

## **Gender and the Legal Profession in Bangladesh: Achievements and Challenges**

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### **Abstract:**

*The history of women entering the legal profession in Bangladesh is quite recent. This is not surprising. Even in Western societies, with liberal cultural ideologies as regards gender-equality, women had to fight a lot to create a space for themselves in the legal profession. In the US case of *Bradwell v. State of Illinois* (1872), for example, the Supreme Court refused to allow a married woman into legal practice, arguing that 'the paramount destiny' of women is to fulfill the noble office of 'wife and mother'. Women in Bangladesh aspiring to enter the legal profession never faced such overt 'official' hurdles from the fellows of the same profession. Rather, a number of social, religious, professional, environmental and ideological factors have often stood, in various degrees, in their way. The Constitution of Bangladesh categorically prohibits discrimination based, among others, on sex. By contrast, it imposes a duty on the state to promote women's participation in every sphere of public life. Nevertheless, it is argued in this paper, Bangladeshi women in various walks of the legal profession continue to face implicit gender discrimination. There are factors that both dissuade women from choosing law as a profession and retard the career of those who are already in the profession. This paper brings into light and examines the factors that are arguably responsible for the hidden discrimination against women in the legal profession. For the purpose of this paper, the term 'legal profession' is used to mean legal practice in courts and elsewhere and the profession in the judiciary.*

### **Introduction**

Why is it important in the 12th year of the 21st century to study 'gender' within the frame of 'legal profession', a profession that practices and professes 'the law' which is supposedly a vital weapon to eliminate discrimination against women? The answers are obvious: laws, legal institutions, and collective and individual cultures do combine in almost every society to maintain and perpetuate discrimination against women. Despite many achievements of the feminist movements and feminists legal scholarships, sexism or gender-bias still produces injustice and deprivation in many legal professions in the world.

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The history of women entering legal profession in Bangladesh is unsurprisingly quite recent. Even in Western societies, with liberal cultural ideologies as regards gender-equality, women had to fight a lot for their entry to the legal profession. In the famous *Bradwell* case (1872), for example, the US the Supreme Court refused to allow a married woman into legal practice. Speaking for the Court, Justice Bradley reasoned that, "[t]he paramount destiny and mission of women are to fulfill the noble and benign office of wife and mother. This is the law of the Creator."<sup>1</sup> Women in Bangladesh aspiring to enter the legal profession never faced such overt 'official' hurdles from the fellows of the same profession. Rather, a number of social, religious, professional, environmental and ideological factors have often stood, in various degrees, in their way. The Constitution of Bangladesh categorically prohibits discrimination based on, among others, sex. By contrast, it imposes a duty on the state to promote women's participation in every sphere of public life. Nevertheless, as argued in this paper, Bangladeshi women in various walks of the legal profession continue to face implicit gender discrimination. There are factors that both dissuade women from choosing law as a profession and retard the career of those who are already in the profession.

This essay is based on a small-scale empirical study. I conducted a formal survey amongst around 30 judges and lawyers, both male and female. By drawing on interview-results, statistics and facts regarding achievements and challenges of Bangladeshi women in the legal profession, I focus on several factors that are arguably responsible for a discriminatory situation in this field. For the purpose of this paper, the term 'legal profession' is used to mean, principally, the legal practitioners who practise before the courts. The phrase 'legal profession', however, has been used here also to mean lawyers practising the law elsewhere than in courts, the profession in the judiciary and, for a limited purpose, the legal academia.

## **Legal Profession in Bangladesh**

In Bangladesh, lawyers admitted to the legal profession are formally called advocates. Advocates are called to the bar or given licence to practise law by the Bangladesh Bar Council, which regulates the legal profession as a whole including the administration, disciplining<sup>2</sup> and control of advocates in accordance with the provisions of the Bangladesh Legal Practitioners and Bar Council Order 1972. For practice, every advocate enrolled with the Bar Council has then to take membership of any local/district-level bar association or the Supreme Court Bar Association.<sup>3</sup>

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<sup>1</sup> *Bradwell v. State of Illinois* (1872) 83 U.S. 130 at 141-142. In a similar English case, *Bebb v The Law Society* [1914] 1 Ch. 286, the Court of Appeal upheld the Law Society's decision refusing to allow Ms. Bebb to sit the professional test leading to the qualification of solicitor. Justice Joyce ruled that women could not become solicitors for their "general disability" and because they were not 'persons' within the meaning of the Solicitors Act 1843. For a historical analysis of the *Bebb's* case, see Auchmuty (2011). For a critique of judicial gender-based prejudices in this and other similar cases, see Sachs (1976); Sachs and Wilson (1978); and Pearson and Sachs (1980).

<sup>2</sup> Apart from other disciplinary measures, the Bar Council has in place a quasi-judicial mechanism for disciplining the recalcitrant and defaulting advocates through the Bar Council Tribunals. On this, see articles 33-36 of the Legal Practitioners and Bar Council Order 1972, and rules 40-51 of the Legal Practitioners and Bar Council Rules 1972.

<sup>3</sup> There are two types of Bar Associations- the Supreme Court Bar Association and other local Bar Associations. There are 81 local bar associations in Bangladesh. An advocate cannot take membership of two local bars at the same time.

Any 'person' being a citizen of Bangladesh, male or female, who is of the age of at least 21 years and has a qualifying law degree from any university recognized by the Bar Council, may be admitted to the legal profession. In terms of the practising status, there are three types of advocates. The first group is entitled to practise only before the subordinate courts. The second group is entitled to practise before the High Court Division of the Supreme Court<sup>4</sup> as well as subordinate courts. Advocates of these two categories, after they pass oral and written tests, are enrolled under the provisions of the Bar Council Order of 1972. The advocates who are permitted by the Chief Justice to practise before the Appellate Division of the Supreme Court are admitted under the Supreme Court (Appellate Division) Rules 1988.<sup>5</sup>

In Bangladesh, the legal profession has a long history of standing, culture, regulation and honour.<sup>6</sup> The Dhaka District Bar Association was formed in 1889, for example. In this region comprising the territories including what is now the present day Bangladesh, before the legal profession became to be formally regulated, people of great wisdom, integrity and social acceptance used to be asked to help the courts or to plead before them. But, since women were not thought to be worthy of possessing the kind of wisdom a society needs to progress further, wise women were not asked to be the pleaders at the outset. Law was a male-centric activity. The Indian High Courts Act, 1861 (commonly known as the Charter Act), passed by the British Parliament, enabled the Crown to establish High Courts in India by Letters Patent and these Letters Patent authorised and empowered the High Courts including the Calcutta High Court (and for that matter the then Dacca High Court) to make rules for advocates and solicitors. Under this system, Ms. Cornelia Sorabji is reportedly the first Indian woman to be called to plead, on an *ad hoc* basis, before a British court in India in 1896 (Mossman 2006: 2-3).<sup>7</sup> The Allahabad High Court enrolled Ms. Sorabji in 1921, thus paving the way for the entry of women into the legal profession in this region.

