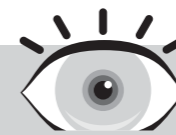


## LAWvision



### ANNOUNCEMENT

### STAR LAW NETWORK

The Daily Star is interested to establish a pool of **pro-active** and 'socially committed' persons for contributing effectively towards ongoing efforts and discourses on law, legal education, legal system, legal decisions, law enforcement, human rights trends, issues and standard-setting. The proposed Star Law Network (SLN) will be primarily based in Law Desk, the Daily Star and the 'LAW AND OUR RIGHTS' section will regularly publish the diverse contributions (e.g., articles, features, critiques, letters, reviews, reports etc) the network will generate. Law students, researchers, lawyers, judges, teachers, social activists and 'human rights defenders' are eligible to participate in the initiative. Persons having genuine interests and participation in the issues of governance, law and human rights with no formal background in law are also welcome to join the proposed network.

The Law Desk also intends to develop an 'International Mailing List' and 'Interactive E-mail Network' among the **pro-active** and 'socially committed' members of legal and human rights fraternity from across the world to facilitate stimulating exchange of views, notions and information. Expanding the 'traditionally limited access to information' will be another aim of the SLN. [www.dailystarnews.com/law](http://www.dailystarnews.com/law) has already opened a new frontier of information and exchange. We cordially invite interested readers of the Daily Star to join this unique initiative for creating a people-friendly legal system and promoting a culture of human rights and tolerance. Please send your name, contact details and preferred area(s) of contribution to the Law Desk. We will keep you informed every Sunday through LAW AND OUR RIGHTS.

For any further query, please contact:  
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## RIGHTS corner



### Restrictive practices prevent human rights organizations

The South Asia Forum for Human Rights (SAFHR) attempted twice to hold a consultation of civil society actors on peace and justice in Jammu and Kashmir. This consultation was to review the progress of the ongoing peace building initiatives in Jammu and Kashmir through "seeding community activism and strengthening grass-roots democracy". In the first instance, SAFHR was forced to cancel the consultation on December 15, 2001, just three days before it was to begin, under pressure of the government of Nepal. In the second instance the consultation had to be cancelled on February 14, on the instructions of the Home Ministry of Nepal, just four days before it was scheduled to begin on February 18, 2002. We have learnt that on both occasions, the Government of Nepal ordered the cancellations at the behest of the Government of India. This is only the last instance in a long line of interventions by the governments of South Asia to stop civil society initiatives and impose serious restrictions on the legitimate work of human rights defenders and democratic movements in the countries of the region.

In India, educational institutions are effectively debarred from holding meetings and seminars for exchange of views on human rights and peace if foreign academics are invited, in the name of the provision to secure prior government permissions.

In Bangladesh, severe visa restrictions are imposed on foreign intellectuals invited to academic and deliberative gatherings.

In Sri Lanka, human rights organizations have to secure permission from the Ministry of Defence before inviting guests to meetings on peace and human rights.

In Pakistan, the government refuses to issue visas and withholds permission for peace rallies and public meetings of trade unions and political parties.

In Nepal, the government has started discouraging, restricting and prohibiting civil society representatives from meeting on regional issues of peace, while its capital hosts the head quarter of SAARH.

In South Asia no regional body can be registered

In such a pervasive atmosphere of restrictions on travel and exchange of views in the region, it is in the interest of democracy and human rights that the human rights community and the UN Human Rights High Commissioner draw the attention of respective governments to these undesirable restrictions and prohibition practices.

The human rights community of South Asia appeals to the United Nations High Commissioner for Human Rights to request the governments of the region to stop their restrictive practices which prevent the human rights organizations in the South Asian countries from exercising their moral and political function of extending democratic rights.

