

Women's access to the laws of Bangladesh and scope of CEDAW

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Abstract: Law and culture both play a major role in social organisation and political structure; both impacts substantially on women. But the prevalent patriarchal mindset hampers the even-handed dealing between sexes and eliminating discrimination against women. Existing various laws validate those discrimination and limit women's access to it. Even though CEDAW is effective to reduce discrimination from laws and policies, but government is less poised to accept the CEDAW principles removing discriminatory laws and policies excusing discriminatory laws are based on religious norms. Luckily, hope exists to eradicate discriminative policies and establish CEDAW through gradual bargaining with the state which I have tried to explore through my writing based on secondary sources.

Keywords: Gender, law, CEDAW, Bangladesh.

1. Introduction

"Historically, neither law nor culture has been kind to women" (Scutt 2016:290). In Bangladesh, women are always denied from the access to health, education, income, decision-making power and legal rights (Khan et al. 2004). Law and policy are the way to uphold and sustain women's rights but sometimes legitimize women's social and economic subordination (Hasan 1994). The Constitution of Bangladesh has protected women's rights through various Laws and policies- as "Article 27 declares all citizens are equal before the law and are entitled to equal protection of law; and Article 28 enumerates that the State shall not discriminate against any citizen on the grounds of religion, race, caste, sex or place of birth, women shall have equal rights with men in all fields of the State" (Sourav 2015; Hossain 2003; BNWLA 2012). Even though we have strict laws and regulations, but implementation remains in question (Khan & Karim 2017; Begum 2004). Besides there are Personal Laws/Family laws which interrupts those articles of constitution by legalizing and validating discrimination against women. The Personal Laws/Family laws have limited the scope of Bangladeshi women to claim their rights in marriage, divorce, maintenance, the guardianship of children and inheritance based on conservatism (Brandt & Kaplan 1995). Giorgio Agamben (1998) explains this as paradox of sovereignty where national laws intersect itself by its own other laws. "The problem of inequality for women in Bangladesh is more social than legal" (Hossain 2003). Gender inequality disfavoring women is deeply embedded in the country's patrilineal and patriarchal kinship system where women's role is that of daughter, wife and mother and the traditional culture demand a systematic subordination to men from them (Begum et al. 2011). The government is not trying to eliminate these restrictions, rather support this subordination indirectly (Brandt & Kaplan 1995: 106).

CEDAW or the Convention on the Elimination of all Forms of Discrimination Against Women is the significant legal mechanism to secure women's human rights through international laws (Merry 2006). The convention includes discriminations occurring to

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women in political, economic, and educational spheres, and necessary steps to eradicate those (Merry 2006). "CEDAW is effective in improving women's social rights if implemented by democratic institutions because it aims at addressing multiple dimensional issues of women's rights" (Byrnes & Freeman 2011). It bridges the human rights and development agendas regarding women (Connors 2018). Bangladesh has ratified CEDAW in 1984 but has reservations on articles 2 and 16.1(c), justifying that those would go against Muslim family law/Sharia law, even though 10% of the population is non-Muslim (The daily Star 2019). The Eighth CEDAW Shadow Report (2016) of Bangladesh states that reservation on Article 2 and 16.1(c) helps to sustain remaining discriminations against women of our society. It also says that the Government does not want to engage in conflict with the religious groups, or anything contradicts with Holy Quran and Sunnah, even though the country is not run by Shariah or Quranic laws. So, in my paper, I have attempted to explore women's position within the law in our country, the scope of CEDAW for elimination of these subordinations and discriminations, the barriers of not ratifying all the articles of CEDAW, and the scope of women's agency connecting with the CEDAW Convention.

2. Women's Access into Existing Laws of Bangladesh

The constitution of Bangladesh has guaranteed equal rights to both men and women in public life and private life by the 'Family laws/Personal laws' which are discriminatory (Begum et al. 2011). The 'family laws' being based on religion, differ from different religions and guides the personal matters like marriage, divorce, guardianship of children, alimony and property inheritance (Begum et al. 2011). Country's Constitution allows these matters to be guided by the personal laws of each religion. Shehada (2016) states that, sexual division of labour within the family: biology is the base of Family laws. "Women are depicted as 'naturally weak', to be protected, maintained, dowered and placed under the guardianship of their male relative because they purportedly lack the 'natural' ability to be autonomous" (Shehada 2016: 91). According to Scutt (2016), the established laws of different countries have either overlooked, ignored or denied women's legal rights. Violence against women occurs in innumerable forms in Bangladesh including sexual harassment, rape, acid throwing, dowry, child marriage, wife abusing, sexual slavery through international trafficking beyond the boundary of class, caste, age, education, religion by the social, economic, political structure, the state laws, and policies (Zaman 1999). I have explored the discriminations occurring through these laws and policies briefly.

