

HOW LEGAL VACUUM IN STUDENT MATERNITY LEAVE POLICY CREATES SEX BASED DISCRIMINATION AND VIOLATES HUMAN RIGHTS: BANGLADESH PERSPECTIVE

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ABSTRACT

Participation of women in higher education in Bangladesh is growing to meet the demand of the modern era. With that growing pace the number of student mother in higher education in Bangladesh is increasing too. Though the number of student mother increasing day by day, it failed to attract the attention of the education policy maker to the need of maternity leave for student mother. Where other sectors allow maternity leave, there is no maternity leave for student mother which have brought intolerable stress to them. This paper aimed to investigate how absence of maternity leave for student mother creates inequality, hampers mother-child bonding, extends discrimination and violates human rights. This study will show how denial of maternity leave is against the principle of rule of law and inconsistent with the constitution of Bangladesh. This paper will also show why maternity leave for student mother is important and how absence of it violates fundamental human rights for both student mother and child. This article examined different legislations, parliamentary enactments, cases, books, journal and newspaper articles and reports. Finally, it ends recommending some measures to eradicate this problem and to upheld human rights.

Keywords: Student mother, Maternity leave, Human rights, Right to life, Discrimination.

INTRODUCTION

Women in Bangladesh have made their presence from peak of Himalaya to the chair of prime minister of Bangladesh. Increasing number of participation of women in higher education played a great role behind this. The number of total students in higher education in Bangladesh is approximately 3.2 millionⁱ. The number of female students in higher education is 33 percentⁱⁱ which means about 1.05 million female students are enrolled for tertiary education and though it seems a poor representation in comparison to the number of total students, but no one can deny that women participation is growing up now. The reproductive age of women is identical to the age of female student of tertiary level.ⁱⁱⁱ The average age for female marriage is 18.6 years^{iv} and average age for female giving birth of the first child around 20 years of age in Bangladesh. Though the female students in tertiary level marry and give birth at the age of above average level, it can't be ignored that there is still a huge number of student mothers studying in different educational institutions.

Violence and discrimination against women are the great concern in Bangladesh. Education is the main tool which can develop the present condition of women in Bangladesh. But when the discrimination itself occurs in educational institution, achieving education becomes more difficult. The nature of female reproductivity in Bangladesh creates obstacles on the way of completion of educational degree for female student. When a female student become mother during her studentship, she had to play the role of mother and a student. Where her double role needs double care, Bangladesh deny them with maternity leave which is vital in many contexts. A woman's right to have children are not considered equally as important as their education rights. No doubt education is very important but a woman becoming mother is also important which the education policy maker failed to understand. There is no provision for maternity leave or extra care for student mother. While new mothers tend to face various new complexities, denying them with maternity leave adds salt to the injury. Because of that lacunae, student mothers fall in the midst of two important directions, rearing up their child and continuing their education from which they have to give priority to one. Generally, they choose rearing up their child and as there is no institutional support, they fall behind in pursuing education. Non co-operation by the educational institution and the absence of maternity leave deprive them of their basic rights of education. On the other hand, some student mother pushes their limit to pursue both at the same time which in the end hampers the child-mother bonding, health condition and growing up of the child and poor performance in the examination of the

mother. Since maternity leave is available in job sectors in Bangladesh, ignoring it for the student mother violates the right to equal protection of law, creates discrimination which is also the violation of human rights. It also deprived the child of its mother's love and hinders the development of child-mother bonding. Research shows that the time spent by a child with his mother affects developing child's behavior. Absence of maternity leave reduce the time of mother as it is divided between child and education. There is a saying that 'today's children, tomorrow's future' and absence of maternity leave also affects the tomorrow's future. This study felt the urgency to look closely what the student mothers have been facing and attempted to provide some guidelines to stop violation of human rights and to come out of that problems.

The age limit of marriage for female in Bangladesh is 18 years of age and getting married under 18 years is a punishable offence in Bangladesh^v. That's why this study only explores the student mother aged 18 years or more though student mothers of all ages require maternity leave. Since female students of 18 years or above is a student of tertiary level, this paper will be based on the experience of tertiary level student mothers and will justify maternity leave for them only.

