

SPECIAL SUPPLEMENT COMMEMORATING WORLD HUMAN RIGHTS DAY 2019

Laws which impose stringent restrictions on rights and liberties do not reflect interest of the people

Barrister Jyotirmoy Barua is a leading human rights lawyer practicing in the Supreme Court of Bangladesh. He is one of the panel lawyers for Bangladesh Legal Aid and Services Trust (BLAST). Barrister Barua has been on the front-line of many leading human rights cases, specially in the field of women's rights and freedom of expression. On the occasion of World Human Rights Day 2019, Pymhe Wadud and Tahseen Lubaba from Law Desk talk to him on the following issues.

Law Desk (LD): Human rights have faced an array of challenges through different world orders. How is the discourse on human rights changing in the present world order?

Jyotirmoy Barua (JB): When speaking about laws and legal framework in general, the state of economic as well as political world order has always been relevant. However, even until the more recent times, the relationship between law and politics has been absent from



the discourse. Needless to say, however, the political situation of a country mostly determines what the laws will be and whether these laws will guarantee the rights of the people. The compliance with human rights for a country, thus,

largely depends on its political landscape. Looking at the global picture, we can say that the discourse on human rights has progressed since the adoption of the Universal Declaration of Human Rights, meaning the concept of human rights has been expanded and newer rights have been recognised. Many subsequent instruments have strengthened the human rights jurisprudence. Countries around the world have ratified and incorporated these instruments and have continued to recognise newer rights. Recently, the Constitution of Nepal has included the right to food as a fundamental right. While the Indian Constitution does not specifically recognise this right, they have adopted the National Food Security Act in 2013 recognising right to food. Therefore, it can be said that positive changes are in fact emerging. However, there are negative impacts of political turmoil on human rights too.

LD: What are some of the challenges to human rights compliance in the present context?

JB: One of the biggest challenges to human rights compliance is the absence of a proper political structure which can harness dissenting voices. A State has various institutions which need to function effectively in order to ensure a check and balance so that the State

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authority itself does not transgress its power. For instance, in our context, as per Article 7 of the Constitution, the people are the source of power and therefore, the laws created should reflect the interests of the people. Laws which impose stringent restrictions on the rights and liberties of the people do not reflect the interest of the people.

LD: How do you assess role of the National Human Rights Commission (NHRC) in protecting people's rights?

JB: The National Human Rights Commission Act 2009 creates some deficiencies which obstructs the effective functioning of the NHRC. The Commission does not have sufficient autonomy, it cannot even employ its own officials. The Act gives the

Commission the power to recommend the State for initiating legal proceedings in connection with a violation - this does not allow for a proper check and balance mechanism for ensuring accountability. The NHRC Act needs to be reviewed in order to provide the Commission with the powers needed to protect the people.

LD: What do you think about national enforcement mechanism for human rights, i.e. judiciary in our country?

JB: The High Court Division does considerable work under its power. While similar power cannot be granted in the lower courts, there may be other mechanisms through which these courts can be resorted to in public interest. One such mechanism is through representative suits. However, when

there is a matter of interpretation of law, the lower court does not have any authority to hear the claims. There have been many landmark decisions handed down by our higher judiciary with regard to human rights, but courts should not be the only forum of redress. The legal system should provide for easier and alternative remedies.

LD: The national as well as international NGOs are seen quite often as defenders of human rights. How do you judge their vigilance in our country's context?

JB: There are a few organisations which work very well in this area and have made great achievements. One example of the contributions made by NGOs is related to combating acid violence. In the 90s, acid violence had become widespread and gained a horrific form. NGOs worked across the country to raise awareness against acid attacks alongside the government. As a result, it has been possible to bring down the number of acid attacks. NGOs are also playing a proactive role in gender justice and working in the field of violence against women and children. However, these NGOs cannot often achieve their ends due to the social and political structure.

LD: Thank you.

JB: You are welcome.

