"ALL CITIZENS ARE EQUAL BEFORE LAW AND ARE ENTITLED TO EQUAL PROTECTION OF LAW"-ARTICLE 27 OF THE CONSTITUTION OF THE PEOPLE'S REPUBLIC OF BANGLADESH dslawdesk@yahoo.co.uk

Rights of working women

SHAKIR UDDIN AHMED

AT present times women employees can be seen in almost every establishments. They work in industries, shops, factories, companies alike the men. However, they have not been always treated fairly in their workplaces. There had been instances where women were denied maternity benefits and even fired during times of pregnancy. There had also been cases where women workers had been sexually assaulted and harassed in their workplaces. Cases of unfair payment and dismissals are also commonly heard of.

As per the Labour Act 2006 (amended in 2013), woman employees of any establishment who has worked there for at least six months will be entitled to pregnancy leave along with full pay.

The law clearly states that every woman employed in any establishment shall be entitled to the payment of maternity benefit in respect of the period of eight weeks preceding the possible date of her delivery and eight weeks immediately following the day of her delivery. For these 16 weeks of leave in total, the benefit she will be entitled to consists of a payment depending on her current wages. To be more precise, the payment of maternity benefit will have to be calculated according to average of three months of salary prior to leave or average of daily wages for the period of her actual absence depending on the nature of her job. The payment of maternity benefit shall be made wholly in cash.

In the event that the woman dies on the day of delivery or within eight weeks after that, maternity benefit will have to be paid to the person who takes care of the child. If both the woman and the child die, the benefit is to be paid to the person she nominated. There is however some restrictions on this maternity benefit right. The woman will be entitled to only two pregnancy leave along with full pay. If she already has two or more children alive, at the time of delivery, she will not be allowed maternity benefit for the third child.

Furthermore, employers are prohibited to discharge, dismiss, and terminate any pregnant woman before six months of the date of her delivery and the eight weeks after the date of delivery. If the employer gives notice or order of dismissal, discharge or removal to a woman 'without sufficient cause' within the above mentioned period, she will not be deprived of the maternity benefit to which she may have become entitled according to the law.

In cases of denial of such benefits by any employer, the woman worker can take legal actions against the employer and seek justice in the Labour Court of Bangladesh. In cases of unfair dismissals, she can resort to the Labour Court as well. If the woman worker is a permanent employee of any establishment, the employer has to give at least four months notice before terminating her permanently. Alternatively, if the employer fires her instantly, the employer has to give her four months of salary during such termination. The terminated woman employee is also entitled to other compensation according to her years of service.

In the case of sexual assault and harassment within the workplace, the woman employee can file a criminal case against the offender. The offender could include other male employees or even the employer. Even if the local police station denies registering any such cases, as is often the case in our country, the woman employee can alternatively file a criminal case at the magistrate court. In that case she has to take the help of a lawyer.

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Some factories and television channels in Bangladesh require women worker to work overtime or late hours. This late working hours put the safety of women workers at serious risk. This is because most companies provide no transport for women who finish the night shift at 10 or 11 p.m. and also that public transport is scarce late at night. Labour law clearly illustrates that employers are prohibited to engage woman workers for working at night between 10 p.m. and 6 a.m. in any establishment without her permission.

Most of the average working women can seek resort to Labour Law 2006. However, if the woman is a managing director, chairman, manager, secretary, partner or has management or administrative functions of any company or factory, she would usually be construed as an employer and will not enjoy the protection of the Labour law. These women have the option of resorting to the civil courts of Bangladesh if any terms and conditions of their employment contract are breached.

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ACCESS TO SAFE Drinking Water

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CLEAN water is essential to human growth, economic growth for a country and sustainability of that country. Without water, life could not exist; it is one of life's most fundamental basic needs. About 1.1 billion people half the developing world has no access to any type of improved drinking source of water. The consequences of not having safe drinking water are stark, 1.6 million people die every year from diarrhoeal diseases attributable to lack of access to safe drinking water and basic sanitation. The World Health Organization states that "access to improved water supply is not only a fundamental need and human right it also has considerable health and economic benefits to households and individuals." The current situation regarding safe drinking water is potentially fatal globally. Almost half of the world's population faces a scarcity of water, and currently one billion people do not have access to safe drinking water.

