



RIGHTS corner



LAW opinion



Rights of the disabled

Towards a new UN Convention

HUMAN RIGHTS FEATURES

In June 2003, the United Nations (UN) Ad Hoc Working Committee on the Rights of People with Disabilities will hold its second meeting to discuss reports from member states, UN bodies, National Human Rights Institutions (NHRIs) and NGOs to consider proposals for a new and comprehensive convention to promote and protect the rights and dignities of persons with disabilities. The proposed convention would be similar to human rights instruments on the rights of women, children, and refugees. The movement towards creating an international convention is the next step in a struggle that has already lasted 20 years. Its goal has been to integrate the human rights approach into discussions of disability rights on the international level. Although the process has been a gradual one, the shift in approach has been quite radical from treating disabled persons as objects of charity to mandating changes in society that will allow disabled persons to participate on an equal level with non-disabled persons.

Behind disability legislation

The first changes came in 1982 when the World Programme of Action Concerning Disabled Persons was accepted by the General Assembly of the UN. The United Nations Standard Rules on the Equalisation of Opportunities for Persons with Disabilities (UNSR), formulated by the UN at the end of their Decade of Disabled Persons in 1992, followed the World Program as the next treaty to address the issue of disability. Both of these defined handicap as "the encounter between the person with a disability and the environment," effectively shifting the focus of disability legislation all over the world from aiding the disabled person to adapting their surroundings to permit equal participation in society. This change reflects the lessons learned from the human rights movement, but there is still considerable scope for integration of the rights based approach with discussions of disability. The Standard Rules have been criticised for having many gaps. Neither the gender dimension nor the needs of children with disabilities are treated sufficiently. The document also fails to address the issue of housing. It is notable that these gaps occur at areas where significant human rights instruments already exist: the Convention for the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Declaration of the Rights of the Child where rights legislation has been proposed such as in this year's draft resolution on the right to adequate housing. Indeed, both the Special Rapporteur on Disability for the Committee on Social Development and a recent UN Report on human rights and disability suggest that the existing human rights mechanisms at the UN have been underused in protecting the rights of persons with disabilities and call for more integration between the two.

Needs for a new convention

Considering the existence of powerful human rights institutions that protect all people, including the disabled, and treaties that protect solely disabled persons: the World Program of Action, Standard Rules, Beijing Declaration on the Rights of People with Disabilities, Declaration of the Rights of Disabled Persons, Declaration on the Rights of Mentally Retarded Persons, and Principles for the Protection of Persons with Mental Illnesses might wonder why there is need for a new convention. Firstly, none of the treaties that deal specifically with disabilities are legally binding. Secondly, the very existence of human rights conventions for refugees, women, and children indicates that there are specific groups that are especially vulnerable and require a single set of binding norms and a separate body to monitor respect for their rights. Arguably, disabled persons fall into this category as well. Lastly, a convention will allow for clarity that will encourage more robust human rights expertise on disability as well as creating a focused body to which NGOs can direct their claims.



Praiseworthy step

The upcoming Ad Hoc Meeting is a welcome step in the promotion of rights of people with disabilities. It has the potential for creating a convention that will complement, not replace, the existing main human rights instruments, and thereby will encourage increased utilisation of the existing treaty bodies in protecting the rights of people with disabilities. However, there is still a long road ahead. The Ad Hoc Committee is only inviting proposals for a convention, so each group that participates in this conference should emphasise the need for such a convention. Discussion about the convention should consider the breadth of coverage of the Standard Rules as a model, while keeping in mind its deficiencies. The drafting of a new convention can take many years. In the meantime, the Standard Rules should be revised and upheld. Additionally, the Committee should consider appointing a Special Rapporteur for Disabilities who can act as a suitable focal point for disability in the human rights system during the long drafting process. The last Ad Hoc Committee meeting in New York was exceptional in its exclusivity; NGOs and even NHRIs were not invited to attend. It is important that these two groups are included in the drafting process because, in the absence of political will, the burden of implementation and monitoring largely falls on these bodies. Fortunately, the second meeting of the Ad Hoc Committee will have NGOs and NHRIs as participants. Hopefully, their contributions to the committee will be emphasised.

