



HUMAN RIGHTS monitor

Homelessness and freedom

S. NAGEEB M. ALI

WHEN we see freedoms, liberties and life violated in other countries (say, Muslims in Gujarat or Bosnia), it evokes a moral outrage; a justifiable moral fury as the angel of death is napalmed upon men, women and children.

Here, I will argue that this resignation betrays any moral attachment we may have to rights or liberties. Homelessness and destitution involve a loss of liberty that is as paramount as violations of freedoms of expression, and religious choice.

To be sure, the loss of liberty is but one aspect of the nightmare of homelessness. There is also the horror of having to face the mercilessness of climate without anything but a single garb of clothing, the perpetual ache of hunger, the beatings, the loneliness, the fear, and the utter despair that accompanies being unable to care for oneself, for one's kith or kin.

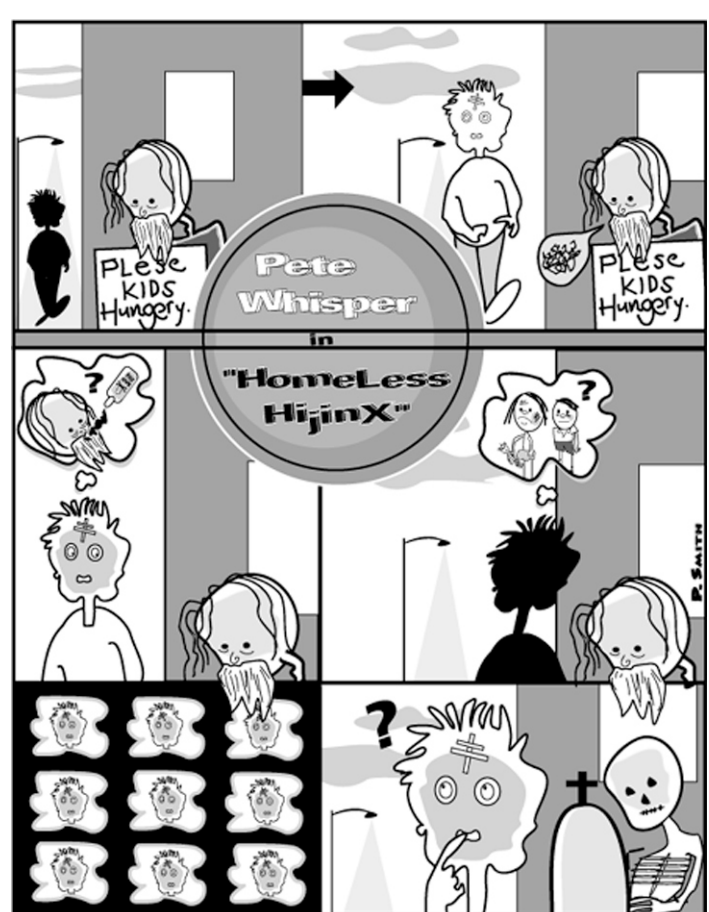
It is also not my contention here that eliminating homelessness leads to better social consequences though it is true that to provide shelter and food would lessen crime and the proliferation of disease, and would be better for all of us.

Let us begin with a truism. A person is not free to do X unless there is somewhere she can do X. All actions involve a spatial component, and if one is not free to be in a certain place, there is nothing one is free to do at that place.

What we see happening in our society today is millions of people have no legal rights to be anywhere, and thus, are compelled to subsist, sleep, and care for their children in lands where property rights are unclear, where the law is blindfolded and handcuffed.

We often look at these tin gardens as an un-aesthetic aspect of Dhaka city

(though the hundreds of posh houses, all aping the White House, are perhaps equally unappealing). And we support destroying the shantytowns on the grounds that they are hotbeds for crime and disease without once consid-



ering what will happen to the people that once lived there. When the plight of poverty is the ugliness of its appearance to the opulent, and not destitution itself, the shadows of evil have shut out the light of justice.

When Marmeladov tells Raszkolnikov in Dostoevsky's Crime and Punishment, "For every man must have somewhere to go," he may not have meant

it as literally as I, but it is certainly true that "every man must have somewhere to turn," and sadly, we have given the homeless nowhere to go or turn; the choice is between death and destitution.

Our cities are embarrassments of riches: embarrassments because while our society can support large shopping complexes, amusement parks outside the city, and yes, now supermarkets with polite service, we claim to suddenly be short on funds when building inexpensive housing for the destitute (oddly enough, while blocks and blocks of apartment buildings lie vacant).

And yet, we claim a commitment to freedom and democracy, the foundation of which is providing individuals with a set of choices for self-determination, and a degree of autonomy. Now a useful distinction to be made philosophically is between positive freedoms and capabilities i.e., that which a person can actually achieve (this is usually what Amartya Sen speaks of when considering freedom) and negative freedoms and liberties i.e., that which a person is permitted to do without interference (though she may not actually be able to do it).

