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The Socio-Legal Status Of

Bangali Women

In Bangladesh:

Implications For Development

By

Saira Rahman

Ph.D. Thesis
University of Kent at Canterbury

1998

ABSTRACT

The Socio-Legal Status of Bangali Women in Bangladesh : Implications for Development

Saira Rahman
University of Kent at Canterbury
1998

There have been specific studies on Bangladeshi women in the past, which have dealt with either the empowerment of rural women, Muslim women or women in the industrial sector. In order to determine the socio-legal position of Bangali women in Bangladesh, it has been necessary to identify and discuss different social and legal issues pertinent to the topic. This study is, therefore, not a selective one, but a broad- based analysis of the position of women in Bangladesh in the eyes of the social and legal system of the country.

The thesis deals with the 'socio-legal status' of Bangali women. Many may deem that using the term 'status 'is degrading to women, as it conjures up the idea of measuring women to a male yardstick where women become dehumanised. However, this thesis has no intention of dehumanising women. The term 'status' has been used to determine women's position in the social and legal system in Bangladesh to date, and refers to women's access to legal, educational and 'public' resources and their decision making power within the household and larger society and what social and legal constraints they have to overcome.

The women of Bangladesh have always been dominated by a patriarchal society, reluctant to shed its traditions and customs which have denied women actual participation in political and social decision-making. This attitude is reflected in some of the laws prevalent in the country and in the lack of implementation of laws enacted to protect women.

It is, however, not only patriarchy which is stifling women in Bangladesh, but also poverty, which is, is some cases due to patriarchal ideas. One example of this is the fact that women-headed households rate among the 'poorest of the poor' in the country, since these women have no male voice or support. Government run poverty alleviation programmes fail to include these households as patriarchal trends consider men to be the main wage-earners of a family.

This thesis has attempted to highlight and analyse the reasons why women in Bangladesh are discriminated against by society and in the eyes of the law. It also tries to analyse the reason why, after twenty-seven years of independence, the country is still poverty-stricken, despite the amount of international funds being poured into it to help finance development programmes. It emphasises the fact that to improve women's social, legal and even economic status in the country it is necessary to change the way society regards them.

Acknowledgement

No thesis is written alone. The topic for this research emerged from my legal and organisational involvement with women who have been deprived of their human and legal rights. This thesis developed under the guidance and support of my supervisor, Robin Mackenzie and with discussions with my second supervisor, Wade Mansell both to whom I am grateful for their encouragement and helpful criticisms.

Archival research was made possible by the generosity of the legal aid organisation, the *Ain-O-Salish Kendra* and the human rights organisation, *Odhikar.* I am truly grateful for the time and friendship of the rural and urban women I interviewed as part of my field work and who were kind enough to share their struggles and hopes with me. I am also grateful for the help of Mohammad Nur Khan, the director of *Odhikar*, and Tipu Sultan, co-ordinator, Investigation Cell, *Ain-O-Salish Kendra*, whose first hand investigation reports and monitoring of the results of violence against women have been valuable sources of information. I am also grateful to Dr. Ahmed Ziauddin for his helpful criticisms, sent all the way from Brussels.

My last two years of registration, which enabled me to continue with my research degree, was made possible by the Overseas Research Student Award and the British Chevening Scholarship and I will be ever grateful to the Committee of Vice Chancellors and Principals and the British Council respectively, for their support.

Finally, to my family I owe my deep love for my country and to my son, Ayan, I owe my determination to try to contribute to the building of a better social system in the country he will grow up in.

Saira Rahman
University of Kent
1998.

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THE SOCIO-LEGAL STATUS OF BENGALI WOMEN IN BANGLADESH

Bangladesh has experienced many difficult periods in history, being dominated by colonial powers for more than 200 years. It was at first, a colony of the British Raj. After the partition of the Indian subcontinent in 1947, India and Pakistan were separated as two independent countries. Pakistan was divided into two wings with the great expanse of India between the two. This formed the politically and economically powerful West Pakistan and the economically exploited and struggling East Pakistan. The latter eventually experienced the neo-colonialism of the Western wing. This led to the struggle for the right to self-determination of the Eastern wing, as determined under Article1 of the International Covenant on Economic, Social and Cultural Rights,[1] and eventually it won its independence in 1971 and emerged as a new country called Bangladesh.

The women of the Indian sub-continent have always been dominated by a patriarchal society, and in Bangladesh, this trend remains, as in Pakistan and India- even though the women of Bangladesh fought alongside the men in their struggles for the right to self determination and independence. This patriarchal society is reluctant to shed its traditions and customs which have always denied women's actual participation in political and social decision making and emphasised male superiority. This attitude is reflected in some of the laws of the country, and in the lack of implementation of the existing laws enacted to protect women. Due to a serious lack in the recognition of aspects of violations of women's rights, ignorance of the laws and lack of implementation of existing laws by law enforcing agents, women in Bangladesh find it difficult to take any action whatsoever and to safeguard their rights.

Women in development sectors of Bangladesh, be it agriculture, industry, health and family planning or education, are facing neglect by the state and opposition from specific sections of the society, both in the urban and rural areas. It is, however, rural women who are facing the larger extent of negligence and abuse, basically due to poverty, illiteracy, ignorance of the laws and dependence on what is imposed on them by the social and religious elite of the locality who, due to their comparatively higher economic standing, wield, in many respects, unchallenged authority and manage to abuse the law by taking it in their own hands and to evade punishment for doing so[2].

The Government and non-government development organisations recognise the need to utilise the population of Bangladesh to its full potential as human resource, regardless of gender. Unfortunately, funds provided by donor agencies towards the

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[1] Article 1(1): All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

[2] This is evident from the numerous cases of women being whipped, stoned or forced to divorce their husbands or even banished from their homes as a result of collaboration between the village *shalish* (a non-formal arbitration body comprising of the rural elders and elite) and the local Imam or religious leader or the teacher of the *madrassah*. This is discussed in detail in Chapter V of this thesis.

development of women's resources are frequently improperly used due to lack of proper planning and poor participation of women in the implementation of targeted plans. Furthermore, the target groups for these funds - mostly rural women along with their urban, slum dwelling sisters - are finding it difficult to have any access in the implementation process of the plans and projects made for them, as these are all treated as top-down matters, where the policies are formulated by unconnected and uninformed people in authority or by the foreign consultants whose knowledge regarding rural Bangladesh and its priorities and the growing poverty in the towns and villages is extremely limited. Further drawbacks are due to the lack of initiatives from the government and the obstruction of the local and religious elite in rural Bangladesh which lay their wrath on both women earning a living and those getting organised into groups. Women are fighting back and, that they protest against those afraid of changing power and authority thresholds, is proof that they recognise the necessity of sending their children to primary schools, and being educated them selves, of visiting health complexes, employment, control over agricultural allotments (as Bangladesh is an agriculturally-based country) and for addressing the issue of poverty. For them, organisation and struggle are the keys to a better future.

All societies in the world are divided into rich and poor. However, the disparity between the rich and the poor is greater in third world countries, including Bangladesh, which has its urban and rural rich and poor. The Urban poor live in the slums of the cities and towns. The rural and urban poor have no say in national and local level policy making. They have no actual participation in any state or administrative structures, although the Constitution of Bangladesh states otherwise[3]. In Bangladesh, approximately 48 percent live below the poverty line[4] and the poorest among the poor are the country's women. Lacking access to government poverty alleviation programmes, abandoned by husbands and held back by social stigma, as many as 96 percent of female-headed households live below the poverty line[5]. Due to this lack of access and due to the existence of a patriarchal society, the women of both the urban and rural poverty groups are the major sufferers.

Although Bangladesh has a small ethnic population, divided into several entities, and each group has its own laws and customs, this thesis, however, deals with the Bangali women since they make up the largest population of women in the country. I have depended greatly on the experience of rural women as well, as rural Bangladesh is where the population is concentrated and where acts of violence and lapses of legal recourse occur most.[6]

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[3] Article 9 of the Constitution of the People's Republic of Bangladesh : 'The State shall encourage local Government institutions composed of representatives of the areas concerned and in such institutions special representation shall be given, as far as possible to peasants, workers and women.'

[4] Netherlands Ministry of Foreign Affairs : *Bangladesh: Evaluation of Netherlands Funded NGOs.* 1972 - 1996. Pg. 45.

[5] Ibid. See also Chapters VI ,VII and IX of this thesis for further discussions.

[6] According to recent statistics, collected by the Netherlands Ministry of Foreign Affairs, about 46 percent of the population of Bangladesh are female (T. Siddiqui, 1995). The same report states that the population of Bangladesh is almost entirely Bengali (or, as used in this thesis 'Bangali') and one percent of the said population comprises of the ethnic population. (Evaluation Report on Bangladesh : Sub-Report 1998).

Objectives of the Research:

The thesis is titled 'The Socio-Legal Status of Bangali Women in Bangladesh'. Many may deem that using the term 'status' is degrading to women, as it conjures up the idea of measuring women to a male yardstick, whereupon women lose their independence and become dehumanised. Being a Bangladeshi woman myself, I have no intention of dehumanising my sisters. I use the term 'status' to determine Bangladeshi women's position in the social and legal system prevalent in Bangladesh to date. I am using the term to refer to women's access to legal, educational and 'public' resources and their decision making power within the house hold and larger society, and what social and legal constraints they have to face and overcome.

The main objectives of this research is to highlight the extent and magnitude which violence against women has reached in Bangladesh, due to both the biased and unchallenged laws and the social fabric and poverty which stifles them and the impact and effect non-government organisations and international financial institutions have on the women and the country as a whole. I emphasise the fact that women are an integral part of socio-economic development and it is vital that their participation in decision making processes be actual and effective.

I would also like to emphasise, through this research, the fact that it is not only the women of the country who need to be educated about their legal rights or how important their contribution is to their family and the economy. Their menfolk need to be educated too. They need to be educated in order to realise that in the modern world, patriarchy and the restrictions to women that come with it, can no longer be an excuse to stop women from coming out of the homes, nor can it be an excuse for acts of domestic violence. Men have also to realise the importance of women's contributions. The theory of 'gender and development' is the approach required in Bangladesh, as both sexes need to be involved, due to the male dominated social frame work of Bangladeshi society.

Breakdown of Chapters:

The thesis is divided into nine chapters dealing with development issues and choices for women in Bangladesh; different women's movements which were involved in socio-legal reform; the present legal status of women in Bangladesh, under civil, criminal and family laws, their position in the legislature and participation in the decision-making process and how the present laws for women are being implemented; aspects of violence against women due to lack of proper and effective implementation of laws and the pressures women face due to a traditional patriarchal society and high demand for cheap labour in the local and global market; a special kind of violence faced by rural women in the name of religion; and the role of and different projects entered into by some specific non-government organisations and the World Bank and International Monetary Fund with the aims of improving the process of legal and socio-economic awareness of women, poverty alleviation and women's empowerment; the position of Bangladesh in regard to international instruments specifically written for the protection of women and children and a final chapter summarising the recommendations and ways forward mentioned at the conclusion of each chapter. Each chapter, as has been mentioned, will discuss

recommendations and alternative ways in which to achieve social-legal awareness and security for women.

The chapter on the options for social economic and legal development of Bangladeshi women (Chapter I), attempts to present the fact that what Bangladesh requires is a plan for 'gender and development', and not 'women in development' since we need to recognise that it is not only women who need to be educated about their rights and that they too can be socially and economically stable, but that the men of the country also need to change their social attitude towards women from a traditional patriarchal view to a more modern, broad-minded way of thought in order to enable women to emerge as strong contributors to the economic stability of the household. Some facts and figures on how Bangladesh, as a country, adheres to decisions made in the different World Conferences on women and how these decisions are incorporated in its fiscal plans have also been highlighted. The chapter attempts to show that even though Bangladesh is aware of the need to improve women's position and participation in public life, it has done little to incorporate this awareness in practical life. This is indeed unfortunate, since in times of political crisis women have risen up to join forces, lend support and fight; they have used their right to vote to elect the government of the people's choice; and they have formed pressure groups for legal reform for a better society.

This brings us to the second chapter which deals with the different contributions women have made in the subcontinent and in Bangladesh for social and legal reform. It deals with the history of different women's movements and political contributions to the country from since the British Raj to the present times and the social status of Bengali women- both rural and urban - in the country today. This chapter is followed by a chapter on the legal status of women in Bangladesh today. It includes a discussion of the laws in the country which are biased against women and the laws which provide them protection. It also demonstrates, with examples, facts and cases, that the conclusions reached in some judicial pronouncements are made against the interests of the women concerned and that the lack of implementation of laws protecting women is one of the main reasons for continuing acts of violence towards them. These, too, reflect the patriarchal nature of Bangladeshi society.

To complement and emphasise the findings in the third chapter on the legal status of women, the fourth chapter of this thesis deals with violence against women. This chapter attempts to show how the lack of implementation of law protecting women and how the actions of vested interest groups are ruining the lives and livelihood of women from both inside the home and in public life. It also shows how, despite women's willingness to work outside the home, in order to earn a living and help the economy of the state, the state is doing very little to afford them protection from such crimes as rape and acid throwing. The chapter attempts to highlight the fact that even though women are trying to earn a living abroad, because of state policy against this, more and more of them find themselves in unsuitable jobs or even in the clutches of traffickers since they try to go abroad by-passing government red-tape or illegally. Women are also facing violence in the home, due to dowry demands, economic frustration and even have no control over their reproductive choices where they face forms of physical and mental abuse. In this chapter, the fact that there is a serious lack of implementation of laws, so much so that the police themselves are often found guilty of rape, has been discussed.

The next chapter stays on the theme of violence against women, where rural women, mostly Muslim (as they form the majority religion), are faced with the violence brought on by the mis-use of *fatwa*, legal decrees, passed by village mullahs with the support of the rural elite. Women have been stoned, burnt to death, ostracised, divorced from their husbands, whipped and instigated to commit suicide due to these decisions. The whole idea of *fatwa* is illegal under law in Bangladesh and the practice is carried out by rural elite groups who wish to remain powerful in an atmosphere where more and more village people are realising the value of education. One of the targets of *fatwa* are the non-government organisations (NGOs) which are encouraging women to take loans, start small-scale industries, help in NGO-run projects and send their children to NGO-run primary schools and attend adult education programmes. NGOs and some micro-finance institutions are doing a lot of good work in Bangladesh, despite some drawbacks. All this has been discussed in the next chapter.

Chapter six of this thesis discusses the role of non-government organisations (NGOs) and the *Grameen* Bank (a micro finance institution) in the lives of the women of Bangladesh and how they help in their social, economic and legal development. Here, the role of major development NGOs and legal-aid NGOs in Bangladesh, the relationship between NGOs and the government and the relationship between NGOs and international financial institutions (IFIs) have all been discussed. Also included are some criticisms of the policies, the method of policy planning and the forms of hierarchy present in the large NGOs of the country, as well as in the *Grameen* Bank. Despite their good intentions and the fact that they are enabling women to empower themselves and gain confidence, credit and loan-giving are not always successful projects and many women end up poorer than they were before they took out a loan.

On the theme of non-government organisations and international financial institutions (IFIs), chapter seven of this thesis discusses the role of IFIs in the lives of the women of Bangladesh and how projects supported or funded by these institutions have, if possible, helped in the social and economic development of the women of Bangladesh. The two institutions discussed are the World Bank and the International Monetary Fund (IMF), both of which opened missions in Bangladesh shortly after independence. As in chapter six, this chapter discusses both the highlights and criticisms of such organisations.

Staying on the international theme, the next chapter of this thesis discusses the position of the government of Bangladesh regarding international instruments specifically designed for the protection of women and children. The two conventions discussed are the Convention on the Elimination of All Forms of Discrimination Against Women and the Convention on the Rights of the Child - both ratified by the government of Bangladesh with reservations in major areas. This chapter seeks to analyse the reasons behind the reservations and discusses how far the government has upheld its obligations under the two instruments to date.

The final and ninth chapter of this thesis is the concluding chapter where attempts have been made to bring together all the recommendations discussed above to form a guideline as to future steps to be taken if we wish to live in a society where women are allowed, among other things, to earn a living and move freely in society without being abused; to participate in decision-making processes; where culprits of all forms of violence against women are punished; and where the judiciary and law-enforcing

agents are not swayed by patriarchal norms, but carry out their duties in a just, equitable and legal manner upholding and implementing the laws present for the protection of women.

Methodology:

a. Fieldwork:

In this research the rights and wrongs of the social and legal position of women in Bangladesh have been discussed. In order to determine both the social constraints they face and the amount of awareness they have of their legal and civil rights, some amount of field work was necessary. Therefore, at the end of 1996 I returned to Bangladesh. For six months, I met approximately 150 women by attending law clinics, participating in legal awareness raising work shops run by legal aid organisations for women living in the slum areas of Dhaka city and rural Bangladesh and was able to visit two villages in northern Bangladesh and four in Dhaka district. I also visited a red-light area in Syedpur, north-western Bangladesh, to determine the social and legal situation of sex workers, their reproductive rights and health matters. I was also greatly helped by human rights investigators and trade union leaders who kindly gave me interviews of their first hand experiences in investigating acts of violence against women.

Ironically, out on fieldwork, it became apparent that the 'women' involved, who are facing the largest odds against them - including extreme poverty- do not speak any language but their own dialect, do not have any forum, media or a thesis like this one to voice their plight in their own words. The women I met were extremely vocal about their rights and the injustices they face. Whatever information I have collected from them is through short interviews, workshops and archival research. I have never lived with them nor experienced their plight and the conflicts they face day to day. I am grateful to them for their information regarding their plights, as it has strengthened my resolve to try my best to contribute to the process engaged in developing a society where women have the right to make decisions regarding what is best for them in both public and private life; where policies for social development and poverty alleviation are formulated with the positive and direct participation of women; and where the norms of equality and basic human rights, as guaranteed by the constitution, take the place of patriarchal norms and ideas.

b. Archival Research:

A fair amount of archival research was necessary in order to write this thesis. I depended greatly on law books, statues and Law reports dating from 1990 to 1997. Sources of my archival research were as follows:

a. Legal Codes, statutory and personal laws, the Constitution of Bangladesh, the Penal Code 1860, the Criminal Procedure Code 1898, Laws specifically codified for the protection of women, Hindu, Christian and Muslim personal laws relating to marriage, divorce, dower, custody and guardianship of children and inheritance of property; labour laws and nationality laws.

b. Law journals and case references : Dhaka Law Reports from 1990 to 1996, Bangladesh Law Digests from 1990 to 1997, studies and articles written by members of the Faculty of Law of the University of Dhaka and published in different issues of Dhaka University Studies.

c. Material including occasional papers, journals and books on developmental studies, status of women in South Asia and status of women in Islam.

d. News paper articles and reports from eight specific national daily papers, both English and Bangla, from 1990 to May 1998, dealing with issues of development, poverty, law reform, investigative reports on violence against women, activities of non-government organisations, etc.[7].

e. Research papers and seminar papers and investigation reports on related issues and published by legal aid and women's rights organisations.

f. Three different translations of the Holy Quran. Different translations needed to be studies in order to carry out a comparative study, since different translators vary in the way they understand and interpret the verses of the Quran.

g. International instruments to which Bangladesh is a party and which it has ratified. These are the UNCEDAW, the Convention on the Rights of the Child and the Anti-Slavery Convention.

h. Books dealing with the political history of Bangladesh.

On carrying out research for this thesis, I found myself becoming frustrated with the patriarchal blind eye turned towards domestic violence, the amount of corruption in the law enforcement agencies and halls of justice, the indifference of the government towards important women-related issues - which could be solved by them without much effort - and the lack of implementation of vital laws. I found myself surprised at the continued resigned attitude of many of the village women towards domestic violence and also with women among the group who were adamant to change social attitudes towards them and who were vocal about the rights they should be given.

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[7] The said newspapers are: The Daily Star, the *Dainik Ittefaq*, the Bangladesh Observer, the *Dainik Bhorer Kagoj*, The Financial Express, the *Dainik Inquilab*, the *Dainik Jonokontho*, and The Independent.

It is not true that there is no hope for the status of women in rural Bangladesh or those who live in the slums and deprived urban areas. Evidence emerging from some development agencies[8] suggest that once women begin to focus on why their life is the way it is, they are capable of organising for mutual self-help and solidarity. This helps in building up and boosting their self-esteem and has an effect on the way their men-folk view them.

The objectives of this thesis would be successful if it can shed a little light and make a little positive change in the whole policy making process in Bangladesh and the development policies decided by donor agencies, who are jointly involved in 'developing' a third world country called Bangladesh.

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[8] See recent country reports published by the *Grameen* Bank and the Bangladesh Rural Advancement Committee.

Chapter I

The Options for Women in Development in Bangladesh

Women's status will be lowest in those societies where there is a firm differentiation between domestic and public spheres of activity and where women are isolated from one another and placed under a single man's authority, in the home.
- Michelle Rosaldo.[1]

The term 'women in development' was first used in the early 1970s by the Society for International Development in Washington D C, a network of female development professionals who were influenced by the work of Esther Boserup and other anthropologists in the field of Third World development. The term 'Women in Development' (or WID) is based on the perception that women are an untapped resource whose contributions in the development process would improve if they were fully incorporated into it.[2] The WID concept believes that a woman's position in society is determined by her access to the formal structures governing society. Proponents of the WID theory believe that the 'backwardness' of developing countries can be attributed to women's limited access to education, technology and other vital resources, and, hence their 'negligible contribution to the economic progress of her community'.[3] In a nutshell, what these proponents are trying to tell us is that a woman's position in society can be improved by facilitating her participation in formal institutions.

Western development models are based on western ideologies regarding the development of third world countries and the assumptions about women made by development agencies. The problem here is that the concerns of western feminists are not necessarily reflective of the concerns of third world women, including Asian women, as there is not only a large economic disparity between the two, but also a difference between the make up of society and traditions and customs. Women in 'developing' countries like Bangladesh, where a predominantly patriarchal society has firmly taken root, spend a major part of their time in the home - specially rural women. There is not much chance or scope for them being integrated into formal institutions. Even if they did work in the formal or informal sector, they still earn less than their male co-worker earns. What needs to be understood about our society are the reasons for the subordination of women both in the home and outside and the strategies needed to overcome such subordination.

In Asia, (rural) women play an integral part in home-based activities such as household work, husking and parboiling paddy and making reed and bamboo mats to sell, etc. All this contributes to the social life that surrounds them. Therefore, to isolate women and focus solely on how to improve their lot in their surroundings and help them develop is only half the battle. To improve women's economic standing and their lot in society and ensure that their contribution towards their country's

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[1] Rehnuma Shehabuddin.: Empowering Women: The Impact of Grameen Bank in Bangladesh. Grameen Bank publication 1992. p 29.
[2] Lise Ostergaard. Gender and Development. Routledge 1992. p 7
[3] Supra. Note 1.

development is recognised and appreciated, it is necessary to change the way '*Society*' regards them. This 'society' is made up of laws, traditions, customs, ethnic and economic norms and ideologies and religious values which govern the relationships between men and women and plays an influential role in men-women relationships in Asia, in which Bangladesh is merely one example. To improve and understand the situation, therefore, what is necessary is not the concept of 'WID' but of 'GAD' - Gender and Development. This, too, is a Western concept, but seems to be a more 'south-friendly' one. According to Lise Ostergaard, the term '*gender*' refers to the "qualitative and independent character of women and men's position in society. Gender relations are constituted in terms of the relations of power and dominance that structure the life chances of women and men"[4]. The concept of 'gender' - the social relationship between men and women arising from the particular division of roles, responsibilities, access to and control over resources and decision making authority - and the way in which these relationships are constructed and constricted in society have to be studied therefore, in order to position women fully in the development process of a nation.

I. **Gender Needs**:

To understand the needs and requirements of women in the development sector, we first have to identify their position in the area of 'gender and development'. The interests dominated by 'gender' involve those that women develop due to their social position through gender attributes. They can be divided into 'strategic needs' and 'practical needs'.

I.i. Strategic gender needs:

Strategic gender needs have been defined as the 'needs women identify because of their subordinate position to men in their society. These needs may vary according to particular contexts. They relate to gender divisions of labour, power and control and may include such issues as legal rights, domestic violence, equal wages and women's control over their bodies. Meeting strategic gender needs helps women to achieve greater equality. It also changes existing roles and therefore challenges women's subordinate position."[5]

Thus, strategic gender needs are those which have to be extracted from the analysis of women's position in society and patriarchal norms and values which subordinate them. These needs are derived from the discrimination in all fields faced by women and in all institutions. In Bangladesh the strategic gender needs of women can be clearly identified. The personal laws prevalent in the country are an area where strategic gender needs must be considered. Biases remain in Hindu and Christian law even though India and England (which gave us our Christian law due to the colonisation of the Sub-continent) have changed the tenets to accommodate women's rights, and the 1961 amendments to Muslim law made in Bangladesh and Pakistan adhere to patriarchal values found in society. Other areas which can be identified are the area of domestic violence, as law-enforcing agents see this as a social rather than a legal problem, the area of work where women get a fraction of what men are paid

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[4] Supra. Note 2.
[5] Caroline Moser: Gender Planning and Development. Routledge 1994.p39

for the same labour and the area of reproductive rights where many more women than men resort to contraception. These are just some of the areas identified where women need strategic gender needs - unbiased laws, legal recognition of their rights, proper implementation of existing laws which protect women and equal pay for equal work.

I.ii. Practical Gender Needs:

Practical gender needs arise from actual situations, circumstances and conditions faced and experienced by women in their societies. Unlike strategic gender needs, these needs are formulated by women in respect to their position in society rather than by the external influences of culture, laws, etc. Practical gender needs are usually a response to necessity within a specific context or role played by women.

Practical gender needs have been defined as "the needs women identify in their socially accepted roles in society. Practical gender needs do not challenge the gender divisions of labour or women's subordinate position in society, although rising out of them. Practical gender needs are a response to immediate perceived necessity, identified within a specific context. They are practical in nature and often are concerned with inadequacies in living conditions, such as water, provisions, health care and employment."[6] In Bangladesh an example of where to employ practical gender needs is in the problem of shelter, food and water faced by women who live in the thousands of slums in the urban areas where they and their families migrate to seek employment. Over-crowding causes health hazards and poor housing, the source of water for slum dwellers are the numerous stagnant ditches or illegal water connections and food and employment are scarce.

This chapter will, however, deal more with the strategic gender needs of Bangladeshi women, in the form of legal frameworks and legal development, so as to identify how they can obtain their practical gender needs as recognised contributors to social and economic development.

II. International Women's Conferences: The Recognition of Strategic Gender Needs:

The International Women's Conferences have each concluded with different ways in which to enhance the development and instigate the process for the empowerment of women. The gradual change in ideas and values have played a role in 'improving' the recognition of the different needs of women and their rights.

II.i. The First International Conference On Women. 1975:

At the first United Nations Women's Conference in Mexico in 1975, it was realised that women were still being pushed back in all spheres of life, including economic and social development. After the conference, the term ' development' was dissected and the real planning and implementation of development strategies were brought to light. It was discovered that activists had failed to develop a steadfast dedication towards such work and had created a superficial image of development where no real progress had been made at the grass-roots level.

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[6] Ibid. p40

Between 1975 and 1980, the concept of attitude regarding women's participation in economic activities went through a revolutionary change. It was finally admitted that women's contribution on the field of economy was necessary and had been sadly neglected and that in many areas it was equal and sometimes more than men's contribution. Till this admission, women's contribution had been ignored, mainly since most of their work was, and still is, within the household where it was not officially seen as being able to be measured by a monetary yardstick.

Development workers then began to search for methods to bring women into the mainstream of economic development activities. However, due to the absence of proper studies, these initiatives were based on the enhancement of a woman's contribution and competence in the home. It was based on the traditional view of her 'appropriate' role and on the belief that women were unable to 'develop' because they lacked the capability to manage their own income. However, the key question which arose was: 'are economic emancipation and competence the sole keys to freedom and equality, or are there other factors as well?'

II.ii. The Second World Conference on Women. 1980:

The second world conference on women took place in 1980 in Copenhagen. It was attended by women much more aware of where they stood and who united to demand not only economic but social, cultural and political emancipation as well. Along with the new agendas came the call for a comparative analysis of women's legal rights and privileges in order to make reforms. The resentment faced by women due to their 'back seat' treatment meted out by history also brought them together in this conference.

By the mid-70s the acceptance of the integration of women in mainstream activities had been more or less established. The next decade saw the ideas of women's empowerment and autonomy gaining a stronghold.

II.iii. The Third International Conference. 1985:

The third international conference, held in Nairobi in 1985 dealt extensively with the need for political and legal equality. It reiterated in unequivocal terms that the question of women's development could not be resolved by using only an economic yardstick. Women must be ensured of equality in social, cultural, political and legal spheres as well. To establish a society based on equality, all systems that harbour inequality and injustice had to be barred. It was decided that the first step in bringing this about was by questioning the concepts and attitudes that gave birth to these systems and which had kept them thriving in history to the present day.

The 1985 conference sought out legal action as a possible alternative for women seeking refuge from violence and discrimination. It recognised that only women who were aware of their legal, social, cultural and economic rights could exercise them with full freedom and make worthwhile contributions to society. Keeping the importance of legal education in mind, the Nairobi Convention declared support for development projects emphasising on literacy programmes. Steps were taken to ensure that such programmes reached grass-roots level. From this declaration came the question of dissemination of legal knowledge and the method of tackling

situations where necessary laws were known but their implementation not possible or ignored. As a result, in the last 10-15 years, a great deal of work has been done on legal education and legal aid. Unfortunately, except for a small number of successful cases, the overall condition of women in the world remain disappointing.

In Bangladesh, the above declaration of the Nairobi Convention regarding women's legal education has been put to practical use by several non-government organisations. Legal literacy is taken to the grass-roots level, but the women who receive the education find it virtually impossible to exercise what they have learnt about their rights. This is because of a serious lack in the implementation of existing laws, corruption in the law-enforcing agencies and the intervention of powerful members of village society. Women are also employed in the cottage industry and other income generating work (such as keeping poultry or cattle) but yet remain discriminated against by both their spouses and rural society which is governed by the village elite (land owners, money lenders, shop keepers, etc.) who are economically powerful. Amendments have been made in the existing laws and new laws introduced. Unfortunately, there are lapses in these as well. All this will be discussed in detail in later chapters.

II.iv. The Fourth World Conference. 1995:

The fourth world conference was held in Beijing in 1995. It laid down an extensive platform of action containing twelve critical areas of concern.[7]

1. Poverty: the strategic objective in this area of concern was to enable women to overcome poverty. It was decided that the following actions need to be taken:
   a. Gender-sensitive economic policies: there was a call to assess poverty and gender implications or macro-economic policies and structural adjustment programmes. Financial institutions to study the effects on the poor and to develop gender-sensitive policies was also regarded as necessary. It was repeated that women's unpaid work must be valued and quantified and the contributions reflected in the Gross National Product;
   b. Target policies and programmes to poor women: here, it became necessary to increase education, training and health investments, to introduce women-friendly credit systems, promote self-help organisations and assist female-headed households;
   c. Help rural women overcome poverty by providing them with equal access to land and other productive resources and credit and extension services;
   d. Address the needs of migrant women workers and displaced women by providing legal protection of their rights as workers.
2. Education: the strategic objective was to ensure women's access to quality education and training by removing gender disparities in education policies, bridging gaps in education between developing and developed countries by providing the same quality of education in the South as in the North; preventing young girls from dropping out of formal education; encouraging women and girls to enter new fields of study to broaden their career options; elect more women to

[7] Banuelos. Kalapurakal. Et al: Beijing Book of Days. International Women's Tribune Centre. 1995

the boards and school committees; and removing social stereotypes from curricula, textbooks and teacher training programmes.

3. Health: the objective in this field was to increase women's access to appropriate, affordable and quality health. This could be done by adopting a comprehensive, integrated and adequately funded health service model for women that emphasises health promotion and disease prevention.

4. Violence Against Women: this is probably the most important area of concern. The strategic objective here was to eliminate violence against women by:

a. addressing the root concern of such violence by studying and publicising links between gender based violence and male power, privilege and control, and its effects on relationships between women and men;
b. integrating eradication methods by adopting national legislature in accordance with the Declaration on the Elimination of Violence Against Women;
c. training the judiciary, police and health professionals to enhance their sensitivity and ensure fair treatment of women who are targets of violence;
d. increasing women in the police force and the judiciary;
e. providing legal and social assistance;
f. stopping sex trafficking and prostitution.

5. Effects of Armed Conflict: the objective here was the need to increase the participation of women in conflict resolution and protect women in armed and other conflicts.

6. Economic Structures and Policies: women's economic self reliance and control over economic resources have to be recognised. This can be done by eliminating all laws and regulations that discriminate against women in economic activities; giving women access to resources, employment and appropriate working conditions and market and trade and implement the principle of equal pay for work of equal value. An environment has to be created which allows women to participate in economic activities and gives both men and women flexible time for family and economic responsibilities.

7. Inequality in Decision Making: factors that promote the full and active participation of women in power structures and decision making need to be strengthened. This can be done by revising education materials to reflect women's equality, rights and actual contribution to decision making; designing training programmes aimed at equipping women to participate in management and decision making and promoting the sharing of decision making in the family as well as the community level. Laws must be passed- and observed- which give women equal opportunity in public and private sectors.

8. Gender Equality: there is a need to integrate gender equality dimensions into policy, programme planning and implementation. This can be done by increasing the collection of gender specific statistics and indicators that show the gender dimension of policies and programmed and placing the national machinery at the highest political level of governments, with adequate staff and resources, financial autonomy and establish links with other national machinery and with the United Nations System. Governments should also develop tools for

gender analysis and require government officials to apply these tools in developing policies and programmes.

9. Women's Human Rights: there is a need to apply and enforce information norms and standards to safeguard full enjoyment of human rights of women. This can be done in the following manner:

a. by making all human rights instruments effective. All human rights bodies should include the status of women and the human rights of women in their deliberations and findings and use gender specific data. The High Commissioner for Human Rights should monitor the extent to which human rights mechanisms identify violations and women are ensured their human rights
b. by ratifying human rights conventions;
c. by implementing international norms in national practice.

10. Media: enhance the role of traditional and modern communications media to promote awareness of equality between men and women. Eliminate gender stereotyping by encouraging more positive presentation of women in the mass media. The diverse and changing social and economic roles of women in society must also be accurately portrayed.

11. Environment: women's contribution to managing and safeguarding the environment must be promoted. This can be done by involving women in programmes of sustainable development by increasing the proportion of women at levels of decision making, planning and technical management and control of environmental degradation; eliminating constitutional and legal obstacles to women's full participation in sustainable development; developing programmes of consumer awareness to promote sustainable patterns of consumption.

12. The Girl Child: The survival, development and protection of the girl child must be promoted. This can be done by eliminating all forms of discrimination against the girl-child by implementing the Convention on the Rights of the Child; eliminating negative cultural attitudes and practices against girls; eliminating discrimination against girls in the field of health, education, nutrition and skills development and training and eliminating the economic exploitation of child labour and all forms of violence against girls.

The areas of concern were agreed upon by all the women attending the conference who had come from diverse social, cultural, economic and political backgrounds. However, priorities differed from region to region. For example, in the Asia-Pacific region, the priorities were as follows:

1. increased feminisation of poverty
2. unequal access to economic activities
3. lack of women's issues in the environment
4. unequal access to decision making
5. violation of women's human rights
6. inequalities, lack of access to health
7. negative portrayal of women in the media
8. inequalities, lack of access to education and literacy
9. inadequate mechanisms for promoting the advancement of women

10. lack of recognition for women's role in peace building.

III. **Status of Women in Bangladesh**

This section will deal briefly with the present status of women in Bangladesh in the light of the International Conferences and their agendas and demands.

From the mid-1960s to the mid 1970s, there were a number of general surveys done by some organisations to counter the perceived ignorance of Bangali women's lives. These tended to be anecdotal in style and to generalise statements rather than linking them to a particular economic class or region. There are numerous texts dating from the colonial period about the lives of women of the sub-continent, specially Bengal, but all relate to women of the urban and elite class and are outside the development discourse.[8] The typical male convention in Bangladesh today regarding women is that ' the lives of women are unknown'. Men in general hardly take interest in how their wives spend their days. It is interesting to note that Professor Mohammad Yunus, founder and Director of the *Grameen* Bank project (for the development of the economic status of rural women) comments, in 1988, that 'when it comes to our knowledge about the other half of our society, it is like knowing about the other half of the moon - we know it is there, but never feel an urge to know more about it'.[9]

The state of Bangladesh has an opportunistic and contradictory approach to gender equality, mingled with vested interest. However, as results of a recent survey show, some overall ideas regarding women's position seems to be constant - that women are primarily mothers and thus associated with biological reproduction; that economic planning is a male-oriented and male-dominated region and that women must only appear in 'appropriate' sectors of social welfare.[10]

In Bangladesh, women's public life is restricted due to the state maintenance of male control over the 'power stations' of politics, industry, armed forces and religion. Out of the 10,97,334 positions in government and semi-government institutions, women occupy only 7.40 % of these positions[11]. The society is patriarchal and state laws and policies and the way the legal system is run all reflect this attitude. Except for a small number of policy makers and social leaders, the demands for equal treatment go unheeded.[12] Like most other third world countries in the South which are tangled in a web of autocratic, corrupt, fanatically religious or military regimes, Bangladesh has managed time and again to side track women's rights issues by reverting to various excuses such as 'religion', 'tradition', 'political stability' etc. The notion that 'women's liberation' is a Western concept also sparked a deliberate movement by religious fanatics who thought it was a fantastic political issue. These fanatic parties began issuing a distorted version of what they saw as

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[8] Sarah C. White: Arguing With the Crocodiles. University Press Ltd. Dhaka 1992.p 20.
[9] Ibid.
[10] Conclusions drawn from results of fieldwork carried out in Dhaka city in January 1997. The fieldwork consisted of interviewing twenty-five women from middle-income families, all housewives, in the Mirpur Section 12 and Pallabi areas of Dhaka city.
[11] Documentation and Investigation Units of Ain-O-Salish Kendra (ASK) a human rights NGO in Bangladesh. 1996.
[12] For more detailed discussions on these themes, see chapters III and IV of this thesis on the legal status of women and violence against women respectively.

'women's rights', combining extremist views of religion with custom and backward politics.

III.i. Women in the Public Sector:

As had been mentioned above, there are only 83,133 women in Bangladesh holding government or semi government positions out of a total of 10,97,334 such positions. In the primary education sector, too, the numbers are poor. Officially, 60% of the teaching positions are reserved for women. In reality however, only 25% of the teachers in government and primary schools are women[13]. Furthermore, there are no women Superintendent's of Police in the police force and very few women in other positions on the force. In the Armed Forces, the positions for women are extremely limited and mainly in the medical corps. Local government institutions are entrusted to elected bodies called 'municipalities' in the urban areas and 'union porishod's' in the rural areas. The chairmen and nine members are elected directly whereas three women are nominated by the said elected members of each union. As a result, there are 13,879 women representatives in these institutions[14]. This provision of selection of women by the elected male members of the council has been criticised by women's groups as being undemocratic. [15]

While women constitutionally have an equal right to vote in elections, a large number of women are deterred from exercising this right by social constraint, ignorance, political influence, fear of violence or coercion. In the June 1996 National Elections, it was reported in various news media that an unprecedentedly large number of women went to polls. Nevertheless, according to various reports, in some unions (district divisions) women were prevented from doing so. For example, in Parliamentary Constituency-6 - in Rangpur, north of the country, 4500 women were discouraged from voting by the local village *mattabor* (head man) and *imams*[16]. The excuse they gave was that women have culturally, traditionally and religiously never been allowed to vote. Apart from the Prime Minister (the second women to hold this position in Bangladesh), and the leader of the opposition, only seven women were elected to Parliament in the polls of 1996.

In the Courts of Bangladesh, women have, through competitive examination , been appointed to office in the subordinate courts as both Assistant Judges and Magistrates but none have reached the High Court or Appellate Divisions of the Supreme Court, where there are 38 sitting judges. In the Magistracy, there are 2000 male magistrates and only 192 female magistrates while in the subordinate courts, out of a total of 561 judges, there are only 56 Additional and Assistant female judges[17]. It has been said that the present government has taken initiatives to increase the participation of women in law enforcing agencies, particularly in the police force and the village defence parties. It has created 'women's cells' in some police headquarters and on 16 August 1996, an investigation cell was established in Dhaka's Mirpur police station. However, ignorance, social pressure and the fear of social ostracization have prevented a majority of abused women from seeking aid from these cells.

[13] Supra Note 11.
[14] Ibid.
[15] For more information and statistics, see Chapters II and III of this Thesis.
[16] Supra Note 11
[17] Ibid

III.ii. Women in the Family: Status Under Personal Law:

About 13% of the total population of Bangladesh are non-Muslim. A majority of these (12%) are Hindu while the remaining are Buddhist, Christian and animists. Among Muslims, members of the Sunni sect predominate. After the colonisation of the Sub-continent by the British Raj, the common law system was introduced. This led to parallel laws being applied to the people of the Raj - the common law system and the personal (or religious) legal system. In Bangladesh today, as in India and Pakistan, the systems remain, with a few modifications and amendments.

The personal laws prevalent in Bangladesh today are, in some cases, discriminatory towards women. Polygamy is permissible under Muslim Law and Hindu Law, and Hindu women have yet to be awarded the right to divorce. The right to divorce for Christian women is extremely limited. Women have limited rights to custody and guardianship of their children after separation or divorce. Property rights of women are limited also. Hindu women are unable, generally, to inherit property, while Muslim women inherit a lesser share than their male counterparts. Many Muslim women forfeit their right to inherit and hand over their allotted share to their brother/brothers in the belief that the latter will take care of his sister if she is widowed or divorced.

III.iii. Violence Against Women:

The Penal Code of 1860, applicable in Bangladesh, covers punishments and provisions for different forms of violence against women. It has separate sections dealing with rape, trafficking, wilfully causing miscarriage, assault, defamation, etc. There are other laws passed by the legislature safeguarding women's rights. Some of these are the Dowry Prohibition Act 1980, the Muslim Family Laws Ordinance 1961, the Family Courts Ordinance 1985, the Child Marriage Restraint Act 1929, the Women and Children Repression (Special Provision) Ordinance 1995 and most recently the Suppression of Violence Against Women and Children Bill 1998. Unfortunately, there appears to be a serious lack of implementation of these laws - specially those providing for deterrent punishment in the case of violence against women. A good example of this is the lack of implementation of the Dowry Prohibition Act 1980. Between January and September 1996, there have been approximately 47 reported cases of dowry related violence, 22 of which resulted in the death of the victim[18]. The Ordinance of 1995 seeks to enhance the penalty for crimes such as rape and trafficking in women to the death penalty and provides for summary trials. However, this Ordinance, like all the others mentioned above, fails to recognise the issue of domestic violence and the violence instigated by the illegal issuing of *fatwa* (religious decree). There is also the genuine fear that these strict laws may have undesirable results for the defendant when used by unscrupulous law enforcing agents, not intended by the Act.

Victims of abuse find it extremely difficult to complain to the police. This is not only because of the fear of social stigma, but also due to the fact that women are sexually abused in what is called 'safe' custody, of which more will be said in the chapter on violence against women.

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[18] Ibid.

III.iv. Women in the Economy:

The economic system of a country can determine a women's position in society. Capitalism is particularly responsible for the suppression of women via cheap labour[19]. A woman's domestic labour is exploited and at the mercy of the state which would otherwise have to pay to provide services necessary to ensure the reproduction of the labour force. On the other hand, socialism recognises women's oppression as a socio-political problem.[20] It identifies the labour force as a normal activity for every able woman and there is an attempt to maintain high employment levels and the state is responsible for labour reproduction and social welfare. In Bangladesh, the country was born with secular and socialist ideological trends, but quickly adopted a capitalist trend which has pushed women to the background of the country's economic development.

When Bangladesh emerged in 1971, there was no foreign exchange reserve, no central policy planning agency for foreign relations, defence and economic planning. One of the first steps the Government took was the preparation of a First Five Year Plan for 1973-1978. A Planning Commission was constituted, headed by technocrats and economic experts all recruited from outside the country's civil service. This resulted in strained relations between the Commission and the country's bureaucracy.[21] The entire economic planning was left in the hands of the members of the Planning Commission and the First Five Year Plan they envisioned was a programme for a 'socialist transformation' of the economy of Bangladesh[22]. Since socialism was laid down as one of the principles on which Bangladesh was founded, the Plan was directed towards achieving this objective through peaceful, democratic means. The Commission considered that the "removal of capitalist system of income distribution of the private ownership of means of production and of the pre-capitalist mercantile as a feudal form of production relation"[23] was a necessary pre-condition for socialist development.

To achieve the above change, the Commission emphasised the need for cadres, chosen by them, to free the war-weary masses from the 'age-old bondage of traditions and values and customs as well as from their exploiters.' [24] According to the Commission, the compensation for the duty of these cadres lay not in monitory gains but in the realisation of ideals. Unfortunately, therefore, it was not the economics of the Plan but its policies, which dominated the thoughts and the work of the Commission which totally failed to review the overall situation of the country, its decline in production - both agricultural and industrial - the general mismanagement in state affairs, the economic anarchy created by the ruling party, the Awami League, and the deteriorating law and order situation in the country.

[19] Sultana Kamal.: Narir Unmukto Mon. Ain-O-Salish Kendra 1996.
[20] Ibid.
[21] See Moolud Ahmad.: Bangladesh: Era of Sheikh Mujib. University Press Ltd. 1983.
[22] Ibid.
[23] Ibid
[24] Ibid

All this had created an atmosphere where no economic growth or 'socialist transformation' could take root. The irony of politics in developing countries is that the more under-developed the country is, the more radical commitments are made by politicians. People, being poor, are given (false) hopes of removing their miseries. When the Government cannot fulfil its glorious promises, new political parties crop up. It becomes sources of occupation for some and a source of income to acquire status in society for others. Personality cults and ideological clashes also breed political parties and soon individuals become more important that ideological doctrines.[25] The Government party was not a doctrinaire socialist party nor had it any socialist leadership, it was petty bourgeois in nature and its leaders were working in various levels and a section of its hierarchy was involved in nepotism, favouritism and corrupt practices. Furthermore, the Awami League's public commitment to socialism had no ideological basis and its leadership did not know what kind of socialism they really perceived or how to go about to achieve that goal. Moreover, the fractions within the party and contradictions within party leadership were too acute to withstand the pressure of conservatives and vested interest groups.

As a result of all these factors, the Plan failed and the country's economy fell into the hands of a few, thus, reverting to the capitalist system the Planning Commission wanted to destroy. After the assassination of the first President, Sheikh Mujibur Rahman, in 1975, Bangladesh witnessed the emergence in political power of open supporters of free economy who, immediately after securing their own positions in the government, began to denationalise the country's industry. The state began to perform a direct and principal role in fostering the development of a group of specially favoured capitalists, and imperialism played a hand in this as well through the state and other agents such as multi-national companies and foreign donor organisations. Foreign aid to help economic development has had damaging results. The increasing dependence on foreign assistance has concentrated the country's wealth in the hands of the minority rich who own the industries and mills. The country's economy has been vested in and dominated by men while women are employed in the lowest levels and hardly receive promotions or equal pay-checks and the public sector is frequently curbed to strengthen the private sector. The Plan, however, emphasised a welfare oriented approach and focused on the rehabilitation of war-affected women and children. Population control was the most important area in which women were considered beneficiaries. However, their productive role was not emphasised or elaborated on.

Local non-government organisations have begun giving women loans to start their own home-based income generating projects. However, after repaying their loans, many women find their earnings being taken away by their husbands for 'safe-keeping'. There are also foreign aided organisations which supply materials for handicrafts which the women make for a small - very small- fee. These handicrafts are then sold by urban outlets of the supplying organisation at very high prices. Nevertheless, many NGO projects, however small, have enabled rural women to articulate demands and taught them to use organisational strength to counter gender bias and rigidities inside the home.

[25] See Modud Ahmed: Democracy and The Challenge of Development: A Study of Politics and Military Interventions in Bangladesh. University Press Ltd. Dhaka 1990.

The Two Year Plan spanning 1978 - 1980 was characterised by a move from welfare to development oriented efforts. Women's development was centrally focused on. The second five year plan, spanning 1980 - 1985 emphasised undertaking more dynamic and diversified programmes. The major objective here was to create an atmosphere for increasing women's development skills and activities. This was aided by expanding opportunities for specialised training, skill development, credit programmes, etc. the Third Five Year Plan, spanning 1985 - 1990 built upon the Second Five Year Plan's activities. To achieve over all integration of women in the development process, the Plan has specific objectives to reduce imbalances between the development of men and women. The Fourth Five Year Plan (1990 - 1995) had, as its objectives, the acceleration of economic growth, poverty alleviation and increasing self-reliance on its agenda. Development policies with regard to women were placed within the context of a macro-economic framework for a multi-sectorial thrust. Special attention was given to increased opportunities for income generation, access to institutional credit and organisational building for participation in bottom-up planning. A draft Participatory Perspective Plan for 1995-2010, formulated by the government in 1995, sets the goal of eliminating all forms of discrimination against women. Its targets include increasing the female literacy from 24% to 50% by year 2000; raising the adult literacy rate to 62%; increasing the enrolment of girls in primary schools by 94%; ensuring health for women by the year 2000; ensuring adequate nutrition for women and girls; and increasing the share of women's employment from 8% to 30% by the year 2000.[26]

In March 1997 a National Policy for Women's Advancement was approved by the Cabinet. The vision of the Plan is to guarantee women's equal access to opportunities for the realisation of the goals of equality and peoples participation. It also aims to provide a comprehensive framework for women's development. It strengthened the following institutional mechanisms:

1. a 44-member National Women's Council headed by the Prime Minister and comprised of ministers, members of parliament and eminent persons, as a policy directing body;
2. the *Jatiyo Mohila Shongstha*, a women's organisation set up by the government which tends to be monopolised by women from the ruling political party, as a statutory body to link grass-roots women's organisations;
3. the Ministry of Women's and Children's Affairs as the leading agency with 32 focal points in different ministries to mainstream women's concerns.[27]

The Fifth Five Year Plan of 1997 - 2002, articulates the goals of the National policy for Women's Advancement but does not include all the recommendations of the Sectoral Needs Assessment reports of different ministries which had been carried out by the government in 1996. The Plan highlights the need 'to eliminate all discriminatory laws, rules, regulations and practices governing the family, social, cultural, economic and political aspects of life'[28]. High thoughts from a government still holding back from ratifying key Articles in the CEDAW Convention. Furthermore, budgetary allocations for women's development remain low

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[26] Draft of the Participatory Perspective Plan 1995 - 2010, Planning Commission, Government of Bangladesh.
[27] Newspaper reports of the Daily Star and the *Dainik Ittefaq*, 9 March 1997.
[28] The Fifth Five Year Plan (1997 - 2002), Government of Bangladesh.

III.v. Women and Education:

The literacy rate in Bangladesh is 44% for men and only 26% for women[29]. Out of this 26% a very small number of women have graduated from colleges or universities while the majority have passed primary school or spent three or four years in primary level education before dropping out or being forced to stop by their guardians or parents.

Girls and boys have the same opportunities for primary and secondary education but because of the fact that female students leave educational institutions mainly after completing their primary level education, male students dominate the halls of higher education by a large margin. Girls have to face the traditional barriers and cultural hangovers that keep them at home. Furthermore, girls often receive confusing and conflicting messages about their gender roles from the family, peers, neighbourhood and environment which contribute to persistent gender stereotypes.

In Bangladesh a majority of the schools, be they primary or secondary, are single sex institutions. However, all the Universities in the country are co-educational. The table below shows the percentage of single-sex schools in Bangladesh and the percentage of male and female students enrolled there. It also shows the total percentage of teachers of both sexes occupied in teaching in those schools.

Educational Institutions for Boys and Girls[30]

Level of Education	% of Girls' Schools	% of Boys Schools	% of Female Students	% of Male Students	% of Female Teachers	% of Male Teachers
Primary	1.2	98.8	45.4	54.6	20	79.6
Secondary	14.3	85.7	25.1	74.9	14.3	85.7

Despite the fact that the previous government laid the foundations of free primary education for the girl-child, many girls drop out of school. Usually this happens when the girl first begins to menstruate, that is, when she is about twelve or thirteen years old. This is based on the tradition that the girl is now an adult and that she has to learn house-work so as to prepare herself for marriage. Even though child marriages are prohibited by law, many rural families (and even some urban families) wed their daughters off at a very early age and falsify their age on the marriage certificate.

The constitution provides that the state is responsible for providing education to all citizens. The Government has adopted a National Plan of Action and has been surveying non-formal education programmes for achieving a 96 percent enrolment rate in primary education by the year 2000. However, primary education enrolment

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[29] Bangladesh Statistical Year Book 1997. Published by the Government of Bangladesh.
[30] Combined Third and Fourth Periodic Report for the UNCEDAW. Ministry of Women's and Children Affairs. Item 1.2.2. Bangladesh. March 1997.

for female students is only an approximate 10 percent . Only 47 percent of all the primary school students achieve completion – and a majority, if not all, are male students.[31]

III.vi. Violence Against the Girl Child:

Physical abuse and other forms of violence are perpetrated against the girl-child in the form of trafficking for prostitution, beatings by home owners when they are employed as domestic help and, of course, physical abuse by relatives and neighbours.

UNICEF has recently estimated that there are about 10,000 child prostitutes in Bangladesh. Other estimates have been as high as 29,000.[32] The law does not allow anyone under 18 years of age to engage in prostitution and according to the Penal Code, a maximum sentence of life imprisonment is awarded to persons found guilty of forcing a child into prostitution. Unfortunately, procurers of minors are hardly ever prosecuted and it has been reported that police and local government officers either ignore prostitution and trafficking of children or actually profit from it.

Rural poverty has caused many people to migrate to the city to look for jobs. This is one of the ways by which children find themselves in domestic labour. These girls, some as young as 6, find themselves in violent situations where they suffer from malnutrition, inhuman torture - including rape, searing with hot utensils and the insertion of objects in private parts- and sometimes even death.

Case Studies:

1. In January 1996, Mrs. Tarafdar and her daughter were arrested in Bogrs, southern Bangladesh, for allegedly murdering their 11 year old maid, Hena. The examining doctors found scars and old wounds on various parts of her body.

2. in November 1996, one Imtiaz Ahmad was arrested in Dhaka for verbally and physically assaulting a domestic worker - 10 year old Fatema. His wife also took part in the assault, but she was absconding when the police came to make the arrests.

3. In 1996, 14 year old Tuni was raped by one Siddique, in whose house she was working. After she complained to his wife, the latter grievously assaulted her and then admitted her to a Dhaka clinic. When her condition deteriorated, she was removed from the clinic and hidden in an acquaintances home by Siddique. However, the neighbours informed the police who rescued the girl and arrested her assailants. [33]

[31] For more data concerning female education see tables in Appendix IX.
[32] U.S Department of State Country Report on Bangladesh. 1996.
[33] All cases were reported in The Daily Star, the *Dainik Ittefaq* and the *Dainik Bhorer Kagoj* newspapers between January and November 1996, Bangladesh.

A survey of 1,011 child domestic workers (in 1000 homes) found that 27% of the girls and 25% of the boys in domestic service are victims of both physical and verbal abuse. 40% of the girls are abused physically and all work an average of 15-16 hours per day. The survey reports that 38% of the girls are between the ages of 11-13 years.[34]

VI. **Sex Roles and Stereotyping**:

Despite efforts to achieve legal and de facto equality, true advancement towards gender equality requires serious fundamental social and cultural changes. The social and cultural pattern in patriarchal Bangladeshi society requires serious consideration in this respect. Practices based on ideas of superiority and inferiority of one sex in relation to another and sex stereotyping need to be addressed.

Social expectations of the roles to be acted out by women are extremely traditional and emphasis is given to child rearing and household management. Although the practise of putting women in *purdah* is changing - mainly because of practical reasons - it is still socially valued. One of the worst forms of demeaning women is perhaps the practice of dowry - illegal in Bangladesh, but still practised. Dowry is the giving of monetary and other gifts to the groom for marrying a person's daughter. It is not known in Muslim law, but is a social custom, accommodated rather favourably by a patriarchal society. Personal laws, based on religion, are also biased towards women in certain aspects of private life and serve to reinforce discrimination.

Social stereotypes of the roles expected of men and women are naturally reflected in the country's media and in the educational curriculum. However, various government and non-government organisations are using the national media to produce and broadcast promotional material for the general public regarding women and health, the dangers of child marriages, family planning, sanitation, the importance of educating women, etc. However, even these lean towards discrimination. For example, family planning advertisements promote birth control pills and not alternative measures that men can use and focus on the idea that it is the man's / father's responsibility to work and feed and clothe his children. Gender training - that is, awareness programmes involving women's contribution to the home and country, etc. - is, however, in the process of becoming institutionalised by various government training institutions, such as the Academy for Planning and Development and the Public Administration Training Centre.

Conclusion:

To date the Government of Bangladesh has ratified :

a. the Convention for the Suppression of Traffic in Persons and for the Exploitation of the Prostitution of Others (1949)
b. the Anti-Slavery Convention (1926)

[34] Data collected from *'Child Domestic Workers in Dhaka: A Study of the Exploited Situation'*. Seminar held in Dhaka , Bangladesh. July 1996.

c. The Convention on the Elimination of all forms of Discrimination Against Women (1981)[35] (Ratified with reservations)
d. The Convention on the Rights of the Child (1991)[36] (Ratified with reservations)

However, as can be seen from the above brief discussion, and will be realised from following chapters, the state has failed to adhere to its obligations as a party to the above instruments.

Discrimination is also found in the country's constitution - which is deemed to be the law of the land and which overrides all other laws. The Constitution of the People's Republic of Bangladesh states that the State shall not discriminate against its citizens and that all are equal in the eyes of the law. The State prohibits, by virtue of Article 28, discrimination on the grounds of race, sex, religion or place of birth and special measures may be taken for 'disadvantaged sections' of the people. Now, 'disadvantaged people' usually means the mentally and/ or physically handicapped. However, the term here also includes women (Article 29). Apart from placing women as 'disadvantaged', Article 29, Clause (c) lays down that nothing will prevent the state from 'reserving for members of one sex any class of employment or office on the grounds that it is considered by its nature to be unsuited to members of the opposite sex'. This statement, coupled with social norms and traditions, plays a part in depriving women of employment in certain sectors.

Thus, there is a serious need for the incorporation of the articles of the different conventions Bangladesh is a party to, into its state laws and a need for regular review of the socio-legal position of women in Bangladesh by a Parliamentary Standing Committee and to prioritise their strategic gender needs in order to empower them and eliminate the gender bias that bars their social, economic and legal development.

From the discussions of the various international conferences on women and the present position of Bangladesh in light of the recommendations made at these conferences, we can see that the women of Bangladesh are not enjoying any benefits from these international discussions. Policy planning has taken place in this country without the direct participation of women; women are still classed as the 'poorest of the poor'; state run electronic media does not highlight aspects of violence against women; the girl child is abused both mentally and physically and deprived of the opportunities available to a boy; and woman in rural Bangladesh have little access to health facilities and economic activities.

The various governments of Bangladesh have attended the world conferences on women, have placed their reports and taken part in state-level discussions. They have signed and ratified certain international conventions concerning women and children. In previous paragraphs, we have seen that there have been various 'Five Year' and 'Two Year' Plan's- since the first Five Year Plan for 1973-1978 - regarding the economy of the country, which hardly acknowledge the participation of women in the economic process - till the second Five Year Plan of 1980 -1985 recognised that women's developmental skills needed to be increased. However, all these will remain merely words on paper until the structural gender needs of women are realised in order for them to have actual participation in the social, legal and

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[35] Signed in 1984. Source: Interights Bulletin Vol.10 No.1 1996. Pg. 42.
[36] Signed in 1990. Source: See note 34.

economic policy planning and to have direct access to economic resources and legal recourses without the fear of violence, bias and patriarchal norms.

This chapter has attempted to highlight the fact that there are differences between the strategic gender needs of women in the South and of women in the North. Strategic gender needs are not the same world wide. Culture, society and economic differences play a part in this difference. For example, in the United States of America, women may be demanding greater control over their bodies, while in Bangladesh, women are demanding that there should be access to better health facilities and economic resources for rural women in the country. There may be parallels in the cases of domestic violence and in the fact that women are paid less than men, but even here, cultural differences creep in. For example, In Bangladesh domestic violence may be the outcome of a woman refusing to allow her husband to contract a polygamous marriage, or it may be the outcome of a husband's demands for dowry. These are almost unheard of in, say, American or English societies. Therefore, the socio-legal development of the women in Bangladesh needs to be addressed by observing women's position in Bangladeshi society, instead of comparing this position to that of women in northern or western society

Chapter II

Development of the Socio-Legal History of Bangali Women

'Where are the men?' I asked her. 'In their proper places, where they ought to be....you cannot know our customs, as you were never here before. We shut our men indoors.' 'Just as we are kept in the zenana?' 'Exactly so.' 'How funny', I burst into a laugh. Sister Sara laughed too. 'But dear Sultana, how unfair it is to shut the harmless women and let loose the men.' 'Why? It is not safe for us to come out of the zenana, as we are naturally weak.' 'Yes. It is not safe so long as there are men about the streets, nor is it so when a wild animal enters a market place.'

- 'Sultana's Dream' Rokeya Sakhawat Hossain (1880-1932)

The position or status of a majority of Bangladeshi women is mainly governed by the way a patriarchal society deems fit. They are seen to be home-makers, whose duty it is to cook, look after the children and please their spouse. Work out side the home seems to be a secondary matter, in many cases - unless it is absolutely necessary for economic reasons. Public participation is seen to be the domain of the men. They are the main wage earners and it is their duty alone to provide for the family. However, when it comes to political participation, the (male) electoral candidates rally the support of the women as well and urge them to come out of the house and vote for them. Women are told that their right to vote is guaranteed in the Constitution as a right to take part in public life. Therefore, 'public participation' of women seems to also be the decision of the male-dominated society, despite the fact that they are protected by constitutional guarantees.[1] Ironically, when it comes to political support, society is constitutionally correct. Women join the men in the streets to protest against oppression, autocratic governments and even fight alongside men for liberation. However, as soon as those ends are met, society once again takes a 'backward' view of women.

As a result, women have little say in the policy planning of the country, they have little participation in government poverty alleviation projects such as fish-farming, cattle rearing, etc. This is more evident in women-headed households. These are formed when the husband has migrated to look for employment, has died or has abandoned his family. The women of these households have very weak positions in society, as they have no male member to support them or speak for them. Such homes are among the most poverty stricken in Bangladesh. Out of the total number of households in Bangladesh, 15 percent are headed by women. Among these, 96 percent live below the poverty line of whom 33 percent are among the hard core poor who suffer from chronic food shortages.[2]

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[1] Article 28 (2): Women shall have equal rights with men in all spheres of the State and of public life.

[2] Netherlands Ministry of Foreign Affairs: Bangladesh Sub Report 1998. p 45.

This chapter attempts to highlight the various socio-political movements which took place between the late eighteenth century till the present day in the area now called Bangladesh, in order to establish women's social and legal rights. In a majority of the social and political movements, there has been the direct participation of women - specially in the cases where women's human rights have been violated. Women have formed groups and planned policies among themselves within these groups, which they deemed necessary for establishing an unbiased social system and for ensuring the protection of their legal rights . They have urged various governments to pass laws for their protection and have also been successful in the process of amending certain laws bias against women. The chapter attempts to show that despite the historic participation of women in public and political life, the socio-legal status of women in Bangladesh still remains dominated by patriarchal norms and decisions.

I. **Introducing Bangladesh**:

Bangladesh. The name means 'land of the Bangalis', a race which dates back to the times of antiquity where several aboriginal races resided in the subcontinent of India. The Bangalis have a mixture of Mongoloid, Dravidian and Aryan blood in their veins and the Turkish, Arab, Persian, Afghan, Portuguese, Dutch, French and English traders, sailors, settlers and colonisers of Bengal have also left their mark.

In the eighteenth century, the Indian subcontinent came under the complete colonisation and rule of the British Raj, after the last emperor of Bengal - which comprised what are the now Indian states of West Bengal, Bihar, Orissa and the country of Bangladesh - Shiraj-Ud-Dowla was betrayed and murdered by a conspiracy plotted by his courtiers with the instigation of the East India Company, Bengal placed in the coffers of the Raj. The rule of the British over the area ended in 1947 and resulted in the partition of India and Pakistan as two independent nations[3].

Pakistan was divided into two wings, the larger and relatively less populated West Pakistan was the seat of the government and held the monopoly while the smaller, but more populous, East Pakistan being the country's main foreign exchange earner due to its fertile alluvial soil (it is the delta of the river Ganges) was miserably exploited. However, economic exploitation, cultural subjugation and political treachery stirred the wrath of the population in the East and when after the Awami League, the political party campaigning for the rights of the East wing won a parliamentary majority in the National Parliament, the military dictatorship (dominated by the West wing) refused to call the meeting of the National Assembly and hand over power to the newly elected representatives[4]. The West wing then unleashed a reign of terror over the former by way of military campaign and genocide, the Bangalis (who made up the population of East Pakistan) rose up in rebellion, declared independence and started its fight for liberation in 1971, after twenty four years of subjugation. Nine months of bloody warfare commenced on 26 March 1971, and it is estimated that around three

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[3] For more information on the history of the British Raj and the Partition of the Sub-continent, see History of British India by Dr. Mohammad Ashiquallah Khan (Mahesh Jain 1988); Rebels Against the British Rule by Bhai Nahar Singh and Bhai Kripal Singh (Atlantic Publishers and Distributers, New Delhi 1989); A Short History of the British Raj by Arthur D. Innes (Lal Publishers, New Delhi 1902).

