



HUMAN RIGHTS monitor



Enforced Disappearance, A Global Concern

QUMRUNNESSA NAZLY

ENFORCED or involuntary Disappearance' is such a heinous practice by which person/ persons are first kidnapped, and then illegally detained in concealed detention centers often associated with torture. The ultimate fate of the disappeared remains unknown to both the disappeared person and his/her relatives. In most cases the victim is killed leaving no trace of the dead body. In rare cases, if the victim is released, he/ she survives with mental and psychological consequences.

Disappearance involves the violation of a series of human rights both for the victims and his families. For the disappeared person, these include right to life, right to recognition as a person before the law; right to liberty and security of the person; right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment and right to fair trial.

For family members of the disappeared person it affects their mental and emotional well being, as for the rest of life they remain in wandering and waiting for their loved one not knowing whether the victim is still alive and, if so, where he or she is being held, under what conditions, and in what state of health. It also affects other economic, social and cultural rights of the family members of the victim disappeared person, like, when the sole earning member of the family is subjected to be enforced disappearance, the enjoyment of some basic human rights such as, right to food, shelter, education and health becomes uncertain. If women are the victims of disappearance, they become particularly vulnerable to sexual and other forms of violence. In addition, women are most often at the forefront of the struggle to resolve the disappearances of members of their family. In this

capacity, they may suffer intimidation, persecution and reprisals.

Global Phenomenon of the Enforced Disappearance

Even though Adolf Hitler devised this heinous practice in 1941 to deter his political opponents, the practice drew international attention in 1770s- 1980s because of mass occurrence of enforced disappearance in Latin America. During the period, unknown numbers of people were subjected to enforced disappearance in Latin American states by the Military Regime in power. For Example, between 1976 and 1983, in Argentina, it is thought that up to 30000 dissidents and people connected to them were subject to forced disappearance under military junta in power. In Chile and Argentina, the infamous 'death flights' were used during 'Operation Condor' by the Military Regime to dispose of the victims' bodies at sea.

However, the term 'Disappearance' first entered the international human rights vocabulary because of occurrences in Guatemala, where the practice emerged on a mass scale in the 1960s.

Disappearance is now a global phenomenon, not limited to any specific region. It occurs not only in countries suffering from internal armed conflict but also in other countries equally as a tool of suppression of political opponents. The practice is exercised by both state agencies and non-state agencies engaged in armed conflict to deter political opponents.

A statistics from Human Rights year Book, 2007, INSEC, a human rights organization in Nepal shows that in Nepal from 1999-2000, 888 persons were subjected to enforced disappearance where 783 by state and 105 by Maoist insurgents. Joint Oral Intervention of Human Rights Watch, the



Colombian Commission of Jurists and the International Commission of Jurists, submitted to Human Rights Council, 4th session, 12 to 30 March 2007 stated that during the period of May 2000 to 13 January 2007 Nepal Human Rights Commission received 2028 cases of Enforced Disappearance. The same statement mentioned that since the establishment of UN Working Group on Enforced or Involuntary Disappearances in 1980, the Group has received over 13000 cases of disappearance from Srilanka.

There are clear allegations against the United States of disappearing over one hundred suspected terrorists to black sites throughout Eastern Europe or to other foreign countries for information as part of the US war on terrorism. The allegations are obviously corroborated with the existence of undisclosed detention centers in different parts of the world. In September 2006, the Bush administration announced it had moved

14 secretly held detainees from CIA prisons at undisclosed locations to the Guantanamo military prison. Besides, there are also allegations against the so called ally states of US led war on terrorism of sending their citizens to different secret detention centers including Guantanamo after arresting as suspected terrorist. Like in a press release issued by the Human Rights Commission of Pakistan (HRCP) on December 8 2006 informs that the number of disappearance has approximately reached 4000 in number since the beginning of the US led 'War on Terror' in 2001.

An important notion of the cases of disappearance is that it takes place in such a systematic way that the truth never comes out. As in most cases, the disappeared persons become the victims of state terrorism, Governments offer indemnity for the government agencies engaged with the offence by way of law and the perpetrators are exempted from prosecution



and punishment thereby providing no remedy to the victims and their family members. In some cases, where the Governments face pressure to take actions, they pretend of investigating the alleged incidents ensuring the investigations lead nowhere.

International safeguard Mechanisms on the Protection of Persons from Enforced or Involuntary Disappearances

Working Group on Enforced or Involuntary Disappearances: In 1980 Commission on Human Rights, the then highest body of Human Rights in UN established the Working group named Working Group on Enforced or Involuntary Disappearances first ever step taken internationally to work for the protection of persons from the enforced or involuntary disappearances. The basic mandate of the Working Group is to assist the relatives of disappeared persons to ascertain the fate and whereabouts of their missing family members. For this purpose, the Group

receives and examines reports of disappearances submitted by relatives of missing persons or human rights organizations acting on their behalf. After determining whether those reports comply with a number of criteria, the Working Group transmits individual cases to the Governments concerned, requesting them to carry out investigations and to inform the Working Group of the results.

