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Sonargaon University (SU)
সোনারগাঁও ইউনিভার্সিটি (এসইউ)

Research Monograph

On

"Affirmative actions in favor of women under the constitutional Mandate and Other Status: Bangladesh Perspective"

This Research Submitted for the Partial Fulfillment of the award of the degree in LL.B (Hon's) Department of Law, Sonargaon University, Dhaka.

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Dedication

This Research is dedicated to my
Father & Mother

LETTER OF TRANSMITTAL

To
Md. Abdul Alim
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Subject: Submission of research paper on **"Affirmative actions in favor of women under the constitutional Mandate and Other Status: Bangladesh Perspective"**

Dear Sir.

It is a great pleasure for me to submit the thesis on **"Affirmative actions in favor of women under the constitutional Mandate and Other Status: Bangladesh Perspective"** While I doing this thesis, I have tried my level best to make this project paper to the latest standard. I think that thesis paper will fulfill your requirement and pleased you. I, therefore, hope that you would be kind enough to go through this thesis paper for evaluation.

I am always be ready for clearance of any part of my thesis.

Thanking you

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CERTIFICATION

This is to certify that the thesis on "**Affirmative actions in favor of women under the constitutional Mandate and Other Status: Bangladesh Perspective**" is done by Sharmin Akter in partial fulfillment of the requirements for the degree of LL.B. (Honours) from Sonargaon University, Dhaka. The thesis has been carried out under my guidance and is a record of the bonafide work carried out successfully.

……

Md. Abdul Alim
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DECLARATION

I do hereby that this Research Monograph on the **Affirmative actions in favor of women under the constitutional Mandate and Other Status: Bangladesh Perspective** have been done by me and this Research is free from all plagiarism and without help of other. I further declare that this monograph is prepared with my own effort and it was not and never submit to any institute for any academic reason.

_____

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ACKNOWLEDGEMENT

I gratefully acknowledge all support and encouragement extended to me by many individuals and institutions to undertake this program. First of all, I would like to express . I am grateful to the authority of the Sonargaon University, Dhaka.

My deepest gratitude and appreciation to my thesis supervisors, Professor Abdul Alim and Associate Professor Sarmin Jahan Runa, Faculty of Law, for their kind, consistent and efficient guidance which were indispensable to the completion of the study. I highly appreciate the active assistance and cooperation of all academics and administrative staff of the Faculty of Law during the course of the study. The Postgraduate Coordinator and former Associate Professor Abdul Alim, Faculty of Law, are gratefully remembered for their generous support extended to all my academic needs. I wish to express my appreciation to all staff in the Sonargaon University.

I would like to express my gratitude to those persons who gave me the relevant information in order to precede my research report also my brother whose cooperation helped me greatly to conduct my research I extremely pay my gratitude to all authors and writers where precious works and publications aid me complete this primitive work.

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Abstract

This paper reviews evidence indicating that as it has been enforced so far, affirmative action has contributed negligibley to women's progress in the workplace, affirmative action can be modeled as a tax on employers whose female employment growth growth greater than the regulatory standard, The tax constraint will not be binding as we shall see, this may hely explain an affirmative action program that is generally ineffective for women, Women's right to positive discrimination is a legally recognised right in the Bangladesh Constitution. Different policies of the government as well stipulate positive discrimination of women. By virtue of the fact that there is large-scale discrimination against women in the society, laws ensured some additional advantages for women to make parity between the two sexes in the society. To implement the constitutional provisions different steps have been taken by the government but in reality the positive discrimination to be effectively applied, the change in the approach of the society is imperative. The present paper presents a complete picture of positive discrimination of women in Bangladeshi law. For that different affirmative steps taken by the Government of Bangladesh are examined. And also the role of judiciary has been highlighted.

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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 generations1of human rights beyond legal rights guaranteed under state laws. In response to such proliferation, especially after the Beijing commitment, 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 term affirmative action refers to a policy aimed at increasing workplace or educational opportunities for underrepresented parts of society. These programs are the commonly implemented by businesses and Governments by taking individuals' race, sex, religion, or national origin into account. according to the Equal protection clause of the fourteenth amendment, minorities only aim for those lower standers. The role of affirmative action admissions in the general institutional atmosphere is especially important in legal education and legal practice because of the continuing.

1.2 Aims of the Study

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:

- ✓ Identify major constraints in Bangladesh that impair women's rights;
- ✓ Critically examine and review the prevailing laws and judicial decisions of Bangladesh;
- ✓ Identify flaws in the legislative, administrative and judicial initiatives in Bangladesh and to assess their impact on women's rights;
- ✓ Evaluate a range of legislation and court practices of other jurisdictions and remedy the above flaws in reference to proper practices;
- ✓ Provide particular suggestions to strengthen the legal regime concerning women's rights.

1.3. Scope and Limitation 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 Rationale and Importance 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. Research Methodology

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 Two: Bangladesh as an Independent State and Women's Rights

2.1 Introducing Bangladesh as an Independent State

Bangladesh emerged as a sovereign state in 1971. It had experienced more than 200 years of British domination as a part of undivided India.[1] The federal government of British India, formed in 1935, recognised Bangladesh as a part of the 'Province of Bengal'.[2] 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.[3] Following the partition, East Bengal became a province of Pakistan and West Bengal remained with India.[4] 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

[1] 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.

