

Breach in the Freedom of Religion in Bangladesh

If some of the recent incidents in Bangladesh are analyzed then questions will be raised both about - its compliance with the Universal declaration of Human Rights issued by UN and it being termed as being a moderate Muslim country. One of those bizarre incidents was the severe harassment for twenty days of three pious Muslim women by the law enforcing agencies; and the only basis on which the agency could do so was simply the wearing of Hijab (Muslim women's religious dress). That also in a country where majority of its people are Muslims and the Hijab has been practiced for years by quite a large proportion of the women. The following report relates this sad, yet true, incident of the harassment.

Victims' Profile

1. **Fouzia Akter**, Student of Accounting department (1st year) in Pirojpur Govt. Sohrawardi College.
2. **Tania Akter**, a primary school teacher.
3. **Jesmin Nahar**, an undergraduate student of Islamic University, Kushtia.

All are members of *Bangladesh Islami Chhatra Sangstha*, a liberal Islamic organization of Bangladesh for female students.

How it started

On 3rd July of 2009, Fouzia Akter and her friend Tania Akter were traveling to visit their other friend Jesmin Nahar. They started their journey from the main town towards Balipara bus stand of Pirojpur where Jesmin was waiting to receive them. A group of young men led by Sheikh Monir (all members of *Chhatra League*, the student branch of *Awami League* - the ruling party) were at the bus station at the same time. As soon as the three friends (clad in Hijab) got together, the group of men started hurling obscene words and remarks at them. One of the assailants snatched away the cell phone and diary of Tania Akter. In order to take refuge from them, the three women asked a carpenter (who was busy working in nearby *Balipara Senior Madrasah*) for shelter and also informed their relatives over mobile phone.

As soon as the gangsters sensed that the situation was getting out of their control, they instantly got hold of the influential people and called the nearest *ZiaNagar police station*, informing them that some female members of JMB (Jamaatul Mujahidin Bangladesh, an extremist party banned in Bangladesh) have taken shelter in the *Madrasah*. Based upon this false information, the police headed by Sub-Inspector Amor Singh rushed to the place and arrested the three innocent women without any formal allegation. They could not find any evidence of any harm. The officer in charge of *ZiaNagar* police station himself admitted that, nothing illegal were found from them

except some simple books. That was only the beginning. On that very day, they were produced before the court. Police charged them as ‘terrorists’ and the court sent them to jail.¹

Bail petition rejected

On 5th July, bail petition in favor of the three was filed before the Court of Magistrate. Their lawyer argued that, police had arrested them on the basis of only the information given by the miscreants, namely Sheikh Munir, Afzal, Hiron; and all of them were the members of the ruling party. The irony of the situation was that the accusers themselves were previously accused of several teasing and female molestation cases. Even with these facts at hand, the Court of Magistrate rejected the bail.²



Bringing them under Police Remand

On 9th July, the police asked for a 7-day-remand from Court. The Court rejected the call for remand and fixed 14th July as the date for further hearing on the case.

On 14th July, the accused were produced before the Court of Judicial Magistrate at 12 p.m. That day the officer-in-charge of ZiaNagar police station forced the women to remove their *Niqab* (face veil)³ in name of *justice procedure*. Upon completion of the hearing, the Court granted 3-day-remand. Application for delaying the remand was filed that afternoon but the Court rejected it saying: “It’s not possible. You may choose to go to higher Court if you want!”⁴

¹ 04 July, 2009, the daily

Nayadiganta, http://www.dailynayadiganta.com/2009/07/04/fullnews.asp?News_ID=153944&sec=3; 14 July, 2009, the daily

Nayadiganta, http://www.dailynayadiganta.com/2009/07/14/fullnews.asp?News_ID=155958&sec=1

² 06 July, 2009, the daily

Nayadiganta, http://www.dailynayadiganta.com/2009/07/06/fullnews.asp?News_ID=154437&sec=4

³ 10 July, 2009, the daily

Nayadiganta, http://www.dailynayadiganta.com/2009/07/10/fullnews.asp?News_ID=155218&sec=4

⁴ 15 July, 2009, the daily

Nayadiganta, http://www.dailynayadiganta.com/2009/07/15/fullnews.asp?News_ID=156175&sec=1

Remand Yields No Proof against the Accused

Sub Inspector Amor Singh, who was dealing with the investigation, could not extract out any proof that could be presented against the accused and proceeded with other plans. Exercising power beyond his jurisdiction, S.I. Amor Singh took the accused women (ignoring the Court, Lawyers and Police Super of Pirojpur) to TIF cell which is situated in the capital, Dhaka, for further enquiry on 15th July.

Even upon further investigation by TIF cell experts, nothing unlawful was found that could be presented as evidence against the accused, or even against any of their distant relatives. Finally, the police brought them back to the prison in Pirojpur on 16th July.

