Star LAW *analysis*

Consumer protection law

Dissecting the drafts

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ENACTING a comprehensive Consumer Protection Law is a need of the time. The simple consumers of Bangladesh are in crucial need of having the protection. Therefore, the government should enact a comprehensive Consumer Protection Act as soon as possible and further strictly ensure the effective implementation of such legislation.

With the relentless effort of the Consumers' Association of Bangladesh (CAB) since 1992, a draft Consumer Protection Act was formulated in 1998 by the Ministry of Commerce in consultation with CAB and other relevant ministries, departments and agencies of the government. In February 2000, the Ministry of Commerce sent the draft Act (with necessary amendment suggestions) to the Bangladesh Law Commission to do necessary research on it. On 29 October 2000, the Law Commission suggested various changes to the draft act so prepared. Based on all these reforms, a bill was later introduced in the Parliament for due enactment.

The Awami League cabinet of 1996-2001 approved the relevant bill in principle but it was again sent to the Secretarial Committee meeting for further scrutiny. The following BNP government enlisted it in its priorities of 100 days and approved the bill in 2004. However, in 2006, a revised draft of Consumer Protection Act was framed and the reality is that no such consumer protection legislation has yet been enacted.

The (draft) Consumer Protection Act 2000 is very much similar to that of India and Sri Lanka. Some claim that it borrows heavily from the consumer protection law of Nepal too. The essential features of the draft law are:
(a)It provides definition of certain relevant terms, such as, consumer, complainant, complaint, consumer dispute, defect, deficiency, goods, service, manufacturer, trader, restrictive trade, unfair trade practice etc.

(b) It proposes the establishment of a National Consumer Council (NCC) and sets down its composition, objectives, functions and responsibilities.

(c)It suggests the establishment of Consumer Disputes Settlement Agencies such as one National Consumer Tribunal (NCT) for the whole Bangladesh and at least one District Consumer Tribunal (DCT) for each district. The draft law provides details of the composition, power, jurisdiction, details of trial proceedings, and the appeal mechanism for both the National and District Consumer Tribunals.

(d) The most striking part of the draft Act is that a consumer complaint, may be filed not only by the concerned consumer(s) or the government but also by any recognized consumers' association. For that matter, it is not necessary that the concerned consumer(s) be a member(s) of such consumer association.

There are two very important issues, which are absent in the draft Consumer Protection Act 2000. They are-

(a) There is no power given to either DCT or the NCT to issue 'interim orders' regarding the sale or withdrawal of hazardous goods from the market. The total complaint procedure would take months or years to settle the issue, but in the meantime the consumers might suffer irreparable loss unless such interim order is passed by the Consumer Courts in appropriate cases.

(b) There is no provision of constituting and maintaining a 'Consumer Protection Fund' for protecting and promoting consumer rights in Bangladesh. By an amendment in 1980, provisions for such fund were incorporated into the Sri Lankan Consumer Protection Act 1979. In Sri Lanka, the sources of such 'Consumer Protection Fund' generally come from the fines procured by the consumer courts for offences under the Act, profits from sale of goods forfeited under the Act, grants and donations, and finally from the budget sanctioned by the parliament for protection of consumer rights.

The recently prepared draft Consumer Protection Act 2006 makes some new provisions to the 2000 draft. Some of such new changes suggested are:

(a) The 2006 draft Act ensures more wide representation of the civil society in the proposed National Consumer Council (NCC).

(b) The 2006 draft Act establishes the Department of Consumer Affairs and the same is entrusted with a 'wide discretionary power' so that it can play an activist role to safeguard the interest of the consumers.

(c) Provisions regarding DCT and NCT are replaced by provisions of the 1st class Magistrate or the Metropolitan Magistrates to try the offences under the proposed Act. Appeals against the verdict of Magistrates will lie in the Court of Session judge.

(d) The 2006 draft Act incorporates the system of summary trial through mobile courts. This is aimed at providing speedy relief to the consumers. No such provision was incorporated in the 2000 draft.

(e) The 2006 draft Act defines specific offences against consumerism and provides punishments for such offences. An offender not only does have criminal liability but also is made subject to civil and administrative liabilities. In other words, the consumers, now, can receive civil and administrative remedies for consumer offences committed.