[2] Government of India Act 1935 s 46

[3] Indian Independence Act 1947 ss 2-3

[4] 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 Emergence of Women's Rights in 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.[5]

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 state. In this regard, the definitional formats of rights are the socio-economic-cultural religious

[5] 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.

and legal settings of a particular country in which women stand[6]. 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.[7] Since then, a series of international covenants, treaties and conferences have

[6] C Bunch, 'Women's Rights as Human Rights: Towards a Re-vision of Human Rights' (1990) 12 *Human Rights Quarterly* 486 at 486.

[7] Although the concept of 'women's rights as human rights' is largely the product of the 4th World Conference on Human Rights 1993, its basis lies with the UN Charter 1945. Prior to the adoption of the UN Charter, women's rights received significant attention in the writings of a good number of prominent writers, and national and international conferences. However, the UN Charter, for the first time, legally made women's rights international. For details see, A S Fraser, 'Becoming Human: The Origins and Development of Women's Human Rights' (1999) 21 *Human Rights Quarterly* at 853-906.

been concluded under UN auspices to reaffirm and elaborate women's rights. The International Bill of Rights 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 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[8] 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 Women51 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.

[8] Six Committees have been established under the major six international human rights treaties under the UN. These are commonly called the 'treaty-monitoring bodies' to monitor the implementation of those instruments. For example, Human Rights Committee under article 28 of the ICCPR, and CEDAW Committee under article 17 of CEDAW are responsible for monitoring the states' compliance with these two Conventions.

2.5 Administrative Framework and Government Policies on Women

2.5.1 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.

2.5.2 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.

2.6 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

[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.

2.7 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

2.8 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.

Chapter 3

Impediments to Women's Rights in Bangladesh

3.1 Introduction

The enjoyment of legal rights is closely linked with the socio-economic-cultural and religious situation of the country.[12] 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

[12] 'Legislating may not be the answer to the 'problem' of culture', 'women's rights legislation exist, they often are not enforced because of cultural isolation', see E G Mountis, 'Cultural Relativity and Universalism: Reevaluating Gender Rights in a Multicultural Context' (1996) 15 *Dickinson Journal of International Law* 113 at 142 & 148

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.[13] 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.

3.2 Socio-economic-cultural Situation 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

[13] W Sadurski, 'Judicial Review and the Protection of Constitutional Rights' (2002) 22 *Oxford Journal of Legal Studies* 275 at 275-276.

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[14]. This social construction debars women from being visible in public life.

3.4. Religious Attitudes towards 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

[14] *The Situation of Women in Bangladesh', Country Briefing Paper,* (hereinafter Briefing Paper) at 4. http://www.abd.org/Documents/Books/Country_Briefing_Papers/Women_in_Bangladesh/default.asp (5 November 2001)

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.

3.5. 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'.[15] '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

[15] Good governance-and sustainable human development- UNDP Governance policy paper', http://magnet.undp.org/policy/chapter1.htm (6 June 2002).

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

3.5.1. Executive and Parliament

3.5.1.1. The Position of the Executive under the Constitution

Bangladesh has a parliamentary form of government. The President is the constitutional head of the state and exercises all of his functions, subject to two exceptions,[16] in accordance with the advice of the Prime Minister. The President is elected by the members of the Parliament. There is a Cabinet for Bangladesh comprising the Prime Minister at its head and such other ministers as the Prime Minister may from time to time designate. The Prime Minister, who has the support of the majority of the members of Parliament, is appointed by the President. Under article 55 of the Constitution the Prime Minister is the chief executive of the country. Accordingly, the executive power of the Republic is exercised by or on the authority of the Prime Minister.

[16] Article 48 (3) of the Constitution empowers the President to appoint the Prime Minister pursuant to clause (3) of article 56 and the Chief Justice pursuant to clause (1) of article 95. See *The Constitution of the People's Republic of Bangladesh* 1972 (hereinafter The Constitution) art 48(3).

Chapter 4

Equal Right to Employment

4.1. Introduction

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.[17] In the 1980s, the significant growth of the Garment Industries (GIS) generated an unprecedented level of waged employment for women.[18] 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.[19] 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 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.

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

[18] 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.

[19] 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.

4.2. Defining Equality

'Equality' is a recurring and dominant theme in women's rights discourse, though its universal or unique definition has yet to develop.[20] At a similar time or in a similar situation equality may require different treatment for different individuals to produce an equal result. Equality, as sharply opposed to discrimination and unfair adversaries, in its simplest expression signifies an equal access to all benefits and opportunities guaranteed by law. In another sense, equality might refer to the relationship of men and women and to the 'ways their roles are socially constructed'. Its broader expression is explained by Justice R Abella as '[equality] is evolutionary, in process as well as in substance, it is cumulative, it is contextual, and it is persistent. Equality is, at the very least, freedom from adverse discrimination.' In Bliss v Attorney General of Canada equality before the law is defined 'as the right of an individual to be treated as well by the legislation as others who, if only relevant facts were taken into consideration, would be judged to be in the same situation.' Given its diversities, a number of feminist theories have been developed worldwide to explore equality. Two central approaches to equality are sameness and difference. They are based on the notions that respectively, likes should be treated alike and unlikes unlike. Sameness is predominantly focused on the formal approach to equality. It presupposes the equal ability of men and women and claims for their identical treatment in enjoying all rights. This approach, however, does not recognise the same rights for all individuals but only for equals, 'similarly situated individuals'. For example, this equality analysis can preclude a person with mental disability from being treated equally with a person without mental disability. Thus, the focus is not on their different status but on the different impact of law on each of them with an effect that is very unlikely to promote the already disadvantaged groups in society.

