

## **RIGHTS OF BANGLADESHI WOMEN IN INTERNATIONAL AND MUNICIPAL LAW**

DR. TASLIMA MONSOOR

This paper<sup>1</sup> intends to assess Bangladeshi women's rights in International and Municipal Law and will also evaluate the confusions and contradictions which are detrimental for implementation of women's rights in Bangladesh. Before going into details on international standards provided in various International documents and conventions, it is first considered how women were treated by the state and the legislature in the independent state of Bangladesh. In this context women's rights in Bangladesh have been analysed within the constitutional framework showing vividly the internal contradictions within the Constitution between granting sexual equality and making special laws for women. The paper then concentrates on the dichotomy of private and public life, the reservation of Family or Personal Laws and the confusion of imposing the concept of sexual equality in Family Law. This confusion as the paper concludes pushes women more to conservatism and deterioration as it avoids the real needs of women in Bangladesh<sup>2</sup>. The real needs of women in Bangladesh is to be protected from economic deprivation and violence.

### **The State, Legislature and Bangladeshi Women**

After independence, the sovereign Democratic Republic of Bangladesh gave new promises to women, acknowledging their

- 
1. It is an amended a version of the paper presented at the International Conference on Economic, Social and Cultural Rights held in Dhaka, under the auspices on the HEAB (The Humanist and Ethical Association of Bangladesh), April 20-29, 1995.
  2. See for details, Monsoor, Taslima: 'From patriarchy to gender equity: Family Law and Its Impact on Women in Bangladesh'. Ph. D. Thesis, University of London, (October 1994).

contribution in the liberation movement. Speaking to a mass crowd in Dacca in March 1972, the father of the nation who was also regarded as the friend of the nation or '*Bangabondhu*', Sheikh Mujibur Rahman stated:

In the past religion has been exploited in order to enslave our mothers and sisters; this will no more be permitted<sup>3</sup>.

He further regretted that, in the past, half of the population of the nation had been confined within the four walls of their homes owing to social prejudices. Acclaiming the appreciable role played by women in the freedom movement, the leader declared that his government would secure that women may enjoy equal rights and privileges with men in free Bangladesh<sup>4</sup>. The stage was, thus, set for an improvement of the legal position of women in the new nation.

The raped women were declared by the leader of the nation, Sheikh Mujibur Rahman, as war heroines, '*Birangona*', to make them accepted in the society. But the majority of them were not accepted by the society and it was a problem for the Mujib government to rehabilitate them. It was rightly stated by Rahnuma Ahmed that the existence of the 30,000 raped Bengali women was an embarrassment to Mujib and his regime<sup>5</sup>. It was reported that the 5% quota of government employment reserved for the rape victims, except for its benefit identified them in society<sup>6</sup>. The Mujib government also provided jobs for the wives of freedom fighters who died or were crippled, but could not improve the overall status of women<sup>7</sup>.

---

3. Rahman, Sheikh Mujibur: 'Women will enjoy equal rights', *the Bangladesh Observer*, (Dacca, 7 March 1972).

4. Id.

5. Ahmed, Rahnuma: 'Women's Movement in Bangladesh and the Left's Understanding of the Woman Question'. 30 The Journal of Social Studies. 48 (1985).

6. For details see Huda, Sigma: 'Women and Law : Policy and Implementation'. Paper presented at a seminar on 'Women and Law' organised by Women for Women, Sept. 13-15, 1987, Dhaka.

7. Ahmed. supra note 5, at 48; Kabeer, Naila : 'The Quest for National Identity : Women, Islam and the State in Bangladesh'. In Kandiyoti, Deniz (ed.) Women, Islam and the State, 125 (London 1991). This article was first published in Institute of Development Studies Discussion Paper. No. 268, 1-33 (Brighton, 1989).

