



Personal law and equality in parlance

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"How fortunate are we to come into this world after those who have gone before us, so we can take warning from their fate".Rumi, mathnawi

WELL, no offence to Aristotle, who said that law is reason, free from passion. But the well-considered historical track of our dear old subcontinent shows that laws in this particular region have more often than not, been guided by whims of passion and emotion rather than sound logic rationality. And coming to the word passion, I have a firm hunch (nice oxymoron, right?) that nobody's going to counter that the greatest amount of passion here swells up in the name of religion. Be it the Battle of Panipath, the Sepoy Mutiny, the Lakhnow Pact, The Bangabhanga, or even our dear Muktiyuddho (yes, we the Bangladeshis did passionately support the peaceful co-existence of religions as opposing to our "dear" West brethren), passion for preserving religious sanctity on paper (doesn't matter

drastically conflict with our elderly. We were there as volunteers at the seminar, so we were somehow getting lost within the hot (literally) speech-battle of the participants who were incessantly accusing one another of daringly encroaching upon one's religious beliefs. That's when we decided that we must voice out what the young people feel about personal laws (let me clarify, it's not religion, but the law). Here I can't help quoting Bonjovi: And I ain't gonna be a face in the crowd, You're gonna hear my voice when I shout it out loud!! Like it or not, we ARE the voice of the nation in coming 10 years, and the conventionalists may as well hear when we vent our thoughts.

We the Street Lawyers regularly exchange views with the higher secondary students of the country. On discussions about family laws, the young minds always surprise us by showing fantastic interpretations of harmonious coexistence of all and this clarity fades away by the time we attain maturity and adulthood. But if these young minds are to take control in coming days, a Uniform Family Code (hereinafter UFC) will not be

impossible for we have begun the practice, it's just a matter of when. The motion is set, and the old school must allow us to uphold the human dignity for which we fought in 71.

Just to make it easier for the readers to catch up, the main issue was whether any reform is possible in the existing personal laws, and more daringly, a UFC. Very passionately many of the elderly opined that the personal laws should be left as they have existed since long, and that those who want to liberalize the laws are misleading the laymen in religious knowledge and are hypocrites. Moreover, if without taking the opinion of the experts any reform is attempted, that would amount to dismantling from the religious course.

Now this is where we have a problem. Religion is something divine, directly ordained by God. The best trait of religion in the subcontinent is the birth of Sufism, where the love for God to dissolve into the supreme is the purest form of piety; and in Rumi's Mathnawi (II, 267), we see that God says to Moses: every man perceives God according his own temperament and capacity. All God wants is the burning inside. Do we have that power to peep into another's mind to see whether the flame of love for God has been extinguished? Is then such comment not audacity to decide for God? What patience then shall we learn from our preceding generation?

A few were saying that securing inheritance for children born out wedlock would encourage the process of producing illegitimate children (a term I don't support because logically no child can be illegitimate). A person never decides how he is to be conceived in the womb. It

is the parents who act whimsically without thinking about the child. Thus, by imputing the consequence of parents' deeds upon the child is the most gross violation and denial of its rights. Can religion support punishing one for the fault of another? I think not.

Representatives from the Islamic Foundation opined that in case of conjugal relations, the spouses may enjoy equal protection only if both share the costs of wedding equally, while the representative from the Catholic Church opined (let me mention I have had educational upbringing in a missionary institution experiencing pure Christian environment) according to the canons of papacy, divorce cannot be supported. Studying the law during these 4 years, we found that the black and white legislation differs tremendously with the practicality. The women in our society never get the opportunity to educate and empower themselves by holding jobs. Having been made so helpless, how can the grown ups demand such prerequisites for equal rights? In the current patriarchal domination, male arbitrariness is at rampant, and how can it be just to allow a woman suffer the shackles of marriage with a torturing incompatible husband? Does not the religion teach us to help the helpless and free the captivated so as to enjoy the blessings as we all are the children of God?

