


# Sonargaon University

**Research Monograph**

**On**

## ‘‘Women’s Position under the Family Laws of Bangladesh: A Critical Analysis”.

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## ABSTRACT

**Women's rights** are the rights and entitlements claimed for women and girls worldwide, and formed the basis for the women's rights movement in the nineteenth century and feminist movement during the 20th century. In some countries, these rights are institutionalized or supported by law, local custom, and behavior, whereas in others they are ignored and suppressed. They differ from broader notions of human rights through claims of an inherent historical and traditional bias against the exercise of rights by women and girls, in favor of men and boys. Issues commonly associated with notions of women's rights include the right: to bodily integrity and autonomy; to be free from sexual violence; to vote; to hold public office; to enter into legal contracts; to have equal rights in family law; to work; to fair wages or equal pay; to have reproductive rights; to own property; to education. Abuse of women's rights and gender discrimination is available in our country. Finding out the drawbacks of law of women and recommendations for fill up the drawbacks, to pass new legislations in some issues, endorsement the rights of the deprived communities of the country in law, to create a positive social revolution for the women is stand on the objectives of the thesis.



**Key Words:** Women's rights, feminist movement, human rights, gender discrimination, sexual violence, equal rights, reproductive rights.

## 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.

To complete this assignment, 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 THE ADVISOR

This is hereby certified that this research monograph on the topic **‘‘Women’s Position under the Family Laws of Bangladesh: A Critical Analysis”** submitted by M**d. Marfat Ali Khokonm (Id No: - LLB-1802014031)** in fulfillment of the requirements for LLB (hones 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.

**Sanjoy Pal**
Lecturer, Department of Law
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## DECLARATION

This is **Md. Marfat Ali Khokon**, a student of LL. B program of Department of Law of Sonargaon University, **ID No: LLB-1802014031** does hereby declare that this research paper 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 assignment 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 fulfill your expectation. I hope that you would be kind enough to go through this dissertation for your 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

**Md. Marfat Ali Khokon**
ID No: LLB-1802014031
Batch: 15th

## TABLE OF CONTENTS


| | |
|---|---|
| Cover Page---------- | 1 |
| Abstract---------- | 2 |
| Preface---------- | 3 |
| Certification by the Advisor ---------- | 4 |
| Declaration---------- | 5 |
| Letter of Transmittal---------- | 6 |
| Table of Contents---------- | 7 |
| **CHAPTER 1** | |
| **INTRODUCTORY** | |
| 1.1 Introduction---------- | 10 |
| 1.2 Objectives of the Study---------- | 11 |
| 1. 3 Scope of the Study---------- | 11 |
| 1.4 Methodology of Study---------- | 11 |
| 1.5 Limitation of the Study---------- | 13 |
| **CHAPTER 2** | |
| **WOMEN'S RIGHT UNDER STATUTORY LAWS** | |
| 2.1 Introduction---------- | 14 |
| 2.2 Law Relating to Women's Right---------- | 15 |
| 2.3 Women's Rights under the Family Laws---------- | 17 |
| 2.4 Women's Rights under the Constitution---------- | 18 |
| **CHAPTER 3** | |
| **WOMEN'S RIGHT UNDER MUSLIM, HINDU & CHRISTIAN LAWS** | |
| 3.1 Legal Status for Muslim Women in Bangladesh---------- | 19 |
| 3.1.1 Succession and Right to property---------- | 20 |
| 3.1.2 Marriage, divorce and connected matters---------- | 22 |
| 3.1.3 Maintenance---------- | 26 |
| 3.1.4 Guardianship of Children---------- | 27 |

| | |
|---|---|
| 3.1.5 Fundamental Rights---------- | 28 |
| 3.2. Right of Women Under Hindu Law---------- | 31 |
| 3.2.1. Women's right in marriage---------- | 31 |
| 3.2.2. Right of Women in Divorce---------- | 33 |
| 3.2.3. Women's Right to Adoption---------- | 34 |
| 3.2.4. Women's Right to Inheritance---------- | 34 |
| 3.2.5. Stridhana ---------- | 35 |
| 3.2.6 Women's right to maintenance---------- | 35 |
| 3.2.7 Laws Relating to Hinduism in Bangladesh---------- | 36 |
| 3.3 Hindu Women in Bangladesh Suffering for Absence of Marriage Registration------- | 36 |
| 3.4 Laws Relating to Christianism in Bangladesh---------- | 38 |
| 3.4.1 Christian Commission for Development in Bangladesh---------- | 39 |
| **CHAPTER 4** | |
| **COMMON DISCRIMINATORY LAWS** | |
| 4.1 Laws of Discrimination for all Community in Bangladesh---------- | 42 |
| 4.2 Gender Discrimination in Citizenship---------- | 43 |
| 4.3 Some legal attempt to remove Gender Discrimination---------- | 43 |
| 4.4 Effectiveness and Weakness of Legislation---------- | 44 |
| **CHAPTER 5** | |
| **CASE STUDY & STEPS TOWARDS BETTERMENT OF WOMEN** | |
| 5.1 Amulya Chandra Modak v. The State ---------- | 47 |
| 5.2 Abu Bakar Siddique v. S.M.A. Bakar and Others---------- | 49 |
| 5.3 Hafizur Rahman v. Shamsun Nahar Begum---------- | 51 |
| 5.4 Some Recent Important Steps Towards Ensuring Equal Rights of Women---------- | 53 |
| 5.4.1 A proposal of Unified Family Code in Bangladesh by Committee of Bangladesh Mahila Parishad---------- | 53 |
| 5.4.2 Opinion of Law Commission; on the Study Report for Marriage, Inheritance and Family Laws in Bangladesh towards a Common Family Code- | 54 |

| | |
|---|---|
| **CHAPTER 6** | |
| **CONCLUDING REMARKS** | |
| 6.1 Recommendations---------- | 56 |
| 6.2 Conclusion---------- | 57 |
| | |
| **BIBLIOGRAPHY**---------- | 59 |
| Books---------- | 59 |
| Newspapers / Magazines---------- | 59 |
| Internet Sources---------- | 60 |

# CHAPTER 1

# INTRODUCTORY

## 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 centuries, they can't live independently.

We know from Bangladesh bouro 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. Right is the power or privilege to which is entitled or a thing to which one has a just claim. Many different types of rights have been described. Many of them terns mean such kind of right which deal women or females facility to get right proper life and right to get right to deal own economic political etc. Every woman has right to get right to life, right 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 labor, women yet roughly 40 percent of a men wage, according to reaches. Dr. Atiar Rahman, a research fellow of the Bangladesh intituation 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 Objectives of the Study

Law may be termed as a behavioural science as it regulates human behaviour. Changes in society demand that law should move with the time if it has to remain alive and active. The objective of legal research is to find out lacunae or deficiencies in the existing laws and to suggest suitable measures to eliminate them. The objective sets the boundaries of a research problem. The main focus of the research proposal is to set its objectives properly. The proposed study focuses on legal status of women in Bangladesh.

The objectives of the proposed study are:

1. To elimination of gender discrimination,
2. To protect women's rights in legal and social regime,
3. To find out the drawbacks of law and deprivation of some communities, and recommendations,
4. Determining women's legal status in domestic law, etc.

## 1. 3 Scope of the Study

The issue of legal status of women is multi-dimensional. It has several aspects e.g. criminological, economical, ethical, geographical, health, human rights, legal, moral, sociological etc. to be researched. The focus of the study is mainly on legal aspect. So far comparative study on the existing laws relating to women in has been done. The study has made an evaluation of laws relating to women. The relevant case laws of both the Bangladeshi and Indian courts have been used. All the relevant laws existing in Bangladesh have been used. For the study, up-to-date laws and laws framed (for three countries) till 2008 were used. Besides, the study made an investigation into the present situation of women in law in Bangladesh.

## 1.4 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.

**Historical Study:**

Woman's Right is an accepted fact in Universal Declaration of Human Right (UDHR). It has a historical back ground of woman's movement for the establishment of their rights. 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 Right are guaranteed in their constitution, state laws, and social and state activities. Through the historical revolution the women' right 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.

**Analytical Study:**

In this thesis the formation development and solutions regarding woman's right 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 right 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 Right. 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 RIGHT".

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

A. **Qualitative Research Method,**
B. **Quantitative Research method.**

Research on “A STUDY OF WOMEN’S RIGHT” 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

- Case study method,
- Judicial method,
- Ground theory method.
- Sociological Method,
- 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:

- Primary Source,
- 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 people’s concern are the important sources of data collection.

**1.5 Limitation of the Study**

Though there are huge information in text books, journals and in internet it’s not sufficient. I’ve got to also give concern about time and price. Furthermore, the current study is undertaken as a part of fulfillment of the wants of LLB degree. The researcher gets only 1 month to complete the Research. Moreover, the research is directed to be within prescribed word limit. Therefore, there Not much scope for doing a comprehensive study. Yet, I try my best to satisfy the objectives Launched within the present study.

# CHAPTER 2
# WOMEN'S RIGHT UNDER STATUTORY LAWS

## 2.1 Introduction

*Legal status of women* indicates to what extent women enjoy equality in the socio-economic and political spheres of the country. Laws protecting women's rights provide the essential framework for formal equality to be transformed into reality. They also provide legal protection to women's rights by critically intervening in health, education and employment sectors to.

Womens legal rights are one of the most significant determinants of their status. In Bangladesh, a series of laws ensuring womens rights have proven largely ineffective in promoting their positions. The prime reasons for this are: the shortcomings and ineffectiveness of laws, womens inability to access legal proceedings, the traditional and cultural negative views about womens 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-ecomic reasons. The core theme of the thesis concentrates on the shortcomings and ineffectiveness of laws, although viewing them within the context of those other factors. To signify the ineffectiveness of laws, emphasis is basically placed on the administrative and judicial approaches in the country to achieve the underlying objectives of law concerning womens rights in pertinent areas. This study aims to promote protection of womens rights by recommending remedies to flaws in prevailing laws in Bangladesh in four areas. Recommendations are made by reference to comparative and international practices. The primary arguments developed and maintained throughout the thesis are: (i) the protection of womens rights is imperative to improve their status and law is an essential instrument to ensure these rights; (ii) the legislative, administrative and judicial efforts in Bangladesh are not appropriate and conducive to dealing with womens rights; and (iii) improvements in those efforts can better protect womens rights. This study critically examines laws regarding womens employment and political participation and the laws on dowry and rape. It also explores the ways laws have been structured and enforced in Bangladesh, and how law can be an effective means of womens pursuit of rights. In so doing, this thesis analyses and compares a range of legislation and judicial decisions of a number of selected common law jurisdictions. Findings of the research demonstrate that the legal efforts of those countries resulted in significant improvements in

traditional laws and enforcement procedures regarding employment, dowry as a form of domestic violence, and rape. Conversely, in Bangladesh, the age-old common-law grown formalities continue to dominate the legal and judicial proceedings and therefore fail to provide remedies to the contemporary needs of women. The present legal regime also suffers from an important flaw with regard to the scope and extent of liabilities for the violation of laws designed to protect women's equal and special rights. The absence of any independent administrative body to monitor the compliance of laws presents another serious flaw in the current legal regime of the country. Such shortcomings eventually encourage and favour the wrongdoer, worsening the vulnerability of already disadvantaged women in the traditional culture of Bangladesh. In responding to such a situation, the present study recommends the reconceptualisation of laws to accommodate women's unique experiences in Bangladesh. The study ends with a number of specific recommendations for ensuring women's rights through strengthening the legal and enforcement mechanisms in Bangladesh

### 2.2 Law Relating to Women's Right

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 Faustina Pereira, a Supreme Court Advocate and author of the book 'Fractured 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

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

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]

**Legislation for Muslim Community:**

- The Muslim Personal Law (Shariat) Application Act,1937 (Act XXVI of 1937).
- The Dissolution of Muslim Marriage Act,1939 (Act No. VIII of 1939).
- The Muslim Family Laws Ordinance, 1961(Act No. VIII of 1961).
- The Muslim Family Laws Rules, 1961.
- The Muslim Marriages and Divorces (Registration) Act, 1974.
- The Muslim Marriage and Divorce (Registration) Rules, 1975.

