



LAW INTERVIEW

Innovation and technology is no silver bullet to achieving gender parity

There is a very low representation of women in the bench and the bar in Bangladesh and the reason is that the legal profession here is not women-friendly, less so our courts in terms of infrastructure, working hours and safety concerns.

Barrister Rashna Imam, an Oxford scholar, is currently practicing as an Advocate at the Supreme Court of Bangladesh. She is the Managing Partner of Akhtar Imam & Associates and Executive Director of Academy of Law and Policy (ALAP). On the occasion of the 8th of March International Women's Day, the Law Desk spoke with her on the following issues:

Law Desk (LD): The theme of this year's International Women's Day is 'DigitALL: Innovation and technology for gender equality'. How can we utilise innovation and technology to eradicate inequality?

Rashna Imam (RI): Innovation and technology is no silver bullet to achieving gender parity, but it certainly provides an opportunity to narrow the gender gap by, among others, enhancing access of women to information, formal and informal learning, financial services, welfare services and giving their businesses commercial advantage.

private sector.

➤ Innovative data pricing strategies should be enabled and adopted to help providers reach more women.

Digital literacy and skills:

➤ Mobile and digital skills must be mainstreamed in school, college and university academic curricula.

Safety and security:

➤ More and more awareness campaigns on how to stay safe online must take place.

➤ Review of existing laws is needed to ensure that they recognise the different types of cybercrimes reported.

➤ Institutional capacity and mechanism are to be built and strengthened to monitor, investigate and prosecute online abuses.

To increase adoption of MFSs by women, we must build and expand and extend the network of female agents across Bangladesh as surveys have shown that women are more comfortable dealing with female agents. We have to come up with innovative MFS-products designed with the needs of women MFS-users in mind and sustainability from a business perspective. If the aim is meaningful financial inclusion of women, the MFSs cannot be limited to just payments (cash-in and utility payments) and transfers (person-to-person), but must expand to, among others, savings mechanisms, loans and insurance in case of emergency.

LD: Do you think there exist enough legal remedies for women when they experience gender-based violence (GBVs) online? If not, what can be done about it?

RI: The spectrum of technology facilitated GBVs is very wide and includes cyber stalking, non-consensual distribution of intimate image, deepfakes, hacking, identity theft, revenge porn, threats, obscene messages, etc.

Bangladesh being a party to the core international human rights treaties like ICCPR, CEDAW and CRPD, it is her international obligation to ensure the rights of women and girls to safety and security. The Constitution of Bangladesh also guarantees the right to life, personal liberty, to be treated in accordance with law and prohibits discrimination on the grounds of, inter alia, sex. While freedom of expression is also a fundamental right, it is subject to restrictions which must be reasonable, as per law, and imposed due to reasons of morality, decency, defamation, contempt of court, incitement to an offence, etc.

Different forms of technology facilitated GBVs have been made criminal offences under different laws, punishable with imprisonment and/or fine. Such laws include the Penal Code 1860 (sections 509 & 500); the Dhaka Metropolitan Police Ordinance 1976; the Pornography Control Act 2012 (section 8); the Information Communication and Technology Act 2006 (as amended in 2013); the Digital Security Act 2018 (sections 25, 26, 29 & 34); the Suppression of Oppression against Women and Children Act 2000 (sections 10, 14 & 9A); the Bangladesh Telecommunication Act 2001 (sections 69 & 70); the Children Act 2013; the National Broadcasting Policy 2014 (section 81); and so on.

Despite the above laws, the number of cases filed by women are low. Some of the reasons include reluctance to pursue legal remedies due to fear of social stigma, lack of awareness of the legal remedies, long, protracted and cumbersome nature of legal proceedings, threats from the perpetrator, lack of digital literacy and the difficulty faced by law enforcement agencies in tracking the perpetrator in cases of cyber violence.