Writ petition seeking interference of Supreme Court

On 19th July, a *Habeas Corpus* writ petition was filed by the women's guardians at the High Court division of Supreme Court asking for the court's remedy on the arrest. In the same petition, an interim bail was also asked in favor of the accused who were detained in absence of any formal charge.⁵

Police Report

On 20th July, the police submitted a report to Judicial Magistrate mentioning that, no connection with extremists had been found during the course of remand and interrogation in TIF cell. So, all three accused could be discharged from the case. On the basis of this police report, the lawyers of the defendants requested for bail in a division bench of HCD (High Court Division). The Courts said that, they would decide on this matter after observing the activity of lower court upon the police report.⁶

On 22nd July, the HCD ordered the district judge of Pirojpur to consider granting of bail to the three women. At the same time it issued Rul-Nisi on the matter that, why their arrest and detention will not be declared illegal. The HCD also expressed surprise at the denial of bail to the

⁵ 17 July, 2009, The daily

Nayadiganta, http://www.dailynayadiganta.com/2009/07/17/fullnews.asp?News_ID=156569&sec=1

⁶ 21 July, 2009, the daily

Nayadiganta, http://www.dailynayadiganta.com/2009/07/21/fullnews.asp?News_ID=157386&sec=1

three, proved innocent, in spite of the police report which stated there was no involvement of those women with any illegal activity. The HCD further said, the concerned Magistrate should grant bail to the women. It promised to investigate into whether any legal violation had occurred by the concerned magistrate in contravention of Section 210 of the Penal Code.⁷



On 22 July 2009, the three women were released from detention upon the HCD's order. Even at that moment, while coming out of the court, 80/90 people carrying weapons (stick, rod etc.) set up obstacles for people who were waiting at the court premise, to receive the women. They broke the glasses of the microbus that was

supposed to carry the women back to their residence.⁸

Violation of Law and Human Rights

1. The Republic is bound to ensure security and safety of life and property of every citizen. Furthermore, it has responsibility to ensure citizens' fundamental rights guaranteed by the Constitution. The detention of the three women is certainly a gross violation of the constituted human rights. The Universal Declaration of Human Rights, 1948 prohibits Government from arbitrary arrests with its clear-cut text that quotes: "No one shall be subjected to arbitrary arrest, detention or exile."⁹

According to the law, police cannot take the responsibility of accusing and arrest the suspect without prior permission of a competent magistrate except during announced emergency situations. Thus, the arrest made by the police must be justified in accordance with law. Section 54 of the Code of Criminal Procedure incorporates those emergencies where police is allowed to arrest without warrant from Magistrate. But in this case, no justification was made under Section 54 while the women were arrested. The police rushed to the place upon false information given by some errant people of the ruling party. The police did not get anything unlawful after searching them. The things that were

⁷ 22 July, 2009, The daily Naya

Diganta, http://www.dailynayadiganta.com/2009/07/22/fullnews.asp?News_ID=157589&sec=1

⁸ 23 July, the daily

Nayadiganta, http://www.dailynayadiganta.com/2009/07/23/fullnews.asp?News_ID=157738&sec=1

⁹ Article 9, Universal Declaration of Human Rights, 1948 which is justified also by Article 7 & 9 of International Covenant on Civil and Political Rights (ICCPR)

found in the course of search were not illegal according to the law of Bangladesh. The book publishers have confirmed it. The investigation officer Mr. Amor Singh also admitted this to the press and the Court.¹⁰

2. Universal Declaration of Human Rights and the Constitution of Bangladesh¹¹ ensure that '*no citizen shall be discriminated on grounds of religion, race, caste, sex or place of birth*'. Moreover, the freedom of religion has been guaranteed in another separate Article of the Constitution that contemplates: 'every citizen has the right to profess, practice or propagate any religion'. Therefore, it's clear that, freedom of religion is an absolute right of a person, the violation of which cannot be accepted. In case of this particular incident, we are surprised to observe how a State manipulates the freedom of religion and harasses its citizens on the basis of the attire that is a part of their religious belief.
3. Modesty of a woman should be deemed with respect. In order to protect the modesty of a woman, many provisions have been enacted in Bangladesh. The Code of Criminal Procedure provides that, when police needs to enter a house where pious women are residing, a notice must be given beforehand so that they are at liberty to withdraw and it's the legal duty of police to afford their reasonable facility for withdrawing.¹² Another provision states that, when a woman needs to be searched, the search shall be made by another woman, with strict regard to decency.¹³ Police ignored this very provision during the arrest and custody of the above three women. Their belongings were searched by male members of police while it could be easily done by the female police!¹⁴ Moreover, police didn't allow them to wear *niqab* when they were produced before the Court.¹⁵
4. What made the situation worse was that someone had the provisions to take pictures of the unveiled faces of the women and print posters with those pictures alongside defamatory messages.¹⁶ This is the strict violation of Law. The Penal Code of

¹⁰ 14 July, 2009, the daily

Nayadiganta, http://www.dailynayadiganta.com/2009/07/14/fullnews.asp?News_ID=155958&sec=1

