

HUMAN RIGHTS analysis

Continued exploitation deters rehabilitation of sex workers

SYED TAPOSH

OWING money to 'leaders' is a common problem for sex workers of brothel areas in Bangladesh. Development organisations have identified it as one of the barriers that slowed down the process of rehabilitation of sex workers. Though there are some initiatives taken by different projects of GOB or NGOs at different brothel areas to provide financial assistance to sex workers in forms of grants, micro-credit supports etc. with the objective to rehabilitate them in society, but in

deprived, cheated or threatened in most cases by their own kins or close acquaintances, women or girls are forced to accept the profession of sex worker losing all their hopes for life. They get entrance to the brothel areas through a process in which the 'leaders' pay money to different people for different purposes in the process. From the date of their entry to brothel areas, they start owing money to their leaders. Leaders pay money to brokers or pimps to 'buy' girl or woman, to lawyers for affidavit (locally called as 'licence'), to the policemen to release them from

purposes also. Excessive sex work, unruly behaviour of clients during sex work, prolonged use of cheap skin lightening creams etc. cause harmful impact on their body which decreases their attractiveness but their balance of debt to leaders increases because the leaders also pay for the purposes above mentioned. The sex workers have to please different types of people and need money on a regular basis for treatment of STDs (Sexually Transmitted Diseases). This amount is also given by their leaders as loan. In this way they become tied to their leaders in a financial bondage. Sometimes they die with a load of debt due to their leaders. They can't save money from their daily income as the income is not enough for personal saving. Some young sex workers earn a lot of money but they don't have choice. They must have to hand over their hard earnings to leaders because the leaders create a captive situation in brothel areas. Actually, the captive situation does not allow them to save from their income.

Some NGOs working in brothel areas have micro-credit activities for sex workers. But the amounts go mostly to the leaders. While the young sex workers sacrifice their body and will but live hand to mouth, the amounts contribute in making the leaders richer. Increased debts to leaders drive the sex workers away from happy life and NGOs with rehabilitation activities face barriers of financial liability. The NGOs are aware of the situation in brothel areas but not able to fight with the leaders because they are powerful with support from different sources. In fact NGOs which have regular activities inside brothel areas avoid confrontation with leaders because of fear of harassment to their staff who have to visit brothel on a regular basis.

In the process of rehabilitation under a scheme of a project of DSS financed by the UNDP, the sex

workers at Jessore and Doulatdia brothels were provided with an amount of Taka 10,000 (ten thousand) each to start business after resettlement. The initiative experienced negative pressures of money they 'owed'. Though large number of general sex workers welcomed the move but were reluctant to accept the help because of their inability to repay the amount they owed to their leaders with the limited fund. Through motivation for long time by NGO workers under project, the sex workers had been able to develop positive attitude towards rehabilitation or alternative livelihood and developed their skills in different trades through participation in vocational trainings but this kind of 'debt' diminished their hopes and aspirations.

However, there are some success stories also. Ms. Rima (not her real name) a sex worker at Maroary Mondir Lane of Jessore brothel was motivated, trained by the project and left the brothel area after she got married to one of her clients. But it was possible only because her leader Ms. Tina (not her real name) allowed her to go out of brothel. Ms. Rima didn't have to pay the money she owed to her leader. Thanks to the leader. But not all the leaders are like her. It may be mentioned here that Ms. Tina was also a beneficiary of the project who got skill development training from the project and developed a positive attitude towards alternative livelihood. She is now working for an NGO as part time worker and planning to take alternative livelihood. Ms. Kakoli (not her real name), another sex worker of Maroary Mondir Lane of Jessore brothel is not able to leave brothel though attended training on different trades under project because she owes a large amount of money to others.

Because of rights based approach and empowerment efforts of different NGOs, the sex



workers are now able to raise voice on different issues. They now attend meetings with other people in our society. In a meeting held at Jessore at the office of the Deputy Commissioner in 2004, the sex workers requested the project authority for more financial support for their rehabilitation.

