

RIGHTS MONITOR

Identity controversy amid communal violence in Bangladesh: A human rights perspective

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Once again Bangladesh has recently witnessed communal violence in different districts during the Durga puja (worship of the Mother Goddess) of the people with Hindu religious faith, a fundamental religious right duly recognised and embodied in the Constitution of Bangladesh. The gravity of these violent acts on the minority Hindus has been censured not only by the national administration and civil society members but also internationally by the UN, the USA, Germany (Berlin), and neighbouring India. Rhetorical reactive responses echoed loudly in the aftermath of every communal violence, which continues almost unabated. This is high time to drift from rhetorical reaction to real action for the de-communalisation of poisonous religious hatred, ideological fanaticism, militant radicalism, and senseless criminality that once contributed to the commission of gruesome atrocities in the name of religion in 1971.

Responding to the above incidents in the *Puja mandaps* in Noakhali,

Information Minister Dr Hasan Mahmud, raised an important, yet controversial, issue of our identity on 10 October 2021 at a meeting organised by Hindu Religious Welfare Trust in the Rangunia upazila of Chittagong (*Prothom Alo*, 10 October 2021). The Minister asserted that 'Bangali' is our first identity for which he rightly reasoned that all religious groups – Muslims, Hindus, Buddhists, and Christians alike – joined forces against religious abuses and excesses during Pakistan period and fought against Pakistani occupation troops and their local collaborators to physically liberate Bangladesh in 1971. Despite this glorious historic religious harmony displayed beyond doubt was one of the dominant forces that created non-communal Bangladesh, our identity controversy is yet to be dissipated, which overtly and covertly contributes to communal violence. It is this identity controversy that is the focus of this brief write-up, which purports to look at the issue from a human rights perspective.

Every individual and clusters of people can have their respective ethnic, racial, national, religious and/

or other identities such as stateless, atheist and so forth. The people of Bangladesh are 'Bangali' by their ethnicity or race, 'Bangladeshi' by their nationality or citizenship, and Muslims, Hindus, Buddhists, and Christians by their religious faith. Now the debate surrounds the issue is whether these identities are amenable to any gradation or precedence in order. Regardless of our identity as 'Bangali', Bangladeshi, Muslim, Hindu, Buddhist,

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'Bangali' by ethnicity because it is inborn, inbuilt, and inherent in us by virtue of our creation. Famous pop singer Michael Jackson could not change his primary identity even after undergoing skin surgery, which made his skin somewhat fairer, but remained an African American, not an Anglo-Saxon or first nation Red Indian. Similarly, there is no means that can transform us from 'Bangali' into a different racial group – be it Rohingya, Tamil, Anglo-Saxon, or any other. Ethnic/racial groups within a state are not created by that state, nor can it alter the ethnicity of a particular racial group by any means at its disposal. States merely recognise the physical existence of various ethnic groups and assume responsibility to protect them. Therefore, a human rights point of view tends to corroborate Dr Hasan Mahmud's view that our ethnic or racial identity as 'Bangali' is our primary identity.

The other category is the acquired identity, which is alienable and changeable and nationality/ citizenship and religion, among others, belong to this category. Constitutionally the nationals/citizens of Bangladesh are recognised as 'Bangladeshi', which is a human made and state conferred identity. National identity can be acquired and lost. A Bangladeshi national/citizen can change his/her national identity through migration and naturalisation in another state or by becoming a stateless person. This has been a regular feature of cross-border physical movement of natural person validated by international refugee law. Recently, following the Taliban takeover of Afghanistan, many Afghan nationals/citizens relinquished their Afghan national identity and have acquired or in the process of acquiring nationality of Western countries. The constitutional fundamental rights that we enjoy as nationals/citizens of Bangladesh are the creation of legislative enactments, which are susceptible to modifications by Parliament. As citizens, we can enjoy guarantees provided in the Constitution and these guarantees not only vary

from state to state but some or all these guarantees can be suspended or withheld during national emergency. Similarly, the religious identity can be acquired and changed through voluntary religious conversion from one religion to another, which is happening routinely in all religions throughout the world. States can even intervene or influence their nationals/citizens' religious affinity through persuasive or coercive means, exemplified by the alleged plight of the Uighur Muslims across China. Most democratic countries' constitutions allow such conversion pursuant to their right to freedom of religion and the Constitution of Bangladesh is no exception permitting religious freedom (articles 12 and 28) and even free from any religious faith to become atheists.