**Signatories of the statement include:** Mr. I A Rehman, Executive Director, Human Rights Commission of Pakistan; Dr. Mubashir Hasan, former Finance Minister of Pakistan; Ms. Asma Jehangir, UN Special Rapporteur on Enforced Disappearances; Mr. Ved Bhasin, Editor and Publisher of "Kashmir Times"; Dr. Siddiq Wahid, a leading academic from Ladakh region of Jammu and Kashmir; Mr. Murray Thompson, Director, Peace Fund Canada; Dr. Shree Mulay, (McGill University) Board member, CERAS- diaspora NGO; Mr. Augusty Thomas, Friedrich Naumann Stiftung; Mr. Tapan Kumar Bose, Secretary General SAFHR; Dr. Ranabir Samaddar, Director, SAFHR Peace Studies Programme.

# Freedom of information from secrecy

A.H. MONJURUL KABIR

**Government by secrecy benefits no one. It injures the people it seeks to serve; it damages its own integrity and operation. It breeds distrust, dampens the fervour of its citizens and mocks their loyalty.** - 110 Congressional Record 17, 087 (1964) (Statement of Senator Long, USA)

THE right to information is guaranteed in international law, including as part of the guarantee of freedom of expression in Article 19 of the International Covenant on Civil and Political Rights. Most governments, however, prefer to conduct their business in secret. In Swahili, one of the words for government means "fierce secret". Even democratic governments would rather conduct the bulk of their business away from the eyes of the public. And governments can always find reasons for maintaining secrecy - the interests of national security, public order and the wider public interest are a few examples. Too often governments treat official information as their property, rather than something, which they hold and maintain on behalf of the people.

### Exploration of 'Freedom of Information Law'

More and more people are beginning to feel the need for more access to information which has until now been in the exclusive possession of the government even though it relates to the well being of the individual or the public at large. Entrenchment and popularisation of democratic values over the years has led to the realisation that government needs to be made more transparent and accountable in order to make democracy meaningful. In order to break away from the feudal system in which even now government is viewed as the lord and master of the common man, people's participation is most important for good governance. The right to information is also being viewed as a possibly potent instrument for minimising corruption and inefficiency in government.

Many countries around the world are now giving legal effect to the right, both by enshrining access to information in their constitutions and by adopting laws which give practical effect to the right, providing concrete processes for its exercise. The last thirty five years or so have seen the passage of freedom of information legislation in several countries beginning with the United States in 1966, Denmark and Norway in 1970, Australia, and New Zealand in 1982, Canada in 1983, Greece in 1986, and Ireland in 1998. South Africa, the United Kingdom, and India are now seriously considering access legislation of their own. The Union Government of India introduced the Freedom of Information Bill in July 2000.

### A welcome development

Freedom of Information (FoI) legislation breaks with the bureaucratic tradi-

tion of secrecy in several countries and, in doing so, helps empower the citizen vis-à-vis the state, thus deepening democracy and enhancing citizen control of political processes. Information helps citizens make better and more reasoned choices about important public policy and electoral issues, and participate in the political process more fully. The capacity to demand information from governments acts as a powerful deterrent against governmental corruption and graft.

The movement for freedom of information in Bangladesh has strong legal and constitutional foundations. The Universal Declaration of Human Rights, which, in its celebrated Article 19, defines freedom of expression and opinion as including the right to "seek, receive, and impart information" and the International Covenant on Civil and Political Rights, which also protects the right to information. The Constitution of Bangladesh in Article 39(2)(a)



guarantees the right of every citizen to freedom of speech and expression subject to some limitations. Given the low levels of literacy and awareness amongst the people, the call for the right in Bangladesh had been limited to a few people, notably journalists, a section of pro-active lawyers and some members of the educated civil society. Even NGO community of Bangladesh is not sensitised enough in promoting people's right to information.

### Position of the Government of Bangladesh

The Government of Bangladesh, as reported in the press, also plans to enact a Freedom of Information (FoI) legislation. The Law Minister asserts in recent public programmes that the present government is committed to expand people's access to information through an act of parliament. As per the desire of the Government, the Law Commission has already been in the process of finalising a draft bill and soliciting comments over the draft.