The study has followed analytical approach as methodology. It is based on the primary and secondary sources. This paper has drawn its extracts from different books, cases, legislations, internet materials, newspaper, and journal articles.

DEFINITIONS

Human Rights

Human rights are those rights which a man inherits with him from the time he born and human being are entitled to those rights simply because they are human being.^{vi} A human born with some rights for the protection of which state has emerged as a necessary tool. These are the basic rights that can't be taken away. Even the great Magna Carta 1215 had assured some basic human rights. Chapter 39 of that great charter stated:

no free man shall be seized or imprisoned or stripped of his rights or possessions, or outlawed or exiled, or deprived of his standings in any other way, nor will we proceed with force against him, or send others to do so, except by the lawful judgment of his equals or by the law of the land.

Chapter 40 of that charter stated that ‘To no one will we sell, to no one deny or delay rights or justice.’

Since human rights are inborn rights, these rights need not be recognized by any state.^{vii} Wherever a human born he need no constitution, no state, no law to recognize these inalienable rights. The American Declaration of independence 1776 is a witness to this statement which is stated below:

*We hold these truths to be self-evident
that all men are created equal,
that they are endowed by their creator with certain unalienable rights,
that among these are life, liberty and pursuit of happiness,
that to secure these rights government are instituted among men...*

So human rights are the rights a human born with and no person or country are allowed to deny these rights. However, the Universal declaration of Human Rights 1948, hereinafter (UDHR), is a milestone document in the history of human rights as it sets out some fundamental human rights to be universally protected. It provided a list of human rights which a man born with and the world is universally agreed to protect these rights.

Right to Life

Right to life is the most important human rights a man born with and on which all other human rights are depend on. Unless a person is alive, he or she can enjoy no other rights and that’s why it is the most important human right.^{viii} Article 2 of UDHR inscribed that “Everyone’s right to life shall be protected by law”. Article 6 of International Covenant on Civil and Political Rights 1966, hereinafter (ICCPR), also guaranteed right to life which stated as- “Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life”. Right to life is rewritten in the constitution of Bangladesh, hereinafter (constitution), which states that “no person shall be deprived of life and personal liberty save in accordance with law”.^{ix} It doesn’t only mean that life can’t be taken away or extinguished except according to the procedure established by law^x but it includes everything necessary to make a life meaningful and worth living.^{xi} Right to life includes all the facility to live as a human being.

Fundamental Rights

‘Fundamental rights are those of the human rights which get special treatment by being written down in the constitution or some other basic document’^{xii}. Constitution of Bangladesh incorporated some human rights and declared them as fundamental rights. The exceptional features of fundamental rights are inscribed in the beginning of the third part of the constitution. It says -

- (1) All existing law inconsistent with the provisions of this Part shall, to the extent of such inconsistency, become void on the commencement of this Constitution.
- (2) The State shall not make any law inconsistent with any provisions of this Part, and any law so made shall, to the extent of such inconsistency, be void.
- (3) Nothing in this article shall apply to any amendment of this Constitution made under article 142].^{xiii}

Rights incorporated in the third part of the constitution are called fundamental rights for the very reason that they can't be taken away or altered and any law which is inconsistent to this part shall be void. These rights are given multi-layer protection. Justice Munir clarified the conception of fundamental rights is worth mentioning-

The very conception of fundamental right is that it being a right guaranteed by the constitution cannot be taken away by the law and it is not only technically inartistic but a fraud on the citizens for the makers of the constitution to say that a right is fundamental but it may be taken away by the ordinary law of the land.^{xiv}

Maternity Leave

“Maternity leave may be termed as a period of approved absence for a female worker granted for the purpose of giving birth and taking care of new-born child. Such type of leave is allowed to a mother before and after the birth of a child”^{xv}. And during this period, they are granted with their wages too.