Consequently, it ignores the socio-economic and political reality in a particular country that disfavors women. The Supreme Court of Canada observed that every differential treatment might not result in inequality; rather, identical treatment may produce a serious inequality. For example, if a woman is required to undertake a similar strength test with a man to obtain a job, it will be very unlikely to bring an equal result for women as was the issue raised in Travail. An

[20] A Afsharipour, 'Empowering Ourselves: The Role of Women's NGOs in the Enforcement of the Women's Convention' (1999) 99 Columbia Law Review 129 at 132.

analogous situation was also demonstrated in Lavell in which the Canadian Court failed to provide an equal remedy to a woman because of her marital status.[21]

4.3.1. 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...' [22] 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-represented. As one of the parts of an affirmative measure, Bangladesh incorporated a provision for special measures for women in its constitutional framework.

4.3.2 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.

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[21] 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

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

4.4 The Political System of Bangladesh

Bangladesh is a unitary parliamentary form of government, based on the Westminster model of governance. The Parliament is formally called Jatiyo Sangshad (House of the Nation), comprising 300 members. Representation in the Parliament is determined on the geographical divisions known as constituencies. Members of the Parliament are directly elected from 300 single territorial constituencies. In addition to these, there are 45 reserved seats for women. 7 Under the Constitution of Bangladesh, elections of the National Parliament are held every five years.

The country is split into six administrative Divisions. In hierarchical order, the Division stands at the top of the administration under which 68 Districts are currently functioning. The third tier of administration is Thana (Police Station). As of March 2003, there are 496 Thanas throughout Bangladesh. A Thana is divided into a number of administrative units known as Unions. 8 A Union again consists of nine Wards. There are roughly 80,000 Villages under Wards. The headquarters of Thanas are mostly in urban areas of the country. Local government bodies in urban areas are called Municipalities and Corporations. Currently, 225 Municipalities for major cities and four City Corporations for metropolitan cities exist in Bangladesh.[23] In July 2000, the Zilla (District) Council Law was enacted to provide a lower level representation in the District through indirect election, however this election has yet to be conducted.[24] The Upazila is another administrative unit ranking above the Union. It is not operational at the present time, and thus is excluded from the discussion of the chapter.

4.5 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.

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[23] Ibid.

[24] US Department of State, Bangladesh- Country Reports on Human Rights Practices (hereinafter US State Report) 2001 at 11.

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[25] 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.

4.5.1 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.[26]

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

[25] 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.

[26] 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.

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 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.[27]

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.

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

4.6 Causes of Women's Under-representation

As a part of the process of the UN commitment to advance women's participation worldwide in decision-making, the Expert-Group Meeting was held in Vienna in 1989. Delegates from 16 countries identified a number of common reasons for women's under-representation in politics. The prominent reasons are: the membership systems of political parties, the 'male-modeled politics', unfavourable selection process, the lack of resources, socio-cultural negative attitudes and the marginal level of development and structural barriers. Education, professional skill and occupational status, inter alia, were regarded as structural barriers. Nonetheless, the above factors do not appear always to be exclusive reasons for unequal participation of women in the Parliament. For example, despite having developed economies the average percentage of women in Parliaments in Western Europe and the Group of developed countries is only 16.4% and under-representation of women in legislative bodies is a worldwide phenomenon. Although women account for 50% of the voters in the world, they hold less than 12% of seats in national legislatures. However, some countries, through using international provisions in the domestic sphere, made noticeable progress in enhancing women's positions in National Parliaments. The experiences of a number of countries, including Nordic ones, provide lessons where women have an average equitable share in politics. The following discussion proceeds by [28] examining those experiences with the objective of promoting women's under-privileged status in politics in Bangladesh.

4.6.1 Electoral System

An electoral system has a profound impact on representative democracy. The two major electoral systems worldwide are the Majority-Plurality (MP) and the Proportional Representation (PR). Bangladesh adheres to the MP electoral system. In all elections votes are cast and counted for an individual candidate. To gain a seat in elected bodies, a candidate is required to earn the most votes. The electorate can use only a single-non- transferable vote. No other options such as preferences or alternative votes are provided under electoral laws in Bangladesh. Despite it being simple to understand and use for the electorate, this system experiences criticism across nations for a number of reasons. The central criticisms are: (i) this pattern of voting does not reflect adequate and fair representation of a disadvantaged or minority group in legislative bodies; (ii) a

[28] The UN Study n 6 at 27-23.

large number of 'wasted votes' are left by the system. The votes that small parties or individuals obtained become useless when they fail to win the election; and (iii) it is susceptible to the manipulation of electoral constituencies. The dominant parties are more likely to gain seats in the Parliament from votes of a comparatively bigger constituency with a great number of electorates.

