



# Illiteracy: A threat to equality before law

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TODAY, 8th September is the world illiteracy day as to be observed all over the world. Governmental as well Non-governmental organizations have organised a lot of programs to create awareness among people for literacy. I am trying to analyze right to education in a pragmatic human rights approach to show essentiality of education to the way of equality before law. Education is the primary vehicle for human, economic and social development, profiting both the individual and society. It is very difficult for individuals to exercise their civil and political rights unless they receive the basic education. Right to education is granted in Article-17 of Bangladesh constitution. The Article provides that the state shall adopt effective measures for the purpose of (a) establishing a uniform, mass-oriented and universal system of education and extending free and compulsory education to all children to such stage as may be determined by law. (b) Relating education to the needs of society and producing properly trained and motivated citizens to serve those needs, (c) removing illiteracy within such time as may be determined by law. Article-17 provides for state's obligation to remove illiteracy within such time as determined by law. That means there has time limitation for fulfilment of the obligation.

Dear reader, you can hope that if a government can not fulfil it in this worldly life, may do in life after death. The right is taken as one of the fundamental principles of state policy. It should be more important that this right is not judicially enforceable. Therefore, if there is any violation of right to education, none can get any judicial protection to enforce the right. These principles are suitable to describe as an ornament of our constitution. I never would like to give allegation to the framers of the constitution rather an international hypocrisy against economic, social and cultural rights after 1948, adoption of The Universal Declaration of Human Rights (UDHR). The western developed countries thought if civil, political, economic, social and cultural rights were taken under same

covenant, that countries might have pay for equality of human being as the rights are international character. The hypocrisy became successful through division of civil and political rights under a covenant to be judicially enforceable and another is not on the same footing. Right to education is one of them not to be judicially enforceable.

But if a prudent man think even for a moment that how non-enjoyment of right to education has paralyzed civil and political rights, may be stop watch statue. Granting of civil and political equality can never be enjoyed unless and until there is equality through economic and social rights. A man can never be free and hungry in the same time. Suppose all citizens are equal to have one vote in national parliament election. But my question to you, is a poor citizen who needs food to live equal in exercising his equal voting right? I think answer should be live fast than politics. If you dare to oppose with me, suppose he is exercising his voting right but is he a little eligible to determine the right candidate through his understanding?

It is only a token equality. Because, an illiterate citizen is neither able nor capable to make a rational choice in exercising his voting right. Only literacy and education, an economic and social right can give the main sword to exercise the civil and political right. Education is the only key to root out all the maladies like poverty, health problems, over- population etc. Moreover, a citizen has to live at first to exercise his civil and political right. He can live on food by wage earning job. But he is never entitled to a standard job unless he has education. Because our equal grant is only among equals who are educated. An illiterate is not entitled to get equal protection although he has civil and political equality. That is why a citizen never gets the enjoyment of civil and political equality since he has no social equality. Education brings



self-confidence and self-reliant to exercise his rights. A foundation of basic education and literacy expands an individual's economic and social opportunities, helping to acquire better job with higher and more dependable income. Education can also be a powerful vehicle for improving awareness on other social issues, such as healthcare and the uptake of preventive health services. A citizen who does not know his rights, how he can exercise his right? Can any one show any example that an uneducated citizen who has neither economic solvency nor social status is a parliament member in Bangladesh? The answer is known even to a little boy. Because, a citizen who has no enjoyment of economic, social and cultural right can never look forward to civil and political right. As we, citizens of Bangladesh are victimized not by luck rather by our constitution itself. Our Constitution is the supreme law of the land.

If the constitution itself keeps the right

to education as judicially non-enforceable, what would be effect by thousands of writings? Argument may be shown by someone as to limited resource of government. But it would be more suitable answer to them that a country with less recourse than Bangladesh has proved to give fundamental grantee of right to education. Neither Non-governmental organization nor any eminent scholar on legal side dare to raise the issue that right to education which is a pre-requisition for civil and political equality to be transformed into fundamental right. Another problem is in legal academic study itself. Because, our law institutes are producing black latter lawyers and judges who look only to the black latter laws written in book. They don't try to understand that law is for man, not man for law. They should know not only what the law is but also what the law should be. However, there is a little hope and aspiration in Bangladesh among new genera-

tion as to apply golden rule of interpretation through judicial activism. The Supreme Court is the guardian of our constitution through judicial review power. It would be the most appropriate if the matter is clarified by the court to declare that the right to education should not be kept in non-enforceable right. It should be turn into a judicially enforceable fundamental right. Because, this right is a vital requirement for enjoyment of civil and political rights. The court may look to Indian courts how they have applied a pragmatic approach to bring right to education into fundamental right via judicial interpretation of the constitutional provisions. Indian supreme court declared a glory decision in *Unni Krishnan, J.P. v. State of A.P. and Others* (1993). The Court held that the right to basic education is implied by the fundamental right to life (Article 21 of Indian constitution), when read in conjunction with the directive principle on education (Article 41). The Court held that

the parameters of the right must be understood in the context of the Directive Principles of State Policy, including Article 45 which provides that the state is to endeavor to provide, within a period of ten years from the commencement of the Constitution, for free and compulsory education for all children under the age of 14. Article 41 indicates that after the age of 14, the right to education is subject to the limits of economic capacity and development of the state. Quoting Article 13 of the International Covenant on Economic, Social and Cultural Rights, the Court stated that the state's obligation to provide higher education requires it to take steps to the maximum of its available resources with a view to achieving progressively the full realization of the right of education by all appropriate means.

