



DISSERTATION

ON

**Discriminatory Muslim personal law affecting gender equality in Bangladesh:
A constitutional analysis to ensure gender Justice**

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DECLARATION

I, Nuzhath Jahan declare and confirm that the thesis presented for the undergraduate program as Law- 406 (Supervised Dissertation) of the Department of Law, East West University was written entirely by me, is entirely the result of my efforts, and has not been submitted for any other degree or professional certification. Any material or content that has aided in the completion of this study is expressly referenced to and acknowledged. It does not contain any previously written or published content by another individual, unless the text specifically states so.

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Abstract

This essay examines how Bangladesh's Muslim personal laws discriminate against women, with a particular emphasis on how these laws affect gender justice. It examines societal norms, legal frameworks, and historical developments, highlighting important areas of concern and suggesting reform initiatives. The research highlights how crucial constitutional principles are to maintaining gender justice.

The main body of the paper is a thorough constitutional analysis of the discriminatory features of Bangladesh's Muslim personal laws. Examining these laws in the context of constitutional articles guarantee of fundamental rights, equality, and nondiscrimination. This analysis looks at constitutional clauses and court rulings from Bangladesh and other countries in comparison to find areas of agreement, conflict, and possible room for reform within the current legal system. The study also investigates how gender differences in Muslim personal laws might be addressed through legislative changes and judicial interpretation. To advance gender equality and justice, it looks at significant court rulings, legislative changes and policy initiatives.

Through an evaluation of these policies' effectiveness in opposing patriarchal standards and defending women's rights, this analysis aims to shed light on possible directions for both social and legal change.

A summary of the study's findings and suggestions for advancing gender justice within Bangladesh's framework of Muslim personal laws are provided in the conclusion. It highlights how crucial it is to fight discriminatory practices and advance gender equality through legislative reforms, judicial activism, and public involvement. Bangladesh may work towards a more inclusive and equitable legal system that protects the rights and dignity of all of its citizens, regardless of gender, by harmonizing Muslim personal laws with the constitutional values of justice, equality, and human rights.

Chapter 1:

Introduction

1.1 Background of the Study

Gender equality and non-discrimination are guaranteed by Articles 27 and 28 of the 1972 Bangladesh Constitution. Gender disparities continue despite these constitutional guarantees, especially in the context of Muslim personal law (MPL). Important facets of Muslim personal life in Bangladesh are governed by MPL, such as inheritance, maintenance, divorce, and marriage. These laws, which are based on conventional interpretations of Sharia, frequently uphold gender inequality and patriarchal standards. To ensure gender justice, this study will examine the discriminatory aspects of MPL in Bangladesh and how they conflict with constitutional provisions. Notably, the historic case Bangladesh National Women Lawyers' Association highlights the judiciary's responsibility under MPL to address gender disparities.¹ Muslim personal laws in Bangladesh have historically been influenced by post-independence reforms, colonial legacies, and Islamic jurisprudence. Despite having their roots in religious customs, these laws have changed over time but still uphold social norms that place a premium on males over women. MPL can restrict women's autonomy and uphold patriarchal structures in situations where it permits behaviors like polygamy and requires a guardian's approval for a woman to marry. The constitutional guarantees of nondiscrimination and gender equality conflict with these practices. For example, the Muslim Family Laws Ordinance, 1961 makes an effort to control polygamy but is unable to guarantee gender parity.²

Post-divorce maintenance and custody laws under MPL often fail to support women, leaving them in precarious financial situations. Custody laws favor fathers, undermining women's rights as equal guardians. This legal discrimination impacts women's financial stability and perpetuates long-term gender inequalities, as seen in the Hefzur Rahman case.³

Muslim Personal Law (MPL) in Bangladesh grants women half the share of men, despite constitutional promises of equality. This discrimination affects women's financial stability and

¹Bangladesh National Women Lawyers & Association v. Bangladesh, 42 DLR (AD) 1990..

²Muslim Family Laws Ordinance, 1961.

³ Hefzur Rahman v. Shamsun Nahar Begum, 51 DLR (AD) 2001.

perpetuates societal gender inequalities. Reforming MPL laws aligns with constitutional principles and international human rights standards, promoting gender justice and equal rights for women.⁴ Bangladesh can work toward a more inclusive and equitable legal system that protects the rights and dignity of all of its citizens, regardless of gender, by harmonizing Muslim personal laws with international and constitutional human rights standards.⁵

1.2 Hypothesis

The study's hypothesis is that some aspects of Bangladesh's Muslim personal law conflict with the constitutional principles of gender equality and nondiscrimination. These discrepancies lead to structural gender inequality that threatens the nation's equality and rights for women.

1.3 Research Question

Which provision of muslim personal law affect gender equality in Bangladesh? Inconsistency of such provision with constitutional provision of gender equality.

1.4 Research Objectives

The followings are the main objectives of this study:

1. To determine which specific Muslim personal law provisions in Bangladesh have an impact on gender equality.
2. To examine how these clauses conflict with the gender equality guarantees found in the constitution of Bangladesh
3. To suggest legislative and policy changes that could guarantee gender justice by bringing Muslim personal law into compliance with constitutional values.

1.5 Literature Review-

The literature on Muslim Personal Law (MPL) and gender equality in Bangladesh demonstrates an intricate interaction between cultural, legal, and religious aspects. This review highlights the notable gender disparities ingrained in MPL by synthesizing important studies and legal analyses,

⁴ Rabia Khatun v. Muklesur Rahman, 49 DLR (AD) 1997.

