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THE underlying spirit of human rights jurisprudence is gaining momentous success in this modern era. Human rights by its divine virtue of human dignity have taken place with due emphasis in the modern legal system. Over the years there has been a gradual enlargement of the scope of human rights through reinterpretation of the concept of human rights to protect victims from abusers and perpetrators. But the fragmentation of human rights from freedom to fear and want still reflect the sorrow picture of human rights realisation. This minimal realisation reveals particularly in the area of economic, social and cultural entitlements.

Though many human rights proponents argued about the indivisibility and interdependence of human rights but the reality suggests otherwise regarding Economic, social and cultural rights (ESC). The ESC rights are often remaining unrealised in the area of human development.

ESC rights are recognised either explicitly or implicitly at both the international and national instruments dealing with human rights. Explicit recognition is found in a variety of international instruments ranging from hard-law treaties to soft-law documents, such as the International Covenant on Economic, Social and Cultural Rights, the European Social Charter and ASEAN Human Rights Declaration (AHRD). Implicit recognition of ESC rights is also found within the rubric of various civil and political rights contained in international instruments. For example the right to adequate housing has been read into the right to protection against inhumane and degrading treatment and the right to respect for private and family life which is found in European Convention on Human Rights.

At the domestic level ESC rights are also recognised in various ways. Like, in Bangladesh ESC rights are incorporated in the constitution under the head of fundamental directives which are not judicially enforceable.

Exploring ESC rights through judicial activism


The Judges are playing pro-active role by giving progressive interpretation to realise ESC rights. In India, *People's Union for Civil Liberties v Union of India and Others* (2004,12 SCC108), the Court through interim order directed the authorities to see that food is provided to the aged, infirm, disabled, destitute men and women who are in danger of starvation, pregnant and lactating women, destitute children. Court also directed to identify the families below poverty line.

In *Kapila Hingorani v State of Bihar* (2003; 6SCC1), the Court approved that

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Empowering ESC rights to ensure human development



human being has the right to food and 'hunger' is a form of violation of human rights and state cannot escape the liability of starvation deaths.

In one of the Bangladeshi case, *Dr. Mahiuddin Farooque v Government of Bangladesh* 48 DLR, held that right to life includes right to adequate standard of living which includes clothing, shelter and medicine. In another case name *Rajdhani Ummayan Kortripokkho (RAJUK) and another v Mohsinul Islam and another*, the Appellate Division gave directions for protecting the environment of Dhaka city and providing an environment-friendly interpretation of urban development.

However, the technique of protecting economic and social rights is still a difficult issue remains to be conceptualised, as the legal effect of ESC rights is a matter of debate. The debate concentrates mainly on the recognition of ESC rights i.e. their source and content and their enforcement i.e. justifiability along with monitoring mechanisms for the protection of ESC rights.

Challenges for enforcement of ESC rights

The proper implementation and enforcement of ESC rights is facing many challenges. Though they are incorporated in the International covenants and declarations, still they have been kept in the inspirational and programmatic category

and not making any decisive element of right.

As a result, the enforcement of ESC rights got further deceleration on the ground that they are too vague to have clear legal content, too costly to implement and thus involve number of positive measures to fulfill.

Regarding the cost and positive measures, UN Committee on Economic, Social and Cultural Rights in its General Comment No. 3, underscored for comprising obligations to take steps towards realising these rights. In this regard, the countries of Asia concentrated mainly on the implicit recognition of ESC rights. However by virtue of the device of judicial activism, the ESC rights receive significant indirect protection through the interpretations and applications of other constitutional rights.

Establishing linkage between ESC Rights and Human development

A careful analysis of the ESC rights suggests proper implementation of the basic necessities of a human being that includes, right to food, health and education. On the other hand the human development, by virtue of capability approach, can only be ensured when a particular individual is able to function as well as to avail those basic necessities. It is clear that, in order to attain the status of human development one has to

avail the economic, social and cultural rights.

Let me refer the human development approach based on the framework of capability approach pioneered by Amartya Sen. He said, the capability approach refers two core normative claims: first, the claim that the freedom to achieve well-being is of primary moral importance; second, that freedom to achieve well-being is to be understood in terms of people's capabilities, that is, their real opportunities to do and be what they have reason to value.

The capability approach purports that freedom to achieve well-being is a matter of what people are able to do and to be, and thus the kind of life they are effectively able to lead. In the development paradigm the capability approach enables a particular individual to assess his well being taking into account the social dynamics.

To realise the human rights, it is significantly essential to address the social, economic and cultural aspects of a particular individual which are inherently attached with that person. In the same way, the functioning's (beings and doings) and capabilities (freedom and opportunities to achieve those beings and doings) of a person purported by human development approach cannot be understood without addressing the social and economic conditions of that person.

