LAW INTERVIEW

In search for a universal rule: Rule of law, democracy, and human rights

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Mohammad Golam Sarwar, Consultant, Law Desk, The Daily Star talks to him on the following issues.

Law Desk (LD): How do you view the current condition of the rule of law and democracy globally?
David Carter (DC): Hillary Clinton, while being the Secretary of State of the United States of America, posed a wonderful question about what the rule of law is, and I think we are searching for a universal rule that is somewhat achievable, though not uniformly, across the world. An example may be how one defines terrorism. The USA has struggled with the definition which, according to it, is now an act or a failure to act that influences governments and where there is a horrendous crime involved in an effort to change our government. However, in giving that definition it understood that individual countries would be able to modify that definition. So, for me, the rule of law rests on the concept of fairness and I am concerned - whether it be in relation to terrorism, or environment, or human trafficking – that we are tackling the problem in a way that puts us in a position

of conducting improper trials. When we do that, we become a society that inflicts punishment without a proper trial and our aim should be to ensure proper trial and safeguards. If we do that, we become the alternative to the terrorist system. If we rush to quick and improper solutions, I would be concerned about the rule of law and this would also cause problems with sentencing and punishment. We need to be thinking about whether we can tackle these issues with lesser punishment or an increased focus on rehabilitation – the example of rehabilitation and reintegration of Tamil Tigers in Sri Lanka may be noted in this regard. Whatever definition we may have of the rule of law, it has to balance punishment, deterrence and human rights. And this has to be the judiciary who has to seek that balance.
LD: Why have we failed to utilise the framework of human rights in tackling the pandemic?
DC: Balancing the interests of economy and the public health at a time like the COVID pandemic is a thorny challenge – there is no absolutism. This will naturally take jobs and largely so, from the poor. There are studies that state that minority populations in the US are less likely to take the vaccines as they are historically subjected to poor medical treatment and therefore are less likely to trust the government. Therefore, making vaccination mandatory, particularly in places of work, raises a question of whether we have built a healthcare structure where this would be viable. The pandemic has permanently changed the workforce and poorer communities are mostly harmed by it.

The mass media plays an important role in the society as the government alone cannot educate or motivate the population into voluntarily complying with health and vaccination measures. Democracy right now is being tested – for a while the world order was leaning towards increased democracy; but in recent times, there have been doubts about whether democracy is the most effective way to tackle some of the contemporary world issues. Democracy can be slow process – rendering good but not perfect outcomes. But when democracy wanes or subsides, we may get quicker solutions, which may not take into account the general interest of the population of the country. When people are empowered so as to participate in decision-making, they are more protective of the society and its interests. But when their voices are taken away, for example, by lack of access to courts or judicial processes, they may resort to self-help or violent tactics. Not having a speedy and effective trial seriously hampers human rights as the accused is kept in custody for long periods of time even before conviction. We must come up with a mechanism giving the judges more discretion to reach resolution in cases in a more speedy and efficient manner. Judges and academics should have more avenues to make inputs into the legislative mechanisms in order to achieve this.
LD: How do you assess the role of the international community to address the issue of displaced people from Myanmar and the environmental, economic, and security impacts of the influx on Bangladesh?
DC: We must evaluate why the international community is more attentive to the issue of Ukraine when compared to the issue of Rohingya displacement from Myanmar. It could be out of self-interest or could be that the international community is not fully cognisant of the inhumane treatment the Rohingya people underwent, perhaps due to cultural, ethnic or religious differences. Culturally, Bangladesh is more sympathetic to the Rohingyas due, among others, to the common religion. Humanity gets lost sometimes due to diversity and while it is commendable that Bangladesh is concerned about the plight of the Rohingya but we must also be concerned why the international community is not as responsive. The international community should have come to the aid of the Rohingya a long time ago. A country has to properly regulate the influx of people into its country to ensure that no one is abusing the processes and to screen out possible cases of trafficking. Bangladesh has, overall, tackled the issue in a very humane manner. Interrelationship between other countries and Bangladesh is of critical importance in order for them to be sensitised to the current situation in Bangladesh with regard to the Rohingyas.
LD: Thank you for your time.
DC: Thanks very much.