The lack of relevant qualities such as the non-availability of resources and family supports for contesting elections in Bangladesh discourage women from participating in politics. After getting a party nomination women are less likely to influence the majority votes in a traditionally male-dominated culture. The pattern of campaign and voter-mobilisation in Bangladesh further reduces their possibility of winning, since it demands extra 'muscle' and monetary power. Support from voluntary organisations or the business community is also a lesser possibility for women in Bangladesh. This is because women in a conservative culture, and with their overburdened household responsibilities compared to men, cannot maintain relations with them. In addition, the low level of literacy and the lack of political knowledge influence the electorate to run after the symbol of a party instead of an individual candidate under the party. This trend also works against women due to their limited mobility and therefore limited familiarity with the general public.46 In such a situation, the following discussion argues that women's share in politics can be better ensured under the PR system.[29]

Under PR, political parties make national lists of electorates. The electorates vote for the list rather than for an individual candidate. The relative strength and popularity of the parties instead of personal appeal or qualities of a candidate influence the electorate. The real competition thus takes place within parties after the election. Parties obtain seats in the Parliament in proportion to their overall share of votes. PR aims to curb an exclusive dominance of major parties and to make the Parliament more participatory. Unlike MP, nearly all casting votes become useful to gain a parliamentary seat. Therefore this system is more likely to favour a minority group to maximise its votes with the parliamentary seats. However, a strong criticism that is often raised against the PR system is that it leaves much discretion with political parties. It is ultimately the party, not the electorate, that determines the seat of a candidate in the Parliament. PR does not facilitate a geographical linkage between the electorate and the MP. Nevertheless, in regard to

[29] Rule 1987 n 38 at 486; Women in Politics n 18 at 49.

women's enhanced representation in National Parliament, empirical findings across the world suggest that PR offers greater access to women than MP does. The annual reports of the Inter-Parliamentary Union revealed that women held 11% of seats in the Parliament in those democracies using MP. The figure was nearly doubled to 20% of those countries adhering to PR. In a cross-national study covering 23 countries, Rule found that PR resulted 'in the greatest proportion of women MPs among 21 countries tested'. Except for a few instances, the transformation from MP to PR led to 'a 15.6% jump in the female proportion of the national legislature'. The following table displays a clearer picture in favour of PR [30]

The increase in constituencies from 300 to 400 in Bangladesh may further make PR morebeneficial for women. It will be more obvious for women to be included in the party list when the number of constituencies increases. As Matland recommends, an increased number of constituencies creates more scope for accommodating candidates of divergent backgrounds to contest elections. The constitutional provision regarding inclusion of technocrats in the Council of Ministers should also be utilized in favour of women. As already noted, 'money and muscle power' play a major role in elections in Bangladesh for which it is often difficult for women to contest the election. Since the assumption of this position does not require direct election, qualified women, if selected under this criterion, may contribute to promote women's political empowerment without being concerned about the costly election process.[31]

4.7 International Commitment and the Parliamentary-Quota of Bangladesh

The international community pressured governments of Bangladesh to recognise the need for enhanced women's participation in politics. The governments' commitment to this end has been reflected in a number of laws and constitutional amendments. Following the enactment of the Local Government Ordinance 1976, the Constitution was amended in 1976. It required the government to provide special representation for women. Consistent with affirmative measures set out in international instruments, another amendment to the Constitution was made in 1978; it increased reserved seats for women from 15 to 30 for a period of 15 years that lapsed in

[30] 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.

[31] 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.

1987.196 The 10th Amendment of the Constitution in 1990 extended those seats for another 10 years, but that period expired on 4 April 2001. A further extension called for an Amendment to the Constitution (a two-thirds majority is required for an Amendment). The erstwhile government introduced a Bill on this issue but failed to pass the Bill since it did not have the two-third majority in the Parliament. The present government has recently passed the bill and extended women's reserved seats from 30 to 45 for a period of ten years.

The provision for reserved seats has been effective in increasing women MPs in the Parliament of Bangladesh; however, a strong controversy has arisen about the nature of the representation (through reservation) itself and the mode of nomination of women MPs. In several respects, women MPs from reserved seats are treated less than equally with those of general MPs in the Parliament. At present, the Constitution provides for 45 overall reserved seats for women through indirect election by the members of the Parliament. As a result, the ruling party which has the majority in the Parliament exclusively gains these seats. This also makes these women MPs very loyal to the leaders of the party. Unlike general MPs, they lack geographical, organisational and grassroots support. The ruling party uses the constitutional provision for two purposes: (i) to exploit those 'controllable' women MPs in favour of the government; and (ii) to create a positive image of the government within and outside the country that it favours women's political empowerment. The effect of this thus cannot develop women's independent political careers, but rather reinforces their subordination in politics. This practice does not encourage other political parties to nominate women candidates for general seats in the Parliamentary election.[32]

The review of the CEDAW Committee reveals that numerous countries have adopted divergent measures under articles 4-5 of the CEDAW to promote women's positions in politics. The measures include a mandatory provision for political parties to guarantee a certain percentage of seats for women and positive action undertaken by the government. For example, in Argentina, a constitutional amendment was made in 1993 that reserved one-third of winnable seats for women. All Nordic countries extensively used article 4.1 of the CEDAW to close the gender gap in politics.208 As of 1997, they had the highest number of women in legislatures. 'The

[32] Chowdhury 2000 n 178 at 123.

quantitative increases in women's share of political post' began to affect the traditional division of labour. Currently, women are holding important portfolios in place of only traditional ones. In 1997, Tanzania enacted a law, guaranteeing 15% of the total seats in Parliament to women. In Costa Rica, the Electoral Code Reforms of 1996 ensured 40% of positions in all levels of political parties for women. A Standing Order of the government of India provides that 30% of seats should be contested by women at local and district levels. The State of Maharastra achieved this target. The Constitution Eighty-Fifth Amendment Bill seeking to reserve one third of parliamentary and State Assembly seats for women is awaiting consideration in the Parliament.

