"ALL CITIZENS ARE EQUAL BEFORE LAW AND ARE ENTITLED TO EQUAL PROTECTION OF LAW"-ARTICLE 27 OF THE CONSTITUTION OF THE PEOPLE'S REPUBLIC OF BANGLADESH ● dslawdesk@yahoo.co.uk

LAW VISION

Bangladesh need MSME law instead of SME policy

M S Siddiqui

There is every reason to devote public resources to strengthen (Micro, Small and Medium Enterprises) MSMEs in any country. The MSMEs generate most of the employment opportunities in any country. The growth of MSMEs can make a balanced development through economic, social and environmental protection of a country. It also ensures relatively fair distribution of wealth among the citizens.

Most of the countries have policies or laws for the development of MSMEs. The overarching goal of a MSME policies or laws is to reduce poverty by increasing economic growth and decreasing income inequality so that all share in a growing economy.

A standard MSME policy element covers four areas: legal/regulatory reforms, access to markets, access to finance, and building skills and knowledge. The policy and its implementation framework fit well with Government's commitment towards rapid, inclusive, and sustainable economic growth and towards the role of a strong private sector in that growth. The Industrial policy and strategy policy documents of Bangladesh also highlighted the role of SMEs in poverty elimination and economic development in the country.

Bangladesh adapted MSME policy 2019 for strengthening Small and Medium-sized Enterprises (SME) sector by enhancing efficiency, improving business environment, providing easy access to finances, ensuring better marketing facilities, upgrading technology and innovative capabilities, and creating employment opportunities. It has been proposed to be implemented from 2019 to June 2024. It has focuses on the followings six different kinds of services to the SME: (1) access to finances; (2) access to technology and innovation; (3) access to market; (4) access to education and training; (5) access to business support services; and (6) access to information. The female entrepreneurs proposed to get similar kinds of facilities for running their SME units.

The policy also includes the strategies, which are set for the development and strengthening of the country's SME sector in line with the Vision, Mission, Goals and Objectives described in the SME Policy 2019. The policy include (1) to improve business environment and institutional framework; (2) to increase scope of the SME sector to receive institutional funding facility; (3) to support to increase competitiveness capability and access to SME products market; (4) to support short-term, low cost SME business support services to the start-ups; (5) to develop and expand SME Cluster-based Business Network; (6) to increase use of ICT and other technologies; (7) to expand of skill developing education and training programs for entrepreneurs; (8) to expand women entrepreneurship development programs and providing specialised services; (9) to establish SME as a backward and forward linkage enterprises to the large industries and ensure protection of SME products; (10) to establish environment-friendly SME industries and develop better capacity for waste management; and (11) to institutionalise SME statistics and conduct research and development activities.

The SME shall register with the relevant department. The administrative procedures of SME entrepreneurship will be simple to improve the SME related business environment and to protect the rights of investors. Necessary steps will be taken to attract domestic and foreign investment to ensure desired development of SME, especially export-oriented SME industries and its capacity building.

It includes strategic tools to simplify the legal and administrative procedures for enhancing SME business, simplification, and rationalisation of SME tax policy. It proposes to provide investment and revenue incentives for export-oriented SME sector, strengthening of coordination among institutional structures, strengthening of capacity building activities of BSCIC, SME Foundation and other SME related trade bodies.

The policy comes with a Credit Guarantee Fund (CGF) to act as guarantors for them when they apply for loans to banks or financial institutions to launch their venture. The CGF will arrange collateral-free loan for small and medium entrepreneurs, especially start-ups. Entrepreneurs will not need to submit any document as mortgage to banks or financial institutes as the government will be the guarantor under the CGF.

The suggested necessary measures will be taken to simplify procedures to receive trade license, expedite the provision of start-up support services with easy access of SMEs online registration facilities, one-stop service centre and other types of financial and non-financial support for SMEs. CGF will act through some companies form under its regulations to act as guarantor for the SME loans.

