

Women and Law

Twenty-four Years in the Life of a Bangladeshi Women

by Sigma Huda

Caught in the strenuous, squalid round of daily existence which is more death-in-life incarnate than life itself, a woman in Bangladesh exhibits in microcosm the whole state of Bangladesh society tellingly characterized by discriminations — familial, social, economic and legal. In fact, the whole gamut of legal constraints she has been facing since independence has given rise to problems and discriminations in other areas. A human rights activist and a lawyer by profession, the writer here looks into women's position in the light of the existing laws.

A Bangladeshi woman since her birth characteristically exhibits indomitable and unsurpassable strength. She survives infant mortality, suppressed development due to malnourishment, overburdening of family responsibilities from early childhood, being second choice to an even less than limited education, early marriage, repeated pregnancies, physical and mental abuses, etc. Involved in such a strenuous struggle for survival, a Bangladeshi woman bounces back with tremendous will power and continues to hold the family-structure till her death.

Yet, sadly enough, with all this strength, the Bangladeshi woman continues to be downtrodden, submissive, yielding, and indifferent towards the redress of the wrongs perpetuated upon her. Why is it so? — Is it that the Bangladeshi woman is devoid of any rights, or is it that she is beyond caring and visualises herself as a necessary domestic appendage? To assess the situation, it is essential to first find her legal status as a person, as an individual and as a respectable dignified citizen, and then to find as to how could such a degeneration of human dignity be made possible so as to make a woman be satisfied with the position delegated to her through societal norms and beliefs.

The Constitution of Bangladesh which is the supreme law of the country on the basis of which the country is run and citizens governed has provided for equality between genders. In fact Article 26 (1) provides: "All existing laws inconsistent with the provisions of this Part (i.e. Part III of the Constitution dealing with Fundamental Rights) shall, to the extent of such inconsistency, become void on the commencement of this Constitution." In Article 26 (2) it has been further stated that "the State shall not make any law inconsistent with any provisions of this Part" (i.e. Part III of the Constitution dealing with Fundamental Rights) "and any law so made shall, to the extent of such inconsistency, be void." In other words, wherever the law provides for discrimination, it will be deemed to be void in law. The Constitution has moreover in Articles 27, 28, 29 made specific provisions for ensuring equality between genders. Furthermore, by Articles 9, 10, 15, 19, 28 (4) and 65 (3) of the Constitution the State has undertaken to ensure woman's participation in all spheres of public life, to social security, etc. thereby admitting that discrimination exists between genders and as such has recognised the need for removal of such discriminations which are not becoming of a newly-born State, especially when it is a matter of record that women were not lagging behind in the Liberation War and had contributed greatly to the independence of Bangladesh.

But, then, Bangladesh is a multi-religious society and in order to preserve its secular appearance, it has by law and custom permitted the religious laws to govern the affairs of the

family life. For the Muslims who comprise more than ninety per cent of the total population, the Muslim Personal Law (Shariat) Application Act, 1937, has been enacted wherein it has been expressly stated that notwithstanding any customs or usage to the contrary in all questions (save relating to agricultural land) regarding intestate succession, special property of females, marriage, dissolution of marriage, maintenance, dower, guardianship, gift, trust and trusts properties and wakfs (other than charities and charitable institutions and charitable and religious endowments) the rule of decision in case where the parties are Muslims shall be the Muslim Personal Law (Shariat). A point that may be discussed here is whether this law overrides Article 26 or not, and if not whether the law will be deemed to be void to the extent of inconsistency with the Part relating to fundamental rights in the Constitution.

The Laws that deal specifically with women are as follows:

i. The Bangladesh Constitution which I have already dealt with earlier in this article, contain and I reiterate: Articles 9, 10, 11, 15, 17, 18, 19, 20, 26, 27, 28, 29, 31 and 65 (3) contain express provisions relating to women.

ii. As already stated earlier, in matters relating to the personal life of an individual, the religious law of that individual will apply. Matters relating to personal life mean marriage, divorce, maintenance, guardianship and custody, inheritance and in the case of Muslims dower. This is where the crux of discrimination between men and women lies, in the case of the Muslims, unlike people belonging to other faiths, there has been an amendment to the Muslim Personal Law by way of Muslim Family Laws Ordinance 1961 which to a great extent modified certain procedures relating to polygamy, maintenance and divorce and a change in the inheritance law by providing for inheritance by the children of a pre-deceased person to his/her share in the property of the grandparent.