In my view, the legal framework is not adequate to curb cyber violence. It is unclear whether traditional crimes that occur in the cyber space can be considered to be cybercrimes. The laws do not address all types of cyber violence that are reportedly

occurring. In some cases, such as the Digital Security Act, the law goes beyond the stated objective of addressing cybercrimes and becomes susceptible to abuse by infringing freedom of expression. There is no law on the protection of victims and witnesses yet.

We need to enact or amend our laws and policies to address the above inadequacies. Government officials and justice sector actors (lawyers, judges, police, legal service providers) need extensive training and orientation programmes on cyber laws, cyber awareness and cyber security. National level campaigns are needed to raise awareness of cyber violence and legal remedies and services by developing communications materials in simple language with infographics.

LD: With the rise of female mobile and social media users, there has been a rise of #MeToo movement even in Bangladesh. Did the movement do better or bad?

RI: The #MeToo movement has no doubt raised awareness about the prevalence of sexual misconduct against women, created solidarity for victims, encouraged the silent sufferers to speak up, and resulted in action being taken against the perpetrators. However, the movement has a dark side too which is often overlooked. It has spurred on false accusations followed by media trial. Mere accusations become proof of guilt. While the believe-all-women mentality may be well-intentioned, it is misguided and harmful to both genders in that genuine cases of misconduct are being lumped together with false ones and men are increasingly becoming more reluctant to mentor women in the workplace.

LD: Now a different but relevant question, do you think there is a satisfactory number of women in legal profession? What can we do to increase female participation in both bench and bar?

RI: Currently, out of 1600 judges in the subordinate courts, only 580 are women, and we have only seven women judges out of 110 judges, who serve in the Supreme Court. Only five percent or so women represent in the bench. Similar scenario, if not the same, also exists in the bar. The reason for this very low representation of women is that the legal profession here is not women-friendly, less so our courts in terms of infrastructure, working hours and safety concerns. The courts do not have adequate and hygienic toilet facilities. There was hardly any day care centre or breast-feeding corner (until very recently). The elevators are mostly congested making incidents of sexual harassment in these not uncommon. Every female lawyer in Bangladesh has had their share of sexual harassment, be it in being stared at, followed around from one court to another, unwanted advances from their seniors to downright unwanted physical advances. In 2021, the Supreme Court pursuant to a direction of the then Chief Justice, Mr. Justice Syed Mahmud Hossain formed a five-member committee for accepting and investigating complaints of sexual harassment, against any people working at the Supreme Court, including judges, lawyers and court staff, occurring on its premises and to recommend appropriate action to the Chief Justice.

The profession is also not very supportive of lawyers with family commitments, particularly new mothers, and do not offer reduced work schedule for proportional compensation or work-from-home options. Inevitably women either quit or fall behind in their careers due to childbirth, child raising and other family commitments. The solution is that we need more women at the table, so infrastructural changes take place and policies and practices reflect and address their concerns.

LD: Thank you for your responses.

RI: You are welcome.

RIGHTS WATCH

Freedom of religion of the Ahmadiyya community

RAFID AZAD SAUMIK

In Bangladesh, the history of infringement of the rights of the Ahmadiyya people goes back a long way. The attack on Ahmadiyya Dhaka headquarters in 1992, the killing of an Ahmadiyya imam in 2003, and the besieging of Ahmadiyya mosques in 2004 are just some of them. Clearly, the intolerance and culture of impunity responsible for the horrible attack of March 3, 2023 on the Ahmadiyyas in Panchagarh, has been the product of the failures of the state for a long time. It is still unclear who the real culprits are, and whether the attack is purely due to religious zealotry or if there is any political aspect involved. But there is no doubt that this issue needs some discussions from a legal point of view.

Firstly, many religious and non-religious leaders have sometimes given many fatwas and speeches regarding the Ahmadiyya community, which have contributed to the dehumanisation of the followers of this belief and incitement to hatred and violence. The Supreme Court of Bangladesh in the case of *Tayeeb (Md) and another v Government of the People's Republic of Bangladesh* (2015) 67 DLR (AD) held that fatwas generally are not unlawful.