A start-up cell will be formed under the SME policy. Start-ups will have to apply to the cell first and officials will scrutinise the applications. The start-up cell will help fresh entrepreneurs get loans, licences and other necessary documents and find market-related information.

It proposes to start an appropriate entrepreneurial education and training programme in the *Technical and Vocational Education and Training* (TVET) and higher education system of the country to develop skilled human resources in the SME sector. The regulators will organise SME related training and curricula, research work, demand-based training, internship etc.

> A policy is mostly a wish list and the regulating authorities are not bound thereby. The regulating authorities seem inactive and financial institutions hardly abide by the policy to give priority to MSME.

The responsibility for overall implementation of strategic goals and action plans described are entrusted to BSCIC and the SME Foundation. BSCIC will implement its own strategic action plans in collaboration with other implementing agencies subject to the approval of the Ministry of Industries. The SME Foundation will inform Ministry of Industries about its own yearly strategic action plan and implement it in collaboration with implementing agencies. The Ministry of Industries will regularly monitor and evaluate the progress and implementation of the action plans/activities of BSCIC and SME Foundation and will provide necessary financial and other supports.

A policy is mostly a wish list and the regulating authorities are not bound thereby. The regulating authorities seem inactive and financial institutions hardly abide by the policy to give priority to MSME. The tax authority does not incorporate any special tax rebate or easy procure for MSME yet. The other countries have specific laws in this regard. Bangladesh should also have MSME laws making all policy mandatory for all the stakeholders including government agencies.

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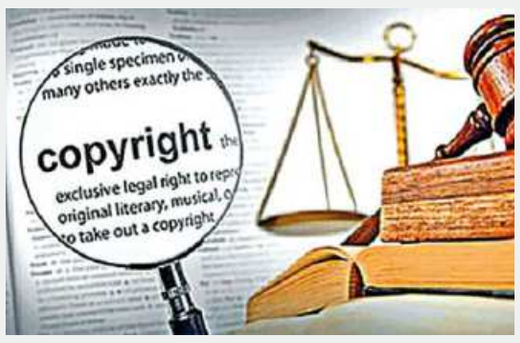
LAW LETTER

On the Copyright dilemma



The recent controversy in copyright law arose with the song '*Juboti Radhe*', when one party claimed it to be their own lyrical composition whereas the other party claimed it to be a popular folk song. Copyright Law is quite wide in terms of its actual right claiming definition. In the arena of literature, dramatics, musical, artistic, cinematograph and sound recordings, it goes without adage that copyright is one of the most significant field of intellectual property related to the exclusive monopoly rights over any specific matter.

Copyright is a property right that subsists in certain specified types of works exclusively to the creator. The creator preserves the right of using that 'property' and everyone needs his consents in order to use that specific 'creation'. This is where the confusion and problem arise. In this era of digital media, it is quite hard for the users to protect and facilitate proper protection of the intellectual property rights of others. The popularity of social media apps like Tik Tok, Likee etc are actually giving access to the social media users of musical recordings without properly complying with the copyrights of the creator.

While granting the copyrights to any specific person, the authorities must have to stick to proper norms and methods along with proper research on this claim. Now, in a country like Bangladesh, where there is a huge number of internet users, the governing law, Copyright Act, 2000 needs to be updated in terms of protecting the intellectual property rights along with guiding the people in general. The authorities should now monitor the digital media policies in order to protect the intellectual property rights.

