

"All citizens are equal before law and are entitled to equal protection of law"-Article 27 of the Constitution of the People's Republic of Bangladesh

Trial of War Criminals: Options for Bangladesh

According to the sources at Muktijuddher Jadugarh (The Liberation War Museum), a mass grave was discovered on 27 July 1999, which is believed to be a killing field used by the occupying Pakistani army in 1971. The Liberation War Museum immediately began extensive excavation work and recovered human skulls, hundreds of human bones and other objects.

The museum reported on 16 August, "From the first batch of 216 intact bones and broken pieces they (the experts) estimate those belong to 7 bodies. They have identified 4 skull (upper portion) four jaws (lower portion). Of these only one pair of jaw and skull match. We can deduce from this that we are yet to recover 3 more skulls. That brings the total number to 7. There are 21 long bones, of them 6 seem to belong to one person. Since others belong to different persons they couldn't be matched but seems to be of 6 different people. Of the bones found one belongs to a woman aged between 25-35. The rest are men aged between 25-35."

The report further stated, "There are signs of bullet injuries in four skulls, one at the lower part of the spinal cord (sacrum), one hip bone and one in the shoulder blade (scapula). Besides other bones have evidences of injuries. One skull shows signs of a sharp weapon were shoved inside the eye socket. Most of the shoulder blades are broken showing sign of some force being used."

In addition, parts of weapons and ammunitions have been found and unexploded mines.

The report understandably is not complete, as the excavation has long way gone yet, when full horror will perhaps be revealed.

With the Liberation War Museum, Bangladesh Army has come forward to participate in excavation. Army Chief Lieutenant General Mustafizur Rahman should be commended for sending his troops.

Bangladesh Army has its own motivation, to find out their missing comrades. In one incident alone, it is believed, that in Mirpur, which was under the control of Pakistani military and collaborators, 40 soldiers went missing when reputed film personality Jahir Raihan went there to search of his brother. The soldiers and Mr. Jahir Raihan, all disappeared.

Confronting the Past

The discovery of the mass grave at Mirpur immediately raised questions about what to do next. The unanswered question of trial of the perpetrators of the genocide surfaced again, especially at a time, when memories remain rather fresh following recent genocides in Bosnia and Rwanda, beamed worldwide by television.

The Liberation War Museum already has made international appeal "to find the truth" and has set up a team of legal experts to proceed to international court to take this evidence of genocide to hold those

By Ahmed Ziauddin

government of Bangladesh can lodge a complaint before International Court of Justice against Pakistan for breach of the Genocide Convention and in particular, its obligations under Article 1. This will require acceptance of ICJ's jurisdiction by Pakistan, where, only the State of Pakistan could be condemned, if proved, that in Pakistan in 1971, the government and military carried out or failed to prevent perpetration of genocide, individuals responsible, in any way, cannot be judged in the World Court.

genocide in 1971, either live, visit or travel countries in Europe and America, where courts do have jurisdiction to try such criminals.

In UK, for example, a British Court recently punished one 78-year old Anthony Sawoniuk, a Belarusian man and a naturalised British citizen, for killing Jews, two men and two women, in 1941 when Germany invaded Belarus. Following invasion, Nazis recruited a small force between 10 and 15 officers from local community, and Sawoniuk was one of the first volun-

Chilean dictator General Pinochet's arrest. This hunting job has to be led by civil society entities, with active support of the government.

Setting up Court under The International Crimes (Tribunals) Act

The Genocide Convention obligates the State to not only enact "necessary legislation" but "to punish" the perpetrators of genocide. Bangladesh Parliament passed on 20 July 1973 The International Crimes (Tribunals) Act. The law was a model of international due process. The Act provided for detention, prosecution and punishment of persons for genocide, crimes against humanity and other crimes under international law, and afforded appropriate legal protection to the accused.

The Act did not create new offences; it merely established a forum for the prosecution within Bangladesh of international crimes already "in force at the time."

Although available, this piece of legislation, though remained in force, but remained unutilised. No one was ever prosecuted, tried or punished under this Act, and more importantly, even no Tribunal was set-up, as the Act requires.

