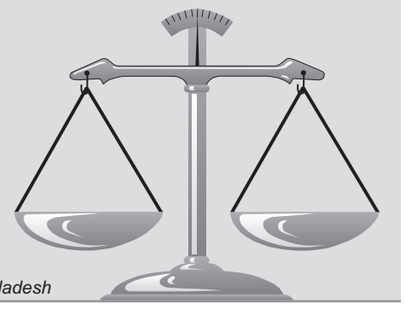
LAW & our rights
www.dailystarnews.com/law
"ALL CITIZENS ARE EQUAL BEFORE LAW AND ARE ENTITLED TO EQUAL PROTECTION OF LAW"-*Article 27 of the Constitution of the People's Republic of Bangladesh*





GOVERNANCE *update*

# Local government in Bangladesh: Constitutional obligation and reality

SHEIKH HAFIZUR RAHMAN KARZON

LOCAL government is a very important institution of democracy. Modern and healthy democracy cannot be thought of without a strong local government. The concept of local government entails governance from the grass-root level and participation of local people in the administrative, economic and welfare activities for ensuring overall development of a specific locality. Local government in all the developed democratic countries have been consigned to ensure law and order situation, to provide local people with some of the basic services like supply of gas, electricity, water, to resolve local disputes, and to make all sort of arrangements for infrastructural development of a locality. Through the machinery of local government, a sense of belongingness and responsibility is developed among the local people and it disburdens the central government by dispensing civic amenities and welfare of local people. So, local government means an elected body charged with executive responsibilities, maintenance of order and development activities of a specific locality subject to supervision of bureaucracy and control of parliament. When describing the significance of local government Blackstone had correctly commented that, "the liberties of England may be ascribed above all things to her free local institutions. Since the days of their Saxon ancestors, her sons learned at their own gates the duties and responsibilities."

## Constitutional framework of local government

It is a unique feature of the Bangladesh Constitution that there are number of constitutional provisions concerning local government. The purpose of the scheme of local government is to ensure people's participation in the activities of local government which will establish a common administration animated by common interest. The local government institutions are not directly established by the constitutional provisions, but the Constitution gives an outline for establishing these institutions and mandates the House of the Nation to take necessary steps to fulfill constitutional obligations. The pious intention behind the whole enterprise is to protect the rights of toiling mass and give them an opportunity to do something for their betterment. The framers of the Constitution incorporated articles 9 and 11 as two Fundamental Principles of State Policy for giving firm foundation to local government institution.

Article 9 of the Constitution provides that, the state shall encourage local government institutions composed of representatives of the areas concerned and in such institutions special representation shall be given, as far as possible, to **peasants, workers and women.** Article 11 of the Constitution provides that, the Republic shall be a democracy... in which participation by the people through their elected representatives in administration at all levels shall be ensured. To fulfill the pledge stated in the Fundamental Principles of State Policy Article 59 provides that local government in every administrative unit of the Republic shall be entrusted to bodies, composed of persons elected in accordance with law. Sub-Clause 2 of Article 59 gives power to legislative organ to prescribe the functions of local government bodies through an Act and those functions may include functions relating to (a) administration and the work of public officers; (b) the maintenance of public order; (c) the preparation and implementation of plans relating to public services and economic development. For the purpose of giving full effect to the provisions of article 59, as provided by Article 60, Parliament shall, by law, confer powers on the local government bodies to impose taxes for local purpose, to prepare their budgets and to maintain funds.

If the members of Parliament want to establish a local government body in any area of the country two conditions must be fulfilled as per the provisions of the Constitution. The local government institution must be established (1) in an administrative unit and (2) be composed of elected representatives of the people. The term 'administrative unit' is defined in article 152(1) to mean a district or other areas designated by the law. Article 152(1) designates districts as administrative units. So, designation by law is not necessary in case of a district, but in case of other areas designation by law is required to qualify 'administrative unit' within the meaning of article 59. If we analyse all the provisions of the Constitution relating to local government, it will be clear that the Constitution leaves the establishment of local government at the free will of the Parliament. But if the Parliament decides to establish a local government body that must be made within the framework of articles 59 and 60 and the legislature should try to fulfill the constitutional obligations enumerated by articles 9 and 11.

