



Banning of headscarves easily gets associated with freedom of religion since the victims happen to form part of the religious minority and since the bans in fact are in consonance with the majority's belief.

PSYME WADUD

ARTICLE 39 of the Constitution guarantees freedom of thought, conscience and expression. Freedom of expression ranges from the articulation of words and images to actions and lifestyle choices, including one's manner of dress and behavior. Subjecting a woman to harassment due on account of her failure to maintain a particular dress code is a discriminatory act, which is a violation of equality clauses of the Constitution and is inconsistent with international standards." The foregoing sentences were verbatim opined in the case Advocate Md. Salauddin v Bangladesh (63 DLR 2011, para 14). According to the Court, alongside right to freedom of expression, arbitrary and intrusive gender based codes for acceptable demeanour and dress also violate right to privacy and personal liberty as well as rights of women to protection from violence (para 15). The case emanated from some sexually

coloured remarks passed by an Upazilla Education Officer and a direction given by him towards the female teachers to attend school thenceforth wearing a scarf. The decision can no way be said to be discouraging towards wearing of veil or covering of head, rather it leaves it entirely to the choice of the women, marking thereby a commendable baby step forward.

Imposition of dress code certainly is a violation of personal liberty and freedom of expression (Article 39); however, it inspires (rather incites) a discussion from another aspect. While backing the ban on headscarves at workplaces, in G4S v Achbita and Bougnaoui (2017), the Court of Justice of European Union found that since G4S's internal rule refers to the wearing of visible signs of political, philosophical or religious beliefs and therefore covers any manifestation of such beliefs without distinction, it in fact treats all the employees in the undertaking in the same way without differentiation.

Therefore, the Court opined that there was no direct discrimination. Inasmuch as indirect discrimination is concerned, (Indirect discrimination occurs when an organisation's apparently neutral policy, rule or procedure affects everyone but has a worse or more adverse impact on a particular group for its protected characteristics which may include sex, race, religion or sexual orientation), the court opined that since the aim was 'legitimate', the rule was justified. It further observed that imposition of the rule was an expression of G4S's 'freedom to conduct business'. This, in my understanding, is a crippled argument propounded in order to 'objectively' (!) justify the ban. It did not show as to how freedom to conduct business supersedes the human right to freedom of religion.

There remains diametrically opposite judgments given by the European Court of Human Rights which have previously ruled on how freedom of religion applies in the workplace, concluding that in some cases, employers must allow employees who wish to wear religious symbols (Eweida v UK (2013), for an example) to do so; and imposition of sanctions which might look neutral, might in fact be indirect discrimination on ground of religion. No reference of the ECtHR judgments in the ECJ judgment, in fact, added another layer of confusion. Insistence upon dress codes have been seen as indirect discrimination on ground of religion in numerous instances. In the Canadian case of Singh v Security and Investigation Services Ltd (1987), a Sikh man was refused a job as a security guard because of requirements that incumbents be clean shaven and wear a uniform that includes hat.

In Bhinder and Canadian Human Rights Commission v Canadian National Railway Co (1985), the employer imposed a condition that all people

working in the place wear hard hats. In these two cases, sikhs were found to be victims of indirect discrimination on the ground of religion. In Eg Kingston & Richmond Area Health Authority v Kaur (1981), demanding that women employees wear skirts or forbidding them to wear trousers was found to be a requirement with which, the Muslim women will not practically be able to comply.

Usually, banning of headscarf, as a sanction, (unlike our domestic case) attracts 'indirect discrimination' because the sanction touches the men as well (all employees are required to keep their heads uncovered). In the present case, there was no need to go in search for indirect sex discrimination because there remained no neutral policy touching men and women both; rather a sanction was imposed on the women only, that too being accompanied by some sexually coloured remarks. However, what remained unseen beyond the apparent was the aspect of freedom of religion. For both Muslim and non-Muslim women, such a sanction, if imposed, would have an impact; but those women, who, for their individual beliefs or religion, prefer to avoid wearing headscarves, would be the ones being adversely affected because of their protected characteristic, i.e. religion or belief. Such sanctions therefore are direct sex discrimination (when imposed the way it has been in the present case) and among the women, an indirect discrimination on ground of religion against a portion thereof.

