

HUMAN RIGHTS *analysis*

LAW week



Economic globalisation and gender equality

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THE term "globalisation" is frequently used among economists, politicians and policy makers when describing the increasing interdependence of countries. For the economists however it is usually defined as an expansion in the volume and variety of cross-border transactions in goods and services, a dramatic increase in international capital flows and also the more rapid and widespread diffusion of technology.

In today's globalise world economy, women are playing increasingly indispensable roles in international, national and household economies, but they still have a disadvantaged economic position compared to men. This article tends to identify the possible effects of globalisation upon women and proceeds to ensure gender equality in the process of economic globalisation.

Impacts of globalisation on women

The impact of globalisation on women depends upon women's position within her local, regional and national economy as well as her role in the social reproduction of family welfare and care services. Therefore, the impact of economic globalisation on women needs to be assessed in light of women's multiple roles as productive and reproductive labor in their families, as well as their contributions towards overall community cohesion and welfare, and maintaining the social fabric. Thus a gender analysis in relation to trade liberalisation should encompass an understanding of the social and cultural construction of the roles and relationships between men and women.

The elimination of public subsidies for health, education and other social services resulted in transference of the "welfare" function of the state onto families, and by extension onto girls and women. This trend is increasing the burden of caring for vulnerable community members (such as children, the aging, disabled persons or those with illness) on families. Because of women's traditional roles in most societies as caregivers, this burden has been disproportionately borne by women than men.

If basic education is privatised or if families cannot afford costs of education, it is more often girls who drop out of school than boys because of beliefs that boys need formal education more than girls to prepare them for their future social roles. This has further implications for the type of employment that women are able to find when they move into the wage labour market. With lower levels of education, women will tend to be concentrated in the lower rungs of the labour market and in jobs that require less formal training or education. Again, the replacement of manual labour with machines and new technology usually displaces more women than men.

An essential aspect of trade liberalisation is export competitiveness and much of this competitiveness in developing countries (like Bangladesh, India) has come from the labour of women. While export industries offer women opportunities for employment and income, the unregulated and competitive nature of these trade regimes also means that women's labour is often unprotected and salaries are still often determined by gender rather than the skills required for the job, resulting in unequal pay for equal work and harassment.

The liberalisation of the agriculture sector has also affected women in a variety of ways, from losing access to local markets for their products to dislocation from traditional forms of livelihood, outward migration and re-settlement. Under trade liberalisation agreements (such as in the WTO) developing countries are bound to import a percentage of agriculture and

food products for domestic consumption.

Another crucial area that is affected by globalisation due to trade liberalisation and privatisation regimes is natural resources, particularly in relation to bio-diversity and traditional knowledge. As women are usually responsible for meeting the family's daily food and livelihood needs, and are veritable storehouses of knowledge about local bio-diversity and traditional extraction practices, privatisation and commercialisation of these resources has an immense negative impact on women.

Bio-piracy and the patenting of women's traditional knowledge of bio-diversity and production processes by private corporations also disempowers women in very particular ways. This not only neglects women's intellectual contributions to bio-diversity and traditional practices, but also, they are compelled to pay for the very resources that they have nurtured and protected for generations.

The liberalisation of tourism industry has also negative effects on women. The promotion and opening of the tourism sector in many countries notably in the Asian countries has led to an increase in prostitution and new



"slave trade" involving women and children. In countries where prostitution has been recognised as work and as an economic sector the illegal traffic of women for prostitution has increased

Therefore, a welfare state should take into account the new conditions of the world economy and labour market, the changed role of women, the growing presence of immigrants, the corporate responsibility etc. For a greater involvement of women in the globalisation process, human and economic capital must be judiciously mobilized. Active policies that provide women and men with increased choices for work and family life must be implemented in both public and private sectors.

Gender equality in the process of economic globalisation

The international community has a duty to promote equality among all human beings, men and women, as required by all international human rights instruments. The principle of equality is inherent in the notion of human rights and should serve as the basis for their realisation. The

Convention on the Elimination of all Forms of Discrimination against Women requires that women should be accorded rights equal to those of men without any de jure discrimination. It also calls for the identification and elimination of obstacles towards enjoying these rights, other than those of a legal nature. Women are thus entitled to the enjoyment of all human rights, including those relating to economic development and resources.

In March 2000, the Human Rights Committee interpreted Article 3 of the International Covenant on Civil and Political Rights in a comprehensive new General Comment regarding the equal rights of men and women. The Human Rights Committee confirmed that gender equality is an overarching principle that applies to the enjoyment of all rights - civil, cultural, economic, political and social - and that the right to gender equality is not merely a right to non-discrimination, affirmative action is required.

