

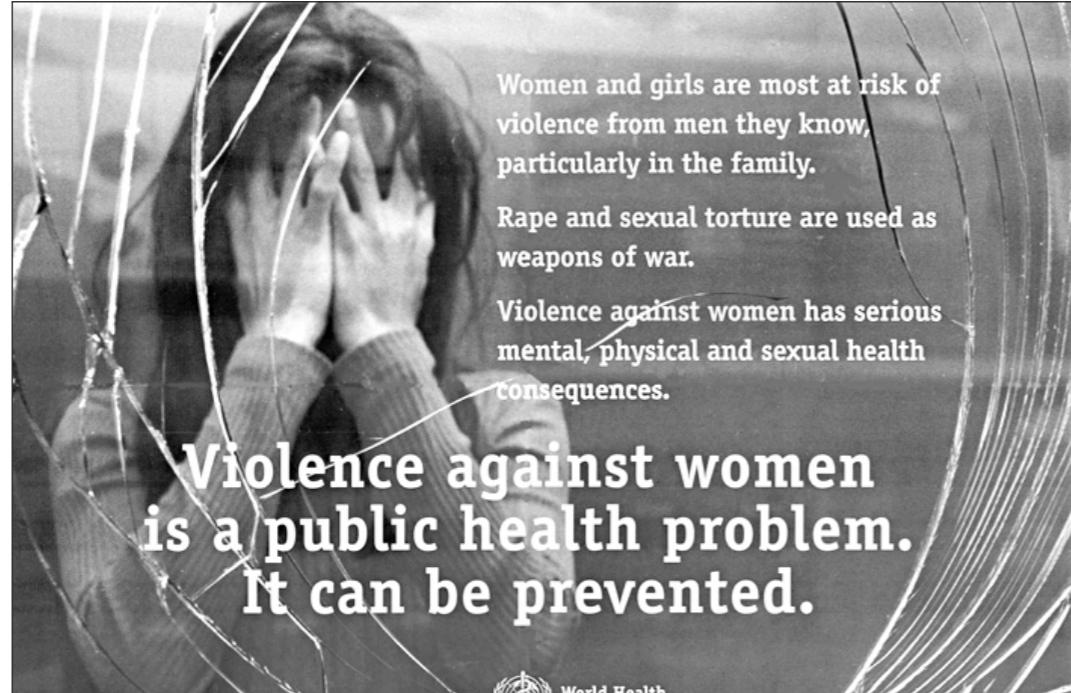
Violence against women and human rights

K N M HOSSAINUL HAQUE

THE human rights concept of today came into being at the end of Second World War in 1945. During this war, targeted genocide of certain population due to racial and ethnic prejudices occurred in unprecedented scale. The allied powers rationalised their war against the axis powers not only on the grounds of fighting their aggression but also to end their gross violation of human rights. After the war, countries of the world reached consensus to establish human rights as a foundation of the new world order. The Charter of the United Nations (1945) proclaimed equality of human beings irrespective of ethnicity, nationality, culture, language, religion, colour or sex. It was followed by the Universal Declaration of Human Rights (UDHR) adopted in 1948 that was founded on principles of equality and non-discrimination. Through the declaration, nations reaffirmed their commitment to ensure universal equality through inadmissibility of discrimination among human beings on pretext of any difference. The human rights principles in the UDHR were further detailed in International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR) both adopted in 1966. The UDHR, ICCPR and ICESCR are together called the International Bill of Rights.

'Women's rights are human rights'

However, the mainstream human rights ideology has been criticised



for insufficient inclusion of women's rights mainly on two accounts. Its focus on common human experience of discrimination and inequality has led to exclusion of women's experiences and marginalisation of women's distinct concerns. Secondly, emphasis on states and the public sphere has cornered the private sphere. But private sphere is often more important than public sphere as far as human rights of majority of women are concerned. Since mobility of most women are limited within private spheres in the existing patriarchal socio-economic context, that is where human rights violations against women mostly

occur. To meet these limitations in the existing human rights framework, individuals and organisations working with women's rights began to propagate idea of Women's Human Rights or Human Rights of Women.

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) of 1979 is an outcome of the new human rights perspective. It is the pioneer international instrument that specifically addresses human rights concerns distinct to women. Therefore, it is also known as the 'Women's Convention'. It combines civil and political rights on

one hand and economic, social and cultural rights on the other. Premised on the principles of equality and non-discrimination, the convention calls for establishing gender equality through elimination of discrimination between women and men in all fields, both in public sphere and private sphere. In CEDAW, various forms of discriminations are understood as part of a common structural and dynamic process. Several institutions -- family, market, community and the state simultaneously interact to reinforce this web of discrimination. As practical way out of this discriminatory structure, CEDAW promotes

'Substantive Equality'. It includes equality of opportunity, equality of access to opportunity and equality of result or outcome. The substantive equality principle provides for not just prohibiting discriminatory practices but also initiation of proactive positive measures to address inequalities at institutional level.

