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# Statutory and Religious Rights of Women in Bangladesh: An Overview

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## ABSTRACT

*The women are the most vulnerable part of our society, culture and religion in almost all aspects of our life. The rights ensured by the supreme law of the land, statutes and religion are also denied most of the time. Different case law provides the important decision in favor of the women and directs not to deprive them from their legal rights. Despite the religious and statutory and religious rights the women are not getting all of their rights equitable. Sometime they are neglected at their workplace, sometime at the educational institution even at her family and they are compared not enough capable with the male personnel. To remove and reduce all kinds of inequality and ensure their statutory rights the Government enacted several Acts on several occasions.*

**Keywords:** *Women right, positive discrimination, religion, social justice, punishment.*

## I. INTRODUCTION

Women are the most important part of our family, society and a country who are contributing in all aspects of our life. The rights of women in almost all religion emphasizes on the protection of the women as well as ensuring their security in our society and daily life. Respect towards women and giving recognition of their works ultimately ensuring and protecting their rights at all. Unlike religion, the Constitution of the People's Republic of Bangladesh has incorporated several rights of women in its different parts including preamble. Family laws like the Muslim Family Laws Ordinance, 1961, the Hindu Married Women's Right to Separate Residence and Maintenance Act, 1946, the Muslim Marriages and Divorces (Registration) Rules, 2009, the Dissolution of Muslim Marriages Act, 1939, and the Family Courts Act, 2023 are also notable which provides and ensures the rights of women for Muslim and Hindu women. Thereafter, some special laws like the Prevention of Oppression against Women and Children Act, 2000, the Acid Crime Control Act, 2002, the Domestic Violence (Prevention and Protection) Act, 2010, the Prevention and Suppression of Human Trafficking Act, 2012, the Dowry Prohibition Act, 2018, the Bangladesh Labour Act, 2006 have also provides some rights of women and punishments for violating those rights. This article aims at focusing to describe the rights of

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women as enshrined in different religious law specially in Muslim and Hindu Family laws and then under different existing statutes of Bangladesh including the Constitution which is the supreme law of the land. We will describe those rights and their violations in the light of various decisions of the case law. Finally, we will find out the circumstances of violations of women rights and provide probable suggestions to stop those accordingly.

### **(A) Methodology**

This article is the nature of a qualitative legal research as there was no field work involved. The study, rules and regulations are mostly use of collection from both primary and secondary sources. The primary source is the collection of literature from laws of Bangladesh. The secondary sources are: Law books, Journals, Law Reports case study and data from various official and unofficial sources. The leading cases from Law Reports of Bangladesh are- (i) Rabia Basri Irene vs. Bangladesh Biman; (ii) Dr. Nurul Islam vs. Bangladesh; (iii) Hefzur Rahman vs. Shamsun Nahar Begum; and (iv) Bangladesh vs. Azzizur Rahman. All the collected information is analyzed and interpreted in a manner which reflects the article in terms of relevance.

## **II. RIGHTS OF WOMEN UNDER THE CONSTITUTION OF THE PEOPLE'S REPUBLIC OF BANGLADESH**

Rights of women ensured in the Constitution of the People's Republic of Bangladesh are as follows:-

### **(A) Social Security to Widows**

The State accepts a fundamental responsibility to increase the social security in order to securing its citizens including the widows. As the part of such responsibility, the Government of Bangladesh has started a scheme to provide allowance to the widows and separated women from the fiscal year 1998-99 through the Department of Social Services under the Ministry of Social Welfare. At first the amount of such allowance was Tk. 100 (one hundred only) per month which is now Tk. 550 (five hundred and fifty only) in the Fiscal Year 2023-24.

### **(B) Public Health and Morality**

Article 17(a) of the Constitution states that the primary duty of the state is to increase the level of nutrition and improve the health of its citizens and it shall take effective measures to prevent the consumption of bodily injurious alcoholic and other intoxicating drinks and drugs unless approved by law. It shall also take necessary measures to prevent prostitution for the improvement of the health condition of the women.

Section 372 of the Penal Code, 1860 enumerates the provision of punishment of imprisonment

up to 10 (ten) years along with fine for purchasing, hiring or otherwise obtaining the possession of any woman under the age of 18 (eighteen) years with intent that she will be employed or used for the purpose of prostitution.

