

GENDER IN LAW: FIVE DECADES OF STRUGGLE FOR EMPOWERMENT

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Empowerment of women means the act of giving power or authority to women to use and enjoy their social, cultural, political and civil rights, realise the remedies available under the different laws for the violation of these rights and enable them to take equal parts and contribute equally along with men in nation building activities. In this article some modest efforts will be made to portray the rights of women as provided under general, personal, national and international laws, their implementation and adequacy to advance the efforts for gender equalization in present day state and society, the role of the state organs in the implementation of rights and protection of women against patriarchal behaviour of men, and present some suggestions for effective empowerment of women in Bangladesh against the backdrop of national and international laws, conventions and actual state of affairs obtaining in urban and remote rural areas of Bangladesh.

Empowerment of women includes to a large extent women's legal empowerment, i.e., where their rights and remedies are guaranteed. Women's participation in the social, economic, political and cultural perspectives is now considered from the viewpoint of women's rights. This concept of women's rights was further developed to establish women's rights as human rights in the Vienna Declaration of 1993. Thus, women's rights and responsibilities have to be measured against accepted human rights values. In the past two decades UN has taken a number of steps in order to enhance the position of women globally. 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 article¹ that all human beings are born free and is equal in dignity and rights. 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 their life. The Nairobi Forward Looking Strategies (NFLS) 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 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 prohibit discrimination against women.²

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

¹See details for International Instruments prohibiting discrimination on the ground of sex. Zamir, Muhammad: 'Measures for advancement of women'. In Human Rights and the International Law. Dhaka 1994, pp.127-131; Morsink, Johannes: 'Women's right in the Universal Declaration'. In Human Rights Quarterly. Vol.13, 1991, pp.229-256.

² On this Convention see Tinker, Catherine: 'Human rights for women: The UN Convention on the Elimination of All Forms of Discrimination Against Women'. In Human Rights Quarterly. Vol.3, No.2, Spring 1991, pp.32-43; Meron, Theodor: 'The Convention on the Elimination of All Forms of Discrimination Against Women'. in Human Rights Law-Making in the United Nations: A critique of Instruments and process. Oxford 1986, pp.53-82.

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. This part 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 for its interference in the privacy of the individual 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 prevail 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.

The position of women in law in Bangladesh today is the product of tireless efforts of women of the Indian sub-continent from its inception. Women in South-Asia are claiming just and fair laws for themselves. The positive outcome of this struggle has been law reforms starting with Family Law, the Child Marriage Restraint Act, 1929 (CMR Act), The Dissolution of Muslim Marriages Act, 1939 (DMMA), the Muslim Family Laws Ordinance (MFLO) 1961, the Dowry Prohibition Act, 1980, the Cruelty to Women Deterrent Punishment Ordinance, 1983 (now repealed), the Family Courts Ordinance, 1985 and the Repression against Women and Children Act, 1995. However, there are discrepancies in those Acts and Ordinances,

which need to be amended to make the law more effective.

Bangladesh has ratified different International Conventions and treaties. The UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) of 18th December 1979 which purports to guarantee equal rights to women³ has been ratified by Bangladesh in 1984 with reservations in Article 2, 13(a), 16(c) and (f). In 1997 Article 13(a), 16 (f) has been withdrawn, but not 16(c) and 2. The Focal point of the problem lies with the implementation and enforcement of the law which is a necessary pre-requisite for the advancement of women. But even after this Convention the situation has not improved notably and there exists considerable discrimination against women even in this world order. Thus, protection of women's right is much more difficult than either defining them or adopting Conventions. The mechanisms for the enforcement of women's rights are very weak. The primary question is how far these Conventions are protecting women's rights. Unless these Declarations or Conventions are made part of our domestic law there cannot be legal enforcement of the body of rights in the Convention. It can be acclaimed as part of the domestic law if it is within the periphery of the Constitution.

Bangladesh has its legal system consisting to two types of laws, the general and the personal law. The general law as we can see is based on egalitarian principles of sexual equality but the personal or family law, based on religion, does not operate on the basis of absolute equality of men and women, but on sexual equity. But the personal law is protected by the Constitution itself.

