



## LAW reform

# Reforming Hindu family law for equal rights of women

GOUTAM MONDAL

**B**ASANA'S husband died just a year after marriage at the age of only 11. Like other rural women of Bangladesh, she had to get married so early; and to the utter misfortune she had to embrace the contemptible life of a typical Hindu widow.

For the last four decades, Basana 51, from impoverished northern district of Rangpur, has been leading an inhumane life. To earn a mouthful of rice, she has to cook in a neighbour's house everyday. If she is unable to work for any reason, she goes hungry.

However, Basana wanted to live with her in-laws and spend the rest of her life without marrying for the second time. But after the death of her husband, his brothers shared all the property among themselves. She got nothing despite having the right to her husband's property. "I would not have to work in other's house as a maid if I had got the due share of my husband's property. But everybody ignored me when my husband died. Now I'm a pauper, a destitute woman," said Basana narrating her disgraceful way of earning bread and butter. Basana returned to her parents' home after the death of her husband and lived with them for several years. "But they are no more now— My brother gave me shelter for a few days but I could not adjust with his wife," she said.

The helpless woman has already crossed 50-years-mark. Now she has no expectation from the family or the society, which deprived her of due rights and compelled to become a servant. Her only hope is now to embrace a peaceful demise " whenever Bahagaban (God) wishes.

### Inheriting property in Hindu Law

As per the Hindu family law, a widow cannot inherit the property of her husband if she gets married for the second time, otherwise, the widow is the genuine inheritor of the property. According to this rule, Basana could get the property, but she was deprived.

Basana still believes that Hindu women can marry only once and widows are restricted by society to get married again. She does not know that a 145-year-old law allows widows to go for second marriage. The law was enacted in 1856 during the British rule amid widespread protest by the conservative Hindu society.

Like Basana, thousands of Hindu women in Bangladesh are being deprived of their right to property and this is being snatched by their own family members or in-laws. Some of these women do not know that they could inherit the property as per law.

The law relating to Hindu widows' rights, which was enacted in 1937, says the widows, if they have no children, are the only inheritors of their husbands' property. If a man dies leaving one or more sons, his wife (or wives) will get the share of property equal to that of one son. But she (or wives) can enjoy the right until death. She cannot donate, will or hand over the property to anybody without any legal reason.

"But this was not enough to ensure the rights of Hindu widows. Without proper application of the law they will continue to be deprived of their rights," said Advocate Nazrul Islam, a lawyer practicing in the Bangladesh Supreme Court. He said any widow could seek legal action to get her due property.

Not only widows, any Hindu women, married or unmarried, are the common victims of such deprivation. Daughter of a Hindu person cannot inherit her father's property if she has a brother(s). If a man does not have any son, his



daughter will get the property. But in most cases daughters do not get their due shares.

"This is a discriminatory law. It favours men. A girl child must have equal share of her father's property. This gender-biased law should be changed," said Advocate Islam.

In neighboring India and Nepal, Hindu family laws were reformed to ensure the rights of women to their ancestral property. But in Bangladesh the law has not been changed since 1947. As a result, Hindu women's rights could not be established or equalised to that of men. Noted jurist Dr. Mofizul Islam said equal property rights of Hindu men and women were established in India through the Hindu Disposition of Property Act 1956. Now sons and daughters in Hindu families get equal share of their father's property according to the law.

"This is one of the law enacted in India to bring fundamental change for ensuring the rights of women," he said.

### Launching movement against discriminatory law

It is true that Hindu women of Bangladesh are yet to a lunch any strong movement to establish their property rights. Social organisations and legal experts are also silent about it. But the discontentment among the victims is growing day by day.

According to a survey by Bangladesh National Women Layers' Association (BNWLA), more than 80 per cent Hindu women consider the existing family law 'discriminatory'. They demand that the law be reformed to ensure their rights.

"This is a creation of the male-dominated society and definitely it has designed to deprive women," said Aparna Karmakar, an MBBS student of Rajshahi Medical College. She strongly demands immediate amendments to this 'gender-biased' law.