[4] See Abu Al Sayeed : Awami Leaguer Itihash: 1949 - 1971 (Bengali).

million Bangalis died and two hundred thousand women were raped. Bangladesh was liberated on 16 December 1971.

The earlier political atmosphere of Bangladesh was faced with unrest and the formation of a single party system, banning all other political parties. This was followed by coups and counter coups and a string of martial law regimes[5]. It also saw the swift rise and equally swift demise of political leaders and political assassinations. After the downfall of the autocratic regime of President Lieutenant General Hussain Mohammad Ershad in the winter of 1990, Bangladesh finally held its first democratic elections, under a neutral care-taker government, in 1991 and popularly elected its very first female Prime Minister, Begum Khaleda Zia. Her reign was abruptly stopped by a series of anti-government campaigns and dissent from the Opposition and in June 1996, another woman, Sheikh Hasina Wajed, former leader of the Opposition, was elected Prime Minister of Bangladesh.

An outsider's view might be that since Bangladesh has had two consecutive female prime ministers, the country's women must be enjoying a lot of rights and privileges. Unfortunately, the scenario is totally the opposite. The prime ministers were elected by popular demand - the former the wife of a former martial law administrator and later president, the latter the daughter of the first President of Bangladesh[6]. They had been elected not for what they stood for, but the political parties they led and the sympathy and support their followers had for their brutally assassinated husband and father, the founders of those political parties. The country is run by their political advisers and the beaurucracy - all male- and they have little say and understanding in the region of policies and decision-making. Thus, ways and means of improving the women's lot in the country is the last thing on their minds and in the minds of their advisers. The subject crops up solely in international conferences, election campaigns and when pressurised by women's groups and human rights organisations after the occurrence of a heinous crime against a women (such as rape in police custody, acid throwing, fatwa, etc.).

The country's legislature, housed in the National Parliament, does have laws for the protection and preservation of women's rights, but, as will be seen in later chapters, these laws lack proper amendment and strict application and in most cases miss the subject matter. Furthermore, the Constitution, which guarantees gender equality in public life is silent on the topic of private life which, due to the intermingling of religion and customs and a strongly patriarchal society, is restrictive and biased against women in many ways. Religious laws have not been amended or updated to give women their rights in the family. This amendment can be done in Muslim law, and has been done in Hindu law in India, which will be discussed in more detail in the following chapter.

However, as will be seen from the following discussions, the women of Bengal and Bangladesh have, throughout the history of the subcontinent, fought for their

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[5] See Modud Ahmed: Democracy and the challenge of Development, A Study of Politics and Military Interventions in Bangladesh. The University Press Ltd. Dhaka, Bangladesh.

[6] The two former leaders, Lieutenant General Zaiur Rahman and Sheikh Mujubur Rahman respectively were both assassinated, the former in May 1981 and the latter in August 1975. Ziaur Rahman was succeeded by his wife, Begum Khaleda Zia, while Sheikh Mujibur Rahman was succeeded by his daughter Sheikh Hasina Wajed, as leaders of their political parties.

rights and many a learned man has also advocated gender equality and the rights of women in the region.

II. **Women's Movements and Reform:**

II.i. Early Women's Rights Activists:

Up till the early nineteenth century, the average woman of Bengal was kept segregated, regardless of her religious belief, uneducated and ignorant of the outside world. She was considered a weak, helpless creature and a mere ornament and procreator of children to carry on the family's name. The average women could read only the holy scriptures as her education and was taught to be submissive and obedient to her husband after marriage.

Social reformists like Raja Rammohan Roy (1772- 1833), Ishwar Chandra Bidyashagar (1820- 1891) and Mohishi Debendranath Thakur (1817-1905) worked untiringly to try to establish a new social order where Hindu women would have rights and opportunities, discrimination against them would cease and where women would be formally educated and learn to be self-sufficient[7].

Rammohan Roy sought to make laws to repeal all discriminatory social and cultural practices like child marriage, the practice of *sati* (widow burning) and polygamy, prevalent in the then Hindu society. He even proposed that a trust be established for destitute widows. He is said to have commented that it was wrong to conclude that women had little intelligence without testing them and giving them a chance to prove otherwise[8]. He also discovered that since women were economically dependent on others, they were the most violated members of society.

During his employment in the East India Company in 1800, Roy had the opportunity to visit many areas of Bengal - Dacca (now Dhaka), Jamalpur , Jessore, Rangpur - which are now parts of Bangladesh. In all these places he had the opportunity to observe the people and their local customs and spread the word of his own major campaign at that time - the banning of *sati*. *Sati* was the Hindu practice of burning a widow beside the corpse of her husband, to show ultimate love and obedience of the wife. A widow who was intelligent enough not to throw herself into her husband's funeral pyre not only lost caste but was also regarded by society in the same way it would regard a leper. It needs no saying that if a wife died before her husband, he was not required to leap into her funeral flames. Sometimes, a widow had to be drugged by the priests and some leaped in voluntarily, since the life of a widow during that era was itself a living death. She was outcast, had to crop short her hair, must always wear white, eat bland food and could not re-marry. The fact that many of the widows were children of twelve or thirteen , as a result of child marriages, makes the ritual of *sati* twice as cruel and inhuman. Roy's anti-*sati* campaign was vehemently opposed by the orthodox Hindu Brahmins . However, the practice was banned by a statute passed by the Privy Council of the British Raj in 1832.

Ishwar Chandra Bidyashagar was another social reformer who strongly advocated female education and the remarriage of Hindu widows, as well as the cessation of child marriages and polygamy. In 1860, after a long ideological battle between

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[7] For more information about this era, see Women in India and Pakistan by Rozina Visram. Cambridge University Press 1992.
[8] Ganesh Mitra.. Nari Jagriti O Bangla Shahittya. p 33-34.

pro- and anti- child marriage demonstrators, the 'Permission for Cohabitation' law was drafted, where it was held that no one could marry a girl who was less than ten years of age. However, after the death of an eleven year old bride on her wedding night in 1889, physicians were up in arms and demanded the complete banning of child marriages. A petition was sent to the Empress of India, Queen Victoria, in this regard. The more orthodox members of Hindu Society were greatly distressed and they and their like-minded Muslim brethren rallied against the law and the ban against child marriages. Amid such a debate, however, the 'Permission for Cohabitation' law was passed on 18 March 1891.

Other laws passed in favour of women at that time were:

1. The Hindu Widow's Remarriage Act 1856, which allowed Hindu widows to marry, by stating that 'many Hindus believe that this imputed legal incapacity [the law that Hindu widows cannot remarry] although it is in accordance with established custom, is not in accordance with a true interpretation of the precepts of their religion, and desire that the civil law administered by the Courts of Justice shall no longer prevent those Hindus who may be so minded from adopting a different custom, in accordance with the dictates of their own conscience; and whereas it is just to relieve this legal incapacity of which they complain, and the removal of all legal obstacles to the marriage of all such Hindu widows will tend to the promotion of good morals and to the public welfare'.[9]
2. The Special Marriages Act 1872, which allowed people of different faiths to marry, by stating 'it is expedient to provide a form of marriage for persons who do not profess the Christian, Jewish, Hindu, Muslim, Parsi, Buddhist, Sikh or Jaina religion..... and to legalise certain marriages the validity of which is doubtful'.[10]
3. The Christian Marriages Act 1872 which was of course 'imported' from England and used by the Christian 'native' community. According to the Act, a 'native Christian' includes the Christian descendants of inhabitants of Indo-Bangla- Pakistan sub-continent converted to Christianity, as well as such converts.'[11]

After the commencement of the social revolution, the statutory laws of the area therefore improved somewhat in favour of women. After the introduction of the Hindu Women's Remarriage Act of 1856, only 500 widows remarried between 1856 and 1911. Statistics of that time tell us that in 1901 there were 1,290 Hindu widows below the age of twelve and 10,891 below the age of 20 [12].

II.ii. The Missionaries:

In the late nineteenth century, missionaries flocked to Bengal to spread the message of Christ. They also built schools for adult education, their target being the Bangalee women. In 1811, the missionary William Cary-Marchman opened a school with nearly 40 female students. Another school was opened by Richard May of the London Missionary School in 1818.[13] Next, the local Baptist missionaries opened the first Bengali school for female students in Calcutta in 1819 and named it the Female Juvenile Society. In 1828, all these schools were collectively placed under a single institution by Mary Anne Cook (later Mary Wilson). Funds for the school were donated by the Raja Boidonath and his Rani.

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[9] The Hindu Widows Remarriage Act 1865. Preamble.
[10] The Special Marriage Act, 1872. Preamble.
[11] The Christian Marriage Act 1872. Article 3.
[12] Saridia Das, Gautum Niogi: Chilo Shidupure Ogo Bideshini. p 443.
[13] Ibid

Another school for young widows and destitute women was later added to it. Because these missionary schools taught Christianity, middle and upper caste Hindu families refused to enrol their daughters who were taught privately at home. Muslim women were yet to come out of strict purdah and be introduced to public schools. Lower caste Hindu families sent their daughters to the schools, specially those who were poverty stricken, since through their daughters they were able to receive charity. Never the less, missionary schools were regarded with the utmost suspicion since many of their young charges were converting to Christianity.

Mary Carpenter was the second woman to come to the subcontinent and attempt to educate the female population. She arrived in 1866 and commented 'I proceeded to Dacca where I had reason to know that great work was going on. Here an adult school has been established which was attended by a number of wives of the native gentlemen anxious to advance the cause of female education. No other school of the same kind exists in India, but at Dacca as in other places, there is a great want of trained female teachers'[14]. In 1867 there were six female teachers in the six schools in East Bengal. In 1886, four teacher training institutions were established which had 242 female students in 1887 and 701 in 1899[15]. However, there were many who could not continue their studies due to impeding marriages and purdah as they attained puberty.

II.iii. The State of Muslim Women:

Since Hindu women were comparatively less secluded from the outside world and were attending school, they had an advantage over their Muslim sisters. As a whole, British- taught and British- influenced Hindu citizens of Bengal were able to succeed in life and reap the benefits of relatively lucrative jobs in comparison to the Muslim population. British-sponsored social reform was rejected for a long time by the rebellious Muslims, so the change was more or less attributed to the Hindu population of the area.

Muslim women in the eighteenth and early nineteenth century had to observe *purdah*[16] from a very young age. They were taught at home by private tutors - the emphasis given on religious studies. Not only were they barred from 'western' education, they were not even taught Bangla - the language used in day to day affairs, including business, commerce, etc., along side English- and could not read or write. In 1886, the 'Mohammedan Education Congress' was established to emphasise the need to educate Muslim women. However, practical application of the campaign began in 1899 after the introduction and establishment of a teacher training school for Muslim women.[17]

It was not only education for women which was necessary. There were movements in Bengal for economic and political emancipation as well. At that time, brave Muslim women who came out of the clutches of *purdah* encouraged Muslim girls to do so. Among these women were Faizunnessa Chowdhurani (1834-1903) and Karimunessa Khanam (1855- 1926).

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[14]Ibid. Pg. 440.
[15] Maleka Begum. Banglar Nari Andolon. University Press Limited 1989. p 33
[16] *Purdah* here means that women were not allowed to appear in front of male strangers and had to leave the house either wearing a veil hiding their figure and features or draw the curtains around their vehicle.
[17] Supra Note 16.

Faizunnessa Chowdhurani was born in East Bengal, in the district of Comilla, now in central Bangladesh. She learnt Bangla, Persian, English, Sanskrit and History while in purdah, and established the Faizunnessa Girls High School, an English medium school in 1873. She also built a hospital and was a great social worker. In 1889, by the order of Queen Victoria, she was bestowed with the title 'Nawab", equivalent to a knighthood, by the British Government. Karimunessa Khanam, on the other hand, was born in North Bengal in the district of Rangpur, now in northern Bangladesh. As per social custom, she was taught only the Quran and little else. She however learnt to read and write Bangla in secret, taught by her brothers and was encouraged by her father's silent approval. Unfortunately, slurs and taunts by relatives put a stop to her Bangla education. She was married at fourteen and widowed at twenty three, but remained faithful to the cause of female emancipation when, defying society, she encouraged her younger sister, Rokeya , to study other subjects along with religion.

Rokeya Sakhawat Hossain was born in 1880 and went into *purdah* at the age of five. Encouraged to learn Bangla by her sister, Karimunessa Khanam, she was taught various subjects, including English, by her lawyer husband. She became a prolific writer and her articles and books were written to hit society for its injustices and discrimination against women. Of the several books she wrote the two most noteworthy are '*Oborodh Bashini*', a Bangla book on Muslim women in the late nineteenth century and 'Sultana's Dream' an English book first published in 1905, about a woman (Sultana) who dreamt that the world was ruled by women and men were kept in seclusion and behind the domestic walls, cooking and looking after children. In this book, Rokeya Sakhawat Hossain boldly proclaimed the advent of the 'new Muslim woman'. In 1910 she established the Sakhawat Memorial Girls Primary School in memory of her late husband. This was the first Bengali school for Muslim girls in undivided Bengal.[18]

However, even then, the number of Muslim girls studying in schools was comparatively low, the enrolment increasing gradually as more such schools were opened. Social change also encouraged Muslim women to attend colleges and universities. Dhaka University was built in 1921 and gradually gained the reputation of the 'Oxford of the East', a reputation that , due to the numerous political upheavals, student riots and the like, is now sadly non-existent. Laila Roy was the first woman to enter the university and in 1922 a Muslim woman by the name of Sultana Begum obtained her Masters Degree in Law from it.

II.vi. The Pre-Partition Years. 1900- 1946:

During the time of the First World War, the economic situation of the subcontinent began to change. Taxes were levied to help maintain the British Army and 'natives' were forcibly enlisted. This ignited unrest and hatred towards the British rulers. Mahatma Gandhi came home to lead the National Congress party and after the establishment of socialism in Russia in 1917, a wave of socialist ideology influenced the anti-British movement in the subcontinent. Anti-British riots increased in tempo after the massacre of hundreds of innocent men and women by the orders of a British officer in a closed garden in Jalinwalabagh in 1919. Rabindranath Tagore renounced his knighthood and Gandhi his 'Kaiser-E-Hind' in protest.

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[18] For more information on women's movements see Maleka Begum 'Banglar Nari Andolon', University Press Limited 1989.

The non-co-operative movement or *'Swadeshi Andolon'* began in 1923. Its plan of action included the abstention from government census, government jobs and government schools and colleges, abstention from British courts, refusal to enlist in the armed forces and abstention from buying British merchandise. [19]

What were the women doing at this time? As has been mentioned, the Hindu women were the more active because of their educational advancement and because they found it easier to come out of seclusion. The National Congress of India had female members since its instigation, its first such member being Swarnakumari Devi (1855-1932). However, female members were not elected as representatives till 1889, when six female delegates attended the fifth meeting of the Congress in Bombay. Annie Besanth, one of the later leaders of the women's movement in India, commented in her book 'How India Fought For Her Freedom': 'One of the delegates, Mrs. Kodombini Ganguly, was called on to move the vote of thanks to the chairman, the first woman who spoke from the Congress platform, a symbol that India's freedom would up-lift India's womanhood.' Just to note, at this time, in England, women were still excluded from state politics.[20]

However, at the time of the Swadeshi Andolon, the rights won by women were not always put into practical use. There began another movement for economic emancipation for socially discriminated women so that women could gain confidence and fight back. In 1901, Madam Kama, a Parsi women's rights activist from Bombay and a staunch socialist, travelled abroad to meet other revolutionaries. On her return she began to take active part in the move for independence and the Andolon. Her message to the women of the subcontinent was 'Remember that the hand that rocks the cradle is the hand that moulds the character. That a soft hand is the chief factor in the national life. So do not neglect that powerful hand'.[21] The women of the Indian subcontinent won their right to vote in 1935, and in the same year also won the right to sit in parliament.

The years between 1886 and 1917 are the most notable periods of the Muslim women's movement. Begum Rokeya Sakhawat Hossains's primary school for Muslim girls opened in 1913, a teacher training college for young Muslim women was established in Calcutta in 1919 and the first Muslim Women's Congress took place in 1915. Two years later, in 1917, a second, larger congress gathered in Lahore (now in Pakistan) to discuss female education and ways and means by which polygamy could be banned - the last becoming the subject of a large women's movement.

Along with the Swadeshi Andolon defying British rule, another movement was taking place. This was the '*Khilafat*' movement. The role of Muslim women is noteworthy here. In the beginning, Muslim women would congregate in Lucknow and Delhi. Bibi Abadi Begum , remembered today as Bi-Amma, was the main spokesperson at these gatherings and fund-raising for the *Kilafat* movement was done by the wives, daughters and sisters of progressive Muslim leaders. This was the first time Muslim women took part in mainstream political activity. The Swadeshi Andolon and the Khelafat Andolon both had the same goal, and thus both Hindu and Muslim women would attend the meetings of both.

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[19] See also India Wins Freedom by Maulana Abul Kalam Azad.
[20] See Manmohan Kaur Role of Women in the Freedom Movement, Sterling Publishers Ltd. Delhi 1968. And Niranjan Ghosh Role of Women in the Freedom Movement in Bengal (1914 - 1947) Tamralipta Prokashoni, Medinipur, India 1988.
[21] Kamala Dasgupta: Swadeshi Shangrame Banglar Nari. 1960 Calcutta. p 79-80.

In 1914, Bi-Amma attended her first Indian Congress meeting - as the first Muslim woman to do so. Wearing a burquah and speaking in Urdu, she gave the first speech on the necessity for Hindu and Muslim women joining forces to fight in the independence movement. In 1921, she visited different areas of East Bengal urging Muslims there to join the *Khilafat Andolon*.[22] In 1921 at a *Khilafat* meeting in Lahore, she shed her *burquah*,[23] saying that the men before her were like brothers and sons and she saw no reason to remain in purdah before them.

Between 1928 and 1935, anti-British movements gained in momentum. In Sylhet, which is now in northern Bangladesh, the *Srihatta Mohila Shangstha* (Srihatta Women's Committee) was formed in 1930. Hundreds of women came out on the streets in protest of the Salt Tax imposed by the British government, defying anti-riot orders. Sixty of the women were jailed. In fact, between 1930 and 1932, the women of Bengal fought with their lives for independence from the Raj.[24]

In 1936, the student community formed the *'Nikhil Bahrat Chattra Federation'* (the All India Student's Federation) and in 1939 while the Second World War was raging, began anti-fascist and anti-imperialist movements. The Federation also had a female students wing, which also took to the streets to protest. Seeing the success of the women's wing, of the Federation, the Muslim students were also eager to form a similar Muslim women's federation. This was founded in 1941 with the help of Begum Shaestha Ekramullah, who, along with Fatema Jinnah - the sister of Pakistan's founding father Mohammad Ali Jinnah - formed the Muslim League Women's Council. In 1942 a women's sub-committee was attached to the Jinnah's Muslim League central committee in order to emphasise not only the need for a separate Pakistan, but also the rights of Muslim women. This sub-committee looked into the needs of destitute women, health and nutrition and the need to repeal unequal laws of Muslim inheritance so that men and women received equal shares. From the first to the fourth of September 1947, a month after the independence of Pakistan and India, thousands of men and women from political, social and cultural groups congregated in Calcutta in silent protest. They joined Gandhi in his fasts, in his peace marches and in his efforts to quell the communal uprisings that were taking place in India.

The laws that were passed at that time in favour of women were:

1.The Child Marriage Restraint Act of 1929, in order to prevent the marriage of minors;

2.Dissolution of Muslim Marriages Act, 1939, which provides for, among other things, conditions by which a Muslim woman can divorce her husband;

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[22] *Khilafat Andolon*: the Kaliph of the Turkish empire was the symbolic head of the Muslim community. After the first world war, the Turkish Kaliphate was occupied by West European forces and the followers of the Kaliph in the Indian sub-continent began the protest movement called the Khilphat Andolon against the British Raj, as Britain was one of the occupiers of Turkey.
[23] *Burquah*: an item of outer clothing, usually black, covering a Muslim woman from head to toe, with a veil attached to it which covers her face. Introduced during the Ummayyad dynasty, well after the establishment of Islam in Arabia.
[24] Supra. Note 21.

3.The Bengal Maternity Benefit Act, 1939 which was introduced to regulate the employment of women for certain periods before and after child-birth and 'to provide for the payment of maternity benefit to them.'[25]

4.The Orphanages and Widow's Home Act, 1944, which provides for conditions and rules to be followed by any person wishing to establish an orphanage or home for widows;

5.The Hindu Marriages (Removal of Disabilities) Act of 1946. This Act deals with the caste system and purports to 'remove certain disabilities and doubts under Hindu law in respect of marriages between Hindu's'[26]

6.The Hindu Married Women's Right to Separate Residence and Maintenance Act, 1946. This Act provides the right for a married Hindu woman to have separate residence and maintenance from her husband if the latter suffers from a 'loathsome disease', is guilty of cruelty towards her, has abandoned her without her consent, if he marries again or if he ceases to be a Hindu by conversion to another religion.[27]

II.v. <u>After Partition (1947- 1970):</u>

The partition of the subcontinent into India and Pakistan in August 1947 saw the mass exodus of Muslims into Pakistan and Hindus into India. The fear of communal violence was real and villages and towns found themselves divided not only in geographic terms, but also in religious terms. Violence abounded and Hindus and Muslims rioted and looted each other's homes and belongings as the time for independence drew near. Hindus were no longer welcome in the states that were now Pakistan and Muslims were threatened if they did not leave the area which was now India. In all, the independence of the subcontinent resulted in the communal partition of the land.

The ruling political party in Pakistan, the Muslim League, hid behind a wall of autocracy instead of looking to the political and economic welfare of its people in both its wings. The government quelled all labour and peasant uprisings and movements for establishing democracy.

More and more persecuted Muslims were flooding into Pakistan from India. The women's wing of the Muslim League formed refugee committees in aid of these people. In 1948, the wife of the country's first Prime Minister, Begum Rana Liaquat Ali Khan, opened a training centre for young women who were taught first aid skills, the care of refugee women and children etc., to help the refugees.[28]

Unfortunately, women were again left out of political participation when the Pakistani Government firmly planted its roots in its new soil. Before independence, Muslim women were encouraged to take active part in political activities of the community. However, in an independent country they were told to revert to the old practices of purdah and seclusion. At that time there were three women's organisations in Pakistan - the Women's Voluntary Association, the Pakistan Women's National Guard and the Pakistan Women's Naval Reserve.

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[25] The Bengal Maternity Benefit Act 1939. Preamble.
[26] The Hindu Marriage Disabilities Removal Act 1946. Preamble.
[27] Section 2 of the said Act of 1946.
[28] Supra. Note 15. Pg. 138.

These social welfare organisations were run by Begum Liaquat Ali Khan for the government. Unfortunately, the main topic taught in these organisations was how women must defend their country in the face of sudden attack by India.

In 1949, the *Apwa Society* was founded by Begum Liaquat Ali Khan where women, regardless of religion, colour or creed, could join. The East Pakistan (now Bangladesh) branch of this organisation was first chaired by Begum Nurul Amin Khan. In 1950, the East Pakistan branch held its annual meeting in Dacca (Dhaka) at the Governor House. The women could not always keep silent and behind purdah, as preferred and instructed by the government of Pakistan. At the meeting, they voiced the needs and rights of the women of the country and pointed out the need for the government to address the problems faced by them. The members of the Women's Committee had fought against British rule and had played an active part in the Swadeshi Movement. They refused to keep silent on the problem faced by women in their country and were veterans of protest. Even though they supported the government party, the Muslim League, they did not accept the discriminatory attitude of the party.[29]

As a result, the government tried to infuse the need for women to take up *purdah* and stay in doors by using religion as an excuse. This however was not only for social reasons. The Muslim league appointed and encouraged thugs and hooligans in an attempt to prevent girls from going to school by instilling fear in them. The government regarded private voluntary organisations with mistrust and since the latter had to abide by rules and regulations laid down by the government, their activities were restricted considerably.[30] The women's organisations run by the government were headed by women from affluent backgrounds, who remained aloof from the 'common woman'. Even though they taught young women first aid, relief work, sewing, etc., they taught it in a very impersonal manner and from afar. Because of this, they were unable to relate with the ordinary women who made up the majority of the female population of Pakistan. Furthermore, the organisations were patronised by the women from affluent families and thus, the students and other members had little to say regarding decision making and received little help. Thus, even though the organisations began with high intentions, the women who found and ran them were unable to escape from their social boundaries.

In East Pakistan, women activists from different areas congregated in the district of Mymensingh in 1948 to form the East Pakistan Women's Society. The Society became the haven for left-leaning women activists who came from middle and lower social classes and they joined in with great enthusiasm. The chairperson of the Society was Begum Sufia Kamal, who was, and still is, a great women's rights activist, poet and social worker[31]. The second meeting of the Society took place in Dacca (Dhaka), the largest city in East Pakistan and the seat of the Provincial Government in the area. However, the Muslim League government did not look upon these activities favourably and when some of the speakers were returning home after the meeting, they were threatened and attacked by miscreants[32].

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[29] Ibid. p139.
[30] Ibid.
[31] See also Janana Mahfil : Bangali Musulman Lekikader Nirbachito Raachona (1904-1938) Shaheen Akhtar (Ed.) Moushumi Bhowmik (Ed.) Published by Stri Mandira Sen, Calcutta, India 1998.
[32] Supra Note 15. p141.

In 1948, the government banned all political groups and activities which were 'anti-Muslim League' or linked to the communist party. They began suppressing all uprisings. However, this did not stop anti-government protests. In Sylhet, the farmers and labourers began to protest and were supported by the Women's Society. When the price of rice and other basic necessities escalated in Barisal, now in southern Bangladesh, on the fifth of July 1948 the East Pakistan Women's Society took to the streets joined by many other women in the district. They ended up at the office of the District Magistrate along with shop-keepers of the bazaar. Police were ordered to attack and beat the protesters. Many women were arrested that day. Women were also arrested on the eleventh of September when the Society met at Coronation Park to put forward pleas for democracy to the Muslim League government. The meeting was surrounded by police and women sent to jail accompanied by verbal abuse and blows.

In 1950, communal riots took place in Dacca. Begum Sufia Kamal and Leila Roy of the East Pakistan Women's Society joined the Wari (now in Old Dhaka) Women's Society in protest marches and relief distribution. Women banded together to from relief groups and ultimately many more women's groups mushroomed. These groups were joined by many female and even male students of Dacca University.[33]

At one time, to prove their dominance over the East wing, the Pakistani government ordered that the state language of the country would be *Urdu*, even though the majority of the population, residing in the East, spoke *Bangla*. Ever since partition, money order forms, currency notes and postage stamps were printed in *Urdu* and English. In October 1947, some teachers and students of Dacca University managed to form the 'All-Party State Language Movement Council'. In January 1948, when the Minister for Transport and Communication visited Sylhet, he found himself faced by student groups and the district committee of the Muslim League Women's Group, demanding that *Bangla* should also be a state language. In 1951, the Language Movement began in East Pakistan protesting the government's policy of '*Urdu*, and only *Urdu*'. On 21 February 1952, students of Dacca (now Dhaka) University, professionals and the general population of East Pakistan organised a mass protest demanding that *Bangla* must also be included as a state language. Needless to say, many women took part in these protests and were promptly arrested. Police fired random shots into the crowd of protesters around Dacca University, killing many. On 28 February, the women of East Pakistan gathered to denounce the government and the killings that took place on the twenty-first. They also demanded freedom of the press, of speech and the repealing of all anti-democratic laws.[34]

As had been mentioned previously, before the partition of the sub continent, the women of the Muslim League gained a lot of support from their male contemporaries. However, all this ended after independence and the League made continuous attempts to stop all political activities carried out by women, saying that such activities were against the teachings of Islam - a common excuse still used by patriarchal societies to keep women suppressed[35]. However, there were thousands of women, specially in East Pakistan, who were being deprived of their basic rights, who were illiterate, poverty stricken and violated. For them,

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[33] Discussions with Sultana Kamal, daughter of Begum Sufia Kamal, Dhaka, Bangladesh. October 1996.
[34] See Imdadul Huq : Omor Akush O Ajker Bangladesh .
[35] See Chapter V for a detailed discussion on women's rights in the Quran.

women's organisations rallied for economic stability and jobs. Unfortunately, their activities were weakened by two factors:

1.as soon as women voiced their demands in public, state-encouraged reactionary groups would counter them by saying that their demands were anti-Islamic and their activities sacrilege;

2.there was a dearth of educated women to lead and guide the women's movement in full force.

However, this did not stop the women from making their demands heard. At the budget meeting of the National Assembly in 1948, the two women representatives brought up the subject of more jobs for women. Due to pressure in Parliament, in 1951, the Sahriat Bill 1948 was passed which created women's rights over all kinds of property, including agricultural land. In 1958, martial law was enforced in Pakistan. The government policy at that time was to keep women subjugated and this was supported heartily by the fanatic Ulema Board - a board of 'religious scholars' - which had openly declared that women below fifty years of age who did not wear the *burquah* had no right to sit in the National Assembly[36] .

Rural women of East Pakistan felt the impact of the social subjugation mentioned above and the *purdah* system. They were stopped from taking part in the social life of the village, attending '*jatra*'s' or open air theatre, the village fairs and bazaars and were even stopped from joining the Eid congregation gathered in the village mosque[37]. The situation of the professional women was nearly as bad. Nurses joined the women's movement in 1950. They were under-paid, over worked and their living quarters inadequate and few in number. The profession was, therefore, somewhat unappealing and as the necessity of proper nursing for women became eminent, the demands of the nurses for better working facilities became public. At that time, due to social stigma attached to young working women, there was only one nurse for 280 thousand babies and one midwife for 800 thousand expectant mothers.[38]

In 1955, women activists and female parliamentarians joined forces to form a pressure group. Faced by their strong demands, protest marches and public meetings, the government appointed Justice Rashid, the Chief Justice of the Supreme Court, to form an investigation commission. The work of the commission was to look into the truth of the grievances given voice to by the Front and to undertake research into the Muslim family laws of the time in order to ascertain whether they were in conformity with the teachings of Islam and maintained the dignity and respect given to Islam by women. The report was completed and submitted in 1956, the year in which Pakistan gave the citizens their Constitution and in which it declared the country to be an Islamic Republic and the year in which the price of essentials escalated and famine hit the rural areas of East Pakistan, killing the weakest members of rural society- its women and children. The findings and recommendations of the committee were not made public, due to pressure on the government from 'religious' groups, and the commission was shelved.

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[36] Salma Sobhan. Women of Pakistan. Bangladesh Institute of Legal and International Affairs. p 55
[37] Supra Note 15. p160.
[38] Ibid.

In 1958, when martial law took over the government machinery of Pakistan, it banned all forms of public assembly, societies, etc., and dissolved the National Assembly. Political leaders and student leaders, mostly from the East were arrested and all forms of political activity banned for six years. Because of this, women's organisations could no longer carry out their activities. However, in the beginning of the 1960's, women's groups in East Pakistan, such as the Wari Women's Society, the Islamic Women's Mission and the University Women's federation began to hold meetings, gatherings and literary events indoors. The topics of the day were employment for women, amendments to the Children's Act, special courts for juvenile offenders, the need for family courts, the necessity of at least one female minister in the National and Provincial government, etc..

The Social atmosphere was reactionary and encouraged by the military government. The Chief Martial Law Administrator, Ayub Khan, began his autocratic regime while women in East Pakistan publicly voiced the fear that the rights given to women under the constitution may be forgotten. They demanded that the contents of the 'Justice Rashid Commission' report be made public. The pressure put on the government by the women's groups in both wings of Pakistan finally gave birth to the Muslim Family Laws Ordinance in 1961, containing some, if not all, of the recommendations suggested by the commission.[39]

One of the most destructive movements in East Pakistan in the early 1960s was one led by Maulana Abbas Ali Khan. Along with leaders of the Jamaat-I-Islami (a fanatic political party), the Ulema Board and Maulana Sayed Abul Ala Maududi (the founder of the fanatic political organisation Jamaat-I-Islami), declared that the laws contained in the Muslim Family Laws Ordinance were in contravention to the Quran. According to him, the sections of the Ordinance which dealt with the regulations of polygamy, divorce, the age of marriage and the rights given to grand children to inherit from grandparents[40] were especially damning. On the fifth of October 1963, Begum Shamsunnahar Mahmud and Begum Sufia Kamal, along with members of different women's groups, held a press conference denouncing the statements made by Maulana Abbas Ali Khan.

In the meantime, in March 1962, Ayub Khan appointed himself president by amending the constitution and lifted martial law in June. Six seats were reserved for women in both the National and Provincial Assemblies according to Article 20 of the constitution. However, the women elected were, for the most part, puppets in the hands of the executive. The troubles between East and West Pakistan were coming to a head.

When the demand for repealing the Muslim Family Laws Ordinance was brought up in the National Assembly[41], Begum Rokeya Anwar, one of the representatives, proposed that a 15-member select committee should be formed to analyse the Ordinance and decide whether it should be repealed, amended or kept as it is. The women of West Pakistan collected fifty thousand signatures on a petition favouring the Bill. Despite vehement protests from the 'religious' groups, the National Assembly accepted the Ordinance without any amendments.

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[39] For more information regarding the political history of Pakistan see Pakistan: A Political Study by Keith Callard, Ruskin House, London.
[40] Sections 4-8 of the Ordinance.
[41] This National Assembly was elected by indirect elections, during the Ayub Khan regime, by the constitution of an electoral college.

II.vi. The Liberation Struggle (1969-1971):

The struggle for the right to self determination of East Pakistan began to increase in tempo during mid-60s. On 19 January 1969, police attacked a protest march brought out by female students of Dhaka University. On 20 January, they fired on another protest march of students killing Asad, a student leader. This resulted in strikes in the Eastern wing. The *Mohila Shongram Porishod* (Women's Action Council) was formed on 10 February 1969, whose members were mostly university students. The Council was the forerunner of the *Mohila Porishod* (discussed below) and a strong voice against the Pakistan regime and their abuse of the eastern wing.

On 22 March, Yahya Khan took over from Ayub Khan as leader of Pakistan and the situation in East Pakistan worsened. On the fourth of April 1970, Begum Sufia Kamal became the chairperson and Maleka Begum the General Secretary of the *Purbo Pakistan Mohila Porishod* (the East Pakistan Women's Council). Some of the aims of the Council were:

1.the establishment of sovereignty in East Pakistan;
2.reserved seats for women in the National Assembly in the sovereign state by popular election
3.equal pay for women workers
4.the freeing of political prisoners;
5.the establishment of a children's hospital;
6.the need to stop adulteration of food-stuff;
7.reduction of the prices of essentials;
8.the complete cessation of violations of women's rights.

On the seventh of March 1971, Sheikh Mujibur Rahman, the leader of the Awami League, the largest political party in Pakistan and mostly comprising of Bangalis, addressed a huge public gathering in Dacca, denouncing the atrocities of the Pakistani government and calling the people of the East to fight for freedom and independence. On 25 March 1971, the Pakistani army attacked East Pakistan leaving a trail of genocide and rape where ever it went. Approximately 200 thousand women were violated in different ways during the nine-month long war. Bangali collaborators of the Pakistan Army, called '*razakars*' (Urdu for 'volunteer') who were, for the most part, fanatically religious and who feared that the loss of East Pakistan would lead to the destruction and loss of the religion and the loss of their political stand, were specially helpful to the invading forces in the rural areas, which were unfamiliar terrain for the latter. In the villages they abetted in the killing of innocent lives and the reducing of women to sexual slaves for their masters. This was done by identifying homes and even kidnapping women.

According to a report by Joseph Fried in the New York Daily News dated 27 December 1971, 'A stream of victims and eye witnesses tell how truck loads of Pakistani soldiers and their hireling *razakars* swooped down on villages in the night, rounding up women by force. Some were raped on the spot. Others were carted off to military compounds. Some women captives were still there when Indian troops battled their way into Pakistani strongholds. Weeping survivors of villages razed because they were suspected of siding with the *Mukti Bahini* (the

freedom fighters) told of how wives were raped before the eyes of their bound husbands, who were then put to death.' Again, a report in the Indian newspaper, The Statesman, of 28 December 1971, titled 'International Red Cross Rescues 51 Girls' informs that 'Indian troops with the help of the International Red Cross have rescued 51 girls from various secret places in Narayanganj and Dacca cantonments in the last few days, reports UNI. Most of the girls aged between 14 and 30 were found in rooms locked from the outside by Pakistani troops before surrendering. They had been starving. The girls narrated harrowing tales of atrocities committed on them. More than 3000 girls are missing from Dacca city alone.'

Bangladesh was liberated on 16 December 1971. It was the united struggle of both Bangali men and women - their joint efforts and fears. Bangali girls and women had flocked to Gobra Camp in Calcutta to learn guerrilla war-fare, first aid and all things necessary to fight a war.[42] Many women freedom fighters were injured or martyred and numerous women helped feed and hide members of the *Mukti Bahini* and their arms. Many mothers lost sons, wives their husbands and sisters their brothers. In the words of Natalya Baranskaya ' Women will always fear war more than men because they are mothers. A woman will always have a baby, her own or her children's, in her arms. She will always be tormented by fear for her children, the fear that one day she may be a witness to their own deaths.'[43]

II.vii. The Contribution of the Women's Movement to the Legal System after Independence:

The Constitution of the People's Republic of Bangladesh was introduced to the citizens in 1972 after being approved by the Constituent Assembly. The Constitution contains Articles guaranteeing and upholding equality of rights, non-discrimination policies and equality before the law.[44]

Other laws and policies for women passed by the legislative body and other authorities after 1972 with the help of the women's movement and pressure created by them are as follows:

1.The Muslim Marriages and Divorces (Regulation) Ordinance 1974 and Rules 1975. The Muslim Family Laws Ordinance 1961 gave women the power to utilise their delegated power of divorce. The process laid down in the Family Laws Ordinance is, however, lengthy and complicated. The Ordinance and Rules of 1974 and 1975 made the process of divorce by the wife less complicated.

2.The Dowry Prohibition Act 1980 and the Dowry Prohibition (Amendment) Ordinance 1982 and 1986. This law has made the giving and accepting of dowry illegal and a punishable offence.

3.In 1976, the Government created the Bangladesh National Women's Association and also set up a women's cell in the President's Secretariat. The aims of this Association and Cell were to monitor women's rights, their violations and the development of women. Unfortunately, nothing concrete emerged from this endeavour.

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[42]Supra Note 15.
[43] Helen Exley (Ed): The Best of Women's Quotations. Exley. 1993.
[44] Such Articles are Articles 9, 10, 11, 12, 19, 27, 28, 29, of the constitution.

4.In 1978 the Ministry for Women's Affairs was established to formulate policies and programmes for development of women in Bangladesh.

5.The Cruelty to Women (Deterrent Punishment) Act 1983 and the Cruelty to Women (Deterrent Punishment) (Amendment) Act 1988 and other amending laws protecting women. The Act of 1988 lays down sections punishing those who perpetrate crimes against women . For example, there are punishments for those who traffic in women, for rape, for causing death during rape, etc. However, this law was repealed in 1995 by the introduction of the Women and Children Repression (Special Provisions) Ordinance 1995. The features of this new law are the setting up of Special Tribunals, fixed deadlines for investigations, trials in absentia and the death sentence for rape, death caused by rape, gang rape, death caused by torture for dowry and trafficking in children. Most recently, in early 1998, the Parliament introduced a new Bill, the Suppression of Violence Against Women and Children Bill 1998. This contains stringent provisions against acts of violence against women, but has its drawbacks as well. This Bill will be discussed in more detail in the following two chapters.

6.The Family Courts Ordinance 1985 and the Family Courts (Amendment) Ordinance 1989: For many years the women of this part of the sub continent had asked for the establishment of a Family Court to adjudicate issues relating to marriage, divorce, dower, custody and guardianship and maintenance. Their demands finally came to materialise in 1985. However, the Family Court is not a separate court, as they had wished. Nor is the Ordinance completely unbiased about who can seek relief in these courts.

7. The 'sunset rule' : The Proctoral Rules 1922 contain a rule regarding the curtailment of women students' movement at a certain time of the day. This 'sunset rule' as it was commonly called, crept into the University Ordinance 1973 of Dhaka University, probably because no one realised how irrelevant it was. The rule called for the attendance of women students in their hall of residence by seven in the evening, before the closing of the main gates; written permission from guardians, to be verified by the Provost, before students can remain out of the residential halls after seven; time limits for visits from relatives such as parents, brothers, sisters or husband; written permission from a local guardian before students, in groups of three, are allowed to participate in cultural activities. The female students of Dhaka University were the only ones to be burdened by this rule. Their sister students of other universities and even the Dhaka Medical College were not so tied down. The rule was deplorable and humiliating and prevented students from, among other things, studying late at the library and in study groups. In 1995, some students got together in protest of the sunset rule and demanded its repeal. A university committee was formed and guardians and parents interviewed on their opinion. The authorities finally relented enough to relax one rule- the changing of the closing time of the main gates of the residential halls.[45]

8. In 1996 a draft for a National Plan of Action for the Advancement of Women in Bangladesh was completed by the Ministry for Women's and Children's Affairs. It provides for the formation of a 42-member National Council for the development of women, under the Prime Minister as chairperson, for the advancement of women. The Government is collaborating with some non-

[45] Interview with Umme Habiba Shumi, one of the student leaders at the forefront of the movement against the 'sunset rule'. March 1997.

government women's organisations in the planning and policies of the proposed Plan of Action. The Plan of Action as seen by the Government, aims to eradicate poverty; ensure equality in education; economic policies involving more women's participation; sharing of resources; elimination of discrimination; ensuring the human rights of women and empowerment of women to work for equality, development and peace.

Apart from the above, the *Oikkoboddho Nari Shomaj* was formed in the late 1980's, which was a coalition of different women's groups, which joined in the struggle for the removal of the autocratic regime of Lieutenant General Hossain Mohammad Ershad.

III. **The Bangali Women in Bangladesh Today:**

III.i. Rural Life:

The daily life of a poor rural woman in Bangladesh revolves around home, family and animal husbandry. From childhood, she is taught to be a good and obedient home maker and wife. Being such involves submission to husband's will, bearing sons, being demure, observing *purdah*, working hard, eating after everyone else and generally keeping her family's - her fathers - 'face'. Unfortunately, abject poverty and landlessness are factors which creep in too quickly and bring the harsh facts of reality to mar the first blushes of a happy bride and introduce sources of frustration and domestic violence.

A rural woman is, in general, viewed by the male population as an inferior species; a domestic slave useful to clean, cook and bear heirs. She is a burden to her own family and, in some cases, to her in-laws as well, specially if she cannot bring a substantial dowry (illegal under Muslim law, but still practised in Bangladesh) with her or if she fails to bear sons. It is self evident that her contribution towards her family is taken for granted and enormously undervalued. Most rural women work very hard, non-stop from dawn to dusk- and have very little leisure time. They are either working in their own homes or in the homes of richer village folk for three meals a day, a few handfuls of rice and no monetary pay.[46]

As has been mentioned, almost all village women are restricted by some sort of *purdah* or the other, whether it is wearing the *burquah* whenever leaving the home, remaining within the four walls of the house and not venturing beyond the courtyard or covering the head and face with the end of the sari whenever a stranger comes. *Purdah* means women have to rely on menfolk for information and ideas and can be more controlled by their husbands. It means that women cannot leave the room of their house when strangers are sitting in the courtyard or veranda - not even to relieve themselves. A woman in *purdah* cannot attend the social aspects of village life - the open-air plays or '*jatra*' and the village councils. She remains ignorant of life around her and gleans what she can from her husband.

However, a poverty stricken woman who must leave home to work cannot afford going into seclusion, but more affluent families observe the ritual as the women do not have to leave the four walls of their homes. Poor women, in this regard, enjoy much more freedom as necessity means they have no time or money for the

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[46] Interview with some rural women at a grass-roots level workshop in Dinajpur, northern Bangladesh, April 1995.

'luxury' of *purdah*. They have, therefore, some influence over business decisions, what crops to sow and how to earn a little extra money for the family. These women are the main target of development organisations, both government and non-government. Not only are the women mobile but are also either the heads of their households - divorce and destitution being common- or their husband's agree on their working as it helps maintain the family.

Unfortunately, rural women also suffer from chronic malnutrition. The fact that they are the last to eat, do heavy domestic work and have no time to rest means that they are constantly at risk of falling ill. This is common in expectant mothers, as a general belief in rural Bangladesh is that if a woman eats less during her pregnancy, she will have a small child and thus it will be easier to deliver.[47] Men think that since they work in the fields they need all the food to keep up their strength. The son receives the second largest share while mother and daughter are left with the scraps. In most cases, women are taught this eating pattern from childhood, along with the number and amount of chores they will have to perform once they are wed.

How are rural women reacting to their supposed image of ignorance and their inferior status? According to Abecassis, some have 'completely internalised the inferior status of women so that their self-image is very low indeed and their creative spirit never flowers; they are the ones who believe that their inferiority is both real and inevitable.'[48] He further observes that 'others struggle against this process, and win some sort of self-esteem, but nonetheless become broken in the struggle - among them may be those who retreat into tyrannising the small world which is under their control. Yet others- the smallest in number- do know that they are valuable to society and to themselves and they retain some sort of creative ember. But whatever may be the internal reaction; the most common external reaction is to suffer in silence. For many there is no other practical alternative.'[49]

III.ii. Urban Women:

Women in the cities of Bangladesh are not a homogenous class. There are poor women who have migrated from the villages alone or with their spouses and families, to live in the slums and work or earn a living by begging, there are the women who work in the garments manufacturing industries and other factories and there are the ' lower middle class' and the 'upper middle class' women who live in houses that do not blow away or leak or are gnawed by vermin, who do not necessarily have to work and who receive a far better education than the former two groups have ever dreamed of.

Basically, the women in the urban areas of the country do not differ much from their rural sisters when it comes to social norms. Since women living in the city slums have come from the rural areas, they try to observe their rural habits as much as they can. Many urban women observe *purdah*, eat after serving the male members of the family, perform all the household chores and rear children. Education differs according to affordability and observance of social or family

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[47] Interview with Sabera Rahman, gynaecologist and obstetrician, director of the Mohammadpur Fertility Services and Training Centre, Mohammadpur, Dhaka, Bangladesh. February 1997.
[48] David Abecassis. Identity, Islam and Human Development in Rural Bangladesh. University Press Limited, Dhaka, Bangladesh. 1989. Pg.57.
[49] Ibid.

norms. Many women in urban Bangladesh are married as soon as they turn eighteen years of age. If they can, they continue their education from their husband's home. Families who can afford to - and who realise the importance of a 'solid' education - , send their daughters to college and university. In some cases it is a choice between further education and marriage.[50]

As in the villages, women who need to venture out to work have no time for *purdah*. There is no class difference when it comes to earning a living. Many of the working women have the freedom of making some- if not all- family decisions, running a business and educating the children. As in rural Bangladesh, a majority of the urban women who observe *purdah* are home makers. They venture out in a *burquah*, either with their husbands or with one or more other female members of the family and are either not allowed to or do not need to earn a living. In a lot of cases, it is the husband who wishes the wife to observe *purdah* - and, of course, his wish is their command. Men in urban Bangladesh also devalue a woman's contribution to the family. Sadly, it is the women themselves who set this ball into motion. Son's are pampered by their mothers, receive the best food and are indulged. This means that they mature into believing that they are superior and women have been brought into this world to look after them and be at their beck and call. It is hard for working women to swallow this without raising some argument, but most 'compromise' by taking part-time jobs and returning home before their husbands.[51]

In independent Bangladesh today, more than 118 million people live within an area of 147000 square kilometres and women constitute approximately 46% of the population.[52] Unfortunately, due to the never-changing social norms in the patriarchal make-up of the country's society and the country's legal system, the large chunk of population that women make up is totally ignored. Women are pushed into the background and classified as the poorest of the poor - whether they are rural poor or urban poor or poor in the economic or social sense of the word.

Conclusion:

The population of Bangladesh to date is more than 120 million of which 46 percent are female[53]. Approximately 80 percent of the total population live in rural areas of the country. Of the total 28.5 million civilian labour force, only 2.5million are women[54]. Furthermore, only eight percent of the 43.9 million economically active population in the age group of 10 years and above are female[55]. One may question, then what has all the women's rights movements, activism and introduction of laws achieved?

As we have seen from above, women have been both directly and indirectly involved in socio-political struggles and have contributed in the process to bring about change in society and in the formation of new 'women friendly' laws by

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[50] Results of fieldwork and survey of approximately 95 women, carried out between January and February 1997 in a slum area of Hatirpul and a low income residential (120 homes) area in Pallabi, both in Dhaka city.
[51] Supra Note 48.
[52] Statistical Handbook of Bangladesh 1997. Government of the People's Republic of Bangladesh 1997.
[53] Netherlands Ministry of Foreign Affairs: Bangladesh Sub Report 1998. p 45
[54] Ainon Nahar Mizan. : In Quest of Empowerment. University Press Ltd. Dhaka, Bangladesh. 1994. p 29.
[55] Ibid.

taking part in various movements and forming pressure groups. They have had to sacrifice and suffer a lot in doing so. However, their struggle continues in the face of a slowly-changing patriarchal system of society and they have never actually managed to break free from its powerful grasp.

As women have had to struggle in a society that has imposed, at one time or another, the system of *purdah* (seclusion), that has secluded them from education and the knowledge of the struggle of women in other countries and has excluded them from actual participation in the socio-political sector, all in order to bring about some sort of change in their socio-political and legal situation, they ought to have an active voice and active participation in the socio-political administration and decision making process of the country. In order for this to happen, there is the need for the co-ordinated struggle among different women's organisations, human rights organisations and like-minded socio-political organisations.

We have seen that some of the laws introduced were done so out of the awareness of specific social injustices done to women, for example, the Hindu Widow's Remarriage Act of 1856, the Child Marriage Restraint Act of 1929, the Dowry Prohibition Act of 1980 and the Cruelty to Women (Deterrent Punishment) Act of 1983 and the laws that followed in the same foot-steps. However, Bangladesh statute still has no statutory laws concerning domestic violence nor for the punishment of those who practice the now common crime of misusing the institution of '*fatwa*'.[56]

As to social discrimination, the lack of female public servants is explained away by the Public Service Commission of Bangladesh with the excuse that qualified women cannot be found. According to reports of 1994, there were only three percent of women in senior and middle management and six percent in junior management in Bangladesh Bank; women form less than one percent of the total police force and are debarred from recruitment as police officers in the Bangladesh Public Civil Service examinations; there are only four women pilots in civil aviation; male public servants receive family medical benefits but parents and families of women public servants are deprived from similar benefits.[57] Apart from the patriarchal trend of male dominance and discrimination in the workplace and the absence of proper facilities for women (for example public conveniences) a further absence of pro-active measures, such as the provision of housing and child care or schools may contribute to the discouragement of women from joining the public sector workforce.

A number of factors, including divorce, desertion and migration by male family members has caused an increase in female headed households - particularly in rural Bangladesh and in the small townships. Furthermore, development indicators of life expectancy, education and health show that women's status is lower than that of men. 48% of rural and 44% of the urban population live below the poverty line,[58] with women suffering from chronic nutritional deficiencies which aggravate during pregnancy. One of the reasons for this is the social, patriarchal practice of 'boy preference' where the male members of the family eat first and get the most nutrition while the women - the mothers, wives and daughters- eat what is left over.

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[56] See Chapter V of this thesis.
[57] Ain-O-Salish Kendra : Human Rights Report 1997. Pg. 7.
[58] Ibid.

As we will observe in the following chapters of this thesis, even though women have been victorious in the formation of protective laws and the amendment of others, what is desperately amiss is proper, strict implementation of these laws. In some cases, as will be observed, the laws are totally ignored as vested interest groups turn to take the law into their own hands. Due to this serious lack of implementation of laws and the social trends in Bangladesh to date, it is not possible for women to develop themselves and integrate themselves fully into mainstream society. Male attitudes always interfere, whether in the home or in public. Men should be educated and motivated along with women in order to understand that women, too, are contributors - both economic and social - and if harmed or restrained or restricted, human development takes a step in the backward direction.

Women's issues will always take a second or even third place in the area of policy planning unless they are given access to active participation in this area. Women have been partially successful in the area of legal reform, but due to the lack of social reform, implementation of laws is evidently slack. Their active participation in policy planning will enable the government to identify women's actual needs in society and enable women to gain better access to economic resources in order to alleviate their poverty. However, as has been mentioned, there is the urgent need to change the patriarchal trends which creep into the present policy planning methods.

Unfortunately, even though patriarchal trends play a great role in policy planning and decision making processes, it is not the only reason why active participation of women in such planning is missing. Later chapters will show that corruption in the government machinery, lack of implementation of existing laws and lack of introduction of appropriate laws are also some of the factors. Furthermore, the women who participate in the forefront of women's groups and lead in the policy planning within these groups, mostly belong to the elite class of Bangladeshi society. They have little idea of the socio-economic needs of poor women and the participation of women from grass-roots level in these policy-making positions is decidedly little. Due to this, the needs of the majority female population are not realised or met.

Therefore, the actual participation of women in all tiers of state machinery needs to be assured and grass-roots participation needs to be included in state policy planning by giving autonomy to the local level governments[59], and by giving rural women the opportunity to actively participate, as community representatives, in the decision-making processes. Only then will the government be pro-active to women.

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[59] Local governments in Bangladesh are four-tiered. From ascending order, they are the Village Council, Union Council, Sub-District Council and the District Council. These are supposed to be acting as autonomous bodies, with their own budgets and tax collecting power as per Article 9 of the Constitution, which states that local government institutions should be encouraged by the state. In reality, however, these local bodies are not financially empowered, since they do not have their own budgets. Furthermore, the law enforcing agencies and other government bodies in these administrative areas are only accountable to the government in the centre.

Chapter III

The Legal Status of Women in Bangladesh.

The world has never yet seen a truly great and virtuous nation because in the degradation of women, the very fountains of life are poisoned at their source.

- Lucretia Mott (1793-1880)

The legal status of women in this study has been adopted to mean the position and standing of Bangali women as determined by the laws of Bangladesh. It is particularly important to collect and examine the legal rules which make up the special provisions for women and those which are biased towards them in order to determine how far the laws - both statutory and personal- underwrite the values of today's society, how far they have contributed to the society and to what extent they have been able to contribute to the relations between the women and men of Bangladesh in both the public and private sphere.

Since the citizens are controlled by the general law of the land, which is secular in its make-up, and also by their personal family laws, it will be necessary to divide this chapter into major divisions, taking into account these variations. Civil laws, meaning the non-religious laws, will be dealt with first. These cover rights under the constitution of the People's Republic of Bangladesh , the Codes of Criminal and Civil Procedure, the Penal Code, Labour Laws and laws relating to citizenship and nationality. In general all these laws are applicable to all sections of society. However, even here there are variations arising from the different beliefs which make the Bangladesh community. For example, the provision in the Penal Code relating to bigamy will apply only to Christian men since their respective personal laws allow Muslim and Hindu men to practice polygamy. The various personal laws will be discussed next. These cover the areas of marriage, divorce, maintenance, custody and guardianship of children and inheritance. The personal laws in Bangladesh are those family laws which are applied to Muslims, Hindus and Christians of the country.

This examination of laws is vital to show that even though there have been amendments to certain personal laws and certain statutory laws in favour of women, patriarchal legislators refuse to amend laws which, if amended to give women more rights, may pose as a threat to the position of men. Such laws are those governing property rights and divorce.[1] Furthermore, bias towards women is also reflected in the way some lower courts pass judgements, specially in matters of divorce and custody, and lower court judges have also been known to occasionally dismiss personal law cases on the grounds that the plaintiff is a non-Muslim woman.[2]

Unless these biased trends are eradicated, women will not be able to fully enjoy their constitutional rights to equality before the law and equal protection of the law. Many

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[1] Laws protecting property rights are bias in both Hindu and Muslim personal laws and divorce laws are biased against women in Muslim, Christian and Hindu personal laws.
[2] This is in cases of personal law brought to the Family Court. This matter is explained in detail in the section on the Family Court in this chapter.

laws have been passed by the legislature protecting women, but unfortunately, none of them seem to be effective. This is due to lack of implementation of laws, the effects of which are discussed in detail in the following chapter. This chapter has tried to highlight that patriarchal trends have shaped the legal system of the country and patriarchal trends are responsible for the present legal status of Bangali women.

With the above discussions in mind, we will now discuss the civil laws in Bangladesh and how they affect or determine the status of Bangali women.

I. Civil Laws:

I.i. The Constitution of the Peoples' Republic of Bangladesh:

The Constitution of the Peoples' Republic of Bangladesh was written in 1972, after the country's independence in 1971. Since then, it has undergone thirteen amendments. The Constitutional Amendments relevant to this study are the Fifth, Eighth and Tenth Amendments.

The Fifth Amendment:

The Fifth Amendment to the Constitution determined the political and social framework of Bangladesh and its provisions put reigns on any progressive steps taken towards the emancipation of women. In 1977, President Ziaur Rahman caused the Parliament to pass the Constitution (Fifth Amendment) Act and ratify all Orders and Proclamations by Proclamations and orders of the Martial Law authorities - which were made while he was Chief Martial Law Administrator, prior to his appointment as President.[3] These ratifications are as follows:

1. Proclamation Order No. 1 of 1977: This added the expression *'Bismillah-ar-Rahman-ur-Rahim'* (In the name of Allah, the Merciful and Compassionate) before the preamble of the Constitution;
2. By amending the preamble by substituting ".....nationalism, socialism, democracy and secularism" by "Absolute trust and faith in the almighty Allah, nationalism, democracy and socialism meaning economic and social justice".[4]

The erasing of the all-important word 'secularism', has caused a rift in the social harmony of the country and mar the reality Bangladesh is - a peoples' republic. The words of the Proclamation have led many to believe that Bangladesh is an 'Islamic' state and this has been used in many ways to undermine not only religious minorities of the country, but also the role of women in society. It (the Proclamation) is one of the bases for biased rulings in the Family Courts, where there have been documented incidences of judges not accepting cases filed by Hindu or Christian women (stating that the Family Court is only for Muslims)[5] and is a good excuse for the Government not to ratify certain articles in the United Nations Convention on the Elimination of all forms of Discrimination Against Women on the grounds that they do not conform

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[3]Mahmudul Islam: The Constitution of Bangladesh. Bangladesh Institute for Legal and International Affairs. 1995.
[4] Ibid.
[5] See section on the Family Court later in this chapter.

with Islamic laws prevalent in Bangladesh. Unfortunately, in this matter, women of other religions are totally ignored.

The Eighth Amendment:

This added a new provision in the Constitution in the form of Article 2A, inserted by another Chief Martial Law Administrator-turned- President, Hussain Mohammad Ershad. This, too, destroys the secular cover of the country by declaring that Islam would be the State Religion . That all other religions would be tolerated and given scope to be practised reads as an afterthought. The Article reads: ' The State Religion of the Republic is Islam, but all other religions may be practised in peace and harmony in the Republic'.

The Tenth Amendment:

Article 65(3) of the Constitution originally provided for the reservation of fifteen seats in Parliament for women for a term of ten years. By virtue of the Second Proclamation Order No.IV of 1978, the number of seats for women was increased to thirty and the period was extended to fifteen years. The Constitution Tenth Amendment Act of 1990 extended the tenure for another ten years from the date of the first meeting of the next Parliament. This was a positive step towards ensuring that women are heard.

I.ii. <u>The Different Parts of the Constitution:</u>

The Constitution itself is divided into eleven 'Parts'. Those that deal directly with women are Parts II, III and V. Part II of the Constitution houses the Fundamental Principals of State Policy, Part III contains the Fundamental Rights guaranteed by the Constitution and Part V deals with the Legislature. When discussing the Constitutional Provisions of Part V, the present position of women in the National Parliament will be discussed.

a. Part II : The Fundamental Principles of State Policy:

The State Policies deal with the promotion of local government institutions, ownership of land, democracy, emancipation of workers, the provisions of basic necessities, rural development , etc. The constitutional provisions in this Part which deal with women's participation and protection are as follows:

1. special representation (as far as possible) of women in local government institutions.[6]

2. steps to be taken to ensure participation of women in all spheres of life;[7]

3. the state holds fundamental responsibility in providing the basic necessities of life and securing to the people food, clothing, shelter, education, medical care, the right to work and to guaranteed employment and the right to social security and public assistance in 'cases of undeserved want arising from unemployment, illness

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[6] The Constitution of the Peoples Republic of Bangladesh. Article 9.
[7] Ibid. Article 10.

or disablement, or suffered by widows or orphans or in old age or in other such cases;[8]

4. the State shall take measures to bring about 'radical transformation' in the rural areas via (amongst others) agricultural revolution, development of cottage industry and improvement of public health;[9]

5. the State shall take measures to prevent prostitution;[10]

6. there shall be equality of opportunity.[11]

All the above are excellent measures by which the State can look after the welfare of the women of Bangladesh, their occupation, their distresses, their health and their rights. However, the crush comes prior to all these well-meaning and encouraging provisions. Article 8(2) of the Constitution forewarns the citizens of Bangladesh that "The Principles.....shall be fundamental to the governance of Bangladesh...shall form the basis of the work of the states.....but shall not be judicially enforceable." Thus, if the state lapses in its duties towards its citizens, towards providing basic necessities, towards ensuring women's participation in all spheres of national life and fails in guaranteeing 'fundamental human rights and freedoms and respect for the dignity and worth of the human person'[12], there is no remedy for the citizens of Bangladesh in the courts of law.

b. Part III. Fundamental Rights:

As in the other Constitutions of South Asia, the Constitution of Bangladesh recognises the fundamental right to equality before the law and equal protection of the law. It further guarantees that 'the state shall not discriminate against any citizen on the grounds only of religion, race, caste, sex or place of birth.' The same Article states that women are to have equal rights with men in all spheres of the state and of public life.[13] This equality does not extend to all spheres of private life - which are regulated by personal laws and customs, which are, as will be seen, quite unequal due to social and sometimes religious reasons. Article 29 of the constitution extends equality of opportunity in public employment for both men and women, however states that the State will have the power to deem which jobs are fit for a certain sex and may bar the opposite sex from obtaining it.[14]

Despite the Constitutional guarantee that there will be no discrimination in public life or in public employment, there are very few female government officers in service in Bangladesh to date. For example, in the Secretariat there was no female Secretary. However, very recently a lone woman Secretary has been appointed in the Prime Ministers Secretariat. There are only seven lower ranking women officers out of a

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[8] Ibid. Article 15.
[9] Ibid. Article 16.
[10] Ibid. Article 18(2).
[11] Ibid. Article 19.
[12] Part II of the Constitution of the Peoples' Republic of Bangladesh. Article 11.
[13] Article 27, 31, 28 and 28(2) of the Constitution respectively.
[14] Article 29 (c).

total number of 1084 First and Second Class employees in the Secretariat of the Government of Bangladesh.[15]

Furthermore, as has been mentioned in the first chapter, of the 1,097,334 positions in government and semi-government institutions, women occupy only 7.40% of the positions, that is, there are only 83,133 women in government and semi-government employment.[16] Local government institutions are entrusted to elected bodies called municipalities in urban areas and 'Union Porishod' (Union Councils) in the rural areas. The chairmen and nine members are elected directly whereas three women were previously nominated by the elected members in each Union. This provision for the election of women members had been criticized by women's groups as being undemocratic. In light of this, the Local Government Representation Act 1997 was adopted by Parliament on the fifth of September 1997. This provided for three reserved seats for women to be elected directly to three tiers of local government, viz. The *Zilla Porishod* (District Councils), *Union Porishod* (Union Councils) and *Gram Porishod* (Village Councils). Thus, women will no longer be nominated by the Chairman of these Councils but elected directly by the people. Furthermore, in the next elections for urban local bodies in 1999, which include four city corporations and 119 municipalities, seats will be reserved for women - who will be elected directly.[17]

Number of Ist and II nd Class Employees in the Government Secretariat[18]

Kinds of Secretaries	**Total Number**	**Number of Women**
Secretaries	64	-
Joint Secretaries	295	02
Deputy Secretaries	662	03
Assistant Secretaries	60	02
Total	**1084**	**07**

In the courts of Bangladesh, women have, through competitive examination, been appointed to offices in the subordinate courts, both as Magistrates and Assistant Judges, but none have reached the higher echelons of the High Court and appellate Divisions of the Supreme Court of Bangladesh. In the Magistracy, there are 2000 male magistrates and only 192 female magistrates while in the subordinate courts there are only 56 Additional and Assistant female Judges while there are 505, higher ranking, male Subordinate Judges[19].

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[15] Data collected from the combined Periodic Report of the Ministry for Women and Children Affairs, for the UNCEDAW. March 1997.
[16] Statistical Handbook of Bangladesh 1996. Government of the Peoples Republic of Bangladesh.
[17] Human Rights Report 1997. *Ain-O-Salish Kendra*, Dhaka, Bangladesh.
[18] Section Analysis Team Report (SNAT). *Ain-O-Salish Kendra*. March 1997.
[19] Supra note 17.

