



LAW campaign



Towards a comprehensive local self-government law

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HERE is now a consensus prevailing in the country for reforming and strengthening our system of local governance. The major political parties, through their election manifestos, have already expressed their commitment to it. A cabinet sub-committee has been working on it for the last few months. The civil society representatives have also been putting forward many reform proposals. For all these initiatives by various interest groups to come to fruition, a very essential step now is to create a legal framework -- a Comprehensive Local Self-Government Law -- piecing together about a dozen or so relevant laws and many sets of rules in order to provide the basic foundation behind the reform ideas. This short piece is intended to identify what we feel

self-government and administration closest to the people. The essential notion is that inhabitants of a given area have the opportunity to make decisions on those issues that affect them most directly. The principle of subsidiarity, enshrined in the United Nation's World Charter of Local Self-Government, states that maximum power, resources, and authority should reside at the level closest to the citizens -- where there is greatest accountability, ownership and efficiency.

Strengthening local governance is a fundamental necessity for eradicating poverty. Unless there are local structures and institutions within society that are responsive and accountable to the people, the end to poverty and hunger cannot be achieved. The challenges of human development, economic progress and social justice must be dealt with primarily at the local level using local leadership and cannot be successfully resolved without stronger institutions of local self-government based on participatory grassroots democracy.

Basic principles

The Proposed Comprehensive Local Self-government Law is based on the principle enshrined in Article 7 of the Constitution of the People's Republic of Bangladesh that all powers belong to the people and every effort must be made to safeguard the rights of the people to exercise their powers and prevent encroachment by the government. It is intended to create a system of local self-government -- government for and by the people themselves -- in order to restore powers to the people by promoting decentralization and devolution through democratic local authorities and strengthening their financial and institutional capabilities. The Proposed Comprehensive Local Self-Government Law requires greater public accountability and emphasizes gender equality and social inclusion as a means of fostering human development, economic progress and social justice. It also takes a firm stand against criminalization of politics.

Structure of local government

Local self-government shall arise from the direct participation of the people through Gram Parishads (village assemblies) and through elected representative bodies at two levels: Union Parishad/Paurashava and Zila. Efficiency, effectiveness and costs are the primary considerations in proposing two tiers.

The Proposed Local Government Law should uphold that:
The people are the source of all power.
The village is the basic unit of mobilization of the people for general welfare and development.

The ward is a political unit comprised of a constituency of an individual Union Parishad/Paurashava representative.

The Gram Parishad is a village assembly convened quarterly in each Union Parishad ward to ensure effective local participation, ownership and accountability.

The Union is a cluster of 5 rural wards to ensure that those authorities, which are closest to citizens, shall exercise public responsibilities.

The Paurashava is a cluster of 10 urban wards to ensure that those authorities, which are closest to citizens, shall exercise public responsibilities.

The Zila is envisioned as the largest sub-unit of the nation, comprised of 100-150 Unions and the existing Paurashavas, with primary responsibilities for efficient coordination of facilities and services that are shared by more than one Union/Paurashava.

Gram Parishads

The Gram Parishads shall provide for the full participation of citizens in all local affairs in order to ensure accountability, transparency, access to information, communication and avoidance of parallel structures. The Gram Parishad shall convene at least once every three months to set the priorities for social and economic programmes and strategies to be implemented by the Union Parishad.

Union Parishads/Paurashavas

The Union Parishad shall provide people of rural areas and the Paurashavas shall provide people of urban areas with the opportunity to

make decisions at the level that affect their lives most directly. Union Parishads and Paurashavas shall have administrative and political control over services in order to facilitate their efficient delivery, thereby improving accountability and effectiveness and promoting local ownership of programmes and projects.

The Union shall be around 10,000 people per last census, consisting of five wards. Each ward shall elect two representatives -- one male and one female -- to the Union. Each Union Parishad Chairperson shall be elected by a majority vote of all elected Union Parishad Members.

The Paurashava, with more than 20,000 people per last census, shall consist of 10 wards. Each ward shall elect two Commissioners -- one male and one female -- to the Paurashava. Each Paurashava Chairperson shall be elected by a majority vote of all elected Paurashava Commissioners.

