LAW & our rights

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"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

LAW campaign

The quest for a right to information law

MD. RIZWANUL ISLAM

WE cannot make real choices in any area of our lives unless we are well informed. This is applicable in politics, the workplace, education, civic life and so on. Information influences our choices and decisions. Unless we have proper, accurate information, we cannot fully exercise our rights and freedoms. Secrecy in public sphere is conducive for the dominant class in a state, generally the government and bureaucrats- civil or military. If citizens can be kept in the dark, it becomes easy to rule for an autocratic, corrupt administration and vice versa. Jeremy Bentham noted centuries ago, "The eye of the public makes the statesman virtuous. The multitude of the audience multiplies for disintegrity the chances of detection." (Quoted in Blacked Out by Alasdair Roberts) The Supreme Court of India, in S.P. Gupta and Others v. President of India and others (1982) AIR (SC) 149 noted that, "Where a society has chosen to accept democracy as its creedal faith, it is elementary that its citizens ought to know what their government is doing... It is only if people know how government is functioning that they can fulfill the role which democracy assigns to them and makes democracy a really effective participatory democracy."

In 1946, one of the very first resolutions of the UN General Assembly stated, "Freedom of information is a fundamental human right and ... the touchstone of all freedoms to which the United Nations is consecrated". Article 19 of the Universal Declaration of Human Rights, 1948 and Article 19 of the International Covenant on Civil and Political Rights, 1966 also contain similar expressions. Although these provisions recognize the right to seek information, they do not impose a corresponding duty to any entity. Hence, in 1997 the UN Commission on Human Rights issued a request to the Special Rapporteur on Freedom of Opinion and Expression to look more closely into the right to seek and receive information. The following year, the Special Rapporteur reported on the issue noting that "The right to seek, receive and impart information imposes a positive obligation on States to ensure access to information, particularly with regard to information held by Governments in all types of storage and retrieval systems".

The first law granting a right to access government information was passed in Sweden as early as in 1776. Interestingly, Sweden remained the only country with such legislation for more than a century until Finland enacted a similar law in 1951. In the last few decades almost all economically advanced countries have enacted right to information laws and increasingly developing and less developed countries are following suit. It is important to note that these laws vary a great deal, for instance, in Sweden citizens can have access to their fellow citizens' income tax return which would in most other jurisdictions be considered as a confidential document. On the other hand, there are countries like China where freedom of information law grant little access to information than granting a 'symbolic right'.

RIGHT TO INFORMATION.CARTOON

How can right to information law have an impact? A concrete example may give us some directions. In 1999 the Bolivian government leased control of the water supply in the city of Cochabamba to a private company. This assignment probably had something to do with the fact that the World Bank had told the mayor of Cochabamba that a US$14 million loan to upgrade the city's water supply was qualified on privatisation. World Bank had placed the same condition on a payment to the government of an amount of US$600 million in international debt relief. The contract was awarded through a secret tender where there was just one bidder- a company called Aguas del Tunari. No one knew who they were or where they had come from, but they were allowed to have control of the city water supply until 2039. Within weeks of Aguas del Tunari's taking over of water supply, it increased water supply charges by 200% or more. For local workers, living on wages of about $60 a month, this meant paying up to a quarter of their income just for paying water usage bill. Local people quite naturally resisted the privatisation deal. After a popular struggle over several months they won. First the rate rises were reversed and then Aguas del Tunari was kicked out. In the course of the struggle to get their water back, the people of Cochabamba unfolded some startling facts. Under the terms of the privatisation deal, the company was receiving a guaranteed annual profit of 16% but the company had made almost no up-front investment in the city's water. If the people had access to these pieces of information, it is inconceivable that the local government could enter into the deal in the first place. It is not improbable that this Bolivian incident would have a number of parallels, at least to some degree, in our country.

It is not just in less developed countries, with lack of a democratic culture, where government and local authorities might be facing embarrassing revelations by people's exercise of right to information. Such laws can and do embarrass even the governments in advanced democracies. For example, a confidential memorandum containing the response of a British army chief to a query from British ambassador in Venezuela regarding whether the British government was ready to endure bribery of foreign officials by British arms dealers had the following sensational revelation:

"I am completely mystified by just what your problem is... People who deal with the arms trade, even if they are sitting in a government office...day by day carry out transactions knowing that at some point bribery is involved. Obviously I and my colleagues in this office do not ourselves engage in it, but we believe that various people who are somewhere along the train of our transactions do. They do not tell us what they are doing and we do not inquire. We are interested in the end result. " (Quoted in Blacked out by Alasdair Roberts, page 7)

It is generally agreed upon that everyone should have access to information held by public bodies. The basis of such a perception is that public bodies hold information not for themselves but as custodians of the public good. Hence, they should provide us with those pieces of information that they hold because it is our information entrusted in their hands, not their information. However, as many functions of public bodies are now being performed by private bodies, the information held by the latter can equally be important for citizens. People should also have the right to access to those pieces of information held by private bodies that is necessary for the exercise or protection of any other right.