The intention behind the framers of the Constitution is clear. They made an arrangement through which the House of the Nation had been enjoined to establish local government in all basic units of society for twofold purposes. Firstly to disburden the government so that they can concentrate on policy matters and central issues. Secondly, to involve the commoners in the administrative and development activities of their locality which will develop sense of belongingness in them. The framers of the Constitution wanted the central government should deal with matters which concern the nation as a whole and matters of district and lower level should be dispensed by the local government functionaries. The change cannot be brought overnight. That's why the framers gave an outline and left it with the House of the Nation to decide upon the time and the manner of doing it. But unfortunately no government through its parliament did take any effective measure for establishing effective, independent and strong local government bodies in all levels of the country. Moreover, articles 59 and 60 remained repealed from 1975 to 1991. The above mentioned two articles were restored by the Twelfth Amendment. From that time onwards we did not see any comprehensive and effective measure on the part of government.

## Existing reality

Though the Constitution enunciates a number of provisions for establishing local government in all levels of the country, but reality is different. Our politicians and policy makers love to talk about democracy, but they are not doing anything for giving democracy an institutional shape. A strong democracy requires strong local government institution. But After 30 years of independence and establishment of the Constitution our governments failed to take steps through their parliaments to give effect to the constitutional provisions relating to local government. Instead the existing government is doing something which will destroy the remains of the local government and make the bureaucratic grip stronger.

**When describing the significance of local government Blackstone had correctly commented that, "the liberties of England may be ascribed above all things to her free local institutions. Since the days of their Saxon ancestors, her sons learned at their own gates the duties and responsibilities."**

Before independence of Bangladesh The Basic Democracies Order (BDO) was promulgated by President Ayub Khan in 1959. In fact the initiative of Auyb Khan was a mixture of democratic and bureaucratic approaches. The BDO introduced four tires local government bodies. They were Divisional Council, District Council, Thana Council and Union Council. The first three tiers were composed of civil servants, so they were bureaucratic in nature. But the functionaries of Union Councils were elected by the people. After the establishment of Bangladesh Union Council and District Council were renamed as Union Parishad and District Parishad. Thana Development Committee was created in each thana in 1972. Union Parishad representatives and thana level bureaucrats were the members of this Committee. Unfortunately the entire chapter III of Part IV of the Constitution dealing with 'Local Government' was deleted by the Fourth Amendment on 25th January of 1975. Significant portion of section 11"effective participation by the people through their elected representatives in administration at all levels shall be ensured" was deleted by the Fourth Amendment. Nevertheless there was an endeavour to reorganise the whole administrative structure as the said Amendment classified the administration into three tiers. Under the new constitutional dispensation by the Fourth Amendment the central government was administered by the President and his ministers. The District administration was handled by the District Council and the Thana administration was maintained by the Thana Council.

Zila and Union Parishad were again revived in 1976. At the end of 70s Thana Development Committee consisting of only of elected Union Parishad Chairman was established in each thana. A member of Parliament was appointed as District Development Coordinator. Military ruler Ziaur Rahman introduced the Gram Sarkar (Village Government) for the first time in Bangladesh as the lowest tier of local government body. This body consisted of an eleven members executive committee of which two were woman, two landless peasants, two farmers, two youths and two or three members from professional groups such as blacksmiths, potters and artisans. But Gram Sarkar was abolished by military ruler H.M. Ershad in 1983. Later Awami League government of Sheikh Hasina took initiative to do something at the village level, but lastly they did not introduce any law.

During the regime of military ruler H.M. Ershad Thana Parishad was upgraded and renamed as Upazila Parishad. Lt. General Ershad introduced this system in 1982. He tried to decentralize the administration and devolution of authority. The Chairman of Upazila Parishad was empowered to exercise control over government officers. The Parishad had been consigned with the functions relating to agriculture, irrigation, industry, forestry, fisheries, livestock, health and family planning, primary education and social welfare. It was also empowered to generate own revenue from a number of sources. The civil bureaucracy only dispensed regulatory functions. In 1991 then BNP government abolished the Upazila system and Upazila was renamed as thana. The government also appointed the 'Local Government Structural Review Commission' which recommended a two-tier local government system for Bangladesh. The first tier would be Union Parishad, which will be the center of all rural development. The second tier would be independent and strong District Councils. But BNP government failed to establish a strong local government structure.

