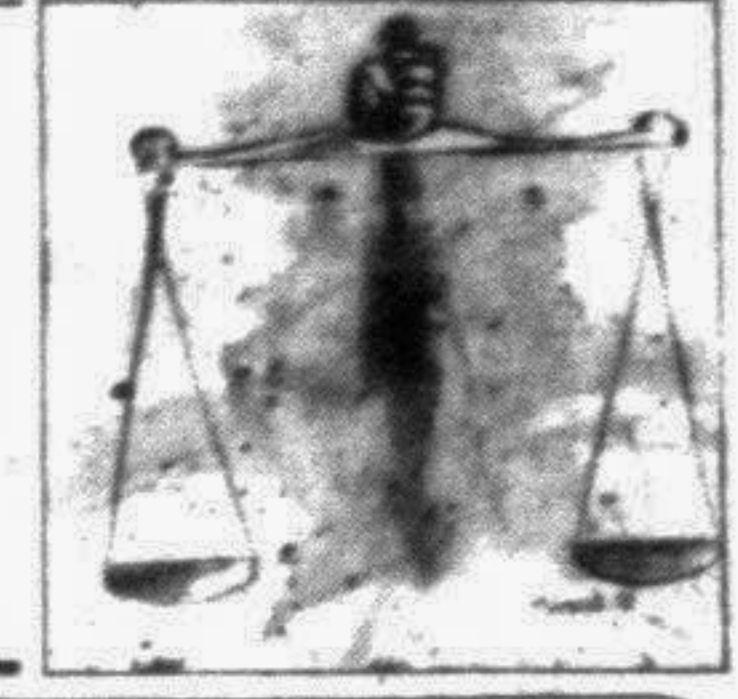


# Law and Our Rights



## Free and Fair at Last?

Election laws have yet to give true meaning to the participation of the people. **Lamis Hossain** looks at recent changes to the law and asks **Barrister Amir-ul Islam** and the SRG for their comments



Voters line up with their ID cards at the Dapunia model elections. — Star photo by Enamul Haq.

WITH the passage of the bill, the franchise of all adult citizens will be safeguarded effectively. Law Minister Mirza Golam Hafiz told the Jatiya Sangsad which approved of the Representation of the People (Amendment) Act, 1994.

But do the changes made to the Representation of the People Order 1972 (RPO) guarantee a foolproof electoral system at last? The recent changes to our electoral laws do contain some positive clauses, but do these amendments have enough teeth?

Leaving aside any political considerations, the Daily Star compared the original 1972 Order with the changes made. Two individuals were requested to add their comments: Barrister Amir-ul Islam who has participated in international election observer teams, and Faruk Ghoni, Executive Director of Manobik Sahajyo Sangstha/Study Research Group (SRG), an NGO with experience in election monitoring.

### Evaluating the amendments

Quite a few of the changes merely specify existing provisions. For example, the new power given to the EC under article 7(6), to withdraw an officer, public functionary or law enforcing official, who obstructs, prevents or influences the conduct of free and fair elections, is not a radical improvement. Article 84 of the RPO already contains provisions to penalise such individuals who persuade, dissuade or influence someone's vote.

The more remarkable move has been allowing the EC to stop the polls at any polling station at any stage of the election if it is convinced that it shall not be able to ensure the conduct of the election justly, freely, fairly and in accordance with the law. Barrister Islam points out that instead of confining the scope of annulment to the 'polling station', it could have been easily extended to the whole 'constituency'.

It can be argued that the EC already has enough room to manoeuvre under our Constitution which stipulates under article 118(4). That the Election Commission shall be independent in the exercise of its functions and subject only to this Constitution and any other law.

The problem is not with the power but with the abuse of the office in the past. Barrister Amir-ul Islam be-

lieves, "Since consecutive martial laws in this country, elections and the EC were made so perverse that despite a mass movement and the fall of Ershad, and despite the hope created by the fairly free elections in 1991, the office of EC has not been able to revert to its Constitutional role." The Magura and Mirpur elections according to him showed how the EC reduced itself to a mere rubber stamp by failing to conduct an enquiry and by validating elections which were not wholly satisfactory. "Bangladesh ought not to lack in personality such as we see in Mr. Seshan (Chief Election Commissioner of India) and Mr. De Silva (CEC of Sri Lanka) who has been running the elections for the last 12 years," he added. "Most of the laws of other countries also provide for mandatory submission of reports by the EC to the Parliament," says the Barrister. He believes that this could have been included in the re-

