"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

LAW INTERVIEW

ROHINGYA CRISIS

The situation requires immediate global action

Nickey Diamond is a Myanmar Human Rights Specialist at Fortify Rights. He is a President George W. Bush fellow (2014-2015) and holds a master degree in human rights from the Institute of Human Rights and Peace Studies, Mahidol University, Thailand. Recently, ***Emraan Azad*** *from Law Desk has talked to him in Phnom Penh, Cambodia on the following issues relating to the Rohingya crisis in Myanmar.*

Law Desk (LD): How do you see the present Rohingya crisis?
Nickey Diamond (ND): From the Myanmar government policies and practices, it has appeared that the recent Rohingya crisis is the outcome of a very systematic but unjust and authoritarian rule. The example is the citizenship law of 1982 by which the right to citizenship of the Rohingyas was arbitrarily taken away, although the 1947's post-independence Constitution of Myanmar and the 1948 Union Citizen Act recognised the Rohingyas as one of the ethnic communities in the country. Later, 1974 and 2008 Constitutions of Myanmar did not recognise the Rohingyas as being the citizens and ethnic community. Constitutional fabric and citizenship law together made the Rohingyas a stateless population. However, the problem is not of the law and policies only. Discriminatory practices of the government also contributed to the making of the present crisis. Once the right to citizenship was denied to the Rohingyas, they became stateless and could not enjoy their basic human rights. To me, it's not a recent issue but a several-decade long issue and the government continues to ignore it. The military leaders and their previous regime considered the Rohingyas as the 'illegal immigrants from Bangladesh' and recently after the 2017 August crackdown they said that the 'Bengali problem' is unfinished business. This is the kind of unfortunate scenario what I see on the face of the Rohingya crisis.

LD: Can you illustrate the patterns of discrimination against the Rohingyas which basically facilitated the state-led persecution in 2017?
ND: We have been documenting Rohingya suppression in northern Rakhine for a long time. Since 2012, they have been forced to live in concentration camps under strict surveillance of the security forces. They could not go out of the camp and did not live like other communities with individual freedom and liberty. They could not even go to another village. They were subjected to movement restrictions and needed special permission to get married and have children. In 2016, we witnessed some systematic execution of government policies. For example, protective fences around the Rohingya houses were removed, and knives and other sharp implements (basically used for agriculture purposes) were confiscated. Security patrols, house searches and cases of beatings, theft and extortion gradually increased. In 2017, the oppression grew more violent and the Rohingyas became defenceless. The kind of measure adopted by the Myanmar state apparatus, I consider, facilitated the 2012 violence which was a kind of preparation for undertaking a larger attack and displacement in August 2017 and committing a crime of genocide against the Rohingya ethnic minority group.

LD: Will you reflect on any propaganda used by the perpetrators?
ND: Institutionalised discrimination in the past and also the Buddhist nationalism played a role in the making of the crisis. Most of the political leaders and monks made propaganda that Buddhism, Buddhists, and Buddhist-nation are under attack by the Muslim Rohingyas who are, to them, the 'Bengali population' and 'illegal immigrants' to Myanmar. This kind of religious intolerance and indoctrination through ideology into the

body-politic of the state made the Rohingyas more vulnerable and the victims of state atrocities. Ordinary people truly believed in all these radical ideologies and became a part of state-led persecution of the Rohingyas. This kind of radicalisation and abuse of religion had been going on for several decades in Myanmar and one of the problems centring the present Rohingya crisis.

LD: Do you believe that a terrorist organisation like Arakan Rohingya Salvation Army (ARSA) exists?
ND: I have talked to the Rohingya community leaders several times on different occasions. They always tell me that an organisation like ARSA may exist, but they do not support any kind of armed struggle or armed conflict. They truly believe in seeking their ethnic identity, restoration of citizenship rights and peaceful co-existence in Myanmar. In a situation of decade-long discrimination and deprivation by the state, it is no wonder that some external forces like terrorist organisations might have tried to mobilise and radicalise ordinary Rohingyas. It is possible that some potential situation may have driven few of them – may be a hundred or so – to fall into the trap of radicalisation. However, the majority Rohingya population believe that an armed struggle cannot bring any real solution to the crisis.

