

**LAW CAMPAIGN**

S. M. MASUM BILLAH

**One Bakha, one Ramgolam**

Mulk Raj Anand wrote his famous novel 'untouchable' in the 1930's Indian society perspective. The novel centered round the life sufferings of a dalit boy named Bakha. Bakha even was not considered as a human being, his humanhood was challenged in that society. To Bakha every second of life appeared as a struggle, an epoch of immeasurable suppression. So, Bakha strikes our mindset, "They think we are mere dirt because we clean their dirt". Coming in 2012, Harishankar Jaldas, has depicted the sufferings and deprivations of the dalits of Bangladesh. Here we get Ramgolam in place of Bakha. Bakha was a bit submissive, but Ramgolam is demonstrative. But at the end of the day a lost, retired 'dalitdepressed and stressed'. In this article I have advocated to uphold the rights of the dalits through prisms of law and social democracy.

**The dalits: The historical background**

*Dalits* were first brought to Bangladesh from Indian state of Uttar Pradesh and Andhra Pradesh in between 1830-1850 to perform the so called lower classes of works: clear up jungles, removing dirt and dead corpus of the animals. These people have got their nomenclature of *bashpuri, dome, cha sromik, domar, lalbegi, mithal, balmiki, fasi, methor, chamar, madiga, chakali, dewali* etc. They are also known according to their place of origin and language such as: *kanpuri, telegu or madrazi*. The Asiatic Society published Banglapedia has mentioned the year of 1624-26 as the starting time of their profession. A landslide massacre was taken place by the Burmese thugs at that time. For the purpose of removing the dead corpses the 'methors' were appointed.

After the formation of Dhaka Committee in 1830 and establishment of Dhaka Pouroshova in 1864, the Pouroshova also assumed the responsibility of cleanliness of the city apart from other activities. As part of this duty, the sweepers carried out the duties of cleaning the city on day basis. In 1905, when Dhaka became the capital of East Bangla, surplus numbers of sweepers were needed. New sweepers were brought from Kanpur, Madras and Nagpur. From this time, the city dwellers had to pay extra duties for cleaning up wastages. Without the service of the *dalits*, how can you contemplate a civilized city life today? In this way, the Dhaka centered civilization owes to the sweepers from old times. Matter of regret is that *dalits* are yet to be recognized even at the 400 years celebration of Dhaka City. *Dalits* are always negated in the governmental and non-governmental policy formulation; even they are not in contemplation of any developmental initiatives. Even study of the deprivations of the *dalit* society is minimal.

**The present conditions of the dalits**

E. M. Forster once wrote, "really, it takes the human



mind to evolve so devilish.....The sweeper is worse of than a slave, for the slave may change his master and his duties and may even become free, but the sweeper is bound for ever, born into a state from which he can not escape and where he is excluded from social intercourse and the consolation of his religion. Unclean himself, he pollutes others when he touches them." The observation is true even in this society. The deprivations of the *dalits* are manifold. In order to grasp the actual grievances of the *dalits* the following points may be mentioned: i) *Dalits* are the victims of sarcasm and untouchability ii) Non-access to socio-economic rights i.e. access to food, housing, water and sanitation, right to health and medicare, right to development etc. iii) Fear of eviction. iv) The aggression of economic liberalization and sweeper-muslims conflict v) Absence of organizational spirit vi) Cultural aggression, poverty and conversion. The situation of the *dalits* can best be described with 3Ls--Lowliest, Lost and Last.

**Constitutional pledge: Are dalits 'un-people' of Bangladesh?**

The very first five words of our constitution 'WE THE PEOPLE OF BANGLADESH' are of revolutionary character. We at once get the touch of ownership upon the constitution as we read the words. The expression makes a resonance in our mind. The preamble at the

very outset has echoed the word 'people' with a culmination of 'WE ARE GIVING THIS CONSTITUTION TO OURSELVES'. So we used to say that constitution is the solemn expression of the 'people'. Any fundamental basis of the country, therefore, can not be scribed beyond the will of the people. 'People' should include all groupds of people and there should not be any inequality on the basis of caste consideration. An equality based society is the barometer of civilization. His Lordship Mr Justice A B M Khairul Haque in *Shamima Sultana Seema* (2005) observed: "This right of equality evolved in the Garden of Eden and was cherished through the civilizations. It is a barometer of the refinement of civilization in any country." In *Indra Sawhney* (1993), Indian Justice Jeevan Reddy commented, "for assuring equality of opportunity, it may well be necessary in certain situation to treat unequally situated persons unequally. Not doing so, would perpetuate and accentuate inequality."

