

LAW opinion

Children's right to education is a must

OLI MD. ABDULLAH CHOWDHURY

All children have the right to education, however all the children in Bangladesh do not have equal access to educational facilities. Though poverty is often referred to as the root cause for not attending primary schools, there are several other reasons for the denial of such basic right of a child. Children living in haors and chars are mostly from poorer families and they do not have adequate access to basic education. Children deprived of parental care are often the worst sufferers of poverty and deprivation and they seldom get opportunity to receive basic education.

Constitution is the source of all laws in Bangladesh and it has been stated in Article 7 "This Constitution is, as the solemn expression of the will of the people, the supreme law of the Republic, and if any other law is inconsistent with this Constitution and other law shall, to the extent of the inconsistency, be void". Article 17 of the Constitution of Bangladesh stipulates that primary education shall be the responsibility of the State and the website of Ministry of Primary and Mass Education (<http://www.mopme.gov.bd/>) bears this testimony.

Again, it has been stated in Article 17, "The State shall adopt effective measures for the purpose of - establishing a uniform, mass-oriented and universal system of education and extending free and compulsory education to all children to such stage as may be determined by law". Although primary education is free and compulsory as determined by law, there is a large group of excluded children in different isolated locations within the country.

The access to primary education in Bangladesh is provided mainly by the Ministry of Primary and Mass Education (MOPME). More than 75% schools are controlled by the MOPME, and around 83% of total children enrolled in primary level educational institutions go to these schools. Similarly, more than 70% primary teachers are working in the MOPME controlled schools. It is clear that government mechanism could not cover all children.

Bangladesh has one of the largest primary education systems in the world. Primary education is recognised as a means of reducing poverty and improving the quality of life for children. Government, NGOs, civil society and donor communities need to act collectively in realising the

Apart from constitutional obligation and domestic law, Bangladesh has not only committed to achieve MDG and EFA goals, but also signed and ratified a number of international human rights conventions. Among others, Bangladesh is one of the earliest signatories of the United Nations Convention of the Rights of the Child (UNCRC), one of the most venerated human rights conventions. It has been stated in Article 28 of UNCRC "States Parties recognise the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular make primary education compulsory and available free to all".

The purpose of the education has been stated eloquently in UNCRC. The convention has provided states parties guidance on the direction of education in Article 30. States parties agree that the education of the child shall be directed to the development of the child's personality, talents and mental and physical abilities to their fullest potential, as revealed in the convention. It further emphasises on the development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations and the development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own.

Moreover, right to education for everyone has been declared in the Universal Declaration of Human Rights (UDHR) too. It has been stated in Article 26 of the UDHR, "Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be

compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit".

Furthermore, the right of children to education has also been enshrined in the International Covenant on Economic, Social and Cultural Rights (ICESC). It has been stated in Article 13, "The States Parties to the present Covenant recognise that, with a view to achieving the full realization of this right: (a) Primary education shall be compulsory and available free to all...". Government of Bangladesh is, therefore, accountable to the international community as well as people of the country for ensuring compulsory education.

Directorate of Primary Education (<http://www.dpe.gov.bd/>) while conducting Baseline Survey has revealed an unsatisfactory situation with regards to internal efficiency of the primary education system and level of wastage. Baseline shows that the repetition rates were high in all districts of Sylhet Division. Similarly, the repetition rates were higher in all the Haor areas compared to other districts of plain areas. Again it is interesting to note that in hilly areas the repetition rate was higher with the exception of Rangamati.

Non-discrimination is one of the central themes of all human rights conventions including the UNCRC, although all children do not get equal opportunity. The fundamental aim of the Second Primary Education Development Program (PEDP-II) though is to ensure the quality of primary education for all children in Bangladesh, educationists complain about the problem in design of the programme itself. The programme broadly covers government primary schools, registered non-government



primary schools (RNGPS) and community schools though there are other types of primary schools providing education to significant number of children in Bangladesh. Children from haor, char and hilly areas do not have equal access to education and quality of education is severely low in those areas.

of teachers.

