



HUMAN RIGHTS *advocacy*



Cutting of hills: Lack of law or lack of law enforcement?

BARRISTER M. OMAR BIN HARUN KHAN

THE recent tragic land sliding incident in Chittagong and some other parts of Bangladesh has reawakened attention to the issue of illegal hill cutting in our country. Massive hill cutting by powerful individuals or organisations, both from public and private sectors for commercial and non-commercial purposes, took a grave turn in recent years in more than one city and district of Bangladesh, threatening environment, natural beauty and bio-diversity of the land having wonderful geographical uniqueness. This hill cutting is going on in full swing even at the expense of the human lives!

The government has imposed restriction on hill cutting without permission and directed the authorities concerned to strictly execute the Building Construction Act, 1952. Despite the fact that hill cutting without proper legislation is banned, the activity goes on without fear of reprisal and, in some cases, with the law enforcers working as accomplices.

The Building Construction Act was enacted in 1952, which was given effect from 21.03.1953, with a view to preventing hazardous erection of buildings, excavation of tanks and cutting of hills and hillocks in Bangladesh. Initially the Act did not contain any specific provision for the cutting of hills. But later on after realising the momentous of this issue, the government amended the 1952 Act twice in 1987 and in 1990. In the Building Construction (Amendment) Act of 1990, amongst other, section 3C and 3D were inserted into the 1952 Act.

As per section 3C of the Act no person shall without the previous sanction of the authorised officer cut or raze any hill. As per this section no such sanction shall be granted unless the authorised officer or such other authority as the government may specify is satisfied that-

(a) the cutting or razing of the hill shall not cause any serious damage to any hill, building, structure or land adjacent to or in the



The army officials are in the rescuing mission

vicinity of the hill, or

(b) the cutting or razing of the hill shall not cause any silting of or obstruction to any drain, stream or river, or

(c) the cutting or razing of the hill is necessary in order to prevent loss of life or property, or

(d) the cutting of the hill is such as is normally necessary for construction of dwelling house without causing any major damage to

the hill, or

(e) the cutting or razing of the hill is necessary in the public interest.

Being empowered under section 18 of the Act, the government formulated the Building Construction Rules 1996 with specific provision regarding the permission procedure for cutting of hills. The said Rules contain the application procedure for the approval of cutting of hills and the fee structure for the

same. Rule 27 states that in addition to the fees, designs as required under the Rules, the applicant must also submit the following documents:

(a) clearance or NOC from the environment department;

(b) topographical or contour map of the hill;

(c) detailed design showing all the necessary development plan, protective measures etc;

However, to the greatest surprise it has been found that in many occasions the Environment authority responsible for giving the clearance, gives the clearance in exchange of bribes or because of political or other pressures and/or because of personal connections, completely disregarding the environmental impact of giving such clearance. On most of the occasions, the hill cutters do not obtain any clearance at all from the authority and in very few of the cases the authority takes actions against them.

After receiving the clearance from the environment authority, when the application is made to the authorised officer, the same incident of corruption takes precedence over the operation of law. Thus, the whole process becomes corrupt and handicapped. Permissions are given not as per the law but by being directed by other improper and illegal motives and for ensuring the unjust enrichment of some vested groups.

The Act not only contains the permission procedure and criteria but also contains specific provisions for punishment and legal actions against the persons transgressing the law. As per section 3D, the authorised officer can serve a show cause notice to any person who is cutting hills illegally. According to section 10A of the 1952 Act, if the authorised officer has reason to believe that someone is cutting the hills without permission or someone is violating the terms of the permission, he may seize all the vehicle, instrument, material used for cutting the hills and may get the person arrested by a police officer without warrant. Furthermore, violation of section 3C is an offence punishable with upto seven years' imprisonment. Thus ample powers have been bestowed on the authority to ensure legal compliance. In Chittagong, so far the Chittagong Development Authority (CDA) has filed only a few cases against some of its officers and against some of the illegal hill cutters, but most of which do not see any day light for different unknown (!) reasons. Thus and so corruption has always been taking precedence over the legal provisions. In