The primary functions of Union Parishads and Paurashavas shall be to awaken the people to a shared vision of development and empower the local people to take ownership of the process. They shall mobilize people to form their own organizations and self-help groups to catalyze local initiatives and self-reliant action with respect to social and human development.

Union Parishads and Paurashavas shall mobilize local and external resources for implementing plans and conduct continuous self-monitoring and self-evaluation.

- Primary responsibilities of the Union Parishad include:
Primary Health (including running community clinics)
Primary and Secondary Education
Safe Drinking Water
Vocational Training and Livelihood
Nutrition
Agricultural extension and support services
Equal Rights
Sanitation and Environmental Protection
Public Safety
Maintenance of Union-level communication and transportation

Maintenance of Paurashava-level communication and transportation infrastructure

Participation of and Accountability to the people

Zila Parishads

Zila Parishad shall address issues of common concern brought to them by members of the Unions and Paurashavas and shall be responsible for the coordination of facilities and services shared by more than one Union/Paurashava. The existing district boundaries should be readjusted in line with practical needs. Every Zila shall consist of 100-150 Unions and include the existing Paurashavas within its jurisdiction. Each Union/Paurashava shall elect one representative to the Zila Parishad. Half of the Zila Parishad Chairperson shall be elected by a majority vote of all elected Zila Parishad Members.

- Primary responsibilities of the Zila Parishad include:
Quality Control of Primary and Secondary Education
Running Zila and Upazila level Hospitals
Emergency planning and disaster relief
Training of government administrative personnel hired by Unions and Zilas (a "local government cadre")
Additional support services as requested by Unions and Paurashavas

Independence of local government units

Under the Proposed Comprehensive Local Self-Government Law, the national government shall commit to true devolution and deliver on this commitment by giving each level of local government real power and authority in their areas of responsibility as detailed in the law. This requires that each level of local government has clear roles and responsibilities, necessary capacity building and training and adequate resources to ensure that services are both effective and close to the citizens.

People have transferred limited powers limited by the Constitution to perform legislative functions -- to the Members of Parliament and they shall not have any direct role in the governing of local affairs. Their role shall be confined to national legislative and oversight functions of the national government. Governance systems shall be restructured to ensure that functions, powers and responsibilities are devolved and transferred from the national government to local government units in a coordinated manner.

Participation and partnerships of citizens

Local authorities shall be empowered to bring all people together and establish effective partnerships with all actors of the civil society, particularly non-governmental organizations, community-based organizations and with the private sector and other stakeholders.

Local authorities shall establish and provide effective opportunities for all citizens, including the civil society, to participate actively and directly in decisions made for all of society.

Resource mobilization

The Proposed Comprehensive Local Self-government Law calls for two categories of resources -- those mobilized and raised by local government bodies and those transferred from the national government.

Local government bodies are encouraged to mobilize their own resources, which must be spent in a transparent and accountable manner. The national government, however, shall have no authority over these locally raised resources.

The national government shall, through a Permanent Local Government Commission, directly allocate at least a third of the national budget to local bodies. The Commission shall also serve as the Election Commission for the local government system and shall prepare a set of eligibility criteria and a code of conduct for locally elected representatives.

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The grassroots leaders

should be the salient features of such a law for developing local self-governance.

In identifying the salient features we have taken a "big bang" approach rather than a timid, incremental one. We believe that to be effective, reforms must be bold and based on "out of the box" thinking. As the old adage goes, halfway and half-hearted reform is worse than no reform at all. Furthermore, we strongly feel that curing all the ills that have accumulated in our system of governance over the years will require radical surgery rather than merely putting on bandages. It must also be pointed out that the ideas suggested here are not the last words; rather they are the initial volleys designed to provoke a vigorous issue-based debate, leading to a consensus on major issues.

Rationale

In an emerging democracy like ours, which faces multifarious challenges on many fronts, good governance, poverty eradication and human development are generally the principal priorities of the government. However, merely setting priorities and having good intentions do not ensure their achievement. This requires, among other things, honest and visionary leadership and vibrant institutions. Strong self-governing local bodies can fill these needs. Such vigorous bodies provide opportunities for empowering leadership at all levels of society, especially of those whose problems need to be solved. They can also play the all-important catalytic role in mobilizing human and non-human resources for solving those problems.

