

LAW INTERVIEW

A voice for the marginalised communities

Jayshree Satpute is a human rights lawyer and co-founder of Nazdeek. Satpute is a legal advocate in human rights pursuing cases in the Supreme Court and High Courts of India related to injustices to slum dwellers, refugees, women labourers, care of orphaned children, juveniles, Right to Information (RTI), and related issue areas. Adib Shamsuddin from Law Desk talks to her on the following issues during her recent visit to Bangladesh



Law Desk (LD): Tell us the background in brief of your work. Also, what are some of the key challenges you faced in being the voice of marginalised community in India?

Jayashree Satpute (JS): I would like to start from the time when I only litigated. I was doing cases on urban housing rights, reproductive health and other socio economic rights, when I found the lawyers working on such cases to be very few. For instance, there was this case that we were working on and we managed to get a stay order. Eventually people got to know about us and whenever there was an issue of housing rights we would get a call. As it happens with cases of housing rights, often multiple houses are related to the case and eventually the number of clients increases. After one point, I found myself exhausted and desensitised, and that was an awakening call for me. I realised doing all that work by myself was not enough, we need more lawyers on the team. And hence one of the challenges I face is that there aren't enough of us.

The other challenge is with clients below poverty line; they do have a genuine case but when you ask whether they have filed one, the answer will be almost always no. Most, even though their case is strong, they depend on oral accounts. You have to do more than your part to ensure justice, and that includes doing research and everything that is needed to build the case. Now you do that too, you eventually win the case and then handover the decision to the client. But the client doesn't seem to comprehend its meaning. To him/her the document is a piece of paper!

Hence, I found the legal language and lack of awareness of rights among the communities a bit of problematic. Even if we get them a decision in their favour, lack of knowledge prohibits them from taking steps to implement it. So my stance became the bottom up approach. When you talk of socio-economic rights lawyers can't expect their clients to come to them like corporations, rather they have to leave their comfort zones to make themselves accessible.

LD: While working, did you face any discrimination because of your gender, socio-economic norms etc.?

JS: I do. In some of the courts I have appeared, judges would not make eye contact with me but they will do so with my opponent lawyer who is not even deliberating! Also, when you work associated with socio-economic rights, you tend to be labeled. What I do to tackle this is I ask some of my colleagues from the court, who don't do this type of work, to take these cases

pro-bono. As a result, I get to spark interest in them towards the type of work I do, which helps in preventing the blanket generalisation. It has also helped in making the bench see that there are many lawyers doing these cases pro-bono, and not just for publicity.

LD: What was the driving force that inspired you to become the voice for the voiceless?

JS: I profess myself as someone who is not the voice for the voiceless but someone who wants to strengthen their voices. There is no beginning as such but what I can tell you is that money has never driven me. I always wanted to do something innovative and not anything like the concept of living to earn and earning to live. I did not have an inclination to accumulate something which I cannot take along after I die.

I regard myself as a conscious person who was fortunate to get education, who was fortunate enough to make her own decisions and help others on the way. I just wanted to send the message that to do good for others, you need not be special.

LD: Tell us about your experience of the Laxmi Mandal Case.

JS: Under Article 21 of the Indian Constitution, every citizen has right to life which has been subsequently elaborated by the Supreme Court as right to life with dignity. The definition of right to life has also been extended to include health care as a fundamental element. At the time of the case, health care to survive child birth was yet to be recognised as a right by any court. Laxmi Mandal is the pioneer in the sense that it is one of the first reported cases in the world to recognise health care during child birth as a fundamental part of right to life.

This case was brought on behalf of a woman stricken by poverty, after she died as the result of being refused adequate maternal healthcare. Previously, she was forced to carry a dead fetus in her womb for five days after being denied medical treatment at several hospitals because her husband was unable to show a valid ration card for medical services. Similarly, there was a woman named Fatema from Central Delhi. During her labour, she sought medical assistance from a Government Hospital but she too was denied healthcare. So, we filed a petition stating State cannot deny health care during pregnancy for lack of identification. The High Court of Delhi concurred and found that there was a failure to properly implement the pre and post natal services which should have been available to her. In both cases, the aggrieved parties received compensation. After the decision, there were a number of

cases both in India and other countries, who cited the case.

LD: Your experience with marginalised communities transcends almost across whole of South Asia. What can we do as citizens of sovereign nations, to ensure rights of overlooked groups?