Perhaps the first law relating to legal practitioners in British India is *the Legal Practitioners Act, 1879*.<sup>8</sup> This law did not spell out any provision regarding the capacity of women to enter the legal profession. Nor was there any woman who was reportedly admitted to any bar until 1921. In such context, *the Legal Practitioners (Women) Act 1923* (Act No. 23 of 1923) was enacted which provided that, no woman can be disqualified by reason only of sex. It is interesting to notice that this the Act of 1923 prohibiting gender-based discrimination in the legal profession coincides the

<sup>4</sup> In order to be able to practise before the High Court Division, an advocate has to have a standing of at least 2 years (in some cases 1 year) in any local bar.

<sup>5</sup> In addition, there are some advocates called 'advocates on record' who are attached only to the Appellate Division to 'instruct' the pleading advocates while filing any petition with the Appellate Division.

<sup>6</sup> Unfortunately, however, there is no available research on this in Bangladesh. For a helpful source, see Schmitthener (2005).

<sup>7</sup> It was no surprise that Ms. Sorabji was called to plead before a court because she was the first woman to study law at Oxford (at Somerville from 1889 to 1892) achieving a third-class honours in the Bachelor of Civil Law (BCL) examinations (Mossman, 2006: 203).

<sup>8</sup> Act No. 18 of 1879. This was followed by the Bombay Pleaders Act, 1920 (Act No. 17 of 1920). In India, the Indian Bar Councils Act, 1926 (Act No. 38 of 1926) first provided for the central and state-level Bar Councils for the regulation of advocates.

history of women entering the legal profession in 1922 in Britain,<sup>9</sup> the country that has most influenced the legal professions in the India-Pakistan-Bangladesh subcontinent.

Thus, by the early 1920s, when there was no 'constitutional equality clause' for the British colonies, it became clear that women wishing to take up the legal practice had a right not to be discriminated. *The Legal Practitioners (Women) Act 1923* has been repealed, for Bangladesh, by the Legal Practitioners and Bar Council Act, 1965 of the then Pakistan, which along with Pakistan's Constitution prohibited gender-based discrimination in the legal profession.<sup>10</sup> After its independence in 1971, Bangladesh enacted the *Bangladesh Legal Practitioners and Bar Council Order 1972* to regulate the legal profession, which provides that, no woman shall be disqualified for the legal profession by reason only of her sex.<sup>11</sup>

### **The Issue of Gender in the Legal Profession in Bangladesh<sup>12</sup>**

In Bangladesh, there is hardly any debate on gender-discrimination within the legal profession, let alone any thoughtful writing or any serious research, although law journals and books contain some good work on the gender issue generally.<sup>13</sup> Compared to that, the role of gender in the legal profession, especially in leadership roles, occupies a significant position in legal scholarship in the west.<sup>14</sup>

In the long forty years of the post-Independence legal profession in Bangladesh, women have earned many achievements. However, these achievements had to be earned with much labour, vigour, patience and perseverance. As the following discussion will bring to light, there is hidden discrimination against women who are in the legal profession.

Women in Bangladesh are not seen in enough numbers in leadership roles within the legal profession. Even, law is still not a usual subject for many girls coming to study at universities. In the post-independence history of Bangladesh, no woman has ever been appointed as the Attorney-General or even the Additional Attorney-General, although women lawyers have achieved the posts of assistant and deputy attorneys general. While there are female-judges both in the lower and higher judiciary, no woman has so far been appointed as Chief Justice or the Registrar of the Supreme

<sup>9</sup> The Sex Disqualification (Removal) Act 1919 paved the way for the women to enter the legal profession in the UK, and Carrie Morrison was the first woman to be admitted as a solicitor (Auchmuty, 2011: 223-24).

<sup>10</sup> After its independence in 1947 India too repealed the Act of 1923 by the Advocates Act 1961.

<sup>11</sup> See article 28. This Order repealed the Legal Practitioners and Bar Council Act 1965.

<sup>12</sup> The factual accounts given and analyses made in this and the following parts are based on the survey I conducted amongst lawyers and judges as well as personal interviews of some select advocates.

<sup>13</sup> To my knowledge, the present paper is the first-ever essay on gender and legal profession in Bangladesh. This is, however, an inadequately serious work. Further socio-legal research should be taken to chart the position and impact of 'sexism' or 'genderness' within the Bangladeshi legal profession. But see a somewhat relevant work on the life and work of the first woman judge in Bangladesh by Karim (2009). Further, there is also a dearth of literature on status/treatment of women under the law in Bangladesh. But see Sobhan (1978; 2004); Khair (1999); and Monsoor (2001).

<sup>14</sup> The literature on women's inequality in the legal profession is extensive, but see Buckley (2008); ABA (2006); Schultz and Shaw (2003); and Brockman (2001). There are even many specialist journals on the 'gender and the law' issue in the USA and elsewhere in the West. My quick search has found around 20 such journals in the USA alone. See, for example, *the Duke J. of Gender Law and Policy*; *Texas J. of Women & the Law*, *Harvard Women's L. J.*, and *Yale J. of Law and Feminism*.

Court. Nor has any woman ever been appointed as the Secretary in the Ministry of Law and Justice.

