

10TH DECEMBER WORLD HUMAN RIGHTS DAY SPECIAL INTERVIEW

# Reflections on selected aspects of human rights in Bangladesh

**Great achievements demand greater responsibility – if Bangladesh wants to make a mark as a developing country, it has to enhance institutional capacity and ensure higher standards of application and enforcement of human rights and good governance.**

**Sumaiya Khair is a Professor of Law at the University of Dhaka, where she served as Head of the Department of Law from 2009-2011. She has a PhD from the UK where she also studied as a Commonwealth Post-Doctoral Academic Fellow. Her research interest extends to a wide range of fields, such as, access to justice and legal empowerment, refugees and migration, governance and anti-corruption, labour standards, child rights, and gender issues. In addition to her academic engagement, she serves as Adviser, Executive Management, at Transparency International Bangladesh (TIB). On the eve of 10th December World Human Rights Day, Emraan Azad from Law Desk talks to her about some of the contemporary human rights issues relating to Bangladesh.**

**Law Desk (LD): How do you assess the performance of the National Human Rights Commission (NHRC)? Is it exercising its statutory power to the extent it is expected to do so?**

**Sumaiya Khair (SK):** I am afraid the NHRC may not have met the expectations of the people in terms of trust, credibility, and performance. Deficient in financial and human resources, it has been struggling to fulfil its mandate since its inception. Its apparent reluctance to intervene in alleged human rights abuses, including extra-judicial killings and enforced disappearances, by the police, military and specialised security forces on the ground of legal constraints not only compromises its image and credibility, but also contributes to the culture of impunity within which law enforcement and security forces operate. The Commission is also found to shy away from investigating politically sensitive incidents which involve human rights violations. These and other weaknesses essentially contradict the Paris Principles (pursuant to which the NHRC was established), which prescribe a set of standards for assessing the independence and effectiveness of national human rights institutes. The NHRC needs to be vigilant, vibrant and visible and work without fear or favour – only then it can regain the trust and respect of the people.

**LD: Does Bangladesh as a state have any international obligation to address the allegations of enforced disappearances? How?**

**SK:** Bangladesh has witnessed a rise in enforced disappearances, which constitute a cumulative violation of human rights. Enforced disappearance is a crime under international law for which states are obliged to hold perpetrators to account through proper investigation and prosecution. Although Bangladesh is not a signatory to the International Convention for the Protection of All Persons from Enforced Disappearance, it has obligations under other international instruments to which it is party, e.g., the International Covenant on Civil and Political Rights (ICCPR), the Convention against Torture (CAT) and the Universal Declaration of Human Rights (UDHR), to protect rights which are also relevant to enforced disappearance, including the right to life, liberty, security and freedom from torture.

**LD: What are some of the pertinent issues that you expect to be addressed in the upcoming state party (ICCPR) report of Bangladesh to the Human Rights Committee?**

**SK:** State party reports on ICCPR broadly cover the state of core civil and political rights in a given country. I believe the Bangladesh report would be no exception. Some of the key issues which have been addressed before and may potentially be raised again include steps taken by the government to address – impunity in cases of extrajudicial killings; arbitrary arrests and detention; enforced disappearances; custodial torture; freedom of expression; and protection and repatriation of the Rohingya. Rights of women, children, persons with disabilities, and minorities always evoke special interest. More recently, the persecution of individuals based on their sexual orientation has raised serious concerns, and as such, may well form part of the discussion. The Committee might also want to see to what extent Bangladesh has been successful in implementing the Committee's earlier recommendations, as stated in its concluding observations issued to



Bangladesh during its review.

**LD: How do you evaluate the future of the Rohingya repatriation and the example Bangladesh could set with regard to the standards for voluntary and safe repatriation of refugees?**

**SK:** Any repatriation initiative must be preceded by a change in circumstances which had triggered the flight in the first place. The change must be fundamental, durable and effective. The core components of "voluntary repatriation" are return in safety and with dignity, without which the return may not be sustainable. To date we have not seen any shift in the political and security context of Myanmar which would indicate the restoration

of conditions conducive to voluntary repatriation. Although Bangladesh is keen for the Rohingya to return safely, the future of repatriation initiatives is uncertain given the lack of political will on the part of Myanmar to recognise the Rohingya as its citizens and to take them back with full protection of their physical, legal and material integrity.

Bangladesh is not party to the Refugee Convention or its Protocol, but it has explicitly complied with the principle of non-refoulement by admitting the Rohingya into its territory. It can similarly set a good example by engaging with the Rohingya to prepare them for voluntary repatriation, keeping

them informed about the status of repatriation efforts, and ensuring their representation in appropriate decision-making platforms. Until it is safe for them to return to their country, the voices of the Rohingya must be heard, supported and spread. Bangladesh has been persistently seeking international cooperation to reach a permanent solution to the Rohingya problem, but responses from global and regional powers have so far been inadequate. This essentially undermines and derogates from the burden-sharing principle. Bangladesh needs to break this inertia by continuing its talks with both the international community and Myanmar to find sustainable solutions to this prolonged problem.

