

Whither Equal Rights?

by Lubna Mariam

What started off as a personal issue for Shonjoy and Eeshan alone, now symbolizes the far greater issue of equal rights for the women of Bangladesh to be able to bestow their citizenship to the child they carry in their wombs, nurture lovingly and shoulder unstintingly the responsibility of raising as responsible citizens of the motherland.

SHONJOY and Eeshan may live in Paris, but in their hearts they believe they are Bangladeshis. Both the boys who are about twelve and nine, respectively, speak impeccable Bangla, love Bangladeshi food, and look forward eagerly to their yearly winter vacations at Nani's house in Bangladesh.

Given time to overcome his shyness Shonjoy will even sing a couple of Robindroshongeet for you. Of course this is not surprising, given the effort made by their mother, Sayeeda Rahman Malkani, to acquaint her sons with their *matribhumi* or motherland. The reality however, in Bangladesh, is that your mother's land is not yours by birth-right unless it is your father's too. Mothers may croon Bangla *ghoom pardani* lullabies at their child's cradle, guide them through their first Bangla rhymes, enjoin them to love Sonar Bangla; mothers may even send their sons and daughters to lay their lives for Bangladesh, if need be; but mothers, in Bangladesh, cannot give their children the right to call themselves Bangladeshis.

So it is that, on 1st September 1997 Mr. Justice Muzammel Hoque, of the High Court Division in Dhaka ruled that Shonjoy and Eeshan were not Bangladeshis. And all this because Sayeeda Rahman, a Bangladeshi by birth, married the man she loves, Ravindra Malkani, a non-resident Indian settled in France. In 1992, an official at the Bangladesh Embassy in Paris cancelled the names of the two boys from Sayeeda's passport on the ground that, her children could not be endorsed in her passport as she had married an Indian citizen.

Failing several attempts to reason with the Embassy officials, including the Ambassador, Sayeeda's lawyers submitted a Writ Petition against the Ministry of Home Affairs, which was in turn asked to show cause why the cancellation of the endorsement of her children's names should not be declared to have been done without lawful authority and why direction should not be given to re-endorse their names in her passport, the above to be considered, on the basis of a mother's right, as with a father, to transfer citizenship to her children, under the constitutional provision of equal rights for all citizens of Bangladesh. The lawyers for the

GAINFUL livelihood for the urban poor is crucial for their day-to-day survival. It is access to income earning opportunities and purchasing power, a World Bank Report (1987) on Bangladesh notes, even more than food availability or access to health and nutrition facilities that will determine whether or not the "hard-core" poor are to improve their lot in the coming years. One can argue the way these issues were identified and ordered, but no one will possibly dispute urban poor need to earn. Bangladesh is an example of a country in which 'income generation' is a key item on the agenda for achieving social development to address the plight of the urban poor by alleviating poverty, meeting gender needs, and building institutional and financial capacity to plan and implement local urban intervention.

Among different sources available to urban poor households to pool income, shelter plays an important role as a setting for earning or supplementing livelihoods of the urban poor. This economic role of shelter, for income generation, has recently emerged as a key global agenda for the reduction of urban poverty in developing countries. *Shelter, Employment and the Informal City* was a key topic discussed recently in the Florence Conference in November last year (UNCHS, 1997).

Concept: As the concept of shelter means more than its physical entity, e.g. its utility as a protection against elements, it is helpful to conceive shelter as not what it is but what it does. From this point, shelter, in addition to being the broad spatial setting within which (urban poor) household exists, is a key resource for its reproduction i.e. day-to-day survival and sustaining household livelihood.

In view of the persistent plight of the urban poor in developing countries, this holistic conception of shelter gains strength due to the following three reasons:

First, as long as earning livelihood from the urban informal sector remains an important feature of the urban economy, low-income settlements will persist as a setting for the informal sector enterprises and as the housing solution for their labour force.

Second, some core development issues, e.g. employment generation, gender needs, and human rights, have been progressively placed at the forefront of the 'housing' policies and strategies in addition to their previous 'shelter' emphasis.