RIGHTS WATCH

Advocating for bringing uniformity to maternity benefit provisions

MUHAMMAD ARIFUR RAHMAN

Maternity benefit is a well-recognised statutory right of employed women across the world, including in Bangladesh. A recent survey of the International Labor Organization (ILO) shows that almost 185 countries have adopted statutory provisions for maternity leave in their legislation. However, the ILO further observes that variations among the countries in maintaining the ILO standards; more specifically, provisions for maternity benefit vary in several countries depending on the category of female workers.

Three major international organizations International Labour Organization (ILO), World Health Organization (WHO), and the United Nations Children's Fund (UNICEF), have expressed minimum standards for maternity benefit for the betterment of both mother and the child. The ILO Maternity Protection Convention, 2000 (No. 183) stipulates that maternity leave should not be less than fourteen weeks. Moreover, the ILO, in its Recommendation No. 191, further advocates increasing maternity leave to at least eighteen weeks, considering the mother's recovery period. The WHO also took the same proposition in alignment with the ILO, whereas the UNICEF emphasizes ensuring at least eighteen weeks of paid maternity leave and recommends at least six months of paid maternity leave, considering the necessity of promoting and supporting exclusive breastfeeding.

Bangladesh modified its maternity benefit provisions by enacting *the* Bangladesh Labour Act, 2006, repealing three different Acts, i.e., the Maternity Benefit Act, 1939; the Mines Maternity Benefit Act, 1941; and the Maternity Benefit (Tea Estate) Act, 1950. This law establishes maternity benefit for every woman employed in any establishment, which can be availed in two phases, eight weeks preceding the expected delivery date and eight weeks (total of sixteen weeks) immediately following her delivery date. However, this law stipulates two conditions for availing of maternity benefit; firstly, the prospective mother must complete six months of employment immediately preceding the day of delivery with the present employer to whom she is claiming maternity benefit. Secondly, she must not have two or more surviving children at the delivery time. Apart from this legislation, the government amended Rule 197(1) of Part-I of the Bangladesh Service Rules in 2010, raising the length of minimum maternity leave to at least six months for all permanent government servants. Similarly, the range of minimum maternity leave was also increased to six months by the notification of *the Ministry of Finance* in 2011, subsequently circulated by the Central Bank of Bangladesh, applicable for all female employees working in any scheduled banks in Bangladesh.

Since maternity, by its very nature as related to the human body, deserves equal treatment irrespective of status, category, or type of workplace, and every child requires similar and equal care towards promoting their development, it is time to consider ensuring at least twenty-six weeks of paid maternity leave for all level of female employees irrespective of their status, category or type of workplace.

It is evident that different discriminatory provisions are established in Bangladesh depending on the category or sector of the workplace. Moreover, it is pertinent to mention here that the Bangladesh Labour Act, 2006 provides further discriminatory provisions stating that this law will not be applicable for women who are working at the management or administrative level, impliedly indicating that they will be eligible for better provisions and can avail themselves of more opportunities/ benefits beyond the requirements specified in this Act. However, the good thing about this legislation is that it prohibits unlawful dismissal within six months before the expected delivery date and eight weeks after childbirth. If any employer does so, the concerned female employee will still be entitled to maternity benefit.

Regulating different sectors of the workplace by different laws and providing various provisions and procedures creates a messy situation in this arena; hence female employees always get disoriented about their rights and procedures for obtaining maternity benefit. Due to lack of uniformity, they mainly suffer from two main difficulties; first of all, many of them are unaware about their rights and usually get confused about their length of leave or whether they can avail of paid leave. Secondly, many employers tend to deprive female workers by taking advantage of their lack of knowledge of those female employees. More specifically, a significant portion of them work in the Ready-Made Garment (RMG) sector, and unfortunately, many are not educated or even illiterate; consequently, they are usually sufferers and deprived of their rights and entitlements. This situation can be avoided by enacting a uniform law concerning maternity benefit containing uniform provisions, uniform conditions, uniform procedures, and uniform benefits for all employed women irrespective of their status and workplace.

Since maternity, by its very nature as related to the human body, deserves equal treatment irrespective of status, category, or type of workplace, and every child requires similar and equal care towards promoting their development, it is time to consider ensuring at least twenty-six weeks of paid maternity leave for all level of female employees irrespective of their status, category or type of workplace, and to enact uniform and definite provisions for maternity benefit so that every employed woman can easily be aware of their rights, avail their benefits and can ensure adequate maternal and child healthcare. If a uniform provision is provided, every female employee can easily be aware of their rights; consequently, it will promote the implementation of the law.

The writer is a Corporate Legal Practitioner.