

Law and Our Rights

"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

Constitutional Standards on Equality Echoed in International Standards

by Naima Haider

FIFTY TWO years of the Universal Declaration of Human Rights (1948) and sixty seven years of the Declaration of Vienna (1933) has been a long tale of trauma, toil and tears for millions of people who have been denied human rights and justice, even they were deprived the very right of being human by the national and global authorities and the forces with vested interests. Till today, the struggle for human rights and justice continues. The history of struggle for rights and liberty is the history of resistance within the process of law if possible and without the process of law if needed.

The constitutions of South Asian countries are written documents that guarantee basic or fundamental rights. Equality before the law and gender equality are basic values respected and incorporated in these constitutions. They also provide specifically for affirmative and administrative action to redress discrimination and inequalities that are products of the country's history, or social and economic relations. Affirmative legislative and administrative action is therefore a strategy that can be used to introduce creative reform in the area of family law. Nevertheless these provisions have not been used to remove the inequalities in the law on nationality and domicile which impact significantly on the status of individuals in the family and their legal rights under municipal law.

Constitutional standards on equality are echoed in international treaties, which deal with nationality and domicile. The international standards on nationality and domicile are contained in several basic United Nations Conventions. The United Nations Convention on the Nationality of Women (1957) is an important multilateral treaty that clarifies that a married woman's nationality shall not be prejudicial by the voluntary acquisition of nationality by her husband. The Convention concedes that marriage should not result in acquisition or loss of nationality by operation of law, though it recognizes that a married woman may be able to acquire the nationality of her husband through administrative discretion by naturalization, as of right. The same are incorporated in Article 9 of the UN Convention on the Elimination of All Forms of Discrimination against Women (1979). This Convention in addition declares that States Parties

should grant women equal rights with respect to the nationality of their children. The general articles of the convention, including the important article on equality before the law and legal capacity in civil matters, undermine traditional legal concepts on a married woman's dependent domicile even though this aspect is not covered by a specific article.

The UN Convention on the Rights of the Child (1989) now strengthens these same standards through its articles on non-discrimination, and recognition that the child's best interests should be primary consideration in determining any matter that affects his/her life. Provisions of preservation of nationality, family reunification and separation from parents can be interpreted so as to accommodate the concept of the child's domicile under national laws. However, specific article recognizes a child's right to protection from abduction or illicit transfer across national borders and a state party's duty to bilateral and multilateral treaties for this purpose. This recognizes a clear mandate to address the problem of kidnapping across borders and introduce regulatory measures to protect a child from such a situation.

These international standards are more specific than the national standards in constitutions, but they reflect a similar value system on the fundamental rights of individuals in the family and the duty of states to respect them. Several countries have accepted the international obligations created by these multi-lateral treaties. For instance all countries have ratified the convention on All Forms of Discrimination against Women and others have accepted the treaty obligations of the UN Convention on the Nationality of Married Women by accession. Nevertheless the international standards that states have agreed to respect have not stimulated law reform in the area of nationality and domicile. The standards have not been used in general in interpreting national laws, nor as an inspiration for legislative and administrative intervention.

One reason for this is that these countries like many others do not recognize a theory of automatic reception of international treaty obligations in the municipal legal system. Provisions in international treaties become part of municipal or local law only by legislative in-

tervention inducing those standards into local law. Besides these conventions do not give individuals direct access to international bodies set up under these conventions through a complaint procedure. Ratification is usually an executive act, done through the foreign office, and these treaties are not perceived as impacting on the state's obligation within the country. The obligation of state party involves the submission of a report, and this attended to through the foreign office. Consequently conventions are not used as a lobbying tool within the country to motivate a government to introduce or enact internationally accepted standards into the local legal system.

There are occasional efforts to incorporate standards set up by multilateral treaties. The amendment to legislation on enforcement of foreign judgments on maintenance in Sri Lanka and Pakistan is one such example. The Children's Act 1974 of Bangladesh, The Children's Charter 1992 and The Women's Charter 1993 of Sri Lanka also represent such efforts.

