

WOMEN'S DAY SPECIAL

LAW OPINION

Women employees' quest for fair treatment



The stories of courageous women workers who bravely fought against unfair treatment and discrimination within international organisations serve as an inspiration for countless other women afraid of speaking out against workplace injustices.

DR. SAYEEDA ANJU

Women employees working in various international organisations worldwide often encounter unfair treatment, discrimination, and sexual harassment in the workplace. When they speak up against such injustices, the whimsical administrative decisions of organisations often try to suppress their voices. The International Labour Organisation's (ILO) administrative tribunal emerges as an ally for victims and provides support and hope to get a fair trial. The author intends to explore the arduous journey of the female employees, highlighting their courage and fighting spirit to fight injustices in the workplace.

In the case of Ms. C.C., she complained to the World Intellectual Property Organisation (WIPO) citing grievances including sexual harassment, discrimination in promotion, work undervaluation, and breaches of staff regulations. Becoming aggrieved with WIPO's decision to settle the complaints, the victim approached the ILO tribunal. Later, the tribunal stated that WIPO failed to ensure a safe and adequate environment for its staff and ordered WIPO to compensate the complainant.

Ms. U. M. C. filed a complaint against the

International Criminal Police Organisation (Interpol) highlighting procedural shortcomings, an inadequate inquiry into harassment, and the impact of the organisation's decisions on her well-being. The decision of the ILO tribunal addressed these concerns, emphasising the importance of due process and timely as well as thorough investigations into harassment cases.

In another case, Ms. S. C. N., the complainant challenged the decision of the World Health Organisation, (WHO) which rejected her claim that her illness be recognised as service-incurred due to work-induced burn-out. While the internal grievance mechanism refused to recognise her claim, the tribunal settled the dispute in favour of the complainant and ordered WHO to pay moral damages.

Ms. E. L., a temporary contract worker, filed a second complaint against the International Criminal Court (ICC) challenging the handling of her grievance complaint by the concerned authority. In this case, the complainant sought the tribunal's intervention, seeking to set aside the impugned decision and requesting an examination into the merits of her grievance complaint. Similarly, Ms. Y. S. filed her third complaint against the Energy Charter

Conference (ECC). The complainant challenged the rejection of her harassment claim. The ILO tribunal determined the validity of the ECC Secretary-General's rejection of the harassment claim. However, notwithstanding the tribunal's decision, the remarkable determination displayed by these women to uphold their rights is commendable.

In another compelling case, the complainant was a Canadian national, Ms. J.L.H, who was employed as a senior auditor at the International Atomic Energy Agency (IAEA) in 2003. After legally marrying her same-sex partner in 2006, she sought dependency benefits. The Agency dismissed her claim, asserting that its policy restricted the definition of "spouse" to opposite-sex partners. Alleging an error of law, abuse of authority, and discrimination based on sexual orientation, Ms. J.L. H challenged the Director General's interpretation, asserting a breach of non-discrimination principles and international human rights instruments. Failing to get a remedy from the IAEA, the complainant asked for a remedy from the ILO tribunal. The tribunal overturned the decision of IAEA and instructed them to reassess the complainant's rights and also to compensate the complainant for the moral injury sustained. This case was a marvel showing what a determined woman can accomplish if she keeps fighting.

In a legal milestone, Ismet Zerin Khan, a Bangladeshi individual, has emerged victorious after a decade-long battle against the World Bank. She was a contractual employee at the World Bank and was fired from the Bank without proper reasoning. Later she sought justice in the World Bank's Administrative Tribunal and did not get any favourable remedy. Unprecedentedly Ismet knocked on the door of the domestic court of Bangladesh where the court decided the case in her favour. This remarkable decision prompts a reconsideration of the World Bank's claimed immunity in other nations.

In one way or another, women of this era keep finding a technique to exercise their rights. This may not be true for many women as well, who, due to structural inequality, fail to fight the odds. The stories of courageous women workers who bravely fought against unfair treatment and discrimination within international organisations serve as an inspiration for countless other women afraid of speaking out against workplace injustices.

