

LAW ANALYSIS

Equality for women

Constitutional status v cultural relativism

TASMIAH NUHYA AHMED

Justice for women can only be ensured when women can seek and obtain a remedy for grievances in compliance with human rights standards.

GENDER equality is a procedure for sharing out resources, programmes and decision makings in a way that ensures equal distribution of the resources, facilities between men and women and each have equal access to the same. While the aspiration of taking care of everyone in a similar manner may seem splendid, the notion of equal handling has a propensity to close the eyes to the fact that every individual is unique and dissimilar. People are divergent in their capacities, interests, resources and experiences and hence, it has been rightly observed by many that time has come to understand the importance of the difference between gender equality and gender equity.

Gender equity is the process of handing over resources, programs and decision-makings fairly to both males and females. This requires ensuring that everyone has access to a full assortment of opportunities to attain the social, psychological and physical benefits available in a society.

The Constitution of the People's Republic of Bangladesh, 1972 have also incorporated the principles of gender equality and equity. Women in Bangladesh have these rights recognised by the Constitution.

Article 27 of the Constitution stands for every citizen, to be treated equally before law and to be entitled to equal protection of law in Bangladesh. Further, article 28 of the Constitution authorises the State to make special provision in favour of women or children or for the advancement of any backward section of citizens.

Then why still a substantial number of women in Bangladesh

are struggling to get their rights established and often find them in an arbitrary position when they seek to establish their rights?

Story of Naina may put some light on the answer we are seeking. Naina is a girl from a middle class family who got married with one of her classmates. Her husband got a chance to do his doctoral degree abroad. Naina went with her husband but came back Bangladesh within six months as she got a good job offer in Bangladesh. Her in-laws did not like the fact that she is not staying with her husband as a homemaker. She fought for what she wants. She came back to Bangladesh to start her first job but the salary was not of an expected level.

During the passage of time, her husband started bullying her for her low income and harassing her on every step. Naina had to answer everyday why she is continuing her job when she is incapable of running the family with her salary. The Husband forgot that Naina loves her own identity. May be she is not earning enough but her job gives her an identity. When she wanted to raise her voice that she does not want to be a homemaker, the traditions and family culture prevailing in this country did not want her to speak up for her own identity.

Victims like Naina in reality cannot resort to any law to establish their right to make choices of their own life. The prevailing dominant culture of our society tends for a woman to be raised in such a way that she actually believes that her male guardian knows what is better for her than she does herself and she agrees that he should make decisions for her on matters that affect her life. The patriarchal beliefs try to hold back every woman who wants to reach the peak of success.

In Bangladesh justice for women can only be ensured when women can seek and obtain a remedy for grievances in compliance with human rights standards. Cultural and social practices in Bangladesh discriminate against women and inhibit their access to opportunities. People have not yet sufficiently understood that human rights are meant to be entitled by every human being, irrespective of her sex, gender, religion, colour, race, nationality and, above all, cultural beliefs etc.

Women are also human beings who deserve to exercise the right to make choices of their own lives. People of Bangladesh are prone to stick to their own horrific culture of social injustices that dominate and discriminate against women. Hence, the justice fails to peep into the life of many women in Bangladesh.

It is time to remove this evil culture of social injustices and establish that justice is ensured to all the women through being fair to both men and women as per their need and desire. To guarantee justice, measures have to be put in place to recompense for the historical and social culture and traditions, beliefs that prevent women and men from operating on a level playing field.

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PEOPLE'S VOICE **Better late than never**

OLI MD. ABDULLAH CHOWDHURY

ENVIRONMENTALIST must have been happy to see the news of ban imposed on Shela river route published in *The Daily Star* on March 22, 2016. The decision was taken after a coal-laden vessel sank in the river. Many readers would still be able to recall catastrophic effects when an oil tanker sank in the river on December 9, 2014. There had earlier been a month-long ban though it was lifted ignoring the protest of forest department. It is better banning late than never. Will the ban on operation of all vessels in the Shela River last though?