**Legislation for Hindu Community:**

- The Hindu Marriage Disabilities Removal Act, 1946 (Act No. VIII of 1946).
- The Hindu Married Women's Right to separate Residence and Maintenance Act, 1946 (Act No. XIX of 1946).
- The Hindu Women's Right to Property Act, 1937 (Act No. XIIX of 1937).
- The Hindu Disposition of Property Act, 1937 (Act No. XIIX of 1937).
- XII of 1928).
- The Hindu Widow's Re-Marriages Act, 1856 (Act No. XI, XV of 1856).
- The Hindu Validity Act, 1949.

**Legislation for Christian Community:**

- The Christian Marriage Act, 1872 (Act No. XV of 1872).
- The Christian Married Women's Property Act, 1874 (Act No. XV of 1872).
- The Divorce Act, 1869 (Act No. IV of 1869).
- The Succession Act, 1925 (Act No. 39of 1925)

[2] Bangladesh: Is the law fair towards women, by Aasha Mehreen Amin; Star weekend Magazine/ The Daily Star, March 5, 2004

**Legislations Common to All Communities:**

- The Penal Code, 1860 (Act No. XLV of 1860).
- The special Marriage Act, 2923.
- The Child Marriage Restraint Act, 1929.
- The Guardians and Wards Act, 1890.
- The Births and Deaths Registration Act, 1873.
- The Birth, Deaths and Marriages Registration Act, 1886.
- The Foreign Marriage Act, 19093.
- The Bengal Maternity Benefit Act, 1939.
- The East Bengal Maternity Benefit Rules, 1931.
- The East Bengal Maternity Benefit (Tea Estates) Act,
- The East Bengal Maternity Benefit (Tea Estates) Rules, 1954.
- The Mines Maternity Benefit Act, 1941.
- The Arya Marriage Validation Act, 1937.
- The Orphanages and Widow's Home Act, 1944.
- The Registration Act, 1974.
- The Child Marriage Restraint Act, 1929.
- The Dowry Prohibition Act, 1980.
- The Family Courts Ordinance, 1985.
- The Family Courts Rules, 1985.
- The Cruelty to Women (Deterrent Punishment) Ordinance, 1983.
- Oppression of Women and Children (Special Enactment), 1995.
- Nari O Shishu Nirjaton Daman Ain, 2000.
- The Acid Control Act, 2002.
- The Acid Oporadh Daman Ain, 2002.

### 2.3 Women's Rights 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 rights 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 mindsets and therefore do little to change the status of women from helpless, inferior citizens.

**2.4 Women's Rights 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 favour of women and children or for the advancement of any backward section of citizens. In "The Fractured Scales" by 'Faustina 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.

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

# CHAPTER 3
# WOMEN'S RIGHT UNDER MUSLIM, HINDU & CHRISTIAN LAWS

## 3.1 Legal Status for Muslim Women in Bangladesh

The legal status of the Muslim women in Bangladesh is defined by the principles of Sharia through Muslim Personal Law along with the general law which is non-religious and secular in its character[3]. The Muslim personal law covers the field of marriage, divorce, maintenance, guardianship of children and inheritance whereas the general law covers the rights under the Constitution, penal codes, the civil and criminal procedure codes, evidence act etc. It is necessary to examine the legal status of the Muslim women in Bangladesh in the context of these two sets of law as in both cases women are supposedly fortified with theoretical legal rights, but there is a gulf of difference existing between theory and its actual application. Most important of all, it must be seen that some of these laws though excellent in theory prove largely elusive in practice. The main hurdle that lies in the way of the practical application of the legal rights of women in Bangladesh is obviously the inherent contradiction of attitude that permeates the male oriented society considerably supported by religious beliefs. In this discussion, however, I shall mainly refer to those statutes or those provisions of a statute which treat men and women differently. Matters not covered herein after should be understood to have egalitarian principles giving women the same rights and obligations as the men. Let us discuss the legal rights of Muslim women in Bangladesh under the following heads:

1. **Succession and right to property**
2. **Marriage, divorce and connected matters**
3. **Maintenance**
4. **Guardianship of children, and**
5. **Fundamental rights.**

Before going onto specific rights we must know that the large majority of people in Bangladesh are Muslims and of these most are Hanafi Muslims while an only small minority of them belongs

[3] 85.47 per cent of the total population in Bangladesh are Muslims according to the Bangladesh Statistical Year Book 1975- 76, P.29; and Women constitute 48.1 percent, Bangladesh Population Census, 1974 Buylletin 2, P.1.

to any other sects[4]. Thus in general when a point is made about the law relating to Muslims it will be referring to the law which governs the majority. Therefore, we should note that historically the provisions we regard as provisions of pure Islamic Law are to a large extent Quranic utterances which were applied to the reformation of the pre-Islamic Arabian customary law.

According to Fyzee, "The Koranic reform came as a super-structure upon the ancient tribal laws: it corrected many of the social and economic inequalities then prevalent."[5] Fazlur Rahman also makes the same point, "Whereas the spirit of the Quranic legislation exhibits an obvious direction towards the progressive embodiment of the fundamental human values…nonetheless the actual legislation of the Quran had partly to accept the then existing society as a term of reference.[6] We should also note further that these laws in the sub-continent have been modified in many cases not only by Statute and by custom but also by case law. The other important point to remember is that though Quran has immensely improved the status of women in several directions, society as a whole maintained the inequalities that still remained. Not only that, though over the course of years some disparities were modified by different laws, custom has sometimes been strong enough to militate against the Quranic rule of law. There is, therefore, no reason to suppose that all the rules that we are going to consider were meant to be definitive for all times.[7] Now let us return to the specific laws.

### 3.1.1 Succession and Right to property:

Muslim law of inheritance has two distinct elements, namely, the customs of ancient Arabia and the rules laid down by the Qurand and prophet Mohammad. Under the customary law of pre-Islamic Arabia the women in whatever capacity were excluded from inheritance. The Quran made quite a considerable change of the position.

[4] 91 per cent of the total Muslim Population is Hanafi Muslims.

[5] A. Fyzee – Outline of Mohammedan Law, 4th Edition. Oxford University Press, Delhi 1974. p.388

[6] Fazlur Rahman – Islam P. 39 quoted in Legal Status of Women in Bangladesh by Salma Sobhan.

[7] Salma Sobhan – Legal Status of Women in Bangladesh, Bangladesh Institute of Law and International Affairs, Dhaka 1978, P. 20.

According to to the Muslim Law there are three kinds of heirs (i) "sharers" who are entitled to a prescribed share of the inheritance, (ii) "residuaries" who take on prescribed share, but succeed to the residue left after satisfying the claims of the sharers, and (iii) "distant kindreds" who are blood relations other than the sharers and residuaries, and succeed generally in the absence of sharers and residuaries. In the classification of the heirs, it is important to note that though the son's son and son's daughter have been made residuary and sharer respectively, daughter's children have been made distant kindreds.[8] The principles of succession among the sharers and residuaries are two-fold, i. The nearest in blood relationship excluded the remote one and ii. Whoever is related to the deceased through any person shall not inherit while the person is living.[9]

Under the Muslim Law, the wife (or wives taken together) get one-eighth if there is child, and one fourth if there be no child from the estate of her husband, though the husband gets exactly double. Mother gets from the estate of her sons one-sixth when there is child of her son or when there are two or more brothers or sisters or one brother and one sister of her son, and one third when there is no child and not more than one brother or sister of her son.

On the other hand, the father gets from the estate of his son one-sixth if there be child of his son and in the absence of any child of his son; he gets the entire residue after satisfying other sharers claim, and so on and so forth. It is significant that the Quran has provided that daughter, mother and wife would under all circumstances be entitled to some share in the inheritance and are not liable to exclusion from inheritance, but they are not treated at par with their male counterparts, i.e. son, father and husband and to these extent rules of inheritance are discriminatory.

Women in fact were not given parity in the matter of their shares and as a general rule, the female is given one-half the share of the male. Salma Sobhan writes, since "the Koran is to be likened to an "amending act" rather an exhaustive code… in the changed society there is little reason to perpetuate this distinction."[10]

[8] Women's Legal Status in Bangladesh by Sufia Ahmed and Jahanara Choudhyry, published in Situation of Women in Bangladesh, Women for Women 1979. P.295

[9] D.F. Mulla – Principles of Mohamedan Law, 17th Ed. M.M. Tripathi (Private Ltd) Bombay 1972. P70.

[10] Salma Sobhan – Legal Status of Woman in Bangladesh. P.31.

The case of sister's inheritance is equally discriminatory. According to the rule of nearer in relationship excluding the remoter in relationship, children of a pre-deceased son or daughter would not inherit if a person died leaving another son. This often rendered the child or child of pre-deceased child destitute. This inequity, however, has been removed by Muslim Family Laws ordinance, 1961[11] which provides that the children of the predeceased child would inherit the share which the pre-deceased children would have inherited had he or she been alive. But the widow of a predeceased son remains as helpless as before as she does not inherit anything of this ordinance.

### 3.1.2 Marriage, divorce and connected matters:

Marriage in Islam is a contract and every Muslim of sound mind who has attained puberty may enter into a contract of marriage.[12] Puberty is presumed, in the absence of evidence, when one reaches the age of 15 years, but this presumption is rebutable.[13]

Until the age of puberty, a minor may be given in marriage by his or her guardian and though this is in fact against the provisions of the Child Marriage Restraint Act, such a marriage even 4 under that Act would not be void. Under the Sharia Hanafi, a girl given in marriage below the age of puberty can repudiate that marriage after she attained it and up to the age of 18 provided the marriage was not consummated. By statute puberty is no longer relevant and girl given in marriage below the age of 16 can repudiate the marriage either on the attaining of 16 years, or puberty, where she was married before puberty. Since according to the Sharia a girl is free from guardianship at puberty and by the time she is 13 this is assumed, the law presents another anoamaly in that a girl can give herself in marriage if she wishes below the age of 16, if she has attained puberty and the marriage would be valid though the person officiating and the groom himself where he was over 18 would be liable for punishment under the Child Marriage Restraint Act.