In the "Briefing Note on Options for Education Services In the Char Livelihoods Programme", it has been revealed that educational attainment in the chars is very limited. Tom Zizys pins down that half of the population aged 5 years and over report no education whatsoever, and four out of five report

suggests a number of studies supporting the linkage between education and development. He argues, education per se is not development but can prepare individuals to enhance their chances of exploring ways and means for development.

All the children must be provided with the opportunity to

explore ways and means for development. Children living in haors, chars and hilly areas must be provided with this opportunity as well. Bangladesh has one of the largest primary education systems in the world. Primary education is recognised as a means of reducing poverty and improving the quality of life for children. Government, NGOs, civil society and donor communities need to act collectively in realising the right to education of excluded children in Bangladesh.

The writer is working for Friends in Village Development Bangladesh (FIVDB).

FACT file



Indigenous peoples can truly live in dignity

Statement by Acting UN High Commissioner for Human Rights Kyung-wha Kang, and S. James Anaya, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people on the International Day of the World's Indigenous People:

This year's International Day of the World's Indigenous People, celebrated on 9 August, is the first to take place following the landmark adoption of the UN Declaration on the Rights of Indigenous Peoples by the General Assembly in September 2007.

The Declaration, which was the culmination of more than two decades of tireless campaigning by indigenous peoples the drafting was started in 1985 marked a significant development in the protection of their human rights.

The Declaration, approved by an overwhelming majority of UN Member States, lays down minimum standards for the survival, dignity and well-being of the world's estimated 5,000 indigenous groups (comprising as many as 370 million individuals). It seeks to address the historical injustices they have faced by re-affirming their right to be different, and to live peacefully on their own lands. It also represents a significant contribution to the guiding principles of



justice and dignity championed in the Universal Declaration of Human Rights, which celebrates its 60th anniversary this year.

However, the adoption of the Declaration on the Rights of Indigenous Peoples important though it is will not in itself change the everyday lives of the men, women and children whose rights it champions. For this we need the political commitment of states, international cooperation, and the support and good will of the public at large, to create and implement a range of intensely practical programmes, designed and undertaken in consultation with indigenous peoples themselves.

The Office of the High Commissioner for Human Rights the principal UN body responsible for the promotion and protection of human rights -- and the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, are committed to working together towards the realisation of the rights contained in the Declaration, so that increasing numbers of the world's indigenous peoples can truly live in dignity and peace.

Source: Office of the High Commissioner for Human Rights.

LAWS FOR everyday life

Custody of children

SHAH MD. MUSHFIQUR RAHMAN

'SAGAR' is a kid of five years. Unfortunately his father dies leaving him orphan.

His mother decides to live separate from her in-laws and thinks that Sagar's interests would be better taken care of by her than anybody else. But Sagar's paternal uncle, who is married himself, thinks Sagar's welfare would best be served under his guardianship. This is one of the typical family disputes that society experiences everyday. A dispute over guardianship is not only produced by the incident of death rather divorce probably accounts for most numbers of suits on guardianship.

Death and divorce are two of the most undesirable events in every society. But these take place and give rise to some serious issues including the question of 'custody' and 'guardianship' of minors. Today we shall be discussing the issue of 'custody'. The term 'custody' is used in more limited sense than the term 'guardianship'. 'Custody' could be defined as "the right to have the child live with the person having such right". It basically refers to the right to look after physical wellbeing of the child.

Who is a minor?

Before getting into the deep, we should know who comes within the definition of minor because in general minors need custody. In Muslim law the terms majority and puberty are used interchangeably. So anybody who steps into the age of puberty, in other words gains the physical capacity to father or mother a child, is entitled to act on himself or herself. This way the age of majority may differ from person to person. But our statutory law prescribes eighteen years to be the age of majority (the Majority Act 1875). For the purpose of marriage the age of majority for males is further extended to twenty one years (the Child Marriage Restraint

Act 1929). Natural custodian First of all, the custody of an infant belongs to the mother. In ortho-



dox Muslim law the mother is entitled to the custody of her male child until he attains the age of seven years and of her female child until she reaches puberty. This rule is also supported by our legal system. Mother's right to custody remains intact even if she is divorced by the father of the child.

