

LAW TRIBUTE

Gender in Bangabandhu's Regime

MD. MAHBUBUR RAHMAN

HERE were four governments under the leadership of Bangabandhu Sheikh Mujibur Rahman, the father of the nation. Gender took different dimensions but did not undergo significant changes during the period. For example, the need for gender equality in politics was first felt in his regime. However, he was not able to make Bangladeshi politics completely free from androcentric practices. The political challenges Bangabandhu faced were huge and must be taken into consideration in the assessment of gender dimensions of his regime.

The first government of Bangladesh was formed as a government-in-exile on 17th of April 1971. Bangabandhu, who was detained in Pakistan at that time, was made the President of Bangladesh. On behalf of the President, some Awami League leaders were actually running the government during that period. The mission of the government was to facilitate the liberation war and secure international cooperation for Bangladesh. It was successful in its mission as within a few months, many people joined the Mukti Bahini (liberation force). Naturally, this government had no scope to particularly think about women. Still, many women joined the Mukti Bahini as freedom fighters, many others facilitated the war through various means. Hence, this government is marked with a vibrant and large scale of women's movement which happened for the first time in the history of Bangladesh.

After being freed from Pakistani prison, Bangabandhu returned to an independent but devastated Bangladesh on 10th of

January 1972. Therefore, a lot of challenges were awaiting him. The greatest challenge for him was to make a Constitution for Bangladesh. In order to tackle that, he issued a Provisional Constitutional Order stipulating a unitary parliamentary form of government. Accordingly, he resigned from the post of the President and became the Prime Minister. Hence, the second government under the leadership of Bangabandhu took over. As a result, Bangladesh got a Constitution on 4th of November 1972, which became effective on 16th of December in the same year.

The 1972 Constitution was very gender friendly indeed. It clearly stated that steps should be taken to ensure participation of women in all spheres of public life (Article 28). Considering the socio-economic and cultural constraints faced by women in our society, it reserved 15 seats for women in the Parliament for 10 years (Article 65.3). Nonetheless, there were no territorial constituencies for the reserved seats. Also, a system of indirect election was put in place for the reserved seats, i.e., the directly elected members of the Parliament were to elect the female members of the reserved seats which was 5% of the directly elected seats. This Constitutional provision was therefore criticised by different women's group.

Another challenge for Bangabandhu was to reestablish the social cohesion which was torn apart during the liberation war of Bangladesh. Reportedly, at least 200,000 women were victims of rape and other kind of sexual and gender-based violence during the nine months of the liberation war. Later, these women were awarded with the title of war heroines (Birangonas). Although

the androcentric social culture politically recognised their sacrifices, Bangladeshi society actually was not ready to accept them. It was observed that the liberation war divided the patriarchal society of Bangladesh into different fractions but could not tear the texture of patriarchy. Therefore, on one hand, integrating the war heroines (Birangonas) into the society was a great challenge for him; on the other hand, it was much needed for establishing social cohesion in newly emerged Bangladesh. This led him to destroy the initially prepared list of the Birangonas, as a part of his efforts to reestablishing the social cohesion.

Amidst these challenges, the first parliamentary election was held in Bangladesh in 1973. The ruling Awami League won 291 seats in the Parliament out of 300 seats. Hence, the third government under the leadership of Bangabandhu took over. It was observed that women were only marginally involved in the 1973 electoral contest. Although only 2 women contested out of 980 candidates in the 1973 parliamentary election, no one came out successful. However, as per the Constitutional provision, 15 women were nominated from Awami League to the reserved seats for women in the Parliament. Later in the same year, a local government election was held in Bangladesh and for the first time in the history of the land the statutory representation of women was ensured at the Union Parishad level. However, in 1973 local government election, only one woman from Rangpur was elected as the chairman of a Union Parishad out of 4352 Unions.

