RIGHTS WATCH

Rights and Challenges of Older People in Bangladesh

Dr. Nahid Ferdousi

The United Nations has initiated various international guidelines for the well-being, dignity, development and realisation of human rights of older persons. Consequently, many developed and developing countries have paid attention to develop elderly social support programme and welfare based legal framework in line with UN standards. Older persons as senior citizens deserve more attention and care from the State as well as the society but their rights are not being ensured extensively in Bangladesh. The problem underlies the fact that this issue is not prioritised at the policy level and that the laws in place are not properly implemented.

The government took few initiatives for the older people, such as pension system, retirement benefits and some other initiatives under Social Safety Net (SSN) programmes, i.e. the Old Age Allowance (OAA), the Allowances for the Widow, Deserted and Destitute Women, the Vulnerable Group Development (VGF) and so on. However, a vast number of people from the older

population remains outside the ambit of these programmes. The government is providing pension benefits for elderly after their retirement specially for the government sector. But private sector workers and migrant older workers do not receive any pension. Thus, most of the elderly face various challenges in financial issues under the exiting social security programs.

The National Policy on Older Persons was formulated in 2013. Although the policy is a positive initiative, due to lack of specific legal framework and sincere efforts from the concerned ministries, it yet to be properly implemented. Most of the older people and service providers authorities are unaware of the policy. Also, the elderly people are not getting public transport facilities, residential establishments, separate healthcare at the grassroots level and other infrastructure in hospitals, airports, buildings and different recreational places, as envisaged under the policy.

In the same year 2013, the Maintenance of Parents Act was enacted for giving maintenance to parents by the children. Before enactment of this Act, there was no specific legislation to bring any legal action for maintenance rights of the parents. The Act can be considered as a milestone in the arena of rights of elderly people. The law ensures the right to food, cloth, shelter, medical facilities for parents and grandparents (sections 2 & 4). In case of separate living of the parents, the children are responsible to give them a reasonable amount of money from their daily, monthly or yearly income (sec 7). The law also ensures the parents maintenance through equal responsibilities of male and female children. Another important provision entails that the children shall never compel their parents to live in parents care or in any other place against their will (sec 3). The offences are cognisable, bailable and compoundable. In case of obstruction or non-cooperation from son's wife or daughter's husband or children or any other relatives, such person shall be liable as abettor to the same crime and punishment (sec 6).

Although the law has established the parents' legal entitlement to maintenance from the children, it is not free from some drawbacks. The law does not provide for the maintenance of adoptive or childless parents. So, it does not include adoptive and step-parents under the term 'parents'. Additionally, the law does not mention by whom and as to how 'reasonable amount of money' is to be paid by children for parents' maintenance. In the context of India, section 5 of the Maintenance and Welfare of Parents and Senior Citizens Act 2007 incorporates assenting and step guardians of children which expands the scope to get maintenance.

> Older persons as senior citizens deserve more attention and care from the State as well as the society but their rights are not being ensured extensively in Bangladesh.

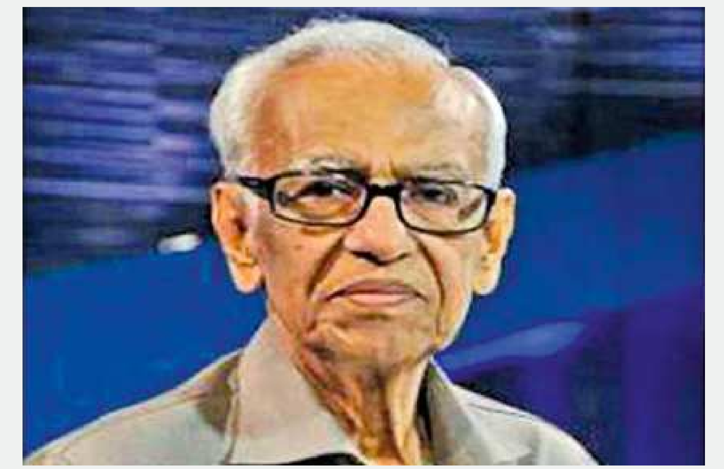
According to section 5(2) of the Act, the court may arrange children to give a month to month recompense to support elderly parents. But the Parents Maintenance Act 2013 of Bangladesh does not have similar provisions. However, looking at the positive aspects of the law, it can be said that, if the law is properly implemented, the safety, security and all other opportunities for many uncared elderly parents will be ensured. But the Rule under the Act has not yet been formulated.

In 2017, the Foundation for the Development of Older Person Act (Draft) was prepared under the Ministry of Social Welfare. The government has planned to establish 'Elders Development Foundation' (*Probin Unnayan Foundation*) by enacting the Foundation for the Development of Older Person Act. It is set to be enacted for the development of older persons. The major objectives of the draft law are to ensure facilities such as food, clothing, communication and treatment for the increasing number of older persons. With the present demands of elderly, the draft law should be enacted for the execution of the national policy and for providing social service facilities to ease the plight of the older people. Additionally, the government should adopt the Madrid Plan of Action towards achieving the Agenda 2030 for Sustainable Development of all citizens including the elderly so that they can pass their later life with respect, dignity and peace.

