Justice

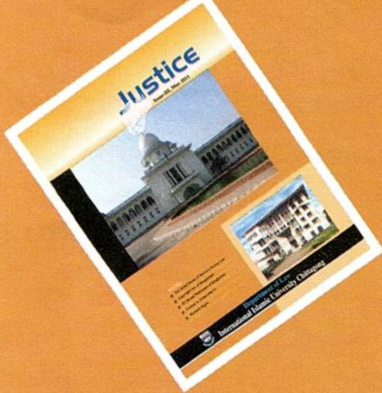
Issue-III, May 2011

Inside...

- The United States of Mexico's Privacy Law
- Copyright Law of Bangladesh
- ICT Based Parliament of Bangladesh
- Journey to Jurisprudence
- Women's Rights

320.011
I16j
D-1359

Department of Law
International Islamic University Chittagong



JUSTICE

Issue-III, 2011
Department of Law
IIUC Law Club

May 2011

Supervisor
Adv. Mohammad Hasan Murad

Editors
A.S.M. Mahmudul Hasan
Ms. Zeenia Hossain

Editorial Board
Prof. Md. Morshed Mahmud Khan
Adv. Kazi Arshadul Hoque
Adv. Md. Aktarul Alam Chowdhury
Adv. Anju Man Ara Begum
Adv. Taslima Khanam
Adv. Mohammad Javedul Islam
Adv. Md. Ridwan Goni
Adv. Md. Abdul Malek
Adv. Md. Mizanur Rahman Chy.
Mr. Mohammad Saidul Islam
Adv. Farzana Akter
Adv. M. Anwarul Aziz Kanak
Adv. Mohammed Abu Taher
Adv. Sheikh Md. Towhidul Karim

Computer & Logistic Support
Mohammed Khorshed Alam

Cover & Layout Design
Golam Kibria Masud
Muhammed Ismail

Published by:
IIUC Law Club

Production :
Barnarekha Press
102, Chandanpura, Ctg.
Ph. : 031-613142

INDEX

- **The United States of Mexico's Privacy Law** — 3-8
  Raul Mendez
- **Copyright Infringement in Publishing and an Easy Reading of the Copyright Law of Bangladesh.** — 9-13
  Muhammod Shaheen Chowdhury
- **A proposal for ICT based Document Management Process in the Legislative Procedure of The Parliament of Bangladesh** — 14-24
  Adv. Mohammad Hasan Murad
- **Journey to Jurisprudence: Why & How to prevail....** — 25-27
  Adv. Taslima Khanam
- **Rights of Women and Children in Law and in Practice : Bangladesh Experience** — 28-31
  Adv. Md. Ridwan Goni
- **A controversy and solution regarding the women's inheritance right** — 32-35
  Mohammad Saidul Islam & Adv. Mohammad Abu Taher
- **Polygamy: Legal System and Social Reforms in the Light of IT** — 36-37
  Adv. Farzana Akter
- **Law of War in Islam** — 38-40
  Adv. Sheikh Md. Towhidul Karim
- **State of Right to information in Bangladesh-Law & Practice** — 41-42
  Md. Mizanur Rahaman Chy.
- **Arbitration** — 43-45
  Md. Kalim Ullah
- **Rights of Women in Bangladesh: Rhetorics & Realities** — 46-52
  A Legal Focus on Local Laws, UN Conventions, NWDP and Islamic Perspective
  A.S.M. Mahmudul Hasan
- **Law and Practice of Preventive Detention** — 53-56
  Jalal Uddin
- **Women's Right In Workplace** — 57-58
  Fatima Jannat
- **Which One You Prefer To Be The Law of Society?** — 59-61
  Akther Jahan
- **LIAR..........OOPPSSS......SORRY.... LAWYER !!!!** — 62
  Nahida Kader
- **The Establishment of Women's Rights in Bangladesh: Concept & Analysis** — 63-66
  Zeenia Hossain
- **Psychological Analysis of Criminal Behaviour** — 67
  Md. Atiqur Rahman
- **Quest for Origin of Law** — 68-69
  Samia Sharif & Shaika Sharmin
- **Industrial Police** — 70
  Mojaher

CENTRAL LIBRARY
INTERNATIONAL ISLAMIC UNIVERSITY, CTG.
Acc. No: D-1359
Date: 26-04-17

Justice

BISMILLAHIR RAHMANIR RAHIM

(In the Name of Allah, the Most Beneficent, the Merciful)

Editorial Note

We express our sincere gratitude to the Almighty that after a long time the third issue of Justice, the Law Club magazine of International Islamic University Chittagong is finally getting published. In this edition we have brought about some changes. We have completely eliminated the message section and the photo album section as this magazine is meant to be a regular one rather than a souvenir. The main aim of the magazine is to provide a platform to the young writers among the students of Department of Law to write on different issues concerning law and society. We also invite scholars to enrich our magazine with their valuable contributions.

We received an overwhelming response from the students of Department of Law . We regret that due to space constraint all articles could not be incorporated. We especially thank Mr. Raul Mendez for his insightful article on Mexican Privacy Law and we also extend our gratitude to all other writers for their precious contributions.

The students are especially encouraged to write for the future issues and we are committed to publish this magazine on regular basis. In near future, we will publish an online issue of the Magazine together with the print issue in order to reach to the wider audience.

We sincerely hope the readers will like the new look and pattern of the issue.

On April 27th, 2010, the Senate for the Republic of the United States of Mexico (Mexico) enacted their first Personal Privacy Protection Law. It is entitled Ley Federal de Proteccion de Datos Personales en Posesion de los Particulares (Law).[1]

Before Mexico's Privacy Law was enacted, just like Bangladesh and many other countries do today, Mexico did not have a general law for the protection of personal data. There was recognition of privacy in Mexico's constitution, but the Mexican legislature found it was more effective to enact the privacy law in order to enact better legislation for the protection of children on-line.

According to Professor Lina Ornelas, General Director for Classified Information and Personal Data (IFAI, Mexico)[2], the law is the culmination of restless efforts.[3]

THE GOAL

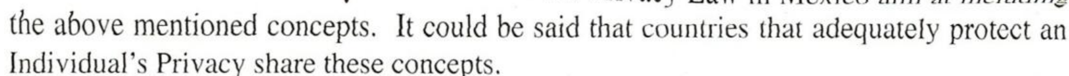
The law's goal is to provide individuals with the tools needed to enforce their right to protect their personal data. The right to protect one's Personal data is considered a Third Generation right.[4] Third Generation Rights emanate from a framework of multi-national Human Rights declarations and treaties. Examples are: The Declaration of the United Nations Conference on the Human Environment (Stockholm Declaration)[5] and the 1992 Rio Declaration.[6]
The concept of Third Generation Rights was coined in Europe, and many times people have called the recognition of such rights "Soft Laws." Experts and scholars in the Human Rights field disapprove of the term "Soft Laws." They are called "Soft Laws" because they are not formally part of any written Statute. However, countries have actually codified some Third Generation Rights. Privacy is the perfect example of a former "Soft Law" which has been codified.

THE RIGHT TO PROTECT ONE'S PERSONAL DATA

Mexico, just like the European Union, has codified the privacy rights of individual persons. There are two concepts which are included in the right to protect one's Personal Data:
1) Protection of the fundamental right of individuals to protect their own person in the

---

[1] http://www.ifai.org.mx/pdf/pot/marco_normativo/LFPDPPP.pdf
[2] Federal Institute of Access to Public Information (IFAI)
[3] Ms. Lina Ornelas is general director of classified information and data protection at the Federal Institute of Access to Public Information in Mexico. https://www.privacyassociation.org/publications/2010_04_30_mexico_passes_federal_data_protection_act/
[4] http://www.youtube.com/watch?v=zE0G7q7DrbA
[5] http://www.unep.org/Documents.multilingual/Default.asp?DocumentID=97&ArticleID=1503
[6] http://www.un.org/geninfo/bp/enviro.html



the above mentioned concepts. It could be said that countries that adequately protect an Individual's Privacy share these concepts.

THE MONTEVIDEO MEMORANDUM

One of the major driving forces in the shaping and forming of the Privacy Law in Mexico may be attributed to the commitment of Professor Lina Ornelas. Professor Ornelas obtained her Law Degree from the Faculty of Law at the University of Guadalajara, Mexico. She then obtained her Masters in Law and International Cooperation from the Vrije Universiteit Brussel in Belgium. Professor Ornelas has also developed her professional skills in the public sector in Mexico and Europe. She has successfully held positions in the Ministry of Economy, the State Department in Mexico and in the European Commission.[8] Due to her educational background and professional experience, one may conclude she is an expert in the field of Personal Privacy Data Protection and International Human Rights. Additionally, she is in agreement with the protection of Third Generation Privacy Rights.

On March 2010, Professor Ornelas published an article in the Privacy Advisor for the International Association of Privacy Professionals. In this article, Professor Ornelas discussed many issues regarding the Montevideo Memorandum.[9] Professor Ornelas was one of the creators of the memorandum.

The Montevideo Memorandum is a project sponsored by the Canadian Government through an agency called Centro Internacional de Investigaciones para el Desarrollo and the Agencia Canadiense de Desarrollo Internacional, Ottawa, Canadá.[10] The Memorandum is composed by several recommendations.[11] The recommendations are meant to increase the protection of children who use Social Networks on the internet.

Other participants included in the Montevideo Memorandum were Brazil, Spain, Uruguay, Ecuador, Chile, Colombia, and Argentina. Representatives for Microsoft and Google and other members of the industry attended the workshop.

[7] Supra, Footnote 3.

[8] As Deputy General Director of the Unit for Legislative Studies at the State Department, she was part of the group that first wrote the initiative of the Access to Information Act presented by President Fox to Congress, and then negotiated for its approval. She was later Deputy General Director for the Promotion and Defense of Human Rights at said State Department. Since 2003, Mrs. Ornelas is the General Director of Classified Information and Personal Data at the Federal Institute of Access to Public Information (IFAI), where she jointly drafted with the National Archives the general archival standards that apply to the federal government in Mexico. She currently is member of the Ibero-American Net for the Protection of Personal Data.

[9] http://www.iijusticia.org/esp_port_eng_fran.pdf

[10] Id..

[11] Memorandum sobre la protección de datos personales y la vida privada en las redes sociales en Internet, en particular de niños, niñas y adolescentes

According to Professor Ornelas, Microsoft and Google pledged that they fully supported any initiative that ensured the creation of a safer internet for children. She also indicated that the Congress of the Republic of Mexico, at the time, emphasized that Mexico needed a Federal Law which protected personal data. The Congress expressed that the Federal Law would include the Montevideo Memorandum's principles and it would include other international privacy standards.

Thus, it could be said that the protection of children may had been one of the many catalyst that the influenced the creation of the Privacy law. The framework is one that seeks to protect children and adolescents within a larger general law a *Lex Generalis*. A perfect example of such generalized law is the European Union Privacy Directive.[12]

THE EUROPEAN INFLUENCE

On page 27 of the Montevideo Memorandum, under the heading "General Considerations," it states that in order to find consensus, rationality and a balance of privacy rights, and the risks involved in the information and knowledge society, it considered the following documents:
1) Settlement of the judicial conflict between the Federal Public Ministry of Brazil and Google (dated July 1st, 2008);
2) the Child Online Protection Initiative of the International Telecommunication Union (dated 18 May, 2009);
3) Opinion 5/2009 on online social networking, by the Article 29 of the European Working Group (dated June 12th, 2009);
4) the Report of Findings into the Complaint Filed by the Canadian Internet Policy and Public Interest Clinic (CIPPIC) against Facebook Inc. (dated July 16th, 2009)

MADRID RESOLUTION

On November the 6th, 2009, fifty DPA's from around the world announced the Madrid Resolution. The resolution was created in a closed door meeting. All country's DPA's agreed with the resolution. Additionally ten different Multi National corporations agreed to implement the resolution.[13] **The Mexican Privacy Law is almost a mirror image of the Madrid Resolution**. Presumably, all 50 members will have to make their laws support the resolution. The Working party has called upon the European Union Commission to reform the European Union Privacy Directives. The Working Party expressed that "[t]he basic principles for data protection, as laid down in the 'Madrid Resolution', should be the universal basis for such legislation."[14] It is fair to conclude that the Madrid Resolution will eventually become the standard for Privacy throughout the world. In theory, countries like Bangladesh should follow the lead in the adoption of a privacy law.

SIMILARITIES BETWEEN THE MEXICAN LAW AND THE EUROPEAN UNION PRIVACY DIRECTIVE

When the Mexican Privacy Law and the European Union Directives are compared, there

[12] Directive 95/46/EC

[13] www.gov.im/lib/docs/odps//**madridresolution**nov09.pdf

[14] The Future of Privacy Joint contribution to the Consultation of the European Commission on the legal framework for the fundamental right to protection of personal data, WP 168

are many similarities present. For example; Chapter 1, Article 3. V, defines personal data in the same manner the European Union Privacy Directives define personal data. Under the same chapter and article VI, Sensitive Personal Data is defined in the same manner it is defined in the European Union Privacy Directives.

Additionally, the promotion of an "Information Society" is of great importance. The Law's concern for the "Information Society" appears to be as consistent as it is in the European Union Directives. Unfortunately, the definition of an "Information Society" is not included in the Law or the European Union Privacy Directives.

Article 1 commences by describing the purpose of the Law. The last sentence of Article 1 indicates that one of the objectives of the Law is to ensure privacy. Privacy is not defined in the law, and it is mentioned thirty four times. The European Union Directives also fails to provide a definition for privacy.

One other similarity is the Corporate Binding Privacy Rules. The law allows the use of Corporate Binding Privacy Rules for the transfer and sharing of Protected Data. Data controllers are not required ask for permission from the Data Protection Authority when using Corporate Binding Privacy rules. The flow of information within a corporation and third parties may take place freely, as long as the corporation and third parties adhere to the Law and the Privacy Notice provided and authorized by the user. The user must be fully informed and must agree by his own volition to the dissemination, use and storage of his Personal Data.

After reviewing the Law, one may conclude that the Privacy Law of Mexico is influenced by human rights opinions and treaties, the Madrid Resolution, the European Union Privacy Directives, Working Party's opinions, Working Party's adopted documents, and case law developed in the European Union.

Presumably, Mexico's privacy law will be applied just as consistently as it has been applied today by the European Union and governments who have decided to protect privacy as a fundamental right.

EXPECTATIONS FROM THE DATA CONTROLLERS AND DATA PROCESSORS

The Privacy law requires strict adherence to the following principles:

- legality
- consent
- notice
- quality
- purpose
- fidelity
- proportionality
- Accountability under the law

Under these principles, all Data Controllers and Processors must promote full **transparency.** When transparency is used as a core concept, Data Controllers and Processors may be considered to be in the right path to full compliance.

One may find some principles to be more problematic than others. For example, there is a need

to have a signed written waiver document where the user gives permission to process his personal sensitive data. The document may be a physical document with the signature of the user, but it is also acceptable to use an electronic signature or any other method of authentication.
When sensitive personal data is processed, there has to be a justification for the processing. There have to be concrete and lawful reasons for the processing of the data. Data Controllers and processors shall afford users the same level of protection data Controllers and Processors use for their own data.

WHAT MAY BE ENCOURAGING ABOUT THE LAW

One may conclude that this law may not be more restrictive than laws currently used by some of the European Union Members. Most importantly, there is no requirement to ask for specific permission to install cookies by the data controller like the European Union Privacy Directives will require starting May of 2011.[15] However, it remains to be seen if the Law assumes that the requirement is already built into the Law as written.
As stated above the exchange of information may be seamless when Data Controllers and processors adhere strictly to the privacy policies authorized by the user. Corporations may communicate data with all other branches located in Mexico or abroad if they subject themselves to **Binding Corporate Rules**, but there is no need to request approval or file any document with the Institute.
Additionally, the law supports self regulation. It encourages industry to create rules and regulations that may be adopted into a deontological code. Copies and issuance of symbols of conformity may be issued and communicated to the authorities.

RIGHTS OF THE USERS

Users shall have the right to access, rectification, cancelation and objection of the data which is held by a controller. Nonetheless, this is subject to verification of identity. The rights of users are also extremely similar to the Madrid resolution.[16]

PENALTIES

CIVIL penalties are varied and the law lists a total of nineteen possible infractions. Whether or not the violations are all inclusive, it is not clear. What are known with certainty are the possible fines that may be imposed. Fines will vary between 100 minimum daily wages and 640,000 minimum daily wages. The minimum wage rate used shall be the one applied in Mexico City. The current minimum wage is about $6.00 dollars a day. Thus, the minimum fine is $600.00 dollars and the maximum is $3,880,000.00 dollars.
When it comes to criminal penalties, the grid below explains the possible criminal sanctions for violations of the law. The only criminalized offense is the illegal processing of protected data. The actual processing must take place for guilt to be found.

---

[1] http://www.chiefprivacyofficers.com/1/post/2010/07/analysis-of-the-ec-cookie-directive.html
[2] Supra Footnote 14

Accused Party (all elements must be met)	Personal Data Penalty	Sensitive Personal Date Penalty (article 69)
Article 67 (negligence) person; authorized to process personal data; for profit; causes a security breach affects the database under his custody	Three Months to Three Years Imprisonment	Six Months to Six Years Imprisonment
Article 68 (intent to commit) person intent to gain illegal profit processes personal data deceitfully taking advantage of owner of data, or person who is in charge of transmitting the data	Six Months to Five Years	Twelve Months to Ten Years

CONCLUSION

All things considered, the Mexican Privacy Law is not as strict as some of the European Union member's privacy law. One benefit is that nothing has to be kept in file with the Institute. The only instance when something must be filed is when a complaint is launched, or there is an action taken by any authority.
Bangladesh must consider following lead in the enactment of its own Privacy Laws. In the future, prosperity of a country will directly determined by its Information Technology industry. The Information Society of the future will seek to be one seamless exchange of information. Any obstacles in the flow of information will prevent corporations and industries to prosper.

Currently, it is difficult to make accurate predictions how the Mexican Law will be enforced since rules and regulations are yet to be known by the public in general. If anyone wishes to contact me, you may e-mail me at raulmendez1@earthlink.net or call me at 206-264-0849.

Copyright Infringement in Publishing and an Easy Reading of the Copyright Law of Bangladesh

Muhammod Shaheen Chowdhury
Assistant Professor of Law, C.U.
E-mail: shaheen_justice@yahoo.com

Copyright is an important branch of intellectual property rights which are also known as 'exclusive rights.' Copyright is a bundle of statutory rights endowed with the creators of literary, artistic, scientific, dramatic & musical works and producers of phonograms, cinematograph films, sound recordings etc. The bundle of exclusive legal rights under the copyright law include, *inter alia*, rights of copying or reproduction, communication to the public, adaptation and translation of the work. There is no copyright in ideas, it remains only in the material form in which the ideas are expressed. The main objective of copyright legislation is to encourage authors, composers, artists and designers to create original works by rewarding them with the exclusive right for a limited period to exploit the work for monetary gain. It protects the writer or creator of original work from the unauthorized reproduction or exploitation of his materials. Copyright ensures certain minimum safeguards of the rights of writers, artists, designers, performers etc. over their creations, thereby protecting and rewarding creativity. Creativity being one of the important elements of development, every country endeavours to provide protection against copyright infringement.

In spite of the silicon boom, easy access to the internet, convertibility of text books into electronic formats and their retrieval system, still most people around the world depend on printed books. Books have been precious tools for documenting and transmitting learning and knowledge through generations and serve as repository of our cultural heritage. Therefore, reading of books is as important today as ever. That is why, intellectual creations like a book deserves special attention and protection. But piracy at the national and international level is a great threat against the copyright. In simple words, book piracy means producing a very costly book at a very cheap rate by unauthorized copying of it through technical and other means. In the context of intellectual property, piracy is the mere reproduction of the property of the copyright owner without his/her permission in order to make profit. Pirates of intellectual property are criminals, usually operating on a large and organized scale, engaged in the theft of the products of other people's talents, skills and investment.