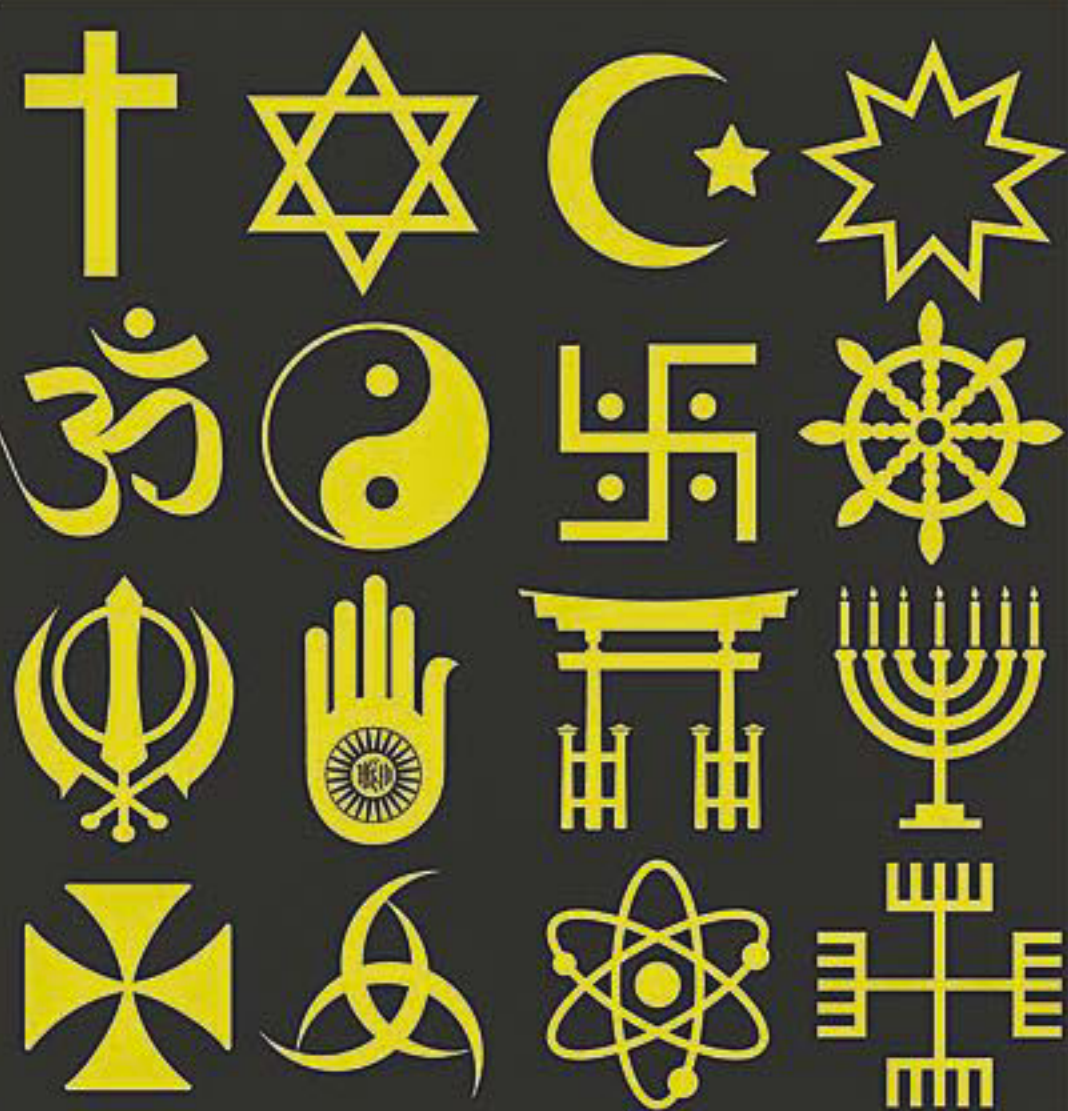
Despite the landslide victory in the 1973 parliamentary election, a deep political crisis arose with the famine in 1974. This led Bangabandhu to take a masculine decision of moving from one party domination in the parliament to a single party system. Therefore, the Constitution was amended for a one-party presidential form of government in January 1975. Hence, the fourth government under the leadership of Bangabandhu took over. Bangladesh Krishak Shramik Awami League (BAKSAL) was formed dissolving all other political parties. Gender issues were taken into consideration in BAKSAL as women constituted a significant front among five fronts of BAKSAL: peasants, workers, youth, student and women. The creation of BAKSAL, however, threatened the status quo of the existing power relations in the society and promoted further factionalism in the politics. As a result, before completion of his new political experiment, Bangabandhu along with his extended family members was assassinated by a group of junior military officers under the auspices of external allies on 15th of August 1975.