The state responded to this declaration nine years later by inserting, through the Ninety-third amendment to the Constitution, Article 21-A, which provides for the fundamental right to education for children between the ages of six and fourteen. The Court didn't direct to transfer Article-41 of Indian constitution to part 1v in decision of *Unni Krishnan* case. Because, subsequently court stated in case of *M.C. Mehta v. State of Tamil Nadu & Ors* (1996) that Article 41 had acquired the status of a fundamental right. Where Indian Court declared that right to education has acquired the status of fundamental right only on expiration of ten years since adoption of Indian constitution and government can't escape its liability on the ground of progressive realization, what should be the position of Bangladesh court? The modern trend about right to education has been newly shaped with right to life. A citizen who is denied right to access education is not only deprived of his right to live with dignity, he is also deprived of his right to freedom of speech and expression enshrined in fundamental rights. We can't deny the latest concept of right to education only on point that that right is one of the fundamental principles of state policy. There is only the way to say think globally and act locally.

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## Analysis of RPO

# Does the law ensure governance in candidate selection?

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BEFORE the 9th parliamentary election, the key electoral legal framework of Bangladesh, the Representation of People Order, 1972 (RPO) was revised and many milestone initiatives were included in the law. One of the initiatives was to bring intra-party democracy in selecting candidates by the political parties. In order to address the issue, two historic provisions were made in the law. The first provision, described in Article 90B(b)(iv) of the law (P.O. No. 42 of 2008) states that the political party has 'to finalise nomination of candidate by central parliamentary board of the party from the panels prepared by the members of the Ward, Union, Thana, Upazila or District committee, as the case may be, of concerned constituency'. The 2nd provision which is promulgated under Article 12(1)(j) describes that a person is disqualified (not applicable for an independent candidate) for election if he is not been a member of a registered party for three years.

Analysing the two provisions, it is observed that there are some objectives behind the motives: (i) to ensure intra-party democracy in candidate selection, (ii) to stop selling nomination by the parties or senior party leaders, (iii) to prevent non-politicians such as civil servants, army officials etc. to become a candidate just after retirement, (iv) to prevent non-political business magnet to become a candidate from a political party and (v) to stop nomination of politicians switching from other parties.

The first provision was mandatory in the 9th parliamentary election and second one has now become mandatory as parties have already completed 3 years after getting registration with Election Commission for Bangladesh (ECB). Now the question is: did the parties follow the first provision in the 9th parliamentary election? About Bangladesh Awami League's nomination Transparency International Bangladesh (TIB) study on Local Participation and Expectations in the Nomination Process of the National Elections observed that 'in most of the constituencies nominations were made from the recommended panel in the 9th parliamentary election. Nevertheless, in some constituencies there was little reflection of the grass-roots opinion as it was ignored and nomination was

not given from the proposed panel'. About BNP's nomination the study finds that 'in most cases their (local BNP leaders) opinion was hardly reflected in the final nomination'. The study also finds that in only 52% cases local leaders of the political parties participate in candidate nomination process.

Both the above-mentioned provisions were made during the time of CTG and later when the law passed in the parliament in 2009, an amendment was made with the Article 90B(b)(iv). According to this latest revision central parliamentary board of the party only considers the panels of nomination prepared by the grass-root committees. If we analyse the objectives of the move described earlier and the reality, we can identify the following shortcomings.

A.The registration criterion [Article 90B(1)(a)(iii)] does not have any mention that the parties have to form committees at Union and Ward level, but the nomination criterion [Article 90B(b)(iv)] makes mandatory provision to collect feedback from the Ward and Union committees along with district and thana/upazila committees. This is contradictory as there is no provision to form Union/Ward committees, how do parties receive feedback from those committees?

B.According to registration criterion [Article 90B(1)(a)(iii)], a party is allowed to get registration if it establishes 'district offices in at least in one-third administrative districts, offices and at least one hundred Upazilas or Metropolitan Thana'. So a party needs not to establish offices at all districts and thanas/upazilas. Now the question is if there is no office/committee in a specific district/thana/upazila and if the party wants to nominate a candidate from a constituency of that area, who will recommend the panel for nomination? In this case, there is no way to violate the RPO provision.

