

ISSN 1991-8976

Rajshahi University Law Journal

Volume 08 2013



**Faculty of Law
University of Rajshahi**

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The Fourth and Fifth Amendment Rights of the American Constitution: Protection of Rights during Search, Seizure and Interrogation

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Published by

Dean

Faculty of Law

University of Rajshahi

Rajshahi - 6205

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Rajshahi University Law Journal (RULJ) Volume 08 2013

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University of Rajshahi

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Published by
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Faculty of Law
University of Rajshahi
Rajshahi - 6205, Bangladesh

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Cover Design & Printed by
Md. Ariful Islam
Text Dot Com (TDC)
Farmgate, Motihar, Rajshahi-6212
Cell: 01711-951377

Subscription Rates

For Individuals: Tk 200.00 US\$ 20 (without postage)
For Organisation: Tk 300.00 US\$ 30 (without postage)

[Published in January 2016]

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Gender Equality and Its Impact on Domestic Violence Law: A Comparative Study of Australia and Bangladesh

Nasrin Rahman^{*}

Abu Naser Md Wahid^a

Biswajit Chanda^β

This article attempts to understand theoretically the laws relating to remedies available to women victims of domestic violence when they are deprived of services offered by the concerned support agencies. At first the study examines the equality provisions of Australia, precisely of Victoria, and those of Bangladesh. Then it scrutinises the existing legal status of the rights of such victims and its impact on their remedy. This is purely a theoretical study based on primary and secondary sources. In this process the Constitution and the relevant legal provisions of both jurisdictions have been looked into.

KEYWORDS: *Domestic violence, legal rights, fundamental rights, women victims, support services.*

1. Introduction

Over the past three decades violence against women including domestic violence has taken the myriad form and gender violence has been conceptualised as a human rights issue. As a result of its development as a human rights issue, the State is liable under the human rights law, which basically means translating the rhetoric and formality of international legal mechanisms into programmes and policies at a grass root level remains a major challenge in Australia (Craven, 2003) as well as in Bangladesh.

^{*} A PhD researcher and Advocate, Judges' Court, Rajshahi, Bangladesh.

^a Associate Professor, Department of Law, University of Rajshahi, Rajshahi-6205, Bangladesh.

^β Associate Professor, Department of Law, University of Rajshahi, Rajshahi-6205, Bangladesh.

The major problem is to address the issue of domestic violence in the legislation, and the problem is not observed at a glance. To correctly view this problem, the root of the legislation must be observed. In both countries the legislation is based on human rights and *Elimination of All Forms of Discrimination against Women* (CEDAW), although in Bangladesh, legislation is also based on the Constitutional provisions.

The first major recognition of women's human rights occurred in the 1970s, in the Convention for the CEDAW (Craven 2003). It was signed by both Australia and Bangladesh (State Government of Australia 2010 and NWAP 2011). The primary focus of CEDAW was political and economic discrimination, and issues that emerged in the public spheres of women's lives (Craven, 2003). Therefore CEDAW ultimately created the public/private dichotomy, and overlooked the violence which occurs in the private sphere against women.

As a signatory of CEDAW, both Australia (Victoria) and Bangladesh developed domestic violence laws. They consisted of the Victorian Domestic Violence Policy, *A Right to Safety and Justice* (one among many other policies) and the *Family Violence Protection Act 2008* (Vic), which are based on The *Charter of Human Rights and Responsibilities Act 2006* (Vic) and CEDAW, and in Bangladesh the *National Policy of Women's Advancement (NPWA) 2011* and the *Domestic Violence (Resistance and Protection) Act 2010*, which are based on the *Constitution of the People's Republic of Bangladesh 1972* and CEDAW.

However, the equality of women is directly protected by the Constitution in Bangladesh,¹ but not in Australia (Human Rights Council 2014). This article focuses on how gender equality is protected in both countries in terms of protection of a domestic violence victim and its implication on support services. More specifically, how the State of Victoria and Bangladesh protect a woman's rights concerning equality and how a woman victim of domestic violence is protected in Victoria and in Bangladesh when domestic violence law fails to protect her.

