

RIGHTS ADVOCACY

Manusher Jonno Foundation's position on the Anti-Discrimination Bill

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The quintessence of the Anti-Discrimination Bill clearly states that discrimination on the basis of caste, religion, ethnicity, language, age, gender, place of birth, profession, or untouchability, will no longer go unaddressed.

The fundamental mandate of the Manusher Jonno Foundation (MJF) is to address the issues of marginality and exclusion in the country. Since 2004, the MJF with support from the UKaid has been working with the Dalit/Harijan community to empower them to claim by themselves their rights and entitlements from the service providers and to have access to all public institutions. Through its work at the grassroots, the MJF has found serious shreds of evidence which suggest that their accessibility to institutions is limited and their position in the society is degraded – resulting in negatively affecting their psychological and livelihood aspects both at present and in future. Therefore, a strong demand has come from the grassroots that there should be a specific law that could protect the Dalit/Harijan from such discrimination and inhuman treatment. Apart from some provisions in the Constitution, as of now, there is no such comprehensive law that can redress discrimination in Bangladesh.

In 2008, under such a scenario, the MJF convened a Dalit conference where representatives from civil society, research institutions, NGOs, Dalit-Harijan organisations and platforms, government officials and legal experts were present. At that conference, the then Joint Secretary of Law Ministry advised that a law should be drafted encompassing the broader canvas of discrimination and guaranteeing freedoms for the marginalised communities facing ill-treatment and discrimination. For doing so, the legal experts opined that we should first mobilise all marginalised communities of the country and identify the nature of discrimination they faced in their lives. Based on such findings, as it was decided, we could draft a law to put before the government.

After the conference, for the next two years, the Rights of the Marginalised theme of the MJF carried out nation-wide extensive consultation, mobilisation, and campaigning through the engagement of the Dalit-Harijan and other marginalised communities. This programme was jointly carried out by more than 15 organisations and platforms working for them. The MJF and its network also engaged National Human Rights Commission and Bangladesh Law Commission to get an anti-discrimination law drafted and adopted by the government.

In drafting the law, similar legal frameworks were consulted including those of India, South Africa, and the UK. Interestingly, there was a consensus that the scope of the law should be broadened, beyond the Dalit-Harijan community, to include all other segments of the society facing systemic discrimination, such as the persons with disabilities, religious and ethnic minorities, sex workers, transgender people, and others.

Afterwards, a comprehensive draft law was submitted to the Law Commission and the MJF subsequently maintained following up the revision and re-revision process. In 2013, the draft law was submitted to the Law Ministry.

After scrutiny, the Law Ministry proposed to bring in some revisions and changes to the draft. Again, in collaboration with the Law Commission, a revised text of the law was submitted to the Law Ministry.

Then the next eight years saw constant advocacy and lobbying with the Law Ministry by the MJF and other leading NGOs including, among others, Nagorik Uddyog, Research Initiative Bangladesh and Bangladesh Legal Aid and Services Trust.

Eventually, on 5 April 2022, the honourable Law Minister placed the much-awaited 'Anti-Discrimination Bill, 2022' in the parliament. This was then sent to the Parliamentary Standing Committee on the Ministry of Law, Justice and Parliamentary Affairs for the review and reporting. Instantly, the MJF collected a copy of the Bill and did a thorough review by its law experts. In the Bill, the MJF found significant laps and gaps. On 17 April 2022, the MJF organised a webinar inviting all members of the aforesaid Parliamentary Standing Committee, civil society actors, grassroots members of marginalised communities and law experts. The MJF presented its analysis of the Bill and then sought others' views. The Chair of the Standing Committee welcomed the move and requested the MJF to send the compiled recommendations given by the MJF as well as the webinar participants. Within days, all the compiled recommendations were sent to all the Standing Committee Members. At present, the MJF has kept lobbying with them, and they have already on principle decided to bring in necessary revisions and changes to the Bill.

The major recommendations to improve the Bill are given below:

(1) The law needs to be re-titled as 'Elimination of Discrimination Act, 2022' instead of 'Anti-Discrimination Act, 2022'. 'Anti' is treated as a sensitive connotation.

(2) The preamble of the Bill should include the references to internationally accepted human rights instruments such as ICCPR (on civil and political rights); ICESCR (on economic, social and cultural rights); CRC (on children rights); CEDAW (on women's rights); CPRD (on disabled people's rights), etc.

(3) Section 2 of the Bill should include separate definitions of all marginalised communities.

(4) Section 3 should clarify (a) for what specific reasons a child may be denied access to school, and (b) which occupation and business are to be deemed illegal.

(5) Section 4 should consider (a) minimising bureaucratic complexities in the structure and formation procedure

of the monitoring committee, (b) incorporating representatives from CSOs and marginalised communities in the monitoring committee, and (c) forming the monitoring committee just after the adoption of the Bill.