While women have an equal right to vote in elections, a large number of women are deterred from exercising this right by social constraints, ignorance, political influence, fear of violence or coercion. In the June 1996 Parliamentary elections, it was reported in various news media that in some Unions (district sub-divisions) women were prevented from casting their vote. For example, in the Pirganj area of Rangpur district, in northern Bangladesh, 4500 women were discouraged from voting by the local *mattobors* (headmen) and fatwa practising imams. The excuse they gave was that women have culturally, traditionally and religiously never been allowed to vote.[20] Again, in the Mahamaya Union of Feni in south west Bangladesh, it has been reported that a Pir's (holy man or soothsayer) decree has prevented women from voting for the last fifty years. However, women finally managed to break this tradition and approximately 7000 women went to the polling stations to cast their votes in the national elections of 1996.[21]

Thus, despite the expansive scope of these guaranteed rights, equality between men and women in public life has traditionally been considered incapable in the social framework of Bangladesh. Equality is absent from personal laws as well. On this point of equality, it is pointed out by some 'religious' enthusiasts, that what is 'equal' in Constitutional guarantees is part and practice of religious norms guaranteed by Article 41 of the Constitution, which states 'Subject to Law, public order and morality every citizen has the right to profess, practice or propagate any religion.....'

It is, however, possible to bring about equality with creative and relevant interpretation of the constitutional provisions. Here, the argument in favour of personal laws over the Constitution fails since their application is subject not only to law, but also to public order and morality and the changing relations between men and women in modern society. For example, in the case of Nelly Zaman Vs. Ghiyasuddin, following an abusive marriage, the petitioner sought to exercise her right to a delegated divorce (in Muslim Law, a wife has limited power to divorce her husband and even then, this said power has to be delegated to her by her husband during the time of marriage and is stipulated in the marriage contract). Her husband challenged the legality of the divorce and pleaded restitution of conjugal rights. The lower court held that the woman had no such right to divorce at her own will even though her right was clearly established in the marriage contract. On appeal, the High Court Division of the Supreme Court of Bangladesh held that "the very concept of the husband's unilateral plea for forcible restitution of conjugal rights has become outmoded and.....does not fit with the State and public principles and policy of equality of all men and women being citizens equal before the law and entitled to be treated only in accordance with the law as guaranteed by Articles 27 and 31 of the Constitution."[22]

c. The Legislature: Women in Parliament

According to a United Nations Development Fund for Women (UNIFEM) report prepared for the Fourth World Conference on Women in September 1994, world wide, women hold only ten percent of parliament seats and women account for only five to ten percent of the world's formal leadership. In Bangladesh women hold a

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[20]Reported in the Bangla newspaper *Shongbad*. 6 June 1996.
[21] Reported in the Bangla newspaper *Jonokontho*. 15 June 1996.
[22] 1993 Dhaka Law Reports Vol. 45.

very small percent of the seats in the National Parliament. Out of a total of three hundred and thirty seats, the Constitution provides, in Article 65 Clause 3, that thirty seats will remain reserved for women.

Apart from the Prime Minister -the second woman to hold this post in Bangladesh- and the Leader of the Opposition, only eight women were elected directly into parliament at the June 1997 national elections. In the present Cabinet, four of the 24 ministers are women. As has been mentioned, eight women members of Parliament were elected directly and, of course, thirty women were selected by the sitting members of Parliament for the said 'reserved seats'. Women's groups have been campaigning for the quota of women's seats to be raised, so as to increase the awareness and interest in women's rights and violence against women and for the direct election of women from the constituencies instead of selection by the sitting MP's. The Constitutional provision of reserving 30 seats for women in Parliament is due to expire in 2001. However, political parties have yet to take up any stand for the direct election of women into Parliament and no Bill has yet been tabled in Parliament regarding any changes for 2001.

The aim of having women Members of Parliament is to uphold the State Policy of 'equal opportunity' as guaranteed by Article 19 of the Constitution and to let women voice their problems and grievances. However, in practice, women's status and affairs are rarely brought to light on the floor of the National Parliament. This, unfortunately, is because the different political groups vying for the reserved seats put up candidates who are willing to support any political move for power planned by the political party who supports them. Thus, the candidate is in the position and frame of mind to counter-oppose and criticise any move initiated by their opponents rather than bring about suggestions for the effective eradication of violence against women and the safeguard of women's human rights. It is evidently difficult to bring about any change in policy favourable to women.

The topics that have been brought to light in Parliament during the last five years and which regard violations to women's human rights, are polygamy, segregation and the introduction of a new law, the 'Repression of Women and Children (Special Provisions) Ordinance' in July 1995. The proposals made by the women MP's regarding the first two (polygamy and segregation) are ample proof of how women are in Parliament only due to their strong affinity towards their respective political party, and how reluctant they are towards change. The proposals are as follows:

1. Polygamy: Section 6 of the Muslim Family Laws Ordinance 1961, lays down several conditions a man must fulfil before he enters into a polygamous marriage. The first condition, contained in Article 6(1) is that 'no man during the subsistence of an existing marriage shall, except with the previous permission in writing of the Arbitration Council contract another marriage.....' In 1993, Mrs. Farida Rahman, Member of Parliament of the then ruling Bangladesh Nationalist Party (BNP), proposed a change in the above law. It was to become known as 'Farida Rahman's Bill', wherein she proposed that the Court of the Assistant Judge should take over the responsibility from the Arbitration Council and that it would be left solely to this court to decide whether the man would be allowed to marry again. The proposed Bill totally ignored the fact that the same section of the Ordinance lays down that the consent of the present wife is mandatory as well.

For all practical reasons, the above proposal does little to alleviate domestic violence which erupts from polygamous marriages . Where other 'Muslim' countries such as Tunisia, Morocco, have banned the practice of polygamy, where women in Bangladesh are neglected and deprived of physical and mental comforts due to their position as co-wives and where a majority of women at the grass-roots level - the social position where the practice of polygamy is rampant - agree that polygamy should be made illegal[23], this sort of proposition can only be seen as a step backward, and has been the source of criticism and protest. The Bill was, due to the criticism and protest, never passed.

2. Segregation: In November 1992, Begum Hafeza Asma Khatun, Member of Parliament for the Jamaat-I-Islami, a fanatic political party, proposed that there should be a separate medical college for female students and an all-women university. She also proposed that there should be segregation in the work place as well. Her reasons for these proposals was that she was against the practice of men and women working side by side in maternity wards during deliveries and operations. This sort of proposal violates Article 28 of the constitution which calls for equal participation in all spheres of public life and that 'no citizen on grounds only of .....sex.....be subjected to and restriction or condition with regard to access to any place of public entertainment or resort or admission to any educational institution.'[24]

Segregation of institutions of higher learning will ultimately lead to the segregation of subjects and opportunities into those 'suitable for women' and those unsuitable, and thus restricted, for women. However there are, as in many countries of the world, all-women schools, high schools (classes XI and XII) and even a private medical college only for women.

I.iii. <u>The Code of Criminal Procedure 1860 and the Code of Civil Procedure 1908:</u>

The Code of Criminal Procedure (CrPC) and the Code of Civil Procedure (CPC) , along with the Penal Code, the labour laws and some other branches of our legal system are legacies of the colonization of the Sub-continent by the British empire. These Codes contain some provisions for women. Section 497 of the CrPC, for example, makes 'womanhood' one of the grounds on which bail may be granted, along with ill health and other such misfortunes. Again, this Code also contains a provision which shows just one example of how a woman's identity is merged into her husband's. Section 198 of the Code provides that when a girl or a woman is defamed, her parents or her husband are also included in the matter as 'persons aggrieved' and are capable of bringing action against the defamer. It is truly unfortunate that a woman's good name and virtue are not her concern alone.

The Code of Civil Procedure of 1908 (the CPC), lays down in its Sections 56, 130 and its Order33 rule 1, that women are exempted from arrest for debt and also from appearance in court. This latter provision of the CPC is acknowledgement of the fact that many women lead lives behind the *purdah* as '*purdanishin women*', or women

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[23] Responses taken from interviews and workshops with approximately 150 women from the grass-roots level, conducted in four districts of Bangladesh- Dinajpur, Jessore, Rajshahi and Dhaka - in March, April and July 1994.
[24] Article 28(3) of the Constitution.

who do not appear before men other than their husbands, brothers, sons and fathers and who do not move in mixed society. In the matter of service of summons, particular care has to be taken to ensure that the service may not be ineffective. In the case of District Board of Tippera Vs. Sarafat Ali, a case where the service of summons was attempted on a woman who was a *purdanishin*, and where no adult male member of the family was present, the said service of summons was held to be inadequate.[25] There has, however, been dicta in several cases from which it is clear that the assumption should not be made that the woman in *purdah* is incapable. Nonetheless, it is considered that due to her immobility she is at a disadvantage. The attitude of the courts make it clear that the so-called privileges of *purdah* in fact militates against the effective exercise by women of their intelligence and judgement and instead of protecting them these legal provisions help only to draw women away from asserting their rights under the law.[26]

I.iv. Labour Laws

If we look at the various rules and regulations regarding the employment of women as part of the labour force, we find further examples of this protective attitude towards women. In the Bengal Payment of Wages Rules, it is laid down that no deduction should be made from the wages of a person under fifteen years of age or of a woman for breach of contract.[27] In the Workmen's Compensation Act it is laid down that where compensations have to be distributed, 'No payment of lump sum as compensation to women or a person under legal disability shall be made otherwise than by deposit with the Commissioner'.[28]

The Shops and Establishments Act, the Tea plantation Labour Ordinance 1962 and the Factories Act 1934 all lay down variously the rule that women are not to be employed between the hours of eight in the evening to six the following morning, or other than seven in the morning to eight in the evening on the same day. This provision was, perhaps, intended to protect women from the roving eyes of the male workers of the evening shift and the (male) security guards on night duty. It is also an euphemism for prostitution.

There are also provisions in these various labour laws relating to the provision for various facilities in the workplace for women. In some cases these provisions are mandatory. For example, Section 7 of the Factories Act states 'In every factory where more than fifty women workers [are employed] there be provided and maintained a suitable room or room for the use of the children under the age of six of such women.' In others, an option is given to the Government, but not to the employer. For example, the Plantation Labour Ordinance - applicable to the tea gardens in Sylhet and Chittagong - provides, in Section 12, that 'the.... Government may make rules providing that in every tea plantation wherein forty or more women workers are employed .....the employer shall provide and maintain in such manner and of such standard as may be prescribed, rooms for the use of children of the women workers as are below the age of six years.' There are, as well, provisions of

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[25] Dhaka Law Reports 1951. Vol.3.
[26] Salma Sobhan: Legal Status of Women in Bangladesh. Bangladesh Institute for Legal and International Affairs 1991.
[27] Section 16(1) of the Bengal Payment of Wages Rules.
[28] Section 8(1) of the Workmen's Compensation Act.

different kinds which protect women from exposure to dangerous machinery such as the provisions which bar women from being employed in any part of a cotton processing factory where a cotton opener machine is at work.[29] There are also various provisions for maternity leave and benefits - which restrict both employer and employee. Section 3 of the Bengal Maternity Benefit Act 1939, for example, states that 'No employer shall knowingly employ a woman during the six weeks immediately following her date of delivery.' These provisions are all meant to be steps towards the protection of women in the workplace, and also include facilities for hygiene, ventilation, fire prevention, food and general security.

Despite all these provisions safeguarding women employees, it cannot but be deplored that there is a general tendency to include women with the physically and mentally incapacitated and with minors. The existence of provisions and regulations like '....no payment of lump sum as compensation to a woman or a person under a legal disability....', those barring women from working with dangerous or complicated machinery has the effect of rubbing in the idea and belief that women will never rise from the lowest kind of labour and will never be fit for serious responsibilities.

Furthermore, the growing trade in the garments manufacturing sector has led to a wild scramble for the hurried construction of factories to meet with foreign demands. These factories hardly have any women-friendly facilities. There are no separate rooms for nursing mothers or children, poor sanitation and ventilation and no fire escapes. This has led to a large number of deaths due to suffocation and the mad crush of workers trying to flee from a burning factory through limited exits. A majority of the victims of industrial fires in the garment manufacturing sector are women who are employed as seamstresses, button hole makers, cutters etc., all using machines. Most of the fires are due to faulty wiring or a general neglect of the factory premises and its machinery by the owners, managers and overseers. For example, in 1996 five fires broke out in more than seven garment-manufacturing factories due to electrical short circuits and other causes, leaving approximately 75 persons wounded and 12 dead[30].

Again, in this popular sector of garment manufacturing, women are grossly underpaid. According to a study by Michel Chossudovsky[31], the factory price on one dozen shirts is US$36 - US$ 40. All the equipment and raw materials are imported and the shirts are retailed at approximately US$22 a piece in the United States of America. The study carried out shows that female and child labour in the factories in Bangladesh is paid approximately US$20 a month, at least fifty times less than the wages paid to garments workers in north America.[32]

I.v. Nationality and Citizenship:

As has been mentioned time and again, the Constitution of Bangladesh advocates equality of men and women in all spheres of public life. However, a passport seems to be a very 'personal' thing, as the nationality laws will show.

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[29] Sections 24 and 29 of the Factories Act 1934.
[30] From data compiled by the *Ain-O-Salish Kendra* Investigation Unit.
[31] Michel Chossudovsky.: The Globalisation of Poverty. Zed Books Ltd. 1997.p 88.
[32] Ibid.

In applying for a passport, women in Bangladesh still have to fill in a form which includes the question 'Fathers/Husbands/Guardians Name'. Men have to fill in their fathers name too, but they are not asked their 'Wife's/Guardian's Name'. Furthermore, a woman is exempted from police verification if she can be described as 'Housewife' in her passport . A woman can travel on her husband's passport (like a weak dependent) but a husband cannot (need not?) travel on his wife's passport.

Not only do various provisions in the Citizenship Act of 1951 provide that the wife's nationality follows that of her husband (in Section 10), and that even after his death she retains the right to acquire the nationality he would have acquired if he had taken the right steps, but also that marriage is a partial emancipation of women in that 'A woman who has been married.....shall be entitled to be ...registered....whether or not she has completed twenty one years of age and is of full capacity' (Section 10). Citizenship by birth or descent only follows the father and citizenship by migration is granted to the wife on her husband's migration, but not vice versa (Section 6). Children are legally compelled to take their fathers name and nationality at birth. According to law, a woman does not loose her nationality by marrying a foreigner, but cannot transmit her nationality to her children.

On September 1997, the High Court Division of the Supreme Court of Bangladesh in the case of Malkani Vs. Bangladesh[33] upheld the statutory provisions regarding citizenship. Section 5 of the Citizenship Act 1951 and Article 2 of the Bangladesh Citizenship (Temporary Provisions) Order 1972, seem to be above the Constitutional guarantees of equality. The Act of 1951 states 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' and the Order of 1972 provides that a person is a citizen of Bangladesh if that persons 'father or grandfather was born in the territories now comprised in Bangladesh and who was a permanent resident of such territories on the 25th of March 1971, and continues to be so resident'. The Supreme Court failed to remove the existing discriminatory practice against women by upholding these discriminatory citizenship laws, even though the Constitution is the highest law of the land. The case is currently pending in the Appellate Division of the Supreme Court.

I.vi. The Penal Code:

The Penal Code prevalent in Bangladesh contains chapters and provisions aimed at protecting women from various kinds of violence. Some of the different 'brands' of violence it lists are kidnapping, wrongful confinement, trafficking, slavery, assault, battery, causing miscarriage, rape, acid-throwing and forced labour.

The chapter of the Code dealing with the topic of rape is another instance of how statutory law lowers the status of women. It is settled law that in any case of rape, the evidence of the prosecutrix must be corroborated. This means that an independent witness must testify to the truth of the allegation. There are cases where the victims of rape have not been examined by the magistrate or where the doctor has failed to examine the victim thoroughly. Such cases will be described at length in the chapter on violence against women.

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[33] Writ Petition No. 3192 of 1992. Judgement delivered on 01 September 1997.

The position of the controversial issue of abortion remains uncompromising. The Penal Code lays down various punishments for anyone who voluntarily causes a woman with child to miscarry, if other than for the purpose of saving the woman's life. Thus abortion is legal if it is carried out to save the mother's life. This particular section of the Code (Section 312) the punishment is more severe if the mother is 'quick with child'. Thus, according to the law of Bangladesh, the foetus is a separate individual and the mother has no control over it- but she may bring an action against any person found guilty under the Code. Therefore, gynaecologists performing abortions under the more clinical name of 'menstrual regulation' obtain the written consent of the patient and her husband prior to the procedure.

It may be noted here that in 1972, however, medical institutions were allowed by the then government of Bangladesh to perform abortions on Bangali women who had been raped by the Pakistani occupation army during the liberation war of 1971. The reason was that women did not want to bear proof of their rape.

The flinging of acid - usually sulphuric acid or battery acid - on the bodies and faces of young women and girls became such a popular means of 'revenge' by jilted or spurned lovers or suitors that in the 1980's a new provision was added to the Penal Code to prevent this sort of act of violence. However, this has not stopped the crime and it is still a means of 'paying back' specially in the small towns in the different districts of Bangladesh.[34]

I.vi. Other Laws Protecting Women:

There are some other laws which echo the provisions of the Penal Code, with modifications on the punishment for specific crimes, etc..

a. The Suppression of Immoral Traffic Act 1933:

This Act lays down that any person who detains any female under the age of eighteen years in any house or room or place where prostitution is carried out will be punished. This reflects the sentiments of the Penal Code on trafficking in women and wrongful confinement.

b. The Women and Children Repression (Special Provisions) Ordinance 1995:

As the date shows, the Ordinance is a very recent one, promulgated by the Legislature in the light of the escalating crime of trafficking in women and children and rape. Trafficking in women and children has become a lucrative trade and the Ordinance provides for special tribunals, speedy investigations, trials to be held in the absence of the accused and the non-granting of bail during investigations. This Ordinance also provides the death sentence for rape, causing of death due to rape, gang rape and the causing of death due to torture in order to obtain dowry. The punishment for other related crimes under this Ordinance ranges from a minimum of seven years to life imprisonment.

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[34] See Appendix III showing two victims of the crime of acid-throwing.

The Ordinance overrides the provisions of a previous 'Cruelty to Women (Deterrent Punishment) Ordinance 1983', modifying the punishments. However, in the above laws we see a repetition of the different chapters of the Penal Code, with different variations as to the length and mode of punishment. A sort of 'variations on a theme'. In the chapter on violence against women, we will see that it is not the laws that we are lacking - we seem to have too many as it is- but their proper and effective application.

c. The Repression Against Women and Children Bill 1998:

In response to the demand to improve laws to contain violence against women, the Government of Bangladesh contemplated harsher punitive measures against offenders which override the latest Women and Children Repression (Special Provisions) Ordinance of 1995. The Ministry of Law, Justice and Parliamentary Affairs set up a Committee to propose amendments to the Ordinance of 1995. Ironically, the Committee was made up of bureaucrats from the said ministry and only two women. It came up with the proposal for a Repression Against Women and Children Bill 1998. However, the amendments suggested did not take into account the diverse experiences of violence against women, including domestic violence. The proposed legislation has been criticised as being ambiguous, since it 'ignores the problem with procedures and it derogates from human rights, particularly because it incorporates sections for arbitrary arrest and punishment of terrorist activities against the state, which are not relevant to violence against women. The major cause of non-enforcement attributed to the inefficient and partisan investigation by the police and their lack of seriousness in filing charge sheets has not been addressed by this legislation.'[35] More about this Bill has been discussed in the following chapter on Violence Against Women.

I.vii. The Jail Code:

The Jail Code of 1923 is not a single volume but a collection of laws and regulations controlling the jail system in Bangladesh. This Code was, as the date shows, introduced by the British colonists in the Indian sub-continent. The Jail Code mirrors the security and protective measures provided for female inmates. Some of these measures are necessary and some cater for the specific characteristics only women bear.

Female warders are required to supervise women prisoners, who are segregated from theor male counterparts by separate cell blocks. There are provisions for 'Class A' female prisoners to act as warders, but only if they have served more than half of their sentence. Even if there is only one female prisoner in the whole jail, there must be a female warder for her. Children under six years of age are allowed to stay with their mothers behind bars, and the Code also provides for separate hospital facilities for female inmates.

There are also provisions in the Code which allow a female inmate to obtain a specific quota of oil for her hair and to ask for a female friend to stay with her if she is the only female prisoner in the jail.

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[35] Supra. Note 15 ,p17.

II. **Personal Laws:**

The institutions of marriage, divorce, dower, guardianship and custody of children and inheritance are all dealt with under personal or family laws which run parallel to the statutory laws of Bangladesh. The main religions of the country are Islam, Hinduism and Christianity, Islam being the predominate religion. In the Tribal areas of the Country there are Buddhists and Animists, but since this discussion deals with the Bangali women of Bangladesh, i.e., those non-tribal women of the plains, the three main religions will be dealt with only.

II.i. Muslim Personal Laws:

Approximately eighty five per cent of the population of Bangladesh are Muslim by faith. Of these, a vast majority belong to the Hannafi School of Islamic law. Muslim laws which govern the Muslim community of Bangladesh have been modified by statute, custom and case laws. It is in this light that we shall first discuss the efforts made by Muslim women towards changing the laws and then discuss the status of women under their personal law.

Before the emergence of Bangladesh, the country was part of Pakistan and thus governed by its laws and regulations. Women realised that as family law prevailed in all matters, that, coupled with a strong feudal and patriarchal society would ensure that they would have no equal legal status. From as early as the 1950's, women began to organise and discuss ways and means of legal reform. In 1965, they drafted a Bill, with the help of female members of the state legislature, in which they demanded equality in marriage and divorce, the banning of polygamy and equality in inheritance and guardianship. However, at that time, Pakistan was under martial law and none of these demands for equal treatment were recognised. Women declared that if their demands were not met, they would abstain from voting. Some procedural reforms were then made - in the area of polygamy, divorce and inheritance. However, these were still biased against women, as will be seen.

The liberation war of 1971 left many war orphans. In 1972, considering the welfare of these children, women were instrumental the passing of an adoption law (it must be noted here that adoption is not recognised in Islam). This was, however, repealed later on the alleged claim that there was corruption in the system and the Muslim fanatics, who had gained quite a footing in the political sphere of the country, protested that the children were being taken out of the country and being brought up as non-Muslims[36].

The women's movement in Bangladesh has given the country's women the Marriage and Divorce (Registration) Act 1974 - to prevent wayward husband's from denying their marriage, the Dowry Prohibition Act, 1980, to prevent the practice of demanding and giving dowry to a groom (this is still in practice, however, and is one of the most common sources of domestic violence), the Cruelty to Women (Deterrent Punishment) Act, 1983 which was repealed by the Repression of Women and Children (Special Provisions) Ordinance 1995, and the Family Courts Ordinance, 1985. Even though the creation of these statutes were instigated by women and

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[36] Supra. Note 26.

'women pressure', they were drafted and passed in a patriarchal social and legal system, thus resulting in biased provisions and in an atmosphere of reluctance to introduce change.

There are several areas in Muslim Law where, despite some amendments, a woman enjoys less advantages than a man and which restrict her rights. These are the areas of marriage, divorce, guardianship and custody of children and inheritance.

i.1 Marriage:

The concept of marriage in Islam is similar to a legal contract. There is a formal offer to marry and a formal acceptance by the parties concerned, the consent of both parties - the man and the woman - is necessary, and, like usual contracts, it may be broken under certain conditions. Even though an adult Muslim person does not require the consent of her/his parent if she/he wished to marry, in practice, some parents decide on the choice of husband/wife for their children. It is taken for granted that the daughter or obedient son will consent to their choice without dispute. Unfortunately, marriages where the couple have eloped are frowned upon by society. In a marriage where the woman has been forced to marry against her will by either her parents or her husband, if she denies giving consent to the marriage in the courts of law, the latter will take pains in finding out whether her facts are true - and also whether she had known the groom intimately or was friends with him prior to the marriage. Since the formalities of a Muslim marriage are extremely few, the courts, it would appear, are reasonably cautious about holding that there was a marriage where one of the parties denies that such a contract was never made.

The law regarding the registration of marriages is also very strict. The Muslim Marriages and Divorces (Registration) Act 1974 states, in Section 3, that 'Notwithstanding anything contained in any law, custom or usage, every marriage solemnised under Muslim Law shall be registered in accordance with the provisions of this Act.' Although the law is observed , the ignorance of the necessity of registration of marriages and divorces means that many women, specially in the rural areas of Bangladesh, are hoodwinked into sexual relationships with men whom they have thought to have married, only to be discarded by the latter on the denial that any marriage had taken place. Ignorance of the necessity of registration of marriages is held to be evidence that there was no marriage.

It must be mentioned here that even though the permission of a parent or guardian is not necessary for an adult Muslim to marry, Muslim men have the right, under Islam, to marry either a Muslim woman or a woman of the Christian or Jewish faith (a '*kitabbiyah*' or one whose religious laws come from a divine Book). However, Muslim women can only marry Muslim men. If a Muslim woman marries outside her faith, the marriage is considered void *ab initio* and the offspring illegitimate. She, of course looses her dower as well, as the marriage was not per Islamic rites. A Muslim male may marry a woman of Hindu or Buddhist faith, but the marriage would be regarded as 'irregular' under Muslim Law. Even though the children born of such marriage would be considered legitimate, the parties would not be able to inherit from each other.

It is, indeed, cruel that a woman cannot marry outside her faith and is thus barred from 'free choice'. The only recourse she has under such circumstances, is to

renounce her religion and marry under the Special Marriages Act of 1872 where one of the requirements of marriage is that both parties have to renounce their respective faiths[37]. The preamble of the Act states categorically that ' Whereas it is expedient to provide a form of marriage for persons who do not profess the Christian, Jewish, Hindu, Muslim, Parsi, Buddhist, Sikh or Jaina religion and to legalise certain marriages, the validity of which are doubtful...' However, on doing so, a Muslim woman (who renounces her religion) looses her right to inheritance, her dowry (seen as a security) and her religious identity.

Marriage of minors: despite statutory laws, the Child Marriage Restraint Act of 1929 to be exact, strictly prohibiting the marriage of minors - of women below the age of 18 and men below the age of 21 - the marriage of minors still occurs in rural Bangladesh. Under Muslim Law, a woman is a minor till she is 16, but the provisions of statutory law are prevalent. However, a woman married as a minor may by exercising what is called her 'option of puberty', abide by or repudiate her marriage on attaining puberty or majority. In the case of Mst. Daulan Vs. Dosa, this option was consciously defined as 'Option of puberty under Mohammedan Law is only a right given to a minor wife to avoid the marriage contract, entered into by her guardian, on becoming *sui juris*'[38]. The woman must prove that the marriage was agreed upon by her parent/guardian, that it was solemnised when she was below 15 years of age, that she has repudiated the marriage before she reached 18 and that the marriage has not been consumated.

If the woman did not know of her marriage till she attained the age of 18 (as such marriages involve the residing of the minor wife in the home of her parents till she reaches puberty or majority), the option may be exercised as soon as she learns of her marriage and within a reasonable time.

Polygamy: The concept of polygamy began as a result of the death of men on the battlefields of ancient Islam. Men would marry war widows and war orphans so as to provide them with shelter and act as their guardian and protector. However, the Quranic injunction was that all wives had to be treated equally. This injunction can be seen as a sort of hidden deterrent to those who looked at the practice of polygamy as a way to procure or marry more wives when the present ones bored them.

The absence of religious wars and changes in socio-economic conditions and values, has resulted in quite a number of Muslim majority states abolishing the practice of polygamy altogether. Laws in Tunisia, Morocco and Iraq have declared polygamy illegal. Unfortunately, instead of banning the practice altogether, the Government of Bangladesh has sanctioned it even further by passing a law to regulate it.

There are two main reasons why a man practices polygamy in Bangladesh today - and none of these reasons are justifiable. One of the reasons centres on the existing wife's inability to produce a male child or her inability to produce any children at all. Such deficiencies are always blamed on the wife and woe betide any woman who dares even suggest that her husband may be at fault! The second reason is clearly, and ironically, stated by Amina Wadud- Muhsin as ' to sanction men's unbridled lust: that if a man's sexual needs cannot be satisfied with one wife, he should have

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[37] See Chapter II .
[38] Dhaka Law Reports (WP) 77. Vol.8.

two. Presumably, if his lust is greater than that, he should have three and on until he has four. Only after the fourth are the Quranic principles of self-constraint, modesty and fidelity to be executed.'[39]

Section 6 of the Muslim Family Laws Ordinance 1961, lays down five conditions a man must fulfil prior to entering into a polygamous marriage. These are:

a. he must first submit an application seeking permission to the Union Chairman - along with a prescribed fee - stating his reasons for the proposed marriage
b. He requires the written permission of the Arbitration Council (which receives his application via the Chairman)
c. he requires the permission of his existing wife - and must state her consent in his application to the Union Chairman.

Unfortunately, the blind belief that a Muslim male can have four wives at any time regardless of the circumstances, prevails in the practice of polygamy. The above rules are ignored and men enter into polygamous marriages arguing that the Quran allows them to have four wives. They are completely oblivious to the fact that, due to psychological and economic factors (poverty), they will not be able to fulfil the Quranic warning that they must treat their wives equally. Thus, in reality, we see that those villagers or urbanites who would like to think that they are following the Muslim Family Laws Ordinance, usually ignore the opinion and plight of their existing wife or threaten or beat her into submission. One of the most common rural practices is sending the wife back to her parent's home while the husband goes off to get married to a younger, prettier village belle. The first wife is rarely called back into her husband's home - or else she is ordered to return, only to be treated like a slave or a domestic worker. Sometimes, the Union Chairman is bribed into agreeing a polygamous marriage, or else he, too, is ignorantly proud of the fact that Muslim men can marry four times and there are no bars to this. Due to these unorthodox practices, the courts are liberal to women who have, either voluntarily or involuntarily, left their homes due to the fact that their husbands' entered into polygamous marriages without their permission. The courts of law are not adverse to granting such women maintenance from their husband's in such a situation.

Fazlur Rahman, on the practice of polygamy in ancient Islam, states ' Unlimited polygamy was strictly regulated and the number of wives was limited to four, with the rider that if the husband feared that he could not do justice among several wives, he must marry only one wife. To all this was added a general principle: You shall never be able to do justice among wives, no matter how desirous you are (to do so) [Quran IV:3,128]. The overall logical consequence of these pronouncements is a banning of polygamy under normal circumstances. Yet as an already existing institution polygamy was accepted on a legal plane with obvious guiding lines that when gradually social circumstances became more favourable, monogamy might be introduced. This is because no reformer who means to be effective can neglect the real situation and simply issue visionary statements. But the later Muslims did not watch the guiding lines of the Quran, and, in fact, thwarted its intention'.[40]

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[39] Amina Wadud-Muhsin.: Quran and Women. Penerbit Fajar Bakti SDN. BHD Kuala Lumpur. 1994. p84.
[40] Fazlur Rahman. Islam. Second Edition. University of Chicago Press.p.38.

Therefore, the law in Bangladesh has, unfortunately, refused to stamp out the evils of polygamy and make its practice illegal. Even though subsequent marriages without notifying the Arbitration Council or taking the permission of the existing wife, are punishable with fine and imprisonment, some unwilling wives, however, settle for their husband's desire to enter into a second (or even third) marriage in order that they may not be destitute or have to live with the stigma of divorce - divorce still regarded as a social downfall for both the woman and her parents in social Bangladesh. A preventive measure has been initiated in a few marriages in Bangladesh where, in the *Kabin Nama* (the marriage contract) it is included that the husband will not, during the continuance of the present marriage, enter into a subsequent one. However, such a practice is not widespread and, as has been mentioned, polygamy is considered as something taken for granted by men.

The *Kabin Nama:* On the subject of the *Kabin Nama* or the marriage contract, even though there is space for both the bride and the groom to sign (as in an ordinary contract), in many cases, a senior male member of the bride's family - a grandfather or paternal uncle - may act as her witness and sign the document on her behalf.[41] However, he must seek her permission, in the presence of witnesses, to do so. Thus her signature remains conspicuously absent from the marriage contract. However, she may go to the office of the marriage contractor - the *quazi* - with her husband and sign the document in the marriage register then. By paying a small fee, the couple can obtain a copy of the contract in both Bangla and English.

The conditions laid down in the *Kabin Nama* are not all unbiased. For example, there is the question whether the bride is a maiden, divorcee or a widow, while no such question is asked of the groom. It seems not to matter whether he is divorced, a widower or is getting married for the first time. Furthermore, there is the controversial clause mentioning whether the husband gives his wife the delegated power to divorce him.

Unfortunately, in a society which is, for the most part, poverty stricken, and where parents' of infant daughters still worry about the responsibility thrust upon them, women tend to be given into marriage without their consent and may even be forced into unsuitable marriages- sometimes even as co-wives in a polygamous marriage - just to relieve the parents of another burden.

Dowry and Dower: Dowry is any money or property promised to the groom in consideration of the marriage. It is, in fact illegal under the Dowry Prohibition Act of 1980 but its practice is still in vogue in the guise of 'presents to the groom'. Sections 3, 4 and 5 of the Act make the giving, receiving and demanding of dowry illegal and liable to imprisonment and fine. Furthermore, the offence is a non-bailable one. The demanding of dowry continues even after the marriage and the wife whose parents cannot meet the demands of her husband is subjected to domestic violence, which can even lead to death. She suffers not only in the hands of her husband but also in the hands of her in-laws. The practice of demanding dowry is rampant in Bangladesh, where large promises are made by the bride's father - ever grateful of finally seeing his daughter wed - which cannot be completely fulfilled. These unfulfilled promises are usually the main cause of dowry-based violence where women are physically and mentally abused.

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[41]Supra Note 35.

In a recent case of Salam Mollik Vs. The State,[42] the husband demanded a dowry of Taka 50,000 in January 1991, even though the couple had been married in 1987. Because his wife was unable to come up with the money, he beat her and their minor daughter and sent them to her paternal home. He refused to take her back. The High Court held that the defendant had committed an offence under the Dowry Prohibition Act 1980. Again, in the case of Rezaul Karim Vs. Mst. Taslima Begum[43], it was held, by the High Court Division of the Supreme Court, that demanding money by the husband from the brother of the wife, after marriage, for taking the wife to his (the husband's) house was a prima facie offence under the Dowry Prohibition Act of 1980.

Unfortunately, due to an immense backlog of cases in the lower courts, there have only been two cases under the Dowry Prohibition Act heard in the High Court between 1991 and 1996.

On the other hand, Dower is what is given to the bride by the groom's family as a consideration for the marriage. it is considered a kind of security for the bride, and is payable on demand. In the case of Atiqul Huq Chowdhury Vs. Shahana Rahim[44], it was held that ' dower in a Muslim marriage forms an inseparable part of the terms of the Kabin Namah and thus, as the Kabin Namah is intended to be registered.....so is the dower.' The amount of dower is usually determined by the current monetary rate, the amount of dower received by the bride's married sister/sisters or, if she has no sisters, the amount received by her maternal aunts. It is also measured by the status and position of the bride. In most marriage ceremonies, the amount of dower is a hotly disputed subject, where the bride's family state an amount which is refuted by the groom's family who state a lower amount. A compromise is usually settled upon which leave both parties grudgingly satisfied. It is small wonder that dower is sometimes called bride price.

Dower is usually divided into two parts, prompt and deferred. The prompt portion of the dower is given to the bride before the marriage has been consumated - usually during the marriage ceremony after the contract has been signed. The deferred portion is payable later either on demand or in the case of dissolution of marriage either by divorce or death of the husband. However, according to Section 10 of the Muslim Family Laws Ordinance 1961, where no details regarding the mode of payment of dower are specified in the marriage contract, the entire amount is presumed payable at any time the wife demands it, much to the (probable) disadvantage of the husband!

Now, the question which arises is : does the institution of dower lower the status of women or does it protect it? This has been the topic of contention among many women. Women of independent means tend to feel that this lowers the status of women - since they themselves earn a living and do not need their 'husband's money'. However, in rural societies where women are generally dependent on their husbands for support and even in the urban areas where women are house wives, the

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[42] Dhaka Law Reports (1996) 329 Vol. 43
[43] Dhaka Law Reports (1988) 360 Vol. 40
[44] Dhaka Law Reports (1995) 301 Vol. 47

thought that they have monetary security in the form of dower is a comforting one. Also, since the rest of the dower has to be paid to the wife on the dissolution of marriage, i.e., if her husband divorces her acts as a useful deterrent as well.

i.2.Divorce:

Divorce is a field where the most flagrant inequality between husband and wife exists. As mentioned, the husband has the right of unilateral divorce, while the wife has a delegated power to divorce.

Section 7 of the Muslim Family Laws Ordinance 1961, lays down the procedure by which a Muslim man may divorce his wife. Sub-section 1 states that ' Any man who wishes to divorce his wife shall, as soon as may be after the pronouncement of talaq (literally 'I divorce thee') ....give to the Chairman notice in writing of his having done so and shall supply a copy thereof to the wife. There are no specific grounds or reasons for a divorce mentioned anywhere in the Ordinance. Indeed, a man does not need any grounds on which to divorce his wife. However, if she is expecting a child, he shall have to wait until the pregnancy ends till the divorce becomes effective. Ninety days must lapse from the sending of the notice to the Chairman, in order to finalise the divorce. This is a precaution in case the parties to the divorce change their minds and do not wish to go separate ways after all. After the lapse of ninety days the divorce becomes final.

Where the husband is allowed by law to divorce his wife without any grounds whatsoever, the plight of a wife is totally the opposite. According to the Dissolution of Muslim Marriages Act of 1939, there are specific grounds which a woman must prove in order to divorce her husband. These conditions are listed in Section 2 of the Act and are as follows:

1. that the whereabouts of the husband have not been known for a period of four years;
2. that the husband has neglected or failed to provide for her maintenance for a period of two years;
3. that her husband has illegally taken another wife;
4. that her husband has been sentenced to a period of seven years or more;
5. that the husband has failed to perform, without reasonable cause, his marital obligations for a period of three years;
6. that the husband was impotent at the time of the marriage and continues to be so;
7. that the husband has been insane for a period of two years or is suffering from leprosy or a virulent venereal disease.

To add injury to the insult, in the matter of the husband being impotent, the court, before passing a decree of divorce on that ground, will first satisfy themselves of the physical condition of the husband by ordering him to satisfy to the court 'within a period of one year from the date of such order that he has ceased to be impotent, and if the husband so satisfies the court within such period, no decree will be passed on the said grounds.'[45]

Thus, not only are the women's chances of obtaining a decree bracketed into specific categories, while a man can divorce his wife at any time he pleases - and for any

[45] Section 2 Dissolution of Muslim Marriages Act 1939.

reason- the court must also be satisfied that her reasons for divorce are genuine, thus putting her rights under further outside control. It is bad enough that she only has the power to divorce her husband if he had delegated such power to her in the marriage contract. To add to the misery of the wife, if she instigated the divorce, she has no right to maintenance from her husband - and there is no system of alimony in Bangladesh either. Such restrictions and checks on a wife's right to instigate a divorce are further proof of male control of women's human rights.

Sultana Kamal comments on the conditions of divorce thus: ' The weakness in the Muslim Family Laws Ordinance, 1961, is that not only is the second marriage not made void, but that the right to unilateral divorce is not effectively curbed, so that any woman opposing her husband's remarrying, in an system where there is no alimony for a divorced woman and where she will rarely have been given an appropriate education to enable her to earn her own living, runs the risk of destitution. It is true that the social attitude contributes to this dismal state of affairs, but the situation can be considerably improved by reform law.'[46]

Sultana Kamal is correct in pinpointing social attitudes as a root cause as to why few women opt for divorce and remain in a turbulent marriage - the economic factors, the social stigma attached to divorced women and the fact that the thread of 'family values' runs strong in Bangladeshi families- all weigh against the woman. Legal reforms are urgently required as the laws for divorce prevalent in Bangladesh today can hardly be called fair, specially where the Constitution advocated equality before the law.

Maintenance after divorce: the case of Hefazur Rahman Vs. Shamsunnahar Begum[47] sums up the husband's duty to maintain his ex-wife. The learned judge held that 'a person after divorcing his wife is bound to maintain her on a reasonable scale beyond the period of *iddat* for an indefinite period, that is to say, till she loses status of a divorcee by remarrying another person.' Therefore, a husband is bound to maintain his wife not only during the ninety-day period (starting from the filing of the divorce suit) after which the divorce becomes final (iddat) but until she remarries and loses her status as a divorced woman.

i.3. Custody and Guardianship of Children:

In Islam, there is a careful distinction between custody and guardianship on one's child or children. One would be tempted to compare the two to the terms 'possession' and 'ownership' respectively. The mother is never entitled to the guardianship of her children. This right lies with the husband and, after him, his father and brothers. However, the mother is responsible for the care and custody of her children in the event of divorce. The son is kept in his mothers custody till he is seven years of age and a daughter till she reaches puberty and a father is responsible for the maintenance of the children while they are in their mother's custody. The economic status of the mother is ignored and the law overrides all efforts of a father to claim custody of his children before they reach the 'proper' ages. In the case of Mst. Hurbai Vs. Usman , where the father claimed, and was refused custody of his

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[46] Sultana Kamal: *Law of Muslim Women in Bangladesh*. Dossier 4.Aug-Sept. 1988. Women Living Under Muslim Laws.
[47] Dhaka Law Reports (1995)54. Vol. 47

minor daughter on the grounds that his wife was poor and had to work, the court held ' there is no doubt that compared to the father, the appellant is poor, and because of that very poverty she has to work. It is however clear that the mere fact that a mother is poor and has to work for her living can never be allowed to operate to deprive her of her right of custody of her minor children, to which she is entitled under the personal law applicable in this case.'[48] A mother, however, may lose custody of her children, specially of her daughters, if she remarries 'a stranger', that is, someone who is not barred to the children by the rules of consanguinity.

The above, therefore are the basic rules of custody and guardianship. But these have been modified not only by statutory law - the Guardian and Wards Act - but also by a fairly substantial amount of case law. It is laid down in the Guardians and Wards Act of 1890, that the courts have stated that these provisions of custody and guardianship are for the benefit and protection of the child, and that it is the courts paramount duty to consider the welfare of the children over the rights of the parents. In the case of Abu Bakar Siddiq Vs. Abu Bakar Siddiq, where the child was suffering from a rare disease and the mother was a doctor, it was held by the Appellate Division of the Supreme Court that ' the principle of Islamic Law has to be regarded, but deviation therefrom would seem permissible as the paramount consideration should be the child's welfare.' It has been held by the Courts that the remarriage of the mother outside the permissible parameters is not an absolute reason for depriving her of the custody of her children[49]. It has also been held that where the children have reached the age where the custody of the mother ceases and they were placed under the custody of the father, it was still advisable to let them continue in the care and control of the mother as the father had remarried and it was felt by the court that the children's interests would not be well looked after by the stepmother. The father was still responsible for paying for his children's maintenance, as maintenance only ceases when the children are being held from him illegally[50].

One may think that since the law is so clear in this aspect, the custody of the child will automatically vest in the mother on divorce. Unfortunately, cases dealing with custody of children more often than not come to court, usually brought by the father who tries his best to prove that the mother is totally incapable of looking after her children, usually stating that she is of 'immoral character'. In such a case, the welfare of the child is usually considered by the court but the decision of the learned judges differ - usually depending on the weight of evidence, the performance of the lawyers and the ideology of the judges in whose court the case has been heard. Two similar cases with totally opposite results can be stated to illustrate this.

In the case of Ayesha Khanam Vs. Major Sabbir Ahmed[51], the plaintiff, a soldier's wife, spent most time with her parents while her husband, the defendant, was transferred to various parts of the country. The defendant was abusive and the plaintiff decided to apply for a divorce and followed the appropriate legal steps, undaunted by threats of dire consequences from the defendant. In 1992, the same year in which the divorce went through, the plaintiff witnessed the defendant drag their minor son into a waiting taxi from the latter's school. The plaintiff applied for a

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[48] Dhaka Law Reports (WP) 1964. Vol 16 p. 209.
[49] Dhaka Law Reports (1955) Vol.7 p. 95
[50] Mst Hamida Begum Vs. Syed Mashaf Hussain. 10 Dhaka Law Reports (1958) Pg. 196
[51] Dhaka Law Reports (1994) Vol. 46. p 399

writ of habeus corpus in the High Court Division of the Supreme Court. It was held that the plaintiff had custody of the child till he was seven years of age. The Court further held that 'the personal law of the parties and the child's welfare doctrine are not in conflict on the question of custody and even if they were, the welfare doctrine would have precedence.' Therefore, the Court decided that the welfare of the child was paramount and that keeping the child in the custody of an abusive parent would be detrimental to the child.

The second case is the unfortunate incident in the life of of S[52], a British National (whose father is Bangladeshi) who had been married to a Bangladeshi national in 1984. She has four children. S's husband had abducted all four children while the family were on holiday in Bangladesh in 1995. He then issued her with a divorce notice and forced her to leave the house. He took the children out of the private school they were enrolled in and took them to his village home where the eldest (a son) was enrolled in the local *madrassah* and the next two children, both girls, remained at home. The youngest son was barely 18 months old at the time.

S sought refuge in her fathers home in Dhaka. She sued for the recovery of her children and spent may days in court, not allowed to talk to or meet her children whose ages at that time ranged from 12 years to 18 months. The divorce took place, but even then she was not allowed access to her children. Finally after appealing, she was allowed to see them for two hours at her lawyer's chambers, with her husband and his lawyer present. In S's own words 'Sitting in that court, I felt that in Bangladesh it is a criminal offence for a mother to want her own children. I was quite surprised that the children were not given the choice to say who they would like to stay with. After four weeks, I eventually received an order giving me custody of my three younger children, but not my eldest child. My ex-husband then went to the Supreme Court and had the High Court's order stayed. So I was left with a few pages of paper and no children again!.....Anyway, for the last 16 months I have been seeing my children two days a week for six hours at my lawyers home. Up till today, I have not been allowed to keep my children with me for one single night.'[53]

Thus, it will be seen that the court, too, gives biased decisions in the case of custody of children. It came as a surprise to all involved in the case for S when the Appellate Division of the Supreme Court decided in favour of the father, despite the law stating that a mother has custody of the child till a certain age and time - and despite the fact that the father had been strongly proved to be a morally corrupt person wholly incapable of bringing up young children in a decent manner.[54] It has been decided by precedent that 'a mother is not only more tender, but also better qualified to cherish a child during infancy, so that committing the care to her is of advantage to the child.'[55]

That the mother can never have guardianship of her child obviously dates back to the patriarchal laws of tribal and feudal pre-Islamic Arabia. Here, again, the modifications of the Guardians and Wards Act come into play. Under the Act, a

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[52] Her identity has been concealed as her second case for custody is still pending in the Family Court.
[53] Interview taken on 22 February 1997 at the Bangladesh Institute of Legal and International Affairs.
[54] I assisted in the case on behalf of S with my seniors, during its instigation in 1995.
[55] Rahmatullah Chowdhury Vs. Helali Begum. Dhaka Law Reports (SC) 1968. Vol.20.

mother can always apply to the court to be appointed guardian of her children. The benefit a mother would gain from this is that she would not be deprived from their company. In the case of Abu Bakar Siddiq Vs. Abu Bakar Siddiq, it was further held by the Appellate Court that departure from the rules of Muslim law was justifiable on the basis of lack of uniformity among the different schools of Islamic law and on the circumstances of the case. The mother's right was upheld because, according to the Court, there was room for difference in opinion on the issue and the father's right to custody could 'not have any claim to immutability. That the mother can never be the guardian of the child is a legacy of the patriarchal laws of pre-Islamic times. However, under the Guardian and Wards Act 1890, a mother can always apply to the court to be the guardian of her children.' However, as was held in Mehrun Hossain Vs. Nazrul Islam, 'Mother is not the legal guardian of the immovable property of her minor children though she may be in charge of the same.....she is nothing but a 'de facto' guardian having no power to convey to any other any right or interest in the the immovable property.'[56]

i.4. Inheritance:

The body of laws governing inheritance which are followed by the Muslims in Bangladesh have originated straight from the edicts of the Quran and there has been little modification.

Originally, in pre-Islamic days, tribal laws permitted that only the male agnates could succeed to property. No women, however near in degree, was ever an heir. Muslim law made women, as well as men, competent to inherit. There is a list of what are known as the 'twelve Quranic heirs', of whom eight are female. They are the wife, mother, daughter, full sister, uterine sister, consanguine sister, son's daughters and grandmother of the deceased. Not all inherit simultaneously, there being priorities within the list.

However, since the Quran 'is to be likened to an amending act rather than an exhaustive code'[57], women were not given parity in the matter of their shares and they inherit are given one half of the share of the male. This may seem an unfair equation - and indeed it is- but in the rural areas of Bangladesh, it is commonplace for a woman to give up her inheritance for the right to visit her father's home -now occupied by her brother or shared, along with any land, among her brothers and herself - once or twice a year. This is a sort of security which is based on the pretext that she will be looked after by her brother if left destitute or widowed. However, even when she does not forfeit her right to inheritance formally, in most cases she is lucky if she receives more than a token usufruct from her share.

Some justify this unequal division of inheritance by arguing that since the son has to work hard to earn a living, has to look after his parents in old age and has to give his wife a dower, it is only fair that he receive double of what is given to his sister on the death of his father. Others support this division by saying that women usually return to their paternal home when their husband's go abroad to work, or return there after they are divorced or widowed. Thus, the brother deserves more since he has to look after his sister and her family under the circumstances. The most common argument

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[56] Dhaka Law Reports (1994) Vol 46 p. 86

[57] A.A. Fyzee.: Outline of Muhammedan Law. 1974. p 381

in favour of this equation is, however, that since the wife will inherit from her husband anyway, she does not need a large share from her father's property. What such staunch supporters forget, however, is that a husband, too, inherits from his wife - and here too, his share is more than what a widow would receive from the estate of her dead husband. However, in answer to this, too, some say that a woman does not have much property anyway, so it is only fair for the husband to inherit a larger share upon her death. This, actually, is the crux of the debate.

The rationale that a son inherits twice the sum inherited by that of a daughter is, however, not fixed in all Islamic schools. The said ratio is part of the rules of inheritance under the Sunni sect of Muslims (and under the Hannafi School). In the Ithna-e-Asharia school, for example, the Quranic injunctions have been construed more in the spirit in which they were intended as underlying principles, rather than the more strict Hannafi way of taking them literally. This means that there is a possibility of advocating a change in the laws of inheritance. In this day and age, where women are contributing members of a family as well, the arguments in favour of the discriminations they face regarding inheritance are definitely not justifiable.

The sole fundamental change brought about in the laws of inheritance is by virtue of the Muslim Family Laws Ordinance 1961. The rule had been that where a child pre-deceased his/her parents, the grandchildren would not inherit. This rule had sometimes led to hardships and has been seriously criticised. By the Ordinance, the grandchildren in such a case were made competent to inherit what their deceased parent would have inherited had she/he been alive. Section 4 of the Ordinance clearly states that ' in the event of the death of any son or daughter of the propositus before the opening of succession, the children of such son or daughter, if any, if living at the time of the succession opens, shall per stirpes receive a share equivalent to the share that such a son or daughter, as the case may be would have received'.

The chapter on inheritance under Muslim Law seems like a gross injustice to Muslim women. It would be fair, therefore, to ease the pain - albeit a little- by quoting Coulson on the lot of Muslim women in general. He says ' There has been in modern times an understandable tendency to exaggerate the picture of Muslim women labouring under the heavy shackles of traditional law. For, by the elaboration of such device, as the deferred and suspended and delegated repudiation, the law had evidenced a position concerned to establish some kind of equilibrium between husband and wife, and the miserable lot of Muslim women in practice has often been the responsibility of society.....rather than the direct result of the terms of the Shari'a law itself.'[58]

II.ii. Hindu Personal Laws:

Law, as understood by a Hindu, is a branch of *'Dharma'*, a term derived from the root ' to support' or 'to maintain'. Dharma means law or duty or ' the essential quality of a person or thing'.[59] Like Muslim Law, Hindu Law is believed to be of divine origin. The law is divided into two schools : Mithakshara and Dayabhaga. In West Bengal and Bangladesh, the Dayabhaga school of Hindu Law is followed.

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[58] Coulson.: *Islamic Family Law.* Changing Laws in Developing Countries. Pg. 255. Edited by J.N.D. Anderson.

[59] M. Rakshit. : The Principles of Hindu Law. Signet Press Ltd. Chittagong. 3rd. Edition 1985.

The rights of women have been curtailed under both the schools of Hindu law, and specially in the Dayabhaga school. For example, under Muslim Law, a mother comes before a father in the order of succession, whereas, in the Dayabhaga school, the father's position is paramount.

There have been instances of the importation of English Ideas into Hindu Law, changing the strict observances of certain inhuman ceremonies such as 'sati' or widow burning, and giving Hindu women certain rights. For example:

1. A widows estate is generally described as a life estate or life interest and some of the laws of English life estate are now applied in this area. According to ancient Hindu law, a widow was expected to use the property inherited from her husband with moderation, as after her death the property would revert to her husband's successors (and not hers). Now, on the analogy of the English life tenant, she is not bound to make any such savings.

2. Laws which were introduced by the English colonisers in the Indian Sub Continent included:

    a. the Freedom of Religion Act
    b. the Hindu Widows Remarriage Act
    c. the Religious Endowment Act

Thus, modern Hindu Law has lost most of the tenets and doctrines of ancient Hindu law.

ii.1. Marriage:

A study of the legal rights and duties of a Hindu woman requires an understanding of the role marriage plays in her life. The subservience of a Hindu woman is not only directly to God, but also indirectly to her father and husband. Marriage seems to be her destiny from both social and religious point of view. The paramount of patriarchal duty is for a father to get his daughter married. 'Hindu marriages are seen as a holy union for the performance of religious duties and is a sacrament'.[60] According to Brierly in his 'Major Legal Systems of the World', : 'Marriage regarded as sacrament by the Hindu religion was traditionally analysed in Hindu law as a gift of the wife by her parents to the husband; the wife being the object of the contract, did not have to consent. Marriage was indissoluble and polygamy was authorised'. The same prevails in Bangladesh today, though polygamy is not regarded as enthusiastically by Hindu men as by their Muslim bretheren.

Further, the religious character of a Hindu marriage is seen from the fact that the marriage is supposed to create an indissoluble union between husband and wife - which will last beyond the grave. It is for this reason that there is no divorce in Hindu marriage laws, and thus it is totally unlike Muslim marriage laws which consider such unions a contract which can be broken. However, in India the introduction of a divorce law has made the dissolution of Hindu marriages possible. Unfortunately, the law is not applicable to the Hindu community in Bangladesh.

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[60] All India Reports (Bombay) (SC)81. Vol. 32

Hindu widows can now remarry under the Hindu Widows Remarriage Act introduced by the British in 1856. No religious ceremony is necessary and a civil marriage suffices. However, under the general principle of Hindu Law, if a widow remarries, she cannot retain the property of her previous husband. Thus, a widow's right to inherit her husband's property is conditional on her capacity to confer spiritual benefits on her dead husband. She loses such right if she remarries.

Child Marriages: Child marriages are still valid and desirable by custom. However, the introduction of the Child Marriage Restraint Act in 1929 has restrained such practices. Unfortunately, the Act does not affect the validity of such a marriage under Hindu Law and in most cases (again in rural Bangladesh) it is ignored. Hindu girls have no option of repudiating their marriage once they reach puberty. As per Hindu law, every Hindu has the right to marry, irrespective of his age, physical or mental health or plurality of wives. Hindu women are given no choice, since the bride's consent to the marriage is deemed unnecessary. However, in Bangladesh today, some Hindu women are asserting their rights as to when they will marry and whom they will wed.

Since marrying off one's daughter is a paternal duty, the father's estate is charged with the wedding expenses of the unmarried girl. If she is of a very young age when she is married, her father remains responsible for her maintenance till she attains puberty. For example, in the case of Sudhindra Chandra Vs. Debesh Chandra[61] , which involved a family dispute over property owned jointly by several brothers and where Rs. 10,000 was claimed by the sons of one brother towards the marriage of their sister, the subordinate judge held that the marriage expenses would come out of the joint property. This rule was upheld by the learned judge of the High Court where the co-owners appealed.

ii.2. Maintenance:

A Hindu husband is under a legal obligation to maintain his wife, minor son, unmarried daughter and aged parents, whether he possesses any property or not. A wife is entitled to be maintained by her husband. However, in order to be maintained by him, Hindu law says that she is bound to reside with her husband and discharge her marital duties. If she quits him on her own accord, she cannot claim separate maintenance.

As soon as a Hindu women marries, she becomes the responsibility of her husband and his family. All her expenses and maintenance are on their shoulders. In the case of Matilal Vs. Brajabashi[62], it was held that 'under Hindu law, a daughter on marriage ceases to be a member of her father's family and becomes a member of her husband's family and she is, as has been stated, entitled to be maintained by her husband and, after her husband's death, out of her husband's estate, but if the husband leaves no estate, then her father-in-law, if he has got sufficient property of his own is morally, though not legally, bound to maintain her, but after his death she acquires a legal right to be maintained out of his estate'.

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[61] Dhaka Law Reports (1961)232 Vol. 13
[62] Dhaka Law Reports (HC) (1960) Vol.12 p147.

Gaur, in his book 'The Hindu Code' quotes from the ancient Hindu jurist, Manu, 'Their father's protect them in youth and their sons protect them in age; a woman is never fit for independence'.[63]

ii.3. Divorce:

As has already been mentioned, divorce under Hindu law in Bangladesh is not recognised and thus impossible. To try and counteract or 'neutralise' the ill-effects of a marriage turned sour, a Hindu may have several wives and, unlike the Muslim tenets, there is no provision for equal treatment. Nor is a husband's unequal treatment grounds for demanding relief. However, such an ill-treated co-wife may leave her husband's house and would be entitled to maintenance.

ii.4. Guardianship and Adoption:

The father is always the guardian of the children, regardless of their age. A mother has rights, but inferior to those of the father. The father's rights under Hindu law regarding the guardianship of his children are an extension of his patriarchal rights which have, however, been modified by the Guardian and Wards Act, where, as has been stated earlier, emphasis has been laid on the welfare of the child.

The guardian of a child had extensive rights to deal with the property of the minor. These rights are much wider than those given under the Act or those enjoyed by a guardian under Muslim law. The Indian law on this is modified. However, since it has not crossed borders and entered Bangladesh, Hindu guardians here still enjoy this advantageous position in respect of their wards' property. Another advantage a Hindu father has over the mother is the ability to appoint a guardian of his children by will. The mother has the right of guardianship merely by way of trust and is thus unable to delegate it.

Muslim law does not recognise the institution of adoption, though childless Muslim families in Bangladesh do adopt children. An adopted child under Muslim law does not inherit from his adoptive parents on their death. However, the institution of adoption in Hindi law plays a vital role. Adoption here is not for the fulfilment and satisfaction of parental needs, but for the spiritual benefit to the father's soul upon his death.

A woman who fails to produce a son can adopt one - only after receiving permission to do so by her husband. When a widow adopts after her husband's death, to appease his departed soul she must have ample proof that before his death he had permitted her to adopt. Since only the son plays such a pivotal role in the life and death of the father (a son sets his fathers funeral pyre alight to assure the former goes straight to heaven), daughters are not considered good adoption choices.

The permission or consent of the natural mother is not necessary. It is the father who gives his son up for adoption. There is no restriction of age and the only instruction is that the natural mother should not be one the adoptive father could not have married. A widow is divested of her widow's estate (the property she inherits after

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[63] Gaur: The Hindu Code. p 281.

her husband's death) on her adoption of a son. She may, however, inherit from her adopted son as if he were her natural child.

ii.5. Inheritance:

The Dayabhaga school of law which governs Hindus in Bangladesh recognises succession as the means of inheritance. The right of inheritance under this school arises from 'spiritual efficiency'. People who can spiritually benefit the deceased are the most entitled to succeed. Every co-parcener of a Dayabhaga family takes a definite share in a joint family/ancestral property so that it passes to his heirs on his death and not to succeeding co-parceners.

Obviously, women are not in the 'most favoured' category. Widows, daughters, mothers and even paternal grandmothers are competent to inherit, merely due to the fact that they may have sons and grand-sons who will perform the rites necessary for the salvation of the soul of the deceased.

The Widow: After the passing of the Hindu Widows Right to Property Act, 1937, the widow is now entitled to inherit the property with her son/sons and she will inherit the same share as him. The interest she inherits is called the 'widow's estate'. However, under the Act, a widow is not entitled to get agricultural property as part of her inheritance. She can only receive maintenance from that. However, it must be noted that in Sylhet, the north-east Division of Bangladesh, the widow receives a share in agricultural property by virtue of the Assam Women's Right to Property (Extension to Agricultural Land) Act 1943. This is because, Assam, an Indian state is situated in the north eastern area above Bangladesh, and Sylhet was part of it before joining East Pakistan in 1947. During the Raj, the influence of the Act spread into what is now Sylhet and it has remained in practice since.

Of course, when a Hindu widow remarried, she loses all interest she inherited in her deceased husband's estate. This disability does not bar her from owning property outright. For example, in the case of Rabeya Khatoon Vs. Mohendra Chandra Mondol[64], where the appellant widow married a Muslim and converted to Islam, it was held that she 'by her remarriage forfeited that property she inherited from Fatik', Fatik being her deceased (Hindu) husband. Under the Dayabhaga school, a husband may make a gift to his wife outright. This gift is included in the category of property called '*stridhan*' (women's property). This is the wife's property alone, given to her by her parents, her brother or a relative at the time of her marriage, or gifted to her by her husband. All such property is covered by the Hindu Women's Right to Property Act 1937.

Therefore, a widow is entitled to maintenance from her husband's estate unless she does any one of the following acts:
1.she remarries;
2.she lives apart from her deceased husband's family for immoral or improper reasons.

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[64] Dhaka Law Reports (1960).Vol 12 p. 638.

However, a widow has no power to transfer her interest, except for legal necessity. Upon her death, her estate does not go to her heirs, but to the next heir of her deceased husband, known as a 'reversioner'.

The Daughter: A daughter cannot inherit if her mother is alive. Thus, in default of the widow, the daughter succeeds. The daughter also takes limited interest in the estate of her father. On her death, her interest reverts to her fathers heirs, the reversioners.

In the case of daughters, unmarried ones get priority over those with sons, since the father has died before fulfilling his paternal duty of getting them wed. Married daughters with only daughters of their own, barren married daughters past their child-bearing age and widows without sons are blatantly excluded from inheritance, as they have failed to produced sons for the appeasement of the departed one's soul. However, a barren, married daughter can stop inheritance of her father's property by a reversioner if she adopts a son, with her husband's permission. An 'unchaste' daughter is banned from the line of inheritance. However, once the estate is vested on her, it cannot be divested by subsequent unchastity.

It is to be noted here that under Dayabhaga law, unchastity of a wife, daughter or mother excludes a female from inheriting from a male, but not from inheriting from another female. Thus, an 'unchaste' woman can inherit stridhan.

From all that has been written about the legal status of Hindu women, it can easily be seen that all the bias and disabilities she faces stems from her marriage and the almost compulsory duty to produce sons. However, Indian legislature has taken steps in reforming at least part of the Hindu (orthodox) law relating to the status of women. There is, thus no reason, why Bangladesh should not do the same for its Hindu population and why the law here should lag behind.

II.iii. Christian Personal Law:

The Christian community in Bangladesh is a very small one and is governed by the religious norms brought to them by Catholic missionaries during the British Raj and by the British legislators in the Subcontinent at that time. A majority of the Christians in Bangladesh today are Roman Catholic, and thus, not all members of the community will observe the laws relating to divorce for Christians in Bangladesh. The laws that have been framed by the Victorian legislators for the Raj reflect the anxiousness of the legislators to protect men and women where as a result of conversion or mixed marriages, the Christian partner was at risk. When we observe the laws, specially the divorce laws, it will be seen that the importance of saving a soul- specially that of an erring wife - is very much in evidence.

iii.1. Marriage:

The marriage of Christians in Bangladesh is governed by the Christian Marriage Act of 1872. The age of marriage, according to this law is over 16 years for the man and over 13 years for the woman. However, in reality, such 'young' marriages do not take place for all practical purposes.

A Christian woman under the Act of 1872, who marries a non-Christian and by the rites of her husband's religion, is deemed not to have contracted a valid marriage, even though the marriage may be recognised and deemed valid in the husband's religion. The purpose, it seems, is to protect a woman from unilateral divorce, since a marriage solemnised according to the Act can only be dissolved under the provisions of the Divorce Act of 1869. However, a Christian woman was 'protected' by this law till 1968, where in the case of Jatoi Vs. Jatoi[65] it was held that a marriage solemnised under English law was, in essentials, also a Muslim marriage and that it too could be dissolved by a Muslim (unilateral) divorce.

iii.2. Divorce:

The law that governs divorce here is the Divorce Act of 1869. It is a extension of the divorce law prevalent in Victorian England at that time. This law was later modified in England, but the benefits of the modification have never reached the Subcontinent. Like the Muslim divorce laws, here, too, we find biased provisions.

According to the Divorce Act, a Christian man can obtain a divorce from his wife on the grounds of adultery alone. That is the only pretext necessary to divorce his wife. On the other hand, the almost complicated conditions a Christian wife must have to face in order to dissolve her marriage are :

1. if her husband has changed his religion and married for a second time;
2. if he has committed adultery or bigamy with adultery;
3. if he has married another woman with adultery;
4. if he is has committed rape, sodomy or bestiality;
5. if he has committed adultery coupled with such cruelty as without adultery would entitle her to divorce by judicial separation.

