

FOR YOUR information



Difference between ratification and accession of a treaty

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A State may become a party to a Treaty either by ratification or by accession. Ordinarily, provisions of a Treaty lay down the procedure for a State to become formally a party to a Treaty either by ratification or accession.

The discussion is related to a multilateral treaty that is applicable to more than two or more states. For instance, the UN Charter or the SAARC Charter is a multilateral Treaty. The 1998 Rome Statute establishing the International Criminal Court is a multilateral Treaty.

The following discussion will make clear the difference between ratification and accession of a multilateral Treaty.

Processes to become a party to a Treaty

Ordinarily, powers of a State are distributed among its three organs: executive, legislative and judiciary. The executive runs the state in accordance with the Constitution and law, the legislature enacts laws and the judiciary implements laws.

The division of powers of a State is known as doctrine of separation of powers. The Bangladesh Constitution of 1972 distributes powers among the three organs of the Republic. Part IV of the Constitution relates to the executive, Part V to the legislature and Part VI to the judiciary of the Republic.

The decision to become a party to a Treaty is an executive decision. That means the government of the day decides to be a party to a Treaty. Ordinarily, this means that a representative of a government signs a Treaty. Signing of a Treaty is to indicate only the intention of the government to become a party to a Treaty.

Why ratification clause in a Treaty?

Ordinarily all multilateral Treaties have ratification clauses. A question arises as to why ratification provision is incorporated in a Treaty. It is because the process of ratification provides time or a second thought for a country as to whether or not it should become a party to a Treaty.

Once a country has become a party, it has to assiduously comply with the provisions of a Treaty. Therefore, it is necessary for a government to ensure whether it can comply with the provisions of a Treaty. If it is too burdensome or onerous, it may decide finally not to become a party to a Treaty, despite its signature by its representative.

For example, Bangladesh has signed the 1998 Rome Statute on International Criminal Tribunal but has not yet ratified it. Until ratification is executed by the government, Bangladesh is not a party to the Rome Statute. About 139 countries have signed the Rome Statute but only 97 signatory countries have ratified it as of March 2005. Bangladesh signed the 1982 UN Convention on the Law of the Sea in the same year but it ratified only in 2001 after a lapse of nineteen years.

Ratification of a Treaty in Bangladesh

The Bangladesh Constitution does not require the Parliament to ratify a Treaty. Article 145A of the Constitution provides that all treaties with foreign countries (not with foreign or international organizations, such as the World Bank, International Monetary Fund or World Trade Organisation) shall be submitted to the President, who shall cause them to be laid before Parliament, provided that any such treaty connected with national security shall be laid in a secret session of Parliament.

The above Constitutional provision requires that a Treaty with foreign countries needs to be laid only for discussion, not for ratification. Discussion by the members of Parliament is very useful because members of the Parliament may raise various issues relating to a Treaty, providing awareness to the government of potential difficulties, thus resulting a pressure on the government of the day not to ratify a Treaty.

The bottom line in Bangladesh is that the executive ratifies the Treaty. Both acts of signing and ratification are executed by the government.

Requirement of ratification by Parliament

In many countries, such as USA, Parliament has to ratify the Treaty. The Covenant of the League of Nations of 1920, although virtually "a child" of President Wilson of the US, was not ratified by the US Senate and as a result the US could not become a member of the League of Nations.

During the term of President Clinton, despite his request to the Senate members, the 1996 Comprehensive Test Ban Treaty (CTBT) was not ratified by the Senate and the US again could not be a party to the CTBT. Many experts believe that non-ratification of the CTBT by the US has weakened the US's moral high ground to ask other countries to become a party to CTBT



(India and Pakistan have not become parties to CTBT).

The above paragraphs indicate how a State formally becomes a party to a Treaty through ratification. Ratification may be either executed by the government of the day or by Parliament, depending on the provisions of the Constitution of the country.

Certain stages followed by countries to become a party to a Treaty

Generally speaking, to become formally a party to the Treaty, a country has to go through certain stages. The stages are as follows:

- after signing, a detailed examination of provisions of a Treaty by the various agencies of the government as to whether the government will be able to comply with the provisions of a Treaty, given its human and material resources,
- if a positive decision is arrived at by the government and if the Constitutional provision requires the treaty to be approved by the Parliament, the government remits the Treaty to Parliament that has to approve the treaty for ratification,
- if the government representative was not able to sign a Treaty document (called Final Act) and a country wishes to be a party to a Treaty, it can do so by accession and the procedure followed for accession remains the same as that of in the case of ratification.

Accession of a Treaty

Ratification can only apply when a state has signed a Treaty after conclusion. However many states may not attend the conference leading to the conclusion of a Treaty and therefore are not in a position to sign the Treaty.