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LAW NEWS

ADOPTION OF UN RESOLUTION CONCERNING RELIGION-BASED VIOLENCE



RELIGION-BASED violence is a cause for grave concern across the world. From the conflicts between Sunni and Shia Muslims to the persecution of Muslim Rohingyas in Myanmar and violent mass shootings in places of worship, international harmony is plagued by the sharp rise in violence based on religious beliefs. Against such a backdrop, the United Nations General Assembly adopted the resolution titled "International Day Commemorating the Victims of Acts of Violence Based on Religion or Belief" on 28 May, 2019. On 22 August, the day was observed for the first time ever.

The UN resolution reaffirms the establishment of freedom of thought, conscience and religion, which have been enshrined in the Universal Declaration of Human Rights. It also brings into particular attention the States' responsibility to protect the rights of the religious minorities to perform their religious activities freely.

In observance of the day, the Secretary General has drawn attention to two new initiatives set up to overcome the threat of violence based on religion and belief: a UN strategy and Plan of Action on Hate Speech, and a Plan of Action to safeguard religious sites. The Secretary General emphasised on the need for dialogue and urged that the best way to overcome hate is to embrace diversity and protect human rights.

COMPILED BY LAW DESK (SOURCE: UN.ORG)

LAW LETTER

Admissibility of digital evidence

WITH the advent of digitalisation, the world has witnessed not only technological revolution but also sophisticated, critical, digital and more organised means of committing crimes. Unfortunately, our orthodox procedural laws have had a paralysing impact on justice disposal system in these changed circumstances.

In Bangladesh, no specific insertions have been made for the admission of digital evidence. However, special laws like the Information and Communication Technology Act of 2006 and the Digital Security Act of 2018 have been enacted.

The widely publicised cases of murders such as the murders of Khadija, Biswajit and Rifat raised the question of whether and how video may be admissible in evidence within present framework of procedural law. In such instances, judicial interpretation has played a significant role.

Digital evidence is a probative information stored or transmitted in digital species like data, photograph, audio, video, DVD, memory card, hard disk, e-mail, telegram, telex. The laws on criminal procedure in Bangladesh, such as, the Evidence Act of 1872 and the Code of Criminal Procedure (CrPC) 1898 prescribe no explicit provision recognising or approving of its admissibility into judicial proceedings but contain scope of judicial interpretation which may allow for the same.

The words "any matter expressed or described upon any substance by means of letters, figures or marks" under the elucidation of "Documentary Evidence" as codified in section 3 of Evidence Act, section 3(16) of General Clauses Act and section 29 of Penal Code can be interpreted to include digital evidence, since the word "matter" is a term of the widest amplitude.

