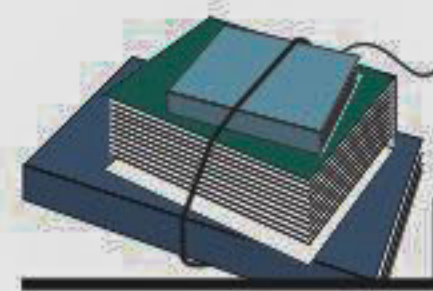


"ALL CITIZENS ARE EQUAL BEFORE LAW AND ARE ENTITLED TO EQUAL PROTECTION OF LAW" - ARTICLE 27 OF THE CONSTITUTION OF THE PEOPLE'S REPUBLIC OF BANGLADESH



REVIEWING VOTING SYSTEM

# Voting system should be changed



MD. ABDUL ALIM

BA NGLADESH'S voting system, the First-Past-the-Post (FPTP) system, is a type of plurality/majority (P/M) system. In this voting system whoever gets the most votes wins, regardless of how many millions of votes, they fall short of obtaining majority. Although this voting system is undoubtedly the most popular and 69 countries (International IDEA, 2008:166) of the world are now using this system to choose their representatives, the question is how suitable it is for Bangladesh. Is the system improving democracy, governance and rule of law? or breeding corruption and endangering democracy in the country? This article has analysed those issues and suggested an alternative which I think more suitable in the context of Bangladesh.

Theoretically, (1) the FPTP is a winner-take-all system. This system is a zero-sum game. In this game, one candidate wins and all other loses and the winner takes. In this system the party which wins enjoys all privileges of the government. (2) FPTP electoral system is an anti-democratic one; the elected candidate is selected by a portion of the voters and supporters of the party. Votes cast by other voters go in vain. This system allows 51 percent of voters to win 100 percent of representation. (3) The FPTP system breeds corruption both in nomination process as well it encourages candidates to buy votes. As the individual candidate wants to get nomination, there is huge scope to sell and buy nomination especially in the context of Bangladesh. Moreover, the system encourage businessman and industrialists to invest money in the elections. (4) One of the classic attributes of the FPTP system is that it can cause a wide discrepancy between the % of votes secured and the % of seats secured. For instance in the 2008 parli-

mentary elections in AL won 230 seats (77%) with 49% of the votes cast, whereas the second-placed BNP won 29 seats (9.7%) with 33% of the votes cast. The third-placed JP secured 27 seats with just under 7% of the vote and the Jamaat won 2 seats with some 4.5% of the vote. So voters are represented unequally. (5) In FPTP system, minor parties and candidates can find it difficult to win against the combined weight of major party candidates.

Practically, in Bangladesh, the ruling party captures everything. All the institutions responsible for ensuring governance such as parliament, appointment authority, judiciary, law enforcement agencies, anti-corruption commission work for the benefit of the ruling party. Opposition here has hardly scope to do ordinary business. They are not considered as a part of the government. It's a real problem for our politics and as a result, parties main objective has become to go in power instead of doing mankind. So the democracy here has become electoral democracy. Moreover, due to the weakness of the FPTP system, the number of businessman in the electoral process have been increasing day by day. Although the RPO has a provision that the parties have to nominate candidates who have been the members of the parties for at least three years, the mechanism is not functioning due to the weakness of our electoral system.

Thus, winner-take-all systems are an anachronism in the modern world, as nearly every emerging democracy has rejected the use of FPTP system. This system was introduced in many countries of the world by the British during the colonial era, and is virtually unknown in other developed countries. Their failings lie at the root of many of our current political problems. This system produces many anti-democratic effects, and may be a major reason for many of our country's current problems, including its rule by two parties which in some

respects are similar enough that some people consider them to be two wings of the same party. So what is the solution?

The best way out from this devastating situation is the Proportional Representation (PR) system. The PR voting is the main rival to P/M voting. The basic approach of PR is simple: legislators are elected in multi-member districts instead of single-member districts, and the number of seats that a party wins in an election is proportional to the amount of its support among voters. So if a country has a 10-member district and the X party wins 50% of the vote, they receive five of the ten seats. If the Y party wins 30% of the vote, they get three seats; and if a third party gets 20% of the vote, they win two seats. In such a system, the emphasis is given on the representation of diverse social, economic, or ideological interests rather than on the linkage between the individual representative and a territorial constituency. As a result, individuals do not run to become candidates and hence, selling of nomination would be stopped and politics would not be considered as a business. In many western democracies where there is PR electoral system, the opposition enjoys potential power, even in some countries the opposition has more power than ruling party.