From the above discussion it is clear that after the establishment of Bangladesh no government took any measure to establish effective local government at all levels of the country. Bangabandhu government deleted the provisions of local government from the Constitution and tried to reorganise the administration, which was not in tune with the spirit of local government. Zia government introduced *Gram Sarkar* and Ershad government introduced Upazila system, but both the systems were abolished by the succeeding governments. Although both the initiatives were good but these were isolated steps and they did not establish local government bodies at all level of the country. Moreover their initiatives did not fulfill the constitutional obligation.

Now the Zila Parishad and UpaZila Parishad are non-existent. The only existing local government institutions are Union Parishads, which are concerned with the development of the rural areas, and Paurashavas with the development of urban areas. Union Parishads are very important as the entire rural development move around these institutions. But it has now become a titular local government body, as it has no authority, which might have possessed by this Parishad to ensure true welfare of the local people. The institution of Union Parishad was established by the Gram Chowkidari Act of 1870.

It had some contributions to the development of the rural areas, but in course of time it has now become an ornamental institution having little utility for the betterment of village areas. If proper steps are not taken to develop this institution as a meaningful local government body, then its existence or non-existence will be all the same. As the Union Parishads are controlled by the civil servants of the government and the UP functionaries only observe some of the government programmes. In the present set up the members of UPs are at the mercy of the government officials, and if they are not able to perform submissive role then they will be removed by the government officers. The activities of Union Parishad are now regulated by the Local Government (Union Parishad) Ordinance, 1983. The provisions of this law make the Union Parishad bodies completely subservient to civil bureaucracy. Now the UP functionaries have to administer their activities as per the direction of the concerned civil administration. They have to submit their annual budget to the Deputy Commissioner for his/her approval. All the provisions of the mentioned Ordinance and the practical situation clearly indicate how dependent and vulnerable the Union Parishads are.

## Concluding remarks

After around sixteen years of military rule in 1991 democracy ushered with new hope. Through the Twelfth Amendment, presidential form of government was converted into parliamentary form of government. We started our journey in the way of democracy afresh. We expected multi-party liberal democracy would flourish. We hoped independence of judiciary would be ensured, local government bodies would be established, election commission would be developed as a neutral and strong organisation having logistic supports, after all a check and balance system would get a firm footing which is an inevitable pre-condition for smooth functioning of democracy. But unfortunately the democratic governments are not taking effective measures for developing the above mentioned institutions. At the same time the politicians of the opposition parties are not raising their voice to make these institutions effective.

Sheikh Hafizur Rahman Karzon is a Lecturer, Department of Law, University of Dhaka.

LAW *watch*

# An abortion boom town

PAMELA BHAGAT

The impact of the recent Bill adopted by the Nepalese Parliament is being deeply felt across the border in India -- in Bahraich, a bustling town in the eastern part of the state of Uttar Pradesh. This Bill, apart from other things, provides Nepalese women access to legal and safe abortions, a procedure that was till a few weeks ago considered an offence punishable by life imprisonment.

Bahraich, about 130 km from the state capital Lucknow, has a population of approximately 240,000 and is populated by a 48:52 ratio of Hindus and Muslims who have always lived in amity, untouched by the politics of religious fundamentalism. But that is not this town's claim to fame. Rather, Bahraich is known more for its Ultrasound and Maternity Homes'. These have been playing host to a huge clientele from across the border in Nepal (approximately 50 km by road), providing Medical Termination of Pregnancy (MTP) services. A whole industry has come up around this demand with cycle-rickshaw pullers and taxi drivers receiving a commission for each desperate case that they bring to these establishments. They have learnt to recognise such cases and look out for them at the railway station and bus stands. While these touts make about Rs 100 per case (1US$=Rs 48), the nursing homes charge anything between Rs 500 to Rs 4,000 depending on the term of the pregnancy, how desperate the woman is and her monetary status. With the passing of the new Bill in Nepal, boom time for the touts in Bahraich may now be over, but there will be less impact on the nursing homes and the medical practitioners who are seldom registered and, more often than not, are not qualified gynecologists or even doctors.