The Working Group acts essentially as a channel of communication between the families of missing persons and Governments, and has successfully developed a dialogue with the majority of Governments concerned with the aim of solving cases of disappearance.

The group prepares annual report on the activities it has carried out all the year round. In addition to the observations on the situation of the disappearances in individual countries, in the report the group also includes conclusions and recommendations on the improve-

ment of the situation regarding enforced disappearances in general.

Declaration on the Protection of All Persons from Enforced Disappearance

On 18 December 1992, the General Assembly, by resolution 47/133, adopted the Declaration on the Protection of All Persons from Enforced Disappearance. Stating the systematic practice of disappearance as a crime against humanity the declaration describes state obligations to take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance, in particular to make them continuing offences under criminal law and to establish civil liability. As the first standard setting document the declaration acted as a basis for the functioning of the Working Group.

International Convention for the Protection of All Persons from Enforced Disappearance

As the Declaration does not have any binding obligations on the states, there was a long felt need to have a binding instrument. On 20 December 2006, the UN General Assembly adopted the International Convention for the Protection of All Persons from Enforced Disappearance which is now open for signature and ratification by states. Article 2 of the Convention defines the enforced disappearance as - the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law. The convention clearly states that neither a state of war, a threat of war, or internal political instability or any other

public emergency may be invoked as a justification for enforced disappearance. Like Rome Statute, the convention also describes the widespread or systematic practice of enforced disappearance as a crime against humanity. According to the Convention, the state party shall be also under obligations to take the necessary measures to ensure that enforced disappearance constitutes an offence under its criminal law. It also obliges the state party to ensure in its legal system that the victims of enforced disappearance have the right to obtain reparations. The Convention declares absolute ban on secret detention. It provides for the tracing of the whereabouts of the disappeared and addresses the problems faced by their children and families. It establishes an expert committee empowered to monitor the implementation of the convention and to take action in individual cases. Amnesty International considers the Convention against enforced disappearances as one of the most forceful human rights conventions ever adopted by the UN. Obviously, this is a positive development in international human rights law in defining the state obligation to put an end to the practice of enforced disappearance. It is now up to the states to sign and ratify the convention immediately and take measures to ensure implementation of the convention. And political will of the governments is the ultimate requirement for all the things to happen. Only the political will of the governments can ensure sufficient measures to prevent the worst form of violations and bring the perpetrators to justice, if they have taken place. We, the people are very keen to see that political will in our respective governments.

The writer is working with Ain o Salish Kendra.

Star LAW analysis

Towards good governance

KHAN FERDOUSOUR RAHMAN

FOR establishing good governance transparency, accountability, efficiency and rule of law are prerequisites, which are far from being in consonance with actual in Bangladesh. Here several factors are constraining the very process of good governance and many issues are posing barriers to good governance. The major issues are corruption, inefficiency, politicisation of bureaucracy, non-observance of the rule of law and, of course, rampant corruption.

A democratic constitution was enacted in Bangladesh in 1972 within a year of its independence in 1971. But democracy was hindered to a large extent because of the authoritarian stance of the democratically elected leaders and time to time by other interventions in politics. Parliament was denied its befitting place in governance. Judiciary was not guaranteed its independence from the executive. The party system itself has been fluid, split into factions, personality centered and undemocratic in its internal operations. However, there is no denying the fact that there is no alternative to democracy, and sustainable economic development with a forward vision for Bangladesh will not be attained unless good governance is established.

Our politics became hostage to a few greedy dishonest and incompetent people, who served their own cause or that of vested interest groups. Worldwide any reform is considered and accepted for achieving results of good governance. Any legislation also warrants revision periodically. Therefore, reform is inevitable in various related sectors for establishing good governance.

Independent Election Commission (EC)

The EC must be independent from the executive. Selection of Chief Election Commissioner (CEC) and other Commissioners should be made on their competency and character. Their integrity should be beyond any question.

Major political parties should be consulted before their selection. Election is a process through which people participate in governance. The EC must review the electoral rule and necessary amendments should be done so that pro people candidates get elected. Honest, clean and competent people so far kept outside the mainstream politics by vested interest groups must be brought in politics to emerge as a new dynamic political force. Political parties must be brought under registration for ensuring their internal democracy and financial transparency. Proper electoral roll with photograph of the voters should be prepared by the EC and the voters should be issued voter ID card.

Efficient House of Nation

Parliament should truly be made the centre of all activities. It needs to be strengthened by strong parliamentary leadership and institutional capacity building. Various committees must perform their watchdog functions in true sense as most effective instruments. Head of various committees must be competent and may be shared among all parties having representation in the parliament. The head of Public Accounts Committee (PAC) must be selected from opposition. Time has come to review article 70 in order to bring flexibility in members' performance.

