

## Law and Our Rights

### A Comparative Analysis

# The Local Government Laws of Bangladesh at the Village Level

#### A 'Law & Our Rights' Special

THE institution of local government is not a new idea in the sub-continent, particularly in Bangladesh. It is well-known that in earlier times council of elders used to sit in panchayat, majlish, or shabha to dissolve disputes arising among villagers. Though the decisions of panchayat, majlish, shabha may not have had specific legal foundations and were probably not mandatory but were frequently accepted and obeyed. It was during the British Rule that village councils or shabhas were given institutional shape. Immediately after the independence, the President made and promulgated the Bangladesh Local Councils and Municipal Committees (Dissolution and Administration) Order, 1972 (PO No 7 1972) for dissolution of all the existing local government bodies. Dissolution of these bodies was found necessary because they did not represent the people and there was persistent demand from the people for their dissolution. On the dissolution of these local bodies "Commit-

tees" were appointed for performing the functions of the defunct bodies. The Union Council was re-named as Union Panchayat, the District Council was re-named as Zila Board, Municipal Committee was re-named as Pourashava. No such "Committee" was, however, appointed in the case of the defunct Thana Councils and Divisional Councils. The history of the local government has a two hundred year history of origin, growth and development, which took various forms and shades. These bodies made great contribution to the country's democracy, which is now a basic structure of the Constitution. With the revival of the constitutional backing for "Local Government" these old institutions cannot be abolished without damaging the democratic fabric of the country. During the British rule progress of these local government institutions was slow but nevertheless they were allowed to function uninterrupted within a limited sphere and a confined jurisdiction, with, usually, scanty re-

sources and limited powers. After independence from the British rule, these institutions did not flourish to facilitate greater self government at local levels and were often victim to corrupt politics or evil designs of autocratic regimes, passed through the ordeal of suppression, dissolution or management of their affairs by official bureaucrats or corrupt persons nominated by Government of the day. The history of local government in Bangladesh shows that local bodies have been established at different levels in different periods. Laws/Ordinances have been formulated to form local bodies at the village, thana and divisional levels from time to time. Changes in the levels of local bodies with the change of government have made these unstable and fluid, making it difficult for local bodies concerned to play an effective role in the absence of stability. Similar to the changes in levels, continuity has not also been maintained on the issue of representation. Emphasis on elected members has alternated

with the system of nomination at various times. One explanation for not developing the local government institutions as representative bodies could be the policy of controlling these bodies through nominated members or bodies. Local Government has no where been defined; it is meant for management of local affairs by locally elected persons. If government's officers or their henchmen are brought to run these local bodies, there is no sense in retaining them as local government bodies. Autocratic regimes in the past, after abrogating or suspending the Constitution, which is the solemn expression of the people's will, and eliminating representational requirements in the sphere of national government, replaced the old bodies with new ones terming them more democratic. But these measures hardly inspired confidence in people. These new bodies were often perceived as mere devices to deceive people of the country.

For, at the present state of world affairs, autocrats and dictators, whether they are political leaders or military figures, are objects of ridicule and universal condemnation. An autocratic regime, though apparently strong, is very weak in spirit and stands alienated from people. So the autocrats and dictators seek sort of political base, and for that purpose, rush to the village, union and thana to establish real democracy there. In the long history of local government institutions we know that Thana Parishad/Thana Council is a recent development, from the days of Basic Democracy in 1959. During the period from 1982 to 1991 decentralisation and devolution took place to a great extent. Thana Parishad built-up in haste in 1982 and was given so much power, function and position that the totally inexperienced elected Chairmen found it difficult to cope with this tremendous re-

sponsibilities thrust upon them, particularly in the absence of proper logistic and other support systems. The local government bodies above and below the Upazila suffered in importance as a result of which Zila and Union Parishads became relatively less important local bodies. This indicates that if a particular level is overemphasised as a focal point, the local bodies at other levels tend to be neglected. The very broad nature of these responsibilities has made it difficult to identify the specific activities that have been assigned to a particular level. The Bangladesh Nationalist Party (BNP) in 1980 passed the "Swanirvar Gram Sarkars (Constitution and Administration) Rules, 1980", and the Jatiya Party in 1989 passed the "Palli Parishad Ordinance, 1989 (Ordinance No XXXIII of 1989)" and the Awami League in 1997 passed the "Local Government (Gram Parishads) Act 1997". If we go through the first Law we find out that there is no provision for elections of the