National Charters based on multilateral treaties and UN Conventions are useful lobbying tools or machineries in the community. However, unless they are used in this way, ratification of international conventions will continue to concern only the foreign office, as a purely diplomatic initiative. These conventions and local charters will not be a catalyst for reform or change of official policy. On the other hand innovative judicial efforts to introduce international standards can attract the attention of respective governments to the need for reform. In the Sepala Ekanayake case (1986) (1987) 1 Sri L R 107, domestic criminal legislation introduced to cover the offence of hijacking, the violation of a constitutional provision, was nevertheless upheld by the Supreme Court of Sri Lanka on the ground that the offence had been recognized in "the general principles of the law recognized by the community of nations". However in an earlier case a Sri Lankan court had held that the Universal Declaration of Human Rights had high moral authority but that has no binding force, as it is not a legal instrument and forms no part of law of the country. It remains to be seen whether Sri Lankan superior courts will develop on the approach in the Ekanayake case

to recognize the Universal Declaration of Human Rights or standard such as the "best interest of the child", now incorporated in the UN Convention on the Rights of Child ratified by 191 countries (till July 1998) as "customary" or general principles of international law applicable in the country.

On the other hand Supreme Court of Bangladesh amongst other dealt with two famous cases in respect of illegal detention of two minor boys namely State vs. Deputy Commissioner, Satkhira and others (Nazrul Islam's case) reported in 45 DLR at page 643 and BLAST vs. Bangladesh (Javed's case) reported in 4 BLC at page 600. In those two cases the Supreme Court, High Court Division exhaustively discussed the child's rights. Universal Declaration of Human Rights, UN Convention on the Rights of Child and having accepted those declared the detention of the minor boy illegal and without lawful authority. In the Nazrul Islam's case his illegal detention for about twelve years was declared illegal and all the criminal proceedings against him were quashed as if he was never in detention nor was there any criminal proceedings against him. In the Javed's case the High Court amongst other dealt with the abuse or misuse of power by the law enforcement agency and directed the Government to frame 'code of conduct' for the law enforcement agency on the basis of United Nations resolutions (Resolution No. 34/169 of 17th December, 1979).

Where international standards accepted by ratification of conventions such as those in the UN Convention on the Nationality of Married Women (1957) link with constitutional standards on equality and gender equality, it should be possible to strengthen the arguments on fundamental rights by reference to the international standards.

In fine, it can be said that the secular state is thus a guarantee that constitutional and international standards will not be undermined because of conflict with ethnic or religious standards. Once this commitment to the secular state is accepted, governments and peoples will have a right and duty to ensure that constitutional standards link with international standards and thus become a catalyst for law reform.

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International Women's Day Notes from History

by A H Monjurul Kabir

Switzerland, where more than one million women and men attended rallies. In addition to the right to vote and to hold public office, they demanded the right to work, to vocational training and to an end to discrimination on the job.

Less than a week later, on 25 March, the tragic Triangle Fire in New York City took the lives of more than 140 working girls, most of them Italian and Jewish immigrants. This event had a significant impact on labour legislation in the United States, and the working conditions leading up to the disaster were invoked during subsequent observances of International Women's Day.

1913-1914

As part of the peace movement, brewing on the eve of World War I, Russian women observed their first International Women's Day.

Down Memory Lane

International Women's Day, it is asserted, is the story of ordinary women as makers of history; it is rooted in the centuries-old struggle of women to participate in society on an equal footing with men. In ancient Greece, Lysistrata initiated a sexual strike against men in order to end war; during the French Revolution, Parisian women calling for "liberty, equality, fraternity" marched on Versailles to demand women's suffrage. The idea of an International Women's Day first arose at the turn of the century, which in the industrialised world was a period of expansion and turbulence, booming population growth and radical ideologies. Following chronology of the most important events can be an eye opener to many.

1909

In accordance with a declaration by the Socialist Party of America, the first National Woman's Day was observed across the United States on 28 February. Women continued to celebrate it on the last Sunday of that month through 1913.

