

LAW opinion



LAW in-depth



Strong local government

Traditional mindset of UP chairman must be changed

DR. BADIUL ALAM MAJUMDAR

THE election of the Union Parishad (UP), the only on-going local government body of our country, was completed with much fanfare in early this year. In this election nearly 55,000 local representatives, including about 13,000 women, were elected by the people at the grassroots. These leaders have already taken office and the question that is now in the minds of many what is next?

The Union Parishad is a very important institution in our country in that it can play a critical role in institutionalising democracy, achieving good governance and fostering socio-economic development. Democratic norms and practices at the grassroots can provide a solid foundation for democracy at the national level. As a strong base is needed for a building to stand on, similarly a vibrant democratic system is required to make the democracy function effectively at the higher echelon.

Good governance requires, among other things, effective people's participation as well as transparency and accountability in the process of governance. Only at the grassroots democratic governance can transition from the "representative" type to a "participatory" variety, reflecting greater participation of the people. Similarly, transparency and accountability can best be practiced at the lower echelon.

Democratic governance is vital for development. As Nobel Prize winning economist Amartya Sen has written, "Democracy is not only the goal of development, it is also the primary means of development." Strong and effective democratic government, especially participatory government at the local level is critically important for the socio-economic resurgence of a country like Bangladesh. People in our country face many challenges on a daily basis and these challenges cannot be solved by the government alone or anyone else for that matter. It will require that the people facing the problems take the primary responsibility for their solution. Most problems are locally created and can and must also be solved locally, at their roots, by awakening and mobilising people, utilising local resources and local leadership, and planning from the bottom. Elected representatives of local democratic institutions can be the change agents in this process and can foment a social movement for this purpose. The "people's planning" carried out by Panchayati raj institutions in Kerala, India is an excellent example of such a bottom-up planning process.

In 1992, the SAARC Independent Commission on Poverty Alleviation pointed out that the traditional, top-down, service delivery paradigm of development could never be effective in reducing poverty in South Asia. The depth and complexity of poverty in South Asia and the enormous numbers of people affected are too vast. The only pathway to poverty eradication, the Commission asserted, is to catalyse a process of self-reliant development, built primarily on the talent, ingenuity and resources of the people themselves. This can only be materialised by vibrant democratic local government institutions.

Our Hon'ble Prime Minister in her inaugural speech to the nation after getting re-elected in October 2001, alluded to a similar development strategy. She asserted that government's main responsibility is to create an enabling environment, while the people have to take the responsibility to achieve progress and prosperity themselves. This obviously calls for a new, people-centered development approach.

The recent UP election, in which nearly 55,000 new representatives were elected, offers a great opportunity to put into practice such a people-centered development paradigm. This will require changing their long entrenched mindset

- mindset of depending on the national government for resources and directions. This will also require a new realisation that the so-called "poor" people are not "problems," but they are the "solutions" of poverty and "keys" to their own development. In other words, the realisation must be that if the poor are mobilised, their creativity unleashed and opportunities created for them, they can become the principal authors of their own future.

In spite of the vast potentials to contribute to institutionalising democracy, achieving good governance and promoting socio-economic development, the roles of UP representatives are at present largely confined to a few traditional, mundane activities. These activities include building infrastructure, dispensing justice and distributing relief materials. They have in essence been working as "agents" of the national government and depending on its favour and largesse. However, these traditional roles can easily be performed by low level functionaries, for they do not require "leading" people awakening, unleashing and mobilising them.

If we are to take advantage of the enormous potentials created by the recent election to solve many of our problems, we must without delay initiate a radical decentralisation programme to give the newly elected representatives the necessary responsibilities, powers and resources. History teaches that more closer the power and resources to the people, greater transparency and accountability are achieved in their utilisation and more benefits do they accrue to the people. Along with the decentralisation initiative, there must also be an effort to prepare the elected local leaders for the tasks ahead. This will require getting them, on a priority basis, out of their traditional mindset regarding their roles and responsibilities. This obviously calls for transforming their present roles and enhancing their skills and leadership, requiring appropriate training and empowerment.

In order to fully utilise the leadership of the newly elected UP leaders to move the country ahead, they need two types of training. They first need the so-called statutory training that will inform them of their powers, responsibilities and the rules governing their activities, as laid out in statutes, government circulars and guidelines. Fortunately, the government has already implemented such a training programme.

The newly elected leaders must also be given transformational training training which will change their mindset and transform their roles in addition to the informational or statutory training. Such training will help them come out of their present state of "thinking within the box" about their roles, confined primarily to infrastructure building and providing a few traditional and rudimentary services. In other words, a successful transformational training, with an appropriate follow-



up mechanism in place, will enable the elected representatives to become catalysts in awakening their constituents to the vision for a better future and mobilising them for action for bringing about measurable improvements in their quality of life rather than merely performing a service delivery role.