members of these local bodies which may be seen to be in contravention of Articles 9 and 59 of the Bangladesh Constitution. Article 9 states that, the State shall encourage local government institutions composed of representatives of the areas concerned and Article 59 (1) states that, Local Government in every administrative unit of the Republic shall be entrusted to bodies composed of persons elected in accordance with law. The "Palli Parishad Ordinance, 1989 (Ordinance No XXXIII of 1989)" provides for elections, which shall be conducted by the Thana Nirbahi Officer. But this Act never came into force. A slight change is observed in the "Local Government (Gram Parishad) Act 1997". Article 5 (3) states that, for the villages within every ward, the persons male and female residing there being voters of the said ward, will elect the members of the Gram Parishad under the supervision of the Parichalana Katripakshya. Section 2 of the Act clears the meaning of "Parichalana Katripakshya", by stating that he/she is "concerned person au-

thorised by the Government". This procedure cannot be said to be an "election" but a new process of probably selecting member/supporter of (ruling party) as the members of the Gram Parishad. Neither does this law mention any how the election will take place nor the procedure for conducting the election. For this vagueness in the law ultimately, it seems that, the Government's authorised person may easily influence the "selection" of the 12 members of the Gram Parishad. According to the Act Gram Parishad being an administrative unit the Election Commission ought to have been empowered to hold the relevant election. Hence this Act deliberately ousts the jurisdiction of Election Commission. From the comparative table below we can see that the above mentioned laws establishing local "elected bodies" more or less follow the same trend, principles and objectives. The three laws are contradictory to the concept of democratic values and norms.

Concerned Principle Law	Swanirvar Gram Sarkars (Constitution and Administration) Rules, 1980.	Palli Parishad Ordinance, 1989	Local Government (Gram Parishad, 1997
Ruling Party	Bangladesh Nationalist Party	Jatiya Party	Bangladesh Awami League
Total Number Persons	Twelve [Rule 5 (2)]	Nine [Section 4 (2)]	Thirteen [Section 5 (1)]
Women Seats	Not less than (2) [Rule 5(2)]	Not less than 2 [Section 4 (3)]	3 members [Section 5 (1)]
Head	Gram Pradhan [Rule 5 (2)]	Palli Pradhan [Section 4 (2)]	Chairman [Section 5 (1)]
Stage	Gram [Rule 5 (1)]	Gram [Section 4 (1)]	Ward [Section 4 (1-2)]
Term of Office	For the first term 3 years; for the subsequent terms 5 years commencing on the day of its first meeting after its constitution. [Rule 6 (1)]	3 years from the day of its first meeting; (until the first meeting of the new committee, the old committee shall continue office despite the termination of its term) [Section 7]	5 years from its commencement [Section 5 (4)]
Mode of Appointment	Gram Pradhan and other members shall be chosen through the consensus of the persons present in the meeting in such a manner as may be agreed upon and shall ensure representation of people of all walks of life and different functional/interest groups. [Rule 5 (4)]	The TNO shall take necessary steps and conduct the election. [Section 6 (1)] He can confer all or any of his (regarding election) power to any officer of the Upazila Parishad if necessary [Section 6 (2)] Palli Pradhan and Members obtaining majority votes shall [Section 6 (3)] Whatever mentioned in the Law any person nominated by the Government, may nominate the first Palli Pradhan and Members of any Village [Section 6 (4)]	The Union Parishad Member of the concerned Ward shall be the Chairman. [Section 4 (2)]
Qualifications of the Chairman	a citizen of Bangladesh b completion of 25 years c name appearing on the electoral roll of the concerned village d not a sitting as a Chairman or Member. e permanent resident of the concerned village. [Rule 9]	a. Citizen of Bangladesh b. completion of 25 years c. permanent resident of the concerned Gram. [Section 5 (1)]	mentioning of negative qualification [Section 5]
Disqualifications	Non fulfillment of the above mentioned conditions [Rule 9]	a. renouncing or losing citizenship b. declared by the Court to be insane c. residing elsewhere permanently than his permanent village d. convicted by a Court e. name not appearing on the electoral roll of the concerned village f. Presently being the Chairman or a Member of the Union Parishad [Section 5 (2)]	a. declared by the Court to be insane b. declared to be insolvent c. renouncing or losing citizenship d. declared by the Court for civil crime (moral turpitude) and punishment given at least 2 years and none completion of 5 years and none completion of 5 years after release. e. loan defaulter of a bank or financial institution [Section 5]
Functions:	Subject to such directions as may be given by the Government, from time to time, the Swanirvar Gram Sarkar may perform and undertake, in general, such functions as it considers necessary for overall development of the village and, in particular, for	a. Increasing of food production b. Population Control and Family Planning c. Eradication of illiteracy and spread of mass education d. Conducting Salish to	a. Conducting surveys and submitting reports on social and economical conditions from time to time as directed by the Authority. b. Collecting and keeping record of the primary statistics on Birth-Death, Marriage and Divorce and disseminating the same to the Union Parishad. c. Inquiring into the curriculums of the Primary,