THE WRITER IS PROFESSOR OF LAW, BANGLADESH OPEN UNIVERSITY, BANGLADESH.

LAW TRIBUTE

Reflecting on the legacy of Barrister Rafique-ul Huq



Shah Monjurul Hoque

Barrister Rafique-ul Huq, Senior Advocate of the Supreme Court of Bangladesh, breathed his last on October 24 leaving behind an ineffaceable legacy in the legal arena of Bangladesh. There is hardly any single areas of law that was not enriched by the unparalleled acumen of his scholarly legal mind.

He contributed significantly to the development of an array of branches of law, including constitutional, civil, criminal, admiralty, customs, tax, and arbitration. He played the role of an *amicus curie* in many cases where crucial issues regarding the interpretation of the Constitution of Bangladesh were involved, and he assisted the Supreme Court in answering pertinent questions of law. Mr. Huq had conducted thousands of cases, nearly 500 of which have been reported in the recognised law reports.

Late Mr. Huq was the pioneer of the company and corporate law in Bangladesh as well. He was one of the members of the Company Law Reform Committee in 1977. In addition, he was a member of the National Committee related to Finance, Banking and Credit wherein he acted as Chairman of the Finance and Banking Sub-Committee and played a pivotal role in reforming the banking laws. He also played an instrumental role in enacting various laws including Bangladesh Bank Orders and pertaining to Private Investment. He was one of the members of the Committee formed for developing the share market. He also served as Chairman of the Corporate Law Committee. Moreover, he was the member of International Chamber of Commerce, Asia, and International Court of Arbitration.

His acumen reigned above partisan politics, across regimes. Post-independence, he was directly involved with the drafting of laws during the regime of the Father of the Nation, Bangabandhu Sheikh Mujibur Rahman. During that time, he was asked to draft the Nationalisation Order, 1972, and subsequently, he drafted de-nationalisation law while Mr. Ziaur Rahman was in power. Later, he challenged the indemnity ordinance (indemnifying murderers of Bangabandhu) passed during the period of Ziaur Rahman before the Hon'ble High Court Division and got the same declared illegal and unconstitutional. His contribution as a lawyer during the national crisis of 2007-2009 was enormous. He represented people of different political identities and intersections. He acted as a lawyer of many political leaders, including the Prime Minister, Sheikh Hasina, and thus played a significant lawyerly role in reinstating rule of law and democracy at that time.

From 1975 to 1976, he acted as Chairman of the Bar Council Tribunal as well as Election Tribunal. He was appointed as the Attorney General for Bangladesh in 1990 and in that capacity, he also acted as Chairman of Bangladesh Bar Council. Moreover, he was one of the members of the representative team who attended the General Assembly Meeting of the United Nations in 1990.

His passion, dedication, sincerity, professional integrity, and commitment towards rule of law, judiciary, country, and people at large made his life worth celebrating and reflecting on. He was a great legal thinker, who lived in a time way ahead of his own. His legacy will stay as a legendary one – of one Barrister Rafique-ul Huq, of his time and forward.

THE WRITER IS AN ADVOCATE, SUPREME COURT OF BANGLADESH.

LAW LETTER

WILL DEATH PENALTY END THE EPIDEMIC OF RAPE?

Mehadi Hasan

In the context of increasing numbers of rape, on many occasions, the so-called 'cross-fire' and death penalty tend to come up as two apparently viable options for addressing the offence of rape.However, a demand for both of the above, masks the real problem underlying the crisis and have their own shares of problems.

In the wake of an increasing number of incidents of rape, recently, the President promulgated an ordinance increasing the maximum punishment in rape cases to death penalty from life imprisonment. It took immediate effect and amended Section 9(1) of theWomen and children Repression Prevention Act, 2000 prescribing death as the highest punishment for the offence of rape. Section 9(2) of the aforesaid Act prescribes the punishment of death penalty or imprisonment for life for the rapist, if in consequence of rape or any act by him after rape, the victim dies.

It is to be mentioned that, previously, the highest punishment for rape was life imprisonment which is a strict punishment itself. Now the question arises, in spite of provisions of strict penalties under law, what was the reason behind the increase in the number of rape? And the answer is- the prevailing culture of impunity. Due to social stigma, threats by the offenders or local political goons, and delay in litigation process, many victims and their families prefer not to report incidents of rape.Many incidents of rape remain unreported or untried.Due to various legal and institutional factors e.g. lack of evidence, delay in sending the rape victim for forensic examination, faulty and biased investigation, the rate of conviction and punishment in rape cases is very low. That means, in majority of rape incidents, the rapist gets away unpunished. This culture of impunity gives confidence to the rapists to repeat the heinous crime and potential rapists to actually commit the crime.