[11] An ordinance to give effect to certain recommendations of the Commission on Marriage and Family Laws dealing with succession, registration of marriage, polygamy, divorce, maintenance, dower, ect.

[12] D.F. Mulla P.255

[13] Mustag Ahmed Vs Mahmud Amin P.L.D. 62. Karachi 442 quoted in Women's Legal Status in Bangladesh by Sufia Ahmed and Jahanara Choudhurry. P.301

Salma Sobhan writes, "Though a minor may be given in marriage, no minor may contract herself in marriage during her minority and any such marriage would be held to be void (9D.L.R.1957).

Where a minor has been given in marriage and marriage has been consummated before puberty such consummation does not operate to deprive the minor of the option to repudiate after puberty (9 D.L.R.1957 p.45). However, there appears no provision for explaining or informing the minor of this right either at the time of her marriage or when she attains puberty…..It would further appear that even in cases where a girl was given in marriage before puberty, she attained puberty or say the age of 14 1/2 years and subsequently the marriage was consummated, she should have the right under statute to repudiate the marriage after she was 16 provided there were no further acts of consummation between the period of her 16th or 18th years.(8 D.L.R.1956 p.77)[14]

A Muslim male can contract valid marriage with a Muslim as also with a Ketabi (Jew or Christian). But his marriage with an idolatress will be irregular. On the other hand, A Mulsim woman may not contract a valid marriage with anyone else but a Muslim.

A marriage with a Christian or a Jew would be irregular while a marriage with a Hindu would be invalid (that is any children born would be illegitimate). It simply means that while a man may marry someone who is not his "social equal" a woman should be protected against such marriages. A Muslim male can take four wives at a time, but a Muslim woman cannot take more than one husband. Even a male marries having already four wives, the fifth marriage is not void, but only irregular. Though Islamic Law vastly improved the then status of woman, the idea of woman being a property could not be altogether thrown away as can be found from the permissibility of plurality of wives. However, realising the evil effects of and the injustice inherent in the polygamy of men Muslim Family Laws Ordinance, 1961 was passed. Sec.6 of the Ordinance provides that no man, during the subsistence of existing marriage, shall contract another marriage without prior written permission of Arbitration Council and violation of this provision entails liability of conviction and punishment. The Arbitration Council while dealing with an application for permission to marry during the subsistence of a marriage would consider whether the existing wife consents to such marriage and whether it is necessary and just to grant the permission. But this legislation failed to

[14] Dhaka Law Report, 1956 P.77

produce the desired result because due to protracted procedure in courts few inclined to bring violations to court and because the Arbitration Council being manned by males very often were not un-willing to accord permission on the slightest pretexts. The law did not make adequate provision to control the discretion of the Arbitration council.

By Bengal Act N°.1 of 1876 (Vide East Pakistan Code, 1963 Vol. 11. p.71) provision was made for registration of Muslim marriages, but registration under this Act was optional. Muslim Family Laws Ordinance 1961 made the registration compulsory and enjoined the Kazi (who solemnises marriage) on pain of punishment to report solemnisation of marriage to marriage registrar so that the marriage may be registered. Similar provisions have been made by Muslim Marriages and Divorces Act, 1974.

One of the essential parts of Muslim marriage is "dower" paid or promised to be paid by the husband to the wife. Dower must not, however be confused with "dowry" which consists of presents made by father and other relations of the bride and Muslim Law does not make any provision for payment of dowry. Dower is the sum of money or other property which the wife is entitled to receive from the husband in consideration of marriage. (D.F. Mulla, Principles of Mohamedan Law, 17th Ed.P.277). The amount of dower may be fixed either before or at the time of marriage of after marriage. The laws does not say anything about the quantum of dower. The amount of dower is generally split into two parts- "prompt dower" which is payable immediately on demand by the wife and "deferred dower" which is payable only on dissolution of marriage by death or divorce. In view of the provisions of Muslim Family Laws Ordinance, the entire amount is now to be treated as "prompt". The claim to dower is not lost even when the marriage is dissolved by Court at the instance of the wife or when the wife exercises the right to divorce.

It is in the field of divorce that the most flagrant inequality between husband and wife exists. The husband has the right of unilateral divorce, for no cause at all. The wife has no such right, and when her husband exercises his right, the wife has no redress.

The women can have judicial separation on specified grounds through intervention of Court. The Muslim Family Law Ordinance 1961 though has already provided for arbiters, the arbitration council cannot prevent the talak by the husband even if it be highly arbitrary and unjust and can

only delay the action in the hope that some conciliation will result. The most common mode of divorce by man prevalent in Bangladesh is Bedai Talak which takes effect immediately without the requirement of communication to the wife for its validity. The husband pronounces three times that he divorces his wife and with the third pronouncement the Talak becomes irrevocable and takes effect on completion of a certain period.

Once this right was exercised the parties could not re-marry without the intervention of another marriage, i.e. unless the wife was married to a thrid person and then divorced after consummation of the marriage. (D.F.Mulla, Principles of Mohammedan Law, 17th Ed.) With the introduction of the Muslim Family Law Ordinance 1961, the position has changed.[15]

Section 7 of the Ordinance provides that Divorce given by the husband shall not take effect until the husband has given notice of the Divorce to the chairman of local administrative unit, Union Parishad and ninety days have elapsed after issuance of the said notice and within the said period the husband can revoke the Divorce. The husband is also to give a copy of the said notice to the wife. The Chairman on receipt of the notice would constitute Arbitration Council for effecting a re-conciliation which, if successful, would render the divorce ineffective. It is an offence not to notify the Chairman about exercise of Divorce by the husband. The provisions of Sec. 7 of the Ordinance apply mutatis mutandis in case of divorce exercised by the wife and the divorce does not take effect unless notice thereof is given to the Chairman and 90 days have elapsed thereafter. The husband can delegate his power of divorce to his unconditionally or with condition and that is called Talak-e-Tawfeez. When any condition is stipulated the wife can divorce her husband in the happening of that condition.

Now the divorced parties can remarry without the formality of the marriage with third party. (Sec7(6), Muslim Family Laws Ordinance, 1961.) Muslim marriage can be dissolved by agreement between the husband and wife and it may take the force of Khula or Mubarrat. In Khula, the marriage is dissolved by an agreement between the parties for a consideration paid, or to be paid, by the wife to the husband, it being necessary condition that the desire to separate should come from the wife. Where desire to the separation is mutual, it is said to be Mubarat. A wife is entitled to Khula as of right or restoration of what she had received in consideration of 5

[15] D.F. Mulla P.257

marriages, if she satisfies the conscience of the court that it will otherwise mean forcing her into a hateful union. As stated above, a Muslim female does not have the right to divorce in the way a mal-e has, but she could seek judicial divorce on grounds permitted by Muslim Law. The Dissolution of Muslim Marriage Act, 1939 was passed in order to consolidate and to clarify those grounds and also to add some new grounds.[16]

A wife is entitled to obtain a judicial divorce on neglect or failure of the husband to provide maintenance for two years. But if the wife refuses herself to her husband without any lawful excuse and deserts her husband, or otherwise willfully fails to perform her marital duties, she has no right to claim maintenance and cannot obtain a decree for dissolution of marriage on the ground of nonpayment of maintenance. The fact that the wife is a woman of means would not be a defense to the claim of judicial divorce for non-payment of maintenance. A Muslim woman can obtain judicial divorce on any ground recognized by Muslim Law. Thus a wife is entitled to judicial divorce if the husband brings false charge of adultery against her unless the husband bonafide retracts the charge of adultery. To constitute a valid retraction, it must be made before the commencement of the hearing of the suit, it must be bonafide and there must be an admission by the husband about making the charge and an unconditional acknowledgement by him that the charge is false. Incompatibility of temperament as results in a hateful union has been accepted as a ground for seeking judicial divorce.

Before the Dissolution of Muslim Marriage Act 1939 apostacy from Islam of either party operated as a complete and immediate dissolution of marriage. After passing of the Act, apostacy from Islam of the wife does not dissolve the marriage (Sec.4 of the Act) while apostacy of the husband dissolves the marriage immediately. (Mulla.P.305).

### 3.1.3 Maintenance:

In accordance with Muslim Law, the father is bound to maintain his daughter until she is married (Mulla). The fact that the mother has the custody of the daughter till the latter attains puberty does not relieve the father of his obligation to maintain the daughter (Mulla). If the father is poor, but the mother is in easy circumstances, the mother has the obligation

[16] Act N° VII of 1939 (Vide Pakistan Code 1966 Vol.IV, p.716, quoted in Women's Legal Status in Bangladesh by Sufia Ahmed and Jahanara Choudhury. P.313.

to maintain the daughter (Mulla). But a father is not bound to maintain a daughter who is capable of being maintained out of her own property. A Muslim mother is entitled to maintenance from her son if she is poor or if the son is financially solvent (Mulla). A Muslim husband is bound to maintain his wife so long the wife remains faithful to him and obeys his reasonable orders. If the wife refuses herself to her husband without any lawful excuse and deserts her husband or otherwise wilfully fails to perform her marital obligations she has no right to claim maintenance from the husband. But if the wife refuses to perform her marital obligations on the failure of the husband to pay the prompt dower the husband will not be absolved of his liability to maintain his wife (Mulla).

A Muslim woman in the event of divorce is entitled to maintenance by the husband till the expiry of the period of Iddat (e.i.90 days, and in case of a pregnant wife till the end of the pregnancy). A Muslim male maintains his daughter as best as his means permit and a husband also maintains his wife to the best of his ability so long the relationship remains good, but if the relationship is estranged, the condition of the wife is very difficult. The social milieu and cumbersome court procedure made it difficult for the wife to have maintenance through Court.

Muslim Family Laws Ordinance, 1961 tried to evolve a procedure through which the wife can easily have her remedy, but it has not produced any appreciable improvement. The Family Courts Ordinance, 1985, however, has been promulgated to deal with divorce and related matters and provisions have been made to dispose the cases of within the shortest time possible.

A Muslim widow is essentially dependent on her son, for, generally even her share in the property of her husband remains in the hands of the son and ironically enough, her fate depends upon the attitude of the daughter-in-law. But if the widow has no son to depend upon the relations of the husband; her condition in most cases is miserable.

### 3.1.4 Guardianship of Children:

In the matter of guardianship of children, a Muslim woman is definitely at odds. Under Muslim Law, the mother is entitled only to the custody of the person of her minor child up to a certain age according to the sex of the child. But she is not the natural guardian either of the person or property of the child; the father alone, or if he is dead, his executor is the legal guardian.