4.8 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.

4.8.1 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[33].

4.8.2 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

[33] Cited in Staff Reporter 2003 n 221

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 and sons. This political identity undoubtedly accords women special status and power within the community.[34]

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.

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

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.

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.

Chapter- 5:

Practical Scenario of Domestic Violence and Protection of Women

5.1 Present situation of domestic violence in Bangladesh

In Bangladesh, the patriarchal capitalism puts women in such a position within their communities that they always remain subordinate under male domination and in many cases this is reflected through violence.[35] Thus a woman commonly has risk of experiencing domestic violence within her family and it is not very surprising that the husband is more likely to assault and/or batter his wife if she fails to meet his dowry demands or to perform household work.

Domestic Violence against women (DVAW), materialization of a historic unequal power relation between sexes, is a form of discrimination and mistreatment of women which results in physical, psychological, and socioeconomic costs to women and society as well. Termed as a global epidemic, DVAW is as much fatal as any serious diseases or accidents that causes deaths of women of reproductive ages[36] and is one of the most disgraceful expressions of human rights violation across the world. WHO multi-country study (10 countries including Bangladesh) demonstrates that most of the women in the study areas experience physical and sexual spousal violence in their lifetime, ranged from 15% to 71%.[37] In Bangladesh, DVAW is a very common practice which denies women's equal opportunity, security, self-esteem, and dignity in the family and in the society as a whole. Being in a patriarchal society, powerlessness and vulnerability is associated with women's lives where they are dominated and subjugated by the men. In Bangladesh, women face various forms of violence, ranging from wife abuse to rape, dowry killings, acid throwing, sexual harassment, and sexual slavery through trafficking in women[38] among which domestic violence is widely prevalent both in urban and rural areas as an everyday matter of women's lives. Deeply rooted subordinate positions of women allow men to dominate and control not only their families and resources[39]but also lives of women.

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[35] S.T. Hadi, (2009) "It's OK to beat my wife?", – Patriarchal Perceptions of Bangladeshi Respondents and Factors Associated,Bangladesh e-Journal of Sociology, V- 6(2), p- 4-14 .

[36] World Bank, 1993.

[37] WHO, 2005, Reports on Bangladesh.

[38] H. Zaman, Violence against Women in Bangladesh: Issues and Responses, Women's Studies International, (2010), Forum, 22(1): 37-48.

[39] K.T. Hossain, Violence against Women in Bangladesh, in the Proceedings of the 8thAnnual Conference

Consequently, societal norms and traditional values associated with gender roles and supremacy within households and society tend to trigger, dictate and provoke domestic violence against women in Bangladesh.[40] Many researchers and theorists discovering the factors associated to violence against women focus on the ecological approach which covers factors of individual, partner, and social context. Women in Bangladesh face domestic violence for very trivial matters. In most cases, they suffer without any reason which is the definite demonstration of subordinate position of women in the patriarchal society. In a study, it is revealed that the most frequently-mentioned reasons for violence included questioning the husband in day-to-day matters, failure of the wife to perform household work satisfactorily, economic hardship of the family, failure of the wife to take proper care of the children, not conforming to veil or other expected behaviour, inability to bring money from parental home, not taking good care of in-laws and relatives, and husband's frustrations in relation to his various activities even dark complexion of children[41] are even violated by the husband and in-laws if she is incapable of giving birth to a child or a son. In this stage, she usually faces humiliation, verbal abuse, mental or physical torture, force to conceive again and again until a male child is born. Another most common reason in Bangladesh that initiates domestic violence against women and many women are giving their lives from either homicides or suicides is the increasing prevalence of dowry for which is strictly prohibited. In addition, covetous nature of men and society perpetuating dowry and violating wives for not getting the expected dowry causes many deaths of women. However, in most cases women live with the abusive husband and in-laws by considering their socioeconomic dependence on men. To consider leaving the husband in the face of violence may induce sufferings for children, no place to go- place at paternal home lost at the time of marriage, and social stigma to broken marriage Moreover, in Bangladesh, through the ender socialization, women come to see dependence and deprivation relative to male family members as natural, a

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of Hong Kong Sociological Association, (2007) p. 257-264; and C.S. Keung, H. Traver, and L. Xiuguo, (eds.) Narratives and Perspectives in Sociology: Understanding the Past, Envisaging the Future Immigration and Refugee Board of Canada (2009) Bangladesh: Violence against Women, Especially Domestic Violence; State Protection and Resources Available to Survivors of Abuse, Accessed 5 August 2014 <http://www.unhcr.org/refworld/docid/403dd1e40.html> International Centre for Diarrhoeal Disease Research-Bangladesh (2006) Domestic Violence against Women in Bangladesh

[40] M.A. Koenig,, S. Ahmed, M.B. Hossain and A.B.M.K.A.Mozumder, Women's Status and Domestic Violence in Rural Bangladesh: Individual and Community Level Effects,Demography, (2003), p- 40:269-288.