Since Bangladesh's independence, senior lawyers have been appointed Law Minister. However, no woman advocate has, to this date, been appointed Law Minister or the State Minister for Law. It is notable, however, that in the present Cabinet there are three female ministers who happen to be advocates of the Supreme Court.<sup>15</sup> Also, the Bangladesh Law Commission has not yet had any woman commissioner.

At the level of activism by the Bar Council or the Supreme Court Bar Association against gender-based discrimination, neither of them has really been serious on the issue of gender diversity in the legal profession or protection of women-lawyers generally. The Bangladesh Bar Council has a human rights committee, but it does not have any special equal rights committee. The Council has not yet reportedly done anything visibly to promote gender diversity within the legal profession or to suppress the discriminatory environment against women lawyers. For example, amongst the 15 members of the present Bar Council, only one woman, Ms. Tania Amir, has been elected as a member. Ms. Amir is the first woman to become a member of the Bar Council in the forty years of its history. Nor has been any woman-advocate appointed thus far as a member of any Tribunal of the Bar Council that adjudicates allegations of professional misconduct against lawyers. Another example of inaction on gender-grounds by the Bar Council is that, even after a Supreme Court decision to formulate an anti-sexual-harassment committee/policy in every working place where women work, the Bangladesh Bar Council has not yet reportedly formed any such committee.<sup>16</sup> The SCBA has not constituted such a mechanism, either.

Interestingly, there is no apolitical women lawyers' organisation in Bangladesh.<sup>17</sup> The Bangladesh National Women Lawyers' Association (BNWLA), formed in 1979, is not such an organisation to promote and protect the interest of women lawyers. Rather, it is a civil society organisation (NGO) with a motto to protect and promote legal rights of women and children and 'gender equality' in society. On the other hand, the Bangladesh Women Judges' Association (in which the current membership is 244), the first-ever organisation of its kind, was not formed as an independent local entity but rather as a chapter of the Internal Association of Women Judges (IAWJ) that was formed in 1991 with judges of all levels as members from across the world with a commitment to 'equal justice'. However, the Bangladesh Women Judges' Association symbolises the unity of a section of judges for the protection of rights of women judges

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<sup>15</sup> They are Advocate Sahara Khatun, Dr. Dipu Mony (a medical doctor with an LLM from the University of London), and Dr. Shireen Sharmeen Chowdhury. During the second martial law regime in the 1980s, one woman-lawyer, Ms. Rabia Bhuiyan, was appointed the Minister for the Women Affairs (1984-1986).

<sup>16</sup> In *BNWLA v Bangladesh* (2009) 14 BLC (HCD) 694, the Court held that, "since the Constitution [...] ensures gender equality [...], it shall be the duty of the employers and *other responsible persons in work places*, and the authorities of all educational institutions to maintain an effective mechanism to prevent or deter the commission of offences of sexual abuse and harassment [...]."

<sup>17</sup> There are some women lawyers' forums, which are affiliated with major political parties. An example of it is the *Jatiyatabadi Mohila Ainjibi Front* which is an association of pro-BNP (Bangladesh Nationalist Party) women lawyers. Needless to say, these associations serve the interests of political parties.

and hence against any kind of gender-discrimination in the profession, say, for example, in the posting of judges to different positions.<sup>18</sup>

As noted above, there is no legal bar for women to enter the legal profession or to take up any leadership role therein. As briefly shown above and as we shall see further below, some women, albeit belatedly, have achieved leadership roles as lawyers. Nonetheless, this success in law does not necessarily mean that there is no discrimination, harassment and injustice against women within the legal profession.

### **Statistics: Locating 'Gender' in the Legal Profession**

In addition to the information as regards the roles and positions of women in the Bangladeshi legal profession, this part takes up the statistics again with a view to giving a glimpse of the role of women in the legal profession. While doing so, I will also bring in analyses of the concerned overt and subtle/background factors wherever relevant.

### **Women Practising Law in Courts**

During the early 1950s (in 1953, in exact terms) there was reportedly only one female lawyer in the then 'Dacca High Court' who used to not practise.<sup>19</sup> The first historic female name in the legal profession is Ms. Salma Sobhan (1937-2003). Ms. Sobhan was the first Bangladeshi (the then first East-Pakistani) woman barrister to be called to the English bar in 1959 at the age of 21 (Khondker 2004).<sup>20</sup> She studied law in Cambridge during 1955 to 1957. She then joined the legal profession but did not continue practice for too long. Ms. Sobhan then joined legal academia and happened to be the first female law professor in the Independent Bangladesh, teaching at the University of Dhaka. In 1982, she resigned from the law faculty to form what is today a leading human rights organization *Ain o Salish Kendra*. For several years, Ms. Sobhan edited a law report, the Bangladesh Supreme Court Reports (BSCR) (1981 to 1988), published by the Bangladesh Institute of Law and International Affairs and thus was the first woman-editor of any law report.<sup>21</sup>

Reportedly, the first practising woman-lawyer to be in legal practice thoroughly has been Ms. Rabia Bhuiyan, also a historic name for the Bangladeshi legal circles, who joined the District Bar in 1967 and the High Court Bar in 1969. Ms. Bhuiyan became an English barrister in 1973, when she returned home to resume legal practice. During the time of Barrister Rabia Bhuiyan, there were three other women-advocates

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<sup>18</sup> Most of the respondents of my survey told that, this Association was not formed out of a sense of 'insecurity' amongst women judges, although such a sense does prevail actually. Women judges themselves think that this Association is formed for their social and legal advancement. As an example, they cite the Association's role in extending the maternity leave from 3 to 6 months.

<sup>19</sup> Information given by Dr. Rafiqur Rahman, a senior counsel of the Supreme Court, in a personal interview with me in Dhaka on 26 August 2012.

<sup>20</sup> Salma Rasheeda Akhtar Banu, known as Salma Sobhan, was born in London in 1937 and was educated in England. Her father was the first foreign secretary of Pakistan and her mother was one of the first two women members in Pakistan's Constituent Assembly, who also later became an Ambassador. Huseyn Shaheed Suhrawardy, former Prime Minister of Pakistan, was her maternal uncle while Justice Hidayatullah, former Vice President and Chief Justice of India, was her paternal uncle.