In the United States, the destitute poor are often criticized for succumbing to the temptations of substance abuse, and in Bangladesh, to crime. Though it is undoubtedly true that malevolence lies within some poor, as it does within some rich, the essential question to ask is what option have we left the poor.

If we were willing to go to war for freedom, and refer to our war of independence as Liberation, we must not leave our people in shackles. Sleep, having a home, having a roof to protect one from the inclement monsoons and the merciless summer sun these are all actions basic to the sustenance of life itself.

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LAWSCAPE

CRC General Comment on the aims of education

SARAH ARMSTRONG

One of the fundamental obstacles to the realisation of social, economic and cultural rights is the fact that the rights themselves are considered to be vague and open-ended.

General Comments by the various United Nations Committees provide crucial starting blocks for the process of delineating the definition, scope and core contents of the rights.

According to the CRC, Article 29(1) of the Convention on the Rights of the Child, which enshrines the right to education, is of 'far reaching importance'. The General Comment avoids defining the right to education and instead focuses on the aims of education.

The Committee explains that education encompasses more than just formal schooling, it must be 'child-centred, child-friendly and empowering' and it must enable children to develop their personalities, talents and abilities and to live a full and satisfying life within society.

The Committee subsequently highlights several of the objectives of the Convention. Significantly, for the first time, the CRC acknowledges the 'indispensable interconnectedness' of the Convention's provisions, something that the Committee on Economic, Social and Cultural Rights Comments.

The CRC's General Comment on the Aims of Education provides a broad-based framework within which the right to education can be conceptualised. It does well at conceptualising the right to education from the point of view of the best interests of the child.

Source: Interights Bulletin

LAW watch

E-commerce-policy options to the regulators

TUREEN AFROZ

TECHNOLOGY is a dynamic concept. It changes its norm and form in every second. Therefore, handling such an ever-changing notion of technology with a given store of knowledge at any particular point of time is undoubtedly a difficult task.

As far as the specific challenges (mentioned above) are concerned, my suggestion is as following:

Legal recognition: The aim of Article 5 of the UNCITRAL Model law is essentially to ensure functional equivalence between electronic and other forms of communication.

Writing: The traditional paper based interpretation of the term, "writing" should be extended to include electronic messages. In this regard, national laws may be changed to incorporate Article 6 of the UNCITRAL Model law that expressly states that a data message should satisfy any requirements for information to be in writing.

Signature: Signature is particularly important in banking, where banks are required to carry out appropriately authorised transactions on behalf of their customers. In the banking world, there are already various types of electronic signatures in use, such as passwords or PIN systems, test-keys, cryptographic techniques such as "Digital signatures".

Originality: In assessing integrity, the article 8 of the UNCITRAL Model law requires that the electronic information should be complete and unaltered and the reliability of the assurance as to integrity should be assessed in the light of the purpose for which the information was generated and all relevant circumstances.

Evidence: It is unfortunate that even the UNICTRAL Model Law does not mandate the admissibility of an electronic record or an electronic signature in the event of objections such as hearsay, lack of authenticity etc. Article 9 of the UNCITRAL Model Law only ensures that electronic records should not be discriminated against solely based on the medium chosen.

Record keeping: It is very important for banks and other financial institutions to collect information and maintain records for a range of internal management purposes. Article 10 of the UNCITRAL model Law prescribes an appropriate basis for the equivalence of electronic and paper-based record retention requirements.

Validity of contracting online: This has been the premier obstacle to growth in electronic commerce. Security traders need the certainty of knowing that their paperless contracts formed in cyberspace are enforceable.

GAO (General Accounting Office) Report 1988 (USA), there has been weaknesses in the management of software that controls access to the Fedwire system. The same report identified that the weaknesses with CHIPS included "inadequacies within security administration and quality assurance that increased the risk of unauthorised use".

Need for internationally harmonised domestic legislation and continuing international co-operation: Banking and securities trading activities and thus the overall financial market mechanisms should be brought under the umbrella of one harmonised set of rules and regulations.

Concluding Remarks

It is true that e-commerce can only flourish under a safe and predictable environment, for which regulation is of utmost necessity. However, regulation should not be the end of everything at least for achieving long-term financial market objectives. What is more importantly needed is the presence of the Responsible Market Participants who would want their markets to have a long term prospect and would dissuade themselves from behaving in a way which does not contribute to "good governance" of the global financial environment.

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Muslim women in India win right to divorce in court

Uttering talaq, talaq, and talaq (I divorce you I divorce you. I divorce you.) in the presence of three witnesses in the past was enough for a Muslim man in India to divorce his wife, even if his wife was not present.