The Public Administration Reform Commission (PARC) in its Report ('Public Administration for 21<sup>st</sup> Century', June 2000) suggests certain steps to bring transparency in the Government documents and publications except those which concern the security of the state. The PARC recommends for the enactment of a Freedom of Information Act and also make necessary amendments to Official Secrets Act, 1923, the sections 123 and 124 of the Evidence Act, 1872 and Clause 19 of the Government Servants (Conduct) Rules 1979. Surprisingly, it also advocates for promulgating a National Security Act!

The present government also attempts to enact or amend a number of laws. Unfortunately, a tendency to form ministerial committee(s) is being noticed after completing lengthy process of drafting concerned bill or finalising proposed changes. Such practice, in fact, slows down the actual work enacting or reforming desired law. The declared attempt to enact a freedom of information law soon might not see the light of the day if it falls in the same pattern.

### Oxygen of democracy

Information is the oxygen of democracy. If people do not know what is happening in their society, if the actions of those who rule them are hidden, then they cannot take a meaningful part in the affairs of that society. Information is not just a necessity for people - it is an essential part of good government. Bad government needs secrecy to survive. It allows inefficiency, wastefulness and corruption to thrive. Information allows people to scrutinise the actions of a government and is the basis for proper, informed debate of those actions. In a developing country like Bangladesh with a rich tradition of governmental secrecy, a proper freedom of information law can make a genuine contribution towards establishing good governance. Freedom of Information laws are not simply for the satisfaction of citizens' curiosity. They usually derive from rights of access to records relevant to a legal interest and there is a continuing connection between the interest, which a citizen has in how the country is governed, and a right of access to records about government. Such a right of access may be important in disclosing inefficiency and even corruption.

# Protecting the rights of the consumers in Bangladesh

TUREEN AFROZ

MARCH 15, 2002 was celebrated world wide as the 20<sup>th</sup> anniversary of the **World Consumer Rights Day**. The day was celebrated on the 15<sup>th</sup> March, 1983 for the first time in the world history. However, it does not mean that the concept of protecting consumer rights is a new one. Rather since the dawn of human civilization, the ordinary citizens of every society have always been consciously trying to protect their rights as consumers, though its scope might have only been limited to prevent unusual price hikes of essential items of the daily life.



With the advent of the 20<sup>th</sup> century, the issue of consumer rights protection has started getting importance in different countries of the world. The Western countries became very much interested in enacting relevant laws to protect their consumer rights and played the pioneer role in creating the awareness. The rights of consumers got the international recognition when the United Nations promulgated the basic guidelines regarding consumer rights protection. By the end of the 20<sup>th</sup> century, the issue of consumer rights protection became almost like a movement all over the world.

There are 8 basic rights of the consumers. These basic rights are internationally recognized and have been approved by the United Nations. These are:

- (1) the right to satisfaction of basic needs;
- (2) the right to safety;
- (3) the right to be informed;
- (4) the right to choose;
- (5) the right to be heard;
- (6) the right to redress;
- (7) the right to consumer education; and
- (8) the right to a healthy environment.

However, with more and more awareness regarding consumer rights, there has been increasing demand to include many specific rights as consumer rights in addition to the above mentioned basic rights of the consumers. A few of them include consumer rights in the banking and information technology sector, consumer rights to demand answerability from the large corporations or consumer right to poverty alleviation. In this era of globalization, there is also now demand for framing "Corporate Code of Conduct" for the large corporate organizations.

To formulate a ideal framework for consumer rights protection, one needs to address three very essential elements of such protection:

- (1) enactment of consumer legislation and regulations;
- (2) consumer empowerment via imparting required education and information; and
- (3) consumer representation in the national as well as international decision making process.