The Divorce legislations are extremely discriminatory in every personal law. The Christian woman has to prove incest/desertion/forcible conversion of religion along with adultery to obtain a divorce whereas the man has only to prove adultery of wife. Where the Constitution in article 27 says all are equal before the eye of law, how can a woman be allowed to keep silent only because her husband committed adultery but not with a blood relation, is living under the same roof and allowing her to go to church every Sabbath day? And have we not come a long way since 636 AD? Do we still need to look upto an incompatible husband to grant his wife permission to divorce him? (and there is a Sunnah providing a woman may not need such permission). Rationality lost its way somewhere in the journey of 1400 years.

Bangladesh policy makers for ages somehow managed to confine the implications of religion within the matters which are indeed personal: how one is to treat one's spouse, how one is to get one's ancestral property, how one is to lead life keeping to the expectations of the "society" (somehow the society bothers about an individual more than s/he bothers about him/herself!). Now, the way religious texts are embodied in the family laws in BD are on a plain reading easily discriminatory. It is hard to discover equality of men and women, be it marital rights, divorce rights, rights to hold on to one's offspring, even the decision to adopt. One the other hand, while making the Constitution they put down Article 27. They hailed the UDHR, they hailed the



CEDAW, CAT, CRC and many more.

Recently I finished reading Ramgolam by Harishankar Jaldas. The novel very finely depicts how using the soft corner of the Horijons the Corporation chief in the name of renovating the Temple made his way to found the butcher-shop right beside it. The horijons were too blind with joy of a new temple to see past the glittering dust the ashes of reality. This is why State intervention is sometimes necessary. Had not Bidyashagor and Raja Rammohun Roy been backed by the BritishRaj, Satidaho and Restraint on Widow marriage would till date persist. Those who opposed then still exist. They fool the common people by twisting the scriptures saying equal rights in family life will bring disaster, and then marry widows to get the 1000 mohranas Bidyashagor gave as dowry, then leave the girl for good; and we listen to them because we must preserve sanctity, humanity is not important for us till we are too late. The British profiled us ages ago, yet till now we fail to realize. We only read what is prohibited, we don't read what is NOT prohibited, thus having implied sanction. This is where liberal interpretation comes, and that is just what Bidyashagor did by saying to save a Widow from becoming "Oshoti" the only ways are to seclude her from worldly attractions or to give her a new husband. Foe the numerous child widows who were denied the beauty of life, Bidyashagor gave the perfect way out by liberal interpretation.

Our constitution is the supreme law, I guess there is no debate on that issue. Now the Constitution says that any law conflicting the constitutional spirit shall be void. Neither does the constitution give any personal legislations preferential treatment. When laws prevent us from human dignity, we are disrespecting the Constitution everyday. Why shall a woman's testimony be half the value of that of a male? There are Sunnahs indicating just the opposite our society practices. If we have the Evidence Act 1872 where a woman can equally testify in a murder case, it defeats rationality when she can't be an equal witness to a marriage ceremony. Let us not make a mockery of Principles of Natural Justice. Making a blanket provision for equal treatment shall never solve the issue. Making equal provisions for the unequal is inequality itself. Thus while bringing any reform, the learned religious studies experts must pay heed to the spirit of humanity, but then do we have that liberal mindset?

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if it is not practically executed) has always played a vital role in shaping the path of our national destiny.

By this time the reader must be wondering why I began my article in this serious law page with a quotation from a story of a lion, a donkey and a fox. Please have patience, for I do have a point. Now, what it has to do with personal laws. Along with a couple of friends, I recently attended a seminar titled 'Discussion on Family Laws' organized by the Law Commission of Bangladesh. The participants and the panelists were the grown up middle age teachers, learned magistrates, lawyers, NGO workers. I am not giving any picture of the outline of the discussion, for that is not what we are concerned about. Sitting there, we the young generation felt that there is somehow a fine difference of perception and point of view on the question of personal laws and civil aspects of legal system having some religious implications which

