



## HUMAN RIGHTS *analysis*



## LAW news



# Realization of human rights: Bangladesh perspective

SHEIKH HAFIZUR RAHMAN

**H**UMAN rights mean a number of entitlements without which a human being cannot live as human being. These entitlements can be translated into some basic claims, benefits and privileges required to exploit the potentialities of every human being. They are called human rights because every human being inevitably possesses these rights by virtue of their humanity regardless of any discrimination. The idea of human rights that has received currency and universal acceptance owes much to all civilizations, religions and philosophies.

### Constitutional obligation of Bangladesh

The rights placed in Part III of the constitution of Bangladesh and safeguarded by constitutional guarantees are all Civil and Political Rights (CP rights.) Article 26(1) unequivocally declares the supremacy of these rights. All existing law inconsistent with the provisions of human rights shall, to the extent of such inconsistency, become void. Article 26(2) imposes restriction on state not to make any law inconsistent with any provision of human rights. The enforcement of CP rights is guaranteed by Article 44 of the constitution as any citizen can file a petition with the High Court Division in case of violation of any of the rights enumerated in the said Part concerning Fundamental Rights (Human rights when guaranteed by the constitution is called fundamental rights.). So all the CP rights are enforceable by a court of law. Constitution provides proper arrangement for the realization of these rights except in the time of emergency. During peacetime the state or any person or authority cannot snatch away any of the rights guaranteed by Part III except in accordance with law for welfare of society, security of people or state, morality, friendly relations with foreign states etc.

All the Economic, Social and Cultural Rights (ESC rights) were included by the framers of the constitution in Part II (Fundamental Principles of State Policy) which are not enforceable by a court of law. Provision of basic necessities (Article 15), Emancipation of peasants and workers (Article 14), Rural development and agricultural revolution (Article 16), Free and compulsory education (Article 17), Public health and morality (Article 18), Equality and Opportunity (Article 19), Work as right and duty (Article 20) all these ESC rights are important for human being for their complete development and nourishment have been placed in Part II. By making ESC rights unenforceable in a court of law Article 8(2) incapacitated them. The lack of financial capability on the part of the state is put forward as the rationale behind the placement of ESC rights in Part II. The framers included a number of rights and left their implementation at the free will of state functionaries when resources would be available. But the state functionaries are evading their responsibility through a quibble by placing basic rights of people in inoperative part of the constitution. At the same time reports are being revealed that, the corruption of first class government officials caused a loss of more than 11,000 crore taka or 4.7 per cent GDP to the country in 2001. (Annual report - 2001 of Bangladesh chapter of Berlin based Transparency International, Daily Star, July 10, 2002.) The Comptroller and Auditor General's office detected misappropriation of 663.75 crore taka in 17 ministries and government offices between 1994 and 2000. (Daily Star, July 17, 2002.) The government of Bangladesh this year remitted 2,400 crore taka of the loan defaulters. All these reports make the contradiction clear that state functionaries are evading their responsibilities in ensuring basic human rights on the pretext of lack of resources on the one hand, the report of thousand crore taka's misuse and misappropriation by the state functionaries are published on the other.

### Realization of Civil and Political Rights

All the CP rights included in the constitution have properly been guaranteed by constitutional safeguards. But in reality the citizen's rights (CP rights) are not well protected. The Special Powers Act, 1974 gave unfettered power to the executive to arrest citizens on the pretext of an apprehension that he might commit subversive activities against the state. All the governments abused this law to harass political opponents. According to a report of the Ministry of Home Affairs, 4,173 persons were detained in 1995 under the

Special Powers Act. Of them 1,705 were released through writ of habeas corpus. 5,413 were detained in 1996 under the same law. Of them 3,376 were released through writ of habeas corpus. This report reveals how the Special Powers Act have been misused by the governments to fulfill their political vengeance. After 1990 another negative trend has been developing by the democratically elected governments. All the governments enacted a law in addition to the Special Powers Act to maltreat political opponents. The Public Safety Act, the Anti-terrorism Act are the products of this negative trend.

Emergency was declared four times in Bangladesh which brought about suspension of some important fundamental rights. During the regime of military ruler Ershad emergency was declared two times to suppress anti-government movement thus manipulating the provision of the constitution. Due to this abuse the enjoyment of fundamental rights was suspended for

respect to life expectancy, reduction of infant mortality, the extent of vaccination of children, the intake of calories per person, the number of persons health care provided, level of literacy, etc.

Today, after 30 years of independence the per capita income has expanded by more than three-fold, human development has progressed and the incidence of income/consumption poverty has reduced by a third.

