



"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

FIGHTING POVERTY
A MATTER OF OBLIGATION
NOT CHARITY

Human Rights Day
10
DECEMBER

HUMAN RIGHTS special



FROM LAW DESK



Elimination of poverty: Mother of all human rights

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HUMAN rights exist simply because one is a human being. Human rights are universal and they regulate structures of institutions in society. Human rights are universal in another sense. They are almost universally accepted as values in community across the globe. Human Rights Day falls on 10th of December simply because on this day in 1948, the Universal Declaration of Human Rights was adopted by the General Assembly of the UN. It contained a list of 30 Articles setting forth human rights and fundamental freedom to be enjoyed by men and women without discrimination.

into account of deprivational perspective. Its components are similar to those of HDI, such as a long and healthy life, literacy and a decent standard of living, but it uses other measures of deprivation. There are three dimensions of this approach of deprivation. The first dimension is measured by the number of people in the population, not expected to survive to age 40. The second dimension is measured by the proportion of adults who are illiterate and are excluded from the world of reading and communication in writing. The third dimension is a composite of three variables, the percentage of people without access to health services, the percentage of people without access to safe water and the percentage of malnourished children under the age of five.

basic rights." Poverty is not an immediate phenomenon. It is a result of historical and systematic denial of basic rights through established institutions. Grameen Bank has shown that poverty is an artificial social construct and a new banking method can help poor to uplift their conditions in life. The other dimension of poverty is that poor people are vulnerable, powerless and suffer humiliation in their day-to-day life. Media reports indicate how many domestic maids are beaten and tortured by their employers in developing countries including Bangladesh. Many of them die due to torture.

Strategy Practical experience suggests that eliminating systematic poverty requires correcting their fundamental causes including denial of basic human rights. A human rights perspective can relieve poverty. Furthermore the internationally recognised human rights mechanisms could be used to provide concrete approaches to reducing poverty. International human rights and domestic constitution and laws provide not only a framework but also a legal obligation for programmes towards achieving elimination of poverty.

Link between poverty and human rights

The link between poverty and human rights is profound. Both equity and human rights principles dictate striving equal opportunity for human development. Elimination of poverty is the mother of all human rights. Personal liberty does not mean anything to an individual with an empty stomach nor does freedom of expression or thought. The former UN Human Rights Commissioner, Professor Mary Robinson (a former Irish President) said in 2002:

"I am often asked what is the most serious form of human rights violation in the world today and my reply is consistent: extreme poverty." In 1999, the horror of poverty was highlighted in a message given by the Secretary General of the UN on the observance of International Day for the Eradication of Poverty. He said:

"How many times have we said that poverty was incompatible with human dignity. But billions of people are still trying to live less than a US\$2 dollars a day, with no drinking water, health care or access to education... and thus still deprived of some of their

opportunity for all individuals must be ensured. Poverty influences many social indicators, such as, state of health, education, food access, housing and work conditions. The 1972 Bangladesh Constitution in its Article 14 under Fundamental Principles of State Policy (Part II of the Constitution) provides a fundamental responsibility of the State to emancipate the toiling masses the peasants and workers- and backward sections of the people from all forms of exploita-



Article 15 provides that it shall be a fundamental responsibility of the State to provide the basic necessities of life including food, clothing, shelter, education and medical care.

A human rights perspective can provide a universal frame of reference for identifying inequitable conditions and human rights standards to a decent living with long and good health can play a crucial role in elimination of poverty. Unless poverty is removed, concept of human rights is an empty shell and has no relevance to poor and deprived people.

The author is former Bangladesh Ambassador to the UN, Geneva.

What do we mean by poverty?

Poverty means one's inability to meet one's end. Poverty entails not only the lack of basic necessities but also the denial of basic opportunities that permit human development. It includes discrimination, inequality, destitution, hunger, homelessness, ill health and exclusion from educational facilities. Since equality of all human beings is a human right, denial of basic rights to survive by an individual is a violation of human rights. Human Poverty Index (HPI) differs from other measures of human well-being such as Gross Domestic Product or Human Development Index (HDI). HPI takes

FACT file



An eyewitness account of what happened in Court No.12 on 30 November 2006

MOIN GHANI

THE following is a brief summary of the hearing that took place in Court No.12 on 30 November 2006 on the writ petitions challenging the assumption of the office of the Chief Adviser by the President.