Third, dissatisfaction with the development paradigm to meet aspects of poverty, social cohesion and overall human well-being. For a broader conceptualisation of the concept of shelter, these three points can be combined to assert that people, habitat and development are parts of an indivisible whole.

Specific Context: Poverty and unemployment/under-employment dominate the national economic landscape.

Ministry of Home Affairs filed an affidavit-in-opposition denying the allegations made by the petitioners. It stated that Bangladesh, like most of the other countries of Asia such as India, Pakistan and Sri Lanka, determines citizenship by descent in the male line. Ms. Malkani's two sons, therefore, cannot claim Bangladeshi citizenship as per the laws determining Bangladeshi citizenship.

Matters of citizenship in Bangladesh are governed under the Citizenship Act of 1951 and the Bangladesh Citizenship (Temporary Provisions) Order, 1972. Section 5 of the Citizenship Act, 1951, provides that a person will be a citizen of Bangladesh by descent if his father is a citizen of Bangladesh at the time of his birth. Article 2 of the Bangladesh Citizenship Order, 1972, provides that a person is a citizen of Bangladesh if that person's father or paternal grandfather was born in the territories now comprised in Bangladesh and who was a permanent resident of such territories on the 25th day of March 1971, and who continues to be so resident. The Constitution of Bangladesh, in the chapter on Fundamental Rights, provides under Article 27 and 28 as follows: 'All citizens are equal before law and are entitled to equal protection of law.'

(1) The state shall not discriminate against any citizen on ground only of religion, race, sex or place of birth.

(2) Women shall have equal rights with men in all spheres of State and Public life.

Section 13 of the General Clauses Act of the Constitution as follows: Gender and Number. In all Acts of Parliament and Regulations, unless there is anything repugnant in the subject or context.

(1) Words importing the masculine gender shall be taken to include female. The Constitution of Bangladesh in Article 152 (1) defines a citizen as 'a person who is a citizen of Bangladesh according to the law relating to citizenship'. However, Article 26 of the Constitution specifically states that any law which is inconsistent with the fundamental rights as provided by the Constitution would be void to the extent of that inconsistency. Lawyers for Sayeeda, Mr. Amirul Islam and Ms. Tanya Amir of the Law Association, argued as follows: The relevant provisions of the Citi-

zenship Act, 1951, and the Bangladesh Citizenship Order, 1972 were discriminatory in that they deny women the right to transmit their citizenship to their children and as such are violative of fundamental rights as guaranteed by articles 27, 28 and 29 of the Constitution; Section 13 of the General Clauses Act of Bangladesh clearly states that words importing the masculine gender be taken to include females, and therefore the word 'father' in Section 5 of the Citizenship Act, 1951 and Article 2 of the Bangladesh Citizenship Order, 1972, includes mother; the Government of Bangladesh is a signatory of the Convention for Elimination of All Forms of Discrimination Against Women (CEDAW), which in its Article 9 (2) states: States/Parliament shall grant women equal rights with men with respect to the nationality of their children.

The well known judgement of the 'Ms. Unity Dow v the Attorney General' case of the Botswana Supreme Court was a persuasive precedent. Ms. Unity Dow's children being denied citizenship under similar legislation and Constitutional provisions, Ms. Dow had contended that the Citizenship Act contravened rights and freedoms granted to her by the Botswana constitution.

As such, the learned Judge elucidated that the Case gave the Court opportunity to explore uncharted waters and to interpret the Constitution free from all judicial authority, as the Constitution 'contains not only the design and disposition of the powers of the state which is being established but embodies the hopes and aspirations of the people. It is a document of immense dimensions portraying, as it does, the vision of the people's future'; expounded that the patrilineal customs and traditions of the Botswana people, though, possibly, taken into consideration by the framers of the legislation, must yield to the Constitution of