If 55 lakhs of *Dalits* of Bangladesh remain outside of these considerations, then the constitutional spirit is bound to fail. The question of *egalite* is coming specially for the '*dalits*', because the society is subsumed in discrimination. The gap between rich and poor here is very emphatic. Some people have been able to take them outside the word 'people' and the rest have been adorned as mass people, general people, deprived, *dalits*, folks etc.

They have only learnt to console them by saying, hey *daridro tumi more korcho mohan!* Justice V R Krishna Iyer seems relevant here, when he speaks about the *dalits*: "They are a class in the cosmos, devoid of civilized amenities. These 'un-people' living in dirt and squalor are allergy to the elite, anathema to the higher judiciary, exasperation to the creamy layer and nouveau riche, who have happy hopes, and A.C. cars, mobile phones, security guard and business class travels." Considering the *dalits*' sufferings in our country, the question, therefore, can be raised: have *dalits* turned in to 'un-people' of Bangladesh?

**Dalit protection: In search for legislation**

Melvin P Sikes, in his Administration of Injustice, has written: "No country can grow and develop where there is no order, and a society without equal justice will self-destruct. There must be law and that law must be tampered by justice. And that justice must be for all!" The protection of legislation for the *dalits* is the demand of time. India has made protective legislation for the *dalits*, namely, 'Untouchability Offences Act, 1955 (Protection of Civil Liberties Act) and Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989. Nepal is not also lagging behind. They have enacted 'Caste-based Discrimination and

Untouchability (Offences and Punishment) Act, 2011'. Bangladesh should also follow their instance.

Recognizing their existence, the state owes an obligation to redeem the deprivations of the *dalits*. This obligation emanates from international human rights law, constitutional jurisprudence and state morality. To make a law for the protection of the 'backward classes' is the tune of Article 28(4) of Bangladesh Constitution. A *dalit* protective legislation should pay heed to the followings: a significant preamble in the light of international human rights law and the constitution, defining *dalit*, and discrimination on the ground of caste, race and profession and prohibition of that. In the law following matters are to be penalized: denial of access of *dalits* to schools, hospitals, obstructing *dalits* to offer prayers in public offering places, harassing, ridiculing or lowering someone on the basis of *untouchability*, propagation of *untouchability* directly or indirectly, justification of *untouchability* on historical or philosophical grounds, cherishing and supporting caste system. Providing proper and just remedy along with compensatory relief for violation of human rights of the *dalits* and institutionalizing proper, easy judicial, administrative remedial forum is another concern of the legislation.

Apart from the specific law, reform is to be brought out in the areas of government policy and regulations: Those should focus on: land reform and distribution of *khas* land ( amending *khas* land settlement policy), reservation in government service and educational rights, health scheme, food rationing, right to employment, right to housing and right to representation etc. The progressive aspirations of mankind can never become successful by excluding these people. As an ally to *dalit egalite*, they should not only be accorded rights but jurisprudence related to their wellbeing and justice should also be forged out. It is then we will be able to call law as 'people's law' or 'People's law Service'.

**Dalit egalite**

Bangladesh has a constitutional commitment to respect for international law. Progressive aspirations of human kind have found their place in the preambular pledge of the constitution and under Article 25 Bangladesh has shouldered the responsibility of international human rights obligation, the obligation under the CERD for example. The United Nations from 2004-2009 has made a Draft Policy and Guideline to effectively eliminate any sort of discrimination on the basis of caste and other professions. Though this policy and guideline is still at a nascent stage, it can prove to be a strong message towards the members of the United Nations. The *Dalits* have turned into permanent tenants of an exploitative system of administration of justice. This exploitation cycle is to be broken. Law is an important social factor and a significant dimension of human activity. For achieving social democracy, *dalit egalite* is the demand of the time.

