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## Women's participation in union parishads: a quest for a compassionate legal approach in Bangladesh from an international perspective

### Abstract

A woman's capacity to participate in politics is a constitutionally entrenched and fundamental right in Bangladesh, repeatedly affirmed in several pieces of legislation, the most recent being the Local Government Act, 2009. Despite the endorsement of a series of affirmative features to promote women's equality, empirical research reveals very disappointing results. This paper investigates some of the fundamental constraints that hinder women's participation in Union Parishads, the third tier of local government, with special reference to a number of serious flaws in the Act. A compassionate approach is developed for the workplace to accommodate exceptional gender-centric concerns in Union Parishads by fostering a relationship in which men and women see each other as interdependent and interconnected.

### Keywords

quest, compassionate, legal, approach, bangladesh, international, perspective, parishads, union, women, participation

### Disciplines

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# **Women's Participation in Union Parishad: A Quest for a Compassionate Legal Approach in Bangladesh from an International Perspective**

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## **Abstract**

Women's equal right to participate in politics a constitutionally entrenched fundamental right and is repeatedly affirmed in several pieces of legislation, including the *Local Government Act 2009* (the Act), the most recent enactment in Bangladesh. Despite their endorsement of a series of affirmative features to promote the end, empirical research reveals very disappointing results in relation to the desired goal. This paper investigates some fundamental constraints that hinder women's participation in Union Parishad (UP), with special reference to a number of serious flaws in the Act. Drawing upon this investigation, a compassionate approach is developed in the workplace that will opt for accommodating gender-centric exceptional concerns in UP by fostering a relationship in which male and female will see each other interdependent and interconnected rather than as rivals.

**Keywords:** Gender, Political participation, Bangladesh, Law, Reconceptualisation

## **1. INTRODUCTION**

For quite some time the discriminatory allocation of legislative powers and functions in the Union Parishad (UP, the third tier of the local government) against women members (WMs) has generated significant controversy in Bangladesh. The controversy came to a peak in mid-2002 when UP WMs organised a workshop in the capital city (Dhaka) that unveiled their systemic maltreatment and their unequal governance roles, which fuelled the eventual formulation of a more equitable UP policy. Yet, the core issue remains unresolved. Society's deeply entrenched cultural and stereotypical attitudes toward WMs unjustifiably incapacitate them to enjoy an equal share in governance and pose a serious challenge to the credibility of attempts of the *Local Government (Union Parishad) Act 2009* (the Act)

and its predecessor seeking to ensure WMs' representation in the decision-making process. The Act's central emphasis on WMs' 'uniqueness'-biological differences and therefore its attempts to compensate them for their traditional disadvantages, obscures the necessity to relieve the cultural impediments that inevitably make the exercise of 'equality' quite unaffordable, and on some occasions, impracticable for WMs.

Undoubtedly, for any legislative initiative to be meaningful and truly effective for women, it must draw on multiple values and perspectives of the society to which they belong. Various statutory efforts in Bangladesh over the last four decades aimed at redressing women's grossly imbalanced status in the public life have almost ended in failure, partly because of their rigid demarcation between the concepts of 'masculinity' and 'femininity' that virtually provokes individualistic competitive attitudes and 'separateness' instead of fostering the mutual concern and respect essential for the enjoyment of every right; and partly of their failure to develop an authoritative mechanism through which compliance with the law could be judged. I argue that a proper understanding and remedying of these complex contextual factors, which usually work to the detriment of both sexes, require a far broader approach that not only opts for accommodating women's uniqueness but also promotes a relationship in which male and female will see each other interdependent and interconnected rather than as rivals. This article attempts to develop the concept of such a culture, coupled with a plea for a 'compassionate-cum-progressive' approach in the workplace, assumingly a required tool for dismantling discrimination against WMs in UP. In so developing the concept, a few selective foreign practices are examined that suggest that a substantial reconstruction of the socio--legal environment is not only desirable but also inevitable to mitigate WMs' discriminatory experiences in UP, and that they could provide powerful impetus for such changes in Bangladesh.

The following discussion begins with a brief exploration of the socio-cultural and legal setting in Bangladesh to elucidate the position of women and their right to participate in politics.

## 2. SOCIO-CULTURAL SCENARIO OF BANGLADESH AND REGULATORY APPROACH TO WOMEN'S POLITICAL PARTICIPATION

Bangladesh is a parliamentary democracy of 150 million citizens of whom 50 percent are women.<sup>1</sup> Traditionally, Bangladesh has been run along the lines of a patriarchal,<sup>2</sup> patrilineal and patrilocal<sup>3</sup> social system which, as elsewhere in the world, has promoted an unequal power relation between men and women, a rigid division of labour, and separate roles for the women. Society's excessive allegiance to those values combined with poverty, ignorance and the lack of education have engendered women's subordination over the decades.<sup>4</sup>

With these social institutions and values, however, some of the important initiatives have been undertaken since independence in 1971 to facilitate women's participation. These include: a series of constitutional provisions guaranteeing equal opportunity in politics; the right to freedom from discrimination and equal protection of law; special privileges under an affirmative action plan to redress their past incapacities<sup>5</sup>; Local Government Ordinances and the Act providing reserved seats for UP WMs and its different committees; several government notifications on the role of WMs that offer one-third of positions of chairperson of different Standing and Project Implementation Committees to WMs and entitle them to participate in development activities.<sup>6</sup>

Despite these measures that have made some positive changes in Bangladesh, the overall record of WMs' genuine participation in UP is still very frustrating, and often reflects disrespect for the rule of law. Patriarchal tradition remains a powerful force; discrimination based on gender is deeply rooted

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<sup>1</sup> 'Bangladesh', [http://www.infoplease.com, accessed 11 June 2009]; The US Department of State, 'Country Reports 2007' [http://www.state.gov, accessed 24 Jan. 2010].

<sup>2</sup> Patriarchy is a concept, a socially established process through which men in general gain control over women – see A.E. Taslitz, 'Patriarchal Stories 1: Cultural Rape Narratives in the Court Room', in *Southern California Review of Law and Women's Studies*, Vol.V, no.2 (Spring 1996), pp.393–95.

<sup>3</sup> These consider the son the potential supporter of the parents in old age and their successor and a symbol of the family prestige and heredity. See A. Begum, 'Politics in Bangladesh: Need for a Reconceptualisation of the Politico-Legal Approach to Mitigate Women's Disadvantaged Positions in the Parliament', in *Journal of Asian and African Studies*, Vol.XLIV no.2 (April 2009), pp.175–76.

<sup>4</sup> A. Begum, 'Rape: A Deprivation of Women's Rights in Bangladesh', in *Asia-Pacific Journal on Human Rights and the Law*, Vol.V, no.1 (2004), pp.29–40.

<sup>5</sup> See for details *Constitution of the People's Republic of Bangladesh 1972* arts 27–8, 9–10, 28(2)–(4).

<sup>6</sup> 'Government Orders' [ http://www.dwatch-bd.org, accessed 3 July 2010].

and a striking inequality in accessing political opportunities is the leading factor depriving WMs of enjoyment of their de jure equality.<sup>7</sup>

### **3. INTRODUCTION TO THE LOCAL GOVERNMENT ACT 2009**

#### **3.1. Background of the Act**

The *Local Government Ordinance 1976* was the first legal initiative in Bangladesh that endorsed provisions for reserved seats (two) for WMs in UP. Significant changes in the structure and composition of UP necessitated reform, leading to the promulgation of the *Local Government Ordinance (Union Parishad) 1983* that increased the number of WM reserved seats to three. In attempts to redress certain deficiencies, the Ordinance was subsequently amended on a number of occasions. Amendments in 1993 and 1997, for example, repealed the selection provision (for reserved seats), and introduced direct election for WM reserved seats, respectively.