[41] A. Bhuyia,, T. Sharmin and S.M.A. Hanifi, Nature of Domestic Violence against Women in a Rural Area of Bangladesh: Implication for Preventive Interventions, J Health Popular , (2003), 21(1): 48-54, ICDDR,B: Centre for Health and Population Research.

logic that encourages them to accept the violent behaviour against them.[42]Institutionalized social norm make women perceive violence as justified, and as they do not have any places to go they have to believe that violence is the only destiny of women, which they cannot escape until death. In Bangladesh, different social and behavioural traits like age, education, socioeconomic status, family pattern, religion etc. are associated with domestic violence. Research reveals that wife's age and marital duration are associated with violence; younger women are more at risk of domestic violence than the older women and longer the marital partnership lesser the violence. Consequently, child marriage, which is very common in rural areas, contributes to the high rate of the continuation of DV. Increased education of both spouses is linked to lesser risks of women to be violated within marriage. Men from low socioeconomic levels have greater probability of perpetrating violence against wife. Slum dwellers, alcohol and drug users are more violent to their wives. In some cases, witnesses of violent behaviour at parental home increased the likelihood of being violated or perpetrating violence. Husband's violent behaviour is associated with the history of abuse of husband's mother by his father and the women who has witnessed the violent behaviour of her father against her mother in the parental house increases her chance to be violated by her partner; and in this case she accepts it as a common fate of all women in the society.[43]

In Bangladesh, due to existing socioeconomic and political systems domestic violence against women is not only manifestation of gender inequality, but also serves to continue this and as a result DV is accepted and tolerated here; and once a woman is victimized by DV, her probability to be victimized again is very high.

Another important system is unequal rights of women in marital life which attributes at the time of marriage, and women remain vulnerable in marital life. One aspect is unilateral divorce right of husband which they enjoy without any complicated legal system, as a result Muslim men use their divorce rights as weapon of DV against their wives; and most of the women are in a threat of divorce in their marital lives. Indeed, various circumstances oblige women to stay with

[42] S.R. Schuler, S.M. Hashemi and S.H. Badal, Man's Violence against Women in Bangladesh: Undermined or Exacerbated by Microcredit Programmes? Development in Practice, (2007), V- 8(2), p- 148-157, Accessed 7 August, 2014 <http://www.unicef-irc.org/publications/pdf/digest6e.pdf>.

[43] R.T. Naved, and L.A. Persson, Factors Associated with Spousal Physical Violence against Women in Bangladesh, Studies in Family Planning, World Health Organization WHO Multi-country Study on Women's Health and Domestic Violence against Women (2005), V- 36(4), p- 289-300.

husband after being violated; and be violated again and that is the ultimate paradox which undoubtedly supersedes the entire bottom lines to domestic violence against women in Bangladesh.

Women are often considered to be financial burdens on their family, and from the time of birth, they receive less investment in their health, care and education. With the advent of puberty, differences in the ways that adolescent girls and boys are treated become much more pronounced. Adolescence is not viewed as a distinct phase of life; instead the onset of physical maturity is seen as an abrupt shift from childhood to adulthood. At puberty, girls' mobility is often restricted, which limits their access to livelihood, learning and recreational and social activities.

Bangladesh's rates of child marriage and adolescent motherhood are among the highest in the world. Maternal mortality rates also remain extremely high. Poor maternal health is the result of early marriage, women's malnutrition, a lack of access to and use of medical services and a lack of knowledge and information. Most women give birth without a skilled attendant. In the home, women's mobility is greatly limited and their decision making power is often restricted. For instance, about 48 per cent of Bangladeshi women say that their husbands alone make decisions about their health, while 35 per cent say that their husbands alone make decisions regarding visits to family and friends.[44]

Domestic violence is a pervasive problem in Bangladesh and presents a huge threat to the security of girls and women. In a 2007 research study, more than half of ever married women aged 15-49 reported that they had experienced some form of physical and/or sexual violence from their husbands, and one quarter had experienced it in the past year1.[45]Additionally, more than one third of both men and women believe that men are justified in beating their wives in specific circumstances, such as arguing.[46]

[44] UNICEF, State of the World's Children: The Double Dividend of Gender Equality, 2007.

[45] National Institute of Population Research and Training (NIPORT), Bangladesh Demographic and Health Survey 2007, March 2009, Acid Survivors Foundation, Bangladesh, World Bank, Whispers to Voices: Gender and Social Transformation in Bangladesh, 2007.

[46] *ibid.*

The practice of dowry, a lower age at marriage, and poverty are all associated with women's higher likelihood of experiencing and condoning violence[47].Adolescent girls are often victims of 'eve teasing' or sexual harassment and are not prepared to face such a situation. In one of its most extreme forms, violence against women takes the form of acid attacks. Although legislation exists to prevent acid attacks, enforcement remains weak. Since May 1999, there have been almost 3000 reported cases of acid throwing, the vast majority against girls and women, however many cases remain unreported.[48]

A study by ICDDR, B in 2012, indicated that 70% of violence suffered by women occurs within their home. The 5th Bangladesh Demographic and Health Survey, (BDHS) 2013 showed 63% of women experienced sexual or physical violence from husbands.

