

SNAPSHOT VIEW OF HUMAN RIGHTS BASED APPROACH

Combating climate change impacts

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JAMIL is living on the bank of the Brahmaputra, a fisherman, carrying out his ancestral fishing business over the years. As a breadwinning person in the family, he has to feed several mouths. Moreover, Jamil is deeply rooted in his land. Jamil is in dismay, thinking that his business is no longer like back then when he used to travel to the bottom of Brahmaputra with his father by troller to catch fish. Jamil has a favourite flash back. They came back with baskets filled with fishes, and his father nodding his head told the tale of the daunted local sailor whose heroism melted Jamil's heart, and he wanted to play with the jewel blue stream of the Brahmaputra like this sailor. However, after reaching home, their happiness flourished more to join dining as they found the delicious fish curries on the table. Life changes its colour. Recurrent floods and booming industrial growth are grabbing up the lands and shirking his fishing business. However, this time the flood is devastating than they ever have experience. Their lands swamped up, and people started starving. Surprisingly, although relief workers supplied flood, still they spent time with empty bellies because they had no cooking arrangement. Jamil and his people are gripped by fear and uncertainty. They do not want to lose the sacred connection with their land and people. It would be a scary ride for them if their land would become uninhabitable and they would be forced to live in another place.

Staying apart from ancestral occupation is a peril not only for fear of losing livelihood and being unemployed but also for getting separated from the age-old cultural heritage. Cultural heritage gives people like Jamil the



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meaning of life and for them losing land means the loss of their identity. Northern part of Bangladesh has been facing the aftermath of massive food attack for a couple of months. Embracing human rights based approach is imperative to address the sufferings of the flood affected inhabitants to offer them a dignified them.

While the climate change is already understood as an economic and environmental problem, the tendency to view this phenomenon through the lens of human rights implications has been little. Recently the trend has changed. For instance, the Paris Agreement, an hard-fought achievement, begun speaking the language of human rights in the context of climate change. In December

2015 this agreement took a big leap through the prioritising of human rights, and provided the commitment of encouraging the people centred approach to combat climate change. The heart breaking story of Mr. Jamil indicated that the climate change impacts magnify the sufferings of local people by making their land uninhabitable and even putting their lives in danger. This write up will unpack the integral relationship between climate change and human rights and how this relationship evolves over the years.

The association between climate change and human rights law is a grey area of international law. In 2005 when attacking the United States' environmental policy, the Inuit with the support of the Center for

International Environmental Law (CIEL) and Earth Justice placed a petition before the Inter-American Commission on Human Rights (IACHR). The petition argued that the antipathic environmental policy of the United States is the leading cause of the vast range of human rights infringements of the Arctic communities. Although the claim was rejected, it ignited consciousness within concerned bodies of the need to evaluate the connection between climate change and human rights. On the other hand, although the steeply rising green-house gas emissions (GHS) are responsible for the less habitable conditions of states with vulnerable ecosystems, it is a complex task to assess how a single polluter contributes to the plights of

certain populations. However, the Inuit petition is a compelling step toward making liable high emitters such as the US and China for climate change effects around the world.

However, despite the law related complexities, respect to humanity embedded in a broad spectrum of human rights principles echo the regional friendships and moral values of nations across the globe. For instance, Australia as a high emitter state takes the burden of its affected neighbouring countries to assist them in strengthening culture resilience and, when the land of these neighbours turn uninhabitable, they will take steps to ensure their orderly migration. As an early stage of this process, Australia has launched a Kiribati Nursing Initiative (KALI) allowing young Kiribati citizens to study nursing at Australia's tertiary institutions. The islands of Kiribati, which are at the risk of disappearance, through this nursing scheme can ensure their inhabitants get access to the skilled migration programme of Australia and other countries. Rather than imposing 'one-size-fits-all' model, this policy introduced by Australia thus tailors the schemes to the need of the individual community. Hence, States nourishing the good neighbourhood principle can reduce the psychological vulnerabilities of their closest neighbours arising from their climate change contribution. Bangladesh is already in the survival threat due to the excessive emissions of industrial States, and the ramifications we are incurring now in the form of a recent flood attack. I wonder during this turmoil, would Bangladesh be ambitious if it expects support from its neighbouring States?