Though for Muslims, it has not been spelt out that the proposal for marriage is made by men, yet societal norm decrees the man to propose to the woman thereby bestowing a feeling of dependence and subordination on the woman. This factor is based on the assumption of the male being the bread earner. Divorce by a woman relies on the woman being granted the power/authority by the male to exercise such a divorce or on her requesting release from such marriage either on waiver of her claim to dower, etc. (thereby once more placing her in an unequal situation) or by seeking the intervention of the court. The Hindu woman is stuck in an unpleasant marriage without even having any of the mechanisms of releasing herself from such a predicament. The Christian wife also does not fare well in the case of a problematic marriage. The same inequalities between sexes are prevalent in custody, maintenance and inheritance only to reinforce the patriar-

chal principle of women's dependency on man. It is therefore sad but true that religious family laws create and legitimise as well as promote discrimination and inequality between sexes of the same religious community and also women belonging to different religions. (Sultana Kamal: "Law as an Instrument of Women's Empowerment"). Civil Laws which include the Law of Contract, mercantile, banking, property, etc. do not make any distinction between gender. However, under the Income Tax Act, 1984, the taxable income of the spouses irrespective of the fact that both are individual assesses will be tagged on to each other to create double taxation which is totally against the principles of the Constitution.

The Code of Civil Procedure and the Code of Criminal Procedure have provisions for exempting women from appearing in court, if they so desire on the ground of observing *pardah*. Taking into consideration, the difficulties faced by the women in implementing whatever little rights they enjoyed on questions of divorce, maintenance, dower, guardianship and custody, inheritance, etc., the Government constituted Family Courts in 1985 to summarily settle the disputes. However, due to shortage of courts and there being no separation of the family court itself from the mainstream courts (the same assistant judge acts as family court, commercial court, etc.), the cases linger on for more than what the law provides, thus creating more hardships of the litigant. Furthermore, the Family Courts Ordinance as existing is an incomplete code which needs a thorough revision in order to remove the inadequacies of the law so as to be truly beneficial to women.

Abuse on the person and mind of the wife due to unjust demands made by the in-laws often resulting in death has ensured the enactment of the Dowry Prohibition Act, 1980 which by itself did not impose any harsh penalty and thus failed to curb the ever growing crime against the person of the wife, thereby compelling the Government to enact a yet harsher law, namely the Cruelty to Women (Deterrent Punishment) Ordinance 1983 which covered not only the acts of cruelty on the person of the wife due to dowry, but also provided for severe enhanced punishment for trafficking in women of all ages, rape, sexual assaults, etc. by the Special Tribunal setup under the Special Powers Act, 1974. These offences are also provided for in the Penal Code which provides for trial in Ordinary Courts of Law.

The labour laws have also specific provisions relating to the employment of women in commercial and industrial establishments, shops, tea-gardens and factories. Specific work-hours with rest hours, maternity leave, creche etc. are expressly detailed in the relevant labour laws; but, unfortunately, due to lack of sincerity on the part of the authorities to enforce the laws, violations take place, especially in the garments, electronic sectors and in the tea-gardens. There have been many in-

stances where religious laws have been superseded by states in their movement towards progress, and Bangladesh has been no exception. What amazes me is that reservations due to religious bans and taboos are raised only when the question of women's position within marriage, family and society becomes an issue. Is this due to the authorities' inherent fear that women, on achieving equality in its truest sense, might jeopardise the position of men and thus be not in a position to any more "control" women? In today's world, one should realise that the denial of women's right to equality will only lead to constant degradation of society, erosion of values and morals. If the states accept in the real sense that equality is a concept which has to be believed in, be committed to, then only will the state be able to achieve speedy development, better understanding, more peace and less crime.

The civil laws of Bangladesh do not discriminate against women. To the contrary, certain laws have been enacted in favour of women, thereby creating reverse discrimination against men which in my opinion was necessary in order to create a congenial atmosphere to achieve equality for women in all aspects.