collusion with the law enforcing agencies and the responsible persons of the concerned authority, the culprits remain beyond the reach of the law. Following the recent incident in different newspaper reports published recently, we have come to know that though important hills were demolished authorities did not take any effective steps against the violators, other than some eye-washing legal actions. In Chittagong, Khulsi, Panchlaish, Nasirabad, Baizid, Lalkhan Bazar, Foy's Lake, Oxygen, Hathazari and Sitakunda have been the worst affected areas where hill cutting still continues. Journalists have also published their reports after physically visiting the affected areas and found that many earth-loaded trucks were seen moving towards their destinations in the dark of night. Hills were usually being razed and leveled after midnight as influential persons and some dishonest law enforcers were seen assisting the hill cutters in the cover of the night.

Isn't it now crystal clear that it is not the deficit or insufficiency of law rather the non-application of law and corruption of some government servants, law enforcing personnel coupled with the greed of unscrupulous persons of the country are responsible for the illegal hill cutting? Consequently, can we only blame the nature for causing the death of hundreds of people in Chittagong or shall we raise our fingers to the actual culprits?

Proper and effective measures should be taken to create examples for the future and to stop any such incident from occurring in the future. Already different NGOs, concerned and conscious citizens are effecting some movements and demonstrations, and media is playing a vigorous role in this regard as well. But like in the past and alike most of the issues in Bangladesh, let not this hope that the issue of illegal hill cutting be pushed under the carpet until the occurrence of another tragic incident.

The writer is practicing in the Supreme Court.

LAW Campaign

Comments on draft RTI Act



Possible way to dismantle secrecy regime



DR. ABDULLAH AL FARUQUE

IN every democratic society, right to information is considered as a pivotal instrument of democratic governance and potential tool of accountability and transparency of public administration. The notion of right to information is logical extension of the freedom of expression and thought - a core component of individual liberty and freedoms. Many countries have either incorporated right to information as a fundamental human right or adopted specific legislation on it or amended existing secrecy laws to promote freedom of information in line with emerging

trend of openness in government activities. Freedom of information may facilitate to attain fundamental goals of democratic governance like transparency, accountability, educating public of the civic sense and responsibilities. On the other hand, constraints on the disclosure of information create considerable hardship in the way of individual's understanding of his role in a democratic society. Access to information also promotes popular control and political equality and enhances the quality of decision making process. In the age of globalisation, information is treated as public good and therefore, should be disseminated as

much as possible for the self-realisation of individual. Through access to information people can make informed decision and hold public bodies accountable, which in turn can prevent corruption and mismanagement of resources.

In our country, information is generally withheld on the ground of state security and public interest under the legal rubric. The existing laws and procedures like the Official Secrets Act, 1923, Evidence Act, 1872, Rules of Business, the Government Servant (Conduct) Rules, 1979 create legal regime on secrecy that deny access to information. But the emerging trends of public interest dictate that information which concerns individuals' needs and necessary to their civil and personal freedoms should be accessible to the public at large. There is a growing realization that public interest will be served in the best possible manner by ensuring public access to information which relates one's basic needs such as health, environment, education or the reasons of arrest etc. Therefore, a specific and comprehensive legislation on right to information is imperative for legal recognition of access to information relating to functioning of public authorities and public bodies.

A separate law on right to information is considered as the best possible way to facilitate access to information. An enabling legislation can make a shift from official secrecy regime to one of freedom of information. The specific legislation for right to information is needed for two reasons: to get information as a legally enforceable right and to case a positive obligation upon the public authorities to ensure access to information. Enactment of specific law can also break the entrenched tradition of secrecy that has been developed by the several existing laws and bureaucratic culture that promotes secrecy.

In this regard, draft law prepared by a group of very reputed legal experts and lawyers under the auspices of Manusher Jonno Foundation - a governance and human rights based NGO, is very timely initiative and sets a benchmark in formulating legislation on right to information. The draft law is very comprehensive, and covers most of the aspects of the issues involved.

