



HUMAN RIGHTS MONITOR

The rights of blind people

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NOWHERE in present world, discrimination on the ground of disability is acceptable in law. Discrimination means treating a person less favourably because of his or her disability. Prejudice (intolerance or discrimination against a person or group) leads people to think that a blind person will always be less effective than his sighted counterpart, which is in fact not being founded on reason. With the invention of Braille many blind people were able to express themselves.

Globally many developments occurred in order to help the blind. One of the major occurrences was passing laws to protect them and give them rights as individuals. The major law prohibits discrimination on the basis of disability including blindness. Equal rights and special care for people with disability (PWD) is recognized by various international and national instruments.

Disability issue is addressed in article 25 of the Universal Declaration of Human Rights (UDHR) of 1948. The UDHR is valid for all PWDs have nevertheless often been disregarded. The International Labor Organization (ILO) Convention concerning Vocational Rehabilitation and Employment of Disabled Persons 1983 is also in the favor of PWDs. The UN Convention on the Rights of the Child (UNCRC) 1989 clearly mentions the rights of the children with disabilities. The UNESCO Salamanca Statement (Education for All) 1994 also supports the PWDs. The UN declared 1981 as the International Year of Disabled People, first step in raising global awareness about PWD and some of the issues they were facing. The adoption of the UN Standard Rules on the Equalization of Opportunities for PWDs in 1993 was the first instrument that spells out the responsibility of state in the process of equalization of opportunities of PWDs in all spheres of society. This convention includes an article regarding participation in cultural life, recreation, leisure and sports. These rules are not legally binding for states, but offer a basis for policy making.

World Bank's commitment of various multilateral bilateral donors, attempts have been taken to address the disability issue in mainstreaming development planning and programming. The UN Convention on the Rights of the People with Disabilities (UNCPRD) 2006 is the first human rights treaty of the new millennium that marks a paradigm shift in attitudes and approaches to PWDs. The UN formally agreed on the UNCPRD with total 50 articles during the 61st session of the General Assembly on December 13, 2006. It introduces new obligations to overcome cultural, legal, economic and physical barriers and introduces measures, which ensure that PWDs are acknowledged as subjects with rights entitled to respect on an equal footing with all other

people. An 18-article Optional Protocol on communications allows individuals and groups to petition to the committee once all national recourse procedures have been exhausted. The UNCPRD and its Optional Protocol, legally binding instruments which set out the legal obligations of States to promote and protect the rights of PWDs, which entered into force on May 03, 2008. Every year 3rd December is observed as International Day for PWDs, which is a time to make a renewed commitment to the principles of dignity and justice for the ratification and full implementation of the UNCPRD and its

Bangladesh is the 8th member state of the UN, the 1st member state of OIC, the 2nd member state of SAARC, and the 3rd member state of Commonwealth ratified the UNCPRD to promote, protect and fulfill the rights and dignity of PWDs. The Government has also ratified the Optional Protocol of the Convention on May 12, 2008.

'Vision 2020' the 'Right to Sight' programs, launched by World Health Organization (WHO) in 1999 together with more than 20 international NGOs involved on eye-care including prevention and management of blindness, is a global initiative that aims to eliminate avoidable blindness by the year 2020. This initiative seeks to raise awareness, mobilize resources and develop national blindness prevention programs with governments to prevent an additional 100 million people from becoming blind. The 'Right to Sight' programs address blindness in children as a major public health priority. Bangladesh ratified 'Vision 2020' in 2000. The country has prepared the 'National Eye Care Plan' under the leadership of the Bangladesh Council for the Blind, an apex body under the Ministry of Health and Family Planning, for implementation of 'Vision 2020'.



SCIENCE DAILY

Optional Protocol.