OBJECTIVES OF THE STUDY

Education is the only way one can improve his humane quality and it is the only tool which shapes a nation. Without education no development whether it is inner or outer is possible. That's why education is needed for every human. Nonetheless women were being deprived of education for centuries. In today's world though necessity of women education is felt and they are given the opportunity to study still they are surrounded by many problems in achieving it. Denying them with maternity leave when they become mother during the continuance of their education is one of great hindrance on the way of female education. The objectives of this study are-

1. To clarify the concept of maternity leave and why maternity leave is needed.
2. To examine the present situations of maternity leave in Bangladesh for employed women.
3. To examine how maternity leave rights are violated in Bangladesh.
4. To examine the present legal mechanism to protect right to maternity leave in Bangladesh.
5. To examine the application of the existing mechanisms.
6. To find out the shortcomings of the mechanisms.
8. To show how easily right to maternity leave are violated due to lack of proper attention and care.
9. To show how violations of right to maternity leave taken away basic human rights such as right to education, right to health, equality right etc.
10. To show how right to life are hampered by that violations.
11. To show some practical and effective way to ensure maternity leave with some other maternity benefits.

JUSTIFICATION OF THE STUDY

“He who opens a school door, closes a prison.” is a famous saying of Victor Hugo refers that only education can enlighten minds and can helps human escaping from being chained. For that reason, education is mandatory for all people. But student mothers have been facing

various obstacles in earning education. Since they are denied with maternity leave and with other maternity benefits, it is tough for them to continue their education.

This study explores the root of all causes that why they are denied with maternity leave and other facilities and how these denials create hurdles on the way of earning education. How these hurdles violate fundamental human rights such as right to life, right to health, right to be treated equally, right to education.

It is hoped that this study will show some guidelines to recover from that problems. Though further study is still needed, yet have the believe that policy makers would be benefited from this study. Since materials on the student maternity leave is not available, this study may help in the future research on issues like this.

MATERNITY LEAVE POLICY IN BANGLADESH

Since the women participation in every sphere is increasing day by day, question on maternity leave comes to light so often. In the male dominated society maternity leave is still considered as a grant to the women. Rule 197(1) of part one of Bangladesh Service Rules 1979 provides six months maternity leave for permanent government women employees. And according to Bangladesh labor act 2006, pregnant workers are entitled to 16 weeks leave with full wages.^{xvi} But labor act's definition of 'worker' is so insufficient^{xvii} that it failed to include person employed in managerial and administrative capacity. It says that-

“any person including an apprentice employed in any establishment or industry, either directly or through a contractor, to do any skilled, unskilled, manual, technical, trade promotional or clerical work for hire or reward, whether the terms of employment be expressed or implied, but does not include a person employed mainly in a managerial or administrative capacity”.

It is evident from these two above mentioned rules that only government women employee and other women worker who are recognized as 'worker' by the labor act are eligible to get maternity leave and outside these two no women employee has right to ask for maternity leave. They get maternity benefit as a grant and it rely on the discretionary power of the employer to grant them maternity leave. Sometimes they have to leave their job as they don't get maternity leave. Where there is no maternity leave for the women employee who have been contributing

to the economy of Bangladesh to a great extent how can there be any maternity leave for student mother? There is no provision for maternity benefit for student mother. Where becoming mother and rearing up child itself a difficult task, difficulty level rises higher when the mother is a student.

IMPACT OF DENIAL OF MATERNITY LEAVE TO STUDENT MOTHER

It is a universal rule that every person of the same class has the right to be treated equally. Equality before law is one of the most important human rights recognized and declared by UDHR. Article 7 of UDHR provides that- “All are equal before the law and are entitled without any discrimination to equal protection of the law”. Article 26 of ICCPR also inscribed equality clause. As Bangladesh is a signatory state of that convention it also incorporated provision for equality before the law. Article 27 of the constitution of Bangladesh provides that ‘All citizens are equal before law and are entitled to equal protection of law’. But this right of equality before the law has been violated in Bangladesh. Where all the women who are government employee and worker as mentioned in the labor act get maternity leave with wages, there is no provision for maternity leave for student mother. A mother is a mother, whatever her status is. So depriving student mother with maternity leave with other extra facilities who has to play double role of motherhood and studentship creates discriminations^{xviii} between them. Since depriving student mother of maternity leave creates discrimination, it violates fundamental human rights.^{xix}

Rearing a child up is itself a very hard task and it becomes harder when united with pressure of study. Student mother faces both of it. They have to play their roles of two different direction. Since their concentration and effort divided between two parts, the amount of time needs in study lessen to a great extent. The double role played by student mother exert huge pressure upon them that they sometimes get sick.

