"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 INTERVIEW

The belief that NHRC carries the voice of the masses has been shaken

__Dr. Mizanur Rahman__ is a Professor of Law, at the University of Dhaka and the former Chairman of the National Human Rights Commission of Bangladesh. He is the founder coordinator of Professional Legal Education in Bangladesh (Continuing Legal Education Programme of the Bangladesh Bar Council), pioneer in curriculum designing and introduction of Clinical Legal Education in Bangladesh and pioneer of Street Law in Bangladesh. Professor Rahman is experienced in institution building and has been a consultant to organizations such as UNICEF, ILO, UNDP, The World Bank, Save the Children-UK, the European Commission etc. He also founded Empowerment through Law of the Common People (ELCOP), a human rights organisation. On the eve of World Human Rights Day 2020, __Psymhe Wadud__ and __Tahseen Lubaba__ from Law Desk talk to him on the following issues.

Law Desk (LD): How would you evaluate the overall situation of human rights compliance in Bangladesh right now?

Mizanur Rahman (MR): The human rights situation in the country has experienced ups and downs over the years. There were times when we were quite pleased that a certain degree of human rights compliance was being maintained, especially in a developing country like Bangladesh. However, there have also been times when the condition had deteriorated. In my opinion, this cannot be linked to any specific political regime - with all governments over the years, we have had some challenges. Right now, we are at a critical period, due to the difficulties posed by the COVID-19 pandemic. Although urban and district areas have been coping somehow, rural areas have been left entirely at the mercy of the Almighty. It is interesting to note how many people in impoverished classes have been found to assert that the COVID-19 is a disease for the rich, and not for them. While this may be construed as ignorance, it is also a reflection of their helplessness and attitude towards the system in general. It is indeed saddening that even after nearly 50 years of independence, the impoverished people are left behind.

Moreover, the pandemic has clearly revealed the fragility and inadequacy of our healthcare system. Although there was a shortage of necessary equipment, in response to the Honorable PM's question, not a single member of the local authorities said that they were unprepared. But when the pandemic hit, the real scenario became apparent. For these reasons, it is crucial that we develop a system of transparency and accountability wherein the authorities may be held accountable.

The group that is facing significant difficulties during these challenging times are the human rights defenders as well. It is important that the human rights defenders and journalists get the space within which they can do their part in upholding democratic governance. This is particularly relevant in the light of the recent decision of the European Union of including human-rights compliance as a requirement that must be met in order to receive development aid and GSP facilities from EU member states.

LD: How do you evaluate the criticisms that the National Human Rights Commission faces on a regular basis?

MR: This is a delicate question – especially because there was a time when I led the organisation too. It saddens me to say that NHRC has not lived up to our expectations and played the role that it ought to have performed, particularly keeping pace with the needs of the current times. The people have not heard much from the NHRC during the recent incidents of human rights violations. The belief that NHRC carries the voice of the masses has been shaken and people are doubtful of its relevance.

In the past, although there may have been some failures, people knew, at least to some extent, that they could reach out to the NHRC with their grievances. This public confidence has weakened significantly. This is also true for other government institutions as well. When the organisations that are essential for the flourishing of democracy weakens, it poses a grave risk to the overall human rights compliance situation within the country. It is important that we evaluate where we stand in this regard.

LD: Are the constraints mostly practical or legal?

MR: One of the reasons behind the shortcomings of the NHRC is the National Human Rights Commission Act itself. The law has significantly reduced the powers and functions of the NHRC. When we were first evaluated by the Global Alliance of National Human Rights Institutions (GANHRI) (which at the time was known as International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights), we received a B status which reflects partial compliance with the Paris Principles, despite tremendous works, research and publications. The resolution identified the weakness of the law, especially with regard to the composition of the Selection Committee. It stated that the Selection Committee is largely a governmental composition with no effective representation from civil society. The resolution also mentioned that since the funding for NHRC comes through the Ministry of Law & Justice, NHRC is made financially dependent upon the Ministry. Financial independence is an essential aspect of the autonomy of the NHRC as an institution which is now constrained. Another important aspect is that of transparency in the selection process. An amendment was proposed wherein the provision of inviting opinions from the people was sought. This has not yet come to fruition, but in my opinion, there should be proper scrutiny of possible candidates.