In Jessore, some organisations which have activities inside brothel areas on a regular basis formed a forum of NGOs. These organisations run different activities for sex workers and their children inside or outside brothel areas with the help of brothel leaders. The forum members decided to prevent violation of human rights in brothel areas. Some other organisations which have legal support or shelter activities but don't have activities inside brothel area have been included in the forum as the forum members don't want to face any conflict with leaders of sex workers

to avoid harassment of their staff during work inside brothel. Within two months of formation of the forum, the forum recovered one girl from the grip of a leader at a brothel called Jhalapatti and the girl took shelter in a safe-home of a forum member (an NGO). Though enough preparations were taken to hide the identity of those forum members (3 NGOs which have taken the responsibilities to monitor and inform the authority about violations) who made the recovery possible by lawyers of a legal support providing organisation under the forum, the information was leaked out and some staff faced the wrath of the leaders during their daily activities inside brothel areas.

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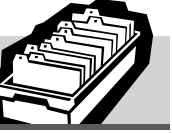


most cases the amounts provided were not adequate to fulfill their requirements as they 'owed' a large amount of money to their leaders in brothel areas. A big amount of money is needed to clear the general sex workers from this 'debt' bondage in the process of rehabilitation. While different NGOs or projects give money to sex workers to start business as an alternative livelihood after rehabilitation, the general sex workers need more money to free themselves from the grip of 'leaders.'

Normally, being raped, tortured,

police station and finally to some other people to ensure smooth entry in brothel areas. After one enters the brothel area and starts her journey as sex worker under the guidance of the leader, from the 1st day she starts repaying the amount from her daily sex work income. The amount starts to increase from the day her profession as sex worker starts and income increases automatically on daily basis. She stays in brothel and it grows up, never to be repaid! Not only for food or cloth, the sex workers need money for other

FACT file



Child rights and CRC

KHAN FERDOUSOUR RAHMAN

VIOLATIONS of the rights of children represent a common occurrence in many parts of the world. These violations take the form of torture; cruel, inhuman or degrading treatment; disappearances; excessive work and labour; prostitution; sexual abuse and slavery. Children also form a significant proportion of the global refugee or stateless population. Millions of children around the world are at serious risk of starvation and malnutrition. As a response to these violations efforts have been made to establish a regime of international protection of the rights of the children.

The origin of the rights of the children came under the League of Nations as Declaration of Geneva in 1924. The same was revised and amplified in 1948. It formed the basis of ten points Declaration on the Rights of the Child adopted unanimously by the General Assembly on November 20, 1959. The International Bill of Rights of the Children includes the Convention of the Rights of the Children (CRC) 1989 of which Bangladesh is one of the signatory among the first twenty countries, and two draft optional protocols which are not yet ratified by minimum required countries -- Optional Protocol on the Involvement of Children in the Armed Conflicts, 2000, and Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, 2000.

The basic rights of the children are protected by CRC 1989. It was adopted by UN General Assembly on November 20, 1989 through Resolution No. 44/25. There are total 54 Articles in this Convention. CRC encompasses few special characteristics i.e. it recognises that every human being below the age of eighteen years can be called a child and full legal capacity is attained at maturity; the CRC is to be understood, interpreted and implemented in the context of all existing international norms in the field of human rights including customary, contractual, universal or regional norms; all the rights of the child are of equal importance and interrelated; it covers various sets of rights (civil and political, economic, social and cultural, and specific rights) of children in difficult circumstances; the cardinal concept of CRC is the recognition of the child as an active subject of rights rather than as the property of the family or the object of the rights of the adult; and CRC makes no mention of the child's duties.

The fundamental general principles or main focus of CRC is placed on various aspects, i.e. any right of child must be implemented on the basis of four general principles (i.e. non-discrimination; best interest of child; right to life, survival and development, and respect for views of the child); all rights of CRC should be respected and ensured by the States for each child within their jurisdiction without discrimination (Article 2); Article 3 deals with principle of the best interests of the child; right to life, survival and



development is reflected in Article 6; and the principle of respect for the views of the child is reflected in Article 12. According to Article 3, best interest of child shall be a primary consideration in all actions concerning children. In connection with the various provisions of the Convention, best interests of child are further referred or specified by reference to family ties, continuity in upbringing and the child's ethnic, religious, cultural and linguistic background (e.g. Article 9, 17, 18, 20, 21 and 40).