Coomaraswamy (1994) argued that by not acknowledging human rights abuses taking place in the private sphere, such as domestic violence, marital

¹ See Article 28 of the *Constitution of the People's Republic of Bangladesh 1972*. Available at http://bdlaws.minlaw.gov.bd/pdf_part.php?id=367. Accessed 15/12/2015.

rape and sexual abuse, the convention reinforced existing patriarchal structures and perpetuated a public/private dichotomy that further oppressed women on an international level. Later women's rights were recognised as human rights to deal specifically with violence against women. CEDAW addressed private life (Coomaraswamy 1997), and sought to make existing legal and political institution work for women and to expand State's responsibility for the violation of human rights.

State-Parties of CEDAW in theory are obliged to pursue policies in accordance with it and report to the CEDAW Committee (Bunch 1990: 495). In addition, according to Craven "declarations, like the *Universal Declaration of Human Rights 1948*, set out the general inalienable rights of all individuals, while Conventions and Covenants tend to focus on more specific areas or interest groups" (2003: 2).

A State can do it in a number of ways, such as incorporating provisions of a particular treaty into its legislations, formulating policies or programmes to promote and/or protect human rights or establishing national institutions to oversee, and if violated to offer remedies (Barker 1997).

As a result, unlike many other countries, in Australia human rights instruments are technically binding under law by the State. As for Bangladesh, most of the civil and political rights have been guaranteed by Part III of the Constitution as fundamental rights. In addition to that Bangladesh also ratified CEDAW. Therefore, once international human rights instruments is ratified, they can only place a degree of political and/or moral pressure on the State to make sure that the "citizens within the boundaries of their jurisdiction can both access and enforce the rights set out in their provisions" (Craven, 2003: 2). States can be asked to take appropriate measures to bring an end to the infringements in terms of violation of these rights, or fails in its responsibility to protect them.²

2. Legislative Provisions in Australia and Bangladesh

This section examines the provisions relating to gender equality provided in the *Charter of Human Rights and Responsibilities Act 2006* (Victoria) and the *Constitution of People's Republic of Bangladesh 1972*. This helps to

² *Prosecutor v Kunarac*, 22 Feb 2001, IT-96-23-T and IT-96-23/1-T at Para 436 cited by Marshal, 2008.

understand the implication of system failure on domestic violence victims in both the jurisdictions.

2.1 Gender Equality and the Charter of Human Rights and Responsibilities Act 2006 (Victoria)

The notion of human rights is one of the few moral visions recognised internationally (Bunch 1990: 486). Bunch stated that “few governments exhibit more than token commitment to women equality as a basic human rights in domestic or foreign policy”. The Australian Constitution stated very little about human rights and included a small handful of provisions that deal explicitly with rights (Saunders 2010). There is nothing in the Australian Constitution about gender equality (Oke 2008). However, the Constitution gives the Commonwealth government the power to make laws with respect to marriage, divorce, matrimonial causes, parental rights and the custody of guardianship (Australian Constitution section 51; Astor and Croucher 2010).

There is a dearth of research which has been done in the area of constitutionalisation of gender. Lambert and Scribner (2009) explained the two categories of Constitution according to the provisions that are based on maternalism and women’s traditional gender roles, and those based on egalitarian principles. In the gender neutral category, two types of differences were created: difference maternal and difference egalitarian. Having recognised women’s difference in maternalism, it is primarily focused on protecting women as mothers and recognising their unique reproductive and care-giving role. Egalitarianism is concerned specifically with the equality of women and proactively addresses discrimination and inequalities in the area of political, social and economic arenas in spite of their traditional reproductive role and thus focuses on the implementation of laws. Based on these differences, Lambert and Scribner (2009: 343) further propose that -

Such constitutional provisions suggest that the political community prioritizes the maintenance of traditional gender roles over gender equality and the ending of discrimination. Difference maternal provisions thus recognize women’s difference, particularly their role as mothers, but at the same time reinforce the social and structural barriers to women’s full participation in the political and economic arenas.

