

## **Gender Justice in Bangladesh: An Evaluation**

Aqib Tahmid

Student of LL.B. (Hons) 3<sup>rd</sup> Year, Department of Law, University of Chittagong

### **Abstract**

Since ancient times, women have suffered from ‘crime against humanity’, so injustice to women is not a recent development. Traditional customs and norms play a great part to place women in a subordinate position in this patriarchal society. And there are other factors prevalent as well that make them vulnerable compared to man. In the pre-Islamic era women were treated as a burden and Arabs used to bury their daughters alive. After the advent of Islam, everything changed, and women were provided with rights. The wife of Prophet (SWA), Khadijah owned her own business and acquired the right to ownership of property in addition to many other rights which was an exception of the pre-Islamic era. After the emergence of Islam many rights were given to women and these rights are sanctioned by ‘Sharia’. In Indian mythology when Draupadi was insulted, Pandavas went into a war with Kauravas, hence kurshtrya began because of securing a woman’s pride. Scriptures of major religions gave women honor to a great extent no doubt. But what else can be done to make the position of women stronger in this male dominated society needs to be given a thought considering the age in which we are living in.

### **Introduction:**

*“In the nineteenth century, the central moral challenge was slavery. In the twentieth century, it was the battle against totalitarianism. We believe that in this century the paramount moral challenge will be the struggle for gender equality around the world<sup>1</sup>.”*

Gender Justice is a Human Right. Dignity, equality and liberty are incorporated within the purview of human rights. Equality and non-discrimination are positive and negative statements of the same principle<sup>2</sup> and it can be expressed that gender equality implies non-segregation amongst man and woman and in the same time maintaining the equity and equality amongst man and woman in all spheres. Gender discrimination, though amongst the most subtle, is one of the most all-pervading forms of the institutionalized deprivation.<sup>3</sup>

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<sup>1</sup>WuDunn, Sheryl, Nicholas D. Kristof, and Alfred A. Knopf. "Half the sky: turning oppression into opportunity for women worldwide."

<sup>2</sup>Ann F. Bayefsky, “The principle of Equality or Non-discrimination in International Law”, 11 Human Rights Quarterly, 1990, p. 5.

<sup>3</sup>Bhatt JN Justice, in “Gender Equality: Turmoil or Triumph”., (see also-Tiwari, Birendra Kumar. "A-Glimpse of Gender Justice in India." *International Journal of Research in Economics and Social Sciences* 5.7 (2015): 9-1)

### **Constitutional safeguards in ensuring gender equality:**

Our constitution has safeguarded gender equality through various articles namely Article 19 (3), 28(1), 28(2), 28 (3), 29(1), 29(2) and 65(I)<sup>4</sup>. Equal rights of man and woman in public life and state, equality in respect of opportunity for all citizens regardless of man and woman are engulfed in the previously mentioned articles as fundamental rights and as fundamental principles of state policy. *Article 27*<sup>5</sup> states unambiguously that all citizens are equal before the law and all the citizens are entitled to equal protection by the law. *Article 28*<sup>6</sup> has given a scope to the state to make 'special provisions favoring women or children or for the advancement of any backward section of citizens'. Social security of widows is marked as responsibility of the state through art 15(d), elimination of gender disparity in terms of acquiring public employment is guaranteed as a fundamental right through art 29. Art 65(2) is a guarantor of taking of affirmative action policy, through which 50 seats for women are reserved for representation in the parliament. Affirmative action is a policy which denotes an explicitly direct action being taken in favor of favor members of a disadvantaged group who suffer or have suffered from inequality and discrimination.<sup>7</sup> These affirmative actions were also taken by Argentina, South Africa, India, Nepal, Tanzania and many other countries. As opposed to numerous different constitutions of various nations, the constitution of Bangladesh unequivocally has given space for privileges of woman. Indeed, even in the constitution of USA there is nothing that specifically confers rights to woman and limits any of these rights or benefits for male.

### **The ill effects of personal laws in ensuring Gender Justice:**

Personal laws are those laws that trace their enforceability through customs and culture. Issues of adoption, maintenance, divorce, marriage and inheritance are dealt within the ambit of personal law. The personal laws based on religion are discriminatory in the areas of marriage, divorce, guardianship of children, alimony and property inheritance where man and women are not treated equal.