Another situation is that many Treaties have come into operation before a country attains its independence. There are many Treaties which have been concluded before Bangladesh was born as a sovereign country. In such two cases, ratification procedure is not applicable but accession is only the procedure through which a country becomes formally party to a Treaty. Either the executive or Parliament can accede to a Treaty.

Bangladesh has acceded to many Treaties after its independence. If Bangladesh does not attend a conference that concludes a Treaty, the only procedure left for Bangladesh is to a party through accession.

Conclusion

To sum up: the difference between the two is only procedural and not substantive. Both procedures are essentially designed as to how a country may become a party to a Treaty. Ratification implies that a country has first signed the Treaty, whereas accession connotes that a country has not signed or was not in a position to sign a Treaty, whatever may be the reasons.

The document of ratification or accession is known as "Instrument of Ratification or Accession", ordinarily prepared by the Ministry of Foreign Affairs and signed by the Foreign Minister, once the head of the state/government (whoever is the chief executive under the Constitution) or the Parliament has consented to either ratification or accession of a Treaty as the case may be.

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LAW vision



Criminal responsibility for torture An Indian perspective

SAUMYA UMA

Contexts of torture

Some of the most common contexts of torture are police stations, detention centres and interrogation centres, although it is a practice that is decried by human rights activists and the Supreme Court. Despite the establishment of the NHRC to deal with such abuses more than a decade ago, police torture continues unabated. The severity of the incidence of torture is much worse than the statistics indicate, because victims, fearing reprisals, rarely report cases against the police. Some police officers justify the use of torture to extract confessions and instill fear. However, it is also true that the police in India are under tremendous pressure, as people need quick results. In a recent attempt to impact the practice of torture, most police stations in Delhi have been equipped with a camera in order to make the police functioning transparent.

Torture is frequently resorted to in situations of armed insurgency and militancy, such as in Punjab, North Eastern states and the state of Jammu and Kashmir. Another context of torture are situations of communal violence. India has witnessed several such situations, some of which include the anti-Sikh attacks in Delhi in 1984, attacks against Muslims in Mumbai, Surat and other places following the destruction of Babri Masjid in 1992-1993, attacks on Christians in 1998-99 and attacks against Muslims in Gujarat in 2002. In all such situations, some form of torture has been used against members of religious minority communities. Dalits are victims of one of the most cruel and exploitative systems legitimised by religion. Various forms of torture are perpetrated upon dalits ('untouchables' in the prevailing caste system) by members of 'upper' castes, aimed at maintaining status quo within the social hierarchy mediated by caste and untouchability. Assault, rape, torture, butchery and massacre of dalits, as well as practices of segregation and discrimination are rampant. Over 40 million dalits are bonded labourers, and are the worst victims of torture, exploitation and coercion in bondage. Adivasis (indigenous peoples), like the dalits, are illiterate and vulnerable to various forms of atrocities, motivated largely by an appropriation of forests and natural resources to serve the ends of economic globalisation. In addition, vulnerable groups such as women are specially targeted for gender violence in all the contexts discussed above. Torture of children in various contexts, including refugee, dalit and tribal children, arrest of children under POTA, corporal punishment and sexual exploitation by police has also been the subject of a detailed report. (Suhas Chakma, The Status of Children in India, Asian Centre for Human Rights, October 2003)

Torture as a women's rights concern

Torture is not only a human rights concern in general, but is also a women's rights concern. The physical and mental pain inflicted by rape and other forms of sexual violence has been clearly recognised in international jurisprudence as one of the most severe forms of torture (Prosecutor vs Delalic et al, IT-96-21, ICTY, November 1998, paras 495 and 496).

Reports also highlight the fact that in situations of armed conflict, women bear the brunt of sexual torture from both sides the insurgent / militant groups and the armed / paramilitary forces.

Women face more impediments to legal redress due to the stigma attached to sexual assaults and the fear of facing discriminatory treatment from the community. In addition, sexual assault of women in situations of communal violence is rampant. In the anti-Sikh attacks in Delhi in 1984, many Sikh women were raped, sometimes repeatedly, by Hindu men. The communal attacks in Mumbai in 1992-3 also witnessed widespread sexual assaults of women. However, the Gujarat carnage of 2002 is unprecedented in its scale, nature and brutality of sexual violence perpetrated against Muslim women and young girls. Rape is also used against dalit women as an instrument of subjugation by dominant castes.

Dalit women are often stripped, raped and molested by upper caste men. In some areas this extends to the killing of women as witches or dayans. Adivasi women are similarly targeted. Many such cases are motivated by property disputes, camouflaged by superstitious and traditional practices.

