

**HUMAN RIGHTS MONITOR**



# My privacy as a citizen!

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**M**ORE often than not when we think of ourselves being a private individual - a citizen of Bangladesh - a consumer, we think about what we purchase through a physical exchange of money for goods or services, ranging from things as simple as fruit or grain to home appliances to cable television, either in a store or through an online exchange where they enter in our credit card information and receive our purchase. Certain services that we - citizens' use may, by its very nature, put an extraordinary amount of sensitive personal information into the hands of vendors. Typical examples include hospitals, banks and telecommunications.

In 2006 it was found that AOL's research site had a stored file that contained information collected from more than 600,000 users between March to May of 2006. Though the file did not indicate each user by name, it was eventually found that there was enough information to correlate specific individuals to their user number. The example of AOL's demonstrates the danger of online privacy breaches through either oversight or negligence of the vendor in adopting adequate security measures.

The OECD guidelines drafted in 1980 provided a useful set of 'fair information practices' within which privacy of citizens may be evaluated. Briefly, the major principles declared were: 1) there should be limits to the collection of data, 2) data should be accurate and relevant to the purpose collected, 3) there should be openness about data policies and changes thereof and 4) enabling the individual to find out if data is being held about him and to obtain a copy of the data and make corrections.

The EU data protection directive is another broad directive adopted by the European Union designed to protect the privacy of all personal data of EU citizens collected and used for commercial purposes, specifically as it relates to processing, using, or exchanging such data. It established a broad regulatory framework

which sets limits on the collection and use of personal data, and requires each Member State to set up an independent national body responsible for the protection of data. In the US the most comprehensive act for the citizens is the Fair Credit Report Act, which was passed in 1970. Enforcement of the Act is vested in the Federal Trade Commission. The FCRA applies to how citizens' information is collected and used, and applies to insurance, employment, and other non-credit transactions.



In India, broadly, there are four potential avenues for the protection of citizens' privacy in India. Firstly, individual organizations may voluntarily commit to protect the information of their clients through "Privacy Policies". Secondly, certain professions and industries have codes of privacy that they must statutorily abide by. Thirdly, citizens' privacy may be enforced by the specialized Consumer Dispute Tribunals and lastly, the newly amended Information Technology Act imposes an obligation on anyone controlling data to indemnify against losses caused by the leakage/ improper use of that data.

The International Guide to Privacy suggests the following be included in privacy policies:- i.e. description of the personal information collected by

the website and third party, description of how the information is used and list of parties with whom it may be shared, a list of the options available regarding the collection, use, sharing and distribution of the information, a description of how inaccuracies can be corrected, a list of the websites that are linked to the organization's site and a disclaimer that the organization is not responsible for the privacy practices of other sites, a description of how the information is safeguarded against loss, misuse, and alteration, consent for use of personal information.

In Bangladesh the Information and Communication Technology Act included a relief to people when a breach of privacy is occasioned by the leakage of data from computerized databases. While categorizing - what is not open? the Right to Information Act clarified no information which would harm the privacy of the personal life of an individual needs to be disclosed. The Consumer Protection Act was enacted with the objective to provide for better protection of the interests of the citizens' has emerged as a major source of possible relief to those who have suffered violations of their privacy.

In conclusion it is important to consider some salient elements when looking at an effective protective regime for citizens' privacy- i.e. a) is a comprehensive data protection more suited to the needs of Bangladesh? b) does Bangladesh want to become compliant with international standards for data protection? c) how will privacy policies be enforced and how will organizations be held accountable for protection of client privacy under the legislation? d) will citizens' be notified if their information is breached? If so what will be included in the breach notification? e) how can legislation ensure that citizens are aware of their privacy rights? and finally f) how can privacy legislation address the need for different levels of protection for different types of data?

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**LAW OPINION**



# Securing water rights through law and policy enforcement

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**W**ATER is essential for life and survival of the ecosystem. Due to the inherent and intrinsic value of water on earth, procedures, rules and regulations to manage this resource have remained in existence since the early day of human in-habitation on this earth.