JS: I would speak in reference to law schools, since I have been invited by one and also since I am a lawyer by profession. I would say there lies a duty with teachers, law students and practitioners to be proactive, to do pro bono cases and to volunteer for legal aid services. From my few days stay here in Bangladesh, I have observed that people here too are just as unaware of their rights as people in India. Here rights are seen more like privileges. Hence, perspective needs to change for which education can be a contributing factor. From the training we do, what I can tell you is that we start with civic education and then comes rights perspective. We start by making a person realise how health is his right, how housing is his right and so on.

LD: What achievements have Nazdeek accrued so far? Tell us about its future plans.

JS: Nazdeek is a word derived from Urdu, it means to come close. It is a legal empowerment organisation. The concept is to bring access to justice closer to marginalised communities. Since maternal mortality rate and infant mortality is very high among tree plantation workers due to poor working and living conditions, we started working for their rights. While working, we realised that if we do not delve into the labour rights issues, problems are not going to be eradicated, as workers are not even paid their minimum wages. We have been working there for the last five years among students, women workers. As a result, the community now has an increasing sense of awareness about health care, food and fundamental rights. We feel that not every violation of right needs to go to court, there are administrative complaint mechanisms that avail your rights without needing involvement of courts.

We feel tea plantation workers in Bangladesh, Sri Lanka, Nepal have similar socio-economic conditions and we want to improve the life of workers working there. I personally feel that if the countries work together, we can raise awareness among those involved in plantations, be that regarding legal aid or something else. Nazdeek also wants to expand across India and explore its possibilities.

LD: Thank you for your time.

JS: You are welcome.

RIGHTS WATCH

Reservation, equality and non-discrimination

TAPOS KUMAR DAS

OF the affirmative actions taken by the state, reservation in public office is the most contentious one. The constitution of Bangladesh permits reservation for backward section of the citizens so as to ensure their adequate representation in the public service. Unless the interests of weaker are promoted, and until they are adequately represented, the idea of establishing an egalitarian society shall remain illusory. Therefore, the government provides reservation for backwards in public service.

Equality and non-discrimination are two touchstones upon which our constitution is founded. In the class ridden society of Bangladesh - where economic exploitation is historical, social and educational facilities are insufficient and disproportionately distributed - bringing the unequal into equality is the major challenge. The backwards - who have suffered socio-economic oppression - to avail fair share in public employment claim reservation. Whereas, another group defies reservation alleging that it amounts to economic oppression by negating equality in public employment. Therefore, the state is required to reconcile the tension between these contrasting claims.

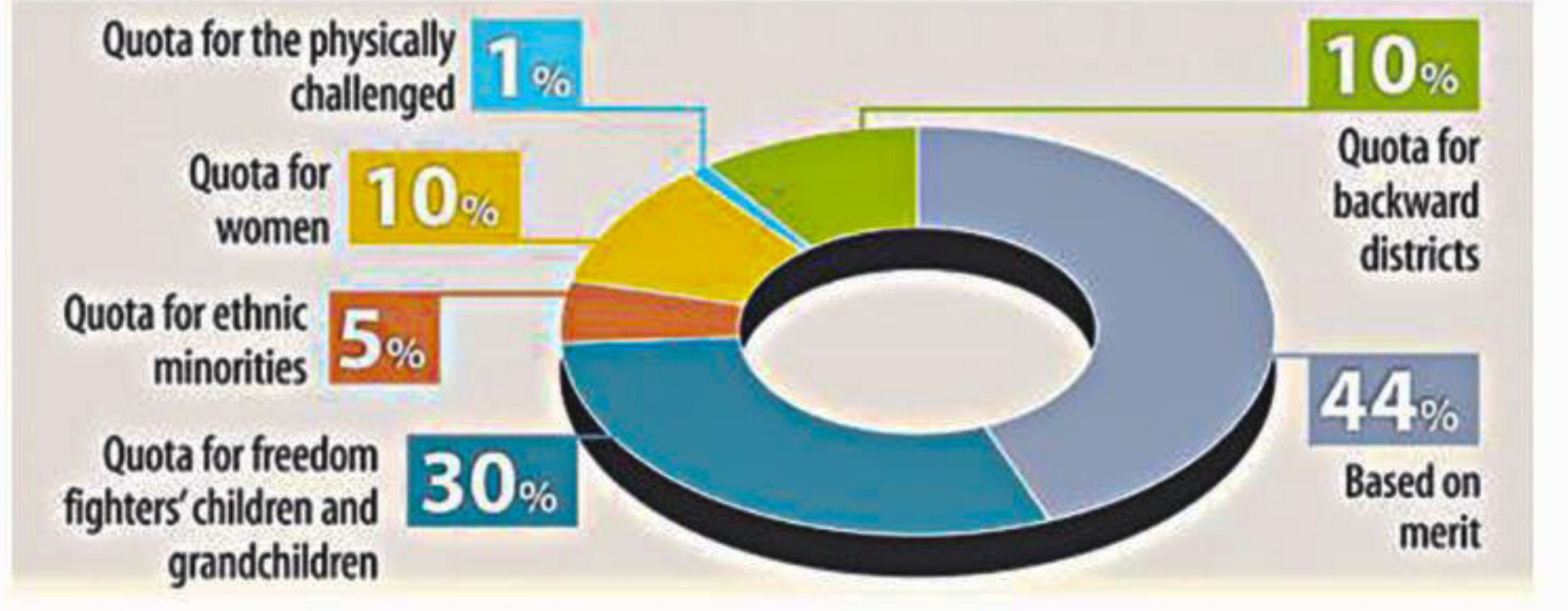
The guarantee of equal opportunity in matters of public employment is a guarantee of something more than what is required by formal equality. It implies differential treatment of persons who are unequal. Egalitarian principle has therefore acknowledged that the government has an affirmative duty to eliminate inequalities and to provide opportunities for underprivileged. Proportional group equality is the concept of equality that permits reservation. The individual member of the group is granted preferential treatment if the group is underrepresented or