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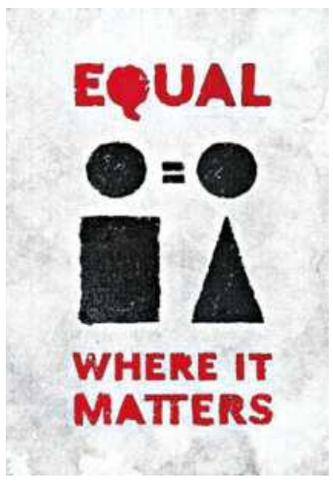
LAW WATCH

Gender neutrality in rape law

Amena Jahan Jhilik

Punishment of rape has been the talk of the town for a while now and it has been this way rightfully; however, punishment alone will not suffice as a deterring factor of this heinous crime. What we need is an inclusive and expansive definition of 'rape' which does not succumb to the historical and cultural stereotypes. It is submitted that the current definition of rape under section 375 of the Penal Code 1960 needs to undergo a radical change for the reasons set out below.

One of the earliest definitions of rape is encapsulated in the Code of Hammurabi which defines rape as follows: 'if a man should force the betrothed wife of another to have sexual intercourse with him, he shall be put to death and the woman shall go free'. On the other hand, the rape of a virgin girl was considered as 'property damage' against her father.



In the light of these anachronistic, sexist and insufficient ancient laws, two observations can be made: firstly, even around 1754 BC the need for severe punishment of rape was acknowledged and implemented. However, it can also be discerned that the definition of rape has not progressed as much as it should have after 3,773 years.

The current definition of rape under section 375 of the Penal Code 1860 falls short on the following grounds: man cannot be victim of rape; woman cannot be perpetrator of rape; only penile penetration amounts to rape; marital rape is still not regarded as an offence unless the wife is under the age of thirteen; terms such as "consent", "penetration" and "against her will" is not defined. In addition to add insult to the injury we are still being ruled by a law which is 160 years old.

Furthermore, the term "sexual intercourse" is used to define the offence of rape. Rush (2011) opined that 'rape is a maelstrom of conceptual and normative contestation, a category in crisis' and as it is intimately related to broader social attitudes (J Temkin and B Krahé, 2008) harboring inaccurate and problematic overtones only does more harm than good.

Although most of these defects are acknowledged and scrutinised, but the gendered notion of rape is a problem that people recoils from. As far as male victims are concerned, section 9 of the Prevention of Women and Children Repression Act 2000 only gives protection to men under the age of sixteen but any men over that age remains without the protection of law. Although male victim of rape may take recourse to the definition of other less serious sexual offences, but the lack of adequate punishment attached to those offences renders the victims left without justice.

The question remains, why after all this time male victims and woman perpetrators are not recognised in law? J. Conaghan (2019) iterates that rape need not always include penile, anal or oral penetration, what it should require is proof of "physical force". Although, such a requirement would result in a wide definition of law, but at least an offence like rape will not go unpunished.

Veiling rape under generally acceptable and less serious sexual violence only encourages a society fueled by hegemonic masculinity, where men are not preferred to be viewed as victims. While commenting on such toxic masculinity, Stanko (1990) stated that men are raped for the exact same reason as women: to exercise power and control over the victim.

A patriarchal society which thrives on the disenfranchisement of women also eclipses the actual victimisation of men. Graham (2006) opines that the view that men cannot be the victims of sexual violence by women, and that women cannot be perpetrators of such offence is prevalent in many societies, 'but it does not resonate with lived social reality'. This does not only leave half of the population unprotected but it also creates certain stereotypes in the perception of those who dispense the law.

While concurring with Stephanie Ng (2009) it is submitted that, only legal reform can aide male victims to justice. In addition, equal protection of law can further be ensured by adequate education of sex, consent, and gender neutral awareness regarding sexual violence.