Rights of persons with disabilities in the Asia Pacific context

The international change in attitudes towards the rights of persons with disabilities is especially important for the Asia Pacific Region since approximately 400 million of the world's 600 million disabled people live in the region. Nearly one third of disabled persons live below the poverty line and

less than ten percent of youth with disabilities attend school. Governments of developing nations, of which there are many in Asia and the Pacific, have been reluctant to champion the rights of disabled persons because of the enormous cost involved in implementing suitable policies. However, the scale of the problem alone should assure governments that protecting these rights are not a matter of choice.

The United Nations declared 1981 the International Year of Disabled Persons, and the adoption of the World Programme of Action concerning Disabled Persons (1982) and the declaration of the Decade of Disabled Persons (1983-1992) followed soon thereafter. These events provided the catalyst for major revisions in the way disabled persons were regarded by governmental and non-governmental institutions. The Asia Pacific Region was the first to follow up with a regional Decade of Disabled Persons in 1993. Inter-country meetings to discuss possible methods of inter-sector collaboration and to assess the success of the Asian Pacific Decade of Disabled Persons were held in India, Malaysia, Singapore and South Korea. Partly in response to the increased international and regional attention, a significant amount of legislation has been passed in the region regarding disabled persons. However, the laws are uneven in scope, implementation and monitoring processes. A closer examination of the legislation of the different nations will reveal areas where these laws are weak and give rise to general recommendations.

Australia and Japan have both passed comprehensive disability laws. In Japan the process of getting these bills passed involved the initiative of many NGOs and the input of disabled individuals in high political positions. However, most other countries have piecemeal legislation that only covers one aspect of disability rights such as the Rehabilitation Council of India Bill that only covers education. On the surface, much progress has been made regionally for the incorporation of the rights perspective into disability legislation. Examples include the India's Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act in 1995 and the Philippines' Magna Carta for Disabled Persons in 1991. However, appearances can be deceptive. The Indian Persons with Disabilities Act suffers from vague terminology and lacks adequate monitoring mechanisms. The caveat that reforms should only be undertaken within the limits of a state's economic capacity all but nullifies the Act's potential for change. In the Philippines, the Magna Carta relies on the courts for enforcement of the regulations, but the first talk of a court case came a full decade after the bill was passed, and the case has yet to actually be heard.

Concluding remarks

The example of the Philippines is by no means exceptional. Most disability legislation in the Asia Pacific region relies on the courts as mechanisms of observance and enforcement. Yet, most disabled people, and disability advocacy groups in the region for that matter, do not have the time, money, or expertise to fight long court battles. For example, courts in India are notorious for backlog, which can delay cases for years. The importance of incorporating NHRIs that conform to the Paris Principles and NGOs into the legislation and legislation making process is especially acute here. These are the agencies that have the mandate to monitor and enforce the laws created by legislatures that do not have the political will, financial support and efficient bureaucracy to implement them successfully. NHRIs and NGOs are also important means of spreading information about any legislation, and can create strong advocacy groups that can in turn demand more from the government. The success of the Asia Pacific Decade of Disabled Persons depends not just on creating appropriate legislation regarding disabled persons but putting into place mechanisms for accurately monitoring such legislation.

Human Rights Feature is an initiative of SAHRDC based in Delhi, India.

LAW news



Protest on Monsanto seed monopoly

Consumer's International (CI) joined forces with Greenpeace oppose Monsanto's effort to gain control of the market for agriculture and food production worldwide. The patent not only includes the genetic engineering process of the cultivated soybean plant and all GE-soybeans, but also extends to other plants such as wheat and maize. Farmers will no longer have a choice this practice is allowed. Patents on plants and seeds mean that in future corporations will determine what farmers are allowed to plant and what the costs will be.