The nature of piracy can be perceived from the following perspectives:

a) A pirate never publishes a new book or records a new song or performance.
b) A pirate pays no royalties to the author, the illustrator, the translator, or to the composer, arranger, lyric writer or performer or to any other creative people who have contributed to the original work.
c) In the case of books, the quality of the pirated edition is often very poor. In the case of text books

and other research books- badly reproduced diagrams and illustrations could be quite serious.

d) The pirate makes no payment to the original publisher or to the record or film producer, in respect of production, editorial or distribution costs.

e) The pirates take no financial risks whatsoever. They concentrate only works, which are very popular and best seller. In fact, very few books or recording are financially successful. Perhaps at the first instance these books are produced at a loss by legitimate publisher or producer, and he has to apply or supply part of the profits from one successful product to recoup the losses on the other nine. The pirate keeps all his profits.

f) Pirates cause harm to both foreign and national works.

g) Not only does piracy cause financial loss to the various interests responsible for the creation, production and distribution of legitimate material, but also it leads to considerable direct and indirect loss to revenue of governments from unpaid taxes.

However, many argue that provision of cheap books or sound recordings or films, especially those needed for education, should be allowed particularly in the least developed countries. But pursuing this objective through piracy is not an acceptable solution. Thus, piracy must be eliminated if national culture, national production, national authorship and publishing are to be protected and encouraged. Experts opine, to condone piracy because of its apparent benefit to the dissemination of information and culture or the cause of education will, in the long run, be contrary to the interests of a country. Piracy demonstrates a disregard for legal rights and obligations towards the intellectual creators upon which the society itself is guided for future aspiration. That is why respect for law and order in an important sector of human society is seriously undermined by the activities of pirates. International community, international organizations like World Intellectual Property Organization, WIPO have shown their firm commitments towards combating this serious public mischief in different Conventions & Treaties. Different inter-governmental initiatives have been adopted so far and many follow-up actions have been taken by the state parties.

To combat piracy, every country must have an up-to-date copyright law, which will include at least following elements:

a) A full range of rights for the various categories of protected works;

b) An effective and vigilant copyright office;

c) Recognition and promotion of copyright societies;

d) Powers to search for and seize evidence of infringement or of the commission of offences, and to obtain information relating to such activities;

e) Rules of evidence which ensure that right owners can effectively enforce their rights through court proceedings without unreasonable hindrance from technical rules;

f) Penal provisions designed to cover all forms of piracy activity, backed by penalties which are effectively deterrent;

g) Control over the importation of copies of books and other protected works irrespective of whether the imported copies were made with or without the authorization of the copyright owner;

h) A full range of remedies including injunctions, both interim and permanent, accounts of profits, delivery up or destruction of infringing articles, awards of damages and reimbursement of costs.

Hopefully the Copyright Act of 2000 in Bangladesh contains almost all the above elements or similar provisions. Copyright subsists in original, literary, dramatic, musical and artistic works etc. and related to the expression of thought, but the expression need not to be original or novel. In order to secure copyright protection the author is required to bestow upon the work sufficient judgment, skill and labour or capital. It is immaterial whether the work is wise or foolish, accurate or inaccurate or whether it has or has not any literary merit. Section 2 of the Copyright Act contains definition of various terms used in relation to copyright. In case of literary, artistic or dramatic work (whether published in books or other pieces of writing), ownership of copyright goes at first to the author of the work. If the author is employed by newspaper, magazine or any publishing house under a contract of service, the proprietor will be the first owner in the absence of an agreement to the contrary. In the case of Government work, Government shall be the first owner. In the case of work made or published by or under any public undertaking, it shall be the first owner. In order to qualify for copyrights the works apart from being original, should satisfy the following conditions:

a) That the work is first published in Bangladesh. See section 3, 15(2) (a).
b) In the case of work published in foreign country, the author must be a citizen of Bangladesh or domicile in Bangladesh at the date of publication, or whether the author is dead at the time of publication and the work is published after his death, the author must be a citizen of Bangladesh or domicile in Bangladesh at the time of his deaths.
c) If any work is published in Bangladesh and any other country simultaneously, the work should be considered to be first published in Bangladesh. The work shall be considered to be simultaneously published if the difference of days between the publication in Bangladesh and publication in any other country is not more than 30 days or the time fixed by the Government. (Section 5)

Section 14 and 15 of the Act lay down the broad scope of copyright protection to an author. A copyright more or less gives the right to do and authorize the doing of any of the following acts, namely:

i) to reproduce the work in any material form;
ii) to publish the work;
iii) to produce, reproduce, perform or publish any translation of the work;
iv) to make any adaptation of work etc.

The Copyright Act provides for a quasi-judicial body called the Copyright Board consisting of a Chairman and two or more, but not exceeding six, other members for dealing with copyright issues. The Board has wide jurisdiction to deal with the granting of copyright and disputes over the payment of royalties, infringement of copyright etc. In order to claim copyright in any work, the author must at first proceed to get his/her work

registered with the Copyright Registrar working under the Ministry of Cultural Affairs. The duration and terms of copyright varies according to the nature of the work and whether the author is a natural person or a legal person, e.g., a Corporation, Government Institution etc. or whether the work is anonymous or pseudonymous. Section 24-32 of the Copyright Act provide for the terms of protection. For the authors of literary, dramatic, musical or artistic work, when the work is published, copyright subsists during the lifetime of the author plus sixty years from the beginning of the calendar year next following the year in which the author dies. When the work is of joint authorship, the sixty years period will start after the death of the author, who dies last. In the case of anonymous or pseudonymous works the terms of copyright is until sixty years from the beginning of the calendar year next following the year in which the work is first published. If the identity of the author is disclosed before the expiry of the sixty years period, copyright shall subsist until sixty years from the beginning of the calendar year next following the year in which the author dies.

Section 41-47 of the Copyright Act, 2000 provides for the concept of collective administration of copyright in Bangladesh where management and protection of copyright in works are undertaken by a society of owners of such works. A copyright society is a registered collective administration society, which as a separate legal entity safeguards the interests of the owners of the works in which copyright subsists. In fact, the author of the work is assured of commercial management of his /her work by these societies. Obviously, no owner of copyright in any work can keep record of all the uses of his work. When he becomes a member of a national copyright society, that society, because of its organizational facilities and strength, is able to keep a better vigil over the uses made of that work throughout the country and collect due royalties from the users of those works.

An author has certain remedies against the piracy of his/her copyright in the work. Piracy is an infringement of copyright and infringement involves one or more of the following acts without the authorization of copyright owner:

a) Reproduction of the work in any material form;
b) Publication of the work;
c) Making of adaptations and translations of the work and doing any of the above acts in relations to a substantial part of the work.

The act of infringement has to be proved from the surrounding circumstances. Similarity in style, language, design and sequence may constitute some evidence of unauthorized copying of books/writings. Exceptions are allowed to the allegation of infringement mainly to enable the encouragement of private study, research and promotions of education. Three kinds of remedies are available against infringement of copyright, namely: i) civil remedies, ii) criminal remedies and iii) administrative remedies. Civil suits provide remedy for claiming compensation for infringement and loss of profits as well. The owner of the copyright can bring civil action in which relieves such as Anton Pillar Order (Search Order), injunction, accounts and damages can be sought. Criminal remedies provide for imprisonment or impo-

sition of the fine or both, seizure of infringed copies etc. The infringement of copyright is a cognizable offence and punishable with imprisonment for a period extending from six months to four years and a fine ranging from taka 50,000/- to taka 2,00,000/. The government can also take administrative measures to prevent piracy of books and other publications.

The Copyright Act, 2000 of Bangladesh is a comprehensive and modern law. It was drafted in tune with international system of protection. The Act is fully compatible with the provisions of the Berne Convention and TRIPS Agreement. However, due to lack of awareness and non-effective administrative and judicial measures, the law has become a mere paper tiger. There are only a handful of cases which are filed under the copyright law and even the number of reported cases in the country relating to copyright is very marginal and not so mentionable. Although the number of piracy is frequent, the action to combat piracy is still at the very minimum level. Therefore, mere provisions for enforcement through legal proceedings, either civil or criminal, will be worthless if actions and remedies are not adequate and effective.

However, in spite of a wonderful legislation, the state of copyright protection in Bangladesh remains very vulnerable. This is due to the weaknesses of government machinery to effectively implement the regulatory safeguards. A culture of impunity seems to prevalent in this country as a result of which legitimate rights and interests of publishers, authors, music composers etc. are violated very frequently. This definitely will negatively impact on the long-term development of Bangladesh. The Ministry of Cultural Affairs, Copyright Society, Copyright Board, Bangla Academy, law enforcing agencies, the judiciary and other stakeholders have to adopt a concerted action programme to remedy the ongoing infringement of copyrights and prevent the possible violations. Of course, many sporadic actions took place in the past which are not sufficient enough to cleanse the whole jungle. Combing operations taken by the joint forces of Army, Police and RAB during the last caretaker regime against piracy of cinematograph films can be a glaring example of administrative vigilances of the state. Besides, some lawsuits are pending before the courts that are hoped to be disposed of quickly for the benefits of copyright holders. Moreover, sensitizing awareness and respect for copyrights among the people can be a general negation to the activities of piracy and other infringements.

References:

1. WIPO Model Law on Intellectual Property Rights.
2. WIPO Intellectual Property Handbook: Policy, Law and Use.
3. Azam, Monirul, "Intellectual Property WTO and Bangladesh." Dhaka, Bangladesh.
4. WTO agreement on TRIPS.
5. The Copyright Ac, 2000.
6. Web: http://www.wipo.int/portal/index.html.en

A proposal for ICT based Document Management Process in the Legislative Procedure of The Parliament of Bangladesh

Adv. Mohammad Hasan Murad
Assistant Professor & Head, Dept. of Law, IIUC.

Abstract

The objective of this paper is to provide an overview of the prospects of the application of information and communication technology (ICT) in the domain of legislative document management in Bangladesh Parliament. Bangladesh is willing to move forward and develop good governance in every organ of government by introducing ICT as a development aid tool as envisaged in the Millennium Development Goal (MDG) of Bangladesh. A fast and progressive legislative system is necessary for Bangladesh in order to address pressing issue where regulatory solutions are required. In order to achieve efficiency and functionality of the working of the legislative body, information systems should be introduced for reliable creation, storage, retrieval and dissemination of legislative documents such as bills, discussions, committee reports ,arguments ,minutes of parliament and laws. In this article I have explored the methods and challenges of developing a legislative Document Management System especially in connection with the structuring of documents and following open standard.

1. Introduction

A Parliament is the center in running democratic affairs of a state. It is in the parliament where a country's present policy is scrutinized and future stance is constructed by way of debates, deliberation and legislation. In almost all democratic states a parliament has played the central role to introduce legislation, taxes and allow expenditures for the government. It has been argued that the primacy of legislation is going to an end[1] and we are gradually moving from the era of legislation to the age of administration[2] (by special technical bodies), or jurisdiction (creation of law by judges, supported by jurists) or customs and soft regulations (as emerging especially from economic relation, contracts and decisions by arbitraries) or even computing code (enabling or constraining actions in virtual environments[3]). However, the emergence of other sources of law does not necessarily render legislation less important and less central and the parliament and its legislation will continue to be the major sources of laws and regulation in the foreseeable future especially in developing countries like Bangladesh. The inherent values that parliamentary legislation should address are as follows[4] :

a) Legislation should provide regulation that will be capable of giving solution to the problem they address being supported by best available knowledge.

1 Giovanni Sartor, Open Management of Legislative Document, Drafting Legislation: A Modern Approach, Xanthaki, Helen (Editor) Stefanou, Constantin (Editor), Ashgate Publishing Ltd, 2008, p 259.
2 Etzioni-Halvey, Bureaucracy and Democracy, London: Routhledge and Kegan Paul. E (1983),
3 As described by Laurance Lessig in his famous book *Code and Laws of Cyberspace*.
4 Sartor, Supra note 1.

b) Legislation should provide regulation that will be a product of open and rational debate among law makers and stakeholders. In this process, relevant advantages, disadvantages and alternatives are considered.

c) Legislation should reflect opinion of the public in general and should be able to adapt to social changes.

d) Legislation should promote legal certainty by way of providing effective normative guideline to the people and decision makers and means to check arbitrary exercise of power.

e) Legislation should enable citizens to be aware of their rights so that in the event of default they are able to claim their rights.

Information and Communication Technology has the ability to contribute to achieve the above mentioned values in a modern parliament by providing-

a) ICT tools to monitor and evaluate the impact of present or new law on the administration and society.

b) Communication and Information retrieval tool to promote informed debate on legislative initiatives.

c) New platform for interaction between citizens and their representatives and voicing opinion i.e. social networking, online feedback, e –petition system.

d) Systems facilitating access to law and other legislative information, making law more understandable and common citizen friendly.

e) Making more accessible knowledge about rules and remedies, clarifying procedures and automation of repetitive tasks.

It is out of the scope of the paper to discuss all components of a Legislative Information System. However the main focus of this paper is outlining a system for document management within parliament which will be a significant part of the whole information system in the Bangladesh Parliament.

2. The need for a Document Management System for the Bangladesh Parliament

Different Governments of Bangladesh who came to power failed to make the Parliament an effective forum for democratic process. The causes which are identified are *inter alia* , Lack of political will, conflict and disunity between the opposition and treasury in almost every matter, lack of education and awareness among members of parliament who mostly come from business community and an age old system of internal management of the Parliament. This is unrealistic to think that Introducing Information and Communication Technology in day to day activities of the Parliament will change the situation overnight. Nevertheless, it will definitely increase the productivity and efficiency of the house and citizens will be largely benefitted and this will set the ground for transforming the Parliament to concentrate on more citizen centric debate rather than making it a political war ground. A Document Management System in The Parliament is expected to bring the following benefit as it did for many Parliaments around the world-

I. The process of legislation takes up months and even years in the present system due a poor communication between different actors in the legislative process. The Proposed

system has the potential to integrate all communication channels between the actors involved and makes it much quicker to establish communication and document transaction among them. This will certainly reduce time in different level of legislation.

II. Law makers need instant access to previous laws, regulation, meeting reports and committee reports to assess a current situation. An easy search and retrieval tool of such document will be a great help for them to decide and deliberate on important issues.

III. Cost is a big issue in the Parliament. Printing and storing volumes of report in paper format involves huge cost and traditional communication by letter is also not so cheap and highly inefficient. Members will be able to file their queries to the government through the system leading to speedy and paperless flow of information across the treasury and opposition benches. While investment in Information Technology is one time and maintenance cost is quiet manageable as compared to the productivity and length and extent of service it has to offer.

IV. Since all proceedings, discussion and decisions will be recorded and protected by encryption, No one in the administration can alter any decision taken in a committee whimsically and this will ensure transparency and accountability. The opposition will have the opportunity to be more involved in the democratic process knowing their opinions will be valued.

V. The work flow of the legislature will be improved which may lead to efficiency and cost reduction.

VI. The most important benefit will be the online accessible publication of proceedings, laws and regulation. In the proposed system laws and regulation will be updated on regular basis and will be freely accessible by any citizen through various delivery channels i.e., World Wide Web, mobile device, community information center etc. The system can be instrumental in strengthening citizen engagement, providing innovative ways of interaction between citizen and legislature.

VII. The system will help connect parliamentarians and parliamentary institutions with their worldwide counterparts, thus sharing and strengthening their knowledge and information on the issues they confront.

VIII. Finally the whole system will be an important driving force to the countries aspiration for greater democracy and development.

ICT policy of Bangladesh clearly supports the objectives in general terms as '(the policy is intended to[5]) promote use of ICT by providing special allocations for ICT project implementation in the public sector. Train the decision makers in ICT use and promote an ICT culture'.[6] Introducing ICT in the Parliament and law making process in a developing country like Bangladesh is a tough challenge to undertake and the system will undoubtedly have some pitfalls too. Firstly, the history of system management in Bangladesh is somewhat disappointing. The DMS could be managed by inefficient people resulting in catastrophic information failure. Secondly, like most e-government projects digital divide will hamper in

[5] Words in parenthesis are added by Author.
[6] Section 2.2.3 of The ICT Policy of The Government of Bangladesh 2009.

ripping the benefit of the parliamentary information system for the mass people. However, with the increasing awareness and literacy of ICT it is hoped that this effect will get substantially reduced in future. Thirdly, it will be difficult to train the lawmakers to use the system because usually most lawmakers are not so ICT friendly. Fourthly, it will be difficult to resolve the issue of the status of originality and state of being official version of documents contained in the Database.

3. Strategies of Building a Document Management System

Before developing and introducing a DMS for the Bangladesh Parliament a thorough study should be made on the methods and ways to be adopted in such a system and strategies should be planned beforehand in order for the smooth development and deployment of the system. Bengt Eriksson, a Swedish specialist who has long practical experience within the area of Legislative Informatics, explained the core strategy to be adopted while developing a document management system for parliaments,

> 'Over the years, we have learned a few things. One is that standards come and standards go. Concretely , that could mean that instead of viewing today's internet and today' standards as the final answer to the document access and information exchange , you should ask yourself which of today's standards are likely to survive long enough to establish themselves as standards of tomorrow. From that point of view, it is obvious that the solutions that you seek today must be as generic as possible, proprietary only to the extent that is deemed absolutely necessary. If such solutions are not found, you stand the risk that because of compatibility difficulties much of your work is rendered useless whenever a new software tools and software version is released.'[7]

A particular solution developed today must be flexible enough to embrace future technology given the fact that ICT is growing and transforming at an exponential rate. Such system should not be complex and user friendliness should be given utmost priority as the users of the system are not supposed to have advanced user level of IT knowledge.

A Document Management Systems may contain the following elements–

a. Document Production
b. Document Storage in Database
c. Document Distribution and Retrieval
d. Document archival

Document Production

The following strategies[8] to keep in mind while designing rational production system of documents-

a) Document should be structured.
b) Metadata and Information about the structure should be entered as close to the source as possible.
c) Information security should be ensured.

[7] Bengt Eriksson ,Maintaining Information Quality – Experience from the Swedish Parliament – Sveriges riksdag, *Legal Management of Information System –incorporating law in e-solutions*, edited by Cecelia Magnusson Sjöberg , Studentlitteratur, Lund , 2009 , p 236.

[8] Id. p 239.

Structuring of Document

Numerous documents are produced during the working of a Parliament i.e. Bills, Committee Reports, Session Minutes, Committee hearings etc. These documents can be produced in raw and flat format or in structured format. Structuring of documents means breaking down of the documents in parts and marking them up so that they can be recognized by a system **which part contains what type of information**. Every system development procedure within the field of legal document management requires a document analysis at the very outset and it is practically imperative when the doc ware[9] technique is applied.[10] A document is structured when we can trace and identify different parts of it such as title, headings, paragraphs, articles and references etc. It is also possible to set rules as to what parts of the document may contain what kind of data. A structured document is useful for various reasons. Firstly, it allows the search of document to be very efficient. Documents may be considerable in size and word matching search within the documents may not produce desired results. Search is more effective when documents are structured. Secondly, if the document is structured it will be much easier for a search engine to locate the exact kind of information a researcher wants. Structured document with better information retrieval technique has the potential to cater to the information need more efficiently. Thirdly, it is quite obvious that technology will evolve very fast in near future and structured documents will be more suited to adapt to the new technologies. Fourthly, rules can be set up with structure which will not allow wrong kind of data to be entered in a specific part of the document leading to the integrity and reliability of the documents. Finally, structured documents are easily manageable in respect to the version control and applications of amendments.

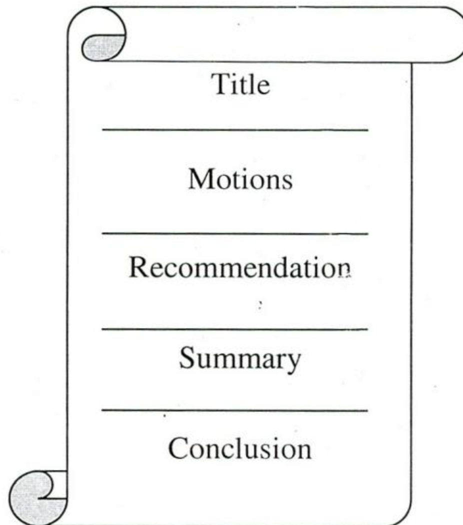


Figure 1 : In a structured document, every part is clearly identified.

