

"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

RIGHTS investigation

Facing deprivation from husbands working abroad

ARAFAT ARA

SALEHA Begum has not seen her husband for 14 straight years, but did not give up hoping he will return home from his work abroad. She keeps her tears hidden from her family. The husband of Saleha left the country 14 years ago in quest of fortunes in Saudi Arabia.

Saleha passed her golden years without her husband. She knows that those days will not return but she still expects to begin a new life with that man who stopped contact with her for more than a decade.

"My husband went to Saudi Arabia 18 months after marriage leaving me and my baby. We don't know what happened to him. I wrote letters after letters, but he didn't reply," said the dejected housewife.

Saleha was happy when her husband decided to go abroad taking loan from moneylenders. Even she was glad during first two years as she sent some money, though inadequate, to repay the loan. "Then he stopped sending money, writing letters. We tried to trace him but failed. His colleagues who returned home confused us more. Some of them said he was jailed following a brawl with the employer company."

Saleha's struggle began since then. She is not happy with the life at her in-law's house in Chouddagram of Comilla district. Her frustrations and concerns are increasing for the growing daughter, now 13 years old. My woes are worse than that of a widow. May be my husband is alive, but for me he is dead," said Saleha who has to face difficulties in every step of life.

Sometimes Saleha fail to pay the tuition fees for her daughter who read in class VII. I cannot buy good dresses for her. I feel bad as she is growing with compassion and sympathy from others. Not only poverty, Saleha also has to face some people who often want to take advantage of her loneliness. This has created a sense of insecurity in her mind. "All of them are close and distant relations of my husband. I cannot make any complaint against them because they are my guardians. If anything happens, everybody finds me guilty, not the so-called guardians."

Being frustrated Saleha went to her parent's home several times and her mother proposed to get her married again. "But I didn't agree. My daughter is now growing. Moreover, I still believe he will come back."

Like Saleha, thousands of women in Bangladesh are living in such a situation as their husbands, after going abroad, forget their wives and children creating a new dimension of social

problem.

According to statistics some 3 millions Bangladeshi people are working abroad, mainly as labourers in the Middle East, Europe, the USA and a number of Asian countries leaving their families at home.

The poor, half-educated people used to go abroad taking loan from moneylenders and repay the loan working hard in the foreign countries. But sometimes it becomes very difficult for the low-paid workers to repay the loan.

house in absence of their husbands. They have to work hard without any recognition. Some of them are forced to come back to their parents. Banani Sanyal, 32 is one of them.

"I returned to my parent's home as my husband went to Canada seven years ago but he didn't return. He had promised to take me and my daughter to Canada but failed to keep his words," said Banani. She said that after going to Canada her husband had kept regular contact with her in first few months. "But soon he started to ignore me. Even he later took his parents to Canada forgetting me and my baby."

Banani doesn't know what was her fault. "I married him without consent of my parents. I was happy as initially my in-laws cordially accepted me. At that time I couldn't imagine that my future would be so dark."

She alleged that her husband cut off relations with her due to some false allegations. "His parents cooked up the complaints and he believed it." "Sometimes I thought of seeking divorce and taking legal action against him but I know I can't do it as per Hindu family law," Banani said adding, "I'm helpless. My daughter is also being deprived of her rights."

However, according to Muslim Marriage Law, a woman can seek divorce showing certain reasons if the husband lives in unknown place for four years, or he fails to bear the expenses of his wife for two years, or he is jailed for a minimum term of seven years or he fails to discharge his responsibilities for three years without any valid reasons.

Human rights activist Advocate Sigma Huda said a woman can also file case against husband to realise her living costs and demohor as mentioned in the marriage documents for paying to the wife. If he does not respond to the notice, his assets at home can be attached to realise the amount sought by the petitioner.

"According to the existing law, actions can be taken against any person living abroad through discussion between the governments of Bangladesh and the respective country," said advocate Farida Khanam. But the reality is that the victims don't have the ability to file and run such cases and time to deal with the very lengthy process of trial.

Social thinkers consider that the government and the non-government voluntary organisations should come forward to solve their problems and make proper arrangements for their rehabilitation.

