

Muslim marriage and divorce: Recounting married women's quest for individual  
sovereignty in literary and legal arenas of Bangladesh



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## Content

Title:	page:
Abstraction.....	1
Chapter 1.....	2 - 9
Introduction	
Chapter 2.....	10 - 24
Chapter 3.....	25 - 37
Chapter 4.....	38 - 50
Chapter 5 .....	51 - 58
Conclusion	
Bibliography.....	59 – 63

## **Abstract**

Marriage has been considered as one of the most ancient and important social institutions in human history. The benefits that marriage provides are undeniable, yet in most of the cases, it imposes restrictions and bindings on Muslim married women, particularly in the context of Bangladesh. Although, marriage promises happiness and fulfillment, yet it performs as a site for female subordination as it binds women to household labour, and limits their lives in the roles of wife and mother. My thesis will travel back and forth between the chronicles of fiction and reality by contemplating how these two arenas portray women's condition in marriage, what are the similarities and disparities, and to what extent Muslim married women can establish their position as individuals and become the overseer of their lives. This thesis therefore will look into five texts by Bengali women writers and will try to explore the conditions of women in Muslim marriage and how do they achieve empowerment regarding their individual happiness, autonomy, as well as feminine sexuality. The legal part of this thesis further will cover the legal differences that Bangladesh has in relation with International laws in the issue of women's question and their rights. Starting with the legal aid organizations and NGOs, and how do they play a key role in combating women discrimination in Bangladesh, will also be analyzed in this dissertation through primary and secondary datas from real life.

## Introduction

Bengal is heir to several legacies which include colonialism, nationalism, independence movement and then an entrance into a period of globalization, due to which the region has experienced miscellaneous reforms in terms of social beliefs and practices. This ongoing intervention of certain, mainly external forces, have ushered modernity in this land, has its root from the time of colonization. A period which was filled with imposing images of imitation and passivity upon Bengal, and colonizers used the images as scramble to capture the political power. Against that the Bengalis at a certain point of time shift their look at this western way of education, life-style, their intrusion of liberal values in social institutions and practices as to be a clear imposition.<sup>1</sup> All of these years of subjugation and push-pull factors have left their imprints where our ideas associated with gender and its relationship with state are exceptionally influenced by colonialist as well as nationalist ideas. This is why after 50 years of independence, the society is still underpinned by the hierarchical system of power where the “self” are the male citizens of the society and women are identified as the markers of the “other” or “second citizens” of that very society. Another nationalist way of looking at the question of female position in the society of Bengal is how Partha Chatterjee in his essay, “The Nationalist resolution of the Woman’s Question”<sup>2</sup> manages to answer that it is believed to be women’s responsibility to cultivate and maintain the spiritual/cultural superiority of the East in order to escape from the tutelage of colonization and therefore, women should stay in the inner space of society so that they can protect, preserve and strengthen the true essence of the traditional culture which circulates into the social space of *ghar*, that is the home or private domain of the society.

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<sup>1</sup>Chatterjee, Partha. “The Nationalist resolution of the Woman’s Question.” in ed. Kumkum Sangari and Sudesh Vaid, in *Recasting Women: Essays in Indian Colonial History*. 1990, pp. 233-253. Print

<sup>2</sup>Ibid. pp. 239

In the case of a Muslim woman, the picture that comes in the mind of general people is that of a person who walks behind a man like a shadow, confines herself into the household tasks and fulfills every command given to her like a machine.<sup>3</sup> The underlying reason of this portrayal is the establishment of an archetypal concept by the state where family is the metaphor of the nation and women are the mothers and care takers of that very nation where it is the absolute duty of females to preserve the honor of family and nation, in every possible way. This principle also hovers around the centre of the nationalist project through which Bangladesh as a country has come into being where the application of dichotomies like home/world, traditional/technological and feminine/masculine have redefined the position of women in the society. As a result, regardless of the scientific and educational progress, it was imperative for women to emphasize on nurturing the feminine qualities of the human species so that the home/traditions of eastern being remain pristine and unmutated. Therefore, this stereotypical image of “ideal woman” which carries a strong patriarchal influence becomes a burden for girls especially during the course of her marriage as this custom defines the notion of woman and her position in the family/society. It also generates the mandatory responsibilities for women where they need to conduct themselves according to the societal expectations to defend the standards of respectability and femininity to secure and maintain the spiritual qualities about which the Bengal or Bangladesh as a nation/community takes pride in. As a consequence, a figure has been crafted not only in our minds but also in the folded pages of literature and other cultural artifacts mostly through the powerful visions of male writers, in which married women, their individualities and expressions are denied because their voices as well as their characters have been obscurely delineated by the self-possessed voice of male supremacy. To support this

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<sup>3</sup>Charrad, M. Mounira. “Gender in the Middle East: Islam, State, Agency.” *Annual Review of Sociology*. 2011, pp. 417-437. <http://www.jstor.org/stable/41288615> (Accessed: 11 Jan 2018)

argument, Chattarejee furthermore mentions in the same essay that the early twentieth century literature, particularly in Bengal, celebrated the emergence of 'new woman' or 'nabeena' who was placed as a foil to the position of 'prabeena' who was shown illiterate, coarse and incapable of living her life in a dignified manner. However, this very creation of 'nabeena' was an educated marionette and was encouraged to pursue her dreams but only within the confinements of private space of home, allowed by patriarchal control. This proves that the process of dividing women into strata are manmade and it is designed to justify the importance of so called feminine virtues to cement a hegemonic concept of female emancipation so that women can happily be bound to patriarchal subordination. Along with the literary emblems, the other way of reinforcing the superiority of male voice in the field of reality is the podium of marriage, which works as an alliance where the unequal distribution of gender roles not only takes away women's independence but also puts them in a secondary position by identifying men as protectors and bread winners. Although, marriage comes with a mythic imagery of being a key to explore unknown doorways, there are a significant number of cases, both in rural and urban areas where it becomes a shackle to women and restricts their hopeful breaths of life. There are exceptions whatsoever, and a certain number of women have always believed in asserting their happiness and individuality which inspire them to challenge the imposing terms and roles which the society generally wants them to satisfy. Hence, this thesis aims to dismantle the typical depiction of passive and victimized Muslim married women, and looks into establishing a reflection of those women who have deserted the romantic and oppressive pinnacle of marriage, to stand out for their individual equality and freedom.

Mary Wollstonecraft in her seminal work *A Vindication of the Rights of Woman* (2009) has given reference to the French philosopher Jean-Jacques Rousseau and his prejudices about

gender roles where he thinks that since men and women have different biological destinies, hence they should get different treatments from the society based on their dissimilarities. Continuing with his obnoxious thoughts about gender and its relation with society, Rousseau says, “The men depend on the women only on account of their desires; the women on the men both on account of their desires and their necessities: we could subsist better without them than they without us.”<sup>4</sup> This flawed conception about women being exotic, bound to tradition and inferior as individuals have its root in the inveterate views composed by the influential male authors and their conventional writing which believe in the idea of binary opposition in the field of sexual politics. However, Mary Wollstonecraft not only criticizes Rousseau’s biased remarks about women but also gives a particular justification to highlight the necessity of considering women not as a secondary sex but as an individual, whose humanization and proper education are necessary in order to become civilized as a nation. Bangladeshi female authors also share this homogeneous idea of equality of sexes and it is with this in mind, this dissertation will look at the writings of female authors like Rokeya Sakhawat Hossein, Makbula Manzoor, Selina Hossain, and Purabi Basu who have written about Bangladeshi Muslim women’s agency either in organized forms such as association and movements or in resistance expressed in daily life. Their selected stories debunk the perception of passive Muslim women of Bangladesh, bring their voices to the forefront and resonate with the works of feminists like Wollstonecraft by recounting the growing sense of Muslim married women in their lives. The aim of this thesis is to show that Bangladeshi Muslim women have endured suppression in their marriage through patriarchal norms as well as legal rules and regulations in the name of protecting morality/spirituality spurred by the controlling voice of the patriarchy. The paper will

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<sup>4</sup>Wollstonecraft, Mary. *A Vindication of the Rights of Woman*. New York: Cambridge University Press. 2009, pp. 171

furthermore celebrate the strong female voice of Muslim married women regarding their choice, desire, and sexuality which have given them a chance to question and rupture the orthodox gender norms. The literary part of this dissertation will be based on primary readings of *Sultana's Dream*, a novella by Rokeya Sakhawat Hossein, and three other short stories titled "Primeval Anger" by Makbula Manzoor, "Motijan's Daughters" by Selina Hossain, and "Saleha's Desire" by Purabi Basu. Through these chronicles, the Bangladeshi female authors have tried to represent how women in this country both in rural and urban areas, call into question their assigned submissive roles by the society, take part in economic activities and societal functions to open up the possibility of female control over their families and communities. This dissertation will also be a close reading of these stories and will try to shed a light on how Muslim women in Bangladesh, particularly the rural ones have withstood the hardship of abuse and biased social and religious treatments, yet manage to exhibit perseverance through which not only they win the social backwardness but over time, also create new social realities.

Edward Said's *Orientalism* (1994) proposes an analysis that sees the Orient, Middle East or Islamic world as barbaric, savage, bound to traditions and inferior to the West<sup>5</sup> and as far as the matter of enacting laws to ensure women's rights in Bangladesh is concerned, there is a consensus that seems to second this attitude. In order to combat gender inequality, many countries and their religious scholars have shifted the focus to the states' role in defining as well as rendering women's right in situations like abusive marriage, however in the case of Muslim majority community of Bangladesh the situation is quite depressing. Bangladesh follows Muslim

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<sup>5</sup>Said W. Edward. *Orientalism*. Vintage Books. 1994.

Personal Family Laws where Shari'a law<sup>6</sup> regulates family life, particularly in the light of marriage and its dissolution. The Muslim personal laws monitor issues such as marriage, polygamy, the right to divorce, compensation and maintenance after divorce, custody of children and inheritance of property etc. It also defines the rights and obligations of men and women in the family and by extension in the community and the society at large. Since Muslim personal laws are the keystone of legal discourse in Bangladesh in terms of familial issues and also determine a woman's legal status after the dissolution of marriage, hence the court chooses to follow the pronouncements which not only ignore women's struggle within the family/society but also intensify the discrimination against them. The process of identifying women and their endowments as 'the other' incarcerated within the inner space through the societal mores and the jurisprudence. These conventions are the basic reasons behind the persistent oppression against married women regardless of different class, time, and place which emphasize the mythological spiritual superiority of women to be benevolent, religious and confined within the patriarchal limits. Both the legal establishment and the religious scholars advocate the importance of domesticity for women and overlook their individuality by lessening their legal rights of equal entitlements. Since, Bangladesh as a country mostly has the largest amount of population with Muslim believers, therefore the legal system of this country acts in accordance with the Islamic representation of women and incorporates policies which have undermined and compromised women's rights and position in the society by making them vulnerable mostly to religious and social misogyny. For instance, Bangladesh has ratified CEDAW (Convention on the Elimination of all forms of Discrimination against Women) in 1984 with initial reservation on Articles 2,

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<sup>6</sup>The Shari'a meaning Islamic law is a set of ethical imperatives that can translate into various rules and behaviors. It stems from the Qur'an and the Sunna or model behavior of the Prophet as recorded in compendia called the Hadith. (see note 1; 420)

13.1[a], 16.1[c] and [f] on the basis of religious sentiments but later on, the reservation on Articles 2 and 16.1[c] have still been retained by the government of Bangladesh. The government believes that these provisions conflict with Muslim views and since Bangladesh is largely a Muslim populated country therefore these prevalent Muslim Personal Laws are essentially based in the light of Holy book of Quran, Hadith and Sunnah; as a result these laws cannot be changed easily as required by the convention to ensure equality for women in terms of familial questions.<sup>7</sup> In order to avoid backlashes from powerful Muslim groups the state is still incompetent to promote and protect women's right because these two aforementioned articles of CEDAW are considered to be the core provisions of the convention as well as central to the object and purpose of eliminating all sorts of discrimination against women. As a consequence, this thesis will attempt to look at the differences between Muslim Family Laws and International Law, specifically CEDAW; regarding the issues of marriage, divorce, maintenance and guardianship. Furthermore, it will also look into the matters where Bangladesh as a state has infringed the equal nature of women's rights, emancipation and their resourcefulness.