Furthermore, according to the Act, a husband bringing a petition for divorce before the court, can make the alleged adulterer a co-respondent to the petition. No such move can be made by the wife instituting a divorce petition. However, a husband is 'excused' from making such a move if the wife (the respondent) is leading the life of a prostitute or if the name of the alleged adulterer is unknown or if he is dead. A husband may sue the co-respondent, if known to him, for damages for the loss of his wife. A wife, however, has no such redress here either.

All this emphasis given to adultery and divorce proceeding revolving around, including the widely different conditions for husband and wife, may be summed up in the decision in the case of Beaufort Vs. Austin[66]where the point at issue was whether the condonation of adultery had taken place. The point made was that what was condonation in a husband was perhaps merely patient resignation in a wife. A wife, therefore, who tolerated for a period of time her husband's escapades was merely doing her best to save her marriage and must not be held to have forfeited her right to ask for dissolution when all her attempts had failed. The tolerance shown by a husband in similar circumstances, however, was not so admirable and would amount to condonation.

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[65] Dhaka Law Reports (1968). Vol 20 p. 27
[66] 1960 Pakistan Legal Decisions (Karachi). p 688

A wife is entitled to alimony pending litigation and to costs when she defends a suit brought against her on charges of adultery. Under the Act, an innocent wife receives no more than one third of her husband's income as alimony, this, too, while she remains unmarried after the divorce. Where, however, the wife is found guilty, it is laid down that the court may, if it thinks fit, order such settlement as it thinks reasonable to be 'made of such property or part thereof, for the benefit of the husband or the children of the marriage or both.'[67] Salma Sobhan comments, ' In such a case it was held that not only could a proportion bigger than one third be settled on the husband and the children, but the court refused to review the situation even if the husband remarries or the wife's fortune fluctuated. The explanation given was that it was not fair that the husband should be deprived of the addition to his income that a marriage to a wealthy woman had brought since, if she were the guilty party she would not really be punished by being divorced, and the co-respondent would benefit from her wealth instead of her till-then lawful husband.'[68] However, it is unlikely that the courts would take such an attitude today.

Under the Divorce Act, however, a wife who had instigated divorce proceedings may seek a protection order with respect to her property and her earnings acquired after separation, to prevent her husband from enjoying them. A married woman also enjoys such protection by virtue of the Married Woman's Property Act 1874.

iii.3:Guardianship and Custody of Children:

The guardianship of children, as contained in the Divorce Act, takes into consideration that under Common Law the father was the natural guardian of the children, but states that the court has complete discretion and the welfare of the child must be taken into paramount consideration. The child, however, must be brought up in the father's faith and the mother may loose guardianship if the child is not so brought up. The Guardian and Wards Act of 1890 is usually referred to in cases of custody and guardianship of children of a Christian marriage.

iii.4. Inheritance:

According to the Christian laws prevalent in Bangladesh today, a husband and wife have equal shares in each other's property. They both receive half of each other's estate. Sons and daughters also have equal shares in their deceased parent's property. The provisions for making a will is also present. According to law, a person may will his or her property to any person. The provisions of the will, however, come into effect only after his death.

The discussion of family laws cannot end without mentioning the Family Court and the latest demand from certain women's rights activists for a Uniform Family Code.

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[67] Divorce Act, 1869. Section 39.
[68]Supra Note 35.

III. **The Family Court**:

The Family Court, which carries out its functions as per rules laid down in the Family Courts Ordinance of 1985, is not a separate court dealing solely with cases brought under family laws or personal laws. Till mid-1996, the District courts, the lowest civil courts in the judicial system, would deal with family law cases side by side with other legal matters. When they dealt with such cases, they were called 'family courts'. Now, however, these subordinate courts sit as family courts once a week and hear such matters as divorce, maintenance, custody, dowry and dower and applications for guardianship of children.

There are two major biases in the Family Courts Ordinance. One deals with the power and extent of the Ordinance itself. Section 1 of the Family Courts Ordinance states that the extent of this Ordinance does not reach the districts of Rangamati, Bandarban and Khagrachari. These are all located in the Chittagong Hill Tracts, the area of the largest ethnic minority population in Bangladesh. It is true that the ethnic people in the region have their own traditional tribal courts, personal laws and separate ways and means of dispute resolution. These must be respected. However, a lot of the people in the region are also Hindu and Christian, interspaced with settlers from the plains, the non-tribal Bengalis, most of whom are Muslim. They, unfortunately, cannot seek relief under the Family Courts Ordinance because it is not applicable in the area.

The second, perhaps major, bias lies in section 5 of the Family Courts Ordinance, which deals with the jurisdiction of the court, and is the source of many a biased decision. This section states that the jurisdiction of the courts is to be controlled subject to the provisions of the Muslim Family Laws Ordinance 1961. This has created a deliberate bar to women of other faiths, and confusion among the decisions of the Assistant Judges who preside over such hearings. Some judges stand firm that only Muslim citizens of Bangladesh can seek redress in the family courts. This section has also fired divided opinions in the higher courts. Three High Court decisions, mentioned in the following paragraph, clearly illustrate this. Two of the cases arise from the question of Hindu women who sought relief in the family court, but being denied entry, sought to appeal in the High Court Division of the Supreme Court of Bangladesh.

The case of Nirmul Kanti Das Vs. Sreemati Biva Rani[69] was a revision case filed in the High Court Division of the Supreme Court by a Hindu wife against her (Hindu) husband for maintenance. The application was rejected in the trial court by the District Judge on the grounds of non-maintainability of the suit. It was held by the learned Judge of the High Court bench that 'a person professing any faith has got every right to bring a suit for the purpose as contained in this Section [Section 5 of the Family Courts Ordinance]. A Hindu Wife is not debarred from bringing a law suit for maintenance against her husband under this Ordinance'. On the other hand, in the case of Krishna Vs. Gitasree, which was heard and decided in the same year as the Biva Rani case, it was held that the ' Family Courts have jurisdiction to entertain and dispose of any suit relating to matters mentioned in clause (a) to (c) of section 5 of

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[69] Dhaka Law Reports (1995) Vol 47.p 514.

the Family Courts Ordinance only between citizens of Muslim Faith'.[70] It must be mentioned here that clauses (a) to (c) deal with divorce, restitution of conjugal rights and dower. It is not only the Judges that sway their judgements according to either their confusion of the matter or their prejudices. Lawyers too use this ambiguous clause in the Ordinance to favour their clients. In the case of Meher Nigar Vs. Mojibur Rahman, another case of 1995, the council for the petition argued that the Family Courts Ordinance was a personal law applicable only to Muslims of Bangladesh. Fortunately, it was held by the presiding Judges that 'the provisions of this Ordinance are applicable not only to the Muslim community but also to other communities constituting the populace of Bangladesh.'

Due to this kind of confusion as to the application of the Ordinance and the jurisdiction of the family court, many women suffer in the hands of the law and the judiciary. As has been seen from the above case examples, all decided in the same year, a lot has to do with the prejudice of the presiding judge. Cases brought under the Family Courts Ordinance are heard in the subordinate District Court, the court of first instance. Those cases brought by non-Muslim women appear in the first court of appeal which is the High Court Division of the Supreme Court of Bangladesh, because the subordinate judge refused to entertain it on grounds of non-maintainability - because the parties were not Muslim. This would never happen if the law was clear on the fact that the Family Courts Ordinance was applicable to all whatever their religious beliefs. It is even worse when a non-Muslim woman finds her case rejected in the Court of Appeal as well. Legal reform is in urgent need in this area.

Furthermore, a huge backlog of cases dealing with family matters lie pending in the Family Courts. In 1994 it was reported that there were more than ten thousand such cases around the country awaiting hearing[71]. This large backlog also influences some judges to summarily dismiss litigants who are non-Muslim by swiftly deciding that they have no jurisdiction and must seek relief elsewhere in the civil or criminal justice system. The country, therefore, urgently needs a separate judicial institution where only family matters will be dealt with. A separate Family Court should be established where all cases dealing with personal laws can be heard and dealt with, regardless of religious beliefs. The occasional family law session in the District Courts of the country should be abolished.

IV. **The Uniform Family Code**:

With regard to the different inequalities faced by the women in their family life regardless of their religious background and due to the fact that some family laws are comparatively more lenient than others, in early 1992, women activists came together to discuss methods by which family laws could be consolidated under one single Family Code applicable to all the citizens of the country. In September 1994, the first draft of a Uniform Family Code was prepared by the *Mohila Porishod*, the oldest women's group in Bangladesh.

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[70] Ibid. Pg. 18.
[71] Reported in the Daily Jonokontho. 9 July 1994.

According to the Code, there will be uniform laws regarding maintenance, guardianship and custody of children, inheritance and adoption applicable to women and men irrespective of their religion.

The principles underlying the Code are as follows:

1. equal rights and responsibilities should be the basis of marital relationships. Women and men should be treated equally in marriage, divorce, guardianship of children and inheritance;
2. regardless of the religious rituals of marriage prevailing in different cultures, all marriages must be registered under common civil law. This law, by definition, should allow inter-faith marriages;
3. polygamy should be banned and made a punishable offence;
4. child-marriages should be banned;
5. divorce should be made possible both for wife and husband on the same grounds. Provision of a judicial separation should be made on the request of the wife and the husband as an interim arrangement to allow for relief and reconciliation;
6. both mother and father should be recognised as guardians of their children. In the absence of both parents, matrilineal and patrilineal relations should have equal rights to a minor's guardianship and custody. The only criterion being the welfare of the child;
7. in the case of divorced parents, maintenance of the child should be shared by both parents according to their capabilities;
8. maintenance should be based on the recognition that a non-wage earning wife is a contributing partner and the recognition that a non-wage earning wife is entitled to maintenance during the period of marital relations;
9. maintenance after divorce should be decided on the recognition of joint contribution of both spouses to the family well-being. Matrimonial property should be shared equally by both;
10. women and men of equal degree should inherit equally;
11. adoption of children should be allowed to both women and men regardless of their marital status after a thorough scrutiny of the eligibility of the adoptive parents, reviewable by the court;
12. family courts should be separate and upgraded and empowered to deal exclusively with family matters. These courts should function on the basis of civil laws applicable to all religious communities, they should be presided by competent judges representing all religious communities to create an environment of trust.[72]

The principles of the proposed Family Code sum up the needs of women-friendly legal reform in a compact manner. Unfortunately, these proposals have still to gain popularity in the decision-making areas of the Bangladesh government. The reason for this is that the latter have hardly ever paid much attention to women-friendly legal reform and are extremely slow to respond to such demands. Perhaps this is why the country is yet to ratify the United Nations Convention on the Elimination of All Forms of Discrimination Against Women in its totality.

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[72] The principles have been taken from the book Need for a Uniform Family Code. Published by the *Mohila Porishod*. Dhaka, Bangladesh. 1993.

Conclusion:

From the above study, it can be realised that it will take a lot of time for the idea of a Uniform Family Code to be applied in Bangladesh. While it is a good idea to introduce a body of laws equalising the rights of inheritance, maintenance, custody and reasons for divorce, Bangladeshi society is clearly not ready to surrender its religious identity as a whole, and in a patriarchal society like Bangladesh, there will be many who will not give up their traditional beliefs, specially in the areas of guardianship and inheritance.[73] In light of this, how will it be possible to amend or reform personal laws in order to give women more rights?

From the above discussions regarding the legal status of women in Bangladesh, it can be recognised that a revision of the present laws is necessary by the Law Commission as a preliminary step towards women-friendly laws. Personal laws should be upgraded, specially in areas where changes for the better (for women) have been made in these laws in other countries. For example, polygamy should be made illegal, as many Muslim countries have done and Hindu laws should be reformed, as has been done in India. As a step towards law reform, women's groups should be consulted for the formation of laws and policies relating to women's laws. Furthermore, there are no women judges in the High Court Division of the Supreme Court. Selection of competent female judges in the High Court is not only needed but could also be a necessary first step towards the better understanding of a woman's situation in family law cases. Women judges can be appointed to the High Court Division of the Supreme Court as per Article 28 of the Constitution of Bangladesh which, in Clause 2, states that 'women shall have equal rights with men in all spheres of the state and of public life' and which in clause 4 states that the state can make special provisions in favour of women and children and for the 'advancement of any backward section of citizens'.

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[73] Interview with Nizamul Hoq Nasim, Advocate of the Supreme Court in October 1996.

Chapter IV

Aspects of Violence Against Women

A drum, a vessel, a donkey and a women
Are all worthy of being beaten.
-Ancient Hindu saying[1].

The use of socially accepted methods of violence to keep women in their socially and traditionally defined places is not a new practice. However, impacts of developments in the economic and political fields have created some new issues of violence as women emerge in a vast, unorganised working force to supplement the pressure faced by nations, including Bangladesh, to show rapid economic growth. The state policies are driven, with the support of donor countries and international financial institutions, to profit-making schemes and a people-friendly, grassroots oriented development approach has been substituted by one which is geared at supplementing the global market.

More and more women are joining the workforce, and hence entering the market area. They are questioning the traditional ideas of 'home' and 'family' and putting men in the awkward position of having to work with women in both the numerous industries - pharmaceutical, garment manufacturing, cosmetic, textile- and in the more informal work of road building, brick chipping and masonry. There is, therefore, a conflict of interests between patriarchal dominance and taboos on the one hand and the economic needs of the family and the country as a whole on the other, which has resulted in the state abdicating from its responsibility to safeguard and protect its citizens[2] - especially its women- and hurling towards rapid economic growth. This is reducing its power to govern its people in a just and equitable manner.

This blind surge towards becoming economically stable as soon as possible has made the state turn just as blind an eye towards women who are now part of the work force and who do not receive the expected assistance and protection from the state in terms of economic, political and social security. This unsuspected freedom found by women is also the target of fanatic and 'obscurantist' groups who (mis)use custom and religion to maintain a hold over women and justify acts of violence against them and who, in turn, influence men into believing that what their wives are doing are wrong in the eyes of God and that they have to be suppressed by punishment, divorce, ostracization or even death. These fanatic groups and their activities will be dealt with in detail in the following chapter.

Women's emancipation in the market is thus, unfortunately, partially responsible for the increase in violence they have to face both in the domestic sphere and by members of the public, including their employers. Therefore, violence against women can be divided into two distinctive parts - domestic violence and public acts of violence.

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[1] Ratna Kapoor,. Brenda Cossman: Subversive Sites. Feminist Engagements with Law in India. New Delhi Sage. 1996.
[2] Relevant Articles include Articles 11, 16, 18, 28 and 32 of the Constitution of the Peoples Republic of Bangladesh.

It must be noted here that the data found in the tables included in this chapter have been taken from newspaper reports published in eight of the national dailies widely circulated in the country. There are many unreported, unpublished incidences of violence against women occurring in Bangladesh every day – specially in the case of rape and other forms of sexual harassment. The reasons for this are discussed in this chapter as well.

I. **The Definition of Violence:**

Violence could be anything beginning from verbal abuse to physical torture and even death. It can leave both mental and physical scars on the victim and, as will be seen in many cases, the violator is dealt with leniently, if accused at all, while the violated has to bear the scars for, in this case, the rest of her life. In Bangladesh, there are both social reasons and legal loopholes which are the sources of violence towards women. The religious and cultural norms, discriminatory and defective laws, the denial of appropriate property rights and the failure of implementing international instruments relating to women's rights and other related factors have created a negative environment for women who are commonly perceived as burdens to their families - consequently rendering them vulnerable to various forms of violence and exploitation.

According to the law, the term 'violence' is defined in the Penal Code of 1860 under the headings 'Criminal Force' and 'Assault'. Section 350 of the Code defines the term 'criminal force' as 'whoever intentionally uses force to any person, without that person's consent in order to the committing of any offence or intending by use of such force to cause or knowing it to be likely that by the use of such force, he will cause injury, fear or annoyance to the person to whom the force is used, is said to use criminal force to the other'. Assault is defined in section 351 of the Code as 'whoever makes any gesture or any preparation intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes the gesture or preparation is about to use criminal force to that person, is said to commit assault'.

The Penal Code does not specifically define the term 'sexual assault', but has definitions for 'rape', 'kidnapping' and for 'criminal intimidation, insult and annoyance'[3]. In the early 1980's a new kind of crime emerged - the throwing or flinging of acid on the face and body, specially of young women. Such was the magnitude of the crime, that a new, separate section was inserted in the Penal Code by virtue of the Penal Code (Second Amendment) Ordinance 1984. Section 326A provides that whoever voluntary causes grievous hurt in respect of both eyes, head or face by means of corrosive substances shall be punished with either death or life imprisonment.

II. **Kinds of Violence:**

Violence towards Bangladesh women is a many - headed snake. There are a multitude of social reasons why women face mental and physical abuse. To classify these incidences, this chapter has been divided into two major classes of violence - domestic violence and public act of violence, i.e., violence faced by women outside the home.

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[3] Sections 375, 366 and 509 of the Penal Code respectively.

II.i. Domestic Violence:

The home can be a dangerous place for some, and specially for women who help their husbands' eke out a living by working themselves. The traditional patriarchal upbringing of most Bangladeshi men have taught them to firmly believe that old cliché ' a women's place is in the home' still stands and that a woman's job outside the home is just a 'fancy' to be indulged in and that she should be at home in time to cook, clean and look after the children - or woe betide her. It is truly unfortunate that a certain degree of chastisement of a wife by her spouse is generally acceptable in all societies of the world and that women, by keeping quiet and surrendering to the violent will of their husband's have encouraged the idea. Unfortunately, domestic violence has in many cases in Bangladesh, led to the death of the victim. For example, in the case of Jatin Chandra Vs. The State[4] the husband beat his wife with a tree branch and violently kicked her till she bled to death. He was in the habit of abusing his wife in such a way.

On talking to rural and slum-dwelling women, it was learnt that a man might beat his wife if he comes home from work to find that his meal is not ready, if she serves him left-overs from an earlier meal, if she forgets to wash his shirt, if he thinks she is neglecting the children, if she does not respond quickly enough when he asks her to do something, if she talks back to him when reprimanded or if she leaves the home without his permission. An undercurrent to most of these reasons for violence could be economic frustration, dislike for his wife (she may have grown old and careworn and he wished to marry again) or the fact that her father still owed dowry payments, as explained further below. Other reasons for such violence, such as beatings for leaving the home without the husband's permission and answering back when reprimanded are the outcomes of a patriarchal social atmosphere.

Most of the rural women interviewed acknowledged that the men were their guardians and had the right to beat them if they behaved 'unacceptably'. Some seemed to be forgiving their husbands for beating them by blaming the act of violence on his inability to work or his inability to enjoy his 'recreations' such as smoking and visiting the cinema due to lack of money. It seemed that they were willing to be 'punch bags' on which their husbands could give vent to their frustrations and ill humour. One woman commented ' My husband beats me if I do not take proper care of his children from a previous marriage. I do not answer back because he may abandon me.' [5]

In Bangladesh, domestic violence is faced by a woman not only from her husband, but also from her in-laws. Up to fifty percent of all murders in Bangladesh have been attributed to marital violence.[6] The main cause of such acts of violence are the inability to bear children or sons (ignorantly, always the woman's fault), dowry demands and physical appearance. In these cases, the violence takes the form of mental abuse, polygamous marriages and even murder. Physical assault by the dissatisfied husband may range from beating with the fists

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[4] Dhaka Law Reports 1991 (AD) Vol. 43.

[5] Result of fieldwork carried out in four villages in northern Bangladesh and in Dhaka District, between October and December 1996 and interviews with women at a legal aid clinic run by the *Ain-O-Salish Kendra* in March 1997.

[6] Report of the United Nations Fund for Population Activities. The Right to Choose: Reproductive Rights and Reproductive Health. 1997. Published in the Human Rights Report 1997 of the *Ain-O-Salish Kendra*, Dhaka, Bangladesh.

or anything close at hand, sexual coercion and humiliation and sexual torture, while emotional torture may range from deprivations from sleep, threats to person, verbal abuse, attacks to self esteem, etc. The abused wife faces both forms even after she becomes a co-wife.

Incidences of Domestic Violence 1997[7]

Kind of Violence	11-15 years	16-20 years	21-25 years	26-30 years	30+ years	Age Unknown	Total	Cases Filed
Torture by husband		2	2	3	3	7	17	4
Torture by husband's family members	1	4		1	1	4	11	5
Murdered by husband	2	42	46	23	27	39	179	99
Murdered by husband's family member		3		3	6	4	16	7
Murdered by husband's Relative	2	1	1	1	2	1	8	4
Total	**5**	**52**	**48**	**31**	**39**	**55**	**231**	**119**

i.1. Dowry Demands :

The demanding, giving and accepting of dowry, as has been mentioned in the chapter on legal status of women, is an offence under the laws of Bangladesh. The practice, however, still prevails in some parts of the country, both rural and urban. Fathers who are unable to marry off daughters who have either passed a 'marriageable age' or who are 'ugly' or 'dark skinned' or have some physical defect, promise prospective grooms and their families vast dowries, which are partly paid during the marriage ceremony while the rest is promised in the near future.

Another reason for the persistence in demanding dowry is the rising unemployment among young males in rural Bangladesh. Marriage and dowry are seen as a source of earning by them. At one time, parents would want a son to become an earning member of the family, but now the possibilities of finding a job have reduced and in many cases the only source of income is through marriage. If the son has some education, it increases the bargaining power of his family. At this present day and age, slightly affluent families in rural and middle class societies in Bangladesh demand the dowry of a ticket to the Middle East so

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[7] *Ain-O-Salish Kendra*. Violence Against Women tables. Compiled from eight daily news papers from January - December 1997. Published in January 1998. Dhaka, Bangladesh.

that the groom can find a job, or they demand investment capital for business. Since dowry had become related to employment provisions for the groom, it has become a common demand while the bride's parents become the sole supplier of capital.

The issue of dowry is probably the most common source of domestic violence in rural Bangladesh, where not only the husband, but the rest of his family take part in reminding the poor girl that more than half the dowry promised is still due. The incidents of murder, or attempt to murder for dowry is almost a regular phenomenon in Bangladesh and such deaths are regular items in the country's daily papers.

The definition of the term 'dowry' in the Dowry Prohibition Act is 'property or valuable security given or agreed to be given as consideration for the marriage of the parties'. Not only is this illegal, but in most cases money or property is even demanded after the marriage by the husband and his family in the name of '*joutuk*' or dowry. This is a case of extortion as defined in the Penal Code, which reads 'whoever intentionally puts any person in fear of any injury to that person, or to any other, and thereby dishonestly induces the person (to give) any property or valuable security or anything signed or sealed which may be converted into valuable security, commits extortion'.

Unfortunately, this form of 'dowry' has obtained judicial sanction by virtue of the 1991 case of Rezaul Karim Vs. Mst. Taslima Begum[8] where the honourable judges of the High Court Division of the Supreme Court expressed their opinion that marriage was not only a ceremony but also a 'creator of status' and that the subsequent demand of money or valuable security by the husband in consideration of giving the woman the status of a wife during the continuation of the marriage would amount to dowry.' This judgement was passed despite the fact that not only was the institution of dowry illegal in the eyes of both statutory and Muslim Personal laws, but it also amounted to the crime of extortion. It is sad to think that such patriarchal attitudes are so imbedded in the fabric of the country that it has permeated the judicial process to come to such conclusions regarding the 'status' of a wife and that to gain 'status' a woman must be married and that her husband can continue to demand dowry in the form of extortion.

i.2. Polygamy :

Another reason why women have to suffer in the hands of their husbands is the inability to bear children or a male heir. This is also one of the reasons why men in rural Bangladesh practice polygamy. Unable to return to her parental home for fear of social stigma and economically depending on her husband and his family, the first wife remains to suffer physical and verbal abuse. In many cases, she is treated like an unpaid servant in her husband's home. Laws relating to polygamy and regulating the practice are either unknown or totally ignored and the emphasis given on the misconceived and misrepresented religious teachings.

Cases of domestic violence, filed under either the Dowry Prohibition Act or criminal laws such as the Penal Code or the Cruelty to Women (Deterrent Punishment) Act (which was repealed in 1995), are heard in the lower courts, but the comparative rarity of such cases and the huge mountain of back-log means that very few have the opportunity of a speedy trial and early relief. The accused party will almost always seek to appeal and the victim will find no relief until the

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[8] Dhaka Law Reports (1988) Vol. 40. p 360.

case is heard out finally in the appellate stages. It is unfortunate that between 1991 and 1996, there have been only six cases of domestic violence heard in the High Court division of the Supreme Court. Two of these were filed under the Dowry Prohibition Act, one under the Cruelty to Women (Deterrent Punishment) Act and three under the Penal Code[9].

Domestic violence is a criminal offence and must be maintained as such. Unfortunately, the social framework of Bangladesh has created a barrier between domestic violence and other forms of violence. Law enforcing authorities are reluctant to recognise such offences as a legal matter and consider them to be matrimonial and therefore social, affairs. Women suffering from domestic violence are thus reluctant to seek legal aid in this area for fear of being ridiculed, misunderstood or inviting further abuse from their spouses. Criminal law has afforded precious little assistance to the cases of domestic violence, nor is a woman legally protected from emotional or mental abuse and torture. Thus, socio-economic traditions, customary attitudes and mis-interpretations of religious doctrines continue to hamper legal rights and rob victims of their voice to protest domestic violence.

II.ii. Public Acts of Violence:

ii.1.Rape:

The crime of rape is probably one of the meanest of crimes perpetrated by men to 'prove' their domination over what they term the 'weaker sex'. As in many societies, rape is a serious problem in Bangladesh. It is viewed in an ambivalent way by men, but is seen as a serious crime committed primarily against the '*izzat*' or honour of the husband in the case of a married victim and of the father or brothers of an unmarried victim. Rape is viewed as a secondary offence against the dignity of the woman. It is first and foremost an offence against the honour of the male members of the family. A staggering example of this attitude is what occurred to some of the rape victims during the liberation war in 1971. Some of the girls who were raped by the invading Pakistani army were refused entry into their fathers homes and rehabilitation centres had to be established to save them from destitution.[10]

The male view of rape is, therefore, the fundamental reason why such crimes are rarely reported to the law enforcing authorities, even though the offender is known to the victim and her family. If the crime is brought to light, lack of proper evidence, poor medical examination of the victim, bribery by the offender, threats to life etc.. prevent further legal action. Unfortunately, the evidence of the victim in the court of law is viewed with a certain amount of suspicion which makes cases of rape even harder to prove. In the case of Federation of Pakistan Vs. Ali Ihsan[11] it was decided that 'the evidence of a prosecutrix in a rape case is customarily received by the courts with some suspicion. In certain jurisdiction, it is the rule that the solitary evidence of the prosecutrix being a woman of full age, is not accepted as sufficient, but requires corroboration by independent evidence, in order to be believed'.

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[9] Archival research carried out in Dhaka, Bangladesh between October and December 1996.
[10] Interview with Sultana Kamal, womens rights activist and active participant in the liberation war of 1971. Dhaka, Bangladesh. December 1996.
[11] DLR (SC) 1967. Vol. 19 p.259.

This rule that an independent witness is required to confirm a victim's statement is echoed in a majority of the cases of rape which come to court. Another drawback to rape cases heard in court is that these cases are not heard *in camera*, and the victim has to face the humiliation of repeating her ordeal and answering embarrassing questions in front of an eager and unscrupulous crowd of court audience. Thus, victims do not come forward in order to save themselves from the embarrassment and, in turn, save the family from shame.

Incidences of Rape. January - June 1998[12]

Age Nature	0-5 Years	6-11 Years	12-15 Years	16-20 Years	21-25 Years	26-30 Years	30+	Age Unknown	Total
Simple Rape	26	93	36	26	10	3		42	236
Death after Rape		1	4	5					10
Gang Rape	2	22	45	48	21	10	9	64	221
Death after Gang Rape			2	5	3	1	2	5	18
Rape by Police		3	3	2				1	9
Nature Unknown			1	2		1		5	9
Total	**28**	**119**	**91**	**88**	**38**	**15**	**11**	**117**	**503**

Under Section 376 of the Penal Code, a man is said to have committed rape when he has sexual intercourse with a woman under the following circumstances:

1. against her will;
2. without her consent;
3. with her consent when obtained by threat or coercion;
4. with her consent, but consented under deception by the man that he is her husband;
5. with or without her consent when she is under 14 years of age and sexual intercourse by a man with a wife who is under 13 years of age.

Under the Penal Code, the offence of rape carries a maximum punishment of either life imprisonment - which is rare unless the rape is followed by the murder of the victim - or imprisonment for up to ten years with a fine. Under the Women and Children Repression (Special Provisions) Act of 1995, rape is punishable by either life imprisonment or even the sentence of death. This is also the case in the most recent piece of legislature, namely, the 'Nari O Shishu Nirjaton Domon Ain' (Repression of Violence Against Women and Children Bill) of 1998. The crime of rape is also punishable under the Special Powers Act of 1974 (As Amended) by the setting up of a special tribunal.

However, regardless of these laws, rape is still flourishing and perpetrators go free due to three major reasons - the social stigma attached to it, the accused being the more powerful party and the legal loop holes in the system. According to Salma Ali of the Bangladesh National Women Lawyers Association, if strong

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[12] Odhikar, A Coalition for Human Rights. Data collected from eight daily papers. Table published in The Daily Star 19 July 1998.

evidence is found against a rapist, and the victim from a disadvantaged socio-economic background, the former can manipulate evidence by bribing law enforcement authorities and can steer the case against him to his advantage. Salma Ali also stated that in some cases, where the victim does seek help from the police and goes to the thana (police station) to complain, instead of filling in a First Information Report, or FIR, the police place the victim under Section 290 of the Criminal Procedure Code. According to this section, the girl is 'bad' and has provoked the incident she has reported as rape.[13] On the topic of the FIR, another loop hole remains. If the rape incident takes place late at night, the police have to wait till next morning in order to present the report before the Magistrates court. This means that the victim has to spent the night in the police cells, with common (male) criminals. [14]Furthermore, getting permission from the court for a medical examination may take up to 2 or 3 days, by which most of the evidence may be totally erased. About ninety percent of rape victims go to the hospital for a medical examination seven or eight days after the crime has been committed. If no evidence can be found and there are no eye witnesses then there is very little chance of the case going to court.

In many of the cases, the decision of the presiding judge reflects the male attitude to the crime of rape. This has been observed in the previous case of Federation of Pakistan Vs. Ali Ihsan. Again, in the case of Abed Ali Vs. The State,[15] 16 year old Akhtar Khatun was promised by the defendant that he would marry her and on that pretext he had sexual intercourse with her. As a result of the liaison, Akhtar became pregnant but Abed Ali refused to take any responsibility. She gave birth and filed a case before the magistrates court (the first court of incident for criminal offences). The defendant was sentenced to five years imprisonment and a fine of Taka 5000 (approximately 100 US Dollars). This kind of punishment seems rather negligent, considering the fact that the victim was coerced by false promises of marriage and that the defendant has no social or economic responsibility over the child, not even by judicial decree or order.

There has been , in recent years, a steady increase of the number of cases of rape reported in the daily papers of the country. This increase in numbers is due not only to the lack of social and legal justice but also due to the increasing number of women who opt for either education or a career of some sort over marriage and relationships. Most of the incidents take place in the rural areas of the country or in the small towns and cities, where the social circle is small and a majority of the perpetrators are known to the victims, either as jilted lovers, spurned suitors or neighbourhood Romeos. The reports come from the police stations, the families of the victims seeking justice or from the legal aid non-government organisations who represent victims of violence. On 23 April 1997, at a monthly meeting held by senior police officials of the country, it was disclosed that the number of incidents of rape and abduction cases filed with the police had markedly increased. According to the report, there were 111 cases of rape in the police records in February 1997 and 165 in March[16]. The following table of newspaper reports of incidents of rape from June 1993 to March 1997 shows just how far the crime of rape has gone. The data has been collected from the same eight newspapers dated June 1993 to 31 March 1997.

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[13] Interview with Salma Ali, Bangladesh National Women Lawyer's Association, Dhaka, Bangladesh. November 1996.
[14] Interview with Ila Chandra. Advocate and Coordinator, Legal Aid Unit of the *Ain-O-Salish Kendra*. Dhaka, Bangladesh. November 1996.
[15] 1983 Bangladesh Legal Digest (BLD) p. 201.
[16] The Daily Star. 24 April 1997.

Reports of Rape. January 1994 - March 1997[17]

Year		Number of reported incidents
June – December	1993	33
January – December	1994	161
January – December	1995	120
January – December	1996	156
January – March	1997	116

Furthermore, according to reports, between January and March 1998, there have been a total number of 183 reported incidents of rape due to various reasons, including gang rape and rape by police.[18]

The crime of rape punishes not only the victim but also her family. The victim of the offence must bear the scar both physically and emotionally - almost forever living as an outcast within her society and neglected by her parents for the shame she has brought them. This is most evident in rural Bangladesh where the birth of a daughter still means an extra burden and where the keeping of a molested, unwed daughter who will never be able to be married off means that the chances of marriage for any remaining daughter/daughters are virtually impossible. In a society where a majority of the people still consider that rape is the victim's fault, many of the so violated women or young girls commit suicide. Our society does not realise that rape is a one-sided offence, perpetrated by the offender.

ii.2.Rape in Police Custody :

Another aspect of rape that has come to light in Bangladesh is the rape of women brought into police custody or who are put into the 'safe custody' of police stations and jails. 'Safe custody' purports to provide safety in jails for those in danger of further assault, but in reality, it has taken the form of a punishment. There is reportedly no budget allocated to keeping women in safe custody so they are kept with other prisoners and are treated as if they are charged with, or convicted for, an offence. To date, there are 44 women in 'safe custody' in Dhaka Central Jail.[19] Women in safe custody usually have to do the prisoners' laundry to win their share of food ration. Women who are put in 'safe custody' at the discretion of the judge (there is not legal basis for the institution) may be victims of a previous incident of rape, a woman previously abducted and now saved by the police, a victim of trafficking.

Police may pick up or arrest women randomly on grounds of suspicion of prostitution or any whim of fancy a police officer may think of. Rape in police custody is a case of 'out of the frying pan and into the fire', and of all the cases brought to light so far, very few of the policemen have received their just desserts. One of the reasons for this could be the fact that it is police who are

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[17] *Ain-O-Salish Kendra.* Documentation Unit. Data collected from seven different daily newspapers.
[18] Ibid.
[19] Odhikar. a coalition for human rights. Documentation Unit. August 1997.

carrying out investigations regarding crimes allegedly committed by their own colleagues. Usually, the strictest forms of punishment they may receive is demotion, loss of service or transfer. However, if the punishment is severe, imprisonment may be a choice. Government investigation and inquiry commissions are set up which take months in producing a single report - which is, then, not disclosed to the demanding public. One of the main reasons why some such police 'criminals' may be punished with jail sentences is due to the continuous pressure from human rights and women's rights organisations.[20]

Incidents of Police Rape. 1996[21]

Name of Victim	**Place of Incident**	**Incident**	**Date**
Munira Begum	Mymensingh	Rape by police	23 March
Aroti	Bagerhat	Rape by police	9 March
Niharu Khatun	Habiganj	Attempted rape and murder by police	31 May
Tara Khatun	Bogra	Attempted rape by police	5 July
Rumina Khatun	Jessore	Attempted rape by police in a field	11 July
Minoti Rani	Mymensingh	Sexual harassment in police custody	9 August
Sakera Begum	Bogra	Attempted rape by police	3 October
Shima Chowdhury	Chittagong	Raped in police custody	9 October
Khaleda	Khulna	Raped by police	18 November
Majeda Begum	Baghaichory	Raped by police	21 December
Total			**11 Victims**

Apart from acts of rape and murder, assault and battery and the throwing of acid onto the faces and bodies of young women are extremely common.

ii.3. Acid-Throwing:

Since the early 1980's the extremely cruel and vindictive crime of the throwing of acid onto the face or person of a woman has gained popularity. The crime became so prolific that in 1984, a new provision, section 326A, was inserted in the Penal Code providing up to capital punishment for those who were guilty of the crime. A majority of the victims are young women between the ages of 10-20 years and the perpetrators are either jealous boyfriends, spurned suitors, neighbourhood stalkers and sometimes angry husbands in search of more dowry or a permission to enter a polygamous marriage. Unfortunately, the crime occurs in the rural and less developed areas of the countries and in the small towns. There are occasional incidents in the larger cities among the factory workers and slum dwelling population. Economic hardships mean that the victims of acid throwing are not able to have reconstruction surgery done to their horribly burnt

[20] See Appendix II for two of the most horrendous cases of rape in police custody involving two young women- Yasmin and Shima Chowdhury.
[21] *Ain-O-Salish Kendra* Documentation Unit 1997.

and disfigured faces and the government has taken no initiative to carry out the procedure free. Thus, the women are scarred for life - unless they find a patron who will donate for their operation[22].

Fortunately, due to the increasing demand that perpetrators of acid throwing must be punished and due to the fact that, unlike rape, there are no social taboos or restraints attached to this crime, there are comparatively more cases of such violence filed in the courts.

Reports of Acid Throwing. 1997.[23]

Reasons for throwing acid	5-10 years	11-15 years	16-20 years	21-25 years	26-30+ years	Age not known	Total No. Of Reports	No. Of Cases
Domestic Row		2	2	3	2	2	11	8
Dowry Demands			5	3		2	10	5
Rejected Suitor		7	4		1	1	13	8
Spurned Lover		10	7			6	23	15
Refusal of polygamous marriage						2	2	1
Refusal to elope		2				1	3	
Refusal of illicit sex		1		4	1	5	11	7
Threats to throw acid			1	1		1	3	
Reason not specified	2	11	15	5	10	10	53	4
Total							**129**	**48**

Two of the most widespread acts of violations to women's rights are the 'lucrative' business of trafficking in women and children and the mental and physical abuse faced by women in the work place. Both these arenas of violence have spread out even more with the increased demand for rising economic standards and the hurry for Bangladesh to compete in the highly competitive 'free market'.

ii.4. Trafficking:

Trafficking in women and children is a significant problem common to Asian societies. Bangladesh is not stranger to the problem. The victims come from poverty stricken families, overburdened with many mouths to feed. The women lack skills and those who do any sort of work are paid less than even the minimum wage. Some women are abducted from outside their homes while at work or play and some are sold by their families out of sheer necessity - regardless of whether they are aware of the dangers their child or daughter may

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[22] See Appendix III.
[23] Supra. Note 7.

face. A majority of the women and children trafficked internally in the country or outside Bangladesh end up in the red light districts of Delhi, Calcutta, Bombay in India, and in Karachi and Lahore in Pakistan. Some find themselves working as domestic maids in the above countries or in an Arab state and others end up in carpet factories and sweat shops in India and Pakistan.

According to statistics of the Central Social Welfare Board of India, at least 500,000 women in India alone are engaged in prostitution. Among this number 2.7%, that is, 13,500 are from Bangladesh. In Calcutta, the concentration of Bangladeshi prostitutes is the largest, where Bangladeshi women make up 13.50% of the sex-workers there.[24] All these women could never have willingly found themselves in a different country merely to enter into prostitution. Again, according to a research carried out by the Pakistani NGO, Lawyers for Human Rights and Legal Aid, conducted between 1991-1993, approximately 100-150 Bangladeshi women are brought into Pakistan every day. Over 200,000 Bangladeshi women are present in Pakistan and at least 2000 are languishing in jails and shelters across the country.[25]

An 'agent' in the form of a job recruiting official, a relative or a neighbour, usually approaches the parent or the prospective victim with false promises of a better job outside the country. If he is posing as a job-recruiter, he charges a fat fee for his efforts - usually amounting to the total life savings of a poor family. If they cannot pay, cattle or land is sold to raise the money. There are also stories of unsuspecting young women being enticed into false marriages - with no dowry demands by the 'husbands' - only to be sold by their spouses once they reach a certain destination. The Bangladesh Observer, an English daily newspaper published from Dhaka, of 9 December 1994 carried an article on the arrest of eight traffickers who were charge sheeted. They had promised jobs and marriage to two poor girls, Mina and Nupur, and took them out of their Dhaka slum. They were, however, arrested by the police at the bus terminal in Jessore where they were trying to cross the border into India.[26]

Sadly, uncles, cousins and neighbours are also responsible for selling their nieces, cousins and neighbours to agents for the purpose of trafficking. In 1991, Shanti Devi left her village home for Sylhet town in search of work to support an ailing husband and three children, she met Mokhar, a neighbour, who convinced her that her long unheard of brother had sent for her as he had found her a job. She went along with Mokhar, who took her to Delhi and left her in a slum. She was then sold to a female pimp for Indian Rupees 2000 who hired her out to a factory worker living in another slum. When Shanti realised what was happening, she managed to escape and hide in a Bangladesh-populated slum and confided in its residents. They, in turn notified the police and a Christian non-government organisation took up her case. They placed Shanti in a rehabilitation

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[24] Selima Sarwar, Director, Community Development Association, Rajshahi. This organisation deals closely with women who have been 'rescued' or found their way back from brothels or from traffickers in India. The data is taken from an organisational report on the situation of trafficked women in 1997.
[25] Lawyers for Human Rights and Legal Aid. Report on trafficking in women and children 1994. Karachi, Pakistan.
[26] Research carried out with the help of *Ain-O-Salish Kendra* during field work in Bangladesh in December 1996.

centre and with their help, she returned home in 1992, after a 17 month separation. [27]

The main targets of agents and traffickers are, therefore, the underprivileged and discriminated women and children. Various studies have shown that a majority of the victims trafficked are poor, illiterate women, women abandoned by their husbands, women facing domestic violence, women with large families, children abused by father or a step parent and women and children affected by natural disasters such as cyclones and floods which leave them widowed, homeless or orphaned.[28]

According to an August 1997 report of the *Bangladesh Jatiyo Mohila Ainjibi Shomity* [29], which has done extensive work on trafficking in women and has rescued many girls and women at home and abroad, every year, approximately 4,500 women and children are trafficked outside Bangladesh and in the last decade approximately 2,00,000 women have been victims of trans-border trafficking[30]. One of the reasons for the alarming increase in trafficking of women is the frustration and need to escape from the traditional family system, oppression and constant poverty. Young people, both male and female, from rural Bangladesh flood to the cities and towns to escape the shackles of poverty. They seek jobs and the material benefits they see in the advertisements in magazines and in the community televisions. Most men find a job of some sort while the women, completely at loss in an alien society, ignorant, and for the most part illiterate, fall easy prey into the clutches of agents who roam the bus, train and ferry terminals[31].

From this, we can infer that trafficking in women and children cannot be just reduced to 'criminal activity'. It is more complex a matter. It is related to social and economic realities faced by Bangladesh and other developing countries. So-called 'liberalisation' and the 'free-market' economy have undoubtedly contributed to this phenomenon. The disintegration of the rural community affecting mainly the women and children is the primary cause of trafficking. Globalisation has severed traditional social structures and led to the treatment of human beings as commodities. Entrepreneurs in more developed countries are using the cheapest forms of labour in sweat shops and in the services sector. Furthermore, prosperity and commercialisation in these societies has developed the demand for sex tourism and the sex industry. This demand is serviced by a regular influx of trafficked women, since aliens are preferred as they are in no position to assert their claims to minimum standards and have no recourse to protection. This is evident in Pakistan, where arrested Bangladeshi prostitutes were jailed not only because they had committed the crime of adultery - an extremely serious offence in the eyes of the notorious Hudood Ordinance of

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[27]. Lavina Ambreen Ahmed, Anandita Sarkar.: '*For a Handful of Dreams*'. The Daily Star Magazine. 20 June 1997. Pg. 7.

[28] Result of fieldwork and archival research carried out in Dhaka, Bangladesh, between October and December 1996.

[29] The *Bangladesh Jatiyo Mohila Ainjibi Shomity* (BJMAS) is a non-government organisation formed by some women lawyers, and based in Dhaka, Bangladesh. It has carried out extensive work in the field of trafficking in women and prostitution. It plays a significant role in 'saving' women from brothels and providing such women with legal aid.

[30] Supra note 16.

[31] Interview with Ahm. Luthfur Rahman Shahjahan, Executive Director, *Chinnomul Shishu Kishore Shangstha*, an organisation for destitute children and young adults. Dhaka, Bangladesh. March 1997.

Pakistan - but also because, under the Pakistan Foreigners Act 1946, they were in the country illegally and had no documents or even a passport.[32]

Children are probably the most vulnerable section of any society. Trafficking in children in Bangladesh - young girls for the sex trade in South Asia and young boys as camel jockeys in the Middle East - is a continuous process. According to government statistics in 1993, there were 19 cases of trafficking of children, where police recovered a total of 200 people - 86 of them children. However, the numbers have increased in the last few years and a reputed Bangla daily paper reported on 5 April 1997 that some 135 children are missing from the northern district of Rangpur alone. Furthermore, the joint SAARC-UNICEF Report of 1995 states that every year approximately 4500 Bangladeshi girl-children are trafficked to Pakistan.[33] Another, more recent study carried out by the non-government organisation Centre for Women and Children Studies, states that at least 13,220 children were trafficked out of the country in five years till 1996, and only 4700 of this number[34] were rescued. The study also says that between 1992 and 1996, only 53 cases against traffickers and agents were placed before the courts and 35 of the said cases were dropped due to lack of evidence.[35]

Though birth registration is compulsory, to date, no effective mechanism has been developed by our government to implement this law. As a result, no authentic document is found regarding the determination of the age of a child. Easy procurement of affidavits certified by the magistrate as well as the notary public also play a vital role in pushing the under aged girls towards easy prostitution , early child marriages and easy prey to trafficking. It is extremely easy for traffickers, brothel owners and agents to procure licenses for prostitution for under-aged girls, and there are quite a few public officials willing to do the forgery for a tidy fee.

Young girls between the ages of 9 and 15 are sold by the agents and brought to the big cities of Dhaka, Khulna, Chittagong and Jessore to be sold to the brothel owners. Here, too, the children are sold either by poverty stricken parents, kidnapped and sold by middlemen or taken away on the pretext of a 'visit' and sold by relatives or neighbours. Such was the case of Rebeka, a twelve year old. Rebeka was taken by Abdul Kashem, a distant uncle, to the town on the pretext of taking her to see a movie. He however, took her to a brothel, meaning to sell her. Realising her plight, Rebeka escaped her uncle's clutches and her cries summoned the police, who promptly arrested Abdul Kashem.[36]

The plight of a young women called Farida received a lot of publicity at the end of 1996. When she was five, Farida lost her mother and her father remarried twice. There were a lot of children in the family and Farida was neglected in the large household. When Farida was ten, a man called Rashid Khan approached her father with a job offer for her. Only too glad to ease some of his financial burden, her father agreed to let her go.

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[32] Ibid.
[33] Supra. Note 17.
[34] Centre for Women and Children Studies: 'Child Trafficking:The Underlying Dynamics'. A report on a study of trafficking in women and children. Dhaka, Bangladesh 1997.
[35] Ibid.
[36] Dhaka Law Reports (1991) Vol.43

Rashid Khan was a professional 'trafficker' and took Farida to Trilokpuri, a re-settlement camp in Delhi, India. There he raped the minor for several nights. When the neighbours intervened, he moved her away to another camp and left her with his accomplice, Mahtab. Mahtab took Farida to a police booth where she was gang-raped by Mahtab and two Indian policemen. The sexual assaults continued and later on she was taken to the home of the local influential man, Om Prakash, where she was again raped. This torture continued, till Farida managed to escape from Mahtab's home. Delhi has a large Bengali-speaking population, living in shanty towns and slums. This is where Farida found herself after running away. The people informed the police and at their insistence, the latter investigated the scenes of the crime, but refused to take action. However, when the incident was published in a local daily, they sprung to action and made a thorough investigation. Om Prakash and Mahtab were apprehended. Farida could not name the police who had raped her, but she described their appearance and they too, were arrested.[37]

Farida was then sent to a remand home in Tihar, while the guilty policemen were freed on bail. During her stay in the remand home, Farida was denied her basic rights. She did not receive any education, was not allowed visitors and even had to survive the sexual attacks and slurs of her fellow inmates. The trial of her offenders began in court. Mahtab and Prakash were present but not the policemen. The case still continues. However, since Farida's presence is not required, she was brought back to Bangladesh by the *Bangladesh Jatiyo Mohila Ainjibi Shomity*. Today, at fourteen, Farida is living at a shelter home belonging to the organisation.[38]

Independent studies were conducted regarding child prostitutes in 1993 and in October 1994. Both studies concluded that :

1. almost all the girls were within the age group of 13-18 years;
2. almost all bore symptoms of malnutrition;
3. a majority had no relatives in the cities in which they were bought;
4. they all came from either large, poverty stricken families or had been treated severely by a step-parent and had run away form home;
5. most came from troubled backgrounds or had, at this tender age, been divorced or abandoned or sexually exploited in their own surroundings and have therefore been isolated or rejected, making them easy prey for the agents;
6. many suffered from sexually transmitted diseases and were unaware of contraceptives.[39]

Some children manage to escape - only to get lost in the big city and be picked up again by agents. It is also common to find child victims of trafficking languishing in jail. When a police raid is carried out, the young girls 'rescued' from the brothels are put into police and jail custody - as 'safe custody'. Some, however, remain in such imprisonment for long periods, as there is no one to claim them, this is also due to the negligence of the police who fail to properly inform or advertise the presence on unclaimed children in their custody.

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[37] Supra. Note 27. p.6
[38] BJMAS report 1997.
[39] Mohammad Nur Khan. Director, Odhikar,1993; Sabera Rahman. Reproductive Health of Women In Bangladesh. Study for Mary Stopes Foundation. October 1994.

It is not that the government is unaware of the increased crime of trafficking in women and children. Public pressure keeps the issue alive. The government has taken various measures to curb the practice - one of them being to strengthen border check posts. However, due to economic constraints of the country, the border police themselves are in league with traffickers in order to supplement their income. The government has recently introduced the Repression of Women and Children (Special Provision) Ordinance 1995 - which awards capital punishment to offenders involved in trafficking of women and children.

Unfortunately, with corruption in both the lower and senior government echelons and lack of implementation of existing laws , the passing of such deterrent measures is not the solution to the problem. Those engaged in trafficking have connections with border security on both sides and while some law enforces have shown great alacrity and honesty in dealing with the crime, some of their fellow colleagues have failed miserably to preserve the same high standards of integrity. Thus, the weak point is not the lack of proper laws, since the Penal Code, the Suppression of Immoral traffic Act 1933, the Children Act 1974 and the Children (Pledging of Labour) Act 1933 all deal with the illegality of trafficking and punish offenders, but the lack of implementation of these existing laws.

Status of Cases Of Trafficking in Different *Thanas*. 1997[40]

Name of Thana	Total No. Of Cases	Chargesheet Submitted	Final Report	Under Investigation	Investigation Pending
Khulna	14	4	3	1	6
Shonadanga	6	1	2		3
Khalishpur	6	3		3	
Dumuria	3	2		1	
Shatkhira	15	9	3	1	
Deghata	6	3		3	
Kolaroa	2	2			
Kaligang	6	3			
Shemnagar	8	5		3	
Chougacha	5	3	1	2	
Jhikargacha	1			1	
Sharsha	4	4			
Total	**76**	**39**	**9**	**18**	**9**

Apart from national laws, the government is treaty bound to protect its women and children from the clutches of traffickers. The government ratified the Anti-Slavery Convention of 1926 and the Supplementary Convention on the Abolition of Slavery of 1956. It has thus undertaken the responsibility to suppress all forms of slavery - including that which arises due to trafficking. Bangladesh is also party to the Convention on the Elimination of All Forms of Discrimination Against Women, which specifically mentions that all parties must take all measures to prevent trafficking of women and exploitation of prostitution. The State also signed the Convention on the Rights of the Child in 1990.

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[40] Salma Ali. Report on Trafficking. Bangladesh National Women Lawyer's Association. 9 June 1997. *Thana*: Thana is the main sub-divisional police station. Each district in the divisions of Bangladesh are again divided into 'thanas' or areas under the jurisdiction of a police station.

However, as has been mentioned, trafficking in women and children cannot be seen merely as a crime. There are diverse socio-economic factors which push women and children into the clutches of agents and traffickers and economic factors are what drive traffickers, border security and government officials to continue such 'business'. This all results in the serious lack of implementation of the laws protecting women, the increase of trafficking in women and children and the lack of apprehension of traffickers.[41]

ii.5. Violence in The Workplace:

The Constitution of Bangladesh states: 'it shall be the fundamental responsibility of the state to emancipate the toiling masses - the peasants and workers and backward sections of the people from all forms of exploitation.' The constitution also states that the State must secure to its citizens the right to work and the right to security.[42] However, despite these State guarantees and despite the constitutional guarantee of equality of sexes in the public sphere, the social, patriarchal make up of the country today means that it is extremely difficult for women to leave the home to work. Male dominated society in Bangladesh still find it hard to accept that women, too, can work just as hard as they can. It is as if they vindictively harass their female co-workers or employees.

Violence against women in the workplace can take two distinctive forms. It can be the violence and danger faced by women in the environment of the workplace, the equipment, the building premises, etc., or it can be the violence and sexual harassment faced from their male employers, colleagues or co-workers.

According to the 1996 report of the Bangladesh Bureau of Statistics, the female labour force participation rate in the country is 51percent. Of this, 63 percent are engaged in agriculture-related fields, 27 percent in the service sector and 10 percent in industrial activities. The report also states that three million of these women are within the age group of 20 - 49 years.[43]

a. The Service Sector: In Bangladesh there is no definition of harassment of women workers at the office and in factories. Women of all ages endure sexual harassment at the workplace, but young and single women are the worst victims. Men find it natural to offer a free drive, lunch or dinner to their female colleagues. They do not consider it a harassment if they spend more time gossiping at the table of a female employer or making passes at women at work. Unfortunately, the demand for women white-collar workers is deplorably low. A majority of women find themselves in the stereotypical position of secretary, even if their job description says otherwise, and the chance for promotion is low. The situation is made worse due to sexual harassment, which has made many women leave their jobs.[44] It must be mentioned here that under Section 509 of the Penal Code words or gestures

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[41] According to the Human Rights Report 1997 published by the Ain-O-Salish Kendra, media reports indicate that 820 victims along with 195 traffickers were arrested by police in 1997. Among this number were 284 women and 95 of them were young girls aged between six and sixteen. p 13 of the report.
[42] The Constitution of Bangladesh. Article 15.
[43] Annual report published by the Bangladesh Bureau of Statistics. Government of Bangladesh 1996.
[44] Daily Star Weekend Magazine. June 28 1997.

made with the intention to 'insult the modesty' of any woman is a criminal offence.

b. The Industrial Sector: while white collar employers do still camouflage their real intentions with subtle offers, it is a totally different story for women working in the industrial sector, like, for example, in the garments manufacturing sector. Government statistics may state that 10% of the female workforce are employed in the industrial sector, but it is a very important 10%, as they are helping the country earn foreign exchange. Unfortunately, instead of encouraging them and their contribution, the sexual harassment here is blunt and obvious. Moreover, a, majority of the cases of such harassment go unnoticed or are not brought foreword because women are afraid of losing their jobs and are also afraid of facing public shame. [45]

According to a large, popular Family Planning Clinic in Dhaka city[46], 23 percent of their clients for the procedure of Menstrual Regulation were young garment factory workers[47]. These girls are mostly unmarried and could lose their jobs if they became pregnant. Furthermore, due to the demand for cheap labour and the quick production of goods, marriage of young women are not encouraged by the employers - as that would mean giving the women maternity leave and the loss of labour. This is also why young, unmarried women are preferred as employees - and also why there is a high rate of sexual harassment and violence.

Women in the garment-manufacturing industry have another form of violence to face. The factories are built hurriedly and for the most part negligently and are virtually death traps. Due to the sudden demand for ready-made garments, hundreds of factories have sprung up in the major towns and cities and proper security and emergence measures are not taken into consideration. Building inspectors are bribed into giving these factories a seal of approval and women and girls are hurriedly employed, given basic training on how to operate the machines and the factory is set humming. Considering the fact that the women work from as early as eight in the morning to six or seven in the evening and that some do overtime till ten in the evening, sanitary conditions are deplorable and not fit for use by women and there are usually no facilities to look after or nurse young children. There is a lack of adequate ventilation in most of the factories and short circuit fires are common and this causes a stampede of about 1000 people for the main or rear entrance of the factory - since there are no fire escapes. Many die not due to the fire, but due to suffocation in the mad frenzy and crush to escape. A majority of the victims are women, as they are the ones plying the sewing machines and other electrical equipment in the factory.[48]

c. Female Migrant Workers: The Government of Bangladesh has a policy which does not allow unskilled women workers to migrate, thus many Bangladeshi

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[45] Ibid.
[46] Interviews with health workers at the Mohammadpur Fertility Services and Training Centre in Mohammadpur, Dhaka. December 1996.
[47] The Daily Star magazine. 13 June 1997.
[48] Result of talks with Mohammad Nur Khan, Director, Odhikar and interviews with Abul Hossain, leader of the Garment Workers Federation in Dhaka, during field work in Bangladesh, December 1996.

women are leaving the country in an extra-legal way.[49] According to a recent study, research findings have suggested that there is an understanding between travel agencies and immigration officials to make such exits possible. The same study points out that the women migrating in such a way often work under unfavourable terms, 'ranging from restriction on movement and long working hours, to physical and even sexual abuse'.[50] This governmental restriction on women migrating abroad, is, thus, one of the factors contributing to the trafficking of women to India and Pakistan. Thus, in an indirect way, the Government of Bangladesh is playing a part in the crime of trafficking in women.

Female migrants are, therefore, an extremely vulnerable group. There is no formal recognition of their status and they are overly dependent on unscrupulous agents for their recruitment. Where male migrants have established a network which facilitates the procurement of identity cards, their female counterparts remain nameless and faceless due to the lack of such support system. Trade in maids is part of export of labour from poorer to richer countries. This is generally due to a decline in the economic growth, foreign debit and overpopulation- all of which is faced by Bangladesh. This sort of trade, or migration, seems likely to continue and increase since richer countries have an excess on labour demands, particularly in the domestic economy of the household, whereas, poorer countries have an excess in labour supply.

The Bangladeshi women sent abroad to work as a domestic maid in order to earn foreign exchange for her country is a sad, exploited women. She is exploited due to her urgent need to be employed. This is due to the following reasons:

1. the agents hold monopoly over jobs;
2. the government affords no protection to these women, not even in the Bangladeshi Missions in the receiving countries;
3. she must send the bulk of her earnings to dependants at home and has little or no savings;
4. governments in receiving countries do little to protect her.[51]

Economic hardships for the poor, indebted countries results in governments acting as competitive agents for the export of female migrant workers. Governments, like the government of Bangladesh, remain driven by market forces and pro-people economic developments are sadly left unpursued.

ii.6. Prostitution:

It is rare for a South Asian country to accept the fact that it has women plying one of the oldest trades in the world. The Bangladeshi society is no exception. Prostitution is considered a taboo subject to discuss and instead of trying to help the women in this field socially and legally, society refuses to even consider the

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[49]Tasneem Siddiqui : *National Responsibility Towards the Migrant Workers*. Occasional Paper 1, Refugee and Migratory Movements Research Unit, Arts Building, Dhaka University. July 1998.

[50] Ibid. p15.

[51] Saira Rahman: Across Borders of Despair: Trafficking in Women and Children in Bangladesh. Paper presented at a workshop on trafficking organised by the Asian Cultural Forum on Development, Bangkok, Thailand. July 1995.Published in Rights and Realities. *Ain-O-Salish Kendra*, Dhaka, Bangladesh. 1997. p 83.

matter. There are 16 authorised brothels in Bangladesh and numerous unauthorised or 'illegal' ones. The country's largest authorised red-light area, Tan Bazaar, is in Narayanganj, a mere one and a half hours drive from the capital Dhaka.

The tradition of prostitution is quite old in Bangladesh. According to Khan and Arifeen, 'The existence of prostitution in East Bengal, particularly in Dhaka and Narayanganj since the early and mid-nineteenth century is evident from the Deccinial Census of India and official municipal documents'.[52] During the early nineteenth century prostitutes used to be categorised under the heading of 'unskilled labour, not agricultural' and under the sub-heading ' indefinite and disreputable'. From the 1991 consensus, prostitutes were categorised in the group containing 'beggars, vagrants and prostitutes' in the 'miscellaneous' column[53]. History records that the wealthy and *zamindari* (land owners) class patronised and supported prostitution and women for entertainment and that even though in the early days most prostitutes were Hindu, the majority today are Muslims.[54]

Not all the women take up this profession out of sheer willingness. Some are the victims of internal trafficking, some enter it due to lack of other skills and for some, prostitution is a hereditary trade as they were born to prostitutes and are now supporting their mothers. Whatever society thinks of prostitution, it cannot merely ban the practice. However, it should not also consciously or unconsciously encourage it. There are no concrete statistics regarding the number of prostitutes in the country. However, the police estimate that there are 25,000 to 30,000 prostitutes in the city of Dhaka and 5000 to 15,000 in Narayanganj. [55]

The Bangladesh Bureau of Statistics recognises them among the 'destitute' and does not recognise prostitution as an occupation or profession.[56] The Constitution states in Article 18 clause 2, that 'the State shall adopt effective measures to prevent prostitution ...' and there are other laws, found in the Penal Code, the Children's Act and the Women and Children Repression (Special Provisions) Act preventing any person from forcing anyone into prostitution or into 'immoral acts'. Soliciting is also against the law, as laid down in the country's Code of Criminal Procedure. However, there are no laws against anyone engaged in sexual activity in exchange for money. It is sufficient for a prostitute to have an affidavit delivered by a magistrate stating that she is above 18 years for her not to be arrested by the police. However, she still has to face harassment and hand out bribes to those who protect the area in which she works, be it the local musclemen or the police.

Prostitution is, therefore, technically, neither legal or illegal, but exists in some legal limbo and therefore prostitutes do not have much legal protection, nor can the state take any legal measures against them. As citizens, they can demand the same fundamental rights and freedoms from the state and are protected by the Constitution. They have a right to shelter, occupation, food and basic amenities. Unfortunately, however, their position in society does little to protect them from

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[52] Zarina Rahman Khan. Helaluddin Khan Arifeen: Patita Nari: A study of Prostitution in Bangladesh. 1989.
[53] Ibid.
[54] Ibid.
[55] Supra. Note 27.
[56] Supra. Note 40.

certain crimes such as rape. While laws relating to the protection of women are the same for all the women in the country, in practice, prostitutes are discriminated against. In the case of rape, they are, more often than not, classified as 'habituated' to sexual intercourse and proof will be harder to give and accept. Furthermore, as we have seen in the case of rape in police custody or rape by police, innocent victims are passed off as prostitutes in an attempt to lighten the real crime.

Prostitutes or 'sex-workers' are also human beings who have physical and emotional problems. Unfortunately, there are no proper health facilities for them to turn to and they rarely seek outside help due to the fear of social stigma and abuse. Some recognise the need to use contraceptives, but their number is very low and there are few organisations willing to send health workers into those quarters where 'good' women refuse to enter. There is yet to be a serious AIDS scare in Bangladesh, but the awareness of AIDS and other sexually transmitted diseases is another topic these women are ignorant of. According to a study, 21.67% of prostitutes interviewed by the National AIDS Committee had VD and 17.5 suffered from or were carriers of hepatitis.[57]

There have been times where the red light areas of the country, specially in the city of Dhaka, have come under physical attack from the general public. The women residing there have been forcibly evicted from their homes and have had to turn to street workers and 'floating prostitutes' in order to earn a living and support their children. Two such incidences occurred in Tan Bazaar in Narayangang and in Kandupatty, a red light area in the city - near the District and Magistrates Courts of Dhaka.

Tan Bazaar: On 25 November 1991, the 200 year-old red light area of Tan Bazaar in Narayangang came under attack by the local Un-Islamic Activities Resistance Committee, who chanted slogans such as 'Those who sympathise with prostitutes are all bastards'. They had decided that due to religious reasons, the area had to be 'cleansed' of prostitution and their supporters were gathered together to carry out the process. Over 5000 women are housed in 10 large brothels in Tan Bazaar and during the 'cleansing', women were forcibly evicted from their homes, stoned and beaten. When the police came on the scene, they started to protect the women which caused them to be victims of the local population's wrath. The eviction procedure was finally quelled by the police, but there were no enquiries made by the government to the condition and plight of the women. Tan Bazaar is now back to normal, but many of the women lost homes and faced the expensive task of rebuilding both home and trade.[58]

Kandupatty: On 12 May 1997, the local *Panchayat* Committee (an informal committee comprising of the influential members of the locality) decided to get rid of the red light area of their neighbourhood. This decision was also based on religious sentiments, but the actual reason, which came to light after NGO investigators came on the scene after the riots, was that some of the members of the Panchayat wanted to illegally occupy some land inside the red light area. Here, too, the women were dragged out of their homes by the supporters of the Committee, beaten and stoned. Unfortunately, the police did nothing to stop the

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[57] Combined Third and Fourth Periodic Report for CEDAW. Ministry for Women and Children's Affairs, Government of Bangladesh. March 1997.
[58] Co-ordinating Council for Human Rights, Bangladesh (CCHRB). Investigation Report.

rioters and there were no government investigations or inquiries held.[59] Non-government organisations and women's groups filed cases against the Committee in this regard. Shamsunnahar, Advocate, Supreme Court, filed a writ petition before the High Court Division of the Supreme Court in this matter. After the service of notices, a Divisional Bench of the Supreme Court gave a dissenting verdict. Justice M.M.Hoque declared the eviction illegal and directed the government to resettle the petitioners and provide full security to the brothel inmates, while Justice Md. Hasan Amin, agreeing that the eviction had been illegal, decided that the writ was not maintainable in the present case, since the eviction was carried out by individuals. The case is pending hearing before a third Bench .[60]

II.iii .Reproductive Choices and Maternal Mortality

The topic of reproductive choices and maternal mortality has been included in the chapter on violence against women for several reasons. Firstly, women in Bangladesh are still pressurised to give birth to a son and may have to go through several pregnancies in order to try to produce one, draining their bodies of nutrition and strength. Secondly, in rural Bangladesh, a majority of people are ignorant of the fact that it is the male genes which determine the sex of the child and if a women cannot produce a son, various forms of punishment await her. She is either ill treated, divorced or finds herself sharing a kitchen with a co-wife. Thirdly, the rate of maternal mortality, as will be seen, is very high in the country, specially in rural Bangladesh, due to lack of proper care and facilities.