The *Union Parishad Second Amendment 1997 Act* is considered a milestone towards facilitating women' access to the UP power structure. With the introduction of direct election for reserved seats, an institutional framework was created for the first time in Bangladesh which enabled women to promote their political skills.<sup>8</sup> It generated widespread enthusiasm among women to ensure their representation in UP than ever before.<sup>9</sup> In the subsequent election (1997), nearly 14,030 women were elected to UP, substantially up from their 863 seats in the 1977 election,<sup>10</sup> demonstrating a significant shift from their under-representation to a broader share in UP. Based on the 1997 reforms, the government also issued directives that increased the number of Standing Committees (SCs) and offered the chair of at least twenty five percent of the SCs to WMs.<sup>11</sup>

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<sup>7</sup> Begum, 'A Deprivation', pp.1-48; A. Begum, 'Judicial Activism v Judicial Restraint: Bangladesh's Experience with Women's Rights with Reference to the Indian Supreme Court', in *Journal of Judicial Administration*, Vol.XIV, no.4 (2005a), p.227.

<sup>8</sup> M.R. Khan, F. Ara, 'Women Participation and Empowerment in Local Governance: Bangladesh Union Parishad Perspective', in *Asian Affairs*, Vol.XXIX, no.1 (Jan-Mar 2006), p.74.

<sup>9</sup> P.K. Panday, 'Gendered Governance', (2009) [<http://www.theindependent>, accessed 27 June 2010].

<sup>10</sup> N. Chowdhury, 'Bangladesh: Gender Issues and Politics in a Patriarchy', in B. J. Nelson et al. (eds), *Women and Politics Worldwide* (London: Yale University Press, 1994), p.99.

<sup>11</sup> Khan, 'Women Participation', p.83.

Nevertheless, as major confusions still remained over some issues, including the role and regular functions of WMs, further reforms were sought and the Ordinance 1983 was replaced by the *Local Government (Union Parishad) Act of 2009*.

### **3.2. The Structure of UP and Basic Provisions for WM's Participation under the Act**

In the local government administrative hierarchy, UP is the third rank, with representation determined on the basis of local territory in accordance with the Act. As of September 2009, there are 4486 UPs in Bangladesh, each comprising nine Wards (lowest administrative unit), and administering about eighteen Villages.<sup>12</sup> Section 9 of the Act empowers UP to act as a body corporate with a chairman as its administrative head and 12 members, including three WMs from reserved seats.<sup>13</sup> A direct election based on the adult franchise establishes their positions in UP and right to take part in the decision-making process.<sup>14</sup> Accordingly, all UP decisions must stem from a majority vote, and WMs from reserved seats are entitled to hold one-third of the positions of chairperson of Permanent Committees and Project Implementation Committees.<sup>15</sup>

The creation of Ward Shava (Ward Meeting) and their methods of enforcement are unique features of the Act. The Ward Shava is a UP general assembly comprising all electors responsible for overseeing UP activities.<sup>16</sup> Section 6(6) of the Act mandates UP to include at least three WMs for Ward Shava Sub-Committees, and provides that it is desirable to have all decisions based on WM participation and a general consensus of the members present at the meeting. There is also a provision for WMs from reserved seats to work as advisors to Ward Shava.<sup>17</sup> These developments are all likely to put women in an advantageous position.

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<sup>12</sup> See, Union Parishad', [<http://wiki.answers.com>, accessed 27 June 2010].

<sup>13</sup> *Local Government (Union Parishads) Act 2009* (the Act) s. 10).

<sup>14</sup> *Ibid.*, ss 10(2)–(3),38.

<sup>15</sup> *Ibid.*, ss 42(7), 45, 47(3).

<sup>16</sup> *Ibid.*, ss 4–7.

<sup>17</sup> *Ibid.*, s 5 (5).

Most importantly, the Act introduces some other distinctive, important elements to UP function, such as a transparent budgetary process with a right to information which allows public access to UP budget discussion and documents.<sup>18</sup> These aim to increase accountability and openness in UP decision-making and to promote good governance by integrating local people in UP meetings, including those on planning and development.<sup>19</sup> It is thought that public participation in the political process via Ward Shava will promote a pro-disclosure culture and build a strong foundation for UP accountability.<sup>20</sup> Arguably, the system has created a sense of greater local ownership in UP matters and given people a stake in project selection and implementation that allows them the opportunity to use their local knowledge, where such was absent before.<sup>21</sup>

Before advancing to an attempt to measure the impact of these statutory provisions on WM in Bangladesh, it is important to identify a number of fundamental flaws in the Act that first need to be remedied to ensure equal WM participation in UP. The flaws can be identified as follows:

### **3.2.1. Absence of a Practical Mechanism for Dealing with ‘Reservation’ and Discrimination**

Section 9 of the Act reiterates the special significance of WM in governance by reserving one-third of UP member seats for them as was enshrined in its predecessor, the *Local Government Ordinance 1983*. Certainly, this endorsement provides legal recognition once again of the need to rectify women’s traditional incapacities, and is a catalyst for advancing a climate in which they should be actively involved and better represented. Regardless of the controversy over reservation,<sup>22</sup> it cannot be denied that it opened up opportunities for women to take part in the political process that could have otherwise been impossible given the stereotypical gender hierarchies in Bangladesh, and became effective in redressing their grossly imbalanced status in politics. As an affirmative action strategy, it essentially paved the way of activating WM in UP and helped change the male dominated political culture.

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<sup>18</sup> *Ibid.*, ss 57–58, 78–81.

<sup>19</sup> Democracywatch , ‘Annual Report 2009’, [ <http://www.dwatch>, accessed 21 Feb. 2011].

<sup>20</sup> ‘Five-year plan for UP’, [ <http://www.thedailystar>., accessed 19 Feb. 2011].

<sup>21</sup> Critics suggest that influential and party line political leaders dominate discussion and common people are usually passive at such meetings. See ‘Performance of UP in Bangladesh’ (2011), [ [www.ccsenet.org/ass](http://www.ccsenet.org/ass), accessed 21 Feb. 2011].

<sup>22</sup> It is argued that this mode of participation renders women passive actors subject to the manipulations of party leaders and loyal to them, and that it encourages excessive political dependence of aspiring candidates on party leadership. See Nelson, *Women and Politics*, p.98.

Yet, the real concerns as to whether the ‘reservation’ in itself could ensure meaningful participation by WM in UP (along with their increased attendance) and whether they have a legal basis for challenging a work environment that promotes hostility and abusive practices towards them. Repeated empirical research findings have confidently claimed that the male’s disrespectful approach to and intense disregard for WM’ governance roles undermine the objectives of reservation and effectively neutralise the political empowerment envisaged by the legislation.<sup>23</sup> Part 4.2. further below, highlights some particular instances that demonstrate how the offensive attitudes of male colleagues have kept WM out of decision -making process and how the situation has efficiently endured in UP.

Of great relevance is the fact that there is no provision in the Act or in any other law in Bangladesh obligating organisations to eliminate a discriminatory and hostile work environment by employing formal plans and procedures (quite old strategies in the workplace regulation worldwide) that could otherwise have facilitated a competent use of ‘reservation’. Consequently, no policy has yet to be developed within UP to advance a work environment free from humiliation and harassment. In particular, the Act fails to acknowledge the fact that there is a close link between discriminatory practices against WM and their commensurate inability to exercise meaningful authority in UP. Without an attempt to recognise and mitigate those specific experiences of WM, the Act’s mere emphasis on ‘reservation’ is simply ‘superficial’.