cent changes. Another notable inclusion is the provision for a pre-poll enquiry committee consisting of judicial officers under article 91A. The Committee will be able to enquire on any matter which may constitute an offence under the Order, either on information received by it or on its own initiative. The SRG believes that this could have been an appropriate place to encourage participation of the people by allowing respected members of the community to sit on the Committee. The Committee is also obliged to finish any enquiry before the election is over. This precludes it from looking into past elections such as the Magura one. Barrister Islam finds this limitation "curious". In his opinion, the power of the Committee should be extended not only to pre-poll irregularities but to irregularities as a whole and the enquiry should not be restricted to the

election period. The most welcome change is the introduction of voter ID cards. To encourage the people to value their card, Barrister Islam recommends that the cards be allowed for other purposes such as finding a job, getting health benefit, and getting a driver's license. "The introduction of ID cards is very commendable but it is too heavy a burden on the lean EC. It is an enormous exercise," Ghoni commented. He was an observer at the Dapunia elections in April 1994 where ID cards could not be issued to all the voters despite two years of preparation by the EC. "The election process starts with the population census," he added, "A complete voter's list takes about a year to complete". If the list is prepared on the basis of a scientific preparatory census, it could also help guarantee the displaced person's right to vote. Should parliament be dissolved and elections called within 90 days, it will be difficult to issue the cards unless the EC goes on a "war footing".

Another addition called an "excellent move" by the SRG is article 63(1)(e) which allows the Tribunal to declare the election of a returned candidate void if he has spent more money than is allowed. Barrister Islam would take this a step further by providing for the funds of political parties to be audited and by making the national budget bear the expenses of the parties, including the elections. Similar provisions exist in Sri Lanka. This would address the problem of black money more effectively.

As far as the campaign itself is concerned, new clause (m) in article 44B has been called as "milestone" by Ghoni. This prevents "writing in ink and or paint or in any manner whatsoever as means of advertisement or for propagating election." It is aimed at the menace of writing on the walls, but it could have specified whether posters fall within the purview of the clause instead of leaving it up to interpretation.

### Areas not addressed

The present election laws still fail to address certain important aspects. The entire campaigning period and the conduct of the political parties, including the regulation

of muscle power, arms, and illegal money, for example, needs closer monitoring.

The current law allows election camps if they are 400 yards away from the polling station, but they could be banned altogether as is done in Sri Lanka. Barrister Islam feels that the campaign should be stopped during the last 72 hours and there should be no candidates around either. "The people could then really feel that it is their process." Other details need to be worked out: should there be common election posters for all candidates, no posters, or should election information packages be sent through the post? There is still time to take care of these areas in a legally binding Code of Conduct.

The current laws have also failed to focus on the problem of television exposure for the political parties. "One would have expected in the new law provisions for more time on the electronic media for each of the political parties and candidates," Barrister Islam says.

The law has also not made any provisions for the speedy disposal of election petitions. In India, the petitioner can go straight to the top instead of starting with the district judge, according to Ghoni. "A district judge has a 101 things to do and the election dispute just becomes one of them," Barrister Islam points out. His suggestion would be to set up as many tribunals as disputes.

### Conclusion

It is commendable that improvements have been passed at all, but Parliament has missed the chance to make them more significant. On the one hand, the new insertions only tend to specify existing general powers and on the other, they completely fail to address important issues like the electronic media and speedy disposal of cases. The election laws have yet to give true meaning to the participation of the people by mentioning voters education and an independent people's observer group.

There are undoubtedly limits to what the law can do to ensure a free and fair election. "A foolproof election is dependent not only on the provision of law but also on its enforcement. It is dependent upon the total commitment of the people participating, particularly the main actors," Barrister Islam concludes.

## Lives Lost on Deadly Wires

Illegal electric wires cost the lives of innocent people whose families receive no compensation, writes **Salma Ali**

ON October 28th in 'The Daily Star', many of us have come across a small news item on the electrocution of three members of the same family in Shatkira. The accident occurred when the victims unknowingly stepped on a line of an illegally taken electric connection for running a shallow tubewell. Similar incidents are taking place very frequently but often remain in the dark.

There are a few other similar accidents from Gazipur district, that have taken the lives of more than two families within four months.