The concept of basic water requirements to meet fundamental human needs was first established at the 1977 United Nations Water Conference in Mar del Plata, Argentina. Its Action Plan asserted that all peoples, whatever their stage of development and their social and economic conditions, had the right to have access to drinking water in quantities and of a quality equal to their basic needs.

Around 26 million people of Bangladesh do not have access to safe drinking water sources, according to an estimate of UNICEF and WHO. The UN Legal framework towards the right to water is globally acknowledged and calls upon the member states that have ratified the specific conventions that declare the right to water and sanitation. Bangladesh has ratified and agreed with several international treaties, under which the human right to safe drinking water and sanitation is guaranteed. Although the fundamental responsibility of the state, under article 15(a) of the Constitution of Bangladesh ensures securing food, cloth, shelter, education and medical care, it incidentally misses safe drinking water from the provision of basic necessities. This safe drinking water will ensure the raising level of nutrition and the improvement of public health, which per se is a primary duty vis a vis paramount principle for the governance of our state under the constitution.

Moreover, the Bangladesh Water Act, 2013 is not in consonance with the International law, as access to safe potable water has not been declared as human rights. Even the penultimate version of the Act had considered access to safe water as human right. However, the government certainly deserves pat on its back for recognising this third generational right of safe potable drinking water for all its citizens.

Eibe Riedel, Member of the United Nations Committee on Economic, Social and Cultural Rights, says that- "People all over the world have a human right to water as the most fundamental prerequisite for living a life in dignity. Without it, the realisation of other human rights is impossible. Since water resources are limited and unevenly distributed, a clear responsibility rests on all States and other public or private non-state actors to secure access to safe, secure, affordable and acceptable, drinking and freshwater resources for all." Access to safe drinking water is a fundamental precondition for the enjoyment of several human rights, including the rights to education, housing, health, life, work and protection against cruel, inhuman or degrading treatment or punishment. In Bangladesh Constitution has no such kind of provision but the Water Act will turn a new leaf in giving statutory recognition to third generational right but still we have many more miles to go in order to secure the socialist goals of our Constitution. The right to water has to be implemented in a sustainable way to secure the right for further generations.

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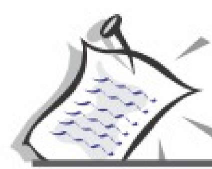

FOR YOUR INFORMATION

BDLR To foster legal scholarship

A.B.M. IMDADUL HAQUE KHAN *and* MOHAMMAD GOLAM SARWAR

BANGLADESH Law Review (BDLR), an online law journal based on http://bdlawreview.org/, started its journey on 21 February 2015. The significance of research, especially in the sphere of law, can never be over emphasised. Legal education, now days, has been attracting the youngsters in whole nation. Active citizenry is developing to pace up with the spread of information technology. Institutions are equally expected to be equipped with modernization. Hence, BDLR comes with a promise to facilitate the brilliant minds as well as to drive development in practical field. It is to be noted that the concept of BDLR is basically masterminded by a promising professional from justice-sector of Bangladesh who contributes for law and our rights page of the Daily Star regularly.

The legal research in Bangladesh to a greater extent suffers from originality crisis which hampers the growth of law and order state of this country. People's confidence over the justice system is deteriorating day by day. The sense of non compliance regarding any obligation is increasing since the law is failing to address the demands of society. In the absence of contextual interpretation based on empirical research, the meaning of law is often misunderstood which vitiates the ultimate purpose of law.

In addition, the legal curricula of Bangladesh have tremendously failed to foster the importance of legal writing. Legal education, devoid of legal research and writing, does not sufficiently respond to the needs of modern social order. In this backdrop, BDLR aspires to foster legal scholarship with a view to addressing the linkage between law and individuals, law and society, law and development and law and politics.

With three broad principles namely,

- Vision to press the change,
- Motivation to help legal minds unleash their potentials
- And fashion to diffuse legal knowledge and disseminate information

BDLR envisages creating a legal platform which essentially addresses the respective need of all the stakeholders and branches of law influencing statutory law reform with a view to facilitating the common people in terms of access to justice.

