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REVIEWING THE VIEWS

India's inter-linking of river project is devoid of legal basis

India wanted by all means to avoid detailed discussion on her river linking project on the plea that it was only at 'conceptual level' and hence, there was nothing to discuss about.

DR. M. SHAH ALAM

IT appears from recent newspaper reportings in India and Bangladesh that India has not deviated from her decades old plan of massive inter-linking of river plan to divert substantial amount of water from Brahmaputra to her South West region. It is learnt that our Ministry of Water Resources has asked the Ministry of Foreign Affairs to contact the Indian Government to know her position and also to let India know our position on the issue. We are yet to know whether such communication has at all taken place, and what is the outcome of any communication if it has taken place.

India actually started to think of such a plan after former irrigation minister of India Dr. K.L. Rao spoke of his idea, back in 1972, of creating a national water grid for India. His proposal envisaged interlinking of rivers—Brahmaputra-Ganges and Ganges-Cauvary, for massive inter-basin diversion of water from North-East India to South-West India to make for the insufficiency of water in that region. The National Water Development Agency of India formed in 1982 took up the idea to consider it as one of her long-term water policy alternatives. In 1987, India actually included such a plan in her national water policy as a possible solvent of her water problem.

On August 19, 1994, a Dhaka based Bengali language weekly Sonar Bangla published a big front page news report giving details of India's mega project of inter-basin water diversion. The weekly referred to the then Indian Water Resource Minister Bidya Charan Shukla who admitted the existence of such a project in a press conference in Gowhati on June 6 1994. This was a time when Bangladesh had no treaty with India on sharing Ganges water, and India unilaterally withdrew water at Farakka as they wished. 30-year Ganges water sharing treaty was signed in December 1996, which gave a somewhat acceptable solution to Ganges water sharing. The provisions of the treaty unequivocally expressed resolve of both sides to solve the problems of common rivers specially water sharing issue through mutual consultations and negotiations, and not to do anything detrimental to either side, specially lower riparian. But we failed to raise or even hint at the issue of India's grand design which, if ever implemented, would create consequences, equal to half a dozen Farakka combined together, strangling the existence of Bangladesh.

It is only after The Daily Guardian in London had published a report on July 24, 2003, on India's grand water diversion scheme that we showed some reactions, which, inter alia, included a protest note to India on August 13. Indian President could never have enthusiastically spoken of India's water diversion plan in a ceremonial speech on the eve of her national day, which he did, nor the India Prime Minister could so nationalistically declare his resolve to take up the project on war footing, which he actually so resolved, nor the Supreme Court of India in a public litigation case on water sharing dispute between Tamil Nadu and Karnataka could instruct the Indian Government to complete the diversion project within ten years, had there been no development in the minds as well as in the practical activities of the Indian Government relating to the project. And we in Bangladesh were all kept in the darkness!

To utter surprise of every one in Bangladesh, Indian side did not even want to include it in the agenda for discussion in any meeting of the Joint Rivers Commission (JRC). India wanted by all means to avoid detailed discussion on her river linking project on the plea that it was only at 'conceptual level' and hence, there was nothing to discuss about. Bangladesh would be consulted, if its interests were affected, they kept on assuring her lower riparian. Were the project at merely conceptual level, devoid of concrete substance and distant from reality, why was India so secretive and sensitive about it, even not ready to mention and discuss the matter?

India knows the possible reactions and repercussions it would generate once the project is fully revealed. She understands the international legal implication of the practical implementation of the project. India knows the project entails massive inter-basin diversion of water of the scale and dimension unknown in history. Task force would only recommend the most optimal of the various alternatives to implement the project. If the issue of diversion of water is clear and India does not hide it, why it cannot be discussed now? The very concept of diversion of water of the common rivers by upper riparian without the consent of the lower riparian is untenable in international law and in equity. It is already a contentious issue. How can talks on it be made contingent upon completion of the work of a task force assigned to work out implementation details of the project?

Let us look back for a while. When on the basis of newspaper reports in the early fifties, the then Pakistan Government protested Indian plan of constructing Farakka barrage, India replied that it was merely a concept, and, therefore, there was nothing to talk about. The same old story. Only difference is that the story this time, if goes uninterrupted, would be many times longer and graver. While Pakistan achieved what it wanted in sharing Indus water with it India by Indus water treaty in 1960, it did not pursue its case as vigorously for Farakka in the Eastern wing. Farakka became a harsh reality and fait accompli. Rivers are life-lines for Bangladesh. In the face of impending danger, Bangladesh is required to act and act in right earnest.

There are many international principles, norms, rules, laws, conventions and bilateral treaties on the regulation of the use of the water of international rivers and on the protection of world environment, which can provide adequate weapons to fight India's plan. Upper riparian cannot interfere with the flow of the river in a way which is substantially damaging to the interests of the lower riparian. This international norm has also been confirmed by the UN Convention on International Water Courses, 1997. Should India decide to go ahead with the project in violation of all norms, and despite the fact that her lower riparian neighbour would face grave consequences, and should there be no formidable force to resist India's environmental aggression, it is imperative for Bangladesh to think of and prepare for various alternatives as countermeasures, including, as it has been already advised by some of our experts, to build a multi-purpose Ganges barrage.