i). Women and Children Repression Prevention Act (Nari-o-Shishu Nirjatan Daman Ain) 2000

The Nari-o-Shishu Nirjatan Daman Ain 2000, is a landmark addressing extensive violence such as trafficking, rape, abduction, dowry violence, burning, and other perpetrations negatively impacting women and children. Aiming to prosecute such cases the law also has commenced special Nari-o-Shishu tribunals. Currently our country has 95 Nari-o-Shishu (women and children) tribunals (Human Rights Watch 2020). A lawyer from Naripokkho (women's rights organisation) explained- "There are so many wonderful things you will see in the national action plan, but when you look in the field, it isn't happening." (Human Rights Watch 2020). It has been 20 years since the Act

developed but implementation is disappointing. BRAC University (2015) conducted a study from 2009-2014 on the reason of low conviction rate of cases filed under the Nari-o-Shishu Nirjatan Daman Ain, 2000 and explored that conviction rates have decreased from about 2 percent to 0.42 percent. The Justice Audit found out that in 2016, courts disposed over 170,000 open Nari-o-Shishu cases, 0.5 percent of those accused were convicted only (Human Rights Watch 2020). Hence it is thought that the Act was not reducing violence rather accelerating crimes occurring to women and children from the beginning (Khan & Karim 2017). Furthermore, the Covid-19 pandemic has fueled on violence against women and girls. Nearly 70 percent violence has increased in March and April 2020 comparing to last year found by the human rights and legal services program of BRAC. In April 2020, a woman was killed by her husband with a knife on Facebook live. Another woman was killed by her husband in May 2020, hitting over the head with a brick, because she didn't serve cold water during iftar (Human Rights Watch 2020). These are not discrete incidents rather shortfall of our laws and their implementation which remain silent in case of women. The Government of Bangladesh enacted the "Domestic Violence Prevention and Protection Act, 2010", but the rules and regulations are not formulated yet, thus performance is still a challenge. As the definition of Domestic Violence is still a shortfall, it does not include marital rape as violence (BNWLA 2012).

Unfortunately, we are lack in legislation to incriminate sexual harassment in Bangladesh but has been addressed in laws and notable legal development has established. Section 509 of the Penal Code 1860 criminalizes acts, words, and gestures intended to "outrage the modesty of a woman" where a woman's "modesty" is the main concern, which can end up victimizing her only. Additionally, section 10 of the Nari-O-Shishu Nirjatan Daman Ain 2000, introduced *jounopiron* (sexual oppression) to criminalize someone who touches a woman or child (with any part of their body or with an object) or "violates a woman's modesty" in order to "illegally satisfy their sexual desires." Same wording problem remains in this Act. In 2009, only after a writ petition filed by the Bangladesh National Women Lawyers Association (BNWLA), the High Court issued 11-point directives to redress, prohibit and prevent sexual harassment in the workplace and educational institutions, where the court drew upon Bangladesh's obligations under the Convention on the Elimination of Discrimination Against Women (CEDAW) and our Constitution's (Huda 2019). Even though sexual harassment is legally criminal offence, but society validates using different masculine norms and ideologies which govern the law in general to not to take these incidents in account.

We also have Dowry Prohibition Act, 2018. A law passed in 1985 by the Government of Bangladesh, where dowry was made illegal (Amin & Huq 2008). But through the new Dowry Prevention Act, 2018, protections of women have been compromised. The Section 2(b) omits wedding "gifts" as a dowry. Section 6 includes punishment of imprisonment and a fine for false allegations which restrains women to go for justice without evidence. Furthermore, section 4 criminalizes both giving and receiving dowry even if they were bound to provide dowry under threat or violence which could suppress to reporting cases (Human Rights Watch 2020). According to Rahman (2018), dowry is a widespread phenomenon in Bangladesh and if wife's family fail to pay then wives go through various physical, psychological violence and even femicide. 73 cases were found in 2020 where dowry-related issues were the reasons for physically abusing women or girls, and in 66 more cases husband or his family killed her (ASK 2020).