The Present Situation and Special Considerations

Women in Bangladesh are apparently guaranteed sexual equality by the Constitution of Bangladesh⁴ and the general law.

3 On this Convention see for example Tinker, Catherine: 'Human rights for women: The U.N. Convention on the Elimination of All Forms of Discrimination Against Women'. In *Human Rights Quarterly*. Vol. 3, No. 2, Spring 1991, pp. 32-43.

4 For a discussion on the supremacy of the Constitution of Bangladesh see, Monsoor, Taslima 'Supremacy of the Constitution', In *The Dhaka University Studies-Part-F*, Vol. ii, No. 1, June 1991, pp. 123-135.

But patriarchal interpretation of the law continues the dominance of patriarchal attitudes⁵. However, there are internal contradictions within the Constitution between granting sexual equality and making special laws for women. The fundamental rights granted under part three of the Constitution specifically deal with women. 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 such backward sections 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.

⁵ On this see in detail *Bangladesh: Strategies for the enhancing the role of women in economic development*. Washington DC 1990, (World Bank); Jahan, Roushan: 'Hidden wounds, visible scars: Violence against women in Bangladesh'. In Agarwal, B.: (ed.): *Structures of patriarchy: State, community and household in modernising Asia*: New Delhi 1988, pp. 216-226.

(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 offices to men alone, if they are seen as unsuited to women. This urge of the legislature can also be gathered in other provisions of the Constitution. These articles of the Constitution perpetuated the conventional view that women are inferior and therefore need protection⁶. Thus, although generally the Constitution promises equality of the sexes, there are disparities of the sexes within it⁷. This paternalistic-attitude towards protecting women as the weaker sex is common in Bangladesh. It is apparent from this that the legislature recognises the unequal status of women in Bangladesh, although they outwardly claim that the

6 For India see Sarkar, Lotika: 'Status of women: Law as an instrument of social change.' In *Journal of the Indian Law Institute*. 1983, Vol. 25, No. 2, pp. 262-269 at p. 267.

7 See for details Sobhan, Salma: *Legal status of women in Bangladesh*. Dhaka 1978, pp. 4-6; Bangladesh: *Strategies for enhancing the role of women in economic development*. Washington DC 1990, pp. 18-20;

Chaudhury, Rafiqul Huda and Nilufar Raihan Ahmed: 'Women and the law in Bangladesh: Theory and practice.' In *Islamic and Comparative Law Quarterly*. Vol. viii, No. 4, Dec. 1988, pp. 275-287, at p. 275; Chaudhury and Ahmed (1980) pp. 18-33.

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 women⁸.

A brief attempt is made here to understand the problem in the context of the situation of Bangladesh. First of all, the Constitution of Bangladesh states under article 149 that all existing laws shall continue to have effect but may be amended or repealed by laws made under the Constitution. Thus, the personal laws as existing laws continue to have effect and it is doubtful whether the Constitution can override the personal laws. Secondly, the constitutional clause of sexual equality [under article 28(2)] only applies to the public sphere and is not applicable to the private sphere. Thirdly, personal laws cannot be considered inconsistent with the Constitution when one of the fundamental rights [under article 28(1)] provided by the Constitution is that the state shall not discriminate against any citizen on the ground of religion. This provision ensures freedom of religion and also safeguards the personal laws based on religion. Finally, the directive principles of state policy, fundamental for the governance of the country although not judicially enforceable or justiceable, do give preference to the religion of the majority of the population.

Protective Legislation and the General Law

In the legislation there is a clear trend of 'paternalism' which shows women as in need of protection because they are weaker, and not as a "privileged class", so that women's identity becomes submerged with the stronger identity of men⁹. Below, we are giving some instances of protective legislation in the general law.

⁸ Sobhan (1978), p. 5.

⁹ *Ibid.*, pp. 6-9.

In the *Payment of Wages Act* of 1937, it is laid down in section 16(1) that no deduction should be made from the wages of a person under fifteen years or of a woman for breach of contract. In the *Workmen's Compensation Act* of 1923, it is provided in section 8(1) that where compensation has to be distributed, no payment of a lump sum as compensation to a woman or a person under legal disability shall be made otherwise than by deposit with the Commissioner. One may question the presumption that the law makers consider women as minors or as persons of legal disability. This paternalistic attitude is not doing women any good, rather making them feel weak and fragile.