During 1975-1981 the regime of president Ziaur Rahman, starting with the United Nation's international women's year, integrated more women in the development process. Under him a separate full-fledged Ministry of Women's Affairs was set up and reserved seats for women in Parliament were increased from 15 to 30<sup>8</sup>. These reserved seats were not open to election but were filled by nomination of the majority party which was simply another means to increase the powers of the ruling party<sup>9</sup>. There seems to be some agreement in the literature that the real cause for the mobilisation of women was not only to legitimise elite rule but to acquire more aid from the donor agencies by giving some attention to women<sup>10</sup>. It is argued that not only the government but also the non-governmental organisations (NGOs) used women's issues as a potential source of funding<sup>11</sup>. But the positive impact of this was that women's issues in Bangladesh were slowly coming to the limelight, paving a way for incorporating them, the untapped resources, in the development process. The government under president Ziaur Rahman also wanted to improve the legal position of women and the Dowry Prohibition Act of 1980, for example, was enacted for that purpose.

The rule under president Hussain Muhammed Ershad, during 1982-90 continued the policy of president Zia to incorporate the women in development (popularly known as WID) program by making use of this hidden resource through employment<sup>12</sup>. However, incentives of foreign aid were attached to it. Some legal measures were devised in this period, supposed to advance women's welfare and to deter crimes against women by more severe punishments, particularly the Cruelty to Women (Deterrent Punishment) Act, 1983 and the Family Courts Ordinance, 1985.

---

8. Id., at 127

9. White, Sara C. : Arguing with the Crocodile : Gender and Class in Bangladesh. London, 15 (New Jersey & Dhaka 1992)

10. Ahmed, supra note 5, at 49; White, Sara C. : 'Women and Development: A new Imperialist Discourse'. 48 The Journal of Social Studies. 103 (April 1990)

11. White, supra note 9, at 15-16

12. Kabeer, supra note 7, at 128

The democratic government of 1991, under the country's first woman Prime Minister, Begum Khaleda Zia, was following the policy of her predecessors to mobilise more women in the employment market. The present democratic government headed by another woman Prime Minister, Sheikh Hasina who is the daughter of the father of the nation is also following their footsteps. New forms of urban employment in the garment, plastic and pharmaceutical industry in particular, have become available since the 1980s; this gave women more opportunities to enter wage labour. In fact, this new economic order of women being more involved in the public arena has become a problem for the society of Bangladesh to cope with. In the professional sphere, too, women are more involved now, not only as teachers and nurses, which is typically supposed to be more fitted for them, but there were already 52 lady judges in the judiciary in 1992<sup>13</sup>. This shows that there is a pressure for sexual equality and revaluation of the stereotyped concepts of our society about subjugating women. However, in Family Law this pressure is creating confusions and contradictions as women do not have absolute equality. But in social reality women do not even enjoy those rights already granted under the Islamic and statutory family law. In this context, a radical change outside the Islamic framework, as recently argued for by the radical feminist Taslima Nasreen, will only provoke the male-dominated society to turn towards more conservatism. It is doubtful how much emancipation of women will be achieved by such provocative writing. However, Taslima Nasreen's brave efforts to attack the whole system are giving her publicity and international attention was drawn to it<sup>14</sup>. Conversely, this offers a

---

13. It was stated by the Law Ministry in a workshop on 'Uniform Family Code and Problems of Enforcement of Equal Rights of Women in Bangladesh: Legal Policy and Social Dimension'. The workshop was held on Sept. 22 and 23, 1992 jointly organised by Bangladesh Institute of Law and International Affairs (BILIA) and the Mahila Parishad. Its proceedings here not yet published.

