

## LAWSCAPE

### Election observation by people with disabilities

AGAINST a backdrop of remarkably public and visible elections, 77 Ghanaians with disabilities served their fellow citizens as fully trained election observers during the December 2000 Presidential and Parliamentary elections.

Election sites were by and large set outside, in school and church yards, aside busy markets, and in central locations in communities across the country. By early morning on election day, December 7, scores and scores of men and women had come to their neighborhood polling stations to stand or sit in line, waiting peacefully and patiently for the voting to begin at the prescribed hour of seven o'clock.

Staffing the polls were a corps of temporary election workers teachers, government employees, clerks trained to process citizens from one step in the voting process to the next. They were joined by a security agent, and by representatives of the major political parties. Observing the process at many polling stations were one or two trained "domestic observers". Their task through their neutrality and by their presence was to assess and promote the credibility of the elections. In all, as many as ten individuals were trained to spend the day working or observing at each polling station, from the early morning, through the closing of polls at five o'clock in the evening.

Following the close of the polls, election workers at each polling station proceeded to count ballots. This was also done in public. At many polling stations, as many as five to six hundred anxious and enthusiastic citizens stayed to witness the count, and to await the outcome of their home district's vote.

As part of this very public process, the International Foundation for Election Systems (IFES) worked with local Ghanaian disability organizations to train and deploy 77 citizens with disabilities to serve as fully credentialed domestic election observers. It is believed to be the first time that people with disabilities were specifically identified and trained to serve as election observers.

These 77 men and women 45 per cent were women were deployed in the capital city of Accra and in nine areas throughout northern Ghana. Like any other observer group, their task was to assess the extent to which the election was free, fair and transparent. But as observers with disabilities, their task was also to assess the degree to which the election process was accessible to voters with disabilities. Finally, their task was to assess their own experiences as observers, and to recommend strategies to assist future election observers with disabilities.

The presence of the observers with disabilities also served another purpose. By representing their fellow citizens in such a public and visible manner, these 77 men and women demonstrated to their communities the capacity of people with disabilities to perform an important civic function. In fact, their very presence as election observers was often greeted with surprise by election workers and voters alike.

Next Steps: The work of the observers with disabilities did not end on December 7. Each of the 77 individuals observed again on December 28, in the special run-off election for the top two finishers in the Presidential ballot. And in the coming weeks, a representative group of the observers will convene for a seminar with the Ghana Electoral Commission. The purpose of the seminar will be to review lessons learned from the observation effort; to identify ways to replicate positive aspects of the December elections; to identify steps necessary to promote the full electoral participation of people with disabilities; and to discuss ways to enhance the participation of election observers with disabilities. IFES will serve as a technical resource at this seminar.

#### Background on IFES Disability Programming

The International Foundation for Election System (IFES) is an internationally recognized provider of technical assistance to electoral agencies and democratic institutions in over 100 nations. Based in Washington, DC, IFES currently has offices in over 20 nations. IFES is committed to expanding the reach of democracy to all individuals, and has been working since 1998 to promote the electoral enfranchisement of people with disabilities.

Over the past two years, IFES' effort has been recognized through grants from the Finland Ministry for Foreign Affairs, and from the Sweden International Development Cooperation Agency (Sida). Finnish funds are used to support three activities: research on constitutions, election laws, and election practices to assess accessibility concerns; pilot projects to election commissions to expand access to voters with disabilities; and election observation missions to assess the manner in which voters with disabilities participate in elections. Swedish funds are earmarked for at least six election observation efforts in which IFES will enable local disability organizations to take part as election observers in their own countries.

In Ghana, Swedish funds were used to support the December 2000 election observation efforts. Finnish funds will be used to convene the post-election seminar.

#### The IFES Disability Project in Ghana

In the months leading up to the Presidential and Parliamentary elections in December 2000, IFES worked collaboratively with local non-governmental organizations in Ghana to enable citizens with disabilities to serve as fully-credentialed observers.

The overall purpose of the project was multidimensional, and included: Awareness raising. In many nations, the citizenry is not accustomed to seeing people with disabilities performing important civic functions. By serving as election observers, the Ghanaians with disabilities were educating their fellow citizens as to the abilities of people with disabilities. Public awareness was also raised through local print, radio, and television media coverage, and through links to other mainstream NGOs which were fielding observation missions.

