

LAW ANALYSIS

Shoddy information on packets of tobacco products

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ANYONE comparing the packets of tobacco products in Bangladesh and some other countries may notice that the packets in Bangladesh are awfully inadequate to give sufficient information about the constituent elements of tobacco products. The packets of tobacco products marketed in Bangladesh contain a basic statutory warning stating that smoking is injurious to the health and contains virtually no information on the proportion of harmful constituent elements. Thus, a consumer of tobacco products has no means to choose a less harmful tobacco product, even if she/he wishes to.

This trend is a violation of Article 11 of the World Health Organization's (WHO) Framework Convention on Tobacco Control, 2003 (the Convention). On 16 June 2003 Bangladesh signed the Convention and in the following year, it ratified the same. Article 11 (2) of the Convention demands that "[e]ach unit packet and package of tobacco products and any outside packaging and labelling of such products shall, in addition to the warnings specified in paragraph 1(b) of this Article, contain information on relevant constituents and emissions of tobacco products as defined by national authorities." Article 11(3) of the Convention provides that "[e]ach Party shall require that the warnings and other textual

has passed the Smoking and Tobacco Product Usage (Control) Act, 2005. Preamble to the said Act explicitly declares that the Act is being introduced to implement the provisions of the Convention in Bangladesh. Unfortunately, the Act only requires the statutory warning to be included in the packets. Section 11 requires that the importer of a tobacco product, at the time of importing would furnish a report to the Government in which the amount of each element used in the imported product. However, even in this case, the law does not require that such information is contained in the packet of the product itself. As Sub-articles 2 and 3 of Article 11 of the Convention obliges the state parties to require tobacco manufacturers and sellers to contain information on the packets as to the relevant constituents and emissions of tobacco products in addition to the statutory warning, it is evident that Sections 10 and 11 do not fully comply with the packaging provisions as contained in the Article 11 of the Convention.

The absence of any information about the constituent elements of tobacco products would not allow numerous consumers of tobacco products to choose a less harmful product. Thus, this would deprive them of a chance to mitigate the adverse impact on their health resulting from consumption of tobacco products. This may arguably amount to a violation of the right to life as enshrined in



information specified in paragraphs 1(b) and paragraph 2 of this Article will appear on each unit packet and package of tobacco products and any outside packaging and labelling of such products in its principal language or languages." This Convention does not provide any scope for reservation from any of its provisions, and hence, Bangladesh is under an international legal obligation to make sure that packaging of all tobacco products contains information on relevant constituents of tobacco products. Indeed, this absence of any scope for reservation connotes that the drafters of the Convention felt that in order to achieve the objectives of the Convention, it is necessary that all state parties implement all provisions of the Convention without any choosing and picking.

Articles 31 and 32 of the Constitution. If we take note of some decisions rendered by the Supreme Court of Bangladesh, we would find that citizens of Bangladesh have been constitutionally guaranteed a right to life which includes the right to a healthy life.

For instance, the High Court Division (HCD), in *Dr. Mohiuddin Farooque v Bangladesh* (1996) 48 DLR (HCD) 438, at 442 has found a quite wide scope of the right to life and has observed that "right to life is not only limited to the protection of life and limbs but extends to the protection of health... maintenance and improvement of public health by creating and sustaining conditions congenial to good health." Similarly, in *Dr. Mohiuddin Farooque, Secy. General (BELA) v Bangladesh* (2002) 22 BLD 534, at para 18, has underscored the importance of

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the constitutional pledge of the right to life and its integral nexus with the right to a healthy life. In *Professor Nurul Islam v Bangladesh* (2000) 52 DLR (HCD) 413, the HCD, even in the absence of a specific law, did not shy away from banning a promotional voyage of a tobacco company entitled 'Voyage of Discovery'. Thus, it is apparent that the state would have to be vigilant to protect the health of its citizens.

One may contend that as neither the Act nor any other law in force in Bangladesh demands that packets of tobacco products contain information as to its constituent elements, the Parliament deliberately omitted to give effect to Article 11 of the Convention. However, a textual interpretation of the Act would not support such a contention. The Preamble to the Act clearly states that the Act has been enacted to implement the provisions of the Convention in Bangladesh. As it does not refer to any parts of Convention, rather refers to the Convention in its entirety. The Act does explicitly oust the application of any part of the Convention in Bangladesh. Hence, it is natural to conclude that the Parliament wanted to apply all the provisions of the Convention. Moreover, as there is no inconsistency between the objective of the Convention and the Act, the provisions of the Convention should be applicable in Bangladesh. Hence, it would be fitting if the Government takes necessary measures to ensure that all tobacco manufacturers and sellers in Bangladesh be obliged to provide adequate information as to the constituent tobacco elements in their products so that consumers can make an informed choice.