ii). The Muslim Marriage and Divorce Registration Act, 1974

Women's access into the marriage and divorce registration act is also controlled through different sections. They are unable to claim for equality because of these legalized evident discriminations. Not only in Muslim marriage and divorce registration but Hindu marriage and divorce act is also discriminatory for women in Bangladesh. "Marriage under the age of 18, defined as child marriage in Bangladesh, is a reality for millions of women globally, especially in the developing world, and is a health and human rights issue of grave concern" (Kamal et al. 2013). 52% girls are being married before the age of 18 in Bangladesh, and among them 18% are younger than 15 (Banarjee 2020). Among South Asia, Bangladesh has the highest child marriage rate (Banarjee 2020). Recently in 2017, Bangladesh backpedaled in the fight to end child marriage through the Child Marriage Restraint Act, 2017 (CMRA) permitting girls under 18 to marry under undefined "special circumstances" (Human Rights Watch 2020). Global Citizen webpage (2017) has written an article on it, named- *"Girls of any age can be married in Bangladesh with the new law"*. Because the act contains two loopholes- parental permission and special circumstances. It has eventually worsened the unstoppable child marriage occurring in the country. The special provision in the Child Marriage Act, 2017 has increased child marriage during covid time because of the poverty and different other reasons (The Daily Star 2020).

Consent is a requirement for both men and women during marriage under Bangladeshi law and should be expressed in front of at least two witnesses (Afroz 2019). But the practice is opposite, where women are not even asked for consent most of the times (Kamal et al. 2014). Moreover, inferiority of women has been legalized through the witness of Marriage. The Islamic Law explains the requirement of two witnesses for a valid marriage and they should be men, otherwise one man and two women, which has legalized woman as "half of man" (Hossain 2003: 99). This is another barrier of women's access to the law as this example is being used to explain woman as half of men limiting their equal access among legal and societal laws.

Divorce law has also different level of unequal accessibility for men and women. Men have solitary right to divorce in the law, no reasoned ground is necessary, have arbitrary power while divorcing (Begum 2004; Akter 2020; Hossain 2003; Kamal et al. 2014). But women can ask for divorce under few circumstances- husband is absent for a long time, long adjudication, refuse to bear maintenance, imbecility etc. (Akter 2020; Hossain 2003), which are extremely tough to prove. According to the Islamic Act- before fulfilling these conditions women must take that permission to divorce from her husband during marriage. "The Nikah Registrar shall not register a divorce of the kind known as Talaq-i-tafweez except on the production of a document registered under the Registration Act, 1908 (XVI of 1908), by which the husband delegated the power of divorce to the wife or of an attested copy of an entry in the register of marriages showing that such delegation has been made" (The Registration Act, 1908). Husbands are asked during marriage if he wants to permit his wife to divorce him by the registrar/kazi which legally close the door for women to access the right. Which is now possible by the court after completing few procedures. Hindu women do not have legal right to divorce even in Bangladesh according to the Hindu Family Law and only women have to go through immense sufferings because of that (Afroz 2019: 264). Where polygamy is legalized for men in both personal laws of Muslim and Hindu (Begum 2004; Akter 2020; Hossain

2003)). Divorce rate has increased in Bangladesh recently which is still treated as a taboo (Afroz 2019: 261). Feminist activists and different NGOs are bargaining to remove discriminatory sections from the marriage registration form and government has also responded positively so far.

iii). Revisiting Existing Rape Law

The definition and punishment of rape has been provided by section 375 and 376 of the Penal Code 1860 of Bangladesh. The Nari-o-Shishu Nirjatan Daman Ain enacted in 2000, has taken the oldest colonial definition of 'rape' just the same (Runa 2020). Recently, President issued an amendment of Nari O Shishu Nirjaton Daman Ain incorporating the capital punishment for rapist on 13 October 2020, because of the huge rape cases occurring all over the country and protests against those. But survivor and witness protection system are still missing, defense lawyers are not forbidden from questioning survivor's character in court (Runa 2020). Institutional obstacles by police and court officials to women and girls are legalized by section 155(4) of the Evidence Act 1872, says that they can refuse to file the case if they find the victim was "of generally immoral character" (The Evidence Act 1872). Which prevents women from taking the case into the court most of the times (Begum 2004). Consequently, the number of rape cases are not decreasing even after having several laws (Runa 2020). Rape perpetrators were surveyed by a UN study, found 95% of urban respondents and 88% of rural respondents faced no legal consequences after rape (Fulu et al. 2013). Even though there are different ordinance existing to secure rape victim but law itself an obstacle to access them.

iv). Marital Rape Law

According to the Penal Code, 1860, marital rape means sexual intercourse between husband and wife but without the consent of the wife (The Penal Code, 1860; BNWLA 2006). But the 375 section of the Penal code says, "Sexual intercourse by a man with his own wife, the wife not being under thirteen years of age, is not rape". Therefore, if the 13 years old wife is forced to have intercourse by her husband that is not rape (Banarjee 2020). Fahmida & Doneys (2013) have studied that women's sexual pleasure or to refusing sex are denied by their husbands rather forced to sexual intercourse. Marital rape however is not perceived as a crime here, neither people discuss this in public (Rahman 2015). Johnston & Naved (2008) have found that sexual oppression to married women and related data is very few because of the legal perceptions regarding it. As sexual violence to wives is not criminal offence, there are many research found on domestic violence but not on sexual violence occurred by husbands (Johnston & Naved 2008).