The broad patent granted to Agracetus for a particle bombardment (biolistic) method of transforming soybeans to cover all soybean varieties should be cancelled for various reasons. Firstly, the claims made by Agracetus are nearly standardised laboratory procedures used in hundreds of laboratories across the world. They are textbook materials described in standard manuals dealing with molecular biology and r-DNA technology. There is no inventive step here and therefore, patent claims should not be upheld. Also, selecting tissues randomly from various parts of the soybean plant has resulted in a fortuitous transformation episode. This hit and miss procedure cannot be termed a truly inventive step. It does not qualify for a patent since 'invention' cannot be established.

On March 2, 1994 a US-based biotech company, Agracetus (then subsidiary of W.R. Grace & Co.), won a European patent on all genetically engineered soybean varieties and seeds (regardless of the genes used) and all methods of transformation (one of the patent's claims actually extends beyond soya to other plant species). Back in 1994, genetically modified soybeans were not yet commercially available. In 1996, Monsanto acquired the Agracetus company and its soybean patent - just one of many biotech companies and patents Monsanto would devour in its binge buying to gain supremacy in agbiotech.

The impact of such a broad patent extending to all plants will become a grave impediment to the ability of developing country researchers to access new crop improvement technologies to breed new crops for their regions. Patents per se and such broad patents particularly have grave implications for farmers in developing countries. Restricting access to seed can strike at food and livelihood security by limiting the ability to access new seeds that can help to cope with biotic and abiotic stress situations that occur from time to time in agriculture.

The innovator was rewarded with a temporary monopoly on the invented product so that he/she continued to benefit society by inventing new and useful products. That was the reason, why 'utility' is such an important feature of a patent claim. Now, with broad patents, monopolies are sought to be established in a way that private interest outstrips the public interest. This attitude cannot be in the larger interest of most people and this patent must be opposed on that ground alone.

Finally, it is not only ironic but also wholly unprincipled for Monsanto to now defend the patent, having opposed it earlier when Agracetus had first applied for it. Agracetus was then yet to be acquired by Monsanto.

Greenpeace's patent expert Christopher Then said that, "By patenting seeds, Monsanto is attempting to gain control of the market for agriculture and food production worldwide. In future the gene corporations want to determine which foodstuffs are produced and marketed. In the interests of farmers and consumers, the patenting of seeds and plants must be stopped."

Courtesy: Consumer's International (CI), Malaysia.

HUMAN RIGHTS monitor



Violation of human rights inside prison

AFROZA ZERIN FAISAL

VIOLATION of Human Rights inside prison is not a new phenomenon in Bangladesh. The simple fact that prisoner is also a human being is often forgotten by us and lost of our sight. As a result, convicts with the denial of their rights to liberty and profession forfeited many of their fundamental rights which they otherwise suppose to possess. Whereas in the whole world a new era has been established regarding the treatment of prisoners, in our country rights of prisoner is hardly a matter of concern. One of the fundamental reasons behind this is our primitive notion about the punishment. All over the world the notion about punishment is being converted to reformative from retributive framework but in our country the concept regarding punishment is still retributive in its nature. In our country, we do have a good number of Statutes, Rules, Regulations and Acts regarding the treatment of prisoner, but those are not being fairly prosecuted. Moreover most of the laws are old and outdated. Therefore we are witnessing relentless sufferings of the prisoners in prison.

Inside the prisons

Like other developing countries the prisons in Bangladesh are beset with various problems e.g, accommodation, food, clothing, bedding problems, sexual violence against women, delays in judicial proceedings, other infrastructure facilities problem and obviously overcrowding. In the recent past, overcrowding of prisons has worsened significantly. In the year of 1991 average of 52,370 prisoners for a sanctioned capacity of 23,942 indicates an overcrowding rate of 218% in the prisons. From a news report published in the Daily Star on 11th September 2000 it is found that about 75,300 prisoners in the country are being kept in prisons with a capacity to 23,942 only. Especially the condition of Dhaka is far worse, where 9,507 prisoners are crowded in a place with a capacity for 2,632 prisoners. Hence overcrowding of prisoners is due mostly to the large number of prisoners awaiting trial. Even under trial prisoners are being kept inside the jail for more than twelve years at a time. So alongside expansion and modernisation of prison facilities, there is the crucial need for legal and judicial reform. And here lies the crux of the matter. The Government took up a program in 1999 to reduce overcrowding in the 9 central, 55 districts and 16 thana jails, which is yet to come into force. Initiative to enhance the capacity of different prisons had also been taken. But needless to say that with enhancing the capacity of prisons the appropriate authority should do something effective about the backlog of cases in the court.