It is reflected in the Australian Constitution, which concentrates on women’s marriage and divorce rather than to protect equality in all spheres. Even though feminist activities have been prevalent for over 30 years, men still hold

the positions of power in the society, whilst women are confined to domestic work. Violence against women is still present in the society, and restrictive roles are imposed on women (Hillier, 1996: cited by Oke 2008). Domestic violence contributes more than any other risk factor to preventable diseases, disability and death for Victorian women aged 15 to 44 (Vic Health 2004: 7) and a woman is killed almost every week in Australia by a male partner or ex-partner, often after separation (State Government Victoria 2010: 7).

It is also evident from different researches that women are facing discrimination in their rights in Australia. To remove this discrimination, there are some legislations, such as the *Sex Discrimination Act 1984* in Australia, the *Equal Opportunity Act 2010* in Victoria, and every state and territory has developed their own domestic violence law. In addition, the proposed *Human Rights and Anti-Discrimination Bill 2012* includes the personal characteristic 'status as a victim of domestic violence' in the list of attributes protected from discrimination. The ADFVC (Australian Domestic and Family Violence Clearinghouse) supports this inclusion and states that it is 'absolutely necessary as employment legislation, at a federal as well as state and territory level, does not and cannot adequately protect employees from discrimination on the ground of domestic violence' and urges to treat domestic violence as a fundamental human rights violation (ADFVC 2012). To remove inequality from the society and to provide equality in dignity and rights to all people, in 2006 Victorian parliament further enacted the *Charter of Human Rights and Responsibilities Act 2006 (Victoria)*.

The *Charter of Human Rights and Responsibilities Act 2006 (Victoria)* is a milestone in Australia's constitutional and political history (Williams 2006).

Compared to many other countries, Australia has a better human rights record (William 2006), as well as a stable and efficient democracy (Saunders 2010). However, there are still some shortcomings in terms of providing protection. Australia's political culture respects human rights, and this influences the Australian approach to protection of rights (Saunders 2010). Saunders criticises that '[p]olitical culture changes over time and Australia does relatively little to reinforce the understanding of the significance of rights and the willingness to give them priority that such a culture requires' (Saunders 2010: 119).

The *Charter of Human Rights and Responsibilities Act 2006* recognises 'equality before law', protects the right to life, protects from torture and cruel,

inhumane or degrading treatment along with other rights. The equal protection before law imposes upon the states a positive duty to ensure protection to all persons. Sir Robert Menzies (1967: cited by Williams 2006: 30) remarked that "the rights of individual in Australia are as adequately protected as they are in any other country in the world." Indeed, Australian legal and political systems follow the tradition that accepts that the rights of individuals should be respected by the State. Therefore, so far, the Australian approach to rights protection has worked very well. In this line, the enactment of *Victorian Charter of Human Rights and Responsibilities Act 2006* is a great challenge in the view that as Australia has a good record in protecting individual rights, it does not need improvement through better legal protection for such rights (Williams 2006: 882). However, this article argues that in Australia individual rights in terms of women rights are beyond rhetoric and agrees with Saunders that it depends on political culture and their willingness. The article shows it in the following sections gradually.

The *Victorian Charter of Human Rights and Responsibilities Act 2006* under sub-sections 1, 2 and 3 of section 8 states that every person has the right to recognition as a person before the law, the right to enjoy his or her human rights without discrimination and every person is equal before the law and is entitled to equal protection of law without discrimination and has the right to equal and effective protection against discrimination. This means that the law must recognise that all people are human beings and have equal rights under the law.³ However, under section 7(2), it restricts power and states that a person's rights may be subject under law only to such reasonable limits as can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom and taking into account all relevant factors including -

- (a) the nature of the right;
- (b) the importance of the purpose of the limitation;
- (c) the nature and extent of the limitation;
- (d) the relationship between the limitation and its purpose; and

³ See the Child Protection Practice Manual, available at <http://www.dhs.vic.gov.au/cpmanual/library/practice-resources/practice-guidance/human-rights-introduction-to-the-victorian-charter>. Accessed on 01/08/2015.

(c) any less restrictive means reasonably available to achieve the purpose that the limitation seeks to achieve.

The rights-restricting powers contained in the *Victorian Charter* help to establish an institutional dialogue amongst the arms of government about the legitimacy of governmental actions. Even the international human rights law neither derogate absolute rights nor limits such rights and as a result 'the *Victorian Charter* does not meet the minimum standards required by international human rights law when exercising the equivalent power of derogation' (Debeljak 2008).