Arati Sarker, 32, and her husband Anil Sarker 38 both died of electrocution at Sinduri village, Balyadi of Kali-akar. On the morning of last Eid-ul-Azha, that is, 22nd of May, Arati Sarker along with her husband went to bathe at the huge pond adjacent to the zamindar house of that village. They were totally unaware of the wires lying around that were said to be there to guard the pond. From some electric connection, this deadly wire first took Arati's life and then her husband's who immediately rushed to rescue her. Three infants who were waiting for their parents to come

back from the bath, only received their dead bodies. These minors Bibhash 12, Shilpi 10, and another six-month baby are now basically homeless. Though the owner of this highbrow pond, in said to have assured financial support, these infants have not yet seen any sign of it.

Another incident from the same district is that of Hanif. This 30 year old man died of electrocution last September.

From all these incidents, the point that is becoming increasingly visible is that, illegal electric connection is costing the lives of innocent people. Now the main question is: who or which body is responsible for this dangerous, unauthorized dealing? Whoever concerned is obviously insensitive and negligent towards the society.

On October 10, 1992, Xavien, a road side cobbler, lost his only son Yasudas, who came into contact with a live wire protruding from an electric post in Madras, India. Mr Chardhi of Tamil Nadu Legal Aid Forum filed a writ petition in the Madras High Court on behalf of Xavien, claiming Rs 5 lakhs in compensation for the city Corporation for their negligence which cost the life

of the 14 year old boy.

Mr Justice K S Bhakthavatsalam of the High Court felt that the claim was justified and directed the Corporation to pay a compensation of Rs 50,000 with 12 per cent interest from the date of the petition, February 2nd 1993, till realization of the amount. The Judgment was delivered on April 16, 1994 in the Madras High Court.

The victims that we see in our country receive nothing more than a few inches news item in a news paper, if at all. Their rights and welfare appears to be nobody's concern and that is why there is no hue and cry about these incidents. Let alone any compensation to their families.

We should learn from the above uncautioned case of Madras, and the legal aid organizations in this country ought to come forward to help such victims. At the same time the Government authorities should not ignore their responsibility and commitment to the public. Their services have to take public welfare into concern.

The writer is an advocate and Executive Director, Bangladesh National Women Lawyer Association.

## Marital Rape : East vs West Debate

Asian culture does not mean submission to a husband's violent behaviour, **Joe Fernandez** reports

KUALALUMPUR (Depthnews) — Muslim religious experts in Malaysia generally hold that "a Muslim woman could not reject her husband's request for sexual intercourse in any situation, even when she is pregnant, so long as the act did not pose any danger."

This view has been stated publicly following a decision by the National Unity and Social Development Ministry to ask for a legal ruling on marital rape. The Attorney-General has been asked to determine whether a man can be accused of raping his wife and whether that act can be classified as an offence under the Family Violence Act 1994.

Although there have been no reports of men raping their wives except for one instance, the matter should be given consideration, says National Unity and Social Development Deputy Minister Alex Lee.

The Islamic perspective on marital rape is important in Malaysia. Muslims being the single biggest community or 45 per cent of the nation's 18.3 million population, Islam is also the official religion although the country is a secular state and the Constitution guarantees freedom of worship.

According to Professor Harun Din of University Kebangsaan Malaysia, the Quran says nothing explicit about marital rape. However, he says, Verse 223 Surah al-Baqarah in the Quran clearly spells out when men may or may not have sex with their wives, one instance of the latter being "when the wife is not in the mood".

Universiti Malaya Professor Hasin Yayha, on the other hand, advises wives to be "clean and ready at all times to fulfill their husband's sexual needs", adding that "men marry to have sex, children and a happy home in that order".

Most Islamic experts, like the two, skirt around the marital rape issue since religion itself details the subject of sex within "a framework of purity, rights and obligations."

Says Islamic counsellor Fadzil Hanafi, "Most of the cases I get involve husbands dissatisfied with their sex life. Invariably these men divorce their wives, take a second wife or indulge in extramarital affairs. (Therefore) wives must take serious note of the sexual needs of their husbands."

"It is possible to legislate such laws (as marital rape), but do we want to?" asks Malaysian Bar Council President Zainur Zakaria. "We should not blindly import concepts unsuitable for our cultural background and values."

It is basically in the east-versus-west context that much discussion on marital rape has taken place. Many lawyers see marital rape as a western concept which derives from the individual rights argument whereas Asian societies, they point out, stress community rights over individual rights.