Despite all these societal and legal discriminations, underprivileged, rural as well as urban women of this country have made their voices heard by exerting agency and by subverting the suppressive nature of the family, religion, state and economic activities. Since the 1980's in most of the region, in part due to the expansion of mass education and social awareness, a number of women's associations, NGOs and movements have developed to safeguard women's entitlements and encourage their contribution in defying the male-orthodoxy in the platform of

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<sup>7</sup>Citizens' Initiatives on CEDAW. "Bangladesh. International CEDAW Day 2015: Withdrawal of Reservation." *The Daily Star*, 3 Sep 2015, <https://www.thedailystar.net/op-ed/politics/withdrawal-reservation-136687> (Accessed: 12 Jan 2018)

marriage and during the dissolution of this ancient institution.<sup>8</sup> This thesis in its legal part will further try to analyze secondary data, stories of family histories of married women collected from organizations like Bangladesh National Women Lawyers' Association (BNWLA), Bangladesh Legal Aid and Services Trust (BLAST) and Ain O Salish Kendro (ASK) to acknowledge the success of those women who have been able to cross politicized and religious patriarchal boundaries of domination. These NGOs offer women with several kinds of help in the post separation period through alternate avenues in economic, political and social fields. They also try to carve a space for them so that they can transcend the strict moral codes and assert their individual identities beyond any sort of patriarchal approval or assistance. Therefore, this dissertation attempts at broadly discussing the issue of marriage and divorce, and contemplating the way these transform a woman's individuality by imposing several societal definitions and roles upon them. It will display the Bangladeshi female writers' portrayal of women's condition in vulnerable marriages, and argue to what extent they have been successful to portray their position and battle against the patriarchal domination to achieve individual independence. This thesis will also be a critique of Bangladesh's failure as a country to resolve the questions regarding women's position and entitlements in a society. In addition to the comparison of laws, the paper will further explore real life cases and events collected from primary and secondary sources of various NGOs, and speculate on the questions of barriers as well as legal assistance that women experience in this country regarding their marriage and divorce.

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<sup>8</sup>Mohammad, Noor. "Islamic law and women rights in Bangladesh." *Social Sciences*. 2013, pp. 22-33. <http://www.sciencepublishinggroup.com/journal/paperinfo.aspx?journalid=202&doi=10.11648/j.ss.20130202.11> (Accessed: 12 Jan 2018)

## Chapter 2

“Everyone has friends who were killed in the War. Everyone gives up something when they marry.”

-Virginia Woolf, *Mrs. Dalloway*

This line by Virginia Woolf can be seen as an eye opener statement for the condition of women in marriage where the very idea of marriage is seem to be sacrificial. If the quotation is examined carefully then one can see how it takes the image of marriage and then is compared to war, bloodshed and giving up life for the sake of love and devotion. Marriage comes with the promises of companionship and unity, although it requires a multitude sacrifice and understanding from the female partners in order to maintain the peaceful nature of marriage. However, war breaks out with the purpose of invading the opponent’s territory to control their movements and capture their power, and similarly, in marriage there is gender politics and power structure present, where mostly women are adjudged to be the ultimate opponent who need to be restrained and defeated. Before entering into the marital relationships, women usually prepare themselves to conform to male domination and this attitude is built up among themselves from the very beginning of their lives, from childhood. Because of the social conditions, the culture of identification of ‘male’ and ‘female’ is laid down from childhood where every child, particularly, the girl child is taught to behave in a certain way in order to satisfy or conform to the social demands of gender roles. Most girl child therefore grow up witnessing their fathers to be the heads of the family and their mothers performing the role of subordinates, whose entire day pass abiding by the rules set by the males of the family. In her seminal work, *The Second Sex*<sup>9</sup>(1997), Simone de Beauvoir examines this notion of treating women as 'Other' and claims that the very

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<sup>9</sup>Beauvoir, Simon de. *The Second Sex*. London: Vintage Classics. 1997.

concept of women being the “Other” or the second sex has developed and established male dominance in the society, which is in every aspect patriarchal. She further states, “One is not born a woman, but becomes one.”<sup>10</sup> and through this statement she criticizes the societal construction which makes women the submissive one in a marriage because of their physical attributes. Therefore, the contributions and the psychological struggles women place and experience into their marriages, have always been neglected and devalued by the “Self”, a superior position which is designated for men because of their phallic pride. The psycho-social eminent attitude towards this proud nature of male supremacy comes from the discovery of paternity and Kate Millett states,

There is some evidence that fertility cults in ancient society at some point took a turn toward patriarchy, displacing and downgrading female function in procreation and attributing the power of life to the phallus alone. Patriarchal religion could consolidate this position by the creation of a male God or gods, demoting, discrediting, or eliminating goddesses and constructing a theology whose basic postulates are male supremacist, and one of whose central functions is to uphold and validate the patriarchal structure.<sup>11</sup>

Nevertheless, women have always faced these treatments with bravery and throughout the historical and traditional times have secured their places in society by means of their aptitudes. From the very beginning of the eastern/Bengali literature or in this case Bangladeshi literature, Bengali female authors have associated themselves to portray the real image of the dual treatment and torment that Bengali Muslim women face in their marriages. They have also narrated the success stories of Bengali Muslim women’s ascension surpassing the assigned position of marginality. Female authors like Rokeya Sakhawat Hossein, Makbula Manzoor,

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<sup>10</sup>Ibid. pp. 172

<sup>11</sup>Millett, Kate. *Sexual Politics*. Granada Publishing. 1968, pp. 6-7

Selina Hossain and Purabi Basu are some of those distinguished writers who have relentlessly tried to represent the voices of the peripheral women of Bangladesh who have not only searched their autonomy in terms of choice, feelings, sexual desire and movement, but also surpassed the social distinctions of patriarchy and added new dimension in their lives. It is with this in mind this chapter will do a close reading of the aforementioned writers' selected stories through which the authors' persistent conviction has proved that female weakness is nothing but a myth and Bengali Muslim women have always fought against all sorts of odds in order to seek independence and victory both in private and public life.

Makbula Manzoor, an accomplished female writer of late 20<sup>th</sup> century, is remembered for her notable contribution to modern Bangladeshi literature. Her writing resorts to women's perspectives and highlights the discrimination that women usually face in the context of family and society. This is the reason why Manzoor has created a significant place for herself in the male dominated arena of Bangladeshi fiction. Selina Hossain, the current chairperson of Bangladesh Shishu Academy, is a renowned novelist from Bangladesh, whose various novella and short stories focus on the issue of women's empowerment in the hierarchical institution of marriage. These contemporary writers, in their short stories titled "Primeval Anger" and "Motijan's Daughters" respectively, have foregrounded the strong voices of Muslim married women who fight back the societal impositions of the family/society. For example, in "Primeval Anger" the protagonist Soburon is portrayed as a machine that gives birth to children. The opening excerpt of "Primeval Anger" shows that Soburon is addressing her children as 'womb enemies'<sup>12</sup> because she despises this fact that her husband, Suroj Mia never has treated her as a human being who must be given respect and affection. On the contrary, whenever he goes to his

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<sup>12</sup>Manzoor, Makbula. "Primeval Anger." *Contemporary Short Stories from Bangladesh. The University Press Limited*. 2010, pp. 62

in-laws house to collect the dowry, he has only ravished Suboron's blooming body which is why in her subconscious mind, Suboron considers her children to be scars of her marital agony. It is sad to say that this has always been the key trait of feminine being because only women can give birth to future generation, and if they fail to do so, regardless of who is responsible for the incompetence, it is women who are blamed by everyone.

This is one of the recurrent themes of Selina Hossain's "Motijan's Daughters" where Motijan's husband Abul is impotent but as a result of predetermined societal notion of women having the ultimate responsibility of bearing children, all the fingers in the society point at Motijan's incompetence. This is the reason her mother-in-law blames Motijan as to be a stumbling block in the path of her growing family prosperity, which because of her inability to have sons, would soon go into extinction. Furthermore, sexuality and marriage are intermingled because marriage gives a legal right to the "Self" or men to consume the "other" or their wives, and they are bound to fulfill their husband's physical needs whenever they ask for it. Besides the sexual intercourse is considered to be a scheduled thing in marriage where it is highly dominated by male figures and no one regards the probability of women having passion and feelings.

This aspect helps to grasp the main content of Purabi Basu's accomplished writing titled, "Saleha's Desire" where the main debate is about how a young girl can possibly has her own physical needs and how she can negate sexual acts with her lover. In this regard, Kate Millett refers to Max Weber's idea of "Herrschaft"<sup>13</sup> in *Sexual Politics* and means that the very concept mainly institutionalizes the birthright priority and sexual domination of males over females.<sup>14</sup> With the influence of this fundamental perception of power, the patriarchal system imposes societal definition on women's body and character, where if they conform to the prejudices of

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<sup>13</sup>A relationship of dominance and subordination where males get the birthright priorities over females

<sup>14</sup>See note 3

male supremacy, they are considered to be “ideal women” but if they do not conform, women are given titles like “fallen women”, “barren”, “harlot” and so on. Nonetheless, all the female protagonists of the aforementioned stories have been stigmatized but with their strong voices of non-conformity, they have succeeded to puncture the oppressive voice of male dominance within the institution of marriage. For instance, in “Primeval Anger”, although Soburon has two children and is deserted by her husband, she does not play the victim card in the entire story and works as the breadwinner of her family where it is mentioned that, “Soburon worked herself to the bone to feed the two—brother and sister—but she could neither fill their stomachs nor win her parents’ love.”<sup>15</sup> In “Saleha’s Desire” also at the end, Saleha is established as a characterless woman and the entire village corners Saleha along with her mother; even then Saleha chooses to live with her dignity instead of committing suicide, a punishment, which the patriarchal society decides for her. She tells her mother while expressing her wish to live that, “Do you know why I didn’t die? Every morning when I get up from sleep I have this hope that from tomorrow good days will dawn. They don’t. Even then I don’t know why it is that I desire to live on.”<sup>16</sup> Motijan also fights back against the barren image she receives and not only she protests verbally but also she ascertains an extra marital relationship with her husband’s friend in order to demolish the stain of unfruitfulness. Each character of the aforementioned short stories do not accept their fate which the society decides for them instead they transgress the marital boundaries and achieve marital as well as sexual independence even after being tyrannized by authoritarian psycho-social misogyny.

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<sup>15</sup>See note 4;62

<sup>16</sup>Basu, Purabi. “Saleha’s Desire.” *Contemporary Short Stories from Bangladesh. The University Press Limited.* 2010, pp. 128

Sexual politics obtains through the socialization of both sexes to basic patriarchal values with regard to temperament, role and status<sup>17</sup> and Millett uses these terms to emphasize political, sociological and psychological stereotyping of masculinity and femininity. Men reserve the role of homemaker for women and if they wish to cross the designated areas for them, the male supremacy then feels threatened. In the related stories, the female protagonists are portrayed as working in the kitchen, doing household chores, sleeping on the ground and get bashed by their male partners whenever there is any delay in fulfilling their endless needs. Although, Makbula Manzoor, Selina Hossain and Purabi Basu have given their characters the conventional roles for married women, their ways of portraying the transcendental journey of these women in the quest of finding individuality and asserting their rights, are commendable. In “Primeval Anger”, Soburon spends her entire day not only by cooking at home but also by husking paddy at other people’s houses in order to become financially independent. She further refuses to be bothered by her husband’s misdeeds who deserts her for not getting any financial support from the in-laws. Manzoor has thus drawn a different picture of a typical village girl, whose life is expected to be driven around her husband, but Soburon is nothing like that rather she considers her husband to be *Azrail*<sup>18</sup>. Also, in “Motijan’s Daughters” Selina Hossain has shown that Motijan is very much aware of her rights and she does not feel afraid to ask for it. In an excerpt Motijan clears her rights to her daunting mother-in-law by saying, “I do my share of work in this household. I earn my food- I don’t just sit idle and eat. You have to give me food.”<sup>19</sup> Motijan gives this fitting reply to her mother-in-law when she tries to snatch the rice container from her hands.