In the morning the Attorney General (AG) of Bangladesh appeared before the Court with an application for the formation of a larger bench for hearing of the case. He argued that under the High Court Rules there was no bar to filing any application at any stage of a case. Since the hearing on the writ petitions challenging the assumption of the office of the Chief Adviser by the President was of utmost public importance a larger bench of the High Court Division should hear the matter.

The Court was of the opinion that the hearing had already taken place and the Court was going to pass an order on that day (30 November 2006). At the end of the previous day's hearing the court had expressed this view.

The AG argued that the petitions should have been

Dr. Kamal Hossain, appearing for the petitioners, submitted that the Court had already allowed extraordinary indulgence to the AG. A Rule is generally issued in a motion, often on an ex parte basis. The opportunity for a full hearing comes only after the issuance of a Rule. Therefore the application of the AG for a larger bench was premature. He agreed that the issues were of great public importance and for that very reason a Rule should be issued. The issues raised merited a full hearing. A larger bench may be constituted for the actual hearing of the case after the issuance of the rule. He also argued that the AG was making contradictory statements: On the one hand he was saying that the writ petitions should be summarily rejected but on the other he was saying that a larger bench should be constituted. There is no objection to a larger bench but that can only be constituted at the time of hearing, and after the issuance of Rule. He further contended that the application for the constitution of a larger bench at this stage of the proceedings was being made with an ill motive. If such an application was allowed then the very foundations of this institution would be undermined. The Supreme Court has had over

issues of interpretation then a Rule has to be issued. He also stated that a more pertinent question was why the AG was continuing to hold his office after the BNP government had left office? He served the previous BNP government as an AG and should have resigned with the Caretaker Government taking office. This was done by all previous AGs when a Caretaker Government took office.

At this point the AG stood up and informed the court that he had offered his resignation to the President. The President refused to accept his resignation and requested him to continue.

Dr. Hossain reminded the AG was supposed to be working for the Caretaker Government and not for the President. Any executive authority was meant to be exercised on the collective advice of the Advisers and not on the unilateral decision of the President. This issue was also at the crux of one of the writ petitions being heard. The AG owed a duty to the court and not to any political party.

The Court enquired whether the AG could apply for a larger bench at this late stage of the initial hearings. Only preliminary issues were being raised here and if the court decided on the issuance of a Rule, then an application could be made for the hearing to be conducted before a larger bench. The Court also pointed out that there were instances in other jurisdictions like India where the assumption of office of the Chief Justice was challenged. The Supreme Court of India even passed a judgment that the assumption of office of the Chief Justice was illegal and the Chief Justice had to leave. However, the work that was done during the period of the illegal holding of office was upheld. Similar rulings had also been made against military rules. Martial Law Proclamations had been declared illegal by courts but their acts had not been declared to be void. Similarly, in this case even if the assumption of office of the Chief Adviser by the President was declared to be illegal, it would not necessarily mean that all the acts of the Caretaker Government would become null and void. A Rule could be issued to show cause and determine whether the constitutional steps were followed by the President during his assumption of office of the Chief Adviser. The actions taken by the Caretaker Government during its tenure under the President would not be illegal.

The AG argued that his application for a larger bench had to be disposed of before proceeding further. He stated that there were other instances where the Appellate Division accepted that a larger bench may be formed. He said that in the past he was the conducting lawyer in such a case and Barrister Rokon Uddin Mahmud was on the other side. He asked Mr. Mahmud whether he had now forgotten the case.

Rokon Uddin Mahmud eventually managed to remember the case being referred to and affirmed that the precedent mentioned actually made the petitioners' position stronger. In that case, a larger bench was constituted only after the issuance of the Rule, and not before.

The AG argued that it was the principle of the case which was important, not the facts. He claimed that the precedence mentioned was very relevant to this case and undertook to produce it to the court at 2:00 p.m after the lunch recess on that day.

The Court expressed the view that it was minded to pass an order at 2:00 p.m as had been declared the previous day.

The AG stated that the court could not pass the order on that day as he had a lot more to say. He had not finished his submissions. In any case, the AG argued that the court had to dispose of the government's application for a larger bench before the court could proceed further. He stressed that he wanted the application disposed of either way and could reject it if the court so desired. The AG wanted his application for a larger bench disposed of first.