From 1971 to 1995, there have been some few laws enacted such as the Dowry Prohibition Act, 1980 (subsequently amended from time to time, the last being in 1986); the Family Court Ordinance, 1985; the Cruelty to Women (Deterrent Punishment) Ordinance 1983 (subsequently repealed to make way for the Cruelty to Women (Deterrent Punishment) Act 1995. The last law deals with offences of violence arising out of dowry demands, for rape or for trafficking in women and children of either gender. It has however failed to cover the most common and every day offence of domestic violence, may be because violence against woman within the family is not considered violation of a woman's basic dignity and human rights. In due fairness and despite the gloomy picture of today's woman, it must be stated that throughout the last twenty-four years of Bangladesh, women of Bangladesh have made some positive inroads into moulding their selves into a more assertive role. Ranging from being nominated into public offices, we have seen women contest elections at various levels — Union Parishad, Municipal, bye-elections or general elections of the Parliament. Women's movements have intensified to create a more positive image of women's positions. Women are becoming more professional in their approach to their problems. Women are in various employments which were previously considered "male spheres". Yet this success story is shadowed by the incidents of violence against women perpetuated and instigated by a certain class of people afraid of losing their control over families and communities. These incidents have always been garbed by *village shalish* or *fatawas* by some self-proclaimed religious leaders. The most unfortunate part in the occurrence of such violence has been the apathy and indifference on the part of the politicians and law enforcers including our parliamentarians and government.

There have been many in-

Education Policy

'Education is a privilege in this country rather than a right'

An interview with Anu Muhammad by Rashida Ahmad

Anu Muhammad, who teaches Economics at Jahangirnagar University and who is a writer, a political leader and a cultural activist long associated with the Bangladesh Lekhak Shibir, exposes in this interview some of the hollownesses of, and potential dangers lurking in, the education policy and system that have remained somewhat unchanged since independence. While dwelling on the relationship between class and education, he stresses the need for altering our fundamental approach to education itself.

DS: What changes do you see in education policy which have taken place since independence, and how, if at all, are they reflected in the present state of education in Bangladesh?

Anu Muhammad: There has been very little well-thought-out policy-planning since independence. True, various Education Committees were initiated by various governments. But none of these commissions had ever been fully implemented. In fact, only the worst recommendations of the commissions appear to have been actualised. The recommendations on Arabic and religious teaching were realised through administrative circulars; but, the recommendations on increasing budget-allocation, the number of schools, etc. were ignored. Consistent policy-planning for implementing universal compulsory education has been absent, an anarchic situation has arisen.

There is a lack of internal initiative. There appears to have been only a haphazard execution of various suggestions, by, for example, donor agencies and the World Bank. This has led to erratic, compartmental policy planning — what is implemented today may not be continued tomorrow, or will be negated by another policy. The trends in education are contradictory, they do not complement each other. Any attempt to develop a national consciousness, or unity, through education is totally absent.

For example, studies have shown that a large majority of the students in *madrasahs* come from the lowest income-groups. The lower middle-income groups, the next class, are usually enrolled into government primary schools, where facilities are totally inadequate. If there was 100 per cent attendance at these schools, there would be no way of teaching them all. I have seen schools with no benches, where all the children are lined up from class 1 to class 5

and taught in the same room.

Then there are the upper classes who mostly send their children to private kindergartens, and here again, there is a division between the top high-cost and the lower-cost ones.

Thus, right from the outset, there is inequality, division into four disparate types of education, purely on the basis of class, the circumstances of birth. On top of this, there is a huge number who get no education whatsoever. Out of a hundred students in the country who enrol into class 1, 60-80 simply drop out.

All of these discrepancies and inequalities exist in our education system because of the lack of comprehensive planning.

DS: You have already gone some way towards answering the next question: to what extent, in your opinion, is the spirit of Liberation present in our education system?

AM: The spirit of Liberation embraces the desire to build a democratic society, and a secular environment; an attitude and approach to life which ensures equality in three areas — *dharma*, *borna*, *lingo*, religion, caste/class and gender; to ensure fundamental rights for all. Taking this as the starting point, how does education policy in this country compare?