These practices started with prudent strategies of managing water resources through customs and precedents, through scriptures and codes of law that later evolved into a body of customary, state, federal acts and international treaties.

Since international institutions recognise water as an important aspect of human rights dimension, it becomes a core concern of law. From a legal perspective then water law becomes a key instrument in providing water and human security to the society vis-a-vis access, quality and control over water.

The goals of water law and policy are to ensure that drinking water is available to all; just allocation of water is provided to different sectoral users; the fundamental right to water is protected; appropriate water quality is maintained for the different users; and water contributes to poverty eradication in the country.

Water law in India is growing, but in many instances follows the colonial legislation that is still in place and specific reform and changes are not taking place. There is a lack of a comprehensive legislation called water law in India and therefore legal regulation of water is made up of several components that include both formal and informal rules of engagement with water.

There seems a gap in water law and policy for securing water, firstly to meet sectoral needs amongst the various users in India, and secondly, conserving it for its own flows, habitat and ecology. Despite policy initiatives, constitutional, legal and administrative enactments, the problem of implementation and enforcement persist, leading to a lack of efficient water governance to ensure basic human rights to water.

A process for change is imperative to build existing initiative, strengthen management capabilities and processes, and improve the quality of delivery along with fundamental reforms needed in India to capture water allocated between sectors, delivered to users and managed. A comprehensive approach combines mechanisms in policy institutions, legal and regulatory framework, economic and financial incentive framework and strengthening data, technology and information.

Water is a state subject in India and the center can intervene only in regulation and development of inter-

state rivers to the extent it is declared by the parliament by law in public interest. State governments with an overall guideline from the center set most regulations and standards. The specificity of governance in the states has to be local and context specific but there are certain common features reflecting the inadequacies of good water governance in most states. Legal and institutional reform is seen as a complex and politically difficult process to tackle within the region. Such a stalemate has led to worsening of situations of scarcity and shortages, equity and access, increasing pollution and falling water tables with no signs of better management and prudence in water use. Weak governance prompts inadequacies of rules regarding access, use and control of water and pursuit of policies that encourage over exploitation of this resource.



The current governance of water resources demonstrates that piecemeal legislation and governance measures have failed to account for interdependencies among agencies, jurisdictions and sectors. Excessive reliance on governmental agencies negating economic pricing, financial accountability, user participation and service to the poor has not fostered good governance in the water sector. This has led the judiciary to step in through several court judgments' and interpret the fundamental right to water in India under the fundamental right to life.

Despite this well-developed jurisprudence affirming the justifiability of the right to water and imposing a duty on the State to protect the environment and water resources, all citizens do not have adequate access to water, demonstrating that an enabling legal regime is by itself insufficient. Political will along with a comprehensive policy framework with regulatory structures, decentralized management and delivery structures and

greater reliance on pricing and participation of stakeholders will go a long way in establishing good governance in the water sector. Governing water wisely, managing it under the 'public trust doctrine' would ensure a secure water future for societies across South Asia.

Water plays a pivotal role for sustainable development and poverty reduction in South Asian societies. Being agrarian economies water is critical to their survival and livelihood. The use and abuse of, and competition for this precious resource have intensified over the past few decades. Increasing population, advances in agricultural technology and industrialization have led to indiscriminate exploitation of water resources. While the importance of conservation and efficient use figures prominently in public discourses but in government plans and practices there is no basic change in the legal principles and policies.

Therefore, water crisis and insecurity can be directly linked to issues of law and governance. The goals of water law and policy are to provide a legal basis for water allocation and distribution. A credible, transparent and accountable framework can contribute to water security by creating management systems that are equitable and based on principles of equality and justice.

However, its success depends only on appropriately drafted laws that set standards, procedural mechanisms and penalties to ensure implementation on the ground. By identifying certain legal obligations of the states towards society, individuals and communities towards each other, and monitoring and assessing its compliance and implementation, water law and policy can create a form of water governance. Radical changes in the institutional and legal structures are imperative to regulate the development and management of water resources in South Asia with special reference to India. If India intends to achieve the UN Millennium Development Goals, where 'water for all' is a key component, an understanding of legal principles and appropriate policies underpinning governance are essential to the success of ensuring water rights.