Furthermore, in cases of violations by law enforcement agencies, NHRC can merely ask for a report from the Ministry of Home Affairs and provide recommendations. This often translates into delays in receiving responses and lack of follow-ups from the Ministry. Besides, the NHRC has a dearth of skilled workforce which affects its efficacy to a great extent. All these have contributed to the current perception of people towards the NHRC. In 2019, the HCD observed that NHRC has become a club of retired bureaucratic officers. This is indeed disappointing.

LD: Is there any scope to still meaningfully contribute despite the constraints?

MR: There indeed is. A lot also depends on the leadership skills of the individuals who run the institution. Building a capable team and leading them in the right direction is a crucial aspect of making NHRC effective. The NHRC should be led by people whose hearts bleed for the less fortunate and who can drive the organisation with passion and dedication.

We must remember that the robust presence of the NHRC can enhance the image of the country in international platforms. Therefore, it is imperative that the present role of NHRC be examined and a system be established wherein it can realise its fullest potential. Therefore, proper amendment of the law to ensure the autonomy of NHRC is crucial.

LD: The 2020 theme for Human Rights Day is Recover Better - Stand Up for Human Rights. Would you please share your thoughts on this?

MR: In the past few years, the US President Trump has caused serious damage to human rights and international relations. At the UN podium, he stated that the future belongs to the patriots (implying the ultra-nationalists, chauvinists) and not the globalists. This worked as motivation for countries around the world. As a result, authoritarianism has engulfed democratic governance across many states of the world. The COVID-19 has made inequalities more prominent - richer countries are already accessing vaccines but other countries are being deprived. This is antithetical to the principles of international cooperation and sovereign equality.

Now we need to rise above the past weaknesses, recover and stand up for our and others' rights. We need human rights defenders who shall be the voice for the voiceless and the strength of the weak.

LD: Thank you for your valuable time.

MR: Thank you.

LAW LETTER

The long overdue menstrual leave

OUR country is far away from legislating provisions concerning menstrual leave. The very concept of menstrual leave is a neglected and overlooked issue in Bangladesh. According to a report of the International Labor Organisation titled 'World Employment and Social Outlook: Trends 2018', 28.4% of women in Bangladesh are employed. Hence, menstruation leave is a topic worth bringing to the limelight.

Agonising menstrual cramps also known as dysmenorrhea has a major impact on a woman's work productivity, daily chores, and health in general. The pain can be mild to severe, accompanied by nausea, fatigue, back pain, and even diarrhoea. According to research conducted by the American Academy of Family Physicians, dysmenorrhea affects approximately 20% of women in the world. 10% of women suffer from endometriosis, a uterine tissue disorder which results in pelvic pain and worsens period symptoms. John Guillebaud, professor of reproductive health at the University of College London said that period pain can be as "bad as having a heart attack."

Research conducted by Acta Biomedica, titled 'Dysmenorrhea in adolescents and young adults: a review in different country' depicts that 59.8% of women in Bangladesh suffer from dysmenorrhea. Our female workforce is not only engaged in white-collar work. Women working in manual labor and at bourgeoisie industries are particularly at a disadvantage when it comes to access to clean water, toilet, and sanitary products. Approximately 70% of Bangladeshi textile workers are women. Dhaka-based NGO "Karmojibi Nari" remarked in a study that 95% of workers get no recess in their 10-hour shift apart from lunch. There are uncountable anecdotes of women facing uncomfortable and humiliating circumstances at the workplace owing to menstruation. These give us a background on why it is high time for Bangladesh to incorporate period leave in the Labor Act, 2006.

Section 115 of the 2006 Act offers ten days casual leave with maximum wages. Pursuant to Section 116, an employee will get annually fourteen days of sick leave with pay. Under Sections 117 and 118 annual and festive leaves are provided. Sections 45-50 of the aforementioned Act enumerates maternity benefit and leave. Bangladesh Labor (Amendment) Act, 2018 has been enacted amalgamating the Labor Rules, 2015 to make the 2006 Act more time-befitting. Though it includes specifications for reasonable behavior towards working women, it does not consider the inconveniences arising from menstruation for paid leave. It was reiterated in *Bangladesh National Women Lawyers Association (BNWLA)* v. *Bangladesh and others* 14 BLC (2009) 694 that fundamental rights guaranteed in Chapter III of the Constitution are sufficient to embrace all the elements of gender equality. It is time for our legislators to take this into account and provide a paid leave for fixed days during menstruation in the 2006 Act.