However, leaders of the Hindu community have different opinions on the question of reforming the existing law. Bangladesh Hindu-Buddha-Christian Oikya Parishad leader Dr Nim Chandra Bhoumik said rights must be equal for men and women. "We don't want to see any gender inequality or discrimination in laws," he said emphasising the need for discussions to reform laws and resolve problems.

On the other hand, Ajit Kumar Barma, general secretary of 'Sanatan Seba Sangha' Rangpur, thinks Hindu women are not unhappy with the existing law. "This law helps maintain a peaceful family life. So there is no urgent need to reform the law," he said.

BNWLA is one of the organisations that can pilot a move towards reforming the law. "But we don't want to launch a movement for it. We want the deprived women to come up and initiate a movement. Then we'll extend our all out support and cooperation to them," said Advocate Touhida Khandaker of BNWLA.

Although Muslim family and property laws ensure the rights of women to the property of their parents or husbands, they are also being deprived. In most cases, widows are denied the right and the property is grabbed by of in-laws. "My in-laws turned down my demand outright. They told me to go to court, but I know it's a question lot of money," said Saima. "Who will give me the money? Who will guarantee that I'll get the property after the legal battle?" Advocate Salma Ali said the Muslim Family Law was reformed in 1961, but the provision on property right remained unchanged. "We can follow the reforms done in Shariah laws in Turkey, Tunisia and Malaysia," she said.

News Network

## LAW watch

# Asian groups' call for learning from experiences

More than 50 people from 17 countries of Asia, Western Europe and Australia, met from 23-25 August 2002 in Nakhon Nayok, Thailand, to discuss issues around the theme "Democracy and Security of the People in the Asian Region".

The participants of the workshop expressed grave concern at the imminent threat posed to the development of democracy and human rights in their countries, by the intensified use of national security laws in the framework of the "war on terrorism" launched by the US government in response to the September 11 2001 attack.

Apart from being plainly illegal and in violation of all due process rights enshrined in the International Covenant on Civil and Political Rights (ICCPR) these legislations and other measures enacted and implemented in the name of "national security" or "anti-terrorism" in the past

... have paved the way for genocides, massacres, extra-judicial killings,



disappearances, torture, detention without trial and sham processes. The role of basic institutions such as an independent judiciary, prosecution and police were fundamentally undermined. Peoples' rights to food, health, education and other basic needs were greatly reduced. People were exposed to terrible insecurity. (Declaration) Thus the participants unanimously rejected the notion of "national security" (which usually means the security of the state or government) and warned that the prolonged operation of national security laws has catastrophically destroyed the fabric of democracy in their countries. They called upon all peoples in the world - Asia, Europe, North America, Australia - to reject these illegal and in themselves terrorising, acts of the State, which ultimately also threaten the democratic way of life in their societies.

On the other hand, they affirmed emphatically that "real security is that which ensures the promotion and realisation of all human rights - political, social, economic and cultural for all peoples." (Declaration) Reaffirming the long tradition of struggle of the Asian peoples to achieve democracy in their societies, the participants resolved to continue and intensify their various national and regional programmes and campaigns to remove the obstacles to and promote the full enjoyment of human rights, as the fundamental basis for true human security.

They urgently call upon all civil society organisations to: **Take immediate actions to oppose the US 'War on Terrorism', in particular the planned US attack on Iraq; Develop solidarity and cooperation amongst the people of Asia to abolish national security laws that violate human rights; Continue to promote and develop human security as an alternative to militarisation and the 'War on Terrorism'.**

Courtesy: LAW WATCH, a center for studies on human rights law

## HUMAN RIGHTS advocacy

# Declaration of the regional NGO workshop Human Security not National Security

**T**HE September 11 attacks and the subsequent declaration by the United States of a "War on Terrorism" poses an imminent threat to "human security". National security laws which entrenched a practice of illegality are being extended and reinforced. We urge the peoples of the world to learn from the experience of Asia and join us in opposing the "War on Terrorism" and the National Security Laws that violate human rights.