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<sup>17</sup>Ibid. pp. 4

<sup>18</sup>The angel of death in Islam is called Azrail

<sup>19</sup>Hossain, Selina. “Motijan’s Daughters.” *Galpa: short stories by women from Bangladesh*. Saqi books. 2005, pp. 103

Both Makbula Manzoor and Selina Hossain have challenged the conventional idea of the services of labor division in a patriarchal marriage and have illustrated women's hard work not only in household area but also in the external realms of economic world. It is believed that men need women in order to complete their families and other requirements. It is also assumed that men have hereditary right to dominate women but if they start demanding their entitlements, men then think it will be tough for them to practice their dominance any longer, hence the fear of men increases. Simone de Beauvoir speaks about this fear in *The Second Sex* when she says, "Seeking to appropriate the Other, man must remain himself; but in the frustration of the impossible possession he tries to become that other with whom he fails to be united; then he is alienated, he is lost[...]"<sup>20</sup>. Here, the underlying psychology of patriarchal dominance suggests that for man, woman is the other with whom he fails to unite, and being dominating in nature man only tries to possess woman, moulds her in the shape comfortable for him so that he might overcome his sense of being alienated and lost. Makbula Manzoor and Selina Hossain have illustrated this tendency in both Soburon and Motijan's husbands, who were ignited by this terror and tortured their wives physically as well as mentally. However, Soburon and Motijan do not feel dismayed because of this harsh treatment instead they raise their voice against the discrimination, earn for their own self and make a niche for their individual freedom, which do not contain any room for parasitic image for themselves in marriage.

Despite the empowering tales of Soburon, Saleha and Motijan, our authors have also emphasized the struggle that these characters experience against the religious norms to achieve the ascendancy of their own life. Islam as a religion is considered to be egalitarian, yet there is no aspect of Islam, which is free from gender bias starting from sacred texts, theology, ethics,

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<sup>20</sup>Beauvoir, Simon de. *The Second Sex*. London: Vintage Classics. 1997, pp. 197

jurisprudence to mystical expression. There are multiple events in the previously mentioned stories, which testify how the mores of this religion are used by men to create obstacle for women, and by riding in the conveyance of religious superiority, they manifest their dominance over their better halves in a sacred relationship like marriage. For instance, in “Primeval Anger” and “Motijan’s Daughters”, it is noticeable that the respective female protagonists, Soburon and Motijan both go through acid tests and tolerate unbearable beating from their husbands because their families fail to consummate the dowry that their husbands ask. This fiasco becomes like a bone stuck at their throat, which neither they can remove nor swallow, and hence suffer threat of divorce and unendurable bashing. Soburon and Motijan initially bear every form of torture because most of the women in Bangladesh receive religious teachings before any kind of academic learning and are influenced to think that this is the fate which they have to conform to. This belief of inferiority that women are manipulated to uphold is the concept of ‘Bad Faith’ a term which is used by Simone de Beauvoir. This term means the false consciousness that women have about their own being and as a result, restrict their individuality within the confinements of the society, which is and remains by and large patriarchal. In addition to this culturally established concept of ‘Bad Faith’, it is Bangladesh’s state religion Islam, which says that a Muslim woman must not only have her obedience to God but also to her husband, and both the masters can punish women in case of any failure.

Therefore Purbai Basu’s “Saleha’s Desire” puts forward another issue of female subjugation through religion where a meeting is called to conduct a judgment against Saleha, who apparently cuts off the penis of her lover when she feels forced by him during physical intercourse. Apparently all moderators in the story are Muslim *Moulvis*<sup>21</sup> and they remain present

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<sup>21</sup>A Muslim scholar of the law (especially in South Asia)

in the mediation just to punish Saleha for her misdeed, whereas her lover's attempt to copulate without her consent does not bother the judges at all. This discrimination shows how the religious leaders believe in the notion of women being the 'other' or alien kind of species and only male's antipathy against this alienated group can consolidate their power in the society. Besides, the theory of one Muslim man can marry four times also makes problems fourfold for women. The stories "Primeval Anger" and "Motijan's Daughters" discuss this aspect of Muslim religion where both the husbands have extra marital relationships with other women, and based on this very thesis of polygamy; men think that it is their hereditary right as Muslims to forge relationships with more than one woman. As a result, even Soburon and Motijan do not care about their husbands' adultery because they know that if they intervene or ask any question, they will be smashed into pieces because not only the society but also the religion has placed men as the *Quwwamun*.<sup>22</sup> Makbula Manzoor, Purabi Basu and Selina Hossain however with their short stories have deciphered the nature of injustice that usually a Muslim Bengali woman goes through in a marital dispute, only because of the societal and religious cosmologies that place men in a higher position than women. The authors furthermore invigorate their female characters in a way that Soburon, Saleha and Motijan independently choose and give a meaning to their lives in their own way. Also with the meaningful expedition, the protagonists overcome from the 'Bad Faith' and make decision to ensure justice to their own self by fragmenting the socially constructed image of womanhood.

In Bangladesh, both village and urban women not only are cornered through societal impositions but also religion plays an important role, since Bangladesh largely is a religious

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<sup>22</sup>The term *Quwwamun* has various shades of meaning that connote authority, dominance, or maintenance. Chaudhry, Ayesha S. *Domestic Violence and the Islamic Tradition*. Oxford University Press. 2013, pp. 10, [https://www.researchgate.net/publication/235348973\\_Domestic\\_Violence\\_and\\_the\\_Islamic\\_Tradition\\_Ethics\\_Law\\_and\\_the\\_Muslim\\_Discourse\\_on\\_Gender](https://www.researchgate.net/publication/235348973_Domestic_Violence_and_the_Islamic_Tradition_Ethics_Law_and_the_Muslim_Discourse_on_Gender)

observant country thus this devotion to exert religious disciplines in the society and family enhances female passivity in marriage. There are thousands of women in Bangladesh again both in rural and urban areas who cannot fight back against all odds, however, there are still some women who have always been persistent in fighting for their individual freedom and make niches for themselves. Makbula Manzoor, Selina Hossain and Purabi Basu celebrate this fearless nature of female efficacy and characters like Soburon, Motijan and Saleha, and their activities are shining examples of mental and spiritual strength. This fearless trait inspires these protagonists to penalize their perpetrators by themselves without taking anyone's approval or caring for the future consequence. For instance, in "Primeval Anger" Soburon takes the law in her own hands by killing her husband Suroj Mia, because not only he tortures Soburon and her family physically and verbally, but also sells Suborn's sister to a brothel in order to recover the dowry, which Soburon's family fails to pay. In this regard, Soburon does not think about her consequence rather to her, it is important to take this drastic step to rupture the patriarchal domination that she along with her family members are forced to bear because of her marriage to a bad person. By killing her husband, she kills the weak and suppressed being inside of her, and simultaneously challenges the religious and social mores, which ask Soburon not only to adhere but also to endure every form of torture caused by her husband. Motijan in "Motijan's Daughters" chooses to fulfill her sexual requirements, just like any other human beings, without falling into the trap of social conventions of what women should do and should not. Even standing at the edge of a sword as people will call her harlot, it is commendable on Motijan's part that she does not accept defeat in this sexual battle, and proves the worth of her vagina by embracing her passionate feelings and motherhood as she forges a relationship with another man. The fulfillment which Motijan derives from the awakening and satisfaction of her sexual desire

is sketched in the following words, “Inside the room, Lokman pressed Motijan to his chest in a tight embrace. For the first time, the very first time in her life, Motijan truly experienced the intense sensation of a man’s touch on her body.”<sup>23</sup> Finally, “Saleha’s Desire” is about acknowledging women’s desire and their choice to live the life according to their wish. “After the first time, intercourse is his right, not her right.”<sup>24</sup> This is extracted from an early 19<sup>th</sup> century Hanafi legal text which implies that a husband should seek permission from his wife for the very first sexual intercourse but afterwards, the wife’s wish will no longer be needed and they should be sexually available for their husbands. “Saleha’s Desire” has a similar kind of context in addition to a twist in its story where the women protagonist, Saleha blatantly expresses her feelings of liking the sexual act with her lover Sobhan, but when he forces himself on her, she cuts half of his penis. Saleha refuses to suppress her gratification and demands her sexual freedom, but when she feels her liberation is threatened by Sobhan, she courageously spits on his face first and later slits his genital organ. Saleha declares the repudiation to bow her choices in before religious and social discriminations by saying, “I did it (cutting the penis off) because I hadn’t felt like doing it (sexual intercourse) that evening and he still forced me.”<sup>25</sup> Muslim Bengali women are envisioned to be spiritually pious and therefore, their sexual desires are cloaked into the arena of respectability but women like Soburon, Motijan and Saleha speak about their need and protest to achieve marital as well as sexual happiness. Simone De Beauvoir talks about such ascension of woman which allows her not only to reach a position in which she assumes the sole responsibility for herself and the world, but also can choose her individual

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<sup>23</sup>See note 11;107

<sup>24</sup>Ali, Kecia. *Sexual Ethics and Islam: Feminist Reflections on Qur’an, Hadith and Jurisprudence*. Oneworld Publications. 2006. p. 1

<sup>25</sup>See note 8;125

freedom.<sup>26</sup> Soburon, Saleha and Motijan are exemplars of those women who rise against all odds, make their voices heard and transcend the predetermined roles set for women in marriage. The authors therefore celebrate this emancipation of Muslim married women as well as their rebelliousness and individual sense of sovereignty through their works.

Rokeya Sakhawat Hossein (1880-1932) is considered to be the pioneer of Bengali Muslim feminism, who has not only opened a new era of gender equality in Bengali literature but also has garnered much appreciation on portraying women's empowerment. One of her most accomplished feminist work is *Sultana's Dream*, which is a utopian novella where she envisages the picture of a world totally governed by women based on their emancipation through proper education and knowledge. This novella portrays that if women are educated in the truest sense then no one can bind their progression in the name of social and religious prejudices. Besides, upon giving equal opportunity, women can be independent and enlightened by contributing to the development of the family and the community. The plot of this novella is narrated by a woman named Sultana who in her dream visits a place named Ladyland, guided by another woman who Sultana addresses as sister Sara. Sultana sees that the land is different as it is totally ruled by women where men play the role of second citizens of the society. Through Sultana's dreamy adventure on this Ladyland, Rokeya Sakhawat Hossein gives her protagonist a chance to experience her share of freedom by breaking the four walls of *zenana*, and for the first time allows her to breathe openly in a place where no one controls her and instructs her to cover herself. Here, *purdah* is used nothing but a metaphor of oppression against women through religious traditions which consider that in order to become an ideal Muslim woman, they must need to cover their body as well as their behavior and voice. However, this idea has been

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<sup>26</sup>Ibid. pp. 198

challenged in this novella and Rokeya Sakhawat Hossein through this piece of writing inaugurates the anti-establishment of men being locked up and hidden in *murdana* (opposite of *zenana*). Female body, if it is uncovered is considered to sexually excite men and this novella gives an anti-thesis of this theory where men are compared to animals and Rokeya Sakhawat Hossein advises that men should be kept locked up and under supervision instead of women covering themselves up. While advocating this issue in her novella Hossein says, “You need not be afraid of coming across a man here. This is Ladyland, free from sin and harm. Virtue herself reigns here.”<sup>27</sup>, and by this statement, the author reestablishes the righteousness of women and indicates that only men abuse their virtue. Furthermore, the novella emphasizes on women’s education as education is the remedy for all societal ills.<sup>28</sup> It is also shown here that by riding on the back of scientific knowledge and technological supremacy, women in Ladyland prove their worth and emerge as the moderators of their personal lives as well as of the land. The female members of this place get themselves engaged in scientific research and invent instruments like water balloon, solar heat catcher and air car, and hence use their credibility to not only save themselves from the clutch of male domination but also from the evil attack of outsiders. Through this analogy, Hossein actually addresses men as the ‘outsiders’ and women are shown as keeping their garb clean by wiping out the patriarchal dominance to their independence in this novella. Rokeya Sakhawat Hossein further transforms the stereotyping of women performing domestic activities at home only and shows that if they are educated enough then it can lead them to zenith of success by defying all the restrictions of their way to achieve greater rights as well as empowerment.

