



WOMEN'S RIGHTS

# Towards a gender-responsive criminal justice system

Law as an instrument of social change will have to be altered occasionally to deal with the changing social evils.

MEHER NIGAR

Gender-based violence against women creates a serious obstacle to achieving sustainable development. As stated in the UN Secretary-General's in-depth study on all forms of violence against women (2006): "violence prevents women from contributing to, and benefiting from, development by restricting their choices and limiting their ability to act, which ultimately affects the overall developmental activities of a State. So, all UN Member States, including Bangladesh, is under a clear obligation to prevent violence against women and girls so that they can participate with their full potential in economic, social, and political spheres.

The government of Bangladesh has undertaken a number of initiatives legal and institutional, to ensure a violence-free life for women. However, these initiatives have not been translated into concrete improvements in the lives of most women who remain marginalised, discriminated against, and at a high-risk of being subjected to violence.

The absence of effective legal protection, lack of political will, absence of awareness, absence of gender-sensitive attitude among duty bearers, and many other socio-legal factors are considered to be the responsible factors behind this heinous occurrence. But the existing legal set-up and its ineffective role remains the major concern in the matter of dealing with violence against women. There is a pressing demand to review the existing legislation not only to ensure equal access to justice for victims of violence but also to allow a woman to live her life without violence. The starting point in this regard should be

revisiting the existing legislation to make sure that all acts of gender-based violence are effectively dealt with by law.

Stereotypical assumptions about gender roles, gender identities, and gender relations contribute to the continuance of gendered violence against women. Cultural stereotypes about the role of women and men that men are the ultimate decision makers, and they are superior to women in terms of intellect, strength, quality, etc. permit discrimination whether it is in the domestic sphere or in the public sector. In addition, these stereotypes find their ways in legislation while addressing certain offences, sometimes by sidestepping the offence or sometimes by maintaining ambiguity in defining the scope of the offence. Non-criminalising marital rape can be an example in this regard.

Unfortunately, even when conscious efforts are made to liberate legislation of these gender biased stereotypes, some other balanced provisions often compromise these efforts. The Child Marriage Restraint Act, 2017 prohibits child marriage (under 18 years for a female child and under 21 years for a male child). However, the Act introduces a special provision, exceptionally allowing child or underage marriages, where a court rules that such marriage is in the 'best interest of the child.' That means the prevalent cultural stereotypes regarding the status of women are so dominant that laws on gender-based violence are yet to achieve a gender-sensitive approach towards women.

The gender-insensitive approach is evident in many prevalent provisions in present gender-based violence laws in Bangladesh, such as, there is no provision for providing

training for officers, who are responsible for handling the victims on their way to justice, though a gender-sensitive justice system highly demands so. Consequently, in every stage of access to justice, ranging from reporting the violent incident to the police station to undergoing an intimate medical examination in a crowded hospital, mostly by male doctors, they (victim) may face discrimination, and harassment causing "secondary victimisation". These stereotypes help perpetuate violence against women, and hence immediate action is needed to address them through appropriate legislation.

Law as an instrument of social change will have to be altered occasionally to deal with the changing social evils. At the same time, the initiative must be coupled with the incorporation of gender-responsive provisions for better application of laws. A necessary prerequisite for the effective application of laws is that justice agents are gender sensitive and knowledgeable of human rights standards. In this regard, education, training, and awareness raising programmes are crucial.

It is recognised by the policymakers around the world that implementing fundamental, transformative reform is possible if law reforms actively promote equal rights for all. Hence, while designing and implementing laws, the voices, perspectives, and priorities of women and girls should be considered in ways that would ensure that the rights of women and girls are meaningfully protected, promoted, and implemented.

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## RIGHTS WATCH

# Human rights concern over the statelessness of Shamima Begum

TASMIM JAHAN NEEHA

With the quashing of the citizenship of the former ISIS bride, Shamima Begum; the legal dilemma regarding statelessness has resurged. Ms. Begum, one of three east London schoolgirls who travelled to Syria in 2015 to support the terrorist organisation, ISIS; was born in the UK to parents of Bangladeshi heritage.

Ms. Begum's appeal was quashed on February 23, 2022, by the UK Supreme Court. The appeal was against the then Home Secretary's removal of her British citizenship on February 19, 2019. So, the verdict has confirmed her being stateless which goes against the standard of human rights.

Under the British Nationality Act of 1981, one can be stripped of their citizenship for "seriously prejudicial act" that goes against the public interest.

Now, the question is whether the verdict of the UK court violates Ms. Begum's human rights. To answer that, two pivotal points are to be determined:

- Whether Ms. Begum is to be punished for her affiliations with the ISIS though she herself has not committed any offence according to official records, and
- If Ms. Begum is to be punished, whether it requires the striking of her citizenship.

