

HUMAN RIGHTS ANALYSIS

Revisiting position of women in Bangladesh

MIRZA FARZANA IQBAL CHOWDHURY

THE discussion on women, women education and women empowerment in Bangladesh are not new, rather these are much voiced issues. Still the concern remains where we are heading in regard to these socio-legal issues. Starting with the issue of education, we can simply put that education is the first and foremost factor of any change in the family, society or the country. As women constitute more or less 50% of the total populace of Bangladesh, women education is much crucial to bring positive and real changes in the country. Though governments of Bangladesh took many initiatives to bring women education into play by the ways of stipends and various projects and Bangladesh has good parchment-record of escalating women education rate, still we are not well-developed in our faculty regarding education and empowerment of women. We can recall the words of Napoleon, 'Give me an educated mother; I will give you an educated nation'. Without proper women education, the dream of Bangladesh as a proper and prosperous country will never be materialised.

The question may come forward; women education rate is good then what is the next step? The matter of concern is that still we impose our ideas, dreams, notions on women that what they should learn and to what extent. Still women education is popped-up as a good marriage point. How good your degrees are, how well-off husband you will get. Ridiculous indeed!

If we dare to observe meticulously, we can see that a sustainable women education pays off fully in regard to the social devisor and irrespective of marital status-single or married. Even if she is single, she can contribute a lot to the furtherance of the society and country. She can enlighten her surroundings; she can serve the society by bringing positive change. When an educated woman gets married, she may face a lot of challenge in the new circumstances where her education may become a vital point of own survival and moving on. If she becomes a mother, she can raise her children more properly than not educated

or poorly educated women. In this modern age, where giving birth of a female child is still a challenge in many male-preferred families, the education of the mother can give her inner strength to face the undesired family odds to save the life and dignity of her female child. In upbringing children, a properly educated mother does not discriminate and does not allow others to discriminate among her male and female children as she knows all are equal and need to be properly guided as these



children will be grown-up to be adult and they will reflect to the society what they learn from their family.

Besides, the concept of women empowerment also necessarily calls for women education. Without being educated and empowered, the women will remain as the neglected creature in the society and without education and financial capability, women empowerment becomes a mocking theory. At every point of survival, self-motivation is exigency which comes from education and self-realisation that what you are, what you have and what you can do. Without education, a woman cannot be able to think properly, wisely and sustainably. When the traditional minds or bunch of fotwabaz speak against women education or women rights,

they actually try to cut the root and water the up of the tree! How hard they try to bring the country on the wheels of development, keeping women out from mainstream or blocking their development will render the development.

Generally women are portrayed as mother, sister, wife, daughter and in so many diversified roles. Very often her individual existence fades away and is not counted. Her role in the family and in the society is always taken for granted.

society or who protested for the women rights, are attempted to be muzzled or even threatened to death by religious or social fanatics as if, women's speaking up for own rights is an offence! If in an environment, women feel honoured, valued and equal in respect of rights and treatments, why will they pose menace to the family and the society? Who think women education and equality as a bundle of menace, the problem lies in them and in their backward and exploitative mental set-ups. Get a life, you are living in a modern age, you are gifted by reason and conscience by God. Then why you are not letting go of your own internal demons, the thoughts which have propensity to depress and repress the volcano of women power.

When any society or country will try hard to repress the irresistible power of the women, undoubtedly the society and the nation will fall down. So still there are time to make the things right, otherwise verily the society and nation will have to pay for all the wrong things done on women by the way of natural theory of karma.

Bangladesh and we, Bangladeshi populace always feel pride of our existing family system comparing to western world, if the mal-treatments on women goes on and the ailments of the women go unaddressed or poorly addressed, sooner or later we will face tremendous challenges to maintain the pride, as the confidence on the family system is by now started to be deteriorated and right away, multi-faceted social calamities e.g., divorce, female child abortion, dowry, dowry-led murders, domestic violence, eve-teasing etc are in full swing. Simply put-the real menace is not in fostering the women education or women empowerment; it lies in our age-old, futile, exploitative mind-sets towards women of the society. We are digging the hole of our misfortune by ourselves by allowing the age-old, superstitious dogmas to manipulate us and the society. The sooner this patriarchal society understands it, the better the things have chances to be.