Strong self-governing local bodies essentially require local democratic governance. A vigorous and effective local democracy is also the underlying basis for a healthy and strong national-level democracy. Democracy and the wellbeing of the people, it must be noted, go hand in hand. As Nobel Prize-winning economist Amartya Sen has pointed out, democracy is not only the goal of development; it is the primary means of development. Only when every individual person experiences greater freedom, voice and opportunity will she or he fully bring her or his creative powers to bear on solving the problems of the community.

Participation in local self-government is both a human right and a civic duty, consistent with Article 29 of the Universal Declaration of Human Rights. Only through democratic local government can people exercise their right and responsibility to be the authors of their own development. Central to local democratic governance is the concept of



Civil society can play an effective role in building constituency for strong local government in Bangladesh

- infrastructure
Participation of and Accountability to the people
Primary responsibilities of the Paurashava include:
Primary Health (including running community clinics)
Primary and Secondary Education
Safe Drinking Water
Sanitation and Garbage Disposal Facilities
Vocational Training and Livelihood
Nutrition
Equal rights
Environmental Protection
Parks and Recreation Facilities
Public Safety

HUMAN RIGHTS analysis

Stating the Obvious

CERD Committee's General Comment on Descent-based discrimination

HUMAN RIGHTS FEATURES

AT its 61st session, the United Nations Committee on the Elimination of Racial Discrimination (CERD) held a special debate on the issue of descent based discrimination on 8-9 August 2002. South Asia Human Rights Documentation Centre (SAHRDC) made an oral intervention in the debate and had earlier submitted a written statement titled "Discrimination on the ground of Descent, Analysis and Recommended Text for a General Comment".

The CERD Committee holds such general debates prior to drafting of its General Comments. However, few other special debates generated such interest. Much of this heightened interest was thanks to the Government of India opposing any reference to descent-based discrimination in the process leading up to the Durban World Conference Against Racism (WCAR). A section of the Dalit NGOs and their support organisations worldwide contributed to the hype that made the caste issue one of the three controversial issues at the WCAR. The other two issues being the issue of Palestine and Compensation for slavery. Both the Government of India and the Dalit groups had made reference to "caste" or the avoidance of it, in the Durban Declaration and Programme of Action an issue of victory or defeat.

The Government of India sought to state that the caste issue was being turned into a "country-specific" issue. The Dalit Groups participating in the WCAR NGO Forum assisted the Government of India by making what should have been a "caste caucus" into a "Dalit Caucus". In the process, these NGOs subsumed the identities of the Burakus of Japan, Groits of Senegal and Osu and Oru people of Nigeria who also face caste based discrimination.

The CERD Committee's special debate on descent-based discrimination basically reaffirms SAHRDC's observation. A cursory reading of the CERD Committee's General Comment shows that it contains a lucid elaboration of the Concluding Observations of the Committee with regard to India, Bangladesh, Nepal, Sri Lanka, Japan and Nigeria.

"The consistent view of the Committee that the term descent in Article 1, paragraph 1 of the Convention does not solely refer to race" had earlier been reaffirmed by the Committee in the Concluding Observations on India of 1996 (CERD/C/30/4/Add.13 (Concluding Observations - periodic report of India, para. 14). SAHRDC had submitted an Alternate Report in August 1996

clearly establishing that caste discrimination fell within the mandate of the CERD Committee.

Nonetheless, the assertion of the CERD Committee that caste discrimination is, one of the many forms and not the only form of descent based discrimination is significant.

In its General Recommendation on descent based discrimination, the CERD Committee recommends that States parties, among other things, take steps to identify descent-based communities under their jurisdiction which suffered from discrimination due to various factors such as: inability or restricted ability to alter inherited status; socially enforced restrictions on marriage outside the community; private and public segregation including in housing and education, access to public spaces and places of worship and public sources of food and water; limitation of freedom to renounce inherited occupations or degrading or hazardous work; subjection to debt bondage; subjection to dehumanizing discourses of pollution or untouchability; and generalized lack of respect for human dignity and equality.

