Sonargaon University

Research Monograph

On

''WOMEN'S POSITION UNDER THE FAMILY LAWS OF BANGLADESH: A CRITICAL ANALYSIS''

This Research paper is submitted in partial fulfillment of the requirements of the degree of LLB (Honors) under Sonargaon University.

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Abstract

Abstract Women's legal rights are one of the most significant determinants of their status. In Bangladesh, a series of laws ensuring women's rights have proven largely ineffective in promoting their positions. The prime reasons for this are: dirtier politics, the ineffective implementation of women rights laws, the traditional and cultural negative views about women's rights, the absence of an accountable and transparent government, the expensive and time consuming judicial process, the lack of an efficient judiciary, and other socio-economic reasons. The core theme of this essay concentrates on the ineffective enforcement of laws with the objective to promote protection of women's rights by recommending remedies to flaws in prevailing laws in Bangladesh. Recommendations are made by reference to comparative and international prewrite. The primary arguments developed throughout this essay are: (i) the protection of women's rights is imperative to improve their status (ii) the legislative, administrative and judicial efforts dealing with women's rights; and (iii) improvements in those efforts to better protect women's rights. This study examines laws regarding women's employment and political participation and the laws on dowry. It also explores the ways laws have been structured and enforced in Bangladesh, and how law can be an effective means of women's pursuit of rights.

Keywords: Judiciary, international prestige, legislature, employment and political participation

PREFACE

At first, thanks to almighty, who has been kind enough to let me complete this Research Monograph in right time.

I would like to acknowledge my gratitude to my honorable teacher Sanjoy Pal for permitting me to undertake this research. Thanks to him for his most constructive suggestion. And informative guidance through his lectures.

From beginning of my research, I am personally indebted to some book writers for their kind And valuable writings. Thanks to all from the bottom of my heart.

Signature

CERTIFICATION BY RESEARCH SUPERVISOR

This is hereby certified that the research Monograph on the topic **''Women's Position Under the Family Laws of Bangladesh: A Critical Analysis''** submitted by **Shakib Hossain** (Id No:- LLB-1802014011) in fulfillment of the requirements for LLB (hon's from Sonargaon University, under my active supervision and guidance and that no part of this paper has been submitted any place earlier, as far as I know.

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DECLARATION

This is, **Shakib Hossain**, a student of LL. B program of Department of Law of Sonargaon University, **ID No: LLB-1802014011**, do hereby declare that the Research Monograph Titled, "**Women's Position Under the Family Laws of Bangladesh: A Critical Analysis''** is an original work.

The assigned work has done by me for partial requirement of my LLB degree, as a part of academic curriculum. I certify that this thesis does not incorporate without acknowledgment any material previously submitted for a degree or diploma in any university; and that to the best of my knowledge and belief it does not contain any material previously published or written by another person except where dereference is made in the text.

I also declare that the presented work does not breach any existing copyright and no portion of this research monograph has been copied entirely from any work done earlier for a degree or otherwise.

Signature:

Date:

LETTER OF TRANSMITTAL

To,
Sanjoy Pal
Lecturer, Department of Law
Sonargaon University, Dhaka.

Subject: **For the submission of research Monograph titled ‘‘Women’s Position Under the Family Laws of Bangladesh: A Critical Analysis’’.**

Dear Sir,

This is a matter of joy for me to submit the thesis on the title ‘**Women’s Position Under the Family Laws of Bangladesh: A Critical Analysis’.** While doing this research monograph, I have tried my level best to keep the required standard. I Hope, this dissertation will fulfil your expectation. I hope that you would be kind enough to go through this dissertation for you kind evaluation. I am always available for any clarification or any other necessity of any part of this research Monograph at your convenience.

Yours obediently

Shakib Hossain
ID No: LLB-1802014011

Dedicated To: My Beloved Parents

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CHAPTER 1

1.1 Introduction

Women are part and parcel of society. They are the nerve of the society. We cannot deny their role in the global society. We cannot imagine a body without a heart. Similarly it is not to think a societal improvement without the participation of the women with this view in mind our national poet quoted that the creation of the world whatever great and beneficial for human being are shared fifty by man and fifty percent women. In Bangladesh practical field of present twenty century they can't live independently.

We know from Bangladesh bourn us of statistics BBS that almost 50% of population are women. So without the development and participation of women equal as men, our national development will be surely hampered.

Position is the power or privilege to which is entitled or a thing to which one has a just claim. Many different types of positions have been described. Many of them terns means such kind of position which deal women or females facility to get right proper life and right to get right to deal own economic political etc. Every women have position to get position to life, position to proper education, freedom of movement it is universal declaration for all women. Something special opinion, women in the village work longer and harder than men folk caring for domestic animals the fields, tending children and cooking. All the boiling, drying and husking of paddy is exclusively women's work.

House spent in household activities like caring for elderly relatives and the sick are not seen as since they do not earn money for the family. As farm labour, women yet roughly 40 percent of a men wage, according to reaches. Dr. Atiar Rahman, a research fellow of the Bangladesh initiation of development studies BIDS, has calculated in a reset study that women work 21 hours more in a week than men.

Similarly, the UN children's agency, UNJCKF, estimates that boys who not do not go to the school. Spend only 12 minutes on housework daily, while girls who have a doped out shoulder five hour off around the work.

1.2 Aim of the Study

Women are favorite subjects of literature, and Bangladeshi women are no exception. The beauty and charm of Bangladeshi women are extolled in poems, legends and short stories. But the suffering of Bangladeshi women hardly comes out in the literature. Bangladeshi women endure oppression and deprivation in their own family, community or in the society at large. They are also subjected to violence and discrimination. In a large country like Bangladesh, with its socio-economic and legal systems biased against the poor and the women, Bangladeshi women are in difficult situation.

The discriminatory attitude against women, rooted in the family and extends to the State level, should be ended. Because of the constraints from the family, society and the State in general, Bangladeshi women are not aware of their positions. And even if some of them become aware of their positions, they still would not assert them due to the "ingrained unexpected continuity" (i.e., the traditional belief of keeping women under the shadow of somebody such as their fathers or husbands).

1.3 Importance of Study

Entitlements of women and girls of all ages are granted. These position may or may not be institutionalized, ignored or suppressed by law, local custom, and behavior in a particular society. These liberties are grouped together and differentiated from broader notions of human rights because they often differ from the freedoms inherently possessed by or recognized for men and boys and because activists for this issue claim an inherent historical and traditional bias against the exercise of positions by women and girls.

Issues commonly associated with notions of women's positions include, though are not limited to, the position: to bodily integrity and autonomy; to vote (universal suffrage); to hold public office; to work; to fair wages or equal pay; to own property; to education; to serve in the military or be conscripted; to enter into legal contracts; and to have marital, parental and religious positions. Women and their supporters have campaigned and in some places continue to campaign for the same rights as modern men.

1.4 Scope and Limitation of Study

This section of the report has listed some of major limitation, which the study has undergone. The finding of study should be consumed/utilized in light of the following limitations.

The study is based on attitude and opinion survey of some teacher, student and lawyer, the questionnaires were developed, and the finding has inherent sampling errors and, therefore, cannot be generalized.

The evaluation of study have been attempted through opinion of respondents, not from general public and, therefore, most likely to reflect response bias. This is another important limitation of the study.

The study has very limited scope and encompasses the volunteer and staffs by me. I am use many NGOs which are related with these activate. The study does not take into consideration other parallel government as well as nongovernment organization working at the grass-roots areas with similar objective.

1.5 Methodology of Study

The methodology used in the thesis is Qualitative Methodology. Our research works are based on

1. Historical Study, and
2. Analytical Study.

1. Historical Study:

Woman's Position is a accepted fact in Universal Declaration of Human Right (UDHR). It has a historical back ground of woman's movement for the establishment of their positions. The woman's movement becomes successful. Now the modern world, Modern state and United Nations Organization highlighted the woman in their dignity, honor, position, participation social work political activity etc.

In Bangladesh the Woman's Position are guaranteed in their constitution, state laws, and social and state activities. Through the historical revolution the woman's position has come to this position. The history woman's movement started from 1971 after successful victory of the Bangladesh war of Independence. So, to write this thesis we have to use historical study.

2. Analytical Study:

In this thesis the formation development and solutions regarding woman's position are to be discussed. In this process of analysis the laws related to the subject and solutions from the judicial process are to be discussed. The enforcement of woman's position is judicial matter. So in this process of study the analytical study is necessary and important for this thesis. For our research works we followed the analytical study.

The main object of the study is to evaluate effects and importance on persons, society and the state. The study is mainly qualitative in nature because, the impact that the study has searched would not be possible to assess without qualitative data.

Legal issues, judicial rulings and administrative management of the government and the public, all are related with the issues. The research work is involved with the legal matter, administrative matter and judicial decision of the Woman's Position. Under these circumstances a regulated research work will be suitable to solve the problems after investigating different variables such as laws relating to "A Thesis on Women's Position".

Normally researchers depend on different methodological approaches. Research method is an important factor for all kinds of study. There are two kinds of empirical research methods namely

1. Qualitative Research Method,
2. Quantitative Research method.

Research on "A STUDY ON WOMEN'S POSITION" a new admiration has emerged among the judicial persons, educators, sociologists, psychologists and public interest, lawyers, politicians, scientists and many others. Peaceful, legal, moral, ethical happy life in the society is the vital issue for the mankind. So considering all the above factors this research works utilizes the following methodologies

1. Case study method,
2. Judicial method,
3. Ground theory method.
4. Sociological Method,
5. Statistical Method.

Method used in this thesis:

The method is used in this dissertation is action oriented. The study has been conducted on the basis of two principal sources of data collection. These are:

1. Primary Source,
2. Secondary source.

The basic data has been collected from the administrative source, legislative laws and historical events. Other data has been collected from judicial rulings and affected person's information. By focusing efforts on critical issues of authority concern, and the victim persons concern are the important sources of data collection.