14. To show how wide circles this has drawn see, Rettie, John: 'Bangladesh's Threatened Writer Wins Police Guard but no Champions'. The Guardian. (10 Dec., 1993); 'Fundamentalists Call for Feminist's Hanging', The Leicester

chance for the fundamentalists to make these issues up for their own campaigns to win power<sup>15</sup>. Khaleda Zia's government has banned one of her books, entitled *Lojja*, as it offends Muslim sentiments and fans communalism<sup>16</sup>. This indicates that the government approves, in principle, of gradual change of attitudes in the society towards giving the granted rights to women. But not many effects can so far be seen in practice. Thus, apart from some pro-women legislative activity, there has been no useful progress for the women in Bangladesh in this sphere. The attempts to improve the status of women which were taken by the politicians were only rhetoric and did not reduce the dominance of males in our society.

### ***The constitutional framework of women's rights in Bangladesh***

In fulfilment of his promise to women the father of the nation ensured full participation of women in the national life by confirming it in the Constitution of Bangladesh, which came into effect from 16 December, 1972, exactly one year after the independence from Pakistan. It aims to give some effects to enhance the rights of women. Under article 10, one of the fundamental principles of state policy states: Steps shall be taken to ensure participation of women in all spheres of national life<sup>17</sup>.

This shows that women's rights were not at par with the men's so far, but apparently some efforts were made by the Constitution to equalise this disparity. Under article 8 of the Constitution, the fundamental principles of state policy are laws fundamental not only

---

Mercury. (19 November, 1993); Mc Girk: 'Life in a Cage for Feminists who Dared to Tell the Truth'. The Independent. (2 March, 1994)

15. The Guardian (10 Dec. 1993)

16. Id.

17. This was substituted by the Proclamations Order No. 1 of 1977. The intention of this change from socialism and freedom from exploitation was merely rehtoric. Perhaps the legislators while taking away secularism from the Constitution and establishing Islamic beliefs wanted apparently to give scope to women to balance the equilibrium.

to the governance of Bangladesh but they are also to be applied by the state in the making of laws. However, the fundamental principles are not judicially enforceable or justiciable as fundamental rights.

The fundamental rights granted under part three of the Constitution specifically deal with women. Article 27 states that all citizens are equal before the law and article 21 states that all citizens are entitled to equal protection of law. Article 28 states:

28. 1) The state shall not discriminate against any citizen on grounds only of religion, race, caste, sex or place of birth.
- 2) Women shall have equal rights with men in all spheres of the State and public life.
- 3) No citizen shall, on grounds only of religion, race, caste, sex or place of birth be subjected to any disability, liability, restriction or condition with regard to access to any place of public entertainment or resort, or admission to any educational institution.
- 4) Nothing in this article shall prevent the state from making special provisions in favour of women or children or for the advancement of any backward section of citizens.

Thus while providing equal rights for women in several respects, although only in the public sphere and not in the private sphere, the legislature could not pull them out of the typical stereotyped image depicting women as the weaker sex in need of protection. They categorised women with children and the backward sections of the population, reserving the rights of the state to make any special provision for the advancement of the backward section of the population.

This paternalistic attitude of the legislature can also be found in other provisions of the Constitution. Article 29 states:

29. 1) There shall be equality of opportunity for all citizens in respect of employment or in the service of the republic .
- 2) No citizen shall, on grounds only of religion, race, caste, sex or place of birth, be ineligible for, or discriminated against, in respect of any employment or office in the service of the republic

- 3) Nothing in this article shall prevent the state from-
- a) making special provision in favour of any backward section of citizens for the purpose of securing their adequate representation in the service of the republic;
  - b) giving effect to any law which makes provision for reserving appointments relating to any religious or denominational institution to persons of that religion or denomination;
  - c) reserving for members of one sex any class of employment or office on the ground that it is considered by its nature to be unsuited to members of the opposite sex.

While providing for equality of opportunity to women, the Constitution under article 29(3) (c) has explicitly given the right to the state to reserve certain employment and office to men alone, as it is in its nature unsuited to women. This urge of the legislature can also be gathered in other provisions of the Constitution. Thus, 15 seats were reserved for women [article 65 (3)] this was increased to 30 seats in Zia's regime. Under article 65(3):

Until the dissolution of Parliament occurring next after the expiration of the period of ten years beginning from the date of the first meeting of the Parliament next after the Parliament in existence at the time of commencement of the Constitution (Tenth Amendment) Act, 1990, there shall be reserved thirty seats exclusively for women members, who shall be elected according to law by the members aforesaid<sup>18</sup>.