The government can, and perhaps should, take steps now, in view of the grisly findings at Mirpur to change its position and set-up such a Tribunal. This is the best possible option available, where both members of the Pakistani military and collaborators of genocide could be put on the dock to reply the dead. A campaign should therefore be launched to set-up this Tribunal.

Proceedings under Ordinary Criminal Law

One other option for justice after genocide could be to file complaints against named individuals involved in carrying out killings, lootings, rapes, destruction etc. in 1971, under local criminal laws.

The younger sister of Professor Giasuddin Ahmed of Dhaka University, who was kidnapped and killed by known and notorious collaborators, filed such a case with Ramna police station on 24 September 1997. The investigation still continues.

In addition, however, several other measures could be taken in a post-genocide society.

Disqualification

The idea being, those who

have acted against the people or have collaborated forfeited some of their rights, including political and civil rights.

Truth Commission

With a goal to investigate the fates of the individual and the nation as a whole. The perpetrators come out openly, reveal all the facts and face the victims publicly and see the results of their actions.

Public Inquiry

A public inquiry commission to find all facts out could help the victims and survivors to know what really happened.

Reparation

For the families of victims and survivors, compensation serves as immediate public recognition of their pain and trauma. The most concrete form of reparation is monetary compensation.

Permanent Reminders

Establishment of permanent reminders of the past, such as monuments, museums, public holidays, and ceremonies together with support group, provide non-violent expression of pain, frustrations and anger of the survivors.

Documentation

It is very important to establish a permanent historical record that would inform and educate future generations to prevent similar atrocities.

Voices of the victims: Another avenue of redress could be a forum with opportunities for survivors in communicating their stories. First hand testimonies of survivors could be incorporated in educational programmes. Similarly, they could be invited to lecture in primary and secondary schools, in history and social studies classes, and in university in various relevant courses.

In press and broadcasting, victims' perspectives are particularly important.

Conclusion

It is the responsibility of all of us, the living beneficiaries, of the sacrifice of the victims of the genocide, which brought into being an independent country-Bangladesh, to find appropriate ways to do justice to the victims. We owe a great deal to them. As their bones and other evidences are excavated, the victims have given us yet, another opportunity to reverse inaction and injustice.

The writer teaches law at Catholic University, Brussels.



Excavating the Past at Muslim Bazar

Photo: Liberation War Museum.

responsible for the crime guilty and punished. A local Bangla newspaper also has launched a similar international appeal.

This article will analyse steps possible future course following aftermath of Mirpur's mass grave.

Options after Mirpur

What then the people of Bangladesh, human rights activists, NGOs and even the government should or could do as the bones from beneath demand answers? There are four way forward, two international and two national.

Complaint to ICJ

Although late in days, the

However, such a possibility is too remote to perceive, considering the attitude of the major political parties, including the party in power. This will jeopardise relations with Pakistan, which no government has stomach to sustain.

Hunt War Criminals Abroad

A number of countries either got their own brand of legislation for genocide and war crimes or subscribes to Genocide Convention in application could be an effective forum against war criminals, torturers or perpetrators of genocide. Many Pakistani Generals, who actively planned and executed

teers for the collaborating police force. He now has to spent rest of his life in prison.

Sawoniuk was tried under the War Crimes Act 1991, which permitted prosecution of suspects who are not British residents at the time of crimes not committed on British soil. Since the 1991 War Crimes Act came into force, a special police unit of the Metropolitan Police has investigated 376 cases, which included three killers of Bangladesh genocide living in UK, exposed by the Channel Four programme in May 1995. By exercising similar jurisdiction, British Courts have upheld

An Engaging Re-Reading of Shari'a Law

By Dr Shahdeen Malik

Alamgir Muhammad Sirajuddin is a reputed professor of history and a former Vice Chancellor of Chittagong University. Though he is a Barrister-at-law, his scholarly writings are not generally well known in the legal community. It is a pity, as this book deserves to be read more by lawyers, legal academicians and students, rather than historians.

The Report of the Law Commission on Marriage and Family Law, which led to the enactment of the Muslim Family Law Ordinance, 1961, (MFL) has not been scrutinised in detail, until this book under review.