a. Increasing of food production; b. Mass literacy; c. Population Control and Family Planning and d. law and order holding Salish to settle local disputes. Note: They may also promote Gram Samabaya and Samabaya Banks. [Rule 17]	maintain peace and security within the village e. Assisting the Law and Order Enforcing Agencies f. Encouraging the people by organizing and setting up Co-operatives, Cottage Industries, Polities, for the economic development of the village g. Taking up welfare programmes in hand for the total development of the people h. Encouraging the people to participate in the development programmes i. Creating conscience within the people for building up a prosperous nation. j. Carrying out any other function conferred by the government. [Section 10]	Madrasha, Moktab, and submitting reports to the Union parishad. d. Encouraging the guardians to send their children to the Primary school. And if fails to do so, shall submit reports to the Union Parishad. e. Assisting the concerned authority for the implementation of the Family Planning Programmes and submitting reports to the Union parishad about their Field Workers. f. Assisting the concerned authority for the implementation of the supplying drinking water and sanitation's. g. Strengthening collective preventive measures and maintaining law and order to resist to resist torture against women, terrorism, theft, dacoity etc. And reporting to the Union Parishad if such acts are committed. h. Being aware of the distribution of the fertilizers, quality seeds and pesticides and reporting to the Union Parishad if any scarcity arises. i. Reporting to the Union Parishad about the activities of Government semi government and NGO workers. j. Mediating any dispute within the parties to maintain peace and security of the concerned village. k. Encouraging the people by organizing and setting up Cooperatives, cottage industries, polities, fisheries, tree plantation for the economic development of the village. l. Taking up welfare programmes in hand for the total development of the people of the village. m. Performing any other activities as the Government may from time to time direct. [Section 14]	
Meeting Place	Determined by the Gram Sarkar from time to time. [Rule 20 (1)]	Not mentioned	Meetings shall take place at the Gram Parishad Office and its time shall be determined by the Chairman. For unavoidable circumstances the Chairman may determine the meeting place elsewhere. [Section 8 (4)]
Form of Oath	In the first meeting the constitution of Swanirvar Gram Sarkar, the Gram Pradhan shall orally take and subscribe to an oath of office in the form mentioned in Bangla and thereafter administer the same oath of office to all members present at the meeting by turn, and require each member to sign the form of oath. [Rule 8]	Not mentioned	Not mentioned
Office	The Swanirvar Gram Sarkar shall have an office of its own within the Gram as determined by the Swanirvar Gram Sarkar. [Rule 19 (5)]	Not mentioned	After consultation with the Chairman the Authority shall determine the place of the office within the limits of the Gram Parishad. [Section 7]
Quorum	One half of the total number of members. [Rule 20 (4)]	Not mentioned	At least 5 members. [Section 8 (5)]
Procedure	The Gram Pradhan shall maintain order in the meeting of a Swanirvar Gram Sarkar and shall conduct the proceedings in such a manner as may be conducive to expeditious and satisfactory disposal of the business; and shall decide points of order and his decision on such points of order shall be final. [Rule 20 (8)]	Not mentioned	According to the permission of the Controlling Authority, Gram Parishad shall determine the proceedings. [Section 8 (1)]