### Recent deployment of Army and human rights violation

Recently the government has deployed army to curb ongoing criminal activities. The army in the name of 'Operation Clean Heart' started their operation, which was highly appreciated for the first two/three days for its neutral operation irrespective of party affiliation. Obviously this deployment of army brought sense of security among the people at the root level of this country. But in course of time this operation started to become controversial. The legality and transparency of this operation has been questioned from the very beginning. Government failed to clarify under which law the army has been deployed.

The government might invoke the common law doctrine of necessity to justify (not to give legality) the recent army operation. Under the common law doctrine of necessity troops can be deployed by declaring 'Martial Law' for suppressing riot, rebellion, insurrection or for maintaining law and order situation. But the present government deployed army without declaring 'Martial Law'. So, the recent deployment hardly fulfils the first requirement of doctrine of necessity. Suppose for sake of public security we assume that it fulfils the first requirement, but it in no way fulfils the second requirement of the doctrine. A military officer "should not interfere beyond what is necessary for the restoration of order... Since Martial Law owes its existence to necessity, the justification of all acts done under Martial Law depends on their being necessary." (Chief Justice Muhammad Munir, Umar Khan vs Crown, DLR (W.P.C.) p.115.) For the same reason it will be difficult for the government to indemnify the army officers and soldiers who have been accused of severe human rights violation. Under Article 46 of the constitution Parliament may by law make provision for indemnifying any person in the service of the Republic or any other person in respect of any act done by him in connection with the national liberation struggle or the maintenance or restoration of order in any area in Bangladesh. As the armed forces have been

accused of violating very core right of citizens (Right to life and liberty, Article 32 of the constitution) without any necessity so how they will be indemnified under the provision of Article 46 that will become a very crucial question for the incumbent authority. The violation of human rights by armed forces clearly defied the existing judicial system and constitutional guarantees of citizens. Without violating the right to life armed forces could have restored the deteriorated law and order situation which they did (by violating right to life) successfully. There is no denying the fact that their operation has been congratulated by the commoners as it relieves the people of all-devouring terrorist and criminal activities. But the way armed forces conducted the operation and violated the right to life that created fear and apprehension among the people.

### Concluding remarks

After thirty years of liberation if we want to evaluate the state of human rights realization of Bangladesh we shall get a disappointing picture. Though Civil and Political rights are guaranteed by constitutional safeguards, during the martial law regimes their enjoyment was either suspended or permitted with extensive restrictions. During the regimes of democratically elected governments enjoyment of the rights have been jeopardized due to criminalisation of politics which caused deteriorated condition of law and order. Sometimes state functionaries have severely trampled the rights of the citizens though they are the custodians of those rights and they have been enjoined to ensure the security of people. Economic, social and cultural rights are not enforceable by a court of law and are left at the free will of the state. They imposed moral obligation on the state to make suitable arrangements for realizing those rights on the condition of availability of resources.

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long time. During the regimes of military ruler Ziaur Rahman and Hussien Mohammad Ershad the operation of the constitution was suspended for long time resulting suspension of many fundamental rights.

Custodial violence has become a common phenomenon of this state. Every year more than 100 people die under the custody of police due to their torture. It has become a disease causing serious blow on the enjoyment and realization of constitutionally guaranteed rights. Right to life and liberty is down-trodden by the police who are the custodian of this right.

According to one report of Odhikar, a human rights organisation, 371 persons were killed from January to September, 2002 due to political violence. During this time 7,585 were injured, 3,646 were arrested, 1,066 women and child were raped and 426 women died as victim of dowry. According to another report of Ain O Salish Kendro, during the said nine months 92 people died when they were under the custody of police and jail authority. 299 women were tortured due to dowry, 190 women were tortured to death, and 209 women became victims of acid throwing.

Another alarming trend of persecuting people of religious minority, especially people of Hindu community started during the election campaign of the last parliamentary election.

### Realization of economic, social and cultural rights

Unlike the CP rights, ESC rights are not protected by constitutional guarantee. So there is no enforcement mechanism in realizing ESC rights like CP rights. ESC rights imposes moral obligation on state leaving their realization at the free will of the state on the condition of availability of resources. We can use the guideline provided by the UN Committee on ESC rights to measure the extent of compliance on the part of a state in realizing ESC rights. The Committee in General Comment No. 1 provides that, initially indicators should be used in the field of health, nutrition and education and observance of these basic needs can be fairly monitored by setting specific goals with

tion pledges. They are considering themselves as merely 'health workers', not fully empowered commissioners.

Rehana Kabir Ranu, a commissioner of Chittagong City Corporation, said the women commissioners are becoming worthless as they are being deprived of important responsibilities and financial allocations for development of their constituencies.

As per the government order, roads, environment, transport, health and other such works will be looked after by all ward commissioners.