[1] Standardized document markup language ie. XML

[2] Cecelia Magnusson Sjöberg , Critical factors in legal document management, *Legal Management of Information System –incorporating law in e-solutions*, edited by Cecelia Magnusson Sjöberg , Studentlitteratur , Lund , 2009 , p 417.

Information Standard

All those benefits of structuring document mentioned above can be achieved by document mark up. There are many markup standard or information standard out there such as HTML , SGML ,XML. XHTML etc. The question is which standard will be appropriate for our system. A suitable standard should be open not limited by intellectual property, vendor independent, supported by a well accepted standardization Authority such as International Standardization Organization (ISO) and most importantly its definition should be publicly accessible and generally understandable. An appropriate standard for legislative document may contain a set of straightforward, technology neutral representation of Parliamentary documents and an enabling structure for the effective exchange of machine readable documents such as legislation, records and minutes. [11] Machine readable means organizing document in a structured and systematic manner so that a software application may read it without any flaw.
In this era of globalization parliamentary information and experience exchange across the world is crucial to promote democracy and international co operation. A good standard allows interlinking and web-enabling of Parliaments. Such standard will address policies and specifications for connecting Parliament information system across countries. Country Parliaments should use the guidance provided to supplement their national e- Government Interoperability Frameworks with an international dimension and thus enable international interoperability of Parliaments.[12]

The choice of standard and XML solution

HTML (Hyper Texts Markup Language) is one of the easiest and widespread mark up standard used to day. However, it is designed largely to define how text and data will be presented to the user. Most of the text presentations we encounter in today's website are defined by HTML. It has predefined mark up tags which seriously undermines the usability of it as information career. In view of this HTML will not be a good choice to structure Legal document although it will be used in the presentation and user interface part of the system.
XML or extensible Markup Language is a popular information standard in the legal arena. XML does not DO anything in itself. XML was instead created to structure, store, and transport information. It is just pure information wrapped in tags. Someone must write a piece of software to send, receive or display it.[13] It is a meta language that can be used to build different kind of information models. XML. XML has elements and attributes. An XML element is everything from (including) the element's start tag to (including) the element's end tag. An element can contain other elements, simple text or a mixture of both. Elements can also have attributes. XML elements can have attributes in the start tag, just like HTML.[14] Attributes provide additional information about elements. **XML based**

11 Fabio Vitali, A standard-based approach for the management of legislative Documents, Global Centre for ICT in Parliament Working Paper No. 2 January 2008, retrieved from www.ictparliament.org.
12 Id.
13 http://www.w3schools.com/xml/xml_whatis.asp
14 http://www.w3schools.com/xml/xml_attributes.asp

standards means the standard in question uses XML to describe the information model that is the object of the standardization attempt.[15] XML is suitable for structuring the legislative documents because it offers the flexibility to the developers to invent their own tags, it is an open standard which means no royalty payment is required and most importantly it provides a system called schema or grammar which is a set of rules that describe the structure of a document and which could be used to validate a document.

```
<REPORT>
        <TITLE>………………..</TITLE>
        <MOTIONS>…………..</MOTIONS>
        <RECOMMENDATIONS>………………</RECOMMENDATIONS>
        <SUMMARY>……..</SUMMARY>
        <CONCLUSION>…….</CONCLUSION>
</REPORT>
```

Figure 2: A simple example of XML document with different elements.

Document Type Definition and Schema

Document Type Definitions and XML Schemas both provide descriptions of document structures. A Document Type Definition (DTD) defines the rules of an XML document. It defines the document structure with a list of legal elements and attributes. XML Schemas express shared vocabularies and allow machines to carry out rules made by people. They provide a means for defining the structure, content and semantics of XML documents. in more detail. XML Schema was approved as a W3C Recommendation on 2 May 2001.[16] An XML Schema defines the elements, child elements and the attributes that can appear in a document. It can also define the order, the number of child elements, the data types for elements and attributes.

```
<xs:schema>
<xs:element name="REPORT">
 <xs:complexType>
  <xs:sequence>
   <xs:element name="TITLE" type="xs:string"/>
   <xs:element name="MOTIONS" type="xs:string"/>
   <xs:element name="RECOMMENDATIONS" type="xs:string"/>
   <xs:element name="SUMMARY" type="xs:string"/>
        <xs:element name="CONCLUSION" type="xs:string"/>
  </xs:sequence>
 </xs:complexType>
</xs:element>
</xs:schema>
```

Figure 3 : Example of Schema of the figure 2 XML document.

15 Nicklas Lunblad, Legal anlysis of XML based information standards, , Legal Management of Information System – incorporating law in e-solutions, edited by Cecelia Magnusson Sjöberg , Studentlitteratur , Lund , 2009 , p 400.
16 http://www.w3.org/XML/Schema

Meta data

Meta data can be defined as 'data about data'. Meta data is not included in the actual content of a document rather they are outside information which describes the content of the document. Metadata is structured data which describes the characteristics of a resource. It shares many similar characteristics to the cataloguing that takes place in libraries, museums and archives. The term "meta" derives from the Greek word denoting a nature of a higher order or more fundamental kind. A metadata record consists of a number of pre-defined elements representing specific attributes of a resource, and each element can have one or more values.[17] Following is the example of meta data

Element	Value
Title	The Document
Creator	Committee 1
Meeting No	1
Format	XML
Date of creation	12.02.2010

DDI, EAD, e-GMS are some examples of meta data standards.[18]

Using controlled vocabulary such as taxonomies, thesauries and anthologies meta data could be created in a document in a more sophisticated manner. Taxonomies and thesauri are vocabulary terms arranged into a hierarchal structure where each term has one more vocabulary and grammar for using that vocabulary to express something meaningful within a specific domain of interest.[19] The Parliamentary Ontology needs to be designed to be extensible so that those Parliaments with different, or more specific, metadata needs may add extra elements and qualifiers to meet their own requirements.[20] Meta data facilitates more knowledge about the document in question and offers users many more possibilities of locating the specific data he or she wants.

Meta data could play an important role in the legal information management like our proposed Parliamentary Document Management System. Meta data in an information retrieval system greatly improves the recall and precision of a particular search. In a legal information retrieval system word matching searches are not always so efficient and effective. Adding meta data to the documents along with latest search technology enables field and semantic searches. The goal is to enhance user satisfaction on the IR system by providing useful search results.

A particular legislation may be amended to address the need of time. In that case the facts behind amendment would be added with the document as meta data. The amendment information such as amendment date, amending bill submission authority ,votes etc are just as important as the amendment text itself. So meta data could supplement new information.

17 http://www.library.uq.edu.au/iad/ctmeta4.html
18 Bloom , J . Meta data say what? http://www.cs.stir.ac.uk/~jmb/publications/jmb_publications.bib accessed on June 6, 2010
19 Ericsson , supra note 7 , p 241
20 Vitalli , supra note 11.

Ensuring Information Security

Information Security is a crucial issue to be considered while developing the Document Management System. The system is required to be safe and reliable both from technical and information quality point of view. Information Security is the overreaching concept that encompasses security of information whether the information is paper based or electronically stored. Internal and external vulnerabilities of the system should be considered and adopt measures to minimize risks and ensure greater confidence and trust. It is customary to discuss three concepts while discussion information security of particular system.[21]

Confidentiality: prevention of unauthorized disclosure of information or information resources. The assets of the information system could only be accessed by authorized persons. Various level of access could be granted to persons with different responsibilities. This will be controlled by an information security policy. In our system some information may be sensitive and must be protected before it is right time to disclose them.
Integrity: prevention of unauthorized modification of information or information resources. Integrity is the most important issue to be ensured in our system. We must make sure that all legislative documents are stored exactly as they were produced and they do not also change when the documents are retrieved. Electronic signature using asymmetric cryptography could be used to achieve integrity.
Availability: prevention of unauthorized withholding of information or information resources. According to ISO 7498-2[22] availability is ' the property of being accessible and useable upon demand by an authorized entity'. This concept indicates under usual condition the system must be functional so that the stakeholder of the system could benefit from it.

Document Storage

Adequate storage and efficient access methods are crucial elements in any document administration.[23] Documents with its structure and meta information has to be stored in a Database for reference and retrieval through various delivery channels. A database is crucial element for our system to organize and store the documents produced in manner described above. In designing the database and choosing a database solution we have to keep in mind that it should support structured document format; it will be better to choose an open source solution to minimize cost and most importantly it must be reliable and secured.

Document Distribution and Retrieval

Intranet and Extranet

Our proposed document management system will be composed of intranet and extranet. An intranet is a private computer network that uses Internet Protocol technologies such as

21 Helena Andersson , Loise Yngström , Information Security , Legal Management of Information System –incorporating law in e-solutions, edited by Cecelia Magnusson Sjöberg , Studentlitteratur , Lund , 2009, p 453.
22 Id. at p 454.
23 Ceceila M Sjöberg, Supra note 10.

HTTP to securely share any part of an organization's information or operational systems within that organization.[24] Intranet is the private network connecting different ministries, parliamentary secretariat, and legislative drafting wing and law commission. The intranet will facilitate synchronized work flow among different agencies above involved in law making process through highly secured and closed network. Through the system a particular ministry can initiate a legislative proposal and the proposal can see it life cycle of transforming into law by work flow defined and established in the system. An extranet is a computer network that allows controlled access from the outside for specific purpose.[25] The public documents can be viewed through extranet. The extranet is the extension of internet to ensure accessibility off site. Some part of the parliamentary web site will be part of extranet.

The Website

Websites have become an indispensable publishing media due to proliferation of internet in every sphere of life. Almost every parliament around the world has a website providing the viewers from basic information to sophisticated e-citizens consultation service. The official website of parliament should be a one stop center for all information regarding the legislature. It should be authoritative and non-partisan and must be easily understandable, user friendly and freely accessible to anyone. The website has to provide information in timely, accurate and comprehensive manner. It is required to be well managed and supported so that it could meet the growing needs of citizens and members, keep pace with new technology and help ensure transparency and accountability of the Parliament.

Objectives of the website

In general the parliamentary websites started with the principle aim of a web presence providing basic information. Over the years parliamentary websites are developed and improved to offer a very diverse range of information in a more complex and challenging way. The following are the objectives of a modern parliamentary website-

a) To provide basic information about the history, functions and members of the parliament.
b) To provide copies of official texts of proposed legislation.
c) To provide a code of law for the country containing all laws and rules in force in the country.
d) To provide accounts of debate and summaries and plenary actions and copies and committee documents.
e) Two way communication between members and citizens and engaging citizens in the policy process.
f) To provide improved methods of access through better search engines for retrieving documents.
g) To provide alerting service to enable citizens to be notified of the introduction and changes in the proposed legislation.
h) To provide audio and video streaming of sessions live or from archive.
i) To provide an easy and user-friendly interface for citizens.
j) To provide download facilities of authoritative parliamentary documents.

The website has to be designed and developed keeping in mind the above objectives. In addition the

[24] http://compnetworking.about.com/cs/intranets/g/bldef_intranet.htm
[25] Id.

website should be designed such a way that in one hand it ensures the access to information of all who interested, on the other hand it protects persons and their personal data from unauthorized access and processing. A privacy policy should be incorporated in the website to achieve the above goal.

4. Document Archival

Due to advancement in technology electronic archiving has become more common place and serves as affordable as well as reliable solution for preserving documents. Through electronic archiving it is now possible to easily archive different forms of data such as images and videos. All the data created and preserved in Document Management System should be delivered to the national archive where they will be preserved for future use. Suitable technological solution is to be explored for such archives as they are meant to last many years to come. Standardized methods of archiving are being developed. There should be rules and regulation to describe the procedure to be followed for delivering data to electronic archiving. Information standard could be suggested as the required delivery formats in this regard.[26]

5. Conclusion

A Document Management System based on XML standard offers many challenges and obstacles and some of them are quite formidable. Practical experience has suggested that it is really a time consuming and laborious task to fully realize the potential of XML standard in combination with available software. Once various tools are acquired, uncertainty still looms at the stage of information retrieval. It is quite challenging to establish proper establishment and updating of hypertext links in a frequently recurring environment of legal texts.[27] A particular amendment may contain a lot of background report and information and it is difficult to fit all the information in and linking them appropriately.

XML require an investment of time and effort by key stakeholders to agree on the format of official documents and on the tags to be used to mark them up. This calls for a specialist team consisting legal experts, technical experts and interdisciplinary experts of Law and Information Technology. It will be quite difficult for Bangladesh to gather and maintain such a team due to unavailability of expert human resource and low compensation structure. The effort needed to reach agreement is also quiet overwhelming.

Adding meta data is also a challenging task. The question is who will add meta data. Meta data should be added by the document creator or meta data can be added by automatic means. In this regard, the drafters work will be significantly increased if meta data is to be added manually.

The system will need high degree of security and availability. It is quite imaginable the degree of chaos and confusion could be created if the system goes offline or malfunction without warning. The system is vulnerable to inside and outside threats and calls for various preventive and remedial measures. An Information security policy should be formulated which will describe the possible course of action that may be taken to deal with the emergency situation arising from time to time.

---

[1] Cecelia M Sjöberg , supra note 10

[2] Cecelia M Sjöberg , supra note 10

Journey to Jurisprudence: Why & How to prevail...

Adv. Taslima Khanam
Lecturer, Department of Law, IIUC.

Preface...

Welcome to the study of Jurisprudence!!! In fact, it amounts a panic journey for most of the students of Law. However, this introduces you to the study of jurisprudence that aims to give you a framework to start the journey with a quest of understanding that feeds our heart and minds with deep-seated human ideals of Law.

A little Jurisprudence can be a dangerous thing...

Law students, at the course of study, require taking lesson on many courses; one of these is Jurisprudence or legal Philosophy or Legal Theory. However most tends to dislike jurisprudence as it is regarded confusing or complicated. Even some believe that it is useless for law professionals. So conclusion is very simple that we do not need Jurisprudence!! But we have to study jurisprudence as a mandatory course at the Law program almost all over the world. In some universities, Law students require to study Jurisprudence as more than one course. Here we often try to take a short cut across the field of jurisprudence. Yet Law professors wish to make sure that every student remembers the major lessons of Jurisprudence during the whole study period. **Why is this**?

Law students are commonly recommended to read some introductory works, which cover the ground of the Law course in outline before they embark on a new legal course. An overview of the terrain before undertaking detailed study is thought desirable. Jurisprudence is that course which is set out to introduce some fundamentals that underpin our understanding of Law. Jurisprudence deals with fundamental principles of Law and Law deals with rules based on fundamental principles introduced by Jurisprudence. Jurisprudence is a particular method of study or investigation into the nature of Law or concept of Law. Unlike Jurisprudence, no other subject in legal studies can help us with a clear vision of looking at Law critically and to feed ourselves with appropriate courage to come up with legal reforms to improve the legal system we are in. However many of us even do not know who is using jurisprudence for what purpose. Let see what the reality is.

Lawyers are the manipulator and forward planner of words; this is an assertion and obviously not a criticism. The lawyer requires the skill of disclosing facts, expressing ideas and applying the principles. The ultimate solution of any legal problem is to be found in the application of basic principles to ascertained facts. The difficulties that obstruct the ultimate solution lie in the selection of appropriate principles and rejection of irrelevant facts. These difficulties may also be faced by the judges or the Courts. Here the skill of proper selection is obviously backed by the jurisprudential knowledge, as this course requires analytical mind or brain with legal acumen to analyze legal issues in such a way that can be used for the welfare of the people and society as well. Even if we go to the field of law making, no one without a deeper acumen and wisdom can suggest legal reforms, which may be conducive to bring about positive changes in any society. Shortsightedness in law-making endeavors and wrong ways of implementing laws are dangerous phenomena that can be understood fully with the help of jurisprudence. Moreover, legal affairs in any modern

society are not at all isolated from the underlying political, social, economic and cultural conditions of concerned state. As law students, we need to appreciate that jurisprudence brings us closer to other fields of knowledge without which we would remain ignorant about the inter-disciplinary approach to law and legal reforms. The knowledge of general ideas and principles lying at the root of all rules of law, which jurisprudence conveys serves to train our minds into legal way of thought and afford a key to the solution of many provisions of law, which would otherwise appear to be unaccountable for law professionals.
The idea of justice in a broad sense closely related with law. We cannot know what any rule is unless we know what it is intended to achieve. It should be recognized that the definition of law is itself purposive. There is no doubt in the realizing that ultimate purpose of law is to ensure the justice promoting the ideals of peace and goods order. Without it, the order of the universe will collapse and the opportunity for perfection will fade away. Thus the sphere of jurisprudence, which is the study relating to law is also a study of the idea of justice; the foundation of creation of humankind and the whole universe. Therefore, the boundary of jurisprudence is widened to the entire earth. So, how can it be possible to remain outside the boundary of jurisprudence? How can a little learning be desirable and feasible here?

Hence, ultimate realization is that we must know jurisprudence and it is true that you know jurisprudence like your mother knows you. This may be the reason why jurisprudence is regarded as "Mother-Science of Law". Therefore, no short cut journey at all.

What is jurisprudence about?
Now to establish a framework to start the journey, firstly we must know: what jurisprudence is about. At the root of the search for this, we may grasp the structure of jurisprudence into two areas according to Austin: the father of English Jurisprudence. One is the area of general jurisprudence and the other is particular jurisprudence. Although opinions vary as to the value of such analysis, it helps us to determine the province of jurisprudence, which is very helpful to start the journey.
General jurisprudence deals with speculation about the law; particular jurisprudence deals with speculation about the particular legal concept. General jurisprudence raises questions of all kinds about law, which may involve analysis of the concept of law and of other legal concepts. Such as:

What is law for?
What does it achieve?
Should we value it?
How it is to be improved?
Who makes it?
Where do we find it?
What is its relation to morality, to justice, to politics, to social practice?

These are the questions of which general jurisprudence is comprised. In this area, we have to go into the legal theories providing the concepts of law (what Law is vis-à-vis what Law does) from different facet and the sources of law (authority behind law and from where we get the law) of different legal systems. On the other hand, particular jurisprudence is concerned with the analysis of legal concepts other than the concept of law itself. Substantive legal commentaries and legal arguments also engage in the analysis of legal concepts. Particu-

lar jurisprudence concerns itself with terms, which are common, both to different system of law and to different branches of law. Murder is not such a concept because though it appears in all systems, it is peculiar to criminal law. Actually particular jurisprudence fastens on terms that are both inter-branch and inter-systemic like Right, Personality, Property, ownership, liability etc. Here we find lots of legal concepts which furnish our legal study in a definite and more comprehensive way for better understanding of law, and there is a tradition to seek the essence of legal concepts by asking for true definitions. It might be contended that the meaning of a legal term varies from context to context. However here we find out what words 'mean' by asking what pictures they bring to the mind and what impulses they stimulate.

If jurisprudence has a heartland all its own, it is **legal theory**. Legal theorists make different assumptions about the proper relationship or legal theory to issues of legal philosophy: that is between an investigation of the nature of law and a discussion of the value implications of law. Here we find that: for Bantham and Austin law should be defined in terms of political facts, so that it may be laid bare for criticism in terms of morality. For Hart, the diverse social functions of the law must be incorporated into our conception of law, so that any judgments we make about it are not deflected by a distorting mirror. For Kelsen, pure information about legal prescriptions must be separated from intrusive value judgment of all kinds. Kelsen is the true friend of the practitioner who wants to be called on to describe the law and nothing but the law in office hour. For the natural lawyers and for the anti positivist like Dworkin, 'what law is" – is so intimately connected with what morally speaking "the law ought to be" that includes some conception of moral truth.

All these are what Jurisprudence about. Now our major task is to try to understand at great length at least some of the famous legal theories and their merits and demerits. We need to discover new meanings of many established legal thoughts and put new sense to those ideas, which is very vital to prevail in this arena.

Conclusion….