Judicial interpretation articulates that digital evidence is an amplification of matter

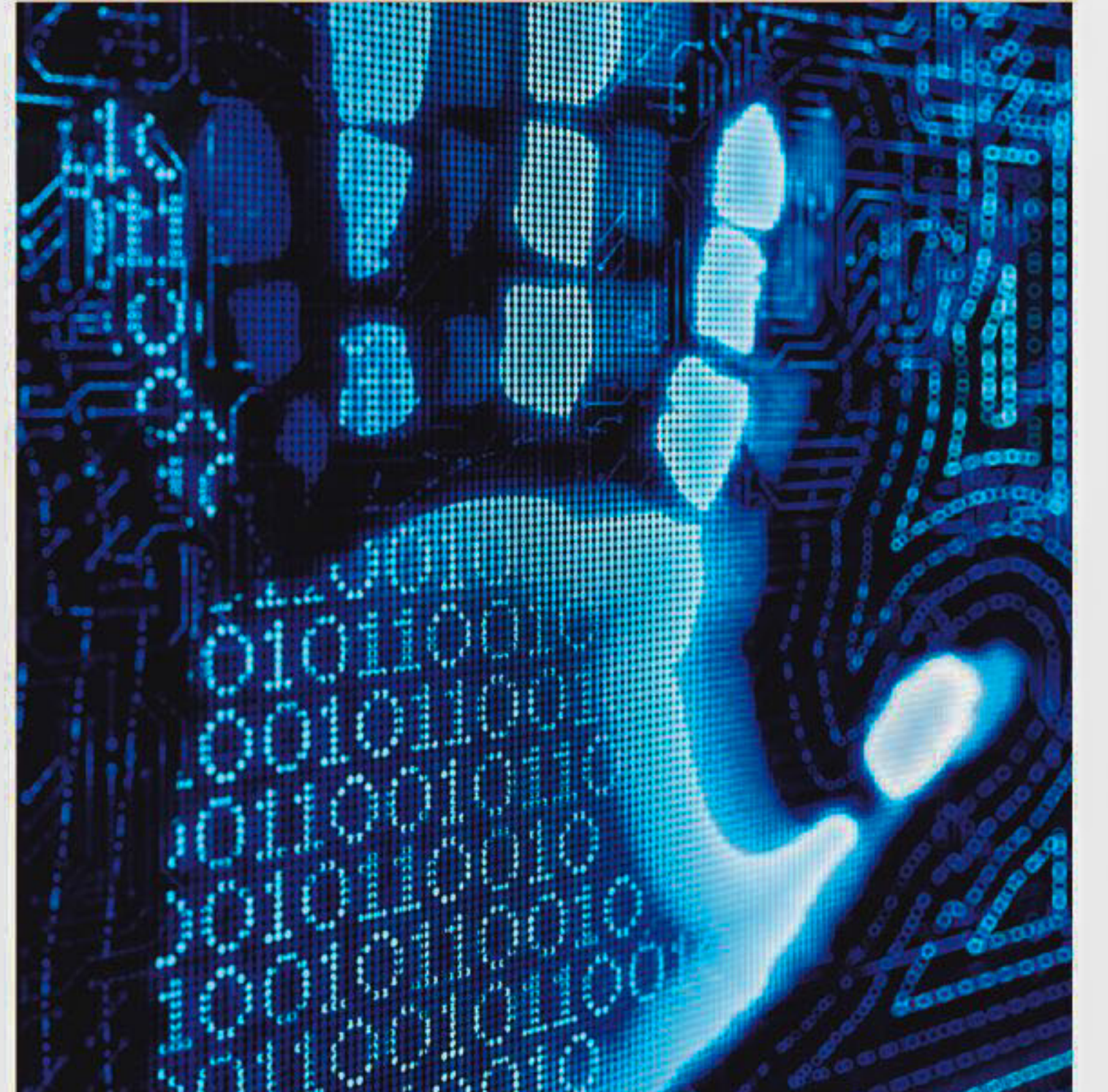
expressed or described upon digital substance by means of letters, figures or marks and inclusive of material and secondary evidence. It verbalises that the other forms of digitalisation have the same legal entity. If question as to authentication and tampering of digital evidence arises, the law prescribes gateway to remove any sort of doubt. Expert opinion rule under section 45 of the Evidence Act provides the scope to seek expert opinion of science. Search and examination rule of section 165 and 161 of the Code of Criminal Procedure empower the Investigating Officer to attach anything and examine its maker. This procedure may be followed to cross-examine the makers of the documentary evidence.