THE WRITER IS LECTURER OF LAW, DAFFODIL INTERNATIONAL UNIVERSITY.

Implementation of right to food



ESHITA TASMIN

RIGHT to food- an inalienable human right which has been recognised worldwide. For the survival of a human being, among the all basic necessities food is the first one because it's not only human being but all the living creatures on the earth requires food for their living. Article 25 of the Universal Declaration of Human Rights (UDHR) and Article 11 of the International Convenient on Economic, Social and Cultural Rights (ICESCR) has adopted the right to food in spite of the millions of children who are suffering from malnutrition, dying for food scarcity and also undernourishment. Bangladesh being a state parties of these international instruments and specifically being a state party (signed and ratified in 1990) of the Convention on the Rights of the Child (1989), are obliged to implement the conditions of the international treaties. However, it is not only the state party who shall be held responsible for non in compliance but the whole community comprising of civil society, NGOs and even individuals have to hold each other's hands to fight with this global problem.

Now the question arises is there any municipal law existing in Bangladesh to ensure this right to food. Article 15 of the Constitution of the Peoples Republic Of Bangladesh state- "it shall be a fundamental responsibility of the state to attain, through planned economic growth, a constant increase of productive forces and a steady improvement in the material and cultural standard of living of the people, with a view to securing to its citizen- the provision of basic necessities of life, including food, clothing, shelter, education and medical care". With this article of the Constitution everyone will get the assurance that state is all in all responsible to provide these basic necessities towards its citizen. However, it is also true that no one can compel state or claim this right from the state in case of non fulfillment as this article belongs to the part 2 of the constitution (fundamental principles of state policy) which cannot be judicially enforced (*Kudrat -E-Elahi v Bangladesh* 44 DLR (AD) 319). Dr Mizanur Rahman, the Chairman of the National Human Rights Commission of Bangladesh gave his statement to Integrated Regional Information Networks (IRIN) regarding the issue of right to food that "the constitution of Bangladesh must endorse the right to food or right to be free from hunger". A proper legislation of food security law can play a vital role to deal with this issue.

While talking about this right to food- the utmost priority shall be given to the children of a state. Children of today are going to form the next generation. Millions of children suffer from one or more forms of malnutrition, including low birth weight, stunting, underweight, Vitamin A deficiency, iodine deficiency disorders and anemia. According to the report of UNICEF, in Bangladesh there exists high prevalence of stunting in children who are mostly under 5 years. Also malnutrition runs over from one generation to next. However, when we talk about the right to food for the children, the children also include street children as they are part of our society. These street children are growing up without getting any kind of care, shelter, safe water, proper food and nutrition and as a consequence just after reaching within the age of 8/10 they start taking cheaper drugs and other types of intoxication. As a result our society suffers the ultimate loss when a huge number of children from the upcoming generation left behind from the progress to contribute in the future development. Moreover, flood and other natural calamities mostly in southern part of Bangladesh like, Chittagong, Cox's Bazar, Bhola, Barishal) and poverty in Northern areas(Rangpur,Gaibandha, Kurigram, Lalmonirhat) also results malnutrition.

However, no matter what the circumstances are, the right to food for the children has to be ensured in all aspect. The nearest neighbor state India is going to enact their "THE NAIONAL FOOD SECURITY BILL, 2013". It is a bill to "provide for food and nutritional security in human life cycle approach, by ensuring access to adequate quantity of quality food at affordable prices to people to live a life with dignity". The government of Bangladesh in the same manner shall take initiatives to enact a law on food security. Minimum price of food at available market, standard of food - especially baby food, fruits and vegetables without formalin, proper measurement of tinned food, and most importantly maintenance of hygiene in the production of baby food - all these matters have to be taken in consideration.