### **(C) Right to Equality**

The right to equality of all citizens before law and equal protection under laws ensured the protection of women from elimination of rights. Equal protection of law is a security that similar person should be dealt with in a similar way and that person of circumstances shall not be considered as if they were the same. The persons in similar circumstances must be governed by the same laws.

In *Rabia Basri Irene vs. Bangladesh Biman*, the Appellate Division observes that fixing the different stage of retirement for Stewards and Stewardesses is discriminatory and violation of article 28 of the Constitution.

### **(D) Prohibition of Discrimination**

The Constitution guarantees not to discriminate anyone only on certain grounds like religion, race, place of birth caste, or sex. So, the class of women shall not be discriminated based on these grounds only. They shall have equal rights with men in all spheres of the State and public life. The State shall make equal opportunity to its all citizens to access to any place of public entertainment or resort, or admission to any educational institution without making any discrimination between men and women on the grounds of religion, race, caste, sex, or place of birth. The State can make any special provision for the advancement women which is regarded as doctrine of positive discrimination.

The Constitution of Bangladesh guarantees equal rights to women regarding the employment or office in the service of the Republic and no such discrimination shall be made on the grounds of only religion, race, caste, sex or place of birth. For ensuring the adequate representation in the service of the Republic, the State is authorized to make any special provision for its citizens of backward section. In this respect, the provision of quota is provided for the adequate representation of women.

The Constitution states that, the State shall try to ensure equal opportunity for the women comparing to men and shall also try to ensure the equal participation of women in all spheres of national life.

The Government of Bangladesh has incorporated quota system immediately after the adoption of the Constitution which has been amended on several times and thus the participation of

women has increased although the Government abolished the quota system in public service for first and second-class job.

In Parliament, the number of reserved seats for women was 15 (fifteen) and thereafter such number was increased up to 30 (thirty) by the Constitution (Tenth Amendment) Act, 1990 and finally up to 50 (fifty) by the Constitution (Fifteenth Amendment) Act, 2011. The duration of such provision was extended for further 25 (twenty-five) years through the Constitution (Seventeenth Amendment) Act, 2018.

### **(E) Right to Choose Religion**

Every citizen of both men and women are entitled to hold or practice any religion and every religious community is entitled to establish, maintain and manage its religious institution which can be enjoyed in accordance with law, public order and morality. To regulate the activities of a religious group, the State may impose any reasonable restrictions and in extreme cases, prohibition may be imposed thereto.

### **(F) Right to Property**

Every citizen both the men and women have the rights to acquire, hold, transfer of property and the property shall not be compulsorily acquired, requisitioned or nationalized except in accordance with law.

In conformity with the provision of this article, section 4 of the Acquisition and Requisition of the Immovable Property Act, 2017 provides that, the Deputy Commissioner, with the prior sanction of the Government, is authorized to acquire any immovable property of any person for public purpose or in the public interest in exchange for sufficient compensation which shall be 300 (three-hundred) per centum of the market value of the property or rehabilitation or both. Section 20 of the same Act also authorizes the Deputy Commissioner to take the possession of any property for maximum 2 (two) years for the public purpose or public interest in exchange for compensation.

Section 4 of the Land Reforms Act, 2023 provides that the owner of an agricultural or his family shall not be entitled to acquire more than 60 (sixty) standard bighas agricultural land by way of transfer, inheritance, gift or otherwise and if he does so, the excess land shall vest in the Government and he or his family will not get any compensation for the land so vested, but compensation will be provided if he/she acquires the excess land by way of gift or will.

As per the provision of Muslim Law of Inheritance, the mother will get  $\frac{1}{6}$  (one-sixth) share of property of the deceased person in presence of Son(s)/daughter(s)/full or consanguine or uterine

brother(s)/sister(s) and  $\frac{1}{3}$  (one-third) in absence of them. A daughter will get  $\frac{1}{2}$  (half) if she has no brother and she will be residuary in presence of brother. A widow will get  $\frac{1}{4}$  (one-fourth) share in absence of any child of the deceased person and  $\frac{1}{8}$  (one-eighth) in presence of any child. Son(s) daughter(s), sister(s), grandmother are also entitled to get share of property of the demised person according to the rule of Islamic Inheritance.

