

## THE LEGAL FRAMEWORK AND POLICY IN BANGLADESH FOR HUMAN RIGHTS

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### Abstract

*Human rights accrued simply by born against which equal treatment is treated as a binding law. Primary responsibility goes upon the state to protect the human rights for its citizens. The court will be at the helm to check the infringement of human rights. The Constitution of Bangladesh declares the equal rights for all citizens without any discrimination. Commensurate policies and by-laws have been enacting in this regard. Human rights violation is a core bar for sustainable development. Equal treatment, especially in case of penalty/crime, must be ensured for having an exploitation free society. Economic and social justice is to be considered in a parallel way along with regular transparent-competitive-participatory election process for democratic practice in order to flourish a human-rights friendly society. In this regard, an intensive effort comprising of all sectors including government, NGOs, and civil society is a time befitting demand.*

**Keywords:** human rights, inherent, equality, accountability, development.

### 1. PRELUDE

Rights are the just claims those are to be desired by the concerned. Human rights are those just claims accrued simply by born as a human being as well as those claims are indispensable with the human life. Human rights are inalienable (i.e. cannot be transferred, forfeited, or waived) & inherent (Sieghart, 1983;1), indispensable (S. Mondol and R. Mondol, 2006;31), universal (Henkin, 1999;122), indivisible & self-evident. The normative presumption on universality enshrined in the UDHR that “All human beings are born free and equal in dignity and rights” (UDHR, 1948, Article 1) is treated as a binding law in the international human rights treaties of the UN. The human rights (i.e. right to life, right to speech, right to pure food, right to move etc) are put in some frame works (i.e. laws, treaties, covenants) for strengthening the possibility of enjoyment. Primarily state is under responsibility for paving the passage of enjoyment of the human rights for its citizen in domestic arena

and international community/institutions as well maintain a pivotal role for human rights in international arena. The court of law will overview the same frequently to ensure the feasibly enjoyment of human rights as well as the court of law may also take stern action in this regard. In this article, I will make a review over the state of human rights from the very inception of birth of Bangladesh till now emphasizing the necessity of study of human rights, historical perspective, normative & instrumental framework of promotion & protection of human rights, constitutional framework & judicial activism regarding human rights, mechanism for implementation of human rights, role of human rights in development and prospective measures to upgrade the human rights condition of Bangladesh.

### 2. SIGNIFICANCE OF HUMAN RIGHTS

Human beings accrue the human rights inherently by born irrespective of caste, color, nationality, religion, sex or other grade and thus

all the human beings are entitled to human rights without any discrimination. One of the core purposes of the United Nations is thus to sustain security and peace internationally through promoting and encouraging respect for human rights as viewed in Article 1 of the United Nations Charter. The pillar of freedom, justice, and harmony of the world is rest on the proper recognition of the inherent and inalienable rights of human society without classification as depicted in the preamble to the Universal Declaration of Human Rights ('UDHR').

### 3. HISTORICAL GENESIS OF HUMAN RIGHTS IN BANGLADESH

The British ruled the Indian Subcontinent (comprising present Bangladesh part among others) as a colony over centuries and the citizens of the colony were generally deprived of human rights. As for example, the desire of the local farmers of the subcontinent was negligibly honored as the British in order to accrue heavy profit from the then high demand Indian dye compelled the citizens of the subcontinent to grow cash crops like '*neel*' (originates from Arabic word 'al-nil' that means 'blue') that occasioned historic *Neel Bidroh* ('Indigo Revolt') (Faruque, Nafisa; 2018). India and Pakistan got independence in 1947 from British but Bangladesh remained a part of Pakistan (the then East Pakistan now Bangladesh) around 24 years. Within this span of time, the citizens of Bangladesh could not ultimately enjoy the human rights in practice. The best instance is that the party led by the founder of Bangladesh Bangabandhu Sheikh Mujibur Rahman despite won a triumph with outright majority in the General Election for the National Assembly could not form the Government due to vehemently resistance by the West Pakistan rulers. Ultimately the East Pakistan – now the People's Republic of Bangladesh – got independence in 1971 through sacrifice of lives of millions of its' gallant sons, and in exchange of modesty of lacs mothers and sisters of this soil (Linton, 2010; 194). However,

Bangladesh has obtained independence around 48 years but it has been unable to uphold the human rights in a satisfactory level till now as for example reportedly 155 persons were killed extra-judicially in 2017 in Bangladesh (Odhikar Report, 2017;30).