With the die-hard effort of our farmers and government Bangladesh produced 33,889,000 metric tons of rice in 2012-2013 and successfully turned into a self-sufficient country in food. At this stage of success in food sector we strongly expect and hope that our children's right to food shall be protected in all aspect and Bangladesh will get a healthy and nutritious generation.

THE WRITER IS AN ADVOCATE.

YOUR ADVOCATE



This week Your Advocate is Barrister Omar Khan Joy, Advocate, Supreme Court of Bangladesh. He is the head of the chambers of a renowned law firm, namely, 'Legal Counsel', which has expertise mainly in commercial law, corporate law, family law, employment and labor law, land law, banking law, constitutional law, criminal law, IPR and in conducting litigations before courts of different hierarchies.

Query:

I am Bangladeshi Muslim and currently living in United Kingdom. I am a student here and planning to get married with a foreign girl. She lives in Canada and she is originally from Philippines. I want to marry her in Bangladesh and where she can appear as a visitor. She will stay in Bangladesh about two weeks and we get married within this time. After that she will go back to Canada again. So please let me know the legal procedure which I need to follow in order to marry a foreign girl in Bangladesh.

Kazi Md. Giash Uddin
UK

Response:

I would like to thank you very much for soliciting my legal opinion regarding the matter of marriage between a Bangladeshi national and a foreign national. Upon receipt of the query I have understood that you are a Bangladeshi Muslim boy and are desirous to marry a Filipino girl, living in Canada. As in your query you have not mentioned the religion of the girl, I will discuss various different situations regarding it.

The common notion of marriage is to have a social and legal union between man and woman in order to live together and often to have child. In Bangladesh the procedure of marriage is different in terms of religion as well the laws governing it.

If there is no such barrier regarding ages of you two and both of you are unmarried at the time of solemnizing the marriage, than you are legally capable of marrying each other. You did not mention in your query that whether the foreigner girl is Muslim or Non-Muslim and it is quiet significant to be acquainted with it before providing any legal opinion. If she is a Muslim, then you can marry under the Muslim Law. The Muslim marriage procedure is quite simple in Bangladesh. You can go to a 'Kazi Office' in order to get married and through the Nikhah Registrar/Kazi you can register your marriage under Muslim Marriage and Divorce (Registration) Act 1974.

The procedure as well the scenario of marriage will be different when the girl is Non-Muslim. Now-a-days we can perceive many cross religion marriages in our country. A Muslim male can have a legal marriage with a Kitabiyah (i.e. a Jewish or Christian girl). Since most of the people in the Philippine are Christians, the girl in issue may be a Christian. In such case as well, you can marry her under the Muslim law both keeping your religion unconverted.

On the contrary, if she is neither a Muslim nor a Christian; and does not want to convert to Islam, then you can marry her under the Special Marriage Act 1872.

However, irrespective of the type of marriages based on religions, since the girl is a foreigner and will merely be a visitor in Bangladesh at the time of marriage, it will be better to swear a declaration in the form of affidavit before the first class magistrate by both of you regarding the marriage. Besides, it may be a practically wise idea for you to request her to provide Unmarried Certificate/Marital Status Certificate' from concerned authorities both in Canada and Philippines.

I hope you will have answer to your queries from the afore-said opinion.

FOR DETAILED QUERY CONTACT: OMAR@LEGALCOUNSELBD.COM.

FOR YOUR INFORMATION

Inconsistency of recording evidence

MOHAMMAD NAYEEM FIROZ

RECURRENTLY an argument resonates in our legal arena about expunging the recorded evidence of the witnesses whose depositions (examination-in-chief) were recorded without cross-examination. The argument is that the evidence given in examination-in-chief cannot be considered and should be expunged in that case. Consequently, another argument is placed that as there is no evidence in such a case the side which produced the witness is not entitled to get the relief what they sought.