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<sup>27</sup>Hossein, Rokeya Sakhawat. *Sultana’s Dream. Galpa: short stories by women from Bangladesh*. Saqi books. 2007. P. 18

<sup>28</sup>Azim, Ferdous and Hasan, Parween. “Construction of gender in the Late Nineteenth Century and Early Twentieth Century in Muslim Bengal: the writings of Nawab Faizunnessa Chaudhurani and Rokeya Sakhawat Hossain.” Routledge. 2014, pp. 28-40

Charlotte Perkins Gilman, in *Women and Economics* insists that women would not be liberated until they were freed from the ‘domestic mythology’ of home and family that kept them dependent on men.<sup>29</sup> In *Sultana’s Dream*, Rokeya Sakhawat Hossein uses this vision of liberating women from the domestic area and shows that with this deliverance, women will take charge of their lives as well as play key roles in the societal advancement. Also, in *Ladyland* there is no room for child marriage and the Queen (in-charge of Ladyland) decides the suitable age for marriage is 21 years old. The quintessential characteristics of marriage get refined in this novella where men are seen to be sitting at home, cooking, taking care of children, and on the contrary, women are the breadwinners. Sultana expresses her utmost wonderment while thinking about *murdana* and how women have overpowered men here and she exclaims, “How my friends at home will be amused and amazed, when I go back and tell them that in far-off Ladyland, ladies rule over the country and control all social matters, while gentlemen are kept in the *murdanas* to mind babies, to cook and to do all sorts of domestic work.”<sup>30</sup> Through this picturization of *Ladyland*, Rokeya Sakhawat Hossein envisions a land where there is no social shaming of women, rather they are given ample opportunities to exert their individuality, run the government and challenge the patriarchal dominance with the help of knowledge and education.

Women always are given various images and roles to play and each time the society, which is patriarchal in nature acts as an image corrector and tries to impose restrictions on women. However, the societal pressures have always been there to slow down women’s liberation and female authors like Rokeya Sakhawat Hossein, Makbula Manzoor, Selina Hossain and Purabi Basu have experienced and been affected by the discrimination which women go through in this society. Hence they have expressed their solidarity with them through their

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<sup>29</sup>Gilman, Charlotte Perkins. *Women and Economics*. Boston: Small, Myland and Co. 1898.

<sup>30</sup>See note 19;25

writings in order to celebrate the contribution that women have in the society/nation and call for reforms for their mental, physical and social emancipation. Therefore, it is wise to say that in Bengali literature, women's writings have acted as an important medium to document the suffering of Bengali Muslim women in abusive marriages, and with their protest they have not only questioned and ruptured gender power play in the family/community but also celebrated women's emergence from this domination.

### Chapter 3

In Bangladesh, marriage is considered to be one of the earliest defining moments of a woman's life, mostly a definition given by the society because it is believed that a woman's entrance into this ancient institution gives meaning to her life. Women are expected to fulfill their marital roles with devotion and integrity even if their husbands fail to treat them properly because of this notion that 'ideal wives' do not react against their husband's wish. It is also considered that ideal wives as such secure a humungous place both in the eyes of the society and the religion. It is a matter of misfortune that the 'ideal scenario' get upside down and trickier when Muslim women try to come out from the shell of marriage if they somehow feel not being ready to struggle with social expectations but then the harsh truth of legal reality slams the door on the face of her desires. Bangladesh despite providing some very strong laws regarding the issues of domestic violence and the equal rights of women, hardly maintain those laws in reality. In addition to that, in familial matters such as marriage, divorce and property rights, Bangladesh not only has discriminatory laws but also poverty-triggering laws, particularly for Muslim married women. Muslim marriage, its dissolution and economic rights at cessation of marriage are issues which are exclusively governed by the Muslim personal laws<sup>31</sup> of Bangladesh where some laws are codified and some are not. The personal laws were codified during the colonial era<sup>32</sup> and after Bangladesh won independence, it adopted all the existing laws. Mainly these codified as well as un-codified laws are Muslim Personal Laws which are open to interpretations

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<sup>31</sup>Muslim Personal Law synonymous with the Arabic *Muamalat*, which means rules and regulations of social life, or the rules that regulate the day to day life of a person. In other words, the rules that a person should follow in his/her personal and social life are collectively called *Muamalat* or social law. The branch of laws treated as 'personal law' in the general legal system is called 'social law' in Islamic shariah. Thus Muslim law means the personal and social laws of the Muslims. Banglapedia. *Muslim Personal Law*. [http://en.banglapedia.org/index.php?title=Muslim\\_Personal\\_Law](http://en.banglapedia.org/index.php?title=Muslim_Personal_Law) (Accessed: 22 Feb 2018)

<sup>32</sup>Human Rights Watch. *Will I Get My Dues . . . Before I Die*. (2012) pp. 36. <https://www.hrw.org/sites/default/files/reports/bangladesh0912ForUpload.pdf>

by the Supreme Court of Bangladesh and the High Court Division of the Bangladesh Supreme Court<sup>33</sup>. According to the Muslim Personal Law (Shari'a) Application Act, 1937, the Sunni-Hanafi school of legal thought applies to the majority of Muslims in Bangladesh while governing Muslim Family Laws in the issues of marriage, dissolution of it including restitution of conjugal life, *talaq*, maintenance, dower, guardianship and many more.<sup>34</sup> According to this act, Bangladeshi citizens are subject to local custom and usage in matters relating to women, wills, legacies and adoption; unless a person expresses his or her wish to be governed by Islamic Law.<sup>35</sup> Along with these personal law, there are other laws which takes care the issues of marriage and divorce, and they are Muslim Family Laws Ordinance, 1961; Dissolution of Muslim Marriages Act, 1939; Muslim Marriages and Divorces (Registration) Act, 1974 etc. These laws are meant to safeguard people, especially Muslim women because whenever a marriage/family falls apart it is always the women who are left by the society to be feeble and vulnerable. Despite these laws are there to protect and answer questions related to women's rights and responsibilities, they are found largely fraught with too many problematic aspects in terms of implementation. This chapter therefore will address the discriminatory sections of these aforementioned laws regarding the issues of marriage and divorce as well as issues that appear with the dissolution of marital relationship due to which the oppression against Muslim married women escalate in Bangladesh. Moreover, being an active member of United Nations, this chapter will also shed light on how Bangladesh has purposefully avoided some articles of CEDAW<sup>36</sup> which has constructed the image of this country as a regressive one which has failed

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<sup>33</sup> Ibid, pp. 36

<sup>34</sup> Act XXVI of 1937; s 2

<sup>35</sup> *Overview of Muslim Personal Law in Bangladesh Perspective*. Legal Article and Solution. 18 Jul 2011, <http://legalarticlesbd.blogspot.com/2011/07/overview-of-muslim-personal-law-in.html>

<sup>36</sup> The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted in 1979 by the UN General Assembly, is often described as an international bill of rights for women. Consisting of a

not only to bring about a far-reaching change in the legal systems to ensure gender equity but also to eliminate discrimination against women.

To begin with, in Bangladesh Muslim married women do not have the right to apply for divorce until the right is given to them by their husbands in the marriage contract. A Muslim man can apply for divorce by following the regulated procedures if he does not perceive satisfaction with his marriage but sadly, a Muslim woman does not have access to the option because the laws regarding marriage and dissolution of it, do not allow women to possess that entitlement. The Muslim Marriage and Divorces (Registration) Act, 1974 and the Clause 6(3) clearly states that, “The Nikah Registrar shall not register a divorce of the kind known as Talaq-i-tafweez except on the production of a document registered under the Registration Act, 1908 (XVI of 1908); by which the husband delegated the power of divorce to the wife or of an attested copy of an entry in the register of marriages showing that such delegation has been made.”<sup>37</sup> This section distinctly indicates that unless the husband consigns the power of divorce to his wife, even the *nikah* registrar will not file documents for divorce for any woman since the law has not given Muslim married women the right of demanding separation on their own accord. Although, the standard *Kabin-nama* allows either party to introduce “special conditions” concerning their rights with respect to divorce and separation, but in a report stated by Human Rights Watch<sup>38</sup>, it is mentioned that a large number of women in this country, both in rural and urban areas, do not have any idea about the significance of the clause with which they can claim to protect their rights. This exclusion of women in the issue of no-fault divorce has direct friction with the article 16.1 of CEDAW, which states, “States Parties shall take all appropriate measures to eliminate

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preamble and 30 articles, it defines what constitutes discrimination against women and sets up an agenda for national action to end such discrimination.

<sup>37</sup>Act LII of 1974; s 6(3)

<sup>38</sup>Human Rights Watch. (see note 32; 32)

discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women.”<sup>39</sup> The Section ‘c’ of this article also says that women should be given “The same rights and responsibilities during marriage and at its dissolution.”<sup>40</sup> It is unfortunate that Bangladesh has put a reservation on the article 16.1(c), which shows the unjust treatment of the government of Bangladesh towards Muslim married women who are denied to receive equal rights in the decision of divorce. The aim of CEDAW is to eliminate discrimination against women, and although Bangladesh is a state party to this convention, still according to a survey of World Bank it tops on the list of 155 countries where the jurisdiction has failed to maintain equality for women in various sensitive issues.<sup>41</sup> Furthermore, the very first article of CEDAW says, “For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”<sup>42</sup> It is a woman’s basic right that she must get her due equal right of making herself free from the clutches of tangled marital relationship where she might feel unappreciated and abused. However, in Bangladesh, Muslim women are yet to be recognized as equals to men let alone ask for equal rights to decide their fate upon an unhappy marriage. Without resorting in the court, in Bangladesh there is another kind of divorce which is less common and generally called *Khula* where a wife seeks the divorce and husband agrees to

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<sup>39</sup>*Convention on the Elimination of All Forms of Discrimination against Women*, New York, 3 September 1981, available from <http://www.ohchr.org/Documents/ProfessionalInterest/cedaw.pdf>

<sup>40</sup>Ibid. (see article 1)

<sup>41</sup>Chowdhury, Nawmi N. “Why are women still not equal in the eyes of the law.” *Dhaka Tribune*. 8 Mar 2018. <https://www.dhakatribune.com/special-supplement/2018/03/08/women-still-not-equal-eyes-law/> (Accessed: 2 Apr 2018)

<sup>42</sup>*Convention on the Elimination of All Forms of Discrimination against Women*. (see article 16; c)

allow his wife to take the decision of breaching the marriage only under the condition where the wife makes some adjustment in *Mahr* promised in the *Nikahnama* during the time of marriage. In this unusual case of divorce, it is still the women who need to bend in front of patriarchal domination and undergo the sufferings of becoming shelter less and penniless. Therefore, both in unilateral divorce and *Khula*, it is always the women who receive secondary treatments and hence become victims of discrimination with no say or right over their marriage, as well as on the money that is their prerogative.