CHAPTER 2

2.1 Basic Concept

Muslim Women existing law is concerning women's rights with respect to dower, maintenance and inheritance and the large gap between what is stated in law and what is practiced in Bangladesh. Women in Bangladesh seldom take full advantage of their rights; this is due to the fact that they are mostly ignorant of them. Even if they are aware of these rights their lower socio-economic status often prevents them from exercising those rights.

This stimulating thesis explores whether women in Bangladesh are deprived of their economic rights. This topic had been analyzed in a sociological context. In fact, the topic of women's status automatically demands a sociological approach. The thesis contains a lot of empirical studies, which are reprinted in order to provide an easy access to the reality of women's problems and issues. This well researched and thought-provoking book is a most welcome addition to the growing literature on the subject.

2.2 Law relating to women's position

The Bangladesh Constitution declares equal rights for men and women in all spheres of public life.[1] The word 'public' seems to be a major clue to solving this riddle. It is only in the spheres of state and public life that equality is guaranteed through the Constitution. This means that in the private or personal sphere women are pretty much on their own. So even if her husband for whatever reason continuously tortures a woman, until she is killed, the state is unlikely to intervene, as it is we say, too gentlemanly to invade the privacy of the individual. The result is that women continue to be treated as inferior human beings by their husbands and by a society that tends to victimize victims instead of helping them.

Trying to understand the dichotomy of public and private spheres of our legal system is like squirming around in quicksand-- the more you want to get out the deeper you get stuck in the muck. According to Faustian Pereira, a Supreme Court Advocate and author of the book 'Fractured

[1] The constitution of the Peoples Republic of Bangladesh, 1972 – article 28 (2).

Scales' that deals with this very issue, the legal system of Bangladesh is categorized into two distinct branches. One is Constitutional Law and the other is General Law or those that are not directly governed by the Constitution. The Constitution being the supreme law of the land demands that any law inconsistent with its provisions is void. Thus laws considered under the General Law must technically confirm to the constitution. But if we try to get a firm grip on what 'General Law' consists of, it becomes clear why so many women prefer to silence rather than seek legal help.[2]

2.3 Women's Positions under the Family Laws

The General Law consists of civil and criminal laws, which are governed respectively by the Code of Civil Procedure of 1908, the Penal Code of 1860 and the Criminal Procedure Code of 1898. The Personal or Family Laws are under the General Law but mostly are governed by the civil law: the matters which directly affect women such as marriage, divorce, dower, maintenance, guardianship, custody, inheritance and restitution of conjugal positions are separately governed by each religious community's "religious personal law" system. For example, take marriage. Muslim parties, says Pereira, are regulated by, among others, the Muslim Family Ordinance 1961 or the Muslim Marriages and Divorce (Registration) Act 1974. Hindu parties are regulated by (among others) the Hindu Marriages Disabilities Removal Act 1946 or the Hindu Widow's Remarriage Act 1856. Christian parties to marriage meanwhile, come under the Christian Marriage Act 1872.

The existence of separate laws for each community means that the kind of justice meted out to a woman is determined by the religious community she belongs to. Most of these laws are antiquated and originated from patriarchal mind-sets and therefore do little to change the status of women from helpless, inferior citizens.[3]

[2] Bangladesh: Is the law fair towards women, by Aasha Mehreen Amin; Star weekend Magazine/ The Daily Star, August 29, 2022

[3] Bangladesh: Is the law fair towards women, by Aasha Mehreen Amin; Star weekend magazine/ The Daily Star (Bangladesh) August 29, 2022

2.4 Women's Positions under the Constitution

Even some of the articles in the Constitution are patronizing towards women. Article 28 (1) states: The State shall not discriminate against any citizens on the grounds of religion, race, cast, sex or place of birth. But then Article 28 (4) states: Nothing in this article shall prevent the State from making special provisions in favor of women and children or for the advancement of any backward section of citizens. In "The Fractured Scales" by 'Faustian Pereira, She said, Lumping women with 'any backward section of the citizens', prejudicially protective, paternalistic attitude. The language of the law, all law, till now, has been the language of patriarchs.

1. Article 7 of the Constitution declares that any existing law of the state which is inconsistent with any provision of the Constitution shall be void.
2. Articles 27, 28 and 29 of the Constitution declare the principles of non discrimination.
3. As per Articles 36, 39 and 65 of the Constitution, a woman has the right to seek nomination and contest for any political opposition.

4. Article 28(2) of the Constitution states that women shall have equal rights with men in all spheres of STATE and PUBLIC life. [4]

2.5 Other laws; relating to violence against women

- Dowry Prohibition Act, 1980
- Nari O Shishu Nirjaton Daman Ain , 2000
- Acid Crime Prevention Act, 2000.
- Acid Control Act, 2000. [5]

[4] The Constitution of Peoples Republic of Bangladesh, 1972

[5](http://bdlaws24.blogspot.com/2013/02/a-comparative-study-on-womens-right-in_8893.html?m=1)

CHAPTER 3

3.1 Muslim Family Law

Although Muslim family law originates from Sharia law, Muslim family law has been revised, added and changed by making new laws at various times due to historical needs and the natural rules of evolution. Some of these laws are Muslim Family Law Ordinance 1961, Muslim Marriage and Divorce Registration Act 1974 and Rules 1975, Muslim Divorce Act 1939 etc. Also, the decisions and interpretations of laws given by the High Court at various times have played an important role in expanding the scope of this law. This article will highlight some of the issues of Muslim family law such as marriage and marriage conditions, divorce, maintenance, guardianship, inheritance etc. [6]

3.2 Marriage under Muslim law

According to law, Muslim marriage is a social and civil contract. An independent person of sound mind and adult is required to enter into this agreement. As a result, the social contract between two men and women of sound mind to legally live as husband and wife based on their opinion is called Muslim marriage. [7]

3.3 Conditions of Marriage

According to Muslim law the conditions to be fulfilled for a consummated marriage are –

1. Age,
2. Consent,
3. Dowry,
4. Witnesses and
5. Registration.

[6] https://lawcastlebd.wordpress.com/2020/01/31/muslim-family-law/

[7] https://blog.ipleaders.in/marriage-under-muslim-law/

- Age: Age of girl should be 18 years and boy should be 21 years for marriage.
- Consent: The second important condition of marriage is the consent of the bride and groom which must be freely and freely given or taken. Obtaining consent by coercion or fraud or inducement is not acceptable in law. Forced or fraudulent marriage without consent is punishable with imprisonment of up to 14 years, fine or both as per Bangladesh Penal Code.
- Dowry: Dowry is one of the conditions of Muslim marriage. Denmohar is the giving or promising to give a certain amount of money or property to the wife by the husband as per the terms of the marriage contract. The husband is legally bound to pay Denmohar. In case of divorce or death of the husband, the wife can collect the dowry. If the husband does not pay the dowry for any reason, the wife can take recourse to the court. Basically, the dowry has to be paid in two ways. The husband will pay the dowry immediately at the time of marriage or when the wife wants it. Besides, dowmhor can be paid at any time of married life and even after divorce or death of husband.
- Witnesses: The duty of witnesses is to verify whether the boy and girl have voluntarily agreed to the marriage. The marriage must be witnessed by two adults and persons of sound mind.
- Marriage Registration: Every Muslim marriage must be registered under the Muslim Marriage and Divorce Registration Act, 1974 (Act No. 52). Registration is a marriage document recognized by the government and executed by a licensed Kazi, which records the details of the bride and groom. Important points regarding Muslim marriage registration - Marriage registration should be done at the marriage ceremony Marriage registration should be done within 30 days of marriage. [8]

3.3.1 Nikahnama/Registration Requirements:

All columns of Nikahnama should be signed by the groom, bride, witnesses and other persons to ensure that they are filled in properly at the time of marriage. In order to take recourse to the court due to any problem arising out of the marital relationship, the registered marriage certificate must be submitted to the court as proof of the marriage contract. For example, if the wife does not provide maintenance to the child without reasonable cause, if she marries again without the

[8] https://bangla.lawhelpbd.com/

permission of the wife or if she divorces the wife and deprives her of dowry, if there is another marriage while she is still married by deception, a registered Nikahnama is required.

3.3.2 Nikahnama/Original Kabinnama:

Nikahnama / Original Kabinnama light blue colour form with number 1600 and this form has 25 columns. Each column must be filled. [9]

3.3.3 Copy of Nikahnama/Kabinnama:

Duplicate or photocopy of Nikahnama No. 1601 which after completion of marriage registration, Nikah Registrar will provide attested photocopy to both parties concerned after entry in the registrar.

3.3.4 Receipt for Payment of Marriage Registration Fee:

After completion of marriage registration, a receipt number 1616 should be issued for receipt of registration fee.

3.3.5 Marriage Registration Fee:

There is a Kazi or Nikah Register appointed by the government to register marriages. Nikah registrar can collect marriage registration fee at the rate of Tk 12.50 (times taka fifty paisa) for every thousand dowry or part thereof for marriage registration. However, if the amount of dowry is more than Tk 4 (four) lakhs, the next one lakh taka is the dowry or part thereof. One hundred rupees can be collected as marriage registration fee. However, the minimum fee shall not be less than 200 (two hundred) rupees irrespective of the amount of dowry. The marriage registration fee shall be paid legally by the husband. Apart from this, if the Kazi fails to perform the correct duties by verifying the marriage registration form, an application can be made to the district administration or the district registrar to take action against him.[10]

[9] https://kaziofficeuttara.com/rules-of-registration/

[10]http://www.kamarpukurup.nilphamari.gov.bd/site/page/4a

3.3.6 Penalty for non-registration of marriage:

Non-registration of marriage shall be punishable with imprisonment for 2 years- or with fine of Rs.3,000/- or with both. The wedding planners, the groom/bride's party and the one who performs the wedding will all be punished.[11]

Note that the issue of marriage registration is important because in almost every case common people are cheated or harassed. It is important to know specific information on this matter as common people are cheated in every case including not being able to differentiate between original copy and duplicate copy of Nikahnama, not knowing receipt of fee, charging extra fee due to not knowing specific fee of Qazi.