With the transformation of their mindset and their roles, the UP representatives would be able to contribute to solving the challenges that people face with respect to quality of education, health awareness, safe water, hooliganism, drug abuse, environmental degradation, women's repression, dowry, child marriage, unplanned birth, and even creating self-employment. For, most of these challenges are created locally and must also be solved locally. When people are mobilised, they work in unison and there are changes in their habits and attitudes, many of these challenges get solved without external financial support. For example, when people come together and work shoulder to shoulder, a form of "social capital" is created, which can be utilised for setting up educational institutions, health centers and even for organising joint income earning projects. Likewise when people are mobilised, they can take united stand and foment a social movement against serious social ills such as hooliganism, toll-collection, corruption and repression of women.

If we are to take advantage of the tremendous possibilities created as a result of the recent UP election, immediate steps should be taken to arrange training for changing the mindset of the elected leaders, which will transform their traditional roles. I hope the government will forthwith make the necessary arrangements for such training and involve those in the non-government sectors with the requisite skills, expertise and experience.

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RIGHTS investigation



Shumon murder by police torture at Khilgaon Thana

ODHIKAR

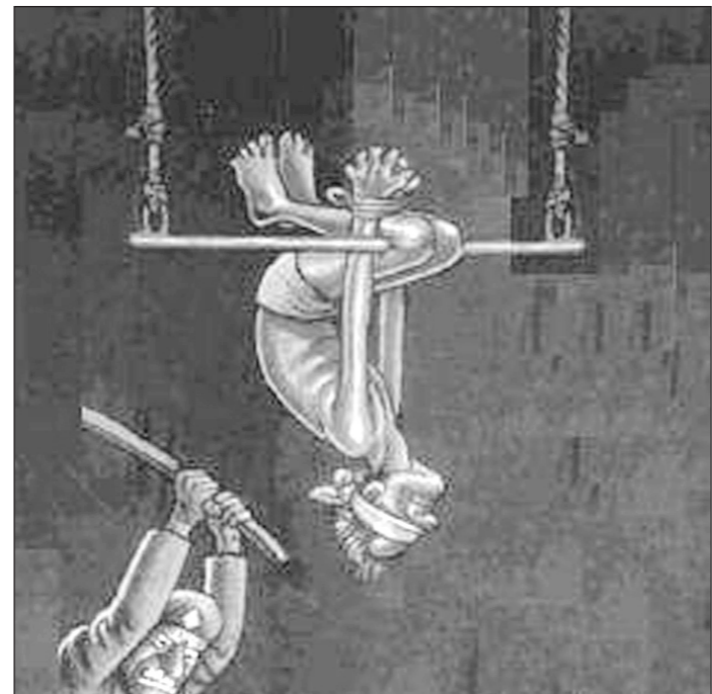
ON 23 October, Shumon went to his uncle's house in the evening to attend an invitation. While he was coming back home at 10 p.m., Police arrested him along with four other persons. His family members, on getting the information, went to the Thana. They found Shumon handcuffed in the Thana custody. As claimed by father of Shumon, he was quite normal then. He went to the Second Officer, Sub-Inspector (SI) Mahub and asked him the reason for the arrest. SI Mahub told him that Shumon was arrested while he attempted to commit a robbery.

Shumon's father told him that he was never involved in any illegal activity. There was no general diary (GD) or suit filed against him in the Thana. He was arrested as part of a conspiracy. The Second Officer demanded Tk. 30 thousand from Shumon's father to release Shumon. He demanded the money to be paid to him by 3.30 a.m. that night. It was not possible for Shumon's father to arrange Tk. 30 thousand within so short period of time. He could arrange Tk. 10 thousand from his home. He sought help from the Ward Commissioner (Ward no.24) Mr. Kazol. Mr. Kazol told him to go to his home the next morning. Going there, Shumon's father did not find him at home. So he could not arrange the rest of the money.

In the morning of 24 October, Shumon's mother Nurjahan Begum went to Khilgaon Thana and meet her son after giving bribe of Tk. 100. She found Shumon very exhausted. Shumon told her that he was beaten by SI Mahub up at 4.30 am at night. He was not given any food either. Shumon's mother wanted to give him some food but police did not allow her. Shumon told his mother to give police the money demanded by the police or else he would be killed. Shumon's mother went back to home and again came back to Thana at 10.30 a.m. with her husband. They found Shumon lying on the floor of Thana custody. He was so severely beaten that he could not stand on his own feet. His hands, legs and loins bore the signs of torture.