On the other hand, extrajudicial killing in the name of 'crossfire' is not only illegal but also unconstitutional. Extrajudicial killings violate Articles 27, 31 and 35 of the Constitution, which guarantee, for every citizen, equal protection of law, the right that no action detrimental to life, liberty etc. shall be taken except in accordance with law, the right to be punished only upon a public and speedy trial by an independent and impartial court.

In order to abolish the culture of rape from the society, we need to get rid of the culture of impunity. In this regard, the society, the political parties, the law enforcement agencies, and the court, all need to perform their respective duties properly. Alongside implementing the existing laws, the victim and the witness should be given protection so that they can give their statement without any hesitation and fear. The society must stop victim blaming. Instead,we need to focus on our moral education and stand by the rape victims so that they can get justice.

The court must strive to ensure speedy disposal of rape cases. By abolishing the culture of impunity, we can build a society where our children and women will feel safe. Neither death penalty nor extrajudicial killing can actually be an answer in this regard.

THE WRITER IS STUDENT OF LAW, NORTH SOUTH UNIVERSITY.

LAW ANALYSIS

Proposed Bangladesh Land Act and land rights of the indigenous people

Mahera Binte Rafiq

The proposed 'Bangladesh Land Act 2020' has stirred a good many quarters of thinkers. However, what has not come to much focus is the issue of land rights of the indigenous people. For generations, the indigenous people are fighting for their ancestors' lands which have been systematically taken away either for settling outsiders or for realising various government projects. It is high time their rights be recognised and implemented in and through domestic laws.

Article 6(2) of the Bangladesh Constitution provides that, 'The people of Bangladesh shall be known as Bangalees as a nation and the citizens of Bangladesh shall be known as Bangladeshis'. This provision masks indigenous people's identities with a majoritarian identity: both in terms of nationality and citizenship. Article 23A, articulates that 'it should be the policy of the state to take step to protect and develop unique local culture and tradition of the tribes, minor races, ethnic sects and communities.' However, without preserving the economic, political, educational and land rights it seems next to impossible to protect the cultural rights of the indigenous people.

The proposed Land Act in Section 112 (5) provides that no land owned by indigenous community should be taken over unless for the development and protection of them and their environment. On the other hand, Section 111 deals with the regular provision of acquisition in case of public interest subject to the approval of the District Commissioner. If any party feels aggrieved by such decision, (s)he has to file objection against such application to the district commissioner under section 118. An authority who is supposed to give the permission for acquisition, is assigned to adjudicate upon complaint on the same issue. It strikes at the very root of the basic principles of natural justice.

> The root of the problem lies in the lack of inclusivity of the indigenous community in proper legal and administrative forums. It is evident from numerous case studies that though there are provisions for compensation and settling issues regarding land acquisition of indigenous communities, those have merely been followed.

The lifestyle of the indigenous people is unique; because they tend to have a very close connection with and because they depend on their surrounding nature, lands, forests and swamps for their living. Though Section 112(5) gives protection to the lands recorded in their names (apparently their homestead and immovable properties owned by them), it does not guarantee protection from changes in surrounding areas' forests, and lands by privatisation, commercialisation and other projects. But the obligation not to dismantle or bring any structural changes in these areas is well recognised under international law such as ILO Convention No. 107, United Nation's Declaration on the Rights of Indigenous People etc. If such areas be selected for acquisition under section 111, their life, culture, habitat and livelihood will be subjected to serious threat. And if so happens, for the impropriety of section 118, they will remain incompetent to get any remedy. In this regard, we cannot conclude that if the proposed land act comes into force, the section 112 (5) shall be enough to safeguard the interest of the indigenous community. The root of the problem lies in the lack of inclusivity of the indigenous community in proper legal and administrative forums. It is evident from numerous case studies that though there are provisions for compensation and settling issues regarding land acquisition of indigenous communities, those have merely been followed.

Under Chittagong Hill Tracts Treaty of 1997, no khas land or tenancy of hill tracts can be subjected to disposal, transfer or lease without the prior permission of the regional district councils. However, the reality is that the regional district councils representing the indigenous communities have not yet been entrusted with the responsibility of land administration, general administration, law and order, and local policing according to the CHT Accord of 1997. All these functions are regulated by and under the authority of the local district Commissioner. Fewer provisions of the Peace Treaty have been implemented till date. In this context, if the proposed Land Act comes into force consigning all powers to the District Commissioner and the Settlement Officer, the council's provision would become meaningless.

In this backdrop, a comprehensive legislation on protecting the rights of the indigenous people needs to be enacted. Additionally, Peace treaty of 1997 needs to be properly implemented. To enforce the Peace Treaty in the fullest sense, land administration of hill tract areas and other local administrative responsibilities should be assigned to the CHT district councils. All the Hill tract Regional Councils (Bandarban, Rangamati, Khagracgari) should include the local tribal groups therein according to the Act. All the government projects in CHT areas should be initiated after consulting with the indigenous communities. There should be special allocation for the advancement of the indigenous community in the national budget.

THE WRITER IS LL.M. STUDENT AT THE UNIVERSITY OF DHAKA.