The statement of "house number 5 and 18" in the marriage registration form is highly discriminatory against women

In the '5th house' of the marriage registration form it is said - whether the daughter is a virgin, a widow or a divorced woman? Although this question was asked in the case of women, this statement was not applied in the case of men. Article 27 of the Fundamental Rights section of Part III of our Constitution states – All citizens are equal before the law and entitled to equal protection of law and Article 28(1) states – The State shall discriminate against any citizen only on grounds of religion, caste, caste, sex or place of birth. no So this statement of the registration form is not a violation of the constitution? Such statements in marriage registration forms need to be struck down as violating the fundamental rights of the Constitution under which this country is governed. We think both men and women should have this type of question. Not only for women. Similarly, it is said in house No. 18 - whether the husband has delegated the power of divorce to his wife? What are the conditions if you do? This column is also against the concept of equality of men and women and against the fundamental rights recognized by the Constitution. Because marriage is a contract between two sane and mature independent people. According to this agreement, the right to divorce should be equal between both parties. But while the issue of conditional divorce was mentioned in the case of women, the need for the wife's permission for divorce in the case of men was ignored. Sole authority of men in matters of divorce. Contractual divorce is a democratic right – this right should apply equally to both men and women as human beings.

[11]https://www.banglanews24.com/law

3.4. Divorce in Muslim Law

In Muslim family law, marriage is a civil and social contract. Therefore, legal dissolution of the relationship established by marriage is called divorce. Husband has absolute power in divorce. Wife can divorce subject to certain legal conditions. The rights of husband and wife are not equal in the case of divorce. The ways in which a husband or wife can file for divorce are as follows:

A. Divorce by husband: The husband can divorce at any time of his own will. This unilateral power of his is called Talaq.

B. Divorce by Wife: The wife can divorce through the following methods.

- If the husband delegates the power of divorce to the wife, that is called Talaq-e-Taufiz (as per the statement of House No. 18 of Marriage Registration).
- By Khula i.e. wife can divorce in return for something
- Through mubarat i.e. husband and wife can divorce with the consent of both parties.
- Through the Court.[12]

3.4.1 Divorce by husband:

An adult sane Muslim man can divorce his wife at any time. But if you say orally or in writing when you want, divorce will not happen. The Muslim Family Law Ordinance 1961 lays down well-defined and well-defined procedures for granting divorce. Section 7(1) of this Ordinance states-

- If a person wants to divorce his wife, he must send a written notice of divorce to the chairman of the Union Paris had in which the wife lives. A copy of the notice must also be sent to the wife. In this Act, Chairman means Chairman of Union Paris had, Chairman of Municipality, Mayor etc.

[12] https://pododhoni.com/

- The Chairman shall, within 30 days of receiving the notice, constitute an arbitral tribunal consisting of 2 nominated representatives of both the parties and he or a representative nominated by him. The arbitration panel will call both parties and try to reach an agreement. Divorce will not be effective if the husband and wife are reunited through reconciliation.
- Divorce shall be effective after 90 days from receipt of notice by the Chairman if both parties do not reach an agreement in arbitration. Until the 90 days have passed, the couple will be considered legally husband and wife and the wife will also receive maintenance.
- When divorce is not effective: If the husband divorces the wife while she is pregnant, the divorce will not be effective until the child is delivered. Divorce will be effective after the birth of the child.
- Remarriage of Divorced Spouses: In case of dissolution of marriage by divorce under the Muslim Family Act, 1961, the divorced couple can remarry if they wish to remarry unless the triple talaq is effective as per Section 7(6) of the Act. For this the wife does not have to perform any intermarriage/ hila marriage.
- Punishment for divorce without giving notice to the chairman: Any person who fails to give notice of divorce to the concerned chairman shall be liable to imprisonment for a term which may extend to 1 (one) year or to a fine which may extend to Tk 10,000/(ten thousand) or to both. Note that divorce will not be effective unless notice is given to the chairman.

3.4.2 Divorce by Wife:

A. Through Talaq-i-Tawfiz

As per the statement of House No. 18 of Marriage Registration, if the husband assigns the power of divorce to the wife: Talaq-e-Tawfiz is not the wife's own power. If the husband empowers the wife to grant divorce through column 18 of Kabinnama, then the wife can also grant divorce like the husband. In that case the wife should also send the notice of divorce to the chairman and a copy to the husband. Talaq-e-Tawfiz is the power of the wife to give divorce. It is mentioned in house no. 18 of the Nikahnama 'Whether the husband delegated the power of divorce to the wife? If done under what condition?

is the question. In this method, the wife's power to divorce is valid only when the husband grants this power to the wife by specifying some reasons and areas in the 18 nine houses of the Nikahnama. This means, if the husband objects to filling house No. 18 or mentions "No" or does not mention any field or gives this power in two or three or one field then the power of the wife to grant divorce will be limited. It is unacceptable to have the statement that men and women will have equal rights to divorce each other in Nikahnama. As a result, this statement of Nikahnama is contrary to the concept of equal rights of men and women and is discriminatory against women.[13]

B. Open separation-

In Muslim law, mutual disagreement between husband and wife can lead to divorce. However, through Khula, the proposal for divorce came from the wife. The wife may try to persuade the husband to divorce in exchange for something (usually dowry or some other tangible property). In this case, the wife will send the divorce notice to the chairman.

C. Mubarat-

In cases where both husband and wife are adverse to divorce and both of them want to dissolve their marriage by agreement, that method is Mubarat. But in Mubarat the wife does not have to give up anything. Either party makes a proposal, the other accepts the proposal. In this case, the person raising the proposal will send a notice to the Chairman.[14]

D. Through the Court-

According to the Muslim Divorce Act 1939, a wife can divorce her husband on certain specific grounds. The wife has to apply to the court for these reasons.

According to Section 1 of the Muslim Divorce Act, 1939, a married wife is entitled to obtain a decree of divorce on one or more grounds, namely —

1. If the husband is celibate for more than 4 years

2. If the husband does not maintain his wife for two years

[13] https://www.legalserviceindia.com/article/l393-Divorce-under-Muslim-Law.html

[14]https://www.legalserviceindia.com/legal/article-5479-divorce-under-muslim-law-the-concept.html

3. If the husband takes more than one wife in violation of the provisions of the Muslim Family Act, 1961;

4. If the husband is imprisoned for 7 years or more;

5. If the husband fails to perform his conjugal duties for three years without any reasonable cause;

6. If the husband is impotent at the time of marriage and remains so during the pendency of the suit;

7. If the husband is mentally retarded or suffering from leprosy or serious venereal disease for two years;

8. If married as a minor, after attaining puberty i.e. after attaining the age of 18, if the wife refuses the marriage; &

9. Also, if the husband abuses the wife physically or mentally, if the husband leads an immoral life and tries to force the wife to live an immoral life, transfers the wife's property or prevents the wife from exercising legitimate rights over her property, the wife is prevented from performing her religious rites. If the husband has more than one wife and does not treat them equally, the wife can apply for divorce through the court for one or more reasons.

In this case it should be noted that the responsibility of proving the complaint is on the wife. If the allegations are proved, the wife can get a decree of divorce. A certified copy of the decree must be sent to the concerned chairman through the court within seven days after the court passes the divorce decree. According to the Muslim Family Law Ordinance, 1961, the Chairman will treat the notice as a divorce notice and take legal action. The divorce will be final exactly ninety days from the day the chairman receives the notice. If the whereabouts of the husband is not known, notice must be given to his heirs as per Section 3 of the Muslim Divorce Act, 1939. Section 5 of the Act clearly states that this process shall not affect any right of the woman to her dowry or any part thereof under Muslim law in case of divorce.[15]

[15] https://www.ainsheba.com/blog/divorce--

3.4.3 Registration of Talaq:

As per the Muslim Marriage and Divorce Registration Act 1974, Talaq must be registered like marriage. According to the Gazette Notification dated 10th April 2011, in case of registration of any type of divorce, the marriage and divorce registrar or Kazi will have to pay a fee of 500/- (Five Hundred) to register the divorce. The person who legally executed the divorce shall submit the application and fee for registering the divorce.[16]

3.4.4 Divorce is discriminatory in Muslim family law:

As a signatory to the Human Rights Charter, the State violated Article 16(a) of the Human Rights Charter. This Article states – Men and women of full age have the right to marry and found a family without any restrictions on account of race, nationality or religion. They have equal rights regarding marriage, marriage and divorce. Similarly, Article 28(1) of the Constitution states that the State shall not discriminate against any citizen solely on the grounds of religion, caste, caste, gender or place of birth. But in the case of divorce, the state law has discriminated against women. It is the duty of the state to eliminate this discrimination in the case of marriage and divorce and establish equal rights and equality for women.

3.5 Maintenance in Muslim Law

Sustenance is the fulfilment of basic needs such as food, clothing, shelter etc. which are very necessary for survival. How much this maintenance will be financially has not been determined. The amount of maintenance is determined by considering social status and other factors. A capable and earning person is bound to maintain his wife and minor children. [17]

3.5.1 Maintenance of wife:

Marriage is a contract under Muslim law. This marriage creates certain legal rights and responsibilities. Among which sustenance is one. Maintenance is husband's duty and wife's right. Wife is entitled to get food, medical and other means of living from her husband due to marriage. This right exists during marriage as well as during divorce. But this right is limited and exists for

[16]https://bangla.lawhelpbd.com/

[17] https://www.toppr.com/guides/legal-aptitude/family-law-i/maintenance-under-muslim-law/

a limited time. In Muslim law, the husband does not have to fulfill such obligations for the wife. Because it is assumed that the girl is financially dependent on her father and husband. So the wife will get maintenance from her husband. The husband's maintenance responsibility does not fall on the wife.

- In cases where the wife will get maintenance even if she lives separately from her husband
- If the husband refuses or does not pay the immediate portion of the dowry of the wife
- If the husband treats his wife cruelly
- If the husband contracts a second marriage without the wife's permission, the wife can refuse to cohabit with the husband and claim maintenance.