Polygamy among Muslim men is very common and in Bangladesh, particularly the working class men are prone to this habit. In Islam a man can have up to four wives under the condition of treating each wife equally but unfortunately, in Bangladesh men neither care about this equal treatment condition, nor any sort of consent and official authorization. Although, the Muslim Family Laws Ordinance, 1961 imposes certain restrictions where under the section of Polygamy<sup>43</sup> it is mentioned that, “No man, during the subsistence of an existing marriage, shall, except with the previous permission in writing of the Arbitration Council, contract another marriage, nor shall any such marriage contracted without such permission be registered 6[under the Muslim Marriages and Divorces (Registration) Act, 1974 (LII of 1974)].” The entire section of Polygamy in the Muslim Family Laws Ordinance, 1961, charges men’s reluctance to act and follow the guidance prescribed in it by giving punishment such as fine which can be extended to ten thousand taka or simple imprisonment up to one year and in some cases, both the punishment can be applicable. Human Rights Watch nonetheless reports that even after all these restrictions and guidelines listed by the Muslim Family Laws Ordinance, 1961; in Bangladesh the legal procedures to minimize polygamy and protect women’s rights are poorly enforced.<sup>44</sup> As a result

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<sup>43</sup>Ordinance VIII Of 1961; s 6(1)

<sup>44</sup>Human Rights Watch. (see note 32; 41)

women who protest against their husband's remarriage or confront them about their decision, receive severe verbal and physical abuse as well as if the other wives inquire about the previous marriage, even then the second/third wives experience mental and physical violence from the perpetrator. One of the victims from Noakhali district narrates her helplessness to Human Rights Watch activists, "What permission? He [my husband] never said a word to me before he got married again. They get married again whenever they want to."<sup>45</sup> Another activist recounts her memory and tells that one of the victims of Madaripur describes her pain when her husband threw acid on her only because the woman refused to accept his decision of remarriage.<sup>46</sup> Despite the fact that it is claimed in some sources that in Bangladesh the rate of polygamy has declined, but not only in the report of Human Rights Watch but also a news published in *The Daily Star* suggests that in 2006 the divorce rate was 0.6 and at the end of 2017, the rate increased to 1.1%.<sup>47</sup> The prominent reason behind this growing rate for divorce and separation are extra marital affairs, immoral practices outside marriage and in many cases, the increasing number of hidden polygamous marriages of male partners. Moreover, this article claims that at least 7 out of 10 cases, the wife complains and look for ways to divorce the husband showing reason like either the husband is having an affair, in some cases married to another young girl without informing them, or the husband has taken the first move towards divorce by physically abusing the wife. Human Rights Watch further states in the same report that it is always the wife who suffer emotionally, physically as well as financially when their husbands take up additional wives and leave their previous wives. Adding insult to this injury of betrayal, the Muslim Family Law rules 1961, provides an illustrative listing of circumstances under which polygamy can be

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<sup>45</sup>Ibid. pp- 41

<sup>46</sup>Ibid. pp- 44

<sup>47</sup>Ahmad Reaz and Molla A. Mohammad. "Divorce doubles, separation triples in one decade." *The Daily Star*. 4 Aug 2017. <http://www.thedailystar.net/frontpage/marriages-get-shaky-1443259> (Accessed: 4 Apr 2018)

considered “necessary and just” and the husband can wish for a subsequent marriage. For instance, according to the Muslim Family Law Rules 1961, the rule number 14 states that a husband can opt for marrying another woman if there are sterility, physical infirmity, physical unfitness for conjugal relations, willful avoidance of a decree for restitution of conjugal rights or insanity, on the part of the existing wife.<sup>48</sup> Therefore, the Muslim religion allows men to take up to four wives, and the country and its laws fail to execute legal restrictions on men who seek to remarry without their wives’ consent. As a consequence, when a marriage falls apart, it is women who lose their husbands, their mental peace as well as financial standings.

Both the aforementioned instances reflect the awful side of the Bangladeshi judiciary system where the rules and laws respecting the issues of marriage and its dissolution are not only discriminatory for women but also are corrupted and manipulated. In order to accomplish this inequity, Bangladesh has purposefully reserved the Article 2, the mother article of CEDAW, which condemns any kind of discrimination against women and instructs to take appropriate means to eliminate discrimination against women without delay. The Clause (C) of the Article commands, “To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination.”<sup>49</sup> Also, the Clause (F) talks about legal reformation and it says, “To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women.” The Clause (G) says, “To repeal all national penal provisions which constitute discrimination against women.” The entire section 2 of CEDAW is an absolute statute by itself where it has been mentioned clearly to take the necessary steps to combat the discrimination that

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<sup>48</sup>Human Rights Watch. (see note 32; 42)

<sup>49</sup>*Convention on the Elimination of All Forms of Discrimination against Women*. (see article 2; C)

women face in every sphere of life. Although Bangladesh has put reservation on this article by stating the reason that it might hurt the feeling of Muslim religious community and scholars of Bangladesh. It has been 34 years since Bangladesh has ratified CEDAW. In 1997 again ratification took place but this time the reservation on this very article continued. In an interview with one of the leading daily newspaper, Prothom Alo, the former chairperson of the CEDAW committee Salma Khan while speaking of gender parity and combating discrimination against women in Bangladesh, expressed her dejection,

It has been 33 years since Bangladesh ratified the CEDAW. Gender parity has not been established, nor has the struggle against violence and discrimination seen great success. It needs the full implementation of CEDAW to bring about gender parity and success for the struggle against violence against women. All discriminatory laws must be abolished and discrimination must be removed in education, wages, health care and so on. The main obstacle to preventing violence against women is the mindset [...] According to the latest survey of the Bangladesh Bureau of Statistics (BBS), 80 per cent of the women in this country are abused by their husbands. ICDDRIB ran a survey on men a few years ago, asking them if they thought women were subservient to them and 97 per cent of the men answered 'yes'. This is enough to show how women are viewed in our society.<sup>50</sup>

This very mindset of women being the second sex prevails amongst the patriarchal group of Bangladesh, due to which the legal protection and rules that are set by those powerful patriarchs are designed to institutionalize the discrimination against women.

The ascending thought of getting girls married at a very early stage of their lives is the social belief that it is marriage which conveys economic and all forms of security for girls. In a

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<sup>50</sup>Rahaman Rokeya. "CEDAW must be fully ratified." *Prothom Alo*. 11 Mar 2017. <http://en.prothomalo.com/opinion/news/141791/CEDAW-must-be-fully-ratified> (Accessed: 11 Apr 2018)

country like Bangladesh, most of the parents of a girl child want to get their daughters married off as soon as possible so that the parents do not have to bear heavy expense instead they will get a lucrative amount of *mahr* if the daughters are married at their adolescents. However, this idea of financial security or any kind of solvency through marriage gets a reality check when a large number of juvenile brides, along with mature married women are beaten, abused and left by their husbands without giving the rightful amount of money for their maintenance. Women in Bangladesh are entering into the work force and the educational sphere in large number at present, but this has brought little change in our mindset about financial security that comes along with the idea of getting married. While questioning one of the clients about domestic violence, the victim says to the Human Rights Watch advocate, “My husband provides me a roof over my head and three meals a day. Can you guarantee that if I leave him?”<sup>51</sup> In Bangladesh the supremacy of the patriarchal norms has been so deeply assimilated where women do not know much about their economic rights in marriage, nor do they get the chance to seek help to be free from the clutches of marriage. This passivity of Muslim Bangladeshi women is justified in one sense, because both the society as well as the jurisdiction put women in the sideline in the light of maintenance both within marriage and after its dissolution. In spite of the fact that under Muslim personal law, it is a duty of a husband to meet his wife’s needs, however according to un-codified Muslim personal law a wife has to be ‘dutiful’ and be a ‘good wife’ in order to avail her right on the money of maintenance otherwise a wife cannot claim her maintenance since it is an act of gift.<sup>52</sup> This is the kind of misogynistic principle is followed by the rule makers of this country where women are considered to be product or object and husband places monetary value on the basis of how much and long he is going to be served.

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<sup>51</sup>Human Rights Watch. (see note 2; 24)

<sup>52</sup>Halder Jhuma. “Family Law of Bangladesh: Consequence.” *Slide Share*, p. 14, 20 Nov 2015. <https://www.slideshare.net/JhumaHalder1/family-law-of-bangladesh-consequence> (Accessed: 12 Apr 2018)

This stereotypical objectification of Muslim married women because of this maintenance issue has not only established the religion and the government of this country to be regressive and misogynistic, but also it raises questions about the role of an ideal husband. It is unfortunate that as of now there is no answer to this question and this is another aspect where Bangladesh, being a state party to CEDAW has failed to implement the concept of section 5(a) according to which, “States Parties shall take all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.”<sup>53</sup> The prejudice and discrimination against Muslim married women become worse upon divorce because a serious shortcoming of the Hanafi school of thought is that a Muslim woman is entitled to maintenance only during the 90 days from notice of divorce until it is finalized, or in the case when the wife is pregnant then the maintenance will be conveyed until the birth of the child. Although, a gallant attempt was taken by a Division Bench of the High Court Division of the Supreme Court of Bangladesh in *Hefzur Rahman v. Shamsun Nahar Begum*, 47 DLR (1995) 74<sup>54</sup>, to provide financial security to divorced women in impecunious circumstances by making their former husbands liable for their maintenance until their remarriage. In a suit by a wife for her *iddat* maintenance, the Court took up *suo moto* the legal query whether the divorced wife could have claimed maintenance beyond the *iddat* period. However, the Court held that a civil court has the jurisdiction to follow the law as contained in the Qur’an, disregarding any other law on the subject which contradicts it. As a result, the decision was greeted with widespread protest and condemnation by fanatical elements and the Appellate Division of the Supreme Court

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<sup>53</sup>*Convention on the Elimination of All Forms of Discrimination against Women.* (see article 5; A)

<sup>54</sup>Halder, *supra* note 13-14.

overruled it, and after this enraging protest *mahr* has been officially proclaimed as ‘consolatory offering’ rather than being a woman’s entitlement.<sup>55</sup> Since women are seen to be inferior to men as well as to be an object of commiseration, therefore, it hardly matters whether after divorce women become shelter less and helpless because *mahr* or maintenance is a consolation gift for them in return of divorce not any right which they can demand as well as deserve.

Aforementioned issues and the Muslim discriminatory personal laws have weakened and worsened the lives of married women who want to start anew after coming out of a troubled marriage. It is not such an issue that in Bangladesh there are not any law present to assist women for their betterment but the core problem lies regarding proper implementation and a just guidance of the laws. For instance, there are procedural protections for women registered in the Muslim Family Laws Ordinance, 1961. However, there are hardly any enactment of those defending moves due to which no one knows about those or attempts to get some sort of help from these inert rules and regulations. Moreover, if a woman chooses to go beyond in the assigned position in marriage, society and the body of laws put multiple stumbling blocks in front of them, such as women in Bangladesh after the dissolution of marriage, cannot claim a share over the marital property, to which they contribute during the course of their marriages. After divorce, it is women who are thrown out of their place and property which they have created by contributing in so many ways as well as by playing so many roles in order to sustain the economic solvency of the family.

Another role of a married woman or in this case, mother, is denied by the Guardianship and Wards Act, 1980. In case of divorce, a Muslim woman can become only a custodian to minor children for a limited period (up to seven years for son and until puberty for daughters) but cannot claim guardianship. The father is the natural and legal guardian of the children in all

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<sup>55</sup>Ibid. pp. 14-15

circumstances.<sup>56</sup> It is a matter of irony that at the end of the divorce battle, it is women who do not get anything, neither the marital property nor the custody of their children, even when the family and the property are assembled under the unacknowledged contribution and sacrifice of women, wife or the mother. Besides the ultimate decision maker of the country, the jurisdiction itself denies women's property rights, rights over her children and rights on the decision of her own life.