⁵ Constitution of Bangladesh, Articles 27 and 28.

with a particular focus on laws regarding inheritance, maintenance, divorce, and marriage. Research on Bangladesh's MPL marriage laws reveals notable gender differences. According to Hossain and Welchman (2005), the legalization of polygamy and the need for parental approval before a woman can marry severely restrict women's autonomy and uphold patriarchal norms. Articles 27 and 28 of the Bangladeshi Constitution guarantee gender equality and prohibit discrimination, which is violated by these practices.

A notable gender imbalance in MPL is highlighted by the men's unilateral right to file for divorce through talaq, as opposed to the more demanding requirements women must fulfill to file for divorce. Rahman (1994) points out that although men are free to file for divorce at any time, women are discouraged from doing so even in situations of abuse or incompatibility due to several barriers, including drawn-out legal processes and social stigma.

Laws under MPL regarding custody and maintenance after a divorce also display bias against women. According to Barkat et al. (2011), maintenance orders frequently fall short of giving women—who are usually left in unstable financial situations after divorce enough support. Fathers are typically given preference under custody laws, which further disadvantages women and threatens their rights as equal guardians of their children.

The MPL inheritance laws give women half of what men get, which is in direct opposition to the equality guaranteed by the constitution. According to Saikia (2012), this legal discrimination not only compromises the financial security of women but also upholds wider gender disparities in society. In order to bring MPL into compliance with international human rights standards and constitutional principles, reform in these areas is imperative. The prevalent gender disparities within MPL in Bangladesh are demonstrated by the literature.

These differences highlight the need for a thorough examination and revision of MPL to guarantee that it complies with the nondiscrimination and gender equality mandates of the Constitution. Bangladesh can work toward a more just and equitable legal system that protects the rights and dignity of all of its citizens, regardless of gender, by resolving these legal inconsistencies.

1.6 Research Methodology

Qualitative research methods will be followed in the study. The research will use document analysis, case studies, and information gathering. Data will be gathered from secondary sources such as academic journals, legal documents, and reports, as well as primary sources like case studies and interviews. Materials from governmental agencies are among these sources. The goal is to gain a thorough understanding of the subject from a variety of angles. This method facilitates the collection of rich, detailed data. Following data collection, analysis will be done to find important themes and insights. A thorough grasp of the research topic is ensured by this approach.

1.7 Scope of the Study

This research is restricted to examining Muslim personal law in Bangladesh with respect to gender equality. It focuses on the legal frameworks surrounding inheritance, maintenance, divorce, and marriage. The goal of the study is to offer a thorough understanding of how these laws affect women's rights and to suggest changes that would bring them into compliance with constitutional protections.

1.8 Limitations-

This study faces several limitations:

1. The study is limited to Muslim personal law and does not encompass other personal laws in Bangladesh.
2. Limited availability of empirical data and access to legal documents may restrict the depth of analysis.
3. Addressing religious and cultural aspects of MPL may be challenging due to potential sensitivities and resistance to change.

Chapter 2: Gender Equality

2.1 Introduction

Men and women should be treated equally as they are equal before law. Bangladesh's constitution was enacted with "equality" listed as one of its tenets in the preamble. So, everyone shall be treated equally by the law. However, there is no set code for families. Personal law continued to exist on the basis of religious laws and customs, and matters were adopted. The Muslim law of Bangladesh shows that males and females are not equal. These laws conflict with the Constitution. Gender discriminations are found in marriage, divorce, inheritance etc.⁶ Achieving gender equality is crucial for both sustainable development and economic progress, in addition to being a fundamental human right. We can all live in a more prosperous and good society if we close the gender gap.⁷

2.2 What is Gender Equality According to The Constitution –

According to the Constitution of Bangladesh, all citizens of Bangladesh are equal before law and all are entitled to equal protection of law. This is under Article 27 of the Constitution. Article 19 says the state shall endeavor equality and opportunity for all citizens. The state shall work to guarantee every citizen equal opportunities. Moreover, the State shall take appropriate action to eliminate economic and social discrimination between people and guarantee that citizens have equal access to opportunities and wealth to achieve consistent economic development across the Republic. The State shall endeavor to guarantee women's participation and equality of opportunity in all areas of national life. In Article 28, it is said that no citizen of the State may be subjected to discrimination based solely on their place of birth, gender, race, or religion. Women and men will enjoy equal rights in all areas of the state and public life. So these articles are about equality and

⁶ Hossain, Kamrul "In Search of Equality: Marriage Related Laws for Muslim Women in Bangladesh," *Journal of International Women's Studies*: Vol. 5: Iss. 1, Article 6.

(2003)<<https://vc.bridgew.edu/cgi/viewcontent.cgi?article=1524&context=jiws>> accessed on 3rd March, 2024

⁷Dr Fahmida Khatun, 'Invest more to accelerate gender equality' (8 March, 2023)

these are fundamental rights of Bangladesh's citizens. ⁸"Equal protection of law" refers that everyone should be treated equally in similar situations and that no one should be subjected to discrimination or make a difference when it comes to granting rights or imposing obligations and liabilities. So the constitution guarantees gender equality for the citizens of Bangladesh ⁹

2.3 Difference between Gender Equality, Equity, and Women's Empowerment-

There is difference between gender equality, equity and women's empowerment. The process of treating men and women fairly in accordance with their individual needs is known as gender equity. Strategies and actions to make up for the historical and societal disadvantages faced by women that keep them from competing on an even playing field with men are required to ensure fairness. The image illustrates the contrast between gender equity and "equality," which is predicated on the idea that everyone gains equally from the same level of assistance.

