

POLICY BRIEF ON THE PROPOSED 'ANTI-DISCRIMINATION BILL 2022'

The 'Anti-Discrimination Bill 2022' was placed in the parliament on 5 April 2022 by Law Minister Anisul Huq. Long years of civil society engagement and advocacy with the government have catalysed this initiative. It can be mentioned that Manusher Jonno Foundation (MJF), civil society members, and other human rights organisations have been relentlessly advocating and providing technical assistance for the formulation and enactment of this non-discrimination law since 2008.

The Bill is now with the parliamentary standing committee of the respective ministry for further examination. While placing the Bill, it was stated that the Law is aimed at preventing all forms of discrimination in light of the Constitution. However, the proposed Law has already raised several concerns among the members of civil societies and human rights organisations, and they demanded a specific review of the Bill.

Given the above, this policy brief aims to present a policy analysis of the proposed Law; civil society's movement and role in the formulation of the proposed Law; their specific recommendations for reviewing the placed Bill and future steps for the enactment, enforcement and effective implementation of the Law.

WHY FORMULATION AND ENACTMENT OF A SPECIFIC LAW AGAINST DISCRIMINATION IS NECESSARY?

To meet State's obligation to ensure human rights and non-discrimination sufficiently

Bangladesh is a signatory to major international conventions, covenants and treaties and obliged to enforce the anti-discrimination guarantee contained in national life. Since its independence, Bangladesh has adhered to this responsibility, but the journey is still in the cart.

The Constitution of Bangladesh provides for the general equality guarantee and specific anti-discrimination provisions and authorises the State to take affirmative action. These provisions of the Constitution are the foundation upon which a thorough Anti-Discrimination Bill has been proposed.

Except for the two sources of anti-discrimination legal provisions as stated above, another source called to be the statutory Law deemed to be not sufficient to ensure equality and non-discrimination in private and public life. Against this backdrop, a specific anti-discrimination law is necessary.

EXISTING LEGAL PROVISIONS AGAINST DISCRIMINATION

Constitution of the People's Republic:

- **Article 27** states the general principle of equality.
- **Article 28** relates to a particular application of the principle of equality, which prohibits discrimination only on the grounds of race, caste, religion, sex or place of birth.
- **Article 29** states provisions regarding equality of opportunity, equality of opportunity in public employment and the right to protection of Law.

Statutory Laws:

- Women and Children Repression Act, 2000
- Domestic Violence (Prevention and Protection) Act, 2010
- Rights and Protection of Persons with Disabilities Act, 2013
- etc.

Policies:

- National Labor Policy, 2012
- National Education Policy, 2010
- Women Development Policy, 2011

To foster the socio-economic development of the country and attain the SDGs

Apart from the human rights perspective, such a law is necessary to foster the country's socio-economic development and attain the SDGs. Because denial of fundamental rights hinders the marginalised communities from contributing to the national economy. Again, Bangladesh's dream of becoming a developed country by 2041 will also be hampered if discrimination increases. It has been observed from the experiences of other middle-income countries that discrimination triggers underdevelopment. When discrimination deepens, domestic economic demand decreases and human resources can not be utilised as per their potential. Given this, an anti-discrimination law is not only meant for safeguarding the rights of the deprived, oppressed, and marginalised communities such as the Dalit-Harijan community, to persons with disabilities, religious and ethnic minorities, sex workers, transgender people etc. Formulation and enactment of such Law is also necessary to ensure overall socio-economic development of the country.

This Law is also necessary to attain the SDGs by 2030, as one of its guiding principles is "Leave no one behind". According to the principles of SDGs, all goals are interrelated and are to be attained in an interlinked manner. Again, it suggests measuring the desired advancement of a country by the condition and State of its most underprivileged. Citizens. SDG 10 and SDG 16 articulated the need to reduce prevailing discrimination within a country. Thus, an Anti-Discrimination Law can be considered a means to attaining the SDGs.

MJF AND CIVIL SOCIETY'S MOVEMENT FOR THE PROPOSED ANTI-DISCRIMINATION BILL

The drafting and placement of the Anti-Discrimination Bill in the parliament is indeed the result of relentless advocacy and continuous movement by civil society members and human rights organisations, including the Manusher Jonno Foundation (MJF). The process of catalysing this Bill can be seen as solid evidence of how a civil society movement can influence the public policy environment. The civil society of Bangladesh not only acted ahead of the curve but also provided technical support to translate this dream into reality. Moreover, this movement engaged relevant stakeholders successfully to form a holistic, united and indivisible public opinion in favour of the proposed Anti-Discrimination Bill.

It can be noted MJF played a leading role in the aforementioned civil society movement.

The journey of relentless advocacy for the proposed Anti-Discrimination Bill

CASE: NON-DISCRIMINATION FOR THE DALIT COMMUNITY

Currently, the number of Dalits in Bangladesh and Harijans is almost 9.2 million, including the Dalits of the tea gardens. These people are a productive force in the country who are contributing to our GDP and providing services that are essential for our existence. Therefore, this country's citizens are equally entitled to their fundamental rights and entitlements as mainstream people enjoy. Moreover, the government and SDG implementers are committed to ensuring that the Dalits, Harijans and tea garden workers are not left behind in the development endeavours. Therefore, promulgating the Anti-discrimination Act will protect them from being discriminated against and ensure their access to diverse livelihood options for a dignified life. On the other hand, it will provide the realisation of rights from both moral and legal perspectives.