Quite the reverse, there is a counter argument that in any given litigation the witnesses are produced before the Court to prove their case and they testify on oath as per rules of evidence but if for some unspecified reasons they cannot be cross-examined by the other side their testimony cannot be discarded and inadmissible only because of the reason that they could not be cross-examined or could not be found for cross-examination at a subsequent stage of the litigation. It is further argued that in cases where the witnesses cannot be cross examined it is sufficient if initiatives are taken to produce the witnesses to that end but if the witnesses cannot be brought again in the Court for some unavoidable reasons despite the issuing of several Court-processes to compel their attendance the litigation can be disposed of upon the evidence already recorded. If the other side is benefitted only for the reason of non-cross-examination of the witnesses such a decision will seriously jeopardize and prejudice the party which produced the witnesses.

Addressing the legal answer to the paradox

At this instant, to find a feasible answer I would like to venture to enter into the legal aspect of the 'expunge of evidence' issue. In the Criminal Justice System of this Country where adversarial adjudication mechanisms are predominantly prevailing the witnesses are very much reluctant to come to the Courts to depose owing to various socio-political embargos and hazards. Similar situation exists in the administration of civil justice too. Despite all such factors the litigant people or the law-enforcing agencies, as the case may be are producing the witnesses to depose at the Courts-of-law with the initiatives of the Courts and the Prosecution in course of the trial.

In such a trial when any prosecution witness after being examined-in-chief and after his cross-examination is held either in part or not at all at the instance of the defense, the said witness did not turn up for his further cross-examination in spite of repeated opportunities being given by the Court, the Trial Court is not obliged to go on granting adjournments to the witness for indefinite period and in such case it would be just and proper for the Trial Court to close the evidence of the said witness and to proceed to the next stage of trial.

Under the scheme of the Code of Criminal Procedure and according to the provision of the Evidence Act, there is no provision for expunging of evidence of any witness from the records, the question of expunging of evidence only arise when there is any order of a superior Court for de-novo trial from the stage of framing of charge. In other words, once evidence is recorded the Court which recorded such evidence has no legal opportunity to expunge the same from the records. In this connection it would be more apt to refer the observation of the Calcutta High Court in the case of *Dever Park Builders*

Prt. Ltd. & Ors. v Smt. Madhuri Jalan & Ors., reported in AIR 2002 Calcutta 281. In the said decision at paragraph 10 the Court observed that in a case in which there is one and singular stage in the proceedings Section 33 of the Evidence Act will not at all be helpful nor it is applicable there.

The issue was whether the testimony of the deceased defendant with unfinished cross-examination will be admissible or be considered at the time of hearing or rendering judgment in that case or not. Under the provisions of Section 138 of the Evidence Act order of examination of witness is provided. It appears that the witness shall be first examined-in-chief by the party who has called him and then if the adverse party so desires may cross-examine and thereafter if the party calling so desires may re-examine. Upon careful reading of the said Section it would be apparent that the cross-examination is not a must nor as a matter course, or



without the same the evidence given in examination-in-chief cannot be rejected nor expunged.

However, if the adverse party opts for, certainly, the cross-examination is a must. There is substance in the stance that there is no provision under law if the witness is not cross-examined either in full or part his evidence would be absolutely rendered inadmissible. A somewhat similar question came up for consideration before the Honorable High Court Division of Bangladesh Supreme Court in the case of *Chowdhury Miah v Dhanindra Kumar Shil.*, reported in 45 DLR 110. In the decision of the above case Honorable High Court Division observed that there is no provision in the Evidence Act that the evidence of a witness which is admissible at the time he gave it should become inadmissible for the reason that he could not be cross-examined for some unavoidable reason.

For the reasons stated above, the argument for expunging the testimony recorded in chief examination is not tenable in the eye of law of evidence and it is for every reason liable to be discarded. In the similar circumstances the cases (where evidence is recorded in full or in part) should be adjudged upon evidence on record and in pursuant to the merit of the case in accordance with rules of evidence along with principles of legal justice.

THE WRITER IS A MEMBER OF BANGLADESH JUDICIAL SERVICE.