Although no one more than the legal philosopher runs the risk of forgetting what he is trying to do, the risk also exists in this journey to jurisprudence. Most of time the word "jurisprudence" is used as a heavy word for the study of law for which the journey to the proper fields of jurisprudence needs a systematic roadmap. Remember further, **a little jurisprudence can be a dangerous thing.** Though, there are no doubt that many permissible ways of the journey are considered, I think the most useful is what conceives of it as attempting to give a profitable and satisfying direction to the application of human liveliness in the law. My effort is to introduce the readers to the journey of studying jurisprudence, leaving it to them to accomplish the destination.

References:

Paton G.W. '*A Textbook of Jurisprudence*' (4th edition, 1972).
Hart H. L.A. '*Definition and Theory in Jurisprudence*' (1957) 70 Law Quarterly Review, 37.
Fitzgerald P.J. '*Salmond on Jurisprudence*' (12th edition, 1966).
Dr. Avtar Singh, '*Introduction to Jurisprudence*' (2nd edition, 2006).
Dr. Maimul Ahsan Khan, '*The Basics of Jurisprudence* '(Law's Empire Publication).
Dr. Hamiduddin Khan, '*Jurisprudence & Comparative Legal Theory*' (1st edition, 1993).
James A Holland, Julian S Webb, '*Learning Legal Rules*' (6th edition, 2006).
Riddall J. G. '*Jurisprudence*', Butterworths, London, 1991.

Rights of Women and Children in Law and in Practice: Bangladesh Experience

Adv. Md. Ridwan Goni
Lecturer, Dept. of Law, IIUC

Now a days women's right is the talk of the country and the present government of the country is drafting law after laws in the only name and banner for the protection of women's right but what the real scenario is? The real scenario is completely different as like as the very ancient period. In the ancient and middle ages women were the favorite subjects of literature, and Bangladeshi women are now also no exception with that. The beauty and charm of Bangladeshi women are extolled in poems, legends and short stories. But the suffering and repression side of Bangladeshi women hardly comes out in the literature. Bangladeshi women endure oppression and deprivation in their own family, community or in the society at large. They are also subjected to violence and discrimination. In a densely populated country like Bangladesh, with its socio-economic and legal systems biased against the poor and the women, Bangladeshi women are in difficult situation.

Women's rights in law

Under the Constitution of Bangladesh, women's rights are protected under the broad and universal principles of equality and participation. These principles are found in the following Articles in the Constitution:

- Article 10 of the Constitution provides that steps shall be taken to ensure participation of women in all spheres of national life.
- Article 19 (1) provides that the State shall endeavor to ensure equality of opportunity to all citizens. Article 27 specifies that all citizens are equal before the law and are entitled to equal protection of the law. Moreover, Article 28 (1) provides that the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, or place of birth. Article 28 (2) more directly and categorically says that women shall have equal rights with men in all spheres of the State and of public life. This latter provision means that all rights mentioned in the Constitution, such as right to life, right to personal liberty, right to property, freedom of movement, freedom of speech, freedom to exercise a profession or occupation are equally applicable to women in Bangladesh.

Bangladesh has a number of special laws, specifically prohibiting certain form of violence against women including the Penal Code, 1860, the Anti-Dowry Prohibition Act (1980), the Cruelty to Women Ordinance (1983), the Suppression of Immoral Traffic Act (1993;),Child marriage restrain Act-1929 and the Prevention of Repression against Women and Children Act (2000) as amended later on.

Women's rights in reality

Despite the legal support for women's rights, Bangladesh women are still practically not

given equal treatment. Practices of inequality are manifold, of which the following deserve a special mention:

- In case of wages in the informal sector, women are paid a lower grade than men for the same work;
- In divorce, women need a court order to enforce their right to divorce, which requires proving the validity of their reason for seeking divorce. Men, on the other hand, do not need such court order and thus they can divorce their wives even without any proper reason, and at any time they wish;
- In inheritance, a woman is generally given half the share of her male counterpart. A son would exclude his paternal uncle or aunt from inheriting from his deceased's father's property, while a daughter would not cause such consequence. (though she gets share from her husband and son).

Contravening the Constitutional provisions on the right to life and liberty (Article 32), and freedom of movement (Article 36), Bangladeshi women face different forms of violence by men on a daily basis. One research report[1] published in 2000 by a reputed women's non-governmental organization in Bangladesh shows that 30% of the women in the cities are battered by their husbands, 37% are victims of verbal insults and harassment, and 33% are victims of other forms of domestic violence. Another survey reveals that among the victims of physical violence, 23% are rape victims, 22% acid-throwing victims, 10% burn-victims, 5% are victims of poisoning, forced abortion and other kinds of violence. A number of traditional practices also oppress Bangladeshi women. Many women have been charged with committing "moral" offences before local religious leaders whose views are generally biased against women. The local religious leaders issue a *fatwa* (ruling) that metes out punishment to women, such as the humiliating and degrading public whipping and stoning. There is no legal sanction for *fatwa*; it is simply a part of traditional practice.(though on 12/05/2011 there lordship has given judgment in favor of *fatwa* with reasons that this fatwa must have to me from proper authority and proper authorized and specially learned and expert on this matter) i personally do appreciate and agree with this judgment so that no woman in Bangladesh in future be harassed only in the name of *fatwa.*

Bangladeshi women who fail to pay the dowry to their husbands and their families are subjected to violence. Some have been beaten, set on fire or poisoned. Women who turn down marriage proposals are in danger of suffering violence from spurned men. There is increasing number of cases of men throwing acid to the faces of women with the aim of disfiguring them. One non-governmental organization (ODHIKAR)[2] reported an increasing number of acid-throwing cases - 101 in 1998, 178 in 1999, 186 in 2000, 206 in 2001 (including 33 of the victims who were children) and 247 in 2002. There are also cases of trafficking of Bangladeshi women to other countries for purposes of forced prostitution. Because of the hidden nature of trafficking, reliable statistics are hard to find. Nevertheless according to one report,[3] the rate of trafficking of women and children in Bangladesh is as follows:

- 200 — 400 young women and children are smuggled and trafficked every month from Bangladesh to Pakistan and Arab countries;

- An estimated 10,000 - 15,000 are trafficked to India annually;
- On average at least 70-80 women and children are trafficked daily from Bangladesh to other countries;
- An estimated 20,000 women have already been trafficked to different countries including girls as young as 9 years old.
- Rape cases are also increasing in an alarming rate. There were 3,189 rape cases in 2005, up from 3,140 cases the previous year.[4] This situation restricts the free movement of women. They fear for their safety. They are not safe whether they are inside or outside the house. Parents, relatives and the women themselves are constantly worried about their physical security. This led to the situation where women cannot anymore freely move around without another person acting as bodyguard, and where parents insist that they return home before its gets dark whether their work is finished or not. The Bangladeshi government created in 1990 a program in the Ministry of Women and Children Affairs to assist women victims of violence after that it is very rare to see such initiative. Assistance cells have been created in different parts of the country to implement the program. However, the number of such assistance cells is very limited to be able to cope with the demand for service.

Early marriage is another obstacle in promoting women's rights. The Majority Act, 1875 clearly provides that a woman must at least be 18 years old to be able to get married. This legal requirement unfortunately is disregarded, especially in rural areas. Many marriages are held without the 'free consent' of the women. The parents give the consent as if there is no justification for getting the consent from the women. Poverty, family honor, social insecurity are some of the major reasons for early marriages. As a result, the women's right to education, a pillar for realizing one's own rights, suffers. In education, more Bangladeshi boys study than girls. The ratio of boy-girl students in the primary school level has improved with girl enrolment reaching 70% of the boy enrolment level. But the situation in the secondary school level is still bad with girl enrolment constituting only 40% of the boy enrolment level. In livelihood, Bangladeshi women suffer discrimination in getting bank loans. Since most of them do not have properties of their own that can used as loan collateral, and husbands or male relatives have to give consent to any bank loan transaction, the opportunity for women to access to financial resource from the bank is limited. Employment of women is still low. This is true for the both private and government offices.[6] And women who occupy government jobs have lower status and very little influence in government decision-making processes.

Turning the Law into Practice

The situation of Bangladeshi women illustrates the problem of turning legal principles into social, political and economic practice. The discriminatory attitude against women, rooted in the family and extends to the State level, should be ended. Because of the constraints from the family, society and the State in general, Bangladeshi women are not aware of their rights. And even if some of them become aware of their rights, they still would not assert them due to the "ingrained unexpected continuity" (i.e., the traditional belief of keeping

women under the shadow of somebody such as their fathers or husbands). A basic change in the institutional structure may occur if social security for women is ensured. Furthermore, the outlook of the family and society has to change to give more opportunity for women's protection and participation in Bangladesh. This, in turn, will help women become independent and conscious about their rights.

Concluding remarks:

'women' they are also human being like men they must have a right to survive in assurance of all rights as ensured in our local laws and constitution provided that we should keep in mind that in the name of enjoyment of women's right we must not draft any law or provisions which is contrary or in contrast with the norms and principles of Quran and Sunnah above all should not inconsistent with the principles of Natural Justice.(as like as women policy-2011)

Recommendation:

1. Government should legislate more proper and reasonable laws to save the women and children.

2. We all along with the govt. should give the practical view the existing laws of the country relating to women and children.

3. Present govt. should reconsider the very recently drafted women policy -2011 to save the women from the inter-conflict with her own brother above all the family member of her family regarding the distribution of her inherited property.

Endnotes:

1. Violence on Women in Bangladesh, Nari Pakha Report, (Dhaka: 2000).
2. ODHIKAR, Yearly Report on Human Rights Situation in Bangladesh (Dhaka: 2002).
3. US Department of State, Trafficking in Persons Report 2002 (Washington: 2002) and USAID, Bangladesh Anti - Trafficking 13 March 2003.
4. "Violence May Be Rising Against Bangladesh Women," Gulf News, United Arab Emirates, 23 March 2002.
5. The government policy of recruiting more women into the government service has not been successful so far. In 1999, only 14% of the new government employees are women. See 1999 Country reports on human rights released by the Bureau of Democracy, Human Rights and Labor, U.S Department of State, February 25, 2000.

A controversy and solution regarding the women's inheritance right

Md. Saidul Islam & Adv. Md. Abu Taher
Lecturer, Dept. of Law, IIUC

Before the advent of Islam, women suffered many injustices in this world and they were treated like material things to be disposed of at the whim of the male guardian. They had no right to inheritance, right to give consent in their marriage, right to remarry after the death of her husband, right to divorce, right to acquire property in her own name, right to education, right to employment but they were to delight their husband. In pre Islamic era the birth of a female child was considered as an evil for the father and the father became extremely angry and disgraced hearing the news of the birth of female child in his family. The expression of the father has been described in the Quran, *"When the news of the birth of a female is brought to any of them, his face becomes dark and he is filled with inward grief. He hides himself from the people because of the evil and shame of that which he has been informed. Shall he keep her in dishonor or bury her in the dirt? Certainly evil is their decision.* (16:59). from this position, Islam has ensured the supreme status for the women. As a tradition from Hazrat Muhammad (sm) says:

A man came to the Prophet (peace be upon him) and asked him: 'O prophet of Allah! Who is the most deserving and worthy of my good company?

Allah's prophet (sm) answered:"Your mother"
The man asked: "Who comes next after her"
He said: "Your mother"
The man asked again: "Who comes next after her"
He said: "Your mother"
The man asked again: "Who comes next after her"
He said: "Your father"

- Bukhari # 5625

In another Hadith it was narrated that the Heaven of the child lies in the feet of their mother. So it can apparently be said that Islam has completely ensured the status of the women in all stages either during maidenhood or overture or widowhood or motherhood. Now here a question arises that Islam has undoubtedly upheld the status of women but the rights have not been properly ensured for them and in some cases equality has not been maintained between men and women.

In answer of this question I want to say that Islam protected the woman from all kinds of injustices and ensured all rights which are necessary for them. Islam provided the following rights for the women: (1) Right to education (2) Right to chose her husband (3) Right to get maintenance from her father or brother or son or husband (4) Equality

of rewards for the equal deeds (5) Right to get dower money from the husband (6) Right to keep of her own money (7) Right to go outside of her house (8) Right to obtain divorce from her husband if she does not like him (9) Right to express their opinion and be heard (10) Right to seek employment (11) Right to movement and travel with their mahram (12) Right to get inheritance (13) And all other rights

Among these rights, here I shall discuss only the right of women to get inheritance from the deceased.

The inheritance right of women:

After the death of a person, the deserted property of that person is distributed among the following heirs consequently.

1. The Zav-il-Furuz (the sharers): the sharers or the quranic heirs are those persons whose shares have been specified by the Quran or the traditions or the Ijma'a ul-Ummat. (2)
2. The Asabah (the agnates): The Asaba or the agnates who takes property, if anything remaining after distribution among the Quranic heirs.
3. The Zav-il-Arham (uterine relations)

The first group comprises total twelve persons, among them eight persons are female and four are male. The female heirs are Wife, mother, True grandmother, daughter, sister, son's daughter, consanguine sister and uterine sister. When these heirs take as Quranic heirs then no problem arises but some of them become residuary then the male takes the double of a female .i.e. When son comes with daughter and both become residuary and son takes the double of daughter as Allah stated in the holy Quran "*Allah commands you as regards to your children's inheritance that a male takes the double of a female*" (4:11). On the basis of this verse many say that one gets the double of another if it does not become the injustice then what will be the injustice because it is incompatible with the concept of equality of rights? And they demand for enacting law ensuring the equal inheritance right of women. This small write up is an attempt to argue against such contention and defend the right of women.

The children get property from many sources, among them one is the inheritance from the parents. Before going to analysis the implied reasons behind granting the double share to men in compare with the equal women I desire to ask a question to the people that if a person gets 15 lac taka from one source and another person gets 15 lac or more than 15 lac from three or more sources then will it be considered as unequal and injustice to the later person? If the answer is negative then Allah did not cause injustice to the female but maintained quite justice to them and taken some steps towards the empowerment of the women by making them financially strong.

Reasons for double share to men: When equal male and female inherit from the deceased jointly then male takes double of female which seem to us as an apparent injustice to women but if we can realize the following matters properly then I think, our misunderstanding will disappear forever and we will try hard and soul to implement the existing rights of women which are apparently and regularly violated in our society.

Firstly: A female child gets maintenance from her father until the marriage of that daughter is held and all the expenses for arranging her marriage will also be borne by the father, on the other hand, father is liable to provide maintenance to his male child up to the age of majority, that is in the opinion of imam Muhammad and Yousf (Rh) the age of fifteen. If father dies before the marriage of daughter then brother, in his absence the grandfather, in his absence the paternal uncle and lastly the property of father is liable to provide maintenance to the daughter yet the property which the daughter inherited from father is not liable for her maintenance. Here it is clear that a daughter gets more maintenance then a son as usually marriage of a female in our country is held after the age of twenty.

Secondly: At the time of marriage, the husband not the wife is bound to give dower money to his wife as a token of love which exclusively belongs to her and she can dispose of her property as she wishes and husband has no right to impose any restriction on the disposition of her property. Even if she becomes owner of crore taka, husband has no right to claim a single penny as of right. Where either husband or wife dies or divorces before either the payment of dower or the consummation even in that case also wife is entitled to her dower. So by imposing this incumbent duty on husband, Islam has vividly upgraded and ensured the status and right of women.

Thirdly: From the date of marriage, all the responsibilities of the wife are taken by husband. It is the obligatory duty of husband to provide maintenance to his wife irrespective of his minority, illness, imprisonment or any other impediment or the wealth of his wife. Fatawa Alamgiry says, "It makes no difference in the husband`s ability to maintain the wife, whether he be in health, or suffering from illness, whether he be a prisoner of war or undergoing punishment, justly or unjustly, for some crime, whether he be absent from home on pleasure or business or gone on a pilgrimage and whether he be rich or poor."The Hedaya says where the parties are wealthy, the maintenance will be given in an opulent manner and if the income of husband increases then the amount of maintenance will also be increased. Where the husband failed to give maintenance to his wife during some period, she has right to recover the unpaid maintenance as the arrears of maintenance.

Fourthly: The maintenance of the child comes from this couple, will not be provided by the wife but by the husband alone. Though it takes a vast expenditure yet the wife is not bound to pay single taka for the maintenance of her children.

Fifthly: When the parents become old aged, the son is under the great obligation to provide proper maintenance to them. In no situation, son can refuse to provide maintenance either he has inherited anything from his parents or not. But the daughter has no duty to supply the maintenance to her parents.

Sixthly: The man is to participate in all social functions which also take a vast expenditure from the fund of a man.

Seventh: The rights of inheritance of women which have been stated by Allah in the holy Quran which describes three types of inheritance for the women:

(1) Women will have an equal share as that of the men.
(2) Women will have an equal share as that of the men or a little less.
(3) Women will have half the share of men.

The minimum share of a woman is half and it is when she comes with an equal man. The abovementioned discussion shows that a woman earns from at least three sources without her own exertion .i.e. dower money, maintenance and inheritance and a man earns only from one source without his own exertion that is inheritance, on the other hand, the woman has no head of expenditure and a man has at least five heads of expenditure .i.e. the payment of dower money to his wife, the maintenance of the wife, the maintenance of the children , the maintenance of the parents and the social functions. Here it is clear that a woman incomes from four heads with her own exertion and there is no head of expenditure and man incomes from two sources with his own exertion and has five heads of expenditure. It may be clarified by an example. Rakib has one daughter named Tania and one son named Hasan. At the time of marriage of Tania, she gets 400000 taka as dower money and per month maintenance 5000 taka from her husband and Hasan, at the time, of his marriage he paid tk. 400000 as dower money to his wife and pays tk. 5000 per month as her maintenance and tk. 4000 for the maintenance of his children and tk. 5000 per month for the maintenance of her parents and expends tk. 2000 for social functions and gifts in different ceremonies. Tania may, by depositing her dower money and inheritance, earn tk. 10000 in every month and Hasan may earn tk.12000 by depositing his inheritance. Suppose Rakib dies leaving behind tk. 1800000 and Tania inherits tk. 600000 and Hasan tk. 1200000.So in every month Tania incomes tk. 10000 and the expenditure is zero and Hasan earns tk. 12000 and monthly expenditure is 16000 taka.

This is the actual picture of women's right to property which has been granted by Islam. This picture has been depicted without taking into consideration of the income comes from their own exertion.

In the conclusion of this paper We deserve the answer of our question to the people whether the granting double share to the man and single share to the woman in this situation which is ensured by Islam is justice or not. And simultaneously I call upon the proper authority to take steps for the implementation of women's rights granted by Islam.

Polygamy: Legal System and Social Reforms in the Light of IT

Adv. Farzana Akter
Lecturer, Dept. of Law, IIUC

'Polygamy', the term literally refers to the custom of having more than one spouse at a time. It's a very common scene in our society; especially among poor and slums dwellers.

A man can marry another lady as it is permitted by both the Shariah law and the existing law of the land, e.g. the Muslim Family Laws Ordinance, 1961(MFLO). Under our Shariah law one man is permitted to avail maximum four wives at a time under the condition of ensuring equal maintenance to all the wives. The second marriage is also authorized by MFLO, but only with the previous permission of from the Arbitration Council (AC) including existing wife or wives.[1]

We will discuss the issue in the case of multiple wives of a single man.

In our society a man shows different attitude to his existing wife and children without any specific, rational reason; like unwillingness, rudeness amounting to physical and mental torture and in most cases these are done with the support of his family and the probable intention is to marry another women.

To restrict further marriage, which is intended by the husband, remedies provided to the existing wife by our laws can be discussed here. The remedy may be claimed under the Nari-o-Shisu Nirjatan Daman Ain, 2000 (Amend 2003) or through application filed by husband of seeking permission for further marriage from AC of local area under MFLO. Action of feelings and social status weaken her to go for remedy against her husband. Some other factors also work there, like existing relationship with her husband, intention to continue that, dependence for maintenance of herself and their children, the risk involved to lose the support provided by her husband.