In Bangladesh the national framework for disabilities in the Constitution states "no citizen shall, on grounds only of religion, race, caste, sex, or place of birth be subjected to any disability, liability, restriction or condition with regard to access to any place of public entertainment, or resort, or admission to any educational institution." This Constitution, in various sections have stressed on the issue, e.g. Article 28(3) and 29(3)(a). The government introduced disability policy in 1997 and enacted the Disability Welfare Act in 2001 to provide a legal framework for the development of PWDs in the country. In light of this act, a national action plan was formed in 2002 and it was accepted by the competent authority in 2006. After enacting this Act, the rights of people with disabilities received a legal base in Bangladesh. The issues of disability have also been included recently in the school text book at primary and secondary levels under national curriculum.

Bangladesh has signed the UNCPRD on May 09, 2007 and ratified it on November 30, 2007.

The medical model of disability identified and treated blindness as defects, whereas the social model aims to assert the rights of those with impairments to participate in society. However, the vested quarter of the society seem to be more concerned about the welfare of the PWDs rather than establishing their rights. Under such circumstances Bangladesh Disability Welfare Act was enacted in 2001. This is basically a paper-based law, where there is no provision of accountability. There is no mention of women with disabilities in the act. The issues like education, employment, health service, transportation, cultural aspects and social security along with constitution recognized rights are included in the schedule instead of the main text; as a result the importance of the law has been undermined.

For the overall betterment of the PWDs, right-based approach is more important than the welfare-based approach. The MDG will not be achieved if PWDs are not included in the mainstream development plan. The successive governments merely gave assurance rather than implementing the convention to ensure the rights of the PWDs. The present government also mentioned in their election manifesto to update and revise the existing disability welfare act. However, forming a law is not enough unless it is implemented with strict monitoring which requires political commitment.

The writer is a freelancer.

LAW LETTER

What should be our sentencing policy?

LAW, Human rights, judicial proceedings are the basic need for every civilized society. But unfortunately, we are the worst sufferers of injustice and corruption in our society. It is the high time to think about the reason behind this never ending practice of corruption in our justice delivery system. One of the attributable reasons behind this practice is inadequate sentencing policy. Carrying the legacy of colonial penal system, we could not impose a strict and retributive sentencing policy yet. Still we are following the British rules set out in the Penal Code 1860, Code of Criminal Procedure 1898 and so on. Even today, when the criminals are more educated than the past, when the crime pattern has changed, when our population and poverty have become the main headache of present decade, we are dealing with the ancient rules of sentencing. So, we should put our concern on this issue right now.

In USA, there are three types of sentencing policies: determinate sentencing, judgment of different judges and indeterminate sentencing. Determinate sentencing has three more sub types: such as, flat time sentencing, presumptive sentencing and mandatory sentencing. Flat time sentencing is quite strict one because offenders cannot enjoy parole and good time during their imprisonment but judges can choose between parole and imprisonment before imposing sentence for any offence. Mandatory sentencing means a sentencing system that has a fixed period of imprisonment. And lastly, presumptive sentencing is where judges can exercise their power by imposing several types of

sentencing systems which should be appropriate for the offender. For example, in 1994 in Texas, a drunk taxi driver was arrested in a case of road accident where an old man was injured. In the hearing of his case, US Federal court imposed a different type of punishment which is to live in an old age home and take care of the old people for 4 months.

In Bangladesh, our judiciary, legislature and administrators deal with the poor and uneducated

the main criminals are the part of power structure of the state. In this circumstances, at first we need to classify the offender into three categories: serious offender, less serious offender and situational offender. Then we need some categorised punishment policies as an amendment of section 53 of Penal Code 1860. For example, acid throwing punishment to an acid thrower. We can consider it as deterrent effect of punishment such as an eye for an eye. Some punishments could be as follows:

1. Cleaning the city (for less serious offender)
2. Hard labor and give the income to a poor person (for situational offender)
3. Deterrent punishments
4. Donate a fixed amount of money to the poor (this is for the black money owner)
5. Imposing high amount of fine which is very difficult to pay back
6. Working as a house maid (this is for the physical abusers) etc.