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## Violence Against Women

# To Resist is Our Constitutional Obligation

by A H Monjurul Kabir

Continued from last issue

\*3. The victims of violence must be encouraged to break the silence and speak-up their experiences. Some form of hotline and counseling is important to support them. Some form of support group for men in needed to raise their awareness on human rights and to provide alternative means of dealing with their anger. We are in desperate need of positive male role-models and a new definition of masculinity. \*4. Government officials must be gender sensitized. For civil servants particularly belong to various departments and divisions of concerned ministries e.g., Ministry of Home, Ministry of Women and Children Affairs, Ministry of Social Welfare etc, gender sensitization is a sin-qua-non to achieve the desired level of standard (of service). To achieve this goal, positive changes should be brought in the training curriculum. The ACR (Annual Confidential Report) of the civil servants must include gender-consciousness, as a separate issue to be evaluated. \*5. The judiciary is the symbol of justice. To ensure justice according to the existing laws of the country is the prime responsibility of the justice delivery system. But if the court in dispensing justice does not take into consideration the defacto situation and prioritizes the letter of the law only then justice would be the most unlikely outcome. The judgment delivered in the Seema Chowdhury's case is the glaring illustration of the above contention. The plaintiff, the defendant and investigator of the case — all quarters belonged to the police. They (Police) did not investigate the sensational case seriously and the judge too did understand their apathetic attitude

towards the investigation. In delivering judgment, the honorable District and Sessions Judge of Chittagong even expressed his dissatisfaction in clear terms. But surprisingly and unfortunately he did not follow any alternative legal option to satisfy his conscience. He set the accused four policemen free with utter displeasure! To avoid such ridiculous situation the higher judiciary should immediately come forward with a set of principles and suggestions. It should also arrange intensive training programme for the judges to make them more gender sensitized. \*6. In case where both the parties of the case are police, the investigation should be carried out by a separate independent investigation agency. The proposed National Human Rights Commission can also take over such job. Important, controversial and sensational cases of public importance can be investigated both by the police and the Proposed National Human Rights Commission jointly. \*7. Anti-violence cell should be set up in every police station. These cells should preferably involve women representatives during investigation. Violence against women cell of the Ministry of Women and Children Affairs should be given some executive power. The cell as a focal point will coordinate among researchers, activists and other relevant organizations for monitoring the implementation of laws and review the prevailing situation from time to time. The cell also collect and disseminate information on violence against women. \*8. Legislation against domestic violence has been enacted in 44 countries around the

world; 17 have made marital rape a criminal offence; 27 have passed sexual harassment laws; and just 12 countries have laws against FGM. The few laws that do exist vary significantly in strength and enforceability from one legal system to another. In countries that have not enacted specific laws, it may be possible to prosecute offenders under more general criminal statutes. Some governments have introduced accessible and well-integrated legal provisions, such as Ecuador's 1995 law against domestic violence — a clear-cut prohibition of physical and mental assaults. Current and former cohabitants and parties in non-marital intimate relationships are included in the legislation, and psychological violence is explicitly defined. Other laws are more vague: New Zealand has enacted family violence legislation without specific reference to women or girls; in Malawi, a constitutional provision makes a general commitment to implementing policy on domestic violence. In recent years, sexual harassment has been publicly acknowledged as harmful to women, and countries are taking the first steps by adopting legislation prohibiting it. In the last two years, legislation that directly addresses sexual harassment has been passed in Belgium, Belize, Costa Rica, Finland, France, Ireland, Paraguay, the Philippines and Switzerland. Similar legislation has been proposed in Chile, Italy, Jamaica and South

Africa. In view of the increase of cases reported on sexual harassment of women, the Supreme Court of India, on a writ filed by women's NGOs, recently has laid down guidelines to obviate such harassment at places of work and at other institutions including universities, hospitals and other professional bodies. In the absence of any legislation the court has held that these guidelines shall be legally binding and enforceable. Most significantly, the Supreme Court has brought sexual harassment within the purview of human rights violations. This is a milestone in judicial activism and a unique development in the field of human rights. The women activists of Bangladesh can seek too the intervention of the judiciary of Bangladesh in the like manner. Laws that criminalise gender based violence are positive steps but they offer no guarantees. Worldwide, even where laws are in place, prosecution of perpetrators is rare, and successful prosecutions uncommon. The patriarchal legal system of Bangladesh needs to be salvaged from the traditional foundations of discriminatory norms about women. A new system should be based on the principle of equality, reciprocity and interdependence of men and women. The permanent Law Commission should immediately review the entire legal system with a view to eradicating existing gender bias. The law of evidence should be re-