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RIGHTS WATCH

Religious minorities and fake denials



PSYHME WADUD

BANGLADESH accepted changes for the Muslim majority through the Muslim Family Laws Ordinance 1961 which it inherited after it ceded from Pakistan. But when it comes to the Hindu minorities, urge for a better tomorrow always gets lost somewhere. The laws in our country do not require a Hindu marriage to be mandatorily registered. Hindu Marriage Registration Act 2012 has made registration of Hindu marriages only voluntary or optional. Under Hindu Women's Right to Separate Residence and Maintenance Act, 1946 Hindu women have right to file cases in order to regain rights to conjugal life and to ask for separation on certain grounds. Surprisingly, they cannot ask for a divorce. Sounds offbeat, right?

In early 2015, a writ petition was filed on behalf of an aggrieved Hindu woman alleging violation of her fundamental rights due to inadequacy in the laws. The High Court Division issued a rule asking the Government as to why Hindu women will not be allowed to divorce their husbands. Unfortunately, like many progressive past decisions, this judgment has found its way in oblivion and in realm of academic discourses only. Only if it were a suo motu rule, the appreciation could ensue from more of a pro bono stand.

Likewise, the laws touching the personal lives of the Hindu majority in India have undergone innumerable changes over the years. A very recent change is the insertion of irretrievable breakdown or irreconcilable differences as a ground for dissolution of marriage (whereas ancient hinduism considers marriages as sacred and indissoluble bonds). The proposed Hindu Marriage Bill aimed at amending their existing laws to introduce the new ground for divorce. Even though the Government has already shelved the Bill, at least the fact that this bill was passed by Rajya Sabha proves how welcoming India is towards changes in the personal codes of the majority. But the minority Muslim women are still hopelessly awaiting a major change.

Including Bangladesh, eight muslim-majority countries have successfully ended the vile practice of triple talaq through legislation. And India, is resting (!) unsure about whether or not to bring about this change.

In 2002, in *A.S.Parveen Akthar v The Union of India*, Madras High Court dealt with the controversial issue of constitutionality of a provision of law validating triple talaq. The Court, even though was frank in condemning triple talaq, didn't declare the section 2 of the Muslim Personal Law (Shariat) Application Act, 1937 void and unconstitutional since

the same dealt with a personal law and the court thought it to fall within the purview of the doctrine of reasonable classification. The recent Allahabad case of 2016 regarding this issue is still unresolved and hence, a conclusion should not be drawn without knowing its effects.

In the South Asian region, surprisingly, Pakistan seems to be successfully striking a balance. The Hindu Marriage Bill 2017 has got the nod of approval from the president lately. This has incorporated provisions which are favorable for the marginalised Hindu minorities. In Nepal, Sri Lanka, Bhutan and Afghanistan, the respective minorities have been forcefully pushed to the fringes of the society.

Making a comparative constitutional analysis of the South Asian Region is not the aim of this article. An attempt, however, can be made to see the situation through the objective prism of Bangladeshi constitutionalism. Overlooking the need for a change for the minorities straightaway goes against the equality clauses and the broadly determined purview of right to life enshrined in the constitution.

In India, a sweeping argument for justifying not amending the laws of the Muslim minority was reasonable classification. This argument always derived from section 2 of the aforementioned 1937 Act which clearly says that personal relationships and certain other issues of a Muslim's life shall be governed by Muslim personal law. The courts and critics have always opined that Muslim personal law doesn't fall within the definition of 'law' under Article 13 of their constitution which is pari materia with our Article 26 and hence that law cannot be held unconstitutional. In absence of such a broad clause in the laws touching the lives of the Hindu minority of our country, the situation is different in our case. Hence the hyped debate of whether Hindu personal law comes within the purview of Article 26 won't even arise in our case. Laws enacted by the parliament do definitely fall within the definition of law and the same can be declared void because of its inconsistency with the constitution under Article 26(1).

The advancement undergone by the world till date may not be at all equal for all- equal for all three layers of the world, but denying the very fact of advancement for a particular group is outright discriminatory and sheer inequality. Doctrine of reasonable classification, in any case, cannot be used as a tool to justify this inequality. The ground depending on which the personal codes touching lives of the majority get amended, can work pretty fine in case of those of the minorities.