Although the mother has the custody of a child of tender years, this does not mean that the father has no rights whatsoever. The mother is entitled only to the custody of the 'person' of her minor child. She is not the natural guardian, but the father is. Thus, where the father and mother are

living together, the husband cannot take the child away from him. On the other hand, the mother cannot take it away without the

son. But if the person is related to the child within the prohibited degrees (child's paternal uncle), this will not be a disqualification. Even if she loses her right marrying a stranger, the right revives on the dissolution of the marriage either by death or divorce; or b) if she goes and resides, during the subsistence of the marriage, at a distance from her husband's place of residence without any reasonable ground; or c) if she is leading an immoral life; or d) if she neglects to take proper care of the child.

If mother is absent or disqualified

In absence of the mother or if she is disqualified, the custody of a child goes to the closest female relatives in the following order of priority:

1. Mother's mother;
2. Father's mother;
3. Full sister;
4. Uterine sister;
5. Consanguine sister;
6. Full sister's daughter;
7. Uterine sister's daughter;
8. Consanguine sister's daughter;
9. Maternal aunt
10. Paternal aunt.

If all the above female relations fail, custody goes to the following male relations in order of priority:

1. The father;
2. Nearest paternal grandfather;
3. Full brother;
4. Consanguine brother and other paternal relations.

Father's turn

The father is naturally entitled to the custody of a boy over seven years of age and a girl who has attained puberty.

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LAW alter views

Politics and our Constitution

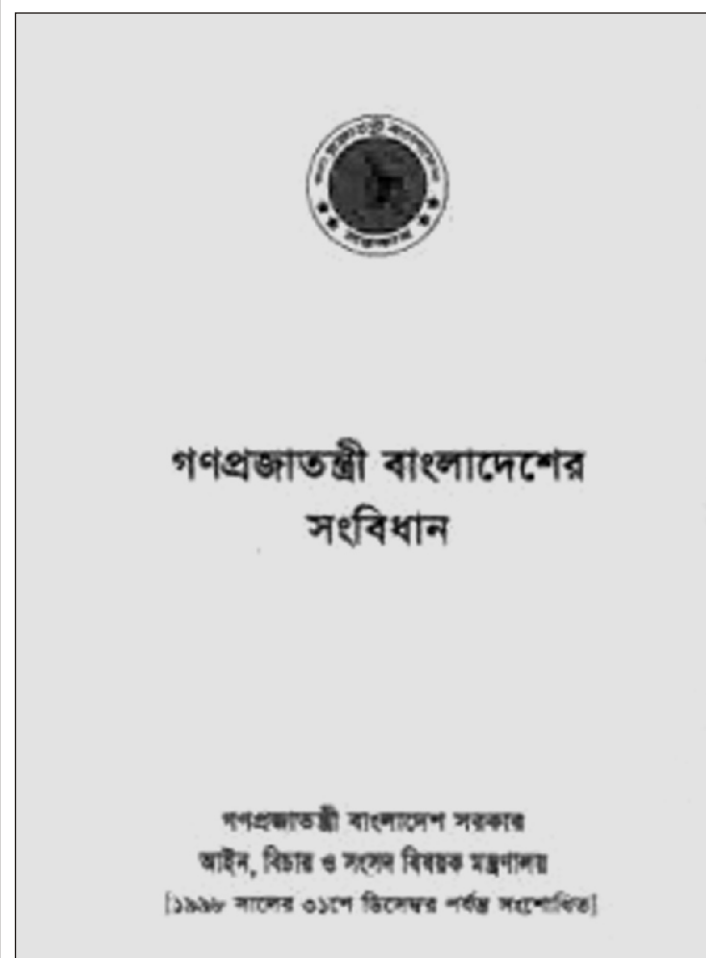
DR. BELAL HUSAIN JOY

The Constitution of Bangladesh is a product of the Liberation Struggle so to say. Soon after the independence, Bangabandhu Sheikh Mujibur Rahman expressed his desire to get the constitution drafted for the new born country at its earliest. Only within eleven months, on 4th November 1972, the final draft of the constitution of Bangladesh incorporating accumulated experience of the available modern constitutions was finalised. Considering the Constitutional history of India and Pakistan, when such a vast work of great importance was completed within a limited time, obviously it could not go through required in-depth research. Most of the provisions have been substantially borrowed from world constitutions especially from the South East Asian countries, although it has a number of distinct features.