On October 25, 2020, a 14-year-old Nurnahar from the Kalia village in Basail upazila, Tangail, reportedly died due to excessive genital bleeding after being admitted at Dhaka Medical College Hospital (DMCH). Lal Khan told Dhaka Tribune, "My granddaughter informed us that she had been receiving treatment from a village doctor (kabiraj), since she told her in-laws that she has been bleeding from the first night of her marriage." Far from ensuring proper medical treatment, Rajib continued having sexual intercourse with Nurnahar, disregarding the girl's injurious condition. It is only when Nurnahar's condition took a dangerous turn that her in-laws took her to a private clinic in Tangail on October 22, and tactfully handed over the girl's custody back to her family and relieved themselves. While it should be clear to anyone that Nurnahar died after being forced to have intercourse but our law

would not consider Rajib's action to be rape, as marital rape of wives above the age of 13 is specifically excluded from the offence of rape in section 375 of the Penal Code 1860 (The Daily Star 2020).

No one was accused for Nurnahar's murder. As if, it was a 'natural death'. Technically marital rape law contradicts and at the same time supports child marriage. Where marital rape law has been developed to support the men exclusively (Ryder & Kuzmenka 1991). Even though Nurnahar was killed because of marital rape but our law limits to claim justice.

v). Property distribution among Family Laws/Personal Laws

"One of the factors working behind the backwardness of women is limited and unjust right and access to resources, particularly to land" (Sourav 2015). The constitution of Bangladesh although guarantees equal rights to men and women but the discriminatory 'personal laws' are paradox (Begum et al. 2011). Property includes one of those where discriminative property distribution practices are usual and legalized (Akter 2016). Majority of the women are marginalized from their property in the social practice (Khan et al. 2016; Akter 2016). Even though our constitution has clear statement of being non-discriminative to women, but religion based personal laws have discrimination regarding inheritance property distribution and this discrimination varies religion to religion (Sourav 2015: 08).

The Muslim Sharia Law states sons as the most important heir in Bangladesh and property is distributed centering them (Khan et al. 2016). Daughters are allowed to get one third portion of the property and rest of the two portions are for son. If a father does not have a son, then daughter will get half of the property and rest of the property will be distributed among the relatives (Khan et al. 2016). The situation of Hindu women is more piteous as they do not have right over inheritance land according to the Hindu family law/Daibhaga law (Khan et al. 2016). Sourav (2015: 10) also explains, the customary practices of many indigenous communities are more like the family laws where the sons are the owner of the father's property among Santal or Oraon. But among the matrilineal like Garo indigenous group of Bangladesh, property and descent are being inherited from mothers to daughters (Sourav 2015: 11).

Prioritizing son regarding property distribution seems central in different family laws in Bangladesh where not only own son rather brother's sons and daughter's sons are also factors of being able to be entitled for the property. It reminds me about Linda Stone (1978), who has mentioned that women from Nepal, where only bearing children, especially sons, creates women's position among family, household, and patriarchy. Ortner (1972) and Kandiyoti (2007) have explained similar constraints of women in patriarchal society. But the overall expectation of having son or male heir is interconnected with discriminatory property laws where law and culture both works together limiting the access of women into the law, both legally and socially. The government of Bangladesh tried to revise inheritance property law in 2011 by providing equal rights to men and women, but that created countrywide strike based on Muslim Sharia Law (Khan et al. 2016). Moreover, it reflected societal aspects and hesitance on men's equal access into property distribution law.

3. Women's Access into the Law Lately

Recently we have faced two different and new incidents added to women's access into the law, which reveals blur boundaries in different parts of the state laws which can easily limit women's access into the law.

Wearing Islamic dress/hijab:

Dr Muhammad Abdur Rahim, director of the institute under the health directorate, in a circular asked male employee to wear clothes above the ankle and women below the ankle with hijab. "It is mandatory to keep mobile phones on silent mode or switch them off [for all] and wear clothes -- above the ankle for men and below the ankle along with hijab for women staffers; and the instruction is to adhere to the [Islamic] dress code," the circular read (The Daily Star 2020).