How long is the wife entitled to maintenance after divorce: From the date the divorce takes effect, the wife is entitled to maintenance from the husband until ninety days have elapsed, i.e. during the Iddat period. Basically: The reason for this act is to ensure that the wife is fertile.

How a wife can collect maintenance from her husband - According to section 488 of the Code of Criminal Procedure 1898, the court can order a maximum monthly maintenance equal to Rs.500. Besides, according to section 9 of the Muslim Family Law Ordinance of 1961, if the husband fails to provide maintenance to his wife, the wife will apply to the local chairman in this regard. The chairman will form an arbitration panel and determine the amount of maintenance according to the social status and he will issue a certificate in this regard. As per the decision, if the maintenance amount is not paid within the specified time, it will be recovered as arrears of land revenue. In this case, if the wife is divorced, she will get maintenance for three months (up to Iddat period). If a person does not comply with the decision of the arbitral tribunal, a Muslim wife can file a suit directly in the family court to recover her maintenance under section 4(c) of the Family Courts Ordinance Act, 1985.

3.5.2 Limitations of Law on Maintenance of Wife:

According to Muslim law, the husband is responsible for the maintenance of his wife after marriage. That is, the wife is financially dependent on the husband. This provision is discriminatory. Because not only the husband does the provision, but the wife also directly fulfils the responsibilities in the family. All the responsibilities of child rearing and household management are assigned to women. But the husband will provide for the wife - this statement

denies the role of women in the family. Both husband and wife are breadwinners in the family. Everyone is dependent on everyone. This interpretation of the law does not reveal that.[18]

3.5.3 Maintenance during and after separation:

Marriage in Muslim law is a contract. Any contract is made between two people of equal status. Since the wife is dependent on the husband, this law ignores the issue of equality. As a result, it can be seen that due to the exclusive power of the husband in divorce, the wife will get only ninety days of maintenance from the husband as per the law. But there is no recognition of the role of women in the formation of that family. Women will get maintenance only for ninety days or only during Idea if childbearing. Again, what is the way out of the irony of a woman being helpless after a divorce? What is the responsibility of the family, society or the state here? As a citizen of the state, the state has to take this responsibility, establishing the woman on the property acquired in the family during marriage. There should be a change in the attitude of family and society where women can live with their independent and individual dignity.[19]

3.5.4 Child Maintenance:

The father is legally responsible for the maintenance of the child. The father will maintain the boy until he reaches puberty and the girl until marriage. The father is responsible for the maintenance of sick and disabled children. If the children are unable to provide for themselves after attaining puberty, then the child will receive maintenance from the father. While the mother is the guardian of the child, the husband will maintain the child.[20]

3.5.5 Guardianship and Responsibility:

According to Section 4(2) of the Guardian and Fostering Act, 1890, guardian means a person who is appointed to look after the body or property or both of the body and property of a minor. So guardianship is the relationship between the minor and the guardian, by which the guardian gets the right to look after the body and property of the minor. And responsibility means the right to

[18]https://www.academia.edu/27510570/An_Overview_of_the_Parent_Maintenance_Act_2013_in_Bangladesh_Limitations_and_Encumbrances

[19]https://www.divorcenet.com/resources/divorce/separation/separate-maintenance-legal-separation

[20] https://youtu.be/DVT6q0D_fMo

rear, maintain, look after and care for the child up to a certain age. In Muslim law, the father is the actual legal guardian of the child. In Muslim law, the mother cannot be the guardian of the child. However, the mother can keep the male child up to seven years and the female child until marriage. This right is called 'Hijana' or responsibility.

Although the mother is not the guardian of the child according to Muslim law, the mother can apply to the court for guardianship of the child depending on the circumstances. For example - the real guardian of the child who does not take care of the child properly or fails to fulfill the child's responsibilities or is not interested in the child's welfare, the mother should have the child with her for the welfare of the child - can apply to the court.[21]

3.5.6 Limitation of this Act:

In this Act, the mother can be a guardian up to the age of seven years in case of a boy and up to the age of puberty in the case of a girl child. A mother cannot be a guardian under this law. However, according to the court order, the mother can remain the guardian even after the specified age of the child. Where both parents are naturally supposed to be the guardian of the child, the mother cannot be the guardian. A mother's role is crucial in doing maximum labor and responsibility for the child. A fatherless child or when the father abandons the child and gives priority to his own will and reluctance, then the child's only support is the mother. Even if the mother sacrifices all the responsibilities and sacrifices to raise the child, the mother will not get the guardianship of the child under the state law. Such discriminatory laws still exist. However, there is a provision to mention the mother's name in various cases in Nam Kawast. But no change has been made in the original law.

3.6 Family Courts Ordinance 1985-

In 1985, the Family Court was established through Presidential Ordinance No. 18. The Act will be applicable to the whole of Bangladesh except the hilly Rangamati, hilly Bandarban and hilly Khagrachari districts.

[21] https://keystone-law.com/guardianship-responsibilities

Jurisdiction of Family Courts: Subject to the provisions of the Muslim Family Law Ordinance, 1961, the Courts shall have jurisdiction to receive, try and dispose of cases relating to the five subjects of the Family Court or matters connected with those subjects. Family Court matters are-

1. Divorce,
2. Restoration of marital relations,
3. Dowry
4. Maintenance and
5. guardianship

Where to sue: RG to be filed in family court within local limits. In cases of marriage – divorce, dowry and maintenance, RG should be filed in the family court located in the local limits where the wife resides.[22]

3.7 Muslim Law of Inheritance

The right of surviving relatives to the property left by a person after his death is called inheritance. Although the main source of Muslim inheritance law is the Qur'an, Muslim jurists at different times have decided to determine inheritance in the light of their experience. 3 features of Muslim inheritance law are as follows-

1. A person's property during his lifetime does not vest in another person's property
2. A Muslim can spend his wealth as he wishes during his lifetime
3. A Muslim can leave instructions regarding the transfer of his property while alive which takes effect after his death. It is called Will or Chatham.

Prerequisites for Distribution of Inherited Property: After the death of a Muslim woman or man, the following conditions must be fulfilled before the property of the deceased can be distributed among his heirs.

[22] http://bdlaws.minlaw.gov.bd/act-682/section-17896.html

1. Payment of burial expenses of the deceased, 2. Paying dowry of wife, 3. Paying off any debts or debts of the deceased, 4. If there is a will made by the deceased, to give the property mentioned in that will. The remaining property will then be distributed among the heirs.

3.7.1 Property Rights of Women in Muslim Law of Inheritance:

According to Muslim law, heirs are divided into three categories – co-heirs, residuary legatees, distant relatives. Residuary legatees become partners in the property subject to certain exceptions in the grant of property to partners. And if the deceased has no partner and surviving partner, the distant relatives get the property.

Partners: Total twelve partners. Eight of them are women. Five of these are major partners. These five partners are (a) father (b) mother (c) wife/husband (d) son (e) daughter. Mainly among these five heirs the property of the deceased is distributed. If these five heirs survive, the rest do not get the property.[23]

3.7.2 Women's Property in Muslim Inheritance Law:

As a daughter-

1. If the deceased has only one daughter and no son then the daughter will get half or 1/2 share of the total property of the father
2. If the deceased has no sons and two or more daughters, they will jointly get 2/3 of the total property.
3. If the deceased has a son with his daughter, each son will get double the daughter's property

As a wife-

1. Wife gets two share in husband's property. First, if they have no children or sons, then the wife will get 1/4 of the total property of the husband. Second, if there is a child, the wife

[23]https://www.facebook.com/1410593185898090/posts/pfbid0Fe7dWzPmzkCMBECBkd6yn4VVJPBHB6k2CmvzwxqDnjtFAEw38c35sCniw2aeJFVHl/

will get 1/8 of the total property. If there are multiple wives of the deceased then they will share 1/4 or 1/8 equally among themselves.

2. The husband also gets a share of the wife's property in two ways. First, if they have no children, the husband will get 1/2 of the wife's total property. Secondly, if the wife has children either by that husband or by another husband or they have children, then the husband will get 1/4 of the wife's property.

As a mother-

1. If the deceased has any children or sons, the mother will get 1/6 of the total property
2. If the deceased has no children or sons and not more than one brother or sister, the mother will get 1/3 of the total property.

As a sister-

1. If the deceased has no son, daughter, grandson, granddaughter and there is only one sister, the sister will get half of the property.
2. If deceased's son, grandson. father, grandfather is alive, sister will not get any property.

Analysis here shows that none of the daughters, wives, mothers and sisters get the same property as the father, husband and brother. Legally girls get half the property of boys. Girls are also deprived of this legal right. Again, society has created an idea that girls who share property are of low social status. False Due to this aristocracy, the property of the sister usually goes to the enjoyment of the brothers. Mata also does not question the division of her property considering future security. It is also said that girls get property from father and also get property from husband. As a result, girls get more property than boys. But the said discussion showed that under no circumstances do girls get more property than boys. While there is a worldwide clamor for women's equality in all spheres, we are fighting over the inheritance of property. The present government in 1997 in the context of wealth management and inheritance in the Women's Development Policy said that women will be given full and equal opportunities in terms of earning opportunities, inheritance, rights over property and land. However, the women's development policy of 2011 has said that women should have full control over their income, inheritance, loans, and assets acquired through land and market management. Where is equal rights and where is full control over acquired wealth. The same government has undermined the equality of women in the

name of establishing women's rights by giving two types of statements in two terms. And this government, the bearer of the liberation war, is not able to implement the fundamental rights recognized by the constitution. According to Article 28(1) of the Constitution, equal rights of women in property can be established. Another deception the government is perpetrating is that it is possible to establish equal rights for women in the absence of the CDO Charter. Another deception that the government is doing is by reserving the clause of the CEDAW Charter which provides for the abolition of discrimination in family and inheritance laws. When women are playing an important role in the family, society and state, not eliminating this discrimination in inheritance law is a manifestation of the state's discriminatory attitude towards women. Establishing equal rights of men and women in property by eliminating this disparity in the inheritance of property will be the establishment of proper status of the state towards women.[24]

3.7.3 Right of orphan grandchildren to receive property:

According to the pre-1961 law, orphaned grandchildren did not inherit any property from their grandparents. The 'Muslim Family Law Ordinance' came into force on 15th July 1961 and is still in force in Bangladesh.