Real gender equality follows from gender equity. In order to truly achieve gender equality, men and women must experience equal outcomes and be able to enjoy goods, opportunities, resources, and rewards on an equal basis. The ideal outcome is gender justice, which can be attained by tackling the underlying causes of gender inequality and removing obstacles to opportunities and resources. In instances of gender inequality, women are typically marginalized or at a disadvantage when it comes to making decisions and having access to financial and social resources. Thus, the achievement of gender equality depends on the empowerment of women, with an emphasis on recognizing and correcting power disparities and guaranteeing that women have greater freedom to run their own lives.¹⁰ Women's empowerment boosting a woman's confidence in herself, her ability to make decisions, her access to resources and opportunities, her control and authority over her life both inside and outside the home, and her capacity to bring about change. However, gender issues center on how men and women interact in society rather than just women. In order to achieve gender equality, men's and boys' behaviors and attitudes are crucial. Gender equality has not been fully achieved in any nation. Scandinavian nations such as Norway, Finland, Sweden, and Iceland

⁸ The constitution of people's republic of Bangladesh, art 19,27,28

⁹ Government of Bangladesh and Others vs. Hamento Kumar Barmon, 65 DLR (AD) (2013) 152.

¹⁰ 'Gender Equality Vs Equity' <<https://www.enterprise-development.org/weegateway/gender-equality-vs-equity/>> accessed on 30th March,2024

are at the forefront of global efforts to reduce gender inequality. The distribution of opportunities, resources, and income between men and women is generally equal in these nations. The Middle East, Africa, and South Asia are the regions with the biggest gender disparities. Nonetheless, when it comes to gender equality, a number of these nations—including Lesotho, South Africa, and Sri Lanka—outperform the US.¹¹

2.4 Conclusion-

While occasional policy changes have been made to lessen gender inequality in various sectors, due to inadequate oversight and execution, the results of these efforts have not materialized. Women are accustomed to being low-status, low-wage jobs with little room for promotion. The study's findings show not only the extent of gender inequality in several domains (work, health, and education), but also its trends, which need to be taken into account when developing sensible policies. According to the study, less progress is being made this year than in previous years in terms of eliminating gender inequality. The creation of effective population and development strategies depends on the advancement of gender equality and women's empowerment. Though the constitution ensures gender equality, there are many provisions in Bangladesh which conflicts with the constitution especially in the Muslim Personal law. There are discriminations about marriage, divorce and inheritance in the laws.¹²

¹¹ 'Global Issues: Gender Equality and Women's Empowerment' <https://www.peacecorps.gov/educators-and-students/educators/resources/global-issues-gender-equality-and-womens-empowerment/#:~:text=Gender%20equality%20means%20that%20men,aspect%20of%20achieving%20gender%20equality>. accessed on 15th April 2024

¹² Jannatul Ferdaush K. M. Mustafizur Rahman, *Gender Inequality in Bangladesh* (First Published 2011,Unnayan Onneshan - The Innovators) 17

Chapter 3

Historical Overview of Muslim Personal Law in Bangladesh

3.1 Introduction

In Bangladesh, Muslim personal law regulates many facets of Muslim citizens' lives, especially those pertaining to marriage, divorce, child support, and inheritance. These laws, which have their roots in Islamic Sharia, have been molded over centuries by historical, social, and political factors. This chapter gives a brief history of Muslim personal law in Bangladesh, looking at how it has changed over time and how it affects gender equality. The analysis demonstrates how gender disparities have been sustained by traditional interpretations and applications of these laws, highlighting the need for significant reforms to bring them into compliance with constitutional guarantees of equality.¹³

3.2 Evolution of Muslim Personal Law-

In Bangladesh there are many Muslim personal law in Bangladesh like The Muslim Family Laws Ordinance 1961, The Muslim Marriage and Divorces (Registration) Act 1974, The Muslim Personal Law (Shariat) Application Act,1937), The Dissolution Of Muslim Marriages Act,1939 etc.

Pakistan's Muslim family laws have not changed since the country's independence in 1947. The 1956 Constitution was the first to include anti-Semitism clauses. The establishment of a seven-member Commission on Marriage and Family Law in 1955 marked the beginning of the interesting history of the MFLO. Six modernists and one traditionalist religious scholar constituted the commission appointed by Mia Abdur Rashid to provide a report on matters such as proper marriage and special courts for divorce documentation, divorce rights, maintenance and women's rights. The strong opposition of the ulama to the report resulted in the commission drawing up a questionnaire to determine public preference. To provide a report on issues such as proper marriage and divorce documents, divorce rights, maintenance, and special courts for women's rights, Mia Abdur. Rashid appointed a commission consisting of six modernists and one traditionalist religious

¹³ The Muslim Personal Law (Shariat) Application Act 1937 (Bangladesh)

scholar. In response to the ulama's sharp criticism of the report, the commission created a survey to ascertain the public's preferences.

The Shariat Act 1937 during the colonial era, legal archives, and historical records of British India, which were applicable in what is now Bangladesh, can be used as references for this historical legislation. Through government archives, historical documents, and scholarly works on Bangladesh's independence and early governance, one can investigate the secular legal framework during Sheikh Mujibur Rahman's leadership.¹⁴

3.3 Impact on Muslim Personal Law For Gender Equality-

The Impact of Muslim personal Law on gender equality is seen everywhere and badly. Here are some areas where impacts are found-

Marriage- Islamic law allows polygamy but there is a strict provision of the Quran. Polygamy can be used in some specific areas. But unfortunately, men misuse this system. If a male person marries four wives, he has to treat them equally. Section 6 of Muslim Family Law 1961 talks about polygamy. It states that only the official arbitration council allows a man to take another wife. If the Council allows him and thinks that is necessary and just then he can remarry. Otherwise, the marriage will not be registered.¹⁵ This creates violence among the wives. The male often tortures the wives mentally and physically due to this.