### **(G) Right to Representation in Parliament**

In 2011, the Government of Bangladesh has made a provision for reserved seats exclusively for women. At the present the number of reserved seats for women are increased up to 50 and the period is further extended for the next 25 (twenty-five) years through the Constitution (Seventeenth Amendment) Act, 2018. Moreover, they can also participate in the general election and also contest with the men from any constituency. The constitution also incorporates the principle of special representation of women in the local self-governing bodies. Therefore, it seems the Constitution of Bangladesh has provided adequate guarantee for women's rights in Bangladesh.

## **III. RIGHTS OF WOMEN UNDER FAMILY LAWS**

Rights of women are also ensured by the Muslim and Hindu family laws which have been discussed under the following heads in the light of some prominent case law and existing statutes of Bangladesh:-

### **(A) Right to Receive Entire Dower**

A Muslim husband is not authorized to contract for second marriage at the time of subsistence of an existing marriage without obtaining the written permission of the Arbitration Council consisting of a Chairman and equal representative of each party. If any such contract is made without prior permission of the Council, the concerned person shall have to pay the entire amount of dower to his existing wife immediately and shall be punished with imprisonment up to 1 (one) year, or with fine up to 10,000 (ten thousand) taka, or with both. An application for such permission shall be accompanied with the reasons for second marriage and also mention whether the consent of the existing wife is taken or not.

The concept of dower is not recognized in Hindu law. The Vedas provide that a dowry be given by the bride's family to the groom. The Rig Veda states that cows and gift by the father of the bride to the daughter accompanied the bride's procession. The ancient custom of kanyadan, where the father presents his daughter with jewelry and clothes at the time of her marriage, and

vardakshina where the presented the groom with kith and kin are, in essence the dowry system.

### **(B) Right to Re-marriage**

A Muslim married woman is entitled to re-marry her previous husband even after the termination of her marriage by divorce without marrying a third person, if such divorce is not effective for the third time with her husband.

In classical Hindu Law, remarriage of Hindu widows is prohibited. But the Hindu Widow Remarriage Act, 1856 created the option for remarriage of the Hindu widows and in that case she will lose the right of inheritance from the property of her deceased husband and thus forfeits her right on the property of her deceased husband. Rights and interests which a widow may have on the property of her husband shall cease upon her remarriage and shall be determined as if she died.

The Court opined that section 2 does not apply if the marriage has been taken place as per the custom of the caste and thus forfeiture of property is not valid except the plaintiff further proves that there is also an existing custom regarding the forfeiture of property that she inherited from her former husband. In another case, the learned Court held different opinion. It held that by remarriage a Hindu widow forfeits her right on the properties of her deceased husband even if the remarriage is allowed by the custom of her caste.

### **(C) Right to Divorce**

Where the right to divorce has been duly delegated to the Muslim married woman in the 18th column of the nikah nama or marriage contract, she can exercise that right and divorce her husband accordingly. A married woman shall be entitled to obtain a decree for the dissolution of her marriage on any one or more of the following grounds, namely: (i) if the address of her husband have not been known for 4 (four) years; (ii) if the maintenance of wife is neglected by her husband or failure of her husband to provide maintenance for 2 (two) years; (iii) if 7 (seven) years of imprisonment has been implicated to her husband by the Court; (iv) if for 3 (three) years, her husband has failed to perform his marital obligations without reasonable cause; (v) if the husband was impotent during marriage and continues to be so; (vi) if the husband is insane for 2 (two) years or he is suffering from leprosy or a virulent venereal disease; (vii) if the wife has renounced the marriage before attaining the age of 18 (eighteen) years without consummation, though the marriage is given by her father or other guardian before she attained the age of 19 (nineteen) years; (viii) if the husband treats his wife with cruelty, and (ix) on any other valid ground recognized for the dissolution of marriages under Muslim law.

Dissolution is not permissible in Shastric Hindu Law in Bangladesh. Marrying again by a Hindu

woman without the consent of her husband and for own pleasure is void on the ground of immorality although her caste permits to do so. But a custom which allows a divorce by mutual agreement between the parties is permissible and not to be void on the ground of immorality. It would be the best way for Hindu women to live separately under the relevant provision of the Hindu Married Women's Right to Separate Residence and Maintenance Act, 1946.