The theme of 2019's World Human Rights Day is 'Youth Standing up for Human Rights'. In the spirit of this theme, to make people aware of fundamental human rights and to provide them with a platform to come forward with their opinions, suggestions, views, and of course criticisms, Law & Our Rights organised a legal write-up competition. The responses we got were overwhelming and among our participants, there were students, professionals, rights activists and even rights conscious ordinary citizens from different sectors. On today's issue, we hence publish the best three write-ups.

Our personal data: Is it safe anymore?

HUMAIRA ANJUM

DOESN'T it happen too often that we are talking about buying a product via messaging apps and the next thing we know an advertisement of the same product pops up in our social media feed? It somewhat feels like someone is keeping track of our conversations but in reality, all forms of our data existing online, for example (but not limited to) our public posts, search histories, private conversations are being accumulated as big data.

Big data is a large volume of structured or unstructured data processed through Artificial Intelligence to acquire useful analysis. These data are used for several purposes - for example, customisation of the advertisements to cater to the requirement of an individual, based on the analysis of Artificial Intelligence. This makes personal data of every individual valuable. The situation of 'Cambridge Analytica' is worth mentioning in this regard. In that case, the Republican election campaign was predominantly based on the analysis of the Big Data of voters through an Artificial Intelligence software, which at the end brought an exceptional outcome. This is why our data is no less than currency to various corporations, businesses and even individuals. However, the real question is, to what extent do these people have the right to accumulate and use our personal data and to what extent do we have the right to protect them?

Evidently, every individual has the right to protect their personal data and their right to privacy as it is considered as one of the fundamental human rights. Article 12 of the Universal Declaration of Human Rights and article 17 of the International Covenant on Civil and Political Rights speak of protecting the right to privacy by stating that no individual shall be subjected to arbitrary interference with his/her



privacy. Moreover, article 8 of the European Convention on Human Rights and article 7 of the European Charter of Fundamental Rights recognise the right to privacy. Furthermore, European Union adopted General Data Protection Regulation (GDPR), a legal framework dedicated to protect individual personal data, which became fully applicable from May 2018 across the countries under European Union. Therefore, as a fundamental human right, no one has the jurisdiction to accumulate any personal data without proper authorisation.

Bangladesh, although is new to the regime of data protection but the right to privacy has been enshrined in our Constitution as a fundamental right under article 43 where it is clearly stated that,

every person has the right to the privacy of his correspondence and other means of communication. Moreover, section 26 of the Digital Security Act, 2018 deems the accumulation or using of 'Identity Information' without authorisation as a punishable offence where the definition of 'Identity Information' is provided in very minuscule manner.

Despite having such laws, our personal data are being used in various ways which we are not even aware of. This happens partly because of our negligence and partly because our data protection laws are not as detailed as the GDPR. Whenever we access a website or an app, we do not always read the terms and conditions or even its privacy policy. Accepting such terms and conditions or privacy policy results in

authorisation given by the user to the app developers. However, most of the times the apps do not clarify the utilisation of our data, making our consent devalued.

The websites using cookies never put up warnings regarding the accumulation of our data every time we log in. We are so dependent on applications like Google, facebook, Instagram etc. that even if we are aware of the accumulation or use of our data, we rarely seem to care. The only way out is an extensive guideline for accumulation, processing and use of our data. Like GDPR, if we also emulate a similar legal framework, our fundamental human right to privacy may as well be protected in the upcoming future.

THE WRITER IS A STUDENT OF LAW, BRAC UNIVERSITY.

Leaving no one behind

TAMAL HASAN

IF we scrutinise only article 27 of the constitution of Bangladesh, it should be enough to understand that every citizen stands equal and must get equal protection of law. Articles 28 and 29 read with article 27 expand the concept of equality and create scope of inclusivity. However, to understand the meaning, interpretation and also the restrictions of the Articles mentioned, we must closely examine the contents embodied within them.

