Law and Our Rights

"All citizens are equal before law and are entitled to equal protection of law"-Article 27 of the Constitution of the People's Republic of Bangladesh

The Judiciary and the People

By Manzoor A. Choudhury

When we speak of transparency and accountability of the judiciary, we mean the right of the people to evaluate and ask questions about the functioning of all tiers of judiciary, from the court of an Assistant Judge to that of a Judge of the Appellate Division, without any inhibition or fear.

IN recent weeks the independence, transparency and accountability of the judiciary has been one of the most discussed topics in seminars, newspaper articles, editorials, letters to the Editor, and presumably in many homes. This is an encouraging sign as "eternal vigilance is the price of liberty".

The debate has drawn comments and statements from politicians, sitting and former Judges of the High Court, lawyers and members of the public. The primary cause of the debate has been a perception, right or wrong, that the government wishes to tame the judiciary and make it subservient to its will. This allegation is a partial view of the matter and seems to have been triggered by some cases adjudicated in the High Court in which the government was a party. In the controversy one has forgotten about transparency and accountability of the judiciary in matters in which the government is not a party. The rule of transparency and accountability should apply equally to the whole judiciary, the District and Magistrates' court as well as the High Court and Appellate Divisions of the Supreme Court.

The question of transparency and accountability of the judiciary will not be disputed by any as long as it does not impair the judiciary's independence. When we speak of transparency and accountability of the judiciary, we mean the right of the people to evaluate and ask questions about the functioning of all tiers of judiciary, from the court of an Assistant Judge to that of a Judge of the Appellate Division, without any inhibition or fear. In order to bring the courts closer to the people and make them responsive to their needs, it is necessary to establish a channel of communication and dialogue between the judiciary and the people to help them interact that will increase the understanding of both of each other's perception, needs and help to bring in necessary reforms.

The people, for instance, would like to know why justice is so much delayed — sometimes it takes a life time to reach the final end in the decision making process and a fortune in lawyers' fee; why there is a back log of thousands of cases, why people suffer imprisonment, in unspeakable condition, sometimes for months and years, without trial; why a case is dragged for long periods by granting adjournment after adjournment; why lawyers are allowed to waste the court's time in un-necessary arguments or on frivolous grounds; why a case is not discharged or frame is not charged for months and years at great cost and suffering to the parties; why a magistrate who hears a particular matter, say land settlement cases, only one day in a week, is often called to a meeting or sent out on tour on that particular day? Why, for instance, the High Court benches are reconstituted suddenly leaving many part-heard cases to start afresh in a new court and at considerable cost to the parties in time and lawyers' fee; why do the High Court benches list 50, and even 80 cases when their capacity to hear is not more than 25 to 30 cases a day? The lawyers say they have to be in attendance whenever a case is listed and the clients have to pay their lawyers for every attendance whether the case is heard or not. Have the Courts calculated the cost to the people for cases not heard?

How and to whom the people may address the above and many other questions and get answers? Our democratic order is not of the kind as in developed countries where one may write to his MP who will do something about it. These are real problems of the people who are law abiding and go to court to seek justice. The government may have suddenly realized that the judiciary should be transparent and accountable because the High Court granted bail to some people. But the government should look at the entire judiciary, not just the High Court. It should be concerned about the problems, ordinary people face every day of their life in getting simple decisions from courts affecting their business, livelihood, families and their lives.

The question one may ask is, has the judiciary failed the people? How and to whom is the judiciary accountable? It is no use saying the judiciary is accountable to the Supreme Judicial Council which means only the High Court Judges. How many among our elite educated class would be aware of the activities of this body? The High Court, still immersed in the ornate setting and practice of a colonial regime of days long gone, and protected from criticism by the people's vague fear of contempt of court, seems distant and aloof from ordinary people and their crying need for expeditious justice. In the past the government set up several Law Reform Commissions but the result is not visible to the people. The Commissions, including the present one, are believed to consult eminent lawyers and various professional bodies of lawyers. The people who get involved in court cases have no opportunity to approach the Commission about the problems they face as they are not organized in a body. However, the Commission could invited people through open announcement in newspapers, to appear before the commission to give their views of convey them in writing if they like. This would be a democratic dispensation.

