CONSTITUTIONAL RIGHT

The reality of the right to education in Bangladesh

As Bangladesh considers a constitutional reform after the July revolution, it may be the right time to evaluate the inclusion of education as a fundamental right. Given the nation's socio-political development since independence, it is an opportune moment for the state to rethink the position of education within the country's legal framework.

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Recognising education as a human right is crucial for both individual and societal development. The right to education is a universally recognised right, enshrined in various international human rights documents, including Universal Declaration of Human Rights (UDHR), International Covenant on Economics, Social and Cultural Rights (ICESCR) and Convention on the Rights of the Child (CRC). These frameworks mandate the compulsory nature of education and set a global standard for ensuring equal access to education for all. They emphasise education not only as a fundamental human right but also a pathway to equality and empowerment. However, in Bangladesh, the vision remains more as an aspiration than a reality. Although the state has woven threads in expanding educational access, a question persists: 'Is education truly a right or merely a privilege?'

'Education' is mentioned in Article 17 of our Constitution which directs the State to establish a uniform, mass-oriented education system that is universal and free for all children. However, it has been classified as one of the Fundamental Principles of State Policy, meaning it acts more like a guiding principle than a right to be legally enforceable through the judiciary. Since these principles are not enforceable in a court of law, per Article 8(2), this right lacks the same legal weight as a judicially enforceable fundamental right mentioned in the Constitution. This creates hardships for the citizens to hold the government accountable for depriving them of this right and its lapses in fulfilling its relevant commitments. In contrast, education is constitutionally recognised as a Fundamental Right in many countries, including our neighboring ones such as India and Nepal. India, for instance, recognised education as a fundamental right by incorporating Article 21A through a constitutional amendment in 2002. A measure of this magnitude has led to the enactment of the Right of Children to Free and Compulsory Education Act, 2009, placing a binding obligation on the government to ensure free and compulsory education for all children aged between 6 to 14. Similarly, Nepal's Constitution explicitly recognised education as a fundamental right in 2015 and guaranteed free and compulsory education up to the secondary level. Despite taking notable progressive steps including stipend programs and school feeding programs, Bangladesh has yet to undertake such specific constitutional approach or legislative measures.

Primary education has been made free and compulsory through the Primary Education (Compulsory) Act, 1990, but this only scratches the surface of the problem. According to a report by Bangladesh Bureau of Statistic, the number of students' dropout rate rose by more than threefold from 2019 to 2023. The underlying reasons for such increase includes, financial burden faced by many families, particularly in the rural areas. These families struggle to afford the hidden costs of "free" education.

Furthermore, merely providing access to education without ensuring quality is insufficient. Indeed, the government initiated the adoption of the National Education Policy 2010 to establish a standardised educational system across the country. Drawing on Sustainable Development Goal 4, the policy aimed at creating a uniform and inclusive system that addresses the educational needs of all across different socio-economic groups. Despite all these efforts, the implementation of the policy remains in challenges. These limitations are evident in the inconsistent policy enforcement due to the accountability deficit. Neither the law nor the policy outlines a clear accountability measure, resulting in required impact. At the core of these issues, lie the absence of constitutional protection for the right to quality education.

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LAW AND MORALITY

Legality of 'assisted suicide' in Bangladesh

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The concept of 'euthanasia' or intentionally ending a person's life to relieve suffering, is not new. The term was first coined by Francis Bacon, referring to a situation where a doctor helps a patient to end their life. There are different forms of euthanasia. 'Voluntary euthanasia' implies a situation where the patient gives consent to end their life, while in case of 'non-voluntary euthanasia,' no consent is taken. Euthanasia can also be classified as 'active' or 'passive.' Active euthanasia involves using lethal methods, like giving a toxic dose of medication, while passive euthanasia involves withdrawal of treatment or life support, allowing death to occur naturally.

Several countries have legalised euthanasia in different ways. In Netherlands, doctors can perform euthanasia for patients experiencing unbearable suffering and petitioning for the same, provided that another doctor must confirm that all legal requirements are met. Minors aged 12 and above may also request for euthanasia under strict conditions. In Belgium, similar rules apply, but euthanasia is also allowed for patients with psychiatric conditions or chronic illnesses, not just terminal illnesses. In 2014, Belgium extended the law to allow euthanasia for minors in certain cases. Canada legalised euthanasia in 2016 under the Medical Assistance in Dying (MAID) law, which allows adults with severe, incurable conditions to request assisted dying. The Supreme Court of Canada ruled in Carter v Canada (2015) that denying the right to assisted suicide is unconstitutional.

