



Budget for a just society

MD. KHAIRUL ISLAM

An economist always argues for emphasis on trade-offs, and is very concerned with moderating claims. They are reluctant to consider the State obligation as to Human Rights. They see entitlements as a threat to the budget management, as they can lead to uncontrolled demands on public resources. On the other hand, a human rights activist considers the budgetary process as a step towards realisation of Economic, Social and Cultural (ESC) rights and an effort to make the poor capable of claiming those rights. This often leads to a dialogue of the deaf. It is the State whose duty is to reduce inequality through proper distribution of resources. Incorporation of Human Rights framework in the budgetary process would be the most effective instrument in this respect. Budget is a part of

National Budget are intricately linked. National Budget is an expression of the State as to its obligations to respect, protect and fulfill ESC rights. Any public policy cannot be carried out without budgetary processes as well as any State action designed to create and facilitate an economic, social and political environment conducive to the enjoyment, exercise and realization of ESC rights cannot be undertaken without funds from the national treasury. Therefore, Budget is a major process by which the State's financial resources are planned and controlled.

Budget is mostly related to Economic, Social and Cultural (ESC) rights of the people. The people are not mere receiver of service of the State rather they are legally entitled to it. The Constitution confers the duty upon the State to ensure fundamental human rights (Article 11). Chapter II of the constitution incorporates some principles

clearly stated that the endeavor of the government must be to realize these aims and not to whittle them down.

Bangladesh's Constitutional guidelines are rooted in a framework aimed at raising the quality of life - a secured living that is foreseeable and safe, with access to productive resources, quality health and education through a balanced and equitable growth. The State must fulfill its constitutionally guaranteed socio-economic rights, but to what extent it is able to do so may be limited by constraints on resources. The State has the onus of proving that it has made every attempt realize these rights within the resources it has available. And the Budget reflects the extent to which the State has taken steps for fulfillment of its ESC rights obligation.

Principle of the international human rights framework entitled people to participate in (directly or through representative) contribute to, and enjoy civil, economic, social, cultural and political development in which all human rights and fundamental freedoms can be fully realized. The scope of direct participation is hardly found in our administrative and legislative framework. Members of Parliament who represent the people have to approve a Budget in indirect democracy. But the cabinet usurps the power of the Members of Parliament. The power of the cabinet in respect of the Budget is in turn concentrated in the persons of the Prime Minister and Finance Minister. This is a highly centralized system where there is no scope for participation for either legislators or other stakeholders. Moreover, the main opposition party is found outside the parliament in most of our Budget sessions. No legislation involving any government expenditure shall be considered by the Parliament without the express consent by the executive as represented by the President (Articles 81 read with 82 of the constitution). The Parliament has been virtually subjected to the executive in respect of the budget. It can either accept or reject the budget as a whole. It cannot improve it even by making partial changes (Sub-article 2 of Article 90 of the Constitution). Therefore, lawmakers do not

have any power to authorize any new expenditure in the budget.

In some cases the Parliament has no control on the receipts of the government, such as imposition of fees and prices of public utilities and enterprises; these are left at the discretion of the government. Notably, these receipts of government directly touch the life of general people. In addition to that, The Parliament cannot discuss Money bill without recommendations of the President (Article 82 of the Constitution). Budget is not discussed in the standing committees because they have no specific mandate.