The peoples of Asia have been struggling for democracy for centuries. During the time of western colonialism and its remnants in various Asian countries, people fought protracted and long battles with great loss of life and tremendous sacrifice.

As these countries were ending the rule of the colonial powers, the people of these countries hoped for democracy, which they attempted to enshrine in their constitutions. The beginnings of democratic institutions, such as parliaments and courts, were made during these years and a hope was implanted for a democratic way of life.

A significant challenge to democracy was the economic inequalities among the peoples. There was an ambition to develop the economies, reduce inequalities and to make democracy sustainable. Thus, the basic aspiration of the peoples of Asia is for democracy and this aspiration is deeper now than ever today.

The conception of democracy shared by the peoples includes the right to food, health, education and shelter as primary needs that should be guaranteed by the state. At the same time this principle gives equal value to basic civil and political rights. This means, insisting on protection from state interference by way of illegal arrest, illegal detention, torture, denial of fair trial, and denial of freedom of expression and association.

Election of government by free and fair elections was a fundamental condition of democracy; this required peoples' participation in all areas of political and social life. Elimination of corruption and ensuring of transparency and accountability was also crucial to achieving these democratic aspirations. The security envisaged was therefore one that incorporated all these aspects of people's security integrated with a democratic way of life.

After the end of Second World War, including the Japanese occupation in many countries and the end of the Korean war, the elimination of war became an integral part of peoples' security. In the fight against colonialism, the right to self-determination became a fundamental principle. As the Asian nations consented to the Universal Declaration of Human Rights, a basic human rights framework became the foundation of democracy and peoples' security.

The obstacles to democracy have come up from two sources. First, from sections of local elites and second, from pressures of international power blocks. Both these forces have relied on national security laws to suppress the democratic aspirations of the people. While these national security laws have their origins in colonial emergency powers and traditional autocracies, they have continued to evolve and been adapted by such local elites to perpetuate their rule.

These so-called 'laws', have paved way for genocides, massacres, extra-judicial killings, disappearances, torture, detention without trial and shams of trials. The role of basic institutions such as an independent judiciary, prosecution

and police were fundamentally undermined. Peoples' rights to food, health, education and other basic needs were greatly reduced. People were exposed to terrible insecurity.

The September 11 attacks on the World Trade Center and the Pentagon and the subsequent declaration by the United States of a global war on terrorism has created a pretext for governments to extend and intensify the use of national security laws to suppress movements for democracy and human rights.

The common features of such laws and actions include:   
-arbitrary detention without charge or trial;   
-the criminalisation of communities and organisations by labeling them terrorist;   
-the undermining of due process;   
-the reinforcement of repressive practices by state authorities including torture;   
-restrictions on freedom of movement and right to asylum;

-The intensification of all forms of racism and discrimination, including those based on gender, caste and religion, against migrants, refugees and minorities;

**The reduction of security to that of government's 'national security' rather than 'peoples' security' or 'human security' underpin this process. We reject this notion of security and affirm that real security is that which ensures the promotion and realisation of all human rights political, social, economic, and cultural for all peoples.**

-the erosion of privacy and increased surveillance.   
In short it is clear that much of what is carried out in the name of national security is in fact illegal and an abrogation of the rule of law. The principles articulated by international human rights instruments, in particular the International Covenant on Civil and Political Rights (ICCPR), are violated in the name of national security.

The reduction of security to that of government's 'national security' rather than 'peoples' security' or 'human security' underpin this process. We reject this notion of security and affirm that real security is that which ensures the promotion and realisation of all human rights political, social, economic, and cultural for all peoples.

In recent years we have seen peoples and movements across the world articulate the possibility and desire for such human security through the common opposition to neoliberal globalisation. The 'war on terrorism' threatens to label any form of dissent as terrorism, and is, in part, an attempt to destroy the capacity of peoples' movements to achieve security. War is the biggest violation of human rights.

With this in mind, we recognize that the current US plans to wage war on the Middle East represent a critical and fundamental threat to human security. There is a widely shared perception that the world is on the brink of

war.   
Therefore we call on governments and civil societies to carry out urgent protest and preventive actions against the US government until it repudiates its plans to commit a war against the people of Iraq and agrees to abide by international law.