Divorce- Though a woman generally has far less legal authority than her husband to file for divorce, the Dissolution of Muslim Marriage Act of 1939 gives the wife some legal protections. A husband may give his wife a verbal Talaq if he wants to get a divorce. But a wife cannot give divorce by pronouncing it. Section 2 of the Dissolution of Muslim Marriages Act, 1939 grants a wife the right to request a decree for the dissolution of her marriage.

So we can see there is gender discrimination in the law for the dissolution of marriage. As a result, women suffer a lot in Bangladesh. Because males have a superior power to give Talaq. Most of the women of Bangladesh are financially independent on husbands. By giving easily divorce, they

¹⁴ D.F.Mulla, *Principles Of Muslim Law* (5th ed Kamrul Book House 2002)

¹⁵ Dr. Muhammad Ekramul Haque, *Muslim Family Law* (First Published 2015, London College Of Legal Studies)

become helpless. They also get mentally shocked. After the dissolution of a marriage, a woman has no respect in our society. Even they are neglected by their family.

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Inheritance: According to Shariah Law, the deceased's son and daughter split their property in a 2:1 ratio, with the husband getting one-fourth of the deceased's property and the daughter getting half of the son's share. The 'Doctrine of Exclusion' also grants the closest relatives—mothers, sisters, grand daughters, and grandmothers—a smaller share of the inheritance or prevents them from inheriting anything at all.¹⁷

3.4 Conclusion –

The historical evolution of Muslim personal law in Bangladesh reveals a complex interplay between traditional Islamic jurisprudence, colonial influences, and post-independence legal reforms. While some efforts have been made to address gender disparities, significant challenges remain. The persistence of discriminatory provisions in marriage, divorce, maintenance, and inheritance laws underscores the need for continued legal and policy reforms. Aligning Muslim personal law with constitutional principles of gender equality is crucial for ensuring justice and equality for all citizens, particularly women.,¹⁸

¹⁶ FM Associates, *Divorce Laws and Procedures In Bangladesh* [https://www.fmassociatesbd.com/divorce-laws-and-procedures-in-bangladesh#:~:text=\(ii\)%20Wife's%20Power%3A%20\(i%2Dtawfid%20or%20delegated%20talaq](https://www.fmassociatesbd.com/divorce-laws-and-procedures-in-bangladesh#:~:text=(ii)%20Wife's%20Power%3A%20(i%2Dtawfid%20or%20delegated%20talaq) accessed on 20th April ,2024

¹⁷ Issa Khan, Md. Faruk Abdullah, Noor Naemah Abdul Rahman, and Mohd Yakub Zulkifli Bin Mohd Yusoff, 'The right of women in property sharing in Bangladesh: Can the islamic inheritance system eliminate discrimination?' [2016] 5(1) Springer 1695

¹⁸ Constitution of the People's Republic of Bangladesh 1972, art 27.

Chapter 4

Constitutional Provisions of Gender Equality In Bangladesh

4.1 Introduction-

The term "fundamental right" refers to a category of human rights that are defined by a constitution and guaranteed protections from outside interference. The reason they are called fundamental rights is that they are enshrined in the ultimate or fundamental law of the land, which supersedes all other laws in the land and has a supreme society. Every citizen of Bangladesh is granted several substantive fundamental rights under Articles 26 to 47 of the constitution, including the freedom of expression, assembly, association, movement, and profession. Article 28 prohibits discrimination solely based on religion, race, caste, sex, or place of birth unless a provision specifically benefits Women, children or the less fortunate segments of society of Bangladesh.

In actuality, this piece advocates for citizens against discrimination. The state is not allowed to discriminate solely on the grounds listed in Article 28, but discrimination would still be legal if it were based on another national factor. Discrimination, which is defined as treating someone poorly or differentiating negatively from them, is a keyword in this article.¹⁹

4.2 Fundamental Rights and Gender Equality in Bangladesh-

Every citizen is equal before the law and has a right to equal protection under the Constitution. In actuality, Part III of the Constitution, which deals with fundamental rights, states in Article 26(1) that "all existing laws inconsistent with the provisions of this Part" "shall, to the extent of such inconsistency, become void on the commencement of this constitution." The Constitution's Part III, which deals with Fundamental Rights, states further in article 26(2) that "the State shall not make any law inconsistent with any provisions of this Part" and that "any law so made shall, to the extent of such inconsistency, be void." Stated differently, any legislation that permits discrimination will be considered unconstitutional. The Constitution states that there shall be no sex-based discrimination, that women shall have equal rights to men in all areas of the State and public life, that no educational institution shall refuse to admit a woman, and that there shall be no

¹⁹ BD Lex, 'Fundamental Rights in Bangladesh Constitution' (2022) <https://www.linkedin.com/pulse/fundamental-rights-bangladesh-constitution-bdlex-manupatra/> accessed 2nd May, 2024

limitations, liabilities, or conditions placed on a woman's ability to enter any public entertainment or resort. Bangladesh's Constitution, as amended Women are guaranteed participation in all areas of national life by Article 10. Women are guaranteed representation in local government institutions by Article 9 of the Constitution. In order to eliminate the difference in living standards between urban and rural areas, Article 16 guarantees the progressive adoption of effective measures in rural development.

