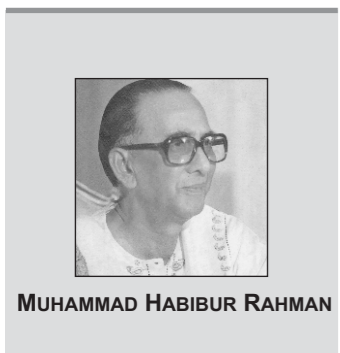


Human rights and governance: Local and global perspectives



MUHAMMAD HABIBUR RAHMAN

Our Constitution we have used the term 'governance' only once. Art. 8 (2) states that the principles set out in Part II describing the fundamental principles of state policy shall be fundamental to the governance of Bangladesh, shall be applied by the State in the making of laws, shall be a guide to the interpretation of the Constitution and of the other laws of Bangladesh, and shall form the basis of the work of the State and of its citizens, shall not be judicially enforceable.

These principles can well be very good guidelines for governance of any state. We have not tried enough to follow them. Legalists have discouraged and waned us that they are not judicially enforceable. In the business of governance more good can be done in good faith than raising or joining issues and seeking court's decision.

The concept of human rights is evolving in an expanding manner and there is a growing unanimity in the matter. These days Indians and Arabs do not claim exclusive intellectual property rights to the numerals or the algebra. They are now a part of human heritage. The benefit of the writ of habeas corpus is universally acclaimed. It is now not all that necessary, apart from its historical context, to know the name of the country of its origin. It does not matter whether the cat is

made of wood; it is enough if it catches rats. There was a time when the lawyers did not take any fees on a habeas corpus brief. And the habeas corpus petitions were used to be heard expeditiously, the time has changed. Once an expeditious remedy, now it is both expensive and time-consuming.

To a large extent the Universal Declaration of Human Rights (UDHR) is based on the earlier western civil rights instruments.

any backward section of citizens. It has been said that the Achilles heel of majoritarian democracies is the exclusion and marginalisation of minorities. Perhaps the most persistent weakness of majoritarian democracies is discrimination against minorities and worsening of horizontal inequalities. Societal attacks against religious minorities are not effectively checked. Legal constraints and inadequacies in law enforcement and

provision for preventive detention. The Constitution was soon amended. The Special Powers Act was passed in 1974. The electoral promise to abolish that law was forgotten. Now the alleged miscreants are liquidated without any trial, getting killed in crossfire. Two years back in the Operation Clean Heart 45 persons died of heart failure in custody in such questionable circumstances that we had to pass an indemnity law. We are assured

trial in prison. For preserving the independence of the judiciary, the Election Commission and the Office of the Comptroller General and Auditor General there are sufficient directions in the Constitution. We have not acted in aid of these three organs of the State by making necessary laws and supplying adequate logistic support. We often take steps after lot of foot-dragging and then again not for the good of the people, but often for avoiding annoyance of the donors that in Unfortunately the fundamental rights are often suspended. Disputes concerning them get highly charged. The decisions of the Supreme Court are not always received with due deference to the constitutional obligations of the executive functionaries of the state. In Bangladesh the Supreme Court's directions with regard to facilitating the separation of the judiciary from the executive, to make necessary changes in provisions for the police power of arrest on reasonable suspicion or for establishing local government at the district level have not yet been complied with though some of the directions were made quite a few years back.

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It is of great difficulty for us to internalise them in our thought process.

In the developing countries, particularly in South Asia, there is a tendency to cover up violation of human rights. The US government, constrained in a very tight position, faced a little awkwardly the questions of violations of human rights in Guantanamo Bay, and in Ghraib prison in Baghdad, and tried to make some amends. In Bangladesh during the operation clean heart more than forty persons died in custody. Instead of facing that uncomfortable situation boldly we closed all door of enquiry by passing an indemnity bill.

In Bangladesh there are more than 45 different ethnic groups making up approximately two percent of the population. There are no special or separate constitutional provisions for the minorities. With regard to the right to equality and equal protection before law art. 28(4) says that provision shall not prevent the State from making special provision in favour of women or children or for the advancement of

justice systems are responsible for this.

The obligations of governance of a democratic state has been well emphasized in the UNDP's: "the state is omnipresent in any discussion of human rights, as culprit and protector, as judge, jury and defendant. It often has to be ready to act against itself, say, extra judicial killing or torture is carried out by its police. A democratic state can fulfil its human rights obligations only if it ensures the rule of law. The institutions that curb the arbitrary exercise of power are a democratically elected legislature an independent judiciary and an executive that can retain a reasonable professional independence in implementing laws and policies. These key elements of democratic governance are embodied in the separation of powers. And their existence enhances the accountability of the state."