Life and livelihood in the South Asian countries are predominantly dependent on nature. Most of the countries belonging to this region have great reliance on nature for a continuous supply of daily needs. Bangladesh is no exception of this. The agriculture of Bangladesh still employs 62.3 per cent of the total labour force and one third of the GDP comes from the agricultural sector. Despite such heavy dependence on nature, Bangladesh like other South Asian countries have been struggling with age-old laws enacted during the colonial era for protection and conservation of various natural resources. Long after the fall of British, some of these laws in the region were amended in respective legal arena to reflect the needs of the constituent populace and acknowledged their stake and participation in management. Such changes were encouraging but have not taken place in all countries in common or in same pace. While countries like Sri Lanka, India and Nepal have made a steady move ahead, Bangladesh and Pakistan are yet to bind themselves with constitutional obligation for environmental protection.

Four years after the Stockholm Conference the forty-second amendment to the Constitution of India added certain significant provisions relating to environment. Under the new provisions as added to the body of directive principles, which guide the state in molding its law, the State shall endeavor to protect and improve the environment and to safeguard the forests and wildlife of the country [Article 48 (A)]. Among the fundamental duties of the citizens incorporated by the forty-second amendment, the duty to protect the environment is significant. It is provided that every citizen shall have a fundamental duty to protect and improve the natural environment including the forests, lakes, rivers and wildlife and to have compassion for living creatures [Article 51 (G)].

In Nepal, some new Articles have been incorporated

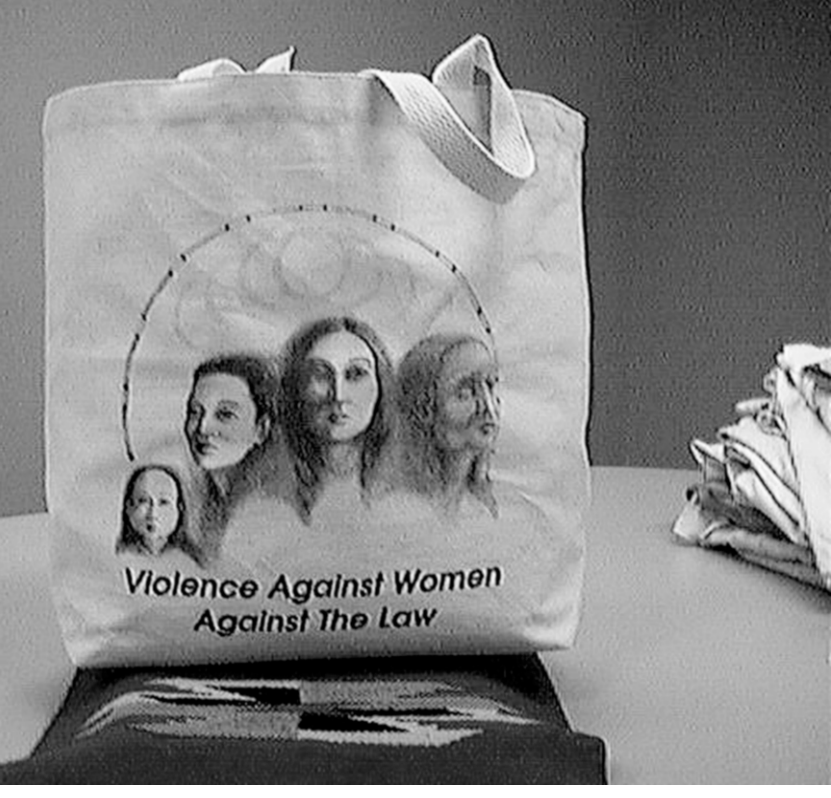
been overturned by the military, the military and the dreaded ISI, the epitomes of the guardian-class model, have been able to conduct themselves in the same manner with complete impunity. A recent report in the press reveals that a large number of army officers purchased agricultural land in Bahawalpur near the Indian border at throwaway prices (unabashedly justifying it as the best defence against an Indian advance in that sector during war) but began selling it off at highly profitable rates. An earlier report disclosed that the former head of the ISI, General (ret'd) Javed Nasir, a born-again Muslim who went around preaching Islamic piety in the upper-class localities of Lahore and who was known to have close links with the Taliban and several Pakistani extremist organisations, has embezzled Rs 3 billion. While the General in a press conference has denied the allegations, it is a fact that cases against him are being probed by the Accountability Bureau.