As I have already said, no formal policy planning exists in Bangladesh, let alone with these fundamental principles, or the spirit of liberation, in mind.

When, because of the circumstances of birth and income, children are being deprived of their right to equality in education, then there is from the start a fundamental contradiction in the system to the spirit of Liberation. Furthermore, gender inequality is also present within the system, alongside religious communalism and constraints on religious minorities.

Thus, in all three aspects, religion, class and gender,

inequalities exist. In no way can we say that our education system reflects the spirit of liberation. Rather, those policies which can be said to negate the spirit of liberation are the policies that exist in our country.

DS: What changes in policy, then, should be made in this context?

AM: This is a difficult question because we should be asking which policies, if any, should be kept, rather than changed! The basic problem lies in our approach. The whole way we view education needs changing. There is no use changing policies here and there. There must be a fundamental shift in philosophy. Education is a privilege in this country rather than a right.

The Government must be forced to take up the responsibility of providing education for all and ensuring the eradication of gender, class and religious disparity. At present, 'availability of funds' is the sole concern, getting money from donor agencies is the sole target, and the responsibility stops there.

Our own initiative is lacking. We have money coming from various donors — but naturally, they tell us how it should be utilised. Money may be donated, for example, by the new Muslim NGOs, and it is spent on *madrasahs*.

In fact, the rate of increase in the number of *madrasahs* is greater than that of schools. The justification for this invariably involves some cliché about the need for 'moral education'; but, in fact, through the *madrasahs*, the ruling classes are able to create a class of people which they can use for their own political purposes.

Another recent policy that is morally questionable is the 'Food-for-Education' programme. To lure people with a carrot on a stick is not right or permissible. If they do not send their children to school, it is because of much deeper and pervasive problems which cannot simply be solved by a

bowl of grain. Furthermore, there is no point in doing so when even the classrooms to teach them do not exist. Since independence, there has not even been a 10 per cent increase in the number of schools.

Immediately after independence, expenditure on education was double that spent on defence. Now, the open budget for defence is almost equal to that of education; but if we were able to see the real underlying budget on defence, we would possibly find it to be much higher than the education budget.

Instead of piecemeal changes in policy, we must alter our fundamental approach to the problem of education.

DS: What about higher education? Has there been much change in the syllabus and curricula in our colleges and universities since liberation?

AM: Higher education has not changed much in content or form since Pakistani, or even British, rule.

Among the intelligentsia or the ruling classes in our society, the fundamental weakness is a 'culture of begging'. Not in terms of money, but mental dependence.

Donor-funded texts, research and approaches to development dominate the curricula. The philosophical base or belief-system is influenced by a new form of colonialism. For example, in economics, 'Western' mainstream neo-classical theory dominates, as does 'Western-donor-funded' research. The same is true in science, and other disciplines.

In fact, two types of orthodox belief systems are interfering with independent thinking in our education system: Western and religious ideology. These exist side by side, creating confusions. We are torn between two ways with no fixed direction.

The distance we have travelled from the 'spirit of liberation' in Bangladesh is too great to ignore any longer.

Health

Looking Before and After, and Pining for What Is

By Naila Z Khan

One of the prominent health specialists, also involved in child development, raises here a number of crucial questions with regard to the health situation in Bangladesh, and looks into the rhetorics and realities of whatever measures of success have hitherto been achieved in the field.

HEALTH is an essential 'quality of life' measure. When one considers the health of an entire nation over a span of almost 25 years, it is probably difficult to come up with one comprehensive assessment without making it sound too simplistic. Nonetheless, it is not unreasonable to ask: are we a healthier nation since 1971? There are innumerable ways of replying to such a question.

Demographic measures, for instance, make easy reading and are immediately comparable over time. On the other hand, what do they say about the actual quality of life of a people? After 25 years, are they more able, intellectually, behaviourally, socially, motorically or psychologically? What about secular trends, a phenomenon by which certain highly developed societies

such as Japan and Sweden have increased their average height, motor performance, etc. within the same span of time mentioned above?

There are so many aspects to the health of a nation that one may have to look at it from different points of views to make any valid assumptions.

A Question of Demographics?