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LAW ANALYSIS

Challenges for the existing filial law

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BANGLADESH, being known as one of the most densely populated country in Asia, with its traditional socio-cultural structure and religious values has persistently fostered the family system. The elderly and parents of the families have always been endowed with the respected social position and valued with proper care and attention. However, at recent times in Bangladeshi societies, there are instances of abuse of elderly of family in general and parents in particular. Bangladeshi legal framework has not comprehensively addressed the issue yet except enacting the Maintenance of Parents Act in 2013. The said Act has put responsibility of providing maintenance to the parents on the children, both reasonably capable son

process is another drawback of the legislation. Social costs of getting legal punishment are huge and may make further distance between the parents and the children. Instead, pre-court alternative dispute resolution procedures would have been a better option for all the parties concerned. However, the instant Act provides compromise procedures after the written complaint submitted to the court.

Irrespective of performing parental obligations, the parents may claim the maintenance from the children under this law. Logically, a question may be raised that if the parents did not perform their own responsibility, should they be entitled to claim maintenance from their children? Bangladeshi law does not expressly address the issue. Furthermore, legal protection under this Act is only extended to the biological parents. The



and daughter. It has further prescribes that no children can separate their parents or force them to live in old homes. Certainly, such filial piety legislation is a good initiative but legal provisions alone cannot solve the problem. Moreover, the 2013 Act has some loopholes for which the main purpose of this Act may be frustrated.

Most religious laws, as applicable in Bangladesh, either deprive or discriminate the female population in respect of right to property. In absence of equal rights in inheritance, how the obligation of providing maintenance by daughter as envisioned by the Act may be discharged? As per the socio-economic conditions of Bangladeshi, girls are generally economically dependent and incapable of bearing any obligation to her natural father's family after her marriage.

The said Act has also extended legal obligation of maintenance to the grandparents in the absence of parents. Many consider it as burdensome for the grandchildren. In Bangladeshi societies, people are struggling with high level of costs of living along with other critical issues due to low level of economic development. The current social scenario makes the undertaking of such huge responsibility by the grandchildren rather uncertain. Unlike other filial laws as applied in different countries of the world, failure to provide maintenance to the parents is an offence as per the Act of 2013. Thus, criminalising whole legal

Act does not applicable to step parents or adoptive parents even if they have duly performed their parental obligations. Point to be noted that Hindu Shastric Law does not discriminate between natural parents and adoptive parents; but the Act of 2013 impliedly makes distinction between them.

As per the 2013 Act, a court cannot take cognizance of any complaint unless written and filed by the parents. What if the victim parents are incapable to file a complaint, is anyone allowed to file it on their behalf? Our law is totally silent on this issue. Quite logically, it would be difficult for the parents in Bangladeshi social context to file complaint directly because of their lack of legal knowledge, illiteracy and socio-economic condition.

The Act does not prescribe any mechanism to ensure speedy and quick trial. The long procedure of getting remedy may inject fresh physiological sufferings to the parents. Certainly, elderly parents need quick legal remedy to reduce their sufferings. From 2013 to current time, there are very few suits instituted in the court under this Act. It demonstrates that law has earned little success in obtaining its purpose. It is, therefore, high time for our government to take necessary initiatives including amendment to the existing law.

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FOR YOUR INFORMATION

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A case diary is written as the investigation progresses. The case diary is prepared by the responsible police officer in course of investigation. The case diary carries relevant entries about the time of investigation, place visited by the investigation officer, people met by him, people interrogated by him, evidence collected during investigation, time and place of meeting with the witnesses, time and place of meeting with the informant and so on. The investigation officers do not have any discretion to take decision as to whether he will or will not record the events during investigation in the case diary.

It is, therefore, obligatory to record the case diary every day when investigation is taken place. The writing up of the case diary must not be held up at the end of the day. It is always wise to write up the case diary in the place where investigation is conducted. The quick and immediate writing up of case diary truly reflects the nitty-gritty of the police investigation. Sometimes the investigation officers neglect the examination of the witnesses on the first day of the visit of the place of occurrence and after consuming days together record the statements in a single day. This process is totally unauthorised and violation of section 172 of Code of Criminal Procedure (CrPC), 1898.