Also know is the fact that officers of the armed forces enjoy benefits and subsidies quite out of proportion with the economic resources of Pakistan. It is no wonder that various international reports inform us that Pakistan's notoriously low standard of living has declined sharply in recent years and now significantly lags behind India's.

Perfect government - a misnomer?

Centuries accumulated wisdom tells us that the belief in establishing a perfect government is a sadly mistaken one. It is, therefore, important that the state be divested of all metaphysical and eschatological pretensions. It is a human artefact which can at best maintain the common good defence against aggression, public services which can be organised efficiently only in a collective manner such as schools, roads, railways, hospitals and so, and state institutions to protect law-abiding citizens from criminals. This function can be performed efficiently only by an open and transparent government that can be held accountable through regular, periodic elections. Such a government can make faulty decisions and even renege on its promises, but the fear that acting irresponsibly could result in public censure manage, overtime, to dissuade it from acting irresponsibly.

What is needed, therefore, is not simply the ritual of an election, but also institutional arrangements that provide effective measures constantly to supervise the way an elected government behaves in office. Should it seriously violate the constitution and laws of Pakistan, it should be possible to start criminal investigations directly and punish such offenders without the military taking over the reigns of government.



A large number of people also go abroad illegally and live without valid permits of the respective countries. Many of them have to languish in jails for years while many others have to remain in hiding. But many of the expatriate men deliberately cheat their wives. They get married at home, go abroad alone and then forget their wives.

On the other hand, the family members of these people have to face reminders from the moneylenders. Their wives and children have to struggle and combat a lot of hurdles in their day-to-day life.

Specially, the women of the expatriate Bangladeshis become victims of multifarious problems in both family and social life. But neither the government, nor any NGO so far came forward to solve their problems.

Most of these women are mentally tortured at their in-law's

LAW views

Who shall guard the guardians?

ISHTIAQ AHMED

HISTORICALLY, democracy has been held not only in great suspicion but in downright contempt by mainstream political thinkers. Plato set the main terms for the criticism of democracy. It was equated with the rule of the uneducated and unskilled masses who allegedly act impulsively and irresponsibly and thus violate the highest purpose of the state: to establish justice and happiness of all in accordance with standards knowable only to the learned and the gifted. He, therefore, wanted to confine the affairs of the state to a guardian class comprising philosophers and warriors. Ordinary human beings were to submit to the rule of that class without any questioning, because it was in their best interest to do so!

variant of the guardian class philosophy, has been in force since independence. The civil and military bureaucrats have ruled directly and indirectly for most of Pakistan's 55-year chequered history. They have invariably referred to the threat of foreign subversion and internal rebellion as the reasons for intervening into the system and saving the country from the rule of incompetent and corrupt elected rulers. Under Zia-ul-Haq a mission to rule in the name of Allah was added to the



Rule of the elites?

The classic objection to the rule of a guardian class or elite has been: who shall guard the guardians? Can they be infallible, or, free from temptations that unlimited power always brings along? Plato's deductive reasoning took for granted such a possibility because it followed logically that if you have the correct knowledge you would not go wrong. His famous pupil, Aristotle, called into question such reasoning. While conceding the theoretical possibility of such a government, he believed that in the real world finding such a single person or class of persons was well-nigh impossible. More likely, the rule of the philosopher-king would degenerate into the misrule of a tyrant, he suspected.

More than two thousand years later, we can appreciate that while the Platonic idea of the perfect state and a guardian class is theoretically exciting and enticing, the record of world history tends to vindicate the stand taken by Aristotle against such a political dispensation. Time and again, it can be demonstrated that all attempts to establish the perfect state or society have fundered, very often by creating just the opposite conditions, resulting in oppressive, autocratic rule of one sort or another. Therefore, in purely empirical terms, there is no evidence to support the inerrancy of a guardian class.

Even in the Islamic tradition, apart from the period of the Prophet (PBUH) and the revered pious caliphate, which lasted less than 30 years, the government was mostly headed by despots, occasionally benevolent but often whimsical and oppressive. In fact even the period of the pious caliphate was not free from serious conflict. The issue of succession was disputed within hours of the death of the Prophet (PBUH) and battles between different Muslim factions marked the periods of the third and fourth caliphs. It is not surprising that the period was superseded by autocratic hereditary rule. The more elitist Shiite theory of the rule of the perfect Imam has never been put into practice, but the rule of the Iranian Ayatollahs, claiming to act in the name of the hidden Imam, should hopefully dissuade people from pinning their hopes on any theocracy.