[The article is based on author's lecture entitled "Challenges of Securing Water Rights through Law and Policy Enforcement in India" on 19 September 2011 in Dhaka which was hosted by the South Asian Institute of Advanced Legal and Human Rights Studies (SAILS).

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## Who bears the brunt of climate change?

"Not much to celebrate on World Habitat Day(3 October 2011) , when close to a third of the global population continues to live in slums and unplanned settlements, often located in areas exposed to serious environmental risks and hazards," said the UN Special Rapporteurs on Housing, Raquel Rolnik, and on Internally Displaced Persons, Chaloka Beyani.

"There is a dangerous combination of rapid urbanization, much of it to precarious, unplanned areas, and an increased frequency and intensity of climate change-induced disasters. This will likely affect many societies in a profound way," warned the UN experts. "States and the international community can no longer afford to ignore the specific vulnerabilities of informal settlers to climate change-induced disasters, and the increasing risks they face."

"Many poor urban populations live on sites unsuitable for housing, like mountain slopes, areas prone to flooding, sea surges or other environmental and weather-related risks," they said on World Habitat Day, focused this year on 'Climate Change and the Cities'. "Such locations are left to the poorest, who do not have access to other, safer, places."

"Disasters magnify and deepen inequalities," stressed the Special Rapporteurs. "People living in informal settlements are particularly affected by climate change induced disasters. After a disaster, they are more exposed to eviction and land grabbing as they lack legal protection and their rights to tenure are not recognized."

Disasters also highlight the inadequate housing conditions and the precariousness of informal settlements. "From a human rights perspective, it is crucial to upgrade settlements and their grossly inadequate living conditions as part of disaster prevention and response", said the UN experts.

Another worrying trend is the erosion of livelihoods, in part provoked by climate change, which is a key 'push' factor for the increase in rural to urban migration. "In situations of internal displacement, rapid assistance and protection is also necessary to prevent internally displaced persons from simply disappearing into urban slums and informal settlements", they noted.

"In observing World Habitat Day this year, we call on States and international agencies to recognize informal settlements and the human rights of their inhabitants, and to address their unique needs and vulnerabilities as an integral and indispensable part of disaster risk reduction and recovery efforts."

Source: Hera.org.



## Old age... is it bad for your rights?

"In a rapidly ageing world, many older persons would agree that old age is bad for your rights," said the UN Special Rapporteur on the right to health, Anand Grover, marking the International Day of Older Persons. "In fact, the rights of older persons are often considered to be a marginal area in human rights."

"As you reach old age, you are more likely to be ignored, patronized, denied access to social security or healthcare, abused, forcefully medicated without your consent or denied medical treatment at all due to your age," the UN expert stressed. "The list is just too long."

"We must recognize older persons have rights like anyone else and we must empower them to exercise their rights, in particular the right to health," Mr. Grover said. "Despite modern society's strides in human longevity, millions of older persons suffer daily from the age-old problems of prejudice, stigmatization, discrimination and lack of access to appropriate health care."

In his recent study\* on the realization of the right to health of older persons, the Special Rapporteur noted that a right-to-health approach is essential for "the design, implementation, monitoring and evaluation of health-related policies and programmes to mitigate consequences of an ageing society and ensure the enjoyment of this human right by older persons."

"More resources are certainly needed for geriatric healthcare, but there should also be a greater focus on treatment for long-term and chronic pain and more respect for the right of older persons to informed consent," the UN expert said. "More should be done to prevent the abuse that the elderly too often suffer, particularly if ill."

"States must have policies and adopt measures to ensure old age is no longer bad for your human rights, including the right to health," urged Mr. Grover. "Only then will millions of older persons have a good reason to celebrate their very special international day."

The Special Rapporteur is an independent expert appointed by the UN Human Rights Council to help States, and others, promote and protect the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. Anand Grover is co-founder and Director of the Lawyers Collective HIV/AIDS in India.

Source: UNITED NATIONS Press release.