A critical point for an effective right to information law is the formulation of proper exceptions that is keeping certain kinds of information away from the scope of the accessible information for securing a few legitimate objectives. The problem is that the object of the law itself can be defeated by an expansive scope of exceptions framed in the name of ensuring national security, law enforcement, foreign relations and so on. All these matters should be clearly defined and should not be too wide to unduly defeat the object of the law. In cases where an application is rejected on any of these exceptional grounds, it should ultimately be upon the court of law to decide whether the law has been applied properly or not. Otherwise, there can be a mockery in the name of granting the right. It should be mentioned that we have the Official Secrets Act, 1923 in force in Bangladesh, which is a formidable barrier to access to information. Although, the Act could serve to achieve legitimate purpose such as prevention of spying, maintaining the security of the state etc, the use of vague or ambiguous wordings in the Act has made it very much open to abuse.

No right of information law can be meaningful unless a culture of seeking information can be nurtured in a society. An effective right to information law needs citizens who are willing to exercise their rights. The human rights NGOs should strive for educating the public about the importance of this right. Assuming that a law is passed creating a right to information, they should campaign for educating the public on how to exercise the right.

It is often contended by some that a right to information law in a country like ours with high rate of illiteracy would have no impact. Despite some merit in the contention, it is an essentially flawed argument. A right to information law at its best would foster a culture of accountability of the different stakeholders and at its worst would have no impact at all. Even this worst possible outcome in this case would have no adverse implication. Furthermore, even if citizens at large do not resort to right to information law in near future, a proper right to information law could hopefully be utilized by our vigilant media and strengthen the trend of investigative journalism. Concern is also expressed that a right to information law can be an administrative burden and too much thrust for government information can make administration less efficient. However, this can be remedied to a great extent by charging reasonable fees for access to information. The fee thus levied can be utilized for investing in setting up adequate mechanism for dealing with application for access to information.

The present interim government has strongly advocated for eradication of corruption in all spheres of public life. It would be fitting for this government to enact a meaningful right to information law that would empower citizens. By enacting a truly significant right to information law, this government can herald a new beginning in the fight against corruption.

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HUMAN RIGHTS watch

Army killings fuel insurgency in Manipur

Government should heed own Commission and repeal Laws fostering Impunity

THE Indian government should fully prosecute army, paramilitary, and police personnel responsible for killings and torture in the northeastern state of Manipur, Human Rights Watch said in a new report released on September 15, 2008.

Human rights violations by Indian security forces have fueled the armed opposition in Manipur. Armed groups have carried out torture, killings, indiscriminately used bombs and land mines, engaged in forced recruitment, and conducted widespread extortion.

The 79-page report, "'These Fellows Must Be Eliminated': Relentless Violence and Impunity in Manipur," documents the failure of justice in the state, where for 50 years the army, empowered and protected by the

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Armed Forces (Special Powers) Act (AFSPA), has committed numerous serious human rights violations.

"Soldiers and police are protected by laws granting immunity and officials unwilling to hold them accountable for serious crimes," said Meenakshi Ganguly, senior researcher on South Asia at Human Rights Watch and author of the report. "These laws perpetuate human rights abuses, which drive civilians to seek the protection of one or other armed group."

The report details the failure of justice in the killing and possible rape of alleged militant Thangjam Manorama Devi by the paramilitary Assam Rifles in 2004. Repeated attempts to identify and punish those responsible for her death have been stalled by the army, which has received protection under the immunity provisions of the AFSPA.

The report documents specific cases of extrajudicial executions and torture by soldiers, paramilitaries, and police in Manipur since 2006, and the Indian government's failure to curb the abuses. Torture of detainees, in particular severe beatings during interrogations of suspected militants and their supporters, remains common. Torture victims described to Human Rights Watch how they were arbitrarily arrested, beaten, and subjected to electric shocks and simulated drowning (water boarding).

Extrajudicial killings often followed a consistent pattern in which the military or police took a person into custody, often in front of eyewitnesses, who was later declared to have been killed in an armed encounter with militants. Such faked "encounter killings" often occurred when security forces suspected someone to be a militant, but did not have enough evidence to ensure a conviction. On occasion, government officials or members of the armed forces would later admit to relatives that a person had been killed by "mistake." This claim is never made officially, so in police records the victim remains identified as a militant, and avenues for redress remain closed.