In Pakistan, the vice-regal model of government, which is a

trappings of the vice-regal model.

The non-responsive elected government

It would be wrong to deny that elected governments of recent years have been guilty of grave and unpardonable betrayal of the public trust. The way the public purse was squandered and looted during the Benazir and Nawaz Sharif periods puts to shame all tall claims in favour of democracy. But the problem is that while corrupt civilian governments in Pakistan have readily

LAW campaign

Environment in the Constitution

BELA

THE Constitution of a country safeguards the fundamental rights of its citizens and lays down the directive principles of state policy. It is reflective of the administrative priorities of respective government and is a live document of people's solemn will and aspiration. All national laws are required to be in line with the constitutional spirit and any inconsistency therewith is to be struck down to uphold justice and basic expectations of the citizens from the state organs. With the progress of civilization, these expectations and aspirations of the common people have been readjusted to meet the challenges of changing time. Accordingly, many states have made a move to change their national legal regime to incorporate the changing and progressive value of mankind. All these changes are in accordance with the constitutional pledges and while some of these accord greater protections to the citizens against state interference; the others require them to perform in a manner compatible with the national priorities and also address issues of global concern.

Following the Stockholm Conference and of course the Rio, most nations with an exception of few have adopted national legislation on environment as part of their commitment to "think globally, act locally." Principle 11 of the Rio Declaration requires the State parties to enact effective environmental legislation and to reflect environmental standards, management objectives and priorities in developmental context. To ensure environmental justice, Principle 13 of the Declaration requires the State parties to develop national law regarding liability and compensation for the victims of pollution and other environmental damage. States are also obliged to cooperate in an expeditious and determined manner to develop further international law on compensation. Needless to state, such development in the arena of international law shall help protect the natural resources that are commonly used or shared by more countries than one and shall depend on strong commitment of the State parties at the domestic level.

With the ever-deteriorating state of the global environment and the emerging crisis resulting from depletion of invaluable natural resources, some countries have shown more commitment over others in committing for the protection of nature and its precious gifts. The South Asian countries have also started responding to such trend resulting in significant change in domestic regulatory regime and also the Constitution, the supreme law of the land.

Life and livelihood in the South Asian countries are predominantly dependent on nature. Most of the countries belonging to this region have great reliance on nature for a continuous supply of daily needs. Bangladesh is no exception of this. The agriculture of Bangladesh still employs 62.3 per cent of the total labour force and one third of the GDP comes from the agricultural sector. Despite such heavy dependence on nature, Bangladesh like other South Asian countries have been struggling with age-old laws enacted during the colonial era for protection and conservation of various natural resources. Long after the fall of British, some of these laws in the region were amended in respective legal arena to reflect the needs of the constituent populace and acknowledged their stake and participation in management. Such changes were encouraging but have not taken place in all countries in common or in same pace. While countries like Sri Lanka, India and Nepal have made a steady move ahead, Bangladesh and Pakistan are yet to bind themselves with constitutional obligation for environmental protection.

Four years after the Stockholm Conference the forty-second amendment to the Constitution of India added certain significant provisions relating to environment. Under the new provisions as added to the body of directive principles, which guide the state in molding its law, the State shall endeavor to protect and improve the environment and to safeguard the forests and wildlife of the country [Article 48 (A)]. Among the fundamental duties of the citizens incorporated by the forty-second amendment, the duty to protect the environment is significant. It is provided that every citizen shall have a fundamental duty to protect and improve the natural environment including the forests, lakes, rivers and wildlife and to have compassion for living creatures [Article 51 (G)].

In Nepal, some new Articles have been incorporated

as Directive Principles of State Policy to preserve the environment and reduce adverse impact on environment due to physical development activities.

The 1978 Constitution of Sri Lanka requires the State of protect, preserve and improve the environment for the benefit of the community [Article 27 (14)]. The exercise and enjoyment of rights and freedoms is inseparable from the performance of duties and obligations and accordingly it is the duty of every person in Sri Lanka to protect nature and conserve its riches. [Article 28 (f)].