Salma Sobhan points out "In Islam a careful distinction is made between being entitled to the custody of one's children and being their guardian…….one would be tempted to compare the difference between these two concepts to the difference between possession and ownership. In any event, in Muslim Law, the mother is never entitled to the guardianship of her children…. However, a mother is always entitled in the first instance to the care and custody of her young children. Her sons she may keep till they are seven, and her daughters till puberty. The father is responsible for their maintenance during that period. A mother may lose custody of her children, particularity her daughters, if she re-marries a stranger, someone that is, who is not barred to the children by the rule of consanguinity. These are the basic rules, but they have been modified, not only by the Guardian and Wards Act, but there is also a fairly substantial amount of case-law on the subject, which on the whole has been very sane. [17]" It is laid down by the Guardian and Wards Act, 1890 that the courts have stated that these provisions are for the benefit and protection of the child, and that it is the courts paramount duty to consider the welfare of the children over the rights of the parents. (20 D.L.R.1968 P.1).

According to Salma Sobhan again "Thus remarriage of the mother outside the permitted degrees has not been held an absolute reason for depriving her of the custody of her children. Were the children having been all along in the custody ceased, it was still considered advisable to let them continue in her care and control, as the father had re-married and it was felt that the children's interests would not be so well looked after by their step-mother. The father is only free from the burden of maintaining his children where they are being withheld from him illegally. The mother's poverty is never a sufficient reason to deprive her of her right to the custody of her children." (Dhaka Law Reports, 1955, 1958, 1964 and Guardian and Wards Act, 1890.) Under the Guardian and Wards Act, a mother can apply to the court to be appointed the guardian of her children.

### 3.1.5 Fundamental Rights:

In here we shall discuss some of the aspects of the general law, which is non-religious or secular in nature, the most important of which is the constitution. Under the Bangladesh Constitution (The Constitution of the People's Republic of Bangladesh, 1972), various provisions exist relating to women both directly and indirectly. In a section where the state accepts a fundamental

[17] Salma Sobhan Legal Status of Women in Bangladesh, p.29

responsibility towards raising the standard of living of the people, it specifically undertakes responsibility for providing social security to, inetr alia, widows. Another section runs, the state shall take effective measures to prevent prostitution". Further on it is stated categorically, "All citizens are equal before the law and are entitled to equal protection of the law" and also that "The State shall not discriminate against any citizen on grounds of …sex" and "Women shall have equal rights with men in all spheres of State nad Public life", and "No. citizen shall on grounds only of…..sex….. be subject to any disability, liability, restriction or condition with regard to any place of public entertainment or resort, or admission to any educational institution. "There is a further section which reads, "Nothing in this article shall prevent the State from making special provision in favour of women or children or for the advancement of any backward section of 6 citizens." In the sections relating to service with the Republic there are also similar passages securing equal opportunity for all citizens on the one hand while reserving the right to make special provision in favour of any backward section of citizens for the purpose of securing them adequate representation or reserving for members of one sex any class of employment or office on the ground that is considered by its nature to be unsuited to members of the opposite sex. Further, in exercise of these provisions, 30 seats of Parliament were reserved for women members exclusively for a period prescribed in the constitution. These provisions are interesting both in that which they say and that which they imply. According to Salma Sobhan's analysis while all citizens are equal before the law and entitled to equal protection this does not mean, nor is it meant to mean that all citizens enjoy equal rights. The State, though, undertakes not to discriminate against any citizen, and women are categorically assured of equality is given outside these spheres. Further the right to reserve any job exclusively for one or other of the sexes because of its nature is a slightly sinister one. Either a job cannot physically be done by a person or else it is a matter of X's opinion that such and such a job cannot be done by Y. This may in fact be no more than a statement that the job ought not to be done by Y. "The tenor of all these provisions read as a whole makes it obvious that the drafters of the Constitution could not fail to acknowledge tacitly the fact of the inequality present in the status of women. To their credit their consciences were sensitive to the particular vulnerability of widowed women and they show commendable awareness of the fact that prostitution exists not usually because of the "weakness" of the prostitute but rather as a means of exploitation by society. Yet it would appear to be implied that the vulnerability or exploitability of women was something inherent to their sex rather than a commentary on the society itself,"

writes Salma Sobhan. Women are thus bracketed with children and "other backward sections of society". The assumption is that it is women who are backward, not the society in its attitudes towards women. Thus we may say that the Constitution operates on two assumptions. The first is that women are in need of greater protection than men. This is not so much for women are privileged, but because they are weaker. And because of this the identity of the woman is submerged with the stronger identity of her male counterpart or guardian. It should be noted that where it appears that the women are being accorded privileged treatment it results often in the so-called privilege under-writing a social custom rather than attempting to eradicate it.

The women are allowed maternity leave in addition to other leave facilities enjoyed by men in public service. In private employment no employer shall knowingly employ a woman during the six weeks immediately following her date of delivery. Rule 197 of Government Service Rules, Vide East Pakistan Service Rules; Part-1 P.82 and Sec. 3 of the Maternity Benefit Act, 1939 Vide East Pakistant Code 1962. The employer also is bound to pay maternity benefit at a certain rate acording to the Maternity Benefit Act of 1939. But due to want of proper check, these provisions are often violated. Moreover, the employers feel inclined not to employ women to avoid that extra cost. Similarly, Acts that every factory emplying more than fifty women must provide for suitable room for use of children of those women (The Factories Act, 1965) and that the Government has been given power to extend this facility to the plantation labour (The Tea Plantation Labour Ordinance, 1962) have not proved effective at all. Looking at how women are treated in Penal Code, let us first consider the Act regarding abortion (Act N°.XIV of 1860). Under that act whoever (including the woman herself) voluntarily causes a woman with child to miscarry, shall, if such miscarriage be caused in good faith (wich now invariably is considered to limit family size) for the purpose of saving of life of the woman be punishable, and who commits this offence without the consent of the woman miscarried shall be liable to higher sentence. It should be noted here that in the recent past abortion has been "justified" in the name of "menstruation regulation" or "medical termination of pregnancy" as a birth control measure, and the "good faith" has changed its connotation from "for the purpose of saving of life of the woman" to "birth control" and abortion as choice of a woman to terminate her pregnancy has remained socially & legally "undesirable".

Assault or criminal force to woman with intent to outrage her modesty and kidnapping and abduction of woman to compel her to marriage, inducing girl under 18 years of age to go from any

place or to do any act with the intent that such girl may be forced or seduced to illegal sexual intercourse or importation of girl below 21 years of age for the said purpose selling or otherwise disposing of girl under 18 years of age for prostitution or illicit sexual intercourse and buying or obtaining possession of such girl for prostitution or illicit sexual intercourse are offences under the Penal Code Rape is an offence and sexual intercourse with the wife under 15 years of age without her consent is treated as rape.

Cohabitation caused by a man deceitfully inducing a belief in the woman of lawful marriage or enticing or taking away or detaining with criminal intent another man's wife are offences. Adultery and bigamy are also offences, but the woman involved in the adultery is not liable to punishment. It is interesting to note that when a woman is accused of an offence, "womanhood" is one of the grounds for release on bail. The Cruelty to Women Ordinance, 11983 and the Dowry Prohibition Act, 1980 have been promulgated to expedite the court procedures and enhance the punishment, no substantial change, however, in law has been made to really improve the situation. The following laws are in the field for the Muslim female in Bangladesh, mainly. Besides, some others laws are also in effective to act as the safeguard of Muslim female like, Cr. P.C; CPC; Penal Code and so on. Thus the classifying of those laws as under:

A. The Muslim personal Law (Shariat) Application Act (Act no. 26) 1937.
B. The Dissolution of Muslim Marriages Act, 1939.
C. The Muslim Family Laws Ordinance (Act No. 8)1961
D. The Muslim Family Laws Rules 1961

### 3.2. Right of Women Under Hindu Law

#### 3.2.1. Women’s right in marriage:

According to Hindu social customs, Hindu marriages are solemnized through religious rituals. There is no marriage registration system for Hindus in Bangladesh. There is also no Hindu marriage law or Hindu marriage registrar in the country. So, if any Hindu woman suffers in the hands of her in-laws, she does not get legal help.

In Bangladesh, Hindu marriages differ from caste to caste. The Hindu marriage rituals have often no lawful ground. So, when the Hindu women want to come out of bad marriages they are in trouble because there is no marriage registration system in the Hindu society in Bangladesh.

As per a 1946 law, Hindu women can file cases with courts to only regain the rights to conjugal life. Besides, the Hindu women can file cases under Family Court Ordinance 1985, Dowry Act 1980 and Women and Children Repression Act 2003. But these laws are too inadequate to protect the Hindu women's rights.

But the situation is very different in neighboring India. There are laws in that country to protect the rights of Hindu women such as Widow Marriage Act 1856, Racial Inability Remission Act 1850, Child Marriage Prevention Act 1929 (Amendment 1938), Earned Property Affairs Act 1930, Inheritance Act 1925 and Hindu Women's Rights to Lands Act 1937. Besides, new laws have been made in India after independence in 1947. These include Hindu Marriage Act 1955, Immature Children's Property Act 1956, Hindu Adoption and Maintenance Act 1956, Hindu Inheritance Act 1956 and Special Marriage Act 1960.

Efforts to enact laws to protect Hindu women's rights in Bangladesh are thwarted by conservatives. There are Hindu men who leave their first wives and take second ones, but the same people resist changes for the better.[18]

Although the clauses No 19 (1) and 19 (2) of the constitution carry clear provisions that the state will ensure equal rights to all citizens and remove social and economic disparities, no government came up with steps to reform Hindu laws for protecting Hindu women's rights.

As per a 1946 law, Hindu women can file cases with courts to only regain the rights to conjugal life. Besides, the Hindu women can file cases under Family Court Ordinance 1985, Dowry Act 1980 and Women and Children Repression Act 2003. But these laws are too inadequate to protect the Hindu women's rights. But the situation is very different in neighboring India. There are laws in that country to protect the rights of Hindu women such as Widow Marriage Act 1856, Racial Inability Remission Act 1850, Child Marriage Prevention Act 1929 (Amended 1938), Earned Property Affairs Act 1930, Inheritance Act 1925 and Hindu Women's Rights to Lands Act 1937.

[18] Pankaj Deb, Right of minority, The Daily Star, June 04, 2004

Besides, new laws have been made in India after independence in 1947. These include Hindu Marriage Act 1955, Immature Children's Property Act 1956, Hindu Adoption and Maintenance Act 1956, Hindu Inheritance Act 1956 and Special Marriage Act 1960. It would be pertinent to mention the remarkable changes in ancient Hindu Law in India through the Hindu Marriage Act-1955:

1. Inter marriage between persons of different castes is not prohibited.
2. Monogamy which is essentially the voluntary union for life of one man with one woman to the exclusion of all others is now enforced by legislation.
3. Bigamy has been made punishable as an offence.
4. The conditions and requirements of a valid marriage have been considerably simplified.
5. Several matrimonial reliefs e.g., restitution of conjugal rights, judicial separation, nullity of marriage and divorce have been provided in this Act.