<sup>21</sup> The second woman-editor of any law report was Dr. Shireen Sharmin Chowdhury, who edited for several years the *Bangladesh Legal Decisions* (BLD).

who practised law intermittently, of whom Advocate Kamrun Nahar Laily was also a notary public (reportedly the first woman-notary).<sup>22</sup> At the Supreme Court-level, Ms. Sigma Huda is another famous female name in the legal profession, who happens to be one of the pioneers for the follower women-advocates who joined the legal profession later. Ms. Huda enrolled as an advocate in 1970 just a year before Bangladesh's independence, and is quite active in practice up to this date.

In 1972, immediately after Bangladesh's independence, 2 female advocates as against 172 male lawyers enrolled with the Bar Council. Of these two female advocates, Ms. Momena Khatun<sup>23</sup> became forgotten in the legal profession – no one knows anything about her, which appears to be a case similar to the life-history of Ms. Bebb in the UK who in effect opened the legal profession to women there. The other woman, Ms. Nazmun Ara Sultana is today's history-making judge on the Supreme Court. In 1972, she was the first woman to be enrolled as an advocate in the Mymensingh District Bar. Those were undoubtedly hard days for a Muslim woman to show the courage or, as some might even say, 'the audacity' to practise law in crowded courts along with male colleagues. This is well-captured by a commentator, Karim (2009: 68):

Justice Nazmun Ara joined the Mymensingh bar in 1972 as its first female advocate. The social reaction was far less than welcoming, however. Even to this day, a subtle yet perceptible stigma exists in the workforces in Bangladesh, where a female has to frequently travel an extra mile to set herself in equal footing with her male counterparts. Understandably, the situation was rather dire some thirty-odd years ago. Petty provincial prejudice prevented a number of people from accepting a young female as a practicing lawyer. Some even had the audacity to come to her house and rebuke her mother! Fortunately though, her family stood firm behind her *choice* to pursue a career in law (*emphasis supplied*).

It is relevant to mention here that, 'choice', as noted in the above quote, is an important driving force behind Justice Sultana's rise to the pinnacle of the profession. In traditional Bangladeshi societies, choices of women used to, and still continue to be, dominated by male-members of family and society. This male-dominance over the women's career-choices, as we shall see below, is one of the culpable reasons behind the inadequacy of number of women practising law in today's Bangladesh.

Like any other country, the number of women taking up the legal profession in Bangladesh increasingly began to rise since the 1980s.<sup>24</sup> Unfortunately, however, the number is still very low, compared to the situation in other countries, including the neighbouring country India. In the Bhola District Bar Association, for example, there is

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<sup>22</sup> The other two advocates were Ms. Ayesha Siddiqua and Ms. Meherun Nessa. I sincerely thank Barrister Rabia Bhuiyan for this piece of information.

<sup>23</sup> According to the Bar Council, Ms. Khatun was the only woman to be enrolled with the Bar Council in 1972. However, Justice Nazmun Ara Sultana was also reportedly enrolled in 1972, which she personally confirms. See also Karim (2009).

<sup>24</sup> Ms. Fawzia Karim Feroze joined the bar in 1982, being the first amongst the women with an LLB Honours degree from the University of Dhaka. In fact, the number of women lawyers in Bangladesh began to increase since the 1990s.

currently only one non-practising female member. In the same way, in the Cox's Bazar District Bar, which was established in the British-period, there are only 10 women lawyers. As of today, only about 10% of the advocates (approximately 30,000) in Bangladesh are women. This does not, however, mean that those women-advocates enrolled are all active in legal practice. In the first part of 2012 (2 April 2012), 3001 advocates enrolled with the Bar Council, among whom approximately 300 are women.<sup>25</sup> By any standard, this increase in the number of women lawyers from <0.5% in 1972 is anything but a 'revolution in number.' It is undeniable, however, that even this level of rise in the number of women taking the law as a profession is quite significant in view of the prohibitive social culture and restrictions vis-à-vis women legal practitioners.

Let us now consider the position of women in leadership roles within the legal profession. The account given here is, however, a partial picture. In the present Supreme Court Bar Association Executive Committee (2012), there are five women members,<sup>26</sup> while back in 1972 there was no female member in the Committee. The number of executive members in the SCBA Committee is 7, and 8 women (out of 14 candidates) ran for the elections. The rate of nomination for the Bar Committee membership seems to be 28.6%, while the rate of passage in election for women is 62.5%. Despite this high electoral success, the reality is that no woman lawyer seemed 'qualified' to have a nomination for the leadership posts of the Committee such as the post of President or the Secretary. As such, since the inception of the SCBA in 1947 no woman has ever been elected (or nominated for election) as its President or Secretary. As noted above the first woman-member in the history of the Bar Council has been elected only in July 2012. The question remains whether this subtle discrimination can be attributed to male-biasness of those bar leaders and politicians who decide and influence the list of candidates or to a generally held gender-based stereotyping that the roles of politically important President/Secretary of the SCBA or of senior officer-holders of the Bar Council are too 'tough' roles for women to play.

### **Women in the Judiciary**

The Bangladeshi Judiciary is often known as the lower judiciary and the higher judiciary, the latter comprising only the Supreme Court of Bangladesh. The judges at the level of junior or trial judiciary are also called the career judges as they are appointed after having been selected through a competitive screening test. Ms. Nazmun Ara Sultana, now Justice Sultana on the Supreme Court, was the first female career judge to join the Bangladesh Judicial Service in 1975 and also the first woman to become the District Judge, the senior most position of the District judiciary, in 1991. She is also reportedly the first woman judge in the entire history of Bangladeshi judiciary since 1947.

Presently, there are approximately 345 women judges against approximately 1150 male judges, which is about 35% of the total number of judges. In the first batch

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<sup>25</sup> These are estimated or approximate accounts. The Bangladesh Bar Council could not provide any exact data.

<sup>26</sup> They are: Advocates Shahanara Pervin, Jahanara Pervin, Jubaida Pervin, Syeda Sabina Ahmed, and Jannat Sultana Mukta.



of career judges selected by the Judicial Service Commission (JSC) in 2008 after the separation of lower criminal judiciary from the executive organ of the State in November 2007,<sup>27</sup> there were 100 female entrants out of the totality of 394, which is about 25.4% of the total judges. In the 5th intake of judges selected through the competitive test conducted by the JSC in 2011-2, this percentage rose to more than 27% (35 women out of 129 judges). Against this, the percentage of female judges was less than 0.30% in 1972.