Being vulnerable in a patriarchal society, women face various types of domestic violence in Bangladesh. In a recent study[49] it has been observed that mainly four types of domestic violence occur, i.e. physical, psychological, economic and sexual abuse and violence; all are prevalent throughout Bangladesh. Most of the victims (93%) reported in the study that they had experienced physical violence; only 13 per cent reported of having experience of sexual violence, 91 per cent of victims reported economic violence and 84 per cent reported psychological violence committed by their husbands. Occurrence of domestic violence varies little in terms of urban-rural divide. A ICDDR,B study shows that among ever-married women, 40% of those in the urban area and 42% in the rural area reported physical violence by their husband.[50]However, sexual violence by husband is more prevalent in rural areas (50%) than urban areas (37%), according to the study.

People often focus on grave social and health impact of domestic violence as it creates social instability, insecurity and gender disparity. The WHO Multi-country Study on Women's Health and Domestic Violence against Women (2005) showed that less than 1% of physically abused women reported the matter.

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[47] *ibid.*

[48] *ibid.*

[49] Centre for Policy Dialogue, 2009.

[50] ICDDR,B, 2006.

It is a matter of concern that a culture of acceptance, even, has grown and is being transmitted from generation to generation to the point of being institutionalised. A study of BNWLA[51] shows that 30 percent of women think that husbands have the "right" to inflict physical violence upon their wives.

"Women are usually taught to stay mum when their husbands are violent towards them," stated Advocate Sultana Kamal, Chairperson of We Can End Violence Alliance -"Domestic violence against women is acceptable in our society and unless we do something to change this attitude, the situation will not change."

The Bangladesh government passed the Domestic Violence (Prevention and Protection) Act 2010 in Jatio Sangsad on Octorber 5, 2010. Awareness needs to be raised among people to make the law socially acceptable and to encourage victims to register their complaints, she emphasizes.

According to interlocutors, the most pervasive form of violence against women in Bangladesh is domestic violence, with an estimated 60% of married women reported to having experienced violence at the hands of a spouse and/or in-laws. Other manifestations of violence include: different forms of sexual violence including rape and eve-teasing; discrimination and violence based on ethnicity, religion, caste, indigenous status, disability, or work; dowry-related violence; sexual harassment; forced and/or early marriages; acid attacks; psychological violence in custodial settings; economic exploitation and cross-border trafficking, among others. Harmful customary and religious practices and violence perpetrated against minorities were also highlighted in numerous testimonies.

Domestic Violence against women and girls in Bangladesh is widespread and political influence; administrative failure and lack of social resistance and implementation of laws are the main reasons that lead to the perpetrators going free. Lots of NGO and international research organisations are closely monitors the overall situation of women and girls in Bangladesh and documents the issues relating to violence against women, in particular, dowry violence, rape, acid violence and stalking (sexual harassment). Victims of rape face severe social stigma where

[51] www.bnwlabd.org /Bangladesh National Woman Lawyers' Association, Last accessed on 23 August, 2014.

in majority cases victims are treated as the guilty party by the police. As a result a majority of victims/their families do not seek justice and try to hide incident.

Due to a weak criminal justice system, insensitivity, corruption, wrong post-mortem reports (present government is trying to reform the systems and try to establish the fact once it happened, in this connection the government appointed women physicians/expertise for preserve the proper evidence after the incident occurred) the judicial procedure is hindered. Though a deep rooted patriarchal mindset and lack of awareness is behind such violence; however, non implementation of laws are also instigating such violence. The inaction and corruption of law enforcement agencies and their reluctance to investigate or arrest the accused also contribute to the continuing crime of violence against women.

Police statistics and assessments by non-government organisations (NGOs) working to establish women's rights show that there is in an increasing trend in violence against women and girls in Bangladesh. According to police records, while there were 2,981 cases of dowry-related violence in 2004, the figure has already hit 4,563 in the first nine months of 2012. Also, where there were 2,901 rape cases recorded in 2004, the figure for the current year, up to August, stands at 2,868.[52]

There are in fact, various types of domestic violence such as Intimate Partner Violence. It refers to behaviour by an intimate partner or ex-partner that causes physical, sexual or psychological harm, including physical aggression, sexual coercion, and psychological abuse and controlling behaviours. Likewise, Sexual Violence refers sexual act, attempt to obtain a sexual act, or other act directed against a person's sexuality using coercion, by any person regardless of their relationship to the victim, in any setting. It includes rape, defined as the physically forced or otherwise coerced penetration of the vulva or anus with a penis, other body part or object.

5.2 Protection of Women from Domestic Violence in Bangladesh: Who will bell the cat?

Domestic violence against women is a cause and a consequence of inequality and discrimination, whether in law and/or practice, (we got good law if we analysis the present laws but it does not work for properly due to weak administrative systems and leaking of proper information) and it is a source of deep concern globally, especially as it substantively impacts the effective exercise

[52] www.ipsnews.net/2012/10/violence-against-women-persists-in-bangladesh/, Last accessed on, 24 August 2014.

of citizenship rights by women. Every country in the world has the responsibility to take effective measures to prevent and respond to all forms of violence against women, and, it is ultimately up to State authorities to make elimination of violence a priority. Violence against women cannot be addressed in isolation of context, including the historical, political, economic, social and cultural contexts and realities that impact and shape the lives of women and girls in Bangladesh.