Section 4 of the Muslim Family Law, 1961 provides that if a son or daughter dies before the death of the person whose property is to be distributed, and if the deceased son/daughter is alive, at the time of distribution of the property, the portion of the property which their father or mother is surviving will get. If there were That is, if the deceased has orphaned grandchildren, the property should be distributed considering their parents as alive during the distribution of property. It is pertinent to note that the children of predeceased sons or daughters will succeed their parents, but their husbands or wives will not get anything.

[24]https://www.bdlawnews.com/

CHAPTER 4

4.1 Hindu Marriage Act, 1955 and other Contemporary Laws

The years of 1955 and 1956 saw placing before the Indian Parliament four separate bills on Hindu law which were duly passed ushering in radical changes of the law relating to marriage, inheritance, maintenance, adoption and guardianship. The Hindu Marriage Act by an Act of the Parliament of India enacted in 1955. The main purpose of the Act was to amend and codify the law relating to marriage among Hindus and others. Besides amending and codifying Shastric Law, it introduced separation and divorce, which did not exist in Shastric Law. This enactment brought uniformity of law for all sections of Hindus.[25] The other three important Acts are: Hindu Succession Act, 1956; Hindu Adoptions and Maintenance Act, 1956; and Hindu Minority and Guardianship Act, 1956. All these enactments are applicable in India and not in Bangladesh. The changes brought in India through those enactments were the reflections of the modern notions and norms of human rights, one of the fundamental elements of which is equality between man and woman.[26]

Now some key factors such as, marriage, conditions of valid marriage, divorce, registration of marriage, adoption, maintenance, property rights of Hindu women etc. as are applied in Bangladesh are compared here with the situation of India on the basis of its gender friendly reformation.

4.2 Hindu Marriage

There are two main schools of Hindu law: a) Mitakshara and b) Daya-bagha. The Hindu laws on marriage as applied in Bangladesh are principally based on the Daya-bagha school. Marriage is a very important concept in Hinduism. Unlike Muslim law, where marriage is considered to be a contract, marriage in Hindu law is a sacrament.[27] In accordance with the ancient and Bangladeshi Hindu law, Hindu marriage is the last of the ten sacraments for men and perhaps the only sacrament for females.[28] It‘s a matter of gender discrimination between Hindu men and women. According

[25] <https://en.m.wikipedia.org/wiki/The_Hindu_Marriage_Act,_1955> accessed 30 January 2022.

[26] Alam (n 2) 31.

[27] Tikait Munmohinti v Basant Kumar, ILR 28 Cal. 758.

[28] Aktar and Abdullah (n 3) 64.

to the Shastric Law Hindu marriage cannot be regarded as contract because there is no dissolution of marriage. As Hindu marriage is not regarded as contract in Bangladesh, there is no necessity that the parties must have attained the age of majority. So, ultimately there is no bar to the marriage of minors.

On the other hand, in India after the passing of the Hindu Marriage Act, 1955', Hindu marriage is now like a civil contract. Because it is now a condition of valid marriage, that the bridegroom must have completed the age of 21 years and the bride 18 years.[29] Besides that, Hindu marriage is now a civil contract in the sense that after the passing of the Act either the husband or the wife has the opportunity to get the marriage dissolved. So, radical changes have been brought in India as regards Hindu marriage.

4.3 Conditions for the validity of Hindu Marriage

In India, the Hindu Marriage Act, 1955 provides certain conditions of a Hindu marriage. According to the Act, a marriage to be valid has to fulfil the following conditions:

i) Age of Marriage

The bridegroom should have attained the age of 21 years and the bride 18 years at the time of marriage. [Section 5(iii)];

While in Bangladesh, there is no minimum age of marriage according to the Shastra Hindu law. So child marriage is allowed under Hindu Religious Law. Though, according to the Child Marriage Restraint Act, 2017, a marriage between a male under 21 years age and a female under 18 years age is a punishable offence but the marriage itself is not invalid.

ii) Capacity and Consent

At the time of marriage, the parties should be capable of giving a valid consent to the marriage. A person who is of a sound mind shall be considered to be a person capable to give a valid consent. Neither party, though capable of giving a valid consent should be suffering from mental disorder

[29] The Hindu Marriage Act 1955 (India), s 5(iii)

of such kind or to such an extent as to be unfit for marriage and procreation of children. Neither party should be suffering from recurrent attacks of insanity or epilepsy.[30]

In Bangladesh, according to ancient Hindu traditions, the purpose of marriage is considered to be the acquiring of a male heir who has the capacity to confer spiritual benefit upon the deceased at the funeral ceremony,[31] which is a matter of gender discrimination. This objective of marriage coupled with the fact that a Hindu marriage is a sacrament and not a contract, makes it apparent that although there is an element of physical capacity involved, infancy or mental incapacity is however, irrelevant.[32]

As regards consent, though we find a difference between Bangladeshi and Indian law as regards the necessity of consent to marriage, both jurisdictions are however, agreed in one respect. That is, if the consent is obtained by fraud or force, then the marriage is invalid.[33]

Without these two major conditions there are other three conditions mentioned in section 5 of the Act of 1955 such as- neither party can marry again having a living spouse;[34] marriage can‘t be solemnized among prohibited relationship, unless the custom or usage governing each of them permits of a marriage between the two; [35] the parties are not spends of each other, unless the custom or usage governing each of them permits of a marriage between the two.[36] These conditions must be fulfilled for a valid marriage in India.

4.4 Inter Caste Marriage

The ancient Hindu rules, as applied in Bangladesh, provide a barrier in marriage between members of different castes. Hindus are barred from marrying outside their caste and hence, inter-caste marriages are invalid in the eyes of law. Thus it has been held that a marriage between a Brahmin

[30] Ibid, s. 5(ii)

[31] John Dawson Mayne, Treatise on Hindu Law and Usage (7th edn, Higginbotham 1906)

[32] Farhad (n 11) 4

[33] Ibid

[34] The Hindu Marriage Act 1955, s 5(i)

[35] Ibid, s 5(iv)

[36] Ibid, s 5(v)

bridegroom and a Kayastha bride is invalid.[37] However, The Hindu Marriage Registration Act, 2012 indirectly abolish the bar on inter caste marriage as section 6 of the Act mentions that a Hindu marriage is completed if it is done according to Hindu religion, principles and rituals there is no requirement of same caste.

On the other hand, in India there is no bar on the inter caste marriage. As Section 5 of the Hindu Marriage Act, 1955 states that a marriage may be solemnized between two Hindus and Section 29(2) of the said Act declares that marriage solemnized before the commencement of the said Act, shan't be deemed to be invalid by reason only of the fact that the parties thereto belonged to different castes or divisions of the same caste.

It is difficult to imagine that even in the 21st century concepts such as caste division have managed to survive in Bangladesh.[38] According to the survey carried out by South Asian Institute of Advanced Legal and Human Rights

Studies (SAILS), among a total number of 175 people, 104 voted for abolition of the rule prohibiting inter caste marriages, 65 voted for retaining the rule and 6 people gave no responses.[39] Thus, in line with the general public opinion, it has been suggested that the law should remove the bar on inter caste Hindu marriages.

4.5 Polygamy

In Bangladesh, Hindu men too, do not have the option to divorce. However, this relative disadvantage is far outweighed by the one sided prerogative bestowed only to the men folk under Hindu laws. Men are permitted to engage in polygamy. Simultaneously, they can take as many wives as their heart desires. There is no condition precedent, neither is there any cap on the highest number of wives they can take. There is however, no corresponding right to polyandry. Women

[37] Aktar and Abdullah (n 3) 72

[38] Farhad (n 11) 6

[39] Dr. Shahnaz Huda, _Combatting Gender Injustice: Hindu Laws in Bangladesh' (2011) South Asian Institute of Advanced Legal and Human Rights Studies (SAILS).

are not given the chance to take more than one husband.[40] So we can again observe the matter of gender discrimination in the ancient Hindu Law which is applicable in Bangladesh.

Polygamy amongst the Muslims is also permitted and polyandry is prohibited and punishable by criminal law. However by virtue of the Muslim Family Laws Ordinance 1961, restrictions have been introduced to the right of polygamy amongst the Muslims and a man wanting to marry again during the subsistence of a marriage must take permission from the appropriate authorities.[41] Unlike the 1961 Act restricting the Muslim mans' right of polygamy to a certain extent, a Hindu man in Bangladesh wishing to marry during the subsistence of his marriages, faces no restrictions whatsoever. Thus in case of Bangladeshi Hindu law the situation becomes especially hard for Hindu women since divorce is not allowed.

In India after the passing of the Hindu Marriage Act, 1955', it is now a condition of marriage that the bridegroom must not have another wife living at the time of marriage. So by virtue of this Act monogamy has been established and bigamy is punishable both for the male and female. Section 5(1) of the Indian Hindu Marriage Act thus prohibits not only polyandry but also polygamy. Section 11 of the Act makes a bigamous marriage null and void and section 17 makes it a penal offence for both Hindu males and females under sections 494 and 495 of the Indian Penal Code.[42]

The fact that polygamy is no longer a desirable in Bangladesh as well as popular entitlement is made abundantly clear by the field survey carried by SAILS, where among 56 questioned, 41 were against polygamy, 6 supported its continuation and 3 had no responses.[43]

4.6 Hindu Marriage Registration

Before the year of 2012, in Bangladesh Hindu marriages were solemnized merely through some religious rituals. There was no marriage registration system for Hindu people in Bangladesh. Now

[40] Farhad (n 11) 5

[41] Section 6 (1) of the Muslim Family Laws Ordinance, 1961 states; No man, during the subsistence of an existing marriage, shall, except with the pervious permission in writing of the Arbitration Council, contract, another marriage, nor shall any such marriage be registered under the Muslim Marriage and Divorces Registration Act 1974 (LII of 1974).