Prof. Sirajuddin situates the debate within the Commission regarding its various reform measures and points out the 'opposition to reform' stance of the only 'ulema' in the Commission — Maulana Ihtisham-ul-Haq. Frankly, this reviewer was not aware that "of the seven members of the commission six were laymen, including three women and one, a religious scholar, namely, Maulana Ihtisham-ul-Haq" (at p. 35) and "it is a 113 page critique of the 36 pages report of the Commission. Maulana Amin Ahsan Islahi, an erudite scholar gave what is perhaps

the most comprehensive and systematic exposition of the traditionalist viewpoint on modernist approach to the problem of legal reconstruction." (at p. 52). The MFL has changed certain parts of the Muslim Family Law rather drastically. However, it was refreshing to learn that these reforms were put forward not by Lawyers but by the 'laymen'. Professor Sirajuddin informs

the author, i.e., that the book is not intended to be a mundane uncritical narration of rules of Muslim law superficially understood and normalised by the Privy Council or High Courts of British India. The book, instead, posits the philosophical, social and textual foundations of reform and its impact.

Such a critical examination was over due, and more so in view of a number of recent

ferent rationale would be Nelly Zaman vs Giasuddin Khan, 34 (1982) DLR 221. Similar disagreements in interpretations of restitution of conjugal rights can also be traced back to a judgement almost a century and a half ago [Moonshee Buzloor Rahman vs Shumshoonissa Begum, 1 (1867) Moore's India Appeals]. On polygamy, the recent judgement of the High Court Division in Jesmin Sultana vs Md. Elias, 17 (1997) BLD 4 has been overruled by the Appellate Division in Md. Elais vs Jesmin Sultana 19 (1999) BLD (AD) 122. However, the Appellate Division seems to have over-looked a somewhat similar interpretation by another Division of the High Court on this issue of polygamy in Makbul Ali and Others vs Munwara Begum, 39 (1987) DLR 181. No less importantly, reverting back to the book under review, we are informed that Turkey, Cyprus and Tunisia, and among the Druzes of Lebanon and of Syria and the Ismaili Khoja community of East Africa, polygamy has been altogether prohibited (at p. 152).

Traditional Muslim Law issues such as custody of children [in A. Baker Siddiqui vs SMA Baker, 38 (1986) DLR (AD) 106] and past maintenance [in Jamila Khatun vs Rustum Ali, 48 (1996) DLR (AD) 110] have, over the last few decades, certainly found new interpretations which are very different from the past ones. The point, taking cue from the book under review, is that Muslim Law in this subcontinent, as in most Muslim countries, has traversed an interesting path of evolution.

The refreshing aspect of the book under review is, as indicated, that it situates the debate within the context of not only of textual positions but socio-economic reality of the country. The MFL, even after almost four decades of its enactment, has not drawn as such 'official' support as it should have, particularly in terms of legal awareness of the reforms engineered by the Ordinance. More importantly, in discussing various viewpoints, the author certainly provides arguments for further reform, particularly in light of those advanced in other Muslim countries.

SHARI'A LAW AND SOCIETY: Tradition and Change in the Indian Subcontinent by Alamgir Muhammad Sirajuddin. Asiatic Society of Bangladesh, 1999, price Tk. 500/=.

making a sincere attempt is also made to recommend how the existing gaps in law and practice can be compressed if not totally eliminated. The book comprehensively analyses to what extent the legislative enactments in family law have contributed to provide women in Bangladesh a better legal status. All relevant enactments are added as appendix to the book. Such addition will, no doubt, benefit its readers.

The method applied in the present study is not a unique one, neither it is based on empirical investigation. The writer rightly comments, "Given the restraints of postgraduate legal research, which was the basis for this work, the present book has to focus mainly on the official law and its various manifestations. Only extensive fieldwork could provide us with the basis for a detailed analysis of socio-legal realities."

The impact of legal practice is revealed by reported and unreported cases, from which the views of the judiciary about the application of the laws for the betterment of the women of Bangladesh can be traced.

Dr. Taslima Monsoor, the author of the erudite study is in the Faculty of Law, University of Dhaka. Dr. Monsoor, a former consultant to Women in Development mission of UNDP,

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Bangladesh Centre For Genocide Studies

BANGLADESH Centre For Genocide Studies (BCGS) was set-up in Brussels in 1994 as a result of a research paper on comparative genocide.