1910

The Socialist International, meeting in Copenhagen, established a Women's Day, international in character, to honour the movement for women's rights and to assist in achieving universal suffrage for women. The proposal was greeted with unanimous approval by the conference of over 100 women from 17 countries, which included the first three women elected to the Finnish parliament. No fixed date was selected for the observance.

1911

As a result of the decision taken at Copenhagen the previous year, International Women's Day was marked for the first time (19 March) in Austria, Denmark, Germany and



Stop this.

Restore the Dignity of Repressed Women

by Salma Ali

In order to bring back the lost dignity of each and every repressed woman and to secure compensation and acquire justice, we need to continue our work.

IN our society, especially when a female related matter comes up, even responsible members of male dominated society raise many doubts, and weave concocted stories to give it religious or moral bluish mainly to harass the victim and they themselves to be in the light. On the other hand, if such victim, after relentless fight, establishes her rights, wins over any evil design, or gets legal redress of any wrong done to her, the attitude of the society takes the opposite turn. The horrendous story of a gang-raped girl in Howrah Station of Calcutta, revealed to BNWLA, is one of such examples. Woman survive with dignity and honour has to fight for her rights and to claim due justice for any repression done to her.

Recently, the victim of Howrah incidence entered BNWLA with the clippings of national dailies of 1 February. She excitedly informed us that the Supreme Court of India had ordered a compensation of Indian Rupees 10 lakh for her suit. While she was narrating those, it seemed to us that she regained her lost confidence.

She also commented that, the society that once repressed her, looked down on her, and showered caustic remarks had changed overnight surprisingly. They also became a part of her success and joy. She further added that as the news broke, the local people were so jubilant that they even started distributing sweets among the people and brought out a procession in that rejoicing mood. For her it was simply an unthinkable and unbelievable event. When she went to the local market to get a copy of the newspaper for the total news, she found local people of many strata of life along with the Chairman waited for her there. All said in a jubilant mood, "It is our victory, let us take out a procession" and requested her to be in the forefront of that.

The local market place was resonating with their slogans. She said, "I could not even visit that market after the incident (Howrah gang rape). I always used to feel embarrassed as people showered remarks. While after the judgement, the attitude of entire community suddenly had changed. Now my victory is their victory as well". We engrossedly listened to what she was narrating in a mixture of emotionally excited, serious and yet in a jubilant mood.

The Supreme Court, comprising of Honorable Justice Saghir Ahmed and Honorable Justice R.P. Sethi ordered the Indian Government to pay the

said Bangladeshi girl the amount of compensation through Bangladesh High Commission within 3 months of the Judgement. Before the verdict, as BNWLA we used to talk to the officials of human rights organizations of West Bengal at least for 2/3 times each month to know the progress of the case. Most of the time, we let the victim talk to them to make her feel well. We have already established communication, with the concerned authorities, for working out modalities for quick receipt of her said compensation.

Flashback on Pending Rape Case

The said girl was gang raped on 26 February 1998 at Howrah Railway Station. The following day a case was filed in Calcutta CMM Court (GRP case no. 49/98, under section 366, 376/34, 134, 325, 379 and 307). The nine accused of the case were: Ashok Singh, Saram Singh, Rafiq Ahmed, Lal Singh, Raj Samiran, Sarma, Sitaram Singh, Udhesh Singh, Sitakundin and Mira Bai. All nine accused were Railway workers and some were involved in ticket black marketing. After the hearing in camera trial, this criminal case awaited judgement.

The incident had moved the people of Calcutta tremendously. It was a shame for them that a visiting Bangladeshi girl had been raped at such a crowded place like Howrah Station. Immediately human rights activists and the women rights activists came out in the road to protest this disgraceful act. In Howrah Station area, women rights activists took out a procession with brooms in hands and they even attacked the accused carrying police van with those brooms. At that time women rights organizations, Swayam, Maitree, West Bengal Legal Aid Service and the like played an appreciable role.