¹¹ Article 28 of the Constitution of Bangladesh

¹² Sec. 48 of the Code of Criminal Procedure, 1898

¹³ Sec. 52 of the Code of Criminal Procedure, 1898

¹⁴ 14 July, 2009, the daily

Nayadiganta, http://www.dailynayadiganta.com/2009/07/14/fullnews.asp?News_ID=155958&sec=1

¹⁵ 15 July, 2009, the daily

Nayadiganta, http://www.dailynayadiganta.com/2009/07/15/fullnews.asp?News_ID=156175&sec=1

¹⁶ 14 July, 2009, the daily

Nayadiganta, http://www.dailynayadiganta.com/2009/07/14/fullnews.asp?News_ID=155958&sec=1

Bangladesh prohibits such kind of work and treated it a criminal offence.¹⁷ But, the police did not take any action against the culprits.

5. The strangest thing during the initiation of the accusation is that how law-enforcing agencies relied upon information provided by criminals accused of eve-teasing, rape, robbery, hijacking etc. Their crimes were publicly known, but no one seemed to approach and question the role of the police as they had political connections. Such manipulation of law is no way commendable.
6. Police arrested the women as being ‘suspected member of JMB (an extremist party, banned in Bangladesh)’. The police choose two members of the ruling Awami League’s leaders as witness to the case. Ironically, one of them did not even know the women; he lived in a village 6 kilometers away from the place where the arrest was made. The witness, named Mazid, said that he went to the police station after being informed of the arrest and confirmed his unawareness about the place of incident!¹⁸
7. The women were taken on remand without any proper allegation. The Court could not satisfy the lawyers about the reason of their remand. Therefore, the questions comes - were they taken on remand only on the basis of their attire?
8. The Sub Inspector had sent the accused women to TIF cell of Dhaka without informing the Court, Police Super or the lawyers of the women. This sort of behavior by a member of law enforcing agency is certainly *ultra vires* in the eye of law.
9. Justice was repeatedly denied with the delay at every step. The police report was received on 20th July while they were released two days later. It was the legal obligation of the Magistrate to discharge them immediately.¹⁹

¹⁷ Sec. 499 of the Penal Code, 1860 states that, Whoever by words either spoken or intended to be read, or by signs or by visible representations, makes or published any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation or such person, is said, except in the cases hereinafter excepted, to defame that person.

¹⁸ 15 July, 2009, the daily

Nayadiganta, http://www.dailynayadiganta.com/2009/07/15/fullnews.asp?News_ID=156175&sec=1

¹⁹ Sec. 241A of the Code of Criminal Procedure provides that, if it appears to the Magistrate that, the charge is groundless, he shall discharge the accused.

Observations from a Broader Perspective

1. In this case the women were defamed. In such cases, the victims in a State should be entitled to get remedy according to the International and local provisions of laws. ICCPR clearly states that, “Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.”²⁰ According to CrPC of Bangladesh, it is the duty of the State to recover compensation from the people who gave false information.²¹ Till date, no such measures have been taken. The Government should take immediate action as per the provisions of Law.
2. The absence of good governance in a democratic state essentially damages the character of equal rights. A country without judiciary is no way imaginable as Lord Bryce states “There is no better test of excellence of government than the efficiency of its judicial system”.²² So an effective and independent judiciary is must. A country cannot claim to have good governance without providing easy, affordable, speedy and impartial justice to the people. The given case has strengthened the fact that the country is far away from it.
3. The judiciary of Bangladesh is independent in pen and paper only. Independence of Judiciary includes independence of Judges namely- substantive, personal, internal, and collective. All these are dependent on the will of the executive especially on the basis of non-interference with the decision of the Courts. At the same time, judges have to think independently. The given case showed us once again how important it is to separate the Judiciary from administration.
Recently, Barrister Rafiq-Ul-Huq²³ made a comment on the unexpected situation of the Judiciary where he quoted: “Different courts give different judgments on the same charge, as the Judges act out of their political bias. Unfortunately, the judgment in a case depends not on the case's merit but on the Judges' preference for respective political parties.”²⁴

²⁰ Article 9(5) of ICCPR

²¹ Sec 250 of the CrPC, 1989

²² Lord Bryce, 1921:42

²³ Senior Lawyer in the Supreme Court of Bangladesh and the former Attorney General of Bangladesh

²⁴ The Daily Star, 20 October, 2010

4. Overall, accusations have been rampantly made against those who practice religion and this has happened all over the country during the present Government. On 01 October 2010, a Muslim lady wearing *Hijab* was arrested on the suspicion of being an extremist while she was simply taking photographs of the national mosque. Police had no prior information about the woman. She was taken to police custody right after that. Later she was identified as a citizen of Cyprus visiting Bangladesh. She was a practicing Muslim and therefore was wearing Hijab as a part of her belief.



This sort of incident has not only limits the stance of Bangladesh with regards to religious freedom in the domestic arena, but has also damages its position in foreign countries.