"There is no Maternity/Nursing Home Registration Act in Uttar Pradesh so these are set up like roadside cigarette shops," says Somalta Shukla, a local activist. Adds Shukla, "Rural Uttar Pradesh -- especially this region -- is traditional, deeply conservative and heavily patriarchal. The result is that

women of both communities are very vulnerable. Violence, incest and sexual exploitation of young girls are rampant. This is further compounded by the culture of silence." This fact is supported by Dr Pushpa Bawa who runs the Bawa Ultrasound and Maternity Home on the Main Lucknow highway. The nursing home was started by her mother-in-law Dr Lila Bawa, who came from Ludhiana almost two decades ago. "Desperate local women come to us even in advanced stages of pregnancy demanding MTP. They volunteer information about conception only in order to pressurise us to perform the procedure. This poses a moral dilemma for us because how can we refuse to abort a pregnancy of incest? Abortion is also being practised as a spacing method since contraception is taboo in the conservative society here."

Pre-natal sex determination too is common in the area and this is apparent from the hoardings outside most clinics where 'Ultrasound' is proclaimed in bolder print than 'Maternity Home'. In Fact MTP clinics and services are advertised in direct contravention of a law that forbids such promotion. Not that anybody is complaining. The Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act of 1994 is a non-issue in this remote area of Uttar Pradesh.

According to the stipulations, MTP of a twelve-week-old foetus can be conducted on the advice of one doctor, over twelve weeks it requires two doctors and after 20 weeks it is not allowed unless it is therapeutic. But the sex of a foetus can be categorically determined by the commonly used ultrasound technique only after twelve weeks. So, in Shukla's view, the Act should be altered to disallow abortion after 15 weeks (instead of 20 weeks) in order to prevent sex selective abortions at least to some extent. However, this opinion is not something that many are keen to heed.

NewsNetwork

RIGHTS *corner*

# Sexual Harassment in Bangladesh: Prevention and penalty

MOHAMMED ZIAUL HOQUE

## Sexual harassment

Section 10 of Suppression of Violence Against Women and Children Act 2000 states that, If a man in order to satisfy his unlawful sexual desire touch a sexual organ or any other part of the body of a women of child with his organ or by any other object, it will be considered as sexual harassment. This Section 10 indicates two things namely "touching of a female organ" and "improper attitude" though "improper attitude" has not been defined. Our law is very much straight forward and says only about the physical assault but absolutely silent about the mental assault. Our law is also silent whether any propositions or request of any sexual nature, comments about victims body or any organ of the body, showing any video clips relating to sex, jokes or derogatory statements will be treated as sexual harassment or not. There is nothing about the harassment in working place in our law.

The European Commission defines sexual harassment as, "sexual harassment" means unwanted conduct of a sexual mature, or other conduct based on sex affecting the dignity of a women and man at work. This includes unwelcome physical verbal or non-verbal conduct. This conduct constitute sexual harassment under three conditions; the behavior must be a) unwanted, improper or offensive b) refusal or acceptance of behaviour influence decision concerning a job and c) the behaviour in question creates a working climate that is intimidating, hostile, or humiliating for the person. This definition is very much liberal and wider than our definition.

## Two forms of sexual harassment

Sexual harassment basically comes in two forms; "Quid pro quo" and "hostile working environment. "Quid pro quo" is very much straight forward. Some one says, it means, "sleep with me, or you will be fired." On the other hand, "hostile working environment" has been defined in an American case (Meritor savings Bank Vs Vinson 477 US57 (1986)). It was stated that "When the workplace is permeated with 'discriminatory intimidation, ridicule, and insult', that is 'sufficiently severe or pervasive to alter the conditions of the victims employment and create an abusive working environment". It was stated in another case (Harris Vs Forklift System Inc 114 S.Ct. 367 (1993)) that "whether an environment is "hostile" or "abusive" can be determined only by looking at all the circumstances. These may include [a] the frequency of the discriminatory conduct; [b] its severity; [c] whether it is physically threatening or a mere offensive utterance; and [d] whether it unreasonably interferes with an employee's work performance". Bangladeshi law is very much silent about the "hostile working environment." In India, in the case of Apparel Export Promotion Council *versus* A K Chopra, (1999 SOL Case No 36), a female employee complained of attempt of molestation against her boss. It was argued in favour of complainant that, physical contact with the female em-


ployee was not an essential ingredient of the charge of sexual harassment. It was decided that complainant's boss "constituted an act unbecoming of good behaviour, expected from a superior officer" and this act is sexual harassment. So, Bangladeshi definition and Section 10 of the Suppression of Violence Against Women and Child Act 2000 should more be clarified.