Bangladesh has a long history of overpopulation. This means that the government accords top priority to family planning and considers it to be an integral part of the development process. Keeping the population in check seems to be the only topic concerning women of which the different governments have really taken any notice. At present, the population of the country is growing at the rate of 1.98% while the total fertility rate is 3.4% and the Contraceptive Prevalence Rate (CPR) is 45%. However the male population of the country still refuse to use contraception and the use of male contraception accounts for only 12% of the total CPR.[61]

Culturally and socially women have not always been able to make independent decisions concerning birth control in Bangladesh. The trend of thought in rural Bangladesh is that more children, specially male children, means more help to the father and an increase in income once they find employment. The first stages of child-rearing and feeding and clothing a large, poverty stricken family seem irrelevant. Therefore, many rural women are encouraged to have children - specially if she has yet to give birth to a son. However, increasing education levels and employment outside the home are giving women the means and incentives to make family planning decisions on their own. However, there is still a resistance, specially among the male population, to providing family planning and reproductive health education to adolescent, unmarried girls and sex and health education in schools is unheard of.

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[59]Shireen Sultana, Md. Asaduzzaman, Raihanur Rahman. A Brief Investigation on the Eviction of Kandupatti Brothel. Report prepared by Odhikar, a non government organisation . August 1997

[60] Decision taken from the original petition. Case No. WP No. 3017/97.

[61] Supra. Note 47.

Women in rural Bangladesh still prefer to have their deliveries at home. This is due to not only the ignorance of the necessity for proper supervision, but also due to social reasons, the dependence on rural *dais* or non-formal midwives and the amount of work women have to do around the house which leaves them no time to visit the local health complexes. Available statistics show that out of 3.6 million live child births in Bangladesh annually, only about 10% take place at medical facilities.[62] The rest of the deliveries take place at home, very few of which are conducted by trained midwives or nurses. Other reasons for maternal mortality are the unawareness of expectant mothers and their families of the need to seek obstetric care, the distance to the health facility and the economic constraints the journey may cause and the lack of proper attention at the facility.[63]

The lack of obstetric care during child-birth threatens the lives of both mother and child and at present 20,000 women die of pregnancy-related causes in Bangladesh every year. 80% of all maternal mortality occur due to direct obstetric causes including post-delivery bleeding, convulsions, obstructed child birth, infections and complications arising from unsafe abortions[64]. The lack of proper obstetric care in emergencies in rural Bangladesh only adds to the problem. A survey by the Obstetrical and Gynaecological Society of Bangladesh in association with UNICEF in 1993 found that 30% of all district hospitals in Bangladesh were barely functioning as basic Emergency Obstetric Care (EOC) centres. Similarly, 40% of the 352 *thana* complexes (sub-districts are further divided into '*thana's* or areas under local police stations) were found to be well below basic EOC standards.[65]

The low value put on women in rural Bangladesh also plays an important factor in the high maternal mortality rate of the country. It is not only the women, but also the men who have to be taught that obstetric care is extremely necessary and a vital part of childbirth. The ignorance and negligence of the husband is one of the reasons why women of rural Bangladesh have to face the violence perpetrated against their reproductive rights.

II.iv. *Fatwa* :

Another form of violence against women in Bangladesh, leading to humiliation and even death of the victim is the illegal practice of '*Fatwa*' or religious decrees passed by the religious elite of rural Bangladesh on women. This has become a popular way in which rural Bangladesh takes the law in its own hands and needs extensive explanation. Due to this, it has been dealt as a separate chapter.

III. **The *Nari O Shishu Nirjaton Domon Ain* (Suppression Of Violence Against Women and Children Bill) 1998.**

In light of the increasing acts of violence towards women and due to continuous pressure from different women's groups and human rights organisations, the Ministry of Law, Justice and Parliamentary Affairs proposed a new Bill in early 1998 before the Parliament in the form of the Suppression Against Women and Children Bill 1998. The aim of this Bill was to enhance the provisions of the Repression Against Women and Children (Special Provisions) Ordinance 1995.

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[62] Ibid.
[63] Dr. Sabera Rahman: Reproductive Health of Women In Bangladesh. Study for Marie Stopes Foundation. October 1994.
[64] Supra. Note 47.
[65] Ibid.

Unfortunately, this newly proposed Bill has its drawbacks which will now be discussed.

The Bill contains 36 Sections relating to the definition and related sentences for offences of violence against women and children. These include the offences of trafficking, abduction and rape, the offences of using flammable and corrosive substances and dowry related violence. It provides for the death sentence in certain cases, for example in the matter of causing the death of a woman after rape, after using a corrosive or combustible substance or if a person is found guilty of 'selling, hiring or otherwise disposing in any other manner' any woman to a person in charge of a brothel.[66] The provision of life imprisonment is another option to the death sentence, with fine.

However, the Bill also includes the definition and related sentences for the offence of terrorism, including the offences of demanding ransom, causing disruption, extortion and interference with tenders - the last being totally irrelevant to the main purpose of the Bill. For example, Section 15 of the Bill states that 'if any person by intimidation or coercion collects or tries to collect money or any other property from any person in the name of subscription, assistance.....he shall be punished with rigorous imprisonment....' And Section 16 states that 'if any person unlawfully by threat or by force obstructs, pressurises or tries to obstruct or pressurise in the bidding, allotting or any other act relating to tender, shall be punished with rigorous imprisonment which may extend from seven to 14 years along with fine.' These are similar to provisions found in Section 2(3) of the Prevention of Terrorism Ordinance 1992, and really have nothing to contribute to the strength of a law protecting women.

Thus, the introduction of a new law strengthening the governments resolve to fight violence against women seems frivolous and unnecessary. This chapter has clearly shown that unless the existing laws are diligently and properly implemented and the law enforcing agencies honestly carry out their duties, the introduction of a hundred new laws protecting women and children will do nothing to prevent extensive acts of violence against them. The laws seem only to be impressive words on paper and not part of forming a safe society.

Conclusion:

This chapter of the thesis strongly highlights the various forms of violence faced by women in Bangladesh and the causes and reasons behind such criminal acts - poverty, lack of proper implementation of the law, ignorance of the law, a high demand for cheap labour here and abroad, lack of education and irregularities and crimnalisation in the law enforcing agency.

Just how irregular the justice system in Bangladesh is, can be seen in a survey conducted by the Survey and Research System, Dhaka, Bangladesh, for the Bangladesh chapter of the network Transparency International[67]. According to this survey, 63 percent of the 2500 householders questioned reported that they had to bribe court officials (9.6 percent of the total number of householders questioned were involved in court cases as either plaintiff or defendant and only

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[66] Sections 4, 5 and 9 of the Bill.

[67] Transparency International: Survey on Corruption in Bangladesh. The Survey and Research System and the Asia Foundation. Dhaka, Bangladesh 1997. Results of a base line survey of 2500 households.

3.3 percent of the cases surveyed were related to the repression of women, while 59.4 percent dealt with property disputes, 10.5 percent were on terrorism and 3.8 percent on political repression.). Furthermore, 63.6 percent of rural householders and 57.1 percent of urban householders stated that they had to bribe court officials while 16.3 percent had to give bribes to lawyers. Hiring witnesses was reported by 18.7 percent of the householders involved in court cases. The survey report further states that about the 41.4 percent of house holders involved in police cases had to make payments to the police and of these payments, 91 percent were made directly to the police involved while the rest were made through employees of the police station.

It is true that the various governments of Bangladesh have enacted, and are still enacting and revising, various protective laws for women. However, as can be seen from the above examples of violence against Bangladeshi women, this seems only to create the illusion that women enjoy a privileged and protected position in Bangladeshi society. After reading this chapter, the reality sets in that these laws seem only to be useless words on paper.

It is obvious that there is the urgent need for proper implementation of the present laws and a regular review of the relevancy of those laws by a permanent Law Commission, which will also take the responsibility for updating laws and repealing those no longer applicable. There is also the necessity for an independent Human Rights Commission to monitor the human rights violations. In 1997, the government of Bangladesh proposed to establish a Human Rights Commission, comprising of a Chairman, chosen from the retired judges of the Appellate Division of the Supreme Court, and 'four members from among persons having knowledge of, or practical experience in, matters relating to human rights'[68]. It was proposed that those responsible for selecting the members of the Commission are to be the President, the Prime Minister, the Speaker of the House of Parliament and the Leader of the Opposition[69]. However, the Commission, itself, according to the proposal, will be answerable only to the Government, which will decide which reports to be laid before Parliament[70]. In order for the Commission to function properly, it must, as has been mentioned, be an independent body with no political gains or affiliations. It should be answerable only to the Parliament, which represents all ideologies and a peoples' voice, to which it should submit an annual report regarding the human rights situation of the country and have the power to take action against government officials, including law enforcing agents, who commit human rights violations. The proposal made by the present government in Bangladesh for a human rights commission is lacking in these qualities.

It has been stated that in many of the acts of violence, specially in the crime of rape, many of the victims do not wish to seek redress. One of the reasons for this is intimidation by the perpetrator and another is the attitude of her family members towards her - particularly the male members of the household. These attitudes can be placed under the practice of a patriarchal form of society and the inferior position a woman has in it. Another social factor which discourages women from seeking redress is the lack of support systems outside the family to take care of her. There are no support groups or campaigners for rape victims or

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[68] Section 3 (3) of the Bangladesh Human Rights Commission Act 1998. Draft Bill prepared by the Institute of Development and Human Rights, 36 Mymensingh road, Dhaka, Bangladesh.
[69] Ibid. Section 3(2).
[70] Ibid. Section 18.

victims of domestic violence. There is no place for the victims to go to and share their experiences and gain the strength and support to file their case in court.

On the topic of 'safe custody', which, as has been stated, has no legal provision and is a source of the crime of police rape, lawyers have suggested that the shelter homes of various human rights and women's rights organisations act as safe custody areas for victims. The Bangladesh *Manobadhikar Bastabayan Shangstha*, a human rights organisation, recently made a proposal for separate shelter homes for victims of serious crimes like rape, placed in a non government institution and away from the area where the crime occured.[71] There is still a lack of shelter homes for victims of violence in Bangladesh. The Department of Women's Affairs, a government organisation, runs one shelter in Dhaka and five in the divisional headquarters which provide food, medicine legal aid and rehabilitation. The *Jatiyo Mohila Shongstha*, a government-promoted women's organisation, runs another shelter in Dhaka. There are also seven women's shelters run by different women's organisations and groups - again in the city of Dhaka. Unfortunately the total capacity of all these homes put together would only be around 400 women[72], and there is still very little provision for long-term rehabilitation.

As for the violence caused by trafficking in women, regional bodies such as the South Asian Association for Regional Co-operation (SAARC)[73], should take stringent measures to prevent this sort of crime and 'economic violence' towards women. It should be the responsibility of both the sending and receiving countries to monitor trafficking and apprehend those involved in the vile business. At the twelfth SAARC Technical Committee meeting held in Nepal in 1997, a draft 'Regional Convention on Combating Trafficking in Women and Children' was submitted to SAARC delegates by three Bangladesh women's rights non-government organisations, the *Ain-O-Salish Kendra*, *Ubinig* and the Bangladesh National Women Lawyers Association. The convention condemned the practice of trafficking and called for stringent measures to prevent the crime at both regional and national level. If such convention were accepted by the SAARC member states and became binding on them and its obligations adhered to, the crime of trafficking may well be reduced.

In all, violence against women plays a large part in maintaining patriarchal norms. It prevents women from exercising their legal rights, constrains their ability to take advantage of economic opportunities and keeps them in the home. Because of their connection to patriarchal norms, to tackle acts of violence against women, awareness-raising programmes are necessary not only for women but also for men so that both parties learn of their legal rights as citizens of Bangladesh and of the punishments meted out on violation of these rights.

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[71] Amin. Ahmed ,Rashid : *Acts of Depravity*. Daily Star Magazine. 27 March 1997.
[72] Supra. Note 41. Pg. 14.
[73] SAARC: A regional body headed by the governments of seven South Asian states, namely, Bangladesh, Bhutan, India, the Maldives, Nepal, Pakistan and Sri Lanka.

Chapter V

The Socio-Legal Status of Rural Women : Violence in the Guise of Religion

There are many who love God and wander in
the Wilderness/ I will follow the one who loves
the Person made by God
- Mohammad Iqbal

Patriarchal customs and economic poverty are starkly evident among rural society. And it is these two factors which are the reasons for a specific form of violence against women. Due to patriarchal customs, girls are taken out of school, women made to observe *purdah* and have almost no say in the decision making process in either their own homes or in public. Economic poverty of the majority has led to the formation of a rural elite group - land owners, money lenders and petty businessmen - who form the hub of the decision-making process of rural communities. They are joined by the religious elite - the mullahs, and teachers of *madrassahs* (religious schools). Women have little participation in these community affairs, even those who belong to the elite group. They adhere to the tradition of cooking, rearing children and observing *purdah*. However, these women form a small rural minority who can afford to stay at home. A majority of rural women suffer from poverty, specially, as has been mentioned, those who head households and have been widowed, deserted or whose husbands have migrated.

Furthermore, vested interest groups among the rural elite have traditionally found ways and means to keep a hold on rural power politics. They have been joined by some of the religious elite, who find in themselves the authority to pass judgement over alleged wrongdoers - specially poor women - in the form of *'fatwa'* (religious decrees). The women so accused are not even allowed to defend themselves or their actions. Patriarchy is the main reason for this social behaviour, as customary belief has it that men are superior and women must be chastised. Unfortunately, many rural women take this as their due, as they have been brought up on the belief that it is acceptable for their father's to beat their mothers and themselves and for their husband's to do the same once they are married.[1] This belief is taken a wider view when it comes to community activities and some women accept the judgement passed against them by the (male dominated) community. Unfortunately, this has led to certain illegal acts of violence against women in the form of abetting of suicide, physical abuse and even burning to death.

This chapter seeks to highlight the forms of violence faced specifically by rural women in the country as a result of vested interest groups who refuse to let women earn a living, emerge from *purdah* and practice her constitutional right to public participation. More than eighty percent of the population of Bangladesh live in the rural areas, and therefore those areas are the strongholds of potential human resources. Unless women are allowed to take part in the processes for rural economic

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[1] See section on Domestic Violence in Chapter IV.

planning and development and social activities, their needs and requirements will not be heeded, not will they be able to contribute to the finances of the household. This, in turn, will ultimately cause the stagnation and stand-still of national resource mobilisation. Some non-government organisations and micro-finance institutions have made attempts to improve the economic situation of rural women, but these, too, have been targets of some rural elite and vested interest groups, as will be discussed further in this chapter.

This chapter begins by a discussion of the make up of rural society and the position of women in it. It goes on to discuss the advent of Islam in Bengal (and ultimately Bangladesh) and the many political situations in which religion has been used to bring home biased policies. This discussion is necessary here as a majority of Bangladeshi's, whether in rural or urban areas, are Muslim and the concept of *fatwa* is a Muslim one. It is also necessary to show how fanatic forces and ideas came into being in Bangladesh. The actual meaning of the term *fatwa* is discussed next, followed by a study on different methods of dispute resolution prevalent in rural Bangladesh. This is necessary, since it needs to be clarified that *fatwa* are passed in only one method of dispute resolution - the informal *salish*. Next to be discussed is how this concept of *fatwa* is being misused in rural Bangladesh to suppress women and violate their human rights. This is followed by the position of *fatwa* in the eyes of the Constitution of Bangladesh - a comparative study on what the constitution guarantees as women's basic rights and what those giving *fatwa* denounce as being against the teachings of Islam. A discussion of human rights provisions and provisions for women's rights and equality found in the Quran is the next section of this chapter, as it needs to be proved that Islam has given women the rights to earn a living, participate in public affairs and are equal to men. The chapter ends with recommendations on how women can fight back against those supporting and pronouncing '*fatwa*'.

I. **Village Society:**

A large majority of the vast population of Bangladesh live in the rural areas of the country, where most live below the poverty level. The village society in Bangladesh is based on age-old customs and traditions and these are the threads which still run through the fabric of day-to-day life. These customs and traditions are based predominantly on patriarchal norms and ideas.[2]

The patriarchy prevalent in rural Bangladesh is, as has been mentioned earlier in this chapter, starkly evident in the duopoly that controls village life - the social and the religious elite. The former is comprised of the influential village elders, the head-man, the affluent land owners, the money lender and in some cases the Chairman and/or Members of the Village or Union Council and the latter is comprised of the village *imam* (leader of prayers) and the teacher of the village *madrassah* (Islamic religious school) - in all, anyone in village society who holds power over the

[2] For more on rural life in Bangladesh, see Kotalova: Belonging to Others . University Press Limited 1996; White: Arguing with the Crocodile. University Press Limited 1989.

remaining villagers. Both these groups have a mutual interest-based relationship, which is brought forth strongly at the village *shalish*.[3]

Moreoften than not, villagers resort to traditional means of dispute resolution when an offence of any kind occurs. This method is called a *shalish* and is one of the ways in which rural justice is carried out. However, in recent times, this village committee has overstepped its boundaries and has, as will be seen, committed violent abuses towards women over whom it has passed judgement illegally.

II. **Social Status of Rural Women:**

According to Abecassis, 'the reality of a poor woman's life is very commonly that she is regarded in every way as an inferior form of human life. She is all too often treated with little or no respect, viewed by her husband and parents -in- law more or less as a chattel, too foolish and ignorant to have any valid opinion on affairs outside the *bari*[4] and of too little value to be accorded the same level of concern, love or care which would be accorded to a male.'[5]

The women of rural Bangladesh, either through their fear of social stigma or of their total ignorance of the law, are relatively more abused and violated than their sisters in the cities and other urban areas. Another reason for this abuse is the lack of interest taken by the law enforcing agents in those areas, who tend to turn a blind eye to the overstepping of traditional and customary methods of dispute resolution in the villages and who regard domestic violence as a social and not a legal issue. Sometimes they, themselves, take part in such activities of domestic violence.[6] Much of the violence faced by rural women also involves the power and authority wielded by the village elders, elite and the '*imam*' of the local mosque. Most of the violence is suffered by the Muslim women of rural Bangladesh, who, along with their menfolk make up the majority of the religious population in Bangladesh and who are unquestioning of religious authority and for the most part illiterate. 'All Bengali Muslims, even if they know little else about Islam, know that there is no god but God, Allah, and that Muhammad is the Prophet of God. This statement of faith is repeated in Arabic at every *namaz* (act of prayer), but unlike other formal prayers the meaning of which may not be appreciated by all who use them, the people do know the meaning of this one.'[7]

This concoction has turned out to be a deadly weapon in the hands of the religious leaders of rural Bangladesh. Poverty, illiteracy and the blind fear of God keep the women subjugated to a life of drudgery and near-slavery in a strong patriarchal atmosphere, where everything that goes wrong - the inability to produce a son, the lack of food, the lack of or large number of offspring - is always their fault and the burden of punishment is born by them. Indeed, this has prompted a grass-root level,

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[3] The method of dispute resolution by *shalish* is discusses in section V of this chapter.
[4] *Bari*: Bengali word meaning household and all that is contained within the four walls of the home.
[5] David Abecassis. Identity, Islam and Human Development. Dhaka University Press Ltd. 1990. p 53.
[6] Result of a workshop and fieldwork in rural Bangladesh. December 1996.
[7] Supra. Note 5, p 27.

women oriented non-government organisation called '*Baachte Shekha*' (Learning to Survive) to produce a poster in Bangla depicting a woman with eight arms each doing a different chore - cradling a baby, sweeping the yard, winnowing rice, feeding chickens, cooking . In the corner, her husband sits on his haunches with a contemptuous look on his face and smoking a hookah. The caption on the poster reads : 'My Wife Does No Work At All!'.[8]

III.**Advent of Islam In Bengal and Its Political Faces:**

Before we enter into the details of how the social structure of the village is causing rural (Muslim) women to suffer religion-based violence, we shall have to briefly delve into how Islam made its way into the region which is now Bangladesh and how it is now used as a political tool to subjugate people and instil in them the fear of punishment and awe them into either supporting fanatic political parties or agreeing with their policies.

III.i. The Advent of Islam:

According to David Abecassis , in 1000 BC, people from the planes around the Ganges began spreading to Bengal bringing with them their religion comprising of Hindu beliefs and culture and grove worship. Then came Buddhists, nearly a thousand years later. On the advent of Buddhism, Abecassis quotes Ramkrishna Mukherjee 'Buddhism contented itself with superimposing a new religion upon the existing tribal societies .....from which it did not uproot animistic practices'. In the higher social strata, Hinduism and different sects of Buddhism - *Vajrayana*, *Mahayama* and *Theravada* - mingled under the aegis of different kingdoms while the peasants continued to practice grove worship introduced in the area by the first settlers. In this social framework, Abecassis comments 'The world view of people at the time of the first coming of Islam was, therefore, the result of a continuous process of conflict and assimilation over the preceding millennia'.[9]

As time went by, various Muslim conquerors established their hold over India. Combined with the preaching of travelling *Sufi*'s (Muslim holy men who combined spiritualism with religion), who probably arrived in Bengal as early as the eleventh century from north India[10], they helped in the spreading of Islam. However, even though 'the Muslim rulers brought with them improved administrative systems and language, but apart from the isolated zeal of some, for most of them it was not part of the policy to convert the indigenous population'[11]

The form of Islam preached by the wandering *sufi*'s emphasised a spiritual union with God and did not require its followers to give up traditional beliefs totally. One may call this an unorthodox practice of Islam and it was only after the awakening of the Islamic Reformist movements, which commenced in India during the sixteenth

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[8] Observed during a visit to the said non- government organisation in Jessore, Southern Bangladesh, in July 1995.
[9] Supra. Note 5.
[10] Ibid. p9.
[11] Salma Sobhan. Politics of Religious Identity. *Sanglap*. Vol. IV. Ain-O-Salish Kendra, Dhaka 1995.

century and spread into Bengal in the eighteenth and nineteenth centuries, that the conflict between religion and custom arose for Bengali Muslims. This conflict is yet to be resolved. According to Fazlur Rahman, 'In India, the roots of the reform movement go back to the $10^{th}/16^{th}$ and $11^{th}/17^{th}$[12] centuries AD, for the spiritual crisis of Islam in India was crystallised by the political developments and the political implications of the ruling Muslim minority over and against the vast Hindu majority'.[13] This era probably marked the first use of Islam as a political tool.

III.ii.Political Face of Islam: British Colonial Period:

In the early nineteenth century, there was a reform movement in Bengal, founded by one Hajji Shariat Allah. He was born in the late eighteenth century and apparently went to Mecca in 1782, where he stayed till 1802.[14] On his return to Bengal, he started the '*Fara'idi*' movement or, the 'movement of purification' which was based on three factors:

1.An anti-British sentiment, by declaring that India was no longer the 'Abode of Islam', but had become the 'Abode of War';

2.Socio-economic reform directed against the rich land-owners and landlords in the interest of the peasants and workers;

3.Purification of Islam from Hindu ideas and Sufi excesses.[15]

Sufism, however, did not disappear altogether. It took on a new form under strict, orthodox pressure which resulted in denuding the practice of its metaphysical character and robing it with the thoughts and practices of orthodox Islam. The *Fara'idi* movement was continued by Shariat Allah's son, Dudhu Miyan. Followers of this movement are still found in Bangladesh.

III.iii.Political Face of Islam: The Birth of Pakistan and Bangladesh:

Pakistan and India were born in 1947 by carving the Indian Sub-continent into pockets of religion. India for the Hindus and Pakistan for the Muslims. This was, of course, a political move. The combined struggle against the British Raj in the Sub-continent had united the Hindus and Muslims but this failed to keep the communities together once the Empire decided to pull out. A large number of Muslims of the new state of India migrated to Pakistan, which was split into two wings - East Pakistan and West Pakistan - divided by the great expanse of India and united only by a common religion. The two wings differed socio-culturally, linguistically and traditionally. East Pakistan had a culture and tradition more akin to the eastern part of the Sub-continent or 'ancient' greater Bengal. It also had a more fertile climate, being the largest delta in the world ,at the mouth of the Ganges. On the other hand, the Western wing had a culture more akin to its surrounding countries like the western part of India and Afghanistan, most of its climate was arid and its people

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[12] The first is the century in the Islamic calendar and the second in the Christian calendar.
[13] Fazlur Rahman. Islam. Second edition. Chicago University Press. p. 204.
[14] Ibid. p. 201.
[15] Ibid. p. 204.

chose *Urdu* as their language for communication, while the Eastern wing spoke *Bangla*.

Due to its fertile soil, East Pakistan was economically exploited by West Pakistan - the trade monopoly used to develop the latter wing. This, coupled with political and cultural domination caused the inhabitants of the Eastern wing to assert their ethnic Bengali identity, culture and language. This, as has been discussed in the second chapter on the Women of Bengal, culminated in a bloody war for liberation in 1971 and the emergence of Bangladesh.

Islam as a religion was frequently used by Pakistan , during the war of liberation, as a political tool. A group of *mullah*s and religion-based fanatic politicians misinterpreted Islam in order to mislead the uneducated, innocent rural Muslims that the liberation forces were out to destroy Pakistan and that the separation of East Pakistan would lead to a destruction and loss of religion.

During the liberation war (26 March - 16 December 1971) we therefore see that religion- based fanatic political forces, who were the prime beneficiaries of the communal partition of the Sub-continent, used the same ploy to try and prevent the liberation of Bangladesh. These forces in the Eastern wing collaborated with the Pakistani Army as '*razakar*s' or volunteers and were especially helpful to the said army in the rural areas where the latter found the unfamiliar terrain difficult to manoeuvre in. In the villages the *razakars* abetted in the identifying and killing of pro-liberation supporters and those who aided and sheltered liberation forces. They also used this as an opportunity to eliminate those who spoke against them and who doubted their ideologies. They were also instrumental in reducing women to sexual slavery for the Pakistani army.[16]

The leaders of these fanatic forces kept a low profile after the liberation of the country in December 1971 and politically reorganised in Bangladesh during the first Martial Law regime to form so-called 'religious' political parties under the Political Parties Ordinance 1978, in the name of Islam. This ultimately gave re-birth to the fanatic organisation, the Jamaat-I-Islami (the Jamaat), branches of which were previously present in both wings of Pakistan but kept a low profile after the liberation of Bangladesh. Its supporters, along with the social and religious rural elite, are now violating all sense of moral, religious and humane behaviour and violating the human rights of women in the rural vicinity in the name of '*Fatwa*'.

IV. **Fatwa**

IV.i. The Meaning of *Fatwa*

Prior to delving into what is occurring in rural Bangladesh society in the name of religion, the term *fatwa* requires explanation in both its actual meaning and in what it means in Bangladesh today.

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[16] See Chapter II on *The Women of Bengal* in this paper.

Fatwa, in true Islamic context has been explained by Dr. Syed Anwar Husain as 'the opinion of a *mufti* who is a versatile person having sufficiently strong grounding in Islamic principles. A *mufti* is a religious person appointed by the state for the purpose of issuing fatwa.'[17] And no one else can do so. Therefore, in other words, a fatwa is a religious decree or edict according to Quranic doctrines or *Shari'a* . The term itself is derived from the Arabic 'to give decision'. During the time when Islam was still young, and through the Ummayyid and Abbassinid dynasties, religious courts were held, where fatwa were passed. Due to outside influence and changes in society, the responsibility of judging people was given to the state, but every-day, domestic disputes were resolved by special *fatwa* institutions, which were, however, not allowed to pass decisions over serious criminal offences. Nor could they decide on severe punishments like the death sentence.

In Bangladesh today considered from a strict Islamic point of view, the practice of *fatwa* is an anathema. It is an instrument of exploitation disguised in religious garb. It is targeted against the most vulnerable members of society to achieve social, political and economic advantage and has its roots in policies and practices of political elite who seek to gain through the patronising of anti-social, anti-development, fanatic elements.

VI.ii. *Fatwa* in Bangladesh are given by Fanatics, not Fundamentalists

At this point of the discussion, I would like to point out the difference between the fanatic and the fundamentalist and would like to stress that '*fatwa*-mongers' in rural Bangladesh are not fundamentalists. Call them 'fanatics', 'religious fascists', 'obscurantists' or 'extremists' but not 'fundamentalists'. Webster defines a '*fanatic*' as 'an extremist, often applied to followers of a religious or political party' and 'fanaticism' as 'excessive zeal or unreasoning fervour especially religious or political'. 'Fundamentalism', on the other hand, denotes 'a belief that the Bible is to be accepted literally as an inerrant and infallible spiritual and historical document'. The term itself is from the word 'fundamental' meaning 'pertaining to or being the basis, root or foundation of something; essential; elementary; primary'. The word 'Bible' can be substituted by 'Quran' in the above definition of 'fundamentalism'. Therefore these two terms are completely opposite in meaning.

Unfortunately, in modern terminology, fanatics and fundamentalists have been thrown together to mean the same extreme personality which makes a fanatic. The western media has also played a role in giving the term 'fundamentalist' a negative meaning. Fatima Mernissi comments '.....the media does not help Westerners to understand what goes on in the Muslim world, reducing, as it does, political figures to Tarzan's Chita. And even Chita had some humane quality about her, denied to Muslims as they are described in the Western media. This dehumanisation of Muslims in America and European television has, by mirror effect a dehumanising impact on the American and European viewers. They become so frightened that their national capacities are paralysed and only their defensive, aggressive energies are

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[17] Dr. Syed Anwar Husain. *Fatwa in Islam: Bangladesh Perspective*. The Daily Star. 18 January 1995.

brought to bear on their relations with this important part of the world civilisation.'[18] Thus, the term 'fundamentalist' when used by the western media - and the westerners themselves- is used in the same way one would use the terms 'extremist' or 'terrorist' and collectively these terms mean, to them, persons who are irrational, immoderate or violent.

According to Riffat Hassan, a contemporary Muslim scholar, the image of a fundamentalist- '....a ferocious-looking Arab....wearing a flowing white robe, riding a white charger and flashing a sabre....'[19]- goes back in time from the Christian west's age old perception of the Prophet Mohammad and of Islam. She quoted Dante's perception of the Prophet 'as a bloody figure who divided the world of Christendom, and assigned to him all but the lowest level of hell for his grievous sin:

> A wine tun when a stave or cant bar starts
> does not split open as wide as the one I saw
> split from his chin to the mouth with which man farts
> Between his legs all of his red guts hung
> with the heart, the lungs, the liver, the gall bladder,
> and the shrivelled sac that passes shit to the bung
> I stood and stared at him from the stone shelf;
> he noticed me and opening his own Breast
> with both hands cried: "See how I rip myself!
> See how Mahomet's mangled and split open!"[20]

The fact that the term 'fundamentalist' and 'fundamentalism' do not quite apply to Islam in the same way as it applies to Christianity or Judaism is, of course, also recognised in some non-Muslim quarters. Bernard Lewis, a Jewish scholar of Islam states "it is now common usage to apply the term 'fundamentalist' to a number of Islamic radical and militant groups. The use of this term is established and must be accepted, but it remains unfortunate and misleading. 'Fundamentalist' is a Christian term. It seems to have come into use in the early years of this century, and denoted certain Protestant churches and organisations, more particularly those which maintain the literal divine origin and inerrancy of the Bible. In this they oppose the liberal and modernist approach to the Quran, and are, in principle at least fundamentalists."[21] However, even though Lewis agrees that the term is misleading, he says that the term 'fundamentalist' is established and must therefore be accepted- even while denoting extremists and Muslim fanatics. If this statement is accepted, then how can we argue for the abolishment of such terms as 'chairman', 'manpower', 'red Indian' and other sexist and racist language which have been part of the English vocabulary for a very long time and are, due to non-acceptance in present times, now seen as 'politically incorrect'?

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[18] Fatema Mernissi : The Fundamentalist Obsession With Women. Simorgh Publications, Lahore, Pakistan. 1987.
[19] Riffat Hassan.. *The Burgeoning of Islamic Fundamentalism.* Paper presented at a lecture on Gender and the Quran. Dhaka. Bangladesh. September 1994.
[20] Ibid. Dante Alighieri. The Inferno. Trans. John Ciardi. New York Mentor 1954. p 236.
[21] Bernard Lewis. The Political Language of Islam. Chicago. 1988.

I emphasise that the *fatwa*-mongers and the political powers behind them are not fundamentalists because they act on blind impulses and emotions with little regard to the basic doctrines of respect, humanity and peace and tolerance enshrined in the Quran. Kazi Alauddin Ahmed places it exceedingly well when he comments ' In my opinion he (the fanatic) is practically blind-folded and yet he enjoys a sort of mirthful sojourn in the dark alleys of ignorance, superstition, intolerance, vengeance and other such ignominious overtures.'[22] The fatwa passed by the village imams, as will be seen, have little to do with Quranic teachings and philosophy. The decisions are almost invariably self-interested and biased: either fabrications, misinterpretations or extremist interpretations of the Holy Book.

A fundamentalist, in the Islamic context, is a believer in the fundamentals of the Quran, its underlying philosophy and spirit. By virtue of his understanding, he is an educated, enlightened, unbiased person having through exposure to the Quran and who, therefore, has no scope of perverting it or distorting the basic principles of peace, humanity and tolerance enshrined in it. A rational Muslim who interprets the term 'fundamentalist' literally, will have no qualms in calling himself one, since a majority of Muslims do believe in the basic principles of Islam contained in Sur'ah Al-Baqarah 17:7 'it is not righteous that yea turn your face towards east or west; but it is righteous to believe in God and the Last Day and the Angels and the Book and the Messengers; to spend your subsistence, out of love for Him, for your kin, for orphans, for the needy, for the wayfarer; for those who ask, and for the ransom of slaves; to be steadfast in prayer, and practice regular charity; and fulfil the contracts which yea have made; and to be firm and patient, in pain and adversity, and throughout all period of panic, such are the people of truth, the God-fearing.'[23] Thus in relation to Muslims, 'Islamic Fundamentalism' should mean the 'fundamentals of Islam.

Thus, the Muslim fundamentalist, in my opinion, is in danger of being overwhelmed by fanatics who are misusing the identity and dignity of the former, with the help of the (purposely?) confused West. In Bangladesh, fatwa are passed not by the enlightened fundamentalist, but by the dark political powers of the fanatics and their cronies.

V. Methods of Dispute Resolution in Rural Bangladesh:

Here I would like to discuss the methods of dispute resolution functioning in rural Bangladesh to date. They include the non-formal gathering for mediation, which often includes the rural elite and religious leaders in the village , called the '*shalish*' and the proceedings of the statutory Village Court. '*Fatwa*' are pronounced at the village shalish by members of the rural religious elite, encouraged by the local '*matobbor*', (the local strong-man).

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[22] Alauddin Ahmad. *Of Fanaticism and Fundamentalism.* The Daily Star. 17 September 1994
[23] Mohammad Marmaduke Pickthall.. The Meaning of the Glorious Quran. Mentor Religious Classics.

V.i. The Village *Shalish*

The *shalish*, or village mediation body, is an institution which dates back to the traditional forms of conflict resolution through mediation. It was a forum where disputing parties sought to have their conflict arbitrated. The arbitrators were the local elite, who had gained such status due to their relative wealth or due to the fact that they held respected positions in village society - the moneylenders, landlords and school teachers fall under this category as do the 'wise' village elders and the *imam* of the village mosque. Both sides were represented and the decisions given by the body were not binding. A *shalish*, however, was not allowed to pass judgement on criminal offences.[24]

The body passed judgement over simple disputes concerning family, property, cattle, sibling rivalry, etc. It however has no legal status and no uniform terms of reference. Nor does it have any legislation governing it. Because of this, the power given to the village *shalish*, by the villagers themselves is, more often than not, misused.

There are divided opinions as to the relevance and need of a village *shalish* and the resolving of disputes through mediation. One opinion is that a *shalish* is an effective, indigenous, non-formal body using methods of conflict resolution which permits the rural population to seek justice outside the slow, expensive and often corrupt machinery of the lower judiciary. Others point out that since *shalish* are usually constituted of conservative members of rural society who arbitrarily seek to adhere to existing social structures and tend to censor those who do not fully conform with (patriarchal) 'socially acceptable' behaviour , their method of arbitration is restricting, stagnant and easily abused. The latter is evident, since *fatwa* are issued by the village imam at a *shalish.*

At the village *shalish*, disputes involving women include those where they have been victims of sexual abuse, physical violence and illicit sex. A woman's case is usually brought to the *shalish* by her (male) guardian. Widows, who lack an authoritative guardian, 'are the most susceptible to sexual and physical abuse by men. They are those who plead directly without any intermediary.'[25] Women usually appear in a *burquah* , their face hidden behind a veil. Those who cannot afford one, swathe their body in a sari and draw its end over their head and cover their face. A woman does not face the judges. Instead, she stands in front of them laterally. She is only supposed to answer the questions they ask, and not give opinions.[26]

As has been mentioned, the *shalish* is not authorised to try criminal cases and by doing so, abuses the judicial system. However, since 1993, reports show that different *shalish* have, without authority, tried, convicted and sentenced women for alleged criminal offences in the name of *fatwa*. In a majority of the cases, the women had no defence and were not allowed to defend themselves. They were convicted in total contradiction to the statutory laws of Bangladesh.

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[24] Interview with Fazlul Hoq, Executive Director, Madaripur Legal Aid Association, Madaripur, Bangladesh. December 1996.
[25] Jitka Kotalova. : Belonging to Others: Cultural Constriction of Womenhood in a Village in Bangladesh. University Press Ltd. 1996. p.80.
[26] Ibid.

V.ii. The Local Courts

There are two kinds of local courts prevalent in Bangladesh, which have been given statutory recognition. Under the Village Courts Ordinance of 1976 and the Conciliation of Disputes (Municipal Areas) Ordinance of 1979, village courts and conciliation boards in towns and cities were established. Their jurisdiction is strictly limited to small civil matters and petty crimes. The village court is constituted upon the application by any party to a dispute. The party must apply to the Chairman of the Union *Porishod* (Union Council) in a prescribed manner and on payment of a fee, for the constitution of the court and trial of the matter. If the aggrieved party's application is rejected by the Chairman on mala fide grounds, the party may apply for revision to the Assistant Judge, who has jurisdiction to try the matter.[27]

The village court, therefore, consists of the Chairman and two other members of the Union Porishod who are nominated by the parties to the dispute.[28] According to section 7 of the Ordinance of 1976, a village court has no power to pass a sentence of imprisonment but it may order the accused to pay the aggrieved party compensation not exceeding Taka 500.00 (approximately US$ 10.00). Section 8 further states that if the decision of the village court is unanimous or brought on by a majority of four to one, the decision is binding on the parties. However, if the decision is made by a majority of three to two, 'any party may, within thirty days of the decision, apply in the prescribed manner' to either the *thana* (local police station) magistrate or the Assistant Judge having jurisdiction. Either of them, on deciding that there has been a 'failure of justice' may set aside or modify the decision or 'direct that the dispute be referred back to the Village Court for reconsideration'.

Article 109 of the Constitution entrusts the High Court Division of the Supreme Court with the control of the subordinate courts, including the Village Court. Thus the High Court Division is also obliged to call to the attention of the Government the acts done by the local bodies taking advantage of judicial powers they have no authority to possess. Furthermore, according to the Village Courts Ordinance, the village chairman is the only person who can pass a resolution at a shalish.[29] A representation is passed to him to decide upon.

However, the concept of shalish as under the Ordinance of 1976 has changed, although the Ordinance has not. The village Imam now has, more often than not, a contribution in the final say in the matter of punishment, *fatwa* is now being used to bolster the authority of the *shalish* and a non-legal set of 'laws' are now being given the force of law de facto at the grass-roots level.

Vi.The Impact of Fatwa in Bangladesh : Violations to Women's Human Rights.

After an explanation about village society, the status of women in that society, *fatwa* and methods of dispute resolution, we come to the main part of this chapter - the effects of *fatwa* (as understood by rural Bangladesh) on women.

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[27] The Village Courts Ordinance, 1976. Section 4.
[28] Ibid. Section 5.
[29] Ibid.

The social and religious elite of Bangladesh are, for the most part, threatened both by the law-enforcing agencies as well as the private, voluntary, non-government (NGO) and some government development agencies. These organisations, realising the need to develop rural infrastructure and successfully integrate rural personpower into the economic system of the country, have formulated ways and means by which to channel the potentials of the people into creating a better Bangladesh. NGOs have generally played an extensive role in this, by building primary schools, cottage industries, poultry farms, small credit programmes etc. for both men and women in rural Bangladesh. However, the emphasis is on the empowerment of rural women, as will be seen in the following chapter.

These education, credit and income generating programmes are making women of rural Bangladesh more self-sufficient, outspoken and aware of their rights. This is posing another serious threat to the power of the religious and social elite. This fear of loss of power is what is instigating arbitrary decision disguised as fatwa. The elite realise that once the villagers are educated, working happily and their children are sent to school, they will not be treated with the same awe that they are used to receiving. In all, they are afraid of constructive development for the socio-economic improvement of Bangladesh and resist it by passing *fatwa*'s to scare villagers into not joining any nation-building activity. Their main target, is of course, women - as the women of Bangladesh have proved to be more hard-working and outspoken than their menfolk. This they recognise and thus try to keep women suppressed.

Because of the dual threat to the rural elite by both legal bodies and development agencies, we will have to divide the incidences of fatwa accordingly.

VI.i. *Fatwa* Against Women - Social Reasons:

As has been mentioned, the village *shalish* is an informal body constituted by the village elders of their own initiative where they accuse individuals of misbehaviour and punish them. These judgements have been justified in the name of customary practice and religious laws (*Shari'a*). but the meting out of punishments have in recent years become increasingly reckless and dangerously illegal. *Fatwa* are now being pronounced at the *shalish* by people who have no authority or scholarship, and are being used to weigh up evidence, which is not the function of the *fatwa*-giver, (or *fatwa*-monger) instead of being used to clarify ambiguous legal situations. From January 1993 to July 1995, there have been nearly 30 reported cases of *fatwa* passed on women who have dared to transcend the traditional and 'normal' submissive attitude women should possess, or who have been cruelly abused by members of the village elite

The women victimised have been unable to seek proper legal redress. This is mainly due to four factors:

1.The law-enforcing authorities are unwilling to interfere in 'traditional' village matters, or are kept satisfactorily unaware of the practice and thus turn a deaf ear;

2.the women are ignorant of the fact that they can seek legal redress;

3.the women are threatened with social ostracisation or even death if they seek the aid of the law;

4. In many occassions, the village shalish illegally sentences the woman without giving her the chance to even complain to the law, and by the time the authorities hear of the matter, the poor women has either been sentenced to death or has committed suicide out of sheer humiliation.

Fatwa Realted Violence. January - December 1997.[30]

	Hila [31]	Lashes No. not mentioned	10-50 Lashes	51-100 Lashes	101-500 Lashes	Abandoned	Social Boycott	Total	Cases Filed
Allegation of theft		1						1	
Oral Divorce	5					1	1	7	
Premarital Pregnancy				2	2		1	5	2
Allegation of Immorality	1	1	1	1				4	1
Social Dispute			1					1	
Seeking Redress for Rape				1	1	1		2	1
Accused of Adultery			1	1				1	
Adultery			1					1	
Reasons not mentioned	1	1	3					5	
Total	**7**	**3**	**7**	**5**	**3**	**1**	**2**	**28**	**5**

Some of the most striking cases of *fatwa* due to 'social transgresses' are given below. In these cases some of the women or their families have gone to court to seek redress. However, for many others, threats from the offender prevent them from doing so.

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[30] Ain-O-Salish Kendra. *Violence Against Women*. A publication of data collected from eight different newspaper reports. January 1998. Dhaka, Bangladesh.

[31] *Hila*: Intervening marriage. When a divorced couple wish to remarry each other they first had to wed others, then divorce them before they could do so. Now made redundant under Bangladesh law.

Noorjahan:

On 10 January 1993, one of the first cases of *fatwa* made public was published in the national dailies. It concerned the suicide of 21 year old Noorjahan of Chattakchara village in Sylhet, northern Bangladesh. A few months before she died, her father had managed to obtain divorce papers from her absconding husband and after the divorce went through she married Matlab.

The local Imam, Maulana (ironically, a title given to those who have thorough knowledge in the Quran) Mannan, was infuriated by this marriage as Noorjahan had spurred a proposal of marriage brought to her father by the Imam. He also had an unresolved dispute with Matlab over some land . Maulana Mannan began raising the issue that Noorjahan did not have a proper divorce from the first husband and thus her second marriage was illegal. Fifteen days after the wedding, a *shalish* was held and it was decided, by the Imam, that Noorjahan's marriage was illegal and that she had committed the crime of bigamy. Her parents were also adjudged guilty for arranging such a marriage.

On 10 January 1993, the verdict against Noorjahan was delivered. She was not allowed to defend herself. The *fatwa* passed decreed that she be buried to the waist and stoned 101 times in public. The punishment was carried out. Noorjahan committed suicide afterwards. In her fathers words "She said 'they have dishonoured me in front of so many people, dishonoured my innocent mother and father. I do not want to live any more.'" [32]

A case was filed against the perpetrators of the crime by women's rights organisations. Eight persons were found guilty, including Maulana Mannan and have been sentenced to seven years imprisonment.

Another Noorjahan

On 5 May 1993, Noorjahan of Faridpur in south-central Bangladesh was burnt to death. She was married to a person who was jobless, as he had some physical disabilities. The family depended on Noorjahan's income and she had to go to different places in search of work.

Allegedly, she left the village one day with a young boy in search of work. She stayed the night away and on her return to the village, her infuriated husband complained to the villagers. She was accused of adultery by the village *shalish*, which included the local Imam. She protested her innocence but was forcibly abducted by some of those involved in the trial. After about a week, she was found tied to a stake in a locked room, burnt to death.

Investigations were carried out by local women's NGOs and a case was filed in the District Court. However, the Court dismissed the case on the grounds of lack of evidence. The High Court Division of the Supreme Court has ordered reinvestigation of the case by virtue of a petition submitted by the *Mohila Porishod* (Bangladesh Women's Council).

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[32] "*Grohonkal*" (Eclipse). Documentary film on incidences of Fatwa produced by the Ain-O-Salish Kendra. 1995.

Farida Begum

Farida Begum's story is one of the most common reasons for *fatwa*. Twenty four year old Farida had sexual relations with Mohammad Rafique who had promised to marry her if she did so. As a result, she became pregnant, and he refused to take any responsibility.

On 21 July, a village *shalish* sentenced her to be whipped then buried to the waist and stoned. Her mother was given a few lashes as well. Farida, who lives in Gazipur, close to Dhaka, fled to the capital to seek aid. The police referred her to the Bangladesh Legal Aid and Services Trust and a case was filed against the perpetrators.

Farida was fortunate in being able to escape to Dhaka before her sentence was carried out. Most are less fortunate.

There have been and still are, more cases of *fatwa* against women for 'social' reasons, than for reasons pertaining to activities outside the home. This is because women are gradually getting the support of their husbands due to their capacity to earn money and supplement the house-hold expenses. Unfortunately, those women who have been accused of 'adultery', 'immorality' and 'loose character' are usually innocent victims of rape or have been victimised by revengeful, jilted suitors or jealous youths whose advances they have spurned.

From 1993 to 1996, there have been fifty-five reported cases of violation to women's human rights by *fatwa* for social reasons. Twelve of these cases have either directly caused the death of the victim or have been the reason for her subsequent suicide by hanging or drinking poison. Out of these cases, legal action of some sort - police investigation, case filed in lower court, General Diary entry in local police station, etc. - has been instigated in 29 incidences. However, most of these are complaints filed in the local police station. Only two cases have made it to the High Court Division of the Supreme Court.[33] According to the above reports of *fatwa*, one thing is very clear. Without the intervention of pressure groups in the form of women's organisations, etc., a majority of the cases of *fatwa* abuse would remain unknown or un-investigated. Police intervention would be hard to achieve. In the cases of Dulali and Noorjahan (of Sylhet), as in the cases of women such as Firoza, Kadbanu, Shopnahar, and Nazma, the abuse they faced was brought to the attention of the judiciary with the help of cases filed on their behalf by these organisations.[34]

VI.ii. *Fatwa* due to Development Activities

The above is not the only way in which religious fanatics are trying to hamper every move or action a woman might make within their knowledge and in their vicinity. As has been mentioned previously, another fear the village elite have is the fear of

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[33] Ibid.

[34] For tables of incidences of *fatwa* and details of the cases of the mentioned women , see Appendix IV and Appendix V respectively.

development. Enthusiastic Imam's are also trying their best to hamper development by issuing their special brand of *fatwa* on women working for or taking advantage of non-government organisations (NGOs) dedicated to development and the emancipation and empowerment of women.

There are over ten thousand NGOs in Bangladesh to date. Of these, approximately 919 are registered as receiving foreign funds of over US Dollars 440 million [35]. The NGOs are controlled by the Government and by several statutory laws. Out of the numerous NGOs there are many which have incorporated women's empowerment, health, education, family planning and legal rights in their poverty alleviation strategies. Some NGOs have income - generating projects for rural women which contain population-education and social mobilisation components which are designed to encourage women's independence in household decision making.

Many rural women are employed by NGOs and Private Voluntary Organisations (PVOs) as field-workers, trainers, project workers and health workers. They also take credit and loans in order to start home-based income generating projects such as cattle rearing, vegetable growing, sewing, weaving, poultry farming etc.. Probably the most favourite targets of the *fatwa*-mongers are the two large NGOs- the Grameen Bank and the Bangladesh Rural Advancement Committee (or BRAC). The former is the pioneer of the practice of giving small loans to village women. At present, 94 percent of the two million Grameen Bank loan recipients are women. The Grameen Bank also has a textile weaving outlet. The latter is the oldest NGO in Bangladesh, founded in 1971. Its projects are primary education, adult literacy programmes, health and family planning clinics, training centres, legal literacy programmes, textile weaving and handicrafts.

The 'strategy' taken by Imams is to hamper women-oriented development work by declaring to all who stop to listen (usually poor village folk) that women should remain in seclusion or in '*purdah*', as per injunctions of the Quran. They preach that women lose *purdah*, and thus status and respect, if they venture out of their homes to work and thus interact with unfamiliar men. The Imams also preach that because some NGOs are funded by foreign donor agencies, they are trying to convert the 'docile' and 'gullible' Muslim women to Christianity, along with the children who go to NGO-run primary schools. In all, the village clerics do not like the idea of women coming out of their homes, becoming educated, independent and learning to assert themselves.

In January 1994, the parents of seventy thousand children in different parts of rural Bangladesh, attending some 21,000 BRAC schools were asked by the Imams to boycott the schools or face the *fatwa* of social ostracisation. Immediately, the attendance at these schools recorded a three percent drop. Between January and March 1994, 110 BRAC schools in the southern and western districts of the country were burnt down.[36] Public sermons after Friday prayers in the village mosques spew forth anti-NGO diatribes. In the villages where the literacy rate is not even 30 percent, people often believe such denunciations because they issue from the pulpit. In most cases, the NGOs maintain a low profile and do not react, but recently, some, like BRAC are now retaliating by bringing cases of defamation against the *fatwa*-

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[35] Mahmood Aminul Islam. *GO-NGO Relations*. The Daily Star. 19 September 1995.
[36] Statistics taken from India Today. 30 June 1994.

mongers and their supporters. One of the oldest women's organisations in Bangladesh, the *Bangladesh Mohila Porishod* (Bangladesh Women's Council), presented a memorandum to the Government urging the latter to impose a ban on *fatwa*. The memorandum was presented on 8 March 1994 - International Women's Day. On 20 April 1994, more than a thousand women marched through the streets of Dhaka protesting acts of violence against women perpetrated by declaring *fatwa*.

In February 1995, Mullahs (religious scholars) in 15 administrative districts in Feni, south-east Bangladesh, attacked and censured NGOs in 40 areas of the countryside and in April of the same year, Maulana Mufti Fazlul Huq Amini warned the Government that if it did not control NGO activity, a *fatwa* would be issued urging people to destroy all NGO 'nests' in Bangladesh.[37] In June 1995, an alliance of Mullah's declared a country-wide *hartal* (general strike) during which they torched two NGO offices at Zakiganj in north-east Bangladesh. The co-ordinator of a women's development organisation who protested the attack was threatened with dire consequences.[38]

VI .ii.a: The Health and Family Planning Sector:

Majida

Majida was expecting her first child. She went to a BRAC - run health clinic for her ante-natal check up. Since Imam's have declared that pregnancy is a thing to be hidden and women who 'flaunt' their pregnancy are shameless, her husband, who found her at the clinic, dragged her home and beat her severely. Her child, born two months premature, died two days after it was delivered.[39]

Other ways of discouraging women to go to health camps and centres is by preaching that these NGOs are trying to insult Islam by hiding copies of the Holy Quran inside the weighing scales. Again, Imam's have preached that taking vaccinations is sacrilege. They claim that because vaccinations come from the West - specially America - they are made from the fat of dogs and pigs, and therefore impure. Because of this, many new born babies have not been vaccinated. The same story is told of medicine dispensed from NGO clinics.[40]

An Amnesty International report of October 1994 (AI Index ASA 13/9/94) says 'Women who had benefited from medical treatment provided by NGO facilities have also been targeted. In Bandaikhara village under Kahalu Thana, Bogra district, some 26 patients were stopped by fatwa in February 1994 from continuing their treatment for tuberculosis provided by BRAC as that NGO was allegedly seeking to convert them to Christianity.' The report continues ' following several deaths due to lack of medical attention, the District Commissioner called a public meeting in which the clerics reportedly admitted that they had been wrong.'

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[37] Selim Samad: *NGO and Fundamentalism*. The Daily Star. 28 August 1995.
[38] Ibid.
[39] The Weekly Bichitra. 8 April 1994. (a Bangla weekly magazine).
[40] Ibid.

The fear of conversion seems to be a favourite instrument of the fatwa-mongers. The Bangla newspaper, the *Daily Jonokontho*, of 20 March 1994, reported that about 100 pregnant women were prevented from continuing their treatment in BRAC medical centres between February and March 1994 as they were allegedly believed to be undergoing conversion to Christianity.

VI.ii.b. The Development Sector.

Women taking loans from the Grameen Bank credit and loan programme have been favourite targets for fatwa. Because women taking loans are becoming increasingly self-sufficient, Imam's declared that they are loosing *purdah* and also defying their husbands - a grave sin. Their husbands were advised to divorce such wayward wives and the women ostracised. If the husbands refused to do so, the whole family was shunned by the village.[41]

In the last two years (1995 and 1996) there have not been many reported cases of *fatwa* being given to women in development activities. More attention seems to be given to *fatwa* due to social transgresses. However, the problem remains - even though the mullah's have become less prominent in this regard. Women going to work still have to listen to remarks and comments about their 'shameless' behaviour. And it is not even the village Imam who makes the comments. The men catch on quickly as their male pride is hurt when a woman must expose herself to jobs outside the home.

Nazmun

Thirty-one year-old Nazmun lives in Bogra, in north west Bangladesh. She has been married for eighteen years. She was employed by BRAC in its seri-culture project and her job was to tend the mulberry trees on which the silk worm larvae fed. For this, she earned three kilograms of wheat a day.

Because of her 'shameless' behaviour, the local Imam passed a *fatwa* on her and told her husband to divorce her, which he willingly did. The divorce was, however, carried in the old Islamic way of pronouncing *Talaq* (I divorce thee) thrice. This procedure is no longer legally valid in Bangladesh, where all divorces have to be written and registered. But, of course, Imam's do not believe in statutory law.[42]

Furthermore, because women tend to the mulberry trees in the BRAC project, Imam's have also passed a *fatwa* that silk made from the silk-worms feeding on the trees would be haram (unholy). In 1994, 'religious' groups cut down approximately eighteen thousand trees, putting 700 women out of job.[43]

Fatwa has also been passed on women who leave the village to look for jobs elsewhere.

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[41] Interview with Mr. Kahled Shams. Assistant Director, *Grameen* Bank. June 1995.
[42] The Weekly Bichitra. 8 April 1994.
[43] Ibid.

Nazma

In September 1996, Nazma, a 28 year old living in a village in Kushtia, south east Bangladesh, left her home with a friend in search for a job. They had made previous arrangements with a employment agent who had come from Dhaka. However, they were not offered the job and sent home on the next bus. On their return they found the village in a state of uproar. A local *shalish* was assembled and the Imam of the local mosque pronounced a *fatwa* and each were given 101 lashes and fined Taka 6,000 (approximately US$ 120).

On learning of their plight from the countries papers, the *Bangladesh Mohila Ainjibi Shomity* (Bangladesh Women Lawyers Association) and the Human Rights Journalists Forum started and investigation in the matter. A case has been filed against the perpetrators.[44]

VI.ii.c. The Education Sector.

In October 1993, the Jago Mujahid, a weekly magazine published by supporters of the Jamaat-I-Islami, printed the following articles:

"After the death of a 12 year old school girl who studied at a BRAC primary school, BRAC workers told her father that they would pay him if he would bury his daughter in a black winding sheet instead of the prescribed white and bury her with her head facing east instead of the prescribed west." BRAC filed a case of defamation against the editor of the magazine in the court of the Chief Metropolitan Magistrate. The editor was freed on bail.[45]

"The Association for Social Development in the name of education for all, is publishing a booklet and distributing it to villagers. In this book, the people are taught that purdah is bad and keeping women indoors is a crime. They are all sinners."[46]

On 29 December 1995, a sermon was given at a village called Chita in the Rajbari District, west of Dhaka, by one Moulana Abdur Rahman Azadi. He condemned, as anti-Islamic, the activities of an adult education programme run by the NGO Shapatagram Nari Swanirvar Porishod. After boasting that he had burnt many BRAC schools and calling teachers of such schools 'offspring of traitors and dogs', he said that those involved in the programme should be tied with a rope, stamped on the chest and their tongues cut out.[47]

Because of the establishment of NGO-run primary schools, some of which have religious studies as part of their curriculum, the admission rate at *madrassah*'s (Islamic religious schools, whose main subject of education is the Quran and matters pertaining to religion) has dropped. This has enraged the village mullahs because

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[44] Information taken from Ms. U.H.Habibunessa, member, *Bangladesh Jatiyo Mohila Ainjibi Shomity*.
[45] I assisted the council for the prosecution in this particular case.
[46] The Monthly Jago Mujahid. October 1993 issue.
[47] Asha Mehreen Amin: *Fighting Against Fundamentalism*. The Daily Star. 7 December 1995.

they can no longer instil their extremist and often twisted religious doctrines into the fertile minds of their young pupils, for example, by teaching them that Islam is a religion based on the punishment of non-believers (ironically, the ancient Arab term '*Islam*' means '*peace*') and by saying that women who ride around on motor-cycles have come straight from Hell and should be stoned - a bitter experience faced by BRAC program organiser, Malida, who was stoned by children who had rushed out of their *madrassah* to taunt her.

The October 1994 report on Bangladesh by Amnesty International (AI Index ASA 13/9/94 Distr:CO/SC) states that 'between January and March 1994, over 110 BRAC schools, but also some educational institutions of other NGOs were reportedly set on fire; some of their teachers were attacked and teaching material destroyed.'

The religion-based fanatic political parties and their supporters do not believe that women are an integral part of the development process. They refuse to recognise the contributions made by women in order to support their families. What they only see in blind fury and fear is that women are invading a society dominated by men with the help of what they term as 'imperialist western forces'. Ironically, all that these obscurantists can do is criticise and terrorise rural folk and act to put a stop to any constructive development activity or commit crimes in the name of religion to assert their power. They have, as yet, to do some constructive deed to help the nation pull itself up from the economic quagmire it is in. Fatima Mernissi comments ' Everyone is afraid of change, but Muslims are more so, because what is at stake are their fantasies about power. And women all over the world know very well how important power fantasies are to one's self-empowerment.'[48]

In the words of Hadrat Mirza Tahir Ahmad, Supreme Head of the *Ahmedia* Muslim Sect, 'examining the overall religious scenario, one cannot fail to notice that in religion there seems to prevail a paradoxical situation today. In general, religion is loosing its grip yet simultaneously tightening it in different areas. In some sections of society, in almost all religions, there seems to be a powerful swing back into the direction of dogmas with medieval rigidity and intolerance of opposition.' He adds '....another extremely disturbing phenomenon which, perhaps is related to the revival of dogmas in religion, is threatening the peace of the world. With the rise of such dogmas a toxic atmosphere is generated which provides fatal to the healthy spirit and flow of ideas. As if this were not enough, wilful attempts by unscrupulous politicians, ever ready to exploit volatile situations to their own advantage, are being made to tarnish the image of religion itself.'[49] He seems to have summed up the situation faced in Bangladesh - specially in the rural parts of the country.

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[48]Fatima Mernissi: *The Fundamentalist Obsession With Women.* Simorgh Publications. Lahore, Pakistan. 1987.
[49] Hadrat Mirza Tahir Ahmad: Islam's Response to Contemporary Issues. Islam International Publications Ltd. 1992. p13.

VII. **The Concept of *Fatwa* and the Constitution of Bangladesh**.

VII.i. The Position of the *Shalish*

As we have seen from the preceding discussions, *shalishes* are occasionally pronouncing *fatwa* on very serious issues like rape, adultery and so on, in order to bolster their authority. Clearly, a *shalish* has no legal authority to try criminal cases. All criminal proceedings in Bangladesh are regulated by the Code of Criminal Procedure in Bangladesh or by specific Acts and Ordinances passed by the parliament. By taking part in a criminal trial, a *shalish* violates national laws and all provisions of fundamental rights accredited by the Constitution of the People's Republic of Bangladesh.

Part III of the Constitution states that every citizen, irrespective of religion, caste, creed, sex and place of birth, should be entitled to the protection of the law. Articles 35(1) says that 'no person should be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to any penalty greater than or different from, that which might have been inflicted under the law in force at the time of the commission of the offence'. Article 35 (5) says that no person should be subjected to torture or any cruel, inhuman or degrading punishment or treatment. These Articles, read with Articles 35 (3), 31 and 32, which deal with protection in respect of trial and punishment, right to protection of law and protection of right to life and personal liberty respectfully, easily demonstrate that the shalish members have not only limited themselves to the act of illegally taking the law into their own hands, but also that they have infringed upon the fundamental rights of the people and their sense of security.

Moreover, the present trend of punishment meted out at some *shalish* shows that it wrongly projects the offences it deals with - adultery, divorce, etc. - as offences done against the state, as they assume that these are criminal offences. However, these 'crimes' are not even listed under the same head in the Code of Criminal Procedure . Adultery is an offence in marriage and the law as it stands in Bangladesh today has no punishment for adultery. However, in Pakistan, the infamous Hoodud Ordinance introduced by the regime of President Zia-Ul-Huq and which contains severe methods of punishment for certain crimes, contains the provisions pertaining to the crime of *Zina* or adultery. According to the law in Pakistan, if a woman claims she has been raped, *but there are no four male witnesses to the crime*, she is deemed to be guilty of adultery. This hideous law is (illegally) applied by the Imam's of rural Bangladesh and helps the perpetrator escape unscathed. The Jamaat-I-Islami support this law and have even campaigned for the inclusion of an 'Anti-Blasphemy Law' in the Penal Code of the country[50]. Pakistan already has such a law- with the sanction of President Zia-Ul-Huq - and the law, as the law of *Zina*, has been misused in several cases - the case of Salamat Masih, a young Christian boy in Lahore, being the most famous.

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[50] Zaved H. Mahmood and Saira Rahman: *The Blasphemy Law Vs. Human Rights*. Human Rights Journal. Co-ordinating Council for Human Rights, Bangladesh. October 1994.

VII.ii. The Position of *Fatwa*

The Constitution is deemed the 'Law of the land' and any law made or act done in contravention to its provisions is, according to Article 7 clause (2), illegal. Unfortunately, the Jamaat-I-Islami and other 'religious' political parties do not recognise the Constitution of Bangladesh since it is a man-made law. For them, the Quran is the Book of Law and Constitution. However, as will be seen shortly, even this 'constitution' is abused by these fanatic religious forces.