Since they are denied of maternity leave and as their most of the time are spent with the child, they cannot attend classes properly. As a result, they cannot fill the quota of required percentage of attendance. Generally, 75% classes have to be completed to be qualified in examination, students with 60%-75% attendance still be qualified for seating in examination but with the payment of specific amount of fine and below 60% attendance will disqualify a student from

participating in examination. And without that specific attendance they sometimes become disqualified to participate in examination. As there is provision for marks on attendance, students with poor attendance get lower marks. For that reason, many student mothers failed to promote themselves. Sometime they drop-out of educational institution. And even if they can participate in examinations, they do not get their desired marks. Poor marks in the examinations discourage them to continue education.

Since they doubled their workloads, extra work makes them sick and mother's sickness is too much related to the child. Less time spend by mother with the child makes the child weaker and impacts in the growing of the child. Research shows that the time spends by a mother impacts the child to a huge extent. Mother-child bonding cannot develop to the required level due to less time spend by the mother of the child. Depriving a child of it mothers love is also the violation of the child's right. It's a cruelty upon the child by the state to snatching away its mother's love and cruelty upon any human is a violation of human rights^{xx}. Since the health condition is also relies upon the mother, child's health conditions heavily influenced by the time it spends with its mother. So, right to health, one of the basic human right, is also violated by the denial of maternity leave. Poor health threatens the life of the child. Due to this artificial complexity, right to life of the child, the most important human right^{xxi}, is under constant threat. It's a chain of human rights violation.

Still today in 21st century, women education is considered unnecessary in many societies. It is regarded as a grant to them. How long a woman will study is still depending upon the discretion of the man. So, when a student mother is denied with the maternity leave, pressure descends from the husband or other financially authoritative person or from society to take care of the child and to stop education. In most of the cases women have nothing to do as they financially depend on the man. They have to choose the job of child rearing and give up the education. So, it become clear that absence of maternity leave enlarges the financial issue and snatches the right to education. "Even in the 21st century, about 70% of student mothers in New York universities abandoned their education because of a lack of support from society and the family"^{xxii}. If the scenario of New York which is regarded as the capital of world is such type that 70% student mother drops-out for financial issue, saying about Bangladesh will be exaggeration. Besides, child rearing increases the expenses. In the absence of any financial

help from the educational institution or government though in the form of loan, student mothers have to give up education.

Besides, there is a pressure from society upon the student mother to become a 'good mother'. Becoming so called good mother requires more time to pass with the child which a student mother can't find. The double role competition reduces the time for both role and increases the pressure upon mother. This leads to the poor performance in both roles and it depress the student mother^{xxiii} which impacts on the health of the student mother. It creates anxiety and various health related complexities. Thus, right to life is hugely affected by the denial of maternity leave. So, denial of maternity leave violates right to life of both mother and child. "Various high-risk behaviors in adolescence and pre-teen children and their emotional and mental health are dependent upon their living conditions such as time spent with the mother"^{xxiv}. So, it is evident that the future is also influenced by the maternity leave.

Average age of students of higher level is 18-25 years and it is considered the perfect age to become mother. Twenty to twenty-five is the most fertile age for women to become mother^{xxv}. Becoming mother after that age is packed with many high-risk diseases. Research shows that children born to older mothers have shorter lifespan.^{xxvi} Parental age has been shown to be one of the major factors to impact on the longevity, health and intelligence of the child.^{xxvii} So, it should not be a strange thing if female students give birth at that age. To continue natural human cycle giving birth of children have no alternative and same goes for female education too. Since older age motherhood negatively impacts on the child, there is no alternative to make provision where female student can give birth of the child fearlessly at the age when they are most fertile though they are still students.