#### **(D) Right to Maintenance**

In case of failure on the part of a Muslim husband to maintain his wife adequately, or to maintain equitably in case of more than one wives, the wife or wives, may apply for maintenance before the Arbitration Council which shall fix the amount of payable maintenance.

The High Court Division ordered the Husband is bound to pay maintenance of her wife if she left the residence of her husband on the ground of cruelty. However in another case the said Court decided that the Court has the jurisdiction to pass decree for past maintenance.

It was held in another case that the husband is bound to maintain his wife after their separation through divorce up to the period of her marriage with another person.

A Hindu husband is absolutely liable for providing maintenance to his legally married wife whether he has enough property or not. A Hindu woman can live separately and claim for maintenance on certain grounds upon the satisfaction of the Court. The quantity of maintenance shall be fixed by the Court considering the means of the husband and the social standing of the parties to a marriage.

#### **(E) Right to Dower (Mahr)**

Dower is a gift to honor the wife offered by a bridegroom. A wife has the right to get dower from her husband as the consideration of marriage. The method of payment of dower are specified in the nikah nama, and in absence of such method the total amount of the dower shall be assumed to be payable on demand.

### **IV. RIGHTS OF WOMEN UNDER OTHER SPECIAL LAWS**

There are many special laws ensured the women's rights that are given below one by one-

#### **(A) The Prevention of Oppression against Women and Children Act, 2000**

This Act ensures the rights of women against any oppression by any other person and provides severe punishment for causing any specific offences like kidnapping, rape etc. against women. The Act ensures the protection of women against kidnapping. It provides that, if any person kidnap any woman for trafficking her, such person shall be punished with life imprisonment or



imprisonment for 14 (fourteen) years along with fine. It also provides the protection of women against any illegal detention. It provides that, if any person detains a woman to impose a ransom the said shall be punished with death sentence or life imprisonment along with fine.

Besides, death sentence as the highest punishment shall be inflicted for committing rape with a woman. If the death is caused because of rape or because of any other act after committing rape, the offender shall be liable for fine 1 (one) lakh taka in addition to such death sentence or imprisonment for life. Punishment for gang rape also made punishable with the same manner.

Abetment for committing suicide of woman is also made punishable in this Act which shall be rigorous imprisonment for 10 (ten) years along with fine. Similar punishment shall also be inflicted for committing the offence of sexual assault against a woman.

Moreover, the husband or his parents, guardian or any other person on his behalf shall be punished with death along with fine for causing death and life imprisonment or imprisonment for 12 (twelve) years along with fine for causing grievous hurt and imprisonment for 3 (three) years along with fine for causing simple hurt to a woman for dowry respectively. Most of the offences under this Act made non-bailable and non-compoundable for giving enough protection against the abovementioned oppression and to control those accordingly.

### **(B) The Acid Crime Control Act, 2002**

The term 'acid' means any kind of burning, corrosive and poisonous substance. It also provide the punishment for death or imprisonment for life and fine of taka 1 (one) lakh for causing death by acid. Causing hurt by acid is also made punishable offence which shall be death penalty or imprisonment for life and fine of taka 1 (one) lakh if either sight or hearing power is lost fully or partly or face breast or sexual organ is defaced or destroyed and imprisonment for 14 (fourteen) years along with fine for 50 (fifty) thousand taka for deforming or destroying any other organ, ligament or causing injury to any part of the body. It also contains the rigorous punishment for 7 (seven) years along with fine for 50 (fifty) thousand taka for throwing or attempting to throw acid.

### **(C) The Domestic Violence (Prevention and Protection) Act, 2010**

In this Act, the word 'domestic violence' refers physical or mental torture, sexual abuse or economic deprivation against a woman by her family member. If the Court primarily satisfied that any domestic violation in the nature of torture or abuse or deprivation takes place against any woman, it may issue an interim order to protect the victim woman against such domestic violence and also issue a protection order including an order restraining the offender not to commit the same further.

**(D) The Prevention and Suppression of Human Trafficking Act, 2012**

This Act define the term ‘human trafficking’ as selling, buying, sheltering, sending or receiving both inside and outside of Bangladesh of any person including women in order to sexual exploitation or oppression by way of threat, use of force or deception. The offence of human trafficking made punishable under the Act the maximum period of such punishment shall be imprisonment for life and also fine not less than 50 (fifty) thousand taka. Rigorous imprisonment for 7 (seven) years along with fine not less than 50 (fifty) thousand taka shall be imposed for importing or transferring for prostitution or any other form of sexual exploitation or oppression.