Therefore, now day's women's participation in development decisions is seen as a requirement of both sustainable development and principle of gender equality. The concept must be refined in the globalisation process and pragmatic and practical steps should be made to ensure gender equality in the international trade.

Engendering the international trade or gender equality in the globalisation process in facts points to broad human development, a more comprehensive concept than mere economic development. Engendering the globalisation or gender development takes off from the feminist idea of a participatory world, a system of sharing that has its roots in interaction among equals, not just before the law but each in the eyes of the other. Such a world may not be easily attainable but it is perhaps the only possible way in which humanity may reach peace in prosperity, liberty, equality, and justice.

To ensure gender equality in the globalisation process, collective political action at different levels: supranational, national, local etc is essential and to do this following may be considered-

- to adopt gender-sensitive policies and programmes of economic and social development at national and international level
- to balance inequality, injustice and insecurity produced by neo-liberal policies, reinforcing social rights and fighting against social exclusion;
- to redefine the international system of accounts to take into consideration women's work, environmental protection and other social factors which do not now affect the gross national product and economic measures.
- to develop new and wider public policies to ensure conditions of equity, equal opportunities and social cohesion;
- to consolidate democracy and women's equal participation in decision-making;
- to regulate transnational corporations to ensure the protection of labour rights and human rights, including explicitly women's rights
- to give women full and equal access to economic resources, to credit and the right to own land and to inherit and
- to restructure and target the allocation of public expenditure to promote women's economic opportunities to education, training, the sciences and new technologies etc.

However, the impacts of economic globalisation on women, and the development of progressive policy measures to counter these measures will not receive the attention it deserves until ongoing discrimination and marginalisation of women is challenged and reconstructed. It is expected that state parties and the international institutions and organizations will take into account the international instruments on human rights and should realise that globalisation or international trade cannot be an excuse to violate human rights. Trade agreements also need to be in conformity with international human rights instruments.

LAW letter



Judicial officers must maintain honesty



TRANSPARENCY International has carried a regional survey recently where it found police department is the most corrupt sector in Bangladesh, which is followed by judiciary. Based on the survey Transparency International issued a press release focusing on its executive summary where it says judiciary is the second most corrupt sector in Bangladesh. This press release was published in the print media and created a furore in the minds of legal community. Hon'ble Chief Justice expressed his anguish over the report while addressing the annual conference of judicial service as Chief guest. It is indeed, a matter of high concern for all of us as member of the society. In early days there was hardly a man who publicly doubted the integrity of a Munsif which was the last tier of the sub-ordinate judiciary. But today a large number of people do doubt the honesty and integrity of Judicial Officers.

In the press release issued by the Transparency International a postscript was added underneath which says the report only refers to lower judiciary and thereby it excluded the higher judiciary from the findings of the survey. Out of 231 respondents, 66 per cent were victim of corruption by the court staff while 13 per cent were victim of corruption of the Public Prosecutors and 10 per cent were by the lawyers of the other side and only 8.62 per cent respondents stated that they were the victim of corruption of the Magistrates. They have clearly claimed that they gave bribe directly to the Magistrates. Based on this household survey report TIB has come to a findings that police is the most corrupt sector in Bangladesh which is followed by the judiciary and it apparently sounds ridiculous to term the lower judiciary as corrupt sector when the honesty and integrity of judicial officer were not at all doubted.

It is an undying truth that Magistrates exercising judicial functions are part and parcel of lower judiciary and it is also true that most of the litigant seek relief in the courts of Magistrates for criminal matters. To them lower judiciary or lower courts in other words is nothing but the Magistrate courts. The persons employed in the judicial service have legal education while the Magistrates belong to Administrative Service are not, few of whom are doctors and Engineers. The Constitution of Bangladesh has not defined the sub-ordinate judiciary as a whole but judicial service is well defined in the constitution in Article 152. It is true that the constitution includes the Magistrates as judicial officers in the sub-ordinate judiciary. The purpose was quite temporary and transitional as per Article 6(6) of the Fourth Schedule (Article 150) of the constitution which lasted for more than 30 years. Therefore sub-ordinate judiciary was composed of both by the judicial officers and by the Magistrates exercising judicial functions as enshrined in part VI chapter II of our constitution.

