



GOVERNANCE *update*



# Wither Union Parishads?

SELF-GOVERNING UP ADVOCACY GROUP

**T**HE Union Parishad (UP), currently the only functioning local government in Bangladesh, is a 132 years old institution, which came into existence by the enactment of the Gram Chowkidari Act of 1870. There are now about 4,500 UP bodies in the country with nearly 60,000 representatives elected to them.

Despite its long existence and the involvement of such a large number of grassroots leaders, it has unfortunately failed to become an important instrument of governance in our country. In fact, over the years it has become an increasingly weak and almost an ornamental institution with little useful role to play in our national life. The situation has now deteriorated to a point that our policymakers must decide either to abolish the UP altogether or make it an effective and useful entity. The Self-governing UP Advocacy Group obviously wants it to be the strong, vibrant and autonomous institution envisioned in our Constitution.

**The Constitutional commitment**

A strong system of local government is indeed enshrined in our Constitution through Articles 9, 11, 59 and 60. The framers of our Constitution believed that "all powers in the Republic belong to the people" (Article 7) and they provided for "Local Government institutions composed of representatives of the areas concerned" (Article 9) - including of disadvantaged groups such as peasants, workers and women - in order to more directly exercise that power. These institutions, according to Article 11, would facilitate "effective participation by the people" and ensure democratic governance at the grassroots. With such a system of grassroots democracy, people would be able to at least influence, if not directly participate in decisions that affect them.

Article 59 of the Constitution specifically mandates that "local government in every administrative unit of the Republic shall be entrusted to bodies, composed of persons elected in accordance with law." The functions of these bodies may include: "(a) administration and work of the public officers; (b) the maintenance of public order; (c) the preparation and implementation of plans relating to public services and economic development." Article 60 provides for conferring powers to local government bodies, including the power to tax in order to perform these functions. Thus, the constitutional provisions appear to assign sweeping responsibility to local government bodies, and clearly present a blueprint for democratic decentralization in our country.

Planning and implementing services provided by public authorities and economic development at the local level are almost an all-inclusive responsibility, encompassing the management of all local affairs. To be successful in meeting this constitutional responsibility, it is obvious that the local government bodies need to be given the necessary ways and means through an appropriate program of decentralization of authority and devolution of resources. Thus the Constitution appears to make the local bodies the conduits for giving the people of an area, through a democratic process, adequate authority, responsibility, power and resources in order to manage their own affairs. Such a process undoubtedly makes possible self-rule, rather than rule by distant masters. The UP body, being the local government tier closest to the people, is expected to be the principal instrument of this self-rule.

In order to ensure self-rule, our Constitution makes the local government institutions autonomous and independent entities, distinct from the central authorities. It mandates elected local bodies at each administrative unit *in addition to and co-equal to* the regular administrative setups. It is obvious that these bodies need to be at the very least *parallel* entities, but not subservient to the central bureaucracy. However, if the local government bodies are to meet their constitutional responsibility of planning and implementing public services and economic development, field level government functionaries must become accountable to the elected local officials. Furthermore, the autonomy of the local government bodies is very much necessary in a unitary form of government like ours in order to provide for a system of built-in checks and balances.

**The reality**

In spite of the bold and visionary provisions on local government in our Constitution, the reality has been just the opposite. Even after more than 30 years of independence, our local government institutions are in total shambles. The Zila Parishad and Upazila Parishads are non-existent. The UP bodies are in a very weak state, with practically no authority or worthwhile responsibility. In fact, they have been made progressively weaker over the years through massive centralization of authority and other legal/administrative restrictions. They are now totally subservient to the central bureaucracy and merely act as vehicles for implementing selected

government programs. In recent years, the situation has been worsened by the intrusions of the Members of Parliament in local affairs.

**Bureaucratic control of UP activities**

Contrary to the constitutional provisions, The Local Government (Union Parishads) Ordinance, 1983, which governs the UP activities, makes the UP bodies completely subordinate to the central authorities. There are also countless circulars from various Ministries solidifying the bureaucracy's grip on UP bodies. In fact, they are now totally at the mercy of the central bureaucracy. Three parts of the law can be cited as examples of bureaucracy's subordination of UPs.