The writer is Professor at the Department of Law, University of Rajshahi.

RIGHTS WATCH

Legal aid in upholding women's rights

MD. IBRAHIM KHALIL
AND SURIYA TARANNUM SUSAN

Article 27 of the Constitution of the People's Republic of Bangladesh enshrines the right to equal protection of the law. In consonance with such affirmation, the Legal Aid Services Act 2000 (hereinafter LASA) was enacted to provide legal aid to the litigants, who are incapable of seeking justice due to financial insolvency, destitution, helplessness, and various socio-economic stratification. District Legal Aid Office (hereinafter DLAO) is a government statutory body that provides legal aid to impoverished people under the National Legal Aid Services Organisation (NLASO).

The right to receive dower is a right of every Muslim woman connected with her marriage. Unfortunately, this financial right of women has been turned into a mere symbolic gesture due to patriarchal subversions. The authority to pronounce "no-fault" unilateral divorce of husbands often brings an abundance of woe to disadvantaged women. The limitation period for recovery of the dower is three years from when the claim for dower was first refused to be paid in case of prompt dower (or where no such demand was made during the continuance of marriage, from when the marriage is dissolved by death or divorce)



and from when the marriage is dissolved by death or divorce in case of deferred dower (Article 103, 104 of the Limitation Act, 1908).

Apart from dower, in case of divorce, the wife is entitled to maintenance of three months' *iddat* period. Gendered power disparity coupled with financial constraints compels many women to accept more dismissals and *ex parte* decrees that impinge on the quality of justice they receive from family courts. There is a plethora of literature on how the backlog of cases in formal courts, gender stereotypes, and societal pressure impede women from accessing justice.

In such a situation, DLAO offers a drizzle of hope. DLAO provides a gender-sensitive environment where women can file applications and after assessing the scenario, DLAO sends notice to the other party. It is pertinent to mention that District Legal Aid Officers do not provide any judgment and their role resembles that of an impartial third-party mediator. However, the settlement contract drawn by both parties in the presence of respective Legal Aid Officers is binding. It is easier to reach a common ground through negotiations which might take years to get resolved in formal judicial procedure. In cases involving dowry-induced violence and other forms of domestic violence, legal proceedings are encouraged, and free-of-cost legal assistance is provided as well.

Some gender-sensitive data from the DLAO, Chattogram, will shed more light on the scenario. A bulk portion of applications received in the concerned DLAO is essentially family disputes. In the preceding year, 433 cases were disposed of with the assistance of the Chattogram legal aid office. 456 criminal applications were received under pre-case Alternative Dispute Resolution of which 76 reached settlement and 115 applications are in progress. In such applications, 85 women were beneficiaries. 445 applications were received on family disputes of which 119 reached settlement and 240 applications are ongoing. The office disburses legal aid funds to prospective recipients based on their application. In the earlier year, 845 female applicants were referred to the panel lawyers. 42 women received legal consultation from the DLAO, Chattogram. An approximate amount of TK. 1,20,00,000 was recovered as dower by the said DLAO.

DLAOs across the country can take measures to ensure that wronged women are not deprived of their Shariah and statutory rights. What takes years of litigation through the formal judicial procedure, can be mediated in a couple of mediation sessions in DLAO. The accelerated dower recovery process is indeed a beacon of hope for women left destitute following unilateral divorce.

The authors are (Senior Assistant Judge) District Legal Aid Officer, Chattogram and intern, district legal aid office, Chattogram, respectively.

LAW VISION

The Constitutions as gendered documents

SURBHI KARWA

Constitutions are often presumed to be concerned with the public power and public life of a nation. This, however, is a flawed presumption, based on what feminist scholars describe as the 'public-private dichotomy' whereby only the public sphere is seen as concern of the Constitutions and the private sphere as protected territory. Further, Constitutions are often written and implemented by male bodies—constituent assemblies, executive, and judiciary—with little or no participation or informed consent of the women. This is why feminist scholar Catharine MacKinnon describes Constitutions as a 'form of particular male legal intervention'.

