

RIGHTS corner

Women - wither empowerment?

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EMPowerment of women not only means broadening the choices and expanding the options and alternatives available to women, but also creating an atmosphere where they will be able to independently assess the course of their lives and determine their destinies. It means enabling women to participate fully in decision making processes both at home and in the public arena and creating the atmosphere and awareness of social, political and economic values and opportunities for women. In the Subcontinent, women, throughout the decades, have taken serious steps to change political discourse, social norms and laws, enabling them and the future generations of women to have more social, economic and political empowerment.

Unfortunately, such enthusiasm for change in economic, social and political empowerment of women has taken a back seat in recent years. In 1971, through the independence of Bangladesh and the introduction of a Constitution on a socialist framework, opportunities for women were created and women's rights organisations took a lead role to help women victims of war atrocities and attracted many donor agencies. Young women took an active role in the political arena by being elected to their student organisations, in the local government and some contested in the parliament. Unfortunately such opportunities for women in Bangladesh has waned due to the gradual erosion of ideology-based politics. With the changing global political and economic scenario, women in the country are now victims of trafficking, cheap labour and almost at the level of goods and chattel. We are going backwards.

Changing donor agenda

Furthermore, donor organisations have changed their agenda; and issue of trade, business and the protection of corporate interest of multi-national organisations have preceded the issue of poverty alleviation. For example, the garments manufacturing industry in Bangladesh, where many young women found economic independence, has been greatly affected by recent occurrences which have made Northern countries feel insecure. Many factories are on the verge of closing business and a large number of women will become jobless. Again, given the recent trend of xenophobia and that Bangladesh is a predominantly Muslim country, foreign trade is occasionally obstructed and the country loses its cue in the world of trade. It is distressing and shameful to note that some local vested interest groups are giving the country a bad name from within and sending negative reports internationally, harming the country more. So much for seeking development and empowerment of women.

Woman's organisations have not yet been able to deepen the dent in the side of negative attitudes towards women's empowerment and the so-called women's wing of political parties merely follow the party dictates. Furthermore, not much has been done to enhance or improve on what reforms were made in the last century and till the early seventies. To date, the empowerment of women seems to lie merely in NGO agenda's of credit schemes, vocational training and legal awareness. All such programmes are extremely necessary, also with other awareness raising programmes. However, more needs to be done in the area of awareness raising for men in order to change male attitudes of women and 'women's work'. One of the ways this can be done is by

strengthening the economic power of women and ensuring that they are paid equally as men. Donor-driven projects are restricted mainly to micro-finance programmes and government bodies are not equipped to safeguard women's political empowerment. Human rights and women rights organisations working towards the empowerment of women can protest and lobby till they are blue in the face, but unless donor attitudes change globally and government attitudes brought to improve, expand



and become positive and responsive, women will continue to take a back seat in decision making and policy planning. The agenda of empowerment of women will also take a backseat.

Political status

Despite constitutional provisions that everyone is equal in the eyes of the law and that there will be no discrimination of sexes in public life, since the institution of the Constitution in 1972, there have not been many significant changes in the political status of women. Since 1991, we have had two female Prime Ministers in the country. However, these heads of state have done almost nothing specifically to contribute to the empowerment of women in all spheres of life. Furthermore, they did not achieve their powers through their active political involvement; rather they were put on the pedestal in a dynastic manner. Politics is still considered to be a male domain and the involvement of women in politics is an irregular phenomenon. Despite democratically elected female Prime Ministers, women have little to be proud of.

Sordid picture of violence against women

It is true that in the eighties and nineties, women's rights organisations protested violence against women and pressured to bring about

women-friendly legal reform measures. Furthermore, due to their constant pressure, new laws were enacted to safeguard women's rights. Unfortunately, 10 years on we see that the violence has not decreased, the legal process is slow, corruption is rife in the law enforcing agencies and in other government sectors and laws are not implemented. What use, then, are these new laws when not even the century-old penal laws are implemented properly or effectively? Empowerment of women not only means giving the women the right to decide. It involves other matters such as legal and economic security, non-discrimination, and eradication of impunity and change in social attitudes. Furthermore, one cannot separate women from men in the empowerment process. Both parties need to be aware and responsive.

Agenda for action

What measures are then necessary to ensure women's empowerment? Here are some suggestions:

Women's groups and organisations should make a great effort to emphasise the issue of gender equity and of gender and development.

A strong political will is required to ensure the full participation of women in the policy-making process and in the political process. Women themselves should be politically aware and free from influence. Those in political parties should be able to work for the good of women in the country and not merely bend to the leader's decisions.

Women should form a coalition to protest the negative impact of globalisation, as women are the worst victims of this.