The social position of the consumers in Bangladesh is very much vulnerable here. The consumers are deprived of their rights at every sphere of their lives. The country has got a few very old-fashioned legislations, which are neither sufficient nor strictly enforced for the protection of the rights of the general consumers. These include, *Control of Essential Commodities Act 1956*, *Pure Food Ordinance 1959*, *Standard of Weights and Measures Ordinance 1982*, *Drug Control Ordinance 1981* and *1982*, *Breast Milk Substitutes (Regulation of Marketing) Ordinance 1984* and *1989*, *Standard and Testing Institution Ordinance 1985* and *1988*.

However, such statutory protections are not comprehensive and thus, fail to meet the contemporary requirements of the consumers. As a result, the general consumers of Bangladesh cannot take proper legal action against the fraudulent and unfair trade practices of the unscrupulous businessmen and traders. Similarly, the issue of "consumer empowerment" is equally ignored both at the level of government as well as that of the private sector.

Also, the consumers of Bangladesh lack proper education about their rights as consumers and they very often than not are deprived of receiving the correct information regarding products and services. In addition, there is a total absence of consumer representation in the process of decision-making.

Now, there are three aspects of consumer rights protection, which every country must consider. They are:

**(1) Institutional Protection:-** when national institutions are established to safeguard and promote consumer rights of their citizens. For example, in 1914 the Federal Trade Commission, in 1927 the Food and Drug Administration and in 1970 the National High Traffic Administration were set up in the USA; the United Kingdom established the office of Director-General of Fair Trading; Sweden set up the Consumer Agency KOV and Consumer

Ombudsman KO, India established National Consumer Protection Council, various State Consumer Protection Councils, National Consumer Disputes Redressal Commission with State Commissions and District Forums; Pakistan set up the Islamabad Consumer Protection Council; Sri Lanka and Nepal set up the office of the Commissioner of Internal Trade and the Consumer Protection Council respectively.

**(2) Statutory Protection:-** when relevant laws are enacted to protect the rights and interests of the consumers. Many countries of the world, including those in Asia have already enacted comprehensive laws in this regard, such as, the *Consumer Protection Fundamental Act 1968* in Japan, *Consumer Protection Act 1979* in both Thailand and Sri Lanka, *Consumer Protection Act 1986* in India, *Consumer Act of Philippines 1990*, *Islamabad Consumers protection Act 1995* in Pakistan, *Consumer protection Act 1998* in Nepal and *The Law on Consumer Protection 1999* in Indonesia and *Consumer Protection Act 1999* in Malaysia were enacted.

**(3) Voluntary Protection:-** when consumers themselves voluntarily set up associations and/or organizations to safeguard their own rights and interests. These associations/organizations generally work as pressure groups on the government on consumer rights issues. There are many such voluntary organizations in India, Pakistan, Sri Lanka and other countries of



the world. In Bangladesh, the *Consumers' Association of Bangladesh (CAB)* was established in 1978.

With the relentless effort of CAB since 1994, a draft *Consumer Protection Act* for Bangladesh was formulated in 1998 by the Ministry of Commerce in consultation with CAB and other relevant ministries, Departments and agencies of the Government of Bangladesh. During 1999, CAB arranged a series of seminars and workshops where people from different corners of the society actively participated to suggest necessary changes in the draft act so prepared. In February 2000, the Ministry of Commerce sent the draft Act (with necessary amendment suggestions) to the Law Reform Commission to do necessary research on it. On the 29<sup>th</sup> October, 2000 the Law Reform Commission published a report on the draft act. Finally the draft Act got the preliminary approval at the cabinet but was again sent to the Secretarial Committee meeting for further security. This is so far the current status of the *Consumer Protection Act* of Bangladesh.

The draft *Consumer Protection Act* of Bangladesh is very much similar to that of India and Sri Lanka. The draft act is organized into four parts with 32 sections in total. The purpose of the act is stated as:

- (1) to protect the interests of the consumers;

- (2) to set standards in business; and
- (3) to establish necessary institutions for satisfying the above mentioned purposes and for the settlement of consumer disputes.