Precedents across many nations illustrate how legal reforms in foreign jurisdictions have incorporated new tests and standards for reconstructing the customary notion of ‘discrimination’ to embrace and redress its dynamic nature. Although it is not the purpose of this article to portray a comprehensive picture of those experiences, such references may provide a strong basis for legal changes in Bangladesh to eliminate, or at least reduce, discrimination against WM in UP.

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<sup>23</sup>P.K. Panday, ‘Representation without Participation: Quotas for Women in Bangladesh’, in *International Political Science Review*, Vol.XXIX, no.4 (Sep. 2008), pp.489–512; A. Begum, ‘Local Governance in Bangladesh: Towards a “Critical Mass” to Combat Discrimination against Women with Special Reference to India’, in *Journal of Social Science*, Vol.XIV, no.3 (2007), pp.263–64.

Almost four decades have passed since the United Kingdom and the United States, for example, enacted a range of legislation addressing different forms of discrimination under disparate treatment and disparate impact claims.<sup>24</sup> Australia and Canada, in the 1980s modified an organisation's liability by imposing an obligation to identify and eradicate discrimination against women in the workplace.<sup>25</sup> Accordingly, employers are required to provide employees with a civilised work environment affording decency, dignity and respect<sup>26</sup> and agency principles are invoked to establish an organisation's liabilities when employee actions or inactions cause discrimination in the workplace.<sup>27</sup> Some jurisdictions have gone even further by placing the onus of proof of discrimination on the government to remove hostile barriers against women in workplace.<sup>28</sup> Even though organisations' liabilities and government's special/affirmative measures are qualified by certain strict restrictions,<sup>29</sup> and have been intensely debated and contested since their introduction, they have had a significant contribution to reduce discrimination and intolerant attitudes in the workplace.<sup>30</sup> Most importantly, rude behavior in numerous jurisdictions has become acknowledged as actionable and compensable discrimination,<sup>31</sup> and there are convincing arguments for treating it with similar legal weight as sexual harassment since such conduct is directed at an individual based on gender.<sup>32</sup> Based on these developments, productive and

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<sup>24</sup> *Sex Discrimination Act 1975* (UK) s 1 (2) (b); *Civil Rights Act of 1964* (USA) Title VII. In disparate treatment claims the plaintiff has to prove that employer's intentional acts or omissions result in discrimination against him/her whilst in disparate impact allegations the plaintiff must show that the employer's apparent neutral acts or policies disproportionately and negatively affected him/her.

<sup>25</sup> See for example, *Sex Discrimination Act 1984*, *Equal Opportunity for Women in the Workplace Act 1999* (Australia) ss 3,6,13A; *Employment Equity Act 1995* (Canada) c 44 ss 3,5, 21.

<sup>26</sup> See *Morgan v Chukal* [Canada] (2000) BCSC 1163.

<sup>27</sup> *Lee v Smith, Ors* (Australia) (2007) FMCA 59.

<sup>28</sup> *Constitution of the Republic of South Africa 1996*, ss 44 8(4).

<sup>29</sup> Employers' liabilities and government's affirmative measures are subject to, for example, bona fide occupational qualification (BFOQ) and 'compelling needs and specific intended outcomes' respectively. BFOQ signifies that the employers may escape their liabilities in disparate impact cases if they prove that their employment practices that result in discrimination is 'job related' and 'consistent with business necessity'.

<sup>30</sup> See for example, *Adarand Constructor v Pena* (1995) 515 U.S. 200.

<sup>31</sup> Canada, for example, provides remedies for psychological harassment in workplace. Psychological harassment includes, *inter alia*, '...hostile or unwanted conduct, verbal comments, actions or gestures, that [affect] an employee's dignity ... and results in a harmful work environment for the employee.' See *An Act to Amend the Act Respecting Labour Standards and Other Legislative Provisions 2002* Chap 80, Section 81.18.

<sup>32</sup> M. Thornton, 'Sexual Harassment Losing Sight of Sex Discrimination', in *Melbourne University Law Review*, Vol., no.26 (2002), pp.113-34.

sophisticated approaches have also been employed by the courts to evaluate gender-specific claims with proper remedies.<sup>33</sup>

Thus, it appears logical to suggest that for ‘reservation’ to have any beneficial impact on WM in Bangladesh, the Act should shift its focus from mere ‘legal entitlement’ to a consideration of the overt and covert aspects of discrimination in UP and implementation of an appropriate and effective policy. Such a policy accompanied by a reliable system of enforcement must seek to condemn and redress discrimination by revisiting its complex nature and scope, and by integrating particular lessons and compulsory training programs targeting males’ mindset which would confront inappropriate conducts and inspire respectful understanding of professionalism and interpersonal relationships.

Infrequent or careless offensive comments of the male members in UP may not be adequately ‘illegal’ to prompt legal action under any current legislation but they obviously carry the required level of indecency that could reasonably said to breach the WM right to a ‘civil, decent respectful and dignified workplace’ as well as negatively affect the work atmosphere<sup>34</sup>, and should therefore be addressed by the Act.

### **3.2.2. Lack of Clarity of Functions of UP Permanent Committees (PCs)**

The Act provides that 33 percent of the position of PC chairpersons be WMs, which is indeed an appreciable attempt to motivate their leadership skills and useful participation in UP. Yet, there is no indication of how PC should function and developmental schemes will be executed. Granting WMs a top position in a Committee *per se* is unlikely to produce the desired result unless it is accompanied by some pragmatic approaches to the utilisation of that position, and appears to support the ways in which the cultural hegemony profoundly impacts on preserving a power-based hierarchy in UP. An empirical

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<sup>33</sup> In dealing with gender specific claims such as sexual harassment many US courts used ‘reasonable woman’ standard instead of ‘reasonable person’. See for example, *Ellison v Brady* (1991) 924 F 2d 872 even though *Ellison’s* endorsement caused controversy and was rejected in many cases such as in *Harris v Forklift Systems* .510 U. S. 17 and *Oncale v Sundowner*.(1998) 523 U.S. 75.

<sup>34</sup> *Lloyd v Imperial* (Canada) (1996) A.R. LEXIS 4386: (41–2).

survey by the World Food Program affirms that such a fear is far from baseless in regard to a 25 percent quota for WMs in different Standing Committees, which had been in place since 1998 when it was instituted by a government notification (by a government notification). This survey found that most of these Committees were yet to function and more than half of the WMs interviewed were not a member of a Committee.<sup>35</sup>

To stimulate WMs' political efficiency, effectiveness and active involvement in UP, it is submitted that a new provision could be inserted in section 45 of the Act that would clearly articulate how the PCs are to function and development schemes be implemented as well as how WM in both should be ensured.

### **3.2.3. Less Prospective for WM' Effective Participation in Decision- making Process**

Participation is one of the most fundamental elements of governance and a key indicator for assessing fairness and quality of the government. Good governance depends on the maximum realisation of stakeholder participation in the society.<sup>36</sup> Conversely, disrespect for participation raises the question of the legitimacy of the government.<sup>37</sup> The Act recognises this by providing, '[it] is desirable to include women members in decision-making process.'<sup>38</sup> Nevertheless, this provision by itself cannot guarantee effective WM participation for two reasons: first, the traditional stereotypical perceptions of the governance role of WMs and the discriminatory attitudes of male members in sharing UP power (discussed in detail in part 4.2) that essentially hinder their greater participation;<sup>39</sup> and second, the way UP Committee and its decisions have been framed, which raises reasonable doubt about the prospect of meaningful WM involvement in UP. Similar concerns naturally affect the PCs.