There are many provisions in different Acts which tend to show the influence of social attitudes and prejudices on the legislature. For example, section 23 of the *Bangladesh Shops and Establishments Act* 1965, section 22 of the *Tea Plantation Labour Ordinance*, 1962 and the *Factories Act* 1965, all lay down that women are not to be employed between the hours of 8 p.m. to 6 a.m. or 7 a.m. Does this not imply that women who work in those hours are only housewives or prostitutes? Or does it imply that women workers are to be protected from the clutches of male workers who cannot control their emotions if women work besides them in a night shift? What these Acts could not hide was that the legislature could not avoid adherence to social bondage and myths, though outwardly they show that they are favouring women.

There are some Acts, however, which provide privileges to women, although they are rarely enforced. For example, section 47 of the *Factories Act* of 1965 provides that where there are more than fifty women workers ordinarily employed, there shall be provided and maintained a suitable room or rooms for the use of children (under the age of 6) of such women. The *Plantation of Labour Ordinance* of 1962 similarly provides, in section 12, that the government may make rules that in every

tea plantation where forty or more workers are employed; the employer shall provide and maintain rooms for the use of children of women workers under the age of six years. Other Acts providing maternity leave and benefits are also highly regarded, for example, the *Bengal Maternity Benefit Act* of 1939 provides under sections 3(1) and 3(2) that no employer shall knowingly employ a woman during the six weeks immediately following her date of delivery and also provides that no woman shall work during the six weeks immediately following her date of delivery. However, the reality is that, knowing their rights of maternity, women may ignore them because of their need for survival. This shows the wide gap between the legal provisions and their implications in Bangladesh. It also shows that the legislature, too, is subordinating women as a class.

Family Law and Women

All of this protective legislation in the general law influences the position of women in family law but the religious and official family laws of Bangladesh clearly aim for gender equity rather than absolute sexual equality. Problems arise over abuses of this relative status system. The crux of the problem is that many women in Bangladesh today are deprived even of the rights granted by the religious and state-sponsored family laws¹⁰. Prominently, women are deprived of their rights of maintenance, dower, dissolution of marriage, custody, guardianship, and other forms of property. Thus, it was found in a study of the metropolitan city of Dhaka that 88% of Muslim wives did not receive any dower¹¹. A study of two villages in Bangladesh revealed that 77% of women from families with land did not intend to claim their legal share in their parental

¹⁰ See for details Taslima Monsoor : *From patriarchy to gender equity: Family Law and its impact on women in Bangladesh*. Dhaka 1999 (published by UPL, University Press Limited).

¹¹ Akhter, Shaheena: *How far Muslim Laws are protecting the rights of the women in Bangladesh*. Dhaka 1992, p. 35.

¹² Westergard, Kirsten: *Pauperization and rural women in Bangladesh-a case study*. Comilla 1983 p. 71.

property to retain better links with their natal family¹². A recent study of child marriage conducted by me and my students in Dhaka University found that in the Motijheel A.G.B. colony 53% and in Mirpur Kazipara 92% child marriages prevail¹³.

Another novel study showed that women are being deprived economically by the customs and conventions of the society that put an embargo to secure their inheritable entitlements. In the study it was found that 95% of the women think it is wrong to ask for their rightful share, 80% of women erroneously believes that their property shall be destroyed if taken from their brothers. A woman narrated that she took her share from her paternal property and bought three cows, which died within a year. 20% of women in the village thinks that if we partition our property the divine will be displeased with us, they say '*Allah'r gojob porbo*' i.e. God's curse will fall or '*Dunia gojob hoiya jaibo*' or the world will become hell¹⁴.

These are instances of the patriarchal arbitrariness of Bangladeshi society which regards women's claims to their rights as challenging the existence of the patriarchal system itself, despite the fact that these claims are based on an Islamic obligation or official law. Thus, women has to come out of these conventions.