The politicians have regrettably shown little awareness or initiative to introduce reforms in the legal system, to improve the antique legal process and the environment in the court rooms and their administrative offices, from taking down of evidence by the Judge in long hand, typing and retyping several times draft orders and judgments in antique manual typewriters, overcrowded, stuffy and noisy court rooms, no place for the people to sit except a few dilapidated benches for the lawyers, total absence of decent and clean rest rooms, dirty, filthy corridors crowded with peddlers, fruit vendors and tea stalls, to the keeping of valuable records and documents. We certainly can afford the money to improve the working of the courts in a dignified and decent environment as we have money to buy frigates and Migs. We can certainly prevent misuse of the court by parties taking time repeatedly by restoring the repealed provisions of Section 339C of the Code of Criminal Procedure, or by making it prohibitively expensive to take time in both civil and criminal cases. According to one source, at the present rate of disposal of cases it would take 10 years to dispose of the pending session cases provided no new case is admitted.

The list of reforms is long. A beginning is to be made immediately. We cannot wait till a decision is made to implement the constitutional provision for separation of power between the executive and the judiciary. An immediate beginning can be made by the Supreme Court initiating reforms in the High Court and Appellate Divisions and the Ministries of Law and Establishment initiating reforms in the District and Magistrate courts. All courts should be accountable to a body or bodies whose deliberations should be reasonably transparent and who would be approachable by common people. The initiative lies with the Supreme Court and the Government. The lawyers may render a great service by nudging both towards reform of the judiciary.

The Judges have a great role to play in bringing in reforms in almost every sphere of our lives since the politicians have miserably failed to do so. We have the example of an American judge, Justice Frank H Johnson Jr, whose historic decisions changed the face of America and set standards for the entire nation on many burning issues of the day. Instead of waiting for the politicians to enact laws, he used the constitution to protect equal rights, right to vote, to employment, rights of patients, prison inmates, desegregation of schools, colleges, parks, libraries, museums, airports, restaurants, rest rooms, buses and other public places as well as the police.

Justice Johnson came to be known as the Federal judiciary's most influential, innovative and controversial trial jurist. His decisions were legion. When he found barbarous conditions in Alabama prisons he threatened to close them unless they were made habitable and safe for inmates. His well-researched opinions often spelled out detailed standards for his reforms, specific quotas, timetables and goals that he called" affirmative action." He also appointed overseers to enforce such orders. Governor Wallace of Alabama charged that Johnson was trying to take over the executive powers of the Governor. A national debate developed on whether unelected Federal Judges were intruding too much in state affairs and assuming too many state and local powers. But to the news media Johnson was the real governor with his appointees overseeing schools, prisons, hospitals and elections. Some even said his rule was preferable to that of the governor.

Justice Johnson's decisions led to ostracism and death threats. But the Judge simply said that he had intervened only when government officials failed to perform their constitutional duties. "My basis philosophy as a trial judge and as an appellate judge is to follow the law and the facts without regard to the consequences" was how he defined his actions. Judge Johnson was reviled and called many names. But to many he was a hero. In a cover story, the Time magazine called him "one of the most important men in America".

In a speech Justice Johnson once said that the civilizing function of a judge is the removal of a sense of injustice. We need a hero like Judge Frank M Johnson Jr.

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law watch

Legal Awareness

Bangladesh Concern

by Nazmul Huda Shamim

LAW is nothing but the summation of some rules and regulations which plays important role in order to regulate various activities of people. Law is most popularly known as the regulator of human conduct. It regulates the activities of human being in the society, in the country and in the international level also. An ideal social order can be expected in presence and observance of law. People have to obey the law of the country.

According to the language of jurisprudence, law is the summation of some rules which the citizens are bound to obey. People must obey the law of a country in their own interest. But reality is that (without those people, related to legal activities) a few people are conscious about law. As a result we see the violation of law in each and every moment. Most often we try to blame that ignorance of law is liable for this unexpected situation. Perhaps we will prefer to show the want of legal awareness as an excuse in this connection. But ignorance of law can't be shown as an excuse.

There is an English maxim- "Ignorance of law is no excuse". This maxim has received moral support also. A murderer can't be escaped from the charge of murder on the plea that he was not aware of the concerned law. It is true that most of the crimes are occurred in the society due to the lacking in legal knowledge. Simultaneously a person is deprived of his rights. The reason is that he does not know that he can get relief or he is entitled to establish his rights on the basis of law.

Frequently offences like theft, robbery, kidnapping, murder, rape and such kind of serious crimes are happening in the society due to the ignorance of law. By being disrespectful to law and lack of consciousness we commit crimes in the society. Hence the peace and harmony in the country are destroyed. To get rid of this problem we have to remove ignorance of law from the society. It is the duty of the state to make people conscious about law.