Shumon again told his parents to pay police the money that they demanded. He told again that he was beaten up for money. Second Officer Mahub beat him up twice at night. When Shumon's father went to Second Officer, he (second officer) used abusive language with him. He told Shumon's father to contact the officer-in-charge to get his son released. When Shumon's father contacted the officer-in-charge, he told that illegal arms were found in Shumon's possession. He also claimed that Shumon was involved in a robbery incident. He demanded Tk. one lakh from Shumon's father. On getting money, police would produce Shumon before court showing him arrested under section 54 of the Cr.P.C. (freeing him from robbery case) and he would be released from court on bail.

That was a Friday and the banks were closed. So it was not possible for Shumon's father to arrange Tk. one lakh. He could arrange Tk. 10 thousand in cash



and he offered a cheque of Tk. 40 thousand to the officer-in-charge. The officer-in-charge got angry with this. He got Shumon's parents out of Thana and started beating Shumon in custody. Shumon's parents saw the incident from outside the custody. At one stage, the officer-in-charge pushed Shumon under his boot on the floor and he became unconscious. Blood was coming out from his nose. Police immediately transferred him to Dhaka Medical College Hospital.

At 3 p.m. in the afternoon, Shumon's elder brother Hira went to hospital to see Shumon. They found police surrounding the hospital. Shumon was kept on the floor with saline pushed in his hands at ward no.33. After half an hour, his body was covered with a white cloth.

On 25 October in the morning, Shumon's father went to the hospital. At 4.30 p.m. Magistrate Abdur Rouf came to hospital to make autopsy report. Shumon's family members feared that shumon died before and police transferred his dead body to hospital to evade the responsibility of his death in police custody.

Shumon's father alleged that the Magistrate did not prepare the autopsy report properly. According to Magistrate's description, a police officer Sobhan prepared the autopsy report. They forced Shumon's father to sign the autopsy report. He alleged that police had influenced the Magistrate to prepare the report. There were signs of torture on various parts of Shumon's body but it was not mentioned in the autopsy report. On 26 October at 12.30 p.m., the post-mortem of the dead body of Shumon was done.

On 26 October at 3 p.m., hundreds of people surrounded the Khilgaon Thana. They chanted slogans against the Officer-in-charge Entezar Rahman. Odhikar investigators were not allowed to enter into the Thana by police. The officer-in-charge did not talk to Odhikar investigators and went out of Thana. The Duty Officer SI Aziz informed that two cases were filed against Shumon; one for attempted robbery (case # 57, section 448/323/379 under Penal Code) and another for possessing illegal arms (case # 58 under section 19(a) of Arms Act along with section 399/402 of Penal Code).

He denied that Shumon was beaten for money in Thana custody. He claimed that Shumon was beaten by people when he attempted to commit robbery and he died of injury in the hospital. Police themselves gave contradictory information on Shumon's death. Once police told that Shumon became injured while he tried to jump from the roof of a house while he went there to commit robbery. People in the locality denied any incident of Shumon being beaten up by the general public.

The owner of the house where police claimed the robbery attempt took place, Nurul Islam Munshi claimed that there was no attempt of robbery in his house. He was forced by police to implicate Shumon in the attempt of robbery case.

It was revealed from the hospital sources that Shumon died due to excessive internal hemorrhage. The Head of the Forensic Department of Dhaka Medical College Dr. Habibur Rahman informed that signs of beating were found on hands and legs of Shumon. His leg mussels were smashed by beating. His forehead skin bore sign of beating.

The Officer-in-charge of Khilgaon Thana Entezar Rahman was closed on 27 October. On 28 October, Shumon's mother filed a case against the Officer-in-charge and the Second Officer. The OC was suspended after the case filed. A three-member probe committee headed by DIG Abdul Mannan was formed to investigate the incident. On 4th November the robe committee gave its report where it was claimed that Shumon did not die at police custody, rather he died by mob-beating when he had gone to commit robbery. The report also claimed that the parents of Shumon could not prove that police demanded money from them. The report commented that the OC failed to protect Shumon from mob beating.

Odhikar is a human rights organisation, prepared the report after talking with Shumon's parents, medical expert and the local people.

Collective security system of UN at a glance

HASSAN FARUK AL IMRAN

The definition of Collective Security is "... the proposition that aggressive and unlawful use of force by one nation against another will be met by the combined strength of all other nations. All will co-operate in controlling a disturber of the peace. They will act as one for all and all for one. Their combined strength will serve as a guarantee for the security of each".

The concept of Collective Security is indicated from the very beginning of the UN Charter. Article 1 provides that the purpose of the UN is to maintain international peace and security and "to take effective collective measure for the prevention of threats to the peace".

The League of Nation's experience was not good, the covenant of it's gave more emphasis on economic sanctions, which failed to prevent the 2nd World War. As a result the drafters of the UN Charter aimed to create a more advanced system of Collective Security for the restoration of international peace and security (especially Chapter VII of UN Charter). Moreover, Article 2(4) UN Charter prohibits 'using of force' or 'threat to use of force' against any states. The provision of Article 2(4) is regarded as principle of customary international law; even it is binding on the few States that are not member of UN nations (Nicaragua v USA, ICJ, Rep 1985).

