



LAW letter

Equality of what ?

The concept of equality is a brilliant invention of modern legal scholars which developed a new legal, social and economic order successfully replacing the institution of slavery and feudalism. Albeit, the term of equality is a normative aspect of law, very obscure one and difficult to define. In the modern world, political, social and economic order is based on the principle of equality. Apparently, such order is treated as a just one under legal discourse. However, I don't want to be concerned about the theoretical aspect of the term of equality. Here, I will try to focus from the practical point of view how the term equality itself breeds inequality, structural injustice in the society and develops modern form of slavery.

If we critically analyze, we will find that the norm of equality is being applied to unequal persons in unequal situation. In a society, the position and possession of

society in this respect. Ours is a highly stratified society. People living under the poverty line in rural areas account for not less than 50 percent and rural people in extreme poverty i.e., those living under hardcore (absolute) poverty line comprise at least 25 percent. The corresponding figures for the urban areas must be more than these (slum and floating population). But the principle of equality is being applied to the people without due regard to the above mentioned situation. In the game of law, the judges and lawyers will argue that the matter is not within the purview of law. So, the principle of equality becomes worthless for the mass people, however it is very good piece to read, good slogan for the politicians, good topic for the researchers, good matter for the lawyers to argue for legal intricacy, good for the judges to pronounce a brilliant judgment.

Here, if we take into consideration a simple specific situation, the matter may be more clear. As for example when a person

WORKERS. As a means to distribute property in a peaceful way and to make a more horizontal society, to provide a more reasonable salary is one of the most important ways and this is a sine qua non for distributive justice. Surprisingly, everyone is silent here.

However, courts and judges claim to be responsible for dispensation of equality and justice, but our courts are silent still now. When an agency responsible for dispensation of equality and justice remains silent under such a crucial moment concerning public interest, what may be the reasonable conclusion? Probably the court will say that the matter is not within the purview of the court. The workers have the full liberty to accept or not to accept the conditions furnished by the employers. Here, the workers and the employers are equally treated as per law. The workers have free will to go to the contract or not to go for the job. So, the necessary condition of a lawful contract is also being upheld. But what is the reality? The workers become bound to do the job under such situation and work for about 10-12 hours for Tk.1000. Ironically there is no legal problem.

Social-economic factors are the raw materials of legal factors and which also act as the underpinnings of legal factors. But when a matter is translated into legal language, the legal discourse usually contemplates that social factors are not within the purview of the law. In this way the concept of equality breeds inequality and causes structural injustice which reflects the interest of the people in power and develop modern form of slavery.

In almost all the cases, inequality is quite structural and it is hardly possible to tell such inequality as inequality. The plea of court and the legal discourse is that the matter is not within the purview of the court. The law and the court are blind here. Such inequality can lead to structural injustice and develop modern form of slavery.

Md. Shahidul Islam,
Advocate, Supreme Court of Bangladesh.

Step towards equality

The House of Lords has stood its ground in favour of a new set of anti-discrimination regulations last week. Amidst the fury of



religious groups, the House has said a clear 'no' to any discrimination on the basis of sexual orientation. The calls from the Christian and Muslim groups to allow them to refuse goods, services etc. to homosexuals in the name of their faith has failed to convince the Lords to overturn the regulations, which have applied in Northern Ireland since 1 January and are due to be implemented across the UK by April 2007. Only 1 of every 3 members voted in favour of a motion to annul the anti-discrimination regulations.

The Equality Act (Sexual Orientation) Regulations (Northern Ireland) 2006 have outlawed the practice of some businesses and other bodies of refusing their premises or services to persons who are gay or lesbian. According to these regulations, it will be unlawful for any person concerned with the provision (for payment or not) of goods, facilities or services to the public or a section of the public to discriminate against a person who seeks to obtain or use those goods, facilities or services by refusing or deliberately omitting to provide him with any of them, or to treat him less favourably than other members of the public, solely on the ground of his or her homosexuality. However, the Regulations seek to balance the rights of the religious groups in respect of services and provisions which are purely religious in nature.

Regulation 16 provides that religious organisations will still be entitled to restrict membership, participation in activities undertaken by them, or to restrict the provision of goods, facilities and services in the course of activities undertaken by the them, or to restrict the use or disposal of premises owned or controlled by them in respect of a person on the ground of his sexual orientation.

The insistence of the House of Lords on the preservation of right of equality in its most comprehensive form has in fact reinforced the fabric of the British society as a tolerant and secular one. These new regulations and their confirmation by the House of Lords have followed up the recent introduction of civil partnership between same-sex couples in the UK. These legal developments go hand in hand with better understanding of the intricate complexities of the human race as a whole in the spirit of harmony and tolerance.