While researching for documents and published materials on genocide in this century, huge amount of information were gathered in a short time. However, none of the books, articles or documents referred to Bangladesh genocide.

In international conferences, genocide scholars discussed 'every other genocide in this world but Bangladesh.'

When asked, noted, genocide scholar Israel W. Charny said, you got to study your genocide first, bring out horrors for the world to read and hear. He was right. In fact, genocide was documented, studied, analysed principally by the victims or survivors of that genocide. The entire population engaged in attempts to understand the genocide. The Holocaust and Armenia are glaring examples.

Bangladesh Centre For Genocide Studies, thus, began the arduous journey to project Bangladesh genocide in international forums, to academic institutions, and to specialised organisations.

BCGS essentially is a research body, however, it carries out some campaign work.

The Centre has produced a number of research articles, essays for newspapers on aspects of Bangladesh genocide. It has linked up with other similar entities, in Europe and North America. The Centre is an affiliate to the International Association of Genocide Scholars, Institute of Genocide Studies, Montreal Institute of Genocide and Human Rights Studies, Centre for the Study of Ethnonationalism, Interdisciplinary Research Program on Root Causes of Human Rights Violations.

One of the major predicaments of BCGS had been its location and its physical distance from Bangladesh. It's more active representation in Bangladesh would have produced additional quality output.

My 30 Lacs People

THE figure 3 million was first estimated by Bangabandhu Sheikh Mujibur Rahman, the Prime Minister of Bangladesh. In an interview with British journalist David Frost on 18 January, 1972 in Dhaka for New York television programme "David Frost in Bangladesh," Bangabandhu in response to a question replied: "His (General Yahya's) savage forces have killed my 30 lacs people and my people are continuously collecting information. Still we have not reached to the exact figure. The final number might exceed the current estimate, but certainly not lower than 30 lacs." For the text of the interview see Dr. Belal Hussain Joy, Bangabandhu Sheikh Mujibur Rahman: A Pictorial Biography, Dhaka: Dynamic International, 1996; also Sardar Fazlul Karim, Rumir Amma O Annana Probandha (in Bangla), Dhaka, Jatiya Sahitya Prokashani, 1989.

The figure quoted by Bangabandhu has now been confirmed by a number of internationally-reputed genocide scholars. Professor Ted Robert Gurr of University of Maryland and Professor Barbara Harff of US Naval Academy in Annapolis in a study on "Victims of the State: Genocides, Politicides and Group Repression from 1945 to 1995" set the upper limit as 3 million which ranked Bangladesh next to the Holocaust of Hitler, where 6 million Jews were killed. For details of their finding see Albert J Jongman (ed), Contemporary Genocides: Causes, Cases, Consequences, Den Haag: PLOOM, University of Lieken, 1996.

What does 'Genocide' Mean?

THE word 'genocide' comes from the Greek 'genos,' meaning 'race, nation, or tribe,' and from the Latin 'caedere,' meaning 'to kill.' It was first coined by R Lemkin, a Polish Jewish jurist, in 1944. See R Lemkin, Axis Rule in Occupied Europe. Washington, DC: Carnegie Endowment for International Peace, 1944. Subsequently, many scholars have contributed towards an all embracing definition of genocide. For various aspects of the concept, see Helen Fein, Genocide: A Sociological Perspective, London: Sage Publications, 1993.

However, Raphael Lemkin's definition of genocide was later incorporated into the United Nations Convention on Genocide (1948), and defined the crime as: 'Acts committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group, as such a) killing members of the group; b) causing serious bodily or mental harm to members of the group; c) deliberately inflicting on the group conditions of life calculated to bring about physical destruction in whole or in part; d) imposing measures intended to prevent births within the group; e) forcibly transferring children of the group to another group.' See Leo Kuper, Genocide, Harmondsworth, Middlesex: Penguin Books Limited, 1981, p-19.

Who are collaborators?