2008	<ul style="list-style-type: none"> → MJF initiated a national movement to float the issue of a law that can protect the Dalits and Harijans from being discriminated against due to the cause of untouchability. → The title proposed for this Law was 'Anti-discrimination Act'.
2008 - 2013	<ul style="list-style-type: none"> → MJF engaged itself in a broader network of CSOs and NGOs, including some social champions, to flag the issue and draft a proposed law for the government. → MJF also got itself engaged further with the Law Ministry and Law Commission and National Human Rights Commission to expedite the promulgation of such a law. → Similar legal frameworks were consulted in drafting the Law, including those of India, South Africa, and the UK. → There was a consensus that the scope of the Law should be broadened, beyond the Dalit-Harijan community, to include all other segments of the society facing systemic discrimination, such as persons with disabilities, religious and ethnic minorities, sex workers, transgender people, and others.
2013	<ul style="list-style-type: none"> → A comprehensive draft law was submitted to the Law Commission, and the MJF subsequently maintained following up on the revision and re-revision process. Finally, in 2013, the draft law was submitted to the Law Ministry. → After scrutiny, the Law Ministry proposed to bring some revisions and changes to the draft. Again, in collaboration with the Law Commission, a revised text of the Law was submitted to the Law Ministry.
2013-2022	<ul style="list-style-type: none"> → MJF and other leading NGOs, including, among others, Nagorik Uddyog, Research Initiative Bangladesh and Bangladesh Legal Aid and Services Trust, constantly kept advocating and lobbying with the Law Ministry for the formulation of the Law.
2022	<ul style="list-style-type: none"> → On 5 April 2022, the honourable Law Minister placed the much-awaited 'Anti-Discrimination Bill 2022' in the parliament. → The Bill is now under review by the Parliamentary Standing Committee on the Ministry of Law, Justice and Parliamentary Affairs. → The MJF presented its analysis of the Bill and submitted compiled recommendations for the review of the Bill, as this has some laps and gaps. → MJF has kept lobbying with the government to bring necessary revisions to the Bill and its enactment as Law soon.

KEY FEATURES OF THE PROPOSED BILL

The proposed Anti-Discrimination Bill aims to prevent all forms of discrimination in the light of the Constitution. The stated objective of the Bill is to prevent discrimination to ensure respect for the human entity, equal rights and dignity. It is also noted to be inspired by the need to establish equality and social justice towards an exploitation-free society in Bangladesh found through a historic Liberation War. Reference is made rightfully to the need to make legal provisions to prevent discrimination consistent with articles 27, 28 and 29 of the Constitution. Therefore, it should be commended as a concrete step towards fulfilling the dream of generations for a discrimination-free society.

There are **17 Sections** in the proposed Bill. The Articles of the proposed Bill, descriptions of the discriminatory actions; formation of a monitoring committee to monitor the implementation of the proposed Act; formation of an anti-discrimination cell; formation of national, divisional, district and other anti-discrimination committees to prevent and immediately redress discriminatory actions; raising mass awareness etc. have been included.

HIGHLIGHTS OF CRUCIAL SECTIONS

- As per the Bill, a monitoring committee would be established (**Sections 4 and 5**). The Law Minister shall be the chairman of the central committee, and a joint secretary from the legislative wing will be its member secretary. Besides, the president of Bangladesh Employers' Federation, three representatives of human rights and social service organisations, two workers' representatives – one of whom should be a tea worker, four representatives of different religious organisations, one representative of minority ethnic groups, and one representative of the Dalit community will be its members. The committee will monitor if any violation of human rights is occurring across the country. It will hold at least one meeting in three months.
- An anti-discrimination cell will be formed (**Section 6**). The cell will then start anti-discrimination national, divisional, district and other committees to prevent discriminatory activities if any.
- As per the Bill, the government will create awareness among people so that no discrimination occurs across society (**Section 8**).
- If anyone lodges a complaint (**Section 9**), the district committee will investigate the matter within 30 days. If the district committee fails to provide a proper remedy, the complainant could urge the divisional committee for an enquiry within 30 days of filing the complaint. If the divisional committee fails, the national committee will investigate and take action after 45 days.
- If the aggrieved person files a case in the appropriate court (**Section 10**), the case has to be disposed of within 90 days. If they fail to do so within 90 days, the case will have to be extended by a maximum of another 15 days.

THE DISCRIMINATORY ACTIONS

The Bill states that any person who engages in the following acts directly or indirectly on the pretext of religion, caste, ethnicity, language, age, gender, physical and mental state, place of birth, birth, occupation and social standing is considered discriminatory (**Section 3**).