"Security forces are bypassing the law and killing people on suspicion that they are militants instead of bringing them before a judge," said Ganguly. "In the name of national security and armed forces morale, the state protects abusers and leaves Manipuris with no remedy to secure justice."

Human Rights Watch called on Indian Prime Minister Manmohan Singh to act on the findings of the committee he appointed to review the AFSPA in Manipur. Created after weeks of protests in Manipur following the killing of Manorama in 2004, the committee led by Justice B.P. Jeevan Reddy recommended in 2005 that the AFSPA be repealed. The Indian government has failed to take action on the committee's recommendation.

India has also ignored concerns and recommendations by United Nations human rights bodies calling for a review of the AFSPA. For example, in 1997 the UN Human Rights Committee said that the continued use of the AFSPA in Manipur was tantamount to using emergency powers and recommended that the application of these powers be monitored to ensure compliance with the International Covenant on Civil and Political Rights. In 2007, the Committee on the Elimination Racial Discrimination (CERD) called for India to repeal the AFSPA and to replace it "by a more humane Act" in accordance with the recommendation contained in the leaked Jeevan Reddy committee report. The Committee on the Elimination of Discrimination against Women (CEDAW) in February 2007 urged India to provide information on the steps being taken to abolish or reform the AFSPA.

"The Indian government has not only ignored the pleas of ordinary Manipuris and UN human rights bodies to repeal the Armed Forces Special Powers Act, but has even ignored the findings of its own committee," said Ganguly. "This reflects the sort of callousness that breeds anger, hate and further violence."

In addition to repeal of the AFSPA, Human Rights Watch recommended that:

- The government of India and the state government of Manipur should investigate and prosecute government officials, including members of the armed forces, police, and paramilitary responsible for human rights violations;
- The government of India should arrest and prosecute to the fullest extent of the law all those found responsible for the 2004 killing of Thangjam Manorama Devi;
- Armed groups in Manipur should publicly denounce abuses committed by any militant group and ensure that there is appropriate accountability for such abuses; and,
- Armed groups should immediately stop the abduction and recruitment of children into their forces.

Source: Human Rights Watch.

LAWS FOR everyday life

Family Court Ordinance

SHAH MD. MUSHFIQUR RAHMAN

HISTORICALLY, civil suits here in Bangladesh take inordinate time to be resolved. The reason lies in the age-old and exceedingly outdated procedural system that we inherited from British colonisers. From juristic point of view family disputes are largely of civil nature. And if they are to go through the same prolix, unpredictable and costly process, it may cost justice-seekers their desired remedy even if the judgment goes their way.

This basic idea prompted the legislators to think about establishing a separate and specialized court system equipped with custom-made procedure for resolving disputes related to family matters. The outcome of this thought was the enactment of the Family Courts Ordinance 1985, the law responsible for the formation of Family Courts that are meant to deal only with family disputes. This legislative intent is manifested in section 20 of the Ordinance whereby the application of the Civil Procedure Code and the Evidence Act was largely done away with.

Scope of the Ordinance

The territorial jurisdiction of the law extends to the whole of Bangladesh except the districts of Rangamati Hill Tract, Bandarban Hill Tract and Khagrachari Hill Tract. As regards subject-matter, the Family Courts can dispose of the following issues: dissolution of marriage, restitution of conjugal rights, dower, maintenance, guardianship and custody of children. The Family Courts have exclusive jurisdiction over these issues i.e. they shall not entertain any other issues and other courts shall not deal with these issues.

Judges of the Family Courts

According to the Ordinance there shall be as many Family Courts as there are Courts of Assistant Judge. All Courts of Assistant Judge shall be Family Courts for the purposes of the Ordinance and all Assistant Judge shall be the judges of Family Courts. This dual responsibility of Assistant Judges partly vitiates the very purpose of the law as they have to deal with family disputes alongside their other regular judicial responsibilities.

Institution of suit

Suits under the Ordinance are to be instituted by the presentation of a plaint to the Family Court within the local limits of whose jurisdiction:

(a) the cause of action has wholly or partly arisen; or

(b) the parties reside or last resided together.