This is read in connection with Article 19, which mandates that the State make an effort to guarantee that every citizen has equal access to opportunities. This is an addition to Article 20, which states that wages shall be paid to all on the basis of the maxim "from each according to his abilities to each according to his work" and prohibits discrimination. Article 28(2) states that women shall have equal rights with men in all areas of the State and public life. Article 27 declares that all citizens are equal before the law and are entitled to equal protection of the law. Article 28(1) forbids the State from treating any citizen unfairly on the basis of "sex," among other things. The state is tasked with ensuring that every citizen has equal opportunities and eliminating social and economic inequality, according to Article 19 of the Constitution. It gives the state the authority to provide special accommodations for women, and Article 29 guarantees equality for women working in government. The Constitution recognizes the disparities that women experience and the need for action to level the playing field for them and men. While they are equally qualified to run for public office, women are given reserved seats in legislatures and other public bodies.²⁰

4.3 Role of the Judiciary in Interpreting the Constitution-

In interpreting the Constitution and ensuring that its principles are respected, the judiciary is essential. Courts have the power to use judicial review to determine whether laws and other acts that may violate fundamental rights, including gender equality, are constitutional. The following notable cases highlight the role of the judiciary in this context: The Supreme Court of Bangladesh upheld the supremacy of the Constitution in the historic Anwar Hussain case, emphasizing the important role played by the judiciary in protecting the constitutional order.

The Judiciary is crucial in enforcing the interpretation of the Constitution and ensuring that its principles are upheld. Courts have the power to exercise judicial review to ensure the

²⁰Sigma Huda, LEGAL RIGHTS AND GENDER EQUITY,(2007) < <https://www.clcbd.org/journal/4.html> > accessed 5th May,2024

constitutionality of laws and other acts that may violate fundamental rights, including gender equality. The following notable cases demonstrate the effectiveness of the Judiciary in this regard: In the landmark Anwar Hossain case, the Bangladeshi Supreme Court affirmed the primacy of the Constitution, highlighting the crucial role the judiciary plays in safeguarding constitutional mandates.

The concept of ultra vires, which prohibits governments from acting outside the authority granted by the Constitution, was one of the Court's main issues. Any government action must be within the bounds of its constitutional powers and any departure from this rule would be unconstitutional.

The Supreme Court ruled that the government's seizure of Anwar Hussain Chowdhury's property exceeded its authority and was therefore unconstitutional. The court asserted that the petitioner's fundamental constitutional rights had been violated and that the government had exceeded its legal jurisdiction.

Courts have confirmed that they have the right to scrutinize government actions to ensure that they comply with constitutional norms. The court has shown its commitment to upholding the rule of law and protecting the rights of citizens by holding the government accountable for its illegal acts.

The case highlighted the responsibility of the judiciary to protect the constitutional mandate and uphold the supremacy of the Constitution, setting a significant precedent in the legal history of Bangladesh.

The Supreme Court's principled ruling upheld the fundamental tenets of constitutionalism, democracy, and the rule of law, strengthening the judiciary's institutional integrity and safeguarding the constitutional order.

The Supreme Court of Bangladesh was instrumental in protecting fundamental rights and promoting judicial activism to address constitutional provision violations in the Dr. Mohiuddin Farooque case.

Dr. Mohiuddin Farooq challenged the legality of his detention under the Special Powers Act, which allows preventive detention without trial, in a fundamental rights petition. This petition focuses on the case. Articles 31 and 32 of the Bangladeshi Constitution guarantee due process and freedom. Farooq is alleged to have been violated by detention.

The Constitution prohibits the state from arbitrarily violating the rights and liberties of individuals. The Court emphasized the importance of judicial activism in addressing constitutional violations. Judicial activism is the active role of the judiciary in interpreting and applying the Constitution, especially when the executive or legislative branches exceed their authority or violate fundamental rights. Dr. The Supreme Court's review of preventive detention under the Special Powers Act in the Mohiuddin Farooq case demonstrates its commitment to upholding constitutional principles and protecting the rights of citizens against arbitrary state action.

The judgment set a precedent for future cases regarding the role of the judiciary in protecting fundamental rights and upholding constitutional principles. The document reaffirmed the role of the judiciary in curbing executive dominance and emphasized the significance of judicial activism in promoting accountability and upholding the rule of law.

The case is a watershed moment in Bangladesh's legal history, emphasizing the judiciary's critical role in safeguarding fundamental rights and promoting rule of law. The Supreme Court's decision reaffirmed its commitment to constitutionalism and demonstrated its willingness to prevent abuses of power and protect citizens' rights and liberties.

The case revolved around a constitutional petition that Rupali Chowdhury filed, contesting specific provisions in Bangladesh's personal laws that upheld discrimination against women. The petitioner specifically challenged sections pertaining to marriage, divorce, inheritance, and maintenance, claiming that they were at odds with the fundamental rights guaranteed by the Bangladeshi Constitution, especially those that dealt with gender equality and nondiscrimination.

The contested provisions were thoroughly examined by the Supreme Court, which scrutinized their compliance with constitutional guarantees, before rendering its decision. Courts have recognized the fundamental conflict between the constitutional requirements of gender equality and private laws, which are often based on religious and customary practices. It underlined that although private laws may reflect customs and social norms, they should not infringe the fundamental freedoms guaranteed by the Constitution.²¹

Discrimination against women in matters of marriage, divorce and inheritance under applicable personal law was one of the main issues before the court. The court noted that some provisions

²¹ Rupali Chowdhury v Bangladesh (2007) 59 DLR (AD) 176.

perpetuated gender discrimination and undermined the concept of equality before the law by favoring men over women.