Further, in exercise of these provisions government by notification reserved 10% of all new recruitment in the public sector for women.

These articles of the Constitution perpetuated the conventional view that women are inferior and therefore needed protection<sup>19</sup>. Thus, although generally the Constitution ensures equality of the

---

18. Substituted by the Constitution (Tenth Amendment) Act xxxviii of 1990. The effect of this was not to give more power to women but to strengthen the authority of the ruling party.

19. Sarkar, Lotika: 'Status of Women : Law as an Instrument of Social Change'. 25 Journal of Indian Law Institute, 267 (1983).

sexes, there are within it disparities of the sexes<sup>20</sup>. This paternalistic attitude towards protecting women as the weaker sex coincides with the patriarchal attitude of our society. It is apparent from this that the legislature recognises the unequal status of women in Bangladesh, although they outwardly claim that the Constitution ensures sexual equality.

*Salma Sobhan rightly observed that,*

The tenor of all these provisions read as a whole makes it obvious that the drafters of the Constitution could not fail to acknowledge tacitly the fact of the inequality present in the status of women<sup>21</sup>.

However, the author has blamed the female section of the population to undermine their own potentialities together with the typical social attitudes towards them. By blaming women the author has victimised them more. We are arguing, on the contrary, that this is only a reflection of social attitudes, mainly the male attitude towards women, as they are not conscious of their hidden powers which are not recognised by the society.

One of the causes of the subordination for women is projected to be politics to use religion to police women's behaviour. It necessitates us to see how it affects women when the Constitution itself has a religious colour. Bangladesh, after independence, ceased to have Islam as the official religion and accepted secularism as one of the pillars of its socio-political structure. However, the

---

20. See for details Sobhan, Salma: Legal Status of Women in Bangladesh. 4-6 (Dhaka, 1978); Bangladesh: Strategies for Enhancing the Role of Women in Economic Development 18-20 (Washington DC 1990) (A country study of the World Bank); Choudhury, Rafiqul Huda & Nilufar Raihan Ahmed: 'Women and the Law in Bangladesh: Theory and practice'; 8 Islamic and Comparative Law Quarterly. 275 (Dec. 1988); Choudhury, Rafiqul Huda & Nilufar Raihan Ahmed: Female Status in Bangladesh 18-33 (Dhaka 1980); (Bangladesh Institute of Development Studies).

21. Sobhan, supra note, 20, at 5



secular Constitution did not have any direction for a Uniform Civil Code to bring at par all the personal laws as was done under article 44 of the Indian Constitution<sup>22</sup>.

The Constitution of Bangladesh was amended in 1977 by President Ziaur Rahman by deleting the principle of secularism from the constitution and replacing it by 'absolute trust and faith in Almighty Allah'. An author has claimed that this replacement was made for financial considerations, basically to have more aid from Arab and Middle-East countries than showing a trend towards Islamisation<sup>23</sup>. In 1988, President Ershad went so far as to islamising the state by a further constitutional amendment to make Islam the state religion by the famous eighth amendment. Under article 2A, it declares:

The state religion of the Republic is Islam, but other religions may be practised in peace and harmony in the Republic.