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RIGHTS WATCH

Unseen wounds of abused children

KHANDAKAR KOHINUR AKTER

CHILD abuse or maltreatment constitutes all forms of physical and emotional ill-treatment, sexual abuse, neglect or negligent treatment or commercial or other exploitation, resulting in actual or potential harm to the child's health, survival, development or dignity in the context of a relationship of responsibility, trust or power. Child abuse is the crime of harming a child in a physical, sexual or emotional ways. There are other forms of child abuse like trafficking, child labor and commercial sexual exploitation.

Research shows that child abuse is caused by abusers who suffer from dysfunctions of biological, psychological, or socio-cultural nature. Significant family dysfunction of one sort or another is almost always present in the backgrounds of repetitive abusers. These dysfunctional patterns often do not stop when abused children grow up, but continue in modified form as long as the involved parents are still living. Additionally, borderline personality traits may be characterised by explosive impulsivity and extreme mood changes that whipsaw from loving feelings to hateful feelings when frustrated or angry. Drugs and alcohol unfasten controls, which may lead to abuse.

Poverty and social disparity are common widespread international issues, and no matter the location, show a similar trend in the correlation to child abuse. Although these issues can likely contribute to child maltreatment, differences in cultural perspectives play a significant role in the treatment of children. In certain nations, son preference is also a major reason of child abuse.

It is known that a child can be abused physically, sexually and psychologically. In consequence, children who had been psychologically abused suffer from anxiety, depression, low self-esteem, symptoms of post-traumatic stress and suicidal tendency at the same rate and in some cases, at a greater rate than children who are physically or sexually abused. Among the three types of abuse, psychological maltreatment is most strongly associated with depression, general anxiety disorder, social anxiety disorder, attachment problems and substance abuse. Psychological maltreatment that occurs alongside physical or sexual abuse is associated with significantly more severe and far-ranging negative outcomes than when children were sexually and physically abused and not psychologically abused.

In reference to Bangladesh, Bangladesh Bureau of Statistics (BBS) has been conducted a survey supported by UNICEF in 2012-13. The multiple indicator cluster survey found that one in every three mothers believes that corporal punishment is needed to teach children family rules and social norms. It is also found that to teach discipline and order two-thirds of children aged 1-14 years, are beaten by parents. The survey reported that in Bangladesh over 65% children were assaulted in any way. 4-6 % of children are suffered through physically harsh punishment and 73.6% child are beaten who are under age of 4.

Parents, family members and also teachers physically abuses children which is socially accepted but this mental set-up must be changed as the supreme court also directed rules against such physical assault inflicted to children. Moreover, in 2013 the Children Act has been enacted for the purpose of implementing the rights and obligations under the United Nations Convention on the Rights of the Child. According to section 70 of the act any person responsible for beating, torturing or abandoning a child and consequently if he suffers injury of any kind, will be punishable with five-year of imprisonment or a fine of one lac or both.

But these words seem meaningless when we see a child is killed by offenders in a broad daylight. Of course the rajon killing reminds us the importance of removing the cultural norm or mindset that 'beating children is nothing serious! While in the developed states, incidents of child abuse get utmost attention and care. So differences in these cultural beliefs demonstrate the importance of examining the legal and cultural perspectives while studying the concept of child abuse.

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LAW LETTER

Building Nexus with WTO Regime

Bangladesh is still tender in entering into reciprocal bilateral Preferential Trade Agreements in comparison with multilateral Preferential Trade Agreements. Bangladesh has already entered into several Regional Trade Agreements (RTAs) like Asia-Pacific Trade Agreement (APTA), South Asian Free Trade Agreement (SAFTA) and also multilateral Free Trade Agreements (FTAs) like BIMSTEC Framework Agreement. Most importantly they already have notified WTO under Enabling Clause. Even in respect of BIMSTEC Framework Agreement early notification has been performed. Since they notified WTO under Paragraph 4(a) of Enabling Clause, they secured special preferences under Enabling Clause. At the same time, they have stepped into the shoes of WTO Transparency Mechanism.

Several bilateral Free Trade Agreements (FTAs) are in the offing for Bangladesh. Negotiations have launched for bilateral FTAs with specific countries like Pakistan, Sri Lanka. Trade agreement between Bangladesh and India has entered into force on 1st April, 2006. Entering into reciprocal bilateral agreements with trade giant would be an utmost challenge to sustain her ultimate interest.

Bangladesh has several possible scopes to enter into bilateral preferential trade agreement. At present the scope for establishment of reciprocal preferential trade agreements are being enshrined in Article XXIV of GATT 1994, Article V of General Agreement on Trade in Services (GATS) and Para 2© of Enabling Clause. Except Para 2©, Para 2 of Enabling Clause provides scope to enter into non-reciprocal Preferential Trade Arrangement (PTAs) in the form of General System of Preference (GSP).