The faults, potential ineffectiveness and unworkable provisions were hardly discussed in the Parliament on or before the day the Constitution of Bangladesh came into being. Then in the name of adapting provisions into the constitution, the politicians in power as and when felt necessary amended the Constitution, mostly either for their own protection or for their personal benefits instead of national interest. Perhaps realising the drawbacks, the Army Chief, General Moen U Ahmed, said in a seminar on July 10, 2007, that "We need reform, we need a review of our constitution and let the parliament come and take over their responsibility and correct the constitution." From such statement, it appears that we have problems with our politics and defects in our constitution. Hence, the politics and the constitution both must undergo a process of reform and review, to protect the people from those who become rulers through wicked means as stated by Niccolò Machiavelli in his book The Prince.

The process of 1/11 is a judicial cum administrative one of reforming politics, with ultimate aim of handing over the power to honest and competent people's representatives, establishing democracy, freeing the society from corruption, crime and mal-administration. The constitution, being the supreme law of the land, should have been up-dated to cater for today's needs and aspirations, which our parliaments, our governments and our judiciary, till 1/11, drastically failed to do. This is why our politics is highly confronted with constant chaos, confusion and conflict. Although the Constitution is the will of the people but its supremacy is in question today. The people from all over the country helplessly witnessed shameful amendments made to the constitution for personal, group or party interest, again and again. During the political crisis, Constitutional provisions were misinterpreted by party politicians and party professionals and even the party lawyers to their favour. Having no other alternative, in the interest of security and safety, peace and stability of our country, proclamation of emergency was inevitable.

From some quarters, questions did arise of abrogating the Constitution. The constitution has assigned or distributed separate powers of the Republic to three individual organs, no one organ can encroach upon the other organs. But in practice, at least during the last three tenures of the governments, the Executive organ was found to dominate over the



Parliament and the Judiciary. There were no checks and balances. As a result, no one of the organs could effectively work either for the people or for the Republic, causing conflicts in politics, in the society, in economy, which ultimately led to today's political crisis. In upholding the Constitution, the caretaker government (CG) took a bold step to finally separate the Judiciary from the Executive, and the Judiciary acted immediately and put the law into action to deliver fair justice to the accused, litigants and complainants.

The Indian Constitution has been reviewed at least eight times; our parliamentarians never gave any thought of doing so. The reviewing process could have been carried out by forming a "Constitution Commission" with independent specialized law-makers and lawyers, who would read the constitution religiously. The Commission could have its own research cell to re-consider every single provision of the constitution, to up-date, to amend, to fit to the modern democracy, finally to recommend to the Parliament to consider review of the required provisions of the constitution. During the last decade or so, the nation suffered from severe shortage of honest and competent leadership, in the traditional dynastic system one replaced another. Statesmanship among the politicians did not grow either.

Reforming process within the political parties is underway, but real intellectuals and educated personalities with honesty and competence are hardly seen as yet. Time has come, party leaderships may change more frequently until the right man is found to lead the nation. Such screening process was also experienced by the French until 1958. We, in Bangladesh, desperately need statesmen with competence and patriotism to rescue this generation from constitutional and political crisis and serve the generations to come. May be more and more think tank organizations are needed to concentrate on specialized areas of the society, economy, and politics to create public awareness, remove inequality from society, decentralise the administration, establish effective rule of law, improve quality of MPs and increase effectiveness of parliamentary standing committees; finally to install a modern democracy giving due respect to the supreme law of the land -- the Constitution.

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