The communal violence that has recently occurred causing wanton destruction of the *puja mandaps*, houses, properties, and lives of the Hindu minorities in Bangladesh are heinous criminal acts which cannot be condoned and justified under any consideration. Otherwise, any antipathy and denouncement of the Modi government's discriminatory treatment of minority Muslims particularly the Kashmiris in India, marginalised plight of the Arab Muslims and Palestinians in Israel, reported systematic religious persecution of the Uighur Muslims in China, and even violent ethnic cleansing of the Rohingyas in Myanmar would sound hollow and self-defeating. Such reprehensible treatment of minorities within states, albeit including horrific communal violence on all minorities in Bangladesh cannot be glorified and subsumed under any pretext whatsoever and under the principle of cultural relativism and cross-cultural perspectives of human rights. These despicable and contemptuous incidents solicit our attention and assault our sense of propriety at regular intervals to launch a worldwide consciousness-raising campaign for their total eradication to sanctify dignified human existence.

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Christian, stateless, or atheist, we all are human being, our fundamental identity, which warrants human rights rationales to play a role in demystifying the controversy.

The identities referred to may be categorised into two distinct groups: natural and acquired. The natural identities are those that are not human made but given by the nature of creation and cannot be acquired, transferred, or lost. In other words, these identities are inalienable or unchangeable that transcends far beyond any state borders, and wherever we go – be it in another state, sea, forest, or desert; we take this identity with us irrespective of our wish. Since we all born with features of human being and distinctive racial attributes, our human being and ethnic identities belong to this category of primary identity. No matter what we do and where we go, we always remain as

YOUR ADVOCATE

PANDEMIC, RETRENCHMENT AND LABOUR LAW

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, family law, labor law, land law, constitutional law, criminal law, and IPR.

QUERY

Due to the ongoing pandemic the business operation of our company has been substantially reduced. Recently, the company authority has informed us that they no longer need some members of staff (mostly in non-management departments) as they have nothing to do at this moment. Already the tenure of a few members has been terminated without any sort of notice and/or compensation. Some of their performances were very good and they are not at fault of any kind. Do you think the action taken by our company authority is appropriate?

Ashik, Dhaka

Response

Thank you for your query. The ongoing pandemic certainly has adversely affected the employment scenario in Bangladesh, like most other countries of the world. Several people have lost their jobs as the employers were unable to run the business smoothly. The employers have limited options to protect their business and the most obvious action for some of them is to reduce the number of employees. However, the question that arose is whether the correct procedures have been followed when an employee has been terminated from the organisation due to redundancy.

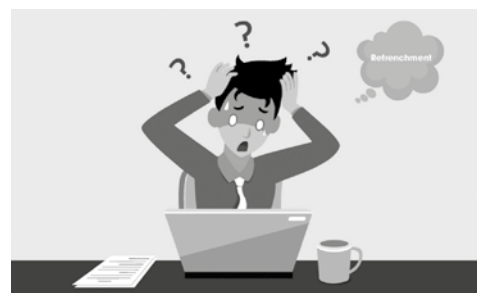
In the context of Bangladesh, the issues related to employment of non-management members of staff are governed by the provisions of the Bangladesh Labour Act, 2006 (hereinafter referred to as 'BLA') and the Bangladesh Labour Rules, 2015 (hereinafter referred to as 'BLR'). There are several methods of termination of employment and one of the ways known as 'retrenchment on the ground of redundancy', which has been dealt with in sections 20-21 of the BLA read with rule 27 of the BLR.

The BLA and BLR have laid down the conditions which are required to be followed by an employer while severing the employment of an employee by way of retrenchment. Firstly, in the scenario the employer chooses to retrench an employee on the ground of redundancy, the employer shall provide him/her a written notice of one month with reasons for retrenchment or payment for such notice period in cases where

the employer wishes to retrench him/her without a notice. Most importantly, this notice period shall be applicable for workers who have completed at least one year of continuous service under the employer. The BLR has prescribed a specific format for the notice of retrenchment, which shall be used to notify the employee about retrenchment. Moreover, it is a requirement under the provision of retrenchment to send a copy of such notice of retrenchment to the Chief Inspector of Labour, Ministry of Labour along with another copy to the Collective Bargaining Agent (CBA) of the establishment, if there is any.

Such notice has to be given to the Chief Inspector irrespective of whether the employee has been retrenched with or without the one-month notice.

In addition, the worker shall be paid thirty



days' basic wages for his every year of service or gratuity, if any, whichever is higher. Apart from the compensation payable when an employee is retrenched, the employee is entitled to his/her due salaries, provident fund (if any), annual leave encashment or any other benefits arising out of his/her employment agreement and/or as per the service rules of the establishment. It is notable that the principle of 'last come first go' applies in terms of retrenchment (section 20(4) of the BLA).