However, if a fatwa given goes against the laws of the country or if it affects the rights or



reputation protected by the laws of the country, then the same will be void. Therefore, any fatwa given that dehumanises the Ahmadiyya people or threatens to violate their fundamental rights is unlawful and void. Moreover, speeches by religious clerics at different religious sermons or otherwise, if they are intended to incite violence, constitute a penal offence under section 505 of the Penal Code, 1860. Despite there being many instances of such incitement to violence, the local authority has hardly ever taken against the instigators.

Secondly, the government has on several occasions seized the publication of books belonging to the Ahmadiyya faith under section 99A of the Code of Criminal Procedure, 1898. For instance, in 1985 a book titled *Islam-i-Nabuat* was seized and later, the order was upheld to be lawful in the *Bangladesh Anjuman-e-Ahmedia, represented by its Secretary, Umooor-e-Ama v The Secretary, Ministry of Home Affairs, Government of Bangladesh* 45 DLR 185. Moreover, in 2004 a blanket ban was given on all publications of the Ahmadiyya Muslim Jama'at (AMJ). However, this order was later stayed due to interference by the High Court Division in the case of *A.K. Rezaul Karim and others v Bangladesh and others* (Writ Petition no. 7037 of 2004). It can be argued that the initial decisions of the government to consider such extreme demands by religious bigots only fuels the hatred towards the Ahmadiyya community.

Thirdly, it is important to highlight the recent incident of March 3, where an angry mob attacked the houses and stores run by the people of the community to protest the decision to arrange a three-day long jalsa program. Such attacks violate the freedom of religion enshrined under article 41 of the Constitution of Bangladesh. The Indian case of *Commissioner, Hindu Religious Endowments Madras v Shri Lakshminidhar Tirtha Swamiyar of Shri Mutt* (1954) AIR 282 can shed some light on this topic. It was held in this case that the right to freedom of religion not only protects the beliefs and ideas of religions but also protects the rituals and practices integral to them.

And lastly comes the demand to the government to declare the Ahmadiyya sect as non-Muslims. It begs the important question of whether the state constitutionally can even make such a declaration. Bangladesh, according to her Constitution, is a secular state, and making such declaration would surely go against the very fundamentals of the Constitution and violate article 12, which pledges to achieve secularism by eliminating all forms of discrimination and persecution.

The government must make a careful balance between the right of a certain portion of the religious community of not to get its religious sentiments hurt and the freedom of religion of the Ahmadiyya sect. It is unfortunate that a state which was liberated from the tyranny of Pakistani military rule so that people of all faith can live in harmony has reached a point where communal violence is slowly becoming a norm. The government is obliged to protect all the fundamental rights of people belonging to all religions not just by its Constitution but also according to its international obligations under the ICCPR and others. It is horrific that these culprits, in most cases, are getting away from the hands of the law enforcement force, which in turn is creating a culture of impunity. An independent probe must be formed to investigate the matter and bring the truth behind such attacks to light, and the government must take sufficient actions so that such incidents never occur again.

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LD: The use of mobile financial services (MFSs) has helped a lot of women carry out small scale businesses from their home. How can our laws and policies further ensure progress in this aspect?

RI: According to the GSMA – The Mobile Gender Gap Report 2022, Bangladesh has the second highest gender gap for mobile ownership (23%) and highest gender gap for mobile internet usage (48%). Some of the top barriers to mobile ownership and mobile internet usage of women include affordability, literacy and digital skills and safety and security.

To remove these barriers what is required is targeted intervention from industry (mobile operators), policymakers, the development community and other stakeholders. Some recommendations include:

Affordability:

➤ Sector-specific taxes have to be reviewed and reduced to lessen the cost barrier.

➤ Financial institutions have to be supported to provide capital for handset loans for women at lower interest rates.

➤ Handsets for marginalised populations should be subsidised in partnership with the