It is a matter of great regret that the Hindu women of our country fail to avail this kind of opportunity due to the lack of proper legislation.

### 3.2.2. Right of Women in Divorce

The concept of divorce is not recognized under the orthodox Hindu Law. Manu believed that the duty of a wife continues even after death. She can never have a second husband. The reason is that a marriage from the Hindu point of view creates an indissoluble tie between husband and wife. Unless divorce is allowed by the custom neither party to a marriage can divorce the other party. However, through the passing of Hindu Marriage Act 1955 in India some revolutionary changes have been introduced regarding marriage and divorce. After the passing of the Act the idea of marriage as an indissoluble union has been abolished and it is almost converted to a civil contract just like Muslim Law. The option of Divorce is the most significant part of this Act. Section 13(1) declares the right of divorce to both the parties. The grounds are as follows: Adultery; treated the other party with cruelty; deserted the other party for a continuous period of not less two years immediately preceding the presentation of the petitioner; conversion to other religion; if one party becomes incurably of unsound mind or has been suffering continuously or intermittently from medical disorder of such a kind and extent that other party cannot reasonably be expected to live with the respondent. Four grounds are available only to wife: Bigamy; Rape, sodomy; Non-

payment of maintenance decreed to the wife; Wife was under 15 when she was married and has repudiated the marriage before she is 18.

Unfortunately, in Bangladesh any legislative enactment is yet to be introduced allowing a Hindu to divorce his/her spouse. Hindu women in Bangladesh are the worst sufferer due to this lack of provision of divorce. Very often they have to undergo physical and mental torture for dowry from their husband but can't divorce him since there is no such option in our country.

### 3.2.3. Women's Right to Adoption

Adoption is the transplantation of a son from the family in which he is born to another family where he is given by the natural parents by way of gift. The power of a Hindu female to adopt a son is very much restricted in Bangladesh. She can't adopt by herself but only with the consent of her husband. She has no right herself, she is deemed to act merely as an agent, or representative of her husband. A wife can but no other female can adopt. However, in India a woman enjoys a lot of rights conferred by the Hindu Adoption & Maintenance Act 1956. The Act has made the following changes in the law relating to adoption:

A. A female may also be adopted(Sec:7&8)
B. A virgin, divorcee, or widow is entitled to adopt and wife can also adopt in certain circumstances (Sec:8)
C. A male can adopt only with the consent of wife or wives, if any. (Sec:7)
D. The father without the consent of mother can't give a child in adoption except in certain circumstances (Sec:9)
E. The ceremony of "Datta Homam" is not essential. (Sec:11)

### 3.2.4. 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 recognised as heir by the said school. Moreover, 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.

### 3.2.5. Stridhana

Stridhana means a particular property a women may have a limited or an absolute interest. Stridhana belonging to a woman of which she is the absolute owner she may dispose of this property without the consent of her husband and without the consent of any one during the maidenhood or widowhood. Stridhana of every description passes on her death to her heirs and not to the heirs of the person from whom such property was acquired.

### 3.2.6 Women's right to maintenance

Generally, a Hindu wife with her husband and the husband is bound to maintain her and she must discharge her duties towards her husband. But if she leaves him for own accord, either without cause or on account of such ordinary quarrels as are incidental to married life, she can set up no claim to separate residence and maintenance. "The Hindu Women's Right to Separate Residence and Maintenance Act" – 1946, says that, notwithstanding any custom and law of a woman is entitle to have maintenance and separate residence from her husband-

a. If he is suffering from certain loathsome diseases.
b. If he is abandoned her.
c. If he has married another woman.
d. If he is converted to another religion.
e. If he is cruel to the wife
f. If he keeps concubine

However, a woman cannot claim maintenance if-

A. She is guilty of unchastity
B. She converts to another religion
C. She refuses to go back to her husband without any justified cause
D. She has re-married to another person.

### 3.2.7 Laws Relating to Hinduism in Bangladesh

Some laws are containing their rights as usual; namely the laws for the Hindu community in Bangladesh are as follows:

A. The Hindu Marriage Disabilities Removal Act, 1946 (Act No.28)
B. The Hindu Married Women's Right to Separate Residence and Maintenance Act, 1946.
C. The Hindu Women's Right to Property Act, I 937(Act. No.18)
D. The Hindu Law of Inheritance (Amendment) Act 1926 (Act No. 2)
E. The Hindu Inheritance (Removal of Disabilities) Act 1928 (Act No. 12)
F. The Hindu Disposition of Property Act, (Act- No. 15)
G. The Hindu Widow's Re-Marriage Act, 1856 (No. 11, 15)
H. The Hindu Validity Act, 1949.

### 3.3 Hindu Women in Bangladesh Suffering for Absence of Marriage Registration:

In Bangladesh, Hindu marriages differ from caste to caste. The Hindu marriage rituals have often no lawful ground. So, when the Hindu women want to come out of bad marriages they are in trouble because there is no marriage registration system in the Hindu society in Bangladesh. Consider the case of Kazali Rani Das, 23. She works as a day-labourer at her village. Her neighbour, Sanjoy Madhu, lured Kazali with a marriage proposal and convinced her. Then they got married and began their conjugal life at the house of Kazali's parents. Before long, Kazali becomes pregnant and Sanjoy is asked to take Kazali to his own house.

Kazali's trouble begins here. It does take long for Kazali to understand that she has fallen into a trap. Sanjoy delays to take Kazali to his house by making false excuses and later disclaims his marriage with her. Kazali is now too helpless to express her plight. Society does not want to believe what she says. She has no official document, as her marriage was not registered.

**This Is No Exception. It Happens to Thousands of Hindu Women in Bangladesh:**

According to Hindu social customs, Hindu marriages are solemnized merely through some religious rituals. There is no marriage registration system for Hindu people in Bangladesh. It is surprising that there is also no Hindu marriage law or Hindu marriage register in the country. So, if any Hindu woman suffers in the hands of her in-laws, she does not get legal help.

As per a 1946 law, Hindu women can file cases with courts to only regain the rights to conjugal life. Besides, the Hindu women can file cases under Family Court Ordinance 1985, Dowry Act 1980 and Women and Children Repression Act 2003. But these laws are too inadequate to protect the Hindu women's rights. A total of 926 marriage cases were received by Ain O Shalish Kendra during July 2003 to February 2004 period. Of them, only 17 cases were related to Hindu women. Says lawyer Nina Goswami, "Hindu women do not complain much fearing the marriage will break. That fear grips them because divorced Hindu women find it hard to get new husbands. There is no law allowing Hindu widows to remarry."

But the situation is very different in neighboring India. There are laws in that country to protect the rights of Hindu women such as Widow Marriage Act 1856, Racial Inability Remission Act 1850, Child Marriage Prevention Act 1929 (Amendment 1938), Earned Property Affairs Act 1930, Inheritance Act 1925 and Hindu Women's Rights to Lands Act 1937.

Besides, new laws have been made in India after independence in 1947. These include Hindu Marriage Act 1955, Immature Children's Property Act 1956, Hindu Adoption and Maintenance Act 1956, Hindu Inheritance Act 1956 and Special Marriage Act 1960. Efforts to enact laws to protect Hindu women's rights in Bangladesh are thwarted by conservatives. There are Hindu men who leave their first wives and take second ones, but the same people resist changes for the better.

Although the clauses No 19 (1) and 19 (2) of the constitution carry clear provisions that the state will ensure equal rights to all citizens and remove social and economic disparities, no government came up with steps to reform Hindu laws for protecting Hindu women's rights. Awami League presidium member Surajit Sen Gupta says, "Hindu laws need to be reformed in our country. But the free democratic environment that is needed for the reforms has not properly developed yet."

Hindu religionist and Professor of Culture and Pali Department of Dhaka University Dr Niranjan Odhikari says, "Marriage registration is as necessary as the babies' birth registration. It will be helpful if Parliament makes laws in this regard." President of Metropolitan City Universal Puja Committee Swapan Shaha says: "There should be laws to guide Hindu marriage, including rights to divorce because Hindu women are sometimes forced to leave their husbands' houses. In such a case, a woman should be able to obtain legal divorce and take another husband."

Organising Secretary of Bangladesh Mohila Parisad Rakhi Das Purkaistha says, "Marriage registration is a legal right of women. Marriage registration needs to be obligatory to all people irrespective of religion, cast and creed because marriage registration does not disregard religion." But leaders of Hindu, Buddhist, and Christian Oikya Parishad have different views. They think marriage registration is unnecessary for Hindu people. They think Hindu boys believe in single marriage and the number of those who go for polygamy is very few. The leaders say Hindu women will be repressed more if marriage registration and divorce laws are enacted.

A Hindu woman social worker, preferring anonymity, regrets, "People in our country only think of the society. They forget that marriage registration is a right of women". Advocate Nina Goswami also says, "In fact, the Hindu women have no right in our country. But we have nothing to do."[19]

### 3.4 Laws Relating to Christianism in Bangladesh

The Christian community also be treated as minor as their short number in Bangladesh, and a few laws are effective to ensure their rights as usual; namely the following:

A. The Christian Marriage Act, 1872 (No. 15)
B. The Christian Married Women's Property Act, 1874
C. The Divorce Act (4 of 1869)
D. The Succession Act, 1925 (39 of 1925'.

Among of these laws, The Divorce Act, 1869 is the most mentionable as well as objectionable Act for the Christians in Bangladesh. The Act is concerned with divorce and matrimonial causes of the Christians. The Act creates greater discrimination between husband and wife. Husband is given priority equality provision is violated. Divorce right is mentioned in section 10-11, which provides that adultery alone is the ground on which the husband can seek dissolution to the District Court or to High Court. On the other hand, Christian women mist demonstrate his adultery coupled wit incest. So, men & women have different standard on the self- same matter.

[19] The Daily Star, June 04, 2004.

Relating Case: Tapan Nath Vs. Bibha Nath 33 DLR (1981) P-292; where it was held that Petitioner Tapan espoused Bibha who had 3 children. Bibha had free mixing with her neighbors James, Harendra etc. She became disloyal. Tapan filed suit for dissolution but did not make the adulterers co-respondent nor take any permission from Court for not making them co-respondent. Suit was decreed ex parte. In HCD, it was held that adulteress should have been made correspondent and the suit could not proceed under section 11. The entire proceedings appear to be misconceived. So, retrial was ordered by HCD.

Recovery of compensation on wife's adultery under section 34, which says that 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. In contrast, the wife cannot pray for such relief. In case of alimony right, if the Court proves that the wife is an adulterer, she is subject to penalty and loses her right to alimony: This is also gender biased. The amount of alimony pendent life: In a pending suit the wife is allowed alimony from her husband, not exceeding $1/5^{th}$ of husband's average net income for 3 years next preceding the date of the order. This is also discriminatory because husband might conceal income or the 5th might not suffice wife's need.