BDLR, with all of its contemporary motivation, hopes that the executive, legislative and judiciary would highly be benefited by this academic endeavour. It is expected that BDLR would be a unique one and would act as a catalyst for outstanding academic resource. It is hoped that it would attract a large number of readerships.

THE WRITERS ARE CO-FOUNDERS OF BDLR.

Seeking to set aside a decree's outcome

MD. RIZWANUL ISLAM

SECTION 41(1) of the Artha Rin Adalat Ain, 2003 (ARAA) provides that either party to a suit filed under the ARAA who may be aggrieved by a decree of the money loan court, if the decreed money is up to five million taka may prefer an appeal to the District Judge Court (DJC) and if the decreed money is above five million taka may prefer an appeal to the High Court Division (HCD) of the Supreme Court. Appeals to the DJC must be made within 30 days and appeals to the HCD must be made within 60 days from the decree. Section 41(2) of the ARAA provides that for preferring an appeal, the appealing party must deposit 50 per cent of the decreed amount. However, Section 41(4) of the ARAA waives financial institutions from this requirement of making a deposit as a precondition for preferring any legally admissible appeal.

In *Dr Md Asadullah and Another v Sonali Bank Ltd. and Others* (2010) 62 DLR (HCD) 474, a parcel of land which was mortgaged as security for a loan was sold by auction in execution of an ex parte decree (on contest against Bangladesh House Building Finance Corporation who had prior charge over the same property). Sonali Bank, the decree holder filed an execution suit and the parcel of land was sold by an auction held in pursuance of the decree. The petitioners claimed that when the auction purchaser took steps to gain possession of the land, only then they could know about the decree. They filed a petition for setting aside the ex parte decree which was ultimately rejected. They then preferred an appeal to the DJC. The DJC rejected the appeal petition on the ground that as the mandatory security deposit has not been made, the petition is inadmissible.

Going by the wordings of the statute, it can be seen that the dismissal of the appeal petition by the DJC is perfectly legal. But quite surprisingly, upon revision against the order of the DJC, the HCD held that the petitioners were not required to make the deposit as they were not applying for setting aside the decree; rather they accepted the decree and only applied for setting aside the auction sale in order to retain the property. The HCD noted that the deposit is mandatory only when a party is aggrieved by a decree and wants to challenge that decree (be that passed on contest or ex parte). But when a judgement debtor would only challenge the auction sale keeping the decree intact, no deposit is required as the debtor is not aggrieved by the decree.

The above findings of the HCD is curious and seems to pay no attention to the express wordings of Section 41(3) of the ARAA which unmistakably provides that when an appellant makes a deposit, it has to be made to the decree-holder financial institution in partial recognition of the decree and if the decree is not accepted, then the deposit would be made as a security in favour of the decree awarding court. This provision of the law clearly covers both situations in which a judgement debtor may prefer an appeal against a decree that is irrespective of whether she/he acknowledges the decree or not.

In this case, the auction sale has occurred in pursuance of a decree and the judgement debtors were a party to the original suit and being so, they were bound by the decree. If the petitioners were not a party to the suit, they could have raised an argument that the decree was not binding on them. Such a situation could arise, when for instance, someone fraudulently mortgages a parcel of land without any knowledge of its owner and then the owner becomes aware of the decree only when the execution proceeding commences. However, this not being the case here, the scope for such an argument is non-existent. Again, in this case, the auction sale itself has taken place in pursuance of a decree of a court of competent jurisdiction. Had there been no decree, there could be no question of the auction sale taking place. In reality, challenging the auction sale amounts to challenging the outcome of the decree. Thus, it is difficult to understand how challenging the auction sale without challenging the decree is possible.

Thus, it would not probably be improper to respectfully put forward that by setting aside the order of the DJC on this point (though not on other points raised in this suit); the HCD has disregarded the letter of the law. This could give a defaulter more breathing space than that is apparently envisaged by the Parliament. Clearly the objective behind the requirement of payment of security for preferring a legally admissible appeal is to discourage filing of frivolous appeals and waving the requirement of deposit of security would act against that scheme of the Parliament. This type of a lenient approach to defaulters may encourage some of them to try to evade the service of summons simply to waste time and wait until the execution suit begins and the property gets sold.

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