“All citizens are equal before law and are entitled to equal protection of law.”<sup>57</sup> This is the article 27 of the Constitution of the People's Republic of Bangladesh where it is mentioned clearly that all citizens, regardless of their sex and gender should be given equal treatment as well as protection from law. The constitution of Bangladesh however, declares equal rights to men and women in public life, unfortunately the same does not extend to private life, which is mostly guided by the discriminatory ‘personal laws’ of Bangladesh. In order to guarantee the equality in individual sphere, CEDAW was adopted in 1979 by United Nations to combat discrimination women. However, Bangladesh has put reservations not only on the mother article, which is article 2, along with that on article 16.1(c) stating that that these articles contradict the country's personal laws. Therefore, all these laws and promises to secure and provide equity for women are nothing but whispers in thunderstorms. Even after several requests to withdraw the reservations, hardly any action has been carried to make the personal life of Muslim women free from all sorts of discrimination. The religious ground which is used by Bangladesh is not very applicable since Muslim countries like Turkey, Yemen, Jordan, Lebanon, Kuwait have ratified CEDAW without any reservations and only a 7 out of 27 Muslim countries have some objection

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<sup>56</sup>Bhuyan Mohammad. “The CEDAW Implementation in Bangladesh: Legal Perspectives and Constrains.” (2011) *ResearchGate*. p. 24 <https://www.researchgate.net/publication/268334919> (Accessed: 18 Apr 2018)

<sup>57</sup>*The Constitution of the People's Republic of Bangladesh*. Art. 27, available from [http://bdlaws.minlaw.gov.bd/pdf\\_part.php?id=367](http://bdlaws.minlaw.gov.bd/pdf_part.php?id=367)

regarding the 2<sup>nd</sup> article of CEDAW.<sup>58</sup> It's been high time that Bangladesh as a country should move beyond the prejudices towards women dominated by a strong sense of patriarchy and contribute to treat women as human beings rather than as inferior sex, so that they can attain the rational faculties and do everything equally which according to many people can only be reserved for men.

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<sup>58</sup>Bhuyan. Supra note 22. pp. 9

## Chapter 4

In the national decline of Muslim women's right due to discriminatory laws and collective perspective of the society, Muslim Bangladeshi women have identified patriarchal norms and practices as shackles in the path of their individual liberation both in private and public domains. No matter how silent Bangladeshi discriminatory rules and regulations remain, when it comes to celebrate the personal struggle of Muslim women for their equality, there are some women both in rural and urban areas who were and are still fearless regarding their independent agencies as well as sovereign social dignity. Along with Muslim Bangladeshi women's dauntless attempt to break the gender differences and develop their potential in the journey of personal liberation, there are a significant number of NGOs such as Ain O Salish Kendra (ASK), Bangladesh Legal Aid and Services Trust (BLAST) and Bangladesh National Women Lawyers' Association (BNWLA) which strive to correct the gender bias of social and legal normative bodies of law. In this chapter therefore, how Muslim Bangladeshi women have achieved their individual freedom with the assistance of such legal aid providers and how these organizations have tried to resist the differences created by patriarchal narratives will be broadly discussed. Furthermore, the role of Bangladeshi government and how it has justified or in most of the cases failed to look after the struggle that Muslim Bangladeshi women made or are still making in order to raise the nation's gender and sex consciousness of equality as well as empowerment will be examined thoroughly.

Ain O Salish Kendra is a national legal aid and human rights providing establishment which works in order to accredit the vulnerable groups of the society in Bangladesh, particularly women, working children and workers. The organization also focuses on creating a transparent environment for the governmental legal entities and seeks to raise awareness as well as

accountability not only among official authorities but also help to make people aware about the surrounding discrepancies. During in a personal interview, Nina Goswami, one of the representatives of ASK states that their aim is to eliminate gender bias in this country regardless of a woman's marital status. They believe that it is because of patriarchy, women's are deprived of their rights and in order to combat the discrimination, their organization tries to reach women primarily in 20 districts of Bangladesh where they have their branches. Furthermore, she says that it also falls under one of their duties to check and recheck the label of married women and whether they are trapped in vulnerable situations of dowry or abusive treatments from in-laws or not and makes their best effort to provide door-to-door individual litigation and mediation. Ain O Shalish Kendra every year publishes year end reports on human rights violation in Bangladesh, and it is a matter of sorrow that Muslim married women in Bangladesh and violation against them on various levels, usually find its place at the beginning of the chart. For example, in 2017 a total 303 women were tortured inhumanly for dowry and other issues related to domestic violence, and among them 145 were beaten to death and 10 others committed suicide.<sup>59</sup> Also, in 2018 only within two months of January-March a disgraceful number of 44 women were killed by their husbands according to Ain O Shalish Kendra's report<sup>60</sup> and if one wants to collect the number outside the reported murders then the figure reaches to a more abominable level. The organization hence every year reports the violence against married women, regardless of their religious beliefs and age in Bangladesh who are trapped and abused to death in their marriages. They not only publish statistics but also feel the need to let women know about their legal rights and how to exercise those in order to achieve their entitlements while living in patriarchal

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<sup>59</sup>"Human Rights Situation of Bangladesh in 2017." *Ain O Shalish Kendra*, 2018, pp. 13,

<http://www.askbd.org/ask/2018/04/24/hr-situation-of-bangladesh-in-2017/>

<sup>60</sup>"Violence Against Women-Domestic Violence : January-March 2018." *Ain O Shalish Kendra*, 2018,

<http://www.askbd.org/ask/2018/04/24/violence-women-domestic-violence-january-march-2018/>

domination. When asked about the percentage of women, both in rural and urban areas, who are open to talk about their abusive marriages, Nina Goswami replied that in urban areas only 30% women come forward to speak about the mental and physical torture, which they experience in their violent marriages. It is also sad yet quite predictable to Ms. Goswami when she recounts that the percentage of Muslim married women in rural areas of Bangladesh, who respond to their assistance makes a small 18%, as mostly rural Muslim married women do not protest against the suffering in their personal lives and in many cases some just walk out of their marriage leaving everything behind. She believes that married women in urban areas are not only more educated but also want to make use of their legal rights on personal issues guided by family court but she feels that on the part of rural areas, Muslim married women are far more scared to take legal help instead they just want to cut off their toxic past of marriage and start afresh completely. The reason behind this fear of getting tangled in legal issues comes from ignorance of legal rights that a Muslim Bangladeshi married woman has regarding marriage and its dissolution. Both in rural and urban areas this fear of the unknown persists among women and the biased patriarchs of the society take advantage of it. Another important reason that brings out this cautious approach towards legal aid and services in marriage and divorce are the social and family pressures that the victims face. The only thought of getting engaged in legal issues and thus maligning the families' reputation with stains of divorce, make women stay out of any form of legal activities. Goswami again looked at this pressure of social stigma because she believes that there were always some women both in rural and urban areas, who did swim against conventional coercion and spoke against the physical and mental abuse that women usually become victim of. She further stated that even now if threats and torture become intolerable, there are many Muslim married women despite their class, caste and position, opt for divorce and free themselves from

the fright of isolation coming from family and society. This positive trend of coming out of the darkness of misogyny is visible because in a news reported by the Dhaka Tribune, where it is mentioned that nowadays most of the divorces are propelled by women and it is increasing every year in number. For example, 67% of divorce notices have been issued by women during 2011-2016 in both Dhaka North City Corporation (DNCC) and Dhaka South City Corporation (DSCC).<sup>61</sup> This statistics prove that Muslim married women in Bangladesh do not feel threatened by social as well as judicial disgrace while reaching out for their agencies and show immense courage in defying rules and obligations not only in private homes but also in the public field like legal judicature. However, Ain O Shalish Kendra provides a comprehensive program for the victims which comprises five separate units of mediation and rapid response, litigation, psycho-social counseling, support services and half-way homes, and outreach to legal aid service where the organization follows step by step methods in order to settle the dispute and bring justice to the victims. The mediation approach ensures that the complaint is registered first by the first party, and steps are taken to resolve the matter by conducting mediation for their betterment. There are multiple objectives of mediations which influence the various kinds of help that ASK provides such as; solving the complaints out of court in prompt and productive manner through mediation, resolving dispute using easier method, satisfying both parties, contributing to a secure place for women to take part in the process to avoid complicated and lengthy court process. To initiate the mediation process, prior notice is served either by post or by hand to the opposite party and if the opposite parties choose to ignore the 1st notice as well as the 2nd notice, only then the final notice is served upon him/her either by post or by hand. On the other hand, if the

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<sup>61</sup>Irani, Bilkis. "Divorce rising in Dhaka as women seek way out of troubled marriages." Dhaka Tribune, 14 May 2017, <https://www.dhakatribune.com/bangladesh/dhaka/2017/05/14/divorce-rising-dhaka-women/> (Accessed: 27 Jun 2018)

opposite parties respond to the notice and come to the legal aid clinics of ASK and agree to make peace with the first party, then a date is fixed for mediation. The first party is then called to appear on the fixed date, when the mediation is conducted in the presence of both the parties, and if needed multiple sittings are arranged to bring both the parties to the same page. However, if the mediation process cannot bring any fruitful result or the opposition does not respond to mediation, then a case is filed in court by the ASK staff lawyer or Panel lawyer in accordance with the interest of the first party. Ain O Shalish Kendra also helps the victims of violence to come to the police station, help them in getting access to legal processes like filing GD, FIR and also act as a liaison on behalf of the victims with lawyers, public prosecutor and police to follow the concerned authorities. The other significant program of Ain O Shalish Kendra (ASK) is Psycho-social Counseling and it aims to provide psycho-social support to clients and contributes to build their potential through symptomatic relief, emotional equilibrium and decision making process. This approach is constructed in order to prepare the victims generally against the violation of their rights as human beings. Ain o Salish Kendra (ASK) furthermore has an emergency shelter for the survivors of violence as well as an Human Rights violation program to secure vulnerable women and children from immediate threat of violence. The clients only receive assistance if they are legal victims and so the survivors are not only given safe shelter, but also are provided with food, medical support as well as psycho-social help. For such special cases sometimes the sufferer requires long-term support for rehabilitation and considering their security and confidentiality, they are referred to the relevant government agencies and NGOs to have support. For instance, a number of organizations like BRAC, Acid Survivors Foundation (ASF), the Australian High Commission, the Hunger Project Bangladesh and Ain o Salish Kendra (ASK) came together last year to celebrate the valiant struggles of girl child in

Bangladesh who have been able to challenge the patriarchal oppression of marriage, domestic violence, sexual harassment and rape.<sup>62</sup> The event was organized to mark the International Day of the Girl Child in 2017 and titled “The power of the adolescence girls: vision for 2030” where six girls were rewarded for their exemplary step in order to combat the odds in their lives. Besides other renowned social workers who were there to support the battle described that girl/women in Bangladesh usually fight to prevent marriage at early or vulnerable stage and also spoke about how girls from very young age should be conscious about their rights and have the ambition to achieve self independence spiritually, socially and economically.