Though she intends to go for remedy, lengthy and complicated procedure of filing and trial of a case in the Judges' Court under Nari-o-Shisu Nirjatan Daman Ain, 2000 though maximum time limit of is provided by the Act[2] which is not mandatory[3] or the weak implementation mechanism of AC are very much depressing and also unable to serve the actual solution. And lastly, she may take the shelter of Section 4 of the Dowry Prohibition Act, 1980[4] by making false deposition of a fabricating incident, only because of its easy procedure of taking cognizance as complaint case by the Magistrate Court. Another reason behind filing suit under that section is the offence is compoundable as mentioned in section 8

[1] Section 6 (1) of MFLO provides, "No man during the subsistence of an existing marriage, shall, except with the previous permission in writing of the Arbitration Council, contract another marriage, nor shall, any such marriage contracted without such permission be registered under the Muslim Marriages and Divorces (Registration) Act, 1974."

[2] Section 20(2) and 20(3): **Trial Procedure:** Trial must be concluded within one hundred and twenty days; within 90 days under section 20(2) and in case of failure within more 30days under section 20(3).

[3] The Act does not provide for any consequences for failure of the trial within one hundred and twenty days. This limitation of time for disposal of cases is merely directory and not mandatory in nature. *Habibur Rahman Zakir and others vs State, 49 DLR 367.*

[4] Section 4: **Penalty for demanding dowry:** If any person, after the commencement of this Act, demands, directly or indirectly, from the parents or guardian of a bride or bridegroom, as the case may be any dowry he shall be punished with imprisonment which may extend to five years and shall not be less than one year, or with fine or both.

of the same act[5]. It means it's a way of creating a pressure on husband to deter him from further marriage and after solution that suit can be withdrawn by the wife. And actually it works in some cases.

For further marriage of husband without taking permission from his existing wife the actual punishment provided by MFLO is simple imprisonment, or fine, or both (sec 6(5))[6]. For this punishment she has to go through legal proceeding, the ultimate result of which may be divorce, stoppage of furnishing maintenance and no communication with that wife and also with the children, the absence of taking permission from his wife may be proved or not. Except the above mentioned punishment no specific remedy is included in any law in case of deception to the later wife, when she and her family believed on his saying that he was unmarried at the time of later marriage.

It is to be mentioned here that no marriage solemnized under Muslim law can be declared null and void in any condition by any court or authority. At the present social condition polygamy can not be declared illegal as well. But the probable consequences of it are very harsh, which may be mental and physical torture, want of enough maintenance to all the family members, social and family crisis, pressure on land and property, population growth, deception on uneducated people etc.

Only education, awareness, knowledge among people about existing law, punishment and provision of taking permission from former wife or wives, inclusion of provisions providing remedy to later wife, ensuring maintenance to all the wives, strengthening the implementation mechanism can not remove the bad effect of polygamy. And in most of the cases, the importance of decision, knowledge and existence of women are ignored. For this reason, my observation is with our legal framework, existing or developed, our information sector can play an significant role in this respect. We can do it easily, because already we have a National Identity Card, consisting an Identity number, name, father's name, address, photos. More information may be included there, such as profession, marital status, family details etc like developed countries and in this connection the performance of information technology providing us Face Book ID is mentionable. That information will be available for mass people under a specific website and will be updated from time to time. Government should come forward to develop this sector serving necessary information under enough legal protection of punishment for presenting and recording false information. Then any adult person will be able to take the decision about his/ her marital life and it will not be a matter whether he/ she is educated or not. Not only to chose the life partner, to discourage or restrict polygamy, but also for every sector, like business, transactions, removing crime from society, develop the idea, social and economical condition that information sector will be extremely helpful. Because, in every aspect of life, taking proper steps through knowledge and consciousness is more necessary than claiming probable remedy.

---

[5] Section 8: **Offence to be non- cognizable, etc:** Every offence under this Act shall be non- cognizable, non- bailable, compoundable.

[6] Section 6(5)(b): Any man who contracts another marriage without permission of the Arbitration Council shall ..... on conviction upon complaint be punishable with imprisonment which may extend to one year, or with fine which may extend to ten thousand taka or with both.

Law of War in Islam

Adv. Sheikh Md. Towhidul Karim
Lecturer, Dept. of Law, IIUC

Law of war is one of the most important issues and most sensitive and controversial ones. The law of war is also known as "Law of Armed Conflict." Before the advent of Islam the world was ignorant of the concept of humane and decent rules of war. The West became conscious of this concept for the first time through the works of the seventeenth century thinker, Hugo Grotius and finally the actual codification of the 'international law' in war began in the middle of the nineteenth century.

After the expansion of the Caliphate, Islamic legal treaties on international law from the 9th century onwards covered the application of Islamic military jurisprudence to international law, including the law of treaties; the treatment of diplomats, hostages, refugees and prisoners of war in Islam; the right of asylum, conduct on the battlefield; protection of women, children and non-combatant civilians; contracts across the lines of battle; the use of poisonous weapons; and devastation of enemy territory.

Rights of Enemies at War:

Islam not only recognizes rights during peace time, it also recognizes the rights during war. In the first hijrah in 623 seventy pagan defeated soldiers of the battle of Badar fell in the hands of the Prophet (SAW), among them were almost all of their gang leaders. They deserved capital punishment with death under customary law existed during those time. But the Prophet (SAW) did not do so. Instead, the Prophet (SAW) and his followers rendered unprecedented good behaviour towards them. According to Tabari,[1]

> *"The prisoners of war of Badar were given the best food to eat in a condition when the captors (the Muslims) themselves were taking only plain dates".*

They were those people who, for last 14 years, had been the cruelest, unjust and who did not leave any stone unthrown against Muslims in their efforts to persecute them and destroy their religion – Islam.

In the early 7th century, the first Caliph, Abu Bakar (RA), whilst instructing his Muslim army, laid down the following rules concerning warfare:

> "*Stop, O people, that I may give you ten rules for your guidance in the battlefield. Do not commit treachery or deviate from the right path. You must not mutilate dead bodies. Neither kills a child, nor a woman, nor an aged man. Bring no harm to the trees, nor burn them with fire, especially those which are fruitful. Slay not any of the enemy's flock, save for your food. You are likely to pass by people who have devoted their lives to monastic services; leave them alone.*"

This lesson was subsequently exercised by Muslim armies during the Crusades, especially by Saladin and Sultan al-Kamil. For exemple, after al-Kamil defected the Franks, Oliverus Scholasticus praised the Islamic laws of war, commenting on how al-Kamil supplied the defected Frankish army with food.[2] These rules were put into practice during the early Muslim conquests of the 7th and 8th centuries.

The Rights of the Non-Combatants:

Islam has made a clear distinction between the combatants and the non-combatants. Non-Combatant means or included the following persons, such as women, children, the old and the infirm etc. In this regards the Messenger of Allah (SWT) says:

> *"Do not kill any old person, any child or any woman."*[3]
>
> *"Do not kill the monks in monasteries" or "Do not kill the people who are sitting in places of worship."*[4]

The Rights of the Combatants:

Islam has not only conferred the rights of non combatants, but also conferred the rights of the combatants. So at first we have to know – who is combatant? Combatant means a person or group involved in fighting in a war or battle. Now let us see what rights Islam has conferred on the combatants.

- Enemy should not be burnt alive. This principle is based on the following Hadith of Prophet (SAW), *"Punishment by fire does not apply anyone except the Master of the Fire."*[5]
- Wounded soldiers should not be attacked who are not fit for fight. The Prophet (SAW) said, *"Do not attack a wounded person."*
- The prisoner of war should not be slain. In this regards a clear and unambiguous Hadith of Prophet (SAW) is that, *"No prisoner should be put to the sword."*
- Combatant should not be tied to be killed.
- Looting and destruction of enemy's property during war is not allowed in Islam. The Prophet (SAW) has prohibited the believers from loot and plunder.[6] His injunction is that, *"The loot is no more lawful than the carrion."*[7]
- Islam has categorically prohibited its followers from disgracing or mutilating the corpses of their enemies. It has been said in the hadith, *"The Prophet has prohibited us from mutilating the corpses of the enemies."*[8] In the Battle of Uhud the disbelievers mutilated the bodies of the Muslims, who had fallen on the battlefield and sacrificed their lives for the sake of Islam, by cutting off their ears and noses, and threading them together to put round their necks as trophies of war. The abdomen of Hamzah, the uncle of the Prophet, was ripped open by Quraysh, his liver was taken out and chewed by Hind, the wife of Abu Sufyan, the leader of the Meccan army. The Muslims were natu-

rally enraged by this horrible sight. But the Prophet asked his followers not to do similar treatment to the dead bodies of the enemies. This is a great example of "treatment of combatants" during war. Besides this, In the Battle of Ahzab a very renowned and redoubtable warrior of the enemy was killed and his body fell down in the trench which the Muslims had dug for the defence of Medina. The unbelievers presented ten thousand dinars to the Prophet and requested that the dead body of their fallen warrior may be handed over to them. The Prophet replied *"I do not sell dead bodies. You can take away the corpse of your fallen comrade."*[9]

- The Qur'an commands Muslims to make a proper declaration of war prior to the commencement of military operations. Thus, surprise attacks are illegal under the Islamic jurisprudence. This rule is not binding if the adversary has already started the war.[10]

In conclusion, I would like to say this is a brief sketch of "Law of War in Islam" which 1400 years ago Islam gave to man i.e law of war is the outcome of Islam; not the western.

Endnote :

[1] Tabari, Abu Jafar Ibn jarir, *Tarikh al Rusul wa al Muluk,* Dar al Maarif, ed. reprint, Qahirah, 1977, vol. ll, pp. 460-61/1338. See also Shibli Numani, *Siratun Nabi,* Adarah-I-Adabiyat-I-Delhi, Jayyed Press, ed. reprint, Delhi, India, 1983, vol. ll, p, 25.

[2] Judge Weeramantry, Christopher G. (1997). *Justice Without Frontiers*. Brill Publishers. pp. 136. ISBN 9041102418

[3] Abu Dawood.

[4] Musnad of Ibn Hanbal.

[5] Abu Dawood.

[6] Al Bukhari and Abu Dawood.

[7] Abu Dawood.

[8] Al Bukhari and Abu Dawood.

[9] Allamah Abu al-'A'la Mawdudi, "Human Rights in Islam", *Al Tawhid Journal*, Vol. IV, No. 3 Rajab-Ramadhan 1407.

[10] Maududi (1998), p.36

State of Right to information in Bangladesh- Law & Practice

Md. Mizanur Rahaman Chy.
LL.B (Hons.), 7th semester

Though the word "Right to information" is a new thought in Bangladesh. But in developed countries it is so Ancient. At first in 1766 the European country Sweden approves the right to information for their citizen. In Bangladesh The Act relating right to information was approved by the president in 2008 as an ordinance. After that it was passed by the parliament on 6-april, 2009.

Information enriche the people, make them confidant and free from slavery. On the other hand by ignorance of information, a man becomes mentaly poor and encompasses with corruption. Once upon a time In Bangladesh the seek to know information was a subject of curiosity. but it is not that after passing RTI (right to information) Act. Now it becomes a right of every citizen of the country. Usually Right To Information means right to access in to the governmental information except which are related to the security of the state. Right to information only refers those types of information which are necessary for public to contribute in decision making of the state. and which are helpful for citizen to enjoy their social, economical and political rights. The Right to information Act is a way to enjoy many other rights. Now it is treated as a Human right. Generally the purpose of passing an Act is to keep peace and security of the society. But the purpose of passing Right To Information Act is not that it is related to the empowerment of the people of the country. The proper implementation of RTI Act can change the social, economical and political culture of the state and it can help establishing an accountable and corruption free government. Before passing RTI Act getting information from various government and non government office was barred by Official secrecy Act-1923.

Right to information is also closely linked with the fundamental right mentioned in the Article-39 of the Bangladesh constitution. It is also co-related with some fundamental principles of state policy mentioned in part-2 of the Bangladesh constitution. Such as, promotion of local government institution (Art-9). It has now been started to implement steadily. To promote local government institution transparency and accountability to the people must be ensured. It is not possible to bring transparency and accountability in local government sector without the empowerment of local people. And the empowerment of people can be ensured by proper implementation of the RTI Act. In another Article-19(1) of the Bangladesh constitution mentioned that ''state shall Endeavour to ensure equality of opportunity to all citizen". To fulfill this purpose, the right to information Act may play a vital role. Because people can make themselves conscious by taking information from various sources under the RTI Act. Without consciousness of the citizens, to establish the equality of opportunity to the people is not possible. In Article-20(2) it is mentioned that "the state shall Endeavour to create conditions in which persons shall not be able to enjoy unearned incomes". To achieve this goal the implementation of RTI Act is must.
After passing of the RTI Act, it is slowly implemented in our country. For the purposes of this Act, a commission named " Information commission" was established on July 2, 2009. But in many government and non government office, which are bound to supply information

according to section-2(b) of RTI Act, the information officer has not been appointed yet. Although according to section-10 of the RTI Act, the appointment of such officer is binding for every establishment within sixty days from the date of passing this Act. Until 23-fabruary, 2011 the information commission disposes only 22 appeal applications. After two years of passing RTI Act in some government offices at districts level the information offices have been appointed. Though the appointment of such officer is binding for every government office at district and Upazilla level. And also binding for all local government institution. The achievement in implementation of RTI is inadequate so far. It is also bad news for us that After passing of the RTI Act government did not take proper initiative to create public awareness about it. But some NGOs named Transparency international Bangladesh, manusher jonno, RTI forum etc jointly and separately arrange some awareness building program about RTI. Now Building awareness among the people regarding RTI mostly defends on NGO initiatives.

It is a question that from where citizen would get information? According to section-2(b) Institution established under constitution of people's republic of Bangladesh, any non government institution which takes foreign aid, any office established under article-55(6) of the Bangladesh constitution etc. from such office a citizen of the Bangladesh can get information by submitting written application or by electronic media or by e-mail. If any office is failed to supply required information to applicant within specified period, mentioned in section-9 of this Act, the applicant has right to often appeal to the Information commission under section-24 of RTI Act.

In Bangladesh many people have not enough knowledge on how to get the services from various government offices. For this ignorance, the people engage in corruptions to enjoy those services. Before passing RTI Act there is no easy way to know various matters from any government office, related to public interest. If we want to establish the rights of citizen to remove the administrative corruption from the country and to establish the good governance, the right to information Act must be implemented properly. For this purpose, citizen must play an important role as according to Section-4 of The Right to Information Act-2009, If any citizen want to know any information from any Office, mentioned in section-2(b) of RTI Act-2009, the concerned office is bound to supply the required information to the applicant. So, if the people do not search the information, the RTI Act shall not provide any benefit to the people. Other laws are implemented by some law enforcement Agencies of the state. But the right to information Act is not like that. This Act can be implemented properly by the active participation of the citizen only. If the citizen is not active about that the passing Of RTI Act shall not bring any good to in near future.

We know, Bangladesh is a third world country. We are always suffered by various problems such as Corruption. Every sector of the government is covered by the corruption. Corruption is one of the more vexatious barrier in economic, social and political development of the country. To establish the good governance in the country the corruption must be removed from the administration. To remove the corruption from every sector of the state the empowerment of the people is must. For empowerment of the people the proper exercise and implementation of RTI Act is a crying need of our country.

Arbitration

Mohammad Kalim Ullah
LL.B (Hons.), 7th semester

Introduction:

Arbitration means the Settlement of a dispute by referring the dispute to a third party and abiding by his decision. Arbitration is less costly than a suit in court of law. It is also more expeditious. Therefore, commercial contracts frequently contain a clause providing for a reference to arbitration in case of a dispute breaks out concerning any matter relating to the contract.

Definition:

Arbitration means the setting of dispute without going to court but with the help of an imperial third party.

Different authorities have defined the term arbitration:
» ***S.K. Roy chowdhury*** –"Arbitration is a term derived from the nomenclature of the Roman law. It is an agreement for taking and abiding by the judgment of a selected person in some disputed matter instead of carrying it to the established court of justice."

» ***Halsbury's Laws of England***-"An arbitration is the reference of dispute or difference between not less then two party, for determination, after hearing both sides in judicial manner, by a person or persons other than a court of competent jurisdiction."
Wharton's law lexicon:-"Arbitration is the determination of a matter in dispute by the judgment of one or more persons called arbitrators, who in case of difference usually call in an 'umpire' to decide between them. An arbitrator is a disinterested person to who judgment and decision matters dispute are referred. "

» ***Concise Commercial Dictionary***: "Arbitration is an alternative to litigation, parties to a dispute may be written agreement legal proceedings are instituted, they may be stayed by the court on the application of the defendant. One or more persons may be appointed be arbitrator, if two, there is usually an umpire. The decision of an arbitrators is called an award ad is binding in the same manner as a decision of a court."

» ***M.C. Kuchhal***: "Arbitration is the settlement of disputes and differences relating to civil matters (e.g.; money or property or beach of contract) between one party and another in a quasi-judicial manner, by the decision of one or more persons called arbitrators, appointed by the conducting parties, without having recourse to a court of law.".
Considering the above definitions, it may be concluded as thus: arbitrations means the settlement or determination of dispute or difference (present or future) between two or more parties by the dispute to a third party and abiding by his decision. Arbitrations is an alternative dispute are usually referred to some disinterested and impartial persons (usually called arbitrator) whose decisions the parties to a dispute agree to abide by. Thus, when the parties to a dispute decide to refer the matter under dispute to be settled by a third party not connected with the disputants, it is called arbitrations.

Nature and scope of Arbitrations: -

An agreement between two or more parties to be bound by the decision of a third party does not always constitute an arbitration agreement. There are some elements in arbitration which distinguish it from other modes of settlement of disputes, namely:

A) There must be a dispute between the parties,
B) The parties must submit or refer the dispute to a third party,
C) The parties must abide by the decision of the third party.

The intention of the parties, the subject matter of the dispute, the functions to be discharged by the person appointed, the nature of the decision and the manner in which it is to be arrived at are to be considered in order to determine whether it is arbitration or another method of settlement of dispute which is not arbitration., The difference between an arbitration room and a court of justice is that the former is tribunal chosen by the parties themselves. But the later is forum over which the parties have no choice. A matter comes as adversely before an arbitrator as before any other tribunal or a court of justice.

Object of Arbitration: -

A dispute between the parties may be determined by court through judicial process or by arbitration through a non judicial process. The method setting disputes through arbitration process has certain merits as compared to a suit in a court of law. Thus, the objects of are:-

1. Avoiding the cost and delay of court proceedings and coping with court overcrowding.
2. Improving access to justice.
3. Offering more effective or efficient methods of dispute resolution.
4. Offering the public more chance to be involved in dispute resolution.

Modes of reference to be Arbitration: -

A reference or submission to arbitration may be made in one of the following three ways:

a) Arbitration under the order or through the intervention of the court when a suit is pending invoked by a joint petition of both the parties.
b) By the operation of law.
c) Arbitration by the agreement between the parties without the intervention of the court.

Arbitration through the court's intervention:

Where there is an agreement, the parties have the option to proceed with the arbitration independently of any court or proceed with the arbitration under the supervision of the court. The later course is usually adopted where difference regarding the actual jurisdiction of the arbitration agreement arises between the parties, e.g.; one of the parties holds the view that a particular matter of dispute cannot be referred to arbitration as per the agreement, while the other party differs. Arbitration through the intervention of the court takes place in two cases: a) where there is no suit pending, b) where there is a suit pending.

Arbitration by the operation of law:

Statutes or Acts of Parliament make it compulsory to refer disputes to arbitration and provide for the settlement of disputes arising out of their provision by arbitration. This type of arbitration is known as statutory arbitration. The procedure relating to such arbitration is generally laid down by this Acts which enjoin such arbitration. Where, however, the Act concerned is silent as to the whole or part of the procedure, the relevant provision of the

Arbitration Act 2001 shall apply. The rule is same in the sub-continent and in English law.

Arbitration by agreement between the parties without court's intervention:

It is the usual mode of arbitration as in vogue from the historical antiquity. In this mode, the arbitration proceedings proceed up to the stages of making the 'award' by the mode the arbitrators without the intervention of court. A reference by agreement of the parties must originate in an arbitration agreement. Such an agreement may be made verbally or in writing. The English Arbitration Act 1996 and our Arbitration Act 2001 Apply only to written agreements. An award made by the arbitration amounts to a settlement of the dispute by mutual agreement and becomes binding on all the parties to the arbitration agreement. But the parties are not bound to be abide by the decision of arbitration proceedings. It's a quasi judicial proceeding performed in a judicial manner. The dissenting party may go to the court for determination of the dispute.