Paid menstrual leave has been guaranteed in several Asian countries namely Japan, South Korea, Indonesia, and Taiwan. Article 68 of the Labor Standards Law in Japan coined the concept of paid menstrual leave for women in 1947. Article 71 of the Labor Standards Law in South Korea not only provides menstrual leave but also additional pay if a woman does not take the entitled leave. The Act of Gender Equality in Employment of Taiwan gives women annually three days of menstrual leave. The "Menstruation Benefit Bill 2017" having provision of two days paid menstrual leave per month was tabled at Lok Sabha in India.

It is pertinent to note that discussions regarding menstrual leave have always been fraught with arguments regarding gender equity at the workplace and reverse discrimination. It is often pointed out that menstruation leave will make companies less inclined to hire female employees and give them positions of authority. These are the same fallacies that are put forward maternity leave. Associating menstrual leave with female participation at the workforce looks a bit incongruent. Women constitute 44.5% of the workforce in Japan and the country has a menstrual leave policy since 1947. South Korea where women make up 42.1% of the workforce precedes such a policy as well.

In an ideal world based on the ideals of gender equality, the debate concerning menstrual leave should not really exist. Unfortunately, employment policies for workplaces have always been adopted by patriarchal society. The norms, policies, standards of productivity, and codes of conduct are mostly made keeping men in mind.

Menstrual leave will not only provide a better working condition for women but also somewhat remove the stigma regarding period. It is high time we thought about incorporating menstrual leave in the Labour Act, 2006, and went a step further in smashing the long-existing taboo.

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REVIEWING THE VIEWS

Interpreting the tenure of life imprisonment

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THE Supreme Court (SC) on December 1 delivered its verdict in the review petition of the *Ataur Mridha* case (Criminal Review Petition 82/2017). In the short order, it sought to clear the confusion that arose following its verdict in 2017 on the tenure of life imprisonment.

Earlier in 2017, the SC had interpreted life imprisonment to be the whole of a convict's natural life by a plain reading of sections 45 and 53 of the Penal Code (PC), 1860 (*Ataur Mridha* v *State*, Criminal Appeal 15/2020, p 18). That verdict, *inter alia*, relied on the Indian SC's decision in *Sambhaji* v *State* ((1974) 1 SCC 196) that *a person sentenced to life imprisonment may be detained in prison for life*. The verdict ignored section 35A of the Code of Criminal Procedure (CrPC), 1898, which obliges a court to deduct the total time an accused has been in custody during the pendency of their trial. The verdict further assumed that the legislature drafted and amended this provision without understanding PC sections 45, 53 and 57 and CrPC section 401 (*Ataur Mridha*, pp 85-86). Hence, it seemed that the SC *effectively created a new law in the guise of statutory interpretation, which is tantamount to 'radical judicial law-making'* (Ridwanul Hoque, 'Constitutionalism and the Concept of Whole- life Sentence in Bangladesh' (BILIA, May 2017)).

Upon review, the SC finally reverted to its decision in *Rokia Begum* v *The State* ((2015) 4 SCOB (AD) 20). By harmoniously interpreting PC sections 45, 53, 55 and 57 and CrPC section 35A, it held that life imprisonment would mean rigorous imprisonment for 30 years. It further held that while awarding sentences, if a court or tribunal, or the International Crimes Tribunal constituted under the International Crimes Tribunal Act, 1973, orders for the accused to be sentenced to imprisonment till their natural death, they will not be entitled to any remission of their sentence. It is speculated that the court may have been wary that the tenure of life imprisonment may be lenient in certain cases. The SC had also expressed similar concerns in *Rokiya Begum* (para 24) but refrained from elaborating on it. Hence, this verdict seems to create two categories of sentences – life imprisonment and imprisonment till death.

While any comment on the merit of the arguments forwarded by the lawyers, the *amicus curiae* appointed by the court and the court's reasoning will be premature before the full text of the verdict is released, the following points are worth noting:

The appeal verdict was based on a plain textual reading of the relevant provisions. It did not take into account the progress that has taken place worldwide in the recent past. Globally, penal policies now have a reformatory approach. Hence, our criminal justice system should move away from awarding any punishment that deprives the accused of the opportunity of reforming and reintegrating themselves back into the society. The review verdict seems to correct the mistaken approach the court had taken earlier. PC sections 55 and 55A, CrPC section 35A, chapter 21 of the Jail Code, apart from other statutory and constitutional provisions, have the provisions to reduce and remit the life sentences of the accused.

However, the SC's creation of a new category of punishment – imprisonment till death in the earlier verdict, as well as in this verdict, has created ample scopes for further discussion. While the decision is a welcoming sign, it leaves a few unanswered questions, which, we can hope, will be answered in the full verdict.

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