In India, the Supreme Court allowed passive euthanasia under certain conditions in the Aruna Shanbaug case in 2018. The court gave guidelines for when life support could be withdrawn, but the decision must be made by close family members or doctors and approved by a medical board and a judicial magistrate. However, critics argue that allowing a spouse to decide could be risky, considering the high number of spousal murders in India.

In Bangladesh, current criminal laws impose penalties for intentionally causing someone's death, regardless of whether the person consented. If a doctor performs euthanasia without consent, it may be deemed justifiable under section 92, though this section does not permit a doctor to intentionally cause death. The idea of legalising euthanasia in Bangladesh faces some additional challenges. Apparently, the prevalent social and religious values strongly oppose taking a life, even with consent. In addition, the right to life, as guaranteed in the constitution, is not seen as including the right to die. In his book 'Constitutional Law of Bangladesh,' Mahmudul Islam argues that the "right to life" does not include the right to die, but rather ensures the right to live with dignity. This viewpoint mirrors the ruling in the Pretty v United Kingdom (2002), where the European Court of Human Rights determined that the "right to life" cannot be interpreted as encompassing a right to die, whether through the involvement of a third party or with the assistance of public authorities.

Indeed, the issue of euthanasia remains a contested one— one where law and morality meet and at times, part ways.

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RIGHTS WATCH

Ensuring judicial oversight in lawful interception

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During the July-August mass uprising in Bangladesh, there were widespread concerns among citizens that phone calls and internet activities were under government surveillance, sparking fears of potential detention by the law enforcement based on information so acquired. While spyware refers to malicious software designed to gather information about a person or organisation and send it to another party, often violating the user's privacy, lawful interception involves the authorised, legally approved monitoring of telecommunication services by the government agencies. It is crucial to review the current legal framework for lawful interception in Bangladesh and emphasise the urgent need for judicial oversight to ensure compliance with these standards.

Lawful interception has become an important tool for the law enforcement agencies and other government services around the world for investigating and prosecuting criminal activities and terrorist operations. The concept of lawful interception has been introduced in Bangladesh by amending the Bangladesh Telecommunication Amendment Act 2001 in 2006. The newly inserted section 97A of the Act allows the government, in the interest of national security or maintaining law and order, to authorise law enforcement, intelligence, or national security agencies to intercept, record, or collect information from telecommunications service providers. The service providers are legally required to comply with these orders. This provision overrides any conflicting regulations in other laws. Notably for the purpose of this section, the government implies the Ministry of Home Affairs. Although our law allows lawful interception and also has established a monitoring center, still there is no discussion regarding judicial oversight mechanisms for lawful interception activities. Judicial intervention is crucial because the right to privacy is enshrined as a fundamental right under Article 43(b) of our Constitution. It has been echoed in the Aynunnahar Siddiqua and Others. v Bangladesh (2016) that, the right to privacy is an essential foundation of the freedom of dissent. So, this right cannot be undermined in the name of surveillance. The Supreme Court of India's 2017 ruling in Justice K.S. Puttaswamy v. Union of India case further highlights that any interception must meet the criteria of legality, necessity, and proportionality to avoid infringing on individual privacy rights.

Furthermore, there are genuine reasons to be concerned over the deployment of such surveillance mechanisms without any judicial oversight as we have experienced plenty of allegations of abuse of authority against members of our law enforcement agencies. Over the last 15 years, rights groups have listed plenty of cases in which people have been charged with sedition for criticising the government activities on social media. Without legal safeguards, putting in place such surveillance systems aimed at suspected anti-state activities carries serious risks of innocent victims being harassed.

Additionally, under the comprehensive telecommunication licensing guidelines introduced by the Bangladesh Telecommunication Regulatory Commission (BTRC), surveillance is not limited to social media activity but extends to a wider array of telecommunications, allowing interception of various forms of communication across multiple diverse platforms.

It is undeniable that lawful interception is essential for national security however when it does not meet the test of legality, necessity, and proportionality it raises serious concerns. In this scenario, it is recommended that a specific legal framework is established whereby surveillance activities are made subject to the said principles. Currently, in practice, the Ministry of Home Affairs holds the sole authority to issue lawful interception orders. However, the legal framework does not clearly outline the process for issuing such orders or provide guidelines on related matters. It is essential to ensure judicial oversight when fundamental constitutional rights are at stake. To introduce accountability in the interception process, a review committee can be formed with representatives from higher judiciary judges, senior officials from the Ministry of Home Affairs, and law enforcement agencies. This committee would review interception orders, and if an order is deemed unjustified, it could mandate the destruction of intercepted materials. A clear timeline should also be set for the committee to review such orders to ensure timely oversight.

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