Bangladesh National Women Lawyers Association (BNWLA), on receipt of the report, took the initiative to help this unfortunate victim. At first we the BNWLA brought her back to Bangladesh and provided her shelter. She was very weak, ill and psychologically unsound. Continuously our counselors including me counseled her to bring her back to normal men-

tal state. Side by side we contrived every possible way to help her legally. Through bilateral cooperation, the women organizations of two countries decided to work unitedly to help her. The lawyers of BNWLA several times accompanied her to Calcutta when she was required to go there during hearing of the case. BNWLA is working together with her counterparts in Calcutta.

Public Interest Litigation

At the request of human rights activists, Advocate Chandrima Das filed a writ petition (No. 4949/98) under Public Interest Litigation in the Calcutta High Court. The Honorable Court declared a historical judgment on 26 June of 1998. The Division Bench, consisted of Justice Pravasankar Misra and Justice Barin Ghosh delivered the judgement after a long trial. In that judgement, the General Manager of Calcutta Eastern Railway was ordered to pay the victim Rupees 10 lakh as compensation. The Judges stated that none could compensate her loss and there was no other way to compensate the aggrieved person. Hence, they declared such harsh decision to resist the recurrence of such heinous crime in future. The High Court also declared that other than this compensation, the victim had the right to file any case if she wished against any of the accused. Moreover, the court ordered the local Government to take the total responsibility of her travel, accommodation, and security whenever she had to appear before the court.

This exemplary judgement of the High Court helped the victim to regain her confidence. She has now become an important person among her relatives and her society. "When will the money come?" She wanted to know from me and she was eagerly waiting for that as the proof of her victory. She declared that with that money she would like to start a shelter home like 'Proshanti' of BNWLA for distressed women and children and a shop for fax-phone services. Beside these, she would work for the betterment of the people of her locality. After the declaration of High Court, she gave a surprising statement that watching the

satellite channels, she thought the girls and women of India were more secured than we were.

Subsequent Hassles

West Bengal Railway appealed in the Supreme Court against the said judgement. Long one year and eight months had passed between the judgement of High Court and the next hearing in the Supreme Court. It frustrated everyone as a shroud of uncertainty cast over all of us for that appeal of West Bengal Railway lay in hanging position. The victim was also getting frustrated. Every now and then she rushed to BNWLA. We counseled her to be patient. She told us that she had started to regain her lost dignity in the society as well as among her relatives. But the delay of Supreme Court had again been pushing her towards a disgraceful situation and she found it difficult to confront that situation all over again. There was nothing to do but to console her in that situation. She even caught a hijacker red-handed and handed him over to the police. We asked her as to why she showed such courage, for it might be dangerous for her. She answered "I am a living corpse, what else can happen to me". Her destructive attitude made us anxious. Repeatedly we requested her to have patience and told her that soon and surely we would win. For last few days, she used to come and sit beside me in our office and did not participate in the conversation properly. She even had a suicidal tendency for sometime. I counseled her for hours and tried to make her understand that in such scenario to remain patient is the most important factor. Frankly speaking, we ourselves also were anxious to know what would happen to her. Would justice be done to her? Often these thoughts made us depressed. At last, she again became happy and confident. I, on my part, got back my trust and strength. Our combined initiative did not go in vain, rather it made a glaring example among the people irrespective of caste and creed after the favorable verdict of the Supreme Court of India.

As a human rights activist what more could I expect? But yes, yet to go a long way! In order to bring back the lost dignity of each and every repressed woman and for her to secure compensation and acquire justice, we will continue our work in that direction.