The Supreme Court in its decision emphasized the need to balance private law with the principle of gender equality found in the Constitution. While personal laws may have historical and cultural significance, the Court emphasized that they must be modified to reflect societal norms and constitutional requirements. It calls for a comprehensive approach to legal reform, to ensure that laws relating to family matters are consistent with the fundamental rights protected by the Constitution.

This judgment represents a major turning point in the legal history of Bangladesh and demonstrates the determination of the judiciary to fight gender-based discrimination in personal law. The Court emphasized the need for consistency with constitutional principles, strengthening its position as a defender of fundamental rights and an advocate for gender equality. restive stance.

4.4 Conclusion

The provisions of the Constitution of Bangladesh provide a strong foundation for gender equality and non-discrimination. Equal rights and protection are expressly guaranteed in Articles 27 and 28, which reaffirm the State's commitment to preserve these values. The role of judiciary is very important. However, achieving true gender equality is severely hampered by the coexistence of personal laws, particularly Muslim personal laws. 45 Personal law Discriminatory clauses continue to erode constitutional guarantees, emphasizing the need for comprehensive legal reform. Realizing the full potential of gender equality in Bangladesh and ensuring that private laws and constitutional principles are aligned to advance gender justice is essential.²²

²² 45 M. Jashim Ali Chowdhury An Introduction to THE CONSTITUTIONAL LAW OF BANGLADESH 4 th edn Book Zone Publication

Chapter 5:

Muslim Personal Laws in Bangladesh

5.1 Introduction

In Bangladesh, a body of legislation known as Muslim Personal Laws (MPL) governs family matters among Muslims. These laws, which are based on Islamic jurisprudence, regulate important family-related matters like inheritance, maintenance, marriage, and divorce. This chapter explores the nuances of MPL in Bangladesh, including its historical evolution, salient features, and effects on social justice and gender equality.²³ Over centuries, the MPL system in Bangladesh has changed as a result of both socio-political and religious influences. Throughout history, the Hanafi school of Islamic jurisprudence has shaped MPL in the area. But these laws underwent substantial codification and modification during the colonial era, leading to the passage of laws such as the 1937 Shariat Act, which attempted to codify the application of Muslim personal laws.

MPL in Bangladesh still reflects gender biases and patriarchal norms, even after later legislative changes. The MPL contains some clauses that continue discrimination and inequality against women, especially when it comes to issues like inheritance, divorce, and marriage. These clauses frequently represent conventional interpretations of Islamic law, which might not be consistent with ideas of justice and gender equality in the modern world.²⁴ It is crucial to take into account how MPL intersects with both international human rights standards and constitutional precepts when examining the situation in Bangladesh. MPL is acknowledged as a source of law, but it has to follow the Constitution's guidelines, which protect fundamental rights like gender equality. The conversation about MPL and gender justice is also influenced by Bangladesh's international obligations, such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

²³ Ahmed, Moudud. *Muslim Law of Marriage and Succession in Bangladesh: A Critical Evaluation* (Dhaka: Bangladesh Institute of Law and International Affairs, 2018), 35.

²⁴ Khan, Nizamuddin. "Muslim Personal Law in Bangladesh: Challenges and Prospects," *Bangladesh Journal of Law* 25, no. 2 (2019): 130

5.2 Marriage

In Bangladesh, men are permitted to marry up to four wives concurrently under Muslim personal law, provided that each wife is treated equally. In reality, though, it is rare to achieve this equitable treatment, which results in unbalanced and frequently unfair marital dynamics. Since polygamy is so common, emotional distress is frequently the result. In reality, though, it is rare to achieve this equitable treatment, which results in unbalanced and frequently unfair marital dynamics. Since polygamy is so common, emotional distress is frequently the result. A common outcome of polygamy's prevalence is emotional distress. A patriarchal family structure is maintained by social stigma against women, financial instability, and other factors, where the needs and consent of women are routinely ignored. Furthermore, because of socioeconomic factors, child marriages continue to occur in some areas despite legal restrictions pressures and deeply ingrained cultural practices, which exacerbate gender inequality even more. The Bangladesh Constitution clashes with this idea. In fact, polygamy goes against the gender equality enshrined in the Bangladeshi Constitution. In particular, Article 28(1) forbids discrimination on the basis of sex, suggesting that policies or actions that treat people differently on the basis of their gender are unconstitutional. Because polygamy by its very nature involves treating wives differently on the basis of their gender, it violates Article 28(1) of the Bangladesh Constitution.²⁵

5.3 Limitation on Age

Bangladesh's Muslim Family Laws Ordinance (MFLO) of 1961 defines the legal framework for Muslim marriages. The minimum age required for marriage is restricted by this law, with 16 years for women and 18 years for men. However, with the approval of the appropriate authority or court, there may be exceptional circumstances that allow an exception to these age restrictions. The age at which marriages are solemnized may be influenced by customs in different regions even in the presence of these legal provisions, which frequently create complications within the legal system and social norms. The Muslim Family Laws Ordinance (MFLO) of 1961 is a noteworthy legislative measure regulating different facets of Muslim personal law in Bangladesh, especially inheritance, maintenance, divorce, and marriage. One of the essential elements governed by this ordinance is the minimum age at which people can get married. According to the MFLO, a person

²⁵ Constitution of the People's Republic of Bangladesh, art. 28(1)

must be 16 years old for girls and 18 years old for boys in order to be married. By preventing young girls from being forced into marriage, which can have a negative impact on their development, education, and general health, this clause aims to protect the rights and well-being of all people. Customary practices may have an impact on the age restrictions for marriage set by the MFLO in Bangladesh, although they may not align with legal mandates. This can cause disparities in the age at which people marry, especially when it comes to young girls. The confluence of legal statutes, cultural customs, and social standards draws attention to the difficulties in enforcing personal law regulations as well as the possibility of abuse and exploitation.²⁶

