Prospects' in Women and Politics n 78 at 6
- See for example, *Hindu Widow's Remarriage Act* 1856, *Child Marriage Restraint Act* 1929. See also, Research Unit on Women's Studies, *Women in India–A Handbook* (hereinafter Women in India) (1975) Bombay: Smt. Nathibai Damodar Thakersey Women's University at 69.
- See Islam 2002 n 44 at 15; M R Islam, 'Free and Fair General Elections in Bangladesh Under the Thirteenth Amendment: A Political-Legal Post- Mortem' (1996) 26 Political Administration and Change 17 at 19.
- See P P Majumder, 'Impact of Working Conditions and Terms of Employment on the Women's Labour Force Participation and their Labour Productivity' (2001) 8 Empowerment-A Journal of Women for Women at 1-36.
- Since 1757, the East India Company had governed the territory of Bengal for a period of 100 years and thereafter the British government directly ruled it until 1947. Before 1757, the territory was administered for centuries by the Hindu, Buddhist and Muslim administrators. For details see, M S Alam, 'Bangladesh' in H Kritzer (ed), Legal Systems of the World: A Political, Social, and Cultural Encyclopedia (2002) Vol-1 California: ABC-CLIO 116 at 116.
- *The Constitution of the People's Republic of Bangladesh* (hereinafter The Constitution) 1972 art 149

- The IWAW Reports n 4.
- The legal systems of the world are split into a number of families. For details see, R David and J E C Brierley, *Major Legal Systems in the World Today: An Introduction to the Comparative Study of Law* (3rd ed 1985) London: Stevens & Sons at 17-31
- The UN Study n 6 at 27-23.
- The United Nations (UN) Charter for the first time, accorded international recognition to the organised struggle for women's rights to politics. Since then, the commitment of the UN to this end has been reflected in a series of international conventions and numerous resolutions and recommendations of its major Organs and Human Rights Committees.
- US Department of State, Bangladesh- Country Reports on Human Rights Practices (hereinafter US State Report) 2001 at 11.
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