Violence against women and the human rights framework

Despite its uniqueness and comprehensiveness in articulating women's human rights, CEDAW had one major limitation as the women's convention. Apart from the article 6 that deals with the issue of trafficking in women, there is no specific provision regarding violence against women in the convention. It was only in 1975 that violence against women was internationally recognised as a major impediment to women's advancement at the UN International Women's Year Conference in Mexico City. Therefore, in the late 1970s through the 1980s, violence against women was a taboo subject of discussion even in international fora on women's rights. It was still regarded a private matter needing no state or public level response. So, through much of the 1980s, violence against women became a focal point of international mobilisation for women's groups and other entities working on women's rights.

In response to the worldwide demand, the CEDAW committee framed the landmark General Recommendation 19 (also the recommendation or the GR 19) for effectively addressing violence

against women within CEDAW. It provides extensive comments on application of specific articles of the convention in relation to violence against women, corresponding state obligations and, comprehensive recommendations on requisite legal, preventive and protective measures to be taken by states parties.

The recommendation argues that any form of discrimination against women within the meaning and context of article 1 of the Convention that may lead to "act that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivation of liberty" will constitute violence against women. It identifies eight areas of rights violation that impair or nullify the enjoyment by women of the rights and freedoms resulting in their subjection to discrimination and gender based violence. These include a) right to life, b) right not to be subjected to torture, c) protection from armed conflict, d) liberty and security, e) equality in law, f) equality in the family, g) equality in health care services and h) just and favourable condition of work. Many of these are related to violence against women.

The adoption of General Recommendation 19 further motivated the ongoing global movement for mainstreaming of violence against women in international human rights agenda. It culminated at the United Nations World Conference on Human Rights that took place in 1993 in Vienna. Women from all over the world attending the conference joined hands in demands of a UN declaration on violence against women and

appointment of a UN Special Rapporteur on this issue. All these mobilisation, agitation and lobbying ultimately paid off. Within six months of the Vienna Conference of 1993, United Nations General Assembly unanimously passed the United Nations Declaration on the Elimination of Violence Against Women (DEVAW). Then within a year the United Nations Human Rights Commission created the post of UN Special Rapporteur on violence against women, its causes and consequences.

Concluding remarks

Violence against women is a phenomenon much older than human

rights concept. It is one of the major manifestations of gender discrimination, an essential outcome of the existing patriarchal social system. Mainstreaming of violence against women has engendered the international human rights framework. A much-needed clarity in understanding of human rights has been established. This has enhanced chances for protection of women's human rights the world over.

The author is Policy Advocacy and Research Officer, Action Network to Combat Violence Against Women (ANCVAW), a coalition of 14 national NGOs that is currently implementing an advocacy initiative for combating domestic violence against women.



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FACT file

NON-PARTY, NEUTRAL CARETAKER GOVERNMENT

Powers of President and Chief Adviser

SINHA M A SAYEED

SURPRISINGLY enough the 13th Amendment to the Constitution while making provisions for a balance of power between President and the Chief Adviser to the non-party, neutral caretaker government, in fact, deliberately or non, produced a kind of "diarchy", i.e., a dual administration. A careful study of the relevant articles, clauses and sub-clauses reveal such truth conspicuously.

Article 58C(11) states: "The Chief Adviser shall have the status, and shall be entitled to the remuneration and privileges, of a Prime Minister, and an Adviser shall have the status, and shall be entitled to the remuneration and privi-

leges, of a Minister". This is a confirmation to the proposition that the non-party, neutral CTG was modeled on the spirit of parliamentary system of government while Article 58B (2)(3) read with Article 58E, 61 produces a kind of loose diarchy with a constitutional, strong President as head of the state, and a constitutional, weak Chief Adviser as head of the CTG. If elaborated and analyzed in true perspective we find:

Such constitutional rise and fall of the power and functions of President are in fact, wonderful, unique and unprecedented in the history of parliamentary democracy which started in 1688 in England.

Again Article 58B(3) reads: "The executive power of the Republic shall during the period mentioned in clause (1) be exercised, subject to the provisions of article 58D(1) in accordance with the constitution, by or on the authority of the Chief Adviser, in accordance with the advice of the Non-party Caretaker Government". On the other hand Article 58D(1) reads: The Non-party Caretaker Government shall discharge its functions as an interim government and shall carry on the routine functions of such government with the aid and assistance of persons in the services of the Republic: and, except in the case of necessity for the discharge of such functions it shall not make any policy decisions."

Both theoretically and practically, it is not at all convincing that a constitutionally weak head of government, Chief Adviser, having a constitutionally strong head of state, President, over the head can smoothly exercise the executive powers of the government.

It is simply a paradoxical proposition.

Question further stands: who is the sole authority to determine "such necessity"? Because determination of such necessity by the Chief Adviser has a risk of being set aside by the President with a different interpretation that ultimately may lead to a deadlock in the administration.

About the routine functions of the Caretaker Government, Advocate Farooqui, in the case of Saleem Ullah v Bangladesh in 2000 (in 2000 Mr Saleem Ullah filed a writ petition challenging the 13th Amendment to the Constitution for introducing non-party, neutral CTG. The Supreme Court of Bangladesh decided in favour of the Amendment) argued: Events do not wait for decisions and least of all in foreign affairs, finance and war. This Article has been set into the Constitution to conceal the truth to divert the public mind from the things which matter. Of all the public responsibilities, that of controlling foreign affairs and of determining the issues of peace and war is at once the most delicate and the most important." He further added: There is no scope for controlling the area of operation for the Caretaker Government. This is not a government for the limited purpose for a period of 90 days as the general conception goes on (The Daily Star).