5.4 Witness Provision for Marriage

A significant piece of legislation in Bangladesh, the Muslim Family Laws Ordinance (MFLO) of 1961, covers many facets of Muslim personal law, such as marriage, divorce, maintenance, and inheritance. This ordinance contains specific provisions that outline the conditions and procedures that must be followed in order to solemnize Muslim marriages. One such clause addresses the necessity of witnesses for the marriage ceremony, which is a deeply embedded Islamic custom. 51 At least two witnesses have to be present. In the event of a female witness, the ratio will be 1 male to 2 female. A witness could be made up of two men or two women and one man, for example.²⁷

5.5 Restriction to Marry Non-Muslim

Muslim men are permitted to wed women from the People of the Book (Ahl al-Kitab), such as Christians and Jews, but Muslim women are generally forbidden from marrying non-Muslim men in Bangladesh. This discrepancy highlights concerns about individual autonomy in marriage decisions and religious freedom while reflecting conventional interpretations of Islamic law.²⁸

5.6 Number of Wives

As long as a man can treat each wife fairly, he is permitted to marry up to four wives concurrently under Bangladesh's Muslim personal law. Nevertheless, this clause transgresses the constitutional

²⁶ MFLO 1961

²⁷ 'Muslim Sunni Marriage Procedure in Bangladesh' 2013 <<https://www.lawthinkers.com/muslim-sunni-marriage-procedure-in-bangladesh/>> accessed on 31 st March,2024

²⁸ A.B. Rahman, Gender Disparities in Bangladesh: A Legal Analysis

guarantee of gender equality and fundamentally maintains gender inequality. The Bangladesh Constitution's Article 28(1) forbids discrimination based solely on a person's gender, guaranteeing all citizens equal rights and protections. Because polygamy permits men to have multiple spouses while denying women the same right, it is by definition discriminatory towards women. This gender-based discrimination runs counter to the spirit of Article 28(1) of the Bangladesh Constitution, which protects the idea of equality before the law. Polygamy is a practice that discriminates against women by definition because it permits men to deny women the same rights and have multiple spouses. This discriminatory treatment based on gender is in direct opposition to the goals outlined in Article 28(1) of the Bangladesh Constitution, which aims to preserve the idea of legal equality. The fundamental rights and dignity of women are undermined by polygamy, which upholds traditional patriarchal norms that place a premium on male authority and control in married relationships. Limited legal reforms have been implemented in Bangladesh to address the issue of polygamy and advance gender equality. Despite the introduction of certain reforms to control polygamous marriages by the Muslim Family Laws Ordinance (MFLO) of 1961—such as the requirement that the husband obtain permission from the Arbitration Council—the practice is still common in many communities. The unwillingness to completely outlaw polygamy is a reflection of broader societal attitudes regarding marriage and gender roles, underscoring the intricate interactions that exist in Bangladesh between the law, culture, and religion.²⁹

5.7 Divorce

Muslim personal laws regulate the intricate and multifaceted process of divorce in Islam. Although Islamic law grants both men and women the right to file for divorce, the processes and reasons for divorce differ greatly between the sexes. Women might have a harder time getting a divorce, especially if their husbands won't give their permission, which emphasizes power imbalances in marriages.³⁰

5.8 Women's Right to Divorce

The Bangladeshi Constitution's fundamental rights, nondiscrimination, and equality guarantees may be in conflict with the MFLO's provision granting women the right to divorce. Gender

²⁹ Dr Muhammad Ekramul Haque, *Muslim Family Law Sharia and Modern World* (first published June 2015) London College of Legal Studies 204

³⁰ Rahman, A.B., *Gender Disparities in Bangladesh: A Legal Analysis* (University of Dhaka, 2020)

discrimination is explicitly forbidden by Article 28(1) of the Constitution, guaranteeing equal rights and opportunities for all citizens. But the MFLO's unequal treatment of men and women in divorce proceedings raises questions about discrimination based on gender and unequal access to the legal system. Furthermore, Article 27 of the Constitution implies that laws should be applied unbiasedly and without regard to a person's gender by guaranteeing equality before the law and equal protection under the law.³¹

5.9 Post-Divorce Effects on Women and Men

Divorce has an effect on both men and women's socioeconomic well-being in addition to ending the marital relationship. Women in particular may struggle to maintain child custody, face financial insecurity, and lose their social support systems. Men may also have financial responsibilities that impact their social standing and financial stability, such as supporting and maintaining former spouses and children.³²

5.10 Inheritance Rights in Bangladesh for Men and Women

According to Muslim law, the deceased father's daughter will get half of the property and son will get twice the property. It means the son and daughter's property ratio is 2:1. So here is gender discrimination. It conflicts with the constitution. So it should be reform.³³

5.11 Conclusion

In conclusion, family life and legal relationships within the Muslim community are significantly regulated by Muslim personal laws in Bangladesh. But these laws, which primarily deal with marriage, divorce, and inheritance, frequently uphold gender inequality and reflect patriarchal norms. To tackle these obstacles, extensive legal adjustments, consciousness-raising campaigns, and endeavors to advance fairness and parity between genders in Bangladesh's legal framework are all necessary.³⁴

³¹ ibid

³² ibid

³³ Inheritance Rights of Women in Bangladesh <https://lcls-south.com/inheritance-rights-of-women-in-bangladesh/> accessed 26th May,2024

³⁴ Huda R. and Ahmed N. R., 'Female Status in Bangladesh' [1980] 46 Bangladesh Institute of Development Studies 176

Chapter 6:

Impact on Women for Gender Discrimination

6.1 Introduction

In Bangladesh, discriminatory laws have a significant impact on women's lives, affecting social status, economic independence, and access to justice, among other aspects of their lives. This chapter explores the gendered effects of these laws, using case studies to analyze their socioeconomic ramifications and offering insights into the larger implications for gender equality in Bangladesh.