Bangladesh Legal Aid and Services Trust (BLAST) is another prominent legal organization which gives free legal aid to mostly poor and marginalized people such as women, children, people with disabilities and ethnic minorities. It also undertakes public interest litigation and advocacy activities in order to ensure that legal assistance as well as justice is not denied to any individual for any reason particularly in the rural areas of Bangladesh. BLAST is programmed to comprise legal aid services which include mediation, litigation and legal rights training where the assistances is given with close observation by BLAST’s head office and nineteen other branches throughout Bangladesh. BLAST makes alternative dispute resolution (ADR) easier through mediation for family, land, financial issues, petty crimes, and labor matters. The organization till now has settled over 15,000 disputes across the country since 2003<sup>63</sup>. Their aim is to resolve disputes through mediation which allows individuals and families to quickly recover land, assets, maintenance, dower and arrears of wages so that the money can be utilized for various purposes like earning livelihoods, starting savings for future or for

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<sup>62</sup>“The Gritty Girls.” The Daily Star, 12 Oct 2017, <https://www.thedailystar.net/frontpage/the-gritty-girls-1475083> (Accessed: 27 Jun 2018)

<sup>63</sup>*Donations and Support*. Bangladesh Legal Aid and Services Trust, <https://www.blast.org.bd/getinvolved/donate>

children's education. Another advantage that the mediation service of BLAST brings while contributing towards resolving the disputes and later helping the clients with monetary issue, is that the organization actually reduces the overwhelming number of pending cases before the courts in Bangladesh. In case if the dispute do not see any settlement through mediation or if the issue deals with problems like human rights violation or criminal offence, then BLAST provides legal advice and usually takes the case in their hands. For example, BLAST since 2003 has filed 35,000 cases on behalf of the disadvantaged, poor people and as mentioned above, have won 15,000 cases in favor of their clients. Moreover, BLAST files Public Interest Litigation (PIL) for their clients in the Supreme Court of Bangladesh, and along with that it supervises awareness program as well as training workshops across the country to let both disadvantaged and advantaged people learn about their legal rights and remedies when encountering any legal inconvenience. Upon asked about matrimonial dispute and what sorts of assistance (economical, educational, habitat related issues) the organization provides for Muslim married women clients, one of the advocates, Ms. Shamima Ara said that this issue of marital dispute is one of the main topics that BLAST handles. The organization believes that Muslim married women experience violence and unequal treatments for family law, and these laws need to be monitored carefully so that women can get equal rights under the national rules and regulations. The representative in her personal interview said that till now BLAST has litigated about 68,000 cases and dealt with 28,000 mediations in which the percentage of women as victims is 92% and through this the organization has received a good amount of USD 668,000 till 2011<sup>64</sup> which the organization later uses for the financial benefits of their female clients. She also talked about a complete project done by BLAST titled "Community Awareness on Access to Justice (CAA)" and the project was run to make people, in particular women, children and minorities, aware of their accessibility to

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<sup>64</sup>Ibid

justice as citizens of Bangladesh. The project continued from 2013 to 2015 in 4 Upazillas and 8 Unions of Mymensingh district to expand and enhance the understanding among poverty stricken people about their legal rights as citizens mostly emphasizing on family law, land law, criminal law and violence against women, children and *adivasis*. The project became a huge success and created legal awareness among people, opportunities for discriminated members like women, children and minorities who were taught to seek redress from the available justice system. It also sent a message to local legal authorities that BLAST and its programs were present in the rural areas and would watch their actions and improve responsiveness among people as well as in the system. Besides creating awareness about legal rights and co-operating the women victims with monetary issues, BLAST also believes in rectifying the gender paradigms that Muslim married women face during their pre and post phases of divorce. Advocate Shamima Ara states in her personal interview that there are multiple push factors which prevent Muslim Married women to go after their equality while considering divorce, and BLAST officials try to make the proceedings easier for them. The officials discuss the positive outcome that the wife/mother will have if they break out their silence and stand against all backlashes regarding the decision of divorce, their maintenance and equal rights of custody. However, positive outcomes are not always that Muslim married women in Bangladesh face, in fact society, religion and laws are characteristically oppressive towards women whenever they cross the traditions and boundaries. Shamima Ara went on to say that, Muslim married women have always fought for their rights both at home as well as outside the home and organizations like BLAST and others play secondary roles to invoke their equal entitlements. BLAST and other legal aid service providers usually bring attention to the rights they have under the national constitution of Bangladesh and help Muslim married women to expunge the victim narrative and achieve their legal

prerogatives. For instance, with the interference of BLAST's mediation program a family has been reunited and a mother as well as a wife got the chance to renew her relationships in Dhaka, Bangladesh in 2010.<sup>65</sup> Sania and Kabir got married in 2010 under Muslim Shari'a law and had a daughter. However, in the later years of their marriage, Sania realized that Kabir was a drug addict and after confronting Kabir about his addiction, Sania became a victim of domestic violence. In addition to beating, Kabir started demanding dowry from his in-laws and created more pressure and atrocity in their conjugal life. Sania's family could not stand their daughter's misery hence, paid 30,000 taka and furniture to Kabir, however this action made him greedier, and he started demanding more by beating Sania every now and then. When the situation went out of control Sania begged for legal assistance to BLAST's Jessore unit and they took the matter in their hands and sent a letter to Kabir so that he could be present for their first mediation meeting. The first meeting was directed by one of the expert counselors of BLAST Jessore unit, which was why both the parties came to a decision of staying together as a married couple after leaving all their differences behind. Kabir was made to sign a consent document for not causing any further violence in his family as well as he was also given a better understanding to what legal actions BLAST could take against him if he further tried to violate Sania's right as a wife and a mother. This is one such example among thousands cases where through BLAST's mediation program Sania not only got her conjugal rights back and continued being a mother and wife to her family in which she really believed in but also got herself free from the clutches of domestic violence. In addition to that, BLAST and other legal aid providing organizations have filed a writ petition no. 7878 of 2014 to oppose and challenge the discrimination that clause 5 of the prescribed marriage registration form (*kabin-nama*) has which discriminates against Muslim

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<sup>65</sup>Bigenwald, Ariane et. al. "Annual Report 2014." *Bangladesh Legal Aid and Services Trust*, 2014, pp. 21, <https://www.blast.org.bd/content/annualreport/AR-2014.pdf>

women and violates article 27, 28, 31 and 32 of the constitution of Bangladesh.<sup>66</sup> Pursuant to sections 3 and 5 of the Muslim Marriages and Divorces (Registration) Act, 1974, reading with rule 28(1) (a) of this aforementioned act requires that marriage should be registered in *kabin-nama*. While doing that, clause no. 5 says that a bride needs to announce her marital status as well as her sexual history, specifically she needs to state whether she is unmarried or a virgin or widowed or divorced before the registration of the marriage. This is discriminatory and creates a sense of male exclusiveness since the groom is not required to make any such clarification before the registration of marriage. Due to this blatant unfairness towards Muslim women during her marriage, BLAST, Naripokkho and Bangladesh Mohila Prishad have filed this petition arguing that the inclusion of terms like, “virgin”, “widowed” or “divorced” infringes women’s individual dignity and personhood, a right which is given to women by the Constitution of Bangladesh in article 32 which says, “No person shall be deprived of life or personal liberty save in accordance with law.”<sup>67</sup> Therefore, on 14 September 2014, a Division Bench of the High Court Division, comprising of Ms. Justice Naima Haider and Mr. Justice Md. Jahangir Hossain, issued a Rule Nisi upon the Ministry of Public Administration and other Governmental agencies to show cause as to the reason why the clause no. 5 in the BG Forms no. 1600 and 16001 should not be declared to be without lawful authority and no legal effect being discriminatory against women. The respondents were also asked to show cause as to why they were not directed to take necessary steps to amend the aforesaid forms by omitting the use of the word “*kumari*” and further asked them to ensure the information regarding marital status should be required by both men and women, and it is a mandatory requirement for both the bride and groom to affix their

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<sup>66</sup>BLAST and others v Bangladesh and others. “Amendment of *kabin-nama*.” 14 Sep 2014, <https://www.blast.org.bd/content/writ/BLAST-WP-7878-o-2014-summary.pdf>

<sup>67</sup>The Constitution of the People’s Republic of Bangladesh. Art. 32, available from [http://bdlaws.minlaw.gov.bd/pdf\\_part.php?id=367](http://bdlaws.minlaw.gov.bd/pdf_part.php?id=367)

respective photographs to the forms at the time of registration. This substantial stepstone although now is pending to hear its result but the writ petition has really made it easier for Muslim Married women to find their individual liberty at the start of their marriage. Along with that, it reinforces their beliefs in the fair judgment of this country to get equal amount of respect and sincerity.

Another very old legal aid organization is Bangladesh National Women Lawyers' Association (BNWLA) which was established in 1979 and they aim to achieve equal rights and opportunities for every woman and child in Bangladesh. The association has narrowed down its focus because unlike the other two above mentioned organizations, BNWLA fights on behalf of women and children only. The organization has always been acted as one of the pressure groups for the government in order to bring overall as well as positive changes in the deplorable situation for women and children not only in grass root level but also in national level and that is why; BNWLA works through partnership, networking and policy level advocacy. BNWLA mainly follows three processes in their line of work and the very first one is advocacy under which the organization not only introduces and clarifies laws of Bangladesh but also calls for reforms in the laws/policies through their research, dialogues, seminars, workshops, PIL, media networking, partnerships and many more.<sup>68</sup> Moreover, the organization runs prevention, protection and support packages for disadvantaged women and children which includes services related to legal advice, shelter, psycho-social counseling and other measures for their rehabilitation. Finally BNWLA aspires for women's empowerment and hence include more professional women lawyers so that together the organization can work towards their vision to eliminate the discrimination against women of Bangladesh. Dhaka Tribune, one of the leading

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<sup>68</sup>*Bangladesh National Women Lawyers' Association.* Namati : Innovations in Legal Empowerment. <https://namati.org/network/organization/bangladesh-national-woman-lawyers-association-bnwla/>

English daily newspapers of Bangladesh last year published a news titled, “Is Bangladesh really closing the gender gap?”<sup>69</sup> where it referred to BNWLA. Its former executive director Salma Ali said that a social transformation has taken place since women in Bangladesh are leading the economic activities of this country, and as a result they are actively taking part in the decision making process of their personal life as well as in the society. However, the gaps in terms of gender equality are still on the rise, she opined.<sup>70</sup> She furthermore talks about a BBS study where it has been mentioned that even in 2011, 87% of Muslim married women in Bangladesh were ill-treated by their husbands. In another report by ICDDR, it was claimed that around 70% of Muslim married women in Bangladesh are victims of intimate partner violence. In this news article, another group of female right activists added that over 5,000 married women in Bangladesh had died from dowry-related violence since 2001. As a result, it will not be wrong to say that most of the cases witnessing dowry related brutalities in marriage are from Muslim marriage because of the failure of Dowry Prohibition Act, 1980. The lack of success with these legal acts and regulations and not so fulfillment in terms of combating the spousal violence as well as policy discrimination towards women have made it difficult for Muslim married women to start their lives afresh. According to the expert opinion of BNWLA, only in 2016, 2,481 cases of violence against women had been reported to their knowledge of them 459 cases were of abusive violence from close family members.<sup>71</sup> The representative of BNWLA further adds that the real number of such vicious cases against women are significantly higher because most of them are unheard and unreported because first, women are tortured by their closed ones such as

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<sup>69</sup>Chaity, Afrose Jahan. “Is Bangladesh really closing the gender gap?” *Dhaka Tribune*, 8 Nov 2017, <https://www.dhakatribune.com/bangladesh/2017/11/08/bangladesh-really-closing-gender-gap/> (Accessed: 1 Jul 2018)

<sup>70</sup>Ibid

<sup>71</sup>Malik, Shadma and Md, Kamrul Hasan. “Fear of stigma keeps women from reporting abuse.” *Dhaka Tribune*, 27 Oct 2016, <https://www.dhakatribune.com/bangladesh/2016/10/27/fear-stigma-keeps-women-reporting-abuse> (Accessed: 2 Jul 2018)

husband or in-laws, and second when they want to put an end to all of these sufferings, the victims family pressurize and cannot make peace with their daughters' decision of stepping out of tormented matrimonial bondage. Nonetheless, above mentioned legal aid service organizations and also other female activists group are trying to curb violence against women. Nowadays therefore more women are breaking the stereotypical role of victims and spreading their fight against gender prejudices outside the private domain. However, it is the impunity of Bangladesh's judicial system that they fail to acknowledge all struggles of Muslim married women to free themselves from the bondage of abusive marriage. Bangladesh has although taken the important step of founding specialized family courts which are eventually there to look carefully into the matters like marriage and its dissolution, maintenance, dower, custody etc so that Muslim married women's distress can be minimized but corruption as well as inaction from internal and external side of the legal system have made the challenges more complex and terrible to administer. The rise of the religious fundamentalists along with the delays and negligence of the judicial system towards the Muslim married women's sufferings pose additional threats on human rights violation. For decades, unfortunately the government of Bangladesh has turned a blind eye not only to the curtailment of women's entitlements both in public as well as private arenas, but also to the countless call from legal assistance providers to reform the discriminatory personal laws and policies, and have been unsuccessful to ensure justice to Muslim married women of Bangladesh.