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REVIEWING THE VIEWS

The Chittagong Hill Tracts Regulation and its constitutional status

Parban Chakma

Chittagong Hill Tracts (CHT), is the only extensively hilly area in Bangladesh. Many indigenous communities have been living in this area from time immemorial. Historically, the Chittagong Hill Tracts was important to the British colonisers as a highly diverse region and its unique socio-political condition. They issued the Chittagong Hill Tracts Regulation (Regulation I of 1900) to protect the diverse culture and its indigenous inhabitants from foreign immigrants. This regulation came into force on May 1, 1900. The Chittagong Hill Tracts area was given special status by this regulation. There are various regulations that applied to indigenous people of the former British Empire, such as the Inner Line Regulation, 1873 (Act V of 1873), the Chin Hills Regulation, 1896 (Act V of 1896). According to the Inner Line Regulation 1873, non-indigenous people cannot enter into tribal areas without taking permission from the local authority. This law is still in force in many states of North-East India. Undoubtedly, the Chittagong Hill Tracts Regulation has recognised the traditional customs and social laws of the tribes and ensured social security by recognising the rights of the indigenous peoples to their lands.

After the liberation war of 1971 of Bangladesh, the CHT formed part of independent Bangladesh. During the Military regime in 1989, when political instability was raging in the CHT, military junta introduced local government councils at the district levels in the CHT (through Acts 19, 20 and 21 of 1989) and repealed the CHT Regulation (Act XVI of 1989) by making unconstitutional laws.

However, the Chittagong Hill Tracts Peace Accord, 1997 and the Chittagong Hill Tracts Regional Council Act, 1998 stated that the Regional Council would advise the government to remove conflicting provisions from the Chittagong Hill Tracts Regulation, 1900 and from the Hill District Councils Act, 1989. As a result, the Chittagong Hill Tracts Act (Amended), 2003 was passed to remove the conflicting provisions of the Regulation and transfer judicial power from administrative officers to judicial officers (Judges).

In *BLAST and other* v *Bangladesh*, the High Court Division Bench of the Bangladesh Supreme Court directed the Executive to implement the Chittagong Hill Tracts Regulation (Amended), 2003 and to establish District Judge Courts in three Hill Districts. The order was implemented during the reign of the military backed caretaker government. But the High Court Division in the case of *Rangamati Food Products* v *Commissioner of Customs and Others*, while discussing the applicability of tax law in the Hill Tracts, declared that the Chittagong Hill Tracts Regulation, 1900 is a 'Dead Law'. On the other hand, in other cases the High Court enunciated that the regulation is an 'effective and valid law'. As a result, special benches were constituted, and the High Court issued an order regarding the effectiveness of the regulation.

In *Abrechai Magh* v *Joint District Judge, Khagrachari & others,* the High Court Division upheld the customary law of the Marma community. In this case, the Joint District Judge applied the Hindu Liability Act in the case of Marma widow's inheritance, so the High Court quashed the judgment of the Joint District Judge in consultation with the Circle Chief (Raja) and the Mouza Chief and upheld the status of customary law.

The three Circle Chiefs, Chittagong Hill Tracts Regional Council and Headmen handed over a memorandum urging the then Deputy Minister of Chittagong Hill Tracts Affairs to take necessary steps to protect the regulation in the court. Then, the Hon'ble Deputy Minister wrote a letter to the Attorney General of Bangladesh emphasising the role of Raja, Headman (Mouza Pradhan) and Karbaris (Para Pradhan) in the governance of the CHT and mentioned that the government needs to play a strong role for implementing the regulation.

Consequently, the Chittagong Hill Tracts Regional Council and the three Circle Chiefs (Rajas) filed a suit to defend the effectiveness of the regulation and the government, on the advice of the Deputy Minister of the Chittagong Hill Tracts Affairs, appealed against the part of the judgment in the Rangamati Food case calling the Chittagong Hill Tracts Regulation 1900 a 'dead law'. As a result, the special bench of the Bangladesh Supreme Court stayed three cases related to the regulation. Finally, in 2016, the Appellate Division declared that the CHT regulation is constitutionally valid and effective while delivering the judgment of *Rangamati food products case*.

Constitutionally there is no contradictory provision in the Chittagong Hill Tracts Regulation. It protects the customary laws of indigenous people of the Chittagong Hill Tracts (CHT) and is an effective as well as valid piece of law.

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