First, Sections 12 and 65 of the 1983 law provide for the removal and suspension of UP Chairmen (and also sometimes Members) by government officers in certain circumstances. Some of the grounds for removal and suspension are quite flimsy, such as the absence from three consecutive meetings of the UP bodies and the initiation of criminal proceedings against them. Although there are requirements for investigation, the government enjoys wide latitude in these decisions. These legal provisions, in spite of some procedural precautions, unequivocally put the government officials in positions of authority capable of removing the elected representatives from office. The very possibility of such removal makes them superior authority to UP Chairmen and Members. Unfortunately these authorities have been misused in a rampant manner over the years. As a judgement of the full-court bench of the Bangladesh Supreme Court noted:

"Since independence from the British, the local government bodies...were superseded by the Government very often, not so much on the ground of inefficiency, mismanagement or lack of finance, as on political grounds or personal rivalries. If the Chairman of the local body was not functioning as 'yes' man of the Government of the day his committee was superseded which resulted in litigation that continued for years. During the period of supersession Government took over functions of a local body and managed them through their officers, such as Sub-divisional Officers, District Magistrates or Commissioners. Hardly any chance was given for these bodies to grow on a democratic line by 'trial and error'..." (Kudrat-E-Elahi Panir Vs. Bangladesh, 44 DLR (AD) (1992), para 41)

Second, in addition to the removal and suspension, Sections 60, 61 and 62 of the law give the government power to directly supervise, control and give direction to UPs. This makes these bodies rather extensions of the executive branch, although the Constitution expected them to be parallel entities. The grip of the bureaucracy is further consolidated by the declaration of the UP Chairmen and Members as *public servants* like other UP employees (Section 81), although they are elected as public representatives. These controls have become more blatant over the years. For example, the UP representatives are now even denied, through administrative circulars, the fundamental right of freedom of movement, violating the Article 36 of the Constitution.

Third, budget making is a very fundamental instrument for setting priori-

ties and expressing autonomy. Article 60 of the Constitution recognizes the right of local bodies to prepare their own budgets. However, the 1983 law denies this autonomy to the UPs. In fact, Section 47 of the law makes UP bodies directly subservient to Deputy Commissioners by designating the latter the final authority to approve UP budgets.

**Role of MPs in Local Government**

In addition to bureaucratic control, the UP bodies, the only on-going local government entities, have in recent years faced another serious challenge - in local affairs. This challenge comes from the induction of the Members of Parliament (MPs) in local affairs.



**The involvement of the MPs in local government activities also violates the 1992 Supreme Court judgement. The court defined local government as entities "meant for management of local affairs by locally elected persons" and stated that "if the Government's officers or their henchmen are brought to run local bodies, there is no sense in retaining them as Local Government Bodies." MPs are locally elected, but meant for exercising legislative powers, not executive powers. Thus, the present UPs, with MPs essentially as their bosses, cannot be viewed as local government entities consistent with Article 59 of the Constitution.**

10 years.

The second argument is that MPs want to participate in local development. However, the experience shows that they are interested only in infrastructure projects, which can be used as patronage for party functionaries. Besides, if they are really interested in local development, they do not have to directly get involved in the selection and implementation of projects or use their party activists to implement such projects.

As a result of the induction of MPs in local affairs, we now have a "MP government" along with the central and local government bodies in many

parts of Bangladesh. The MP government is consisted of his/her party functionaries who usually implement many schemes even though the UP Chairmen and Members continue to be legally liable as chairpersons of the implementation committees. This not only compromises governmental authority and encourages corruption, it also creates serious social tensions.

The involvement of the MPs in the implementation of local schemes raises serious constitutional issues. Article 65 of the Constitution assigns only "legislative powers" - involving the enactment of laws and the exercise of parliamentary oversight - to the MPs. However, the development work is an executive function. Thus the interference of MPs in local affairs violates the "principle of separation of powers," which is a fundamental pillar of our Constitution. Besides, the involvement of the MPs in the implementation of development schemes compromises their oversight role, cutting into the very roots of our parliamentary democracy.

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**Gram Sarkar**

It is reported that government is considering the introduction of a 13-member "Gram Sarkar" in each UP ward, with UNOs having the final say in the selection of its members. This is not a very good news for UPs. The proposed Gram Sarkar, if implemented, will, on the one hand, further solidify bureaucratic control on local government system, and at the same time, it will legitimize the MP government, by accommodating the party functionaries in the newly constituted entities. This is likely to make the UP body totally ineffective and almost irrelevant. Furthermore, it will tear apart our society by further fueling partisan activities at the village level.