But at the same time it was decided that the general ward commissioners will act as chairmen of the respective committees and the women commis-



sioners will act as 'advisors'. Thus the role of women commissioners in development activities has been curtailed. Moreover, the government is yet to finalise the remuneration for the women commissioners while they do not have any specific office, transport and other facilities.

DCC commissioner Lovely Chowdhury said since one woman commissioner represents three wards they do not have any permanent office to sit and discharge their responsibilities. As a result, the voters have to visit their residences. Dhaka City Corporation has recently decided that each woman Ward Commissioner will get Tk 3,000 a month in office rent. But the same is not applicable for the women commissioners at Rajshahi, Khulna and Chittagong city corporations. According to sources, the decision to keep

women commissioners out of important responsibilities was taken by the Local Government Ministry reportedly under political pressure.

LGRD Minister Abdul Mannan Bhuiyan, however, says it will be very difficult for a woman commissioner to supervise and monitor all development works in the area comprising three wards. He says there is scope to reconsider the matter.

The women commissioners have already organised themselves to protest the discriminatory order of the government. Thirty commissioners of DCC have jointly appealed to the ministry to ensure their equal status. "If necessary, we'll go to the Prime Minister. We'll in no way accept the discrimination," commissioner Dipti insists.

Nari Uddug Kendra, a women rights group, has come up with a proposal for keeping one-third wards reserved for women so that the women commissioners could participate in overall development activities. "If it is done, women commissioners will be able to perform their jobs with full status and without discrimination," says Mashuda Khatun Shefali, executive director of Nari Uddug Kendra.

Most women commissioners allege that they do not get necessary cooperation from the male commissioners. Besides there is a wide gap in the coordination between the works of women commissioners and the general ward commissioners. The necessity of women commissioners in local government bodies was felt long ago. In 1983, an ordinance was promulgated with the provision of nominating one woman commissioner in the reserved seat for every five wards of local bodies. But the women commissioners could not play their due role as they were not elected directly.

In 1997, the government upgraded the status of women commissioners by introducing direct election for the women commissioners - one for every three wards of city corporations, municipalities and union parishes.

As per the provision, a total of 63 women commissioners were elected in the country's four city corporations. Among them, 30 were elected from Dhaka, 13 from Chittagong and 10 each from Khulna and Rajshahi. The preparations are now going on to hold elections to newly upgraded Sylhet and Barisal city corporations. Besides, hundreds of women commissioners were also elected from different municipalities and union parishes initiating a mini revolution in women's participation in local government administration and development. The main objective of the direct election of women commissioners is to empower them and ensure their valuable representation in local government bodies that would help them take part in development works of their locality.

The provision was highly acclaimed both at home and abroad as it was assumed that women were getting their deserved status and enjoying their rights. But the discriminations in facilities and responsibilities have virtually made the appreciable steps useless.

NewsNetwork

# India: Embryo Wars

NITIN JUGRAN BAHUGUNA

A proposed legislation seeking to curb and monitor the functioning of fertility clinics which have mushroomed across India has caused acute consternation among the country's gynaecologists and obstetricians. India is home to 14 per cent of an estimated 80 million infertile couples in the world.

In what its detractors declare will be a blow to infertile couples, the Indian Council of Medical Research (ICMR) has framed guidelines for licensing and supervision of all clinics treating infertility by using gametes donated or dealing in storage of gametes or embryos for research.

The national guidelines for 'Accreditation, Supervision and Regulation of Assisted Reproductive Technology (ART) clinics', were drafted by a 19-member ICMR team in collaboration with the National Academy of Medical Sciences. These forbid any ART clinic to be a party to any commercial element in egg/sperm donor programmes or in gestation surrogacy. Tests to ascertain the sex of the foetus and human cloning are also banned.

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With hundreds of largely unregulated fertility clinics offering in-vitro fertilisation, and the availability of sex determination techniques to a society that prefers male children, policymakers warn that India is in danger of becoming an embryo surplus nation and encouraging illegal trade in human embryos.

The objectives of the ICMR guidelines are to prevent violation of human ethics, streamline foreign collaborations in this field and introduce safeguards against commercial exploitation of embryo research, says J V R Prasad Rao, Secretary, Ministry of Health and Family Welfare. "We are confident that these guidelines will be legislated in the form of an Act within a year. And people will welcome it because desperate, infertile couples are being emotionally and financially exploited through unethical practices." In a prefatory note to the guidelines, ICMR Director General Dr N K Ganguly states: "New scientific developments like ART, that have wide application



and that impinge on human life, raise great public concern about their possible misuse. ART technologies have also raised questions from society on their ethics and safety and in some instances, moral issues too are involved."

Gynaecologists on the other hand, are against prohibition on related donation because they feel it could be detrimental to infertile couples who suffer the "stigma" of infertility, besides triggering a vicious cycle of commercial donation.