[42] Paras Diwan, Modern Hindu Law (Allahabad Law Agency 1993) 106-108.

[43] Huda (n 28).

according to the Hindu Marriage Registration Act, 2012, a Hindu marriage can be registered on an optional basis,[44] as the marriage registration is not compulsory if a marriage is not registered then a Hindu woman will be more affected rather than a man. So the registration of a Hindu Marriage should be compulsory

There was an overwhelming public support favoring a compulsory registration mechanism. The survey carried out by SAILS[45] shows that of a total of 175 questioned, 118 were supporting a compulsory move towards registration, whereas 29 were against and 28 gave no responses

Regarding Marriage Registration, Indian Hindu Marriage Act, 1955 also provides the same provision. As per section 8 of the Act registration of marriage is optional in India but the State Government may, if it is of opinion that it is necessary or expedient so to do, provide that the marriage registration shall be compulsory in the State or in any part thereof.[46]

4.7 Divorce

For the Hindus the marital bond is eternal and unbreakable. The sacramental marriages amongst Hindus have three characteristics: [47]

- It is a permanent and indissoluble union;
- It is an eternal union;
- It is a holy union.

Shastric Hindu law does not allow dissolution of the marital tie, however painful cohabitation may be.[48] However in some communities the custom of divorce obtained and the courts enforced such custom provided they fulfilled the requisites of a valid custom.[49] Since Bangladesh predominantly follows Shastric Hindu law, divorce is practically not permitted here and in reality many Hindu

[44] The Hindu Marriage Registration Act 2012 (BD), s 3(1)

[45] Huda (n 28).

[46] The Hindu Marriage Act 1955 s 8(2).

[47] Dr. Shahnaz Huda, _―Double Trouble‖, Hindu Women in Bangladesh - A Comparative Study (1998) IX(1) Part-F The Dhaka University Studies 119.

[48] Ibid

[49] Sankaralingam v Subban, 1894 ILR 17 Mad 479.

women in Bangladesh lead lives of abject misery in case of abandonment by the husband who can marry as many times as he wishes.[50]

But in India, under section 13 of the Hindu Marriage Act of 1955, either husband or wife may seek divorce on grounds of cruelty, adultery, desertion, insanity or incurable disease and so forth. This Act also grants the wife additional grounds for dissolution of marriage.[51] Section 12 of the Act provides that marriages may be voidable and may be annulled by a decree of nullity on grounds of impotency of the respondent. Like the traditional concept of option of puberty for the Muslims recognized by section 2(vii) of the Dissolution of Muslim Marriage Act, 1939', the Indian Act of 1955 by Section 13(2) (iv) provides that Hindu wife may petition for dissolution of her marriage on the ground:[52]

that her marriage (whether consummated or not) was solemnized before she attained the age of fifteen years and she has repudiated the marriage after attaining that age but before attaining the age of eighteen years.

Thus, it is quite clear that compared to India, the law regarding divorce for a Hindu woman in Bangladesh is rife with unfairness and is badly in need of modernization. There is widespread support for introducing the provision of divorce in Hindu marriages. A survey carried out by the South Asian Institute of Advanced Legal and Human Rights Studies (SAILS) shows that of a total of 175 Hindu people interviewed, 125 supported the right to divorce, 45 were against it and 5 had no responses.[53]

4.8 Essential Ceremonies of Hindu Marriage

Another essential of a Hindu marriage in Bangladesh is that the prescribed ceremonies have to be performed. There are a number of such rituals and ceremonies both preceding and following the

[50] Akter and Abdullah (n 3) 76-77.

[51] The Hindu Marriage Act 1955, s 13(2).

[52] Huda, _Double Trouble (n 36) 120.

[53] Huda, _Combatting Gender Injustice (n 28).

actual wedding. However, according to the Supreme Court in Amulya Chandra Modak v The State,[54] only two requirements are mandatory, which are as follows:

- Viva homa, that is, invocation before the sacred fire; and
- Saptapadi, that is, the taking of the seven steps before the sacred fire by the bride and the bridegroom.

Thus this case has very specifically established that viva homa and saptapadi must be performed for the validity of a Hindu marriage. Otherwise the marriage is void.

On the other hand, in India the Hindu Marriage Act, 1955'prescribes no particular form of ceremonies for the validity of marriage. A Hindu marriage may be solemnized according to customary rites & ceremonies of either party thereto.[55]

4.9 Maintenance

Under traditional Hindu Law which is applicable in Bangladesh, the husband has the duty to maintain his wife and minor children. A father is bound to maintain his daughter until marriage. The responsibility to maintain his wife is a personal obligation arising out of the fact that she is his wife and independent of the possession of any property by him. After the Hindu Married Women's Right to Separate Residence and Maintenance Act, 1946, a woman may be entitled to maintenance even if she is living separately, based on several grounds.

Under the Hindu Marriage Act of 1955, applicable to India, both parties to the marriage can make an application for maintenance pendent late as well as for permanent maintenance and alimony.[56] Under the Hindu Adoptions and Maintenance Act of 1956, maintenance' is defined as including, provisions for food, clothing, residence, education and medical attendance and treatment...'[57]

The Act makes provisions for civil proceedings to obtain maintenance while under Section 125 of the Indian Criminal Procedure Code, 1973 maintenance is made recoverable by summary proceedings. The above mentioned section also clarifies that wife includes a woman who has been

[54] 35 DLR (1986) 160; see also Utpal Kanti Das v Monju Rani Das, 50 DLR (AD) 1998 47.

[55] The Hindu Marriage Act 1955, s 7.

[56] Ibid, ss. 24-25.

[57] S. 3(b)(i)

divorced by, or has obtained a divorce from her husband and has not remarried'. Thus, under the Act a destitute divorced wife may be entitled to maintenance until remarriage.

4.10 Property Rights of Hindu Women

In Bangladesh the kinds of property that a Hindu woman may possess continues to be divided into a) Stridhan and b) Property inherited by her and to which she has limited rights. Stridhan property is property over which a woman generally has absolute control. So, Stridhan means property which a woman has power to give, sell or use independently and which passes on her death to her heirs.[58]

When a Hindu man inherits property, whether from a man or a woman, he takes absolutely and becomes the fresh stock of descent i.e. after his death the property passes to his heirs. When however, a female inherits property whether from a male or a female she only takes a limited estate and upon her death the property reverts back to the reversionary, i.e. the next heir of the person she had inherited the property from. The estate inherited by a widow from her dead husband is called widow's estate. Although the woman is entitled to enjoy the estate inherited by her she cannot dispose of such property by gift, sale and so forth.[59]

A daughter's right to her father's property depends, astonishingly enough, upon whether she has or can have a son. Little wonder therefore the importance placed upon a male offspring. The daughter is fifth in line to her father's property. In the absence of a son, son's son, son's son's son, widows the daughter inherits. Preference is given to the maiden daughter who may possibly have a son in the future, then to a daughter who has a son. Barren daughters, widowed daughters who have no children or who have daughters are excluded.[60] While in India however, after independence, the State, through direct and positive intervention brought about fundamental and radical changes in the law of succession in breaking violently with the past.[61] In 1956, the Hindu Succession Act was enacted.

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[58] Huda, Double Trouble' (n 36) 120.

[59] Ibid

[60] Huda, Double Trouble' (n 36) 124.

[61] Prem Chowdhry, Conjugality, Law and State: Inheritance Rights as Pivot of Control in Northern India' (1993) Special Issue on Feminism and Law INLSJ 106.

Of the broadest changes made by the Hindu Succession Act, 1956 is the abolition of the limited estate of the female Hindu. A Hindu female had now the right to deal freely with and dispose of in any manner any kinds of property acquired by her. Section 15(1) of the Act states that any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner. By the 1956 Indian Act the property of a male Hindu devolves in equal shares between his son, daughter, widow and mother. Male and female heirs are now treated as equal without any distinction.[62]

4.11 Adoption

Adoption is recognized under Hindu law. The aim of adoption under Hindu law is two-fold. The first is religious i.e. to secure spiritual benefit to the ancestors and to the adopter by having a son for the purpose of offering funeral cakes and libations of water to the manes of the adopter and his ancestors. The second is secular i.e. to secure an heir and perpetuate the adopter's name. In Bangladesh the Shastric uncodified law relating to adoption continues to exist.[63] Under this law only a male can be adopted. He must belong to the same caste as his adoptive parents and his mother must not be within the prohibited degrees to his adoptive father, i.e., he must not be a boy whose mother his adoptive father could not have married. Under Shastric law only a man can adopt unilaterally. A wife or a widow, in most places, may adopt only with the husband's express consent. The Hindu Adoptions and Maintenance Act of 1956 has changed, amended and codified the law relating to adoption in India. All adoption in India after 1956 are secular, and to be valid must conform to the requirements of the Act.[64] In the case of adoption changes have been made in India which gives a woman rights almost equal to that of a man. A married Hindu male cannot adopt without the consent of his wife [Section 5(1)]. A Hindu woman, unmarried, widow or divorcee can adopt but a married woman cannot adopt even with her husband's permission. The husband must adopt with her permission (Section 8).

[62] Hindu Family Law: An action Study on proposed reforms of Hindu family law; BNWLA, NY 13.
[63] Huda, Double Trouble' (n 36) 122.
[64] Ibid 123.