It is understood that the higher judiciary was kept outside of the survey for numbers of reasons. Same thing have been done in respect of judicial officers by simply using a word that it does not relates to persons employed in the judicial service. Had it been the case that the persons who carried the survey and prepared executive summary have an amount of respect about the judges of sub-ordinate judiciary same as the judges of the Supreme Court. The reasoning which were given in the report to substantiate existing corruption do more relates to police and magistracy apart from which the report is full of trash. It shows that the modality of the survey and its sample were not aiming at the judges of the sub-ordinate courts. The bulk of the accusations have come on the shoulder of the judicial officers and therefore, the report needs to be contradicted for obvious reason.

I am not in any way trying to establish or put forward an argument that the judges of the sub-ordinate judiciary are honest as expected and the

Magistrates are resorting to corrupt practice and that is not my look out too. Both of the judges of sub-ordinate judiciary and the Magistrates are the members of the society and the people today have doubted the honesty of both. But in this age of extreme moral degradation if any one is asked to name a department where the officials care for honesty the answer, I am sure, would be judiciary. If the judicial officer can not maintain this perception of the people it is the judiciary which will be the best loser. The judicial officer who does not or can not maintain honesty should immediately quit the job and try for elsewhere.

M Harunur Rashid
Joint district judge, Madaripur.

Independent election commission: A far cry

Relationship between the government and the Election Commission is in the extreme point over the Union Parishad elections. Chief Election Commissioner Mr. M.A. Syed asked for army deployment during the polls. But the government turned down his call contending that army deployment

in Union Parishad elections is unprecedented in the country and the law and order of the country is much better following the joint drive. According to Constitution of Bangladesh election commission's duty is to hold elections and it is the constitutional duty of the government to assist the election commission in holding the elections free and fair by complying with the request of the election commission. If Article 126 and 119 are read together it becomes clear that it is constitutional duty of the government to the election commission in the discharge of its function. Article 126 of the constitution says that it shall be the duty of the government to assist the election commission in the discharge of its functions. On the other hand clause 2 of the article 119 of the constitution said that the election commission should perform such functions as may be prescribed by the constitution or any other laws. It is up to the election commission to assess what assistant it required from the government and it is the constitutional obligation towards the election commission to ensure such assistant. Therefore it is gross violation of the constitution if the government fails to respond to election commission's request. In fact, this is the common tendency of our political parties to do everything in the way they want. Present party in power BNP opposed appointment of Mr. Syed saying that he was a former District Governor of Bakshal. But they welcome his role during the parliament election in October 2002. This time Bangladesh Awami League termed him as a traitor. Apparently it is seen that BNP is not satisfied with the CEC and even they thinking of his removal by putting age bar on the constitutional post. Such type of non-cooperation of the government hinders the election commission to act independently, which is opposed to its constitutional obligation of the government.



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Mehar Nigar
Dhaka University.

FACT file



Does fatwa still continues?

FARAH JABIN SHAMMY

Nazma Akhtar, 24, endured several cane lashes as her neighbours watched helplessly. The flogging was ordered by a group of religious leaders of her village in Comilla district after she eloped with her boyfriend and married him secretly. The trial and punishment occurred as recently as in September this year. She was sentenced to 100 lashes. The young woman, haunted by the public humiliation, never really understood why she had been punished. "Is it a crime to fall in love with the person you like and marry him? I did not protest the flogging after the so-called prosecutors threatened to expel my family from the village," said Nazma. She was flogged in front of her neighbors, friends, relatives and other people of the village. Few dared to intervene to save her. Such flogging is illegal in Bangladesh, which despite being a Muslim-majority nation is governed by secular laws. Yet, this type of trial and punishment is a common practice in the country's remote villages, which are controlled by the religious leaders. The village leaders pronounce "Fatwa" (religious edict) in incorrect interpretation of Islamic laws and practice. The perpetrators are usually influential people linked with the rich, while the victims are almost always women from the poor families. These poor people are always subjected to violence and neglect. The incident of Nazma has brought to remind the 1993 death of Noorjahan at Chhatakchhara village in Komolgnaj upazila under Moulvibazar district. Noorjahan, 22, took her own life after she was buried up to the waist before being stoned in execution of a fatwa issued by a group of local Muslim leaders. Noorjahan's death shocked the nation and raised new questions about the practice of fatwa.

Unofficial figures show that 162 women fell victim to fatwa in eight years till 2000. However, these figures were collected mainly from newspaper reports. The actual number of such victims is believed to be higher. Human rights activists say, those who practice fatwa is not fit for the job. They are too ignorant about Islam to perform such a difficult job. In fact, such clerics abuse Islam for lack of knowledge about it.