Matters which can be referred to arbitration:

Generally Speaking, all matters in dispute which can be divided by civil courts may be referred to arbitration unless prohibited by any legislation or law that in force. Thus, dispute relating to matters which are purely criminal in nature cannot be referred to arbitration. However, the fowling matters can be referred to arbitration. Namely,

1. Matters of civil Matters, e.g. dispute about property or money, breach of contract etc.
2. Matters of relating to personal rights between the parties, e.g. question of marriage, maintenance, Separation between husband and wife, etc.
3. Dispute regarding dignity and respect.

Matters which can not be referred to arbitration:

The following Matters cannot be referred to arbitration: namely

1. Matrimonial Matters like divorce or restitution of conjugal life,
2. Testamentary matters like the validity of a will,
3. Insolvency Matters,
4. Matters relating to the guardianship of a minor or lunatic person etc.
5. Criminal matters-where a person is guilty of an guilty of an offence or not, can not be decided by arbitration.

Conclusion:

Generally speaking, by their nature, arbitration proceedings tend not to be subject to appeal, in the ordinary sense of the word. However, in most countries, the court maintains a supervisory role to set aside awards in extreme cases, such as fraud or in the case of some serious legal irregularity on the part of the tribunal. Only domestic arbitral awards (i.e. those where the seat of arbitration is located in the same state as the court seised) are subject to set aside procedure.

References:

1. *Mercantile law by Mc Kuchal*
2. *Commercial law by Sen and mitra*
3. *The Arbitration Act, 2001*
4. *R David. Arbitration in international trade (1985)*
5. *Gary Born. International Commercial Arbitration (2009 Kluwer*

Rights of Women in Bangladesh: Rhetoric's & Realities

A Legal Focus on Local Laws, UN Conventions, NWDP and Islamic Perspective

A.S.M Mahmudul Hasan
LL.B (Hons.), 6th Semester

1. Introduction:

Women's rights are entitlements and freedoms claimed for women. And their legal rights are one of the most significant determinants of their status. There are several laws, charters, conventions are present like Beijing Declaration and Platform for Action, Fourth World Conference on Women, The Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) even several laws and regulation are enacted also in Bangladesh. There are approximately 55 million women in Bangladesh, relatively half of the country's entire population. Women's rights have become one of the fundamental principles of state law and policies in Bangladesh. Even recently the cabinet meeting of the government has approved National Women Development Policy-2011 with a provision of equal share of women in property and their opportunities in employment and business. In addition, this policy has arisen a large controversy in the country. However, this article aims to point out the existing laws and the reasons for ineffectiveness of laws regarding women's rights in Bangladesh as well as focuses the International conventions and UN Charters. Also this study examines the recent controversies regarding women issues in the country with logical grounds of the claim of both parties.

1.1 Meaning of Women's Rights:

Women's Rights:

Women's rights in their literal meaning simply refer to a set of rights which are exclusively enjoyed, or rather enjoyable, by women in particular, to the exclusion of men. A narrow sense of the phrase implies only those rights that are recognized in an individual state. In this regard, the definitional formats of rights are the socio-economic-cultural- religious and legal settings of a particular country in which women stand. Accordingly the scope of rights varies from country to country. In a broader sense, women's rights signify a wide range of 'entitlements' that women are entitled to buy virtue of their humanity, and are the same for all.[1]
According to the Oxford dictionary, 'Women's Rights are the rights that promote a position of social and legal equality, of women to men', 'they are the rights, claimed for the women, equal to those of men, as regards to suffrage that right to vote, as regards to property, etc'.[2]

2. Existing Laws in Bangladesh:

2.1 Constitutional Provisions on Women Rights:

Article- 10: Participation of women in national life: Steps shall be taken to ensure participation of women in all spheres of national life.
Article 27: Equality before law: All citizens are equal before law and are entitled to equal protection of law.
Article 28: Discrimination on grounds of religion, etc:
(1) The State shall not discriminate against any citizen on grounds only of religion, race

caste, sex or place of birth.

(2) Women shall have equal rights with men in all spheres of the State and of public life.

2.2. Personal Laws on women Rights:

1. The Hindu Widows Remarriage Act, 1856
2. The divorce Act, 1869.
3. The Christian Marriage Act 1872.
4. The Special Marriage Act, 1872
5. The Married Women's Property Act, 1874.
6. The Births, Deaths and Marriages Registration Act, 1886.
7. The Guardian and Wards Act, 1890.
8. The Foreign Marriage Act, 1903.
9. The Hindu Inheritance (Removal of Disabilities) Act, 1928.
10. The Hindu Law of Inheritance (Amendment) Act, 1929.
11. The Child Marriage Restraint Act, 1929.
12. The Hindu Women Rights to Property Act, 1937.
13. The Dissolution of Muslim Marriage Act, 1939.
14. The Hindu Married women's Right to separate Residence and Maintenance Act, 1946.
15. The Hindu Marriage Disabilities Removal Act, 1946.
16. The Muslim Family Laws Ordinance, 1961.
17. The Orphanages and Widows Home Act, 1944.
18. The Muslim Marriage and Divorces (Registration) Act, 1974.
19. The Dowry Prohibition Act, 1980.
20. The Family Courts Ordinance, 1985.
21. The Family Courts Amendment Act, 1989.

2.3. Rights of Women as Preserved Under International Instruments:

1. Universal Declaration of Human Rights, 1948
2. International Covenant on Civil and Political Rights, 1966.
3. International Covenant on Economic, Social and Cultural Rights, 1966.
4. Convention for the Suppression of the Traffic in persons and of the exploitation of the prostitution of others, 1951.
5. Convention on political Rights of Women, 1952.
6. Convention on the Nationality of Married Women, 1957.
7. Declaration of the Rights of the child, 1959.
8. Convention against Discrimination in Education, 1960.
9. Convention on consent to marriage, Minimum age for Marriage and Registration of Marriages, 1962.
10. Declaration on the Elimination of Discrimination against women, 1967.
11. Declaration on the protection of women and children in Emergency and Armed Conflict, 1974.
12. Convention on the Elimination of All Forms of Discrimination against Women, 1979.
13. The Proclamation of Teheran, 1979.
14. Convention on the Rights of the Child, 1990.

15. Declaration on the Elimination of Violence Against Women, 1993.
16. Optional Protocol to the CEDAW, 2000.[3]

3. Social Institutions and status of women in Bangladesh-

In Bangladesh women are dependent on men throughout their lives, from their fathers through to husbands, brothers or sons. The Constitution affirms their rights, but state legislation and institutions frequently disregard women's rights. Women in Bangladesh have been subjected to exploitation and negligence for decades.

According to the UN DevelopmentT Programme's Human DevelopmentT Report for 2006 regarding gender equity and facilities, Bangladesh ranks 137 out of 177 countries on its Gender Development Index[4]

In Bangladesh, parental authority is closely linked to religion. Islamic Sharia law regards women as "custodians" but not legal guardians of their children. Inheritance practices also follow religious teachings. Female genital mutilation is not believed to be practised in Bangladesh. Tradition and social norms limit the ability of Bangladeshi women to achieve financial independence, as they have to face bureaucratic matter more and more. As with most societies in today's world, women in Bangladesh face huge difficulties in all aspects of life. Low literacy rates, low political consciousness, low consciousness in own cultural activities have all led to the unequal status of women and gross levels of discrimination.[5]

4. Reasons for ineffectiveness of laws:

It is absolutely true and right that there are several laws in our country such as mentioned above ensuring women rights. However, these laws have proven difficult to enforce, largely ineffective in promoting their positions. In addition, we have examined that women in Bangladesh have been subjected to exploitation and negligence for decades. The prime reasons for this are:

- the shortcomings and ineffectiveness of laws.
- women's inability to access legal proceedings.
- the traditional and cultural negative views about women's rights.
- the absence of an accountable and transparent government.
- the expensive and time consuming judicial process.
- the lack of an efficient judiciary.
- in rural areas the traditions and family customs tend to govern social life.
- the disobedience to the religious commitment.
- the grave cultural crisis i.e. yellow culture intrudes in Bangladesh.

5. Other Conventions and policies:

5.1. UN CEDAW:

On December 18, 1979, the United Nations adopted CEDAW- the Convention on the Elimination of all forms of Discrimination Against Women. It is also known as the "Women's Convention" or the "Women's Bill of Rights". The Convention is the most comprehensive and detailed international agreement, which seeks the advancement of women. It establishes rights for women in areas not previously subject to international standards. The Con-

vention entered into force as an International Treaty on September 3, 1981.[6]

CEDAW consists of a preamble and 30 articles and it can be divided into following three broad categories:

1. Article 1 to Article 16: ensuring equality between men and women.
2. Article 17 to Article 22: UN CEDAW Committee and its mandate.
3. Article 23 to Article 30: administration of the treaty.

Countries that has ratified or acceded to the Convention are legally bound to put its provisions into practice. They are also committed to submit national reports, at least every four years, on measures they have taken to comply with their treaty obligations.

The substance of the CEDAW Convention is based on three core interrelated principles: 1. Principle of equality 2. Principle of non-discrimination 3. Principle of State obligation

5.1.1. Bangladesh Scenario:

The Government of Bangladesh ratified the CEDAW on November 6, 1984. However, at the time of ratification, the Government of Bangladesh made reservations to a number of provisions of the Convention.

Bangladesh has recently withdrawn reservations to Article 13(a) (equality as to the right to family benefits) and Article 16(1)(f) (equal rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children etc.) of the Convention. In the international arena, Bangladesh has proudly declared so in its combined third and fourth periodic reports.

It may be mentioned that some Islamic parties and conscious Muslim persons question such reservations, as Bangladesh is Muslim dominated country. So this is objectionable.

5.2. Fourth World Conference on Women:

The United Nations convened the Fourth World Conference on Women on 4-15 September 1995 in Beijing, China. Delegates had prepared a Declaration and Platform for Action that aimed at achieving greater equality and opportunity for women

The principal themes were the advancement and empowerment of women in relation to women's human rights, women and poverty, women and decision-making, the girl-child, violence against women and other areas of concern. The resulting documents of the Conference are **The Beijing Declaration and Platform for Action.** [7]

6. National Women Development Policy (NWDP) of Bangladesh:

The Bangladeshi government has approved a new policy with a provision of equal share of women in property and their opportunities in employment and business, with a view to that the policy — *National Women Development Policy-2011* — will pave the way for further development of the women and their empowerment in the country.

The policy, which was approved at the cabinet meeting of the government with Prime Minister Sheikh Hasina in the chair on Monday ahead of Int'l Women's Day, 2011, upholds the rights of all women irrespective of their religion.

The policy reads, "Provide women with full control over their right to land, earned property, health, education, training, information, inheritance, credit, technology, and opportunity to earn... And enact necessary new laws to put these rights into practice." The proposed national women policy put emphasis on ensuring equal rights of women through involving them in all activities of national economy, education, training, sports and culture, also laid emphasis on economic, political and administrative empowerment of women through creating more employment opportunities for them.

6.1. Statements of the left-wing platform regarding NWDP:

1. We found a fair reflection of the ideas and thinking of Begum Rokeya, the pioneer of women's movement in this subcontinent about the concept of equality.
2. There was also recognition of role of women's movement, the role of general mass women.
3. There is nothing new in the policy itself, and, in fact, these commitments had been made earlier in the Constitution, in CEDAW, in the Beijing Plan of Action, the MDG and NSRP.
4. It also highlighted the role of women's organizations, women's movement and its positive role in building newly liberated country, building democracy and many other developments issues.
5. The NWDP had a strong link with the principles and spirit of the Constitution of 1972. It was also in the light of the ideas of UN Declarations like UNCEDAW, world events like Vienna, Cairo, Beijing. Like the development of National Plan of Action (NAP), NWDC etc. All the efforts were very positive for women's empowerment.
6. Islam is a religion of peace. And yet the ulama are deliberately breaking the peace by use of vituperative language and seditious threats of "civil war." So this should be restricted [8]

6.2. Statements of the U'lama- Mashaikh platform regarding NWDP:

The ulama committee formed to review the National Women Development Policy has strongly opposed equal rights to women, recommending deletion of six sections of the policy and amending 15 others as they said these sections "clash" with the provisions of the Quran and Sunnah.

The Recommendations:

1. The committee said 15 sections of the National Women Development Policy are against Islam and should be revised or corrected while six sections should be eliminated.
2. The Islamic scholars said not only is it impossible to establish equal rights for men and women in the country, but in some cases, giving women equality would deprive them of their rights in many sectors.
3. They proposed replacing the phrase "equality, equal rights and affirmative action" with "just rights".
4. The ambition of eradicating "existing disparities between women and men" is unclear and should be replaced by the phrase "existing disparities between women and men in light of the Quran and the Sunnah".
5. On the section that asks for giving women equal human and fundamental rights such as political, economic, social and cultural, they said "just rights" should be ensured for men and women in light of the Quran and Sunnah.

6. They said the government must ensure participation of ulama and muftis alongside women's law experts while drawing up or eliminating or amending any "existing discriminatory" law.
7. They proposed inclusion of religion experts in a committee to resolve any inconsistency regarding women's interest arising from misinterpretations of provisions of those religions.
8. They also opposed the provision of a child's being identified by both the mother and father, saying it "encourages sexual abuse" and pre-marital cohabitation. They recommended identifying a child by "legally married" parents.
9. The committee observed that the policy's proposed penalty for child marriages is not in line with Islamic policy as the legal marriage age of 18 should not apply here because Islam states that a girl can be married as soon as she has "come of age".
10. It recommended replacing the phrase "child marriage" of the section concerned with "discourage underage marriage".
11. The committee opposed inclusion of women in peacekeeping missions, saying it would make women insecure and it could tarnish Bangladesh's image. The ulama proposed canceling the provision.
12. They also opposed the provision that women "must be given equal opportunities and participation in wealth, employment, market and business", saying it clashes with the Quran's teachings. They proposed giving women equal opportunities and participation in these sectors in light of religious dictums.
13. The committee specifically said one's inheritance rights should be determined by their own religions.
14. The ulama asked the government to cancel the initiative to reserve one-third parliamentary seats for women to increase women's participation in parliament and its application in local elections.[9]
15. *Islam believes in equality of men and women – 'Equality' does not mean 'identicality'.*

7. Women's Rights in Islam:

Dr. Zakir Naik point outs that the 'Women's rights in Islam' should judged according to the authentic sources, and not what individual Muslims do, or what the Muslim society does. In Islam, the role of a man and woman is complimentary, it is not conflicting. It is that of a partnership, it is not contradictory, so as to strive for supremacy.[10]

8.1. Followings are some rights, which Muslim women have-
1. The right and duty to acquire education.
2. The right to have her own independent property.
3. The right to work [job or business] to earn money, which she keeps it.
4. The right to equal reward for equal deed and/or work.
5. The right to express her opinion.
6. The right to argue and/or advocate her cause or opinion to be heard.
7. The right to vote since 1,421 years.
8. The right to provisions from her husband for all her needs and more.
9. The right to negotiate marriage terms of her choice.
10. The right to obtain divorce from her husband, even on the grounds that she simply don't like him. In Islam divorce is suppose to be last resort.
11. The right to keep all her own money. [She is not responsible for maintenance of family].

12. The right to get sexual satisfaction from her husband.
13. The right to get custody of her children in case of divorce
14. The right to choose husband of her choice.
15. The right to refuse a proposed and/or arranged marriage.
16. The right to re-marry after divorce or after becoming widow. [11]

9. Conclusion:

Women's rights have become the most inspiring rallying flag in today's world. Seminars are held, debates are organized, conventions are signed and of course, promises are made again and again. In the international forum, the tales of the State Parties claiming to have achieved a 'miracle success' on women's rights issue sounds impressive![12] But for the women of Bangladesh, it is still a long way ahead to actually realize the standards of Islamic view regarding women's rights.

References:

1 Begum, Afroza, protection of WR in BD: a legal study in an int'l & comp. Perspective, PhD thesis, Faculty of Law,2004.http:// ro.edu.au./theses/595

2 Lockwood, Bert B. (ed.), Women's Rights: A "Human Rights Quarterly" Reader (Johns Hopkins University Press, 2006), ISBN 978-0-8018-8374-3

3 Ibid.. p.6-10

4 UN Development Programme's Human Development Report for 2006, http://www.un.org/womenwatchreports/.pdf

5 STATUS OF WOMEN IN BANGLADESH, http://www.country-studies.com/bangladesh

6 "Declarations, Reservations and Objections to CEDAW". UN Division for the Advancement of Women. Retrieved 2008-01-09.

7 Beijing Declaration and Platform for Action adopted by the Fourth World Conference on Women: Action for Equality, Development and Peace, Beijing, 15 September 1995, Human Rights Library, University of Minnesota.

8 Ayesha Khanam, General Secretary, Central Committee, Bangladesh Mahila Parishad.

9 Fascist violence against a women's policy in Bangladesh, A compilation from the Bangladesh Press, Friday 25 April 2008 , SACW, (via sacw.net)

10 Women's Rights in Islam – Dr. Zakir Naik

11 Women's Rights in Islam By Jacqueline S. Waheed, http:// www.answering-christianity.com

12 Barrister Tureen, CEDAW and the Women's Rights in Bangladesh - a promised Silver Lining, conclusion.

Law and Practice of Preventive Detention

Md. Jalal Uddin
LL.B (Hons.), 5th Semester

Introduction:
Preventive detention is one of the most arguable topics of law in recent times. That's why a lot of people tried to give a exact definition of it, But there is no authoritative definition of it. In the case A. K. Gopalan v. State of Madras, the court held that, there is no authoritative definition of preventive detention. The word "Preventive" means that restrain, whose object is to prevent probable or possible activity, which is apprehended from a would be detent on ground of his past activities;
Detention means keeping back. Preventive detention means detention of a person only on suspicion in the mind of the executive authority without trail, without conviction by the court.

Preventive detention:
People are taken under detention when they commit any crime or they are taken under a trail for their criminal activities. That means detention is the result of committing any crime by an individual of a nation. But Preventive detention is quite contrary to it. In general law, no people can be arrested without being informed of the reason for which he is arrested and there is a specific time of 24 hours to place him before a magistrate. But in Preventive detention a person can be arrested any time without showing telling him any reason and can be taken in custody for a period of six months. In general sense, it can be said that Preventive detention is not imposed as the punishment for a crime, rather to prevent a person from committing a crime, if he is likely to commit a crime. Preventive detention is a special form of imprisonment.

Preventive detention in Bangladesh:
In the original constitution of Bangladesh there was no provision for Preventive detention. It was inserted by the 2nd amendment of the constitution in 1973. Preventive detention is legalized in Bangladesh by the article 26 and 33 of the constitution of Bangladesh. It states in article 33 that ''safeguards as to arrest and detention."

1. No person who is arrested shall be detained in custody neither being informed, the grounds for such arrest, nor shall he be permitted the right to consult and be defended by a legal practitioner of his choice.
2. Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of 24 hours of such arrest, excluding the time necessary for the journey from the place of arrest to the court of magistrate, and no person shall be detained in custody beyond the said period of without the authority of a magistrate.
3. Nothing in clauses and shall apply to any person a) who for the time being is an enemy alien or b) who is arrested under any law providing for Preventive detention.
4. No law providing for Preventive detention shall authorized the detention of a person for a period exceeding 6 month unless an Advisory Board consisting of three persons, of whom two shall be persons who are, or have been, or are qualified to be appointee as, judges of the Supreme Court and the other shall be a person who is a senior officer in the service of the Republic. Has, after affording him an opportu-

nity of being heard in person, reported before the expiration of the said period of 6 months that there is, in its opinion, sufficient cause for such detention.

5. When any person is detained in pursuance of an order made under any law providing for Preventive detention, the authority making the order shall, as soon as may be, communicate to such person the ground on which the order has been made, and shall him the earliest opportunity of making a representation against the order.
6. Parliament may be law prescribes the procedure to be followed by an Advisory Board in an inquiry under clause."