Botswana' and that 'customs and traditions have never been static. A constitutional guarantee cannot be overridden by custom'; affirmed that 'Botswana is a member of the community of civilized states which has undertaken to abide by certain standards of conduct, and unless it is impossible to do otherwise, it would be wrong for its courts to interpret legislation in a manner which conflicts with the international obligations Botswana has undertaken'; declared the Citizenship Act ultra vires the Constitution; The Judge elaborated that merely because in the Article 27 and 28 the provisions were made for equal treatment with man and woman it will not in any way make the children citizens of Bangladesh, he cited the submissions of both Mr. Nurullah and Mr. Rafiqul Huq in various instances to support his decisions while Dr. Kamal Hossain's submissions were not debated or referred to except in the statement that the Court 'is considering (the submission) in the matter of disposing this case'. Tanya Amir's submissions were also not reflected in the Judgement; the Judge also stated that Mr. Amirul Islam, the counsel for the Petitioner, 'failed to notice one thing that what is the constitutional meaning of the word Citizen', as such, it was ruled that the children did not meet the requirements of Article 152 (1) of the Constitution since their father was a citizen of India and therefore denied the Petition.

However, Mr. Huq allowed that the endorsement of the children's name in the mother's passport was made legally and that it should not be cancelled in view of the fact that they are minor sons of the petitioner and as such that made her the natural guardian of her sons. Mr. Nurullah submitted that the children cannot claim citizenship of Bangladesh, by any stretch of imagination, nor should their names be endorsed in the passport of their mother in view of the fact that they can claim citizenship according to the citizenship of their father who is an Indian national. He stated that the reference to the General Clauses Act is not applicable and that in the Citizenship Act 1951, and the Bangladesh Citizenship Order 1972 the word 'father' or 'paternal grandfather' has been specifically provided and that is why it cannot be read in a genetic gender as mother. Mr. Nurullah further submitted that the children's names should be endorsed in the passport of their father only.

The Judgement On the first part of the submission the Judge ruled that the cancellation of the children's names from the mother's passport is 'absolutely illegal and arbitrary' in view of the fact that since the mother is the natural guardian of the minor child, the name of the minor child may be endorsed in the mother's passport'. Under the circumstances, the Court directed that the names be re-endorsed in Sayeeda's passport. In the matter of the second submission regarding right of the mother to give citizenship to

right of the mother of custody of children on tender years; on reaching majority, the children will be stateless unless they have in the meantime acquired the nationality of the father. Mr. Rafiqul Huq, submitted that according to the Citizenship Act the children cannot claim to be citizens of Bangladesh as their father is a citizen of India.

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duty by interpreting the law narrowly in 'technical and literal' terms and abdicating responsibility by contending that it was the responsibility of the Legislature to review and amend the Law.

On the other hand, pro-active Judges would view the execution of the Law as an instrument for meeting the emerging expectations of a changing society. The Constitution, he asserted, was a living document, made responsive to changes only through its interpretation by the Judiciary.

It could only be a document of permanence if social changes and evolving attitudes are reflected in Judgements.

Dr. Kamal Hossain also suggested that the next course of action, before the case was brought to the Appellate Division, was to build opinion in favour of elimination of all discrimination against women's rights, through the offices of the various human rights organizations and women's organizations and/or through a signature campaign; inform all the members of the parliaments of the imperative need for such reforms and lastly, approach the Law Reform Commission for re-enactment of legislation contravening the provision of Constitution.

Ms. Salma Sobhan, Barrister-at-law, of the Ain-o-Shalish Kendra was of the view that 'the Judgement was subject to appeal. The Courts view that the Citizenship Act did not contravene the provisions of the Constitution was a value judgement which had not reflected the various submissions of the counsel for Sayeeda Rahman and the submissions of Dr. Kamal Hossain; citizenship was a modern day concept and should not be judged by the prevalent values of traditional customary laws. She also considered that the application of the law was not a mechanical process and always reflected the mind set of the Judges. It was, therefore, necessary to educate the judiciary of the need for change. The basic fault she was convinced lay in the education system itself which failed to inspire reflective thinking. The Ain-o-Shalish Kendra, she advised was, therefore, involved in various projects for disseminating information which would in the long run assist in changing the biases of the citizenry and in the process the judicial system itself. On further reflection on the case some pertinent questions immediately

rise in one's mind. By use of a circular logic the court denied citizenship to the children. However, it failed to address the issue of the infringement by both the Citizenship Act 1951 and the Bangladesh Citizenship Order 1972 of the mother's equal fundamental rights, as provided by the Constitution, to grant citizenship to her children. Does this reflect a lack of commitment or lack of understanding on the part of the Court?