During Pakistan time we were against detention without trial. Many of our leaders were detained under various preventive laws. At the commencement of our Constitution there was no

that no such legislative exercise will be needed this time.

We have belatedly decided to get a report on every death in cross fire. The report is to be made under the Police Regulations. We ought to have asked for the report when the first incidence of death in crossfire occurred. That would have made the law and order men more cautious. Unfortunately, the law and order situation in the country is so horrendously bad that even amongst the educated people there is outpouring of glee for the summary liquidation of miscreants. Police Regulations were made by the colonial rulers for a colonized people for protecting the good name of the colonial administration. When the colonized people freed themselves they neglected to apply those regulation for the protection of the basic rights of the people against the abuse police power.

We often forget that the reputation of a country does not depend on how severely the miscreants are dealt with, rather it depends on what treatment is meted out to the accused, the malcontents and the deviate in custody, and after

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Muhammad Habibur Rahman is former Chief Justice and head of caretaker government

A son's resolve

We will not rest until justice is done

DR. REZA KIBRIA

Many people here and abroad are shattered at the assassination of my father Shah A.M.S. Kibria, M.P., in a grenade attack in his constituency of Hobiganj on 27 January. He was 73 years old.

My father's life was one of remarkable achievements. He held various senior positions here and abroad, including: Finance Minister in the Awami League Government of Sheikh Hasina (1996-2001); Under-Secretary General of the United Nations and Executive Secretary of ESCAP (1981-1992), and Foreign Secretary of Bangladesh (1978-81). At the time of his death he was Editor of his beloved Bengali weekly magazine, "Mridubhashan" (softly spoken), which he also founded.

The circumstances of his death have horrified most people. Even after the initial attack he lived for several hours. If he had been given proper medical attention or sent a helicopter to fly to Dhaka or even provided with a fully-equipped ambulance (the one sent for him was stuck on the road without fuel for an hour and had no saline and oxygen equipment) he might well be alive today. He was denied all these facilities and bled to death virtually without medical treatment. I have heard (this is not confirmed) that government helicopters were available just five minutes away at Sylhet. I understand that just six months ago an injured Jubo Dal leader was given helicopter transportation to Dhaka. When a helicopter was requested for my father the official response was that this facility could only be made available to individuals of high rank.

I know that many tears have fallen for my father. There is no time for tears right now. If you cared even a little for my father in your heart you know that the need of the hour is to ensure his killers do not escape unpunished. Those who count themselves as our friends must steel themselves for the long campaign ahead and prepare to take effective action. My mother, sister and I will not rest until justice is done.

We are demanding an independent international investigation (led by a respected agency, preferably the FBI) into the attack and the events leading to my father's death. Given the government's miserable record of failure with regard to past investigations, we have no confidence in any "joint" investigation in which it has any supervisory role. Please remember that the reports of foreign experts earlier incidents have never been made public. The Government, while it has made public statements accepting the demand for international help in the investigation, has never stated that it has actually made any official request -- clumsy attempt to fool the nation. The FBI is not suddenly going to arrive with a team simply on the basis of press reports of the government's "willingness" to allow them to come here.

My father was a good and great man. I would give

almost anything right now to have just one-tenth of his enormous abilities, so that I could best do what needs to be done. My mother is an artist and housewife, and my sister a university teacher, like myself. All three of us stand ill-prepared for the task of leading a mass movement or even public campaign. However, we are forced to do so now to ensure that my father's killers are brought to justice, so that his soul may rest in peace.

My mother, sister and I hold no position of political power or public office. We have few family resources at our disposal -- we will have to remain dependent on the help and goodwill of others to support our campaign. We are ordinary people suddenly faced with the most daunting task of confronting the powerful dark forces that conspired to kill my father. We would ask everyone to pray to Almighty Allah to give us the strength, courage and wisdom to succeed where so many others have failed.

Although I am just an ordinary citizen, I am my father's son. Let no one doubt my resolve to find my father's killers. Be assured that however long that may take, we will prevail.