Further attention must be given to Article 72(4) that says: If after a dissolution and before the holding of the next general election of Members of Parliament the President is satisfied that owing to the existence of a state of war in which the Republic is engaged it is necessary to recall Parliament, the President shall summon the Parliament, that has been dissolved, to meet.

Needless to say that this is very much interesting to note that under such circumstances there is no provision that Prime Minister will resume his/her office. There shall only be a Caretaker Government headed by the Chief Adviser. The past Prime Minister shall sit in the Parliament as a

Member and not as a Prime Minister.

Reality again shows that if elections to Parliament are not possible because of war or an act of God in the form of natural calamities or something like that, then what shall be the consequences of the ninety days' timeframe for the CTG? Question again arises: if such situation crops up then how long non-party neutral CTG shall be confined to "routine functions" only?

Under the amended Article 61, the supreme command of the defence services shall vest in the President and the exercise thereof shall be regulated by law (and such law shall, during the period in which there is a non-party CTG under article 58B, be administered by the President). It is also found that President has been given, "an exclusive jurisdiction" to deal with the matters related to defence and it was seen how President Abdur Rahman Biswas in 1996 without having a consultation with the Chief Adviser Justice Habibur Rahman exclusively handled the military crisis in his own way by applying this very article during the functioning of the first non-party, neutral CTG after the 13th amendment came into being.

How does it sound that a head of the government in the name of "routine functions" has constitutionally been debarred from even knowing the causes of military crisis that could also have toppled his civilian government?

Therefore the recommendations are:

1) "Routine functions" as mentioned in Article 58D(1) shall be redefined by bringing about a balance in power and functions (in particular covering Articles 58E, 61) between President and Chief Adviser of non-party, neutral CTG.

2) Possibility of holding elections to parliament in case of or in the wake of war or external aggression does not apparently stand at all. Constitutional provision may be made to this effect that President's summoning of the dissolved Parliament pursuant to Article 72(4) shall also follow the replacement of non-party, neutral CTG by the party-run government with Prime Minister and his/her Council of Ministers who were in office immediately before the dissolution of the parliament. Provisions for formation of national government headed by the immediate past Prime Minister may also be considered.

Because in such situation a non-party, neutral CTG comprising all non-political and not so experienced persons in running a government cannot cope with the overall complexities and dimensions of a war in the context of national, regional and international policies, diplomacy and relations. It is only possible and desirable on the part of a political government.

And this can be done through a further amendment to the 13th amendment to the constitution. Now it is up to the members of parliament, present or future, as what to do, how to do and thus put things on the right track.

Member and not as a Prime Minister.

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calls for a U.N. force in Darfur.

On August 31, the U.N. Security Council approved resolution 1706, which authorizes a U.N. force of more than 17,500 troops and 3,300 police to be deployed to Darfur, providing that the Sudanese government consents. So far, Khartoum has refused to permit the U.N. deployment and recently threatened to eject the existing 7,000-member African Union force.

Human Rights Watch said that the dispute over the U.N. force has tested the Security Council's willingness to enforce its own resolutions. Sudan has proved adept at dividing the council, whose members include China and Russia, each with veto power, as well as Qatar; all three have apparently refrained from pressing Sudan to accept the U.N. force.

Under U.N. Security Council resolution 1591, the Security Council can place individuals who violate international human rights and humanitarian law, breach the arms embargo on Darfur, or "impede the peace process" on a list for travel bans and asset freezes.

In April 2006, the Security Council imposed sanctions on four individuals, including one Sudanese military commander, two rebel leaders and one government-allied militia leader. No high-level government officials have been affected, despite the inclusion of several cabinet ministers on a confidential list of 17 persons recommended for sanctions and five others, including President Bashir, to be considered for possible future sanctions by the U.N.

Panel of Experts more than nine months ago. "Censure is only half the message to Khartoum," said Roth. "Sanctions are a vital way for the Security Council to get the Sudanese government to stop abusing its people."

Source: Human Rights Watch.

Day for Darfur on September 17, with rallies, and other events in dozens of cities around the world to raise awareness and demand action by policymakers.

Human Rights Watch called for the U.N. Security Council to immediately impose asset freezes and travel bans on the highest-level Sudanese officials including President Omar El Bashir and other senior officials who fail to protect civilians by impeding the deployment of a U.N. force to Darfur. "Security Council members must make protecting Darfur civilians their highest priority," said Kenneth Roth, executive director of Human Rights Watch. "The secretary-general has reminded President Bashir and other high-level officials that the 'responsibility to protect' means that they will be held personally responsible should their failure to accept a U.N. force result in continuing civilian casualties."

September 17 marks one year since world leaders agreed on a common responsibility to protect populations from genocide, ethnic cleansing, war crimes and crimes against humanity. Civil society activists are planning a Global

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