Khatib of Baitul Mukarram National Mosque Maulana Obaidul Haq said, "Fatwa" is an Arabic word that means "decision" or "resolution". "The purpose of fatwa is to explain the laws of shariah," he said. Maulana Haq said an Aleem or Mufti (Islamic scholar) can pronounce "fatwa" but none has the right to punish anyone. "Punishment can be given only by a court, not the people who utter fatwa," he observed. The Khatib admitted that due to ignorance of some village leaders and illiterate "morals", poor women are victimised by fatwa. "They are like quacks, they don't deserve the right to utter any fatwa." However, Maulana Haq suggested formation of a state-level "Fatwa Board" to institutionalise it and prevent abuse of Islamic rules. "There should be provisions for punishment of those who pronounce fatwa beyond the board." Islamic thinkers say that "fatwa" can be pronounced only for the sake of welfare of the people but a section of people are taking the opportunity to harass women misusing the provision of edict. On the other hand, women leaders said such fatwas target women who want to stand on their own feet. Those who are striving to break the male domination in the society are the usual victims. Most of the victims are those poor women, who can not resist the influential people due to lack of power. The rural 'opinion leaders' out of their narrow personal interest want to show their power by pronounced fatwa against women so that they could not strengthen their position in society. Penalties such as stoning and flogging are "totally illegal and violation of laws."

In 1994, the village arbitrators scissored off the hair of a fatwa victim Rokeya, a housewife of Feni, and forced her to walk around the village with a garland of shoes in her neck. They kept the women tied with a tree for about eight hours and four youths raped her thereafter. Rokeya fell victim to such cruelty through "fatwa" as she conceived from an alleged extra-marital affair with a youngman of her village. No trial of her alleged lover took place. He lived merrily, while Rokeya was punished. Apart from these rural women, some progressive women leaders also became the target of fatwa. Jahanara Imam who launched a movement against religious fundamentalism and fanaticism was declared "murtad" by a section of religious leaders. Women leaders think such incidents of cruelty against women not only violate the fundamental rights of the women but also stand against the country's ratification of international charters of human and women rights.

There are still some pockets in Bangladesh where adult women are barred from exercising their constitutional voting rights. Female voters of Mahamaya union of Chhagalnaiya thana under Feni district have not voted since 1954, because of a fatwa pronounced by a local 'Pir' and his successors, s. 'Hilla marriage' is another form of fatwa through which divorced women are forced to marry a man selected by the arbitrators for a certain period if their husbands want to marry them again. If a man utters 'talak' three times, the religious leaders consider it a divorce, which is totally illegal, according to the marriage laws. But in these cases, divorced women seeking to re-marry the former husband is forced to take a temporary husband, a practice known as "hilla marriage."

However, in 2001, the High Court ruled fatwa illegal. But the judges - Nazmun Ara Sultana and Mohammad Golam Rabbani were also declared "murtad" by those who support such practice.

NewsNetwork

Criminal case against OC

Five criminal cases were filed against 16 people including Nurul Amin, officer in charge of Pallabi police station and 3 other cop's on the charge of gouging out the eyes of five persons on January 27 at Baunia embankment area in Dhaka. Relatives of the victims filed the case with the Chief Metropolitan Magistrate's Court, Dhaka. The complainants in their plaint alleged that OC Nurul Amin Arrested the victim's in early hours of 27 January. Later they were taken to Baunia embankment area and were beaten up mercilessly and their eyes gouged with the help of other accused. Metropolitan Magistrate Emdadul Haque took cognizance of the petition and directed Dhaka Metropolitan Police Commissioner to take legal action against the accused after investigation. *Prothom Alo, 06 February.*

Custodial death hinders investment

Foreign investors were reluctant to invest in Bangladesh as deaths in custody, mass arrests, strikes, political unrest and ineffective parliament were sending wrong signals to the investors. Kerry Pollard, member of British parliament said this in the opening session of a conference on "Shaping Partnership" organised by British Bangladesh Chamber of Commerce (BCCC) in association with Federation of Bangladesh Commerce and Industry (FBCCI). He said the investors are reluctant because of political unrest and prisoners die of heart attacks in custody under mysterious circumstances. He also criticised the main opposition party for not playing its due role in the parliament. *Bangladesh Observer, 06 February.*