Moreover, even my grief-stricken family is not entirely helpless or powerless if those who respected my father are prepared to stand beside us and provide assistance at my mother's call. If 200 people stage a peaceful protest, it may become a fearful business as this group may be arrested, assaulted by goon or worse. If 200,000 people stage the same type of peaceful protest the fear will be in the hearts of those against whom such a demonstration is directed. Keeping a large protest peaceful is not easy and requires meticulous planning and organisation -- agent provocateurs must not be allowed to operate. I would therefore urge all concerned citizens of this country to stand united and participate peacefully in every single programme called by my mother, Mrs. Asma Kibria, demanding justice.

Perhaps some of you may feel you owe this to my father and his family. I thank all of you from the depths of my heart. But I would also remind all the peace-loving people of this country that you owe it to yourselves and your children to finally stand up and be counted, to take charge again, rejecting those driven by greed, hatred and the lust for power. We must unite to pull this great nation of ours towards the vision of "Sonar Bangla" that so many millions died for 34 years ago.

Among others, Shah Manzur Huda, the nephew of Shah A.M.S. Kibria, was killed with him in the attack on 27 January. He leaves behind his grieving wife and two young sons, aged 8 and 12. We are in the process of setting up a Shah Manzur Huda Welfare Fund to provide for the maintenance and education of the family.

Iraq elections: Defiance to terror and desire for democracy?



DR. ALAMGIR HUSSAIN writes from Singapore

The great enthusiasm, the strong will and the festive mood displayed by the Iraqi voters on the election day, despite the state of immense terror and fear, are extraordinary by any standard. Al-Zarqawi's threat of flooding the street with the blood of those coming out to cast their votes has been more than real and deadly -- with over 200 "al-Zarqawi suicide bombers" waiting to explode on the voting day, any reasonable mind must have anticipated a casualty figure of hundreds if Iraqis would come out to vote in force.

However, the most memorable day of Iraq's living history ended with only 9 or so human bombs exploding resulting in killing of 25-30 people -- an extraordinarily lower casualty than had been feared. Most thrilling thing is that Iraqis defied the huge risk on their lives to come out in great number dancing in the streets on their way to voting stations in many parts of the country, including in dangerous Zarqawi-dominated Sunni places like Baquba. The voter turn-out is said to have broken the pre-election expectation of 57 percent [which itself sounded heavily inflated] the actual figure now may stand in the range of 60-70 percent. This huge turn-out, despite the extraordinary state of terror and fear, is surely a determined expression of a strong desire for peace, democracy and justice by the Iraqi people. This unprecedented event in the history of Iraq is a defiant rejection of violent terrorism unleashed by al-Zarqawi. The Iraqis have spoken the language of freedom, democracy, justice, peace and human rights. Jordan's King Abdullah, whose country is in the frontline of democratic reform in the Middle East, told CNN's Christiane Amanpour: "Obviously, a successful Palestinian election and what seems to be a successful

Iraqi election can only assure people that this is a process that the Middle East needs, and one that needs to be taken seriously." Surely, his unprecedented Iraq election would serve a blow to the monarchies in Middle East and would have a great positive impact in that -- religion and beyond.

Despite the fact that Iraq election has exceeded all expectations, big challenges surely lie ahead. This is the stepping stone for Iraqis to move forward from their brutal past and a bloody and anarchic present. There is no doubt that Iraqis will only move forward from here but blood-baths of what-so-ever extent by the extremists are yet to follow. The sooner the Iraqi security forces become capable and intelligence agencies become effective in identifying and catching the murderous extremists, the better it is for Iraq's future. The second critical issue that must be addressed is the "election boycott" by a good majority of the Sunnis because of combined reasons of threat of "blood bath" by the extremist groups and a "boycott call" by section of Sunni political parties fearing marginalisation in the upcoming governance of Iraq.

It must be remembered here that the minority Sunnis (20% against 60% Shiites), empowered by Saddam, oppressed the Shiites for decades. Logically, it should have been the Sunnis to reach to the Shiites for mending the relationship because of the atrocities they committed under Saddam's patronisation. Ironically, however, the onus of reaching out has now fallen on the Shiites, because of Sunnis' boycott of elections. It is now most critical that ordinary peace-loving Sunnis and the Shiites must work together if Iraqis want to defeat the extremists, which will ensure their march into a better future. If not, Iraq may still plunge into a state of further chaos, anarchy and violence leading, probably, to a civil war which will be catastrophic

without any doubt. However, the pleasing and hopeful thing is that Iraqis have endured and crossed the most vulnerable phase of their march toward democracy and peace. This success should mostly be credited to the Shiites, who endured further brutal violence against their lives and properties with towering patience, following ousting of Saddam. Shiites still have to take that patience and the gesture of peace and reconciliation one step further.