### 4. AN OUTLINE FOR PROMOTING AND ENCOURAGING HUMAN RIGHTS OF BANGLADESH

The Constitution of Bangladesh is the supreme law of the land as per Bangladesh Constitution, art.7. Art.7(2) also asserts that any law repugnant to the constitution is void *ab initio*. The constitution depicts equal rights of the citizens without any discrimination. Despite having constitutional guarantee, exclusion based on background prevails over the country. The pertinent example may be in this regard that a special-background-student despite obtaining qualifying marks in the admission test is not allowed to study Bangla Literature at Dhaka University. However, the following laws-policies are also available in Bangladesh for promoting and encouraging human rights:

- National Women Policy, 2011;
- National Children Policy, 2011;
- National Human Rights Commission Act, 2009;
- Anti-Corruption Commission Act, 2004;
- *Aingoto Sohayota Prodan Ain, 2000* [The Legal Aid Act, 2000];
- Anti-Terrorism Ordinance, 2008;
- *The Nari-o-Shishu Nirjatan Daman Ain, 2000* [The Women and Children Repression Prevention Act, 2000];
- *Acid Oporadh Domon Ain, 2002* [The Acid Crimes Prevention Act, 2002];
- The Child Marriage Restraint Act, 2017; and
- The Dowry Prohibition Act, 2018.

### 5. CONSTITUTIONAL FRAMEWORK OF BANGLADESH AND HUMAN RIGHTS

### **5.1 Are Human Rights Provisions into the Constitution of Bangladesh was a unique?**

The inclusion of human rights in the constitution of a country obviously bears special significance. Such constitutional inclusion provides human rights with a higher degree of protection. It keeps them beyond the reach of easier and frequent changes by the legislature. Constitutional inclusion of human rights standards also 'provides a focus for discussing those issues and their implications within the political system (Feldman, 2007). Incorporating certain provisions regarding human rights in the constitution has become an established norm of constitutionalism in the 20<sup>th</sup> century. Human rights have been incorporated in national constitutions both in justiciable and unjusticiable forms. The Constitution of Bangladesh was adopted in 1972, the middle of the latter half of the 20<sup>th</sup> century, when the International Bill of Rights has already been adorned by its three stage lockets of the Universal Declaration of Human Rights, 1948 (hereinafter 'UDHR'), International Covenant on Civil and Political Rights, 1966 ('ICCPR') and the International Covenant on Economic, Social and Cultural Rights, 1966 ('ICESCR'). At the time of adoption of the Constitution of Bangladesh, 'there was a marked global increase in awareness for the need to protect human rights and fundamental freedoms (Naidu, 1987). Since the advent of the two Covenants in 1966, very few if any national constitutions have been adopted that have failed to include human rights provisions. The Constitution of Bangladesh is the supreme law of the land, which contains provisions regarding human rights in different forms. The insertion of different human rights provisions into the Constitution of Bangladesh was not a unique event in the context of the development of human rights.

### **5.2 An Analysis of the Provisions Regarding Human Rights in the Constitution of Bangladesh**

The Constitution of Bangladesh contains provisions relating to human rights in three different parts including the preamble. The preamble asserts the pledge to secure fundamental human rights as an aim of the state. Specific human rights are listed in the Constitution either as fundamental rights or as Fundamental Principle of State Policies (FPSP). Human rights contained in the FPSP chapter (Part II; Bangladesh Constitution, art.8-25) (i.e. principle of ownership, rural development, free & compulsory education, equality of opportunity) are not judicially enforceable - not judicially enforceable does not necessarily mean that state is at liberty to refrain from implementing these rights for ever; whereas the human rights contained in the chapter on fundamental rights (Part III-; Bangladesh Constitution, art.26-47A) (i.e. inconsistent laws with fundamental rights void; equality before law; principles of non-discrimination; right to protection of law, life, liberty; freedom of movement, assembly, association, thought, speech, profession, religion; property right etc.) are judicially enforceable. As it has been mentioned earlier, according to the new article 7B of the Constitution all provisions of all of these three parts fall within the category of basic structures of the Constitution which are completely non-amendable. Any aggrieved person may file application (Writ) before HCD of the Supreme Court of Bangladesh under article 102(1) of the constitution for enforcing any fundamental right save during emergency.