It is pertinent to mention that the above discussion is done for employees who fall within the definition of 'worker' (non-managerial staff) by virtue of section 2(65) of the BLA, as your question was mainly focused on them. For the management staff, the terms in their employment contract shall have to be adhered to. I hope the advice would help you understand the appropriate legal process in the given context.

REVIEWING THE VIEWS

Clarifying our understanding of Hilla Marriage

ADIBA TAHSIN RAHA

In the Muslim community, the concept of *Hilla* marriage is certainly a controversial one. According to the existing law, a Muslim man can divorce his wife and can revoke such divorce twice. But as he divorces his wife for the third time, the divorce becomes irrevocable, and the woman becomes haram (unlawful) for the man. The man cannot marry the same woman unless she gets married to another man; the marriage is consummated and afterwards gets terminated by the second husband. Upon observing the period of *iddat*, there is no bar for the first husband to re-marry her. However, the literal understanding of the concept of *Hilla* marriage has caused great miseries to the Muslim women who have to bear its brunt.

In the pre-Islamic era, a Muslim man could divorce his wife as many times as he wanted and could revoke the same in exercise of an undisputed authority. It had become a means of ill-treatment and torture of the Muslim women and the sanctity of marriage as an institution is vitiated through this harmful practice. With an intention to curb this ill practice, it was ordained in Islam that a Muslim man could only revoke divorce twice and the third time the divorce would become irrevocable; he could not get his wife back without an intermediary marriage. The Quranic reference of this concept can be cited as follows:

"And if he has divorced her (for the third time), then she is not lawful to him afterward until (after) she marries a husband other than him. And if the latter husband divorces her (or dies), there is no blame upon the woman and her former husband for returning to each other if they think that they can keep (within) the limits of Allah. These are the limits of Allah, which He makes clear to a people who know." (2:230)

From *Bukhaari* (2639) and *Muslim* (1433) it can be found that the wife does not become lawful for her first husband until the second marriage is consummated.

Unfortunately, the failure to understand the spirit of the letters of the Quran and Hadith has led to a practice in which a man marries and subsequently divorces a woman simply to render her lawful for the first husband. Such a marriage has no sanction in Islam and is completely void. Our Prophet (PBUH) condemned such marriage saying, "Curse be upon the one who



marries a divorced woman with the intention of making her lawful for her former husband and upon the one for whom she is made lawful." [Abu Dawood (2076); Ibn Majah (1935); At-Tirmidhee (1119)]

Furthermore, according to the *Malikie*, *Shafiee* and *Hanbalie* schools of thoughts, such marriage is void as it is conditional and is to last only for a certain period of time.

The practice of *Hilla* marriage is prevalent in Bangladesh especially in rural areas. In August 2021, a couple of Chalimpur village, of Debiganjupazila under Panchagarh, had been isolated by the local influential people as the husband denied his wife's *Hilla* marriage after their divorce. As clearly conceivable, *Hilla* marriage in Bangladesh is incidental to the issue of triple *Talaq* (three pronouncements at a single sitting). This is another ill practice which goes against the very spirit of Islam.

The Muslim Family Law Ordinance, 1961 addresses issue of triple *Talaq* and *Hilla* marriage. According to section 7 of the 1961 Ordinance, a man can divorce his wife by pronouncement of *Talaq* in any form he wants, and he has to give a notice to the Chairman in this regard and also a copy to the wife. Failure to comply with this will result in simple imprisonment which may extend to one year or with fine which may extend to ten thousand taka or both. If the *Talaq* is not revoked earlier,

it shall take effect after the expiration of 90 days from the day on which the notice was given. This section also stipulates that a wife divorced by her husband according to this section can re-marry him without an intervening marriage unless the termination is for the third time so effective. Thus, this section does not expressly ban triple *Talaq* but successfully curbs its effect by fixing a period of 90 days for the *talaq* to take effect.

The High Court Division in the Writ Petition No. 5897 of 2000 held that execution of a *fatwa* related to *Hilla* marriage is punishable offence under sections 494, 508, and 509 of the Penal Code, 1860 and under section 7 of the 1961 Ordinance.

In a patriarchal society, *Hilla* marriage is implemented as yet another weapon to exploit women. Such marriage not only undermines the wisdom of Islam but also goes against the constitutional spirit of Bangladesh. Such practice undermines women's agency and contradicts their fundamental rights as guaranteed under the Constitution.

Misinterpretation of Hadith and Quran has the effect of substantially restricting the rights of the Muslim women. Therefore, a sincere approach on part of the Muslim community towards understanding Quran and Hadith is necessary.

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