Various pertinent and persuasive submissions by both Sayeeda's counsel and by Dr. Kamal Hossain were completely ignored by the Court, thereby raising questions about the judicial process itself. It is not normally expected that a Judgement should reflect and consider the arguments and the submissions of the counsel for the petition. In spite of the fact that the Court was informed about the international obligations of Bangladesh in regard to elimination of all forms of discrimination against women, it chose to evade the issue by taking an extremely narrow perspective of the Law. Is it then to be expected that, even in the face of the growing domestic and international demands to implement these conventions, the Court can ignore these with impunity by passing the buck to the legislature? Can the court not be held accountable/expected to take into consideration these demands, enable on these issues which concern half the population of the country? Apart from the Case in discussion, it saddens one to realize that we are stepping into another century, yet this world continues to correlate the transmission of any and all things tangible with the according to religious dictates. Citizenship, however, is a secular concept which should be evaluated separate from personal laws based on religious predicates.

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Shelter for Income Generation

An Approach for Reduction of Urban Poverty

by Dr Shayer Ghafur

Shelter in a piece of land is a priori not only for home-based income generation but also for day-to-day household survival. The urban poor's access to land and adequate shelter is one of the crucial issues in the urban shelter sector in Bangladesh.

major hindrance to benefiting from housing finance, in particular, access to land.

It says: Current economic growth is insufficient to radically improve the income distribution in the short-term; hence affordability will remain low over the foreseeable future. This means that most families have incomes below the levels needed to participate in a formal lending programme and cannot be assisted through a conventional housing finance system.

The implication of household low income, and consequent lack of access to land has led to government interventions focusing on land on which urban poor have already been living — low-income settlements in the broader sense. Subsequently, 'slum upgrading' has been identified, among other possibilities, as the potential type of intervention.

In a context in which a high GDP growth rate of 5 per cent per year would not employ all new entrants to the labour force, let alone the existing ones, self-income generation has been a potential way out of urban poverty.

Dwelling space i.e. shelter, in addition to the broad setting within which it exists, is a potential vehicle to carry out homebased income generation (HIG). Household premise-based economic activities, i.e. non-agricultural economic activities such as cottage industries, shops or workshops in or within its premises have traditionally been a key generic type of economic activity in Bangladesh. Whether home-based or not, small-scale income generation is precisely what many GOs, NGOs and micro-finance institutions (MFIs) have been promoting successfully in the rural areas in Bangladesh. It is quite obvious that the general context within which poor live and generate income to survive is different among rural and urban areas. However, middle and higher-income groups have also benefited from certain products made by poor petty producers. Given the scarcity of wage employment opportunities, HIG has gained credence as a productive activity to supplement, if not the sole source, of total household income, and it contributes to the day-to-day survival of households.

Second, urban poor households are not homogeneous in practicing and benefiting from HIG. The mechanisms and consequences of HIG differentiate households into three possible categories. They are subsistence households, marginally-improved households and petty-capitalist households; the majority are subsistence households.

Third, the main economic and social significance of income generated by HIG is household spending on subsistence (i.e. enabling households to buy food and clothing), and a behavioural change from dependence to self-reliance. Given the insignificant role of the formal industrial sector in the urban economy studied, HIG as a productive activity to supplement, if not the sole source of total household income, and it contributes to the day-to-day survival of households.

Shelter, in addition to the broad spatial setting within which it exists, is a resource for urban poor household reproduction. Income from HIG is one of the key outcomes of household use of this setting as a resource. This income, however small, makes a difference in the lives of urban poor households in Bangladesh. A local government initiative, i.e. SIP, has been seen most effective to enable households, particularly among women, to earn from HIG and address aspects of urban poverty. To understand why SIP is positively correlated with HIG, it is important to bear in mind that constituent economic, social and physical components of SIP do not impact HIG individually but collectively.