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everyone is not same. Poor people are usually marginalized as they are not well integrated in the society. So, their social position is inferior to the rich. So, the status of people in a society is heterogeneous and in this way relationship among such people become a vertical one. Now, my question is that under such situation, if the principle of EQUALITY is applied; what will happen? Now, I want to portrait the picture of our

seeks for a job and if he is poor, it becomes quite impossible for him to negotiate for the conditions of the job. Salary is determined by the employer, the working hour and the job description is determined by the employer and every other provision relating to the job is also determined by the employer. If such situation becomes extremely vertical what will happen? Now, this is the situation of our GARMENTS

LAW news



Landmark UN treaty on disabilities opens for signature

More than 70 countries are expected to sign a new treaty that would protect the world's 650 million persons with disabilities when it opens for signature tomorrow at the United Nations.

"This is an enormous event for people like me," said Thomas Schindlmayr of the UN Department of Economic and Social Affairs, who uses a wheelchair, at a press briefing. "The Convention marks a major shift away from the way societies look at persons with disabilities. No longer are persons with disabilities to be seen as objects of charity and pity."

Mr. Schindlmayr said the new Convention on the Rights of Persons with Disabilities treats persons with disabilities as full-fledged citizens, and stresses that their full integration will require a change of attitude in society. "It's not asking for persons with disabilities to have any new rights. It's asking that persons with disabilities enjoy the same opportunities in society that everybody already enjoys." Jamaica is likely to be the first country to also ratify the treaty, which

needs 20 States parties -- or countries which have ratified the pact -- before it comes into force. Mr. Schindlmayr said he expected the Convention to enter into force later this year.

Some 40 countries will also sign the 18-article Optional Protocol on Communications, which will allow petitioning by individuals and groups on alleged violations of their rights to a committee of experts once all national recourse procedures have been exhausted.

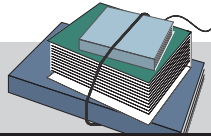
Deputy Secretary-General Asha-Rose Migiro, High Commissioner for Human Rights Louise Arbour and disability advocate Gideon Mandesi, among others, will address the meeting.

The Convention was adopted by the General Assembly in December after only three years of negotiations -- and termed as "the fastest-negotiated treaty ever".

UN News Service



LAW lexicon



Disability - a physical, mental, or sensory impairment, permanent or temporary, that limits the capacity to perform one or more essential activities of daily life

Handicap - the loss or limitation of opportunities to take part in the life of the community on an equal level with others. It describes the encounter between the persons with a disability and the environment.

Rehabilitation - the process to enable disabled persons "to reach and maintain their optimal physical, sensory, intellectual, psychiatric and/or social functional levels"

RIGHTS column



CHILD RIGHTS

Slum children have little access to education

SHANU MOSTAFIZ

SHEFALI spends much of her time taking care of her younger brother. She also has to fetch drinking water for her family from nearly a half-mile away every morning when girls her age go to school.

Shefali, a seven-year-old girl of Rayer Bazar slum in capital Dhaka, also picks abandoned papers and dried leaves for cooking. Then she has to wait for her mother's return who works in different houses of their neighbourhood as a housemaid.

"I used to go to school, but now I cannot for lack of time. Lately the school has been closed. There is another school away from our house. But, if I go to school, there will be no one to take care of my little brother," she says.

Shefali and her younger brother live alone in their shanty, as their mother has to work hard all day long to earn bread and butter. Back home, their mother has little energy to take care of them. More painful is that these children are deprived of father's affection as he left them to marry another woman.

A 2003 Unicef report says 54.5 percent boys and 60.9 percent girls, aged between 6 and 10, go to school from the slums in Dhaka City. Of them, only 2.8 percent slum children go to school when they reach the school age.

The report also reveals an alarming figure that 62.9 percent slum children work more than eight hours a day where 31.5 percent boys and 33.2 percent girls never go to school. When it comes to countrywide statistics, the report shows that 44.8 percent boys and 12.6 percent girls never go to school.

"Around 1.2 crore people live in Dhaka Metropolitan areas where 28.4 lakh people languish in around 4,300 slums. "These slum dwellers are poor and hardly aware about their basic rights. So, the government should do something for improving their lifestyle," says Dr Nazrul Islam, a development expert.

Dr Islam continues: A section of the civil society and some non-governmental organisations



(NGOs) are working for the development of slum children. Of them, 2-4 NGOs are working on the education of slum children.