But without a law against marital rape, "a marriage licence will be a licence to rape" and "marriage will be a safe haven for rapists", according to women's rights groups. "A woman has a right to her

own body. If she is coerced into sex, that is rape, whether (it is) with her husband or with a stranger," says a woman activist. A wife should no longer be regarded as the man's property "but an equal partner whether in household matters or sexual relations," she adds.

The push for a law against marital rape has its supporters among average Malaysians.

"Asian culture does not mean submission to a man's violence or derogation of a woman's self-respect," says chemist Pushpa Devi. "If Asian culture meant submissive behaviour, laws against child abuse would not have been passed. Asian children are supposed to be totally obedient."

"Rape within marriage is not uncommon," says economist L. Ronald. "Infringement of human rights should be against Malaysian culture."

Others have misgivings not about legislation itself but the implementation of the law. Says engineer Siti Aishah: "Those in the cities exposed to western culture might laud the move to make marital rape an offence. But those in the villages will find it difficult to accept (the idea)."

Legal circles add that even if marital rape is outlawed, "at the end of the day proof may not be forthcoming."

"In most rape cases, it is the word of one person against another," says one lawyer. "But in cases of marital rape happening in the home, there will not only be no witnesses but maybe no injuries."

Indications are that should any law against marital rape be passed, it will cover only non-Muslims. Islam is clearly silent on marital rape and besides, Muslim family matters come under the jurisdiction of the Syariah (Islamic) courts which are unlikely to preside over marital rape cases. *Depthnews Asia*

## Human Rights Day '94

# From Precepts to Practice

Continuing human rights violations in South Asia demonstrate the need for an effective regional mechanism, says **Khandakar Majharul Huq**

IN recent years, we have witnessed major changes in the worldwide development of human rights and democracy. Popular calls for more representative government have confronted many nations with the immediate need to develop institutions which safeguard human rights. While numerous successful transformations from authoritarian oppression to democracy are well documented, demands for human rights and fundamental freedoms fall all too often on the ears of governments unwilling to heed the call of the people. Such regimes typically respond with increases in their own coercive capacities, making the realization of human dignity within their borders, a virtually unattainable goal. Human rights and fundamental freedoms are certainly universal in nature, which was unanimously reaffirmed at the World Conference on Human Rights in June, 1993.

Despite the universal applicability of human rights throughout the world, some of the most effective means of realistically ensuring the realization of human rights have been regionally based. Regional human rights organizations are currently operating in Africa, the Americas, Western Europe, and the Middle East. Regional human rights commissions function in each of these regions and the first three have produced legally binding judgments. In the Americas and Western Europe, regional courts have been established to hear cases of human rights violations. In addition to these, various monitoring, advisory and enforcement institutions have

developed in different degrees in each region, supplementing and reinforcing Human Rights law and making constructive contributions to the realisation of human rights and fundamental freedoms in their respective areas. In the early days of the human rights movement, regional human rights arrangements were thought to be a potential detriment to the universal nature of the rights they were designed to protect. However, that attitude has been abandoned in the intervening decades and the international community has repeatedly recognized the merit of regional mechanisms and the need for their establishment in other parts of the world.

Alleged continuing violations of universally accepted human rights in most of the South Asian countries demonstrate the need for effective regional human rights conventions and national institutions in this area of the world. In most of the South Asian countries, suppression of fundamental freedoms by means of restrictions on freedom of speech and expression; arbitrary arrest and detention; torture and extra-judicial killings; and the denial of the right to political participation, are taking place in alarming proportions. It has been seen from past experience that governments in South Asia face serious difficulties in bringing members of their own law enforcing agencies to justice for violations of human rights, par-

ticularly in situations of civil unrest. The lack of regional human rights mechanisms in South Asia has long been recognized as an obstacle in this area of the world. At the Bangkok Conference of Human Rights, Asian government reiterated the need for establishing regional arrangements for the protection of human rights. They put forward a more practical suggestion for making sub-regional human rights arrangements which could be a more effective way of safeguarding human rights in Asia. One such subregion is South Asia, comprising of Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan, and Sri Lanka. These seven nations currently constitute the South Asian Association for the Regional Cooperation (SAARC), the only regional organisation in South Asia.

Recently, the organisation has begun to make progress in the area of human rights, most notably at the Sixth SAARC Summit held on December 21, 1991 in Colombo, Sri Lanka. The formal recognition of the importance of human rights at the Sixth Summit is an important first step towards the creation of regional human rights institutions in South Asia and has certainly paved the way for future discussion of human rights concerns amongst SAARC Member States.