Reciprocal preferential trade agreement under Para 2© of Enabling Clause encompasses special sanctity comparing with other mentioned scopes. Unlike GATT Article XXIV, it enables developing countries and least developed countries (LDCs) to enter into PTAs without eliminating internal barriers entirely and without covering all sectors of trade. Even under Para 2(d) of Enabling Clause, LDCs have been conferred special treatment. In particular, LDCs may be required to reduce tariff on a smaller scale than those required of other developing countries. Be a part of existing UN LDCs list, Bangladesh has profound scope to enter into reciprocal bilateral trade agreement under Para 2© of Enabling Clause. But Para 2© ousts developed countries totally from its ambit. Hence to enter into reciprocal preferential trade agreement with developed countries, only the stringent scope under GATT Article XXIV and GATS Article V is available for Bangladesh. Thus she needs to be cautious in case of entering into bilateral reciprocal trade agreements with developed countries under stringent provisions.

Crucial challenge for Bangladesh may be the non-notification of the reciprocal bilateral agreements to the WTO. Though Bangladesh-India trade agreement entered into force on 1st April, 2006, it has not been informed to the WTO yet. Para 4(a) of Enabling Clause demands for the notification of establishment of preferential trade agreements to the WTO. 2006 Transparency Mechanism requires member countries to notify the trade agreement to WTO as early as possible. To incur beneficiary provisions under WTO covered agreement and to protect discriminations, a need for building strong nexus with WTO regime are evident. Notification procedure is such an efficient bridge to step into the shoes of WTO mechanism. Hence the performance of notification requirement is indispensable for bilateral preferential trade agreements to secure beneficial preferences under Enabling Clause and to be an effective part of WTO Transparency Mechanism.

Shuvra Dey

FOR YOUR INFORMATION

How to do mutation of land

RAISUL ISLAM SOURAV

MUTATION means insertion of the name of the new owner in the *Khatiyan* (Record of Rights) instead of the former owner after transferring the ownership of a land. Mutation is indispensable to establish the proprietary rights over the property. Moreover, it is essential to create new holding for the purpose of payment of rent in own name which will avert further complicacy in terms of possession and enjoyment of that land.

Ownership may be transferred through kabala/sell, gift, exchange, will, waqf, inheritance or by the Govt. through settlement of khas land to the landless. However, one cannot claim ownership of a piece of land officially without presenting the document of mutation. Additionally, without mutating the name of the new owner there is high possibility to transfer the property again by the former owner. Because he/she is the documentary owner of that land until the necessary changes took place in the *Khatiyan*. In addition, mutation is essential to transfer, register or payment of tax. Hence it is the duty of the new owner to mutate his/her name in the record of rights properly and cautiously.

Concerned authority to mutate land

Assistant Commissioner (AC) (Land) is the authority where an owner of a land can apply to mutate his/her name in the official record. However, there is an assistant mutation officer in the AC (Land) office who will deal the matter primarily and an officer equivalent to Najir will take the relevant fees for mutation. Nevertheless, an inquiry will be conducted by the *Tahshilder* (assistant settlement officer) to confirm the real ownership of the property before such mutation.

How to apply

To mutate a piece of land, the owner or his/her duly nominated representative has to apply to the AC (Land) in prescribed form collected from the AC (Land) office or on white paper along with court fees worth Tk 100 and mutation fee Tk 25 (after getting approval) accompanied by other required documents.

Additional Tk 1.50 will be required to create and transfer first three divisions from the existing undivided plot/dag. Further Tk .50 will be needed to make every subsequent division. However, the concerned officer will serve notice to the parties and the applicant is obliged to pay the process fee of Tk 1.50 for each. There is no other requirement to pay any further money for mutation.

In the application form the applicant must clearly mention the name and address of the applicant and the transferor, detail description of the land and its surrounding boundary, size, nature and identification of the land, registered deed number and date of such registration.

Moreover, the applicant ought to affix copy of main deed, via deed, copy of *Khatiyan*, receipt of payment of land development tax, proof of means to acquire the ownership i.e partition deed, copy of the decree or judgment obtained from competent court (if any), passport size photograph of the applicant etc. with the application.

It is noteworthy to state that no middleman or extra money is necessary to do mutation of land. Applicant himself/herself can do it by paying only prescribed fees to the Govt. exchequer. However, now 60 days is fixed to finish the whole process of mutation in metropolitan area and 45 days for any other region.

Relief against refusal

If the AC (Land) refuses to mutate the name of the applicant for default of document or for any other reason whatsoever, the aggrieved applicant can apply to the Additional Deputy Commissioner (Revenue) within 30 days from the date of such refusal. However, anyone can apply further to the Additional Divisional Commissioner (Revenue) within next 30 days against the impugned decision of the Additional Deputy Commissioner. Finally the complainant has another forum to appeal to Land Appeal Board within 90 days against an impugned order given by its immediate inferior authority.

Nevertheless, apart from appeal there is alternative option of revision against the alleged decision and any authorise superior officer can alter such order promulgated by the subordinate official after call for the pertinent records. In addition, one can apply for review to the same decision making officer to reconsider his/her decision within 30 days from the date of first decision. However, it should bear in mind that in that circumstance the petitioner will drop his/her right to file appeal.

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