Justice Nazmun Ara Sultana was the first woman to be appointed as a Judge of the High Court Division of the Supreme Court in May 2000. Justice Sultana was also the first lady justice ever to be appointed in the Appellate Division of the Supreme Court in 2011. She is the first judge of the Supreme Court from amongst the career judges, while Ms. Salma Masud Chowdhury was the first woman to be appointed to the High Court Division of the Supreme Court from amongst the practising advocates in 2002.

In the Supreme Court, there are currently 6 female judges of whom one is in the Appellate Division and the others are in the High Court Division.<sup>28</sup> Of these six Supreme Court judges, 3 were drawn from the bar, of whom two happen to be daughters of former judges of the Supreme Court, and the other has been the daughter of an influential politician-advocate cum former Member of Parliament. By providing this bibliographical fact, I do not mean in any way that they are deficient in qualification to become judges of the Supreme Court. By contrast, they are perfectly qualified for the post of Supreme Court judges: two of them have first class law degrees<sup>29</sup> and all of the three judges have both graduate and post-graduate degrees in law from Dhaka University. It is, however, undeniable that the biographical links do often influence the policy-makers who decide who will sit on the nation's top court. Also, it is not known whether, while elevating female career judges to the Supreme Court the policy-makers were in any way influenced by some pressure/lobbying from any sector or whether the Government was motivated with an absolute good faith that diversity in the judiciary should be increased and maintained.<sup>30</sup>

### **Women in the Legal Academia and Female Law Graduates in Bangladesh**

In Bangladesh, on average 30% of the legal academia are women. Amongst the law faculties of the two major universities of the country - Dhaka and Chittagong Law Schools, for example, respectively 33.36% and 24% are women. At present, of the 33 members of the Dhaka University Law Faculty only 12 are women, while the number of female members in the Chittagong University Law Faculty is four out of 17

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<sup>27</sup> Before 2007, lower court judges were used to be selected by the Public Service Commission and they were treated as members of Bangladesh Civil Service for the purpose of appointment.

<sup>28</sup> One woman-judge who was appointed as an additional judge to the High Court Division for 2 years was not later appointed as a permanent judge after her provisional tenure.

<sup>29</sup> One of these two judges has an LLM from Columbia University and a PhD in law from South California University.

<sup>30</sup> It would not be completely out of place to mention that, amongst the law clerks of the advocates, there is reportedly very poor representation of women. Also interestingly, throughout the country there are reportedly no woman-peshkar (administrative officer) in the lower judiciary. In the High Court Division of the Supreme Court, too, there is no female principal bench officer.

members. Notably, however, with the increase of new law schools at both private and public universities, women are joining the legal academia in greater number than before.

As mentioned above, the first woman to teach law at the University level was Ms. Salma Sobhan, while the first female dean of law was Dr. Taslima Monsoor at the University of Dhaka who was elected a dean in early 2002.

In order to have an idea of the number of women joining the legal profession, we now turn to a few selective accounts of career-choices of female law-graduates from three leading and old law schools.

To take a representative example from the Dhaka University Law School, in the graduation year of 1984, the number of female law-graduates was 20. Of them, three are in legal practice, one joined the judiciary and two joined legal academia. For Rajshahi University Law School, 9 female law-students graduated in the year 1988. Of them, two are in legal practice, one in the judiciary, and two joined human rights organisations. From the University of Chittagong, 9 female law-graduates passed out in 1996, of whom two have been teaching law at universities (at home and abroad) but none has been practising law and none has joined the judiciary. This sample does not provide the whole picture of the scenario. However, in order to have a glimpse, these figures can be seen in terms of percentage. It seems that, only 13% per cent of the female graduates do join the legal practice, while 5% join the judiciary and another 10% join the legal academia. This means that, around 70% of female law graduates opt for other professions such as development practice, corporate jobs, business, and so on.

### **Women Lawyers in Development Practice and Social Actions**

A number of female lawyers are active in development practice and social legal movements, working with non-government organisations, government organisations, and development organisations such as the USAID, DFID, UNHCR, ILO, UNICEF, UN Women and so on. One can debate whether the term legal profession includes the law-job in such organisations. The fact, however, remains that, in most cases female lawyers are recruited by these organisations for a kind of legal job beyond the court.

Further, a number of women-lawyers are working in human rights and legal aid organisations, prominently in Ain o Salish Kendra (ASK), BNWLA, Bangladesh Environmental Lawyers Association (BELA), BRAC, and so on. As regards the nature of job of the female advocates with non-government human rights organisations, one discernible trend is that some are engaged in private legal practice and at the same time serve such organisations as legal advisers. There are some others, such as those lawyers in BELA, who are in full-time positions in such NGOs but represent their organisations as advocates in court litigations.<sup>31</sup> Another trend is that there are female lawyers appointed as legal officers or legal advisers but who do not practise law in courts.

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<sup>31</sup> For example, Syeda Rizwana Hasan, the Executive Director of BELA often argues the cases filed by BELA.

## The Hidden Discrimination or the 'Implicit Gender Bias'<sup>32</sup> in the Legal Profession

As noted above, there seems to be no prima facie gender bias in the Bangladeshi legal profession, which is clearly prohibited in the law. Article 28 of the Legal Practitioners and Bar Council Order 1972 provides that, "[n]o woman shall be disqualified for admission to be an advocate for reason of her sex." This, however, only guarantees an equal right for women to enter the legal profession and does not in itself protect women from discrimination within the legal profession.

Beyond the legal profession, Bangladeshi women generally are officially guaranteed formal equality. The Constitution of Bangladesh, in article 28, expressly prohibits any kind of discrimination including gender-based discrimination, and guarantees women "equal rights with men in all spheres of the State and of public life".<sup>33</sup> Unlike the statute of 1972 governing Bar admission, this constitutional equality clause, combined with the equal legal protection clause,<sup>34</sup> encompasses any kind of discrimination, implicit or explicit, against women in any occupation including those in the legal profession.