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**GEOGRAPHICAL INDICATION**

Time to rethink international trade policy

EKRAM UDDIN KHAN & SHAKHAWAT SHAMIM

In the last few decades, there are proposals and negotiations regarding strengthening of protection for Geographical Indications (GIs) in the World Trade Organization (WTO). European Union (EU) is one of the major proponents of stronger protection for GIs. One of the strong arguments from western philosophers for GIs protection is that it has put forward and provides an avenue for economic development for agricultural producers in developing countries- a way to captures markets of developed countries. Although the concept of GIs is very new for developing countries' farmers, but it is true that GIs are not a new phenomenon-they have had a long history on particular products, e.g. alcoholic beverages. The EU is the global leader in GIs with about 5000 registered indicators and new registrations occurring at a rapid rate. GIs has become more prominent in western agricultural policy and GI designation are also popular with farmers as a result of the 'feel good' factor that comes from having one's product recognized as special. Originally, the special features of GIs were rooted in terroirsomething unique associated with the physical attributes of the soil and/or water (possibly in inter action with climate or other natural phenomenon) but have been expanded to include a host of factors associated with (often collective) human

capital or intellectual property (IP)sometimes classified as traditional knowledge in the IP literature (examples of GIs are Zamdani Sharee of Bangladesh, Feta Cheese of Greece, Maine Potatoes of US, Bashmati Rice of Pakistan etc). The topic of geographic indicators was renegotiated during the Uruguay Round. The protection of geographic indicators was also included within the new Agreement on TRIPS. Geographic indicators are dealt within three TRIPS articles. Article 22 Protection of Geographic Indicators defines geographic indicators as follows: "GIs are, for the purposes of this Agreement, indications which identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin." Rest of the clauses of Agreement on TRIPS set out the obligations of members to legally discipline misrepresentations of the geographic origins of products in their domestic law.

Some western experts on GIs claim that GIs can provide sustained benefits to groups of farmers in developing countries and certainly better than the claims often made by the European Commission such as: "GIs provide added value to our producers. French GI cheeses are sold at a



premium of 2 euro. Italian "Toscana" oil is sold at a premium of 20% since it has been registered as a GI in 1998. Many of these products, whose names are protected, are exported. 85% of French wine exports use GIs. 80% of EU exported spirits use GIs. GIs are the lifeline for 138000 farms in France and 300000 Italian employees" (EuropeanCommission, 2003). Effective

management of the GIs will first require that appropriate target countries are identified some countries' GI regimes may be more suitable to some products than others. Once the appropriate target markets are identified then the GI must be registered in those countries.

From Bangladesh perspective, Nakhshi Kantha, Jamdani Sharee, Rajshahi's Fazli

Mango etc have long national emotion and pride for the quality of these products. To protect the rights on GIs, government of Bangladesh needs to take proactive action to capture foreign markets and to promote farmers and small entrepreneurs. Already the government of Bangladesh made a Draft on GIs Act and it is yet to pass by the parliament. India, our neighboring country, already made an Act in 1999 for the Protection of GIs and to grab international markets, where they included so many products which have deep link with our national culture and heritage; such as Jamdani share, Nakshi kantha etc. As a Bangladeshi, one may feel proud these unique products such as Nakshi Katha, Jamdani Sharee, Rajshahi Fazli Mango and Silk products. There is a time to rethink and take quick step by government of Bangladesh on our international trade policy. Still there is a chance for Bangladesh and nothing to worry because few years ago, USA faced legal battles after the patenting of Bashmati Rice and India and Pakistan reestablished their GIs rights on Bashmati Rice. We can establish a national Intellectual Property Institute like China from where the experts on IP give proactive guideline to government and can save our national IP from the aggression of foreign countries.

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