The part of the eighth amendment which amended article 100 and gave power to the state to decentralise the High Court Division of the Supreme Court was challenged by writ petitions and was declared void by the celebrated judgement of the eighth amendment case<sup>24</sup>. However, the other part of the eighth amendment which declares Islam as the state religion, although contested by women's organisations as contravening the Constitution and United Nations Conventions, was not made void<sup>25</sup>. The women's organisations opposed it as it would make women more vulnerable to discriminatory

---

22. Pearl, David: 'Bangladesh: Islamic Laws in a Secular State', 8 South Asia Review, 33 (1978)

23. Guhathakurta, Meghna: 'Gender Violence in Bangladesh: The Role of the State'. 30 The Journal of Social Studies, 85 (1985)

24. See for details, Anwar Hossain Chowdhury v Bangladesh & Others C. A No. 42 of 1988, Jalaluddin v Bangladesh & Others C. A. No. 43 of 1988 & Ibrahim Shiekh v Bangladesh & Others C. P. S. C. A. No. 30 of 1989 arising out of Writ petitions No. 1252, 1176 and 1283 of 1988 'Constitution 8th Amendment case Judgment' In Bangladesh Legal Decisions, Dhaka 1989 (special issue).

25. Kabeer (1989), White (1990), supra note 10, at 95

laws<sup>26</sup>. To them it was also attempt to amalgamate religion with politics to strengthen the authority of the orthodox people to police women's behaviour<sup>27</sup>. it was also reported that the women's organisations were arguing that the Amendment is taking away the spirit of the liberation movement and the guarantees of freedom of speech, thought and women's rights of independent Bangladesh<sup>28</sup>. The women's organisations were fearing that this amendment will strengthen orthodoxy of religion, taking away their rights and putting them in seclusion, back to square one.

### **Women's Rights and International Standards**

In the past two decades UN has taken a number of steps in order to enhance the position of women world-wide. The Charter of the United Nations referred to equal rights of men and women and forbids discrimination on the basis of sex, race, language or religion.

The Universal Declaration of Human Rights also equally proclaimed under article 1 that all human beings are born free and are equal in dignity and rights<sup>29</sup>. The declaration that 1975 is the International Women's Year started a new era for the improvement of the women's status in every sphere of her life. The Nairobi Forward Looking Strategies (NELS) for the advancement of women was adopted by the Third World Conference on women. The conference was held in Nairobi after the UN decade for women. The Conference

---

26. An active women's organisation called 'Naripokho' challenged this part of the Amendment in the court but were not successful. Other organisations, such a Mahila Parishad, Democratic Forum, Hindu Boidho Aiko Forum were also against it.

27. Kabeer (1989), supra note at.

28. The Holiday (Dhaka, 19 April 1988)

29. See details for International Instruments prohibiting discrimination on the ground of sex, Zamir, Muhammad: 'Measures of Advancement of Women' Human Rights and the International Law, 127-137 (Dhaka 1994); Morsink, Johannes: 'Women's Right in the Universal Declaration', 13 Human Rights Quarterly, 229-256 (1991)

on women reviewed the achievements for women with regard to equality, development and peace in this decade.

Despite enactment of various International Instruments and Documents extensive discrimination against women, the half of the world population, continued to exist. This encouraged the UN to adopt the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) on 18th December, 1979, which came into force from 3rd September, 1981. The Convention purports to guarantee equal rights to women and to prohibit discrimination against women<sup>30</sup>.

The discrimination against women is defined under article 1 as follows :

'For the purposes of the present Convention, the term discrimination against women shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, social, cultural, civil or any other field'.

This definition and other articles of the Convention, as for instance article 16, obligate the state parties to take all appropriate measures to ensure equality of men and women in all matters relating to marriage and family relations. This explicitly shows that the Convention extends to private life also. These parts of the Convention which regulates the interpersonal conduct is controversial as it aims to promote change in the cultural attitude of men and women within the family. Conflicts arose as it was an

---

30. On this Convention see Tinker, Catherine: 'Human Rights for Women: The UN Convention on the Elimination of All Forms of Discrimination Against Women', 3 Human Rights Quarterly, 32-43 (Spring 1991); Meron, Theodor: 'The Convention on the Elimination of All Forms of Discrimination Against Women', Human Rights Law-Making in the United Nations: A Critique of Instruments and Process, 53-82 (Oxford 1986)

interference to the privacy of the individuals life. While analysing the critical features of the *Convention* first of all it can be said that it did not dichotomies public and private life and did not even limit the parameters of public and private life. Hence it did not open the controversies which prevails in the patriarchal societies of the world. The ratification of the *Convention* means to accept international norms for equality between men and women, but it might not coincide with national norms. Thus, the *Convention* would have been much more adaptable if it would have considered the major systems or concepts of the world.