Shela River has been a dolphin sanctuary in the Sundarbans and there are legitimate concerns regarding bio-diversity of Sundarbans, the largest mangrove forest. However, there are critical areas requiring immediate attention in the north-east as well. Environmentalist recently called on the government to take immediate steps to make all forest areas, including Ratargul swamp forest canal, free from encroachers and pollution as the news got published in *The Daily Star* (February 23, 2016). The fundamental right to life guaranteed in the Constitution of Bangladesh (Articles 31 and 32) has been expanded to include anything that affects life, public health, and safety. This also includes, "the enjoyment of pollution free water and air, improvement of public health by creating and sustaining conditions congenial to good health and ensuring quality of life consistent with human dignity".

Supporting legislations are in place and the Bangladesh Environment Conservation Act, 1995 gives the Director General



(DG) of the Ministry of Environment and Forest the authority to enforce environmental laws. The authority enables DG to deal with the need for pollution control and other issues. The Act was strengthened by the 1997 Environment Conservation Rules, which provide the regulatory framework for environmental management in Bangladesh.

News of another ravaged tourist location in the north-east got published some months ago in *The Daily Star* (December 7, 2015). It delineated how Jaflong, a popular tourist destination with a river and hills has been turned into a mess due to unplanned commercial activities. Through Public Interest Litigation (PIL), Bangladesh Environmental Lawyers Association (BELA) only had been able to halt illegal mechanized stone extraction. Although High Court declared stone extraction using excavators or any other machine from the beds of three Sylhet rivers - Pyain, Dawki and Dhalai illegal; a section of unscrupulous businessmen, allegedly in collusion with the local administration and the ruling party men resumed their destructive activities. Mechanized stone extraction has virtually destroyed the beauty of Jaflong once known to be top tourist attraction place in Sylhet.

Will authority move to save bio-diversity and environment before it is too late?

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LAW REFORM

RIFAT Z. KHAN and ADIB SHAMSUDDIN

Bar to disclose rape victim's identity

RAPE is one of the most heinous criminal offences occurring in Bangladesh. From January to September 2014, a total 527 incidents of rape or attempt to rape was documented in Bangladesh by Ain-O-Salish Kendra (ASK). Among these only 291 cases were filed, 43 victims died after rape and 11 other committed suicide.

The tendency of unreported rape cases is said to be the fruit of social stigma associated with rape and prevailing patriarchal attitudes, protracted court proceedings, inadequate investigations by police, lacunae in law, particularly the absence of rape shield provisions, etc. To justify these claims and provide sufficient awareness, we first analyse the law in writing - to which the majority of the population is not familiar with. In turn we will set propositions for the protection of rape victim's identity.

According to section 375 of the Penal Code of 1860, rape is committed when a man has sexual intercourse with a woman against her will, without free consent, falsely getting consent by making her believe that she is lawfully married, when her consent has been obtained by putting her in fear of death or of hurt and with or without consent if she is under 14 years old.

In the explanation of this section an exception is cited where sexual intercourse with one's wife over 13 years is not considered rape. In the current context this definition fails to address the cases of marital rape wholly and enables sexual violence on girls over

14 years who are still children by definition.

In the Prevention of Oppression against Women and Children Act of 2000, the discussion of rape begins from section 9 which declares a person or group committing rape or attempting to do such is to be punished with rigorous life imprisonment and fine. Death penalty is applicable for the guilty party when the victim has died or has been inflicted injury

Constitution of Bangladesh, which safeguards one's right to privacy. With the recent disclosure of yet another rape victim from Comilla, debate has sparked over freedom of expression and the prior mentioned right. This is so despite that to protect the acquaintance of the victim, section 14 of the above mentioned Act restricts the publication or sharing of news which discloses identity of the rape victims.

That can include pictures and specially pictures of the victims during or after attacked. If done the accused is punished with imprisonment, which may extend to two years or with fine not exceeding one lac taka or both.

In social media platforms, such regulations are often unheeded and since we do not have any social media law for such circumstances *per se*, right to safeguard oneself against irresponsible dissemination retains the *status quo* of a penumbra right.