During elections, the potential of women candidates, their leadership qualities and their competence as candidates should be highlighted. If they have no such qualities, they should not be made candidates just for their affiliation to a political party. There may be less female candidates because of this, but in this matter competence is a big factor.

There should be a positive discrimination within political parties during parliament and all local level elections to nominate at least 35% active, responsible women candidates.

There is a great necessity for the proper implementation of existing laws and all forms of impunity and corruption in the law enforcing agency and lower judiciary must be stopped.

Domestic violence and all things related to it must be treated as a legal offence and not merely as a social issue. Awareness raising in this matter is a must.

Empowerment begins in the home. Men must be made conscious of the contribution their wives and daughters make to the home, even if they are not earning members of the family.

Education of girls and women is a must. The school curriculum at a certain level should include topics related to constitutional guarantees and gender equality. Students should not have to wait till they are in University and studying a relevant topic, to be made aware of these.

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LAW reform

Enforcement of arbitral award Could delay in the process make room for justice?

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Since one of the main purpose of resorting to arbitration is to have speedy and effective disposal of disputes by avoiding the technical and frustratingly delayed and expensive court mechanisms, it is, therefore, necessary to set the enforcement process of an arbitral award in such a



way which ensures less delay. The Arbitration Act of 2001 by allowing the freedom of the parties to conduct the arbitration within their agreed procedure has definitely cut down the time of a dispute resolution with favourable consequences for both the parties. But once an arbitral award is rendered, like any other judgement of a civil court, the winning party may need to enforce it, especially when the award gives the winning party a claim to money. It is common ground that an enforcement mechanism originating in the lower courts of Bangladesh is a never-ending process and hugely contributes to delay and thereby frustrates justice. One prominent lawyer once said that the winning party has to go to door to door to enforce a judgement or decree.

The fear

The fear now is that if the arbitration advocated by the Arbitration Act, 2001 gains wide acceptance among the business and other interested parties, how far the present enforcement mechanism would be able to effectively tackle the demand of the parties for a speedy disposal of the enforcement process. It is argued that the Arbitration Act lacks in a coherent direction to resolve the issue as to speedy enforcement of an arbitral award.

Section 44 of the Arbitration Act deals with the enforcement of an arbitral award. It states that an arbitral award shall be enforced under the Code of Civil Procedure of 1908 in the same manner as if it were a decree of the court. In other words, the provisions in Part II and Order XXI of the Code of Civil Procedure would apply to an execution of an arbitral award. It is not intended here to venture on the overall procedural effectiveness of these provisions. However, it remains to see whether it is safe and effective to rely bluntly on the usual civil court enforcement mechanisms for enforcing an arbitral award. The following issues are relevant:

If an arbitration procedure is completed within a reasonable time, how far can we predict the time frame as to the enforcement of an award?

If the enforcement procedures and the enforcement set-up have proved to be very time consuming, how far the parties can have faith on the normal civil court system as to enforcement of an award?

If among the interested parties in any arbitration, it becomes common ground that enforcement through usual civil court process is the beginning of a never ending legal battle, then those parties will be less motivated to resort to arbitration. They would not see arbitration as an effective alternative to going to the court. This might lead to serious discouragement to settle a dispute through arbitration.

If that is the case, the purpose of the new Arbitration Act would be utterly frustrated and the consequences would be like the Arbitration Act of 1940 failure to encourage the parties to resort to arbitration more than litigation.

Reliance on the usual civil court mechanism of enforcement of an award has the potential of clogging an arbitration award; the award will be held up in the normal enforcement queue of the court; the court is not going to give any special treatment to enforcement of the awards under the present system; the already overburdened civil courts will be more unpredictable as the awards would put more pressure on the fragile system.

While the High Court has been vested with powers to intervene as to some matters arising out of arbitration, especially in case of international commercial arbitration held in Bangladesh, it has not been given any power to enforce an award as a decree. This is crucial. This omission is not going to convince a foreign party to resort to arbitration in Bangladesh, unless they are compelled by other means, albeit grudgingly!

What lies ahead: Two ideas

Enforcement power may be given to a specially assigned High Court Judge, in both domestic and international arbitration or at least in international arbitration. An arbitration wing could be installed within the High Court together with administrative power to conduct enforcement activities; or

A special mechanism has to be created within the civil court system to deal with the enforcement of arbitral awards. This could be achieved in a number of ways. But it is suggested that a separate arbitration wing could be installed within the District Courts with power and other logistic support to deal with all enforcement mechanisms under the Code of Civil Procedure. This arbitration cell would be independent of other sections of the District Court. The District Judge or an Additional District judge shall be given power to directly monitor the enforcement of an arbitral award.