The Special Power Act 1974 of Bangladesh has also described the provision of Preventive Detention:

The parliament on February 9, 1974 enacted the Black Law "Special Power Act 1974 "containing the provision of Preventive Detention. The Acts says that any person can be arrested and detained by the executive authority if there is apprehension in mind of the authorities that he may commit "Prejudicial Act" which means:

1. To prejudice the sovereignty or defense of Bangladesh.
2. To prejudice the maintenance of friendly relation of Bangladesh with foreign states.
3. To prejudice the security of Bangladesh or to endanger public safety or public order.
4. To create or excite feelings of enmity or hatred between different communities classes or section of people.
5. To interfere with or encourage with the administration of law or the maintenance of law and order.
6. To prejudice the maintenance of supplies and services essential to the community.
7. To cause fear or alarm to the public or to any section of the people.
8. To prejudice the economic or financial interests of the state.

So it is clear that though the first constitution of Bangladesh did not have the provision regarding Preventive Detention, it has been made as law for some unlawful opportunities taken by the second amendment of constitution and Special Power Act, 1974.

Preventive Detention ; A weapon of oppression:

Preventive detention has both advantages and disadvantage as every other law. But the use of this power should be very limited or it may be a weapon of oppression very easily.

In some corrupted countries, it has noe become a weapon to oppress people. In most democratic countries, this law is used only in emergencies. As for example, in U.S.A, this law is used only in emergencies.

The U.K declared this law illegal when there is no emergency. But in third world, it is used both at the time of emergencies and at peace for example, Bangladesh, Nigeria and so many other countries. When the rule of Preventive detention is used frequently, then there always remain higher chance of misusing it. So, it can be said that, excessive use of it can be harmful for the state and democracy.

There are some specific reasons why it is said as weapon of oppression.

Firstly, in Bangladesh without trial 6 months detention confers to the detainee. This is a bad process because now here in the world such a long period is found. In India the maximum period of detention is three months and in Pakistan the initial period of detention is three months.

Secondly, in democratic countries Preventive detention is a method resorted to in emergencies like war. The western developed countries like USA, UK, and Singapore, it is specifically mentioned that only in time of emergency, Preventive detention is applied for and also for specific purposes, but there is no specification in our constitution in this regard and can be restored to it in times of both peace and emergency.

Thirdly, we have not a fixed maximum period of detention neither in our constitution nor the Special Powers Act 1974. This is also a negative aspect of Preventive detention. In Pakistan the period of Preventive detention is eight months and in India maximum two years.

Fourthly, in Bangladesh a large number of political workers and leaders are detained without trial through the Preventive detention under the Special Power Act1974 and known as a "Black Law". But this picture of detention without trial is not found in western countries where this Preventive detention also exists.

Fifthly, the Preventive detention under the Special Power Act1947 is keeping in line with the maintenance of Indian Security Act1971 and the East Pakistan Public Safety Act1958, but in Bangladesh the provision relating to Preventive detention made more draconian than these two. By 44th amendment the process of Preventive detention made a pit democratic in India constitution.

Sixthly, police officer after arresting any person prays before Magistrate court for remand (police custody for interrogation) and in most cases police apply brutal force and torture to extract information or obtain confession which is an extreme violation of human rights.

Seventhly, it is not clear whether a detained person can take the counsel of lawyer during the hearing in front of the Advisory Board. The Advisory Boards report is confidential except the part containing the opinion of the Advisory Board.

Eighthly, in practice persons detained under The Special Powers Act, 1974 is detained for days without producing them before the Magistrate.

Ninthly, many suspects who are not actually criminal, for wrong information they are kept inside the jail. Among them who are rich come outside through writ of Habeas Corpus in High Court Division but those who are poor, they have no chance.

In Aspect of Bangladesh:

From 1974 to present, this law is being used at a excessive rate and that's why now a days it is a weapon to oppression in respect of this country, Preventive detention is established by the Special Power Act, 1974 and now it is known as Black Law. From 1974 to present, the SPA has been using successive government to stem the tide of political opposition. Though there is no authentic figure available but various press report indicates that around 25000 people were detained from February 1974 to August, 1975 under this act and similar number to 1985-1987. All the political parties when out of power make serious criticism of the law and promise in the election manifesto that they would repeal this black law if put into power. For example, the three alliances during the movement for fall of the autocratic Ershad regime had been very vocal that the Bangladesh Nationalist Party (B.N.P.) which came into power started emphasizing that it is a law of utmost necessity and government cannot work without it. Likewise, sheikh Hasina, Awami League Chairperson, declared before she came into power through the Parliament election held on 12th June in 1996 that she would repeal the law if came to power. But after assuming power she pulled her tone in

opposite direction by announcing that its efficacy to past governments justified its existence. Again BNP in its election manifesto in 2001 said that it would scrap this tyrannical law if came to power but they did not. The present government also has not repealed the Special Power Act, 1974.

The Act provides for the detention of individuals who might commit "prejudicial acts" against the State, under section 2(f) of the Act, include undermining the sovereignty or security of Bangladesh, creating or exciting feelings of enmity and hatred between different communities and interfering with the maintenance of law and order. The act provides no guidance on the burden of proof necessary for the government to conclude that an individual is likely to commit a prejudicial act. As a result, detention under the Special Power Act, 1974 generally rely on allegation with very little evidence.

There is little, if any, institutional checks against abusive use of the Act by government officials. Detention under the Act is generally performed at the behest of the District Magistrate or Additional District Magistrate in the area. In most districts, the district Magistrate is also the district administrator. An article 115 of the constitution of Bangladesh provides that subordinate courts are to be under the control of the executive. The failure of the separation of powers has meant that detention is often politically motivated within the districts. The ministry of home affairs is supported to provide a report within 30 days stating the grounds for detention of an individual. The act allows for initial detention of a period of one month, after which time an Advisory Board can indefinitely extend the detention for six months period at a time. Additionally detainees are denied the right to legal representation before the Advisory Board.
The frequency, with which the Special Power Act has been used, has increased drastically since it introduction, in 1974 a total of 513 individuals were detained under the Act. In the first six month of 1999, 6650 individuals were detained under the Act. Various types of people are detained under the Act-Politicians, students, family members of opposition leaders and personal enemies of police personal and government administrators. This also proves that, now-a-days, it is good weapon to harass the people.

Conclusion:

Though Preventive Detention is a tool of constitution for social need, but now it is serving for the other purpose inguised its legal or theoretical purpose. The excessive use of laws of preventive detention affects the liability of the individual and as well as dangerous for a big community. The law related person should not forget that this law is for the protection of the society and state and not for steaming roll or upon the political counterparty.

Bibliography:

1. The Constitution of Bangladesh
2. Front page of Prothom Alo, 08 December,2002
3. Law Quarterly Review,2004 volume-122
4. Bangladesh Research Publications Journal
5. West Law Webpage
6. http://www.hrdc.net/sahrdc/
7. http://jurist.law.pitt.edu/world/bangladesh.htm

Women's Right in Workplace

Fatima Jannat
LL.B (Hons.), 5th Semester

Our National poet Kazi Nazrul Islam said whatever great works had been done in the world. Half of those had been done by women. But how much the people believe it? How much a woman gets opportunity for contributing the development of a country? The menever do not know how they cruelly behave with woman. The answer of all these questions may not be found by anyone including me.

Bangladesh Sromo Ain 2006 Provides the behaviour towards women worker in **S-332**. But this is not so strong provision and there are on other provisions in this regard. So, day by day, the environments of working place for women workers become worsened. The male co-workers and authorised male persons behave with women workers uncomfortably and the women workers are harassed by this misbehaviour. Misbehaviour can take various forms. For example–

- A woman worker is deprived from equal rights and equal wages. Sometimes we see that a woman may be doing the same job that a man does but her wage is less than him.
- A woman worker also deprived from equal dignity and equal promotions.
- Without any reason authorised male worker insults a woman worker or raises question about her qualifications or skills in the presence of other workers. This is so insulting for a woman to be tolerated

Besides these, there are so many. Among them, sexual harassment to the women workers is the most common and important topic in the present world. The harasser may be a student, a teacher, a friend or a stranger, a co-worker or a professor. Sexual harassment can take also various forms. Sometimes, we see that harasser may willingly do it or may do it for fun or used as a joke. But they don't think how much it is uncomfortable to the women. There is a well saying that women are feeble, and this opportunity will be taken by men. The women cannot say anything because there are no strong provisions to protect them. I think, at first the Govt. should take necessary steps. We know that at present to stop sexual harassment in educational institutions and the workplace a new law is drafted by Ain commission. And this draft copy is sent to the different councils for approval as per this Act, there are two kinds of punishment to the sexual harasser. These are trivial offence and grave offence. And the punishment will be given by different ways on the basis of the offence. In case of trivial offence, the harasser may be scolded, warned, the increment of wages or promotions may be suspended for a definite times, the time scale may be stopped and may be entitled for giving compensation from the wages. And the grave offence is that the decrement of demotion, compulsory retired or exempted from service or compensation. The drafted copy also provides a scope to create a committee in which the number of member is 3-5.

Besides these, I think, there must include some other necessary steps.

- The Govt. should be bound the employers through laws for creating a policy about behaviors towards women workers.
- The Govt. should make provisions to create a policy against sexual harassment in every organisation. And the employer should provide educational Training related to the said policy. For example, through service regulations, through magazines, documents, making provisions in the work regulation for items concerning sexual harassment, implementing training, lectures to increase awareness.
- There should be a provision for establishing a process for handling the complaints and the situation in the proper manner.
- Before joining the working place every worker should be given a training about the behavior especially the behavior towards women and this rule also should be included in this Act.
- When a person has been dismissed for his heinous offence in the workplace, he should be provided with a certificate stating the reason of his dismissal. This certificate shall reduce his working experience or working ability. Because of this certificate, he cannot get a new job easily and the harasser will think before misbehaving with women. There must be provision regarding the certificate of reduction of his working experience
- There is a provision in the Bangladesh Sromo Ain 2006 (S-345) that payment of equal wages for equal work. But in practice, we do not see this. So, in this new Act there must be included a provision for violating S-345.
- There should be a provision that every book in primary level must include a curriculum about the behavior towards women. Because if we make the children's aware about this matter from their childhood, I think this harassment will be reduced.
- In every working place, there must arrange a training sessions for employees and it must be made compulsory for every institution through the law.

If strict laws are imposed and implemented then there will be big possibilities of reducing sexual harassment. And the most important thing is to create awareness among the people. The private firm like BRAC, ASHA and others can take necessary steps to create awareness. Our TV channel can also play vital role. But the most important thing is to change our attitude.

"Which One You Prefer To Be The Law Of Society?"

Akther Jahan
LL.B (Hons.), 5th Semester

I know this question seems to be very complicated to answer, could be I have thrown you in to confusion. Don't know why but few days back my head was struck by this issue, when I found law is being used as a weapon of government, also have heard some odd news that Bangladesh nowadays enforces some laws which happens to challenge the Holy Quran. Strange to hear, people cry for justice where as today you break and create the law reasons, which has no ends although you have never realized today's law cannot support any of your reason. Since laws are being promulgated through reason. And the divine law itself is the one, which has been promulgated through reasons. I concur that its good enough to make the constitution as supreme law, but that doesn't mean you can change the law that has been promulgated through reason. How can you challenge the Holy Quran one of the source of law. Now what I think is, instead of creating separate laws and making the procedure too complicated what if a Muslim country follows the Divine law The Law of Almighty Allah. That's what is my question to all of you ***"Which one you prefer to be the law of society, the Man-made law or the Natural law***". For a committee or an assembly to be empowered to draft the law of society is both invalid and undemocratic. It is also invalid and undemocratic for the law of society to be abrogated or amended by individual, a committee, or an assembly. No doubt, we believe that the natural law of any society is grounded in either tradition (custom) or religion don't you agree with me? So, any other attempt to draft law outside these two sources is invalid and illogical what I think. Also we believe that it's a part of divine law, which is revealed through the reason of man. A person to govern their affairs and relation applies it. It was found that Law happens to represents the other problem, parallel to that of the instrument of government, which has not been resolved yet, what do you think about the constitution a positive law, ***constitutions cannot be considered as the law of society, but why is this so...*** because a constitution is fundamentally found to be a (man-made law) i.e. positive law, and lacks the natural source from which it must derive its justification. The problem of freedom in the modern age is that constitutions have become the law of societies. These constitutions are based solely on the premises of the instruments of autocratic rule prevailing in the world today, ranging from the individual to the party. Proof of this is the differences existing in various constitutions, although human freedom is one and the same. The reason for the differences is the variation in the assumptions and values implicit in diverse instruments of government. This is how freedom becomes weak under contemporary forms of government. The method by which a specific modality of government seeks to dominate the people is contained in the constitution. The people are compelled to accept it by virtue of the laws derived from that constitution, which is the product of the tendencies

within particular instruments of governments.

The laws of the dictatorial instruments of government have replaced the natural laws, i.e., positive law has replaced natural law. Consequently, ethical standards have become confused. The human being is essentially, physically and emotionally, the same everywhere. Because of this fact, natural laws are applicable to all. **However, constitutions as conventional laws do not observe human beings equally.** This view has no justification, except for the fact that it reflects the will of the instrument of government, be it an individual, an assembly, a class or a party. That is why constitutions change when an alteration in the instruments of government takes place, indicating that a constitution is not natural law but reflects the drive of the instrument of government to serve its own purpose. The abrogation of natural laws from human societies and their replacement by conventional laws is the fundamental danger that threatens freedom. Any ruling system must be made subservient to natural laws, not the reverse. The fundamental law of society must not be subject to historical drafting or composition. Its importance lies in being the decisive criterion in light of which truth and falsehood, right and wrong, and individual rights and duties can be judged. Freedom is in jeopardy unless society sticks to a sacred law with established rules that are not subject to alteration or change by any instrument of government. It is rather, responsibility of the instrument of government to stick on to the laws of society. Unfortunately, people in all over the world are currently ruled by man-made laws that can be changed or abrogated, depending upon the struggle for power among competing forms of government. The law of society is an eternal human heritage that does not belong only to the living. Therefore, drafting a constitution or conducting a plebiscite on it is a mockery. The catalogues of man-made laws emanating from man-made constitutions are fraught with physical penalties directed against human beings, while tradition contains few such measures. Tradition lays down moral, non-physical penalties that conform to the intrinsic nature of humanity. Religion contains tradition and absorbs it; and tradition is a manifestation of the natural life of people. Its teachings comprise basic social guidelines and answers to the fundamental questions of existence.

Most physical penalties are deferred to a future judgment. This is the most appropriate law affording due respect to the human being. Religion contains tradition, and tradition is an expression of the natural life of the people. Therefore, religion is an affirmation of natural laws, which are discerned therein. Laws that are not premised on religion and tradition are merely an invention by man to be used against his fellow man. Consequently, such laws are invalid because they do not originate from the natural source of tradition and religion.

I am sure all of us know and we none of us lack this knowledge "that humans are the superior creature of all other creations". Man can control his own destiny to a large extent but he is subject to certain basic impulses, which are the impulses to reproduce the

species and rear children, and the impulses to prove and take such decisions as are necessary for the attainment of higher and better things. Remember always the primary precept of law is that good should be done and pursued and evil to be avoided and on this you will find all the other precepts of law, by reflecting your own impulses and nature you can decide what is good for you. I won't agree a law always to be a strict command, a sanction, a notion of order a duty when it does not consists of any means of achieving ends, would you call it to be a law, when the law happens to be just an instrument with no ends? Every thing around us which exists definitely follows the divine law I mean the natural law, existence of law is truly within the nature of God, look at those tinniest atoms and the heavenly bodies and question yourself why is the sun, a heavenly body in a constant position and the earth and the moon revolving in its orbit around the sun. Have you ever seen the clusters of star or the formation of galaxy? Or try at least to spend half of your time in thinking why couldn't Lord keep the earth stable and the sun to revolve? If He had done so, today the world wouldn't attain its equilibrium and would have fallen in to an implausible destruction long back. Just knock this questions in your mind that's all, you will certainly find the definition of law. He commands the seed, which is sown under the earth " you will not grow till you have been nourished", this is what is already set by the Almighty Allah. All this has been done so that we realize law existed since the existence of the world and if I am not wrong, all the unbelievable scenery we observe around us has defined the law earlier, truly "He is the law maker, and nothing is beyond his knowledge", all His signs represent law, even the secret code. In that case do you think this species have no ends, yes they do have what is it? The equilibrium on the earth this is what is their ends, they have no freedom of choice they are bound to obey, but we do have the power to think, and freedom of choice, identify the wrong and right path do good and eschew evil is the only end in this world. Understanding the concept of law defined by Kelsen, Austin, Salmond and by all other famous founder, I found the "law to be a set of rules sorted and given by the Sovereign which is to be pursued and maintained by both the living and non living beings just to keep the world in balance." Now your question is " human's, a sense of balance"? Take a simple example of your daily life, you wake up early at 5 than have your breakfast at 8 and at 9 you go to university and so on, in every new day maintaining this itself brings equilibrium in your life, this is what is law in stern sense the rules and regulation given by the Sovereign. Although all this matters were dealt with in different periods of history, but the problem still persists today. There is no key to the question ...... "which one you prefer to be the law of society?"

Now, what is your answer, if its Man-made law then my opinion would be it should be subservient to the natural law i.e. the divine law?

LIAR...OOPPSSS...SORRY... LAWYER !!!

Nahida Kader
LL.B (Hons.), 5th Semester

1st person- what is your aim in life?
2nd person- I want to be a lawyer
1st person- oh! Why you want to be a lawyer? Do you want to be a liar?
2nd person- no! I will not a be liar. I will be an honest lawyer!
1st person- my dear! It's not possible! All lawyers are same! They have to lie...

This is a conversation between me and my uncle, when I was in class nine. And from that time I faced this types of conversation many times, though the person and places were different. Many times I quarreled with them and I also tried to prove them that lawyers are not liar but now! I keep my mouth shut when any person says like that.

Now my question is for you! Does lawyer mean liar? Are you studying in International Islamic University Chittagong for becoming a liar? I know the answer! Of course it will be "NO". My friends look on developed country! Lawyers are respected person for their profession so why people of our country thinks them lair?

I am lucky cause I have got a chance for reading Justice (magazine of law club)) there were some articles about Amendment, justice etc... but there was no article about this injustice. That means the lawyers from IIUC will suffer for this word!

I know...if people get any fault of any person they try to poke all. But why only lawyers will suffer? Doctors also do mistake even engineers also do wrong works. So why people think that lawyers are liar though every person lied!

Not only they called us liar but also lawyers have to suffer for this profession ....even land owners don't want to rent his house to a lawyer. And people walk behind when they heard that the girl or boy is lawyer in case of marriage! I know it sounds funny but believe my friends it's really true!

I am a student of law for two years and I really fall in love with this word because I learnt that, lawyers give legal advices and they show the dark. They help judge to punish the criminals and depend the innocent from punishment.

I know reality is different from my thought. But this reality is made by you and me so why we together can not change the wrong? My friend! Today you and me thinking about this problem but may be tomorrow we will think about this problem and after, all lawyers of Bangladesh will solve this problem.

I know many of you thinking that, "this is a dream! This will happen only in article. "But I think those who think like that must forget when our Prophet Mohammad (pbh) was born. Because when he came on earth, social life of Arab was in dark. But our Prophet (pbh) changed that social darkness. He established peace in human life so, why can't we follow him? Why can't we change the thought of people about lawyers? Please go behind 100 years back. Did any person think that men will fly in the sky? But the Write Brothers dreamt and invented Airplane! Before 10 years did any one of us think that we will get Nobel Prize in peace? But now we have a Nobel Prize for Yunus who is from Chittagong. So, why a student of IIUC can not change the thought of people about lawyers?

So, I am requesting my friend of law club... Let's change the thinking of people. Let's show them lawyers are not liar only we who are from IIUC lets promise that we will not lie in our profession even if the criminal is our relative. We never give any chance to criminals and we will try hard for becoming a good and honest lawyer.

If we want to make any impossible work possible we have to see dream first so, I dreamt that I will face this type of conversation after some years........