Bangladesh is a country where politics has become a gainful business and businessman and industrialists are getting nomination and become MPs and ministers. The FPTP voting is giving this opportunity. So the voting system should be changed into PR system as this system can create scope for the oppositions to take part in the government activities which may keep the oppositions not to call hartals and abstain from parliament. Moreover, PR voting systems provide more accurate representation of parties, better representation for political and racial minorities, fewer wasted votes, higher levels of voter turnout, better representation of women, greater likelihood of majority rule, and little opportunity for gerrymandering which ultimately decrease corruption in the country, bring stability to our parliament and make scope for the treasury bench and opposition to work together.

Election Commission has just hold dialogues with political parties and this issue has not been discussed. Before the 10th parliamentary election, another series of dialogue could be arranged as BNP and its alliance has not participated in the dialogue. So BEC, in order to ensure governance in the electoral process and in the long run to improve governance in the state affairs, should consider to revise the RPO and bring PR system of voting.

The writer is a former head of the Election Project, UNDP Bangladesh, presently perusing PhD in the field of electoral governance.



HUMAN RIGHTS ADVOCACY

# Adult for work not for compensation!

SULTANA RAZIA

ALIM, worked in a welding factory in Uttara for last five years and with the "grace" of excessive workload, his lean and thin body disguise his actual age. I guessed he was 7 but making me wrong he was 12 that time; this gives a clear message that he started his work at the age of 7! He works for 12 hours and 7 days a week, accepts big holidays like, Eid or something like that. I asked him about his work. With a matured voice, Alim replied, he has to do it because his employer is kind enough to give him this job, which helps him and his family to ensure daily meals. Working there for last five years, he gained a lot of confidence of the employer and enables himself to take the burden of unusual workload. When I asked about the payments, he replied he earned 70 take per day! Which is half of an adult but the work he has done is not half; rather it is more than what an adult is done.

The excessive obedience of the poor child workers who are inclined with extreme poverty facilitates the employer to deprive those needy children from their entitled compensation. His employer, Tariqul, respond, "I am doing favour



to Alim and his family. I taught him this trade and he has a chance to practice his skill here, as a child how could you expect more money than what he is paying?"

Farid, a non paid worker, in a tea stall, in Ramu, sadar, Cox'sBazar, works for more than twelve hours and seven days a week, his father used to work with that stall and owe some money, which he still not able to pay. To repay that amount, Farid started working with the stall for last one year. He is not at all happy with the solution, but at least given three meals for his tinny soul and afraid to leave the job, which may harms his family. New anti trafficking law says, "Forced labour or services" means all work or service that is exacted from any person under the threat of any penalty, loss, or damage to life, liberty, property, or reputation of that person" But poor Farid, nor his father has no idea how to get rid from this exploitative situations.

There is no minimum wage for certain sectors and some works are not even treated as work. Working like an adult, treated like adults but not being compensated like them is the only name of discrimination, is the only name of exploitation and our working children are growing with this unjust system.

In this competitive world, where skill should be determining factor for getting compensation, why these young adults will not be paid, as only for being young? Salma, a house help for Dhanmondi, says, she has to work long hours, but she is happy, as she is allowed to watch a drama-serial and she thinks as she is employed here, how long there is work, she needs to finish it.

Unfortunately, this is very common issue in rural area, where a children often taken care of other children, carrying heavy bags, doing work for rich children and abused or exploited with wages. Sometimes this is really weird to think but this is reality.

If we really trust on the core essence of CRC we should stop doing this, or at least start thinking to break this circle. Education is a must for children and for working children it is our (employer) responsibility to ensure his young employer's right, only then we can dream for a perfect child friendly world.

From Law Desk.



LAW ANALYSIS

## BANGLADESH PATENT ACT 2012

# How far maintains TRIPS standard?

MD. MOSTAFA HOSAIN

THE obligation of States towards TRIPS (Trade-Related Aspects of Intellectual Property Rights) has been reflected in Article 1 of the TRIPS which states that "members shall give effect to the provisions of this agreement". As TRIPS will be enforced from 1st July of 2013 in Bangladesh mainly regarding agricultural chemical product, the newly drafted legislation called "Bangladesh Patent Act, 2012" tried to comply with TRIPS standard in almost all aspects except a few points. Furthermore, the Act states that after entering into force of this Act of 2012, all the provisions relating to patent in the earlier both Patent and Design Act, 1911 and its Amendment Act of 2003 shall be repealed. Although the Act is yet to enforce but it is high time to look at the Act whether it maintains TRIPS standard and whether it will be capable of resolving all existing lacuna.