### 3.4.1 Christian Commission for Development in Bangladesh

Christian Commission for Development in Bangladesh (CCDB) founded in 1973, immediately after the Bangladesh Liberation War, by the World Council of Churches (WCC) to succeed the Bangladesh Ecumenical Relief and Rehabilitation Services (BERRS). This national organization working under the banner of the National Council of Churches of Bangladesh (NCCB) was founded to aid in relief and rehabilitation leading to mid and long-term development activities.[20] It is governed by an inter-faith body called the Commission. Its services are rendered in the spirit of inter-faith dimensions, irrespective of caste or creed, race or religion. These services are quite separate from evangelism.[21] The organization asks local imams to talk about disaster preparedness in their Friday services as part of its Disaster Preparedness Programme.[22]

[20] Shamsul Huda, CCDB, *Banglapedia*: The national encyclopedia of Bangladesh; *Retrieved: 2007–12-11*

[21] Sushanta Adhikari, Christian Commission for Development in Bangladesh, Financial Management Service Foundation, India; *Retrieved: 2007–12-16*

[22] Sara Speicher, Building a house on sand, World Council of Churches, 13 May 2002; *Retrieved: 2007–12-16*

**Major activities:**

The major activities of CCDB include rural development, people-managed savings and credit programmes, work with ethnic/indigenous communities, training traditional birth attendants, women's development programmes and gender awareness programmes, enhancing human and organizational potential. The major programmes are:[23]

- **Ethnic Community Development Programs:** It include five major thrusts: local self-governance (the People's Institution programme), education (including the highly successful programme to provide local schools), ethnic culture, health, food security and the economic development, and environmental conservation.

- **Traditional Birth Attendant Training Program:** 30,000 practicing Traditional Birth Attendants (TBA) has been trained through an eleven-day basic training course.
- **Economic Development Program (EDP):** Through this programme CCDB arranged business creation training courses for 310 rural entrepreneurs. It also provided business development services and appropriate technology support, including organic farming, to these entrepreneurs.
- **Women's Small Local Organization Program (WSLO):** The WSLO program has been helping women of Bangladesh to develop management skills through small local organizations since 1989. 200 WSLO representatives participated in training, workshops and orientations on a variety of subjects. These subjects include the human trafficking, human rights, entrepreneurship, HIV/AIDS, arsenic mitigation, legal services, safe water and sanitation, adolescent reproductive health and the birth registration among other issues. The WSLO program also created 14 preschools that serve 2400 underprivileged children.

**Current Status:**

CCDB is addressing the needs for access to credit, training, and work through its People's Participatory Rural Development (PPRD) in 22 districts. These are: Manikganj, Rajshahi, Narsingdi, Nawabganj, Naogaon, Natore, Pabna, Gopalganj, Barisal, Dinajpur, Rangpur, Bandarban, Rangamati, Faridpur, Jessore, Magura, Jhenaidah, Khulna, Sathk

[23] Christian Commission for Development in Bangladesh (CCDB) Update, Global Ministries; *Retrieved:2007.12.16*

hira, Kushtia, Narail and Cox's Bazar. CCDB has provided necessary support 36 community development areas, 49 small organisations and 136,595 families, including 28,949 people helped through PPRD, 9,100 of them from the poorest sector of the communities.[24] Out of the total operations, CCDB's development programmes are running in 89 Thanas under 19 districts, covering 129,660 poor reference families at an annual operation budget is approximately US$2.1 million. It is addressing the needs for access to credit, training, and work through PPRD, its core development program, as well as other programs. CCDB's nine programs together has helped over 100,000 people, 80% of whom are women and children. These programs are supported by 14 donor agencies from Europe, Australia and USA, with an annual contribution of approximately $3.5 million. The World Council of Churches (WCC), Geneva, co-ordinates a Round Table for CCDB. The budget of the organization for 2000-2001 was Taka-188.395 million. The WSLO has been particularly successful in mobilizing local and external donor agencies to support CCDB projects.

[24] People's Participatory Rural Development, Bangladesh, Church Word Service; *Retrieved: 2007–12-16*

## CHAPTER 4
## COMMON DISCRIMINATORY LAWS

Some other laws, are common to all community; namely-

A. The Special Marriage Act, 1923
B. The Child Marriage Restraint Act, 1929
C. The Guardians and Wards Act, 1890.

### 4.1 Laws of Discrimination for all Community in Bangladesh:

There are many laws that are still discriminatory towards women. The citizenship laws do not allow a Bangladeshi woman to pass on her citizenship to a foreign husband, but if a man marries a woman his wife automatically becomes a Bangladeshi citizen. There is also discrimination in the Muslim Family Law and Hindu Law. Under Muslim Law, "the wife (or wives taken together) get one-eighth if there is a child, and one fourth if there be no child from the estate of her husband, though the husband gets exactly double. Mother gets from the estate of her sons one-sixth when there is child of her son or when there are two or more brothers or sisters or one brother and one sister of her son, and one third when there is no child and not more than one brother or sister of her son. On the other hand, the father gets from the estate of his son one-sixth if there be child of his son and in the absence of any child of his son, he gets the entire residue after satisfying other sharers claim, and so on and so forth". Muslim Law still allows polygamy "with the previous permission in writing" from his first wife and a wife can only file for divorce from her husband if her husband gives her the permission to do so in a marriage certificate. A man, however, can divorce his wife whenever he wants. Under Muslim Law a man is always the legal guardian of a child and the mother only has temporary custody of the child up to a certain age depending on the sex of the child. But she is not the natural guardian either of the person or property of the child; the father, or if he is dead his executor, is the legal guardian.

A Hindu woman is the most vulnerable. The rights and obligations of Hindus are determined by the principles of Hindu law. "Although in India the laws have been reformed," says Khan, "because the government of our country is very sensitive about how to deal with Hindu groups our laws have remained the same."

According to Khan many people who consider themselves to be leaders of their communities' resist changes in their laws. "The present government is in a position to amend these laws," she says, "most governments have been neglectful or scared to touch issues around minority communities. In India Hindus enjoy almost complete equality between men and woman, legally and a Hindu woman can divorce her husband and they inherit the same amount of property as a man." In Bangladesh no Hindu woman can ask for a divorce.

For the first time in our country we have a woman as a Home Minister and as a Foreign Minister. It is a great initiative of the government to assign leadership positions to deserving women. Now is the best time for the government to reform discriminatory laws against women, and amend the state mechanism of redress towards women victims.

### 4.2 Gender Discrimination in Citizenship

There are also constitutional laws that directly discriminate against women. The Citizenship Act of 1951, for example, states that only a man can transmit nationality. A woman does not have the right to transmit her nationality to her children or husband. Strangely this prejudicial law has existed for decades in other parts of South Asia such as India, Pakistan and Sri Lanka. In 1992 however, the Citizenship Act of India 1955, was amended to allow both men and women equal right to transmit their nationality to their children and spouses. In Bangladesh the Citizenship Act, relegates women to second class citizenship. The Factories Act 1934, The Tea Plantation Labour ordinance 1962 and The Shops and Establishments Act 1965, gravely restrict women's right to movement or choice of employment. These laws prohibit employment of women and children between the hours of 8p.m. and 6a.m.[25]

### 4.3 Some legal attempt to remove Gender Discrimination:

There have been some attempts in recent years by governments to safeguard women's legal rights and improve their social status. The Dowry Prohibition Act of 1980 forbids anyone from giving or receiving dowry although the practice is still very prevalent in our country which indicates the lack of enforcement. The "Nari-O- Shishu Nirjatan Daman Ain 2000" (Law on the Suppression of

[25] Bangladesh: Is the law fair towards women, by Aasha Mehreen Amin; Star weekend magazine/ The Daily Star (Bangladesh) March 5, 2004.

Violence against Women and Children 2000), has for the first time expanded the definition of rape considerably although it does not acknowledge marital rape. Sexual assault and sexual harassment have been made punishable offences under this Act. The overall character of this new law is reflective of same level of participatory effort; the law on children is one of the best examples of the workings of a clear distinction between religion as a private matter and the area of personal welfare of citizens as subject to state intervention. The laws on children and personal disputes relating to children such as the Guardians and Wards Act, 1890, the Majority Act and the Child Marriage Restraint Act, are all applied uniformly to all children and citizens of Bangladesh, irrespective of gender or religion despite these areas being clearly within religious-personal sphere of citizen's lives.

**4.4 Effectiveness and Weakness of Legislation:**

Constitutional guarantees in favour of women and laws enacted for their protection and benefit have not had much real impact on their lives. The harsh reality is that women in South Asia in general and in the Indian Sub-continent in particular are less powerful, less educated, less well to do than men and more exploited at almost every level of society.

The incidents of violence against women e.g. kidnapping, family violence, dowry, wife beating, sexual exploitation, trafficking and the like have been increasing gradually. Despite the constitutional provisions for equality, social justice and protection of women these continue. Jurist observes: “such offences are not merely a problem of law enforcement but are also indicative of the disabilities and inequalities from which the women in our country continue to suffer…” This is the reality also for India and Nepal.

In case of Bangladesh, the then Chief Martial Law Administrator in 1983 enacted the first special legislation, the Cruelty to Women (Deterrent Punishment) Ordinance, 1983. This law was enacted in response to the widespread and gradually increasing oppression on women and children. This was done with a view to remove the drawback of the existing lawenacted during the colonial rule. The 1983 Ordinance provides provisions for penalising offences related to kidnapping or abduction of women for unlawful or immoral purposes (Section 4), trafficking in women (Section 5), rape (Sections 7 and 8), causing death for dowry (Section 6) etc. But it had no provision for penalising offences relating to oppression on children, which was underlined as a major drawback of the legislation.

With the existence of the law the oppression on women and children had been increasing alarmingly. As a result, the weakness of the 1983 Ordinance appeared to the administration and judiciary without further delay. The Parliament during the then Government of the Bangladesh Nationalist Party (BNP) once again enacted a new legislation titled Nari-O-Shisu Nirjatan (Bishesh Bidhan) Ain, 1995 [The Oppression on Women and Children (Special Provision) Act, 1995] in 1995. This (new law) repealed the 1983 Ordinance. The 1995 Act decreased the punishment for "trafficking in women" from "death or imprisonment for life or with rigorous imprisonment for a term which may extend to fourteen years, and shall not be less than seven years and shall also be liable to fine" to "life imprisonment and in addition to fine also." Unlike the 1983 Ordinance the 1995 Act provides for 14-years rigorous imprisonment and fine for disposing or otherwise obtaining possession of a woman to import or export, let to hire to be engaged in prostitution or illicit intercourse or unlawful and immoral purposes [Section 8(2)]. Accordingly, it provides for the punishment of life imprisonment or rigorous imprisonment for 10 years which may not be less than seven years and in addition fine for offences related to kidnapping or abduction of women (i) to be engaged in prostitution or other unlawful or immoral purposes; (ii) to be married against her will; and (iii) to be forced or deceitful intercourse (Section 9). The law, for the first time provided punishment directly for trafficking in children. The penalty was death sentence or life imprisonment (Section 12).