Some recent reforms in the field of family law and some favourable judicial decisions exist in Bangladesh, purporting to ameliorate the status of women. But such vague references to 'amelioration of a depressed class' are not readily usable for legal analysis. To analyse how far relevant laws or decisions are enforced to protect or safeguard women's interest, or whether they are merely rhetoric, we have to go into details of the family law judgements of Bangladesh. Although achieving of

13 Monsoor, Taslima: Prevention of child marriage by the Child Marriage Restraint Act, 1929: Legal implications and social reality. In the Law Journal of Rajshahi University, 1998, pp 87-108.

14 See for details Monsoor, Taslima: In search for security and poverty alleviation: Women's inheritable entitlements to land, the untapped resources. In the Journal of International Affairs, Vol. 4, No. 2, July-December 1998, pp. 42-57.

favourable legislation or decisions by itself does not modify prevailing attitudes and change the patriarchal system of a male-dominated society.

Much controversy surrounds the question whether there is judicial bias towards men. It may be expected that the effects of a male-dominated patriarchal society have an impact on the courts. But some judicial decisions are remarkably enlightened and can be seen as a departure from the patriarchal mould these decisions signify concern of the higher courts not only about giving general emphasis on women's rights but also about the need to protect women from cruel treatment and deliberate economic deprivation. There are also many judgements, however, in which the courts are interpreting the legislation only on the basis of orthodox concepts and fail to give effect to the underlying social purpose of the Convention or legislation. We are discussing below a few issues where reported decisions would comprehend the matter.

Restitution of conjugal rights

The early law on restitution of conjugal rights is that although this remedy is allowed to both husband and wife, its Anglo-Indian development has strengthened the already strong position of a Muslim husband. However, there are grounds of defence which can be used by the wife to refuse the forced restoration of her conjugal life. Payment of prompt dower is one such defence, which acts as a condition precedent to the husband's claim for restitution of conjugal rights¹⁵. The courts, before the independence of Bangladesh, seemed to be not very appreciative of these defences. The shift in the attitude of the judiciary can be gathered if we consider the cases reported after the emergence of Bangladesh. After independence in cases on restitution of conjugal rights, judges have forcefully advanced social welfare arguments against orthodox canonical precepts:

15 Shabbir, Mohammad: Muslim personal law and judiciary. Allahabad 1988, pp. 104-110; Haq, Mohammed Nurul: 'The effects of legislation and judicial decision on the Muslim law of dower. In *Dhaka University Studies Part A*, Vo. 45, No. 1, June 1988, pp 93-111.

The leading example here is Justice S.M. Hussain's potent pronouncement in *Nelly Zaman v. Giasuddin Khan*¹⁶. He commented:

A reference to article 28(ii) of the constitution of Bangladesh guaranteeing equal rights of women and men in all spheres of the state and public life would clearly indicate that any unilateral plea of a husband for forcible restitution of conjugal rights as against a wife unwilling to live with her husband is violative of the accepted state and public principle and policy¹⁷.

This shows that the judges are beginning to use the constitutional provisions of equality to give women more rights in the arena of personal law. In his unprecedented judgement Justice S.M. Hussain has elucidated dicta of restitution of conjugal rights as not being physically enforceable and executable through any process of law. He stated:

It may be specially mentioned that by lapse of time and social development the very concept of husband's unilateral plea for forcible restitution of conjugal rights as against a wife unwilling to live with her husband has become outmoded and does not fit in with the accepted state and public principle and policy of equality of all men and women being citizens equal before law entitled to equal protection of law and to be treated only in accordance with law as guaranteed in Article 27 and 31 of the Constitution of Bangladesh¹⁸.

This appeared to be the first step to burying the stereotyped conceptions of the wife as property of the husband, beginning to look upon women as human beings having their own rights in marital relationships. This was in consonance with the equality clauses of the Constitution. However, bringing sexual

16 34 DLR (1982) 221.

17 Ibid, p. 225

18 Ibid., p. 224-225

equality into family law as many argues has been creating some confusion. Moreover, the constitutional clause of sexual equality under article 28(2) only applies to the public sphere and is not applicable to the private sphere. The judges of the Family Courts are only applying Article 27 and 31, i.e. that all citizens are equal before the law and are entitled to equal protection of law. The judge further stated, while comparing the equality of men and women, as that :

In the husband's unilateral plea for forcible restitution of conjugal rights as against a wife unwilling to live with her husband, there is no mutuality and reciprocity between the respective rights of the husband and wife, since such plea for restitution of conjugal rights is not available to a wife as against her husband apart from claiming maintenance and alimony¹⁹.