(f) Provisions of 'interim order' in appropriate instances are introduced. The Director of the Department of Consumer Affairs is entrusted with the power to issue such orders. This was not there in the 2000 draft.

(g) No provision of 'constituting and maintaining' a permanent Consumer Protection Fund was created. However, the 2006 draft Act establishes that if a fine is imposed on the offenders, either by the Court or by the Department of Consumer Affairs, the aggrieved consumer has a right to share at least 25 percent of the fine amount.

From the ongoing discussion it is clear that the 2006 draft Act is more elaborate than the 2000 draft in many aspects of consumer protection. However, it fails to make provisions for a permanent Consumer Protection Fund. Also, the 2006 draft deletes the provisions of specialized consumer protection tribunals, which could be efficiently used in dealing with the consumer protection matters alone.

Enactment of a comprehensive law to protect the rights of consumers of Bangladesh has become a priority. It is unfortunate that when other neighbouring developing countries (like India, Pakistan, Nepal, Sri Lanka, Thailand, Indonesia, Malaysia and many others) have already enacted comprehensive consumer protection legislation in their respective countries, consumers in Bangladesh are being deprived of even their basic rights. More unfortunate is to note that matters relating to consumer protection have neither been a priority in the governmental agenda nor an issue of serious concern in the political manifesto of any of the political parties of the country so far. The snail-pace movement of enacting the draft Consumer Protection Act in Bangladesh makes one wonder whether it will ever see the daylight.

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RIGHTS *monitor*

EGYPT: PROPOSED CONSTITUTIONAL AMENDMENTS

Greatest erosion of human rights in 26 years

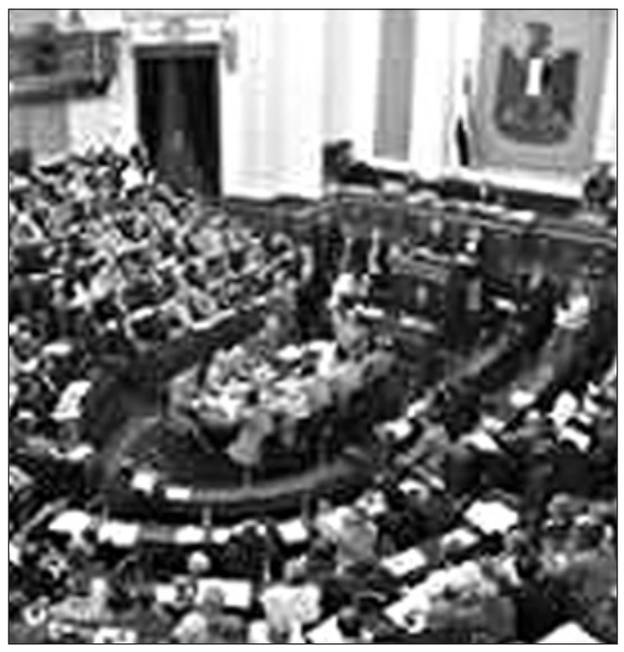
AMNESTY International called on Egyptian members of parliament to reject proposed amendments to the country's constitution, which the organisation described as the most serious undermining of human rights safeguards in Egypt since the state of emergency was re-imposed in 1981.

The appeal came as the Egyptian Parliament prepared to approve this amendments to 34 articles of the constitution, including Article 179. The amendments to this Article would give sweeping powers of arrest to the police, grant broad authority to monitor private communications and allow the Egyptian president to bypass ordinary courts and refer people suspected of terrorism to military and special courts, in which they would be unlikely to receive fair trials.

"The proposed constitutional amendments would simply entrench the long-standing system of abuse under Egypt's state of emergency powers and give the misuse of those powers a bogus legitimacy. Instead of putting an end to the secret detentions, enforced "disappearances", torture and unfair trials before emergency and military courts, Egyptian MPs are now being asked to sign away even the constitutional protections against such human rights violations," said Hassiba Hadj Sahraoui, Deputy Director of Amnesty International's Middle East and North Africa programme.

The amendment of Article 179 would pave the way for the introduction of a new anti-terrorism law that would undermine the principle of individual freedom [Article 41(1)], privacy of the home [Article 44] and privacy of correspondence, telephone calls and other communication [Article 45(2)]. The amendments would also grant the president the right to interfere in the judiciary by bypassing ordinary courts, including by referring people suspected of terrorism-related offences to military courts.