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Women Under Attack Global Scenario

by Mansoor Mamoon

CONTRARY to accompanying euphoria and expectations, generally speaking, the dawn of the new millennium appears to have brought no sign of any marked improvement in the overall socio-political-economic condition of women the world over. Rather, as the women-folk are venturing for resurgence to have their equal and rightful share in all facets of life, their male counterparts with a myopic vision of age-old conservatism and vengeance in different countries are found to be sharpening their tools for clipping their wings so as to continually maintain their dominion over them and keep them subjugated. This had been so, roughly ten thousand years ago when agriculture was invented and marriage as a social custom gradually came into being for ensuring hereditary rights over land as well as to use women as chattel and virtual slaves for rearing up children and doing domestic chores. Ten thousand years of sufferings and struggles for securing their inalienable rights have not metamorphosed the overall condition of women till to date. Whatever progress in the emancipation of women has so far been achieved, could not proportionately trickle down to those in the lower rungs of the society and in the developing countries as will be evidenced in dispassionate review of the scenario.

Though widow marriages were introduced in the nineteenth century by the Hindu reformists till now not more than ten percent of the marriageable Hindu widows could find their husbands and start a new lease of life. The vast number of these widows are forced out of their husbands' or parental homes and take shelter at various Hindu holy places like Kashi, Gaya, Benares etc for life-long penance as is said to have been prescribed by their religion as if such women are to be blamed for the death of their husbands. These hapless widows feel prey to powerful clerics and other elements called the Pandas who often use them as sex slaves and force them to prostitution.

In the last Lok Sabha (the Lower House of parliament) election, the number of elected women MPs dropped from 49 to 46. A bill pertaining to allocate 33 percent of the assembly seats was recently tabled before the Lok Sabha. It was supposed to be brought during the tenure of the last Lok Sabha, but could not be

done as the male dominated political parties were not earnest about it. Though finally tabled, there is every doubt that it will at all be able to pass. Already a number of political parties have openly voiced their opposition against the move. Their plea that women in India are not adequately politically conscious and hence appropriately qualified to seat in parliament in such a vast number smacks of gross gender discriminatory attitude. They are pleading that to begin with at least ten percent seats should be earmarked for the women though they constitute about half of one billion inhabitants of the country. Under such circumstances, the fate of the bill could easily be understood.

In India cases of dowry-related death, acid burn, rape, molestation and other crimes committed against women have not shown any downward swing. In Kuwait, representatives of conservative tribal factions have voted for preventing and blocking women's from seating in the country's parliament and the move has rudely jolted the women's position in the society and retarded the progress, albeit not much, they achieved during centuries of struggle and clamor. In most of the Middle Eastern countries, women virtually enjoy no fundamental rights, bigamy is widely practiced by men, women possess no right to divorce while their husbands can divorce their wives whenever they like. Women even can not have driving licenses and travel to foreign countries without the permission of their husbands.

Pakistan's deposed Prime Minister Nawaz Sharif started enacting Sharia Law and would have completed the process had he remained in power. Many Islamic groups in Pakistan are increasingly and vehemently clamoring for enforcing Sharia Law fully segregating women and excluding them from public life.

Even in a newly industrialised multi-ethnic country like Malaysia Sharia law is very much in practice with the strict provision of covering heads and wearing ankle-length dresses by Muslim women.

In Turkey and Algeria, fundamentalists often target women who dare to move freely and in a carefree manner.

In Nigeria, which has a Muslim majority, one of its

thirty six states has very recently enforced Sharia in a bid to what its Governor said "creating a society which will be a crime and sin free ideal society". As if, women are the gates to hell, the girls will now be required to attend segregated schools and observe strict flogging. Other Nigerian states are reported to be preparing to follow suit.

In Ghana, Chad and other neighbouring countries where the JO JO tribe dwells, an evil custom of handing over the girl-child to the clerics for the crimes committed by their fathers by way of penance. The crimes may be flimsy like telling a lie. For the crime of her parents, a girl child is permanently given over to the clerics. Thirty thousand such girl-children are reported to be used as sex partners of the clerics and are forced to work throughout the day often without food. Only in death, they find their liberation. The custom is reminiscent of the Sevadis or temple girls which was in vogue in ancient and medieval India.