The Constitution of the People's Republic of Bangladesh is the solemn expression of the will of the people. This Constitution recognizes state ownership of public natural resources only on behalf of the people. This in turn suggests that the people of Bangladesh, whether they are farmers or fishermen, are the actual owners of the natural resources that the State simply manages on their behalf. Under the Constitution, it is the duty of every citizen to observe the Constitution and laws, to maintain discipline and to perform duties and protect public property. In the process of protecting public properties, the citizens of Bangladesh have always bound themselves to protect precious nature and its resources that are under direct control of the state agencies. The irony lies in the fact that the management and control over such resources have always been devoid of public participation with inherent colonial structure, legal and

administrative. As a result, the institutional development of public property management overlooked the traditional knowledge and way of life and discouraged conservation affecting traditional living, wisdom, and knowledge.

Followed by the agriculture sector, the wetlands of this riverine Bangladesh employ 1.2 million people. The employment in the forest sector is 2 per cent of the total labour force while hundreds of tribal communities are totally dependent on the ecology of forest.

The Constitution of Bangladesh commits for effective measures to bring about a radical transformation through agricultural revolution. Does the same Constitution protect the wide divergence of the biologically rich forest and the wetland? Are the constitutional commitments to protect right to life and livelihood and conserve the cultural traditions and heritage of the people wide enough to protect the environmentally significant ecosystems like forest and wetlands and the occupational rights of those connected therewith?

Undoubtedly, to ensure enjoyment of professional rights by every citizen associated in a traditional profession, people's wide and increasing interdependence with nature needs express constitutional recognition. The lawmakers of the neighboring countries have recognized this fact and have given the same due constitutional protection that is perhaps, reflective of people's solemn will. In the past we have seen amendments to our Constitution on various occasion. All the major political parties of Bangladesh have included environment in their party manifesto. Such inclusion should support the connotation that the needed political commitment to amend the Constitution is not absolutely missing. In the given reality of people's life being so close to nature, any move to incorporate environmental protection in the Constitution shall not be totally out of context and deserve serious consideration.

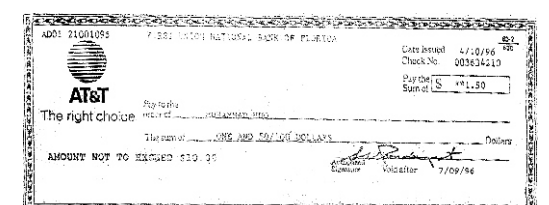
A Constitution that protects wetland gives protection to the fishermen and the boatman. It also protects those who get their only animal protein from fishery. For Bangladesh, 80 per cent of the protein intake comes from the fishery. Although the Constitution of Bangladesh talks about protection of public health, it is yet to talk about fishery and for that matter protection of wetlands. The move of the neighboring countries in amending their respective Constitutions should encourage the law and policy makers to facilitate an amendment to Constitution of Bangladesh. The State having committed to make full contribution towards international cooperation in keeping with the progressive aspirations of mankind and claiming to have recorded the solemn expression of the will of the people in its Constitution should not lag behind any jurisprudence to make the commitments further clear and effective. Constitutional recognition of environmental protection would further strengthen the basis of environmental jurisprudence in Bangladesh and would set motion to the process of environment justice that equally affects all the fourteen crore people of the country.

Bangladesh Environmental Lawyers Association

LAW opinion

Missing notion of consumer rights in Bangladesh

A few years ago when I was on a short visit to the USA, I tried to make a phone call from a public booth. Due to a fault in the machine I lost \$1.50 but couldn't get a connection. I complained to the operator by dialing zero. He advised me to use another booth located nearby. I asked for \$1.50 credit for the next attempt. The operator told me that he had to investigate before he could adjust my lost money and asked for my address. As I was scheduled to leave for home the next day, I gave my home address in Dhaka. Within two weeks I received a cheque for \$1.50 from AT&T. I am enclosing a photocopy of the cheque as the story appears to be incredible. The AT&T must have spent at least \$5/- to send only \$1.50. What I could understand is that AT&T would not take a customer's money without providing him service. They lost no time in investigating and making a refund of such a meagre sum.



In July 2001 I paid Tk. 18,400/- to our T&T for a phone connection. Thereafter I wrote several letters to the T&T but to no avail. Fourteen months have passed since then and nobody from the T&T has even shown the courtesy to reply let alone providing a phone.

Mahbub
75, Naya Paltan, Dhaka