The Constitution of Bangladesh does have provisions protecting women and defending women's rights. Apart from the Articles mentioned in the previous section, Article 10 states that steps will be taken (by the State) to ensure the participation of women in all spheres of national life. Article 11 states 'The Republic shall be a democracy in which fundamental human rights and freedoms and respect for the dignity and worth of the human persons shall be guaranteed...' There is also a special Article dealing with rural development. Article 16, which deals with 'Rural Development and Agricultural Revolution' lays down that the State must adopt 'effective measures' to 'bring about a radical transformation' in rural Bangladesh through 'the promotion of an agricultural revolution, the provision of rural electrification, the development of cottage and other industries and the improvement of education, communications and public health in those areas. All this is aimed at removing 'the disparity in the standards of living between urban and rural areas.'

Therefore while the law is conscious of the fact that rural development and women's empowerment are extremely necessary and the Government has made a few improvements accordingly (rural electrification in some areas, free primary education for girls, cottage industries, some free health facilities), and while NGOs are co-operating in the education, health and economic sectors, what right do the village social and religious elite have to undermine these efforts, without even trying to improve the standard of living themselves? The illegality of their actions are even more evident from Article 20 of the Constitution which states as follows:

1.Work is a right, a duty and a matter of honour for every citizen who is capable of working, and everyone shall be paid for his work on the basis of the principle 'from each according to his abilities to each according to his work.'; and

2.the State shall endeavour to create conditions in which, as a general principle, persons shall not be able to enjoy unearned incomes, and in which human labour in every form, intellectual and physical, shall become a fuller expression of creative endeavour and the human personality.

Of course, *fatwa* is not only targeted at development activities. The worst *fatwa* scenario is found in the social lives of the people who are at the mercy of the village *shalish*.

Women who are the targets are experiencing a violation of their fundamental rights to life, liberty and even privacy and their fundamental freedoms of movement, assembly and occupation. Article 28(2) of the Constitution which states that 'women shall have equal rights with men in all spheres of the State and public life', Article 32, 35 and 36 (which have been mentioned in the previous section) seem to be the specific provisions the fatwa-mongers and the Jamaat-I-Islami hate the most.

VIII. The State's Response to *Fatwa:*

With all these 'protective principles' embodied in the Constitution, which also guarantees that 'to enjoy the protection of law, and only in accordance with law, is the inalienable right of every citizen, wherever he may be..... and in particular no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law', why is it that so little notice is being taken of these inhuman acts? Why are they continuing in full knowledge of the State and of Government authority -the police, the *Upazilla* Chairman, the District Commissioner, etc.? The two major political parties of Bangladesh - the Bangladesh Nationalist Party (BNP) and the Awami League (AL), both chaired by women, have taken no steps towards condemning these attacks of fatwa. In an interview with India Today (and Indian magazine), the then Minister for Women's Affairs of the BNP Government (which was defeated by the AL government in the June 1996 National Elections), Begum Sarwari Rahman insisted that '*fatwa* bazi' (the act of pronouncing *fatwa*) 'is not a serious problem at all and has been kept under control'.[51] Even the newest Ordinance passed for the 'protection' of women - the Women and Children Repression (Special Provisions) Ordinance, passed in July 1995, contains no mention of fatwa, which has become, in the last three years, a special brand of crime.

It is the history of Bangladesh which shows us that ever since its birth, the different governments of the country have always treated religious 'leaders' with kid gloves. The move was probably instigated with the General Amnesty or Pardon granted to the collaborators of the 1971 war by the first President of the country, Sheikh Mujibur Rahman. Ironically, there remains a Trial of War Criminals Ordinance in Bangladesh- Act No. XIX of 1973, passed during the Mujib regime- which has never been used. This Act specifies that it is to provide for the detention and prosecution and punishment of persons guilty of crimes against humanity, genocide, war crimes and other crimes under international law. According to this Act, even the 'attempt, abetment or conspiracy to commit a war crime' or even 'complicity in or failure to prevent the commission of a war crime'[52] is a punishable offence. Furthermore, according to the said Act, crimes against humanity include, among other things, murder, confinement, torture, rape and 'other inhuman acts committed against any civilian population.....whether or not in violation of the domestic law of the country where perpetrated'.[53] The leaders of the fanatic forces in Bangladesh have been accused of committing both war crimes and crimes against humanity. However, after the Pardon, the flood gates were open to a powerful force which, through years of political non-intervention, cannot now be dammed.

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[51] India Today. 30 June 1994.
[52] Section 2 Sub-sections (g) and (h) of Act No. XIX of 1973. A 'War Crime' is defined by the Act as including *murder, ill-treatment or deportation to slave labour or for any other purpose of civilian population in the territory of Bangladesh ; murder or ill-treatment of prisoners of war, killing of hostages and detenues, plunder of public or private property, etc.*
[53] Ibid. Section 2 sub-section (a).

IX. **The Decisions of the *Shalish* and Muslim Law.**

The fatwa passed by the Imam at a village *shalish* on personal matters such as adultery, extra-marital relationship, talking to strangers etc., are not even punishable offences under Muslim Law in Bangladesh. The Muslim Family Laws Ordinance 1961, provides norms pertaining to marriage, divorce, custody and guardianship of children. There are no provisions for *zina* and the ancient practice of verbal divorce has been made illegal. Under the Muslim Marriages and Divorces Registration Rules, 1975, all divorces have to be written and registered[54]. A husband may divorce an adulterous wife, as the Muslim Family Laws Ordinance, quite unfairly states that a Muslim husband can divorce his wife for any reason whatsoever, but that is a purely personal matter. Furthermore, the practice of *hilla*, or an intervening marriage for the parties to a divorce who want to remarry, was banned by the said Ordinance in the 1980s. Thus, the decisions of the Imam also violate the personal law of his victims.

According to a survey report prepared for the Bangladesh chapter of Transparency International, eighteen percent of the 2500 rural households interviewed preferred to settle disputes by way of the village *shalish*. 35.4 percent of these disputes related to violence of different natures, 11.4 percent of which involved marital problems. However, 40 percent of the households interviewed had a negative view of the shalish. 93.5 percent commented that the *shalish* favoured the rich and influential while 84 percent claimed that the shalish 'was influenced by money and opportunities'. Sixty-six percent said that they felt that the *shalish* was influenced by terrorism.[55] From this survey, it is easy to see how the twisted decisions of the members of the *shalish* and the village religious elite may influence the actions of violence perpetrated against women.

X. **The 'Fundamentals' of Human Rights in the Quran.**

Not only does the practice of *fatwa* violate statutory law and Muslim law, they are also gross abuses of the basic human rights of life and liberty. The Quran contains doctrines which enshrine the necessity for believers to be humane, tolerant, patient, respectful towards each other as well as towards those who are of other religions. It is in many respects a document of human rights.

X.i. <u>General Human Rights</u>:

Sur'ah Al-An'am of the Quran states ' Come, I will tell you what your Lord has made binding on you: that you shall serve no other god besides Him; that you shall show kindness to your parents; that you shall not kill your children because you cannot support them (we will provide for you and them); that you shall not commit

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[54] Section 6 of the Act.

[55] The Survey and Research System : <u>Survey of Corruption in Bangladesh</u>. Survey conducted for Transparency International- Bangladesh. Dhaka, Bangladesh 1997.

foul sins whether openly or in secret; and you shall not kill - for that is forbidden by God - except for just cause. Thus God exhorts you that you may grow in wisdom'.[56]

Again, Sur'ah Ma'idah points out that 'We ordained for the children of Israel that if anyone slew a person - unless it be for murder or for spreading mischief in the land - it would be as if he slew the whole people. And if anyone saved a life, it would be as it he saved the life of the whole people'.[57] In this passage, the life of a person is likened to that of a whole community. Sur'ah Al-Nisa, which deals largely with women, and which will be recurring in this part of the chapter quite a few times, says ' it is unlawful for a believer to kill another believer except by accident.....He that kills a believer by design shall incur the wrath of God, who will lay his curse on him and prepare for him a woeful scourge.'[58] One would think that if the 'religious elite' of the village and the political parties who use religion as a means to gain power, knew of this passage, life would be much safer for the women of rural Bangladesh.

The Quran emphasises the right to seek justice and the duty to do justice. It uses the concept of *'Aadl'* to mean 'Justice'. An eminent scholar of Islamic Law. A.A.A. Fyzee defines *'aadl'* as 'to be equal, neither more nor less'.[59] Sur'ah Al-Nisa lays down : "God commands you to hand back your trusts to their rightful owners, and, when you pass judgement among men to judge with fairness'[60]. However, while upholding the principle of humanity, the Quran recognises that since human beings are not equal in regard to human situation and potential, justice cannot be interpreted as equality of treatment. The Book teaches that merit is a fundamental human right and that it depends solely on 'righteousness', which is made up of just beliefs and actions.

Sur'ah Al-An'am defines righteousness as 'Righteousness does not consist in whether you face towards the east or the west (in prayer). The righteous man is he who believes in God and the Last Day, in the angels and the Book and the Prophets; who though he loves dearly, gives away his wealth to his kinsfolk, to orphans, to the destitute, to the traveller in need and to beggars, and for the redemption of captives; who attends to his prayers and renders the alms levy; who is true to his promises and steadfast in trial and adversity and in times of war. Such are the true believers; such are the God-fearing.'[61]

In the case of punishment for crimes, the Quran does not believe in the division of sexes. For example, for the crime of 'being unchaste', the punishment for both sexes is the same. However, it differs between different classes of women. A slave woman - there were slaves in pre-Islamic and early Islamic times - would receive half and the Prophets wife/wives double the punishment given to a 'free' Muslim woman, for the same crime. ' And who so is not able to afford to marry free, believing women, let them marry from the believing maids whom your right hand possesses [i.e. slave women]. Allah knoweth best (concerning) your faith. Ye (proceed) one from the

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[56] N.J. Dawood: The Koran. Penguin Edition 1993 Sur'ah 6:151.
[57] A.Y. Ali: The Holy Koran. McGregor and Weirner Inc. 1946.
[58] Supra Note 56. Sur'ah 4:92.
[59] A.A.A Fyzee.: A Modern Approach to Islam. 1978 Edition. p. 17.
[60] Supra. Note 56. Sur'ah 4:54.
[61] Ibid. Sur'ah Al-Anam.

other.'[62] 'so wed them by permission of their folk and give unto them their portions of kindness, they being honest, not debauched not of loose conduct. And if, when they are honourably married, they commit lewdness they shall incur the half punishment (prescribed) for free women (in that case). This is for him among you who feareth to commit . *But to have patience would be better for you.* Allah is forgiving , Merciful'.[63] Such distinction between women of two different social classes shows how the Quran places high moral standards for the 'free woman' and compassion for the morally disadvantaged. The Quranic injunction also states that God prefers patience to punishment.

Another unique concept found in the Quran is that of '*Ihsan*' which means 'restoring the balance by making up a loss or deficiency'.[64] The Quran envisages society (*Ummah*) as a mother who cares for her children and realises that their individuality means that they have different needs. She is the mother who 'feels she has the right to make up the deficiency of a child who, despite its best efforts, still cannot meet the requirements of life. *Ihsan* secures what even *aadl* cannot; it shows the Quran's sympathy for the downtrodden, oppressed human beings, (such as women, orphans, slaves, the poor and infirm and minorities).'[65]

Human beings have hardly any limits to what they may or may not do. The Quran recognises the institutions of autocracy, dictatorship, despotism etc., and emphasises 'It is not possible for any human being unto whom Allah has given scripture and wisdom and the Prophethood that he should afterwards have said unto mankind : Be slaves of me instead of Allah; but (what he said was) : be ye faithful servants of the Lord by virtue of your constant teaching of the scripture and of your constant study thereof.'[66]

This is only further proof of how religion is being misused in the ill-treated concept of *fatwa.*

X.ii. The Quran and Violations to Women's Human Rights:

According to Riffat Hassan ' the greatest guarantee of personal freedom for a Muslim lies in the Quranic decree that no one other than God can limit human freedom (Sur'ah 42:21) and in the statement that "Judgement is only Allah's (Sur'ah 12:40)'[67]. She says, in her essay *On Human Rights and the Quranic Perspective* 'The most gross violation of human rights in Muslim societies is that of the rights of women, who for centuries have been deprived of the right to be fully human. Muslims say with great pride that Islam abolished female infanticide; true, but it must also be mentioned that one of the most common crimes in may Muslim countries (for

[62] Pickthall. M.M. The Meaning of the Glorious Koran. Mentor Religious Classics: *'This expression, which recurs in the Koran, is a reminder to men that women are of the same human status as themselves'.*
[63] Ibid. Sur'ah 4:25.
[64] G.A. Perwez: Tafweet-Ul-Quran. Lahore 1977. Vol. I.
[65] Riffat Hassan. *Human Rights and the Quranic Perspective.* Journal of Ecumenical Studies 19:3. Summer 1982.
[66] Ibid.
[67] Ibid.

example, Pakistan) is the murder of a women by her husband. These so-called 'honour-killings' are actually extremely dishonourable and are frequently used to camouflage other kinds of crimes.'[68]

X.ii.a.Discrimination from Birth

In pre-Islamic Arabia, infant girls were buried alive in the desert sands. However, the birth of Islam put a stop to this inhuman practice and upheld the glory of the girl-child. Sur'ah Al -Nahl states ' And they assigned unto Allah daughters - be He glorified! And unto themselves what they desire/ when if one of them is receiving tidings of the birth of a female, his face remaineth darkened, and he is wroth inwardly/ he hideth himself from the folk because of the evil of that whereof he hath had tidings, (asking himself) : shall he keep it in contempt, or bury it beneath dust! Verily evil is their judgement.'[69]

Unfortunately, female children in Muslim countries, including Bangladesh (and other South Asian countries too) are discriminated against from birth, despite what the Quran teaches. Their emergence into the world is bemoaned, particularly by those in the lower income brackets, and they are taught to be invisible - buried in the four walls of the home, instead of the desert sands of Arabia. The reason is based on the belief that women are unproductive members of society - which is why women's work goes unnoticed - and the father must work harder to earn enough to marry her off. While she is barely a day old, she is already considered a mature girl of marriageable age in the minds of her parents. On the other hand, boys born in needy families mean that they can help supplement the family income once they are old enough to do so. Here 'old enough' could mean from anywhere as young as six to fourteen. Parents in rural Bangladesh do not find large families of sons cumbersome, even though they can barely feed them.[70]

In Bangladesh, the preoccupation with the gender of a child begins during early pregnancy. Predictions of whether a woman is carrying a male or female child is based on beliefs regarding physical changes in the pregnant mother, carried down from generation to generation - most of which one may call 'old wives tales'. For example if the expectant mother 'glows' with health and beauty, she is carrying a son, and if she looks sickly and drawn and is having a generally 'bad time' with her pregnancy, she is carrying a girl.[71]in an observance from Kotalova, 'the preference for boys is evidenced in demographic studies which indicate a 35-50 per cent higher mortality rate for females under five years of age.'[72]

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[68] Ibid.
[69] Supra Note 56. Sur'ah 16:57-59.
[70] Supra. Note 6.
[71] Results from discussions with women's groups in both urban (Dhaka city) and rural areas (Shologhar village in Dhaka district and other rural areas) in Bangladesh. December 1996.
[72] Supra note 25 p.65.

A lot of the above has to do with the belief that men are superior over women - a common enough school of thought which transcends religious beliefs! However, Sur'ah Al-Baqarah states ' women shall with justice have rights similar to those exercised against them, although men have a status above women. God is Almighty and Wise.'[73] The phrase 'status above women' is what is so misquoted and misunderstood today. The Arabic word '*Qawwamun*' meaning 'guardian made responsible to keep wards on the right path' has been misrepresented by medieval minded *Ulemas* (doctors of religion)[74]to mean that men have a claim of superiority over women. However, in actual 'fundamental' terms, the word '*Qawwamun*' 'refers to and advantage that the bread-winner has over his dependants.'[75]It, therefore, has nothing to do with male superiority, and is more in the area of guardianship. It can be argued that times have changed, women are now in many cases the bread-winner of the family in many societies and situations. However, one must consider the era and social situation in which the Quran was placed before the people of Arabia Unfortunately, this misrepresentation of male superiority is what is affecting Muslim women, not only in Bangladesh but all over the Muslim world.

X.ii.b. Discrimination Against Women.

The self-proclaimed religious authorities in rural Bangladesh are trying to prevent women from improving their lot not only by violating their basic human right to life but also by barring their right to livelihood. They do this by putting stress on veiling and segregation and by accusing women on unsound and unproved grounds, of adultery. They claim that all they preach comes straight from the Quran. What does the Quran actually say?

1. Women's Right to Earn a Livelihood:

Sur'ah Al-Nisa states 'And covet not the thing in which Allah hath made some of you excel others. Unto men a fortune from that which they have earned, and unto women a fortune from that which they have earned. (Envy not one another) but ask Allah of his bounty. Lo! Allah is ever knower of all things.'[76] Thus, the Quran allows women to earn money by stating '.....unto women a fortune from that which they have earned'.

2. Unveiling the Mystery Behind the *Purdah:*

A woman in Bangladesh who practices *purdah* avoids direct eye contact with men. She either wears the *burquah* on leaving the home or will cover her head with a long, wide scarf or *orna,* or the end of her sari in the presence of men and sometimes in the presence of her parents-in-law and husband, as a sign of respect. In some cases, eat, walk and sometimes even sleep separately. In rural Bangladesh, villages are often

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[73] Supra Note 56.
[74] See note 65. p. 80.
[75] Ibid.
[76] See note 62. Sur'ah 4:32.

divided into 'zones' based on their degree of approachability by women and on how busy or public they are. The most public of areas is the bazaar, avoided by women of the upper village social class, and lonely by-ways and paths, due to their potential dangers. A woman in Bangladesh enters the state of observing *purdah* when she attains puberty. She is no longer allowed to wear short frocks, play with her male friends and is kept mostly in the home helping her mother and her outside activities either restricted or strictly controlled

Quaranic legislation dealing with women's dress and conduct was solely to make sure she was not molested or harassed while she went about her daily business. However, now a days, the concept of the 'veil' or '*purdah*' is, as has been mentioned, a cumbersome '*burquah*' covering the woman from head to toe and her arms and with a gauze or net veil covering her face. In some areas, this is a sack - like outer garment with sleeves and two holes cut for the eyes. This design is made with the excuse to protect a woman's chastity, instead, it compels the woman who wears it to move in perpetual twilight.

During pre-Islamic times, women wore long loose shirts reaching to the knee over loose trousers (a *shalwar*). Over it, they wore a jacket. The shirt was worn open over the chest. When Islam was young, during the Prophet Mohammad's lifetime, the woman's dress did not change. Instead, it was open at the neck and a long robe 'something like those worn by Anglo-Saxon dames'[77] thrown over it. The robe was recommended so that women could protect themselves from leering eyes and the desert dust. The women, like the men, wore a tasselled, girdled kerchief around their heads to protect themselves from the strong sun and the dust. Under the Ommaiyyad and Abbasside dynasties (661-683 AD and 749-775 AD), the mode of dress became, if anything, more fashionable. Women wore long, loose gowns with girdles and used make-up. The cloak was still worn when outside the home.[78]

According to eminent Muslim scholar Asghar Ali Engineer, ' the kind of *purdah* observed by women in parts of South Asia.....cover not only their entire body but also their faces. This is not in keeping with the spirit of the Quran. All the Quran requires of women is that they do not display their sexual charms, but dress in a dignified manner. These prejudices emanated in the feudal era wherein the ruling Muslim classes wanted to protect their womenfolk from others and wanted to keep them under strict seclusion. However, that tradition was given Islamic legitimacy along with traditions that required women to observe *purdah* even in the presence of a blind person'.[79]

Purdah in 'fundamental' terms never meant segregation of sexes which allowed women only to leave the house in *burquah's*. In fact, Sur'ah Al-Azhaf states 'O Prophet! Tell thy wives and thy daughters and the women of the believers to draw their cloaks close round them (when they go abroad) that they may be recognised and not annoyed'[80] However, the version of the 'cloak' today in Bangladesh, as in the

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[77] Syed Ameer Ali. : A Short History of the Saracens. Macmillan & Co. Ltd. London. 1955. p69.
[78] Ibid.
[79] Asghar Ali Engineer: The Rights of Women In Islam. Sterling Publishers, New Delhi. 1996. p 14.
[80] See note 56. Sur'ah 33:59.

Indian Sub-continent and even in Saudi Arabia , is a contraption which, when worn, disguises the wearer so completely that she is unrecognisable. This out-door fashion statement, which succeeded the cloak of the Prophet's Arabia was introduced after the Abbasside dynasty. 'It [*purdah*] was a product of feudal rulers' concept of *'izzat'* (honour- here used in the sense of inviolable feminine chastity).' [81]

According to Judge Said Al-Ashmain of Egypt, 'While Islam does recommend women and girls to dress accurately [i.e., without showing off their 'sexual charm' or figure], it contains nothing which invites women and girls of the twentieth century to don the veil. They may wear if they so choose, but should in no way be threatened or intimidated to do so, and certainly not in the pretext that it is a Quranic or Prophetic command. The veiling of women is considered today to be a sign of faith, but in truth it is only the uniform of political Islam. The religious jurists who prevent anybody from discussing or debating this issue, by reference to the Quran and Prophetic tradition, are simply serving the interests of the politicians. For in truth, political Islam cares only for appearances and not for essence'[82]. The Judge talks of Egypt, but the situation is no different in Bangladesh. It is indeed sad to see the village Imams exhorting women to wear the veil or *burquah*, knowing full well that in the poverty-stricken rural areas of the country, a majority of the women cannot afford to feed their families three meals a day and watch their children suffer from the effects of malnutrition, let alone buy clothing.

On the concept of veiling, Mernissi comments ' Are we going back to the veil, back to the secluded house, back to the walled city...of course, that would be the dream of many Muslim men. But without taking on the role of a psychic, I can predict that it is very unlikely....we have to remember that societies do not reject and resist change indiscriminately. Muslim societies integrate and digest quite well technological innovations without much resistance. But the social fabric seems to have trouble absorbing anything having to do with changing authority thresholds: freely competing unveiled women, freely competing political parties... Whenever an innovation has to do with free choice of the partners involved, the social fabric seems to suffer some terrible tear. Women's unveiling seems to belong to this realm. For the last 100 years, whenever women tried to or wanted to discard the veil, some men, always holding up the sacred as a justification screamed that it was unbearable, that societies' fabric would dissolve if the mask is dropped. I do not believe that men, Muslims or not, scream unless they are hurt.'[83]

3. Segregation and Chastity:

When restrictions were imposed on women in early Islam, it was upon the concept of protection of chastity. Chastity slowly became to mean *purdah* . Thus, those women who observed strict purdah (or were made to do so) were though to be extremely chaste, while those who violated purdah were labelled 'immoral'. This idea is still true today and evident in the preaching of the rural Imam and the ideologies of the fanatic political parties. Chastity resulted in the segregation of the sexes and even

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[81] Supra Note 65. p 5.
[82] *The Veil is Not Islamic*. Index on Censorship 1 / 2 1994. Pg. 129.
[83] Supra Note 48. p 14.

now, women in purdah are not allowed to meet men who are not direct family members (i.e. not their father or brother/s) unless they are covered in a *burquah* and their faces hid. The whole idea of chastity was that it was the basis of male honour. If a woman became 'unchaste' the honour of the father , brother/brother's and husband was lost.

Hadrat Mirda Taher Ahmad writes 'Segregation is grossly misunderstood when it is conceived as an imposition of restriction on female members of the Muslim society from fully participating in all spheres of human activity. ..... the Islamic concept of segregation is only to be understood in the context of measures to protect the sanctity of female chastity and the honour of women in society so that the dangers of violating these objects are minimised'.[84] According to the teachings of Islam, women have to be free from exploitation. They must not be turned into 'playthings or left at the mercy of male vulgarity'.[85]

The Quran advocates equality between sexes, as will be seen in later sections, and this is specially true in the case of chastity and modesty. If women were required to be covered from head to toe as *fatwa*-mongers and their political and social supporters would like them to be, no occasion would arise for the menfolk to act according to what is laid down in Sur'ah An-Nur, ' Tell the believing men to lower their gaze and be modest. That is purer for them. Lo! Allah is aware of what they do.'[86] Again, Sur'ah Al- Ma'arij states that men should preserve their own chastity 'save with their wives'[87]. Thus, the responsibility of modesty, respect and chastity are reciprocal and not for women alone.

Thus, if the Quran advocated seclusion, it would not have contained the passages mentioned above. Furthermore, the confinement of women within the four walls of their home is, according to the Quran, a punishment for unchastity! The Quran says, ' As for you women who are guilty of lewdness, call to witness four of you against them, and if they testify (to the truth of the allegation) then confine them to the houses until death take them or until Allah appoint for them a way through new legislation'.[88]

Justice Aftab Hossain, in his book *Status of Women in Islam,* states, ' The reduction of the status of women by the religious scholars is proof of a double standard for modesty and chastity, one for the man and another for the women.....Both the sexes were required to be free agents in the achievement of the goal of maintaining his or her chastity. But the doctors in the classical age terminated the agency of the women and for guarding her chastity as well as the chastity of man, segregated her entirely from male society. Unobtrusively, the women, through the negative attitude of segregation thrust against her upon the *Ulema* (religious scholars) was made the sentinel of male chastity. This is what the present day *Ulema* deduce from seclusion and veiling of women.

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[84] See note 49. Pg. 80.
[85] Ibid. Pg. 81.
[86] Supra Note 62. Sur'ah 24:30
[87] Ibid. Sur'ah 70:29-31.
[88] Ibid. Sur'ah 4:15.

4. Accusations of Adultery:

Fatwa-mongers accuse innocent victims of rape as being 'adulterous', since they cannot provide four male witnesses to the alleged crime. However, on close reading of the Quran, it is the accuser who has to prove the act of adultery. If he cannot prove it, it is he and not he victim who is punished.

The Quran says, ' Those that defame honourable women and cannot produce four witnesses shall be given eighty lashes. Do not accept their testimony ever after, for they are great transgressors - except those among them that afterwards repent and mend their ways. God is Forgiving and Merciful'.[89] Yousuf Ali has a more forceful translation of this Sur'ah , ' And those who launch charge against chaste women, and produce not four witnesses (to support their allegations) - flog them with eighty stripes; and reject their evidence ever after; for such men are wicked transgressors - unless they repent thereafter and mend (to their conduct); for Allah is Oft-forgiving, most Merciful.'[90]

5. The Use of Force:

The Mullahs and Imams of rural Bangladesh exert their own religious dictates on the unsuspecting village population. However, Islam does not permit the use of any kind of force as an instrument to spread the message of the Quran. The Book says, ' There should be no compulsion in religion. True guidance is now distinct from error'.[91] Thus, to propagate Islam, there is no need for coercion. A person is left alone to determine the truth. The Quran further states, 'Therefore give warning. Your duty is only to give warning: you are not their keeper. As for those who turn their backs and disbelieve, God will inflict on them the supreme chastisement'[92]. Thus, a Muslim who is admonished to deliver the message of Islam to the world at large ' has a clean-cut code of conduct'[93] laid out for him.

Islam teaches Muslims to be patient and not to resort to violent methods. Sur'ah Al-Baqarah says, 'Believers, show discernment when you go to fight for the cause of God, and do not say to those that offer you peace 'you are not believers' - seeking the chance booty of this world; for with God there are abundant gains. Such was your custom in days gone by, but now God has bestowed on you His grace. Therefore show discernment; God is cognizant of all your actions.'[94] The fanatics and the *mullah's* of rural Bangladesh are showing even more impatience and intolerance by trying to deter people from taking advantage of development facilities by stating the NGOs are actively carrying out the process of conversion to Christianity on women and children. This anti-Christian factor coupled with the hatred for anything 'Western' is the favourite topic of many a Jamaat-I-Islami public meeting.

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[89] Supra note 56. Sur'ah 24:4-5.
[90] Abdullah Yousuf Ali : The Holy Koran. Text, Translation and Commentary. Amna Corp. Maryland, USA 1989.
[91] Supra Note 56. Sur'ah Al- Baquarah 2:256.
[92] Ibid. Sur'ah Al-Ghashujyah. 88:22-23.
[93] Supra Note 65. p 34.
[94] See note 56. Sur'ah Al - Nisa 4:94.

Apart from the Quranic injunction of respect for humanity and tolerance, in 628 AD, while in Medina, the Prophet Mohammad drew up and decreed a Charter granting the monks of the monastery of St. Catherine, near Mount Sinai, and all Christians certain privileges. The Charter was 'a monument of enlightened tolerance'.[95] By it, the Prophet secured for the Christians immunities and ' Muslims were prohibited under severe penalties from violating and abusing what was therein ordered'[96]. In the charter the Prophet took the responsibility of protecting the Christians, guarding them from persecution and defend their churches and the residences of the priests. He also urged his fellow Muslims to do the same. Furthermore, the Charter decreed that no Christian churches were to be demolished to build mosques or Muslim homes, Christian women married to Muslims were to enjoy their own religion - and not to be subjected to compulsion to do otherwise. With such monumental tolerance did the Prophet protect the Christian community, who were, by then, somewhat of a minority group. If the Prophet of Islam himself decrees a Charter proving respect for all religions, then why are the Imams and their supporters so anti-Christian? It is all a political tool - a 'prop' of sorts, in order to gain political power.

Furthermore, all the Prophets of God are given equal status in Islam. None is above the other. Sur'ah Al-Baquarah states, 'The Messenger believeth in that which hath been revealed unto him from his lord and so do the believers. Each one believeth in Allah and His angels and His Scriptures and His Messengers - we make no distinction between any of His messengers and they say : We hear and we obey.....'[97]

Again Sur'ah Al-Nisa echoes the same sentiments, ' Lo! Those who disbelieve in Allah and His messengers, and seek to make distinction between Allah and His messengers, and say 'We believe in some and disbelieve in others' and seek to choose a way in between/ such are disbelievers in truth; and for disbelievers we prepare a shameful doom/ But those who believe in Allah and His messengers and make no distinction between any of them, into them Allah will give their wages; and Allah is ever forgiving and Merciful.'[98] The same Sur'ah speaks of Moses, Jesus and how Allah took up the latter after he was crucified. In fact, Islam strives to bring unity among peoples, despite their religious beliefs.

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[95] See note 77. p 14.
[96] Ibid.
[97] See note 56. Sur'ah 2:285.
[98] Ibid. Sur'ah 4:153-158.

Conclusion:

Women are an integral part of the development process of Bangladesh both in the public and the private sector. A large number of women around rural Bangladesh have taken loans from NGOs and more and more women are turning to income generating work to help support their families. Unfortunately, as we have seen, some sections of society vehemently oppose this 'shocking' and 'shameless' transgression of women from subservient door-mats to bread-winners. They use the only weapon they have - extremist interpretations and mis-interpretations of the Quran.

The rights of women are guaranteed in the Quran, but later history seems to have robbed women of all status. A majority of the interpretations, at least the most popular ones in Bangladesh today - all carried out by male scholars- seem to have the sole goal of trying to prove that men are superior to women and that Islam is a religion of strict punishment. They use the religion as a weapon and are thus committing two grave crimes in the eyes of Islam - distortion of Quranic teachings and injunctions to violate human rights and forcing these distortions on the unsuspecting and vulnerable sections of society.

Women in rural Bangladesh must be educated, despite the opposition from Imams and mullahs. Men, too need to be educated about the rights of women and gender equality so that they too can oppose these anti-development and anti-Islamic (for that is what the fanatic political parties and their supporters seem to be, judging from their activities and ideologies) forces. Adult literacy programmes are necessary not just for formal education but also to teach women the fact that their contribution in day to day life is just as important as the work done by their menfolk.

The interpretations given by religious teachers of the verses of the Quran include the usual mixture of male superiority, *purdah*, chastity, segregation and silence. When she leaves the Madrassah, at nine or ten years of age, to help at home, these teachings are what rule a young girl for the rest of her life. I suggest that the religious teachers either be re-educated according to the real teachings of the Quran, or the more extreme ones replaced. This would educate both boys and girls about gender equality, respect, patience and tolerance between each other and respect for other religions.

To fight against the *fatwa*-mongers and the vested interest groups, perhaps the most dangerous enemy we have to face is corruption- both monetary and moral. The corruption in Bangladesh society is so deep that its presence is felt by the poor in almost all their activities. Corruption in police administration and in the lower judiciary means that there is no justice for the poor, who then decide to resort to the village mediation committee as they cannot afford to pay or bribe the police, ect.. According to David Abecassis 'Although rural Muslims admire and respect an honest person who is not corrupt, corruption is actually accepted as a social norm. Thus, both rich and poor alike do know that it is morally wrong, but this knowledge does not generally regulate their behaviour to the extent of taking any active step to resist it. This is partly because in a society where this aspect of human relations is

regulated more strongly by shame and honour - *izzat* - than by morality and guilt, there is no impetus to resist a social norm'[99].

Thus, for example, the family of a rape victim does not always complain to the legal authorities as they prefer to go to the rural elite and the *shalish* in order to keep the incident within their particular community. Abecassis remarks, 'It will be impossible for the poor to create a new society In Bangladesh until corruption reduces, and this cannot be done until the social norm is changed from within'[100], he further suggests that at the very least, corruption must be presented to the people as a social problem which has to be eradicated as a corrupt person treats others as objects which must be exploited and not respected. Therefore, we can freely say that, since the rural elite, both social and religious, treat women as objects of exploitation - the former by taking advantage of their sex and vulnerability and the latter by using their miseries and their activities as an excuse to berate them and control the people by a show of power and by passing dangerous, illegal decisions. These fatwa-mongers, the political support behind them and the rural elite which help them are not only guilty of gross violations of human rights, but also morally corrupt.

The village *shalish* is a traditional way of resolving petty disputes. However, it must not interfere in offences dealing with cases of violence against women - which must be taken up by the formal state legal structure. It could possibly organise to decide on how to proceed with more serious offences, for example how they must be entered in the police records, how to appoint a lawyer and how other basic legal proceedings are made. Furthermore, when deciding offences, the village *shalish* must be impartial and an equal representation of both parties must be made. Furthermore, women's representation at the *shalish* is necessary where disputes involving women are concerned. We have seen in earlier paragraphs that money and power play a role in influencing the decisions of the *shalish*. This is gross corruption of a system which is supposed to mete out rural justice in an equitable and unbiased manner.

Thus, education, both legal and formal, is a must for both men and women in order to broaden their minds to their surroundings and to instil in them the will to fight against corruption and corrupt practices within their village and their communities. Unless they fight back against the elitist powers which suppress them, they will never be fully aware of either their potential or of the fact that both man and women are important for the development of not only their village, but of the country as a whole. Furthermore, this kind of forced non-participation of women in rural development activities will cause the rural social and economic infrastructure to further deteriorate, as women, too, are capable of being part of the workforce. It is poverty, patriarchy and corruption which are holding them back.

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[99] David Abecassis: Identity, Islam and Human Development. University Press Ltd. Dhaka. 1990.
[100] Ibid.

Chapter VI

The Role of Non-Government Organisations and Their Effect on Women in Bangladesh

"I have been living in sorrow since birth. God has not created me to taste any happiness."
- Sakhina. A member of Grameen Bank.[1]

The patriarchal system in Bangladesh isolates women within the four walls of their home and within their families, while it gives men control over most economic resources. The deprivation faced by women- in the areas of education, nutrition, health and economic situation- is reflected in the country-level statistics. Infectious disease morbidity in Bangladesh is higher among women than among men and the caloric intake is lower and the rate of severe malnutrition is nearly three times as high among female children than among male children.[2] Further more, according to United Nations Population Fund report of 1995, seventy eight percent of adult females were classified as illiterate, compared with fifty three percent of adult men.

Strategies such as non-formal education, social and political consciousness raising and legal awareness are some of the ways in which women in Bangladesh can be empowered to realise that they are a strong, contributing part of society and that the patriarchal social structure in (rural) Bangladesh can be overcome. Another way in which women's empowerment is being targeted is by introducing them to credit programmes. All the above strategies and programmes are the mainstay of hundreds of non-government organisations which have mushroomed in the country. This chapter of the thesis deals with such non-government organisations - or NGOs- specially the largest ones and the Grameen Bank, a micro-finance institution, their activities, contributions and drawbacks. It also deals with the relationship between international financial institutions and NGOs and the relationship between NGOs and the government.

This chapter is divided into four parts. Part one involves the history of non-government organisations in Bangladesh. Part two on the interest international financial institutions have in NGOs and vice versa, which has aided in relaxing government red-tape on non-government organisations; part three deals with the relationship between the government and non-government organisations. In this part, the different strategies taken by NGOs and the Grameen Bank in order to influence policy making, during different regimes will be discussed as well. Part four will discuss the main purpose of NGOs - the relationship between them and the target group and will also discuss the pros and cons of NGO and Grameen Bank activities. This thesis deals with the women of Bangladesh and this part will discuss different strategies taken by the organisations which affect the development of the socio-legal and economic status of women. It will also discuss the shortcomings of such

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[1] Mohammad Yunnus, Ed. : Jorimon and Others, Faces of Poverty. Grameen Bank Publications 1986. p47.
[2] Sidney Ruth Schuler, Syed. M. Hashmi: *Credit Programmes, Patriarchy and Men's Violence Against Women in Rural Bangladesh.* Soc. Sci. Med. Vol. 43. No 12. p 1730. 1996.

organisation's in the present day and age. The final part of this chapter will contain some recommendations and a conclusion on how the institution of 'NGO' can, if properly involved, help in the socio-legal and economic uplifting of women.

I. **The Introduction of NGOs in Bangladesh:**

Apart from government actors, international financial institutions (IFIs), non-government organisations (NGOs) and micro-finance institutions in Bangladesh have a role to play in protecting the rights of under-privileged groups including women, advocating social change, implementing their policies against acts of discrimination and violence. The different regimes in Bangladesh have not been particularly attentive to certain aspects of women's rights and of the violence they face. This is where the non government organisations generally step in as awareness groups and pressure groups and alternative actors to stand in where the government has been negligent.

Non-government organisational work first began immediately after the war of liberation in 1971. The work involved the rehabilitation of refugees, giving shelter to victims of rape and to war orphans, helping the disabled freedom fighters and invalid civilians, etc. Many of those eager to help were from 'progressive' backgrounds and had been involved in the liberation war. Others were philanthropic members of society who committed themselves to the people in need.

After independence, many students who had a 'progressive' background joined NGOs after their education had been completed, rather than entering into white-collar government jobs. They saw NGOs as a means to do good for the rural and urban poor. The number of such young people increased in the NGO circle after the collapse of the Soviet bloc - which had an impact on their way of thinking. Unfortunately, many opportunists also set up NGOs as a means of receiving funds and non-government organisations emerged in large numbers. A.N. Chowdhury has described the rise of the NGOs in the following way: 'After the war of independence.....foreign aid poured into the devastated country, denuded of infrastructure and of manpower. The handful of idealistic youths remaining decided to avail of this opportunity to rebuild the country. They formed semi-social welfare organisations and went to work in the poverty-stricken villages. The sight of foreigners in jeeps doling out food, clothing etc. with villagers running after them was common. Relief and a dole mentality .....and government corruption were the order of the day.'[3]

Traditionally, in Bangladesh, the role of non-government organisations (NGOs) has been to act as an entry point for local level social development. These organisations were loose groups of elite and influential members of the society, social workers and activists, eager and willing to work for a charitable cause and petition the grievances of the oppressed and disadvantaged.[4] In the post-independence period, the importance and necessity of NGOs as important actors in the development process became prominent and there soon became a rapid mushrooming of such organisations,

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[3] David. Abecassis.: Identity, Islam and Human Development in Rural Bangladesh. University Press Limited. 1990. p 81.

[4]Interview with Shireen Akhtar. Chairperson of the women's NGO, *Kormojibi Nari*. December 1996.

specially those dealing with credit and development. Today, NGOs in Bangladesh are more organised, and interlinked by national, regional and international networks and associations, a few of them have attracted and amassed vast funds from international financial institutions like the World Bank and the Asian Development Bank (ADB). These NGOs have become powerful tools by which to mobilise people for voluntary group action to work towards development and self-reliance. However, as we shall see later in this chapter, NGOs and the Grameen Bank (a micro-finance institution) have become increasingly involved in the political scenario of Bangladesh, influencing and pressurising governments and some have even joined protest movements which have a direct involvement with politics.

According to an evaluation study carried out by the Netherlands Ministry for Foreign Affairs in 1998, the major sectors in which NGOs are currently operating have been identified as follows:

1. integrated rural development
2. savings and credit
3. family planning
4. income generation and training
5. women's development
6. health
7. education
8. adult education
9. relief and rehabilitation
10. social awareness and motivation
11. agriculture
12. fisheries
13. legal aid
14. human and civil rights
15. rehabilitation of blind and/or disabled
16. child development
17. children's homes and orphanages
18. environment and forestry
19. public health

According to the said study, most of the above can be grouped under the umbrella of 'poverty alleviation' and apart from these sectors, 'most NGOs have an underlying concern to raise the capacity of the poor to participate in national social and democratic processes. This is undertaken through raising the organisational strength of the poor by group formation and development, as well as by encouraging the poor to avail themselves of government services and participate in national and local elections.' [5]

A large number of NGOs are supplementing the government's targeted effort for poverty alleviation and socio-economic development in rural Bangladesh and are playing a creative and innovative role in improving the conditions of the rural poor and the disadvantaged. The main programmes which these organisations carry out in rural Bangladesh are group formation for providing credit and mobilisation;

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[5] All data taken from an evaluation report made by the Netherlands Ministry of Foreign Affairs on Bangladesh titled: Bangladesh. Evaluation of Netherlands Funded NGOs, 1972 - 1996. Sub-Report 1998. .p 54 - 55.

awareness raising; leadership development; capacity for developing management and occupational skills; employment generation; income generation through self-employment; providing access to health, education and nutrition services, clean water and sanitation; low cost housing and shelter; disaster management.

II. The Relationship Between IFIs and NGOs:

The great majority of indigenous NGOs in the country today are engaged in activities falling under the 'welfare' category. Such organisations are said to number over 1300 but not all are currently active. Only some 200 registered indigenous organisations are using foreign funding sources. However, 900 NGOs have registered with the NGO Affairs Bureau seeking foreign funding. This is a rise from the 300 such organisations in 1991.[6]

The advantage NGOs have over government organisations is their closeness to the people and their 'approachability'. Furthermore, since there is little or no red-tape, the service they give is faster. These are some of the qualities that made international financial institutions (IFI) like the World Bank and the Asian Development Bank (ADB) interested in involving NGOs to further their development-oriented programmes in rural Bangladesh. Furthermore, 'Government extension staff are seen by many donors as being unable to effectively reach their poor target groups because they are associated with the political system which has failed to improve the conditions of the poor and because they are seen as allies of the rural elite. Expectations of corruption and exploitation also militate against trust for those representing any level of the bureaucratic system, as do the high degree of centralisation of decision making which introduces delays and inefficiencies into service delivery.'[7]

IFIs are promoting NGOs in Bangladesh in two ways - on one hand they are encouraging the government to develop liberal laws to 'create an enabling environment for the NGOs' [8] and on the other hand they are 'persuading the government to allow NGO participation in the IFI funded projects'.[9] NGOs are important to these international institutions, as they 'usually play a major role in pointing out limitations and biases of mainstream development strategies pursued by IFI's.'[10] Thus, involving NGOs in IFI projects improves project quality.

From 1987, the World Bank, along with other donors, took the initiative of urging the government to simplify rules and regulations pertaining to NGOs. In response to such request, coupled by pressure from NGOs themselves, the government created the NGO Affairs Bureau in 1990[11]. This caused some procedural changes in the way the government dealt with NGO matters and enabled the organisations to obtain necessary clearances for their programmes from one single government agency.

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[6] Ibid. Pg.53.
[7] Ibid. Pg. 59.
[8] Tasneem Siddiqui. *"Interaction between International Financial Institutions and Non-Government Organisations in Bangladesh."* Bangladesh. Internal Dynamics and External Linkages. Ed. Abdul Kalam. University Press Ltd. Pg.118.
[9] Ibid.
[10] Ibid. Pg. 130.
[11] Ibid.

Again, with the initiative from the World Bank, the government of Bangladesh established a semi- government micro-credit financing institution, the Palli Karmo Shahayok Foundation in 1990 as well. The foundation acts as a conduit for soft term loan to the rural poor through NGOs.[12]

In 1986-87, the idea of bringing NGO experience in Asian Development Bank (ADB) supported projects emerged in Bangladesh. In July 1987, the Director of ADB approved a policy paper calling for ADB co-operation with NGOs, 'specially in effectively assisting the poor and disadvantaged groups in meeting their basic needs and to support natural resource management and conservation activities'[13]. In the early 1990's, the ADB commissioned a study on NGOs in Bangladesh in order to assess the role and impact of these organisations in the country. The study 'identified 23 NGOs who "by virtue of their size and experience, competence and attitude, have the potential to collaborate" in Bank financed future projects.[14]

Why are international financial institutions so interested in NGOs? As early as 1983, the World Bank in its country memorandum report emphasised the importance of non governmental organisations in Bangladesh in the creation of rural employment.[15] As has been mentioned in the beginning of this section, these international institutions recognised NGOs as channels for fast implementation of their programmes. Non-government organisations are seen as 'new agents with a capacity and commitment to make up for the short-comings of the state and market in reducing poverty'[16]. For example, one of the main agendas of the World Bank is 'poverty alleviation'. The Bank realises that NGOs have a more effective channel through which poverty oriented development programmes for the rural poor can be operated and uses this channel to carry out some of its projects. Tasneem Siddiqui calls the process 'external resources routed to the rural poor bypassing the state bureaucracy'.[17] However, it must be noted here that the IFIs do not fund NGOs directly. All the funds are directed through and approved by the NGO Affairs Bureau. In 1982, a World Bank- NGO Committee was formed to act as the formal co-ordinating forum to deal with NGOs[18] and in 1995 the Bank created an NGO Advisory Committee where the directors of some of the largest NGOs in Bangladesh - Bangladesh Rural Advancement Committee (BRAC), *Proshikha, Nijera Kori* and *Gonoshastya Kendra* - are all members.[19]

Specific areas have been identified by the above committees where NGOs can participate in Bank financed projects. These include environment, rural development, food security, women in development, small scale enterprise development, education, family planning, health, nutrition and community organisation development.[20] In order to facilitate NGO involvement, the Bank bi-annually publishes the list of World

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[12] Ibid. Pg. 119.
[13] Ibid. Pg. 122
[14] Ibid.
[15] World Bank: Bangladesh: Selected Issues in Rural Employment. Washington DC March 1983. p 90.
[16] S. Paul, A. Israel : Non-government Organisations and the World Bank, Co-operation for Development. World Bank 1991. p 2, 19.
[17] Supra. Note 5. p 120-121.
[18] Ibid. p121.
[19] Ibid. p 122.
[20] Ibid. p 119.

Bank financed projects with 'potential for NGO involvement'[21]. The list of 1991 included 250 up-coming Bank projects.[22]However, studies show that in a majority of cases, NGOs are used in IFI-funded projects as sub-contractors or service deliverers. NGOs work as 'implementers without any input at the project preparation and designing stages'.[23]

Non-government organisations also gain from this relationship. As has been mentioned before, with the help of IFI's and other donor organisations, the NGO's were successful in making the government form the NGO Affairs Bureau which decreased the bureaucratic red-tape tangling NGO operations. Again, large non-government organisations, having large scale development projects in numerous fields, need bilateral donors to keep their projects afloat. For example, the Bangladesh Rural Advancement Committee (BRAC) runs 900 primary education schools all over Bangladesh. To finance such a huge operation, it is obvious that it has to seek multilateral donors.[24] Thus, large NGOs have an interest in the IFI's in order to gain access to a large amount of funds.

'Non-government organisations also believe that over the last two and a half decades through their grass-roots level activities, they have gained enough experience to contribute in the national policy formulation.'[25] The area in which they would like their voice to be heard is in the formulation of policies in favour of the poor. To meet this aim and pressurise the government, a lot of advocacy and lobbying is necessary. This can be done with the help of interaction with both the government and the IFI's. Furthermore, NGO's want the government to allow them to function under a policy of self-regulation, playing a role similar to the Bangladesh Chamber of Commerce and Industry, Bangladesh Bar, Press and Medical Councils. In this respect, the organisations find the IFI's important allies to influence the government.[26]

Ironically, initially non-government organisations were 'critical of the multilateral development agencies/IFI's for their insensitivity to 'the issue of the adverse impact of mainstream development policies on the poor.'[27] Now, however, they depend on these international institutions to meet important objectives. They are regardless of the fact that this IFI-NGO relation may adversely effect NGO movement in Bangladesh in the future, as some of the plans and programmes implemented for the rural poor by the IFI's go against the interests of this target group. This will be discussed in the following chapter on the International Monetary Fund and the World Bank.

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[21] Ibid. p 122
[22] Ibid.
[23] Ibid. p 130.
[24] Ibid. p 124.
[25] Ibid. p123.
[26] Ibid. p 124.
[27] Ibid. p 123.

III. **The Relationship Between NGOs and the Government of Bangladesh**:

III.i. Since NGOs claim they are comparatively closer to the people in organisational terms, their relationship with the government has become particularly important for the latter in order for it to gain public opinion regarding its state policies. However, in order to monitor NGO activities and the international funds received by them, the government has a set of rules.

Supervision on NGOs can be found in the terms of their registration with the government's NGO Affairs Bureau. Several laws contain procedures to be maintained by NGO. These are the Societies Registration Act 1806, the Voluntary Social Welfare Agencies (Registration and Control)Ordinance 1961, the Foreign Donations (Voluntary Activities) Registration Ordinance and Rules 1978 and the Foreign Contributions (Regulation) Ordinance 1981. The first two laws deal with the registration of non-government organisations while the last two deal with the inflow of aid. A clearance from the Special Branch of the police department and the National Security Intelligence is also required for registration.[28]

The age-old Societies Act is the most relaxed of the laws relating to NGOs. It contains measures necessary to form or dissolve an association and applies not only to NGOs but to any organised association of people. It allows the voluntary registration of associations comprising of seven or more people, associated for literary, charitable or scientific purposes. The comparatively recent laws provide more closed supervision of the government. The Act of 1961 makes the registration of 'voluntary social welfare agencies' mandatory. These agencies are defined by the Act as 'those organisations which provide social services to children, juveniles, women, the disabled, prisoners, indigents and the elderly and all those who 'depend on public subscriptions, donations and government aid'. The Ordinance of 1978 houses provisions for the registration, establishment and the dissolution of agencies, accounting procedures and fines of up to Taka 2000 (approximately US$50.00)or imprisonment of up to six months or both, for non-compliance with the rules.[29]

The foreign contributions ordinance of 1981 covers all foreign contributions in cash and kind and prohibits both the receiving and disbursement of foreign aid as according to its two provisions which state that no citizen or organisation in Bangladesh is allowed to receive any foreign contribution without the prior permission of the government and that no government, organisation or citizen of a foreign state can make such grant, donation or assistance to a citizen or organisation in Bangladesh without prior permission of the Bangladesh government.[30] This law makes the donor liable for non-compliance and the penalties for ignoring this law are either six months imprisonment, a fine not exceeding twice the amount or value of the contribution, or both.[31]

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[28] This was experienced when the researcher and some colleagues took up the task of establishing a non-government organisation called *Odhikar* in October 1995.
[29] Nipa Rahim: *Non-Government Organisations in Bangladesh*. A report prepared for the *Ain-O-Salish Kandra*, Dhaka, Bangladesh. 1997.
[30] Section 4 (1) and 4 (2) of the Ordinance.
[31] Ibid.

The purpose of the foreign Donation (Voluntary Activities) Ordinance is to 'regulate receipts and expenditure of foreign donations for voluntary activities'. Section 2 (d) of the ordinance defines a 'voluntary activity' as 'an activity undertaken or carried on (partially or entirely with external assistance) by any person or organisation of his or her own free will to render agricultural, relief, missionary, educational, cultural, vocational, social welfare and developmental services and shall include any such activity as the government may from time to time, specify to be voluntary activity.' It further defines an 'organisation' as a 'church or a body of persons called by whatever name, whether incorporated or not, established by persons for the purpose of undertaking or carrying out any voluntary activity in Bangladesh'.[32] This section fails to maintain the Constitutional provision of equal protection under law, by singling out the church as a 'voluntary organisation'. The reference to churches was included by an amendment to this Ordinance in 1982.[33]

A foreign donation is recognised by the above Ordinance as a 'donation, contribution or grant of any kind made for any voluntary activity in Bangladesh, by any foreign government, organisation or citizen or by Bangladesh nationals who live or work abroad, unless exempted by the Government.[34] Under the Ordinance, the registration of an NGO receiving foreign funds is mandatory and all such organisations are to be registered in the NGO Affairs Bureau mentioned earlier and obtain approval of all project related expenditures prior to the release of foreign funds. The organisations must also submit detailed financial statements and annual activity reports to the Bureau. The above laws give the government of Bangladesh a considerable amount of supervisory power over NGOs and foreign funds.

III.ii. The second part of this section of the chapter deals with the relationship the NGO community has with the different regimes in Bangladesh. It will show how the non-government organisations have increasingly been involved in partisan politics and policy reforms. These reforms have, however, not been for the betterment of their target groups, but have been to further their own internal, vested interests. It also deals with how different regimes have either tried to control NGO activities or befriended them in order to attempt to work together.

a. The Era of Lieutenant General Hussain Mohammad Ershad:

It was during the era of Lieutenant General Hussain Mohammad Ershad that non-government organisations and international financial organisations strengthened their bonding. We might say that this era saw a 'triangular friendship' among the government, the NGO community and international financial institutions.

On the first of July 1987, the Ministry of Land Reform published a government paper detailing a plan to redistribute *khas* land[35] to the landless peasents. It stated its intention to involve non-government organisations in the implementation and monitoring of the plan. Next year, in February 1988, an NGO Cell was created in the Cabinet Division of the President's secretariat and an NGO Steering Committee was placed in every concerned ministry, chaired by a Divisional Secretary.

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[32] Section 2 (b) of the Ordinance.
[33] Supra. Note 23.
[34] Ibid.
[35] *Khas Land*: Land owned by the government.

After the devastating floods of 1988, where NGOs worked along side government organisations distributing relief aid, the NGO lobby for the relaxation of bureaucratic red-tape controlling NGO funds and activities, strengthened. This movement was, as has been mentioned earlier, done with the help of IFI backing. The movement pressurised the government to create the position of an advisor, with ministerial rank and status, in charge of NGO affairs. This act preceded the creation of the NGO Affairs Bureau which was 'meant to provide a one-stop service to all foreign funded NGOs in Bangladesh.'[36]

b. The Era of Khaleda Zia:

As Lieutenant General Ershad's autocratic government worsened, the NGO community, under its umbrella organisation, ADAB[37], joined the people's movement against the regime. However, the newly elected government of Khaleda Zia [38]was wary of non-government organisations and 'remained sceptical because they (NGOs) had joined the movement so late and were suspected of collusion with the previous regime'.[39]

The relation between the NGO community and the NGO Affairs Bureau became strained and deteriorated after ADAB submitted a complaint to the Prime Minister, who called for a report from the Bureau. 'This report, entitled "NGOs Activities in Bangladesh" prepared by the Bureau officials, blasted NGO leaders in unequivocal terms. The report portrayed NGO activities as debatable and controversial. It alleged that NGOs are involved in embezzlement, irregularities, corruption and anti-state activities. They succeeded in raising huge sums of donations from abroad by exhibiting a poverty stricken image of Bangladesh. The money thus collected is used for luxury cars, fat salaries and wealth accumulation.'[40] In response to the report, the government of Khaleda Zia decided to cancel the registration of ADAB in 1992. In the face of 'ambassadorial intervention' the government had to withdraw the order within a few hours after announcing it.[41] The Director General of the NGO Affairs Bureau was placed under order of transfer and all charges were withdrawn.

In 1994, the government drafted the Voluntary Activities Registration Act. However, it was withdrawn after a sharp response from ADAB[42]. This was probably the catalyst which hurried the deterioration of the relationship between the NGO community and the government. Before the February 1996 elections, some NGOs decided to involve themselves in poll monitoring and formed the coalition 'Fair Election Monitoring Association' or 'FEMA' as it was more commonly called. 'The government viewed this with some suspicion and on 19 February 1996, after the elections held on the 15th of February, FEMA called for cancellation of results and

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[36] Nazmul Ahsan Kalimullah.: *NGO Power and Party Politics*. The Weekly Holiday. 21 November 1997.
[37] Association of Development Agencies in Bangladesh.
[38] Elected Prime Minister of Bangladesh after parliamentary elections in 1991. She is the first women in Bangladesh to hold this post.
[39] Supra. Note 30.
[40] Ibid. Jamil and Mannan. 1994. Pg.9.
[41] Supra. Note 30.
[42] Ibid.

asked the Election Commission to come up with a new date....Later on, ADAB leadership was alleged to have become involved in partisan politics by showing solidarity with the opposition cause.'[43]

c. The Era of Sheikh Hasina Wajed:

In early 1996, ADAB leadership joined other professionals with the help of the Federation of Bangladesh Chambers of Commerce (FBCCI) in establishing the *Shommilito Peshajibi Porishod.* They took part in agitation's against the government of Khaleda Zia and 'succeeded in gaining the confidence of Sheikh Hasina and the Awami League leadership'[44] After the Awami League won the parliamentary elections, NGO-Government relations have improved.[45] 'For the first time, with this partisan act, they aided a political movement in bringing down a civil government'.[46]

On 23 September 1996, the government of Sheikh Hasina Wajed formed the Asian Development Bank sponsored Government-NGO Consultative Council (GNCC), through a Gazette Notification. The aim of the GNCC is to provide a forum for open dialogue between NGOs and the government 'with a view towards increasing mutual understanding, co-operation and promotion of human resources, poverty eradication, women's development and overall development of the country.'[47] Some ministries such as Fisheries, Health and Population Control, Local and Rural Development, have already formed a close working relationship with NGOs. They have undertaken a number of joint projects and constitutional bodies such as the Election Commission are allowing certain NGOs to run voter education programmes, along with poll monitoring.[48]

'Direct involvement of NGO leaders in partisan politics before the elections has consolidated rather than weakened NGO influence in the present government. As previous government experience illustrates and since the government itself largely depends on foreign aid, its ability to control the activities of foreign funded NGOs is limited.'[49]

III .iii. In the third part of this section I would like to mention some of the areas in which the government and NGOs have collaborated. The main areas of collaboration are in the fields of primary education, health and family planning. In other areas, NGOs have been allowed to operate as sub-contractors on government projects. In some cases government ministries have held meetings with members of appropriate non-government organisations to form policy measures. For example, members of women's NGOs met with officials of the Ministry of Law, Justice and Parliamentary Affairs and the Ministry of Women's and Children's Affairs in order to discuss the social and legal status of Bangladeshi women and their discrimination in different administrative sectors. Non-government organisations are vital to the government machinery in order to 'sound out' public opinion regarding the former.

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[43] Selim Samad. Article published in The Weekly Holiday. 17 May 1996.
[44] Supra. Note 33.
[45] Ibid.
[46] Saira Rahman., Adilur Rahman Khan.: *Emerging NGO Culture in Bangladesh*. The Weekly Holiday, January 10 1997.
[47] Bangladesh Gazette 1996.
[48] Supra. Note 30.
[49] Ibid.

IV. **The Relationship Between NGOs, the Grameen Bank and Their Target Group**:

Since this thesis deals with the women of Bangladesh, here we will focus on the programmes mainly focusing on women's empowerment and development. Therefore in respect to these programmes, the target group for the NGOs and the Grameen Bank are the women of rural Bangladesh.

Many NGOs have focused much of their attention on women because the suffer from social discrimination, violence, exploitation and are classified as the 'poorest of the poor'. Another reason of this focus on women is based on the idea that they will not abuse the facilities given to them and are more likely than men to repay any credit received.[50] Apart from credit facilities and a general emphasis on women's participation in social and family life, many NGOs target the social position of women and work towards strengthening it by addressing factors such as legal rights, domestic violence, other forms of violence against women and legal redress. In this field, a few NGOs have grown to focus only on women and women's rights and empowerment.

Probably the two most important functions carried out by non government organisations in Bangladesh and which affect the lives of women most are the credit schemes and awareness programmes and legal aid. The giant credit giving NGOs in Bangladesh are the Bangladesh Rural Advancement Committee (BRAC) and *Proshika,* the *Grameen* Bank is a large micro-finance institution giving credit to landless rural women, and the main legal aid providing NGOs are the Madaripur Legal Aid Association, *Ain-O-Salish Kendra* and the Bangladesh Legal Aid and Services Trust. We will deal first with the credit giving organisations and the Grameen Bank.

The regular banking system requires collateral security and is also occasionally time consuming. A majority of poor village women do not own any assets and are too busy to keep up with the long, drawn out procedures of a regular bank. Various social and cultural customs make it difficult of women to gain easy access to bank and bank officials. Therefore they are not always familiar to banking procedures and requirements. Further more even though some of the national banks have a 'ladies branch' operated by women only, and targeted mainly for women who prefer *purdah,* their main role is accumulation of savings rather than encouraging investment. Moreover, although it is not a legal requirement, in practice, bank managers require the consent of the husband or other male relative as a guarantor before sanctioning loans to women.

Due to the difficulty in obtaining loans, and due to the level of poverty in the country, the number of women eligible to borrow from regular banks is extremely limited. In this respect, NGOs and some government organisations have programmes to provide collateral free loans and credit to poor women. Such was the popularity of the

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[50] See *Grameen* Bank studies and occasional papers on this idea.

scheme that by June 1996, two hundred and thirty four NGOs had disbursed Taka 21,940 million to three million members of their credit schemes.[51]

The *Grameen* Bank, which literally means 'village bank' is a specialised micro finance institution already reputed world wide for its successful approach to provide the rural poor with an institutional credit mechanism and has established the fact that rural poor are generally more sincere in repaying loans where the urban rich are, in many occasions, defaulters. The founder and Director of *Grameen* Bank is Professor Mohammad Yunnus, who, in his own words, began the project 'since there was no institutional arrangement to channel financial capital to the poor, I started an endeavour called the "*Grameen* Bank Project" in Jobra village in 1976 with a view to fulfilling this need.'[52] The Bank provides credit mainly to the landless, poor women in rural Bangladesh, who are unable to offer collateral. By organising potential loan-takers into groups is the reason why no collateral is necessary, as each group member is responsible for each other and the group leader chosen is responsible for keeping account of the loans taken and the uses they are put to by each member of her group. As of July 1995, the Bank has been able to provide credit amounting to Taka 5.96 billion to 2.2 million people for income generating activities by organising them into groups of five. Ninety five percent of the beneficiaries are women and, according to Bank information, their repayment rate is allegedly ninety-nine percent.[53] The borrowers own 72 percent of the shares in the Bank while the government owns the remaining 18 percent. [54]The Bank operates in 33,687 villages through 44,455 centres and finances a wide range of activities including low cost housing, sanitation, hand-loom factories, etc..

The latest project taken up by the Bank is the mobile telephone, where the organisations leases one hand set per village to a qualified *Grameen* Bank member at a fixed charge with fixed rate for incoming and out going calls. In houses where there is no electricity, the Bank installs a solar panel for re-charging batteries. The members owning the phone become the village 'pay phone operator' and she or he earns the difference between the fixed charges paid to the Bank and the amount she/he charges the customer for the call. *Grameen* Bank officials fix the rates the operator charges and monitors her or his business activities. If the operator defaults on the payment to the Bank her or his status as 'operator' is lost.[55]

The Bangladesh Rural Advancement Committee or BRAC as it is familiarly called, is another giant NGO in Bangladesh which employs thousands and disburses a huge amount of funds. It has built up a solid grounding as a well constructed organisation in the last twenty-five years[56]. BRAC activities began in the Sulla region of Sylhet where it provided relief for the war ravaged victims who had lost all and had no means of livelihood. It eventually went on to a wider range of projects with goals of poverty alleviation and empowerment of the poor. Since 1993, it has focused its

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[51] Credit and Development Forum: Savings and Credit Information of NGOs. Vol.2. No.1 October 1996.
[52] Mohammad Yunnus. Ed.: Jorimon and Others, Faces of Poverty. Published by *Grameen* Bank, Bangladesh, 1982. p. Xvii.
[53] Khandakar Zakir Hossain : *Good News for NGOs and Business People*. The Daily Star. 11 October 1997.
[54] Supra. Note 42.
[55] Interview with Shahed Latif, Director, *Grameen* Phone. Dhaka, Bangladesh. October 1996.
[56] Daily Star Weekend Magazine. June 13, 1997.

programmes on women and children. Its income generation for vulnerable group development programme is designed exclusively to address the needs of rural women who, for the most, are completely illiterate, possess no land, have no income nor receive any support from their family and community or are victims of desertion or divorced and left without means.[57]

Apart from its programmes of non-formal primary education, health and population programme, BRAC has a strong rural development programme which involves the organisational development of rural women and credit receiving groups, credit disbursement, facilitation of savings habit and provision of income generation activities. This project is one of the main activities of BRAC and its income generating projects include fisheries, irrigation, sericulture, vegetable cultivation, forestry, poultry, small holder livestock development and rural enterprise development.[58] From the instigation of its credit and loan programmes till June 1996, BRAC has disbursed a total of Taka 11,714 million as loans to 1,388,701 persons, of which 3,364 are women.[59] The organisation also has launched a micro-credit programme on an experimental basis. Its target candidates for this programme are those with the potential to carry out a successful small enterprise which will also generate employment. This project will facilitate BRAC group members to take larger loans to initiate bigger enterprises.