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LAW VISION

Towards a sustainable criminal justice system

NAURIN AKTAR KANKON

GIVEN that economic sufferings of the justice seeking people are immense in our country, the time demands a sustainable criminal justice system that shall enable underprivileged people to secure meaningful access to justice. As an objective in the paradigm of Sustainable Development Goals to be achieved in 2030 equal access to justice is one of the fundamental human rights.

Access to justice has different meanings. It may be defined narrowly, to signify an individual's right to bring a claim to a court or tribunal and to have that court or

ensuring people's right to justice.

To solve these challenges and implement reformative changes in administration of criminal justice, the cost effective, supportive, speedy procedural strategies can be adopted. The combination of those strategies for their result-oriented outcome in ensuring the right to justice to the optimum level can be labeled as 'sustainable justice scheme'. The viability of this scheme can be achieved through harmonious application of rule of legal justice and principles of natural justice within our jurisdiction in the justice sector.

This scheme necessarily involves few creative methods in all three strata (pre-trial

in the financial activities supplementary to economic growth.

On top of that, speedy disposal of criminal disputes through this system fundamentally mitigated the long-standing enmity and adversarial attitude of the people of our country leading to the protection of human rights, endurance of human security and endorsing of democracy-based good governance. The principal legal actors in the administration of justice viz. the judges and magistrates, the Court-staff, the lawyers, the public prosecutors, police personnel and concerned Government officials can be integrated for implementing the aforesaid scheme.

To be specific the 'sustainable justice scheme' includes but not limited to the following methods:

- Court-annexed legal aid to ensure access to justice for the marginalised litigant people
- Information and communication technology based expeditious summoning and evidence recording
- Encouraging the litigant parties to resolve the disputes through alternative dispute resolution mechanisms i.e. mediation, conciliation and arbitration
- Ensuring speedy trial of cases through one-sitting summary trial or trial without any needless adjournment depending on the gravity of the offences alleged.
- Reducing case-backlogs through case management strategies and priority based disposal of the long-pending cases.

Successful implementation of this scheme will substantially contribute to the sustainable development and good governance. It will help to uplift the rule of law, enabling people to save litigation-consumed time, strengthening democratic institutions in a comparatively placid society with controlled law and order situation.

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tribunal decides the claim. It could also refer to the right to be given legal aid when the individual does not have the resources required to avail of legal remedies. In a broad sense, access to justice also includes, as a critical element, the individual's right to have his/ her claim decided according to substantive standards of fairness and justice. However, the time consuming, expensive and non-supportive aspects of administration of criminal justice in Bangladesh are some of the challenges for

investigations, trial and post-trial execution) of the criminal justice administration to provide expeditious dispensation of expected justice. That the said system ultimately caused a sharp decline in the unbearable expenses and undue delay involved in the litigation incurred by the litigant people as well as the Government of Bangladesh resulting in a productive economic environment where the saved expenses of the government and general people along with the precious time of the people were invested

LAW NEWS

Cultural diversity and development

CULTURAL diversity – the driving force of change and development – is increasingly under threat, United Nations agencies said on May 21, reaffirming support for the cultural diversity that stems from migration.

"Across the world, violent extremists have targeted cultural minorities and destroyed our shared heritage, to weaken the essential links between people and their history," said Irina Bokova, the Director-General of the UN Educational, Scientific and Cultural Organization (UNESCO).

Marking the World Day for Cultural Diversity for Dialogue and Development, Ms. Bokova called for a new humanism for the 21st century, to renew the fundamental aspirations to justice, mutual understanding and dignity that guide all women and men.

She quoted Martin Luther King Jr., saying: 'injustice anywhere is a threat to justice everywhere. We are caught in an inescapable network of mutuality, tied in a single garment of destiny.'

By embracing cultural diversity, the international community can more easily achieve the 17 Sustainable Development Goals (SDGs) which draw upon "the strength and creative potential of humanity's diversity of cultures."

Similarly, the Director-General of the International Organization for Migration (IOM), William Lacy Swing, urged Governments and their citizens to embrace

migration, despite its challenges, and help to develop common understandings, values and perspectives.

The World Day for Cultural Diversity for Dialogue and Development, proclaimed by the UN General Assembly in December 2002 and celebrated annually on 21 May, is



meant to be an opportunity for mobilization on the part of governments, policy makers, civil society organizations, communities and cultural professionals to promote culture in its diversity and in all its forms.

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