Dr. Kamal Hossain argued that the application of the AG was premature and contradictory. He was saying that no rule was warranted and at the same time he was making an application for the matter to be sent to a larger bench. The matter could be sent to a larger bench if this court determined that there were constitutional issues that had to be determined. But for that to happen a Rule had to be issued first. The AG's argument that the petition should be summarily rejected as the President's actions cannot be challenged in a court was also not maintainable. Dr. Hossain reminded the court that he had exhibited precedence [caselaw] that the President's actions were subject to judicial review by the superior courts. A President was not beyond judicial review.

Dr. Hossain argued that the AG's application for a larger bench would only be maintainable after the issuance of a Rule. He requested the Court to look at the issue from the petitioner's side as well. He posed the question if the petitioners felt that they were not going to get a Rule from this court, could they, at this stage, ask for the matter to be sent to a larger bench? The court would certainly not have allowed the petitioners that kind of indulgence.

The AG submitted that a larger bench should determine this matter. The AG requested the court to, at the very least, dispose of the application for a larger bench. The court could reject the application if it so pleased. He also pointed out that the court had already formed an opinion on the issuance of a Rule.

Dr. Hossain interrupted that the issuance of a Rule could not be obstructed by an application for a larger bench. There was no precedence for such an application.

The AG interjected that this case was unprecedented and it called for unprecedented steps to be taken. He left the court in the middle of the hearing while Dr. Hossain was submitting on behalf of the petitioners.

The court then fixed the time for orders at 2:00 p.m. Mr. Rokon Uddin Mahmud just before the court rose pointed out that the AG had mysteriously left the court and the petitioners were suspicious that he had some ill motive to undermine the court. He said the AG was contriving to tie your hands. He urged the court to issue the rule before rising for lunch.

The court maintained that the AG had said he would come back at 2:00 p.m. with a precedent which was relevant for the court. Therefore the court would wait for the AG and pass the order at 2:00 p.m.

The rest, as they say, is history...



rejected summarily without any hearing. This was an unprecedented case and the outcome of the case would have grave consequences for the nation. The petitioners had come to court to further their political purposes. They were agitating in the streets and were believed to cause another obstacle to the forthcoming elections which have to be held in 90 days. Therefore, the petitioners had come to court to win political points. This case has serious political consequences and the court cannot be oblivious of that.

150 years of practice and there was no precedence for such an application at this initial stage, prior to the issuance of a Rule. He argued that the submissions made by the AG were extraordinary. He also pointed out that a court should not be conducted in the manner in which it was being conducted. He blamed the lawyer audience on both the sides for screaming "yes" and "no" to the court. He stated that this kind of shouting match must stop otherwise the entire institution would be undermined.

Dr. Hossain stated that it was obvious that the petition merited the determination of certain constitutional issues. He posed the question how the AG could make such a submission that a Rule should not be issued. If there are

HR Commission: Always in manifesto, never in agenda

SULTANA RAZIA

For the last fifteen years no government took the issue of establishing the human rights commission seriously. Though the political parties always promised people, especially the non-governmental organisations and the international community and also put this issue on their electoral manifesto. The latest BNP led alliance has also failed to keep its electoral pledge to form a national human rights commission during its rule. Their Law Minister Moudud Ahmed once said that the government had failed to of the commission due to non-co-operation from some ministers. The last government reportedly completed the process of drafting the legislation, no initiative was taken to approve the bill in Cabinet and present it in the Parliament.

Background

In late 1994 the process of establishing this institutions was initiated. The Institutional Development of Human rights in Bangladesh (IDHRB) project was formally launched in 1995. The work of drafting a law was continued during 1996-2001 under Awami League government. Later BNP-led alliance government on December 10, 2001 formed the committee headed by the law minister to examine the prospect of setting up of the commission. They proposed to enact a comprehensive law on the protection of human rights instead of legislating a bill for instituting a National Human Rights Commission only. After a series of meetings on January 23, 2003 committee finalised the draft and sent it to the Cabinet Division. Since then, the bill has not been placed before the cabinet meeting.

In an international conference in 2004, the former law minister informed that difference of opinion among the ministers was hindering the constitution of the institution. In the previous tenure of Awami League, their law minister was also promised to establish the institution during their tenure.