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<sup>35</sup> *The New Nation* (31 Dec. 2004), [<http://allbanglanewspapers.com>, accessed 1 Jan. 2005].

<sup>36</sup> E. Vigoda-Gadot & S. Mizrahi, 'Public Sector Management and the Democratic Ethos: A 5-Year Study of Key Relationships in Israel', in *Journal of Public Administration Research and Theory*, Vol.XVIII, no.1 (Jan. 2008), p.80.

<sup>37</sup> L.B. Bingham, 'Public Sector Knowledge Networks as Governance: The Role of Legal Frameworks, Conflict Management, and Public Voice', in *Public Administration Review*, Vol.LXIX, no.3 (May-June 2009), pp. 88–9.

<sup>38</sup> The Ac, s 6 (6).

<sup>39</sup> BRAC, 'Research Report 2007' [<http://www.bracresearch.com>, [accessed 21 Feb 2011].

The composition of each UP, remains as it was, comprising a chairman, nine members elected from the general seats (in most cases these ten are men) and three WM from reserved seats (ratio is almost 3:1). As seven votes (of the thirteen) are required to make all decisions WM remains the minority. *In PCs, overall membership can be far less, perhaps as few as one third of the UP members plus a chairperson. Thus if the chairperson is a WM, the remaining 3 members may be male and thus the participation rate would remain 25 percent within the PC.* In both instances WMs may have little influence on the outcome of decision-making due to internally operating mores reflecting traditional attitudes. Arguably, this is aggravated at UP level by the absence of a binding directive mandating that the chairman be sensitive to WMs' historical under-representative and 'ornamental' status in UP, which essentially makes the entire process vulnerable to the bias of the dominant group.<sup>40</sup> Supporting this observation Panday confirms that WMs' opinions fail to attract any significance in the Committee and they are virtually excluded from decision-making, especially in dealing with financial issues of UP.<sup>41</sup> Hence, the number of WMs in UP must be judged against the quality of their participation. Quality participation can be ensured by requiring incorporation of at least three WMs in decision-making and by adopting obligatory strategies which will demonstrate clear evidence of their integration into all affairs and proceedings of UP. Reasonably, such a provision is more likely to limit the excessive influence of any particular group on a Committee as well as to introduce a more balanced way of exploiting UP power by guaranteeing WMs broader access to the decision-making process.

#### **3.2.4. Absence of Scrutiny by an Independent Monitoring Authority**

Another important flaw in the Act is that it does not provide any requirement for all functions and powers of UP to be scrutinised in conformity with laws by an independent body. Neither is there any agency in Bangladesh to administer equal opportunity in the workplace. Providing benefits by law rings hollow as long as the law fails to incorporate some realistic mechanisms through which these

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<sup>40</sup> Begum, 'Critical Mass', p.263.

<sup>41</sup> Panday, 'Gendered Governance'.

benefits can be enjoyed and enforced.<sup>42</sup> This fundamental deficiency of the law compensates a logistic evaluation of the acts and omissions of the chairman as well. Although a range of provisions in the Act stress the importance of determining UP accountability by allowing government and local people's interference in its activities, these are more concerned with administrative irregularities and the public interest than monitoring equal opportunities.<sup>43</sup>

Australia and India, amongst others, provide leading examples of how diverse activities and a careful investigation by an independent Commission have helped women overcome some contemporary problems in the workplace. The Human Rights and Equal Opportunity Commission was established in Australia in 1986 to examine, *inter alia*, the consistency of the objects and compliance with the relevant Acts of all establishments' practices, and to examine cases of complaints of discrimination.<sup>44</sup> Despite limitations, the Commission's activist efforts have had positive implications for achieving women's improved status in public office.<sup>45</sup> In India, an Advisory Committee, half of whose members are women, has been established to oversee compliance of the practices of all public and private sectors with equal opportunity as guaranteed by the Constitution.<sup>46</sup>

These precedents demonstrate that foreign jurisdictions recognised an obligation to relinquish gender unfairness in the public sphere, and that the incorporation of an autonomous Commission into the Act or in a separate Act is long overdue in Bangladesh to monitor the compliance of working practices in all sectors of the government with equal opportunity provided under the Constitution. Accordingly, the primary responsibility of the Commission should include: *inter-alia*, (i) analysing and studying the situation of WMs in UP; (ii) detecting the areas of hostility and providing remedies; (iii) raising awareness among WMs (and all concerned) of governance roles by organising various programs and seminars; and (vi) taking cognisance of complaints of discrimination.

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<sup>42</sup> *Rani v Kumar* (1985) AIR SC 628: 639–64.

<sup>43</sup> The Act, ss71–4.

<sup>44</sup> *Sex Discrimination Act* 1984 s 48.

<sup>45</sup> *Aldridge v Booth* (1988) 80 ALR 1; *Southern v Dept of Education* (1993) EOC (92-491): 79534–36.

<sup>46</sup> *Equal Remuneration Act* 1976 s 6.

#### **4. MEASURING THE IMPACT OF REGULATORY APPROACH ON WM**

The Act---along with other laws, different orders and circulars issued by the Government---provides the legal basis for regulating WMs' participation in UP as mentioned. Even though the Act is still in its embryonic stage in terms of its evolution, defying assessment of its effectiveness, some of its entrenched provisions regarding WM have been in place since 1983. Since then, empirical research has largely provided very frustrating findings on WMs' UP participation. Nevertheless, it is true that WMs are now more visible in UP, more conscious of their roles and better equipped with legal sanctions than ever before. The following section, however, evaluates whether and to what extent the regulatory approach ensures WM's meaningful participation in UP.

##### **4.1. Records of WM' Participation in UP**

Seven UP elections have so far been held in Bangladesh. In the first election held in 1973, only one WM was elected across 4,350 UPs. In the 1977 and 1984 elections, WM won four and six seats respectively.<sup>47</sup> WMs numbered 863 seats (of 114,699) in the 1988 and 1,135 seats (in 169,643) in the 1992 election, constituting just 0.7 percent of positions in both instances.<sup>48</sup> In 1997 WMs were elected to 14,030 positions.<sup>49</sup> The 2003 election results, however, show a slight decline; WM won 12,785 positions.<sup>50</sup> In recent instances, women also contested positions against their husbands and sons, which is persuasively indicative of their political awareness and enthusiasm.

##### **4.2. WM' Practical and Exceptional Experiences in UP**

Despite improvements in WMs' political outlook and their encouraging record of engagement with UP, the gain is to a significant degree overshadowed by the discriminatory approaches and degrading behavior of their male colleagues (as pointed out earlier) and by a series of stereotypical perceptions that validate the allocation to them of unequal governance roles and negate any belief in the feasibility

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<sup>47</sup> A. Sultana, 'The Role of Training in the Empowerment of Women in Union Parishad: An Analysis', in *Lok Proshashon Samoyke*, Vol.17, no.1 (2000), p.14.

<sup>48</sup> Begum, 'Critical Mass', p.262.

<sup>49</sup> S.R. Qadir, 'Participation of Women at the Local Level Politics Problems and Prospects', in N. Chowdhury (ed) *Women and Politics* (Dhaka: Women for Women, 1994), p.6.