Some NGOs are running schools in different city slums for foreign assistance. But there is always a question about the standard of education in those schools as there is a lack of regular monitoring, skilled manpower and education materials.

Dhaka City Corporation (DCC) operates some education centres in slums but these are not enough compared to the growing requirement. But, the schools run by some of the NGOs, including Suravee, UCEP, Ahsania Mission, EMES and Aparajeyo Bangladesh, have already earned appreciation for their success.

Under the circumstances, Unicef and the government have jointly taken some programmes to provide education to slum children and the kids of low-income group families. Around 3.46 lakh children, aged between 10-14 years, have been brought under the programme's first phase while another 2 lakh will be brought in its second phase, says Saidul Haque

Milki, Project Officer of Child Development and Education Section.

"We're now planning a pilot project for the children of 6-9 age group. We're providing training to some children who are engaged in stone crushing in Aminbazar area and some child labourers of old Dhaka as an experiment. We've also provided training on beauty treatments to some teenaged girls and some of them are now working in different beauty parlours," says Milki.

According to teachers of some slum education centres, children are interested to read but they cannot do that for various problems. Even, they do not get books in due time of the academic year. Besides, they have to buy a lot of education materials although they cannot afford that. Many schools have even no playground, which is necessary to attract kids.

Ganoshakkharata, another NGO, in a report published in August 2005 revealed that 53.7 percent parents talk about various problems when it comes to sending their kids to school. Around 92.3 percent parents think education is

costly while 20.4 percent say children are not interested to go to school for lack of facilities for recreation and educational materials. Above all classrooms in most schools are dirty.

It also says the dropout rate of children has a deep relation with the monthly income of a family. The dropout rate is 80 percent in the families whose monthly income is Tk 1,000 while it is 46.2 percent in the Tk 1,001-2,000 income group, eight percent in that of Tk 2,001-7,000 income group and nearly zero percent in that of Tk 7,000 income group.

Some educationists say economic insecurity and lack of education among the parents are the major obstructions to education of children. Besides, slum eviction, frequent fire and flooding are also the reasons behind the high dropout of slum children. But they hope the schools will get better response from the slum children if those institutions could be given a permanent shape.

Bangladesh is one of the initial signatories to the United Nations Convention on Children Rights, which describes elimination of all forms of discriminations, upholding the rights of children and government's due role in the development of children. So it is time to see whether these rights of the country's children are ensured.

In 2002, according to a Unicef report, the number of child labourers in Bangladesh was around 60 lakh and now it has come close to 1 crore.

"Improvement of lifestyle of slum dwellers is our national problem because of our widespread social discrimination. Education is one of the fundamental rights of children. Not only the government but also the civil society members should sincerely come forward to ensure education for all," says Prof Abdullah Abu Sayeed, a prominent academican.

Source: News Network

South Asia Media Commission for free info flow to be set up

South Asian media leaders decided to establish South Asia Media Commission to facilitate free flow of information among Saarc countries while regional foreign ministers promised to liberate their visa regimes for journalists. South Asian Free Media Association (Safma) yesterday at its third conference decided to set up the media commission in New Delhi.

The media commission was set up to respond to attacks on journalists, promote free flow of information and harmonise ethical standards for journalists in South Asia. All the Saarc foreign ministers attended the Safma conference yesterday during the lunch break of the council of ministers meet ahead of the Saarc summit. They pledged to ease visa restrictions for journalists of Saarc countries. Accepting a key demand of media persons, foreign ministers of Saarc nations decided to give visa stickers to 50 journalists from each member country to facilitate their movement within the region. Indian External Affairs Minister Pranab Mukherjee told the conference, "India will initiate the liberalisation of its visa regime for journalists from the region." He said journalists are crucial in strengthening information connectivity among Saarc citizens to form the core of Saarc's base: a South Asian identity, culture and ambition. Immigration officials from Saarc countries will meet within a few months to see how this decision can be implemented, Indian Foreign Secretary Shivshankar Menon said last evening. -- *The Daily Star* -- April 03, 2007.