The prayer for the restitution of conjugal rights was not allowed by the court, in the above case, on the ground that the marriage had already been dissolved by the exercise of the right of delegated divorce by the wife.

Custody

The cases of custody show that the judiciary in Bangladesh is deciding the issue on the paramount consideration of the welfare of the minor. In *Md. Abu Baker Siddique v. S.M.A. Bakar and others*²⁰, on the strength of precedents in the Pakistani period, the Appellate Division ruled.

It is true that, according to Hanafi school, father is entitled to the *hizanat* or custody of the son over 7 years of age. Indisputably, this rule is the recognition of the *prima facie* claim of the father to the custody of the son who has reached 7 years of age, but this rule which is found neither in the Quran nor Sunnah would not seem

¹⁹ *Ibid.*, p. 225

²⁰ 38 DLR (1986) AD 106.

²¹ *Ibid.*, p.114

to have any claim to immutability so that it cannot be departed from, even if circumstances justified such departure²¹.

It was further held in the above case that the welfare of the minor was assumed to be the determining factor which the court regards as 'paramount consideration', even though the opinion of well-known jurists may not be followed. Thus, the rules of custody propounded in Hanafi law may be departed from in permissible circumstances, in consideration of the minor's welfare. In the above case, the mother was preferred to be the guardian of the minor. The facts of the case were that the mother, being a doctor, was considered better suited to look after the minor than the father, especially in view of the illness of the minor. The Appellate Division conclusively determined that,

Facts as mentioned above clearly point out that the welfare of the boy requires that his custody should be given to the mother or that she should be appointed as his guardian²².

But this is only a rare case where a woman as a specific individual was recognised as having the right to custody when her own ability and interest to help the child was greater than that of her husband. This was probably, not a plan of the father to get rid of a handicapped child, using the convenient fact that the mother was a doctor; actually, the mother wanted to have custody of the child. The Appellate Division in the case of *Abdur Razzaq v. Jahanara Begum*²³ held that divorced mother is entitled to custody of her minor daughter aged about 16 years in preference to the father considering the welfare of the girl and her willingness to live with the mother. In the case of *Romana Afrin v. Fakir Ashrafuddin Ahmed*²⁴ it has been held that Muslim mother has absolute right against the father over

²² Ibid., p 15

²³ 1996 BLD (AD) 163

²⁴ 1996 BLD 487

the children's guardianship till she remarries.

In South Asia the jurists had argued that the husband should provide maintenance during subsistence of marriage and during the idda period²⁵. This was perhaps, because in Islam after dissolution of marriage the parties are entitled to remarriage and the woman returns to her natal family²⁶. Moreover, according to Islamic law, the deferred dower is seen as the safeguard for divorced women. Nevertheless, women in Bangladesh are usually deprived of their deferred dower. But what happens to those women whose natal family cannot provide for them? There is no state welfare system in South Asian countries as in the West. In India it has been argued that maintenance after divorce is an obligation of the ex-husband on the basis of the argument provided in the original sources²⁷. From the women's viewpoint it is seen that the wife, who was not rewarded, should not just be turned out of her house without any subsistence. In Bangladesh these problems are not articulated yet, although the judiciary has taken encouraging steps to provide for post-divorce maintenance. In *Hefzur Rahman vs. Shamsun Nahar Begum*²⁸ it was held that a person after divorcing his wife is bound to maintain her on a reasonable scale beyond the period of iddat for an indefinite period till she loses the status of a divorcee by remarrying another person.

The latest position of Sunni Law in the Subcontinent regarding past maintenance of Muslim wife as held by the Appellate

25 Fyzee Asaf A.A.: *Outlines of Muhammadan Law*. 4th ed. New Delhi 1974, p. 186; Diwan, Paras: *Muslim Law in modern India*. Allahabad 1985, p. 130

26 Mahamood, Tahir: *Personal laws in crisis*. New Delhi 1986, p. 87.

27 In the celebrated case of Shah Bano (Mohd. Ahmed Khan AIR 1985 SC 945), in India the court allowed post divorce maintenance. See for details, Naseem, Mohammad Farogh: *The Shah Bano case: X-rayed*. Karachi 1988; Ali Ashgar (ed.). *The Shah Bano controversy*. Bombay 1989. For the current developments under the Muslim Women (Protection of Rights on Divorce) Act of 1986 see Menski, W.F.: 'Maintenance for divorced Muslim wives'. In Kerala Law Times. Journal 1994 (1) pp. 45-52.