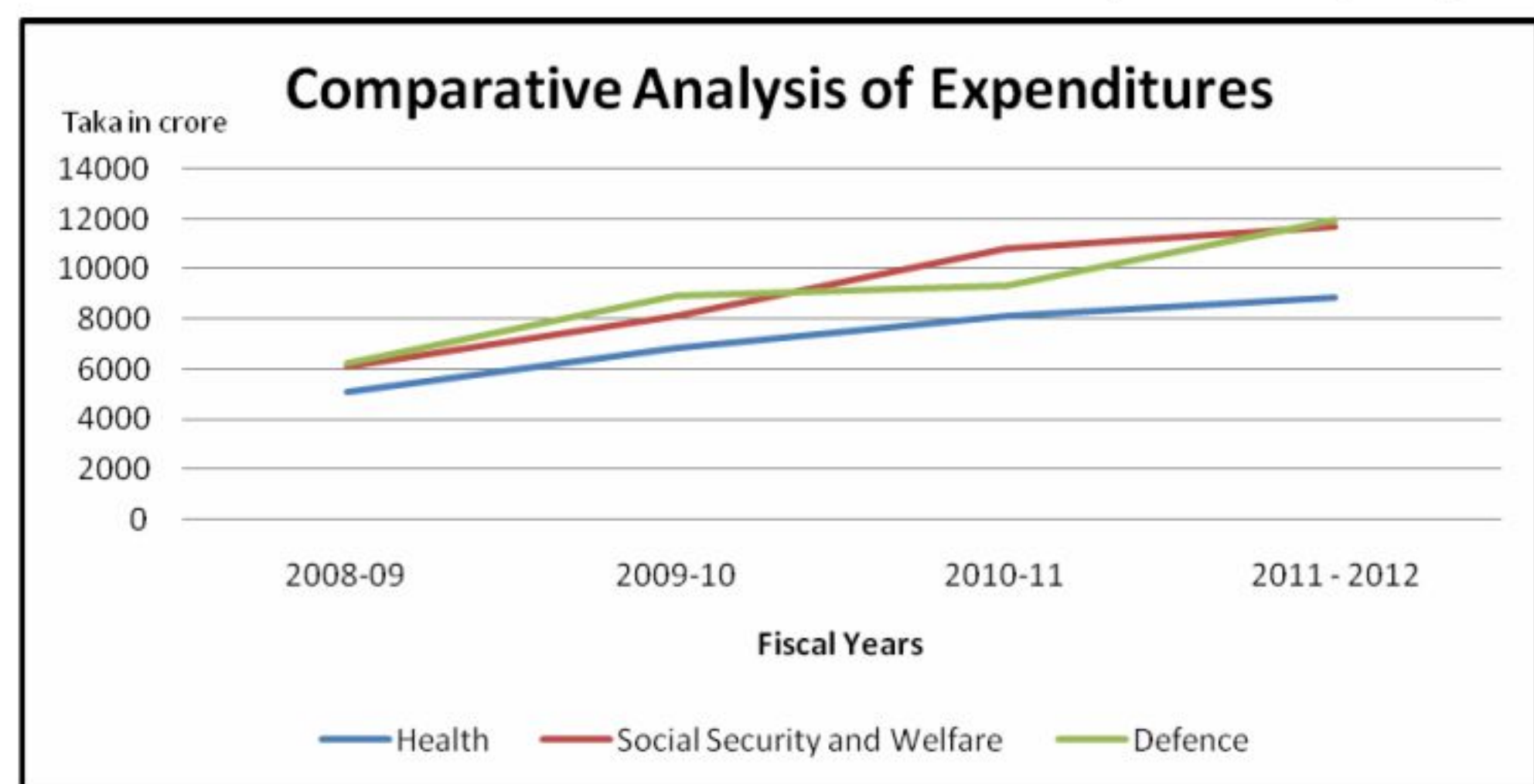
Resource constraint is not always a bar in realization of human rights rather wastages of resources or improper use of resources, thereby may degrading the human rights condition in a society. The conventional wisdom posits that an increase in military sector growth is detrimental to promotion of human rights. High Military spending detract from citizens' quality of life by limiting spending on development or social programs are a major concern, particularly for developing countries. There is an inherent "opportunity cost" with all government spending money that is spent in one area cannot be spent on another. The choice between government spending on social issues and the military is sometimes referred as "guns or butter." There is no doubt that security is important in all countries, regardless of the income level. A more accurate definition of security would include right to live without human rights abuses, war, poverty, hunger, and disease. In our country, budgetary allocation for military expenditure is increasing over the years. In Budget FY2011-12 in total Tk. 11,955 Crore allocated for defense sector, which is 7.3 per centum of the total Budget and Tk.2,633 Crore higher than the allocation of FY 2010-11. Therefore, it can be said that government uses more resources for armed forces than human rights realization. If half of the allocated money for armed forces use for improvement of public health, housing, education and other ESC rights then that may ensure a dignified life of the people which is ultimate object of human rights.

Foreign Assistance becomes a basic feature of our national budget. In Budget 2011-12, the total foreign assistance amounted to Crore 23623Tk. which is 11 per centum of the total budget and Crore 2,846 taka more than the previous fiscal year. However, Conditionality of foreign grants is criticized for undermining the State sovereignty by rendering governments accountable to external bodies rather than to their own people. Conditionality of IFIs binds the State to reduce its social expenditure in many cases.

Introduced of Value added tax (VAT) in 1991 is another way to disregard human rights. Unlike income tax, VAT is an indirect tax which has to bear by a consumer at a flat rate and equally irrespective of his financial ability. Equal treatment of law is one of the basic principles of human rights. However, all persons are not alike and nothing can be greater inequality than to treat unequal as equal (*S.A. Sabur v. Returning Officer*, 41 DLR (AD) 30). In case of VAT a millionaire and a street bagger both have to pay an equal amount of tax when one purchases any commodities or services. The government gradually becomes more dependent on VAT for its resources generation which violate the doctrine of reasonable classification and adversely discriminatory to the marginalized group of people. A law which is non-discriminatory on the face of the record may even be proved to be discriminatory, if it, in effect, operates unevenly on persons or property in similar situation. Like should be treated alike. Imposition of uniform tax without taking into account financial capability of a person is violative to Article 27 of the constitution and also inconsistent to Article 14 & 19(2) of the constitution, Article 7 of the UDHR and 26, 27 of the ICCPR.