Iraq's interim Prime Minister Iyad Allawi has already expressed that essence of reaching out for reconciliation with all Iraqi groups in his post election comments: "The terrorists now know that they cannot win," he said. "We are entering a new era of our history and all Iraqis -- whether they voted or not -- should stand side by side to build their future." He promised to work to ensure that "the voice of all Iraqis is present in the coming government." Given that Prime Minister Allawi has already assured the presence of voices of all sections of Iraqis, irrespective of race, religion and sect, it can be hoped that a proactive approach would be taken by the ensuing Government to persuade the Sunnis to participate in the political and administrative affairs of Iraq in a fair manner. Given the economic status, a long history of tyranny, oppression and injustice and a rather inexperience in democracy and freedom -- it will be a difficult path for Iraqis to follow.

The ground Iraqis have founded through their choice for democracy, peace and justice by defiant and courageous participation in the ballot -- there is every chance that Iraq might emerge a peaceful country with vibrant democracy and freedom and a strong economy in a decade.

Foreign aid and poverty reduction

MD. ABDUL KADER AND SOHEL IBN ALI

Due to rethinking and changes in the contemporary development strategies governments are surrendering key areas of development and governance to transitional agencies and private sector. In Bangladesh the bilateral and multilateral development organisations are directly supporting non-governmental organisations instead of government for good governance, rights establishment and poverty reduction. Internationally, this has taken the form of a sharp reduction in direct aid to government on the part of multilateral agencies and donor states, and a corresponding redirection of investment and development funds to private sector organisations. Internationally, one important institutional structure that has emerged to take over this role is the non-governmental organisation, or NGO. The multilateral, bilateral and other donor agencies are supporting these NGO activities under their project funding procedures. These donor agencies, of course, are also supporting government under budget and sectoral funding procedures.

In the first two decades of our independence, donor agencies directly supported the government through their budget funding mechanism. However, after that they found irregularities, misappropriation, malpractices and corruption and also administrative limitations, bureaucratic procrastinations in utilisation of foreign aids. Then they started to provide sectoral funding to government. In a very short time, it was found that the sectoral funding also was not properly utilised and it could not change the previous situation.

If we look into our last three decades' development initiatives by government under budget or sectoral funding, we find it not satisfactory in terms of programmes and money investment. In a research study by Dr. Abul Barkat, Secretary General of Bangladesh Economic Association, it is said that in the last three decades governments in Bangladesh have received around one lakh eighty thousand crore taka as foreign aids for poverty reduction and development. However, out of the amount only 25 percent seems to have been actually spent for poverty reduction and development, rest of the amount apparently found way to the pockets of consultants, contractors and allegedly even corrupt officials.

In addition to the corruption and misuse of money, there were administrative and planning limitations and drawbacks with

the budget and sectoral funding procedures. These were: (i) Economic growth was considered as single criteria of development; (ii) It denied the society as well as country's historical learning; (iii) It less considered the local values as well as indigenous knowledge and less emphasised these in the context of development; (iv) Universal applicability of models (did not consider that local societal actors which vary from state to state, society to society); (v) Considered development as technical and mechanical issues (more emphasised technological issues); (vi) Used and emphasised income and material related indicators of progress, ignored human development issues; (vii) Top down decision making and planning process;

development activities and respond effectively to the enormous challenge of poverty. This created an opportunity for alternative to penetrate with great speed into what had previously been considered the exclusive domain of government. It was recognised that government initiatives under budget or sectoral funding had a limited success in bringing about the desired development in key sectors such as agriculture, education, health and environment, and in poor people's lives. The second is the emerging concept of minimal state involvement and preference for multilateral and bilateral development partners for channelling foreign assistance through NGOs/private sectors, under project funding, as a result of demonstrated effectiveness of

Hillary Benn, UK Secretary of State for International Development, attending a landless people's rally at Ghugudaha Beel in Pabna during his recent visit to Bangladesh. The landless people were benefited by vast patches of government khas land reclaimed from Ghugudaha Beel and distributed among them by Samata, a local NGO engaged in land reform activities.

(viii) Rights issues, social struggle, social mobilisation and mass people's participation were ignored; (ix) Failed to respond to natural and social disasters; (x) High administrative costs; (xi) Urban based planning not focusing rural issues and (xii) Ignoring minorities like indigenous people.