LD: What is your expectation from the international community?
ND: I am a little sceptical about the international response and action regarding the Rohingya crisis. The international community is taking time and seeking legal justification under international law to act for solving the Rohingya crisis. We need to understand that it is a case of mass atrocity, millions of people are displaced and have already become a humanitarian burden for another state, i.e. Bangladesh. The situation requires immediate global action responsive to the crisis, specially in terms of holding the perpetrators accountable under international criminal law. Though the Chief Prosecutor of the International Criminal Court (ICC) has taken an initiative to investigate into the matter, the Court is itself struggling with different political challenges which actually frustrate us who are time and again raising our voices to ensure justice for the Rohingyas. Apart from this criminal justice aspect, the issue of reparation and repatriation is also a big issue right now to the crisis since most of the perpetrators are now in power in Myanmar. In such a situation, it is very difficult to ensure accountability of the perpetrators and justice for the Rohingyas. The question is – under what basis and confidence the Rohingya people will return to their homeland, unless a tangible assurance is given and a visible measure is taken by the government in power. Since the perpetrators are still in power and they are not taking the responsibility of the safety of the Rohingyas, the chances remain that they might again violate and kill these Rohingya people on their return to Myanmar. Hence, a potential danger exists even in future to the crisis.

LD: Thank you for your time.
ND: You are welcome.

RIGHTS COLUMN

DOMESTIC WORKERS RIGHTS IN BANGLADESH

Monirul Islam

EMPLOYING domestic helper of varying ages is a common practice in urban areas of Bangladesh. Over 80% of them are underage girls. There exists no regulatory framework for the minimum age of employment, pay and working hours for these poor and vulnerable workers. As documented by news portals and human rights organisations, domestic workers are routinely subjected to violence. As per the report of Ain o Salish Kenda (ASK), only in the first six months of 2019, there have been 15 reported cases of violence against domestic workers, of which 8 were cases of rape.

The Government of Bangladesh had earlier promulgated an Ordinance for the registration of the Domestic workers in certain area of Bangladesh. This Ordinance does not touch any regulatory aspect does not confer any rights or remedies to the domestic workers.

In *Bangladesh National Women Lawyers Association (BNWLA)* v *Government of Bangladesh* 2011 BLD 265, the Court acknowledged the rights of the domestic workers for the first time and said that the child domestic workers of Bangladesh between the ages of 14-18 should be incorporated automatically within the provisions of the Labour Act 2006. However, this recognition has been largely ineffective.

Bangladesh is a member of the International Labour Organization (ILO). It is a signatory to the Domestic Workers Convention 2011 that come into force on September 5, 2013 but is yet to ratify it.

However, the Cabinet of Bangladesh approved the draft of National Policy name is the Domestic Workers Protection and Welfare Policy in 2015, but this policy is no justiciable and moreover, it does not outline minimum wage and working hours.

Domestic workers arguably the most vulnerable class of workers, and are easy prey to abuse. It is about time their plights are heeded and they are afforded justice.

THE WRITER IS A STUDENT OF LAW AND HUMAN RIGHTS, UNIVERSITY OF ASIA PACIFIC.

RIGHTS ADVOCACY

ARBITRATION COUNCIL TO RESOLVE FAMILY LAW DISPUTES

Fayazuddin Ahmad

THE Muslim Family Laws Ordinance (MFLO) 1961 has provisions for the constitution of Arbitration Council to resolve three specific family disputes: divorce, polygamy, and maintenance. The arbitration may be defined as the reference of a dispute for adjudication to a third party chosen by the parties in dispute and whose decision is binding on the disputants. Islam recognises Tah'kim (arbitration), alongside the Al-qada' (judiciary) as a means of dispute settlement, as it is evidenced in the Quran, and the Sunnah (tradition) of the Prophet (SM).

After the enactment of MFLO 1961, all incidents of verbal divorce had been announced unlawful. Now, the party who wants to file an application for divorce should go to the Marriage Registrar, and file the application, mentioning the reason. The Registrar will receive the application and send the notice to the Chairman/Mayor of respective local government institution (LGI) for the next course of action and a copy to the other party.

The Chairman/Mayor within 30 days, to form the Arbitration Council, will inform both parties to send particulars of their representatives within 7 days. With the nominated representatives the Chairman/Mayor will form the Council. This Council will call both parties for dialogue, attempting to resolve the dispute. If the couple comes to a consensus that they will continue the marital relationship, the divorce application will not be effective. In case of no-consensus, the divorce will be effective within 90 days after receiving the notice.

In *Jesmin Sultana* v *Mohammad Elias* (1997 (17) BLD 4), the Court ruled that Section 6 of the MFLO prohibiting the contracting of a polygamous marriage without the prior permission of the Arbitration Council is against the principles of Islamic law. The Court stated that Muslim jurists and scholars are nearly unanimous in the view that it is practically impossible to deal with co-wives justly, and so the Quranic injunction that a second wife may be taken under specific conditions is virtually a prohibition.