The new legislation having 29 sections provided for provisions for special court, time limit for investigation, trial procedure, special powers for Magistrates etc.

But within a very short time, the loopholes of the new legislation were (1995 Act) exposed to a great extent. It was observed that stringency was more emphasised instead of normal implementation during enactment of the law. It provided that the arrested person (accused) would not be granted bail within 90 days.

Section 18 of the Act provided for the tenure of 60 days for investigation of any complaint under the Act. In special circumstances, the court could extend the time for 30 days more. There was no provision for punishment of the Investigation Officer if s/he failed to complete the investigation within the stipulated time (maximum 90 days). It was not clearly mentioned that what would be the position of a case if the investigation were not completed timely. Press reports indicate that the "non-bailable" provision of the Act become a weapon for harassing "innocent public." The Act

provided the penalty of death sentence for offences like acid burn (Section 5), rape (Section 6), killing for dowry (Section 10), child trafficking (Section 12) etc. For other offences, the penalty ranged from life imprisonment to rigorous imprisonment for 14 years. The oppression on women and children has been increasing gradually. With the enactment of "special laws" for women and children the phenomena of filing "false case" has increased sharply. The judge, lawyer and investigating authority (police) acknowledged it. This is going on for harassing others. As a result, the rate of conviction is very few under the Act. Though it also resulted from faulty complaint and charge sheets, lack of evidences, absence or irregular presence of eyewitnesses, faulty trail procedure and other things. These influence high rate of acquittal.

## CHAPTER 5
## CASE STUDY & STEPS TOWARDS BETTERMENT OF WOMEN

Some Important Case Analysis on Family Laws in the Supreme Court of Bangladesh

### 5.1 Amulya Chandra Modak v. The State[26]

This case is a milestone under the Hindu Personal Law, to decide requirement of valid marriage, of Hindu community.

**Fact behind the Case**

This case for the prosecution in brief is that complaint Kalpona Rani Modak (aged about 17/18 years at the time of occurrence) used to lived with her parents in the house whice is adjacent to the house of accused Amulya Chandra Modak (aged about 22 years at the time of the occurrence) the accused mother was ailing. The accused in month of Baisakh 1383 B.S. took her to his house to look after his mother and also work in his house. The accused mother also asked her to nurse and work in her house about 10/15 days latter the condition of accused mother deteriorated and she was transferred to her elder son's house at Mymensing town. After his mother went Mymensing the accused proposed to marry her by exchanging garlands and also proposed to marry her ceremonially after his mother returned from Mymensing.

On 17th Baishakh 1383 B.S. at night the accused brought two readymade garlands (made of paper) and secretly exchanged garlands with her in night. She was made to understand that she was married to appellant. Thereafter Kalpana Rani co-habited with him under the belief thatshe was lawfully married to him. In this way the accused co-habited with her about one and a half month. There after the accused mother came back from Mymensing , Kalpana Rani told him to marry her ceremonially. The accused promised to marry her within 2/3 days. But his parents did not agree with this and drove her out from their house. Kalpana Rani told the accused that she is pregnant by him when the accused again promised to marry her. The accused brought some roots and ask her to eat the same so that a miscarriage could take place but se denied to do this. Thereafter she

[26] 35 DLR 1983 p.31.

narrated the occurrence to her parents, her father reports this to the villagers, they request to the accused father to get his son married to Kalpana Rani as the accused had made her pregnant even after such request the parents of the accused refused to agree.

Related Law and Custom of Marriage

According to Hindu law there are two essentials for a valid marriage are invocation before the sacred fire and 'Saptapadi', that is the taking of seven steps by the couple and some other rites amongst the Hindu in Bangladesh.

As stated in Mulla's Hindu Law (eleventh edition) at page 547, invocation before the sacred fire and 'Saptapadi', that is the taking of seven steps by the bridegroom and the validity of a hindu marriage other in the Bruhma form or in Ausura form.

**Discussion on this Fact**

Actually for valid marriage in Hindu Law there are mainly two essentials, first one, invocation before the sacred fire and second is, 'Saptapadi', that is the taking of seven steps by the couple.

However, in this marriage case the main ritual for valid marriage has not done by the both parties. For breaking the religious and customary law of Hindu marriage must not be accepted to the court. The court always presumed that there have all kinds religious customary may done. But above in all situations, according to the fact and other circumstances in this religious is not pure or valid. According to the other case law as a precedent here is a true example on Raghanath Padhy v. The State.[27]

**Judgment**

According to 493 of the Penal Code, Muhammed Habibur Rahman, j accused Amulya Chandra Modak has been convicted by Mr. S.M.A. Rahman, Assistant Session Judge. Second Court, Mymensing on 30.12.1978 under section 493 of the Penal Code and sentenced to suffer rigorous imprisonment for five years and pay a fine of taka 1,000.00 in defaults to suffer 2 months more.

[27] AIR 1957, Orissa,p. 198

**Findings of the case**

After analysis of the above case it is clear that the marriage of Hindu community is not specified. The form of the evidence of the case is inadequate. There is no provision of marriage registration so there has the scope to confusion. If there would a binding force to the registration of marriage, there will no confusion of validity of a marriage.

## 5.2 Abu Bakar Siddique v. S.M.A. Bakar and Others[28]

This case is a unique case in Muslim personal law, it maintains the doctrine of welfare of child. This is the only case which gave judgment which is separate from sharia law which opens a new door to ensure natural justice.

**Fact behind the Case**

Appellant Abu Bakar Siddique filed an application under section 25 of the Guardian and Wards Act (Act VIII of 1890) in the Court of District Judge, Dhaka for Custody of his minor son. The boy is about 8 years, was born on 22nd may 1976. He married respondent who is an M.B.B.S. doctor on 10th June 1973 she on getting a job left for Saudi Arabia leaving the boy with his father. In July 1978, she came back home and after two months she again left for Saudi Arabia. This time she took the boy with her. Appellant also went to Saudi Arabia and lived with his wife and son. But come back in April 1981 leaving the boy with his wife.

In a suit for dissolution of marriage is filed at the instance of respondent. Her marriage with the appellant was dissolve in June 1982. In May 1984 respondent returned with her son to Bangladesh and went back to Saudi Arabia keeping the boy with her relations. At this stage the appellant filled an application for the custody of the boy. She filed a written statement thereafter denying the allegation. It was stated that, the boy has been suffering from 'Hirshtring' a disease. Steps were to taken to take boy to the UK. Welfare of the boy would be best served if he is allowed to live with his mother District Court agreed with her statement and dismissed the suit, and then the appellant go to High Court Division, however, it was also dismissed in the same ground.

**Related Rules and customs of Custody**

Question regarding Hizanat (custody) of a minor boy or daughter is depended on his or her age.

[28] 38 DLR 1986, AD p.106

The right of mother to custody of infant child: the mother is entitling to the custody of her male children until he has completed the age of seven years and of her female child until she has attained puberty. The right continues though she is divorced by her husband unless she marries a second husband in which case the custody belongs to the father.

The right of father to custody of infant child: right of father to custody of a boy over seven years of age and an unmarried girl who has attained puberty. Failing the father, the custody belongs to the paternal relations.

If there be none of these it is for the court to appoint a guardian of the person of the minor. - Mulla's Principle of Mohammedan Law.

**Discussion of the fact**

In case involving the question of guardianship their decision is seen to be influenced by the concept of welfare of the minor child concerned. In this connection it may be mentioned that under the provision of Guardianship Act, the court to whom an application is made under that Act is to be satisfied that the welfare of minor required the appointment of a particular person as his guardian. But the court is to make appointment consistently with the law to which the minor is the subject. Indeed, the principle of Islamic Law has to be regarded, but deviation there from would seem possible as the paramount consideration should be child's welfare.

**Judgment**

The court held that, for the minor's welfare the minor should be live with his mother or she should be appointing as his guardian.

**Findings of the case**

In this case it is appears that the women's economic independence is most needed for accruing there right. This is only case where the welfare of the child is prevailed over the Muslim Law, beyond this judgment the most influencing reason is that the mother is an M.B.B.S doctor she is economically independent and a doctor which is most needed for a sick child.

## 5.3 Hafizur Rahman v. Shamsun Nahar Begum[29]

This case is under the Muslim Law, maintenance. In this case the court determined how much and how far the husband is bound to maintain his wife as well as the child. In this case the decision of the High Court Division was set aside because of that it is beyond of the Islamic Law. And court decide the point so moto.

### Fact behind the case

Shumsun Nahar Begum filed Family count suit no.60 of 1988 in the Family Court and the Court of Assistant Judge, Doudkandi, Comilla on 2-11-1988 for realization of dower money of taka 50,001.00 and for maintenance of each of the plaintiffs, mother and son. The parties are married on 25-3-1985 at dower money of taka 50,000.00. The son borned in their wedlock, on 15-2-1987, and the defendant divorced plaintiff on 10-08-1988. The family court by judgment and order dated 30-10-1990, decreed the suit for Taka 89,000.00 including taka 3,000.00 to the wife as maintenance during the Iddat period at Taka 1000 per month.

In family appeal no.2 of 1991, preferred by the appellant, the learned District Judge, Comilla by judgment and decree dated 20-04- 1992, reduced the amount of Taka 1,000.00 to Taka 600.00 per month in respect of maintenance of wife. The learned District judge deleted Taka 2,000.00 claimed to have been spend by plaintiff at the time of holding that the Family Court Ordinance did not provide for realization of any such amount. The total decretal amount was reduced from taka 89,000.00 to 72,000.00.

### Related rules and customs of maintenance

According to Mulla's Principle of Mohammedan Law, the husband is bound to maintain his wife (unless she is too young for matrimonial intercourse) so long as she is faithful to him and obey his reasonable orders. But he is not bound to maintain her who refuses herself to him[30] or is otherwise disobedient. Unless the refusal or disobedient is justified of non payment of prompt dower (sec. 290)[31].

[29] 51 DLR (AD) 1999 p.177

[30] Muhammed Ali v. Mt Gulam Fatima (1983)160 I.C. 335,(135)A.L. 902.

[31] Muslim Family Laws Ordinance 1961.

If the Husband is neglect or refuses to maintain his wife without any lawful cause the wife may sue him for maintenance, unless the claim is based on a specific agreement[32] or she may apply for an order of maintenance under the provision of the Code of Criminal Procedure, 1908, section 488, in which case the court may order the husband to make a monthly allowance not exceeding four hundred Taka.