Condition of prisoners

The living conditions of prisoners in jails are very much inhumane as well. According to the Standard Minimum Rules for the Treatment of Prisoners which Bangladesh has adopted very recently, sleeping accommodation should be in individual cells or rooms and each prisoner shall occupy by night a cell or room. If for special reasons, such as temporary overcrowding it becomes necessary for the central prison administration to make an exception to this rule, it is not desirable to have two prisoners in a cell or room. But this provision contrasts with the prison system in Bangladesh, because here, although the prisoners are entitled to 36 sq. ft. of floor space, but in reality the space available for per prisoner is only 15 sq. ft. Bedding, clothing etc. are also detrimental to the physical and mental health of the prisoner. The food which provides to the prisoner in the



prisons is not only sub standard but also unhygienic. The medical facility inside the prison is also very much inadequate. There are no medical staffs available within the Directorate of prisons to provide medical services in jails, which is contrary to Article 22(2) of the Standard Minimum Rules for the Treatment of Prisoners. Furthermore there is no lady doctor available for the women prisoners in our jail.

The children and female prisoners are also beset with various problems. Besides the accommodation, bedding, clothing or food problems, and female prisoners has been subjected to physical and sexual abuse. Children and juveniles in different jails are living in intolerable and brutal conditions and are facing cruel, inhuman and degrading treatment. In addition there are no separate ward or arrangement of the children in jail now.

Concluding remarks

Outdated laws relating to treatment of prisoners should be amended immediately to institute a more humane approach. Moreover prisoners should be allowed to send complaints against prison officials directly to the Ministry of Home affairs without censorship by jail authorities. To stop corruption inside prisons the condition for prison officers and staff should be improved. Speedy trial system should be encouraged to reduce the judicial backlog. The prisoners should be engaged in work suitable in their physique and health. They should also be received wages for their labour. For the female and juvenile prisoners separate ward should be arranged inside our prison.

True, for last 30 years Government has taken a lot of steps for the reforms and modernisation of the prison in our country. But till today those steps remain in black and white. To ensure the human rights of the prisoners inside prison these steps should be materialised without any delay.

Afroza Zerine Faisal is lecturer of law department, Prime University, Dhaka.

Coordination is must for better law and order

MONZUR HOSSAIN

Recently completed the Bangladesh Development Forum (BDF) meeting pinpointed that 'deteriorated law and order' situations and 'absence of good governance' are the main hindrances to growth and poverty eradication in Bangladesh. Our Prime Minister Begum Khaleda Zia, in her inaugural speech, honestly and boldly mentioned that "...we are not fully satisfied with our achievements. A number of development and governance problems are yet to be addressed". Thanks to the Prime Minister too for her courageous confession.

Nonetheless to mention, Bangladesh's problems are multifaceted that are interacted with each other. It is very difficult to improve one sector without giving much attention to other sectors. But it is very clear as daylight that we are in a very bad law and order situation. People are suffering from lack of safety and securities, eventually growth of many sectors are hampered. Those we are in a foreign country, our feelings are much more painful, because we have the opportunity to compare the law and order situations of both the countries. Here I can mention the situation of Japan as it is known as the most peaceful country in the world. Crime occurrences are very negligible in Japan. The interesting thing is that it is hard to see any policeman in the street. It is said that service of police in Japan is very comfortable and they are passing their time idle. One of my Professors (he is an American) made an interesting comments that there is no need of policeman in the street because every Japanese people is acting as a police. If there is any breach of discipline, they will instantly inform police. This comment bears very important message, it upholds the responsibility of the Japanese people to their society, and to their country. We don't believe that our country will turn into the standard of Japan's law and order situation within a short period of time, we may at least expect more responsibility from the people to our society and to our country. The fact is that the sufferers are the commoners. Those we are always showing our deep concern regarding law and order situation, we should question ourselves how much responsible we are to the society and to the country. We are not actually playing our proper role for the improvement of law and order situation. Only the government can do everything.