In the Biswajit murder case, it was held that video footage was officially handed over to Investigating Officer under a

seizure list; so, its recording was authenticated ipso facto. Judicial interpretation supports that there is no bar to the admission of digital evidence. Hence, the court of law should follow a strategic way to admit digital evidence. If the prosecution proposes digital evidence or the trial court finds its existence in oral evidence adduced thereon or if it refers to a fact which could be perceived by any other sense or in any other manner, it must be part of the prosecution witnesses.

To recapitulate, although digital evidence may be admissible under the present law but as proliferation of technology expands and the nature of electronic information grows to be even more complex, the law should be revised to meet the needs of the time.

RAJIB KUMAR DEB JUDICIAL MAGISTRATE, COX'S BAZAR.



BOOK REVIEW

Quest for Justice for the Poor People

ABDULLAH AL FARUQUE

ACCESS to justice is recognised as one of the fundamental tenets of rule of law, democracy and human rights. Given the growing dissatisfaction of people with both the process and outcome of justice delivery system, alternative dispute resolution is increasingly recognised as one of the instrumentalities to facilitate access to justice. In particular, poor people who are often denied access to justice due to their poverty need alternative dispute resolution more desperately than others.

The book under review has been written by Fazlul Haque, an eminent human rights activist and founder of the Madaripur Legal Aid Association which is located in Madaripur district of Bangladesh. The book contains a narration of the history of establishment of Madaripur Legal Aid Association, a pioneer human rights NGO in Bangladesh which developed a model of Alternative Dispute Resolution different from traditional dispute resolution. However, the essence of the book is the personal account of the author's journey of taking justice system at the door steps of the common people. The book asserts that access to justice cannot be ensured only through the prevailing justice system in Bangladesh, but informal justice also has many weaknesses and shortcomings. The book notes that the traditional shalish system is deeply rooted in social and cultural traditions of Bangladesh but it suffers from paternalistic approach and lack of neutrality. It often imposes punishments contrary to existing laws and justice delivery system. Madaripur Legal Aid Association has re-modelled and modernised the traditional shalish system by addressing its biases and gender-discrimination. This modernised version of the shalish is conducted by trained mediators within the framework of our legal system. It is demonstrated in the book that access to justice of disadvantaged people, particularly women and children, increased in through their participation in this system.

The book also describes how the alternative dispute resolution system developed by MLLA has strengthened the state sponsored legal aid programmes. The Madaripur Legal Aid Association has taken steps to activate the Village Courts established under the Village Court Act 2006. The re-modelled shalish system of MLLA has great potential to empower the disputant parties as they have considerably more autonomy in the process of mediation and more control in the outcome of the process than they would be in an adjudication process. The MLLA model of shalish has been replicated in some other countries.



Quest for Justice for the Poor People Fazlul Haque Ghas Ful Nadi Publisher, Dhaka, 2019

It is evident that a legalistic and formalistic approach of litigation emphasises on legal rights of the parties, which are usually determined by a win-lose outcome. But the MLLA's modernised shalish system not only brings about to the resolution of the dispute, but also attains peace and healing, which is important for the preservation of future relationship between the parties and for creating mutual understanding and trust. This achieves valuable goal of social cohesion. In this way, mediated solution tends to be integrative, accommodative and durable.

The book is written in Bengali and offers a comprehensive account of development of ADR system developed by MLLA that is used outside of the court. Although the book has been written in an autobiographical style, the richness of its content makes it informative and readable. This excellent book will undoubtedly be of great interest to law students, human rights activists and academics.

THE WRITER IS A PROFESSOR OF LAW, UNIVERSITY OF CHITTAGONG.