Banning of headscarves easily gets associated with freedom of religion since the victims happen to form part of the religious minority in those contexts and since the bans in fact are in consonance with the majority's belief. Imposition of the same should also be seen through the specs of freedom of religion in contexts where the imposition is similarly in consonance with the

majority's belief because the religious aspect of headscarves is not something we can keep aside and inasmuch as 'banning' thereof affects the freedom of religion or belief of a particular group, 'imposition' thereof affects the same of another.

One might frown saying that the present case is distinguishable from the others cited above for not concerning a written policy, rather a sanction, only orally imposed (this, in turn, can even unknowingly initiate another distinctly different discourse by questioning the standing of the petitioner and encouraging another stream of arguments for showing as to how a Government official or public servant's statements amounting to oral sanctions can be attributable to the State). Since the admissibility was and remained unchallenged, with hindsight, my observation starts from a few steps through the judgment. The directives given towards the Ministry of Education in fact shows that the Court foresaw and encompassed other situations (which might concern written policies) with factual overtones and undertones, within the decision. One might further argue that seeing the aspect of freedom of religion was not at all required. However, since several other Articles of the Constitution were invoked, invocation of Article 41 doesn't really seem to be too farfetched.

This was an opportunity for analysing in detail as to how imposing such a sanction violates a woman's freedom of religion too and how it can be, in some cases, an indirect discrimination on ground of religion (besides freedom of expression, personal liberty and privacy). Honorable Court did enter into the valley in Salauddin Dolon case; however, it completed its journey only partially!

THE WRITER WORKS WITH LAW DESK, THE DAILY STAR.



**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**

Hello, I am a retired army officer and currently involved in social works with few of my retired colleagues. Considering the cons, we aim to eradicate prostitution from the society. As such, I would like to know about the legal position relating to prostitution and the penalty associated therewith, in Bangladesh.

Mohakhali DOHS, Dhaka

**Response:**

Dear Concerned,

Thank you for your query. As per the social customs or while considering

10 years imprisonment and fine for inducing any minor girl under the age of 18 years to go from any place or to do any act with intent that such girl may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person. Buying minor for purposes of prostitution or illicit intercourse is punishable offence with imprisonment of either description for a term which may extend to ten years, and fine.

Dhaka Metropolitan Police (DMP) Ordinance 1976 and similar police legislations for other local jurisdictions prohibit solicitation for