LAW REPORT

Death penalty 2011

Alarming levels of executions

COUNTRIES that carried out executions in 2011 did so at an alarming rate but those employing capital punishment have decreased by more than a third compared to a decade ago, Amnesty International found in its annual review of death sentences and executions. Only 10 percent of countries in the world, 20 out of 198, carried out executions last year. People were executed or sentenced to death for a range of offences including adultery and sodomy in Iran, blasphemy in Pakistan, sorcery in Saudi Arabia, the trafficking of human bones in the Republic of Congo, and drug offences in more than 10 countries. Methods of execution in 2011 included beheading, hanging, lethal injection and shooting. Some 18,750 people remained under sentence of death at the end of 2011 and at least 676 people were executed worldwide. But these figures do not include the thousands of executions that Amnesty International believes were carried out in China, where the numbers are suppressed. Nor do they account for the probable extent of Iran's use of the death penalty. Amnesty International has had credible reports of substantial numbers of executions not officially acknowledged. "The vast majority of countries have moved away from using the death penalty," said Salil Shetty Secretary General of Amnesty International. "Our message to the leaders of the isolated minority of countries that continue to execute is clear: you are out of step with the rest of the world on this issue and it is time you took steps to end this most cruel, inhuman and degrading punishment." In the Middle East there has been a steep rise in recorded executions up almost 50 per cent on the previous year. This was due to four countries: Iraq (at least 68 executions), Iran (at least 360), Saudi Arabia (at least 82) and Yemen (at least



41) which accounted for 99 per cent of all recorded executions in the Middle East and North Africa. The rise in Iran and Saudi Arabia alone accounted for the net increase in recorded executions across the world of 149, compared to 2010. Thousands of people were executed in China in

2011, more than the rest of the world put together. Figures on the death penalty are a state secret. Amnesty International has stopped publishing figures it collects from public sources in China as these are likely to grossly underestimate the true number. The organization renewed its challenge to the Chinese authorities to publish data on those executed and sentenced to death, in order to confirm their claims that various changes in law and practice have led to a significant reduction in the use of the death penalty in the country over the last four years. In Iran, Amnesty International received credible reports of a large number of unconfirmed or even secret executions which would almost double the levels officially acknowledged. At least three people were executed in Iran for crimes that were committed when they were under 18 years of age, in violation of international law. A further four unconfirmed executions of juvenile offenders were reported there, and one in Saudi Arabia.

The United States was again the only country in the Americas and the only member of the G8 group of leading economies to execute prisoners 43 in 2011. Europe and former Soviet Union countries were capital punishment-free, apart from Belarus where two people were executed. The Pacific was death penalty-free except for five death sentences in Papua New Guinea. In Belarus and Vietnam, prisoners were not informed of their forthcoming execution, nor were their families or lawyers. Public judicial executions were known to have been carried out in North Korea, Saudi Arabia and Somalia, as well as in Iran.

In the majority of countries where people were sentenced to death or executed, the trials did not meet international fair trial standards. In some, this involved the extraction of 'confessions' through torture or other duress including in China, Iran, Iraq, North Korea, and Saudi Arabia. Foreign nationals were disproportionately affected by the use of the death penalty, particularly in Saudi Arabia, Malaysia, Singapore, and Thailand. But even in those countries that continue to execute on a high level some progress was made in 2011. In China, the government eliminated the death penalty for 13 mainly 'white collar' crimes, and measures were also put forward to the National People's Congress to reduce the number of cases of torture in detention, strengthen the role of defence lawyers and ensure suspects in capital cases are represented by a lawyer. In the USA, the number of executions and new death sentences dropped dramatically from a decade ago. Illinois became the 16th state to abolish the death penalty. A moratorium was announced in the state of Oregon. And victims of violent crimes spoke out against the death penalty "Even among the small group of countries that executed in 2011, we can see gradual progress. These are small steps but such incremental measures have been shown ultimately to lead to the end of the death penalty," said Salil Shetty. "It is not going to happen overnight but we are determined that we will see the day when the death penalty is consigned to history."

Amnesty International opposes the death penalty in all cases without exception regardless of the nature of the crime, the characteristics of the offender or the method used by the state to carry out the execution. The death penalty violates the right to life and is the ultimate cruel, inhuman and degrading punishment.

Source: Amnesty International.