In addition, many instances of violence against women exist in the Indian society. The home has become a torture chamber for many women, who face domestic violence. According to the statistics of National Crime Bureau, in 2002, cruelty and torture perpetrated by a husband and his family made up 36 percent of all reported crimes against women in India. Yet, it is ironic that a special provision brought into the Indian Penal Code (S. 498A) to deal with the menace is constantly under fire due to alleged misuse by a few women. Feminists have advocated for an understanding of domestic violence as torture.

Investigation of allegations of torture

There exists a backlog of complaints pending before the NHRC and human rights commissions of various states, and hence the victim has to endure great delay. While the commissions can award compensation, they have no power of

prosecution and hence the errant officials remain at large. Investigations by the police do not inspire the confidence of the public, as such processes are largely seen as sham, aimed at shielding the errant police officers. Most investigations are handled by junior, inexperienced and untrained police officials. Investigations by the Central Bureau of Investigations (CBI) bear some credibility, but CBI enquiry is directed only in extreme cases of torture. Investigating allegations of torture by the armed forces is much more difficult. Internal inquiry proceedings exist, but do not inspire public confidence. Torture in contexts of communal violence, and upon dalits and adivasis are largely taken up for investigation by independent fact-finding committees or commissions set up by the government for the purpose. Many fact-finding reports remain in cold storage and are not acted upon. Many torture victims do not approach the police for registering complaints due to fear of reprisals and a lack of guarantee that a sensitive, unbiased and efficient investigation into the allegations will be conducted.

Conclusion

There is no dearth of judgements where the Supreme Court and the High Court have denounced the use of torture by law enforcement officials, and provided redress to victims. However, a climate of impunity continues to exist in India in dealing with allegations of torture. The key to ending this climate of impunity is to inspire the confidence of victims in coming forward with registering complaints, and providing victims and witnesses protection from intimidation and coercion during and after the litigation. The Law Commission of India has made an important initiative in this regard, by preparing a consultation paper on a proposed law for witness protection. This effort requires to be taken to its logical end.

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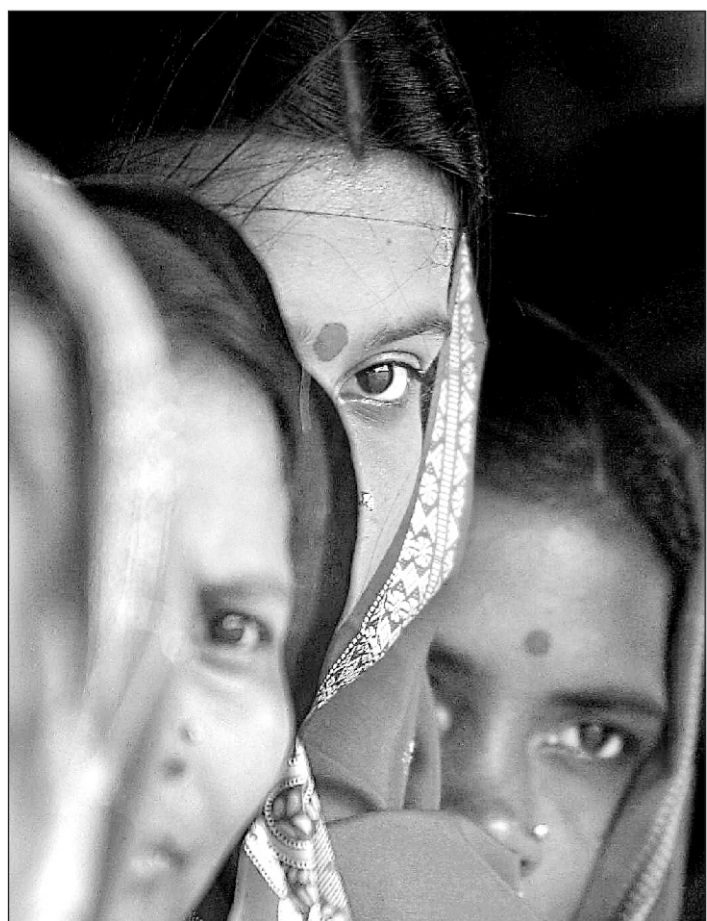


LAW vision



The long, winding road to empowerment

SAIRA RAHMAN KHAN



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.

Furthermore, donor organisations have changed their agenda; and issue of trade, business and the protection of corporate interest of multi- and transnational 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. Furthermore, the health and security standards of such factories are so poor that women are constantly at risk of being electrocuted or burnt due to faulty machinery and wiring. 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.

Women'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 (neglect?) 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.

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. 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.

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.

Most importantly, like charity, the idea of women's empowerment should start from the home. Mother's are constantly blamed for favouring sons, while ensuring that daughters have a hard life from the very beginning to 'get them used to what it is like to be a woman and suffer'. This practice really needs to change. 'Masculine' behaviour and social attitudes also need to go through a revolution which may come across to some as a culture shock. Unless both genders get together to ensure that empowerment for women can become a reality, it never will.

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