In every case the investigation officers must record the statements of the witnesses present expeditiously on the first day or the following day if the FIR discloses the names of the witnesses who are acquainted with the facts of the case. Section 157 of the Evidence Act 1872 in an unambiguous language states that the admissibility of a previous statement that should have been made before an authority legally competent to investigate the

Case diary: Mirror of investigation



fact 'at or about the time', when the fact to which the statement relates took place. The object of this section is to admit statements made at a time when the mind of the witness is still so connected with the events as to make it probable that his description of them is accurate. But if time for reflection passes between the event and the subsequent statement, it not only can be of little value but may be actually dangerous and as such statement can be easily brought into being.

Moreover, as the case diary is a confidential document, so it may not be claimed by the accused person at any time for the purpose of assessing and scrutinising its entries. A criminal court is free to ask for the case diary at any stage of the proceedings. But, the case diary cannot be used as evidence in the trial. The entries of case diary may not be referred to the court at the instance of the accused person. The accused in such a case can seek permission to use the case diary to show contradiction in the prosecution case. The police officer, therefore, has scope to see the case diary

during his examination-in-chief for the purpose of refreshing memory. If the police officer thinks that his case diary can be helpful in giving appropriate testimony, he may request the court to permit him to use case diary for refreshing memory. Sections 159-161 of the Evidence Act deal with the extent to which, and mode in which, a witness may refer to a writing in order to refresh his memory while giving evidence. Section 159 gives a witness chance to refresh his memory by reference to case diary with the permission of the Court.

A perusal of Regulation Nos. 68 and 264 of the Police Regulations of Bengal, 1943 makes it clear that the diary should contain full unabridged statement of persons examined by the police so as to give the Magistrate a satisfactory and complete source of information which would enable him to ensure complete justice.

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LAW NEWS

CHARITY, like the notions of volunteerism and philanthropy, contributes to the creation of inclusive and more resilient societies. Charity can alleviate the worst effects of humanitarian crises, supplement public services in health care, education, housing and child protection. It also promotes the rights of the marginalised and underprivileged and spreads the message of humanity in conflict situations.

In the 2030 Agenda on Sustainable Development Goals, adopted in September 2015, the United Nations recognises that eradicating poverty in all its forms and dimensions, including extreme poverty, is the greatest global challenge and an indispensable requirement for sustainable development. Moreover, the Agenda also calls for a spirit of strengthened global solidarity, focused in particular, on the needs of the poorest and most vulnerable. It also acknowledges the role of the diverse private sector, ranging from micro-enterprises to cooperatives and multinationals, and that of civil society organisations and philanthropic organisations

Standing by the vulnerable



International Day of Charity
Homage to Mother Teresa

in the implementation of the new Agenda.

The International Day of Charity was established with the objective of sensitising and mobilising people, NGOs, and stakeholders all around the world to help others through volunteer and philanthropic activities with an aim of making the world a better place.

The date of 5 September was chosen in order to commemorate the anniversary of the passing away of Mother Teresa who received the Nobel Peace Prize in 1979 "for work undertaken in the struggle to overcome poverty and distress, which also constitute a threat to peace." For over 45 years she

ministered to the poor, sick, orphaned and dying, while guiding the Missionaries of Charity's expansion.

In recognition of the role of charity in alleviating humanitarian crises and human suffering within and among nations, as well as of the efforts of charitable organisations and individuals, including the work of Mother Teresa, the General Assembly of the United Nations in its resolution A/RES/67/105 designated the 5th of

September, the anniversary of the death of Mother Teresa, as the International Day of Charity.

The UN recognises that in terms of development, governments cannot act alone and that civic engagement — through volunteering & philanthropy — plays an important role in creating the desired global change. By raising awareness about how difficult challenges are, eliminating societal and cultural barriers and building resilience through community action, civic engagement can contribute in this regard.

COMPILED BY LAW DESK (SOURCE: UN.ORG).