With the old punishment types, we also need the above types to create "fear of punishment" as well as "hate of punishment" into the offenders mind.

If we truly want to establish fair justice in our country, it would not be very tough for us to revisit our sentencing policy in consonance with the change of the society.

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people. They do not understand the language of law. They only understand the result of imposing sentence. They want to see that the offenders suffer from harsh treatments. Our present situation is also asking us to follow a strict rule but as our court system has so many bureaucratic problems we cannot follow "Zero Tolerance" policy but we can follow a definite system of punishment. Here, in Bangladesh,



HUMAN RIGHTS & ENVIRONMENT

"Climate Change Refugee": A misnomer?



SPACECITYSEATTLE

MOSTAFA MAHMUD NASER

WHILE the term 'environmental refugee' has been floating since 1970 to identify the people displaced for environmental reasons; with the increasing certainty of global warming, the more precise term 'climate refugee' has become a staple of popular discourse in recent years. In 2007, the link of climate change to 'large-scale migration' became even part of the rationale for awarding the Nobel Peace Prize. Many academics, NGOs and noted personalities frequently use the catchy term 'climate refugee'. Barac Obama in his remarks at United Nations Secretary General Ban Ki-Moon's Climate Change Summit on September 22, 2009 used the term 'climate refugee'. By the same token, academics, government officials, policy makers and NGOs in Bangladesh popularly coin the term 'climate refugee' to mean generally 'people displaced for environmental degradation as a result of climate change' without any corresponding reference. Given the existing international law on refugees, it is debatable whether the people forced to migrate as a consequence of environmental degradation should be described as 'refugees'. The debate circles around the concern with ascertaining whether a particular individual displaced for environmental reasons fits the definition of 'refugee' under 1951 Refugee Convention. The term 'refugee' has a precise meaning in international law. Refugees are currently defined in the Refugee Convention as someone who holds a 'well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it'. Clearly, someone who flees due to environmental reasons or does



ELEMENTSHEALTHSPACE

not cross an international border is not treated as 'refugee' in strict sense. Generally, the 'movement for environmental reasons' is not considered as 'persecution' required characteristic to get a refugee status. Moreover, the distinction between refugees and internally displaced persons is a fundamental and integral characteristic of traditional refugee law. The concept of 'refugee status' under the Refugee Convention is predicated on being outside and unable to return to the country of habitation.

However, some commentators argue that they are implicitly included under the Convention's refugee definition and, thus can avail themselves of the Convention's protection. Such argument, however, though carries some academic merit and bears the impression of ensuring international protection for them; ultimately make the situation complex leaving a large number of people unprotected. Those who propose to use the term 'climate refugee' seem to be less concerned with issue of protection and more with the social and political implications of it. Indeed the term 'refugee' has 'strong moral connotations of societal protection in most world cultures and religions'. It evokes a sense of global responsibility and accountability, as well as a sense of legitimacy and urgency it deserves for impending disasters. There is also no justifiable reason that the term 'refugee' should be reserved for only those who being persecuted for certain political reasons crossed an international border and seeks refuge to another country different from his country of origin; and cannot be used for people who are also facing similar grim consequences.

However, the application of the term 'refugee' with climate change induced displaced people is likely to raise many legal and extra legal complexities. Given the narrow applicability of the Refugee Convention intended by the parties, it is hardly convincing that the climate change migrants are protected under existing refugee regime. The term 'refugee' has been vigorously criticised by some scholars as 'unhelpful, unsound, controversial'; 'deeply problematic' and 'legally meaningless' having no practical value. To them, defining the term as 'climate change refugees' appears not to serve any purpose other than raising the profile of the issue as this does not create new international legal regimes. While most of the people displaced in the situation of climate change in Bangladesh are likely to be internal, the attempt to categorise those people as 'refugee' bears the risk of leaving large number of people unprotected under international law. So, using a non-legal definition might create unnecessary confusion and undermine the necessary protection of this emergent migrant group.

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