When Bangladesh emerged as a new nation in 1971, how important was the health sector to the policy makers, and in fact to the informed public in general, in the overall design of building the country? The First Five Year Plan (1973-78) states that pre-existing health facilities were grossly inadequate both in quality and in quantity and services were enjoyed by only a privileged few. It further states that the total estimated population in

1973 was 74 million, with a growth rate of over 3%. The infant mortality was 140 per 1000, crude birth rate 47 per 1000, and death rate 17 per 1000. Based upon all these alarming indices, the amount of resources allocated from public funds was about 5% of the total budget.

More than two decades later, the demographic information may leave someone with both hope and despair. Infant mortality has come down to 91 per 1000, crude birth rate to 31.5 per 1000, and crude death rate to 11.2 per 1000. Less infants and children are dying today and that is surely something to acknowledge and be thankful about, although it would have been more heartening to see at least a halving of the deaths in so many years. What is of more concern is the total estimated

population of 116 million (1993) people. By the turn of the century, the population is expected to be double that of 1971 (Fourth Five Year Plan). Resource allocation from public funds has also seen a reversal, with the health sector receiving 2.5% and family planning 4.08%.

Less Food for More People, or Lack of Equity?

Calorie intake of the average Bangladeshi has come down to 1850 kilocalorie, much less than the required amount. Nutritional deficiency in children has risen from 60% in 1971 to 75% in 1995. It may well be that pauperization is leading to such drastic states in our children, and there are many hypotheses for this phenomenon that economists often make conjectures about. Even more drastic is to compare the affluence and waste that are seen within the urban middle and upper classes, especially in the wedding ceremonies taking place everyday of the year in various community centres, *Shanakunja*, etc. How many mouths would that kind of money and food feed? If mass starvation is a matter of health and resources being concentrated in the hands of the privileged and powerful few, such *manmade* epidemics must certainly be confronted at the economic and political levels.

Health Service Infrastructure

A Success Story Marred by Poor Quality of Service?

This is one aspect where in 25 years we have made considerable strides. Over two-thirds of the total Thanas have a Thana Health Complex (THC), most of them equipped with specialized services such



Mass movement '71: Women aquating

Social Disintegration

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 lions have lived in a sort of cultural backwater. The intrusion of TV, with the CNN and BBC programmes, into their quiet lives has suddenly pulled them into a conceptual turmoil. Because of the language barrier they are likely to receive a distorted picture of the whole thing. The happy and neat picture of Western society is what will leave a lasting impression on them — especially the young ones. The cultural indigestion is a natural consequence, but this may be a blessing in disguise. Like the Soviet society that came to know West through magazines, newspapers, TV and jeans, our real society's contact with the rich world may act as a watershed in the ambitious under-

taking with its privileged part. So far the signs are really alarming because we tend to emulate the worst in Western society, not the virtues for which the people there have come to the stage where they are. This is no to advocate for pacifism nor to decry the Western influence. What is however at stake is a culture that has the strength to survive every kind of onslaught from outside and yet get enriched.

This calls for a review of our state policies on education, agriculture and human resource development. All other areas must take a back seat in the mean time.

The first task is to bring about land reform that will give land to farmers, not the

jotedars. Education for all children is a stated policy of the government but the crux of the problem is that without supportive measures this goal can never be achieved. How to do that? With cutting budgets from unproductive sectors and reallocating them for education this is quite possible. The contribution of our agriculture to the Gross National Product (GNP) is between 70 to 80 per cent, but it is the industry sector that eats away the lion's share of investment year after year. Similarly our defence is making a growing demand on our resources. Even the civil administration, because of its inefficiency, is putting increasing burdens on the real productive section of society, the farmers. And it is these farmers who get nothing to keep their body and soul together.

There must be a policy to keep at least 50 per cent of what the farmers produce in villages. If that can be done, the task of human resource development will not be an impossible proposition. The issues are actually interlinked. The rolling over of resources within the rural parameter will ensure education for all children and no exodus from villages to cities. The economic and educational programmes must be complemented with healthy entertainment and sports. Education's other benefits like health and planned families must automatically follow. To achieve all this we perhaps need another war. If we are dead serious not to let our society disintegrate into a meaningless whimper, we must get ready for that war. This time the war will need no weapon but our mental resources.

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