The fact, however, is that Constitutions deeply impact the exercise of private power amongst citizens. The gendered violence against women inside the home, for instance, is certainly a constitutional concern. This is why feminist movement(s) across the world have recognised the gendered impact of the Constitutions. Feminists have struggled and demanded equality with, within (and without) the Constitutions.

One way through which Constitutions have attempted to challenge the gendered hegemony and patriarchal power is through the non-discrimination and equality guarantees. For instance, Article 14 of the Indian Constitution provides equal protection of law. Article 15.1 guarantees that there cannot be any discrimination based only on the ground of sex. Article 15.3 provides that the state could make 'special provisions' for women and children. Bangladesh Constitution, very similarly, provides for equality before law (Article 27), guarantee of non-discrimination on grounds 'only' of sex (Article 28.1, Article 28.3), special provisions for women and children (Article 28.4), and equal opportunity in public employment (Article 29.1).

Despite these guarantees, in the Indian context, discriminatory laws could not be readily challenged. This is because the courts took a rather narrow approach to the equality guarantee (ie

the formal approach) of equality. Thus, for instance, the court interpreted the word 'only' under Article 15(1) to mean sex and sex alone. Thus, in *Air India v Nargeesh Mirza* case, the court refused to recognise discriminatory employment conditions against Air Hostesses based on age of marriage and first pregnancy on the ground that these conditions were not based on 'sex alone'. Instead, they were based on conditions of suitable age of marriage, domestic responsibility of women, and family planning. The court did not enquire whether these 'other considerations' themselves were based on preconceived notions of women's gendered role within family. Similarly, in another case, the court denied women

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the right to hold employment in male prisons on the ground that it is not based on sex discrimination but on other conditions, such as safety of women. The court did not enquire whether the notions of safety themselves are a code word for restricting women's rights. This interpretation also meant that women who faced intersectional discrimination



based on their multiple intersecting identities of caste, religion, sexual orientation, class, were not deemed protected under the non-discrimination guarantee.

These understandings are changing today. In recent years, the Indian Supreme Court has articulated a substantive vision of equality that requires the court to enquire whether a provision is causing/perpetuating subordination and disadvantage to women based on the historical and stereotypical notions of women's role. Thus, for instance, the court in *Joseph Shine v UOI*, found the Indian Penal Code section 497, which criminalised adultery, unconstitutional on the grounds that it was based on stereotypical notions of women's agency. Under the provision, women could neither be prosecuted, nor she could bring a case against her adulterous husband. Instead, under the provision only a husband could bring case against another man for 'defiling' his wife. The court held that the provision stereotypes women as eternal victims lacking any agency or capacity to take decisions for themselves. Similarly, in *Navtej Johar v UOI*, Justice DY Chandrachud rejected the earlier interpretation that the word 'only' under Article 15(1) has to be interpreted as 'sex and sex alone'. Instead, the judge held that any form of discrimination, direct

or indirect, if based on stereotypes, will be discriminatory. This rejects the earlier notion that since women are inherently different from men, they can be treated differently. The question is not of sameness or difference, rather of subordination, power, and hierarchy.

Further, in *Justice KS Puttaswamy v UOI*, the court rejected the earlier notions of privacy which entrenched patriarchal power within the domestic sphere. Instead, a nine-judge bench of the Indian Supreme Court held that Indians have a right to privacy, understood as bodily and mental integrity, decisional autonomy, and informational autonomy. Under such an articulation of privacy, women are seen as equally capable of agency and choice, and any action in private that harms women's autonomy cannot be held constitutional.

What this journey of court cases shows us is that the meaning of constitutional equality is not given; it is to be constantly constructed through feminist interpretations, movements, and continuous questioning of the taken-for-granted presumptions that underlie the notions of power within a Constitution. Constitutions can make or break conditions of equality and thus, have to be constantly negotiated with.

The writer is BCL graduate from the University of Oxford.