Most of the people of our country are poor and illiterate. Proper steps should be taken to make them solvent and literate. On the other hand fundamental knowledge of law should be given to the people to create an ideal and pioneer nation.

To administer entire activities of a country, huge number of laws are necessary. But in its primary stage it is not possible to educate each and every citizen of Bangladesh Law the volumes of law. So, we have to select those laws, which are very much essential in our everyday life. These laws should be added in the syllabus of the schools and colleges as compulsory subjects so that students can get an opportunity to know the essential laws of the country. The Constitution of Bangladesh, the Penal Code, the Code of Criminal Procedure, the Evidence Act, the Code of Civil Procedure, the Special Relief Act, the Limitation Act, the Land Laws, the Family Laws and such other laws those are too essential laws of our country.

Steps should be taken so that the general people can get proper knowledge of law. In this regard strong publicity of law is required. Mass media like Radio, Television and Newspaper can take important role in this regard. A considerable number of persons can be employed to work in the field level to make understand the people about the general concepts of law. It is essential that persons so deployed should be trained properly. NGOs can play a constructive role in this matter.

It is true that mere the presence of minimum legal knowledge can't ensure that laws will not be violated. At times violation of law is done by one who knows the law. Recently an allegation was made against an advocate for killing his wife who was also an advocate. Last year, from January to September the police raped sixteen women. In such a situation we can say that mere legal knowledge is not sufficient. Violation of law can be prevented when we will be respectful on law and obey the rules of laws.

Today it is the proper time to say that if we expect a peaceful social order as a well-organised nation, the people of the country should be educated in legal side also. They have to make conscious to obey it. Now it has become the demand of time to take proper steps in this regard.

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Sexual Harassment

A Cause to Caution All

Syed Refaat Ahmed, Syed Afzal Hasan Uddin, Adilur Rahman Khan

SEXUAL harassment in its most commonly understood form has to do with the vulnerability of an individual to sexually unwelcome treatment at the workplace. In this regard, vulnerability is evidenced in the non-consensual submission by such individual to suggestions or demands for sexual favours, indeed, the relationship between an official in a superior position and a subordinate in a given setting, the extent to which the former exploits authority stemming from such position as a leverage to make sexual advances or demand and/or obtain sexual favours from a subordinate, and the extent to which the submission to such treatment is projected and understood as a necessary condition for employment benefit and prospects, can constitute the determinants of such vulnerability and hence sexual harassment. In its most basic element, sexual harassment may be described as discrimination based on sex. Gender also plays a significant role in providing a context for sexual harassment and in this regard there is a noted preponderance of reported cases involving female employees found to have been subjected to uninvited, non-consensual sexual advances and acts by their male colleagues. In this regard, examples can be found of purely gender-based discrimination prevailing in a setting where the superior-subordinate calculation may not have any application. This said, it must also be borne in mind that sexual harassment should under no circumstance be considered a discriminatory act where the harasser and the victim can always neatly be categorised as being exclusively male and female respectively.

So what are the defining elements of "this social problem of considerable magnitude" (as noted by Chief Justice J.S. Verma of the Indian Supreme Court in Vishaka v. State of Rajasthan [1997] 6 SCC 241).

Sexual harassment defined

The U.S. Equal Employment Opportunity Commission (EEOC) formed under Title VII of the Civil Rights Act of 1964 states that "unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitutes sexual harassment when submission to or rejection of this conduct explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work performance or creates an intimidating, hostile or offensive work environment." In the United States, for example, this constitutes the basis for claims of sexual harassment to be made under two sets of legal grounds. The first of these being *quid pro quo*. Alan M. Dershowitz, a Harvard Professor, sees *quid pro quo* harassment as sexual harassment properly defined and explains it as an act by which "a person in an hierarchically superior position (for example, a boss or a teacher) [exploits] that position to coerce sexual favors from an unwilling subordinate (for example, an employee or a student)." The essential feature of such harassment is that the favors are sought in return for employment benefits due the victim. In other words, the harassment is made a condition of employment or a basis for employment decisions, such as evaluations, promotions etc.