However, the provision of Article 2(4) is not an absolute theory. There are three exceptions under UN Charter to 'use of force'. Firstly, under Articles 12 and 24 Security Council is 'primarily responsible' to maintain international peace and security; as a result under Article 39 Security Council can use collective force after determination the 'threat of peace'. Secondly, under Article 51 individual or collective right of self-defence may be taken only 'until the Security Council has taken measures necessary to restore international peace and security'. Thirdly, Article 53(1) allows regional use of force without the authorisation of Security Council if there is a breach of peace.

Interestingly, the practice of Article 2(4) is different from its theoretical exceptions. Practice has been developed that use of force may be lawful if there is any civil war for national liberation, protection of national and property abroad, humanitarian grounds (Indian's intervention in East Pakistan in 1971, NATO's action against Serbia).

Whether the Collective Security (or 'use of force') is the only way to restore international peace and security? In a simple word the answer is 'no'. Article 2(3) provides "all members shall settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered". Chapter VI of UN gives details guidelines on peaceful settlement (Articles 33-38) that includes mediation, negotiation, arbitration, and judicial settlement.

When Collective Security or use of force is inevitable? Article 39 is the first article of Chapter VII, which provides "the Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or resort to international peace and security".

Therefore, firstly, it is important to consider what is 'threat to the peace', 'breach of the peace', or 'act of aggression', that is the preconditions to the exercise of Security Council's power. Surprisingly, the Charter does not try to define the terms 'aggression'; as a result in 1974 General Assembly (Resolution 3314) adopted the definition of aggression.

The definition of aggression provides "aggression is the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State or any other manner inconsistent with the Charter of the United Nations, as set out in this definition".

Enforcement action of Collective Security under UN Charter can take two forms: Article 41 provides for 'non-military' enforcement action (such as trade boycott, an arms embargo) and Article 42 provides for 'military' action. In practice, 'non-military' sanctions may well be an effective remedy in some cases but the UN Charter recognised that some 'acts of aggression' may be 'so serious' that the collective 'use of force' is needed. As a result under Article 42 the Security Council may take military action, which "may be necessary to maintain or restore international peace and security".

Interestingly, Article 42 must be read in conjunction with Article 43, which provides for "special agreement or arrangements" is needed for arm forces. Moreover, Article 47 provides "there shall be established a Military Staff Committee to advise and assist the Security Council on all questions relating to the Security Council's military requirements for the maintenance of international peace and security." But the reality is due to disagreements between the five permanent members (US, UK, France, Soviet Union, China) of Security Council special agreement under Article 43 had never been made. Questions arise: who is the Commander in Chief of that force? How it will be operated?

In practice, by using different powers, and by following different procedure, Security Council has been able to authorise 'use of force' against a State as a means of restoring international peace and security, e.g. Iraq's invasion of Kuwait (Resolution 678, (1990)), where military force was operated under United State's command on behalf of Security Council.

Chapter VII of UN Charter also gives authority to regional organisations to 'use of force'. But in practice it creates problem. It was criticised that the mechanisms of the relationship between Security Council and regional body are not explicitly defined in UN charter. The greatest area of ambiguity is that of hierarchy. Article 53(1) provides "no enforcement action shall be under taken by regional arrangements or regional agencies without the authorisation of the Security Council". But in practice the powerful regional body may ignore the approval of Security Council authorisation, which is the supreme body to maintain global peace and security; example, NATO's action in Kosovo.

At present, it is clear that after the end of the Cold War the Security Council is more effective. Security Council can use of its power under Chapter VII not only against an 'aggression' or for 'breach of peace' (Article 39) but also for various different purposes i.e., humanitarian reasons, internal conflict (Somalia, Rwanda) peacekeeping and determination of border (Iraq - Kuwait war). However, reality is - still the theory and concept of UN Charter has never been followed. Still there is 'no' special arrangements or agreement under Article 43. Moreover, 'no' permanent military force has been formed as a result Security Council enforcing alternatively way by giving authority to use of force on behalf of Security Council (Gulf War 1990 91).

Most recently, US and UK have used military force against Iraq because of 'aggression' without Security Council's authorisation by ignoring international law. This raises a hoard of questions about the UN Collective Security system. Whether the superpower is more powerful than Security Council? Who gave them authority to 'use of force' against Iraq? Why United States is taking initiative for 'use of force' - only for its political or economic interest? What would be if United States continue more frequently this practice in future? Then, what would be the situation of UN Collective Security. Therefore, we have to wait for future for full evaluation of this type of 'use of force'.

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