Alongside the formal guarantee of general equality, the courts of law have largely drawn a broader view of the concept of equality in dealing with legal challenges on the ground of discrimination.<sup>35</sup> Of course, there are instances of applying the law from a gendered framework of understanding and construction (Khair 1999: 157).<sup>36</sup> In *Sayeeda Rahman Malkani v The Government of Bangladesh* (1977),<sup>37</sup> for example, the Supreme Court refused to hold unconstitutional a legal provision that disallowed any woman married to a foreigner to pass her nationality to her children.<sup>38</sup> "The judge agreed that the Constitution would appear to have empowered the judiciary to have found in favour of [Ms. Malkani] but he preferred that the Legislature should take this step" (Sobhan, 2004: 49). However, "[d]espite the fact that paternalistic assumptions have long influenced lawmaking and public decision-making including judicial decisions", the Court has generally applied the constitutional equality clause quite assertively (Hoque, 2011: 124). On several occasions, the Supreme Court has struck down gender-based discriminatory actions. In the case of *Bangladesh Biman v Rabia Bashri Irene* (2003),<sup>39</sup> the Court declared unconstitutional a public body's fixation of

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<sup>32</sup> This phrase is taken from Levinson and Young (2010).

<sup>33</sup> Article 28 (2).

<sup>34</sup> Ser article 27 (*Equality before law*): "All citizens are equal before law and are entitled to equal protection of law".

<sup>35</sup> It is interesting to note that, there seems to be no court challenge that involves gender-discrimination in the legal profession.

<sup>36</sup> Khair (1999: 157), as regards the adjudicative results in cases involving violence against women, had this to say: "[...] the legal process is also paternalistic in its approach and tends to personalise women's problems in keeping with popular social demands that exhort women to suffer in silence. As such judicial decisions have traditionally tended to weigh against the woman by giving the man the benefit of doubt".

<sup>37</sup> Writ Petition No. 3192 of 1977 (unreported judgement of the High Court Division).

<sup>38</sup> The Citizenship Act 1952 (which gave this right to a Bangladeshi male citizen married to a foreigner). This inequality has recently been removed by amending the Act.

<sup>39</sup> (2003) 55 DLR (AD) 132 (DLR = Dhaka Law Reports).

differentiated retirement- ages for male and female flight attendants. In another famous case, *Shamima Sultana Seema v Bangladesh* (2005),<sup>40</sup> the Court declared unlawful a scheme of the allocation of differentiated functions and unequal 'remuneration' for women commissioners of Khulna City Corporation, a local government body, who were elected from the 'reserved seats'. In this case, interestingly, the Court took up a pedagogic role, "seeking to educate the government about its protective duty towards women in an egalitarian welfare state like Bangladesh. It emphasised that a dynamic rather than technical approach to the constitutional concept of gender equality was to be cultivated, and wished a change in societal attitude towards women (Hoque, 2011: 124)".<sup>41</sup>

As the above account reveals, neither the Constitution nor the anti-discrimination court jurisprudence could prevent implicit or tactical discrimination against women in the legal profession in Bangladesh. It is seen, for example, that in leadership roles, women-advocates are less visible. Internal male-dominated politics of different professional forums as well as ideology-inspired government decisions have prevented them from rising to leadership roles.

Without repeating the facts described above, one should recall that no woman-advocate has until today been nominated for or elected into the top-level positions of the Bar Council (and within its committees and tribunals), the Supreme Court Bar Association, and other legal forums. As we have seen, three women with legal professional qualifications have been appointed ministers in the present Government, but the minister and the state minister for law are male-advocates. By the same token, although there are senior women judges in the District judiciary, no woman-judge has ever been appointed the District Judge for Dhaka or the Chief Metropolitan Magistrate in any metropolitan city. The policymakers consider these posts to be the 'sensitive posts', perhaps not worthy of being staffed by women.

Needless to say, these are instances of tacit gender-discrimination practised institutionally at the high-level policymaking arena. One reason for this state of affairs may be that women-advocates for these political or politically important positions are not adequately trusted or considered capable enough. Male-biasness may also be witnessed amongst the minds of individual legal leaders or legal policy-makers. One tentative example of this kind of bias is perhaps reflected in the fact that, the Chief Justices of Bangladesh have tended not to nominate any woman-judge to the enrolment committee of the Bar Council for the purpose of selecting new entrants to the legal profession or the 'High Court advocates'. Similarly, patriarchal attitude of the male judges of the Supreme Court can perhaps be read from the fact that they rarely invite any female lawyer to appear in any case as *amicus curiae*, a call that is considered highly prestigious for lawyers.<sup>42</sup>

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<sup>40</sup> (2005) 57 DLR (HCD) 201.

<sup>41</sup> For details, see the judgment in (2005) 57 DLR (HCD) 201, at 212-13.

<sup>42</sup> As far as my personal knowledge goes, only three women-advocates have been till date invited to be the amici curiae: Ms. Rabia Bhuiyan, Ms. Sara Hossain, and Ms. Syeda Rizwana Hasan.

My survey reveals that female advocates face discrimination from both clients and colleagues. Some 'senior'<sup>43</sup> male colleagues reportedly engage their junior female lawyers only in drafting legal documents ('chamber practice') rather than sending them to courts to argue any case. Some other 'seniors', who are few in number though, do use directly discriminatory words towards their junior female colleagues. On the other hand, Bangladeshi clients prefer male-lawyers to women lawyers generally, and when they approach women advocates they do so because, they think they can pay them less than they will have to pay any male-advocates.<sup>44</sup> Let us take a glimpse of the picture of court-appearances of women lawyers before the Supreme Court by way of a sample-inquiry. Amongst the 88 cases/judgments of the Supreme Court reported in the *Bangladesh Legal Decisions* in 2011, women advocates appeared in 47 cases that were argued by only 26 women-advocates. Of the 47 cases, only two cases before the Appellate Division, the top most court, were argued by two female advocates.<sup>45</sup>

In the following part, we reflect upon certain reasons that may be held responsible for the implicit gender-biasness in the legal profession in Bangladesh.