Non confirmation in HC challenged

A writ petition has been filed before the High Court division challenging the non-confirmation of Additional Judges and Judges of the High Court disregarding the recommendation of the Chief Justice. Md. Idrisur Rahman, an Advocate of the Supreme Court filed the writ petition against the government. In his petition Mr. Rahman alleged that in two occasions the present government did not confirm five additional judges of the High Court Division as the judges of the said court though the then Chief Justice recommended their names. He also contended that the recommendation of the Chief Justice regarding the appointment of the judges of the Supreme Court should have primacy and must be honoured. Appointment of judges disregarding the recommendation of the Hon'ble Chief Justice is violation of the Constitution of Bangladesh, he added. *Bangladesh Observer, 06 February.*

HC orders DC to pay compensation

The High Court Division directed the District Magistrate of Dhaka to pay Tk 5000 as compensation to Md. Shahid who was detained under the Special Power's Act illegally. A Division Bench of the court passed the order and declared the detention of Mr. Shahid illegal. The police arrested Mr. Shahid, a salesman, on August 26, 2002 and an order of detention was passed against him on September 01. Following a writ petition the High Court Division declared his detention illegal on October 06 and he was released from jail on October 10. But on the same day, the same District Magistrate reproducing earlier grounds passed a fresh order of detention. Thus the detenu was further detained. Following a writ petition High Court Division issued a rule nisi upon the government to show cause on the matter. On Tuesday, 04 February after hearing both the parties, the High Court Division made the rule absolute declaring the detention illegal and ordered the District Magistrate of Dhaka to pay Tk. 5000/- as compensatory cost to the detenu. *Ajker Kagoj, 06 February.*

Two bills passed

The Jatiya Sangsad adopted two amendment bills named Foreign Exchange Regulation (Amendment) Act, 1947 and Money Laundering Protection (Amendment) Act 2002. State Minister for Finance and Planning Shah Md. Abul Hossain tabled the two bills. Presenting the Bills State Minister said that the government is trying to stop smuggling of foreign exchange and laundering of money from the country. The Deputy Speaker Akhtar Hamid Siddiqui, placed the bills before the house and it was passed in the voice vote. *The Independent, 06 February.*

Amendment to WCRP Act soon

The government plans to bring amendment in the Women and Children Repression Prevention (WCRP) Act to stop abuse of the law now mostly being used for blackmailing. Law Minister Mr. Maudud Ahmed said this in the parliament. He told that the objective of the law was good but there has been massive abuse of the law due to two or three loopholes. He also told that the law is being used as an instrument for blackmailing. The Minister said that if any body's name came in the FIR of the case, he would have to go to jail, as there is no provision for bail. Even if any body holds hand with a woman or rebukes her it can be shown as repression. He said that amendment would be brought in the definition of repression and regarding bail to ensure speedy justice. *Ittefaq, 07 February.*

Law for birth & death registration

A new law styled "Birth and Death Registration Act 2003" is in the offing, making birth and death registration mandatory. The draft of the proposed law is ready and the process is underway to place it in the parliament soon. Project Director of birth and death registration Mr. Abdullah disclosed this at an agreement-signing ceremony of UNICEF with the Netherlands government in Dhaka. He also said that the government would establish a monitoring system for birth registration and by 2005 it will be able to help birth registration a routine rather than exception in 20 districts and several municipalities. UNICEF sources said financial assistance from the Netherlands government would help child protection program in important areas like birth registration, combating sexual abuse and exploitation of children including trafficking. More than five million new born were registered in 17 district over the last two years and the Dutch assistance will help registration to another ten districts. *Bangladesh Observer, 07 February.*

National policy for child labour

Pragmatic national policies are needed to spare children from doing hazardous jobs and groom themselves as worthy citizens. Speakers at a discussion meeting titled "Child Labour Policy of Bangladesh: What are we looking for?" urged this. State Minister for Labour and Employment Mr. Lutfar Rahman said that the government is going to formulate the child labour policy and enact a law soon with a view to uproot child labour from the society. He also informed that the government has drafted the national policy on child labour. It can be mentioned that substantial number of children are engaged in hazardous jobs like tobacco factories, motor workshop, lather industries, welding workshops though they get very small amount of money. *Bangladesh Observer, 07 February.*

Legal cell for Bangladeshis in NY

The Bangladesh Consulate General opened a legal cell in New York for legal counseling and assistance to those Bangladeshis who were likely to be under purview of the National Security Entry Exit Registration System (NSEERS). Five Bangladeshi American Attorneys and also two Para Legal Assistants are offering legal service and assistance to Bangladeshis every Saturday. The service will continue until the end of next month. Efforts are also being made to engage attorneys at the Immigration Neutralization Services (INS) office in New York during the actual registration period to extend legal help and support to Bangladeshis. *Financial Express, 07 February.*

Corresponding Law Desk

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