(6) Section 9 should ensure a quick trial procedure against any case of discrimination. The section should also make provision for initiating a criminal case on the allegation of discrimination, because without a criminal case, a punishable measure cannot be taken against the person(s) who is/are proved to have committed discrimination under law.

(7) Section 7 should ensure representation from marginalised communities in national and local committees to address the elimination of discrimination.

(8) Strong recommendations were also made in the quick formulation of rules after the adoption of the Bill and wider dissemination of the law.

The quintessence of the Anti-Discrimination Bill clearly

states that discrimination on the basis of caste, religion, ethnicity, language, age, gender, place of birth, profession, or untouchability, will no longer go unaddressed. It further states that citizens cannot be deprived of getting services from government offices, statutory bodies, and non-government organisations, nor can anyone be denied employment because of the above-mentioned identities. However, a law is only one of the tools to ensure rights and entitlements. Therefore, a much stronger commitment must be made to build a discrimination-free, exploitation-free society where everyone has the same right to live in freedom, dignity, and security.

The writer works at Manusher Jonno Foundation (MJF) focusing on marginalised communities.

LAW LETTER

Paradoxes in the punishment of registration of child marriages

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According to the Child Marriage Restrain Act of 2017, the contracting, allowing, solemnisation and registration of the child marriage a punishable offence. The Act has repealed the previous Act of 1929. The present Act does not invalidate the child marriage, rather impose penalty for such marriage. Section 7 of the Act imposes punishment on the persons for contracting child marriage, while section 8 punishes the parents for allowing child marriage. In addition, section 9 provides penalty for the persons who solemnise or conduct the child marriage. Again, section 11 of the Act makes the registration of the child marriage a punishable offence. The section goes on to say that,

"If any Marriage Registrar registers a child marriage, it shall be an offence, and for this, he shall be punished with imprisonment which may extend to 02 (two) years but not less than 06 (six) months, or with fine which may extend to 50 (fifty) thousand Taka, or with both[.]"

Therefore, if the "Marriage Registrar" under the Muslim Marriages and Divorces (Registration) Act, 1974 registers the child marriage, he/she will be punished with imprisonment which may extend from six months to two years or fine which may extend up to 50 thousand Taka or both.

However, the paradox appears when we read section 3 of the Muslim Marriages and Divorce (Registration) Act of 1974, which states that,

"Notwithstanding anything contained in any law, custom or usage, every marriage solemnised under Muslim law shall be registered in accordance with the provisions of this Act."

The provision



makes it clear that "every marriage" solemnised under "Muslim law" shall be registered. Here, one may raise question whether the term "Muslim law" means statutory laws that regulates the Muslim's family matter or the shariat. If we read it in connection with section 2 of Muslim Personal Law (Shariat) Application Act, 1937, it clarifies the meaning of Muslim law in section 3 of the Act of 1974 as the Muslim Personal Law or the Shariat. Because, according to this section, the Islamic Sharia Law tends to govern ten matters of Muslim's family that, among others, include the Muslim marriage.

Now, the term "every marriage solemnised under Muslim law" may be interpreted in different ways but every interpretation will include valid marriage solemnised under Muslim law or the Shariat. The Muslim personal law or the Shariat allows child marriage, and it is absolutely valid. At the same time, there is no statutory provisions in Bangladesh that declares child marriage void. Therefore, the term "every marriage solemnised under Muslim law" plausibly includes child marriage too.

In the above circumstances, the Marriage Registrar is bound to register the child marriage under section 3 of the Muslim Marriages and Divorce (Registration) Act, 1974 as the section makes it obligatory with a precise wording, i.e., "shall be registered".

Again, section of 5(4) of the Act of 1974 provides that,

"A person who contravenes any provision of this section commits an offence and he shall be liable to be punished with simple imprisonment for a term which may extend to two years or with fine which may extend to three thousand Taka, or with both."

Therefore, if the Marriage Registrar contravenes section 3 of the Act, that will be an offence under section 5 of the Act. Hence, the person will be punished for the non-registration of the child marriage.

From the above discussion, it is seen that the non-registration of the child marriage is punishable under section 5 of the Muslim Marriages and Divorce (Registration) Act, 1974 whereas the registration of such marriage is punishable under section 11 of the Child Marriage Restrain Act, 2017. That means, the Marriage Registrar is bound to register the child marriage under section 3 of the Act of 1974, and he/she will be punished under section 11 of the Act of 2017 for fulfilling such bindings. The Acts have clear contradiction with each other. So, the government must take initiatives to remove the contradiction between the Acts. Otherwise, the Marriage Registrar will plausibly be punished whether he/she registers or refuses to register the child marriage.

The writer studied law at the Bangladesh University of Professionals (BUP).