**(E) The Dowry Prohibition Act, 2018**

Demanding, giving or taking of dowry by any party to a marriage made punishable offence under this Act and the maximum punishment for such demand is imprisonment for 5 (five) years or fine up to 50,000 (fifty thousand) Taka, or with both.

**(F) The Bangladesh Labour Act, 2006**

Section 109 provides that, an employer shall not engage any woman worker in any work between 10:00 PM to 6:00 AM without written consent of such woman and without ensuring her safety and journey. Section 46 provides that, every woman worker is entitled to get maternity leave along with benefit before and after giving the birth of new baby and deprivation from such benefit is made punishable under section 286 of the said Act. Even if she dies at the time of her delivery, the benefit shall be given to the person taking care of her child or to her nominee or legal representative. As per section 45, before her delivery, the employer shall not employ her for any work which is hard in nature, or which needs to stand for long hours, or which may affect her health.

**V. DRAWBACKS AND SUGGESTIONS**

Notwithstanding the rights of women have been incorporated in several statutes, the women cannot exercise those rights without any hindrances and challenges. The major challenges of exercising those rights and their probable suggestions to remove those drawbacks are the following:-

1. In many cases it is believed that women are less efficient comparing to male personnel especially in the establishments which ultimately impacts on the mind of the women which ultimately deprives the women to contribute in the society and country as well. This view should be changed as early as possible and just discussing discrimination against women is pointless.

**2.** As the Constitution of Bangladesh focused on the social security of the women and the Government has enacted several laws for ensuring such security but the major portion of actual incidents against women like rapes or harassments of women remains unreported and they commit suicide due to the non-implementation of those enactments strictly. The Government should implement those special laws strictly and dispose of the case within the stipulated time.

**3.** Women work at their workplace without required number of facilities because of their physical conditions comparing to male workers. They should provide convenient environment at their workplace so that they can easily get access to the healthcare and other necessary treatments.

**4.** Gender violence is a common phenomenon in Bangladesh over the decades and the women are not yet fully protected at their home and workplace. The Government should identify the specific areas of such violence and incorporate precautionary measure to prevent that violence through women friendly legislation and provide quick remedies in those matters.

**5.** The jurisdiction of Family Courts under the Family Courts Act, 2023 are limited to only 5 (five) matters, namely:- (a) dissolution of marriage; (b) restitution of conjugal rights; (c) dower; (d) maintenance and € guardianship and custody of children. The other family related matters like dowry, mental or physical torture to wife by her husband may also be added to such jurisdictions.

**6.** Although the Family Courts are bound to settle a dispute through Alternative Dispute Resolution (ADR) before starting their judicial proceedings in a civil suit relating to family affairs but there is no provision of incentives for the judges for settling a family matter through ADR system which encourage the judges to settle a dispute through this system and ultimately reduce the backlog of civil suit. For settling a family matter through ADR system may be encouraged by introducing the provision of incentives for the judges.

**7.** As per section 4 of the Muslim Family Laws Ordinance, 1961, a daughter is entitled to get specific share in the property and represent her father if he dies before the demise of her grandfather. But in practice, the daughters are deprived of their rights of such representation in the name of strict application of Sharia Law. Severe punishment for violating this section may be imposed through the enactment of the Parliament.

**8.** A Muslim woman is entitled to divorce her husband if the husband authorized her in the 18th column of the nikah nama (marriage contract) during her marriage, otherwise she is entitle to exercise such right in any grounds as provided in section 2 of the Dissolution of Muslim

Marriages Act, 1939. The right to divorce on the part of wife may be inserted in the same column of the nikah nama absolutely without any kind of authorization from the husband.

## **VI. CONCLUSION**

As the women are the most integral part of our family, society and a country, we must focus on their rights and also to ensure those rights without imposing any condition thereon. The state should take more measures for the proper implementation of those rights to uphold the dignity of women and their progress in comparing to men. It is also pertinent to provide exemplary punishment to the violators for the execution of women rights in Bangladesh.

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