**Personal laws of Muslim woman:** The validation of polygamy for man, women's greater hurdle in giving divorce compared to men are some of the examples of "inequality" having the force of laws as opposed to the equality guaranteed in articles 26(1), 27, 28, 31 and 32 of the constitution of Bangladesh. Human Rights Watch found that even the limited procedural protections available for women under the Muslim Family Laws Ordinance, 1961, were often not implemented.<sup>8</sup> As per family law, husband should ask for consent prior to remarrying someone and there's a requirement of getting approval by local council arbitration.<sup>9</sup> Human

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<sup>4</sup>Constitution of the People's Republic of Bangladesh (1972)

<sup>5</sup>Ibid

<sup>6</sup>Ibid

<sup>7</sup>Zalta, Edward N. (ed.). "Affirmative Action". Stanford Encyclopedia of Philosophy.

<sup>8</sup> "Will I Get My Dues ... Before I Die?" Harm to Women from Bangladesh's Discriminatory Laws on Marriage, Separation, and Divorce, <[tps://www.hrw.org/report/2012/09/17/will-i-get-my-dues-i-die/harm-women-bangladeshs-discriminatory-laws-marriage](https://www.hrw.org/report/2012/09/17/will-i-get-my-dues-i-die/harm-women-bangladeshs-discriminatory-laws-marriage)>, last accessed 28 november,2017

<sup>9</sup>Section 6 of the Family Court Ordinance 1985

Rights Watch interviewed 40 Muslim women in polygamous marriages, and in no case, was an arbitration council convened to approve a subsequent marriage.<sup>10</sup>

**Personal laws of Hindu woman-**Ironically India being a country having Hindu majority contains scope of divorce for a Hindu woman, but Bangladesh didn't change the century old Dayavaga rule that Bangladeshi Hindus are following by still not creating any measure that allows Hindu woman to give divorce to a Hindu man. On 20 January 2015 the High court issued a rule on the Government asking it to clarify that what good reason a Hindu woman would not be permitted to be separated from her husband as there exists no privilege to do as per Hindu laws. The petitioner of the concerned case specified that the Hindu laws on marriage and separation are conflicting with the provisions of the rights which are ensured in the articles 26(1), 27, 28, 31 and 32 of the constitution of Bangladesh as well as in article 3, 5, 7 and 16(1) of the Universal Declaration of Human Rights.<sup>11</sup>

Another instance is that through the interpretation of the sacred texts of Hinduism, women are secluded from the line of succession in Bangladesh whereas in India by means of The Hindu Succession Act, 1956, women are not in deprivation of the utility of acquiring their ancestral properties.

**Personal laws of Christian woman-** Huge complexities are in place when a Christian woman wants to give a divorce. To give a Divorce, she has to file a petition in a subordinate court or high court division of Supreme Court. Another point is that, even if district court confers permission, a confirmation by high court is needed but not 6 months beforehand. This procedure creates hardship for the women who are living in rural areas to get remedies with ease. The provisions for dissolution of a Christian marriage by a decree of the court have been included in the Divorce Act of 1869.<sup>12</sup>

**Inconsistency of personal laws with international law-** Religiously based personal laws displays discrimination and unequal treatment towards women in relation to guardianship, divorce, marriage and property inheritance. Bangladesh<sup>13</sup> is one of the 160 countries which signed their commitments to the convention named CEDAW with some reservation being made on some of the articles.

The personal laws that are prevalent in Bangladesh are inconsistent with CEDAW's article no 2 (f)<sup>14</sup>. In Article 2(f) it is envisaged that-states must take appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which

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<sup>10</sup> Bangladesh: Discriminatory Family Laws Fuel Female Poverty<<https://www.hrw.org/news/2012/09/16/bangladesh-discriminatory-family-laws-fuel-female-poverty>>, last accessed 28 November, 2017

<sup>11</sup>Hindu women's divorce rights, Daily Star,(February 24, 2015)

<sup>12</sup>< [http://bdlaws.minlaw.gov.bd/print\\_sections\\_all.php?id=20](http://bdlaws.minlaw.gov.bd/print_sections_all.php?id=20)>>, last accessed 28 november,2017

<sup>13</sup> CEDAW and Women: The Bangladeshi

Experience<[http://www.aworc.org/bpfa/pub/sec\\_i/hum00001.html](http://www.aworc.org/bpfa/pub/sec_i/hum00001.html)>>, last accessed 5 december,2017

<sup>14</sup>< <http://www.un.org/womenwatch/daw/cedaw/cedaw.htm>>, last accessed 5 december,2017

constitute discrimination against women. Due to the reservation clause made by Bangladesh on CEDAW'S article 2(f), Bangladesh has tactfully spared itself from the obligation of making a uniform family code that will be consistent with the will of CEDAW and that ensures gender justice by guaranteeing welfare and equality of women in terms of family related matters.