In addition, unlike Bangladesh, where constitutional supremacy is predominant,⁴ the *Victorian Charter Act* retains parliamentary sovereignty, which is linked to traditional rights instruments. However, it allows the judiciary to invalidate a legislation that is contradictory only with guaranteed rights (Debeljak 2007: 15). Debeljak (2008: 428) noted that -

More modern human rights instruments address this supposed anti-democratic tension by ensuring that the judiciary does not have the final say about rights. In these instruments, judicial review is simply one element of an institutional dialogue about rights between the executive, legislature and the judiciary. This contrasts with a parliamentary monologue in jurisdictions with no formal protection of human rights (such as the Australian model), or a judicial monologue under a fully-fledged constitutional human rights instrument (such as the US model).

Victorian Charter recognises the power of Victorian parliament and overrides the rights under section 31. Section 31(1) states that parliament may expressly declare in an Act that the Act or any provision of that Act or another Act or a provision of another Act has effect despite being incompatible with one or more of the human rights or despite anything else set out in this Charter. In section 6 it further states that 'if an override declaration is made in respect of a statutory provision, then to the extent of the declaration this Charter has no application to that provision'. Even the Supreme Court cannot make a declaration of inconsistent interpretation in respect to the statutory provision.

In addition, section 38 of the Victorian Charter poses restrictions on public authority. It states that "it is unlawful for a public authority to act in a way that

⁴ Article 7 of the *Constitution of the People's Republic of Bangladesh 1972*. Available at http://bdllaws.minlaw.gov.bd/pdf_part.php?id=367, accessed on 02/08/2015.

is incompatible with a human right or, in making a decision, to fail to give proper consideration to a relevant human right' and it gives the definition of public authority under section 4. Williams (2006: 900) summarised this as 'an entity whose functions are or on include functions of a public nature, when it is exercising those functions on behalf of the state or a public authority (whether under contract or otherwise)'.

As Victorian domestic violence law is based on Victorian Charter, thus in spite of enormous data that women are the main victims of domestic violence, Victoria fails to divide public/private dichotomy and the family violence law sets the definition as gender neutral. Symbolically, thus reveals that men and women are both the victims of violence, in the light of human rights. On the other hand, gender framing of domestic violence demonstrates that women as citizens deserve to live without fear of violence, and that the society needs to take action against it (Murray and Powell 2011: 48). In this connection, it is important to mention that while domestic violence mainly happens towards women and children, the Victorian government has given more emphasis on children rather than women in the domestic violence law.

The Victorian Charter takes a cautious approach to domestic rights protection by satisfying the desire to preserve parliamentary sovereignty and it is highlighted by the resistance to secure rights within the *Victorian Constitution Act 1975* (Victoria) (Debeliak 2007). The Charter is just a instrument, rather than a law that focuses on enforcement by courts (Williams 2006: 893). Williams further comments that '[t]he Victorian Charter does not give the final say to the courts, nor does it set down unchangeable rights in the Constitution Act 1975 (Victoria).'

2.2 Gender Equality and the Constitution of the People's Republic of Bangladesh 1972:

In Bangladesh "women's rights" has become one of the fundamental principles of state law (Begum, 2004). Bangladeshi Constitution guaranteed equal rights and equal protection of law to all citizens.⁵ Moreover, because of the magnitude and pervasive nature of violence against women, Bangladeshi parliament especially enacted the *Domestic Violence (Prevention and*

⁵ See Part III of the Constitution of the People's Republic of Bangladesh, 1972, in particular articles 27 and 28. Available at http://bdlaws.minlaw.gov.bd/pdf_part.php?id=367. Accessed on 15/08/2015.

Resistance) Act 2010 along with a number of other laws to protect women. In spite of this, in response to international proliferation, Bangladesh ratified fifteen human rights instruments⁶ and undertook a range of formal plans to promote women rights (Begum 2004).