4.12 Women's right to inheritance

According to Bangladesh Law Hindu women only get a limited share. They inherit life interest in the property. There are five female Sapindas according to the Dayabagha law, namely the widow, the daughter, the mother, the father's mother and the mother of father's father. No other female relation is recognized as heir by the said school. Morever a daughter cannot receive any property; even she cannot get life interest in the presence of son, grand son and great grandson. Although in neighboring India laws in this regard have been updated since independence in 1947, in Bangladesh the pre-1947 laws are still prevailing. In India laws have been framed and amended that has established women's rights on the property of father and husband.[65]

[65]http://bdlaws24.blogspot.com/2013/02/a-comparative-study-on-womens-right-in_8893.html?m=1

CHAPTER 5

5.1 Christian, Buddhist, Tribal etc.

The Christian Marriage Act, 1872 (Act No. XV of 1872), relates to solemnization of marriage of persons who professing Christian religion. Marriage Registration is mandatory in Christian law. U/s 5 of the act, marriage can be solemnized. The act provides that any marriage solemnized other than in accordance with the act shall be void. Marriage under Christian law is in the nature of contract and hence there should be a free and voluntary consent between the parties. When there is a minor, as defined in the act, the consent of father or guardian is necessary. Marriage is not permitted between the parties who are within the prohibited degrees of relationship u/s 19 of the act. There is no legal impediment for marriage between a Catholic and a Protestant. By marriage, the husband and wife becomes one person, the legal existence of the women is incorporated and consolidated into that of the husband.

There is no law in our country regarding marriage or marriage registration of Buddhist and Tribal community. There is wide demand for registration of marriage and divorce for all communities alike. Because of non-registration women are subjected to different humiliation. There is a big tribal community in our country. To avoid gender discrimination and to establish fundamental rights and human rights and equality before law, and to develop the community proper enactments and steps is very necessary for this concern.[66]

5.2 Divorce in Christian Law

Christian Law creates greater discrimination between husband and wife. Husband is given priority over wife and equality provisions are violated. The divorce Act, 1869 provides for right to divorce (section 10-11), adultery alone is the ground on which the husband can seek dissolution to the District Court or High Court Division. On the other hand, Christian women must demonstrate his adultery coupled with incest (sex relationship with kinsfolk) desertion, or he is guilty of bigamy (taking two wives at the same time), or of rape, sodomy or bestiality (beastliness). So men and women have different standards on self-same matter. Another objectionable side of the act that the husband has a right to get compensation from a person, who had illegal relation with his wife

[66] The Christian Married Women's Property Act, 1874 (Act No. XV of 1872).

(section 34). In contrast the wife can't pray for such relief. If the court proves that the wife is an adulterer, she is subjected to penalty and loses her right to alimony. This is also gender biased.[67]

5.3 Guardianship and Custody of Children

Christian Law

Though the Christian Law sounds perfect in protecting best interest of the child, it is discriminatory to the mother. The mother's right may be denied if it is deemed that such custody might conflict with the bringing up of a child with a faith other than the father's. [68]

5.4 Inheritance in Christian Law

Christian law simply liberal for male female's succession. Married Women's Property Act, 1874 and The Succession Act, 1925 provides for Christian inheritance. In Christian law son and daughter get equal from the deceased. [69]

[67] The Divorce Act, 1869 (Act No. IV of 1869).

[68] The Christian Married Women's Property Act, 1874 (Act No. XV of 1872).

[69] The Succession Act, 1925 (Act No. 39of 1925)

CHAPTER 6

6.1 Practical Position of Women in Bangladesh

Though in theory Islam provides a significant number of admirable rights to women but in practice, they are discriminated in many fields of life. In most cases men always get precedence, and women are usually kept away from the main stream of national life. Women are actually segregated in social and educational spheres. A woman is generally chosen to be fit only for domestic works. As a result, though according to the true Islamic norms and principles there is no ambit of suppression to women but in practice this untoward is happening because of ignorance of some 'bad guy' types Muslims and in absence of the application of Islamic law in state affairs.

6.2 Violation of Women's Right and Dignity

Historically, denial or non-recognition of women's right to equality and dignity mainly manifests itself in two ways: through discrimination and through physical and other categories of violence. There is also often a clear lack of concern for their special needs.

Discrimination is almost all-encompassing. It begins at birth. It occurs within the family in parental and marital relationships, and at the societal and the state levels. It is reflected in individual attitudes and in administrative action and inaction. It is ingrained in certain laws, habits and social customs.

Violence or abuse, whether it occurs domestically or at the hands of outsiders, has its roots in the racial belief about the women being a lesser breed. It thrives in practice because the law, society and the administration in their variety of ways render her more vulnerable and themselves less appropriately able to respond to the wrongs committed or possible of being committed against her.

Violence against women occurred from various sources. There are criminal violence that usually took the form of kidnapping, rape, public humiliation, trafficking and abuse. Extra-judicial violence is perpetrated by the prevalent penal system and by members of law-enforcing agencies, usually against women in custody. Domestic violence consisted in battering and even burning of women. And a graphic illustration of social violence is the custom of killing of a woman in the family on suspicion of her having formed illicit liaison. None of these got reported on the scale it actually occurred.

(a) Sexual violence: Rape is a form of violence against women and girls who become the victims of this offence almost unhindered. In some occasions they fall victims of gang rape by the perpetrators causing death. Rape is not only committed by the civilians but also law enforcement officials commit this heinous crime. All cases are not reported due to intimidation by the perpetrators and also due to the fear of social stigma. This view has been endorsed in the judgment of Justice Badrul Haque in Amin VS. Bangladesh case. [70] He observed, "A women who has been reaped undergoes two crisis, one the rape and the other the subsequent investigation and trial. In Bangladesh, the number of rape is 33 times higher than in Nepal, where 0.3 percents are victims of rape.[71]

Rape in Bangladesh is a punishable offence. It has been defined under section 375 of Bangladesh Penal Code (Act No. 45 of 1860) which came in to force on 6 October, 1860.

It is to noted that Islam prescribes only death punishment for a married fornicator or a fornicatress and scourging of 100 stripes for unmarried persons when illegal sexual intercourse takes place with or without consent. [72]

(b) Police violence: With increasing pressure against keeping women accused in police stations overnight and the stiffening of the law against it the errant members of the law enforcement agencies began turning to other methods for their exploitation of women. They either directly joined criminal gangs that, among other things, assault or kidnap women, or they used their accessibility and the terror of police methods to trawl their prey.

(c) Women in prison: Conditions and practices in jails constitute another category of violence against women suspected or accused of, or convicted for, an offence. Often the circumstances of suspicion or accusation where themselves a kind of gross violence against them.

(d) Violence of customs: Social customs often developed in order in effect to reinforce the supremacy of the male and the discrimination against the female. Disparate marriages arranged by the families purely to suit their landed and other material interests or the girls' 'marriage' to the

[70] 51 DLR (1999) 154.

[71] Human Development Report in South Asia, 2001, P.14.

[72] Al- Qur'an (Sura Noor) 24:2; Shahih Al-Bokhari, vol. vi, P. 161(1982).

Holy Qur'an just to keep the family property intact were the more common of the practices that did violence to the interests of the girls. A more directly violent practice is the killing of the persons suspected of adultery. This too in practice victimized the women much more than the men.

(e) Acid violence: In Bangladesh acid violence is a heinous and cruel form of crime which is committed mostly against women. It is a major subject of national concern and is being reported frequently by media throughout the year. Acid attack is a horror which must not be adhered in any civilized society. Only 25 years back, acid violence virtually was not known to this country. Acid attack causes severe pain, disfigurement, disabilities or death. Acid attacks usually take place due to rejection of offer of marriage or sexual relations, family disputes or dowry refusals. Acid throwing causing harm and injury is a serious crime for which death punishment or life imprisonment and monetary fine up to one lakh taka has been provided in the Prevention of Acid Crime Act, 2002. [73] Besides, government legislated 'Acid Control Act 2002'.

(f) Dowry victim: Mohr or dower is a sum of money or other property which the wife is entitled to receive from the husband in consideration of the marriage" (Bailie. Vol. 1 p 91: Abdul Kadir vs Salima (1886) 8 All 149: (37). The Family Courts Ordinance, 1985 has not ousted the jurisdiction The Family Court's Ordinance, 1985 has not ousted the jurisdiction of a Magistrate to exercise power under section 488, CrPC. The provision of the Family Court's Ordinance, 1985 are applicable not only to Muslim community but also to other communities as well. (Meher Negar vs Md Mojibur Rahman 1994 BLD 467).

It becomes very clear that to get dower is the right of women. But this dower is one of the major causes of violence against women rights. In spite of prohibition against taking of dowry by the bridegroom from bride, violence associated with it continues in Bangladesh unhindered. In rural areas there is hardly any marriage without dowry, specially in the poorer community. Failure to meet dowry demand is the prime reason for marital violence which sometimes lead to death of the wife. And the dowry is the curse for the poor girls.

[73] Section 4 of the Act (Act No. 2 of 2002) prescribes death punishment or rigorous imprisonment for life including fine taka not more than one lakh if any body causes death or makes an attempt to cause death to any child or woman by using any burning substance, e.g. acid.

(g) Women trafficking: Trafficking in women includes all acts involved in the capture , acquisition, recruitment and their transportation within and across national borders with the intent to sell, exchange, or use for illegal purposes such as prostitution, servitude in the guise of marriage, bonded labor or sale of human organs by means of violence or threat of violence. [74] Trafficking in women and children is the worst violence against them. Recently trafficking in women from Bangladesh has increased tremendously. And the trafficking women are treated as beasts not like as a human, so here their rights and dignity are also being violated.

(h) Domestic violence: Domestic violence against women may rise and fall in any particular society depending upon socio-economic developments, as well as upon religious and cultural factors. In Muslim community domestic violence occurred by the husband, mother-in-law, father-in-law, and others in the husband's house because of not capable to give money to the husband, poor, illiterate, careless, and always dominated by the male members of the society in our country.

(i) Violence against women in the working place: Unlike domestic violence, violence against women in the working place is not yet commonplace in Muslim societies because there are still very few Muslim women working in vulnerable settings lacking family protection or the collective protection of relatives in their local.

In this age of modernity and uncertainty, women need to equip themselves with professional skills to face the challenges of life, and to bring their own contributions to the total productivity and creativity of any state and society. Muslim nations and countries have been ignoring this pressing need to educate their women up to their full potential. And for these reasons women's rights and dignity needs to be protected.