THE law defined as 'collaborators persons who had: 1. participated with or aided or abetted the occupation army in maintaining, sustaining, strengthening, supporting or furthering the illegal occupation of Bangladesh by such army; 2. rendered material assistance in any way whatsoever to the occupation army by any act whether by words, signs or conduct; 3. aided or abetted in waging war against the People's Republic of Bangladesh; 4. actively resisted or sabotaged the efforts of the people and the liberation forces of Bangladesh in their struggle against the occupation army; 5. attempted to aid or aided the occupation army in furthering its design of perpetuating its foreseeable occupation of Bangladesh by making a public statement or by voluntary participation in propaganda within or outside Bangladesh or by associating in any delegation or committee or by participating in purported by-elections.

Crimes against humanity, war crimes and other crimes under international law, a three members prosecution team was constituted with Advocate Sirajul Haq as convener and Aminul Huq (later Attorney General) and Ismailuddin Sarker (later judge of the Supreme Court). The law did not create new offences, it merely established a forum for the prosecution within Bangladesh of international crimes already in force at the time, except the fact, under Section 3(2) of the Act, the definition of genocide was enlarged to include 'a political group.'

Source: Bangladesh Centre for Genocide Studies (BCGS)

Eviction: A Magical Solution?

By Sohana Khandoker

THE government has taken up a sudden move to evacuate the city slums as crimes in city are on rise. Government has undertaken various rehabilitation plans and housing schemes for the poor. The government sanctioned Taka 5 crore (which is not at all enough) to implement rehabilitation process in phases. The decision has taken to control slum-based crimes and anti-social activities. It was also thought to take possession of the government land from the illegal occupants.

A writ petition had been filed challenging the legality and authority of demolition of slums and eviction of the inhabitants, Dhaka City Corporation, Rajuk without arranging any alternative accommodation facilities and without any prior notice. On 23rd August '99 the High Court disposes the writ petition ordering to evict the slum dwellers in phases, arranging their rehabilitation on the basis of a master plan respecting their basic rights.

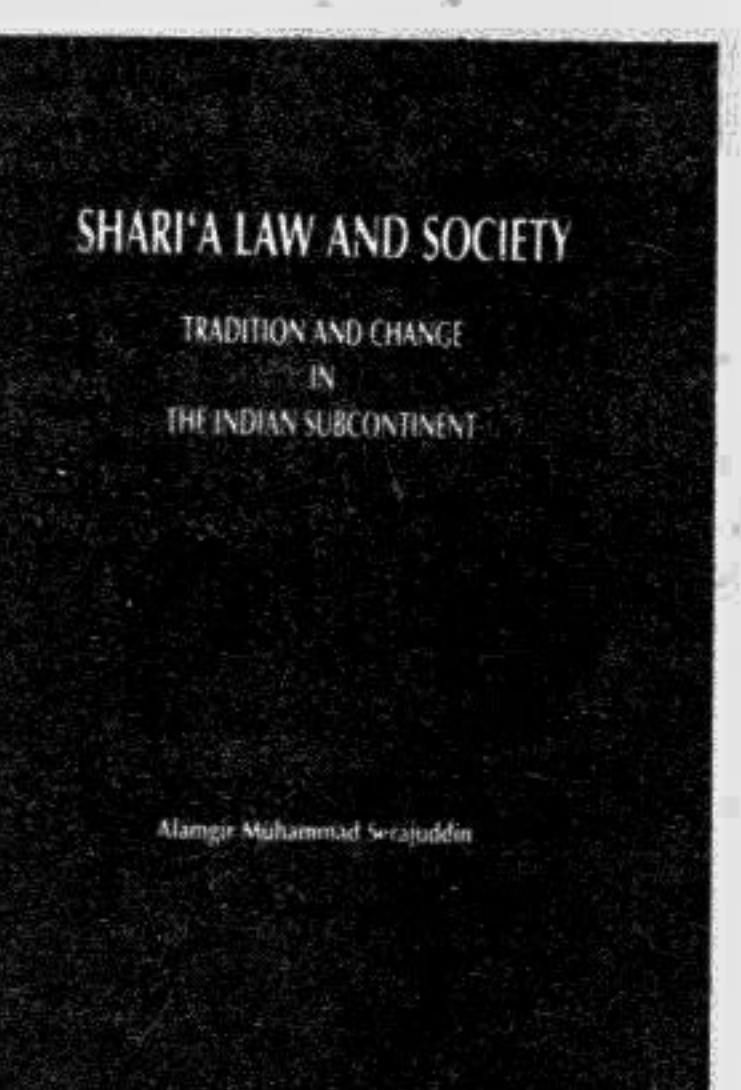
The government authorities repeatedly claimed that slums are the place of criminals' den. In an interview with a police officer reveals that the mastaans often take shelter in the slums. These are the den of mastaans where heroine, phenesdyll are easily available. A number of 17000 bottles of phenesdyll, banned addictive syrups were found from the premises of Railway Nirapatta Bahini Barrack at Copighab.