The Bangladesh Rural Advancement Committee also extends financial aid to smaller non-government organisation, mostly in their education sector - in supplying books, teaching equipment, materials to build schools etc. BRAC, therefore, works both as a small donor and as an adviser. It has a very big network with smaller organisations, many committees of which are chaired by the Chief Executive of BRAC. For example, BRAC works jointly with the NGO Forum for Drinking Water to distribute tube wells across the country.[60]

Proshika is another giant NGO and has been around for more than twenty years. It was established in 1976 and from its inception concentrated on organising and mobilising rural landless men and women and poor peasants for socio-economic self reliance. Beneficiaries are organised in groups and encouraged to undertake income generating activities through their own savings supplemented by the organisation's revolving loan fund. Different terms and , according to the organisation, a lower rate of interest for women provide incentives to participate in economic activities. *Proshika*'s programmes are geared to emphasise the empowerment of the poor through participatory development approach in order to achieve sustainable development among the rural poor. Between July 1993 and June 1994, the organisation has disbursed loans worth a total of Taka 1.64 million to the rural poor for different projects.[61] From the perspective of income generation, it has been said that the loan recovery rate in all the above three organisations is very high - and ranges from between 96.0 - 100 percent. Credit for this has been given to group

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[57] Ibid.
[58] Ibid.
[59] Supra. Note 42.
[60] Information supplied by Habib Rab, intern, BRAC. January 1997.
[61] Supra. Note 42.

responsibility and pressure and grass-root mobilisation efforts.[62] A large number of borrowers from these projects are, of course, rural women - the poorest of the rural poor . some of the projects they seek loans for are paddy husking, poultry raising, handicrafts, petty trading, pisciculture, weaving, raising milch cows and goats and horticulture. As said earlier, this group are the one who are the most prompt in repaying loans.

Legal aid NGOs are mostly involved in protecting the civil and political rights of the people. They, therefore, play an important part in safeguarding women's rights. Among such organisations, the prominent ones include the Madaripur Legal Aid Association (MLAA), the *Ain-O-Salish Kendra* (ASK) and the Bangladash Legal Aid and Services Trust (BLAST).

These organisations address the different aspects of violence faced by women in Bangladesh - for example domestic violence, family matters, acid throwing, trafficking, fatwa, etc.. The main activity of legal aid NGOs is to provide free legal service to those who cannot afford to pay a lawyer to represent them, they also work to ensure that the civil and political rights of the people are being properly addressed and implemented. This is done through advocacy and legal awareness programmes. A majority of the clients approaching these organisations are poor women. The MLAA is the only legal aid organisation placed in the district of Madaripur in Bangladesh. BLAST is based in Dhaka, but has branches in nine district headquarters (out of sixty-four districts). ASK is based in Dhaka city only. The administrative locations of these NGOs makes it difficult for potential clients in rural areas of Bangladesh to seek their help.

Apart from credit and legal aid non-government organisations, there are also specialised NGOs whose sole objectives are to ensure that the rights of women are being protected. One of the oldest of these women's NGOs is the *Bangladesh Mohila Porishod,* which has been involved in many different women's movements in the past and maintains a shelter home for destitute women. Another women's organisation is *Naripokkho,* which also campaigns for the protection of women's rights. It has done a great deal of work with victims of the heinous crime of acid throwing.[63]

Non-government organisational activities have become a threat to some vested interest local power groups in rural Bangladesh. The development programmes for women are the most 'unpopular' in this case, specially the income generating projects and primary schools (which encourage the enrolment of the girl child). Due to all the programmes and other activities of NGOs concerning and involving women, the latter are gaining encouragement and are gradually becoming an organised force and their voices are being heard. As has been seen in Chapter V, on '*fatwa*', NGOs and their female clients are targets of illegal practices. The different governments have, while willing to work with NGOs, largely failed to investigate, arrest or persecute the perpetrators.

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[62] Amin, Hill, Li: *Poor Women's Participation in Credit-based Self-employment.* The Pakistan Development Review. 34:2 (Summer 1995).
[63] See Appendix III.

Some Reported Incidences of Attacks on NGOs in Rural Bangladesh

Date	Incident
June 1993	35 women in a village in Sirajgonj ostracised for using contraceptives handed out by an NGO health complex.[64]
January 1994	600 mulberry bushes cultivated by women engaged in silk production as part of an NGO sponsored programme were cut down by madrassah students. In all of 1994, it is estimated that 11,000 mulberry trees were damaged by religious fanatics. In the same year an estimated 40 primary schools run by BRAC were burnt.[65]
March 1994	10 women forcibly divorced for working wit NGOs and ostracised for working outside the home.[66]
January 1995	Children deterred from attending BRAC run primary schools.[67]
Feb-March 1995	Mullahs in 15 administrative districts in Feni attack and censure NGOs in 40 areas in the countryside, singling out projects on women's development, family planning credit and non-formal education for children and adults.[68]
April 1995	At an anti-NGO rally in Dhaka, Moulana Mufti Fazlul Huq Amini warned the government that if they did not control NGOs, a fatwa would be issued asking people to destroy all NGOs in Bangladesh.[69]
June 1995	An alliance of mullahs declared a country-wide hartal and torched two NGO offices in Zakiganj, in north-east Bangladesh.[70]
December 1995	Sermon given at Chita in the Rajbari district of Bangladesh by Moulana Abdur Rahman Azadi, who condemned, as anti Islamic, the activities of an adult education programme run by the NGO Shaptogram. After boasting that he had burnt many BRAC schools, and calling teachers the 'offspring of traitors and dogs', he said that those involves in the programme should be tied by a rope, trampled on and their tongues cut out.[71]

According to a 1998 study, the following observations were made of women who were beneficiaries of NGO programmes:

1. Many women have made direct economic gains from participating in NGO programmes
2. many have gained directly marketable skills

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[64] Sanglap: *Selection of Fatwas Issued in1993 - 1995.* ASK Publication August 1995 issue.
[65] Ibid.
[66] Ibid.
[67] Ibid.
[68] Saleem Samad: *NGOs and Fundamentalism.* The Daily Star. 28 August 1996.
[69] The Daily Star. 1st April 1995: '*Anti-NGO Rally Held in City.*'
[70] Supra. Note 55.
[71] The Daily Star. 7 December 1997.

3. the role of women as the households route to credit, which has been introduced by most NGOs, has brought important social gains in terms of their respect in the household and society
4. the process of participation in NGO group activities in itself raises women's awareness and confidence, and thus has an empowering effect
5. women do not see the broader social disadvantages from which they suffer, such as dowry, polygamy and domestic violence as liable to improve in the short to medium term, even though these issues are greatly emphasised by NGO 'empowerment' training
6. women have begun to feel that their improved status within the household, gained largely through participation in NGO programmes, may in the much longer term make inroads in these social disadvantages.[72]

Non government organisations and micro finance institutions have largely contributed in the development of Bangladesh and have, in many ways organised a large number of rural poor, specially women, and made them socially aware of their socio-economic and legal rights and duties. However, apart from all these achievements, inflow of foreign funds and their massive expansion have created internal and external bureaucracies, which are distant from the target groups and influenced by top-heavy and top-down policies. They are largely accountable to donor agencies instead of the people for whom they are working for. A large section of the rural poor are dependent on NGO funds and the NGOs are dependent on donor funds and there is a lack of 'partnership', dialogue and democratic decision making. The present relationship between NGOs /micro-finance institutions and their target groups is now reminiscent of the relationship between the village '*mahajan*' or money-lender and the poor peasant. Those who take loans from these organisations are caught in the vicious circle of loan receiving and repaying, which can, for some, be a life-long task. Furthermore, even though these organisations and institutions have made their clients and members economically active, they have never made them independent.

Bangladesh is heavily dependent on foreign aid. A large amount of this is disbursed among the non-government organisations. For example, *Proshika*, one of the largest NGOs in Bangladesh, is currently working in a joint NGO-government project geared towards the urban poor. The NGO has taken a considerable amount of funds from the government in 1997 to perform its part of the project. Again, large NGOs like the Bangladesh Rural Advancement Committee (BRAC) and the Grameen Bank, which have a multitude of projects and employ thousands of employees, are, as has been mentioned, almost akin to large multinationals and have projects outside Bangladesh. These 'foreign' projects involve helping foreign organisations and institutions to design and develop programmes. BRAC also takes part in joint research projects in which there may be several stake holders.[73] 'Bangladesh, as a South Asian Case, has been spoilt by aid. The economic ideology of post-liberation Bangladesh was, at least on paper, of a socialist nature, although the reality was different. NGOs funded by foreign aid money came on the scene to eventually metamorphosis the economy of a new Bangladesh into a capitalist mould. Foreign aid

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[72] Supra. Note 4. Pg. 301.
[73] Supra. Note 52.

supported NGOs have succeeded in changing the course of the Bangladesh economy.'[74]

There are many questions involving the modus operandi of credit-giving NGOs and institutions - specially the large ones. Even though, according to *Grameen* Bank sources, 94% of their borrowers are women, a recent empirical study has shown that most credit extended to women are actually taken by men - women remaining the surrogate borrowers.[75] Again, the reason why the Bank prefers women borrowers to men is, according to some *Grameen* Bank officers, 'because women are passive , submissive, they cannot run away with the money and most importantly, their vulnerable honour or *izzat* assures the Bank "an unwritten guarantee" of getting back the loan money, as a woman's failure to repay her loan in time would bring shame to her entire family.'[76] So the Bank, while vocal on women's economic development - has an extremely patronising view of why women are preferred as Bank clients.

Grameen Bank also states that it has a high loan recovery rate. What happens to those who cannot repay their loans on time? The Bank lends money to two members of groups of five at a time. They are supposed to repay the loan in 52 instalment's, interest rates being high - 25 - 28 percent. Subsequent loans to other members in the group are not sanctioned till the individual accounts of each group member are settled. The other members work as guarantors for the borrowers. Thus, peer pressure and intimidation by group members work as a sort of collateral for the Bank.[77] One must not forget how vulnerable the rural poor are in Bangladesh and how uncertain are the returns from micro-credit. It has been learnt that borrowers who fail to make their regular repayments of loan instalments are 'forced to sit on their bare feet on a mud floor for several hours until all the instalments are collected and group members take the defaulters' saleable house hold items, jewellery and livestock and sell them to collect loan instalments.'[78]Aleya, a poor village woman borrowed Taka 3500 from the *Grameen* Bank to buy a cow which stopped lactating after six months - leaving her owing Taka 1700 to the Bank. As under the *Grameen* Bank rules, the cow could not be sold till the loan had been repaid in full, Aleya had to work in the houses of wealthier villagers and cut down on the family's eating and put everyone in the family, even her seven-year old daughter to work to repay her loan instalments.[79]

The reality in a majority of cases is that even though the *Grameen* Bank gives out loans for different domestic projects, a large part of the loan is used to meet household expenses first. After that has been fulfilled, the capital expires within a matter of weeks. The loanee then has two avenues open to her - to either borrow from the village money-lender to repay the loan or take out another loan from the Bank in the guise of using it for another project in order to repay the instalments[80]. This is what happened in the case of Ferdous Ara. She became a member of

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[74] Supra. Note 40.
[75] Taj-Ul-Islam Hashmi: *Microcredit and the Myth of Development*. The Weekly Holiday. 20 June 1997.
[76] Ibid.
[77] Ibid.
[78] Ibid.
[79] David Bornstein.: The Price of a Dream. University Press Ltd. Dhaka 1996. Pg. 149 - 151.
[80] Taken from interviews with various activists from the grass-roots level in rural Bangladesh. January 1997.

Grameen Bank in 1990 and took out a first loan of Taka 2000 (approximately US$ 37) to make ends meet. To date, she owes the Bank Taka 9000 (approximately US$ 163).[81]

Below is a table listing loanees who have been caught up in the vicious cycle mentioned in the last paragraph. This has been prepared by the researcher Mir Illias Hossain and is published in his book titled *Grameen Bank Mohajoni Shashoner Obhinobo Hatiaar*, translated loosely as 'The *Grameen* Bank is the New Instrument in the Money-Lending Trade'[82]. The table shows that ten women, all from the same area of rural Bangladesh, have been left with a debt to the Bank which is far greater than the loan they took out originally. They will probably spend their entire lifetime repaying their loan to the Bank – which was created in order to improve the lot of women by poverty eradication.

Serial No.	Loanee	Age of Association	First Loan (in Taka)	Present Amount Owed (in Taka)
1	Feroza Begum	4 Years	2000	33,000
2	Shukia Khatoon	3 Years	2000	11,000
3	Anwara	3 Years	2000	10,000
4	Nejtarun Nessa	2 Years	3000	7000
5	Rahima Khatoon	4 Years	3000	20,000
6	Rabeya Khatoon	3 Years	3000	9,500
7	Lalbhanu	3 Years	3000	8000
8	Tahura Begum	3 Years	3000	13,000
9	Shaheda Begum	3 Years	2000	11,000
10	Rahima Begum	3 Years	3000	43,000

Despite the continuous flow of foreign aid to help in handing out loans, there is a high rate of drop out of *Grameen* Bank members in villages with electricity and branches of commercial banks.[83] On the 20th of November 1997, a workshop on micro-credit was held in Dhaka. The aim of this workshop was to find ways and means to stop the alarming drop out rate of members from micro-credit organisations such as the *Grameen* Bank.[84]The reasons for this could be the high rate of interest imposed, the unreliability of micro-credit programmes and the treatment meted out to 'loan defaulters' by peer groups acting as collaterals. 'It goes without saying that the

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[81] Ibid. One US Dollar is equal to approximately fifty-five Bangladesh Takas.
[82] Published by Latifa Pervin Papiya, Nirjhor Prokashoni, 75 Pagla Kanai Sharak, Jhinaidaha 7300. February 1998. The research was carried out in the village of Holidhani, in Ramchandrapur in Jhinaidaha. In this village, 35 women had joined the Grameen Bank.
[83] Supra. Note 66.
[84] The Daily Star: *NGOs Urged to Help Check Drop-out of MFIs Clients.* 21 November 1997.

existing commercial banks had long been giving out loans to the poor at lower interest rates than *Grameen* Bank (with rates as high as 28 percent),and by doing so, they have been unable to alleviate poverty in Bangladesh. If in reality it turns out to be such, how credulous is *Grameen's* claim as far as alleviation of poverty is concerned? Maybe for the sake of verification of facts, Grameen should disclose a list of people who have crossed the poverty line.'[85]

Another thought on the matter of credit, is the question whether loans and credit programmes actually help in poverty eradication and development? From the above drawbacks we can see that credit alone does not have any remarkable impact on the situation of poor women because the actual benefits flow to those in control of the funds and loans and the loanees gains are pathetically small. Credit programmes cannot work alone to aid in social development. Legal awareness, education and social awareness to overcome the traditional power structure need to work with credit programmes in order to help in the social development of women - and of men.

The Bangladesh Rural Advancement Committee (BRAC) is no different. BRAC is one of the largest non-government organisations in the country, employing thousands of people and having a large number of projects, which also include the handing out of credit to the rural poor. However, the organisation too exploits the poor for the benefit of the rich. A simple example of this is that the BRAC run handicrafts outlet, Aarong, charges Taka 6,000 for a hand embroidered sari, while the poor village women who did the embroidery gets about Taka 300 .[86]

Other large non-government organisations are similar. One of the main disadvantages of these huge NGOs is that they are run by either one single person or a group of people related to each other.[87] This prevents a democratic process from entering into decision-making. Furthermore, 'potential employees break away to form NGOs of their own.'[88] This is also due to the 'lack of democratic practices in management and membership, since the discretionary power ultimately lies in the hands of the sole ruler.'[89] The lack of democratic and unbiased factors in NGO decision-making, the lack of transparency and accountability to target groups and the large influx of bilateral funds make NGOs 'prone to corruption.....the system of checks and balances operate even less than in the code-following government.'[90] Eighty officials and employees of the women's NGO *Shaptogram Nari Swanirvar Porishod* resigned en mass 'in protest against alleged corruption and irregularities by some executives of the *Porishod*....when asked by the newsmen, they emphatically said that they would not work under such a corrupt official[91]. They alleged misappropriating money depriving the poor people for whom the money was sanctioned by donor countries.'[92]

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[85] Abdullah Al Amin. *Grameen Bank: another critique.* The Weekly Holiday. October 3, 1997.
[86] Supra. Note 69.
[87] BRAC has an Executive Director, who has remained in this position since the formation of the NGO nearly 25 years ago. Grameen Bank's and Proshika's positions are the same.
[88] Supra. Note 30.
[89] Ibid.
[90] Subhas Chandra Sarkar: *Role of NGOs: An Analysis.* The Weekly Holiday 25 July, 1997.
[91] Shaptogram Nari Swanirvar Porishod is another large NGO headed by a single person, who has been its executive director since its inception.
[92] *'Alleged Corruption in NGO Working for Women'.* The Daily Star. 11 October 1997.

Conclusion:

It is true that non-government organisations and micro finance institutions are contributing to the social and economic development of Bangladesh and many have helped in empowering women by making them take charge of household expenses, encouraging them to form groups and take loans and raising their confidence in themselves by starting them off with small income generating schemes. However, despite all these good works, there remains a serious loophole in the system in the areas of administration and power thresholds.

The weaknesses of NGOs in Bangladesh as a whole, can be summarised as follows:

1. limited size, scope and impact

2. loose structure, often with limited accountability to beneficiaries

3. inadequate attention to the 'very poor'

4. unduly influenced by donors' interests which may not reflect the priorities of the poor

5. ineffective strategy and implementation of measures to build institutional capacity and self-reliance among the poor

6. insufficient attention to monitoring and evaluation

7. weak planning and management capacity

8. lack of broad social and economic perspective

9. inadequate technical, professional and managerial skills.

The very few large NGOs may be exempt from many of the above limitations, but at the operational level, as we have seen , they too are prone to bureaucratisation and unaccountability and rely excessively on the power and decisions of founders at policy level - making them a somewhat undemocratic party.

Large NGOs, supported by influential IFI's seem to be pushing the government into a corner to meet their demands. Their 'attempts to weaken the functions of a [democratic] government machinery are ominous for the welfare of Bangladesh. Weak governments and strong NGOs have nowhere led to prosperity'.[93] Non government organisations need to discard their present elitist approach and become democratic, accountable and transparent to their target groups. Their decision making

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[93] Supra. Note 63.

processes should include the direct participation of members of their target groups and projects should be drawn up and implemented with their consultation.

As regards the credit schemes and programmes run by non government organisations, Hashmi comments 'NGOs and *Grameen* Bank cannot perform miracles through micro credit schemes. Men and women, urban and rural, rich and poor, educated and illiterate, everybody will have to work for achieving 'miracles' like those of the 'dragons' and 'tiger's' of the Asia-Pacific region'.[94]

Despite the drawbacks in some programmes, NGO's, have been instrumental in stimulating a sense of self-reliance, self-esteem and strength and democracy among the communities they have worked in. This is specially true among the women of rural Bangladesh. If the weaknesses can be eradicated somehow, specially by means of enhanced transparency, accountability, democratic policy and grass-roots access in the decision making process, then these organisations, side by side with government organisations would greatly improve the social, economic and legal status of the poor and specially of the women in Bangladesh.

[94] Ibid.

Chapter VII

The Effect of the Role of the World Bank and the International Monetary Fund On Women's Lives

The problem with structural adjustment policies is not that they assume women are outside development and need to be brought in ..... but that they are actually grounded in a gender ideology which is deeply, and fundamentally exploitative of women's time/work and sexuality.

- Peggy Antrobus[1]

This chapter deals with the functions of two Bretton Wood institutions, the World Bank and the International Monetary Fund (IMF) and their activities in Bangladesh. It will stress on the effect of World Bank and IMF policies on the lives of Bangladeshi women. The chapter attempts to show that despite World Bank and IMF funds, women in Bangladesh still remain economically the poorest of the poor, exploited if they are employed and still experience physical violence. This is mainly due to the structural adjustment policies which these two institutions impose on the government in exchange for funds. However, it is not only the World Bank and IMF who are to blame. The economic reforms suggested by them are supported by the elite of Bangladeshi society - the bureaucracy and military. Needless to say, these are both male dominated areas of control.

The chapter is divided into five parts. Part one deals with the role of these two institutions in Third World countries, part two on their role in Bangladesh, part three will contain a study of World Bank and IMF activities and projects focusing on women in Bangladesh, part four a critical analysis of the activities of these two institutions and the impact on women and part five recommendations and conclusion.

I. The Role of the World Bank and IMF in Third World Countries.

'The history of the World Bank is closely tied to the history of the expansion of the Third World's development project'.[2] Its mandate includes 'combating poverty' and 'protecting the environment'[3] - specially in Third World countries, along with supplying loans for development projects in these nations. The role of the World Bank, as its mandates denote, is active in less developed countries aiding them in projects which the Bank thinks fit to enhance the economic development of the said countries and help reduce poverty. One of the countries it has a mission in is Bangladesh.

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[1] Mortgaging Women's Lives. Feminist Critiques of Structural Adjustment. Ed. Pamela Sparr. Zed Books Ltd. 1994. Pg. 183. Paper prepared by P. Antrobus for the UNDP/UNFPA Training Programme for Women in Development, INSTRAW, Santo Domino28 Nov. - 2 Dec. 1988.

[2] Ibid. Pg. 24.

[3] Michel Chossudovsky.: The Globalization of Poverty. Impacts of IMF and World Bank Reforms. Zed Books. 1997. p 35.

The International Monetary Fund, or IMF, began as an organisation to ensure monetary stability in the world economy, after the gold standard was repealed. Its mandate was 'to impose adjustment on all parties'.[4] However, the introduction of a general system of floating currencies in 1973 put an end to the IMF mandate and it took another role - that of 'managing unilateral structural adjustment in Third World countries in order to manage Third World debt'[5]. This is mirrored in the fundamental purpose of the Fund, as stated in Article 1 of its Articles of Agreement -'to give confidence to members by making the general resources of the Fund temporarily available to them under adequate safeguards, thus providing them with opportunity to correct maladjustment's in their balance of payments without resorting to measures destructive of national or international prosperity.'[6]

II. The Activities of the World Bank and the IMF in Bangladesh.

According to a study on the World Bank activities in Bangladesh, 'The physical problems of Bangladesh - its precarious environment, lack of natural resources and alluvial terrain with high cost of infrastructure had been compounded by poorly chosen and implemented programmes in the past.....The most striking failure lies in the increasing gap between food grain production and requirements. Bangladesh, a predominantly agricultural country, must import 15 % of its food requirements.....As a consequence, Bangladesh stands out as one of the most extreme examples of rural poverty in the contemporary world.'[7]

In 1972, Bangladesh applied for membership to the IMF fund and the World Bank and became a member in August 1972, with a fund quota of SDR 125 million[8]. For fiscal year 1973, Bangladesh had been allocated an amount of US $ 60 million by the Bank and of this $ 50 million had been committed as a Reconstruction Imports Credit. An amount of $ 12 to $ 15 million was spent to meet credit for a seed project, inland water transport and project preparation, studies and technical assistance needed to accelerate the projects.[9]

Since independence, the World Bank has provided Bangladesh with nearly seven billion US Dollars in financial assistance, most of it as concessional loans for projects and programmes in a wide range of areas[10]. 'In addition to providing concessional funds, Saifur Rahman, Finance Minister during the regime of Khaleda Zia (1991 - mid 1996) commented that the Bank plays an important 'catalytic and advisory' role in promoting the necessary reforms to consolidate the domestic economy for meeting the challenges of the 21st century.'

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[4] Samir Amin: Capitalism in the Age of Globalization. Zed Books 1997. p 18.
[5] Ibid.
[6] International Monetary Fund : World Economic Outlook . May 1998.A survey by the staff of the IMF. Washington D.C. p 8.
[7] Jasmine Ivy Mostafa: World Bank Activities in Bangladesh (1972 - 1996) A Critical Analysis. The World Bank Resident Mission in Bangladesh. 20 October 1996. p 3.
[8] SDR: Special Drawing Rights.
[9] Supra. Note 6. p 5.
[10] S.Y.Bakht. : *WB Played a Crucial Role in Bangladesh's Development.* The Daily Star Special supplement: '25 Years of Partnership' 10 July 1995. p3.

The resident mission of the World Bank celebrated its 25th year in Bangladesh in 1996. In the immediate post liberation years, the organisation busied itself funding the reconstruction of infrastructure - roads, bridges, etc. - which were destroyed during the 1971 war[11]. In the mid- 1970's, a substantial portion of World Bank funds were directed to the agriculture sector - the mainstay of Bangladesh's economy. It had projects dealing with population and irrigation, which were designed to augment food production.[12] Along with agriculture, Bangladesh industry was also considered. Policy based lending by the Bank entered the industrial sector in the areas of fertilisers, textile, industrial energy, small scale enterprises and development finance companies.[13]

Between 1975 and 1980, the focus of the World Bank was the population of Bangladesh. Population and family health projects formed the basis of World Bank activities in these areas. Their aim was 'to relieve the severe economic and social pressure that arouse out of extremely high and increasing population density'[14] . Some activities under the projects were the construction of health care complexes, training of medical workers and family planning education. Primary and secondary schools and vocational training centres were projects taken up by the Bank between 1976 and 1980. Other projects in the field of education included education in the areas of agriculture, business training, training of civil servants and in engineering and polytechnic institutes.[15]

Bangladesh has undergone several political upheavals and changes of regime in its relatively young life. The World Bank has attuned and changed its policies and strategies in Bangladesh through each regime and changed the economy of the country towards its (the Bank's) ultimate goal - reforms for an 'open market'. Below, is a summary of the different strategies of the Bank during each change in regime:

II.i. The Era of Sheikh Mujibur Rahman (1972 - mid-1975):

The Era of Sheikh Mujibur Rahman was the first political regime in Bangladesh. The country was in economic and structural shambles and had just become a member of the World Bank in 1972. 'Law and order had to be re-established in the newly liberated country and an administrative framework constituted. The returning refugees had to be resettled, relief and transport provided and the country's economy restored to post-war levels. There was a drastic shortage of food and industrial activity had come to a standstill'.[16]

The World Bank welcomed the new nation of Bangladesh and granted it a fund quota of SDR 125 million. Due to the post-war conditions faced by the country, the Bank organised the following strategies:

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[11] Supra. Note 6 p 1.
[12] Ibid.
[13] Ibid.
[14] Ibid.p 2.
[15] Ibid.
[16] Ibid. p 4.

1. to maintain a careful balance between programme lending, sectorial programmes and project lending;
2. creation of new capacity ensuring at the same time utilisation of existing capacity;
3. to undertake an active programme of project preparation and appraisal
4. acceleration of the project process.[17]

II.ii.The Era of Ziaur Rahman. (1975 - mid 1981):

The political stability of the country was taking a downhill slide since independence during the era of Sheikh Mujibur Rahman. The foreign exchange crisis, devastating floods and the famine conditions during the second half of 1974[18] added to the political dissatisfaction. The situation was further aggravated after the Fourth Amendment of the Constitution which changed the form of government from a multi-pary parliamentary to single party presidential system on 25th January 1975. After the formation of this single party presidential system, known as BAKSAL[19], radical left-wing political parties went under ground in order to challenge the single party, autocratic system. A violent political coup took place on 15th August 1975 which overthrew the government of Sheikh Mujibur Rahman and assassinated him along with most members of his family. After several other coups, Lieutenant General Ziaur Rahman became the president of Bangladesh.[20]

The problems faced by this regime were a lack of natural resources, political instability, weakness in the administrative system, the pressure of population and lack of skilled manpower. As a result, the issues it had to face were domestic resource management, reduction of food subsidies, improving the distribution of food grain and introducing a rationing system, import liberalisation, improving the performance of public sector industries and population planning programmes.[21]

During this era, the World Bank focused on improving the abilities of the agencies which dealt with project preparation and implementation. It used technical assistance to implement reforms in operating agencies such as the creation of new posts, appointment of key personnel, changes in project related procedures, etc.. It expanded, modestly, the lending programme; put emphasis on the rural sector, where agriculture would get the highest priority followed by population planning and

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[17] Ibid.

[18] The food shortage problem was due to the devastating flood and administrative mis-management. This, however was transformed into a full-blown famine when the ship containing food aid under the PL480 programme of the United States Government was diverted when Bangladesh decided to sell its jute to a socialist country, Cuba. For more information see Facts and Documents of Bangabandhu Killing by Professor Abu Sayeed. Published by Gyankosh Prokashoni 4th Edition 1994.

[19] BAKSAL : Bangladesh Krishok Sromik Awami League. A national party introduced by the Fourth Amendment of the Constitution. The idea behind its introduction was to establish a single party system under one leader. It was officially known as the 'Second Revolution' of Sheikh Mujibur Rahman. (the first revolution being the war of liberation in 1971). See the Weekly *Bichitra* of 13 June 1975, Pg. 6 - 7.

[20] For more information on this historical occurrence read The Unfinished Revolution by Lawrence Lifshutz, Zed Press, London 1979 .

[21] Supra Note 6. Pg. 7 - 8.

chalked out a five year Economic Work Programme to identify areas for Bank involvement and to complement the lending programme.[22]

The government introduced some changes in policy in tune with the mandate of the Bank in Bangladesh. These included the raising of the ceiling of private investment to one million Taka; the sale of small and medium sized enterprises (which began in 1972); expansion of agricultural credit to increase the use of fertiliser; reviving the Dhaka Stock Exchange[23]. The launching of the Second Five Year Plan began in July 1980. However, this was a disaster due to the overestimation of domestic resources. Further chaos occured when the government was 'reluctant to reflect international prices of petroleum products in the domestic pricing when the second oil shock hit the world.'[24] The country's economy faced even serious problems in 1980 - 1981 and 1981 - 1982. The budget deficit soared and the rate of inflation touched 16%. Foreign exchange reserves fell drastically to the level of about US$ 100 million and in 1981 - 1982, the GDP growth rate was below the rate of the population growth. The government failed to respond to external changes and faced a serious fall in the macro - economic growth rate.[25]

II.iii. The Era of Hussain Mohammad Ershad (1982 - 1991):

Following the assassination of Ziaur Rahman in mid-1981, Vice President Abdus Sattar took over as Acting President and was subsequently elected as President. Even though the democratic process was a struggling and weak one, it was already under threat from military and civil cliques. A military government took over ruling the country in a coup on 24 March 1982, under the leadership of Lieutenant General Hussain Mohammad Ershad, an alleged assassin of President Ziaur Rahman,[26] who later declared himself President. The problems prevalent in the Zia regime were carried over to this new one. Further problems came to light in the form of drought and food shortage; a sharp increase in prices; a severe balance of payment crisis and a decline in external aid flow.[27]

The donor community engaged the government in a policy of stabilisation and structural adjustment to the economy. The objective of this policy was to create conditions whereby the economy of the country would grow and poverty be reduced.[28] Donor - driven structural adjustment measures began in 1983 and expanded in later years.

The strategies of the World Bank under these circumstances were as follows:

1. to mitigate the severity of the impact of the adjustment process and underpin the programme of reform, the World Bank encouraged other donors to increase their assistance to Bangladesh and the response had been positive. It also proposed

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[22] Ibid. Pg. 8.
[23] Ibid.
[24] Ibid. Pg. 9.
[25] Ibid.
[26] Hussain Mohammad Ershad and Others Vs. The State. Case still pending in trial court.
[27] Supra. Note 20. Pg.10.
[28] Ibid. Pg.11.

IDA to increase its lending to Bangladesh in real terms over the next five year period of 1984 - 1988.

2. to relieve the acute import constraint and the budgetary situation IDA increased the share of programme assistance in its over all programme lending to Bangladesh. It was done in two ways: (a) by increasing the share of project costs financed by IDA so as to ease local counterpart resource constraint (b) by identifying possibilities for operation and maintenance projects so as to project existing assets and minimising additional financial strains imposed by new investment.
3. Bangladeshi institutions have limited capacity to formulate economic and sector policies and programmes, and to devise and implement investment plans. World Bank supported the government in these areas through World Bank's economic and sector work programme and by means of free standing technical assistance credit.
4. the principal objective of World Bank's economic and sector work programme were (a) to expand knowledge of critical macro-economic and sectoral development policy issues as a basis for providing advise to the government in a considerably changed and economic environment (b) to support directly World Bank's own on-going and future lending operations in Bangladesh (c) to service the information and policy co-ordination means of the aid donor. This sector work inturn enabled the Bank to continue to play an important role in the evolution of policies, to maximise the impact of Bank's own lending operations in Bangladesh and to assist the government in devising appropriate investment strategies in critical areas.
5. World Bank also paid special attention to the critical need for strengthening Bangladesh's development administration.[29]

II.iv. The Era of Khaleda Zia (1991 - mid 1996):

By 1987, the reign of Lt. General Hussain Mohammad Ershad was turning increasingly unpopular. He faced considerable political opposition, specially after he was elected President by a thoroughly rigged election in 1985. Decision making had become extremely centralised and corruption widespread.[30] Even though he made public statements acknowledging that corruption was widespread in the civil service and administration, he became enmeshed and involved in corrupt practices himself.[31],[32]

Lt. General Hussain Mohammad Ershad was forced to resign in December 1990, after a popular uprising against him and after parliamentary elections in February 1991, Khaleda Zia, the widow of assassinated President Ziaur Rahman, was elected Prime Minister of Bangladesh. The Constitution of Bangladesh, by virtue of the Twelfth Amendment, changed a Presidential system of government to a Parliamentary one.

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[29] Ibid. Pg.11-12.
[30] Ibid. Pg. 13
[31] Ibid.
[32] At present there are nineteen cases, including corruption cases, pending against him in the Dhaka Sessions Court.

The regime of Khaleda Zia was faced by the daunting prospects of restoring financial stability in the country. In order to do this, the government increased revenue collection, put tight controls on additional spending and restraints on credit and monetary expansion. It also devalued the Taka. Debt recovery was also on the agenda. Trade and policy reform attracted foreign investors as well.[33]

The strategy of the World Bank during this regime were as follows:
1. economic growth with stability;
2. restoring financial stability;
3. public resource management;
4. revitalising agriculture;
5. expanding the role of the public sector;
6. industrial development;
7. jute sector restructuring;
8. infrastructure development;
9. poverty reduction and sustainable development;
10. reduction in population growth;
11. human resource development;
12. *development of women;*
13. environmental concerns;
14. public administration;

According to Saifur Rahman, the then Finance Minister, 'Assistance from the World Bank and other donors has succeeded in promoting an effective population programme, in increasing and diversifying agricultural production, in construction of urgently needed rural infrastructure and in alleviation of poverty.'[34] He also stated that 'a good report on the economic performance of the country by the Bank and the IMF greatly contributes in inducing private sector investors, both local and foreign, to invest in Bangladesh'.[35] However, he added that 'there has been profound disagreement between the Government and the Bank in the content, spacing and speed of some of the reform programmes' and that 'disagreement led to the termination of some of the Bank's policy based lending programmes'.[36]

II.v. The Era of Sheikh Hasina Wajed: (June 1996 - to date)

The Awami League, led by Sheikh Hasina Wajed, Hussain Mohammad Ershad's Jatiyo Party and the religion-based fanatic political party the Jamaat-I-Islami, led by Ghulam Azam, joined to raise a two year long, violent campaign[37] for elections to be held under a neutral care-taker government and for this system to be included in the Constitution of Bangladesh. In February 1996, elections took place in which the Bangladesh Nationalist Party, led by Khaleda Zia, and some minor political parties participated, but the major political parties, including those mentioned above, abstained. The Constitutional Thirteenth Amendment was duly passed and fresh elections took place in June 1996 under a neutral caretaker government. In this

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[33] Supra. Note 6.
[34] Ibid.
[35] Ibid.
[36] Ibid.
[37] The violent campaign included causing strikes, hartals, freezing port activities and instigating riots in the port city of Chittagong.

election, Sheikh Hasina Wajed's party, the Awami League, won majority and with the help of the Jatiyo Party and a fraction of the Jatiyo Shomajtantrik Dol, formed the government and she became Prime Minister of Bangladesh. This is the second Awami League government after twenty one years.

The role of the World Bank in Bangladesh to date has not changed. It is still releasing funds on its terms and conditions and what it thinks fit as development projects for the country. It is mainly concentrated in activities which will boost the economy of the country in order for it to catch up with global economy as fast as possible. This is in accordance with its strategies of 'economic growth with stability', 'restoring financial stability' and 'industrial development', as decided in its policy planning during the era of Khaleda Zia..

The International Monetary Fund, which opened its Dhaka Office in August 1972, purports to promote 'international monetary co-operation among its 181 members; the stimulation of balanced growth of international trade and the establishment of a multilateral payment system'.[38] Bangladesh has, to date, borrowed SDR 1.9 billion dollars (US$ 2.6 billion at current exchange rates) from the fund, of which a large proportion - US$ 1 billion - was used to 'overcome the structural problems with its balance of payments and slow economic growth'.[39] The IMF, like the World Bank, also provides policy advice to Bangladesh, including annual consultation missions, the latest taking place in 1997. It also provides technical assistance in areas such as fiscal policy and administration, bank supervision, etc. Since the Fund provides policy advice, it also decides on how and when it will grant a loan. For example, On 06 July 1998, an IMF delegation stated it was eager to 'support [Bangladesh's] policies aimed at increasing growth and reducing poverty. Such loan could be provided under ESAF'[40]. However, at the same meeting, the delegation from the IMF also indicated that the Fund 'might temporarily withhold the agreement on a proposed ESAF[41] credit of about US$ 600 million due to non-compliance to the reforms conditions.'[42] These conditions are : cut down the size of the government; cut down the budget deficit by curtailing the government non-development expenses; privatisation of the state-owned enterprises and liberalise the overall trade regime further.[43]

III. **World Bank Projects Dealing Directly with the Women of Bangladesh**:

This section of the chapter deals with projects of these international institutions which deal with the female population of Bangladesh. These include projects concerning education, health and family planning, and population control.

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[38] Data supplied by the IMF. Bangladesh Bank Main Building, GPO Box No. 2093, Dhaka - 1000, Bangladesh. <IMFDHAKA@Bangla. net>
[39] Ibid.
[40] Chanpen Puckahtikom, Assistant Director, Asia-Pacific Department of the IMF. Reported in the Daily Star 07 July 1998.
[41] ESAF: Enhanced Structural Advancement Facility. See Note 55 for further explanation.
[42] Weekly Holiday: *IMF Witholds ESAF Credit.* 10 July 1998.
[43] Supra. Note 36.

III.i. Education:

'A key component of the Bank's poverty reduction strategy is to develop human capital by focusing on delivering quality health and nutrition services to undeserved areas and expanding and improving basic education, particularly for girls and disadvantaged groups.'[44]

According to a World Bank paper, the female literacy rate in Bangladesh stands around 20%, even though the female enrolment in educational institutions has nearly doubled in the last fifteen years.[45] The World Bank's education sector in Bangladesh includes a US$ 68 million Female Secondary School Assistance Project. This project provides stipends to encourage girls to attend secondary schools. The stipend covers a share of personal and tuition costs and the cost of textbooks and examination fees.[46]

III.ii. Population Control and Family Planning:

With the help of the World Bank, the government implemented four Population Projects, from 1976 to 1996. The objectives of the first and second projects (1976 - 1981 and 1981 - 1986) was to 'strengthen infrastructure for family planning services and train appropriate human resources for that purpose, side by side with the spreading of informational and educational messages among married couples to accept modern contraceptive methods'[47].

The strategy of the third Project (1986 - 1991) was centred around the foundation of mother and child health.[48] Under this Project, the number of female field - level workers was increased and a large number of traditional birth assistants in the villages were trained to conduct safe deliveries and take care of post natal mothers[49]. However, the Fourth Population Project (1992 - 1996) is the largest of its kind of assisted population and health projects in the world.[50] The total allocation for this project was US$ 601.4 million of which the Government provided 27.5% and the World Bank about 30%.[51] The over all objective of this project was to reduce fertility, to lower infant mortality, to ensure maternal care and safe deliveries and to enhance the nutritional status of women and children.

For the fiscal year of 1997, the World Bank decided on a US$150 million loan for some operations in Bangladesh. According to a World Bank report, 'About 1.2 million poor people, 90 percent of whom are women, will have access to credit so that they can start small businesses such as basket weaving, poultry and livestock rearing, street vending and rice husking.'[52]

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[44] The World Bank Annual Report. 1997. Pg. 62.
[45] Supra. Note 6. Pg. 22.
[46] Supra. Note 8. Pg. 25-26.
[47] Supra. Note 6. Pg.25.
[48] Ibid.
[49] Ibid.
[50] Ibid.
[51] Ibid. Pg.25.
[52] Supra. Note 33. Pg. 99.

IV. **The Impact of World Bank and IMF Policies on Bangladesh and its Women**:

We have seen, from the above sections, the activities of the World Bank and the IMF during the different political eras in the history of Bangladesh and the projects these two institutions have which involve the women and girls of the country. How much, in fact, do these Bretton Wood institutions contribute in the socio-economic development of the country? There are many criticisms regarding the role of the Bank and the IMF in the Third World. In this section, we will see these criticisms in the light of Bangladesh and its women.

According to Michel Chossudovsky, since the early 1980's 'the "macro-economic stabilisation" and "structural adjustment" programmes imposed by the IMF and the World Bank on developing countries (as a condition for the renegotiation of their external debt) have led to the impoverishment of hundreds of millions of people. Contrary to the spirit of the Bretton Woods agreement which was predicated on "economic reconstruction" and the stability of major exchange rates, the structural adjustment programme has contributed largely to destabilising national currencies and ruining economies of developing countries.'[53]

He further states that 'the impact of structural adjustment' includes the derogation of the social rights of women and that the 'IMF-World Bank policy prescriptions have become increasingly harsh and unyielding.'[54] He also relates that the IMF has 'performance targets' and countries which do not conform to them are black-listed[55]. One example of this in Bangladesh was published in a weekly newspaper under the caption 'WB-IMF Credit Uncertain'[56]. Paragraph three of the report states 'But the Government failed to comply with some of the basic conditions for the IMF credit under ESAF[57], like privatising the State Owned Enterprises, reduce the bad debt portfolio of the banks and reduce budget deficit through cuts in revenue expenditures.'

The report further states 'Jan Bove, the IMF Resident Representative in Dhaka, told Holiday .....that the Government has yet to decide on an official proposal to the IMF seeking the credit line. The proposal must contain the package of policy measures earlier recommended by a visiting IMF team in early May.'[58]Again, as mentioned earlier, in an interview on the eve of the 25th anniversary of the World Bank's mission in Bangladesh, the then Finance Minister, Saifur Rahman, stated that 'there had been "profound disagreement" between the Government and the (World) Bank in the content, spacing and speed of some of the reform programmes. "Disagreement led to the termination of some of the Bank's policy based lending programmes".'[59]

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[53] Supra. Note 5. Pg. 33.
[54] Ibid. Pg. 34.
[55] Supra. Note 5. Pg.35.
[56] The Weekly Holiday. 18 July 1997.
[57] ESAF: Enhanced Structural Adjustment Facility. A country that has an ESAF with the IMF must meet fairly specific financial, monetary and budgetary targets on a quarterly or semester basis. If it meets these targets or a wavier is approved, it will receive another instalment of the loan. (Pamela Sparr. Mortgaging Women's Lives. Feminist Critiques of Structural Adjustment. Zed Books Ltd. 1994.)
[58] Supra. Note 45.
[59] Supra. Note 6.

According to Adam Zagorin, 'Instead of simply delivering needed money, the (International Monetary) fund (sic) has also been delivering ultimatums, using the desperate straits of its borrowers as a way to insist on deep economic reforms.....the focus on sudden change instead of relief has left many nations twisting in knots to solve problems quickly that should require years of patient work[60]'. Bangladesh is a very good example of such a nation.

As has been discussed previously in this chapter, the IMF, after 1973, played the new role of managing unilateral structural adjustment in order to manage Third World debt. It, along with the World Bank have, since the 1980's, imposed such adjustment policies on Third World countries, like Bangladesh, as a pre-requisite to loans. The IMF began specialising more in stabilisation loans, 'with the understanding that the World Bank's expertise made it stronger in the long term structural adjustment area.'[61] This policy of structural adjustment has not only played a role in, among other things, destabilising national economy, but has also affected the lives of Bangladeshi women in a drastic way. Before we discuss how this came about, we first need to explain the concept of 'structural adjustment'.

According to Pamela Sparr, structural adjustment 'refers to the process by which many developing nations are reshaping their economies to be more free-market oriented. They are acting on the premise that less government intervention in the economy is better. More specifically, structural adjustment assumes an economy will be more efficient, healthy and productive in the long run if market forces operate, and products and services are not protected, subsidised, heavily regulated or produced by the government.'[62] She elaborates further that 'many developing nations do it more or less voluntarily, as a condition of receiving new loans from foreign commercial banks and/or multilateral institutions such as the International Monetary Fund (IMF) and the World Bank. These two institutions are the main architects, overseers and financiers of such policy changes...'[63]

The results of structural adjustment, as a condition imposed by the World Bank and IMF, in Bangladesh, directly and indirectly affect the lives of the country's women and girls - their health, income, employment, family relations, place of residence, etc.. It is also responsible, in part, for the increase in violence against women in the form of trafficking and prostitution and violence faced as a result of migration. According to Pamela Sparr, there are a few reasons why structural adjustment has such a profound affect on the lives of women - all the effects she mentions fit into the social position of women in Bangladesh today. They are as follows:

1. Increasing numbers of women look for income generating work;
2. more women than men become unemployed;
3. working conditions for women deteriorate;
4. wage differentials grow;

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[60] Adam Zagorin. *Is the IMF Killing Off Its Patients?* Time magazine August 31 1998, p 38. Washington.
[61] Pamela Sparr: Mortgaging Women's Lives: Feminist Critiques of Structural Adjustment. Zed Books.Ltd. 1994. Pg. 4
[62] Ibid. Pg. 1.
[63] Ibid.

5. as formal employment opportunities diminish, more women enter the informal sector;
6. women become poorer;
7. export promotion (of manufactured goods) has mixed employment effects on women;
8. women's unpaid work escalates;
9. progress with girls' education slows;
10. food consumption diminishes;
11. girls' health and mortality rates worsen;
12. women face greater reliance on credit;
13. women suffer greater domestic violence and stress;
14. household structures change.[64]

How did the IMF-World Bank sponsored economic reforms bring about such an effect? The reforms strengthened the 'rentier economy'[65] which is controlled by the elite of Bangladesh society - the bureaucracy and the military - and which is at the mercy of foreign aid and foreign trade. After restoring a formal democratic system in the country, the leader of the opposition and the Prime Minister happened to both be women. Public opinion focused on 'the rivalry in parliament between the "widow" and the "orphan", the dealings of local power groups, including members of the military, with the "aid agencies" and donors passed virtually unnoticed.'[66] This gave the donor community the chance to act or appear to be the 'defender of a bogus democratic facade, controlled by armed forces'.[67] In other words, it enabled international aid and donor organisations to patronise the ruling elite for the economic advantage of both at the expense of the country.

The worst sufferers of these reforms are, therefore, those who fall in the 'disadvantaged' category of Bangladesh society and who have no say or decision in the policy - making of the country. These include the poor and the rural people, on whom the decisions of structural adjustment policies have had the greatest impact. Where rural Bangladesh is concerned, the IMF had imposed the elimination of subsidies to agriculture - which contributed to the bankruptcy of small and medium-sized farms. The number of landless farmers increased, who were driven to work in marginal, flood-affected land. With the absence of credit to small farmers by the government, the village money lenders began a thriving business, imposing high interest rates. The World Bank and IMF also insisted on the liberation of trade and deregulation of the grain markets. This was used to disguise the dumping of American grain surplus on Bangladesh. Furthermore, the 'food for work' programme implemented at village level by USAID, and used to implement rural level public works projects was another way of getting rid of Surplus US grain. The peasants involved in the project were paid in (US) grain instead of cash, thus destabilising local grain markets.[68]

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[64] Ibid. Pg.26-29.
[65] Supra. Note 5. Pg.138.
[66] Ibid. Pg. 139
[67] Ibid.
[68] For more information : The Globalisation of Poverty. Impacts of IMF and World Bank Reforms. By Michel Chossudovsky. Zed Books Ltd. 1997.

Another example of the 'evils' of structural adjustment is the restrictions imposed on Bangladesh's jute industry. Jute was, at one time, the main earner of foreign exchange for the country, and was thus named the 'golden fibre' and was initially used to make gunny sacks and rope and later on other things like cloth, thanks to improved scientific research. However due to the fact that it was in competition with synthetic materials produced by multinational - owned textile mills, the IMF required that a large proportion of the jute mills be closed down. This was one of the conditions it imposed before granting a loan under the enhanced structural adjustment facility. More than 30,000 workers lost their jobs and millions of rural households, which depended on the cultivation of jute for a livelihood, suffered.[69]

How do women fit into all this? The loss of agricultural land, jobs (specially in the jute mills and local grain market) income and sometimes home, caused the migration of thousands of families to the towns and cities. Women were uprooted from the traditional rural society and rural industry of weaving, pottery making, poultry farming , growing vegetables and agricultural activities. They had to leave the villages either to follow their husbands' to the towns, or look for jobs themselves. Due to this, many women looking for well paid employment fell into the clutches of agents who took, and still take on, the guise of 'job recruiters' to lure women to be sold in brothels at home and abroad and into bonded labour, after promising them jobs as domestic maids in countries like India and Pakistan. Other women and girls, finding no other alternative, turned to prostitution voluntarily. Those who decided to remain at home found themselves heads of the household. Such female headed households constitute approximately 15 percent of the total number of households in Bangladesh to date. They find it increasingly difficult to find employment in their immediate surroundings and make ends meet in a society which still regards the men to be the heads of households and the main bread-winners.

Due to the deplorable situation of the country's agricultural processes and the difficulty local and national industries are facing due to structural adjustment policies, Bangladesh is forced to look outwards for economic stability. The country's main export -based industry at present, after the collapse of the jute sector due to structural adjustment, is the garment manufacturing industry, in which a majority of the employees are women and girls. A majority of these come from the rural areas of the country. We have seen in the chapter on violence against women that labour laws are being ignored or bypassed in the mad rush to build garment factories in order to compete with the international market and appease foreign investors. Poor sanitation facilities and safety precautions are two of the many difficulties faced by the female workers. Furthermore, in many factories, women never become permanent workers. As soon as their contract terminates, they can find themselves out of a job or have their contract renewed[70]. Fires are an occasional event in these factories and there are, as have been seen, incidences of female workers being victims of sexual harassment which has led, in some cases, to rape.

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[69] Interview with Mr. Nur Khan, Secretary of the *Paatkol Sromik Jote* , a trade union organisation for jute mill workers. Interview taken on 19 February 1997 in Dhaka, Bangladesh.

[70] Interview with Shireen Akhtar, Secretary of *Kormojibi Nari*, a working womens' non government organisation, of which many female garment industry workers are a member. Interview taken on 18 January 1997.

As regards the family planning programmes of the World Bank, the whole idea has been 'built upon extensive reliance on sterilisation and on economic incentives and disincentives'[71] Being heavily dependent on foreign aid, Bangladesh, in the late 1970's succumbed to World Bank pressure to take strong actions to meet national population control objectives on time. In 1983, the government increased economic incentives for those accepting to be sterilised and disincentives for those family planning workers who could not meet their monthly sterilisation targets.[72] Men and women who were sterilised not only received a monetary award, but also a sari (for the women) and a lunghi (for the men). When the incentives increased, the number of sterilisations increased. Between 1982-83 and 1983 - 84, vasectomies increased from 88,000 to 214,000 and tubectomies from 275,000 to 334,000.[73] Clinical conditions under which these sterilisation's were carried out were extremely poor and post-operative care was non-existent in most cases.[74] Poor and rural women had no reproductive choice and were torn between poverty and the attractive incentives promised. Corrupt officials were the reason why some did not even receive their promised benefits. Furthermore, some were not even told that the process was irreversible.[75]

The female education programmes also fall short. Due to the fact that women either take up the responsibility of heads of the household, when the father is working in another part of the country, or they themselves have to leave the home to work, girls must leave their education in order to help their mother's at home. 'The United Nations found that since 1980 there has been a slow down in the rate of improvement in female : male enrolment ratios in general education second level schools in Africa and Asia. Deteriorating female enrolment appears 'to have been closely linked with periods of increasing unemployment'. [76]

Conclusion:

From the above discussions, we can conclude that the policies and conditions imposed by the World Bank and International Monetary Fund are unjust and violative of the basic human rights of livelihood, food, health and shelter. The policy makers, both international and national have little or no practical idea about the requirements and position of the rural people and the plans and programmes they formulate have little to do with what the latter really need. This kind of top-down decisions need to come to an end and the target groups must be thoroughly heard and consulted before any move regarding the country's economy and society is to be made.

According to Samuel P. Huntington, 'Through the IMF and other international economic institutions, the West promotes its economic interests and imposes on other nations the economic policies it thinks appropriate. In any poll of non-Western peoples, the IMF undoubtedly would win the support of finance ministers and a few others, but get an overwhelmingly unfavourable rating from just about anyone else,

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[71] Asoka Bandarage. : Women, Population and Global Crisis. Zed Books Ltd. 1997. Pg. 43.
[72] Ibid. Pg.72.
[73] Ibid.
[74] Ibid.
[75] Ibid. Pg. 73.
[76] Supra. Note 50. Pg.27.

who would agree with Gregory Arbatov's characterisation of IMF officials as "neo-Bolsheviks who love expropriating other people's money, imposing undemocratic and alien rules of economic and political conduct and stifiling economic freedom"'[77]

Furthermore, there have been complaints from various quarters that the World Bank and IMF are not all together transparent in the way they practice their development policies. For example, a few years ago, a project of procuring telephone poles was taken up. The project was financed by the World Bank which told the government to procure the said poles from India. The people would have never known about this unless a local manufacturer of electric poles decided to file a suit in this matter[78]. So much for helping the economic development of the people of the country. Furthermore, the doubts of the transparency of the Bank and the Fund go back quite a long way since a Task Force report, headed by Prof. Muhammad Yunus, revealed that barely 25% of the foreign aid procured by the government is actually spent for the purpose it was borrowed.[79]

If the policies impressed upon Bangladesh by international organisations involved the discussing of policies for rural women directly with the women concerned, including the safeguard of women's rights and proper implementation of existing laws, as conditions to be met in order to receive loans, some good would have probably emerged from structural adjustment programmes these large donor organisations so fervently try to promote. These international financial institutions need to change their character from becoming masters of the global world to becoming real partners in development in order to help building the national economy of Bangladesh, instead of making it into a credit state.

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[77] Samuel P. Huntington. *The Clash of Civilazations?*. Foreign Affairs. Summer 1993. p39-40.
[78] Shamsuddin Ahmed: *WB-IMF Transparency*. Dhaka Courier 17 July 1998.
[79] Ibid.

Chapter VIII

Bangladesh in the International Arena

Women constitute half the world's population
Perform nearly two-thirds of its work hours
Receive one-tenth of the world's income and
Own less than one-hundredth of the world's property
- United Nations Report, 1980

This chapter will discuss the role of Bangladesh in conforming with the international standards regarding the elimination of discrimination against women and safeguarding the rights of the girl-child. The rights of the girl-child will be included here, as not only are they physically abused, as we have seen in the chapter on violence against women, they are also the future women of the country and Bangladeshi citizens as well. If we can safeguard their rights and make them aware of the fact that they have such rights, it will give them strength to fight against any abuse of rights when they become women. Not only is the country a member state of the United Nations, and thus bound by its Charter, but has also ratified the Convention on the Elimination of all forms of Discrimination against Women (the 'Women's Convention') and the Convention on the Rights of the Child, with, however, reservations to both.

Bangladesh has not incorporated international instruments into its municipal or statutory law. However, the provisions found in Part III of the Constitution on 'Fundamental Rights' have been adopted from the Universal Declaration of Human Rights. Unfortunately, due to the non-incorporation of international instruments, it is exceedingly difficult to bring the provisions of the above conventions into arguments and petitions in the courts of law. Experience has shown that a majority of judges demand to know the provisions of statutory law and refuse to dwell on the contents of most international instruments, as they have not been ratified by the state, when hearing a case in which the provisions of the Universal Declaration of Human Rights or the Convention on the Elimination of All Forms of Discrimination can be applied and have been violated.[1]

[1] This is an experience the researcher faced many times while assisting cases in the High Court Division of the Supreme Court in 1995-1996. The cases involved the loss of livelihood and right to shelter of women forcibly and illegally evicted from slums, along with their families, by the Government. The Honourable Judges awarded stay orders in favour of the petitioners, but grew impatient when the council for the petitioners quoted international instruments.

I.**The Women's Convention :**

I.i: Introducing the Convention on the Elimination of All Forms of Discrimination Against Women:

The second paragraph of the Preamble to the Charter of the United Nations reads "We the people of the United Nations Determined.....to reaffirm faith in fundamental human rights, in the dignity and worth of the human person , in equal rights of men and women....."[2] Based on this provision of equality between sexes, a United Nations Sub-commission on the Status of Women was established, whose function was, and still is, to prepare recommendations and reports promoting women's socio-cultural, civil and political rights. Among its tasks was the drafting of the 'Women's Convention'.

In 1948, the Commission on the Status of Women asked the Secretary General of the United Nations to prepare a report on the legal status of women and nationality laws. By 1952, a convention on the political rights of women had been drafted by the Commission and had been adopted by the General Assembly. [3] In 1963, by UN General Assembly Resolution No. A/5606, the Commission was asked to draft a Declaration on the Elimination of Discrimination Against Women. The Resolution was co-sponsored by Afghanistan, Algeria, Argentina, Austria, Cameroon, Chile, Colombia, Czechoslovakia, Gabon, Guinea, Indonesia, Iran, Mali, Morocco, Pakistan, Panama, the Philippines, Poland, Togo and Venezuela. The idea behind the resolution was that the elimination of discrimination would promote development, and the Declaration was adopted in March 1967[4]. After this the Commission began working on a Convention to eliminate discrimination, which was adopted on 19 December 1979 and came into force in September 1981[5]. This is the Convention on the Elimination of All Forms of Discrimination Against Women, or the 'women's convention' in short.

According to Julie Peters and Andrea Wolper[6], 'international law has begun to recognise that the establishment of structures for the prevention of discrimination is as valuable as the legal censure of discrimination. The Convention on the Elimination of All Forms of Discrimination Against Women....is a major step towards laying out not only passive provisions forbidding discrimination but also active provisions.....for remedying historical inequality".

Under Article 17 of the Convention, the Committee on the Elimination of Discrimination Against Women (CEDAW) is established to monitor the implementation of the Convention.[7] The 23 members who make up the CEDAW are elected by ratifying countries and serve in their personal capacity and not as government representatives. Some commission delegates are also members of non-

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[2] The Charter of the United Nations. Fact Sheet published by Centre for Human Rights, United Nations office, Geneva.
[3] See Fraser. Arvonne. Kazantsis and Miranda. International Women's Rights Action Watch. *CEDAW 11.* Aug. 1992. University of Minnesota.
[4] Ibid.
[5] Ibid.
[6] Peters . Wolper. Ed. Women's Rights, Human Rights. Routledge 1995
[7] The Convention on the Elimination of all forms of Discrimination Against Women. Human Rights Fact Sheet. Centre for Human Rights, United Nations Office, Geneva. 1996.

government women's organisations. Each member serves a four-year term and may be re-elected. To date, the Chairperson of the Committee is Ms. Salma Khan, a Bangladeshi women who is, by profession, a bureaucrat.

According to the International Women's Rights Action Watch (IWRAW) report of August 1992, 'The collective power of women's organisations was demonstrated when a UN treaty body declared that gender-based violence is an abrogation of women's human rights. In January 1992, the CEDAW, which monitors implementation of the women's human rights treaty, adopted a general recommendation stating exactly how that treaty - the Convention on the Elimination Against All Forms of Discrimination Against Women- covers violence against women and what Government's should do to stop that violence'.[8]

The preamble to the Convention states that for a country to develop completely, there must be maximum participation of women on equal terms with men. It also refers to the equal rights guaranteed in the United Nations Charter and the Universal Declaration of Human Rights and acknowledges that the extensive discrimination against women continues to exist and emphasises that this discrimination violates the principals of equality of rights and respect for human dignity.

In 1980 the women's convention was signed by some 50 countries and to date 116 countries have ratified it -that is, they have obligated themselves to pursue policies contained in the Convention towards the elimination of discrimination and to report to the United Nations on such progress made to that end within one year of ratification and every four years thereafter.

I.ii: The CEDAW Committee's Conclusions on Violence Against Women:[9]

The Committee on the Elimination of Discrimination Against Women issued General Recommendation 19 of 1992 after reviewing reports from ratifying countries. The report concluded that:
a. Gender-based violence is discrimination;

b. such discrimination violated women's human rights;

c. the Convention covers both public and private acts (of violence and discrimination);

d. gender-based violence is contrary to numerous specific Articles in the Convention; and

e. Governments should take legal and other measures to prevent such violence and report back, in its regular reports, on measures they have taken.

The recommendations laid down by the Committee noted the close relation between discrimination, violence and violations of human rights and fundamental freedoms and stated that 'no woman is free or enjoys human rights when violence against women is tolerated by her country, community, employer or family. Such toleration

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[8]Supra Note 3.
[9] Ibid.

is the ultimate form of discrimination because the physical integrity of individual women and all women is thus always at risk'.[10]

The main text of the Convention is contained in the Appendix to this paper and only relevant Articles will be discussed below.

II. **The Position of Bangladesh in the Realm of the Women's Convention:**

The Government of Bangladesh ratified the Women's Convention in November 1984, with several reservations which, it claimed, were in conflict with personal laws. However, according to the Government of Bangladesh, 'personal laws' mean the laws applicable to the majority Muslim community only. The Articles of the Convention which the Government of Bangladesh refuse to ratify, and the reasons why it wishes to do so are discussed further in this chapter.

According to the Initial Report of Bangladesh of April 1986[11] submitted to the Committee, the Government stated that it is 'taking all necessary steps to create awareness among men and women to achieve elimination of prejudices based on the idea of inferiority of women and to emphasise the equal role of father and mother for the overall development of the children." This is in conformity with Article 5 of the Convention which calls for the elimination of sex roles and stereotyping. Article 6 of the Convention calls on state parties to suppress all forms of traffic in women and the exploitation of prostitution. In reply to this, the country report of Bangladesh states "as per Article 6 of the Convention, it may be stated that the Government of Bangladesh has taken legislative measures to suppress all forms of traffic in women and exploitation of prostitution of women by promulgating the Cruelty to Women (Deterrent Punishment) Ordinance 1983.....besides, the Directorate of Women's Affairs, of the Ministry of Social Welfare and Women's Affairs, has undertaken a huge project to rehabilitate the prostitutes through vocational training and income generating programmes". On paper, at least, it seems as if the country is determined to comply with the policies laid down in the Convention and improve the lot of its women. The preceding paragraphs of this discussion tell a different story.

The Second Periodic Report of Bangladesh[12] dated 30 March 1990, states "Along with the Ministry of Women's Affairs other Ministries of the Government, such as Agriculture, Education, Health and Population, Finance, Local Government and Rural Development, etc. are implementing a large number of special projects on women in line with the principles of the United Nations Decade for Women". The report further states: " the number of women in non-traditional jobs, such as mills, factories, garment industries, pharmaceuticals, electronics and other small scale trades and businesses are increasing.....The Government has been using law as an important instrument to effect improvement in the status and condition of women in our society. It has ratified the Convention on the Elimination of All Forms of Discrimination Against Women. Our constitution and domestic laws ensure equal opportunity to all citizens regardless of their sex or religion.....the Government of Bangladesh has enacted and amended various necessary laws. These are in

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[10] Ibid.
[11] CEDAW Report No.CEDAW/C/5/Add.34
[12] CEDAW Report No.CEDAW/C/13/Add.30

conformity with the provisions of the United Nations Convention on the Elimination of All Forms of Discrimination Against Women....."

In March 1997, the Government completed the drafting of a combined Third and Fourth Periodic Report to be presented "for consideration of the United Nations Committee for the Elimination of All forms of Discrimination Against Women. The Committee is to sit, in New York, in June 1997. Under the heading 'Remaining Obstacles Encountered By Women' it acknowledges that even though the Constitution provides for equal rights for both men and women in the public sphere, 'various discriminatory practices persist, however, which are gradually being addressed and removed through appropriate measures.'[13] The same section of the report also states 'There are problems in implementing existing legal provisions due to women's as well as men's ignorance about their legal rights.'

Furthermore, the report acknowledges that unequal provisions in personal laws , such as in the case of inheritance, guardianship of children, and divorce contribute to the inferior social, economic, political and legal status of women. But, as has been seen in the chapter on the legal status of women, there is scope for the Government to make amendments in the realm of personal law, specially in the area of marriage (polygamy), divorce and custody of children.

It is unfortunate that the report states that the implementation of existing legal provisions cannot be done properly because of ignorance of the knowledge of legal rights. It is true that if a person does not know his or her legal rights, he or she will not know how to take legal action. However, as has been seen, there is no proper implementation of the existing laws, despite amendments; social, patriarchal attitudes fail to recognise domestic violence as a legal issue; the lower judiciary smells of corruption[14]; there is a huge backlog of cases pending in both the lower and superior courts while there is the practice of paying an 'informal fee', by those who can afford to do so, in order to have cases heard relatively quickly (in the lower judiciary and sub-courts) ; and corruption in the bureaucracy are also factors which hamper proper implementation of the law and deters people - specially the poor- from seeking justice, even if they are aware of their legal rights.