**Concluding remarks**

Our Constitution prominently provides for an autonomous and self-governing system of local government. It mandates the creation local government, which is co-equal and parallel to the central government - envisioning the two to exist side by side. Nowhere the Constitution, either explicitly or even implicitly, require the local government bodies to be subservient to the central bureaucracy or be directed by the Members of Parliament.

Despite the constitutional commitment to the creation of a strong local government, the reality is very different. At this time we have a very weak system of local governance, which exists mostly in name. The UP, the only functioning local government body, has little authority or real responsibility, although nearly 60,000 grassroots leaders are part of it. It also has little resources at its disposal to perform any of the 48 functions assigned to it. Increasing centralization of authorities, mindless bureaucratic control and the blatant interference of MPs over the activities of local government bodies are primarily responsible for such a state of affairs. Because of the bureaucratic control and MPs' interference, the UPs are now unable to play much useful role in our society.

There are serious costs associated with the progressive weakening of the local government system in our country. We are missing a great opportunity to empower a large group of local leaders and create vibrant local institutions to mobilize local people and local resources for solving many of the poverty-related challenges we face as a nation. According to the principle of proximity, the closer the power and resources are to the people, the more benefit they provide to the people. In addition, democratic governance at the grassroots could provide a solid foundation for democratic governance at the national level.

The Self-governing UP Advocacy Group was recently created by a group of UP Chairmen and Members to advocate strengthening of our local government system in general, and UPs in particular.

**The Law Desk is committed to promote the cause of a strong, effective and pro-people local government system in Bangladesh. We invite readers, local government groups and activists to join our campaign for a vibrant and sustainable local government system.**

RIGHTS *corner*



# Biharis in Bangladesh: Crisis in identity

ZIAUL HOQUE

The stranded Biharis are neither citizen of Bangladesh, nor India or Pakistan. They have no legal status. An entire generation of Biharis doesn't know who they are. They cannot enjoy any right as other residents of Bangladesh enjoy. Moreover, from the international point of view they are not refugees though the Bangladeshis call them refugee.

**Biharis, refugee or not**

The UNHCR don't treat them as "refugee" as they don't come within the purview of the definition of "refugee". Article 1A(2) of the 1951 Convention relating to the status of Refugee states "... The term 'refugee' shall apply to any person who... owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country..." So the Biharis does not come within the purview of refugee because they have not been persecuted and they have no reason to fear for persecution. Though it is the UNHCR's stand that these Biharis are not refugees, if the Biharis want to be repatriated then UNHCR will help them. Bangladeshis people treat them as unwelcome foreigner. Since the Biharis face the problems as like as the refugees, some corners of the international community treat them as "circumstance-like Refugee".

**New generation, new attitude**

There is a difference of opinion between the younger and older generation of the refugees because the older generation still believes and wants the repatriation. On the other hand the younger generation doesn't wish to go to Pakistan because they think themselves as Bangladeshi and they want to live as Bangladeshi. They by different means and ways applied and urged to the government for their citizenship right. They don't want to stay in the Camp. Because they don't think themselves as "refugee". One young person said, "I am not Pakistani I think myself as Bangladeshi. I was born here in Bangladesh, but not in the camp". A 40-year-old Bihari said, "Our children are now studying in Bangladeshi schools and speak Bangla. Bangladeshi culture is now our culture. We have no intention to go to Pakistan if the Bangladesh Government gives us citizenship, voting and other facilities." The Biharis are now publicizing for this new stand. Sadakat Khan, president of a

refugee youth organization, organized a press conference in national Press Club on 5 March 2000 here he said that, "We prefer to rehabilitate and settle ourselves in Bangladesh deviating from the earlier stand of repatriation which seems a closed chapter with no prospect at all".