Women Muslim Marriage Registrar (Kazi)?

A decision of the High Court Division (HCD) recently prohibits women to act as nikah/marriage registrars in Muslim marriages. There was a writ petition challenging the validity of a decision of the law ministry cancelling a panel of selected nikah registrars (or commonly known as "kazi") for Dinajpur's Phulbari municipality. The reason shown for cancellation was that all three selected candidates were women and "in the present realities of Bangladesh, women could not be appointed as marriage registrars". One of the selected panelists had filed the petition, which was eventually rejected by the HCD (The Daily Star 2021).

Both of above cases are struggles of women to have access into the law. In both cases women's access was not defined earlier, that's why the health directorate was able to issue that circular which was rejected by the court at last. And in second case when they claim for it, they were refused by showing socio-cultural ideologies. These are only two examples of regular incidents of denying women's access into the law but are not limited to. The second case also translates women's agency to me as they are claiming their legal rights.

4. Exploring the Scope of CEDAW in Bangladesh

Established laws are not just legal codes rather influence our ideology, perceptions, societal power structures as a social phenomenon (Shehada 2016). In that perspective we are already in a better position by having established laws and now it's time to ensure those implementation and eradication of all sorts of discriminatory laws and policies. However, as part of the broader process of social and economic changes, the gender relationship in the country too has been passing through a process of transformation by accomplishing some positive changes towards women. For example, sex difference has disappeared in school enrolment in the primary and secondary levels (GED 2009), more women are participating in labor market without gender gap, women's life expectancy has increased (BBS 2009), and women engaging themselves to public spaces more than before. Another hope is the government has endorsed the international treaties and conventions such as CEDAW, CRC, ICPD, MDGs, etc., which have positive impact on women. But among the treaties and conventions, the CEDAW holds a unique importance eliminating all forms of discrimination against women (Begum et al. 2011). For that, a

request has been made to the Ministry of Law, Justice and Parliamentary Affairs, and the Ministry of Religious Affairs by the Ministry of Women and Children Affairs of Bangladesh to investigate the possibilities of withdrawing the reservation (Begum et al. 2011). Women's movement actors are raising awareness and continuously pressuring state to change discriminatory policies and establish women's rights (Nazneen 2017).

Although CEDAW itself has few barriers in it which limits the scope and need to change to make fruitful in every society. Merry (2006) suggests overcoming a structural problem of CEDAW to make it more effective. According to CEDAW, violence against women refers to bodily injury, torture, pain and death like other human rights violation. But she reminds keep in mind that those are interconnected to everyday problem and embedded in kinship, religion, warfare and nationalism of every society. But violation of human dignity in the name of local ideology or long-standing tradition should also not be accepted (Farmer & Gastineau 2002). Another problem is localization of CEDAW, Merry (2006) mentions. Because those ideas are developed in global settings but not understandable in local places, and eventually gets rejected by the local community. CEDAW ideas should be understandable by the local people to make those implemented and accepted. Rosenblum (2011) explains another limitation of CEDAW which is its central term 'women', that passively confirming all the male/female disparities and emphasizes to change it for better outcome. Furthermore, there are confrontations implementing CEDAW, but it is influential to establish gender equality internationally. These positive changes and potential scopes make us hopeful to make a better country for women without any discriminatory law.

5. Conclusion

Women's inequality in Bangladesh is socially composed than legally (Hossain 2003), but women's status is destined by the legal rights (Begum 2004). Meaning, if there is existing evident law of equality then women have the ground to claim for their rights. Hankivsky et al. (2014) have also argued for Intersectionality Based Policy Framework to eradicate all the discriminations of the society. According to Phillips & Cole (2013: 9), "Publics are made, and they can be unmade". Means, dominant masculine state laws, traditions and customs that limits women's access into the law, are changeable. This is also true for the discriminative laws and policies remaining in Bangladesh. CEDAW would be the prior ground to do that by removing reservation from article 2, because Bangladesh government will be liable to remove all the discriminative laws and policies against women by ensuring equal legal access. Even though we have established several laws to protect women's rights, but implementation always remains in question. Positive changes should be visible only through implementation through those laws and policies. As the Haitians say, "Laws are made of paper; bayonets are made of steel" (Farmer & Gastineau 2002), similarly we should not stop by establishing laws rather ensure the implementation to bring changes. Women's empowerment and achieving gender equality through elimination of persistent gender discrimination is a continuous process in Bangladesh where different NGOs and women rights groups are continuously working. I am hopeful that CEDAW will prevent patriarchal society and discriminative laws to subordinate women one day and ensure women's equal access into the laws and policies.

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