We urge India and Pakistan in view of the nuclear threat to the region, to withdraw forthwith their forces from the border and start negotiations for peaceful resolution of all conflicts, including Kashmir.

We call for the rejection of all so-called "anti-terrorist" and national security measures taken by governments as illegal acts which violate international human rights standards. As long as the 'war on terrorism' continues it will be used by governments everywhere in the world as a justification for their illegal actions in the name of national security.

We would remind all governments that all acts of violence perpetrated by them in the name of national security or the "war on terrorism" that violate international human rights law are in fact themselves terrorist acts. We will act together to oppose such acts of state terrorism. We again affirm the universal right to self-determination and the right of peoples to self-defence of their rights, particularly in the face of tyranny and oppression. We reject the labeling as terrorists of groups resisting state terrorism.

All over Asia people are struggling for democracy through the abolishment of all national security laws that offend human rights. This forum affirms its support for that struggle.

We urge the people of the world, particularly people in Europe, North America and Japan, to learn from the Asian peoples' experience of the operation of national security laws which has catastrophically destroyed the fabric of democracy in our countries.

The participants of the forum warn that the war on terrorism threatens the very core of democratic nations. Further the participants warn that the very foundation of the United Nations and the UN instruments and mechanisms of Human Rights has already been undermined and is moving towards a collapse. In short, gains made by way of agreement of the Universal Declaration on Human Rights face a critical challenge.

September 11 and its aftermath is a critical moment for the peoples of Asia. We must seize this moment to ensure that democracy will remain and develop our continuing way of life by removing the threats and obstacles caused by the national security laws and the 'war on terrorism'.

Therefore we reiterate our calls to civil society organisations to:-

-Take immediate actions to oppose the US 'War on Terrorism', in particular the planned US attack on Iraq;   
-Develop solidarity and cooperation amongst the people of Asia to abolish national security laws that violate human rights;   
-Continue to promote and develop human security as an alternative to militarisation and the 'War on Terrorism'.

Regional workshop on Democracy and Security of the People in the Asian Region 23-25 August 2002, Nakhon Nayok, Thailand. The Workshop was jointly organized by: Asia Forum for Human Rights and Development (Forum Asia) Asian Human Rights Commission (AHRIC) Suara Rakyat Malaysia (Suaram) Transnational Institute (TNI). Courtesy: Law Watch.

## LAW opinion

# Proctorial rules require amendments

SHEIKH HAFIZUR RAHMAN KARZON

**I**N 1921 when Dhaka University was established, it had its own Rules, Regulations and Proctorial system to administer academic, administrative and disciplinary affairs of this university. In course of time, Rules, Regulations and Proctorial system were amended from time to time. Finally we got Dhaka University Order, 1973 (President's Order No. 11 of 1973). All the affairs of Dhaka University are now regulated as per the provisions of this Order and related rules. The Rules and Regulations of Dhaka University provide a proctorial system to ensure discipline and conduct of students within the University campus outside the Halls. This Proctorial system has been amended from time to time. Nevertheless, some of the provisions of this system create contradiction with constitutional provisions and some have become obsolete.

Rules (5) (ii) (iii) of Chapter XI of the Dhaka University Ordinances and Regulations (As amended up to September, 1997) provides that, the Proctor shall have power to impose on a student a fine up to twenty five taka at a time and the Assistant Proctor shall have power to impose on a student a fine not exceeding five taka for a breach of discipline or misconduct in the University outside the Halls. The provision of fine and the amount of fine determined by the Proctorial Rules in case of breaching discipline by any student is ridiculous. Because we never heard of imposing fine on any student on disciplinary ground, so what is the utility of that provision? If Proctorial Rules contain any provision which has no application in practice, then that provision should be deleted. Otherwise the amount of fine should be increased and the provision should be implemented impartially.