<sup>50</sup> Begum, 'Critical Mass', p.262.

or possibility of transformation.<sup>51</sup> Research in 2007<sup>52</sup> revealed that in performing UP functions WMs were not considered credible and capable political actors and reserved seats 'are not seen as having same value as general ones'.<sup>53</sup> It further revealed that six out of seventeen WM interviewed reported that the attitudes of male colleagues towards them were very humiliating and that 'they even raised objections to our sitting on chair in early days in office'.<sup>54</sup> The study concluded by suggesting that discriminatory allocation and application of UP power confidently made WM passive beneficiaries and ensured 'male-only' access to the resources and decision making of UP. In a different study,<sup>55</sup> Ms Hasnehena, a UP member observed:

After my oath I went to the chairman and asked him to assign me some work. The chairman became annoyed and said the government has brought out the women from their houses to create unnecessary trouble in the *Union Parishad*. [He said] "what will you do in the *Union Parisha*" "Go upstairs and sit with my wife and spend your time. I do not find any work for you....

BRAC report reveals:

Male members also harassed women members by passing comments such as, "*Get a list prepared by husband.*" A male member from other UP remarked, "*Women members are curse in UP. They are also weeds (agasa) in UP. If they don't visit the UP remains clean.*"<sup>56</sup>

Other recent research<sup>57</sup> with 107 WMs claims that they work in the negative environment and receive fewer projects as compared to the males, even though they represent constituencies three times larger than each male.

In addition, NGO reports reveal different indecent incidents occurring in UP, ranging from harassment to sexual assault of WMs. For example, when Ms Rani, (a Moulvibazar UP member) wished to protest against illegal activities of the chairman, she experienced harassment by his 'muscleman', exclusion

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<sup>51</sup> Begum, 'Politics in Bangladesh', p.176.

<sup>52</sup> The research was conducted by me with 17 WMs on 5 issues in 5 UPs at Rajshahi, a Division of Bangladesh, see Begum 'Critical Mass', pp.263-64.

<sup>53</sup> *Ibid.*, p.262.

<sup>54</sup> *Ibid.*, p.263.

<sup>55</sup> Panday, 'Representation without Participation', p.506.

<sup>56</sup> BRAC, 'Research Report'.

<sup>57</sup> Panday, 'Gendered Governance'.

from official meetings and a false allegation of an illicit relationship with a colleague which shattered her married life and eventually forced her to leave UP.<sup>58</sup> Ain O Salish Kendra (ASK), a leading NGO in Bangladesh, reported a series of cases, which were filed against chairmen and male UP members on charges of rape, kidnapping and attempted rape and gang rape. Amongst them, a number of victims are reportedly UP WMs.<sup>59</sup> Another ASK report documented features of the two WMs, the purported victims of rape by the chairman and male members of a UP,<sup>60</sup> however, the police in both cases failed to take any legal action.

Inevitably, all display an unfettered and audacious exercise of UP power by the dominant group suggesting that the legal enactment cannot produce equality in an unequal world developed on gender disparity and disgrace.

Thus, it could be said that facilitating women's access to local politics through reservation is an appreciable step granted by the Act but not adequate to empower them within and outside UP. The strength of discriminatory practices in UP and the Act's failure to address these unique concerns of WM have promoted an unreceptive working atmosphere which hardly generates any scope for them to raise their voices in terms of activist UP involvement.<sup>61</sup>

Any legislative initiative to advance women must, therefore, focus not only on the so-called objective of making men and women equal, but also on the inner aspects of the particular culture with which they are closely associated and in which discrimination is a deeply embedded social phenomenon.<sup>62</sup>

In particular, focus should be placed on the social relationships that construct and give meaning to women's roles. It might be useful to review the possible alternative ways in which social relationships are rooted in Bangladesh in an effort to combat discrimination against WM in UP (see below).

#### ***4.2.1. Resolving Public/Private Dichotomy***

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<sup>58</sup> Panday, 'Representation without Participation', p.506.

<sup>59</sup> Ain O Salish Kendra (ASK), *Human Rights in Bangladesh 1998*, (Dhaka: The University Press, 1999), p.141.

<sup>60</sup> *Ibid.*, p.94.

<sup>61</sup> 'Report on Bangladesh', (2006) [<http://www.adb.org>, accessed 3 June 2010].

<sup>62</sup> A. York, 'The Inequality of Emerging Charter Jurisprudence: Supreme Court Interpretations of Section 15(1)', in *University of Toronto Faculty of Law Review*, Vol.LIV, no.2 (Spring 1996), p.328.

The traditional assumption that women are biologically best suited to domestic work and men to economically assigned employment is nowhere more obvious than in the realm of stimulating and sustaining discrimination against women in the public world.<sup>63</sup> This assumption legitimates women's home-maker roles while largely relieving men of this responsibility as well as ignoring women's potential by forcing them out of highly valued public roles.<sup>64</sup> In this stereotypical assumption, women's domesticity is characterised by their social relationships in which they are depicted as economically dependent, submissive, caring and almost exclusively responsible for maintaining a sound family heritage, whilst men are evaluated as independent, productive and economically valued individuals.<sup>65</sup> Arguably, this economic significance has generated a 'superfluous ego', a feeling of 'power' among men in the traditional society as in Bangladesh, which inspires them to develop and exercise unwarranted dominance over women as opposed to developing helping and respecting attitudes.<sup>66</sup> In particular, the emphasis on women's household responsibilities within the private life 'inevitably gives way to the male-defined needs and interests of the workplace,' and noticeably reduces, or in some cases eliminates, women's employability by increasing employer's eagerness for males.<sup>67</sup>

On the other hand, the law's continued tolerance of this ideology and its lack of commitment to valuing women social and family roles have adeptly engineered an abnormal culture in the workplace where 'men-only-economic-value' concepts are acknowledged and nurtured. Thus, women suffer on two important levels. On one level, marital and parental responsibilities trap them inside the private domain without any legal recognition of their consistent efforts for the family. Customarily, women are primarily responsible for bearing and caring for children, family and the elderly no matter what they

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<sup>63</sup> L.M. Finley, 'Transcending Equality Theory: A Way Out of the Maternity and the Workplace Debate', in *Columbia Law Review*, Vol.LXXXVI, no.6 (Oct. 1986), p.1120.

<sup>64</sup> J. Mertus, 'Human Rights of Women in Central and Eastern Europe', in *American University Journal of Gender, Social Policy and the Law*, Vol.6, no.2 (1998), p.372.

<sup>65</sup> D.W. Carbado, 'Motherhood and Work in Cultural Context: One Woman's Patriarchal Bargain,' in *Harvard Women's Law Journal*, Vol.XXI, no.1 (Spring 1998), pp.11-4; Taslitz, 'Patriarchal Stories', pp.393-95.

<sup>66</sup> Begum, 'Politics in Bangladesh', p.7; C.A. Littleton, 'Reconstructing Sexual Equality', in *California Law Review*, Vol.LXXV, no.4 (July 1987), p.1319.

<sup>67</sup> Finley, 'Transcending Equality', p.1120; R.J. Franklin, 'Jefferson's Daughters: America's Ambiguity Towards Equal Pay for Women', in *Southern California Review of Law and Women's Studies*, Vol.XI, no.1 (Fall 2001), p.247.

earn, or how many hours they spend on public duties (if any), and these tiring tasks are not acknowledged (cost effectively or economically). At another level, only men are monetarily (and more substantially), rewarded for their role in the economy, one often achieved largely due to women's faithful fulfillment of domestic roles. Resolving this dichotomy is therefore a precondition to any endeavor to empower women.