According to Section 9, if without any valid reason, a husband neglects his wife and do not pay adequate maintenance or if there is more than one wife and he is not able to give them maintenance equally or if the husband without any valid reason declines to give any maintenance to his wife then the wife can file a petition to the Chairman/Mayor claiming her right to maintenance.

During a recent study facilitated by the Madaripur Legal Aid Association (MLAA) and Bangladesh Legal Aid & Services Trust (BLAST) some common findings came out. They are:-

Lack of awareness: During the interviews with the service recipients at Union Parishad, Pourashobha, and City Corporation, it was commonly observed that neither the husband nor the wife is aware and/or (more than 90%) clear about the process that they need to follow to complete the relevant processes.

One law but many practices: Citizens are not aware of where to go, to whom to consult at the local government. There is no uniformity in practice. The practice that has been observed in Chittagong City Corporation is not similar to that of Khulna City Corporation or Dhaka City Corporation.

Avoidance of law: The matter of maintenance and polygamy was found to be solved outside the Arbitration Council. As the citizens are not aware of the law they did not take the matter to the Council for settlement. In these cases, the local government representatives preferred to informal arbitration (Salish) to solve the matters.

Based on the present situation the following actions were proposed:-

Raising the level of awareness regarding the MFLO: Both duty bearers and citizens should be aware of the regulations. Raising awareness could ensure prevention of illegal practices.

Reviewing and revising the mandate under MFLO: The mandate of the local government institutions should be reviewed and revised. At present, a divorce application comes effective automatically after 90 days of serving the notice. If they have the authority to withhold the application without their approval, the Council may become more effective.

Ensuring capacity building: To activate the Council, the Chairmen of the Council should be given training on counseling and conciliation and members of the Council should be provided with reasonable remuneration for their services.

Monitoring and coordination of services: The performance of the Marriage Registrar should be monitored and coordinated with other relevant agencies regularly. And for any failure, he should be penalised. This will stop unlawful and corrupt practices by the Registrars.

Digitizing services: Interviewees proposed to effectively digitize the services. The one-stop point option may be the center point of this process. This may also eliminate the challenge of serving relevant notices as an integral part of the process.

THE WRITER IS AN ADVOCATE AND SOCIO-LEGAL RESEARCHER.

GLOBAL LAW UPDATES

India brings major amendments to the Right to Information Act

ON August 1, 2019, the President of India assented to two key amendments to the country's Right to Information (RTI) Act. Both amendments were passed by the Indian Parliament last month. The first amendment takes away the firmly rooted security of tenure of five years that Information Commissioners currently enjoy. And the second allows the government to dictate the terms and conditions of service of Information Commissioners.

On 22 July 2019, the Rajya Sabha passed the Right to Information (Amendment) Bill, 2019 by a voice vote amid a walkout from the Congress, Rashtriya Janata Dal (RJD), Trinamool Congress (TMC) and the other opposition parties. The legislation was passed after the Opposition's proposal to send the RTI Amendment Bill to select committee was defeated with 117-75 in the Rajya Sabha.

The RTI bill was earlier passed in the Lok Sabha on 19 July 2019, three days after it was introduced by the government. In the Lok Sabha, 218 members voted in favour of the RTI (Amendment) Bill, while 79 went against the legislation.

Describing the legislation as "clumsy", Minister of State (MoS) in the Prime Minister's Office Jitendra Singh tabled the RTI (Amendment) Bill, asserting it will lead to ease of delivery of RTI Act. He also described it as enabling legislation for administration purposes.

Earlier, UPA Chairperson Sonia Gandhi had alleged that the Narendra Modi government is "hell-bent on completely subverting" the RTI Act. Sonia Gandhi had also alleged that the government wants to "destroy" the independence of the Central Information Commission. Her reaction came a day after the Lok Sabha passed the RTI Amendment Bill.

"It is a matter of utmost concern that the central government is hell-bent on completely subverting the historic Right to Information Act, 2005. This law, prepared after widespread consultations and unanimously passed by Parliament, now stands at the brink of extinction," Sonia Gandhi said in the statement.

Advocate Ashish Goel practicing law in Indian courts comments that "the manner in which it was passed in both Houses of Parliament within a matter of days are deeply questionable. The government did not let the Bill go through any kind of public scrutiny. Nor was the Bill referred to the Standing Committee. This is despite the fact that the Bill, when notified for introduction in the monsoon session of Parliament last year, faced the flak of RTI activists and opposition parties alike."

"The amendments are much likely to be challenged on grounds of being ultra vires of the Constitution and hopefully our constitutional courts would see through this stratagem," Advocate Goel criticised the amendments while writing in International Journal of Constitutional Law Blog.

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