Independence of Judiciary

Judiciary is the last resort of common people. It is the institution that actually protects and harmonises the varying interest of the members of the society and ensures rule of law. It has been the major recourse of the human rights community for enforcement of human rights. However, in a landmark approach the present interim caretaker government has moved to separate the judiciary from the executive.

Professional and non-partisan Bureaucracy

Bureaucracy is an inseparable part of any organised society. But the bureaucracy of Bangladesh is not efficient in terms of service delivery. It is not prepared to participate in global negotiation,



generally lacking in bargaining competence and vivid diplomacy to tackle any diverse situation. Only efficient and neutral bureaucracy can play a major constructive role in the political process and save a democracy from debacle. But our bureaucracy is also highly politicised. So the civil servants need to be imbued with a great sense of collective national welfare -- which alone can lift them from party bias -- to play the envisaged role conscientiously.

Independent Anti Corruption Commission (ACC)

An independent and strong ACC can play a vital role to eliminate corruption. The recently formed ACC has initiated much talked about anti corruption drive, which has brought lot of influential cor-

rupt people to task. The present ACC drive has proved that nobody is beyond law. The same drive must continue without being biased and with same speed even during future elected governments.

Human Rights Commission

HR Commission should be formed as a possible solution to the human rights violations or problems existing in the country. It is expected to be a watchdog body by monitoring, advocating and promoting human rights.

Office of the Ombudsman

Its need arises for taking preventive and corrective actions with a view to containing bad governance committed by officials or employees of the public adminis-

tration.

Right to Information Act

Existing laws very often restrict people's right to access to information. Enactment of the right to information law would stop bureaucrats from getting away with corruption and ensure transparency and accountability in government both in political and bureaucratic functions. Functioning with this law the corrupt officials cannot hide behind the cloak of secrecy and escape punishment.

Consumer Protection Act

Price hike of essential commodities and adulteration of food items are alarming in the market. This law to be enacted immediately should cover the food safety standard and pricing of commodities.

Service of public agencies (like T & T, DESA, DESCO, Titas Gas, WASA, Radio, BTV) should also be brought phase-wise under this law.

Regulatory Bodies

In any market economy government is having more role to play in regulating various sectors. So the regulatory bodies, i.e. Bangladesh Bank, UGC, BSTI, SEC, BTRC, BERC etc need to be made more effective and functional.

Constitutional Appointments

Judges of Supreme Court, Election Commissioners, Chairman and members of Public Service Commission (PSC) and University Grants Commission (UGC) and others should be selected through standing selection process without influence from ruling party.

National Security Council (NSC)

National security process of Bangladesh has been neglected since independence, even after experiencing long time insurgency in Chittagang Hill Tracts (CHT), frequent devastating natural disasters, repeated border skirmishes as well as bomb and grenade attacks on various occasions at various places of the country. So NSC must be formed immediately.

Freedom of Media

Citizen's rights and democracy have not been flourished in the country at the expected level due to control on media. All the past governments also failed in formulating a policy on mass media, in absence of which control of private satellite TV channels seemingly has gone in the hands of businessmen and politicians. So there must be a policy on mass media as well as BTV and Radio Bangladesh given full autonomy immediately.

Police Reform

Police should be truly made friend of the people through massive reform. They must not be utilised for political purpose and their incentives also to be practically provided. Disciplinary action must be

taken against indiscipline police officials and police must be regulated through a commission, which will be truly represented by civil society members.

Dependency on Donors

Bangladesh can very well avoid foreign aid if it can contain corruption because as is being revealed, the amount eaten away by corruption is much more than foreign aid received. Thereby conditionality of donors can very well be avoided.

Review of Constitution

Constitution needs to be upheld with democratic practice. We have already passed 35 years after adoption of our constitution. Though there is no disagreement between and among political leaders regarding basic spirit of the constitution, i.e. no alternative to democracy, people are holders of all power, government should be formed by the elected representatives, government should be accountable to the parliament, parliament to enact legislation, independence of judiciary, no legislation against basic theme of constitution etc, but in recent past there was clear disagreement between politicians explanation of various articles of Constitution. Now time has come to review it to remove any disagreement on explanation of any article so that in future no such confusion arises.

Good governance will not be achieved in one day. It is a step by step process. All parties in governance -- the government, the opposition, bureaucracy, armed forces, civil society, development partners and all others having a stake must sort out the differences, if any, and develop a model by concerted efforts most appropriate for the country that will ensure good governance. It is necessary to sensitise people about their social responsibility and thus to increase their receptivity and ability to respond to good governance. Let Bangladesh be a hunger and poverty free country in the world, where there will exist true democracy, human rights and good governance.

The writer is a freelance contributor to The Daily Star.