6.2 Examining the Gendered Implications of Discriminatory Laws

The rural economy of Bangladesh has witnessed extraordinary structural changes Change and Diversity in the 1990s. Its role in today's society. Women also raise children outside the home. Empirical evidence indicates that there are significant gender differences in all spheres and families live in Gram Bangla. About 85% in Bangladesh percentage of women live in rural areas. Rural social structure is plagued with many problems like illiteracy, unemployment, malnutrition, and poverty. There is even a rationalization of systems and institutions in place. They are unequal and disadvantaged (Ali, 2012). Women have to play the dual role of housewife and wage earner. Participation of women in home and farm activities depends on the socio-cultural and economic situation in an area. It varies from region to region and even within a region, their involvement varies widely among different agricultural systems, and castes. Class and socio-economic status. Women's Opportunity and Public engagement have changed drastically in recent decades. For example, Great progress has been made in ending gender discrimination in school enrollment at both primary and secondary levels (Ferdousi, 2012). There are social and religious restrictions on women in Bangladesh working outside the home. So their activities are limited to child care, household management, kitchen gardening, rice processing and corn, service, etc., in any country at peace, the development is large. It depends on the participation of people including women. In Bangladesh, women make up almost half of the population. Bilk's (2010) finds family. The main reason is the culture and religious values that are taught by the family gender gap in employment. Begum (2005) found a high level of gender among rural households in Bangladesh.

6.3 Socioeconomic Consequences

Gender inequality is sustained by discriminatory laws that are deeply ingrained in Bangladesh's legal system, especially when it comes to family law. Traditional gender roles are reinforced by laws that place women beneath men in family structures, allow polygamy, limit women's autonomy in marital affairs, and grant unequal inheritance rights. Women who lack access to property rights and inheritance are deprived of essential economic resources, which makes them financially dependent on male family members. Their economic vulnerability makes them more vulnerable to poverty and limits their access to opportunities for education and work, which feeds the cycle of socioeconomic marginalization.³⁵

6.4 Conclusion

Gender equality is one of the most important steps towards ending extreme poverty. The United Nations has identified gender equality as Goal 5 of its 17 Sustainable Development Goals by 2030. To reach this, our approach of concern is to address the root causes of gender inequality. Many of these factors are similar to those that perpetuate global poverty and hunger.³⁶

³⁵ Law Reform Commission of Bangladesh, Report on Reforms in Family Laws (2017) <<http://lrc.gov.bd/uploads/documents/Report%20on%20Reforms%20in%20Family%20Laws%20-%202017.pdf>>

³⁶ Gender Inequality in Bangladesh, <https://www.concern.net/news/gender-inequality-in-bangladesh-closing-the-gap> (2022) acced 1st June 2024

Chapter 7

Findings, Recommendations, and Conclusion

7.1 Findings

a. Gender Differences in Inheritance Rights: The research shows notable gender differences in Bangladesh's Muslim personal laws regarding inheritance rights. Usually, women receive half as much as men do, which runs counter to the Gender equality guaranteed by the Constitution.³⁷

b. Autonomy in Marital Matters: Women discriminated against in maintenance laws are more financially vulnerable after divorce. Despite spousal support laws, their enforcement is lax, leaving many divorced women without enough money to support their children and themselves.³⁸

c. Post-divorce Economic Vulnerability: Women who experience discrimination in maintenance laws are more vulnerable financially after a divorce. Despite spousal support laws, their enforcement is lax, leaving many divorced women without enough money to support their children and themselves.

d. Legislative and Judicial Reforms: Although a few courts have attempted to interpret private law in alignment with constitutional principles, these efforts are rare and often fail to yield significant results. Legislative changes are still needed to bring Muslim personal laws into compliance with the constitution's gender equality mandate.

7.2 Recommendations

a) It is necessary to enact legislative changes to bring Muslim personal laws into compliance with the nondiscrimination and gender equality clauses of the constitution. This entails changing inheritance laws to guarantee men and women receive equal shares as well as eliminating discriminatory clauses that limit women's independence in marriage-related decisions.³⁹

b) When it comes to interpreting Muslim personal laws in light of constitutional guarantees, the judiciary ought to take a more proactive stance. Programs that educate and enlighten judges about human rights and gender equality can help achieve this objective.

³⁷ Constitution of Bangladesh 1972, Art (27 and 28)

³⁸ Hossain and Welchman, *Women and Muslim Family Laws in Arab States* (2005)

³⁹ Constitution of Bangladesh 1972, Articles 27 and 28

c) It is crucial to launch campaigns to educate people about women's rights and how some personal laws are discriminatory. Men's and women's-focused educational initiatives can influence cultural norms and lessen opposition to legislative changes.

7.3 Conclusion-

The study shows that, there are some discriminatory sections in Muslim Personal law in Bangladesh. These sections and features are conflicting with Constitution. These are seriously hampering the justice system and gender equality. Necessary legal reforms, improved enforcement strategies, proactive judicial interpretation, and public awareness campaigns are all necessary to address these distinctions. Bangladesh can try for a better, inclusive and equitable legal system that protects the rights and dignity of all citizens, regardless of gender, by harmonizing Muslim personal laws with constitutional principles.

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