[74] State of Human Rights Bangladesh 1999. Coordinating Council for Human Rights in Bangladesh (CCHR) p. 98 (2000).

CHAPTER 7

7.1 The Development of Family Law in Bangladesh

This part of the thesis gives an overview of the policy debates surrounding the development of family law in Bangladesh, concentrating on the establishment of the Family Courts and their effects on women. Before going into details on legal enactments and case-law, we first consider how women were treated by the legislature in the newly independent country and whether the stated aim to ameliorate women's rights was more than rhetoric. In this light, women's rights in Bangladesh have been analyzed within the constitutional framework, indicating the disparity between the personal law and the constitutional rights, showing vividly the internal contradictions within the Constitution between granting legal equality and making special laws for women. The personal law system is then analyzed projecting how the Constitution ensures that the personal law system continues to survive although it is lagging behind some basic principles which have been accepted by the Constitution. The minority laws and their position vis-a-vis uniformity of laws are also given some consideration. The chapter then concentrates on the recent establishment of Family Courts. Finally, the post-independence reforms in family law are analyzed generally to see whether the legal reforms have actually operated to the advantage of women. [75]

7.2 Revisiting position of women in Bangladesh

The discussion on women, women education and women empowerment in Bangladesh are not new, rather these are much voiced issues. Still the concern remains where we are heading in regard to these socio-legal issues. Starting with the issue of education, society or the country. As women constitute more or less 50% of the total populace of Bangladesh, women education is much crucial to bring positive and real changes in the country. Though governments of Bangladesh took many initiatives to bring women education into play by the ways of stipends and various projects and Bangladesh has good parchment-record of escalating women education rate, still we are not well-developed in our faculty regarding education and empowerment of women. We can recall the words of Napoleon, 'Give me an educated mother; I will give you an educated nation'. Without proper women education, the dream of Bangladesh as a proper and prosperous country will never be materialized.

[75] https://eprints.soas.ac.uk/33887/1/1101647.pdf

The question may come forward; women education rate is good then what is the next step? The matter of concern is that still we impose our ideas, dreams, notions on women that what they should learn and to what extent. Still women education is popped-up as a good marriage point. How good your degrees are, how well-off husband you will get. Ridiculous indeed! If we dare to observe meticulously, we can see that a sustainable women education pays off fully in regard to the social devoir and irrespective of marital status-single or married. Even if she is single, she can contribute a lot to the furtherance of the society and country. She can enlighten her surroundings; she can serve the society by bringing positive change. When an educated woman gets married, she may face a lot of challenge in the new circumstances where her education may become a vital point of own survival and moving on. If she becomes a mother, she can raise her children more properly than not educated or poorly educated women. In this modern age, where giving birth of a female child is still a challenge in many male-preferred families, the education of the mother can give her inner strength to face the undesired family odds to save the life and dignity of her female child. In upbringing children, a properly educated mother does not discriminate and does not allow others to discriminate among her male and female children as she knows all are equal and need to be properly guided as these children will be grown-up to be adult and they will reflect to the society what they learn from their family.

Besides, the concept of women empowerment also necessarily calls for women education. Without being educated and empowered, the women will remain as the neglected creature in the society and without education and financial capability, women empowerment becomes a mocking theory. At every point of survival, self-motivation is exigency which comes from education and self-realization that what you are, what you have and what you can do. Without education, a woman cannot be able to think properly, wisely and sustainably. When the traditional minds or bunch of footwear speak against women education or women rights, they actually try to cut the root and water the up of the tree! How hard they try to bring the country on the wheels of development, keeping women out from mainstream or blocking their development will render the development. Generally women are portrayed as mother, sister, wife, daughter and in so many diversified roles. Very often her individual existence fades away and is not counted. Her role in the family and in the society is always taken for granted. Whether she will be educated or not and if educated, to what extent she may pursue her study relies on the decisions of the male members of the family.

In most of the cases, women education is perceived as a menace in the patriarchal society that educating women may cost much. Like she will be less comforting, less patient and less caring personality in the family and society, which is highly wrong. Why can't the thinkers think in a different way? If the odd situations are not created where an educated woman may act as less comforting and less patient, may be that is the right thing to be pursued.
It is seen in the history of Bangladesh many times that women writers who tried to pen seeking women rights from the society or who protested for the women rights, are attempted to be muzzled or even threatened to death by religious or social fanatics as if, women's speaking up for own rights is an offence! If in an environment, women feel honored, valued and equal in respect of rights and treatments, why will they pose menace to the family and the society? Who think women education and equality as a bundle of menace, the problem lies in them and in their backward and exploitative mental set-ups. Get a life, you are living in a modern age, you are gifted by reason and conscience by God. Then why you are not letting go of your own internal demons, the thoughts which have propensity to depress and repress the volcano of women power.
When any society or country will try hard to repress the irresistible power of the women, undoubtedly the society and the nation will fall down. So still there are time to make the things right, otherwise verily the society and nation will have to pay for all the wrong things done on women by the way of natural theory of karma.

Bangladesh and we, Bangladeshi populace always feel pride of our existing family system comparing to western world, if the mal-treatments on women goes on and the ailments of the women go unaddressed or poorly addressed, sooner or later we will face tremendous challenges to maintain the pride, as the confidence on the family system is by now started to be deteriorated and right away, multi-faceted social calamities e.g., divorce, female child abortion, dowry, dowry-led murders, domestic violence, eve-teasing etc are in full swing. Simply put-the real menace is not in fostering the women education or women empowerment; it lies in our age-old, futile, exploitative mind-sets towards women of the society. We are digging the hole of our misfortunate by ourselves by allowing the age-old, superstitious dogmas to manipulate us and the society. The sooner this patriarchal society understands it, the better the things have chances to be. [76]

[76] https://www.thedailystar.net/revisiting-position-of-women-in-bangladesh-35755

CHAPTER 8

8.1 Recommendations

Violation of woman rights and dignity is a common feature throughout the world and as well as Bangladesh. In the era of modern civilization women are depriving from their equitable honor and position in the society. Deaths of women for the cause of dowry are the common phenomenon in our country by the same persons who are legally and socially enjoined to protect them, i.e. their husbands or in- laws.

Discrimination against woman in respect of service, salary, position, dignity is widely practicing in the society. There should be an end of this status of the women. For this we like to propose the following recommendations for the protection of the women rights.

It has to be acknowledged first that women are contributing to development and economic growth of a country until and unless participation of women in public spheres and design in such a manner to participate women in development activities of a country.

There is discrimination against women everywhere and it is a long term task and it cannot be removed by laws only. The attitude of society towards women needs to be changed.

8.2 Concluding Analysis

In this era of development of society and civilization, we have to raise the demand for equality between men and women as well as equality in family and inheritance laws. Because it is clear from the above discussion that no religion-based family law has equal rights for men and women. Different religious family laws vary in terms of marriage. Muslim women can get a divorce subject to conditions, but Hindu women do not have the right to divorce. There is discrimination in child custody. Muslim and Christian family laws do not provide for adoption. Although Hindu law provides for adoption, male authority is paramount. Muslim inheritance law discriminates against women's share of property. If a father has one or more daughters then according to the law the father cannot give the entire share of his property to the daughter despite his will. The position of women in Hindu inheritance law is most neglected. Here, women do not get full ownership of any

property other than their own acquired property or gifts. However, in Christian inheritance law, the rights of men and women in property are almost equal.

The obstacles to reforming family and inheritance laws are nowhere. In several other countries, including Turkey, Tunisia, the main Muslim country, equal rights of men and women have been established in the inheritance of property. Most of the religious practices in India, a predominantly Hindu country, have been abolished and reformed. However, whenever there is a question of changing the family and inheritance laws in Bangladesh, the government does not play any role in changing these laws because of communal power. Rather, the state directly and indirectly supports these sectarian politics and forces. Because its profitable field is to patronize communal-fundamentalist politics and forces for the sake of remaining in power rather than establishing equal rights for women in all fields. The government's attitude towards women proves this base interest of the government.

Why it is important to establish equal rights of men and women in family and inheritance law. Because this discriminatory view of the law repeatedly reminds women of their subordinate status as second-class citizens in the state. The government also promoted the contribution of women in newspapers and magazines. According to Bangladesh Education Information and Statistics Bureau, although female students are equal in primary education, the participation of female students is higher at secondary level at about 53 percent. Women's participation in other professional education including medicine and law is 38 percent. According to various data of Bangladesh Bureau of Statistics, 650,000 women are engaged in teaching profession. In addition, women's movement is visible in various fields including scientists, bankers, media, cultural workers, politics. Again, women make about 10-12 crore worth of household labor annually, which is not recognized by the family, society and the state. Women's participation is high in agriculture, industry and service sectors. Garment is the main industry of the country. 80% of this sector are women workers. 9 lakh women are working as domestic workers. 90 lakh 11 thousand women are engaged in agricultural work. And outside of their workplace, women spend about three and a half hours every day on household chores including cooking, child rearing. On the contrary, there is terrible physical and mental violence against women. 87 percent of married women are abused in their own homes. Child marriage rate is 65 percent. 80 percent of unmarried women are victims of sexual harassment. Besides, women are victims of murder due to rape-gang-rape, dowry and acid throwing. In this case too, the state law fails. Mainly according to the

government statistics, this disparity in family and inheritance laws should be abolished even if women's progress and women's oppression are to be prevented.

There is no religious distinction in the civil and criminal laws of the state. But differences exist in family and inheritance law. Therefore, in order to eliminate this difference, family and inheritance laws should also be brought under the civil law and courts and introduction of uniform civil code should eliminate the disparity of family law. As a result, if the government amends the family and inheritance laws by taking practical steps to eliminate the existing discrimination in the society in the light of the SIDW charter, the constitution and other international laws, then the attitude towards women in the society will change. As a result, it is almost impossible to establish equal rights and equal status of women in this existing social structure. So true emancipation of women is possible only in a non-exploitative society. We want the joint participation of men and women in the struggle to establish this society without exploitation.

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