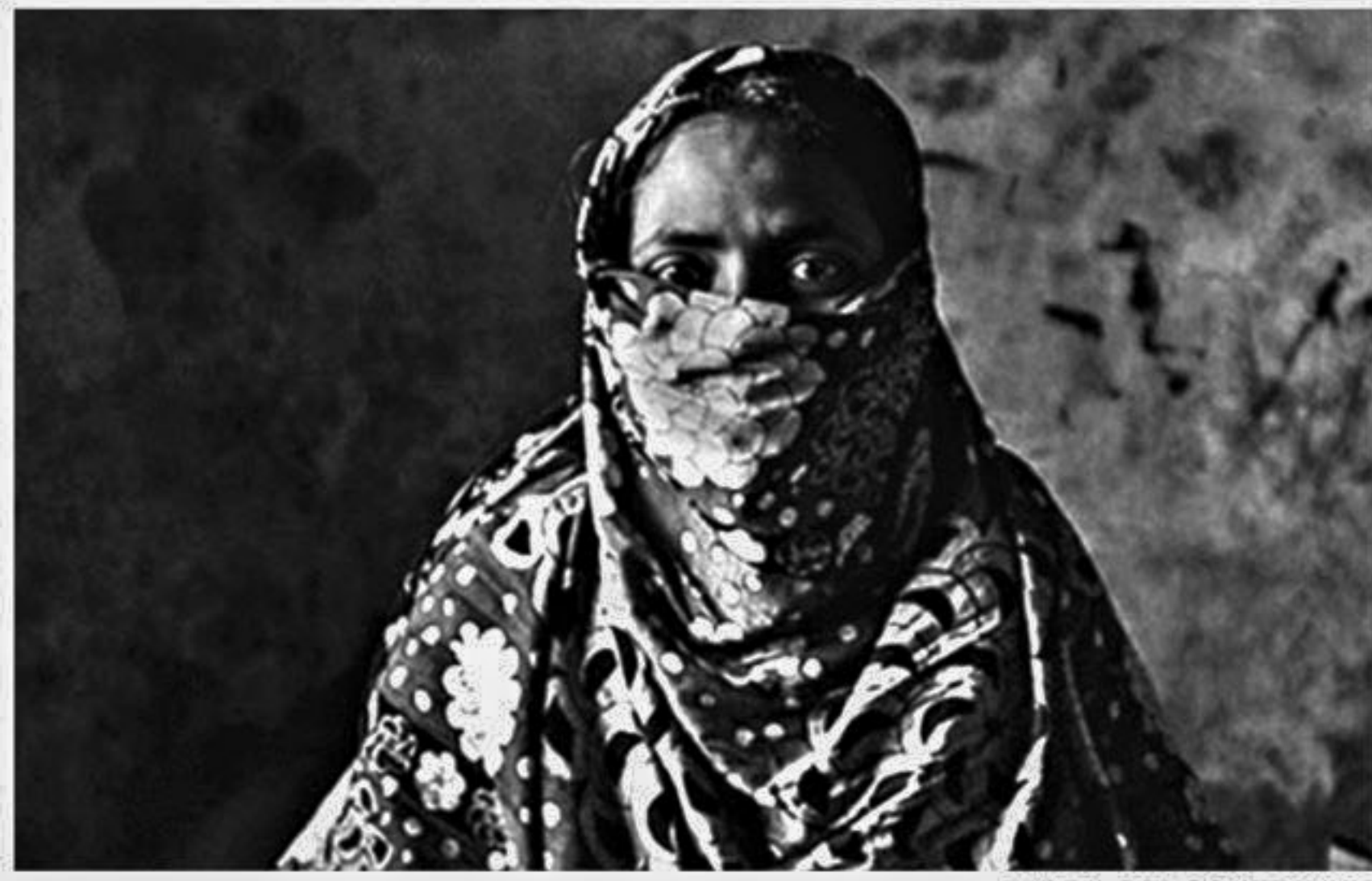


PHOTO: PEP BONET NOOR

the religious aspects, prostitution is generally considered as immoral and hence prohibited. Notwithstanding this prevailing mindset, the laws of Bangladesh do not prohibit prostitution. Bangladesh is one of the few countries where prostitution is 'technically' legal. The only possible restriction available is in the Constitution of the land. Article 18 of the Constitution of Bangladesh mentions that the State shall adopt effective measures to prevent prostitution and gambling. Thus, in Bangladesh, prostitution is not encouraged but yet not prohibited.

Soliciting for the purpose of prostitution is an offence punishable with imprisonment. Other prohibitions relate to forced prostitution or child prostitution. For your ready reference, few provisions from the Penal Code 1860 are stated below:

Section 364A provides death penalty or life imprisonment or rigorous imprisonment of 7-14 years for kidnapping or abducting a person under the age of ten. Section 366A prescribes a punishment of maximum

the purpose of prostitution. For example, as per Section 74 of the 1976 Ordinance, any person who in any street or public place or within sight of, and in such manner as to be seen or heard from, any street or public place, whether from within any house or building or not,—

(a) by words, gestures, or indecent personal exposure attracts or endeavours to attract attention for the purposes of prostitution; or

(b) Solicits or molests any person for the purposes of prostitution; shall be punishable with imprisonment for a term which may extend to three months, or with fine, which may extend to five hundred taka, or with both.

Thus, when we talk of the legal regime considering prostitution, we are to say that, as long as the State does not impose a legal embargo upon prostitution, the same shall be considered as a lawful profession. A person can voluntarily choose this profession and has the freedom to pursue the same.