Now the Mumbai High Court has ruled that Muslim men will have to divorce their wives in court, giving Muslim women the right of due process of law. This ruling will apply not only to Muslim men and women in Mumbai but to Muslims throughout India.

This ruling overcomes the silence of the government and of society in Muslim divorce cases after the case of Shah Bano 17 years ago. In this case, Shah Bano, who had been married to her husband for 43 years, was thrown out of her house after her husband decided to take a second wife.

RIGHTS corner

Death of Badal

ODHIKAR

On 19 May 2002, various newspapers reported the death of Badal (19), a butcher by trade, who was arrested by the police from his house in Boroipara, Narayanganj, Dhaka, on the night of 07 May 2001.

Badal's mother, Sanowara Begum and his elder brother Shagor, alleged that at 2 am on 8 May 2002, A Sub Inspector of the Detective Branch (DB), Azharul Islam, came with a team and arrested Badal from his home.

Badal's mother, Sanowara Begum told Odhikar that after his arrest, Badal was tortured and that the DB police has demanded Taka 50,000 from each of the four arrested. Badal's family is in economic hardship.

Even though the four young men were arrested at 2 in the morning of 8 May, they were presented before the court on the afternoon of 9 May 2002, in disregard to legal provisions that an arrested person must be presented before the magistrate within 24 hours of his/her arrest.

On examining the case records, Odhikar investigators found that on the afternoon of 9 May 2002, the four men appeared before the Magistrates Court and the police of the DB sought for 7 days remand for them ('remand' is sought when police want to question the arrested persons further.

12 year old Jahurul Islam was one of the persons arrested with Badal. He told Odhikar that the court had granted him bail. However, even though the police were shown his bail order, he was arrested again and kept in lock-up for 2 days and beaten.

Inspector of the DB, Fazlul Kabir and Investigating Officer, Sub Inspector Azharul Islam denied having tortured Badal. They told Odhikar that he was a drug addict and that he was begging for Heroin in the police lock-up.

Odhikar also talked to the Head of the Dhaka Medical College Forensic Department. He told the investigators that Badal had died almost as soon as he had been admitted to the Emergency Department. He said that Metropolitan Magistrate Taslima Nahid prepared the inquest report and had only mentioned the fact that there were 3 marks of injury on the body and Badal had suffered from high temperatures and had a headache.

On 19 May 2002, Badal's mother, Sanowara Begum, filed a case in the First Class Magistrates Court in Narayanganj, against Inspector Fazlul Kabir, Sub Inspector Azharul Islam, Sub Inspector Morshed, Constable Alamgir and Constable Shamsu Mia.

The investigators returned to Badal's home in Boroipara. His parents were away, but his wife was in. Initially, she refused to speak to them, but finally said that the family were scared of the police and could not afford to continue the court case.

to an agreement with the DB police after receiving a lot of money. They also said that on the 22 of May, all the witnesses were ready to go to court, but she left without telling them.

Because the 26th of May was a government holiday, the 27 was set for the hearing in the cognisance court. However, since the said court had not received any information from the magistrate, the hearing could not be held. At the court premises, Badal's father, Akkas Ali told Odhikar that the family could not afford to continue the case.

Death in, or as a result of, police torture is not an unfamiliar scenario in Bangladesh and the term "remand" is one feared by every arrested person. Autopsy and inquest reports remain unclear and unprofessionally written and post mortem examinations and reports hazy.

Asia makes some healthy gains

SALEEMUL HUQ

Asia has the world's largest number of poor, and many of its worst environmental problems. It is also where the main actors in global terrorism have originated in the recent past. A major factor in the rise of the fundamentalism that breeds terrorism is the lack of hope for the continent's young people.

A notable feature of most of these initiatives has been their participatory nature involving all the key stakeholders, including civil society. Many countries have even set up new institutional structures at the highest levels.

A key feature has been the willingness of the different stakeholder groups to work together for a common purpose to solve problems. Another key feature has been the realisation that economic, social and environmental problems cannot be solved in isolation from one another, but need synergistic approaches that tackle all the problems in a holistic manner.

This is not to say that all the problems in the countries of Asia have been solved. This is clearly not the case. The region still is home to the largest concentration of the world's poor and tackling poverty still remains the number one priority in most countries of the region.

As the World Summit on Sustainable Development, to be held in Johannesburg, South Africa in September, approaches, it is perhaps a good time to remember the words of Indira Gandhi, the late Indian prime minister: "Poverty is the biggest polluter in the world."

Saleemul Huq is a researcher and practitioner on sustainable development in Asia. Courtesy: Bangkok Post