Organizational strengthening. IFES provided a sub-grant to Action on Disability and Development (ADD), an NGO based in Tamale, in northern Ghana. ADD had overall responsibility for identifying and training the observers, and worked with a network of NGOs based in Accra the Federation of Disability Organizations (FODA) to conceptualize and plan the deployment of the observers.

Promoting citizen participation/strengthening democracy. By involving and training citizens to serve as stakeholders in the conduct of an election, the project served to promote and strengthen Ghana's emerging democracy.

Promoting electoral access for people with disabilities. By observing the elections through a "disability lens," the observers are taking part in a global effort with IFES to identify barriers which limit the participation of people with disabilities in elections, and to promote solutions to remove those barriers.

Courtesy: IFES

## Legal regime of people's right to vote Laws on election expenses

A. H. MONJURUL KABIR

DEMOCRACY and the rule of law are inseparably connected. Democracy strengthens respect for the rule of law, by making the people the ultimate source of legal authority. But it also depends on the rule of law, because without respect for law it is not possible to hold free elections, to conduct them fairly, or to settle disputes about the electoral process. A strong, independent, prompt and effective 'dispute resolution mechanism' is, therefore, essential.

Regulating election expenses in accordance with law is an important factor for a free and fair election. The constitutional provision of equality before law will be meaningless if we can not ensure the compliance of laws on election expenses. Like other relevant matters of the parliamentary elections, the issue of election expenses is also regulated by the Representation of People Order (RPO) 1972. Article 44A of the RPO, 1972 defines election expenses as any expenditure incurred or payment made, whether by way of gift, loan, advance, deposit or otherwise, for the arrangement, conduct or benefit of or in connection with, or incidental to, the election of a candidate, including the expenditure on account of issuing circulars or publications or otherwise presenting to the electors the candidate or his views, aims and objects, but does not include the deposit made under Article 13.

#### Permissible amount: From 3 lakh to 5 lakh?

In 1972, the permissible amount of election expenses was Taka 20,000/-. The amount was increased to Taka 100,000/- in 1985. Later in 1991 the amount was further increased to 300,000/-. Recently the Election Commission of Bangladesh has decided to increase the permissible amount of election expenses from the existing amount 300,000/- to 500,000/-. No legislative amendment has not yet been followed up the decision. Many quarters think the amount of the permissible expenses is still inadequate and should be extended further.

Article 44A(1) of the RPO obligates every contesting candidate to submit a statement of the probable sources of funds to meet his election expenses to the Returning Officer within seven days after the withdrawal day. Such a statement shall also be accompanied by a statement of the contesting

candidate's assets and liabilities and his annual income and expenditure. Payment towards the election expenses of a candidate shall be made only to the election agent of such candidate and election expenses of such candidate shall be incurred only by his election agent.

Several provisions were subsequently enacted by an amendment in 1991 regulating the modes as to how this money should be utilised. Clause (3A) of Article 44B of the amendment instructs that the election expense or any portion thereof shall not be utilised for any of the following purposes:

- printing a poster in more than one colour,
- using imported paper for printing of posters or leaflets,
- erecting any gate or arch,
- setting up an awning covering an area of more than four hundred square feet,
- making a banner of any cloth,
- employing or using more than three microphones
- commencing election publicity in any manner at any time three weeks prior to the date fixed for the poll,
- setting up more than twenty election camps or offices in a constituency
- using any vehicle or vessel such as truck, bus, car, taxi, motor-cycle and speed-boat for taking out any procession,
- illuminating with electricity in any form,
- using symbol or portrait of a candidate in one than one colour,
- displaying a symbol exceeding the sized prescribed by the commission, and
- writing in ink or paint or in any manner whatsoever as means of advertisement for propagating election campaign.