**Pakistan's stand**

The stand of Pakistan government is that these Biharis are not Pakistani citizens. Former foreign minister Sartaj Aziz said after his Bangladesh visit on 1998 that the so-called Biharis stranded in Bangladesh were not Pakistanis at all. It was stated in an article published in the "Dawn" on 20.04.99 written by M P Bhandara that, the non-repatriation of Bihari Pakistanis by Pakistan since the creation of Bangladesh in 1971 is a negation of the so-called two-nation theory which was and is the ideological basis for Pakistan; it is also a silent but solemn rebuttal of our pitched claims of Islamization. One wonders, how and why Pakistan, which is the great champion of Muslims from Kashmir to Kosovo, and from Palestine to Afghanistan, had the resources and the space to give shelter to millions of Afghans and even thousand of Bosnians and now offers sanctuary to the Muslim Kosovans, is not prepared to admit own citizens stranded in Bangladesh". It was also published in "Dawn" on 7.4.99 that Prime Minister Nawaz Sharif in May 1999 visited Kosovo and donated 6 million pound cash and relief goods, but no such gesture was made towards the Biharis when the Prime Minister was in Bangladesh in 1998. However, the Pakistani authority made it clear that Pakistan may consider this problem only on the ground of humanity but not because that they have rightful claim to be regarded as Pakistanis stranded

in Bangladesh.

**Pakistan's obligation**

On August 1973, an agreement was signed between India and Pakistan in New Delhi regarding the refugees. Clause 2 of this agreement says that, both India and Pakistan reviewed the progress so far made in the implementation of the Simla Agreement and the special representative of both the countries reaffirmed the resolve of their respective governments. The special representatives were confident that the repatriation of prisoners of war and nationals of Bangladesh and Pakistan would generate an atmosphere of reconciliation and thus contribute to the building of structure of a durable peace in the sub-continent. Clause 3 sub clause V of the agreement provides that "without prejudice to the respective position of Bangladesh and Pakistan on the question of non-Bangalees who are stated to have "opted for repatriation to Pakistan", the government of Pakistan, guided by considerations of humanity, agrees initially to receive a substantial number of such non-Bangalees from Bangladesh. It was further agreed that the Prime Minister of Bangladesh and Pakistan might be permitted to do so. The agreement is still in force but Pakistan has distracted from their legal position.

**Bangladesh's stand**

On the other hand, Bangladesh is very much straight forward about their stand. Former Prime Minister of Bangladesh Sheikh Hasina, In a meeting with Mr Nawaz Sharif made it plain that Bangladesh could not go on supporting the Biharis indefinitely and that they should be shifted to Pakistan.

International community is assisting Bangladesh government in order to assist Biharis and improve the Biharis total situation. About the Biharis



Geneva camp in Dhaka. 300,000 people live in this camp since Bangladesh's independence in 1972. Many of the residents hope one day to be repatriated to Pakistan.

assistance a debate was held in House of Lords in England in 1997. Lord McNally asked her majesty's government what assistance they plan to give to the Government of Bangladesh and to British and International non-governmental organization working in Bangladesh to assist the Biharis who have now been refugees in Bangladesh for 25 years. I asked one of the Bihari leaders about the British assistance and he replied that "we cannot blame Bangladesh Government because previous leader Mr Nasim Khan denied to accept the assistance". He also replied that Mr Nasim Khan has made our entire community paralyzed.

**Biharis' unbearable ordeal**

The present situations of the Biharis are horrible. They are living in the camp, which is nothing except a small room. The whole environment is unhygienic and not tolerable. Bangladesh Government cannot do anything for them except permitting them to stay in any other place except the camp as Bangladesh is very poor country. The Biharis are now praying to the Bangladesh Government for their citizenship right, voting rights and all other as the Bangladeshis enjoys.

**Bangladesh should seek international assistance**

Biharis issue can not be solved in one day since it is very complicated one. Bangladesh Government should effectively raise the issue to the international community to solve this problem. Bangladesh can request Pakistani Government with the support of International Community to repatriate the Biharis gradually and may come into a new agreement. Secondly if the Pakistan Government denies repatriating the Biharis then Bangladesh may apply to the international community to assist Bangladesh Government as Bangladesh is an over populated country. If international community agrees to assist Bangladesh, Bangladesh can think very sincerely about their claim. The Biharis believe if Bangladesh gives them citizenship right then existing problem will be solved. International community should help pay for Biharis settlement to Pakistan or local integration in Bangladesh. UNHCR should offer its expertise in resettlement and local integration to Pakistan and Bangladesh. UNHCR has not been involved with the Biharis because they are not refugees according to UNHCR. Still they can play an important role to solve the Bihari problem.

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