The United Nations has two major conventions on statelessness: the 1961 Convention on the Reduction of Statelessness and the 1954 Convention relating to the Status of Stateless Persons. The 1961 Convention is the leading instrument in setting the rules for the non-withdrawal of citizenship to avoid statelessness. Whereas the 1954 Convention is significant as it has defined a "stateless person" as someone "who is not considered as a national by any State under the operation of its law." It aims at ensuring certain rights of a stateless person. Again article



1(2) has provided certain conditions under which a person would not be considered a stateless person; one of such conditions is that the person has committed a war crime, crime against peace or crime against humanity. The UK Court has not decided on Ms. Begum's committing any of the offences. She has served as a sex slave in the ISIS and regardless of it being a terrorist organisation, she has not been found of any criminal offence since she moved to Syria.

According to section 40(2) the British Nationality Act, 1981, 'The Secretary of State may by order deprive a person of a citizenship status if the Secretary of State is satisfied that deprivation is conducive to the public good.' The Act also mentions that any act being prejudicial to the UK's interest will lead to deprivation of citizenship.

The Court had failed to investigate the matter from the perspective of a teenager who may possibly have been the victim of trafficking and radical brainwashing. Ms. Begum's lawyers argued on the point that if her age during which Ms. Begum went to 'serve' the ISIS was taken into consideration, the verdict could have been different. She was just fifteen at the time, legally a minor. Even if her acts are considered juvenile, that does not validate her being struck out of her citizenship as she can be held legally liable for those actions. Apart from being an ISIS bride, official records do not show her committing any offence during her stay in home and abroad.

European Convention on Human Rights (ECHR) also imposes obligations concerning nationality. Certain case laws have also affirmed the protection granted under article 8 of the ECHR that nationality is part of one's social identity (*Karrashev v Finland*, 1999).

According to article 15 of the Universal Declaration of Human Rights, 1948, every person has a right to nationality. Ms. Begum had only the UK citizenship and because of her being stripped of it, she is currently stateless. So, the verdict has violated the provisions of the UDHR too.

So, the verdict of the UK Supreme Court remains another stern and unjust approach to the so called 'War on Terror', violating human rights.

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LAW WATCH

# Can a company have both a 'Managing Director' and a 'Chief Executive Officer'?

ASIF HASAN

It is customary for companies to have either a Managing Director (MD) or a Chief Executive Officer (CEO). But can a company have both MD and CEO posts hold by two separate individuals?

At the outset, the Companies Act, 1994 does not define, use or discuss the term "Chief Executive Officer". In practice, the terms "managing director" and "chief executive officer" are used interchangeably. Hence, the question arises as to whether the eligibility and functions of an MD and a CEO are the same. The consequential question that arises is whether in presence of an MD, a CEO can be appointed or vice versa. To address these questions, eligibility and functions of both these positions are to be examined. In this regard, as per section 2(m) of the Companies Act, 1994, a "managing director" is a director with powers of management entrusted to him by virtue of an agreement with the company, or of a resolution passed by the shareholders at their general meeting or by the board of directors. Hence, an MD occupies the dual capacity of being a director as well as an employee of the company. In contrast, a CEO is essentially a C-level executive, a member of senior leadership at the top of a company's corporate hierarchy. A CEO does not need to be a director of the board, he acts as a top employee of the company. So, the eligibility criteria of an MD and a CEO is distinct.



With regards to the functions, typically, a CEO has the responsibility to facilitate business and should also have a strategic vision to align the company, both internally and externally. He plays the role to guide the employees and the executive officers of a company, whereas an MD is the member of the Board with the power of managing hence described as a managing director. Despite the possibility of having some overlapping, the functions of a CEO and an MD are not necessarily the same or identical. As such, from a general point of view, there is no legal bar in appointing a CEO while having an MD so long as the roles and responsibilities of each person are defined. Having said that, if the company is a public limited company, the Corporate Governance

Code issued by the Bangladesh Securities and Exchange demands consideration. Section 4(a) of the Corporate Governance Code states, "The positions of the Chairperson of the Board and the Managing Director (MD) and/or Chief Executive Officer (CEO) of the company shall be filled by different individuals." Section 4(d) states, "The Board shall clearly define respective roles and responsibilities of the Chairperson and the Managing Director and/or Chief Executive Officer". By using the expression "and/or" in between the terms "Managing Director" and "Chief Executive Officer", the Code essentially indicates that a public company may have both an MD and a CEO; and that if the positions are taken by different individuals, their roles and responsibilities need to be clearly defined.

In addition to the above, the articles of association of the company requires to be examined to identify, if there is any direct or implied restriction to appoint a CEO in presence of an MD.

To reiterate, subject to the provisions in the articles of association of a company, different individuals for both the positions of CEO and MD can be appointed. However, it is of importance that the roles of these individuals are clearly defined to avoid any potential major overlapping.

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