Specifically, one might as well question the need to share or distribute the often very lurid and traumatised depictions of the victim, given the fact that the victim has already been burdened social stigma and insecurity. Unconsented, uninformed and irresponsible dispensation of such nature has the effect of desensitisation rather than victim's destigmatisation, owing to the fact that harm is aggravated by allowing disclosure of private facts without attaching any liability whatsoever to an identifiable and culpable individual. Hence, parceling out of insensitive imagery through social platforms is necessary by way of legal regress.

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due to rape. In case of rape under police custody, this law for the first time recognised the direct responsibility of police personnel who happen to be in-charge of the custody of women. Among others, section 13 of the aforementioned law provides that the child born of rape is to be maintained by the perpetrator himself.

For victims, however, unaccepted ignominy often follows from irresponsible dissemination, through distribution of their pictures and identity. This is interpretive of a breach of article 43 of the

FOR YOUR INFORMATION

Guardianship of children by mother



NAJNIN SULTANA

WHEN parents are separated through divorce, guardianship of their children is determined by the Guardian and Wards Act, 1890 and Family Court Ordinance, 1985. According to Family Court Ordinance 1985, a mother has the authority to take care of her children, if she is not remarried, lives far from child's father house, irresponsible to the child, lead immoral life, leave own religion, characterless, unbelievable etc.

It should be mentioned that a mother gets priority to have her children in her care if the boy is not yet seven and the girl is not yet prepubescent. After this tenure, if girl wants, she can stay with her mother up to 25 years old. And in the case of a boy, after twelve years the father has the legal right to keep the boy with him. But wherever the children live, the father is liable to maintain financial expenses.

In reality, when a separation occurs, it rarely ends happily. If children stay with their father he usually does not appreciate them to meet their mother. Contrarily, when children stay with mother, it is not unheard of the father trying to harass her directly or by way of her children.

There is no law to prevent such and only humanity is accountable here. Again, if the children stay with mother and father denies the financial responsibility, she has to go to the court which is a time consuming process to attain the right.

If the children stay with her mother without court's order, father is still the legal guardian. Without father's permission and/or photocopy of National ID of father, you can't do anything say it passport, national ID and any legal identification system. Since separation comes from dissatisfaction, such procedural difficulties can only create further problem.

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LAW LETTER

Ensure justice for involuntary disappearance

Recognised as a human rights violation back in 1970s, enforced or involuntary disappearance is now unanimously accepted as one of the gravest crimes in today's world.

Article 2 of the International Convention for the Protection of All Persons from Enforced Disappearance (ICPED) defines "enforced disappearance" as an arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorisation, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law. Article 7(2)(i) of the Rome Statute of the International Criminal Court provides similar definition with two additional points that (a) such disappearance could be occurred by a political organisation and (b) there must exist an intention on the part of an offender to remove someone from the protection of the

law for 'a prolonged period of time'.

Article 1 of the ICPED prohibits enforced disappearance while article 24 defines a victim as not only the person who is subjected to enforced disappearance, but also as any other individual who has suffered harm as



the direct result of such disappearance.

In Bangladesh, between January 2009 and August 2015, human rights groups have documented at least 212 people forcibly disappeared in the country. Often victims family filed the writ of Habeas Corpus according to

article 102(2)(b)(i) of the Constitution of Bangladesh before the High Court Division. But the Court has only issued rule against the respondents and accepted the statements of the law-enforcement agencies that have formally refused involvement in all

crimes of disappearance.

The UN Declaration on Enforced Disappearance (A/RES/47/133, 1992) specifies that enforced disappearance constitutes a violation of the right to recognition as a person before the law, the right to liberty and security of the

person and the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment and that it violates or constitutes a grave threat to the right to life.

Bangladesh is not a party to the ICPED but party to the ICC and also Accession on 23 March 2010, it legally recognizes enforced disappearance as an international crime and is bound to ensure accountability. Moreover, the significance of ascertaining the customary law prohibition on enforced disappearance is important as a norm to be invoked within international and domestic jurisdictions in the absence of binding treaty law. It constitutes a crime against humanity; any enforced disappearance is a violation of international humanitarian law and human rights law. So Bangladesh government must ensure justice for involuntary disappearances.

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