### **International Standards of Women's Rights and Bangladeshi Women**

Bangladesh is a signatory to Nairobi Forward Looking Strategy for advancement of women (NFLS) and Convention for Elimination of All Forms of Discrimination Against Women (CEDAW). However, it has reserved the articles which according to the government have potential conflict with the socio-cultural ideology of Bangladeshi Society.

Bangladesh has reserved article 2, 13(a), 16(1) (c) and 16(1) (b). Article 2 undertakes to adopt legislation to ensure elimination of discrimination through sanction and legal protection. Article 16 provides that women and men have equality in all matters relating to marriage and family relations including the same rights to enter inter marriage and the same rights and responsibilities during marriage and at its dissolution. The same situation of reservation of the *Convention* prevails in other countries whose majority of the population are Muslims, as for instance Egypt. The reservation of the *Convention* of Egypt reads as follows.

Reservations of the text of article 16 concerning the equality of men and women in all matters relating to marriage and family relations during the marriage and upon its dissolution, without prejudice to the Islamic Sharia's provisions whereby women are accorded rights equivalent to those of their spouses so as to ensure a just balance

between them. This is out of respect for the sacrosanct nature of the firm religious beliefs which govern marital relations in Egypt and which may not be called in question and in view of the fact that one of the most important basis of those rights is an equivalency of rights and duties so as to ensure complementarity which guarantees true equality between the spouses. The provisions of the Sharia lay down that the husband shall pay bridal money to the wife and maintain her fully and shall also make a payment to her upon divorce, whereas the wife retains full rights over her property and is not obliged to spend anything on her keep. The Sharia therefore restricts the wife's rights to divorce by making it contingent on a judge's ruling, whereas no such restriction is laid down in the case of the husba<sup>31</sup>.

In the legal system of Bangladesh there is duality of general and personal law. Religious law is applied to personal life relating to marriage and family relations. The reservation of article 16 was necessary otherwise the *Convention* could not have been incorporated in the legal system of Bangladesh. However, if the whole system of personal law is deleted from the legal system it would be possible. Although it is never analysed whether the full ratification of the Convention is realistic or feasible in the patriarchal society of Bangladesh. It is also not analysed whether the equality of the spouses in the family will bring harmony and peace in such society.

It is true that discrimination against women in family or personal life is in an alarming state but there is also a wide gap in the rhetoric paper rights in the public life. Yet regulating the personal conduct through state and international regulations may violate the privacy and associational rights of the individual and conflict with the freedom of opinion, expression and belief<sup>32</sup>. Thus, the Convention conflicts with

---

31. Multilateral Treatise deposited with the Secretary General: Status as at 31 December, 1984. UN Doc. A/40/45 (1985), 153.

32. Meron, (1986), supra note 30, at 62.

the personal laws of Bangladesh. Moreover, sexual equality in Bangladesh is a distant mirage where even the rights granted by the religious personal and statutory laws are rarely enforced. In a study it was reported that 88% of women in Dhaka metropolitan city did not receive any dower or another study shows that 77% of women from families of two villages did not intend to claim legal share in their parental property to retain better links with their natal family<sup>33</sup>. Thus, unless there is a shift in the general attitudes towards women in the patriarchal society of Bangladesh the rights given under the International and Municipal Law would be a myth than a reality.

---

33. Akhter, Shaheena: How far Muslim Laws are Protecting the Rights of Women in Bangladesh. (Dhaka 1992); Westergaard, Kirsten : Pauperisation and Rural Women in Bangladesh a Case Study. (Dhaka 1992).