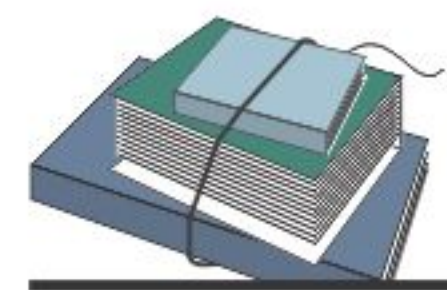
Our dream is of an ideal society where equality and human dignity would be ensured. Human Rights refer to human dignity and if that dignified life can be ensured through the budgetary process that might be the most desirable solution. We hope our dream of a just society will come true in some day.

The writer is Lecturer of Law at Northern University of Bangladesh.



development process of a State, and determines, how and for what purpose all other development processes will run. The question may arise that is there any nexus between Human Rights and Budget? Bangladesh is under its constitutional obligation to fulfill all civil, political, economic, social and cultural rights of its people. However, the State party always argued for its resource constrain in realization of these rights. Since every action taken by the State has financial implications that are ultimately translated into the National Budget, the States' ESC rights obligations and the

of the State policy which basically incorporate the ESC rights of the people. For example, Article 15 of the Constitution vests on the State the responsibility of meeting basic needs and social security of the people. The principles set out in this chapter are fundamental to the governance of Bangladesh and should be applied in the making of laws. Nevertheless, these provisions are not judicially enforceable. Now the question may arise does it really empower the State to feel free from any compulsion to realize these rights. In *Anwar Hossain Chowdhury v. Bangladesh* [1989 BLD (Spl.) 1, p. 61] it is



REVIEWING THE VIEWS

Daughter's share in succession: Our reply

DR. SHAHJAHAN MONDOL & DR. REBA MONDOL

An assessment of the Law Commission report on 'daughter's share in the succession of parents' property in absence of son' made by us was published in the Daily Star on June 16, 2012. It was very sharply gone through and criticized by Mr. Anisur Rahman, Assistant Professor of Law of the Eastern University, on this page of the Daily Star on 30 June. Whatever may be the result of the assessment made by us and the criticism made by the writer the Law Commission as well as the Ministry of Law is hereby being requested to consider each and every problem and prospect of the Commission's proposal and think twice before enacting or amending a sensitive branch of law of Muslim succession as well as to consult with the law experts.

Assessment of the criticism

What we said in our 16 June writing we'll come latter to. Let's see and assess what the writer and critique showed and stated in his 30 June write-up:

(i) The writer in the last lines of third column said, "The principle 'male will get double of female' lies to the first verse of Sura 7 of the holy Quran."

Assessment: The mentioning of both the verse as well as the number of Sura is not correct. He mentioned verse 1 of Sura Aaraf (Sura No. 7). But it does not say anything about such principle. It reads: "Alif lam mim sowad." Where the principle of tasib is laid down is verse 11 of Sura 4 (Sura Nisa) of the holy Quran. Any reader can easily see it.

Moreover, the verse mentions not 'male' and 'female', rather 'son' and 'daughter'.

(ii) The writer showed in fourth column that 2/3 is equal to [1-(1/2+1/6)].

Assessment: There should have been 1/3 instead of 2/3.

(iii) The writer, in the same fourth column as well as in the first box, gave an exam-

ple wherein he tried to solve a problem wherein the propositus (P) is survived by a daughter (D), one full brother (FB) and one son's daughter (SD). He allocated 1/2 for D, residue (i.e. 2/3) for FB and 1/6 for SD.

Assessment: Every law student knows that under the present law of representation in force in Bangladesh i. e. section 4 of the Muslim Family Laws Ordinance of 1961 the solution would be as follows:

D= 1/3 [as residuary with (S) assuming him to be alive]

FB= excluded by (S) assuming him to be alive.

(S)D= 2/3 [assuming (S) to be alive].

(iv) The writer, in the same fourth column as well as in the second box, gave another example to show and establish that the principle of tasib, i.e. male and female of the same class and degree receiving in the proportion of 2:1, does not apply wherein the propositus (P) is survived by mother (M), full Brother (FB) and father (F). His allocations are M=1/6, F=1/6 and FB=2/3 (residue). He reasoned, 'in presence of brother parents will get sixth of the property.'