**LD: As Bangladesh will be graduating to a developing country from the LDC soon, what sorts of human rights concerns do we have in the post-graduation period?**

**SK:** In the fifty-one years since independence, Bangladesh has achieved many things for which it can be proud of. However, its performance in the context of good governance and human rights has not been so encouraging, primarily due to corruption, politicisation of key institutions of accountability, erosion in the rule of law, and slack regulatory control. These weaknesses find expression in key indices which assess a country's performance in selected thematic areas. For example, Bangladesh has ranked 127<sup>th</sup> out of 140 nations on the World Justice Project Rule of Law Index 2022, dropping by two points from last year. It has slipped ten notches in this year's World Press Freedom Index, ranking 162<sup>nd</sup> out of 180 countries. Bangladesh has ranked 147<sup>th</sup> out of 180 countries in the 2021 Corruption Perception Index, one position lower than in 2020. Great achievements demand greater responsibility – if Bangladesh wants to make a mark as a developing country, it has to enhance institutional capacity and ensure higher standards of application and enforcement of human rights and good governance.

**LD: Thank you.**  
**SK:** You are welcome.

**The theme of 2022's World Human Rights Day is 'Dignity, Freedom, Justice for All'. In the spirit of this theme and to provide people with a platform to come forward with their opinions, suggestions, ideas and of course criticisms, Law and Our Rights organised a legal write-up competition. The submissions were overwhelming and among our participants were students, professionals, rights activists, and even rights conscious ordinary citizens from different walks of life. On today's issue, we publish the best two write-ups.**

## Human rights to flourish democratisation

TAREQ HASAN

A right is a claim that we are justified in making. Based on the principle of respect for individuals, human rights are standards that recognise, promote and protect the dignity of all human beings. Enjoying human rights does not depend on the wish of any entity such as the state and others. Adopted on 10 December 1948, the Universal Declaration of Human Rights (UDHR) is considered to be the first formal global document to set out a cluster of rights to be universally recognised, promoted and protected.

In our post-independent Constitution of 1972, democracy was enshrined as a fundamental principle of state policy. That we value democracy as one of the constitutional bases is well-reflected, among others, in Preamble, arts. 11 and 59 of our Constitution. Preamble categorically reminds us '... to realise through the democratic process a socialist society, free from exploitation a society in which the rule of law, fundamental human rights and freedom, equality and justice, political, economic and social, will be secured for all citizens.' Art. 11 reinforces this idea of democracy and art.59 mandates the rule of peoples' representatives at all administrative levels to make the democratic system all-encompassing.

We have had 11 parliamentary elections in the history of Bangladesh. However, even the governments formed with the consent of the people are often alleged to have not upheld the democratic ideals of respecting peoples' rights, the rule of law, transparency, accountability, and social justice. The prerequisite of a democratic polity is free, fair and credible elections, which serves as the mechanism to create a government with the consent of the people. Whether a government is truly democratic depends on what it does or does not do in between two elections.

In the political history of independent Bangladesh, emergency was formally declared several times. During those states of emergency, the president made special laws containing several injurious sections to govern the country. These laws were argued contrary to a range of international human rights standards and norms by the higher courts in the country.

For a true democratic system to flourish, every government must facilitate citizens to enjoy fundamental human rights so that we as a nation can uphold the spirit of liberation war which was, in accordance with the Proclamation of Independence (1971), fought to 'ensure for the people of Bangladesh equality, human dignity and social justice'.

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## Protection of human rights through good governance

JULIAN RAFAH

The concept of 'good governance' has two aspects. The first aspect is related to the *form of the government* which is best represented by liberal democratic governance that includes principles such as propriety, transparency, participation, effectiveness, accountability, and human rights. The second one concerns the *functioning of the government* with efficiency in combating corruption and caprices to protect the core principles of good governance.

There is a strong link between the principle of good governance and human rights. The legal provisions protecting human rights include different forms of good governance. The preamble to the Universal Declaration of Human Rights (UDHR) recognises that inherent dignity, equal and inalienable rights of all members of the human family are the foundations of freedom, justice, and peace in the world. Arts. 1 and 2 of the UDHR ensure due care, legal certainty, and equality, while arts. 6, 8, 14.1, 21.1-2, and 29.1 guarantee public participation. Arts. 22, 25.1, and 30 warrant transparency, accountability, and effectiveness which are all good governance-spirited principles. Thus, the concepts of good governance and human rights are mutually reinforcing.

Our Constitution's commitment to the idea of constitutionalism is undeniable as it is reflected in art. 7 which talks about 'constitutional supremacy'. The legislature's power to amend the Constitution under art. 142(a)(ii) has been limited in nature. Given the separation of power under art. 22, the Constitution also provides for a system of checks and balances among the organs and it is exemplified in art. 102 by conferring on the Supreme Court the power of judicial review to declare any action by the executive or legislature as illegal. However, the power of judicial review is not extended to the domain of fundamental principles of state policy, and due to this, we have perhaps failed to assist the promotion of good governance, for example, in regulating the process of free and fair elections through the regulation of political parties.

Shortcomings, however, are also prevalent with respect to ensuring the effectiveness of the judicial and administrative processes, and curbing corruption. Although art. 77 of the Constitution creates scope for the institution of the Ombudsman, this has remained unimplemented to date.

Even though the Constitution is compatible with the notion of good governance as far as the liberal democratic framework of governance is concerned, it has a few deficiencies in delineating governmental function in curbing corruption and caprices.

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