### **Reasons for the Hidden Gender Bias: The 'Culture' Factor and Beyond**

The above shows that, despite the constitutional guarantee of equality, tacit discrimination in varied forms against women in the Bangladeshi legal profession persists. In this Part of the article, I shed some light on the probable reasons that generate, maintain and perpetuate this 'gendered' scenario.

One telling argument of the feminist legal scholars as to why discrimination persists even in societies that recognize *de jure* equality is that, "law in its actual functioning discriminates against women because legal agents interpret laws in patriarchal ways" (Menon, 2004: 4). As regards our case of the role of gender in the legal profession, there has been little or no occasion of interpreting the law with a bias-against the women advocates. However, generally, the 'ideology' that many laws behold is patriarchal (Khair, 1999) and, despite the instances of recent gender-sensitive court decisions, any keen observer may locate gender-biasness in some judicial pronouncements. It can be argued that such a scenario within the legal system may influence the mental make-up of the persons charged with decision-making as regards women advocates/judges.

This leads us to take a view that the core reasons why there are still such a quite small number of women-lawyers in Bangladesh or why women-advocates depart from

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<sup>43</sup> This means the advocates in whose chambers junior/ trainee lawyers work, and not necessarily the 'senior advocates' designated as such by the Chief Justice.

<sup>44</sup> A recent Indian survey, conducted in a wider and a more systematic way, interestingly unravels similar kinds of discrimination against women lawyers in India. See Makhija and Raha (2012).

<sup>45</sup> As my survey shows, some female-lawyers have received more briefs than others because of, among other things, their political and family connections.

the profession more often than their male colleagues (Kay 2004: 110)<sup>46</sup> may be grounded in the social culture tainted by patriarchal beliefs and gendered stereotyping. As we shall see below, this state of affairs may also be explained by some other factors such as, for example, the inadequacy of 'shining' women lawyers or judges or even the size of the family of which a woman is a member.

The question of why there are fewer females in the legal profession can partially but significantly be answered by looking at the image of women's position in any other profession. The patriarchal society still typifies jobs by classifying some of their kinds as worthy of being done by persons of softer hands, passionate minds and loving hearts, that is, women. This being the case, the families of the women aspiring to join a profession or rise up the ladder of the career often influence and in some cases manipulate the free choices of the women. The intervention with the choice of women begins at the early days of their education. In Bangladesh, during the early 1950s, for example, even the female Muslim students entering the University of Dhaka were to give an undertaking to wear head scarf. During this period, no girl students were allowed to talk to their male friends without the prior-permission of the Proctor (Khatun, 2012: 121). At this time, only a limited number of courses were thought to be the right subjects for the girls to study. Moreover, the law course was not even opened in any university during this time. Law could be studied only in law colleges in which classes were taught during the evening hours. These disadvantages, combined with the inhibition that the legal profession is not a befitting vocation for women, led to the creation of a small number of women advocates in the country.

The damaging patriarchy (*see* Chowdhury, 2009) has emerged as a reason also for the departure of women advocates from the legal profession. We have already shown that this is a reason why women advocates in Bangladesh are not seen in leadership roles in enough numbers. During the survey I conducted, the male lawyers tended not to be willing to respond to the survey altogether or to the questions relating to discrimination against women advocates. While this does not, in any way, mean that male colleagues are not supportive and pedagogic to female advocates, this fact of disinclination perhaps suggests that male advocates generally refuse to accept that women advocates are discriminated.<sup>47</sup>

Apart from the above broad-based and systemic factors, the following are identified as factors or reasons that explain the lower rate of women entry into the legal profession or the women-advocates' less visibility in the leadership roles or relatively less briefs, and the relinquishment of the profession:

- the crowded environment of the courts and the absence of women-friendly facilities

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<sup>46</sup> This may also be the case in other societies. For example, a Canadian report (Kay, 2004: 110) states: "Women are more likely than men to leave the practice of law. Women are less likely to enter law practice after bar admission, and more likely than their male colleagues to leave law practice in subsequent jobs."

<sup>47</sup> On the other hand, almost all the female respondents have reported that they think that their male colleagues do not want to see women in leadership since it is their conviction that women lack the leadership-capacity.

- sexual harassment or stalking by colleagues, or clients or others
- the difficulty of balancing career and family life (or the expansion of family responsibility)
- decline of professionalism, reputation, and ethics
- absence of income and lack of remuneration paid by the 'seniors' in the early years of the profession
- lack of enough role-models in the legal profession
- failure to keep up with technology and changes in law
- the nature of the work involving much labour
- availability of alternative careers with relatively more remuneration (at the early stage of career) and time-flexibility

Now, reflections may briefly be made on some of the above factors that retard the growth of women's legal practice in Bangladesh. The physical environment of most courts in Bangladesh is extremely unwholesome and indeed not friendly for women. In particular, Dhaka and Chittagong court premises, the two largest courts, do hardly have any space even for breathing. The court buildings lack healthy lavatories and refreshing facilities for lawyers. In no court premises, there is any support that accommodates women's family responsibilities, such as any day-nursery facilities.

The non-physical environment of the court premises also constitutes another disincentive for women legal practitioners. The attitude, body-language and behaviour of male lawyers, judges, court-officials, law clerks and even clients are such that a women lawyer cannot win a case or does not have the necessary skills to handle a case properly.<sup>48</sup> There is also the allegation of sexual harassment of women lawyers. One reason why women-advocates entering the legal profession leave is sexual harassment. All the respondents of my survey told that, sexual harassment exists within the legal profession. Very often women junior lawyers face sexual harassment from their 'seniors' either of their own chambers or from outside of the chambers. All the respondents but one confirmed that they knew some one leaving court practice for the reason of sexual harassment.<sup>49</sup>

The difficulty of balancing career and family responsibilities is a "pressing issue" for many women-advocates across the world (Kay, 2009: 9).<sup>50</sup> In the culture-bound Bangladeshi society, it is very difficult for a woman-advocate with family responsibility or children to continue with the hard work of legal practice. In such a case, the family often insists on her either to quit or to go for an 'easy job'. Success in

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<sup>48</sup> It is relevant to mention that, such kind of prejudice was present amongst many in the early days of women entering the legal profession across the world, which unfortunately still persists in some societies including Bangladesh. Justice O'Connor (2001: 189) quotes one Even Clarence Darrow, one of the most famous champions of unpopular causes at his time, as saying: "You [women] can't be shining lights at the bar because you are too kind. You can never be corporation lawyers because you are cold-blooded. You have not high grade of intellect. I doubt you can ever make a living."

