



Right to housing: Struggle for human dignity

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RIGHT to housing has a constitutional guarantee under Bangladesh constitution taken as one of the fundamental principles of state policy which is not judicially enforceable. The government escapes its obligation only showing the lame excuse of progressive realization and limitation of resources. But this right has an intrinsic part of right to life. A citizen can never enjoy a standard life unless and until he has minimum access to the basic necessities like food, shelter, clothing, education and medical care. Violation of right to house is a common sight in rural area and more acutely in city town of Bangladesh. There are a number of programs and policies taken by government several times but a wide range of people are till today live under open sky in foot path. The issue has shaped a new discussion as to the root causes which act as the barriers to ensure access for enjoyment of the basic necessities in Bangladesh. Moreover, the right to house has gained a judicial proclamation to establish relation between social and civil rights. The traditional concept of right to house has also taken a wide concept to bring the government under a legal obligation to facilitate the enjoyment of the right. Social inequality and disparity show the primary obstacles in the way to ensure this basic necessity. The right needs a right based practical initiative to ensure the constitutional guarantee.

Right to housing got its legal origin under a number of international documents. They are- The Universal Declaration of Human Rights-1948, The Convenient of Social, Economic and Cultural Right [ICSECR] and UN Istanbul Declaration on Human Settlement -1996. Right to housing has been taken in alternative term of "shelter" as one of the five basic necessities declared in Article-15 of Bangladesh constitution. The Article provides that it shall be a fundamental responsibility of the state to attain, through planned economic growth a constant increase of productive forces and a steady improvement in the material and cultural standard of living of the people, with a view to securing to its citizens-(a).the provision of the basic necessities of life, including food, clothing, shelter, education and medical care. There the right to life is



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the hardcore right and there are other five rights which are intrinsic to right to life. There the word "including" is used to mean a conjunctive meaning rather disjunctive. Therefore, the right to housing is to be considered as an intrinsic part of right to life, a fundamental right judicially enforceable.

Right to housing had a traditional concept referring to live under roof. But the concept has got a modern and wide concept more specifically by the ICSECR Committee in its General Comment No. 4, as providing legal security of tenure, availability of services, materials, facilities and infrastructure, location, habitability, affordability, accessibility and cultural adequacy. [paragraph 18]. Now, the new and modern trend as to the right requires two aspects to be ensured by a government. They are accessibility of the right and to ensure the right. Accessibility means the obligation of government to facilitate means of housing through raw materials for housing, growing income level of citizen and to improve capacity to build home. To ensure the right means securing the rights for those who are not capable to get that right within their own afford. Therefore, it means that the state must create conditions through laws, budgets and other measures that enable individuals and groups to gain access to housing. Further, both the state and private actors such as banks and landlords must not prevent access to housing

rights. The government shall facilitate access to housing subsidies, as well as technical, financial, logistical and administrative support either by building directly or by managing the building process.

The most crucial point may be traced towards the judicial afford to establish the intrinsic relation between right to life and right to housing for better guarantee of the right. The issue got the first judicial basis in Grootboom case, a landmark in explaining right to house in South Africa. South African Constitutional Court on appeal affirmed that national government bears the overall responsibility for ensuring that the state complies with its section 26 obligations. It further found that the housing program fell short of the state obligation to provide relief to people in desperate need. It said that a reasonable part of the national housing budget should be devoted to providing such relief. If this was not done, the state's housing program could not be considered reasonable for the purposes of section 26(2). The Constitutional Court also recognized the close relationship between the right to equality and socio-economic rights, including housing rights. It noted that the realization of socio-economic rights is key to the advancement of equality and the development of a society in which both men and women are equally able to fulfill their potential (Para 23).

The same recognition was declared by

the Indian Court in Olga Tellis and ors Vs. Bombay Municipal Corporation and ors MANU/SC/0039/1985 case, another landmark decision in Indian legal history. The court, in its oft quoted ruling affirmed that right to life included right to livelihood and eviction from their dwellings was indeed a deprivation of livelihood.