Articles 43 to 54 deal with implementation measures by setting up of a Committee with ten experts from the field of law, medicine, economy, sociology, education and international law to examine the certificates given by State parties by two years of ratification and thereafter by every five years. State parties are to make reports widely available to the general public. The committee may propose for any special study on specific right of the Convention and make evaluation. To foster effective implementation of the Convention and to encourage international cooperation the ILO, WHO, UNICEF, UNESCO should attend the meeting of the Committee. NGOs having consultative status with the ECOSOC may submit pertinent information to the Committee and may be asked to advice on optimal implementation of the Convention.

The principal task of the Committee is to consider national reports of State parties on measures adopted to give effect to rights of the children and on progress made in the enjoyment of such rights. The reports are presented to the Committee by competent national delegation, after a constructive dialogue between the delegation and members of Committee. The Committee convenes annually informal regional meetings with the support of UNICEF.

The main reason of non-implementation of the provisions of CRC is the lack of fund, which the developing countries cannot afford and thus require the support of developed countries.

The writer is a freelancer.

COURT corridor

Delay in the lower judiciary

BARRISTER MOKSADUL ISLAM

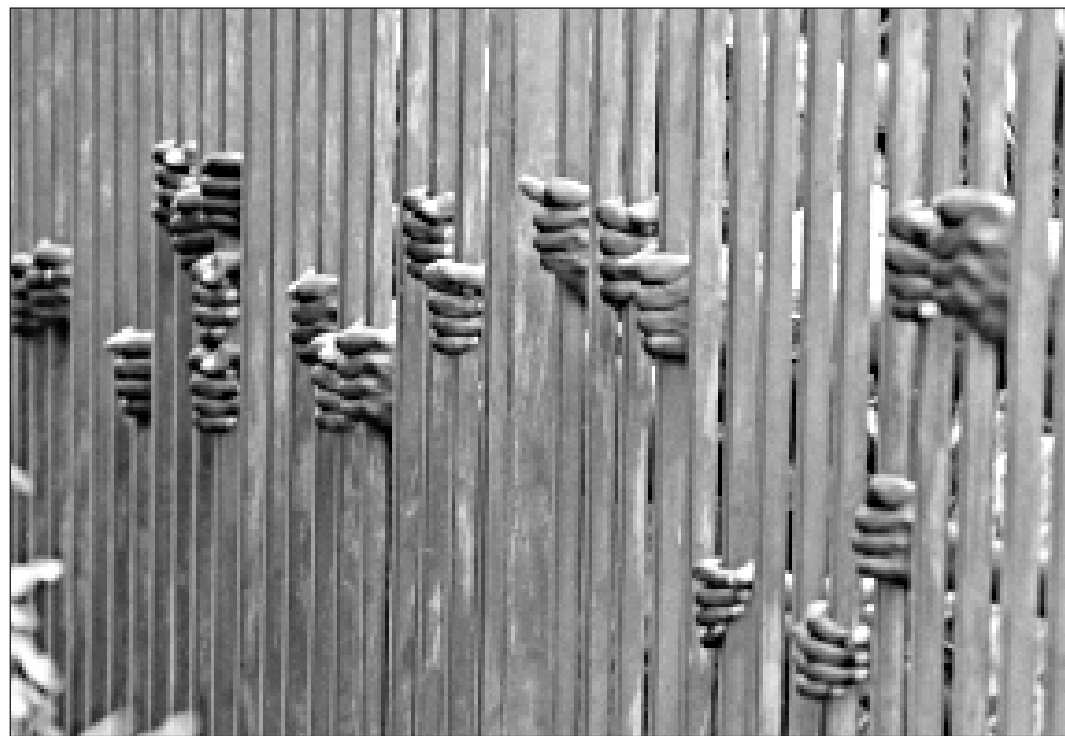
AT times the Supreme Court (SC) has no other option but to stay an order of the lower judiciary as an interim measure before the matter is heard at length in presence of the both side. Usually it will be a temporary order and apparently for a limited period. However before the expiry date all such temporary orders of stay can be extended very easily. As a result these temporary orders may last even for decades. On many occasions it is stayed till disposal of the Rule. Whatever may be the case it actually is a permanent stay order and that continues till the matter is heard completely.