A senior police officer said that "A section of criminals were using the place for their illegal narcotics business, taking help of the slum dwellers." It cannot be denied that slums are more prone to various crimes but to what extent this demolition will reduce the rate of city crime is still a question.

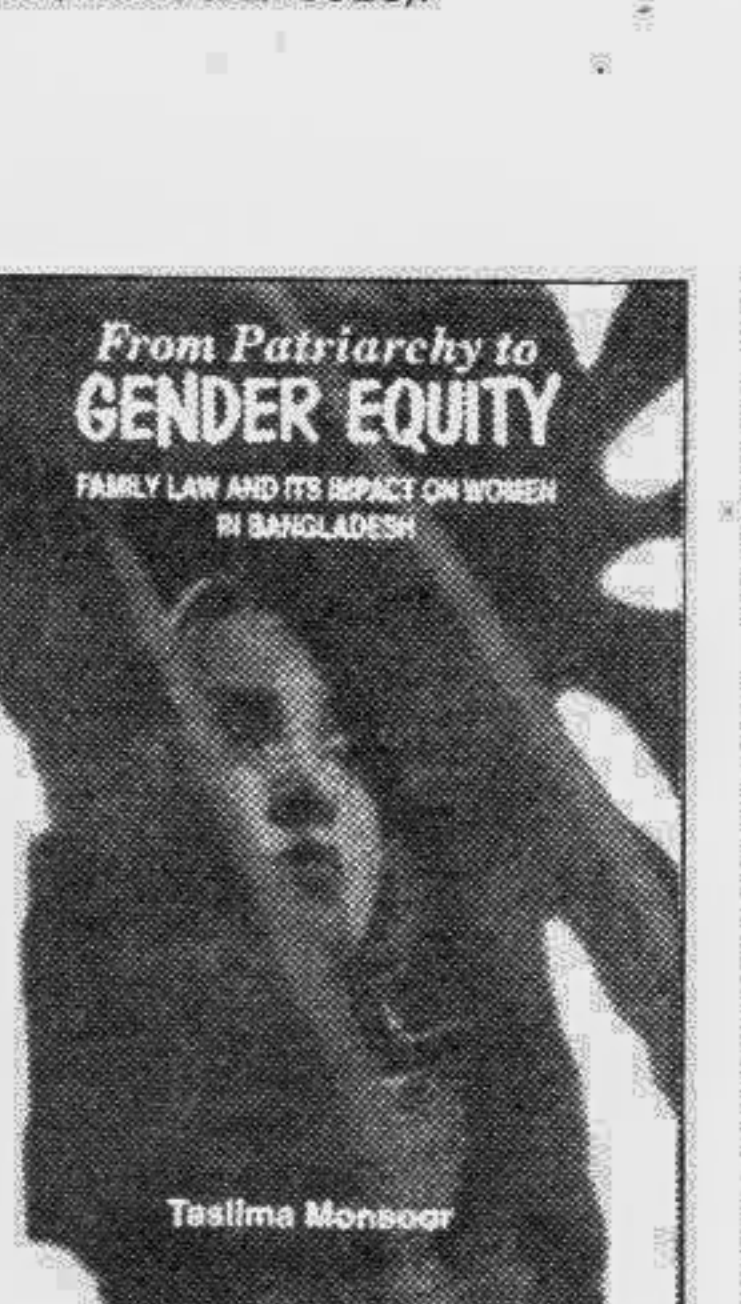
The slum dweller can legal be evicted if the Deputy Commissioner gives the residents' 30 days notice (Government and Local Lands and Builders Ordinance, 1970). But the evictees never given enough time nor prior notice.