In any of the above options, additional manpower (e.g. section clerks or Serestadar etc.) would be needed to make the system reliable and effective. Amendment to section 44 of the Arbitration Act would be needed and a few new sections to be inserted into the Act to create the special mechanism. However, the Code of Civil procedure does not need to be amended. Any of the above suggestions should be given effect in the light of the demand that is foresighted. Recent World Bank sponsored studies on judicial capacity building should also incorporate issues as to encouraging effective arbitration and enforcement mechanism.

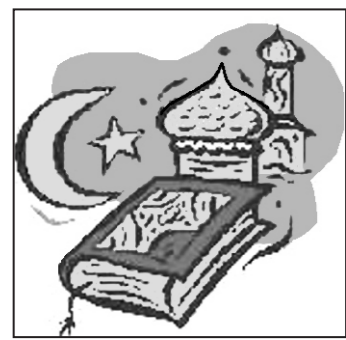
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LAW views

Islam and pluralism

ASGHAR ALI ENGINEER

Continued from previous issue



THE Qur'an does not take narrow sectarian view as many theologians tend to do. Its view is very broad humanitarian and its emphasis is not on dogmas but on good deeds. And it strongly condemns evil deeds which harms the society and humanity at large. In this respect also it makes no distinction between Muslims and non-Muslims. Thus the Qur'an says in 4:123: "It will not be in accordance with your vain desires nor the vain desires of the people of the Book. Whoever does evil, will be requited through his own sin. Allah is a friend of the doer of good." (99:7)

The Qur'an is very particular about freedom of conscience is key to pluralism. The Qur'an clearly states that there is no compulsion in religion (2:256) and maintains that all children of Adam are honourable (17:70). It does admit of inter-religious dialogue but with decorum: "And argue not with the People of the Book except by what is best, save such of them, as act unjustly. And Say: We believe in that which has been revealed to us and revealed to you, and our God and your God is One, and to Him we submit." (29:46)

The Qur'an lays great stress on unity of humankind. It says in 2:213, "Mankind is a single nation. So Allah raised prophets as bearers of good news and as warners, and He revealed with them the Book with truth, that it might judge between people concerning that in which they differed. And none but the very people who were given it differed about it after clear arguments had come to them, envying one another. So Allah has guided by His will those who believe to the truth about which they differed."

This whole verse is suffused with the spirit of pluralism and freedom of belief and conscience. According to this verse entire mankind is one but different prophets in their given situations come with revealed scriptures to guide them or warn them and thus, depending on their specific situation, different ways of life emerge. But then people start differing from each other and envying one another instead of respecting each others specificity and this people get divided. That is not the purpose of divine guidance. Allah guides those who believe to the truth about which they differed.

Emphasis on racial, linguistic and national identities

Apart from oneness of humankind the Qur'an also lays stress on racial, linguistic and national identities. These identities are projected as signs of God. "And of His signs", the Qur'an says, "And of His signs is the creation of the heavens and the earth and the diversity of your tongues and colours. Surely there are signs in this for the learned." (30:22) Thus diversity is projected by the Qur'an as sign of God and hence to be respected. Different identities are for recognition and hence necessary. In the verse 49:13 it is said, "O mankind, surely We have created you

from a male and a female, and made you nations and tribes that you may know each other." Thus national and tribal or for that matter other identities are necessary for knowing each other and it should not lead to any conflict. Thus different identities are product of national and tribal diversities and play a useful social role. Thus the Qur'an clearly accepts the legitimacy of diversity.

It also makes it clear quite forcefully that all places of worship should be respected and protected. The Qur'an states, "And if Allah did not repeal some people by others, cloisters, and churches, and synagogues, and mosques in which Allah's name is much remembered, would have been pulled down." (22:40) It is significant that Qur'an maintains that be it church or synagogue or mosque, Allah's name is being privileged in these places. No single religious place is being privileged in this respect. Thus here too religious pluralism is stressed.

The Prophet of Islam when he migrated from Mecca to Medina found himself in a pluralist situation. There was religious as well as tribal diversity. He not only accepted this diversity but legitimised it by drawing up an agreement with different religious and tribal groups and accorded them, through this agreement, a dignified existence and rights of their own. This agreement is known in history of Islam as Misaq-i-Madina.

It begins thus: In the name of God, the Merciful, the Compassionate! This is writing of Muhammad the prophet between the believers and Muslims of Quraysh and Yathrib (Madina) and those who follow them and are attached to them and who crusade along with them. They are a single community distinct from other people."