The degree and extent of the problem of domestic violence in Bangladesh requires identifying the priority areas for interference so that required steps can be taken. In fact, at least half of women in Bangladesh experience domestic violence at least once in their lives.[53] But, there are unfortunately no plenty support groups for victims of domestic violence. Nationwide efforts in this regard are expected to be initiated to combat domestic violence. Legal and other initiatives such as imposing punishments on the perpetrators as well as responses to create awareness and motivational programs are highly encouraged.

The main focus to reduce the domestic violence against women and girls in Bangladesh should be on Law and order force ensuring during incident and quick response, Cultural reforms (negative things which discriminate women), Environmental reforms (Secure and free and fare environment ensure for women), Establish new victim support centre according to the density of the population, Justice system reform (Set law and quick justice system, once offenders offence established), Mindset change (Women and girls are not weak or neglected person), Human right Act ensure in Bangladesh (It works in all section as it is the right of every citizen), Field based Research and Evaluation process and take action for practical solution.

Currently, there are few interventions whose effectiveness has been proven through well designed studies. More resources are needed to strengthen the prevention of intimate partner and sexual violence, including primary prevention, i.e., stopping it from happening in the first place. But the important factor is that few NGO's and very weak women activist will not monitoring and properly control the overall systems as it a big disease in Bangladesh as anything happens in family unfortunately first victim is women or girls.

[53] The domestic violence against women in developing countries, World Bank Report,2009

Regarding primary prevention, there is some evidence from high-income countries that school-based programmes to prevent violence within dating relationships have shown effectiveness. However, these have yet to be assessed for use in resource-poor settings. Several other primary prevention strategies: those that combine microfinance with gender equality training; that promote communication and relationship skills within couples and communities; that reduce access to, and harmful use of alcohol, drugs and gambling, illegal relationship out of proper family life and that change cultural gender norms, have shown some promise but need to be evaluated further.

To achieve lasting change, it is important to enact legislation and develop policies those are address discrimination against women; promote gender equality; support women; and help to move towards more peaceful cultural norms.

An appropriate response from the Government various sectors/NGO's can play an important role in the prevention of violence against women and girls in Bangladesh. Sensitization and education of diversification of culture and laws within the country and other service providers is therefore another important strategy. To address fully the consequences of violence and the needs of victims/survivors requires a multi – organisation's response. Combined workforce will only reduce the bad effect of domestic violence against women and girls in Bangladesh. Bangladesh is rising and now it is called digital Bangladesh. Connectivity is very important to reduce any sort of violence in the society. Bangladesh needs the better co-ordination to reduce any sort of risk in the society.

The Constitution of Bangladesh guarantees equal rights to men and women, albeit only in the spheres of the State and of public life, and not in the private sphere. This is a source of concern, as inequality and discrimination are pervasive in the private sphere and thus constitutional protection to rights of equality and non-discrimination should therefore be extended to all spheres. Some efforts have been made towards the empowerment of women and to increase women's political participation, including through reserved seats and quotas.

This is a big credit for the Bangladesh government has taken a number of legal steps to improve the situation of women, starting with the Suppression of Violence against Women and Children

Act in 2000. In 2009, the National Human Rights Act was passed followed by the Domestic Violence Act in 2010. But need to co-ordination afford and reform the organisation structure according to the demand of the present situation. According to these laws government should take proper strategic implementation plan and monitoring and controlling by the proper and experience motivated manpower. There are lots of skills and experience women and girls in Bangladesh but for the opportunity and proper platform, they should not utilise their skills and experience. Government and private sectors will need to hunt these high skills and experience female to engage and reform this sector to improve the zero tolerance.

Everybody will agree that women and girls in Bangladesh, they need to raise their own voice to outcome the any unwanted or worse situation in their lives. Finally, they are the victim of any domestic violence within the family. It is very important to them to act immediately and look forward to help and solution of the issues. It is to be taken into account that Bangladesh is a signatory to international conventions designed to protect women and their rights. Yet, very little is being done on the ground to ensure a secure and safe environment for them. So every woman and girls should take the advantage this facility and raise the issues in the proper platform to resolve severe domestic violence issues against them. Violence against women in Bangladesh, particularly domestic violence, gives us a brief understanding of the problem. In order to arrest this increasing trend of domestic violence against women, proper intervention strategies need to be undertaken. Existing laws regarding protection of women's rights should be enforced effectively. Law enforcing agencies need to handle the situation with sincerity, honesty and with strong commitment without any hesitation and bias. Awareness and capacity building among the women are also important. Under the existing social values and norms, males' attitude and behaviour towards females need to be changed as well. In this regard relevant agencies of the Government, NGOs, researchers, lawyers, activists and media need to come forward and work together for advocacy and campaign against domestic violence in women and girls in Bangladesh. Most importantly a huge change in the mental setup is highly required and it must be remembered by all that love and peace in intimate relationships as well as in family nexus among male and female members should be based on self respect and respect to others. Female members of a family should realize that who sleeps upon her rights may not enjoy her rights and only for the sake of mere harmony the ultimate dignity of oneself should not be sacrificed.

Chapter 6: Findings, Recommendation & Conclusion

6.1 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.'

6.2 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.[54]

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.

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

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.[55] These are:

(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

[55] 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.

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[56].

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

[56] 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

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:

(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.[57]

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

6.3 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.[58]

[58] 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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- 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
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- 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.
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