Says Dr Chandra Mansukhani, Consultant Gynaecologist at Sir Gangaram Hospital, "Every couple has a right to reproduce by whatever means and the government should provide all options to them." Personally, she advocates adoption instead of fertility treatment that is costly, traumatic and not always successful. In the present context, however, Dr Mansukhani feels fertility clinics must be allowed to function without restrictions because these would have 'devastating' implications on infertile couples.

Like many other experts, she feels the prohibition of related donation will encourage ART clinics and commercial donors to make a lot of money at the expense of the donee. According to reports, a paid sperm donor pockets between Rs 200 to 5,000 (1US\$=Rs49) and an egg donor gets Rs 10,000 to 20,000; doctors pay out such amounts in the garb of 'travelling expenses'. Donees are known to pay a staggering amount - Rs 70,000 to Rs 100,000 for one cycle of pregnancy, the success of which is only 25 per cent.

Doctors think a related donor is more dependable than a paid donor, and that the ban on pre-natal diagnostic tests and professional blood donation has not stopped clinics from continuing the practise. "Whom are we trying to encourage as potential donors?" Dr Harish Grover of the Delhi Medical Council (DMC) asks rhetorically. "Sperm banks are already flourishing in a big way and the proposed legislation will only encourage the practise of commercial donors thus raising more medical problems."

Dr Grover is Chairman of the Council's Disciplinary Committee that looks into public complaints against the city's practising allopathic doctors. So far, he says, the Committee has not received a single complaint against the functioning of fertility clinics. "Ultrasound, if not misused for sex determination, is a very useful machine for monitoring the development of the unborn child and checking for possible deformities. But with a blanket ban on this method, women have been denied a valuable medical tool," he regrets.

The draft bill directs that all ART clinics will have to secure a license from ICMR and "no ART clinic may start operating unless it has obtained a temporary license to do so. This license would be confirmed only if the clinic obtains accreditation from ICMR or the state's appropriate accreditation committee within two years of obtaining temporary license. The license must be renewed every three years." The draft document also proposes the setting up of a national accreditation agency and a national database on donors of eggs and sperms.

Mr Prasad Rao defends what he calls the 'ethical regulations' inherent in the draft bill. "Unlike in many western countries, self-discipline is lacking in India. Female foeticide is legitimised with the argument that a family has a right to choose the child." It is precisely because of this mindset that there has to be regulation, he says.

But professionals like Dr Grover caution against hasty decisions on what has unquestionably become a very sensitive social issue. "There should be a public debate on this matter and views should be ascertained from all sections of society before making it a law."

WFS

## GOVERNANCE *update*



# Elected women members of local governments face discrimination

SULTANA RAHMAN

**W**HEN she was elected a Ward Commissioner of Dhaka City Corporation in the last elections, Shahida Tareq Dipti prepared to fulfil the pledges she made to the voters. She was one of those women who were elected in direct voting to fill seats reserved for women. Unlike in the past when women were picked up by the elected commissioners, she was directly elected. This happened thanks to a new system under which some seats are kept exclusively for women.

Months later, Dipti, a housemaker-turned-politician, is not as happy as she was after winning the polls. She has found that her powers are far less than those held by the male Ward Commissioners. "I'm not allowed to perform certain responsibilities, while those are done only by my male colleagues," says Dipti.

The newly introduced provision of direct election of women ward commissioners in local government bodies was a major step towards women empowerment to ensure their participation in nation-building activities with the mandate given by the people. But the word 'empowerment' means nothing to the women representatives. Because the government, in a notification later, barred the women commissioners from doing the jobs relating to issuance of character certificates, birth registration and law and order. "Why is this discrimination? We are also elected commissioners, then why we'll not be able to issue character certificates or contribute to the improvement of law and order in my locality," says Dipti terming the government order as biased against women.

Under the directive, the women commissioners of city corporations, municipalities and union parishes have been entrusted with the responsibilities relating to only prevention of women and children repression. And the male commissioners will play leading role in performing all other duties.

Not only this, the women commissioners have been barred from four major duties 1) birth and death registration, issuance of various certificates including for nationality and character, 2) examining the designs of buildings, 3) assisting in census and all other demographic surveys and 4) monitoring law and order.

"This order is totally discriminatory," fumes Dipti adding that the women commissioners are elected from areas three times bigger the size of an area from where male commissioners are elected. But while distributing duties and responsibilities women are considered less important.

She says women commissioners would lose their credibility and popularity if they are not elected to work for their voters. "It has been some months since we have been elected. So far, we have not been able to do anything important. This is disappointing."

Due to the discriminatory distribution of duties among the male and female commissioners, the women representatives cannot fulfil their elec-