Regarding prosperity and growth, the BDF meeting emphasised singularly on good governance, and law and order situation. Development partners mentioned that to improve investment climate for attracting more FDI, to function private sector properly, to increase GDP growth 3-4% more and for overall development of the country, good governance and law and order must be ensured.

The views expressed by the development partners are worth mentioning. In this regard, it is instructive to go back to Adam Smith, the great economist and review what he listed as three essential functions of the government in his book 'The Wealth of Nations (1776)': (i) National Defense, (ii) Law and Order (Justice), and (iii) Provision of public works such as education, social infrastructure etc. It is remarkable that Adam Smith clearly meant the list to be exhaustive, and saw no other areas where he would condone government intervention. With the twentieth century world economic history behind us, Adam Smith's foresight seems remarkably perspicacious. Also history taught us that the three functions are essential to go through substantial development of a country. As our Prime Minister mentioned in her speech, "The constitution also enjoins us to create a just society, meet basic needs of the people and ensure the values of a free society to every citizen". So, where is the problem? The development partners urged the government to evolve clear strategies to bring about fundamental improvements in the aforesaid areas- but how the fundamental improvements could be achieved?

It is true that the recent past has seen fundamental changes in the government's role with the changing global situation. With the worldwide onslaught of free market economy, the direct role of government is shrinking and its indirect role is increasing. In case of market failures, it is expected that market forces would automatically correct this failure. The fact is that the government has to play some role of coordinator, regulator and in some situations alternative. What if the government fails? Who will play the role of coordinator or regulator? I am not arguing that the government fully fails in maintaining law and order situation, but there are some sorts of failures, such as coordination failures of course. Now the question, who will play the role of coordinator? This is also a big question to the public sector economists. In this situation the civil society can play the role of coordinator between the government, the law enforcing agency and the general public. However, there may be different solution of coordination, the policy makers can think about the best possible way. In this article, I am proposing one of the solutions. My proposal is just for Dhaka city on trial basis. Since a coordination factor is required, a group of five members can be formed to coordinate the law and order situation of a ward or two wards.

Formation of the group

The group members will include two academicians (one university professor, one college/school teacher), one retired judge of high court/Supreme Court, one retired army/police officer, one professional person such as doctor, engineer, lawyer etc. The group members must have general reputation as 'honest'. I don't want to include the politicians in this group because it is generally believed that there is a nexus between politicians, police and criminals that provides protective umbrella to the criminals. The service of the group members may be voluntary or involuntary. This will be a 'high powered' group which must have direct access to the top level of the government, law enforcing agency etc. They have an office and the office will be equipped with modern technology such as Internet, fax, telephone etc. There might be a central coordination committee to monitor the activities of individual groups that will work in the Prime Minister's office.

Coordination job

The 'group' will be responsible for coordinating the law and order situation of the concerned ward(s). They will motivate people to give information regarding criminals, crime occurrences of that ward physically or through e-mail, fax, or telephone. The 'group' will immediately order the nearest 'Thana' police to take action against the informed case. If the group finds any negligence in taking action, they will notice it to the top level of the government or law-enforcing agency. The group members also will have the authority to solve the local disputes by arbitration.

'Coordination failure' is one of the fundamental problems of every collective effort. This problem should be addressed innovatively. It is hoped that improving law and order situation will reduce the extent of corruption. Because corruption and deteriorated law and order situation is highly positively correlated. In sum, to achieve sustainable economic growth, improvement of law and order situation is a compelling necessity.

Monzur Hossain is a Ph.D. student at National Graduate Institute for Policy Studies, Tokyo, Japan.

Corresponding Law Desk

Please send your mails, queries, and opinions to: post - Law Desk, The Daily Star, 19 Karwan Bazar, Dhaka-1215; telephone 8124944, 8124955, 8124966; fax 8125155, 8126154; email dslawdesk@yahoo.co.uk