- Preventing, controlling or restricting the entry or presence of any person or group in public places.
- Deprived of access to government, semi-government, autonomous or private office services.
- Restricting the production, sale or marketing of any product or service legally or imposing controls and restrictions on the acceptance of any benefit, product or service prescribed by Law.
- Refusal or obstruction to enrol a child in an educational institution due to the inability of parents to provide identification without proper reason, expulsion from educational institutions, or any other form of discrimination.
- Giving away a child to a particular person, group or institution without raising them in the family because of disability or being of the third gender, or obstructing family life on the pretext of disability.
- Prohibit any person or group from taking up any legitimate occupation or job or conducting legitimate business.
- Differentiation or restriction in leave, promotion, transfer, salary-allowance or benefits in government, semi-government, autonomous or private employment and compelling to resign.
- Denial to renting out a house or place of residence to an individual or group or denying an application or imposing strict conditions.
- Preventing an individual or group from entering their home, evicting or forcing them to leave the area or residence.

- Rural arbitration or socially or religiously bringing a person or group together, socially boycotting or harassing.
- Discriminatory treatment due to divorce or marital status.
- Forbidding an individual or group to observe religious rites or customs or forcing them to adopt and observe or abandon any other religion.
- Preventing any person or group from legally acquiring and transferring property and depriving them of property rights or inheritance.
- Creating barriers to participation in social, political, and cultural activities at the local and national levels.

REVIEW OF THE PROPOSED BILL

In the proposed Bill, MJF found significant laps and gaps. Therefore, MJF organised two consultations in April 2022 and December 2022, inviting all members of the Parliamentary Standing Committee, civil society actors, grassroots members of marginalised communities and law experts. The MJF presented its analysis of the Bill and then sought others' views. The Chair of the Standing Committee welcomed the move and requested the MJF to send the compiled recommendations given by the MJF. At present, MJF has kept lobbying with them, and they have already, on principle, decided to bring in necessary revisions and changes to the Bill.

The significant recommendations from MJF to improve the Bill are given below:

1. The Law needs to be re-titled as 'Elimination of Discrimination Act, 2022' instead of 'Anti-Discrimination Act, 2022'. 'Anti' is treated as a sensitive connotation.
2. The preamble of the Bill should include references to internationally accepted human rights instruments such as ICCPR (on civil and political rights); ICESCR (on economic, social and cultural rights); CRC (on children rights); CEDAW (on women's rights); CPRD (on disabled people's rights), etc.
3. Section 2 of the Bill should include separate definitions of all marginalised communities.
4. Section 3 should clarify (a) for what specific reasons a child may be denied access to school and (b) which occupation and business are to be deemed illegal.
5. Section 4 should consider (a) minimising bureaucratic complexities in the structure and formation procedure of the monitoring committee, (b) incorporating representatives from CSOs and marginalised communities in the monitoring committee, and (c) forming the monitoring committee just after the adoption of the Bill.
6. Section 9 should ensure a quick trial procedure against any case of discrimination. The section should also make provision for initiating a criminal case on the allegation of discrimination because, without a criminal case, a punishable measure cannot be taken against the person(s) who is/are proven to have committed discrimination under the Law.
7. Section 7 should ensure representation from marginalised communities in national and local committees to address eliminating discrimination.
8. Strong recommendations were also made in the quick formulation of rules after adopting the Bill and broader dissemination of the Law.

What revisions in the Bill are feasible to attain at this moment

The Bill has been tabled, and the cabinet has approved it. As a result, a radical departure from the Bill's basic structure is not possible at the moment. If revisions take place beyond the scope of the current Bill, it will require drafting a new Bill. So instead of bringing in significant structural changes, acceptable modifications may occur within the current Bill's scope.

Some of those likely changes are as follows:

1. The Law can be re-titled as 'Elimination of Discrimination Act, 2022'.
2. Section 2 can add more categories of marginalised communities, such as sex workers, transgender people etc. Section 3 can include an additional clause as "any other act that is disgraceful for the human civilisation"
3. In Section 4, the monitoring committee can include relevant parliamentarians, increase the number of CSO representatives can be increased to ensure more inclusion. In addition, a reporting mechanism for the monitoring committee should be added to ensure accountability.
4. Section 8 can add a clause about the mobile court's authority to redress minor complaints.
5. Section 9 requires more clarification on the complaint mechanism. The timeline for redressing and a dispute needs to be specific. A timeline of 30 days can be added. The redressing provisions need to be precise. An indication of the possible remedies can be added. Both parties require to have access to the divisional committees.
6. Section 10 needs to clarify the sanctions. It can be a blend of both civil and criminal court procedures. The 90 days timeline to resolve the court case is difficult to attain. It can be generalised.

NEXT STEPS

- To ensure that the parliament has adopted the Anti-discrimination Bill with proposed revisions from the CSOs. Civil society members can seek a meeting with the Law Minister to place the specific propositions. Civil society members can also lobby to attend the review meeting of the Parliamentary Standing Committee to put their particular recommendations and jointly work on the Bill to be adopted, passed and enacted as an Act.
- After the Act's enactment, advocacy needs to be taken for the formulation of the Rules of the Act and an Action Plan to implement it.
- To shadow monitor the implementation of the Act and check for any discriminatory actions in the communities to ensure the rights of the marginalised communities.