Bangladesh Patent Act, 2012 Now coming to the contents of the Act, section 2 of the Act defined patent as "a granted monopoly right to protect any invention by which the patentee has been permitted to prevent any other person to use his invention within Bangladesh". This definition is more comprehensive in comparing with the definition given in earlier Act of 1911. Regarding preconditions of patentability, TRIPS provided in article 27(1) that it must be new, involving inven-

tive steps and having industrial application whereas in the Act of 2012, the only point which differs from TRIPS is instead of inventive step, it states the condition of 'originality' under section 4. The relevant provision of TRIPS is more comprehensive comparing with the Act of 2012. The reason is that TRIPS mentioned 'invention shall be in all field of technology either product or process'. This portion is not articulated in the Patent Act of 2012, inclusion of which would make the provision more specific and comprehensive. Regarding subject matter of patentability, the new Act is more comprehensive and contentious comparing with the Act of 1911 mostly because it categorised what can't be patentable in section 3 of the Act. Discovery, scientific theory, mathematical method, business method, computer programmes, mental act, diagnostic, therapeutic or surgical process in human or animal body are not the product used for that purpose, natural objects, discovery of new use for a known substance, plants or animals and essentially biological processes all are not patentable. Furthermore, on the ground of ordre public and morality, granting of patent shall be refused. Under section 15 of the Act, 2012 in case of illegally accessed genetic resources, patent shall be refused if the question of ordre public or morality comes. But micro-organism, non-biological process, micro-biological process, process applied for segregating any natural thing from its inherent environment

are patentable under the Act of 2012. Patenting of agricultural chemical product and pharmaceutical product shall temporarily be excluded from patentability till 1st July of 2013 and 1st January of 2016 consecutively under section 3(2) of the Act. Regarding patenting of biotechnology, scholars apprehend that it will create monopolisation and binds poor farmers and communities to leave their advantageous means of livelihoods or causes concerns in food security. As TRIPS will be enforced in Bangladesh on and from 1st July of 2013, food-stuffs, seeds, agricultural chemicals, herbicides or other agro-products made of patented bio-technology are likely to assume higher price and make them exorbitant for the poor Bangladeshis. Furthermore, in Doha round it was a demand of developing and LDC countries to specify and mention the name of origin of product and genetic resource of product, some suggest that this should be articulated in the Patent Act of 2012.

The provision regarding grounds for rejection of patents based on public order and morality under the Act lacks specificity comparing with TRIPS provision. Although article 27 (2) of the TRIPS has been inserted in section 3(2) of the Act, but it has missed a few points of article 27(2). The portion mentioned as "protection of human, animal or plant life or health or to avoid serious prejudice to the environment" in article 27 (2) a flexibility for member-state to prevent commercial exploitation on

the ground of ordre public and morality, has not been articulated in section 3 of the Bangladesh Patent Act. Secondly, article 27 (3) (b) of the TRIPS provided that "member shall provide for the protection of plant varieties either by patents or by an effective sui generis system or by any combination thereof." Although sui generis protection is suggested by scholars to be advantageous for Bangladesh, this part of TRIPS provision is absent in the Patent Act of 2012. Talking about our neighboring country India, it has made law titled "The Protection of Plant Varieties and Farmers' Rights Act, 2001". But we don't have any legislation in this regard. In absence of any legislation securing farmers' rights, the plant breeders Rights enriched in International Convention for the Protection of New Varieties of Plants (UPOV) Convention is likely to cause the heavy burden of payments to the agriculture-prone Bangladesh resulting in change of livelihood of farmers and affecting the foodstuffs produced from the protected seeds. Although under section 12 of the Act, rights of any farmer using his produced crops in his own supervision for the purpose of propagation is ensured where patent holder can't prevent a farmer to do such.

The duration under article 33 of TRIPS is 20 years whereas under section 14 of Patent and Design Act 1911, it was 16 years. But in the new Act of 2012, the duration was complied with TRIPS in section 13 of the Act. Regarding compulsory license, section 14 of Bangladesh Patent Act of 2012 has not prop-

erly complied with TRIPS. The provision of TRIPS in this regard is article 8 which provides, "members may take necessary measures.....to promote the public interest in sectors of vital importance to their socio-economic and technological development," whereas section 14 of Bangladesh Patent Act 2012 has not included "socio and technological development" and it has only inserted economic development as a ground for taking necessary measures.

As a student of law, I think that before passing any legislation, a scrutiny examination has to be conducted and specially regarding this Act, it has to be tested and examined by IP practitioners, jurists, legal scholars, concerned experts and students of law so that it can resolve the lacuna and meet the challenges after coming into force. Since TRIPS will be entered into force in Bangladesh, points which are not included in the Act but provided in TRIPS have to be taken into account to insert in the Act. Most importantly, broadening grounds of compulsory licenses mentioned in the Act, sui generis protection or other means of protection of plant varieties provided in TRIPS, specification or mentioning of origin of product produced in microbiological process as demand of developing and LDC are issues to be taken into account for the legislation to be purposeful and meaningful in application.

The writer is student of LL.M, South Asian University, New Delhi, India.