Reading article 27 alone might raise a few questions in a reader's mind, 'will the people working not as hard share equal results?' Or 'what about the whole concept of competition we use everywhere?'. The answer is, it actually talks about a human being in general and their statuses as a human being. And if article 28 is brought in the equation it clarifies further that regardless of religion, race, caste, sex or place of birth, citizens are to be treated equally by the State.

Now, one can bring up a saying of Aristotle which goes, 'the worst form of inequality is trying to make unequal things equal', so is the Constitution allowing



unequal treatment among unequal citizens? Do the provisions in articles 28 and 29 which talk about positive discrimination in favour of women, children and backward, stand against the principles of equality? This can be answered easily if we look into the history and societal structure of Bangladesh. Had they been treated equally and given the equal opportunity to prove themselves to be on the same footing as the privileged stratum of the society, they would have been at the same place. Hence there is room for ensuring measures to bring the suppressed groups in equal footing with others. Every time we see a person

classified as *dalit* getting discriminated on ground of his/her being *dalit* or a woman getting denied of entry into a certain company despite being capable, these are clear violation of Constitution itself and the human rights which actually have their roots embedded in International Convention on Civil and Political Rights (ICCPR), International Convention on Economic, Social and Cultural Rights (ICESCR) and Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) under which Bangladesh, as a signatory has obligations, with a few exceptions. Article 26 of ICCPR talks about the right to equality before

law and equal protection, which is in consonance with our Constitution.

Despite having countless safeguards rooted in international laws, conventions and specifically in the Constitution we see a surge of infringements on the rights of the deserving who need attention of the law. It is mainly because of the lack of awareness and the mechanisms that has been built by the usurpers throughout history to make it difficult for backward and oppressed classes to come forward.

Franz Kafka illustrates a metaphorical scenario in the parable 'Before the law' that the law is being guarded by a corrupt doorkeeper who builds a facade that law is easily accessible but when you need the access, it will always tell you, the admittance in the realm of law isn't possible at the moment without giving any particular explanations. And will keep you giving false hope till the day you die. This can be used to get an idea why even after having so many provisions to empower the different classes in Bangladesh, many are nowhere even close to achieving their rights.

THE WRITER IS A STUDENT OF LAW, UNIVERSITY OF DHAKA.

The strength of human rights education

NAZIA AMIN

HUMAN rights education teaches more than the mere definition of human rights. It enables a person to know about his actual legal rights, ways to safeguard those rights and teaches respect to the rights of others. Without such knowledge, a person can neither claim rights nor protect the rights of others. Female members in the society of Bangladesh must know that they have rights of education, bodily integrity, privacy and dignity. Children should also be taught about their human rights. They must learn what kind of treatment they are entitled to and what responsibilities they have to their fellows. Human rights education should be designed considering the needs of present society. Human rights can indeed ring about positive changes.

Human rights education generally functions in a transformative way. There should be positive changes in families, institutions, job sectors,



relations between employers and employees. Universal Declaration of Human Rights encompasses various facets of human rights from articles 1 to 30. It is the responsibility of human rights educators to let people know about all these facets. When a law student studies the law courses through books and other materials, he/she understands those in a speculative manner. But when he/she gets involved in group study and shares his/her understanding and also listens to other people's discussion, the idea gets clearer. Human rights education from various dimensions should be promoted in this way. Practical trainings should also be included. For instance, when a law graduate engages himself/herself in court practice or pursues internships at law chambers, he/she becomes more knowledgeable with regard to the practical areas of law.

Practical knowledge helps them delve deep into the provisions of law. Another example can be given about clinical legal education through law clinics and moot court societies. Law schools of both public and private universities now-a-days offer courses on mock trial and moot courts. These courses enable the law students to easily understand the court proceedings because they provide practical learning and training. A student becomes expert at searching for and finding out cases, art of examination and cross-examination of witnesses. Practical training being part of human rights education can play the same role. Such training should not only be confined to adults but needs to be inclusive of children also. In consequence, people will have the practice to raise questions on various issues of human rights from an early age.

THE WRITER IS AN LL.M STUDENT, SOUTHEAST UNIVERSITY.