## Bangladesh perspective

In a survey, it has been found that, in our country, the rate of sexual harassment is very much high in the garments sector and thereafter in NGOs. Though in garments sector the rate is very much high, and garments workers are often the victims of harassment, can we say that the rate of harassment is high because they are powerless? Perhaps this is not true. Yet we have not forgotten Sangeeta's case. Sangeeta Sharma an advocate of High Court, Andhra Pradesh sought legal assistance from a woman's group but refused to express the name of those harasser who were fellow lawyers. She was afraid about the reprisal on her and her young child. Being unable to alter the whole situation ultimately she committed suicide. So in everywhere harassment will be continued until and unless legal circumstances have been changed. I have told earlier that in our country, Suppression of Violence Against Women and Child Act is silent about the "hostile working environment" or sexual harassment in the working place etc. There is no rule or guideline for the employer in our country, which will be, followed both the employers and the employee. Every employer has to follow a "Rule of Modesty" or its own harassment policy. What is harassment, what will be treated as harassment, if a harassment is made then what will be the type of complaint, who will investigate the whole matter, what will be the punishment, if the harassment committed by any outsider i.e. any customer or visitor what will be the remedy etc. will specifically be determined by the employer in that policy.

## Prevention of sexual harassment

It was suggested in a Regional tripartite seminar on "Action Against Sexual Harassment at Wok" in Asia and Pacific held in Penang, Malaysia on 2-4 October 2001 that the code for addressing sexual harassment include (i) a policy statement prohibiting sexual harassment; (ii) a clear definition; (iii) a complaints procedure; (iv) disciplinary rules and penalties which can be used against harassers and individuals who bring false allegation; (v) protective and remedial measures; and (vi) promotional and educational programmes. In Malaysia, a "code of practice on the prevention and eradication of sexual harassment "has been adopted by the Malaysian government, which has been appreciated. It has been found in a survey (ICFTU-APRO) made few months ago, that there is no government monitoring system in our country whereas in Singapore and other countries there is government monitoring system. It was also disclosed that, women are often harassed in Bangladesh by the opposite sex boss and opposite sex colleague. We have discussed earlier the case of Apparel Export Promotion Council of India. In South Asia subcontinent and perhaps in Asia Pacific, India is the first country where a formal compulsory guideline for the employers was laid down. This landmark guideline came through the Vishaka's case and it is very much famous as "Vishaka guideline." This "Vishaka guideline" laid down by the Supreme Court of India provide a definition on sexual harassment and according to that guideline employers are obliged to set up a complaints committee headed by a women comprised of at least 50% female members, including and NGO representative as member. These guidelines are binding until legislation is enacted that overrides it. Bangladesh should follow this international development.

## Penalty for sexual harassment in Bangladesh

Suppression of Violence Against Women and Children Act 2000 provides rigorous imprisonment of not more than ten years and not less than three years and monetary fine for sexual harassment. The Act also said that, if anyone outrages the modesty of a women or make obscene gestures, will be sentenced to rigorous imprisonment for not more than seven years and not less than two years and monetary fine also. This Act only deals with the physical harassment and absolutely silent about the mental harassment and about its punishment. The Act should be amended both in definition clause and punishment clause. Until and unless both physical and mental harassment is not included in the law, both prevention and punishment will be impossible. In our country, since there is no law for the sexual harassment in working place or "hostile working environment" the employers are free from any bindings and to follow the law. Punishment should be specific for specific type of harassment. A lady who is working in a bank said, "When any complaint is made to the higher authority, the punishment takes place only in transferring the person concerned to another department" she then asked, "Is it the solution to end harassment of women in workplaces"?

Sexual harassment is an unwelcome and unwanted conduct of sexual nature. We must stop this sexual harassment as we are promised to create a society in which the rule of law, fundamental human right and freedom, equality and justice, political, economic and social, will be secured for all citizens. Sexual harassment violates the fundamental rights guaranteed by our Constitution. We have clearly stated in Article 28 of our Constitution that, women shall have the equal rights with men in all spheres of state and of public life. We have also guaranteed the right to life and liberty of all the people. Moreover, Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Beijing Declaration direct all the state parties to take appropriate measures to stop all kinds of discrimination against women. As a signatory of those International documents, we must follow some effective measures.

Mohammed Ziaul Hoque is an Advocate of the Supreme Court of Bangladesh.