If approved by parliament, the amendments to Article 179 will be put to a popular referendum on 4 April along with amendments to 33 other articles of the Constitution. Egyptian NGOs and others have also expressed grave concerns about these other amendments including those which would ban the establishment of political parties based on religion and reduce the role of the judges in supervising elections and referendums. The first is seen as part of a government strategy to undermine the opposition Muslim Brotherhood following its improved showing in the 2005 elections. The second is seen as an attempt to prevent any repetition of events last year, when two leading judges denounced the government's failure to take action in response to evidence of electoral fraud during the presidential and parliamentary elections in 2005.



The amendments are being presented to MPs as a package on which they must vote yes or no. They cannot accept some and reject others, nor can they open up any of the proposed amendments for further parliamentary review.

"Amnesty International recognises the threat posed to Egypt by terrorism, but respect for and protection of fundamental human rights cannot simply be swept away by a majority vote," said Hassiba Hadj Sahraoui.

"By pushing through these amendments, the government will write into the permanent law emergency-style powers that have been used to violate human rights over more than two decades, so that when it then bows at last to international criticism and lifts the state of emergency the impact will be no more than cosmetic. The parliament should not rubber stamp this. Instead, it should reject the amendments and insist that Egypt's national law adequately safeguards the universal rights enshrined under international law which Egypt has committed, but so conspicuously failed, to uphold."

Amnesty International firmly believes that the current constitutional reform must be seized as an opportunity to further strengthen human rights protection and to break with the practices of the past. None of the provisions of the emergency legislation should be entrenched in the new law or protected by the constitution.

Source: Amnesty International.

LAW *watch*

Separation of power: Revisiting the basics

IT seems that our long aspired separation of judiciary is on the horizon. But whether letters of law will be truly translated into practical life is a question to be answered in future. Meantime, we may turn our attention to some more fundamental issues to be taken care of to give our democracy a better chance to thrive. I am talking about a better functioning legislature or parliament from the perspective of separation and decentralization of power.

The concept of separation of judiciary derived from a greater concept of separation of political powers of a state. Every student of law knows it well what these powers are: executive, legislature and judiciary. Analyzing constitutions and constitutional practices of several states Baron de Montesquieu came up with a device he named 'separation of power' to thwart any chance of any of these powers getting tyrant. The basic idea was that if powers of two or more state organs are vested in one person, he has a strong likelihood to abuse that authority. Better, let powers be separated and thus diffused to reduce this possibility of high concentration of powers leading to dictatorship by a single authority. When solidifying his theory Montesquieu had England in his mind as perfect example of power-separation. Later on the idea was taken further to further the separation among state organs by some eminent thinkers like James Madison. Eventually the theory saw its best ever exemplification in the governance system of the USA.

In our system, which we inherited from England, legislature and executive can hardly be separated. Theory says, in this form of governance Cabinet is collectively responsible to the Parliament as the body directly representing people's voice and Cabinet loses its mandate if Parliament withdraws its support. But reality tells an altogether different story. Cabinet forms with the most powerful members of the political party/alliance that enjoys majority in the parliament. This collection of big shots again is led by an almost invincible Prime Minister. So, practically there remains no choice for ordinary pro-government parliament members other than to support every government move. And Article 70, which originally installed to restrain floor-crossing but later proved to be quite instrumental in preventing any sort of dissent that may arise from within the party, has a lot to do with weakening the authority of parliament as a separate organ of the state. As a result two kinds of different authorities, lawmaking and executive get virtually converged in one hand. This may furnish us with part of the answer why our ruling party, more particularly our Prime Minister is untouchably omnipotent. Excessive power does not take time to be excessively abused. And we have been experiencing just that over the past one and half decades.