C.Article 12(1)(j) of the RPO clearly tells that a candidate nominated by a registered political party must have membership for three years. The question is how BEC will understand who is a member of BAL and who is a member of BNP? The RPO does not have any mandatory provision that the parties have to submit and/or update their membership base to BEC time to time. As a result, there is scope by the parties to show someone as a candidate who is not a member of the party for

three years. Assume Mr. X is not a member of a particular party, but the party wants to nominate him as a candidate and it is very easy for the party to show him as their member by submitting papers with back date.

D.After revising the law in 2009, party only can collect list of panel from the grass-root committees, but central parliamentary board is not bound to select candidates from this list of panels. As a result, we are assuming that the previous practice of nominating candidates will back again and the party high-ups will enjoy all in all power to nominate candidates. So, there would be chance of corruption and lack of intra-party democracy in candidate selection. In the case of Simin Hossain Rimi, BAL didn't collect any suggestions or feedback from grass-root committees and the decision was taken by the party high-ups.

Suggestions: (i) RPO has to make a provision that the parties have to establish membership database, update it on a regular basis and submit to BEC once a year. The concerned membership base could be stored in the respective local offices of BEC and local election officials could be given responsibility to verify the information during the time of election. (ii) The nomination provision of the RPO [Article 90B(b)(iv)] could be revised to ensure meaningful intra-party democracy, e.g. parties could hold council for nomination of candidates. Many countries have such kind of practice. The German Law on Political Parties requires that "the nomination of candidates for election to all levels of government must be by secret ballot. The nomination procedure shall be as prescribed by the election laws and party statutes." Article 21 of the law provides that there are three ways that a party can nominate a candidate, i.e. through an assembly of party members, or a special assembly or a general assembly of party representatives. (iii) The time between the declaration of election schedule and finalization of nomination is very limited in Bangladesh. During this limited time, it is impossible

## নির্বাচনী তথ্য কণিকা-৭

### প্রার্থীর মনোনয়ন ফরম

জাতীয় সংসদ ও উপজেলা নির্বাচনে প্রার্থী হতে ইচ্ছুক ব্যক্তিদের মনোনয়ন ফরম ও ফরম পূরণ করার বিষয় আগেই জেনে নিন।  
কারণ, মনোনয়ন ফরম যথাযথভাবে পূরণ করা না হলে;  
আপনার মনোনয়ন পত্র বাতিল ঘোষণা করা হবে।

- সম্প্রতি জাতীয় সংসদ নির্বাচন ও উপজেলা নির্বাচন সংক্রান্ত আইন ও বিধিমালা সংশোধন/পরিবর্তন করা হয়েছে। তদানুসারে সকল নির্বাচনের মনোনয়ন ফরমও পরিবর্তন করা হয়েছে।
- সংশ্লিষ্ট নির্বাচন পরিচালনা বিধিমালায় মনোনয়ন ফরম সংযুক্ত রয়েছে। নির্বাচন কমিশনের ওয়েব সাইট হতে এ বিধিমালা ও ফরম ডাউন লোড করা যাবে।
- আপনি যে পদের জন্য প্রার্থী হতে ইচ্ছুক সংশ্লিষ্ট আইনে সে পদের প্রার্থী হওয়ার যোগ্যতাসহ বিস্তারিত বিবরণ রয়েছে। যেমন- জাতীয় সংসদ নির্বাচনে অংশগ্রহণের জন্য যে কোন নির্বাচনী এলাকার ভোটার হতে হবে এবং উপজেলা নির্বাচনে প্রার্থী হতে হলে তাকে সংশ্লিষ্ট উপজেলায় ভোটার হতে হবে, তাছাড়া আরো বেশ কিছু শর্ত এ ক্ষেত্রে প্রযোজ্য হবে।
- প্রার্থী, প্রস্তাবক ও সমর্থক সকলকেই আইন অনুযায়ী যোগ্যতা সম্পন্ন হতে হবে।
- প্রার্থী, প্রস্তাবক ও সমর্থক সকলের নাম, ভোটার এলাকা, ভোটার নম্বর সঠিক হতে হবে।
- মনোনয়নপত্রের সাথে হলফনামা যথাযথ পূরণ করে জমা দিতে হবে।
- মনোনয়ন ফরম পূরণ বিষয়ে বিস্তারিত জানার জন্য নির্বাচন কমিশনের ওয়েব সাইট দেখুন।

নির্বাচনী আচরণবিধির লংঘন দণ্ডনীয় অপরাধ

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to verify information provided by the candidates. The timeframe could be extended and the parties could tell to submit a potential list of candidates six months earlier of the election so that BEC can verify information about the candidates. (iv) CSOs in Bangladesh are very strong. There are lots of NGOs/CSOs work in the field of election. The RPO should make a provision to include these organizations to oversee nomination by the parties. (v) Although the law says to select candidate based on the recommendations by the grass-root committees, there is no provision to oversee whether the parties follow the procedure or not. The RPO could make a provision that a candidate nominated by a political party has to submit the list of panel prepared by grass-root committees along with the nomination submitted to ECB.

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