In South Africa wife killing, child-rage, abuse and domestic violence perpetrated by male members are common practice. According to a recent statistics, a wife dies at the hand of her husband in every six days and at least one child or woman is abused in every twenty-four minutes. Very few of these crimes are reported to the police. Even there are cases of police personnel committing rape. In 1999, at least one hundred members of the country's police were charged with rape. The government has recently enacted a law to provide legal support to the battered women. But the police say they remain otherwise busy and can not give full attention to the women victims. Besides, there is also dearth of funds for providing adequate legal cover as such cases are found to be glaring.

Even in developed western countries women are also grossly discriminated. In England, the Tory Party has recently been criticized for gender discrimination despite the fact that women secured their franchise in the early nineteenth century at the behest of the Tory government. The party also gave Britain its first lady Prime Minister Margaret Thatcher. In the last general elections, the Tories gave nomination to only 16 women out of whom 10 could get elected. Compared to the Tories, the Labour Party ear-

Since those early years, International Women's Day has assumed a new global dimension for women in developed and developing countries alike. The growing international women's movement, which has been strengthened by four global United Nations women's conferences, has helped make the conference the very starting point for co-ordinated efforts to demand women's rights and participation in the political and economic process. This date is also designated in many countries as a national holiday. When women on all continents, often divided by national boundaries and by ethnic, linguistic, cultural, economic and political differences, come together to celebrate their Day, they can look back to a tradition that represents at least nine decades of struggle for equality, justice, peace and development.

Challenges of Globalisation

The campaign to promote and protect the equal rights of women promoted by the United Nations have generated more intense and widespread support compared to UN ventures. The Charter of the United Nations, signed in San Francisco in 1945, was the first international agreement to proclaim gender equality as a fundamental human right. Since then, the Organisation has helped create a historic legacy of internationally agreed strategies, standards, programmes and goals to advance the status of women worldwide.

In many countries, the equal enjoyment of human rights has been written into law. The world has identified violence against women in its various forms as a clear violation of women's rights. Laws have been enacted, at the international, regional and national levels, to confront what should always have been considered unconscionable.

Yet, much remains to be done. There are daunting challenges, both new and old. At the forefront of the new is the way women are affected by the negative side of globalisation. Women are usually the first to lose their jobs as governments restructure and companies retrench. Poverty among women - especially heads of households and older women - appears to be deepening. Women are more likely to be unemployed or underemployed. If employed, they are more likely than men to be found in poorly paid and insecure jobs.

Rededicate ourselves to eliminating the discrimination and disadvantage to which women are still subjected, can make a real difference.

marked ten percent of its nomination for women. The Tory Party is alleged to put up woman candidates in such seats where the party does not have any prospect of winning. For example, a woman was put up against Prime Minister Tony Blair from the very start, her fate was sealed. The United States is yet to elect a woman as the President of the country.

In the Soviet Parliament a leading member lamented that after the dismemberment of the Soviet empire the country has only one commodity to export and that is their women. The same is the condition in many of the East European countries. In the WTO Conference the women found to their utter dismay that the so-called process of globalization and liberalization has grossly undermined their interests reducing them into mere commodities.

Finally, about the condition of women in Bangladesh the less said the better. From 1991, Bangladesh is continuously ruled by two women Prime Ministers. Bangladesh is probably the only country in the world where both the Prime Minister and the leader of the opposition in Parliament are women. Yet, the condition of women particularly in rural areas beggars description. All sorts of crimes are being committed against women. Albert Einstein once said, "The world is a grass roots level. The Union Parishad chairmen are resorting to even punishment by Fatawa which previously was the domain of the Mullahs. Women and children in large number (over seven thousand per year according to one statistics) are being smuggled to different countries. According to a foreign researcher (Lima by name) about two hundred thousand Rohingya women have found their way to Pakistan via India and are forced to prostitution to pay the exorbitant charges (about 2000 US Dollars per woman) of the traffickers. The Bangladesh government, however, has refuted the claim of the researcher.

Women, therefore, will have to go still a long way in achieving their rights. In the new millennium, they will be required to play a more pro-active role and wage a relentless crusade if they hope to have their equal share. For them awaits a rugged terrain and not a path strewn with roses.

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