Indeed, the situation in South Asia seems more conducive than ever in making progress in regional human rights protection. In most

SAARC countries, democratic governments are in power. It is our firm belief that democracy and human rights are inextricably linked and one cannot flourish without the other. All the seven South Asian nations are signatories to the UN Conventions on Human Rights, the Bangkok Declaration, and all have approved the Vienna Declaration and Plan of Action at the recent World Conference on Human Rights. The governments of Sri Lanka and India have already created national human rights institutions and the government of the Maldives has begun to take steps toward the establishment of national human rights mechanisms. The current democratic government of Bangladesh may take a major lead and initiative at the forthcoming SAARC Summit for establishment of regional human rights mechanisms in South Asia.

In this context, the first and foremost need is to draft a regional Human Rights Convention for the SAARC countries to ensure fundamental human rights, including equal rights and opportunities for all citizens regardless of race, colour, creed or political belief and equality of women so that they may exercise their full and equal rights.

The creation of national human rights institutions in SAARC countries, particularly in Bangladesh is necessary to monitor compliance with the regional convention as well as with international human rights instruments in order to strengthen the judiciary of in-

dividual countries and to avoid any undue delay in adjudication of human rights cases.

Protecting and strengthening the independence of the legal profession to obtain a high standard of integrity and professionalism in the practice of law as well as providing judges and lawyers with the basic text of the main regional and international instruments of human rights, is essential. Most importantly, adequate funds should be provided by the government for effective access to justice through proper functioning of the courts and adequate legal aid, advice, and assistance for people who cannot otherwise obtain legal service.

All these could provide the basic foundation for working towards the creation of a South Asian Regional Human Rights Commission.

In a new world order, we must seek "liberty, freedom from oppression, freedom from want, and freedom to be ourselves."

We should remember, "liberty lies in the hearts of men and women; When it dies there is no constitution, no law, and no court can save it."

That is an important truth which we forget at our peril. The spirit of liberty can, however, be greatly encouraged and strengthened by the constitutional and legal system, as well as by the courage, humanity, integrity, and sense of justice of individual men and women in our country and across the entire world. That is the hope and the challenge.

## Measuring Consumer Savvy

How smart are Bangladeshi consumers? CAB finds out

CONSUMERS are said to enjoy several internationally recognised rights: the right to be informed what is in the product, the right to be heard and voice grievances, the right to redress, the right to a healthy environment, the right to choose and the right to consumer education. Bangladesh also has legislation to protect consumers, like the Essential Products Act 1956, Pure Food Ordinance 1959, and the Standard of Weights and Measures, 1982. But are Bangladeshis aware of any of this?

Consumers Association of Bangladesh (CAB) recently conducted a survey in Dhaka, Chittagong, Barisal, Sylhet, Comilla, Bogra, Khulna and Gazipur districts involving 1000 consumers of different social backgrounds on the rights and responsibilities of consumers. From this survey, it could be seen that 68.33 per cent of consumers knew that their rights are internationally recognised, but no one could give a correct reply on the specific rights. 88.36 per cent did not answer the question on

specific rights and responsibilities.

Everyone questioned considered themselves to be a "consumer". Of those surveyed, 23.89 per cent of the consumers were not aware that they had rights. 31.67 per cent were ignorant about consumer responsibilities.

59.70 per cent were not aware that Bangladesh had product control laws. Out of these persons, 42.47 per cent said they had heard of such a law but did not know what the laws were.

"What should be done with regards to consumer rights and responsibilities?" In answer to this question, survey subjects gave more than one answer, but almost everyone said consumers need to be more aware of their rights and responsibilities, and spoke of the need to take their own initiative. Apart from this, there were also requests for organising consumer rights by

the government. They also gave their advice on the need to create a consumer organisation. Some of the consumers surveyed also gave their opinion that consumers should bargain before purchasing.

CAB believes that in a country where nearly 77 per cent of the population is illiterate, a large number is unemployed or low income, it will be very difficult to unite and create awareness among consumers without government patronisation.

Therefore, side by side with NGO initiative, the government's initiative is also required. Apart from this there is great need for the modernisation and realisation of existing laws, and to inform consumers and allow them to take advantage of such laws.

Data compiled by Emdad Hossain Malek, Information Officer, CAB. In next issues: CAB investigates the products on our shop shelves and reports on the state of our hospitals.

Your Shout: there are plans underway to modernise the DMP. What do you feel is the solution? Selected letters will be published. Feel free to write to "Law and Our Rights" on any other issues which interest you.