<sup>49</sup> I know personally two women-lawyers who have left the profession specifically for unsocial behaviour and demeaning comments of the fellows, of whom one joined a multinational corporate firm as a lawyer and the other joined a legal rights-NGO. Interestingly, most of the women lawyers who appoint female clerks are thought to be doing so in order to avoid unacceptable behaviour of male clerks.

<sup>50</sup> For a general view of this problem, see English (2003).

the legal profession depends on how much time one can give not only during court hours but also thereafter at homes or at chambers in the evening. In this job, there is thus virtually no scope for a woman with a child to take even maternity-leave. These are factors that dissuade certain women, after their bar admission, to either commence legal practice or to leave it soon after they have entered it. Some of my interviewees have confirmed that they left the legal practice for the interest of their children or family, while some have returned to the profession after a long family break.<sup>51</sup> The difficult task of balancing private life and court-career is prevalent in any society tainted, at whatever degree, by patriarchy. The disadvantages for careers associated with motherhood, whether they are men-made or natural, are ubiquitous. It is for these private reasons that Ms. Bebb who famously helped to open the door of legal practice for women in England disappeared from the practice. Regarding this, Auchmuty (2011: 230) helpfully writes:

Her story shows that women's history is often going to be different from men's, because women have not found it so easy to escape the private dimension of their lives, or to rely on it to support the public dimension. This account of Miss Bebb's life raises a number of gender issues that are still relevant today – arguments about masculine and feminine roles and qualities, the 'choices' available to men and women, the political tactics adopted by feminist legal reformers (...) and, most tellingly, the defensive strategies employed by those [male lawyers] whose privileges are under threat.

Financial uncertainty is another potential reason that is more likely to incentivise women-advocates to look for other jobs. In Bangladesh, senior advocates pay almost nothing to junior trainee lawyers. The clients too do not like to engage any junior lawyer. The Bar and other forums do not provide any financial incentives to the new entrants. Nor are there adequate chances for young lawyers to work under the legal aid schemes, which would have earned them some emoluments.<sup>52</sup> Unless one has sufficient means or wealth from family or other sources, it is very difficult for one to survive in the legal profession or to bear with its early-day 'glorious uncertainties'. Besides, in the legal profession it usually takes much time for one to establish, which, is also a discouraging force. As such, there are few established and highly successful role models in the legal profession, which would have attracted young women to this profession. Needless to say, in order to make a career-choice, it matters a lot for the new-comers whether there are enough women-judges and enough senior women-advocates in practice.<sup>53</sup>

The degradation of professionalism and the over-politicisation of the legal profession in Bangladesh (see, e.g., *LawDev* 2009) also constitute a disincentive for aspiring women who might think of joining the legal practice. Despite many attractions

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<sup>51</sup> I know a woman-advocate, now teaching at a school, who was selected as a judge back in the mid-1980s but could not join the judiciary because her first child was below six months at that time.

<sup>52</sup> The Legal Aid Act 2000 only creates scope for lawyers with certain length of standing to work as legal aid panel-lawyers.

<sup>53</sup> Justice O'Connor (2003: 187), the first woman US Supreme Court judge, wrote: "Even today...I can still say that it matters a great deal to me to have a second woman on the Supreme Court".



of the legal profession that motivate young girl students and female law graduates to think of a career in law, the Bangladeshi legal profession has, in recent years, sustained a dent in its reputation.<sup>54</sup> There also is a widely held perception amongst the public that the lawyers earn money by excessively charging their clients and that lawyers are usually anti-poor. The decline of professionalism and the fact of over-flow of the profession with mediocre practitioners discourage young brilliant law graduates, including women, to come to the legal profession.<sup>55</sup>

## Conclusion

My aim in this paper has been to demonstrate that all is not well with women's participation within the legal profession. If one forgoes the notable instances of a few women rising to high positions or offices within the legal practice or in other areas of the legal profession, it can be safely concluded that legal profession in Bangladesh is a gendered profession. Although some may have different views, the above shows that the success of those few women in the legal practice is founded together on their talent, hard work and bibliographical background factors. This very fact means that there is a hidden male bias in the legal profession. As the facts and statistics provided above show and confirm, the implicit gender discrimination within the legal profession is in effect more pervasive than it is thought to be, and this helps sustain the continued subordination of women in the legal profession. The discrimination has its roots not only in society and in one's family, but also in the minds of brothers and sisters of the legal fraternity.

The present paper also stands for optimism for those women who are in the struggle against discrimination and injustice within the legal profession. The successful women legal professionals had the resilience, and gained skills to overcome the inhibitions and hurdles. The facts demonstrated above also serve to remind those of us involved in the current struggle that women usually have to fight for their rights, "and that reason and justice are often irrelevant in the face of institutional power" (Auchmuty, 2003: 230).

Many feel that there is some discrimination against women in the legal profession. But it seems that those in responsible positions feel uncomfortable to discuss and debate this inequality and inequity. The present paper, therefore, can be seen as an important call to the effect that the continuing 'subversion' of women in the legal profession must be taken seriously and needs to be addressed to forge the path towards gender equality. As this needs to be accomplished, further research should be

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<sup>54</sup> This claim is equally applicable to other legal professions such as the ones of India and the USA. O'Connor (2003: 223) writes about the American legal profession: "It is hardly a secret that many lawyers today are dissatisfied with their professional lives. The pressures associated with the increasing commercialization of law practice have made lawyers, as a group, profoundly unhappy a lot". As for India, the Indian Law Commission in its 14th (1958) and 184th (2002) reports respectively observed that, the legal profession in India is no more a 'distinguished public service' and is no more as attractive as it was before, and that there is some dilution in the quality of the legal profession.

<sup>55</sup> One can find this assumption (or the reality) as true while one pays attention to the fact that Bangladeshi women are generally more honest than men, and that they are more likely to be affected by professional erosion than men.

undertaken to explore the varying shades of discrimination and inequities women in the Bangladeshi legal profession are facing.

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