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**PEOPLE'S VOICE**

ADIB SHAMSUDDIN

AROUND October of last year, netizens of Dhaka discovered a deed of utmost inhumanity: two dogs and their puppies were first beaten and was then killed by being buried alive. The perpetrator was Md. Siddique, 45, a security guard of Bagichartek Welfare Association, Rampura. Mr. Rakibul Haq Emil, Chairman of People for Animal Welfare Foundation, filed a case against alleged perpetrator with the Rampura Thana, under section 7 of the Cruelty to Animals Act, 1920. The subsequent verdict was rendered on 10th May, after the court took into account deliberations from both prosecution and defense and also the evidence given by 6 witnesses. Siddique, currently absconding, was given a sentence of 6 months imprisonment and also a fine of BDT 200, failure of which will lengthen imprisonment by 7 more days.

The decision, though one of the first of its kind, has been pointed out by animal rights activists as inadequate to have a deterring effect. Mr. Raqibul Haq Emil has expressed his discontent over the verdict in a wall post on the official Facebook group of People for Animal Welfare (PAW) foundation stating that the existent punishment is too lenient on the guilty. He opined, among other things, that such acts are considered a tendency towards greater crimes such as rape and murder in the developed world and that we can curb instances of animal cruelty by introducing heavy fines against such offenders.

With that, let's take a look at the aforementioned section of the Act. Section 7 of the Act states " If any person kills any animal in an

unnecessarily cruel manner he shall be punished with fine which may extend to two hundred Taka, or with imprisonment for a term which may extend to six months, or with both."

However the Act exempts religious rites, bona fide scientific or medicinal purpose.

A comparative analysis of neighbouring jurisdictions shows much more stringent rules to be in place. For example, under the newly



amended Indian Animal Welfare Law cruelty to animals is an offence punishable with a fine which shall not be less than ten thousand Rupees, this may extend to twenty five thousand Rupees or with imprisonment up to two years or both in the case of a first offence. In the case of repeated offence, the fine which shall not be less than INR 50

thousand, but may extend to INR 1 lakh and with imprisonment of a term which shall not be less than 1 year but may extend to 3 years. This amendment is currently awaiting ratification from the Government of India.

Thailand has recently introduced its first animal welfare law, the Cruelty Prevention and Welfare of Animal Act 2014.

The law renders protection to animals 'raised as pets, as animals for work, as beasts of burden, as friends, as livestock, as performing show animals, or for any other purposes no matter with or without owners'. The law makes it a responsibility upon owners to raise animals with good health, sanitation, sufficient food and clean water. The term owner extends to all family members, domestic help, any friends taking care of the pet etc. The Act also makes the consumption of dog and cat meat illegal. Feeding live baits to crocodiles, snakes etc is also now prohibited by law. Pet owners who dump unwanted dogs and cats at temples can now be charged with abandoning and endangering animal life. Neglect and torture has been properly defined and now carry sanctions of two year imprisonment and a fine of 40, 000 baht, or both.

Although, the verdict is a welcoming decision, we must bear in mind that the law is guided by an archaic Act predating the Independence of Bangladesh. We must update our laws to extend the protection offered and we should also raise awareness in the society we live in, to treat animals with more dignity, compassion and love. After all, animals too are habitants of planet earth.

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**GLOBAL LAW UPDATES**

IN 1997, the General Assembly proclaimed the year 2000 as the "International Year for a Culture of Peace". In 1998, it proclaimed the period 2001-2010 as the "International Decade for a Culture of Peace and Non-Violence for Children of the World."

In 1999, The General Assembly adopted the Declaration and Programme of Action on a Culture of Peace, which serves as the universal mandate for the international community, particularly the United Nations system, to promote a culture of peace and non-violence that benefits all of humanity, including future generations.

Subsequently, The UN General Assembly, in its resolution 72/130, declared 16 May the International Day of Living Together in Peace, as a means of regularly mobilising the efforts of the international community to promote peace, tolerance, inclusion, understanding and solidarity. The Day aims at upholding the desire to live and act together, being united with individual differences and diversity, in order to build a sustainable world of peace, solidarity and harmony.

**Living together in peace**



Living together in peace is all about accepting differences and having the ability to listen to, recognise, respect and appreciate others. 16 May 2018 will be the first time marking the celebration of the International Day of Living Together in Peace, having only been officially recognised by the General Assembly in December 2017.

The Day invites countries to further

promote reconciliation to help ensure peace and sustainable development, including by working with communities, faith leaders and other relevant actors, through reconciliatory measures and acts of service, for encouraging forgiveness and compassion among individuals.

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