HC rulings declaring their detention illegal stayed for a month

The 53 arrested high profile persons, including leaders of both Awami League and BNP, will not be freed from jails soon as the Supreme Court (SC) yesterday stayed for one month the High Court (HC) rulings declaring their detentions illegal. The SC Appellate Division also accepted the government's leave to appeal petitions against the HC order. The appeals will also be heard after a month. The seven-member full bench of the Appellate Division headed by Chief Justice Mohammad Ruhul Amin yesterday passed the order and granted the government's appeal. Many high profile former ministers and lawmakers, businessmen and professionals were arrested after the declaration of the state of emergency and were later detained under the Special Powers Act. The HC had declared the detentions of the 53 arrestees illegal after relatives of the detainees filed separate petitions at different times challenging the detention orders. The SC decided to hold an analogous hearing of the government appeals against the HC orders. Following yesterday's SC stay order, the 53 detainees will have to be inside jails. Besides, nobody will be able to challenge any other detention orders under Section 491 of Criminal Procedure Code until the disposal of the SC order, legal experts observed. Meanwhile, an HC bench yesterday adjourned until April 15 the passing of an order on a provision of the Amended Emergency Powers Rules that bar an accused from appealing for bail. The HC adjournment came following a deputy attorney general's submission saying the government will amend section 19 Gha of the Amended Emergency Powers Rules that bar an accused from seeking bail from a court or a tribunal. The HC bench said in the meantime it will hear the bail petitions as usual. -- *The Daily Star*, April 04, 2007.

Nazmul Huda, Tuku, Salahuddin, Pintu Salim shown held in different cases

Detained former ministers Nazmul Huda, Iqbal Hassan Mahmud Tuku, Salahuddin Ahmed and lawmakers Nasiruddin Ahmed Pintu and MAH Salim were shown arrested yesterday in connection with different cases filed on different dates. The Chief Metropolitan Magistrate's Court, Dhaka passed the orders following petitions for showing them arrested in the cases. -- *The Daily Star*, April 04, 2007

Campus politics to be banned for good

The government has initiated a move for a permanent ban on politics of students and teachers in public universities and colleges, in a significant bid to restore proper atmosphere for education. Since January 11, all political activities have remained banned under the emergency rules while the University Grants Commission (UGC) is drafting a law that will restrict politics in educational institutions even after the state of emergency is withdrawn, sources said. The education ministry that directed drafting the law, identified students' and teachers' politics as a major obstacle to suitable atmosphere for education. A seven-member high-powered committee headed by UGC Chairman Prof M Asaduzzaman and comprising educationists and legal experts, which is preparing the draft law, is likely to submit it to the education ministry early next month. Apart from imposing a ban on students' and teachers' politics, the draft will include some provisions to ensure accountability of the teachers by introducing a system to evaluate the teachers' performance by the students.

"No students' and teachers' organisations will be allowed to use party slogans and carry out any political party sponsored activities on the university campuses. The law will also be applicable in case of government colleges," the UGC chairman told to *The Daily Star*. He said the draft law will have provisions to punish anybody if he or she ignores the law. The students and teachers will however be allowed to be involved in 'limited' politics, which will be related to education and improvement of academic atmosphere, Prof Asaduzzaman said, adding that the draft law will also have provisions to allow students and teachers to be involved in political activities if the country faces a critical moment. -- *The Daily Star* April 05, 2007.

CEC asks govt to lift embargo on indoor politics

Chief Election Commissioner (CEC) ATM Shamsul Huda yesterday asked the caretaker government to withdraw the embargo on indoor politics. The CEC made the request so that the Election Commission can hold dialogue with the political parties seeking their opinion on planned electoral reforms. On the CEC's request made at a meeting with Law Adviser Mainul Hosen, the adviser later told newsmen, "The proposal has merit and it will be raised at the council of advisers for taking a decision." Emerging from the meeting, the CEC said he proposed to the government withdrawal of the embargo on indoor politics. "We are ready to start dialogues with political parties and civil society bodies as soon as the government withdraws the embargo on indoor politics," the CEC said. The EC has already drafted a set of proposals for electoral reforms, Shamsul Huda said. "The proposals will be finalised after holding dialogues with the political parties and civil society. Then we will send those to the law ministry to take necessary steps...But we cannot hold dialogue due to the embargo on indoor politics." The CEC also said he discussed with the law adviser the planned electoral reforms for holding the stalled ninth parliamentary election in a free and fair manner.

In addition to the restriction on political activities following the proclamation of emergency on January 11, the caretaker government on March 7 slapped a ban on all sorts of political activities including indoor politics, processions and meetings across the country until further order. In such a situation, the CEC met the law adviser at his secretariat office.

The council of advisers may discuss the issue (CEC's proposal) at its meeting scheduled for Saturday, the law adviser told newsmen. "The government will have to consider this proposal because it is the government which can allow indoor politics."

Mainul however said the caretaker government is working for a meaningful change of the existing pattern of politics. "We want good leadership to emerge instead of the old ones." -- *The Daily Star* April 05, 2007.

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