The draft bill stipulated a five-member commission led by a retired judge of the Appellate Division of the Supreme Court, which must have one-woman member. The commission is supposed to investigate any human rights violation and recommend actions. It could probe any such incidents by the defence forces. The human rights commission was also a demand of the international donors who thought good governance critically depends on the rule of law.

The process has been continuing for last the 12 years. May be the first country in world that is taking this long time to establish an effective institution. The non-governmental organisations and the civil society who were critical about the progress of this institution are also keeping their views confined in seminars and meetings with the international organisations.

In a country like Bangladesh where the violation of human rights by state agencies is rampant, the expectation from any such proposed institution is thus minimal. But at the same time, it might not be seen justified to spend donor money in a sector where the government is politically unwilling to set up the commission. Forming sub-committees, involving in prolonged discussion, or undertaking time consuming research study often delay the process underplaying government's international obligation and national commitment towards human rights.

UN approach

The establishment of a National Human Rights Commission consistent with the Paris Principles relating to the status of National Human Rights Institutions for the promotion and protection of human rights could have served as an effective mechanism to address gross and systematic human rights violations.

The concept of national human rights commission/institution is, however, very more specific—referring as it does to a body whose functions are specifically defined in terms of promotion and protection of human rights. The national institutions considered here are all administrative in nature—in the sense that they are neither judicial nor law making. As a rule, these institutions have on-going, advisory authority in respect human rights at the national and/or international level. Their purposes are pursued either in a general way, through opinions and recommendations, or through the consideration and resolution of complaints submitted by individuals or groups.

From the experience of the various national human rights commissions United Nations realised that no single model of national institution can, or should, be recommended as the appropriate mechanism for all countries to fulfil their international human rights obligations. Although each nation can benefit from the experience of others, national institutions must be developed taking into account local, cultural and human rights orientation of that region and legal traditions as well as existing political organisation.

The role of national governments in the realisation of human rights is particularly important. Human rights involve relationships among individuals, and between individuals and the State. Therefore, the practical task of protecting and promoting human rights is primarily a national one, for which each State must be responsible. At the national level, rights can be best protected through adequate legislation, an independent judiciary, the enactment and enforcement of individual safeguards and remedies, and the establishment of democratic institutions. In addition, the most effective education and information campaigns are likely to be those which are designed and carried out at the national or local level and which take the local cultural and traditional context into account.

Function of the human rights commissions

One of the most important functions of the commission is to receive and investigate complaints from individuals (and occasionally, from groups) alleging human rights abuses committed in violation of existing national law. In order to properly carry out its tasks, the commission will usually be capable of obtaining evidence relating to the matter under investigation. Even if only used rarely, this power is important in that it guards against the possibility of frustration through lack of cooperation on the part of the person or body complained against.

While there are considerable differences in the procedures followed by various human rights commissions in the investigation and resolution of complaints, many rely on conciliation and/or arbitration. In the process of conciliation, the commission will attempt to bring the two parties together in order to achieve a mutually satisfactory outcome. If conciliation fails to resolve the dispute, the commission may be able to resort to arbitration in which it will, after a hearing, issue a determination.

Usually they don't impose any legally binding outcome on parties to a complaint. However, this does not mean that the settlement or appropriate remedial steps recommended by the commission can be ignored. In some cases, a special tribunal would hear and determine issues outstanding from an unresolved complaint. If no special tribunal has been established, the commission may be able to transfer unresolved complaints to the normal courts for a final and binding determination.

Another important function of a human rights commission is to systematically review the government's human rights policy in order to detect shortcomings in human rights observance and suggest ways of improving it. The ability of a commission to initiate enquiries on its own behalf is an important measure of its overall strength and probable effectiveness.

Concluding remark

National human rights commission can work as the uppermost domestic mechanism and establish a remarkable role in UN mechanism. In Bangladesh an independent commission can raise voice against the human rights violations and force the state to be more accountable and comply with the international norms and standards. However critics say that our NGOs treat the human rights related works as their own responsibility and don't want to share it with government while lack of political commitment is hindering the way of establishing this institution.

Sultana Razia is editorial assistant, The Daily Star. Source: Office of the High Commissioner for Human Rights.

We dedicate December 9 and 16, 2006 "Law & our rights" pages to the observance of "International Human Rights Day".

DISCLAIMER: I am an associate of Dr. Kamal Hossain and this summary has been written from the personal notes taken by me in court - Moin Ghani.