In such circumstances, in the mid eighties, 'project funding' was introduced by the donor agencies in order to properly utilise their funds for poverty reduction as well as overall development. The phenomenal increase of project funding is attributed to two sources. First, limited success of government by itself to implement

development activities and respond effectively to the enormous challenge of poverty. This created an opportunity for alternative to penetrate with great speed into what had previously been considered the exclusive domain of government. It was recognised that government initiatives under budget or sectoral funding had a limited success in bringing about the desired development in key sectors such as agriculture, education, health and environment, and in poor people's lives. The second is the emerging concept of minimal state involvement and preference for multilateral and bilateral development partners for channelling foreign assistance through NGOs/private sectors, under project funding, as a result of demonstrated effectiveness of

many projects/NGO activities in delivering services to the poor.

In the project funding era, Bangladesh has achieved tremendous successes. First, it has achieved impressive successes in the area of population control. Total fertility rate (TFR) declined from 6.3 in 1975 to 3.3 in 1997-99. Secondly, mortality rate is often considered as the criterion for judging economic success and failure of nations. The infant mortality rate declined from 153 deaths per thousand live births in 1975 to 94 deaths in 1990, dropping further to 66 in 2000. Thirdly, Bangladesh witnessed significant success in disaster preparedness and in

overcoming the phenomenon of mass starvation and threat of famine syndrome in the backdrop of endemic vulnerability to natural disasters. At the aggregate level, the country has achieved the desirable objective of near self-sufficiency in rice production even with declining cultivated area. The production of cereals increased at a rate of 2.4 percent per year. Fourthly, the country made impressive gains in reducing child malnutrition rates over last ten years. The rate of stunting for children in the age group of 6-7 months which was 69 percent in 1985/86 dropped to 49 percent in 2000. Fifthly, Bangladesh has achieved considerable success in mainstreaming women into the development process. Bangladeshi women have played an important role in the success of

The administrative and political criminalisation, politicisation of national and local public institutions, rampant corruption, high insecurity of citizens, lack of employment opportunities, etc. are the unresolved and endemic problems in the country. These cannot be solved by government alone. It needs both GO and NGO joint efforts and continuity of project funding mechanism.

micro-credit, participation in the rural power structure, ready-made garments, reducing population growth, increasing child nutrition, and in spread of primary education.

These successes have come due to channelling foreign aids directly to grassroots people through NGOs and geographical and issue based projects.

Recently, global development practitioners and development partners have started thinking to restart the previous budget funding mechanism in the name of consolidation of success and facing new challenges through developing 'Poverty Reduction

Strategy Paper (PRSP)' and in order to attain the 'Millennium Development Goals (MDG)'. However, there is a very strong argument that if it is implemented now, on one hand it will deter the previous success (development works need continuity) and on the other hand it will not cover the yet to be done planned activities. It is not the appropriate mechanism to achieve the objectives of MDG as well as PRSP. Again, due to the changes of funding priority and mechanism the pro-people institutions and organisations which have been developed over the last decades would have to face threats, challenges and financial constraints. The government still do not have such capacity and expertise so that it can implement the programmes in more transparent, accountable and pro-poor way.

Development means following Amartya Sen -- the expansion of capabilities. The secretary general of Bangladesh Economic Association Prof. Abul Barkat stated in his paper 'Power, Politics and Poverty in Bangladesh' that 'the issue of poverty needs to be viewed in relation to deprivation: poor people are caught into deprivation trap, and true human development requires breaking the trap by empowering the excluded -- the poor and deprived, focusing on human freedom in contrast with narrower views of development such as identifying development with the growth of gross national product, or with the rise in personal incomes, or with industrialisation, or with technological advances, or with modernisation. Growth of GNP or of individual incomes can be important as means to expanding freedoms enjoyed by the members of the society. But freedom depends also on other determinants, such as social and economic arrangements as well as political and civil rights'.

The administrative and political criminalisation, politicisation of national and local public institutions, rampant corruption, administrative irregularities, grabbing of public resources, high level of bureaucratic procrastination, high insecurity of citizens, lack of employment opportunities, poor governance, lack of transparency and accountability, lack of political freedom, lack of participation of the poor and women in the decision making etc. are the unresolved and endemic problems in the country. These cannot be solved by government alone nor only through budget funding mechanism. It needs both GO and NGO joint efforts and continuity of project funding mechanism.

MD. Abdul Kader is Executive Director and Sohel Ibn Ali is Director of Samata