One of the main causes of delay in the justice delivery system is the proceedings of the original jurisdiction i.e. lower judiciary are being stayed by the higher judiciary for long time. On many occasions it may have been done on flimsy grounds or may be even though actually (or legally) there was no ground at all. Should we say it was granted by the Court very summarily or obtained by the learned Advocate on flimsy grounds or even by misleading the Court? For the purpose of this write up 'granted' would also mean 'obtained' and both the words would be used interchangeably.

On many occasions an order of stay serves the purpose of the party in whose favour it has been granted even though it apparently was a temporarily order. Sometimes an order of stay may also give him complete benefit of the case.

Usually the order of stay should correspond to the Rule. Some variation, depending on the nature of the dispute, may be allowed. However on some occasions the prayer for an order of stay is framed in such a manner it virtually stays the entire proceeding of the lower court ignoring the Rule. Let us see how an order of stay granted by or obtained from the High Court (HC) is obstructing justice in thousands of cases in the lower judiciary by examining a true story.

A lady was unlawfully evicted from her house and she sought protection of law in the lower judiciary. She won both in the Court of Senior Assistant Judge and District Judge of the lower judiciary. Subsequently she also won her case in the High Court Division and also in the Appellate Division [12 BLT (AD)]. Appellate Division observed that "on perusal of the materials on record it is seen that the Courts of facts in the background of the materials on the record were satisfied that defendants dispossessed the plaintiffs from the land ... taking advantage of the order of stay that was passed by the High Court Division In that state of the matter we are of the view High Court Division has committed no error in refusing to interfere with the order of learned District Judge passed in the Miscellaneous Appeal affirming the order of the learned Assistant Judge allowing the prayer for mandatory injunction and thereupon making direction to the defendants to vacate the land of 'Kha' schedule and to restore possession thereof to the plaintiffs". Accordingly evic-



tion order was given in favour of her. However in the execution stage various unreasonable applications were filed in the lower judiciary by the other side and all of them were eventually refused or dismissed. Now she is about 80 and was longing to enter into that house after more than a decade since she was evicted. However surprisingly on the 31st August 2006 an order staying the entire proceeding of the main suit has been granted by or obtained from the HC. Excuse me but how (it was obtained)? Excuse me but why (it was granted)? The

lady wanted to know. Was the order of stay obtained or granted? May be it was both.

It was obtained by the learned Advocate as he misled the court by not informing that the matter has already been disposed of by the Appellate Division and by drafting a vague application and also by framing the prayer deceitfully. May be it was granted by the HC hastily as upon a reasonable reading of only couple of initial paragraphs of the application it would reveal that there are gaps in between lines and paragraphs of the said application.

It also refers a case called Miscellaneous Judicial Case. However what is a Miscellaneous Judicial Case? Apparently the Rule was issued or obtained regarding that Miscellaneous Judicial Case then why an order of stay of the entire proceedings. Was there any prima-facie arguable case for staying the entire proceeding of the lower judiciary after 15 years?

The lady has signed different kind of powers at different stage of this case during last 15 years. Recently when she was asked to sign another power again for the

HC she could not remember whether she signed the earlier powers in Bangla or in English. She also could not remember the surname she used (as she uses both Khatun and Begum) in signing those powers. She also was not sure whether she used her title in those powers. Her hand was trembling because of her age. She barely managed to scribble her signature in the power and she does not think it would match with her earlier signatures. She was sorry and asked forgiveness for that. Now the question is will she be able to enter her house before she dies. Who should be blame for this delay? The learned advocate who obtained the order of stay by misleading the court? Could we also dare to blame the Court for granting the order of stay? I guess not. There must be a good ground with sufficient evidence before an order of stay is granted.

No proceedings of the lower judiciary should be stayed in hurried manner. Otherwise someone may interpret that our higher court is mainly responsible for delaying thousands of cases in the lower judiciary. We must also formulate a way of disposing an application for staying proceedings of the lower judiciary within a reasonable time. It must be a mandatory requirement. If it is not disposed of within such specified time all such stay order should stand vacated automatically.

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