The question still remains that, whether the economic growth of a country can ensure human development through realisation of human rights particularly ESC rights. The practical evidence suggests the negative answer. This is true that economic growth facilitates to create an atmosphere where the indicators of development like, life expectancy, infant mortality and adult literacy secure incentive but economic growth alone, does not guarantee human development.

Over the years, Bangladesh has achieved commendable economic growth despite consistent political turmoil. It also secured success towards achieving the Millennium Development goals. However, this is an evident truth that human development remains a far cry in Bangladesh. The Court in some cases gave decisions regarding the Esc rights to be judicially enforceable, but amidst of persistent human rights violations across the country creates difficulties to realise ESC rights.

In this backdrop, the ESC rights should be integrated into the development process through constitutional and judicial commitment. The development stakeholders should overview the principles of ESC rights while undertaking a development project.

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LAW EVENT

Zero tolerance for sexual harassment



NAZMUN ZAMAN CHOWDHURY

BANGLADESH National Woman Lawyers' Association (BNWLA) in association with the USAID and Plan Bangladesh organised an advocacy meeting with the civil society members titled as "Prevention of Sexual Harassment; Experience, Challenge and Way Forward" on 8 September, 2014.

Advocate Salma Ali, Executive Director of BNWLA, focused on the severity of sexual harassment as it constitutes a serious human rights violation, while addressing the session. In the wake of increasing incidents of sexual harassment on campus and at workplaces in Bangladesh BNWLA, invoked the writ jurisdiction under Article 102 of the Constitution for prevention, protection and redress against sexual harassment at educational institutions and workplaces, she referred.

Accordingly the High Court came up with a declaration which calls to formulate complains committees in

their respective organisations as per Article 9 of the guideline. But it is regretful that after five years of this declaration it is found not be implemented properly, she added.

Advocate Rehana Sultana presented the key note paper where she briefly discussed the salient features of the sexual harassment guideline and also the proposed draft law on sexual harassment.

This is very shameful that the proposed law on sexual harassment is yet to be passed, said A.K. Azad Chowdhury, Chairman (State Minister) University Grants Commission of Bangladesh while addressing the meeting as chief guest.

Among others, Ms. Dilara Choudhury, Professor of Political Science at North South University, Dr. Shah Alam, Member, Law Commission of Bangladesh, and Dr. Khurshida Begum from Jahangirnagar University also spoke at the programme.

Distinguished participants came up with concrete recommendations which include zero tolerance for sexual harassment at educational institutions, conducting a survey in primary and secondary schools under few unions to determine the implementation status of the guideline, uniting BNWLA and other NGOs to come together and pressurise the government to pass the proposed Act. They reiterated that without establishing an effective legislative framework- the elimination of sexual harassment will not be practicable.

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LAW LETTER

Enforcement of international laws

By observing the last few months devastating condition along with the death toll in Palestine, Syria and other middle east states and the silence or absence of any action against these unjustified attacks on innocent civilians and non-combatants, it has become quite clear that all international rules and laws are being violated and promises to the humanity has been denied to be implemented.

Within states, municipal laws are followed to avoid punishment and to protect the rights of the citizen. When law comes under a global shed, states follow the international law considering it as custom or norm to maintain the relationship between states. States discharges its conduct with other states through international law and also maintain its relation with each other under the terms and conditions of international law.

However, states are not the only subjects of international law but the international organizations as well. Moreover, non state actors have also been considered as the legitimate subject of international law. Among all the international organisations, United Nation is the mastermind to regulate the international relations among its member states and maintain peace and security.

After the disastrous ending of the Second World War the United Nation was established with a view to keep check on the security and maintains peace in world community. According to Article 34 of the charter of UN "the security council may investigate any dispute or any situation lead to international friction or give rise to a dispute, in order to determine whether the continuance of the dispute or situation is likely to endanger international peace and security". The Security Council has been given extensive power and authority in pen and paper to control the dispute between states.

Then what comment shall we pass when we see the current situation between Israel and Palestine. So far 2016 people have been killed in Gaza(Palestine) by Israel armed force among them 542 were children and 250 were women and 95 were elderly men and almost 10000 people are injured and fighting with death(Cihan News Agency, Turkey).

Moreover, Ayelet Shaked, the Honorable member of Israeli Parliament has passed a comment on a social networking page stating, "Behind every terrorist stand dozens of men and women, without whom he could not engage in terrorism. They are all enemy combatants, and their blood shall be on their heads". These types of racial statement legalised the unstoppable attacks and ceasefire of Israel on Palestine. The saddest part is still no steps has been taken so far by the United Nation to stop this mass killing.