### **6. JUDICIAL ACTIVISM AND HUMAN RIGHTS IN BANGLADESH**

The exponent of judicial activism Chief Justice Marshall of the United States observed in Marbury v. Madison (1803) case that it is for the court to say what the law is. The concept of judicial review may also be reckoned from this observation. Judicial activism depicts the proactive role played by the judiciary in ensuring that rights and liberties of citizens are protected. Judiciary is in the pivotal point to ensure social

justice. Public Interest Litigation ('PIL') is one of the significant examples in this regard. PIL is the process where any third party may fight for the aggrieved people. Moreover, Supreme Court (being guardian of the constitution - the supreme law of a country) can take necessary step *sou moto* that means taking initiative spontaneously. Judicial activism in Bangladesh basically plays a significant role in promoting and protecting different human rights among those protection of women rights, right to secure life, right to minorities, and protection of prisoners' rights are more pertinent to mention here.

## 7. FRAMEWORK FOR HUMAN RIGHTS IN BANGLADESH

### 7.1 Legal & Policy Framework for Implementation of Human Rights in Bangladesh

Implementation of the rights is the obligation and sovereign right of each state itself (Henderson, 2005). The human rights treaties are legally binding and the state parties to these treaties are responsible for their implementation. Thus, the state and its agencies are called "duty bearers". States are the main actors within the arena of international law that have the primary obligation to implement human rights and this obligation has three aspects: to respect, protect and fulfill the human rights. This tripartite typology was introduced by Shue in his book "*Basic Rights: Subsistence, Affluence and US Foreign Policy*" (Shue, 1996; 52) and then developed by Eide (1987; 68). Implementation mechanism of human rights in Bangladesh is diversified as follows:

- Implementation of Human Rights under the Bangladesh Constitution;
- Implementation through Public Interest Litigation (PIL);
- Enacting National Laws in Conformity with International Instruments;
- Ratification/Accession to International Human Rights Instruments;

- Application of International Human Rights Law in Domestic Courts; and
- Implementation through Legislative and Policy Framework etc.

### 7.2 Institutional Framework for Implementation of Human Rights in Bangladesh

Human rights in Bangladesh are implemented also through some institutional framework like NHCR, ACC, IC.

- ❖ **NHRC** stands for The National Human Rights Commission of Bangladesh. The NHRC is consistent with the Paris Principles Relating to the Status of National Human Rights Institutions, 1993 for the protection and of promotion of human rights in Bangladesh has been serving as a core institutional mechanism to address gross and systematic human rights violation. The NHRC established under The National Human Rights Commission Act, 2009 comprising of 07 members (women and ethnic group representation mandatory) including full-time (a 3-year tenure but not more than twice) basis one chairman and one member secretary works like a national human rights watchdog having merely advisory and inquiry mechanism no direct enforcement mechanism.
- ❖ **ACC** stands for The Anti-Corruption Commission of Bangladesh. The ACC established in 2004 works for combating corruption with legal authority to conduct inquiries & investigation, file & conduct cases, review legal measures for preventing corruption, demand statement of assets & liabilities, and seize property in excess of known sources.
- ❖ **IC** stands for The Information Commission of Bangladesh. The IC having directive authority is responsible for overseeing the compliance with The Right to Information Act, 2009, concerning people about their

rights and resolving disputes regarding information disclosure.

## 8. POVERTY, HUMAN RIGHTS AND DEVELOPMENT PLANNING

Poverty and human rights are interconnected. A right based approach towards development is advocated for sustainable development because poverty is considered as a sole reason of human rights violation. In view of the former United Nations High Commissioner for Human Rights, extreme poverty is the gross violation of human rights in the present world (Steiner, Alston, and Goodman, 2008). An absence of accountability and the rule of law in the economic sphere, inequality, and corruption, mismanagement of public resources, austerity measures and conditions continue to trigger civil unrest in many parts of the world, which in turn undermine the sustainability of long-term development and growth (United Nations, Office of the High Commissioner website, 2018). The following significant programs to alleviate poverty in Bangladesh have been taken by this time:

- Old-Age Allowance Program;
- Allowances Program for Widow and Destitute Woman;
- Honorius Program for Freedom Fighters;
- Training and Self Employment Program for Insolvent Freedom Fighters and their Wards;
- Fund for Rehabilitation of the Acid Burned and the Physically Handicapped;
- Cash Transfer Programs for Education;
- Primary Education Stipend Project;
- Female Secondary School Assistance Program;
- Rural Maintenance Program;
- Food for Works Program;
- Vulnerable Group Development Program;
- Vulnerable Group Feeding Program;

- Poverty Alleviation and Government Development Project;
- Providing Incentives and Financial assistance to poultry & livestock sector;
- Poverty alleviation and Micro-Credit Programs Undertaken by Department of Fisheries;
- Fund for Housing and Homeless;
- Fund for Mitigating Risk due to Natural Disaster;
- Fund to Meet Sudden Natural Disaster;
- Micro-Credit Programs Implemented by the Government and NGOs.

## 9. INTERNATIONAL HUMAN RIGHTS OBLIGATIONS AND THEIR EFFECTS ON BANGLADESHI LAW

Human rights in international sphere can be implemented under different international instruments (i.e. UN charter) by different monitoring bodies (i.e. UNCHR). These bodies are often treated as the “gold standard” as they embrace the ability to impose sanctions on states that have violated their human rights obligations. Apart from its constitutional obligations regarding human rights, Bangladesh now incurs obligations under international human rights law with regard to human rights. It acceded to the ICCPR in 2000 and the ICESCR in 1998, and therefore it has obligations to implement the rights recognized in those treaties. Apart from treaties and conventions, customary international law also acts as a significant source for human rights obligations for Bangladesh. Treaties are not self-executing in Bangladesh. Ratification or accession to international treaties is not sufficient to oblige the Government of Bangladesh under its domestic law to perform the obligations arising out of those treaties. Until they are incorporated into the domestic legal system of Bangladesh, the state remains responsible only under international law.

The Constitution of Bangladesh makes no express commitment regarding application of international law (including international human

rights law). However, the Proclamation of Independence of 1971, which was the interim Constitution of Bangladesh, explicitly affirmed the commitment to perform all obligations that Bangladesh incurred as a member of the international community. But no explicit law is in Bangladesh till now. Ratification or accession to international covenants however may be exercised by the head of the executive on behalf of the head of the state (the president) envisaged in Bangladesh Constitution, art.145-145A but the mere ratification or accession is not enough to protect human rights without framing specific law in this regard.

The possible solutions here (1) to comply with both international human rights law and domestic law where both analogous, (2) international human rights law can be applied to fill the lacuna where the constitutional is silent, and (3) the court will give directions to the legislature authority to remove the existent conflict between the municipal law and the international law by bringing necessary changes to the municipal law. It is as seen in BELA v. Bangladesh (un-reported Writ Petition No.7260 of 2008). The aforesaid writ petition has been for restraining ship breaking from the territorial zone of Bangladesh on the ground of creating environmental hazards mentioning *inter-alia* as Bangladesh is one of the states ratified Basel Convention 1989 (Bangladesh signed on April 1, 1993), it must be compelled to comply with the provisions envisaged therein. The Supreme Court of Bangladesh observed that yes Bangladesh being signatory of Basel Convention is bound to comply with the safeguards and provisions referred in the Basel Convention along with framing necessary rules and regulations in this regard for dealing materials and wastes hazardous for environment and accordingly the court directed the concerned authority of the government in this regard. It may be mentioned here that the court adopted here monastic technique in our dualistic country.

In monastic technique international and national legal system is seen as an accord and a judge can declare here a domestic law invalid based on international law (Melissa; 2007). In dualistic technique, international and national laws are not treated akin to. Mere ratification of any international convention is not enough for compliance and creating any right towards the aggrieved persons until or unless the concerned international treaty or convention is adopted in national law or making law in line with that international treaty and convention and thus a judge cannot override any domestic law in dualistic technique.

## 10. CONCLUSION

We have obtained independence four decades ago but till now we have been unable to upper the status of human rights of the citizens of Bangladesh at the expected level in order to be an ideal country of the world. Collective development should be given priority. All the concerned at the helm of running the country should come first under the shade of transparency. Equal treatment, especially in case of penalty/crime, must be ensured for having an exploitation free society. Economic and social justice is to be considered in a parallel way along with regular transparent-competitive-participatory election process for democratic practice in order to flourish a human-rights friendly society. In this regard, a concerted effort comprising of all sectors including government, NGOs, and civil society is a time befitting demand.

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