Assessment: His solution is not correct. The reasoning is also not correct. Under Sunni Muslim law of succession, as applicable in Bangladesh, mother gets 1/3 when there is no child or child of a son (h.l.s.), or no two or more brothers or sisters of any kind | please see: M. Habibur Rahman, Muslim Aain, First Part, Rajshahi, Bangladesh, 1989, p. 48ka; Dr. Muhammad Faiz-ud-din, A Text Book on Islamic Law (including Statutory Family Laws), Shams Publications, Dhaka, 2008, p. 239; Principal A A M Moniruzzaman, Islamic Jurisprudence O Muslim Aain ebong Muslim Parivarik aain Parichiti (the Bangla version of Sir D F Mulla), Shams Publications, Dhaka, 2011, p. 180; Asaf A A Fyzee, Outlines of Muhammadan Law, Oxford University Press, 1994, p. 399. N J Coulson, Succession in the Muslim Family,

Cambridge at the University Press, 1971 may also be seen for details).

Father receives 1/6 as Quranic sharer in presence of child or child of a son (h.l.s.) and as residuary in their absence [please see the same first three authorities as well as Asaf A A Fyzee, *ibid.*, p. 399]. Full brother, on the other hand, is a residuary but he is excluded by nearer residuary father under the rule of nearer in degree excluding the more remote. Not only that, all kinds of brothers and sisters are excluded by father. So the writer's reasoning at this place (in presence of brother parents will get sixth of the property) is proved to be incorrect. Therefore, in this case the allocations would be as follows:

M=1/3 (QS) for there being no child or child of a son (h.l.s.) and one brother

F=2/3 (R) for there being no child or child of a son

FB= (R) excluded by F

It is very interesting that the FB who, according to law, is not entitled to inherit here was given 2/3 by the critique writer. In the Law Commission report published on 9 June a confusion was created in this statement: (i) 'however, under normal circumstances, if father dies leaving only daughter/s, she does not get the whole property, as she is entitled to get as representative of the predeceased father under the 1961 law'. This confusion was mentioned in our 16 June article. Still we admitted therein, in this connection, that 'perhaps and in fact, son's daughter (SD) was, in this sentence, wanted to be meant who inherits under the 1961 law'. Every law- student knows that while distributing estates of a deceased (s)he is called 'propositus', and all her/his heirs are named and mentioned depending on her/his relations with such relatives/heirs; for example when we say 'father', it means the propositus' father, when 'brother' it means propositus' brother; when we say 'daughter' it means the daughter of the propositus.

Proposal of the Law Commission

The proposal of the Law Commission was that a provision should be added after section 4 of the Muslim Family Laws Ordinance of 1961 which would prohibit any part of the property of the propositus from going to his FB whereby her portion would increase. In the purpose of allocating more portions for D the Commission wants to exclude FB by D. But the Commission said nothing about the position of a full sister (FS) of the propositus who is the paternal aunt ('fufu' in Bangla) of the daughter.

In fact, FS is a Quranic sharer in absence of FB, as well as a residuary in presence of FB. She can be an accompanying residuary in presence of D and SD (h.l.s.). When she is a residuary either she should inherit with FB or be excluded along with him. When the Commission proposal wants to exclude FB by D, the FS of the propositus is also excluded by D rationally, because it can not be supported that one heir should inherit and the other of his/her same class and degree shouldn't. Then what stands the result? For the purpose of protecting one woman's (D) right another woman (FS) suffers exclusion from inheritance. It is absolutely against the spirit of ijtihaad, based on equity, justice and good conscience. This obviously does not look pretty. Such deprivation may not be supported by feminist scholars and activists. We also proposed in our 16 June article to keep alert in this regard so that FS might not be excluded. Moreover we did not want anyhow to exclude daughter from her dues. But

the critique writer seems, though possibly unknowingly, to try to exclude FS. This shows that the critique has taken a position against women's rights.

What we wanted we stated in our 16 June writing. That is very clear. Upon a proper scrutiny of our early writings it may not be hard to understand that nothing misleading or ambiguous explanation was given there, rather we wanted to assist the Law Commission, the Law Ministry as well as the Parliament i.e. the people of



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Bangladesh. If it is attempted by the Law Commission to exclude FB why shouldn't it be extended to the most important case of son and daughter whereby daughter should take equal to son without prejudice to others' portions? That would rather be in line with the present day human rights and women's rights movements. Once again, whatever the Law Commission or the Law Ministry proposes to the Parliament our social context as well as the political position of the Government should be kept in mind as well as the law-legends on the issue should be consulted with.

The writers are Professor and Associate Professor of Law respectively at Islamic University, Kushtia.