The reason behind this could be the passing of a motion by the United Nations' General Assembly changing Palestine's "entity" status to "non-member observer state" on 29th November 2012. Since 11th may of 1949, Israel is the member state of United Nations. Then isn't it the duty of this members state to maintain the agenda of the United Nation which starts with the vow of maintaining peace and international security worldwide?

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REVIEWING THE VIEWS

Aftermath of appalling 16th amendment



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THE question of impeachment of the judges' gains momentum in view of the fact that the recently passed 16th amendment directly impinge on the doctrine of checks and balances enshrined in the Constitution. If the balance is not maintained as envisaged it might directly create an impact on the concept of judicial independence. An intense constitutional debate, managed to capture the public attention, is going on until the enactment of law through which judges will be impeached.

The concept of judicial accountability, is remarkable in the sense that a lurking suspicion emerges in many legal minds that legislature might possess an undue preponderance of influence in the judiciary. Why and for what purpose, the amendment is brought at the moment without taking any views from legal expert, raised questions before people. Moreover, public perceptions are gaining ground that Political calisthenics stomp carte blanche to grip the throat of judiciary. To get out of this perceptions before making the Act, some drawbacks must be removed and follow the precedent of full-fledged democracy to avoid any further mayhem in judicial arena.

The word "misconduct" as applicable to judges of the Supreme Court in articles 96 of our Constitution, means conduct or a course of conduct on the part of a judge which brings dishonour or disrepute to the judiciary as to shake the faith and confidence which the public reposes in the judiciary. It is not confined which are contrary to law. It is not confined to acts connected with the judicial office. It extends to all activities of a judge, public or private to criminal acts or to acts prohibited by law. In all countries, a Judge cannot be guilty of misconduct if the allegations relate to the merits of a judgment or order. So, there is a grey area where it is not possible to decide whether the allegations in a complaint are serious or not. The government

must be of the view that proof must be 'proof beyond reasonable doubt' as regards all types of charges which come before the Judicial Council. There is need to incorporate a definition of the words 'misbehaviour' and 'incapacity'.

According to article 70 of our constitution, neither an MP can put forward his strong dissenting opinion nor can he/she vote against the party line. As a result of impeachment, no matter how unfair it may be, gets quickly passed. The ruling party always knows that it is not going to be defeated by motion of no-confidence, for no member (MP) of the majority party has the right to vote against the party line. So, this provision should amend immediately.

Besides, article 48(3) empowers the president to exercise all of his functions with the advice of the Prime minister except the appointment of Prime minister and Chief Justice. As a result, if inquiry commission of the judges finds someone guilty, President cannot nod his consent, if the Prime Minister doesn't wish. So, it must be balanced.

It is noticeable in most of the country of sound democracy that inquiry commission is mainly formed by

former or current judges. If the government decides to form the inquiry cell among the MPs, the academic and professional background of legal knowledge must be confirmed. Otherwise, it crops up blunder over judiciary.

In India, along with the existing Judges Inquiry Act, 1968, two more proposed Acts were drafted by the Indian Law Commission, Which can be a good example for drafting our proposed Act of Impeachment. The Judges (Inquiry) Bill, 2005 was drafted by and examined by the Indian Law Commission. It introduced a new concept of 'complaint procedure' in addition to the earlier 'reference procedure' contained in the 1968 Act. In a 'complaint procedure' a complaint can be made by any person to Judicial Council against Judges of the Supreme Court. If the allegations are proven, the National Judicial Council may impose

minor measures or recommend the removal of the judge. Removal of a judge shall be through impeachment by Parliament. Though it is lapsed now, but the new concept might be a useful one.

Moreover, The Judicial Standards and Accountability Bill, 2010 in India, tried to lay down enforceable standards of conduct for judges. The Bill establishes three bodies to investigate complaints against judges: the National Judicial Oversight Committee, the Complaints Scrutiny Panel and an Investigation committee. National Judicial Oversight Committee will consist of a retired Chief Justice of India as the Chairperson, a judge of the Supreme Court, a Chief Justice of the High Court, the Attorney General for India and an eminent person appointed by the President. The Oversight Committee shall have supervisory powers regarding investigation into complaints against judges and also the power to impose minor measures. Scrutiny Panel will be constituted in the Supreme Court and High Court. It shall consist of a former Chief Justice and two sitting judges of that court.

Investigation Committee will be set up by Oversight Committee to enquire into complaints. They will also be set up if the Scrutiny Panel recommends that an inquiry should be carried out to investigate a complaint. The Bill does not specify the qualifications of members of the investigation committee, but leaves this to the discretion of the Oversight Committee.

So, the lawmakers should be poignant over their whimsical decisions to formulate a new law.

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