As mentioned above, Bangladesh includes human rights, mainly civil and political, as fundamental rights in the Constitution. There are differences between Constitution and statute in terms of nature and character (Islam 1995). Fundamental rights are those human rights which get special treatment by being guaranteed by the Constitution of a State. Islam (2012: 125-6) posed doubt over effective protection of individual liberty without constitutionally guaranteed fundamental rights because of the fragile political decision of persons having majority support of the day. In favour of his argument, Islam (2012: 126) cited Lord Scarman, '[w]ithout a Bill of Rights protected from repeal, amendment, or suspension by the ordinary process of a bare Parliamentary majority controlled by the government of the day, human rights will be at risk.' It is not like legislation, which may be reversed by political majorities (Lambert and Scribne 2009), rather liable to revisions to meet different situations (Islam 2012). In addition, it has 'consequences for government policy initiatives as well as the judicial protection and definition of individual rights and state obligations' (Lambert and Scribner 2009) and 'above all it is a document under which laws are made and from which the laws derive their validity' (Islam 1995). Constitutional guarantee of such rights are also important as the right to move before the Supreme Court for the enforcement of any of the fundamental rights is itself a fundamental right (Islam 2012: 385). But that is not the case for the violation of legal or statutory rights like Australia, which may be in a less stronger footing in terms of its protection.

Lambert and Scribne (2009) maintain that 'Many Countries across the developed and developing world have increasingly moved to constitutionalise gender, either with respect to equality between men and women or with respect to women's essential differences from men'. This article discussed above about the maternalism and egalitarianism. Idealisation of the family within the Constitution is associated with a greater inequality between women and men (Lambert and Scribne 2009: 343). In Bangladesh, the Constitution

⁶ See https://www.unicef.org/bangladesh/Child_Rights_Convention.pdf, accessed on 15/08/2015.

provides equal rights in all spheres of State and public life, equal opportunity of employment and special provisions in the form of positive discrimination in favour of women, children or for the advancement of any backward section of citizens.⁷ This emphasises that Bangladeshi Constitution does not see women in their traditional roles as mothers, rather its affirmative action is positively associated with measures of women's equality with men, which is in the line of the theoretical argument made by Lambert and Scribne (2009).

This is also imbedded in the domestic violence law, where the law explicitly mentions gender based violence, which means women are the victims, which implies that as citizen women have equal rights and deserve to get the protection from the law, so that they can live without fear (Murray and Powell 2011). In line with the observation of Murray and Powell, Bangladeshi domestic violence law explicitly mentions women as the main victims of such violence.

In reality, as Ameen (2005) confirms, despite constitutional guarantee, there are many instances that women in Bangladesh are discriminated by the society. It is also suggested that women in Bangladesh are provided formal equality by the Constitution, however, 'in the areas of social norms, education, employment and legal rights, gender inequality is perpetuated by patriarchy' (Ameen 2005: 4).

It is claimed that 'the subordinate position of women in Bangladeshi society is prevalent in every sphere of their lives' (Ameen 2005: 4). The reason is that patriarchal attitude is deeply rooted in Bangladeshi society. Pease and Flood (2008) observe that the attitude is the central concern for violence against women and it is also true in the case of Bangladesh. In spite of guaranteed equality by the Constitution, women are deprived of their rights because of the patriarchal attitude. There are several pieces of evidence, as mentioned below, on how the attitudes of patriarchy shaped in Bangladeshi society and legal system.

The legal system of Bangladesh is primarily based on common law (Begum 2004; Hossain 2003). A series of laws which were enacted and inherited from British India (Begum 2004) are far too old, but are still in practice in Bangladesh without mostly any amendment. Some of them are well suited to

⁷ Article 28(4) of the *Constitution of the People's Republic of Bangladesh 1972*. Available at http://bdlaws.minlaw.gov.bd/pdf_part.php?id=367. Accessed on 15/08/2015.

women advancement; however, some of them lie in a critical situation which further constructs patriarchal attitude. For example, lack of research, misinterpretation of the text and enactment of law as per the need of men are just making the issue more complex. The enactment of provisions regarding polygamy favouring the husband in the *Muslim Family Laws Ordinance 1961* reinforces gender inequality. In spite of its explanation by different researchers, such as Ameen (2005), Khatun and Rahman (2012) and a decision given by the High Court Division in the case of *Elias (MD) vs Jesmin Sultana*⁸ still that law is in existence. The 1961 Act also gives unilateral right to husband in the case of divorce.