Despite the Government of Bangladesh's most recent laws which are said to be 'pro-women' and its plans and activities for women's development, in practical terms it has failed to utilise these measures to their full. The blind eye it turns towards fanaticism in the name of religion and the fact that it has left the crime of issuing so-called *fatwa* out of new legislation and its inability to use stringent measures to curb the continuing practice of trafficking in women and children for the purpose of prostitution and slavery are just a few examples to prove this fact. Furthermore, the failure of the respective governments of Bangladesh, two of which have been led by female prime ministers, to investigate the crimes committed against women in Bangladesh during the liberation war of 1971and try the perpetrators of those crimes,

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[13] Draft Combined Third and Fourth Periodic Report in Accordance with Section 18 of the Convention on the Elimination Of All Forms Of Discrimination Against women. Ministry of Women and Children Affairs, Bangladesh. March 1997.

[14] See chapter on Violence Against Women, chapter IV, in this thesis for statistics and examples of corruption in the police force and judiciary.

shows that despite the existing law, Act XIX of 1973,[15] none of the governments have shown the slightest interest in either punishing the rapists nor in demanding an apology from Pakistan for the acts of violence committed. Section 3 subsection 2 of Act XIX defines which acts are crimes under this Act. Clause (a) of this subsection defines crimes against humanity. Under this comes '.....abduction, torture, rape or other inhumane acts committed against any the civilian population....whether or not in violation of the domestic law of the country where perpetrated.' If the war criminals of world war two could be tried fifty years after committing their crimes, what is stopping the government of Bangladesh from punishing those who committed war crimes a mere twenty seven years ago?

The Convention recognises the right to work as a human right (Article 11) and addresses, in particular, discrimination against rural women (Article 14). It urges state parties to eliminate discrimination against women in rural areas so that they may participate and benefit from rural development equally with men. It specifically lays down that rural women must be given equal rights in development planning, given access to health care facilities, to benefit from social security programmes, to obtain formal and non-formal education and training, to organise self-help groups and co-operatives and participate in community activities.[16]

The country's efforts to encourage women in all the above matters has been decidedly half-hearted. Via the government-controlled electronic media it has been able to send messages about the importance of both parents in the family, about the dangers and illegality of the marriage of minors and about adult education. However, the number of young medics, teachers and others who have newly passed the Bangladesh Civil Service Examination, are unwilling candidates for government jobs in rural Bangladesh. This is because, despite the large amount of foreign aid received by the country, there are suspiciously poor facilities and inadequate pay in the government-run clinics and schools, and this is the reason why such a large number of young people flock to be recruited in non-government organisations where they will be able to enjoy the satisfaction of giving education and health to the rural population and earning well at the same time.[17] Furthermore, the 'encouragement' of the rural practice of so-called *fatwa* (by turning a blind eye) and the government's inability to practice equality of sexes, even it its own offices, due to tradition and 'culture' shows that it is, in fact, further acting in contravention to the provisions of the Women's Convention.

Political power, economy etc., are all based in Dhaka, the capital of Bangladesh. Due to such centralisation of these factors, people in the rural areas, specially the most vulnerable and poverty stricken- women, children and the elderly- suffer because of the lack of development and presence of inadequate facilities. The government needs to be decentralised and autonomous local governments formed, which will include the participation of women, as per the dictates of the Fundamental Principles of State Policy housed in the constitution. Development of the country should be made

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[15] Act XIX of 1973: An Act to provide for the detention, prosecution and punishment of persons for genocide, crimes against humanity, war crimes and other crimes under international law. Published in the Bangladesh Gazette, Extraordinary on 20 July 1973.
[16] Supra Note 7.
[17] Discussions with some medical and law school graduates from Dhaka Medical Collage and Dhaka University in April 1997.

according to locality and need and the budget allocation decided by the local governments and spent according to their recognised needs and demands. In this case, the women's' participation in the local government, in order to voice their demands, needs and grievances, must be in a proportionate basis. The governments of Bangladesh ought to learn from history, where the country suffered from lack of autonomy and self-rule during its days as part of Pakistan.

Article 9 of the Convention addresses the rights of women and their children in relation to nationality, and states specifically that a woman's nationality should not be automatically changed, nor should she be forced to change her nationality or be rendered stateless if she marries an alien or her husband changes his nationality. It also states that women shall have equal rights with men where the nationality of their children is concerned.[18] In its 1989 Country Report, the only reference Bangladesh makes to the provisions of Article 9 is "Article 9 is applicable in Bangladesh. Marriage to an alien does not automatically change the nationality of the wife". However, we have seen in the chapter on the legal status of women that a woman must, by law, take the nationality of her husband when/if he changes it and the children are legally bound to take the nationality of the father when they are born. This seems to have been overlooked by the Government .

Here, I would like to take the opportunity to quote, extensively, the factors the Government of Bangladesh lays down to explain why it is difficult to exercise the enjoyment of the rights mentioned above. This has been taken from the 1986 Country Report, before the establishment of the present Government in 1996. It is disheartening to know that, apart from some statistical data, nothing this report mentions has changed in the last ten years. It must be mentioned here that the present Government submitted its Country Report for 1996, to the Committee in June 1997.

The Report states: "it may be noticed that in spite of constitutional and general legislative provisions aiming at achieving equality for women under law, gap still remains between the provisions of the constitution, general laws and the personal laws of both Muslims and Hindus. Again, there is a difference between the '*de facto*' and the '*de jure*' status of women. As a matter of fact, due to the aforesaid reasons in spite of enormous efforts made by the Government, the desired change could not yet be brought in the status and role of women in the society. The main obstacles to the realisation of equality is the pervasiveness of social attitudes and custom deep rooted in traditional history. While under general law, women are entitled to equal status and educational rights to those of men, in practice , a large number of women, especially in the rural areas, still cannot enjoy equal education opportunities or the rights which are given to them. Socio-economic reasons, such as poverty, illiteracy, ignorance, unemployment, social attitude including traditionally defined sex role and customary practices and mis-interpretation or religion continue to impede rural women's access to equal opportunity and legal rights. Therefore in spite of many protective laws and the enormous effort made by the government to give the status of women, there are still cases of murder or attempt to murder for dowry, and cases of rape violence on women, disfiguration or death caused by acid."

The Report continues: "Bangladesh is still predominantly a rural country where about ninety percent of the total female population live in the rural areas. Against the

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[18] Supra Note 7.

national literacy average of 22.2%, male literacy number is 29.9% while the average female literacy is only 13.7%. Though laws allow equal access of women in schools, colleges and offices at all levels with men, but the women representation is, though higher than before, but has not yet reached expected lines (sic). Of the two children, poor parents prefer to educate a son to a daughter. Considering the meagre resources, rapid growth of population has a negative impact on the socio-economic and legal status of women. Again if there is no right to *talaq-e-tawfeez* (delegated power of divorce) in the marriage deed, the wife has to file a case for divorce. It has been found that in the case, such suit is followed by a criminal allegation of theft against the wife by the husband. Many people.....are not yet fully prepared to accept the reforms and changes made in the law."

"Again, even though the government has through legislation, restricted polygamy and increased the penalty for marrying again without the permission from the chairman of the Arbitration Council, many wives do not prefer to go to court for legal remedy either for socio-economic reasons or for procedural complicity. In a developing country like Bangladesh, amidst population problem and socio-economic difficulties, the desired result cannot be expected to be achieved over night. The government is determined to achieve the objective of the UN Decade.....

As a matter of fact the issues of legal status and equality, as it affects women of the world, is closely related to the problem of under development, poverty, illiteracy, social condition, traditional attitude of people and the question of consciousness or awareness of women themselves. Law itself is not the root cause of women's exclusion from or inclusion in the process of development. So the attainment of de facto equality presupposes not only equality under the law but also the equal access to resource, education, economic opportunity, power to participate, share as well as equal access to decision making at all levels.....

That women's struggle to achieve equal rights and status in Bangladesh is linked not only to continuous efforts to eliminate male prejudices but also to the overwhelming problems of population explosion, scarce resources, under development and poverty, which affect, in fact, access by both men and women equally to the economic opportunities, education, health and other benefits....."

III. **The Reservations made by the Government of Bangladesh**:

According to the CEDAW document CEDAW/SP/13/Rev.1, "The Government of the People's Republic of Bangladesh does not consider as binding upon itself the provisions of Article 2, 13 (a) and 16 (1) (c) and (f) as they conflict with the *Shari'a* law based on the Holy Quran and *Sunna*". We have seen in the preceding chapters how fanatics use the harshest interpretations and misinterpretations of the Quran in order to violate women's human rights. The government's reluctance to move for reform of discriminatory laws and its reservations towards the three Articles in the Convention only proves that it has a similar bias attitude towards women.

Article 2 of the Convention deals with policy measures to be undertaken to eliminate discrimination. These measures include the inclusion of the principle of equality in national constitutions and other laws and the abolishing of all existing regulations, customs and laws that discriminate against women. It also calls for the establishment of institutions to protect against discrimination. Article 13 (a) states that women are

to have equal access to family benefits as men, Article 16 (1) (c) states that men and women will have "the same rights and responsibilities during marriage and its dissolution", Article 16 (1) (f) states that both spouses will have the same rights to guardianship, wardship, trusteeship and adoption of children, it also states that "in all cases the interests of the children shall be paramount".

Article 28 of the Constitution of Bangladesh readily states that "the state shall not discriminate against any citizen on grounds of sex..." It also states that laws inconsistent with the fundamental rights are to be void.[19] Unfortunately, the state has quite a number of laws that are either directly or indirectly discriminatory towards women. Some provisions of the labour laws, the family laws etc., are discriminatory either because of their contents or because the state has not properly amended the existing provisions of 'old laws' that we still use today, to make them more 'woman friendly' and up-to-date. For example, India and Bangladesh have, basically, the same law for the Hindu community in both countries, but where India has introduced a divorce law for its citizens, Hindu women in Bangladesh have no such recourse as the state has not introduced such a 'modern' law. Furthermore, the institute of polygamy has not been completely repealed by Bangladesh, it has only been amended and given strict guidelines. However, these guidelines are not always maintained by a man marrying for a second time and thus his first wife suffers violations to her right to life. Many Muslim countries, as stated earlier, have banned the age-old practice of polygamy and made it illegal - but not Bangladesh.

The state's refusal to ratify parts of the said Articles dealing with the abolition of existing laws which discriminate against women may be justified, in a strict sense, due to the existing norms under personal laws. However, there have been changes or attempts to change these laws, such as in the Muslim law of polygamy, in the fact that it is now held that in guardianship of children, the welfare of the child is of paramount consideration. Unfortunately, the State has solely placed its excuse not to ratify on the shoulders of Muslim Law. What of the rest of the population? Hindu women in Bangladesh do not have the right to either divorce or, if they have been widowed, to remarry. Christian women in the country are faced with biased and stringent divorce laws. The country's unwillingness to ratify the whole of the Convention is not only unfair to all the women of the country, but also biased towards the religious minority. Bangladesh is reluctant to change family laws any further, and also seems reluctant to change the social attitude towards a more 'equal' and unbiased way of thinking. There is, however, no reason why the state should refuse to abolish discriminatory regulations and customary laws which have no links whatsoever with religion. Neither is it justified in refusing to establish institutions to protect against discrimination, as provided for in Article 2 of the Convention.

Furthermore, the Government's reservation of Article 2 of the Convention is in apparent contradiction with the Constitution of the People's Republic of Bangladesh. Equality is granted in the Constitution in Articles 10, 19, 27, 28 and parts of Article 29. These Articles grant equality and accord affirmative actions in favour of women. Thus, from a theoretical point of view, one does not find any justification on the part of the Government to put reservations on Article 2 of the Convention on the grounds

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[19] Article 26: *The State shall not make any law inconsistent with any provision of this part and any law so made shall, to the extent of such inconsistency, be void.* Part III: Fundamental Rights. The Constitution of the Peoples Republic of Bangladesh.

that it conflicts with *Shari'a* Law (Islamic Law). Again, Bangladesh is apparently the only country which has reservations on Article 13 (a) relating to family benefits[20]. This is in contradiction with its ratification of the Convention of the Rights of the Child and the adoption of the Decade Action Plan for the Girl Child (1991-2000) basic objectives which are to give girls equal access and benefit in all areas of life for full development.

In July 1997, Bangladesh partially withdrew its reservations to Articles 13(a) and 16 (1) (f). These Articles state that the State Parties to the Convention shall take appropriate measures to eliminate discrimination against women in areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights, in particular, the rights to family benefits.

The CEDAW Committee in its 1997 meeting, noted Bangladesh's Constitutional guarantees of equality and affirmative action for girl's education and public appointments. It urged the Government to withdraw its reservations to Articles 2 and 13 (a), to allocate adequate resources for women's programmes, to strengthen its enforcement and monitoring of existing laws, policies and mechanisms on violence and to create a social environment which would change social stereotypes of discrimination.[21]

The CEDAW Committee expressed its concern at the 'continued trends in :

1.violence such as acid burns, stoning and dowry death, and the inability of the government to enforce existing laws effectively or to provide immediate relief and justice to the victims;

2.lack of access to women's education, in spite of positive literary programmes;

3.inaccessibility of primary health care to rural and marginalized women;

4.non-implementation of minimum wage levels, lack of health and social benefits in both public and private sectors including paid maternity leave, and the lack of adequate child-care facilities in the manufacturing sector;

5.absence of special prisons leading to insecurity of women prisoners;

6.lack of monitoring impact of development on women;

7.imposition of *fatwa;*

8.lack of protective measures for migrant workers and women victims of trafficking.[22]

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[20] Salma Khan. Chairperson CEDAW. 1995
[21] CEDAW Forum : Report on Implementation of CEDAW in Bangladesh. July 1997.
[22] Ibid.

IV.The United Nations Convention on the Rights of the Child (CRC)

IV.i. The Children of Bangladesh:

The fundamental rights of children, their basic needs and the duties of the state towards them, are provided by Part III of the Constitution of Bangladesh which deals with the fundamental rights and freedoms of the country's citizens. Articles 27, 28 and 31, concerning equality before the law, non-discrimination on grounds of race, religion, caste, sex or place of birth and right to protection of law respectively, lay down the general principles regarding the protection of children and others from all forms of discrimination. However, these constitutional provisions have been proved inadequate in ensuring these rights. Not only must society itself create the appropriate environment for these rights to be engendered, it should be noted that there are inadequate legislative, judicial, administrative or other measures in force to guarantee the enforcement of these rights. The State of the World's Children 1996 ranks Bangladesh 41 out of 150 countries in descending order of the under-5 mortality rate[23] and the 1996 UNDP Development index ranks Bangladesh 143 out of 174 countries.

Apart from the Constitution, there are other statutory laws which protect the child - The Children's Act of 1974, The Children (Pledging of Labour) Act of 1933, The Suppression of Immoral Traffic Act of 1933, The Penal Code of 1860 (as amended by the State), the Criminal Procedure Code of 1896(as amended by the State), the Employment of Children Act of 1938, the Factories Act of 1965, the Guardian's and Ward's Act of 1890, the Employment of Children Act 1938 and the Child Marriage Restraint Act of 1929.

The Government also drafted a National Policy on Children in 1993 - which is still in draft form (and is expected to remain so for some time). It has the principle objectives to harmonise child development activities with the provisions of the CRC. Its objectives are:

1. Survival;
2. Education / psychological development;
3. family environment;
4. assistance to children in specially difficult circumstances;
5. best interest of the child; and
6. protection of legal rights.

Unfortunately, with all these laws and 'good intentions' to better the condition of children, the state has failed miserably to improve the situation of its young citizens. The lack of implementation of the above laws and the lack of political will are the offenders in this case.

There still remains no consistent definition of a child by law. Each Act or Ordinance has its own version of who a child is. The varied age-specific laws that continue to exist within the legal framework have yet to be revised with a unified definition. Thus, legislation regarding children fail to take into account the different stages of childhood with respect to physical, psychological, social and cognitive development.

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[23] UNICEF State of the World Children 1996 report.

The Employment of Children's Act of 1938 prohibits the employment of any person below the age of 12, the Children's Act of 1974 treats a person below the age of 15 as a child, according to the Factories Act of 1965 anyone below the age of 16 is a child and the Guardians and Wards Act of 1890 states that a child is made the ward of the court till she/he attains 21 years of age. Again , Muslim law sets 'puberty' as the time when a child attains 'adulthood' or maturity.[24]

The range of ages defined by various laws and statutes results not from consideration of the different stages of childhood, nor is it a reflection of culturally accepted norms. The majority of these diverse definitions are simply a result of outdated laws that were framed at different times particularly throughout our colonial history. These archaic laws remain in effect to date. Many rights of the child in Bangladesh, particularly those relating to family, guardianship, custody, inheritance, adoption, etc., are coloured by or fully governed by personal laws. However, it is in such areas as child labour and (marital) rape that the confusion in the existing laws become most apparent.

IV.ii. The UN Convention on the Rights of the Child and the State of Bangladesh:

The Convention on the Rights of the Child (CRC) was adopted by the UN General Assembly on 20 November 1989. It is based on fundamental human rights, dignity and worth of the human person and the promotion of social progress and better standards of life. It reminds us that the United Nations has proclaimed that childhood is entitled to special care and assistance and that a child should be fully prepared to live an individual life in society and brought up in the spirit of peace, dignity, tolerance, freedom, equality and solidarity.[25]

The Government of Bangladesh ratified the CRC in the early 1990's but placed reservations to Article 21 relating to the adoption of children and Article 14(1) relating to a child's right to freedom of thought, conscience and religion. The reason for its reservation on Article 21 is, as in the reservations of Articles of the CEDAW Convention, religious. Adoption is not recognised under Muslim Law and an adopted child is barred from inheritance. However, in the early 1970's, just after the Liberation of the country, the state legally allowed for the adoption of war orphans and children born from mothers who had been victims of rape by the Pakistani army by virtue of the Abandoned Children Ordinance. This law was, unfortunately, repealed by the Abandoned Children Repeal Ordinance of 1982 - on the plea that adoption is not recognised in Islam.. The reason for the reservations of Article 14(1) is that according to statutory law, a child takes the religion of her/his father.

The convention protects the rights of all children regardless of sex, but for the purpose of this study, the articles which need to be analysed in relation to the status of the girl-child in Bangladesh are Article 1, 2, 11, 28, 32, 34, 35 and 36.

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[24] There is a legal presumption, however, that if the child has not 'knowingly' reached puberty before the age of fifteen, s/he is said to have done so by that age.
[25] Preamble to the Convention on the Rights of the Child.

V. **The Articles of the CRC and the Girl Child in Bangladesh**:

Article 1 of the CRC states that "a child means every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier." In Bangladesh, specially in the rural areas of the land, a girl becomes an 'adult' when she begins to menstruate - that is, anywhere between 10-13. This practice has serious effects on her social life. She is, more often than not, taken out of school, kept in the house doing house-hold chores or married off- which affects her health as well . There is a law preventing child marriages - the Child Marriage Restraint Act- but ignorance of the law, improper practice of the teachings of Islam and lack of implementation means that the law is ignored. Usually these marriages remain unregistered - either due to ignorance or because the parents of the young bride do not wish to disclose the age of the child. Those child-marriages which are registered have the age of the girl enhanced to 18 - the legal age of marriage for a girl, according to the Act.

The age of a girl is thrown into a limbo when trying to prove not only marriage, but also marital rape. This sort of rape does occur in Bangladesh but cases are rare, mostly due to social taboo. Section 375 of the Penal Code which deals with the topic of rape, is particularly confusing. It states, *inter alia*, that a man is said to commit rape if he has sexual intercourse with his wife if she is under fifteen years of age. However, if a man has sexual intercourse with a woman 'with or without her consent' when she is under sixteen years of age, then he is said to commit rape. Ironically, under the Child Marriage Restraint Act, a woman must be at least eighteen years old in order to enter into a marriage. Where, then, does a victim of rape stand ? If she is fifteen or sixteen and married, marital rape cannot be proved, if she is below sixteen and not married, then the act will be labelled as 'rape' and, ironically, if she is given into marriage at the age of fifteen, the marriage itself will be illegal.

Reported Incidence of Rape of Children. January - December 1996[26]

Kind of Rape	**Total No. of Cases**	**Cases Involving Children (Below 15 Years)**
Simple Rape	51	29
Death after Simple Rape	2	X
Attempted Rape	9	1
Gang Rape	58	20
Death after Gang Rape	3	8
Death After Attempted Rape	1	1

Article 2 of the CRC asks State Parties to respect and ensure the rights guaranteed by the Convention to each child and prevent discrimination of any kind. The Bangladesh Action Plan for the South Asian Association for Regional Co-operation (SAARC) Decade of the Girl Child was drafted to reinforce the principles of non-discrimination contained in the Constitution of the People's Republic of Bangladesh and the UN Convention Against All Forms of Discrimination Against Women. This Plan, called

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[26] *Ain-O-Salish Kendra*. (A Legal Aid and Human Rights NGO). Documentation Unit.

'SAMATA' (Bangla for 'equality') seeks to enable programmes focused on the girl child as integrated development on basic education, sanitation, health, nutrition and legal and social support. However, in the previous chapters we have seen that the girl-child is discriminated against from birth, taken out of school at a very early age, married off while still a child, must adhere to specific bias role models and is constantly a victim of society.

Despite legislation, economic and social factors still combine to make not only discrimination but cruelty against the girl child very much a reality[27]. Though there is legislation protecting women and 'girl-children' from trafficking, abuse and other forms of cruelty, as has been mentioned, these acts are rarely enforced. There is also a great disparity in education, nutritional health and the social attitude towards boys and girls. Although these aspects are slowly changing in the urban areas- and a few signs of change in some rural areas of the country - with the gradual shift in common perception, attitudes within the legal framework , law enforcement and the judiciary, are slower to reform.

Articles 11, 32, 34, 35 and 36 of the CRC basically deal with trafficking in children - an abuse faced by many children of Bangladesh. Internal and cross-border trafficking are both frequent and the agents are rarely punished. Boys find themselves strapped to a camel (as camel jockeys) in some Middle East country, while they are at the tender age of nine or ten or working in some carpet factory in Pakistan, while girls are abused as sex-workers and domestic servants.

Article 11 of the CRC states that State Parties 'shall take measures to combat the illicit transfer and non-return of children abroad. Article 32 states the need to recognise the right of the child to be protected from economic exploitation and from performing any work that is likely to be, among other things, harmful to the children's health or physical, mental, spiritual, moral or social development. Article 34 urges the State to undertake to protect the child from all forms of sexual exploitation and sexual abuse , Article 35 urges the states to take appropriate national and bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children 'for any purpose or in any form' and Article 36 sums up by stating 'State Parties shall protect the child against all forms of exploitation prejudicial to any aspects of the child's welfare'. As has been stated in Chapter I on women and development, UNICEF has recently estimated that there are about 10,000 child prostitutes in Bangladesh, while other estimates have been as high as 29,000.

Case Study:

Shewly is a 13-year old prostitute working in a brothel in Syedpur, just on the outskirts of Rajshahi . Syedpur is a cantonment town and has the civil airport for Rajshahi district, in the north of Bangladesh. I met Shewly in 1995 on my way back from a workshop on women and legal awareness in Rajshahi town. There was a (Bangla) signboard outside the brothel area which read 'The women in this brothel have AIDS. Anyone visiting them does so at his own risk'. The women who had attended the workshop with me decided to investigate the health of the women and their general situation. Shewly had been sold to the brothel a year ago. She had been

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[27] *Ain-O-Salish Kendra.* Working for an Alternative Reality. An alternative report to the UN Committee on the Rights of the Child. September 1996. Dhaka, Bangladesh. Pg. 11.

brought there from her village in Rajshahi by an agent who had told her poverty-stricken parents that he was taking her to Rajshahi town to work as a domestic maid. She wanted to go home, but did not know how. She did not know what AIDS was, nor the use of contraception. Shewly was approximately 7 months pregnant.

An independent study was conducted regarding child prostitutes in October 1994. The study concluded that:
1.Almost all the girls engaged in prostitution were within the age group of 13-18 years;
2.Almost all bore symptoms of malnutrition;
3. A majority did not have relatives in the cities where they were bought;
4. Most came from troubled backgrounds or have been divorced/abandoned/sexually exploited in their own surroundings and have therefore been isolated and rejected, making them an easy target for 'agents';
5. Many suffer from venereal or sexually transmitted diseases and are unaware of contraceptives.[28]

Article 28 of the Convention mentions the fact that the State Parties must educate all children without discrimination whatsoever. However, as has been mentioned, (rural) society thinks otherwise.

Conclusion:

The question which arises from all this is : how dedicated is Bangladesh to eliminating discrimination against women? It is definitely not making sufficient efforts to carry out its responsibilities under the two Conventions, despite ratification. The UNIFEM and UNICEF joint presentation on the Convention on the Elimination Of All Forms of Discrimination Against Women , prepared for the Fourth World Conference on Women in September 1995, comments on the ratification of the Convention's Articles by various state parties: "CEDAW permits ratification subject to reservations, provided that the latter are not incompatible with the object and purpose of the Convention. Many countries party to the Convention have filed reservations - perhaps more than to any major human rights treaty. Some of these reservations limit obligations undertaken by that country in vague and sweeping terms, others concern areas of fundamental importance to the achievement of women's equality, such as family law. Some reservations do, indeed, appear to be inconsistent with the CEDAW objectives and purpose."

The Report also states: " .....some of these reservations strike at the very heart of the concepts of gender equity and non-discrimination- the very foundations of the Convention. They divest women of the convention's guarantees of equality and non-discrimination, enumerated in other treaties and instruments. Other reservations maintain the general thrust of the treaty obligations, but preserve the power of the state parties to continue discrimination in particular spheres by maintaining discriminatory laws, practice and patterns of behaviour. Most frequently, the State's reservations exclude from the reach of treaty obligations the family - the very sphere where rights for women are most crucial."

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[28] Dr. Sabera Rahman. Reproductive Health of Women in Bangladesh. Study done for Marie Stopes Clinic. October 1994.

It has been stated several times in paragraphs above that there is no apparent reason why the government cannot ratify the whole of the women's convention. The excuse they have given is that the articles not ratified go against the provisions of Muslim Law. The contention here is that not only is this unfair to the religious minorities of the country, but also that in Islam, Muslims have been given the choice of several sources of Muslim law- the Quran (being the major source), the Hadith (the teachings of the Prophet), *Ijmaa* and *Quias*. The last two can be roughly translated into the common consensus of learned Muslim scholars and what a person's conscience tells him is just and right - both keeping the basic teachings of the Quran in mind. If apparent changes can be made in certain areas of Muslim law for the good of the people, then why not in the areas of inheritance, marriage, divorce and adoption? Furthermore, on the topic of adoption, even though it is not allowed in Muslim law, the government of Bangladesh did, at one time, allow war orphans to be adopted in order to provide them with security. Was not this done in so-called 'contravention of Muslim law'? The school of thought used to introduce this adoption law in the first place must have fallen into the class of *Quias*. It seems that patriarchal thoughts have crept into the process of ratification of the CEDAW, as the various governments have found it very difficult to ratify Articles which give women the same property rights and rights to divorce as men.

Chapter IX

Some Reflections and Recommendations

The Republic shall be a democracy in which fundamental human rights and freedoms and respect for the dignity and worth of human persons shall be guaranteed.....

- Article 11, Constitution of the Peoples Republic of Bangladesh.

The title of this thesis is 'The Socio-Legal Status of Bangali Women in Bangladesh'. In it, attempts have been made to explore the social and legal position of Bangali women as it stands to date, in order to search for ways in which the state actors and non-state entities could, if possible, change their methods of policy planning and methods of project implementation so as to include women's voice and actual participation in the project planning and implementation process in order to prioritise their needs. It is true that Bangladesh has a strong patriarchal society, but it is not only patriarchal norms and trends which are depriving women of social and legal rights. Some 48 percent of the nation's population live below the poverty line[1] , and it is this which also has a role in denying mostly women and children of their basic rights.

One example of why women are classed among the 'poorest of the poor' in Bangladesh is the fact that about 15 percent of households in the country are headed by females. The reason being that the husband has either died, migrated to the city to look for work or has abandoned his wife. As many as 96 percent of these households live below the poverty line, of whom 33 percent are among the hard core poor, i.e., subject to chronic food shortages.[2] Government-run poverty alleviation projects fail to include these households, as patriarchal trends consider men to be the main wage-earners of the family. Furthermore, as we have seen in Chapter VI of this thesis, on the role of NGOs and micro-finance institutions, poverty alleviation programmes for landless women have not always been successful in reducing their poverty. Therefore, it is this combination of poverty and patriarchy which discriminates against women and are the sources of the various kinds of violence they face.

There have been specific studies on Bangladeshi women in the past. These have dealt with either the empowerment of rural women, the position of Muslim women or women in the industrial sector. In order to determine the social and legal position of Bangali women in Bangladesh, it has been necessary to identify and discuss different social and legal issues pertinent to the topic. Therefore, many issues had to be dealt with - religious, social, legal and economic. This study, therefore, is not a selective one, but a broad based analysis of the position of women in Bangladesh in the eyes of the social and legal system of the country.

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[1] Netherlands Ministry of Foreigh Affairs : *Bangladesh, Evaluation of Netherlands-funded NGOs, 1972-1996.* Sub-Report 1998. Pg.45.
[2] Ibid.

This thesis has attempted to analyse the reasons why women in Bangladesh are discriminated against by society and in the eyes of the law. It has also tried to analyse the reason why, after twenty six years of independence, the country is still poverty stricken- despite the amount of international funds and aid that is being poured into it to help finance development projects. This poverty is one of the main factors of discrimination against women, along with patriarchal customs and ideologies.

This chapter is divided into three divisions of suggestions and recommendations which the government and non-government organisations and financial institutions could use to improve their development and poverty alleviation projects and policies. The first section will discuss general recommendations - what the society as a whole could do to abolish discrimination against women. The second section will discusses strategies state actors could take and policy changes they could make and the third section deals with what non-government organisations and micro-finance institutions could do in order to make their programmes more effectively geared towards women's empowerment and positive social and economic change.

I. **General Recommendations**:

About 46 percent of the population of Bangladesh are female, who suffer substantial disadvantages in society. In the previous chapters we have see that they are discriminated in the areas of education and employment and suffer violence in the home and in out of it. Patriarchal norms and ideas have been used to justify this discrimination - that women need to be chastised, must observe *purdah*,[3] need not be educated. Education is a very important factor to counter such traditions. An educated mother means, in most cases, an educated family.

Furthermore, in the private sector, women face other hazards. The numerous garment manufacturing industries, business houses and other private sectors which have mushroomed in order to boost the country's race to join the 'open market' boast of poor or no facilities for the women they employ. There is little job security, poor pay, inadequate safety measures and no facilities for nursing mothers or their children. Again, on leaving the factory after work, women workers are faced with the possible dangers of abduction, rape or acid throwing, as due to the weak law and order system, they become easy targets. Women faced with poverty come to work in these sectors to make ends meet only to be faced with further violations to their human rights.

However, women cannot improve their social and legal position alone and in an isolated group. It is the men as well who need to be educated that in modern society, where most factors revolve around economic improvement and poverty alleviation, patriarchal traditions have no place. Men, too, have to be educated about socio-legal and economic rights, not only as their rights, but as women's rights as well. In this regard, mutual support is a vital factor. Mutual support is necessary to fight off the vested interest groups who target women as commodities, pronounce cruel and illegal sentences on them and who use the excuse of poverty alleviation projects in order to line their own pockets.

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[3] See Chapter V for explanation of '*Purdah*' as used in this Thesis.

Therefore, human rights education, realisation of the meaning of social justice, basic education and the determination to support victims of human rights violations are vital in order for Bangladeshi society to shed its discriminatory practices and give its women the social and legal status they ought to be receiving already as a basic human and constitutional right.

II. **Suggested Government Strategies**:

Patriarchal practices are quite clearly seen in the way the government agencies run and plan their policies. In the first five chapters of this thesis, I have attempted to highlight this. Women have taken part in political activities, lobbied for legal reform, helped in crisis situations and taken part in state elections. Yet, law enforcement agencies do little to protect them; courts pass biased judgements against them; laws passed for their protection are poorly implemented; and members of the police force have, in some occasions, raped them while in their 'safe custody'. It has also been reported that members of the border security force turn a blind eye to women being trafficked through their check posts into India. This is because some are bribed by the agents carrying out such 'business'.[4] In rural Bangladesh the law enforcing agencies are extremely slack when it comes to investigating crimes such as rape and the illegal (mis)use of *fatwa*. It is not as if the government is not aware of these occurrences. The (privately owned) daily news media carry stories of such crimes. However, the general public are kept in the dark of further information, as state-owned electronic media never carry such stories of violence against women and investigation reports and documentaries dealing with crimes against women are very rarely broadcast.

The state's continuing efforts to become economically developed for the past twenty-seven years, have marginalised women-oriented government projects. In the industrial and public sector, facilities for women employees are either non-existent or extremely poor. Furthermore, the government policy of restraining women from seeking employment abroad has encouraged them to seek the same illegally, often through unscrupulous agents. In this respect they fall in the hands of traffickers and it can be said that the government is, in an indirect way, contributing to the act of trafficking. Again, the government missions abroad do little to protect the women migrant workers employed in those countries. Trafficked women who have been arrested and are languishing in jails abroad do not receive any legal support or aid from these missions either.

There are drawbacks as well in the legislature and judiciary. Corruption in the lower judiciary and in the law-enforcing agencies has already been discussed. The legislature is kept busy making new laws for the protection of women, regardless of the fact that it is not new laws that we need but the amendment and strict implementation of those already existing. This organ of the state seems to have overlooked the reasons why existing laws had been passed in the first place. Investigation reports made by government appointed committees on serious violations to women's rights are never made public either.

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[4] Interview with Tipu Sultan, present Co-ordinator, Investigation Cell, Ain-O-Salish Kendra. January 1997.

Another drawback to development is the centralisation of resources by the government. For example, the best health facilities and education institutions are in the main cities. Social service provisions in the outskirts and rural areas of the country are inadequate and there is a shortage of qualified personnel willing to work outside the comforts a big city can provide. This problem is aggravated by insufficient facilities and equipment. There is no autonomy in the local government level either and more and more people are flocking to the cities in search of employment and benefits. This has resulted in the female-headed households, mentioned in the beginning of this chapter, in increased poverty in rural Bangladesh and in the raise of maternal and infant mortality in rural Bangladesh due to poor health facilities.

There is a vital need for an independent law commission and human rights commission in the country in order to monitor the implementations of existing laws and research the necessity for the amendment or repeal of laws needing such action, monitor the human right situation and take action against violations to these rights. The commissions have to be independent with no outside influence in order for them to function in an unbiased manner. Furthermore, government resources, including budgetary allocations, need to be decentralised so that they can reach all levels of society, whether urban or rural. The local governments ought to be made autonomous bodies, where women's positive participation must be made a compulsory factor so that their needs and necessities can be prioritised.

Political promises such as 'democracy', 'rule of law', 'social justice' will remain mere words on paper. They can be put into practice by addressing the plights of urban and rural women and giving the confidence and support to seek justice against violations of their rights.

III. **Suggested NGO Strategies**:

Non-government organisations and micro finance institutions have played a vital role in the empowerment of women. Their primary and adult education programmes have given women and girls confidence and the realisation that they too have rights and can make choices. Other projects run by them have encouraged women to work in groups for mutual support and exchange of views.

However, as we have observed from the chapter on NGOs and micro-finance institutions, how much of the projects and programmes planned by these non-state entities are targeted at the actual need of women? Credit programmes have helped some but have also left many poorer than they were before. A lot of the women will be in debt for the rest of their lives - either to the loan giving NGO or the money lender from which they borrowed money to pay off the loan. Many NGOs depend on donor countries and organisations for their funds and for financing their projects. These donors have their own agendas which do not necessarily reflect the needs of the target groups - who are mainly women.

In the administration and policy planning sector of the NGOs, the large organisations are headed by a highly salaried, single executive who holds almost all the power over project planning and funds. Furthermore, these executives hardly ever visit the rural, poverty-stricken areas of Bangladesh or their project areas and therefore are unable to assess and prioritise the needs of the people. Another reason this is not done is

because of NGO dependence on donors who release funds to NGOs willing to implement the latter's projects.

NGOs ought to be made accountable and transparent to their target groups. These groups, specially the women, must be allowed to participate in the project and policy planning as well. Furthermore, donor countries and agencies should plan their policies in accordance with what the disadvantaged people need and not on what they decide will be their next project for the coming fiscal year. Only in this way will they be actually carrying out their policies which contribute to the development of Bangladesh.

Conclusion:

The state system of Bangladesh and the non-state agencies therefore need to change their policy planning methods and the general public have to go further in order to uphold women's human rights and afford them legal protection as citizens and fellow members of society. This thesis, has set out to demonstrate that it is not only woman who need to wake up to the realisation that they can make a change, but the society as a whole. What is vital in Bangladeshi society is human development - the process by which 'the identity of the people is transformed by the people themselves towards goals and ideals which they identify for themselves.'[5] Social, legal and economic development are the catalysts to human development, as they are the first needs to be realised. However, even though the need for economic development and legal reform are addressed by the state, social development has been pushed to the side. Social development is a vital factor in order to build a secure environment for our future generations of citizens - men and women alike.

[5] Davis Abecassis: *Identity, Islam and Human Development*. University Press Ltd. 1989.Pg.7.

APPENDIX

APPENDIX - I

Chapter IV : Aspects of Violence Against Women.

The following tables show the number of different crimes of violence against women committed in 1995, 1996 and 1997. The data has been collected by the Documentation Unit of the legal aid organisation, the Ain-O-Salish Kendra from reports in seven daily papers - the Daily Star, the *Dainik Jonokontho*, The Bangladesh Observer, the *Dainik Ittefaque*, the *Dainik Inquilab*, the *Dainik Bhorer Kagoj* and The Independent.

Different Forms of Violence Against Women

1995

Form of Violence	No. of Incidents	No. Killed	No. of Cases Filed
Rape	240	25	138
Dowry	124	66	82
Fatwa	13	5	15
Acid Throwing	28		27
Domestic Violence	203	180	146

1996

Form of Violence	No. of Incidents	No. Killed	No. of Cases Filed
Rape	262	27	152
Dowry	77	38	45
Fatwa	22	1	5
Acid Throwing	51		27
Domestic Violence	55	52	27

1997

Form of Violence	No. of Incidents	No. Killed	No. of Cases Filed
Rape	753	62	460
Dowry	177	109	109
Fatwa	28	2	5
Acid Throwing	130	3	77
Domestic Violence	234	204	120

APPENDIX II

Chapter IV: Aspects of Violence Against Women

The following are the cases of two of the most horrendous incidences of rape by police men involving Yasmin (in 1995) and Shima Chowdhury (in 1996). Information regarding these cases were taken from interviews given by Mr. Nur Khan, Director of Odhikar:a coalition for human rights, and Mr. Asaduzzaman, advocate and legal investigator, Odhikar; newspaper reports; Amnesty International Index report ASA 13/04/97 Distr SC/CO of July 1997; the magazine '*Garments Ar Kotha'* brought out by the Union of Garment Industry workers.

Incident 1 : Yasmin

In August 1995, a fourteen year old girl, Yasmin Akhtar, died after three police officers in Dinajpur in north-western Bangladesh, had reportedly raped and injured her. This ultimately caused her death. The police had given her a lift to her village home in their police van and later dropped her dead body by the road side. Police claimed that she had died by jumping off the moving van and further tried to cover up the misdeed by claiming that she had been a prostitute. This instigated violence in the township of Dinajpur where people poured into the streets and in agitation burnt four police stations.

The police fired into the crowd, killing at least seven protesters. Following the public protests about the attempted cover-up, three police officers were suspended and charged. A judicial inquiry submitted its report to the government in October 1995 but, as usual, it was not made public. The trial of the three police men began in the same month.

On 31 August 1997, the long awaited judgement against the police concerned in the rape was announced by the District and Sessions Judge in Rangpur. The three accused police were tried under the Women and Children Repression Act of 1995. The Judge held that 'these men had committed the worst possible crime and they deserve to die, especially because they being policemen were supposed to protect the helpless girl'.. It is shameful that the judgement came after two years, and that too only after constant demand and pressure on the government by women's groups and legal and human rights groups and the general public.

Incident 2: Shima Chowdhury

Shima Chowdhury was an eighteen year old worker in a garment manufacturing factory in Chittagong, southern Bangladesh. She was walking with her fiancé, Abdul Hafiz in the afternoon of 8 October 1996 towards the village of Majidpur when a police vehicle stopped them and arrested them on the grounds that a woman may not walk with a man to whom she is not married, regardless of the fact that there was no legal basis for such an arrest. They were both taken to the nearby Moghdi police camp, where they were held till the afternoon of 9 October and were not even produced before the court (Article 33 of the constitution requires that any detainees must be produced before the court within 24 hours of arrest), the couple were then transferred to the police station at Rauzan where they were held in separate rooms. Abdul Hafiz was locked in a cell while Shima was 'detained' in the office of the Officer-in-Charge (OC) of the police station. According to the OC, he left at midnight, leaving his key to the officer in duty. There were four policemen on duty that night.

Shima later recalled that she had been forced by the policemen to drink some 'muddy water' whereupon she became dizzy and was raped by the four policemen in that state. She later became unconscious. In the morning, the OC, finding Shima in that state in his office, called the doctor, who transferred Shima to the emergence ward of the Chittagong Medical College Hospital. Duty doctors found the marks of injury on her person and a medical board was set up when she claimed that she had been raped. The board carried out tests at the hospital's forensic department and on 15 October concluded that Shim Chowdhury had indeed been raped. On learning of this, police began to investigate the case the same day. The four officers on duty that night were implicated and named as the accused. They were sent to Chittagong Jail and the case allotted to the Criminal Investigation Department on 17 October.

Unfortunately, on 15 October, the court, on plea from the police, sent Shima to so-called 'safe custody' at the Chittagong Jail. Several women's rights organisations appealed to the court for custody of Shima, fearing further violence on her person while she was in jail. The court rejected their appeal and insisted that Shima remain in safe custody. Completely isolated from everyone, including her mother, having no visitors or anyone to give her support, and allegedly, receiving no medical treatment, Shima became very ill. Her condition became so serious that the jail officials sent her to the Chittagong Medical College Hospital where she was diagnosed as having gastric ulcer and a lung infection. However, jail officials forced her to go back to jail.

In January 1997, her condition worsened, but the jail doctor, who knew of her illness did not visit her for three weeks. When he eventually did so, he did not authorise her transfer to the hospital. On 5 February, Shima way dying. The jail doctor reportedly said he could not carry out a diagnosis because there were no 'modern diagnostic facilities' in jail. Instead, he gave Shima malaria tablets. On 7 February, Shima was visited by the doctor again. She was suffering from severe stomach pain and was in a critical condition. The doctor finally found it fit to send her to the hospital.

However, no ambulance was called and she was sent there in a cycle-van several hours later. On her arrival at the hospital, Shima was declared dead. A post-mortem was carried out, but the police insisted that the body be cremated - contravening the Muslim ritual of burying a body. The cremation was carried out immediately. On 1 March 1997, three weeks after Shima's death, the autopsy report was completed saying that Shima had died of typhoid and no traces of any poison of any kind had been found in her blood.

On 2 February, five days before Shima's mysterious death, the police brought charges against the accused police officers. However, as if to justify the acts perpetrated by them, Shima was repeatedly referred to as a floating prostitute in the chargesheet. On 14 July, the trial judge set the four accused policemen free for 'lack of evidence'.

The *Shommelito Nari Shomaj* (United Women's Community), a coalition of women activists and women's groups commented 'the court order proved that there was negligence on the government's part in framing the charges' and that they were concerned about the lack of justice for working women abused by police because in most cases the investigators and prosecutors are pursuing charges against their colleagues. On 15 July, the Government announced that it would appeal the acquittal and a fresh investigation was ordered. The Home Minister warned that any one, including the police, found tampering with the evidence that led to the acquittal would be punished.

APPENDIX III

The two pictures below show distressing images of two young women, almost girls, called Joynab and Halima who have been horribly disfigured by acid. They were both victims of the rage of 'spurned admirers', who took revenge on them in this way. The Incidents took place in 1997.

Joynab in Dhaka Medical College Hospital

Halima in Dhaka Medical College Hospital, Dhaka

APPENDIX IV

Instances of Fatwa Pronounced on Women

The following tables show the number of instances of *fatwa* pronounced on women in 1993, 1994, 1995 and 1996. The data has been collected by the Documentation Unit of the legal aid organisation, the Ain-O-Salish Kendra from seven daily papers - the Daily Star, the *Dainik Jonokontho*, The Bangladesh Observer, the *Dainik Ittefaque*, the *Dainik Inquilab*, the *Dainik Bhorer Kagoj* and The Independent.

Reported Incidences of Fatwa: 1993

Name of victim	Date of incident	Place	Reason for Fatwa	Decision	Result
Noorjahan	10 January	Sylhet.	Second marriage not performed as per *Shari'a* injunctions.	Buried to the waist and stoned 101 times	Commits Suicide
Noorjahan	5 May	Faridpur.	Accused of Adultery by a village elite	Death by fire	Tied to a stake, doused with kerosene and burnt to death.
Firoza	1 September	Shathkhira.	Pre-marital affair with a Hindu boy.	101 lashes with a rope	Commits suicide
Kadbanu	1 September	Rangpur.	Conjugal relationship with a man who promised to marry her. Became pregnant.	Buried to the waist for hours in the strong sun.	Banished from the village.
Zulekha	5 October	Lalmonirhat.	Pre-marital affair.	Verbally abused and whipped 101 times	Hangs herself
				TOTAL No.	**5 Cases**

Reported Incidences of Fatwa. 1994

Name	Date of Incident	Place	Reason for Fatwa	Decision	Result
Rokeya	7 January	Feni.	Pre-marital affair with promises to marry. Pregnant.	101 lashes with Bamboo pole. Threats to feed her to the dogs.	Afterwards her hair was shaved off, and she was paraded around the village and tied to a tree for 8 hours. At night, eight people raped her
Dulali	18 January	Noakhali,	Accused of *Zina* (adultery). Pregnant	101 lashes with a bamboo pole	survived
Momtaz	18 April	Dinajpur.	forcibly married to house-tutor. She was only six.	Drowned. Believed to have been strangled first.	
Sopnahar	11 May	Brammon-baria	Raped, but accused of Adultery	100 lashes	Survived
Beauty	21 May	Shirajgong	Extra-marital affair.	101 lashes	Survived
Razia	Unknown	Kishorgang.	Accused of pre-marital affair	Made to drink own urine	Survived
Parul	Unknown	Noakhali	pre-marital affair	101 lashes	Survived
Anjali	11 June	Rajshahi.	Talking to a Muslim boy. (Anjali is Hindu)	101 lashes	Survived
Ruma	8 July	Kushtia.	Husband divorces her after 10 days of marriage. Alleges he had married her younger sister previously.	Decided that her younger sister is the actual wife and not her.	Commits Suicide
Shahida	8 September	Savar	Pre-marital affair. Pregnant.	101 lashes	Missing
Zulekha	5 October	Shathkhira.	Accused of giving birth to illegitimate child	101 lashes	Survived
Hajera	25 October	Kurigram.	Raped. Accused of *Zina* (adultery) instead.	80 lashes	Survived
Rina	17 December	Feni	Accused of carrying illegitimate child	Beaten with bamboo cane	Commits suicide
Lilly	24 December	Rangpur	Husband does not acknowledge child as being his.	101 lashes	Survives
				TOTAL No.	**14 Cases**

Reported Incidences of Fatwa. 1995

Name	Date of Incident	Place	Reason of Fatwa	Decision	Result
Razia	18 March	Pirojpur	Husband returns to her after an affair with her sister.	Husband punished with 41 lashes and Razia with 7.	Commits suicide
Zohura Akhtar	24 March	Manikganj	Her cow had escaped to a neighbour's field.	Beaten with slippers	Commits suicide
Zohura	11 April	Mymen-singh	Accused of prostitution after disallowing the use of her home for immoral purposes. A widow.	Hair shaved off. Ostracised from the rest of the village.	Survived
Dilara	20 April	Sylhet	Had a relationship with a man who promised to marry her.	100 lashes	Survived
Monowara	29 April	Habigonj	Her divorce was held to be 'un-Islamic'	100 lashes.	Survived
Jahanara	8 June	Chitta-gong	Accused of adultery.	Banished from her village.	
Amena	10 June	Shathkhira	Illicit relationship	101 lashes.	Survived
Farida	21 July	Gazipur	Pre-marital relationship with false promises of marriage.	Buried to the waist and stoned.	Survived
Ashiya	23 July	Feni	Accused of having affair with nephew	101 lashes.	Survived
Nasima	21 August	Savar	Pregnant with illegitimate child	Tied to a tree and given 101 lashes.	Survived
Faninissa	15 Sept.	Kushtia	Accused of adultery by jilted suitor	100 lashes	Commits suicide
Rezia	24 Sept.	Sherpur	Pregnant after affair with brother-in-law	101 lashes	Hangs herself
Golapi	29 Sept.	Braman-baria	pre-marital relationship	101 lashes	Survived
Monowara	3 October	Comilla	Pre-marital affair.	100 lashes	Survived
Mamata	10 October	Mymen-singh	Raped by father-in-law. However, accused of adultery when she complained.	Kept locked in a room.	
Madiha	5 October	Gazipur	Relationship with false promises of marriage. Pregnant.	Threatened with burial alive if child was not her partners	fatwa not carried out. Stillbirth.
Lipi	15 October	Kurigram	Accused of adultery	101 lashes	Ostracised
Dilara	17 October	Sylhet	Accused of prostitution by spurned suitor	101 lashes	Survived
Noorjahan	16 Nov.	Dhaka	Husband verbally divorces her. Fatwa passed to 'purify' them.	Both buried to the waist and stoned	Survived
Fazira	21 Nov.	Maulavi-bazar	Accused of adultery	41 lashes	Survived
Anowara	3 Dec.	Dhaka	Accused of adultery	101 lashes	Survived
				TOTAL No.	**21 CASES**

Reported Incidences of Fatwa. 1995

Name	Date of Incident	Place	Reason of Fatwa	Decision	Result
Razia	18 March	Pirojpur	Husband returns to her after an affair with her sister.	Husband punished with 41 lashes and Razia with 7.	Commits suicide
Zohura Akhtar	24 March	Manikganj	Her cow had escaped to a neighbour's field.	Beaten with slippers	Commits suicide
Zohura	11 April	Mymen-singh	Accused of prostitution after disallowing the use of her home for immoral purposes. A widow.	Hair shaved off. Ostracised from the rest of the village.	Survived
Dilara	20 April	Sylhet	Had a relationship with a man who promised to marry her.	100 lashes	Survived
Monowara	29 April	Habigonj	Her divorce was held to be 'un-Islamic'	100 lashes.	Survived
Jahanara	8 June	Chitta-gong	Accused of adultery.	Banished from her village.	
Amena	10 June	Shathkhira	Illicit relationship	101 lashes.	Survived
Farida	21 July	Gazipur	Pre-marital relationship with false promises of marriage.	Buried to the waist and stoned.	Survived
Ashiya	23 July	Feni	Accused of having affair with nephew	101 lashes.	Survived
Nasima	21 August	Savar	Pregnant with illegitimate child	Tied to a tree and given 101 lashes.	Survived
Faninissa	15 Sept.	Kushtia	Accused of adultery by jilted suitor	100 lashes	Commits suicide
Rezia	24 Sept.	Sherpur	Pregnant after affair with brother-in-law	101 lashes	Hangs herself
Golapi	29 Sept.	Braman-baria	pre-marital relationship	101 lashes	Survived
Monowara	3 October	Comilla	Pre-marital affair.	100 lashes	Survived
Mamata	10 October	Mymen-singh	Raped by father-in-law. However, accused of adultery when she complained.	Kept locked in a room.	
Madiha	5 October	Gazipur	Relationship with false promises of marriage. Pregnant.	Threatened with burial alive if child was not her partners	fatwa not carried out. Stillbirth.
Lipi	15 October	Kurigram	Accused of adultery	101 lashes	Ostracised
Dilara	17 October	Sylhet	Accused of prostitution by spurned suitor	101 lashes	Survived
Noorjahan	16 Nov.	Dhaka	Husband verbally divorces her. Fatwa passed to 'purify' them.	Both buried to the waist and stoned	Survived
Fazira	21 Nov.	Maulavi-bazar	Accused of adultery	41 lashes	Survived
Anowara	3 Dec.	Dhaka	Accused of adultery	101 lashes	Survived
				TOTAL No.	**21 CASES**

Reported Incidences of Fatwa. 1996

Name	Date of Incident	Place	Reason for Fatwa	Decision	Result
Shahana	4 Jan.	Meherpur	Verbal divorce by husband because she had no dowry. (*Verbal divorce illegal under Statutory law*).	*Hilla*(intervening marriage) before re-marrying husband. (Hilla *is illegal under statutory law*)	Survived
Asma	4 Feb.	Natore	Accused of Pre-marital sex. Was actually raped.	101 lashes	Social boycott
Uleccha	7 Feb.	Hobigonj	Extra-marital sex	101 lashes	Survived
Shaheen Akhtar	14 Feb	Noakhali	Rape. Offender bribed shalish.	101 lashes	Survived
Parveen	26 May	Barisal	Pregnant by cousin	25 lashes	Survived
Farida	1 June	Magura	Verbal divorce by husband.	Shalish threw her out of her house with her children	Abandoned
Fatema	2 July	Bramman-baria	Pre-marital affair with promise to marry.	101 lashes	Social boycott
Bedona Begum	2 July	Kurigram	Accused of drowning step-son	Social boycott with husband	
Zulnur Khatun	5 July	Chapainawab-ganj	Pre-marital affair	100 lashes	Commits suicide
Sakina	14 July	Kushtia	Verbal divorce by husband. Thrown out of home. However, realising his mistake, husband requests shalish to bring her back.	*Hilla*. Both refuse.	Both made to leave village.
Majeda	14 Sept.	Natore	Accused of relationship with brother-in-law	100 lashes	Survived
Nazma	21 Sept.	Kushtia	Leaving home without permission	101 lashes and fined Taka 6,000.00	Survived
Rahela	26 Sept	Bogra	Verbal divorce by husband while arguing. Normal life after that. Neighbours complain to Imam.	Social boycott	
Kamla	9 Nov.	Gazipur	Husband sends her back to parents for dowry, then complains to Imam.	Social boycott	Survived
Kayuma	17 Nov.	Coxs' Bazaar	Extra-marital sex	5 lashes	Survived
Momtaz	23 Nov.	Borguna	Filed case against husband for dower. Villagers opposed the fact that she went to court without male escort.	100 lashes	Survived
				TOTAL No.	**15 CASES**

APPENDIX V

Other Cases of *Fatwa* Pronounced on Village Women

Feroza

Feroza of Shathkhira, Khulna in southern Bangladesh, committed suicide out of sheer humiliation after a *shalish* sentenced her to 101 lashes because she had established a relationship with a Hindu man. She had been accused by a madrassah teacher, Moulana Abdul Rahim and his allegations had been supported by some members of the Union Porishod (Union Council) - all very influential people. The *shalish* took place on 1 September 1993. Eleven of the perpetrators (those who were present at the *shalish* and took part in it) were charged with abetting suicide. Five of them are presently serving jail sentences.

Anjali

Anjali, an eighteen year old Hindu girl was, on 11June 1994, accused of immorality merely because she talked to a Muslim man, the manager of a local saw mill in Rajshahi, northern Bangladesh. The *fatwa* against her - 101 lashes- was passed by political workers of the Jamaat-I-Islami and its sympathisers and the *Upazilla* (Sub-district) Chairman. Unfortunately no action was taken on her behalf. This is probably because of the fear of harassment as she is a Hindu and thus of a minority religion.

Feninessa

When Feninessa refused to marry Amir Hossain, he complained to a village *shalish* that she was of immoral character. On the night of 14 September, 1995, the *fatwa*-mongers came to Feninessa's home to pass their judgement. They decided that Feninessa would have to pay a fine of Taka 5,000.00 (about US$ 100.00) and would be given 100 lashes. Amir Hossain gave Feninessa the 100 lashes. She paid Taka 1,000.00 to Amir, and pleaded she had no more money. She begged forgiveness and said that she could not afford to pay the rest of the 'fine'. However, the *fatwa*-mongers punished her with a hundred more lashes. Feninessa committed suicide out of humiliation.

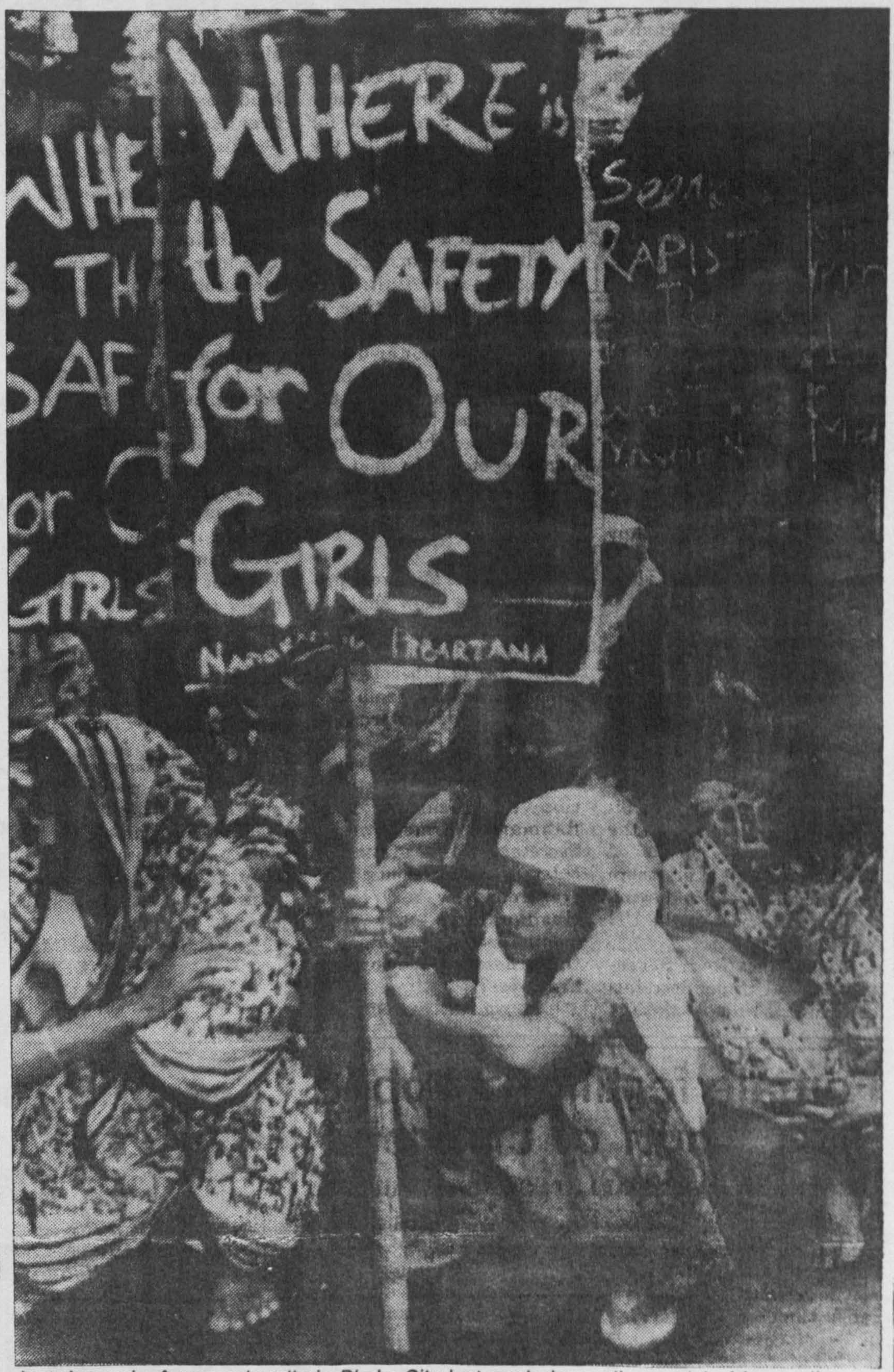
Her brother lodged a case against the perpetrators at the local police station on 21 September 1995. However, the police did not arrest the accused persons. He then filed a case in the Magistrates Court . On appearing before the court, the *fatwa*-mongers and Amir Hossain confessed to the crime of *fatwa*. They were charged with abetment of suicide.

Lipi

On 5 October 1995, 16-year old Lipi's husband's friend came to visit her in the absence of her husband. Some village youths entered her home and dragged them both out. They were taken to the grounds of the village madrassah and tied to a tree. The superintendent of the madrassah, Maulana Abdur Sattar, gave a *fatwa* ordering Lipi to suffer 101 lashes. He also decided that no male relative would be allowed to visit her. No action was taken against the *fatwa*-monger or those present at the shalish.

APPENDIX VI

The following pictures were taken by photographers of the weekly newspaper 'The Weekly Holiday'. They show poor women from rural and urban Bangladesh gathered in Dhaka to protest violence against women.



Just demand : A women's rally in Dhaka City last week demanding retrial of four policemen accused of raping and then murdering Seema Choudhury

Protest of the displaced : A rally was organized last week in Dhaka City to demand rehabilitation of sex workers and their children who were earlier evicted from their homes

APPENDIX VII

The following pictures show activities taking place in a legal aid clinic in a Dhaka slum, run by the legal aid organisation, Ain-O-Salish Kendra. Women visit this clinic from the surrounding slums to discuss any cases they have pending in the courts. The cases are usually family matters – maintenance, divorce and custody of children. The trainers and lawyers present at the clinic explain the complexities of the judicial system and reasons why cases take time. It is also an oppertynity for the women to give vent to their frustrations, their family problems and to come with any incidents which they think require legal help. Legal aid is given free to these women.

The women are gathered, waiting for the lawyer to begin.

A Trainer and a Lawyer begin by listening to individual cases

APPENDIX VIII

The following pictures were taken on fieldwork in the district of Pabna, where the Dhaka Community Hospital had set up their annual health camp in a village close to the town. The Community Hospital holds a health camp every year in Pabna and gives free treatment and follow-ups to the rural and urban poor.

Young pre-puberty girls looking after cattle

Women holding their health records await treatment

A young boy stares boldly into the camera, while his mother and sisters stand away behind trees.

APPENDIX IX

Women in the Education Sector.

The tables below show the number of female teachers working in and female students enrolled in different educational institutions in Bangladesh between 1990 and 1995. The institutions are primary schools, secondary schools, colleges and universities. All the data used was taken from the 'Third and Fourth Periodic Report' presented by the Ministry of Women and Children Affairs, Government of Bangladesh for the consideration of the United Nations Committee for the Elimination of All Forms of Discrimination Against Women. the report is dated March 1997.

The table below shows the enrolment of female teachers in mainstream primary education. This chart deals with the years 1990 - 1995.

Year	Enrolment of male teachers per 100,000	Enrolment of female teachers per 100,000	Percentage of female teachers
1990	66.62	53.88	17.80
1991	69.10	57.25	17.33
1992	70.48	59.48	17.59
1993	75.25	65.41	19.38
1994	80.48	71.32	18.24
1995	82.00	82.00	18.79

The table below shows the female enrolment in government - run secondary schools between the years 1990 to 1994:

Year	Total Number of Students	Percentage of Female Students
1990	194835	44.69
1991	198805	44.72
1992	210673	43.04
1993	214915	43.89
1994	217715	41.73

The table below shows a comparative study of the number of female teachers in graduate and post graduate institutions in 1990 and in 1994. Colleges are those institutions which are placed under the administration of general universities. To date, there are 611 degree colleges; 18 medical colleges; 1 dental college; 4 technical colleges; 3 agricultural colleges; 21 law colleges; 21 homeopathic colleges; 10 general universities; one agricultural university ; and 1 engineering university in Bangladesh.

Institution	**Total No. of teachers in 1990**	**No. of Female teachers in 1990**	**Total No. of Teachers in 1994**	**No. of Female teachers in 1994**
Degree Colleges	12783	1988	20262	16673
Medical Colleges	728	156	1206	256
Dental Colleges	41	16	49	13
Bangladesh Institute of Technology	223	6	226	8
Agricultural Colleges	132	10	128	12
Law Colleges	545	33	310	30
Homeopathic Colleges	547	35	302	30
General Universities	2589	433	3165	530
Agricultural University	352	8	393	12
Engineering University	305	19	458	38

The table below shows a comparative study of the number of female students enrolled in graduate and post-graduate institutions in 1990 and 1994.

Institution	**Total No. of students in 1990**	**No. of Female students in 1990**	**Total No. of students in 1994**	**No. of Female students in 1994**
Degree Colleges	680680	159739	962393	302531
Medical Colleges	7983	2341	9247	3285
Dental Colleges	334	135	330	128
Bangladesh Institute of Technology	2986	71	3105	139
Agricultural Colleges	900	66	1125	97
Law Colleges	12110	1560	10537	1791
General Universities	55995	14500	62651	14761
Agricultural University	4092	281	4912	590
Engineering University	3813	301	4994	579

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