Our constitutional court has applied this pragmatic approach to bring the relation between right to life and right to housing. In Modhumala vs. Director, Housing and Building research Institute [W.P. No. 59/1994], the Hon'ble High Court Division ordered to "undertake eviction of slum dwellers phase by phase providing option with resources either to go back to their village and settle there o[r] to stay back to lead an urban life....". The issue became more clear in Ain o Shailish Kendra, BLAST and Odhikar V. Government of Bangladesh and others, Writ Petition n-3034 of 1999, 19 BLD(HCD) case. Thereby, the High court tried to strike a balance between social justice and the government's administrative regime. The sole object of the petition was to protect the slum dwellers right to life, shelter, livelihood and to physically and social rehabilitate them. The court held that rights are the fundamnetal principles of the state policy, which aims to guarantee the fundamental human rights and freedoms, and respect for the dignity and worth of all individuals. Therefore, government can't escape its liability only on the ground of fundamental principles of state policy. There is another misconception that limited resource in Bangladesh is a barrier to fulfill the right to housing. But limited resource is not the main obstacle behind fulfillment of the right rather absent of poor oriented government policy. This policy is creating gap between poor and rich more acute and the poor are becoming more poor day by day. It is evident that ninety percent of total wealth is in the hand of only ten percent rich man while only ten percent of total wealth is in the hand of ninety percent poor people. Where a rich man has twenty storied building, thousands of poor people sleep under a tree. This inequality has rooted in the hard core barrier to the enjoyment of right to housing in Bangladesh. The poor always become under systematic exclusion using simple demand-supply tools. The Man who has a five storied building is entitled to another while a

man living under open sky is deprived. The state should maintain minimum basic conditions of the institutional facilities to accelerate right to housing. Given the prevalence of the equality before law and right to life as enunciated as the hardcore fundamental rights in Bangladesh constitution, it is appropriate that right to housing and its enjoyment be accorded the same attention as fundamental rights which are judicially enforceable.

The government should take policy to build house for a large number of people who are totally unable to build house due to financial insolvency. Program and project should be taken not only in a particular area but also in all part of Bangladesh. But the policy should be preferred in the worse position area like slums and tents. All policies and programs should be measured and estimated in field based practical necessity. However, initial cost of construction is not just enough for public housing. It requires government's obligation towards the maintenance and management of those public projects. The policy may be wholly public or a public-private partnership. In this case the government is not directly proving shelter to houseless people rather facilitating access to the right for low-income earning people. This can be achieved partly by means of cross subsidisation of land costs and raw materials to build house. However, because of possible difficulty of low income housing co-ops securing private sector financing, the government may have to provide underwriting of the finances and provide subsidy to the cost of borrowing in the form of interest rate subsidization. A significant number of people in Bangladesh are homeless and in acute violation of the minimum enjoyment of their right to life. Only Political will on the part of government along with active participation on part of society as a whole can ensure enjoyment of right to house a basic necessity to live as human being. Area-based assessment, planning and implementation that is based on an integrated approach and long term vision are pre-requisites towards the fulfillment of state's obligation. Therefore, it is imperative to address the housing need of the poor in practical terms and allocate resources for public or public-private initiatives.

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LAW EXCERPTS

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ENVIRONMENTAL Impact Assessment (EIA) is a procedure of evaluating possible impact on the environment when any proposed projects, activities or undertakings are conducted. It was first introduced in the domestic law of USA, namely US National Environmental Policy Act of 1969.

a. International regime

EIA is defined in article 1(VI) of the Espoo Convention on Environmental Impact Assessment in a Transboundary Context of 1991 (the only international convention relating to EIA) as 'a national procedure for evaluating the likely impact of a proposed activity on the environment'. The necessity of EIA has been reflected in Principle 17 of Rio Declaration "EIA, as a national instrument, shall be undertaken for proposed activities that are likely to have significant adverse impact on the environment." The UNCLOS 1982 required EIA to be undertaken under Article 206. International dispute settlement bodies have also taken a strong position for undertaking EIA. The issue has been dealt with by ICJ in the Gabcikovo-Nagymaros case, 1997, Pulp Mills case of 2010 and ITLOS dealt with MOX Plant Case of 2001 and Land Reclamation Case of 2003. The World Court in Pulp Mill case declared, "The obligation has gained so much acceptance among States that it may now be considered a requirement under general international law to undertake an environmental impact assessment where there is a risk that the proposed industrial activity may have a significant adverse impact" (Para 204).