The existing law on election expenses has been elaborated by the Code of Conduct formulated by the Code of Conduct prepared in 1995 and enacted as an Amendment to Article 91B of R.P.O., in December 1995. Section 3 imposes ban on subscription, donation or any promise for giving

such subscription or donation by any candidate or any person on his behalf whether openly or in secret following the announcement of the election schedule till the day of polling. Section 5 restricts setting up any camp on any road or place meant for the use of public. Serving food or drink to the voters in the election camp is prohibited. Procession with buses, trucks or any other vehicles or torch procession in favour of any contesting candidate is not allowed. The code has iterated that no candidate shall, under any circumstances, cross the limit of election expenses.

To regulate election process effectively, Article 44BB has been added. It requires every election agent or the contesting candidate to open a separate account with a scheduled bank for the purpose of making payments by the election agent and all payments towards the election expenses will be made from the account. Article 44C provides that every election agent of a contestant candidate shall submit to the election expenses within 15 days after the holding of election. With a view to maintaining the propriety of the return statement, Article 44C(2) requires that such statement shall be accompanied by an affidavit sworn severally by the contesting candidate and his election agent.

#### Law for non-observance?

The most depressing situation is the absolute non-implementation of the laws relating to election expenses. Political parties and their candidates are least bothered about these provisions. The supporters and workers of the political parties sometimes directly violate the laws due to lack of awareness and absence of enforcement of relevant provisions. The Election Commission is also under-resourced to monitor the compliance of such provisions in a countrywide election like the parliamentary election. It is also true that the Commission has not yet learnt to utilise the constitutional mandate and legal power it enjoys. Article 126 of the Constitution of Bangladesh, which, obligates all state functionaries to provide assistance to the Election Commission in conducting election, is a crystal clear reminder of that.

## Economic freedom : The forgotten human right

PARTH J. SHAH

HUMAN rights are an essential rallying point for fighters of freedom. They are largely a bundle of various rights or freedoms like the right to life, freedom of expression, freedom of religious practice, right to vote and participate in a democratic set-up. Generally when these political rights or civil liberties are listed, an important set of rights and freedoms economic freedoms are left out. Even the UN declaration of human rights hardly dwells on economic freedom. The freedom to produce and trade without any encumbrance, economic freedom is just as important as the right to free expression.

#### Rights, not entitlements

Economic freedom and economic entitlements are rather different. In a fundamental sense, they are antitheses. A variety of "new economic rights" are banded around: the right to education, health care, and housing being the most conspicuous. A distinction must be made between a right to the process of producing or acquiring goods and services and a right to the goods and services themselves. For example, the right to freedom of expression simply means that we can express ourselves without fear or favour. It does not entitle us to a free printing press or radio/TV station for broadcasting. Neither does it entitle us to use the intermediary of the government to acquire use of someone else's printing press or radio station. Nor is the government required to provide a printing press or radio station to every one who wants to exercise the right to free expression. It only requires that no one should interfere in our exercise of that right; no one is compelled to provide us the means to exercise that right. In the same vein, the right to education should mean that no one can stop us from producing and obtaining education, not that somebody has to provide us education. The right to the pursuit of happiness and the right to happiness are fundamen-

economic ladder nobody appreciates capitalism more than the poor hawker or peddler. Economic freedom entails the removal of various licences and laws under which citizens live. A lack of freedom and excessive regulation affect the poorest hardest. One small example is the plethora of regulations covering cycle-rickshaw

Lack of economic freedom also affects the fulfilment of our social objectives, of universal education and healthcare, for example. The Delhi Education Act of 1973 requires an "Essential Certificate," a license, from education authorities for opening a new school or even for expanding an existing one. The authorities are required to assess

how the market adapts and corrects itself. All players in the market have the same rights of production and trade. They have to compete amongst each other and constantly keep providing a better and cheaper product or service. If any one manufacturer is too lazy or greedy, he would see his market share eroded by others who would move in to

#### Components of index of economic freedom

- Size of Government : Consumption, Transfers and Subsidies
- General Government Consumption Expenditures as a Percent of Total Consumption.

counties for the seven components and their global ranking for 1997 are given (the higher the rating, the more the economic freedom; but the lower the rank, the higher the economic freedom).