SUSTAINABLE SOLUTIONS

It is evident that what student mother have been facing must be taken into deep consideration and must introduce necessary steps which will assure facility for student mother.

The first step to be taken is to introduce maternity leave for student mother. The duration of maternity leave for student mother may be fewer than the duration of maternity leave for

employed mother. It may be eight weeks to twelve weeks. Though it is hard to introduce maternity leave for student mother, but it must be introduced. Class attendance of student mother during this leave period not to be taken into consideration to attend into examination. It would be an option on the mother to choose whether she will participate in the examination or not during that leave period. Provision must be made that any kind of examination scheduled to be held during this maternity leave period must be taken in the convenient place of the student mother. Since they are in a critical condition, they may not be able to take part in examination in the prescribed examination center. For that reason, they must be given the option to choose their own center.

Beside introducing maternity leave, other maternity benefits have to be given to student mothers so that they can continue their education smoothly. Since internet facility is available in almost every educational institution, online class facility for student mothers must be introduced so that they can attend to classes from home. Online class facility will inspire them to stick to education and enhance their chance of learning. Recorded classes will give them chance to take their classes in their convenient time. Facility should be made for online presentation. It will be easier for the student mother.

Generally, 75% attendance in class is required to be qualified to participate in examination. That 75% class attendance ceiling must be reduced for student mother. Since they are in a special condition, special provision must be made so that they can take part in the examination with less attendance.

Since most of the student in Bangladesh is unemployed, becoming mother adds extra load on the shoulder of the student mother. Financial crisis creates extra pressure on them. To remove this problem long-term soft loan (with 3%-4% interest) may be introduced. Loan must be sponsored by the government or educational institution in case of it is a private institution. Financial facility will help student mothers to continue their education. Husband or other family members cannot be able to create pressure upon them to stop education. Since financial dependence on husband or other family member stands as a hindrance on the way of women education, financial independence can make the way of education smoother.

The cost of educational expenses must be reduced during first two years of the birth of the child. Reduced cost with the extra benefit of loan may help extending the opportunity for them to continue their education.

Day care system must be introduced in every educational institution. In a country where no day care system is available in almost every institution for teacher-mother, it is very tough to establish day care system for student mother. But still day care system should be introduced. It will facilitate mothers to take care of their child. When there will be facility for day care, student mothers will be able to bring their child with them when they will come for classes or examinations. It will reduce their tensions for their child and will help them to participate into classes or examinations freely.

Psychiatric in every educational institution must be appointed. They must be made available so that any student can take treatment from them. Since student mother faces huge pressure from all sides, in handling that pressure they become sick both physically and mentally. Counselling with the psychiatric may help them escaping from depression and improving mental strength.

Legal cell must be introduced in every educational institution. If anyone wants to stop the continuation of education then student mother can complain against him in this cell which will take direct action against that person. It will help them to continue education.

‘Women holds half the sky’ is a great saying by Mao Zedung refers the contribution of women in the today’s world. Without the contribution of women today’s world couldn’t reach where it is now. Without improving the condition of woman, the wheel of civilization can’t be able to maintain its pace towards development. Women who are more responsible for the human reproduction must not be denied with the right of education. If these above-mentioned maternity benefits can be arranged for student mother, world will get strong and healthy baby which is the future of any nation and educated mother.

LIMITATIONS

The findings of the study are not comprehensive and can't be generalized for all. A comprehensive guideline to protect the right of student mothers and to introduce maternity leave with other facilities for student mother cannot be given as it is always tough to give a concrete guideline. Future studies should be conducted to improve the present findings and to discover new mechanisms too.

CONCLUSION

“Give me an educated mother and I will give you an educated nation” is a great saying of Napoleon refers that an educated nation depends on the education of the mother. So, how can it be possible to get an educated nation without educating mother? If the maternity facility can be given to the student mothers, they can be able to continue their education and will also be able to give any nation an educated future. It is high time that government took necessary measures so that they can continue their education with ease. If these above mentioned, steps can be materialized, achieving education by student mothers will be easier. Otherwise women participation in the higher education may decline as a result of which Bangladesh will fall behind.

ENDNOTES

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