This agreement can be called the constitution of Madina and it was definitely a milestone which sought to lay the foundation of a new political and religious culture. What is significant to note in this agreement is that all together - Muslims of Quraysh from Mecca, Muslims of Madina belonging to the tribes of Aws and Khazraj and Jews belonging to different tribes - together constituted a single community - an Ummah. The agreement was also quite democratic in spirit. The Holy Prophet did not claim to be the ruler of this community. The emigrants (Muhajirs) were, in fact, treated as a clan, and the Prophet was their chief, and there were eight other clans with their chiefs. If the Constitution is a good evidence at this point, he was only marked off from other clan chiefs on two counts: firstly that for the group of believers i.e. Muslims he was a prophet and whatever was revealed to him was binding on the believers; secondly, the Constitution states that "whatever there is anything about which you differ, it is to be referred to God and to Muhammad". The idea seems that the holy Prophet should act as arbitrator between rival factions and maintain peace in Madina. The Qur'an also describes as one of the functions of the prophet as an arbiter. It says: "And for every nation there is a messenger. So when their messenger comes, the matter is decided between them with justice, and they are not wronged." (10:48)

It is interesting to note that the eminent Muslim theologians of India represented by Jami'at ul-'Ulama-i-Hind had cited this constitution of Madina drawn up by the holy Prophet in support of their acceptance of composite nationalism. They opposed separate nationalism based on religion advocated by the Muslim League. They argued, citing the Constitution of Madina, that the Prophet had accepted different religious and tribal groups as part of a single community - ummah wahidah. The Medinese society was, thus, a democratic civil society which had tribal, religious and racial diversity.

The modern democratic civil society cannot become a strong stable and prosperous conflict free society unless religious diversity or pluralism is accepted as legitimate way of life. It is unfortunate that most of the Muslim countries do not adhere to this spirit of pluralism and diversity in the Qur'an and sunnah. The extremists and fundamentalists among the

Muslims in these countries attack the spirit of pluralism and want to create a monolithic society.

Many socio-political doctrines which we consider as 'pure Islamic' and worthy of emulation today developed during medieval age when mulkiyat (personal and monarchical power structure) had become all pervasive and the Qur'anic values and Islamic spirit were hardly practiced. There was of course no question of any concept of civil society because the ruler was all powerful and followed his own personal whims or went by compulsions of power rather than the injunctions of the Qur'an. Also the arrogance of power and all pervasive authoritarian atmosphere also influenced for formulation of Islamic political doctrines. These medieval doctrines can hardly have any validity today.

It is for the Islamic political theorists of today to develop new political theories which are in keeping with the Qur'anic injunctions and sunnah on one hand, and takes the realities of modern world, on the other. There need not be any sharp contradiction between the two. The concept of civil society which respects autonomy of a citizen and his/her religious, cultural and political rights does not, as shown above, in any way, contradictory to the Qur'anic injunctions. Human rights respect the dignity and freedom of conscience of every individual. The Qur'an clearly states that all children of Adam have been honoured (17:70). This of course includes right to live with dignity and to promote ones own religious, cultural and linguistic or ethnic interests.

Creative and critical mindset

We must enter the 21st century not with the imitative (taqlidi) mind set but with a creative and critical mind set which, while adhering to the Qur'anic values, enables us to live freer life and life of full dignity while, at the same time, accepting the dignity of the other. The Qur'an, accepted, fourteen hundred years ago, the Christian other and the Jewish other with full dignity and respect for their beliefs. It was later accepted to the Zoroastrians and even Berbers. Many 'ulama and the Sufi saints, extended it to the Hindus also.

It is interesting to note that the words 'kafir' and 'mushrik' have definite historical connotation and should be used with great caution and restraint. Unfortunately many Muslims use these terms very loosely and describe every religious other as kafir or mushrik. These being terms of contempt are resented by others. Only those who refuse to accept truth in any form and negate good (ma'ruf) completely and advocate munkar (evil) would qualify as kafirs and those who refuse oneness of God and associate partners with Him will qualify as mushrik. And, it is also important to note, even kafirs and mushriks would have civil rights as long as they do not cause any disturbances in society and maintain peace. The Qur'an has given the kuffar also the right to worship in their own way and have their own beliefs. The freedom of conscience cannot be taken away from any human person, whatever his or her beliefs. Thus it will be seen that Islam does not come in the way of promoting a pluralist civil society ensuring dignity and freedom of conscience to all.

But it has yet to be realised in all Muslim countries. In many Muslim countries like Turkey and Iraq, let alone non-Muslims, even Muslims of other nationalities and ethnic origin like the Kurds are severely persecuted. It is in clear violation of the Qur'anic injunctions, as pointed out above. An Islamic civil society should treat all with equal degree of dignity and accord them equal citizenship rights.

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