The draft has the following salient features:

- 1. positive duty on public authorities to disclose information regarding their activities;
- 2. provision of giving information on payment of fees;
- 3. institutional framework for implementation of the Act;
- 4. Criminal liability for refusal to provide information by public authorities without just cause;
- 5. Broader definition of information;
- 6. Clear definition of public authorities and their defined responsibilities regarding disclosure of information;
- 7. Timely release of information;
- 8. Overriding effect of proposed legislation on Official Secrets Act, 1923 and other laws/rules having provisions of secrecy;
- 9. Striking a delicate balance between public interest and individual rights by providing exemptions from disclosure of information;
- 10. Establishment of an institutional mechanism called 'Information Commission' and its well defined powers and functions;
- 11. Accountability of the 'Information Commission' through submission of the annual report;
- 12. The law provides procedure for access to information as well as procedure for providing information.

However, the draft is silent about necessity of publicity of law to create awareness about right to information and training for government officials on how to use law and procedure on right to information. These functions can be conveniently entrusted to the proposed 'Information Commission' envisaged in the draft law.

The draft law is marked by conceptual clarity and provides compelling explanations of most of the provisions of law. Given the window of opportunity created by present care-taker government's reform agenda, the draft law should be implemented by turning it into law as soon as possible to dismantle the secrecy regime and pave the way for transparent and accountable government.

The writer is Associate Professor, Department of Law, University of Chittagong.

KHADEM ALI

THE Right to Information Act (Daily Star, June 9, 2007) will be good news if it sees the light of the day. In fact it will give teeth to so many other laws which are breached with impunity under cover of Official Secrets Act. The impressive groundwork by the team of Manusher Jonno (Star Weekend Magazine, June 8, 2007) and its many supporters deserve our commendation and full support. The Daily Star is to be commended for its consistent advocacy and many past initiatives on this cause. I hope the media will keep up this effort.

Law is foundation of a just and civilized order. Secrecy is the dark force which tends to undermine this order. What darkness is to a thief, culture of secrecy is to public bodies. That is why Jefferson's apt remark, the choice should be clear between a government without a free press and a free press without a government. In those formative years of the US he opted for a free press, and got both for his people. Our choice and our tragedy, to be frank, gave us none. During the formative years of the independent Bangladesh I had once the occasion to informally ask the then Law Minister why should we obey repressive laws which do not serve public interest. He responded by saying, 'even if they don't, we have to obey the laws'. The result is there for all to see.

Sadly, our framers of law, and legal institutions charged to implement them, fail to discriminate between legitimacy and legality of the law. Legitimacy is the cause d'etre for Law; the rest are mere tools of implementation. The tools or laws written by its framers, which are at times imperfect and inappropriately used; but with time they all require improvement and adjustment to the purpose, which is people's welfare. This does not happen.

The legal architecture of the



state is full of pitfalls for the citizens. The people in the legal profession are constrained by legality and are themselves victims. We lay citizens, clear-headed but impotent, wedged between the insensitive bodies of laws and the legal practitioners, are put between a rock and a hard place. The Right to Information Act can restore our empowerment. Whether or not that will happen remains a question. Present environment gives us some hope. So, if not now, then never.

Democracy is not the right of political parties to get elected by abusing a flawed system, but people's right to good governance through genuine representation. The head of the CTG Dr. Fakhruddin Ahmed rightly stated in his second policy statement

during the opening of the Ekushey Boi Mela on 21st February: "It is time now to reflect on our aspirations for a liberated Bangladesh and what were our dreams and why didn't they come true! It is time to think how these can be achieved, and to take actions". On 15th March he again echoed our sentiment when he said, "Law is made for man, man is not made for law." The Legal Advisor of the CTG most recently voiced our anticipation stating, "the primary task before the CTG is ensuring future of good governance, and not early election".

We support this position, for this is the legitimacy of the CTG. We expect from him to ensure that the Right to Information Act is not diluted or frustrated again by bureaucracy, and is expeditiously adopted before the time runs out.

As a member of the legal profession himself, what better can he do by setting this landmark for his people!

Footnote: The draft Law appears to have loopholes and needs to be at places more precise. To cite one example, Chapter III, Article 8, Exemptions from Disclosure of Information, subclause (1) paragraph (h) the text 'cabinet papers, including records of deliberations of the Cabinet, Secretaries and other officers' gives a blanket cover for denial of information on a wide range of actions. The words 'secretaries and other officers' might be deleted or made more qualified. There are other examples.

The writer is Architect by profession.