**Discussion of the Fact:**

Under Mohammedan Law maintenance during the period of Iddat is incumbent upon a former husband. A divorced wife can legally and lawfully realized maintenance for the period of iddat. But the right of "Mattaa" loosely used as maintenance beyond the period of Iddat may be statutorily provided for the poorer women who are destitute and suffering in the hand of unjust and cruel husbands. It can be argued that for giving benefit to Muslim women laws may be made as has been made in several counties and the beneficial legislation will not be against Muslim personal law and will be consonance with the ideas of justice tolerance and composition of Holy Qur-an enjoins upon all righteous and true Muslim.

The High Court Division is appears to be too wide, but as in our country many women are divorced by their husbands without any fault on their part some legislation may be made for the good of Muslim women community in Bangladesh. Many divorced women in our county suffer as they have no economic and educational background to support them. She urges to provide for a fair, just and reasonable legislation to remove the extreme hardship of divorced women in our society. Such statutory recognition of benefits and privileges for a divorced woman will not be in conflict of Muslim Law.

**Judgment**

It was held that the learned judge of the High Court Division had no jurisdiction to give her any further relief beyond what was granted by the first two courts below. The decision of the High Court Division was set aside because of that it is beyond of the Islamic Law. And court decide the point so moto.

[32] Abdool Futtah v. messa (1881) 6 Cal. p,631.

**Findings of the Case**

I am also agreeing with the observation from the case of Rashida Begum Vs. Shadhin Din & others[33], with the view that if the interpretation of the Holy Qur-an by the commentators who lived in thirteen or twelve hundred years ago is considered as the last word on the subject then the whole Islamic society will be shut up in a iron cage and not allow to develop along with the time. The decisions of the High Court Division was a unique decision over time the judge consider the literal meaning of the first part of Verse 241 of Sura Baquara and finally held that a person after divorcing his wife is bound to maintain her on a reasonable scale beyond the period till she looses the status of a divorce by re marring another person……., I think it is a milestone to prevent polygamy and violence against women. But unfortunately the Appellate Division set aside the decision and re-imposes the decree that the husband is bound to maintain his wife till Iddat period.

## 5.4 Some Recent Important Steps Towards Ensuring Equal Rights of Women

### 5.4.1 A proposal of Unified Family Code in Bangladesh by Committee of Bangladesh Mahila Parishad

The Bangladesh Mahila Parished wisely proposed a Uniform Family Code irrespective of sex, religion, race, cast and place of birth which should be applicable to all citizens. It is based on principle of equality, principle of non- discrimination, and principle of state obligation.
They argued that the Constitution of Bangladesh ensures the right of man and woman in all spear of public life and it is one of the fundamental right. Under third part of the Constitution, Article 27 states "All citizen are equal before law and entitle to equal protection of law." After that in Article 28(1), it says "The state shall not discriminate against any citizen on the ground of only of religion, race, cast, or place of birth". And according to Article 26, Law inconsistent with fundamental right will be void.

Part two of the Constitution of the Bangladesh states the fundamental principle of state policy, according to Article 8 there are four fundamental principles one of them is socialism; it means, economic & social justice. So discrimination against women in social life cannot be social justice.

[33] PLD 1960, (Lahore) p, 1142.

So, for the requirement of time the law should be changed which is discriminate against women. In this perspective this organization proposed that there should be one uniform law irrespective of sex, religion, race, cast etc. it was first published in 1 April 1993 and the new edition was published after several reform in 2006.

This proposal contains five parts,

- Uniform Marriage and Divorce Registration Act, 2005.
- Uniform Maintenance Act, 2005.
- Uniform Guardian and Ward Act, 2005.
- Uniform Law of Inform of Inheritance Act, 2005.
- Uniform Adoption Act, 2005.

### 5.4.2 Opinion of Law Commission; on the Study Report for Marriage, Inheritance and Family Laws in Bangladesh towards a Common Family Code

The UNESCO and Women for Women have jointly prepared a Study Report in respect of "Marriage, Inheritance and Family Laws in Bangladesh-Towards a Common Family Code" and submitted the same to the Government in the Ministry of Law, Justice and Parliamentary Affairs for its opinion on the report. The Government has thereafter referred the joint study report to the Law Commission for opinion in the matters raised in the Report vide Memo No-177 dated 23/03/05, where the chairman was Justice Mustafa Kamal, and other two members are Justice M.D. Sirajul Islam and Dr. M. Enamul Haque.

According to Law Commission, the Muslim Personal Law (Shariat) Application Act, 1937 (XXVI of 1937) is still an existing law in Bangladesh providing for the application of Muslim Personal Law in all matters relating to Muslim Family Affairs. A reference may be made to the case of Hefzur Rahman Vs Shamsun Nahar Begum, 51 DLR (AD) 172, in which a question of maintenance of a divorced Muslim woman was decided by the Appellate Division. Justice Mustafa Kamal (then a Judge of the Appellate Division) in his Judgment has quoted section 2 of the Muslim Personal Law (Shariat) Application Act, 1937 which is as follows:

> ***"Application of Personal Law to Muslims- Notwithstanding any custom or usage to the contrary, in all questions (save questions relating to agricultural land) regarding intestate succession, special property of females, including personal property inherited***

***or obtained under contract or gift or any other provision of Personal Law, marriage, dissolution of marriage, including talaq, ila, zihar, lian, khula and mubara'at, maintenance, dower, guardianship, gifts, trusts and trust properties, and wakfs (other than charities and charitable institutions and charitable and religious endowments) the rule of decision in cases where the parties are Muslims shall be the Muslim Personal Law (Shariat)."***

In this case mention has been made of Article 8 (1) of the Constitution which says that "The principles of absolute trust and faith in the Almighty Allah .....shall constitute the fundamental principles of state policy" and of Article 8 (1A) of the Constitution which says that "Absolute trust and faith in the Almighty Allah shall be the basis of all actions." (page 194, pares 92 and 93)

The Hindu law is one of the most ancient laws in Bangladesh. The Hindu jurisprudence regards the Smritis, which are often designated as Dharmashastras, as constituting the foundation of an important source of Hindu law. In Hindu religion, the law is considered as a branch of Dharma. The rights and obligations of Hindus are determined by the principles of Hindu law which is the traditional law of this religious community and which is regarded as law of the religion itself. Therefore, Hindu law also cannot be amalgamated with other religious law in favour of a Common Family Code. Although some changes have been made by a number of enactments in India in the Hindu personal laws, but that have been made applicable to the people of Hindu, Buddhist, Jaina and Sikh communities only in the whole of India and are not applicable to the people of Muslim and Christian communities.

The Christians in Bangladesh are mostly followers of Canon laws that are based on traditions of their respective Churches. Christian law is also the personal law of the Christians and is called the law of the religion of the community. The Buddhist community of our country has no separate system of law. They are mostly governed by the principles of Hindu law. The different Tribal Communities are guided by their indigenous religious beliefs, customs and culture. Most of the tribal people follow a Matriarchal family system.

# CHAPTER 6
# CONCLUDING REMARKS

## 6.1 Recommendations

Despite legal and policy initiatives, women's progress in Bangladesh in terms of real change in the women's life, is still far away to reach. Prevailing patriarchal values and traditional norms which are very much to see women in performing reproductive roles prevent women to exercise equal rights both in private and public life. The patriarchal values are embedded in each and every vein of the society and the institutional framework as well which also prevents to effectively implement the legal and policy initiatives. Though as a result of women's rights movement, government introduces various reforms to secure women's equal rights, women face challenges and lack of favorable environment to enjoy those rights coming out of the reforms. Prevalent patriarchal ideology, lack of sensitivity on women's equal status and equal rights among the people in the society, lack of sensitivity among the officials of justice providers, women's lack of knowledge on available remedies, and most of all, women's lack of agency or empowerment are among the grave concerns to the achievement of women's equality in true sense. Religion-based power politics is another major challenge on the way to struggle for women's equal rights. For instance, on many occasions, Islamist political parties publicly protested against women's demand for equal rights to the property acquired by way of inheritance. Besides, weak institutional mechanisms, misuse of funds, inadequate financial and human resources, and faulty planning without proper consultation, lack of monitoring and supervision of programmes for elimination of discrimination impede implementation of programs for advancement of women (Citizens Initiatives on CEDAW-Bangladesh, 2010).The Bangladesh government should take the following key measures

- Reform all personal laws to remove discriminatory features, especially polygamy; grant equal access to divorce to men and women; remove barriers to securing maintenance; and ensure women's equal right to marital property during marriage and upon divorce.
- Disseminate information about the protections available in the law against domestic violence in different media, including through disabled-friendly methods, and monitor implementation of the law.

- Review and reform family court proceedings to eliminate delays and ensure that judges grant interim maintenance in eligible cases.
- Strengthen social assistance programs, including access to shelters for poor women, divorced and separated women, and survivors of domestic violence.
- "For decades Bangladesh has ignored how discriminatory personal laws impoverish women," said Kashyap. "By immediately heeding calls for personal law reform by its own women's rights advocates Bangladesh will demonstrate its commitment to women's equality and poverty eradication."

### 6.2 Conclusion

On the basis of the above discussion, probably it is a bit too strong to say that the law actively, in all spheres, denigrates women, but it certainly does not elevate them. Discussing the law of maintenance of wives under Muslim Law, Naimuddin Ahmed writes, 2 In Bangladesh, the law, as it is, cannot probably rescue Muslim wives from, first, being abandoned and then being divorced and left with a life-time of indigence by arbitrary, capricious and whimsical husbands.[34]" The weakness in the Muslim Family Law Ordinance 1961 is that not only is the second marriage not made void, but that the right of unilateral divorce is not effectively curbed, so that any woman opposing her husband's remarrying, in a system where there is no alimony for a divorced woman, and where she will rarely have been given an appropriate education to enable her to earn her own living, runs the risk of destitution. It is true that the social attitude contributes to this dismal state of affairs, but the situation can considerably be improved by reform of law. When the Constitution professes equality of women with men, the need to review and revise the law to ensure fundamental rights to equality hardly requires any emphasis. Not only that he law should be revised, but its enforcement should be made easy, speedy and similar so that the women can get some benefit out of whatever the law is offering. Unless the law itself along with the procedure for its enforcement is changed, the position of Muslim women in Bangladesh will continue to remain subject to such humiliating condition because of erroneous concept of law, of women's position in society and also of humanity as a whole.

[34] aimuddin Ahmed – Maintenance of Wives under Muslim Law, published in Law and International Affairs Vol.8, N°2, 1985, Journal of the Bangladesh Institute of Law and International Affairs. P.64

It may be mentioned here that the various women's organisations, namely the Mahila Parishad, Women's Lawyers' Association and the Committee for Resistance to Violence to Women and Social Injustices are working seriously towards reformation of Law as well as speedy adjudication of the same. One of the results of long struggles of women in Bangladesh is the promulgation of the Family Courts Ordinance, 1985, the Cruelty to Women (Deterrent Punishment) Ordinance 1983 and the Dowry Prohibition Act, 1980.

Women are being more and more conscious about their religious, social, economic, political as well as legal position and are showing quite a considerable interest in working towards a more egalitarian and just situation.

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