1st person- I face trouble so, I need an advice!
2nd person- you can go to a lawyer for legal advice.
1st person- yup! I need an honest and good lawyer.
2nd person- oh! Then you must need a lawyer who is from IIUC, because they are really honest and famous...!!!

The Establishment of Women's Rights in Bangladesh : Concept & Analysis

Zeenia Hossain
LL.B (Hons.), 4th Semester

Introduction;

Etymologically "women's rights" to a set of rights which are exclusively enjoyed, or rather enjoyable by women in particular, to the exclusion of men. In narrow sense, the phrase implies only those rights that are recognized in an individual state. In this regard, the definitional formats of rights are the socio-economic-cultural-religious and legal settings of a particular country in which women stand.

If we look back in the past history of the status of women's rights, we can realize that there were no rights of women at all. They were treated not less than like beasts. They were not given perfect dignity as a human being!!

But with the gradual advancement and civilization of our society, we, today's women are living far better than our ancestors lived. Today's women are much aware about ensuring their rights in every aspect of their life. However, even in this 21st century, how far "women's rights" are established and prevented from gross violation is a big question. Because statistics show that there had not been such deterioration of women's rights that have been occurring for a couple of years and still continuing till today.

However, let's see an analysis of every footstep forwarded towards establishment of "women's rights" which are in the following:-

INTERNATIONAL RECOGNITION OF WOMEN'S RIGHTS AS HUMAN RIGHTS:

Women's rights gained international recognition for the first time in the United Nations (UN) Charter, 1945.Since then, a series of international covenants, treaties and conferences have been concluded under UN auspices to reaffirm and elaborate women's rights. The International Bill Of Rights was pioneering in providing list of women's rights.

To address women's rights exclusively, some specific international treaties were also developed. For example, the Convention the Political Rights of women,1953,the Convention on the Nationality of Married Women,1957,the Convention against Discrimination in Education,1960 and more importantly the Convention on the Elimination of all Forms of Discrimination Against Women(CEDAW),1979.

These instruments provide provisions, aiming to place women in parallel with men in the public sphere. The CEDAW is the most comprehensive attempt in the international arena to address gender equality and to develop almost all aspects of women's rights.

ESTABLISHMENT OF WOMEN'S RIGHTS IN ISLAM:

Islam is the first religion that recognized women as equal to men in many aspects and even provided women much higher dignity than men in some cases. In Islam, woman is a completely independent personality. She can make contract in her name and can inherit property as mother, wife, sister, and daughter.

Islam prohibits forced marriage, by giving women the right and liberty to choose their husbands. In Islam, there is absolutely no distinction between men and women as far as their relationship to God is concerned, as both are promised to same reward for good conduct and same punishment for evil conduct. The Holy Quran says:-
"And for women are rights over men similar to those of men over women."
Islam has also encouraged to support widows. Abu Hurairah reported that from Prophet (pbuh) said: "One who makes effort to help a widow in the path of God is like one who stands up for prayers all of the night and fasts for all of the day."

Women as mother command the greatest respect in Islam. Our Prophet (pbuh) states that the rights of the mother are paramount. Abu Hurairah reported that a man came to Prophet (pbuh) and asked, "O Messenger of God, who is the person who has the greatest right on me with regards to kindness and attention?" He replied, "Your Mother". Then who? He replied, "Your Mother". Then who? He replied, "Your Mother". Then who? He replied, "Your Father".

This proves that how Islam recognizes women's rights and enhances their dignity even over men in some respects. Hence in Shariah (Islamic Law), women are spiritual and intellectual equals of men.

3. LEGAL FRAMEWORK OF WOMEN'S RIGHTS IN BANLADESH:-

In Bangladesh, a range of legislative measures have been undertaken to safeguard women's rights. Beginning with the supreme law of the land, i.e.; The Constitution of People's Republic of Bangladesh,1972 there are also many other laws that provide provisions against infringement of women's rights in every aspect of their life. Such noteworthy laws are in the following:-

The Constitution of People's Republic of Bangladesh,1972:-

Under part III of the Constitution of Bangladesh, are the fundamental rights where there are various provisions relating to women, both directly and indirectly.
Article 27 ensures right to equal protection of law.
Article 28(1) prohibits discrimination on grounds of religion, race, caste, sex or place of birth.
Article 28(2) specifically mentions about equal rights of women with in all spheres of the state and of public life.
Article 28(3) provides:-"No citizen shall, on grounds only of religion,race,caste,sex or place pf birth be subjected to any disability,liability,restriction or condition with regard to access to any place of public entertainment or resort, or admission to any educational institution."
Article 28(4) provides:-"Nothing in this article shall prevent the State from making special provision in favour of women or children..."
Article 29 ensures equality of opportunity for all citizens in public employment and prohibits discrimination on grounds of religion, race, caste, sex or place of birth.
The Penal Code, 1860 defines some crimes such as rape, abduction and kidnapping, against women and provides stringent punishment for them. The Dowry Prohibition Act, 1980 was enacted to address multi dimensional forms of dowry, and was amended many times.
Another significant law, The Nari O' Shishu Nirjatan Daman Ain, 2000 which has been amended in 2003, describes punishment for crimes like women trafficking, kidnapping and abduction, rape and death for rape, provoking suicide, sexual harassment, causing death for dowry and cruelty to women.

Immoral Trafficking Act,1993 is another important law on women, penalizing, among other things, forced prostitution. In labour law, The Bangladesh Labour Act, 2006 provides right to maternity benefit for women and also has provision regarding proper behavior towards women in the employment. Apart from these, personal laws such as Shariah (Muslim Personal law) for Muslims and Hindu law for Hindus constitute significant portion of formal rules in providing rights for women.

All personal laws are concerned with personal affairs like marriage, dissolution of marriage,dower,maintenance and guardianship are dealt by family courts that were established in 1986 under the Family courts Ordinance,1985.Certain reformative measures were adopted during the last decades on Muslim personal law. Some of the noteworthy laws are:- The Muslim Family Laws Ordinance,1961, Child marriage Restraint Act,1929, The Dissolution of Muslim Marriages Act,1939, the Muslim Marriages and Divorces (Registration) Act,1974, The Guardians and Wards Act,1890.By enacting these laws many of the women's rights are recognized and through these laws remedies are also ensured.

On the other hand, in Hindu Law, laws regarding personal affairs like marriage, maintenance, succession are provided but unlike Muslim Personal law, their, women's rights are actually infringed in Bangladesh in the name of ancient Hindu customs and traditions which are the main sources of Hindu law. Specifically, The Hindu Women's Rights to Property Act -1937 has certain provisions which deprive Hindu women's rights to inherit property since the Act provides limited ownership of women regarding inheritance. Moreover, no law regarding the registration of marriages exists in our country which makes the women more vulnerable towards injustice. However, Widow's Remarriage Act, 1856 allows a Hindu widow to remarry.

Moreover, in Bangladesh there are some associations which are now consciously working for the promotion of women's rights. Among them are Mahila Parishad, Women's lawyer's Association, and the committee for Resistance to Violence to Women and Social Justice are working seriously towards reformation of laws as well as speedy adjudication of the same. Such results of long struggles of women in Bangladesh is the promulgation of the existing laws.

4. REMEDIES AGAINST INFRINGEMENT OF WOMEN'S RIGHTS IN BANGLADESH:-
The nature of remedies against infringement of women's rights under the prevailing laws in Bangladesh can be categorized into four types:-

Firstly, the rights of women ensured by the fundamental rights of the Constitution of Bangladesh can be enforced by Supreme Court of the country. To this end, specific provisions are embodied in Articles 44 and 102 of the constitution. Article 102 empowers the High Court Division to issue orders and directions to enforce fundamental rights.

Secondly, personal laws that provide women with the rights to dower from husbands, maintenance, dissolution of marriage, and restitution of conjugal rights are subject matters of Family Court.

Thirdly, right to inheritance for women invokes civil jurisdiction.

Fourthly, rights under Dowry Prohibition Act, 1980 and Nari O' Shishu Nirjatan Daman Ain,2003 provide stringent punishment for violation of women's rights that fall within the purview of the Criminal and Penal Codes of the country.

5. COMMENTS AND RECOMMENDATIONS:-

Unfortunately, in spite of the establishment of so many laws regarding women, many women are still experiencing gross violation of their rights. Crimes like abduction, acid-throwing, rape, sexual harassment have been increasing in an alarming rate in the name of a social disease called 'eve-teasing' or stalking. Moreover, torture and death for dowry are raising constantly .The consequences of all such crimes are the commission of suicides by considerable number of women today who let go-off their lives to save them completely from living with such humiliating experiences in their life.

But pragmatically thinking is this the way we should set such fragile figures of women towards our society? Certainly not. So first of all, to prevent the violation of our rights, we, the women, should be much more conscious about our religious, social, economic, political as well as legal position. According a legal maxim, "Ubi jus ibi remedium" which means, 'where there is a right, there is a remedy'. So being women, we should not think ourselves frail; rather we should take the initiative against crimes and be confident enough to struggle for the achievement of the remedies of the wrongs.

Further, there are a lot more factors that depend upon the establishment of women's rights. There are already several laws protecting women's rights, but lack of effective implementation is the main cause of the deterioration of these rights. Besides, reformations in the existing laws regarding women shall also ensure better prevention of the violation of their rights. In such case, limited provisions of law regarding the protection of women's rights and less severe penalties for infringement of such rights for committing such heinous crimes are the impediments that should be widened and modified to make the existing laws much more forceful.

Such as Hindu law must be reformed to ensure greater proprietary rights to Hindu women and Hindu marriages must be registered in our country. So appropriate laws should be made for these minorities in Bangladesh.

Furthermore, it can be said there are effectual laws securing women's rights of which, forceful implementation can actually restrain the declination of their rights. But the effective implementation depends upon the due process of law, good governance, an independent and strong judiciary, efficient law enforcing agencies, greater social awareness, harassment free judicial procedure and above all, on the honest commitment of the Government.

6. CONCLUSION

Ultimately, it is high time that we should think about the establishment of women's rights in order to make women truly independent from all kinds of physical and mental harassments and live a better and happier life.

Psychological Analysis of Criminal Behaviour

Md. Atiqur Rahman
LL.B (Hons.), 4th Semester

Good man & bad man rich man & poor man-children & old man male & female live in the whole world. But every man is good for specific activities. If you say anybody good he will be good. So an offender & a criminal both person are human being. No one man can birth with his offence & crime activities. But in our legal system, every offender & criminal get punishment by the court or society. But I think that punishment is not only the solution of offence & criminal activities.

In the modern state, the administration of justice according to law is commonly taken to imply the recognition of fixed rules. But the most important branch of legal psychology or sociology is criminology or penology, the study of punishment in relation to crime. It studies the causes of the crime. The behavior of the criminals & the effects of different kinds of punishment upon the criminals. Particularly their effect in diminishing the crime. Until recently judges & legislatures had to gauge the effect of punishment. Now exact data are becoming available through the efforts of criminologist who use scientific method of determine the actual effects of punishment upon the incidence of crime. In the community as well as the effects of other methods of dealing with crime. Work of this kind is obviously of the first importance for law reforming which should be best upon an exact knowledge as to how the existing law is working. Even law reformer is necessarily interested in the sociology of law.

we know that a man passed ten stage in his life as like parental stage (after conception to birth), infancy (birth to two weeks), baby hood (two weeks to two years), early childhood (two years to six years), late childhood (six year to ten or twelve years), puberty (ten or twelve to thirteen or fourteen years) adolescence (thirteen or fourteen to eighteen years), early adulthood (eighteen to forty), middle age (forty to sixty) & old age (sixty to death). If his life only eighteen years taken proper step then he gets good benefit in his total life. Other hand when a man did offence or crime that time he is a psychological patient. If he get proper step in his parental stage to adolescence stage he will get more benefit in his future life. When a man doesn't continue his proper life that time he becomes offender & criminal. That time a psychologist or criminologist can take proper step for the man. Criminologist or psychologist can apply introspective method of observation experimental method, statistics method, survey method, clinical method or case history method. Finally psychologist or criminologist can apply psychological assessment or clinical assessment or treatment.

So we wish measure of criminal liability & psychological assessment or treatment shall improve offender or criminal to turn back in his normal life.

Quest for Origin of Law

Samia Sharif & Shaika Sharmin
LL.B (Hons.), 3rd Semester

Law

Law is a set of rules which controls society by setting out a fixed standard of behavior. In other words, law means some rules and regulations enacted and enforceable by the sovereign authority. It plays a vital role in a society as stated by a German sociologist, Max Weber that the primary role of law is to maintain order in society. It also ensures the human rights. In fact nothing in the society can be run peacefully without law...

Origin of law...

It is essential for us to know about the sources from which laws have taken place in our society. There are different kinds of opinions regarding this-

Various revealed books including the Quran and the Bible say the first laws were established between God and Adam i.e. when God told Adam and Eve not to eat from the tree of knowledge. Most people think this was a command that God laid down. In this regard, there is a divine thought. Early legal commentators, such as Cicero, Grotius, Montesquieu, Blackstone and Kent, believed that when God created the heavens and the earth, He imposed His will and laws upon the entire earth and its inhabitants. Such laws were believed to be applicable to all people and discoverable by anyone through a well-reasoned observation of human behavior and experience. These are called "the law of nature" It was also believed that the king was appointed by God to administer the people according to the law of nature. Furthermore, these laws were held to be absolute and eternal and were most popular in pre-Darwinian times. Though it is not the prevalent or accepted basis for legal philosophy today. In point of fact, it was accepted in America for a longer period of time.

Generally, it is said that there are 6 sources of law. But in legal field, there are different opinions the sources of law such as Austin gave three, Keeton gave two meanings and so on. But the most preferable one is the Salmond"s view who told about the two main sources of law—FORMAL and MATERIAL source.

Formal source—It includes the will of states as manifested in statutes or decisions of the courts. According to Salmond, the law derives its validity from it.

Material source— It is of two kinds—LEGAL MATERIAL and HISTORICAL MATERIAL source. Legal material sources are the sources from which we get new laws and have legal recognition in the field of law. And in case of second one, primitive thoughts of the savages such as magic or religion are the sources of law, are included and these are not legally recognized.

Besides these, as a part of legal material source there are some well known sources of law..

Custom- Custom is simply the practices and usages of distinctive communities. Among various customs and traditions, the reasonable ones are conceded as sources of law. But every custom can not be regarded as a source of law as there are some criteria to be fulfilled. They are-1-"Time memorial" means it must have existed since time memorial.2- "Reasonableness means it cannot conflict with fundamental principles of right and wrong.3-"Certainty and clarity" i.e. it must be clear and certain.4-"Locality" i.e. it must be specific to a particular geographic area.5-'Continuity " means it must have existed continuosly.6-"Exer-

cised as of right" means it must be exercised peaceably, openly and as of right.7-Consistency" it refers that it must be consistence with other local customs. And8-Conformity with statute which denotes that a custom which is in conflict with a statute will not be held to give rise to law. In modern time, customary laws play a very little part.

Judicial decision- While leading various cases, the judges give several decisions depending on the situations. Sometimes it is seen that decisions are also followed by the subsequent similar cases. And the decisions of the Supreme Court are bound to the inferior court as well as to the brother judges sitting on the same court. In these ways, the reasonable decisions of the judges or in other word precedents are recognized as a source of law. Recently, in Bangladesh, in the Masder hossain case, 2007 properly known as "separation of judiciary case", it was decided that the judiciary is independent from executive on 1st November, 2007. Here, the decision was made depending on the previous judicial decision pronounced by the Appellate Division of the Supreme Court of Bangladesh on 1999.

Acts of the legislature—Acts passed by the supreme law making authority or parliament are the prime source of law. It is more preferable than precedent because judges create law only for the case in dispute while legislature lays down rules without referencing any actual dispute for every matter. These are also known as ENACTED LAW.

Convention- It includes contractual relations, treaties between two nations. These also may be regarded as an important source of law. The most obvious examples of conventions are- ***"The Geneva Conventions for the Protection of War Victims, 1949", the International Labour Organization, 1919 etc.***

Equity- In England, equity is a notable source of law. Once the legal system in England was found too rigid to be good at all times in all cases. Subsequently, the dissatisfied parties used to petition to the Chancellor, the king's chief minister, as the king did not want to spend time considering them. The court of chancellor used to provide laws by using moral sense. These are also considered as source of law in English legal system. Sometimes, in other countries along with our country, use these laws.

On the other hand, another thought regarding the development of law given by jurists of historical school of law who divided it into four stages—

Firstly, divine law that means the Goddess of justice. **Secondly,** customary law means frequent application of judgments led up to uniform practice which crystallized into customary law which was followed in the primitive society. **Thirdly,** priestly class as a sole repository of customary law i.e. the authority of kind to enforce and execute law was usurped by the priestly class. **Lastly,** codification in where a class of learned people came forward who denounced the authority of people included in the priestly class as law givers and advocated codification of law to make it more accessible and easy to understand.

As there are miscellaneous opinions regarding the origin of law, it is difficult to say which one is exactly correct. However, there is a wise saying that **LAW IS NOTHING BUT COMMON SENSE** so it can be said that the prominent source of law is common sense of people. From whatever source we get the law , the main element is our common sense which includes , according to the natural law theory, the natural sense of right, wrong, truth, falsity, honesty, dishonesty, justice, unjustice etc. By using natural sense, legislatures or judges of different countries enact different kinds of laws.

Industrial Police

Mohammadullah Mojaher
LL.B (Hons.), 4th Semesters

The operation of industrial police has launched, a specialized unit of law enforcer aiming to maintain order in the country's four industrial zones.

Initially, 1,580 personnel deputed from the police department will make up the force, they will later be joined by 1,410 more cops to patrol Dhaka, Gazipur, Narayangonj and Chittagong industrial hubs. The head quarter of such force is situated in Dhaka. Government has formed the force to ensure no outsiders can incite violence or create anarchy in industrial sector. Industrial police will help tackle labour unrest. They will exercise unrest restraint in dealing with labour protests.

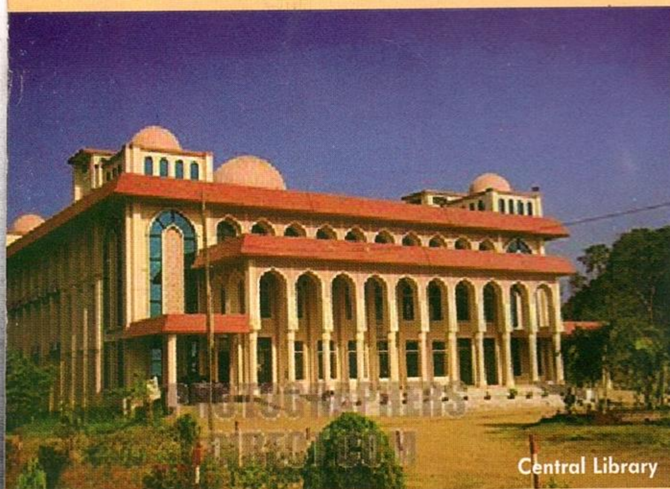
There would not be necessity to form the specialized unit of police, if there would be peaceful understanding and good relationship between employers and workers. It is possible to solve some exceptional anarchy by existing police. This is the demand of employers. They always demand to the government a special police. Employers may want to use this force by paying money on behalf of them. If the industrial police are used correspondently, workers must again be oppressed. The workers have been becoming victim of repression and oppressive arrest due to the protest for their rightful demands. Workers have been harassed by filling suite. But never employers would have been arrested, who delay willfully to provide the payable money of the workers and deprive them from their rights.

The employers earn thousands billion profits. By making people hard-work brutally. But no improvement in the fate of workers, employers don't agree to increase the salary. Workers have no capability to purchase new dresses for family on religious festivals.

The main reasons of unrest and destructive activities in industrial society are the small amount in salary, insufficient facilities and not recognizing the effort of the workers appropriately. Protest is originated from these reasons.

However, we welcome government for forming the industrial police to remove incite violence, anarchy and to maintain rules-regulations in industrial society. Industrial police should be trained to resolve disputes between employers and workers through arbitrations. They should perform duty impartially on behalf of the workers and employers. We hope just like.

IIUC Main Gate



Central Library

IIUC Auditori

International Islamic University Chittagong

Permanent Campus, Kumira