Sri Lanka (ranked 66 out of 123 countries) has the highest degree of economic freedom among all ranked SAARC countries, while Nepal and Bangladesh have the lowest (both ranked 94). All the ranked SAARC countries have a good score on components I (Size of Government) and III (Monetary Policy). This has been true since 1970 except for a few lapses. The size of government score has ranged between 8 to 8.9 for India, 8.1 to 8.7 for Sri Lanka, 8.3 to 9.4 for Pakistan, 8.8 to 9.5 for Nepal and 9.9 to 10 for Bangladesh.

The quantification of economic freedom has allowed social scientists to assess its importance in economic development. A growing literature now supports the wisdom of Adam Smith: Economic freedom is critical in achieving higher rates of development. Importantly, simply changing the legal and regulatory system, i.e the functioning of the government, we can increase economic freedom. It can be done far quickly compared to building infrastructure, providing basic education and healthcare, and developing technologies and know-how.

In protecting dignity of the individual and in building a good society, economic freedom is as critical as political and civil liberties. Economic freedom freedom of production and trade must be an essential component of basic human rights.

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#### Economic freedom is not just for rich capitalists. It is more critical for those at the bottom rung of the economic ladder. A lack of freedom and excessive regulation affect the poorest, hardest.

pullers in Delhi.

Delhi has approximately two hundred thousand cycle-rickshaws providing an affordable and available service compared to buses or auto-rickshaws. The Municipal Corporation of Delhi has mandated that rickshaw pullers have to be licensed and only 50,000 licences shall be given out. In one fell sweep three-fourths of cycle-rickshaws are now illegal operations. Another irrational rule is that the holder of the cycle-rickshaw has to ply his cycle-rickshaw himself, the owner and the driver must be the same person. You can own multiple taxis or auto rickshaws or buses but not the cheapest means of transport the cycle-rickshaw. The law basically says one person can own only one cycle-rickshaw: No room for growth for individual owners in the cycle-rickshaw business. And we wonder why we are unable to eradicate poverty!

#### Economic freedom and livelihood

What use is economic freedom for a person with an empty stomach? That is the standard refrain when one talks of economic freedom. However, as our example of cycle-rickshaw pullers shows, economic freedom is critical in earning an honest living. In a sense economic freedom is the freedom to carry on with your livelihood. More importantly, it is in the nature of freedom that even if I do not exercise it, its

"any adverse impact" of opening of a new school on the existing ones in the area. The license permit raj that ruled the industry in India until 1991 still operates in the field of education. Severe scarcity of schools and poor quality of education are the predictable results of the license-permit raj in education. Economic

make up for the slack. With a wide variety of goods and services on offer, consumers would gravitate towards those with the best quality at the cheapest price. Competition, therefore is a better guarantor of keeping prices low and quality high than government licensing and regulation. Manufacturers and

Components	Bangladesh	India	Nepal	Pakistan	Sri Lanka
I	9.9	8.0	9.0	8.3	8.7
II	2.0	3.5	2.9	4.6	5.3
III	9.0	8.7	8.7	8.4	8.9
IV	3.2	7.0	2.8	4.5	4.9
V	6.9	7.6	—	7.0	7.6
VI	—	4.1	6.6	5.0	5.8
VII	3.5	3.8	3.8	3.2	6.0
Summary Rating	5.3	5.8	5.3	5.6	6.5
Overall Ranking (out of 123 countries)	94	86	94	88	66

freedom is as much a solution in education as it is in industry.

#### Economic freedom and social welfare

The denial of economic freedom is sought to be justified by citing social welfare. Government regulations are for the good of all and without them the market would run amok