The second form of harassment has to do with the extent to which it leads to the creation of a *hostile work environment* for the victim and operates as an extension of the *quid pro quo* category. This arises when the sexual conduct is such as interferes with the victim employee's work or is sufficiently severe and/or pervasive as to create an intimidating, hostile or offensive work environment. Under this category, as developed in U.S. case law, a claim will be justified only if it satisfies a two-pronged test. The authority for an elaboration of these tests are to be found, for example, in two cases, i.e., Harris v. Forklift Systems Inc. 114 S.Ct. 367 (1993) and Meritor Savings Bank v. Vinson, 477 U.S. 57 (1986). Accordingly, any given conduct will not be considered as severe enough to found a claim under this head unless it can be shown that it created an objectively hostile or abusive work environment that a reasonable person would find hostile and abusive and additionally that the victim subjectively perceives the environment to be so and that it has actually interfered with the victim's work performance and altered the victim's conditions of employment. Thus it is not enough to show that the victim found the act or advances offensive. It is for the victim to additionally show that an ordinary, reasonable, prudent person in like or similar circumstances, would have found such act or advances to be equally offensive. Thus the claim of sexual harassment must therefore pass both the subjective and objective tests.

The constituent elements of sexual harassment

In an interesting example of judicial activism inspired by the "now ... accepted rule of judicial construction that regard must be had to international conventions and norms for construing domestic law when there is no inconsistency between them and there is a void in the domestic law", the Indian Supreme Court, in the *Vishaka* case, enunciated a series of guidelines and norms to govern the matter of sexual harassment and for enforcing the fundamental rights violated by such harassment with a view that these were being "laid down for strict observance at all workplaces or other institutions, until a legislation is enacted for the purpose." In this regard, the Supreme Court had reference to Article 11(1)(a) and (f) of the 1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) as safeguards the right to protection of health, including reproductive functions, and to safety in working conditions, and the CEDAW recommendations on the same as ratified by India. Accordingly, the Supreme Court defined sexual harassment and its constituent elements thus:

"... sexual harassment includes such sexually determined behaviour (whether directly or by implication) as:

a) physical contact and advances;

b) a demand or request for sexual favours;

c) sexually-coloured remarks;

d) showing pornography;

e) any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

Where any of these acts is committed in circumstances whereunder the victim of such conduct has a reasonable apprehension that in relation to the victim's employment or work whether she is drawing salary, or honorarium or voluntary, whether in government, public or private enterprise such conduct can be humiliating and may constitute a health and safety problem. It is discriminatory for instance when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment or work including recruiting or promotion or when it creates a hostile work environment. Adverse consequences might be visited if the victim does not consent to the conduct in question or raises any objection thereto."

It must be borne in mind that the guidelines laid down by the Indian Supreme Court has been in the context of a class action brought "with the aim of assisting in finding suitable methods for realisation of the true concept of gender equality" thereby seeking gender justice for the protection and enforcement of the fundamental rights of working women. In this regard, the guidelines do not anticipate various other settings in which the issue of sexual harassment may be of dispute. For this an elaboration by the EEOC in the U.S. of the other varied contexts of such harassment is of relevance. Thus, for example, according to the EEOC sexual harassment can occur where the victim and the harasser may be of the either gender with the added qualification that the victim does not necessarily have to be of the opposite sex, the harasser can be the victim's supervisor, an agent of the employer, a co-worker or even a non-employee, or even the victim may not be the person harassed but offended and affected by the act in question all the same.

Without detracting from the significance of the above, it is to be appreciated that a defining and an almost overriding factor of a claim of sexual harassment has to be the fact that it was unwelcome and that the victim cannot in any way be said to have consented to or solicited such behaviour on the part of the harasser. This is because sexual harassment, by definition, cannot fester in a consensual setting. In this regard the bottom line is that "consenting relationships that don't interfere with business have always been OK..." (Marianne Lavelle, "The New Rules of Sexual Harassment", U.S. News, Cover Story, 6 July 1998).

Spurious claims

It should not be lost on any authority concerned with deliberating and deciding on a claim of sexual harassment that the guidelines above secure not only the rights of a victim of harassment but are intended as standards against which the veracity and the justification of the allegations are to be tested. In this regard, the seriousness of the stigma accompanying any allegation of sexually harassing a subordinate, a co-worker or an apprentice or student, and unwarrantable censure by family, friends and society at large on account of otherwise by false and misconceived allegations are factors which should not be lost on the decision-making authority.

Any decision in a sexual harassment case hinges largely on the credibility of both the alleged harasser and the victim. In the case of either individual, the benefit of the doubt is to be given when all available evidences concerning that individual have been obtained and checked. The examination and consideration of evidence should be exhaustive and comprehensible to the extent reasonably possible, and there should remain no scope for the enquiry to have been unduly balanced in favour of a party to the dispute to the prejudice of the other. In that case the decision given will be perverse and arbitrary.