A very comprehensive and long-established legal analysis exist in rights jurisprudence to illustrate how the law with its equal and special approaches has become inept to respond to women's specific needs, and failed to remedy the public-private dichotomy.<sup>68</sup> Here, I only highlight the two core points of these two approaches that emerged from this analysis. The 'equal' provision does not and cannot produce an equal result for men and women when they occupy different 'spaces' in a specific society.<sup>69</sup> Constitutional equality in Bangladesh, for example, while it aims to offer equal opportunity for an equally-qualified a man and a woman in the public office, it cannot guarantee women's equal access to education or other sources of power that are essential for her to attain the necessary qualifications to compete with men, and she cannot therefore benefit from this provision. On the other hand, the 'special' approach designed to acknowledge and value women's 'uniqueness', including features such as pregnancy, often transforms such attributes into a further disadvantage.<sup>70</sup> Women are penalised due to the extra costs associated with their employment (for example, maternity leave) and paid for by the employer. The extra cost intensifies the employers' resolve not to recruit women and reinforces their preferences for men.<sup>71</sup>

Resolving this dichotomy thus warrants an integration of a complementary provision reflecting women's perspectives ignored in existing laws that would recognise that both work in the home and outside are 'tedious' and are worthy of equal value and respect. The reconceptualisation of the socio-

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<sup>68</sup> C.A. MacKinnon, *Feminism Unmodified* (Cambridge: Harvard University Press, 1987), pp.37, 42; A.C. Scales, 'The Emergence of Feminist Jurisprudence: An Essay', in *Yale Law Journal*, Vol.XCV, no.7 (June 1986), pp.1387-89.

<sup>69</sup> *Andrew v Law Society of British Columbia* [Canada] [1989] 1 SCR 143: 164.

<sup>70</sup> Begum, 'Judicial Activism', pp.235-45.

<sup>71</sup> Mertus, 'Human Rights of Women', p. 374.

legal norms should begin in ways that would strive to diminish gender-value-hierarchy not by valuing one's role over other, or separating one from the other but by redefining and reassessing both roles in constructing and encouraging a flourishing healthy working relation. The law's recognition of the fact that an intrinsic, inseparable link and complementarity exists between public and private life is most crucial, especially in today's interconnected world where one's role is shaped and judged by considering others.<sup>72</sup> William maintained that a legal provision incorporating a shared notion of care based on mutual respect and concern, not disregard--- 'on relationship, not competition; on negotiation, not combat; on commitment, not individual self-interest'----can motivate men and women's involvement in both worlds and gradually cause stereotypical assumptions to disappear.<sup>73</sup> Most importantly, males, community and the society at large must be convinced that success even in public life has been achieved in significant part through the continued support and care provided by the private sphere, and that both spheres will suffer in important ways if the divide is allowed to continue unabated. At this stage, it is the primary responsibility of the legislator to reflect that 'new ethics of care' in law and convince all community members that ultimate prosperity indisputably depends on a combination of appropriate values from the two spheres, and that any denial of, or deviation from, that understanding would cause irreparable harm to society at large. This initiative, however, should not be underestimated, especially having regard to the society's dire need to resolve this dichotomy and to include more women in the public sphere. Drawing a correlation between the nation's overall development and women's continued exclusion from the public world, Sen observed: 'nothing is as important today in the political economy of development as an adequate recognition of political, economic and social participation and leadership of women.'<sup>74</sup>

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<sup>72</sup> Finley, 'Transcending Equality', p.1171.

<sup>73</sup> *Ibid.*, p.1181.

<sup>74</sup> As quoted in C.J. Ogletree, R. Silva-de Alwis, 'When Gender Differences Become a Trap: The Impact of China's Labor Law on Women', in *Yale Journal of Law and Feminism*, Vol.XIV, no.1 (Nov. 2002), p.96.

Given how socio-legal acceptance can create, reinforce and widen the gap between men and women and place the broader community at risk, the public-private dichotomy should be redressed in Bangladesh by reflecting women's exceptional concerns and ideals in law and giving these the recognition that they have long been unduly deprived of. More fundamentally, law must '...seek to foster women's equality... by joining strong anti-discrimination protections with gender neutral supports to enable men and women to share equally in paid market and unpaid caretaking work'.<sup>75</sup>

#### ***4.2.2. Reconceptualising the Notion of 'Responsibility'***

The notion of 'responsibility' owes its origin to the above public-private dichotomy that defines and divides male-females roles; but cultural hegemony not biological characteristics determines the extent of responsibility.<sup>76</sup> The increasing penetration of individualistic thinking in the nineteenth century's liberal philosophy of rights jurisprudence in which individual's autonomy and freedom were enticed to be achieved through separation from, rather than within, interconnected community values, has a significant influence on sustaining this ideology.<sup>77</sup> Liberal philosophy's almost exclusive focus on the 'self' attainment stimulated a competitive environment where individuals were motivated to concentrate more time and skills on fulfilling that goal not by interacting with, but by deviating from, other community members in the traditional duty based society.<sup>78</sup>

By adhering to this perception, laws had subsequently been enacted and enforced to establish equality, justice on the basis of, *inter alia*, gender; however, equality did not and could not be realised in any real sense because of the fundamental lack of examination of the conceptual issues surrounding rights analysis. Law in the first place predominantly endeavored to ensure individual rights, happiness and aspirations in the public sphere and the private domain and its particular needs and ideals went entirely unnoticed. This law's non-recognition not only generated devastating consequences for those women

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<sup>75</sup> *Ibid.*

<sup>76</sup> A.E. Freedman, 'Sex Equality, Sex Differences, and the Supreme Court,' in *Yale Law Journal*, Vol.XCII, no.6 ( May 1983), p.915.

<sup>77</sup> J. Donnelly, *Universal Human Rights in Theory and Practice* (London: Cornell University Press, 1989), p.28, 88.

<sup>78</sup> A. Jacobson, O. Bruun (eds), *Human Rights and Asian Values: Contesting National Identities and Cultural Representations in Asia* (Richmond: Curzon Press, 2000), pp.2-3.

who desperately needed public assignments, but also eroded the need for and justification of men's involvement in nurturing family relations, the most important and sacred obligation in human life.<sup>79</sup> This legal mistreatment inflicted at least two exclusive and unfair disadvantages on women: ironically, due to socio-economic and cultural impediments women gravitated to insignificant positions in employment while male dominated public employment. Consequently, the workplace had been structured and maintained, mainly with male values and perspectives in mind without regard to family needs.<sup>80</sup> With time, changing needs and values, women began to actively participate in public duties: they then found the 'equal' provision of law was ineffective in promoting equal results for them. For example, the height and weight requirements of law for particular jobs essentially eliminated women's possibility of contesting equally with men for those jobs.<sup>81</sup> The 'neutral' equal provision also failed to respond to women's unique biological differences and needs such as pregnancy as mentioned. To accommodate those differences and to mitigate women's disadvantaged status in the public sphere, law in the latter stage provided special treatment, affirmative measures and so on, what the males now regard as an 'excess' to the dimension of rights rather than a woman due.<sup>82</sup>

Since the 1940s, decades have been dedicated to trying to fit women's particular concerns in the public world by tracing a deep division detaching them from men without significant or required ends.<sup>83</sup> Although it cannot be gainsaid that women are now more conscious of their rights and such rights now have stronger legal basis, they still suffer a wide range of discrimination in both spheres, mainly because of ways legal and rights analysis have been developed.<sup>84</sup> It is therefore necessary to incorporate a new terminology of responsibility in rights analysis before making fresh attempts to further women's equal integration into the public life.

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<sup>79</sup> Mertus, 'Human Rights of Women', p.374.

<sup>80</sup> Finley, 'Transcending Equality', p.1119.

<sup>81</sup> *Action Travail des Femmes v Canadian National Railway* [1987] 1 SCR 1114:1124–26,1143–46).