Reservation must intend merely to give adequate representation to the backward; it cannot be used for creating monopolies or for unduly upsetting the legitimate interest of other contestants.

constitutional scope and, a denial of equality and non-discrimination.

Article 29(3)(a) permits reservation on satisfaction of 'backwardness' and 'under-representation'; such requirements are analogous and concurrent. Mere 'backwardness' or mere 'under-representation' of any section of citizens does not justify reservation in their favor. Again, the 'backward section of citizens', despite having no illustration refers generally to the socially and educationally backward classes. In determining backwardness economic conditions, occupations and geographical location need to be considered. Reservation policy must accommodate these conditions to justify the protective measure.

There are underprivileged people within the perceived forward class of the society, who must have access to the state sponsored privileges.



systematically excluded from competing on an equal basis.

Equality does not imply absolute equality. The rule of differentiation is inherent in the concept of equality. Equal protection of law necessarily involves classification. However, validity of the classification must be adjusted with reference to the purpose of the law. If there is a rational classification consistent with the purpose for which such classification is made, equality is not violated. A classification, in order to be constitutional, must rest upon distinctions that are substantial and not mere illusory; it must have a reasonable basis. Article 29(3)(a) of our constitution, which permits classification requires a revisit to examine, whether the classification made so far is free from artificiality and arbitrariness, and whether the extent of the differential treatment is reasonable.

Merit and non-discrimination are universally recognised principles for public appointment. The merit principle requires that the candidate for public office must fulfill the prescribed eligibility criteria and merit alone should be considered for selection. The principle of non-discrimination requires that the best eligible candidate shall be appointed without any distinction or reservation.

Non-discrimination in appointment is a widely recognised principle, international covenants like article 21 (2) of the UDHR, article 25 of the ICCPR recognises equal access to public service without any distinction or restriction whatsoever. Apart from eligibility criteria any other consideration like race, sex, social origin etc., should be extraneous and discriminatory.

In performing duty, officials are influenced by their social backgrounds, values and ideologies. Therefore, fair representation in the public office helps to improve the quality of service. It also ensures a balanced composition so that all sections of the society do have representation and confidence in the administration. However, to ensure representation of different social groups appointments should not be made regardless of merit.

Presently, public officials are selected on the basis of 'merit' and 'quota'. From the list of successful candidates, 44% are selected solely on merit and remaining 56% are selected on the basis of quota. Of the quota posts, 30% are reserved for descendants of the freedom fighters, 10% for female, 10% for backward district territory, 5% for tribal and 1% for physically challenged people. Appointment in public office is seen to be dominated by quota not merit.