In view of the above, the disputed facts must be allowed to be presented by the accused and the victim in a manner as ensures against an arbitrary decision being reached in the dispute. In this regard, there must be no procedural or regulatory restrictions as impede the investigation in ascertaining thus:

a) that from the point of view of the accused, the relationship was a consenting relationship, which was not intended to and did not in fact affect business;

b) that additionally the relationship from the perspective of the accused was quite independent of either individual's employment status and as a consequence gave no cause for either individual to reflect on the relationship as having any adverse effect whatsoever on the work environment;

c) that it is for the claimant to categorically and conclusively show the relationship to have been otherwise than as stated in a) and b) above;

d) that until this is done the presumption must be that the claimant could not have been subjectively offended by the alleged conduct of the accused in a way that could justifiably expose the accused to the allegation of having created a hostile work environment for the claimant;

e) that it is also for the claimant to show that the hostile work environment arose not merely because work has been impaired but additionally that the work conditions had been discriminately been altered to the prejudice of the claimant; and

f) that the claimant must show that the conduct of the accused was so severe and pervasive that it created an objectively hostile or abusive environment that a reasonable person would find hostile or abusive.

It should be borne in mind that the 'severe and pervasive' standard raises some difficult questions of construction and application and has generally been applied in the United States, for example, to cases where the circumstances gave rise to conduct that were gratuitous, egregious and alarmingly aggravated. In this regard, it is our opinion that the circumstances in the *Vishaka* case involving the brutal gang rape of a social worker in a Rajasthani village would satisfy this test.

Employer responsibility

In the absence of any guidelines or legal decisions, precedents on sexual harassment in Bangladesh, it is paramount that employers, organisations, both government and non-government take the issue of sexual harassment in the work place gravely and ensure adequate steps are taken in mitigating their responsibility in this regard. It may be recommended that all organisations formulate guidelines on sexual harassment, procedural methods to investigate such allegations of harassment and disciplinary actions against perpetrators of such acts. In formulating guidelines for sexual harassment organisations may draw inspiration from United States cases or the judicial activism shown by the Courts of India. Although many international organisations have set up procedures and committees to tackle the issue of sexual harassment in the work place, local organisations may be criticised somewhat for their lack of vision in enacting principles and organising committees to address the issue of sexual harassment internally.

Firstly, all companies and or organisations must be encouraged to draft an elaborate, detailed and comprehensive written policy on sexual harassment. This should clearly identify what behaviour would constitute sexual harassment. Such explicit written policies on defining sexual harassment is necessary considering the subjective and objective nature of interpretation of what constitutes sexual harassment, as discussed hereinabove. In drafting a written policy the company must also take into consideration the cultural background of its employees. Once the company formulates a sexual harassment policy this should be widely distributed and ensured that all employees are well aware and informed of the company's stance on sexual harassment.

Secondly, the company must have an effective mechanism and procedure to deal with potential sexual harassment complaints. The mechanism should be discreet, prompt and fair. The parties, i.e., the victim of sexual harassment and the perpetrator both should be given the opportunity to be heard and the company should take appropriate action which shall be deemed to be fair and considered reasonable to end harassment in the work place. In some companies it may even be feasible to consider a 'Ethics Person' to whom complaints of sexual harassment are reported. Persons representing both sexes may perform the role of 'Ethics Person' jointly. This would allow both male and female victims to come forward with claims thus enhancing the employer's ability to take effective remedial action and consider the matter fairly. It is also essential that victims have easy access to and knowledge of the company's procedure for dealing into sexual harassment complaints. It is the company's responsibility to ensure unhindered accessibility to such procedures.

Thirdly, once the employer has investigated the allegation of sexual harassment it must promptly and effectively respond to its findings. Whether such action by the company is a verbal warning, written warning, job transfer, suspension of employment or if necessary termination against the perpetrator would depend on each specific case and the company's investigation into the allegation.

Finally, sexual harassment in a company presents a growing risk to businesses and it is therefore necessary for companies to continuously monitor its sexual harassment policy and make amendments, recommendations, if necessary. Such policies to ensure safeguards of the employees,' fundamental rights will ensure a healthy work environment and a continued professional and productive business atmosphere.