<sup>82</sup> Littleton, 'Reconstructing Sexual Equality', p.1314.

<sup>83</sup> *Ibid.*, p.1326.

<sup>84</sup> Begum, 'A Deprivation', pp.1–48.

### A. *Responsibility in the Right Discourse*

Traditionally, one of the major objections raised in the current formulation of rights analysis has been that it regards individuals as isolated, autonomous ‘entities’ and ‘as proprietors of their persons and talents with respect to which they owe nothing to society.’<sup>85</sup> The individualisation of core pursuits such as freedom, equality, happiness and autonomy to satisfy the ‘self’ incapacitates individuals’ ability to interact with other community members in carrying out their responsibilities, and impairs harmonious social relations.<sup>86</sup> As Finley argued, the ways people search for ‘self attainment’ disengage individuals from ‘context and connection’ and hardly acknowledge any responsibility to or interconnection with others.<sup>87</sup> By establishing individuals as independent right holders, this particular ideology has undermined the practical necessity of having coherent and meaningful interaction based on mutual respect between men and women as well as outweighed the fundamental ethics of relationship between them. The self-centric competitive attitude could have largely been avoided had rights analysis developed on the basis of some complimentary values such as interconnection, compassion, devotion, kindness and respect. To incorporate and rationalise those values in the existing framework, legal analysis should begin by recognising that individuals-men-women are biologically, socially and emotionally interdependent.<sup>88</sup> One’s continued presence and support are indispensable to the fulfillment of the ‘self’ of others. The others’ positive feelings, regards, care and attachment essentially make the ‘self’ valued and life enjoyable, while disregard, neglect and detachment injure and render incomplete any achievement.<sup>89</sup> Inevitably, all of our gain, success, happiness and even existence find due meaning, significance and richness only when we locate ourselves in the pleasant emotional context and concerns of others.<sup>90</sup> Even from ethical viewpoint, society’s completeness is

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<sup>85</sup> Donnelly, *Universal Human Rights*, p.93).

<sup>86</sup> S. Goonesekere, ‘A Rights-Based Approach’, (2002) [<http://www.un.org>, accessed 25 Feb 2004].

<sup>87</sup> Finley, ‘Transcending Equality’, pp.1159–60.

<sup>88</sup> *Ibid.*, p.1161.

<sup>89</sup> Littleton, ‘Reconstructing Sexual Equality’, p.1335.

<sup>90</sup> Finley, ‘Transcending Equality’, p.1161.

sought by promoting interactions rather than separation between males and females.<sup>91</sup> The underlying principle suggests that for any material effort to be effective and successful in its entirety, a unity or a combination is indispensable. Littleton, for example, emphasises that '[even] with rapidly developing reproductive technology, it is still necessary for some part of a woman to interact with some part of a man to produce a pregnancy.'<sup>92</sup>

Thus, the real socio-biological-ethical recognition of the inevitability of an interaction between men and women significantly blurs the conception of 'self-autonomy', and should ease the process of reconstruction of laws that could benefit both. Although excessive allegiance to those values in legal spectrum may expose the risk of destabilising individual basic rights, little need be deducted from the current hard and fast conception to accomplish an interdependent and interrelated relationship that would ultimately benefit the children-men-women and society in general.

### ***B. Responsibility in the Workplace***

As long as law fails to take into account a shared notion of responsibility in the private sphere, women cannot escape potential adversaries in the workplace.<sup>93</sup> The consequences of the traditional assumption that the public workplace is exclusively a male domain has resulted in a 'wide range of hostility, ranging from unfriendliness to harassment' towards women when they managed to gain employment in that domain.<sup>94</sup> Eventually, at work, the legal prescription with its equal and special approaches (to accommodate their differences) could not remedy women's *de facto* inequality as noted; instead it aggravates the situation by denying their access to certain employment. Employment legislation in Bangladesh, for example, without making any alternative arrangements, unfairly penalised women by

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<sup>91</sup> P.H. Baily, *Human Rights: Australia in an International Context* (Sydney: Butterworths, 1990), p.27.

<sup>92</sup> Littleton, 'Reconstructing Sexual Equality', p.1327.

<sup>93</sup> S.R. Babu, 'Third Shri Akella Satyanarayana Memorial Endowment Lecture on Gender Justice-Indian Perspective', in *Supreme Court Cases Journal*, Vol.XV, no.1 (2002), p.5.

<sup>94</sup> Ogletree, 'When Gender Differences Become a Trap', p.91.

preventing their employment in a number of areas, including mining.<sup>95</sup> While an argument based on the well-being of the child is used to substantiate this treatment, it unfortunately overlooks the fact that the well-being of the mother, especially of the working mother in itself depends on the sincere support and compassion of the ‘public’ father, and nor does it acknowledge that their social contribution should deserve esteem, recognition and reward. This standpoint further underpins women’s subordinate status by imposing almost exclusively on women the burden of family-nurturing, and denying them the scope to learn skills essential required for highly valued prestigious positions.<sup>96</sup>

Yet, by any consideration—be it legal, moral or ethical---women alone as a group, should not logically be burdened with caretaking in private life and at the same time abandoned by the public sphere for doing such an important job. Back in the 1980s, the Supreme Court of Canada observed that women who bear children and benefit society should not be unfairly disadvantaged: ‘[such] an unfair disadvantage may result when the costs of an activity from which all of society benefits are placed upon a single group of persons’.<sup>97</sup>

The legal focus therefore needs to be shifted from the equal/special approach to accommodating women’s unique perspectives in the public life to the private life to redress contemporary experiences of work, and that must be reflected in workplace regulation. Workplace regulation should be restructured in a way that would see ‘mothering’ as not in conflict with the ‘profit’ and ‘productivity’ of the organisations. This process of restructuring must seek to endorse some values, such as a shared parental and family-nurturing responsibility, and a sympathetic view of men-women’s inputs into both spheres. Such a reconstruction would make both spheres connected and responsive to each other by integrating suitable lessons for eliminating discriminatory attitudes and also by compelling employers to cherish and enrich those values. To quote an important passage from Finley:<sup>98</sup>

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<sup>95</sup> R.J. Cook, ‘Reservations of the Convention on the Elimination of All Forms of Discrimination Against Women’, in *Virginia Journal of International Law*, Vol.XXX, no.3 (Spring 1990), p.698.

<sup>96</sup> *Marschall v Land Nordrhein-Westfalen* [1997] All ER (EC) 865: (29–30).

<sup>97</sup> *Brooks v Canada Safeway* [1989] 1 SCR 1219 at (part VII).

<sup>98</sup> Finley, ‘Transcending Equality’, p.1172.

...[In] the workplace the concept of responsibilities would start from a recognition that workers of both sexes have home lives and personal needs that affect them as workers, and that their lives as workers affect other aspects of their lives. This would give the employer a certain measure of responsibility to be sensitive to the way in which structures of the workplace can harm workers' ability to integrate their lives in a socially and personally healthy way.