The Committee also recommended that State parties consider incorporation of an explicit Constitutional prohibition of descent-based discrimination; and review and enact or amend legislation to outlaw all forms of discrimination based on descent in accordance with the Convention, to raise awareness through education and community dialogues, establish positive discriminatory measures and to provide disaggregated data on descent based communities.

In its recommendations on "Multiple discrimination against women members of descent based communities," the Committee recommended that States parties, among other things, take into account, in all programmes and projects planned and implemented, and in measures adopted, the situation of women members of such communities; and that they take all measures necessary to eliminate multiple discrimination against them including descent-based discrimination.

On segregation, the Committee recommended that States parties, among other things, monitor and report on trends which give rise to the segregation of descent-based communities and that they work to eradicate the negative consequences of such segregation. With regard to dissemination of hate speech, including in the mass media and on the Internet, the Committee recommended that States parties, among other things, take measures against any dissemination of ideas of caste superiority and inferiority or which attempted to justify violence, hatred or discrimination against descent-based communities. Earlier in its 1996 Concluding Observations

on India, the CERD Committee regretted "The lack of concrete information on the legal provisions in force to prohibit organizations which incite and promote racial discrimination and hatred, and to punish members of such organizations in accordance with article 4 of the Convention, as well as on their application in practice, including eventual court decisions..."

... This is most serious in view of widespread violence against certain minorities actively sponsored by extremist organizations that have not been declared illegal."

On administration of justice, the Committee recommended that States parties, among other things, take all necessary steps to secure equal access to the justice system for all members of descent-based communities, prosecution of the guilty and provisions for adequate compensation for victims and recruitment of members of decent based communities into the police and other law enforcement agencies.

On the subject of civil and political rights, the Committee recommended that States parties, among other things, ensure that authorities at all levels involved members of descent-based communities in decisions which affected them. On economic and social rights, the Committee among others, recommended the address of the vulnerability of children of descent based communities to exploitative child labour and to eliminate debt bondage and degrading conditions of labour.

On education, the Committee recommended that States parties ensure that public and private education systems included, and did not exclude, children of affected communities.

Although, the CERD Committee's reiteration of its consistent view on descent based discrimination has helped resolve the wasteful controversy over "caste discrimination" in Durban, a cursory reading reflects that the General Comment fails to address a few fundamental issues. For example, on the administration of justice, the CERD Committee failed to make any recommendations to the judiciary for the removal of biases against members of descent-based communities. Caste biases especially at the lower levels of the judiciary in India, Nepal and Japan is a serious constraint in the administration of justice and implementation of specific laws dealing with caste discrimination. Unless, laws prohibiting such discrimination are enforced, discrimination against descent-based communities will continue to persist.

Human Rights Features is an initiative of SAHRDC, based in Delhi, India



LAW watch



Global campaign for the places of worship



The International Movement for a Just World (JUST) is launching a global campaign on Protection of Places of Worship. The global of this campaign is to persuade the United Nations to adopt an international convention on the Protection of Places of Worship. No such convention exists at the moment. In fact, none of the UN bodies offers specific protection for places of worship through there are instruments devoted to the protection of a nation's or a cultural or religious community's heritage.

An International Convention on the protection of places of worship would serve three purposes at the very least. **One**, it will strengthen the resolve of individual governments which are already committed to the protection of places of worship in their own societies. **Two**, it will foster global consciousness of the vita importance of ensuring that each and every church, mosque, synagogue and temple is treated with the respect and reverence it deserves.

Three, if the convention is ratified by the vast majority of states and acquires the weight of law, it would help to prevent, or at least minimise the danger of, groups and individuals, destroying places of worship.

The JUST campaign will be conducted in two stages. The first stage envisages getting as many Non-Governmental Organisations (NGOs) and prominent individuals as possible from all over the world to support and endorse the campaign. During this stage, the media, it is hoped, will also give coverage to the campaign and to activities related to it. Talks and seminars will also be organised to highlight the significance of protecting places of worship all over the world.

In the second stage, an attempt will be made to persuade governments to support the campaign. One or more government will be approached to act as the interlocutor of the cause -- the cause of protecting places of worship -- in the UN. JUST and other NGOs will also, on their own, lobby the UN to obtain its support. If all goes well, the campaign will culminate in the UN presiding a draft of the proposed convention on protection of places of worship to its member states.

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