Rule (5) of Chapter XI provides that, no clubs or societies or students organisation other than recognised Unions or Associations shall be allowed to be formed. Here recognised Unions and Associations mean Dhaka University Central Students' Union (DUCSU), Hall Unions, debating clubs or cultural associations recognised by the university authority. If the university authority follows this provision then all the activities of the students' organisations functioning in the Dhaka University Campus will be considered illegal and all the meetings held by University Authority with the student leaders will be considered violation of Proctorial Rules. University Authority has no jurisdiction to hold meetings with the leaders of different students' organisations as the authority is only entitled to talk with the representatives of students directly elected by the general students. If any student or teacher raises the question that, under which authority University holds meetings with students' leaders, then what will be the answer? In Dhaka University last twelve years there was no election of DUCSU or Hall Unions. Now there is no representative of students and there is no initiative to hold this election which will eradicate the negative influence of non-student leaders and promote the academic and extra-curriculum activities of regular students. The student leaders might say that to form association and become member of association is their constitutional right. In that case proctorial provision should be amended to make it consistent with the constitutional provision of freedom of association. Either the activities of all students' organisations should be made valid through legal device or the University Authority should follow the existing Proctorial Rules which banned all students' organisations other than Unions or Associations recognised by University Authority and arrangements should be made to hold elections of DUCSU and Hall Unions regularly.

Regarding students' strike, Rule 6 of Chapter XI of the Dhaka University Ordinances and Regulations provides that, no student of the University individually or collectively shall declare a 'strike' of the University nor shall a student prevent another student from attending classes, Laboratories and Library. Obviously this provision was made to ensure smooth and unobstructed academic atmosphere in the Dhaka University Campus. But at the same time it curtails another democratic right, right to strike of students which they can use to realise their rightful demands. Recently the general students of Dhaka University called a number of strikes to protest the atrocities committed on the female students of Shamsunahar Hall and to press the resignation of the then Vice-Chancellor and Proctor of Dhaka University. This provision should be amended to accommodate the democratic right of students e.g., the right to strike.

As per Rules of Proctorial system, resident male students must be in their Houses or Halls before 9 PM during the months of November to February and 10 PM during the rest of the year. The gate of each House or Hall of male students shall be closed at 9-30 PM during the months of November to February and at 10-30 PM during the rest of the year. (Rule 1 and 2, Part-I, Chapter XII, Dhaka University Ordinances and Regulations.) Resident female students must be in their Halls before 7 PM during the months of November to February and before 8 PM during March to October. The main gate of every Hall of female students shall be closed at 8 PM in the summer (March-October) and at 7 PM in the winter (November-February). If a female student needs to stay outside the Hall after closing of the Hall Gate, that student will be allowed to enter the Hall up to 9 PM in the summer and up to 8 PM in the winter with the permission of concerned authority. (Rules 3 and 4 (i) (ii), Part-II, Chapter XII, Dhaka University Ordinances and Regulations.) Now female students can say that, Proctorial Rules and clearly violative of Articles 27 and 28 of Bangladesh Constitution. Article 27 of the

Constitution provides that, all citizens are equal before law and are entitled to equal protection of law. Article 28 (1) provides that, the state shall not discriminate against any citizen on grounds only of religion, race, caste, sex or place of birth. Sub-clause 2 of Article 28 very clearly declared that, women shall have equal rights with men in all spheres of the State and public life. So, it is very much clear that, Proctorial Rules made discrimination among the male and female students. These Rules create contradiction with the above mentioned provisions of Constitution. So, a special committee should be formed to recommend amendments of Proctorial Rules. The committee should identify the obsolete provisions of Proctorial Rules with a recommendation to abolish those provisions and those Rules which are repugnant to the constitutional articles so that all the inconsistencies will be eliminated. The committee should consider the social reality of this country.

Proctorial Rules are necessary for maintaining discipline and code of conduct of students of any institution like Dhaka University. None can deny the necessity of these Rules. But some of the provisions of Proctorial Rules have become obsolete, some create contradiction with constitutional provisions and some are in the book of law without having any application. So, after taking all these things into cognizance effective measures should be taken to amend Proctorial Rules of Dhaka University.

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