As one of the most important ways to combine family and workplace values, parental leave has long been available in some countries. Finland could be regarded as a model for advancing women's active participation through restructuring the workplace in a way that facilitates parenting while not endangering women's chances for public employment. An amendment to Finland's *Contracts of Employment Act* 1988 mandates employers to provide parents with partial leave of absence to care for children who are under four years of age and live with them.<sup>99</sup> Although men are reportedly more reluctant to take this leave than women, this provision has created awareness of the issue among all concerned, and countries worldwide are increasingly recognise its importance by enacting a range of flexible legislation. Even in Asia, for example, in our neighboring country India, some industries have begun to grant father's leave as an alternative to maternity leave.<sup>100</sup>

Given the society's traditional negative assumptions about women's ability to work and the need to encourage their improved participation in employment, this article proposes the introduction of paternity leave for Bangladesh. It seems rational that paternity leave would make a significant difference in the way employers treat working women in conservative cultures such as Bangladesh. When men are seen in the family nurturing task employers may no longer consider them alone 'cost-effective'. Instead, men's engagement with caretaking chores will increase women's work time availability, which could improve their skills for promotion, or for securing and maintaining other highly paid employment. It could also make the 'difference' less costly, by motivating organisations/employees to overcome discriminatory judgments of working women; by enabling males to share the caring tasks and by progressing women's access to employment. Ogletree and Alwis

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<sup>99</sup> Report to the CEDAW Committee, (1989), CEDAW/C/Sadd.56, p.1.

<sup>100</sup> Babu, 'Gender Justice-Indian Perspective', p.5.

contend that shared parenting<sup>101</sup> ‘...will equalise the burdens of domestic work and enable both parents engaged in caretaking tasks to return to the workplace with minimum loss of job opportunities’.<sup>102</sup>

However, it is important to acknowledge here that the above provisions may unjustly work to the disadvantage of other groups, such as the employer and male-female employees without children. Also, there are strong academic arguments on the issue that maintain that such preferences are discriminatory against others. Childless employees, for example, may not see parental leave as suitable to their needs and may desire their special needs be accommodated through other ways. Nevertheless, certain exceptions to the right to ‘equality’ (via special rights) of the unequal are well recognised and used across nations to compensate for particular circumstances. For example, within a specific service, the service provider may be required to grant different remedies to equally qualified employees in response to unique situations, such as the accommodation of a disability.

Again, employers could see such provisions as apparently incompatible with their goal of profit and productivity, yet that should also be counterbalanced by the fact that they will benefit from happy, healthier and skilled employees through a reduction of training and associated cost.<sup>103</sup> Additionally, in some circumstances employers are under a legal compulsion to bear the extra cost resulting from employees’ special needs. In the US context, Finley, for example, asserts that the US law requires employers to protect the veterans’ jobs and reinstate them with full accrued seniority. She then contends:

When male activities and needs have been deemed socially important, employers have frequently been expected to bear some responsibility for them, even to the point of restructuring their workplace to the detriment of some other workers. Should we not expect the same for female activities and needs, especially one with such obvious social importance as bearing children?<sup>104</sup>

In the end, there seems no justifiable reason left for denying women recognition of their most valued roles in shaping and giving significance to family and work lives and to initiate the process of

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<sup>101</sup> Freedman, ‘Transcending Equality’, p.967.

<sup>102</sup> Ogletree, ‘When Gender Differences Become a Trap’, p.95.

<sup>103</sup> Finley, ‘Transcending Equality’, p.1175.

<sup>104</sup> *Ibid*, p.1176.

reconstructing workplace regulation in conformity with male female both needs. Rather, this process has every potential to produce a congenial culture in both spheres that would ultimately benefit men, women and the society at large.

## **5. POLICY RECOMMENDATIONS**

Despite significant advancement in WMs' political vision and awareness, their meaningful participation in UP is still frustrated by a series of powerful factors that must be addressed. The following policy recommendations might be supportive of redressing the situation.

1. A provision should be in place obligating UP to eliminate discriminatory and hostile work environments, which will require chairman to employ a definite plan and procedure of dealing with the issue.
2. Rude and abusive behavior must be recognised by law as actionable and compensable discrimination. A provision could be inserted in the Act creating a liability for not only treating WM less favorably than the male members but also for tolerating a culture which leads to intimidating or abusive work environment. In particular, all UP officials must be aware of that a clearly framed policy covering discrimination and harassment is in place and its violation will give rise to a legal claim.
3. The government should issue appropriate directives supported by an authoritative enforcement method to investigate, correct, and stop such treatment that 'renders competent performance impossible or continued employment intolerable'.<sup>105</sup> Providing such directives will restrict intimidation by the male members and strengthen administrative responsibility to achieve real equality for WMs by improving their protection against hostile workplaces.
4. To ensure qualitative participation there must be a provision that will ensure the inclusion of at least three WMs in UP decision-making. To that end, a new provision articulating clear methods of implementing different UP projects and integrating WMs in these projects should be introduced in section 45 of the Act.

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<sup>105</sup> *Canada Safeway v Laal* (2005) BCSC 457: (47).

5. An independent body with proper authority is indispensable in Bangladesh to monitor the compliance of equal opportunity as guaranteed by the Constitution and other laws in regard to UP practices in which half of the members could be women as in India.

6. A legal compulsion for drafting an annual report of UP reflecting, *inter alia*, WMs' perspectives and its compulsory submission by the chairman to the highest relevant body may produce positive results. Such a report will contain how UP complies with relevant strategies and what future plans it has drawn to promote genuine participatory governance.

7. Most importantly, despite the fact that different training programs among UP members are presently functioning in Bangladesh to raise awareness,<sup>106</sup> emphasis should be placed on a special training intended to rectify negative male attitudes by building up a compassionate working environment where males and females would see themselves as interrelated and interdependent rather than the rivals, a detrimental phenomenon based on patriarchal outlook. This program must focus on progressive, multi-faceted strategies embodying international best practices and aiming to sensitise all officials involved in UP and raise their consciousness of the law and core values of human life.

8. Finally, to redress women's traditional incapacities and advance their overall condition, the legal approach to equality in Bangladesh must provide room for the promotion of their ability to exploit the law's potential benefits. As mentioned, women cannot compete equally with qualified men because of their inequalities in their lives, for example, lack of education. To mitigate this, a substantive approach to equality 'meaning equality of opportunity and of result' could be integrated in policy-making.<sup>107</sup>

Even though the government has already undertaken some initiatives and different NGO and national education programs are in operation to that end, providing a quota of 25 percent of places for women at

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<sup>106</sup> CIDA, 'Assessing Training Program', (2002), [bd.org/rassu1, accessed 25 Dec. 2009].

<sup>107</sup> It encompasses a broad 'remedial component' to combat the effects of women's past incapacities by obligating the government to promote strategies appropriate to their particular experiences, even though the process may result in expense or some inconveniences for others. A reasonable restriction, however, to the right to have 'equality' of the unequals, the already advantaged groups, is recognised, in a number of laws across nations to redress women's underprivileged status in public life. See, *Alberta HRC v Central Alberta* (Canada) [1990] SCR 489 p.495.

the university level; establishing more educational centres or technical institutes exclusively for women, and developing a regular monitoring program to inquire into the impact of those educational programs would help immensely to increase the number of women in fields where they traditionally lag behind men.

## **6. CONCLUSION**

The foregoing demonstrates that the ways the socio-legal and cultural environment have developed in Bangladesh are not appropriate, or conducive to dealing with WMs' exceptional concerns in UP. Instead, the patriarchal outlook and discriminatory practices in UP have unjustifiably uphold men's supremacy and depicted WMs as unworthy of social and economic significance. On the other hand, the Act has conceived a highly flawed vision of 'reservation' that essentially promotes disrespect for WMs' governance roles and makes them passive participants in UP. All these socio-cultural phenomena and the fundamental shortcomings of the Act stimulate a grossly imbalanced power-centered approach in the public and private domains, worsening the vulnerability of already disadvantaged women in general in Bangladesh. In responding to such a situation, this article recommends the reconceptualisation of the Act seeking to achieve the 'equality' of result, and suggests that the proper accommodation of values and commitments of the males and females is the only way to foster a more balanced and compassionate environment in the both worlds.