According to the draft Act, a **National Consumer Protection Council** will be established in Bangladesh. The objects of such council shall be to promote and protect the rights of the Consumers such as the right to be protected against the marketing of goods and services which are hazardous to life and property; the right to be informed about the quality, quantity, potency, purity, standard and price of goods and services so as to protect the Consumer against unfair trade practices; the right to be assured of the access to a variety of goods and services at competitive price; the right to be heard and to be assured that consumers' interests will receive due consideration at appropriate forums; the right to seek redressal against unfair trade practices/restrictive trade practices or unscrupulous exploitation of consumers; and the right to Consumer education.

In addition to the above-mentioned council, there will be established at least one **District Consumer Court** in each district of Bangladesh and one **National Consumer Court** for the whole Bangladesh to deal with Consumer disputes. The *District Consumer Courts* shall have jurisdiction to entertain complaints where the value of the goods or services and compensation, if any, claimed does not exceed 25 lac taka. Such amount, if exceeds 25 lac taka, shall be a matter for the *National Consumer Court*. Appeal against the orders of any *District Consumer Court* shall lie with the *National Consumer Court* and appeal against the orders of the *National Consumer Court* shall lie with the Appellate Division of the Supreme Court of Bangladesh.

The most striking part of the draft Act is that a complaint in relation to any goods sold or delivered or agreed to be sold or delivered or any service provided or agreed to be provided, may be filed not only by the concerned consumer(s) or the government but also by any recognized consumers association. For that matter, it is not necessary that the concerned consumer(s) be a member(s) of such consumer association.

The draft Act gives quite a lot of power to the *District Consumer Courts* and the *National Consumer Court*. If such courts find any complaint to be true, they have the power to issue order directing the relevant party/parties to do one or more of the following things, namely-

- (a) to remove the defect from the goods or services in question;
- (b) to replace the goods with new goods of similar description, free from any defect;
- (c) to return the price/charges paid for the defective product/services;
- (d) to pay compensation for any loss or injury suffered by the consumer due to negligence of the opposite party;
- (e) to discontinue with unfair trade practice or the restrictive trade practice;
- (f) not to offer the hazardous goods for sale;
- (g) to withdraw the hazardous goods from being offered for sale; and
- (h) to provide for adequate costs to parties.

There are two very important issues, which are absent in the draft *Consumer Protection Act* of Bangladesh. They are-

(I) There is no power given to either *District Consumer Courts* or to the *National Consumer Court* to issue an "interim order" regarding the sale or withdrawal of hazardous goods from the market. The total complaint procedure would take months or years to settle the issue, but in the meantime the consumers might suffer irreparable loss unless such interim order is passed by the Consumer Courts in appropriate cases.

(II) There is no provision of constituting and maintaining a "Consumer Protection Fund" for protecting and promoting consumer rights in Bangladesh. By an amendment in 1980, provisions for such fund were incorporated into the Sri Lankan *Consumer Protection Act 1979*. In Sri Lanka, the sources of such "Consumer Protection Fund" generally come from fines procured by the consumer courts for offences under the Act, profits from sale of goods forfeited under the Act, grants and donations, and finally from the budget sanctioned by the parliament for protection of consumer rights. In Bangladesh, similar provision for "Consumer Protection Fund" can be incorporated into the Act.

In conclusion, the innocent consumers of Bangladesh are in crucial need of having the protection of a comprehensive consumer protection legislation. Therefore, the government of Bangladesh must enact a comprehensive *Consumer Protection Act* as soon as possible and further strictly ensure the effective implementation of such legislation. We should always remember that an effective consumer protection legislation of a nation not only protects and promotes the rights and interests of its consumers, but it also enhances certain socio-economic targets of its macro economy, such as poverty alleviation, efficient, fair and transparent market mechanism, good governance and above all, socio-economic justice for its citizens.

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