Gender and assignment of roles

Much of the case law that has developed in this area has had to do with sexual harassment as a variation of sexual discrimination. There is an argument that reliance on the notion of sexual discrimination in this regard more often than not leads to an enquiry of the gender or the sex of the victim as the primary ground for the harasser to choose a victim. This leads to a stereotypical role-assignment of the heterosexual male harasser versus the female victim. Indeed this stereotyping breaks down in circumstances where redefined gender roles in the work place and greater upward mobility of the female work force ensure positions of authority no longer remain the exclusive reserve of the heterosexual male. Also issues of sexual orientation clearly makes this stereotypical male to female equation unworkable. It is evident from available data that a noticeable percentage of victims of sexual harassment worldwide are working and school or university going heterosexual males. And the prognosis is that this percentage will increase with more women assuming positions of power in the work place. There is also the greater concern of whether taking the male to female equation as a given premise in all harassment cases does not amount to prejudging the guilt of the accused to his detriment and thereby allowing compromises to be made regarding the credibility and the personality profile of the accuser. That the suggestion here would be that like many other criminal acts, sexual harassment be seen in gender-neutral terms or without a gender bias and that it comes to be prohibited as an unwelcome and reprehensible conduct regardless of the gender identification of the harasser and that of the victim.

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The Purse Strings as the Noose

Indian NGOs Face New Challenges

THE Government of India has recently intensified its efforts to restrict the activities of non-governmental organisations (NGOs) by breathing new life into an anachronistic, Emergency-era statute. The Government's arbitrary application of the Foreign Contribution (Regulation) Act of 1976 (FCRA) at the behest of particular political interests infringes the fundamental rights to freedom of association and expression guaranteed by international law and the Constitution of India. Moreover, it flouts the most basic norms of fairness and due process enshrined in the Constitution of India and other Indian legislation.

The FCRA requires all Indian organisations and individuals that seek to receive foreign contributions to receive clearance from the Ministry of Home Affairs (the Home Ministry), in the form of either registration or prior permission. In recent weeks, the Home Ministry has deployed the FCRA as a blatantly political tool, seeking to intimidate NGOs that have been critical of the Government and its policies.

Within days of these statements, the Home Ministry dutifully served notice upon several of the 13 NGOs presumptively classifying the groups as "organisation[s] of a political nature, not being a political party" under Section 5(1) of the FCRA. If unable to rebut this classification, these NGOs would be required to obtain prior permission from the Home Ministry before receiving any foreign contributions. When another NGO, the Volunteer Action Network India (VANI), publicly defended the groups, it too was promptly informed that the Home Ministry intended to cancel its registration to receive contributions from abroad without prior permission.

The above examples reveal a pattern of arbitrary enforcement of the FCRA that violates fundamental freedoms guaranteed by the Constitution of India and international human rights law. On its face and as applied, the FCRA violates Article 19 of the Constitution of India and several international human rights instruments that guarantee freedom of expression and freedom of association including Articles 19(3) and 22(1) of the International Covenant on Civil and Political Rights (ICCPR) — ratified by India in 1979. The Government's arbitrary application of the FCRA also violates guarantees of equality and due process under Articles 14 and 21 of the Indian Constitution. Moreover, the decision to target NGOs that criticize the Government's record on women's rights raises serious questions about the Government's commitment to implementation and enforcement of the Convention on the Elimination of All Forms of Discrimination of Women, which India ratified in 1993.

The Home Ministry's deployment of the FCRA as a political weapon comes on the heels of another recent assault on the political and social space for NGOs in India. For example, the Government's recent imposition of an arbitrary clearance requirement for NGOs organising international conferences contravenes India's constitutional guarantees and international commitments. (See Human Rights Features, India Restricts NGO Meetings, HRF/7/99, 20 September 1999). Such efforts signal an increasing unwillingness on the part of the Government to tolerate criticism and dissent.

While the Government has a legitimate interest in holding NGOs accountable for financial or other wrongdoing, normal regulatory and criminal justice procedures provide sufficient institutional resources to accomplish this task. Narrowly-tailored financial reporting requirements for NGOs serve legitimate governmental interests and should remain in place. However, these laws should be administered by the Ministry of Finance, rather than the highly politicised Home

Ministry. And to the extent that the direct channels of political participation are to be reserved for Indian citizens, the proper targets of regulation are political parties and the candidates they field for office, not voluntary organisations and advocacy groups. Democracy and human rights depend upon the vitality of civil society which, in turn, depends upon the ability of NGOs to operate free of arbitrary legal obstacles. The Government's heavy-handed use of the FCRA to restrict the legitimate activities of politically-disfavoured NGOs represents yet another troubling retreat from India's democratic tradition.

Courtesy: Human Rights Features