28 47 DLR (1995) 54.

29 16 BLD (AD) (1996) 61

Division of the Supreme Court in *Jamila Khatun vs. Rustom Ali*²⁹ is that the wife is entitled to past maintenance even in the absence of any specific agreement.

The Bangladeshi Judges of the highest level of judiciary have only very recently made celebrated judgments providing for post divorce maintainance in *Hefzur Rahman vs. Shamsun Nahar Bagum*³⁰ and past maintenance for Muslim women in *Jamila Khatun vs. Rustom Ali*³¹ but how far these decisions are being implemented in reality is yet to be analysed. However, Hefzur Rahman's case has been overruled in practice the execution of maintenance decrees is very difficult as the husbands evade to pay maintenance, hide and cannot be located. Even when they are traced, they might not have any possessions or may falsely conceal them. It is recommended that the sanctions of the Family Courts could be strengthened by providing them with a criminal court's power to order for arrest of husband or attach their property to pay maintenance to the wives. It is suggested that the powers of the Family Courts should be enhanced in this regard.

The Family Courts of Bangladesh have now become the main repository of family law issues as very few cases actually come up to the higher courts. To make a full assessment of how the law is developing today, a detailed study of unreported cases from various parts of the country would be necessary. In the present article, this could not be done. However, the prevailing impression from the reported case-law that modern Bangladeshi family law has benefited from judicial activism, protecting the interests of women, may need to be revised in the light of more detailed research focusing on local litigation patterns. Our own limited research of the case studies provided many examples of insufficient protection of women and shows that there is a need for more systematic activation of the judiciary and better sensitisation of all judicial personnel for the

30 47 DLR (AD) (1995)54

31 16 BLD (AD) (1996) 61

needs of women.

If we ask how effective the judgements of the Family Courts are in practical life and whether the rights given to women in the decisions are actually achieved in social reality, we must admit that there is a dearth of information and that further research is needed. A related pertinent question is whether the enlightened judgements of the courts are actually accepted by the society. Even when liberal or pro-women judgements are pronounced in matrimonial law, it is important to recognise that the patriarchal society will not accept them unless there is a substantial change in the traditional attitudes of the people, especially among males. This can be felt mostly in relation to child marriage and dowry, as few people observe the official law in the rural areas and it is freely violated without anyone ever challenging this in a court of law.

For effective implementation of laws, revisions need to be made in judicial procedures as well. For elimination of violence against women we have to increase mass awareness on issues relating to violence, dowry and child marriage explicitly stating that they are offences for which punishments and penalties are provided.

Substantial improvement of women's access to legal justice is essential. Rehabilitation through focus on both quantity and quality of services available, including legal aid services relating to women is a primary requirement. The different target groups at central and local levels of the legal system and the judiciary can also be used for promoting gender sensitisation.

Empowerment of women of their legal rights can be achieved by developing and strengthening institutional and non-institutional mechanism to address issues related to women's rights and thus provide them with their granted rights. While the potential impact of enlightened judgements on society should not be underestimated, it is too simple to assume that court decisions by themselves can change the social realities for

most women. Court activity and the involvement of sensitised judges may help to establish that institutions like the Family Courts as the right platform to protect women from economic deprivation and violence. But, it is not only the obligation of the courts or the judiciary but the leaders of political parties, social reformers, academicians and NGO's and persons in all services to step forward to reform the conventional attitude of our society so that women get equal treatment and acceptance in every sphere of their lives. Then there will not be any child marriages, no dowry deaths, no violence against women and women will not be deprived of their granted rights of having equal treatment from not only their father, brothers but also from their fellow colleagues. It seems appropriate to conclude that a better sensitised society with enlightened attitude can only empower and protect women and children and that will bring some meaningful achievement of the last five decade's struggle for empowerment of women of Bangladesh.