## Conclusion

She rose to His requirement, dropped  
 The playthings of her Life  
 To take the honorable Work  
 Of Woman and of Wife.  
 If aught She missed in Her new day  
 Of Amplitude, or Awe,  
 Or first Prospective, or the Gold  
 In using wore away,  
 It lay unmentioned, as the sea  
 Develops Pearl and Weed,  
 But only to Himself is known  
 The Fathoms they abide.<sup>72</sup>

Through this poem Emily Dickinson illustrates how marriage is a disabling awe for women where a woman in order to fulfill the social conventions of being a mother and a wife, sacrifices her desires, goals, dreams as well as her individuality. The message which Dickinson addresses in this poem is the issue of conventional gender segregation in marriage and how there are many married women, in many other societies in the world, regardless of their religion, social and educational status, are mostly defined by patriarchal social values. The final stanza of this poem subtly portrays the disillusionment that marriage brings in a woman's life, where her creativity and ambitions such as 'pearl' and 'weed', mentioned in the poem, go unheard and devalued by the social system of patriarchy. Bangladesh as a nation also is a nurturer of this same belief system where a girl and her life go through a transformation from the minute she

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<sup>72</sup>Dickinson, Emily. *Bartleby.com*. 1924, <https://www.bartleby.com/113/3017.html> (Accessed: 5 Jul 2018)

agrees to chain her personal independence to a traditional destiny called ‘marriage’<sup>73</sup> where she needs to leave all her ‘playthings’ behind to become whatever her husband requires her to be. The dripping sarcasm of this poem can easily be considered as the reflection of many Muslim married women of our society, which is patriarchal in terms of religious as well as in legal directives. These conventions instruct married women to consider their husbands to be nothing less than a God and desert their innocence and creative individuality in order to accept the ‘honorable’ confinement of housewife and mother. Nonetheless, there are many Muslim married women in this country who do not feel entrapped in their marriage and do not suppress their expression, instead there have been a significant number of married women, both in rural and in urban areas, who have not only loved being a wife/mother but also exercised their version of liberty while staying at home with pleasure. However, the number of abusive Muslim marriage in Bangladesh is on the rise in terms of statistics and hence, Muslim married women need to be sensitized to claim their individual freedom and to disregard prejudiced social as well as legal traditions and practices. It is believed that married women should not protest the way they are perceived by the patriarchal norms, in fact they are advised to keep their secrets, happiness, sadness and needs to themselves only. Yet Muslim married women have been outspoken about their rights both in indirect manner within the confinement of private arena, and also in direct manner by stepping out of home while search of their independence in public domain.

In describing the Muslim married women’s empowerment and their efforts to do away with societal and religious dictates, this dissertation closely look at the three short stories and one novella written by Bengali women writers such as Rokeya Sakhawat Hossein, Makbula Manzoor, Selina Hossain and Purabi Basu. With their works, the writers have used their artistry

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<sup>73</sup>Beauvoir, Simon de. *The Second Sex*. London: Vintage Classics. 1997, pp. 189

to celebrate the emancipation and the revolutionary free self of Muslim married women in Bangladesh. “Primeval Anger” by Makbula Manzoor is a short story in which the story basically revolves around the protagonist Soburon’s life where she becomes a victim of abusive marriage and her husband tortures her for dowry. As the story proceeds, it becomes clear that after deserted by her husband, Soburon takes charge of her life and financial expenses not only for her children but also for her paternal family, and even chooses to protest when her sister and husband get involved in extra marital relationship. The story ends when Soburon takes the law in her hand and kills her husband as he had sold her sister to a brothel in order to recover the dower money. In this short story Makbula Manzoor shows a character’s progression through battling against the social pressure given by her paternal family, in-laws and her husband. By the end, Soburon not only tears off the weaker self of her own but also takes the control of her fate when she kills the root of all miseries in her life, her husband. Even after knowing the consequence of being jailed or punished severely, Soburon does not care and recognizes how it is important for her as a woman to put an end to her husband’s patriarchal domination over her life in order to appreciate her liberated self. Selina Hossain another accomplished Bengali female author in her short story titled, “Motijan’s Daughters” again tries to defy the ideological oppression on women based on their feminine qualities. In her story she creates a ‘new’ phase in her central female character where she chooses her independence in terms of sexual desire over everything else. In this story, Motijan’s husband is unable to continue their sexual life and in order to hide his ineptitude he tortures Motijan, disrespects her as a human being and allows the society to project her as an infertile woman who has failed to provide him any sort of satisfaction in their marriage. Because of this misrepresentation, Motijan initially has to suffer all the tantrums hurled against her both by her mother-in-law and by society until one day, she starts questioning the prejudiced

traditional attitude towards women and takes charge of the financial activities in her marital house which encourages her not only to assert her prerogatives as a woman but also to embrace her sexual freedom. Motijan at the end of the story is seen seducing her husband's friend Lokman and manages to get herself impregnated twice in order to cast all the labels away from her sexual dignity. At the same time she escapes the conventional role of a 'pure' married woman in order to enjoy her sexuality just like any other human being.

"Saleha's Desire" by Purabi Basu where she portrays Saleha as an individual whose wings soar above the despotic traditions and sexism against women. The competent writer gives Saleha an identity which is neither defined by the role of a wife nor a mother instead the character is seen to reject societal obligations when she refuses to get married to her lover even when they were physically engaged for a long time. Furthermore, Saleha cuts half off her lover's sexual organ when she feels her autonomy is being threatened and she even accepts this blatantly in front of the religious scholars of her village because she does not repent any of her action and considers the incident as an example of her self-affirmation. Selina Hossain therefore draws a picture of a strong, rebellious woman who does not believe in the gender demarcation of the society, drugged by her idea of self-awareness and individual freedom, chooses to move forward all alone, and never relinquishes before a limited traditional notion of female identity and responsibility. As a result, it can be said that through the character Saleha, the author has added a new chapter in the history of Bangladeshi literature where the female character serves the ideology of individuality and a forerunner of a completely new feminine presence. A feminine aspect that the author defines totally based on Saleha's experience without giving any importance to an institution like marriage or any other norms of the society.

Rokeya Sakhawat Hossein manages to create a separate ground for herself in the literary history of Bengali literature in terms of establishing Bengali Muslim feminism. In her utopian novella, *Sultana's Dream* the author envisions a kingdom totally governed by women where women control the state with the advancement of education. The author has dreamt the transcendental journey of women with the help of educational knowledge and scientific opportunities. Therefore, women in Ladyland can overpower the corrupt domination of patriarchy, escape their confinement from *zenana* and *purdah*, and replenish the essence of human being. Through this novella, Rokeya Sakhawat Hossein advocates for gender equality and emphasizes on the fact that women need to get equal education if they want to gain power over their lives as well as if they want to resist the patriarchal system of authority. Furthermore, the roles designated to men and women are top to bottom altered by the author where instead of women getting married early, giving birth to children and pleasing their husbands by becoming subservient to their mastery do not exist at all, in fact it is the ladies of Ladyland who are in charge of their life in the realm of marriage, maternity, domesticity and public domain. Rokeya Sakhawat Hossein thus synthesizes her version of reality in her utopian piece of work where she focuses on the importance of intelligent development of women of the society to achieve the power of knowledge so that they can defy the normative gender related challenges against them. This thesis hence looks closely at the works of the above mentioned writers in order to illustrate how they have talked about female agency, represented the pictures of gender inequality in a country like Bangladesh and explained the ways through which Muslim married women will be able to surpass all the discrimination and achieve empowerment.

The following parts of the dissertation mainly speculate on the discriminatory laws in Bangladesh that shows how difficult it is for Muslim married women to be autonomous and rebel

against the patriarchal malpractices. It is a matter of regret that although Bangladesh has been a signatory of many international, prestigious initiatives which believe in working towards the development and emancipation of women, while implementing that somehow the legal mechanisms fall short of providing the required protection. For the protection of Muslim married women's right, the country has drawn multiple laws such as Muslim Family Laws Ordinance, 1961; Dissolution of Muslim Marriages Act, 1939; Muslim Marriages and Divorces (Registration) Act, 1974, Dowry Prohibition Act, 1980. Furthermore, there is the UN convention which is The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) however, even all these laws fail to recognize and value women's rights of this country. As a result, the United Nations country team in Bangladesh has identified marital instability and destitute manner of law enforcement as to be key causes behind the deplorable mental as well as economic condition of Muslim married women in this country who not only feel entrapped in abusive marriages, but also hampered by inert legal proceedings which increase their sufferings. However, women as well as the legal aid organizations and women rights activists hope and deeply advocate to the government of Bangladesh that there is momentum for a change in Bangladesh and it is necessary to deal the women question, in particular Muslim married women. In 2010, a new law against domestic violence has been introduced which has primarily focused on the economic loss that Muslim married women incur after a marriage falls apart.<sup>74</sup> The law recognizes that Muslim married women make many contributions both economically and spiritually in their family/state, hence, the country should also look after them. This is why the new law provides habitat opportunities for women in their marital home even after the dissolution of their marriage, and also the courts have to arrange for temporary maintenance for survivors of domestic violence. Furthermore, women's rights groups, legal aid

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<sup>74</sup>Human Rights Watch. (see note 32; 36)

service providers, NGOs and international pressure groups have consistently demanded reforms in the personal and procedural laws of Bangladesh. As a consequence, in 2012, the Law Commission of Bangladesh, supported by the Ministry of Law, Justice and Parliamentary Affairs started a nationwide reformation research for Muslim, Hindu and Christian personal laws. In addition to achieve further improvement regarding the issue of violence against women, a helpline having the toll free number of 109 has been set up also in 2012 by the government of Bangladesh so that the right to justice can be accessible from all parts of the country and to ensure that the victims get immediate assistance like police advice, legal and telephone counseling. Nonetheless, it is a matter of great concern that even after so many possibilities for Muslim married women for their betterment and personal liberty, the question still remains of whether all these activities only are eyewash rules of law book. Also, whether the actual implementation will really take place and with such limitations, the question further rises that to what extent, Muslim women will be able to utilize these opportunities and be advantaged.

There is a significant number of legal aid providing organizations who echo the struggle of Muslim married women's contestation against all sorts of subjugation and the further chapter of this thesis takes a look at the support system these associations have been to them while addressing their share of stories as well as call for their freedom and entitlements. Some of the distinguished organizations are Ain O Salish Kendra (ASK), Bangladesh Legal Aid and Services Trust (BLAST) and Bangladesh National Women Lawyers' Association (BNWLA), who are relentlessly working for women in Bangladesh to ensure equality and justice. These organizations protest injustice against the vulnerable communities of the society, defend the beliefs of their clients and work to redress inequality in every untouched part of the society. Furthermore, all these organizations' grassroots activities are mostly complemented by a host of

advocacy as well as legal intervention and rehabilitation so that women with their support can challenge all sorts of discrimination that the society exert upon themselves. These associations do not limit their activities to national arena in fact, there are many a times when they collaborate their functions with international groups and with their objectives, who genuinely work for the benefits of women progress and development. To conclude, it can be said that Bangladeshi government with the help of legal aid association and women groups are need to make a paradigm shift where the entire social, religious and legal directives of life need to be reformed as a whole, so that no one based on their different gender, religion, class and race get deprived of the possibility to come out of the cage of inequality as well as injustice.

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