But can this happen that the theory of parliamentary democracy as such is not an unworkable one and it is only us who are responsible for our dysfunctional parliament? Unfortunately this may not be the case. Even in England, proud country to supply the model for modern parliamentary democracy, parliament does not dominate the executive, rather facts are just the other way around. It is highly unlikely that the executive wants a law to be passed but the parliament turns it down. Though there is no 'straight' law to restrain dissenting vote or even defection, several devices are employed with success to keep the parliament members of the ruling party tame and sufficiently obedient. One of such methods is designating whips, whose duty is to make sure that party members attend and vote in favor of their nominating party on important occasions. The word 'whip' originated from the term 'whippers-in' that again came from a barbaric way of amusement. 'Red fox hunting' trailing a vicious pack of hounds was a well-known recreational sport for elites of medieval Europe. Whippers-in were not huntsmen themselves but they had an important part to play. They were responsible to keep the dogs in one single pack and used whips in doing so. Present day 'whippers-in' in 'parliamentary games' are also equipped with some invisible but equally potent whips at their disposal to maintain the discipline inside the party. These range from patronage for obedience to expulsion for disobedience in extreme cases. So, no wonder that there were only three instances in the whole preceding century where English House of Commons exercised their constitutional authority to topple the executive.

Like elsewhere, this executive dominance over parliament and other organs of the government has taken the shape of 'elective dictatorship' in Bangladesh where the winner in election takes it all and parliament acts merely as the rubber stamps of the executive. So we remain unable to find a case of substantial alteration made by the parliament in a law proposed by the executive and there is no example of a bill forwarded by opposition being passed by our rejuvenated parliament.

If we keep the theoretical rhetoric of people's representation aside for a while and look back in the history, it will be seen that the concept of parliament, be it Anglo-Saxon Witenagemot or Roman Comitia Curiata, was originally developed as a collection of elites who used to gather to exert synergized pressure on the all-powerful Monarch. So the primary and the foremost contribution of the emergence of parliamentary system was nothing more than the 'decentralization' of state authority among few hundred people as against one single king. And general people have never been at the receiving end of the benefit that parliamentary system yielded to remain underrepresented, if not unrepresented altogether. What popular suffrage brought new is the sensation of election which really matters little to common people when they find that dominant political parties offer meager divergence in respect of their policies and execution thereof. So if a given government is particularly corrupt, such decentralization of power means decentralization of corruption too. We might have had enough of it. We cannot change the lines of history books, but what we can do is to write the script of our future. But how? Will a change in Article 70 suffice or it requires something more?

Our major political parties, with rare exceptions of course, lack intra-party democratic practice. The ways nominees for different elections, parliamentary or local governments, are selected by these parties are not above criticism. This top-down approach, where top leaders decide who is to represent which constituency, is only enough to ensure that it will be a face off between tycoons. By no means does it bear any symptom of people's representation. Nominees, if elected, remain accountable to the central body of his/her political party and they don't bother to feel any responsibility for his/her constituency. Things can get little better if we can introduce a down-top approach in political parties' selection of nominees. In this approach grass-root units of political parties will have major role to play in this selection process so that only the people having qualities to get past the test of local activists make it to the national or local government level. Secret ballot will rather enhance the credibility of this process. Hopefully this will keep the 'overnight politicians' away from our elections. It will also help elected representatives feel relative independence from his/her political party. After all, representing the voters is their primary responsibility and implementation of concerned political parties' agenda comes second.

Another major and fundamental reform can be done by bringing in the 'proportional representation' of electoral formula in the place of current 'first-past-the-post' system. In the existing system if a political party manages to receive majority seats in the parliament it enjoys unfettered power in governance though its total vote may not be that much higher from its major rival. This system is criticized as being not truly representative of people's choice. On the other hand, in 'proportional representation' number of total votes count and decide the number of parliament members a party will have on the basis of percentage.

It should be mentioned that over the years we have been confusing between the responsibilities of parliament members and local governments. Development activities are supposed to be carried out by the local government bodies and parliament is responsible to legislate and ensure the accountability of the executive division of government. If this division of works, as envisaged by the Constitution, can be maintained to a reasonable extent, lucrative elements of parliamentary membership could be shaken off to keep it away from being prey to the all-devouring greed of mafias. But if we really want to decentralize state power, we need to strengthen our local government bodies. In the changed political milieu of overhauling we may expect the execution of the judgment given in Kudrat-e-Elahi Panir's case, less-talked but equally important as that of Masdar Hossain's case. This case requires the government to reactivate the dormant local government institutions and put people's representatives, as contrasted to bureaucrats, in their central roles.

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