Moreover, effective implementation of law naturally depends on the due process of law, good governance, an independent and strong judiciary, efficient law enforcing agencies and above all, an honest political commitment of the government (Begum 2004).

The patriarchal attitude is also seen in the *Domestic Violence (Protection and Resistance) Act 2010*. On the one hand the law recognises that women are the main victims, on the other hand it imposes punishment for false complaints, which may go against women. While law does not impose any punishment for the perpetrator of domestic violence except in the case of protection order, however, it imposes punishment for false complaints, which contradicts with each other. Thus Smart (1982) maintains that it is the patriarchal arrangement, supported by law, which ensures the social and economic insecurity of women and thereby oppress them.

3. Redress Offered by the State in terms of Equal Protection and Equality

The discussion on women's equality under the Constitution and statutory laws above remind that 'female subordination runs so deep that it is still viewed as inevitable and natural, rather than seen as a politically constructed reality maintained by patriarchal interests, ideology and institutions' (Bunch 1990). This section focuses on whether the state fails to protect a woman through domestic violence law, how the woman will get the redress, or what redress is available in Victoria and Bangladesh to protect women under the Human rights law in Victoria and under constitution in Bangladesh and how it works.

⁸ 17 BLD (HCD) 04 (1996).

In Victoria, if the State fails to protect a woman from domestic violence through domestic violence law - the *Family Violence Act 2008*, she is able to make a complaint before the Department of Human Services (DHS) under the *Victorian Charter of Human Rights and Responsibilities Act 2006*, when a breach is occurred under the Charter, she can complain to an external complaint body such as the Ombudsman or courts or tribunals. In addition to that

A person who believes their human rights have been violated by a public authority cannot seek damages for this under the charter. However, if they are able to go to court or apply to a tribunal under another law (an existing cause of action), they can add a claim that the public authority acted unlawfully because they breached the Charter. If the court or tribunal finds there has been unlawful activity, they may be able to stop further activity. Such a finding of unlawful action would impact on the reputation of the public authority and the government.⁹

In Bangladesh, if the State fails to protect a woman from domestic violence articles 44 and 102 of the Constitution empowers the High Court Division (HCD) of the Supreme Court to issue orders and directions in order to enforce fundamental rights, which is called writ jurisdiction of the HCD (Begum 2004).

In a Victorian case, Luke who was 11 years old, died at a cricket ground in Melbourne, after his father Greg Anderson hit him with a cricket bat and stabbed him. Greg Anderson was shot by the police and died in the hospital. At the time Anderson killed Luke, police had four arrest warrants in his name and several intervention orders, including one to protect him and his mother.¹⁰ However, the police personnel who visited Anderson in the weeks before did not have access to that information.¹¹ In addition, it is found that a bail application document dated 4 January 2013 was penned by first constable Clinton Taylor of Hasting police. In the second application on 11 June 2013

⁹ Available at <http://www.dhs.vic.gov.au/cpmanual/library/practice-resources/practice-guidance/human-rights-introduction-to-the-victorian-charter>. Accessed on 03/08/2015.

¹⁰ Carlyon, Peta. 2014. 'Luke Batty inquest: Father, Greg Anderson, previously threatened 11yr son with knife.' Available at <http://www.abc.net.au/news/2014-10-20/luke-battys-father-had-threatened-son-with-knife-before-coroner/5827314>. Accessed on 15/08/2015.

¹¹ ABC News. 2014. 'Luke Batty murder prompts Victoria Police to speed up arrest warrants'. Available at <http://www.abc.net.au/news/2014-03-11/luke-batty-case-prompts-changes-to-police-warrants/5312880>. Accessed on 15/08/2015.

the police prosecutor told the magistrate that the application for bail was unopposed.¹² The inquest Victorian State Coroner Ian Grey found key issues to be explored. Police officers described Anderson as “intelligent” and “calculating” while coroner Ian Gray heard that he had been suffering from delusions and probably an undiagnosed mental illness.¹³ In spite of history of mental illness Anderson was allowed to meet and spend time with his son, which was found during the inquest. In addition, DHS closed the file in spite of Luke informed them that his father attempted to kill him with knife. Later Rosy (Luke’s mother) told in the court that she built up a rapport with DHS officer and had ‘felt reassured’ that they were involved in Luke case.¹⁴