### **Other discriminatory laws:**

There are several instances of laws other than personal law that somewhat disrupts gender justice to varied extents. Section 497 of the Penal Code which envisages:

*“Whoever has sexual intercourse with a person who is and whom he knows or has reason to believe to be the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery, and shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both. In such case the wife shall not be punishable as an abettor”.*

The law fundamentally provides that the offense of infidelity is committed just by man (outsider), who engages in sexual relations with the spouse of another man without the husband's assent and woman can't be subjected to punishment, even as an abettor, as it is commonly acknowledged that the man is the abettor not the woman and this is a sign of discrimination.

*As per Evidence Act 1872, Section 155 (4),* there is an archaic understanding in place which states, that *“when a man is prosecuted for rape or an attempt to ravish, it may be shown that the prosecutrix was of generally immoral character.”* A woman is required to prove that her character is not bad to acquire justice owing to a rape case. In this case the focus of the trial ultimately shifts from accused to the victim.

### **Judicial Activism in ensuring Gender Justice:**

Some notable decisions demonstrate that courts have stayed dynamic in guaranteeing woman's rights through different dynamic interpretations. On account of the judicial activism shown by the courts, glimmer of hope stays on movement in the current environment that isn't good for woman.

#### **1. Matters relating to Divorce:**

Arbitrary exercise of giving divorce on simple matters is common in Bangladesh on the part of the husband and this is because of our personal law provisions that allow such arbitrary powers. But In *Kazi Rashed Akhter Shahid (Prince) V. Rokshana Choudhury (Sanda)*<sup>15</sup> this arbitrary exercise of divorce was put on a check through an observation of the high court in relation to Section 7 (1) of Muslim Family Law Ordinance 1961 that asks for requirement on the part of the husband to provide a notice in writing of his having pronounced Talaq to the Chairman. The court observed that if the husband abstains from issuing such notice to the

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<sup>15</sup> 58 DLR (HC) 271 (2006)

chairman then it would be deemed that the husband has revoked the Talaq and the marital status of the parties has remained unchanged.

## **2. Post-Divorce Maintenance:**

In *Ikhtiar Hossain Choudhury v Shahenoor Akhter*,<sup>16</sup> post maintenance to the wife subsequent to divorce was granted by the court for four years ten months including three months for iddat period. This case law has remained a precedent in ensuring gender justice in relation to maintenance after divorce.

But there are instances of setbacks in ensuring gender justice as well. In *Hefzur Rahman v. Shamsunnhar Begum*<sup>17</sup>, It was decided in the HCD that subsequent to giving of divorce by husband to his wife, the wife is entitled to maintenance on a logical extent outside the Iddat period. Until her status of divorce is terminated by her remarriage with another person, she is entitled to maintenance. The appellate division quashed this judgment unfortunately.

## **3. Guardianship:**

In *Abdul Jalil v Sharon Laily Jalil*<sup>18</sup> a family court granted full custody of four minor children aged between five and fourteen years, on grounds of rights conceded in CEDAW and CRC, to the mother, a British Christian citizen. With regard to the right of guardianship, the High Court has shown an affirmative approach in Syeda Shamsunnahar's<sup>19</sup> case where the mother's entitlement to guardianship of her minor has been validated.

## **Conclusion**

Bangladesh has ignored for a long period the need of changes in laws that contravene gender justice. By having discriminatory personal laws and failing to ensure access to judicial remedies and social assistance, Bangladesh is in violation of its obligations under international human rights law. There are some recommendations that might help Bangladesh to achieve success in ensuring equality between man and women. The following key initiatives should be taken by Bangladesh Government:

- Removal of discriminatory features by reforming the personal laws specifically dealing with divorce, polygamy, maintenance, women's equal right to marital property during continuation of marriage and subsequent to divorce, inheritance.
- Uniform Civil code can be introduced to supplant personal laws based on scriptures and customs of all the major religions.

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<sup>16</sup>11, BLC (HC)

<sup>17</sup>47 DLR (1995) 74

<sup>18</sup> Combined Sixth and Seventh Alternative Report to the UN CEDAW Committee, Submitted by Citizens' Initiatives on CEDAW in Bangladesh <<http://www.southasianrights.org/wp-content/uploads/2011/01/CEDAW-Alternative-Report.pdf>> last accessed 8 december,2017

<sup>19</sup>*Ibid*

- There are some laws that hamper gender equality such as the provision of Evidence Act 1872, Section 155 (4) and *Section 497 of the Penal Code*. These laws should be reformed.
- Creating awareness for people through media and through other scopes about gender equality.
- Reinforcing all the social assistance programs which include access to shelter for impoverished woman, survivors of domestic violence and divorced and separated women.