Rokeya a slum dweller of Ghuntighar area says "I have been living here since 25 years. This is for the third time; we have been driven out from the house. We will set up the house when police leave." It has become a curse where several governments at different period of time, without taking rehabilitation programmes, try to vacate the illegal occupants and fails to do so.

The writer works for Program for Research on Poverty Alleviation, Women Trust.



AVAILABLE books on personal law in the subcontinent currently go by the title of 'Muslim' Law while the earlier nomenclature was 'Mohamedan', generated by D F. Mulla's Principles of Mahomedan Law. Precursors of Mulla, for using the word 'Mohamedan' in titles, were N J Baillie (A Digest of Moohummudan Law, 1875), W H Macnaghten (Principles and Precedents of Moohummudan Law, 1825), and Syed Amir Ali (Mahomedan Law, 1912 and 1928).



DESPITE some recent reforms purporting to improve the status of women in Bangladesh, there is no real change in the situation of patriarchal domination. The dominant patriarchal structures, with the interlinked forces of religion, tradition and seclusion, are sustained not only in family but also in family law. If the judiciary becomes more sensitized about the particular needs of women besides proper implementation of existing legal rights by the executives, the condition of women would be improved

A Compromise between Tradition and Equality?

By A H Monjurul Kabir

progressively. These are some of the eloquent arguments contrived by Dr. Taslima Monsoor in her recent publication 'From Patriarchy to Gender Equity: Family Law And Its Impact on Women in Bangladesh'.

Focusing on women and family law in Bangladesh, Dr. Monsoor argues that gender equity, rather than full-fledged equality is a desirable and realistic aim for the development of Bangladeshi family law. Women in Bangladesh tend to respect and cherish their family as the highest priority of their life. "What they really want is not equality but freedom from violence and economic deprivation imposed by men. Thus, it makes not much sense to inspire for the distant mirage of sexual equality, rather we shall argue for 'sexual equity' in family law in parallel with cultural norms. This is an sustainable strategy towards the empowerment of women securing their granted basic rights in the patriarchal society of Bangladesh," she adds.

The study is broadly divided into 7 chapters. Chapter 1 streamlines the central themes, justification and framework of the scholarly study focusing on women and family law in Bangladesh distinctly. The writer clarifies her bias towards traditional family laws. Recognizing that the family

may be an oppressive institution for women, she also sees its potential to honor and protect women. The main objective of the research, as stated, is to assess the effects of recent family law reforms on women in Bangladesh. And the parameters of the book as a whole are clearly defined in chapter 1.

Chapter 2 begins by focusing on the patriarchal arguments for the subordination of women in Bangladesh in the socio-cultural setting of women's legal status. It then attempts to balance the position of women in Bangladesh by investigating the forces that protect and strengthen the position of women.

The first part of Chapter 3 examines to what extent British colonial imperialism contributed to the subordination of women in South Asia. The second part of chapter 3 shows how family law was gradually interfered with by the British and considers how the legal reforms have affected the position of Muslim women. The relevant judicial decisions discussed in this chapter provide a historical background to the more recent family law reforms in independent Bangladesh.

Chapter 4 provides a detailed exposition and critical analysis of family law reforms in Bangladesh in response to the

needs of the new state. The analysis of women's rights under the constitutional framework indicates the disparity between the religious family law and the constitutional rights. It also reveals the internal contradictions within the Constitution between granting sexual equality and making special laws for women. The major focus of inquiry of this chapter is whether the new laws ameliorated women's rights or whether they were simply rhetoric.

Chapter 5 tries to explore what is the attitude of the judges and the opinion of the court regarding women's status in Bangladesh and how far they are aware about the needs of women. It also focuses on the question whether women in Bangladesh stand to benefit from judicial activism or more sensitivity in issues involving the welfare of women and safeguarding them from abuse.

Chapter 6 extends the review of the issues of women in Bangladesh to disputes concerning dowry and cruelty to women asking whether the new legislation introduced to curb these social evils affecting women was successful or not.

The last chapter encapsulates the legislative enactments in Bangladesh and explains the trends in judicial decision