It may be argued that because of the absence of constitutional rights, Rosy could not file a complaint against the police and DHS. In this case, the police failed to assess and arrest Anderson in spite of having an arrest-warrant against him. DHS closed the case of Luke in spite of hearing that he was threatened by his father with a knife. In spite of Anderson’s mental illness, the court did not send him for counselling, rather allowed him to meet his son. The most significant issue is that Victoria’s coroner did not release an official report of this murder, amid fears it would undermine the State’s child protection services¹⁵ and also ruled that it would not be made public for the next five years.¹⁶ Here applies section 38 of the Victorian Charter which poses restriction on public authority and alludes parliamentary sovereignty over the

¹² Hurley, David. 2013. ‘Police ‘bungled’ bail hearing of Luke Batty’s dad Greg Anderson’, *The Herald Sun*. 21 February 2014. Available at <http://www.heraldsun.com.au/news/law-order/police-bungled-bail-hearing-of-luke-battys-dad-greg-anderson/story-fni0fee2-1226834170539>. Accessed on 15/08/2015.

¹³ Davey, Melissa. 2014. ‘Luke Batty: killed by a father no one truly knew’, available at <http://www.theguardian.com/australia-news/2014/nov/02/-sp-luke-batty-killed-by-a-father-no-one-truly-knew>”, accessed 15/08/15.

¹⁴ Hobday, Liz. 2014. ‘Luke Batty inquest: Rosie Batty says she was traumatised by Victoria’s court system’. Available at <http://www.abc.net.au/news/2014-10-22/rosie-batty-traumatised-by-court-system-dealings/5832792>, accessed 02/08/15.

¹⁵ Carlyon, Peta. 2014. ‘Luke Batty inquest: Victorian coroner blocks release of report into 11-year-old’s death’, available at <http://www.abc.net.au/news/2014-12-03/coroner-blocks-release-of-report-into-luke-battys-death/5938662>, accessed 02/08/15.

¹⁶ Davey, Melissa. 2014. ‘Luke Batty report must be suppressed for five years, coroner rules’. *The Guardian*, Australia. 03 December 2014. Available at <http://www.theguardian.com/australia-news/2014/dec/03/luke-batty-report-must-be-suppressed-for-five-years-coroner-rules>, accessed 03/08/15.

individual rights and more specifically women's rights as a citizen. In Victoria, except the police, the domestic violence law does not include other support services although they are directly involved in a domestic violence case.

In contrast, in Bangladesh a woman at least have the right to file a writ-petition against the state for discharging their duties according to law (Islam 2012: 745). In Writ Petition No. 1395 of 1997 where Bangladesh National Women Lawyers Association (BNWLA) had filed a writ petition before the High Court Division of the Supreme Court against the police and prison authority for keeping women in custody with ordinary criminals and exposing them to vulnerability. The High Court Division issued a rule upon the respondents (five concerned departments/ministries of the Government of Bangladesh) (Ali 2001).

Another writ petition was filed against the police administration and the University of Dhaka authorities to show cause as to why they would not be directed to take steps according to law to eradicate anti-social and criminal activities and to improve the law and order situation in Dhaka city in general as well as in the university campus. The High Court Division directed the government and the police to take necessary action against the persons who were engaged in that crime (Ali 2001).

The above instances of two different jurisdictions, namely Victoria and Bangladesh, clearly show that constitutional guarantee of human rights as fundamental rights placed a domestic violence victim in a more favourable position than mere statutory protection.

4. Conclusion

On the basis of the findings of this study, it can be concluded that Bangladeshi constitutional guarantee and provisions of gender-based positive discrimination in favour of women based on egalitarian principles theoretically offers a better and effective protection to female domestic violence victims against government agencies than that of the Victorian position which is based on maternalism. However, despite the constitutional guarantee, because of the patriarchal nature of society, in practice, Bangladeshi domestic violence victims are often oppressed by society and law related people. On the other hand, since the Australian approach to the protection of rights relies heavily on a political culture that respects individual

rights, their rights are better protected. The existence of constitutional guarantee of human rights, however, may improve the protection of the victims against government agencies when they fail to comply with statutory laws.

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