EIA has been articulated in most of the developing states after being party to the Convention of Bio Diversity (CBD). Each contracting party is required to set up EIA of proposed projects that are likely to have significant adverse effects on biodiversity for the purpose of avoiding or minimizing the effect. The requirements provided in this convention are also supplemented by decisions of the COP. Decision IV/10 called upon the parties to submit to the secretariat impact assessments reports on the effectiveness of

EIAs, reports relating to national legislation on EIAs.

b.i. EIA under the laws of Bangladesh

The Environment Conservation Act, 1995 is potentially the most pertinent law in this regard. Section 12 of the ECA provides that "no industrial unit or project shall be established or undertaken without obtaining in the manner prescribed by rules, an Environmental Clearance Certificate from the Director General." So ECC is mandatory and within ECC procedure, EIA is a step to be followed for a few specified industries.

The Environment Conservation Rules, 1997 requires to take ECC for undertakings industrial units and projects. Rule 7 of ECR, 1997 categorised all industrial units and projects into four i.e. green, orange-A, orange-B and red and EIA is required mandatorily in "red category". Under Schedule -1, there are 69 types of industrial units categorised as "red". According to Rule 7(6) (d) (ii) of ECR, 1997; for approval of the Department, the entrepreneur shall submit EIA report prepared on the basis of program outlined in IEE Report along with the time schedule and ETP design. For an ECC, the entrepreneur shall apply to the Concerned Divisional Officer of the Department in Form-3 along with appropriate fees prescribed in schedule-13. In form 3, serial number 13 (a) is the required mandate for IEE and EIA. So EIA is mandatory step to get ECC for undertaking or establishing "red categories" industrial unit or project. Where the application will be received under rule 7(9) (d), the EIA report shall be approved or rejected within sixty working days mentioning appropriate reasons. After approving of EIA, the Entrepreneur shall open L/C for importing machine and apply for ECC. Although for other three categories EIA is not mentioned to be taken, but in case of "Orange-B" category certain steps are to be followed called "report on the feasibility of the industrial unit or project and

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report on the Initial Environmental Examination of the industrial unit or project." This issue of environmental examination falls under the broad spectrum of EIA. Now coming to the violation aspect, for the infringement of section 12 of the ECA, section 15 in column 8 specified "imprisonment not exceeding 3 years or fine not exceeding 3 lac taka or both". Under section 15A of the Act all belongings used in the commission of the offence may be confiscated.

b.ii. EIA under National Environment Policy Policies are not laws according to article 152 of the Constitution of Bangladesh. These policies have binding impact on the activities of Government agencies and therefore, can greatly influence in the shaping of national environmental regimes. The National Environment Policy of 1992 required to undertake EIA in case of all new industries of government and private. Principle no. 3.4.3. of NEP states that in energy and fuel sector, EIA is required only before using nuclear energy

or nuclear radiation. It did not include EIA in every stage of lifecycle of the gas related project. In water development and flood control and irrigation, It demands undertaking EIA before taking any plan regarding water development and its management. In transport and communication field, safe transport and communication by road, rail, air and internal navigation system must be ensured from pollution of environment of the concerned and before implementing or undertaking projects of this type; EIA is required to be taken.

Although our legislations mentioned above have encompassed the EIA regime, there are a few issues yet to be clarified. First, the procedure is not clear as to how EIA would be conducted and by whom it would be taken. Second, international environmental law has now required two categories of EIA procedure i.e. EIA at the time of initiation of projects and periodical EIA. There is no specific mechanism under our domestic law covering the second category. Third, it has to be considered now that whether EIA procedure is to be inserted in 'Orange-B' and 'Orange-A'. In order to establish transparency and fairness in the EIA procedure, every steps has to be clear and written. The provision of good faith under section 18 of Environment Conservation Act, 1995 has to be reviewed because without proper EIA procedure, ECC under this section can be issued. Since policies have no enforceability, some of the important aspect of policies can be taken into law. Furthermore, under The Brick Burning (Control) Act, 1989 and Brick Burning (Control) Rules, 1989, EIA requirements are suggested to insert within its license process. According to the existing framework, only Initial Environment Examination is required.

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