Reservation under article 29(3) (a) requires satisfaction of two conditions: firstly, the beneficiaries must constitute 'backward section' and secondly, they are 'under-represented' in public service. However, the present reservation policy demonstrates that the requirements of article 29(3) (a) are not satisfied objectively. Again, creation of super privileged class for descendants of freedom fighters is beyond the

Similarly, there is a creamy class among the backwards who are to be excluded from the protective privilege. Social, educational and economic disparity and privileges simultaneously exist in every layer of the society. There are 'backwards' among the 'non-backwards'; similarly, there is 'creamy class' among the 'backwards'. The creamy layer of the backward class is economically well-off, socially and educationally advanced. 'Equality of opportunity for unequal can only mean maximisation of inequality'. Therefore, the provision of reservation for the 'backwards' inclusive of 'creamy class' would not be able to ease the persistent inequality the 'real backward class' is experiencing. Thus, it is the creamy class enjoying the advantage of reservation for the backward. It is not the 'unequal opportunity' rather 'poverty' or 'resource constraint' impeding cherished mark of the backward. Consequently, even reservation for the 'backward' may not alter the fate of 'more backward' as the 'creamy class' of the 'backward' outrace the 'real backward'.

Reservation necessarily involves appointment of less competent persons, which in turn leads to lowering efficiency of the administration. The qualifications, standard and talent necessary for backward section cannot be relaxed or reduced to a level which may materially affect the efficiency of the administration. Reservation must intend merely to give adequate representation to the backward; it cannot be used for creating monopolies or for unduly upsetting the legitimate interest of other contestants. A reasonable balance must be struck between reservation and fair competition as well as the requirement of administrative efficiency.

Equality and non-discrimination are core constitutional guarantee which the executive cannot overlook. Equal opportunity in public employment is the general rule and reservation is an exception. Exception should not overshadow the general rule. In advancing the backward, the government is not justified to ignore the remaining society. Only 44% merit based appointment is utter rejection of the constitutional commitment for equality and non-discrimination.

Article 29(3)(a) leaves an ample discretion for the state to provide many alternative privileges than mere reservation. Scheme may be taken to provide financial assistance, free medical care, educational and hostel facilities, scholarship, free transport and so on. Such privileges will also help the backward in attaining success through merit based competition. Reservation, if subsists, caution should be taken not to disappoint the deserving and qualified candidates. "An unfilled vacancy may not cause as much harm as a wrongly filled vacancy".

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LAW EVENT

Think Legal organises commercial law conference

THINK Legal Bangladesh, the online legal resource platform dedicated to the open and free sharing of legal knowledge in Bangladesh and the founders of the "Think Legal Lecture Series" has taken a remarkable leap forward in organising the first-of-its-kind "Think Legal Bangladesh Corporate and Commercial Law Conference 2018" at the Westin, Dhaka on last 5th of May, 2018. The conference was attended by nearly 300 guests.

Since its founding, Think Legal Bangladesh has developed its online pool of legal resources to establish ease of accessibility in pursuit of its overarching aim of ensuring greater access to justice. In furtherance of the foregoing, the Think Legal Bangladesh Corporate & Commercial Law Conference 2018 was designed to serve as an informative and stimulating forum for exchange and dissemination of knowledge on key legal issues and industry insights in the corporate and commercial law arena in Bangladesh.

The Conference featured stellar personalities from the corporate and legal world synergising their diverse knowledge and insights in order to create multi-dimensional perspectives on a variety of issues encompassing the energy sector, international dispute resolution, corporate accountability, banking, taxation, and writ jurisdiction of the Supreme Court of Bangladesh.



Business in Bangladesh", moderated by Barrister Mustafizur Rahman Khan. After a short coffee break, the Conference proceeded with breakout sessions whose panels featured eminent justices of the Appellate Division and High Court Division of the Supreme Court of Bangladesh such as Mr. Justice Mirza Hussain Haider, Mr. Justice Zubayer Rahman Chowdhury, Mr. Justice A.F.M. Abdur Rahman, Mr. Justice Syed Refaat Ahmed, Mr. Justice Sheikh Hassan Arif and Madam Justice Kashafa Hussain. The panels were also enriched by the presence of prominent personalities such as Mr. Sheikh F. Fahim, Senior Vice President of the FBCCI; Mr. Fouzul Kabir

Khan, the former Secretary of the Ministry of Power, Energy, and Mineral Resources, Ms. Rubana Huq, the Managing Director of Mohammadi Group; Mr Mahtab Uddin Ahmed, Managing Director and CEO, Robi Axiata Limited, and Mr. Zahida Fizza Kabir, Board Member, Renata Limited and Director of Sajida Foundation.

The panels were moderated by well-known, practicing lawyers and Senior Advocates of the Supreme Court of Bangladesh. The event was brought to a fitting close by a speech delivered by Hon'ble Justice M. Imman Ali.

EVENT COVERED BY LAW DESK.