designed in tune with the special circumstances of delicate and touchy social and personal factors involved in violence cases. Special legal provisions should be made for summary trial and speedy disposal of police investigation and completion of court hearing within a given time frame. Submission of charge sheet against the offenders within 90 days as provided by the law should be ensured. Kendra, The above table of statistical data testifies the horrifying frequency of incidence of rape one of the most pervasive violence against women in Bangladesh. And it is a matter of great concern that the number of committing rape is increasing day by day at an alarming rate. The involvement of the law-enforcers (e.g. police) with such abominable violence (rape) aggravates the situation further. The true activism on the part of the judiciary and at the same time, the Ministry of Home can greatly improve the existing vulnerable situation. Section 375 of Bangladesh Penal Code which defines the offence rape must be reformed in accordance with the changed circumstances. It is the high time to define the offence 'Custodial Rape', as already done by India. In the adjudication of rape cases, the question of consent of women becomes vital. The defence counsel always tries to prove that the rape victim had her consent to sexual intercourse or she enjoyed the incident meaning she had con-

sented to it. As a consequence of such unfair attempt many accused remain unpunished utilizing fully the flaws and loopholes of the letter of the law and the judicial system. In this situation, the term 'Consent' must be redefined for the sake of justice. In each and every district health complex, adequate facilities for required forensic test must be ensured. A Women friendly hospital initiative could be started where a minimum standard of services for abused women should be provided. \*10. Another loathsome instance of violence against women is throwing acid to disfigure a woman's face. In recent months this gruesome trend of violence is occurring frequently. The government must strictly control the sale of acid to any private individual, section of people or organisation. Without specifically written note of demand authenticated by proper authority and upon its examination as to the truth of the content, a seller shall not sell any quantity of acid. He must inform the nearest thana about the purchaser, quantity of acid, purpose of purchase after each sale. For proper and highly sophisticated Medicare treatment of the victims of acid burning adequate facilities must be created in each division. The GOB and the concerned NGOs should work together to ensure a better life for the victims of the males medieval barbarism. \*11. A national platform for action shall be set up to curb

various pervasive forms of violence and to initiate a concerted social movement. The platform shall comprise representatives from the GOB, various NGOs and donor agencies. There shall be a data bank at the platform on all sorts of violence against women. The platform shall take any decision necessary for creating public awareness, social mobilisation for preventing instant or continual violence against women. The platform shall take steps to promote research on violence, publish findings in simple language and disseminate information among the people at all levels. The platform shall have two cells in the central (state-controlled) broadcasting units (TV & Radio). \*12. The role of media in creating social mobilisation and awareness is tremendous. Both the news media and electronic media must play the role of the conscience of the people. They must unite against the barbaric trend of any sort of violence against women. Victims of any sort of violence should not be highlighted any more. Rather the accused culprits should be identified and brought to daylight. The network of crime reporters should be enhanced to initiate a new era of cooperation at least in case of violence against women.

violence is profoundly political. It results from structural relationships of power, domination and privilege between men and women in society. Violence against women is central to maintaining those political relations at home, at work and in all public spheres" — Charlotte Bunch. In the preamble of our constitution we solemnly pledge that — "it shall be a fundamental aim of the state to realise through the democratic process a socialist society, free from exploitation — a society in which the rule of law, fundamental human rights and freedom, equality and justice, political, economic and social, will be secured for all citizens." But it is a matter of great regret that all of us have already forgot the promise we vowed in the preamble of our constitution nearly 26 years ago. For making the constitution truly meaningful we must remember our promise that is enshrined in the article 11 of our constitution: — "The Republic shall be a democracy in which fundamental human rights and freedom and respect for the dignity and worth of the human person shall be guaranteed". It is our sacred constitutional duty to resist all sorts of violence committed against women for the sake of justice, equality, democracy, human rights and rule of law. And we have no other option but to raise our voice against such brutal, medieval practices. And the time is NOW. This was one of the back-ground papers of the Regional Meeting on 'Violence Against Women & Girl Child in South Asia' held in Kathmandu, Nepal from 21st October to 25th October 1997.

#### The Constitutional Obligation