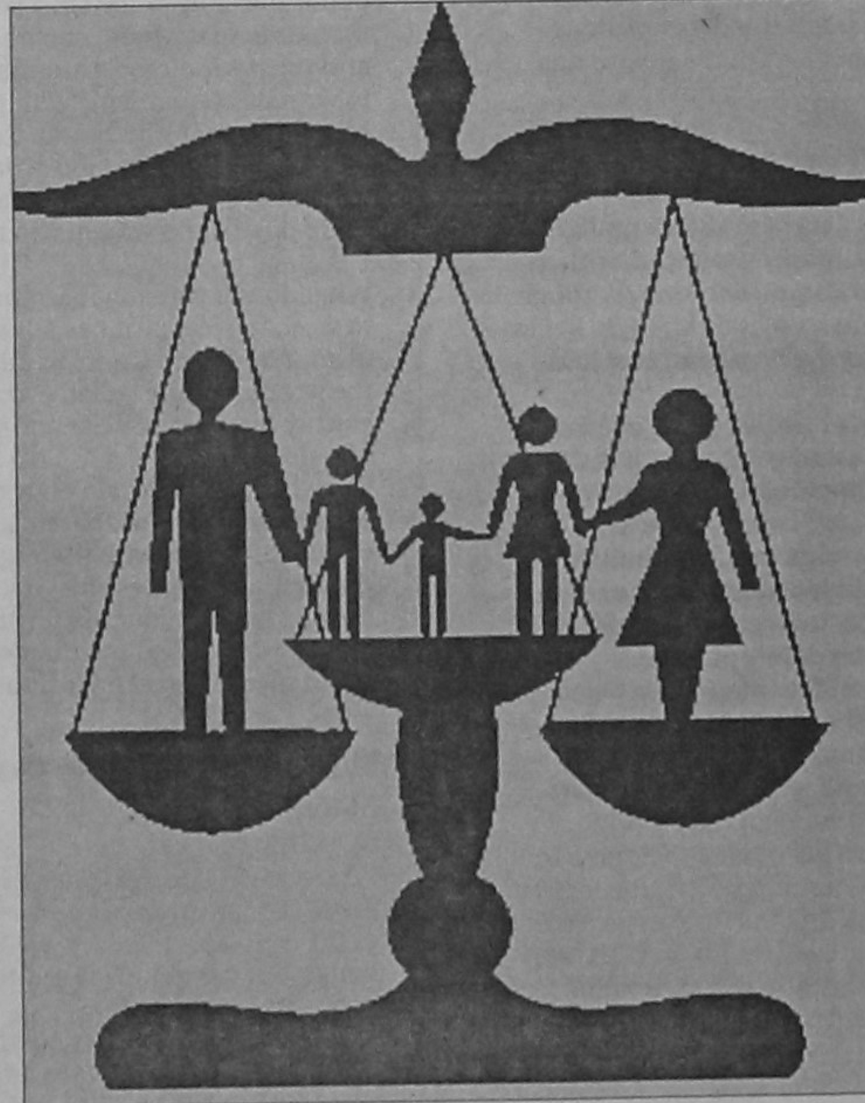
In terms of institution of suits, women litigants are accorded with a special favour. In suits for dissolution of marriage, dower or maintenance, the Court within the local limits of whose jurisdiction the wife ordinarily resides shall also have jurisdiction.

Procedures to be followed

A separate and special procedure is established for the Family Courts. In doing so, recourse has been taken to some provisions of the CPC and even the CrPC. But that has not hampered the unique characteristics of the Family Courts when it comes to procedure. One such characteristic can be found in the manner a Family Court records evidence. Unlike the procedure of taking evidence in an ordinary suit, a Family Court may put any question to any witness for the purpose of elucidation of any point which it considers material in the case. It would not be out of place to mention that per adversarial nature of judicial proceedings ordinary courts ordinarily don't take any active role in the examination of witnesses.

Trial in camera

Another unique feature of the Family Courts is the scope of holding the trial in camera. This means close door trial that only allows the presence of persons having stake in the suit. A Family Court may, if it so deems fit, hold the whole or any part of the proceedings under this Ordinance in camera. Where both the parties to the suit request the Court to hold the proceedings in camera, the Court is bound to do so.



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Compromise decree

Another important feature of the Family Courts is its statutory obligation to attempt to reach a compromise or reconciliation between the parties, if this be possible. The attempt is to be made at two different stages of any particular suit. At the pretrial stage, before framing of issues, the Court shall try to reach a compromise failing which it will frame the issues. After the close of evidence of all parties, before pronouncing judgment, the Court shall make another effort to effect a compromise between the parties failing which it will pronounce judgment.

Where a dispute is settled by compromise or conciliation, either at pre-trial or post-trial stage, the Court shall pass a decree or give decision in the suit in terms of the compromise or conciliation agreed to between the parties.

Appeal

An appeal shall lie from a judgment, decree or order of a Family Court to the Court of District Judge. An appeal shall be preferred within thirty days of the passing of the judgment, decree or order. But no appeal shall lie from a decree passed by a Family Court:

a) for dissolution of marriage; and

b) for dower not exceeding five thousand taka.

Though a decree given by a Family Court regarding dissolution of marriage is not appealable, there is an exception to this. If the decree of dissolution is given on the ground that a husband disposes his wife's property or prevents her from exercising her legal rights over it, then an appeal shall lie against this decree in the Court of District Judge.

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