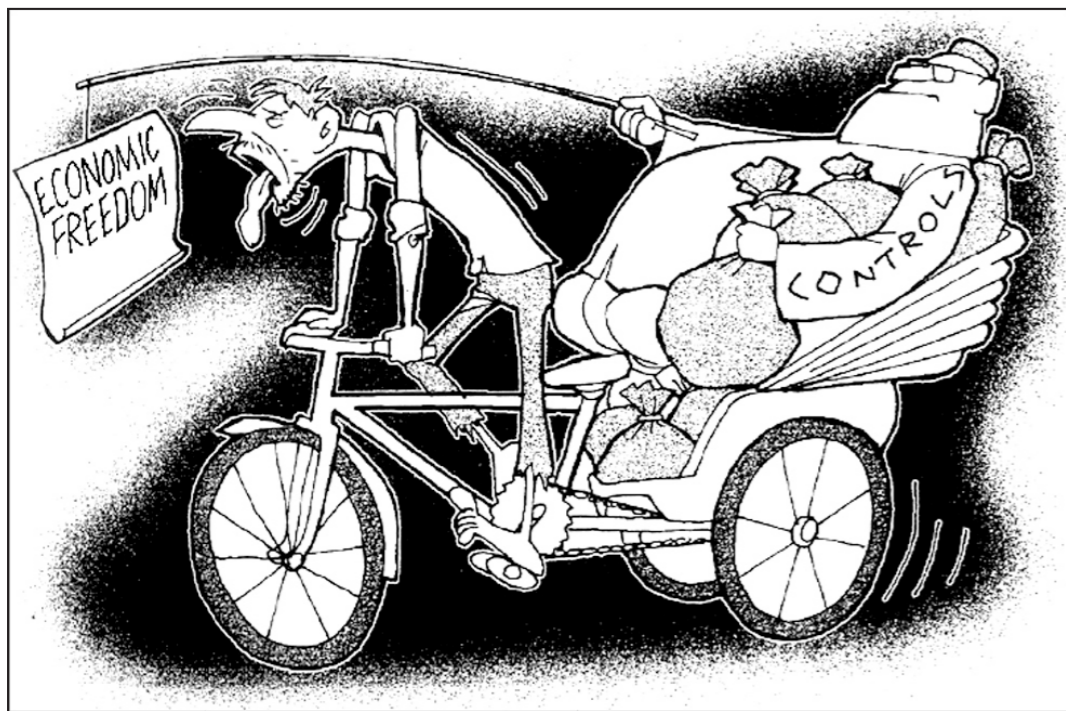
service providers have a far greater incentive to self regulate, otherwise they lose their goodwill, market share, profits. Under free and open competition, greed of one businessperson is a better check against the greed of other businesspersons than the benevolent hand of the government.

#### Measurement of economic freedom

Recently a different approach quantitative instead of philosophical and theoretical to understanding the significance of economic freedom has been tried. Following the Freedom House's successful assessment of political/civil freedoms, several attempts have been made to quantify the degree of economic freedom. The Freedom House in New York, Heritage Foundation in Washington, DC, and the Fraser Institute in Vancouver, all three of them have developed indices to measure economic freedom. The Centre for Civil Society is a co-publisher of the Fraser Institute's Economic Freedom of the World.

The Fraser Index of Economic Freedom takes into account seven different areas including how large a government is and how much it interferes in the working of the economy via government enterprises, price controls and tax rates; monetary policy including the ability to control inflation; the efficiency of the country's legal institutions especially the ones to protect property rights; freedom of citizens to trade domestically and internationally, and freedom to use and maintain bank accounts in alternate currencies. The detailed components list is as follows:

- Taxes on International Trade
  - Non-tariff Regulatory Trade Barriers
  - Freedom of Exchange in Capital and Financial Markets
  - Ownership of Banks: Percent of Deposits Held in Privately Owned Banks
  - Extension of Credit : Percent of Credit Extended to Private Sector
  - Interest Rate Controls and Regulations that Lead to Negative Interest Rates
  - Restrictions on the Freedom of Citizens to Engage in Capital Transactions with Foreigners
- Out of the seven SAARC countries, Bhutan and Maldives are not ranked by the Fraser index. The rating of the remaining five SAARC



tally antithetical. So is economic freedom and economic entitlements.

#### The poor and economic freedom

Economic freedom is not just for rich capitalists. It is more critical for those at the bottom rung of the

use by other confers benefits on me. A poor illiterate person may be unlikely to exercise his freedom of expression, but the fact that others in his society have that freedom provides him tremendous benefits.

#### Economic freedom and social objectives

and provide sub-standard goods and services at exorbitant prices. Monopolies and restrictive trade practises, the argument says, would be unchecked without the controlling hand of the government.

A closer dispassionate look at how markets actually function clears misconceptions and shows