The study found that HIG is basically an income supplementation strategy for most of the urban poor households; in average, income from HIG con-

stitutes 49 per cent of total monthly household income. In these three cities, like other cities in Bangladesh, urban poor household earning of a livelihood is conditioned by an urban economy characterized by dominance of the commercial and service sectors, with a very small formal industrial sector. Key implications of HIG in this economic context are:

First, the urban poor have to cater for themselves, using products and services within the informal urban sector. They cannot afford to buy many items of (daily) consumption from formal sector enterprises. The production and consumption linkage has been found to be most beneficial among the urban poor households. However, middle and higher-income groups have also benefited from certain products made by poor petty producers. Given the scarcity of wage employment opportunities, HIG has gained credence as a productive activity to supplement, if not the sole source, of total household income, and it contributes to the day-to-day survival of households.

In most cases, HIG requires very small initial capital. In economic terms, small credit for income generation helps start or boost existing HIG. Credit disbursement on the basis of social collateral, based on Gramene Bank model, has been seen worked well. Although credit makes a difference, but small credit makes small difference.

The implementation of SIP has shown that the provision of physical infrastructure in dwelling space surrounding shelter makes a drastic improvement in household living environment. It is again important to keep in mind that infrastructure contributes to HIG in addition to social and economic input from SIP. The provision of basic infrastructures contributes to HIG in the following ways: (i) Infrastructure increases labour productivity though it has been found difficult to measure. (ii) Infrastructure is used directly in the production/trading activity. (iii) In public land, infrastructure gives de facto tenure and increased investment in HIG. (iv) Road/footpath, lampost, drain, increase intra-neighbourhood linkages by better accessibility and mobility.

Critical Appreciation: To critically appreciate the positive role of SIP, an urban local intervention, let us look at the issues generally. In developing countries, the provision of physical infrastructure in dwelling space surrounding shelter makes a drastic improvement in household living environment. It is again important to keep in mind that infrastructure contributes to HIG in addition to social and economic input from SIP. The provision of basic infrastructures contributes to HIG in the following ways: (i) Infrastructure increases labour productivity though it has been found difficult to measure. (ii) Infrastructure is used directly in the production/trading activity. (iii) In public land, infrastructure gives de facto tenure and increased investment in HIG. (iv) Road/footpath, lampost, drain, increase intra-neighbourhood linkages by better accessibility and mobility.

Issues for Action: Local urban interventions initiated by agents external to lower-income communities to provide relevant social, economic and physical inputs will remain crucial at least in the near future, for urban poor households from poverty. Together, they positively impact on and contribute to the use value of dwelling spaces, in particular, to household use of space as a resource for HIG. But 'most often, access to these components for all urban poor households living in a

city or country is neither within the financial and institutional capacity of central or local governments, nor do poor households think them affordable.

The apparent inability of urban poor households to enter into the market and thereby establish successful claims on land, shelter, and services through exchange has been conditioned, in part, by what they earn in relation to the existing urban economy specific to their social milieu. Two key consequences arise from this observation. On the one hand, the limitation of conventional local urban interventions as they are economics-driven and centrally conceived and set a price on housing which low-income households cannot afford. On the other hand, welfarist and heavily subsidised urban local intervention, despite all its positive objectives and implementation achievements, is financially unsustainable in the long term. They create a dilemma and point towards an impasse in project continuation and expansion.

The discourse that aims to show a path beyond this impasse is broad and complex.

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Gender Realism: Realism about the effective role of women, i.e. productive, reproductive and community management activities that they can accomplish by themselves, either by utilising the credit given by local intervention for HIG, or at a broader social level, by coming into contact with and negotiating with municipalities to establish successful claims on basic urban services. This realism about the role of women points toward a shift from the 'reductionist and essentialist' connotation of Townsend, 1993 of gender relations to a more holistic social perception.